

Incitement in media content and political discourse in EU Member States

Contribution to the second Annual Colloquium
on Fundamental Rights - November 2016

Media content and political discourse in EU Member States, whether online or offline, show incitement to discrimination, hatred or violence on different grounds, as evidence collected by the European Union Agency for Fundamental Rights (FRA) reveals. The growing reliance on the internet as the main source of information for many enables the fast spread of often unverified statements that could also incite to hatred. This FRA contribution to the second Annual Colloquium on Fundamental Rights provides a snapshot of manifestations of incitement in media content and political discourse against different groups in EU Member States. It outlines the European and international legal framework governing such cases, substantiated by relevant case law examples. Highlighting that members of minority groups perceive the prevailing social climate as condoning racism, xenophobia and intolerance, this FRA paper underlines the need for EU institutions and Member States to address the effect incitement can have on the population groups it targets.

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Incitement in the public sphere of the European Union¹

The arrival of asylum seekers and migrants in large numbers in the European Union (EU) since 2015 combined with reactions to (foiled) terrorist attacks in a number of EU Member States has contributed to the more open manifestation of racism, xenophobia and intolerance in public discourse, as evidence collected by the European Union Agency for Fundamental Rights (FRA) [shows](#).² In this context, it is worthwhile recalling that “[r]acist and xenophobic attitudes expressed by opinion leaders may contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of conduct, such as racist violence,” as the European Commission noted in its 2014 [report](#) on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The growing reliance on the internet as the main source of information for many – particularly Facebook, as the [Pew Research Center](#) shows – enables the fast spread of (unverified) statements that could incite to hatred. Statements posted online can go viral almost instantly, making it difficult to challenge them and to remove them completely. This, in turn, can have a corrosive effect, where such content gets amplified in ‘echo chambers’ where alternative views are seldom, if ever, expressed.

In other words, the continued and unrestrained expression of intolerant rhetoric disseminated through the media and in political discourse could lead to incitement to discrimination, hatred or violence. International legal instruments govern such cases; they include provisions that guarantee and define the scope of the right to freedom of opinion and expression. As this FRA paper shows, the legal framework relevant to incitement is informed by European Union, Council of Europe and United Nations

standards, as well as by commitments made by states participating to the Organization for Security and Co-operation in Europe (OSCE).

This paper also provides a snapshot of manifestations of incitement in media content and political discourse in EU Member States, on the basis of a request the European Commission made to the FRA in the framework of its [second Annual Colloquium on Fundamental Rights](#) on media pluralism and democracy. The [multidisciplinary research network](#) of the agency collected the information, which covers the period 1 January 2014-1 September 2016.

Legal framework relevant to incitement

European Union

It is universally acknowledged that the media play an important role for societies based on democracy, human rights and the rule of law. These elements are also the cornerstones of the values on which the EU is founded. These values are common to all EU Member States, as Article 2 of the [Treaty on the European Union \(TEU\)](#) stresses: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

These values are not only central for any country applying for membership to the EU (Article 49 of the TEU); they are also at the core of continued membership of the Union. This is clearly signalled by the sanctions mechanism included in Article 7 of the TEU. This mechanism enables the EU to react in situations where its values come under serious threat. As the EU Treaties state, the values enshrined in Article 2 have to inform both the internal and external behaviour of the EU.

The [Charter of Fundamental Rights of the European Union \(Charter\)](#) provides a more detailed translation of these values into a human rights language. Article 11 of the Charter concerns freedom of expression and information, with other provisions relevant to addressing incitement including:

- Article 2 on the right to life;
- Article 3 on the right to the integrity of the person;
- Article 7 on the right to respect for private life and family life;
- Article 8 on the right to protection of personal data;
- Article 21 on the right to non-discrimination;
- Title III on equality more generally.

The Charter does not extend the field of application of Union law and applies to Member States only when they are acting within the scope of EU law (Article 51 of the Charter). The rights outlined above nevertheless form the normative backbone of the EU as far as incitement is concerned.

The importance given to the media and the role they have in relation to incitement also finds expression in EU legislation. Article 6 of the [Audiovisual Media Services Directive \(2010/13/EU\)](#) stipulates that EU Member States “shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality”. Under Article 3, Paragraph 4, lit. a of this directive, Member States are permitted to derogate from freedom of reception and restrict the retransmission of audiovisual media in “the fight against any incitement to hatred on the grounds of race, sex, religion or nationality”.

This directive was under revision at the time of writing, with the [draft proposal](#) envisaging the establishment of a European Regulators Group for Audiovisual Media Services. This group would be entitled, among others, to give opinions, in particular on the protection of minors and on incitement to hatred. The draft also calls on Member States to ensure

that providers of video-sharing platforms take appropriate measures to protect all citizens from content containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin. In this sense, the Audiovisual Media Services Directive’s notion of ‘incitement to hatred’ is limited in scope and covers only some of the grounds listed in Article 19 of the [Treaty on the Functioning of the European Union \(TFEU\)](#), which covers discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law defines hate speech as “publicly inciting to violence or hatred”.

The framework decision also calls for the criminalisation of publicly condoning, denying or grossly trivialising crimes against humanity or genocide. Such offences need to be effectively punished, including “where the conduct is committed through an information system” (Article 9).

Council of Europe

Through its case law relating to the [European Convention of Human Rights](#), the European Court of Human Rights (ECtHR) has enhanced legal norms developed by the Council of Europe to address incitement. When interpreting the Convention, the Court always requires that any limitation to Article 10 on freedom of expression is prescribed by law, pursues a legitimate aim and is necessary in a democratic society.

When the Court is confronted with speech that is clearly racist, xenophobic or that consists of Holocaust denial, it refuses to apply the guarantees of Article 10 of the Convention. If, on the other hand, the Court considers that the impugned speech could contribute to a discussion of public interest, it will assess the necessity of the restriction to

freedom of expression. The following examples illustrate this dual approach.

An essential aspect of the ECtHR case law on freedom of expression should be mentioned first. Since the *Handyside v. the United Kingdom* judgement in 1976, this case law always recalls that "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". Such an approach requires that a high level of protection be afforded, 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".

In *Erbakan v. Turkey*, the Court clarified that "tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance [...] provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued".

The ECtHR does not use any specific definition of the concept of incitement in individual cases. Instead, in its judgements it takes into account a number of facts that have an influence on the context within which the speech has been produced, as the examples that follow illustrate; all these examples relate specifically to the media.

In *Jersild v. Denmark*, the ECtHR examined the conviction of a journalist who had been found guilty of aiding and abetting the dissemination of racist statements, when he reproduced the racist views of people he interviewed. The Court found that the right to freedom of expression of the journalist had been violated. In its judgement, the Court held that "News reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is

able to play its vital role as public watchdog. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so".

In *Féret v. Belgium*, the applicant, then a Member of Parliament and Chair of a political party, was also an author and the editor of the party's publications. He was convicted because of the distribution of leaflets produced for an election campaign. These leaflets advocated for the deportation of immigrants, the creation of ethnic ghettos, and converting asylum seekers' centres into shelters for the homeless. The ECtHR observed that the leaflets portrayed immigrant communities as criminally minded and as keen to exploit the benefits they derive from living in Belgium. Hence, the comments could trigger feelings of distrust, rejection or even hatred towards foreigners.

The Court was also called upon to examine a complaint about liability for user-generated comments on an internet news portal. In *Delfi AS v. Estonia* – the first case of its type – the applicant was one of the largest news portals in Estonia, which national courts had held accountable for offensive comments posted by readers below one of its online news articles. In its Chamber judgment, the ECtHR found that the conviction was proportionate and justified, as the comments posted were highly offensive. The Chamber judgment also stated that the portal had failed to prevent the comments from becoming public, profited from their existence and allowed their authors to remain anonymous.

The case was subsequently referred to the Grand Chamber, which upheld this decision and further clarified that when third-party user comments incite to hatred and provide direct threats to the physical integrity of individuals, then "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”.

When confronted with clearly racist speech or Holocaust denial, the ECtHR has not hesitated to invoke Article 17 of the European Convention on Human Rights on the prohibition of abuse of rights. Article 17 aims to withhold the benefit of the guarantees of the Convention from those who wish to use them to further an objective contrary to the values protected by the Convention. The *Garaudy v. France* case provides one example of the Court’s approach in this regard. In this case, the ECtHR declared inadmissible the application of a writer convicted for Holocaust denial, defamation in public of a group of persons and incitement to violence. It ruled that the content of the applicant’s book had indeed amounted to Holocaust denial, which not only constitutes one of the most serious forms of racial defamation of Jews, but also triggers incitement to hatred towards them. Consequently, the Court held that such acts are incompatible with the fundamental values of the Convention and the applicant could therefore not benefit from the protection afforded by Article 10.

Other standards of the Council of Europe are also relevant here. Article 3 of the 2003 [Additional Protocol to the Convention on Cybercrime](#) requires states to “adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system”.

In 1968, the Committee of Ministers of the Council of Europe had adopted [Resolution 68 \(30\)](#) on measures to be taken against incitement to racial, national and religious hatred. Since then, there has been “considerable diversity in the range of strategies devised by the Council of Europe to combat ‘hate speech’”.³ One strategy has been to include relevant provisions in legal instruments it adopts, such as Article 6 on a

spirit of tolerance and Article 9 on freedom of expression of the 1995 [Framework Convention for the Protection of National Minorities](#).

When adopting [Recommendation 97 \(20\)](#) on hate speech in 1997, the Council of Europe’s Committee of Ministers reached a political agreement on defining what hate speech encompasses, namely “all forms of expressions which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”. [Recommendation 97 \(21\)](#) on the media and the promotion of a culture of tolerance complements Recommendation 97 (20), which the Committee of Ministers also adopted.

In its 2015 [General Policy Recommendation No. 15](#) on combating hate speech, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe proposes a broader definition: “Hate speech is to be understood for the purpose of the present General Policy Recommendation as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of ‘race’, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status. [H]ate speech may take the form of the public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes which have been found by courts to have occurred, and of the glorification of persons convicted for having committed such crimes.”

In its General Policy Recommendation No. 15, the European Commission against Racism and Intolerance recognises, however, that all forms of expression “will not on that account

alone amount to hate speech". In doing so, it embraces the approach adopted by the ECtHR in its case law relevant to hate speech.⁴

United Nations

Turning to relevant standards of the United Nations, Article 7 of the Universal Declaration of Human Rights dictates the prohibition of incitement from an international law viewpoint. It states: "All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

Article 19 of the International Covenant on Civil and Political Rights guarantees freedom of expression and sets out limitations thereof (Article 19 (3)). This article needs to be read in conjunction with Article 20 (2) of the Covenant, a more specific obligation concerning the prohibition of incitement to hatred. It states: "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".⁵

[General Comment No. 34](#), adopted by the Human Rights Committee in 2011, explains the relationship between these two articles: "What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19 [...] It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. In every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19."

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination further requires States parties to "condemn all propaganda [...] based on ideas or theories of superiority of one race or group of persons of one colour or ethnic

origin, or which attempt to justify or promote racial hatred and discrimination in any form." Article 4 of this convention also requires States parties to declare all dissemination of ideas based on racial superiority, hatred or incitement to racial discrimination an offence punishable by law.

The mandatory character of this norm was reaffirmed by the Committee on the Elimination of Racial Discrimination in recommendations that relate to measures to eradicate incitement to or acts of discrimination. [General Recommendation 7](#) and [General Recommendation 15](#) emphasise that states are obliged not only to enact adequate legislation but also to ensure its effective enforcement. These recommendations were adopted in 1985 and 1993, respectively.

In its 2013 [General Recommendation 35 on combating racist hate speech](#), the Committee further observed that "Racist hate speech can take many forms and is not confined to explicitly racial remarks. As is the case with discrimination ... speech attacking particular racial or ethnic groups may employ indirect language in order to disguise its targets and objectives ... States parties should give due attention to all manifestations of racist hate speech and take effective measures to combat them ... whether emanating from individuals or groups, in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events".

In this context, it is worth noting provisions of [General Recommendation 30 on discrimination against non-citizens](#) adopted in 2005, which require states to address and combat hate speech targeting non-citizens. This recommendation also requires for states to "counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians officials, edu-

cators and the media, on the internet and other electronic communications networks and in society at large”.

The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression provides guidance on the way to reconcile the need to protect freedom of expression while combating discrimination and incitement to hatred. The special rapporteur provides a detailed overview of legal and non-legal measures in his [2012 report on the promotion and protection of the right to freedom of opinion and expression](#), including education, social dialogue, data collection and media ethics that need to be taken into account.

Organization for Security and Co-operation in Europe

Participating States to the Organization for Security and Co-operation in Europe (OSCE) have signed up to a number of [commitments](#) to preserve the freedom of the media, freedom of expression and the free flow of information. The annual [Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression](#) are also indicative of challenges to media freedom and freedom of expression in the world.

A snapshot of incitement in media content and political discourse in the EU

At the EU level, systems of checks and balances exist in EU Member States to assess whether statements made in the media or by political actors fall within the boundaries of the rights to freedom of opinion and expression. In the period between 1 January 2014 and 1 September 2016, courts, national equality bodies, independent press councils and independent regulatory or supervisory bodies for broadcasting organisations in a number of EU Member States found incitement in a number of instances, as this section of the paper shows.

These are all different types of bodies with different mandates. Yet, they all play a key role in ensuring that tolerance and non-discrimination are safeguarded in EU Member States. The fact that such a diverse range of bodies found incitement in media content and political discourse indicates that systems of checks and balances to tackle incitement function.

It is also true that not all incidents of incitement will make it to the attention of courts, equality bodies or (self-)regulatory bodies. For this reason, the information presented in this FRA paper should not and cannot be taken as evidence that any given type of incitement is more or less prevalent in any given Member State. Instead, this information provides a snapshot of how incitement can manifest itself in media content and political discourse in EU Member States.

Broadly speaking, courts, national equality bodies, independent press councils and independent regulatory or supervisory bodies for broadcasting organisations found incitement in media content and political discourse in **Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland** or **Romania** between 1 January 2014 and 1 September 2016. These concerned incitement against migrants and refugees; ethnic minorities or national minorities; religious minorities; sexual minorities; or persons with disabilities, each of which will now be dealt with in turn.

Incitement against migrants and refugees

Between 1 January 2014 and 1 September 2016, courts, national equality bodies, independent press councils and independent regulatory or supervisory bodies for broadcasting organisations ruled that media content and political discourse in several Members states incited against migrants and refugees, among which **Bulgaria, Cyprus, Ireland, Finland, France, Greece** or **Poland**.

Court decisions

Two court cases relating to incitement against refugees in Bulgaria can be highlighted, with the first concerning fines imposed on a television channel and the other concerning fines imposed on a political party. The Sofia City Administrative Court in June 2014, upheld a fine imposed by the Bulgarian Council of Electronic Media on a cable television channel (Eurocom/Евроком), which the Sofia Regional Court had overturned on appeal.

The original case concerned comments made in October 2013 by the presenter of a television show against Syrian refugees who seek asylum in Bulgaria. Among others, she described refugees as carriers of disease and as potential criminals. The administrative court held that freedom of expression can be restricted when it infringes upon other constitutionally protected rights. The court further [concluded](#) that statements made by the presenter incited to intolerance towards Syrian refugees, as well as they provoked hostility, fear and anger.

In the second case, the Sofia City Administrative Court upheld a fine imposed by the Council of Electronic Media on the television channel of the Ataka political party (Alfa TV/Алфа ТВ). The original case concerned comments made in September 2013 by a talk show host against Syrian refugees, which she described as mass murderers, thieves and rapists, among others. The talk show host was then a representative of Ataka in the national parliament. During the programme in question, she also called for riots and for an uprising to protect Bulgaria against these refugees. The court [held](#) that such statements amount to incitement to hostility towards refugees.

A representative of the Greek Golden Dawn party was served a one-year jail sentence plus a three-year suspended sentence in September 2014, on a conviction of public incitement to hatred and violence, under Article 1 of Law 927/1979 on punishing acts or activities aiming at racial discrimination. He appeared in a television documentary in March 2012, where he, among others, referred to migrants as sub-humans and as

parasites that would be turned to soap by Golden Dawn, with their skins used to make lampshades.

The Athens Single-Member Court of Misdemeanours ruled that such comments publicly incited to violence against foreigners, with the purpose of setting an example that would compel them to leave Greece.⁶ In fact, the court perceived that these statements had been acted upon by some, since violent attacks and beatings of immigrants and other extreme behaviours were carried out following this documentary being broadcasted.

District courts in Finland and Poland were called to rule on cases of incitement to hatred against migrants and refugees by internet users during the reporting period. In the Finnish case, the District court of Central Finland found in April 2016 that a video uploaded on a public Facebook page and on an anti-refugee website called "Keep Finland Clean" amounted to incitement to ethnic hatred.⁷ The video showed a child being encouraged by his parents to be violent to a stuffed monkey, which he referred to as being a refugee. The court ruled that the purpose of publishing this video was to threaten, defame and insult refugees as a group on the basis of race, skin colour, birth status, national or ethnic origin, as well as on the basis of their refugee status.

In another case concerning messages posted on a public Facebook page, the [District Court of Lublin in Poland](#) ruled in February 2016 that insulting Syrians and calling for them to be gassed constituted incitement to violence under Article 256 of the Polish criminal code. This article relates to incitement to hatred based on nationality, ethnicity, race or religion. In its judgment, the court noted that such comments are found more and more often on social media.

Decisions by other bodies

In May 2016, the national equality body of Cyprus received four complaints relating to a programme aired on national television. These relate to an interview with a Greek

singer notorious for expressing racist comments against migrants and refugees. During the interview, he described migrants as raping Greece and as colonising the country as part of a plan orchestrated by Turkey to 'Islamise' Greece – such statements are particularly sensitive in the Cypriot context. The television channel screened the interview twice despite pleas from non-governmental organisations and political parties not to air it because of the extreme views they knew the singer would express.

The [equality body](#) opted not to position itself on the legal liability of the Television channel, considering this to be the domain of the Radio Television Authority and the Cyprus Media Complaints Commission, stating that it does not wish to affect or prejudice any investigation conducted by the police in relation to possible crimes committed by the singer.

The Cyprus Media Complaints Commission did examine complaints submitted to it in relation to this incident, in the light of article 12 of the [Code of Journalistic Ethics](#). This article requires journalists to avoid any reference or action against persons that contain elements of prejudice on the basis of race, colour, language, religion, political or other convictions. The Commission ruled that statements made by the singer during the interview were racist and xenophobic and found the television channel responsible for offering a platform for the expression of these views. The Commission referred to [the law transposing the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law](#), which foresees five years' imprisonment and a fine of €10,000 for those who disseminate racist messages.

The Cyprus Radio and Television Authority also initiated an investigation into this incident and found that the interview amounted to incitement to hatred and imposed administrative fines on the Television channel. The [Authority's decision](#) stated that incitement to hatred against migrants and refugees cannot be tolerated at a time when Europe is receiving large

numbers of refugees amidst protests from far-right organisations. The television channel paid the fine imposed by the Cyprus Radio and Television Authority, but at the same time filed an application in court for judicial review of the Authority's decision, claiming that this contained an error in law for infringing freedom of expression. At the time of writing, the case had not yet been decided.

In November 2015, the [Broadcasting Authority of Ireland upheld a complaint](#) of racism and incitement to hatred against migrants and asylum seekers. The complainant alleged that a late night radio phone-in talk show "permitted callers to express hatred and racism against others" and that "more air time was given to those who used negative stereotypes to portray immigrants as culturally more prone to violence, laziness, and welfare dependency than was given to persons presenting opposing views".

The [French Higher Audio-visual Council held](#) in June 2014 that statements made by a political commentator on national radio in May 2014 were likely to encourage discriminatory behaviour towards specific populations groups and incite to hatred or violence against them. The commentator described Chechens, Roma, Kosovars, North Africans and Africans as plundering, aggressive and thieving hordes. The Council referred to Article 15 of the Law of 30 September 1986 on the freedom of audio-visual communication, which empowers the Council to ensure that broadcasted programmes do not contain any incitement to hatred or violence on the grounds of race, sex, morals, religion or nationality.

Incitement against ethnic and national minorities

Between 1 January 2014 and 1 September 2016, courts, national equality bodies, independent press councils and independent regulatory or supervisory bodies for broadcasting organisations ruled that media content and political discourse in several Members states incited against ethnic and national minorities, among which **Austria**,

Bulgaria, the Czech Republic, Italy, the Netherlands, Poland or Romania.

Court decisions

The Constitutional Court in the Czech Republic clarified in June 2015 that parliamentary immunity only applies to statements that contribute to debates in parliament or that serve to impart information or communicate opinions to other parliamentarians. This meant that charges brought by the police against a member of parliament for anti-Roma statements he posted on a public Facebook page held.⁸

In another case concerning anti-Roma statements posted on a public Facebook page, a Czech politician was found to incite to hatred against a group of persons as a result of election materials he posted online. The District court of Nový Jičín ruled in March 2015 that using slogans such as “The Final Solution to the Roma issue”, together with pictures of white sheep pushing out black sheep can be likened to Nazi slogans.⁹

In February 2014, a professional soldier in Poland was found guilty of incitement to hatred against Roma by the Wrocław Military Court. He had posted comments under a news article in the online version of the *Gazeta Wroclawska* newspaper. In his comments, the soldier praised an anti-Roma demonstration organised by an extreme right-wing organisation and offered to buy gasoline to burn down provisional housing of Roma persons to make space for walks, at a time when Roma settlements in Wrocław were being shut down by the local authorities.

In another case concerning Roma, the Maribor High Court in Slovenia confirmed, in August 2014, that five members of a local council were guilty of incitement to hatred, violence and intolerance against Roma. Comparing Roma to rats who should be poisoned to stop them from reproducing is one example of incriminating statements made on the occasion of a meeting they organised in March 2012 to protest against a Roma family moving to their village. The court found that statements of this kind – and the fact that

they went unchallenged – may endanger or disturb public order and peace.¹⁰

In January 2014, the High Court of Justice and Cassation in Romania ordered the national equality body to re-examine a case that it had declared inadmissible on procedural grounds in 2011. The case relates to a public statement on Roma made by the country’s then president. During a press conference in November 2010, he stated that Roma are difficult to integrate into society because they are unwilling to work and rely on thieving to make a living. In February 2014, the [equality body found](#) the president guilty of ethnic discrimination and of breaching the right to dignity of the person.

In a case concerning incitement against persons of African descent, [the criminal court of Trento, Italy, ruled](#) in May 2014 that a message posted on a public Facebook page amounted to incitement to racial hatred and to defamation. In this case, the defendant had posted a message to the effect that Cecile Kyenge, Italy’s first black minister of state, should resign and go back to the jungle. The court ruled that insults, threats, violence and verbal attacks on the personal dignity of a person do not fall under the protection of the right to freedom of expression.

In February 2014, the [Amsterdam District Court convicted](#) the owner of a website and the moderator of a thread on that site under article 137e of the Dutch criminal code. This article criminalises making public or disseminating statements that the perpetrator should know is insulting to a group of persons because of their race or that incite to racial discrimination. The publicly available thread in question invited internet users to air their racist opinions. The moderator had also posted cartoons lampooning black people, allegedly with the ironic intention of highlighting how stupid racist statements can be, and therefore without the intention of insulting black people or inciting to hatred against them. The court rejected this line of argument.

In another case concerning the Netherlands, the [Supreme Court](#) upheld the conviction of a

representative of the *Nederlandse Volks-Unie*, an extreme right-wing party, in March 2016. Statements he made in public during a demonstration in Enschede in May 2011 to the effect that Turkish people should go to Turkey were found to consist of incitement to racial discrimination and to insult a group of people because of their race. Articles 137c and 137d of the Dutch criminal code protect people against discrimination and incitement based on their racial or ethnic background, gender, sexual orientation, disability or religion.

Decisions by other bodies

In March 2015, the Romanian equality body found a minister of state guilty of racial discrimination against the Roma.¹¹ In 2010, the then minister of foreign affairs claimed in a speech that the Roma have a natural, physiological tendency towards criminality. In its final ruling, the equality body highlighted that the fine it served to the minister was asked for by the Bucharest Court of Appeals and that imposing sanctions that are too severe is a disproportionate breach of the right to freedom of expression. In addition, it held that since the minister's speech was delivered in 2010, the pedagogical effect of the fine would no longer have the desired impact. In any event, the equality body pointed out that the minister's speech targeted an entire community; that the Roma community is one of the most vulnerable in Romania; and, that racial discrimination constitutes the most severe form of discrimination.

The national equality body of Romania initiated an investigation into anti-Roma statements made in an online article by a representative of the *Uniunea Populară Maghiară/Magyar Népi Szövetség* (Hungarian People's Union). In his article, the party representative characterised Roma as being lazy and thieves, and stated that the only way for him to protect his family against the local Roma community would be to become a racist and a neo-Nazi. The equality body found in May 2015 that this article was in breach of the right to human dignity of the Roma community and that the right to

freedom of expression does not extend to protecting neo-Nazi, xenophobic or extremist speech.¹²

The national equality body in Romania also started an investigation against a local newspaper in response to an article portraying Roma as thieves, beggars, burglars and brawlers, and claiming that Roma inmates are impossible to rehabilitate. The equality body found that the article was infringing upon the right to human dignity of the members of the Roma community as guaranteed by Romanian anti-discrimination legislation. As a result, that article did not fall under the protection of the right to freedom of expression.¹³

The Romanian National Audiovisual Council sanctioned a television station because in one of its shows, the host stated that Hungarians were the enemy of Romania and that they were ready to exterminate the Romanian people. The Council considered these statements to be hostile and extremely serious, particularly in a context where anti-Hungarian discourse in Romania is perceived to be on the rise.¹⁴ The Council considered these statements to be in breach of the right to freedom of expression as defined by the Constitution and the jurisprudence of the European Court of Human Rights.

The [Austrian Press Council](#) found in March 2014 that the description of Roma and Sinti in Europe as, among others, beggars, thieves, alcoholics and wife beaters in an article in a weekly magazine to be contrary to provisions of the journalistic code relating to protection against discrimination.

In January 2016, the [Journalist Ethics Commission in Bulgaria](#) found that a newspaper article differentiating between Roma and the remainder of the Bulgarian population violated provisions of the code of ethics of the Bulgarian media on incitement to hatred, violence or discrimination. The headline of the incriminated article consisted of a quote of a local Roma resident, full with grammatical mistakes. In addition, the article implied that only Roma would accept to cast their votes in exchange for money, as

opposed to 'other Bulgarians', who would not do such a thing.

Incitement against religious minorities

Between 1 January 2014 and 1 September 2016, courts, independent press councils and independent regulatory or supervisory bodies for broadcasting organisations ruled on cases or complaints relating to incitement to hatred against (members of) Muslim, Jewish and Christian communities in a number of Member States, including **Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Hungary, Italy, Lithuania, the Netherlands** or **Slovakia**.

Court decisions

The District Court of Pirkanmaa in Finland found in February 2014 that posting comments in a blog and on Facebook to the effect that Muslims are rapists and that their culture is one of violence amounts to incitement to violence against Muslims, as well as to defamation against Islam.¹⁵ In another case concerning comments describing Muslims as rapists and as being dirty, the [District Court of North Holland](#) ruled in July 2016 that posting such comments on Facebook amounts to insulting a religion and incites to discrimination on the ground of religion. In a case involving Twitter, the High Court of Denmark found in February 2016 that a tweet by a representative of the *Dansk Folkeparti* (Danish People's Party) incited to violence against Muslims.¹⁶ This tweet compared Muslims to Hitler and called for them to receive the same treatment Hitler got, presumably death.

Concerning incitement against Jews, in July 2015 the [Austrian Supreme Court](#) upheld a prison sentence served to a defendant who had posted comments inciting to hatred against Jews and against Israeli citizens on a public Facebook page.

In another case pertaining to parliamentary immunity, the Brussels Court of Correction found, in June 2015, an independent member of the federal parliament in Belgium guilty of

Holocaust denial as a result of comments questioning the existence of gas chambers he posted on his blog. Holocaust denial qualifies as a criminal offence in Belgium.

The Administrative Court of Burgas addressed the antisemitic trope of the Jewish conquest in January 2015. The court [upheld](#) the finding of the Council of Electronic Media in Bulgaria that comments made on national television describing Jews as wanting to conquer the world to consist of incitement to national intolerance.

A case in Lithuania concerns posts made on public Facebook pages comparing Christianity to a religion of zombies or stating that the end for Christians is nigh, with this statement accompanied by a photograph of the bleeding, severed head of a pig. The [Klaipeda Regional Court](#) ruled in July 2016 that the public dissemination of such statements amounts to incitement to discrimination or hatred against people because of their religion.

Decisions by other bodies

Still concerning incitement against Jews, a complaint considered by the Lithuanian Commission of Ethics in the Provision of Information to the Public can be noted. This complaint concerned the author of a book who claimed that Lithuania was being invaded by Jews who destroy its factories and agriculture, deprive Lithuanians of their freedom and steal their land and resources. The [ethics commission](#) found the publication to be in breach of provisions of the Code of Ethics of Lithuanian Journalists and Publishers relating to incitement to hatred.

The [Austrian Press Council](#) found in January 2015 that a newspaper article with the headline "Tomorrow's Jihadists start early" illustrated with a picture of a boy with a dagger in his hand was in violation of provisions of the journalistic code of ethics relating to prohibition of discrimination and to respect for religion.

The Belgian Council for Journalistic Deontology also handled a complaint relating to the usage of a photograph to illustrate a

newspaper article. In this case, a photograph depicting a Muslim woman wearing a full veil was used to illustrate an article for which this type of veil was of no relevance. [The Council considered](#) that the choice of picture created confusion in the minds of readers about the central questions evoked in the article, which had no bearing on the full veil. In February 2014, the Council found that the grounds of the complaint, namely that the article was not respectful of the truth, that it distorted information and that it incited to hatred was well-founded.

The German Press Council found that a comment included in a daily newspaper describing Islam as an obstacle to integration could disturb public peace, as well as it was in violation of provisions of the press code relating to respect for human dignity, religion and non-discrimination.¹⁷ Essentialist representations of Islam were also the subject of a complaint filed with the regional council of Lombardy of the professional order of journalists in Italy. Here, the complaint related to equating the terrorist attack against *Charlie Hebdo* with Islam, which, in June 2016, [the council considered](#) to amount to incitement to hatred on the ground of religion.

The National Media and Info-communications Authority of Hungary considered a similar complaint in May 2016. [The authority found](#) that a newspaper article stating that all Muslims are potential killers following the November 2016 attacks in Paris and that the borders of the European Union should have been sealed and no refugees let in after these attacks amounted to incitement to hatred, in breach of the [Hungarian Media Act](#).

The [Council for Broadcasting and Retransmission in Slovakia found](#) that a radio station incited to hatred and violence against Muslims, as a result of one of the presenters claiming that if radicalised Muslims are not killed by you, then they will kill you.

Concerning incitement against Christians, [the Electronic Media Council in Croatia unanimously decided](#) to suspend the licence of a local, Zagreb-based, television station (*Z1 televizija*) for three days, from 26 to 29

January 2016. The reason was that a warning given at the end of a show to citizens of Zagreb not to walk near the Serbian Orthodox Cathedral of the Transfiguration of the Lord, because "their children could become victims of Chetnik slaughter" violated Article 12 (2) of the Electronic Media Act. This article prohibits, among others incitement to hatred and discrimination on the ground of religion.

Incitement against sexual minorities

Courts and independent regulatory or supervisory bodies for broadcasting organisations in **Bulgaria, Croatia, Greece, Lithuania, the Netherlands or Poland** ruled on cases relating to incitement to hatred against sexual minorities between 1 January 2014 and 1 September 2016.

Court decisions

Concerning incitement against homosexuals, in February 2016, the [Amsterdam Court of Appeals](#) upheld the conviction of a local politician who had been found guilty of incitement to discrimination against homosexuals, as well as of insulting homosexuals. The politician represented the *Republikeinse Moderne Partij*, a republican party. Among others, he made statements to the effect that homosexuals are dirty, that it is normal to hate them and that they should be expelled from Amsterdam in an interview aired on a local television channel in February 2010. The [Amsterdam Court of Appeals ruled](#) that such remarks are "so contrary to the Constitution and the fundamental principles of the Dutch democratic constitutional state that they are not worthy of protection".

In a case concerning incitement to violence against homosexuals, the [District Court of Kielce in Poland found](#) in May 2016 that a local councillor representing the *Prawo i Sprawiedliwość* party (Law and Justice) guilty of threatening participants in a demonstration against homophobia, along with seven other persons. They shouted statements calling for homosexuals to be beaten up, gassed or killed during a demonstration held in May 2010.

At the time of the judgment, the Polish criminal code did not contain provisions directly related to addressing incitement to hatred against homosexuals. The case was therefore ruled on on the basis of Article 119 of the criminal code, which relates to the concept of 'unlawful threat', that is, threatening someone in such a way that it provokes a reasonable fear in them.

A February 2015 ruling of the Misdemeanour Court in Rijeka in Croatia concerned a post made by a minor on the page of the Zagreb Pride Association, calling for homosexuals to be beaten up, slaughtered and thereby exterminated. Taking the age of the perpetrator into account, the court issued him with a reprimand, while highlighting that this post violated the dignity of the person and consisted of incitement to hatred on the ground of sexual orientation.¹⁸

A case in Lithuania concerned a video uploaded on YouTube titled "God hates homosexuals". The video holds that homosexuals are cursed by God, that they will burn in hell and that the prohibition of homosexuality should be reintroduced in the criminal code. The [Kaunas District Court ruled](#) in October 2014 that uploading this video was a criminal offence and that it incited to hatred and discrimination on the ground of sexual orientation.

Decisions by other bodies

The [Council of Electronic Media in Bulgaria found](#) that a presenter of a television programme on a private channel discriminated against homosexuals, when she described them as being inferior people and stated that they should not be allowed to serve in government. The Council held in June 2016 that by broadcasting a programme setting social groups with different sexual orientations against each other, the media service provider incited to intolerance between citizens, in breach of the Radio and Television Act.

The National Radio and Television Council in Greece examined a complaint where the host of a television show made repeated

derogatory remarks towards transsexuals, while openly admitting that she has no respect for them and blaming them for being socially marginalised. [The Council found](#) in June 2015 that the host's views amounted to incitement to hatred against the transsexual community and ordered the television channel to pay €15,000 in administrative fines.

In conclusion

This FRA paper shows that incitement to discrimination, hatred or violence on different grounds can be identified in media content and political discourse in EU Member States, whether online or offline. Where incitement is found, it might be useful to recall that the FRA emphasised [in its 2012 report on making hate crime visible in the EU](#) that "the message conveyed by the offender sends a signal not only to the individual victim, but also to other persons who feel that they are at risk of being labelled and treated like the victim. Moreover, the bias-motivated offence, when understood as a statement about persons who (are thought to) bear a certain characteristic, has the potential to incite followers. The impact [...] thus reaches far beyond the immediate interaction between offender and victim."

This is particularly relevant in a context where members of minority groups perceive that the prevailing social climate indeed condones racism, xenophobia and intolerance. [Surveys conducted by FRA](#) evidence such perceptions, such as the [survey on discrimination and hate crime against Jews](#), in which 5,847 self-identified Jewish people participated. Findings of this survey show that in the country where they live and based on their experience:

- 59 % of respondents perceive that antisemitism in the media as a whole is a very big or fairly big problem, with another 56 % specifically perceiving that antisemitic reporting is a problem;
- 75 % of respondents perceive that antisemitic comments on the internet are a problem, with another 73 % perceiving that the level of

antisemitism on the internet rose in the five years preceding the survey;

- 44 % of respondents perceive that antisemitism in political life is a very big or fairly big problem, with another 53 % perceiving that antisemitic comments in political speeches and discussions are a problem.

The challenge for EU institutions and Member States is to address the effect incitement can have on the population groups it targets. One possibility would be to encourage media literacy, including in the digital environment. Indeed, enabling a critical reading of media content in all its forms would enable people to recognise, confront and report statements that could incite to hatred. The same applies for political discourse.

This, in turn, could help defuse a situation where people feel emboldened to use ever more intolerant language to criticise people they do not like or activities they do not agree with. It would also help EU Member States to meet requirements under Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination: "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups."

Endnotes

- ¹ The European Union Agency for Fundamental Rights (FRA) would like to thank the agency's Scientific Committee and three independent experts (Elda Brogi, Centre for Media Pluralism and Media Freedom; Steven Ellis, International Press Institute; and Tarlach McGonagle, Institute for Information Law) for their input to previous versions of this paper.
- ² All hyperlinks in this FRA paper link to original sources, where these are available. The endnotes reference sources for which no web links are available.
- ³ McGonagle, T. (2012), 'A survey and critical analysis of Council of Europe strategies for countering "Hate Speech"', in Herz, M. and Molnar, P. (eds.), *The content and context of hate speech: Rethinking regulation and responses*, Cambridge, Cambridge University Press, p. 456.
- ⁴ See European Court of Human Rights (2016), *Factsheet – Hate speech*, Press Unit, June 2016; Oetheimer, M. (2009), 'Protecting freedom of expression: The challenge of hate speech in the European Court of Human Rights case law', *Cardozo Journal of International & Comparative Law*, Vol. 17, No. 3, pp. 427-444; Tulkens, F. (2012), 'When to say is to do: Freedom of expression and hate speech in the case-law', in Casadevall, J., Myjer, E. et al (eds.), *Freedom of expression: Essays in honour of Nicolas Bratza*, Oisterwijk, Wolf Legal Publishers, pp. 279-295; Tretter, H. (2013), 'Der europäische Rechtsrahmen zur Bekämpfung von Hassrede', in Feik, R. and Winkler, R. (eds.), *Festschrift für Walter Berka: Sonderdruck*, Wien, Jan Sramek Verlag, pp. 237-262.
- ⁵ O'Flaherty, M. (2015), 'International Covenant on Civil and Political Rights: Interpreting freedom of expression and information standards for the present and the future', in McGonagle, T. and Donders, Y. (eds.), *The United Nations and freedom of expression and information: Critical perspectives*, Cambridge, Cambridge University Press, pp. 55-88.
- ⁶ Greece, Athens Single-Member Court of Misdemeanours, Decision 65738/2014, Case of Alexandros Plomaritis.
- ⁷ Finland, District Court of Central Finland, R 15/3178.
- ⁸ Czech Republic, Nález Ústavního soudu I.ÚS 3018/14.
- ⁹ Czech Republic, *Rozsudek Krajského soudu v Ostravě 5 To 47/2015*.
- ¹⁰ Slovenia, sodba *Višjega sodišča v Mariboru*, opr. št. IV Kp 36334/2012.
- ¹¹ Romania, Petitia nr 15310/23.03.2014 în fața Consiliului Național pentru Combaterea Discriminării.
- ¹² Romania, Petitia nr 5619/20.08.2014 în fața Consiliului Național pentru Combaterea Discriminării.
- ¹³ Romania, Petitia nr 1093/13.02.2015 în fața Consiliului Național pentru Combaterea Discriminării.
- ¹⁴ Romania, Consiliul Național al Audiovizualului, *Sesizare împotriva emisiunii TV Lumea lui Banciu*, Decision No. 206/17 March 2016.
- ¹⁵ Finland, District Court of Pirkanmaa, R 13/6335.
- ¹⁶ Denmark, High Court, U. 2016.2066Ø, Case nr. S-2812-15.
- ¹⁷ Germany, Deutscher Presserat, Beschwerde No. 0597/14/2,.
- ¹⁸ Croatia, J-1570/14-13, Prekršajni sud u Rijeci.

Further information:

The following FRA publications offer further information on the themes explored in this paper:

- *Fundamental Rights Report 2016* (2016), <http://fra.europa.eu/en/publications-and-resources/publications/annual-reports/fundamental-rights-2016>;
- *Fundamental Rights Forum - Chair's Statement* (2016), <http://fra.europa.eu/en/publication/2016/fundamental-rights-forum-chairs-statement>;
- *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of anti-semitism* (2013), <http://fra.europa.eu/en/publication/2013/discrimination-and-hate-crime-against-jews-eu-member-states-experiences-and>
- *Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary* (2013), <http://fra.europa.eu/en/publication/2013/racism-discrimination-intolerance-and-extremism-learning-experiences-greece-and> (available in Greek and Hungarian);
- *Making hate crime visible in the European Union: acknowledging victims' rights* (2012), <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights> (available in English, French and German).

Further information on FRA's work in the field of hate crime, and racism and related intolerances is available on the FRA website:

- <http://fra.europa.eu/en/theme/hate-crime>
- <http://fra.europa.eu/en/theme/racism-related-intolerances>



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