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# **Hate speech; an overview and recommendations for combating it**

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**Abbreviations:**

CERD- Convention on the Elimination of all forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination

CoE- Council of Europe

CSO- Civil Society Organisation

DDPA- Durban Declaration and Programme of Action

ECHR- European Convention on Human Rights

ECtHR- European Court of Human Rights

ECRI- European Commission against Racism and Intolerance

EU- European Union

ICCPR- International Convention on Civil and Political Rights

NGO- Non- Government Organisation

ODIHR- Office for Democratic Institutions and Human Rights

OHCHR- Office of the High Commissioner for Human Rights

OSCE- Organization for Security and Co-Operation in Europe

UDHR- Universal Declaration of Human Rights

UN- United Nations



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## 1 Introduction

A persons' thoughts affect only him/her and not other people unless he/she expresses them or acts them out. Then these thoughts set events in motion which are likely to have effect. Therefore it is always important to take words seriously and listen, because it may become necessary to react when words do not express positive thoughts or views, but harmful, demeaning and hateful opinions towards a specific individual or a group of individuals. If not counteracted, hate speech will gradually be normalised and accepted. We catch new words and shortly they become part of the day to day discourse. Words are also the first tool we use to change attitudes, norms, dos and donts in our society.

Equality for all persons is the cornerstone of human rights. Hate speech and propaganda are present in all societies to a various degree and intensity. Hate speech affects and undermines the right of the targeted person to equality and freedom from discrimination. Left unanswered, hate speech can lead to disaster. It promotes prejudice and hate, which in time can undermine the roots of society, create a divide between societal groups and eventually lead to deep divides in the social cohesion. Nazi Germany is a striking example as well as former Yugoslavia, where media, ruled by opposing groups, spewed hatred against national minority groups which escalated the conflict and finally lead to mass murder. The genocide in Rwanda is also a striking example of the effect and consequences of hate speech. In later years, the number of hate sites (fora) has drastically increased and social media, such as Facebook and Twitter have further added to this evolution. Most people do not realise that a few words on Facebook or Twitter can sow a seed or an idea in the mind of someone who already has negative views or dangerous thoughts against specific groups or individuals. In this connection, Anders Behring Breivik is a name that comes to mind.

The aforementioned and other similar events have led to international realisation of how powerful hate speech can be and the international consensus is on hate speech and hate propaganda to be prohibited by law.

The financial crisis, economical instability, slow economic progress and rising unemployment rates all over the world have led to social unrest and an increase in racism and xenophobia as well as discrimination against various groups in policy making and execution. Along with this negative development there is also a rise in hate speech and propaganda in the political debate. Political parties with a policy of racism and xenophobia have had substantial rise in following and they increasingly use hate speech promoting discrimination and violation of rights of various groups in society. It is therefore extremely important that the administration as well as the general population counter this development, by legislation, awaransess raising and education urging people to embrace diversity.

There is a difference between hate speech on one hand and hate propaganda on the other. Hate propaganda is systematic and often follows a specific ideology such as hate propaganda against Jewish people in Nazi Germany. Hate speech is expressed by various different individuals who do not necessarily have any connection to one another and is therefore not systematic. Even so, hate speech can have a devastating effect since so many different individuals in so many different places instigate the same kind of hate and prejudice against



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individuals or groups with common characteristics. Sometimes there is not a clear distinction between the two, for example hate speech occurs when a religious group or a political movement systematically attack a specific group or groups in society, through radio or television stations for example. Hate speech is also often apparent in comments on social media.

This publication is meant to be an overview of hate speech and hate propaganda, Icelandic legislation thereon and the way phenomena appears in Iceland as well as on international legislation and actions combating it, such as awareness raising and education on diversity in society. Finally, thoughts on the interaction between hate speech and freedom of expression and the prohibiting of the former will be addressed and recommendations made for changes in national legislation and a comprehensive government policy to counter hate speech.

## **2 What is hate speech/-propaganda?**

### **2.1 Hate speech/-propaganda- a historical view**

The United Nations adopted the Universal Declaration of Human Rights (UDHR) following WWII (the Second World War) and even if it does not contain any stipulation prohibiting hate propaganda, there was heated discussion during the drafting period whether or not to allow for restrictions on the right to freedom of expression. The member states had many and different personal views on such restrictions and also what their purpose should be. The atrocious acts committed during WWII motivated the nations of the world to do everything in their power to prevent the spreading of intolerance and hate rooted in the war and the events leading up to it. They also wanted to minimize the consequences of such hate and prevent that events such as those which happened in Nazi Germany, would ever happen again.

After WWII the Allied forces held a series of military tribunals, the Nuremberg trials (die Nürnberger Prozesse), where prominent members of political, military, judicial and economic leadership of Nazi Germany were prosecuted. One of the tribunals resulted in one of the earliest examples of conviction for the distribution of hate propaganda. In the case against Julius Streicher, the publisher of *Der Stürmer*, a magazine systematically instigating for Jews to be persecuted and eliminated, the tribunal found Streicher guilty, under international law, of inciting genocide (crimes against humanity). Even if the law under which he was convicted was not in place at the time his crimes were committed and Streicher's conviction therefore controversial, the principles put forward in that legislation are internationally agreed upon. These principles were also applied by the United Nations International Criminal Tribunal of Rwanda after the genocide in 1994.

The UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted in 1965 and entered into force in 1969. The convention was international



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society's reaction to a wave of anti-Semitic attacks in Germany as well as it was considered to be important for the battle against colonialism and apartheid. CERD defines the term "racism" and Article 4 condemns propaganda and organizations attempting to justify discrimination or based on the idea of racial supremacism. It obliges parties, "with due regard to the principles embodied in the Universal Declaration of Human Rights", to adopt "immediate and positive measures" to eradicate these forms of incitement and discrimination. Specifically, it obliges parties to criminalize hate speech, hate crimes and the financing of racist activities and to prohibit and criminalize membership in organizations that "promote and incite" racial discrimination. A number of parties to the convention have reservations on this article, and interpret it as prohibiting, or requiring measures that infringe upon freedom of speech, association and assembly.

Since the adoption of CERD there has been rapid development and change as regards prejudice and discrimination in the world. Today, people are subject to prejudice and discrimination on various discrimination grounds, not only those included in CERD and many have wondered whether CERD adequately addresses this development. Discrimination against individuals or a group of individuals on more than one discrimination grounds is now more and more being put into focus. To be able to counter this development and the seriousness of multi-faceted discrimination, and to ensure that all those discriminated against enjoy protection, the UN Committee on the Elimination of Racial Discrimination (CERD) has gradually broadened its scope and added discrimination grounds through intersectionality. In their General recommendations, CERD addresses gender (no. 25), descent (no. 29) and Roma (no. 27), where they state that discrimination may affect genders differently, also that people can be discriminated against on grounds of their descent and that those factors should be taken into consideration when combating discrimination.

This widening of scope and broader interpretation raises questions on where to draw the line, how far CERD can go in their effort to eliminate discrimination on grounds that are not included in the Convention. CERD has actually limited the scope to only establishing discrimination if race, ethnic origin, colour, descent, national or ethnic origin are also a factor. CERD does for example not cover discrimination against religious groups solely on that ground but only if the discrimination grounds listed in CERD, Article 1, are also a factor.

Approaching prejudice and discrimination comprehensively and intersectionally, facilitates actions against discrimination and the many forms and embodiments of hate speech. It is necessary to have a broad perspective of hate speech and discrimination so as not to exclude various forms of discrimination or discrimination grounds which might lead to vulnerable individuals, or groups of individuals, not being protected. This has never been as pressing as now, since advocates of hate seek all ways and means to disseminate hate speech.

## 2.2 Definition of hate speech.

Hate speech is a complicated concept and there is no internationally accepted definition or understanding of it. Gradually however, through legislation, court precedents and academic



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publication, the damage and danger a certain form of expression entails, has been internationally recognised. Therefore, both at an international, regional and national level, efforts have been made to address the problem and define the concept. However, although many countries have passed legislation prohibiting hate speech, what is defined as hate speech varies significantly between countries and regions.

The Council of Europe, Committee of Ministers recommendation no. 97(20) states that for the purposes of the application of the principles therein, the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed through aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

In dealing with cases concerning incitement to hatred, the European Court of Human Rights (EctHR) has not defined hate speech but refers to it as „*all forms of expression, verbal or written* , which spread, incite, promote or justify hatred based on intolerance (*also on grounds of religion*)“.

### **2.3 Hate speech as a punishable offence.**

It can sometimes be difficult to recognise hate speech, it may be „hidden“ in a sentence or a statement which at first glance may seem logical and natural. However, certain key points/standards, indicating hate speech, may be present.

International laws and principles ascertained from case-law as well as academic writing on hate speech have determined certain basics which have to be present for an expression to be considered and categorized as punishable:

- Intent to stir up hatred against a certain group of people must be established.
- Incitement to hatred must also be established.
- Causal link – different interpretation, in some instances the effects (consequences) must be established, in other instances it suffices to show that expression of hate is likely to have a harmful effect.

It is therefore not only the words which establish hate speech. Each instance must be reviewed in light of context, content, intent, and the likelihood of the speech to cause actual harm.

### **2.4 Summary**

Our past experiences clearly show how severe the consequences of hate speech can be and the necessity of education on the subject. Diverse groups are targeted by hate speech and individuals as well as groups suffer from hate speech based on one or more discrimination grounds. The perpetrators in these cases are also many and even though their expressions of



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hate may affect those subject to it to a various degree, every word uttered carries responsibility and often a small seed sown may incite a person to commit atrocious deeds or to exercise injustice in some way or form.

There are many examples of hate speech, by not being addressed, having led to certain groups of people being disrespected and discrimination against them considered to be legitimate. The most serious instances have led to a deep divide in the social cohesion and even to conflict. This is not acceptable in a democratic society.

### 3 International instruments

For the past 50 years, or even since the adoption of the Universal Declaration of Human Rights (UDHR), the international community has made certain progress in combating discrimination on grounds of race, racism, xenophobia and other such intolerance. Both national and international legislation have been implemented as well as international conventions prohibiting discrimination. A few milestones have been reached along the way, such as the abolition of Apartheid in South Africa, but there is still a long way to go before achieving the goal of a world free of racism and discrimination. This chapter is on UN Conventions as well as European legislation regarding discrimination and hate speech as well as the case law of the European Court of Human Rights as regards hate speech and discrimination.

#### 3.1 The United Nations

Several international conventions include provisions on protection of privacy and honour and prohibition of discrimination. Not all of them have provisions against hate speech but restrictions to freedom of expression were discussed by member states under their drafting process. The Universal Declaration of Human Rights is considered to be the foundation for all international human rights law even if is not legally binding, contrary to international human rights conventions. It sets out core principles on human rights which enjoy international acclaim. Article 2 states that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 7 also states that;

*„All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.“*

Freedom of opinion and expression is protected by Article 19. Article 29, Paragraph 3 and Article 30, contain provisions which emphasize that the rights and freedoms put forward in the Declaration may never be exercised contrary to the purposes and principles of the United



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Nations and also that nothing in the Declaration may be interpreted as giving a State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

On December 21, 1965 the UN General Assembly adopted the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Article 1, Paragraph 1, defines racial discrimination as;

*„any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.“*

Article 4 contains provisions on racism and freedom of expression and is the most important stipulation as regards hate speech:

*„States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, 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, inter alia:*

*(a) Shall 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) Shall 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) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.“*

Article 4 not only obliges member states to render certain conduct punishable, but also obliges them to ensure the implementation of these stipulations and effective remedies for those discriminated against. The CERD Committee has highlighted the involvement of private actors in discrimination and focused on whether or not member states have passed legislation and ensured measures rendering private actors liable. The Committee has put special focus on individuals' right to compensation or other restitution for acts based on racial discrimination, especially regarding hate speech and derogatory speech. The Committee recently issued General recommendation No. 35, on combating racist hate speech, emphasising that member states honour their obligations under CERD, in particular as regards Articles 4, 5 and 7. The recommendation also states that the relationship between proscription of racist hate speech and the flourishing of freedom of expression should be seen as complementary and not the expression of a zero sum game where the priority given to one necessitates the diminution of the other.

Article 19 of the International Convention on Civil and Political Rights (ICCPR) protects freedom of expression but Paragraph 3 states that the exercise of the rights provided for in Paragraph 2 of article 19 carries with it special duties and responsibilities and may therefore



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be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals. ICCPR article 20, Paragraph 2 states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. CERD article 4 takes it a step further since it renders such behaviour punishable.

The UN realises that prejudice and discrimination are a part of everyday life for many people all over the world and have therefore been seeking new methods and alternatives to combat this. The UN divided their battle against racism and discrimination into a three decade period, from 1973 until 2003 and have held three global conferences on these issues.

When organising the third conference emphasis was put on establishing a monitoring system to ensure that the member states were meeting with their obligations and fulfilling their promises. The third conference was therefore aimed at action, not words alone. The third conference, held in Durban in 2001, (the Durban Conference) was the first conference where the member states were to discuss and tackle racism, discrimination, xenophobia and other forms of intolerance, not only as a foreign affair but as a problem to be faced by all member states. Notwithstanding some member states having little interest in participating in such discourse, an understanding was reached on a programme of action against racism, the Durban declaration and programme of action.

After the third conference the UN established an Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (DDPA). DDPA is a comprehensive, action-oriented document that proposes concrete measures to combat racism, racial discrimination, xenophobia and related intolerance. It is holistic in its vision, addresses a wide range of issues, and contains far-reaching recommendations and practical measures.

The DDPA embodies the firm commitment of the international community to tackle racism, racial discrimination, xenophobia and related intolerance at the national, regional and international level. The recognition that no country can claim to be free of racism, that racism is a global concern, and that tackling it should be a universal effort, is an important achievement. Although the DDPA is not legally binding, it has a strong moral value and serves as basis for advocacy efforts worldwide.

The Programme of Action contains 219 recommendations directed at member states, NGOs, CSOs and international institutions. The actions include: Prevention; that member states formulate and apply policies and action plans against racism, discrimination and xenophobia; that member states establish a national human rights institution to monitor national legislation and investigate, research and educate on the phenomena; equal access to education, work and political life; human rights education for adults, children, public officials and professionals. The Declaration and Programme of Action were revised at a conference in April 2009.



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After the revision of DDPA the Office of the High Commissioner for Human Rights (OHCHR) organized a series of expert workshops in various regions, with 45 experts from different cultural backgrounds and legal traditions. The objective of these series was threefold; to gain a better understanding of legislative patterns, judicial practices and policies regarding the concept of incitement to national, racial or religious hatred, while ensuring full respect for freedom of expression as outlined in articles 19 and 20 of ICCPR; to arrive at a comprehensive assessment of the status of implementation of the prohibition of such incitement in conformity with international human rights law; and to identify possible actions at all levels. Marking the culmination of this process is the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which was formally introduced by the UN experts on February 21, 2013. It stresses the shared responsibility of all, civil servants, religious, community and political leaders, media and individuals, for nurturing social consciousness, tolerance, mutual respect and intercultural understanding and dialogue. The Rabat Plan of Action succeeded in combining the efforts of various human rights bodies, relevant international and regional organizations, national human rights institutions and civil society organizations (including academia, journalists and faith-based organizations) could also participate as observers, for a comprehensive action plan striking a balance between freedom of expression and the prohibition of incitement to hatred.

The Rabat Plan of Action requires Member States to implement a comprehensive legislation on discrimination as well as a broad set of policy measures, for example in the areas of intercultural dialogue – reciprocal knowledge and interaction – and education for pluralism and diversity, and policies empowering minorities and Indigenous People to exercise their right to freedom of expression. The Action Plan also requires Member States to repeal blasphemy laws as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion.

## **3.2 European legislation on hate speech and discrimination**

The basis for European legislation against discrimination is the European Convention on Human Rights (ECHR) and European Union Legislation. The Case Law of the European Court of Human Rights (EctHR) determines how to interpret and apply this legislation.

### **3.2.1 Council of Europe**

The principle of equality and non-discrimination is a fundamental element of many Council of Europe (CoE) conventions and protection against discrimination has been the main goal in the development of rules and regulations from the Council and is regarded as one of the core principles to be upheld. The ECHR was one of the first Human Rights Conventions to be established drawing on the inspiration of the Universal Declaration of Human Rights. The Convention requires Member States to respect the fundamental human rights of all individuals within their jurisdiction. Article 14 prohibits discrimination:



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*„The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.“*

Protocol 12 to the ECHR, which was adopted in 2000 extends this prohibition to cover discrimination in enjoying any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law. This ensures not only equal rights under ECHR but also all individual rights provided for in national law and all official capacity and decision making as well as in any interaction between individuals and authorities.

The European Social Charter from 1996 sets out all workers right to *equal opportunities* and equal treatment in matters of employment and occupation and prohibits discrimination on grounds of gender. The CoE Framework Convention for the Protection of National Minorities includes provisions prohibiting discrimination as well the CoE Convention against Trafficking and the CoE Convention on Access to Official Documents. The protocol on Xenophobia and Racism to the CoE Convention on Cybercrime includes provisions on the dissemination of xenophobic and racist material through computer systems and is therefore a valuable tool to combat hate speech on the Internet.

### **3.2.2 the COE Council of Ministers**

*Recommendation No. R (97) 20 to member states on hate speech was adopted by the European Council Committee of Ministers on October 30, 1997. As mentioned before, the recommendation contains a definition of hate speech and condemns all forms of expression inciting racism, xenophobia, anti-semitism and intolerance and stresses the necessity of laying down guidelines for governments of member states on how to address these forms of expression. The Recommendation notes that such forms of expression may have a greater and more damaging impact when disseminated through the media albeit that national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand. The same day, Recommendation No. R (97) 21 to member states on the media and the promotion of a culture of tolerance was adopted by the Committee of Ministers. The Recommendation notes that the media can make a positive contribution to the fight against intolerance, especially where they foster a culture of understanding between different ethnic, cultural and religious groups in society. Finally, the Committee of Ministers' Declaration on freedom of political debate in the media from 2004. The Declaration emphasises that freedom of political debate does not include freedom to express racist opinions or opinions which incite hatred, xenophobia, antisemitism and all forms of intolerance.*



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### 3.2.3 CoE Parliamentary Assembly

In their resolution on the freedom of expression and respect for religious beliefs no. 1510 from 2006, the CoE Parliamentary Assembly, reaffirms that democratic society can not exist without the fundamental right to freedom of expression. The Assembly also expressed their opinion that freedom of expression, as protected under Article 10 of ECHR, should not be further restricted to meet increasing sensitivities of certain religious groups. At the same time, the Assembly emphasised that hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the ECHR and the case law of the European Court of Human Rights (EctHR). In their Recommendation No. 1085 (2007) on Blasphemy, religious insults and hate speech against persons on grounds of their religion, the Parliamentary Assembly recommends that the Committee of Ministers penalise statements that call for a person or a group of persons to be subject to hatred, discrimination or violence on grounds of their religion as on any other grounds.

The Parliamentary Assembly requested the CoE European Commission for Democracy through Law (the Venice Commission) to look into the issue of the regulation and prosecution of blasphemy, religious insults and incitement to hatred in member states. In their report, the Commission concluded that in an effective democracy, all groups, including religious groups, should tolerate public discourse and criticism to their operations, doctrine and beliefs as long as neither mockery, insults, defamation nor incitement to hatred, disruption of public order, violence or discrimination against individuals belonging to specific religious groups was intended.

### 3.2.4 European Commission against Racism and Intolerance (ECRI)

On December 13, 2002, ECRI adopted their General Policy Recommendation No. 7 on National Legislation to Combat Racism and Discrimination. The Recommendation defines Racial discrimination as:

„b) “direct racial discrimination” shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

c) “indirect racial discrimination” shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.”

The Recommendation encourages states to implement, in their criminal law, stipulations that penalise the following acts when committed intentionally: a) public incitement to violence, hatred or discrimination, b) public insults and defamation or c) threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin; d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.



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Noting with serious concern that racism and intolerance as well as hate speech are on the rise in Europe, ECRI issued their Declaration on the use of racist, antisemitic and xenophobic elements in political discourse. ECRI has also issued a Declaration on the occasion of EURO 2008, the UEFA European Football Championship, „Unite against Racism“.

### **3.2.5 No Hate Speech Movement**

The CoE stands for and coordinates the No Hate Speech Movement and Campaign which is composed of national campaigns in member states which together with European partners and online activists work to implement the objectives of the campaign which are:

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

The Campaign is not aimed at restricting freedom of expression on the Internet. It combats hate speech in all forms, including those that most affect young people, such as cyber-bullying and cyber-hate. The campaign is based on human rights education, youth participation and media literacy. The campaign was initially intended to be carried out from March 21, 2013 until March 21, 2014 but it was prolonged until the end of 2017.

### **3.2.6 The European Court of Human Rights (Ecthr)**

Freedom of expression is protected under Article 10 of ECHR and the Court has received many complaints of violation of that article from individuals who have been convicted, sanctioned or otherwise penalised for hate speech. The Court has concluded the following:

*„Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued“.*



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The Case law regarding Article 10 reflects the importance of freedom of expression, including the right to receive and distribute information and ideas as well as stressing the importance of the media in a democratic society. However, there is no doubt that any remark directed against the underlying values of the Convention would be excluded from protection under Article 10 by Article 17 (prohibition of abuse of rights). When dealing with cases concerning incitement to hatred and freedom of expression, the ECtHR uses two approaches which are provided for by ECHR: - the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights) , 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 (this approach is adopted where the speech in question, although considered to be hate speech, is not apt to destroy the fundamental values of the Convention).

When deciding upon infringement of Article 10, the Court evaluates whether or not the member state in question has met with the following requirements for legitimate interference with the exercise of freedom of expression:

1. *Any restriction on freedom of expression must be prescribed by law.*
2. *The restriction must be for a legitimate aim set out in Article 10, paragraph 2.*
3. *The restriction must be necessary in a democratic society.*

The Court evaluates the circumstances of every individual case, the context and the aim of the expression, at what it was directed and where it was put forward. The Court puts more emphasis on political debate or issues concerning the general public, religious discourse and makes a clear distinction between information (facts) and opinions (value judgments).

### **3.2.7 The Organization for Security and Co-operation in Europe (OSCE)**

OSCE member states have undergone various commitments as regards hate speech. Notwithstanding that they have recognised freedom of expression as a core human right more than once, they have also taken a clear stand against hate speech and other expression of aggressive nationalism, racism, xenophobia, anti semitism and violent extremist groups, as well as discrimination on grounds of religion or belief. The member states have stressed the importance of promoting tolerance and equality as important tools in countering hate speech. OSCE's main focus is on hate crimes since expression is not a crime and does therefore not fall under OSCE's defined area of competence. The OSCE Office for Democratic Institutions and Human Rights (ODIHR), issues an annual report on the status of hate crimes in member states. Sometimes the report includes information on hate speech in member states where hate speech is penalised in national legislation. Iceland has appointed a National Point of Contact – NPC to ODIHR at the office of the National Commissioner of the Icelandic Police. He collects data on hate crime, statistics, law, law amendments and on-going projects in Iceland.



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### 3.2.8 *The European Union*

The European Union (EU) has adopted various legislation on discrimination for member states to implement. The EU Charter of Fundamental Rights draws on ECHR and includes provisions on freedom of expression (Art. 11) and prohibition of discrimination (Art. 21). In 1999, the Amsterdam Treaty provided the EU Parliament with the power to adopt measures to combat discrimination, such as implementing binding legislation on discrimination on grounds of gender, race, ethnic origin, religion or belief, disability, age, or sexual orientation. For this purpose the EU adopted four directives and guidelines based on Art. 153 and 157 (previously Art. 137 and 141) of the Treaty establishing the European Community (equal rights for men and women in the work place, and equal pay to men and women). These four directives and guidelines are;

1. ***The Framework Directive** prohibits discrimination on grounds of disability, age, religion, belief and sexual orientation as regards both the public and private sectors, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation as well as access to all types and to all levels of vocational guidance and training. This also includes employment and working conditions, dismissals and pay as well as membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession.*

2. ***The Race Directive** implements the principle of equal treatment between persons irrespective of racial or ethnic origin as regards employment and training, education, social protection (including social security and healthcare), social advantages, membership and involvement in organisations of workers and employers and access to goods and services, including housing.*

3. ***Directive 2004/113/EC** implements the principle of equal treatment between men and women in the access to and supply of goods and services.*

4. ***Manual for gender mainstreaming: employment, social inclusion and social protection policies** explains what it is to mainstream gender policy and provides policy-makers with practical advice on how to pursue this issue in employment, social inclusion, as well as social protection.*

EU legislation on discrimination provides protection to specific groups in the aim of improving their status on the labour market as well as to put an end to discrimination regarding access to goods and services. All EU member states have transposed the directives into law.

Article 6 of Directive 2010/13/EU, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) states that:

*„Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality“*

In most member states, national legislation provides for more protection than the Directives, for example more discrimination grounds or a broader scope of prohibition against discrimination. However, there are many lapses in the implementation of this legislation. Therefore the EU is constantly working at increased protection for all their inhabitants.



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In November 2008 the EU Council adopted the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. According to Article 1, member states shall take all measures necessary to ensure that intentional public incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, is punishable. Also, member states must penalise public condoning, denying or grossly trivialising the Holocaust, crimes of genocide, crimes against humanity and war crimes. The Framework Decision is aimed at defining a common criminal law approach to racism and xenophobia, so that the same behaviour constitutes an offence in all EU countries, in order to facilitate international cooperation against hate speech and hate crimes. The Framework Decision does not address hate speech on the internet and has no particular focus on minority groups. The European Fundamental Rights Agency (FRA) has issued their opinion on the Framework Decision with special attention to the rights of victims of crime.

In June 2016, a new High Level Group set up by the European Commission, on combating racism, xenophobia and other forms of intolerance, held its first meeting. The new Group brings together, for the first time ever, authorities, civil society organisations and community representatives in EU Member States, and also relevant EU agencies, in particular the FRA, as well as international organisations, such as the CoE, OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and UN OHCHR and UNHCR. This provides the means to step up cooperation and improve coordination between relevant actors and maximize concrete impact on preventing and countering hate crime and hate speech on the ground.

## 4 Icelandic legislation

Article 65 of the Icelandic Constitution, (Act no. 33/1944) includes a general principle on equality:

*„Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status.*

*Men and women shall enjoy equal rights in all respects.“*

Various national legislation includes stipulations prohibiting discrimination but no general and comprehensive anti-discrimination legislation has been implemented and therefore Icelandic legislation is lacking in protection against discrimination. There are no legal definitions of legal terms on discrimination, such as direct and indirect discrimination, harassment etc., and very few stipulations allow for supervision and penalties for discrimination. The Act on Equal Status of Women and Men, no. 10/2008 (Gender Equality Act), is of great importance but it only addresses discrimination on grounds of gender, not other discrimination grounds.



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Various stipulations of the General Penal Code no. 19/1940 protect individuals and groups against various forms of expression, for example Article 234 which states that anyone injuring the personal honour of another by means of insult in word or in deed and anyone spreading such rumour shall be subject to fines or imprisonment for up to 1 year. Article 180 prohibits anyone in the course of business or service practice to refuse delivery of goods or services to a person in equal measure to others on the basis of the nationality of the latter, colour, race, religion or sexual orientation. The Article also prohibits refusal, on the same grounds, of admittance to an official place of gathering or other places open to the public.

Article 233. gr. a of the General Penal Code was implemented to meet with the Icelandic State's obligations according to the CERD:

*„Anyone who publicly mocks, defames, denigrates or threatens a person or group of persons by comments or expressions of another nature, for example by means of pictures or symbols, for their nationality, colour, race, religion, sexual orientation or gender identity, or disseminates such materials, shall be fined or imprisoned for up to 2 years.“*

The stipulation was implemented into the General Penal Code in 1973 following the ratification of CERD. It only addresses public conduct and contains no definition of racial discrimination or discrimination on grounds of colour.

Article 27 of the Act on Media no. 38/2011 contains a provision prohibiting hate propaganda and incitement to punishable acts:

*„Media service providers may not incite people to criminal behaviour. They shall be forbidden to encourage hatred in the media on grounds of race, gender, sexual orientation, religious belief, nationality, opinion or cultural, economic, social or other standing in society.“*

The law only applies to media as defined therein and therefore social media and various websites do not fall under the scope of the law. The necessity of implementing legislation on hate speech and hate crime on the Internet and in social media is ever becoming more pressing since websites and portals containing hate speech are constantly rising in frequency and the on-line comment systems have been used to publish hate speech and libellous remarks. As a point of interest in this context; in 2015, the ECtHR issued a judgement in the case *Delfi vs. Estonia*, where a commercially-run Internet news portal was made liable for the offensive online comments of its readers.

The Act on Media does not cover traditional criticism, difference in opinion or political media debate. The Act on Media was amended in 2013 adding penalty clauses to Articles 54 and 56, rendering all acts listed under Article 27 punishable, not only incitement to hatred as before. The wording of Article 27 was also amended, now only covering **systematic** and **repeated** encouragement to hatred in the media on grounds of race, gender, sexual orientation, religious belief, nationality, opinion or cultural, economic, social or other standing in society.

This amendment means that a single newspaper article or a radio programme containing hate speech do not fall under the scope of the law, since there has to be systematic and repeated incitement to hatred in the media for the stipulation to apply. The stipulation is



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intended to address the liability of the media itself, not individuals which are covered by Article 51 of the Act on Media and other legislation such as Article 233a of the General Penal Code. The greatest likelihood in this country is however for a single news story or coverage to contain hate speech and therefore, in these instances, the Act on Media would not adequately protect those subject to these expressions of hate speech.

The city of Reykjavík has diligently worked at raising awareness and educating their staff as well as city dwellers on multiculturalism. The City established a Multicultural Council which acts as an advisory board to the Human Rights Council and other departments in the city that deal with immigration issues. The Multicultural Council aims to engage multicultural communities and bridge Icelanders to them, advocate in the interest of multicultural communities and encourage the development of a harmonious multicultural society. An annual Multicultural day is also held in the City celebrating city culture and hosting various events aimed at introducing different cultures.

The Icelandic Human Rights Centre has, in cooperation with CSOs and institutions, carried out various projects aimed at awareness raising and education on discrimination and prejudice. The Centre has held seminars on EU discrimination legislation for CSOs and organisations as well as government and municipal institutions. The Centre also conducted radio campaigns against discrimination as well as organising the annual European Week against Racism.

#### **4.1 Freedom of expression**

In a publication on hate speech and how to combat it, freedom of expression must inevitably be addressed. Freedom of expression is after all, in the words of the EctHR:

*„one of the cornerstones of a democratic society, essential foundation for sustainable inclusive development and for the promotion of individuals’ self-fulfilment and autonomy“.*

Freedom of expression is protected by many international human rights instruments such as UDHR, ICCPR and ECHR. According to these instruments, freedom of expression is the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Freedom of thought, opinion and expression is protected by Article 73 of the Icelandic Constitution.

Freedom of expression is an important right on its own but also in relation to other rights. Free debate and exchange of information, ideas and opinions benefits society to a large degree and political debate and criticism provides for necessary restraint on governments in democratic societies. Freedom of expression is however of delicate balance, one person’s freedom of expression may be an infringement upon another person’s fundamental rights. Therefore restrictions on freedom of expression may be necessary to uphold these person’s rights or in the interests of public order. The Icelandic Constitution, Article 73, Paragraph 2, states that everyone shall be free to express his thoughts, but shall also be liable to answer for them in court; i.e. everyone must assume responsibility for expressing their thoughts and opinions and may be made liable for their expression either by suffering penalties or paying damages. Article 73, Paragraph 3 states that freedom of expression may only be restricted by



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law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions. Restrictions to freedom of expression must always be justifiable and in accordance with restrictions allowed for in the international agreements mentioned before. All member states must adapt their national legislation to these agreements. According to EctHR case law there must be pressing need for restrictions to freedom of expression especially restrictions in advance. Such restrictions are only allowed for upholding important rights and where such expression might cause irreparable damage and only in a specific instance such as prohibition on showing a particular film or a specific publication. A general prohibition of showing or publishing material of a certain nature would not be considered an acceptable restriction to freedom of expression nor keeping a group of people from exercising their right to express themselves by not allowing them access to certain media, the Internet, IT systems or other media.

As mentioned before, it is important to establish clear procedural rules as well as to define the term hate speech in a detailed manner so as to establish what should be regarded as hate speech and the penalties for it. The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression have adopted a Joint Statement on racism and the Media which lays down a number of principles for the restriction of freedom of expression through so-called hate speech regulations which should, at a minimum, conform to the following:

- *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; and*
- *any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.*

## 4.2 The Internet and social media

In spite of the Internet having its obvious advantages in our daily life, the drawback is how easy it is to exploit the freedom it brings us. The Internet has therefore increasingly been used to promote hate speech and incitement to hate crime against individuals on grounds of their colour, ethnicity, religion, sexual orientation etc. Through increased access and rapid technical developments, more and more hate sites established by extremist groups have been launched. Studies show that, since 1995, when the first website by an extremist group was launched, they have multiplied in number, in 2012 around 15 thousand sites were found, most of them with racist and xenophobic propaganda.

Many countries around the world have expressed their concern for the ever increasing use of the Internet by extremist groups to promote hate and hate crimes. NGOs and UN institutions have also expressed their concern for the use of various media, such as



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newspapers and web media, to promote hatred and prejudice and also for the ever increasing number of hate crimes and violence against minority groups on grounds of race, origin and religion. The lack of statistics on these crimes is also of concern. The Durban Declaration and Programme of Action (DDPA) put special emphasis on measures and actions against the Internet being used for the dissemination of hate speech and propaganda. CoE has also adopted various measures to combat hate speech on the Internet. The campaign *No Hate Speech Movement: Young People for Human Rights Online* was launched in March 2013 and is still ongoing. CoE has trained young people to combat hate speech so as to conduct the campaign with the aid of CoE staff and coordinating groups in member states. In 2000, ECRI issued their General Policy Recommendation no. 6 on combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet, establishing that the same legislation, penalties, prohibitions and restrictions should apply to hate speech and incitement to hatred on the Internet as to other forms of hateful expression. The recommendation urges member states to ensure that relevant national legislation also applies to racist, xenophobic and antisemitic offences committed via the Internet, to prosecute those responsible for these offences and to undertake sustained efforts for the training of law enforcement authorities in relation to the problem of dissemination of racist, xenophobic and antisemitic material via the Internet.

As mentioned before, laws, regulations, indictments and other measures taken by member states against websites and propaganda disseminated via the Internet, have had limited effect since the users and administrators can be anywhere in the world and therefore difficult to get a hold of. Legislation and policies on dissemination of hate speech and incitement to hate crime also vary between countries. Other measures are therefore also needed to make progress in the battle against hate speech. Those measures should include private companies, especially Internet service providers and companies providing material for dissemination on the Internet. They should adopt and follow ethical guidelines and cooperate to seek measures to prevent harmful use of the Internet. It is important that all stakeholders have a clear and precise role in combating hate speech and increased awareness raising and education on the Internet as well as in other spheres of society would lead to increased tolerance and acceptance of diversity.

### **4.3 The role of media in countering hate speech**

Through their dissemination of information and ideology, media, especially visual, can be important tools in molding the public opinion. They can therefore be a double edged sword when it comes to hate speech and prejudice. Media can be used for promoting human rights, combat violence, building up trust and reconciliation of conflicting groups but media can also be used for creating tension, intolerance and hatred.

As mentioned before, the CoE Committee of Ministers Recommendation (97)21, on the Media and the Promotion of a Culture of Tolerance, notes that the media can make a positive contribution to the battle against intolerance, especially where they foster a culture of understanding between different ethnic, cultural and religious groups in society. In the Appendix to the Recommendation the media is encouraged to usefully reflect on; reporting



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factually and accurately on acts of racism and intolerance, depicting cultural, ethnic and religious communities in a balanced and objective manner and in a way which also reflects these communities' own perspectives and outlook, draw up professional codes of conduct within their different media sectors, provide in-house training or opportunities for outside training for their media professionals at all levels, on professional standards on tolerance and intolerance as well as a multi-ethnic journalistic team.

The media should not only uphold these principles in times of peace but also in times of conflict. The CoE Committee of Ministers has adopted guidelines on the protection of freedom of expression and information in times of crisis. Litra 9 of the preamble states that:

*„Convinced not only that media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information, but also that media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society.“*

The media can also be a venue for public debate, which is necessary in a democratic society. Such debate can have positive effect for relieving tension and create a balance between the interests of the majority and minority groups in society.

Special emphasis is also put on the protection of human rights and human dignity in a world of rapidly advancing technology, see for example Recommendation Rec (2003) 9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting and their Declaration on a European policy for new information technologies. The Standing Committee on Transfrontier Television of the Council of Europe issued a Statement in 2002 on Human Dignity and the Fundamental Rights of Others, especially aimed at reality television, putting emphasis on television programmes to uphold human dignity and respect every individual's fundamental rights.

According to the European Commission's report from 2012, Icelandic media, for the most part, operate according to EU rules on IT and media due to Iceland's membership to the European Economic Area (EEA). The Act on Media reflect these principles, especially the stipulations on hate speech and incitement to hate crime. The Act on Media now applies equally to printed and digital media and offers added protection to sources as well as obliging media service providers to provide information on gender representation, including the proportion of men and women among persons interviewed in news broadcasts and news-related content, proportion of women and men members of staff itemised by job designation and measures taken by the media service provider to counter stereotyped gender images. According to article 26 of the Media Act, a media service provider shall, in all their activities, uphold democratic principles and guard freedom of expression as well as respect human rights and equality and bear in mind the right to privacy. Media service providers shall also take care to meet requirements regarding impartiality and accuracy in their comments on news and news-related content and ensure that a variety of opinions are expressed, including both those of men and women. Any party who considers that his legitimate interests, and in particular his reputation and good name, have been damaged by the distortion of facts in a medium shall



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have the right to respond, in the medium or to have access to another equivalent remedy. Liability for textual content has also been enhanced and now applies equally to all media.

All over the world governments face similar challenges as regards influencing the media to become an effective tool in the battle against prejudice and its consequences; opposing prejudice instead of spreading it. The method used in international agreements, rules and standards is striving for a venue for the general public to participate in a critical debate while making sure that such venue to be tolerant and free of hate. Unfortunately, recent developments in technology have proven to be a hindrance to the process of creating a balance between freedom of speech and prohibition against discrimination. It is of great importance that the media assume responsibility. Each medium can set their own procedural rules and codes of conduct that all employees should follow. These rules may compass the employee's conduct in the work place but also their expression in other venues, as shown by BBC's editorial values and guidelines. The EU has issued an information providers guide aimed at presenting some examples of typical and important kinds of content suitable for publication on the Web.

#### **4.4 Media and Internet literacy**

Nowadays the Internet is the most powerful medium for reaching diverse groups of people in as short a time as possible. People work, learn, play and communicate via the Internet. Through our access to diverse Internet media we find global news; on war, peace, the environment, science etc. How this material is presented may affect people's views and opinions on the people and issues at hand. It is therefore important for people to be Internet literate, just as we are taught to read and write we also have to understand how the different type of media operate and how to critically assess the material presented there. Media literacy is the ability to access, analyze, evaluate, and create media; from television, radio, Internet, newspapers, social media, and all other forms of media and to use them in a responsible and critical manner.

Media literacy is a part of the school curricula in Sweden, Ireland and the UK and more EU countries either have followed, or are likely to follow their example. At the end of 2007 the EU Commission issued a Communication on a European approach to media literacy in the digital environment which was aimed at supporting the EU policy on audiovisual media. The Communication is in accordance with the EU Audiovisual Media Services Directive. Article 33 of the Directive obliges the Commission submit to the European Parliament, to the Council and to the European Economic and Social Committee, a report on the application of the Directive in all member states. In 2008, the European Commission and the European Council adopted a joint conclusion on media literacy and instigated a study on assessment criteria for media literacy levels in Europe. In 2009, the European Commission also issued a recommendation, on media literacy in the digital environment, recommending member states, in cooperation with the authorities in charge of audiovisual and electronic communication regulation to open a debate on the inclusion of media literacy in the compulsory education curriculum and to provide citizens with clear, user-friendly information, about techniques



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used for commercial communication purposes and online advertising, and with means to better identify the boundaries between marketing and content. In 2016, the European Council adopted conclusions on developing media literacy and critical thinking through education and training.

By teaching media and Internet literacy you can teach people how search engines work and how to better use them, teach students how to make a film and techniques used for commercial communication purposes so they may better identify the boundaries between marketing and content. Media and Internet literacy is a necessary tool for evolving critical thinking and for enabling all individuals, old and young, to take better part in building a democratic society where all people's human rights are respected without discrimination.

## 5 Do we need change?

This section contains recommendations for law amendments and other actions for providing adequate protection against hate speech and to ensure remedies and compensation for victims of hate speech. A special focus is put on recommendations to the Icelandic State made by international human rights committees.

### 5.1 Recommendations by the CERD Committee and ECRI

In 2010, the CERD Committee made various recommendations in their concluding observations to Iceland's National report to the Committee. The Committee urged Iceland to consider adopting a comprehensive anti-discrimination legislation and to incorporate all of the substantive provisions of the CERD into domestic law. The Committee stressed that this legislation should address all manifestations of racism, racial discrimination, xenophobia and related intolerance in all spheres of life, and provide, inter alia, for effective remedies in civil and administrative proceedings.

The Committee also recommended that the State party further strengthen the provision of human rights education in schools, including adequate reflection in standard school curricula and training of teachers and that efforts to prevent and combat prejudices and to promote understanding and tolerance in all spheres of life be continued, aimed particularly at young people and the media.

In their fifth country-by-country monitoring cycle, ECRI, issued their report on Iceland in February 2017. The report included recommendations for amending the Criminal Code to add the grounds of language and national or ethnic origin to Article 233 a and to include the following offences committed on grounds of "race", colour, language, religion, nationality, or national or ethnic origin: public incitement to violence, hatred or discrimination; public



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insults; the public expression with a racist aim of an ideology which claims the superiority or which depreciates or denigrates a group of persons; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; the public dissemination or distribution, or the production or storage aimed at public dissemination or distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by ECRI's General Policy recommendation No. 7 Article 18 a, b, c, d and e; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and genocide. ECRI once again recommended that a provision to be inserted into the Criminal Code making racist motivation an aggravating circumstance for all criminal offences. ECRI strongly reiterated its recommendation to enact comprehensive anti-discrimination legislation and to establish a specialised body to combat racism and racial discrimination. ECRI also recommended that the Media Act of 2011 be amended to allow for sanctions to be applied for violations of Article 27 on prohibition of hate speech and incitement to criminal activity without the requirement for violations to be repeated. ECRI recommended that the authorities raise awareness among the general public and the police about the possibility of submitting complaints concerning hate speech in the media to the Media Commission and to provide the Media Commission with adequate funding and staff in order for it to monitor the media and take action against violations of the Media Act on its own initiative.

## 5.2 Changes are necessary

Article 65 of the Icelandic Constitution should be reviewed for the purpose of adding more discrimination grounds, such as disability, sexual orientation, gender identity, gender expression etc. It is also very important to implement a comprehensive legislation on discrimination. Such legislation should ensure adequate protection of vulnerable groups and ensure judicial or administrative remedies for victims of discrimination, hate speech and hate crime. Also, international conventions governing the issue should be ratified, for example Iceland has signed but not ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Article 242, litra 1 of the General Penal Code states that violations against Article 233 a shall be prosecuted, regardless of whether or not the victim presses charges. The police does however not receive many complaints on violations against this article, most likely the general public is not alert to this type of offence and ignorant of the law. Also, it has happened that the police would not receive complaints made by a third party. In recent years, the police has put more focus on hate crimes, but public awareness must be raised. Hate speech is more likely to be directed at specific groups rather than individuals and therefore difficult for the group as a whole to press charges. Also, these groups might not know their legal status or they do not dare report violations to the police. It is therefore important that the police conduct independent investigations, instigated by the police or a concerned third party. Sweden has a special prosecutor on hate crime (s. Justitiekanslern). It might be useful to study how his methods and procedures might be put to use in this country.



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A sentence or an article should be added into chapter VIII of the General Penal Code allowing for aggravated sentences in penalty cases motivated by racism or prejudice or if the victim was discriminated against in some way.

### 5.3 Recommendations, summary

1. Article 65 of the Icelandic Constitution should be revised so as to include prohibition on discrimination on grounds of disability, gender identity, sexual orientation, gender expression, gender non-conformity etc.
2. The General Penal Code should be amended so as to allow for prosecution for hate speech on grounds of public interest and democratic values.
3. Aggravated sentence; either implement a separate stipulation or a new paragraph to Article 70 of the General Penal Code, for an aggravated sentence in cases instigated by racism or prejudice.
4. Even if the Media Act has been amended so as to penalise hate speech and not only instigation to hate, the scope of Article 27 has been narrowed and does not encompass single hate speech programmes, only systematic incitement to hatred (hate propaganda). This should be revised so as to harmonise with the situation in Iceland, to provide means to combat hate speech in the most effective way possible. Also, stipulations on individuals' and editors' liability for publishing hate speech in the media should be clarified and strengthened.
5. An act encompassing media which do not fall under the scope of the Media Act, such as social media, web sites, Twitter, blogs, Facebook etc. should be implemented. This might be done by broadening the scope of the Media Act. Such legislation should also be monitored by a supervisory body.
6. The government should implement a comprehensive legislation on discrimination, harmonising with the EU discrimination directives and other international legislation on discrimination.
7. The government should implement a comprehensive policy on equality and anti-discrimination as well as action plans against prejudice and discrimination in Icelandic society.
8. Data collection, registration and research are necessary tools to establish the status of minority groups, the extent of discrimination in society and to systematically counteract prejudice which might lead to hate speech.



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9. Education and awareness raising must be carried out among the general public as well as specialist groups such as the judiciary and government officials. In 2017, the police and prosecutors underwent an education programme on hate crimes, a good start but such education must be conducted on a regular basis.
10. Policy making and training of police, the judiciary and public officials should be carried out on a regular basis.
11. Internal supervision and codes of conduct. The media should implement codes of conduct regarding media coverage of minority groups and supervise their implementation. Most likely, the majority of media have already established such codes of conduct, but they must ensure that they are comprehensive, binding and effectively implemented. Preferably, a supervisory body, for example the Union of Icelandic Journalists, should be established, for supervising the implementation of these codes of conduct, in the same manner as the Icelandic Bar Association and its' disciplinary committee supervise and rule on alleged violations by attorneys of law of the attorney's Code of Ethics.
12. The media and Internet service providers should implement rules on the publication of material, which might be categorised as hate speech, and train journalists in covering minority groups and vulnerable groups as well as to counteract general misconceptions.
13. Awareness raising campaigns on media literacy should be conducted, on the Internet, in schools and media. It might be of use for the preparation and construction of such campaigns to make use of the know how of Sweden, Germany and the UK.

## 6 Final words

It is necessary to establish what constitutes as hate speech in order to find effective ways of countering it. That is only possible through awareness raising and education on cause and effect. Intercultural education is a powerful tool to increase tolerance and counter prejudice. Such education must be aimed at society as a whole, the general public as well as specialists. Legislation must also be revised and effectively implemented and therefore attention has been drawn to amends that need to be made and recommendations made by international committees on the situation in Iceland.

Hate speech is extreme stereotyping of an individual or a group of individuals aimed at dehumanising them. It is by far easier to attack someone who has been dehumanised. Icelandic society must take care that prejudice and intolerance do not become the norm so that derogating speech and prejudice will no longer be considered as offensive. It must not be forgotten that words are a powerful tool and while one individual does not react to hate speech and incitement to violence another one might. For intolerance to be accepted needs only the indifference of the general population. We should never lose sight of our ultimate goal which is a world of



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multiculturalism and tolerance. We must find effective measures to protect vulnerable groups and individuals against hate speech and violence.

Hate speech is only a symptom, a manifestation of intolerance and narrow mindedness deeply rooted in society. Therefore, legal measures alone, such as restrictions to freedom of expression, are not enough. To address the problem in a comprehensive manner, we must enlighten people, change their way of thinking and broaden their perspectives, by using measures such as intercultural dialogue, education on tolerance and diversity. In addition, the government must strengthen freedom of expression. The reaction to hate speech should be a comprehensive legal frame, including legislation on equality and anti-discrimination, as well as increased dialogue on diverse cultures, multicultural society and diversity. Minority groups should also be given a voice, for example by more positive media coverage. Freedom of expression can in fact be the best way to reach individuals in society and to change their mindset permanently.