Thematic factsheet[1]
Update: July 2018

HATE SPEECH, APOLOGY OF VIOLENCE, PROMOTING NEGATIONISM AND CONDONING TERRORISM: THE LIMITS TO THE FREEDOM OF EXPRESSION

By virtue of Article 17 of the Convention, which prohibits the abuse of rights, any statements directed against the Convention's underlying values of justice and peace falls outside the scope of the protection afforded by the right to freedom of expression guaranteed by Article 10 of the Convention. Such is the case for speeches gratuitously offensive or insulting, inciting disrespect or hate or casting doubt on clearly established historical facts. Also, statements which may be held to amount to the glorification of or to incitement to violence cannot be regarded as compatible with the notion of tolerance, and run counter to the fundamental values set forth in the Preamble of the European Convention of Human Rights.

Hate speech entails the advocacy, promotion or incitement to denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat to such persons on the basis of a non-exhaustive list of personal characteristics or status that includes race, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.

A particular feature of hate speech is that it aims at inciting or can reasonably be expected to have the effect of inciting others to commit acts of violence, intimidation, hostility or discrimination against those it targets. Incitement to hatred can result from insulting, the holding up to ridicule or the slandering of specific groups of population where such forms of expression are exercised in an irresponsible manner, which might entail being unnecessarily offensive, advocating discrimination or using vexatious or humiliating language. Intent to incite might also be established where there is an unambiguous call by a person using hate speech to others to commit the impugned acts. It might also be inferred from the strength of the language used and other relevant circumstances in which hate speech is used. Member states must sanction or even prevent all forms of expression which spread, incite, promote or justify hatred, provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued.

INCITEMENT TO ETHNIC HATRED

Statements inciting to hatred against the Poles and the Jews

Balsytė-Lideikienė v. Lithuania 72596/01
Judgment 4 November 2008

[1] This note presents a non-exhaustive selection of the European Court of Human Rights' relevant case-law and of other relevant Council of Europe instruments. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to amount to a hindrance of Article 10 of the Convention. This information is not a legal assessment of the alerts and should not be treated or used as such.

The applicant owned a publishing company. In March 2001 the Polish courts found that she had breached the Code on Administrative Offences on account of her publishing and distributing the "Lithuanian calendar 2000" which, according to the conclusions of political science experts, promoted ethnic hatred. She was issued with an administrative warning and the unsold copies of the calendar were confiscated. The applicant alleged in particular that the confiscation of the calendar and the ban on its further distribution had infringed her right to freedom of expression.

The European Court of Human Rights found, in particular, that the applicant had expressed aggressive nationalism and ethnocentrism and statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian authorities cause for serious concern. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court found that in the present case the domestic authorities had not overstepped their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant. The Court also noted that even though the confiscation measure imposed on the applicant could be deemed relatively serious, she had not had a fine imposed on her, but only a warning, which was the mildest administrative punishment available. Therefore, the Court found that the interference with the applicant's right to freedom of expression could reasonably have been considered necessary in a democratic society for the protection of the reputation or rights of others.

Conclusion: **no violation of Article 10** (freedom of expression)

Newspaper editor convicted of public incitement to ethnic hatred for articles portraying the Jews as the source of evil in Russia

Pavel Ivanov v. Russia 35222/04
20 February 2007 (decision on the admissibility)

The applicant, owner and editor of a newspaper, was convicted of public incitement to ethnic, racial and religious hatred through the use of mass-media. He authored and published a series of articles portraying the Jews as the source of evil in Russia, calling for their exclusion from social life. He accused an entire ethnic group of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. Both in his publications, and in his oral submissions at the trial, he consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The applicant complained, in particular, that his conviction for incitement to racial hatred had not been justified.

The European Court of Human Rights had no doubt as to the markedly anti-Semitic tenor of the applicant's views and agreed with the assessment made by the domestic courts that through his publications he had sought to incite hatred towards the Jewish people. Such a general, vehement attack on one ethnic group is directed against the Convention's underlying values, notably tolerance, social peace and non-discrimination. Consequently, by reason of Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not benefit from the protection afforded by Article 10 (freedom of expression) of the Convention.

Conclusion: **inadmissible**

See also: ***W.P. and Others v. Poland*** no. 42264/98 Refusal by the Polish authorities to allow the creation of an association with statutes including anti-Semitic statements. Decision of 2 September 2004: **Inadmissible**

Criminal conviction of newspaper editor for publishing articles by Chechen separatists

Dmitriyevskiy v. Russia - 42168/06
Judgment 3.10.2017

The applicant was the chief editor of a regional newspaper. In 2004 the newspaper published two articles that were believed to have been written by two Chechen separatist leaders who were wanted in Russia on serious criminal charges. In the first article, the author urged Chechens to choose peace and get rid of the President by voting against him in the pending presidential elections. In the second, the author alleged that the Chechen people were being subjected to a continuing genocide orchestrated by the Kremlin. The applicant was charged under Article 282 § 2 of the Criminal Code with incitement to hatred or enmity and the humiliation of human dignity. He was subsequently convicted after a linguistic expert appointed by the trial court concluded, inter alia, that the authors of the articles had sought to incite racial, ethnic or social discord, associated with violence and the use of terrorist methods. The applicant was given a two-year suspended sentence and four years' probation for having published the articles.In the Convention proceedings, the applicant complained of a violation of his freedom of expression secured by Article 10 of the Convention.

In order to determine whether the applicant's conviction in connection with those articles was "necessary in a democratic society", the European Court of Human Rights had particular regard to the applicant's status, the nature of the articles and their wording, the context in which they were published, and the approach taken by the domestic courts to justify the interference. The applicant was the chief editor of a regional newspaper and in that capacity his task was to impart information and ideas on matters of public interest.

The first article was written in quite a neutral and even conciliatory tone and could not be construed as stirring up hatred or intolerance on any ground, let alone fuelling violence capable of provoking any disorders or undermining national security, territorial integrity or public safety. Although the second article was more virulent and strongly worded, using expressions such as "genocide", "criminal madness by the bloody Kremlin regime", "Russia's terror", "terrorist methods" and "excesses", it was an integral part of freedom of expression to seek the historical truth and a debate on the causes of acts of particular gravity which could amount to war crimes or crimes against humanity had to be able to take place freely. Moreover, it was in the nature of political speech to be controversial and often virulent.

Overall, the views expressed in the articles could not be read as an incitement to violence or as instigating hatred or intolerance liable to result in violence. There was nothing in the articles other than a criticism of the Russian Government and their actions in the Chechen Republic. However acerbic that criticism might have been it did not go beyond the acceptable limits, which were particularly wide with regard to the government.

As to the approach taken by the domestic courts, their decisions in the applicant's case were profoundly deficient. Firstly, the crucial legal finding as to the presence in the impugned articles of elements of "hate speech" was made by the linguistic expert rather than by the courts themselves. That situation was unacceptable as all legal matters had to be resolved exclusively by the courts. Secondly, there was nothing in the domestic courts' decisions to show that they had made any attempt to assess whether the impugned statements could be detrimental to national security, territorial integrity or public safety, or to public order. The domestic authorities had thus failed to base their decision on an acceptable assessment of all relevant facts and to provide "relevant and sufficient" reasons for the applicant's conviction.

Lastly, both the applicant's conviction and the severe sanction imposed were capable of producing a chilling effect on the exercise of journalistic freedom of expression in Russia and dissuading the press from openly discussing matters of public concern, in particular, those relating to the conflict in the Chechen Republic. The domestic authorities had thus overstepped the margin of appreciation afforded to them for restrictions on debates on matters of public interest.

Conclusion: violation of Article 10 (freedom of expression)

See also,

- ***Ottan v. France*** no. 41841/12, [Conviction of a lawyer for public comments contesting the ethnic origin of members of an assize court jury] Judgment 19.4.2018: **violation of Article 10**
- ***Smajić v. Bosnia and Herzegovina*** no. 48657/16 [Conviction for making a number of posts in 2010 on an Internet forum describing military action which could be undertaken against Serb villages in the Brčko Districtin the event of another war]:) Decision 8.2.2018 :**inadmissible**
- ***Dmitriyevskiy v. Russia*** - 42168/06 [Criminal conviction of newspaper editor for publishing articles by Chechen separatists] Judgment 3.10.2017 : **violation of Article 10**

INCITEMENT TO HOMOPHOBIA

Circulating homophobic leaflets

Vejdeland and Others v. Sweden 1813/07
Judgment 9 February 2012

This case concerned the applicants' conviction for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants had distributed leaflets by an organisation called National Youth, by leaving them in or on the pupils' lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS. The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools.

The European Court of Human Rights found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour. It concluded that the interference with the applicants' exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others.

Conclusion: **no violation of Article 10** (freedom of expression)

NEGATIONISM AND REVISIONISM

Holocaust denial

Garaudy v. France 65831/01
24 June 2003 (decision on the admissibility)

The applicant, the author of a book entitled *The Founding Myths of Modern Israel*, was convicted of the offences of disputing the existence of crimes against humanity, defamation in public of a group of persons – in this case, the Jewish community – and incitement to racial hatred. He argued that his right to freedom of expression had been infringed. The European Court of Human Rights declared the application **inadmissible**. It considered that the content of the applicant's remarks had amounted to Holocaust denial, and pointed out that denying crimes against humanity was one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. Disputing the existence of clearly established historical events did not constitute scientific or historical research; the real purpose was to rehabilitate the National Socialist regime and accuse the victims themselves of falsifying history. As such acts were manifestly incompatible with the fundamental values which the Convention sought to promote, the Court applied Article 17 (prohibition of abuse of rights) and held that the applicant was not entitled to rely on Article 10 (freedom of expression) of the Convention.

See also: ***Honsik v. Austria*** 25062/94 and ***Marais v. France***, 31159/96 **Inadmissibility** decision of the Commission of 24 June 1996 (concerning an article in a periodical aimed at demonstrating the scientific implausibility of the "alleged gassings" in concentration camps).

Promoting anti-Semitism and support for Holocaust denial disguised as an artistic production

M'Bala M'Bala v. France 25239/13
20 October 2015 (decision on the admissibility)

This case concerned the conviction of Dieudonné M'Bala M'Bala, a comedian with political activities, for public insults directed at a person or group of persons on account of their origin or of belonging to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith. At the end of a show in December 2008 at the "Zénith" in Paris, the applicant invited Robert Faurisson, an academic who has received a number of convictions in France for his negationist and revisionist opinions, mainly his denial of the existence of gas chambers in concentration camps, to join him on stage to receive a "prize for unfrequentability and insolence". The prize, which took the form of a three-branched candlestick with an apple on each branch, was awarded to him by an actor wearing what was described as a "garment of light" – a pair of striped pyjamas with a stitched-on yellow star bearing the word "Jew" – who thus played the part of a Jewish deportee in a concentration camp.

The European Court of Human Rights found that, by virtue of Article 17 (prohibition of abuse of rights), the applicant was not entitled to the protection of Article 10 (freedom of expression). The Court considered in particular that during the offending scene the performance could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism through the key position given to Robert Faurisson's appearance and the degrading portrayal of Jewish deportation victims faced with a man who denied their extermination. In the Court's view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention. The Court thus concluded that the applicant had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Conclusion: **Inadmissible**

INCITEMENT TO RELIGIOUS HATRED

Displaying a poster with the words "Islam out of Britain – Protect the British People"

Norwood v. the United Kingdom 23131/03
16 November 2004 (decision on the admissibility)

The applicant had displayed in his window a poster supplied by the British National Party, of which he was a member, representing the Twin Towers in flame. The picture was accompanied by the words "Islam out of Britain – Protect the British People". As a result, he was convicted of aggravated hostility towards a religious group. The applicant argued, among other things, that his right to freedom of expression had been breached.

The European Court of Human Rights found in particular that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The Court therefore held that the applicant's display of the poster in his window had constituted an act within the meaning of Article 17 (prohibition of abuse of rights) of the Convention, and that the applicant could thus not claim the protection of Article 10 (freedom of expression) of the Convention. **Inadmissible**

Journalist's conviction for defamation after rejecting Papal authority in a daily newspaper

Giniewski v. France - 64016/00
Judgment 31.1.2006

The applicant, a journalist, sociologist and historian, wrote an article in a daily newspaper on Pope John Paul II's encyclical "The Splendour of Truth". An association called the "General Alliance against Racism and for Respect for French and Christian Identity" complained that the article defamed the Christian community. The courts allowed the civil claim lodged by the association, finding that some passages in the article undermined the honour and character of Christians and, more specifically, the Catholic community. The applicant was found guilty of publicly defaming a group of persons on the basis of their religion. He was ordered to pay the association one French franc in damages and 10,000 French francs in expenses, and to publish a statement concerning his conviction in a national newspaper.

According to the European Court of Human Rights, although the article had criticised a Papal encyclical and hence the Pope's position, the analysis it contained could not be extended to Christianity as a whole, which was made up of various strands, several of which rejected Papal authority. The applicant had sought primarily to develop an argument about the scope of a particular doctrine and its possible links with the origins of the Holocaust. In so doing he had made a contribution, which by definition was open to discussion, to a wide-ranging and ongoing debate, without sparking off any controversy that was gratuitous or detached from the reality of contemporary thought. By considering the detrimental effects of a particular doctrine, the article in question had contributed to discussion of the various possible reasons behind the extermination of Jews in Europe, a question of indisputable public interest in a democratic society. In such matters restrictions on freedom of expression were to be strictly construed. Although the issue raised concerned a doctrine upheld by the Catholic Church, and hence a religious matter, the article in question did not contain attacks on religious beliefs as such, but a view which the applicant had wished to express as a journalist and historian. In that connection, the Court considered it essential in a democratic society that a debate on the causes of acts of particular gravity

amounting to crimes against humanity should be able to take place freely. The article in question had, moreover, not been "gratuitously offensive" or insulting, and had not incited disrespect or hatred. Nor had it cast doubt in any way on clearly established historical facts. With regard to the penalties imposed on the applicant, the fact that the statement which he had been required to publish had mentioned the criminal offence of defamation undoubtedly had a deterrent effect, and the sanction appeared disproportionate in view of the importance of the debate in which the applicant had legitimately sought to take part.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Conviction of leader of an Islamic sect for inciting people to religious crime and hatred through publication of his comments in the press

Gündüz v. Turkey (no. 2) 59745/00
Decision of inadmissibility 13.11.2003

A report about the applicant, the leader of Tarikat Aczmendi (a community describing itself as an Islamic sect), was published in Haftalık Taraf, a weekly newspaper with radical Islamic leanings. The public prosecutor charged the applicant with incitement to commit an offence and the domestic courts sentenced him to four years' imprisonment. The applicant complained that his criminal conviction had entailed a violation of Article 10 of the Convention.

The European Court of Human Rights considered that, having regard to the violent content and tone of the applicant's comments, they amounted to hate speech advocating violence and accordingly were incompatible with the basic values of justice and peace expressed in the Preamble to the Convention. Moreover, in the article in question the applicant had given the name of one of the persons he was alluding to. As that person was a writer enjoying a certain amount of fame, he was easily recognisable by the general public and, following publication of the article, therefore indisputably exposed to a significant risk of physical violence. Accordingly, the Court considered that the severity of the penalty imposed (four years and two months' imprisonment and a fine) was justified in so far as it was a deterrent that might turn out to be necessary in the context of preventing public incitement to commit offences. **Inadmissible**

APOLOGY OF VIOLENCE AND INCITEMENT TO HOSTILITY

Responsibility of an owner of the review for readers' letters appealing to bloody revenge

Sürek (no.1) v. Turkey 26682/95
8 July 1999

The applicant was the owner of a weekly review which published two readers' letters vehemently condemning the military actions of the authorities in south-east Turkey and accusing them of brutal suppression of the Kurdish people in their struggle for independence and freedom. The applicant was convicted of "disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people". He complained that his right to freedom of expression had been breached.

The European Court of Human Rights noted that the impugned letters amounted to an appeal to bloody revenge and that one of them had identified persons by name, stirred up hatred for them and exposed them to the possible risk of physical violence. Although the applicant had not personally associated

himself with the views contained in the letters, he had nevertheless provided their writers with an outlet for stirring up violence and hatred. The Court considered that, as the owner of the review, he had been vicariously subject to the duties and responsibilities which the review's editorial and journalistic staff undertook in the collection and dissemination of information to the public, and which assumed even greater importance in situations of conflict and tension.

Conclusion: no violation of Article 10 (freedom of expression)

See also, among others:

- ***Taulats and Roura Capellera v. Spain*** no. 51168/15 [conviction of two Spanish nationals for setting fire to a photograph of the royal couple at a public demonstration held during the King's official visit to Girona in September 2007] Judgment 13.3.2018: Violation of Article 10
- ***Özgür Gündem v. Turkey***, 23144/93 judgment of 16 mars 2000 (conviction of a daily newspaper for the publication of three articles containing passages which advocated intensifying the armed struggle, glorified war and espoused the intention to fight to the last drop of blood);
- ***Medya FM Reha Radyo ve Iletişim Hizmetleri A. Ş. v. Turkey***, 32842/02 decision on the admissibility of 14 November 2006 (one-year suspension of right to broadcast, following repeated radio programmes deemed to be contrary to principles of national unity and territorial integrity and likely to incite violence, hatred and racial discrimination).

Statements which amount to glorification of or incitement to violence

Gündüz v. Turkey 35071/97
13 November 2003 (decision on the admissibility)

The applicant, the leader of an Islamic sect, had been convicted of incitement to commit an offence and incitement to religious hatred on account of statements reported in the press. He was sentenced to four years and two months' imprisonment and to a fine. The applicant argued, among other things, that his right to freedom of expression had been breached.

The European Court of Human Rights declared the application inadmissible, finding that the severity of the penalty imposed on the applicant could not be regarded as disproportionate to the legitimate aim pursued, namely the prevention of public incitement to commit offences. The Court stressed in particular that statements which may be held to amount to hate speech or to glorification of or incitement to violence, such as those made in the instant case, cannot be regarded as compatible with the notion of tolerance and run counter to the fundamental values of justice and peace set forth in the Preamble to the Convention. Admittedly, the applicant's sentence, which was increased because the offence had been committed by means of mass communication, was severe. The Court considered, however, that provision for deterrent penalties in domestic law may be necessary where conduct reaches the level observed in the instant case and becomes intolerable in that it negates the founding principles of a pluralist democracy.

Conclusion: Inadmissible (**manifestly ill founded**)

Speech criticising the United States' intervention in Iraq

Faruk Temel v. Turkey 16853/05
Judgment 1 February 2011

The applicant, the chairman of a legal political party, read out a statement to the press at a meeting of the party, in which he criticised the United States' intervention in Iraq and the solitary confinement of the leader of a terrorist organisation. He also criticised the disappearance of persons taken into police custody. Following his speech the applicant was convicted of disseminating propaganda, on the ground that he had publicly defended the use of violence or other terrorist methods. The applicant contended that his right to freedom of expression had been breached.

The European Court of Human Rights noted in particular that the applicant had been speaking as a political actor and a member of an opposition political party, presenting his party's views on topical matters of general interest. It took the view that his speech, taken overall, had not incited others to the use of violence, armed resistance or uprising and had not amounted to hate speech.

Conclusion: violation of Article 10 (freedom of expression) of the Convention

See also, among others:

- ***Dicle (no. 2) v. Turkey***, 46733/99 judgment of 11 April 2006 (conviction for alleged inciting to hatred and hostility following the publication of a seminar report): **violation of Article 10**
- ***Erdal Taş v. Turkey***, 77650/01 judgment of 19 December 2006 (conviction for disseminating alleged propaganda against the indivisibility of the State on account of the publication of a statement by a terrorist organisation, following the publication in a newspaper of an article consisting of analysis of the Kurdish question): **violation of Article 10**

CONDONING TERRORISM

Drawing representing the attack on the twin towers of the World Trade Center

Leroy v. France 36109/03
Judgment 2 October 2008

The applicant, a cartoonist, complained of his conviction for publicly condoning terrorism following the publication in a Basque weekly newspaper on 13 September 2001 of a drawing representing the attack on the twin towers of the World Trade Center with a caption imitating the advertising slogan of a famous brand: "We all dreamt of it... Hamas did it". He argued that his freedom of expression had been infringed.

The European Court of Human Rights considered, in particular, that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. In this regard, the Court based its finding on the explanation which accompanied the drawing, and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims. In addition, it had to be recognised that the drawing had assumed a special significance in the circumstances of the case, as the applicant must have realised. Moreover, the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked; the weekly

newspaper's limited circulation notwithstanding, the Court noted that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region. Consequently, the Court considered that the grounds put forward by the domestic courts in convicting the applicant had been relevant and sufficient and, having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, it found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.

Conclusion: **no violation of Article 10** (freedom of expression) of the Convention

CONDONING WAR CRIMES

Texts published in the daily newspaper defending Marshal Pétain's memory

Lehideux and Isorni v. France 55/1997/839/1045
Judgment 23 September 1998

The applicants wrote a text which was published in the daily newspaper *Le Monde* and which portrayed Marshal Pétain in a favourable light, drawing a veil over his policy of collaboration with the Nazi regime. The text ended with an invitation to write to two associations dedicated to defending Marshal Pétain's memory, seeking to have his case reopened and to have the judgment of 1945 sentencing him to death and to forfeiture of his civic rights overturned, and to have him rehabilitated. Following a complaint by the National Association of Former Members of the Resistance, the two authors were convicted of publicly defending war crimes and crimes of collaboration with the enemy. They alleged a violation of their right to freedom of expression.

The European Court of Human Rights considered that the impugned text, although it could be regarded as polemical, could not be said to be negationist since the authors had not been writing in a personal capacity but on behalf of two legally constituted associations, and had not praised pro-Nazi policies but a particular individual. Lastly, the Court noted that the events referred to in the text had occurred more than forty years before its publication and that the lapse of time made it inappropriate to deal with such remarks, forty years on, with the same severity as ten or twenty years previously.

Conclusion: **violation of Article 10** (freedom of expression) of the Convention

DENIGRATING NATIONAL IDENTITY

Journalist commenting on Armenian minority found guilty of "denigrating Turkish identity"

Dink v. Turkey **2668/07, 6102/08, 30079/08, 7072/09 et 7124/09**
Judgment 14 September 2010

Firat (Hrank) Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of a bilingual Turkish-Armenian weekly newspaper published in Istanbul. Following the publication in this newspaper of eight articles in which he expressed his views on the identity of Turkish citizens of Armenian origin, he was found guilty in 2006 of "denigrating Turkish identity". In 2007 he was killed by three bullets to the head as he left the offices of the newspaper. The applicants, his relatives, complained in particular of the guilty verdict against him which, they claimed, had made him a target for extreme nationalist groups.

The European Court of Human Rights found that there had been no pressing social need to find Fırat Dink guilty of denigrating "Turkishness". It observed, in particular, that the series of articles taken overall did not incite others to violence, resistance or revolt. The author had been writing in his capacity as a journalist and editor-in-chief of a Turkish-Armenian newspaper, commenting on issues concerning the Armenian minority in the context of his role as a player on the political scene. He had merely been conveying his ideas and opinions on an issue of public concern in a democratic society. In such societies, the debate surrounding historical events of a particularly serious nature should be able to take place freely, and it was an integral part of freedom of expression to seek historical truth. Finally, the impugned articles had not been gratuitously offensive or insulting, and they had not incited others to disrespect or hatred.

Conclusion: violation of Article 10 (freedom of expression) of the Convention

Display of a flag with controversial historical connotations

Fáber v. Hungary 40721/08
Judgment 24 July 2012

The applicant complained that he had been fined for displaying the striped Árpád flag, which had controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred. The European Court of Human Rights held that there had been a violation of Article 10 (freedom of expression) read in the light of Article 11 (freedom of assembly and association of the Convention. It accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining the applicant for refusing to take down the flag in question. The mere display of that flag did not disturb public order or hamper the demonstrators' right to assemble, as it had been neither intimidating, nor capable of inciting violence.

Conclusion: violation of Article 10 (freedom of expression) of the Convention

INCITEMENT TO RACIAL DISCRIMINATION OR HATRED

Documentary containing abusive remarks about immigrants and ethnic groups

Jersild v. Denmark 15890/89
Judgement 23 September 1994

The applicant, a journalist, had made a documentary containing extracts from a television interview he had conducted with three members of a group of young people calling themselves the "Greenjackets", who had made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The applicant was convicted of aiding and abetting the dissemination of racist remarks. He alleged a breach of his right to freedom of expression.

The European Court of Human Rights drew a distinction between the members of the "Greenjackets", who had made openly racist remarks, and the applicant, who had sought to expose, analyse and explain this particular group of youths and to deal with "specific aspects of a matter that already then was of great public concern". The documentary as a whole had not been aimed at propagating racist views and ideas, but at informing the public about a social issue.

Conclusion: **violation of Article 10** (freedom of expression) of the Convention

Book inciting to hatred and violence against Muslim

Soulas and Others v. France 15948/03
Judgment 10 July 2008

Criminal proceedings had been brought against the applicants, following the publication of a book entitled "The colonisation of Europe", with the subtitle "Truthful remarks about immigration and Islam". The proceedings resulted in their conviction for inciting hatred and violence against Muslim communities from northern and central Africa. The applicants complained in particular that their freedom of expression had been breached.

The European Court of Human Rights noted, in particular, that, when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as the main enemy, and to lead the book's readers to share the solution recommended by the author, namely a war of ethnic re-conquest. Holding that the grounds put forward in support of the applicants' conviction had been sufficient and relevant, it considered that the interference in the latter's right to freedom of expression had been necessary in a democratic society.

Conclusion: no violation of Article 10 (freedom of expression) of the Convention

Leaflets distributed during election campaigns carrying slogans against immigrants

Féret v. Belgium 15615/07
Judgment 16 July 2009

The applicant was a Belgian member of Parliament and chairman of the political party *Front National* in Belgium. During the election campaign, several types of leaflets were distributed carrying slogans including "Stand up against the Islamification of Belgium", "Stop the sham integration policy" and "Send non-European job-seekers home". The applicant was convicted of incitement to racial discrimination. He was sentenced to community service and was disqualified from holding parliamentary office for 10 years. He alleged a violation of his right to freedom of expression.

In the European Court of Human Right' view, the applicant's comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant's conviction had been justified in the interests of preventing disorder and protecting the rights of others, namely members of the immigrant community.

Conclusion: no violation of Article 10 (freedom of expression) of the Convention

Statements made about Muslims in France in an interview with *Le Monde* daily newspaper

Le Pen v. France 18788/09
20 April 2010 (decision on the admissibility)

At the time of the facts, the applicant was president of the French *Front National* party. He alleged in particular that his conviction for incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with *Le Monde* daily newspaper – he had asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge" – had breached his right to freedom of expression.

The European Court of Human Right observed that the applicant's statements had been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. Moreover, the varying scale of the problems concerned, which could sometimes generate misunderstanding and incomprehension, required considerable latitude to be left to the State in assessing the need for interference with a person's freedom of expression. In this case, however, the applicant's comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting the applicant had thus been relevant and sufficient. Nor had the penalty imposed been disproportionate. The Court therefore found that the interference with the applicant's enjoyment of his right to freedom of expression had been necessary in a democratic society. **Inadmissible**

Denial of an Armenian genocide in the Ottoman Empire

Perinçek v. Switzerland 27510/08
Judgement 15 October 2015 (Grand Chamber)

This case concerned the criminal conviction of the applicant, a Turkish politician, for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire in 1915 and the following years had not amounted to genocide. The Swiss courts held in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The applicant complained that his criminal conviction and punishment had been in breach of his right to freedom of expression.

The European Court of Human Right, being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, found that the dignity of the victims and the dignity and identity of modern-day Armenians were protected by Article 8 (right to respect for private life) of the Convention. The Court therefore had to strike a balance between two Convention rights – the right to freedom of expression and the right to respect for private life. It concluded that it had not been necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in this case. In particular, the Court took into account the following elements: the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; the context in which they were made had not been marked by heightened tensions or special historical overtones in Switzerland; the statements could not be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland; there was no

international law obligation for Switzerland to criminalise such statements; the Swiss courts appeared to have censured the applicant simply for voicing an opinion that diverged from the established ones in Switzerland; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.

Conclusion: violation of Article 10 (freedom of expression) of the Convention
See, also, the cases of

- *Ottan v. France* (application no. 41841/12): Conviction of a lawyer for public comments contesting the ethnic origin of members of an assize court jury: Judgment 19.4.2018 - **violation of Article** 10 (freedom of expression)
- *Smajić v. Bosnia and Herzegovina* (application no. 48657/16): Conviction for making a number of posts on an Internet forum touching upon the very sensitive matter of ethnic relations in post-conflict Bosnian society **:** decision on 8.02.2018 **inadmissible**

INCITEMENT TO RELIGIOUS INTOLERANCE

Politician's speech calling against the principles of secularism and for a society structured exclusively around religious values

Erbakan v. Turkey 59405/00
Judgement 6 July 2006

The applicant, a politician, was notably Prime Minister of Turkey. At the material time he was chairman of *Refah Partisi* (the Welfare Party), which was dissolved in 1998 for engaging in activities contrary to the principles of secularism. He complained in particular that his conviction for comments made in a public speech, which had been held to have constituted incitement to hatred and religious intolerance, had infringed his right to freedom of expression.

The Court found that such comments – assuming they had in fact been made – by a well-known politician at a public gathering were more indicative of a vision of society structured exclusively around religious values and thus appeared hard to reconcile with the pluralism typifying contemporary societies, where a wide range of different groups were confronted with one another. Pointing out that combating all forms of intolerance was an integral part of human-rights protection, the Court held that it was crucially important that in their speeches politicians should avoid making comments liable to foster intolerance. However, having regard to the fundamental nature of free political debate in a democratic society, the Court concluded that the reasons given to justify the applicant's prosecution were not sufficient to satisfy it that the interference with the exercise of his right to freedom of expression had been necessary in a democratic society.

Conclusion: **violation of Article 10** (freedom of expression) of the Convention

Remarks made in *YouTube* videos concerning non-Muslim and Sharia by leader of Salafist organization

Belkacem v. Belgium 34347/16
27 June 2017 (decision on the admissibility)

This case concerned the conviction of the applicant, the leader and spokesperson of the organisation "Sharia4Belgium", which was dissolved in 2012, for incitement to discrimination, hatred and violence on

account of remarks he made in *YouTube* videos concerning non-Muslim groups and Sharia. The applicant argued that he had never intended to incite others to hatred, violence or discrimination but had simply sought to propagate his ideas and opinions. He maintained that his remarks had merely been a manifestation of his freedom of expression and religion and had not been apt to constitute a threat to public order.

The European Court of Human Rights noted in particular that in his remarks the applicant had called on viewers to overpower non-Muslims, teach them a lesson and fight them. The Court considered that the remarks in question had a markedly hateful content and that the applicant, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimination underlying the European Convention on Human Rights. With reference to the applicant's remarks concerning Sharia, the Court further observed that defending Sharia while calling for violence to establish it could be regarded as hate speech, and that each Contracting State was entitled to oppose political movements based on religious fundamentalism. In the present case, the Court considered that the applicant had attempted to deflect Article 10 (freedom of expression) of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention. Accordingly, the Court held that, in accordance with Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not claim the protection of Article 10.

Conclusion: **Inadmissible**

Conviction of a leader of a sect for defending Sharia law during a television programme

Gündüz v. Turkey 35071/97
Judgment 4.12.2003

Criminal proceedings were instituted against the applicant following his appearance, in his capacity as a leader of 'Tarikat Aczmendi' (a community that describes itself as an Islamic sect), on a television programme broadcast by the HBB channel. On 1 April 1996 a state security court found him guilty of inciting the people to hatred and hostility on the basis of a distinction founded on religion and sentenced him to two years' imprisonment and a fine. It found in particular that he had described contemporary secular institutions as "impious", fiercely criticised secular and democratic principles and openly called for the introduction of the shariah. The applicant complained that his criminal conviction had entailed a violation of Article 10 (freedom of expression) of the Convention.

The European Court of Human Rights observed, firstly, that the programme had been about a sect whose followers had come into the public eye. Mr Gündüz, whose ideas the public was already familiar with, was invited onto the programme to present the sect and its nonconformist views, including the notion that democratic values were incompatible with its conception of Islam. The topic was the subject of widespread debate in the Turkish media and concerned a problem of general interest. In the Court's view, some of the comments for which the domestic courts had convicted the applicant did demonstrate an intransigent attitude towards and profound dissatisfaction with contemporary institutions in Turkey. However, they could not be regarded as a call to violence or as "hate speech" based on religious intolerance. Expressions that sought to propagate, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection of Article 10 the Convention. However, in the Court's view, merely defending the shariah, without calling for the use of violence to establish it, could not be regarded as "hate speech". Accordingly, notwithstanding the margin of

appreciation accorded to the national authorities, the Court found that there were insufficient reasons to justify the interference with the applicant's right to freedom of expression.

Conclusion: violation of Article 10 (freedom of expression)

HATE SPEECH AND THE INTERNET

Liability for user-generated comments on an Internet news portal

Delfi AS v. Estonia 64569/09
Judgement 16 June 2015 (Grand Chamber)

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The applicant company, which runs a news portal run on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, the applicant company removed the offensive comments about six weeks after their publication.

The European Court of Human Rights first noted the conflicting realities between the benefits of Internet, notably the unprecedented platform it provided for freedom of expression, and its dangers, namely the possibility of hate speech and speech inciting violence being disseminated worldwide in a matter of seconds and sometimes remaining remain persistently available online. The Court further observed that the unlawful nature of the comments in question was obviously based on the fact that the majority of the comments were, viewed on their face, tantamount to an incitement to hatred or to violence against the owner of the ferry company. Consequently, the case concerned the duties and responsibilities of Internet news portals, under Article 10 § 2 of the Convention, which provided on a commercial basis a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engaged in clearly unlawful speech, which infringed the personality rights of others and amounted to hate speech and incitement to violence against them.

In cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, the Court considered that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. Based on the concrete assessment of these aspects and taking into account, in particular, the extreme nature of the comments in question, the fact that they had been posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction (320 euro) imposed on the applicant company, the Court found that the Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression.

Conclusion: **no violation of Article 10** (freedom of expression) of the Convention

Liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites

Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary 22947/13
Judgement 2 February 2016

This case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites following the publication of an opinion criticising the misleading business practices of two real estate websites. The applicants complained about the Hungarian courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The European Court of Human Rights reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

It is to be noted that this case was different in some aspects from the *Delfi AS v. Estonia* case (see above) in which the Court had held that a commercially-run Internet news portal had been liable for the offensive online comments of its readers. The applicants' case was notably devoid of the pivotal elements in the *Delfi AS* case of hate speech and incitement to violence. Although offensive and vulgar, the comments in the present case had not constituted clearly unlawful speech. Furthermore, while *Index* is the owner of a large media outlet which must be regarded as having economic interests, *Magyar Tartalomszolgáltatók Egyesülete* is a non-profit self-regulatory association of Internet service providers, with no known such interests.

Conclusion: **violation of Article 10** (freedom of expression) of the Convention

Liablility for the third-party offensive comment on a blog

Pihl v. Sweden 74742/14
7 February 2017 (decision on the admissibility)

The applicant had been the subject of a defamatory online comment, which had been published anonymously on a blog. He made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment. The claim was rejected by the Swedish courts and the Chancellor of Justice. The applicant complained to the Court that by failing to hold the association liable, the authorities had failed to protect his reputation and had violated his right to respect for his private life.

The European Court of Human Rights declared the application inadmissible. It noted in particular that, in cases such as this, a balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal. In light of the circumstances of this case, the Court found that national authorities had struck a fair balance when refusing to hold the association liable for the anonymous comment. In particular, this was because: although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been

taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days. **Inadmissible** (manifestly ill-founded)

See, also, ***Nix v. Germany*** **-** **35285/16** [Conviction of blogger for publishing post using unconstitutional (Nazi) symbol] Decision 13.3.2018: **Inadmissible**

OTHER RELEVANT COUNCIL OF EUROPE RELEVANT TOOLS

Committee of Ministers

- **Recommendation No. R (97) 20 to member states on "hate speech" (1997)**

Parliamentary Assembly

- **Recommendation 2098 (2017) and Resolution 2144 (2017) Ending cyberdiscrimination and online hate**
- **Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion (2007)**

Venice Commission

- **Study no. 406/2006, Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, Adopted by the Venice commission at its 76th plenary session (2008)**
- **Blasphemy, insult and hatred: finding answers in a democratic society, Science and technique of democracy, No. 47 (2010)**

European Commission against Racism and Intolerance (ECRI)

- **General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination (2002)**
- **General Policy Recommendation No. 15 on combating hate speech (2015)**

Council of Europe's Publications

- **Manual on hate speech, Strasbourg, Council of Europe (2009)**

Council of Europe Commissioner for Human Rights

- **Issue discussion paper on "Ethical journalism and human rights", doc. CommDH (2011)40 (2011)**

Council of Europe's Conferences

- **Website of the Conference "Tackling hate speech: Living together online" organised by the Council of Europe in Budapest in (2012)**
- **Website of the Conference "The hate factor in political speech – Where do responsibilities lie?" organized by the Council of Europe in Warsaw (2013)**
- **Website of the Conference "Freedom of expression: still a precondition for democracy" organized by the Council of Europe in Strasbourg (2015)**

See also, CoE F**actsheet on Combating Sexist Hate Speech** and the dedicated pages on **Combating Sexist Hate Speech**