KEY THEME[1]
Article 10
Hate speech

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Introduction

This Key Theme aims to complement the Case-law Guides on Article 10 and Article 17, by providing a more focused and detailed overview of the case law on the issue of hate speech.

Hate speech does not have a clear universal definition, either in international human rights law or in relevant academic writings. The Court itself has not adopted any exhaustive definition of the term and, instead, has approached the concept and scope of hate speech on a case-by-case basis.

The Court has regularly referred in this regard to European and international soft law instruments, including Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech" and General Policy Recommendation No. 15 on Combating Hate Speech, adopted by the European Commission against Racism and Intolerance on 8 December 2015 (see further relevant sources cited in *Perinçek v. Switzerland* [GC], 2015, § 170, and *Savva Terentyev v. Russia*, 2018, §§ 34-40).

The Court has, furthermore, noted that it is not for it to rule on the constituent elements of the offence of incitement to hatred, violence and discrimination. It is primarily for the national authorities, in particular the courts, to interpret and apply domestic law. The Court's role is rather to review under Article 10 the decisions that domestic courts deliver pursuant to their power of appreciation. In so doing, it must satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (*Belkacem v. Belgium* (dec.), 2017, § 29).

Selection of relevant general principles drawn from the case-law

- Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every person. Subject to paragraph 2 of Article 10, it 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 v. the United Kingdom*, 1976, § 49).
- The Court considers that the positive obligations of States with regard to freedom of expression imply, *inter alia*, that States are required to create, while establishing an effective system for the protection of authors or journalists, an environment conducive to the participation in public debates of all persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to, or are irritating or shocking to, those defended by the official authorities or by a significant section of public opinion (*Dink v. Turkey*, 2010, § 137).

[1] Prepared by the Registry. It does not bind the Court.

- Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain situations to sanction or even prevent forms of expression which spread, incite, promote or justify hatred based on intolerance, provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued (*Erbakan v. Turkey*, 2006, § 56, *Savva Terentyev v. Russia*, 2018, § 65).
- Incitement to discrimination is a form of incitement to intolerance, which, together with incitement to violence and hatred, is one of the limits which should never be overstepped in the exercise of freedom of expression (*Zemmour v. France*, 2022, § 50). However, incitement to different treatment is not necessarily the same as incitement to discrimination (*Baldassi and Others v. France*, 2020, § 64).
- The dominant position which a government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to unjustified attacks and criticisms of adversaries. Nevertheless, it certainly remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Finally, where such remarks incite to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression (*Sürek v. Turkey (no. 4)* [GC], 1999, § 57).
- Journalists, NGOs, and other "public watchdogs" may be accorded particular protection under Article 10 of the Convention. For example, the Court has said that news reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog". The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (*Jersild v. Denmark*, 1994, § 35). Similarly, the local authorities' refusal to permit an NGO to display an anti-discrimination poster on billboards for the allegedly offensive nature of the poster was an unjustifiable restriction of Article 10. The Court likened the role of the NGO to a social "watchdog" (*National Youth Council of Moldova v. the Republic of Moldova*, 2024, § 73). At the same time, as regards the duties and responsibilities of publishers, media owners, editors-in-chief, the Court has consistently found that, even if they were not authors of and did not personally associate themselves with, the views which were found to stir up violence and hatred, they should not be exonerated from responsibility as they nevertheless provided the authors of those views with an outlet to stir up violence and hatred (*Sürek v. Turkey (no. 1)* [GC], 1999, § 63; *Sürek v. Turkey (no. 3)* [GC], 1999, § 41; *Halis Doğan v. Turkey (no. 3)*, 2006, § 36; *Saygılı and Falakaoğlu v. Turkey (no. 2)*, 2009, §§ 28-29; *Fatih Taş v. Turkey (no. 3)*, 2018, § 35; *Gürbüz and Bayar v. Turkey*, 2019, § 44; and *Karaca v. Türkiye*, 2023, § 157).

Legality and legitimacy requirements

Legality requirement:

It is important that criminal law provisions – directed against expression that stirs up, promotes or justifies violence, hatred or intolerance – clearly and precisely define the scope of the relevant offences, and that those provisions be strictly construed in order to avoid a situation where the State's discretion to prosecute for such offences becomes too broad and potentially subject to abuse

through selective enforcement (*Savva Terentyev v. Russia*, 2018, §§ 58-59, 85; *Dmitriyevskiy v. Russia*, 2017, §§ 82-83; see also, in the context of convictions on the basis of "hooliganism motivated by religious hatred", *Mariya Alekhina and Others v. Russia*, 2018, §§ 101-102, 209, 224-225).

The Court has addressed the issue of "lawfulness" particularly as it relates to the concept of hate speech in a number of cases.[2]

- In *Altuğ Taner Akçam v. Turkey*, 2011, the applicant was a professor of history who was accused of "denigrating Turkishness", a criminal offence under Article 301 of the Turkish Criminal Code, by publishing an editorial opinion regarding the Armenian population. The Court noted that the scope of the terms of Article 301 of the Criminal Code, as interpreted by the judiciary, was too wide and vague and thus the provision constituted a continuing threat to the exercise of the right to freedom of expression, and found that Article 301 of the Criminal Code did not meet the "quality of law" (*ibid.*, §§ 91-95; compare with *Dink v. Turkey*, 2010, §§ 131-32).
- In *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, the parliamentary immunity of the applicant, a member of the Turkish parliament, had been lifted and he was subsequently held in pre-trial detention for membership of an armed terrorist organisation (Article 314 of Criminal Code) for his political speeches. The Court considered that the amendment leading to the lifting of parliamentary immunity was a one-off *ad homines* affair and noted that laws which are directed against specific persons are contrary to the rule of law. It also noted that Article 314 of the Criminal Code is so broad that its content, coupled with its interpretation by the domestic courts, does not afford adequate protection against arbitrary interference by the national authorities, and concluded that the interference with the exercise of the applicant's freedom of expression was not "prescribed by law" (§§ 160, 269-270, 279-281; see also, on terrorism-related charges, *Gözel and Özer v. Turkey*, 2010, §§ 43-64).
- In *Sokolovskiy v. Russia*, 2024, the Court examined the applicant's criminal conviction for creating YouTube videos that constituted "extremist acts". It recognised that the circumstances of the case may raise a "quality of law" issue. However, it decided to examine the case from the perspective of the "necessity of the interference in a democratic society" test (§ 98). In doing so, the Court examined the domestic courts' analysis and concluded that neither the state actors nor the domestic courts could prove presence of "inter-religious tensions" or a "climate of hostility and hatred" among religious or ethnic communities which allegedly constituted the "extremist acts" (§ 111). It further reiterated that an offensive or insulting remark does not on its own constitute hate speech (§ 101).
- In *Selishcheva and Others v. Russia*, 2025, where the applicants had been banned from standing as candidates in municipal elections based on the police information about their "involvement" with organisations designated as "extremist", the Court was particularly concerned with vagueness, overbreadth and retrospective application of the relevant legislation which allowed the domestic authorities to classify a potentially indeterminate range of legitimate activities as grounds for disqualification from elections (§§ 46-47). It also pointed out to the domestic courts' failure to provide any meaningful interpretation that would limit the scope of that legislation or establish clear criteria for its application,

[2] In addition to the cases discussed in this section, see also *Başkaya and Okçuoğlu v. Turkey* [GC], 1999, §§ 51-52, (no basis in law, but further aspects of the case examined by the Court); *Cumhuriyet Vakfı and Others v. Turkey*, 2013, § 54; *Yavuz and Yaylalı v. Turkey*, 2013, § 38; *Gülcü v. Turkey*, 2016, §§ 103-108; *Belge v. Turkey*, 2016, § 29; and *Döner and Others v. Turkey*, 2017, §§ 93-95 (quality of law considered questionable but further aspects of the case examined by the Court).

with the result that no distinction had been drawn between the exercise of Convention rights and involvement in the work of prohibited organisations (§ 48).

- In certain cases, the Court expressed doubts regarding the "lawfulness" of the impugned interference but preferred to approach them from the perspective of the "necessity in a democratic society" of that interference (*Ete v. Türkiye*, 2022, § 27, and the cases cited therein).

Legitimate aim:

In cases related to hate speech, the legitimate aims most often invoked are "the rights of others", "national security", "maintaining public order and safety", and "preventing crime".

- States may target speech that threatens national security, territorial integrity or public safety or that may provoke disorder and crime (*Stomakhin v. Russia*, 2018, § 87). The purposes of protecting "national security" and "public safety" in Article 10 § 2 must be interpreted restrictively and should be brought into play only where it has been shown to be necessary to suppress the release of information for these purposes (*Stoll v. Switzerland* [GC], 2007, § 54; *Görmüş and Others v. Turkey*, 2016, § 37). The "national security" and "public order" aims have also been used to justify entry bans on foreigners. A popular Russian performer and producer was prohibited from entering Lithuania not because of isolated statements or speeches but because of the local authorities assessment that he was the Russian Federation's "tool of soft power" (*Kirkorov v. Lithuania* (dec.), 2024, § 59). Where a State's interpretation of "public order" was overly broad, the Court accepted that the interference in question pursued instead the legitimate aims of "the protection of morals" and "of the rights of others" (*Zhablyanov v. Bulgaria*, 2023, § 104).
- It has been the Court's constant approach to stress that where the views expressed do not comprise an incitement to violence (namely, advocate recourse to violent action or bloody revenge, justify the commission of terrorist offences in pursuit of their supporter's goals or can be interpreted as likely to encourage violence by expressing deep-seated and irrational hatred towards identified persons), Contracting States cannot rely on protecting territorial integrity and national security, maintaining public order and safety, or preventing crime, to restrict the right of the general public to be informed of them (*Sürek v. Turkey (no. 4)* [GC], 1999, § 60; *Fatullayev v. Azerbaijan*, 2010, § 116; *Gözel and Özer v. Turkey*, 2010, § 56; *Nedim Şener v. Turkey*, 2014, § 116; *Şık v. Turkey*, 2014, § 105; *Dilipak v. Turkey*, 2015, § 62; *Dmitriyevskiy v. Russia*, 2017, § 100).

Context-specific approach

The Court has been called upon to consider the application of Article 10 of the Convention in a number of cases concerning statements, verbal or non-verbal, alleged to stir up or justify violence, hatred or intolerance. In assessing whether an interference with the exercise of the right to freedom of expression of authors, or sometimes publishers, of such statements was "necessary in a democratic society" in the light of the general principles formulated in its case-law, the Court has had regard to several factors. To assess the weight of an applicant's interest in the exercise of his right to freedom of expression, the Court must first examine the nature of his/her statements (*Perinçek v. Switzerland* [GC], 2015, § 229) and the context (*ibid.,* § 242 and following paragraphs; see as well, among many others, *Savva Terentyev v. Russia*, 2018, § 66).

The relevant contextual factors include whether the statements were made against a tense political or social background; whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred

or intolerance; and the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences. In such cases, it is the interplay between the various factors rather than any one of them taken in isolation that determines the outcome of the case. The Court's approach to that type of case can thus be described as context-specific (*Perinçek v. Switzerland* [GC], 2015, §§ 204-208; *Mariya Alekhina and others v. Russia,* 2018, §§ 217-221).

Content of the speech:

- Expression on matters of public interest is, in principle, entitled to strong protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection (*Perinçek v. Switzerland* [GC], 2015, § 230; *Zemmour v. France*, 2022, § 49).
- Any remark directed against the Convention's underlying values, notably justice, peace, tolerance, non-discrimination, may be removed from the protection of Article 10 by virtue of Article 17 (*Seurot v. France* (dec.), 2004; *M'Bala M'Bala v. France* (dec.), 2015, § 39; *Ibragim Ibragimov and Others v. Russia*, 2018, § 94; *Pavel Ivanov v. Russia* (dec.), 2007). At the same time, Article 17 is only applicable on an exceptional basis and in extreme cases. In cases concerning Article 10 of the Convention, it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (*Perinçek v. Switzerland* [GC], 2015, § 114; *Zemmour v. France*, 2022, § 26).
- The Court examined, among other categories of content, negative public statements about a group that can be seen as affecting the "private life" of individual members under Article 8 (*Aksu v. Turkey* [GC], 2012, §§ 58, 81; *Budinova and Chaprazov v. Bulgaria*, 2021, §§ 53-68; *Behar and Gutman v. Bulgaria*, 2021, §§ 68-73); statements that strike at the dignity of people (*Atamanchuk v. Russia*, 2020, § 42); sweeping statements that attack or cast in a negative light entire ethnic, religious or other groups (see the case-law references in *Perinçek v. Switzerland* [GC], 2015, § 206; *Karaca v. Türkiye*, 2023, § 158); language that expresses aggressive nationalism and ethnocentrism (*Balsytė-Lideikienė v. Lithuania*, 2008, §§ 73 and 79); remarks that brutalise or dehumanise a group of people (*Stomakhin v. Russia*, 2018, § 99); statements that amount to an appeal to violence or that justify and glorify terrorism (*Stomakhin v. Russia*, 2018, § 92; *Rouillan v. France*, 2022, §§ 68-71); comments which promote intolerance and detestation of homosexual persons (*Lilliendahl v. Iceland* (dec.), 2020, § 38); or remarks that are considered as constituting an incitement to religious hatred and hostility (*Tagiyev and Huseynov v. Azerbaijan*, 2019, § 47; *Sokolovskiy v. Russia,* 2024, §§ 101-112).
- The Court's particular concern about statements attacking groups was demonstrated in cases regarding, for instance, generalised negative statements about Muslim immigrants in France (*Seurot v. France* (dec.), 2004; *Soulas and Others v. France,* 2008; *Le Pen v. France* (dec.), 2010; *Zemmour v. France*, 2022); a case concerning statements portraying non-European immigrant communities in Belgium as criminally minded (*Féret v. Belgium,* 2009); a case concerning statements linking all Muslims in the United Kingdom with the terrorist acts in the United States of America on 11 September 2001 (*Norwood v. the United Kingdom* (dec.), 2004); cases that concerned vehement anti-Semitic statements or direct calls for violence against Jews, the State of Israel, and the West in general (*W.P. and Others v. Poland* (dec.), 2004; *Pavel Ivanov v. Russia* (dec.), 2007; *Hizb ut-Tahrir and Others v. Germany* (dec.), 2012; *Kasymakhunov and Saybatalov v. Russia*, 2013); and a case that concerned allegations that homosexuals were attempting to play down paedophilia and were responsible for the spread of HIV and AIDS (*Vejdeland and Others v. Sweden*, 2012).

- In contrast, the Court excluded the police, a law-enforcement public agency, from being classified as an "unprotected minority" or "group that has a history of oppression or inequality", or "that faces deep-rooted prejudices, hostility and discrimination", or "that is vulnerable for some other reason", a classification that would, in principle, require a heightened protection from attacks committed by insult, holding up to ridicule or slander (*Savva Terentyev v. Russia,* 2018, § 76).
- Under some circumstances, restrictions on the right to freedom of expression under Article 10 may be permissible for speech that personally attacks an identifiable individual (*Savva Terentyev v. Russia*, 2018, § 75; compare with Articles 2 or 8 cases *Kaboğlu and Oran v. Turkey*, 2018; *Selahattin Demirtas v. Turkey*, 2015).
- Offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration; but the use of vulgar phrases is not in itself decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. For the Court, style constitutes a form of expression and it is, as such, protected together with the substance of the ideas and information expressed (*Savva Terentyev v. Russia*, 2018, § 68). Following the circumstances of the case, some emotional appeals, provocative metaphors or symbolic acts may be understood as an expression of dissatisfaction and protest rather than a call to violence (*ibid.*, §§ 72, 74, and the references cited therein). On the other hand, the Court has permitted the sanctioning of provocative humour or satire beyond certain limits, such as when the expression referred to acts of terrorism (*Leroy v. France*, 2008, §§ 36-48; *Z.B. v. France*, 2021, §§ 56-57).

Intent of the speaker:

The motivation behind the contested speech is often relevant in determining whether a State may justifiably interfere with freedom of expression rights under Article 10.

- In *Glimmerveen and Hagenbeek v. the Netherlands* (Commission decision, 1979, p. 195), the Commission considered it important that the policy advocated by the applicants was inspired by the overall aim to remove all non-white people from the territory of the Netherlands, in complete disregard of their nationality, time of residence, family ties, as well as social, economic, humanitarian or other considerations.
- In *Féret v. Belgium*, 2009, §§ 70-71, the Court agreed with the domestic court's findings that the leaflets and drawings that the applicant distributed during an electoral campaign contained elements which clearly, although sometimes implicitly, incited discrimination, segregation or hatred against a person, group, community or their members by reason of race, colour, ancestry or national or ethnic origin and manifested a will to resort to such discrimination, segregation or hate.
- In *Pavel Ivanov v. Russia* (dec.), 2007, the applicant authored and published a series of articles portraying 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 Jews the right to national dignity, claiming that they did not form a nation. The Court agreed with the assessment made by the domestic courts that through his publications, the applicant had sought to incite hatred towards the Jewish people.
- In *Atamanchuk v. Russia*, 2020, the applicant, an entrepreneur and owner of a local newspaper, was convicted of inciting hatred on account of an Article containing offensive remarks about non-Russian ethnic groups. He stated in particular that these groups were prone to crime, would "slaughter, rape, rob and enslave, in line with their barbaric ideas" and "participate[d] in the destruction of the country". The Court found it questionable

whether the content of the applicant's Article was capable of contributing to the public debate on the relevant issue or that its principal purpose was to do so (§ 62).

- In *Belkacem v. Belgium* (dec.), 2017, the Court considered the case of an applicant who had posted publicly available videos on YouTube in which he called on viewers to "dominate" non-Muslims, teach them a lesson and fight them. The Court had no doubt as to the highly hateful content of the applicant's opinions and agreed with the domestic courts' finding that the applicant had sought, through his recordings, to make people hate, discriminate against and be violent toward all non-Muslims (§ 33).
- In *Zemmour v. France*, 2022, the Court agreed with the national courts that the applicant's remarks had not been confined to criticism of Islam, but that, in view of their overall context, they had been made with a discriminatory intent, such as to call on viewers to reject and exclude the Muslim community as a whole, which had thus been harmful to social cohesion (§ 63).

By contrast, the Court has also expressed doubts as to the alleged wrongful intention of the applicant:

- In *Perinçek v. Switzerland* [GC], 2015, the Court disagreed with the Swiss courts that the applicant had spoken with a racist motive when he publicly denied that there had been any genocide of the Armenian people by the Ottoman Empire (§§ 232-233).
- In *Tagiyev and Huseynov v. Azerbaijan*, 2019, a writer and the editor-in-chief of a newspaper were sentenced to three and four years' imprisonment, respectively, for having published an Article criticising Islam. The Court found a violation of the applicants' rights under Article 10, criticising, *inter alia*, the domestic courts' failure to consider whether the context of the case, the public interest and the intention of the author of the impugned Article had justified the possible use of a degree of provocation or exaggeration (§§ 48-50).
- In *Stomakhin v. Russia*, 2018, the Court focused on different statements and gave some weight to the fact that some statements at issue, while revealing an intention to romanticise/idealise a separatist cause, stigmatised, brutalised and dehumanised the other party to the conflict (§ 99), some other statements communicated to the readers the general idea that recourse to violence and terrorism is necessary and justified measures of self-defence in the face of the aggressor (§ 100) and, in respect of another statement, to the fact that the domestic courts failed to assess the former in its context and to examine which idea it sought to impart (§ 115).
- In *Yefimov and Youth Human Rights Group v. Russia*, 2021, the Court found that speech alleged by the State, without sufficient factual assessment or analysis, to have been extremist or terrorist in character was in fact genuine contribution to public debate (§§ 45-46); see also *Mukhin v. Russia*, 2021, §§ 121-147.
- In *Jersild v. Denmark*, 1994, an important factor in the Court's evaluation was whether a television documentary about a racist group, when considered as a whole, appeared from an objective point of view to have had as its purpose the propagation of racist views and ideas. The Court considered that a significant feature of the case was that the applicant did not make the objectionable statements himself but assisted in their dissemination in his capacity as a television journalist responsible for a news programme (§ 31). Taken as a whole, the applicant clearly sought – by means of an interview – to expose, analyse and explain this particular group of youths, limited and frustrated by their social situation, with criminal records and violent attitudes, thus dealing with specific aspects of a matter that already then was of great public concern (§ 33). The Court reached a similar conclusion in *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, 2021, finding that, in context, the publication of quotations from a nationalist manifesto alongside images resembling Nazi

symbols was in service of a journalistic investigation and therefore did not justify the state media regulator's interference in that case (§§ 97-109).

Likelihood of harm:

The Court has also considered whether the relevant expression is "liable" to incite violence (*Sürek v. Turkey (no. 4)* [GC], 1999, § 58). The Court has discussed a number of indicators that may contribute to a finding that a particular speech is likely to produce such harm.

Political and social context

- One of the relevant factors has been whether the statements were made against a tense political or social background (*Perinçek v. Switzerland* [GC], 2015, § 205).
- In that regard, the Court has always been mindful of the difficulties linked to the prevention of public disorder and terrorism (on the publication of opinions which advocate recourse to violence against the State, *Stomakhin v. Russia*, 2018, §§ 96, 98-109; on the tense climate surrounding the armed clashes between the Workers' Party of Kurdistan (PKK) and the Turkish security forces in south-east Turkey in the 1980s and 1990s, *Zana v. Turkey*, 1997, §§ 57-60, and *Sürek v. Turkey (no. 4)* [GC], 1999, § 58; on the atmosphere engendered by deadly prison riots in Turkey in December 2000, *Falakaoğlu and Saygılı v. Turkey*, 2007, § 33, and *Saygılı and Falakaoğlu v. Turkey (no. 2)*, 2009, § 28; on the statements describing perpetrators of terrorists attacks as "brave" and made not long after those attacks, *Rouillan v. France*, 2022, §§ 68-71). However, the fact that speech relates to terrorism or takes place in a politically sensitive context is not dispositive; the Court will proceed to analyse other criteria, such as whether the speech itself constituted incitement to violence (*Erkizia Almandoz v. Spain*, 2021, § 46).
- In the context of historical debates, in a case concerning the criminal conviction of the applicant for rejecting the legal characterisation of atrocities committed by Ottoman Empire against the Armenian people from 1915 as "genocide", the Court considered that there was no evidence that at the time when the statements were made the atmosphere in Switzerland was tense and could result in serious friction between Turks and Armenians there (*Perinçek v. Switzerland* [GC], 2015, § 244).
- The Court has also stressed that it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely, because free elections and freedom of expression (particularly freedom of political debate) together form the bedrock of any democratic system (*Bowman v. the United Kingdom*, 1998, § 42, and *Savva Terentyev v. Russia*, 2018, § 70; compare and contrast *Sanchez v. France* [GC], 2023, §§ 152-53, 175-76).
- In the case of a purportedly offensive billboard advertisement published by an NGO, the Court has stated that it is important to look at the broader social context in which the advertisement was published. In this particular case, the Court found that there was no incitement to hatred or intolerance conveyed by the advertisement, and that it contained an intelligible albeit exaggerated anti-discrimination message *(National Youth Council of Moldova v. the Republic of Moldova*, 2024, §§ 78-79).

The potential impact of the speech: its form and publicity, its author and audience

- The form that a particular expression takes is another relevant consideration for the Court (on the limited impact of the form of poetry, *Karataş v. Turkey* [GC], 1999, § 52; on the format of a programme designed to encourage an exchange of views, *Gündüz v. Turkey*, 2003, § 44).

- The publicity generated by a particular speech may also be relevant for the Court's decision (for the case of politicians who covered the electorate with their messaging, thereby targeting the whole of a country's population, *Féret v. Belgium*, 2009, § 76; on distribution figures of a newspaper in a multi-ethnic region, *Atamanchuk v. Russia*, 2020, § 63; on the ability of a journalist to reach a wide swath of the public by using language familiar to the press readership, *Soulas and Others v. France*, 2008, § 39; on a statement made in person and only at three public events, *Perinçek v. Switzerland* [GC], 2015, § 254; on an expression as a member of the public not expressing himself from a prominent platform likely to reach a wide audience, *Lilliendahl v. Iceland* (dec.), 2020, § 39; on a blog post which drew very little public attention as opposed to a statement published on mainstream or highly visited web pages, *Savva Terentyev v. Russia*, 2018, §§ 79-81; and see, by contrast, the context of the case *Norwood v. the United Kingdom* (dec.), 2004, where Article 17 was applied despite the limited publicity).
- In *Jersild v. Denmark*, 1994, the Court noted that speech transmitted through the audiovisual media has a much more immediate and powerful effect than the print media (§ 31; see as well *Roj TV A/S v. Denmark* (dec.), 2018, § 47; *Zemmour v. France*, 2022, § 62).
- The identity of the author or speaker may also be significant (see, for instance, *Zana v. Turkey*, 1997, where the impugned statements were voiced by the former mayor of the most important city in south-east Turkey, § 60; and *Rouillan v. France*, 2022, § 67, where the relevant statements were made by a former member of a left-wing terrorist organisation active in 1980s in France who authored several books and played himself in a film; and, by contrast, *Baldassi and Others v. France*, 2020, where the applicants were simply citizens, § 70).
- In *Erbakan v. Turkey*, 2006, stressing that the fight against all forms of intolerance is an integral part of the protection of human rights, the Court considered of crucial importance that politicians, in their public discourse, avoid disseminating statements that could fuel intolerance (§ 64).
- Finally, the Court has also considered the audience of the speech. Thus, in *Vejdeland and Others v. Sweden*, 2012, § 56, the Court took into consideration that leaflets bearing the impugned statements were left in the lockers of young people who were at an impressionable and sensitive age and who had no possibility to decline to accept them.

Significance and credible nature of the potential harm

- In *Stomakhin v. Russia*, 2018, the Court has given a certain weigh to the fact that the impugned statements incited hatred against the members of the federal armed and security forces and exposed them to a possible risk of physical violence (§ 107; see, in contrast, *Savva Terentyev v. Russia*, 2018, where the Court noted that there was no indication that the impugned statements were liable to produce imminent unlawful actions in respect of police officers and to expose them to a real threat of physical violence (§§ 77-78).
- In *Fáber v. Hungary*, 2012, the Court noted that the authorities had not argued that there was an increased likelihood of violence due to the presence of the Árpád-striped banner or that the use of that symbol, perceived as provocative by the authorities, resulted in a clear threat or present danger of violence (§ 44).
- In *Féret v. Belgium*, 2009, the Court accepted that the impugned political speech that incited hatred based on religious, ethnic or cultural prejudice threatened public peace and political stability (§ 73). However, espousing one's own religion without promoting violence, hatred, or intolerance of others is unlikely to justify interference with one's freedom of expression (*Taganrog LRO and Others v. Russia*, 2022, §§ 157-159).

- The Court has considered of importance the fact that a speech would encourage discrimination (*Glimmerveen and Hagenbeek v. the Netherlands*, Commission decision, 1979, p. 196); stir up base emotions or embedded prejudices (*Atamanchuk v. Russia*, 2020, § 64); or tend to increase interreligious tensions (*Ibragim Ibragimov and Others v. Russia*, 2018, § 102), to provoke hostility toward a minority community (*Le Pen v. France* (dec.), 2010), or to target members of the LGBTI community (*Vejdeland and Others v. Sweden*, 2012, §§ 54-55).

Connection between the interference and the legitimate aim

- The Court has considered whether penalising the speaker for the impugned speech would have an actual impact on others' ability to enjoy their rights as protected by the Convention. Thus, in *Perinçek v. Switzerland* [GC], 2015, § 246, the Court declined to find that the Swiss authorities could penalise the applicant for his speech in part because the Court was not convinced that the applicant's criminal conviction in Switzerland protected the Armenian minority's rights in any real way or made it feel safer.
- It is only in a very sensitive context of tension, armed conflict and the fight against terrorism or deadly prison riots that the Court has found that statements were likely to encourage violence capable of putting members of security forces at risk (*Savva Terentyev v. Russia*, 2018, § 77 and the references cited therein).
- The Court found that a speech stirred up "traumatic memories" where those were still fresh and thus painful for the relatives victims of terrorist attacks, as well as for the survivors of the attacks; publication, in this context, of articles justifying and glorifying that deadly violence constituted a particularly cynical attack on the victims' dignity (*Stomakhin v. Russia*, 2018, § 101).
- In a case where the proceedings against the applicant were instituted four years and five months after the impugned speech, the Court considered unlikely that the speech in issue gave rise to a "present risk" and an "imminent" danger to society (*Erbakan v. Turkey*, 2006, § 68).

Hate speech and the Internet

The general principles applicable to offline publications also apply online. However, cases involving the use of the Internet present unique challenges and may focus on the specific features of the Internet as a powerful medium and public space.

- In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general (*Times Newspapers Ltd (nos. 1 and 2) v. the United Kingdom*, 2009, § 27; *Delfi AS v. Estonia* [GC], 2015, § 133; *Savva Terentyev v. Russia*, 2018, § 79). User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression (*Delfi AS v. Estonia* [GC], 2015, § 110).
- At the same time, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (*Delfi AS v. Estonia* [GC], 2015, § 133; see also *Savva Terentyev v. Russia*, 2018, § 79). Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online. Thus, the possibility of imposing liability for defamatory or other types of unlawful speech must, in principle, be retained,

constituting an effective remedy for violations of personal rights (*Delfi AS v. Estonia* [GC], 2015, § 110; *Annen v. Germany*, 2015, § 67).

- The specific features of the Internet may be taken into account in ruling on the level of seriousness in order for an attack on personal reputation to fall within the scope of Article 8 (*Arnarson v. Iceland,* 2017, § 37).
- Considerations concerning safeguards, afforded by Article 10 to journalists in relation to reporting on issues of general interest, and their duties and responsibilities in that regard, play a particularly important role nowadays, given the influence wielded by the media in contemporary society: not only do they inform, they can also suggest by the way in which they present the information how it is to be assessed. In a world in which the individual is confronted with vast quantities of information circulated *via* traditional and electronic media and involving an ever-growing number of players, monitoring compliance with journalistic ethics takes on added importance (*Stoll v. Switzerland* [GC], 2007, §§ 103-104).
- The electronic network, serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control as printed media. Therefore, the policies governing reproduction of material from the printed media and the Internet may differ. The latter undeniably have to be adjusted according to the technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned (*Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, § 63). It is reasonable, for example, that domestic courts draw a distinction between, on the one hand, statements in leaflets which have a geographically limited impact, and, on the other hand, statements on the Internet, which could be disseminated worldwide (*Annen v. Germany*, 2015, § 72).
- The Court also considers it clear that the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages. It is therefore essential for the assessment of a potential influence of an online publication to determine the scope of its reach to the public (*Savva Terentyev v. Russia*, 2018, § 79; *Kozan v. Turkey*, 2022, § 51;) *Avagyan v. Russia*, 2025, §§ 31 and 35).
- The impact of the Internet's amplifying effect appears very clearly in a case concerning an individual against whom accusations of antisemitism were made: entering the individual's name into a search engine enabled one to access and read the impugned Article. The publication on the applicant association's site had thus had a considerable impact on the reputation and rights of the individual concerned (*Cicad v. Switzerland*, 2016, § 60).
- As to any liability of a publisher for third-party content, the Court considers that, because of the particular nature of the Internet, the "duties and responsibilities" that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher as regards third-party content (*Delfi AS v. Estonia* [GC], 2015, § 113). The Court has been careful to distinguish the duties and responsibilities of Internet news portals from other fora on the Internet where third-party comments can be disseminated, for example an Internet discussion forum or a bulletin board where users can freely set out their ideas on any topic without the discussion being channelled by any input from the forum's manager; or a social media platform where the platform provider does not offer any content and where the content provider may be a private person running the website or blog as a hobby (*Delfi AS v. Estonia* [GC], 2015, §§ 115-116).
- The Court has found that if accompanied by effective procedures allowing for rapid response, a notice-and-take-down-system may function in many cases as an appropriate tool for balancing the rights and interests of all those involved. Nevertheless, in cases where third-party user comments take the form of hate speech and direct threats to the

physical integrity of individuals, the rights and interests of others and of the society as a whole might entitle Contracting States to impose liability on Internet news portals if they failed to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties (*Magyar Tartalomszolgáltatók Egyesülete and Index.Hu Zrt v. Hungary*, 2016, § 91; *Delfi AS v. Estonia* [GC], 2015, § 159).

- Where a political candidate faced criminal fines for failing to promptly delete from his Facebook "wall" third-party comments which contained hate speech, the Court found that such a penalty did not violate Article 10. Domestic courts weighed factors such as the applicant's knowledge of the comments, his status as a public figure, the publicly accessible nature of his Facebook, and the election context. The use of a "cascading" liability system which penalised the applicant as a "producer" of online speech, in addition to penalising the original authors of the comments, was neither arbitrary nor manifestly unreasonable (*Sanchez v. France* [GC], 2023, §§ 134-39,). In a case where an Internet news portal was found not liable for sexist remarks posted on its site by anonymous third parties, with respect to the measures adopted by the news portal, it appeared that there had been an established system of moderators who monitored content and the Court found no violation of Article 8 of the Convention. (*Høiness v. Norway*, 2019).
- Finally, the Court has noted that, even when the aim is to prevent impermissible speech, authorities choosing to block access to an Internet site should take into consideration, among other elements, the fact that such a measure, by rendering large quantities of information inaccessible, may substantially restrict the rights of Internet users and have a significant collateral effect (*Ahmet Yıldırım v. Turkey*, 2012, § 66; *Engels v. Russia*, 2020, § 33). The fact that the organisations continued to have social media presence or were publishing on other platforms is not "an equivalent substitute for their main and fully fledged news websites" that have been blocked by local authorities. Even the fact that the website block could be bypassed through VPNs and other third-party services cannot "alleviate" the impact of such orders. (*RFE/RL Inc. and Others v. Azerbaijan*, 2024, § 72-73) Further, blocking orders interfering with the applicant's right to freedom of expression that fail to meet the "prescribed by law" requirement of Article 10 are in breach of that provision (*RFE/RL Inc. and Others v. Azerbaijan*, 2024, § 108).
- In a similar vein, *Google LLC and Others v. Russia*, 2025, imposition of unprecedentedly high fines on an information society service provider for a failure to comply with take-down requests concerning a broad range of user-generated content, including expression of support to political opposition, calls for peaceful demonstration, reporting on Russia's military actions in Ukraine by independent news outlets, and similar, hosted on YouTube, was found to be in breach of Article 10. None of the content which the authorities had sought to supress had contained expressions of hate speech, incitement to violence, or discrimination against any group. The sole basis for requiring their removal appeared to have been their capacity to inform public debate on matters which the authorities had preferred to suppress. Penalising the applicant company for hosting content critical of governmental policies or presenting alternative view to military actions, without demonstrating a "pressing social need" for its removal, struck at the very heart of Internet's function as a means for the free exchange of ideas and information (§§ 75-80).

Further references

Case-law guides:

- Guide on Article 17 – Prohibition of abuse of rights
- Guide on Article 8 – Right to respect for private and family life, home and correspondence

Other key themes:

- Protection against hate speech (Articles 8, 13 and 14)

Council of Europe:

- Framework Convention for the Protection of National Minorities (1995)
- Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech" (1997)
- European Commission against Racism and Intolerance, General Policy Recommendation no. 7 of 13 December 2002 on national legislation to combat racism and racial discrimination (CRI(2003)8)
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)
- European Commission for Democracy through Law (Venice Commission), 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 at its 76th Plenary Session held in Venice on 17-18 October 2008, CDL-AD(2008)026
- European Commission for Democracy through Law (Venice Commission), Opinion no. 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, adopted at its 91st Plenary Session held in Venice on 15-16 June 2012, CDL-AD(2012)016-e
- General Policy Recommendation No. 15 on Combating Hate Speech, adopted by the European Commission against Racism and Intolerance on 8 December 2015
- Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States on combating hate speech (2022)

European Union:

- Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law
- Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions – Tackling Illegal Content Online, COM(2017) 555 final, 28 September 2017
- Hate speech and hate crime in the EU and the evaluation of online content regulation approaches (study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs)

United Nations:

- International Covenant on Civil and Political Rights, Articles 19 and 20
- International Convention on the Elimination of All Forms of Racial Discrimination, Articles 4 and 6
- Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Conclusions and recommendations emanating from the four regional expert workshops organised by the OHCHR, in 2011 ("the Rabat Plan"), adopted in Rabat, Morocco, on 5 October 2012
- Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, No. A/HRC/23/40, 17 April 2013

- UN Strategy and Plan of Action on Hate Speech (2019)

KEY CASE-LAW REFERENCES

- *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24 (no violation of Article 1 of Protocol No. 1 and no violation of Articles 10 and 18);
- *Glimmerveen and Hagenbeek v. the Netherlands*, Commission decision, 1979 (inadmissible – incompatible *ratione materiae*);
- *Jersild v. Denmark*, 23 September 1994, Series A no. 298 (violation of Article 10);
- *Zana v. Turkey*, 25 November 1997, Reports of Judgments and Decisions 1997-VII (no violation of Article 10 and violation of Article 6 §§ 1 and 3);
- *Karataş v. Turkey* [GC], no. 23168/94, ECHR 1999-IV (violation of Articles 6 § 1 and 10);
- *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, ECHR 1999-IV (violation of Article 6 § 1 and no violation of Article 10);
- *Sürek v. Turkey (no. 3)* [GC], no. 24735/94, ECHR 1999-IV (violation of Article 6 § 1 and no violation of Article 10);
- *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, ECHR 1999-IV (violation of Articles 6 § 1 and 10);
- *Gündüz v. Turkey*, no. 35071/97, ECHR 2003-XI (violation of Article 10);
- *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI (inadmissible – incompatible *ratione materiae*);
- *Seurot v. France* (dec.), no. 57383/00, 18 May 2004 (inadmissible – manifestly ill-founded);
- *W.P. and Others v. Poland* (dec.), no. 42264/98, ECHR 2004-VII (extracts) (inadmissible – manifestly ill-founded);
- *Erbakan v. Turkey*, no. 59405/00, 6 July 2006 (violation of Articles 6 § 1 and 10);
- *Halis Doğan v. Turkey (no. 3)*, no. 4119/02, 10 October 2006 (violation of Article 6 § 1, no violation of Article 10);
- *Falakaoğlu and Saygılı v. Turkey*, nos. 22147/02 and 24972/03, 23 January 2007 (no violation of Article 10);
- *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007 (inadmissible – incompatible *ratione materiae*);
- *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V (no violation of Article 10);
- *Soulas and Others v. France*, no. 15948/03, 10 July 2008 (Article 17 inapplicable; no violation of Article 10);
- *Leroy v. France*, no. 36109/03, 2 October 2008 (violation of Article 6 § 1 and no violation of Article 10);
- *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, 4 November 2008 (violation of Article 6 § 1 and no violation of Article 10);
- *Saygılı and Falakaoğlu v. Turkey (no. 2)*, no. 38991/02, 17 February 2009 (no violation of Article 10);
- *Willem v. France*, no. 10883/05, 16 July 2009 (no violation of Article 10);
- *Féret v. Belgium*, no. 15615/07, 16 July 2009 (Article 17 inapplicable; no violation of Article 10);
- *Le Pen v. France* (dec.), no. 18788/09, 20 April 2010 (inadmissible – manifestly ill-founded);
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- *Dink v. Turkey*, nos. 2668/07 and 4 others, 14 September 2010 (violation of Articles 2 and 10 and of Article 13 combined with Article 2);
- *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, no. 33014/05, ECHR 2011 (extracts) (violation of Article 10);
- *Altuğ Taner Akçam v. Turkey*, no. 27520/07, 25 October 2011 (violation of Article 10);
- *Ahmet Yıldırım v. Turkey*, no. 3111/10, ECHR 2012 (violation of Article 10);
- *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, ECHR 2012 (no violation of Article 8);
- *Vejdeland and Others v. Sweden*, no. 1813/07, 9 February 2012 (no violation of Article 10);
- *Fáber v. Hungary*, no. 40721/08, 24 July 2012 (violation of Article 10 read in the light of Article 11);
- *Kasymakhunov and Saybatalov v. Russia*, nos. 26261/05 and 26377/06, 14 March 2013 (no violation of Article 7 in respect of the first applicant, violation of Article 7 in respect of the second applicant);
- *Delfi AS v. Estonia* [GC], no. 64569/09, 10 October 2013 (no violation of Article 10);
- *Nedim Şener v. Turkey*, no. 38270/11, 8 July 2014 (violation of Articles 5 §§ 3, 4 and 10);
- *Şık v. Turkey*, no. 53413/11, 8 July 2014 (violation of Articles 5 §§ 3, 4 and 10);
- *Dilipak v. Turkey*, no. 29680/05, 15 September 2015 (violation of Article 10);
- *M'Bala M'Bala v. France* (dec.), no. 25239/13, ECHR 2015 (extracts) (inadmissible – incompatible *ratione materiae*);
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- *Cicad v. Switzerland*, no. 17676/09, 7 June 2016 (no violation of Article 10);
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- *Dmitriyevskiy v. Russia*, no. 42168/06, 3 October 2017 (violation of Article 10);
- *Roj TV A/S v. Denmark* (dec.), no. 24683/14, 17 April 2018 (inadmissible – incompatible *ratione materiae*);
- *Fatih Taş v. Turkey (no. 3)*, no. 45281/08, 24 April 2018 (no violation of Article 10, violation of Article 6 § 1 and Article 13);
- *Stomakhin v. Russia*, no. 52273/07, 9 May 2018 (violation of Article 10);
- *Mariya Alekhina and Others v. Russia*, no. 38004/12, 17 July 2018 (violation of Article 3, Article 5 § 3, Article 6 §§ 1 and 3 (d) and of Article 10);
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- *Erkizia Almandoz v. Spain*, no. 5869/17, 22 June 2021 (violation of Article 10);
- *Z.B. v. France*, no. 46883/15, 2 September 2021 (no violation of Article 10; Article 17 inapplicable);
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