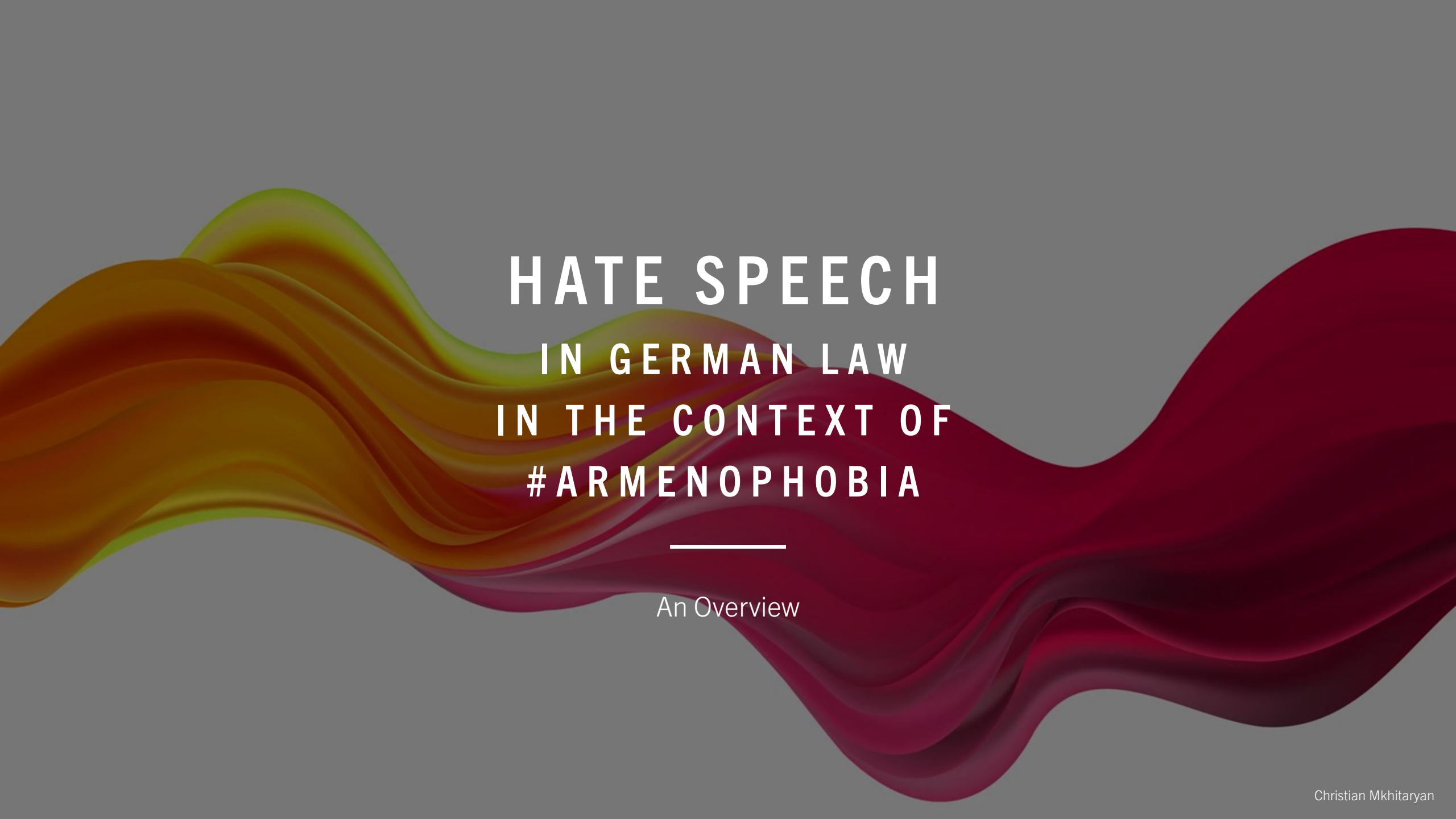




HATE SPEECH IN GERMAN LAW IN THE CONTEXT OF #ARMENOPHOBIA

An Overview

LEGAL MECHANISMS TO COMBAT #HATESPEECH ONLINE AND SOCIAL MEDIA ACCOUNTABILITY IN THE EU



International Convention on the Elimination of All Forms of Racial Discrimination, ICERD („Internationales Übereinkommen zur Beseitigung jeder Form von rassistischer Diskriminierung“)

ICERD came into force under international law on January 4, 1969 and is intended to ensure that people are protected from racial discrimination in legal and factual terms.

Digital Services Act (DSA) („Gesetz über digitale Dienste“ GdD)

The new rules include EU-wide rules for detecting, reporting and removing illegal content, as well as a new framework for risk assessment of very large online platforms and search engines on how illegal content is disseminated on their service. What constitutes illegal content is defined in other legislation either at EU level or at national level: for example, terrorist content, child sexual abuse material or illegal hate speech are defined at EU level. The law came into force on November 16, 2022 and will apply in all EU countries from February 17, 2024.

Measures to combat illegal online-hate speech

General Data Protection Regulation (GDPR) („Datenschutz-Grundverordnung“ (DSGVO))

If the hate speech contains the illegal use of personal data, content can be checked for its legality on the basis of the GDPR. National data protection authorities monitor compliance with the GDPR and maintain a complaints system through which they can take action against social media platforms.

EU Code of Conduct (“EU-Verhaltenskodex”)

The European Commission introduced the Code of Conduct in May 2016 together with four major IT companies (Facebook, Microsoft, Twitter and YouTube) to tackle the spread of racist and xenophobic hate speech online.

LEGAL MECHANISMS TO COMBAT #HATESPEECH ONLINE AND SOCIAL MEDIA ACCOUNTABILITY IN GERMANY



facebook



§ 2 NetzDG

Obligation to report
(„Berichtspflicht“)

Report on handling complaints about illegal content
on the platform

§ 3 NetzDG

Duty to provide a complaints system
(„Beschwerdeverfahren“)

effective, transparent, easily recognizable,
immediately accessible, easy to use and
permanently available procedure

Network-Enforcement Act
(„Netzwerkdurchsuchungsgesetz“ NetzDG)

§ 3a NetzDG

Obligation to notify

Obligation to report content to the
Federal Criminal Police Office
(„Bundeskriminalamt“) as the central
office for the purpose of enabling the
prosecution of criminal offenses

§ 3b NetzDG

Counter-presentation procedure
(„Gegenvorstellungsverfahren“)

Control system if there are
different views between a user and
the provider of a social network as
to whether reported content needs
to be deleted or not

§ 3c NetzDG

Arbitration
(„Schlichtung“)

With the help of private arbitration
boards, disputes between users
and social networks can also be
settled out of court

§ 4 NetzDG

Fine Regulations
(„Bußgeldschorchriften“)

Providers of social networks who violate their
obligations commit an administrative offence. This can
be punished with a fine of up to five million euros
against a person responsible for the complaints
procedure. The fine against the company itself can be
up to 50 million euros.

HATE SPEECH IN THE FORM OF #ARMENOPHOBIA AS A PUNISHABLE ACT IN GERMAN CRIMINAL LAW



§ 130 StGB

Incitement of masses
("Volksverhetzung")

Fine or imprisonment for up to 5 years

§ 111 StGB

Public incitement to
commit offenses

("Öffentliche Aufforderung
zu Straftaten")

if offense materialized: Punishment like the perpetrator of the instigated act
if offense not materialized: Fine or imprisonment for up to 5 years

§ 189 StGB

disparagement of the
memory of the deceased

(„Verunglimpfung des Andenkens
Verstorbener“)

Fine or imprisonment for up to 2 years

Berlin-Brandenburg, Beschluss vom 17.03.2006 (Aktenzeichen: OVG 1 S 26.06)

← **A R M E N O P H O B I A** →

§ 185 StGB

Insult

("Beleidigung")

Fine or imprisonment for up to 2 years

§ 186 StGB

Malicious gossip

("üble Nachrede")

Fine or imprisonment for up to 2
years

§ 187 StGB

Defamation

("Verleumdung")

Fine or imprisonment for up to
5 years



THE CASE OF THE #ARMENOPHOBIC HATE PREACHER

In the summer of 2020, the German-Armenian Lawyers' Association, in parallel coordination with several people of Armenian origin, filed criminal charges against a hate preacher who is known as a community activist and singer.

The accused was suspected of having published two videos in June 2020 on his Facebook account, which was freely accessible to everyone, in which he said, referring to the genocide of the Armenians in the Ottoman Empire in 1915, among other things:

"We, our Ottoman ancestors and Turks are very proud of the genocides that our ancestors committed against you Armenians, you deserve to be killed, injured and beheaded,"

"Your history is full of blood, betrayal and lies."

"We know your history is full of lies, yet we are proud of the mass murders perpetrated against you by our Ottoman ancestors"

"The souls of our Ottoman ancestors shall be blessed, we are proud of those who killed you all".

In a video from June 13, 2020, he also calls on the Lebanese population, especially the Sunnis, to fight the Armenian community. In the course of the investigation, the perpetrator's house was searched by the police and items (laptop, tablet, mobile phone) were confiscated. In 2022, a penalty order ("Strafbefehl") was issued against the perpetrator by the district court of Dortmund for incitement of masses with a fine of 90 daily rates. The special feature of the penal order procedure is that it can lead to a final conviction without an oral hearing.

THE EFFECTIVE FIGHT AGAINST ARMENOPHOBIA

Creation of an online network

- Lawyers, private individuals, associations, NGOs
- Training on mechanisms to counter armenophobia

Identification of Armenophobia on Online Platforms

- Creation of databases
- filing of complaints on online platforms
- filing of criminal charges

Coordinated pressure on online platforms and law enforcement agencies

- Inspection of files
- written applications