



November 2023

This factsheet does not bind the Court and is not exhaustive

# Hate speech

**“Freedom of expression** constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], it **is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.** Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.” ([Handyside v. the United Kingdom](#) judgment of 7 December 1976, § 49).

“... [T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle **it may be considered necessary** in certain democratic societies **to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance** ..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.” ([Erbakan v. Turkey](#) judgment of 6 July 2006, § 56).

1. When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches which are provided for by the [European Convention on Human Rights](#):

- the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights)<sup>1</sup>, where the comments in question amount to hate speech and negate the fundamental values of the Convention; and
- the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention<sup>2</sup> (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention).

2. Internet news portals which, for commercial and professional purposes, provide a platform for user-generated comments assume the “duties and responsibilities” associated with freedom of expression in accordance with Article 10 § 2 of the Convention where users disseminate hate speech or comments amounting to direct incitement to violence.

<sup>1</sup> This provision is aimed at preventing persons from inferring from the Convention any right to engage in activities or perform acts aimed at the destruction of any of the rights and freedoms set forth in the Convention.

<sup>2</sup> Restrictions deemed necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.

## Exclusion from the protection of the Convention

“[T]here is no doubt that any remark directed against the Convention’s underlying values would be removed from the protection of Article 10 [freedom of expression] by Article 17 [prohibition of abuse of rights] (...)” (*Seurot v. France*, decision on the admissibility of 18 May 2004).

### Threat to the democratic order

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

See, among others: *Communist Party of Germany v. the Federal Republic of Germany*, decision of the European Commission on Human Rights<sup>3</sup> of 20 July 1957; *B.H, M.W, H.P and G.K. v. Austria* (no. 12774/87), decision of the Commission of 12 October 1989; *Nachtmann v. Austria*, decision of the Commission of 9 September 1998; *Schimanek v. Austria*, decision of the Court on the admissibility of 1 February 2000.

### Racial hate

#### [Glimmerveen and Hagenbeek v. the Netherlands](#)

11 October 1979 (decision of the European Commission of Human Rights<sup>4</sup>)

In this case, the applicants had been convicted for possessing leaflets addressed to “White Dutch people”, which tended to make sure notably that everyone who was not white left the Netherlands.

The Commission declared the application **inadmissible**, finding that Article 17 (prohibition of abuse of rights) of the Convention did not permit the use of Article 10 (freedom of expression) to spread ideas which are racially discriminatory.

### Negationism and revisionism

#### [Garaudy v. France](#)

24 June 2003 (decision on the admissibility)

The applicant, the author of a book entitled *The Founding Myths of Modern Israel*, was convicted of the offences of disputing the existence of crimes against humanity, defamation in public of a group of persons – in this case, the Jewish community – and incitement to racial hatred. He argued that his right to freedom of expression had been infringed.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It considered that the content of the applicant’s remarks had amounted to Holocaust denial, and pointed out that denying crimes against humanity was one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. Disputing the existence of clearly established historical events did not constitute scientific or historical research; the real purpose was to rehabilitate the National Socialist regime and accuse the victims themselves of falsifying history. As such acts were manifestly incompatible with the fundamental values which the Convention sought to promote, the Court applied Article 17 (prohibition of abuse of rights) and held that the applicant was not entitled to rely on Article 10 (freedom of expression) of the Convention.

<sup>3</sup>. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States’ compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1<sup>st</sup> November 1998.

<sup>4</sup>. See footnote 3 above.

See also, among others: [Honsik v. Austria](#), decision of the European Commission of Human Rights<sup>5</sup> of 18 October 1995 (concerning a publication denying the committing of genocide in the gas chambers of the concentration camps under National Socialism); [Marais v. France](#), decision of the Commission of 24 June 1996 (concerning an article in a periodical aimed at demonstrating the scientific implausibility of the “alleged gassings”).

### **M’Bala M’Bala v. France**

20 October 2015 (decision on the admissibility)

This case concerned the conviction of Dieudonné M’Bala M’Bala, a comedian with political activities, for public insults directed at a person or group of persons on account of their origin or of belonging to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith. At the end of a show in December 2008 at the “Zénith” in Paris, the applicant invited Robert Faurisson, an academic who has received a number of convictions in France for his negationist and revisionist opinions, mainly his denial of the existence of gas chambers in concentration camps, to join him on stage to receive a “prize for infrequency and insolence”. The prize, which took the form of a three-branched candlestick with an apple on each branch, was awarded to him by an actor wearing what was described as a “garment of light” – a pair of striped pyjamas with a stitched-on yellow star bearing the word “Jew” – who thus played the part of a Jewish deportee in a concentration camp.

The Court declared the application **inadmissible** (incompatible *ratione materiae*), in accordance with Article 35 (admissibility criteria) of the Convention, finding that under Article 17 (prohibition of abuse of rights), the applicant was not entitled to the protection of Article 10 (freedom of expression). The Court considered in particular that during the offending scene the performance could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism through the key position given to Robert Faurisson’s appearance and the degrading portrayal of Jewish deportation victims faced with a man who denied their extermination. In the Court’s view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention. The Court thus concluded that the applicant had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

### **Williamson v. Germany**

8 January 2019 (decision on the admissibility)

The applicant, a bishop and a former member of the Society of Saint Pius X, complained about his criminal conviction of incitement to hatred for denying the Holocaust on Swedish TV. In particular, he argued that German law was not applicable to his statements as the offence had not been committed in Germany, but in Sweden – where that statement was not subject to criminal liability. Moreover, he had never intended that his statement be broadcast in Germany and had done everything in his power to prevent its broadcast there.

The Court declared the application **inadmissible** as being manifestly ill-founded. It observed in particular that the applicant had agreed to provide the interview, in which he denied the Holocaust, in Germany despite residing elsewhere at the time while knowing that the statements he made were subject to criminal liability there. He did not insist during the interview that it not be broadcast in Germany and did not clarify with the interviewer or the television channel how the interview would be published. The

---

<sup>5</sup>. See footnote 3 above.

Court thus found that the Regional court's assessment of the facts was acceptable with respect to its finding that the offence had been committed in Germany, in particular because the key feature of the offence (the interview) had been carried out there.

### Pastörs v. Germany

3 October 2019

This case concerned the conviction of a Land deputy for denying the Holocaust during a speech in the regional Parliament.

The Court declared **inadmissible** as being manifestly ill-founded the applicant's complaint under Article 10 (freedom of expression) of the Convention. It noted in particular that the applicant had intentionally stated untruths to defame Jews. Such statements could not attract the protection for freedom of speech offered by the Convention as they ran counter to the values of the Convention itself. In the applicant's case, the response by the German courts, the conviction, had therefore been proportionate to the aim pursued and had been "necessary in a democratic society".

## Religious hate

### Norwood v. the United Kingdom

16 November 2004 (decision on the admissibility)

The applicant had displayed in his window a poster supplied by the British National Party, of which he was a member, representing the Twin Towers in flame. The picture was accompanied by the words "Islam out of Britain – Protect the British People". As a result, he was convicted of aggravated hostility towards a religious group. The applicant argued, among other things, that his right to freedom of expression had been breached.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It found in particular that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The Court therefore held that the applicant's display of the poster in his window had constituted an act within the meaning of Article 17 (prohibition of abuse of rights) of the Convention, and that the applicant could thus not claim the protection of Article 10 (freedom of expression) of the Convention.

### Belkacem v. Belgium

27 June 2017 (decision on the admissibility)

This case concerned the conviction of the applicant, the leader and spokesperson of the organisation "Sharia4Belgium", which was dissolved in 2012, for incitement to discrimination, hatred and violence on account of remarks he made in *YouTube* videos concerning non-Muslim groups and Sharia. The applicant argued that he had never intended to incite others to hatred, violence or discrimination but had simply sought to propagate his ideas and opinions. He maintained that his remarks had merely been a manifestation of his freedom of expression and religion and had not been apt to constitute a threat to public order.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It noted in particular that in his remarks the applicant had called on viewers to overpower non-Muslims, teach them a lesson and fight them. The Court considered that the remarks in question had a markedly hateful content and that he applicant, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimination underlying the European Convention on Human Rights. With reference to the applicant's remarks concerning Sharia, the Court further observed that it had previously ruled that defending Sharia while calling for violence to establish it could be regarded as hate speech, and that each Contracting State was entitled to oppose political movements based on religious fundamentalism. In the present case, the Court considered that the applicant had attempted to deflect Article 10 (freedom of expression) of the Convention from its real

purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention. Accordingly, the Court held that, in accordance with Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not claim the protection of Article 10.

## Ethnic hate

### Pavel Ivanov v. Russia<sup>6</sup>

20 February 2007 (decision on the admissibility)

The applicant, owner and editor of a newspaper, was convicted of public incitement to ethnic, racial and religious hatred through the use of mass-media. He authored and published a series of articles portraying the Jews as the source of evil in Russia, calling for their exclusion from social life. He accused an entire ethnic group of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. Both in his publications, and in his oral submissions at the trial, he consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The applicant complained, in particular, that his conviction for incitement to racial hatred had not been justified.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It had no doubt as to the markedly anti-Semitic tenor of the applicant's views and agreed with the assessment made by the domestic courts that through his publications he had sought to incite hatred towards the Jewish people. Such a general, vehement attack on one ethnic group is directed against the Convention's underlying values, notably tolerance, social peace and non-discrimination. Consequently, by reason of Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not benefit from the protection afforded by Article 10 (freedom of expression) of the Convention.

See also: W.P. and Others v. Poland (no. 42264/98), decision on the admissibility of 2 September 2004 (concerning the refusal by the Polish authorities to allow the creation of an association with statutes including anti-Semitic statements – the Court held that the applicants could not benefit from the protection afforded by Article 11 (freedom of assembly and association) of the Convention).

## Incitement to violence and support for terrorist activity

### Roj TV A/S v. Denmark

17 April 2018 (decision on the admissibility)

This case concerned the applicant company's conviction for terrorism offences by Danish courts for promoting the Kurdistan Workers' Party (PKK) through television programmes broadcast between 2006 and 2010. The domestic courts found it established that the PKK could be considered a terrorist organisation within the meaning of the Danish Penal Code and that Roj TV A/S had supported the PKK's terror operation by broadcasting propaganda. It was fined and its licence was withdrawn. The applicant company complained that its conviction had interfered with its freedom of expression.

The Court declared the application **inadmissible** as being incompatible *ratione materiae* with the provisions of the Convention. It found in particular that the television station could not benefit from the protection afforded by Article 10 of the Convention as it had tried to employ that right for ends which were contrary to the values of the Convention. That had included incitement to violence and support for terrorist activity, which had been in violation of Article 17 (prohibition of abuse of rights) of the Convention. Thus the complaint by the applicant company did not attract the protection of the right to freedom of expression.

---

<sup>6</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

## Incitement to violence or hatred against people because of their sexual orientation

### [Lenis v. Greece](#)

27 June 2023 (decision on the admissibility)

This case concerned the posting by the applicant – who was the Metropolitan (equivalent of a bishop) of the Greek Orthodox Church for Kalavryta and Aigialeia at the time of the events – of a homophobic article on his personal blog in December 2015, when the Greek Parliament had been about to debate proposed legislation introducing civil unions for same-sex couples, and his subsequent prosecution and sentencing for incitement to hatred and discrimination.

The Court declared the application **inadmissible** as being incompatible *ratione materiae* with the provisions of the Convention. In the present case, it noted in particular that the applicant's right to freedom of expression as protected by the Convention had not been violated, as his views had been liable to cause discrimination and hatred. Moreover, even though criticism of certain lifestyles on moral or religious grounds was not in itself exempt from protection under Article 10 of the Convention, when remarks went so far as to deny LGBTI people their human nature, and were coupled with incitement to violence, then the engagement of Article 17 (prohibition of abuse of rights) of the Convention had to be considered. Considering the nature and wording of the statements in the impugned article, the context in which they had been published, their potential to lead to harmful consequences and the reasons found by the Greek courts, which had carefully assessed the evidence before them and had conducted a balancing exercise which had taken into account the applicant's right to freedom of expression, the Court found that the statements sought to deflect Article 10 of the Convention from its real purpose. In addition, the remarks related directly to an issue which was of high importance in modern European society – protection of people's dignity and human value irrespective of their sexual orientation.

## Restrictions on the protection afforded by Article 10 (freedom of expression) of the Convention

Under Article 10, paragraph 2, of the Convention, the Court will examine successively if an interference in the freedom of expression exists, if this interference is prescribed by law and pursues one or more legitimate aims, and, finally, if it is "necessary in a democratic society" to achieve these aims.

## Incitement to racial or religious discrimination or hatred

### [Jersild v. Denmark](#)

23 September 1994

The applicant, a journalist, had made a documentary containing extracts from a television interview he had conducted with three members of a group of young people calling themselves the "Greenjackets", who had made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The applicant was convicted of aiding and abetting the dissemination of racist remarks. He alleged a breach of his right to freedom of expression.

The Court drew a distinction between the members of the "Greenjackets", who had made openly racist remarks, and the applicant, who had sought to expose, analyse and explain this particular group of youths and to deal with "specific aspects of a matter that already then was of great public concern". The documentary as a whole had not been aimed at propagating racist views and ideas, but at informing the public about a social issue. Accordingly, the Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention.



### Soulas and Others v. France

10 July 2008

This case concerned criminal proceedings brought against the applicants, following the publication of a book entitled "The colonisation of Europe", with the subtitle "Truthful remarks about immigration and Islam". The proceedings resulted in their conviction for inciting hatred and violence against Muslim communities from northern and central Africa. The applicants complained in particular that their freedom of expression had been breached.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It noted, in particular, that, when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as the main enemy, and to lead the book's readers to share the solution recommended by the author, namely a war of ethnic re-conquest. Holding that the grounds put forward in support of the applicants' conviction had been sufficient and relevant, it considered that the interference in the latter's right to freedom of expression had been "necessary in a democratic society". Finally, the Court observed that the disputed passages in the book were not sufficiently serious to justify the application of Article 17 (prohibition of abuse of rights) of the Convention in the applicants' case.

### Féret v. Belgium

16 July 2009

The applicant was a Belgian member of Parliament and chairman of the political party *Front National/Nationaal Front* in Belgium. During the election campaign, several types of leaflets were distributed carrying slogans including "Stand up against the Islamification of Belgium", "Stop the sham integration policy" and "Send non-European job-seekers home". The applicant was convicted of incitement to racial discrimination. He was sentenced to community service and was disqualified from holding parliamentary office for 10 years. He alleged a violation of his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. In its view, the applicant's comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant's conviction had been justified in the interests of preventing disorder and protecting the rights of others, namely members of the immigrant community.

### Le Pen v. France

20 April 2010 (decision on the admissibility)

At the time of the facts, the applicant was president of the French "National Front" party. He alleged in particular that his conviction for incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with *Le Monde* daily newspaper – he had asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge" – had breached his right to freedom of expression.

The Court declared the application **inadmissible** as being manifestly ill-founded. It observed that the applicant's statements had been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. Moreover, the varying scale of the problems concerned, which could sometimes generate misunderstanding and incomprehension, required considerable latitude to be left to the State in assessing the need for interference with a person's freedom of expression. In this case, however, the applicant's comments had certainly

presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French on the one hand against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting the applicant had thus been relevant and sufficient. Nor had the penalty imposed been disproportionate. The Court therefore found that the interference with the applicant's enjoyment of his right to freedom of expression had been "necessary in a democratic society".

### Perinçek v. Switzerland

15 October 2015 (Grand Chamber)

This case concerned the criminal conviction of the applicant, a Turkish politician, for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire in 1915 and the following years had not amounted to genocide. The Swiss courts held in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The applicant complained that his criminal conviction and punishment had been in breach of his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. Being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, it found that the dignity of the victims and the dignity and identity of modern-day Armenians were protected by Article 8 (right to respect for private life) of the Convention. The Court therefore had to strike a balance between two Convention rights – the right to freedom of expression and the right to respect for private life –, taking into account the specific circumstances of the case and the proportionality between the means used and the aim sought to be achieved. In this case, the Court concluded that it had not been necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the case. In particular, the Court took into account the following elements: the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; the context in which they were made had not been marked by heightened tensions or special historical overtones in Switzerland; the statements could not be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland; there was no international law obligation for Switzerland to criminalise such statements; the Swiss courts appeared to have censured the applicant simply for voicing an opinion that diverged from the established ones in Switzerland; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.

### Šimunić v. Croatia

22 January 2019 (decision on the admissibility)

The applicant, a football player, was convicted of a minor offence of addressing messages to spectators of a football match, the content of which expressed or enticed hatred on the basis of race, nationality and faith. He submitted in particular that his right to freedom of expression had been violated.

The Court declared the applicant's complaint under Article 10 (freedom of expression) of the Convention **inadmissible** as being manifestly ill-founded, finding that the interference with his right to freedom of expression had been supported by relevant and sufficient reasons and that the Croatian authorities, having had regard to the relatively modest nature of the fine imposed on the applicant and the context in which he had shouted the impugned phrase, had struck a fair balance between his interest in free speech, on the one hand, and society's interests in promoting tolerance and mutual respect at sports events as well as combating discrimination through sport on the other hand, thus acting within their margin of appreciation. The Court noted in particular that the applicant, being a famous football player and a role-model for many football fans,



should have been aware of the possible negative impact of provocative chanting on spectators' behaviour, and should have abstained from such conduct.

### **Zemmour v. France**

20 December 2022

The case concerned the conviction and sentencing of the applicant – a well known political journalist and pundit, who published several books on politics before launching his own political career in 2021 – for the offence of inciting discrimination and religious hatred against the French Muslim community for statements made on a television show in 2016. He alleged a violation of his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in respect of the applicant, finding that the interference with the applicant's right to freedom of expression had been necessary in a democratic society to protect the rights of others which had been at stake in the case. While dismissing the French Government's preliminary objection under Article 17 (prohibition of abuse of rights) of the Convention, it relied on that provision as an aid to interpreting Article 10 for the purposes of assessing whether the interference complained of had been necessary. Like the domestic courts, the Court pointed out in particular that the applicant's statements had contained derogatory and discriminatory claims of a kind that might exacerbate a rift between French people and the Muslim community as a whole. It took the view that the statements in issue had not belonged to a category of speech enjoying enhanced protection under Article 10 and concluded that the French authorities had therefore had a wide margin of appreciation to impose restrictions. The Court also noted that the statements had been made on live, prime-time television and observed that the applicant, who was a journalist and pundit, had not been exempt, although he had been speaking as an author at the time, from the "duties and responsibilities" of a journalist. The Court was of the opinion that his remarks had not been confined to criticism of Islam but had, in view of the context of terrorist violence in which they had occurred, been made with discriminatory intent such as to call on viewers to reject and exclude the Muslim community. It concluded that the grounds on which the domestic courts had convicted the applicant and sentenced him to a fine, the amount of which was not excessive, had been sufficient and relevant.

See also, recently: **de Lesquen du Plessis Casso v. France**, decision (Committee) on the admissibility of 15 December 2022; **Société d'exploitation d'un service d'information CNews v. France**, decision on the admissibility of 7 November 2023.

## Condoning war crimes

### **Lehideux and Isorni v. France**

23 September 1998

The applicants wrote a text which was published in the daily newspaper *Le Monde* and which portrayed Marshal Pétain in a favourable light, drawing a veil over his policy of collaboration with the Nazi regime. The text ended with an invitation to write to two associations dedicated to defending Marshal Pétain's memory, seeking to have his case reopened and to have the judgment of 1945 sentencing him to death and to forfeiture of his civic rights overturned, and to have him rehabilitated. Following a complaint by the National Association of Former Members of the Resistance, the two authors were convicted of publicly defending war crimes and crimes of collaboration with the enemy. They alleged a violation of their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It considered that the impugned text, although it could be regarded as polemical, could not be said to be negationist since the authors had not been writing in a personal capacity but on behalf of two legally constituted associations, and had praised not so much pro-Nazi policies as a particular individual. Lastly, the Court noted that the events referred to in the text had occurred more than forty years before its publication

and that the lapse of time made it inappropriate to deal with such remarks, forty years on, with the same severity as ten or twenty years previously.

## Apology of violence and incitement to hostility

### Sürek (no.1) v. Turkey

8 July 1999 (Grand Chamber)

The applicant was the owner of a weekly review which published two readers' letters vehemently condemning the military actions of the authorities in south-east Turkey and accusing them of brutal suppression of the Kurdish people in their struggle for independence and freedom. The applicant was convicted of "disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people". He complained that his right to freedom of expression had been breached.

The Court held that there had been **no violation of Article 10** (freedom of expression). It noted that the impugned letters amounted to an appeal to bloody revenge and that one of them had identified persons by name, stirred up hatred for them and exposed them to the possible risk of physical violence. Although the applicant had not personally associated himself with the views contained in the letters, he had nevertheless provided their writers with an outlet for stirring up violence and hatred. The Court considered that, as the owner of the review, he had been vicariously subject to the duties and responsibilities which the review's editorial and journalistic staff undertook in the collection and dissemination of information to the public, and which assumed even greater importance in situations of conflict and tension.

See *also*, among others: [Özgül Gündem v. Turkey](#), judgment of 16 mars 2000 (conviction of a daily newspaper for the publication of three articles containing passages which advocated intensifying the armed struggle, glorified war and espoused the intention to fight to the last drop of blood); [Medya FM Reha Radyo ve İletişim Hizmetleri A. Ş. v. Turkey](#), decision on the admissibility of 14 November 2006 (one-year suspension of right to broadcast, following repeated radio programmes deemed to be contrary to principles of national unity and territorial integrity and likely to incite violence, hatred and racial discrimination).

### Gündüz v. Turkey

13 November 2003 (decision on the admissibility)

The applicant, the leader of an Islamic sect, had been convicted of incitement to commit an offence and incitement to religious hatred on account of statements reported in the press. He was sentenced to four years and two months' imprisonment and to a fine. The applicant argued, among other things, that his right to freedom of expression had been breached.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the severity of the penalty imposed on the applicant could not be regarded as disproportionate to the legitimate aim pursued, namely the prevention of public incitement to commit offences. The Court stressed in particular that statements which may be held to amount to hate speech or to glorification of or incitement to violence, such as those made in the instant case, cannot be regarded as compatible with the notion of tolerance and run counter to the fundamental values of justice and peace set forth in the Preamble to the Convention. Admittedly, the applicant's sentence, which was increased because the offence had been committed by means of mass communication, was severe. The Court considered, however, that provision for deterrent penalties in domestic law may be necessary where conduct reaches the level observed in the instant case and becomes intolerable in that it negates the founding principles of a pluralist democracy.

### Gündüz v. Turkey

4 December 2003

The applicant was a self-proclaimed member of an Islamist sect. During a televised debate broadcast in the late evening, he spoke very critically of democracy, describing

contemporary secular institutions as “impious”, fiercely criticising secular and democratic principles and openly calling for the introduction of Sharia law. He was convicted of openly inciting the population to hatred and hostility on the basis of a distinction founded on membership of a religion or denomination. The applicant alleged a violation of his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the applicant, who had represented the extremist ideas of his sect, with which the public was already familiar, had been taking an active part in an animated public discussion. That pluralist debate had sought to present the sect and its unorthodox views, including the notion that democratic values were incompatible with its conception of Islam. The topic had been the subject of widespread debate in the Turkish media and concerned a problem of general interest. The Court considered that the applicant’s remarks could not be regarded as a call to violence or as hate speech based on religious intolerance. The mere fact of defending sharia, without calling for violence to introduce it, could not be regarded as hate speech.

See also: **Fondation Zehra and Others v. Turkey**, judgment of 10 July 2018 (concerning the dissolution of a foundation striving for a State based on Sharia; the Court found that the dissolution was justified and held that there had been no violation of Article 11 (freedom of association) of the Convention in the case).

### **Faruk Temel v. Turkey**

1 February 2011

The applicant, the chairman of a legal political party, read out a statement to the press at a meeting of the party, in which he criticised the United States’ intervention in Iraq and the solitary confinement of the leader of a terrorist organisation. He also criticised the disappearance of persons taken into police custody. Following his speech the applicant was convicted of disseminating propaganda, on the ground that he had publicly defended the use of violence or other terrorist methods. The applicant contended that his right to freedom of expression had been breached.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the applicant had been speaking as a political actor and a member of an opposition political party, presenting his party’s views on topical matters of general interest. It took the view that his speech, taken overall, had not incited others to the use of violence, armed resistance or uprising and had not amounted to hate speech.

See also, among others: **Dicle (no. 2) v. Turkey**, judgment of 11 April 2006 (conviction for inciting to hatred and hostility on the basis of a distinction between social classes, races and religions, following the publication of a seminar report); **Erdal Taş v. Turkey**, judgment of 19 December 2006 (conviction for disseminating propaganda against the indivisibility of the State on account of the publication of a statement by a terrorist organisation, following the publication in a newspaper of an article consisting of analysis of the Kurdish question).

### **Altıntaş v. Turkey**

10 March 2020

This case concerned a judicial fine imposed on the applicant for an article published in 2007 in his periodical *Tokat Demokrat*, describing the perpetrators of the “Kızildere events”, among others as “idols of the youth”. The events in question took place in March 1972, when three British nationals working for NATO were abducted and executed by their kidnappers. The applicant was convicted in 2008 by the Criminal Court, which found that the article glorified the insurgents involved in those events. He complained in particular of a breach of his freedom of expression on account of his criminal conviction and sentence to a judicial fine.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicant’s right to freedom of expression had not been disproportionate to the legitimate aims pursued. It took the

view, in particular, that the expressions used in the article, about the perpetrators of the “Kızildere events” and their acts, could be seen as glorifying, or at least as justifying, violence. It took account of the margin of appreciation afforded to national authorities in such cases and the reasonable amount of the fine imposed on the applicant. Furthermore, it was important not to minimise the risk that such writings might encourage or drive certain young people, in particular the members or sympathisers of some illegal organisations, to commit similar violent acts with the aim of becoming, “idols of the youth” themselves. The expressions used had given the impression to public opinion – and in particular to people who shared similar political opinions to those promoted by the perpetrators of the events in question – that, in order to fulfil a purpose that those individuals regarded as legitimate in terms of their ideology, the use of violence could be necessary and justified

## Incitement to religious intolerance

### **I.A. v. Turkey (no. 42571/98)**

13 September 2005

The applicant, the owner and managing director of a publishing company, published 2,000 copies of a book which addressed theological and philosophical issues in a novelistic style. The Istanbul public prosecutor charged the applicant with insulting “God, the Religion, the Prophet and the Holy Book” through the publication. The court of first instance sentenced the applicant to two years’ imprisonment and payment of a fine, and immediately commuted the prison sentence to a small fine. The applicant appealed to the Court of Cassation, which upheld the judgment. The applicant alleged that his conviction and sentence had infringed his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It reiterated, in particular, that those who chose to exercise the freedom to manifest their religion, irrespective of whether they did so as members of a religious majority or a minority, could not reasonably expect to be exempt from all criticism. They had to tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the present case concerned not only comments that were disturbing or shocking or a “provocative” opinion but an abusive attack on the Prophet of Islam. Notwithstanding the fact that there was a certain tolerance of criticism of religious doctrine within Turkish society, which was deeply attached to the principle of secularity, believers could legitimately feel that certain passages of the book in question constituted an unwarranted and offensive attack on them. In those circumstances, the Court considered that the measure in question had been intended to provide protection against offensive attacks on matters regarded as sacred by Muslims and had therefore met a “pressing social need”. It also took into account the fact that the Turkish courts had not decided to seize the book in question, and consequently held that the insignificant fine imposed had been proportionate to the aims pursued by the measure in question.

### **Erbakan v. Turkey**

6 July 2006

The applicant, a politician, was notably Prime Minister of Turkey. At the material time he was chairman of *Refah Partisi* (the Welfare Party), which was dissolved in 1998 for engaging in activities contrary to the principles of secularism. He complained in particular that his conviction for comments made in a public speech, which had been held to have constituted incitement to hatred and religious intolerance, had infringed his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found that such comments – assuming they had in fact been made – by a well-known politician at a public gathering were more indicative of a vision of society structured exclusively around religious values and thus appeared hard to reconcile with the pluralism typifying contemporary societies, where a wide range of

different groups were confronted with one another. Pointing out that combating all forms of intolerance was an integral part of human-rights protection, the Court held that it was crucially important that in their speeches politicians should avoid making comments liable to foster intolerance. However, having regard to the fundamental nature of free political debate in a democratic society, the Court concluded that the reasons given to justify the applicant's prosecution were not sufficient to satisfy it that the interference with the exercise of his right to freedom of expression had been "necessary in a democratic society".

### **Tagiyev and Huseynov v. Azerbaijan**

5 December 2019

This case concerned the conviction of the applicants – a well-known writer and columnist and an editor – for inciting religious hatred and hostility with their remarks on Islam in an article they had published in 2006.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicants' conviction had been excessive and had breached their freedom of expression. It noted in particular that the national courts had not justified why the applicants' conviction had been necessary when the article had clearly only been comparing Western and Eastern values, and had contributed to a debate on a matter of public interest, namely the role of religion in society. Indeed, the courts had simply endorsed a report finding that certain remarks had amounted to incitement to religious hatred and hostility, without putting them in context or even trying to balance the applicants' right to impart to the public their views on religion against the right of religious people to respect for their beliefs.

## Condoning terrorism

### **Leroy v. France**

2 October 2008

The applicant, a cartoonist, complained of his conviction for publicly condoning terrorism following the publication in a Basque weekly newspaper on 13 September 2001 of a drawing representing the attack on the twin towers of the World Trade Center with a caption imitating the advertising slogan of a famous brand: "We all dreamt of it... Hamas did it". He argued that his freedom of expression had been infringed.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in respect of the applicant's conviction for complicity in condoning terrorism. It considered, in particular, that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. In this regard, the Court based its finding on the caption which accompanied the drawing, and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims. In addition, it had to be recognised that the drawing had assumed a special significance in the circumstances of the case, as the applicant must have realised. Moreover, the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked; the weekly newspaper's limited circulation notwithstanding, the Court noted that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region. Consequently, the Court considered that the grounds put forward by the domestic courts in convicting the applicant had been relevant and sufficient and, having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, it found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.



### [Stomakhin v. Russia](#)<sup>7</sup>

9 May 2018

This case concerned the applicant's conviction and sentence to five years in jail for newsletter articles he had written on the armed conflict in Chechnya, which the domestic courts said had justified terrorism and violence and incited hatred. He complained about his conviction for views expressed in the newsletters.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that some of the articles had gone beyond the bounds of acceptable criticism and had amounted to calls for violence and the justification of terrorism. Other statements, however, had been within acceptable limits of criticism. Overall, there had not been a pressing social need to interfere with the applicant's rights by penalising him for some of his comments and the harshness of the penalty had violated his rights. The Court also added that it was vitally important for States to take a cautious approach when determining the scope of crimes of hate speech. It called on them to strictly construe legislation in order to avoid excessive interference under the guise of action against such speech, when what was in question was actually criticism of the authorities or their policies.

### [Erkizia Almandoz v. Spain](#)

22 June 2021

This case concerned the participation by a Basque separatist politician in a ceremony to pay tribute to a former member of the ETA terrorist organisation, and his conviction for publicly defending terrorism, receiving a one-year prison sentence and seven years' ineligibility. The applicant complained of an infringement of his right to freedom of expression on account of his conviction for publicly defending terrorism, whereas, in his view, his speech had been aimed solely at initiating an exclusively democratic and peaceful procedure for securing the independence of the Basque Country.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the interference by the public authorities with the applicant's right to freedom of expression could not be deemed "necessary in a democratic society". Having analysed the application of the various factors characterising hate speech and statements condoning or defending terrorism, the Court found that although the applicant had made his statements during a ceremony in memory of a former ETA member in a tense political and social context, the content and formulation of the applicant's comments showed that he had not intended to incite people to violence or to condone or defend terrorism. In the Court's view, no direct or indirect incitement to terrorist violence had been established, and the applicant's speech at the ceremony had, on the contrary, advocated pursuing a democratic means of achieving the specific political objectives of the abertzale left.

### [Rouillan v. France](#)

23 June 2022

This case concerned the sentencing of the applicant, formerly a member of the terrorist group *Action directe*, to a term of 18 months' imprisonment including a suspended portion of 10 months with probation, upon his conviction as an accessory to the offence of publicly defending acts of terrorism for remarks he had made on a radio show in 2016 and which had subsequently been published on a media website.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention on account of the severity of the criminal penalty imposed on the applicant. It took the view, in particular, that the applicant's conviction and sentencing as an accessory to the offence of defending acts of terrorism had amounted to an interference with his right to freedom of expression, and recognised that the interference had been prescribed by law and had pursued the legitimate aim of preventing disorder and crime. Turning to whether the interference was necessary in a democratic society within the meaning of Article 10 § 2 of the Convention, the Court accepted, first, that the

---

<sup>7</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

remarks in issue fell to be regarded as an indirect incitement to terrorist violence and saw no reasonable basis on which to depart from the meaning and scope attached to them by a decision of the Criminal Court, whose duly stated reasons had been adopted by the Court of Appeal and the Court of Cassation. The Court further stated that it saw no reasonable ground, in this case, on which to depart from the domestic courts' assessment regarding the principle behind the penalty. It held in this regard that their reasoning as to why the penalty imposed on the applicant had been warranted – based on the need to combat defence of terrorism and on consideration of the offender's personal characteristics – appeared both "relevant" and "sufficient" to justify the interference at issue, which fell to be regarded as responding, in principle, to a pressing social need. However, after reiterating that the authorities were required, in matters of freedom of expression, to exercise restraint in the use of criminal proceedings and especially in the imposition of a sentence of imprisonment, the Court held that, in the particular circumstances of the case, the reasons relied on by the domestic courts in the balancing exercise which had been theirs to perform were not sufficient to enable it to regard the 18 month prison sentence passed on the applicant – the suspension of 10 months notwithstanding – as proportionate to the legitimate aim pursued.

### **Rivadulla Duró v. Spain**

12 October 2023 (decision – Committee – on the admissibility)

This case concerned the applicant's – a rapper also known as "Pablo Hasél" – conviction and custodial sentence on charges of public praise or justification of terrorism, insult and slander against the Crown, and insult and slander against State institutions, for the content of several social-media posts and a song about King Emeritus Juan Carlos I of Spain. The applicant complained of a breach of his freedom of expression in the national court decisions, which had been linked to his ideological freedom, and alleged that the purpose of the punishment had been to silence him.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicant's complaints under Article 10 (freedom of expression) of the Convention. As regards the conviction for public praise or justification of terrorism, it noted, in particular, that the Spanish courts had found that the applicant's comments and songs had been incitement to support terrorism, a finding which the Court agreed with. The Court also noted that these statements had been available to a wide audience and had had the capacity to lead to harmful consequences. It found that the Spanish courts' assessment had been reasonable and proportionate. They had examined the applicant's case in the light of the Court's relevant case-law, and the reason for their judgments – combating public praise or justification of terrorism – appeared to have been "relevant" and "sufficient" to justify the interference with the applicant's rights. Concerning the custodial sentence handed down, the Court noted that had it not been for the applicant's prior conviction, he would not have served time for the offence in question. As further regards the conviction for slander against the Head of State and the State institutions, the Court noted that the applicant had made the relevant statements in his capacity as an artist, including repeated accusations of torture, murder, Nazism, and so forth. The Court considered that the *Audiencia Nacional* had carefully considered the case in the light of the Court's case-law and had weighed up the various interests involved, before finding him guilty. That conviction could not be considered disproportionate.

See also: **Jorge López v. Spain**, decision (Committee) on the admissibility of 20 September 2022.

## Incitement to ethnic hatred

### **Balsytė-Lideikienė v. Lithuania**

4 November 2008

The applicant owned a publishing company. In March 2001 the Polish courts found that she had breached the Code on Administrative Offences on account of her publishing and distributing the "Lithuanian calendar 2000" which, according to the conclusions of

political science experts, promoted ethnic hatred. She was issued with an administrative warning and the unsold copies of the calendar were confiscated. The applicant alleged in particular that the confiscation of the calendar and the ban on its further distribution had infringed her right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found, in particular, that the applicant had expressed aggressive nationalism and ethnocentrism and statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian authorities cause for serious concern. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court found that in the present case the domestic authorities had not overstepped their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant. The Court also noted that even though the confiscation measure imposed on the applicant could be deemed relatively serious, she had not had a fine imposed on her, but only a warning, which was the mildest administrative punishment available. Therefore, the Court found that the interference with the applicant's right to freedom of expression could reasonably have been considered "necessary in a democratic society" for the protection of the reputation or rights of others.

### **Atamanchuk v. Russia**<sup>8</sup>

11 February 2020

This case concerned a businessman's criminal conviction for inciting hatred and enmity following statements about non Russians in an article published in a local newspaper.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the Russian courts had given relevant and sufficient reasons in the context of the case for prosecuting and convicting the applicant and that there had been exceptional circumstances justifying the sentences imposed on him. It noted in particular that the applicant's sweeping remarks had not contributed to any public debate and agreed with the national courts' assessment of them as stirring up emotions or prejudices against the local population of non-Russian ethnicity. Moreover, the courts had been justified in fining him and banning him from journalistic or publishing activities for two years, given that those sentences had been imposed in the context of legislation against hate speech. In addition, the sentences had not had any significant consequences for the applicant who was more of a businessman than a journalist.

## Denigrating national identity

### **Dink v. Turkey**

14 September 2010

Firat (Hrank) Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of a bilingual Turkish-Armenian weekly newspaper published in Istanbul. Following the publication in this newspaper of eight articles in which he expressed his views on the identity of Turkish citizens of Armenian origin, he was found guilty in 2006 of "denigrating Turkish identity". In 2007 he was killed by three bullets to the head as he left the offices of the newspaper. The applicants, his relatives, complained in particular of the guilty verdict against him which, they claimed, had made him a target for extreme nationalist groups.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that there had been no pressing social need to find Firat Dink guilty of denigrating "Turkishness". It observed, in particular, that the series of articles taken overall did not incite others to violence, resistance or revolt. The author had been writing in his capacity as a journalist and editor-in-chief of a Turkish-Armenian newspaper, commenting on issues concerning the Armenian minority in the context of his role as a player on the political scene. He had merely been conveying his ideas and

---

<sup>8</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

opinions on an issue of public concern in a democratic society. In such societies, the debate surrounding historical events of a particularly serious nature should be able to take place freely, and it was an integral part of freedom of expression to seek historical truth. Finally, the impugned articles had not been gratuitously offensive or insulting, and they had not incited others to disrespect or hatred.

## Insult of State officials

### Otegi Mondragon v. Spain

15 March 2011

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

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant’s conviction and sentence had been disproportionate to the legitimate aim pursued, namely the protection of the King of Spain’s reputation, as guaranteed by the Spanish Constitution. The Court observed in particular that, while it was true that the language used by the applicant could have been considered provocative, it was essential to bear in mind that, even if some of the words used in the applicant’s comments had been hostile in nature, there had been no incitement to violence and they had not amounted to hate speech. Furthermore, these had been oral statements made in the course of a press conference, which meant that the applicant had been unable to reformulate, rephrase or withdraw them before they were made public.

### Stern Taulats and Roura Capellera v. Spain

13 March 2018

This case concerned the conviction of two Spanish nationals for setting fire to a photograph of the royal couple at a public demonstration held during the King’s official visit to Girona in September 2007. The applicants complained in particular that the judgment finding them guilty of insult to the Crown amounted to unjustified interference with their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the act allegedly committed by the applicants had been part of a political, rather than personal, critique of the institution of monarchy in general, and in particular of the Kingdom of Spain as a nation. It also noted that it was one of those provocative “events” which were increasingly being “staged” to attract media attention and which went no further than the use of a certain permissible degree of provocation in order to transmit a critical message in the framework of freedom of expression. Moreover, the Court was not convinced that the impugned act could reasonably be construed as incitement to hatred or violence. In the present case, incitement to violence could not be deduced from the joint examination of the “props” used for staging the event or from the context in which it had taken place; nor could it be established on the basis of the consequences of the act, which had not led to violent behaviour or disorder. Furthermore, the facts could not be considered as constituting hate speech. Lastly, the Court held that the prison sentence served on the applicants had been neither proportionate to the legitimate aim pursued (protection of the reputation or rights of others) nor “necessary in a democratic society”.

### Rivadulla Duró v. Spain

12 October 2023 (decision – Committee – on the admissibility)  
See above, under “Apology of terrorism”.

## Agitation against a national or ethnic group

### Vejdeland and Others v. Sweden

9 February 2012

This case concerned the applicants’ conviction for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants had distributed leaflets by an organisation called National Youth, by leaving them in or on the pupils’ lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a “deviant sexual proclivity”, had “a morally destructive effect on the substance of society” and was responsible for the development of HIV and AIDS. The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools.

The Court found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour. It concluded that there had been **no violation of Article 10** (freedom of expression) of the Convention, as the interference with the applicants’ exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as “necessary in a democratic society” for the protection of the reputation and rights of others.

## Display of a symbol associated with a political movement or entity

### Fáber v. Hungary

24 July 2012

The applicant complained that he had been fined for displaying the striped Árpád flag, which had controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred.

The Court held that there had been a **violation of Article 10** (freedom of expression) **read in the light of Article 11** (freedom of assembly and association of the Convention). It accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining the applicant for refusing to take down the flag in question. The mere display of that flag did not disturb public order or hamper the demonstrators’ right to assemble, as it had been neither intimidating, nor capable of inciting violence.

## Incitement to national hatred

### Hösl-Daum and Others v. Poland

7 October 2014 (decision on the admissibility)

The applicants were charged with insulting the Polish nation and inciting national hatred. They alleged a breach of their right to freedom of expression on account of their conviction for putting up posters in the German language describing atrocities committed



after the Second World War by the Polish and the Czechs against the Germans. The Court declared the application **inadmissible** for non-exhaustion of domestic remedies. It found that, by failing to lodge a constitutional complaint against the impugned provisions of the Criminal Code, the applicants had failed to exhaust the remedy provided for by Polish law.

## Extremism

### **Ibragim Ibragimov and Others v. Russia**<sup>9</sup>

28 August 2018

This case concerned anti-extremism legislation in Russia and a ban on publishing and distributing Islamic books. The applicants complained that the Russian courts had ruled in 2007 and 2010 that books by Said Nursi, a well-known Turkish Muslim theologian and commentator of the Qur'an, were extremist and banned their publication and distribution. The applicants had either published some of Nursi's books or had commissioned them for publication.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. The Court found in particular that the Russian courts had not justified why the ban had been necessary. They had merely endorsed the overall findings of an expert report carried out by linguists and psychologists, without making their own analysis or, most notably, setting the books or certain of their expressions considered problematic in context. Furthermore, they had summarily rejected all the applicants' evidence explaining that Nursi's books belonged to moderate, mainstream Islam. Overall, the courts' analysis in the applicants' cases had not shown how Nursi's books, already in publication for seven years before being banned, had ever caused, or risked causing, interreligious tensions, let alone violence, in Russia or, indeed, in any of the other countries where they were widely available.

### **Yefimov and Youth Human Rights Group v. Russia**<sup>10</sup>

7 December 2021

This case concerned, in particular, the prosecution of the first applicant – who was the founder and director of the applicant association – for hate speech and his placement on a list of terrorists and extremists for publishing a note criticising the Russian Orthodox Church.

The Court held, in particular, that there had been a **violation of Article 10** (freedom of expression) of the Convention, in respect of the first applicant, finding that the publication had not been shown to be capable of inciting violence, hatred or intolerance or causing public disturbances.

See also: **Mukhin v. Russia**, judgment of 14 December 2021 (concerning the conviction of a newspaper editor and the termination of his newspaper's media-outlet status under anti-extremism laws – the Court held that there had been a violation of Article 10 (freedom of expression) of the Convention).

## Missionary work

### **Ossewaarde v. Russia**<sup>11</sup>

7 March 2023

This case concerned a US national living in Russia, a Baptist Christian, who was fined for holding Bible study meetings in his home without notifying the authorities. The applicant complained in particular about being fined for preaching Baptism under the new legislation, arguing that he had not been a member of any religious association but had been exercising his right to spread his personal religious convictions.

<sup>9</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>10</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>11</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court held that there had been a **violation of Article 9** (freedom of religion) of the Convention in respect of the applicant. It noted in particular that the sanction in question had been imposed on the applicant following new legal requirements for missionary work introduced in Russia in 2016 as part of an anti-terrorism package. The new legislation made it an offence to evangelise in private homes and required prior authorisation for missionary work from a religious group or organisation. In the present case, the Court found that the Russian Government had not explained the rationale behind such new formalities for missionary work which had left no room for people engaged in individual evangelism, such as the applicant. Further, there was no evidence that the applicant had used any improper methods of proselytism, involving coercion or incitement to hatred or intolerance. The Court also held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 9** in respect of the applicant in the present case.

## Publishing statements by a terrorist organisation

### Ali Gürbüz v. Turkey

12 March 2019

This case concerned seven sets of criminal proceedings brought against the applicant – the owner of the daily newspaper *Ülkede Özgür Gündem*, at the relevant time – for publishing, in the newspaper, statements by the leaders of organisations characterised as terrorist under Turkish law. He was acquitted after proceedings which had lasted between five and over seven years, without having been remanded in custody.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the fact that the numerous sets of criminal proceedings against the applicant had been prolonged for a considerable length of time, on the basis of serious criminal charges, did not meet a pressing social need, that the impugned measure had not been proportionate to the legitimate aims pursued, and that the measure was accordingly not necessary in a democratic society. The Court noted, in particular, that criminal proceedings had been systematically opened, regardless of the actual content of the articles. They had in fact contained insignificant messages such as Christmas wishes which did not call for any violence, armed resistance or uprising, and did not constitute hate speech, that being an essential factor to be considered.

### Gürbüz and Bayar v. Turkey

23 July 2019

The case concerned criminal proceedings brought against the applicants – who were respectively, at the relevant time, the owner and the editor-in-chief of the daily newspaper *Ülkede Özgür Gündem* – for publishing statements by A.Ö. (head of the Kurdistan Workers' Party (PKK), an illegal armed organisation) and M.K. (president of Kongra-Gel, a branch of the PKK) in an article which appeared in their newspaper in September 2004. After several years the first applicant's prosecution became time-barred; the second applicant received a suspended judicial fine.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in the present case, finding, in particular, that the contested interference had not been disproportionate, given, firstly, the margin of appreciation enjoyed by the national authorities in such cases and, secondly, the statute-barring and suspended sentence from which the applicants had benefited respectively. The Court recalled, inter alia, that the mere fact of having published statements by terrorist organisations could not justify media professionals being systematically convicted by the courts without an analysis of the content of the contested articles or the context in which they were written. It added that, however, when it came to statements which could be held to amount to hate speech or to glorification of or incitement to violence, the Court itself analysed the contested articles, notwithstanding the fact that the reasons given by the courts for the convictions in question had been clearly insufficient. In the instant case, the Court considered that, given that A.Ö.'s statements could effectively be

interpreted as an incitement to violence, the applicants could not, in their respective capacities as owner and editor-in-chief of their newspaper, be exempted from all liability. The right to impart information could not serve as an alibi or pretext for disseminating statements by terrorist groups.

## Propaganda for a terrorist organisation

### Özer v. Turkey (no. 3)

11 February 2020

This case concerned criminal proceedings brought against the applicant, the owner and editor of a magazine, over an article published in the magazine. The applicant was prosecuted and convicted of the criminal offence of providing propaganda for a terrorist organisation. He complained of an infringement of his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the Turkish authorities had failed to conduct an appropriate analysis having regard to all the criteria set out and implemented by the Court in cases concerning freedom of expression, and that the Turkish Government had not demonstrated that the impugned measure had met a pressing social need, had been proportionate to the legitimate aims pursued and had been necessary in a democratic society. The Court noted in particular that the domestic courts' assessment of the case had not answered the question of whether the impugned passages of the article in question could – having regard to their content, context and capacity to lead to harmful consequences – be considered as comprising incitement to the use of violence, armed resistance or rebellion, or as amounting to hate speech.

### Üçdağ v. Turkey

31 August 2021

This case concerned the applicant's criminal conviction for disseminating propaganda in favour of a terrorist organisation on account of two posts published on his Facebook account, as well as the rejection of his individual application to the Constitutional Court as being out of time. At the relevant time, the applicant was a public official working as an imam at a local mosque. The impugned posts had included two photographs (of individuals in uniform similar to that of PKK members and of a crowd demonstrating in a public street in front of a fire), originally shared by two other Facebook users.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that by convicting the applicant on a charge of disseminating propaganda in favour of a terrorist organisation by posting the impugned contents on his Facebook account, the domestic authorities had failed to conduct an appropriate balancing exercise, in keeping with the criteria set out in its case-law, between the applicant's right to freedom of expression and the legitimate aims pursued (protecting national security and territorial integrity and preventing disorder and crime). In particular the assessment carried out by the domestic courts had not explained whether the sharing of the posts in question could have been considered, in view of their content, context and capacity to lead to harmful consequences having regard to their potential impact on the social networks under the circumstances of the case, as comprising incitement to the use of violence, armed resistance or uprising, or as amounting to hate speech. In the present case, the Turkish Government had not demonstrated that the grounds relied on by the domestic authorities to justify the impugned measure had been relevant and sufficient and had been necessary in a democratic society.

Publicly mocking, defaming, denigrating or threatening a person or group of persons for certain characteristics, including their sexual orientation or gender identity

### Lilliendahl v. Iceland

12 May 2020 (decision on the admissibility)

This case concerned the applicant's conviction and fine for homophobic comments he had made in response to an online article. The applicant alleged that his conviction had breached his right to freedom of expression.

The Court held that the applicant's complaint under Article 10 (freedom of expression) of the Convention was manifestly ill-founded and rejected it as **inadmissible**. It found that the applicant's comments had amounted to hate speech within the meaning of its case-law. The Court accepted in particular the Icelandic Supreme Court's finding that the comments had been "serious, severely hurtful and prejudicial", and that the decision which had originally sparked the debate, concerning measures to strengthen education in schools on lesbian, gay, bisexual or transgender matters, had not warranted such a severe reaction. The domestic courts' decisions in the case, taken after an extensive balancing exercise between the applicant's right to freedom of expression and the rights of gender and sexual minorities, had therefore been reasonable and justified.

Praising crime and criminals

### Yasin Özdemir v. Turkey

7 December 2021

This case concerned the criminal conviction of the applicant, a teacher, for praising crime and criminals, on account of comments which he had posted on the social networks in April 2015, in favour of the Gülenist organisation and its leader (Fethullah Gülen). The applicant complained about his conviction, arguing that at the time he had published the contested comments, the organisation in question had not been known as a terrorist organisation.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicant's exercise of his right to freedom of expression had failed to meet the "quality of the law" requirement. It noted, in particular, that the applicant had been convicted with final effect of praising crime or criminals, and that his conviction had been based solely on the comments which he had posted on Facebook concerning newspaper articles. The Court took the view that the comments in question had mainly consisted of the applicant's opinions on topical political issues. Furthermore, at the time of their publication, the messages had contained ideas and opinions expressed in the framework of public debates on certain sensitive subjects – similar ideas had already been expressed not only by members of the Gülenist movement but also by the legal opposition, including political opposition parties, as well as by the national and international media. Lastly, those opinions had in no way incited people to commit violence or revolt.

Racial insults and questioning the existence of crimes against humanity

### Bonnet v. France

25 January 2022 (decision on the admissibility)

This case concerned the criminal conviction of the applicant, known as Alain Soral, by the French courts for the offence of proffering a public insult of a racial nature against an individual or group on account of their origin or of belonging to a given ethnicity, nation, race or religion, and for the offence of questioning the existence of crimes against humanity. This conviction followed the publication, on the website "Equality and Reconciliation", of a page headed "Chutzpah Hebdo", a parody of the front page of the

weekly Charlie Hebdo, containing the caption “historians all at sea” and a drawing representing the face of Charlie Chaplin in front of a Star of David asking the question “Shoah where are you?”, the answer being given in a number of speech bubbles, “here”, “over here” and “here too”, placed next to drawings depicting soap, a lamp-shade, a shoe without laces and a wig. The applicant complained of a violation of his freedom of expression.

The Court declared the application **inadmissible**, as being manifestly ill-founded, finding that, even supposing that Article 10 (freedom of expression) of the Convention was applicable, the interference with the applicant’s freedom of expression had been necessary in a democratic society. The Court took the view, in particular, that the domestic courts had provided relevant and sufficient reasons for their finding that the various elements of the offending cartoon directly targeted the Jewish Community. The cartoon and the message it conveyed could not be regarded as contributing to any debate in the public interest and fell within a category which was afforded reduced protection under Article 10 of the Convention. Further, as to the context, the Court noted that the French authorities had already been called upon to respond to remarks or speech calling into question or denying the existence of the Holocaust, which was a clearly established historical event. As to the underlying factors, namely the nature, medium and context of the offending cartoon, the domestic courts had examined the case in detail and had weighed in the balance the various interests at stake: the applicant’s right to freedom of expression, on the one hand, and the protection of the rights of others, on the other, on the basis of sufficient and relevant reasons. The Court lastly noted that while a prison sentence could have been handed down, the applicant had been sentenced on appeal to pay 10,000 euros, and that while this was a significant amount it was less than that imposed at first instance.

## Verbally insulting the national flag

### Fragoso Dacosta v. Spain

8 June 2023

This case concerned the applicant’s criminal conviction (a fine of 1,260 euros), for having insulted the Spanish flag while protesting as a trade union representative, over unpaid wages of the cleaners of the Ferrol Military Arsenal building, a military base under the responsibility of the Ministry of Defence. From October 2014-March 2015, the employees, together with some trade-union representatives, held daily protests in front of the arsenal, shouting slogans, whistling and generally being noisy. Those protests coincided with the solemn daily raising of the national flag in the presence of the military. The applicant complained that the criminal sanction imposed on him had violated his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in respect of the applicant, as it was not persuaded that the domestic authorities had struck a fair balance between the relevant interests at stake when convicting the applicant and imposing such an excessive sanction on him. In particular, while the Court accepted that the language used by the applicant could have been considered provocative and the use of expletives gratuitous, there had been no indications of disorder or disturbances following his statements and neither the *Audiencia Provincial* nor the Spanish Government had sought to justify his conviction by reference to incitement to violence or hate speech. Further, although the Constitutional Court had referred to a “feeling of intolerance” transmitted by the applicant, it had not examined whether there had been sufficient grounds to find that his statements had amounted to hate speech, such as the existence of a tense political or social background or the capacity of the statements to lead to harmful consequences.



## Online hate speech

---

### Delfi AS v. Estonia

16 June 2015 (Grand Chamber)

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The applicant company, which runs a news portal run on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, the applicant company removed the offensive comments about six weeks after their publication.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It first noted the conflicting realities between the benefits of Internet, notably the unprecedented platform it provided for freedom of expression, and its dangers, namely the possibility of hate speech and speech inciting violence being disseminated worldwide in a matter of seconds and sometimes remaining persistently available online. The Court further observed that the unlawful nature of the comments in question was obviously based on the fact that the majority of the comments were, viewed on their face, tantamount to an incitement to hatred or to violence against the owner of the ferry company. Consequently, the case concerned the duties and responsibilities of Internet news portals, under Article 10 § 2 of the Convention, which provided on a commercial basis a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engaged in clearly unlawful speech, which infringed the personality rights of others and amounted to hate speech and incitement to violence against them. In cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, the Court considered that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. Based on the concrete assessment of these aspects and taking into account, in particular, the extreme nature of the comments in question, the fact that they had been posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction (320 euro) imposed on the applicant company, the Court found that the Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression.

### Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary

2 February 2016

This case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites following the publication of an opinion criticising the misleading business practices of two real estate websites. The applicants complained about the Hungarian courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing

exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites. It is to be noted that the applicants' case was different in some aspects from the *Delfi AS v. Estonia* case (see above) in which the Court had held that a commercially-run Internet news portal had been liable for the offensive online comments of its readers. The applicants' case was notably devoid of the pivotal elements in the *Delfi AS* case of hate speech and incitement to violence. Although offensive and vulgar, the comments in the present case had not constituted clearly unlawful speech. Furthermore, while *Index* is the owner of a large media outlet which must be regarded as having economic interests, *Magyar Tartalomszolgáltatók Egyesülete* is a non-profit self-regulatory association of Internet service providers, with no known such interests.

### **Pihl v. Sweden**

7 February 2017 (decision on the admissibility)

The applicant had been the subject of a defamatory online comment, which had been published anonymously on a blog. He made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment. The claim was rejected by the Swedish courts and the Chancellor of Justice. The applicant complained to the Court that by failing to hold the association liable, the authorities had failed to protect his reputation and had violated his right to respect for his private life.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that, in cases such as this, a balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal. In light of the circumstances of this case, the Court found that national authorities had struck a fair balance when refusing to hold the association liable for the anonymous comment. In particular, this was because: although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days.

### **Smajić v. Bosnia and Herzegovina**

18 January 2018 (decision on the admissibility)

This case concerned the applicant's conviction for incitement to national, racial and religious hatred, discord or intolerance following a number of posts on an Internet forum describing military action which could be undertaken against Serb villages in the Brčko District in the event of another war. The applicant alleged in particular that he had been convicted for expressing his opinion on a matter of public concern.

The Court declared the applicant's complaint under Article 10 (freedom of expression) of the Convention **inadmissible** as being manifestly ill-founded. It found in particular that the domestic courts had examined the applicant's case with care, giving sufficient justification for his conviction, namely that he had used highly insulting expressions towards Serbs, thus touching upon the very sensitive matter of ethnic relations in post-conflict Bosnian society. Furthermore, the penalties imposed on him, namely a suspended sentence and a seized computer and laptop, had not been excessive. Therefore, the interference with the applicant's right to freedom of expression, which had been prescribed by law and had pursued the legitimate aim of protecting the reputation and rights of others, did not disclose any appearance of a violation of Article 10 of the Convention.

### **Nix v. Germany**

13 mars 2018 (décision sur la recevabilité)

This case concerned the applicant's conviction for posting picture of a Nazi leader and swastika in a blog. The applicant argued that the domestic courts had failed to take into

account that his blog post was intended as a protest against school and employment offices' discrimination against children from a migrant background.

The Court declared the application **inadmissible** as being manifestly ill-founded. While accepting that the applicant had not intended to spread totalitarian propaganda, to incite violence, or to utter hate speech, and might have thought he was contributing to a debate of public interest, it considered that the domestic courts could not be reproached for concluding that he had used the picture of the former SS chief Heinrich Himmler with the swastika as an "eye-catching" device, which was one of the things the law penalising the use of symbols of unconstitutional organisations had been intended to prevent (the so-called "communicative taboo"). Domestic case-law was clear that the critical use of such symbols was not enough to exempt someone from criminal liability and that what was required was clear and obvious opposition to Nazi ideology. In the applicant's case, the Court saw no reason to depart from the domestic courts' assessment that the applicant had not clearly and obviously rejected Nazi ideology in his blog post. The Court therefore concluded that the domestic authorities had provided relevant and sufficient reasons for interfering with the applicant's right to freedom of expression and had not gone beyond their room for manoeuvre ("margin of appreciation") in the case.

### **Savva Terentyev v. Russia**<sup>12</sup>

28 August 2018

This case concerned the applicant's conviction for inciting hatred after making insulting remarks about police officers in a comment under a blog post.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that while the applicant's language had been offensive and shocking that alone was not enough to justify interfering with his right to freedom of expression. The domestic courts should have looked at the overall context of his comments, which had been a provocative attempt to express his anger at what he perceived to be police interference, rather than an actual call to physical violence against the police.

### **Kilin v. Russia**<sup>13</sup>

11 May 2021

This case concerned the applicant's trial and conviction for disseminating extremist materials. The applicant in this case had been accused of posting allegedly racist video and audio files involving neo-Nazis, racial epithets, people of apparently Caucasian descent and calls to extremism on a popular online social network. He complained in particular that his criminal conviction had been in violation of his rights.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. In the circumstances of the case, and given the racist nature of the material and the absence of any commentary on such content, it found that the domestic courts had convincingly demonstrated that the impugned material had incited ethnic discord and, foremost, the applicant's clear intention of bringing about the commission of related acts of hatred or intolerance. Moreover, while there was no indication that the material had been published against a sensitive social or political background, or that at the time the general security situation in Russia had been tense, those elements had not been decisive in the present case. Lastly, the nature and severity of the penalties imposed (a suspended eighteen-month term of imprisonment with a similar period of probation and some other requirements) had been proportionate in the specific circumstances.

### **Standard Verlagsgesellschaft mbH v. Austria (No. 3)**

7 December 2021

This case concerned court orders for the applicant media company to reveal the sign-up information of registered users who had posted comments on its website, the website of

<sup>12</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>13</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

the newspaper *Der Standard*. This had followed comments allegedly linking politicians to, among other things, corruption or neo-Nazis, which the applicant company had removed, albeit refusing to reveal the information of the commenters.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the domestic courts had overall failed to balance the rights at issue and to give sufficient reasons to justify the interference with the applicant company's rights. It considered, in particular, that the comments at issue had been neither hate speech nor incitement to violence, and had been about two politicians and a political party in a political debate of public interest. The court orders had thus not been "necessary in a democratic society".

### **Sanchez v. France**

15 May 2023 (Grand Chamber)

This case concerned the criminal conviction of the applicant, at the time a local councillor who was standing for election to Parliament, for incitement to hatred or violence against a group of people or an individual on the grounds of their membership of a specific religion, following his failure to take prompt action in deleting comments posted by others on the wall of his Facebook account. The applicant alleged that his conviction had breached his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that, taking account of the State's margin of appreciation, the decisions of the domestic courts had been based on relevant and sufficient grounds, with regard both to the applicant's liability, as a politician, for the unlawful comments posted by the third parties, who had themselves been identified and prosecuted as accomplices, and to the applicant's criminal conviction. The interference in question could thus be regarded as "necessary in a democratic society". The Court noted in particular that the criminal case had turned solely on the applicant's lack of vigilance and failure to react in respect of comments posted by others. It had thus raised the question of the shared liability of the various actors involved in social media. The French criminal courts, applying a "cascading liability" regime introduced by the Law of 29 July 1982, had convicted the authors for the unlawful messages together with the applicant as the Facebook account holder, being characterised as "producer". First, the Court considered that the domestic legal framework, providing for a sharing of liability between all those involved, had been sufficiently precise, for the purposes of Article 10 of the Convention, to enable the applicant to regulate his conduct in the circumstances. Secondly, the Court agreed with the domestic courts that the comments at issue, which had been posted in the specific context of a forthcoming election, could be classified as hate speech, when interpreted and analysed in terms of their immediate impact, and were therefore unlawful. Thirdly, it took the view that the interference with the applicant's freedom of expression pursued not only the legitimate aim of protecting the reputation or rights of others, but also that of preventing disorder or crime. Further, as the applicant had decided to make his Facebook "wall" publicly accessible and had "authorised his friends to post comments", in the Court's view he could not have been unaware, in view of the local tensions and ongoing election campaign around that time, that his choice was clearly not without certain potentially serious consequences.

## Hate speech and right of others to respect for private life

### **Kaboğlu and Oran v. Turkey**

30 October 2018

This case concerned newspaper articles containing threats and hate speech against the applicants, two university lecturers, attacking them for the ideas they had presented in a report addressed to the Government concerning questions of minority and cultural rights. The applicants lost their cases before the domestic courts, which took the view that the offending articles fell within legislation protecting freedom of expression. The applicants complained that the national authorities had not protected them from the

insults, threats and hate speech directed against them in the press on account of the ideas they had expressed in their report.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the applicants, finding that the domestic courts had not struck a fair balance between their right to respect for their private life and freedom of the press. It considered, in particular, that the verbal attacks and threats of physical harm made against the applicants sought to undermine their intellectual personality, causing them feelings of fear, anxiety and vulnerability in order to humiliate them and break their will to defend their ideas. The Court also found that the domestic courts had not provided a satisfactory answer to the question of whether freedom of the press could justify, in the circumstances of the case, the damage caused to the applicants' right to respect for their private life by passages amounting to hate speech and incitement to violence, thus being likely to expose them to public contempt.

### **Beizaras and Levickas v. Lithuania**

14 January 2020

The applicants, two young men who were in a relationship, alleged that they had been discriminated against on the grounds of sexual orientation because of the authorities' refusal to launch a pre-trial investigation into the hate comments on the Facebook page of one of them. The latter had posted a photograph of them kissing on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in general, while others personally threatened the applicants. The applicants submitted that they had been discriminated against on the grounds of sexual orientation. They also argued that the refusal had left them with no possibility of legal redress.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention, finding that the applicants had suffered discrimination on the grounds of their sexual orientation and that the Lithuanian Government had not provided any justification showing that the difference in treatment had been compatible with the standards of the Convention. It noted in particular that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them so publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation. Such a discriminatory attitude had meant that the applicants had not been protected, as was their right under the criminal law, from undisguised calls for an attack on their physical and mental integrity. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention because the applicants had been denied an effective domestic remedy for their complaints.

### **Association ACCEPT and Others v. Romania**

1 June 2021

This case concerned the interruption, by a group of about 50 people who entered the venue shouting homophobic remarks, insulting and threatening the participants, of the public screening of a movie portraying a same-sex family, organised by the applicant association and attended by the other applicants. The investigation into the applicants' criminal complaint, for incitement to discrimination, abuse of office by restriction of rights and the use of fascist, racist or xenophobic symbols in public, was discontinued by the prosecutor and their challenges thereto were unsuccessful.

The Court held, *inter alia*, that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention, in respect of the individual applicants, finding that the Romanian authorities had failed to discharge their positive obligation to investigate in an effective manner whether the verbal abuse directed towards the individual applicants constituted a criminal offence motivated by homophobia. In doing so, the authorities had shown their own bias towards members of the LGBT community. The Court reiterated, in particular, that while being careful not to hold that each and every utterance of hate speech must, as such, attract criminal prosecution and criminal sanctions, comments



that amounted to hate speech and incitement to violence, and were thus clearly unlawful on the face of things, might in principle require the States to take certain positive measures. Likewise, inciting hatred did not necessarily amount to a call for an act of violence or other criminal acts. Attacks on people committed by insulting, holding up to ridicule or slandering specific groups of the population could be sufficient for the authorities to favour combating racist speech in the form of freedom of expression exercised in an irresponsible manner. The Court also emphasised that the necessity of conducting a meaningful inquiry into the possibility that discriminatory motives had lain behind the abuse was absolute, given the hostility against the LGBT community in the respondent State and in the light of the evidence that homophobic slurs had been uttered by the intruders during the incident. In the absence of such an inquiry, prejudice-motivated crimes would inevitably be treated on an equal footing with cases without such overtones, and the resultant indifference would be tantamount to official acquiescence, or even connivance in, hate crimes.

### **Valaitis v. Lithuania**

17 January 2023

In January 2018 the applicant published an essay on the Internet portal of a major daily newspaper, *lytas.lt*, mentioning a finalist of the televised singing competition *The Voice*, who had publicly come out as homosexual. Twenty-one comments were posted in reply, insulting both the applicant and homosexuals, going so far as to suggest that homosexuals should be burnt in Auschwitz. Before the Court, the applicant submitted that the Lithuanian authorities had not taken effective measures to protect homosexuals from hate speech.

The Court held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention in respect of the applicant. It noted in particular that the reopening of the investigation in the present case, following its judgment in the case *Beizaras and Levickas v. Lithuania* (see above), had demonstrated a clear and positive shift in the State authorities' attitude towards the prosecution of hate crimes, who had drawn the necessary conclusions from that judgment. The Court did not find that the reopened pre-trial investigation in the applicant's case had been discontinued or suspended owing to a prejudicial attitude by the authorities. Although it had not led to anyone being charged or convicted, it had not, on the whole, fallen short of the requirements under Article 13 of the Convention.

## Texts and documents

---

See, among others:

- [Guide on Article 10 of the European Convention on Human Rights – Freedom of expression](#), prepared under the authority of the Jurisconsult
  - Council of Europe [Internet page](#) on "Hate speech"
- 

### **Media Contact:**

Tel.: +33 (0)3 90 21 42 08