



**RIGA
GRADUATE
SCHOOL OF
LAW**

HATE SPEECH AS LIMITATION TO FREEDOM OF EXPRESSION

BACHELOR THESIS

AUTHOR:

Roberts Kārlis Sedols
LL.B 2017/2018 year student
student number B015066

SUPERVISOR:

Mamuka Andguladze

Ph.D.

DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

RIGA, 2018

SUMMARY

The aim of this thesis is to provide a reasonable solution for the absence of definition of hate speech, which could be applied within the case law of the European Court of Human Rights concerning freedom of expression. The problem arises as a result of the ambiguity of “hate speech” as it has no universal definition, therefore creating a legal problem – when the right to freedom of expression is exercised and leads to legal consequences where the interpretation of freedom of expression is uncertain, in some cases it is unclear whether the expression constitutes as a hate speech or not.

The thesis is divided into three parts, where each part provides analysis on a particular problem of the main question of the thesis. The first part will provide a brief overview of when freedom of expression may be limited and will analyze the scope, limitation and justification of limitations on freedom of expression provided under Article 10 of the European Convention on Human Rights. The second will address the application of hate speech in the European Court of Human Rights and will establish a definition of hate speech by analyzing various case law of the European Court of Human Rights concerning hate speech. The third part will provide a case study on how the financial sustainability of online media outlets is affected by the use of hate speech and what is the imposed risk of hate speech.

The analysis in the thesis draws on two methodologies: doctrinal method and interdisciplinary aspect. For the doctrinal method two sub-concepts—case law and statutes—will be used. Since the thesis focuses on questions regarding the limitation of freedom of expression and how the European Court of Human Rights defines hate speech, it is necessary to analyze the cases of the European Court of Human Rights regarding limitation of freedom of expression (hate speech) and evaluate what principles and methods the court has applied for the decisions, to provide a comprehensive concept of hate speech. Additionally, the European Convention on Human Rights will be analyzed, mainly Article 10, to provide comparison between what the law states and how it is applied. The interdisciplinary aspect provides focus on law and business and will allow to assess the risk of the financial impact on online media outlets.

By the end of the thesis each research question will be answered, therefore enabling to assess the danger of hate speech to freedom of expression and providing a solution for the lack of definition of hate speech and its application to the European Convention on Human Rights.

TABLE OF CONTENTS

INTRODUCTION	3
1. FREEDOM OF EXPRESSION AND ITS LIMITATION	5
1.1 Scope of Protection provided by Article 10 of ECHR.....	5
1.2 Restriction of Freedom of expression.....	6
1.2.1 Article 10.2 of ECHR.....	7
1.2.2 Article 17 of ECHR.....	8
1.3 Justification to interference of freedom of expressions	8
1.3.1 Three part test.....	9
1.4 The broader protection of freedom of expression.....	11
1.4.1 Case law and its protection of freedom of expression.....	12
1.5 Limitation of hate speech.....	13
2. APPLICATION OF HATE SPEECH BY EUROPEAN COURT OF HUMAN RIGHTS	14
2.1 Risks of hate speech	14
2.2 Definition of Hate speech by the Council of Europe.....	15
2.3 Issue of Hate speech.....	16
2.4 Fact or a value judgement?.....	17
2.5 Forms of hate speech	17
2.5.1 Ethnic hatred.....	18
2.5.2 Religious hatred.....	18
2.5.3 Incitement to hostility.....	19
2.5.4 Negationism and revisionism	20
2.6 Difference between Perincek V Switzerland and Garaudy V France	21
2.6.1 Analysis of Perincek V Switzerland	22
2.7 Solutions for the issue of hate speech.....	23
3. MEDIA OBLIGATION TO FREEDOM OF EXPRESSION AND HATE SPEECH.....	24
3.1 Freedom of Expression within Online environment.....	24
3.2 Liabilities of Intermediaries.....	25
3.3 Governance of Media.....	26
3.4 Media Self-Regulation.....	28
3.5 Delfi AS V Estonia judgement	29
3.5.1 Facts of Delfi AS V Estonia	29
3.5.2 Main Findings of Delfi AS V Estonia.....	30
3.6 Delfi AS V Estonia assessment.....	31
3.7 Future Risks of online media.....	31
CONCLUSION	34
BIBLIOGRAPHY	37

INTRODUCTION

Human rights as such have become an imperative part of law as the rights have been implemented in international conventions and in countries national constitutions. However, one right especially has established its own contribution as being a fundamental part for allowing to receive and express information amongst the society and facilitate the development of human rights, which is the right to freedom of expression: “Today there are few States in the world which do not profess freedom of speech in their constitution.”¹

The right to freedom of expression is mutual amongst the states since the right has been recognized and implemented as a part of human right for it to be exercised within the society. Moreover one of the International Conventions, which has established the foundation of popularizing and protecting human rights within the Europe is the European Convention on Human Rights (further in text - ECHR), which is binding to 47 member states of the Council of Europe (further in text - CoE)² and has established its own guidance and enforcement measures by enabling the European Court of Human Rights (further in text - ECtHR) to be the judge of the matters concerning interpretation and application of ECHR and the freedom of expression within the Europe. Therefore, the research of the thesis will concern matters of the right to freedom of expression provided under Article 10 of ECHR and the legal problems of it, because the Convention is the leading human rights body in the Europe and has been: “[T]he leading international legal instrument protecting human rights since the 1950s.”³

As the freedom of expression is a fundamental right amongst human rights, which grants the possibility to be able to express his or her own opinion, which is crucial element for the further development of the society, by enabling for the society to learn and teach within the shared information amongst everyone. However, the right grants a wide range of possibilities and opportunities for receiving and imparting the information, therefore it comes with its own flaws as there can be a cause of unnecessary promotion of negativity and hatred. Commonly one of the forms which could be facilitated by the use of freedom of expression is hate speech.

The presence of hate speech is one of the most alarming threats for the freedom of expression in the process of potentially limiting the expression as such. Nevertheless, the main problem

¹ Rhona K.M. Smith, *Textbook on International Human Rights* (New York: Oxford University Press, 2003), p. 284.

² The Council of Europe in brief. Our member States, available on: <https://www.coe.int/en/web/about-us/our-member-states>. Accessed April 28, 2018.

³ Information Platform humanrights.ch. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), available on: <https://www.humanrights.ch/en/standards/ce-treaties/echr/>. Accessed April 29, 2018.

of hate speech can be found in the absence of an universal definition. Therefore, invoking various interpretations and outcomes by the presence of hate speech within the expression. Thus, the main purpose of the research is to establish a more comprehensive way to indicate and to be able to perceive the definition of hate speech within the case law of the ECtHR. Hence the research will be divided in three parts were each part will have its separate research question and topic of concern.

The first part will focus on the research question: does the presence of hate speech incorporate significant grounds to restrict the freedom of expression which is provided under Article 10 ECHR. To be able to assimilate the answer to the question it is crucial to analyze the right to freedom of expression under Article 10 of ECHR and its limitation. Moreover, the first part of the research will incorporate requirements when the freedom of expression may be limited and what is the broader protection of it, therefore there will be analysis of case law of the ECtHR and certain Articles of the ECHR. Thus, by the end of the first part there will be introduced the limits of freedom of expression and whether the presence of hate speech is a suitable ground for the restriction of freedom of expression.

As the main goal of the research is to provide a solution of the applicability of hate speech the second part will concern the definition of hate speech, including how the application of term “hate speech” varies in case law by the ECtHR? Therefore, a significant analysis of several aspects will be provided including different forms of hate speech and how the ECtHR approach each case from different standpoint, distinction between fact or a value judgment, what are the definition set by the CoE and the controversial judgement of *Perincek v Switzerland* will be analyzed. By the end of the second part there will be a determination made on how to handle the presence of hate speech within the case law, thus providing necessary tools to determine hate speech.

The third part will focus on the research question regarding what is the imposed financial risk of hate speech to online media outlets. Therefore, including the interdisciplinary aspect of business. This part will analyze the future risks of hate speech within the online environment and how the online media outlets should manage their allocation of resources to prevent any financial obligations with regards being liable for the hate speech within their content. Consequently, there will be pinpointed the self-regulation of media, liabilities of intermediaries, media governance and most importantly analysis of case *Delfi AS V Estonia*. Thus, providing a way to overcome the hate speech in the online environment and indicate the most significant financial risks of it.

1. FREEDOM OF EXPRESSION AND ITS LIMITATION

The Article 10 of the European Convention on Human Rights establishes the fundamental right to freedom of expression for everyone in the society. The importance has been acknowledged by the European Court of Human Rights in the case *Handyside V UK*, where it is formulated that: “Freedom of expression constitutes one of the essential foundations of a society and for the development of every man.”⁴ The case law of the ECtHR and ECHR guarantees freedom of expression, which is included in wide variety of applications. For example, the freedoms which are guaranteed within the Article 10.1 of ECHR includes the freedom to have an opinion, the freedom to express of critical opinions, the freedom to impart information and ideas, the freedom to receive information and ideas, the freedom of access to information and protection of speech⁵. Nevertheless, freedom of expression is not an absolute right, which means that it does not fall within the category of human rights of those which cannot be restricted by any means, therefore freedom of expression may be limited⁶.

The first part of the research will primarily focus on the principles when freedom of expression may be restricted, in particular Article 10.2 and Article 17 of ECHR, which provide the conditions when freedom of expression may be restricted. In addition, different concepts will be discussed regarding when freedom of expression can or cannot be restricted, as set by the ECtHR in cases such as *Sunday Times V UK*, *Axel Springer AG V Germany*, *Von Hannover V Germany* and more. The first part will also provide the scope of protection and justification of the freedom of expression interference, which will examine the limitation of freedom of expression of the criteria provided by the Article 10.2 of ECHR. Finally, the first part will discuss freedom of expression and the broader protection of it, illustrating it with appropriate cases such as *Lingens V Austria*. The analysis in the first part will contribute to the first research question: does the presence of hate speech incorporates significant grounds to restrict the freedom of expression provided under Article 10 of ECHR?

1.1 Scope of Protection provided by Article 10 of ECHR

Before establishing when the freedom of expression may be restricted, first it is crucial to provide an analysis of the scope of protection guaranteed under Article 10 of ECHR for

⁴ Mario Oetheimer, eds., *Freedom of expression in Europe: Case law concerning Article 10 of the European Convention on Human Rights Human Rights Files No.18* (Council of Europe, 2007), p. 85, accessed March 10, 2018, [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

⁵ Dominika B. Siniarska, eds., *Protecting the Right to Freedom of Expression Under the European Convention on Human Rights* (Council of Europe, 2017), pp. 12-16, accessed March 11, 2018, <https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>.

⁶ *Ibid*, p. 23.

freedom of expression. The scope of protection comprises and entails many elements of freedom of expression:

“...[T]he protection given by Article 10 extends to any expression, notwithstanding its content, disseminated by and individual, group or type of media.”⁷

The main elements included under the scope of protection are the right to hold opinions, receive information and ideas and impart information and ideas, which in combination allow for expression to be conducted freely⁸.

Moreover, one of essential rights provided under scope of protection is the ability hold opinions:

“States must not try to indoctrinate their citizens and should not be allowed to distinguish between individuals holding one opinion or another.”⁹

This permits everyone to hold his or her own opinion without repercussions and a possibility to express it publicly, without any interference, as it is meant to be democratic societies.

However, for the state to maintain its democratic structure, the presence of the right to impart information and ideas is crucial. Furthermore, the right provides the essential tools for the citizen to be able to criticize the government of the state and, most importantly, to hold a free and open election by which the society elects the government and provides a possibility for further development of the country¹⁰. Nevertheless, the right to receive information and ideas is strongly connected with imparting information and ideas, because the right allows media or broadcasting services to gather and receive information¹¹.

1.2 Restriction of Freedom of expression

When analyzing the restrictions and limitations of freedom of expression under ECHR, it is necessary to recognize how far expression of thought can be expanded in terms of application and what are the potential limitations of the scope of freedom of expression. Freedom of expression as such is not an absolute right and embraces boundaries of its use¹², likewise the Article 10.2 and Article 17 of ECHR has provided a clause on the limitation of the right to freedom of expression¹³. The main difference between article 17 and article 10.2 of ECHR lies within the severity of the expression. In a statement by the ECtHR: “...[W]ill not protect

⁷ Ibid, p. 12.

⁸ Ibid, p. 13.

⁹ Supra 5, p. 13.

¹⁰ Supra 5, p. 14.

¹¹ Supra 5, p. 15.

¹² Supra 5, p. 11.

¹³ European Convention on Human Rights (4 November 1950). Available on: https://www.echr.coe.int/Documents/Convention_ENG.pdf. Accessed March 8, 2018.

somebody whose speech goes directly against the goals of the convention.”¹⁴ Usually Article 17 is applied when the expression shows signs of hate speech and implies violence¹⁵.

1.2.1 Article 10.2 of ECHR

A common practice has been established for situations when the right to freedom of expression faces restrictions. As the J. Oster mentions:

“...10(2) ECHR state that the exercise of freedom of expression may be subject to, inter alia, restrictions as are necessary for the protection of the rights of other.”¹⁶

Essentially, the ECHR recognizes that the fundamental right to freedom of expression should not be used to cause a negative impact on society as a whole. The protection amplifies a broader effect towards personality rights, which include rights to respecting one’s honor, reputation and privacy, in addition the freedom of expression may be limited when there is a threat to national security¹⁷.

However, when interpreting the ECHR and facing the possible threats to freedom of expression it is complicated to determine whether the expression exceeds permissible limits as certain phrases are too vague and ambiguous. However, some of the criteria established by the ECtHR have made the elucidation more explicit, for example, in the personality rights case *Axel Springer V Germany*, where the newspaper published an article regarding the possession of drugs, which caused damaged to the reputation of the person. The court established a criterion on when a certain expression could affect the person's privacy. Consequently, these findings have made *Axel Springer V Germany* a defining precedent for similar cases covering personality rights¹⁸. Nevertheless, there are many issues still to be clarified regarding respecting limitations on freedom of expression. For example, with regard to the term “hate speech” there is still no fundamental or established definition¹⁹.

¹⁴Jo Roels, The Battle against Hate Speech and Freedom of Expression Online, Charles University in Prague Faculty of Law Research Paper No. 2017/1/4, p. 6. Available on:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954422. Accessed March 10, 2018.

¹⁵ European Court of Human Rights. *When to say is to do Freedom of expression and hate speech in the case-law of the European court of Human Rights*. 2015, p. 5. Available on:

[http://www.ejtn.eu/Documents/Administrative%20Law%202015/5\)%20ECtHR%20for%20Judicial%20Trainers/ECtHR%20and%20hate%20speech%20\(paper\).pdf](http://www.ejtn.eu/Documents/Administrative%20Law%202015/5)%20ECtHR%20for%20Judicial%20Trainers/ECtHR%20and%20hate%20speech%20(paper).pdf). Accessed March 8, 2018.

¹⁶ Jan Oster, *European And International Media Law* (United Kingdom: Cambridge University Press, 2017), p. 71.

¹⁷ Ibid, p. 71.

¹⁸ Judgement on Merits and Just Satisfaction by Grand Chamber, *Axel Springer AG V Germany*, no 39954/08, ECHR February 7, 2012. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-109034"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 11, 2018.

¹⁹ Supra 16, pp. 98-100.

1.2.2 Article 17 of ECHR

The scope of the interference of Article 17 of ECHR has a wider implication as not only can it be applicable to Article 10 of ECHR, but it can also serve as a limitation for all rights provided under the ECHR²⁰. Article 17 of ECHR is not a commonly used article when limiting the freedom of expression and it is not recommended to invoke it:

“The application of Article 17 is also said to be unnecessary, as it in no way generates added value for democracy or for human rights protection.”²¹

Therefore, Article 17 is applied only in severe violations of freedom of expression.

The Article 17 of ECHR covers:

“...[R]ights which would allow, if invoked, an attempt to derive from such rights the right, indeed, to engage in activities aiming at the destruction of the rights or freedoms recognized in the Convention.”²²

The aim of Article 17 of the ECHR is to deprive anyone of the opportunity to use the rights granted under the ECHR for destructive ends with intent to degrade the values of the ECHR²³.

Therefore Article 17 of ECHR has its own purpose amongst the ECHR

1.3 Justification to interference of freedom of expressions

Article 10.2 of ECHR was established mainly as a result of the influence of the member states of the CoE and their domestic legislation to not upset the right to freedom of expression. The ECtHR was meant to be as last instance to solve disputes regarding freedoms provided under ECHR²⁴. Whenever there is a condition that is not clear under the provisions of freedom of expression or other freedoms of the ECHR, the national courts of the member states should consistently make an attempt to study the case from each aspect and make unbiased decisions, because Article 10.2 only grants the freedom of expression to be restricted when the limitation satisfies all three criteria of the “three part test.”²⁵ It is necessary to note, however, that:

“...[W]hether or not infringements of protected rights are justified under provisions like Article 10(2) tends to vary the strictness with which such justification will be demanded depending on the circumstances of the particular case.”²⁶

²⁰ Supra 13.

²¹ Supra 15, p. 5

²² Anne Weber, eds., *Manual on hate speech 4th ed.* France: Council of Europe, 2009. p. 22, accessed March 10, 2018. <https://rm.coe.int/1680665b3f>.

²³ Ibid, p. 23.

²⁴ Supra 5, p. 31.

²⁵ Supra 5, p. 32.

²⁶ Mark W. Janis, Richard S. Kay and Anthony W. Bradley, *European Human Rights Law Text and Materials 3rd ed.*, (Oxford University Press, 2008), 249.

1.3.1 Three part test

Under Article 10.2 of the ECHR, any limitation of freedom of expression should be justified, meaning that the national court whenever restricting freedom of expression should ensure that certain criteria are present to make a ruling that restricts freedom of expression, thus there should be compliance with the principles of the “three part test” : interference is prescribed by law, there should be legitimate aim for the interference and the interference should be necessary in democratic society meaning proportional²⁷. Additionally, when there is no deviation or uncertainty, the *Sunday Times V United Kingdom* case can be used, which was held regarding the withdrew of drugs which contains thalidomide the trial was covered by media outlet Sunday Times which was injuncted²⁸. Commission of the court stated: “...[I]n any borderline case, the freedom of the individual must be favorably balanced against state’s claim of overriding interests.”²⁹ The case has established a precedent for protection of a person’s rights to freedom of expression more fundamental that state interests in certain cases. However, there can be cases where the interference cannot be justified by any terms. J. Oster states:

“Certain types of interferences are fundamentally contrary to freedom of expression and media freedom in a way that they destroy the essence of this right and may thus under no circumstances be justified.”³⁰

Therefore, the statement promotes to the application of fundamental right of freedom of expression which should not be confined by removing person’s ability to exercise the expression, which empowers the development within the society.

The “three part test” mentioned in Article 10.2 of the ECHR is necessary to determine whether the member state can justifiably impose limitation on Article 10 of the ECHR. If all domestic remedies of court are exhausted, then the applicant can make an appeal to the ECtHR, which will research the case and look mainly on the three principles of the test³¹. If one of these principles is not fulfilled, then the ECtHR finds that Article 10 of the ECHR has not been observed by the member state³². To justify each of the principles national courts use separate approaches based on domestic values, it is often the case that where in one scenario freedom of expression may be granted fully in one country, but in another country the same

²⁷ Supra 5, chap. 4.

²⁸ Judgement on the merits delivered by Plenary Court *Sunday Times V The United Kingdom*, no. 6538/74, ECHR April 26, 1979. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57584"\]}](https://hudoc.echr.coe.int/eng#{). Accessed on March 12, 2018.

²⁹ Supra 5, p. 33.

³⁰ Supra 16, p. 70.

³¹ Supra 13.

³² Supra 5. pp. 32-33.

scenario does not entail this freedom. For example, in the United States there is a different approach regarding limitations of lawfulness of freedom of expression:

“The US approach is based on the confidence that the best remedy against hate speech is more speech, but European Jurisdictions do not share this optimism.”³³

Therefore, the focus will be on European jurisdictions and a brief analysis of each criteria in Article 10.2 will be provided.

Each national legal system should have implemented the most common framework which includes the possibility that the law has accessibility and foreseeability³⁴ to be able to enforce the law. When freedom of expression is limited there is a necessity for the state to ensure that the certain enforcement is prescribed by the law. Generally, “this means that the impugned measure must have a basis in domestic law.”³⁵ However, the scope of the abstraction goes further:

“[T]he word ‘law’ has been extensively construed to include not only statutory law but also unwritten laws to accommodate the legal cultures of common law countries.”³⁶

Still the use of common law as prescribed law has been an uncommon practice and has only been done in the case of *Sunday Times VS UK* where the court proclaimed the primacy of common law within the UK³⁷. Nevertheless, if there is contradiction of the prescribed law within legislation, a domestic court should always choose an approach which gives priority to the fundamental right of freedom of expression³⁸.

When a domestic court decides to restrict the freedom of expression, a specific legitimate aim for the limitation must be provided. The most common reason for restriction is due to protection of national security of the state³⁹. In addition, the legitimate aim depends on the individual country and the values of each country (some countries traditionally do not limit freedom of expression), but still the legitimate aim should be within the boundaries of Article 10.2 of the ECHR. The legitimate aim has an important significance in courts opinion, therefore “[i]t is not uncommon for the Court to simply pass over the issue entirely...”⁴⁰

When the national court supports its restriction based on legitimate aim it is necessary to indicate an obvious reason for restriction of freedom of expression and explain how freedom of expression could threaten national interests and security. Furthermore, when the legitimate

³³ Supra 16, p. 99.

³⁴ Harris, O’Boyle and Warbrick, *Law of The European Convention on Human Rights 3rd ed.*, (United Kingdom: Oxford University Press, 2014), 649.

³⁵ William A. Schabas, *The European Convention on Human Rights a commentary*, (Oxford University Press, 2015), p. 469.

³⁶ Supra 34, p. 649.

³⁷ Supra 5, p. 33.

³⁸ Ibid, p. 34.

³⁹ Supra 34, p. 652.

⁴⁰ Supra 35, p. 471.

aim is indicated a domestic court should move to the next criteria of Article 10.2 which is proportionality⁴¹.

Proportionality in enforcing observation of laws and regulations always plays a significant role in the legal framework of the courts decisions, the adoption of the concept of proportionality has made laws the way they are today. Nevertheless, there has been noted the importance of the principle of Article 10.2 in the ECHR, which states that restriction of freedom of expression can be justified, if the restriction is necessary in a democratic society⁴². Essentially requiring analyzing the enforcement, whether there is contribution to overall interests of democratic society⁴³. In assessing proportionally, it is necessary to analyze the overall case, taking into account not only the imposed sanction whether it was appropriate, yet also looking at public interests, because freedom of expression and freedom of media are affected by public interests. Given this, proportionality should be measured in relation to interests of the public which then would fulfil the required criteria in Article 10.2 of the ECHR⁴⁴.

1.4 The broader protection of freedom of expression

The previous segment of the research outlined instances where freedom of expression provided under Article 10 of the ECHR is not protected and what are the lines of justification for limiting freedom of expression as stated in Article 10.2 of the ECHR. However, there are other precedents set out within case law regarding the application and restrictions on freedom of expression. It is equally important to understand what influence freedom of expression can have when it is used and to consider subject or target of discussion when freedom of expression is invoked.

Regarding the target of discussion in cases where freedom of expression is a concern, it is important whether the person is a public figure, politician, high ranking official or civil servant. Therefore, the ECtHR has set specific standards for these persons regarding cases where they may protest freedom of expression. For example, the politicians enjoy less protection from defamation because of their status of representing the government and the state and being in the public spotlight. It is assumed that politicians should be able to tolerate higher degrees of controversial information which may be protected under freedom of expression⁴⁵. The ECtHR initially recognized the proposition of higher degree of protection to

⁴¹ Supra 5, p. 44.

⁴² Supra 13.

⁴³ Supra 5, pp. 44-45.

⁴⁴ Ibid, pp. 44-45.

⁴⁵ Ibid, p. 64.

freedom of expression in case *Lingens V Austria*, where freedom of expression was invoked when criticizing an Austrian politician. Nevertheless, Lingens acted in a good faith and exercised his fundamental right to freedom of expression⁴⁶.

1.4.1 Case law and its protection of freedom of expression

The Austrian court declared that Lingens had given a false statement which amounted to defamation, yet Lingnes considered that there is a violation of the right to freedom of expression which is provided under the ECHR⁴⁷. After the case was handed to Strasburg's court, the judgement of the ECtHR held that there had been a violation of Article 10⁴⁸. The judgement of ECtHR affirms that public figures still enjoy protection of reputation and dignity at smaller degree, however:

“[I]n such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.”⁴⁹

Therefore, this again implies that each case should be viewed and analyzed in separate detail. In cases concerning public figures and threat to their right to privacy, different restrictions and principles on freedom of expression should be applied, compared to ordinary cases.

However, it is necessary to note that if freedom of expression amounts to a negative outcome which could impact the privacy of other individuals, even if the individual is considered a public figure, then the freedom of expression should be understood as a more concrete concept and should be limited as in the case *Von Hannover V Germany*, where the judgement of the ECtHR gave priority to the person's right to privacy, rather than the right to freedom of expression⁵⁰. Other cases with criticism of public figures include cases such as *Axel V Springer*, where photos of Princess Caroline were published, and she complained that it can impact her reputation. The case has left its impact and has provided specific criteria which should be assessed when exercising freedom of expression when it can stimulate a negative decisive influence respecting the public figures privacy⁵¹. The norms are represented in six questions where each has an equal influence on the overall outcome of the case. Specific questions examine the facts of the case and the outcome. These questions are as follows: does it contribute to public interest? how well the person is known? is there prior conduct? what

⁴⁶ Decision on the admissibility delivered by Plenary Commission *Lingens V Austria*, no. 9815/82, ECHR October 11, 1984. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-73549"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 5, 2018

⁴⁷ Alastair Mowbray, *Case Materials and Commentary on the European Convention on Human Rights* 3rd.ed, (United Kingdom: Oxford University Press, 2012) pp. 644-646.

⁴⁸ *Ibid*, pp. 644-646.

⁴⁹ *Supra* 5, p. 65.

⁵⁰ *Supra* 5, pp. 63-64.

⁵¹ *Supra* 16, p. 73.

the method of was obtaining the information? what the consequences are? what the severity of the sanction is⁵²? The questions provide a better understanding of when freedom of expression may be invoked within the boundaries of its limitation or necessity, and whether freedom of expression serves public interests. By assessing these factors, a court can make a decision whether Article 10 of the ECHR has been observed or not⁵³.

1.5 Limitation of hate speech

This part of the research has discussed significant practices of use of freedom of expression and their limitations. The analysis considered the following components: what is included within freedom of expression in Article 10 of ECHR, the freedom of expression justification of limitation under Article 10.2 of ECHR and the borderline cases where the protection of freedom of expression extends even further. Having established the basis of the enquiry in this research, it is essential to provide an answer to the question: does the presence of hate speech incorporate significant grounds to restrict the freedom of expression provided under Article 10 of the ECHR? The research provides an overview on how freedom of expression functions, thus allowing to perceive on the impact of hate speech towards freedom of expression. As mentioned before in the analysis of the ECHR and the case law of the ECtHR, when freedom of expression amounts to hate speech, there is no protection provided and consequently the expression should be limited, even if the expression is targeted to public figures, as the use of hate speech goes against all the fundamental values of the ECHR and its Article 10. Furthermore, the use of hate speech can invoke an opposite outcome, still the answer of the first research question does not capitalize on the overall research of the thesis as it is only a small fracture of yet to be examined. Nevertheless, hate speech does not have a universal definition, which leads to larger risk of hate speech to freedom of expression, thus leaves a question on the precise definition of “hate speech”.

⁵² Ibid, p. 73.

⁵³ Ibid, p. 74.

2. APPLICATION OF HATE SPEECH BY EUROPEAN COURT OF HUMAN RIGHTS

2.1 Risks of hate speech

When the fundamental right to freedom of expression under Article 10 of the ECHR is invoked, the legal norm establishes a right of an individual to access or express information in the interest of the general public. However, freedom of expression also poses risks in terms of having a potential impact on one's reputation, rights to privacy, dignity, honor, or risk to become hate speech⁵⁴. The aforementioned risks may promote a negative view on freedom of expression and may hinder the application of freedom of expression. However, this part of the research will focus in particular on hate speech, as the application of hate speech is still common in case law of the ECtHR and hate speech lacks universal definition and identification in case law concerning freedom of expression⁵⁵.

The presence of hate speech has made an impact on case law of the ECtHR. There are several cases which deal with instances where hate speech transcends freedom of expression, thus limiting the rights provided under Article 10 of the ECHR⁵⁶. The court has stated in the *Gunduz* case that:

“...[T]here can be no doubt that concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention.”⁵⁷

thus, indicating that hate speech shall not be protected as a form of freedom of expression.

Hate speech is a huge threat to freedom of expression. In the case *Belkacem V Belgium* the ECtHR formulated an affirmation why hate speech should be prohibited when the right to freedom of expression is invoked:

“The ECHR found against the applicant, stating that his attempt to rely on his right to freedom of expression was for ends which were manifestly contrary to the spirit of the Convention.”⁵⁸

The key elements pointed out in the statement are that by enacting hate speech as part of the expression of one's opinions, the action goes against the function of the ECHR, which is to stimulate and secure the development of society. To present the statement from a different angle, Neisser's has affirmed that:

⁵⁴ Jack Beatson and Cripps Yvonne Cripps, *Freedom of Expression and Freedom of information, Essays in Honour of Sir David Williams*, (New York: Oxford University press, 2000), chap. 10.

⁵⁵ Supra 16, p. 98.

⁵⁶ Supra 22, p. 2.

⁵⁷ Rainey Bernadette and Elizabeth Wicks and Clare Ovey, *The European Convention on Human Rights 6th ed*, (United Kingdom: Oxford University Press, 2014) 441.

⁵⁸ Human Rights Law Centre, Human Rights Case Summaries, July 20, 2017, available on: <https://www.hrlc.org.au/human-rights-case-summaries/2017/9/26/european-court-of-human-rights-finds-hate-speech-not-protected-by-freedom-of-expression>. Accessed March 25, 2018.

“[H]ate speech includes all communication that insults a racial, ethnic and political group, whether by suggesting that they are inferior in some respect.”⁵⁹

This supports the previous argument that hate speech causes harm to society and, therefore measures need to be applied for limiting hate speech.

However, the CoE and the ECtHR faces a larger problem. Not only is it difficult to prevent hate speech but indicate whether expression amounts to hate speech. Consequential this has made it difficult to determine legally whether any expression of thoughts amounts to hate speech or not⁶⁰. It may seem that the definition of hate speech is unambiguous as the wording itself establishes an approximate definition. However, in many cases the ECtHR encounters the problem of vagueness of hate speech and therefore similar cases concerning hate speech may have different outcomes, for instance in the case *Perincek V Switzerland* was adjudicated as a violation of Article 10 of the ECHR even though the ECtHR made no indication of hate speech within the ruling⁶¹. Still the judgement was very controversial as the case included denial of Armenian genocide, which amounts to hate speech, based on the CoE definition⁶².

2.2 Definition of Hate speech by the Council of Europe

The CoE has described hate speech as follows:

“...[T]he term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred.”⁶³

The provided definition of hate speech by the CoE describes and outlines what forms a hate speech; however, it is not enough as a working definition. Hate speech is an expression which promotes hatred and violence, but when it is necessary to be able to judge cases, which consist of different facts and evidence, the definition of hate speech is not sufficient.

The classification of hate speech, provided by the CoE, is outdated and it would be a wise decision to update it as the case law of ECtHR is developing in the years and has established broader concept on hate speech which could be applied in a new definition of hate speech, based on the ongoing developments in the case law, yet it is necessary to note that:

⁵⁹ Apalara, Rahman, Striking a Balance: Freedom of Expression and the Prohibition of Hate Speech and Offensive Remarks (September 11, 2017), p. 13. Available on: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3035410. Accessed March 26, 2018.

⁶⁰ Supra 15, pp. 2-3

⁶¹ Judgement delivered by Court *Perincek V Switzerland* (GC), no. 27510/08, ECHR 15 October 2015. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["002-10930"\]}](https://hudoc.echr.coe.int/eng#{). Accessed on March 26, 2018.

⁶² Ibid.

⁶³ Supra 22, p. 3

“...Court which prefers to analyze each case submitted to its on its own merits and to ensure that its reasoning- and its case law- is not confined within definitions that could limit its action in future cases.”⁶⁴

So, the ECtHR does not depend solely on the definition of hate speech when analyzing a case but can rely on the definition as simply a reference point, and the court can approach each case separately. The ECHR is adapting and changing as the society develops and the ECHR tries to operate based on principles of Common law, so each dispute should be judge separately - case by case⁶⁵. However, there still should be auxiliary guidelines and regulations provided to the ECtHR to interpret the term hate speech and identify it within case law.

2.3 Issue of Hate speech

For in-depth analysis, it is necessary to specify what hate speech is and the prevailing interpretation of hate speech. A. Weber considers that “ “hate speech” can be concealed in statements which at a first glance may seem to be rational or normal.”⁶⁶ As hate speech may be embedded in regular expressions of thought, expressions have to be analyzed regarding their effect on freedom of expression in society, and regarding the aims and goals which are embedded in the expression. In order to comprehend the various form of hate speech, it is essential to determine the essence of the expression itself, therefore uncovering the basis of freedom of expression. As the author explains:

“An alternative approach would be to examine the content of the expression in question to ask whether it furthers any of the values which underline freedom of expression.”⁶⁷

By analyzing context and intention, the ECtHR can identify the purposes of the expression of particular thoughts or ideas and can identify if there is a presence of hate speech.

The aim of the research is not to provide a new universal definition of hate speech, which would attempt reconcile the various interpretations of hate speech, since as the definition would not ameliorate to overall case law. As there can be numerous definitions, where each has its own interpretation on what constitutes a hate speech. Regardless the concept of what composes hate speech will be perceived by relying on the case law, and therefore will provided a clear view on the possible definitions of hate speech as suggestions, additionally answering the research question on how the application of term “hate speech” varies in the case law of the ECtHR. Thus, the answer to the research question could provide a resolution to the issue in a form of suggestions and instrument. Which could be utilized by the ECtHR

⁶⁴ Josep Casadeval and Egbert Myjer, Michael O’Boyle, Anna Austin, *Freedom of Expression, Essays in Honour of Nicolas Bratza*. (Netherlands: Wolf Legal Publishers, 2012), p. 281.

⁶⁵ Supra 5, p. 10.

⁶⁶ Supra 22, p. 5.

⁶⁷ Supra 54, p. 187.

allowing to distinctly perceive where the freedom of expression amounts to hate speech and overall to facilitate for the next steps of finding universal definition of hate speech.

2.4 Fact or a value judgement?

When facing the possibility of hate speech in case law, one of the initial tasks for the court is to indicate whether the expression is a value judgement or a statement which can be proven by facts⁶⁸. The main difference between these two concepts is that the statement of fact is evident by itself- the facts are established by history and are genuine and therefore cannot be denied:

“The requirement to prove the truth of a value judgement is impossible... [h]owever even where a statement amounts to a value judgement, there must exist a sufficient factual basis to support it.”⁶⁹

This is very significant in the case law of freedom of expression, as in the *Garaudy* case the court was reluctant and stated that:

“[T]here can be no doubt that denying the reality of clearly established historical facts such as the holocaust, as the applicant do in the book, does not constitute historical research akin to a quest for the truth.”⁷⁰

Accordingly, the expression was more a value judgement, which had no proof or grounded arguments to back-up the statement, which resulted in prohibition of freedom of expression. The key element of the abstraction is for the court to perceive whether a person has gone too harsh with their expression of thoughts, and, if so, whether it constitutes hate speech, resulting in no protection under Article 10 of the ECHR.

2.5 Forms of hate speech

To be able to assess the related case law of the ECtHR concerning hate speech, firstly it is important to discuss what forms hate speech can take and why hate speech is feared. The main forms of hate speech include incitement of ethnic hatred, religious hatred, hostility, negationism and revisionism⁷¹. Nevertheless, there are also other forms of hate speech which can impact the threat to the democratic order, condoning terrorism, war crimes, etc. However, the cases which will be included in the analysis contribute to the initially mentioned forms of hate speech, because the particular forms are the most common and cause most harm to society, which is against the democratic values of the ECHR⁷². The established concepts of

⁶⁸ Supra 22, p. 36

⁶⁹ Ibid, p. 36.

⁷⁰ Ibid, p. 36.

⁷¹ Council of Europe. Factsheet – Hate speech. Available on:

http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf. Accessed on March 29, 2018.

⁷² Ibid.

forms of hate speech within the provided case law will further contribute to the research on how the court should interpret hate speech when freedom of expression is exercised.

2.5.1 Ethnic hatred

One of the significant cases which concerns the ethnic hatred is *Pavel Ivanov V Russia*, where an editor of a newspaper expressed his dissatisfaction and hatred towards a Jewish community in his publications, therefore criticizing Jews and making and offensive statements⁷³. The publication aggrieved the Jewish community and the statements were not based on provable facts. The publication solely was based on the personal hatred of the person and anger towards the Jewish community. The ECtHR found that the statements were inadmissible stating that:

“Such a general, vehement attack on ethnic group is directed against the Conventions underlying values, notably tolerance, social peace and non- discrimination.”⁷⁴

The applicant’s expression was judged to be hate speech. By analyzing the ECtHR’s findings, it is possible to uncover additional information on how the court should address the cases with similar situations. By evaluating the statements in case *Pavel Ivanov V Russia*, the ECtHR made an adjudication that the expression was against the fundamental values of the ECHR and promoted hatred⁷⁵. When it is established in the case that there is an instance of incorrect invocation of freedom of expression, it is compulsory to examine whether the expression is fulfilling the function and values of the ECHR. So, the significant provision under Article 10 of ECHR is that a form of expression cannot consist of elements which impinge on dignity of an ethnic group⁷⁶, resulting in destabilizing peace and promoting unnecessary conflicts and suffering within the community.

2.5.2 Religious hatred

Hate speech can also cause religious hatred and one of example can be found in a significant case *Norwood V United Kingdom*, where the applicant was from the British National Party and had made a poster which displayed elements of racial hatred against Islam and demanded the people of Islam to leave the United Kingdom⁷⁷. Islam is a prevalent religion in United Kingdom, therefore making the insult very personal for many citizens, in the United

⁷³ Supra 15, p. 7.

⁷⁴ Supra 15, p. 7.

⁷⁵ Supra 15, p. 7.

⁷⁶ Supra 15, p. 7.

⁷⁷ Supra 71, p. 4.

Kingdom⁷⁸. As in the previous case *Pavel Ivanov V Russia*, the ECtHR held a similar approach, and declared that the case is inadmissible, based on the same principles as in case of *Pavel Ivanov V Russia*, where the expression was against values of ECHR. However, in commenting the case the court announced that:

“[S]uch a general, vehement attack against a religious group, linking the group a whole with a grave act of terrorism is incompatible.”⁷⁹

The case established that statements cannot be made which have association with a potential threat of terrorism, in this case by criticizing the Islamic religious group.

Nevertheless, in case *Norwood V United Kingdom* ECtHR confirmed on the previous findings related to ethnic hatred, as the both situations are similar, though in *Norwood vs United Kingdom* the additional criteria goes one step further of the limitation of hate speech. Therefore, when dealing with freedom of expression and hate speech, one of the requirements is to acknowledge international differences in interpretations, as each society has its own values, thus the effect of an expression can be different, as in the *Norwood VS United Kingdom*. Great Britain is inhabited by many Islamic communities, therefore the statement in *Norwood VS United Kingdom* made a huge impact and promoted awareness of members of Islamic religion. However, if the applicant had made his claims in another country with not so many Islamic people, the outcome could be different as general public interests would overwhelm the minority in the society⁸⁰. Irrespective of any hatred against a particular religion, hatred of a race or ethnic hatred should not be cultivated anywhere. The ECtHR should take note of the particular situation in a country before assessing the case.

2.5.3 Incitement to hostility

Incitement to hostility occurs in majority of cases concerning hate speech in one form or another; however, there are some cases which directly focus on incitement to hostility as the main argument for labeling something a hate speech, and therefore can provide legitimate grounds for limiting freedom of expression. For example, in case *Surek (no.1) V Turkey* a media outlet published an article where opinion was expressed about Turkey’s treatment of the Kurdish community within their country, which was recognized as spreading propaganda against Turkey⁸¹. The ECtHR considered that there was no violation of Article 10 of ECHR, based on the publications the court formulated:

⁷⁸ The Telegraph News, Muslim population of the UK could triple to 13m following record influx, November 29, 2017. Available on: <https://www.telegraph.co.uk/news/2017/11/29/muslim-population-uk-could-triple-13m-following-record-influx/>. Accessed March 31, 2018.

⁷⁹ Supra 15, p. 7.

⁸⁰ Supra 78.

⁸¹ Supra 15, p. 10.

“[T]he impugned letters amount to an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices which have manifested themselves in deadly violence.”⁸²

The statements in the media outlet caused a high risk of unnecessary violence within the region.

The case has established that when a person expresses his or her opinion and there is a risk of hate speech occurring in the process, it is important to consider what is the impact of that expression and whether the ideas or opinions expressed can have an impact on society in a such way that it could endanger the right of other people glorify and incite violence. Thus, there should be an analysis of the possible outcomes of expressed ideas and what are the possible risks when it is applied in the society. By following the principles used as for the reasoning of the judgement within the case law of hate speech, there could be provided a possible distinguishable element, if the expression can incite to violence and overall be declared as hate speech.

2.5.4 Negationism and revisionism

Historical facts are essential when considering hate speech. An expression of ideas can usually lead to two outcomes depending on the facts used in expressing one’s opinion- an expression of ideas can be based on unproven facts, which can offend someone's dignity, or the expression of ideas can be factually grounded and justifiable. Nonetheless, hate speech can also result from negationism and revisionism. In the case *Garaudy V France* the author of the book denied existence of war crimes against Jewish people, potentially inciting racial hatred⁸³. The ECtHR expressed that:

“[C]ontent of the applicant’s remark had amounted to Holocaust denial and pointed out that denying crimes against humanity was one of the most serious forms of racial defamation of Jews and of incitement to hatred of them.”⁸⁴

The ECtHR declared that the expressed statements in the book should be limited under Article 17 of the ECHR. The ECtHR ruled that there cannot be any denial of historical facts which are officially established, and the applicant was found guilty of breaching this norm. These findings invoke the previous stated provisions of the difference between value judgements and statements with factual basis.

The findings in the case *Garaudy V France* support the claim that freedom of expression does not grant rights to issue statements, which do not have a factual basis or are not provable, therefore denying history. The Holocaust is a historical fact which is acknowledged by the

⁸² Supra 15, p. 10.

⁸³ Supra 71, p. 2.

⁸⁴ Supra 71, p. 2.

majority of states, therefore if war crimes as the Holocaust are denied there, is no doubt of use of hate speech⁸⁵. Yet the ECtHR's approach in this case *Garaudy V France* was very appropriate by sticking to the fundamental values of the ECHR, however in the case *Perincek v Switzerland* the righteousness of the judgement of the ECtHR could be questioned⁸⁶.

2.6 Difference between *Perincek V Swizerland* and *Garaudy V France*

The analysis of case law in the ECtHR has shown how case law varies and how each case has been approached differently. However, there are cases, where the ECtHR has controversial judgements. One such case is there will be established some flaws within the judgement *Perincek V Switzerland* and this section will outline the main flaw of the judgment in this case. Combined with the principles established in previous in the cases regarding hate speech that which were analyzed previously in this research, it will be possible to offer suggestions on how the judgement in *Perincek V Switzerland* should have been handed out differently.

The case *Perincek V Switzerland* is a case of negotiationsim and revisionism. The case concerns a Turkish politician who publicly stated his opinion that there was no genocide conducted against the Armenian community in 1915 by the Ottoman Empire⁸⁷. The court of Switzerland considered that these vague statements lacked any factual basis of historical facts and espoused racism, however the ECtHR found that there was a violation of Article 10 of the ECHR by the Switzerland court⁸⁸. The main arguments of ECtHR were that:

“[T]he applicant had never questioned the massacres and deportations perpetrated during the years in question but had denied the characterization of those events as “genocide.”⁸⁹

The ECtHR ruled that the events occurring in 1915 are not internationally recognized, therefore the majority of states do not recognize genocide against the Armenian community, in contrast to the genocide on the Jewish community, which was already recognized as genocide during the Nurnberg trials. However, there is no denial that there have been war crimes conducted against the Armenian community which could be considered as genocide. Additionally, the ECtHR considered: “the applicants statements bore on a matter of public interest and did not amount to call for hatred or intolerance.”⁹⁰ There are not many Armenian people in Switzerland, but still there should be acknowledgement made to the minority of

⁸⁵ Frontline, How Do Young Germans Deal With the Legacy of the Holocaust and the Third Reich? May 31, 2005, Available on: <https://www.pbs.org/wgbh/pages/frontline/shows/germans/germans/howdo.html>. Accessed April 1, 2018.

⁸⁶ Supra 61.

⁸⁷ Supra 15 pp. 16-17.

⁸⁸ Supra 15 pp. 16-17.

⁸⁹ Supra 15, p. 7.

⁹⁰ Supra 71, p. 11.

Armenian communities established within the Switzerland and this should not be a reason to allow provocation of negationism incite tensions within the society⁹¹.

2.6.1 Analysis of *Perincek V Switzerland*

To analyze the case of *Perincek V Switzerland*, the previous established principles, drawn from the case law of the ECtHR judgments, will be used to evaluate the accuracy of the court's judgements and rulings. *Perincek V Switzerland* does not concern religious or ethnic hatred, however, the previous findings by the ECtHR stated that in situations where the expression of opinion is not in line with the values of the ECHR, freedom of expression should be limited. Moreover, in the case *Perincek V Switzerland*, the statements expressed could have a negative impact on relations between people of Armenian and Turkish background and possibly between Armenia and Turkey.

Also, in the previous mentioned case *Surek (no,1) V Turkey* regarding the incitement of violence the expression should not promote any violence, which could impact the other people, nevertheless this case concerns Armenian and Turkish genocide, which could result in tension between these communities. And the last in the case *Garaudy V France*, which deals with similar situation regarding negationism. The court announced that there cannot be denial of historical facts by denying the holocaust, therefore by denying historical facts of 1915 concerning the harshly acts done to Armenian community, which could be considered as genocide by some is almost as denying the history by the applicant and not providing factual basis for his opinion⁹². Armenian genocide is not so recognized internationally, however, it is still recognized by some countries and there should not be any statements made which could deny history without factual basis⁹³.

The final step is to analyze how well was the court's judgement received by the Armenian people in Switzerland as reported in Switzerland, the Armenia Association was not satisfied with the judgment of the ECtHR, stating that:

“Freedom of expression cannot be misused for rewriting history, particularly so for seeking deny or justify genocide, which is the most absolute and heinous of crimes.”⁹⁴

⁹¹ Panarmenian Net, *Perincek V Switzerland*: What does ECHR's judgement mean? Available on: <http://www.panarmenian.net/eng/details/199014/>. Accessed April 4, 2018.

⁹² The International Forum for Responsible Media Blog, Case Law, Strasbourg: *Perincek V Switzerland*, Grand Chamber confirms conviction for denying the Armenian genocide as Article 10 violation, Dirk Voorhoof, Available on: <https://inform.org/2015/10/21/case-law-strasbourg-perincek-v-switzerland-grand-chamber-confirms-conviction-for-denying-the-armenian-genocide-as-article-10-violation-dirk-voorhoof/>. Accessed April 5, 2018.

⁹³ Supra 91.

⁹⁴ Supra 91.

Therefore, the denial of Armenian genocide in Switzerland concerned the public interests. The judgment in the case *Perincek V Switzerland* is very controversial, as it did not consider denial of Armenian genocide as hate speech, therefore it is necessary for the ECtHR to judge each case separately and analyzing the case from different angles.

2.7 Solutions for the issue of hate speech

The sum up, an answer can be provided on the research question regarding how the application of the term “hate speech” varies in case law by of the ECtHR and regarding improved solutions to applying the term “hate speech”. Cases such as *Garaudy V France*, *Pavel Ivanov V Russia*, *Surek (no.1) V Turkey*, *Perincek V Switzerland*, *Norwood V United Kingdom* were analyzed which dealt with different forms of hate speech and had different outcomes. However, the ECtHR mainly defined hate speech as a notion which goes against values of freedom of expression and the ECHR, such as “social peace, non- discrimination and tolerance⁹⁵.” The analysis of the cases provided an approach on how more cases regarding hate speech should be handled in case of variations in how hate speech is understood. Firstly, the ECtHR should determine whether potential hate speech is a value judgement or based on factual basis, therefore avoiding possible negationism or revisionism. Secondly, analysis of the public interests within a particular country should ensue and determine how an expression of opinions could influence the society. Thirdly, one should determine whether the expression of an opinion can impact the well-being of the society or constitute an incitement to violence. Fourthly, it is important to understand whether the expression undermines the values of the ECHR. These principles are crucial for assessing the various cases associated with hate speech, such as provided in the case of *Perincek V Switzerland*. Based on the principles determined in this research, the case could be judged differently. The findings in the research could provide a more precise way of interpreting hate speech and how to use this interpretation.

⁹⁵ Supra 5, p. 26.

3. MEDIA OBLIGATION TO FREEDOM OF EXPRESSION AND HATE SPEECH

3.1 Freedom of Expression within Online environment

The internet is becoming an important area where the application of freedom of expression is a concern, as the court has acknowledged:

“[I]mposing on states a positive obligation to create an appropriate regulatory framework to ensure effective protection of journalist’s freedom of expression on the internet.”⁹⁶

The protection provided by Article 10 of the ECHR applies not only to standard print publications, but includes also publications made online:

“Article 10 of the Convention applies to the Internet as a means of communication, whatever the type of message and even when used for commercial purposes.”⁹⁷

The main emphasis of this part of the research will be on the online media and on the application of freedom of expression under Article 10 of ECHR in the online environment. Moreover, as hate speech is becoming prevalent in the online environment and has become for a concern for online media (in terms of removing or blocking hate speech), it is also important to consider how to prevent offensive content as hate speech in the online environment⁹⁸.

The previous two parts of the research have explained the concepts of freedom of expression and hate speech and how they relate to one other. Furthermore, the elements that constitute hate speech were clearly outlined, as well as the necessary criteria for the freedom of expression to be limited. However, in this part the research will focus more on the impact of hate speech on the online media outlets. In addition, it will explain what is the financial risk that social media, online media and other related media platforms face when dealing with hate speech, the financial risk will be assessed in relation to imposed fines or sanctions by the ECtHR. In the analysis, cases where the intermediary of the online website did not fulfil the necessary obligations to ensure free environment from hate speech, therefore violating Article 10 of ECHR, will be consider. These cases are relevant because “the Article 10 of the Convention applies to the Internet as a means of communication.”⁹⁹

Before moving forward, it is crucial to establish what is an internet intermediary and what falls within this category. The function and the role the internet intermediaries are to provide

⁹⁶ European Court of Human Rights. Internet: case law of the European Court of Human Rights, 2015, p. 18. Available on: https://www.echr.coe.int/Documents/Research_report_internet_ENG.pdf, Accessed April 10, 2018.

⁹⁷ Ibid, p. 17.

⁹⁸ Human Rights Brief Hate Speech Is Not Free Speech For Europe, Flaka Pollozhani. Available on: <http://hrbrief.org/2017/12/hate-speech-not-free-speech-europe/>. Accessed on April 11, 2018.

⁹⁹ Supra 96, p. 17.

the users with the necessary tools to access the internet¹⁰⁰. Nevertheless, an internet intermediary can also be a social network provider, including Facebook, Twitter or YouTube.

Yet, before assessing the case law and to evaluate the evidence, firstly, it is necessary to explain what the established framework for governance of internet intermediaries is and what their responsibilities are. Therefore, the recommendations from the CoE will be analyzed, mainly regarding the liability of intermediaries and media governance. Which will determine the approach by the ECtHR in case law concerning cases of online media and their liability of content as hate speech in the online environment. An analysis of the judgments of the ECtHR will be conducted, particularly regarding the case *Delfi V Estonia*, which dealt with hate speech and the liability of the third-party comments. The analysis will provide a perspective on how the online media outlets should contribute to filtering and removing offensive content as hate speech¹⁰¹. The following section will also address the upcoming legal amendments in Germany which could change the way how the protection of freedom of expression is governed in the online environment.

3.2 Liabilities of Intermediaries

Freedom of expression is a fundamental right not only offline, but also in the online environment, because the most information nowadays is received and imparted by using online websites, which enable to express opinions and receive information faster and from various parts of the world. The court has expressed that: “[T]he internet plays important role in enhancing the public access to new and facilitating the dissemination of information generally.”¹⁰² As a result, the CoE is aware of the significance of freedom of expression to the internet and have conducted and provided recommendations for member states. The Council has expressed that “[t]he protection of privacy and personal data is fundamental to the enjoyment and exercise of most of the rights and freedoms guaranteed in the Convention.”¹⁰³ Therefore, the CoE has issued recommendations for member states and intermediaries to enhance freedom of expression in the online environment and to protect the values of the ECHR. The CoE has stated that:

¹⁰⁰ Association for Progressive Communications, Frequently asked questions on internet intermediary liability. Available on: <https://www.apc.org/en/pubs/apc%E2%80%99s-frequently-asked-questions-internet-intermed>. Accessed April 14, 2018.

¹⁰¹ Judgement on Merits and Just Satisfaction by Grand Chamber, *Delfi AS V Estonia*, no. 64569/09. ECHR June 16, 2015. Available on: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4529626-5466299&filename=003-4529626-5466299.pdf>. Accessed on April 15, 2018.

¹⁰² Supra 96, p. 22.

¹⁰³ Recommendation CM/Rec(2018)2 of the Committee of Ministers to members States on the roles and responsibilities of internet intermediaries, Adopted by the Committee of ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies, Available on: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14, Accessed April 16, 2018.

“[T]he rise of the internet and related technological developments have created substantial challenges for the maintenance of public order and national security.”¹⁰⁴

Yet, the internet provides a new and user-friendly way on how to impart and receive information. Yet benefits come with disadvantages and risks which can impact the fundamental values of the ECHR, if not approached correctly as set in the recommendations.

The CoE has issued a recent amendment in 2018 for the liability of internet intermediaries, which has been updated and has introduced new obligations for intermediaries. The first and most important responsibility of internet intermediaries is to follow and respect human rights, meaning each and every internet intermediary should implement the necessary measures including the terms and conditions to prevent violation of human rights, which includes preventing violation of freedom of expression through harassment as hate speech¹⁰⁵. To fully respect human rights, it is mandatory for internet intermediaries to “search, identify and remove allegedly illegal content.”¹⁰⁶ Internet intermediaries have an obligation to remove access to illegal online content, which can be found on several websites, including content which shows signs of human rights abuse, for example, in case of¹⁰⁷. When the internet intermediary faces circumstances where the content should be removed or restricted, the Council states that:

“Any restriction of content should be carried out using the least restrictive technical means and should be limited in scope and duration to what is strictly necessary to avoid the collateral restriction or removal of legal content.”¹⁰⁸

This means that all actions to remove content have to be proportionate and should fall within the boundaries of the established test of limitation of freedom of expression under Article 10 of ECHR.¹⁰⁹

3.3 Governance of Media

The next step is to analyze the governance of media- what are the recommendations of the CoE and what are the main functions of media in relation to freedom of expression. The CoE states that:

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Council of Europe, The roles and responsibilities of internet intermediaries the Council of Europe perspective, Speaker: Elena Lopatina, p. 7. Available on:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=32321&no=8>,

Accessed on April 17, 2018.

¹⁰⁷ Ibid.

¹⁰⁸ Supra 103.

¹⁰⁹ Council of Europe. *Filtering, blocking and take-down of illegal content of the Internet*. Available on:

<https://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet>. Accessed April 16, 2018.

“[M]edia are the most important tool for freedom of expression in the public sphere, enables people to exercise the right to seek and receive information.”¹¹⁰

In many ways the media safeguards the values of freedom of expression. The media is a medium between the public and information, and for that reason the media strengthens intercultural dialogue, mutual understanding and reinforce democracy¹¹¹. However, for the media to be able to properly promote the values of freedom of expression, there has to be a framework which equally establishes the editorial independence and the accountability of the public interests¹¹².

Besides editorial independence and accountability, the media functions also as a public watchdog whose purpose is to observe activities within the government and inform the public on the most important occurrences¹¹³. The media has a crucial role in the application and promotion of the freedom of expression and even the ECtHR has acknowledged the importance of media:

“[F]reedom of the press affords the public on the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.”¹¹⁴

Thus, involving the media to initiate a dialogue within the public and the mass information, which is a crucial element of the freedom of expression provided under Article 10 of ECHR. However, when the media and the press is exercising the right to freedom of expression, there are requirements, which should be fulfilled by the media. For example, it is stated that:

“Article 10 is subject to provision that they are acting in good faith in order to provide accurate and reliable information in accordance with ethics of journalism.”¹¹⁵

Therefore, the media is obliged to comprehend these conditions in good faith and ensure that the information provided to the public is accurate and in no way spreads inaccurate or offensive information.

If the media is not sure of the content that it provides, the consequences can be severe. In the case *Sener V Turkey*, the court held the opinion that:

“[W]hen consideration is being given to the publication of views which contain incitement to violence the media becomes a vehicle for the dissemination of hate speech.”¹¹⁶

¹¹⁰Recommendation CM/Rec (2012) 1 of the Committee of Ministers to member States on public service media governance, Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies Available on:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4, Accessed on April 18, 2018.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Supra 5, p. 87.

¹¹⁴ Supra 5, p. 88.

¹¹⁵ Supra 5, p. 98.

¹¹⁶ Supra 5, p. 98.

Furthermore, the media is required to omit any expressions in the information's on the court reporting's, publications, interviews, etc. That could incite hatred and could go against with the values of freedom of expression under Article 10 of ECHR¹¹⁷.

3.4 Media Self-Regulation

Before proceeding with the analysis of online media outlets and the penalties imposed on them by the ECtHR in case of non-compliance with the values of Article 10 of the ECHR, it is important to establish how the ECtHR assesses case law in relation to media. There is a specific clause for the media under Article 10 until the obligations mentioned in media governance are followed, however, in case of negligence the media outlet can face penalties and there should be balance made between financial interests and editorial responsibility of media., for that reason, in case when media does not follow the editorial responsibility then the editorial responsibility will prevail the financial interests, meaning the court will give priority to the editorial responsibility and will not protect the media outlet from financial outcome¹¹⁸.

As a consequence, the media has to implement considerable self-regulation, to obtain editorial freedom, minimize state interference and promote published materials of high quality which all contribute to evidence of media accountability¹¹⁹. Mainly the appliance of self-regulation ensures promotion and secures the rights of freedom of expression¹²⁰. The self- regulation additionally protects media from legal disputes and promotes high ethical standards, which are crucial not only for public interests, but also for the media to protect their financial stability by avoiding unnecessary lawsuits. The self-regulation of media is different to the governance of media, which was discussed previously; Self-regulation is created by the media itself under certain guidelines and requirements as they: “[S]hare of responsibility for the quality of public discourse in the nation, while fully preserving their editorial autonomy in shaping it.”¹²¹ The principles the media observe to establish and maintain editorial freedom secure an overall better performance of the media and allows freedom of expression to be a mainstay in news outlets.

¹¹⁷ Supra 13.

¹¹⁸ Thomas Hammarberg, eds., *Ethical Journalism and Human Rights*, (Council of Europe, March 1, 2011). Available on: <https://rm.coe.int/16806da80a>. Accessed April 30, 2018.

¹¹⁹ Haraszti Miklos, eds., *The Media Self - Regulation Guidebook*, (Vienna, 2008). Available on: <https://www.osce.org/fom/31497?download=true>. Accessed April 19, 2018.

¹²⁰ Ibid.

¹²¹ Ibid, p. 9.

3.5 Delfi AS V Estonia judgement

Having established a brief overview of the regulations and guiding principles of the media, the next emphasis will be on how these regulations apply in specific cases. The *Delfi AS V Estonia* case is significant for online media outlets as it is a landmark case for hate speech and lack of observation of media guidelines and standards. Previously there were mentioned what are the imposed Previous sections detailed the imposed liabilities on internet intermediaries, how the media is governed and how it is self- regulated by certain guidelines. Having provided conclusions from each part of the research, it will be possible to obtain a clearer understanding on how the media is functioning in the case of *Delfi AS V Estonia*. It will be possible to determine what is the financial impact on media outlets when publishing of hate speech causes legal repercussions. Moreover, it will be possible to assess whether a supervisory mechanism should be established for guarding the online environment from hate speech.

3.5.1 Facts of Delfi AS V Estonia

The *Delfi AS V Estonia* case concerns the use of comment sections for posting of offensive information on the “Delfi” online news website. When an article is posted on “Delfi” online website, there is an option to write a comment and express the thoughts and opinions regarding the article. However, “Delfi” has created a system where the comments posted can be anonymous, which made “Delfi” liable for the comments in an article about a ferry company, which were posted on their online website¹²². As a result of the situation, there was a request from the lawyers of the owner of the ferry company to remove the comments which were offensive and constituted hate speech¹²³. Delfi removed the comments six weeks after they had appeared in the comments section. The case was moved from domestic courts to the ECtHR and the main inquiry was made on the question whether the court would find Delfi AS liable for these third-party comments had infringed its right to impart information¹²⁴. This case was significant to other similar online media outlets and their responsibility for content on their online websites.

One of the reasons given why “Delfi” may have been liable for the comments posted on their news portal was that:

¹²² Supra 96, p. 17.

¹²³ Supra 96, p. 17.

¹²⁴ Supra 96, p. 28.

“Delfi had integrated the comment environment into its news portal, inviting visitors to the website to complement the news with their own comments, it exercised control over the comment section as such.”¹²⁵

The main problem was that the comments were anonymous, thus making “Delfi” the sole legal person liable for the comments. This gave “Delfi” a reason to establish an additional mechanism for their online news portal, which would filter illicit comments and delete the offensive content¹²⁶.

3.5.2 Main Findings of Delfi AS V Estonia

To assess whether “Delfi” were liable for the third-party comments posted on the website, the court considered four criteria: the context of the comments, liability of the actual authors of the comments, the measures applied by the applicant to remove the comments and the consequences for the company¹²⁷. In the verdict of the court it was first explained that the comments were offensive as they constituted hate speech. Secondly, “Delfi” were trying to filter the comment section by removing some offensive content. Thirdly, the authors of the comments were not liable, because it was impossible to determine their identity¹²⁸.

“Delfi” acknowledged their legal responsibility for the comment section and removed the comment. However, the court considered that the comments should have been removed without any delay, especially because the comment amounted to hate speech¹²⁹. Therefore, the ECtHR found no violation of Article 10 of the ECHR, but “Delfi” had to pay a compensation of EUR 320 to the offended person. Since the Delfi case there have been similar cases as *Phil V Sweden*, where the online content amounted to defamation, nevertheless, the imposed fine was EUR 0.10, the comment and the post was removed swiftly enough to avoid any further negative consequences and an apology was issued¹³⁰. In another case *Magyar and Index.hu V Hungary* regarding liability of comments, the ECtHR stated that:

“...[B]ecause of the particular nature of the Internet, these duties and responsibility may differ to some degree from those of traditional publisher, notably as regards third-party content.”¹³¹

The “Delfi” case has led to a very important precedent in managing the liability for illicit comments on online media websites, providing the ECtHR opportunities to deliver different

¹²⁵ Supra 16, p. 239.

¹²⁶ Supra 16, pp. 238 – 241.

¹²⁷ Supra 16, p. 241.

¹²⁸ Supra 16, p. 241.

¹²⁹ Supra 16, p. 241.

¹³⁰ European Court of Human Rights, *Rolf Anders Daniel Phil V. Sweden*, Dirk Voorhoof. Available on: <http://merlin.obs.coe.int/article.php?id=15844>, accessed April 20, 2018.

¹³¹ European Court of Human Rights, *Magyar Tartalomozsgaltatok Egyesulete and Index.hu Zrt v. Hungary*, Dirk Voorhoof, Available on: <http://merlin.obs.coe.int/iris/2016/3/article2.en.html>. Accessed April 20, 2018.

judgments, and has strengthened the resolve media outlets to invest in monitoring their online resources.

3.6 Delfi AS V Estonia assessment

When assessing the “Delfi” case, the ECtHR applied the main principles regarding the liability of intermediaries, media governance and the values of the ECHR. The case pointed out how “Delfi” is managing their online news portal by indicating their lack of accountability and failure to remove unpleasant content as hate speech from the online website. Additionally, “Delfi” failed to comply with the obligations and editorial responsibility of the media and there was a lack of measures implemented to remove offensive or illegal content immediately after the publication, which is against the main values of democratic society to respect and protect the human rights. The media is an essential tool for the public to be able to receive and disseminate information, however, “Delfi” did react swiftly enough to prevent hateful content and indicated their lack of editorial responsibility what came off as an insufficiently professional approach in managing their online news portal. “Delfi” did not acknowledging the recommendations of the CoE, which lead to financial consequences for the online media outlet.

“Delfi” case was the first major case which concerned the liability of a company for comments which were posted on the online website¹³². In the “Delfi” case the comments which were posted by users “violated the personality rights of others and constituted hate speech advocating acts of violence against others.”¹³³ Therefore, the “Delfi” case is an example of how significant hate speech can be for media outlets and what the consequences can be for not observing main values of Article 10 of the ECHR regarding media responsibilities. The online media outlets should pay more attention to the online environment and reorganize the allocation of their financial resources to develop better measures to restrict content which carries hate speech online.

3.7 Future Risks of online media

There is a huge risk of hate speech to online media outlets. The imposed fine in the “Delfi” case was only EUR 320, which is not a large fine, considering “Delfi” is one of the largest internet portals in Estonia, however for smaller media outlet the fine could have a more severe impact¹³⁴. The goal of any online news portal is to earn money, which is facilitated by

¹³² Supra 96, p. 27

¹³³ Supra 96, pp. 27-28.

¹³⁴ Supra 5, p. 113.

advertisements, posting google ads, etc¹³⁵. However, to be able to receive sponsorship, the online website solely depends on the number of visitors of the website. In the research it was not possible to indicate the exact number of revenue for “Delfi”, because the financial statements are not available publicly, however, “Delfi” received 21.18 million visitors in March of 2018¹³⁶. For comparison, the New York Times had total of 382 million visitors in the same time period¹³⁷. Besides, New York Times revenue in 2017 exceeded USD 1 billion. However, the main significance is the importance on how many comments are posted in each day on the website. For example, on the articles posted on “Delfi” several articles can reach hundred comments, therefore leading to possible use of hate speech within the comments. Without a mechanism to monitor these comments remove the content of hate speech, the online media could face more lawsuits, even such outlets as the New York Times, Fox News, Yahoo News. The imposed fines could be significant and have a large impact on their financial sustainability, because in international news the online website is more well received with significantly high amount of views, therefore potential risk of hate speech within the comments is even higher.

There are already further developments in Europe to minimize and reduce the amount of hate speech in the online environment. Germany has adopted the Network Enforcement Acts, which is called the “Facebook Law”¹³⁸. The law mainly targets social media websites such as Facebook, Twitter and YouTube. The main goal will be to remove any offensive content online, such as hate speech¹³⁹. The norms within the law state that:

“Social media companies must develop and implement a procedure for managing complaints about purportedly unlawful content, providers have seven days to remove or block access to the unlawful content, make monthly reviews of their process for handling notices of unlawful content.”¹⁴⁰

Nevertheless, if the norms are not observed, the company can face a fine ranging from USD 5,7 million to USD 57 million. As the fines are enormous, they could impact the financial standing of wealthy companies such as Facebook¹⁴¹. The amendments made by Germany are very important for the future of promoting freedom of expression, which will prevent hate

¹³⁵The Balance, Online Media, How To Create a News Website That Makes Money, Glenn Halbrooks, November 3, 2017. Available on: <https://www.thebalance.com/how-to-make-a-news-website-2315317>, Accessed on April 21, 2018.

¹³⁶ Similar Web, Delfi.ee, March 2018 Traffic overview, Available on: <https://www.similarweb.com/website/delfi.ee>, Accessed on April 21, 2018.

¹³⁷ Similar Web, New York Times, March 2018 Traffic Overview, Available on: <https://www.similarweb.com/website/nytimes.com#search>, Accessed on April 21, 2018.

¹³⁸ Supra 98.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

speech from occurring online environment and will send a message to other European countries to set a similar example.

This research of this part has provided significant overlook on the risk of hate speech to online media outlets by imposing brief overview on the media governance, liabilities of intermediaries and self-regulation of media, which supplemented the analysis of case *Delfi V Estonia*. Which lead to the conclusion that “Delfi” were liable for the comments posted on the online website and represented a lack of determination towards safeguarding values of ECHR. However, the main emphasis of the research was to answer the research question, the financial risk of hate speech towards the online media outlets. The “Delfi” case pointed a significant fine amounted to 320 EUR by not removing the hate speech content on their website, additionally with the astonishing amount of user activity on “Delfi”, which are expressing their opinion on the comment section can result in more fines, if “Delfi” will not manage the presence of hate speech. Moreover, the presence of hate speech has already been acknowledged by Germany, which has implemented the “Facebook Law”, therefore in the future the law could also be applied to online media outlets and within all the Europe. These concerns could potentially have huge impact to the financial standings of the company.

To sum up, there is a risk of hate speech to online media outlets, therefore the online media should adapt to the upcoming changes by allocating the resources, which could prevent the presence of hate speech by filtering and removing the content and follow the recommendations provided by the CoE, however if the online media outlets do not follow the upcoming changes there is huge risk of facing additional fines for the companies, which have a potential to bear a financial and economic impact of the company.

CONCLUSION

Freedom of expression has a special standing within the human rights as it fulfils the necessary functions as enabling for the expression to be shared amongst others and information to be received and imparted, therefore promoting to the overall development of society. However, there are real threats to freedom of expression, which can limit the right. One of them being the appearance of hate speech, which imposes a crucial risk for the applicability of freedom of expression. The effect of hate speech is comprehensive as it not only affects those who are willing to exercise the instrument of freedom of expression, yet also media outlets which can face a potential financial risk, particularly of not being able to limit the hate speech within the content. Thus, to be able to overcome the occurrence of hate speech the research was concluded where three separate research questions were conducted with applicable emphasis on different aspects of hate speech.

To apprehend the potential risk of hate speech and its imposed threat, it was necessary to perceive the scope of freedom of expression and indicate when it does freedom of expression face limitation. Furthermore, several aspects were analyzed on the established criteria by the Articles and ECtHR as the “three part test” when the freedom of expression may be limited. Additionally, case law was analyzed which provided different situations and outcomes on when the freedom of expression encountered limitation. However, the main research question concerning first part was to determine whether the presence of hate speech incorporates significant grounds to restrict the freedom of expression provided under Article 10 of ECHR. After the analysis, the conclusion and the findings indicated that there are certain criteria when freedom of expression is not limited based on the circumstances of the case, for example public figures are entitled to less protection when expression is targeted to them. However, the answer to the research question indicated that when dealing with hate speech there cannot be any justification as the hate speech indicates unjustifiable action, thus freedom of expression should face limitation if there is a sign of hate speech.

Nevertheless, due to different forms of hate speech it causes a problem to indicate the hate speech within the case law of ECtHR. In addition, it was fundamental in the second part to answer the second research question on how does the application of term hate speech varies in case law of the ECtHR? Throughout the second part there were introduced different forms of hate speech and the distinctive nature of them, which pointed out different approaches by the ECtHR depending on the form of hates speech, additionally the answer to the research question provided significant findings on way how to the ECtHR should deal with hate speech in the case law. The proposed solution to determine whether expression amounts to hate

speech within the case law is that ECtHR should follow and analyze these components: is the hate speech a value judgement or based on fact, how the expression could affect public interests within democratic society, the effect of hate speech to the society, does the hate speech undermines the values of ECHR? Therefore, by applying these components it could have a potential to minimize the risks of hate speech and provide approach to acknowledge the hate speech within the case law and limit it.

Freedom of expression nowadays is more fostered through media. Without media those amongst the society would not be able to benefit from the attributes provided by the freedom of expression, for example to receive information, gathering information for public interests, fluffing watchdog function, etc. As the online environment is advancing and becoming a larger platform where the freedom of expression is exercised, it requires a special analysis to be conducted. Furthermore, the third part was focused on the media and its obligations to the content of online media outlet, moreover what is the financial risks imposed by hate speech towards the online media outlets? The research provided a vast majority of findings with regards the liabilities and governance of media and additionally guidelines for self-regulation of media which should be followed to secure editorial independence. Nevertheless, the analysis of *Delfi AS V Estonia* and recently introduced “Facebook law” in Germany indicated that importance of hate speech is crucial, and it has potential to impact financial sustainability of online media outlets, thus the risk of hate speech in the online environment has to be acknowledged by media. To minimize the risk of hate speech within the online environment there is requirement of certain actions to be conducted as implementing mechanisms of governance over the content of media. Additionally, it is compulsory for the media to follow and adapt the imposed recommendations provided by the CoE, therefore avoiding the unnecessary financial obligations as being liable for the hate speech within the content.

During the research of the thesis there have been indication of most significant problems of hate speech to freedom of expression, however in the conclusion there have been made solutions for them, by acknowledging the hate speech as ground for limitation of freedom of expression and indicating the financial risks of hate speech to online media outlets and most importantly grasping the essence of hate speech and establishing principles where different forms of hate speech must be approached with different caution.

To conclude, hate speech imposes a significant threat for the future of human rights and development of the society. Nevertheless, the thesis provided some useful ways how to apprehend the hate speech and limit it, which could be beneficial when dealing with hate speech in case law by the ECtHR or when removing the hate speech content in the online

environment by the online media outlets. However, the rapid development of the world and the society comes with its own attributes and risks as one of them is hate speech which may not seem as a threat in the beginning. Nonetheless, the risk is real and if it will not be minimized the consequences may lead to violence and frustrations in the humanity, thus preventing for further development within the society as the effect of attributes provided by freedom of expression will be hindered.

BIBLIOGRAPHY

Primary Sources

1. European Convention on Human Rights, 4 November 1950. Available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf, Accessed March 8, 2018.
2. International Covenant on Civil and Political Rights, 1966. Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed February 12, 2018.
3. Universal Declaration of Human Rights, 1948. Available on: <http://www.un.org/en/universal-declaration-human-rights/>. Accessed March 12, 2018.

Cases

1. Decision by the Third Section Court
Phil V Sweden, no. 74742/14, ECHR February 7, 2017. Available on: [https://hudoc.echr.coe.int/eng#{"appno":\["74742/14"\],"itemid":\["001-172145"\]}](https://hudoc.echr.coe.int/eng#{). Accessed April 21, 2018.
2. Decision delivered by Fifth Section Court
M'Bala M'Bala V France, no.25239/13, ECHR October 20, 2015. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-160358"\]}](https://hudoc.echr.coe.int/eng#{). Accessed February 12, 2018.
3. Decision delivered by Fourth Section Court
Graudy V France, no. 65831/01, ECHR June 24, 2003. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-23829"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 21, 2018.
4. Decision on the admissibility delivered by Plenary Commission
Lingens V Austria, no. 9815/82, ECHR October 11, 1984. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-73549"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 5, 2018.
5. Judgement delivered by Court
Perincek V Switzerland (GC), no. 27510/08, ECHR 15 October 2015. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["002-10930"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 26, 2018.
6. Judgement on Merits and Just Satisfaction by Grand Chamber
Delfi AS V Estonia, no. 64569/09. ECHR June 16, 2015. Available on: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4529626-5466299&filename=003-4529626-5466299.pdf>. Accessed April 15, 2018.
7. Judgement on Merits and Just Satisfaction by Fifth Section Court
Editorial Board of Pravoye Delo And Shtekel V Ukraine, no. 33104/05, ECHR May 5, 2011. Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-104685"\]}](https://hudoc.echr.coe.int/eng#{). Accessed February 12, 2018.

8. Judgement on Merits and Just Satisfaction by Fourth Section Court
Magyar Tartalomsgazdasági Szakszervezetek Egyesülete And Index Hu Zrt V Hungary, no. 22947/13, ECHR February 2, 2016. Available on:
[https://hudoc.echr.coe.int/eng#{"appno":\["22947/13"\],"itemid":\["001-160314"\]}](https://hudoc.echr.coe.int/eng#{).
Accessed April 26 12, 2018.
9. Judgement on Merits and Just Satisfaction by Grand Chamber
Axel Springer AG V Germany, no. 39954/08, ECHR February 7, 2012. Available on:
[https://hudoc.echr.coe.int/eng#{"itemid":\["001-109034"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 11, 2018.
10. Judgement on Merits and Just Satisfaction by Grand Chamber
Von Hannover V Germany, no. 40660/08 and 60641/08, ECHR February 7, 2012.
Available on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-109029"\]}](https://hudoc.echr.coe.int/eng#{). Accessed
March 13, 2018.
11. Judgement on Merits and Just Satisfaction delivered by Fifth Section Court
Leroy V France, no. 36109/03, ECHR October 2, 2008. Available on:
[https://hudoc.echr.coe.int/eng#{"itemid":\["002-1888"\]}](https://hudoc.echr.coe.int/eng#{). Accessed February 12, 2018.
12. Judgement on the merits and Just Satisfaction by Grand Chamber
Jersild V Denmark, no. 15890/89, ECHR 23 September 1984. Available on:
[https://hudoc.echr.coe.int/eng#{"itemid":\["001-57891"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 11, 2018.
13. Judgement on the merits delivered by Plenary Court
Sunday Times V The United Kingdom, no. 6538/74, ECHR April 26, 1979. Available
on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57584"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 12,
2018.
14. Judgement on the merits delivered by Plenary Court
Handyside V The United Kingdom, no. 5493/72, ECHR December 7, 1976. Available
on: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57499"\]}](https://hudoc.echr.coe.int/eng#{). Accessed March 1,
2018.

Secondary sources:

Books

1. A. Schabas William. *The European Convention on Human Rights A Commentary*.
United Kingdom: Oxford University Press, 2015.
2. Beatson Jack and Yvonne Cripps. *Freedom of Expression and Freedom of
Information, Essays in Honour of Sir David Williams*. New York: Oxford University
Press, 2000.

3. Benedek Wolfgang and Matthias C. Kettemann. *Freedom of Expression and the Internet*. Council of Europe, 2014.
4. Bernadette Rainey and Wicks Elizabeth and Ovey Clare. *The European Convention on Human Rights (6th ed.)*. United Kingdom: Oxford University Press, 2014.
5. Casadevall Josep and Egbert Myjer, Michael O'Boyle, Anna Austin, *Freedom of Expression, Essays in Honour of Nicolas Bratza*. Netherlands: Wolf Legal Publishers, 2012.
6. Castendyk Oliver and Egber J. Dommering, Alexander Scheuer. *European Media Law*. Kluwer Law international, 2008.
7. Hammarberg Thomas, eds. *Ethical Journalism and Human Rights*, Council of Europe, March 1, 2011. Available on: <https://rm.coe.int/16806da80a>. Accessed April 30, 2018.
8. Haraszti Miklos, eds. *The Media Self - Regulation Guidebook*, Vienna, 2008. Available on: <https://www.osce.org/fom/31497?download=true>. Accessed April 19, 2018.
9. Harris, O'Boyle & Warbrick. *Law of The European Convention on Human Rights (3rd ed.)*. United Kingdom: Oxford University Press, 2014.
10. Heinze Eric. *Hate Speech and Democratic Citizenship*. United Kingdom: Oxford University Press, 2016.
11. K. M. Smith Rhona. *Textbook on International Human Rights*. New York: Oxford University Press, 2003.
12. McGonagle Tarlach. *Freedom of Expression and Defamation*. Council of Europe, 2016.
13. Mowbray Alastair. *Cases, Materials and Commentary on the European Convention on Human Rights (3rd ed.)*. United Kingdom: Oxford University Press, 2012.
14. Oetheimer Mario, eds. *Freedom of expression in Europe: Case law concerning Article 10 of the European Convention on Human Rights Human Rights Files No.18* Council of Europe, 2007. Accessed March 10, 2018. [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).
15. Oster Jan. *European And International Media Law*. United Kingdom: Cambridge University Press, 2017.
16. Robertson Geoffrey and Andrew Nicol. *Media Law*. London: Sweet & Maxwell Limited of 100 Avenue Road Swiss Cottage, 2002.

17. Siniarska Dominika B, eds. *Protecting the Right to Freedom of Expression Under the European Convention on Human Rights* (Council of Europe, 2017). Accessed March 11, 2018, <https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>.
18. W. Janis Mark and Richard S. Kay, Anthony W. Bradley, Ailen McColgan, Jim Murdoch. *European Human Rights law (3rd ed.)*. New York: Oxford University Press, 2008.
19. Weber Anne, eds. *Manual on hate speech (4th ed.)*. France: Council of Europe, 2009. Accessed March 10, 2018. <https://rm.coe.int/1680665b3f>.

Official documents and papers

1. Council of Europe, *The roles and responsibilities of internet intermediaries the Council of Europe perspective*. Speaker: Elena Lopatina. Available on: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=32321&no=8>. Accessed April 17, 2018.
2. Council of Europe. *Factsheet – Hate speech*. Available on: http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf. Accessed March 29, 2018.
3. Council of Europe. *Filtering, blocking and take-down of illegal content of the Internet*. Available on: <https://www.coe.int/en/web/freedom-expression/study-filtering-blocking-and-take-down-of-illegal-content-on-the-internet>. Accessed April 16, 2018.
4. Council of Europe. *Protection of reputation*. Available on: http://www.echr.coe.int/Documents/FS_Reputation_ENG.pdf. Accessed March 7 11, 2018.
5. Council of Europe/European Court of Human Rights. *Practical Guide on Admissibility Criteria*, 2014. Available on: http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf. Accessed March 15, 2018.
6. European Court of Human Rights. *Internet: case law of the European Court of Human Rights*. 2015. Available on: http://www.echr.coe.int/Documents/Research_report_internet_ENG.pdf, Accessed April 10, 2018.
7. European Court of Human rights. *When to say is to do Freedom of expression and hate speech in the case-law of the European court of Human Rights*. 2015. Available on: [http://www.ejtn.eu/Documents/Administrative%20Law%202015/5\)%20ECtHR%20fo](http://www.ejtn.eu/Documents/Administrative%20Law%202015/5)%20ECtHR%20fo)

[r%20Judicial%20Trainers/ECtHR%20and%20hate%20speech%20\(paper\).pdf](#).

Accessed March 11, 2017.

Recommendations and opinions

1. Recommendation CM/Rec (2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society. Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies. Available on:
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5. Accessed April 21, 2018.
2. Recommendation CM/Rec (2012)1 of the Committee of Ministers to member States on public service media governance, Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies. Available on :
<https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec%282012%291&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true>. Accessed April 18, 2018.
3. Recommendation CM/Rec(2018)2 of the Committee of Ministers to members States on the roles and responsibilities of internet intermediaries, Adopted by the Committee of ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies, Available on:https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14, Accessed April 16, 2018.
4. Recommendation No. R (97) 20 of the Committee of Ministers To member states on "Hate Speech". Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies). Available on: <https://rm.coe.int/1680505d5b>. Accessed March 30, 2018.

Articles

1. Alexander, Larry, Freedom of Expression as a Human Right (September 2001). U of San Diego Public Law Research Paper No. 23. Available on:
<https://ssrn.com/abstract=285432> . Accessed February 21, 2018.
2. Apalara, Rahman, Striking a Balance: Freedom of Expression and the Prohibition of Hate Speech and Offensive Remarks (September 11, 2017), p. 13. Available on:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3035410. Accessed March 26, 2018.
3. Kuczerawy, Aleksandra, Intermediary Liability & Freedom of Expression: Recent Developments in the EU Notice & Action Initiative (December 31, 2014). Published

- in Computer Law and Security Review, Vol 31. Issue 1 2015, pages 46-56.; CiTiP Working Paper 21/2015. Available on: <https://ssrn.com/abstract=2560257>. Accessed February 27, 2018.
4. Letsas, George, The ECHR as a Living Instrument: Its Meaning and its Legitimacy (March 14, 2012). Available on SSRN: <https://ssrn.com/abstract=2021836>. Accessed February 12, 2018.
 5. Marwick, Alice E. and Miller, Ross, Online Harassment, Defamation, and Hateful Speech: A Primer of the Legal Landscape (June 10, 2014). Fordham Center on Law and Information Policy Report No. 2. Available on: <https://ssrn.com/abstract=2447904>. Accessed on February 12, 2018.
 6. Massaro, Toni M., Equality and Freedom of Expression: The Hate Speech Dilemma (1991). 32 William & Mary Law Review 211 (1991); Arizona Legal Studies Discussion Paper. Available SSRN: <https://ssrn.com/abstract=2584632>. Accessed February 25, 2018.
 7. Roels Jo, The Battle against Hate Speech and Freedom of Expression Online, Charles University in Prague Faculty of Law Research Paper No. 2017/1/4, p. 6. Available on: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954422. Accessed March 10, 2018.
 8. Tsesis, Alexander, Dignity and Speech: The Regulation of Hate Speech in a Democracy (May 1, 2009). Wake Forest Law Review, Vol. 44, 2009. Available on: <https://ssrn.com/abstract=1402908>. Accessed February 12, 2018.

Websites

1. Association for Progressive Communications, Frequently asked questions on internet intermediary liability. Available on: <https://www.apc.org/en/pubs/apc%E2%80%99s-frequently-asked-questions-internet-intermed>. Accessed April 14, 2018.
2. European Court of Human Rights, Magyar Tartalomozolgaltatok Egyesulete and Index.hu Zrt v. Hungary, Dirk Voorhoof, available on: <http://merlin.obs.coe.int/iris/2016/3/article2.en.html>. Accessed April 20, 2018.
3. European Court of Human Rights, Rolf Anders Daniel Phil V. Sweden, Dirk Voorhoof. available on: <http://merlin.obs.coe.int/article.php?id=15844>, Accessed April 20, 2018.
4. Frontline, How Do Young Germans Deal With the Legacy of the Holocaust and the Third Reich? May 31, 2005, available on:

- <https://www.pbs.org/wgbh/pages/frontline/shows/germans/germans/howdo.html>. Accessed April 1, 2018.
5. Human Rights Brief Hate Speech Is Not Free Speech For Europe, Flaka Pollozhani. available on: <http://hrbrief.org/2017/12/hate-speech-not-free-speech-europe/>. Accessed April 11, 2018.
 6. Human Rights Law Centre, Human Rights Case Summaries, July 20, 2017, available on: <https://www.hrlc.org.au/human-rights-case-summaries/2017/9/26/european-court-of-human-rights-finds-hate-speech-not-protected-by-freedom-of-expression>. Accessed March 25, 2018.
 7. Information Platform humanrights.ch. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), available on: <https://www.humanrights.ch/en/standards/ce-treaties/echr/>. Accessed April 29, 2018.
 8. Panarmenian Net, Perincek V Switzerland: What does ECHR's judgement mean? available on: <http://www.panarmenian.net/eng/details/199014/>. Accessed April 4, 2018.
 9. Similar Web, Delfi.ee, March 2018 Traffic overview, available on: <https://www.similarweb.com/website/delfi.ee>, Accessed on April 21, 2018.
 10. Similar Web, New York Times, March 2018 Traffic Overview, available on: <https://www.similarweb.com/website/nytimes.com#search>, Accessed on April 21, 2018.
 11. The Balance, Online Media, How To Create a News Website That Makes Money, Glenn Halbrooks, November 3, 2017. available on: <https://www.thebalance.com/how-to-make-a-news-website-2315317>, Accessed on April 21, 2018.
 12. The Council of Europe in brief. Our member States, available on: <https://www.coe.int/en/web/about-us/our-member-states>. Accessed May 1, 2018.
 13. The Telegraph News, Muslim population of the UK could triple to 13m following record influx, November 29, 2017. available on: <https://www.telegraph.co.uk/news/2017/11/29/muslim-population-uk-could-triple-13m-following-record-influx/>. Accessed March 31, 2018.
 14. The International Forum for Responsible Media Blog, Case Law, Strasbourg: Perincek V Switzerland, Grand Chamber confirms conviction for denying the Armenian genocide as Article 10 violation, Dirk Voorhoof, Available on: <https://inform.org/2015/10/21/case-law-strasbourg-perincek-v-switzerland-grand-chamber-confirms-conviction-for-denying-the-armenian-genocide-as-article-10-violation-dirk-voorhoof/>. Accessed April 5, 2018.