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## Monitoring and Detecting Online Hate Speech

### **D4.1b: FAQ on Responding to online hate speech**

#### **Abstract**

This document introduces hate speech and the challenges it causes in society. There is a short overview of several court cases which provide a contextual background for a set of frequently asked questions about hate speech. The answers to these questions have been developed by the partners to the Mandola project based on research on current position papers on this topic. This deliverable includes many outcomes of Deliverable 2.1b which provides a broader, comprehensive review of the legal issues relevant to assessment of hate speech.

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## 1 Introduction

The purpose of this document is to identify and answer a range of frequently asked questions relating to hate speech on the Internet. These questions are identified and selected by the partners who participate in the Workstream 4 on Reporting and Networking. They are selected to cover a wide range of issues and to minimise duplication. This document depends on the ongoing work of Workstream 2 on Legal and Ethical Framework which is developing a document on relevant legal definitions in this space.

The nature of hate speech is complicated since national and international legislation covers a comprehensive range of issues which protect freedom of speech and places limits and responsibilities on these freedoms which then restricts what is permitted by law. There are types of content on the Internet, which are clearly and unambiguously addressed such as child abuse material, which are specifically covered by international conventions prohibiting the manufacture, possession and distribution of child abuse material. There is an additional protocol to the Council of Europe Cybercrime Convention, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>1</sup>.

Hate speech is a very complex issue with many different definitions and understandings of what is considered to be hate speech. In the Manual on hate speech<sup>2</sup> by Anne Weber it is noted that *“no universally accept definition of the term “hate speech” exists, despite its frequent usage”*. This document highlights the issues around incitement of racial hatred when anger and hatred is directed against specific persons or groups in society specifically on the basis of being of a specific race. It also covers such behaviours based on religious grounds. The term "hate speech" might include all forms of expression which spread, incite, promote or even justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance. This also includes intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

This document is not intended to provide detailed legal advice or descriptions since legal issues are covered in comprehensive detail in the work and deliverables of Mandola Worksteam 2 on Legal and Ethical Framework. Further research will be required by readers of this document to fully understand and cope with the complex nuances when interpreting hate speech. This document is intended as a brief overview for the non-skilled reader and deliberately simplifies and concisely describes complex legal issues.

This document first describes the Mandola project and its objectives. It then describes illegal content and activity online and, to highlight the challenging debate in this area, describes examples from historical legal cases what might be considered as hate speech. In some cases, recent legislation may have addressed the issues raised in these cases. This document then describes the current responses to online hate speech and then answers a range of the frequently asked questions in some detail. It draws some short conclusions and then provides sources for additional reading on this complex subject.

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<sup>1</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189>

<sup>2</sup> [http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Hate\\_Speech\\_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Hate_Speech_EN.pdf)

## 2 Mandola Project Overview

MANDOLA (Monitoring ANd Detecting OnLine hAte speech) is a 24-months project co-funded by the Rights, Equality and Citizenship (REC) Programme of the European Commission. The project operated from October 2015 until September 2017 with reduced support after those dates.

The project is led by the project coordinator FORTH (Foundation for Research and Technology – Hellas) in a consortium with Aconite Internet Solutions (Ireland), the International Cyber Investigation Training Academy (Bulgaria), Inthemis (France), the Autonomous University of Madrid (Spain), the University of Cyprus (Cyprus) and the University of Montpellier (France). Further, and up-to-date details are available on the project website on <http://www.mandola-project.eu><sup>3</sup>.

### 2.1 Mandola Objectives

MANDOLA aims at improving the public understanding of how online hate speech prevails and spreads. The project also aims at empowering ordinary citizens to monitor and report hate speech. MANDOLA's objectives are:

- to monitor the spread and penetration of online hate-related speech in EU member states using a big-data approach, while investigating the possibility to distinguish between the potentially illegal hate-related speech and non-illegal hate-related speech;
- to provide policy makers with information that can be used to promote policies for mitigating the spread of online hate speech;
- to provide ordinary citizens with useful tools that can help them deal with online hate speech irrespective of whether they are bystanders or victims;
- to transfer best practices among EU Member States.

The MANDOLA project addresses the two major difficulties in dealing with online hate speech: lack of reliable data and poor awareness on how to deal with the issue. Although in general online hate speech seems to be on the rise, it is not clear which member states seem to be suffering most. It is not even clear which kind of online hate speech (e.g. homophobia, xenophobia, etc.) is on the rise. Moreover, the available data generally do not easily distinguish between illegal hate content and harmful (but not illegal) hate content. The different legal systems in various member states make it difficult for ordinary people to make such a distinction. It is even more difficult for citizens to know how to deal with illegal hate content and to know how to behave when facing harmful but not illegal hate content. Without reliable data it is very difficult to make reliable decisions and push policies to the appropriate level.

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<sup>3</sup> Last accessed November 2017

## 2.2 Mandola Innovations

The project has two main innovative aspects. The first is the extensive use of IT and big data to study and report online hate, and the second is the research on the possibility to make clear distinction between legal and not illegal content taking into account the variations between EU member states legislations.

MANDOLA is serving: (i) policy makers - who will have up-to-date online hate-speech related information that can be used to create enlightened policy in the field; (ii) ordinary citizens - who will have a better understanding of what online hate speech is and how it evolves - will be provided with information for recognizing legal and (illegal) online hate-speech and will know what to do when they encounter (illegal) online hate speech; and (iii) witnesses of online hate speech incidents - who will have the possibility to report hate speech anonymously.

## 2.3 Mandola Activities

In order to achieve the set of core objectives, the project implemented several activities:

- Legislation of illegal hate-speech in 10 European countries was analysed.
- The legal and ethical framework on privacy, personal data and protection of other fundamental rights was identified and analysed in order to implement adequate safeguards during research.
- A monitoring dashboard was developed which identifies and visualizes cases of online hate-related sentiment via social media (such as Twitter) and the Web
- A multi-lingual corpus of hate-related speech was created based on the collected data. It is used to define queries in order to identify Web pages that may contain hate-related speech and to filter the tweets during the pre-processing phase. The vocabulary was developed with the support of social scientists and enhanced by the Hatebase repository (<http://www.hatebase.org/>).
- A reporting portal was established which allows Internet users to report potentially illegal hate-related speech material and criminal activities they detect on the Internet.
- A smart-phone application was developed which allows anonymous reporting of potentially illegal online hate-related speech materials.
- A Frequently Asked Questions document was created. The FAQ document is disseminated via the project portal and the smart-phone app.
- A network of National Liaison Officers (NLOs) of the participating member states was created. They act as contact persons for their country and will exchange best practices and information.
- A landscape and gap analysis document was written. Some countries still do not have sufficient methods or structures to handle complaints or reports about hate speech. That is why a landscape of current responses to hate speech across Europe was completed and a Best Practices Guide for responding to online hate speech for Internet industry in Europe will be created and disseminated. A comprehensive survey among key stakeholders - major Internet Service Providers and Law



Enforcement will be conducted. They will identify the key challenges and best practices in responding to hate speech transnationally.

### 3 Illegal Content and Activity Online

Freedom of expression is strongly protected in Europe, and the debate lies in the question to know what is or not morally totally inadmissible, in a given society, which is a very sensitive issue.

Indeed, freedom of expression has been considered by the European Court of Human Rights<sup>4</sup> (ECtHR) as constituting "*one of the essential foundations of (...) a (democratic) society, one of the basic conditions for its progress and for the development of every man*"<sup>5</sup>. This means that "*every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere*"<sup>6</sup> must have a legal basis, a legitimate aim, must be necessary (i.e. useful in order to answer a crucial issue<sup>7</sup> - the ECtHR evokes a "pressing social need"<sup>8</sup>), and must be proportionate to the legitimate aim pursued. The prohibition of hatred towards "others" is a legitimate aim, since it preserves the rights of others. However, the necessity of such a prohibition is less obvious in all situations, since hatred might be everywhere and is a common human feeling<sup>9</sup>. Therefore, societies need to define which morals and values are absolutely not tolerated, so that society can then reasonably justify the necessity of the prohibition of such identified morals and values. The European Court of Human Rights leaves a certain margin of variation (appreciation), to Member States, on this issue<sup>10</sup>. Once unacceptable behaviours are defined, in a restrictive way, their prohibition must be legally based and proportionate, and all the other "*'information' or 'ideas' that offend, shock or disturb the State or any sector of the population*" must be protected, since "*such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'*"<sup>11</sup>.

Since the legal requirements of morals vary from time to time and from place to place<sup>12</sup>, it is very difficult to obtain a common definition of hate speech as it must be legally combatted, or as it might be individually combatted (since the combatting of other forms of hatred might generate personal liability, if disproportionate<sup>13</sup>). Further, for this reason and for reasons linked to the differences between treaties and between the way these treaties have been transposed, the comparative study of the legislations of ten EU Member States shows a wide disparity in the definition of unacceptable hatred. (See Deliverable D2.1)

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<sup>4</sup> The European Convention on Human Rights applies in the 47 Member States of the Council of Europe, including all the EU Member States.

<sup>5</sup> European Court of Human Rights, *case of Handyside v. The United Kingdom*, 7 December 1976, Application no. 5493/72, §49, available at [hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499&filename=001-57499.pdf&TID=erlfalnvex](http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499&filename=001-57499.pdf&TID=erlfalnvex) (last accessed on 30 June 2016).

<sup>6</sup> *Ibid.*, §49.

<sup>7</sup> See Estelle De Marco and Cormac Callanan, in C. Callanan, M. Gerecke, E. De Marco and H. Dries-Ziekenheiner, Internet blocking - balancing cybercrime responses in democratic societies, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>); Estelle De Marco and all., Deliverable D3.3 - Legal recommendations - ePOOLICE project (early Pursuit against Organized crime using environmental Scanning, the Law and Intelligence systems), projet n° FP7-SEC-2012-312651, version 1.2 of 29 August 2014 and version 1.3 of 10 December 2014.

<sup>8</sup> See for example European Court of Human Rights, *case of Handyside v. The United Kingdom*, §48.

<sup>9</sup> See below Section 5.1.

<sup>10</sup> European Court of Human Rights, *case of Handyside v. The United Kingdom*, §48.

<sup>11</sup> *Ibid.*, §49.

<sup>12</sup> *Ibid.*, §48.

<sup>13</sup> The principles of legal basis, legitimate aim, necessity and proportionality of any restriction to the freedom of expression applies to individuals as well.

### 3.1 What kind of behaviours could represent hate speech?

This section presents a range of court decisions issued by the European Court of Human Rights<sup>14</sup> relating to different aspects of hate related speech and behaviours. The decisions of this Court are of utmost interest since it may receive applications from any person once domestic remedies have been exhausted<sup>15</sup>, and since the European Convention on Human Right, which bases its rulings, applies in the 47 Member States of the Council of Europe<sup>16</sup>. The purpose is to provide a brief review and context to the debate on hate speech and the complex issues raised by different activities and court decisions. The selected cases are not intended to be complete or comprehensive but simply a sample of interesting court decisions.

#### 3.1.1 Incitement to ethnic hatred – Case 1

Sample Case: Pavel Ivanov v. Russia (20 February 2007)

The applicant was convicted in Russia of public incitement to ethnic, racial and religious hatred through the use of mass-media. As owner and editor of a newspaper, the applicant called for the exclusion of Jews in a series of articles that he authored and published. In these articles, he accused an entire ethnic group of plotting a conspiracy against Russian and associated Fascist ideology against the Jewish leadership. He relentlessly denied the Jews the right to national dignity, claiming that they are the source of all evil in Russia.

The applicant raised his case before the European Court of Human Rights which declared the application inadmissible. The Court, agreeing with the Russian courts, stated that the circumstances show a general and vehement attack on one ethnic group, which is in contradiction with the Convention's underlying values, notably tolerance, social peace and non-discrimination. Consequently, the Court found that the applicant abusing his right of freedom of expression could not seek the protection of the Convention.

#### 3.1.2 Incitement to ethnic hatred – Case 2

Sample case: Balsytė-Lideikienė v. Lithuania (4 November 2008)

As owner of a publishing company, the applicant had published and distributed the “Lithuanian calendar 2000” which, based on the expert opinion of political science experts, promoted ethnic hatred. Before the Polish courts, the applicant was found guilty to breach the Code on Administrative Offences and was issued with an administrative warning while the unsold copies of the calendar were confiscated. Alleging the infringement of her right to freedom of expression, the applicant raised her case before the European Court of Human Rights.

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<sup>14</sup> For additional background reading, two documents published by the Council of Europe provide more detailed case histories: [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf), [http://www.rgsl.edu.lv/uploads/files/ECHR\\_fact\\_Sheet\\_on\\_hate\\_Speech.pdf](http://www.rgsl.edu.lv/uploads/files/ECHR_fact_Sheet_on_hate_Speech.pdf)

<sup>15</sup> See for example European Court of Human Rights, Council of Europe, 2014, *Practical guide on admissibility criteria*, available at [http://www.echr.coe.int/Documents/Admissibility\\_guide\\_ENG.pdf](http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf) (last accessed on 4 July 2016).

<sup>16</sup> Indeed, they have all ratified or accessed the Convention. See the chart of signatures and ratifications on the Council of Europe website at [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=wUm3fgaP](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=wUm3fgaP) (last accessed on 4 July 2016).

The Court found no violation of Article 10 of the Convention holding that the administrative measures taken were necessary in view of the aggressive nationalism and ethnocentrism expressed by the applicant and her statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian authorities cause for serious concern.

### **3.1.3 Racial hate**

Sample Case: Glimmerveen and Hagenbeek v. the Netherlands (11 October 1979)

The applicants had been convicted for possessing leaflets addressed to “White Dutch people”, which tended to ensure the departure from the Netherlands of all non-white people.

The European Commission of Human Rights declared the application inadmissible since the spreading of so general and vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination (and therefore cannot be protected under the Freedom of expression).

### **3.1.4 Incitement to racial discrimination or hatred**

Sample Case: Le Pen v. France (20 April 2010)

At the time of the offence, the applicant was president of a French party and he made various contentious statements about Muslims in France during an interview in a newspaper. Among other things, he asserted that “*the day there are no longer 5 million but 25 million Muslims in France, they will be in charge*”. These statements lead to 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. He disputed this conviction before the European Court of Human Rights.

The Court declared the application manifestly ill-founded finding that the interference with the applicant’s right of Freedom of speech was necessary. The Court observed that while the statements were made in the context of general debate, they portrayed the entire Muslim community as an existing latent threat to the dignity and security of the French people, and were likely to generate a feeling of rejection and hostility.

### **3.1.5 Negativism and revisionism**

Sample Case: Garaudy v. France (24 June 2003)

The applicant is the author of a book entitled “*The founding Myths of Modern Israel*” which analysed in detail a number of historical events relating to the Second World War - such as the persecution of the Jews and the Holocaust. The applicant was found guilty of disputing the existence of crimes against humanity, public defamation of the Jewish community and incitement to racial hatred. He alleged that his right to freedom of expression had been infringed.

The European Court of Human Rights declared the application inadmissible, stating that “*denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth*”. The Court also pointed out that “denying crimes against humanity is one of the most serious forms of racial defamation [...] and of incitement to hatred [...]” and that such statements constituted an abuse of right which cannot benefited of the protection of the freedom of expression.

### 3.1.6 Religious hate

Sample Case: Norwood v. The United Kingdom (16 November 2004)

The applicant had displayed in his window a poster representing the Twin Towers in flame with the caption “Islam out of Britain – Protect the British People”. The picture was supplied by a British party of which he was a member. Consequently, the applicant has been convicted of aggravated hostility towards a religious group. Before the European Court of Human Rights, he argued that his right to freedom of expression had been infringed.

The Court declared the application inadmissible, stating 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*”.

### 3.1.7 Incitement to religious intolerance

Sample case: İ.A. v. Turkey (13 September 2005)

As owner and managing director of a publishing company, the applicant has published several copies of a book which addressed, in a novelistic style, theological and philosophical issues. He was convicted for insulting “*God, the Religion, the Prophet and the Holy Book*” through that publication and was sentenced to two years of imprisonment and a payment of a fine. Before the European Court of Human Rights, he argued an infringement of his right to freedom of expression.

The Court pointed out that the case had to do not only with comments that offended or shocked the reader and with “provocative” opinions but also with “*an abusive attack on the Prophet of Islam*” (§29). On account of the passages in question “*believers [might] legitimately feel themselves to be the object of unwarranted and offensive attacks*” (§29). Given the margin of appreciation which countries were allowed in the matter of attacks on religious beliefs,<sup>17</sup> the respondent state had not breached Article 10 (on this analysis see Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing, p. 95<sup>18</sup>).

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<sup>17</sup> This sentence is very important. It highlights that the ECHR does not include in any case this behaviour in the list of ones that must be prohibited, but only considers that it may be admissible that such behaviour is prohibited in certain States, given their history and culture. It is of huge importance in the debate relating to the freedom of expression and the right to criticise in democracy... even beliefs.

<sup>18</sup> [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf). (last accessed November 2017)

### 3.1.8 Threat to the democratic order

Sample Case: Communist Party of Germany v. the Federal Republic of Germany (20 July 1957)

Dissolved and prohibited by Decision of the Federal Constitutional Court, the applicant, a German party, argued before the European Commission of Human Rights that this decision has violated its fundamental rights.

The Commission found the application inadmissible, holding that the original and actual (at the time of the Decision) aim of the party “to establish a socialist-communist system by means of a proletarian revolution and the dictatorship of the proletariat” is “incompatible with the Convention, as much as it includes the destruction of many of the rights or freedoms enshrined therein”.

### 3.1.9 Insult of State officials

Sample Case: Otegi Mondragon v. Spain (15 March 2011) <sup>19</sup>

As spokesperson for a left-wing Basque separatist parliamentary group, the applicant was convicted of the offence of serious insult against the King. Indeed, at a press conference, he portrayed 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 alleged before the European Court of Human Rights a breach of his right to freedom of expression.

The Court held a violation of the freedom of expression founded on a disproportion between the conviction, the sentence and the protection of the King of Spain’s reputation, as guaranteed by the Spanish Constitution. The Court stated that the statements, despite their provocative and hostile nature, “*did not advocate the use of violence, nor did they amount to hate speech*”.

Indeed, the disputed remarks had not been a personal attack against the King, nor did they concern his private life or his personal honour. They had related solely to the King’s institutional responsibility as Head and symbol of the State apparatus and of the security forces which, according to the applicant, had tortured the newspaper’s editors. The Court further noted that Mr Mondragon’s political comments had contributed to a wider public debate on possible torture by the Spanish security forces in the context of anti-terrorist activities and had therefore concerned a matter of public interest. (European Court on Human Rights factsheet on Hate speech, p7<sup>20</sup>).

### 3.1.10 Apology of violence and incitement to hostility

Sample Case: Sürek v. Turkey (n°1) (8 July 1999)

As owner of a weekly review, the applicant was convicted of “disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people”. Indeed, his review has published two readers’ letters which

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<sup>19</sup> A presentation of the case is available at <http://hudoc.echr.coe.int/eng-press?i=003-3470003-3906386>. (last accessed November 2017)

<sup>20</sup> [http://www.rgsi.edu.lv/uploads/files/ECTHR\\_fact\\_Sheet\\_on\\_hate\\_Speech.pdf](http://www.rgsi.edu.lv/uploads/files/ECTHR_fact_Sheet_on_hate_Speech.pdf). (last accessed November 2017)

condemned the military actions of the authorities in south-east Turkey, accusing them of brutal suppression of the Kurdish people in their struggle for independence and freedom. The applicant argued before the European Court of Human Rights that his right to freedom of expression has been breached.

The Court found no violation of the freedom of expression, noting that the letters, in regards of the references made and the fanning of “base emotions” in a strained context, amounted to an appeal to bloody revenge. Also, one of the letters stirred up hatred towards identified people, exposing them to the possible risk of physical violence. It had been further stated that if the applicant did not personally associate himself with the contents of the letters, he provided their writers with an “outlet for stirring up violence and hatred”.

### **3.1.11 Homophobic Activities**

Example: Circulating homophobic leaflets.

Sample case: Vejdeland and Others v. Sweden (9 February 2012)

The applicants, in an upper secondary school, had distributed roughly 100 leaflets which depicted homosexuality as a “*deviant sexual proclivity*” that had “*a morally destructive effect on the substance of society*” and was responsible for the development of HIV and AIDS. Those leaflets had been considered by the domestic courts to be offensive to homosexuals, which led to the conviction of the applicants. The applicants claimed before the European Court of Human Rights that they intended to start a debate about the lack of objectivity in the education in Swedish schools and not to stigmatise homosexuals.

The Court found no violation of the freedom of expression, considering that while the leaflets were not “*a direct call to hateful acts, they contained serious and prejudicial allegations that justified an interference by the Swedish authorities*”. It further stated that “*discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour*”.

### **3.1.12 Condoning terrorism, War Crimes**

Sample case: Leroy v. France ( 2 October 2008)

The applicant, a cartoonist, made a drawing representing the attack on the twin towers of the World Trade Center with the caption “*We all dreamt of it... Hamas did it*”. The drawing published in a Basque weekly newspaper on 13 September 2001 led to the conviction of the applicant of publicly condoning terrorism. Before the European Court of Human Rights, he claimed the infringement of his right to freedom of expression.

The Court held no violation of the freedom of expression in respect of the applicant’s conviction for complicity in condoning terrorism. Basing its finding on the caption “*We all dreamt of it... Hamas did it*”, the Court 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. Furthermore, such statements made in a politically sensitive region and following the attacks of the World Trade Center, had provoked a certain public reaction capable of stirring up violence*”.

### 3.1.13 Condoning war crimes

Sample case: Lehideux and Isorni v. France (23 September 1998)

The applicants wrote a piece of text, published in the daily newspaper, which portrayed Maréchal Pétain in a favourable light without mentioning any of the offences Pétain had been accused of and sentenced to death. The applicants 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 before the European Court of Human Rights..

The Court held a violation of the freedom of expression, considering that while it could be regarded as passionate, the text had no condoning nature since *“the applicants explicitly stated their disapproval of Nazi atrocities and persecutions”*. Furthermore, it was pointed out that text dealt with the theory of the Maréchal Pétain’s “double game” policy which was a public historical debate allowed by the freedom of expression.

### 3.1.14 Denigrating national identity

Sample Case: Dink v Turkey (14 September 2010)

Firat Dink, a Turkish journalist of Armenian origin, had been found guilty in 2006 of *“denigrating Turkish identity”* in respect of eight articles in which he expressed his views on the identity of Turkish citizens of Armenian origin. Hence, his relatives claimed that this conviction had made the late journalist a target for extreme nationalist groups.

The European Court of Human Rights found a violation of the freedom of expression, finding that Firat Dink’s conviction had not been compelled by any “pressing social need”. Indeed, the eight articles had no offensive or insulting nature, and did not incite to violence, resistance or revolt, neither did they incite to disrespect or hatred. The Court observed that the late journalist in his articles was merely addressing issues concerning a group minority – here the Armenians - which in a democratic society constitute an issue of public concern.

### 3.1.15 Display of a flag with controversial historical connotations

Sample Case: Faber v Hungary (24 July 2012)

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

The Court held that there had been a violation of the freedom of expression. While accepting the potential disrespectful nature of the display of a controversial symbol, the court found that such sentiment could not alone set the limits of freedom of expression. The Court found no legitimate aim justifying the conviction of the applicant, in view of his non-abusive or non-threatening behaviour, as well as the lack of a risk to public security.



## 4 Responses to Online Illegal Content and Activity

### 4.1 Legislation, Policy and Regulation

Hate speech and the right to non-discrimination are addressed in several legal instruments at the International and the European level. These instruments are the following:

At the United Nations level:

- International Convention on the Elimination of All Forms of Racial Discrimination.

At the Council of Europe level,

- Additional protocol to the Convention on cybercrime concerns the criminalisation of acts of a racist and xenophobic nature committed through computer systems;
- Article 14 of the European Convention on Human Rights (ECHR), which prohibits discrimination when applying the other provisions of the Convention;
- Additional protocol n°12 to the ECHR, which provides for a general prohibition of discrimination.

At the European Union level,

- Articles 21, 22 and 23 of the Charter of Fundamental Rights of the European Union (prohibiting discrimination and promoting equality between genders and cultural, religious and linguistic diversity),
- Council Directive 2000/43/EC of 29th of June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- In a lesser extent, Council Directive 2000/78/EC of 27th of November 2000 establishing a general framework for equal treatment in employment and occupation.

These legal instruments are not directly applicable in countries that must comply with them (the binding effect depends on the accession to or ratification of the related international treaty or convention, or on the EU membership of the country, in relation with Directives and Council framework decisions<sup>21</sup>), at the exception of some Treaties such as the ECHR which may have such a direct effect<sup>22</sup>. As a result, the application of these instruments implies most of the time their transposition into domestic law.

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<sup>21</sup> On the binding effect of Framework decisions see European Court, Judgment of the Court (Grand Chamber) of 16 June 2005, Case C-105/03, *European Court Reports 2005 I-05285*, §33 (available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003CJ0105> - last accessed on 30 June 2016).

<sup>22</sup> The direct effect depends on the status given to the treaty by each national Constitution. See for ex. Marc J. Bossuyt, *The direct applicability of International instruments on Human rights*, RBDI 1980.2, pp. 317 to 344, available at <http://rbdi.bruylant.be/public/modele/rbdi/content/files/RBDI%201980/RBDI%201980-2/Etudes/RBDI%201980.2%20-%20pp.%20317%20-%20C3%A0%20344%20-%20Marc%20Bossuyt.pdf> and at [http://www.academia.edu/633695/The\\_Application\\_of\\_the\\_ECHR\\_in\\_the\\_Domestic\\_Systems](http://www.academia.edu/633695/The_Application_of_the_ECHR_in_the_Domestic_Systems) (last accessed on 01/07/2016). In relation with the ECHR, See for example Estelle De Marco and Cormac Callanan, in C. Callanan, M. Gercke, E. De Marco and H. Dries-Ziekenheiner, Internet blocking - balancing cybercrime responses in democratic societies, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>), n° 6.5.2.2. (Last accessed November 2017)

From this situation may result differences of transposition, and therefore, at the end, differences between national legislations, which may in addition provide for additional provisions that are not covered by European and International instruments.

## **4.2 Organisations**

Fighting effectively on line hate speech may imply a synergy between public and private actors. Consequently, close cooperation between government and law enforcement agencies and NGOs combating hate speech online and providing support to victims and survivors is necessary in some situations. In addition, the positive role private bodies (such as host providers, Internet platforms and editors of on line content) can provide is also crucial.

### **4.2.1 Government Agencies**

Law enforcement agencies are assigned the delicate task of identifying online hate speech and of the proper and in time response in order to combat the propagation of such content, protect the victims and properly collect evidence in conformity with the law.

Governmental funded agencies can undoubtedly play a key role in the fight against online hate speech. A well-organised system of governmental agencies can assist the access of victims to the Public Prosecutor and Justice for claiming compensation and restoration.

### **4.2.2 NGO**

NGOs can have a very significant and active role in the prevention domain, by both tracking hate speech and initiating campaigns of public awareness (in relation with the negative effects of online hate speech, the support of the victims and the distinction between illegal hate speech and not legal speech).

Organisations, such as charities, independent from government and law enforcement agencies, which provide different ways of assistance, such as legal advice, counselling and other services to the victims, can play an important role.

## 5 Frequently Asked Questions

### 5.1 What is Hate Speech?

In the Oxford dictionary hate was initially defined as an emotion of "*intense dislike*", for someone or something, of an "*aversion to*" something<sup>23</sup>. Later updates include the feeling of "*hatred or intolerance*" which can be verbalised in a speech (becoming this way a "hate speech") and used to express "hatred or intolerance of other social groups, especially on the basis of race or sexuality"<sup>24</sup>. Hate speech might be more generally used to designate "hostile verbal abuse", and the term is "*sometimes understood to encompass written and non-verbal forms of expression*"<sup>25,26</sup>

This definition shows that hatred is a very wide notion, and corresponds to a very basic human feeling.

Within the framework of this wide definition, more restricted ones may be issued for different purposes, starting from the promotion of peace among humankind to the prohibition of unlawful acts, through the definition of what should be illegal but is currently not, on which all people do not necessarily agree.

While there is no universal comprehensive legal definition of hate speech, it is useful to consider and reflect on the views of the Committee of Ministers of the Council of Europe which has stated<sup>27</sup>, that they consider that "*hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin*".

Since there is no universal definition, some web pages and social platforms have adopted their own definitions of hate speech. Facebook defines the term 'hate speech' as "direct and serious attacks on any protected category of people based on their race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or disease.

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<sup>23</sup> Oxford dictionaries, "Definition of *hate* in English", available at <http://www.oxforddictionaries.com/definition/english/hate> (version of 8 July 2016).

<sup>24</sup> Oxford dictionaries, "Definition of *hate speech* in English", available at <http://www.oxforddictionaries.com/definition/english/hate-speech?q=hate+speech> (version of 8 July 2016).

<sup>25</sup> Oxford dictionaries, "Definition of *hate speech* in English", available at <http://www.oxforddictionaries.com/definition/english/hate-speech?q=hate+speech> (version of 8 July 2016).

<sup>26</sup> The Oxford dictionaries *Definition of hate speech in English*, has been modified and is now referring to an "*abusive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion or sexual orientation*" (version of 25 September 2017, available at [https://en.oxforddictionaries.com/definition/hate\\_speech](https://en.oxforddictionaries.com/definition/hate_speech)). It is to be noted that no justification is given to such modification, whereas the notions of "*hatred or intolerance*" are rather different than the notions of "*abusive or threatening*".

<sup>27</sup> Recommendation 97(20) of 30 October 1997

## 5.2 What is legally considered Hate Speech?

Legally speaking, hate speech is the speech that is prohibited by the law which applies to the situation. This very clear and simple definition hides a very complex situation in practice, even within the E.U.

International and European legal instruments (see 5.10 below) aim at harmonising national legislations in order to enforce cooperation possibilities<sup>28</sup>, and follow a similar approach on what should be at least illegal (mainly as regards the additional protocol to the Convention on cybercrime and the EU Council Framework decision 2008/913/JHA). However, these texts still show differences of content, and their transpositions into domestic laws have not been done in the same way (and sometimes in a non-harmonised manner at the domestic level). As a result, the E.U. Member States' legislations show huge disparities, which may lead to the punishment, non-punishment or lower punishment of certain behaviours or of certain grounds motivating the behaviour, depending on the precise circumstances that surround the potential offence, even in one single country, and depending on the country that will be competent to judge the case<sup>29</sup>.

Taking this situation into account, the comparative study which is available in the MANDOLA intermediate deliverable D2.1, proposes a classification of hatred content into three categories: (1) illegal in all or almost all of the 10 studied EU Member States, (2) illegal or partly illegal in a majority of these countries; (3) illegal in a minority of these countries. For the next section relating to infringements it is important to refer to the first three subsections of Section 4.1 of D2.1b (which provides more extensive description and explanations). For convenience, they are briefly summarised here.

The following behaviours are illegal in all or almost all the studied EU Member States:

- Publicly inciting hatred (or, additionally in 8 countries out of 10, violence or discrimination) directed against a group of persons or a member of such a group determined on the basis/grounds of their race, national or ethnic origin, and (if used as a pretext for any of the other factors) religion, if (3 countries out of 10 impose in addition one of the following conditions) the incitement is either carried out in a manner likely to disturb public order (2 countries), or public peace (1 country), or which is threatening, abusive or insulting (1 country, alternatively to the 1<sup>st</sup> condition). An important number of countries add additional illegal grounds such as sexual orientation (5 countries out of 10), gender or disability.
- Making available to the public xenophobic or racist material which incites hatred through a computer system, for the same illegal grounds as mentioned above (an important number of countries do also prohibit promotion of hatred, and incitement / promotion of violence or discrimination for the same illegal grounds and even additional ones in some countries).
- Publicly insulting a person or a group of persons by reason of their racial or ethnic origin or (if used as a pretext for any of the other factors) religion (prohibited or covered in 10 countries but only 6 of them accept one person or a group as a victim).

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<sup>28</sup> See for example the preamble of the additional protocol to the Convention on cybercrime and the preamble of the Council Framework Decision 2008/913/JHA, § 3 and 4.

<sup>29</sup> See D2.1, Section 3.5.

Additional illegal grounds may be provided for and certain countries impose an additional condition (such as the effect that this person or group of persons is exposed to hatred, contempt or ridicule).

- Public defamation, which is, in many countries, prohibited whatever the grounds. However, in certain countries an illegal motivation (predominately motivations based on race, nation, ethnicity, religion or other beliefs, conviction, sex or sexual orientation) is necessary.
- Threatening of a natural person with the commission of a serious offence (*10 countries*), **often under certain additional conditions** (*6 countries - depending on the country: threat likely to evoke fear or cause anxiety or intended to intimidate, or repeated or materialised, or committed with the intent to provoke a breach of the peace or knowledge that such a breach might occur*), **eventually motivated by racism or xenophobia** (for the reason he or she belongs to a group distinguished by their racial, national or ethnic origin, colour, descent, or -if used as a pretext for any of these factors-, religion).
- Direct or indirect discrimination, in particular areas (employment, guidance, involvement in organisations, social advantages, education, access to goods and services), including harassment. This prohibition mainly targets off-line behaviours, but could serve in some situations as a legal basis in order to sanction certain statements of discrimination or instructions to discriminate. Common illegal grounds are racial or ethnic origins but a lot of additional ones may be taken into account.

The following behaviours are illegal or partly illegal in a majority of the studied EU Member States:

- Establishing or participating in organisations that promote or incite discrimination or violence or hatred. Illegal motivations that are common to all the countries that prohibit at least partly the behaviour are race, or national or ethnic origin (covered in 9 countries out of 9). Moreover, religion is fully covered in 7 countries.
- Publicly condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes (totally prohibited or covered in 1 country out of 10, and mainly or partly prohibited/covered in 5 countries out of 10. 3 additional countries restrict the infringement to holocaust / National Socialism). Common illegal motivations are here race, religion, national or ethnic origin and (missing in only 1 country out of the 9 that cover at least partially the infringement) colour and descent.
- Sending of grossly offensive and/or indecent or obscene or menacing content (fully or partly prohibited in 6 countries out of 10). This behaviour, where penal sanctioned at least partly, is punishable whatever the grounds, except in Spain where motivations must be one of the following: religion or beliefs, family situation, membership of or not to an ethnic group, race or nation, national origin, gender, sexual orientation or identity reasons, reasons of gender, illness or disability.
- Direct public incitement to commit any offence or crime, for any ground (fully or partly prohibited in 8 countries out of 10). Some other conditions might be imposed, such as an infringement resulting from the incitement.

- In addition, an illegal motivation is an aggravating circumstance of all the penal infringements in 6 countries out of 10, and of certain penal infringements in 2 countries out of 10 (in relation with insults, defamation and harassment, as far as it relates to offences at stake in the current report). Motivations considered as illegal are race national origin / nationality; ethnic origin (8 countries out of 8); religion (7 countries); Gender and sexual orientation (6 countries); political beliefs (5 countries), handicap (4 countries); age and philosophical beliefs (3 countries each).
- Insult to religion / blasphemy / harming religious feeling (prohibited in 4 countries and partly prohibited in 3 other countries).

The following behaviours are illegal in a minority of the studied EU Member States:

- Sending of a message, or whatever content, which can cause annoyance, harassment and / or needless anxiety to another person, which the sender knows to be false, for any ground.
- Promotion or public incitement to hostility or violence between communities.
- Recording of images of the commission of a crime or offence against a person (for any ground).
- Realising a montage with the talk or the images of a third party without his or her consent, if it is not obvious that it is a montage or if it is not specified that it is a montage, for any ground.
- To misuse / usurp someone else's identity, for any ground.

Regarding specifically illegal grounds, the comparative study shows that all the following ones may be taken into consideration, depending on the country and depending on the exact behaviour to sanction and its circumstances (outside direct and indirect discrimination, which is slightly particular - see above):

- In relation with most infringements, including incitement to racial hatred: race; national and ethnic origins; religion; sexual preferences or orientation or hetero or homosexuality; disability or bodily, psychological or mental handicap; sex or sex and gender motives or gender; sexual identity or gender identity; national or ethnical ancestry or genealogical origin or descent or ethnic, racial or national belonging of family members; origins or social origins; nationality; skin colour; ideology or beliefs or political or philosophical beliefs; familiar situation; age; civil status; birth; fortune; language; state of health; illness; physical or genetic characteristics; membership of the travelling community.
- In relation with the making available of material inciting or promoting hatred, violence or discrimination, additional (to the paragraph above) illegal motivations are in one country flags, emblems, pins, uniforms, slogans, salutation formulas or any other signs which promote fascist, racist or xenophobic ideas, conceptions or doctrines.
- In relation with the participation in organisations that promote or incite discrimination or violence or hatred, additional grounds might be those mentioned in relation with incitement to hatred above, and, in one country, social category, non-transmissible chronic disease, HIV infection, belonging to a disadvantaged category, as well as any criterion which would restrict or discharge the acknowledgement, use or exercise - in equal conditions - of human rights and

fundamental liberties or rights acknowledged by law, in the political, economic, social and cultural fields or in any other field of the public life.

- In relation with aggravating circumstances, additional grounds might be those mentioned in relation with incitement to hatred above, and racist, xenophobic or other inhuman (Germany); wealth, chronic non-contagious disease or HIV/AIDS infection, social category, inclusion in a unflavoured category, or any other criterion (Romania, in relation to harassment). We can notice that some of these grounds are widely open to interpretation.

In addition, a wide range of countries prohibit some hatred-related behaviours whatever the ground. According to European instruments, or to International instruments to which some E.U. member States are parties, some additional actions should be illegal but are not identified in the previous list. These include the dissemination of ideas based on racial superiority or hatred directed against any race or group of persons of another colour or ethnic origin and the provision of any assistance to racist activities, including the financing thereof.

### **5.3 Who are the victims of hate speech?**

Anyone may be a victim of hate speech. However, there are persons (at an individual level) or groups or people (such as minorities) much more likely to be the subjects of hate speech, partly due to the current socio-political context or the current existing conflicts between beliefs or personal morals.

Legally speaking, victims of hate speech are the persons who are targeted by the speech, or eventually, where the law provides for it, the people who belong to a group, a community or a religion which is the target of the hate speech. Unfortunately, whilst a victim of hate speech on the basis of certain of his or her characteristics will be protected by law (for example race, which is highly common to EU Member States, despite the absence of meaning of this notion in genetics, and religion), a victim of a hate speech based on other grounds will not be protected in all cases, and even not protected at all in certain countries (for example, sexual orientation, gender, disability, ascendancy, or other beliefs than religion).

Within the framework of some specific infringements (such as, generally, threats, insults and defamation), a complaint of the victim is necessary in order to prosecute the author of the illegal behaviour.

### **5.4 I believe I have encountered hate speech. What can I do about it?**

The answer of this question depends on the nature of the speech. Illegal speech must be combatted, whereas not illegal speech must be preserved in public places, since it is an essential foundation of a democratic society, and "*one of the basic conditions for its progress and for the development of every man*"<sup>30</sup>. Some categories of speech are also only prohibited when they are public, and remain legal when made in private spheres or

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<sup>30</sup> European Court of Human Rights, *case of Handyside v. The United Kingdom*, 7 December 1976, Application no. 5493/72, §49, available at [hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499&filename=001-57499.pdf&TID=erlfalnvex](http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499&filename=001-57499.pdf&TID=erlfalnvex) (last accessed on 30 June 2016). See Section 3 of the current document.

places (such as the incitement to hatred, which is in most countries only prohibited where publicly made).

The definition of (illegal) hate speech is however unclear as soon as several countries (and therefore laws) are involved, which is the case in relation with online contents (see Section 5.2 above).

It is the reason why the most interesting action does consist in reporting the content to entities that propose a reporting system in relation with hate speech, which generally will legally assess the content and take action (such as a transmission to the relevant police services) if they believe it is illegal.

Of course, the victim of the speech should always lodge a complaint<sup>31</sup> for two reasons: the first is that she or he ensures that way that a proceeding will follow, in case the content is illegal; and the second reason is that beside legal provisions that target hate speech, other provisions may apply in order to protect specific rights of the victim, without necessarily considering the special motivations (colour, religion, gender...) of the perpetrator.

Among other actions, a hateful content can be reported to the public authorities, in countries where a reporting mechanism is in place. Authorities will be entitled to take action in case the content is potentially illegal on their territory.

Illegal content can also be reported to Internet hosting providers, who in the European Union have generally the obligation to act expeditiously to remove or to disable access to the information, when they have knowledge or awareness of its unlawfulness. However, this system remains imperfect, since hosting providers also contribute to the exercise of the freedom of expression on the Internet, and can engage their own liability in case they would suppress a non-illegal content. When they receive reports about hosted public fora they must be careful to assess as accurately as possible, the lawfulness of the content, in order to only remove illegal content (in many countries, an "obvious" unlawfulness is required in order to oblige them to remove content).

Editors of public or private places have on the opposite more room to suppress the contents that are not compatible with their conditions of use, and often provide for mechanisms that enable users to report - even anonymously - about non-desirable contents that are posted on these fora.

However, it is also important to note that the legislation of some countries provide that a person who falsely accuses another can be charged with defamation or malicious accusation. Therefore, it is recommended to check the punishability of the controversial content before filing a report. In other words, it is a requirement to ascertain beforehand that the content can reasonably be considered hate speech according to the law of the country where the report will be processed.

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<sup>31</sup> Some care may have to be taken regarding the form of the complaint or the person who is the subject of the complaint, in order to avoid any liability for abusive complaint or denunciation. Please, in this regard, refer to the legal rules applicable in the country where you are lodging the complaint.



## 5.5 What does Freedom of Expression allow us to say?

Covered by Article 10 of the European Convention on Human Rights, Freedom of expression is the right that every person has to express and communicate their ideas and opinions freely and fearlessly, without prohibitions or consequences, such as government retaliation or censorship. It constitutes one of the essential foundations of a democratic society. On the basis of this Human Right, we can not only express ideas that are well received, but also to those that offend, shock or disturb (*Handyside v. the United Kingdom judgment of 7 December 1976, § 49*).

Nevertheless, it is not an absolute right, and it can be limited while respecting several principles that are: the need of a legal basis, a legitimate aim, a pressing social need to be protected, and the definition of a measure that is useful to protect this need, and is proportionate to the aim pursued (constant jurisprudence; see for ex. *Sunday Times, 26 April 1979*).

As an example, it has been judged that, sometimes, public order insists on sanctioning or even preventing all forms of expression which spread, incite, promote or justify hatred based on intolerance (*Erbakan v. Turkey judgment of 6 July 2006, § 56*). Hate speech is therefore a form of expression that might be considered as not being protected under the freedom of expression (or, in other words, is a form of expression that might be prohibited by States without being considered as violators of the freedom of expression, if they respect the afore-mentioned principles).

## 5.6 Why words can be harmful and sometimes dangerous?

Some words can be harmful<sup>32</sup>. Some words can be considered as harmful, due to their importance and their capacity of hurting people when harmful words and speeches are directed to them<sup>33</sup>. This phenomenon is often related to the disruption in self-image that individuals have to confront when hearing these kinds of words or speeches. Further, some words are particularly harmful when intentionally used to manifest intolerance, humiliation, or insult, or when they might incite violence or prejudicial action against an individual or group of people.

Words can stimulate actions, reactions, moods and beliefs. They can also stimulate atmospheres of fear surrounding the victims and perhaps even causing real physical results. Hate speech victims could feel threatened and feel that their physical integrity is at risk, afraid that any response might irritate the hate speech instigator even more<sup>34</sup>. In addition, the victims could cease their daily activities and isolate themselves.

As in many crimes, hate crimes infringe on personal qualities that make up the core of one's personality and identity. Sometimes hate attacks are exceptionally offensive, violent, public, and visible, and that is another reason why they have a negative impact

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<sup>32</sup> Delgado, Richard, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling (1982). Harvard Civil Rights-Civil Liberties Law Review, Vol. 17, p. 133, 1982; Seattle University School of Law Research Paper. Available at SSRN: <http://ssrn.com/abstract=2000918>

<sup>33</sup> Jay, Timothy, Do offensive words harm people? Psychology, Public Policy, and Law, Vol 15(2), May 2009, 81-101. <http://dx.doi.org/10.1037/a0015646>

<sup>34</sup> MacKinnon, C. A. (1993). Only words. Harvard University Press.

both on the social order and security, and on the opinion people might have about certain groups of people or their members.

### **5.7 Is hate speech forbidden online?**

Hate speech (illegal by definition) which is prohibited off-line is also prohibited online. Moreover, certain countries, implementing the additional protocol to the Convention on cybercrime, created provisions that criminalise some hatred-related behaviour that are not prohibited off-line. In addition, many countries provide for aggravating circumstances where certain kind of prohibited hate speech is published through the use of a computer system or electronic communications.

However, it must be noted that, in most cases, only public hatred content is prohibited, even though certain countries also prohibit non-public content. Content sent to a limited group of identified persons will generally only be punishable where they constitute an insult, defamation, or eventually a threat (for further details on this entry see the Mandola D2.1 intermediate).

### **5.8 Is Hate speech and hate crime the same thing?**

Answering this question imposes to define notions beforehand. Hate speech is a hateful content, which might be motivated by usually evoked motivations such as race, religion, gender or sexual orientation, but also by any other ground. Depending on the country, the notion of "hate crime" may refer to all the penal infringements or offences that are committed for hateful reasons (against individuals, their community or their property), or to the more harshly punished category of penal infringements (in system that classify infringements in categories such as contraventions, misdemeanours and crimes).

Even by understanding "hate crime" as covering all penal infringements, the answer to the question is no. As already explained, hate is a common human feeling, and is not illegal in all situations, in order to give room to freedom of expression and to enable societal debates or individual discussions (for example, in some countries, an insult is not punishable if it has been committed in response to a primary attack - see D2.1 intermediate)

### **5.9 I believe I have been a target of hate speech? What are my rights as a victim?**

Any victim of hate speech should lodge a complaint in order to prosecute the perpetrator<sup>35</sup>. Most of the time, this is a pre-condition to issuing proceedings against the perpetrator (especially in case of insult and defamation). In addition, even if the content was judged non illegal under the "hate speech" category, the content may be illegal toward the victim for other reasons than hate, and a complaint is the only way to get the perpetrator punished. Beside penal proceedings, the victim may also obtain damages under civil law or administrative law, before the relevant Court (civil damages can also often be obtained before the penal judge).

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<sup>35</sup> Some care may have to be taken regarding the form of the complaint or the person who is the subject of the complaint, in order to avoid any liability for abusive complaint or denunciation. Please, in this regard, refer to the legal rules applicable in the country where you are lodging the complaint.

## 5.10 Which legal protection against Hate Speech does exist within EU?

Hate speech is addressed in several legal instruments at the International and the European Union level. The European Union ones are binding for the EU Member States, whereas International ones are only binding for the EU Member States which ratified them or acceded to them. In any case, with the exception of some Treaties that may in some countries have a direct effect, such as the European Convention on Human rights<sup>36</sup> (which is an international instrument despite its name), International and National instruments are not directly applicable in internal law, and must be transposed into domestic law by the State for this purpose.

As a result, the competent judge is the national one. However, national Courts may in certain cases refer to the Court of justice of the European Union to obtain a decision in relation with the violation of a EU legal instrument. In addition, citizens are entitled to go before the European Court of Human Rights (ECtHR - which is an international Court at the Council of Europe level), once they have exhausted domestic remedies, if they consider that their State did not respect a provision of the European Convention on Human Rights. The ECtHR considers that *"tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society"*<sup>37</sup>. *"As a consequence, in principle it might be considered necessary, in democratic societies, to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), if it is ensured that the (...) 'restrictions' or 'sanctions' that are imposed are proportionate to the aim pursued"*<sup>38</sup>.

## 5.11 What are providers doing about online hate speech?

The continuous growth of Internet as a mean of communication, along with the anonymity that it provides, has enabled the proliferation of hate-based activities in cyberspace, such as harassment and expressions of hate, which are now located beyond the realms of traditional Law Enforcement methods and Law prosecution. Therefore, it is needed for other cyber-entities, such as individual users or some web providers, to fight against this type of offence.

Web pages and forums are sometimes moderated, and where moderators are in place, they are responsible for confirming the proper functioning and adequate conformity to the rules of each web page and forum. There are web sites, social networks, and fora that have their own teams that review and evaluate reports on hate speech.

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<sup>36</sup> The direct effect depends on the status given to the treaty by each national Constitution. See for ex. Marc J. Bossuyt, The direct applicability of International instruments on Human rights, RBDI 1980.2, pp. 317 to 344, available at <http://rbdi.bruylant.be/public/modele/rbdi/content/files/RBDI%201980/RBDI%201980-2/Etudes/RBDI%201980.2%20-%20pp.%20317%20C3%A0%20344%20-%20Marc%20Bossuyt.pdf> and at [http://www.academia.edu/633695/The\\_Application\\_of\\_the\\_ECHR\\_in\\_the\\_Domestic\\_Systems](http://www.academia.edu/633695/The_Application_of_the_ECHR_in_the_Domestic_Systems) (last acceded on 01/07/2016). In relation with the ECHR, See Estelle De Marco and Cormac Callanan, in C. Callanan, M. Gercke, E. De Marco and H. Dries-Ziekenheiner, Internet blocking - balancing cybercrime responses in democratic societies, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>), n° 6.5.2.2.

<sup>37</sup> ECtHR, decision *Erbakan v. Turkey*, no. 59405/00, 6.07.2006, §56 (translated from French).

<sup>38</sup> *Erbakan v. Turkey*, no. 59405/00, § 56, 6.07.2006. See also European Court of Human Right, Factsheet - Hate speech, March 2016, introducing frame, §2, available at [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf) (last acceded on 12 July 2016).

Facebook offers its own page notes on ‘Controversial, Harmful and Hateful Speech’<sup>39</sup>, in which they assure that they “prohibit content deemed to be directly harmful, but allow content that is offensive or controversial”. Furthermore, in Facebook’s Statement of Rights and Responsibilities<sup>40</sup>, hate speech is explicitly prohibited. They aim to maintain these regulations updated and adapted to legislation, so they: 1) Update their guidelines soliciting feedback from legal experts, representatives of the women’s coalition and other groups that have historically faced discrimination; 2) Update the training for the teams that review and evaluate reports of hateful speech or harmful content on Facebook; 3) Increase the accountability of the creators of content that does not qualify as actionable hate speech but is cruel or insensitive by insisting that the authors stand behind the content they create, in order to monitor the activity of these users and be able to react fast if they start to publish prohibited content; 4) Establish more formal and direct lines of communication with representatives of groups working in this area, including women's groups, to assure expedited treatment of content they believe violate their standards.

Moreover, on 31 May 2016, the European Commission together with Facebook, Twitter, YouTube and Microsoft (“the IT companies”) unveiled a code of conduct<sup>41</sup> which includes a series of commitments to combat the spread of (illegal) hate speech online in Europe; in order to develop co- and self-regulatory approaches to fighting hate speech online. By signing this code of conduct, the IT companies commit to continuing their efforts to tackle (illegal) hate speech online. Some of these efforts will include the continued development of internal procedures and staff training to guarantee that they review the majority of valid notifications for removal of (illegal) hate speech in less than 24 hours and remove or disable access to such content, if necessary. The IT companies will also endeavour to strengthen their ongoing partnerships with civil society organisations who will help flag content that promotes incitement to violence and hateful conduct.

The IT Companies also underline that the present code of conduct is aimed at guiding their own activities as well as sharing best practices with other internet companies, platforms and social media operators. Nevertheless, web providers are welcome to check and look for web page regulations in the Information Providers Guide included in the European Internet Handbook<sup>42</sup>, which provides information for everyone who develops and publishes material on EU websites, including webmasters, editors, content providers, web developers and contractors.

### **5.12 Who is liable for hate speech?**

Liability is an issue decided by courts of law or sometimes based on special decisions by agencies or tribunals empowered by law to arbitrate on these issues. There are a range of liabilities depending on the content of the hate speech, the audience for the hate speech, the impact of the hate speech and the reasonable prior knowledge of the impact of the hate speech on the audience and on the target of the hate speech.

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<sup>39</sup> <https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054/>

<sup>40</sup> <https://www.facebook.com/legal/terms>

<sup>41</sup> [http://europa.eu/rapid/press-release\\_IP-16-1937\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1937_en.htm)

<sup>42</sup> [http://ec.europa.eu/ipg/index\\_en.htm](http://ec.europa.eu/ipg/index_en.htm)

In principle, where the content is illegal or harms the rights of a third party, the first person to be liable is the author. This latter notion might cover different significations or actions, depending on the countries, but it relates primarily to the person who created the content and / or who published it. Besides the author, might be liable the accomplices. The notion of complicity might also be different depending on the country, but it generally covers the acts of aiding, abetting and instigating (these actions are sometimes alternatively sanctioned under another terminology or under the category of authors)<sup>43</sup>.

In most countries, legal persons can also be liable, generally where the offence is committed by one of their representative and/or committed in their benefit. The liability of legal persons does not necessarily exclude the liability of natural persons.

Exceptions to the rules afore-mentioned do exist<sup>44</sup>.

- Firstly, some countries exclude the possibility, in certain situations, to include liability of accomplices (excluding Ireland, where offences do not belong to the category of "indictable offences"), or the legal persons in relation with certain infringements (case of Greece, Ireland, Spain, France, and Bulgaria) or just because such possible liability is not provided for at all by law (which is the case in Cyprus).
- Secondly, two countries (France and Spain), out of ten countries whose legislation has been studied, have created a special liability regime that applies to press or media. The content of these regimes vary, but the common result is to render liable specific persons who contributed for sure to the creation or to the publication of the content, or who are in charge of taking care of the lawfulness of published contents. Besides that, the liability of accomplices or of legal persons might be possible or not in addition (the French press liability regimes enables to sue the author as an accomplice, in addition to the publication director, but legal persons (e.g. registered companies) cannot be declared liable; the Spanish media liability regime lists the different categories of authors that are exclusively liable, excludes the liability of any accomplice but enables the liability of legal persons).

### **5.13 Who investigates online hate speech?**

Where the content is prohibited by penal law, investigations are usually the mission of law enforcement agencies, or sometimes of a judge, depending on the country.

### **5.14 Which law applies to online hate speech?**

Due to the Internet being an egalitarian way of communication, a unilateral national content legislation does not always apply when prosecuting offences committed in such a globalised and decentralised landscape. Even though there have been efforts to agree on virtual borders in relation to cyberspace so as to regulate this type of offences, these efforts were unsuccessful since they impacted on jurisdictional<sup>45</sup> and sovereignty<sup>46</sup>

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<sup>43</sup> On this paragraph and the rest of the current Section, see the MANDOLA D2.1 intermediate.

<sup>44</sup> The following exceptions result from the comparative analysis of ten E.U. countries (see the MANDOLA D2.1 intermediate). It does not exclude that further exceptions could be discovered during the analysis of all the E.U. Member States.

<sup>45</sup> France Vs. Yahoo! Inc.

<sup>46</sup> The right to punish is the most important expression of States sovereignty - See for example Huet (A.), "L'impact du droit communautaire sur le droit pénal", in Simon (D.) (sous la dir. de), *Le droit communautaire et les métamorphoses du droit*, Strasbourg PUS 2003, p. 13 s., quoted by Denys SIMON - Cahiers du Conseil

issues. An international and multilateral legislative approach to investigate and fight against hate speech must and has progressively been adopted, even if it still faces some challenges, most of them having to do with different commitments to free speech and regulation in different countries. The Convention of Cybercrime (Budapest, 23/11/2001) was the first international treaty on crimes committed via the Internet and other computer networks, and its aim was to set out a common criminal policy pursuing the protection of society against cybercrime, by fostering international co-operation and developing appropriate legislation<sup>47</sup>. Its State Parties are represented by the Cybercrime Convention Committee (T-CY). There was an additional protocol to the Convention of Budapest, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

On the basis of this agreement and on other agreements relating to penal law (such as the International Convention on the Elimination of All Forms of Racial Discrimination) or to cooperation in the penal area, bound States (see 5.10 above) are supposed to have in their legislation a common denominator of infringements, and basic rules enabling the territorial competence of their countries in certain cases (ensuring that way that at least one penal law applies in each case), and enabling cooperation in case of assistance request coming from a foreign LEA.

For example, art. 22 of the Convention on cybercrime states that *"each Party must adopt such legislative and other measures as may be necessary to establish jurisdiction over most of the offences established in accordance with the provisions of the Convention, when the offence is committed (a) in its territory; or (b) on board a ship flying the flag of that Party; or (c) on board an aircraft registered under the laws of that Party; or (d) by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State"* (exceptions may be brought to b, c and d). Art 22's last paragraph also states that *"when more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution"*.

Regarding the notion of "committed in its territory", in relation with materials that are available on the Internet, it may differ according to the provision of the penal legislation of each country. However, many countries consider that the offence has been committed in their own territory where one of the legal elements that constitute the offence has been committed on this territory. Some countries further consider that the commission on the territory of one of the facts that constitute together the offence is enough (such as in France). As a consequence, several legislations are likely to apply in case of illegal online content<sup>48</sup>.

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constitutionnel n° 26 (Dossier : La Constitution et le droit pénal), Constitution, "souveraineté pénale, droit communautaire", August 2009, available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-26/constitution-souverainete-penale-droit-communautaire.51489.html> (last accessed on 12 July 2016).

<sup>47</sup> See for example [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

<sup>48</sup> See for example Estelle De Marco, *Le Droit Pénal Applicable sur Internet* (The penal law applicable on the Internet), Master II thesis, University of Montpellier 1, 1998.

### 5.15 What are the penalties for those found guilty of hate speech?

The answer to this question varies from country to country, and from offence to offence, in addition to the fact that laws generally set-up a maximum penalty, which the judge will adapt to the particular situation. It would be therefore too long and even impossible to answer precisely and exhaustively.

However, knowing that most common penalties for natural persons are fine and / or imprisonment (in addition to several complementary penalties that might be applied in certain situations), the following ranges can be given as illustrations, on the basis of the comparative study of ten EU countries (for the exhaustive definition of the prohibited behaviours listed below, please refer to 5.2 above).

- Publicly inciting hatred, or making available to the public, through a computer system, xenophobic or racist material which incites hatred: imprisonment up to 5 years and/or a fine up to €45 000. Particularities in Germany (theoretically up to €10 800 000<sup>49</sup>) and Spain (up to €144 000).
- Establishing or participating in organisations that incite or promote discrimination or violence or hatred: imprisonment up to 10 years and/or a fine up to €20 500 - depending on the country. Particularities in Germany (theoretically up to €10 800 000<sup>50</sup>) and Spain (up to €288 000).
- Hatred-related insults: imprisonment up to 1 year (5 years in two countries if other conditions are met) and/or a fine up to €22 500 (€34 000 in one country if other conditions are met) - depending on the country. Particularities in Germany (theoretically up to €10 800 000<sup>51</sup>), and Spain (up to €168 000).
- Public defamation for illegal reasons: imprisonment up to 5 years and/or a fine up to €12 500 - barring aggravating circumstances -depending on the country. Particularities in Germany (theoretically up to €10 800 000<sup>52</sup>), Spain (up to €288 000), and Romania (up to €26 640).
- Threatening of a natural person, motivated by racism or xenophobia: in the two countries prohibiting threats without other conditions but illegal grounds: imprisonment up to 3 and 5 years; in one country: fine up to €34 000. In relation with threats to commit a damage or a penal infringement: imprisonment up to 5 years and fine up to €75 000 (outside aggravating circumstances), depending on the country. Particularities in Germany (theoretically up to €10 800 000<sup>53</sup>), and Spain (up to €288 000).
- Publicly condoning, denying or grossly trivialising crimes against peace, crimes of genocide, crimes against humanity and war crimes: Depending on the country, imprisonment up to 5 years and fine up to €45 000. Particularities in Germany (theoretically up to €10 800 000<sup>54</sup>), and Spain (up to €144 000).
- Direct or indirect discrimination in certain fields: depending on the country, where penally sanctioned, imprisonment up to 3 years and fine up to €45 000.

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<sup>49</sup> Such a large amount has never been applied up to now.

<sup>50</sup> Such a large amount has never been applied up to now.

<sup>51</sup> Such a large amount has never been applied up to now.

<sup>52</sup> Such a large amount has never been applied up to now.

<sup>53</sup> Such a large amount has never been applied up to now.

<sup>54</sup> Such a large amount has never been applied up to now.

Particularities in Germany (theoretically up to €10 800 000 €<sup>55</sup>), and Spain (up to €288 000). Administrative fines may reach €50 000.

This question is more extensively covered in Deliverable 2.1 intermediate.

### **5.16 Which persons are entitled to initiate legal proceedings against authors of hate speech?**

In principle, only the victim can initiate legal proceedings in case a penal offence is committed, together with the public prosecutor, and some other entities that might be authorised so by law<sup>56</sup>.

However, a complaint of the victim stays necessary in relation with some specific infringements, such as insults and defamation (and sometimes threats), in many countries<sup>57</sup>.

In addition, where the public prosecutor is entitled to initiate proceedings, the report of the offence to LEA by citizens, NGOs specialised in the combat illegal hatred, media or any other person or entity may be at the origin of a legal proceeding.

### **5.17 Are there any restrictions in freedom of speech for audio-visual service providers?**

Yes, there are some restrictions in the freedom of speech rights of audio-visual service providers, as well as press. In many countries, it is specifically forbidden for these media to support any incitement to hatred on certain grounds varying between countries, such as race, sex, religion or nationality, and violations of human dignity concerning individual persons (E.g. Radio and Television Act, Bulgaria, Article 5, (5)), in addition to the fact that media are submitted to the same rules as citizens, who are also restricted in their freedom of speech in relation with some hatred behaviours, as already seen (see 5.2). Freedom of expression is a core European value which must be preserved, but the European Court of Human Rights set out the important distinction between content that "*offends, shocks or disturbs the State or any sector of the population*" and content that contains genuine and serious incitement to violence and hatred. The Court has made clear that States may sanction or prevent the second one.

However, the MANDOLA project does not focus on audio-visual, since its core is relating to hate speech on the Internet, provided for by persons who want to transcend legal rules and the aspiration of the people to live peacefully together.

### **5.18 Which rules prevent a company to hire me or fire me based on grounds of race, sex, religion or nationality or to restrict me under any internal policy rules?**

Direct or indirect discrimination, including harassment, in the field of employment, must be prohibited in Member States according to the Council Directive 2000/43/EC and the Council Directive 2000/78/EC (see 5.10 above). Possible exceptions are strictly regulated.

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<sup>55</sup> Such a large amount has never been applied up to now.

<sup>56</sup> This is generally regulated in the penal procedure Code of each country.

<sup>57</sup> See the MANDOLA deliverable D2.1 intermediate.



The illegal grounds motivating illegal discrimination are however restricted to race or ethnic origins in Directive 2000/43/EC, and to "religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons" in Directive 2000/78/EC. However, some countries protect other grounds such as origin, gender, family situation, state of health, genetic characteristics, way of living/moral, sexual identity, pregnancy, physical appearance, surname, place of residence.

As an example, according to the Bulgarian Labour Code (Article 8, Amended, SG No. 100/1992, SG No. 25/2001, SG No. 52/2004), no direct or indirect discrimination is allowed on grounds of ethnicity, origin, gender, sexual orientation, race, skin colour, age, political and religious convictions, affiliation to trade union and other public organisations and movements, family and property status, existence of mental or physical disabilities, as well as differences in the contract term and the duration of working time.

### **5.19 What is harmful content?**

All illegal content is harmful but not all harmful content is illegal. Mandola defines the words "Harmful content" as referring to content that is not considered as illegal and should not be judged as illegal but which might cause harm to sensitive persons or persons who need additional protection – minors, special needs persons. An example could be the nature of violence in material, or the ideas it supports, or its age-inappropriateness. In some countries, such content might require rating or prior-notice before being viewed by users.

This term causes further confusion since some websites, such as Facebook, describe harmful content as "content as anything organizing real world violence, theft, or property destruction, or that directly inflicts emotional distress on a specific private individual (e.g. bullying)", and thereby include, in the "harmful" category, content that might be or that are illegal. They also include a list of prohibited categories of content that can be found in their Community Standards<sup>58</sup>, and which might be either illegal or harmful (some of their prohibited contents include: naked or sexual content, hate speech or speech that incites hatred, and violent and graphic contents). They might then decide to prohibit that content on their platforms only.

### **5.20 Why are some harmful contents not illegal?**

Non illegal harmful content is not illegal in order to preserve the freedom of speech that is necessary to enable democracy and the feeding of public debates. If all the speeches that hurt a third party would be prohibited, democracy and freedom of speech would completely disappear.

Indeed, freedom of expression has been considered by the European Court of Human Rights<sup>59</sup> (ECtHR) as constituting "*one of the essential foundations of (...) a (democratic) society, one of the basic conditions for its progress and for the development of every*

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<sup>58</sup> <https://www.facebook.com/communitystandards>

<sup>59</sup> The European Convention on Human Rights applies in the 47 Member States of the Council of Europe, including all the UE Member States.

*man*"<sup>60</sup>. This means that "every "formality", "condition", "restriction" or "penalty" imposed in this sphere"<sup>61</sup> must have a legal basis, a legitimate aim, must be necessary (i.e. useful in order to answer a crucial issue<sup>62</sup> - the ECtHR evokes a "pressing social need"<sup>63</sup>), and must be proportionate to the legitimate aim pursued.

The prohibition of hatred towards "others" is a legitimate aim, since it preserves the rights of others. However, the necessity of such a prohibition is less obvious in all situations, since hatred might be everywhere and is a common human feeling (see 5.1 above). Therefore, societies must define what morals and values do absolutely not tolerate, in order to justify the necessity of its prohibition, while maintaining the level of freedom of speech that is necessary to feed democracy and public debates. And the ECtHR leaves a certain margin of appreciation, to Member States, on the field of morals<sup>64</sup>.

Once unacceptable behaviours are defined, in a restrictive way, their prohibition must be legally based and proportionate, and all the other "information' or 'ideas' that offend, shock or disturb the State or any sector of the population" must be protected, since "such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'"<sup>65</sup>.

However, such offensive, shocking and disturbing ideas and content might be harmful for certain persons or category of persons (see 5.20 above). Several tools enable to protect these persons, from disclaimers to end-users filtering tools that can be set to meet each individual requirements.

### **5.21 What is the difference between illegal content and potentially illegal?**

Only content which has been declared illegal by an independent authorised judge, according to the penal procedure of the applicable law is considered illegal. Content which has been assessed by skilled and trained personnel or by LEA might be declared as potentially illegal<sup>66</sup>. Content made available in an unrestricted manner or to specific groups or persons in society might be considered potentially illegal (even if public content is more likely to be prohibited<sup>67</sup>). Content that is potentially harmful to specific groups is not inherently illegal (see 5.20 and 5.21 above). Finally some content might be contentious or disruptive but is not likely to be illegal in any situation (see 5.2 above).

### **5.22 How does the Mandola project support activities against online hate speech?**

Mandola was created to investigate two key innovative aspects of online hate behaviour:

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<sup>60</sup> European Court of Human Rights, *case of Handyside v. The United Kingdom*, 7 December 1976, Application no. 5493/72, §49, available at [hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499&filename=001-57499.pdf&TID=erlfalnvxc](http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57499&filename=001-57499.pdf&TID=erlfalnvxc) (last accessed on 30 June 2016).

<sup>61</sup> Ibid, §49.

<sup>62</sup> See Estelle De Marco and Cormac Callanan, in C. Callanan, M. Gercke, E. De Marco and H. Dries-Ziekenheiner, Internet blocking - balancing cybercrime responses in democratic societies, October 2009, available at <http://www.aconite.com/blocking/study> (French version available at <http://juriscom.net/2010/05/rapport-filtrage-dinternet-equilibrer-les-reponses-a-la-cybercriminalite-dans-une-societe-democratique-2/>); Estelle De Marco and all., Deliverable D3.3 - Legal recommendations - ePOOLICE project (early Pursuit against Organized crime using environmental Scanning, the Law and Intelligence systems), projet n° FP7-SEC-2012-312651, version 1.2 of 29 August 2014 and version 1.3 of 10 December 2014.

<sup>63</sup> See for example European Court of Human Rights, *case of Handyside v. The United Kingdom*, §48.

<sup>64</sup> European Court of Human Rights, *case of Handyside v. The United Kingdom*, §48.

<sup>65</sup> Ibid., §49.

<sup>66</sup> This derives from the principle of presumption of innocence and from the right to a fair trial.

<sup>67</sup> See Mandola D2.1 intermediate.

- 1) through the extensive use of IT and big data to study and report online hate; and
- 2) by carrying out research on the possibility to make clear distinctions between legal and potentially illegal content taking into account the variations between EU member states legislation.

### **5.23 Where can I find more information?**

The final section of this document offers suggestions for further reading.

## 6 Conclusion

This document provided a short introduction to the Mandola project and the partners. This was followed by a short profile to the area of Hate Speech online through a range of sample court decisions. The role of the state/ governments and the role of the non-governmental organisations were then described. The list of frequently addressed questions was then considered reflecting the important issues which affect users who are possible victims of hate speech or users who wish to understand this area more deeply.

Providing comprehensive answers to these questions is complex and difficult. The answers provided will be updated when new relevant information comes available and, therefore, they are subject to change and we welcome feedback on how we can improve the information contained in this document.

This is the second and final version of the document based on additional research since the first version was released in July 2016. This version also includes further results from the activities of Workstream 2 on Legal and Ethical Framework with regard to online hate speech.

### 6.1 Next Steps

The MANDOLA consortium welcomes community feedback and comment so that the advice provided can continue to be improved. .

## 7 Further Reading

Neither the Mandola project team nor the Mandola partners specifically endorse any of these organisations or these views on the subject of hate speech and includes these suggested documents and web sites in order to stimulate further debate and understanding of the complex area of online hate speech.

All web references were last accessed in November 2017,

### **No Hate Speech Movement**

<http://www.nohatespeechmovement.org/>

A youth campaign of the Council of Europe for human rights online, to reduce the levels of acceptance of hate speech and to develop online youth participation and citizenship, including in Internet governance processes.

The Campaign is part of the project Young People Combating Hate Speech Online running between 2012 and 2014. The project stands for equality, dignity, human rights and diversity. It is a project against hate speech, racism and discrimination in their online expression.

Objectives of the campaign:

- To raise awareness about hate speech online and its risks for democracy and for individual young people, and promoting media and Internet literacy;
- To support young people in standing up for human rights, online and offline;
- To reduce the levels of acceptance of online hate speech;
- To mobilise, train and network online youth activists for human rights;
- To map hate speech online and develop tools for constructive responses;
- To support and show solidarity to people and groups targeted by hate speech online;
- To advocate for the development and consensus on European policy instruments combating hate speech;
- To develop youth participation and citizenship online.

### **No Hate Speech (In Spanish)**

[www.nohate.es](http://www.nohate.es)

The Spanish Institute of Youth, which was responsible for a past European campaign (finished on December 2014) against intolerance on the Internet. Several NGOs, Internet experts, researchers, university members, enterprises, and juvenile organizations participated in the project. It is interesting since it addresses a special population, youngsters, who actually work and use the Internet on a daily basis, and are much more vulnerable to encounter online hate speech.

### **Bulgarian Helsinki Committee**

<http://www.bghelsinki.org/en/>

Independent non-governmental organization for the protection of human rights

The Bulgarian Helsinki Committee was established on 14 July 1992 as an independent non-governmental organisation for the protection of human rights.

The objectives of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularise and make widely available human rights instruments.

**Bulgarian branch of UNICEF**

<http://www.unicef.bg/>

UNICEF is United Nations Children's Fund and a part of the big family of UN. From 1949, UNICEF is a leading organization, working in more than 190 countries for the benefits of children.

Activities include child protection and social inclusion, education, early childhood development, justice for children, child's Rights Monitoring, Child and Youth Participation

**Bulgarian online magazine for freedom of religion, speech and conscience**

<http://svobodazavseki.com/>

Only in Bulgarian

**Bulgarian non-governmental organization promoting understanding, tolerance and equality among different social groups in Bulgarian society.** <http://ontolerance.eu/>

The association plans, organizes and implements youth projects, activities and initiatives to promote forms of non-formal education. The organization creates opportunities for social and creative skills of young people by focusing on young people from minority backgrounds, people with disabilities and disadvantaged backgrounds. The aim is to promote, propagate and promote public participation in voluntary initiatives and civic causes.

**Wikipedia and 'Hate speech'**

[https://en.wikipedia.org/wiki/Hate\\_speech](https://en.wikipedia.org/wiki/Hate_speech)

Includes definitions and references to different laws in the different countries.

Definition of the term 'hate speech' and examples from the web.

<http://dictionary.reference.com/browse/hate-speech>

Definition of the term 'hate speech' and examples from the web.

[http://www.blackwellreference.com/public/tocnode?id=g9781405131995\\_chunk\\_g978140513199513\\_s4-1](http://www.blackwellreference.com/public/tocnode?id=g9781405131995_chunk_g978140513199513_s4-1)

<http://definitions.uslegal.com/h/hate-speech/>

Hate speech law and legal definitions.

**FAQs on Hate Crimes and Hate Speech**

<http://sikhcoalition.org/images/documents/faq-hatecrimes-hatespeech-2015.pdf>

FAQs on Hate Crimes and Hate Speech document developed by “The Sikh Coalition”. The Sikh Coalition is a community-based organization that works towards the realization of civil and human rights for all people. The organization is working towards a world where Sikhs may freely practice and enjoy their faith while fostering strong relations with their local community wherever they may be.

Their mission is to provide direct legal services to persons whose civil or human rights are violated; advocate for law and policies that are respectful of fundamental rights; promote appreciation for diversity through education; and foster civic engagement in order to promote local community empowerment

**FAQs document developed by Hatebase.**

<http://www.hatebase.org/faqs>

Hatebase is a web-based application which provides data through both a web interface and an open API. Core components of the Hatebase application are HateBot, a robot which interacts with external APIs to retrieve potential sightings, and HateBrain, a linguistic parser which automates some of the task of identifying hate speech acquired by HateBot.

**FAQs document developed by Civil Rights Movement (UK) including:**

<http://www.civilrightsmovement.co.uk/faq-what-classed-hate-speech.html>

- What Are Typical Hate Speech Targets?
- What UK Laws Offer Protection Against Hate Speech?
- What Are the Penalties for those found Guilty of Hate Speech?
- Is Hate Speech Prohibited on the Internet?
- How Can Hate Speech Be Banned on the Internet?
- Has There Been Controversy Over Internet Regulation?
- How Can the Public Help to Stop Internet Hate Sites?

About Civil Rights Movement is a website which was created as a unique reference point that gives both a background on the historic civil rights movement and provides information on UK citizens rights today.

**Information about Hate crime in the The European Union Agency for Fundamental Rights (FRA)**

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

A specially dedicated section about Hate crime in the The European Union Agency for Fundamental Rights (FRA) website consisting: The European Union Agency for Fundamental Rights (FRA) is one of the EU’s decentralised agencies. These agencies are set up to provide expert advice to the institutions of the EU and the Member States on a range of issues. FRA helps to ensure that the fundamental rights of people living in the EU are protected.

Fundamental rights set out minimum standards to ensure that a person is treated with dignity. Whether this is the right to be free from discrimination on the basis of your age, disability or ethnic background, the right to the protection of your personal data, or the right to get access to justice, these rights should all be promoted and protected.

Through the collection and analysis of data in the EU, the FRA assists EU institutions and EU Member States in understanding and tackling challenges to safeguard the fundamental rights of everyone in the EU. Working in partnership with the EU institutions, its Member States and other organisations at the international, European and national levels, the FRA plays an important role in helping to make fundamental rights a reality for everyone living in the EU.

**Ensuring justice for hate crime victims: professional perspectives”.**

[http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-justice-hate\\_crime-victims\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf)

Report developed by the European Union Agency for Fundamental Rights – „Ensuring justice for hate crime victims: professional perspectives”.

In the document could be found professionals’ views on Hate crime, victims reporting, role of the police etc. Offering insights into the reporting and recording of hate crimes from the perspective of professionals, this report analyses the specific factors that affect how and why hate crime victims do or do not seek justice and how and why victims’ efforts to be acknowledged as victims of severe discrimination ultimately are – or are not – successful. Understanding the obstacles to victims’ access to justice will allow EU institutions and Member States to adopt targeted measures that facilitate such access and make victims’ fundamental right to access justice a reality.

<http://fra.europa.eu/en/theme/hate-crime/publications>

A list of publications developed by the European Union Agency for Fundamental Rights about hate crime, such as:

- Antisemitism - Overview of data available in the European Union 2004-2014  
Antisemitism can be expressed in the form of verbal and physical attacks, threats, harassment, property damage, graffiti or other forms of text, including on the internet. This report relates to manifestations of antisemitism as they are recorded by official and unofficial sources in the 28 European Union (EU) Member States
- Promoting respect and diversity - Combating intolerance and hate  
Regardless of ethnic origin, religion or belief, everyone living in the Union has a fundamental right to be treated equally, to be respected and to be protected from violence. This contribution paper to the Annual Colloquium on Fundamental Rights provides evidence of the fact that such respect is lacking, and suggests ways in which governments can ensure they fulfil their duty to safeguard this right for everyone living in the EU.
- Fundamental rights: challenges and achievements in 2014 - Annual report  
European Union (EU) Member States and institutions introduced a number of legal and policy measures in 2014 to safeguard fundamental rights in the EU. Notwithstanding these efforts, a great deal remains to be done, and it can be seen that the situation in some areas is alarming: the number of migrants rescued or apprehended at sea as they were trying to reach Europe’s borders quadrupled over 2013; more than a quarter of children in the EU are at risk of poverty or social exclusion; and an increasing number of political parties use xenophobic and anti-immigrant rhetoric in their campaigns, potentially increasing some people’s vulnerability to becoming victims of crime or hate crime.



- Equal protection for all victims of hate crime - The case of people with disabilities  
This paper discusses the difficulties faced by people with disabilities who become victims of hate crime, and the different legal frameworks in place to protect such victims in the EU's Member States. It ends by listing a number of suggestions for improving the situation at both the legislative and policy levels.
- Being Trans in the EU - Comparative analysis of the EU LGBT survey data  
Trans persons, or those whose gender identity and/or gender expression differs from the sex assigned them at birth, face frequent discrimination, harassment and violence across the European Union (EU) today. This reality triggers fears that persuade many to hide or disguise their true selves. This report examines issues of equal treatment and discrimination on two grounds, namely sexual orientation and gender identity. It analyses data on the experiences of 6,579 trans respondents from the EU Lesbian, gay, bisexual and transgender (LGBT) survey, the largest body of empirical evidence of its kind to date.

### **www.observatorioproxi.org (Spanish)**

This website is an online project against xenophobia and intolerance online (with the participation of several Human Rights' associations). It has publications and interesting articles and news.

**True Vision is the website which gives information about hate crime or incidents and how they can be reported.**

[http://www.report-it.org.uk/what is hate crime](http://www.report-it.org.uk/what-is-hate-crime)

**True Vision** is the website which gives information about hate crime or incidents and how they can be reported. In addition True Vision is available as an app – police hate crime app. The app such as the website gives information how to report hate crime incidents. Both the app and the website platform are UK's Police projects.

On this website, you can find out what hate crimes or hate incidents are., find out about the ways you can report them, report using the online form., and find information about people that can help and support you if you have been a victim.

### **Report Hate**

<http://www.denoncerlahaine.org/>

Only in French

### **Report online illegal content**

<https://www.internet-signalement.gouv.fr/PortailWeb/planets/Faq.action>

Only in French

### **Recommendation paper by Council of Europe Committee of Ministers on “Hate Speech”.**

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/dh-lgbt\\_docs/CM\\_Rec%2897%2920\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec%2897%2920_en.pdf)

Aware of the need to reconcile the fight against racism and intolerance with the need to protect freedom of expression so as to avoid the risk of undermining democracy on the grounds of defending it; Aware also of the need to respect fully the editorial independence and autonomy of the media, Recommends that the governments of member states: 1. take appropriate steps to combat hate speech on the basis of the

principles laid down in this recommendation; 2. ensure that such steps form part of a comprehensive approach to the phenomenon, which also targets its social, economic, political, cultural and other root causes; 3. where they have not done so, sign, ratify and effectively implement in national law the United Nations Convention on the Elimination of All Forms of Racial Discrimination, in accordance with Resolution (68) 30 of the Committee of Ministers on measures to be taken against incitement to racial, national and religious hatred; 4. review their domestic legislation and practice in order to ensure that they comply with the principles set out in the appendix to this recommendation.

### **Factsheet on Hate speech**

[http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)

A Factsheet on Hate speech by European Court of Human Rights. In the document there is a list of different examples of hate speech such as: Ethnic hate, Negationism and revisionism, Racial hate, Religious hate, Threat to the democratic order, Circulating homophobic leaflets and many others.

### **Council of Europe's website and European Commission against Racism and Intolerance (ECRI)**

[http://www.coe.int/t/dghl/monitoring/ecri/legal\\_research/national\\_legal\\_measures/](http://www.coe.int/t/dghl/monitoring/ecri/legal_research/national_legal_measures/)

Portal section at Council of Europe's website and European Commission against Racism and Intolerance (ECRI) indicating legal measures to combat racism and intolerance in the member States of the Council of Europe.

### **American Bar Association**

[http://www.americanbar.org/groups/public\\_education/initiatives\\_awards/students\\_in\\_action/debate\\_hate.html](http://www.americanbar.org/groups/public_education/initiatives_awards/students_in_action/debate_hate.html)

American Bar Association regarding hate speech and different actions. It is published in the Students in Action and Student Central directories.

About the ABA: The American Bar Association is one of the world's largest voluntary professional organizations, with nearly 400,000 members and more than 3,500 entities. It is committed to doing what only a national association of attorneys can do: serving our members, improving the legal profession, eliminating bias and enhancing diversity, and advancing the rule of law throughout the United States and around the world.

### **Take Back The Tech!**

<https://www.takebackthetech.net/about>

Take Back The Tech! was initiated in 2006 by the Association for Progressive Communications (APC) Women's Rights Programme and has grown into a diverse movement of individuals, organisations, collectives and communities. It is the result of research papers published in 2005 that looked at the connection between ICT (Information & Communications Technology) and VAW (Violence Against Women), an issue that received little attention or discussion at that time. After sharing the findings with women's rights and communication rights advocates in different spaces, APC found this to be a critical issue that compelled further attention and deeper engagement.

Take Back the Tech! sets out to:

- Create safe digital spaces that protect everyone's right to participate freely, without harassment or threat to safety.
- Realise women's rights to shape, define, participate, use and share knowledge, information and ICT.
- Address the intersection between women's human rights and the internet, especially VAW.
- Recognise women's historical and critical participation and contribution to the development of ICT.

The campaign has been taken up, adapted and owned by individuals, groups, networks and organisations in places such as Bangladesh, Bosnia and Herzegovina, Brazil, Cambodia, Canada, Democratic Republic of the Congo, Germany, India, Kenya, Macedonia, Mexico, Malaysia, Pakistan, Philippines, Rwanda, South Africa, Uganda, UK, Uruguay, USA.

In the website of the project people could also learn more about:

- Blackmail
- Cyberstalking
- Hate speech
- How to help
- How to be safe online

#### **Article 19**

<https://www.article19.org/pages/en/hate-speech.html>

Explanation of the term "hate speech" and section where examples are being provided by the project Article 19.

About the organization:

ARTICLE 19 envisages a world where people are free to speak their opinions, participate in decision-making, make informed choices about their lives., ARTICLE 19 is campaigning with people around the world for the right to exercise these rights with offices in Bangladesh, Brazil, Kenya, Mexico, Tunisia, Senegal and the UK, and in collaboration with 90 partners worldwide, the project is doing the following:

- Work on behalf of freedom of expression wherever it is threatened. This work includes monitoring, research, publishing, advocacy, campaigning, setting standards and litigation
- Advise on the development of legislation to protect freedom of expression and freedom of information in countries emerging from conflict, war and genocide.
- Campaign to safeguard pluralism, independence and diversity of views in the media
- Champion freedom of expression, including freedom of information, as a fundamental human right that is central to the protection of other rights
- Advocate for freedom of information legislation to ensure transparency and to strengthen citizens' participation.

## **United States Mapping Exercise**

<https://www.splcenter.org/hate-map>

A map of the United States of America displaying 892 registered hate groups and showing them in the different States.

## **The Sentinel Project**

<https://thesentinelproject.org/2013/03/25/introducing-hatebase-the-worlds-largest-online-database-of-hate-speech/>

Article about hate speech published on the Sentinel Project's website. The Sentinel Project is a non-profit organization based in Canada with members in several countries worldwide. Our mission is to prevent the crime of genocide worldwide through effective early warning and cooperation with victimized peoples to carry out non-violent prevention initiatives.

In the website of the organization you can learn more about other activities, such as:

- Genocide Prevention - More about why genocide is preventable and how the Sentinel Project will make that a reality.
- Early Warning System - The early warning system is the core project's work. This overview explains the work involved in assessing where genocide is likely to happen.
- The Role of Technology - The creative use of technology is one of the aspects that makes the Sentinel Project unique. You can read about how technological tools can be used to predict and prevent genocide.

## **Legislation in Ireland on Hate Speech**

<http://www.irishstatutebook.ie/eli/1989/act/19/section/1/enacted/en/html#sec1>

Link to Irish Law Register and more precisely - Prohibition of Incitement To Hatred Act, 1989. The website give the possibility to view the whole act, print or download it in PDF file.

## **OSCE Office for Democratic Institutions and Human Rights (ODIHR)**

**Tolerance and Non-Discrimination Department** <http://hatecrime.osce.org/italy>

OSCE Office for Democratic Institutions and Human Rights (ODIHR) Tolerance and Non-Discrimination Department website is giving information about hate crimes and recording of hate crimes in many participating countries. In the link above a statistic could be found regarding recorded hate speech crimes in Italy.

Effectively tackling hate crime requires a comprehensive effort targeting various levels. Governments need to integrate strategies to combat hate crime into education, law-enforcement and social policies, as well as to collect and publish relevant data. The gravity of these crimes needs to be reflected in law. Police, judges and prosecutors must be able to identify hate crimes and deal with them accordingly. Civil society play an important role in monitoring and reporting incidents, supporting victims, fostering good inter-community relations and raising awareness in society. Intergovernmental organizations can help set standards, promote best practices internationally and assist states in meeting these goals.

ODIHR has been tasked to assist OSCE participating States in their efforts to counter hate crime. In line with this mandate, ODIHR has partnered with participating States, civil society and international organizations to produce the following programmes:

- **Hate crime recording** - ODIHR supports government officials in designing and developing monitoring mechanisms and data collection on hate crime.
- **Police training** - Training against Hate Crimes for Law Enforcement (TAHCLE) is a programme designed to improve police skills in recognizing, understanding and investigating hate crimes, interacting effectively with victim communities, and building public confidence and co-operation with other law-enforcement agencies.
- **Supporting Law Makers** - ODIHR helps participating States design and draft legislation that effectively addresses hate crimes. To that end, ODIHR has developed a practical guide assisting law makers in fulfilment of this role. On the request of the participating States, ODIHR also reviews and comments on draft versions of hate crime legislation.
- **Training prosecutors** - ODIHR provides training that builds the capacity of participating States' criminal justice systems. PAHCT is designed to improve the skills of prosecutors in understanding, investigating and prosecuting hate crimes. In doing so, it helps prevent hate crime and build constructive ties with marginalized groups.

The programme is tailored to the needs and experiences of each country in which it is used. PAHCT is short, compact and flexible. It is designed to be integrated into existing training efforts.

- **Working with civil society** - Civil society plays a crucial role in monitoring and reporting hate crimes. Data provided by NGOs form an important part of ODIHR's hate crime data collection and offer indispensable context to participating States' reporting on hate crimes.

ODIHR helps raise awareness of hate crimes among civil society and international organizations. It provides information about the characteristics of hate crimes and their impact on the stability and security of the community. ODIHR also supports civil society efforts to monitor and report hate crimes, NGOs outreach efforts in their communities and foster relationships between community groups and law enforcement so that victims feel confident to report crimes. ODIHR also encourages civil society advocacy for better hate crime laws.

- **Working with educators** - Educators play a fundamental role in countering intolerance and discrimination. ODIHR works to support participating States that have committed themselves to promoting educational programmes that counter intolerance and promote mutual respect and understanding.

ODIHR, together with the Council of Europe and UNESCO, has developed guidelines for educators to counter intolerance and discrimination against Muslims. As well, in co-operation with national experts, ODIHR and the Anne Frank House in Amsterdam have developed teaching materials to combat anti-Semitism. ODIHR continues to develop educational tools and strategies to counter the biases that can lead to hate crime.

**The Legal Project** <http://www.legal-project.org/issues/european-hate-speech-laws>

The Legal Project: protects researchers and analysts who work on the topics of terrorism, terrorist funding, and radical Islam from lawsuits designed to silence their exercise of free speech.