

Combating Sexist Hate Speech

The Work of the Council of Europe

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Abstract This paper presents the Council of Europe current work on sexist hate speech and sexism. After an overview on sexist hate speech, its different forms, the factors contributing to it and the connection between sexist hate speech and freedom of expression, this contribution presents relevant Council of Europe standards and activities (including the new Committee of Ministers Recommendation on preventing and combating sexism), extracting from them the key elements that should guide governments, media, civil society and other relevant stakeholders in their action against sexism. A 'checklist' of indicators and actions to eliminate sexist hate speech is presented as a conclusion.

Keywords Council of Europe. Sexism. Hate speech. Human rights. Gender equality.

Summary 1 Introduction. The Council of Europe. – 2 Why Working on Sexist Hate Speech? – 3 The Relation between Sexist Hate Speech and Freedom of Expression in Council of Europe Conventions. – 4 Standards Developed by Monitoring Bodies and Awareness-Raising Initiatives. – 5 The Recommendations of the Committee of Ministers. – 6 Conclusion.

1 Introduction. The Council of Europe

The Council of Europe is the continent's leading human rights organization. Created in 1949 by 10 States, it has now 47 member States, including the 28 members of the European Union. Belarus is the only European State which is not a member of the Organization. It is an intergovernmental organization, founded with the objective of protecting and promoting human rights, democracy and the rule of law.

From the 1980s onwards, the Council of Europe has played a major role in the development of norms and concepts such as parity democracy, gender



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budgeting and gender mainstreaming, that have been providing a new approach to gender equality, shaping its development in Europe.

Council of Europe action is based on a 'strategic triangle', in which the development of standards is linked with their monitoring and supplemented by technical co-operation to facilitate their implementation. All Council of Europe actions are developed and implemented in areas where the Council of Europe has a strong expertise and added value.

This is notably the case of gender equality and violence against women: the Council of Europe supports member States in implementing relevant texts and standards (conventions and recommendations) through a variety of measures (policy guidelines, capacity building, peer-to-peer exchange of good practice, awareness raising), including mainstreaming gender equality across all the policies and activities of the Organization. The objective is that member States change their policy, legislation and practice to bridge the gap between *de jure* and *de facto* equality. To this end, and building on its standards and *acquis*, the Council of Europe has adopted a six-year-strategy in the field of Gender Equality (2018-23),¹ which includes among its objectives the fight against gender stereotypes, sexism, sexist hate speech and other forms of violence against women. Relevant standards and activities covering the three sides of the 'strategic triangle' will be presented, with particular attention to the question of sexist hate speech.

2 Why Working on Sexist Hate Speech?

Sexist hate speech is rampant in Europe, and women are disproportionately targeted. Sexist hate speech can take many forms, both online and offline, in all forms of social interaction: at school, in the family, in social circles, in the public space, at work, via e-mails, websites, social media, etc.

Lack of awareness, unwillingness to address the issue, gaps in legislation and policies and problems with their enforcement, especially online, also contribute to a climate of impunity for abusers. But sexist hate speech has severe psychological, emotional and possibly physical impacts. It limits women's and girls' participation in different fields, undermines freedom of speech, and ultimately contributes to controlling and silencing women, obliging them to adapt their behaviour.

From this perspective, sexist hate speech has the same effects - and presents similar obstacles to its eradication - as other forms of violence against women, and can be seen part of a continuum

1 <https://www.coe.int/en/web/genderequality/gender-equality-strategy>.

of violence. This also means that answers to sexist hate speech may be found in existing instruments to combat violence against women, such as the Council of Europe *Istanbul Convention*.

The internet has provided a new dimension for the expression and transmission of sexism, especially of sexist hate speech, to a large audience. The feeling of impunity and the thought of the Internet as disconnected from real life have contributed to the spread of sexist hate speech online, notably of a specific kind directed at women. This has led, on the one hand, to freedom of expression being sometimes abused as an excuse to cover unacceptable and offensive behaviour and allowing sexist hate speech to thrive; whilst, on the other hand, there persists a distinct – and generally legitimate – fear of restraining free speech, which is also shared by self-regulatory bodies and social media. But free speech and free expression are not ‘free’ if they are hijacked to intimidate, demean and – ultimately – to try to silence women.

In fact, there is no difference in impact between sexist hate speech online and offline, and the root causes of sexist hate speech precede the technological developments: they are fundamentally linked to the persistent unequal power relations between women and men. Sexist hate speech, online and offline, targets women because they are women, especially when they do not conform to traditional gender roles and put the status quo into question.

While in most Council of Europe member States sexism does not have a specific legal definition and is not subject to specific criminalization or comprehensive legal treatment, numerous countries have introduced criminal or other sanctions for different acts of sexism, including sexist hate speech. Some member States have legal, administrative, civil or criminal provisions prohibiting hate speech towards groups on the basis of certain grounds, including sex in a number of countries (ranging from fines to jail). These provisions can be found in criminal codes (France, Lithuania, Netherlands), anti-discrimination laws (Republic of Moldova), gender equality laws (Lithuania, United Kingdom), laws on violence against women (Spain), laws on sexism (Belgium) and anti-harassment (Ireland, Switzerland), as well as in laws on freedom of the press (France, Greece, Turkey).² The legal framework is constantly evolving.

This being said, there are not many national court cases dealing with sexist hate speech. This might be due to the lack of clarity in legislation, the lack of awareness and knowledge about rights, the

² The country examples in brackets are given as illustration only. The information comes from the study by the Institut pour l’Égalité entre les femmes et les hommes: “Étude préparatoire de droit comparé sur les législations qui visent à sanctionner le sexisme”, Brussels, 2010.

difficulty to find the identity of an anonymous hater, or the unwillingness to consider this issue as a serious one.³ The European Court of Human Rights itself has not, so far, pronounced itself on cases of sexist hate speech.

3 The Relation between Sexist Hate Speech and Freedom of Expression in Council of Europe Conventions

The question of sexist hate speech is, as indicated earlier on, closely connected with the question of freedom of expression: both freedom of expression and equality between women and men being fundamental human rights.

Freedom of expression constitutes one of the essential foundations of a democratic society, and one of the basic conditions for its progress. As a fundamental human right protected by Article 10 of the *European Convention on Human Rights*, it enjoys a solid place in the human rights framework, and the increasing accessibility of the Internet has made it easy for users to share their thoughts publicly, instantly and autonomously. But freedom of expression is not an absolute right. Its exercise carries “duties and responsibilities” and might be subject to restrictions prescribed by law, concerning, for example, the protection of the reputation or rights of others. As the European Court of Human Rights pointed out,

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.⁴

Other articles of the Convention can be read in conjunction with Article 10 with respect to hate speech, notably Article 17, which prohibits the

³ There have been convictions of online haters in the United Kingdom. Stella Creasy, a British Member of Parliament was threatened online with rape from a man opposed to the campaign to put Jane Austen’s face on a banknote. In September 2014, the author of the threatening tweet was convicted to 18 weeks imprisonment. Stella Creasy supported the campaign of journalist Caroline Criado-Perez who was also the target of threats. In January 2014, two of her Twitter ‘trolls’ were sentenced, respectively, to 12 weeks and 8 weeks of imprisonment for abusive messages.

⁴ *Erbakan v. Turkey* judgment of 6 July 2006, § 56.

abuse of rights,⁵ and Article 14, which contains a non-discrimination provision applicable to the enjoyment of rights and freedoms set forth in the convention, including on grounds of sex. A self-standing general prohibition of discrimination is, finally, provided in Protocol no. 12 to the Convention,⁶ which has at present been ratified by 20 States.⁷

When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights follows either the approach of exclusion from the protection of the Convention, provided for by Article 17, where the comments in question amount to hate speech and negate the fundamental values of the Convention, or the approach of limiting protection (in accordance with Article 10, paragraph 2) where the speech in question, although it amounts to hate speech, is not apt to destroy the fundamental values of the Convention. So far, however, the European Court's case-law about hate speech mainly focused on ethnic or racial hate speech,⁸ and no judgement deals specifically with sexist hate speech.

The other key binding instrument to deal with sexist hate speech, notably as a form of violence against women, is the *Istanbul Convention*.⁹

The *Istanbul Convention* is the most comprehensive and progressive legally binding instrument addressing violence against women and calling for greater equality between women and men. Although it does not refer explicitly to sexist hate speech, various provisions of the *Istanbul Convention* indirectly deal, or can deal, with the matter. The convention contains for instance provisions related to eradicating gender stereotypical behaviour, traditions and practices which contribute to inequality between women and men (Article 12). This is relevant, as practices based on the idea of the inferiority of women are at the core of sexism, which can indeed take the form of sexist hate speech.

The need to ensure the dignity of women's rights and prevent violence against women in the information and communication technology sector and the media is also echoed in Article 17 of the *Istanbul Convention*, which encourages the participation of the private sector and the media in preventing violence against women. This article recognizes the importance of providing guidance and tools to avoid

⁵ "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention" (*European Convention on Human Rights*, Art. 17)

⁶ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680080622>.

⁷ Albania, Andorra, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Finland, Georgia, Luxembourg, Malta, Montenegro, the Netherlands, North Macedonia, Portugal, Romania, San Marino, Serbia, Slovenia, Spain and Ukraine.

⁸ https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

⁹ <https://www.coe.int/en/web/istanbul-convention/home>.

sexist and stereotypical language, as well as of having clear policy frameworks and complaint mechanisms to ensure the withdrawal of sexist and harmful content in the media.

Finally, the *Istanbul Convention* requests Parties to criminalize forms of violence that relate to sexist hate speech. For instance, pursuant to Article 40 of the convention, on sexual harassment,

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

As regards stalking, States Parties are requested, in Article 34, to

take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalized.

The implementation of these provisions by the States Parties is regularly followed by the *Istanbul Convention* monitoring mechanism, which consists of an independent body, the Group of Experts on Action against Violence against Women (GREVIO), and of the Committee of States Parties to the Convention. The GREVIO produces country reports, and the Committee of the States Parties adopts, on the basis of the reports and conclusions of the GREVIO, specific recommendations addressed to the Parties concerned.

4 Standards Developed by Monitoring Bodies and Awareness-Raising Initiatives

ECRI, the Council of Europe Commission against Racism and Intolerance, is a unique human rights monitoring body, not based on a convention, which specializes in questions relating to the fight against racism, discrimination (on grounds of 'race', ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance in Europe. It is a pan-European Commission, composed of independent members from all Council of Europe member States.¹⁰

¹⁰ <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/home>.

In the framework of its country monitoring work, ECRI examines the situation in each of the Council of Europe member States and produces country reports. In addition, it elaborates General Policy Recommendations (GPRs) addressed to the governments of all member States, providing detailed (non-binding) guidelines which policy-makers are invited to use when drawing up national strategies and policies in a variety of fields.

It is in this context that, in 2015, ECRI published General Policy Recommendation no. 15 on combating hate speech.¹¹ This GPR refers for the first time to sex and gender in a definition of hate speech:

Hate speech for the purpose of the Recommendation entails the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation. (ECRI General Policy Recommendation no. 15, para. 9)

With specific regard to sexist hate speech, the GPR stresses the gravity of hate speech targeting women both on account of their sex, gender and/or gender identity, and particularly when this is coupled with one or more of their other characteristics, such as 'race', religion or some other personal characteristic or status.¹²

The No Hate Speech Movement Campaign was coordinated by the Council of Europe Youth Department from 2013 to 2017. The objective of the campaign was to reduce the acceptance of hate speech (including sexist hate speech) both online and offline, through human rights education and awareness-raising, youth participation and media literacy. The website of the campaign¹³ is still active and allows to look at initiatives carried out at national and international level.

One of the main products developed to support the Campaign is *Bookmarks*¹⁴ a manual on combating hate speech through human rights education, addressed to educators working both inside and outside the formal education system, for young people aged 13 to 18. The

11 <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.15>.

12 ECRI General Policy Recommendation no. 15, para. 31.

13 <https://www.coe.int/en/web/no-hate-campaign>.

14 <https://www.coe.int/en/web/no-hate-campaign/bookmarks-connexions>.

main body of the manual consists of 24 activities, each of which has been designed to address one or more of the themes. With regard to sexist hate speech, for instance, the activity foreseen consisted in devising a ‘mini-campaign’ against sexism in online gaming. A second educational manual, *We CAN!*,¹⁵ offers guidance to develop counter and alternative narratives to combat hate speech and promote human rights, especially in online environments. The manual proposes a set of online and offline communication and educational approaches and tools to undermine narratives which sustain and legitimize hate speech.

5 The Recommendations of the Committee of Ministers

In addition to the binding instruments and to the findings and recommendations of the monitoring bodies, the Council of Europe has developed, starting already in 1990, other non-binding standards, mostly under the form of recommendations of the Committee of Ministers to member States, which are directly or indirectly relevant in order to define the existing normative framework for sexist hate speech.

The importance of non-sexist language had been addressed by the Council of Europe’s Committee of Ministers for the first time in 1990, when Recommendation no. R(90)4 on the Elimination of Sexism from Language¹⁶ confirmed the “fundamental role of language in forming an individual, and the interaction which exists between language and social attitudes” and recommended governments to encourage the use as far as possible of non-sexist language (including in the media) and to bring “the terminology used in legal drafting, public administration and education into line with the principle of sex equality”.

One of the best-known instruments is the 1997 Committee of Ministers Recommendation R(97)20 on Hate Speech,¹⁷ this instrument contains the first international definition of hate speech accepted by the Council of Europe member States, although not legally binding, which still remains a reference. The 1997 Recommendation defines it as covering:

all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

15 <https://www.coe.int/en/web/no-hate-campaign/we-can-alternatives>.

16 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505480>.

17 <https://rm.coe.int/1680505d5b>.

As can be easily noted, sexist hate speech is not, however, explicitly mentioned.

In more recent years, attention focused more on the relevance of the gender dimension in the media context, including the audiovisual industry and, of course, the Internet. This dimension has been consistently addressed as a matter of priority in various Council of Europe transversal strategies.

First and foremost, of course, the Council of Europe Gender Equality Strategies 2014-17¹⁸ and 2018-23,¹⁹ which both identify the fight against gender stereotypes and sexism, including combating sexism as a form of hate speech, as a priority objective. The strategy currently in force, in particular, requires the Council of Europe and its member States to address sexist hate speech as a form of sexism, to analyse and monitor its impact, in co-operation with other relevant sectors of the Council of Europe, and to prepare a draft recommendation to prevent and combat sexism (see below).

Secondly, the Council of Europe Strategy for the Rights of the Child for 2016-21²⁰ includes two priority areas related to sexist hate speech: “A life free from violence for all children” (with a particular mention of violence against girls); and the “Protection of children in the digital environment”. Thirdly, the Council of Europe Internet Governance Strategy for 2016-19²¹ emphasizes the need to combat online harassment and bullying and includes an objective on “monitoring action taken to protect everyone, in particular women and children, from online abuse, such as cyber-stalking, sexism and threats of sexual violence”.

The result of this increased attention to the phenomenon, in terms of production of new standards, has been manifold. It is worth mentioning notably the following instruments:

- Recommendation CM/Rec(2013)1 of the Committee of Ministers on Gender Equality and Media contains specific guidelines to ensure gender equality and to combat gender stereotyping in the media including in relation to legislation, accountability channels, indicators and media literacy.²²
- Recommendation (2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media²³ stresses the need for a gender-sensitive approach for all

¹⁸ <https://rm.coe.int/1680590174>.

¹⁹ <https://www.coe.int/en/web/genderequality/gender-equality-strategy>.

²⁰ <https://rm.coe.int/168066cff8>.

²¹ <https://rm.coe.int/16806aafa9>.

²² https://search.coe.int/cm/Pages/result_details.aspx?objectId=09000016805c7c7e.

²³ https://search.coe.int/cm/Pages/result_details.aspx?objectId=09000016806415d9.

issues related to the protection of journalists. It refers, notably, to the fact that female journalists and other female media actors face specific gender-based dangers, including sexist, misogynist and degrading abuse; threats; intimidation; harassment and sexual aggression and violence, and calls for “urgent, resolute and systemic responses”.

- Recommendation CM/Rec(2017)9 of the Committee of Ministers on gender equality in the audiovisual sector,²⁴ in which the governments of member States are invited, *inter alia*, to support awareness-raising initiatives and campaigns on combating gender stereotypes, including hate speech and sexism in the audiovisual sector.

Separate and specific attention should then be deserved to the new landmark Committee of Ministers Recommendation CM/Rec(2019)1 on preventing and combating sexism.²⁵

One of the reasons which makes this recommendation a potential game-changer with respect to sexism in general, and to sexist hate speech in particular, is that it contains the first internationally agreed definition of sexism. For the purpose of the recommendation, sexism is defined as:

Any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of:

- i. violating the inherent dignity or rights of a person or a group of persons; or
- ii. resulting in physical, sexual, psychological or socioeconomic harm or suffering to a person or a group of persons; or
- iii. creating an intimidating, hostile, degrading, humiliating or offensive environment; or
- iv. constituting a barrier to the autonomy and full realization of human rights by a person or a group of persons; or
- v. maintaining and reinforcing gender stereotypes.

²⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509e6.

²⁵ The recommendation was still a draft at the time of the Seminar. It has been adopted by the Committee of Ministers on 27 May 2019. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093b26a.

The recommendation also tackles sexist hate speech more directly in various sections, including for instance inviting for the first time the governments of member States to consider legislative reforms to define and criminalize sexist hate speech, to consider the imposition of non-criminal penalties, for example the withdrawal of financial and other forms of support from public bodies or other organizations that fail to denounce sexism and sexist behaviour, especially sexist hate speech, and to support research on systematic data on, *inter alia*, sexist hate speech. Particular attention is dedicated to sexist hate speech with respect to media and the internet, recommending for instance the implementation of legislative measures that define and criminalize incidents of sexist hate speech and are applicable to all media, including the internet and new media, better reporting procedures and appropriate sanctions, and the adoption and implementation of self-regulatory policies and mechanisms for the elimination of sexism, including sexist hate speech. The recommendation also tackles other sectors like justice – proposing notably to train law enforcement personnel, prosecutors and judges on sexism, cyber sexism, sexist hate speech and violence against women; sports and culture – fostering ‘zero tolerance’ towards sexism and sexist hate speech in sports and cultural events and encouraging leading cultural and sports figures to correct sexist assumptions or denounce sexist hate speech.

The recommendation also foresees a ‘soft’ follow-up procedure whereby member States will be periodically requested to report on the measures undertaken to implement it.

6 Conclusion

Sexist hate speech needs to be addressed by all stakeholders, including the public, relevant authorities, international organizations, law enforcement and other actors of the justice system, the private sector and civil society. In doing this, a balance must be found in providing a platform for free speech without tolerating sexist hate speech. A ‘checklist’ of indicators and actions to eliminate sexist hate speech, emerging from the Council of Europe normative and practical experience may include:

- Eliminate discriminatory laws, tackle gaps in legislation and monitor their implementation to ensure appropriate and effective action against sexist hate speech.
- Use regulatory powers with respect to the media to combat the use of sexist hate speech.
- Provide support, clear policy frameworks and legal remedies for victims, especially women and girls, in cases of sexist and harmful content.
- Promote civil society initiatives in this area.

- Encourage the media to strengthen self-regulatory mechanisms and codes of conduct to condemn and combat sexist hate speech and ensure more effective moderation of social media, including by setting clear standards for the industry and putting in place mechanisms to monitor progress.
- Ensure the integration of a gender equality perspective in all aspects of education and media policies.
- Promote gender equality and media literacy training and the production of training materials.
- Encourage all relevant actors (e.g. public institutions, political parties, civil society, sports and cultural organizations) to adopt and implement codes of conducts that address sexist hate speech.
- Research the phenomenon of sexist hate speech and the different forms it takes, including measuring its extent and the harm it causes.