

Although there is no universal definition of the term of hate speech within the context of international law, it is possible to say that Recommendation No. R 97 (20) of the Committee of Ministers of the Council of Europe to member states on **Hate Speech** is accepted as the main reference in defining the term of hate speech. According to this, the term of hate speech covers “...**all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin**”.¹

In the European Commission against Racism and Intolerance’s (ECRI) General Policy Recommendation No. 15 on Combating Hate Speech, hate speech is defined as “ the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.”²

The first international treaty to deal with the issue of hate speech is the **International Convention on the Elimination of all Forms of Racial Discrimination (CERD)**.³ In the convention, the hate speech is addressed in four different aspects:

- ▶ Dissemination of ideas based on racial superiority
- ▶ Dissemination of ideas based on racial hatred
- ▶ Incitement to racial discrimination
- ▶ Incitement to acts of racially motivated violence.

Hate speech can be directed against foreigners, immigrants, ethnic groups, people with disabilities and various diseases, or it can manifest itself in the form of gender-based, racial or political hate speech.

1. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b>

2. ECRI, *General Policy Recommendation No.15 on Combating Hate Speech*, CRI(2016)15, 21 March 2016, p. 16, para. 9.

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

3. Toby Mendel, “Hate Speech Rules Under International Law”, 2010, p. 2; <http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf>

Things to Know About Hate Speech

In order for an expression to embody hate speech, it must necessarily include comments directed at a particular person or group.

According to Constitutional Court, it should be accepted that the hate speech has occurred if these are in question; “expressions directed at a group or members of a group incite hatred, the so called valid reason of this incentive is based on characteristics attributed to that group, humiliating members of a group just because they belong to that group, appear different from the general majority, being the perpetrator of social negativities or the humiliation and disenfranchisement of these groups or their members, justification of exclusion, oppression or violence to which they are subjected.”

The hate speech is not only limited to openly express statements. Expressions that are offensive to minority groups can be conveyed in an indirect language so that their target and purpose are not visible.⁴ **The hate speech can be conveyed through any form of expression, including images, cartoons, objects, gestures and symbols and it can be offline or online.**⁵ For this reason, it may seem difficult to identify the expressions that can be qualified as hate speech because such statements are not expressed only through hate expressions or emotions, and may be hidden in expressions that may seem logical or normal at first glance.⁶

In order for an expression to be qualified as hate speech, it does not have to contain violence or incitement to crime. State authorities should take action in cases where freedom of expression is used irresponsibly to insult, humiliate or defame certain segments of the society.⁷

In its General Recommendation No. 35, the UN Committee on the Elimination of Racial Discrimination’s (CERD) draws attention to the need for States Parties to regulate the necessary legislation to combat hate speech. It also recommends that they define as a crime and sanction the expressions of all ideas based on racial or ethnic superiority or hatred in any form, and the incitement of humiliation, discrimination and hatred against members of a group on the basis of race, colour, descent, national or ethnic origin.⁸

ECRI emphasizes that the internet and social media have a great impact on the spread of hate speech “The internet has become an important tool for promoting racism and intolerance, hate speech used through social media is increasing rapidly, and has the potential to reach a much wider readership than previously reached by extremist print media.”

4. *United Nations (UN) Committee on the Elimination of Racial Discrimination, General recommendation No. 35 “Combating racist hate speech”, para. 7.*

5. UN, “What is hate speech?”, <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>, A.D. 23.08.2022.

6. Anne Weber, *Manual on Hate Speech*, Strazburg, Council of Europe, 2009, p. 5.

7. *European Court of Human Rights (ECHR), Vejdeland and others vs. Sweden, B. No: 1813/07, para. 55*

8. *UN Committee on the Elimination of Racial Discrimination, General recommendation No. 35 “Combating racist hate speech”, para. 15.*

The Relation Between Freedom of Expression and Hate Speech

Hate speech is not considered a harsh criticism as it may incite violence against the victims, cause the victims to react in a way that may lead to violence, and even if such harm does not occur, it may in itself cause moral harm to those who are the subject of such statements. Therefore it is not protected under the norm area of freedom of expression.⁹

In the Article 19 of the **International Covenant on Civil and Political Rights (ICCPR)** it is stated that everyone has the right to freedom of expression, it may therefore be subject to certain restrictions. Expression containing a ‘hate speech’ in accordance with the three-stage test envisaged under the third paragraph of Article 19 of the ICCPR can be prohibited if provided by law expressly, having lawful aim and it is necessary in a democratic society.

Article 20 of the Covenant provides that the advocacy of national, racial or religious hatred in the form of incitement to discrimination, hostility or violence is prohibited by law. In the General Comment No. 11 of the UN Human Rights Committee, which is the supervisory mechanism of the Convention it has been emphasized that the freedom of expression regulated in Article 19 of the Convention and the use of which depends on certain duties and responsibilities, and the prohibitions envisaged within the framework of the aforementioned article are in full harmony. It has been also emphasized that in order for Article 20 to have full effect, propaganda or such defense is against public order and its sanctions must be clearly stated in the law.

In Rabat Plan of Action¹⁰ on Prohibition of propaganda for war and inciting national, racial or religious hatred which is prepared with the support of the UN High Commissioner for Human Rights (OHCHR) (A/HRC/22/17/Add.4, appendix), it is stated that for a speech to constitute a criminal offence, each of the six parts of the following threshold test must be fulfilled.¹¹

(1) Context: Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated.

(2) Speaker: The speaker’s position or status in the society should be considered, specifically the individual’s or organization’s standing in the context of the audience to whom the speech is directed.

(3) Intent: Negligence and recklessness are not sufficient for an act to be an offence, it also requires the “advocacy” and “incitement.”

(4) Content and form: Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed.

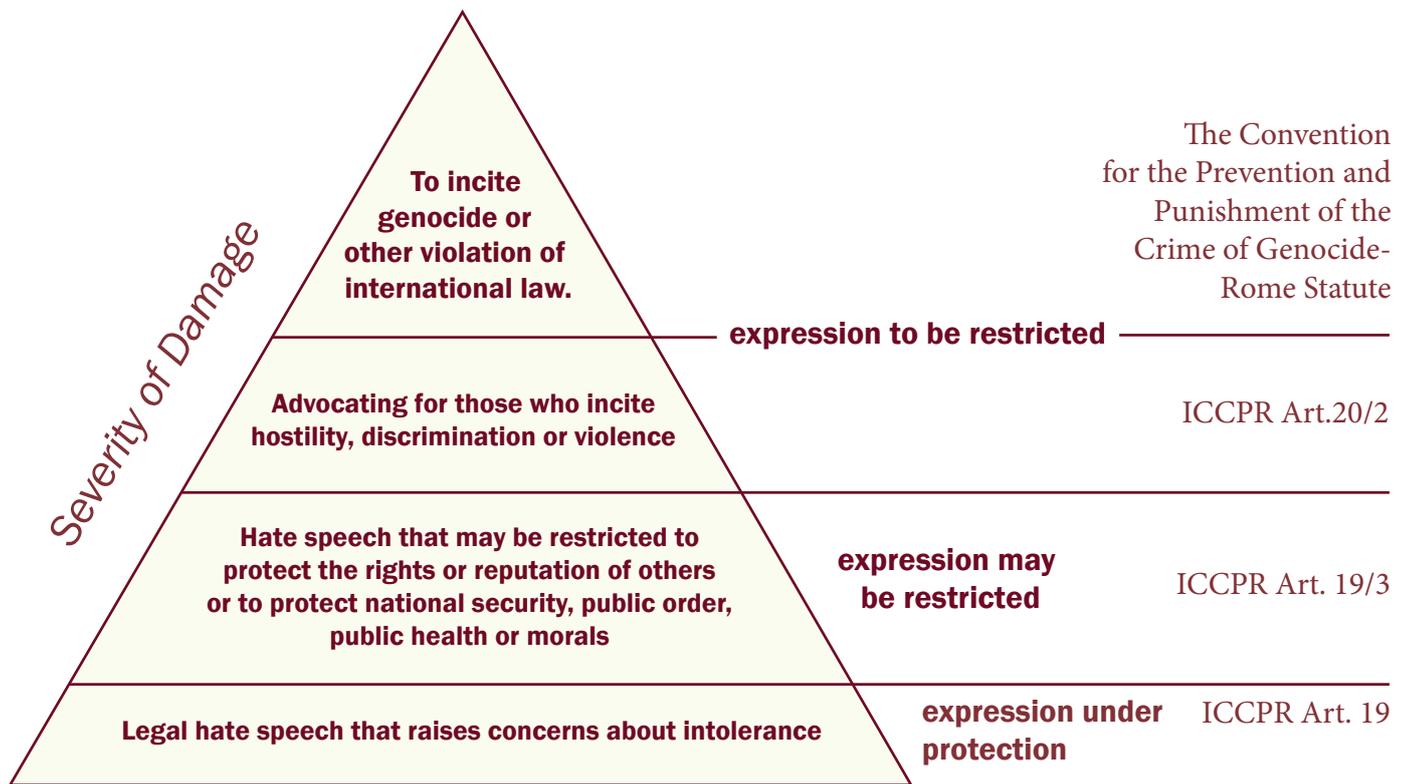
9. Ulaş Karan, *Freedom of Expression: Individual Application to the Constitutional Court Handbooks Series – 2*, Council of Europe, 2018, p. 26.

10. OHCHR and freedom of expression vs incitement to hatred: the Rabat Plan of Action, A/HRC/22/17/Add.4, 05.10.2012. <https://www.ohchr.org/en/documents/tools-and-resources/one-pager-incitement-hatred-rabat-threshold-test>, A.D. 23.08.2022.

11. OHCHR, “One-pager on “incitement to hatred”: The Rabat threshold test”, <https://www.ohchr.org/en/documents/tools-and-resources/one-pager-incitement-hatred-rabat-threshold-test>, A.D. 23.08.2022.

(5) Extent of the speech act: Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public.

(6) Likelihood, including imminence: The action advocated through incitement speech must have some degree of risk of harm for targeted group to be committed for said speech to a crime.



Graph¹² : Pyramid of Hate

↑
Relevant legislation

The phenomenon of hatred in the process in the pyramid; It starts with the formation of prejudices and is reflected in the words and behaviors embodied in hate speech, then it can reach discrimination and finally committing a hate crime. For this reason, the diagnosis and prohibition of hate speech, which is one of the ways in which hate crimes are committed, in the early stages of its development and before its intensity emerges, plays the role of an **“early warning system”** in preventing irreparable consequences.

Protecting individuals or groups from hate speech is not just about the struggle between exercising freedom of expression and limiting this right in favor of protected groups.

It also is directly related to the principle of equality and non-discrimination, which has the nature of ‘jus cogens’.

12. Article 19, “Hate speech’ explained: A summary”, <https://www.article19.org/resources/hate-speech-explained-a-summary/>

Organization for Security and Co-operation in Europe (OSCE), regarding the year 2020; 137 non-governmental organizations covering 46 participating States declared that 7203 hate incidents were recorded as a result of the reports on hate incidents.¹³

Combating Hate Speech

In its General Policy Recommendation No. 15¹⁴ adopted on December 2015, ECRI emphasized that:

- ▶ Developing special education programs for children, youth, public officials and the public to raise public awareness of the importance of respecting pluralism and the dangers of hate speech,
- ▶ Supporting non-governmental organizations, equality bodies and national human rights organizations in combating hate speech,
- ▶ Encouraging public figures to react swiftly to hate speech in a way that not only condemns it but also supports the values it threatens,
- ▶ Stating clearly in anti-discrimination laws that hate speech is a manifestation of discrimination and that equality bodies have the duty and responsibility to combat hate speech, at least through legal and administrative regulations,
- ▶ Developing and promoting effective grievance mechanisms to the public,
- ▶ Encouraging victims to report incidents of hate speech they faced,
- ▶ Providing counseling services to individuals who are exposed to hate speech in order to help them and to make them aware of their rights during the trauma process they have experienced are necessary in combating hate speech.

The UN Rabat Plan of Action was adopted by experts in Rabat on 4-5 October 2012. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence brings together the conclusions and recommendations from several OHCHR expert workshops. By grounding the debate in international human rights law, the objective has been threefold:¹⁵

- ▶ 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 the ICCPR;
- ▶ To arrive at a comprehensive assessment of the state of implementation of the prohibition of incitement in conformity with international human rights law and;
- ▶ To identify possible actions at all levels.

13.OSCE, “2020 Hate Crime Data”, <https://hatecrime.osce.org/hate-crime-data?year=2020>,

14.ECRI, General Policy Recommendation No. 15, Combating Hate Speech, CRI(2016)15.

15.<https://www.ohchr.org/en/freedom-of-expression>

In May 2019, the **United Nations Strategy and Plan of Action on Hate Speech** was launched highlighting that a disturbing groundswell of xenophobia, racism and intolerance is being observed around the world. The UN Strategy and Plan of Action on Hate Speech aims to give to the United Nations the room and the resources to address hate speech, which poses a threat to United Nations principles, values and programmes. In order to address hate speech, the UN will implement actions at global and country level, as well as enhance internal cooperation among relevant UN entities. The Strategy will be guided by the following principles:¹⁶

- ▶ The strategy and its implementation to be in line with the right to freedom of opinion and expression. The UN supports more speech, not less, as the key means to address hate speech;
- ▶ Tackling hate speech is the responsibility of all – governments, societies, the private sector, starting with individual women and men. All are responsible, all must act;
- ▶ In the digital age, the UN should support a new generation of digital citizens, empowered to recognize, reject and stand up to hate speech;
- ▶ We need to know more to act effectively – this calls for coordinated data collection and research, including on the root causes, drivers and conditions conducive to hate speech.

16. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

References

- Toby Mendel, *Hate Speech Rules Under International Law*, 2010 <http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf>
- Ulaş Karan, *Freedom of Expression: Individual Application to the Constitutional Court Handbooks Series – 2*, Council of Europe, 2018.
- Council of Europe Committee of Ministers <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b>
- Council of Europe, *Manual on Hate Speech*, Anne Weber, http://ihop.org.tr/wp-content/uploads/2011/04/nefret_soylemi.pdf
- ECRI, *General Policy Recommendation No. 15, Combating Hate Speech* <http://hudoc.ecri.coe.int/eng?i=REC-15-2016-015-ENG>
- ECRI, *Hate Speech and Violence*, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/hate-speech-and-violence>
- ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, <https://hudoc.ecri.coe.int/eng#%7B%22sort%22:%5B%22ECRIPublicationDate%20Descending%22%5D,%22ECRIIdentifier%22:%5B%22REC-07rev-2003-008-ENG%22%5D%7D>
- ECRI General Policy Recommendation No. 6 on Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet <http://hudoc.ecri.coe.int/eng?i=REC-06-2001-001-ENG>
- European Court of Human Rights (ECHR), *Vejdeland and others vs. Sweden* <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-109046%22%5D%7D>
- HREIT, *Guide of National Advocacy Mechanisms*, https://www.tih.gov.tr/upload/file_editor/2022/07/1657206748.pdf
- Ministry of Justice, “Thematic Fact Sheet on Hate Speech (Unofficial translation)” https://www.echr.coe.int/Documents/FS_Hate_speech_TUR.pdf
- Article 19, “Hate speech’ explained: A summary”, <https://www.article19.org/resources/hate-speech-explained-a-summary/>
- OHCHR, *Rabat Plan on Action* <https://www.ohchr.org/en/freedom-of-expression>
- OHCHR, *One-pager on “incitement to hatred”: The Rabat threshold test*, <https://www.ohchr.org/en/documents/tools-and-resources/one-pager-incitement-hatred-rabat-threshold-test>
- Organization for Security and Co-operation in Europe, <https://hatecrime.osce.org/>
- OSCE, “2020 Hate Crime Data”, <https://hatecrime.osce.org/hate-crime-data?year=2020>
- Presidency for Turks Abroad and Related Communities, *Hate Crimes and Anti-Discrimination Portal*, <https://nesam.ytb.gov.tr/>
- United Nations (UN) Committee on the Elimination of Racial Discrimination, *General recommendation No. 35 on Combating racist hate speech* <https://www.refworld.org/docid/53f457db4.html>
- UN, *What is hate speech?* <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>
- United Nations Strategy and Plan of Action on Hate Speech <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

