When to say is to do
Freedom of expression and hate speech in the case-law
of the European Court of Human Rights

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Plan

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Erbakan v. Turkey judgment of 6 July 2006, § 56

I. The background

Recommendation No. R 97 (20) of the Council of Europe Committee of Ministers to Member States on “hate speech” of 30 October 1997
Gündüz v. Turkey, judgment of 4 December 2003, § 22

II. Article 17 of the European Convention on Human Rights and abuse of rights

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Lawless (no. 3) v. Ireland, judgment of 1 July 1961
Ždanoka v. Latvia, judgment (GC) of 16 March 2006

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Garaudy v. France, decision (inadmissible) of 24 June 2003 (conviction of writer for contesting crimes against humanity)

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Norwood v. the United Kingdom, decision (inadmissible) of 16 November 2004 (conviction for publicly displaying signs of hostility towards a racial or religious group)

Ethnic hatred

Ivanov v. Russia, decision (inadmissible) of 20 February 2007 (publication of articles inciting hatred towards the Jewish people)

* All judgments and decisions of the European Court of Human Rights mentioned are available from the Hudoc database accessible via the Court’s website: http://hudoc.echr.coe.int
Negationism / Revisionism

Perinçek v. Turkey, judgment of 17 December 2013 (pending before the Grand Chamber after referral) (conviction for rejecting legal characterisation of atrocities committed by Ottoman Empire against the Armenian people from 1915 as “genocide”)

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Cases where the Court found that conviction was justified under Article 10 ECHR

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Gerger v. Turkey, judgment (GC) of 8 July 1999 (incitement to “violence, armed resistance or an uprising”)
Özgür Gündem v. Turkey, judgment of 16 March 2000 (statements “which advocated intensifying the armed struggle, glorifying war and espoused the intention to fight to the last drop of blood”)
Gündüz v. Turkey, decision (inadmissible) of 13 November 2003 (statements advocating the use of violence, for example “to use knives or bayonets to get rid of political adversaries”)
Schenck v. United States, 249 U.S. 47 (1919) “clear and present danger” test Brandenburg v. Ohio, 395 U.S. 444 (1969) (“imminent lawless action” test) Sürek (no. 1) v. Turkey, judgment (GC) of 8 July 1999 (conviction for disseminating propaganda against the indivisibility of the State following publication of two readers’ letters in a review)
**Hocaoğulları v. Turkey**, judgment of 7 March 2006 (conviction for disseminating separatist propaganda in favour of the PKK on account of the publication of two articles)

**Gündüz v. Turkey**, decision (inadmissible) of 9 November 2004 (conviction of leader of an Islamic sect for public incitement to commit a crime)

**Cases where the Court found a violation of Article 10 ECHR**

**Dicle v. Turkey (no. 2)**, judgment of 11 April 2006 (conviction for inciting to hatred and hostility on the basis of a distinction between social classes, races and religions, following the publication of a seminar report)

**Erdal Taş v. Turkey**, judgment of 19 December 2006 (conviction for disseminating propaganda against the indivisibility of the State on account of the publication of a statement by a terrorist organisation, following the publication in a newspaper of an article consisting of an analysis of the Kurdish question)

**Faruk Temel v. Turkey**, judgment of 1 February 2011 (press statement read out at a party conference allegedly protesting against the U.S. intervention in Iraq and Abdullah Öcalan’s solitary confinement)

**Önal v. Turkey**, judgment of 2 October 2012 (two cases: conviction for the publication of a biography of a businessman of Kurdish origin accused of drug trafficking and belonging to the illegal armed organisation PKK; conviction for the publication of a work on the subject of the Alevis of Dersim)

- **Religious intolerance**


- **Racial hate speech**

  **Soulas and Others v. France**, judgment of 10 July 2008 (conviction of the authors of a book aiming to demonstrate what they considered to be incompatibilities between European and Muslim civilisations)

  **Leroy v. France**, judgment of 2 October 2008 (conviction for complicity in condoning terrorism following publication of a caricature and accompanying caption)

  **Féret v. Belgium**, judgment of 16 July 2009 (conviction of president of extreme right-wing party for inciting the public to discrimination or racial hatred in leaflets distributed in electoral campaign)

  **Le Pen v. France**, decision (inadmissible) of 20 April 2010 (president of the French “National Front” party fined for “incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion”)

  **Vona v. Hungary**, judgment of 9 July 2013 (dissolution of association involved in anti-Roma rallies and paramilitary parading)

- **Sexual orientation hate speech**

  **Vejdeland and Others v. Sweden**, judgment of 9 February 2012 (convictions for circulating homophobic leaflets at school)

  **Snyder v. Phelps et al.**, judgment of the US Supreme Court of 2 March 2011

- **Negationism / Revisionism**

  **Perinçek v. Turkey**, judgment of 17 December 2013 (pending before the Grand Chamber after referral) (conviction for rejecting legal characterisation of atrocities committed by Ottoman Empire against the Armenian people from 1915 as “genocide”)

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