

'HATE SPEECH' LAWS

Why Democracy Needs True Freedom of Expression

'Hate Speech': A Term with No Clear Definition

While most will be familiar with the term 'hate speech', it is not used by any of the major international human rights treaties, and it has not been clearly defined by the European Court of Human Rights or any other international court.

National governments, technology companies, and international agencies use the term 'hate speech' in different ways in different documents. It is widely accepted that there is no universally agreed definition of 'hate speech' and most attempts rely on vaguely defined terms and subjectivity.

Dangerously Ambiguous Laws

Hundreds of draconian criminal speech laws exist on the statute books in Europe. In Austria, 'insulting or belittling with the intent to violate the human dignity of others' carries a two-year prison sentence.¹ In Greece, 'insulting God in public' carries a two-year prison sentence,² and in

Denmark, insulting the flag of the United Nations carries the same sentence.³ In Hungary, the State itself can be the victim of 'hate speech': inciting hatred against the Hungarian nation potentially carries a three-year prison sentence.⁴

Similar laws exist across Europe, with enforcement focused on those who do not share the State's views on certain politically-charged topics. Consequently, in twenty-first-century Europe, public – and sometimes, even private – discussions on abortion, immigration, Islam, marriage and same-sex relationships are high risk.

'Hate Speech' Laws Hurt Democracy

Because 'hate speech' laws rely so heavily on subjective and unclear terms (such as 'insult', 'belittle', and 'offend') they are inconsistently interpreted and arbitrarily enforced. Generally 'hate speech' is considered hateful by reference to the hearer, making it subjective and often with no or little regard for the content of the speech itself.

1 Section 283 of the Austrian Criminal Code. This law and others examined in this Briefing are further examined in: P Coleman, *'Censored: How European 'hate speech' laws are threatening freedom of speech'* (Vienna, 2016).

2 Section 198 of the Greek Criminal Code

3 Section 110(e) of the Danish Criminal Code.

4 Article IX (5) of the Hungarian Constitution.

Because of the vague and subjective nature of these allegations, the authorities necessarily have to select which prosecutions to pursue. This generally results in the targeting of minority groups or opinions by those who disagree. In some cases, even the fact that what was spoken is demonstrably truthful is no defence.

It is not just spoken speech which has attracted the attention of censors, but also activity online. Internet giants including Facebook, Twitter, Google and Microsoft have partnered with the European Commission to actively remove 'hate speech' online.⁵ In practice, this has led to significant censorship on internet platforms, with very little insight into how each decision to remove user content is made, or how such decisions can be appealed.

The Importance of Freedom of Expression in Society

Freedom of expression is undoubtedly one of the most fundamental freedoms and features prominently in all major human rights treaties and national constitutions the world over.

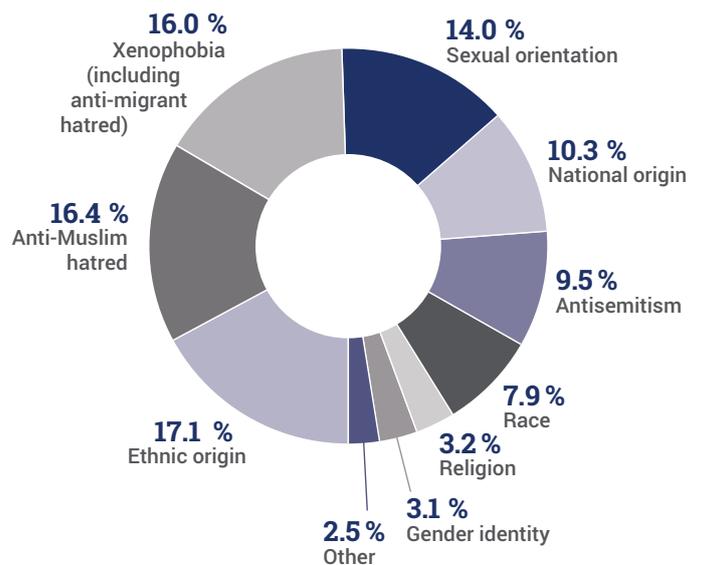
Article 10 of the European Convention on Human Rights guarantees that everyone has the right to freedom of expression, and in the landmark case of *Handyside v. United Kingdom*,⁶ the European Court of Human Rights recognized that:

Freedom of expression constitutes one of the essential foundations of [democratic] society, one of the basic

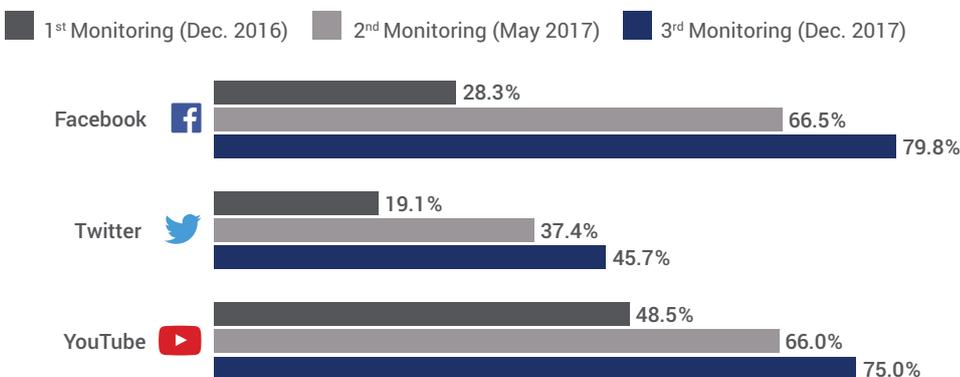
conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.

The European Court has further stressed that States are under a positive obligation to create a favourable environment for participation in public debate by all persons concerned, enabling them to express their opinions and ideas without fear.⁷

Notifications per ground of hate speech (in%)



Removals per IT company (in%)



Source:

Recent EU monitoring exercise on implementation of Code of Conduct factsheet: http://ec.europa.eu/newsroom/just/document.cfm?doc_id=49286

⁵ See European Commission Press Release: European Commission and IT Companies announce Code of Conduct on illegal online hate speech <http://europa.eu/rapid/press-release_IP-16-1937_en.htm>.

⁶ Application no. 5493/72, 7 December 1976.

⁷ *Dink v. Turkey*, Application nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, § 137.

'Hate Speech' Laws Chill Freedom of Expression

'Hate speech' laws shrink the boundaries of free speech and create a chilling effect on a variety of important conversations. Given the vague nature of 'hate speech', citizens look to avoid engaging in sensitive or potentially offensive topics for fear that this might be qualified as 'hate speech' and lead to a criminal investigation.

This unduly restricts personal liberty as individuals should be able to freely express their thoughts, ideas and personal convictions. It also stifles debate, differences of opinion or unpopular views and creates a climate of suspicion and mistrust. 'Hate speech' laws open the door to baseless litigation and the criminalization of 'rational' or 'normal' speech on unclear and unsubstantiated grounds.

'Hate speech' can end up meaning whatever state authorities arbitrarily decide. This confers an extraordinary amount of power on the state to police the speech of its citizens. Once the premise that the state can give or take away the right to speak freely is accepted, there is no logical stopping point.

Necessary and Justifiable Restrictions on Freedom of Expression

There are limitations on the right to freedom of expression contained in Article 10(2) of the European Convention on Human Rights, but any restrictions must be considered 'necessary in a democratic society' and proportionate to the legitimate aim pursued.⁸

In the *Handyside* case, the European Court noted that the adjective 'necessary' implies the existence of a 'pressing social need' and the word does not have the flexibility of expressions such as 'useful', 'reasonable' or 'desirable'.

Freedom of expression may legitimately be restricted in limited and specific situations which involve incitement to imminent unlawful physical violence. But such limits should remain an exception which is narrowly construed, well-defined, and proportionate.

'Hate speech' laws do not meet these standards because they are vague, subjectively defined, and open to arbitrariness. Moreover, such a limitation cannot be accepted on the unverifiable assertions that such speech 'harms' society or individuals.

Real People Affected

These 'hate speech' laws can ruin the reputation and livelihoods of individuals, even when they ultimately do not result in a prosecution. In this sense, the process becomes the punishment and others are deterred from making similar statements in the future.

In 2007, the police urged a British evangelist, Julian Hurst, not to hand out Easter leaflets that featured a picture of a daffodil flower and said: 'New Life, Fresh Hope'. This is because a member of the public considered it offensive that the church would hand out Easter leaflets in a part of the town where there was 'obviously a sizeable gay community'.

In December 2010, a 63-year-old retiree, Helmut Griese, was charged under the Austrian Criminal Code for 'disparagement of religious symbols', a law that is generally used against neo-Nazis who desecrate Jewish graves. Griese was yodelling in his garden out of pleasure. His Muslim neighbours contended that the yodelling was an attempt to mock and imitate the Muezzin's call to prayer. To avoid a costly legal battle, Griese agreed to pay the €700 fine.

In 2012, Irish Bishop Philip Boyce was investigated for 'hate speech' after preaching an 'offensive' homily. His statement that the church was being 'attacked from the outside by the arrows of a secular and godless culture' was enough to trigger a police investigation at the request of a leading atheist campaigner. Although his sermon might have been mildly offensive to some parts of society, it should have been allowed as part of a healthy debate on the current moral state of the culture.⁹

8 *Sunday Times v. The United Kingdom*, Decision of the European Commission, adopted on 18 May 1977, Series B no. 28, 64, § 194.

9 For more than 50 cases involving 'hate speech', see P Coleman, 'Censored: How European 'hate speech' laws are threatening freedom of speech' (Vienna, 2016).



ADF INTERNATIONAL

What You Can Do

Get informed

Find out more on the ADF International website at www.ADFinternational.org/censored and discover how 'hate speech' laws might affect you.

Raise awareness

Raise awareness in your own country about the harmful consequences of 'hate speech' laws.

Build an alliance

Identify a list of political actors, NGOs, academics, and journalists who share a critical view towards 'hate speech' laws.

Write to your representatives

Write letters to your local Member of Parliament (or MEP) raising your concerns with 'hate speech' laws, and ask what action they will take to protect freedom of expression.

Organize an event

Organize an event or a conference to discuss action that can be taken to protect freedom of expression in your country.

Join the conversation

Share our content and regular website news updates on social media.

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