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This paper elaborates the phenomenon of racism and xenophobia on Internet as form of hate speech and potential cyber crime if inciting to racial hatred. Furthermore, the competition of freedoms and models as well as cases of restriction of freedom of expression are discussed. Finally, the Council of Europe legal framework and practices in this field are reviewed.

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RACISM AND XENOPHOBIA ON INTERNET: CONCEPTUAL DILEMMAS WITH SPECIAL FOCUS ON THE INSTRUMENTS OF THE COUNCIL OF EUROPE

1. Interpretation of the freedom of expression in the context of racism and xenophobia

Old freedoms (namely, the freedom of religion, of speech, of the press, of petition, and of assembly), are at times incompatible with newer forms of freedom. Freedom of speech conflicts with the "right not to be discriminated against" and the great problem modern society faces is not a lack of freedom, per se. It is a question of how to resolve the conflict of many different incompatible freedoms within particular context. The UN Committee of Human Rights provides that States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas ... The right of information includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others¹⁾. The forms of expressions, in accordance with the General Comments No.34 on Article 19, paragraph 3, include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well

¹⁾ General Comments No.34 of the Committee of Human Rights 2011. According to the Comment, "any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government." (para. 43)

as electronic and internet-based modes of expression (paragraph 12). As defined the freedom of expression is not an absolute right in its nature, i.e. can be a subject to permissible restriction. Namely, Article 19(3) of the ICCPR permits limited restrictions on freedom of expression where these are: a) provided by law; b) for the protection of one of the legitimate interests listed; and c) necessary to protect that interest. "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law"²⁾. Similar model of restriction of the freedom of expression has the Convention on the elimination of Racial Discrimination (CERD): "Dissemination of ideas based on racial superiority; dissemination of ideas based on racial hatred; incitement to racial discrimination and incitement to acts of racially motivated violence".

2. Council of Europe combating the racism and xenophobia on Internet

The modern models of information sharing are challenging for development of new concepts for prevention and protection from materials with xenophobic and racism content³⁾, but also personal data protection in the fact finding process of potential creators and distributors of those materials⁴⁾. The Council of Europe started to create common standards in this field with the Recommendation No R(92)19 of the Committee of

²⁾ Article 20 (2) International Covenant on Civil and Political Rights

³⁾ "Racist and xenophobic material" means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors. Article 2, Paragraph 1 of the Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems, 2003.

⁴⁾ See [unclear], [unclear], [unclear] 1/2010, [unclear] 124-150.

Ministers to member States on video games with a racist content and Recommendation No R(97)20 of the Committee of Ministers to member States on "Hate Speech". In the Political Declaration adopted on 13 October 2000 at the closing session of the European Conference, the member States of the Council of Europe committed themselves to combating all forms of expression which incite racial hatred as well as to take action against the dissemination of such material in the media in general and on the Internet in particular.

The Council of Europe's Recommendation (2008)⁶ on Measures to Promote Respect for Freedom of Expression and Information With Regard to Internet Filters acknowledges the ways in which Internet filters can impact on freedom of expression and information. The recommendation calls on Member States to take measures with regard to Internet filters, in line with a set of guidelines promoting user notification, awareness and control of Internet filters and accountability of the private and public parties involved.

Generally, the European Commission against Racism and Intolerance in 2000⁵⁾ was focused on: needs from regulation on international level aimed at the suppression of illegal content on the Internet; future Convention on cyber-crime; international co-operation and mutual assistance between law enforcement authorities across the world; national legislation; training of law enforcement authorities; setting up of a national consultation body; support existing anti-racist initiatives on the Internet; responsibility of content host

⁵⁾ ECRI General Policy Recommendation N°6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, Adopted by ECRI on 15 December 2000.

and content provider and site publishers; support the self-regulatory measures and increase public awareness.

All efforts culminated with adoption of the Additional protocol to the convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

3. Contemporary challenges in cyber hate speech

While the intention of international organizations and states to combat illegal activity over the Internet and to protect their citizens from harmful content is legitimate, there are also significant legal and policy developments which sometimes have an unintended negative impact on freedom of expression and the free flow of information. Recent laws and certain legal measures currently under development have provoked much controversy over the past few years. These include access-blocking, filtering and content removal. Many of the issues described above have been raised in front of the European Court of Human Rights in the case *Yildirim v. Turkey* and *Akdeniz v. Turkey*. The decision of the court will certainly help clarify a number of issues in the area of Internet and freedom of expression, and will thus have serious implications for the state parties to the Convention.

One of the problem in creation of quality policies is extent of duplication of efforts at the supranational, and international levels of governance. This duplication has resulted in delays in finalising policies within relevant organisations, and in its subsequent implementation at the national level to address Internet related problems. Governments and international organisations are, however, reacting more positively against the

dissemination of racist content through the Internet, and there is more awareness of the nature of the problem including the use of the Internet by terrorist organisations for terrorist propaganda and inciting terrorist violence

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4. Conclusion

- The concept of freedom of expression has evolved throughout history, but also restricted thus enabling other types of freedoms to be implemented.
- Development of communication technologies contribute to racism and xenophobia to be available everywhere and difficult to prevent.
- Council of Europe in time recognized the risk of spreading hatred over the Internet and took measures to promote legislation and infrastructure in the Member States.
- Although the usage of Facebook and other social networks as a means to express hate speech is to be stigmatised, closure, removal or blocking of social networks accounts, websites, blogs, search engines or any other internet-based, electronic or similar form of communication represents a serious restriction of the right to freedom of expression. Such restrictions on freedom of expression on the Internet are only acceptable if they comply with international standards.
- Lack of an integrated approach globally and international organizations to act synchronized in the fight against hate crimes and hate speech on the Internet.

⁶⁾ Akdeniz Y. Governing Racist Content on the Internet, Expert Seminar: Combating Racism While Respecting Freedom of Expression, ECRI, Proceedings 36 pp.

- The specific nature of the Internet calls for the adoption of specific instruments to combat hate speech promoting racism and violence, which is widely and swiftly disseminated on the web.

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