

# Combating Antisemitic Incitement through the European Courts and Online

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European law offers increasing protection for Jews and other minorities through judgments by the European Court of Human Rights (ECtHR), and successful case law from European national courts. This improvement in legal protection arises from recent and parallel developments that are not directly related, but are slowly changing perceptions about hate speech, and its links to racist violence, radicalization and extremism, while nevertheless recognizing the importance of free speech.

While there is no universally accepted definition of "hate speech," the ECtHR has established certain guidelines making it possible to characterize it in order to exclude it from the protection afforded to freedom of expression. At the political level, the Office for Democratic Institutions and Human Rights (ODIHR) at the Organization for Security and Cooperation in Europe has also published a definition agreed upon by its participating states and their criminal justice agencies, which participating states are urged to use.

Accordingly, ODIHR has noted that hate speech, however discriminatory or insulting, would not be a crime without a specific base offense, such as the glorification of Nazi ideology or Holocaust denial, which European Union (EU) member states are required to criminalize.<sup>1</sup>

The second development is a consequence of continuing discussion between the major social networks, lawyers, a small group of NGOs and government experts. They have been brought together by shared concerns over the malign power of the Internet. This has led recently to the former agreeing to a set of standards to reduce online harmful content. This is fuelled by the realization that social networks have social as well as financial and technological interests, and demands by European states and international agencies for more effective controls against harmful online content. The over-riding consideration by all participants in these discussions is that self-regulation by the internet industry will be more effective than imposed rules and laws.

## European Agreements

Three European agreements directly and indirectly offer protection to Jewish communities. Two of them are directives that have to be transposed by EU member states

and are attached to a time-scale governing their incorporation into national legislation. States transposing them are also subject to inspection by the European Commission, with the possibility of a referral to the European Court of Justice if a state either fails to transpose the directive or if it fails to transpose it effectively.

Chronologically, the first of the three agreements, the Additional Protocol on the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems to the Council of Europe Convention on Cybercrime (2003) is not enforceable, and only ratifying states are bound by its terms.

The Additional Protocol requires signatory states to adopt criminal laws against: making available racist and xenophobic material through a computer system; threatening persons distinguished by race, color, descent, religion or national or ethnic origin through a computer system; publicly insulting persons as defined above through a computer system; denying, grossly minimizing, approving or justifying genocide or crimes against humanity, including the Holocaust.<sup>2</sup>

All Council of Europe (CoE) member states were expected to ratify the Additional Protocol by January 1, 2014, but the European Commission has since extended the timeframe to allow EU member states to ratify it by the end of 2015.<sup>3</sup>

1. Hate Crime Laws - A Practical Guide, OSCE ODIHR (2009), at 25-26, available at [www.osce.org/odihr/36426?download=true](http://www.osce.org/odihr/36426?download=true) (last visited Sept. 9, 2015).
2. Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through Computer systems, 2003, Council of Europe, available at [conventions.coe.int/Treaty/en/Treaties/Html/189.html](http://conventions.coe.int/Treaty/en/Treaties/Html/189.html), (last visited Sept. 9, 2015).
3. Council conclusions on combating hate crime in the European Union, December 2013, Council of the European Union, available at [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/139949.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139949.pdf) (last visited Sept. 9, 2015).

The second agreement is the European Union Council Framework Decision 2008/913/JHA, on combating certain forms and expressions of racism and xenophobia by means of criminal law. This has enforcement powers from January 1, 2014, and requires EU member states to legislate against: publicly inciting to violence or hatred against a group of persons defined by reference to race, color, religion, descent or national or ethnic origin; publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes; publicly condoning, denying or grossly trivializing the Holocaust.<sup>4</sup>

The third agreement is the Framework Directive on Victims' Rights, which reinforces existing national measures with EU-wide minimum standards on the rights and protection of victims of crime, and which requires that victims of crime are recognized and treated in a respectful, sensitive and professional manner according to their individual needs without discrimination. The preamble to the Directive notes *inter alia* that victims must be encouraged to report crimes in order to break the cycle of repeat victimization, and that a respectful, sensitive, professional and non-discriminatory response by the authorities will increase victims' confidence in criminal justice systems and reduce the number of unreported crimes. A second introductory note states that the collection of systematic and adequate statistical data is an essential component of effective policy making and that states are required to publish relevant statistics on crime victims. While these provisions do not specifically apply to hate crime, another introductory note lists protected characteristics including race, religion, ethnicity etc. The Directive entered into force on November 15, 2012 with a deadline for transposition by member states of November 16, 2015.<sup>5</sup>

### General Principles Underlying European Law on Incitement

The authors of the European Convention on Human Rights (the Convention) sought to establish an institutional framework based on democratic values in order to overcome extremism, following the Second World War, although critics, including the UK government, are now pressing for the Convention to be updated in the light of recent history.<sup>6</sup>

The ECtHR was established in 1959 to consider cases initiated by organizations, states and individuals against any state that has signed the Convention. Parties must comply with its rulings although the ECtHR has no enforcement power, unlike the Luxembourg-based European Court of Justice. Over the years the ECtHR has identified a number of forms of expression that were considered offensive and contrary to the Convention including racism, xenophobia, antisemitism, aggressive

nationalism and discrimination against minorities and immigrants. However, it has been careful to make a distinction in its findings between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of individuals (including journalists and politicians) to express their views freely and to "offend, shock or disturb" others.<sup>7</sup>

While there is no universally accepted definition of the expression "hate speech," the ECtHR case-law has established certain parameters making it possible to characterize "hate speech" in order to exclude it from the protection afforded to freedom of expression (Article 10 of the Convention) or freedom of assembly and association (Article 11).<sup>8</sup>

The ECtHR therefore excludes hate speech from protection by means of two approaches:

(a) by applying Article 17 of the Convention (prohibition of abuse of rights) where the comments in question amount to hate speech and negate the fundamental values of the Convention, or

(b) by applying the limitations provided for in the second paragraph of Article 10 and Article 11 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.<sup>9</sup>

4. Council Framework Decision 2008/913/JHA, Nov. 2008, O.J. (L.328/55), available at [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF) (last visited Sept. 9, 2015).
5. Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2012 O.J. (L.315/57), available at [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF) (last visited Sept. 10, 2015).
6. The Case for Change, p. 3, Protecting Human Rights in the UK - the Conservatives' proposals for changing Britain's human rights laws, The Conservative Party, 2015, available at [https://www.conservatives.com/~media/files/downloadable%20Files/human\\_rights.pdf](https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf)
7. Hate speech, ECtHR, June 2015, available at [www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf) (last visited Sep. 10, 2015).
8. European Convention on Human Rights, art. 10, para. 2, Nov. 1950, noting that the exercise of these freedoms (of expression) may be subject to restriction in the interests of national security, available at [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (last visited Sep.10.2015)
9. *Ibid.*, art. 11, para. 2, noting that restrictions on freedom of assembly may be necessary for the prevention of crime or disorder.

### European Case Law on Holocaust Denial

In three separate judgments, the ECtHR has ruled that Holocaust denial is a breach of the Convention, thereby establishing the fact that, in certain cases, Holocaust denial constitutes incitement to hatred.

In the first case, the French Holocaust denier Roger Garaudy sought to overturn his conviction for denying the Holocaust that was upheld by the Court of Cassation. The ECtHR ruled that his right to free speech enshrined in Article 10 of the Convention did not outweigh his duty not to dispute the existence of crimes against humanity, contained in Article 17. They further stated that the purpose of Holocaust deniers was to rehabilitate the National Socialist regime, to accuse the victims of the Holocaust of falsifying history, and therefore constituted one of the most severe forms of racial defamation, and of incitement to hatred.<sup>10</sup>

In *Honsik v. Austria*, the European Commission on Human Rights, sitting in private as a court, dismissed the applicant's complaint under Article 10 of the Convention that his right to freedom of expression had been violated when he had published material denying the facts of the Holocaust in his periodical, *Halt*, in September and November 1986, and that they constituted National Socialist activities within the meaning of Section 3(g) of the Austrian National Socialist Prohibition Act.<sup>11</sup>

In *Marais v. France*, Pierre Marais had complained that the French courts had convicted and sentenced him for defending war crimes, publishing racial insults, denying crimes against humanity and publishing racially defamatory statements for an article about the Natzweiler-Struthof death camp in the journal *Revision*. In June 1996, the Court dismissed his claim that the French court was biased against him and had no right to rely on the judgment given by the Nuremberg International Military Tribunal.<sup>12</sup>

Although it does not deal with antisemitism, the *Delfi AS v. Estonia* case lays down an important principle, though one that some have found contentious, namely that a publisher is liable for the material on his platform if it contains illegal content. This has important implications for the right of Jews, among others, not to be defamed or not to be the focus of incitement to hatred.<sup>13</sup>

The case concerned the liability of an Internet news portal for offensive comments that were posted by readers below one of its online news articles. In particular, the domestic courts had rejected the portal's argument that under the EU Directive 2000/31/EC on Electronic Commerce, its role as an Internet society service provider or storage host was merely technical, passive or neutral, finding that the portal exercised control over the publication of comments. Before the Court, the applicant

company complained that being held liable for comments of its readers breached its right to freedom of expression.

The ECtHR upheld the judgment of the Estonian courts regarding the liability of an Internet news portal for offensive comments posted by readers in 2013. It rejected the argument that an ISP's role was merely technical, passive or neutral, finding that it must exercise control over the publication of comments. The judgment was upheld two years later by the higher Grand Chamber, to which the earlier judgment was referred for final adjudication.

The case therefore concerned the duties and responsibilities of Internet news portals that provide on a commercial basis a platform for user-generated comments on previously published content and some users, whether identified or anonymous, engaged in clearly unlawful hate speech that infringed the rights of others. The *Delfi* case did not concern other fora on the Internet where third party comments could be disseminated, for example an Internet discussion forum, a bulletin board or a social media platform. The Grand Chamber held by a majority decision that there had been no violation of the applicant's freedom of expression and therefore no breach of Article 10 of the Convention.<sup>14</sup>

### Some Cases from the European Courts

On July 11, 2008, at Leeds Crown Court in the UK, Stephen Whittle was convicted of four counts of publishing racially inflammatory material and Simon Sheppard was convicted of nine counts of publishing racially

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10. *Garaudy v. France*, 65831/01, ECtHR, press release (2003).
  11. *Honsik v. Austria*, Eur. Comm'n H. R. First Chamber (1997), ECtHR, available at [hudoc.echr.coe.int/eng?i=001-46008#{"itemid":\["001-46008"\]}](http://hudoc.echr.coe.int/eng?i=001-46008#{) (last visited Sept. 9, 2015).
  12. *Marais v. France*, Application No. 31159/96, Decision of June 24, 1996 on the admissibility of the application, ECtHR, available at [hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88275#{"itemid":\["001-88275"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88275#{) (last visited Sept. 9, 2015).
  13. *Delfi AS v. Estonia*, ECtHR, Application No. 64569/09, Decision of October 10, 2013, available at [http://hudoc.echr.coe.int/eng?i=001-126635#{"itemid":\["001-126635"\]}](http://hudoc.echr.coe.int/eng?i=001-126635#{).
  14. Press Release, the Registrar of the Court, ECtHR. Commercially run Internet news portal was liable for the offensive online comments of its readers (June 16, 2015), available at <http://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-5110487-6300958&filename=003-5110487-6300958.pdf> (last visited September 9, 2015).

inflammatory material. They fled the UK to the U.S., where they claimed asylum, but were returned nearly one year later, having failed in their asylum claim. On July 14, 2008, Whittle was convicted of a further count of the same offense, and Sheppard of a further two counts, in their absence. On July 10, 2009, Sheppard was sentenced to four years and ten months imprisonment, and Whittle to two years and four months imprisonment.

The material, which included antisemitic, Holocaust denial, and other criminally racist content, was posted on the heretical.com website, that Sheppard managed, and was hosted in California. The Court held that as the material in question was uploaded in the UK, and that it was available to the public at large, the offense occurred in the UK, and was therefore subject to British jurisdiction and was not extra jurisdictional as the defendants had argued. The convictions were upheld by the Court of Appeal, and the Supreme Court, although Sheppard's sentence was reduced by the former.<sup>15</sup>

On June 12, 2013, the French Court of Appeal rejected Twitter's attempt to shield the identities of those responsible for antisemitic posts made in 2012 with the hashtag #unbonjuif (a good Jew), that contravened French laws on hate speech.

The Union of French Jewish Students (UEJF) and four anti-racism organizations had asked Twitter to reveal the identities of the posters and to make it easy for its users to flag messages that contravene French hate speech laws.

In March 2013, faced with Twitter's reluctance to hand over the names, UEJF filed a criminal complaint against the company. Twitter appealed the initial ruling, which the Court rejected on June 12, 2013, ordering it to pay compensation and costs.<sup>16</sup>

In November 2010, Mohammed Sandia was convicted at Edinburgh's Sheriff's Court in Scotland for posting remarks on the website of *The Scotsman* newspaper in March 2008, which included "Jews are not fit to breathe our air. They must be attacked wherever you see them: throw rocks at their ugly hooked-nosed women and mentally ill children, and light up the REAL ovens."

He pleaded guilty, but sentence was deferred for a year pending reports on his behavior. When he appeared for sentencing in December 2011, he was found guilty and admonished, but no custodial sentence was handed down.<sup>17</sup>

In April 2013, four men from various Italian cities were convicted of inciting race hatred after posting antisemitic and white supremacist messages on the Italian website of the U.S. based neo-Nazi Stormfront website. A Rome court sentenced them for promoting and directing a group whose purpose was the instigation to ethnic, religious and racial discrimination and violence. Additionally, the

Court found the men guilty of "targeting Jews and immigrants, advocating the supremacy of the white race and instigating racism and Holocaust denial."<sup>18</sup>

In June 2013, a court in Feldkirch, Austria, sentenced a neo-Nazi to eighteen months in prison for posting on Facebook pictures of Adolf Hitler, swastikas and other material banned in Austria. The defendant admitted uploading the material but stated that he was not aware that it could be seen by anyone and that he did not intend to glorify Nazism. The Court however pointed out that his computer contained other material that is illegal and that he was active on the skinhead scene.<sup>19</sup>

In July 2013, Manchester-based DM Digital, a Muslim television channel, was fined £85,000 by OFCOM, the UK broadcasting regulator, for broadcasting a program in which Abdul Qadir Jilani, an east London-based preacher, urged Muslims to kill anyone who insulted Islam.<sup>20</sup>

15. *Sheppard & Whittle v. Regina*, EWCA Crim 65 (January 29, 2010), available at [www.bailii.org/ew/cases/EWCA/Crim/2010/65.html](http://www.bailii.org/ew/cases/EWCA/Crim/2010/65.html) (last visited Sept. 10, 2015).
16. Somini Sengupta, *Twitter yields to pressure in hate case in France*, N.Y. TIMES, July 13, 2013, available at [www.nytimes.com/2013/07/13/technology/twitter-yields-to-pressure-in-hate-case-in-france.html](http://www.nytimes.com/2013/07/13/technology/twitter-yields-to-pressure-in-hate-case-in-france.html) (last visited Sept. 9, 2015).
17. Narrative for Court on November 10, 2010, *Procurator Fiscal Edinburgh v. Mohammad Sandia*, ED09013728, document in author's possession. Sandia posted the comments on March 1, 2008 and March 2, 2008, but the Scotsman web-link no longer exists; Mohammed Sandia sentenced for posting Anti-Semitic comments on the Scotsman website, Dec. 9, 2011, SCOTTISH COUNCIL OF JEWISH COMMUNITIES, available at [www.scojec.org/news/2011/11xii\\_sandia.html](http://www.scojec.org/news/2011/11xii_sandia.html) (last visited Sept. 9, 2015).
18. *Four race-crime convictions for neo-Nazi website*, GAZZETTA DEL SUD, April 8, 2013, available at [www.gazzettadelsud.it/news/english/41782/Four-race-crime-convictions-for-neo-Nazi-website.html](http://www.gazzettadelsud.it/news/english/41782/Four-race-crime-convictions-for-neo-Nazi-website.html) (last visited Sept. 9, 2015).
19. *Austrian neo-Nazi gets jail term for Facebook posts*, THE NEW AGE, June 27, 2013, available at [www.thenewage.co.za/99730-1020-53-Austrian\\_neoNazi\\_gets\\_jail\\_term\\_for\\_Facebook\\_posts](http://www.thenewage.co.za/99730-1020-53-Austrian_neoNazi_gets_jail_term_for_Facebook_posts) (last visited Sept. 9, 2015).
20. David Barrett, *Muslim television channel fined after preacher of hate incited murder live on air*, THE TELEGRAPH, July 5, 2013, available at [www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/10162099/Muslim-television-channel-fined-after-preacher-of-hate-incited-murder-live-on-air.html](http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/10162099/Muslim-television-channel-fined-after-preacher-of-hate-incited-murder-live-on-air.html) (last visited Sept. 9, 2015).

In August 2014, John Curchod from Sussex England, posted messages on Twitter, including the following: “The world will exterminate you. As Hitler failed to do in entirety”; “We are waiting - got the shotguns man – ready to shoot Jews”; “Why are Jews so despicable”. The following June, he pleaded guilty to sending messages that were antisemitic and of a grossly offensive, obscene or menacing character. He was fined £1,000 and ordered to pay costs at Hastings Magistrates Court, Sussex.<sup>21</sup>

In February 2015, Mahmudul Choudhury, a married teacher, was fined £464 plus costs at Bromley Magistrates Court, south east London, for posting a picture of Adolf Hitler on his Facebook site with the caption “Yes man, you were right. I could have killed all the Jews, but I left some of them to let you know why I was killing them. Share this picture to tell the truth [sic] a whole world.”<sup>22</sup>

The cases cited above indicate that prosecutions against antisemitic incitement can now take place across the EU and span offenses across the social networks and electronic media. European law has therefore caught up with the use of the Internet and is applying the law to this medium, as it does with material published offline. Moreover, service providers will no longer be able to plead that they merely act as the unknowing vehicles for spreading criminal incitement against Jews, or any other minority, and that they bear no responsibility for what appears on their platforms. As the process of transposing the EU Directives into national legislation, and as the pressure on states to prosecute hate crime and hate speech that crosses a criminal threshold gain momentum, it is likely that the number of cases will increase.

Some states have publicized their determination to prosecute harmful content that crosses the criminal threshold, and the European agreements noted above will underpin their action. In the UK, which has gone further than most states in tackling the problem, a series of warnings and amendments to legislation are facilitating the prosecution of such material. After extensive consultation with the police and civil society experts, The Crown Prosecution Service published *Guidelines on prosecuting cases involving communications sent via social media* in 2013, and the Ministry of Justice published *Complaints about defamatory material posted on websites: Guidance on Section 5 of the Defamation Act 2013 and Regulations* in 2014.<sup>23</sup> In 2012, the Chief Crown Prosecutor issued a public warning *Resolve to use Facebook responsibly this year – or risk jail*.<sup>24</sup> In July 2014, the House of Lords Select Committee on Communications published its review of legislation available to prosecute incitement and concluded that it is generally appropriate for the prosecution of offenses committed using social media, but that some laws might be adjusted, such as investigation

periods extended to twelve months, due to the frequent need to obtain evidence from abroad, and that questions of jurisdiction and access to communications data might be resolved by an international treaty.<sup>25</sup>

### Working with the Social Networks to Reduce Antisemitism

In 2012, the Inter-Parliamentary Coalition for Combating Antisemitism (ICCA), an organization of parliamentarians from around the world, asked the American Anti-Defamation League (ADL) to convene a Working Group on Cyberhate. The request followed the ICCA conference held in Ottawa in 2010, at which parliamentarians *inter alia* called for the establishment of an “International Task Force of Internet specialists comprised of parliamentarians and experts to create common indicators to identify and monitor anti-Semitism and other manifestations of hate online and to develop policy recommendations for governments and international frameworks to address these problems.”

21. *Fine for Antisemitic Twits*, Coordinating Forum for Combating Anti-Semitism, July 10, 2015, available at [antisemitism.org.il/article/98128/fine-antisemitic-twits](http://antisemitism.org.il/article/98128/fine-antisemitic-twits) (last visited Sept. 9, 2015).
22. *Teacher fined for posting pro-Hitler image on Facebook aimed at Jews*, THE TELEGRAPH, Feb. 18, 2015, available at [www.telegraph.co.uk/news/uknews/crime/11419645/Teacher-fined-for-posting-pro-Hitler-image-on-Facebook-aimed-at-Jews.html](http://www.telegraph.co.uk/news/uknews/crime/11419645/Teacher-fined-for-posting-pro-Hitler-image-on-Facebook-aimed-at-Jews.html) (last visited Sept. 9, 2015).
23. *Guidelines on prosecuting cases involving communications sent via social media*, June 2013, CPS, available at [www.cps.gov.uk/legal/a\\_to\\_c/communications\\_sent\\_via\\_social\\_media/](http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/) (last visited Sept. 9, 2015); *Complaints about defamatory material posted on websites: Guidance on Section 5 of the Defamation Act 2013 and Regulations*, January 2014, Ministry of Justice, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/269138/defamation-guidance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269138/defamation-guidance.pdf) (last visited Sept. 9, 2015).
24. *Resolve to use Facebook responsibly this year – or risk jail* says Chief Crown Prosecutor, CPS, January 4, 2012, available at [blog.cps.gov.uk/2012/01/resolve-to-use-facebook-responsibly-this-year-or-risk-jail-says-chief-crown-prosecutor.html](http://blog.cps.gov.uk/2012/01/resolve-to-use-facebook-responsibly-this-year-or-risk-jail-says-chief-crown-prosecutor.html) (last visited Sept. 9, 2015).
25. *Social media and criminal offences*, 1st Rep. of Sess. 2014-15, Select Committee on Communications, House of Lords (UK), July 29, 2015, available at [www.publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/37/37.pdf](http://www.publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/37/37.pdf) (last visited Sept. 9, 2015).

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The Working Group's mandate was to develop recommendations for the most effective responses to antisemitism, and other forms of bigotry, online. Its membership includes representatives from the major social networks and internet industry, civil society, academia and the legal community.

Meeting over the course of two years, the Working Group members have shared information, experiences and knowledge of the developing legal frameworks and court cases described above. Their work culminated in the publication of the Best Practices for Responding to Cyberhate, a set of best practices that both sides agreed to share.

Since then, several of the major social networks have followed up the agreement, by inviting representatives of Jewish organizations, alongside police officers, prosecutors, and representatives of anti-racist NGOs to meetings at their European headquarters to discuss ways to reduce harmful content on their platforms, while respecting the free speech ethos that govern the Internet. An example of this determination to improve their service was Twitter's unveiling of a "Safety Centre" to improve reporting of, and action against, antisemitic messages, developed in conjunction with the Community Security Trust in the UK.

Twitter, Facebook and Google have all responded to invitations to meet NGOs campaigning against cyber hate. Twitter and Facebook, for example, have sent senior representatives to meetings of the International Network against Cyber Hate (INACH). Facebook and Google sent senior representatives to the Israel Ministry of Foreign Affairs Global Forum Against Antisemitism in 2015, to explain their developing strategies. The latter two companies are also funding the Facing Facts project to develop online programs to assist civil society to monitor hate crime to criminal justice standards.

Thus slowly but determinedly, the social networks are participating in a scheme to bridge the trans-Atlantic gap between the American stance which adheres closely to the First Amendment doctrine of free speech, and that of

Europe which holds that free speech is not absolute and that those who incite hatred are to be held accountable to law.

### **Conclusions**

Jews and Jewish communities are therefore afforded protection in law against antisemitic incitement as a consequence of European agreements, directives and cases settled before the ECtHR. The realization by the social networks that their platforms provide a vehicle for antisemitic incitement, as well as all the benefits that the Internet has brought, should also begin to strengthen that protective shield.

The Additional Protocol to the Council of Europe Cybercrime Convention requires that signatory states criminalize incitement to hatred and Holocaust denial; the Council Framework Decision has greater force, and EU Member States are now inspected to ensure that it is properly implemented, while the Framework Directive on Victims' Rights reinforces existing measures, and Member States will again be inspected on its implementation.

The interpretation of the European Convention on Human Rights by the ECtHR criminalizes Holocaust denial, and has ruled that deniers cannot claim the right of free speech, nor can they seek to rehabilitate Nazism or Nazi ideology. However, European states have sometimes been reluctant to use the tools they have been provided with, and it is therefore the task of civil society, and Jewish communities to hold them to their responsibilities. This will become ever more vital as European populations react to economic decline and migration pressures, and turn to far right populism and other forms of extremism that appear to offer short term solutions. ■

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