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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

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WORKING GROUP A

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Report
Human Rights in a Multicultural Society
Hate Speech

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Preliminary remarks

1. Freedom of expression, freedom of thought, conscience and religion, respect for private life or human dignity, and the prohibition of discrimination are all among the foundations of a "democratic society". Within a democratic society situations could, however, arise in which the rights or interests of one person compete with the rights or interests of another. For example, the right to freedom of expression from one person could compete with the rights to respect for private life or freedom of religion of another person. None of these rights potentially involved are absolute; they can be restricted under certain conditions. The challenge for authorities is therefore to strike a fair balance between these competing rights and interests. This is of particular importance in multicultural societies, which are characterised by a diversity of cultures, religions and ways of life.

2. This document, which reflects the discussions that took place in Working Group A, focuses on the right to freedom of expression and, more specifically, on the topic of "hate speech". As regards this theme, the Working Group, by way of introduction would like to state that freedom of expression, guaranteed by Article 10 of the European Convention of Human Rights (hereafter, ECHR or the Convention) and by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), is an essential precondition for public debate on issues of public interest, without which a democratic, pluralist, and open society is inconceivable. Given the essential role that freedom of expression plays in a democratic society, this right protects not only views that are favourably or indifferently received, but also those that "offend, shock or disturb."[1]

3. This does not mean that there are no limitations on freedom of expression. The exercise of this freedom entails duties and responsibilities (Art. 10 para. 2 of the ECHR). While the right to freedom of thought as such (internal freedom or *forum internum*) is absolute, the right of freedom of expression (external freedom or *forum externum*) may be subject to certain limitations if those are prescribed by law, follow a legitimate aim and are proportionate to this aim (Article 10 para. 2 of the ECHR and Article 19 para. 3 of the ICCPR). Legitimate aims include the prevention of disorder and crime and respect for the reputation and rights of others. In judging whether these limitations are "necessary in a democratic society", national authorities have, according to the case-law of the European Court of Human Rights (hereafter, the Court), a certain "margin of appreciation" (see below in particular paras 25 et seq.). Moreover, it should be noted that, the case-law of the Court also holds that certain concrete expressions are outside of the protection of Article 10 ECHR (see part 3.3 below).

4. Most states have adopted legislation to outlaw such expressions which are often referred to as "hate speech", albeit using slightly different definitions of what is prohibited. Although the term "hate speech" is very frequently used, it is not always clear what exactly is covered by it. The Committee of Ministers' Recommendation R(97) 20 contains a definition of "hate speech"[2] (see paragraph 88 below) and the OSCE/ODIHR adopted a working definition of "hate crime",[3] but there is no

[1] *Handyside v. United Kingdom*, judgment of 7 December 1976, para. 49.

[2] The Committee of Ministers' Recommendation R(97) 20 on "hate speech" defined it as follows:
"[T]he term 'hate speech' shall be understood as covering 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."

[3] The OSCE/ODIHR adopted the following "Working Definition" of the slightly different notion of "hate crime" (*Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives* (2005), p. 12, available at <http://www.osce.org/odihr>):
"A hate crime can be defined as:
(A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership of a group as defined in Part B.
(B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor."

universally accepted definition of "hate speech". It should be noted that such speech does not necessarily imply the expression of "hate" or emotions. Racial discourse may be concealed in statements that at first sight appear rational or routine.

5. The Court has increasingly referred to the term "hate speech", in particular in cases where this term was used in the national law of the respondent state.[4] The Court held that "as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance)."[5] The Court does not consider itself bound by the domestic courts' classification. It sometimes rebuts this classification, when it was adopted at national level by the domestic courts,[6] or on the contrary, the Court sometimes classifies certain statements as "hate speech" when the domestic court ruled out that classification.[7]

6. According to the Court, "there can be no doubt that concrete expressions constituting 'hate speech', which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention."[8] According to recent judgments, the fact that certain expressions do not constitute "hate speech" is the essential element to be taken into consideration when judging whether interferences with the right to freedom of expression are necessary in a democratic society.[9] The Court has, however, not developed a precise definition of the notion of "hate speech". While in some cases, the Court held that expressions of racial hatred came within the meaning of Article 17 of the ECHR,[10] such a conclusion has been carefully avoided in others.[11]

7. In the light of the aforementioned, the Working Group was of the view that besides the question, "How do you strike a fair balance between competing rights or interests?" another question should be tackled, namely: "Is it possible to identify factors that distinguish offensive expressions fully protected by the right to freedom of expression from those expressions that are not protected?" Tackling this question is important because expressions qualified as "hate speech" are either not protected by Article 10 ECHR (so-called "Article 17 ECHR exeptions") or restrictions of these expressions are justified under the second paragraph of Article 10. In other words, when "hate speech" is involved, no situation of *protected* competing interests exists. But, what is "hate speech"? When are expressions qualified as "hate speech"? Since there is no universally accepted definition of "hate speech" – and even if there was, this definition could be subject to diverging interpretations – the Working Group considered it useful to identify factors, content and context related, from the case-law of the Court and from other international instruments which could be used as a tool to distinguish (offensive) expressions that are protected by the right to freedom of expression from those that are not.

8. The Working Group notes that the work entrusted to it by the plenary was to draft a descriptive document which should give an overview of existing standards.

9. This document broadly follows the structure of the outline which the DH-DEV proposed for the working group's report (document DH-DEV(2006)008, Appendix V) with some slight adjustments which were felt appropriate by the Working Group:

- competing rights and interests at stake;

[4] *Gündüz v. Turkey*, judgment of 4 December 2003, para. 40; *Erbakan v. Turkey*, judgment of 6 July 2006, para. 56; *Sürek* (No. 1) *v. Turkey*, judgment of 8 July 1999 (Grand Chamber), para. 62.
[5] *Gündüz v. Turkey*, ibid, para. 40.
[6] E.g. in *Gündüz v. Turkey*, ibid, para. 43.
[7] E.g. *Sürek (No. 1) v. Turkey*, ibid., where the Court found that there had been "hate speech", whereas the applicant had not been convicted of incitement to hatred but of separatist propaganda (see paras 13-20).
[8] *Gündüz v. Turkey*, ibid, para. 41. See also *Jersild v. Denmark*, judgment of 23 September 1994 para. 35.
[9] *Ergin v. Turkey*, judgment of 4 May 2006, para. 34; *Alinak and Others v. Turkey*, judgment of 4 May 2006, para. 35; *Han v. Turkey*, judgment of 13 September 2005, para. 32.
[10] *Norwood v. United Kingdom*, decision of 16 November 2004.
[11] *Garaudy v. France*, decision of 24 June 2003; *Seurot v. France*, decision of 18 May 2004.

- applicable human rights instruments;
- principles from the case-law of the European Court of Human Rights and from other relevant Council of Europe bodies;
- factors taken into account for the application of Articles 10 and 17 of the ECHR;
- examples of national measures and initiatives preventing "hate speech" and promoting tolerance drawn from the replies given to the questionnaire (see document GT-DH-DEV A(2006)008 Addendum).

1. Competing rights and interests at stake

10. As said before, the right to freedom of expression of one person may compete with the right to private life (Article 8 ECHR) or the right to freedom of religion (Article 9 of the ECHR) of another person. The prohibition of discrimination may also be at stake (Article 14 of the ECHR and Protocol No. 12). The interests of the individual who expresses himself or the group on behalf of whom he speaks may compete with the interests of the democratic community as a whole. Paragraph 2 of Article 10 therefore allows, under certain conditions, limits to the right to freedom of expression on grounds such as national security or public safety, the prevention of disorder and crime, for the protection of the reputation or rights of others - including human dignity - and for maintaining the authority and impartiality of the judiciary.

2. Applicable international instruments

2.1. Treaties

11. A number of international human rights instruments are of direct relevance in connection with "hate speech". The table below indicates the relevant provisions of these instruments classified by rights concerned. Since not all legally binding instruments have been ratified by all member states, footnotes will indicate which member states have done so. The full text of these provisions is to be found in Appendix of the document.

Relevant Rights Instruments	*Freedom of expression*	*Prohibition of discrimination*	*Freedom of religion and to manifest one's religion*	*Right to respect for private and family life*	*Prohibition of abuse of rights*	*Prohibition of advocacy of hatred or incitement to discrimination*
Universal Declaration of Human Rights	Article 19	- Article 1 - Article 2 - Article 7	- Article 18 - Article 29 (conditions for limitations to be acceptable)	Article 12		
International Covenant on Civil and Political Rights [12]	Article 19	Article 26	- Article 18 - Article 27	Article 17	Article 5	Article 20
International Convention The Elimination of All Forms of Racial Discrimination		Article 1				Article 4[13]
European Convention on Human Rights [14]	Article 10	- Article 14 - Article 1, Protocol No. 12	Article 9	Article 8	Article 17	
American Convention on Human Rights	Article 13	- Article 24 - Article 1 para.1	Article 12	Article 11		Article 13 (para.5)
European Social Charter (revised) [15]		Article E				
Framework Convention for the Protection of National Minorities [16]	Article 9	Article 4	- Article 5 - Article 7 - Article 8		Article 21	

[12] The International Covenant on Civil and Political Rights is legally binding on all member states.

[13] Some Council of Europe member states have made reservations and declarations to Article 4, which refer to the conciliation of obligations imposed by this article with the right to freedom of expression and association. See in particular the reservations or declarations made by Austria, Belgium, Ireland, Italy the United Kingdom which emphasize the importance attached to the fact that Article 4 of the ICERD provides that the measures laid down in subparagraphs (a), (b), and (c) should be adopted with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention and which therefore consider that the obligations imposed by Article 4 CERD must be reconciled with the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association.

[14] Protocol No. 1 to the ECHR has been ratified by all member states except Andorra, Monaco and Switzerland. Protocol No. 12 to the ECHR has been ratified by the following member states: Albania, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Finland, Georgia, Luxembourg, Netherlands, Romania, San Marino, Serbia, "the former Yugoslav Republic of Macedonia", Ukraine.

[15] The European Social Charter (revised) has been ratified by the following member states: Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, Netherlands, Norway, Portugal, Romania, Slovenia, Sweden.

[16] The Framework Convention on the Protection of National Minorities has been ratified by all member states except Andorra, Belgium, France, Greece, Iceland, Luxembourg, Monaco and Turkey.

12. Among the international human rights instruments, only the International Covenant on Civil and Political Rights (Article 20 para. 2)[17] and the American Convention on Human Rights (Article 13 para. 5)[18] contain explicit prohibitions of the advocacy of national, racial or religious hatred. The International Convention on the Elimination of All Forms of Racial Discrimination contains a provision (Article 4) prohibiting propaganda for racial discrimination.[19]

2.2. Recommendations and other instruments

United Nations

- Human Rights Committee, General Comment 11/19 of 29 July 1983 [Article 20 – Prohibition of propaganda for war and advocacy of hatred].
- Committee on the Elimination of Racial Discrimination, General Recommendation No. 15: Organized violence based on ethnic origin (Art. 4) (document A/48/18, 1993).
- Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against non citizens (01/10/2004).
- Office of the High Commissioner for Human Rights on the elimination of all forms of intolerance and discrimination based on religion or belief, Resolution 2005/40 (19/04/2005)

Council of Europe

- Recommendation no. R (97) 20 of the Committee of Ministers to member States on "hate speech", adopted on 30 October 1997.
- Recommendation no. R(97) 21 of the Committee of Ministers to member States on the media and the promotion of a culture of tolerance, adopted on 30 October 1997.
- European Commission Against Racism and Intolerance (ECRI), General policy recommendation no. 7 on national legislation to combat racism and racial discrimination, adopted on 13 December 2002.
- European Commission Against Racism and Intolerance (ECRI), Declaration on the use of racist, antisemitic and xenophobic elements in political discourse, adopted on 17 March 2005.
- Resolution 1510 (2006) of the Parliamentary Assembly on freedom of expression and respect for religious belief, adopted on 28 June 2006.

European Union

- Joint action concerning action to combat racism and xenophobia, adopted by the EU Council on 15 July 1996.
- EU Council framework decision on combating racism and xenophobia, adopted on 19 April 2007.
- European Parliament resolution on the right to freedom of expression and respect for religious beliefs, adopted on 16 February 2006.

[17] "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

[18] "Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

[19] See Appendix to this document.

3. Principles from the case-law of the European Court of Human Rights

3.1. General principles regarding the right to freedom of expression

13. Freedom of expression, as enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, has a particular status among the rights protected by this instrument, as it is not just one of the consequences of democracy, but shapes and nourishes it. Without free debate and the freedom to express beliefs, democracy would not be able to progress or even survive.

14. The particular significance of freedom of expression in the life of a democratic society has of course been noted by the Court. In the *Handyside v. the United Kingdom*, it summed up the paramount role of freedom of expression in the following terms: "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man*"* and, couching the principle in the familiar form regularly used by the Court, the judgment stated that this freedom is: "applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'".[20]

15. The scope of Article 10 of the Convention is very broad. It covers not only opinions and ideas expressed in writing or orally but also photographs, pictures,[21] drawings and pictorial works of art;[22] it also encompasses historical matters[23] and the business world.[24] On the other hand, while not ruling out the possibility definitively, the Court did not find that this freedom applied to rules regarding clothing.[25]

16. However, it is in the area of ideas and opinions that freedom of expression is most important and it is for this reason that the Court has developed an extensive protection system for the press, justified by the press's role as democracy's "watchdog", a role the Court acknowledged in the *Lingens v. Austria* judgment of 8 July 1986.[26]

17. It is probably this need for democratic society to be nourished by the freest and most open debate possible that has led the Court to assert that the right to free expression entails a *public right to information*,[27] even if the comments reported by a journalist are openly and violently racist, albeit on condition that the journalist does not subscribe to such comments himself or herself.[28]

18. The Court has clearly set out the duties and obligations of those who exercise the right to freedom of expression. For instance, the Court has found that journalists should comply with a number of conditions that show that they acted in good faith thereby demonstrating the journalist's intention of providing accurate and creditable information with due regard for proper journalistic standards.[29] In the *Bladet Tromsø and Stensaas v. Norway* judgment, it held as follows: *"*It must (…) be examined whether there were any special grounds in the present case for dispensing the newspaper from its

[20] *Handyside v. the United Kingdom*, judgment of 7 December 1976.
[21] *News Verlags GmbH, judgment of 11 January* 2000; *Von Hannover*, judgment of 24 June 2004.
[22] *Muller v. Switzerland,* judgement of 24 May 1988; *Vereinigung Bildender Künstler v. Austria*, judgment of 25 January 2007
[23] *Lehideux and Isorni v. France,* judgment of 23 September 1998; *Chauvy v. France*, judgment of 29 June 2004; *Monnat v. Switzerland*, judgment of 21 September 2006.
[24] *Markt intern Verlag GmbH v. Germany,* judgment of 20 November 1989
[25] *Stevens v. United Kingdom*, decision of 3 March 1986.
[26] See also *Observer and Guardian v. United Kingdom*, judgment of 26 November 1991.
[27] *Lingens v. Austria,* judgment of 8 July 1986; *Plon,* judgment of 18 May 2004 .
[28] *Jersild v. Denmark,* judgment of 23 September 1994.
[29] *Cumpana and Mazare v. Romania*, judgment of 17 December 2004 (Grand Chamber); *Houdart and Vincent v. France*, decision of 6 June 2006.

ordinary obligation to verify factual statements that were defamatory of private individuals. In the Court's view, this depends in particular on the nature and degree of the defamation at hand and the extent to which the newspaper could reasonably regard the Lindberg report as reliable with respect to the allegations in question".[30] Similarly, it requires observance of "the fundamental rules of historical method" in the case of works dealing with such subjects.[31]

3.2. Restrictions of the freedom of expression (Article 10 para. 2 ECHR)

3.2.1. General remarks

i. General approach of the Court

19. The second paragraph of Article 10 of the Convention states the right of freedom of expression carries with it 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".

20. Freedom of expression is not therefore unlimited. To ensure that any interference by the state does not infringe the state's obligations under the Convention, such interference must satisfy the three following conditions set by the Convention itself:

- be prescribed by law;
- be necessary in a democratic society;
- be proportionate to the legitimate aim pursued.

21. According to the well-established case-law the term "necessary", within the meaning of Article 10 para. 2 ECHR has been found to imply the existence of a "pressing social need". The Contracting States enjoy a margin of appreciation in this respect, which is more or less extensive depending on the circumstances (see paragraphs 25 et seq. below). For the sake of completeness it should be mentioned that the relevant national law must be formulated with sufficient precision to enable the persons concerned – if need be with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

22. In reviewing under Article 10 the decisions taken by the national authorities pursuant to their margin of appreciation, the Court must determine, in the light of the case as a whole, whether the interference at issue was "proportionate" to the legitimate aim pursued and whether the reasons adduced by them to justify the interference are "relevant and sufficient". At the core of the examination of any interference in the exercise of freedom of opinion is therefore a balancing of interests, in which the Court takes account of the significance of freedom of opinion for democracy (see paragraph. 14 above). This balancing of interests takes on a special significance in a multicultural society.

23. The factors to be taken into account according to the case-law of the Court in the context of this balancing of interests are to be presented below. Since, however, the Court bases its decision in each application on the specific circumstances of the individual case, which can not be described in this framework, hence attaching specific significance to the individual factors, it is not possible to present a conclusive list of criteria in this respect. It should be pointed out once more at this juncture that a balancing of interests can only be considered at all if the statements to be examined do not lead to the

[30] *Bladet Tromsø and Stensaas v. Norway* judgment of 20 May 1999, para. 66; see also *McVicar,* judgment of 7 May 2002.
[31] *Chauvy v. France,* ibid.

destruction of the rights and freedoms granted by the Convention (Article 17 ECHR, see point 3.3. below).

24. Finally, the Court makes an assessment of the proportionality of the sanction imposed by national courts in the light of the aim pursued by the state. This explains how the Court may find that, in principle, the restriction of the right to freedom of expression was necessary, but that the sanction imposed is disproportionate. Such was the solution retained in the *Cumpana and Mazare* case (previously cited), in which the applicants had been sentenced to a term of imprisonment of 7 months. The outcome was different in the case of *Zana v. Turkey*[32] where a twelve-month sentence, a fifth of which was to be served in detention, four-fifths on probation, was held not to be disproportionate, neither was a conviction of four-months' suspended sentence in the case of *Lesnik v. Slovakia*.[33] Symbolic convictions of one euro have on the other hand been considered disproportionate,[34] whereas the imposition of a 1078 € fine and the sum of 13 469 € in punitive damages has not been considered an excessive sanction, and has not been held to have a deterrent effect on the exercise of the right to freedom of the media,[35] neither was the confiscation of paintings that were considered to be obscene.[36] However, in the recent case of *Vereinigung Bildender Künstler v. Austria* regard was had to the effect of prohibiting the exhibition of a painting thought to be offensive. It was held that as the Austrian Courts' injunction was not "limited in time or space", it left the applicant association with no possibility of exhibiting the painting at a future exhibition, which meant that the injunction was disproportionate to the aim it pursued and therefore constituted a violation of Article 10.[37]

ii. "Margin of appreciation" and supervision by the Court

25. It is well known that this concept, which is not found in the Convention itself, was "discovered" by the Commission in its *Greece v. the United Kingdom*[38] and reiterated by the Court in the *Ireland v. the United Kingdom*.[39] It has been the subject of much debate and writing by leading authors.[40]

26. With regard to Article 10 of the Convention, the margin of appreciation allows the Court to insist on a strict interpretation of the second paragraph of Article 10, which describes the circumstances under which freedom of expression may be limited, in which case the Court holds that the states' margin of appreciation is restricted. Alternatively the Court can take a broader view of the scenarios outlined in this paragraph and find that the margin of appreciation is wider, that is, that the states have greater liberty to restrict freedom of expression. It should be noted that, even in the latter case, the Court reserves the right to decide that, although the state has a wide margin of appreciation, the state has exceeded its afforded limits, although the margin of appreciation may be broad, it is never limitless.

27. Where the states' margin of appreciation is restricted, the Court will conduct a more thorough independent examination of the facts of the case, reviewing in particular the proportionality of the measures taken in the light of the evidence adduced.[41] In the *Monnat v. Switzerland* judgment,[42] the Court described its task as follows: after noting that the national authorities had a "restricted margin of appreciation to determine whether there [was] a pressing social need", the Court stated that it intended

[32] *Zana v. Turkey*, judgment of 25 November 1997.
[33] *Lesnik v. Slovakia*, judgment of 11 March 2003.
[34] *Brasilier c. France*, judgment of 11April 2004*, Giniewski v. France*, judgment of 31 January 2006.
[35] *Pedersen and Baadsgaard v. Denmark*, judgment of 17 December 2004 (Grand Chamber).
[36] *Muller v. Switzerland*, ibid.
[37] *Vereinigung Bildender Künstler v. Austria*, judgment of 25 January 2007, paras 37 and 38.
[38] *Greece v. United Kingdom,* decision of 2 October 1958, European Commission of Human Rights.
[39] *Ireland v. the United Kingdom,* judgment of 18 January 1978.
[40] For example, the professor and judge Ms Françoise Tulkens, who gave an article on the margin of appreciation the sub-title "superfluous legal safety net or inherently essential arrangement" ("*Paravent juridique superflu ou mécanisme indispensable par nature*") Revue de sciences criminelles, 2006, p.3.
[41] *Erbakan v. Turkey*, ibid.
[42] *Monnat v. Switzerland*, judgment of 21 September 2006

"as a consequence to conduct a more thorough examination as to whether these were proportional in the light of the legitimate aim pursued within the meaning of Article 10" (unofficial translation).

28. On the other hand, where the margin of appreciation is broader, the Court exercises only limited control over the assessment of the facts and the necessity of the measure taken by the national authorities.

29. As regards the respective spheres of these margins of appreciation for states, it can be said that, in the sphere of freedom of expression, the principle is that the margin of appreciation is restricted, and it is all the more so when what is at stake is "political speech or debate on matters of public interest".[43] Margins of appreciation are, however, broader where commercial matters are concerned or where the issues at stake are moral ones, among which the Court includes those concerning religion. Criticism of the administration of justice may also belong to this category.[44]

30. With regard to moral matters, the *Handyside v. the United Kingdom* and *Muller v. Switzerland* judgments (cited above) clearly inferred from the lack of a "uniform conception of morals' that "by reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them". Nevertheless, this margin of appreciation is not unlimited and so the Court may adopt the stance that it did in the *Open Door v. Ireland* judgment,[45] in which it confined itself to the matter of whether the dissemination of information on abortion ran counter to the protection of morals. The Court stated that while the national authorities' margin of appreciation was broader in this field than in others, their discretion in such matters was not "unfettered and unreviewable"; as a result it found that the interference complained of was too extensive and disproportionate.

31. Where religious feelings are at stake, the Court noted in its *Wingrove v. the United Kingdom* judgment[46] that, although Article 10 leaves little scope for restrictions on freedom of expression, "a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion". It added that, in this field, "as in the field of morals, and perhaps to an even greater degree, there is no uniform European conception of the requirements of 'the protection of the rights of others' in relation to attacks on their religious convictions".

32. It is for this reason that the Court did not find that either interference intended to protect "objects of religious veneration" (*Otto-Preminger-Institut v. Austria*)[47] or the sentencing of the author of a novel dealing with "philosophical and theological issues" but containing passages which constituted "an abusive attack on the Prophet of Islam" (unofficial translation) (*İ.A. v. Turkey*)[48] were violations of Article 10 of the Convention.

33. However, the Court was aware of the arbitrariness which could arise from such an approach and noted, in its *Wingrove v. the United Kingdom* judgment that "the high degree of profanation that must be attained constitutes, in itself, a safeguard against arbitrariness". It was probably in order to avoid the pitfall of arbitrariness that, in its *Aydin Tatlav v. Turkey* judgment,[49] it held that there had been a violation of Article 10 in the decision to impose a fine of 10 euros (EUR) on the author of a book which, according to the Court's analysis, constituted "a non-believer's critical view of religion's role in the social and political sphere", in which there was no discernible insulting tone aimed directly at

[43] *Okcuoglu v. Turkey*, judgment of 8 July 1999 (Grand Chamber), para. 46.
[44] *Lesnik v. Slovakia*, ibid., paras 55 and 64
[45] *Open Door v. Ireland*, judgment of 29 October 1992.
[46] *Wingrove v. the United Kingdom* judgment of 22 November 1991.
[47] *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994.
[48] *İ.A. v. Turkey*, judgment of 13 September 2005.
[49] *Aydin Tatlav v. Turkey*, judgment of 2 May 2006.

believers or any abusive attack on sacred symbols. In this judgment, the Court stated that although the sphere in which the applicant had expressed himself – *a sphere in which it was possible for intimate personal moral or religious beliefs to be insulted* (para. 24) – was one in which states were afforded a wider margin of appreciation, this margin was not *unlimited* (unofficial translation).

3.2.2. Specific aspects taken into account by the Court

i. Content of the expression in question

34. The Court examines the specific wording, as well as the nature and weight of the statement at issue. It has distinguished statements of fact from value judgments. For example, in the *Pedersen and Baadsgaard* case, the Court stated that "[i]n order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments in that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof."[50] Moreover, in the *Unabhängige Initiative Informationsvielfalt* case, it was stressed that "[t]he degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, in particular when expressing his opinion in the form of a value judgement."[51] Any requirement to prove the truth of a value judgment would be impossible to satisfy and would infringe freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether a sufficient factual basis exists for the impugned statement, since even a value judgment without any factual basis to support it may be excessive.[52]

35. The right of the press to disseminate information on matters of public interest requires that journalists make statements in good faith on the basis of exact facts and provide reliable, precise information in compliance with their professional ethics. This obligation requires of them to use sufficiently precise, reliable facts which can be regarded as proportionate to the nature and significance of their allegations. This is in line with the principle that the more grievous the allegation, the more sound the basis in fact must be. As to the date with respect to which the Court determines whether there was a factual basis, this is, in principle, the date on which an impugned article was written and published. This was the case in the *McVicar v. United Kingdom* judgment,[53] in which the Court criticised the applicant for being concerned with "verifying the truth or reliability of the allegations [against an athlete for using performance-enhancing drugs] to a high standard only after the event, once the defamation proceedings had been commenced against him", while in other decisions it has relied on facts subsequent to the impugned statements to establish the existence of a factual basis.[54]

ii. Context of the expression in question

36. When balancing the interests involved, the Court takes into account all material circumstances, particularly the context in which the statements were made. This concerns the following aspects.

- *Purpose and intent of the expression*

37. In a series of cases, the European Commission of Human Rights (hereafter, the Commission) ruled inadmissible complaints of a breach of the right to freedom of expression due to various interferences by the authorities based on the hateful nature of the statements in question. The Commission did not refer to intent in these cases, focusing instead on the harm that the statements

[50] *Pedersen and Baadsgaard v. Denmark,* ibid*.,* para. 76.
[51] *Unabhängige Initiative Informationsvielfalt v. Austria*, judgment of 26 February 2002, para. 46.
[52] *Petersen and Baadsgaard v. Denmark,* ibid*.,* para. 76.
[53] *McVicar v. United Kingdom*, ibid.
[54] *Brasilier c. France,* ibid, and *Vides Aizsardzibas Klub*s *v. Latvia*, judgment of 27 May 2004.

caused. At the same time, nothing in these cases would rule out an intent requirement and it may have been implicit in the decisions. This conclusion is supported by the jurisprudence of the European Court of Human Rights, which addresses the real purpose of a publication. In the *Garaudy v. France decision*, the Court held the real purpose of a book denying the Holocaust was "to rehabilitate the National-Socialist regime and, as a consequence, accuse the victims themselves of falsifying history" and went on to say "Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them."[55] The purpose of the impugned text in question was also found to be important in the case of *Lehideux and Isorni*, which concerned an advertisement placed in a newspaper. The Court held the applicants "were not so much praising a policy as a man, and doing so for a purpose – namely securing revision of Philippe Pétain's conviction – whose pertinence and legitimacy at least, if not the means employed to achieve it, were recognised by the Court of Appeal."[56] The same course is steered by the judgment in a case involving the conviction of a journalist for statements made by members of a racist group in the context of a serious programme intended for an informed audience and dealing with social and political issues.[57] The purpose of the programme was not to promote racism but, on the contrary, to expose and analyse it: "Taken as a whole, the feature could not objectively have appeared to have as its purpose the propagation of racist views and ideas. On the contrary, it clearly sought - by means of an interview - to expose, analyse and explain this particular group of youths, limited and frustrated by their social situation, with criminal records and violent attitudes, thus dealing with specific aspects of a matter that already then was of great public concern."[58] In that case, therefore, lack of racist intent played a key role in the Court finding a breach of the right to freedom of expression. Equally, critical reporting on politicians who do not sufficiently distance themselves from extreme views is permissible.[59]

- *Impact of the expression in question*

38. The potential impact of the medium of expression used is an important factor referred to in the Court's case-law. In order to assess the possible influence, the Court refers here in particular to the form and medium of transmission. It was acknowledged that audio-visual media have a more immediate and powerful effect than print media[60](depending on the broadcaster, broadcasting time, format and potential audience of the programme). Audio-visual media also makes it virtually impossible for the speaker (at least in the case of a live broadcast) to consider statements in advance or to withdraw or alter them after the event. In *Gündüz v. Turkey*, the Court held that "in balancing the interests of free speech and those of protecting the rights of others under the necessity test in Article 10 para. 2 of the Convention, it is appropriate to attach greater weight than the national courts did, in their application of domestic law, to the fact that the applicant was actively participating in a lively public discussion (…)".[61]

39. The Court considered a much lesser potential for risk than with mass media to exist, by contrast, in artistic forms of expression in poems which by nature are only accessible to a small group of individuals. In one case, based on this aspect, it reached the conclusion that the applicant in question did not intend a call to an uprising and to violence, but to express his deep distress in the face of the political situation. The place of dissemination may also play a role here. For instance, a greater margin of appreciation was recognised for areas in which terrorism is a major problem.[62]

40. In a recent judgment, the Court emphasised for the first time that it had not been established that the speech in question had given rise to or been likely to give rise to a "present risk" and an "imminent danger" (the authorities had waited more than four years before bringing criminal proceedings against

[55] *Garaudy v. France,* ibid p. 23.
[56] *Lehideux and Isorni v. France*, ibid., para. 53.
[57] *Jersild v. Denmakr,* ibid.
[58] *Jersild v. Denmark*, ibid., para.33.
[59] *Scharsach and News Verlagsgesellschaft mbH v. Austria,* judgment of 13 November 2003, paras 38-39.
[60] *Pedersen and Baadsgaard v. Denmark*, ibid., para.79, *Murphy v. Ireland*, judgment of 10 July 2003, para. 69.
[61] *Gündüz v. Turkey*, ibid., para. 49.
[62] *Karatas v. Turkey*, judgment of 8 July 1999, para. 52.

the applicant). It should, however, be observed that the Court replied to an argument raised explicitly by the respondent State.[63]

- *Impact of measures restricting freedom of opinion*

41. The Court further takes into account the significance of the encroaching measures for the applicant who considers his or her freedom of opinion to have been restricted. As a matter of principle, it has recognised the necessity to "sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued". [64] Fines, trial expenses and civil damages may also constitute an interference with the right to freedom of expression where their amounts are disproportionate to the injury or raise the question of the financial survival of the person who is ordered to pay it. Indeed, in *Karatas v. Turkey*, the Court noted that "in that connection that the nature and severity of the penalty imposed are also factors to be taken into account when assessing the proportionality of the interference."[65] In this context, the Court examined alternatives which the authorities might have had at their disposal, as well as the manner in which the state authorities had handled similar situations in the past.[66]

42. In addition to the significance of the restriction for the applicant in question, however, one must take into account any impact it might have on a democratic society itself, as well as any concomitant risks. In particular, measures intended to prevent the transmission of information and ideas via the press from the outset (*ex ante*) are subject to highly detailed examination by the Court.[67]

- *Status of the applicant in society*

43. The function of the applicant, that is his or her role in society, is evaluated by the Court, particularly in the case of politicians, as well as of journalists and of the press in general. The Court's case-law suggests that political speech,[68] and indeed all speech on matters of public interest,[69] warrants a high degree of protection. The Court therefore considers that there is less scope for restriction in political debate or discussion of matters of public interest, and that the Contracting States' margin of appreciation is narrower. In this context, the vital role of the press as society's "watchdog" takes on particular importance.

44. On the other hand, the Court stressed the special responsibility of politicians to avoid making comments likely to foster intolerance.[70] The Court has also repeatedly found the press to have a special responsibility. It presumed that the press have such a responsibility in cases in which it was not the respective applicant, i.e. the journalist, author or presenter, etc., but another person who had made the criticised statement. In this context it has also to be taken into account that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (e.g. via audiovisual media).[71]

[63] *Erbakan v. Turkey*, ibid., para. 68.
[64] *Gündüz v. Turkey,* ibid., para. 40.
[65] *Karatas v. Turkey*, ibid., para.53.
[66] *Lehideux and Isorni v. France,* ibid., para. 57.
[67] *Sunday Times (No. 2) v. United Kingdom,* judgment of 26 November 1991, para. 51.
[68] *Incal v. Turkey*, judgment of 9 June 1998, para. 46.
[69] *Jersild v. Denmark*, ibid., para.31, *Gündüz v. Turkey*, ibid., para. 43.
[70] *Erbakan v. Turkey*, ibid., para. 64.
[71] *Jersild v. Denmark*, ibid., para. 31.

- *Status of persons affected by the expression of opinion, as well as the grievousness of the effect*

45. The Court also takes into account the position or status of the party affected by the expression of opinion. In very general terms, the Court considers the limits of acceptable criticism to be wider when it comes to critical statements made in respect of politicians, in particular members of the government.[72] In *Vereinigung Bildender Künstler v. Austria*, it was held that an offensive painting of a politician could not be understood to refer to details of his private life, but rather to his public standing as a politician, and therefore the politician in question had to "display a wider tolerance in respect of criticism". [73] On the other hand, a narrower limit is applied to criticism of public officials. For instance, in the *Pedersen and Baadsgaard* case[74] the Court found that while a senior police officer was subject to wider limits of acceptable criticism than a private individual, he could not be treated on an equal footing with politicians when it came to public discussion of his actions. The Court has also included in its assessment the conduct of the party concerned which preceded the expression of opinion affecting him or her. By way of example, in the *Nilsen and Johnsen* case,[75] the Court found the fact that the injured party had gone beyond his function of government expert by participating in public debate and had published a book harshly criticising the police working methods was relevant. The applicants, as elected representatives of the national and local police associations, had rightly felt that they had an obligation to counter the attacks on the police's working methods. The Court thus took this aspect into account when balancing the competing interests at stake.

- *Context of religious beliefs*

46. The above factors are reflected in a specific manner in those cases that are related to expressions of opinion made in a religious context. The Court has repeatedly stated that members of a religious community must tolerate the denial by others of their religious beliefs.[76] In the case of unjustified insulting attacks on objects of religious veneration the Court recognises the possibility of the Contracting States to take measures to restrict the freedom of opinion.[77] In this context, the religious feelings of others certainly constitute "rights of others" within the meaning of Article 10 para. 2 ECHR.[78] In all cases in which moral or religious convictions come to play, the Court recognises a broad margin of appreciation of the States as to the question of whether a restriction of freedom of expression was "necessary in a democratic society" (see paragraphs 31-33 above).[79]

47. When it comes to a violation of religious feelings of others, the Court has, however, not limited itself to invoking "rights of others" within the meaning of Article 10 para. 2 ECHR, but, insofar as this had been submitted in the application, the Court has directly referred in some cases to religious freedom, as protected by Article 9 ECHR.[80] The Court explained in this context, for instance, that in extreme cases the effect of denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their faith.[81] As to the relationship between religious freedom and freedom of opinion, it should be stated that they are not, in principle, in competition. By guaranteeing freedom of expression, Article 10 ECHR for instance also protects the freedom to disseminate and receive ideas and information of a religious nature.

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[72] *Castells v. Spain*, judgment of 23 April 1992.
[73] *Vereinigung Bildender Künstler v. Austria*, ibid., para. 34.
[74] *Pedersen and Baadsgaard v. Denmark*, ibid., para. 80.
[75] *Nilsen and Johnsen v. Norway*, judgment of 25 November 1999, para. 52.
[76] *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, para. 47; *Aydin Tatlav v. Turkey*, judgment of 2 May 2006, para. 27.
[77] *İ. A. v. Turkey*, ibid., para. 24.
[78] *Otto-Preminger-Institut v. Austria*, ibid., para. 48.
[79] *Wingrove v. United Kingdom*, judgment of 25 November 1996, para. 58.
[80] *İ. A. v. Turkey*, ibid., para. 27.
[81] *Otto-Preminger-Institut v. Austria*, ibid., para. 47.

48. In the *Aydin Tatlav v. Turkey* case,[82] in the Court's opinion it was of importance that a book about Islam did not perceive an insulting tone to the comments aimed directly at believers or an abusive attack against sacred symbols. The Court also took account of the fact that no proceedings had been instituted until the fifth edition. With regard to the punishment imposed on the author, the Court considered that a criminal conviction involving, moreover, the risk of a custodial sentence, could have the effect of discouraging authors and editors from publishing opinions about religion that were not conformist and could impede the protection of pluralism, which was indispensable for the healthy development of a democratic society. The Court thus reached the conclusion in this case that the applicant's conviction constituted a violation of Article 10 ECHR.

49. In *Giniewski v. France*,[83] a critical analysis of the Pope's position in an encyclical, which sought to develop an argument about the scope of a particular doctrine and its possible links with the origins of the Holocaust was interpreted by the Court in the same line. The Court observed that although the article had criticised the Pope's position, the analysis could not be extended to Christianity as a whole, which was made up of various strands, several of which rejected papal authority. It emphasised that the applicant had made a contribution, which by definition was open to discussion, to a wide-ranging and ongoing ideological debate, without sparking off any controversy that was gratuitous or detached from the reality of contemporary thought. It considered that interference in freedom of opinion by the applicant's conviction to pay a fine had not been justified in this case.

50. By contrast, in *İ. A. v Turkey*,[84] the Court ruled that the prohibition of a publication, which contained abusive attacks on the Prophet Mohammed, by means of which believers legitimately felt themselves to be the object of unwarranted and offensive attacks, was justified.

3.3. Speech falling under Article 17 of the ECHR

51. The aim of the following paragraphs is to identify, on the basis of the Court's case-law, instances of "hate speech" which may not enjoy the protection of the right to freedom of expression. The intention therefore is to single out the most representative examples of the application of Article 17 but not to attempt to establish an exhaustive list of all the cases in which Article 17 is mentioned. In so doing, a few criteria on the basis of the Court's case-law are pinpointed which may help to apply this article consistently with regard to "hate speech" in a multicultural environment.

52. Article 17 of the Convention reads as follows:

> "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention"

53. This provision is not intended solely as a further restriction on Article 10, as it is aimed not just at states but also at groups and individuals and covers all rights and freedoms governed by the Convention. Its field of application therefore extends well beyond Article 10 of the Convention.

54. In the *Lawless* case,[85] the Court clearly established the relationship between Article 17 and the other articles of the Convention in these terms:

> "Whereas in the opinion of the Court the purpose of Article 17, insofar as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in

[82] *Aydin Tatlav v. Turkey*, ibid., paras 28-31.
[83] *Giniewski v. France*, ibid.
[84] *İ. A. v. Turkey*, ibid., paras 24 et seq.
[85] *Lawless v. Ireland*, judgment of 14 November 1960.

> the Convention; whereas, therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms; whereas this provision which is negative in scope cannot be construed a contrario as depriving a physical person of the fundamental individual rights guaranteed by Articles 5 and 6 of the Convention;"

55. As a result, a clear distinction is made between the exercise of those individual rights and freedoms guaranteed by the Convention, which may not give rise to a complaint under Article 17 and cannot be invalidated by this article under any circumstances, and an alleged right, not guaranteed by the Convention, to destroy rights and freedoms. This is not therefore an additional restriction on a particular right, for example the right to freedom of expression, but a general guarantee designed to provide lasting support for the system of democratic values underlying the Convention. The development of Article 17 has passed largely unnoticed and there have even been long periods in which it was applied only sporadically and sparingly without any analytical investigation of its content. However, recently it has had a new lease of life and is being applied in new spheres.

56. Broadly speaking, it can be said that there have been various stages of application, each one of which has corresponded to the main challenge or one of the main challenges faced by European democracy at a particular time in its history.

57. Each time the Commission and Court have applied this article, it has therefore been the sign of a particular cause of unrest.

58. So it is no coincidence that, during the Cold War, substantial use was made of the article in respect of totalitarian communist regimes. The most emblematic case of this period was that of the German Communist Party. In its decision of inadmissibility in this case, the European Commission of Human Rights found not only that the establishment of "the communist social order by means of a proletarian revolution and the dictatorship of the proletariat" was contrary to the Convention but also that, even though the political methods used by the party at the time when it submitted its application were constitutional, it was still clear that it had not abandoned its revolutionary goals.[86]

59. Over the following decades, it was the fear of a resurgence of national-socialism as a totalitarian ideology at variance with the Convention which prompted the Commission and the Court to make frequent use of Article 17. By way of example, the *Nachtmann v. Austria* decision:

> "Moreover, the Commission has already stated earlier that National Socialism is a totalitarian doctrine incompatible with democracy and human rights and that its adherents undoubtedly pursue aims of the kind referred to in Article 17".[87]

60. Or, to take another example, the *Schimanek v. Austria* decision:

> "As regards section 3a (2) of the Prohibition Act, under which the applicant was convicted, the Court notes that it prohibits the founding or leading of groups which aim at undermining public order or the autonomy or independence of the Austrian Republic through its members' activities inspired by National Socialist ideas. The applicant was actually found guilty of having held a leading position within such a group. National Socialism is a totalitarian doctrine incompatible with democracy and human rights and its adherents undoubtedly pursue aims of the kind referred to in Article 17 of the Convention. In these circumstances, the Court concludes that it

[86] *German Communist Party and Others v. Germany*, No. 250/57, report of 20 July 1957, European Commission of Human Rights.

[87] *Nachtmann v. Austria,* No. 36773/97, decision of 9 September 1998, European Commission of Human Rights; see *Glimmerveen and Hagenbeek v. The Netherlands*, Nos. 8348/78 et 8406/78, decision of 11 October 1978, and *Kühnen v. Germany*, No. 12194/86, decision of 12 May 1988, both decisions of the European Commission of Human Rights.

> derives from Article 17 that the applicant's conviction was necessary in a democratic society within the meaning of the second paragraph of Article 10".[88]

61. From the 1990s onwards, the Court's and Commission's case-law began dealing with a new criterion of incompatibility with the Convention on the basis of Article 17. "Hate speech" gradually came to feature in the case-law, particularly in relation to anti-Semitic speeches. The case-law cited below reflects various criteria for assessment which go beyond the "sentencing" of a totalitarian regime as being contrary to the Convention. In all these examples, Article 17 is applied very meticulously in relation to current affairs reported by means of publications, statements and other forms of expression. It is even possible to detect a degree of progression in the reasons given for decisions, with new items being added in each case, helping to forge a concept of "hate speech". For example, in the *Honsik v. Austria* decision, the Court highlighted the polemical, biased tone, devoid of all scientific objectivity, in which the systematic extermination of Jews through the systematic use of toxic gases in concentration camps was denied. However, the term "polemical" did not yet point clearly to the people who might consider themselves the "victims' of these publications:

> "As regards the circumstances of the present case, the Commission particularly notes the findings of the Court of Assizes and the Supreme Court that the applicant's publications in a biased and polemical manner far from any scientific objectivity denied the systematic killing of jews in National Socialist concentration camps by use of toxic gas. The Commission has previously held that statements of the kind the applicant made ran counter one of the basic ideas of the Convention, as expressed in its preambular, namely justice and peace, and further reflect racial and religious discrimination".[89]

62. The Commission gave a much clearer idea of its position vis-à-vis "hate speech" in another case, *Remer v. Germany*, in which it adopted the definition of incitement to hatred used by a national court:

> "As regards the circumstances of the present case, the Commission notes the detailed findings of the Regional Court as to the contents of the applicant's publications in which he had attempted to incite tohatred against Jews. Moreover, the Federal Court of Justice confirmed that anybody who on the basis of ideas of national socialism incited to hatred against parts of the population in making commonly known untrue factual allegations in public and reproaching them with lying and extortion and thus portraying them as particularly abominable. The Court of Justice considered that such a consideration applied the more when the fate of the Jews under the national socialist regime was depicted as an 'invention' and when this allegation was combined with the alleged motive of extortion.
>
> The Commission finds that the applicant's publications ran counter one of the basic ideas of the Convention, as expressed in its preamble, namely justice and peace, and further reflect racial and religious discrimination".[90]

63. In another case, *Udo Walendy v. Germany*, the Commission went a little further, describing the denial of historical facts as an insult to Jews:

> "As regards the circumstances of the present case the Commission notes that the publication in question did according to the German appellate court deny historical facts about the mass murder committed by the totalitarian Nazi régime and therefore constituted an insult to the Jewish people and at the same time a continuation of the former discrimination against the Jewish people".[91]

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[88] *Schimanek v. Austria*, No. 32307/96, decision of 1 February 2000.
[89] *Honsik v. Austria*, No. 25062/94, decision of 18 October 1995, European Commission of Human Rights.
[90] *Remer v. Germany*, No. 25096/94, decision of 6 September 1995, European Commission of Human Rights.
[91] *Udo Walendy v. Germany*, No. 21128/92, decision of 11 January 1995, European Commission of Human Rights.

64. Clearly, in this case, the issue was no longer the compliance with the Convention of an extreme-left-wing or extreme-right-wing totalitarian political system but an aggressive speech targeting a particular community, which was addressed from the angle of relations between individuals and communities.

65. The Court's decision of inadmissibility in the *Garaudy* case went a step further down this road:

> "The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others. Its proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the Convention".[92]

66. In this decision, the Court added two important elements, which have a significant bearing on this report.

67. Firstly, it associated the fight against racism and anti-Semitism with the fundamental values of the Convention, particularly with those set out in the preamble. In so doing, it incorporated a range of contemporary political activities, namely those designed to combat racism and anti-Semitism, into the body of values to be protected as a matter of priority.

68. Secondly, the speech complained of in the *Garaudy* decision was said to "infringe the rights of others". Here, as well, there is a substantial step forward in the description of the interest that has been infringed. It is not just a case of a vague insult but of an infringement of the rights of third parties.

69. The idea of the infringement of a third party's rights has been vigorously taken up in more recent cases such as the *W.P. v. Poland* decision:

> "Turning to the facts of the present case, the Court notes that the memorandum of association of the National and Patriotic Association of Polish Victims of Bolshevism and Zionism included in points 6, 12 and 15 statements alleging the persecution of Poles by the Jewish minority and the existence of inequality between them. The Court agrees with the Government that these ideas can be seen as reviving anti-Semitism. The applicants' racist attitudes also transpire from the anti-Semitic tenor of some of their submissions made before the Court. It is therefore satisfied that the evidence in the present case justifies the need to bring Article 17 into play".[93]

70. The same idea is expressed in an even more recent decision. In its *Witzsch v. Germany* decision, the Court held as follows:

> "The applicant's statement that the opinion expressed by W. Was part of the war propaganda and after-war atrocity propaganda combined with the denial of Hitler's and the national Socialists' responsibility in the extermination of the Jews showed the applicant's disdain towards the victims of the Holocaust. The Court finds that the views expressed by the applicant ran counter to the text and the spirit of the Convention. Consequently, he cannot, in accordance with Article 17 of the Convention, rely on the provisions of Article 10 as regards his statements at issue. The fact that they were made in a private letter and not before a larger audience is irrelevant insofar. The applicant's allegation that he did not intend to have a public debate on his views is in any event questionable in the particular circumstances of the instant case".[94]

[92] *Garaudy v. France*, ibid.
[93] *W.P. v. Poland*, No. 42264/98, decision of 2 September 2004.
[94] *Witzsch v. Germany*, No. 7485/03, decision of 13 December 2005.

71. It is interesting to note that the Court is not particularly concerned about the fact that the applicant had no intention of triggering a public debate on his views – a fact that is all the more significant given that the statements at issue were made in a private letter.

72. A major turning point came with the *Norwood* case, in which the Court applied Article 17 in the context of an attack on the Muslim community:

> "The poster in question in the present case contained a photograph of the Twin Towers in flame, the words 'Islam out of Britain – Protect the British People' and a symbol of a crescent and star in a prohibition sign. The Court notes and agrees with the assessment made by the domestic courts, namely that the words and images on the poster amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The applicant's display of the poster in his window constituted an act within the meaning of Article 17, which did not, therefore, enjoy the protection of Articles 10 or 14 (see the cases cited above, and also *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, para. 35).
>
> It follows that the application must be rejected as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 35 paras 3 and 4".[95]

73. This decision lay well outside the sphere of historical revisionism and anti-Semitism, which had given rise to the application of Article 17 of the Convention in previous decisions of the Court. It is worth noting that the Court preferred to rely on Article 17 in this context rather than on Article 10 para. 2, for which there is a substantial body of case-law. It could have arrived at the same conclusion of inadmissibility by applying the criterion of the necessity of interference in a democratic society and thus remaining within the context of freedom of expression. It is also interesting to note that the Court had taken a similar line in a previous case. In the *Seurot* case, which concerned the dismissal of a teacher who claimed that the article he had written for a school newsletter describing French people of North African origin as "Muslim hordes that it was impossible to assimilate" was "humorous", the Court, noting that the words used had been racist in nature, went on to consider whether Article 17 was applicable:

> "In the instant case, the Court is of the opinion that, in view of the overall tone of the impugned publication, the applicant cannot not rely on Article 17 of the Convention. Instead, the Court wonders whether the expression of the applicant's opinions should not be excluded from the protection of Article 10 by virtue of Article 17" (unofficial translation).[96]

74. In conclusion, in the light of the Court's recent case-law, it can be said that Article 17, which was applied only occasionally in past decades, has acquired renewed relevance in view of the new challenges faced by European society.

75. Although new criteria such as the concept of the rights of others and of victims have been added to the former case-law on the subject, historical revisionist opinions could be regarded as an extension of old totalitarian ambitions. The inclusion of the fight against racism in the intrinsic values of western democracy, however, is an entirely new feature. This new view of democracy implies the need not just to combat "historic" threats which could re-emerge but also to avert the dangers lying in wait for western democracies which have now become multicultural.

76. Furthermore, all the case-law concerning Article 17, and hence concerning the new forms of "hate speech", places the emphasis on the identification of the threat to the Convention's absolute values,

[95] *Norwood v. United Kingdom*, No. 23131/03, decision of 15 November 2004.
[96] *Seurot v. France*, No. 57383/00, decision of 18 May 2004.

making no use of the criteria for the application of Article 10, such as the risk of provoking violence, the proportionality of the interference or the appropriateness thereof in view of the legitimate aim pursued. This is an important point, as the order of priorities is reversed under Article 17, its aim being to safeguard the democratic framework underlying all the rights and freedoms set out in the Convention.

4. Other Council of Europe Standards

4.1. European Commission against Racism and Intolerance (ECRI)

77. The European Commission against Racism and Intolerance (ECRI) is the Council of Europe body entrusted with the task of combating racism and racial discrimination in Greater Europe, from the perspective of protecting human rights. Its activities cover all necessary measures to combat violence, discrimination and prejudice faced by individuals or groups of persons, particularly on grounds of race, colour, language, religion, nationality, or national or ethnic origin. Its members are appointed on the basis of their expertise in dealing with racism and intolerance. In accordance with its Statute, they serve in their individual capacity and are independent and impartial in fulfilling their mandate.[97]

78. Part of ECRI's task is to look into the question of racist discourse. In ECRI's General Policy Recommendation No. 7,[98] racism is described as "the belief that a ground such as race,[99] colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons". In multicultural European societies, racist discourse has, alas, by no means been eliminated and, in some respects, has even intensified in recent years. This problem is particularly prevalent in political discourse – a fact which prompted ECRI to commission a study on the question and to adopt, in 2005, a declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse.[100]

79. ECRI draws up General Policy Recommendations for all member states, setting guidelines for the development of national policies and strategies in various spheres.[101] General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination calls on Council of Europe member states to adopt criminal law provisions designed to combat certain racist forms of expression: public incitement to violence, hatred or discrimination, public insults and defamation or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.[102] It calls for criminal penalties to be imposed for the public expression, with a racist aim, of a racist ideology, the denial, with a racist aim, of crimes of genocide, crimes against humanity or war crimes,[103] or the public dissemination, with a racist aim, of material containing racist manifestations of the type described above.[104] ECRI insists

[97] For more information on ECRI, its Statute and its activities, particularly its county-by-country monitoring reports and its general policy recommendations, please consult the ECRI website at www.coe.int/ecri.
[98] For more details of the content of this recommendation, see below.
[99] All human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race", ECRI uses this term in this Recommendation.
[100] See Jean-Pierre Camus "study on the use of racist, anti-Semitic and xenophobic elements in political discourse" in *The use of racist, anti-Semitic and xenophobic elements in political discourse*, High-level panel meeting on the occasion of the International Day for the Elimination of Racial Discrimination, Paris, 21 March 2005, available on the ECRI website.
[101] Regarding the Internet, see General Policy Recommendation No. 6 on Combating the dissemination of racist, xenophobic and anti-Semitic materiel via the internet.
[102] See paragraph 18 a), b) and c) of General Policy Recommendation (GPR) No. 7. See also the corresponding paragraphs of the explanatory memorandum.
[103] See paragraph 18 d) and e) of GPR No. 7. See also the corresponding paragraphs of the explanatory memorandum.
[104] See paragraph 18 f) of GPR No. 7. See also the corresponding paragraphs of the explanatory memorandum.

that all these criminal law provisions should provide for effective, proportionate and dissuasive sanctions as well as ancillary or alternative sanctions.[105]

80. In the course of its country-by-country monitoring activities, ECRI carries out an in-depth analysis of problems of racism and intolerance in each Council of Europe member state. The country-by-country approach deals with all of these states on an equal footing. In its reports, ECRI looks into manifestations of racism in the media, political discourse and all other forms of public discourse. In each state, it studies the criminal law provisions designed to combat these manifestations of racism and recommends improvements and/or additions where necessary. ECRI has noticed that in all countries, albeit to varying degrees, the real problem stems from shortcomings in the enforcement of the relevant legislation. This is why ECRI regularly recommends that the national authorities provide training courses for police officers, public prosecutors and judges in criminal law against racism and the need to implement it properly.

81. ECRI's country-by-country reports show that there is a consensus in Europe on the need to combat racist discourse and manifestations, particularly by means of criminal law. However, in recent years ECRI has been increasingly confronted with arguments that use freedom of expression to justify inaction and, in particular, the failure to enforce criminal law sanctions to combat expressions of racism. ECRI believes that the exercise of freedom of expression must be restricted in order to combat racism, particularly in the name of the rights and reputation of others and with the goal of protecting the human dignity of victims of racism. Any such restrictions must comply with the requirements of Article 10 of the European Convention on Human Rights as interpreted by the European Court. ECRI is aware of the importance of freedom of expression as one of the pillars of our democratic societies and the need to protect all human rights but at the same time to strike the balance between competing rights. Consequently, ECRI wished to look more thoroughly into the question of combating racism while respecting freedom of expression and therefore held an expert seminar on the subject in Strasbourg on 16 and 17 November 2006.[106]

4.2. The Steering Committee on the Media and New Communication Services (CDMC)

82. The Steering Committee on the Media and New Communication Services (CDMC) is a specialized subordinate committee to the Committee of Ministers of the Council of Europe. At the same time the fact that its terms of reference are concentrated on freedom of expression and the media provides unique opportunities for the CDMC to influence policy-making in this crucial area and to adopt acts with long-term consequences. These corollaries follow from the essential role freedom of speech and freedom of the media play in modern democracies and more concretely their importance for the formation of a deliberative and pluralist public sphere.

83. As a committee embracing the problems of both traditional and new media the contribution of the CDMC could be considered as being of greater relevance nowadays when we all witness the rapid progress of a fluctuating new digital environment, its challenges and eventually its enormous impact on human life.

84. From the perspective of a broader human rights dimension the CDMC is a committee for the protection, promotion and facilitation of the exercise of freedom of expression in a pluralistic democratic society. In respect to this it promotes diversity of sources of information and plurality of opinions and ideas across frontiers.

85. From a more specific media aspect the committee deals with specific issues pertaining to the media in times of crises, media pluralism and media diversity, social cohesion, digital inclusion, media literacy, public service media and all related topics to the functioning of the traditional and the new media as well as their impact on human rights principles and values.

[105] See paragraph 23 of GPR No. 7. See also the corresponding paragraphs of the explanatory memorandum.
[106] For more information on this seminar, see the ECRI website at the address given above.

86. During the years the CDMC has tackled both the problems pertaining to the dissemination of hatred and violence by the media (negative approach) as well as to its role for fostering intercultural dialogue, tolerance and understanding (positive approach). Among the acts adopted there are two instruments being of particular importance for the topic treated - Recommendation (97) 21 on the media and the promotion of a culture of tolerance and Recommendation (97) 20 on "hate speech".

87. *Recommendation (97) 21 on the media and the promotion of a culture of tolerance* notes that the media can make a positive contribution to the fight against intolerance, especially where they foster a culture of understanding between different ethnic, cultural and religious groups in society. The document targets different social actors responsible for the entrenchment of culture of tolerance.

88. *Recommendation (97) 20 on "hate speech"* is important for the topic discussed because it provides a definition of "hate speech", condemning all forms of expression which incite racial hatred, xenophobia, anti-Semitism and all forms of intolerance. Though the definition does not cover all forms of "hate speech" which we know or can think of, it might be considered an open one subsuming any behaviour aiming at spreading, inciting, promoting or justifying certain forms of hatred based on intolerance. The act notes in particular that such forms of expression may have a greater and more damaging impact when disseminated through the media. However, it is stated that national law and practice should clearly distinguish between responsibility of the author of expressions of hatred and the responsibility of the media to disseminate them as part of their public function to impart information and ideas on matters of public interest (paragraph 6 of the appendix). Thus Recommendation (97) 20 incorporates the conclusions of the ECtHR reached in the seminal *Jersild* case. The ideas are developed in greater detail in paragraph 7, setting the obligation on member states to respect journalistic freedoms and especially freedom of reporting on racism, xenophobia, anti-Semitism or other forms of intolerance. In regard to this, freedom of reporting is protected under Article 10 of the ECHR from which it follows that any restriction imposed must be in conformity with the principles embodied in the Convention, taking into account the manner, contents, context and purpose of the reporting. Journalists should also feel free to choose the type of reporting technique without any fear of sanctions. Identifying all these principles the recommendation transforms the case-law of the European Court of Human Rights into concrete and clear guidelines, not only to member-states but to the media too, enabling them to respond adequately to the complex environment and controversial situations.

89. During the years the CDMC has adopted many instruments promoting directly or indirectly a culture of unity, tolerance and understanding among European countries and striving for a multicultural and intellectually rich society through the unhampered exercise of freedom of expression. The principles formulated in the acts elaborated by the steering committee aim at counteracting hatred, racism and intolerance as alien to the European cosmopolitan tradition. They can serve as a sound basis for drafting national policies and legislation which encourage the development of creative and responsible media as a major factor for culture and democracy.

5. Identification of factors for the application of Articles 10 and 17 of the ECHR

90. The various provisions on freedom of expression in different international human rights treaties as well as their clauses on permissible restrictions raise a number of interpretative issues. In a multicultural society, the coexistence of persons of different cultures, religions and identities requires respect for each other. There are limits to freedom of expression that are defined by law in order to protect individuals from offence and insult on the ground of their actual or presumed identity, culture or origin. The enforcement of existing legislations raises complex issues in societies that have become ever more diverse and multicultural in their composition. Certain expressions directed against the Convention's underlying values, such as democracy, tolerance, human dignity or non-discrimination, falling under Article 17 are not allowed to enjoy the protection afforded under Article 10 of the ECHR (see point 3.3 above). In other cases, a fair balance needs to be found between the competing rights

and freedoms (e.g. freedom of expression on one hand, respect for private life, freedom of religion and the prohibition of discrimination on the other hand). In doing so, States enjoy a "margin of appreciation" and the Court recognises that national authorities may need to adopt different solutions taking account of the specificities of each society.

91. As regards the theme of "hate speech", it is of particular practical importance to distinguish offensive expressions fully protected by the right to freedom of expression from those abusive expressions that may legitimately be the subject of restrictions or are not even protected by the right to freedom of expression. It has been argued that the main characteristic of abusive expressions is that they target human beings rather than ideas.[107] Both the Court and other human rights monitoring bodies within the Council of Europe and the United Nations had to address the distinction between offensive and abusive expressions of "hate speech" in concrete cases. The following paragraphs represent an attempt to give a systematic overview of the criteria used for the identification of expressions of "hate speech" and their distinction from expressions that simply offend, shock or disturb any segment of the population.

92. The aim is not to set any new standards, but to provide member states and their authorities with practical guidance on how to achieve a fair balance between the different rights and interests at stake. Rather than being conclusive in their application, the factors should be seen as mere pointers that are to be used with discretion. "Hate speech" is a complex phenomenon, which does not call for generalisations. Each expression must be seen in its particular context.

5.1. Factors from the case-law of the European Court of Human Rights

a. Content-related factors

i. the expressions constitute an incitement to violence against individuals, groups of individuals or a sector of the population;[108]

ii. the expressions seek to spread, incite or justify hatred based on intolerance, including racial hatred or religious intolerance;[109]

iii. the expressions constitute a denial or justification of crimes against humanity;[110]

iv. the expressions constitute an incitement to a specific illegal act;[111]

v. the expressions do not merely criticise, oppose or deny religious beliefs, but inhibit those who hold such beliefs from exercising their freedom to hold and express them,[112] denigrate the context of their religious faith,[113] seriously offend their deepest feelings and convictions[114] or constitute an abusive/offensive attack on matters regarded as sacred by them;[115]

[107] J. Gaudreault-DesBiens, "From Sisyphus's Dilemma to Sisyphus's Duty? A Meditation on the Regulation of Hate Propaganda in Relation to Hate Crimes and Genocide", (2000) 46 McGill Law Journal 121 (135).
[108] *Sürek (No. 1) v. Turkey*, ibid., para. 61 and the other twelve judgments against Turkey delivered on 8 July 1999.
[109] *Gündüz v. Turkey*, ibid., para. 51.
[110] *Garaudy v. France*, ibid., (2003).
[111] *Riza Dinç v. Turkey*, judgment of 28 October 2004, para. 34.
[112] *Otto-Preminger-Institut v. Austria*, ibid., *Dubowska and Skup v. Poland*, decision of 18 April 1997.
[113] *Klein v. Slovakia*, judgment of 31 October 2006, para. 52; *Giniewski v. France*, ibid., para. 51.
[114] *Wingrove v. United Kingdom*, ibid., para. 58; *Murphy v. Ireland*, ibid., para. 67.
[115] *Otto-Preminger-Institut v. Austria*, ibid., paras 47 and 49; *İ.A. v. Turkey*, ibid., para. 30; *Aydin Tatlav v. Turkey*, ibid., para. 28.

vi. the statements are gratuitously offensive, defamatory or insulting;[116]

vii. the inaccuracy of the statements, in particular denial of established historical facts which does not constitute historical research akin to a quest for the truth;[117]

viii. the existence of a racist, xenophobic or otherwise discriminatory intent;[118]

ix. the expressions contribute to a pluralistic public debate, in particular if the subject is widely debated and concerns a matter of general interest;[119]

x. as regards the use of satire in visual art forms, this can be considered "a form of artistic expression and social commentary" which through exaggeration and distortion of reality "naturally aims to provoke and agitate". Consequently, particular care must be taken when examining any interference with an artist's right to such expression.[120]

b. Context-related factors

i. the statements are made in a context of violence and terrorism;[121]

ii. a degree of exaggeration can be tolerated in the context of a heated and continuing public debate of affairs of general concern, where on both sides professional reputations are at stake;[122]

iii. the political context in which the expressions are made,[123] in particular whether statements are counterbalanced by other statements or comments;[124]

iv. the actual impact of the expressions,[125] which may be influenced by their actual dissemination and circulation, in particular restrictions on distribution,[126] or by the form of expression used;[127]

v. as regards audiovisual media, the type of programme in which the statements are broadcast[128] or the fact that the statements are made orally during a live broadcast without the possibility of rephrasing, refining or retracting them before they are made public.[129]

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[116] *Otto-Preminger-Institut v. Austria*, ibid., para. 49*; İ.A. v. Turkey*, ibid., para. 29; *Giniewski*, ibid., para. 52; *Aydin Tatlav v. Turkey*, ibid., para. 23.
[117] *Lehideux and Isorni v. France*, ibid., , para. 47; *Garaudy v. France*, ibid.
[118] *Jersild v. Denmark*, ibid., paras 33-34; *Garaudy v. France*, ibid.
[119] *Lehideux and Isorni v. France*, ibid., para. 55; *Giniewski v. France*, ibid., para. 51.
[120] *Vereinigung Bildender Künstler v. Austria*, ibid., para.33.
[121] *Incal v. Turkey*, ibid., para. 58; *Sürek (No. 1) v. Turkey*, ibid., para. 62.
[122] *Nilsen and Johnsen v. Norway*, ibid., para. 52.
[123] *Scharsach and News Verlagsgesellschaft mbH v. Austria*, ibid., para. 38.
[124] *Gündüz v. Turkey*, ibid., para. 51.
[125] See *Jersild v. Denmark*, ibid., para. 31: "the audiovisual media often have a much more immediate and powerful effect than the print media (…). The audiovisual media have means of conveying through images meanings which the print media are not able to impart."
[126] *Wingrove v. United Kingdom*, ibid., para. 63.
[127] *Karataş v. Turkey*, ibid., para. 49 ("poetry, a form of artistic expression that appeals to only a minority of readers").
[128] *Jersild v. Denmark*, ibid., para. 34.
[129] *Gündüz v. Turkey*, ibid., para. 49; *Fuentes Bobo v. Spain*, judgment of 29 February 2000, para. 46.

c. Factors relating to the status of the author of the expression

i. interferences with freedom of expression of politicians who represent their electorate, draw attention to their preoccupations and defend their interests, call for the closest scrutiny;[130]

ii. special duties and responsibilities of journalists who may not be the authors of the statements in question themselves[131] and who must be able to express their opinions, including value judgments, on matters of public concern,[132] but who are responsible for the collection and dissemination of information;[133]

iii. special duties and responsibilities of teachers who are figures of authority to their pupils.[134]

d. Factors relating to the status of the person affected by the expression

i. the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media. Nevertheless it remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal law nature, intended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith;[135]

ii. the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance; [136]

iii. Civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent politicians do and should therefore be treated on an equal footing with private individuals when it comes to criticism of their conduct. [137]

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[130] *Lingens v. Austria*, judgment of 8 July 1986, para. 42; *Castells v. Spain*, ibid., para. 43; *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, para. 63; *Incal v. Turkey*, ibid., para. 46. It should, however, be noted that such considerations do not appear to be warranted in cases of openly racist speech (e.g. the Commission's decisions in cases such as *Glimmerveen and Hagenbeek v. the Netherlands*, decision of 11 October 1979, *Kühnen v. Germany*, decision of 12 May 1988, *Nationaldemokratische Partei Deutschlands v. Germany*, decision of 29 November 1995).

[131] *Jersild v. Denmark*, ibid., para. 31.

[132] *Ünabhängige Initiative Informationsvielfalt v. Austria*, judgment of 26 February, 2002, para. 46.

[133] *Sürek (No. 1) v. Turkey*, ibid., para. 63.

[134] *Seurot v. France*, ibid.

[135] *Castells v. Spain*, ibid., para. 46.

[136] *Lingens v. Austria*, ibid., para. 42.

[137] *Thoma v. Luxembourg*, judgment of 29 March 2001, para. 47; *Pedersen and Baadsgaard v. Denmark*, ibid., para. 80. See also *Oberschlick (No. 2) v. Austria*, judgment of 1 July 1997, para. 29; *Janowski v. Poland*, judgment of 21 January 1999 (Grande Chamber), para. 33.

5.2. Factors from other international sources

a. Content-related factors

i. public incitement to violence, hatred or discrimination, public insults and defamation or threats against persons or a grouping of persons on the grounds of their race, colour, language, nationality or national or ethnic origin; [138]

ii. public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;[139]

iii. public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;[140]

iv. any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned; [141]

v. the dissemination of all ideas based upon racial superiority or hatred;[142]

vi. the expressions target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups;[143]

vii. the statements contain negative generalisations about an entire grouping of persons based solely on actual or presumed identity, culture or origin and without regard to their particular views, opinions or actions;[144]

viii. the stereotyping of ethnicity combined with its denigration, provoking resentment and hatred;[145]

ix. the expressions are likely to cause substantial damage to individuals or groupings concerned.[146]

b. Context-related factor

the context in which the statements are made is likely to lead to violence (e.g. the context of a genocidal environment).[147]

c. Factor relating to the status of the author of the expression

political parties, which can play an essential role in combating racism by shaping and guiding public opinion in a positive fashion, should formulate a clear political message in favour of diversity in European societies.[148]

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[138] ECRI's general policy recommendation no. 7, part IV (criminal law), point 18 (a) to (c).
[139] ECRI's general policy recommendation no. 7, part IV (criminal law), point 18 (e).
[140] ECRI's general policy recommendation no. 7, part IV (criminal law), point 18 (f).
[141] UN Human Rights Committee, General Comment 11/19.
[142] CERD General Recommendation XV, para. 4; CERD Committee, Communication 30/2003, Jewish Community of Oslo, para. 10.4.
[143] CERD General Recommendation 30, para. 12.
[144] CERD Committee, Communication 34/2004, Gelle (2006) para. 7.4.
[145] *Internation Criminal Tribunal for Rwanda, Nahimana* (2003) para. 1021.
[146] See Article 1 (a) of the EU Council framework decision on combating racism and xenophobia.
[147] *Internation Criminal Tribunal for Rwanda, Nahimana* (2003) para. 1022.

6. Examples of national initiatives and measures (e.g. position paper, preventive action, non-judicial procedures and involvement of civil society)

93. The following represents a selective list of practical initiatives aimed at preventing "hate speech" and promoting tolerance. The examples have been taken from the responses provided by the member states (all replies are contained in document GT-DH-DEV A(2006)008 Addendum). The examples do not represent an exhaustive list of all practical initiatives within each country. It should be noted that in 2005 the OSCE already published a summary of national initiatives to combat hate crimes and other similar factors of discrimination.[149]

94. The summary of national initiatives/best practices has been broken down into seven categories:

- Action plans and programmes of action;
- Data collection, recording and reporting;
- Education;
- Training and policy initiatives through law enforcement, judicial and other public officials;
- Self-regulation and codes of conduct;
- Media and Internet (other than codes of conduct);
- Civil society and campaigns.

6.1. Action plans and programmes of action

95. The Durban Declaration and Programme of Action (the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance of 31 August – 7 September 2001) urged States to "establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations" (paragraph 66) and to "develop and implement policies and action plans, and to reinforce and implement preventive measures, in order to foster greater harmony and tolerance between migrants and host societies, with the aim of eliminating manifestations of racism, racial discrimination, xenophobia and related intolerance, including acts of violence, perpetrated in many societies by individuals or groups" (paragraph 30 of the Declaration and Programme of Action). The CERD Committee also regularly affirms the need for the States Parties to implement such plans.

93. Opinion No. 5-2005 of the EU Network of Independent Experts on Fundamental Rights gives a detailed overview of national action plans and their implementation in the *EU member states*. [150]

97. Among the non-EU member states, *Croatia* has indicated several action plans and programmes:

- National plan of activities for the Roma (the Decade of Roma 2005 - 2015)
- National plan of activities for the prevention of violence among children and youth, 2004
- National plan for the prevention of trafficking in children (2005 – 2007)
- National strategy of the unique policy for disabled persons (2003 -2006)
- National policy to promote gender equality, 2001
- Action plan to promote gender equality (2001 – 2005)
- Programme for AIDS prevention
- Programme to prevent behavioural disorders in children and youth
- National strategy for the prevention of discrimination (under elaboration).

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[148] ECRI Declaration on the use of racist, antisemitic and xenophobic elements in political disourse (2005).
[149] *Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives* (2005), 51-59, available at <http://www.osce.org/odihr>.
[150] Pages 9-13.

6.2. Data collection, recording and reporting

98. Several member states collect statistics on hate crimes and violent incidents with potential racist motivation. For the *member states of the European Union* reference must be made to the European Monitoring Centre on Racism and Xenophobia (EUMC) and the so-called RAXEN network, which collects data and information on hate crimes.

6.3. Education

99. *Andorra* has taken several initiatives to raise awareness among young people of religious and cultural diversity and tolerance. There are projects aimed at conflict resolution through mediation, the promotion of children's" rights and a campaign against domestic violence.

100. *Belgium* has initiated a project "schools for Democracy" focusing on the link between tolerance and respect. *Luxembourg* is also giving special emphasis to human rights education in schools. *San Marino* proposes training programmes on arguments related to multicultural education and respect for diversity for various professional categories, including teachers. Schools and colleges have implemented numerous intercultural and human rights projects.

101. Within the framework of the National Action Plan Regarding the Decade of Roma Inclusion (2005-2015), *Slovakia* is actively promoting education focusing on the marginalised Roma community.

6.4. Training and policy initiatives through law enforcement, judicial and other public officials

102. In *Austria*, police authorities are actively involved in awareness-raising measures aimed at young people. At least once every semester, they contact teachers, headmasters, regional school inspectors and other persons responsible in the field of education and assist them in their efforts to combat racist, xenophobic and anti-Semitic ideologies. Special attention is also paid to racism and xenophobia in the basic training of police officers. Moreover, an Internet project was initiated in 1996 by what was then the Intelligence Service (now Federal Office for Constitutional Protection and Combating Terrorism) with the aim of observing in particular web sites and discussion forums (newsgroups, mailing lists) in order to draw conclusions regarding tendencies of extremist groups. The information is collected and evaluated both centrally at the BVT and by the individual police authorities.

103. *France* has designated special magistrates (*magistrats référents*) in order to ensure coherence in local crime policy and to establish contacts with civil society (associations, representatives of churches and religious groups). In 2004, special internships (*stages de citoyenneté*) were created, both as a preventive measure and a substitute for punishment. Their aim is to recall Republican values and respect for human dignity.

104. In *Norway*, the Directorate of Immigration and the Police University College have established a joint project to develop the methodology and content of a continuing education programme on cultural understanding, diversity and immigration law. During the period 2001-2004, methods, strategies and training programmes were developed to improve the attitude of public service employees towards minorities.

6.5. Self-regulation and codes of conduct

105. The International Federation of Journalists adopted a Declaration of Principles on the Conduct of Journalists.[151] Principle 7 states that:

[151] Adopted by the Second World Congress of the International Federation of Journalists (IFJ) at Bordeaux on 25-28 April 1954 and amended by the 18th IFJ World Congress in Helsingör on 2-6 June 1986.

> "The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins."

106. The "Internet Service Providers *Austria* (ISPA)" have a Code of Conduct. ISPA Members must prevent illegal content as far as possible. In the case of illegal content the ISPA reports to the hotline and law enforcement units. ISPA has set up www.stopline.at which deals with neo-Nazi content.

107. In *Cyprus*, the Commissioner for Administration prepares codes of practice, binding both in the private and public sectors, for, inter alia, eliminating discrimination on such grounds as religion, nationality or ethnic origin. He is also empowered to make surveys and statistics on these matters.

108. In *Finland*, netiquette guidelines have been published by the commercial internet operators. These guidelines forbid, among other things, racism and incitement to racism. There are also guidelines for journalists by the Council for Mass Media (see www.jsn.fi), which provide inter alia:

> "26. The human dignity of every individual must be respected. The ethnic origin, nationality, sex, sexual orientation, convictions or other similar personal characteristics may not be presented in an inappropriate or disparaging manner."

109. In *Hungary*, the ethical codes of several authorities, chambers, professional associations and big business organisations contain rules related to "hate speech".

110. In *Norway*, the Press Association has drawn up an ethical code of practice for the press (printed press, radio and television).

111. In *Switzerland*, the Declaration of the Duties and Rights of a Journalist contains the following point 8 entitled "Declaration of Duties":

> "Respecter la dignité humaine; le/la journaliste doit éviter toute allusion, par le texte, l'image et le son, à l'appartenance ethnique ou nationale d'une personne, à sa religion, à son sexe ou à l'orientation de ses mœurs sexuelles, ainsi qu'à toute maladie ou handicap d'ordre physique ou mental, qui aurait un caractère discriminatoire ; le compte rendu, par le texte, l'image et le son, de la guerre, d'actes terroristes, d'accidents et de catastrophes trouve ses limites dans le respect devant la souffrance des victimes et les sentiments de leurs proches." (available in French only)

6.6. Media and Internet (other than codes of conduct)

112. In *Belgium*, CYBERHATE brings together public and private bodies such as FCCU (Federal Computer Crime Unit of the Federal Police), ISPA (Internet Service Providers Association Belgium) and public prosecutors. www.cyberhate.be receives and centralises complaints.

113. In *Greece*, Hellenic Radio and Television SA (ERT SA) broadcasts an increasing number of informational programmes relating to the protection of human rights (protection of minors, refugees issues, abuse of women/children, racism and xenophobia, trafficking etc.), which proves the sensitisation not only of the media professionals in Greece, but also the increased interest of the public vis-à-vis these issues.

114. In *Latvia*, various initiatives of NGOs fight "hate speech" in Latvian cyberspace. The largest one is a new on–line library www.tolerance.lv (see: http://www.iecietiba.lv/index.php?lang=2). The library consists of various sub-themes related to different issues of tolerance. Another project, conducted by a

group of cybermedia in Latvia, is dedicated to fighting "hate speech" on the Internet and is called "Internet – free of hate". Detailed information about the project can be downloaded at www.dialogi.lv.

6.7. Civil society and campaigns

115. Several member states are financing civil society projects encouraging tolerance and understanding between minorities and the majority population (e.g. *Czech Republic*, *Denmark*, *Germany*, *the Netherlands*, *Sweden*).

116. *Denmark* has created a prize for private companies that have made a special contribution to further diversity in the workplace. The campaign 'show Racism the Red Card" was launched in 2006 and is intended to go on for 3 years. The Danish campaign is inspired by similar campaigns in other European countries and will take off in the sphere of football. The Danish Campaign is, however, not just limited to racism connected to football, but will also include a range of initiatives directed towards schools and companies. The campaign is led by a secretariat but is also carried out by professional football players in Denmark who are assumed to carry a high degree of authority in the target group.

117. *Germany* has a series of initiatives aimed at preventing "hate speech", such as "Primary Prevention of Violence against Members of Groups – In particular Young People", a "Forum against Racism" for dialogue between state agencies and non-governmental organisations or "Young People for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia and Anti-Semitism" launched by the "Alliance for Democracy and Tolerance – Against Extremism and Violence" which joins governmental and non-governmental initiatives.

118. In *Greece*, the Macedonian Press Agency has actively participated in the community initiative EQUAL-DREAM by promoting the idea of the programme, which fights against racism and xenophobia in the media.

119. The *Icelandic* Red Cross has implemented the programme "Diversity and Dialogue" for individuals, companies, organisations and local communities. Diversity and Dialogue is a process-orientated programme based on group dynamics and aimed at awareness-raising. Its goal is to work against all forms of racial and ethnic intolerance, prejudice and discrimination, and to work for participation, representation and respect for all members of society. At the end of each seminar, the participants prepare a concrete action plan on how to combat racism in their everyday life in the local community, at work places, schools, churches etc.

120. In *Lithuania*, non-governmental organisations provide very valuable input in preventing "hate speech" and promoting tolerance. Examples are the Lithuanian Centre for Human Rights, which organised the seminar "Mapping capacity of civil society dealing with anti-discrimination" for representatives of NGOs and has published books in this field, and the research project "Prevention of Ethnic Hatred and Xenophobia. Civic Response in the Mass Media" by the Centre of Ethnic Studies of the Institute for Social Research.

121. In *the Netherlands*, the government has an active policy promoting tolerance and respect between different cultures. On a national level the so-called "&-campaign" has been successful in stressing the added value of people from different cultural backgrounds working and living together. On a local level, the city council of Amsterdam organises several events and has founded networks, directed at bridging gaps between the various groups of people living in Amsterdam. The overall project is called "Wij Amsterdammers" – We, the people of Amsterdam – and includes, among other projects, a biannual Day of Dialogue, a Jewish-Moroccan Network and many more activities.

122. In *Sweden*, the Government is contributing to the establishment of the non-profit organisation Centre against Racism. The Swedish Integration Board, with the overall responsibility for ensuring that the visions and goals of Sweden's integration policies have an impact in different areas of society, has granted funding to and will supervise the activities of the organisation. The overall goal for the

organisation is to enhance and complement society's actions against racism, xenophobia, homophobia and discrimination. The Living History Forum which develops the work against anti-Semitism, Islamophobia and homophobia is another initiative by the Government. The Institute has, inter alia, performed a survey among students regarding their attitudes towards Muslims. Seminars for teachers, debates for the public, youths, teachers and policy-making authorities have been held. Discussions and dialogues regarding the issues is an ongoing activity for the institution. Surveys regarding public opinions towards Jews and Muslims are also currently ongoing.

123. *Switzerland* has a project "street working sur Internet" by *Aktion Kinder des Holocaust* which contacts the authors of pro-nazi or anti-Semitic statements.

124. In the *United Kingdom*, the Government published in 2005 Improving Opportunity, Strengthening Society,[152] its strategy to increase race equality and community cohesion in Britain. It declares the Government's intention to give greater emphasis to promoting a sense of common belonging and cohesion among all groups, setting out a vision for an inclusive British society in which, among many other things, racism is seen as unacceptable. There are also numerous local initiatives such as a new pilot telephone hotline to enable people in Yorkshire and Humberside to report racist incidents at any time of the day or night.

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[152]See http://www.communities.gov.uk/index.asp?id=1504860

Appendix – Relevant provisions of international instruments (full text)

Universal Declaration of Human Rights

Article 1
All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 18
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19
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.

Article 29
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

International Covenant on Civil and Political Rights

Article 5
1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 17
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one‘s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19
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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20
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.

Article 26
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27
In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Convention on the Elimination of all forms of Racial Discrimination

Article 1
1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 4
States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:
(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.

Some Council of Europe member states have made reservations and declarations to Article 4, which refer to the conciliation of obligations imposed by this article with the right to freedom of expression and association. See in particular the reservations or declarations made by Austria, Belgium, Ireland, Italy the United Kingdom which emphasize the importance attached to the fact that Article 4 of the ICERD provides that the measures laid down in subparagraphs (a), (b), and (c) should be adopted with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention and which therefore consider that the obligations imposed by Article 4 CERD must be reconciled with the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association.

European Convention on Human Rights

Article 8 – Right to respect for private and family life
1 Everyone has the right to respect for his private and family life, his home and his correspondence.
2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one‘s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, 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.

Article 14 – Prohibition of discrimination
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 17 - Prohibition of abuse of rights
Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Protocol No. 12 to the European Convention on Human Rights

Article 1 – General prohibition of discrimination
1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

American Convention on Human Rights

Article 1. Obligation to Respect Rights
1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 11. Right to Privacy
1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12. Freedom of Conscience and Religion
1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of Thought and Expression
1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
   a. respect for the rights or reputations of others; or
   b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 24. Right to Equal Protection
All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

European Social Charter (revised)

Article E – Non-discrimination
The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Framework Convention for the Protection of National Minorities

Article 4
The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5
The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 7
The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8
The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9
The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 21
Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

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