Freedom of Speech and its Limits in Law
ECHR and hate speech part I

Freedom of Speech is Not a Licence to abuse. It is a responsibility.
THE EUROPEAN COURT OF HUMAN RIGHTS

5 May 1949 - Creation of the Council of Europe
4 November 1950 - Adoption of the Convention
3 September 1953 - Entry into force of the Convention
21 January 1959 - First members of the Court elected by the Consultative Assembly of the Council of Europe

23-28 February 1959 - The Court’s first session
18 September 1959 - The Court adopts its Rules of Court

14 November 1960 - The Court delivers its first judgment:
Lawless v. Ireland

1 November 1998 - Entry into force of Protocol No. 11 to the Convention, instituting “the new Court”
18 September 2008 - The Court delivers its 10,000th judgment
1 June 2010 - Entry into force of the Protocol No. 14, whose aim is to guarantee the long-term efficiency of the Court
THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights is an international court set up in 1959.

It rules on individual or State applications alleging **violations of the civil and political rights** set out in the European Convention on Human Rights.
The applicant may lodge an application with the Court if he considers that he has personally and directly been the victim of a violation of the rights and guarantees set out in the Convention or its Protocols.

The alleged violation must have been committed by one of the States bound by the Convention.
THE EUROPEAN COURT OF HUMAN RIGHTS

The following rights, in particular, are protected:

- the right to life;
- the right to a fair hearing in civil and criminal matters;
- the right to respect for private and family life;
THE EUROPEAN COURT OF HUMAN RIGHTS

- freedom of expression;
- freedom of thought, conscience and religion;
- the right to an effective remedy;
- the right to the peaceful enjoyment of possessions; and
- the right to vote and to stand for election.
As an potential applicant:

- You can be a **private individual or a legal entity** such as a company or association.

- You must have **directly and personally been the victim** of the violation you are alleging.

- You **cannot make a general complaint** about a law or a measure, for example because it seems unfair; nor can you complain **on behalf of other people** (unless they are clearly identified and you are their official representative).
As an potential applicant

- You must have **used all the remedies** in the State concerned that could provide redress for the situation you are complaining about (usually this will mean an **application to the appropriate court**, followed by an **appeal**, where applicable, and **even a further appeal** to a higher court such as **the supreme court or constitutional court**, if there is one).
As an potential applicant

- It is not enough merely to make use of these remedies. In so doing, you must also have **actually raised your complaints** (the **substance of the Convention violations** you are alleging).

- You have **only six months from the date of the final decision** at domestic level (generally speaking, the judgment of the highest court) to lodge an application.

- After that period your application cannot be accepted by the Court.
The applicant can lodge an application against one or more of the States bound by the Convention which, has/have (through one or more acts or omissions directly affecting you) violated the European Convention on Human Rights.
Since 1998 it has sat as a **full-time court** and individuals can apply to it directly.

In almost fifty years the Court has delivered **more than 10,000 judgments**.
THE EUROPEAN COURT OF HUMAN RIGHTS

These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas.

The Court’s case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe.
THE EUROPEAN COURT OF HUMAN RIGHTS

The Court is based in Strasbourg, in the Human Rights Building designed by the British architect Lord Richard Rogers in 1994 – a building whose image is known worldwide.
THE EUROPEAN COURT OF HUMAN RIGHTS

From here, the Court monitors respect for the human rights of 800 million Europeans in the 47 Council of Europe member States that have ratified the Convention.
Composition of the Court

- The judges are elected by the Parliamentary Assembly of the Council of Europe from lists of three candidates proposed by each State.
- They are elected for a non-renewable term of nine years.
Composition of the Court

- Although judges are elected in respect of a State, they hear cases as individuals and do not represent that State.

- They are totally independent and cannot engage in any activity that would be incompatible with their duty of independence and impartiality.
Composition of the Court

- A **Section** is an administrative entity and a Chamber is a judicial formation of the Court within a given Section.

- **The Court has 5 Sections in which Chambers are formed.**

- Each Section has a President, a Vice-President and a number of other judges.
Section I

President
I. Berro

Vice-President
E. Steiner
K. Hajiyev
M. Lazarova Trajkovska
J. Laffranque
P. Pinto de Albuquerque
L.-A. Sicilianos
E. Mose
K. Turkovic
D. Dedov

Section Registrar
S. Nielsen

Deputy Section Registrar
A. Wampach

Section II

President
I. Karakaș

Vice-President
A. Sajó
N. Vucinich
H. Keller
P. Lemmens
E. Küris
R. Spano
J.F. Kjolbro

Section Registrar
S. Naismith

Deputy Section Registrar
A. Campos

Section III

President
J. Casadevall

Vice-President
L. Lopez Guerra
J. Sikuta
K. Pardalos
J. Silvis
V. Grtco
I.A. Motoc
B. Lubarda

Section Registrar
S. Phillips

Deputy Section Registrar
M. Tsirli

Section IV

President
G. Raimondi

Vice-President
P. Hirvela
G. Nicolaou
L. Bianku
N. Tsotsoria
P. Mahoney
K. Wojtyczek
F. Vehabovic
Y. Grozov

Section Registrar
F. Elens-Passos

Deputy Section Registrar
F. Araci

Section V

President
M. Viliger

Vice-President
A. Nußberger
D. Spielmann
B. Zupančič
G. Yudkivska
V. De Gaetano
A. Potocki
H. Jäderblom
A. Pejchal

Section Registrar
C. Westerdiek

Deputy Section Registrar
M. Blasko

Filtering section

List of single judges
Composition of the Grand Chamber

- The Grand Chamber is made up of 17 judges:
  - the Court’s President and Vice-Presidents,
  - the Section Presidents and
  - the national judge, together with other judges selected by drawing of lots.
“Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.
Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], 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 the State or any sector of the population.
Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.” (Handyside v. the United Kingdom judgment of 7 December 1976, § 49).
“Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society.
That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.” (Erbakan v. Turkey judgment of 6 July 2006, § 56).
When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches which are provided for by the European Convention on Human Rights:
1. the approach of **exclusion from the protection** of the Convention, provided for by Article 17 (prohibition of abuse of rights), where the comments in question amount to hate speech and negate the fundamental values of the Convention; (like Holocaust Denial).

- This provision is aimed at preventing persons from inferring from the Convention any right to engage in **activities** or perform acts **aimed at the destruction of any of the rights and freedoms** set forth in the Convention.
2. the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention).

- Restrictions deemed necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.
Exclusion from the protection of the Convention

- “There is no doubt that any remark directed against the Convention’s underlying values would be removed from the protection of Article 10 [freedom of expression] by Article 17 [prohibition of abuse of rights] (…)” (Seurot v. France, decision on the admissibility of 18 May 2004)
The end of part one
Thank you