

RUSHING TO JUDGMENT

Are Short Mandatory Takedown Limits for Online Hate Speech Compatible with The Freedom of Expression?

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The Future of Free Speech is a collaboration between Justitia, Columbia University's Global Freedom of Expression and Aarhus University's Department of Political Science. We believe that a robust and resilient culture of free speech must be the foundation for the future of any free, democratic society. Even as rapid technological change brings new challenges and threats, free speech must continue to serve as an essential ideal and a fundamental right for all people, regardless of race, ethnicity, religion, nationality, sexual orientation, gender or social standing. Publications by Justitia can be freely cited with a clear source citation.

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Executive Summary

For the first time in human history, ordinary people have been given the ability to publicly share and access information instantly and globally through social media, without the mediation of traditional gatekeepers such as newspaper editors or government censors. Yet, the growth of social media has made even democracies wary of the resulting impact on the global ecosystem of news, opinion and information. Unmediated and instant access to the global digital sphere has gone hand in hand with the amplification and global dissemination of harms, including online extremism and disinformation.¹ With the entry into force of the Network Enforcement Act (NetzDG) in 2017, Germany became the first country in the world to require online platforms with more than 2 million users in their country to remove “manifestly illegal” content within a time period of 24 hours. Since the adoption of the NetzDG, more than 20 states around the world – including France - have adopted similar laws imposing “intermediary liability” on social media platforms.²

While democracies impose intermediary liability to counter online harms, ‘outsourcing’ government mandated content regulation to private actors raises serious questions about the consequences on online freedom of expression. Whether content is lawful or not is a complex exercise that is heavily dependent on careful context-specific analysis.³ Under Article 19 of the UN’s International Covenant on Civil and Political Rights (ICCPR), restrictions of freedom of expressions must comply with strict requirements of legality, proportionality, necessity and legitimacy.⁴ These requirements make the individual assessment of content difficult to reconcile with legally sanctioned obligations to process complaints in a matter of hours or days.

In June 2020, France’s Constitutional Council addressed these very concerns, when it declared unconstitutional several provisions of the Avia Law that required the removal of unlawful content within 1 to 24 hours.⁵ The Council held that the law restricted the exercise of the freedom of expression in a manner that is not necessary, appropriate and proportionate.⁶

The objective of this report is a preliminary and indicative attempt to sketch the duration of national legal proceedings in hate speech cases in selected Council of Europe States. The length of domestic

1 Koetsier, John. “Why 2020 Is A Critical Global Tipping Point For Social Media.” Forbes, <https://www.forbes.com/sites/johnkoetsier/2020/02/18/why-2020-is-a-critical-global-tipping-point-for-social-media/>.

2 The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship, Jacob Mchangama and Joelle Fiss, Justitia (November 2019), http://justitia-int.org/wp-content/uploads/2019/11/Analyse_The-Digital-Berlin-Wall-How-Germany-Accidentally-Created-a-Prototype-for-Global-Online-Censorship.pdf; The Digital Berlin Wall Act 2: How the German Prototype for Online Censorship went Global, Jacob Mchangama and Natalie Alkiviadou, Justitia (November 2020), https://justitia-int.org/wp-content/uploads/2020/09/Analyse_Cross-fertilizing-Online-Censorship-The-Global-Impact-of-Germanys-Network-Enforcement-Act-Part-two_Final-1.pdf.

3 Brown, Alexander, What is Hate Speech? Part I – The Myth Of Hate, International Journal of Law and Philosophy (2017) 36: 419–468, <https://link.springer.com/content/pdf/10.1007/s10982-017-9297-1.pdf>.

4 General Comment 34, *UN Human Rights Committee*, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

5 Decision n° 2020-801 DC, French Constitutional Court, (June 18, 2020), <https://www.conseil-constitutionnel.fr/decision/2020/2020801DC.htm>.

6 “French Law on Illegal Content Online Ruled Unconstitutional: Lessons for the EU to Learn.” Patrick Breyer, 19 Nov. 2020, <https://www.patrick-breyer.de/?p=593729&lang=en>.

criminal proceedings is then compared with the timeframe within which some governments require platforms to decide and take down hate speech under laws such as the NetzDG.

It is important to note that there are crucial differences between criminal proceedings and private content moderation. The former involves the threat of criminal sanctions, including – ultimately - the risk of prison, whilst the latter ‘merely’ results in the removal of content or, at worst, the deletion of user accounts. Moreover, when restricting freedom of expression, States must follow time consuming criminal procedures and respect legally binding human rights standards. On the other hand, private platforms are generally free to adopt terms of service and content moderation practices less protective of freedom of expression and due process than what follows under international human rights law. However, when governments impose intermediary liability on private platforms through laws prescribing punishments for non-removal, platforms are essentially required to assess the legality of user content as national authorities. Accordingly, while being cognizant of the differences between (a) national criminal law and procedure and (b) private content moderation, it is relevant to assess how the time limits prescribed for private platforms by national governments compare to the length of domestic criminal proceedings in hate speech cases. Large discrepancies may suggest that very short notice and take down time limits for private platforms results in systemic “collateral damage” to online freedom of expression. Platforms may be incentivized to err on the side of removal, rather than shielding the speech of their users against censorious governments. Platforms may thus respond by developing less speech protective terms of service and more aggressive content moderation enforcement mechanisms that are geared towards limiting the risk of liability rather than providing a voice to the users.⁷ Due to the nature of the relevant data, the following comparison between national criminal proceedings and time limits under government mandated notice and take down regimes is merely indicative and preliminary. Nevertheless, it is our hope that it may contribute to answering the question of how to develop time limits that are consistent with a meaningful assessment of the free speech interests of users of large social media platforms. A question essential to the future of online free speech.

Summary of Findings

As detailed below, the nature of the available data does not allow direct and exact comparisons between the different jurisdictions studied in this report. Still, even when allowing for this shortcoming, all the surveyed domestic legal authorities took significantly longer than the time mandated for social media platforms to answer the question of whether the relevant content was lawful or not. As compared to the short time frames – ranging from hours to a week - granted to platforms:

⁷ Kaye, D. (2018). Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/38/35). United Nations Human Rights Council. <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>



DENMARK - 601 days (National authorities)*

DENMARK - 1341 days (ECtHR)



AUSTRIA - 1273,5 days (ECtHR)



GERMANY- 678,8 days (ECtHR)



FRANCE- 420,91 days (ECtHR)



UNITED KINGDOM- 35,01 days (National authorities)**

UNITED KINGDOM- 393 days (ECtHR)



Council of Europe average- 778,47 days

- Austrian authorities took **1273.5** days on average to reach their decision starting from the day of the alleged offence;
- * Danish authorities took **601** days on average from the date of complaint until the conclusion of the trial at first instance (as per data released by National authorities for cases between 2016 and 2019) and **1341** days on average (as per data extracted from the two ECtHR judgments from other periods);
- French authorities took **420.91** days on average;
- German authorities took **678.8** days on average;
- ** United Kingdom authorities took **35.01** days on average from the date of first hearing in Court to the conclusion of the trial at first instance (as per data released by National authorities for cases between 2016 and 2019) and **393** days from the date of the alleged offence (as per data extracted from the sole hate speech case from the United Kingdom that was decided by the ECtHR);
- Overall, data extracted from all ECtHR hate speech cases from reveals that domestic legal authorities took **778.47** days on average from the date of the alleged offending speech till the conclusion of the trial at first instance.

These findings demonstrate that expecting thousands of complex hate speech complaints to be processed within hours, while simultaneously attaching proper weight to due process and freedom

of expression may be unrealistic at best and entail systemic “collateral damage” to the online ecosystem of information and opinion at worst.⁸ These findings support the conclusion of the French Constitutional Council in the Avia case insofar as the government mandated notice and take down regimes prescribing very short time limits are incompatible with the meaningful exercise and protection of the freedom of expression.

Thus, [the Future of Free Speech Project](#) urges States, international organizations (including the EU) and private platforms to cultivate content moderation standards reflecting human rights principles in accordance with due process and standards of legality, necessity and legitimacy. In this regard, we recommend the standards set out in the [Manila Principles](#) and the Report on [Online Content Moderation](#) (2018) by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Both documents recommend that platforms must only be *required* to remove content pursuant to an order issued by an independent and impartial judicial authority determining the unlawful nature of the relevant content. Governments may wish to create specialized independent judicial bodies or procedures that are able to issue such orders in an expedited manner, while preserving core aspects of due process and attaching due and proper weight to the freedom of expression, in accordance with international human rights standards. Given the sheer amount of content across platforms, such new bodies and procedures should focus on addressing gross and systematic violations of national criminal law, rather than every single piece of content that may potentially violate criminal law. Platforms should focus on developing content moderation standards that allow individual users more control over the content they are confronted with, to ensure that community standards and terms of service do not reflect the lowest common denominator.



8 “Community Standards Enforcement Report, November 2020.” About Facebook, 19 Nov. 2020, <https://about.fb.com/news/2020/11/community-standards-enforcement-report-nov-2020/>; Google Transparency Report. <https://transparencyreport.google.com/youtube-policy/removals?hl=en>.

Introduction

On March 15, 2019, 28-year-old Australian Brenton Tarrant logged on to the online message board 8chan and posted a message on a far-right thread that he visited frequently. Tarrant wrote that he would be livestreaming an attack on certain “invaders”.⁹ Around 20 minutes later, Tarrant entered the Al Noor mosque in Christchurch, New Zealand with an automatic weapon in his hand and a GoPro camera mounted on his head.

Over the next 36 minutes, Tarrant killed 51 persons while live-streaming on Facebook. Facebook removed the livestream after 17 minutes, but it had already been viewed by over 4,000 people by then.¹⁰ In the next 24 hours, Facebook removed the video 1.5 million times, of which 1.2 million were blocked at upload.¹¹ Tarrant’s preparation and announcement made it clear that the carnage was tailor-made for social media, which may also have provided inspiration for Tarrant’s heinous act.¹²

Two months later, in May 2019, top leaders and Heads of Governments from New Zealand, France, Germany, the United Kingdom, and several other nations released the [Christchurch Call](#) to Eliminate Terrorist & Violent Extremist Content Online. Technology giants such as Facebook, Twitter and YouTube supported the Call and committed to taking specific measures for the “immediate and permanent removal” of violent extremist content.¹³ The Call was in line with similar legislation introduced around the world in the last few years, such as Germany’s [Network Enforcement Act](#) (NetzDG), France’s [Avia law](#) and the EU’s [Proposal for a Regulation on preventing the dissemination of terrorist content online](#).

Freedom of Expression: Global Standards

The global standard on the right to freedom of expression is enshrined in Article 19 of the ICCPR: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. However, governments may restrict this right if they can prove that each element of a strict three-part test is met: (1) any restriction must not, among other things, be vague or overbroad (the “legality” test); (2) restrictions must be imposed for a legitimate set of governmental objectives (the “legitimacy” test); and (3)

9 Workman, Michael et. al, ‘What We Know about Christchurch Mosque Gunman Brenton Tarrant’. 15 Mar. 2019, <https://www.abc.net.au/news/2019-03-15/christchurch-shooting-brenton-tarrant-what-we-know/10904744>.

10 Macklin, Graham. ‘The Christchurch Attacks: Livestream Terror in the Viral Video Age’. *CTC Sentinel*, vol. 12, no. 6, July 2019, pp. 18–29, <https://ctc.usma.edu/christchurch-attacks-livestream-terror-viral-video-age/>.

11 Liptak, Andrew. ‘Facebook Says That It Removed 1.5 Million Videos of the New Zealand Mass Shooting’. *The Verge*, 17 Mar. 2019, <https://www.theverge.com/2019/3/17/18269453/facebook-new-zealand-attack-removed-1-5-million-videos-content-moderation>.

12 Macklin, Graham. ‘The Christchurch Attacks: Livestream Terror in the Viral Video Age’. *CTC Sentinel*, vol. 12, no. 6, July 2019, pp. 18–29, <https://ctc.usma.edu/christchurch-attacks-livestream-terror-viral-video-age/>.

13 *The Christchurch Call*, <https://www.christchurchcall.com/call.html>.

restrictions must be the least intrusive means to achieve the objective pursued and be proportional to the interest being protected (the “necessity” test).

The ICCPR does contain a mandatory ban on hateful speech when it rises to the level of (1) advocacy of national, racial, or religious hatred that (2) constitutes incitement to (3) discrimination, hostility, or violence (Article 20). However, even speech bans imposed pursuant to Article 20 must meet Article 19’s tripartite test of legality, legitimacy, and necessity. (General Comment 34, para 50-52).

In this regard, *in Mohamed Rabbae, A.B.S and N.A. v. The Netherlands*, the Human Rights Committee underlined that “[A]rticles 19 and 20 are compatible with and complement each other. A prohibition that is justified on the basis of Article 20 must also comply with the strict requirements of article 19(3). Thus, in every case, measures of prohibition under Article 20(2) must also be “provided by law”; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of Article 19(3), and they must conform to the strict tests of necessity and proportionality”.¹⁴

Given the need for individual assessment to determine if advocacy of incitement has occurred and whether the criminalization of speech is the least intrusive means, the UN’s Rabat Plan of Action outlines a six-part threshold test to guide such determinations, namely: (1) the social and political context (2) status of the speaker (3) intent to incite the audience against a target group (4) content and form of the speech (5) extent of its dissemination and (6) likelihood of harm, including imminence.

Freedom of Expression: The Council of Europe

It is imperative to consider the Council of Europe framework given that the countries examined in this report are all members of this institution. On a Council of Europe level, Article 10(1) of the European Convention on Human Rights (ECHR) lays down the right to freedom of expression. This right is not without exceptions and is restricted by grounds set out in Article 10(2) (such as protecting the rights and reputation of others) and the non-abuse clause embodied in Article 17. Essentially, the European Court of Human Rights (ECtHR) exempts the worst forms of hate speech from Article 10 protection through the use of Article 17. It is noteworthy that hate speech is not actually defined by the Court whilst its general conceptualization of such speech is vague and broad. As noted by the (former) Special Rapporteur on Freedom of Opinion and Expression, [“European human rights law...fails to define hate speech adequately, a point emphasized in the joint dissenting opinion of Judges Sajó and Tsotsoria in the Delfi v. Estonia judgment...”](#)

Justitia analysed 60 cases decided by the ECtHR and the European Commission of Human Rights between 1979-2020. 57 of those cases were brought by the speakers under Article 10, and 3 by the victims of the alleged hate speech under Articles 8, 14 and/or 13. *61% of cases brought by the*

¹⁴ Mohamed Rabbae, A.B.S and N.A. v. The Netherlands, Communication No. 2124/2011*.

speakers resulted in the applicant's loss through a finding of non-violation of Article 10. Only 39% of cases brought by the speakers have resulted in a finding in favour of the applicant. Thus, on average, free speech has been upheld in just over one out of three hate speech cases. Here, it is relevant to note that in his 2019 report on freedom of opinion and expression, the (former) Special Rapporteur underlined (in the framework of an analysis of the treatment of hate speech by different regional courts) that "regional human rights norms cannot, in any event, be invoked to justify departure from international human rights protections".¹⁵

The ECtHR has also been quite stringent in relation to the obligations on internet intermediaries when it comes to hate speech. In the landmark ruling of *Delfi v Estonia* (2015), the ECtHR held that "a large news portal's obligation to take effective measures to limit the dissemination of hate speech and speech inciting violence – the issue in the present case – can by no means be equated to private censorship". Interestingly, it took a different position in the subsequent case of *MTE and Index v Hungary* (2015). In finding a violation of Article 10, the Court underlined that this case differed to *Delfi* since "the incriminated comments did not constitute clearly unlawful speech; and they certainly did not amount to hate speech or incitement to violence". Again, the position in *Delfi*, demonstrates the low threshold which the ECtHR attaches to freedom of expression when it comes to alleged hate speech. Even if the ECtHR attaches significantly less weight to freedom of expression than what follows under the ICCPR, the determination of whether speech reaches the threshold of hate speech or not requires a thorough assessment by national authorities including whether the restrictions are necessary and proportional to the aim pursued.¹⁶

National Practices

The Avia decision

In June 2020, the French Constitutional Council recognised the incompatibility of short removal timelines with freedom of expression.¹⁷ The Council is France's highest Constitutional authority and its main activity is to rule on whether proposed statutes conform with the Constitution, after they have been voted on by Parliament and before they are signed into law by the French President. The Council struck down certain provisions of the Avia Law including the provision that required 24 hour removal of unlawful hate speech.¹⁸ It held, *inter alia*, that the platforms' obligation to remove unlawful content "is not subject to prior judicial intervention, nor is it subject to any other condition. It is therefore up to the operator to examine all the content reported to it, however much content there

¹⁵ Kaye, D. (2016). Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/71/373). United Nations Human Rights Council. <https://undocs.org/A/71/373>.

¹⁶ Article 10 test: The ECtHR considers whether the restriction to free speech was prescribed by law, necessary in a democratic society and proportional to the aim pursued.

¹⁷ Decision n° 2020-801 DC, French Constitutional Court, (June 18, 2020), <https://www.conseil-constitutionnel.fr/decision/2020/2020801DC.htm>

¹⁸ Note: It also struck down the requirement to remove terrorist or child sexual abuse content within one hour of notification from the administrative authority.

may be, in order to avoid the risk of incurring penalties under criminal law". The Council reasoned that it was "up to the operator to examine the reported content in the light of all these offences, even though the constituent elements of some of them may present a legal technicality or, in the case of press offences, in particular, may require assessment in the light of the context in which the content at issue was formulated or disseminated". Thus, it held that "given the difficulties involved in establishing that the reported content is manifestly unlawful in nature... and the risk of numerous notifications that may turn out to be unfounded, such a time limit is extremely short". This, along with the penalty of EUR 250,000 incurred from the first infringement and the "lack of any specific ground for exemption from liability" restrict the "exercise of freedom of expression in a manner that is not necessary, appropriate and proportionate".¹⁹ This decision will potentially have implications for intermediary liability outside France as well since, for the first time, a Constitutional body in Europe has held that stringent 24-hour requirements modelled after the NetzDG are disproportionate.

The Council's decision comes at a time when member states and the European Commission are moving towards short timelines to remove content and away from the matrix of the [E-Commerce Directive 2000](#). Article 14 of the E-Commerce Directive prescribes that intermediaries that are hosting providers are not liable for hosting illegal content until they have 'actual knowledge' of the illegal content. The Directive does not explicitly impose an obligation to remove content but leaves it to the member states to apply a duty of care through national law and require takedown of illegal content.²⁰

The political motivation to hold platforms liable became stronger as social media impacted politics. In Europe, the call for such regulation was particularly motivated by allegations of social media manipulation in relation to the 2016 Brexit Referendum, as well as a rise in anti-immigration xenophobia following the 2015 refugee-crisis.²¹ In the US, it was a result of the alleged Russian interference in the 2016 US Elections as well as allegations of anti-conservative bias in the 2020 US Elections. As a result, there appears to be bipartisan support – albeit with different motivations – in the US today to dilute or even remove Section 230 of the Communications Decency Act, which provides online platforms broad immunity from user generated content as well as from the platforms' own efforts at content moderation.²²

At the European Union level, 24-hour notice and take down regimes were first introduced by a voluntary agreement. In 2016, the European Commission issued the [Code of Conduct on Countering Illegal Hate Speech Online](#) together with tech giants such as Facebook, Microsoft, Twitter and

19 "French Law on Illegal Content Online Ruled Unconstitutional: Lessons for the EU to Learn." *Patrick Breyer*, 19 Nov. 2020, <https://www.patrick-breyer.de/?p=593729&lang=en>.

20 *Reform of the EU Liability Regime for Online Intermediaries: Background on the Forthcoming Digital Services Act - European Parliament*. [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA\(2020\)649404](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2020)649404).

21 Bradshaw, Samantha, and Philip Howard. *Challenging Truth and Trust: A Global Inventory of Organized Social Media Manipulation*. Computational Propaganda Research Project, Oxford Internet Institute, <http://comprop.oii.ox.ac.uk/wp-content/uploads/sites/93/2018/07/ct2018.pdf>.

22 Reardon, Marguerite. "Democrats and Republicans Agree That Section 230 Is Flawed." CNET, <https://www.cnet.com/news/democrats-and-republicans-agree-that-section-230-is-flawed/>.

YouTube.²³ As per the Code, social media companies committed to reviewing “the majority of removal requests” in 24 hours and to “remov[ing] content if necessary”.²⁴

In September 2018, the European Union presented a proposal for a Regulation on preventing the dissemination of extremist content online.²⁵ The proposal included a legally binding one-hour deadline for content to be removed following an order from national competent authorities.²⁶ The proposal was criticised by then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye. Kaye expressed his concern for the short timeframe to “comply with the sub-contracted human rights responsibilities that fall on platforms by virtue of State mandates on takedown”.²⁷ Despite the opposition from civil society, on December 10, 2020, the European Parliament and the Council of the European Union provisionally agreed to proceed with the proposal including the one-hour deadline and the proposed Regulation is now pending formal adoption.²⁸

The proposed [Digital Services Act 2020](#) of the European Commission also introduces “targeted, asymmetric measures with stronger obligations for very large online platforms which are prone to the highest levels of risks for the EU society and economy”. As per the proposed Act, all hosting providers shall process removal notices in a timely, diligent and objective manner, though no specific time limit is prescribed. Further, very large platforms may now be fined up to 6% of their annual income or turnover for failure to comply with obligations and the proposal envisages individual criminal liability for legal representatives of intermediaries that fail to meet obligations under the Act.

Legislation such as the Avia law and NetzDG threaten social media platforms with significant penalties and even criminal sanctions if they fail to remove clear instances of hate speech in 24 hours. These laws have often been described as detrimental to online freedom of expression as when

23 Press Release of The European Commission - IT Companies Announce Code Of Conduct On Illegal Online Hate Speech, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1135

24 Note: Since 2016, Instagram, Dailymotion, Snapchat and Jeuxvideo.com have also volunteered to adhere to the Code. Press Release Of The European Commission - [The Code Of Conduct On Countering Illegal Hate Speech Online](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1135), https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1135; Press Release Of The European Commission - Code Of Conduct On Countering Illegal Hate Speech Online: Questions And Answers On The Fourth Evaluation, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_806.

25 *Preventing the Dissemination of Terrorist Content Online*, European Parliament, *EUR-Lex - 52018PC0640 - EN - EUR-Lex*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0640>.

26 *Preventing the Dissemination of Terrorist Content Online – Legislative Train Schedule*, European Parliament, <https://www.europarl.europa.eu/legislative-train>.

27 Kaye, D. (2018). *Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression* (A/HRC/38/35). United Nations Human Rights Council. <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>

28 Correspondent, EU Reporter. “Council Presidency and European Parliament Reach a Provisional Agreement on Removing Online Terrorist Content.” *EU Reporter*, 10 Dec. 2020, <https://www.eureporter.co/frontpage/2020/12/10/council-presidency-and-european-parliament-reach-a-provisional-agreement-on-removing-online-terrorist-content/>.

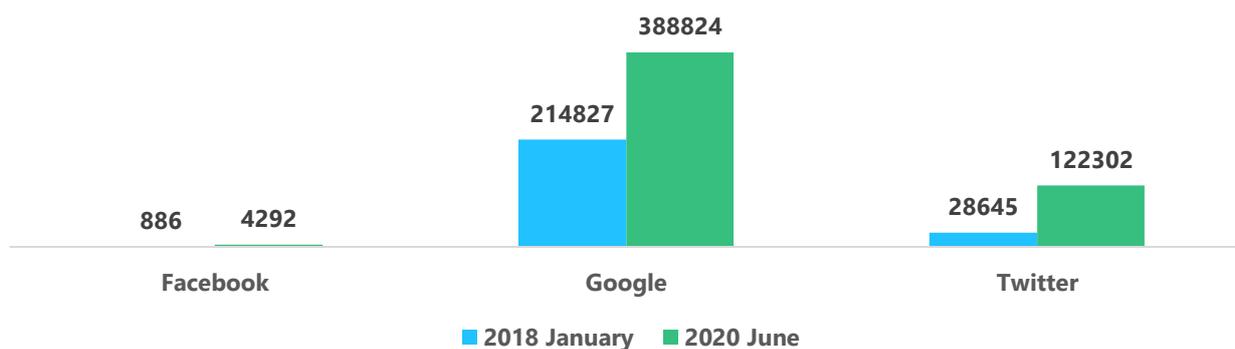
platforms are threatened with fines and criminal sanctions for user-generated content, they tend to err on the side of caution and remove legitimate speech to shield themselves from liability.²⁹

In his comment on the NetzDG, then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, noted that:

*"The high fines raise proportionality concerns and may prompt social networks to remove content that may be lawful. The risk appears even higher considering the strict time periods of 24 hours and 7 days according to which social networks must assess and remove content in violation of domestic law. The short deadlines, coupled with the afore-mentioned severe penalties, could lead social networks to over-regulate expression - in particular, to delete legitimate expression, not susceptible to restriction under human rights law, as a precaution to avoid penalties. Such pre-cautionary censorship, would interfere with the right to seek, receive and impart information of all kinds on the internet"*³⁰

When assessing the direct impact of the NetzDG, it is relevant to look at the removal rates on social media platforms. Three years after Germany implemented the NetzDG, the number of complaints Facebook received from Germany has increased to 4,292 reports in 2020 (January to June) from 886 reports in the same period in 2018.³¹ YouTube's complaints identified 214,827 pieces of content in 2018 (January to June) and this number increased to 388,824 in 2020.³² Similarly, Twitter removed 28,645 pieces of content in 2018 (January to June) and this number increased to 122,302 in 2020.³³

Removal on social media



29 Keller, Daphne. *Internet Platforms: Observations on Speech, Danger, and Money*. SSRN Scholarly Paper, ID 3262936, Social Science Research Network, 13 June 2018. [papers.ssrn.com, https://papers.ssrn.com/abstract=3262936](https://papers.ssrn.com/abstract=3262936).

30 Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, NetzDG (Reference:OL DEU 1/2017), <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-DEU-1-2017.pdf>

31 Facebook NetzDG Transparency Report, July 2020, https://about.fb.com/wp-content/uploads/2020/07/facebook_netzdg_july_2020_English.pdf

Note: Individuals may cite multiple reasons for illegality in a single NetzDG report.

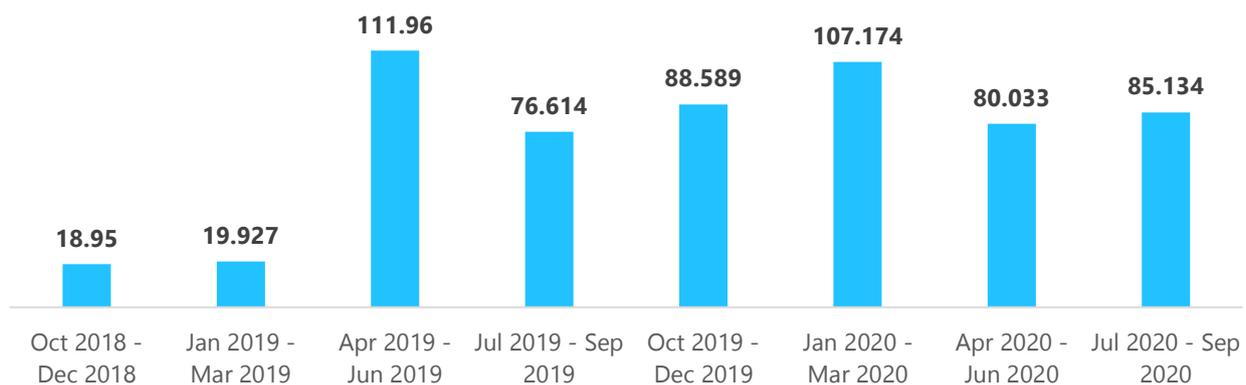
32 YouTube NetzDG Transparency Report, July 2020, https://transparencyreport.google.com/netzdg/youtube?hl=en_GB&items_by_submitter=period:Y2020H1&lu=items_by_submitter

33 Twitter NetzDG Transparency Report, July 2020, <https://transparency.twitter.com/content/dam/transparency-twitter/archive/data/download-netzdg-report/netzdg-jan-jun-2020.pdf>

These statistics prompted the German Justice Minister Christine Lambrecht to announce that “we see significant improvements in the way social networks deal with user complaints about criminal content”.³⁴ She also concluded that there is no evidence of over-blocking affecting legal content protected by freedom of expression – one of the main concerns of critics of the NetzDG. However, the removal rates under the NetzDG regime cannot be viewed in isolation since the vast majority of content deleted by social media platforms is removed pursuant to the relevant platform’s Terms of Service/Community Standards, rather than national laws.³⁵

The trend of increased removals is also evident specifically for hate speech. For example, between January to March 2020, YouTube globally removed 107,174 videos which it considered hate speech; 80,033 between April and June 2020; and 85,134 between July and September 2020. This was significantly higher from September – December 2018 when YouTube only took down 25,145 videos.³⁶

Hate speech removals on Youtube



Similarly, Facebook removed 9.6 million pieces of ‘hateful’ content in Q1 of 2020 which rose to 22.5 million in Q2 of 2020. this number is starkly higher than 11.3 million removals in all of 2018, when NetzDG became operational.³⁷

In addition to the risk of over removal to comply with legislation, there also exists the risk of platforms expanding the scope of their Community Standards in light of increasing pressure from lawmakers and critics to act on hate speech.³⁸ For example, in 2020, Facebook lowered its hate speech threshold

34 Law against hate speech online did not lead to overblocking, *En24News*, <https://www.en24news.com/2020/09/law-against-hate-speech-online-netzdg-did-not-lead-to-overblocking.html>

35 The Digital Berlin Wall Act 2: How the German Prototype for Online Censorship went Global, *Jacob Mchangama and Natalie Alkiviadou*, Justitia (November 2020), https://justitia-int.org/wp-content/uploads/2020/09/Analyse_Cross-fertilizing-Online-Censorship-The-Global-Impact-of-Germanys-Network-Enforcement-Act-Part-two_Final-1.pdf.

36 Google Transparency Report, https://transparencyreport.google.com/youtube-policy/featured-policies/hate-speech?hl=en&policy_removals=period:Y2020Q1&lu=policy_removals.

37 Community Standards Enforcement Report (Nov 2019), <https://transparency.facebook.com/community-standards-enforcement>

38 “Facebook Bans Holocaust Denial, Reversing Earlier Policy.” *NPR.Org*, <https://www.npr.org/2020/10/12/923002012/facebook-bans-holocaust-denial-reversing-earlier-policy>.

to expand what it considered an attack based on protected characteristics. Today, Facebook protects against statements which attack against one's "immigration status" or that are based on "harmful stereotypes".³⁹ Further, legislation such as the NetzDG and the Avia law can even be misused to suppress dissent and minority voices in a democracy if Government regulators have the authority to fine platforms hefty fines for refusing to remove offensive albeit legal content.⁴⁰ One of the first posts to be controversially taken down from Twitter and Facebook after the NetzDG came into force was a post by the Beatrix von Storch (leader of the far-right AfD opposition party) who had criticized the Cologne police department in for tweeting a New Year's greeting in Arabic.⁴¹ [The Twitter account of 'Titanic' - a German satirical magazine was suspended for 48 hours](#) for violating hate speech rules following a series of tweets by an imagined Beatrix von Storch (after she had been suspended from Twitter). Titanic's tweets included jokes such as her watching the world darts final which included "*white men getting drunk and shooting stuff, a last bastion of our Germanic traditions*".

Another consequence of the pressure on social media platforms to regulate unlawful content is the increased reliance on automatic algorithmic content moderation.⁴² Users post over 500 hours of video to YouTube every minute⁴³, 481,000 tweets on Twitter every minute⁴⁴, and Facebook's over 1.7 billion daily active users post billions of comments every day.⁴⁵ As it is manifestly impossible for human reviewers to monitor the vast amount of online content and detect unlawful speech, platforms rely upon content filtering algorithms. As per the latest 2019 report on the compliance with the EU's Code of Conduct on countering illegal hate speech online, platforms now review an average of 89% content uploaded within 24 hours and take down 72% of these reports.⁴⁶ This number is a stark increase from the 40% content they reviewed in 24 hours when the Code was implemented in 2016.⁴⁷ Similarly, Facebook's Transparency report for July to September 2020 reveals that 94.7% of the hate speech it took down was detected before users reported it, suggesting that it was identified and (in some instances) deleted by automation.⁴⁸ Compare this with the same period from 2019 when Facebook took down 80.6% of hate speech before users reported it and 52.9% from the same period in 2018.

39 *Community Standards* / Facebook. https://www.facebook.com/communitystandards/hate_speech.

40 'Hate Speech on Social Media: Global Comparisons'. *Council on Foreign Relations*, <https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons>.

41 Kinstler, Linda. "Germany's Attempt to Fix Facebook Is Backfiring." *The Atlantic*, 18 May 2018, <https://www.theatlantic.com/international/archive/2018/05/germany-facebook-afd/560435/>.

42 European Parliament Study, The impact of algorithms for online content filtering or moderation, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU\(2020\)657101_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU(2020)657101_EN.pdf)

43 'YouTube: Hours of Video Uploaded Every Minute 2019'. *Statista*, <https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/>.

44 Desjardins, Jeff. 'What Happens in an Internet Minute in 2018?' *Visual Capitalist*, 14 May 2018, <https://www.visualcapitalist.com/internet-minute-2018/>.

45 *Top 10 Facebook Statistics You Need to Know in 2020*. 10 May 2020, <https://www.oberlo.com/blog/facebook-statistics>.

46 *Code of Conduct on Countering Illegal Hate Speech Online – Fourth Evaluation Confirms Self-Regulation Works*, https://ec.europa.eu/info/sites/info/files/code_of_conduct_factsheet_6_web.pdf

47 *Code of Conduct on Countering Illegal Hate Speech Online – Fourth Evaluation Confirms Self-Regulation Works*, https://ec.europa.eu/info/sites/info/files/code_of_conduct_factsheet_6_web.pdf

48 *Facebook Transparency Report | Community Standards*. <https://transparency.facebook.com/community-standards-enforcement#hate-speech>.

Automated content moderation poses a risk to free speech since this practice is susceptible to flagging false positives and targeting sensitive speech that does not necessarily violate legal restrictions or community standards/terms of service.⁴⁹ Automated content filtering is generally unable to properly assess the context of the content, e.g. parody or critique, which affects the legality of the content (or compliance with terms of services). Further, algorithms are susceptible to direct and indirect bias that may disproportionately affect specific groups or minorities.⁵⁰ Facebook, Twitter and YouTube acknowledged these shortcomings in light of increased reliance on these algorithms due to COVID-19.⁵¹

Methodology of Report

This report is a preliminary attempt to map the duration of domestic criminal proceedings in relation to hate speech cases in selected Council of Europe States in order to assess how the length of proceedings compare with time limits these States demand social media platforms to comply with when it comes to removing hate speech online pursuant to laws such as the NetzDG. However, due to limited data (both in terms of quantity and quality), the findings of the report should only be considered indicative.

It is important to note that there are crucial differences between criminal proceedings and private content moderation. The former involves the threat of criminal sanctions, including – ultimately – the risk of prison, whilst the latter ‘merely’ results in the removal of content or, at worst, the deletion of user accounts. As a result, domestic legal processes contain rule of law safeguards that are time-consuming. Moreover, when restricting freedom of expression, Council of Europe States must follow time consuming criminal procedure and respect legally binding human rights standards. Private platforms on the other hand are generally free to adopt terms of service and content moderation practices less protective of freedom of expression and due process than what follows under Article 19 ICCPR.⁵²

However, when governments impose intermediary liability on private platforms through laws prescribing punishments for non-removal, platforms are essentially required to assess the legality of user content as national authorities, when moderating content. Moreover, when private platforms are obliged to remove illegal user content, the resulting content moderation ceases to reflect voluntarily adopted terms of service and the relevant private platforms become de facto enforcers

49 “Testing Times for Digital Rights around the World: The Three Most Pressing Challenges.” *International Observatory of Human Rights*, Shreya Tewari and Raghav Mendiratta, <https://observatoryihr.org/blog/testing-times-for-digital-rights-around-the-world-the-three-most-pressing-challenges/>.

50 Horwitz, Deepa Seetharaman and Jeff. “WSJ News Exclusive | Facebook Creates Teams to Study Racial Bias, After Previously Limiting Such Efforts.” *Wall Street Journal*, 21 July 2020. www.wsj.com, <https://www.wsj.com/articles/facebook-creates-teams-to-study-racial-bias-on-its-platforms-11595362939>.

51 “Facebook, YouTube Warn of More Mistakes As Machines Replace Moderators.” *NPR.Org*, <https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators>.

52 Nevertheless, private platforms must respect ICCPR standards in line with the UN Guiding Principles on Business and Human Rights.

of national criminal law, but without being bound by human rights standards that would normally protect users from state restrictions of freedom of expression.

Accordingly, while being cognizant of the differences between (a) national criminal law and procedure and (b) private content moderation, it is relevant to assess how the time limits prescribed for private platforms by national governments compare to the length of domestic criminal proceedings in hate speech cases. Large discrepancies may suggest that very short notice and take down time limits for private platforms results in systemic “collateral damage” to online freedom of expression. Platforms may be incentivized to err on the side of removal rather than shielding the speech of their users against censorious governments. Platforms may thus respond by developing less speech protective terms of service and more aggressive content moderation enforcement mechanisms that are geared towards limiting the risk of liability rather than providing voice to the users.⁵³

The report studies the length of criminal hate speech proceedings in five member states of the Council of Europe: Austria, Denmark, France, Germany and the United Kingdom. We chose these jurisdictions as they have passed or are considering passing stringent intermediary liability legislation to tackle hate speech and other unlawful content. In these jurisdictions, we filed Freedom of Information (FOI) requests to the relevant authorities to obtain data for five years between January 1, 2016, and December 31, 2019. We requested information about the duration between the date of the initiation of investigations/legal proceedings till the final decision at the Court of the first instance. While we were provided data by Denmark and the United Kingdom, authorities in Austria, France and Germany reported that they did not record or maintain the relevant data. A key research limitation of the findings is that for data regarding the length of proceedings in Denmark and the UK, a direct comparison cannot be made since Danish authorities provided timeline data from the date of filing of complaint to conclusion of trial, including initial investigation by police and determination of whether to charge by the prosecution service. UK authorities provided data only from date of first hearing until the conclusion of trial at first instance, thus excluding time spent investigating and evaluating by police and prosecution service. Accordingly, the Danish data is more directly comparable with the notice and take down regimes of private platforms since filing a complaint about alleged hate speech to the police can be compared to a user (or trusted flagger) notifying a private platform of content alleged of violating hate speech.

Due to the paucity of data from the selected countries and for purposes of getting a broader indication of the length of proceedings, we also studied all hate speech cases from the European Court of Human Rights (ECtHR), including cases from the defunct European Commission on Human Rights, and extracted the relevant dates and time periods from the cases. It is important to note that the vast majority of ECtHR timelines are calculated from the time when the impugned speech was

⁵³ Kaye, D. (2018). *Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/38/35)*. United Nations Human Rights Council. <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>

uttered, not from the time of any complaint or beginning of court proceedings, which precludes exact comparisons with data about length of proceedings from Denmark and the UK.

It should also be noted that ECtHR cases may not be representative since they are likely to be more principled and complex than many of the pure national cases decided by national courts that are not taken to Strasbourg.

Due to the above-mentioned differences in the availability and nature of data and the differences in categorizations by relevant domestic authorities, the timelines and resulting comparisons should be seen as indicative rather than authoritative. More detailed studies with consistent gathering of data across States will be needed to form a more precise picture of how long national criminal law proceedings last in hate speech cases across the Council of Europe, and consequently how they compare with government mandated notice and take down regimes.

Analysis: Comparing the time limits prescribed for social media platforms and adjudication timelines for courts



A. Austria

Section 283 of the Austrian [Criminal Code](#) criminalises incitement to hatred and violence. It prescribes that whoever publicly, in a manner suited to jeopardise public order incites or instigates to violence against any other group of persons defined by criteria of race, colour of skin, language, religion or ideology, nationality, descent or national or ethnic origin, sex, a disability, age or sexual orientation or a member of such a group, explicitly on account of his/her belonging to such a group, shall be punished with imprisonment of up to two years. Further, Article 3(d) and Article 3(h) of the [National Socialism Prohibition Act, 1947](#) criminalise the instigation to perform forbidden acts of hatred, the glorification of the activities of the Nationalsozialistische Deutsche Arbeiterpartei (NSDAP), and the denial/justification of the National Socialist genocide or any other National Socialist crimes against humanity. The Act prescribes a prison sentence of up to five and ten years, or, twenty years if the perpetrator or the activity poses a particularly grave danger.

On September 3, 2020, the Austrian government released a legislative package to tackle online hate speech. The package included a bill entitled [Kommunikationsplattformen-Gesetz](#) (KoPI-G) with several similarities to the NetzDG. The KoPI-G created heavy obligations for online platforms. Section 7 prescribed fines of up to €10 million for failing to provide a notification mechanism for unlawful content or for failing to remove illegal content that has been reported and Section 8 prescribed a fine of up to €100,000 on individual responsible agents.

The Bill was severely criticised by the Opposition and civil society.⁵⁴ For instance, MP Susanne Fürst called the introduction of the Bill as a “bad day for freedom of expression”. She said that even though online hatred was a problem, the current law shows that the danger of overregulation and “overblocking” is real, especially as it is difficult to judge what is wrong and what is right, as the debates in the wake of COVID-19 show.⁵⁵ Nonetheless, the law will come into force on January 1, 2021, and social media platforms will have 3 months to implement the new requirements.

54 “First Analysis of the Austrian Anti-Hate Speech Law (NetDG/KoPIG).” *European Digital Rights (EDRI)*, <https://edri.org/our-work/first-analysis-of-the-austrian-anti-hate-speech-law-netdg-koplg/>.

55 *Hass im Netz: Verfassungsausschuss billigt neue Auflagen für Kommunikationsplattformen* (PK-Nr. 1289/2020). https://www.parlament.gv.at/PAKT/PR/JAHR_2020/PK1289/#XXVII_I_00463.

We filed Freedom of Information requests with the Federal Ministry of Justice. We were informed by the Ministry that it did not possess the relevant data. We then studied all hate speech cases from Austria that had ever reached the ECtHR to obtain an indicative timeline for cases.

Results and Analysis

As per the data extracted, the average processing time between the offending speech and the conclusion of trial at first instance was **1273.5 days**.



Austria

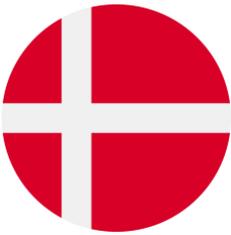
Legislation governing takedown	KoPI-G	
Time prescribed for social media intermediaries to arrive at a conclusion	Obviously illegal content 24 hours	All other kinds of illegal content 7 days
Average time period until decision by first instance Courts in Austria (Criminal code and National Socialism Prohibition Act)	1273.5 days	

A detailed breakdown of time durations at different stages of the case is presented below:

Name of the Case and Mode of Speech	Number of days between the date of the alleged hate speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
B.H., M.W., H.P. and G.K. v. Austria (Offline)	- 1976 → 02/04/1984 (Excluded from the calculation as the exact dates are not mentioned)	814 days 02/04/1984 → 25/06/1986	1205 days 25/06/1986 → 12/10/1989
Honsik v. Austria (Offline)	2059 days 15/09/1986 → 05/05/1992 (The judgment states that there were numerous publications in	728 days 05/05/1992 → 03/05/1994	533 days 03/05/1994 → 18/10/1995

September and November 1986. As the exact date is not specified, we assume a median date of September 15 for our calculation)

<u>Nachtmann v. Austria</u> (Offline)	- Exact date not mentioned → 08/08/1995	346 days 08/08/1995 → 19/07/1996 (The judgment notes that even though the Supreme Court refused to entertain the application on 21/05/1996, the judgment was communicated to the applicant's counsel only on 19/07/1996)	782 days 19/07/1996 → 09/09/1998
<u>Schimanek V. Austria</u> (Offline)	- 1987 → 31/03/1995 (The applicant was accused of multiple activities and the exact dates were not mentioned)	236 days 31/03/1995 → 22/11/1995	1532 days 22/11/1995 → 01/02/2000
<u>E.S v. Austria</u> (Offline and Online)	488 days 15/10/2009 → 15/02/2011 (The applicant was accused of holding multiple seminars starting 15/10/2009)	1058 days 15/02/2011 → 08/01/2014 (The judgment notes that even though the Supreme Court refused to entertain the application on 11/12/2013, the judgment was communicated to the applicant's counsel only on 08/01/2014)	1895 days 08/01/2014 → 18/03/2019



B. Denmark

Section 266(b) of the Danish [Criminal Code](#) penalises hate speech. It prescribes that public statements through which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation are punishable with up to 2 years imprisonment.⁵⁶

We filed Freedom of Information requests with the National Police and Prosecution Service. We requested information about the time duration between the day of initiation of investigations/legal proceedings and the final decision at the Court of first instance. In response, the Danish authorities provided us with the timelines for cases between 2010 and 2019 from the day of complaint to the police to the judgment in the first instance. Thus, the timeline data from Denmark is the most directly comparable with (government mandated) time limited notice and take down regimes, since a criminal complaint is (somewhat) comparable to a user notification (complaint) about alleged illegal content. We then also studied all hate speech cases from Denmark that had ever reached the ECtHR to obtain an indicative timeline for cases across all time periods. However, ECtHR timelines in relation to Denmark are calculated from the time when the impugned speech was uttered, not from the time of any complaint, which precludes exact comparisons.

Results and Analysis

- Data received from FOI request for domestic cases (2016 – 2019)

The average processing time for cases between 2016 and 2019 from THE complaint to the police to the conclusion at first instance was **601 days**. This was an increase from the 487.5 days that it took for cases between 2010 and 2015. Amongst the years for which data was provided, 2019 was the year with the highest average duration of cases, being 655 days. 2011 had the shortest average duration of cases, that being 376 days.

- Data extracted from ECtHR judgments

As per the data extracted from the two cases that reached the ECtHR, the indicative processing time between the offending speech and the conclusion of trial at first instance was **1341 days**.

⁵⁶ Study on the European legal framework on hate speech, blasphemy and its interaction with freedom of expression, *Directorate General For Internal Policies Of The Union*, [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU\(2015\)536460_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf).



Denmark

Proposed legislation governing takedown	High-level government working group expected to publish proposal in 2021	
Time prescribed for social media intermediaries to arrive at a conclusion	Upon obtaining knowledge	
Time period until decision by first instance Courts in Denmark (criminal code)	Cases between 2016 – 2019 601 days	Two Cases from Denmark that reached the ECtHR 1341 days

A detailed breakdown of time durations at different stages of the case is presented below:

Name of the Case and Mode of Speech	Number of days between the date of complaint and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Jersild v. Denmark (Offline)	642 days 21/07/1985 → 24/04/1987	661 days 24/04/1987 → 13/02/1989	2048 days 13/02/1989 → 23/09/1994
Roj TV A/S v. Denmark (Offline)	2040 days 10/06/2006 → 10/01/2012 (There were multiple publications between 10/10/2006 and 10/09/2010 and thus we calculate the processing time starting from the first publication)	779 days 10/01/2012 → 27/02/2014	1510 days 27/02/2014 → 17/04/2018



C. France

Hate speech is governed by provisions of the [Loi du 29 Juillet 1881](#) ('the Freedom of the Press, 1881') as amended by the Gaysot Act and the French Penal Code. Article 24 of the 1881 Act penalises incitement to discrimination, hatred or violence on account of origin or membership of a racial or religious group with imprisonment of 5 years and a fine of 45,000 Euros. Article 24bis penalises the offence of denying crimes against humanity and holocaust. Article 32 punishes defamation on account of race, religion, membership of a nation or ethnic group, sexual orientation or gender identity. Article 33 punishes public insult based on a protected characteristic. Other provisions of the Penal Code, including Article R624-3, Article R624-4 & Article R625-7 punish public and non-public insults based on protected characteristics. Further, Section 3 of the Law No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy also prohibits non-public provocation, defamation and insults of a racist or discriminatory nature.

France introduced the Avia Law in May 2020 to overhaul the online hate speech framework. It required intermediaries to implement a single notification system to be used by users to flag content. Platforms would be required to remove 'manifestly illegal content' within **24 hours** and certain extreme material such as terrorist content and child sexual material is required to be taken down within **one hour**. Platforms are required to take down all other types of illegal content within **seven days**. The law faced severe criticism from multiple fronts, including the European Digital Rights Association⁵⁷ and other NGOs.⁵⁸

In June 2020, France's Constitutional Council declared most of the provisions of the Avia law as unconstitutional. The Council held that many of the law's provisions restricted freedom of expression in a manner that was not necessary, appropriate and proportionate. It struck down the 1-hour deadline to remove terrorist content and the 24-hour notice-and-action regime for manifestly illegal content. The Council concluded that "*given the difficulties involved in establishing that the reported content is manifestly unlawful in nature... and the risk of numerous notifications that may turn out to be unfounded, such a time limit is extremely short*". Thus, the effective time limit for intermediaries is now seven days.

⁵⁷ "France's Law on Hate Speech Gets a Thumbs down." *European Digital Rights (EDRI)*, <https://edri.org/our-work/frances-law-on-hate-speech-gets-thumbs-down/>.

⁵⁸ "France: The Online Hate Speech Law Is a Serious Setback for Freedom of Expression." *ARTICLE 19*, <https://www.article19.org/resources/france-the-online-hate-speech-law-is-a-serious-setback-for-freedom-of-expression/>.

We filed Freedom of Information requests with the Ministry of Interior (Police) and the Ministry of Justice (Office of Public Prosecutor). We were informed by both authorities that they did not possess the relevant data. We then studied all hate speech cases from France that had ever reached the ECtHR to obtain an indicative timeline for cases.

Results and Analysis

As per the data extracted, the average processing time between the offending speech and the conclusion of trial at first instance was **420.91 days**.



Legislation governing takedown	Avia Law, 2020		
Time prescribed for social media intermediaries to arrive at a conclusion	Terrorist content and child abuse* ⁵⁹ 1 hour	Manifestly illegal content including hate speech* ⁶⁰ 24 hours	All other kinds of illegal content 7 days
Average time period until decision by first instance Courts in France (Freedom of the Press Act)	420.91 days		

A detailed breakdown of time durations at different stages of the case is presented below:

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Lehideux and Isorni v. France (Offline)	714 days 13/07/1984 → 27/06/1986	2699 days 27/06/1986 → 16/11/1993	1772 days 16/11/1993 → 23/09/1998

59 Struck down by the French Constitutional Council on June 18, 2020.

60 Struck down by the French Constitutional Council on June 18, 2020.

<u>Giniewski v. France</u> (Offline)	428 days 04/01/1994 → 08/03/1995	1925 days 08/03/1995 → 14/06/2000	2147 days 14/06/2000 → 31/04/2006
<u>Garaudy v. France</u> (Offline)	- (Excluded from the average as exact dates not mentioned)	928 days 27/02/1998 → 12/09/2000	1015 days 12/09/2000 → 24/06/2003
<u>Soulas and Others v. France</u> (Offline)	303 days 15/02/2000 → 14/12/2000 (As the judgment does not mention the exact date in February, we assume a median date of February 15 for our calculation)	705 days 14/12/2000 → 19/11/2002	2152 days 19/11/2002 → 10/10/2008
<u>Orban and Others v. France</u> (Offline)	267 days 03/05/01 → 25/01/2002	1047 days 25/01/2002 → 07/12/2004	1590 days 07/12/2004 → 15/04/2009
<u>Leroy v. France</u> (Offline)	117 days 13/09/2001 → 08/01/2002	441 days 08/01/2002 → 25/03/2003	2204 days 25/03/2003 → 06/04/2009
<u>Haguenauer v. France</u> (Offline)	651 days 07/03/2002 → 18/12/2003	453 days 18/12/2003 → 15/03/2005	1955 days 15/03/2005 → 22/07/2010
<u>Willem v. France</u> (Offline and Online)	174 days 3/10/2002 → 26/03/2003	552 days 26/03/2003 → 28/09/2004	1899 days 28/09/2004 → 10/12/2009
<u>Le Pen v. France</u> (Offline)	574 days 30/04/2004 → 25/11/2005	1166 days 25/11/2005 → 03/02/2009	441 days 03/02/2009 → 20/04/2010
<u>M'Bala M'Bala v. France</u> (Offline)	488 days 26/12/2008 → 27/10/2009	1085 days 27/10/2009 → 16/10/2012	1099 days 16/10/2012 → 20/10/2015
<u>Baldassi and Others v. France</u> (Offline)	814 days 22/09/2009 → 15/12/2011	1405 days 15/12/2011 → 20/10/2015	1696 days 20/10/2015 → 11/06/2020
<u>Ottan v. France</u> (Offline)	253 days 1/10/2009 → 11/06/2010	664 days 11/06/2010 → 05/04/2012	2296 days 05/04/2012 → 19/07/2018



D. Germany

The German Criminal Code prescribes punishments for various hate speech related offences. Section 130 prohibits incitement to hatred, incitement to violence, and incitement to arbitrary measures against a national, racial, religious group or a group defined by their ethnic origin. It prescribes a punishment of up to 5 years. Section 130a prohibits the dissemination of publications capable of serving as an instruction for an unlawful act or encouraging others to commit such an act, as defined by Section 126, this includes breach of the public peace, genocide, crimes against humanity and war crimes. Section 86 punishes the dissemination of propaganda material of unconstitutional organisations. Section 86a punishes the use of symbols of unconstitutional organisations. Section 46(2) stipulates that racist, xenophobic, and other inhumane or contemptuous motives are an aggravating circumstance to be taken into account when establishing the grounds for the sentencing of any crime under the Criminal Code. Several of these provisions on insult, defamation, defamation of religion, and insult of state symbols, are criticised for being contrary to international human rights standards.⁶¹

The [NetzDG](#) governs the takedown of online unlawful content in Germany. It does not create new categories of unlawful content and is aimed at enforcing the existing provisions in the German Criminal Code. It entered into force on October 1, 2017, and has since been criticised for being vague, overbroad and prescribing disproportionate penalties on platforms and causing a chilling effect on free speech. Section 3(2)(2) requires online intermediaries to take down 'manifestly unlawful' content within **24 hours** of receiving a user complaint. Section 3(2)(3) requires all other unlawful content to be taken down within **seven days** of receiving a user complaint. In the failure to do so, the Act prescribes a penalty of to five million Euros that may be multiplied to ten to 50 million Euros in cases of repeated failures to take down content. The Act does not contain any direction for online intermediaries to decide questions of taking down content with regard to users right to freedom of expression.

We filed Freedom of Information requests with the Federal Ministry of Justice and the Federal Office of Justice. We were informed by both authorities that they did not possess the relevant data. We

⁶¹ Germany: Responding to 'hate speech' – Country Report 2018, *Article 19*, <https://www.article19.org/wp-content/uploads/2018/07/Germany-Responding-to-%E2%80%98hate-speech%E2%80%99-v3-WEB.pdf>.

then studied all hate speech cases from Germany that had ever reached the ECtHR to obtain an indicative timeline for cases.

Results and Analysis

As per the data extracted from the six cases that reached the ECtHR, the average processing time between the offending speech and the conclusion of the trial at first instance was **678.8 days**. Of these six cases, the average time taken for two cases with online speech was 819.5 days and the average time taken for the remaining offline cases was 585 days.



Germany

Legislation governing takedown	NetzDG	
Time prescribed for social media intermediaries to arrive at a conclusion	Manifestly unlawful content 24 hours	All other kinds of illegal content 7 days
Average time period until decision by first instance Courts in in Germany (Criminal Code)	678.8 days	

A detailed breakdown of time durations at different stages of the case is presented below:

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Kühnen v. Germany (Offline)	- 1983 → 25/01/1985 (Excluded from the average as exact dates not mentioned)	304 days 25/01/1985 → 25/11/1985	899 days 25/11/1985 → 12/05/1988
Remer v. Germany (Offline)	495 days 15/06/1991 → 22/10/1992 (The judgment states that the offending publications were published in June, August and December 1991.	487 days 22/10/1992 → 21/02/1994	562 days 21/02/1994 → 06/09/1995

As the judgment does not mention the exact date in June, we assume a median date of June 15 for our calculation)

<u>Witzsch v. Germany</u> (Offline)	602 days 03/12/1999 → 27/07/2001	489 days 27/07/2001 → 28/11/2002	1111 days 28/11/2002 → 13/12/2005
<u>Williamson v. Germany</u> (Online)	1350 days 21/01/2009 → 02/10/2012 (Prior to the penal order on 02/10/2012, the Regensburg District Court had issued a penal order on 22/01/2009 in the case. However, this order was quashed by the Nuremberg Court of Appeal for not meeting the procedural requirements. Subsequently, the order on 02/10/2012 was issued)	1616 days 02/10/2012 → 07/03/2017	671 days 07/03/2017 → 08/01/2019
<u>Pastörs v. Germany</u> (Offline)	658 days 28/01/2010 → 16/08/2012	658 days 16/08/2012 → 05/06/2014	1946 days 05/06/2014 → 03/10/2019
<u>Hans Burkhard Nix v. Germany</u> (Online)	289 days 23/03/2014 → 07/01/2015	378 days 07/01/2015 → 20/01/2016 (The judgment notes that even though the Federal Constitutional Court refused to entertain the complaint on 12/12/2005, the reasoned refusal was communicated to the applicant only on 20/01/2016)	783 days 12/12/2015 → 13/03/2018



E. United Kingdom

Hate speech is governed by multiple provisions under Part 3 and Part 3A of the [Public Order Act, 1986](#). Section 18 prescribes a punishment of up to 7 years imprisonment for any person who uses threatening, abusing or insulting words if he intended to stir up racial hatred. Section 19 – Section – 22 carry a similar punishment for stirring up racial hatred by publishing or distributing written material, public performance of an inflammatory play, broadcasting racially inflammatory content, etc. Section 29A – Section 29F deal with religious hatred and hatred on the grounds of sexual orientation. Besides, Section 3(2) of the Football (Offences) Act 1991 also punishes indecent or racist chanting at designated football matches.

The UK Government published a White Paper on Online Harm in 2020 that envisages a Duty of Care on platforms to actively monitor and take down certain categories of unlawful content.⁶² The White Paper was severely criticised by digital rights organisations. In December 2020, the UK Government [indicated](#) that the Online Safety Bill which would give effect to the final regulatory framework would be ready in 2021.⁶³

We filed Freedom of Information requests with the Ministry of Justice (MoJ), the Crown Prosecution Service (CPS) and the National Police. We requested information about the time duration between the day of the initiation of legal investigations/proceedings and the final decision at the Court of the first instance. In response, the Ministry of Justice provided us with the timelines from the first day of the court hearing until the final disposal of the case. Thus, a research limitation for the data from the UK is that the timelines provided do not include the time from the date of occurrence of the speech or any complaint to the police until the first date of hearing in court, precluding any exact comparison with the data from Denmark and the ECtHR. We then also studied all hate speech cases from the UK that had ever reached the ECtHR to obtain an indicative timeline between date of alleged offence and the decision at first instance for cases across all time periods.

Results and Analysis

- Data received from FOI request for domestic cases (2016 – 2019)

62 "Online Harms White Paper - Initial Consultation Response." *GOV.UK*, <https://www.gov.uk/government/consultations/online-harms-white-paper/public-feedback/online-harms-white-paper-initial-consultation-response>.

63 "Online Harms Bill: Warning over 'unacceptable' Delay." *BBC News*, 29 June 2020. [www.bbc.co.uk, https://www.bbc.com/news/technology-53222665](https://www.bbc.com/news/technology-53222665).

The average time taken between the first date of hearing and the final disposal of the case at first instance was **35.01 days**. However, it is important to note that this period does not include the time between the occurrence of the speech and the time leading up to the first hearing in Court that includes the time taken for police investigation and filing of charges (included in the data from Denmark). As per data released by the Home Office for England and Wales, the police takes a median of 30 days to assign an outcome to public order (hate crime) offences.⁶⁴ Further, as per data from the Crown Prosecution Service from Q3 of 2020, the Crown Prosecution Service takes 32.64 days on average for all cases (not exclusively for hate crimes) to charge a suspect referred by the police.⁶⁵ Accordingly, the actual length of criminal proceedings from complaint to final disposal is likely to be significantly longer than 35.01 days, as also indicated by the (very slim) data from UK ECtHR hate speech cases.

- Data extracted from ECtHR judgments

As per the data extracted from the only hate speech case from the UK to reach the ECtHR, the processing time between the offending speech and the conclusion of trial at first instance was **393 days**.



United Kingdom

Proposed legislation governing takedown	Online Harms Bill to be introduced in 2021	
Time prescribed for social media intermediaries to arrive at a conclusion	Upon obtaining knowledge	
Time period until decision by first instance Courts in Denmark (criminal code)	Cases between 2016 – 2019 35.01 days	Sole Case from England and Wales that reached the ECtHR 393 days

A detailed breakdown of time durations at different stages of the case is presented below:

⁶⁴ "Hate Crime, England and Wales, 2019 to 2020." *GOV.UK*, <https://www.gov.uk/government/publications/hate-crime-england-and-wales-2019-to-2020/hate-crime-england-and-wales-2019-to-2020>.

⁶⁵ *CPS Data Summary Quarter 3 2019-2020 | The Crown Prosecution Service*. <https://www.cps.gov.uk/publication/cps-data-summary-quarter-3-2019-2020>.

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Norwood v. United Kingdom (Offline)	393 days 15/11/2001 → 13/12/2002 (As the judgment does not mention the exact date in November, we assume a median date of November 15 for our calculation)	202 days 13/12/2002 → 03/07/2003	502 days 03/07/2003 → 16/11/2004

In addition to studying the length of proceedings in the selected jurisdictions above, we also studied the processing time of all hate speech cases from Council of Europe States that have been decided by the ECtHR. This complete study and detailed breakdown of length of proceedings is available for reference in Annexure I of this report. Overall, the data extracted from all hate speech decisions of the ECtHR reveals that domestic legal authorities took **778.47 days** on average from the date of the alleged offending speech until the conclusion of trial at first instance. Even with the above-mentioned caveats in terms of the nature of the available data, this demonstrates that legal authorities across Council of Europe states take significantly longer than 24 hours – or even a week – to decide hate speech cases.

Conclusion

With the introduction of the Code of Conduct on Countering Illegal Hate Speech Online, social media companies committed to reviewing “the majority of removal requests” in 24 hours and to “remov[ing] content if necessary”.⁶⁶ The following year, with the entry into force of the NetzDG, Germany started a global trend of government-imposed notice and take down regimes relating with short time limits of hours or days within which to remove unlawful content.⁶⁷ The June 2020 decision of the French Constitutional that declared the 1-hour (terrorism) and 24-hour (hate speech) notice and take down regime under the Avia law is a landmark decision highlighting the problems of the NetzDG and its international “clones”. The decision recognised that the difficulties involved in establishing the manifest unlawfulness of content, and the risk of numerous notifications that may turn out to be unfounded, make a 24-hour time limit extremely short for online intermediaries. In all jurisdictions studied in this report, domestic legal authorities took drastically longer to answer the same question of whether the speech was lawful or not. Austrian authorities took 1273.5 days; Danish authorities took 1341 days to reach their decision; French authorities took 420.91 days, German authorities took 678.8 days, and English authorities 393 days. Overall, the data extracted from all hate speech judgments of the ECtHR reveals that domestic legal authorities took **778.47 days** across all jurisdictions of the Council of Europe. Based on these findings, it seems difficult to reconcile government mandated notice and take down regimes with short timelines – such as 1 or 24 hours – with the requirements of legality, necessity and proportionality, and legitimacy arising from the protection of freedom of expression under ICCPR Article 19. Nor do such short time limits seem possible to reconcile with the six-part test of the Rabat Plan of Action pertaining to assessing advocacy of incitement in hate speech cases. While the ECtHR allows States Parties wide discretion in countering online hate speech, any meaningful assessment of whether online content is falls within or is exempt from the protection of Article 10 is also difficult to reconcile with short timelines of 1 or 24 hours.

Accordingly, compelling platforms to make a rushed evaluation leads to a situation where platforms, under the threat of heavy regulatory fines, are likely to err on the side of caution and take down legitimate speech to protect themselves from potential liability if courts or regulators later conclude that a post was unlawful. They then create an incentive for over-removal or a “better safe than sorry” approach and may lead to a disproportionate takedown of legal content in order to target a smaller amount of illegal material, which contradicts the “strictly necessary” and “proportionate” principles

66 Note: Since 2016, Instagram, Dailymotion, Snapchat and Jeuxvideo.com have also have also volunteered to adhere to the Code. Press Release Of The European Commission - [The Code Of Conduct On Countering Illegal Hate Speech Online](https://ec.europa.eu/commission/presscorner/detail/en/Qanda_20_1135), https://ec.europa.eu/commission/presscorner/detail/en/Qanda_20_1135; Press Release Of The European Commission - Code Of Conduct On Countering Illegal Hate Speech Online: Questions And Answers On The Fourth Evaluation, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_806.

67 The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship, *Jacob Mchangama and Joelle Fiss*, Justitia (November 2019), <http://justitia-int.org/wp-content/uploads/2019/11/Analyse-The-Digital-Berlin-Wall-How-Germany-Accidentally-Created-a-Prototype-for-Global-Online-Censorship.pdf>.

embedded in human rights law.⁶⁸ This creates systemic risks to the proper interests of freedom of expression as the architecture and governance of large social media platforms are readjusted from providing a voice to all, towards removing even potentially unlawful content.

This problem is compounded by the fact that online platforms are increasingly relying upon automated content moderation using.⁶⁹ However, these algorithms pose a risk to free speech as they are poor at understanding context and thus susceptible to flagging false positives and disallowing sensitive speech that does not necessarily fall afoul of either legal limits or terms of service.^{70 71}

International NGOs have devised the [Manila Principles](#) and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye issued a Report on the regulation of user-generated online content. These documents provide good starting points for the development of acceptable standards for intermediary liability and removal of content. They both recommend that intermediaries should only be required to remove unlawful content pursuant to an order by an independent and impartial judicial body with the power to review take down requests.⁷² Governments may wish to create specialized independent judicial bodies or procedures that are able to issue such orders in an expedited manner while preserving core aspects of due process and attaching due and proper weight to the freedom of expression, in accordance with international human rights standards. Given the sheer amount of content across platforms, such new bodies and procedures, should focus on addressing gross and systematic violations of national criminal law, rather than every single piece of content potentially violating criminal law. Platforms should focus on developing content moderation standards that allow individual users more control over the content they are confronted with, to ensure that community standards and terms of service do not reflect the lowest common denominator.

68 Private Governance of Freedom of Expression on Social Media Platforms, Nordicom Review | Volume 41: Issue 1, (March 2020), [https://content.sciendo.com/configurable/contentpage/journals\\$002fnor\\$002f41\\$002f1\\$002farticle-p51.xml?tab_body=fullHtml-78567#d8362997e185](https://content.sciendo.com/configurable/contentpage/journals$002fnor$002f41$002f1$002farticle-p51.xml?tab_body=fullHtml-78567#d8362997e185).

69 Faddoul, Marc. "COVID-19 Is Triggering a Massive Experiment in Algorithmic Content Moderation.", *Brookings*, 28 Apr. 2020, <https://www.brookings.edu/techstream/covid-19-is-triggering-a-massive-experiment-in-algorithmic-content-moderation/>.

70 "Testing Times for Digital Rights around the World: The Three Most Pressing Challenges." *International Observatory of Human Rights*, Shreya Tewari and Raghav Mendiratta, <https://observatoryihr.org/blog/testing-times-for-digital-rights-around-the-world-the-three-most-pressing-challenges/>.

71 The impact of algorithms for online content filtering or moderation, *Policy Department for Citizens' Rights and Constitutional Affairs – Directorate General for Internal Policies*, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU\(2020\)657101_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU(2020)657101_EN.pdf).

72 *The Manila Principles on Intermediary Liability Background Paper*, https://www.eff.org/files/2015/07/08/manila_principles_background_paper.pdf.

Annex I: Processing Times of all ECtHR cases



Azerbaijan

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Tagiyev and Huseynov v. Azerbaijan (Offline)	184 days 01/11/2006 → 04/05/2007	263 days 04/05/2007 → 22/01/2008	4426 days 22/01/2008 → 05/03/2020



Belgium

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Feret v. Belgium Offline	- Exact date not mentioned → 04/10/2006	- Exact date not mentioned → 04/10/2006	1163 days 04/10/2006 → 10/12/2009
Belkacem v. Belgium (Online)	- Exact date not mentioned → 10/02/2012	627 days 10/02/2012 → 29/10/2013	1337 days 29/10/2013 → 27/06/2017



Bosnia and Herzegovina

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Smajic v. Bosnia and Herzegovina (Online)	757 days 03/01/2010 → 30/01/2012 (The case pertained to numerous allegations of hate speech between January and February 2010)	1542 days 30/01/2012 → 20/04/2016	636 days 20/04/2016 → 16/01/2018



Croatia

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Šimunić v. Croatia (Offline)	749 days 19/11/2013 → 08/12/2015	336 days 08/12/2015 → 08/11/2016	805 days 08/11/2016 → 22/01/2019



Estonia

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Delfi v. Estonia (Online)	517 days 24/01/2006 → 25/06/2007	716 days 25/06/2007 → 10/06/2009	2197 days 10/06/2009 → 16/06/2015



Hungary

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Vajnai v. Hungary (Offline)	384 days 21/02/2003 → 11/03/2004	615 days 11/03/2004 → 16/11/2005	1057 days 16/11/2005 → 08/10/2008
Fáber v. Hungary (Offline)	- 09/05/2007 → Exact date not mentioned	Exact dates not mentioned	Exact date not mentioned → 24/10/2012



Iceland

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Lilliendahl v. Iceland (Offline)	738 days 21/04/2015 → 28/04/2017	230 days 28/04/2017 → 14/12/2017	880 days 14/12/2017 → 12/05/2020



Lithuania

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Balsyte-Lideikiene v. Lithuania (Offline)	- 2000 → 13/03/2001 (Even though the applicant was initially convicted on 28/06/2000 by a court of first instance, the Regional Court quashed this conviction on the ground that the applicant was hospitalised during part of the proceedings)	52 days 13/03/2001 → 04/05/2001	2833 days 04/05/2001 → 04/02/2009

<p>Beizaras And Levickas v. Lithuania (Online)</p>	<p>46 days 08/12/2014 → 23/01/2015 (The photograph that garnered the hateful comments was posted on 08/12/2014 and the ECtHR case originated after the two applicants lodged an application with the Court on 13/08/2015)</p>	<p>26 days 23/01/2015 → 18/02/2015</p>	<p>1912 days 18/02/2015 → 14/05/2020</p>
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Russia

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
<p>Stomakhin v. Russia (Offline)</p>	<p>1393 days 27/01/2003 → 20/11/2006</p>	<p>184 days 20/11/2006 → 23/05/2007</p>	<p>4156 days 23/05/2007 → 08/10/2018</p>
<p>Ibragim Ibragimov and Others v Russia (Offline)</p>	<p>- 2005 → 09/11/2006 (Excluded from our calculation as exact dates not mentioned)</p>	<p>313 days 09/11/2006 → 18/09/2007</p>	<p>4157 days 18/09/2007 → 04/02/2019</p>
<p>Pavel Ivanov v. Russia (Offline)</p>	<p>2003 → 08/09/2003 (Excluded from our calculation as exact dates not mentioned)</p>	<p>232 days 08/09/2003 → 27/04/2004</p>	<p>1029 days 27/04/2004 → 20/02/2007</p>
<p>Atamanchuk v. Russia (Offline)</p>	<p>870 days 01/03/2008 → 19/07/2010</p>	<p>399 days 19/07/2010 → 22/08/2011</p>	<p>3339 days 22/08/2011 → 12/10/2020</p>



Sweden

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Pihl v. Sweden (Online)	529 days 29/09/2011 → 11/03/2013 (The District Court initially rejected the applicant's claims on 11/11/2011 however the Court of Appeal quashed this order on 10/07/2012 due to a procedural error)	866 days 11/03/2013 → 25/07/2015	563 days 25/07/2015 → 07/02/2017
Vejdeland and Others v. Sweden (Offline)	208 days 15/12/2004 → 11/07/2005 (As the judgment does not mention the exact date of publication in December, we assume a median date of December 15 for our calculation)	360 days 11/07/2005 → 06/07/2006	2134 days 06/07/2006 → 09/05/2012



Switzerland

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Perinçek v Switzerland (Offline)	671 days 07/05/2005 → 09/03/2007	278 days 09/03/2007 → 12/12/2007	2864 days 12/12/2007 → 15/10/2015



The Netherlands

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Glimerveen and Hagenbeek v The Netherlands (Offline)	211 days 30/08/1976 → 29/03/1977 (Note: This is a case of the European Commission on Human Rights)	350 days 29/03/1977 → 14/03/1978	576 days 14/03/1978 → 11/10/1979



Turkey

Name of the Case and Mode of Speech	Number of days between the offending speech and conclusion of trial at first instance	Number of days between conclusion of trial at first instance and disposal of all domestic proceedings by higher courts	Number of days between final disposal at the domestic level and final disposal at the ECtHR
Sürek v Turkey (Offline)	225 days 30/08/1992 → 12/04/1993	1296 days 20/08/1992 → 08/03/1996	1217 days 08/03/1996 → 08/07/1999
Gündem v Turkey (Offline)	1098 days 10/12/1993 → 12/12/1996	-	1190 days 12/12/1996 → 16/03/2000
Medya FM Rega Radio (Offline)	587 days 11/06/1998 → 19/01/2000	748 days 19/01/2000 → 5/02/2002	1743 days 05/02/2002 → 14/11/2006
Gündüz v Turkey (Offline)	294 days 12/06/1995 → 01/04/1996	177 days 01/04/1996 → 25/09/1996	2819 days 25/09/1996 → 14/06/2004
Gerger v Turkey (Offline)	200 days 23/05/1993 → 09/12/1993	827 days 09/12/1993 → 15/03/1996	1210 days 15/03/1996 → 08/07/1999
Faruk Temel v Turkey (Offline)	244 days 21/01/2003 → 22/09/2003	493 days 22/09/2003 → 27/01/2005	2285 days 27/01/2005 → 01/05/2011
Erdogdu v Turkey (Offline)	444 days 02/10/1992 → 20/12/1993	1451 days 20/12/1993 → 10/12/1997	918 days 10/12/1997 → 15/06/2000
Erdal Tas v Turkey (Offline)	- Exact date not mentioned → 10/04/2001	77 days 10/04/2001 → 26/06/2001	2092 days 26/06/2001 → 19/03/2007
Altintas v Turkey (Offline)	403 days 15/03/2007 → 21/04/2008	No appeal (The judgment notes that the applicant was denied of the	4463 days 21/04/2008 → 10/07/2020

	(As the judgment does not mention the exact date in March, we assume a median date of March 15 for our calculation)	possibility of appeal because of the amount of the fine imposed)	
<u>I.A v Turkey</u> (Offline)	939 days 1/11/1993 → 28/05/1996	496 days 28/05/1996 → 6/10/1997	2990 days 6/10/1997 → 13/12/2005
<u>Erbakan v Turkey</u> (Offline)	1699 days 25/02/1994 → 21/10/1998	2015 days 21/10/1998 → 27/04/2004	894 days 27/04/2004 → 06/10/2006
<u>Dink v Turkey</u> (Offline)	700 days 7/11/2003 → 7/10/2005	521 days 7/10/2005 → 12/03/2007	1373 days 12/03/2007 → 14/12/2010
<u>Aksu v Turkey</u> (Offline)	466 days 15/06/2001 → 24/09/2002 (The case was brought by someone who was offended by the speech not by the speaker. So, the first date is the date that he filed an application at Court	561 days 24/09/2002 → 07/04/2004	2898 days 07/04/2004 → 14/03/2012
<u>Karatas v Turkey</u> (Offline)	99 days 15/11/1992 → 22/02/1993 (As the judgment does not mention the exact date in March, we assume a median date of November 15 for our calculation)	1743 days 22/02/1993 → 1/12/1997	584 days 01/12/1997 → 08/07/1999



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