



**Working Session 11: Tolerance and non-discrimination I (continued), including prevention and responses to hate crimes in the OSCE area and combating racism, xenophobia and discrimination, also focusing on intolerance on religious grounds**

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Despite the fact that the European Court of Human Rights has clearly articulated that speech which is offensive, shocking or disturbing is protected under the European Convention of Human Rights,<sup>2</sup> there is an ever increasing inclination in Europe to criminalize speech which is deemed 'indecent' or 'offensive' under the banner of tackling "hate crime".<sup>3</sup>

The European Commission recently indicated what the trajectory of tackling "hate speech" looks like when it presented the Code of Conduct on illegal "hate speech" online in May of this year, in collaboration with IT giants Facebook, Twitter, Youtube and Microsoft.

Under this Code of Conduct, not only is the definition of "hate speech" vague and difficult to articulate, but the Code currently fails to provide for any judicial or quasi-judicial appeal mechanism which would allow citizens to vindicate their right to freedom of expression online.

Even the Secretary General of the Council of Europe, who has championed the combating of "hate speech" online, has expressed concerns that States are failing to define what "illegal content" amounts to, which leads to a wide margin in the interpretation of online content and can be detrimental to freedom of expression.<sup>4</sup>

The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression emphasized the importance of ensuring that any restrictions on freedom of expression must be applied in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse.<sup>5</sup>

Therefore, the Code of Conduct as it stands constitutes a real threat to citizens' freedom of expression and right to a fair trial, and does not reflect the democratic values of plurality, tolerance and respect for all that should be firmly in mind when considering measures to combat "hate crime".

The ultimate effect of these kinds of measures is a chilling effect that will stop people from expressing their opinion, and halting conversation on controversial issues that most warrant debate and

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<sup>2</sup> ECtHR, *The Sunday Times v. The United Kingdom*, Application no. [6538/74](#), judgment of 26 April 1979.

<sup>3</sup> For more, see *Censored: How European "Hate Speech" Laws are Threatening Freedom of Speech*, 2<sup>nd</sup> Edition, Paul Coleman, Kairos Publications, June 2016.

<sup>4</sup> See <http://bit.ly/24iqmLQ>

<sup>5</sup> Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, A/67/357, paragraph 42 (7 September 2012).



discussion. Rather than fostering open conversation on contentious issues, dialogue is being driven underground, before rearing its ugly head in other places.

ADF International applauds the public statement of Director Link and the leaders of the European Commission against Racism and Intolerance and the EU's Fundamental Rights Agency in March of last year that recognized this reality, and stated that "hate speech" must be "confronted and condemned directly by counter-speech".<sup>6</sup>

**ADF International strongly urges the OSCE to restate the foundational importance of freedom of expression, particularly as applied to undesirable ideas and minority opinions.**

**ADF International further calls on Participating States to repeal vaguely worded "hate speech" laws, and ensure that adequate safeguards against abuse of restrictions on freedom of expression are established, to ensure a free exchange in the marketplace of ideas.**

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<sup>6</sup> See <<http://www.osce.org/odihr/145741>>