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# Hate speech

"... 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 democratic societies **to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance...**"

(judgment [Erbakan v. Turkey \(no. 59405/00\)](#), 06.07.2006, § 56)

## General principles

The authors of the [European Convention on Human Rights](#) sought to establish an institutional framework based on democratic values in order to **overcome extremism**.

The European Court of Human Rights has identified a number of **forms of expression which are to be considered offensive** and contrary to the Convention (including racism, xenophobia, anti-Semitism, aggressive nationalism and discrimination against minorities and immigrants)<sup>1</sup>.

However, the Court is also careful to make a distinction in its findings between, on the one hand, **genuine and serious incitement to extremism** and, on the other hand, the **right of individuals** (including journalists and politicians) to **express their views freely** and to "offend, shock or disturb"<sup>2</sup> others.

There is **no universally accepted definition** of the expression "hate speech". The Court's case-law has established certain **parameters** making it possible to characterise "hate speech" in order to exclude it from the protection afforded to freedom of expression (Article 10) or freedom of assembly and association (Article 11).

The Court excludes hate speech from protection by means of two approaches provided for by the Convention:

- (a) by applying Article 17 (*Prohibition of abuse of rights*<sup>3</sup>) where the comments in question amount to hate speech and negate the fundamental values of the Convention, or
- (b) by applying the limitations provided for in the second paragraph of Article 10 and Article 11<sup>4</sup> (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention).

<sup>1</sup> Recommendation No. R 97 (20) of the [Committee of Ministers of the Council of Europe on "hate speech"](#)

<sup>2</sup> [Handyside v. the United Kingdom \(no. 5493/72\)](#), 7.12.1976, § 49.

<sup>3</sup> This provision is aimed at preventing persons from inferring from the Convention any right to engage in activities or perform acts aimed at the destruction of any of the rights and freedoms set forth in the Convention.

<sup>4</sup> Restrictions deemed necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.

## Racial hate speech

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### **Aksu v. Turkey (no. 4149/04 et 41029/04)**

15.03.2012 (Grand Chamber)

Mr Aksu, of Roma origin, alleged that three government-funded publications (a book about Roma and two dictionaries) included remarks and expressions that reflected anti-Roma sentiment.

Article 14 (prohibition of discrimination)

The Court reiterated that discrimination within the meaning of Article 14 was to be understood as treating people in relevantly similar situations differently, without an objective or reasonable justification. However, Mr Aksu had not managed to build a case to prove that the publications had a discriminatory intent or effect. Mr Aksu's case did not therefore concern a difference of treatment and the Court decided to examine the case only under Article 8.

No violation of Article 8 (right to respect for private and family life)

The Court held that neither the book nor the dictionaries were offensive to Roma. It found in particular that the Turkish authorities had taken all necessary steps to comply with their obligation under Article 8 to protect Mr Aksu's effective right to respect for his private life as a member of the Roma community. It did mention, however, that it would have been preferable to label a second definition of the word "Gypsy" – "miserly" – in the dictionaries as "pejorative" or "insulting" rather than "metaphorical".

### **Féret v. Belgium (no. 15615/07)**

16.07.2009

Daniel Féret was a Belgian member of Parliament and chairman of the political party Front National-Nationaal Front 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". Mr Féret 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 Court's view, Mr Féret'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. The Court held that there had been **no violation of Article 10.**

### **Leroy v. France (no. 36109/03)**

02.10.2008

Denis Leroy is a cartoonist. One of his drawings representing the attack on the World Trade Centre was published in a Basque weekly newspaper on 13 September 2011, with a caption which read: "We have all dreamt of it... Hamas did it". Having been sentenced to payment of a fine for "condoning terrorism", Mr Leroy argued that his freedom of expression had been infringed.

The Court considered that, through his work, the applicant had glorified the violent destruction of American imperialism, expressed moral support for the perpetrators of the attacks of 11 September, commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims. Despite the newspaper's limited circulation, the Court observed that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and of having a demonstrable impact on public order in the Basque Country. The Court held that there had been **no violation of Article 10.**

### **Jersild v. Denmark (no. 15890/89)**

23.09.1994

Jens Olaf Jersild, a journalist, 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 made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. Mr Jersild was convicted of aiding and abetting the dissemination of racist remarks. He alleged a breach of his right to freedom of expression.

The Court drew a distinction between the members of the "Greenjackets", who had made openly racist remarks, and Mr Jersild, 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. Accordingly, the Court held that there had been a **violation of Article 10**.

See also:

*Glimmerveen and Hagenbeek v. the Netherlands*, nos. 8348/78 and 8406/78, 11.10.1979 – a political party based on the belief that the general interest of a State is best served by an ethnically homogeneous population.

## Sexual orientation hate speech

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### **Vejdeland and Others v. Sweden (no. 1813/07)**

09.02.2012

The 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 Court 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".

The Court concluded that there had been no violation of Article 10, as 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.

## Religious hate speech

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### **Hizb Ut-Tahrir and Others v. Germany (no. 31098/08)**

19.06.2012 (admissibility decision)

The case concerned the prohibition in Germany of the activities of an Islamic association, which advocates the overthrow of non-Islamic governments and the establishment of an Islamic Caliphate.

The Court, by a majority, declared the application **inadmissible**. It held in particular that under Article 17 (prohibition of abuse of rights) of the European Convention on Human Rights, it was impossible to derive from the Convention a right to engage in an activity aimed at destroying any of the rights and freedoms set forth in the Convention.

The association could therefore not rely on Article 11 (freedom of assembly and association) to complain about the ban on its activities.

See also:

[Kasymakhunov and Saybatalov v. Russia](#), nos. 26261/05 and 26377/06, 14.03.2013.

### **Pavel Ivanov v. Russia (no. 35222/04)**

20.02.2007 (admissibility decision)

Pavel Ivanov wrote and published a series of articles portraying Jews as the source of evil in Russia. He accused them of plotting against the Russian people, and the tenor of his remarks was markedly anti-Semitic. He was convicted of incitement to ethnic, racial and religious hatred. Mr Ivanov complained in particular of a breach of his right to an effective remedy (Article 13), alleging that his conviction had been based on contradictory evidence. He criticised the Russian courts for refusing to order an expert report which could have demonstrated the truth of his assertion that the Jews did not form a nation. He also claimed to have been discriminated against on the basis of his religious beliefs (Article 14).

The Court considered that Mr Ivanov was complaining in substance of a violation of his right to freedom of expression under Article 10. It took the view that the applicant, who had sought in his publications to "incite hatred towards the Jewish people" and advocated violence against a particular ethnic group, could not claim the protection of Article 10. The Court declared the application **inadmissible**.

### **Norwood v. the United Kingdom (no. 23131/03)**

16.11.2004 (admissibility decision)

Mark Anthony Norwood 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. Mr Norwood argued, among other things, that his right to freedom of expression had been breached.

The Court found 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, and that Mr Norwood could not claim the protection of Article 10. The Court declared the application **inadmissible**.

### **Gündüz v. Turkey (no. 35071/97)**

04.12.2003

Müslüm Gündüz was a self-proclaimed member of an Islamist sect. During a televised debate broadcast in the late evening, he spoke very critically of democracy, describing contemporary secular institutions as "impious", fiercely criticising secular and democratic principles and openly calling for the introduction of Sharia law. He was convicted of openly inciting the population to hatred and hostility on the basis of a distinction founded on membership of a religion or denomination. Mr Gündüz alleged a violation of his right to freedom of expression.

The Court noted that Mr Gündüz, who had represented the extremist ideas of his sect, with which the public was already familiar, had been taking an active part in an animated public discussion. That pluralist debate had sought to present the sect and its unorthodox views, including the notion that democratic values were incompatible with its conception of Islam. The topic had been the subject of widespread debate in the Turkish media and concerned a problem of general interest. The Court considered that Mr Gündüz's remarks could not be regarded as a call to violence or as "hate speech" based on religious intolerance. It held that there had been a **violation of Article 10**.

See also:

[W.P. and Others v. Poland](#) (admissibility decision), no. 42264/98, 02.09.2004.

## Negationism

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### [Garaudy v. France \(no. 65831/01\)](#)

24.06.2003 (admissibility decision)

Roger Garaudy, 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. Mr Garaudy argued that his right to freedom of expression had been infringed.

The Court considered that the content of the applicant's remarks had amounted to Holocaust denial, and pointed out that "[d]enying 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 and held that Mr Garaudy was not entitled to rely on Article 10. The application was declared **inadmissible**.

### [Lehideux and Isorni v. France \(no. 24662/94\)](#)

23.09.1998

Marie-François Lehideux and Jacques Isorni 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 Court 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 praised not so much pro-Nazi policies as 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". The Court held that there had been a **violation of Article 10**.

See also:

[Honsik v. Austria](#), no. 25062/94, 18.10.1995 – publication denying the committing of genocide in the gas chambers of the concentration camps under National Socialism.

[Marais v. France](#), no. 31159/96, 24.06.1996 – article in a periodical aimed at demonstrating the scientific implausibility of the "alleged gassings".

## Speech based on totalitarian doctrine

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### **Islamic fundamentalism**

### [Refah Partisi \(The Welfare Party\) and Others v. Turkey \(nos. 41340/98, 41342/98, 41343/98 and 41344/98\)](#)

13.02.2003

In 1998, Refah Partisi (the Welfare Party) was dissolved on the ground that it had become a "centre of activities against the principle of secularism" and that various acts and declarations by its leaders and members indicated that some of the party's

objectives, such as the introduction of Sharia law and a theocratic regime, were incompatible with the requirements of a democratic society. Several members of the party alleged a breach of their right to freedom of association.

The Court observed that Refah Partisi's acts and speeches revealed its long-term policy of setting up a regime based on Sharia, and that it did not exclude recourse to force. In the Court's view, the real opportunities the party had to put its plans into practice presented an immediate danger to democracy and justified its dissolution. The Court concluded that there had been **no violation of Article 11**.

As a rule, the Court will declare inadmissible, on grounds of incompatibility with the values of the Convention, applications which are inspired by totalitarian doctrine or which express ideas that represent a threat to the democratic order and are liable to lead to the restoration of a totalitarian regime.

*(neo-)Nazism; National Socialism: Communist Party of Germany v. the Federal Republic of Germany*, no. 250/57, 20.07.1957; *B.H; M.W; H.P; G.K. v. Austria*, no. 12774/87, 12.10.1989.

*(Kurdish) nationalism: Medya FM Reha Radyo ve İletişim Hizmetleri A. Ş. v. Turkey*, no. 32842/02, 14.11.2006.

## Political speech

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### Otegi Mondragon v. Spain (no. 2034/07)

15.03.2011

Otegi Mondragon, the spokesperson for a left-wing Basque separatist parliamentary group, referred at a press conference to the closure of a Basque daily newspaper (on account of its suspected links with ETA) and to the alleged ill-treatment of the persons arrested during the police operation. In his statement he referred to the King of Spain as "the supreme head of the Spanish armed forces, in other words, the person in command of the torturers, who defends torture and imposes his monarchic regime on our people through torture and violence". Mr Mondragon was sentenced to a term of imprisonment for the offence of serious insult against the King. He alleged a breach of his right to freedom of expression.

The Court considered that the impugned remarks had not been a personal attack against the King, nor did they concern his private life or his personal honour. They had related solely to the King's institutional responsibility as Head and symbol of the State apparatus and of the security forces which, according to the applicant, had tortured the newspaper's editors. The Court further noted that Mr Mondragon's political comments had contributed to a wider public debate on possible torture by the Spanish security forces in the context of anti-terrorist activities and had therefore concerned a matter of public interest. The Court held that there had been a **violation of Article 10**.

### Faruk Temel v. Turkey (no. 16853/05)

01.02.2011

Faruk Temel, 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 Mr Temel was convicted of disseminating propaganda, on the ground that he had publicly defended the use of violence or other terrorist methods. Mr Temel contended that his right to freedom of expression had been breached.

The Court noted 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. The Court 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. It found a **violation of Article 10**.

See also:

[Erbakan v. Turkey](#), no. 59405/00, 06.07.2006 – a politician who openly incited the population to hatred and hostility based on religious, racial and regional distinctions.

## Anti-constitutional/national hatred speech

### Pending case

#### **[Beleri and Others v. Albania \(no. 39468/09\)](#)**

Communicated to the Government on 31.05.2010

The applicants claim to belong to the Greek-speaking minority in Albania. Following incidents during the 2003 local elections, they staged a demonstration, carrying Greek flags and chanting slogans in support of one of the candidates. The Albanian authorities brought proceedings against them for incitement to national hatred and defamation of the State and its symbols. The applicants complain of a violation of their right to freedom of expression.

#### **[Dink v. Turkey \(nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09\)](#)**

14.09.2010

Firat (Hrank) Dink, a Turkish journalist of Armenian origin, published several articles on the identity of Turkish citizens of Armenian origin. He wrote, in particular, that Armenians were obsessed with having their status as victims of the 1915 genocide recognised, that Turkish people were indifferent to this need and that this explained the traumas suffered by Armenians. He also expressed the view that the Armenian diaspora's ties with the country should be strengthened in order to forge a healthier Armenian national identity. Mr Dink's remarks provoked a virulent reaction among extreme nationalist groups. He was found guilty of denigrating "Turkishness" (Turkish identity). Approximately a year and a half later, he was killed by nationalist extremists. Following his death, his family complained, among other things, of a breach of his right to freedom of expression.

The Court's main finding was that the Turkish authorities had failed to protect Mr Dink's life. As to his remarks, he had been writing in his capacity as a journalist on a topic of general interest, seeking to establish historical truth. The Court noted that, in bringing charges against him, the Turkish judicial authorities had indirectly punished him for criticising the Turkish State's denial of the Armenian genocide and had thus infringed his right to freedom of expression. The Court found a **violation of Article 10**.

#### **[Association of Citizens "Radko" & Paunkovski v. "the former Yugoslav Republic of Macedonia" \(no. 74651/01\)](#)**

15.01.2009

A citizens' association named "Radko" after Ivan Mihajlov-Radko (leader of the Macedonian Liberation Movement for over 60 years), which had been officially registered, was subsequently dissolved by the authorities in "the former Yugoslav Republic of Macedonia". The authorities considered that the association had negated the identity of the Macedonian people through the promotion of Fascist ideas concerning the Bulgarian origins of the Macedonian people. This was held to be contrary to the constitutional order and to encourage national or religious hatred or intolerance. The association and its chairman, Mr Paunkovski, complained of a violation of their right to freedom of association.

The Court considered that the mere fact of naming the association after an individual who had been perceived negatively by the majority of the population could not in itself be considered a present and imminent threat to public order and did not justify dissolving the association. Furthermore, there had been no evidence to suggest that the association had advocated hostility or intended to make use of violent methods or

methods apt to destroy the constitutional order. While acknowledging that the association's interpretation of the country's history was liable to shock many people, the Court considered that it did not amount to an attack on the rules of democracy or a public defence of violence, and that the association should not have been banned. The Court held that there had been a **violation of Article 11**.

### **Sürek v. Turkey (no.1) (no. 26682/95)**

08.07.1999 (Grand Chamber)

Kamil Tekin Sürek 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 Court 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 Mr Sürek 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. The Court held that there had been **no violation of Article 10**.

See also:

[Partidul Comunistilor \(Nepeceristi\) and Ungureanu v. Romania](#), no. 46626/99, 03.02.2005 – refusal to register a political party on the special register on the grounds that it posed a risk of re-establishment of a State based on communist doctrine.

[Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#), nos. 29221/95 and 29225/95, 02.10.2001 – prohibition of meetings of a party that was subsequently declared unconstitutional and dissolved, on the grounds that the meetings posed a possible threat to public order.

[Sidiropoulos and Others v. Greece](#), no. 57/1997/841/1047, 10.07.1998 – refusal to register an association on the ground that, once it was established, it might engage in activities liable to undermine the country's territorial integrity, national security and public order.

## Further reading

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A number of Council of Europe texts deal with the question of "hate speech":

- [Recommendation No. R 97\(20\) of the Committee of Ministers of the Council of Europe on "hate speech"](#)
- [Recommendation 1805 \(2007\) of the Parliamentary Assembly of the Council of Europe on blasphemy, religious insults and hate speech against persons on grounds of their religion](#)
- [Venice Commission Study 406/2006 on blasphemy, religious insults and incitement to religious hatred](#)
- [General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance \(ECRI\) on national legislation to combat racism and racial discrimination](#)
- [Commissioner for Human Rights Issue discussion paper: Ethical journalism and human rights](#)
- Manual on hate speech<sup>5</sup>



- [Council of Europe Fact sheet 4 "Hate speech"](#)
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<sup>5</sup> A. Weber, *Manual on hate speech*, Strasbourg, Council of Europe Publications, 2009. This handbook sets out to define what constitutes hate speech and to act as a guide to decision-makers, experts and society as a whole on the criteria applied by the European Court of Human Rights in its case-law.