European Commission against Racism and Intolerance: new General Policy Recommendation against Hate Speech

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On 21 March 2016, the European Commission against Racism and Intolerance (ECRI) issued its General Policy Recommendation (GPR) No. 15 on Combating Hate Speech. The launch coincided with the International Day for the Elimination of Racial Discrimination; the GPR had already been adopted on 8 December 2015.

For the purpose of GPR No. 15, ECRI understands "hate speech" as "the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of 'race', colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status" (footnote omitted, Preamble). This understanding of the term is different to - and wider than - the most common reference point for the scope of the term "hate speech", within the Council of Europe's standards, i.e., the Committee of Ministers' Recommendation No. R (97)20 on "hate speech" (see IRIS 1997-10/4).

GPR No. 15 is essentially a ten-point plan for combating hate speech. Each of its ten main points or recommendations cascades into a number of more specific recommendations. Its main recommendations include calls on Council of Europe Member States to ratify various relevant treaties and withdraw reservations to particular treaty provisions; identify and address the root causes of hate speech; undertake public awareness-raising measures about the importance of diversity and the dangers of hate speech; provide support for persons and groups targeted by hate speech; withdraw (financial) support by public bodies for political parties and other organisations that use or condone hate speech, and take effective action - including criminal law measures, where appropriate - against hate speech that amounts to incitement to different types of illegal acts.

Two recommendations are particularly relevant for the media and Internet. Recommendation 7 calls on States to "use regulatory powers with respect to the media (including internet providers, online intermediaries and social media), to promote action to combat the use of hate speech and to challenge its

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acceptability, while ensuring that such action does not violate the right to freedom of expression and opinion [...]". An array of measures are contemplated in order to achieve these aims, including self-regulatory mechanisms, codes of conduct, monitoring and condemnation of hate speech, filtering techniques, training of editors, journalists and other media professionals on hate speech and how to counter it, and promotion of complaints mechanisms to report hate speech.

Recommendation 8 urges States to "clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those who are targeted by it while respecting the right to freedom of expression and opinion [...]". This recommendation is, in part, a response to the European Court of Human Rights' differing findings in respect of Internet intermediaries' duties, responsibilities and liability in respect of online content, including hate speech, in its recent Delfi AS v. Estonia [GC] (see IRIS 2015-7/1) and Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary (see IRIS 2016-3/2) judgments.

ECRI regularly drafts GPRs as part of its work on general themes, which is one of its three main lines of activity. Country-by-country monitoring and developing relations with civil society are its other two main lines of activity. The thematic focuses of earlier GPRs include: "Combating Racism and Racial Discrimination in the Field of Sport" (No. 12, 2009) (see IRIS 2009-5/3); "Combating racism while fighting terrorism" (No. 8, 2004) and "The fight against antisemitism" (No. 9, 2004) (see IRIS 2004-10/5) and "Combating the dissemination of racist, xenophobic and antisemitic material via the Internet" (No. 6, 2000) (see IRIS 2002-7/4).

In 2006, ECRI organised an expert seminar on combating racism while respecting freedom of expression, but that event does not appear to have been explicitly referenced either in GPR No. 15 or in its Explanatory Memorandum.

ECRI, General Policy Recommendation No. 15 on Combating Hate Speech, 8 December 2015

http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/default_en.asp

ECRI, Proceedings of Expert Seminar on Combating Racism while Respecting Freedom of Expression, 16-17 November 2006

http://www.coe.int/t/dghl/monitoring/ecri/activities/22-Freedom_of_expression_Seminar_2006/NSBR2006_proceedings_en.pdf

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