

What is Hate Speech? Shall and How to Regulate? —Analysis of Jurisprudence of the European Court of Human Rights

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Abstract

This article reviews issues including what constitutes hate speech and whether and how to regulate it through an analysis of the judgments of the European Court of Human Rights. The relevant cases are divided into five fields: political controversy, religious conflict, racial dispute, national identity and gender character.

The Court does not explicitly define hate speech, but regards Nazi, Fascist, anti-Jewish, extreme expression, exclusion of Muslims or members of a specific race, race-based threats, and appeals to violence as forms of hate speech. Some of these expressions are excluded from protection because of Article 17 of the Convention. The Court also rules that a political party based on Sharia law can be dissolved; preventive measure can be imposed due to an association with true threats; speech appealing to violence can be prohibited.

This essay argues that the Court need not draw a “restricted zone,” nor emphasize the application of Article 17 of the Convention. It may, instead, focus on second paragraphs of Articles 10 and 11 to review whether the restrictions comply with the principle of proportionality. The essay also argues that the Court has to clarify why Sharia law does not stand with democratic principles. The Court should insist on its own relevant and sufficient pressing social need principle.

Key Words: hate speech, European Convention on Human Rights, European Court of Human Rights, freedom of expression, freedom of association