

# HATE SPEECH

NEGOTIATING PEACE IN THE AMBIT OF  
FREEDOM OF SPEECH

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A POLICY PAPER BY ELSA MALTA'S  
SOCIAL POLICY ORGANISING COMMITTEE

*elsa*

The European Law Students' Association

MALTA

# Thinking Ahead in Social Policy

## FOREWORD

I am truly honoured to announce that yet again our Legal & Social Policy Organizing Committee has amalgamated months of hard work, co-operation, planning & research to produce our policy paper entitled 'Hate Speech: Negotiating Peace in the Ambit of Freedom of Speech'. Hate Speech is a heated issue and its time that the ball is set rolling on the various discussions that are taking place. We are proud to also be contributing on such a relevant issue, by having protagonists who day in day out suffer prejudice & fight for such rights wholeheartedly.

ELSA Malta remains committed to be pro-active on several important issues that have a social impact. We believe that it is not only our right as students, but moreover, our duty, to voice our opinion, propose legislation and discuss ideas. This policy paper is a clear example. We believe that it is surely our responsibility, as a law student organisation to be relevant in today's society and keep up to date with new proposed legislation. ELSA is an organization which revolves around having "a just world in which there is respect for human dignity and cultural diversity". This publication endorses this idea.

This publication would not have been possible without a dedicated and keen team. Indeed, I have been lucky enough to have worked with 4 enthusiastic and hardworking researchers forming part of an even bigger team, that of ELSA Malta's Legal and Social Organising Committee. To the members of the Organising Committee, your hard work never goes unnoticed. I would like to express my gratitude to Sara Ezabe, who led the production of this policy paper, and her great team of researchers and writers, Sarah Musù, Naomi Bugre, Dionne Taryn Gatt. My appreciation also goes out to the ELSA Malta Executive Board 2016/2017 and incumbent President, Bernice Saliba. I would particularly like to thank Nick Debono, current Secretary General, and former Director of Social and Legal Policy, for his guidance and encouragement in continuing making ELSA Malta's Social and Legal stance ever more prominent in our society.

I wish to extend my appreciation to several other people who have contributed in making this publication possible, namely David Friggieri, from the

Fundamental rights and rule of law Directorate at the European Commission for his suggestions with regard to developments at EU level. I would also wish to thank Daniel Vella for the design and marketing materials.

On behalf of the ELSA Malta Social Policy Office, we hope that you enjoy reading our paper, take the time to evaluate our suggestions, and lastly to follow us and support us in our aim - to always be proactive!

Nicole Sciberras Debono  
Director for Social Policy and Legal Publications  
7 December 2016

## ABSTRACT

The main objective of this policy and legal paper is to speculate the way forward while using existing legislation as the tool of overcoming hate speech online. The online world has brought with it many positive changes, and yet it has also created unprecedented challenges, which could be overcome with the effort and collaboration of professionals, politicians and civil society. The philosophy of this research is that online public space should be subject to the same expectations regarding human rights as physical public space; human rights apply online just as they apply to the rest of society.

There needs to be a co-operative effort on an international level, since globalisation brings with it no borders, and although we have Maltese and European Legislation safeguarding citizens from Hate Speech, uncovering the virtual world is a completely different story.

This research was conducted not to stay on shelves, but to be read and scrutinised in order to be criticised where weak and applied where there are strengths. It is divided in a way that provides the reader with a legal understanding of both International and European legislations on hate speech online and suggesting some very interesting recommendations some of which can inspire change on a national and global level. This research embarks on a journey of exploring the already existent mechanisms and tools and come up with concrete ways to step up collective action to prevent and combat hate speech online

It promises to serve as a tool for politicians, international and civil society organisations, community leaders, equality bodies, representatives from the worlds of education, work and media, and academics.

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## INTRODUCTION

### Defining Hate Speech Online

The virtual world has created unprecedented issues when it comes to hate speech. Anonymity, has led for certain people to abuse of platforms which the Internet offers such as those of social media. It is evident that it's time for more regulation when it comes to hate speech online, particularly on social media.

Hate speech is not as self-evident as it may seem. Posting malicious online comments that insult a person or a group of people might seem hateful, but it is not the function of hate speech regulations to protect against hurt feelings. The European Court of Human Rights has recognised the right of individuals to “offend, shock or disturb”<sup>1</sup> others. Most offensive speech is actually protected by the right to freedom of expression. On the other hand, the Court has also noted in its case law that “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...”<sup>2</sup>

### Defining Hate Speech

Therefore, there has to be a line drawn somewhere between where the “right to offend” other people ends and illegal hate speech starts. The Council of Europe’s Committee of Ministers’ Recommendation 97(20) defines hate speech in the following manner,

the term ‘hate speech’ shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred,

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<sup>1</sup> *Handyside v. UK* (1976) App no. 5493/72 (ECHR, 7th December 1976).

<sup>2</sup> *Erbakan v. Turkey* App no.59405/00 (ECHR, 6<sup>th</sup> July 2006).

xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”<sup>3</sup>

Of course this definition could also be transferred to Online Hate speech, because after all whether it is on the virtual world or in reality so to say, this should not make a difference.

### **Definition of Hate Speech under Maltese law**

The Maltese Criminal Code deals with hate speech under Article 82A(1) which states;

“Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.”<sup>4</sup>

Considering the wording of Article 82A(1) it becomes clear that the nature of this law, is more inclined in preventing violence against the dignity of the persons targeted than limiting one’s freedom of expression by punishing those who resort to threatening, abusive or insulting words or behaviour.

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<sup>3</sup> Council of Europe; Committee of Ministers, “*Hate Speech*” (Recommendation 97(20), October 30 1997).

<sup>4</sup> Chapter 9 of the laws of Malta, Act, VIII. 2012.



Examining domestic law in relation to hate speech, it is clear that there exists a strong legal framework that is potent enough to prevent violence but at the same time open to engagement in constructive dialogue that needs to be undertaken in any democratic society in order to have social progress. However, the question of how these provisions of law are applied to the Internet and social media remains an unanswered question. Hate speech online qualifies as printed material and hence, it is regulated by provision 82 of the laws of Malta, but the underlying problem here is the regulatory bodies of the Internet and social media.

## **Hate Speech defined by Social Media Companies**

Hate Speech on Social Media, can be very tricky to regulate because different companies, define hate speech in a different way. What harms the community standards of Facebook might differentiate from the way hate speech is defined by Twitter. Hence, it is interesting to analyse the different understandings of Hate Speech in relation to social media.

Facebook, for example, answers the question of what they consider to be hate speech as follows: “Content that attacks people based on their actual or perceived race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or disease is not allowed.” They also add a significant note: “We do, however, allow clear attempts at humor or satire that might otherwise be considered a possible threat or attack. This includes content that many people may find to be in bad taste.”<sup>5</sup>

Twitter does not provide its own definition, but simply forbids to “publish or post direct, specific threats of violence against others.” YouTube, clearly says it does not permit hate speech, it defines it as “speech which attacks or demeans a group

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<sup>5</sup> Facebook Help Centre: ‘What does Facebook consider to be Hate Speech?’ <[https://www.facebook.com/help/135402139904490?helpref=uf\\_permalink](https://www.facebook.com/help/135402139904490?helpref=uf_permalink)> accessed on 5 December 2016.

based on race or ethnic origin, religion, disability, gender, age, veteran status and sexual orientation/gender identity.”<sup>6</sup> Google also makes a special mention on hate speech in its User Content and Conduct Policy: “Do not distribute content that promotes hatred or violence towards groups of people based on their race or ethnic origin, religion, disability, gender, age, veteran status, or sexual orientation/gender identity.”<sup>7</sup>

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<sup>6</sup> YouTube Community Guidelines, 'Hate Speech' <<https://support.google.com/youtube/answer/2801939>> accessed on 5 December 2016.

<sup>7</sup> Google Terms and Policies, 'User Content and Conduct Policy' <<https://www.google.com/intl/en-US/+policy/content.html>> accessed on 5 December 2016.

## A EUROPEAN PERSPECTIVE

A significant step towards clarifying the definitions of online hate speech is the Council of Europe's Additional Protocol to the Convention on Cybercrime. It defines online hate speech as

any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.<sup>8</sup>

Considering that there are all these different definitions, it can be difficult to define Hate Speech, however what is more important other than having one definition, is regulating hate speech online, especially on social media. This is essential because it is more than merely expressing ideas or dissent, it promotes fear, intimidation and harassment of individuals. This may result in serious violation of human dignity, up to causing depression and possibly suicide attempts of the hate speech victims. Not to mention, it can be an incitement to murder and even genocide of those against whom it is targeted.

Anonymity can also present a challenge to dealing with hate speech online. "(T)he internet facilitates anonymous and pseudonymous discourse, which can just as easily accelerate destructive behaviour as it can fuel public discourse" (Citron & Norton 2011).

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<sup>8</sup> Council of Europe, '*Additional Protocol to the convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*' (January 28, 2003)

As Drew Boyd, Director of Operations at The Sentinel Project, has stated, “the Internet grants individuals the ability to say horrific things because they think they will not be discovered. This is what makes online hate speech so unique, because people feel much more comfortable speaking hate as opposed to real life when they have to deal with the consequences of what they say”<sup>9</sup>.

The Council of Europe’s No Hate Speech Campaign originally ran from 2013 to 2015. It was a youth campaign which aimed to promote human rights online, make the Internet a safer space and come up with ways forward to counter the challenge of hate speech online through human rights and democracy. As defined by the Council of Europe, hate speech covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. Other forms of discrimination and prejudice such as antigypsyism, christianphobia, islamophobia, misogyny, sexism and discrimination on the grounds of sexual orientation and gender identity also fall within the scope of the campaign.

In May 2015, in the framework of the Action Plan on the fight against violent extremism and radicalisation leading to terrorism, the Committee of Ministers decided to continue the No Hate Speech Movement until 2017. This campaign remains driven by the need to counter online hate speech in all its forms, included those that most affect young people such as cyber-bullying, and cyber-hate, racism and other forms of discrimination. The No Hate Speech Movement operates centrally and through National Campaigns in member states. Agenzija Zghazagh is the Maltese National Campaign co-ordinator striving to raise awareness and promoting activities to spread the message of the No Hate Speech Movement in Malta both as an Agency and in collaboration with other organisations and

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<sup>9</sup>Interview: Drew Boyd, Director of Operations, *The Sentinel Project for Genocide Prevention*, (24 October 2014)

NGOs. The No Hate heart is the logo that distinguishes all efforts made as part of this campaign.

## MALTESE JURISPRUDENCE

Although Maltese jurisprudence is very scarce, when dealing with these offences - a popular case in Malta related to Hate speech is **Police v Norman Lowell**.<sup>10</sup> Mr. Lowell is a political figure in Malta who gained popularity for making outrageous statements against irregular immigrants and non-Maltese nationals. He was prosecuted in relation to three separate political meetings he conducted in the name of his political party 'Imperium Europa' and an article he published entitled 'Coming Cataclysmic Crises'. Videos of the meetings and the article were posted on the respective website [www.vivamalta.org](http://www.vivamalta.org).

In the second instance, the Court of Criminal Appeal discussed the intention and formal act required by Article 82A. The Court highlighted the element of 'probability' in that no actual violence needs to result from the incitement, but it is enough if it might have encouraged such violence. In considering the probability of resulting in violence, there is no need for certainty beyond reasonable doubt. This was further enhanced by the fact that most of the individuals present at the meeting were persons who often frequented them and were members of Imperium Europa, and, were, therefore, more likely to be encouraged by his words.

The Court considered the fact that the speech was uploaded onto the website, meaning that it became easily accessible to more individuals and thereby increased the 'probability of inciting violence' factor. Therefore, in terms of Maltese law, online hate speech by its mere widespread audience automatically influences the determination of the intention of the perpetrator.

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<sup>10</sup> *Police vs Norman Lowell* (27 March 2008, Court of Magistrates) 518/2006; *Police Vs Norman Lowell* (15 July 2013, Court of Criminal Appeal) 98/2011

The Court of Criminal Appeal commented that the standard that must be applied is that of the reasonable man, so that there would be no doubt to a man with average intellect that the words or actions are abusive and insulting and incite racial hatred, that is, that they discuss the differences between races in a degrading manner. It is irrelevant what the speaker intended but what the result of the words or actions are. The Court also clarified that the definition to racial hatred to be adopted is that found in the International Convention on the Elimination of All Forms of Racial Discrimination, which Malta ratified, as a definition is not found in Maltese law.

The Court of Magistrates, at first instance, discussed the margin of appreciation in that many argue that the criminalisation of hate speech might impinge on the freedom of expression, but this restriction is justified because everyone has the right not to be insulted on the basis of his race, religion, sex etc. Both courts found Lowell guilty as they both concluded that there was no doubt of racial hatred based on the tone of voice and words used, such as when he describes Sudanese persons as 'vicious violent men trained for war'.

Apart, from the Judicial interpretation of the present law and the current regulations, one needs to see this from a long term angle. It is crucial that there are long term solutions to these problems that the technologies have brought with them. It is understood that at the current stage, there are lacunas however these should be identified.

## WHO IS RESPONSIBLE TO REGULATE HATE SPEECH?

The question which arises is - who is responsible of regulating social Media and its content? In other terms, who has jurisdiction over that what is written in such an open space? The Foundation *People for Change* has set up a platform for people to report racism online. This Facebook page goes by the Name 'Report Racism Online'. Dr. Jean Pierre Gauci admitted that the information required in the report form is very detailed, however he also added that one can choose not to fill all of it up. This report will then proceed to be analysed for hate speech, however although it is accessible to anyone because it is on the Internet it deals particularly with the reports filed by people residing in Malta. The Reports are then refereed to the police and the process follows. Although this project hopes to support many people, not many resolve to this and usually just report it directly to Facebook.

Elizabeth Linder, works with Facebook and has delivered a paper titled "The Human Connection: Facebook's technology and the global political dialogue" at the University of Malta. One question which arose was how Facebook is dealing with Hate Speech and how inefficient the current system is. Many Identified the fact that reporting through the Facebook page they where given stupid replies. She argued that although the Facebook team is currently working on this in full swing with several people across the world the problem still remains. This is because it is very difficult for robots to categorise hate speech and they are now employing several people from different countries so this could be handled in a better way. One has to consider the current political situations in that country and hence this could be very difficult. Notwithstanding language barriers which arise in such situations. However, she assured that the company is working on a better reporting system.

During his visit to Germany, Mark Zuckerberg also promised to have "no tolerance" for "hate speech against migrants." Facebook has even launched a one million initiative to tackle "hate speech" on social media, which they will run alongside European NGOs to "thwart Xenophobia." This of course is a step forward, however

there are many other regulations which can be implemented.

From the National Scene, the President of Malta, Marie Louise Coleiro Preca has been pushing forward educating the racist and with a tone of reconciliation. She has warned people to be more conscience about the way they speak on Facebook. Repeatedly, she has been a voice for all the vulnerable people in society especially migrants and refugees who are at the receiving end of these comments.

Putting pressure on the Government and influencing politicians to take a stand against hate speech she insisted is one of the most important steps the Nation must consider. Politicians are popular with people and if they put forward the idea that hate speech is not accepted, then it will become popular with the civil society. She also shows her concerns about the growth of Far right parties and argues that this radicalisation should be kept under control. From her end, the President's Foundation for Social Wellbeing, has been a vocal through organising events to promote dialogue amongst civil society about peace building and use of political dialogue about the issues related with Hate Speech.

Facebook and other social media applications are a reflection of the sentiments of the common man on the street and if these sentiments are racist then this is a result of fear and misinformation which must be addressed.

A purely legal lens can miss out on how societies evolve through contestation and disagreement. Although hate speech is an offensive and low expression of dissent, it can also be thought of as a window into deeply-rooted tensions and inequalities, which themselves do need addressing beyond pure speech issues, and beyond the online dimension.



## JOURNALISM AND HATE SPEECH

It is quite evident that the rise of hate speech through cyberspace has increased. In the following section, we shall be discussing this issue from another perspective, assessing the harm which unregulated journalism can leave through the incitement of hatred. Journalism serves as a means through which individuals keep themselves updated in order to form ideas and opinions and therefore leaving an impact on the values which society upholds. Hence, journalists should strive to base writing on the promotion of authenticity and righteousness in order to disprove the misuse of their profession and in doing so promote it as a “public good” through ethical journalism.<sup>11</sup>

Nowadays, journalism and fundamental human rights converge and as a result have created more exploration through themselves and policy making, creating a link between “values, morality and law”. We shall explore this aspect in human rights through the UCHR, ICCPR and ECHR who preserve the rights of individuals concerned and are still relatable to the principles of today.<sup>12</sup> Consequently, it is important for their to be regulations in order to safeguard those vulnerable to hate, making sure freedom of speech is ensued in conscientious and for the benefit of ethical journalism.

In fact, out of all the fundamental principles which journalism upholds, that of anti-discrimination prevails. Notwithstanding, one still comes along incidents that encourage racist behaviour and therefore writers become promoters of such philosophy.<sup>13</sup> Hate speech directives are of utmost importance in such situations in order to fight prejudice, yet we must make sure that such laws do not “go beyond

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<sup>11</sup> Commissioner for Human Rights: *Ethical Journalism and Human Rights* (CommDH/IssuePaper(2011)1): 7

<sup>12</sup> Ibid: 7

<sup>13</sup> Aidan White, ‘Ethical Challenges for Journalists in Dealing with Hate Speech’ <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP8White.pdf>> as assessed on 2nd February 2015: 1

protection from objective harm”<sup>14</sup> and therefore find a balance between freedom of speech and the act of hate speech. As was stated in the *Handyside v. UK* case by the European Court of Human Rights the boundary of freedom of speech is violated as soon as one “offend[s], shock[s] or disturb[s]” the State or individuals which fall under other communities.<sup>15</sup>

Freedom of speech and freedom of information is being safeguarded through Article 19 of the Universal Declaration of Human Rights which states that

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.<sup>16</sup> Freedom of speech is a crucial component to democracy, and therefore a fundamental human right all individuals are entitled to. As mentioned it is important to differentiate between “freedom of speech and vulgarity, indecency and hate speech”, an infringement by those there to damage the “global village” that has been created through such rights.

Hate speech is a violation of freedom of speech, and once again the global village is at threat when there is such form of resentment, including incitement to genocide, which is considered as a crime by international law.<sup>17</sup> In the case of *The Prosecutor v. Nahimana, Barayagwiza, & Ngeze*, it entrenched that the intention of the individual is of utmost importance when it is distributed in the media, but unnecessary to indicate “any specific causation ... linking the expression at issue with the demonstration of a direct effect”.<sup>18</sup> In order to prevent such hostility the International Covenant on Civil and Political Rights held that statements that

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<sup>14</sup> Ibid: 1

<sup>15</sup> *Handyside v. The United Kingdom* (1976), Council of Europe, 18.

<sup>16</sup> United Nations Universal Declaration of Human Rights 1948, Article 19.

<sup>17</sup> Article 19, ‘Hate Speech’ <<https://www.article19.org/pages/en/hate-speech-more.html>> as accessed on the 25th of February 2016.

<sup>18</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, ICTR-99-52-A (United Nations).

include such “discrimination, hostility or violence”.<sup>19</sup> are to be disallowed by law.

In contrast, numerous states and individuals have seen this as a violation of their right to freedom of expression and that this might result into the refusal from authorities to discuss issues related to ethnic groups. As a result, the *International Convention on the Elimination of All Forms of Racial Discrimination* has included both the protection of freedom of speech and the prohibition of hate speech into the same article, incorporating “principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5”<sup>20</sup> of the CERD. Undoubtedly, the discrepancy of both doctrines being put together has brought uncertainty amongst nations, including Malta; a few having doubts about the provision and others that held that they would illustrate it in an appropriate manner.<sup>21</sup>

In addition, the definition of what hate speech should constitute has been distinct from one state to another, while some have constituted their ideologies through a single angle, others adopted a merge between judgements and journalists.<sup>22</sup> Malta at case in point, who adopts a number of policies, that will be further discussed in detail.

In order to combat hate speech which occurs through journalism, it is important to have journalistic ethics boards, they work independent of government and therefore give themselves more transparency to themselves, giving them more credibility. Malta at case in point, which has established a Press Ethics Commission in 1999. This is made up of a retired judge or a magistrate and two

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<sup>19</sup> International Covenant on Civil and Political Rights (1966): Article 20(2).

<sup>20</sup> International Convention on the Elimination of All Forms of Racial Discrimination (1969) : Article 4

<sup>21</sup> Article 19, ‘Hate Speech’ <<https://www.article19.org/pages/en/hate-speech-more.html>> as accessed on the 25th of February 2016

<sup>22</sup> Aidan White, ‘Ethical Challenges for Journalists in Dealing with Hate Speech’ <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP8White.pdf>> as assessed on 2nd February 2015 :1

journalists that are not active in their profession. In addition, an “honorary secretary” without the requisite to voting but with the right to amend the policy.

The Institute of Maltese Journalists had been laid out as the Maltese Press Club which collaborated together with the Institute in Broadcasters in 1991 in order to set up an Ethics code. This gave rise to an ethics council as means to protect the profession of journalism.<sup>23</sup> It is important that since such codes are independent to government, they further inspire journalists to operate through their conscience.<sup>24</sup> Most importantly, the amending of ethics is “the collective business of journalists, not principally of the corporations which commission and carry their journalism, and especially not of governments”.<sup>25</sup> Therefore, governments can only give reference when it comes to ordinary law and not of such a commission.

Moreover, the Ethical Journalism Network lists 5 instances in which a journalism should consider whether the information he will be giving will cause provocation or not. Firstly, the writer should make sure that the content is not alarming making sure to take note to the local laws for there not to be infringements and no encouragement of hatred and brutality. Secondly, it is important to decide what the impingement of your actions would result in especially taking into account the state of the economic, social and political climate of the state which you are addressing. Also, the speaker who would have contacted the journalist is to be trustworthy and un-relevant information is not to be neglected. Furthermore, the journalist should take note to private conversations if hate speech occurs as that could result as promotion of hatred. Lastly, the journalist should make sure that the intent of a speech is not to there to put down others and make sure that there are no legal ratification.<sup>26</sup>

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<sup>23</sup> Code of Ethics: Press Club of Malta and Institute of Broadcasters (1991): Article 9.

<sup>24</sup> Aidan White, ‘Ethical Challenges for Journalists in Dealing with Hate Speech’ <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP8White.pdf>> as assessed on 2nd February 2015: 3.

<sup>25</sup> *ibid* (n 4).

<sup>26</sup> Religion Link, *Reporting on Hate Speech* link <<http://www.religionlink.com/reporting-on/reporting-on-hate-speech/>> as accessed on 1st of March 2016.

After constant importance of the speaker of such reports given by the Ethics Journalism Network, Susan Benesch focuses on 'Dangerous Speech' such individuals inflict leaving disturbances between parties. Through discussion these entities are given a platform for their ideas and therefore leave an impact on others, therefore it is important to note the reactions that people around them are leaving and when the public shows concern that the individual might propagate their ideas and cause violence. These are signs which show great danger according to Benesch, therefore one must recognise such sign to address the issue and most important not let the lapse of time pass before action is taken before continuous damage is done through a platform they might have been given.<sup>27</sup> Moreover, it is also stated in the Code of Principles of International Federation of Journalists (2003) that the journalist himself is take note of the threat that his work might leave. Therefore, it is important to abstain from similar discrimination beforehand.<sup>28</sup>

In contrast, article 7 of Malta's Code of Ethics holds that journalists are to work contrary to discrimination, and to work towards human rights, 'defend[ing] freedom of expression and of fair comment'. Consequently, it should not 'introduce in society discrimination based on sex, race, religion or difference of political opinion.'<sup>29</sup> Under article 6 of the Press act of Malta, it is also stated that those you promote such discrimination, are liable to imprisonment not exceeding 3 months, or a fine.<sup>30</sup>

To sum up, in order for us to improve ethical journalism, responsibility must be taken both by the government and also by those in media. We must promote journalism as an appraisal to individual's lives through the adherence of codes.

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<sup>27</sup> Religion Link, *Reporting on Hate Speech link* <<http://www.religionlink.com/reporting-on/reporting-on-hate-speech/>> as accessed on 1st of March 2016.

<sup>28</sup> International Federation of Journalists, IFJ Declaration of Principles on the Conduct of Journalists (2003): 7.

<sup>29</sup> Code of Ethics, Press Club of Malta and Institute of Broadcasters (1991): Article 7.

<sup>30</sup> Press Act, Chapter 248 of the Laws of Malta, Article 6.

Finally, it shouldn't be used as a tool to further indoctrinate others with your disinformation and neither as a profit-making machine. <sup>31</sup>

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<sup>31</sup> Commissioner for Human Rights: *Ethical Journalism and Human Rights* (CommDH/IssuePaper(2011)1), 18.

# HATE SPEECH ONLINE IN EUROPE

With the recognition of the need for a unified document which declares and promises a unified response to human rights globally, the UN Declaration on Human Rights was adopted in 1948. Since then, we have seen a number of global documents which have aimed at addressing the issues faced by racial minorities and the prejudice faced by individuals on the basis of religion, nationality, ethnicity and origin. There was the feeling that there was a need for such documents for centuries, but the atrocities witnessed in the Second World War heavily speeded the process with the aim of preventing such an occurrence on a global scale. Europe after WWII was split. This is what caused institutions such as the Council of Europe and the European Union to come into formation. Through the years, they have aimed to develop a system of unity through an interdependence of resources and materials ranging from economic to political and on to legislative.

Issues of hate speech are essentially human rights issues. When looking at Europe we see two main bodies which enforce human rights legislation which goes beyond simply national parliament-made laws. These two bodies are the Council of Europe, which consists of nearly all European states which total to 47 members, and the European Union and its 28 member states. This section will deal with a brief overview of both respective institutions.

## 1. Council of Europe (CoE)

Undoubtedly, the most recognised and enforced document drafted, signed and ratified by all CoE member states is the European Convention on Human Rights (ECHR). The European Court of Human Rights oversees the upholding of the rights enshrined in this document with member states giving it jurisdiction since states who are signatories are bound to enforce such laws. It is the national courts who first and foremost have the duty to oversee that these laws are upheld. When dealing with hate speech issues, the primary defence for such discourse is often one of the fundamental values which is protected by this same legislation which is

freedom of expression<sup>32</sup>. Article 10 of the ECHR makes it clear that freedom of expression comes with 'duties and responsibilities' and,

may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The Court has frequently affirmed that hate speech is one of the restrictions justified and necessary in a democratic society to ensure plurality of belief and ethnicity in a peaceful society.<sup>33</sup> Internet portals that provide a platform for comments assume the "duties and responsibilities" associated with freedom of expression in accordance with Article 10 § 2 of the Convention where users disseminate hate speech or comments amounting to direct incitement to violence.<sup>34</sup>

The Council also have a number of other documents dealing with hate speech to guide member states to the proper dealing of such a matter. The Framework for the Protection of National Minorities (1995) was the first step to recognising the specific needs of minorities by the Council of Europe. However, this document seems to focus more on the equal opportunities and inclusion of those who form part of a minority rather than specific protections from specific third-party crimes directed towards such persons. In fact, hate speech or internet discrimination are

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<sup>32</sup> European Convention on Human Rights (1953), Article 10.

<sup>33</sup> See e.g. *Erbakan v. Turkey* (2006), § 56

<sup>34</sup> See e.g. *K.U V. Finland* (2008), 'Although freedom of expression and confidentiality of communications are primary considerations and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others.'



not mentioned in this document. However, in 2003 the recognition of racist and xenophobic attacks was annexed to the CoE Budapest Convention on Cybercrime. CETS 189<sup>35</sup> deals with racist and xenophobic material defined as

any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

This led to further awareness on the criminalisation of discriminatory material even on the internet.

Aside from the legislative role of the CoE, the promotion of democratic values and human rights work done by this Council are notably effective as it also means that it takes an educational role. The “*No Hate Speech Movement*” which ran between 2012 and 2014 was one of the youth campaigns the Council encourages. This particular campaign was directed towards hate speech online and resulted in an on-going Hate Speech Forum.<sup>36</sup>

## 2. European Union

The European Union in recent years has begun to address the issue of hate speech directly. In 2015, the European Parliament Committee for Civil Liberties, Justice and Home Affairs requested a document which received a number of inputs from different professionals in the member states. This document, entitled ‘*The European legal framework on hate speech, blasphemy and its interaction with freedom of expression*’ enumerates the different legal mechanisms in the EU which address hate speech but also explores the relation that hate speech incidents have

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<sup>35</sup> *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer system* (2003)

<sup>36</sup> Council of Europe, ‘Hate Speech Watch’ (2012) <<http://www.nohatespeechmovement.org/hate-speech-watch>> as accessed on 25 April 2016.

with the ever-present right of freedom of expression. With the emergence and growth of self-proclaims anti-immigration and what can be considered extreme rightist 'nationalist' political parties, the European Parliament had begun to consider the possibility of the emergence of these parties inside the EU institutions. While the EU is a political entity, it legislates on behalf of the member states in the areas where it is given competence.

In 2008, Framework Decision 2008/913/JHA on combatting certain forms and expressions of racism and xenophobia by means of criminal law (CFD) was adopted by the Council with members being obliged to comply by 28<sup>th</sup> November 2010<sup>37</sup>. While notably this Framework directly tackles hate speech, criminal law remains the domain of the national member states which may considerably affect the Union's ability to directly tackle this issue which makes the Council of Europe a better candidate to enforce such anti-hate legislation.

While the Council of Europe and the European Union remain separate entities with different functions, when it comes to human rights and the protection of fundamental freedoms, they essentially have the same goals and duties. The political ties which the European Union bring make it a strong candidate towards pushing forward the agenda of "Unity in Diversity", not only between states, but also citizens.

In October 2015, the European Union held its first Annual Colloquium on Fundamental Rights entitled '*Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe*'. This produced a detailed debate on the rise of xenophobic sentiment in Europe and a large number of proposals of how to tackle hate crime were brought forward. Some of the targets tackled in the Conclusion Paper<sup>38</sup> include:

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<sup>37</sup> Policy Department C: Citizens' Rights and Constitutional Affairs (2015): '*The European legal framework on hate speech, blasphemy and its interaction with freedom of expression*', 28.

<sup>38</sup> 'Fundamental Rights Colloquium Conclusions En' (2015) [http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/fundamental\\_rights\\_colloquium\\_conclusions\\_en.pdf](http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/fundamental_rights_colloquium_conclusions_en.pdf) as accessed on 25 April 2016.

1. The crucial role of schools in the education of young people in the promotion of diversity, peace-building and the importance of working together as citizens to create a society which works for all of us
2. The importance of the emergence of a diversity of young leaders with a diverse mind-set and a peace-building approach
3. Working together with IT companies and social networking sites to prevent the emergence of these as platforms for anti-Semitic discourse and the use of innovation when tackling the issue such as the use of the hashtag *#NoPlace4Hate*
4. The urgent need for more effective means of investigation and prosecution of hate crimes by speeding up the process of enforcing the EU Agenda on Security<sup>39</sup> which would provide clear tools for such protection of victims

The conclusions of the colloquium include a large number of key action points. The discussion took a round-table format which is recommended in such discussions. Round-table discussions allow for personal experiences and sociological, philosophical, religious and civic society interventions which bring to light the humanistic and practical aspects of dealing with hate crimes through different perspectives. The focus was mainly put on a two-fold approach. On the one hand, educative tools and creating spaces for discussion and for different communities to get together and learn from each other. On the other hand, further punitive measures were encouraged with more focus shifting to the increase in investigations.<sup>40</sup>

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<sup>39</sup> European Commission, 'The European Agenda on Security' <[http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu\\_agenda\\_on\\_security\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf)> as accessed on 25 April 2016.

<sup>40</sup> European Commission, 'Joining forces against antisemitic and anti-Muslim hatred in the EU: outcomes of the first Annual Colloquium on Fundamental Rights' (2015).

## Addressing of hate speech in political discourse

Undoubtedly a growing concern is the growing support for political parties with openly anti-semitic views. This, however regrettable, creates issues when it comes to dealing with hate speech in political discourse. This is because the fundamental right to representation of the citizen is something to be respected not only at a national level but also is the set-up that the European Parliament takes with the citizens voting for their preferred MEP's. Therefore if the citizen shares in these anti-semitist and xenophobic views, do they not also have a right to representation?

Although there are clear legislative bans on the spreading of hate and racist sentiments, there is no clear distinction of what constitutes such a breach. Legally, hate speech has many different definitions. Member states give this crime a different interpretation make it difficult to clear line. It is clear that hate speech includes much more than simple speech but when it comes to collective legislation by the CoE or the EU this seems to be absent in terms of giving clear guidelines referring to hate speech in the media, online and even in the forms of symbols and imagery.

*“The ultimate confirmation of the trend was remarked during the elections to the European Parliament in May 2014. Eurosceptic right-populist parties increased their vote share from 11% to 15%, with some countries receiving even more support. Lega Nord in Italy, Austrian Freedom Party, Jobbik in Hungary, Party of Freedom in the Netherlands, True Finns, and Congress of the New Right in Poland have now marked their representation in Strasbourg and Brussels. Danish People's Party, National Front in France and the United Kingdom Independence Party won the elections in their states, scoring respectively 26%, 25% and 27% of votes. The National Democratic Party of Germany and the Golden Dawn of Greece, two parties considered neo-nazi also won seats for their MEPs. The last case is especially alarming because the Greek party (associated with a swastika-like symbol) promotes political violence, being under investigation for brutal crimes, and their leaders facing incarceration. This proves that the radical right present in*

*the European Parliament is thus not only the so called “far right 2.0”, the one with more aesthetic look and rhetoric traits, but also includes the traditional far right that bases its support on racism, anti-Semitism, skinheads, etc.’<sup>41</sup>*

There is an undeniable link between hate speech in the media and political discourse. As Europe faces a number of economic challenges as well as crises such as the large number of immigrants travelling to Europe, most citizens feel threatened and we see a greater shift towards these political parties. The Council of Europe has frequently condemned countries such as Hungary and Poland<sup>42</sup> in its mention of the concerns on growing hateful discourse by politicians but a collective plan to tackle such discourse has not been reached.

## **A comprehensive and enforceable definition of the term ‘hate speech’**

As previously mentioned, one of the most needed tools in the fight against hate speech is a collective, comprehensive and enforceable definition of what constitutes hate speech. As things stand, this is the domain of the national laws of every European state and a common challenge is the drawing of a line between what is considered to be rude or not ‘politically correct’ and what is outright illegal.<sup>43</sup> This may cause difficulty in the prosecution of hate speech crimes, both in speech and in writing online and offline. However, since social media brings together an entire global community, bridging together different continents and states, the confrontation of hate speech online is difficult since what constitutes hate speech is essentially left in the hands of the service provider or social media outlets and companies. In the European Union’s first Annual Colloquium on Fundamental

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<sup>41</sup> Hate Speech: *European Union – Central Europe – Poland* (Featured Articles, 19 May 2015) <<http://4liberty.eu/hate-speech-european-union-central-europe-poland/>> as accessed on 25 April 2016.

<sup>42</sup> ‘Council of Europe Criticises Racism in Hungary, Poland’ (9 June 2015) <<http://www.euractiv.com/section/justice-home-affairs/news/council-of-europe-criticises-racism-in-hungary-poland/>> as accessed on 25 April 2016.

<sup>43</sup> The Middle East Forum: *‘European Hate Speech Laws: The Legal Project’* (2016) <<http://www.legal-project.org/issues/european-hate-speech-laws>> as accessed on 25 April 2016.

Rights, the need for a collaboration between the Unions' legislative branch and the social media companies was highlighted however we have yet to see whether this will be put into practice. Also, the reporting of hate speech occurrences usually is the domain of the competent authorities in member states which can only be tackled if national hate speech laws support that particular violation.

## **Practical educative tools**

Education of citizens and young people is often mentioned when tackling hate speech. This is because of citizens are aware of the threat that hate speech brings to our democratic societies then it will be the citizens themselves who will take action on the grass-root level. However, the way in which this education takes place in schools and other institutions is rarely discussed. It is usually within the discretion of the school syllabus how such matters will be tackled and it is usually a formal approach which is taken. However, one of the goals highlighted in the 'No Hate Speech' campaign done by the CoE, was in fact the importance of non-formal education when educating the community on hate speech.

There is no doubt that most education institutions include a number of selected topics on democracy, human rights and tolerance however, we fail to see a practical approach in this area. Some of the events included in the fore-mentioned campaign were Campaign training workshops, courses, seminars, conferences, youth events, festivals and flashmobs. However, we continue to see the need for these informal learning tools presently even though this campaign ended in 2014. The non-formal aspect is usually passionately taken upon by NGOs and campaign groups who, through funding and other means, make use of tools to create innovative projects to push forward non-hate messages. Thus, the importance of such non-governmental organisations and other groups should not be taken for granted.

## Effective Monitoring Instruments on a European level that are pro-active

As previously stated, the Council of Europe already has a monitoring function within its member states. These include The European Commission against Racism and Intolerance (ECRI) composed of independent experts and issues monitoring reports, including reports on the problem of hate speech. The Commissioner for Human Rights also plays a vital role as a monitoring tool and has drawn attention to hate speech as a human rights concern (for instance, in relation to Roma, refugees and asylum seekers).<sup>44</sup>

Although these monitoring mechanisms are vital in the following up of hate speech legislation, most of the work done tends to be reactive rather than pro-active resulting in the tackling of issues after they have already occurred. These monitoring devices are also not able to enforce actions unless their recommendation has to do with something which is outright illegal, however, anything else remains a simple suggestion. Since the balance between freedom of expression and the prohibition of hate speech are such a huge concern for most European communities and states at the moment, it is recommended that a Committee is set up to work on the afore-mentioned reflections. This Ad-Hoc Committee may be a short-term one with long-term and crucial functions. These may include an enforceable and comprehensive definition of hate-speech, proper enforcement training and monitoring of legislative mechanisms in member states and the addressing of hate-speech online across the continent.

A clear example can be found in one of the positive outcomes of the first 'Annual Colloquium on Fundamental Rights' by the European Commission. This was the implementation of a code of conduct after efforts by the Commission and IT

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<sup>44</sup>Council of Europe Commissioner for Human Rights and Council of Europe: *'Time for Europe to get migrant integration right'* (Council of Europe, 2016)

Companies.<sup>45</sup> This code of conduct incorporates and builds on, in the most practical manner, the e-Commerce Directive<sup>46</sup>. Article 40<sup>47</sup> states that service providers have a “duty to act” in taking down illegal content but this was not addressed in a step-by-step manner, nor did it convey any procedures for how this should be done. This code of conduct focusing on re-committing IT companies to fighting hate speech online, and therefore, employing clear and concise procedures for taking down such materials as soon as users notify the customer service staff. The code also places focus on training staff members to detect hate speech and also how to educate users of these sites on hate speech eradication and proper limits and boundaries online, but also, in offline environments.

## Empowering victims by implementing restorative justice

While European structures and institutions such as the EU have been seen as taking great steps forward in implementing effective legislation and directives, a criticism of all this is the lack of focus on the victims themselves. Unfortunately, research shows that punitive measures against perpetrators are not enough to restore the victims’, citizens and communities to a place where they no longer feel victimised but feel empowered to make a change in society.<sup>48</sup> Restorative justice does not only seek to punish the wrong-doer, punish him and keep him away from society, but also, it seeks to restore the victim to their previous state before the crime affected their well-being.<sup>49</sup> This can be seen as imposing on states a

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<sup>45</sup> European Commission: *'European commission and IT companies announce code of conduct on illegal online hate speech'* (European Commission Press Release Database, 31 May 2016) <[http://europa.eu/rapid/press-release\\_IP-16-1937\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1937_en.htm)> as accessed on 28 July 2016

<sup>46</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') 2000 (32000L0031 - EN)

<sup>47</sup> Ibid: 40, Both existing and emerging disparities in Member States' legislation and case-law concerning liability of service providers acting as intermediaries prevent the smooth functioning of the internal market, in particular by impairing the development of cross-border services and producing distortions of competition; service providers have a duty to act, under certain circumstances, with a view to preventing or stopping illegal activities ....”

<sup>48</sup> *Contemporary Justice Review* (1997), Vol.1 No,1: 47-56

<sup>49</sup> Eugene McLaughlin, Open University, and Gordon Hughes, *'Restorative justice: Critical issues'* (SAGE,2003): 40



responsibility to provide information, psychological assistance and counselling, safety and access to the judicial system, among others.

A big part of restorative justice therefore is compensation for the victims. This can take one of two forms; monetary and non-monetary. Both are equally important and play a part in the validation and healing of the victim.<sup>50</sup>

## HATE SPEECH ONLINE - AN INTERNATIONAL PERSPECTIVE

The Universal Declaration on Fundamental Human Rights recognises the need for respect and recognition of human rights for all. In fact, it is stated that '[...] the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people'.<sup>51</sup>

It is clear that freedom of speech is given utmost importance in the spectrum of fundamental human rights. On the other hand, instances of hate speech are on the rise, particularly due to the wider use of social media platforms such as Facebook and Twitter.

Although the present international legislative framework can potentially tackle hate speech in its traditional sense, there are certain particular issues that must be considered when dealing with hate speech online. Moreover, certain countries afford constitutional protection to freedom of speech which may result in the instances of hate speech going unpunished due to the fine line that exists between the two types of speeches. In this section, we shall focus primarily on how hate

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<sup>50</sup> Alex Manoz, 'How do you compensate a victim of discrimination?' (Australia Pty Ltd) <<http://www.bradbrooklawyers.com.au/pdf/articles/How-do-you-compensate-a-victim-of-discrimination-A-Manos-Howard-Zelling-Chambers.pdf>> as accessed on 28 October 2016

<sup>51</sup> *Universal Declaration of Human Rights*, Preamble, para. 2

speech online is dealt with internationally and in the United States of America as well as how private entities, mainly social media outlets, are tackling instances of hate speech through their commercial influence and behaviour.

## 1. Elements of Hate Speech Online

Protection against hate crimes has long been a priority for international organizations and law makers. In fact, there are a number of legislative frameworks such as the International Covenant on Civil and Political Rights,<sup>52</sup> a multilateral treaty adopted by the UN General Assembly in 1976, together with International Covenant on Economic Social and Cultural Rights<sup>53</sup> provide certain limitations for freedom of expression in order to combat hate speech.

On the other hand, there are certain elements particular to online hate speech, which might render the traditional legal measures protecting against it in other media ineffective or otherwise inappropriate. The permanence, itinerancy, anonymity and cross-jurisdictional character of online hate speech must be taken into consideration when drafting appropriate legal frameworks to protect against the incitement of hatred and discrimination.

Although hateful online content may be removed, it has the potential of remaining online in different formats on the various platforms available and may also be linked repeatedly. Moreover, websites shut down for such prohibited content may be revived under a different web-hosting service. The cross-jurisdictional character of online content may also cause some problems since the same content may be allowed in one country and prohibited in another. This gives rise to a situation whereby websites indoctrinating hate and discrimination are allowed in countries having a higher threshold for hate speech. The latter situation is due to the lack of a unified regulatory system dealing with hate speech and the fine line between protecting the innate right for freedom of expression as opposed to its limitations.

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<sup>52</sup> Hereinafter 'ICCPR'.

<sup>53</sup> Hereinafter 'ICESCR'.

## 2. International Legal Frameworks tackling hate speech

We shall first discuss the international frameworks, particularly the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>54</sup> which deal with hate speech and need to be adhered to by signatory states.

### a. ICCPR

As we previously pointed out, combatting hate speech online is no mean feat. This is mainly due to the particular elements related to online content and the fine line between freedom of speech and the prohibition of content that may limit this fundamental human right.

The ICCPR is part of the International Bill of Rights in conjunction with the Universal Declaration on Human Rights and the ICESCR. Signatories to this multilateral treaty must respect certain political and civil rights of individuals including that of freedom of speech, freedom of religion and freedom assembly amongst others.

Despite not making use of the term 'hate speech' explicitly, the ICCPR provides a framework for freedom of expression and underlines the limitations to which this right must conform to in order for it to be legitimate. The main articles to focus on are Article 19 and Article 20. The former embodies the right to freedom of expression stating that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>55</sup>

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<sup>54</sup> Hereinafter 'ICERD'.

<sup>55</sup> ICCPR: Articles 19(1) – 19(2), Vol.999,1-14668.

On the other hand, sub-article 3 of the same article provides a limit for the right of freedom of expression by recognising the duties and responsibilities linked with this right. It also states that any limitation of freedom of expression shall be as provided for in the law and necessary 'for [the] rights and reputation of others [and for] the protection of national security or of public order (order public), or of public health or morals'.<sup>56</sup>

Therefore, it seems that Article 19 is addressing hate speech in line with the protection of the fundamental human right of freedom of expression. However, those who drafted this multilateral treaty felt the need to include Article 20 as a more specific provision tackling the prohibition of hate speech:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law<sup>57</sup>

We must draw a distinction between the limitation of Article 19(3) and the *raison d'être* behind Article 20. The wording of Article 19 ensures that the limitation of freedom of expression is the exception rather than the rule. Therefore, anything that impedes individuals and entities from exercising this fundamental right should be kept to a minimum and must be necessary and within the ambit of the law. On the contrary, the wording of Article 20 expressly prohibits the dissemination of information which incites hatred, discrimination or violence. Moreover, Article 20 imposes an obligation on the signatories of the ICCPR to prohibit content which is classified as 'incitement to discrimination, hostility or violence' whilst limitations under Article 19(3) are optional.

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<sup>56</sup> *ibid*: Article 19(3)(a) - (b).

<sup>57</sup> *ibid*: Article 20.

Article 20's interpretation is not as clear-cut as its wording. There is a difference between expression of hatred, expressions that advocate hatred and hateful speech that incites discrimination, hostility or violence and their interpretation constitutes a grey area. In light of this, a set of criteria known as the Camden Principles were adopted to aid in the interpretation of these articles.<sup>58</sup>

In his commentary related to the ICCPR, Nowak considered Article 20 to have introduced 'an alien element in the system of the Covenant in that it does not set forth a specific human right but merely establishes limitations on other rights, through a separate provision.'<sup>59</sup> Therefore, the ICCPR is not only allowing states to interfere with these fundamental human rights but is expecting them to draft provisions prohibiting the advocacy of incitement to any hatred, hostility or violence as provided in Article 20(2). On the other hand, legal authors such as Ghanea feel that labelling this concept as 'alien' is an overstatement since such provisions should never impinge on the rights of others. Thus, states are not given a *carte blanche* to engage in an activity destroying or restricting fundamental human rights as underlined in the same document.<sup>60</sup>

#### a.1 - Rabat Plan of Action

The United Nations has also recognised the complexity of interpreting the ICCPR's provisions and has sought to provide a number of opportunities to discuss these provisions as well as the way forward to understand the concepts of freedom of expression and its limitations.

A series of consultative meetings in 2012 led to the Rabat Plan of Action, which underlined that despite the obligations posed on signatory states in the ICCPR, not all countries have provisions preventing the advocacy of hate speech. In addition,

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<sup>58</sup> For further information, refer to <<https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>> as accessed on 9 May 2016.

<sup>59</sup> Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, p. 468.

<sup>60</sup> Nazila Ghanea: *Conference Room Paper*: 52. Refer to document on: <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Seminar2008/CompilationConferenceRoomPapers.pdf>> as accessed on 9 May 2016.

those having these provisions are sometimes inconsistent with the wording in the ICCPR. The same plan of action also introduced a 6-tier test to identify these kinds of hate messages.

#### b. ICERD

This document, which came into force in 1969, also has implications conceptualising forms of hate speech but differs significantly from the ICCPR in three aspects. Firstly, it specifically prevents hate speech related to ethnic or racial discrimination. This seems to be more limited and specific than the provisions found in the ICCPR.

Secondly, Article 4 of the ICERD, dealing with hate speech is stricter than the prohibitions imposed by Article 20 of the ICCPR. In fact, this article states that it:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.<sup>61</sup>

Therefore, the ICERD classifies such instances of hate speech as criminal offences, as opposed to the ICCPR, which only imposes prohibitions by the

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<sup>61</sup> ICERD, Article 4.

signatory states. In addition, the ICERD encompasses other actions against racial discrimination which are not necessarily hate speech per se, but are related to it.

Finally, the intent envisioned in these two legal instruments differs since ‘the advocacy to hatred’ found in the ICCPR is more specific than that of discriminatory speech found in the ICERD. In order for intent to be present under the ICCPR articles, there must be the proven intent to sow hatred. On the other hand, the ICERD condemns ‘the mere dissemination of messages of racial superiority or hatred, or even incitement to racial discrimination or violence’.<sup>62</sup>

This concept of intent is particularly relevant when dealing with hate speech online since the mere spreading of hate speech online may automatically amount to an offence under the ICERD but not under the ICCPR, due to its requirement of proving the intent of inciting hatred when spreading hate messages.

Although such international frameworks are of particular relevance when dealing with hate speech, one must also mention some regional frameworks which have tackled hate speech online<sup>63</sup> including the American Convention of Human Rights, the African Charter on Human Rights and Peoples’ Rights, the Cairo Declaration on Human Rights in Islam, the Arab Charter on Human Rights and the ASEAN Human Rights Declaration. It must be noted that each of these documents adopts a different approach when dealing with the freedom of expression and hate speech. Some may be considered as particularly more restrictive of freedom of speech than Article 19(3) of the ICCPR whilst others adopt a narrower approach than the international standards when deciding on the limitations of such freedom of speech.

### C. The United States of America

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<sup>62</sup> UNESCO, ‘*Countering Online Hate Speech*’ :22 [2015].

<sup>63</sup> For the purpose of this paper, we shall only list down such frameworks without going into detail in order to make room for more significant considerations in the following sections.

Being party to both the Universal Declaration of Human Rights and the ICCPR, the United States ('US') gives considerable importance to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. In fact, such right is given constitutional safeguard through the First Amendment which stipulates that:

Congress shall make no law respecting an establishment of religion or prohibiting the exercise thereof; or abridging the freedom of speech, or of the press or of the right of the people peaceably to assemble, and to petition the government for redress of grievances.<sup>64</sup>

Based on the concept that a free and open exchange of ideas and opinions, regardless of whether they are offensive or reprehensible to others, the First Amendment enhances the principles of democracy and should be broadly safeguarded. On the other hand, it seems that the fine line between freedom of expression and hate speech needs to be reconsidered since the broad protection afforded by the First Amendment also seems to safeguard people inciting hatred against certain religions or beliefs.

### C.1. Narrow Exceptions to the First Amendment

As explained above, blanket statements expressing hatred of an ethnic, racial or religious nature are protected through the First Amendment, even if they are aimed at particular individuals and cause distress to them. This is regardless of whether such speech is found online or in other types of traditional media such as newspaper or books. In fact, Supreme Court decisions have affirmed that the government may not regulate or censor the content of any speech online to a greater extent than it can regulate other types of traditional media.

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<sup>64</sup> US Bill of Rights, Article I (Amendment 1, Freedom of expression and religion).



On the other hand, while the First Amendment affords broad protection to freedom of speech, it is not absolute and there are some narrow exceptions to the rule.

## C.2. Content - Neutral Restrictions

Provided that the restrictions are not based on the content of the speech or the viewpoint of the individual himself, government can have time, place or manner restrictions in particular circumstances.

To better understand this, one may refer to *Schenck v. United States*<sup>65</sup>, decided in 1949. The plaintiff, Schenck, was convicted of going contrary to the Espionage Act, a law criminalizing acts obstructing the recruitment of soldiers or attempts to make soldiers disloyal or disobedient by distributing pamphlets stating that the government had no right to criminalize such acts.

In this judgement, Justice Oliver Wendell Holmes, Jr. confirmed that in ordinary time, Schenck's actions would have been protected under the First Amendment since he was exercising his freedom of speech but, at the time of the case, when the nation was at war, his actions could have resulted in the incitement of others to an unlawful purpose and therefore the government could suppress his actions.

In the words of the Court:

[t]he question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.<sup>66</sup>

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<sup>65</sup> *Schenck v. United States* (1919).

<sup>66</sup> *ibid.*

Therefore, it is clear that the First Amendment will not apply in situations where certain words will result in the incitement of danger or violence during a particular time or place. Such situations are exceptional and prevent against speech which has the possibility of inciting violence rather than protecting those who are victims of hate speech. On the other hand, the constitutional protection under the First Amendment will not apply in these particular situations.

### 'Fighting words'

Another exception to the absolute constitutional protection granted to freedom of speech through the First Amendment is the use of 'fighting words'. The rationale of the protection afforded to free speech is that the government can never limit the freedom of expressing oneself simply because individuals or the majority of the community disagree with it or find it offensive. Thus, a distinction is made between the advocacy of unlawful conduct and the intentional incitement of such conduct. Whilst the former would be granted protection under the First Amendment, the latter would not.

The distinction between the two can be noted in *Brandenburg v. Ohio*<sup>67</sup> and *Chaplinsky v. State of New Hampshire*. In *Brandenburg*, the Supreme Court considered a speech advocating the 'revengence against Jews and African Americans'<sup>68</sup> as protected under the First Amendment since such a speech was not directed at or likely to incite unlawful conduct, despite the fact that this speech was done whilst brandishing firearms.

*Chaplinsky*, on the other hand, introduced the 'fighting words' doctrine, limiting the constitutional protection of freedom of speech under the First Amendment. In this case, the plaintiff, a Jehovah's Witness, was accused of calling a town marshal who arrested him a 'Fascist' and 'racketeer'. He was charged under the New Hampshire Offensive Conduct law which punishes 'any offensive, derisive or

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<sup>67</sup> *Brandenburg v. Ohio*, U.S (1969).

<sup>68</sup> *ibid.*

annoying word to anyone who is lawfully in any street or public place ... or to call him by an offensive or derisive name’.

The Supreme Court’s Justice Harry Blackmun confirmed that ‘fighting words’ constitute one of the well-defined limits for the protection afforded by the First Amendment. He stated that:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words — those which by their utterance inflict injury or tend to incite an immediate breach of the peace.<sup>69</sup>

## **Role of private entities in combatting hate speech online**

The legal frameworks described above show how states can aid in the fight against hate speech and discrimination. As previously stated, the cross-border element of online content may render the above-mentioned international frameworks ineffective since such content may easily be reproduced in a jurisdiction with more lenient laws on hate speech. In spite of this, we cannot underplay the role that major social media platforms such as Facebook and Twitter play in preventing the dissemination of discriminatory or offensive content through their terms of service.

Before delving into the terms of services of particular terms of service, we must note the Guiding Principles on Business and Human Rights which elaborates on the private entities’ responsibility to respect all human rights and address any adverse human rights impacts in which they are involved.<sup>70</sup> In light of this, these

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<sup>69</sup> David L. Hudson Jr, ‘Fighting words’ case still waves on 70<sup>th</sup> anniversary, <<http://www.firstamendmentcenter.org/fighting-words-case-still-making-waves-on-70th-anniversary>> as accessed on 27<sup>th</sup> October 2016.

<sup>70</sup> Guiding Principles on Business and Human Rights, Principle 11.

Internet intermediaries should assess potential or actual human rights violation and act on their results as well as providing adequate remedies for any such violation of these rights.

Even though these principles are considered as adequate to combat hate speech, finding the true balance between freedom of expression and fighting hate speech is extremely challenging. This is because the main aim of social media platforms is the dissemination of information and prohibiting users from making use of such public spaces would risk undermining the whole concept of such a space. However, a number of Internet intermediaries have adopted terms and conditions which take hate speech and its dissemination into consideration. Some of these companies have even provided for a definition of hate speech whilst others prefer to indirectly refer to it.

## Facebook Terms of Service

Facebook expressly refers to hate speech in their community standards stating that:

Facebook removes hate speech, which includes content that directly attacks people based on their: race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender or gender identity, or serious disabilities or diseases.<sup>71</sup>

On the other hand, it specifically provides for the allowance of satire and humour related to these topics whilst also noting that users sharing such content are responsible for their actions. In fact, Facebook attempts to deal with the element of anonymity as follows:

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<sup>71</sup> Facebook Community Standards <<https://www.facebook.com/communitystandards>> as accessed on 10 May 2016.

[w]e ask that Page owners associate their name and Facebook Profile with any content that is insensitive, even if that content does not violate our policies. As always, we urge people to be conscious of their audience when sharing this type of content<sup>72</sup>

It is clear that Facebook tries to balance the concept of free speech with the protection of its users against hate speech and discriminatory content. Moreover, users have the ability to report any content which violates the community standards and Facebook will investigate the matter further.

## YouTube Terms of Service

YouTube's terms of services also make an explicit reference to hate speech. They allow the spreading of unpopular opinion parallel to the right of freedom of expression, but are conscious of the problem of hate speech. In fact, they provide that:

We encourage free speech and defend everyone's right to express unpopular points of view. But we do not permit hate speech: speech which attacks or demeans a group based on race or ethnic origin, religion, disability gender, age, veteran status and sexual orientation/ gender identity.<sup>73</sup>

Such definition is more restrictive than the definition provided from in the international framework of the ICCPR and is therefore evidence of how approaches by private entities can sometimes be considered as more effective than the international frameworks applicable for signatory states. The same approach as Facebook for reporting abusive content is adopted as well.

## Twitter

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<sup>72</sup> *ibid.*

<sup>73</sup> YouTube Terms of Service <<https://support.google.com/youtube/answer/2801939?hl=en>> as accessed on 10 May 2016.

Twitter adopts a different approach than Facebook and YouTube when it comes to dealing with hate speech. Firstly, it does not make explicit reference to the term or try to define it. On the contrary, it warns its users that they might be exposed to 'offensive, harmful, inaccurate or otherwise inappropriate [content] or in some cases, postings that might have been mislabelled or otherwise deceptive'.

The social media platform also stipulates that 'Under no circumstances will Twitter be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Services or broadcast elsewhere'.

The latter sheds light on the concept of liability which differs from that of traditional media. Whilst traditional news portals may be punished for inciting hatred in their content, the situation does not seem to be so clear-cut when dealing with social media platforms and online content due to the issues mentioned in the introductory part of this section.

One must note that Twitter at first resisted the introduction of reporting of abusive content, but due to worldwide pressure in the aftermath of abusive tweets and threats aimed at feminist campaigner Carolina Criado-Perez<sup>74</sup>, a reporting system similar to other social media platforms was launched.

In addition, it is clear that reporting abusive content is not the sole responsibility of these Internet intermediaries but is also dependent on responsible users making use of these websites. It must be kept in mind that such social media platforms deal with countless amounts of data every single day making it almost impossible to track down hate speech as it happens; therefore having a sufficient reporting system might be the most feasible solution at present.

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<sup>74</sup> *Twitter 'trolls' Isabella Sorley and John Nimmo jailed for abusing feminist campaigner Caroline Criado Perez* <<http://www.independent.co.uk/news/uk/crime/twitter-trolls-isabella-sorley-and-john-nimmo-jailed-for-abusing-feminist-campaigner-caroline-criado-9083829.html>> as accessed on 10 May 2016.

## Concluding remarks:

- The current international human rights frameworks and their limitations are rendered somewhat insufficient when dealing with online hate speech due to its particularities and cross-jurisdictional elements.
- The terms of services of major players in the social media market such as Facebook, Twitter and YouTube are attempting to tackle this global issue head on but there is still no concrete worldwide definition of hate speech and interpretation, especially when dealing with online content.
- Certain countries, particularly the United States, protect freedom of speech in an absolute manner, except for certain narrow limitations. There is a fine line between safeguarding one's right to freedom of expression and protecting the victims of hate speech and a balance must be created.

## Recommendations

### Empowerment through Education

- One of the most important obstacle which we must overcome as a nation is the poor education about migrants and refugees who are residing in Malta. As proposed by the UN Human Rights Council Special Rapporteur on Minority Issues, States could work collaboratively with organisations and projects that conduct campaigns to combat hate speech, including on the Internet, including by providing financial support (HRC, 2015).
- Education in all its various forms be it formal, Informal and non-formal plays a crucial role in the prevention of intolerance and hate speech. It is important to impact, at an early age, the fundamental values of democracy which constitute the social fabric of society.
- Teacher and educators need to be trained and given the tools to overcome their own prejudices.
- The school curriculum should foster an inclusive education and mutual understanding amongst children and young people.
- Local and national authorities should, together with civil society , support community leaders in the breaking of stereotypes and the developing of counter-narratives reaching beyond their own communities.
- More structural initiatives are needed in order to explain not only how certain instances can be reported, but also why this is important in creating shared spaces where dialogue can occur around hate speech.
- Although Movements such as the “No Hate Movement” have developed different materials and resources (including videos, training manuals, educational tools, and the online platform to report hatred content), there



are no clear public guidelines on how to evaluate or report impact moreover, although there has been funding of many projects across Europe and the message has come across. Ideally the events which are founded by this Campaign transform into an active solutions in tackling hate speech online.

## Legislation

- Medium length projects which may achieve measurable results in the given time if the focus of the work is in such specific areas as effecting legislative change, removing a given number of websites from the internet, building a group of supporters of a particular size, or simply raising general awareness of the problem.
- Hate Crime laws and new EU rules protecting the rights of victims of crime and improve recording and data collection of hate crime incidents.
- Full Implementation and transposition of the EU framework Decision on combating racism and xenophobia.<sup>75</sup>
- Self-regulation for journalists which gives ethical standards to journalists and they are still given independency. Hence, their work would be reviewed by their own colleagues rather than those in power. Consequently, it will also aid writers to generate trust with people giving it more power and independency from “political and economic pressure”.<sup>76</sup>
- The EU Agency for Fundamental Rights in cooperation with the European Broadcasting Union should support media literacy through training and data

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<sup>75</sup> European Commission: *Joining Forces against antisemitic and anti-Muslim hatred in the EU: outcomes of the first Annual Colloquium on Fundamental rights* : 5

<sup>76</sup> Commissioner for Human Rights: *Ethical Journalism and Human Rights (CommDH/IssuePaper (2011)1)*, 19.

dissemination and sensitise the media to promote diversity and tolerance.

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- Specific projects aimed at better implementing legislation on racism and xenophobia including through training judges, prosecutors and police.
- A more effective platform for victims to report hate speech and raising awareness amongst citizens on their rights as victims of hate crimes and by carrying out projects aimed at increasing victims' trust and facilitate reporting.

## Defining Hate speech

- Consultative meetings dealing with hate speech should be organised more frequently and attempt to reach a consensus on a concrete definition of hate speech and hate speech online.
- Although the traditional definition should be retained, it must be tweaked to reflect the digital era whilst also keeping in mind the protection of the fundamental human right of freedom of expression. The line between this right and its limitations should also be clarified.
- Global players in the industry should note the difficulties and shortcomings in their terms of service when tackling hate speech and discuss the most feasible way forward to ensure that hate speech online is adequately tackled without leaving any room for leeway. Guidelines focusing on hate speech or draft terms of services can also be adopted.
- Whilst considering the challenges to provide concrete monitoring of hate speech, all major players in the industry and legal drafters should come together and create a more efficient way of monitoring hate speech. They

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<sup>77</sup>European Commission: 'Joining Forces against antisemitic and anti-Muslim hatred in the EU: outcomes of the first Annual Colloquium on Fundamental rights', 5.

should also distinguish who is liable and responsible for the actions to be taken in combatting hate speech online. Despite the challenges and the difficulty in reaching consensus with a large number of countries, talks and cooperation may lead to the spreading of a worldwide campaign against hate speech and its implications.

## BIBLIOGRAPHY

### Legislation

- Council of Europe , European Convention on Human Rights (1953), (1970)
- Council of Europe, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer system (2003)
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (32000L0031 - EN)
- International Covenant on Civil and Political Rights (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1969)
- Laws of Malta, Criminal Code
- United Nations Universal Declaration of Human Rights (1948)

### Jurisprudence

- *ECHR, Erbakan v. Turkey* , app.no. 59405/00,2006
- ECHR, *K.U V. Finland*, app.no. 2872/02, (2008)  
Court of Magistrates, Malta, Police vs Norman Lowell, 27 March 2008
- Court of Criminal Appeal, Malta, Police Vs Norman Lowell, 15th July 2013,
- *Handyside v. The United Kingdom* (no 5493/72) 7th December 1976  
European Court of Human Rights
- *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, ICTR-99-52-A (United Nations)

### Books

- Eugene McLaughlin, Open University, and Gordon Hughes, 'Restorative justice: Critical issues' (SAGE)(2003)

## Website

- Article 19, 'Hate Speech' <<https://www.article19.org/pages/en/hate-speech-more.html>> as accessed on the 25th of February 2016
- Article 19, 'Media Regulation <> as accessed on the 29th February 2016
- Council of Europe, 'Hate Speech Watch' (2012) <<http://www.nohatespeechmovement.org/hate-speech-watch>> accessed 25 April 2016
- <[http://nohate.ext.coe.int/content/download/38987/300906/file/Bookmarks\\_EN\\_online.pdf](http://nohate.ext.coe.int/content/download/38987/300906/file/Bookmarks_EN_online.pdf)> accessed 25 April 2016
- 'Community Standards | Facebook' (*Facebook.com*, 2016) <<https://www.facebook.com/communitystandards>> accessed 10 August 2016
- Facebook Help Centre: What does Facebook consider to be Hate Speech? <<https://www.facebook.com/help/135402139904490>>
- Google User Content and Conduct Policy
- 'Hate Speech - Youtube Help' (*Support.google.com*, 2016) <<https://support.google.com/youtube/answer/2801939?hl=en>> accessed 10 May 2016
- Office of the United Nations High Commissioner for Human Rights, Conference Paper "FREEDOM OF EXPRESSION AND ADVOCACY OF RELIGIOUS HATRED THAT CONSTITUTES INCITEMENT TO DISCRIMINATION, HOSTILITY OR VIOLENCE"- <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Seminar2008/CompilationConferenceRoomPapers.pdf>?>

- 'Office Of The United Nations High Commissioner For Human Rights' (2016) <<http://www.ohchr.org>> accessed 10 August 2016
- 'UNESCO' (*UNESCO*, 2016) <<http://unesco.org>> accessed 10 May 2016
- Religion Link, Reporting on Hate Speech link <<http://www.religionlink.com/reporting-on/reporting-on-hate-speech/>> as accessed on 1st of March 2016

## Study

Alex Manoz, 'How do you compensate a victim of discrimination?' (Australia Pty Ltd)

<<http://www.bradbrooklawyers.com.au/pdf/articles/How-do-you-compensate-a-victim-of-discrimination-A-Manos-Howard-Zelling-Chambers.pdf>> accessed 28 October 2016

Policy Department : CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS (2015) 'The European legal framework on hate speech, blasphemy and its interaction with freedom of expression "

## Conclusion Paper

Council of Europe Commissioner for Human Rights and Council of Europe, 'Time for Europe to get migrant integration right' (Council of Europe) (2016)

European Commission, 'Joining forces against antisemitic and anti-Muslim hatred in the EU: outcomes of the first Annual Colloquium on Fundamental Rights' (2015)

ORLOVA Renata (JUST), 'Fundamental Rights Colloquium Conclusions En' (2015) <<http://ec.europa.eu/justice/events/colloquium-fundamental-rights->

2015/files/fundamental\_rights\_colloquium\_conclusions\_en.pdf> accessed 25 April 2016

## Articles & Journals

'Council of Europe Criticises Racism in Hungary, Poland' (9 June 2015) <<http://www.euractiv.com/section/justice-home-affairs/news/council-of-europe-criticises-racism-in-hungary-poland/>> accessed 25 April 2016

European Commission, 'European commission and IT companies announce code of conduct on illegal online hate speech' European Commission Press Release Database (31 May 2016) <[http://europa.eu/rapid/press-release\\_IP-16-1937\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1937_en.htm)> accessed 28 July 2016

Forum TME, 'European Hate Speech Laws: The Legal Project' (2016) <<http://www.legal-project.org/issues/european-hate-speech-laws>> accessed 25 April 2016

Hate Speech: European Union – Central Europe – Poland' (*Featured Articles*, 19 May 2015) <<http://4liberty.eu/hate-speech-european-union-central-europe-poland/>> accessed 25 April 2016.

Laiq Ahmed Atif, 'Is hate speech a right?' Times of Malta (20th October 2012).

The President of the Republic, Hate Speech and Constitutional Reforms.

Use of social media to humiliate and ridicule individuals is social violence – President.

White A, 'Ethical Challenges for Journalists in Dealing with Hate Speech' <<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP8White.pdf>> as assessed on 2nd February 2015

## Other

Code of Ethics: Press Club of Malta and Institute of Broadcasters (1991)

Commissioner for Human Rights: Ethical Journalism and Human Rights (CommDH/IssuePaper (2011)

Commission E, 'The European Agenda on Security' <[http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu\\_agenda\\_on\\_security\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf)> accessed 25 April 2016

Council of Europe. Committee of Ministers. Recommendation 97(20) on "Hate Speech"

Council of Europe. Additional Protocol to the convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, January 28, 2003

Hate Speech: European Union – Central Europe – Poland' (*Featured Articles*, 19 May 2015) <<http://4liberty.eu/hate-speech-european-union-central-europe-poland/>> accessed 25 April 2016.

International Federation of Journalists, IFJ Declaration of Principles on the Conduct of Journalists (2003)

Interview: Drew Boyd, Director of Operations, The Sentinel Project for Genocide Prevention, 24 October 2014

Gagliardone I and others, *Countering Online Hate Speech* (United Nations Educational, Scientific and Cultural Organization 2015)

Public Lecture by Elizabeth Linder, "The Human Connection: Facebook's technology and the global political dialogue"



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