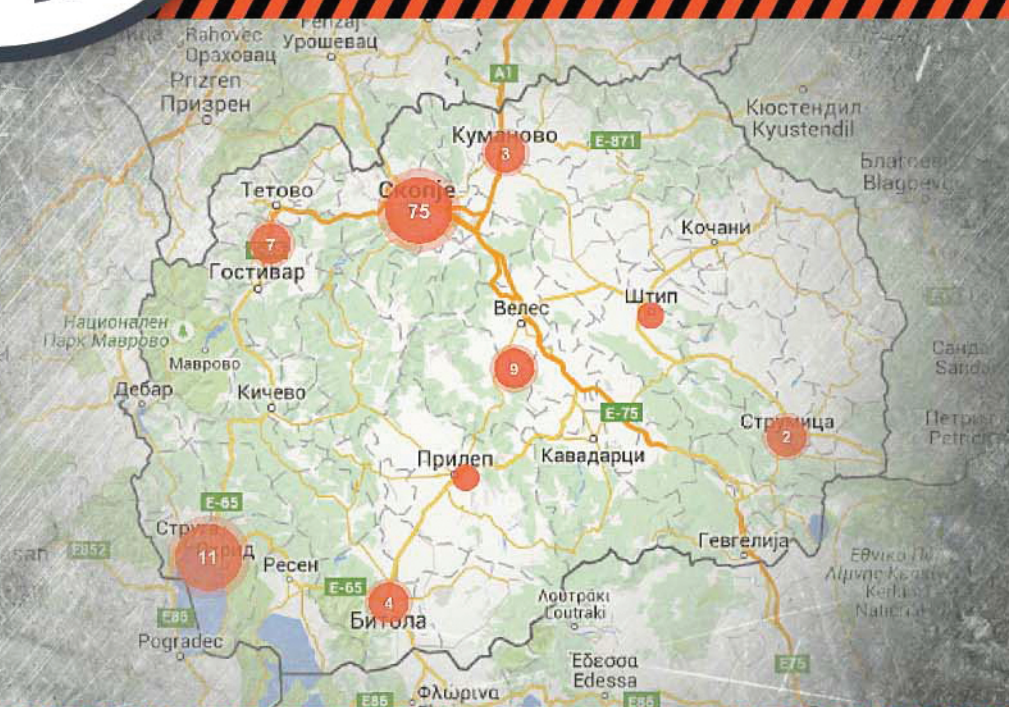




# АНАЛИЗА НА СОСТОЈБАТА СО **ГОВОР НА ОМРАЗА** ВО РЕПУБЛИКА МАКЕДОНИЈА

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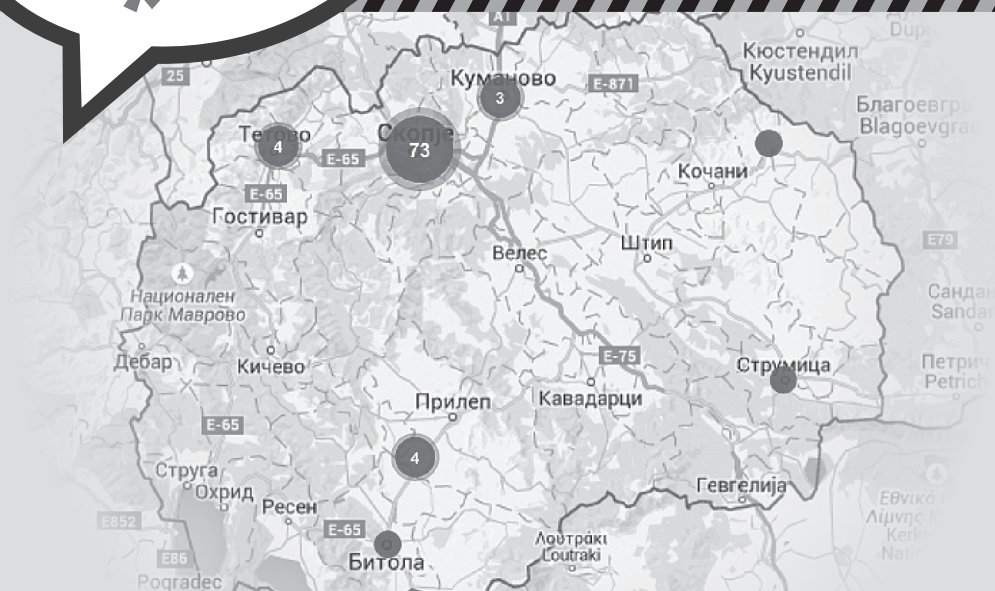


ANALIZË E GJENDJES PËR GJUHËN E  
URREJTJES NË REPUBLIKËN E MAQEDONISË

ANALYSIS OF THE SITUATION WITH HATE  
SPEECH IN THE REPUBLIC OF MACEDONIA

 **ХЕЛСИНШКИ**   
КОМИТЕТ ЗА ЧОВЕКОВИ  
ПРАВА НА РЕПУБЛИКА  
МАКЕДОНИЈА

# ANALYSIS OF THE SITUATION **WITH HATE SPEECH** IN THE REPUBLIC OF MACEDONIA



Skopje, August, 2015

“Analysis of the situation, protection and possibilities for prevention of hate speech in the Republic of Macedonia” is an activity in the project: “Internet platform for mapping and monitoring hate speech in the public spaces and the media”. The project is financially supported by the National Endowment for Democracy based in the United States of America. The Helsinki Committee for Human Rights of the Republic of Macedonia takes responsibility for the information and standpoints expressed in this analysis.

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## **Abbreviations:**

HPP	– Higher Public Prosecution
ECHR	– European Convention on Human Rights
ECtHR	– European Court of Human Rights
EU	– European Union
PP	– Public Prosecution
CERD	– Committee for Elimination of Racial Discrimination
CC	– Criminal Code
CPD	– Commission for Protection against Discrimination
LGBT	– Lesbian, Gay, Bisexual, Transgender, Intersex
MRT	– Macedonian Radio Television
Mol	–Ministry of Interior
PPP	– Primary Public Prosecution
UN	– United Nations
USA	–United States of America
CoE	– Council of Europe

# INTRODUCTION

The Helsinki Committee of Human Rights of the Republic of Macedonia implemented the project **“Internet platform for mapping and monitoring hate speech in public spaces and the media”**. Some of the activities from this project that is to be implemented by the Helsinki Committee consist of monitoring, taking note of and reporting hate speech in the public space and the media in real time.

Noting down hate speech on a local and central level through volunteers on the [www.govornaomraza.mk](http://www.govornaomraza.mk) platform

A campaign promoting the platform and,

Analysis and recommendations for prevention and combating hate speech

The last activity, i.e. the analysis, provides an overview of the situation in the Republic of Macedonia and the access to justice of victims of hate speech. Researchers and lawyers teamed up to process the collected data for the needs of the analysis, and at the same time consulted international and domestic legislation taking into consideration the need for their consolidation in this area. In line with the methodology, qualitative and quantitative methods of data collection were used, as well as a multi-disciplinary approach, in order to answer the established theses:

1. Does the Republic of Macedonia have a clear and defined legal framework concerning hate speech?

2. Are citizens given access to efficient and effective protection mechanisms against hate speech?

The text below refers to the methods of research and gives a short overview of the chapters elaborated in this analysis.

## QUALITATIVE METHOD

Method: Legal research

The qualitative method of data collection is based on collecting and analysing legal research, the legislation, international and domestic reports from international and domestic institutions/ organizations. The legal team did data analysis, prepared open questions and forwarded them to the competent institutions in the shape of a questionnaire, based on the right of information of public character, and in accordance with the Law on Free Access to Information of Public Character. When it comes to international and national legislation, all relevant international conventions, constitutional and legal grounds dealing with the right to freedom of expression, the prohibition of hate speech and non-discrimination have been taken into consideration. At the same time, the needs for consolidation of the existing legal framework with the international norms and standards regarding hate speech has been established, especially the need for a clearer definition of the phenomenon of hate speech

## QUANTITATIVE METHOD

Method: Preparing and disseminating questionnaires

The questionnaires were prepared and submitted to the competent institutions, and data analysis was done in accordance with the collected answers which served as grounds for the recommendations for improvement of the legal framework for protection against hate speech, as well as improvement of the efficiency in the protection of victims of hate speech. The research team submitted questionnaires to the institutions in charge of protecting victims of hate speech and preventing hate speech in the first place. The questionnaires were submitted to the: Ministry of Internal Affairs of the Republic of Macedonia (hereinafter Mol), the Primary Public Prosecutor's Offices (a total of 20 questionnaires) and the Primary Courts on the territory of the Republic of Macedonia (a total of 24 questionnaires), the Appellate Courts (a total of 4 questionnaires), the Supreme Court of the Republic of Macedonia and the Agency for Audio and Audiovisual Media Services. Apart from preparing and submitting the above-mentioned questionnaires, the Helsinki Committee of Human Rights of the Republic of Macedonia, in the course of the past year collected data from the volunteer's fieldwork which is featured on the hate speech monitoring platform [www.govornaomraza.mk](http://www.govornaomraza.mk) as well as individual citizens' reports. In line with the data collected in 20 major towns and surrounding regions, the most frequent grounds for hate speech have been observed, as well as their relation to the social and political events. The data breakdown was done in a period of 16 months or, from 01.04.2014 to 31.07.2015.

### CONTENT OF THE CHAPTERS

Chapter 1: The first chapter deals with international legislation and definition of the term "hate speech" through examples of the jurisprudence of the European Court of Human Rights. It covers the methods which make it possible to spot the difference between hate speech and freedom of expression, thus making it possible to make a distinction, especially in court proceedings on hate speech.

Chapter 2: The second chapter presents a brief historic overview of hate speech as treated in the Criminal Code of the Republic of Macedonia and the overall scope of the legislation and the institutions which need to provide the citizens with adequate protection against hate speech.

Chapter 3: The third chapter refers to assessment of hate speech in the Republic of Macedonia and the functionality of the laws and mechanism for protection against hate speech. This chapter analyses the data collected from the questionnaires submitted to the courts and institutions, as well as the data on hate speech from the platform. At the same time, it also deals with the responses to the established thesis and the conclusions about the situation in the Republic of Macedonia.

Conclusions and recommendations: In accordance with the findings, the legal research team prepared conclusions and recommendations for prevention and dealing with hate speech in the Republic of Macedonia. The recommendations refer to the need for improvement of the national legal framework, the sanctions and access to justice through the judiciary and independent mechanisms for protection against hate-speech.

The analysis, conclusions and recommendations will be submitted to all the relevant institutions and bodies in order to direct more attention towards this phenomenon, as well as the possible preventative measures that the country should take in order to decrease or eradicate this social problem.

# 1. INTERNATIONAL LAW AND STANDARDS FOR PROTECTION

## AGAINST HATE SPEECH

The legal and political reflections on hate speech, in essence, can be traced back to the time of the war period, or, to be more specific, the genocidal activities of Nazi Germany against the Jews and the Holocaust, i.e. the use of language in the attempts to dehumanize and objectify a specific group represented in German society - the Jewish one.<sup>1</sup> In fact, through the propaganda and political messages against the Jews, the modern perspectives point out to the correlation between the speech used to degrade, discriminate against and exclude a specific group from society and the physical strategies in the achievement of this goal. On the same line, the danger from hate speech and its abundance prior to mass atrocities is also clear in the case of the Rwandan genocide, i.e. the propaganda that<sup>2</sup> the Hutu used against the Tutsie (during the conflict in Rwanda, in 1994).

The mechanisms established in the post-war period which aimed towards protection and guaranteed human rights have initiated further attempts, on international level, in the struggle against all manifestations breaking the principles of dignity and equality, intolerance, anti-Semitism, discrimination, racism. In addition, the new trends with regards to hate speech are related to transformation of racism into forms of new, so-called cultural racism related to the violations on grounds of various cultural practices which are in a certain way perceived as inferior or as a threat (e.g. female circumcision).

The broad political alliances which when established had the good will in that struggle, such as the Organization of the United Nations (UN), and the European Communities (which later on grew into the European Union/EU), have established mechanisms which are important for the protection and prevention of violation of human rights and freedoms, and are at the same time of importance for the subject of hate speech.

### *Definition and the need of balancing when placing bans*

In the direction of precisely emphasizing the protective mechanisms through the international law and standards, it is necessary to mention that: 1) there is no single and final definition of what hate speech is; and 2) hate speech, as a separate notion, often gets lost in the vacuum between various rights and their interpretation (such as, for example: the right to protection against discrimination and freedom of speech) so that in the area of protection the role of the courts is of special significance.

Therefore, the first part and the lack of a single and final definition of what is covered with the notion of hate speech, from the aspect of international law and standards, has to take into consideration the definition of hate speech as contained in the Council of Europe's Committee of

<sup>1</sup> The history of massacres of minority ethnic communities in Europe is long and full of hate speech crimes, but its prohibition has only recently started to be regulated, i.e. after the Second World War, and is still being developed to date.

<sup>2</sup> The UN International Criminal Court passed verdicts in the case of Rwanda against three media workers for the media campaign which was aired during the Rwandan conflict in 1994. In fact, in 1993, the radio station Radio Television Libre des Mille Collines called for "the final war" to "eradicate the cockroaches (Tutsies)", and during the genocide when 800,000 Tutsies were murdered, this radio station broadcasted lists of names of people who were to be killed, and the locations where they could be found.



Ministers' Recommendation 97(20) on "hate speech" where the term of "hate speech" is understood as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin". In addition, in order to clarify this notion, several doctrinal definitions of hate speech can be presented, such as: "Hate speech is a type of speech used to deliberately offend an individual, or a race, ethnicity, religious or other group. It bears the message of inferiority of the members of a historically oppressed group and condemns, humiliates and is full of hate (Cohen-Almagor, 2006); All racists, xenophobic, and related declinations of identity-threatening expressions could be defined under the notion of hate speech (McGonagall, 2001)" While the second part and the need for balancing refers to the fact that the notion of hate speech creates a discrepancy in the set of fundamental rights, challenging both individuality (through freedom of speech) and equality (through the right to protection against discrimination) as pillars of liberal societies. This discrepancy, or, to be more specific, the need to align the priorities in values in a context, through the perspective of the established international standards, is clearly visible in the approach to freedom of speech by various countries, i.e. various legal traditions (in the continental and common law). It is significant that hate speech, as an notion/substance separated from the usual "hateful talking" regarding certain ongoing political topics or topics from the public sphere, because the special treatment of hate speech, from the aspect of protection, is different from the treatment of other types of abrasive speech and the subsequent actions (such as the example with insult, defamation and (in)direct discrimination). In fact, the protective mechanisms when it comes to hate speech are designed to protect a specific list of fundamental or invariable identity traits of any individual which constitute the essential multiple layers of identity that cannot be replaced, despite the concepts of culture as "input" and "output". Exactly this part of the individual's identity provides the bindings ties towards a certain group sharing the same system of values, which at simultaneously reflects the ongoing relationship of building the self. The distinction between the protection against hate speech as opposed to the other types of abrasive speech is important because this notion does not protect other traits of the individual which may become a target of hate speech, and which are at the same time variable and dependent on the varying living circumstances of the individual's choices. In this sense, the fundamental traits which are protected against hate speech are: race, religion, language, ethnicity and national background, physical or mental disability, sexual orientation and/or gender identity. This list of protected fundamental traits of the individual which may be violated with hate speech is necessarily closed, and no other possible identity traits which are subject to change may be added to it (such as political affiliation, marital status, level of education, social standing). This necessity stems from the exceptionality of hate speech compared to other types of abrasive speech which do not violate the individual's identity coherence in the same way, as well as the need to have the protection against hate speech normatively clear and effective. Finally, despite the absence of a single definition and rigidity in the understanding of this notion, the clear distinction from other types of abrasive speech through the violation it may result it, implies the treatment of protection of the fundamental identity traits which only makes sense and has a goal and this list of traits is rigidly closed and this is adequately regulated.<sup>3</sup>

<sup>3</sup> The most frequent mistake in euphoric solutions for legal protection and the experts who advocate them, is to create a list of traits protected against hate speech which is open and to which other traits may be added. Hence, the legal consequence is defocusing of the protection, i.e. losing the focus and sense of what is to be protected which leads to inefficiency of the regulations. A mistake of this nature exactly has been made with the Macedonian Criminal Code, in the sections referring to prevention and punishing hate speech

In the same vein with the exceptionality of the violation committed by hate speech, we also emphasize its relation to negative reevaluation of the individual's dignity, whereby this attitude is reflected in the person's self-esteem and self-perception. This means that hate-speech imposes a position in which the individual is inferior and less important as a human being, on a political, cultural and social level. Therefore, when this speech is tolerated with bad political will, as well as defocused legislation and consequently similar jurisprudence, a "culture of violence" persists in society which corrodes the social relations and imposes positions of power harmful for the "social tissue". In fact, the non-punitive presence of hate speech and the danger of its victims getting exposed to violence point to the fact that the individual's fundamental traits, as well as the group that the individual belongs to and shares the same traits are violable and this generates a certain "history of oppression" of the group.

On the other hand, such a history of group oppression cannot be generated with another type of unequal treatment of the individual by means of abrasive speech and actions such as insult, defamation and discrimination. Hate speech and the incrimination of this type of abrasive speech is different to insult, defamation and discrimination exactly because these crimes do not harm the individual in the same manner and to the same extent when it comes to its identity coordinates. This means that in cases of insult, defamation and discrimination, the harm to the individual is of a different, maybe even less grave nature, and needs to be treated differently from a legal and political aspect.

Furthermore, when it comes to defamation and insult, above all, from a legal aspect, it is worth mentioning that they are most often treated as civil law matter, while hate speech is treated as a criminal law matter. This normative positioning of hate speech, simultaneously means political readiness of society to condemn this type of treatment towards a certain group of individual which belongs to this group according to its fundamental traits. Exactly the exemption of the fundamental traits, when it comes to defamation and insult, in cases when the individual's honor and reputation have been harmed, i.e. the individual has been exposed to degrading treatment and false statements have been said about her/him, means that the individual has been assaulted on grounds other than its belonging to a group and identity relations. Therefore, in case the same violation of the individual's honor and reputation is committed, in order to attack his/her relation to the group that it belongs to, this would be considered an aggravating circumstance in sentencing this behaviour, since it would be treated as hate speech, and not insult or defamation.

The distinction from discrimination, in turn, creates initial recognition of hate speech, since discrimination is inherent to hate speech. The very definition of discrimination as "disparate treatment of individuals, including unreasonable classification and separation in a legal context" (Frchkoski Lj. D., 2012), implies the involvement of discrimination in practicing hate speech. Thus, "the unreasonable classifications" stem from the identity affiliation of the individual, while "the separation in a legal context" is imposed as an inferior position of the given individual by means of hate speech. Yet although hate speech inherently implies discrimination, there still needs to be a clear indication of the violation which is deemed more serious by using or disseminating hate speech, especially given the fact that the list of traits of the individual on grounds of which he/she may be discriminated against is open and broader than the list of the previously mentioned fundamental identity traits.

## *United Nations*

In order to give an overview of the protective mechanisms with regards to hate speech, i.e. the development of precise measures for its prevention, we will initially point out the ones used within the UN. As such, the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) together with the Committee on Civil and Political Rights, that operates on the basis of the Covenant), the Convention on the Elimination of All Forms of Racial Discrimination UN (1965) (together with the Committee on the Elimination of Racial Discrimination that operates on the basis of convention / CERD) all contain the guarantees and protection of freedom of expression (or more broadly - freedom of speech), but at the same time also contain the bans on those forms of abuse of speech and expression which are aimed at encouraging and spreading hatred and discrimination towards different identity groups, calls to violence and hostility.

These simultaneous guarantees of freedom of expression, as well as bans on the abuse of this freedom when hatred and violence are expressed, present in the UN mechanisms, can be easily explained with the conclusion of the Human Rights Committee regarding the judgment in *Faurisson v. France* (Human Rights Committee, *Faurisson v. France*, Communication No. 550/1993, 8 November 1996). In fact, professor Faurisson from France had revisionist views on the Holocaust and the strategies of the Germans in the extermination of the Jewish population, whereby he was sentenced in accordance with “Gayssot Act”, according to which the denial of the Holocaust and the denial of the crimes against humanity. In addition to this judgment, the Committee finds that in this case the restriction of freedom of expression is justified by Article 19 of the International Covenant on Civil and Political Rights (paragraph 3a), and that “the statements of (the author) Faurisson in their entirety, are of such nature as to strengthen anti-Semitic feelings “and that consequently “this restriction (to the freedom of expression) has served as a tribute to the Jewish community and its life free from fear and atmosphere of anti-Semitism.”<sup>4</sup>

In a similar manner, and the Committee on the Elimination of Racial Discrimination, considering the case through the scope of application of Article 4 of CERD, give an opinion on the case of the Jewish Community of Oslo et al. v Norway<sup>5</sup>, when during the commemoration of the Nazi leader Rudolf Hess a speech was held by a group called “Bootboys”. The Committee, with regards to this case, assessed that “that the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech” and that “the Committee’s own General recommendation No. 15 clearly states that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression.” With regards to this case the Committee ruled that “the ideas based on racial superiority and hatred (...) the referrals to Hitler and his principles and “steps” must be treated in the least as incentive to racial discrimination, if not violence”, i.e. emphasized that with this decision of the Supreme Court, Norway had violated Article 4 from CERD.<sup>6</sup>

## *The Council of Europe and the European Union*

The EU and CoE legal system, unlike the one covered in the UN operation, is similar in its treatment of hate speech, although within the EU mechanism, from the aspect of hate speech, several rights are in mutual collision when it comes to this notion. In fact, hate speech, in this case is in a vacuum

<sup>4</sup> Quoted in Weber Anne’s, “Manual on hate speech”, Council of Europe, 2009

<sup>5</sup> Committee on the Elimination of Racial Discrimination, *Jewish Community of Oslo et al. v Norway*, Communication No. 30/2003, 15 August 2005, para. 10.5

<sup>6</sup> Quoted in Weber Anne’s, “Manual on hate speech”, Council of Europe, 2009

between the borders, the ban and interpretation of several rights, starting from the previous conflict between the freedom of expression and the right to protection against discrimination, in addition to the right of religious belief, and even the right to privacy, bearing in mind, on one hand, the prominently multi-cultural structure of the EU, and on the other hand, the fundamental positioning of all these rights. Therefore, it is important to mention the role of the European Court of Human Rights (ECHR) as an authority which can contribute towards the balancing of these rights, and at the same also contribute in favour of an adequate punitive treatment and prevention of hate speech. Whatever the case, the basic mechanism which has a binding legal effects for the Member States of the EU and the CoE, and which treats hate speech and implies the further development of other mechanisms which would cover this notion in more detail, is the European Convention on Human Rights of the EU (1950), or to be more precise, Article 10 from it. Although ECHR (Article 10), guarantees the freedom of expression, i.e. to hold opinions and to receive and impart information, it also contains duties and responsibilities in the exercise this freedom. The interpretation of this article has led to criteria according to which ECHR can establish whether the limitation of the freedom of expression is justified or not, bearing in mind that in its treatment of cases involving hate speech ECHR employs two approaches using 1) Article 17 which bans the abuse of any of the rights guaranteed with ECHR, and 2) Article 10 and paragraph 2, as well as Article 11 which refer to the freedom of speech and its limitation:

- providing precise legal restrictions on the freedom of expression so as to avoid the lack of legal basis and arbitrariness;

- If legally provided, the limitation of the freedom of expression should contain legitimate purposes (referred to in paragraph 2 of Article 10 of the ECHR);

- the necessity in a democratic society arises from the proportionality and the proportionate measure of restriction to the freedom of expression<sup>7</sup>

The last criteria in ECtHR's decision-making, or the proportional measures in the limitation to the freedom of expression largely refer to the legal notion of "margin of appreciation" which varies depending on the cases (it is lower in cases of religious intolerance and higher when it comes to cases of protection of public personalities), and through the principle of Subsidiarity it allows the countries to decide whether the restricting measures as proportional through their domestic legislation and judiciary.

Through the case of *Handyside v. the United Kingdom*<sup>8</sup>, the ECtHR refers exactly to the "margin of acceptance" by highlighting the role of the national authorities in the initial fulfillment of the "social needs", where the criterion of necessity in the democratic societies arises ECtHR's decision-making. Consequently, "there was in no way (in this case) the Court's task to take the place of the competent national courts but rather to review under Article 10 the decisions they delivered in the exercise of their power of appreciation".<sup>9</sup>

On the other hand, ECHR does not consider the explanations and the consequent sentencing of hate speech of the national court as definitive, to the contrary ECtHR has developed an "autonomous"<sup>10</sup> concept regarding this notion, and it does not consider itself bound by the classifications of certain national courts, and even classifies certain statements as "hate speech", even when domestic

<sup>7</sup> See more in Mihajlova Elena, PhD; Bachovska Jasna, PhD; Shekerdziev Tome, PhD; Freedom of Expression and Hate Speech, OSCE, Skopje, 2013

<sup>8</sup> *Handyside v. the United Kingdom*, Application no. 5493/72, Judgment 7 December 1976

<sup>9</sup> Quoted in Weber Anne, "Manual on hate speech", Council of Europe, Strasbourg, 2009

<sup>10</sup> Weber Anne, "Manual on hate speech", Council of Europe, Strasbourg, 2009

courts ruled out this classification. Such is the case of *Sürek v. Turkey*<sup>11</sup>, when ECtHR concluded in this instance that there had been hate speech, whereas the applicant had not been convicted of incitement to hatred but of separatist propaganda, since the domestic courts considered that there were no grounds for convicting him of incitement to hatred. Finally, most often in its judgments, ECHR refers to “all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance).”

The practice of the EU Court of Justice coherently builds on these principles, covering in the same way the discourse of the fundamental human rights by prioritizing its values in a given context. This means that the equalization of the practices of the ECtHR and the Court would also set strategic directions of development of the legal traditions of the EU as a whole. In fact, in a dozen of cases, the Court has faced cases which raise dilemmas regarding the right to expression, but the *Feryn*<sup>12</sup> case shifted the balance of the colliding rights towards a constitutive solution which could be symbolically called the “European right to freedom of expression”. In fact, this case pointed to the possibility of having freedom of expression be a cross section of the constitutional guarantees in the national legislations of the EU member states, the traditional framework of European legislation, the rulings of the ECtHR and the Court, i.e. harmonization of the Brussels mechanisms so that the efforts in the fight against hate speech, and at the same time, the freedom of expression may start to be recognized as a “European first Amendment” (by analogy to the US Constitution).

Although in the *Feryn* Case, in which one of the directors of the *Feryn* Company, Mr. Pascal Feryn in an interview for the *De Standaard* daily talked about recruiting workers to install doors for their clients is treated as discrimination, this case also implied the Court’s treatment of hate speech, especially bearing in mind the court’s explanation for the verdict. In fact, Mr. Feryn’s statement that the company’s clients do not want Moroccans coming into their homes and installing their doors, which would lead to them not recruiting Moroccans in their company triggered the reaction of the anti-racist organization Centre for equal opportunities and opposition to racism; “the CGKR” which brought proceedings against the company. Yet, the *Arbeidsrechtbank* (lower court in Strasbourg) held that the public statements in question did not constitute acts of discrimination; rather, they were merely evidence of potential discrimination. However, in the further treatment of the statements by Mr. Feryn the Court ruled that hate speech on grounds of race or racist speech is recognized as a form of discrimination, i.e. the statements that discourage certain groups from applying for jobs due to their fundamental traits constitute use of speech degrading those groups. Finally, the importance of the Court’s ruling in the *Feryn* Case is that it changed the direction of the Treaty on the Functioning of the EU (article 19)<sup>13</sup>, as well as Directive 2000/43/EC of the EU Council for implementation of the principles of equal treatment of people principle of equal treatment between persons irrespective of racial or ethnic origin<sup>14</sup>. This attitude of the Court significantly contributes towards EU’s anti-racist aspirations, especially prominent after the Treaty of Maastricht (1992), i.e. points to the raising awareness of the EU institutions that contemporary hate speech, in fact reflects the racist concepts and division of “Europeans” and “non-Europeans” which are the result of and are triggered by those eras in European history of use of abusive speech against the Jews and the Roma and the consequences it had on these groups. Furthermore, these divisions based on racism (taking

<sup>11</sup> *Sürek v. Turkey* [GC], No. 26682/95, ECHR, 1999-IV

<sup>12</sup> Case C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV*, [2008] ECR I, at 5187

<sup>13</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

<sup>14</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

this term as an “umbrella” term), and inciting hate speech, are part of the ECHR practice which covers hate speech on grounds of race, religion and nation, denial (of mass crimes; the Holocaust), political speech, speech based on the totalitarian doctrines, as cases of hate speech.

Yet, unlike those grounds which are directly related to racism, it is important to mention that ECHR did not treat sexual orientation and/or gender identity and the aspect of homophobia as hate speech<sup>15</sup> until recently, although this does not mean that homophobia was not recognized as hate speech, such as in the case of the document on Intercultural Dialogue adopted at the 118 session of the Committee of Ministers in 2008. In addition the case of *Vejdeland and Others v. Sweden*<sup>16</sup> from 2012 to a certain extent contributed towards ECtHR's clear declaration that discrimination on grounds of sexual orientation is equally serious as discrimination on grounds of race, ethnicity or background. In the case in question, the applicant was convicted by domestic courts for distributing 100 leaflets in a secondary school, as an action insulting homosexuals, as the content of the fliers stated that “homosexuality has a morally destructive effect on the substance of society”, that it is a “a deviant sexual proclivity” and it is to blame of the outburst of HIV/AIDS. Regarding the case, ECHR ruled that there had been no breach of the freedom of expression (article 10 from ECHR) on the part of Sweden, i.e. the applicants right to freedom of expression had been reasonably limited by the Swedish authorities as a necessity in democratic societies for protection of the reputation and rights of others.

From the other mechanisms important for the EU and CoE justice system, which are in the area of prevention and punishment of hate speech, the most notable are the European Commission against Racism and Intolerance (1993), which takes the approach “country by country” when observing and thus significantly contributes in presenting the specific conditions and recommendations for improvement, the European Monitoring Centre on Racism and Xenophobia (1997), later taken over by the Agency for Fundamental Rights (2007), the European Charter on Human Rights (2000), Framework Decision on racist and xenophobic crimes (2008). From the EU and CE legislation it is important to include the following documents: Recommendation (97)20 on hate speech adopted by the Committee of Ministers (1997), Recommendation (97) 21 on the media and promotion of culture of tolerance (1997) Declaration of the Committee of Ministers on freedom of political debate in the media (2004), Resolution 1510 (2006) on freedom of expression and respect for religious beliefs adopted by the Parliamentary Assembly (2006), Recommendation 1805 (2007) on blasphemy, religious insults and hate speech to people based on their religious affiliation (2007), General Recommendation 7 on national legislation to combat racism and racial discrimination ECRI (2002).

### *Different approach to hate speech*

Guided by international mechanisms, national legislations take an alleviated approach to deal with the standardization of punitive measures and further prevention of hate speech, bearing in mind the previously set international standards in the treatment of this notion, which are later on differently reflected in the penal laws, the legislation on prevention and protection against discrimination, the legislation on prevention of the violation of equality, the legislation preventing incitement of religious, racial, ethnic and national intolerance and hostility or finally, as well as separate and specified legislation on hate speech (including hate speech in cyberspace). However, depending on the

<sup>15</sup> As noted in “Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis” (European Union Agency for Fundamental Rights), June 2008

<sup>16</sup> *Vejdeland and Others v. Sweden*, Application no. 1813/07

legislation, and in particular the judiciary of different countries, they have also developed different approaches to hate speech i.e. belong to different legal systems - the European one, based on civil law, and the US one, based on case law. Thus, the basic division of countries, achieved through the different approaches to this notion, is the legal, judicial and political position of the United States of America (USA) vs. other countries. In fact, this division is based in the US attitude towards freedom of expression, guaranteed by the interpretation of the First Amendment of the US Constitution which states that “Congress shall make no law abridging the freedom of speech... as an individual right, which similarly to the right to property, may not be violated unless closely related to criminal activity”.<sup>17</sup> Therefore, the constitutionally guaranteed inviolability of the freedom of expression in the US also implies difficulty in imposing limitations to this freedom of the American citizens since such restrictions are limited exclusively to the doctrine of “clear and present danger.”<sup>18</sup> In addition, on the line of protecting freedom of expression and not stipulating clear restrictions, the US also allows “pure advocacy” of illegal activities such as advocacy of racism, according to the Brandenburg rule<sup>19</sup>, which can be clearly and unambiguously seen through case of the National Socialist Party of America v. Village Of Skokie (1977).<sup>20</sup> In this case, neo-Nazis had proposed to hold their march in full SS uniform with swastikas through Skokie (a suburb of Chicago), populated by dominant Jewish population, as well as many Jews who had survived the Holocaust. Although the local city authorities had taken action against holding the march, however, these measures were annulled by the state and the judicial authorities, since, according to their assessment, the violated the neo-Nazis’ freedom of speech. Thus, despite the clear message of the neo-Nazis and the deliberate selection of this place to hold the march, i.e. despite being informed by the Jews that displaying swastikas (note: Displaying symbols could be interpreted as hate speech) may incite violence, the first instance court decided that such a march could be banned, but the Supreme Court overruled it, since the first-instance court wrongfully concluded that the proposed march met the criteria of “inciting violence” failing to clarify what may satisfy this standard.<sup>21</sup>

It is interesting to note that, despite belonging to the same legal systems based on common law, Canada, unlike the United States, as country that also has a prominent multicultural structure, as well as a history of racism, imposes limits to freedom of expression in order to balance the protection of human rights. One of the cases in point is Malcolm Ross v. Canada<sup>22</sup>, where a teacher was removed from his job because of his public discriminatory statements against Jews and Judaism. The decision of the Canadian courts to limit the freedom of expression in this case was identical to the opinion of the Human Rights Committee that “restrictions may be permitted on statements which are of a nature as to raise or strengthen anti-semitic feeling, in order to uphold the Jewish communities’ right to be protected from religious hatred”<sup>23</sup>, whereby the Committee had clearly taken into consideration the teacher’s intention and his social position.

In contrast to those countries whose legal systems are based on case law, the European states whose legal systems are based on Civil Law have a different approach to hate speech, or endeavor to balance the colliding rights and allow restriction of freedom of expression when it simultaneously

<sup>17</sup> “Hate Speech and Cultural Differences” („Говорот на омраза и културните разлики“), Templum, Skopje, 2010, p. 64

<sup>18</sup> See more in Mihajlova Elena, “Hate Speech and Cultural Differences” („Говорот на омраза и културните разлики“), Templum, Skopje, 2010, p. 65

<sup>19</sup> Referring to the Branderburg v. Ohio Case, 395.U.S. 1969

<sup>20</sup> National Socialist Party of America v. Village Of Skokie, 432 U.S. 43, 1977

<sup>21</sup> More on the case in “Hate Speech and Cultural Differences” („Говорот на омраза и културните разлики“), Mihajlova Elena, Templum, Skopje, 2010, pp. 68-69

<sup>22</sup> Human Rights Committee, Malcolm Ross v. Canada, Communication No. 736/1997, 18 October 2000, para. 11.5.

<sup>23</sup> Quoted in Weber Anne, “Manual on hate speech”, Council of Europe, Strasbourg, 2009

means committing a violation of the dignity and rights of others. In this context, and in order to illustrate the attempts to preserve the democratic tradition, as well as keep a consistent restrictive attitude towards various discriminatory and exclusionary activities, we can refer to the German legislation and jurisprudence regarding hate speech. In fact, the progressive positions of this country, in order to reconcile past oppression and mass atrocities committed during World War II (the Holocaust) are clearly perceived in the treatment of hate speech, both, through the legislation, as well as through the courts' rulings. One of the cases of reference for this thesis is the case of "Lut"<sup>24</sup>, from 1958, when at the opening of the German Film Week, the President of Hamburg Press Club, Mr. Lüth agitated for boycotting director Veit Harlan (popular in the Nazi period) later on stating for the news that "Harlan's return can only reopen wounds barely healed, and resuscitate diminishing distrust fatal to German reconstruction", i.e. that "it is not only the right but the duty of all decent Germans to protest against, and even to boycott, this ignominious representative of the German film industry", whereby the Court in Hamburg prohibited him to continue with his appeals, but Lüth's complaint filed to the Constitutional Court had been admitted and revoked the ban of the Court in Hamburg.<sup>25</sup> In the Netherlands, as a landmark country of the freedom of expression, this is regulated with Articles 137 (c) and 137 (e) of the Criminal Code which prohibit public and intentional insults, as well as engaging in verbal, written and illustrated incitement of hatred on the basis of race, religion, sexual orientation or personal beliefs; and finally in the UK it is regulated with the Public Order Act (1986), where section 18 (1) states that "a person who uses threatening, abusive or insulting words or acts in such a way i.e. disseminates threatening, abusive or offensive written materials shall be guilty of an offense if a)he/she intends to arouse racial hatred or b) is aware of all the circumstances that might arouse racial hatred", while Section 5 of the Public Order Act states that the use of threatening, abusive or insulting words "in places where they can be heard by the person who may find them upsetting" is punishable.

### *Indicators of identification*

While observing the mechanisms of international law in relation to hate speech as well as the established standards in the prevention and punishment of this type of abrasive speech, it may be noted that the main difficulty stems from the need to balance between the collision of various fundamental rights. Namely, through the efforts of national jurisdictions for more accurate regulation of the restrictions to the freedom of expression on the one hand and the grounds and circumstances in which certain expressive activities can be labeled as hate speech on the other, as well as the case law and the conclusions regarding the guarantees of certain rights, we can perceive the challenges of identifying hate speech. Moreover, several indicators are used to identify hate speech, given that states have a different approach and the involved parties (judges, prosecutors, media, journalists, NGOs) use different indicators in specific cases:

- intention
- content/context
- consequences/banned results<sup>26</sup>

<sup>24</sup> BvefGE 7, 198, 1958

<sup>25</sup> Quoted in "Hate Speech and Cultural Differences" („Говорот на омраза и културните разлики"), Mihajlova Elena, Templum, Skopje, 2010, p. 74

<sup>26</sup> See more in Mihajlova Elena, PhD; Bachovska Jasna, PhD; Shekerdziev Tome, PhD; Freedom of Expression and Hate Speech, OSCE, Skopje, 2013. pp. 33-34



## 2. LEGAL FRAMEWORK AND MECHANISM FOR PROTECTION AGAINST HATE SPEECH

### IN THE REPUBLIC OF MACEDONIA

Some of the fundamental values of the constitutional order of the Republic of Macedonia are the basic rights and freedoms of humans and citizens recognized in international law and laid down in the Constitution. According to the Constitution, the citizens of the Republic of Macedonia are equal in their freedoms and rights regardless of sex, race, color, national and social origin, political and religious beliefs; property and social status. The freedom of religion and the right of members of minorities to freely express, foster and develop their identity and national attributes. The Republic guarantees the protection of ethnic, cultural, linguistic and religious identity. The Constitution protects the rights and freedoms of humans and citizens relating to the freedom of belief, conscience, thought and public expression of thought, political association and activities and the prohibits discrimination on the grounds of sex, race, religion or national, social and political affiliation.

There is no specific law in the Republic of Macedonia that would cover and govern the matter of hate speech in detail and that would, particularly, analyze the definition, protection against and means of prevention of hate speech. This phenomenon was first incriminated with the adoption of the Criminal Code from 1996. However, the Criminal Code does not have a coherent and consistent Article with a with closed lists of traits, which would cover hate speech in detail. Pursuant to the Criminal Code<sup>27</sup>, the elements of hate speech can be found in Article 179 which states: “those who, intending to ridicule, shall publicly mock the Macedonian people and the communities that live in the country, shall be punished with a fine” and Article 319, “a person who, by force, mistreatment, endangering the security, ridicule of national, ethnic or religious symbols, by damaging other people’s objects, desecrating monuments, graves, or in another way causes or incites national, racial or religious hatred, discord or intolerance, shall be punished with imprisonment of one to five years”. Paragraph 2 of Article 319 stipulates that a person, who commits the crime from paragraph by misusing his position or authorization, or if because of these crimes, riots and violence were caused among people, or a property damage with a large extent was caused, shall be punished with imprisonment from one to ten years.

In addition, hate speech has been criminalized under specific conditions in Article 417, paragraph 3, according to which a person who spreads ideas about the superiority of one race above another, or who advocates racial hate, or instigates racial discrimination, shall be punished with imprisonment of six months to three years. A provision incriminating hate speech through computer systems is articulated in Article 394-d stipulating that “any person who, through a computer system, is distributing racist and xenophobic written material, image or other representation of an idea or

<sup>27</sup> Criminal Code of the Republic of Macedonia, Official Gazette of the Republic of Macedonia no. 37/1996; 80/1999; 4/2002; 43/2003; 19/2004; 81/2005; 60/2006; 73/2006; 7/2008; 139/2008; 114/2009; 51/2011; 135/2011; 185/2011; 142/2012; 166/2012; 55/2013; 82/2013; 14/2014; 27/2014; 28/2014; 41/2014; 41/2014; 115/2014; 132/2014; 160/2014

theory that advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, color, national or ethnic origin, as well as religious belief, shall be sentenced to imprisonment of one to five years. Any person who commits this crime by abusing the official position or authority, or if such a crime has resulted in disturbances and violence against other people or in property damage of large proportions, shall be sentenced to imprisonment of one to ten years.

Any justification of a genocide, crimes against humanity or war crimes shall also constitute hate speech. In fact, Article 407-a from the Criminal Code stipulates: One that will publicly negate, roughly minimize, approve and justify genocide, crimes against humanity or war crimes with the intention to incite hatred, discrimination or violence against a certain person or group of persons due to their national, ethnic or racial belonging shall be sentenced with imprisonment of one to five years. If the negation, minimizing, approval or the justification is performed with intention to pour hate, discrimination or violence against a person or group of persons due to their national, ethnic or racial origin or religion, the perpetrator shall be sentenced with imprisonment of at least four years.

The crime of hate speech may be reported to the Ministry of Interior or a criminal complaint can be filed to the competent primary public prosecutor. Hate speech on social networks can be reported to the Department of Electronic Crime under the Ministry of Interior. According to the Law on Prevention of Violence and Indecent Behavior at Sports Matches, hate speech at sport events<sup>28</sup> can be reported to the police officers present at the match or at the Ministry of Interior.

According to the Law on Prevention and Protection against Discrimination<sup>29</sup>, discriminatory behaviour or acting is any active or passive behaviour of any person by the public authorities, as well as by legal and natural persons from the private and public sector within the public life, which creates grounds for unjustified privilege and non-privilege of any individual, or which exposes to unjustified or degrading behaviour compared to other individuals in similar situation on any of the discriminatory basis (Article 5, paragraph 4). In accordance with Article 7 from the Law, the harassment and degrading behaviour is violation of the dignity of any person or group of persons, which arouse out of discriminatory basis and which aims to and results in violation of the dignity of certain person or creation of threatening, hostile, derogatory or fearful surrounding, approach or practice. Furthermore, in accordance with Article 9, discrimination shall be deemed any activity, with which any person directly or indirectly invokes, encourages, gives directions and stimulates other person to perform discrimination. In any of the above cases, a complaint for protection against discrimination/harassment may be submitted to the Commission for Protection against Discrimination. The complaint is filed within 3 months of the day when the violation occurred, or no later than 1 year after finding out of the discriminatory act.

When it comes to cases of hate speech on the radio and television, in accordance with the Law on Media<sup>30</sup> (Article 4), the publishing, i.e. transmission of media content must not threaten the national safety, call for violent destruction of the constitutional order of the Republic of Macedonia, call for military aggression or armed conflict, incite or spread discrimination, intolerance or hatred based on race, sex, religion or nationality. In case of a violation of this article from the law, a complaint may

<sup>28</sup> Law on Prevention of Violence and Indecent Behavior at Sports Matches (Official Gazette of the Republic of Macedonia no. 89/2004; 142/2008; 135/2011; 27/2014)

<sup>29</sup> Law on Prevention and Protection against Discrimination (Official Gazette of the Republic of Macedonia no. 50/2010; 127/2010; 44/2014; 150/2015)

<sup>30</sup> Law on Media (Official Gazette of the Republic of Macedonia no. 184/2013 and 13/2014)

be filed to the competent regulatory body, the Agency of Audio and Audiovisual media services,<sup>31</sup> pointing to the program, specific media outlet, the date and period of the program's broadcasting. The Agency of Audio and Audiovisual Media Services, i.e. the Head of the Agency, may take the following measures: adopt a decision to reprimand; submit a request for initiation of infringement proceedings in a case where, despite the decision for a reprimand the violation for which the reprimand was issued is repeated during the year; to propose to the Council to revoke the license of the broadcaster or decide to delete it from the register pursuant to the Law on Audio and Audiovisual Media Services<sup>32</sup>.

For cases of hate speech in the media by journalists who are members / members of the Association of Journalists of Macedonia, a complaint can be lodged to the Council of Honour<sup>33</sup> of the Association of Journalists of Macedonia. This Council appoints and defends the principles of ethical, balanced and fair journalism that respects human rights while fully complying with the freedom of editorial policy of the media. After reviewing the complaint, if the Council of Honor establishes violation of the principles and provisions of the Code of Journalists of Macedonia, it publicly reacts and condemns this violation.

Unlike the Council of Honour of AJM, which reacts against the violation of the Code of Ethics of the journalists, the Council of Ethics reacts against the violations done by the media and the media are bound to accept and announce the Council's decisions.

The Council of Media Ethics in Macedonia functions as an NGO whose work is aimed at self-regulation of the media through the application of moral sanctions on those who do not comply with professional standards and the Code of Journalists<sup>34</sup>. Within the Council there is an advisory body - the Complaints Commission<sup>35</sup>, which reviews the complaints from citizens, legal persons and other members of the public about the content published in the media, mediates between people who lodged the appeal and the editor or media outlet that the contents of the complaint refers to and decisions on complaints about possible violations of the Code. The appeal may be filed against a single media outlet, while anonymous complaints and complaints against individual journalists cannot be submitted.

Complaints Commission considers complaints against media outlets that are not members of CEM. The procedure for these complaints is the same as that applicable to members of the SEMM, except that instead of a decision, the Commission adopts an opinion on the case. The Complaints Commissions announces its decisions and opinions on its website and sends press releases to all the media, members and non-members of the SEMM.

In line with this, it can be concluded that the Republic of Macedonia has established formal and legal independent mechanisms for protection; however, the legal framework allows too wide interpretation of hate speech, which hinders the implementation of the criminal provisions. As indicated in the last chapter:

- the judicial system does not recognize the act precisely due to the reasons that the provisions are too broadly defined and require more precise interpretation and understanding of the phenomenon. In circumstances where the judiciary does not recognize or use the best practices from cases in

the European Court of Human Rights, it is almost impossible to make national jurisprudence which would serve to improve access to rights and justice for victims of hate speech. - In addition, the independent mechanisms which should have control over the media are often criticized for their bias, inoperable and indifference to take more effort to punish media that encourage or spread hate speech.

- There is no cooperation with the NGO sector whatsoever, which is also a case in point of the policy of impunity and ignoring the problems that the citizens are facing, on the part of the competent authorities.

### 3. EXAMPLES OF HATE SPEECH IN THE REPUBLIC OF MACEDONIA

In the Macedonian practice of hate speech and the detection and prosecution of hate crimes committed there is a lack of a defined basic approach in their differentiation as a special form of crime. Unfortunately there is no separate monitoring and reporting as well as any statistics on these crimes perpetrated by the state. The police does not keep any special records, and the presence of a hate motive is not even noted down in criminal charges, although in some cases there are clear indications that the perpetrators of these cases acted on such motives. The results of questionnaires aimed at obtaining public information received from the competent courts and offices of the primary public prosecution in the country show a tendency of avoiding, or giving a more lenient qualification of cases inciting hatred, discord or intolerance on a national, racial, religious and other discriminatory basis (Art. 319 of the Criminal Code). For the period from 2011 to 2014, there was only one final judgment in the Republic of Macedonia for this crime.

The reasons for non-implementation of statutory provisions are complex and due to the fact that the case law has a conservative position when it comes to the acceptance of the concept of a crime committed by hatred.

A special problem and reason for inciting hate speech and hate crimes is also the political ideology of ethno-nationalism which dominates the policies. This political ideology openly and indirectly promotes glorification of one's own nation and spreading prejudice to the extent of demonization of the other cultures and ethnicities, which constitutes grounds for dissemination of hate speech. The situation in Macedonia recently gained such proportions in politics that it was followed with intensive increase in hate speech and hate crimes.

There is constant pressure on the criminal justice system, which makes it obvious that the judiciary is not independent, and that its capacities for objective, independent and impartial action in these cases constantly declines. The criminal and legal bans on hate speech are focused on incrimination of the abuse of the freedom of expression which consists of incitement of violence.

Setting up an adequate criminal justice concept for hate crimes and hate speech, as forms of crime, is one of the basic conditions to establish a democratic rule of law, based on the principle of respect for human rights and their equality, as well as the right to tolerance in a pluralistic and multi-ethnic society. This concept represents the legal framework which is essential for the preventative and repressive activities of society towards prevention against discrimination, hatred and prejudice against certain minorities or marginalized groups, which can in turn lead to more intense forms of intolerance and violence.

Regarding the media, the Agency for Audio and Audiovisual Media Services in charge of prohibiting program content that leads to incitement to national, racial or religious hatred and intolerance and imposing fines to legal entities and editor-in-chief for the offense which consists of broadcasting

programs aimed at incitement of national, racial, gender and religious hatred. So far, despite the abundance of broadcasted content of this kind of content, the Agency has not imposed a single sanction. From the other measures (written warning, temporary ban etc.) that the Agency (formerly the Broadcasting Council) has at disposal, it has so far issued only two “informal warnings” (to TV Sitel and MRT) and a ban on broadcasting advertisements for a period of two days (to Kanal 5 for hate speech in the “Milenko Nedelkovski show”).

In the Macedonian practice of the authorities responsible for prevention of hate speech, there is an ignorant attitude towards the implementation of these legal restrictions, which is indicated by the low number of recorded cases which are criminally prosecuted. Due to this fact, although there are available court statistics for the period 2011 to 2014, they only prove that there is only a very small number of initiated court proceedings, which does not lead a realistic conclusion about the extent and prevalence of this social problem, which in turn takes place in conditions of heightened political and ethnic tensions.<sup>36</sup>

As a result of this, in recent years there has been an increase in the calls for inter-ethnic clashes at sports competitions, burning flags, calls for violent opposition to the actions of state authorities through social networks. The reaction of the courts to these behaviors is in the least too lenient, often involving extensive media coverage of the incriminated event and accompanied with allusions that such occurrences are simply isolated incidents that should not be taken as indicative for the usual practice of the society.

When it comes to such behaviors that encourage hatred or violence based on race, nationality or religious affiliation, the Law on Prevention of Violence and Inappropriate Behavior at Sporting Competitions prescribes misdemeanor charges in Articles 13 and 14, but in practice there are either no or there are very rare cases when infringement proceedings were initiated against the perpetrators.

In Macedonian criminal law the concept of a crime committed out of hatred began to apply the new amendments to the Criminal Code in 2009, which prescribe application of the general provision for sentencing (Art.39 para. 5), and according to which, when determining the sentence for each criminal offense, the court should bear in mind whether the crime was committed against a person or property related to some of the protected grounds as an aggravating circumstance. Committing any crime on any discriminatory grounds, should be considered an aggravating circumstance when determining the sentence. i.e. when this circumstance is recognized, the sentence should be closer to the maximum than the minimum thereof.

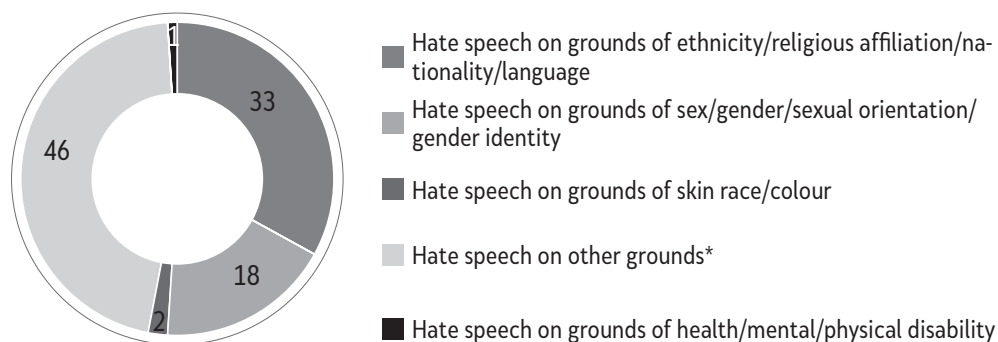
Taking into consideration of the court statistics of cases on these grounds, it is more than clear that the crime is not recognized, or is ignored thus disabling jurisprudence as grounds for upgrading the law in this direction.

In accordance with the data collected by the Helsinki Committee for Human Rights from the platform recording hate speech in real time ([www.govornaomraza.mk](http://www.govornaomraza.mk)) and despite the lack of jurisprudence, it is more than clear that hate speech as a phenomenon is significantly present in Macedonia, in particular on grounds of ethnicity and sexual orientation. The process of documenting/ recording hate speech on the interactive web platform officially launched in April 2014 and lasted

<sup>36</sup> The analysis of the data from the questionnaires collected from all the court instances, the Public Prosecution and the Ministry of Internal Affairs submitted in a format of a request for information of public character in accordance with the Law on Access to information of public character.

until the end of July 2015, in which period, a total of 237 applications were submitted, 103 of which were confirmed, and 90 reports were verified. The discrepancy of 13 confirmed report is due to the reports which stated that there were grounds for hate speech, but due to lack of verifiable information they were recorded in a separate category which does not enter in the final outcome of the displayed statistics. Most of the reports on the platform were submitted by 20 volunteers deployed to cover cities in the 8 non-administrative regions<sup>37</sup>. The data extracted from the platform points to the fact that hate speech is present in all regions, mostly represented in social networks and Internet-based media. Due to the nature of the phenomenon, the volunteers registered hate speech in public spaces on a local and central level by documenting graffiti. (See Figure 1)

The statistic data from the categories represented on the platform, in accordance with the Criminal Code of the Republic of Macedonia, show that:



Graph 1: grounds, reports and percentages

\* Note on “other grounds”: Political affiliation/social origin, family/marital status, property/ social standing and ridicule of representatives of foreign countries were considered as “other grounds. Although according to international standards these grounds are not a protected, unchangeable category, the authors of the analysis, for the purposes thereof, collected and analyzed the cases reported as hate speech on the grounds listed above.

- Most of the reports refer to the category listed as hate speech on grounds of ethnicity/ religion/language/nationality.
- The second category according to the number of reports was hate speech on grounds of sex/ gender/sexual orientation and gender identity.
- Most of the reports were filed on several grounds and often the reports on a published text, comment or other content on social networks and media contained hate speech on several grounds. In fact, a large part of the reports were on two grounds simultaneously - both, on the basis of sexual orientation and ethnicity.
- The graph, which according to the report measures the parameters for escalation of hate speech, confirms that this phenomenon is closely related to the political programs based on nationalist discourses which influence the electorate. As examples, and according to the monthly reports of the Committee, hate speech escalated the most during of the regular

<sup>37</sup> The non-administrative regions cover the territorial division of the Republic of Macedonia into the: Polog, Pelagonija, Skopje, Northeast, Southwest, East, Southeast and Vardar region.

general and presidential elections. Next, during the post-election period or after the verdict for the defendants in the case “Lake Smilkovo”.

- What is particularly worrying is the active campaign to increasing homophobia by promoting etc. traditional values by the executive authority. This campaign has undoubtedly resulted in an increase in the number of reports on the platform about hate speech on grounds of sexual orientation and gender identity. This campaign, apart from hate speech also resulted in another attack of the LGBT community during a public event. (see figure 2)<sup>38</sup>.

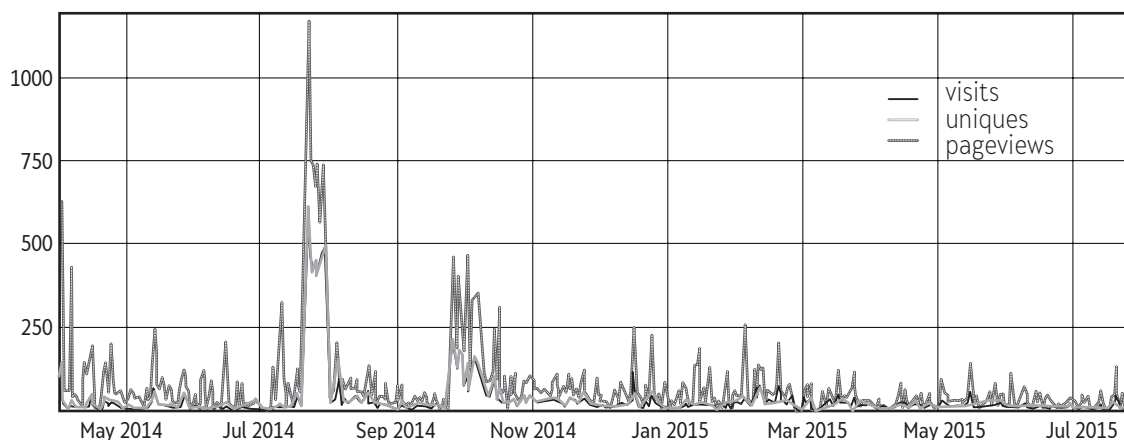


Figure 2: Increase in hate speech in certain time intervals displayed by month.

- Hate speech is indirectly stimulated by the executive authority, often by pro-government media, when they label individuals or groups that are part of civil movements, formal and informal initiatives of social networks and media. The number of graffiti containing hate speech is also associated with the current socio-political developments. The fact that many of these graffiti are directed toward members of ethnic and marginalized groups is worrying. Furthermore, there has been an increase in graffiti containing Nazi symbols associated with pronounced nationalist rhetoric and propaganda as a result of the policy of the executive authority.

The Helsinki Committee regularly reacts to the trends of increase in hate speech and hate crimes in the country by monitoring hate speech in real time, alerting the public about the data through monthly and annual reports and filing appropriate criminal charges. What is particularly worrying is that the relevant institutions such as the Public Prosecutor’s Office and the Department of Electronic Crime under the Ministry of Interior have not taken a proactive role in reducing or preventing hate speech<sup>39</sup>. The data indicating that despite the increased presence of hate speech and its impact on the number of serious hate crimes and incidents, the institutions are not motivated to analyze and appropriately sanction this phenomenon, is also increasingly worrying.

The Helsinki Committee, together with the Coalition for Sexual and Health Rights of Marginalized Communities have lodged 3 criminal charges for dissemination of hate speech against LGBTI persons

<sup>38</sup> Bi-monthly report on the situation with human rights in the Republic of Macedonia by the Helsinki Committee: [http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/861/Dvomesecen\\_izvestaj\\_noemvri\\_dekemvri\\_2014.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/861/Dvomesecen_izvestaj_noemvri_dekemvri_2014.pdf) стр. 4.

<sup>39</sup> Due to the increase in hate speech towards the LGBTI community and prominent activities for LGBTI rights, especially on the social network “Facebook”, the Helsinki Committee filed requests for discovery of the perpetrators to the department of Electronic Crime under Mol, but so far we have not received an answer to any of the requests.



to the Public Prosecutor's Office, two of which were submitted after the entry into force of the new Law on Criminal Procedure. There has been no response to the first application which was filed 2, 5 years ago in accordance with the provisions of the old Law of Criminal Procedure, while the other 2 applications received a negative response from the Primary Public Prosecutor's Office Skopje, stating that the reported crimes are not offenses prosecuted ex officio.

These decisions were appealed before the HPP Skopje which in one case decided to uphold the decision that the case in question is not an offense that is prosecuted ex officio, since it contains no elements of hate speech, and in the second case it ruled that the PPP Skopje had not fully investigated case, because there were elements of hate speech and brought the case back for re-consideration before the Primary Public Prosecutor's Office Skopje. This attitude of HPP Skopje represents a sort of a precedent, because the previous practice indicates that criminal charges of hate speech or either left unprosecuted or are dismissed without conducting a full and serious investigation. However, this attitude of the prosecutor of HPP Skopje remains an isolated case, which should be followed by the other public prosecutors acting on charges of hate speech. Apart from the judicial protection, local authorities do not take timely measures for the removal of graffiti containing hate speech, although as holders of executive public office they have a duty to prevent the spread of hatred. The general silence of all relevant institutions when it comes to this phenomenon may be interpreted as approval by offenders who, unless faced with the crime committed, could repeat it or commit another hate crime depending on grounds that they have a subjective attitude to and bear hatred against.

In accordance with the previously stated and the analysis of the collected data, the answers to the two theses posed of interest the research, indicate the following:

1. The Republic of Macedonia has a precise, clear and defined legal framework on hate speech

At present, the legal framework is in need of a clearer definition of hate speech as a crime. The Criminal Code defined hate speech partially incorrectly (by leaving an open list of protected traits) thus diminishing the efficiency of the fight against it. The Helsinki Committee believes that by separating and more clearly defining the phenomena, better jurisprudence and access to justice to the victims of hate speech would be provided. In addition, this would lead towards alleviated access to information to the judges processing these crimes and the victims' legal representatives. Due to the lack of jurisprudence, the courts need to pay due attention to the court decisions of the European Court of Human Rights, especially since the Republic of Macedonia has taken on the obligation to comply with the European Convention of Human Rights and is a full-fledged member of the Council of Europe.

2. The citizens have access to efficient and effective mechanisms for protection against hate speech

Bearing in mind that in accordance to the statistical data obtained from all the court instances on the territory of the Republic of Macedonia within a period of 3 years, a single court verdict has been reached, the lack of statistical data in the Ministry of Interior, the due attention to the content in the media and unbiased approach in the punitive policies of the Agency for Audio and Audiovisual Media Services, it can be established that the citizens do not efficient and effective mechanisms for protection against hate speech. It is more than clear that the Public Prosecution does not initiate

proceedings against people from the public discourse who often resort to hate speech, and often fails to even take action after charges for hate speech are pressed, which indicates the lack of an efficient and effective legal remedy. In fact, the Public Prosecutor has to start proceedings ex-officio and “by hearsay”. Moreover, the PP has not given its statement upon submission of charges, this limiting the access to justice to victims of hate speech. Therefore, it can be concluded that profound and systemic change is necessary in the access to efficient and effective mechanisms for protection against hate speech, in order to protect the rights and provide equal access to justice to the citizens, and the conclusions which can be drawn from this is that Macedonian has very low effectiveness in the access to the mechanisms for protection against hate speech.

## CONCLUSIONS:

1. The legal framework for recognition and sanctioning of hate speech is imprecise and does not provide a clear framework for the definition and scope of hate speech, which in turn does not provide conditions for development of the jurisprudence.

2. The independent mechanisms for protection against hate speech in the media do not recognize hate speech and do not sanction the perpetrators.

3. The hate speech disseminated or incited electronically has noted high increase in the past two years, while the level of sanctioning of the perpetrators under the jurisdiction of the Ministry of Interior (Department of Electronic Crime) is virtually non-existent.

4. The independent and external mechanisms for protection against hate speech in the media do not pay due attention to the ethical and professional standards in journalism, although the media are often generators of negative trends in hate speech.

5. The Ministry of Interior does not have statistical data on hate speech at disposal.

6. In cases of hate speech, the Public Prosecution does not act ex officio, and also does not show any interest for adequate and timely action upon submission of criminal charges.

7. The Ministry of Education and Science does not provide raising awareness programs among the youth about hate speech as a social phenomenon.

8. The insufficient level of training when it comes to recognizing and sanctioning hate speech on the part of police officers, judges, public prosecutors and lawyers, as well as lack of trainings provided by the relevant authorities.

9. The Criminal Code does not stipulate alternative measures or sanctions for the perpetrators of hate crime.

10. There is lack of public campaigns for recognition and prevention of hate speech in the public sphere, leading to low awareness about the phenomenon among the citizens.

# RECOMMENDATIONS

1. The Republic of Macedonia has a weak formal frame for recognition and sanctioning of hate speech. The jurisprudence and principle of impunity point to the need of codification and clearer definition of Articles in the Criminal Code, which cover this crime. In addition, bearing in mind that sexual orientation has not been specified as grounds, while according to the statistical data it constitutes the second in line grounds of hate speech in the country, it such should be explicitly stated.

2. The independent mechanisms for protection of hate speech in the media, such as the Agency for Audio and Audiovisual media services to apply its competences without bias, and at the same time take a pro-active role in condemning hate speech in the public discourse.

3. The Ministry of Interior and the Department for Electronic Crime to take a proactive role in eradicating hate speech disseminated or incited electronically. At the same time, they would improve the cooperation with the local authorities and remind them about their duty to remove hate speech from public spaces.

4. The Ministry of Interior to start running statistics and data on the grounds of hate speech and hate crimes in accordance with the recommendations of the OSCE Mission, which in the past 3 years has submitted this request in the reports on the progress of democracy and human rights in the Republic of Macedonia, as a full-fledged member of this organization.

5. The Public Prosecution to increase their interest to act ex officio and upon submission of criminal charges for hate speech, according to their competences.

6. Drafting and implementation of programs against hate speech in secondary and primary schools in the Republic of Macedonia and increased focus on youth in cooperation with the Ministry of Education and Science and with the NGOs working on this issue.

7. Conducting training for police officers, judges, prosecutors and lawyers in order to raise the awareness, recognition and understanding of the phenomenon of hate speech, including the jurisprudence of the European Court of Human Rights in this area.

8. The penalty provisions in the Criminal Code should offer alternative punitive measures for the perpetrators. Practical examples of voluntary work in NGOs for the perpetrators in accordance with the grounds of hatred against an individual or group give better results in the process of reintegration and rehabilitation of offenders as opposed to an imprisonment sentence or a fine.

9. Greater involvement of the executive authority in the promotion of values such as equality and tolerance for diversity, as well as educational materials for the public to be able to identify hate speech.

10. The media and journalists must have rigorous mechanisms for verification and rejection of hate speech in the information they disseminate, while the media and journalists who encourage or spread hate speech must be adequately sanctioned under the Criminal Code. The Associations of citizens, the Council of Ethics of the media and journalists' unions to take the leading role in establishing high ethical and moral standards in writing and informing the public.

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5. Bi-monthly report (November-December) of the Helsinki Committee for Human Rights of the Republic of Macedonia, 2014

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1. Criminal Code of the Republic of Macedonia, Official Gazette of the Republic of Macedonia no. 37/1996; 80/1999; 4/2002; 43/2003; 19/2004; 81/2005; 60/2006; 73/2006; 7/2008; 139/2008; 114/2009; 51/2011; 135/2011; 185/2011; 142/2012; 166/2012; 55/2013; 82/2013; 14/2014; 27/2014; 28/2014; 41/2014; 41/2014; 115/2014; 132/2014; 160/2014.
2. Law on Prevention of Violence and Indecent Behavior at Sporting Events, (Official Gazette of the Republic of Macedonia no. 89/2004; 142/2008; 135/2011; 27/2014)
3. Law on Prevention and Protection against Discrimination, (Official Gazette of the Republic of Macedonia no. 50/2010; 127/2010; 44/2014; 150/2015)
4. Law on Media (Official Gazette of the Republic of Macedonia no. 184/2013 and 13/2014)
5. Law on Media (Official Gazette of the Republic of Macedonia no. 184/2013 and 13/2014)
6. Law on Audio and Audiovisual Media Services (Official Gazette of the Republic of Macedonia no. 184/2013, 13/2014, 44/2014, 101/2014 and 132/2014)
7. Rules for the selection and work of the Council of Honor of AJM.
8. Code of Journalists
9. Rules of Procedure of the Appeals Commission of the Council of Media Ethics of Macedonia

### **International Documents:**

1. Treaty on the Functioning of the European Union 2007.
2. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

### **Links:**

1. [www.govornaomraza.mk](http://www.govornaomraza.mk)
2. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>
3. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>
4. <http://www.znm.org.mk/drupal-7.7/mk/node/437>
5. <http://semm.mk/pravna-ramka/kodeks>
6. <http://semm.mk/komisija-za-albi/delovnik>
7. [http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/861/Dvomesecen\\_izvestaj\\_noemvri\\_dekemvri\\_2014.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/861/Dvomesecen_izvestaj_noemvri_dekemvri_2014.pdf) стр. 4