

“Report Racism”

WORKSHOP

Module 3:

Understanding the Legal Framework of Hate Speech and Reporting Hate Speech

Duration: 4 hours

Important Information on the Module

Module Title	Understanding the Legal Framework of Hate Speech and Reporting Hate Speech
Aim	<p>To introduce local students and young migrants to the legal framework of Hate Speech on international and European level and inform them on their rights and ways to report Hate Speech incidents by distinguishing between Freedom of Expression and Hate Speech. Also, to sensitise them in recognising Hate Speech of every form, in order to denounce and report it.</p>
Name of Trainer	
<p>Learning Outcomes</p> <p><i>At the end of the workshop, the participants will be able to, in terms of:</i></p>	<p>Knowledge: 1. Define Hate Speech and the difference between Freedom of Expression and Hate Speech, 2. Numerate all the categories of Hate Speech, 3. Define the international and European legal framework of Hate Speech, 4. Define, at a certain level, how national legislations address Hate Speech, 5. Define the online dimension of Hate Speech and relevant legislation, 6. Numerate ways of reporting Hate Speech.</p> <p>Skills/Competences: 1. Recognise the difference between protected and prohibited speech, 2. Recognise how Hate Speech affects individuals, groups, and communities, 3. Use speech that has no negative effect on individuals, groups, and communities, 4. Escalate or de-escalate a conflict by adopting positive ways of using speech, 5. Use Hate Speech legislation to report online and offline Hate Speech incidents, 6. Apply ways of reporting Hate Speech.</p> <p>Attitudes: 1. Reject Hate Speech of every form, 2. Be sensitised in recognising and reporting Hate Speech incidents.</p>

What *Hate Speech* is and its Limitations

- There is no internationally agreed definition for **Hate Speech**.
- “Speech that intentionally attacks a person or a group based on **race, ethnicity, gender, disability, sexual orientation, religion**, or any other prohibited criterion” (definition by Tulkens, 2013: 3).
- Hate Speech can be expressed **face-to-face, via media, or through the Internet**.
- The main difficulty for a common definition is the **fine line** between **free speech**, as a fundamental human right and **hate speech**, as an action which goes beyond the right of the freedom of expression.



There is **no commonly agreed threshold** which needs to be met for **hate speech's** legal regulation to be permissible.

International and European Protection of the *Freedom of Expression*

- United Nations (UN)



- Council of Europe (CoE)

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950, Article 10

- Everyone's freedom of expression is protected and should "include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".



LIMITATION:

- This freedom "may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others".

Legislative Bodies and Instruments addressing *Hate Speech* directly or indirectly

Council of Europe

Committee of Ministers of the Council of Europe - Recommendation No R 97(20) on "Hate Speech", 30.10.1997

European Commission against Racism and Intolerance (ECRI) - Policy Recommendation No 15 on "Hate Speech", 08.12.2016

Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 2003

Organization for Security and Co-operation in Europe (OSCE)




Office for Democratic Institutions and Human Rights (ODIHR)

European Court of Human Rights (ECtHR)



- **Use of the term “hate speech” throughout its case-law**
- **No precise meaning of and no specific criteria for it**
- **Case-by-case approach**
- **Jurisprudence reflecting freedom of expression, equality, and human dignity**
- **Articles 10 of the ECHR**
- **Article 17 of the ECHR: “Abuse of rights clause”**

Hate Speech and the European Union

- Council of the European Union (CoEU)
 - Framework decision on “combating certain forms and expressions of racism and xenophobia by means of criminal law” 2008/913/JHA, 28.11.2008
 - “publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin”
 Criminalisation of racist and xenophobic Hate Speech
 - “Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting”
 - Member States were obliged to comply with the provisions of the Framework Decision by 28 November 2010.
 - Basis for European Commission’s Code of Conduct on Countering Illegal Hate Speech, 31.05.2016: Voluntary commitment by Facebook, YouTube, Twitter, Microsoft, and Instagram to counter spread of hate speech online.

Activity 1: “Meeting up with Hate Speech”

1. Brainstorming on “Hate Legislation” in plenary.
2. Division into groups of 4-5 persons.
3. Distribution of pictures of different forms of Hate Speech.
4. Discussion in groups.
5. Categorisation of the pictures (*Hate Speech v Free Speech*).
6. Discussion on personal Hate Speech experiences in plenary.

ACTIVITY



Hate Speech in EU Countries' Legislation (Study Findings)

Study (2015) by the General-Directorate for Internal Policies of the European Parliament - Policy Department C: Citizens' Rights And Constitutional Affairs on

**“Hate Speech and Hate Crime in 7 EU countries:
Belgium, France, Germany, Greece, Hungary, Sweden, and the Netherlands”**

Table 1 : Overview of legislative responses to address hate speech and hate crime

Member State	Criminal law rules	Civil law rules	Administrative law rules	Media self-regulation
BE			✓	
DE			✓	
EL			✓	
FR		✓	✓	
HU			✓	
NL				
SE				

Hate Speech in the Media (Study Findings)

Hate speech and hate crime, if committed by the Media are punishable under administrative law in certain Member States, namely in Belgium, Germany, Greece, France, and Hungary.

In some Member States, self-regulatory bodies of Media service providers have developed rules and procedures regulating the liability of publishers for hate speech. The only Member State where self-regulations expressly provide for the liability of publishers for Hate Speech is Hungary.

Hate Speech Online (Study Findings)

Specific reference to online commission is rarely provided in the transposing provisions themselves. Such reference is only available in the Greek provisions transposing Article 1(1) of the CFD, which explicitly mention the commission of hate speech via Internet. Rather, general criminal law rules cover online hate speech situations or such coverage could be derived from case law.

Hate Speech has been undoubtedly affected by the enormous capacity of the Internet, which leads to a cyberspace where limits barely exist.

Hate Speech in the Social Media

- To prevent and counter the spread of illegal Hate Speech online, in **May 2016**, the European Commission agreed a “**Code of conduct on countering illegal Hate Speech online**” with:

- ✓ Facebook (2016)
- ✓ Microsoft (2016)
- ✓ Twitter (2016)
- ✓ YouTube (2016)
- ✓ Instagram (2018)
- ✓ Google+ (2018)
- ✓ Snapchat (2018)
- ✓ Dailymotion (2018)
- ✓ Jeuxvideo.com (2019)



EU Directives controlling Racist and Xenophobic Behaviours in the Media and over the Internet

1. The Audiovisual Media Services Directive 64
2. The Electronic Commerce Directive 65
3. Other important Directives: Victims' Support Directive, Racial Equality Directive, Employment Equality Directive, Equal Treatment Directives.

Important Cases of *Hate Speech* before the ECtHR

- Freedom of Expression and Hate Speech - *What is Hate Speech and what it is not* (under Article 10 of the ECHR):
 - Media exposure of racism is not “Hate Speech”: [Jersild v Denmark \(1994\)](#)
 - Defending Sharia is not “Hate Speech”: [Günduz v Turkey \(2003\)](#)
 - Homophobic “Hate Speech” (i.e. beyond race and religion): [Vejdeland and others v Sweden \(2012\)](#)
- Hate Speech online:
 - [Delfi v Estonia \(2015\)](#)
 - [MTE and Index v Hungary \(2016\)](#)

Activity 2: “Stranger or not?”

The facilitator:

- Gives information about the general framework of Hate Speech in some EU countries (at least 6).
- Presents the current legal framework of Hate Speech in the EU and some of the findings of the study included in this presentation.
- Divides the participants into mixed groups of 4-6 persons, shows them a list of EU countries, and asks from them to predict which 3 countries hold the least accepting and which 3 the most accepting attitude towards migrants.
- Distributes case studies of Hate Speech incidents from these countries, one to each group, giving them 10 minutes for group discussion.

Representatives from each group present their group’s views in plenary, giving justifications.

The facilitator provides the participants with real data from selected sources about these countries and asks from them to select again 6 countries from the list (3+3), based on the data that they have received.

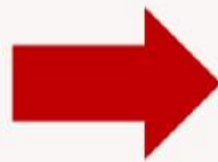
All the participants discuss if the real data correspond to their predictions and the reasons for that. They can also discuss the cultural factors that contribute to which countries' citizens are the most and the least accepting of migrants as well as ways in which they would handle a similar situation.

ACTIVITY

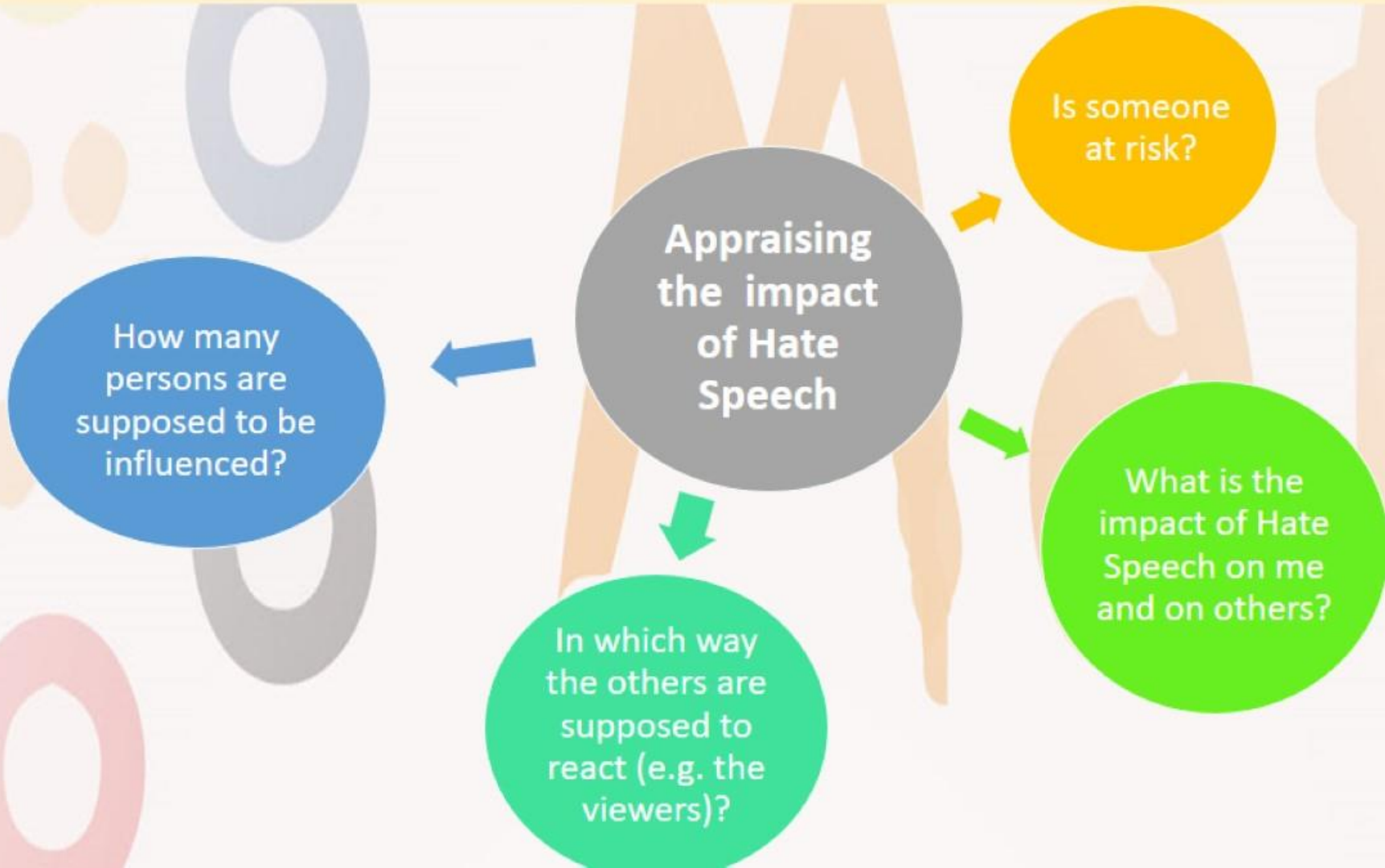


Reporting *Hate Speech*

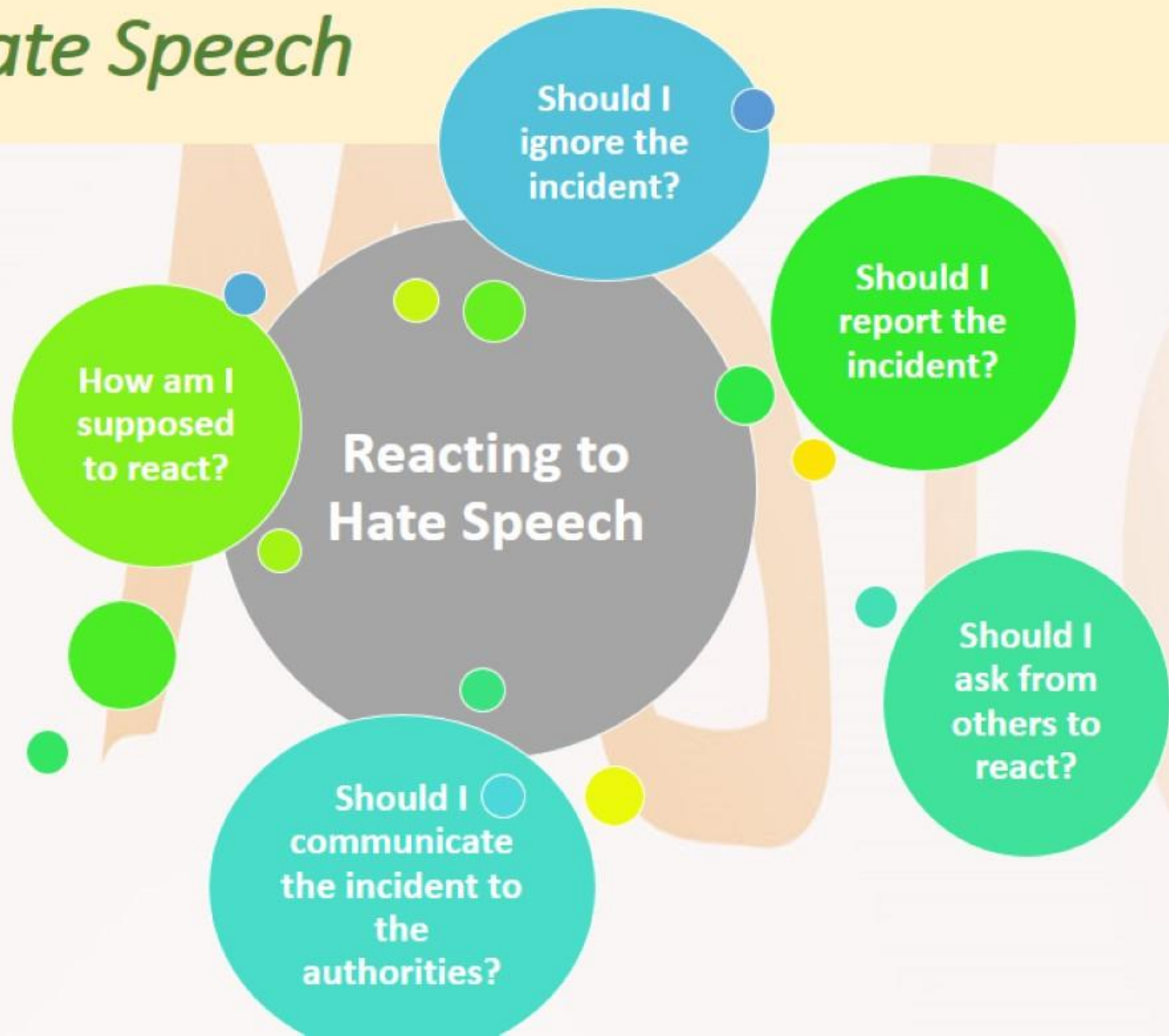
- Most European countries have established national reporting mechanisms and support for victims of **cyber bullying, Hate Speech, and hate crime**, provided by national authorities and NGOs.



1. Appraising the impact of *Hate Speech*



2. Reacting to *Hate Speech*



3. Reporting *Hate Speech* (Aggregate Diagram)

Legal Instruments

- The European Convention on Human Rights
- The European Court of Human Rights
- The Council of Europe Convention on Cybercrime and its Additional Protocol

European Protection Policy

- The Council of Europe's Internet Governance Strategy (2001)
- The Committee of Ministers and the Parliamentary Assembly of the Council of Europe Recommendations for Policies combating Hate Speech on the Internet (e.g. Recommendation CM / Rec (2009) 5)

Instruments for the Prevention of Hate Speech

- The European Commission against Racism and Intolerance (ECRI)
- The Commissioner in relation to Roma, refugees, and asylum seekers
- The Council of Europe's Pestalozzi Programme, designed specifically for education professionals, including seminars on Media and intercultural education

Education, Prevention, and Skills Development

- The Wild Web Woods online game, a tool that helps children learn the basic methods to be safe online
- The Internet Literacy Handbook
- The Council of Europe's Youth Department
- Training seminars, organised locally and internationally for Human Rights activists and trainers, and a wealth of educational material

Other Actions from the Youth Foundation

- Online research on Hate Speech and publishing of the project's Starting Points for Combating Hate Speech Online
- A survey on young people and Hate Speech, 2012
- The European Youth Foundation, awarding grants to young people's organisations for projects aiming at tackling online Hate Speech
- Training Seminars for "online activists"
- Workshops and seminars for activists and campaign organisers

Useful Sources of Information about *Hate Speech*

Cases of the European Court of Human Rights dealing with Hate Speech:
[www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/
http://echr.coe.int/Documents/FS_Hate_speech_ENG.pdf](http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/http://echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)

Pestalozzi Program:
www.coe.int/t/dg4/education/pestalozzi/Documentation_Centre/ML_resources_en.asp#TopOfPage

Compass - A Training Manual on Human Rights for Young People:
www.coe.int/compass

Wild Web Woods
[www.wildwebwoods.org/
popup_langSelection.php](http://www.wildwebwoods.org/popup_langSelection.php)

List of Recommendations, Decrees, and Declarations adopted by the Committee of Ministers in the field of Media:
[www.coe.int/t/dghl/standardsetting/
media/doc/cm_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm_EN.asp)

Activity 3: *“Try to walk in my shoes!”*

The facilitator:

- Gives to the participants important information on reporting Hate Speech and dealing with it.
- Divides the participants into mixed groups of 2-4 persons and distributes to them worksheets with different case studies/scenaria on Hate Speech (e.g. on homophobia, sexism etc.)
- Asks from them to read the scenaria. One of them takes the role of the victim and the other that of the offender. The other participants watch the role play. All the participants of the group have to experience the role play.
- When **all the participants** have experienced the activity, all the groups discuss in plenary their experience by the different roles that they have taken (of the victim, offender, and viewer). They can also discuss the factors that may influence their behaviour as well as ways of reporting Hate Speech and dealing with similar situations, while having these different roles.

ACTIVITY



Key Points - Conclusions on the Legal Framework of *Hate Speech*

1. The EU's Framework Decision incorporates higher thresholds than the UN documents, whilst the Additional Protocol finds itself somewhere in the middle of the UN and EU documents in terms of thresholds.
2. All international and European legal documents focus solely on speech attacking racial, ethnic and religious characteristics, with no documents or provisions protecting attacks on sexual orientation and gender identity.
3. Both the EU and the Council of Europe should incorporate provisions and documents dealing with the use of non-criminal legislative measures to tackle hate speech, which may not reach the threshold needed for the use of criminal law but may cause harm.
4. Ever-existing persistence of countries across the globe to attach a sacred status to free speech when confronted with hate speech.



Possible Actions for *Anti-Hate Speech* Education and Awareness

Use weblogs and social networking sites to communicate what people can do if they fall victims to Hate Speech or witness it.

Use the language of Human Rights: Improve understanding of the rights that protect us online, as well as the relationship between Human Rights and Hate Speech on the Internet.

Create "myth-breaking" tables for groups often targeted by Hate Speech. Post them on social networking sites or create brochures to distribute them offline.

Organize offline activities, training seminars, or public awareness events. They could deal with:

- The problem of Hate Speech on the Internet or in general,
- Prejudices about a specific target group,
- Methods of dealing with Hate Speech,
- The impact of Hate Speech
- The need for people to take responsibility for their actions as well as others' actions,
- Initiatives by other groups of young people, like the *No Hate Speech Movement* - Something else!

Tell the stories of people who have been victims of rhetorical hatred. Use them to raise awareness of the problem and cultivate empathy for the people targeted by Hate Speech.

Take Action! (*Anti-Hate Speech Campaigns*)

Subscribe to the campaign's newsletter, post photos or videos, and interact with others on the campaign's website:

[http:// forum.nohatespeechmovement.org](http://forum.nohatespeechmovement.org)

Subscribe in the campaign:

www.nohatespeechmovement.org

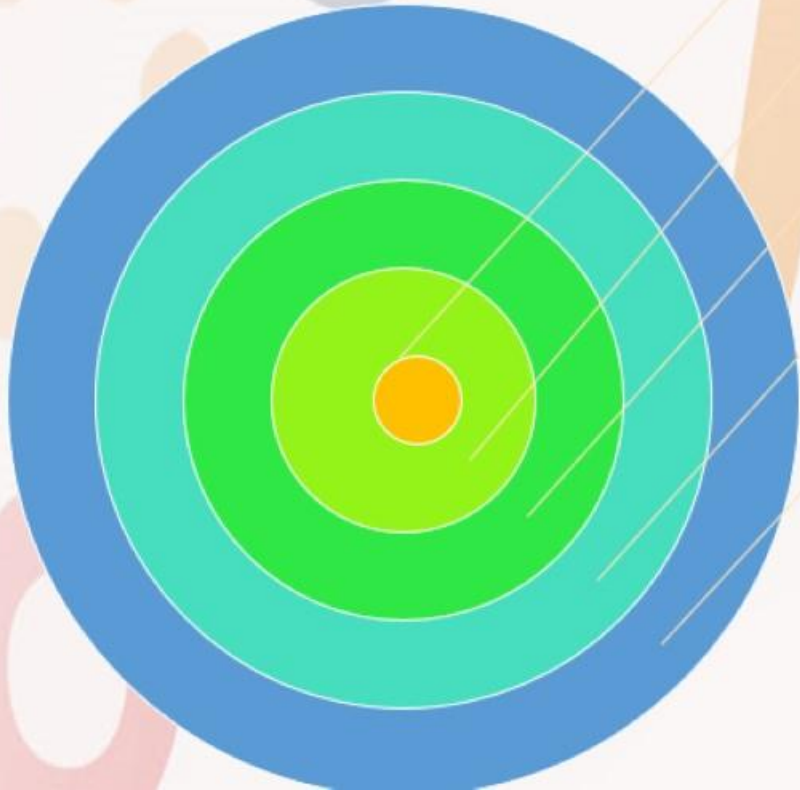
Watch Hate Speech online and report incidents of Hate Speech at:

www.nohatespeechmovement.org/hate-speech-watch

Visit the campaign co-ordination website at:

www.coe.int/youthcampaign

Don't forget **European Days of Action**



Review Questions

- How do you recognise a Hate Speech incident?
- Which are the most important bodies and instruments protecting freedom of expression/against Hate Speech?
- How do you report a Hate Speech incident?



Well done!

You have completed this Module!

Mäte

