



The European Court of Human Rights and Violent Online Extremism



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Content

- Freedom of expression and abuse of rights under the ECHR
- Two key dilemmas
- Article 17 ECHR
- Case-law on online expressions, with emphasis on extremism



Article 10 ECHR

1. Everyone has the right to **freedom of expression**. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (...)
2. The exercise of these freedoms, since it carries with it **duties and responsibilities**, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, **for the protection of the reputation or the rights of others**, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



Article 17 ECHR

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.



Dilemma 1

Either Free reign for dangerous expressions

Or Democracy that defends itself

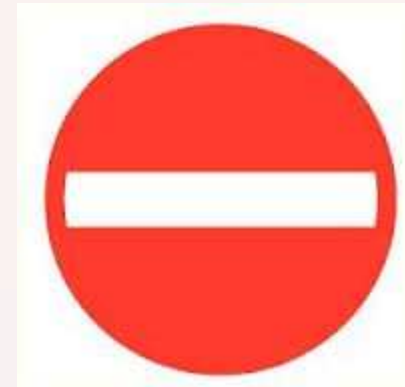
Risks for democracy and rights themselves





Dilemma 2

Categorical



Or balancing approach





In the middle

Article 17 for situations halfway between:

- 'Ordinary' ECHR violations :
individual assessment
- Emergencies (Article 15 ECHR) :
general exceptions of protective scope
of some rights, applied to everyone



Ways of applying 17

- Direct : the “guillotine”
- Indirect : part of balancing under one of the substantive Convention articles (mostly Article 10 – freedom of expression)
- Note: *no clear consistency in application!*



Application of abuse clause

- Far left: EComHR, *German Communist Party* (1957)
- Far right: ECommHR, *Glimmerveen & Hagenbeek* (1979)
- Holocaust deniers / antisemites: ECtHR, *Garaudy* (2003), *Ivanov* (2007) (before 1980s Article 17 played no role in this context)
- Deniers of other war crimes: *Orban* (2009)
- Advocates of violence: *Hizb Ut-Tahrir* (2012)



Speech online (I)

- Any medium protected under Article 10, thus also information published online – same criteria apply (e.g. *Copland v. UK* – 2007)
- Interferences allowed, e.g. for infringement of copyright (*Ashby Donald and others v. France*; *Neij and Sunde Kolmisoppi v. Sweden [Pirate Bay case]* - 2013)
- No requirement of prior notification to those about whom one publishes online (*Mosley v. UK* – 2011)



Speech online (II)

Leading case: *Delphi AS v. Estonia*

- Decided in 2013
- Offensive (and anonymous) comments on online news portal
- Holding portal liable for this is not automatically a violation of FoE



Conclusion

- Article 10 vs. 17 issues:
 - Proportionality
 - Consistency
- *Delfi AS*: liability for internet portals possible (but: to be continued: referred to Grand Chamber)
- Also: upcoming cases on access to internet rights (e.g. for prisoners)



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