March 2019
This factsheet does not bind the Court and is not exhaustive

Hate speech

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

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

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

- the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights)[1], where the comments in question amount to hate speech and negate the fundamental values of the Convention; and

- the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention[2] (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention).

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

[1] This provision is aimed at preventing persons from inferring from the Convention any right to engage in activities or perform acts aimed at the destruction of any of the rights and freedoms set forth in the Convention.
[2] Restrictions deemed necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.

Exclusion from the protection of the Convention

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

Ethnic hate

Pavel Ivanov v. Russia

20 February 2007 (decision on the admissibility)

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

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

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

Incitement to violence and support for terrorist activity

Roj TV A/S v. Denmark

17 April 2018 (decision on the admissibility)

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

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

Negationism and revisionism

Garaudy v. France

24 June 2003 (decision on the admissibility)

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

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

See also: ***Honsik v. Austria***, decision of the European Commission of Human Rights[3] of 18 October 1995 (concerning a publication denying the committing of genocide in the gas chambers of the concentration camps under National Socialism); ***Marais v. France***, decision of the Commission of 24 June 1996 (concerning an article in a periodical aimed at demonstrating the scientific implausibility of the "alleged gassings").

M'Bala M'Bala v. France

20 October 2015 (decision on the admissibility)

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

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

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

to the values of the European Convention. The Court thus concluded that the applicant had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Williamson v. Germany

8 January 2019 (decision on the admissibility)

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

The Court declared the application **inadmissible** as being manifestly ill-founded. It observed in particular that the applicant had agreed to provide the interview, in which he denied the Holocaust, in Germany despite residing elsewhere at the time while knowing that the statements he made were subject to criminal liability there. He did not insist during the interview that it not be broadcast in Germany and did not clarify with the interviewer or the television channel how the interview would be published. The Court thus found that the Regional court's assessment of the facts was acceptable with respect to its finding that the offence had been committed in Germany, in particular because the key feature of the offence (the interview) had been carried out there.

Racial hate

Glimmerveen and Hagenbeek v. the Netherlands

11 October 1979 (decision of the European Commission of Human Rights[4])

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

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

Religious hate

Norwood v. the United Kingdom

16 November 2004 (decision on the admissibility)

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

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

[4]. See footnote 3 above.

Belkacem v. Belgium

27 June 2017 (decision on the admissibility)

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

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It noted in particular that in his remarks the applicant had called on viewers to overpower non-Muslims, teach them a lesson and fight them. The Court considered that the remarks in question had a markedly hateful content and that he applicant, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimination underlying the European Convention on Human Rights. With reference to the applicant's remarks concerning Sharia, the Court further observed that it had previously ruled that defending Sharia while calling for violence to establish it could be regarded as hate speech, and that each Contracting State was entitled to oppose political movements based on religious fundamentalism. In the present case, the Court considered that the applicant had attempted to deflect Article 10 (freedom of expression) of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention. Accordingly, the Court held that, in accordance with Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not claim the protection of Article 10.

Threat to the democratic order

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

See, among others: ***Communist Party of Germany v. the Federal Republic of Germany***, decision of the European Commission on Human Rights[5] of 20 July 1957; ***B.H, M.W, H.P and G.K. v. Austria*** (application no. 12774/87), decision of the Commission of 12 October 1989; ***Nachtmann v. Austria***, decision of the Commission of 9 September 1998; ***Schimanek v. Austria***, decision of the Court on the admissibility of 1 February 2000.

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

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

[5]. See footnote 3 above.

Apology of violence and incitement to hostility

Sürek (no.1) v. Turkey

8 July 1999 (Grand Chamber)

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

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

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

Gündüz v. Turkey

13 November 2003 (decision on the admissibility)

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

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

Gündüz v. Turkey

4 December 2003

The applicant was a self-proclaimed member of an Islamist sect. During a televised debate broadcast in the late evening, he spoke very critically of democracy, describing contemporary secular institutions as "impious", fiercely criticising secular and democratic principles and openly calling for the introduction of Sharia law. He was convicted of

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

Faruk Temel v. Turkey

1 February 2011
The applicant, the chairman of a legal political party, read out a statement to the press at a meeting of the party, in which he criticised the United States' intervention in Iraq and the solitary confinement of the leader of a terrorist organisation. He also criticised the disappearance of persons taken into police custody. Following his speech the applicant was convicted of disseminating propaganda, on the ground that he had publicly defended the use of violence or other terrorist methods. The applicant contended that his right to freedom of expression had been breached.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the applicant had been speaking as a political actor and a member of an opposition political party, presenting his party's views on topical matters of general interest. It took the view that his speech, taken overall, had not incited others to the use of violence, armed resistance or uprising and had not amounted to hate speech.

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

Circulating homophobic leaflets

Vejdeland and Others v. Sweden

9 February 2012
This case concerned the applicants' conviction for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants had distributed leaflets by an organisation called National Youth, by leaving them in or on the pupils' lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS. The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools.
The Court found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour. It concluded that there had been **no violation of Article 10** (freedom of expression) of the Convention, as the interference with the applicants'

exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others.

Condoning terrorism

Leroy v. France

2 October 2008

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

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

Stomakhin v. Russia

9 May 2018

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

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

Condoning war crimes

Lehideux and Isorni v. France

23 September 1998

The applicants wrote a text which was published in the daily newspaper *Le Monde* and

which portrayed Marshal Pétain in a favourable light, drawing a veil over his policy of collaboration with the Nazi regime. The text ended with an invitation to write to two associations dedicated to defending Marshal Pétain's memory, seeking to have his case reopened and to have the judgment of 1945 sentencing him to death and to forfeiture of his civic rights overturned, and to have him rehabilitated. Following a complaint by the National Association of Former Members of the Resistance, the two authors were convicted of publicly defending war crimes and crimes of collaboration with the enemy. They alleged a violation of their right to freedom of expression.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It considered that the impugned text, although it could be regarded as polemical, could not be said to be negationist since the authors had not been writing in a personal capacity but on behalf of two legally constituted associations, and had praised not so much pro-Nazi policies as a particular individual. Lastly, the Court noted that the events referred to in the text had occurred more than forty years before its publication and that the lapse of time made it inappropriate to deal with such remarks, forty years on, with the same severity as ten or twenty years previously.

Denigrating national identity

Dink v. Turkey

14 September 2010
Firat (Hrank) Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of a bilingual Turkish-Armenian weekly newspaper published in Istanbul. Following the publication in this newspaper of eight articles in which he expressed his views on the identity of Turkish citizens of Armenian origin, he was found guilty in 2006 of "denigrating Turkish identity". In 2007 he was killed by three bullets to the head as he left the offices of the newspaper. The applicants, his relatives, complained in particular of the guilty verdict against him which, they claimed, had made him a target for extreme nationalist groups.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that there had been no pressing social need to find Fırat Dink guilty of denigrating "Turkishness". It observed, in particular, that the series of articles taken overall did not incite others to violence, resistance or revolt. The author had been writing in his capacity as a journalist and editor-in-chief of a Turkish-Armenian newspaper, commenting on issues concerning the Armenian minority in the context of his role as a player on the political scene. He had merely been conveying his ideas and opinions on an issue of public concern in a democratic society. In such societies, the debate surrounding historical events of a particularly serious nature should be able to take place freely, and it was an integral part of freedom of expression to seek historical truth. Finally, the impugned articles had not been gratuitously offensive or insulting, and they had not incited others to disrespect or hatred.

Extremism

Ibragim Ibragimov and Others v. Russia

28 August 2018
This case concerned anti-extremism legislation in Russia and a ban on publishing and distributing Islamic books. The applicants complained that the Russian courts had ruled in 2007 and 2010 that books by Said Nursi, a well-known Turkish Muslim theologian and commentator of the Qur'an, were extremist and banned their publication and distribution. The applicants had either published some of Nursi's books or had commissioned them for publication.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. The Court found in particular that the Russian courts had not justified why the ban had been necessary. They had merely endorsed the overall findings of an expert report carried out by linguists and psychologists, without making their own

analysis or, most notably, setting the books or certain of their expressions considered problematic in context. Furthermore, they had summarily rejected all the applicants' evidence explaining that Nursi's books belonged to moderate, mainstream Islam.
Overall, the courts' analysis in the applicants' cases had not shown how Nursi's books, already in publication for seven years before being banned, had ever caused, or risked causing, interreligious tensions, let alone violence, in Russia or, indeed, in any of the other countries where they were widely available.

Display of a flag with controversial historical connotations

Fáber v. Hungary

24 July 2012

The applicant complained that he had been fined for displaying the striped Árpád flag, which had controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred.
The Court held that there had been a **violation of Article 10** (freedom of expression) **read in the light of Article 11** (freedom of assembly and association of the Convention. It accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining the applicant for refusing to take down the flag in question. The mere display of that flag did not disturb public order or hamper the demonstrators' right to assemble, as it had been neither intimidating, nor capable of inciting violence.

Incitement to ethnic hatred

Balsytė-Lideikienė v. Lithuania

4 November 2008

The applicant owned a publishing company. In March 2001 the Polish courts found that she had breached the Code on Administrative Offences on account of her publishing and distributing the "Lithuanian calendar 2000" which, according to the conclusions of political science experts, promoted ethnic hatred. She was issued with an administrative warning and the unsold copies of the calendar were confiscated. The applicant alleged in particular that the confiscation of the calendar and the ban on its further distribution had infringed her right to freedom of expression.
The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found, in particular, that the applicant had expressed aggressive nationalism and ethnocentrism and statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian authorities cause for serious concern. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court found that in the present case the domestic authorities had not overstepped their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant. The Court also noted that even though the confiscation measure imposed on the applicant could be deemed relatively serious, she had not had a fine imposed on her, but only a warning, which was the mildest administrative punishment available. Therefore, the Court found that the interference with the applicant's right to freedom of expression could reasonably have been considered necessary in a democratic society for the protection of the reputation or rights of others.

Incitement to national hatred

Hösl-Daum and Others v. Poland

7 October 2014 (decision on the admissibility)

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

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

Incitement to racial discrimination or hatred

Jersild v. Denmark

23 September 1994

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

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

Soulas and Others v. France

10 July 2008

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

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

Féret v. Belgium

16 July 2009

The applicant was a Belgian member of Parliament and chairman of the political party *Front National/Nationaal Front* in Belgium. During the election campaign, several types of leaflets were distributed carrying slogans including "Stand up against the

Islamification of Belgium", "Stop the sham integration policy" and "Send non-European job-seekers home". The applicant was convicted of incitement to racial discrimination. He was sentenced to community service and was disqualified from holding parliamentary office for 10 years. He alleged a violation of his right to freedom of expression.
The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. In its view, the applicant's comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant's conviction had been justified in the interests of preventing disorder and protecting the rights of others, namely members of the immigrant community.

Le Pen v. France

20 April 2010 (decision on the admissibility)
At the time of the facts, the applicant was president of the French "National Front" party. He alleged in particular that his conviction for incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with *Le Monde* daily newspaper – he had asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge" – had breached his right to freedom of expression.
The Court declared the application **inadmissible** (manifestly ill-founded). It observed that the applicant's statements had been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. Moreover, the varying scale of the problems concerned, which could sometimes generate misunderstanding and incomprehension, required considerable latitude to be left to the State in assessing the need for interference with a person's freedom of expression. In this case, however, the applicant's comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French on the one hand against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting the applicant had thus been relevant and sufficient. Nor had the penalty imposed been disproportionate. The Court therefore found that the interference with the applicant's enjoyment of his right to freedom of expression had been necessary in a democratic society.

Perinçek v. Switzerland

15 October 2015 (Grand Chamber)
This case concerned the criminal conviction of the applicant, a Turkish politician, for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire in 1915 and the following years had not amounted to genocide. The Swiss courts held in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The applicant complained that his criminal conviction and punishment had been in breach of his right to freedom of expression.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. Being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, it found that the dignity of the victims and the dignity and identity of modern-day Armenians were protected by Article 8 (right to respect for private life) of the Convention. The Court therefore had to strike a balance between two Convention rights – the right to freedom of expression and the right to respect for private life –, taking into account the specific circumstances of the case and the proportionality between the means used and the aim sought to be achieved. In this case, the Court

concluded that it had not been necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the case. In particular, the Court took into account the following elements: tha applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; the context in which they were made had not been marked by heightened tensions or special historical overtones in Switzerland; the statements could not be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland; there was no international law obligation for Switzerland to criminalise such statements; the Swiss courts appeared to have censured the applicant simply for voicing an opinion that diverged from the established ones in Switzerland; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.

Šimunić v. Croatia

22 January 2019 (decision on the admissibility)

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

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

Incitement to religious intolerance

İ.A. v. Turkey (no. 42571/98)

13 September 2005

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

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It reiterated, in particular, that those who chose to exercise the freedom to manifest their religion, irrespective of whether they did so as members of a religious majority or a minority, could not reasonably expect to be exempt from all criticism. They had to tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the present case concerned not only comments that were disturbing or shocking or a "provocative" opinion but an abusive attack on the Prophet of Islam. Notwithstanding the fact that there was a certain tolerance of criticism of religious doctrine within Turkish society, which was deeply attached to the principle of secularity, believers could legitimately feel that certain passages of the book in question constituted an unwarranted and offensive attack on them. In those circumstances, the Court considered

that the measure in question had been intended to provide protection against offensive attacks on matters regarded as sacred by Muslims and had therefore met a "pressing social need". It also took into account the fact that the Turkish courts had not decided to seize the book in question, and consequently held that the insignificant fine imposed had been proportionate to the aims pursued by the measure in question.

Erbakan v. Turkey

6 July 2006

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

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found that such comments – assuming they had in fact been made – by a well-known politician at a public gathering were more indicative of a vision of society structured exclusively around religious values and thus appeared hard to reconcile with the pluralism typifying contemporary societies, where a wide range of different groups were confronted with one another. Pointing out that combating all forms of intolerance was an integral part of human-rights protection, the Court held that it was crucially important that in their speeches politicians should avoid making comments liable to foster intolerance. However, having regard to the fundamental nature of free political debate in a democratic society, the Court concluded that the reasons given to justify the applicant's prosecution were not sufficient to satisfy it that the interference with the exercise of his right to freedom of expression had been necessary in a democratic society.

Insult of State officials

Otegi Mondragon v. Spain

15 March 2011

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

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

Stern Taulats and Roura Capellera v. Spain

13 March 2018

This case concerned the conviction of two Spanish nationals for setting fire to a photograph of the royal couple at a public demonstration held during the King's official

visit to Girona in September 2007. The applicants complained in particular that the judgment finding them guilty of insult to the Crown amounted to unjustified interference with their right to freedom of expression.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the act allegedly committed by the applicants had been part of a political, rather than personal, critique of the institution of monarchy in general, and in particular of the Kingdom of Spain as a nation. It also noted that it was one of those provocative "events" which were increasingly being "staged" to attract media attention and which went no further than the use of a certain permissible degree of provocation in order to transmit a critical message in the framework of freedom of expression. Moreover, the Court was not convinced that the impugned act could reasonably be construed as incitement to hatred or violence. In the present case, incitement to violence could not be deduced from the joint examination of the "props" used for staging the event or from the context in which it had taken place; nor could it be established on the basis of the consequences of the act, which had not led to violent behaviour or disorder. Furthermore, the facts could not be considered as constituting hate speech. Lastly, the Court held that the prison sentence served on the applicants had been neither proportionate to the legitimate aim pursued (protection of the reputation or rights of others) nor necessary in a democratic society.

Hate speech and the Internet

Delfi AS v. Estonia

16 June 2015 (Grand Chamber)

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

company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction (320 euro) imposed on the applicant company, the Court found that the Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression.

Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary

2 February 2016

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

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

It is to be noted that the applicants' case was different in some aspects from the *Delfi AS v. Estonia* case (see above) in which the Court had held that a commercially-run Internet news portal had been liable for the offensive online comments of its readers. The applicants' case was notably devoid of the pivotal elements in the *Delfi AS* case of hate speech and incitement to violence. Although offensive and vulgar, the comments in the present case had not constituted clearly unlawful speech. Furthermore, while *Index* is the owner of a large media outlet which must be regarded as having economic interests, *Magyar Tartalomszolgáltatók Egyesülete* is a non-profit self-regulatory association of Internet service providers, with no known such interests.

Pihl v. Sweden

7 February 2017 (decision on the admissibility)

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

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

Smajić v. Bosnia and Herzegovina

18 January 2018 (decision on the admissibility)

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

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

Nix v. Germany

13 mars 2018 (décision sur la recevabilité)

This case concerned the applicant's conviction for posting picture of a Nazi leader and swastika in a blog. The applicant argued that the domestic courts had failed to take into account that his blog post was intended as a protest against school and employment offices' discrimination against children from a migrant background.

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

Savva Terentyev v. Russia

28 August 2018

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

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

Texts and documents

See, among others:

- **Recommendation No. R 97(20)** of the Committee of Ministers of the Council of Europe to Member States on "hate speech", 30 October 1997.
- **General Policy Recommendation No. 7** of the European Commission against Racism and Intolerance (ECRI) on national legislation to combat racism and racial discrimination, 13 December 2002.
- **Recommendation 1805 (2007)** of the Parliamentary Assembly of the Council of Europe on "blasphemy, religious insults and hate speech against persons on grounds of their religion", 29 June 2007.
- **Study no. 406/2006** of the Venice Commission, "Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred", doc. CDL-AD(2008)026, 23 October 2008.
- **Manual on hate speech**, Strasbourg, Council of Europe Publishing, 2009.
- **Issue discussion paper** by the Council of Europe Commissioner for Human Rights on "Ethical journalism and human rights", doc. CommDH (2011)40, 8 November 2011.
- Website of the **Conference on "Tackling hate speech: Living together online"** organized by the Council of Europe in Budapest in November 2012.
- Website of the **Conference "The hate factor in political speech – Where do responsibilities lie?"** organized by the Council of Europe in Warsaw in September 2013.
- Website of the **Conference "Freedom of expression: still a precondition for democracy"** organized by the Council of Europe in Strasbourg in October 2015.
- **General Policy Recommendation No. 15** of the European Commission against Racism and Intolerance (ECRI) on combating hate speech, adopted on 8 December 2015.

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