

The Cases

Across this guideline, you saw numbers after statements. The numbers are referring to cases we have discussed while creating this brochure.

- 1, *Delfi v. Estonia** (case is currently pending)
- 2, *Jersild v. Denmark*; *Lehideux and Isorni v. France*
- 3, *Erbakan v. Turkey*
- 4, *Lehideux and Isorni v. France*
- 5, *Jersild v. Denmark*
- 6, *Wingrove v. The United Kingdom*
- 7, *Glimmerveen and Hagenbeek v. the Neatherlands*; *Pavel Ivanov v. Russia*; *Sürek v. Turkey*
- 8, *Incal v. Turkey*
- 9, *Seurot v. France*
- 10, *Lingens v. Austria*; *Castells v. Spain*
- 11, *Pedersen and Baadsgard v. Denmark*

This document is a simplified version of the original guideline. You can download the extended edition, which also contains a short summary of the cases we have used by following this link: http://files.elsa.org/AA/OHS_Guideline.pdf



The European Law Students' Association



The guideline

What you hold in your hands is a practical guideline for moderating hate speech online.

This guideline was drafted during the European Law Students' Association (ELSA) conference on online hate speech in Oslo, December 2013. Students from 20 European countries contributed to the guideline by doing research and drafting reports prior to the conference. It was the first time that such a widespread legal research has been done in this area. After the conference, a working group consisting of participants from six countries continued to work on the project to create an understandable and legal-based guideline

In addition to the participating countries, the Council of Europe held the patronage to this conference and project. Together with ELSA - the worldwide biggest law student association - the „No Hate Speech Movement“ now has a fundamental research on legal aspects regarding online hate speech across Europe.

We are honoured and proud that the Council of Europe gave us the trust and the help we have received.

A just world in which there is respect for human dignity and cultural diversity.

- the Vision of ELSA

Contributing countries:

Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Finland, Germany, Greece, Ireland, Italy, Norway, Poland, Republic of Macedonia, Romania, Russia, Sweden, The Netherlands, Ukraine, United Kingdom



Building your community

Building your online community is the biggest part of your work. It is important to give it a framework in which it can form and also to establish some tools which help you moderate.

The fine line to walk on

When stating your opinion, talking about current events or discussing different viewpoints **controversial** or **political** statements can occur. This is fine as long as the main goal is to **inform** and not attack others or spread lies.

Be open to your community

You will encounter those who will post things on your platform that might provoke others. A small disclaimer stating that you do not share opinions or statements posted by others may help to **settle issues beforehand**. Be aware that this will **not exclude** you from being held **liable** for what is written on your webpage!

Create a policy that suits your needs

In order to have a tool that you can work with it is good to have a **policy** that is accessible to every user. This way you can moderate the comments on an **unbiased ground**. The policy can for example contain that *„the moderator may delete comments attempting to side-track, are off-topic or are of hateful content.“*

Be aware of different media

It is important to take into consideration which type of media is used to convey a message. When moderating, you must consider the influence that a certain type of media (like photos or videos) has on its audience.

Content matters!

Now to the more difficult part - the content. Based on principles established by the European Court of Human Rights (ECoHR) we want to outline the limits of freedom of expression.

Handling freedom of expression

Deleting a comment means that you restrict someone's freedom of expression. Therefore you must decide for **every statement** if it is still protected or not. According to the ECeHR, the following statements should be handled with care and the freedom of expression shall rather be prioritized. This is the case if the statement ...

... is **aimed at informing** or spreading ideas on matters of public interest²

... **contributes** to an ongoing public debate³

... is **of interest** to a political discourse/campaign³

... is a **part of** an ongoing debate among historians⁴

Moderation based on the topic

In addition to the mentioned points, it is important to be aware of **the debate's topic**. A statement can be provocative and can still contribute to the debate. Always consider the whole debate and do not take the statement by itself before moderating. Also keep in mind that the debate gives room for all points of view⁵.

Limits to freedom of expression

On the other side the freedom of expression ends where the freedom from discrimination begins. There are some rather clear cases where you as a moderator need to act. This is the case if the expression ...

... is generally incompatible with human right values

... insults or offends morals or religious convictions⁶

... calls for violence, hostility or hatred⁷

... creates or reinforces existing prejudices

The people involved

Since **freedom of expression includes the right to information**, it is important to notice who contributes to the debate and how this influences it.

The provider of information

A special status is granted to the people who either have a **fundamental role** in a political debate or act as **provider of information** (e.g. journalists or reporters). Due to the necessity of these individuals to **spread information** their freedom is **less limited** compared to a private individual⁸.

People with influence

Some actors in society are considered to be **trustworthy**, **due to** their profession - such as teachers, doctors and officials. They have a special status when they issue a statement in their specific capacity. However this status **does not apply** if these people make a statement that is not in their **function** or is **discriminating**⁹ (see „Limits to freedom of expression“). This also **applies** for the „provider of information“.

Status of the targeted person

When moderating, one must also consider the status of those people who are addressed by certain statements. If a statement **criticises** a politician or the government **reasonably**, it still falls under the freedom of speech⁶. These public figures are therefore **not as heavily protected** as private individuals.

On the other side, a non-elected public official or civil servant (such as police officers) can also be criticised. If the critique is aimed towards them as **acting in the capacity of their profession**¹⁰ they do **not enjoy as much** protection as an individual but **more than** a politician¹¹. If attacked as a private individual they - of course - enjoy the **same rights** as any other private individual.