

2019년 2월 11일 가와사키시 교육문화회관에서 극우 관계자의 연설



가와사키시 조례 동향

재일코리안의 인구 집중지역 중 하나. 재일코리안의 시민 운동이 강한 도시. 향후 조례 제정운동에 대해 상징적으로 중요성을 갖는 도시.

2019년 7월 8일 조례안 공표 (장애, LGBT, 인종차별 등을 포함한 포괄적인 차별금지조례. 권고, 명령을 무시했을 경우에는 헤이트스피치에 형사처벌 (벌금50만엔이하)). 8월 9일까지 퍼블리코멘트 모집. 퍼블리코멘트 18000건 이상.

2019년 12월 : 조례 제출 예정

현재의 과제 (인종차별단체 정치단체화)



재특회 대표
사쿠라이마코토는 "일본제일당"을
결성하고 2016년에 실시된 도쿄
도지사 선거에서 11 만표를 획득

현재의 과제 (인종차별단체 정치단체화)



법무부, 경찰청의 대응. 평가는...

機密性2 完全性1 信頼性1
事 務 選 給
平成31年3月12日

法務省人権擁護部第三課長 殿
(東京、大阪)
法務省人権擁護部第一課長 殿
(除く、東京、大阪)
法務省人権擁護部第二課長 殿
地方法務局人権擁護課長 殿

法務省人権擁護局調査救済課長官

選挙運動、政治活動等として行われる不当な差別的言動への対応について
標記について、近時、選挙運動、政治活動等に類似して不当な差別的言動等が
行われる場合があるとの指摘がされています。選挙運動、政治活動等（以下「選
挙運動等」という。）の自由の保障は民主主義の根幹をなすものですが、他方で、
選挙運動等として行われたからといって、直ちにその言動の違法性が否定される
ものではありません。

ついては、選挙運動等に類似した不当な差別的言動その他の言動により人権を
侵害されたとする被害申告等があった場合には、その言動が選挙運動等として行
われていることのみをもって安易に人権侵害性を否定することなく、「ヘイトス
ピーチ」に関する人権相談に対する対応指針」（平成27年6月10日付け当職事
務連絡）及び「インターネット上の不当な差別的言動に係る事案の立件及び処理
について」（平成31年3月8日付け法務省権限第15号当課長依命通知）をも
踏まえ、その内容、態様等を十分吟味して、人権侵害性の有無を総合かつ適切
に判断の上、対応されるよう願います。

なお、この種事案の人権侵害事案としての立件、調査及び処理に際しては、侵
害された人権に十分配慮した処理を目指しつつも、他方、選挙運動等の自由にも
十分配慮する必要があるため、その対応方については、事前に当課と十分に協議
されるよう配慮願います。

**警察庁が出した
選挙に特化したヘイト取り締まりの通知**

2019年3月28日

【1】選挙運動だからといって不当な差別的言動の違法性が
否定されることはない

【2】差別的言動の中で虚偽事項の公表や選挙の自由妨害
など刑事事件として取り上げるべきものがあれば適切
に対処する

【3】各地の法務局など関係省庁と連携する

혐오 표현이 혐오 범죄로 연결



불법행위 유발
재일코리안
변호사 대량
징계청구 사건

2017年 全国の弁護士に大量の懲戒請求が出された

온라인상에서 헤이트스피치



韓国、ソウル市日本人女児強姦事件に判決 一転無罪へ

TOPICS: 国際問題 小学生 強姦 日本



POSTED BY: 南風月 2017年1月27日
16日、ソウル市裁判所にて日本人女児を強姦したとして起訴されたイ・ムヒョンに判決が下され、
一審の判決を覆す無罪が言い渡された。

宮城 社会 3.11大震災

<外国人犯罪デマ>被災地半数聞き86%信じる

東日本大震災直後に宮城県内で流れた「被災地
で外国人犯罪が頻発している」というデマを聞いた
仙台市民の8割以上が事実と信じたとする調査
結果を、郭基煥（カクキカン）東北学院大教授
（共生社会論）がまとめた。宮城県警によると当
時、外国人犯罪が増えた事実はない。会員制交流
サイト（SNS）の普及で真偽不明の情報が拡散
しやすい状況と、大災害直後の特殊な心理状態が



震災直後、被災地を見回る警察官ら。外国人犯
罪が横行しているという報告はなかった=20
11年5月、宮城県南三陸町

拡大写真

皆星! あっちゃんみられす

「必ず人知れずの少人数で監視」この業界ではよくあること

혐오 표현이 혐오 범죄로 연결



한국인을 적대시하는 미디어 환경



제안

- 국회에서의 포괄적인 인종차별 금지법 제정
- 정부차원에서의 민족적소수자보호 정책수립
- 지방자치단체차원에서의 인종차별 금지 헤이트스피치 금지 조례의 제정
- 온라인상 헤이트스피치 및 헤이트크라임에 대한 대응 강화
- 인권 교육의 강화 (특히 역사교육, 차별에 반대하는 교육의 강화)
- 정치인이 헤이트스피치에 명확하게 반대를 표명

Hate Speech in Japan and Response by the Government, Corporations, and Civil Societies

August 28, 2019

Changho Kim 김창호

Japanese Lawyer, 3rd Generation Korean in Japan
(일본변호사, 재일교포 3세)

Hate Speech in Japan

- Hate speech against various groups including migrants, Ainu and Ryukyu indigenous communities, Buraku communities, LGBT, people with disabilities are reported.
- Hate speech targeting Koreans in Japan is most serious, and has become a matter of public concern.
- Government survey also shows that Koreans (especially long term permanent residents) suffer more from hate speech in Japan than other foreigners.



Hate Speech Against Koreans in Japan

Since around 2010, hate speech against Koreans in Japan is on the rise

For example, racist group, Zaitokukai was established in 2006

Surge of online hate speech against Koreans in Japan since 2000s

Number of offline hate speech demonstrations: 2013 (347cases), 2014 (378 cases), 2015 (250 cases)

Before 2016, no law prohibits advocacy of national, racial, or religious hatred, and hate speech is protected as freedom of expression. Police are protecting racists from those who protest against hate speech.



Korea is evil, and Korea is enemy, so Kill Koreans.

Background of hate speech against Koreans in Japan

Biases against Koreans since colonial period

Political and historical issues between Japan and South/North Korea (Dokdo/Takeshima, Comfort Women, Forced Labor during WWII, North Korean Missile, Abduction, etc)

Rise of Korean Economy

>> Anxiety over Japan's economic position

Widening economic inequality

Koreans in Japan as most visible minority group in Japan

Koreans in Japan become a main target of Japanese Nationalism

Civil Society's Response

- Counter Action



5

Civil Society's Response

- Counter Speech



6

Measures to Address Hate Speech (3)

Litigation (Kyoto Korean School Cases in 2009 – Hate Crimes)



- In 2013, Kyoto District Court Ruled for the Korean School and considered racist motive as a factor to increase the compensation
- Court ruled that “Acts of hate speech targeting an unspecified number of persons or groups cannot be addressed under the current legal system in Japan, unless a new law is enacted”

7

International Human Rights Advocacy in the UN (2014)



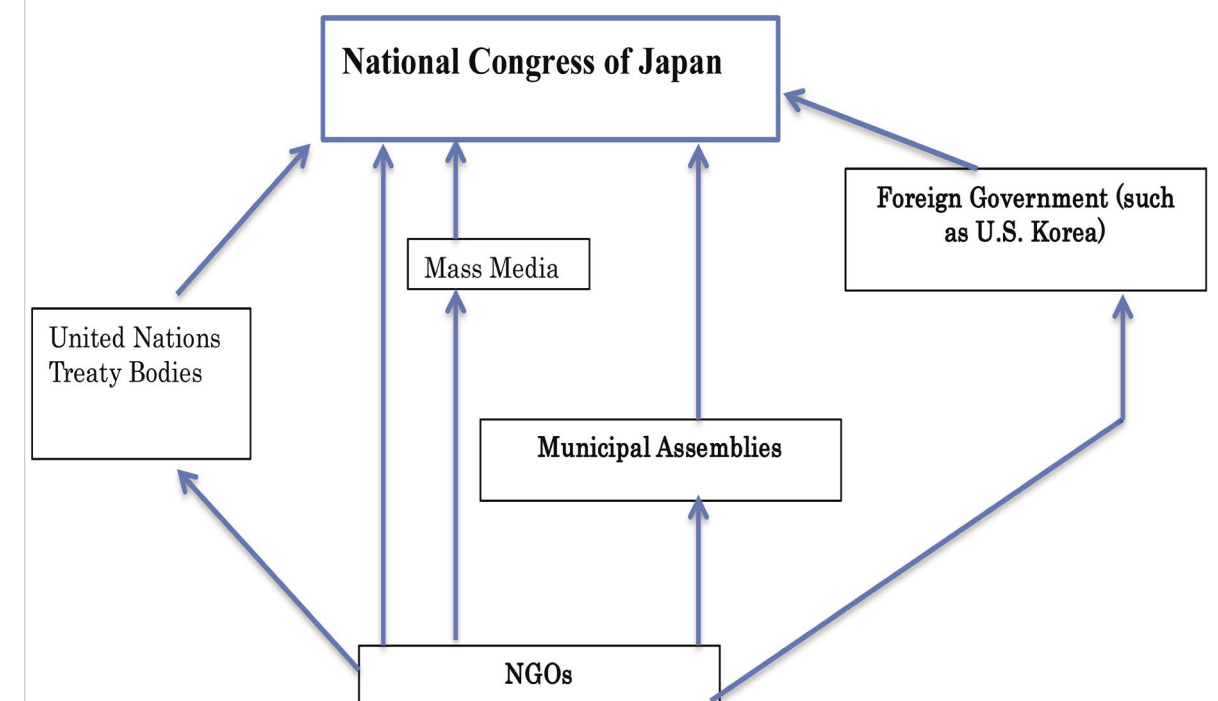
8

Impacts of UN recommendations in 2014

- Increased media coverage on hate speech
- Establishment of a hate speech project team inside the ruling party LDP (Jimin-tou) (September, 2014)
- Opposition parties submitted a bill prohibiting racial discrimination (suspended due to the opposition of LDP)
- Ministry of Justice started to place anti-hate speech ads in newspapers, put up posters, run notices on the internet (Nov 2014)
- US Department of State Human Rights Reports 2015 mentioned about hate speech in Japan.
- More than 300 municipalities adopted the resolution urging the national government to take measures against hate speech based on the UN Recommendations

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Figure: NGO's Approach for Hate Speech Regulation using International Human Rights Law





Resolutions at local assemblies urging the national government to take measures against hate speech

地方議会による「ヘイトスピーチ」対策要望意見書採択、300件を突破／2015年11月・12月定例会～

タイトルを「～300件に迫る」から「～300件を突破」に修正しました（2016年4月4日）。 更新日: 2016年05月03日

LINEで送る B! 0 いいね! 0 ツイート この記事に関するお問い合わせ

この記事は私がまとめました
three_sparrowsさん

これまでの流れ

ヘイトスピーチ対策を求める意見書採択の動き、各地の地方議会に広がる - Togetterまとめ



プレミアム注目!

トップページ > 政策・施策 > 国民の基本的な権利の実現 > 人権擁護局フロントページ > 啓発活動 > ヘイトスピーチに焦点を当てた啓発活動

ヘイトスピーチに焦点を当てた啓発活動



ヘイトスピーチ、許さない。

■背景

近年、特定の民族や国籍の人々を排斥する差別的言動がいわゆるヘイトスピーチであるとして社会的関心を集めています。こうした言動は、人々に不安感や嫌悪感を与えるだけでなく、人としての尊厳を傷つけたり、差別意識を生じさせることになりかねません。

近時、このヘイトスピーチが、マスメディアやインターネット等で大きく報道されるなど、更に社会的関心が高まっている上、平成26年7月の国連自由権規約委員会による日本政府報告審査における最終見解【PDF】※及び同年8月の国連人種差別撤廃委員会による同審査における最終見解【PDF】※で、政府に対してヘイトスピーチへの対処が勧告されています。

また、このような情勢の中、国会において、「本邦外出身者に対する不当な差別的言動の解消に向けた取組の推進に関する法律」が成立し、平成28年6月3日に施行されました。

※外務省ホームページへリンクしています。

Enactment of Hate Speech Elimination Act (2016 May)

- Declare that hate speech will not be tolerated (Preamble)
- Preparation and Maintenance of a Consultation System (Article 5)
- Enhancement of Education (Article 6)
- Awareness Raising Activities (Article 7)
- No penalty for hate speech
- Only addressing hate speech. Lack of comprehensive anti-racial discrimination law.

Impact of the New Law(1)

- Decrease in the number of hate rallies and demonstrations
- Order of Ministry of Justice to delete online videos describing hate speech against specific individuals or institutions
- Court decision prohibiting hate rallies and demonstrations closed to Korean towns
- Several judgments in civil cases mention about new law when ruling for victims of hate speech. Individual victims of hate speech won cases of defamation. (Lee Sinhae v. Zaitokukai, Lee Sinhae v. Hoshu Sokuho)

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Impact of the New Law(2)

~ Corporate Responses ~

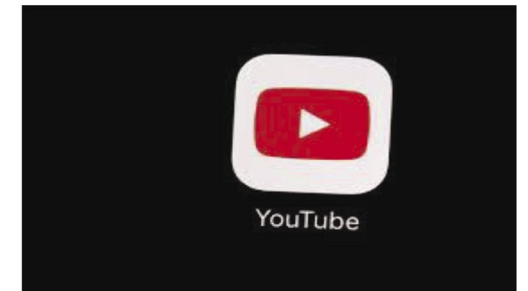
- Ministry of Internal Affairs and Communications and Ministry of Justice had meetings with internet companies over human rights violations in the internet.
- March 2017: Model Contract Provisions addressing illegal and harmful information online was amended by internet industry groups. Hate speech defined in the law is considered illegal and harmful information, and internet companies can delete such information voluntarily.
- Both domestic and internet companies have started to delete hate speech on the internet voluntarily

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Corporate Actions in Response to Actions by Civil Societies



Dec 2017 : Demonstrations in front of Twitter Japan>> Many accounts blocked



May to July 2018 : Youtube deleted more than 300,000 hate videos.

June 2018: SeikoEPSON etc withdrew advertisements from far-right wing websites



Limitations of New Law

- Ministry of Justice has not taken actions against hate speech against unspecified individuals or groups
- Despite provisions in the law to conduct education to prevent hate speech, it is nearly impossible to conduct education teaching anti-discrimination. Under current education systems, teaching about historical background of Korean communities in Japan is almost impossible. Japanese education systems make it difficult to teach wrong doings conducted by Japanese government. Similarity to distortion of modern history by Japanese government.
- Limitation of voluntary actions by corporations.
- No monitoring on situation of hate speech. No survey on hate speech was conducted since the enactment of the law

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Movement of making ordinance addressing hate speech

- The new law catalyzed the enactment of local ordinances addressing hate speech.
- Jan 2016: Osaka City established ordinance against hate speech (After receiving complaints about hate speech, expert panel will decide whether the speech is hate hateful or not. If speech is found hateful, the city will prevent dissemination of such information, and may disclose the name of hate speakers. Due to Japanese telecommunication law which protects the secrecy of communications, Osaka city cannot disclose real names, and can only disclose internet user names. Hate speakers have filed lawsuit against Osaka city arguing that the ordinance is unconstitutional).
- March 2018: Setagaya Ward in Tokyo passed ordinance which prohibits discrimination based on SOGI, nationality or ethnicity. Residents of the ward can file complaint to the ward if they face discriminatory behaviors. Mayor of Setagaya Ward can take necessary actions against discriminatory behaviors.
- Oct 2018: Tokyo Metropolitan government passed the ordinance prohibiting discrimination based on SOGI as a preparatory measure for 2020 Olympic. The ordinance does not prohibit discriminatory behavior based on nationality or ethnicity. Victims of hate speech based can ask Tokyo Metropolitan government to take necessary measures to prevent dissemination.
- Dec 2018: Kunitachi City in Tokyo passed ordinance prohibiting discrimination based on SOGI, nationality or ethnicity. After receiving complaints on discriminatory behavior, expert panel will recommend necessary measures to take.¹⁹

Guidelines on the use of parks, municipal halls and other public facilities against hate speech

March 2018: Kawasaki city made guidelines on the use of public facilities addressing hate speech. The city can restrict the use of public facilities when (i) specific risk of discriminatory acts or language exists, judged from objective facts, and (ii) the permit of the use of facilities is likely to obstruct the use of public facilities by other people, judged from objective facts.

April 2018: Kyoto Prefecture also passed the guidelines which allow local government to restrict the use of public facilities when (i) or (ii) is satisfied.

April 2019: Tokyo Prefecture passed the guideline which allows the local government to restrict the use of public facilities when (i) and (ii) are met.

Feb 2019: Ultra right political candidates used public halls to deliver speech



Current status of Ordinance in Kawasaki City

As a major Korean town in Japan, the ordinance in Kawasaki has a symbolic meaning and would influence ordinance making process in other local governments.

Outline of the Ordinance was published in July 8, 2019:

- Prohibit discriminatory behavior based on disabilities, SOGI, race, and ethnicity, etc. Comprehensive Anti-Discriminatory Ordinance.
- If hate speakers continue to use hate speech after receiving warning, and prohibition order by the city mayor, the city can impose fine less than 500,000JPY.

More than 18,000 comments were submitted during the public consultation period (from July 8 2019 to August 9 2019).

Kawasaki city mayor plans to pass the ordinance by Dec 2019.

Remaining Issues (Xenophobic Political Party)



- 日本人の国を守りぬく政党誕生
 - ・自主憲法制定・天皇を元首と明記・国軍保持
 - ・在日特権廃止・移民政策中止・パチンコ禁止
 - ・日韓合意破棄・反日談話破棄・ヘイト法廃止
 - ・外国人参政権反対・日教組等反日教職員追放
- 桜井誠
- Hate Speech used in the political campaign
 - Makoto Sakurai, a leader of racist group, ran for election for Governor of Tokyo and got more than 110,000 votes.

Response of Ministry of Justice and National Police Agencies against hate speech during election campaign

権限性 2 完全性 1 可能性 1
事務 連絡
平成 31 年 3 月 12 日

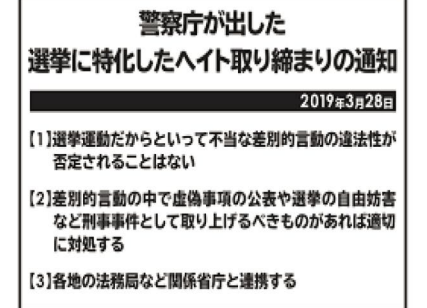
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ピーチ」に関する人権相談に対する対応方針(平成 27 年 6 月 10 日付け当職事務
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されるよう配慮願います。



Xenophobic Politicians and Hate Speech during Elections



Online Hate Speech



韓国、ソウル市日本人女児強姦事件に判決 一転無罪へ

TOPICS: 国際問題 小学生 強姦 日本



POSTED BY: 高橋 2017年11月17日

16日、ソウル市裁判所にて日本人女児を強姦したとして起訴されたイ・ムヒョンに判決が下され、一審の判決を覆す無罪が言い渡された。



宮城 社会 3.11大震災

東日本大震災直後に宮城県内で流れた「被災地で外国人犯罪が頻発している」というデマを聞いた仙台市民の8割以上が事実と信じたとする調査結果を、郭基煥(カクキカン)東北学院大学教授(共生社会論)がまとめた。宮城県警によると当時、外国人犯罪が増えた事実はない。会員制交流サイト(SNS)の普及で真偽不明の情報が拡散しやすい状況と、大災害直後の特殊な心理状態が



震災直後、被災地を見回る警察官ら。外国人犯罪が横行しているという報告はなかった=2011年5月、宮城県南三陸町

拡大写真

皆星にへったふみられ

10月1日、仙台市で撮影された「この写真はよくあること」

Online hate speech causes hate crimes



Racist website causes around 1000 disciplinary actions against Korean lawyers.

Online hate speech causes hate crimes



Hostile Media Environment against Koreans



Recommendations

- Making comprehensive anti-discrimination law including race, ethnicity, and nationality
- Establish measures to protect ethnic minorities
- Make more ordinances at the municipal level addressing hate speech and racial discrimination
- Strengthen measures against online hate speech and hate crimes (cf. Germany)
- Strengthen human rights education (with a focus on history education and anti-discrimination education)
- Commitment by Policy Makers against Hate Speech

제5회 국제인권심포지엄
The 5th International Human Rights Symposium
혐오표현의 확산, 어떻게 대응할 것인가? - 해외 사례로 보는 제도적 대안
How to Respond to the Spread of Hate Speech?
- Institutional Countermeasures Learning from International Cases

Session 2

혐오표현 관련 해외 규제 제도의 시사점과 국내 도입 검토 Implications of the international regulations and institutions against hate speech and ways to introduce them in Korea

발제자 | Speaker

이주영 Dr. Joo-Young Lee
서울대학교 인권센터 전문위원
SNU Human Rights Center

법무부 제5회 국제인권심포지엄 (2019.8.28)

“혐오표현의 확산, 어떻게 대응할 것인가? – 해외 사례로 보는 제도적 대안”

혐오표현 관련 국제인권기준과 판례, 해외 입법례와 국내 시사점

이주영

서울대학교 인권센터

혐오표현

사회적 약자/소수자 집단에 대한

- 증오/혐오 선동(incitement to hatred)
- 공개적 비방·멸시
- 심각한 편견이나 선입견을 유포하는 표현(extreme forms of prejudice and bias)

등 다양한 성격과 수위의 해악을 동반하는 표현 포괄

- 해외입법례: 인종주의적 혐오표현을 시작으로 성적지향, 성별정체성, 성, 장애 등을 이유로 한 혐오표현으로 규제 범위 확장 경향
- 예: 영국 커뮤니케이션청(OfCom) 방송법상 Hate Speech 정의: all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation

발표 순서

□ 혐오표현

□ 혐오표현 관련 국제인권기준과 판례, 대응 사례

유엔

- 집단학살죄 방지 협약(1948)
- 인종차별철폐협약 (1965) 국제형사재판소 설립 로마규정 (1998)
- 시민적 및 정치적 권리에 관한 국제규약 (1966)
- 차별금지과 평등, 차별 선동에 대한 보호

유럽

- 유럽평의회(Council of Europe)
- 유럽연합
- 유럽인권재판소(유럽평의회 사법기구) 판례

□ 외국 입법례

- 독일
- 캐나다

□ 주요 이슈: 온라인상 혐오표현에 대한 대응

□ 혐오표현 대응, 기본 방향과 과제

혐오표현, 왜 대응이 필요한가?

- 인권 또는 중요한 공적 가치 침해

: 인간 존엄, 차별금지와 평등, 동등한 공적생활 참여, 표현의 자유, 결사의 자유 등

- 표적이 된 사람들에게 가하는 해악

: 정신적 피해, 인간존엄성 손상, 안전에 대한 위협, 사회 참여 억제, 차별 등

혐오표현 대응에서 기본 고려 요소

- 해악의 성격과 심각성
 - 어떠한 대응?
 - 형사처벌
 - 민사적 제재/구제
 - 행정적 제재/구제
 - 교육, 홍보, 임파워먼트
 - 자율규제
- 해악에 따라 필요한 대응이 다름
- 혐오표현 대응을 위한 종합적인 틀이 필요함

관련 국제인권기준: 차별·증오 선동 금지

「시민적 및 정치적 권리에 관한 국제규약」(자유권규약, 1966) 제20조 제2항

“차별, 적의 또는 폭력의 선동이 될 민족적, 인종적 또는 종교적 증오의 고취는
법률에 의하여 금지된다.”

관련 국제인권기준: 제노사이드 선동 금지

「집단살해죄의 방지와 처벌에 관한 협약」(1948) 제3조(c)
「국제형사재판소에 관한 로마 규정」(1998) 제25조(3)(마)

직접적이고 공개적으로 제노사이드 선동하는 행위: 형사 범죄로 규정, 처벌

→ 한국, 「국제형사재판소 관할 범죄의 처벌 등에 관한 법률」 제정 (2011)

관련 국제인권기준: 인종차별 촉진·고무 금지

「모든 형태의 인종차별 철폐에 관한 국제협약」 제4조
인종주의 사고의 전파, 인종주의적 혐오, 차별 고무
형사 범죄로 규정, 처벌

일반권고 35 (인종주의적 혐오표현 대응)

- 인종차별을 금지하는 법률 필수 (para.5)
- 형사적 제재 시, 표현의 내용과 형식, 정치경제적 상황, 발화자의 지위, 표현이 미칠 영향, 발화의 목적 등 맥락 고려(para.15)
- 차별과 혐오의 근본 원인을 개선하기 위한 교육, 홍보, 문화적 접근 필요 (paras.30-44)

관련 국제인권기준: 차별에 대한 보호

「세계인권선언」(1948) 제7조
「경제적, 사회적 및 문화적 권리에 관한 국제규약」(1966) 제2조 제2항
「시민적 및 정치적 권리에 관한 국제규약」(1966) 제2조 제1항, 제26조

비차별과 평등의 보장
차별이나 차별 선동에 대한 평등하고 효과적인 보호
→ 국가의 의무

유럽평의회 각료회의의 관련 권고

- “혐오표현”에 대한 권고 Recommendation No. R(97) 20 on “Hate Speech (1997)
 - 공직에 있는 사람들: 혐오표현을 하지 않아야 할 특별한 책임
 - 혐오표현 대응을 위한 종합적 법제 수립: 형사, 민사, 행정적 조치
 - 표현의 자유 제한에서 비례성 원칙 강조
 - 혐오표현의 사회, 경제, 정치, 문화적 근본원인을 개선하기 위한 조치 강조
- 미디어와 관용적 문화 증진에 대한 권고
Recommendation No. R(97) 21 on the media and the promotion of a culture of tolerance (1997)
 - 다양성과 관용 증진에서의 미디어의 긍정적 역할 강조
 - 차별과 부정적 고정관념 금지하는 행동강령 필요성

유럽평의회 관련 조약

「컴퓨터를 통한 인종주의, 외국인혐오적 행위의 처벌에 관한 사이버 범죄 협약 추가의정서」
(Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, 2003)

온라인상 인종주의, 외국인혐오적 내용의 전파(제3조)
인종주의적 모욕 행위(제5조)
제노사이드 또는 인도에 반하는 범죄 부정, 심각한 축소, 승인, 정당화(제6조) 등의 행위에 대해
형사 규제 도입, 처벌하도록 함

유럽연합 관련 규범 (1)

「형법을 통한 인종주의와 외국인 혐오의 특정 형태와 표현에 대응하기 위한 기본 결정」
Council Framework Decision on “Combating Certain Forms and Expressions of Racism and Xenophobia
by Means of Criminal Law” (2008)

인종, 피부색, 종교, 혈통 또는 출신 국적 및 민족에 따라 규정된 집단 또는 그 일원에게
공개적으로 폭력과 증오를 선동하는 고의적 행위
각 회원국 내에서 형사범죄로 처벌되도록 하고, 각국 법원들 사이의 관련 협력 도모

유럽연합 관련 규범 (2)

「불법 온라인 혐오표현 대응 행동기준」 Code of Conduct on Countering Illegal Hate Speech Online (2016)

근거규범: 「형법을 통한 인종주의와 외국인 혐오의 특정 형태와 표현에 대응하기 위한 기본 결정」 (2008)

2016 Facebook, Microsoft, Twitter, Youtube

2018 Instagram, Google+, Snapchat, Dailymotion

2019 Jeuxvideo.com

각각 내부 정책(Community Guidelines) 통해, 신고절차 마련

→ 신고된 콘텐츠 24시간 안에 검토, 불법 온라인 혐오표현 삭제 또는 접근 제한토록

유럽인권재판소: 표현의 자유

표현의 자유에 대한 기본 태도

“표현의 자유는 우호적으로 수용되거나 불쾌하지 않은 것 혹은 무관심의 대상으로 간주되는 ‘정보’나 ‘견해’에만 적용되는 것이 아니라, 국가 혹은 사회구성원 어떤 집단에게 불쾌감을 주거나 충격을 주거나 심란하게 하는 정보나 견해에도 적용된다. 이는 다원주의, 관용, 포용성의 요구이며, 이러한 것 없이 ‘민주사회’란 존재하지 않는다. 즉, 이 영역에서 부과되는 어떠한 ‘형식’, ‘조건’, ‘제약’ 또는 ‘형벌’도 추구하는 정당한 목적에 비례해야 함을 의미한다.”

Handyside v. the United Kingdom, Application no. 5493/72 (ECHR) 7 December 1976.

유럽연합 관련 규범 (3)

「시청각 미디어 서비스 지침」 (EU Audiovisual Media Service Directive, 2018.10 개정)

관련 규범: 「형법을 통한 인종주의와 외국인 혐오의 특정 형태와 표현에 대응하기 위한 기본 결정」

• 텔레비전 방송, 주문형 시청각 미디어 서비스, 동영상 공유 플랫폼 서비스 등 시청각 미디어 서비스를 통해 특정 집단 또는 구성원에 대한 폭력이나 증오를 선동하는 콘텐츠 규제

• 2018년 개정 내용: 동영상 공유 플랫폼 서비스 규제 도입 의무:

회원국은 2020년 9월까지 폭력과 혐오 유발 콘텐츠로부터 일반 대중을 보호하기 위해 ‘적절한 조치’를 제도화하여야 함 (제28b조 1.(b))

유럽인권재판소: 혐오표현에 대한 일반적 접근

- 유럽인권협약상 혐오표현에 대한 명시적 조항 없음
- 혐오표현 규제가 표현의 자유에 대한 제한으로서 정당한 것(유럽인권협약 제10조 제2항)인지 여부 심사

1. 법률에 근거해야 함. 해당 법률은 ‘명확한 용어로 규정되어, 시민들이 자신의 행위를 규제할 수 있어야’ 함
2. 타인의 명예나 권리의 보호 등 동 조항에서 인정한 정당한 목적을 추구해야 함
3. 정당한 목적을 추구하는 데 있어 민주사회에서 필요한 것이어야 함. 중대한 필요성 여부 심사 위해, 표현의 내용, 맥락, 정당한 목적 추구를 위한 적정 수단인지 여부, 제한되는 표현의 자유에 비해 보호되는 권리 혹은 공익이 더 큰지 심사

Zana v. Turkey, Application No. 18954/91, (ECHR) 25 November 1997, para. 51.

유럽인권재판소: 권리남용금지 조항

유럽인권협약 제17조에 근거, 표현의 자유 적용 범위에서 배제, 심리적격 단계에서 각하한 판례

Glimmerveen and Haagenbeek v. the Netherlands, Applications no. 8348/78 and 8046/78, ECHR, 11 October 1979

- ‘모든 비백인들 떠나게 해야 한다’ 는 등의 인종주의 책자 작성, 배포 목적 소지하고 있던 극우정당 대표가 인종차별 선동죄로 국내법원에서 2주 실형 선고 받은 사건

Norwood v. the United Kingdom, Application No. 23131/03, ECHR, 16 November 2004

- 극우민족주의 정당 지역 조직담당자가 반이슬람주의 포스터를 사람들이 볼 수 있게 게시. 타인종, 종교집단에 대한 적의를 갖고 위협적, 공격적 또는 모욕적인 표현물 게시 행위 금지 위반 국내법원에서 벌금형 받은 사건

Pavel Ivanov v. Russia, Application No. 35222/04, ECHR, 20 February 2007

- 반유대주의 글들을 작성, 게재한 신문 편집인이 인종, 민족적 증오 선동죄로 국내법원에서 벌금형 받은 사건

협약 제17조 적용 판례 경향: 나치 이데올로기나 그에 기반을 둔 활동의 요소가 강한 경우.

하지만 일관된 적용 기준이 나타나지는 않음

유럽인권재판소: 표현의 자유 정당한 제한 결정

Vejdeland and Others v Sweden, Application no. 1813/07, ECHR, 9 February 2012

- 동성애혐오, 비방 유인물 배포
- 판시 주요 내용: 심각하고 편견에 가득 찬 주장. 성적지향에 근거한 차별은 인종, 출신, 민족, 피부색을 이유로 한 차별과 마찬가지로 심각한 문제. 유인물 배포 대상이 학생이었다는 점 중요. 처벌의 성격과 정도가 과하지 않음.

Feret v. Belgium, Application no. 15615/07, ECHR, 16 July 2009

- 벨기에 국민전선 의장/국회의원의 선거기간 중 이민자를 범죄자, 복지혜택을 남용하는 집단으로 묘사, ‘벨기에의 이슬람화에 맞서 일어나자’, ‘거짓통합정책 중단하라’, ‘비유럽 구직자들을 집으로 보내자’ 등 인종주의 유인물 배포
- 판시 주요 내용: 외국인에 대한 불신, 거부, 증오를 일으킬 수 있고 특히 교육수준이 낮은 대중들 사이에서 더욱 그러함. 선거 중이어서 그 전파력이 더욱 높고 인종적 증오선동임이 분명함

유럽인권재판소: 표현의 자유 침해 결정

Jersild v. Denmark, Application, Application no. 15890/89, ECHR(Grand Chamber), 23 September 1994

- 어떠한 정보나 현상을 알리고자 하는 목적이 있을 때, 증오선동의 내용을 일부 포함한다는 이유만으로 처벌해서는 안 된다, 전체적인 맥락에서 그 의도를 중요하게 고려해야 한다는 기준 확립

Erbakan v. Turkey, Application no. 59405/00, ECHR, 6 July 2006

- 문제가 된 공공연설이 “종교 간 적의를 일으킬 ‘임박한 위험’ 이 있거나 그럴 개연성이 입증되지 않았다”

Otegi Mondragon v. Spain, Application no. 2034/07, ECHR, 15 March 2011

- 바스크 좌파정당 대변인이 기자회견 중 스페인 왕에 대해 과장되고 강한 언어를 사용하였지만, 정치적 논쟁에서 허용될 수 있는 범위 안에 있음. 국가 상징으로서 왕이 어떠한 비판도 받지 않도록 보호받을 수 없음. 국가수반으로서의 제도적 책임과 관련된 내용이었음. 국왕 개인의 ‘인간존엄의 핵심’ 을 침해한 것이라 볼 수 없음

외국 입법례: 독일

- 「형법」 제130조

민족, 인종, 종교, 국적, 성적지향 등을 이유로 특정 집단에 대해 **증오/혐오를 선동하는 행위**, 경멸, 악의적 중상 혹은 명예훼손으로 **인간 존엄성을 침해하는 행위** 처벌

- 「형법」 제185조, 제187조 (모욕, 명예훼손죄)

집단모욕죄, 집단명예훼손죄 인정

- 「평등대우 원칙의 실현을 위한 유럽연합지침 이행을 위한 법률(일반평등대우법)」
언어를 통한 **차별적 괴롭힘과 차별 지시**, 차별행위로 규정

- 「네트워크 법집행법」(NetzDG 법, 2018년 1월 시행)

소셜미디어 제공 기업에 불법 온라인 혐오표현 콘텐츠 삭제 또는 접속 차단 조치 의무

의무 위반: 벌금 5천만 유로. 투명성 보고 의무 부과

외국 입법례: 캐나다

- 「형법」 제318조, 제319조
피부색, 인종, 종교, 출신국가, 민족, 연령, 성별, 성적지향, 장애로 구별되는 집단에 대한
공개적 증오·혐오선동, 증오·혐오의 고의적 고무
- 사스캐츄완 주, 브리티시 콜럼비아 주, 앨버타 주 「인권법」
차별금지 사유에 기초해 개인이나 집단을 혐오/증오 또는 경멸에 노출시킬 수 있는 내용 출판, 발간, 방송 등의
행위 금지
목적: 발화자의 처벌이 아니라 차별 예방, 피해자 보호
수단: 차별행위 중지, 재발방지, 손해배상 등
- 연방 「인권법」, 사스캐츄완 주, 브리티시 콜럼비아 주, 온타리오 주, 앨버타 주, 퀘벡 주 「인권법」
차별의도를 나타내는 내용 출판, 발간, 게시 행위 금지
- 연방 「인권법」
차별금지 사유에 기반해 언어적으로 불쾌하게 하거나 수치심을 주는 행위, 위협·협박하는 행위 등 언어적 괴롭힘
구성

Facebook Fueled Anti-Refugee Attacks in Germany, New Research Suggests The New York Times, Aug.21 2018

Fanning the Flames of Hate: Social Media and Hate Crime

[Karsten Müller](#), [Carlo Schwarz](#)

Published 2018

“This paper investigates the link between social media and hate crime using Facebook data. We study the case of Germany, where the recently emerged right-wing party Alternative für Deutschland (AfD) has developed a major social media presence. We show that right-wing anti-refugee sentiment on Facebook predicts violent crimes against refugees in otherwise similar municipalities with higher social media usage. To further establish causality, we exploit exogenous variation in major internet and Facebook outages, which fully undo the correlation between social media and hate crime. We further find that the effect decreases with distracting news events; increases with user network interactions; and does not hold for posts unrelated to refugees. Our results suggest that social media can act as a propagation mechanism between online hate speech and real-life violent crime.”

주요 이슈: 온라인 혐오표현

“They are morally bankrupt pathological liars who enable genocide (Myanmar), facilitate foreign undermining of democratic institutions.”

“[They] allow the live streaming of suicides, rapes, and murders, continue to host and publish the mosque attack video, allow advertisers to target ‘Jew haters’ and other hateful market segments, and **refuse to accept any responsibility for any content or harm.**”

New Zealand’s privacy commissioner, John Edward (8 April 2019)

Who Are They?

온라인 혐오표현: 몇 가지 특징과 어려움

- 피해 지속, 확대 가능성이 높음
- 공동의 공적 공간(common public sphere)이 있기 보다는 수많은 작은 공적 공간들
- 커뮤니티 내적 결속/배타성 높고 커뮤니티 간 의사소통 활발하지 않음. 당파성 강화
- 대항 발화를 통한 편견 해소, 다양성 증진 어려움

소셜 미디어와 인권, 민주주의



"Social Media made the Arab Spring".
2010-2012



"Do social media threaten democracy?
Facebook, Google and Twitter were supposed to
save politics as good information drove out
prejudice and falsehood. Something has gone
very wrong" The Economist, Nov 4th 2017

온라인 혐오표현 피해 방지와 구제에 대한

국가의 의무는?

온라인 플랫폼을 운영하는 기업의 책임은?

EU 「불법 온라인 혐오표현 대응 행동기준」(2016)

- 유럽연합 회원국: 「형법을 수단으로 인종주의와 외국인 혐오의 특정 형태와 표현에 대응하기 위한 기본 결정」(2008)에 따라 공개적인 증오/혐오선동 법으로 규제
- 온라인상에서도 불법 혐오표현 신고에 대해 신속하게 대응해야 할 필요
 - 온라인 플랫폼, 소셜미디어 플랫폼, 기업 내부 규정 또는 커뮤니티 가이드라인에 폭력과 증오 조장, 선동 금지 명확히
 - '유효한' 삭제 요청 → 규정/가이드라인에 따라 검토 → 최대한 24시간 내 불법 혐오표현 삭제 신고 요청 검토 → 검토 결과에 따라, 콘텐츠 삭제 또는 접속 차단 조치
 - 규정과 커뮤니티 가이드라인에 대한 정보 제공, 인식 제고
 - 시민사회 및 전문가 그룹과 협력 강화

EU 「시청각 미디어 서비스 지침」 (EU Audiovisual Media Service Directive, 2018.10 개정)

관련 규범: 「형법을 통한 인종주의와 외국인 혐오의 특정 형태와 표현에 대응하기 위한 기본 결정」

- 2018년 개정 내용: 동영상 공유 플랫폼 서비스 규제 도입 의무
- 회원국은 2020년 9월까지 폭력과 혐오 유발 콘텐츠로부터 일반 대중을 보호하기 위해 '적절한 조치'를 제도화하여야 함 (제28b조 1.(b))

독일

- 소셜미디어를 통한 인종주의, 증오선동 증가
- 2015년 네트워크 운영자와 시민단체 참여 대책위원회 설치(Task Force)
- 소셜미디어 플랫폼 기업의 자율규제 (2015-)

불법 콘텐츠 신고 후 24시간 이내 삭제율 (2017년 초 정부 조사)

YouTube: 90%, Facebook: 39%, Twitter 1%

(Source: Heidi Tworek and Paddy Leerssen, "An Analysis of Germany's NetzDG Law", April 2019)

NetzDG Law 하 소셜 네트워크의 투명성 보고서(2018.6)

Platform	신고 콘텐츠 수	삭제된 콘텐츠 수와 비율	24시간 이내 삭제
Facebook	1,704	362 (21.2%)	76.4%
Google (YouTube)	241,827	58,297 (27.1%)	93.0%
Twitter	264,818	28,645 (10.8%)	93.8%
Change.org	1,257	332 (26.4%)	92.7%

Source: Echikson & Knodt 2018

- 신고절차의 접근성, 이용편의성
- 소셜미디어 제공기업의 내부 규정(Community Guidelines, Rules)의 역할
- 위법성 내용별(예: Google): 혐오표현과 정치적 극단주의 (75,892), 명예훼손 또는 모욕(45,190), Sexual content (27,308) 순

「소셜 네트워크에서의 법집행 개선을 위한 법」 (NetzDG Law) (2017.6.30 제정, 2018.1.1 시행)

- 등록된 국내 이용자, 2백만 이상인 소셜네트워크 (제1조)
- 위법 콘텐츠(제1조 제3항): 형법이 규정하는 증오선동, 아동음란물 배포, 사진촬영을 통한 인격권, 사생활 침해 등
- 신고 처리에 관한 보고서 1년에 2번 작성, 공개 의무 (제2조)
- 신고 처리 절차(제3조 제2항): 위법 콘텐츠 신고 → 위법성 검토, 삭제 or 접근 차단 지체 없이 심사
- 명백히 위법한 콘텐츠 처리: 24시간
- 위법성 명백하지 않은 콘텐츠: 1주일 (전문가 의뢰, 법의 승인을 받은 자율규제기관에 판단 의뢰)
- 신고인과 이용자에 조치 결과에 대한 통지, 이유 제시, 기록 보관(제3조 제2항)
- 국내 송달 대리인 임명 (제5조)
- 과태료 처분: 보고 의무와 절차규정 위반에 대해 최고 5천만 유로 (법원 판결 토대)

비판

- 콘텐츠의 과잉 차단 위험
- 법 집행의 민영화: 기업에 의한 사적 검열

의의와 개선 과제

- 의의
 - 국내 소재 여부 관계 없이, 소셜미디어 기업의 책임 제도화
 - 소셜미디어 내 처리 절차의 투명성 증진
- 개선 과제
 - 부당하게 삭제, 차단된 콘텐츠에 대한 이의제기 절차 강화 / 콘텐츠 작성자에 대한 통지
 - 정부, 소셜미디어 제공기업, 시민사회 지속적 협의

프랑스 온라인 증오혐오대응법 (2019.7.9 하원 통과)

- 레티시아 아비아(Laetitia Avia) 의원 발의

독일 NetzDG Law을 모델로, 커뮤니케이션 서비스 제공자에 아래 같은 의무 부과

- 프랑스 법률에 위배되는, 인종, 종교, 민족, 성별, 성적지향 또는 장애를 이유로 해 명백히 증오를 선동하거나 모욕하는 내용의 콘텐츠 삭제
- 불법 콘텐츠 신고 내부 절차와 외부 관련 절차에 대한 정보 제공
- 불법 콘텐츠 신고 간소화
- 국내 송달 대리인 임명
- 과태료: 최고 125만유로

혐오표현에 대한 대응

- 핵심: 사회적 약자·소수자에 대한 차별과 사회적 배제 조장 방지
평등과 다원주의에 바탕을 둔 민주적 가치 옹호
- 주요 과제
 - 평등과 다원주의적 민주적 가치 증진을 기본 가치로 명확히 하여야 (정부나 정치인 보호 목적 아님)
 - 혐오표현 피해 방지와 보호: 국가의 의무 확립
 - 한국사회에서의 혐오표현, 세계적 현상으로서의 혐오표현: 사회적 배경, 미디어 환경 변화 모두 검토해야
 - 법적 개념 확립 필요
 - 종합적 대응 틀 필요: 교육, 홍보, 행정적 규제(차별금지법, 미디어 관련 법), 민사적 규제, 형사적 규제
 - 혐오표현 유포·확산 경로에 대한 연구, 미디어 기업의 인권 존중 책임 제고 방안 검토: 투명성 증진 첫 단추

영국

Online Harms White Paper

2019년 4월 디지털·문화·미디어·스포츠부 장관, 내무부 장관 작성, 의회 제출
소셜 미디어 기업, 소셜네트워크서비스 채팅 기업의
이용자 보호 책임(Duty of Care)에 관한 입법 제안

과도기: Ofcom (커뮤니케이션청)

폭력이나 증오 유발 콘텐츠, 아동청소년 유해 콘텐츠 등 관련
동영상 공유 플랫폼(Facebook, YouTube, Instagram..) 규제, 과태료 부과 가능
EU 「시청각 미디어 서비스 지침」(2018년 개정) 이행 차원이기도 함

혐오표현에 대한 대응: 주요 질문들

- 혐오표현 누구를 향하는가?
- 표적이 된 사람들에게 어떤 영향을 미치는가?
- 일반 대중에 어떤 영향을 미치는가?
- 표적이 된 사람들, 공격 의사표현의 기회와 수단을 충분히 갖고 있는가?
- 혐오표현 발화자, 어떤 사회적 위치에 있는가?
- 혐오표현 피해자들, 무엇을 필요로 하는가? 어떤 구제가 요청되는가?
- 공직자의 책임?
- 언론의 책임, 소셜미디어 기업의 책임?

MOJ the 5th International Human Rights Symposium (August 28, 2019)
"How to Respond to the Spread of Hate Speech? – Institutional Countermeasures
Learning from International Cases"

International human rights standards, court decisions and legislation cases about hate speech and their implications

Lee Joo-Young
SNU Human Rights Center

Hate Speech

Against the socially vulnerable / the minority

- Incitement to hatred
- Public slander and contempt
- Expressions in the extreme forms of prejudice and bias

Encompassing expressions with various characteristics and levels of harms

- Hate speech laws in other countries: Tend to expand the range of regulations on hate speech based on racism to sexual orientation, sexual identity, gender, disability, and others
- Ex. Definition of hate speech under the *Broadcasting Act* of OfCom: All forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation

Content

- Hate speech
- International human rights standards, court decisions and responses related to hate speech
 - the United Nations
 - The Convention on the Prevention and Punishment of the Crime of Genocide (1948)
 - The International Convention on the Elimination of All Forms of Racial Discrimination (1965) the Rome Statute of the International Criminal Court(1998)
 - The International Covenant on Civil and Political Rights (1966)
 - Prohibition of discrimination, equality, protection from the incitement to discrimination
 - Europe
 - Council of Europe
 - The European Union
 - Decisions of the European Court of Human Rights (a judicial body of Council of Europe)
- Legislations in other countries
 - Germany
 - Canada
- Main issue: Response to online hate speech
- Response to hate speech, basic direction and challenges

Hate Speech, why does it need to be responded?

- Infringe human rights or important public value

: Human dignity, prohibition of discrimination and equality, equal participation in public life, freedom of expression, freedom of association, etc.

- Harms against the targeted people

: psychological damage, damage on human dignity, threats to safety, restriction of social participation, discrimination, etc.

Basic factors to be considered in response to hate speech

- Characteristics and seriousness of harm
 - What kinds of response?
 - Criminal punishment
 - Civil sanction/remedy
 - Administrative sanction/remedy
 - Education, promotion, empowerment
 - Voluntary regulation
- Responses vary by harm
- Comprehensive framework is needed to respond to hate speech

Relevant international human rights standards: Prohibition of incitement to discrimination and hatred

Article 20 (2) of the *International Covenant on Civil and Political Rights* (ICCPR, 1966)

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

Relevant international human rights standards: Prohibition of incitement to genocide

Article 3 (c) of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948)

Article 25 (3) E of the *Rome Statute of the International Criminal Court* (1998)

Acts of direct and public incitement to genocide: define as a crime and inflict punishment

→ Korea enacted the *Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court* (2011)

Relevant international human rights standards: Prohibition of justifying or promoting racial discrimination

Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination*

Propaganda based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin,
attempt to justify or promote racial hatred and discrimination
Regulate them as a crime and inflict punishment

General Recommendation 35 (Combating racist hate speech)

- Require to enact the law prohibiting racial discrimination (para.5)
- On the qualification of dissemination and incitement as offences punishable by law, the content and form of speech, the economic, social and political climate, the position or status of the speaker, the reach of the speech, and the objectives of the speech should be taken into account (para.15)
- To address the fundamental factors of discrimination and hatred, educational, promotional and cultural approaches are needed (paras.30-44)

Relevant international human rights standards: Protection from discrimination

Article 7 of the *Universal Declaration of Human Rights* (1948)

Article 2 (2) of the *International Covenant on Economic, Social and Cultural Rights* (1966)

Articles 2 (1) and 26 of the *International Covenant on Civil and Political Rights* (1966)

Guarantee non-discrimination and equality

Equal and effective protection from discrimination and incitement to discrimination

→ State's duty

Recommendations by the Ministerial Meeting of the Council of Europe

• Recommendation No. R(97) 20 on "Hate Speech" (1997)

- Public officials: Special responsibility not to use hate speech
- Formulate comprehensive laws and regulations to respond to hate speech: criminal, civil, administrative measures
- Emphasize the principle of proportionality in the limit of free speech
- Emphasize measures to address the social, economic, political, cultural and other root causes of hate speech

• Recommendation No. R(97) 21 on the media and the promotion of a culture of tolerance (1997)

- Emphasized the positive role of media to improve diversity and tolerance
- Need the code of conduct prohibiting discrimination and negative stereotypes

Relevant Council of Europe Treaty

Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, 2003

Requires state parties to introduce a criminal regulation and inflict punishment against

Dissemination of racist and xenophobic material through computer systems (Article 3)

Racist and xenophobic motivated insult (Article 5)

Denial, gross minimisation, approval or justification of genocide or crimes against humanity (Article 6), etc.

Relevant EU Standards (1)

Council Framework Decision on "Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law" (2008)

Public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin

Make it punishable as criminal offences in each State Party and promote the inter-court cooperation

Relevant EU Standards (2)

Code of Conduct on Countering Illegal Hate Speech Online (2016)

Grounded norms: *Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law* (2008)

2016 Facebook, Microsoft, Twitter, Youtube

2018 Instagram, Google+, Snapchat, Dailymotion

2019 Jeuxvideo.com

Put in place processes to review notifications regarding illegal hate speech under the Community Guidelines

→ Review the reported content within 24 hours, remove or disable access to illegal hate speech

European Court for Human Rights : Free Speech

Basic attitude to freedom of expression

“Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society” In other words, “form”, “condition”, “restriction” or “punishment” imposed in this sector should be proportionate to just purpose to be sought.

Handyside v. the United Kingdom, Application no. 5493/72 (ECHR) 7 December 1976.

Relevant EU Standards (3)

EU Audiovisual Media Service Directive, amended in Oct 2018

Relevant norms: *Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law* (2008)

- Regulate the content of incitement to violence or hatred directed against a group of persons or a member through audiovisual media services such as television broadcasting, VOD services, and video-sharing platform services
- What was amended in 2018: Obligation to introduce the regulation on video-sharing platform services
Member states shall institutionalize “proper measure” to protect general public from the content of incitement to violence and hatred by Sep 2020 (Article 28b (1).(b))

European Court for Human Rights: General Approach to Hate Speech

- There is no specified clause against hate speech under the European Convention of Human Rights
-
- The Court reviews whether the regulation on hate speech is justifiable as a restriction on freedom of expression (Article 10 (2) of the European Convention of Human Rights)
 1. Any restriction shall be prescribed by law. The law shall specify the acts with clear terms, so that citizens may regulate their own acts
 2. Any restriction shall pursue legitimate aims recognized by the clauses such as protecting others’ dignity or rights
 3. Any restriction shall be necessary in a democratic society in respect to pursuing legitimate aims. In order to review the existence of pressing social need, the content and context of the expression, whether it is a proper mean to seek a justifiable purpose, or whether the rights or public interests being protected is bigger than freedom of speech being restricted

Zana v. Turkey, Application No. 18954/91, (ECHR) 25 November 1997, para. 51.



European Court for Human Rights: Clause Prohibiting Abuse of Rights

Grounded under Article 17 of the European Convention of Human Rights, decisions that excluded hate speech from the range of freedom of expression and dismissed the cases

Glimmerveen and Haagenbeek v. the Netherlands, Applications no. 8348/78 and 8046/78, ECHR, 11 October 1979

- a president of an extreme right-wing political party who drafted and possessed leaflets saying “remove all non-white people from the territory” which the court found to be inciting to racial discrimination was convicted by the the national Court to a two-week prison term

Norwood v. the United Kingdom, Application No. 23131/03, ECHR, 16 November 2004

- a member of an extreme right-wing political party displayed a large poster depicting anti-Islamism. the member faced a fine in violation of the prohibition of displaying a threatening, offensive or insulting message with hostility towards a racial or religious group

Pavel Ivanov v. Russia, Application No. 35222/04, ECHR, 20 February 2007

- an editor of a newspaper who drafted and published anti-Semitic articles was convicted of public incitement to ethnic, racial and religious hatred by the national court

Decisions that applied Article 17 of the Convention: In the case of Nazism or Nazi-based acts
But the applications of Article 17 do not seem consistent

European Court for Human Rights: Decision of Violation of Freedom of Expression

Jersild v. Denmark, Application, Application no. 15890/89, ECHR(Grand Chamber), 23 September 1994

- If there is a purpose to display certain information or circumstances, the person shall not be punished only for the reason that the expression includes a part of incitement to hatred; This established the standard of considering the intent in the overall context

Erbakan v. Turkey, Application no. 59405/00, ECHR, 6 July 2006

- The public speech in question was not proved to have “imminent danger” or probability to cause hostility between religions

Otegi Mondragon v. Spain, Application no. 2034/07, ECHR, 15 March 2011

- A spokesperson of a left-wing political party of Basque used exaggerated and strong words to Spanish King, which was within the acceptable range in political controversy. As a symbol of a state, the King cannot shield himself from all criticisms. The content was about an institutional responsibility as the head of a state. It cannot be considered to infringe on the “innermost core of individual dignity”

European Court for Human Rights: Decision of Justifiable Restriction on Freedom of Expression

Vejdeland and Others v Sweden, Application no. 1813/07, ECHR, 9 February 2012

- Distribution of leaflets expressing contempt of homosexuals
- Summary of description: Serious and prejudicial allegations. discrimination based on sexual orientation is a problem as serious as discrimination based on ethnicity, origin, race, and color. It was also considered that the target of the leaflets were students. the characteristics and degree of the punishment are not excessive

Feret v. Belgium, Application no. 15615/07, ECHR, 16 July 2009

- During the election period, the chairman/representative of Front National, a Belgium political party, described the immigrants as criminals and a group abusing welfare benefits and distributed racist leaflets saying “Stand up to the Islamization in Belgium”, “Stop the sham integration policies” and “send non-European job seekers to home”
- Summary of description: It can arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred.

Legislations in Other Countries: Germany

• Section 130 of the *Criminal Code*

Acts which incite hatred against segments of the population or a national, racial or religious group, or one characterised by its ethnic customs, or assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group shall be punished

• Section 185, 187 of the *Criminal Code* (Insult, Intentional Defamation)

Recognizes crimes of group insult, group defamation

• Law to implement the European Directive on the realization the principle of equal treatment (*General Act on Equal Treatment*) 』

Specify verbal harassment and an instruction to discriminate as an act of discrimination

• Network Enforcement Act (NetzDG Act, enacted in Jan 2018)

Companies providing social media platforms are obliged to take measures of removing or disable access to illegal online hate speech

Violation of the obligation: Fine of up to EUR 50 million, Transparency requirements- reports detailing its content moderation practices



Legislations in Other Countries: Canada

- Article 318, 319 of the *Criminal Code*
Acts that publicly incite hatred and deliberately promotes hatred against an identifiable group distinguished by color, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression
- The *Human Rights Act* in the Provinces of Saskatchewan, British Columbia and Alberta
Prohibits the publication, distribution or broadcastiung of the content that may expose a person or a group to hatred based on the grounds for prohibition of discrimination
Purpose: not to punish the speaker, but to prevent discrimination and protect victims
Means: cease and desist from discrimination, prevent recurrence and pay damages
- The *Federal Human Rights Act*, the *Human Rights Act* in the Provinces of Saskatchewan, British Columbia, Ontario, Alberta and Quebec
Prohibits publication, distribution and display of the content showing its intent of discrimination
- The *Federal Human Rights Act*
Verbal harassment including the acts of verbally humiliating or offending others based on the grounds for prohibition of discrimination or the acts of threatening

Main Issue: Online Hate Speech

“They are morally bankrupt pathological liars who enable genocide (Myanmar), facilitate foreign undermining of democratic institutions.”

“[They] allow the live streaming of suicides, rapes, and murders, continue to host and publish the mosque attack video, allow advertisers to target ‘Jew haters’ and other hateful market segments, and refuse to accept any responsibility for any content or harm.”

New Zealand’s privacy commissioner, John Edward (8 April 2019)

Who Are They?

Facebook Fueled Anti-Refugee Attacks in Germany, New Research Suggests

The New York Times, Aug.21 2018

Fanning the Flames of Hate: Social Media and Hate Crime

[Karsten Müller](#), [Carlo Schwarz](#)

Published 2018

“This paper investigates the link between social media and hate crime using Facebook data. We study the case of Germany, where the recently emerged right-wing party Alternative fur Deutschland (AfD) has developed a major social media presence. We show that right-wing anti-refugee sentiment on Facebook predicts violent crimes against refugees in otherwise similar municipalities with higher social media usage. To further establish causality, we exploit exogenous variation in major internet and Facebook outages, which fully undo the correlation between social media and hate crime. We further find that the effect decreases with distracting news events; increases with user network interactions; and does not hold for posts unrelated to refugees. Our results suggest that social media can act as a propagation mechanism between online hate speech and real-life violent crime.”

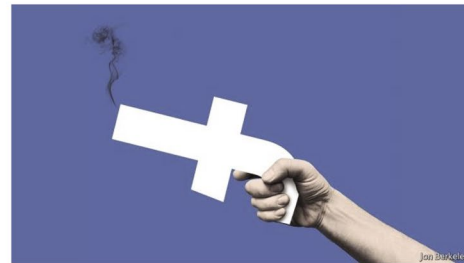
Online Hate Speech: Characteristics and Challenges

- High possibility of continuing and expansive damage
- Rather than common public sphere, numerous small public spheres
- High cohesion and exclusiveness within a community and little communication between communities strengthen faction
- Difficult to address biases through counter-speeches and to improve diversity

Social Media and Human Rights, Democracy



“Social Media made the Arab Spring”.
2010-2012



“Do social media threaten democracy?
Facebook, Google and Twitter were supposed to
save politics as good information drove out
prejudice and falsehood. Something has gone
very wrong” The Economist, Nov 4th 2017

EU Code of Conduct on Countering Illegal Hate Speech Online (2016)

- Member States of the EU: Regulating public incitement to hatred under the *Framework Decision to Combat Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law* (2008)
- Need to immediately respond to the report of illegal hate speech online
 - Clearly prohibits promotion and incitement to violence and hatred in the internal rules or community guidelines of online platform and social media platform companies
 - “Valid” request to remove → Review under the rules and guidelines → Review the majority of valid notifications for removal of illegal hate speech in less than 24 hours → Remove or disable access to the content based on the review result
 - Offer information on the rules and community guidelines and improve the awareness
 - Strengthen the cooperation with civil societies and expert groups

In respect to prevention and remedy of damage from online hate
speech,

What is the duty of the State?

What responsibility do online platform companies bear?

EU Audiovisual Media Service Directive (Amended in Oct, 2018)

Relevant norms: *Framework Decision to Combat Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*

- Amendment in 2018: Obligation to introduce regulations on services of video sharing platforms
Member States shall ensure that video sharing platform providers take “appropriate measures”
to protect general public from content promoting violence and hatred by September 2020
(Article 28b (1) (b))

Germany

- An increase in racism and incitement to hatred via social media
- Task force of network operators and civic groups was launched in 2015
- Voluntary regulation of social media platform companies (2015-)

The rates of illegal content deleted within 24 hours from reporting (Governmental research in early 2017)

YouTube: 90%, Facebook: 39%, Twitter 1%

(Source: Heidi Tworek and Paddy Leerssen, "An Analysis of Germany's NetzDG Law", April 2019)

Transparency Report of Social Media under NetzDG Law(June 2018)

Platform	# of contents reported	# and rates of contents deleted	Deleted within 24 hours
Facebook	1,704	362 (21.2%)	76.4%
Google (YouTube)	241,827	58,297 (27.1%)	93.0%
Twitter	264,818	28,645 (10.8%)	93.8%
Change.org	1,257	332 (26.4%)	92.7%

Source: Echikson & Knodt 2018

- Accessibility to the reporting procedure and convenience of use
- The role of community guidelines or rules of social media providers
- Unlawfulness by content (e.g.: Google): Hate speech and political extremism (75,892), defamation or insult (45,190), Sexual content (27,308)

Network Enforcement Act (NetzDG Law) (enacted on June 30, 2017, enforced on January 1, 2018)

- Social network with more than 2 million domestic subscribers (Section 1)
- Unlawful content (Section 1 (3)): incitement to hatred, distribution of child pornography, infringement on the right to character and privacy via photo-shooting, etc. described in the Criminal Code
- Reports on the handling of complaints shall be produced half-yearly and disclosed (Section 2)
- The procedure for complaints (Section 3 (2)): Complaint on unlawful content → review whether the content is unlawful and subject to removal or whether access to the content must be blocked
- Proceeding with clearly unlawful content: 24 hours
- Content of which unlawfulness is not clear: 1 week (request judgment to experts or self-regulatory institution certified by law)
- give notification and provide the reasons for the decision to the author of the complaint and the user, and save the records (Section 3 (2))
- Person authorized to receive service in Germany (Section 5)
- Penalty: up to EUR 50 million for the violation of the obligation to report and the procedure (based on a court decision)

CRITICISM

- Danger to excessively restrict content
- Privatization of law enforcement: Private censorship by companies

MEANING AND CHALLENGES

- Meaning
 - Institutionalize the obligation of social media companies regardless of the place of the companies
 - Improve transparency of the proceedings on social media
- Challenges
 - Strengthen the procedure of complaints on content unfairly deleted or restricted / notifications to the content writer
 - Continuous cooperation with the Government, social media operators and civil societies

Law to Fight Online Hate Speech in France (French Chamber of Deputies passed the bill on July 9, 2019)

- Proposed by Representative Laetitia Avia

Benchmarked the NetzDG Law of Germany, imposing the following obligations to communication services providers

- Delete content that clearly incites hatred or insults for the reason of race, religion, ethnicity, gender, sexual orientation or disability in violation of the French laws
- Offer the information on the internal procedure to report illegal content and related external procedures
- Simplify the reporting procedure on illegal content
- Appoint a person authorized to receive service
- Penalty: up to EUR 1.25 million

Response to Hate Speech

- Core: to prevent discrimination and social exclusion experienced by the socially marginalized and the minority to advocate democratic value based on equality and pluralism
- Main challenges
 - Clearly anchored in the basic value of equality and pluralistic democratic values (not intended to protect the Government or politicians)
 - Establish the state's duty to prevention and protect individuals from harms of hate speech:
 - Hate speech at home and abroad: shall review a social background and the change in the media environment
 - Need to establish its legal concept
 - Need to create a comprehensive framework to combat hate speech: educational, promotional measures, administrative regulations (anti-discrimination law, and media laws), civil regulations, criminal regulations
 - Research on the path of distribution and spread of hate speech, and review on the measure to improve the responsibility of media companies to respect human rights: improve transparency is the first step.

U.K.

Online Harms White Paper

Secretary of State for Digital, Culture, Media and Sport and Secretary of State drafted and submitted in April 2019

Proposed legislation on duty of care of social media companies and chat-based social network service companies

Transition period: Ofcom (Office of Communications)

Given a new power to regulate video sharing platforms (Facebook, YouTube, Instagram..) concerning content inciting violence and hatred or harmful to children and adolescents and impose a fine

Part of implementation process of the EU *Audiovisual Media Service Directive* (Amended in 2018)

Response to Hate Speech: Main Questions

- Who is the target of hate speech?
- What effects does hate speech have on the targeted people?
- What effects does hate speech have on the public?
- Do the targeted people have sufficient means and opportunities of public expression?
- Which social status are speakers of hate speech in?
- What do the victims of hate speech need and what kind of remedy is required?
- What are public officials responsible for?
- What are media and social media companies responsible for?

제5회 국제인권심포지엄
The 5th International Human Rights Symposium

혐오표현의 확산, 어떻게 대응할 것인가? - 해외 사례로 보는 제도적 대안
How to Respond to the Spread of Hate Speech?
- Institutional Countermeasures Learning from International Cases

Session 2

혐오표현과 차별, 그 제도적 대안은
Hate Speech and Discrimination:
What are the Policy Alternatives?

토론자 | Discussant

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