"INTERNET HATE SPEECH: A THREAT TO *ORDRE PUBLIC*? – IDENTIFYING THE OBSTACLES OF REGULATION"

PARTICIPATION NUMBER: 022

ONLINE HATE SPEECH ESSAY COMPETTION 2012-2013

ONLINE HATE SPEECH: RIGHT OR CRIME?

EUROPEAN YOUTH CAMPAIGN AGAINST HATE SPEECH

APRIL 2013

List of Abbreviations

Art./Arts.	Article(s)
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EuConst	European Constitutional Law Review
EU	European Union
EYMI	European Yearbook of Minority Issues
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IndInt'l & CompLRev	Indiana International & Comparative Law Review
ISP	Internet Service Provider
JTransnat'lL & Pol'y	Journal of Transnational Law & Policy
NCJInt'lL & ComReg	North Carolina Journal of International Law and Commercial Regulation
UDHR	Universal Declaration of Human Rights
US	United States of America
Wash & LeeLRev	Washington & Lee Law Review

1. Introduction

The World Wide Web revolutionized unprecedentedly means of communication. What initially was launched as a university project to send and receive data packages between interconnected networks in the early 60's[1], catapulted traditional print media and telecommunication in the shadows. Its decentralized attribute granted individuals a tool to instantly receive and impart information. Yet, as progressive as this switch of paradigms was, cyberspace entailed a safe haven; a safe haven for hatemongers.[2] The Internet has become an highly effective tool providing space to expand propagandistic views, and is being abused to spread hateful views to an innumerable audience.[3] This practice has been recognized by the Council of Europe (CoE) with the following wording. "(…) [T]he Internet is also used for disseminating racist, xenophobic, and anti-Semitic material, by individuals and groups aiming to incite intolerance or racial and ethnic hatred."[4]

2. Need for Regulations?

It is assessed that this form of hateful dissemination can arise to the status of threat to *ordre public*. Beyond this background regulating Internet hate speech shall be regarded as a legitimate tool, which rightfully has been described by the academia as to prevent interference with other rights.[5]

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[1] *Leiner et al.*, Brief History of the Internet, <http://www.internetsociety.org/sites/default/files/Brief_History_of_the_Internet.pdf>.

[2] According to the data collected by the Simon Wiesenthal Center 2012 Digital Terrorism & Hate Report, some 15.000 Websites, social networks, forums, and newer online technology games and apps are considered to be "problematic".*Cf.* <http://www.wiesenthal.com/site/apps/nlnet/content2.aspx?c=lsKWLbPJLnF&b=4441467&ct=11675937#.UUOEGBcz0VA>.

[3] *Cf. Timofeeva*, "Hate Speech Online: Restricted or Protected?", JTransnat'lL & Pol'y 12 (2003), p. 256 et seq.

[4] *ECRI/CoE*, ECRI General Policy Recommendation No. 6 on Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet.

[5] *McGonagle*, "Minorities and Online 'Hate Speech'", EYMI 9 (2010), p. 421.

3. Obstacles

However, the *modus operandi* to regulate Internet hate speech regulation is facing an entire set of obstacles. Any inconsideration towards these obstacles would sum up to a non-stringent application of rule of law principles at the cost of harming values of a democratic society.[6]

3.1 The Lack of a Universal Definition

In order to analyze hate speech the need of a definition is deemed quintessential since the term hate speech has no universally accepted definition.[7] It is not considered as a legal term neither in relevant practice, nor theory. The CoE defines hate speech as:

> "(…)[C]overing all forms of expression which spread, incite, promote, or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination, and hostility against minorities, migrants and people of immigrants origin."[8]

Once scrutinizing the definition the absence of intolerance on grounds of sex, sexual orientation, and age becomes evident. The lack of these elements should not be regarded as an omission by the drafting Committee, but rather as an explicit focus on political racism, xenophobia, anti-Semitism and intolerance.[9] Noteworthy towards terminological aspects is the case law tradition of the European Court of Human Rights (ECtHR, or the Court), who differentiates hate speech in the following subcategories: racial, sexual orientation, and religious hate speech, negationism, speech based on totalitarian doctrine, and politically motivated speech.[10]

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[6] *Cf.* also *Dautermann*, "Internet Regulation: Foreign Actors and Local Harms", NCJInt'lL & ComReg 28 (2002), p. 178.

[7] *Cf. Nowak*, CCPR Commentary, art. 20, para. 14; *Christou*, Die Hassrede in der verfassungsrechtlichen Diskussion, p. 20; *ECtHR*, Factsheet – Hate speech, p. 1.

[8] *CoE Committee of Ministers*, Appendix to Recommendation No. R (97) 20.

[9] *McGonagle*, supra note 5, at 422 et seq.

[10] *ECtHR*, supra note 7, p. 2 et. seq.

3.2 Collision of Interests

A predominant matter arising from the attempt to regulate hate speech is the question, whether hate speech is a right, but crime. This question is unalienable especially when put against the background that hatemongers, strictly speaking, exercise their right of freedom of expression. In other words, is freedom of speech absolute without space for restrictive regulations?

The right of freedom of expression is enshrined in numerous regional and international human rights conventions.[11] The right is stated in art. 10 of the European Convention on Human Rights (ECHR). According to art. 10 (1) ECHR it is composed of three elements: the right to hold opinions, the right to receive information and ideas, and the right to impart information and ideas. The fact that freedom of expression is not a fabric of rather a single freedom, but a compound of three specified elements shows the complexity of this multifaceted right.[12]

Freedom of expression occupies a special place in the fundamental rights; any unjustified interference would limit this fundamental right at the consequence of leaving a negative impact in the discourse of a democratic system.[13] The justification of state interference towards this fundamental human right is articulated in art. 10 (2) ECHR.[14] Accordingly, art. 10 (1) ECHR can be limited on the grounds of the following: interest of national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary. Therefore freedom of expression is not absolute and thus can be subject to restriction.

Although the ECHR enumerates the grounds for state interference, the ECtHR is reluctant in defining them. Rather, it applies a process in finding the necessary legitimacy for restriction. This leads to the application of the so called *three-step process*. Under this principle, (i) the limitation must be prescribed by law, (ii) it must follow a legitimate purpose, and (iii) the

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[11] Although this fundamental right is protected in numerous human rights instruments, e.g. art. 19 UDHR, art. 19 ICCPR, and art. 11CFREU, for the scope of regional emphasis this paper will analyze solely freedom of speech as protected by the ECHR.

[12] *Cf. Gisbert*, "The Right to Freedom of Expression in a Democratic Society (Art. 10 ECHR)", in: *Garcia Roca/Santolaya (eds.)*, Europe of Rights: A Compendium on the European Convention of Human Rights, p. 372.

[13] *Ibid.*, at 373.

[14] *Ibid.*, at 373.

limitation must be determined as necessary in a democratic society.[15] Additionally, the ECtHR applies the *margin of appreciation* when rendering decisions.[16] Under this doctrine, the Court measures the discretion of States that apply international treaties regulations, taking into account their own national circumstances.[17] This doctrine merits a closer look.

3.2.1 *Handyside v. the United Kingdom*

In its seminal case *Handyside v. the United Kingdom* the ECtHR outlined inter alia the limits of *margin of appreciation* regarding art. 10 (2) ECHR. This judgment is recognized as a landmark case since it was the first to interpret the criterion of what is "necessary in a democratic society".[18] As hate speech primarily interferes with "operative public values: dignity, non-discrimination and equality, (effective) participation on public life, and the freedom of expression, association, and religion"[19], any such interpretation is deemed necessary in order to foster a criterion on what a pluralistic society can bear under the camouflage of freedom of expression by hatemongers. Only with such criterion policymakers are in the position to draw a line between hate speech and freedom of expression. In this case the Court scrutinized, whether restrictions of an obscene publication can be justified trough art. 10 (2) ECHR in order to protect morals, and ruled:

> "(…) [N]evertheless, art. 10 para. 2 does not give the contracting States an unlimited power of appreciation. The domestic margin of appreciation thus goes hand in hand with a European supervision." [20]

With this line of argument the Court established that restriction with the *margin of appreciation* is not unconditional. It recognized that:

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[15] *Ibid.*, at 376.

[16] *Viellechner*, "Berücksichtigunspflicht als Kollisionsregel", in: *Matz-Lück/Hong,* Grundrechte und Grundfreiheiten im Mehrebenensystem – Konkurrenzen und Interferenzen, p. 158.

[17] *Arai-Takahashi*, The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR, p. 1 et seq.

[18] *McGonagle*, supra note 5, at 425.

[19] *Ibid.*, at 421.

[20] *Handyside v. the United Kingdom,* No. 5493/772, Judgment of the ECtHR, 7 December 1976.

> "(…) [F]reedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. (…) it is applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also 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 ruling highlights the quintessence of opposite viewpoints in a democratic discourse. In the effort to regulate hate speech disseminated within cyberspace policymakers should not be granted with abusive powers. In doing so, especially without well defined thresholds of hate speech, policymakers would be granted a blanket check. Such an approach cannot be burdened on to civil society, as there will be always an opposing view point compared to mainstream views. A functioning society will always be confronted with views by a group which is not shared by the rest of society. The right of freedom of expression cannot be disregarded if statements by one are considered by the other as "offending, shocking or disturbing". Yet this approach, which seems a compromise between conflicting parties, raises the question whether the ECtHR adopts a similar methodology as the US Supreme Court, and hence, if, is reserved with the concept of hate speech.

3.2.1.1 Approaching the American Tradition?

Although the right of freedom of expression is not absolute in the United States either,[21] under the First Amendment case law the Supreme Court is more tolerant than the ECtHR. Generally, the First Amendment protects hate speech from government regulation.[22] The Supreme Court is extremely suspicious of government efforts to ban harmful messages.[23] In its precedent case for racist speech regulation *R.A.V. v. City of St. Paul* the Supreme Court established a standard.[24] Pursuant to this standard content based regulation is deemed as inadmissible and forbids the prohibitions on speakers who express their disfavored views on race, color, or religion, however

[21] *Breard v. Alexandria*, 341 U.S. 622, 642 (1951); *Damania*, "The Internet: Equalizer of Freedom of Speech?", IndInt'l & CompLRev 12 (2002), p. 249.

[22] *Van Blarcum*, "Internet Hate Speech", Wash & LeeLRev, p. 809.

[23] *Cf. Farber/Eskridge/Frickey*, Cases and Materials on Constitutional Law, p. 614.

[24] *R.A.V. v. City of St. Paul,* 505 U.S. 377 (1992).

heinous they are.[25] Only general non-content based prohibition is permitted, if they inflict injury or tend to incite immediate breach of peace.[26] Moreover, there are two compelling tests whether speech is proscribable; it must either (i) constitute a true threat[27] or (ii) equate to fighting words.[28] However, this method of rejecting hate speech bans[29] is not deployed by the ECtHR. This becomes evident examining other seminal cases of the ECtHR, where the restrictions on freedom of expression were contended. In this regard, two cases of ECtHR ruling that restrictions did not violate art. 10 ECHR are nominal, namely, *Féret v. Belgium* and *Garaudy v. France.*

3.2.1.2 *Féret v. Belgium*

In *Féret v. Belgium*, a hate speech ruling in the category of racial hate speech, the facts involved MP Daniel Féret convicted by the Belgian judiciary of publicly inciting racism, hatred and discrimination. Féret, who during electoral campaigning distributed leaflets alleged that with the conviction his right of freedom of expression was breached. The leaflets and posters included following statements: "Attacks in the USA: the couscous clan"[30], "oppose the Islamization of Belgium"[31], "stop the policy of pseudo-integration"[32], "return the unemployed non-European"[33]. Additionally, some of the leaflets advocated for "the formation of ethnic ghettos".[34] The Court ruled that this form of discourse inevitably generates among the public hatred *vis-à-vis* foreigners.[35] The Court explicitly mentioned that it deems necessary in democratic societies to sanction or prevent all forms of expression which spread, incite, promote or justify hatred based

[25] *Cf. Timofeeva*, supra note 3, at 254.

[26] *Ibid.*, at 254.

[27] *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

[28] *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

[29] *Sottiaux*, "'Bad Tendencies' in the ECtHR's 'Hate Speech' Jurisprudence", EuConst. 7 (2011), p. 41.

[30] *Féret v. Belgium,* No. 15615/07, Judgment of the ECtHR, 16 July 2009, para. 17.

[31] *Ibid.*, para. 17.

[32] *Ibid.*, para 17.

[33] *Ibid.*, para. 9.

[34] *Ibid.*, para. 9.

[35] *Ibid.*, para 49.

on intolerance.[36] Feret's allegation on the grounds of freedom of expression was unanimously declared as inadmissible.

3.2.1.3 *Garaudy v. France*

In *Garaudy v. France*, a hate speech ruling in the category of negationism, the facts involved Roger Garaudy, author of the book *The Founding Myth of Modern Israel*. Some chapters of the book included: "The Myth of the Nuremberg Trials" and "The Myth of the Holocaust".[37] After lengthy procedures (four charges) the *Paris Tribunal de Grande Instance* found Garaudy guilty for: (i) denying crimes against humanity, (ii) publishing racially defamatory statements, and (iii) inciting to racial or religious hatred or violence.[38] Relying on art.10 ECHR Garaudy submitted that he had been prevented from expressing his opinion freely. Yet, the Court regarded the statements in the book to amount to the Holocaust denial.[39] The court found the applicants allegations as inadmissible and ruled:

> "(…) [D]enying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others."

3.2.1.4 The ECtHR's Threshold – the Distinction of Speech from Action

In her findings to hate speech restrictions the ECtHR acknowledges, that freedom of expression is not only applicable to favorable or inoffensive ideas, but that is also applies to such ideas that "offend, shock or disturb the State or any sector of the population".[40] However it is introducing a clear line by establishing a boundary; namely, not accepting racial defamation or incitement to hatred towards a particular group. This boundary is regarded as a necessary element for the distinction between hateful speech and actual hate speech aimed to incite discrimination and

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[36] *Ibid*., para 64.

[37] *Garaudy v. France,* No 65831/01, Judgment of the ECtHR, 24 June 2003, p. 2.

[38] *Ibid*., p. 2.

[39] *Ibid*., p.23.

[40] *Handyside v. the United Kingdom,* supra note 20, para. 49.

racism. The critique of hate crime regulation advocates that advocates of free speech "tend to assume that hate speech can be clearly separated from action"[41] must be acknowledged, in this regard the above mentioned solution as adapted by the ECtHR must be underlined. In this tradition, unlike the US Supreme Court, the *leitmotiv* of the Court can be summoned up to the following: freedom of expression is indispensable in public debate, yet this freedom cannot be regarded as absolute, if human rights of others guaranteed by the ECHR are violated. The dead end of freedom of expression is where it is in conflict with the spirit of the Convention, namely, justice and peace.[42]

3.2.2 Liability and Jurisdiction

Another major obstacle to enforcement of "traditional laws"[43] and successfully combating online hate speech is jurisdiction and liability matters. Yet these two matters, because of the decentralized and transboundary characteristic, seem a major obstacle for hate speech regulations. Online hate speech propagators can choose from which Internet Service Provider (ISP) they spread their content. This becomes in so far relevant since national regulations vary. The risk in this is the mere fact that the propagator can opt for a favorable jurisdiction where there are no such restrictions. Consequently, the propagator is given open floor to evade criminal liability.[44]

Yet simply blocking or banning hate sites in a particular jurisdiction cannot be regarded as an effective tool to combat online hate speech. The reason being: it is well documented and common to simply relocate the hate site to another server in a favorable jurisdiction after being blocked in a particular jurisdiction.[45]

4. Existing Mechanism to Combat Online Hate Speech

A successful solution combating online hate speech requires transnational normative orders. Although there are several instruments to combat hate speech, the international community cannot tackle this phenomenon in the absence of a legally binding international treaty. Out of the nature of the Internet, any non-multilateral approach is doomed to failure.

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[41] *Starr*, Understanding Hate Speech, p. 129.

[42] *Cf.* Preamble of the ECHR.

[43] *Cf. Van Blarcum*, supra note 22.

[44] See also *McGonagle*, supra note 5, at 432.

[45] *Cf. ibid.*

4.1 International Mechanisms

Among the international instruments there are only two[46] universal treaties to address hate speech, the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Art. 20 (2) ICCPR provides that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law. However, the effectiveness of art. 20(2) ICCPR remains questionable. Art. 4 ICERD on the other hand was the first most eloquent provision to address the criminalization of hate speech and also by far the most far-reaching.[47] It provides that signatories shall (i) declare an offense punishable by law the dissemination of ideas based on racial superiority or hatred, (ii) declare illegal and prohibit organizations, which promote and incite racial discrimination, and recognize participation in such as an offense punishable by law, and (iii) prohibit authorities and public institutions from promoting or inciting racial discrimination. However, the drafters of this convention could have not foreseen the rise of the Internet; therefore the wording lacks entirely any element relating to computer systems, so does the ICCPR as well.

4.2 Domestic Mechanisms

All CoE Member States except Andorra, Liechtenstein, Moldova and San Marino, have either ratified, acceded or succeeded to the ICERD.[48] The majority of the Member States have laws regulating hate speech, which are often extended to hate speech on the Internet.[49] However, and analogously to the above mentioned problem of effectiveness with the ICERD under 4.1., each sovereign has different laws. These normative orders cannot be regarded as effective if crimes committed in one county are not regarded as such in the other. Additionally, the domestic hate speech legislation of many countries are limited to denials of genocide.[50] As a result, individual examination of each of these laws is intentiously omitted.

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[46] According to *Weber* there is only one international instrument at universal level. Cf. *Weber*, Manual on Hate Speech, p. 9.

[47] Cf. *Mendel*, "Hate Speech under International Law", <http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf>.

[48] CoE, "Legal Instruments to Combat Racism on the Internet", <http://www.coe.int/t/dghl/monitoring/ecri/legal_research/combat_racism_on_internet/internet_chapter4_en.asp?toPrint=yes&>.

[49] *Cf.* also Van Blarcum, supa note 22, at 800.

[50] *Cf. ibid.*

4.3 CoE Mechanisms

The first major international treaty to address cybercrime is the CoE Convention on Cybercrime. It covers crimes committed via the Internet and other computer networks, dealing particularly with the infringements of copyright, computer-related fraud, child pornography and violations of network security. However, when the ECRI recommended to include the issue of combating racism, xenophobia, and anti-Semitism in all current and future work (including the Convention on Cybercrime)[51], such proposal could not assess itself due US's non-ratification, if such wording would be introduced to the Convention.[52] Instead, the CoE prepared a separate protocol concerning Internet hate speech, namely the Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems (or Additional Protocol).

4.3.1 Provisions of the Additional Protocol

The Additional Protocol calls upon Member States to take measure at the domestic level to criminalize the following: dissemination of racist and xenophobic material (art. 3); threatening persons because of race, color, descent, national or ethnic origin, as well as religion (art. 4); insulting publicly persons because of race, color, descent, national or ethnic origin, as well as religion (art. 5); dissemination of material which denies, grossly minimizes, approves or justifies acts constituting genocide or crimes against humanity (art. 6), and lastly aiding and abetting any such offenses (art. 7). A *novum* in comparison with domestic and international mechanisms is the inclusion of a very particular element into arts. 3-7; these provisions are qualified, if perpetrated through a computer system. This wording is in so far revolutionary, since even if most Member States have laws criminalizing hate speech, the wordings of the laws are technologically neutral, thus domestically hate speech is criminalized in general, but not hate speech over the Internet in particular. Another, pillar of the Additional Protocol is art. 8 (2), accordingly the scope of extradition provisions of the Convention on Cybercrime extends to include Internet hate speech. This provision is regarded as a pillar as it paves the way for jurisdictional issues – in other words prosecution of offenders becomes easier. With the domestic mechanisms this was only possible, if domestic Courts applied the universal jurisdiction broadly.

Although the Additional Protocol paves the way to combat Internet hate speech, it comes along with massive deficiencies as well. Firstly, pursuant to the Explanatory Report on the

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[51] *ECRI/CoE*, supra note 4, at 4.

[52] *Cf. Van Blarcum*, supra note 22, at 791.

Additional Protocol, all the offences contained in the Protocol must be committed intentionally for liability to apply. Yet, the Explanatory Report confirms that ISP's are released from criminal liability, as they do not have criminal intent, which as mentioned constitutes one of the elements of the crime. Additionally, ISP's are not required to monitor conduct to avoid criminal liability. Bearing in mind that ISP's are multifaceted – they can be carrier, speaker, or gatekeepers[53] – a general non-liability is not regarded as effective. Leaving ISP's out of the criminal liability sphere is not apt for the challenges in reality.

The Electronic Commerce Directive of the Council of the European Union seems to promote a more adequate solution on the liability of ISP's, since it is not vague and more strictly regulated. Pursuant to this Directive liability of the ISP is interconnected to conditions. Thus, ISP's are not liable for the information transmitted, on the condition that the provider: (a) does not initiate the transmission; (b) does not select the receiver of the transmission; and (c) does not select or modify the information contained in the transmission. Yet this Directive is a legal document of the EU, and therefore non-binding to the CoE. Secondly, and more importantly, as of 15 March 2013 only 20 member States (emphasis added) have ratified the Additional Protocol.[54]

5. Conclusion

The inclusion of views of the entire spectrum of society should not only be protected but also promoted through various legal frameworks. The right of freedom of speech should be fostered especially by the judicial and legislative branches as well as its main addressee, the civil society. For the fact that an inclusion of all views from society automatically leads to a collision of interest, we will always be exposed to the "offending", "shocking" or "disturbing". Therefore ones fundamental rights shall be granted to full extent, as long as it does not cross with the fundamental rights of the others. This concept becomes the more important once realizing that greater Europe is a pluralistic society with different colors, religions, and ethnicities. The Internet however established unwillingly a forum for propagators inciting intolerance or racial and ethnic hatred. Such hateful dissemination in the new form of online hate speech can establish a threat to *ordre public*. All stakeholders of society should prevent any such rise of power, since history of humanity proved the destructiveness of supremacist and megalomaniac racial ideas. Therefore the following are recommended:

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[53] *Ku*, "Open Internet Access and Freedom of Speech", TulaneLRev. 75 (2001), p. 125.

[54] For the status of ratification visit:
<http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=189&CM=1&DF=&CL=ENG.>.

- An effort to regulate online hate speech shall not be constructed on the platform of applying censorship;
- A regional instrument as the Additional Protocol does not suffice: an international instrument involving the international community is deemed as unalienable due the character challenges of the Internet;
- Any attempt to draft a new instrument shall include a definition of hate speech, the element trough computer systems, as well as provisions on extradition.

List of References

Literature

Arai-Takahashi, Yutaka, The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR, Hart, Oxford, 2001.

Christou, Vasiliki E., Die Hassrede in der verfassungsrechtlichen Diskussion – Ein Beitrag im Lichte des deutschen, des U.S.-amerikanischen und des griechischen Rechts, Heidelberg, Nomos, 2006.

Council of Europe, Legal Instruments to Combat Racism on the Internet – The Position under Public International Law, available at: http://www.coe.int/t/dghl/monitoring/ecri/legal_research/combat_racism_on_internet/internet_chapter4_en.asp?toPrint=yes& (last accessed: 05 April 2013).

Damania, Farzad, "The Internet: Equalizer of Freedom of Speech? A Discussion on Freedom of Speech on the Internet in the United States and India", Indiana International & Comparative Law Review 12 (2002), pp. 243-264.

Dautermann, Walter C. Jr., "Internet Regulation: Foreign Actors and Local Harms – at the Crossroads of Pornography, Hate Speech, and Freedom of Speech", North Carolina Journal of International Law and Commercial Regulation 28 (2002), pp. 177-220.

European Court of Human Rights, Factsheet – Hate Speech, 2012, available at: http://www.echr.coe.int/NR/rdonlyres/D5D909DE-CDAB-4392-A8A0-867A77699169/0/FICHES_Discours_de_haine_EN.pdf (last accessed: 16 March 2013).

Farber, Daniel A./Eskridge Jr., William N./Frickley, Philip P., Cases and Materials on Constitutional Law – Themes for the Constitution's Third Century, 3rd edition, Thomson West, St. Paul, 2003.

Gisbert, Rafael Bustos, "The Right to Freedom of Expression in a Democratic Society (Art. 10 ECHR)", in: Garcia Roca, Javier/Santolaya, Pablo (eds.), A Europe of Rights: A Compendium of the European Convention of Human Rights, Brill, Leiden, 2012.

Ku, Raymond Shih Ray, "Open Internet Access and Freedom of Speech: A first Amendment Catch 22", Tulane Law Review 75 (2001), pp. 87-135.

Leiner, Barry M. et al., "Brief History of the Internet", available at: http://www.internetsociety.org/sites/default/files/Brief_History_of_the_Internet.pdf (last accessed: 10 March 2013).

McGonagle, Tarlach, "Minorities and Online 'Hate Speech': A Parsing of Selected Complexities", European Yearbook on Minority Issues 9 (2010), pp. 419-440.

Mendel, Toby, "Hate Speech under International Law", 2010, available at: http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf (last accessed: 10 March 2013).

Nowak, Manfred, CCPR Commentary, 2nd revised edition, Kehl am Rhein, Engel, 2005.

Sottiaux, Stefan, "'Bad Tendencies' in the ECtHR's 'Hate Speech' Jurisprudence", European Constitutional Law Review 7 (2011), pp. 40-63.

Starr, Sandy, "Understanding Hate Speech", in: *Möller, Christian/Amouruoux, Arnaud* (eds.), The Media Freedom Internet Cookbook, Vienna, OSCE, 2004.

Timofeeva, Yulia A., "Hate Speech Online: Restricted or Protected? Comparison of Regulations in the United States and Germany", Journal of Transnational Law & Policy 12 (2003), pp. 253-285.

Van Blarcum, Christopher D., Internet Hate Speech: The European Framework and the Emerging American Haven, Washington & Lee Raw Review 62 (2005), pp. 781-830.

Viellechner, Lars, "Berücksichtigungspflicht als Kollisionsregel: Zu den innerstaatlichen Wirkungen von völkerrechtlichen Verträgen und Entscheidungen internationaler Gerichte, insbesondere bei der Auslegung und Anwendung von Grundrechten", in: Matz-Lück, Nele/Hong, Mathias (eds.), Grundrechte und Grundfreiheiten im Mehrebenensystem – Konkurrenzen und Interferenzen, Springer, Heidelberg, 2012.

Weber, Anne, Manual on Hate Speech, Council of Europe, Strasbourg, 2009.

Legal Documents

Council of Europe, The European Convention on Human Rights (entry into force date: 3 September 1953).

Ibid., Convention on Cybercrime (signed 23 November 2011).

Ibid., Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems (28 January 2003).

Council of Europe Committee of Ministers, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'Hate Speech' (adopted on 30 October 1997).

European Commission against Racism and Intolerance (ECRI) Council of Europe, ECRI General Policy Recommendation No. 6 on Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet (adopted on 15 December 2000).

European Convention, Charter of the Fundamental Rights of the European Union (ratified on 7 December 2010).

European Parliament and Council of the European Union, Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce in the Internal Market (8 June 2000).

United Nations General Assembly, Universal Declaration of Human Rights (ratified on 10 December 1948).

Ibid., International Covenant on Civil and Political Rights (adopted on 15 December 1966).

Ibid., Convention on the Elimination of All Forms of Racial Discrimination (adopted on 4 January 1969).

Case Law

Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States, Appeal from the Supreme Court of Ohio, 9 June 1969.

Breard v. Alexandria, 341 U.S. 622, Supreme Court of the United States, Appeal from the Supreme Court of Louisiana, 4 June 1951.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), Supreme Court of the United States, Appeal from the Supreme Court of New Hampshire, 9 March 1942.

Féret v. Belgium, No. 15615/07, Judgment of the European Court of Human Rights, 16 July 2009.
Garaudy v. France, No 65831/01, Judgment of the European Court of Human Rights, 24 June 2003.

Handyside v. the United Kingdom, No. 5493/772, Judgment of the European Court of Human Rights, 7 December 1976.

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992), Supreme Court of the United States, Certiorari to the Supreme Court of Minnesota, 22 June 1992.