

LIBERAL

AGENDA

AGAINST

ONLINE

HATE

SPEECH



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Hate speech is everywhere: on the walls of our cities, in mainstream media, and in online media as well. It is impossible to avoid. It's impossible to run away from it. Its massive character changed the attitude of people towards hate speech. Before it was the domain of the stadium hooligans or the far right extremists. Not anymore. Hatred entered political life, and extreme parties found their way to national and European parliaments. Their language was sometimes adopted by mainstream parties, which influenced journalists. The situation is even worse in the virtual world. The Internet has become a bottomless pit of hate speech. Forums, blogs, web sites, and social media are full of aggression that targets groups and individuals. Each verbal attack has held consequences for their victims and on the society in general, some of them being tragic.

In 2012 we decided that something has to be done. Projekt: Polska started a HejtStop project that aimed at removing hate speech from the public space in Polish cities. A special web site was created, wherein everyone could send a picture of hate speech graffiti, and the coordinators together with local authorities, owners of the walls, and with the support of private companies, removed them. Some were covered with beautiful murals. The project received large success initially and developed further. Today there is a special application and HejtStop removes hate speech from social media. Further, in 2012 was also started a long term ELF project for "Developing a liberal strategy against online

nationalism". The first part of the project was an international conference that took place in Kraków in 2013. Experts from many European countries analyzed the situation in Europe and looked for solutions. The follow up took place in Poznań in September 2014. It had a practical dimension and participants, together with experts and workshop facilitators, approached practical solutions.

This paper is a result of the project. It is an analysis of the current situation of online hate speech in Europe. It defines the problem and points out existing legal instruments that address the issue. Finally, it offers nine liberal policy proposals. The proposals are of varying character, some that suggest legal changes, some that require more dialogue with private partners and changes in existing projects. Nevertheless, all of them aim to combat hate speech while protecting liberal values, especially that of the freedom of expression. These proposals can be developed immediately, but they may not be treated as a closed catalogue. They are rather a starting point for a further discussion amongst liberals all around Europe. #

[...] tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance [...]

Erbakan v. Turkey, judgment of 6 July 2006, § 56

The last few years have shown that the economic crisis was deeper than expected and that it has influenced European societies significantly. Europe has had to respond and one of the responses on the European level was a gradual deepening of economic integration, for example through financial rescue mechanisms and fiscal policy coordination. This reaction has provoked many counter-reactions. In many countries anti-European, nationalistic groups arose and their representations in local parliaments were perceived as a danger for the open liberal democracy.

Of course, the key factors that accelerated the development

of nationalistic movements are in most cases internal, strongly connected with the socio-economic situation in particular states, but a common European dimension has been noted too. Every European nation is vulnerable to some extent to nationalism which is strongly connected with European history and a fact that the European states were formed finally as nation-states in the era of nationalism. What is more, nationalism is also a product of romanticism, therefore it is not all about reason. It is all about sentimentality, which makes it harder to fight against.

Economic crisis has brought economic tensions. High unemployment rate forced some members of the European society and the political class to look for the simplest solutions that would (presumably) protect their nations. Foreigners living in the nation-states (immigrants) and outside (powerful states) were claimed to be responsible for the new and difficult situation. In the European Union the standard of living saturated at a certain level and the peoples of Europe blamed Brussels and accused the system. The system is very often symbolized by the European bureaucracy, overregulation and the euro. The EU is seen as an imposer of policies that slow down development of economy, especially those of industry and agriculture. “We want our country back,” demands Nigel Farage (UKIP); “Less Europe, more Holland,” adds Wilders (VVD). This sentiment has gotten intertwined with the populism. Irresponsible opposition, anti-establishment parties look to get new voters by all means. Nationalism and far right ideology was an easy platform to gain support. On the far right of the political spectrum the leaders of the parties found new topics to mobilize the voters against the mainstream parties.

One additional problem with right populism is that it get easily picked by the mainstream right or center right parties. The language of the public debate moves therefore further to the right.

The ultimate confirmation of the trend was remarked during the elections to the European Parliament in May 2014. Eurosceptical right-populist parties increased their vote share from 11% to 15%, with some countries receiving even more support. Lega Nord in Italy, Austrian Freedom Party, Jobbik in Hungary, Party of Freedom in the Netherlands, True Finns, Congress of the New Right in Poland have now marked their representation in Strasbourg and Brussels. Danish People's Party, National Front in France and the United Kingdom Independence Party won the elections in their states, scoring respectively 26%, 25% and

27% of votes. The National Democratic Party of Germany and the Golden Dawn of Greece, two parties considered neo-nazi also won seats for their MEPs. The last case is especially alarming because the Greek party (associated with a swastika-like symbol) promotes political violence, being under investigation for brutal crimes, and their leaders facing incarceration. This proves that the radical right present in the European Parliament is thus not only the so called "far right 2.0", the one with more aesthetic look and rhetoric traits, but also includes the traditional far right that bases its support on racism, anti-Semitism, skinheads, etc. #

HATE SPEECH

Of course the rise of the far right ideology in Europe is embodied not only in political parties. This ideology is also influencing different aspects of social life. Negative approach towards immigrants or minority groups sets the tone for activities of many formal and informal groups. It influences not only their acts but also their speech, topics of their debates, lexis and rhetoric aiding in further penetration into the media.

Hate speech is one of the aftermaths of the development of extreme right

movements in Europe. Hate speech is organically connected with nationalistic demagoguery, with both phenomena feeding each other. Hate speech reflects a negative attitude represented by nationalists towards different groups, and on the other side hate speech becomes the nutrient for far right movements that institutionalize aggressive discourse. This is the classic knock-on effect, which can also be observed in relationship between hate speech and hate crime.



¹ http://fra.europa.eu/sites/default/files/hate_speech_warsaw_slide.pdf

Therefore fight against hate speech contributes to the fight against nationalism, which is focus on the topic is required from the liberal front.

Hate speech has become a typical behavior among politicians. More than 40% of respondents a research said that the use of offensive language towards LGBT people by politicians is widespread in their country. In some countries it went up to above 90%. On an average, 44% of respondents across the eight countries surveyed said that anti-Semitism in political life is a big problem. In some countries, this figure rises to well over 50%. Political hate speech is connected with hate speech in media. The same survey shows that in those countries in which the respondents reported a high degree of anti-Jewish sentiment, there is also a heavy presence of anti-Semitic reporting in the media. This research appears to have identified an interaction between the media and the politics, that requires further investigating.¹

Obviously, the notion of hate speech is itself broader than presented above. Not

all hate speech is tightly bonded with nationalism, or more broadly speaking – with the far right. The most visible examples of hate speech, those which are most commonly discussed in public, like racism, xenophobic speech, speech against LGBT and religious groups, are clearly linked with extreme right agenda (even if haters are not directly inspired by the extreme right movements). But in the public space there also exists hate speech against other groups that normally are not identified as enemies of the far right parties. Hate speech can be directed towards any group, such as women, or supporters of a particular sport team or a music band, i.e. any group that can be victimized. Any group can be connected with stereotypes and attacked. What is important is that not only groups but also individuals are targeted by haters.

All hate speech results from discriminatory attitudes. All hate speech has victims, and all hate speech deprives people of their rights. This is why all hate speech deserves to be an object of powerful critique and of campaigns by liberals. #

WHAT IS HATE SPEECH?

The first problem with hate speech is that there is no agreement concerning the definition and the scope thereof. The spectrum of hate speech is very broad, from hatred to extremely abusive forms of prejudice. *Oxford English Dictionary* define hate as follows: “an emotion of extreme dislike or aversion; detestation, abhorrence, hatred”. And often the qualification “extreme” is treated as a decisive parameter in defining hate speech.

From a legal perspective, the hate speech spectrum stretches from types of expression that are not entitled to protection under international human rights law, to types of expression that may or may not be entitled to protection, depending on the existence and weight of a number of “contextual variables” (eg. extremely offensive expression), to other types of expression that presumptively would be entitled to protection despite their morally

2 The Council of Europe
against online hate
speech: Conundrums
and challenges.

objectionable character (eg. negative stereotyping of minorities).²

One of the definitions of hate speech can be found in Recommendation No. (97) 20 of the Committee of Ministers of the Council of Europe:

[...] the term "hate speech" shall be understood as covering all forms of expression which is used to 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.

One more definition that does not come from a legal text is as follows:

Hate speech is any speech, gesture or conduct, writing, or display which is forbidden because it may incite violence or prejudicial action against, or by a protected individual or group, or because it disparages or intimidates a protected individual or group.

The law may identify a protected individual or a protected group by certain characteristics.

This definition includes publications, symbols, graffiti, songs, movies and radio broadcasting. This definition will be accepted as the official one in this report. It is broad and implies that hate speech cannot be left alone, and action must be taken against it.

HATE SPEECH AND LAW

3 Hate crimes are criminal acts committed with a biased motive. Every hate crime has two elements. The first element is that an act is committed that constitutes a criminal offence under ordinary criminal law. The second element is that the offender intentionally chose a target with a protected characteristic. A protected characteristic is a characteristic shared by a group, such as "race", language, religion, ethnicity, nationality or any other similar common factor. *Crime Laws: A Practical Guide*, (Warsaw: ODIHR, 2009), p. 16.

4 This view is especially popular in the USA and it has been protected by the Supreme Court of the USA in *Snyder v. Phelps, United States v. Alvarez, United States v. Stevens* and others)

The purpose of regulating hate speech is to prevent interference with other basic rights and to prevent the occurrence of certain harms.

Hate speech can interfere with human rights and also with so called operative values, such as dignity, non-discrimination, equality, freedom of expression, religion, association or effective participation in public life. Additionally hate speech harms individuals and causes damages in individuals such as psychological harm, fear, inhibited self-fulfillment or damages to self-esteem.

Hate speech that interferes with the human rights is especially harmful and dangerous for it violates the non-discrimination principle. They undermine personal dignity and alienate individuals or groups that often are already marginalized. Hate speech undermines the sense of security and confidence of anyone who belongs to the group targeted, and personalized attacks may also infringe the right to private life and can even be considered inhuman or degrading treatment. Additionally, sometimes hate speech leads to hate crimes which endangers human rights relating to personal safety.³ The most terrible hate crimes, like genocide, are always associated with hate speech.

The different types of hate speech result in different responses to it. Hate speech needs an appropriate response which cannot be overly restrictive of the freedom of expression. It should acknowledge and attempt to address the damage it can cause. Therefore always a diverse set of suggestions/responses should be taken into consideration.

Some are best dealt with by regulatory measures, including the ones concerning criminal law, but others are better tackled with non-regulatory tools, which can be educational, cultural or informational ones.

It is important to remember that an appropriate response to hate speech will not be overly restrictive of the freedom of expression, but it will acknowledge and attempt to address the damage it causes/can cause. While deciding about the most appropriate response the following factors are taken into account:

- the content and tone of the expression,
- the intent of the person responsible for the expression,
- existing targets or potential targets,
- the context,
- the impact.

Some liberals are reluctant to act against hate speech because they consider it an unacceptable limit of freedom of expression. Some believe that the government should not be in the business of ensuring that people do not have their feelings hurt. Censorial solutions are absolutely out of picture in such cases.⁴ Some accept that it is only acceptable to react in the most extreme forms of hate speech, when for example immediate threats to someone's life, health or security are issued.

The biggest discussion on the process of answering the question about anti hate speech action concerns its relation with the freedom of expression. Article 19 of the Universal Declaration of Human Rights reads: "Everyone has the right

to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. Also in the European Charter of Human Rights we read in Art. 11: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

Many liberals believe that this principle is absolute and cannot be limited and that any attempt towards eliminating hate speech violates the freedom of expression, and should not be accepted. This is especially visible in the American political and legal culture where freedom of expression is seen as the most significant of all freedoms and is very rarely limited. It is described as a part of human nature that is crucial for democracy. Hate speech is not criminalized, because there was no historical past and need for protection. Europe, which has experienced the World War II at its worst, with the trauma of the Holocaust, took a different path. A path where none of the principles of constitutional law is absolute; they are all balanced.

In the 2001 Joint Statement, the UN, OSCE and OAS Special Mandates on the right to freedom of expression set out a number of conditions which hate speech laws should respect:

- No one should be penalized for statements which are true;
- No one should be penalized for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;

- The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- No one should be subject to prior censorship;
- Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

These principles should be the starting point in every discussion about penalization of hate speech. It is a set of conditions that guarantees that the anti-hate speech laws respect the freedom of expression in the broadest way possible.

The liberals in Europe cannot stand still facing the problem of development of hate speech. When fundamental rights of individuals and groups are endangered, liberals must act and find solutions to protect them. Liberalism is based on the protection of the individuals and the creation of a free space for exchange of ideas and thoughts. Hate speech goes against these principles. Hate speech does not bring in any new ideas or thoughts, it never builds but it always ruins. It is the embodiment of the most counterproductive stereotypes and vulgarities that does not deserve any protection, and should not be justified under the cover of the freedom of expression. Hate speech usually targets weaker groups, and the protection of minorities is one of the main principle of liberal democracy. Finally, hate speech very often leads to even more grave crimes and fight against hate speech equals preventing hate crimes. #

LEGAL INSTRUMENTS AGAINST HATE SPEECH

The first hate speech legislation in European nations in the 20th century was aimed at stopping political racism associated with fascism and the experiences of the World War II. After the war, the United Nations, through various declarations and treaties, sought to fight racist regimes. In its International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) the UN linked racial discrimination with racism, in an effort to outlaw not only discriminatory treatment but also hate speech and other elements of racism that might not fall under the definition of racial discrimination.

There is already quite a long list of legal instruments that are supposed to limit hate speech from the public space. A very special place in that system of protection belongs to the Council of Europe (CoE) and the European Court of Human Rights (ECtHR). Both were created to guard legal standards, human rights and democracy. Among those international legal instruments are:

1. The Convention on the Prevention and Punishment of the Crime of Genocide (es. Article III (c) – direct and public incitement to commit genocide);
2. The International Convention on the Elimination of all Forms of Racial Discrimination

(ICERD) (esp. articles 4 and 5 – all dissemination of ideas based on racial superiority or racial hatred, incitement to racial discrimination, with due regard to the right to freedom of expression);

3. The International Convention on Civil and Political Right (ICCPR) (esp. Articles 19 and 20 – respectively, freedom of expression and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence).

Many of the treaty provisions have been clarified by General Comments or Recommendations, eg. Human Rights Committee's General Comment No. 34 on the right to freedom of expression and the Committee on the Elimination of Racial Discrimination's General Recommendation No. 35, entitled "Combating racist hate speech".

ICERD is of special interest because it contains provisions on the relationship between freedom of expression and hate speech. Article 4 thereof requires states to render several types of expression punishable by law. This makes ICERD a special tool that creates more far-reaching obligations for states than other treaties. States Parties condemn all propaganda and all organizations which are based on ideas

5 Three other interpretive principles espoused by the Court are of particular relevance for the right to freedom of expression: the practical and effective doctrine; the living instrument doctrine and the positive obligations doctrine.

or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination. To this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, the states shall, inter alia:

- a. declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- b. declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- c. not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

In Europe, Article 10 of the European Convention of Human Rights (ECHR) is the centerpiece for the right of freedom expression. It reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court of Human Rights has developed a standard test to determine whether the Article 10 has been violated. Whenever it has been established that there has been an interference with the right to freedom of expression, the nature of the interference must first of all be prescribed by law (i.e., it must be adequately accessible and reasonably foreseeable in its consequences). Second, it must pursue a legitimate aim (i.e., correspond to one of the aims set out in Article 10 [2]). Third, it must be necessary in a democratic society (i.e., correspond to a “pressing social need”) and be proportionate to the legitimate aim(s) pursued.

States are given a certain amount of discretion in how they regulate expression (a margin of appreciation). The extent of this discretion, which is subject to supervision by the European Court of Human Rights, varies depending on the nature of the expression in question. Whereas States only have a narrow margin of appreciation in respect of political expression, they enjoy a wider margin of appreciation in respect of public morals, decency and religion.⁵

As it was mentioned before, The Committee of Ministers of the Council of Europe went further and recommended member governments to combat hate speech under its Recommendation R (97) 20: “hate speech” shall be understood

6 See *Seurot v. France, Norwood v. United Kingdom, Pavel Ivanov v. Russia, Garaudy v. France, H., W., P. and K. v. Austria.*

7 *Bowman v. the United Kingdom.*

8 *Feret v. Belgium, Castells v. Spain, United Communist Party of Turkey v. Turkey.*

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.

The outer extremity of that protection of freedom of expression is determined by Article 17 of the Convention. This is a so called prohibition of abuse of rights clause. It is a tool designed to prevent the ECtHR from being misused or abused by those whose intentions are contrary to the letter and spirit of the Convention. Generally speaking, the ECtHR tends to invoke Article 17 in order to ensure that Article 10 protection is not extended to racist, xenophobic or anti-Semitic speech; statements denying, disputing, minimizing or condoning the Holocaust, or (neo-)Nazi ideas.⁶

The European Court of Human Rights used the term “hate speech” for the first time in 1999, but without explaining its introduction, intended purpose or relationship with the case law. The ECtHR avoids this term in its decisions. It has been used only a few times. In *Surek v. Turkey* the ECtHR relied on the term in a way such that it had significant interpretative consequences. The Court distinguished between hate speech and protected speech. It established a new category that does not deserve protection under the freedom of speech principle.

In 2012 the Court recognized homophobic hate speech.

The ECtHR also analyzed hate speech in context of protection of democracy, which can be of a special interest for the liberals. Democracy plays an important role in the case of law derived from the Article 10 of the Convention. Democracy is seen by the Court as “the only model contemplated by the Convention and, accordingly, the only one compatible with it”. The Court observes that “free elections

and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system”.⁷

The Court also explained how the freedom of expression of each political actor, eg. MPs, government, opposition parties, is shaped by the nature of the position exercised or status enjoyed. In the case of *Lingens v. Austria*, ECtHR found that “the limits of acceptable criticism are wider for politicians than for private people because the former lay themselves “open to close scrutiny of [their] every word and deed by both journalist and the public at large, and [they] must consequently display a greater degree of tolerance”. This freedom is especially important in the case of members of government and the representatives to parliaments.⁸

Practice shows that hate speech often coincide with freedom of expression in political practice. Therefore, freedom of political expression should have some limits. The question is where the boundaries lie. The Court stated that: “[as] the struggle against all forms of intolerance is an integral part of human rights protection, it is crucially important for politicians, in their public discourse, to avoid expression that is likely to foster intolerance”. Consequently, the freedom of political expression does not include “freedom to express racist opinions or opinions which are incitement to hatred, xenophobia, anti-Semitism and all forms of intolerance”. With the development of new technologies, online information channels and social media it can be expected that the interplay between hate speech and political expression become stronger. Alongside, legal conflict between the two extremely important values protected by the Council of Europe will be on the rise.

It should also be mentioned that a wide spectrum of non-legal instruments exist in the framework of the Council of Europe. These instruments appeal to the sense of “duties and responsibilities”

9 Other strategies from the Council of Europe against hate speech are: Framework Convention for the Protection of National Minorities, European convention on Transfrontier Television.

of all political actors and have been developed extensively in the context of ECRI's monitoring framework, as well as that of the Advisory Committee on the Framework Convention for the Protection of National Minorities. ECRI's Declaration

on the use of racist, anti-Semitic and xenophobic elements in political discourse, and the Charter of European Political Parties for a Non-Racist Society should be mentioned as measures that can play a bigger role in the future.⁹ #

LEGAL INSTRUMENTS OF THE EUROPEAN UNION

To reflect on the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union recognizes freedom of expression (Article 11), as well as the right to non-discrimination (Article 21).

In 1996 the European Union also adopted a Joint Action, that encouraged action from Member States to prevent perpetrators of racist acts from moving to States with more lenient laws by either criminalizing certain behaviors, or by agreeing to remove the requirement for double criminality. On 28 November 2008, the Council of the EU adopted the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. As regards hate speech, Member States must ensure that the following intentional conduct is punishable when directed against a group of persons or a member of such a group

defined by reference to race, color, religion, descent or national or ethnic origin:

- public incitation to violence or hatred, including by public dissemination or distribution of tracts, pictures or other material;
- public condoning, denying or grossly trivializing
- crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court (hereinafter 'ICC'); or
- the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, when the conduct is carried out in a manner likely to incite violence, or hatred against such a group or one or more of its members.

Article 1 requires EU Member States to punish specified intentional conduct, including “publicly inciting to violence or hatred directed against a group of persons or a member of such group defined by reference to race, colour, religion, descent or national or ethnic origin”. For the latter purpose, Member States may choose to punish conduct which is either carried out in a manner likely to disturb public order, or which is threatening, abusive or insulting. Article 4 provides that, for offences other than incitement to violence or hatred, “Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or alternatively,

that such motivation may be taken into consideration by the courts in the determination of the penalties”. This recognizes that, across the EU, there are various methods of addressing racist crime, and in particular, that incitement to hatred legislation is not the sole means of addressing racially motivated crime.

The Commission’s new report published in January 2014 finds that most EU Member States have not yet correctly implemented EU rules designed to tackle racist and xenophobic hate crimes. In particular, national provisions against denial, condoning or grossly trivializing certain crimes – such as crimes against humanity – remain inadequate in up to 20 Member States. #

ONLINE HATE SPEECH

In the last decade hate speech has gained a new space to grow, namely the Internet. The world wide web is a vast and powerful instrument. The platforms for expression are multiplying, with new social media and blogs starting up almost daily. The Internet itself is not something that one should fear, for it is not solely used exclusively to harm others. On the contrary, the Internet is a mighty tool that serves to promote freedom of speech, or right to information. The Internet users create a new world of opportunities and chances for the liberal democracy to grow. With the development of the Internet network and availability of electronic equipment the circulation of knowledge and ideas is faster than ever and liberal concepts can reach new targets more easily than ever before. Through

the Internet people get connected and very basic liberal ideas like human rights or democracy can be promoted. Nevertheless, the Internet is also a place where hate speech shows its most awful face. The feeling of anonymity and impunity activates the worst behaviors among some users of the web and changes some corners of the web into an arena of vulgarity and hatred. Globalization, facilitated by the Internet, makes ‘action at a distance’ possible and the fact that the victim of hate speech is not in the same physical space as the perpetrator (who may moreover be anonymized), facilitates the dehumanization of the former by the latter.

There are claims that the fight against online hate speech is pointless and useless. The main argument here is that there

JOINT DECLARATION ON FREEDOM OF EXPRESSION AND THE INTERNET

A. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognised under international law [...]

B. When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.

UN Special Rapporteur on Freedom of Opinion and Expression,
OSCE Representative on Freedom of the Media, OAS Special Rapporteur
on Freedom of Expression and the ACHPR Special Rapporteur
on Freedom of Expression and Access to Information

will always be haters online, and that the amount of hate speech in the Internet makes it impossible to win against. Some would say that those are only few words; words in the ocean of Internet content that cannot do much harm. Both arguments are

missing the point. This is true that the online hate speech is tolerated more than offline hate speech. It is harder to monitor because of its massive character. But this does not give anyone the permission to make a stand without any reaction. Online

haters are often even more abusive than others because they act behind the mask of anonymity. Online hate speech targets both individuals and groups. Respectively, it has as many negative consequences as other forms of hate speech. Online forms of hate speech are more than mere words. In the online world other forms of hate expressions are also possible, e.g. photos and videos. On the internet, imagination is the limit. And the problem with online hate speech is that it lasts forever. Material once published online is almost impossible to remove since forms of expressions are copied and published elsewhere.

The online hatred becomes more extreme by the year and it grows in measures of gigabytes. The 2011 edition of the Simon Wisenthal annual Digital Terror & Hate Report notes a 12% increase to 14,000 “problematic social networks websites, forums, blogs, twitter, etc comprised on the sub-culture of hate. The International Network Against Cyber Hate (INACH), whose goal is “bringing the online in line with human rights”, has been raising awareness about hate speech and claims to have succeeded in having 15,000 hateful pages, posts and comments removed from the net in the last decade. NGOs report a substantial increase

on social networking sites and other Web 2.0 sites such as YouTube, Yahoo! Groups, and Google Groups. However, the filtering system used by the company is a crude one: a number of sites have complained that they have been classified incorrectly as hate sites – to later be re-classified by Websense as acceptable.

The Internet cannot be left out. That it is a new tool does not imply that it should develop totally out of control, allowing aggression towards some individuals and groups. Precisely because it is a relatively new medium, and that we are all still learning its utility, we still have a chance to make it a better space, a space where such behavior will not be accepted. The Internet is not a deserted island. Some acts that are not accepted in the real world, should not be accepted online.

It is important to underline here that total anonymity is a myth. One can talk more about pseudoanonymity. In reality everything done online can be tracked to the author or provider. And this knowledge should serve to destroy another myth, the one about impunity. Haters should know that their actions are illegal or immoral or simply unfair, and that they can be convicted. #

CYBERBULLYING

Cyberbullying is a growing problem that is tightly connected with hate speech. 78% of the respondents of an online survey stated they had encountered hate speech online on a regular basis. Across Europe 6% of 9 to 16-year-old Internet users reported having been bullied online, and 3% confessed to having bullied others. Cyberbullying causes the most destructive reactions in its victims, including suicides.

While hate speech can be directed against individuals or groups, cyberbullying is an action directed against one person. They are both similar form of violence and use similar channels. Most of the time they are combined, and they damage individuals in the same way, which is why they should be combatted alongside. #

[...] cyberbullying means any electronic communication including, but not limited to, one shown to be motivated by a student's actual or perceived race, colour, religion, national origin, ancestry or ethnicity, sexual orientation, physical, mental, emotional, or learning disability, gender, gender identity and expression, or other distinguishing personal characteristic, or based on association with any person identified above, when the written, verbal or physical act or electronic communication is intended to:

- (I) Physically harm a student or damage the student's property; or
- (II) Substantially interfere with a student's educational opportunities; or
- (III) Be so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- (IV) Substantially disrupt the orderly operation of the school.

Responding to Cyberhate, Toolkit for Action (Anti-Defamation League)

LEGAL INSTRUMENT AGAINST HATE ONLINE SPEECH

Of course all the legal instruments that are used to fight against hate speech as such are also used against online hate speech. There

is one additional instrument of international law that is relevant here. It is the Convention on Cybercrime of the Council

of Europe. It serves as a guideline for any country developing its national legislation against hate speech and as a framework of cooperation between state parties of the treaty. There is also an additional Protocol to Convention on Cybercrime concerning the criminalization of acts of a racist or xenophobic nature committed through computer system(which is optional). The protocol not only provides for a harmonized approach towards the criminalization of such harmful conduct, it also makes the investigative powers of the Cyber Crime Convention applicable to the investigation of racist and xenophobic crimes in electronic environments. The Cyber Crime Convention contains a number of new investigative measures, in particular directed at investigations in electronic communication networks, which enable mutual assistance in a modern, flexible, and – if necessary – expedited way. According to the Protocol '[r]acist and xenophobic material' implies any written material, image, or any other representation of thoughts and theories, which advocates, promotes or incites hatred, discrimination or violence against any individual or group of individuals, based on race,

colour, descent, or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

Among the courts' decisions one is worth mentioning here. The European Court of Human Rights issued a judgment in *Delfi AS v. Estonia* (no. 64569/09), a case about the news portal's liability for third-party comments made on its website. The Estonian courts had found that Delfi AS, the news portal, should have prevented clearly unlawful comments from being published in the portal's comments section, even though Delfi had taken down the offensive comments as soon as it had been notified about them. When Delfi lodged a complaint with the European Court, the Court concluded unanimously that the domestic courts' findings were a justified and proportionate restriction on Delfi's right to freedom of expression. This article should be criticized from a liberal point of view as a failure to understand the EU legal framework regulating intermediary liability, but it is binding legal rule now. Consequences of that judgment for Internet content providers may be very deep and troublesome. #

POLICY PROPOSALS

1

- Policy proposal #1
Broadening the scope of the definition of hate speech.

There is a need to expand the definition of hate speech in national legislation to move away from focusing predominantly on race and ethnicity, to also include, for example, LGBT people and groups. Hate speech today has gained a brand new

dimension and new groups are targeted. Nowadays, discrimination based on race or ethnicity is less acceptable in European societies than was the case a few decades ago, therefore the old anti-discrimination laws are seen to have fulfilled their role

successfully. Now it is time to include other vulnerable groups under protection of the antihate speech umbrella. This has already been done in a number of Member States, but it needs a more general approach. A broad European definition will be a focal point for national law makers and law enforcement bodies, proving that hate speech against some groups should not be accepted, even if there is still a higher level of popular acceptance for such speech. A change in the definition will not only have legal consequences, e.g. it will require conviction for certain kinds of hate speech, but it will also have educational consequences, namely it will send a clear message

that such behavior targeting certain groups cannot be accepted and tolerated.

The new definition could be constructed as follows:

Hate speech covers all forms of expression which is spread to, incite, promote or justify hatred based on race, nationality or ethnicity, religion, gender or sexual orientation, political views, age and social background, 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. Hate speech can target both groups and individuals. #

2

• Policy proposal #2

Ratification of the Additional Protocol of the Convention on Cybercrime

Fast ratification of the Additional Protocol to the CoE Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems needs to be implemented, if the same has

not been done yet. Only 20 member states have so far ratified the Additional Protocol. The Additional Protocol offers good solutions to combat online hate speech and its ratification could fill up the lacuna left by the Convention on cybercrime. #

3

• Policy proposal #3

Better monitoring of implementation of Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law

The Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law is the only instrument that the European Union has, when considering online hate speech. Most EU Member States have not yet correctly implemented EU rules designed to tackle racist and xenophobic hate crimes. In particular, national provisions against denial, condoning or grossly trivializing certain crimes – such as crimes against humanity – remain inadequate in 20 Member States. The majority of Member

States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the Framework Decision. Some gaps have also been observed in relation to the racist and xenophobic motivation of crimes, and the liability of legal persons and jurisdiction. Therefore this would be a better instrument to monitor the implementation needed. The European Parliament should push on the Commission to use all possible instruments to make the Member States

fulfill their obligations from the Framework Decisions, especially through engaging in bilateral dialogues with Member States with a view to ensuring full and correct

transposition of the Framework Decision, giving due consideration to the Charter of Fundamental Rights and, in particular, to freedom of expression and association. #

4

- Policy proposal #4

Better organization of units responsible for investigation and prosecution of hate speech

All data show that that authorities responsible for investigation and prosecution of hate speech, and online hate speech in particular are not well prepared for their work. State authorities should participate in stock-taking and evaluation exercise focusing on whether their internal legal systems adequately reflect and implement the principles set out in the basic international documents regulating hate speech. The first thing that can be done is the issue of special guidelines for these authorities, training sessions for them would also be required. Target groups include policemen, judges, prosecutors and others. Special instruments for the exchange of the best practices would

be useful, including multi-agency partnerships and third party reporting. Additionally, these authorities should work better with civil society that understands well the issue of hate speech, such as victims and academia. The cooperation should be national and cross-border. The latter is especially important in case of online hate speech since the Internet knows no borders. Online hate speech requires also special computer skills that should be included in the training of these authorities, especially the police. The very last recommendation, which can be successful in some countries, could be creation of dedicated special units to fight against hate speech. #

5

- Policy proposal #5

Fast implementation of the Victims' Directive

It is fundamental to ensure that victims of hate crime are assisted, supported and protected, taking into account the Victims' Directive to be implemented by 16 November 2015. In particular, it is needed to ensure the case-by-case assessment of a victim's protection needs, as defined in Article 22 of the Directive.

Underreporting is a serious problem in the case of hate speech. Therefore it is important to create an effective system of collecting information from victims, while taking care about their security and comfort. Member States should improve trust in law enforcement and criminal justice, and facilitate reporting not only

from victims, but also from witnesses. Special institutions should take care of this issue; while instruments of reporting may have a form of hot lines or Internet sites (including third party reporting by victims and anonymous reporting). The work of the International Association of Internet Hotlines or of the Polish HejtStop project can be used as a good example of how this may be achieved. These tools should enable victims to register complaints and access the legal system. It is important to promote training for relevant practitioners coming into contact with victims of hate crime, thereby enabling them to efficiently assist the victims. #

6

- Policy proposal #6
Putting pressure on big Internet corporations

Hate speech has tended to gravitate towards social media. The big corporations which dominate the social media – Twitter, Facebook and YouTube – as well as Google can in principle capture and regulate much of the hate speech that appears on their pages through the facilitation of the reporting of posts which breach its community guidelines on hate speech, though they tend to be overwhelmed by the sheer volume of hate-speech videos. Big companies may be convinced to change terms and conditions of their service to render them less hate speech friendly. Sometimes simple

reminding that special international laws as regards protection from hatred exist and can be executed, could be enough in convincing to restrict their internal regulations covering extreme hate speech.

Creation of a permanent working group on hate speech will be necessary. Such a group would consist of representatives of the European institutions (e.g. Parliament and Commission), and representatives of the industry charged with the task of maintaining a continuing dialogue on best practices on combating Internet hate and to promote transparency on how online hate is addressed. #

7

- Policy proposal #7
Online filtering capacities

No changes concerning restriction of anonymity are required. Anonymous online speech as such should be protected for the same reason anonymous offline speech is protected; it in general brings more good than bad. Forcing all users to identify themselves to get a small number of haters can provoke harmful consequences and the government should not do that. Of course, private companies can introduce new *real name* policies as part of their own campaigns against hate speech and other offensive forms of expression. Registered commenters mechanism can be an intermediate form of fighting against hate speech. Some major content providers, like *The New York Times*, have experimented with premium placement, where registered users have their comments pushed up in the queue. Other instruments that can be considered are “like/don’t like” buttons that can also push up or down some comments in the queue, or a simple option letting the users themselves to determine

whether they wish to allow comments on their user-generated content at all.

An important question is who should be responsible to denounce hate speech in the commercial sites, such as news sites with a commenting option. Modern news media, and other content web sites or blogs, are interactive, and therefore encourage users to comment and develop the discussion online. In many countries forums of the biggest websites have changed into bottomless source of hate speech, aggression, disrespect and hate crime propaganda. It is not fully clear who should be responsible for hate speech content on commercial sites. This is especially important in the case of content providers that allow commenting. Some, including the ECHR answered positively to this question (*Delfi* case). Therefore a flagging button system should be introduced on such sites. An obligatory flagging button next to every comment creates a system of peer control of other users’ content. It also

helps the owners of the sites in monitoring. A content flagged by a user or users as hate speech will alarm the owners that they should analyze a particular content and possibly remove it. This creates a functional instrument of co-responsibilities

for the content. The websites also stand to benefit because they are cleaned of hate speech content. The companies benefit as well because they gain a warning instrument against being an object of law suits. #

8

• Policy proposal #8 Internet literacy building

Internet literacy is the ability to access, understand, critique and create information and communication content online. This competence is needed in current times since the Internet became the main source of information, especially for young people. The information is picked by the young people directly or indirectly, via social networks and other online activities. In both cases participation in the online world is important; active participation includes a competence of receiving and creating content. Young people are not trained on these aspects. The situation is even more complicated when it comes to create negative content. In the latter case young people are often not able to write a constructive critique, and they proceed to hate speech immediately. Internet literacy should be a part of the educational system. It can be easily implemented in diverse courses at different stages of schooling. The general training should consist of critical thinking and information processing, finding information and checking the authority concerned thereof. One part of general internet literacy training should be recognition of and reaction on hate speech.

Internet literacy training should be combined with media literacy and

education to toleration. Media literacy is understood as the ability to access, analyze, evaluate, and create messages in a variety of forms. Education to toleration requires the development of open-mindedness, critical skepticism, the power of deliberation, and the willingness to change one's attitude.¹⁰ Also information about online governance will build awareness and create positive online behaviors.

It is important to implement anti hate speech elements into programs of the European Commission directed to youth or connected with lifelong learning, like Erasmus+. There's no need to create new special projects to tackle this issue, but it should be included in the existing projects. Online citizenship or online literacy could be added as topic clusters in programs or as required elements of youth projects sponsored by the European Commission.

Development achievements at the intersection of education and social/NGO work should be continued. Such projects can be developed afresh, or projects of the Council of Europe, like Pestalozzi Program, No hate Speech Movement and Living Together Online, should be supported. #

¹⁰ David Heyd, „Education to Tolerance: Some Philosophical Obstacles add their Resolution“, in C McKinnon and D Castiglione (eds), *The Culture of Toleration in Diverse Societies: Reasonable Tolerance* (Manchester University Press 2003) 204.

9

• Policy proposal #9 Message to political actors

Racist and xenophobic attitudes expressed by opinion leaders may contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of conduct, such as violence. Since hate speech comes often from the political actors and the Internet is used as one of the main tools in political campaigns, the politicians should also be the target for the implementation of anti-hate speech measures. Politicians should work according to guidelines provided by the ECR1 and the Charter of the European

Political Parties for a Non-Racist society. ALDE can and should be a leader among the political groups in the field of combating online hate speech. It could create a code for its members with the highest standards of rules of the political discourses and guidelines concerning how to react on hate speech of other political actors. Such guidelines should be detailed and concrete measures and best practices, built upon national and European expertise, should be constructed. An ALDE mechanism of evaluation of hate speech can be introduced. #

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About the organizations **European Liberal Forum (ELF)** is the foundation of the European Liberal Democrats, the ALDE Party. A core aspect of our work consists in issuing publications on Liberalism and European public policy issues. We also provide a space for the discussion of European politics, and offer training for liberal-minded citizens. Our aim is to promote active citizenship in all of this. Our foundation is made up of a number of European think tanks, political foundations and institutes. The diversity of our membership provides us with a wealth

Projekt: Polska are people who are dreaming of a modern, open, and liberal Poland. Those, to whom a democratic, effective and citizen-friendly government is a key goal, and who help accomplish this goal while enjoying themselves, forming new friendships, and furthering

HejtStop is a project within the framework of Projekt: Polska that works against hate speech. HejtStop coordinators together with public and private partners, using online tools remove hate speech from walls

of Projekt: Polska and a co-founder of Projekt: Polska in Iceland. Now he is a board member of Projekt: Polska Association.

of knowledge and is a constant source of innovation. In turn, we provide our members with the opportunity to cooperate on European projects under the ELF umbrella.

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their own interests. The Projekt: Polska Foundation is our framework, a group of professionals with immense experience in direct action: entrepreneurs, leading NGO heads, civil servants.

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of Polish cities and the online space. HejtStop is also a center of expertise about hate speech and a team of educators.

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