

Analysis to determine
the institutional

GAP

regarding the
registration and processing
of the hate speech

in The Republic of North Macedonia

ANALYSIS TO DETERMINE THE INSTITUTIONAL GAP REGARDING THE REGISTRATION AND PROCESSING OF HATE SPEECH IN THE REPUBLIC OF NORTH MACEDONIA

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Зajакнување на националните
заштитни механизми против
говор на омраза во РС Македонија



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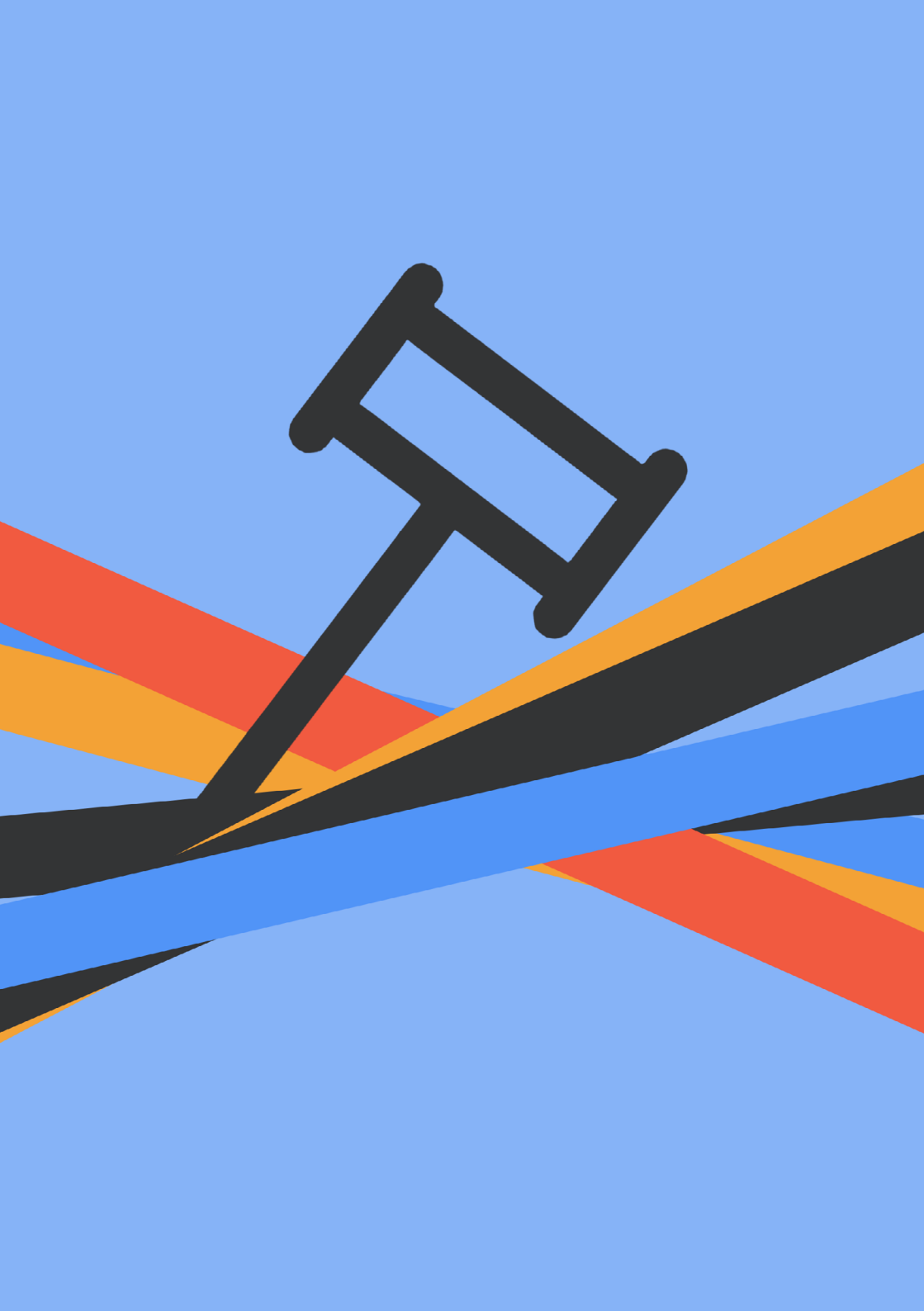
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INTRODUCTION

The beautiful word seduces a person. On the contrary, the ugly word, and what's more, an untrue one, arouses unrest and conflicts. Man is a group being, and he proves it through the fact that he does not tolerate solitude (and is even afraid of it); the fact that he is more sensitive to the clamour of the crowd than to any other sound, and the fact that he is very sensitive to the leader of the pack, but also to the opinion of his fellows. Even in the case of religious ascetics and hermits, they cannot be said to have isolated themselves in solitude because by doing so they believe they will communicate with someone else – with their deity. What is innate in man, as well as in a large number of animals, is the system of communication or speech, and it can only be practiced in a group of the same species.^[1]

Freedom of speech as a fundamental democratic quality implies speech – literally but also the freedom of expression, writing, and publication. By definition, freedom is the social capacity to act, to move in any direction, to behave in accordance with as many alternatives as society allows, and yet to remain just. It can be said that society is the

1. Supek, R., "Društvene predrasude: Socijalno-psihološka observanija", Radnička štampa, Beograd, 1973., p.10, 31.

best when it provides the greatest number of alternatives.^[2] Freedom is limited by the deprivation of inner feelings, the lack of affection in childhood and youth, sexual or political repression, and punishments without foundation. All those factors reduce the alternatives. Although it is said that liberties are innate and rights are acquired, without adequate penal treatment, freedom becomes endangered. And it is the individual freedom that is being threatened at first, and then – the social freedom since the essence of freedom is in the human entirety and its totality.

A free society is one that does not argue about the problem of freedom but allows free action and speech.^[3] But that freedom can be abused. Then comes the hate speech. After considering the constellation between freedom of speech as a fundamental human right and legislative restrictions on hate speech, it is clear that for these two categories the common denominator “speech” is only apparent. It is not a question of synonyms or homonyms. These are completely different spheres that touch in competition. Expressed allegorically, it can be said that the fire is also alive because it has “living” flames, but it does not represent – life. On the contrary, it means destruction. Well, that’s exactly how things are set up between freedom of speech and hate speech, which in this case would be equated with fire.

In the context of Southeast Europe, these have a direct influence on the crime of hate speech: nationalism, geopolitical significance, strategic foreign propaganda, and political tension. This is a region where different religions meet, but also different mentalities (European rationalism versus Mediterranean nonchalance), natural climates (Mediterranean versus continental), but also science and empiricism versus superstition and mythology. The peninsula is a geographic key to three continents. It is a complex political microcosm^[4] with unpredictable politics. However, it is curious that according to some relevant research, racism is the least visible in the republics that emerged from former Yugoslavia

2. Wolfgang, ME, “Freedom and violence”, ed.: “Violence in schools: Perspectives, Programmes and Positions”, Lexington books, DC Heath and company, Lexington, Massachusetts, Toronto, 1975, p.35.

3. Source: Vujacic, V., “Violence and humanity”, Library - Criticism, studies, essays -, Book 2, Cetinje, 1975, p.43.

4. Source: Yanakos, S., A., “Ethnic Conflict: Religion, Identity and Politics”, Ohio University, 2002, p.54.

compared to the rest of Europe,^[5] and Croatia^[6] is considered the least “Islamophobic”.^[7] But unfortunately, hate speech covers a wider range of protected categories, including ethnicity, religion, and political affiliation. Here, in relation to Macedonia, it is enough to say that a few years ago news broke out that we were “bombarded” with hate speech.^[8]

Theoretically, hate speech is still a grey area due to disagreements and controversies about the definition and its scope. Therefore, in practice, this term still does not have its own firm definition before international organizations. Anyone can be a victim of hate speech crime, although members of minority communities are the most common victims.^[9]

In this paper, an attempt will be made to answer the complex question of building a strategy – a systemic response to the prevention and sanctioning of hate speech in both traditional media and “online” media. In particular, criminalistic “ground” aspects are elaborated, which should be taken into account when building that strategy. But in order to create an effective response, the phenomenon and its quantity should be well-known beforehand. On the contrary, the response will be mild, watered down, and the hate speech will take on mythical proportions. That is why statistics are needed as a tool.

In order to register and process hate speech, if elementary statistical processing is taken into consideration, there should first be an appropriate and favourable legislative reality in the state that will authorize officials to register the data they come across while working in those state authorities

5. <https://www.srbijadanas.com/vesti/drustvo/harvard-kaze-da-smo-najtolerantniji-narod-srbija-je-zemlja-sa-najmanje-rasizma-u-evropi-2020-06-05>

6. <https://www.islamska-zajednica.hr/naslovnica/intervju-uspjeli-smo-u-nastojanjima-da-u-hrvatskoj-ne-bude-islamofobije>

7. Islamophobia is a phenomenon that has come into the focus of attention recently, due to the joint efforts of some major Muslim countries. See: <https://www.trtworld.com/turkey/cavusoglu-turkey-pakistan-to-develop-cooperation-in-defense-industry-43216> (23.05.2023).

8. <https://faktor.mk/bombardirani-sme-so-govor-na-omraza-nekolku-nastani-vo-zemjava-jazovrea-ovaa-pojava>

9. Even the richest countries are not immune to the discriminatory treatment of minorities that culminates in acts of hate (including acts of hate speech). For example, such incidents still occur against the Sami people, who are an indigenous minority in the Kingdom of Norway, which, in turn, is considered a country with one of the largest GNP per capita in Europe. See: Minde, H., “Assimilation of the Sami - Implementation and Consequences”, *Acta Borealia*, Rutledge, Tromsø, 2003, pp.121-146. <http://www.tandfonline.com/doi/abs/10.1080/08003830310002877>

that have the authority to fight against hate speech as a phenomenon. Then, according to the positive legal regulations for administrative work and archiving, every state authority has the duty to take care of this data and, if the state needs it, to channel it into one centre. Ultima ratio as far as “processing” is understood in the sense of acting and fighting against such crimes and if there is a favourable legislative climate for that as well, in that case these officials should not remain passive and only register, but should act preventively or repressively, according to the Law. It is these things that will be discussed in this analysis.

NOTION OF HATE SPEECH

The most intense prejudices in a modern society are typically borne by the middle class because they are most often frustrated that they do not yet belong to the upper class in a heterogeneous society.^[10] Migrations of the population for economic reasons also contribute to the strengthening of prejudices. Thus, the probability that a hate crime speech will occur depends directly on the increased number of immigrants in the total population. Another factor that stimulates prejudice is the fact that the concept of creating national and not multi-ethnic states still prevails in the world. An important factor for the growth of prejudices is the very natural tendency of people to simplify and generalize.

Prejudices are based on stereotypes. Specifically, stereotypes are called: prejudices associated with the behaviour of groups of people and combining these prejudices with other prejudices.^[11] They are mental images that lack experience and are a product of a rigid way of thinking, often associated with ethnocentrism. Stereotypes can be both positive and negative. Negative stereotypes serve to justify prejudices.

Often stereotypes are the product of oppressive ideologies that are present everywhere. They are rooted in racism, homophobia, transphobia, sexism, and discrimination against an individual or group based on age and disability. Stereotypes are cultural phenomena, so their removal can be considered a cultural struggle. Some theorists consider the media and educational institutions as the main source of stereotypes.^[12]

10. Rot, N., "Rasizam i etničke predrasude", Zbornik radova: "Rasizam, rase i rasne predrasude", special editions, volume 2, Antropološko društvo Jugoslavije, Beograd, 1974, p.109.

11. Inter Group, "Racism: What is and how to deal with it: A guide to talking about racism", Navreme Publications, vol.8, Kumanovo, 2007, p.25.

12. See: Croly, N., "Fight against stereotypes, rumours and discrimination", Proceedings "16th NOVEMBER International Day of Tolerance: selected texts", MANU-OSCE, Skopje, 2015, p.37.

Three Macedonian journalists will say: “Stereotypes are ideal for media communication. Media expression requires short expression and economy of language. From that point of view, the use of a stereotype frees the author from crowded expressions and excessive detailing.”^[13]

On the other hand, both political parties and authorities can be generators of stereotypes and prejudices, and thus emulsifiers of hate speech in political debates, and even through the emergence and sloppy practice of the art of “political correctness”. The conclusion can be drawn from everything that prejudices are unusually tenacious opinions, and their mitigation or suppression requires a persistent and consistent struggle through various ways and methods.

Metaphorically speaking, the uttered pagan word is like a launched underwater harpoon that hits the target. It can be returned, but not without consequences... Historically, before the Second World War, hate speech was called “group defamation” and after the war it received its current name, and that was in the United States. Widespread use arrived in the 1980s of the 20th century.

Acts of hate speech are a very complex social and criminal phenomenon and have specificities in relation to other acts. First of all, they differ in relation to the perpetrator’s motive, that is, according to a subjective element that often does not represent a constitutive element of the nature of the criminal act. Hate speech has two actions, namely: the statement that is made with it and the performance that marks the beginning of something more difficult, most often being a hate crime. Hate speech potentially leads to hate crime. It is used to insult a person through the protected group to which that person belongs. Such speech generally seeks to condemn or dehumanize an individual or group or to express anger, hatred, violence, or contempt towards them. It conveys a message of inferiority to the members of the respective group.

It has already been said that there is no universally accepted definition of the term “hate speech” in international law, although the Council of Europe has already taken the first step by adopting

13. Trajanoski, Zh. et al., “The media, hate speech and marginalized communities: a guide for media”, Coalition “Sexual and health rights of marginalized communities”, Skopje, 2013, p.29.

Recommendation CM/REC(2022)/16.^[14] According to theorists, hate speech is defined as: “a communication act that serves to attack certain groups or individuals on the basis of their particularity, affiliation or belief.”^[15] The various forms of attack can include belittling, mocking, calling names, humiliating, all the way to the most extreme forms such as discrimination, dehumanization, and satanization.”^[16]

Hate speech crimes are aimed at discrimination. They are mostly acts of verbal violence against individuals or groups.^[17] In order these acts to be the correctly identified, during the identification of specific violent behaviours, attention should be directed to the characteristics of the group as a victim, as well as to the peculiarities that distinguish the victim: collective rights, specific features, natural or imagined features and so on. In the specific articles of the CC that contain incriminations included in the corpus of acts of hate speech (or so-called “rights” or “special” acts), these features of the victim are mostly drawn from the existing Law on Prevention and Protection from discrimination.

14. See art.1 paragraph 2: “ For the purposes of this recommendation, hate speech is understood as any type of expression that incites, promotes, spreads or justifies violence, hatred or discrimination against a person or group of persons or that disparages, due to real or attributed personal characteristics or status such as ‘race’, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.” Available at: https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2022-16-1-of-the-committee-of-ministers-to-member-states-on-combating-hate-speech (25,05,2023).

15. According to more extensive definitions, hate speech is verbal or written communication or other form of public expression of an attitude in any form of communication (with conclusive actions, gestures, use of symbols, etc.) with others that contains an intention, based on prejudice, to: discriminates, harasses, provokes a reaction or incites a negative attitude, intolerance, hostility or violence against individuals or groups of people, based on their race or gender, age, ethnicity, nationality, religious belief, sexual orientation, gender identity, disability, language nationality, cultural background, moral or political views, social status, occupation, mental and physical characteristics, or any other characteristic. See: Kambovski, V./Trajkovska, L., M., “Legal analysis of the concept of the punishable hate crime and hate speech”, OSCE, Skopje, 2012. p.37.

16. Cit. Jigal, S., “Features of hate speech on social networks”, “November 16, International Day of Tolerance: selected texts”, MANU-OSCE, Skopje, 2015, p.17.

17. In terms of hate speech, the most prevalent is the offensive speech against the Roma, which is sometimes masked by saying aphorisms about “Gypsies”. Such phenomena are recognized today in the social sciences as “anti-Gypsyism”. See: <https://en.in-ius.cz/news/overwhelmed-by-anti-gypsyism.html> . (10.09.2020).

The most common forms of texts in the media are those of false generalizations – when conclusions are drawn about a group of people or when one part is falsely presented as a whole.^[18] Real language experts can perceive the real ideology that a person has after many years of practice through the interpretation of various textual or contextual signs, such as: intonation, specific syntactic structures, gestures, meaning of words in another context or facial expressions.

The motive for committing the crime is closely related to the determination of mitigating and aggravating circumstances – without determining the motive, it would be impossible to apply the principle of individualization of punishment. Finally, the determination of the motive is also necessary for the correct setting of the legal qualification of the act,^[19] but it is important for the subject of the paper that the motives of the acts of hate speech belong to the political motives of low motives, although sometimes the perpetrators are mistaken due to their ideology that their motives are of a noble reason, such as when one acts in defence of one's ethnic group and condemns another ethnic group transgenerationally – for events from the distant or recent history.

A real problem is the inhibition of the victims of acts of hate speech to report the acts to the competent authorities, and consequently the high “dark number” for this type of crime arises from that. Society must be able as a sensor to properly alert hate speech, preventing it from displacing the true nature of the discourse. Ignorance is never a safe distance from the physical attack that may follow. The fight against hate speech should be based on a three-pronged approach: developing positive policies, protection through administrative and civil laws/procedures and provision of criminal sanctions. Each of these is an indispensable link in society's efforts to tackle hate speech and protect pluralism and diversity. The positive role of the state in creating a supportive environment for pluralism and diversity is as necessary as its sanctioning or punitive approach. In addition, not all types of expressions within the scope of “hate speech” require the application of criminal law provisions. It could

18. Trajanoski, Zh. and others, Op. cit., p. 71.

19. Motives are classified on several grounds, so there are first of all solid and wavering motives; motives with complete autonomy of the will; and motives of subordinate will. Source: Dageļ, P., S./Kotov, D., P., “Subjective side of crime and its establishment”, Publishing House of Voronezh University, Voronezh, 1974, p.197.

lead to overly broad and unnecessary restrictions on expressions such as political comments and debates, religious disagreements, comments or criticisms, as well as artistic expressions.^[20]

20. Mihajlova, E./Bachovska, J./Sheqerdziev, T., “Freedom of Expression and Hate Speech”, OSCE, Skopje, 2013, p.46.

THE MOST IMPORTANT SPECIFICATION – THE MOTIVE

According to the law, subjective responsibility or fault can take the form of either intent or negligence. Acts of hate speech are premeditated acts.

As a subspecies of criminal responsibility arising from criminal acts committed with intent are criminal acts committed through mass media (although most theorists place them in a “special case of criminal responsibility”^[21] and some bring them closer to the campus of acts committed by negligence). Science says that, theoretically, the criminal responsibility for the acts committed through media can be a cascading responsibility if several persons have acted within that medium, such as: the owner, the editor, the author, the publisher or the printer, the importer, or the distributor of media products. But when there are already so many protagonists, all professionally intertwined with previous knowledge of their scope, then at the very least possible intent should be relevant in their actions, and not negligence as a form of guilt. Otherwise, the principle of cascading responsibility,^[22] which is an example in some foreign legislations, is not accepted in the country. In our case, we are talking about the application of the “principle of subsidiary, but still – subjective responsibility”.^[23]

Intention (especially the direct one) and hatred are complementary phenomena. Even more, hatred usually simmers for a long time, so it bears long and carefully planned premeditation to commit a crime. Hate, on the other hand, is considered to be a durable organization of aggressive impulses against a person or a class of persons. Since hatred is composed of existing bitter feelings and thoughts of blame, it is a stubborn structure

21. See Marjanovic, Kambovski, Budzakoski.

22. See: art. 26, art. 27 and art. 27-a of the CC.

23. Citation: Bavcon, Lj. - Šelih, A., “Kazensko pravo - general part”, Ljubljana, 1978, p.245.> Marjanović, G., “Macedonian criminal law - general part”, fifth ed., Prosvetno delo, 1998, Skopje, p. 197.

in an individual's mental and emotional life. In its very nature, hatred is extropunitive, which would mean that the individual believes that the blame for their hatred lies with the object of their hatred.^[24]

The execution of the criminal act first begins in the mental process and is perfected by a physical action that manifests itself in the external world. In the case of hate speech acts this action is verbal. The law determines the criminal responsibility to be conditioned by a certain quantum of consciousness and will. Existing criminal responsibility implies the congruence of the criminal offense and the guilt. The motive also comes from guilt. The motive is that inner force whose knowledge contributes to the explanation of why a certain action was taken and what the perpetrator wanted to achieve with that action. A motive is defined as a motivation towards a certain behaviour.^[25]

In practice, it is rare for the motive to be clarified by reaching the court's verdict. In order for the motive to be clarified, it is necessary to take into account the circumstances that preceded the commission of the crime, the circumstances that arose after its commission and to take into account the character of the perpetrator. Finally, the manner in which the crime was committed and the type of the crime itself should be taken into account.^[26]

In the practice of police operations, when investigating an event, there are numerous clues and for each clue multiple versions of the event are created. Versions (hypotheses) as reasoned assumptions are not process, but para-process activities. Evidence building is completed when all versions, except for one, would be eliminated, which would be absorbed in the indictment and, finally, in the verdict.

24. Allport, "The Nature of Prejudice" p.363, Source: Jacobs BJ/Potter, K., "Hate Crimes, Criminal Law & Identity Politics", Oxford University Press, Oxford, 1998, p.12.

25. Karanović, M., "Utdrivnivanje vinosti u krnačkim produkta", Privredna štampa, Beograd, 1982.str.49.

26. Criminology teaches that without finding out the motive for a committed criminal act, it is not possible to fully find out the objective truth. But in searching for the question "why", one should not forget about pathological motives, as in the cases of kleptomaniacs or pyromaniacs. See: Vodinelić, V, "Kriminalistika - textbook for operational employees of JB and DB, military police, public prosecutors, investigative and trial judges, advocates and other lawyers, students of the Faculty of Law and DSZ activists, sixth revised and extended edition, Scientific book, Belgrade, 1987, p. 33.

In relation to the criminal division based on the way one learns about the preparation or existence of the crimes, the acts of hate speech belong to the first group – obvious crimes, with obvious consequences (if perfidious bullying with euphemisms is excluded).

THE ELEMENT OF AGGRESSIVE SPEECH

Man's aggression can be psychological and physical. Physical aggression is aimed at the physical and bodily integrity of the person against whom the aggression is directed. Psychological aggression, which is also a feature of hate speech, is usually performed through threats (*vis moralis*). Threat is psychological coercion. Considering that aggression is a property (an instinctive characteristic of a person, the inability of a person to control their impulse), it transforms their conduct in a person into dangerous, criminal, and unacceptable. Hence, man is as civilized as they can control their urges and in that order the aggression that manifests itself in almost all relationships of life.

Aggression is often preceded by frustration. Frustration, on the other hand, is interpreted as various deprivations, barrenness, inconveniences, or inferiority to which an individual or a social group is exposed during life, from childhood to adulthood.^[27] Frustration can also be unconscious. It can take the form of fear and depression or anxiety, but also active feelings of anger^[28] and hatred, but then the external element of a person or group of persons is also needed. Frustration then turns into aggression.^[29] According to some doctors, aggression may also be caused by the frustration of intellectual impotence.^[30]

27. <https://en.wikipedia.org/wiki/Frustration>

28. This expression would have its own internationalized synonym in the expression "resentment" (long cherished hatred, envy).

29. Supek, Op. cit. p. 214.

30. <http://kapital.mk/intelektualnata-nemok-ja-aktivira-agresijata/>

REACTIONS AND ACTIVITIES FOR REGISTRATION OF HATE SPEECH ACTS OF THE NON-GOVERNMENTAL SECTOR IN THE COUNTRY

The first Law on associations and foundations was adopted back in 1998.^[31] The last one was passed in 2010. Currently, around 600 out of 2800 registered non-governmental organizations are active in the country. In paragraph 4 paragraph 2 of the Law, it was stipulated that the establishment of an organization is prohibited if the program and its actions are aimed at “inciting and calling for military aggression and stirring national, racial, or religious hatred or intolerance...” In 2022 amendments were made to the Law, so paragraph 2 of article 4 was amended (expanded),^[32] and a new paragraph 4 was added to article 8, with which civic associations cannot use names, surnames, abbreviations, pseudonyms, and initials of people who on any basis were or are associated with racial, religious, national, ethnic, and other impatience, intolerance, hatred, genocide, extermination, spreading or support of fascism, Nazism, National Socialism, and the Third Reich.^[33] Article 65 is also important, which stipulates that the organization will be banned if its action is aimed at “inciting and calling for military aggression and

31. “Official Gazette of the Republic of Macedonia” no.31/98 from 02.07.1998

32. “Registration of an organization and establishment of an organization is prohibited if the title, name, abbreviated name, programmeme, goals, activities, and its action are aimed at the violent collapse of the constitutional order of the Republic of Macedonia, incitement and incitement of military aggression and incitement of national, racial, religious hatred or other impatience, intolerance, hatred, genocide, extermination, spreading or supporting, inciting and endorsing fascism, Nazism, National Socialism and the Third Reich, undertaking activities related to terrorism, undertaking activities that are contrary to the Constitution or the law and undertaking activities that violate the freedoms and rights of other persons.”

33. <https://m.mkd.mk/node/478350>

inciting national, racial, or religious hatred or intolerance” (See Art. 65 paragraph 1 paragraph 2). With the changes in 2022, a new paragraph 6 was introduced to paragraph 1 of this article, so it is now prohibited if “the title, name, abbreviated name, programme, goals, activities cause racial, religious, national, ethnic, and other intolerance, intolerance, hatred, genocide, extermination, propagation or support of fascism, Nazism, National Socialism and the Third Reich.”

Some of these NGOs also deal with the issue of detecting and combating hate speech (but they also deal in principle with “media literacy among the population”).^[34] In 2022, a total of 145 reported cases related to hate speech^[35] were registered in the “Helsinki Committee for Human Rights”^[36] (hereinafter: MHC). The incidents are published on the internet portal www.govornaomraza.mk.

The Metamorphosis Internet and Society Foundation is already an established organization.^[37] In 2018, they published a “[Preliminary Report](#)”^[38] which gave an overview of the situation related to the legal frameworks and measures to combat hate speech in Macedonia in the past and current period, as of 31 December 2017.^[39] Some of the recommendations of “Metamorphosis” were: the government, in cooperation with citizens’ associations, political parties, religious organizations, the media, and MANU, should prepare a long-term strategy to combat hate speech (including online hate speech); to take specific measures through public campaigns to increase awareness of the harms of hate speech and of the existing mechanisms for protection against

34. See manual: https://metamorphosis.org.mk/izdanija_arhiva/so-kritichko-mislenje-dorazoblichuvanje-na-dezinformacii/

35. <https://mhc.org.mk/reports/vkupno-registrirani-prijavi-na-govor-na-omraza-vo-2022-godina/>

36. In December 2018, the Helsinki Committee for Human Rights of the Republic of Macedonia started implementing the project “Monitoring hate speech at the local level” financed by the Open Society Foundation - Macedonia. The project had a duration of 12 months.

37. <https://fosm.mk/25-godini-temi/informacii/>

38. Available at: <https://metamorphosis.org.mk/wp-content/uploads/2018/04/1.3-Preliminaren-izveshtaj-govor-na-omraza.pdf>

39. This report was part of a wider report on the state of freedom on the internet, with a focus on freedom of expression, privacy and security in the digital world, as part of the “Freedom on the Internet” project implemented by the Metamorphosis Foundation within the framework of the regional project “Internet Freedom in Eastern Europe and Eurasia” of the American Bar Association (ABA ROLY).

hate speech, and to prepare an annual review of all hate speech cases registered by the Government, the Ministry of Internal Affairs, the public prosecutor's offices, the courts, the Ombudsman, the Commission for Protection against Discrimination, MARnet, AJM, CMEM, and AAAMS. The LPPD also proposed specific changes. "Metamorphosis" also proposed an amendment to the Law on Public Assemblies to prohibit calling and inciting violence or stirring hatred on all grounds. It also reminds of the necessary need for training officials and officials in competent institutions regarding hate speech.

Of the other NGOs in Macedonia, interesting are the appeals of "Civil" for sanctioning hate speech,^[40] the monthly reports of "Нексус Цивил Концепт" (Nexus Civil Concept) for the detection of disinformation, hate speech in the media and fake news, which is a project supported by the EU,^[41] then the reaction of the "Националниот младински совет" (National Youth Council) of Macedonia to the collection of poetry from the project "Млади поети" (Young Poets) in 2018, as well as the NGO initiative from 2016 "Навивај без омраза" (Cheer Without Hatred).^[42] But the most significant is the role of the Helsinki Committee for Human Rights of North Macedonia and their already mentioned website - www.govornaomraza.mk, which is of crucial importance because until recently it was the only instrument for recording any statistical trends on hate speech that they publish as part of their "annual reports",^[43] as well as in the "annual reports on hate crime" of the OSCE – the mission in Skopje. Based on their results, conclusions could be drawn about the scale of hate speech, which was on the rise in the country.

In multi-ethnic societies, the media play a crucial role when it comes to building coexistence. The journalistic approach with which the media represents individual social groups, the way they focus on or describe negative phenomena and processes, can openly or subtly encourage stereotypes, and hate speech. Therefore, the contribution

40. <https://www.webohrid.com/civil-navivackite-grupi-da-ne-koristat-govor-na-omraza-ili-nasilstvo/>

41. <https://nexus.org.mk/papers-2/>

42. <https://akademik.mk/navivaj-bez-omraza-proekt-za-iskorenuvane-na-govorot-na-omraza-za-vreme-na-sportskite-natprevari/>

43. <https://mhc.org.mk/wp-content/uploads/2020/07/annual-report-on-hate-crime-2019-mkd-final-1.pdf>

of the Association of Journalists of Macedonia as a pivot of the self-regulation of journalism in the country should not be overlooked.^[44] “The goal of self-regulation is not to be a censor or to impose self-censorship, but to set and defend the principles of ethical, accurate, objective journalism that respects human rights, while fully preserving the freedom of editorial policy, whatever and how it will be presented by the media.”^[45] Their regular announcements and several created handbooks on hate speech in the media are important. In addition, the Code of Journalists of Macedonia from 2001 is also their authorship, where it is stated in Article 10 of the same: “The journalist shall not consciously create or process information that threatens human rights or freedoms, shall not speak with the language of hatred and will not incite violence and discrimination on any basis (national, religious, racial, gender, social, linguistic, sexual orientation, political...).”^[46]

In addition, a specialized body “Council of Honour”^[47] operates at AJM, which is the oldest self-regulatory body of journalists in Macedonia. Its main task is to take care of and promote the ethical principles, criteria, and standards of professional and responsible journalism noted in the Code of Journalists of Macedonia. Any person or organization affected by the emergence of unprofessional and unethical journalism can turn to it. It is about autonomous control of the media, a mechanism of the so-called self-regulation. By filing a complaint about unprofessional or inaccurate content, citizens, together with journalists, participate in efforts for accurate, timely and professional information, thus protecting the freedom of the media, freedom of speech and the public’s right to the truth.^[48] The procedure is initiated within a maximum of 10 days from the day of the application. The Council of Honor makes valid resolutions with a simple majority, if at least 4 members – councillors – are present at the

44. “Self-regulation does not mean censorship, nor self-censorship. It refers to establishing minimum standards for ethics, accuracy and protection of personal rights with full preservation of the editorial freedom to choose the topics that will be reported on and the opinion that will be presented to the public. Self-regulation helps the media to respond to legitimate complaints from the public and possibly correct mistakes”, Citation: “Lexicon of media and justice terms”, p.54, Source: <https://jpacademy.gov.mk/leksikon-na-makedonski-mediumski-i-pravosudni-termini/>

45. <https://znm.org.mk/wp-content/uploads/2020/07/Priracnik-za-etika.pdf>

46. <https://znm.org.mk/kodeks-na-novinarite-na-makedonija/>

47. During the period of the RNM, this body was named “Court of Honor”.

48. Source: <https://znm.org.mk/wp-content/uploads/2020/07/Priracnik-za-etika.pdf>

session. The session of the Council of Honour is not public. The Council of Honour consists of 7 members who are elected by the AJM members at the Election Assembly. Recently, this Council has started making resolutions in cases of hate speech and these are carefully recorded and available online.

Lastly, the “Promedia” group, formed by AJM, the Media Development Association ONLIMIT MEDIA, the Economic Chambers of North Macedonia, the Independent Union of Journalists and Media Workers, and CMEM as an association of the larger private media houses in RNM (it does not include MRTV and MIA) successfully created the “Register for Professional Online Media” in 2020.^[49] The goal was to show those online media that meet the mandatory criteria of CMEM^[50] to be part of the register of professional online media. The criteria are divided into two parts – obligatory^[51] and non-obligatory. At the moment, there are also considerations to expand the mandatory criteria with a new criterion – that there is an obstacle to entry into the Register if there is a legally binding sentence imposed on the person responsible for the online media – Prohibition to perform a profession, activity or duty in accordance with Art. 38-b of the CC.

The intention was for this register to gain power through the cooperation of CMEM with the Chamber of Commerce of Macedonia, and through the Chambers the companies that are members of those chambers would be influenced as to where and on which internet site

49. <https://semm.mk/soopshtenija/699-www-promedia-mk>

50. CMEM is structured like most self-regulatory bodies in the world, where there are: an administrative office, an appeals commission and a management board. CMEM was formed by over 40 media in 2014. Unlike the Court of Honour, which acts on complaints against journalists, CMEM acts exclusively on complaints against unethical behaviour of media as legal entities.

51. Mandatory criteria:

1. To have listed a reliable imprint (editor, editorial office), contact data and address
2. To respect the Code of Journalists, the Charter for Ethical Reporting on Elections and the Statute of CMEM.
3. The members are online media that regularly publish informative content of public interest
4. To have a registered legal entity in the Republic of North Macedonia and transparently declare ownership
5. Members should have transparent funding, in accordance with the law
6. To publish the decisions of the SEMM and to be involved in the mediation process
7. To place a banner on their page with which they undertake to respect the principles of the Code (and self-regulation)
8. The published texts should be signed by the author, and if they are taken from other media, this should be indicated, in accordance with the Law on Copyright Protection.

they should provide support by paying for commercial advertisements. For now, no clear result of this strategy of AJM and CMEM is visible. As far as CMEM is concerned, this organization also has the so-called “Council of Ethics”, but its members (7 in total) are directly delegated by the responsible persons of the big media houses, in contrast to the Council of Honour of AJM where the members are elected in direct elections. Until now, the Council of Ethics has mostly reacted with official announcements regarding objections to the concept and contents of, mostly, television programmes, and rarely regarding individual journalistic articles, interviews or reports in which “hate speech” prevails, although statistics record that such cases had a non-negligible number (165).^[52] In the future, this could change and they could be proactive because the Code of Journalists from 2014 provides a source and legitimacy for them as well.

The positive side of self-regulation is that it allows flexibility and appears in the role of a protection mechanism against the potential interference of power centres in media content, while the weakness is that it carries only moral sanctions and cannot compel any action without voluntary consent of the media that committed the offense. At the same time, it is good that the term “co-regulation” is avoided, which roughly speaking it implies simple registration of these media by the state and their taxation. This thing represents a technicality and is qualitatively insufficient to be attributed as a sin to the state for intervening in this segment.

Otherwise, procedurally, the procedures led by CMEM provide for mediation as the first level if the complaint is founded, while this procedure also provides for an apology and correction from the media, after which the CMEM Complaints Commission considers the case closed. In the field of accepting the resolutions of the Court of Honour or the CMEM, the practice is like that in most countries of the region, so that in a small number of cases the resolutions are accepted by the media and transparently published. The trend of acceptance of decisions in recent years has seen an increase. The most frequent violators of the Code of Journalists under which both self-regulatory bodies work are online media. However, the fact that most of the cases refer to non-

52. <https://complaints.semm.mk/>

compliance with the obligation to request a second source or a second party in reporting, a basic rule in journalism, is also worrying.^[53]

53. Source: https://metamorphosis.org.mk/wp-content/uploads/2019/03/BDT-medijumi_MK-FINAL.pdf

COUPLINGS, INSTITUTIONAL CONSTELLATIONS

In the political system of the RNM, there are a variety of institutions in the executive and judicial authorities that have the legal opportunity to act in the fight against hate speech, and to tell the truth, most of them are already doing it, some directly, some indirectly. Additionally, these entities would contribute to the registration of acts of hate speech. Even if some of them do not have adequate personal capacities (as can be concluded from the text below), then the state authorities could be used for such services by the private sector as well. A similar example was published recently when it became known that the Macedonian Language Institute “Krste Misirkov” and several PHIs used archiving services from a private Skopje company, so there is no reason why that cooperation with other relevant state authorities should not be deepened in the area of “data registration and processing” by companies which perform such activity.^[54]

Those who do this directly include the bodies of the judicial authority (PP as the most important because it leads the pre-investigation and investigative procedure), and from the bodies of the executive authority it is, first of all, the Ministry of Internal Affairs, as well as the specialized body established with Law of AAAMS – the Agency for AAAMS and the specialized body for combating discrimination – the Commission for Protection against Discrimination, and more will be said about those two below.

Among those that do this indirectly, the following stand out:

54. https://sdk.mk/index.php/instagram/rakopisi-stari-po-500-godini-od-institutot-za-makedonski-jazik-so-digitalizatsija-se-spaseni-od-pozhar-i-voda/?fbclid=IwAR3BRYpIO_LDd1iBW20bvKi_AJG_nhxs-uWHxsuhGnlqcLSffAsP_o8Wljw (25,05,2023).

the Government of RNM, the Ministry of Education and Science (in the following text: MES), MARnet, the Ombudsman, and the religious communities.

As for the Government of the RNM, it is certain that back in 2019 it made a “Plan to fight fake news”. Indeed, “fake news” as a category is part of the scope of the security policies of governments around the world because they primarily fall into the domain of “special wars”, propaganda, “hybrid warfare”.^[55] This is information that is mostly “prepared” in the “kitchens” of the intelligence and security services. But still, as a fragment in that corpus of “fake news”, there is no doubt that information that is a typical “hate speech” is circulating.^[56] The next thing that the Government of the RNM did was to establish the Action Group for the fight against fake news in 2019, but it died before it started working; and its members were politicians. With that, the “Plan” could practically not be implemented, but it is still relevant because it was set with durable and precise solutions. Regarding the “Plan”, the Government recently announced new efforts, which will be implemented this year with foreign support from the United States,^[57] but also in cooperation with the NGO sector.

One gets the impression that there is a lack of specialized staff in the Government that would deal with this activity because even those few of the so-called classical sector for media monitoring have not yet established the so-called “Rapid alert system”^[58] which, among other things, would monitor “fake news” and create a “Register for established and declassified information”, let alone a body that would do something more. This situation is expected to be quickly overcome in view of the geopolitical developments and the resulting war between the Russian Federation and the Republic of Ukraine, as well as the quick

55. Thus, last year in the USA, the “Government Board for Disinformation” was established, which had variable success because it stopped its work soon after its establishment. Source: <https://www.washingtonpost.com/technology/2022/05/18/disinformation-board-dhs-nina-jankowicz/> (23.05.2023).

56. Such as a recent column in the Palestinian Authority print media that the Republic of Israel deliberately introduced the corona virus into Palestine. See: <https://www.algemeiner.com/2021/12/23/official-palestinian-newspaper-israel-infected-palestinians-with-covid-19/>

57. See: <https://www.mkd.mk/node/513338>

58. https://www.eeas.europa.eu/sites/default/files/ras_factsheet_march_2019_0.pdf (25.05.2023).

and coordinated reaction of NATO countries, including the RNM, in the context of identifying and blocking “fake news”. In that future state, hate speech would only be partially covered because in these developments, although it is inherent, it is still of marginal importance in relation to the main topic – fake news.

The potential of the Macedonian Government to harness itself in the fight against hate speech is huge, but the ideas have yet to come, and one of them would be the use of the public service – MRTV, which would have specialized regular programmes for detecting hate speech in our country, “Fact checkers” type shows in terms of hate speech are similar to those that are shown on large public (state) European television services such as: Euronews, BBC, France 24 and which gained viewership in the last two years. In this way, the global trend for objective and professional journalism would be followed. Until now, only internet portals that originate from the NGO sector, but whose primary interest seems to be geopolitics, and which have not built up their credibility and popularity among the people, such as: <https://vistinomer.mk> and the fact-checking service of the NGO “Metamorphosis”.^[59] In addition, MRTV could also have periodical contact shows where acts of hate speech would be reported, followed by a public debate with calls from citizens, in the manner of morning programmes broadcast by large private TV companies in the RNM.

Beyond the topic of “fake news”, and speaking of “hate speech”, a problem arose for the Government when the unexpected request came from the Republic of Bulgaria in 2020 for our country to deal with hate speech against Bulgaria and Bulgarians,^[60] and in context of the Bulgarian veto to the accession of the RNM to the European Union (the opening of accession negotiations).^[61] In that direction, through the Ministry of Foreign Affairs, the Government of North Macedonia established an Interdepartmental Working Group that was in charge of political coordination of activities in relation to the measures established in the “Second Bilateral Protocol for Implementation of the Agreement with

59. https://metamorphosis.org.mk/en/uslugi_arhiva/servis-za-proveka-na-fakti-od-mediumite/

60. <https://360stepeni.mk/zaharieva-bugarija-ja-blokira-s-makedonija-poradi-govorot-na-omraza/>

61. Even though the Republic of Bulgaria itself has not “finished its homework” in terms of combating hate speech. See: <https://bntnews.bg/news/ek-zapochva-procedura-sreshtu-balgariya-zaradi-borbata-s-rasizma-i-ezika-na-omrazata-1096561news.html>

Bulgaria on Good-neighbourly relations and Friendship of 2017”,^[62] as one of the conditions for the RNM to start accession negotiations with EU led by the Minister of Foreign Affairs.^[63] Furthermore, in support of the work of the Interdepartmental Working Group, topic subgroups were formed in the following areas: hate speech, rehabilitation of victims of repression during the period of the communist regime, implementation of the recommendations adopted by the Commission that works on historical issues as well as in the field of protection against discrimination. The Minister of Foreign Affairs pointed out that the commitments undertaken by the RNM with the “Protocol” are being actively worked on and soon the “results of archives, textbooks, hate speech, and anti-discrimination” will be presented.^[64] As for the MES, it should be highlighted the multi-year project of this ministry on “Media Literacy” which resulted in the new concept for primary education when in 2021 “media literacy” became part of this concept and was introduced as a basis for recognizing what correct information is and what fake news is.^[65] The implementation was first with teacher trainings in 2022,^[66] and already in 2023 “media literacy” became part of the Macedonian language programme for the VI grade with a total of 20 lessons planned. In the genesis of this novelty was the problem with the constant exposure of young people to information-conspiracy theories that were on social networks and on portals and on television during the COVID-19 pandemic.^[67]

The state “Bureau for Education Development” helped in the implementation of the trainings, which organized webinars for teachers

62. <https://sdk.mk/index.php/makedonija/tselosen-tekst-na-protokolot-so-bugarija-shto-deneska-go-potpishaa-osmani-i-genchovska/>

63. An Interdepartmental Working Group was formed at the beginning of 2023, consisting of representatives of the AAAMS, KSZD, JORSM, MIA and MFA. One public prosecutor and one representative from the Publicity Department of JORSM take an active part in it. They have frequent meetings regarding the above-mentioned problem with the Republic of Bulgaria (among them the famous “Pendikov” case), so it is desirable to extend their interest to other cases of hate speech as a crime.

64. <https://www.slobodnaevropa.mk/a/32120617.html>

65. Although in 2008, in the Macedonian language curriculum for primary education, there was already one subject with a similar name, but different content, namely Media Culture. Within the scope of this subject, 10 hours were planned to be completed to learn about film, animation and other visual arts.

66. <https://mim.org.mk/mk/novosti/1348-nad-100-nastavnici-od-osnovnite-uchilishta-go-zavrshija-prviot-del-od-obukata-za-mediumska-pismenost-3>

67. <https://skopjeinfo.mk/carovska-mon-raboti-na-voveduvanje-mediumska-pismenost-vo-nastavnite-sodrzhini>

to acquaint themselves with the subject, and the most active from the NGO sector for several years is the “Institute for Communication Studies”, which made outstanding contributions to the “media literacy” of their internet portal <https://medium.edu.mk>. In 2021/2022, the NGO “Institute for Human Rights” conducted a project among students with the support of the German Embassy in Skopje aimed at recognizing and combating hate speech.^[68] The most significant thing is that in the aforementioned programme, it is clearly and decisively stated that the “evaluation standards” will include “recognition of personal insults and slanders in online communication”, as well as “recognition of hate speech in the media and on social networks”. Among the goals of the programme, there is one other: “The student understands and accepts that in the digital space it is important to ensure the protection of identity, privacy, and emotional security, not to use hate speech and cyber violence and to respect the rules and the norms of communication in digital communities.”^[69]

68. <https://ihr.org.mk/mk/realizirani-proekti/zashtita-od-diskriminacija-buling-i-govor-na-omraza> (23,05,2023).

69. Page 5 of the Programme.

The didactic methods for implementing this goal are also interesting.^[70] Of course, the public expects the Ministry of Education to react promptly if there is “hate speech” in the teaching contents; that is, contents that could encourage intolerance or hatred, and to promptly remove them. In addition, in order to have a complete picture, it is of great help the fact that the “Days of Media Literacy” started to be celebrated in the country, last year was from October 25 to November 1.^[71]

Among the bodies where information and statistical data on acts of hate speech should naturally be channelled, the State Statistics Office is leading the way.^[72] The State Statistics Office is a professional and independent organization within the state administration in the Republic of North Macedonia. The basic functions of the institution are the collection, processing and dissemination of statistical data on

70. Students, divided into 5 groups, draw one of the set of cards on which are written (one on each card): RACE (whites, blacks and others), SEX/GENDER (boy, girl, woman, man), OCCUPATION (policemen, doctors, teachers and others), AGE (older, younger, teenagers), FAMILY MEMBERS (daughter, son, mother, father, grandmother, grandfather). Each group should, on a large sheet of paper, describe (in words and through a drawing) how the people on the chosen card are depicted in the media (in movies, drama series, advertisements) – how they look, how they behave and what qualities they have. On another sheet of paper, they should also list examples from the media in which they saw it (which movie, series, advertisement). After completing the work, each group (one by one) hangs their sheets with the descriptions and examples on the wall and presents their work to the others. After each presentation, the students from the other groups supplement with their own examples and it is determined together what kind of description dominates in the media. The teacher writes on the board all the listed descriptions that match common stereotypes about the groups (eg: Blacks are criminals, sell drugs; Grandmas are caring, make pie, don't dress up; Boys are brave, strong, don't cry). The teacher uses the descriptions written on the board to define the term stereotype (a characteristic attributed to members of certain groups) and to indicate the types of stereotypes that are determined by the groups they refer to (racial, gender, professional, adult). At the same time, the descriptions of family members are associated with gender and age stereotypes. Within each group, each student should give an example of a specific person they know who is different from the stereotype and list his/her characteristics that make him/her different from the stereotype. Groups present their examples. In an open discussion, it is concluded that the media mainly makes us see all members of a group as if they are the same (according to the stereotype), even though many of them differ from the stereotype. An open discussion is conducted to explain how gender stereotypes in the media are also transmitted on social networks: (1) How much does someone (boy or girl) who is different from the stereotype feel free to present themselves in the right light?; (2) How would others react if portrayed in a different light; (3) What are the consequences of that? It is generally concluded about the negative consequences of the spread of gender and other types of stereotypes through the media and social networks. The groups are asked to prepare a warning that would be placed in front of the film, series or advertisement that encourages stereotypes towards a certain group, on the principle of the warning on cigarettes: Smoking kills - to come up with a catchy sentence that indicates the consequence of the presence of the specific stereotype.

71. <https://mediumskapismenost.mk/denovi-na-mediumska-pismenost-2022/> (25,05,2023).

72. The State Statistics Office carries out its activity in accordance with the Law on State Statistics (1997, 2007, 2011, 2013, 2014, 2015, 2016, 2018 and 2020) together with other participants in the statistical system of the state defined by the Programme for Statistical Research, 2023-2027.

demographic, social, and economic phenomena in Macedonian society. In addition, the State Statistics Office is the main holder and coordinator of the country's statistical system, it is the responsible institution for international cooperation in the field of statistics, as well as for defining statistical methodologies and standards and for ensuring the protection of individual data collected by individuals and legal entities. In the statistical categories maintained by the Office, the judiciary is also included, but unfortunately there, in the so-called electronic database, "Maxstat" does not have specific statistics regarding acts of hate speech as a group of criminal acts.^[73]

And the ombudsman should not be skipped in the network view of the relevant authorities that should be in conjunction with the others, with the aim of suppressing and registering hate speech. The Ombudsman pays particular attention to the protection of the principle of non-discrimination and establishes a "Department for the Protection of Citizens from Discrimination". However, apart from the rare public indications of the presence of hate speech, the Ombudsman does not treat cases of hate speech as a form of discrimination in the annual reports. An exception to this practice is the 2010 report where the Ombudsman indicates one case of hate speech, without going into the details of the case.^[74] Unfortunately, this trend has continued to this day, as can be seen from the latest Report of the Ombudsman for 2022, which states that in 2022, an increasing number of complaints related to protection against discrimination (76) were recorded, as many as 33 more than in 2021, but it is not stated whether hate speech was also present in those cases.^[75]

Regarding the issue of timely reaction, reporting and registration of hate speech, religious communities should not be ignorant either. Their position in the RNM is regulated by the Law on the legal position of a

73. https://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/MakStat__Sudstvo__PrijaveniPolnoletniStoriteli/102_SK1_Mk_T3a_ml.px/?rxid=46ee0f64-2992-4b45-a2d9-cb4e5f7ec5ef

74. Source: "Preliminary and report on legal frameworks and measures to combat hate speech", Internet and Society Foundation "Metamorphosis", 2018, p.14. LINK: <https://metamorphosis.org.mk/wp-content/uploads/2018/04/1.3-Preliminaren-izvestaj-govor-na-omraza.pdf>

75. See p.82 of the Report. Source: <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2022/GI-2022.pdf>

church, religious community and religious group^[76] (despite the fact that Macedonia is a secular state). Freedom of religion is also a constitutional category. From there, religious communities have a moral obligation to contribute. But there is also a legal obligation for them in Article 4 of the Law, which stipulates: “Religious discrimination is not allowed. Religious conviction does not release a citizen from the obligations he has as a citizen according to the Constitution, laws and other regulations, unless it is regulated otherwise by law or other regulation.” In European democratic states, the question of whether it is necessary to introduce a mandatory state registration of religious preachers, in order to prevent sermons by religious persons full of hate speech.^[77] RNM should also think in this direction.

76. (Sl. Gazette of Rome no. 113/07 and no. 81/08).

77. <https://www.dw.com/en/austria-calls-for-european-register-of-muslim-imams/a-56114597>

MARnet

The Macedonian Academic Research Network (hereinafter: MARnet) is a public institution that performs activities of public interest and was established in 2010.^[78] It has numerous responsibilities within the framework of internet traffic in the country^[79] and so far it has been ungrateful to neglect and exclude it from the network of state authorities that have the authority to act in the fight against hate speech, as well as to collect data – to register hate speech. Perhaps for the first time this body came into the focus of the public with the recent resolution of the Basic Criminal Court Skopje^[80] in the case against Marjan Stamenkovski, as the person responsible for the “Dokaz.mk” portal for several crimes, including spreading racist and xenophobic material on through a computer system

78. Official Gazette of the Republic of Moldova, no. 124 of 20.09.2010.

79. MARnet performs the following tasks and tasks:

- manages the closed telecommunications network;
- encourages the development of the closed telecommunications network;
- plans, organizes and manages connections between users of telecommunication services;
- leads, manages and performs the procurement and rental of the necessary software, material and communication equipment;
- organizes and conducts trainings and provides professional assistance to the users of telecommunication services;
- manages the Macedonian domain (.mk domain)
- ensures membership and cooperation with appropriate international organizations;
- performs computer activities related to research and experimental development in natural and technical-technological sciences;
- performs work related to software (prepares, issues, provides consultations);
- performs consultations regarding hardware;
- maintains a database and processes data;
- maintains a single Register of registered subdomains in the MK-domain (in hereinafter: the Register);
- maintains telecommunication systems in the closed telecommunication network;
- carries out publishing activities related to the provision of telecommunication services;
- performs work related to the reproduction of computer media;
- performs services on the closed telecommunications network for the execution of programmes of educational activities;
- performs works related to the connection of the closed telecommunication network of the users of the telecommunication services;
- provides professional and technical connection with related telecommunication networks abroad;
- establishes, maintains and develops cooperation with other telecommunication networks in the Republic of Macedonia and abroad and
- performs other tasks established by law.

80. K no. 429/23 of April 4, 2023.

from article 394-d paragraph 1 of the CC, where MARnet was tasked by the Court to implement the sentence – Prohibition from performing a profession, activity, or duty from article 38-b of the CC, with which the accused was banned from registering a domain and calling himself a registrant or owner of a portal registered in MARnet for a period of 10 years.

MARnet works not only on the basis of the Law, but on the basis of by-laws as well, such as: the Rulebook for the organization and management of the top-level .MK domain and the top-level .MKD domain of 21.05.2014, the Decision on establishing general conditions for the work of a registrar from 27.11.2015 and the Rulebook for general rules for access and use of the closed telecommunications network of MARnet and telecommunications services from 2017, in which in art. 2, Art. 6 and art. 18 paragraph 15 is expressly prescribed that it constitutes “unauthorized use” if an entity-educational institution, such as a MARnet user of the Closed Telecommunications Network (Currently composed of a dozen higher education institutions and scientific institutes, exclusively state-owned) “spreads national, religious, racial, or gender discrimination, hatred and intolerance or other activities that insult, slander or disturb individuals or a whole group of people, such as threats, violation of religious, ethnic, political or other beliefs, etc.” In that case MARnet has the right to exclude the user from using the services according to Art. 6 of the Regulations. So far, there has been no such example in MARnet’s practice.

But this does not apply to users of the regular Macedonian .mk domain and the top Macedonian .mkd domain, types of subdomains in the .mk and .mkd domains. On the other hand, the registration of these domains in accordance with Article 19 of the Regulation on the organization and management of the top mak .MK domain and the top mak .MKD domain from 21.05.2014 is transferred by MARnet to the registrars, which are about 15 private companies that work according to the principle First come, first served, and with whom MARnet concludes a cooperation agreement in accordance with Article 7 of the Decision on determining general conditions for the work of a registrar dated 27.11.2015, in which agreement the registrars can oblige to ask the registrants to deposit stated that they will not practice hate speech on their websites; that they

will be proactive in deleting such comments within a reasonable time, and that they will strive to reach the “Binding Criteria” of the aforementioned “Professional Online Media Registry”. But this thing is a measure that would be useful in terms of the prevention of hate speech, and as for the process of registering hate speech itself, there is no direct legal obligation for MARnet to do the same even though is obliged to “maintain a database and process data” without a specific designation as to what kind of data should be dealt with. In this part, perhaps there should be guidance and assistance from the Ministry of Administration and Information Society, which supervises the work of MARnet in accordance with Art. 19 of the Law on MARnet, since it is still a state body that has a small number of staff (7 employees) and where there is a lack of technical staff.

In the end, regarding the introductory part dedicated to this public body, the undoubted significant contribution that MARnet makes in the sanctioning of hate speech and the plan of special and general prevention, and in view of the legal obligation from 29 of the Regulation on organization and management, is highlighted. with the top-level .MK domain and the top-level .MKD domain from 21.05.2014, which stipulates: “MARnet has the right to modify any domain information or delete a domain based on a final court decision or a resolution of the competent authorities.” When necessary, to preserve the technical stability of the Internet, MARnet may, after prior notice to the registrant, temporarily deactivate the domain until the cause is removed.”

In relation to all the mentioned state bodies, the most important is the obligation prescribed by Art. 273 of the Law on Criminal Procedures for reporting crimes on official duty, including special forms of “hate speech”. In the same article, the additional obligation for the state authorities to state the evidence and to take measures to preserve the traces of the crime and the items that were used in its execution or resulting from the execution and other evidence is prescribed.

LEGISLATION

The Macedonian Constitution guarantees freedom of belief, conscience and thought and public expression of thought, freedom of speech, public performance, public information and the free establishment of institutions for public information, free access to information, freedom to receive and convey information, as well as the right to protect the source of the information in the means of public information. In Macedonia, media freedom is an inviolable right.^[81] Curiously and peripherally to the topic of hate speech, the only place in the Constitution where the term “hate” is found is in Article 20.^[82]

Regarding more extensive legal acts, the Criminal Code and the Electoral Code are also relevant for hate speech. The first one will be discussed thoroughly below, but what is significant regarding the Electoral Code is that it comes to the fore immediately before the elections in the country are conducted in the campaigns, and when in fact intensified hate speech is observed. However, it does not pay special attention to hate speech, although the media is tightly regulated to create a “balanced media representation” of political parties fighting for power (See Art. 75 of the Code), and hate speech is certainly diametrically opposed to “balanced representation”. Otherwise, the competences for media supervision are assigned by the Code to the AAAMS Agency, which will be next discussed (See Art. 76–c). It must be noted here that the SEC’s role must be more active in cases of observed hate speech between parties in campaigns. A few years ago, in one of our neighbouring countries (B&H), this very body (Central Election Commission) issued a warning to the political parties that it will process to the competent authorities all cases of using nationalist and anti-state rhetoric in the pre-election campaign.

81. Article 16 of the Constitution prescribes the norms regarding journalism. They are interpreted in a way that journalists have a role to convey information, ideas and opinions and to comment truthfully. They should be honest, objective and accurate and respect ethical values and professional standards. Source: “Defamation and insult in criminal proceedings against journalists”, Coalition All for a Fair Trial, December, 2006, Skopje, p.11.

82. “The programmes and actions of citizens’ associations and political parties cannot be aimed at violently overthrowing the constitutional order of the Republic and at inciting or inciting military aggression or inciting national, racial or religious hatred or intolerance.”

This resulted in a “softer” campaign.^[83]

Another act inherent in pluralism is significant, and that is the Law on Political Parties. ^[84]Article 3 paragraph 3 of the same provides that “The programme, statute, and action of political parties cannot be aimed at inciting national, racial, or religious hatred or intolerance, ethnic intolerance, intolerance, hatred, genocide, extermination, spreading, or support of fascism, Nazism, National Socialism, and the Third Reich or reference to persons and events of the past associated with fascism, Nazism, National Socialism, and the Third Reich.” Criminal liability for the political party as a legal entity is also designated for the same (fine in the amount of 800.00 to 4,800.00 euros), according to Art. 40 of the Law. The procedure for banning the political party if the provision of Article 3 of the Law is violated is regulated in Articles 33–37 of the Law, and is initiated by the public prosecutor, but in civil proceedings (See Article 33 of the Law). In relation to the statutes of the political parties, the restrictions in that direction are specified, and in accordance with Art. 16 paragraph 5 of the Law: “The name and symbols of the political party must not contain symbols, words, abbreviations that cause racial, religious, national, ethnic and other intolerance, hatred, genocide, extermination, propagation or support of fascism, Nazism, National Socialism, and the Third Reich.”^[85]

“Minor” laws are also important for the fight against hate speech, such as: the Law on AAAMS, the Law on Prevention and Protection against Discrimination, the Law on Offenses against Public Order and Peace, the Law on the Prevention of Violence and Indecent Behaviour in Sports Competitions, the Law on Probation, and the Law on Execution of Sanctions, but more will be said about all of them in the text below.

83. Source: Radosavljevic, P., “Govor mrznje u Bosni i Hercegovina”, *Anali poznežnej ekonomije*, no.13, 2015, p.68, Available at: <https://doisrpska.nub.rs/index.php/APEPIMBL/article/view/5818> (25.05.2023).

84. Official Gazette of the Republic of Moldova No. 76/2004.

85. Law on amending and supplementing the law on political parties dated November 2, 2022.

A LOOK AT THE SITUATION WITH THE MEDIA IN MACEDONIA THROUGH THE PRISM OF THE LAW ON THE AUDIO AND AUDIOVISUAL MEDIA SERVICES AGENCY AND THE MEDIA LAW

According to theorists, under “media and media space” we have internet portals, the press, radio and television informative shows and social networks.^[86] Generally, the Republic of North Macedonia does not have a special law that comprehensively regulates the extensive matter of public information, but it is done individually. With the adoption of the Audiovisual Media Services Directive, the European Union has taken concrete actions to deal with hate speech in audiovisual media services. Article 6 of the Directive states that the authorities in each Member State “must ensure, by appropriate means, that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.” This also means acting against channels that use a satellite connection (uplink) in an EU country and satellite capacity used to broadcast hate speech by channels licensed in other EU countries. In December 2013, the Audiovisual Media Services Directive was transposed into the RNM’s new Law on Audio and Audiovisual Media Services (LAAAMS). By the way, in the EU-report on the progress of Macedonia from 2018, it is underlined that “the legal framework is broadly aligned with European legislation

86. Poljak, M./ Hadžić, J./ Martinić, M. “Govor hajnje u hrvatske medijskom prestorio”, In Medias Res, Zagreb, 2020, p.2716. Available at: <http://www.centar-fm.org/inmediasres/index.php/marko-poljak-jelena-hadzic-i-masa-martinic-govor-mrznje-u-hrvatskom-medijskom-prostoru> (22,05,2023).

and international standards“ (Here we mean both the AAAMS and the Media Law).

Article 4 of the Law on Audio and Audiovisual Media Services (hereinafter: “LAAAMS”) states that “the competent body for the issues that are subject to this Law is the Agency for Audio and Audiovisual Media Services” (hereinafter: the Agency).

In Article 48 paragraph 1 of the Law,^[87] special prohibitions on “hate speech” are regulated. This provision reads:

“Audio and audiovisual media services must not contain programmes that threaten national security, encourage the violent overthrow of the constitutional order of the Republic of Macedonia, call for military aggression or armed conflict, encourage or spread discrimination, intolerance or hatred based on of race, colour, origin, national or ethnic origin, sex, gender, sexual orientation, gender identity, membership of a marginalized group, language, nationality, social origin, education, religion or religious belief, political belief, other belief, disability, age, family or marital status, property status, health status, personal property and social status, or any other basis provided by law or a ratified international agreement”.

Article 48, paragraph 2, states that: “The special prohibitions from paragraph (1) of this article shall be in accordance with the practice of the European Court of Human Rights.” This provision authorizes the Agency to use the precedent law of the European Court for human rights in every resolution it makes.

Furthermore, in Article 6, it is determined that the Agency has the authority, among other things, to “take measures in accordance with this law in cases where there is a violation of the provisions of this law or of the regulations adopted on the basis of it and the conditions and obligations of the permits.”

The agency in its “Hate Speech Monitoring Guide” states that “This provides clear authority for the AAAMS (the agency) to respond to the

87. Law on amending and supplementing the law on audio and audiovisual media services (Official Gazette of the Republic of Moldova, No. 247 of 12/31/2018).

violation of any article of the Law, including Article 48 and the identification of ‘hate speech’”.[88] This is also complementary to the misdemeanour provision of Art. 147 of the Law which was relatively late entered into the Law by the legislator, and where now in paragraph 1 a fine is prescribed in the amount of 1,000.00 to 5,000.00 Euros in denar equivalent value if the subject “broadcasts and creates programs that threaten national security, incites the violent overthrow of the constitutional order of the Republic of Macedonia, calls for military aggression or armed conflict, incites or spreads discrimination, intolerance or hatred based on race, skin colour, origin, national or ethnic origin, sex, gender, sexual orientation, gender identity, belonging to a marginalized group, language, nationality, social origin, education, religion or religious belief, political belief, other belief, disability, age, family or marital status condition, property status, health condition, personal property and social status, or any other basis.”[89] In addition, there is a precisely regulated section in the Law for taking measures to promptly stop the transmission and reception of audio and audiovisual media services from third countries on the territory of the Republic of Macedonia in accordance with Article 45 of this Law.

Despite the legally assumed status of the Agency as a public and transparent state body, there are no publicly available data on how many criminal proceedings the Agency has initiated due to violation of Article 48 of the Law and what the epilogue is like after them. In accordance with Article 7 of the Law, “the work of the Agency is more closely regulated by the Rules of Procedure of the Agency”. Pursuant to paragraph 5.2 of this article, the Agency can develop the procedure for adopting by-laws and other acts arising from this Law, which can again be a by-law for additional registration of “hate speech” and processing of that data, as well as to establish a separate Department for keeping statistics, which is now missing.[90] On the other hand, according to Article 23 of the Law, the Agency, in addition to making a proposal to initiate criminal proceedings, has other types of sanctions at its disposal, such as: 1) issuing a public warning, 2) revoking the permit, or 3) implementing a deletion procedure from the register of providers of audiovisual media services or from the

88. Guide for monitoring “hate speech”, Agency for Audio and Audiovisual Media Services, Skopje, p.19.

89. Art. 147 paragraph 1 item 10 of the Law (Official Gazette of the RNM no. 248/2018).

90. <https://avmu.mk/strucna-sluzba>

register of broadcasters.

The problem the Agency faces is its passivity. The strong remarks of the RNM Government are still upheld, when in the Introduction of the Draft Law on Amendments and Supplements to the Law on Audio and Audiovisual Media Services from February 2018 it was stated: “...there is no political pluralism in the media, there is a more hate speech in the media, while the Media Agency is only a silent witness to these negative phenomena”.

But if nothing else, then at least the abovementioned Article 48 of the Law on AAAMS is consistent with Article 4 paragraph 1 of the “Media Law” which prohibits the publication, i.e. broadcasting of content in the media that endangers national security, incites violent overthrow of the constitutional order of the Republic of Macedonia, calls for military aggression or armed conflict, and incites or spreads discrimination, intolerance, or hatred based on race, gender, religion, or nationality.^[91] The Law does not provide for misdemeanour liability for acting in violation or a fine. But this Law does not treat online media as media. This is a problem in practice and creates a huge space for the spread of hate speech on the Internet, as is the case with the LAAAMS which regulates the rights, obligations, and responsibilities of broadcasters, providers of on-demand audiovisual media services and operators of public electronic communication networks that broadcast or rebroadcast the programme services of broadcasters.

91. Paragraph 2 of the article stipulates: “The special prohibitions from paragraph 1 of this article shall be in accordance with the practice of the ECHR.”

DOMESTIC CRIMINAL LEGISLATION

The analysis deals with hate speech as a criminal phenomenon. Its criminological aspects were mentioned, but since it is a new phenomenon, it is expected that these aspects will be soon expanded. Although a new phenomenon, the international judicial authorities have already developed an attitude and practice on the treatment of hate speech, and this especially applies to the ECHR.^[92] Even more, this practice has helped to classify hate speech, both according to the protected good and according to the *modus operandi*. Thus, it is not the same if the hate speech was placed in a restaurant, or in public – through traditional media or online social networks.

In the Macedonian legislation, there are provisions that criminalize speech due to its special content. Criminal prohibitions on hate speech are focused on criminalizing abuses of freedom of expression that consist in inciting violence or other violations of equal freedoms and rights; or expressing a discriminatory attitude towards others. The criminal acts in which hate speech is incriminated in the Criminal Code of the Republic of Macedonia are: Endangering security from art. 144 paragraph 3 and paragraph 5, “Exposure of mockery of the Macedonian people and members of the communities” from art. 179, “Inciting hatred, discord or intolerance on national, racial, religious, and other discriminatory grounds” from Art. art. 319, “Participation in foreign army, police, paramilitary or parapolic formations” from art. 322–a paragraph 4, “Dissemination of racist and xenophobic material through a computer system” from art. 394–d, “Approval or justification of genocide, crimes against humanity, or war crimes” from art. 407–a and “Racial and other discrimination” from

92. But among the theorists there are also respected critics of the work of the Court who especially attack the “double standards” of the Court when deciding on cases of hate speech, especially when entities that symbolized the state power were attacked, and because of its plastic interpretation of the “evil tendency” or “the risk of physical violence” as a criterion. See more: Sottaux, S., “Conflicting conceptions of hate speech in the ECHR’s case law”, German law journal (2022), pp.1193-1211.

art. 417 para. 3 of the CC.^[93] In addition to the CC as a codification in the field of substantive criminal law, there are procedural laws that embody the substantive legal regulation, such as: the Criminal Code, the Law on Execution of Sanctions, and the Law on Probation, which will be discussed in detail below.

Domestic legislation also includes international acts, ratified in accordance with law, and as the most relevant among them when it comes to hate speech committed online, is the CE Convention on Cybercrime, which contains material and procedural norms, and norms for international cooperation. The provisions are also included in the Macedonian material legislation, mainly in the section of the General part of the CC where the basic terms for this type of crime are defined, as well as specific concrete crimes, but which will be discussed more below.

The domestic legal framework that regulates the area of computer crime includes the CC, LCP, the Law on Electronic Communications,^[94] the Law on Monitoring Communications,^[95] the Law on Electronic Commerce,^[96] the Law on Electronic Management,^[97] the Law on Litigation Procedure,^[98] the Law on Data in Electronic Form and electronic signature,^[99] and the Declaration for a safer internet.

Worldwide, there are several principles of incorporating these norms into domestic legislation, such as in Romania and Tahiti,^[100] where the regulation of this issue is made by a special law that contains both substantive and procedural legal provisions, completely separated from the conventional ones. penal laws. The domestic legislation retains the continental approach and the norms governing this matter are incorporated into the existing laws. The material provisions for criminal acts in the field of computer crime are contained in the Criminal Code

93. There is still a disagreement among theorists as to whether this group of works should include the works from Art. 178 and Art. 181 of the CC.

94. Official Gazette of the Republic of Moldova No. 13/2005, 14, 55/2007, 98/2008, 83/2010, 13, 59, 123/2012, 23/2013.

95. Official Gazette of the Republic of Moldova No. 121/2006, 110/2008, 4/2009, 116/2012.

96. Official Gazette of the Republic of Moldova No. 133/2007, 17/2011.

97. Official Gazette of the Republic of Moldova No. 105/2009, 47/2011.

98. Official Gazette of the Republic of Moldova no. 79/2005, 110/2008, 83/2009, 116/2010.

99. Official Gazette of the Republic of Moldova No. 34/2001, 98/2008.

100. Computer Crime Practitioner's Handbook, Op. cit., p.8.

and refer to about 20 criminal acts,^[101] as well as to Article 122 – Definition of basic segments of computer crime, with the following points: point 15 – payment cards,^[102] point 24 – child pornography,^[103] point 26 – computer system,^[104] and point 27 – computer data.^[105]

101. article 144 - Endangering security, article 147 - Violation of the confidentiality of letters or other shipments, article 149 - Misuse of personal data, article 149-a - Preventing access to a public information system, article 157 - Violation of copyright and related rights , Article 157-a – Violation of the right of the distributor of a technically specially protected satellite signal, Article 157-b – Piracy of an audiovisual work, Article 157-c – Piracy of a phonogram, Article 193 – Showing pornographic material to a child, Article 193- a – Production and distribution of child pornography, Article 193-b – Enticing adultery or other sexual activity of a minor who has not reached the age of 14, Article 251 – Damage or unauthorized access to a computer system, Article 251-a – Making and entering computer viruses, Article 251-b – Computer fraud, Article 271 – Making, procuring or alienating means of counterfeiting, Article 274-b – Making and using a false payment card, Article 279-a – Computer forgery, Article 286 – Violation of the right of registered or protected invention and topography of integrated circuits, Article 394-g – Dissemination of racist and xenophobic material through a computer system.

102. Payment cards mean any type of means of payment issued by banking or other financial institutions that contain electronic data on persons and electronically generated numbers that enable the performance of any type of financial transaction.

103. Child pornography means pornographic material that visually depicts overt sexual acts with a minor or an adult who appears to be a minor or depicts a minor or an adult who appears to be a minor in an overt sexual position, or realistic images that depict overt sexual acts with a minor or depict the minor or an adult who appears to be a minor in an overtly sexual position.

104. A computer system means any device or group of interconnected devices, one or more of which performs automatic data processing according to a specific programme.

105. By computer data is meant the presentation of facts, information or concepts in a form suitable for processing by a computer system, including a programme eligible to be put into operation by the computer system.

DOMESTIC CRIMINAL LAW

Having already elaborated on LAAAMS, the next act that is important to mention from the perspective of freedom of speech is [the Law on Free Access to Information](#) of 2019.^[106] It was previously in effect The law on free access to public information.^[107] The new law stipulates that publicity and openness are ensured in the operations of the holders of information and it is possible for natural and legal persons to exercise the right of free access to information of a public nature. Holders of information (state authorities), on the other hand, are obliged to provide information to the public for their work (See Art. 2 of the Law). It goes without saying that there is classified information and information that by its nature should not be shared, but that is why Article 37 of the Law stipulates that: “An employee of the owner of the information who provides protected information, if it is important for detecting abuse of official position and corrupt behaviour, as well as for preventing serious threats to people’s health and life and endangering the environment.”

Hate speech is specified in Art. 9 and Art. 10^[108] of [the Law on Prevention and Protection from Discrimination](#) from 2020 and is prohibited by the misdemeanour provisions of Art. 41 of the Law: “Paragraph (1) A fine in the amount of 400 to 10,000 euros in denars will be imposed for an offense against a legal entity that has been determined by a competent

106. (“Official Gazette of the RNM” number 101/2019).

107. (“Official Gazette of the Republic of Macedonia” number 13/2006, 86/2008, 6/10, 42/14, 148/15, 55/16 and 64/18).

108. “Article 9 (Invocation, incitement and instruction for discrimination)

Invoking, inciting and instructing discrimination is any activity by which directly or indirectly invites, encourages, instructs or incites to commit discrimination on a discriminatory basis.

Article 10 (Harassment)

(1) Harassment is unwanted behaviour towards a person or a group of persons discriminatory grounds that have as a goal or consequence, a violation of dignity or creating a threatening, hostile, humiliating or intimidating environment, approach or practice.”

authority to have committed discrimination in accordance with Article 6, in connection with Article 4 points 4 . and 5., Article 8, [Article 9](#), [Article 10](#), Article 11, Article 12, Article 29 and Article 30 of this law in the following manner: from 400 to 1,000 euros in Denar equivalent for micro traders, from 600 to 2,000 euros in denar equivalent for small traders, from 800 to 10,000 euros in denar equivalent for medium traders and from 1,000 to 10,000 euros in denar equivalent for large traders. Paragraph (2) A fine in the amount of 400 to 2,000 euros in denars equivalent value will be imposed for the offense of another legal entity, different from paragraphs 1 and 2 of this article, which has been determined by a competent authority to have committed discrimination in accordance with article 6, in relation to article 4 points 4 and 5, article 8, [article 9](#), [article 10](#) , article 11, article 12, article 29 and article 30 of this law. Paragraph (3) A fine in the amount of 100 to 400 euros in denars equivalent value will be imposed for an offense from paragraph (2) of this article, to the official of a state authority, the mayor of the local self-government unit or to an official entrusted with exercise of public authority. Paragraph (4) A fine in the amount of 50 to 150 euros in Denar equivalent will be imposed for the offense of a natural person, who has been determined by a competent authority to have committed discrimination in accordance with Article 6, in connection with Article 4 points 4 and 5, Article 8, [Article 9](#), [Article 10](#), Article 11, Article 12, Article 29 and Article 30 of this law.” The Commission for the Prevention and Protection against Discrimination (hereinafter – KSZD) according to the LPPD has the authority to monitor and report on all forms of hate speech, in all spheres, including hate speech online. Consequently, KSZD should make efforts to register the reported cases of hate speech. Disinformation is the news that spread in the non-governmental sector that in 2016 KSZD allegedly made a formal decision that it is not competent for cases of hate speech.^[109] However, very little has been done so far. Not even in the report on operations for 2021 KSZD found it appropriate to mention the phenomenon of “hate speech”, although in one place it mentions a case of “offensive speech”

109. See p. 24 of the Report. <https://metamorphosis.org.mk/wp-content/uploads/2018/04/1.3-Preliminaren-izveshtaj-govor-na-omraza.pdf>

committed on the Internet.^[110] In the future, KSZD should develop online tools to combat hate speech and to provide legal assistance to victims of hate speech (portal and phone applications for reporting hate speech, for information on legal options and for providing legal and other advice on combating hate speech).

The Law on offenses against public order and peace is also relevant. It regulates that an offense against public order and peace makes “anyone who, with their behaviour or actions, disturbs the peace, work, or the usual way of life of citizens, endangers their safety in a public place or creates insecurity, prevents the smooth movement of citizens in public places or disrupts the realization of their rights and obligations, hinders the work and performance of the competences of state bodies and other institutions that exercise public powers, or the performance of the activities of legal entities or otherwise disrupts public order and peace”. Article 4 stipulates that “Whoever in a public place by scolding, shouting or indecent, and insolent behaviour violates public order and peace shall be fined in the amount of 100 to 400 euros equivalent in denars.” The misdemeanour procedure is led by a commission of the Ministry of Internal Affairs. Article 18 states that “Whoever unauthorizedly removes, tears, obscures, damages, or in any way exposes to ridicule the state symbols of the Republic of Macedonia, the symbols of the members of the communities or displays a flag or coat of arms that does not contain the symbols prescribed by according to the law, they will be fined in the amount of 1,000 to 1,500 euros equivalent in denars.”

Next in terms of relevance is the Law on the Prevention of Violence and Indecent Behaviour at Sports Competitions. This law regulates the issues related to violence and inappropriate behaviour in sports competitions, as well as the measures taken to prevent them, ensuring the safety of spectators, competitors, and other participants in sports competitions, the obligations of the organizers and the authorities of the

110. See p. 31 of the Report. Source: <https://kszd.mk/wp-content/uploads/2022/03/Godisenizvestaj-2021.pdf>. In fact, it is a text that contained disturbing content based on sexual orientation and gender identity. The portals acted on the recommendation of KSZD and published an apology and withdrew the text. See more in the paper of Nikodinovska, V., RESISTANCE: Civil society for media without hate and misinformation, 2021, p.10. Available at: https://www.mim.org.mk/attachments/article/1330/MK_chapter4_regulatorna%20i%20samoregulatorna%20ramka-9-2-22.pdf (25.05.2023).

competent authorities for the implementation of those measures.

Article 3, paragraph 1, paragraph 3 – The following actions are considered violent and inappropriate behaviour at sports competitions: bringing in and displaying banners, flags and other objects with text, pictures, signs, or other signs, as well as singing songs or sending messages that provoke and incite hatred or violence on the basis of racial, national, and religious affiliation or on the basis of other characteristics; burning fans' props, flags of other countries, flags of other clubs, and other objects. Amount of a fine for an offense – amount from 180 to 220 euros.^[111] A sanction can also be imposed – Ban on entry and attendance at all or certain sports competitions for a maximum of three years (Article 13-a of the Law). These actions take on a more serious form if they are carried out by a masked person (art. 3 para. 2 of the Law). In that case, the fine for the offense amounts to 200 to 250 euros.

Article 7 paragraph 1 paragraphs 5, 6 and 7 – Measures taken at sports competitions

The organizer of sports competitions is obliged to provide enough security guards in order to:

- prevent the entry of banners and symbols that encourage racial, national, religious, or other intolerance;
- warn, i.e. remove viewers who by singing songs or posting offensive messages cause and incite hatred based on racial, national, and religious affiliation;
- reprimand, i.e. remove spectators whose inappropriate behaviour may cause violence at the sports match.

The determined fine for the organizers' offense (if they do not act in accordance with Art. 7 of the Law) is in the amount of 500 to 7,000

¹¹¹. See Art. 1 Paragraph 2 of the Law on Amendments to the Law on the Prevention of Violence and Indecent Behaviour at Sports Competitions from 06/30/2021.

euros.^[112] The organizer of the sports competition is obliged to prepare and submit a security plan to the Ministry of Internal Affairs no later than 48 hours before the start of the sports competition. Sports competitions with increased risk are determined by the competent national sports federations, and for their holding, they are obliged to notify the Ministry of Internal Affairs and the sports clubs participating in the competition no later than 48 hours before the start of the sports competition (Art. 9). Pursuant to Art. 10 of the Law, the organizer is obliged to cooperate with the representatives of the fans of the clubs in order to provide assistance in maintaining the order of the sports competition; to ensure the separation of home and away fans in the auditorium; to provide technical equipment for monitoring and recording the behaviour of the spectators and to provide controlled sale of tickets with the inspection of a personal identification document with the possibility for one person to buy up to five tickets.

The Minister of Internal Affairs prescribes the form and manner of keeping the records for persons who have been given a misdemeanour sanction banning entry and attendance at all or certain sports competitions and the records of initiated settlement procedures and their outcome.

Article 13–c of the Law:

“The person who has been given a misdemeanour sanction, a ban on entry and attendance at all or certain sports matches, is obliged to come and stay at the competent police station according to the place of residence or residence during the sports match and one hour after the sports match ends.

In the event that the person from paragraph 1 of this article is unable to come and stay at the said police station due to health reasons, professional obligations, or other justified reasons, which cannot be delayed, they are obliged to notify the competent police station according to the place of residence or residence for the address at which they will be located during the time period from paragraph 1 of this article.”

112. See Art. 2 paragraph 1 of the Law on Amendments to the Law on the Prevention of Violence and Indecent Behaviour at Sports Competitions from June 30, 2021.

Regarding the by-laws for which no criminal, but disciplinary or moral responsibility is foreseen, the Code of Journalists of Macedonia, which was already mentioned earlier, stands out.

JUDICIARY – RESOLUTIONS

It is interesting the fact that on the topic of “hate speech” which is the antipode of “freedom of speech” as a constitutional category, the Constitutional Court of the RNM did not make a final meritorious resolution on a specific case where a broader and sustained position would have been clearly pronounced, inherent in the constitutional courts in the states. Resolution U.br.27/1994 is the first case where one of the special crimes of hate speech is mentioned.^[113] Then followed the two famous cases where the initiator was Rufe Osmani, a politician who was in the centre of attention during the riots in Gostivar in 1997 and who faced criminal responsibility for the crime of causing national, racial and religious hatred and discord and intolerance from Article 319 paragraph 2 of the Criminal Code.^[114] U.br.20/212 is noted as the last verdict.^[115]

113. With which decision was rejected the request of Ilija Ilievski, president of the Party of Human Rights from Strumica for the protection of the right to political association and action. “During the procedure, the Court established that the Supreme Court of the Republic of Macedonia, ruling on the appeal of the Party for Human Rights, changed the operative part of the judgment, in the sense that the work of the Party for Human Rights is prohibited, because its activity is used to inflame national hatred and intolerance, according to article 23 paragraph 5 of the Law on social organizations and associations of citizens. It follows from the mentioned constitutional and legal provisions that the freedom of political association and action is not absolute, but is guaranteed only within those forms and contents of its enjoyment that do not endanger the values established by the Constitution and the law, such as freedoms and the rights of other people, the democratic form of changing the constitutional order, peaceful coexistence with other states, as well as national, racial and religious tolerance and coexistence.”

114. U. no. 168/1997 and U. no. 50/1998. Both decisions rejected the applicant’s claims.

115. Which rejected the request of Petrit Ibraimi from Tetovo, Rinor Slova from Debar, Tunus Papraniku from Tetovo and Valon Kurtishi from Tetovo, for the protection of freedoms and rights from article 110 paragraph 3 of the Constitution that refer to freedom of thought and public expression of thought, and in connection with the drawing in 2012 at the entrance to the city of Tetovo, a graphite illustration of a drawing that represented an old map of “Greater Albania”. In the request, they ruled that the actions of the competent authorities of the Republic of Macedonia in the exercise of their competences through informative conversations and invitations for questioning before a competent court of the applicants in the capacity of potential perpetrators of a crime - Inciting national, racial and religious hatred, were allegedly unconstitutional. discord and intolerance according to article 319 paragraph 1 of the Criminal Code, and in connection with the event at the location.

From the aspect of hate speech, court epilogues can be of a different character. The very concept of hate speech sometimes has a borderline-amorphous character, so depending on the factual situation, it can sometimes be treated by the judicial authorities as a crime, sometimes as a misdemeanour, and sometimes even as a civil-law offense of insult or defamation. It is precisely the latter for which the civil court is competent to act that are the most numerous in terms of court proceedings. Regarding the issue of their registration, the civil court uses the “AKMIS” system for electronic case management. It is established and regulated in accordance with legal and by-law regulations, such as: the Court Rules of Procedure of the Ministry of Justice from 2013,^[116] the Law on Court Service from 2014,^[117] and the Rulebook on the Method and Procedure for Managing Court Cases Using Information Technology from 2009,^[118] and the Law on managing the movement of cases in the courts from 2020.^[119] According to the Law, in its Transitional and Final Provisions, there is an obligation to adopt the by-law (Regulation) within 30 days, and to adopt a new “Regulation and Software Solution” within 90 days, but this has not been done to this day. Otherwise, in the Basic Civil Court Skopje in “AKMIS”, special attention is paid to disputes regarding defamation and insults, so they are recorded in the Electronic Register “P5”, which is reserved only for them. Something similar is also in the Basic Criminal Court, where “AKMIS” allows separate registration of acts of hate, but for now not exclusive registration of acts of hate speech as a subtype of acts of hate. This will of course be subject to revision because in the Report of the European Commission on the RNM for 2021, the section of Chapter 23 (Judiciary and fundamental rights) states the recommendation that the state “improve the information system for automatic management of court cases (AKMIS) in order to ensure its full functionality and reliability.”^[120]

116. Official Gazette of the Republic of Moldova No. 66/2013.

117. Official Gazette of the Republic of Moldova No. 43/2014.

118. Official Gazette of the Republic of Moldova No. 70/2009.

119. Official Gazette of RSM No. 42/2020.

120. Available at: <https://www.sep.gov.mk/post/?id=5657> (May 25, 2023).

MACEDONIAN COURT CRIMINAL LAW PRACTICE

Judicial practice in Macedonia does not abound with final verdicts in cases where it was a question of crimes of hate speech.^[121] In fact, it is only a matter of a handful of judgments. Thus, chronologically, the verdict of the Basic Court in Struga K.br.227/14 of 15.04.2016 for the crime of causing hatred, discord or intolerance on national, racial, religious, and other discriminatory grounds is the first known in the last decade. Art. 319 of the CC. Then follows a series of judgments of the Basic Criminal Court in Skopje.

On the other hand, at least in the archives of the Primary Public Prosecutor's Office – Skopje, you can find more negative meritorious public prosecutor's decisions that either dismissed the criminal complaint for a crime like this or decided that there is no place for public prosecutor's intervention. In fact, as for the Skopje Public Prosecutor's Office, where more than half of all crimes in the country are solved, the numbers are no longer negligible. Namely, in 2021 alone, 12 criminal charges were received for the crime under Article 394 of the Criminal Code, and for 10 of them, decisions were made to reject the criminal charges, for the crime under Article 144, Paragraph 4 of the Criminal Code, 4 criminal reports, but all of them ended with a Decision to reject the report by the Public Prosecutor's Office; for the crime, on the other hand, from Article 319 of the Criminal Code, 2 criminal charges were received and decisions were made to dismiss the criminal charge in both cases; for the crime from art. 417 of the CC, one criminal report was received, for which a decision was also made to reject the criminal report, and for the crimes from art. 178, art. 179 and art. 181 of the CC, no criminal reports were received. The positive decisions of the Public Prosecutor's Office prosecuting the crime

121. According to the official data of JORSM provided to representatives of the non-governmental sector in the period from 2010-2018 in connection with the criminal acts: Causing national, racial and religious hatred, discord and intolerance from Article 319 and "Dissemination of racist and xenophobic material via computer system" from Art. 394 of the Criminal Code, no charges were filed.

of hate speech are only a few in number and date from: 2017 – when an indictment proposal was submitted for Article 144 paragraph 4 of the Criminal Code, from 2018 when one indictment proposal was submitted for a criminal offense under art. 394–d paragraph 1 of the Criminal Code, from 2019 when a verdict was passed following a proposal for an agreement for an event with a criminal offense under article 144 paragraph 3 of the Criminal Code, and in the same year an indictment was also filed motion for the same crime. In 2020, an indictment proposal was submitted for a criminal offense under Art. 144 paragraph 4 in relation to art. 12 paragraph 2 c.v. Paragraph 1 of the Criminal Code, which was also a custody case, as well as one indictment submitted for two criminal offenses from Article 394 of the Criminal Code. Several criminal proceedings are still being conducted and are in the pre-investigation phase.

In the context of the topic, in 2019, a report was submitted by the CEELI Institute based in Prague, which was submitted to Macedonian judges and PP and aims to familiarize the judicial authorities with the importance of social networks on the Internet, as well as to give them direction and advice on how to behave as participants in the same, where it was emphasized that judges need to be continuously educated about social media and judges must be familiar with the way social media functions because their use will gain importance in the cases for which they will they have to decide.^[122] Also, the preface of the Report rightly states that “On the other hand, social media is an effective means of educating the public, partly because it reaches that part of the public that does not interact with the judiciary in any other way. Using social media can improve the perception and understanding of the public about the work of the courts...”. In that direction, recommendations are given to the holders of judicial functions to be careful about their behaviour on social media, such as avoiding political and commercial comments, making an official note if someone befriended a person on social media who later becomes involved in some case, to do two-factor identification, etc.^[123]

122. Source: “Practical guidelines for the use of social media by judges: Central and Eastern Europe”, CEELI Institute Report, November, 2019, p.14.

123. Ibid., pp. 18, 21.

MACEDONIAN COURT CIVIL-LEGAL PRACTICE

Defamation and insult are expressions of hate speech. Namely, it is true that a specific person can be insulted/slandered with hate speech. However, in the case of hate speech, it is not offended as a separate individual, but as a member of a specific community, with which it shares certain identity characteristics.

The insult, on the other hand, is a social evil because of the damage it causes to the injured party in the eyes of others. It is an injury not because it causes pain or hurts the feelings of the individual concerned but because it degrades/debases the person in the eyes of others, damages his social status and harms his reputation. Such hate speech in practice can also be a verbal attack *ad hominem*. With the adoption of the Law on Civil Liability for Insult and Defamation from 2012, this matter was completely excluded from criminal law in our country. In 2022, the new Law was adopted. Pursuant to Art. 6 of the Law, whoever, with the intention of denigrating, by statement, conduct, publication or otherwise expresses a disparaging or humiliating claim about another with an established or unequivocally obvious identity, which injures their honour and reputation, is liable for insult.

Liability for insult also exists if the reputation of a legal person, a group of persons or a deceased person is defamed by such action. If the insult was committed through a means of public information (which, according to the practice of the Basic Civil Court in Skopje, also includes a social network on the Internet, because according to the Law, the publications thereof are treated as “electronic publications”), the author of the statement, the editor or the person who replaces him in the means of public information and the legal entity.

As an exception, the journalist, as the author of the statement, will not be liable for insult if they prove that the publication of the offensive statement was ordered by the editor or the person substituting them, or

the content of their statement was significantly changed by the editor or the person who substituted them. Also, the journalist as the author of the statement is not liable if it has acquired an offensive character by furnishing it with titles, subtitles, photographs, extracting parts of the statement from its entirety, announcements, or in any other way by the editor or the person who substitutes them. (See Art. 6 paragraph 6 and paragraph 7 of the Law).

The law of defamation dates to the Roman Empire. The crime *libellis famosus* was sometimes punishable by death. According to the law in our country, a person is liable for defamation who, with the intention of harming their honour and reputation, presents or conveys to a third person untrue facts that are harmful to their honour and reputation, and they know or were liable and may know they are untrue. Liability for defamation also exists if the false claim contains facts harmful to the reputation of a legal entity, a group of persons or a deceased person. In the same way as with the insult, the author of the statement, the editor or the person who substitutes them in the means of public information and the legal entity can be held responsible if the statement or passing on untrue claims about facts was made through a means of public information (See Art. 8) from the Law).

If the insult or defamation was committed through a means of public information or a computer system, the injured party has the right to submit a request for the publication of an answer, rebuttal, or correction within seven days from the day they found out that it was published, but no later than one month since its publication. The means of public information publishes the denial, the answer or the correction within two days of the submission of the request, in the first consecutive issue, if it is a periodical issue, or in another means of public information, if it is a non-periodical publication (See Art. 13 of the Law). The amount of monetary compensation for damages in the case of an insult or defamation dispute should be proportional to the damage caused to the reputation of the injured party, and when determining it, the court should consider all the circumstances of the case, as well as the property status of the defendant. Article 18 paragraph 1 of the Law stipulates: “The court cannot award as compensation for non-material damage caused by insult or defamation by a journalist in the exercise of a journalistic profession a fair monetary

compensation in an amount greater than 400 euros in denar equivalent value”. This policy is also in line with the ECHR’s practice.^[124]

The procedure following a lawsuit to determine liability for insult or defamation and compensation for damage is urgent. By filing a lawsuit to determine liability and compensation for damages, the injured party can submit to the competent court a request for the determination of a temporary judicial measure consisting in the prohibition of further publication of the offensive or slanderous statements (See Art. 24 of the Law). In practice, the courts in Macedonia do not always do the best when dealing with defamation or insult lawsuits, which cases are often at the zenith of public interest, but judges must also consider the important practice of the ECHR when making decisions.^[125]

In general, while the old law was in force, the prevailing view was that the courts awarded disproportionate non-material damages in these cases. In addition, the Skopje court has a practice of rejecting lawsuits for insult and defamation directed against online media based on a submitted objection of “lack of passive legitimation” by the defendants, regardless of whether the defendant is a legal entity owner-registrant of the online media, editor-in-chief according to the published imprint or author of the statement.^[126]

124. Namely, in the case of *Filipović v. Serbia*, the European Court believed the compensation must be proportional to the moral damage, and also to the means available to the accused. In this case, although the defendant unfairly accused the plaintiff of “embezzlement”, the fact remains that the plaintiff was under investigation for tax offenses. Hence, the moral damage is not great and the damages awarded by the court are the equivalent of six months’ salary, an amount that the ECHR assessed as excessive and as a violation of Article 10 of the ECHR (hereinafter - ECHR) . Source: *Filipovic vs. Serbia*, application no. 27935/05, judgment of November 20, 2007. Source: “Defamation and insult in criminal proceedings against journalists”. Op. cit., p.60.

125. For example, in relation to insult, the ECHR in the judgment in the case “*Lingens v. Austria*” has already adopted its position that: “The existence of facts can be proved, while the truth of value judgments is not subject to proof.” See more: Popovič, D., “European law of human rights”, JP Official Gazette, Belgrade, 2012, p.328.

126. For all this, see more in: “Freedom on the Internet in Macedonia: Report for 2017” of the Foundation for Internet and Society “Metamorphosis”. Source: <http://metamorphosis.org.mk/wp-content/uploads/2018/09/dad6a750-e7c6-486f-b061-5d59a0f2eabb.pdf>

STATE CRIMINAL RESPONSIBILITY: MIA, PP, PROBATION SECTOR

The state must take care and establish a mechanism for the prevention of hate speech. Judiciary is the linchpin in such a future strategy to deal with the problem. According to principle 5 of the Recommendation of the Council of Europe no. R (97) 20 on “hate speech” requires national laws and practices to enable competent prosecuting authorities to pay special attention, as far as their discretion allows, to cases involving hate speech . The important principle highlighted by the Recommendation is that national laws and practices should be in line with Article 10 of the ECHR. Furthermore, the standards applied by national authorities in assessing the need to restrict freedom of expression must be consistent with the principles of Article 10 of the ECHR, as established in the case law of the Convention bodies, considering, inter alia, the manner, content, context and purpose of the notification. And finally, respect for journalistic freedoms also implies that it is not the courts or public authorities that should impose their views on the media regarding the types of reporting techniques employed by journalists.^[127] So a subtle balancing of competing rights is needed.

After failure in prevention and after the crime has already been committed, the ways to find out about the existence of that crime are:

- With the help of informants;
- Through a criminal report by a competent authority or other legal entity;
- Through a criminal complaint by the injured party;

127. Source: Guide for monitoring “hate speech”, Agency for Audio and Audiovisual Media Services, Skopje, p.8

- Through the application of a witness;
- Through anonymous reporting;
- Through fame – voice heard;
- By self-reporting of the offender;
- From official media;^[128]
- From an internet portal.

In most cases, it is not necessary to prove the motive for the committed act. Since motive is a complex issue and there is no limit to the type of evidence that can be adduced to prove it, hate crime cases require police, prosecutors and judges to approach these crimes differently. difference from other crimes.^[129] However, with such a legal response to acts of hate speech, there is a danger of jeopardizing the basic human right to freedom of thought and expression, which is a serious problem in a liberal-democratic society.

The ways in which criminology helps in finding out the motive, which something as shown above is essential for acts of hate speech, is first of all through the method of “observation” of the perpetrator, i.e. observing their facial expressions, pantomimes, dress, neatness, through which the traits of their personality would be interpreted. Furthermore, the “method of systematic natural observation”, which is implemented through the “method of situation analysis” and the “method of time samples”, also helps. Criminalistics also refers to the use of an “interview” as a method, whereby the same should be performed in such a way that the party would not feel what the main purpose of asking questions is. For a successful interview, it is necessary to create spatial conditions so that the interviewed person can feel comfortable.^[130] Depending on the goal

128. Vodinelić, Op. cit., pp. 55-56.

129. Brochure “Understanding Hate Crime”, OSCE, Office for Democratic Institutions and Human Rights, Warsaw, 2014, p.11.

130. Josifovski, D., “Criminal Psychology”, Skopje, 1995, pp. 21-25.

to be achieved, the interview can be standard or free.^[131]

When giving the oral statement by the witness or the perpetrator, the inspector should also use the observation method. From the aspect of acts of hate speech, the political passions of the interlocutor can be observed relatively easily during the interview. However, it is more difficult to perceive the character of that person, which is an indication of a committed crime. During the interview, the physiological and psychological changes in the respondent must be considered.^[132] Common physiological reactions are dryness of the mouth, sweating on the face and hands, need to urinate, redness of the face, avoiding eye-contact by directing the look to the sky when untrue answers are given. But sometimes these manifestations are also experienced by some innocent persons who are by nature scary. Due to this subtle approach to obtaining verbal evidence in dealing with hate speech, there is a need for newly employed psychologists who would work and help the inspectors from the Ministry of Internal Affairs.

As stated above, for a crime to constitute hate speech there must be a causal link between the crime and officially recognized prejudice. The real (special) acts of hate speech in their legal descriptions foresee the bias and hatred towards the victim of the act as a member of a certain social group as a special feature of the legal being of the act. But the definition of these acts should not be limited if, in addition to this motive, there are additional motives that contributed to the commission of the hate crime speech. Considering the complexity of the matter, it will sometimes be necessary for the PP to order psychiatric expert opinions in cooperation with the PHI, even though these expert opinions in practice have been exclusively ordered so far to determine the criminal's sanity or sanity.

131. In the standard interview, the questions are determined in advance on a list. The bad side of this method is that this interview lasts shorter and it is difficult to establish a close relationship with the interlocutor, and the whole procedure boils down to an official hearing. This weakness, as well as the list of questions, do not exist in free interviewing where the conversation takes place spontaneously.

132. They are manifested in concern and fear of future events, and this is especially true for the suspects who actually committed the crime, but there is no established evidence for this. Josifovski, Op. cit., p. 208.

The law on probation^[133] was a novelty in the spectrum of criminal legislation. Despite the fact that “probation” in Macedonian conditions has acquired a narrow meaning (since it does not include an initiative to revoke conditional sentences that are without protective supervision), this Law regulates the probation matters and the procedure for the implementation of alternative measures that are of interest to the problem of hate speech, namely: conditional sentence with protective supervision and community service (See Art. 1). They are of interest because these alternative measures are very convenient and offer the prospect of resocialization for perpetrators of hate speech acts who have committed a lesser offense and have no previous convictions. Simply, good “feedback” for society would be for the same perpetrator to do community service work in a humanitarian organization that deals with the advancement of the rights of that group with protected characteristics that the perpetrator previously attacked, and for which attack they were convicted. Or, for example, to work in a public institution exactly in the neighbourhood where citizens who belong to that group live, even if it were an educational institution or PE “Streets and Roads”. And if this thing was in relation to the alternative measure – community service”, then in relation to the alternative measure “Conditional sentence with protective supervision” a sufficient argument is that it could be imposed for more serious crimes of hate speech, but Pursuant to Art. 56 para. 1 item 8 of the Criminal Code, the court would order “[use of free time according to the assessment of the competent authority in accordance with the law](#)”, and that would be more socializing and mutual cooperation with the persons from the protected group towards whom the perpetrator had animosity, with a simultaneous sentence of “[avoiding and not associating with persons who have a negative influence on the convicted](#)”, in accordance with Art. 56 paragraph 1 item 9 of the Criminal Code, which would be useful if it was a young offender involved in some radical group of youths or hooligans.

Probation work is carried out by probation officers from the Administration for the Execution of Sanctions (hereinafter: the Administration), based on a request or decision of a court during the court proceedings and based on a final and enforceable court decision,

133. Official Gazette of the Republic of Macedonia, No.226 from 25.12.2015

and based on the prior consent of the person against whom the probation works are carried out. Within the Administration, a Department for Probation is organized as an organizational unit of the Administration at the central level and offices in the area of basic courts with expanded competence at the local level. This Department submits its statistical reports directly to the Administration.^[134] In the work of probation officers, any direct or indirect discrimination, calling and inciting discrimination and assisting in discriminatory behaviour is prohibited, based on sex, race, skin colour, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property status, health status, or any other basis provided by law or by ratified international agreement in accordance with the Constitution of the Republic of Macedonia (See Art. 7 paragraph 4).

Otherwise, the procedure regarding the imposition and implementation of the above-mentioned alternative measures is regulated not only by the Law on Probation, but also by Chapter XXXII of the Criminal Code, as well as Chapter XXX of the Law on Execution of Sanctions (but only in relation to child offenders, not and adult offenders, which is also a reasonable solution considering that the Law on Probation is *lex specialis* in relation to that matter).

In the past 8 years, the Administration has signed numerous contracts with the public sector, with units of local self-government, private companies, and other entities where the alternative measure – community service is implemented, so it is recorded that the first case of community service performed by a convict was in 2019 year in Tetovo.^[135] With the appearance of criminal proceedings for crimes from Article 206 of the Criminal Code in the period of the COVID-19 pandemic, these parapenal and admonishing measures became more frequent, the implementation

134. Pursuant to Art. 9 of the Law, the Administration for Execution of Sanctions keeps a single register for persons against whom probation is being carried out. Within the framework of the single register, records and files are kept for the persons against whom probation works are carried out. Probation offices at the local level keep records of the execution of probation work. The register is kept electronically. Probation officers also prepare reports on the implementation of alternative measures and submit them to the court that made the decision in the first instance.

135. Source: Brochure “Probation Department”, Ministry of Justice, Skopje, 2019, p.16.

of which is also important in the Rulebook on the method of performing community service, which mandates the Administration with convicts to conclude contracts for community service. During the operation, the Administration is obliged to insure this person against injury at work. Experience has shown that the probation officers are dedicated to the work and for each convict for whom they have established an object of work, they prepare an “Individual Treatment Programme”, and based on the assessment of the person and the convict’s personal circumstances. This service has constant cooperation with the Ministry of Internal Affairs both in terms of obtaining data from the Ministry of Internal Affairs on the residences or residences of the convicts, as well as in terms of the service’s obligation to inform the Ministry of Internal Affairs of final and enforceable judgments that imposed community service. In the case of such an alternative measure, the probation service also informs the Employment Agency.^[136]

Social media views can also call into question the impartiality and fairness of the judicial process. For those reasons, the Judicial Media Council (JMC) was recently established.^[137] In that direction, but also in the direction of educating journalists, was the publication of the Macedonian translation of the “Lexicon of Macedonian Media and Justice Terms” from 2019, authored by the joint project of the EU and CE in Bosnia and Herzegovina.^[138]

136. Source: Ristova, O. and Baltovska, E., “Manual for cooperation of state institutions, public enterprises and non-governmental organizations with probation service”, Zelena lupa, Skopje, 2021, p.19 and p.27.

137. This Council established the Association of Judges of the Republic of Macedonia to increase the transparency of the judiciary. The Council was formed after previous experiences of such advisory bodies in the United States of America. The US Embassy enabled judges and prosecutors, as well as trainers of the police, prosecutor’s offices and courts from the USA through positive experiences to show Macedonian judges and journalists that cooperation between the two sides is possible. The ultimate goal is improved communication and understanding in the interest of citizens. The council has 21 members, 11 of whom are journalists from various media and 10 are judges and presidents of courts. The mandate of all of them lasts 2 years, and the work is on a voluntary basis.

138. <https://jpacademy.gov.mk/leksikon-na-makedonski-mediumski-i-pravosudni-termini/>

NATIONAL SYSTEM FRAMEWORK, PROCEDURES, STATISTICS

Chapter VII of the Criminal Code, entitled “Obligation to provide legal aid”, serves as a premise for the national systemic framework against hate speech to function and for it to receive criminal legal treatment. It stipulates: “(paragraph 1) The judicial police, the public prosecutor, and the court can request assistance for the purposes of conducting criminal proceedings from the courts, the public prosecutor’s office, the state administration bodies, and other state bodies, institutions that exercise public powers and from the bodies of the local self-government units. Those authorities are obliged to respond to the request in the shortest possible time, and to remove possible obstacles without delay. If necessary, they can be provided with a copy of the criminal records. (paragraph 2) The bodies of the state administration and other state authorities can reject the request from paragraph (1) of this article, with a reasoned decision in accordance with their legal competences, if in this way the obligation to keep classified information is violated, as long as the competent authority does not cancel such an obligation.” Of course, if there is even the slightest doubt that a legal entity would not be cooperative, then the instrument is also available – Request, according to Art. 287 of the LCP, where a fine is also provided for.

From the point of view of the executive bodies, the Agency from LAAASM has activities in the field of media literacy on the plan to fulfil the mosaic called “national system framework”, even though it has not yet started a misdemeanour procedure for hate speech. As far as the media sphere and professionalism is concerned, an example of balanced journalism that will not arouse bias and ethnic or other hatred is the need in the black chronicle columns not to label the perpetrators by highlighting their ethnicity as a prefix, but, if they are foreigners, at the end of the presentation of the title, to have a suffix that will clarify the

perpetrator, as a citizen of that “unique” country.^[139] Classic examples would be the wording “Albanian terrorists” or “Bulgarian fraudsters” which should be replaced by “terrorists of Albanian origin or citizens of Albania” or “fraudsters, citizens of Bulgaria”. Sometimes it is not excluded that the victim’s right to privacy may come into conflict with the public’s right to receive information.

The state of suppressed journalism is another problem. That problem is present in RS. Macedonia, and that situation is present to varying degrees in the region, especially in the post-communist states with a weak democratic tradition. An example would be the ban by the Bulgarian police on the entry of Macedonian journalists to report on the event commemorating the birth of J. Sandanski.^[140] But since the time of socialism in the Republic of North Macedonia there have been news that uses a political judgment that underestimates the Republic of Bulgaria.^[141] Meanwhile, in the Republic of Bulgaria, due to the successful European integration processes, a nationalist discourse about own superiority is used, which has no basis. But in the case of the Republic of North Macedonia, this attitude of the media is somewhat understandable, because it is about self-defence on one side, in a situation where the other side (Bulgaria) denies the identity of the majority of the inhabitants of the first side (Macedonians). The Macedonian drive to constantly self-affirm themselves, and even to place themselves superior, is a psychologically expected outcome. Highlighting the differences with the Bulgarians and their hyperonization is in that direction (such as the claim that all Bulgarians are portrayed as Turco-Mongols and of the yellow race, and Bulgaria without its own history).^[142]

139. Zivanovski, N., “Hate Speech: Theoretical Review and Research Supplement: Bulgaria in the Macedonian Media”, BATA PRESS, 2014, p. 267.

140. For example, in 2007 in the Rozhen Monastery.

141. According to Zivanovski’s findings, this has not changed neither in democracy nor when Bulgaria became a member of the EU. The conservative stereotype has been maintained, with the Macedonian’s self-perception from the time of socialism being maintained in relation to the Bulgarians. Source: Zivanovski, “Hate speech: theoretical overview and research supplement...”, Op. cit., 259.

142. [https://makedonija.net.mk/%D0%B1%D1%83%D0%B3%D0%B0%D1%80%D0%B8%D1%82%D0%B5-%D1%81%D0%B5-%D1%82%D0%B0%D1%82%D0%B0%D1%80%D0%B8-%D0%B5%D0%B2%D0%B5-%D0%B8-%D0%B4%D0%BE%D0%BA%D0%B0%D0%B7-%D0%B7%D0%B0-%D0%BE%D0%B2%D0%B0-%D1%82%D0%B2/\(10.10.2020\)](https://makedonija.net.mk/%D0%B1%D1%83%D0%B3%D0%B0%D1%80%D0%B8%D1%82%D0%B5-%D1%81%D0%B5-%D1%82%D0%B0%D1%82%D0%B0%D1%80%D0%B8-%D0%B5%D0%B2%D0%B5-%D0%B8-%D0%B4%D0%BE%D0%BA%D0%B0%D0%B7-%D0%B7%D0%B0-%D0%BE%D0%B2%D0%B0-%D1%82%D0%B2/(10.10.2020)).

As for the research of the non-governmental sector on the presence of hate speech in the media in Macedonia, a bold research by Opinion research & Communications from 2013 stands out, where the methodology was a telephone survey of 800 citizens, with the conclusion that 97.3% of the respondents believe that hate speech between political parties is represented on television as a medium, and only 48.7% noticed it on social networks as well.^[143] In today's perspective, after 6–7 years this percentage would surely increase, and due to the fact that the number of citizens who use internet social networks has also increased. Otherwise, the respondents were from both the Macedonian and the Albanian ethnic communities and sometimes their answers were in discrepancy, but the percentage (about 72%) of the respondents from the different groups who believed that the level of hate speech between political parties is increasing is almost identical. When it comes to the NGO sector, in some Western countries (Italy) there are already NGOs that have experience using an interactive, network tool for collecting, analysing and visualizing the discourse and reaction of citizens towards immigrants.^[144]

Hate speech can also be interpreted as a form of discrimination. It has already been said that the Law on Prevention and Protection from Discrimination also touches on the topic of hate speech, for which criminal provisions are provided. That misdemeanour procedure is foreseen in accordance with Art. 27 of the Law, which is initiated before the competent court at the request of the Commission for the Prevention of Discrimination, as an original, specialized body established by the Law. A misdemeanour proceeding and a misdemeanour sanction is imposed by the competent court for misdemeanours (See Art. 44). The amount of the fine is calculated in accordance with the Law on Offenses (Art. 43). In 2022, 14 misdemeanour proceedings were initiated^[145] and KSZD also submitted notifications to the competent PP when they noticed in the current operation that in the “case” there were indications of a committed crime.

143. Presentation: “Research on hate speech between supporters of political parties and politicians in the Republic of Macedonia”, Opinion research & Communications, December 2013.

144. Poljak, M./ Hadžić, J./ Martinić, M. “Govor hâtnje u hrvatske medijskom prestorio”, In Medias Res, Zagreb, 2020, str.2714.

145. Annual report for 2022, p.38. Source: <https://kszd.mk/wp-content/uploads/2023/05/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD-%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-2022.pdf>

Within the KSZD there is a special Department for Research Analyses, as well as a Sector for analytics, inter-institutional national cooperation and international cooperation. KSZD maintains an overview website where quarterly and annual reports on their work are published.^[146] Otherwise, with the Law on Prevention and Protection from Discrimination, there is a possibility for judicial-civil protection with a lawsuit to the civil court filed by the discriminated person, as well as a lawsuit for protection against discrimination in the public interest (*actio popularis*). This lawsuit is filed by associations, foundations, unions or other civil society organizations and informal groups that have a legitimate interest.

When it comes to the Constitutional Court, in the previous constitutional judicial practice, a very small number of cases can be found where the court decided on protection against discrimination and which were previously listed chronologically, and as for hate speech as a form of discrimination,^[147] the Constitutional Court has so far not explicitly stated anything regarding this issue.

The Law on International Legal Cooperation in Criminal Matters is relevant if there is no other bilateral or multilateral agreement ratified by the state that governs this matter. International legal assistance from Chapter II of the Law is particularly important, such as: execution of procedural actions; the delivery of spontaneous information; the exchange of certain information and notices; controlled delivery; monitoring communications;

146. <https://kszd.mk/%d0%b3%d0%be%d0%b4%d0%b8%d1%88%d0%bd%d0%b8-%d0%b8%d0%b7%d0%b2% d0%b5%d1%88%d1%82%d0%b0%d0%b8/>

147. "Basically, in the Constitutional terminology there is no direct reference to the conceptual meaning of hate speech, the only direction regarding this legal category is the indirect reference through the protection against discrimination as a partial form when disclosing hate speech... from the spirit of the Constitutional determination, it is undoubtedly clear that the fundamental legislative act was created in the direction of encouraging coexistence, mutual respect, freedom for self-determination and preservation of everyone's individual identity determination in a whole of cohesive co-existence with a clear tendency to build civil and democratic society o; Which, according to the logical consequence of the interpretation, would also mean constitutional disagreement in the cases of speech of hatred, which is particularly expressed in our country, on the basis of national, religious and/or ethnic affiliation." Cit. Kuzmanovska, F., Legal aspects of freedom of expression in relation to hate speech, available legal mechanisms for protection and prevention", Association for Dyslexia – Einstein, Skopje, 2018, pp.17-18. Available at: <http://disleksija.org.mk/wpcontent/uploads/2021/03/%D0%9F%D1%80%D0%B0%D0%B2%D0%BD%D0%B8%D1%82%D0%B5-%D0%B0%D1%81%D0%BF%D0%B5%D0%BA%D1%82%D0%B8-%D0%BD%D0%B0-%D0%B3%D0%BE %D0%B2%D0%BE%D1%80%D0%BE%D1%82-%D0%BD%D0%B0-%D0%BE%D0%BC%D1%80%D0%B0%D0%B7 %D0%B0.pdf> (25.05.2023).

search of premises and persons; temporary securing of objects, property or assets that are related to a criminal offense. The instrument that the prosecuting authority should use is a subpoena. Relevant provisions are Art.16 - 37, found in Chapter II of the Law.

From the point of view of the Law on Criminal Procedures, the chapter where the special investigative measures are prescribed is relevant. Although the possibility of using PIM for such crimes is limited (because apart from the acts: Approval or justification of genocide, crimes against humanity or war crimes from art. 407-a paragraph 2 of the CC and Participation in a foreign army, police, paramilitary, or parapolice formations from Article 322a paragraph 4 of the Criminal Code, most of them are not criminal offenses for which a prison sentence of at least four years is prescribed, which is a legal requirement for the application of PIM, and hypothetically they can be prepared, in progress execution or to be carried out by an organized group, gang, or other criminal association) however, the provision of the Criminal Code that allows the evidence obtained in this way to be used in other procedures with a subjective or objective connection is important. According to the LCP, the preservation of data is done either by preserving its content (regardless of the form) or by preserving evidence from transmitted data, which represents the preservation of the trajectory along which the data was transmitted. Relevant provisions are: art. 184, art. 198, art. 252 paragraph 1, 4, 5 and 6.

The most important PIM – Monitoring of communications is carried out by a state body. Despite the desire of the legislator for the independence of OTA as a separate body from the MIA, the specialized Agency for National Security of the MIA is still a filter for information that is of interest to the MIA. In fact, in the systemic response of the state to the crime of hate speech, the most significant role should be played by the police. Namely, the “red button” system for reporting instigators of violence, including verbal violence due to hatred, operates within the framework of the Ministry of Internal Affairs. A criminal report can also be submitted electronically to the specialized department of the Ministry of Internal Affairs for cybercrime and digital forensics if it is about hate speech online, by e-mail: cybercrime@moi.gov.mk.

To analyse the effectiveness of the penal provisions and to convey

the institutional message that crimes of hate speech will be punished, it is necessary to develop indicators through which the effectiveness itself will be measured, and these will also serve to define national policies to fight against such type of criminality. The indicators themselves are qualitative indicators to see if the goal of the legal norms has been achieved, but also quantitative to see if the scope of the legal norms is the one that should have been achieved, in accordance with the intention of the legislator. Due to the fact that the matter of crimes of hate speech is specific, the indicators should also be descriptive, which enables an assessment of whether the police adequately processes the initial reports of hate crimes,^[148] as well as whether the Public Prosecutor's Office adequately turns them into charges so that it can for the judge to make a meritorious decision to the extent of the well-founded confidence that the crime was committed due to some prejudice.

Almost any premeditated crime can constitute a hate crime. But in such a case, the subjective element – the motive – is important. From this criminal law aspect, the institutional response against these crimes would be the training of judges and public prosecutors to recognize these crimes and use the legal solutions so that the perpetrators of these crimes are punished more severely. It represents a special concept of criminal law reaction to acts of hate with great preventive potential.^[149]

Working with indicators presupposes keeping statistics on the criminality of hate speech. But from the point of view of statistics, it is necessary that the software and records of hate crimes are primarily located in the court, and not in the public prosecutor's office, because it is the court, according to the CC (See Art. 106) and the LCP (See Art. 543 - 546) keeps the criminal records. However, numerous cases in which

148. That is why it is necessary to develop recommendations for the Ministry of Internal Affairs that will clearly emphasize the difference in the gradation of hate speech offenses, so that the police can distinguish offenses from criminal offenses and from the civil-legal relationship of discrimination or insult and defamation.

149. In 2013 and 2014, the Academy for Judges and Prosecutors organized several events on the topic of fighting hate crime. First, the trainings for the trainers were organized, then followed by 4 cascade two-day trainings for each judicial appeal area, in which more than 80 participants participated annually, and in 2015, an additional training for the trainers was organized. Source: Arnaudova, A., "Effective laws and qualified professionals in response to hate speech", Proceedings "November 16, International Day of Tolerance: selected texts", MANU-OSCE, Skopje, 2015, p.81.

the Ministry of Internal Affairs and the Ministry of Justice are invested do not end up in the Court and considering that the criminal proceedings are stopped due to factual or legal obstacles to criminal prosecution. That is why it is important that both the Ministry of Internal Affairs and the Ministry of Justice keep records of acts of hate speech and share their statistics. In that direction, with the mediation of the OSCE, special attention was paid to the training of police officers to recognize hate crime, and as a subspecies of this type of crime – hate speech, so for the time being a special column was provided to mark acts of hate. in the form: “Record of application receipt”. In the future, it will be necessary to introduce a column for acts of hate speech, given that there is a clear legal distinction with acts of hate. As for the crime of hate speech, more extensive trainings for police officers are planned to be conducted in cooperation with the non-governmental sector and the Police Training Centre in Skopje. The premiere lectures will be held in 2019.

However, there is a gap in the Ministry of Internal Affairs regarding the registration and processing of data on acts of hate speech. Structurally, the Ministry of Internal Affairs also has a specialized department for keeping statistics that receives data both from the Skopje Crime Intelligence Analysis Unit (EKRA) and from the crime intelligence analysis departments from the cities inland. The problem is that these authorities register all separate offenses against public order and peace and criminal acts in terms of time, place, manner, but most importantly – also in terms of legal qualification. However, they first have no idea what crimes are of a special type of hate speech, so that they would only target them and deliver annual reports, and then, they do not register the different views of the members under which they are normed the crimes in CC. This represents a real problem that could be simply solved by technically inserting the views as separate graphs in the electronic tables in which the records of committed acts are kept by these authorities. The specific and precise legal qualifications should of course be confirmed and confirmed by the public prosecutor’s offices during the criminal proceedings, so it is shown as a necessity in the future to have a more active communication between the Public Prosecutor’s Office, on the one hand, and EKRA (on the one hand, it processes the 80 % of crime in the state) and OKRA, on the other hand. This is implemented to some extent because there is

a legal obligation for the Public Prosecutor's Office to always notify the Ministry of Internal Affairs, if it is the filer of the criminal complaint, about the epilogue of the criminal procedure – the public prosecutor's decision on the merits, and which letter also contains information about the exact legal qualification.

Among the obligations that the Public Prosecutor's Office accomplishes in the plan of registering and processing data on acts of hate speech, the basis was the introduction of the electronic “case management” system in accordance with the Law on the Public Prosecutor's Service^[150] and the Rules for the Internal Operation of Public Prosecutor's Offices.^[151] Namely, in the system itself, analogous to the judicial AKMIS, there is a special column that must be checked by the competent PO, if it is a hate crime. Similarly, as with the court system, but also with the “record for receiving reports” of the Ministry of Internal Affairs, it will be necessary to intervene and introduce a column for acts of hate speech, given that there is a clear legal distinction with acts of hate to accomplish. In addition, the Protocol on cooperation between MIA, PP, and the Financial Police from 2014 will have to be amended, which will prescribe an obligation for immediate verbal notification by the executive authorities to the Ministry of Finance in the event of a committed and discovered hate crime speech,^[152] and regardless of whether that crime is qualified as “serious” (according to the LCP, the authorities have this obligation only if a criminal offense has been detected that entails a prison sentence higher than 4 years). In 2023, another Protocol for cooperation between the Ministry of Internal Affairs and JORSM was indeed signed,^[153] but it was related to the deepening and clarification of the initial Protocol from 2014, and it is significant that in it a categorization of criminal acts was made, so it was established and the category of “complex crimes” for which the organizational unit of the Ministry of Internal Affairs is obliged to immediately notify the Public Prosecutor's Office of the received report. It is not stated here whether the most serious special forms of crimes of hate speech would also be treated under such crimes, so there is room

150. Official Gazette of the Republic of Macedonia, No. 62 of April 20, 2015.

151. Official Gazette of the RNM Gazette No. 190/2021 of July 29, 2021.

152. See Art. 8 of the Protocol.

153. https://jorm.gov.mk/wp-content/uploads/2023/04/protokol-za-sorabotka-%D1%98orsm-mvr_1.pdf

for refinement of the Protocol in that direction, especially because with the last Protocol an eight-member Commission was established which will specifically deal with “amendments” to the Protocol. In the scope of this Commission and with the same goal and task, the harmonization of the methods for registering and processing the works of hate speech would be interpreted.

To work more efficiently, the Public Prosecutor of the RNM instructed all the Public Prosecutor’s Offices in the country, starting from 01.01.2023, to regularly and without exception update the cases in the “case management” information system by uploading the decisions of the Public Prosecutor’s Office, with which system in fact the prosecutor’s offices have had it since 2016, but the training of all staff for its use was slow. This thing came to life and is put into practice.

It is important to keep in mind that it is possible for other authorities to collect various data and information. For example, health and social services may collect information on victims and the services provided to them, education authorities may have data on hate speech crimes or incidents in schools, and housing services may have data on speech offences of hatred in certain areas or residential complexes. It is also necessary for scientific circles to determine the correlation between economic and cultural factors and hate speech based on these statistics.^[154] Close coordination between ministries and authorities could lead to the development of a broad strategic approach by the authorities, whereby many government authorities would be united in their commitment to effectively respond to acts of hate speech. In particular, the aforementioned Interdepartmental Commission under the Government of the Republic of Moldova is already functioning in the RNM, which in the future could coordinate between the relevant institutions regarding the treatment of acts of hate speech, and which will also perform the role of frontman before the public. with the aim of prevention and pre-emptive action.

It has already been said that from a penological point of view, probation

154. Such a study was done in the Republic of Italy. Source: Poljak, Ibid, p.2715. Available at: <http://www.centar-fm.org/inmediasres/index.php/marko-poljak-jelena-hadzic-i-masa-martinic-govor-mrznje-u-hrvatskom-medijskom-prostoru> (22.05.2023).

and preventive supervision are good tools for the control of previous offenders, but, unfortunately, not yet implemented on a significant scale in the Republic of North Macedonia.^[155] From the victimological aspect, despite the changes made in the criminal procedure^[156] that introduced the term “victim”, in practice, the state has not yet set up the institutional networks for the timely protection and satisfaction of these persons.

From the point of view of civic initiatives, the American experiences are interesting and could be applied in the Macedonian environment. In the USA, for 30 years there have been practices of organizing friendly dinner clubs where each participant is obliged to invite a guest to the restaurant who is of a different race (skin colour). Such clubs are initiatives of numerous anti-racist groups.^[157] They are known for their actions of erasing offensive graffiti from the walls of buildings, a practice that has already started in Macedonia through left-wing NGOs such as “Solidarnost” and “Lenka”.

155. EU legislation also refers to their use, specifically the Recommendation of the Committee of Ministers (2014) 3 of 19.02.2014 at the European Council regarding the treatment of dangerous criminals “when there is a high possibility that the person will commit a serious criminal offense again.”

156. Official Gazette of the Republic of Moldova No. 120/2010.

157. Klanwatch, “Focused community action can help reduce hate crimes”, “Hate groups: Opposing viewpoints”, Greenhaven press, San Diego, California, 1999, p.150.

THE INTERNET AS A FUEL AND ADDITIVE TO THE INCREASED HATE SPEECH AND THE IMPORTANCE OF INTERNATIONAL LEGAL COOPERATION TO TACKLE OFFENSES COMMITTED ONLINE

The Internet is a vast system of interconnected computing units, consisting of millions of civic, private, public, academic, business, and government networks connected by a variety of electronic, wireless, and optical networking technologies. These connections exist thanks to a series of global protocols, the most important of which from a criminal law point of view is the Internet Protocol (IP). The World Wide Web (www) is an information space where files and resources are available over the Internet.^[158] The basis of communication over the Internet is the process of assigning an address to each device connected to the Internet. This address allows the device to connect and communicate with any other internet-connected device that uses this scheme. This pattern (setting) is commonly called an IP address and can be compared to the postal system. It allows a person to address a package and drop it into the

158. At the time the “web” was being developed, three specifications were defined for Web technologies: Uniform Resource Locator (URL), Hypertext Transfer Protocol (HTTP), and Hypertext Markup Language (HTML).

system.^[159]

The Internet made it possible to create the so-called social networks or media for direct communication and interaction between users. Early social media networks such as AOL Chat Rooms, LiveJournal, and MySpace emerged in the late 1990s. Current, popular social websites include Facebook, Twitter, LinkedIn, Instagram, Snapchat, YouTube, Google+, WeChat, Pinterest, Snapchat, Tumblr, Viber, WhatsApp, Wikipedia, TikTok, Reddit, Vkontakte in Russia, Weibo in China, and others. The biggest boost for social media came with the introduction of smartphones, which in recent years have enabled 3 billion users to communicate and publish,^[160] of which about 2 billion people have an account on Facebook.^[161]

The popularization of the Internet is also called the process of “digitalization”. Apart from the fact that social internet media is more accessible than traditional media, it has many sources of content and many recipients of that content, while traditional media such as radio or newspaper have only one source and many recipients. The biggest difference between traditional and social media is that social media allows everyone to create and share their own content, whether it’s a blog, picture, video or status update.

But digitalization has not only changed the way people communicate, it has also significantly and irrevocably transformed the nature of journalism and ethics. The change in the media prism, from a smaller number of large entities to a huge number of small entities that have an active role in public information, also reflected on the professionalism and understanding of public communications by journalists, especially in the

159. The other part of the communication protocol is called Transmission Control Protocol (TCP). TCP is one of the main protocols in TCP/IP networks. And while IP only handles data packets, TCP allows two hosts to establish a connection and exchange data streams. TCP guarantees the delivery of data and that this will be done in the same order in which the data was sent. See more: Handbook for Training Academies for Judges and Public Prosecutors in SEE, “Foreign Terrorist Fighters”, UN Office on Drugs and Crime, Vienna, 2017, p.31.

160. “Practical guidelines for the use of social media by judges, Op. cit., p. 25.

161. This is why the attitude of some theorists is worrisome that it is Facebook as a company that only has a declarative attitude towards its “Rules of Conduct”, so they accuse the company of only having a “profiteering attitude” and bypassing these rules when it comes to hate speech. Source: Poljak, Ibid, p.2714. This thing is also supported by the information from the so-called “whistleblowers”: <https://a1on.mk/world/haugen-fejsbuk-znae-kako-da-shiri-omraza-nainternet/>

context of digital communications. The newsrooms became smaller and smaller, without a clear organization and with limited capacities, which led to a limited accumulation and transfer of knowledge. So today there are a huge number of online media where there is not a single professional journalist. The universal role of the media, to educate, was even degraded to the point that some media began to misinform through “fake news”.^[162]

So, the Internet is too powerful a multiplier medium to remain “untouched”. Some of its performances such as “fake news” can radicalize human behaviour, make humans behave more destructively than usual.^[163] This was also proven with the last American presidential elections when after the campaign there was an attack on Capitol Hill (the US Congress), so in January 2021 Twitter, Snapchat, Instagram, and Facebook suspended the profiles of the presidential candidate Donald Trump (Twitter did so with a “permanent suspension,” but reversed the decision after just one day)^[164] who was suspected of being the instigator of the violent events.^[165] For this gesture, there was also criticism in the public (Bill Gates), and in the direction of defending the cohesion in the American society.^[166] Otherwise, there are theorists who are of the opinion that limiting hate speech can increase democratic legitimacy.^[167] Such was the case with Reddit when it banned/shut down two of its

162. Source: Richliev, Z. “Recommendations for increasing the integrity and professionalism of online media”, Association of Journalists of Macedonia, 2016, p.1, internet: <https://star.znm.org.mk/wp-content/uploads/2016/03/%D0%9F%D1%80%D0%B5%D0%BF%D0%BE%D1%80%D0%B0%D0%BA%D0%B8-%D0%B7%D0%B0-%D0%B7%D0%B3%D0%BE%D0%BB%D0%B5%D0%BC%D1%83%D0%B2%D0%B0%D1%9A%D0%B5-%D0%BD%D0%B0-%D0%B8%D0%BD%D1%82%D0%B5%D0%B3%D1%80%D0%B8%D1%82%D0%B5%D1%82%D0%BE%D1%82-%D0%B8-%D0%BF%D1%80%D0%BE%D1%84%D0%B5%D1%81%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%BE%D1%81%D1%82%D0%B0-%D0%BD%D0%B0-%D0%BE%D0%BD%D0%BB%D0%B0%D1%98%D0%BD-%D0%BC%D0%B5%D0%B4%D0%B8%D1%83%D0%BC%D0%B8%D1%82%D0%B5-%D0%BD%D0%BE%D0%B5%D0%BC%D0%B2%D1%80%D0%B8-2017.pdf>

163. Psychology as a science says that people adopt and express radical attitudes because of their inner urge to be more likable, and because in the digital world they have become more daring. People in such performances demonstrate an exaggeration in their convictions about their credibility as a source of information and political views. A contest of calling and persuasion ensues. This phenomenon is also known as group polarization. Source: Citron, K., D., “Hate crimes in cyberspace”, Harvard University Press, 2014, p.63.

164. Available at: <https://www.bbc.com/news/technology-55569604> (23.05.2023).

165. Available at: <https://www.dailymail.co.uk/news/article-9120399/Donald-Trump-BANNED-Twitter-12-hours.html> (23.05.2023).

166. <https://www.livemint.com/news/world/bill-gates-says-social-media-bans-aren-t-answer-to-divisiveness-11613970373747.html> (23.05.2023).

167. See: Poljak, Op. cit., p. 2728.

sub-platforms in 2015 for implementing its new “anti-harassment” policy. The same results, as hate speech was reduced by as much as 80%, even though some of the commenters migrated to other Reddit sub-platforms where they apparently adopted a different “style” of expression.^[168]

In cyberspace it is easier to find “soul mates” with similar convictions, and if there are differences between them, they are minimized. Group polarization is most evident in the activities of cyber mobs. On a global level, statistics from the studies and monitoring of scientists say that the largest number of “unacceptable” comments (read: hate speech) is found on Facebook,^[169] and the largest number of such comments in proportion to the total comments on that social network is on YouTube.^[170]

When it comes to the hate speech between our fellow citizens on social networks, from the research done in the framework of a scientific paper, it ^[171]was concluded that it is observed that this speech is present in all forms and affects the creation of preconditions for the occurrence of hate crime. The absence of regulation and self-regulation contributes to hate speech being used especially in conditions of intense political mobilization, but also in the daily communication of the users of such networks. From the features of protected groups as references, the following are present on social networks in Macedonia hate speech based on religious and ethnic affiliation, hate speech on a political basis, furthermore, based on sexual orientation, but also hate speech on the basis of the professional orientation towards migrant communities. Traditional hate speech is often synthesized and has multiple bases at the same time. The most explicit form of hate speech occurs based on sexual orientation, and as a new form of hate speech is the one directed at migrants who have been transiting through Macedonia in recent years.

It is undeniable that technology (read: the internet) has given “wings” to hate speech. Therefore, in order to understand the modus operandi for

168. Ibid, p. 2714.

169. Regulation and self-regulation were established by Facebook in 2018 when it introduced the possibility for any user to mark a post as “hate speech”, and in the same year it began to publish data on the number of removed posts that were recognized as “hate speech”. Source: Ibid, p.2726.

170. Ibid, p. 2713.

171. Scientific paper: “Hate speech on social media in the Republic of Macedonia” by Dejan Marolov and Strashko Stojanovski from the University “Goce Delchev” in Shtip.

committing acts of hate speech on the Internet, it is necessary to have prior knowledge about that technology, about the ways of communication via the Internet, that is: What is “Lazy Journalism”?; What is the “Snowball Effect?”; What is “onion-news”?; What is the “echo-chamber” effect (entry into the vicious circle)?; What is the phenomenon of “information bombardment online”? Otherwise, there are different categories of fake news that should be recognized by practitioners.^[172]

172. Some categories of news are false (misinformation), while others are attributed to biased information (misinformation). They all have a very loose connection to the truth and basically constantly intend to deceive. This applies both to confusing news that may contain half-truths, and to “deliberately misleading news” that has been invented deliberately to make money through the number of clicks, to cause confusion or discontent, or for the purpose of sensationalist propaganda. These stories are usually distributed through imposter news sites designed to look like “real” brands or through fake news websites. They often use video and graphic images that are manipulated in some way. Source: “Practical guidelines for the use of social media by judges, Op. cit., 28, 29.

COUNCIL OF EUROPE CYBER (COMPUTER) CRIME CONVENTION

The stem for global harmonization of substantive and procedural norms in the field of computer crime and electronic evidence was made by the Convention on Cybercrime of the Council of Europe IST182 of 23.11.2001.^[173] This act is one of the few that had a regional scope (for the continent of Europe^[174] where the member-states of the international organization – Council of Europe – come from), and which was an inspiration and even a source of law in other countries around the world. Although there were earlier attempts to define the material norms that regulate international legal cooperation in the domain of combating computer crime,^[175] the Convention, due to its comprehensiveness, flexibility, and the possibility of easy incorporation into national legislations, has become a recognizable mechanism for easy communication between states.

As it was previously said, the procedural provisions in the national legislation in the area of gathering evidence in electronic form are based on the Convention on Cybercrime. Thus, the procedural provisions that are defined there are largely mirrored in our criminal procedure and in the Law on International Cooperation in Criminal Matters, as well as a series of other laws that regulate issues related to electronic communications.^[176]

173. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680081561>

174. The Council of Europe adopted the Convention on Computer Crime in Budapest on November 23, 2001. A total of 58 countries are signatories to the Convention, 28 of which have ratified. The convention was signed by R S. Macedonia on November 23, 2001, ratified on September 15, 2004, and entered into force on January 1, 2005.

175. See: Handbook for practitioners “Computer crime”, Zvrlevski/Andonova/Milosheski, OSCE, Skopje, 2014, p.7.

176. See more: Koneska, M./Milosheski, V./Markoski, A., “International Cooperation in Criminal Matters: Handbook for Practitioners”, OSCE, Skopje, 2016, p.32.

More importantly, in 2003 the Council of Europe adopted the “Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through a computer system (ETS No. 189)”.^[177] With this Additional Protocol, it was defined what constitutes racist or xenophobic material (see art. 2 paragraph 2). In Article 8 of the Additional Protocol, entitled: “Relations between the Convention and this Protocol” it is stipulated that: “Articles: 1, 12, 13, 22, 41, 44, 45, and 46 of the Convention shall apply, mutatis mutandis, of this protocol. In the rest, this Additional Protocol is in many respects like the EU Framework Decision on combating certain forms of expression of racism and xenophobia by means of criminal law of November 28, 2008, 2008/913/JHA.^[178] Just as in that act and with the Additional Protocol, the member states undertake to criminalize numerous actions motivated by racist or xenophobic incitement, such as “racist or xenophobically motivated threat”.^[179]

The procedural provisions of the Cybercrime Convention are stipulated in Art. 14 to Art. 22, namely scope of procedural provisions, conditions, and guarantees for expeditious preservation of stored computer data, for order for search and seizure of stored computer data, for collection of computer data in real time, to intercept content data and jurisdiction.^[180]

International cooperation according to the Convention is dealt with in 6 articles, namely general principles regarding international cooperation, extradition, general principles of providing mutual assistance, spontaneous information, procedure regarding the request for mutual assistance in the absence of valid international instruments, and confidentiality and restriction of use.

177. <https://edoc.coe.int/en/cybercrime/6559-convention-on-cybercrime-protocol-on-xenophobia-and-racism.html>

178. The CE Convention on Cybercrime together with the Additional Protocol represent a base on the basis of which the EU has adopted several directives regulating this matter.

179. Article 4 stipulates: “Each party shall adopt legal and other measures that may be necessary in order to establish as criminal acts under the national law of the party, if the act was committed intentionally and unlawfully, the following behaviours: threats through a computer system, with the existence of legal features of a serious criminal offense as determined under its domestic law, against: (i) persons by reason of belonging to a group, distinguished by race, colour, origin or national or ethnic origin, as well as religious affiliation, if it is used as an excuse for any of these factors, or; (ii) a group of persons distinguished by any of the above characteristics.”

180. <https://rm.coe.int/1680081561>

International cooperation in accordance with the Cybercrime Convention is implemented based on several principles:

1. “The principle of expeditious preservation of stored computer data”. This means that the requested data must be saved immediately because it is a subject to rapid contamination, primarily by deleting it from the system in accordance with national regulations. The range of storage ranges from 6 months to 2 years;

2. “Principle of expeditious discovery of stored transmission data”. This is one of the most important principles based on which pre-investigation and investigation procedures can be successfully carried out in a specific criminal case. Namely, the expeditious discovery of the stored data – the IP address is of great benefit for the successful conduct of the investigation, especially when the communication continues through another operator in order to easily and quickly obtain the final geo position of the last IP address;

3. “Principle of mutual assistance in relation to accessing stored computer data with prior consent or when they are publicly available”; (no special explanation is needed here).

4. “Principle of cross-border access to stored computer data with prior consent or when such data is publicly available”. Often the creator of the data is in the territory of one country, and the data itself in the territory of another country, so if that data is publicly available (does not fall into the category of protected data), the domicile authorities can have direct access to it. As an example of this are smart mobile phones that have been entered a certain web e-mail account or a social network account, so if they are open, then it is possible to search through them and collect evidence even though that evidence is not stored in phone memory but are stored on a data carrier abroad. Otherwise, the collection of evidence would require prior consent from the state where the data is stored;

5. “Principle of mutual assistance in the collection of transmission data in real time”. Acquisition of transmission data in real time is a way to immediately trace the wanted person and;

6. “Principle of mutual assistance in relation to the interception of content data”. This provision is related to the application of PIM from the LCP, namely Art. 252 paragraph 1 item 4 of the LCP, which enables secret inspection and search in a computer system in a situation where it is still active and when it can be easily see which person creates, processes or receives the data.

Important provisions of the Convention are Art. 16 and Art. 17 because they refer to the special tool, the so-called “Network 24/7”, created by Article 35 of the Convention. According to these provisions, the signatory states are obliged to designate a person – point of contact, who will be available on a 24/7 basis and in emergency cases will act on the request of another state aimed at expeditiously freezing data within 90 days, as and their partial disclosure to the interested party in order to be able to follow the path of the information and provide other necessary technical assistance. Such assistance shall include the facilitation or, if permitted by domestic law and practice, the direct implementation of the following measures: 1) provision of technical advice; 2) saving data in accordance with Articles 29 and 30 of the Convention; 3) gathering evidence, providing legal information and 4) locating suspects. With this tool, the provisions of the Law on International Legal Cooperation in Criminal Matters are not derogated from,^[181] but only obtained in time so that the data can be preserved.

181. Official Gazette of the RNM No.77/2021 (04.06.2021)

CRIMINAL ASPECTS TO COLLECTING EVIDENCE OF HATE SPEECH ACTS COMMITTED ONLINE

Modern technology-dependent living causes electronic traces. This means that if such evidence is to be obtained, it is necessary to detect its sources and the place where it was provided. The goal is to accurately define the subjective relationship and the presence of the persons involved in the electronic communication, and which persons are of interest to the law enforcement authorities for solving the criminal legal event, i.e., defining their roles as perpetrators of crimes, helpers, instigators, victims or witnesses. Two basic problems arise here, first – what the content of the data is and how to get to it; and secondly – where that data is stored. The content of the data is the evidence in the criminal matter.^[182]

A quick and efficient collection of evidence is essential. The more the procedure drags on, the more there is a danger that the required evidence will not be found. The deletion of the submitted content or any other post does not mean that this data is permanently unavailable to others, or that it cannot be found or tracked by the operator of the Internet service, or by another user, in original or modified form. It is significant to say more about internet providers how to capture the overall picture of what investigators face in a criminal procedure in which electronic evidence needs to be obtained.

Internet service providers (ISPs) first began to appear in the late 1980s and early 1990s. These are private companies that provide

182. Koneska/Milosheski/ Markoski, Op. cit., p. 31.

users with Internet access and services over the Internet.^[183] There are several different types of Internet service providers depending on the service they offer, that is, whether it is Internet access, e-mail, Internet service hosting, information service, social networks and other Internet services.^[184]

Hosting providers offer online service for e-mail file transfer via FTP protocol, web hosting services, virtual machines, Cloud, and physical servers. Transfer- ISPs enable internet services that offer large amounts of bandwidth needed to interconnect hosting providers and ISPs.^[185] Virtual Internet Service Providers (VISPs), on the other hand, offer to purchase services from other Internet Service Providers to provide users with Internet access. Free internet providers (freenets) provide free internet access service and often display advertisements while users are connected.^[186]

The big picture is that cyberspace is no longer a legal enclave in which one can act freely and unchecked. Hate speech, which is often a prelude to acts of hate, is already prohibited by the Council of Europe Convention on Cybercrime. In principle, everything that is prohibited in the real space is now prohibited in the virtual space.^[187]

183. These providers allow customers to connect to the Internet and access services on the Internet. Often, ISPs are companies that offer telecommunications services, including Internet communication, data access, and telephone connection. Most telephone companies now operate as ISPs, which may be commercial, non-profit, private, or jointly owned. Some of the ISP services include Internet access, domain registration, domain name hosting, dial-up access, leased line access, and co-location.

184. Internet connection providers offer their services through technologies that provide Internet connection. Internet connection or Internet access can be provided via fibre optic cable (FIOS), DSL (Digital Subscriber Line) or satellite. A number of Internet access providers also provide e-mail and additional services for hosting certain services. Source: Guide (short) for prosecutors "Provision of evidence in electronic form from international and domestic Internet service providers", Stoilkovski, M./Cvetanovski, J., Association of public prosecutors of RS. Macedonia and OSCE - mission in Skopje, Skopje, 2017, p.9.

185. The same.

186. Ibid., p.10.

187. Zivanovski, N., "Some aspects of European and American legal philosophy regarding freedom of speech and hate speech and their reflections on the Internet", "NOVEMBER 16 International Day of Tolerance: selected texts", MANU-OSCE, Skopje, 2015, p.14.

The criminologist Karanovic says: “Criminal responsibility is the supreme synthetic term of criminal law, but in its determination the inner psychic content should be well recognized, and this after the physical action and the caused consequence have been perceived. For this purpose, the statements of witnesses, the statement of the perpetrator, data about that person, the determination of objective factors and material evidence are used as evidence.”^[188] The question is how to use the internet to provide that evidence. More will be said about this in the next chapter.

The rapid development of technology and widespread use in all spheres of social life found its articulation in the execution of criminal acts. The way of communication is being transformed, being digitized. In the process of determining criminal responsibility, circumstantial evidence is often more important, and this especially applies to acts of hate speech as works-product of ideologies and “message acts”.^[189] Namely, what something in a specific case encouraged and activated the human activity and in which direction it was directed, can be found out by analysing the circumstances that preceded the commission of the crime, as well as those after the commission of the crime, and basis of the perpetrator’s character traits. The execution of the crime occurs in the mental processes and is perfected by the physical action that manifests itself in the physical-external world.

Basing criminal law on the crime does not imply ignoring those subjective elements that raise the objective meaning and gravity of the crime, such as the special intention, motive (motivation) or goal of the perpetrator. They do not represent purely subjective elements of the perpetrator’s guilt but are transformed into elements of the objective

188. Karanović, Op. cit., p. 31.

189. They are designed to convey a message not only to the victim, but also to a whole group, which in the eyes of the perpetrator is subordinated in society. The message, in turn, should cause a feeling of uneasiness, vulnerability and tension between the members of that group. Source: Chakraborti N./Garland, J., “Hate crime: Impact, Causes and Responses”, SAGE, Los Angeles, 2008, p. 14.

injustice of the crime.^[190]

There are also a number of proprietary software options and “online” techniques available to terrorists to protect the security of their data and activities. Some research has shown that communication through “normal” channels (e-mail, etc.) using secret encryption techniques, such as steganography^[191] and hidden watermarking, remains an option. These techniques, when applied with encryption, create serious challenges for intelligence, police and prosecutorial authorities. Another technique is Tor,^[192] which is a web browser often referred to as the “deep” or “dark web”. It is a part of the internet that is not indexed by search engines, such as, for example – Google. Tor encrypts connections to thwart the possibility of tracking Internet activity. In situations where encryption is not possible, such as on an insecure channel, terrorists use techniques such as “chaffing” and “winnowing”.^[193]

190. The criminological phenomenon of “Foreign Terrorist Fighters - STB” would be taken as the first example of skilful abuse of the Internet due to hatred. In relation to the forensic methodology for conducting investigations into STB crimes, it is necessary to consider the influence of the Internet in the last generation of recruited fighters. Regarding the influence of the internet on crimes of hate speech, it was mentioned above, but it is necessary to add that the spread of radicalization on social media is something that worries more and more, so in 2020 it operated with a number of some 90,000 accounts on Twitter controlled by the terrorist organization - ISIL in order to profile and recruit young people to go to war where “hashtags” are the new weapons. As with other groups, it has proven difficult in practice for “online” investigations to track down ISIL members due to the technological tools they use such as: encryption applications, social media platforms, and encrypted instant messaging platforms. messages. About 10 years ago, several media outlets broke the news that ISIL had produced a manual for its fighters titled “How to Tweet Safely Without Giving Away Your Secret Location to the US National Security Agency,” which explained how to avoid surveillance. See: <http://securityaffairs.co/wordpress/47243/terrorism/covert-communications-terrorists.html>.

191. Steganography is data hidden within data – for example, hiding a text file inside an image. Steganography is an encryption technique that can be used in conjunction with cryptography as an extremely secure method of data protection.

192. English abbreviation for “The Onion Router”.

193. In digital communications, these techniques allow the sender to send a message without encryption, as plain text, with the receiver and sender sharing a common secret key that they use for verification. With this method, the confidentiality of the message is ensured by a third party who simultaneously sends a deliberately crafted message through the same channel as the sender. Source: Handbook for Academies..., “Foreign Terrorist Fighters”, Op.cit., p.30.

THE PROVISION OF EVIDENCE IN ELECTRONIC FORM

The dynamic development of technological tools inevitably requires a specific readiness of the law enforcement authorities in the process of discovering the perpetrators of crimes. Securing computer data that could constitute evidence in a particular criminal proceeding is not always straightforward. On the contrary, in most cases, what may be a priority for the domestic authorities, it may not be so for the foreign Internet provider from where the data is to be provided.^[194] Additionally, each of these providers has its own regulations and protocols that comply with the legal framework of the country in which they are registered.

But before getting into the topic of procedures at foreign Internet providers, first, as it was said, the information about where the communication between the electronic devices started and where the communication ended should be obtained. This is achieved in two ways. First, by physically detecting the electronic device, which is a more complicated way and is less likely to be discovered, because the procedures of the LCP for confiscation of objects with any committed crime must be observed, and then making an expertise on the phone from by the specialized department of the Ministry of Internal Affairs, which always remains a difficulty in determining whether this electronic device, which was hypothetically taken from the perpetrator, was actually used by the perpetrator at the critical time. The second way is by detecting the predefined IP addressing data provided by the corresponding telecommunications operator through which operator the offender logs on to the network or the so-called “MAS address”. Then PP is sure that a telecommunication or data transfer was made through a certain electronic device.^[195]

194. Stoilkovski/Cvetanovski, Op. cit., p. 41.

195. Koneska et al., Op. cit., p. 31.

So one of the first stages of the investigation in determining the perpetrators responsible for crimes of hate speech committed “online” is the tracking of IP addresses. The phenomenon of “forum-shopping” should also be considered here, when perpetrators strategically choose the location for the placement of such information, which digital sites represent “hosts”, in countries with favourable “impunity” legislation.^[196]

Arguably the most important evidence in digital evidence collection is only in the form of non-permanent data contained in a computer’s RAM (Random Access Memory).^[197] If dealing with a “cybermob” case, the monitoring of IP addresses sometimes needs to be broader in scope and synchronized. Namely, the forms of the Internet through which extremists communicate, the so-called “chat rooms” from the 1990s where the number of correspondents could be dozens of people. There was a clear hierarchy in these forums. The highest was the person who owned the forum and to whom the domain was registered. He had de facto control over the technical aspects of the website, including the power to delete other people’s messages and posts, and to accept new members. Under him were the administrators, or – the moderators. They had most of the powers of the owner except the ability to completely delete the forum. There could also be a hierarchy among the administrators, so the more important administrators could have their own deputies.^[198] The investigator at the Ministry of Internal Affairs or at the “Investigative Centre” of the PPP will have to shed light on that structure.

Historically, since the US is the most cost-effective to have a secure server, even Al Qaeda has created forums based on US servers. But extremist forums also have their own inner circles. Some major areas are restricted only to trusted members, who are involved in both the

196. McGonagle, T., “The Council of Europe against online hate speech: Conundrums and challenges, EXPERT PAPER”, University of Amsterdam, 2013, p.27.

197. The traditional “power off” approach misses out on huge amounts of non-volatile data sitting in memory that can be lost. Today, investigators routinely face the reality of sophisticated data encryption, as well as hacking tools and malware that can only exist in memory. If a computer is involved, it is highly recommended that the knowledge of computer forensics experts be utilized as shutting down the computer could result in the loss of any evidence of criminal activity. However, if the computer is turned on but is running destructive software (formatting, erasing, removing, or cleaning information), the computer should be powered off immediately to preserve what is left in the device. Handbook for the Academies for the Training of Judges and Public Prosecutors in SEE: “Foreign Terrorist Fighters”, Op.cit., p. 50.

198. Stern, J./Berger, JM, “ISIS the state of terror”, Harper Collins Books, NY, 2015, p.129.

organization's secret and future plans. Despite this structure, the forums proved to be highly vulnerable and easily penetrated by the intelligence and security services, which penetrated them and found out useful information, or shut down the forums. For those reasons, lately, jihadists have started to leave the forums and start opening "accounts" on open media platforms on the Internet. Due to this trend, YouTube has added an option for users, who can now mark certain posted material as having terrorist content.^[199]

It is necessary to approach the problems and methods for such cooperation operations of the criminal prosecution authorities and these companies with a prior plan; first of all to define the computer data that may be needed by the judicial authorities during the criminal procedure; to review and obtain information about the type of computer data that can be obtained, where it is located and how it can be secured during the previous procedure, according to the domestic international legal framework; and finally to emanate the method and procedure which should be followed when providing the computer data that could be potential evidence in the procedure and to prepare the forms for submitting requests for data from domestic or foreign Internet providers.^[200]

During the previous procedure, the provision of the necessary computer data can be uncertain, and the uncertainty arises if PP and the police are not sure whether the requested data exists, whether the same will be given based on the initiated procedure, and what is the real time frame in which it can be expected that the requested data will be delivered.

For the purposes of the criminal investigation, it is usually necessary to provide the following types of data:

- **"Subscriber data"** – information to identify the user of a specific Internet protocol (IP address) or IP addresses used by a specific person;

199. In 2009, Facebook took a similar, but more rigorous action to eliminate terrorist content, even if it was closed for access by the public. Extremists responded by quickly creating new profiles under new names. This is especially the case with ISIS's indoctrination operation of new recruits. See article: "Jihadists are recruited on the Internet", Utrinski Vesnik, 30.08.2016.

200. Source: Stoilkovski/Cvetanovski, Op. cit., p.5.

- “Internet traffic data” – represent log files where the activities of the operating system of a certain computer system or of other software or of communications between computers, especially the source and destination of messages, are recorded.
- “Content data” – This type includes messages, images, movies, music, documents, or other data. There is a difference between content that is stored, that is, data that is already available on a computer system, and content that needs to be stored in a future period, which is not yet available and will have to be obtained in real time.^[201]

Of all the aforementioned operations and types of data, subscriber data is the most frequently requested computer data in domestic and international investigations. Without this information, it is often impossible to initiate or continue an investigation, so securing it is critical. Operators very often (if not always) appear on the market as joint legal entities whose network covering the possibility of electronic communication is huge and in most cases is directly connected to foreign legal entities. At that moment, data should be requested from the operator who is assigned to use the IP address that is of interest to the procedure, and then go step by step looking for where and with which other electronic device from that IP address was communicated for finally to get to the requested place where the data is stored or transmitted.^[202]

Subscriber data is usually processed and stored by service providers, i.e., Internet service providers that are part of the private sector, which means that all data must be requested with a request or subpoena (if the addressee is abroad) submitted by a public prosecutor. Issuing data orders can often be treated as a threat to human rights and the right to privacy, as can the search and seizure of computer systems or the monitoring of communications. In this context the European Convention on Cybercrime of the Council of Europe makes a distinction and adopts the mentioned classification: subscriber data, internet traffic data, and content data.^[203]

201. Ibid., p.11.

202. Koneska et al., Op. cit., p. 32.

203. Stoilkovski/Cvetanovski, Op. cit., p. 12.

Collecting electronic evidence from foreign independent data holders can take a lot of time and there is a risk that by the time the recipient of the information, which is the service provider, receives the request, according to their national law the requested data will have already been deleted. Providers of communication services, Internet and telephony do not keep data about communication traffic forever and often such data is not kept longer than the time necessary to fulfil payment obligations or similar obligations.

When submitting the request for the delivery of computer data, the Public Prosecutor's Office can directly address the domestic Internet service provider with a request based on Art. 287 of the Civil Code or do so with an order through the Department for Computer Crime and Digital Forensics at the Ministry of Internal Affairs works. The process of providing data from foreign Internet service providers is generally defined by the protocols and procedures of foreign Internet service providers for cooperation with law enforcement authorities. If the movement of data is within a country, then it is easy because domiciled legal entities are obliged to provide the data to the authority that leads the procedure, and due to the short period of discovery of the communication between IP addresses, the chances of obtaining the data are high. Also, if it is about the need to reveal the ownership of a domestic online medium from where communication took place, then it is enough for the authority to obtain the information from MARnet.^[204] But unfortunately these are rare cases because it is the rarest way of communication between IP addresses.

Internet service providers that are registered in the United States in accordance with the current legislation on more serious crimes have the authority to cooperate directly with representatives of law enforcement authorities from other countries and at the same time provide data for users of their Internet services about user activities, as well as for the content created by the users of a certain service. Cooperation between these providers and law enforcement authorities is on a voluntary basis, but it should be noted that each provider individually has its own protocol specifics which are published in the form of "procedures" for providing data for law enforcement purposes, and which procedures are discussed in more detail below. In the end, it should be considered that

204. <https://marnet.mk/>

the institutional gap in dealing with hate speech is the greatest if it is a question of international interaction between subjects-institutions.

In terms of foreign experiences, it should be said that there are also international companies that specialize in data storage, but whose headquarters are in several countries, so the data is spread all over the world in so-called “Clouds”. At that moment, a serious problem arises as to where to find the data, how and from where to obtain it and whether there is even time for this data to be obtained during the investigation phase. Namely, a large number of legal entities, according to their national legislations, keep the initial data for a very short time, which means IP addresses and their locating needs to be completed in an express period because a large number of legislations oblige their legal entities to keep this data for a period of 6 months. However, fortunately, the European and even the world trend indicates that the legislations are becoming aware of this problem and are extending the term of keeping IP addresses up to two years. This has something to do with initiatives to reform the internet for the better, such as that of one of the inventors of the internet – the English engineer Tim Berners-Lee who offered a contract that could be signed by all participants and users of the internet.^[205]

As a candidate country for EU membership, the position of the EU and the cooperation of the RNM with the EU in this field are also important to us.^[206] Regarding the companies that run social networks, it should be said that the biggest companies, such as: Facebook, Microsoft, Twitter, and YouTube have concluded a “Code of Agreement” with the EU in 2016.^[207]

205. The principles for which it advocates are as follows: Governments undertake to ensure that all citizens can be connected to the Internet, that it is available to them all the time and that the basic rights to data privacy will be respected. Companies that become signatories should ensure that the Internet is accessible to all, respect privacy, create an atmosphere of trust and develop technologies that encourage the best in people and suppress what is bad in them. Individual users commit to being content creators and contributors to the web, creating communities that respect human dignity and civilized debate. Source: <https://contractfortheweb.org/> (17.10.2020).

206. Recently, the EU has been sponsoring projects aimed at combating hate speech and carried out by NGOs. Such is the “Europe for Citizens 2014-2020” programme. These projects should help de-stigmatize immigrants and build intercultural dialogue and mutual understanding. Such initiatives became especially common in the EU after the #MeToo campaign and the “Black Lives Matter” protests. Source: <https://www.politico.eu/article/commission-to-move-forward-with-european-hate-speech-plan/> (25.05.2023).

207. See more: CODE OF CONDUCT ON COUNTERING ILLEGAL HATE SPEECH ONLINE, http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf

Among other things, it paraphrased stipulates that: they undertake to create an effective process for reviewing notifications containing hate speech and within 24 hours of publication to remove them or disable access to them; furthermore, IT companies agree to develop “Community Rules or Guidelines” that state that the promotion of hate or violence is prohibited; they also undertake to take measures to educate users and develop their awareness to recognize the content of hate speech; to be expeditious in cooperation with the justice authorities of the EU member states; to do such eligible training for their employees; to take into account the existence of “trusted journalists” as reliable sources for placing the information and for the same to announce that it is a matter of verified information, etc.^[208]

Regarding the respect of these commitments by IT companies, a fourth evaluation was made by the EU in 2019 and it was found that there is progress; that as much as 89% of the cases that were marked as hate speech by IT companies were revised within 24 hours. Of the reported cases of illegal hate speech (4392 reports for the monitored period of 6 months at the end of 2018) in the form of comments or notifications, as many as 72% were removed.^[209] Criticisms certainly exist, so the main criticism is that the whole process represents pre-emptive self-censorship in the digital space and suppression of freedom of speech, as well as the fact that it is still unclear who is the final judge who assesses what constitutes hate speech on the Internet. Regarding the procedure in which IT companies ban or delete published content, there is criticism that the same is not subject to appeal or objection by the publishers.^[210] Finally, in 2022, a significant Regulation entered into force, which will be discussed further below.

But even before the Code and before the Regulation in the EU, there

208. https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1135

209. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_806 (25.05.2023).

210. See more: Chavleski, A., “European Union’s response to hate speech: Recent developments”, “Zbornik radova: Moć komunikacije 2017”, p.25-26. https://apeiron-uni.eu/wp-content/uploads/2020/04/MOC-KOMUNIKACIJE-Zbornik-radova_2017.pdf

was legislation that had an effect in the direction of combating hate speech, namely the EU Directive, 2000/31/EC on electronic commerce, which effectively exempts Internet providers and social networks from any responsibility for content that they have not approved, edited, modified or authorized. However, if they are aware of illegal content hosted on their services, this protection is nullified and they have the option to remove such content or face the possibility of being liable for any possible violation of national legislation.^[211]

211. Milo, D., "Review of the legal framework, case law and non-legal tools used in the prevention of hate speech on the Internet", "16 NOVEMBER, International Day...", Op. cit., p. 23.

PROVISION OF EVIDENCE BY USA INTERNET SERVICE PROVIDERS

The dominant number of relevant Internet service providers are from the United States.^[212] First of all, these are Facebook, Google, Yahoo, and Microsoft. For Facebook to submit the necessary data to the law enforcement authorities, it is necessary to submit a request for international legal assistance or a request from a competent service (if the requester is an American authority).^[213] Facebook publishes information on the procedures and mechanisms for securing computer data on its website, along with general information on the total number of requests submitted by each country.

There is also the possibility of a preliminary request by law enforcement agencies for data retention by Facebook. In situations where it takes a certain amount of time to process the formal legal procedure from the state requesting the data, Facebook may keep the requested computer data. The request (more like a request) to save certain data until the arrival of the formal legal documentation can be made through the online system for submitting a request by the Public Prosecutor's Office or the police, by e-mail, fax, or regular mail.^[214] The data storage

212. Although recently the expression "Cyber-Balkanization" is also current, which means the fragmentation of the global Internet into several smaller, nationally administered Internets, divided according to geopolitical spheres of influence. The process is ongoing in the Russian Federation, the PRC and the EU. See: [https://medium.com/skycoin/cyberbalkanization-and-the-future-of-the-internets-f03f2b590c39#:~:text=Cyberbalkanization%20\(also%20termed%20'internet%20balkanization,internets%20aligned%20along%20geopolitical%20boundaries.](https://medium.com/skycoin/cyberbalkanization-and-the-future-of-the-internets-f03f2b590c39#:~:text=Cyberbalkanization%20(also%20termed%20'internet%20balkanization,internets%20aligned%20along%20geopolitical%20boundaries.)

213. See more: <https://mk.globalvoices.org/02/18/20277/>

214. For example, in Macedonia, the Department for Computer Crime and Digital Forensics at the CPS of the Ministry of Internal Affairs requested, and it was done, Facebook's removal of groups that spread hatred and called for violence in connection with the 2011 Calais conflict. During this event, the Ministry of Internal Affairs issued a public call to refrain from hate speech, for which they were recognized by ECRI.

period is a maximum of 90 days.^[215]

“In cases involving imminent harm to a child or risk of death or serious bodily injury to any person requiring disclosure, without delay, a police officer or public prosecutor may make a request through an online request system. In practice, it often happens that the user whose data is requested is not notified of the request because his notification may jeopardize the investigation or lead to a risk of another form. In such cases, Facebook should receive an appropriate court decision that requires Facebook not to notify the user.”^[216] According to Facebook, the following may be submitted through a subpoena from a competent foreign judicial authority – name and surname, credit card information, other account information, full header of sent and received messages, e-mail address, and last IP addresses of logins/log out, if the requested data is available.^[217]

In the case of Google, the International Legal Assistance (ILA) mechanism should be used for requests from abroad. However, in addition, on a voluntary basis, Google may provide user data upon appropriate request from non-US government agencies. This disposition of Google is a kind of arbitrariness that reflects the controversial fact that Google collects data about its users on various grounds and for various motives that are not necessarily altruistic in nature. For those reasons, the EU in 2019 initiated a procedure to assess Google’s operations,^[218] after which it imposed a fine of 50 million euros.^[219]

Requests to Google through the MLA mechanism must comply with international norms, US law, Google policies, and the law of the country of origin of the request. All requests for content data should be submitted in electronic form i.e., through international legal assistance (MLAT). Company data may also be obtained if joint investigations are conducted between US and national law enforcement authorities or if the requests

215. <https://www.facebook.com/safety/groups/law/guidelines/>

216. Cit. Stoilkovski/Cvetanovski, Op. cit., pp. 26-27.

217. Ibid, p.31.

218. <https://www.pravdiko.mk/eu-ke-proveruva-kako-fejsbuk-i-gugl-gi-koristat-podatotsite-nakorinisitsite/>

219. https://edpb.europa.eu/news/national-news/2019/cnils-restricted-committee-imposes-financial-penalty-50-million-euros_en (23.05.2023).

are for emergencies.

Google publishes information on the procedures and mechanisms for securing computer data on its website along with general information on the total number of requests submitted by each country. On a similar principle to other foreign Internet providers, Google does not process too general or vague requests.^[220] Requests must be in writing and signed by an authorized official of the requester. Data in the form of a video or other type of material published on: YouTube, Web Search and Blogger can also be searched. On the Google website every 6 months, a “[Google report on transparency](#)” is published, which gives information regarding the number of requests, where they come from and what their nature is, while the same is shown in overview and with diagrams.^[221]

As far as Microsoft is concerned, there is also a procedure for enforcing requests from law enforcement authorities that is publicly announced.^[222] An important principle that Microsoft adheres to is that it refuses to cooperate with the requesting state authority if it is a question of requesting direct or unhindered access of that authority to user data, as well as if the “keys” for encryption or the possibility of breaking the encryption. All requests must specifically relate to specific accounts or identities. The principles, policies and practices contained in this document also apply to Skype.^[223] According to the procedure Microsoft for the requested data requires a court order or other officially signed equivalent document depending on the type of data requested. Microsoft provides different types of data for US applicants and those from other countries. Inquiries should be addressed directly to their office in Ireland. Requests for data that reach Microsoft from non-English speaking countries are sent to a local team or individual (usually a lawyer or someone working under legal guidelines) to determine compliance with local laws, in which case the request will be translated and sent to the teams of Microsoft in the US or Ireland.^[224]

220. Stoilkovski/Cvetanovski, Op. cit., pp. 28-29.

221. <https://transparencyreport.google.com/government-removals/overview>

222. <https://blogs.microsoft.com/datalaw/our-practices/>

223. Skype is wholly owned by Microsoft.

224. Stoilkovski Cvetanovski, Op. cit., p. 30.

Just like Google and Microsoft, it publishes semi-annual detailed reports on the computer data provided to various government authorities.^[225] Microsoft makes a clear distinction between content data and non-content data. “The above-mentioned procedure does not specifically state the conditions for handling urgent requests. But the document states that Microsoft can provide limited information about the user to law enforcement authorities, that is, it only provides information for which the provider itself has reason to believe that the user intends to harm himself or someone else by publicly publishing the same information. Requests that are not properly submitted or are too general are rejected by both Microsoft and Skype.”^[226]

The American firm Yahoo also cooperates with the law enforcement authorities of foreign countries. For a request to provide computer data, a procedure for international legal assistance is carried out, but exceptionally, if it is an emergency (e.g. kidnapping or imminent bomb threats) direct cooperation is possible. Yahoo does not always provide the requested data. If they consider that the volume of data is large or the data cannot help in the procedure, then according to their policies they cannot respond to the request or only partially provide data.^[227] For direct requests from abroad (which would mean not from the US) basic subscriber data can be provided. This procedure is identical for Flickr.^[228]

In comparison, Google may also store basic data after such direct requests. A formal request sent via email is required. Google will save the requested data until the arrival of the official request through the procedure for international legal assistance. Microsoft, however, may retain data based on requests received directly from foreign law enforcement authorities and requires a signed letter to be faxed in advance. Microsoft may retain the data for a period of 180 days and, in addition, for a period of 90 days, until the arrival of an official request through the procedure for international legal assistance. It's the same at

225. <https://www.microsoft.com/en-us/corporate-responsibility/law-enforcement-requests-report>

226. Cit. Stoilkovski/Cvetanovski, Op. cit., pp. 29-30.

227. Ibid., pp. 30-31.

228. https://www.eff.org/files/filenode/social_network/yahoo_sn_leg-doj.pdf (16.10.2020)

Microsoft as it is at Yahoo.^[229]

But apart from direct requests, there are also urgent cases. Therefore, in the event of an emergency, including immediate injury to a child or risk of death or serious physical injury to any person, Facebook shall without delay provide data to an authorized law enforcement official. Requests should be submitted through the online system for receiving requests from law enforcement authorities at: <https://www.facebook.com/records/x/login/> or via email. This constellation also applies to Google, Microsoft, and Yahoo, but for them, requests for emergencies must contain a description of the reason for the urgency and an explanation of how the information requested can prevent harm, bearing in mind that requests to Yahoo and Microsoft must be in writing and signed by an authorized officer. Yahoo and Google have a disposition to share only information they believe is necessary to prevent a particular emergency.^[230] The procedures are similar in relation to Twitter,^[231] but which social network now has serious criticism that it is not objective in accessing and recognizing hate speech, and this after the ownership structure was changed, so now the owners are billionaire Elon Musk (who calls himself a “freedom of expression absolutist”)^[232] and the Kingdom of Saudi Arabia,^[233] which, on the other hand, is not a country with an image of supporting freedom of speech, given its legislation that provides criminal liability for the crime of blasphemy and the scandal in 2018 with the assassination of journalist Jamal Khashoggi in the Kingdom’s DCP in Istanbul, Turkey.^[234]

Finally, there are unforeseen situations due to the complexity of international relations when large companies are “lost in translation” in the relationship with the authorities of some smaller states such as the RNM, so for mysterious reasons, in 2018, there was a moratorium almost throughout the year in the cooperation between the Ministry of Internal

229. Stoilkovski/Cvetanovski, Op. cit., p. 33.

230. Ibid., p.34.

231. <https://help.twitter.com/en/rules-and-policies/enforcement-options>

232. Source: Paper by Đaković, T., “Regulating and combating hate speech in the European Union and in Croatia - a human rights approach?”, Annual Review of the Rule of Law in the EU, Institute for European Policy - Skopje , 2022 , p. 38. Available at: <https://epi.org.mk/post/23042> (May 25, 2023).

233. <https://biz.crast.net/alarm-on-capitol-hill-over-saudi-investment-in-twitter/> (23,05,2023).

234. Available at: <https://www.bbc.com/news/world-europe-45812399>

Affairs and the company Facebook, so the public prosecution was prevented from obtaining data related to the social networks Facebook and Instagram.

The practice of the PP 2 years ago in the RNM is that the PP of the PPP if it encounters a need for international cooperation in criminal matters, addresses the specialized department for international legal assistance of the Primary Public Prosecution of the Republic of North Macedonia, and not directly to the companies – providers and hosts in foreign countries. states. The department was established in January 2021 with the aim of improving, standardizing and speeding up the procedure for requests for international legal assistance. Now this department passes requests or requests to the Ministry of Justice, where they are electronically forwarded to the ministries of justice of the respective countries (especially the USA, where the largest number of providers and hosts are located) and from there, in a relatively quick time, the response arrives from companies for the requested data. There is also an alternative in the case when it comes to countries with which the Ministry of Internal Affairs of the RNM has established inter-police cooperation, so the department for international cooperation of the PPP submits the request to the Ministry of Internal Affairs and the answer arrives from there, but practice has shown that this path is longer, and probably and for the reason that the correspondence is not exclusively by electronic means, but by written shipments. In fact, the need to have a response in a “hard-copy” document must be emphasized in the initial contact regarding the matter in any case and regardless of the approach chosen by the PP.

DATA STORAGE

It was previously mentioned that the EU countries in their acquis communautaire have already prescribed proposals for the time frames until which they can ask the operators to keep their digital information that would then be used as evidence, but such a provision is also Article 16 of the European Convention on Cybercrime which allows member states to request the preservation of computer data, such as: e-mail account contents, even before obtaining legal authorization to exchange data. Article 17 on Internet traffic data also allows partial disclosure of information in an accelerated manner. A certain country can ask another member to save data through the “contact network” which, as mentioned, operates 24/7.

It is recommended that when a data retention request is made, the requesting law enforcement agency requests confirmation that the data has been retained and is given a reference number for the retained data. However, according to the European Convention on Cybercrime it is not mandatory to use the 24/7 contact network for preservation requests. If national procedural law allows it, direct cooperation between providers and law enforcement authorities is also possible. Potentially, “direct cooperation between these two entities in relation to conservation requests, rather than through a 24/7 network, which is more of a supplementary character, is often a more flexible solution than the established formal contact points of the Convention...”^[235]

235. Stoilkovski/Cvetanovski, Op.cit., p.36.

OTHER MEASURES AND POLICIES TO COMBAT HATE SPEECH ON THE INTERNET

Measures and policies to prevent hate speech online are essential. Otherwise, as a result of the lack of response from the law enforcement authorities and their inertia, the victim may retaliate, with an attack against the perpetrator in the virtual space, so the victim will feel a little “relief”, but the victim’s response will likely be seen by an entire audience pre-acquainted with the offensive messages on the Internet, and the victim will still suffer mental anguish. Ultimately, destructive behaviour cannot be a response to another such behaviour.

In recent times, as a result of numerous abuses in the sphere of online media in Macedonia, calls for the so-called “regulation of portals” have increased. However, global standards and practices and the expert public^[236] argue the opposite - that regulating the content of online media is impossible and unnecessary. It is only necessary to responsibly enforce existing laws.

However, it is evident that problems exist - the Macedonian online sphere is flooded with informational websites presenting themselves as media outlets. Hate speech, discrimination, libel, insults, and disqualifications are present. The solution, though imperfect, lies in self-

236. See more Electronic publication: “Freedom of the media in the face of political pressures and propaganda, disinformation and hate speech: How to proceed?”, text by Mladen Chadikovski, Source: [103](https://ima.mk/wp-content/uploads/2023/05/%D0%A1%D0%BB%D0%BE%D0%B1%D0%BE%D0%B4%D0%B0%D1%82%D0%B0-%D0%BD%D0%B0-%D0%BC%D0%B5%D0%B4%D0%B8%D1%83%D0%BC%D0%B8%D1%82%D0%B5-%D0%BD%D0%B0%D1%81%D0%BF%D1%80%D0%BE%D1%82%D0%B8-%D0%BF%D0%BE%D0%BB%D0%B8%D1%82%D0%B8%D1%87%D0%BA%D0%B8%D1%82%D0%B5-%D0%BF%D1%80%D0%B8%D1%82%D0%B8%D1%81%D0%BE%D1%86%D0%B8-%D0%B8-%D0%BF%D1%80%D0%BE%D0%BF%D0%B0%D0%B3%D0%B0%D0%BD%D0%B4%D0%B0-%D0%B4%D0%B5%D0%B7%D0%B8%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D0%B8%D0%B8%D1%82%D0%B5-%D0%B8-%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%D0%BE%D1%82-%D0%BD%D0%B0-%D0%BE%D0%BC%D1%80%D0%B0%D0%B7%D0%B0-%D0%9A%D0%B0%D0%BA%D0%BE-%D0%BF%D0%BE%D0%BD%D0%B0%D1%82%D0%B0%D0%BC%D1%83.pdf (21.05.2023)</p></div><div data-bbox=)

regulation rather than regulation. It is essential to make a clear distinction between media content and citizen journalism, especially prevalent on social networks and blogs, but specifically in Macedonia with websites presenting themselves as media outlets that do not meet minimum standards. One reason why state regulation of online media content is neither desirable nor technically and legally supported, especially in a situation with numerous abuses, is that efforts should be increased towards self-regulation. This process has already begun in Macedonia with the creation of the Register of Professional Online Media, as mentioned earlier. Self-regulatory bodies establish the boundaries between the legitimate rights of free media and the legitimate rights of individuals who attract media attention.^[237] In Macedonia, these self-regulatory bodies include the Council for Ethics in the Media (CEM) and the Court of Honor under the Association of Journalists of Macedonia (AJM), as mentioned earlier. The Court of Honor deals with citizens' complaints against unethical behavior by specific journalists. These two bodies are advocates of the aforementioned "self-regulation" of online media.

The actual number of online media outlets in Macedonia is slightly over 300 active ones, of which at least half predominantly engage in socially and politically oriented content, while the rest specialize in entertainment, sports, and other topics.^[238] Positive initiatives, such as the voluntary "Register"^[239] (as elaborated previously), are one way to legitimize professional and ethically motivated media.^[240] Calls for

237. Source: "Recommendations for increasing the integrity and professionalism of online media" p.3 <https://znm.org.mk/wpcontent/uploads/2016/03>

238. Source: Richliev, Z. "Recommendations for responsible online media", Association of journalists of Macedonia, 2017, p.1. See: <https://star.znm.org.mk/wp-content/uploads/2016/03/%D0%9F%D1%80%D0%B5%D0%BF%D0%BE%D1%80%D0%B0%D0%BA%D0%B8-%D0%B7%D0%B0-%D0%BE%D0%B4%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%D0%BD%D0%B8-%D0%BE%D0%BD%D0%BB%D0%B0%D1%98%D0%BD-%D0%BC%D0%B5%D0%B4%D0%B8%D1%83%D0%BC%D0%B8-%D0%BD%D0%BE%D0%B5%D0%BC%D0%B2%D1%80%D0%B8-2017-1.pdf>

239. <https://znm.org.mk/povik-za-prikлучuvane-vo-registarot-n/>

240. Richliev, Z. "Recommendations for increasing the integrity and professionalism of online media", Association of Journalists of Macedonia, 2016, p.5. See: <https://star.znm.org.mk/wp-content/uploads/2016/03/%D0%9F%D1%80%D0%B5%D0%BF%D0%BE%D1%80%D0%B0%D0%BA%D0%B8-%D0%B7%D0%B0-%D0%B7%D0%B3%D0%BE%D0%BB%D0%B5%D0%BC%D1%83%D0%B2%D0%B0%D1%9A%D0%B5-%D0%BD%D0%B0-%D0%B8%D0%BD%D1%82%D0%B5%D0%B3%D1%80%D0%B8%D1%82%D0%B5%D1%82%D0%BE%D1%82-%D0%B8-%D0%BF%D1%80%D0%BE%D1%84%D0%B5%D1%81%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0>

additional regulation of the online sphere will lead to excessive regulation. The guild understands the media best.^[241] However, this is true only if the journalists' association is united and possesses integrity in the face of political-party influences, and such a climate cannot be said to exist here. In summary, the legal gap regarding the oversight of online media in media laws must be filled on the ground with intensive education of all stakeholders in public communication about the role of online media, their rights and responsibilities, as well as existing legal regulations.

Apart from “self-regulation,” there are also other mechanisms. Policies for revealing the “true, real identity” of hate speech content creators on the internet aimed at suppressing hate speech through the “network” are not a guarantee that they will deter the perpetrators, considering that determined wrongdoers can still find ways to conceal their identity. Therefore, private platforms should remain in automatic mode to allow for anonymity.^[242] However, any measure in the already extensively expanded internet is not easy to implement. There have been unsuccessful attempts in the past.^[243]

An interesting tool within internet social networks is the procedures for reporting content that incites hatred. While these procedures are ongoing on social networks such as Facebook and YouTube, the content is suspended, and if the management of these companies decides that the report was unfounded, the same content is reposted. On YouTube, a user who has had their report rejected loses the right to report again for 60 days.

However, when it comes to hate speech, there are criticisms regarding Facebook's handling it, suggesting that it reacts inadequately and indecisively. There has even been a decision by the German Office of Justice to impose a fine of 2 million euros on Facebook for “failure to meet transparency requirements in resolving complaints about

241. <https://novatv.mk/obid-za-stavane-kraj-na-haosot-na-internet-mediumite-koj-se-plashi-od-samoregulatsija/>

242. Citron, Op. cit., p. 28.

243. Thus, in 1995 a participant in the digital space under the pseudonym: “Lambda MOO” proposed new legislation entitled “Hate Crime”, which would impose penalties on those who would act by harassing others on the basis of racial difference. After the petition was launched, those who refused to sign it used the “argument” that the proposed legislation was invalid because victims were free to conceal the fact of their race. Source: Ibid, p.78

hate speech” and for “incomplete information regarding the language skills and training of the staff responsible for processing hate speech complaints” in relation to the social network’s report for the first half of 2018.^[244] It should also be noted that Facebook is an American company with an American more-free “understanding” of what constitutes hate speech, and recently they made a statement that neo-Nazi groups could remain on the platform because it was determined that they did not violate community standards.^[245] The same happened in 2022 regarding Ukrainian neo-Nazi organizations, such as “Azov.”^[246] However, it appears that the company has inconsistent stances, as in 2020 there was news that Facebook would test algorithms for racial discrimination and that teams of experts were formed to address “equality” within the company and within Instagram,^[247] which is owned by Facebook.^[248]

In 2022, the situation escalated with an increased number of terrorist attacks, prompting the implementation of the EU regulation from 2021. This regulation dictates that companies such as Facebook and YouTube must remove terrorist content within one hour of its identification or risk significant fines. In the case of systematic violations, companies may be fined up to 4% of their annual revenue. This applies to all companies providing internet services within the bloc, regardless of whether they are located in the EU.^[249] Regarding the implementation of other techniques to combat online hate speech, there are proposals from some theorists suggesting that the anonymity accepted automatically by social media platforms could become a privilege that could be revoked if a user violates internal rules regarding hate speech.^[250]

A measure of protection against the incitement or apologia of acts of hatred through the internet is, of course, the dissemination of truthful facts and messages of tolerance through the same medium. Information

244. <https://nezavisen.mk/fejsbuk-kaznet-so-dva-milioni-evra-poradi-govor-na-omraza/>

245. Source: <https://sdk.mk/index.php/magazin/fejsbuk-tolerira-stranitsi-na-neonatsisticki-grupi-bidejki-ne-gi-prekrshuvaat-negovite-standardi/>

246. <https://antropol.mk/2022/02/28/fejsbuk-dozvoli-velicenje-neonacisticki-azov-ukraina/>

247. Instagram targets people through photography, and those who use it are usually under the age of thirty-five.

248. <https://nezavisen.mk/fejsbuk-kje-go-testira-algoritmot-za-rasna-diskriminacija/>

249. <https://www.politico.eu/article/online-platforms-to-take-down-terrorist-content-under-an-hour-in-the-eu/>

250. See Citron, p.239

cascades should be precisely designed to overcome harmful information or calls in search engines.^[251]

It has already been mentioned that the danger of people behaving violently in the virtual space lies in the characteristics of the internet itself, which it provides: anonymity, mobilization of groups, and group polarization. Other characteristics, such as Google bombs^[252] and cascading (harmful) information, increase the likelihood of causing harm. However, these same characteristics can also serve for positive purposes. Thus, anonymity allows people to be more honest, and information cascades can contribute to broad and rapid education. The internet is the “fuel” for human voice and productivity. That is precisely what attracts millions of people, its users.

In summary, internet media should not hide behind the euphemism of the word ‘media’; they should not abuse their position to become cold electronic weapons of hate ideas. For a start, they should not silence police efficiency, which would discourage criminals. The media space should be used to spread the message that modesty is a virtue. It is time to create online campaigns titled ‘Don’t say on the internet what you wouldn’t say to someone’s face.’^[253] Similar campaigns have been conducted in neighbouring countries (Bosnia and Herzegovina).^[254] This

251. Such was the case with the police-killed dissident Khaled Said in the Arab Spring in Egypt in 2010, when a photo of his tortured, dead body was seen by millions of people in the face of fake news from the authorities who claimed that he had strangled himself by ingesting hashish, and for only 6 months, his Facebook page “We are all Khaled Said” had 473,000 supporters. On the same page, benchmarks were posted for locations and times where the protests would take place. These numerous protests resulted in the fall of the authoritarian rule of former President Hosni Mubarak. Source: Ibid, p.68

252. Occurs when the prominence of certain websites over others increases based on the intensity of traffic to those websites. This is also achieved when individuals link to certain websites with so-called “anchor texts”.

253. Professional organizations such as the International Federation of Journalists, the International Press Institute and the International Association of Publishers, which have comprehensive information on the state of media freedom and quality in various countries and regions of the world, help to create such a media space. Source: <https://www.ifj.org/who/about-ifj.html> (11.09.2020).

254. “You are not invisible” campaign which included revealing IP addresses and MAC addresses and prosecuting people who disturb the public with their comments and spread hate speech, harming individuals and especially harming the reputation of professional Internet portals. Source: Paper by Jigal, S. “Social connection and involvement in dealing with hate speech”, SEMM, 2021, p.9. Available at <https://semm.mk/dokumenti/publikacii/909-opshtestvenotopovrzuvanje-i-vkluchenosta-vo-spravuvanjeto-so-govorot-na-omraza> (25,05,2023).

is a political strategy that should enable non-violence and tolerance to be long-lasting. In this case, modesty should not be understood as weakness but as the antithesis of arrogance and as a quality of realistically assessing one's limits.^[255]

One of the goals, however, of law enforcement authorities should be the ability to differentiate between: critically free speech; defamation and slander compared to hate speech as a criminal offense; new modalities and emerging forms of hate speech; procedural actions, responsibility, and jurisdiction regarding internet hate speech; the accessibility and effectiveness of mechanisms for regulating and self-regulating digital media concerning hate speech. The report also highlighted the problem of identifying hate speech, especially when it comes in the “camouflage” of euphemisms and from the “pens” of skilled journalists and bloggers. Perhaps that's why reactions from law enforcement authorities are sometimes delayed and confusing. However, these authorities are just a part of the mosaic. The response of states must be systemic, through a spectrum of actions by a greater number of authorities with different jurisdictions. The state must take into account and establish a mechanism for preventing hate speech in cooperation with the non-governmental sector.

So, the internet does not have to be an enemy of the police. It can be an ally. Social media can be powerful tools for monitoring events and/or individuals for intelligence purposes. It should be emphasized that so-called open sources of information (OSI) refer to publicly available information freely published by individuals or groups on the internet and accessible without the need to enter restricted areas of the global internet network.^[256]

For North Macedonia, there are no official data regarding cyberbullying, which often manifests itself through hate speech, but the fact is that such occurrences exist. To address this issue, an initiative was taken in the NGO sector to educate citizens about the existence of “cyber-violence” (a term adopted locally), although such incidents are

255. Keane, J., “Violence and democracy”, Cambridge University Press, 2004, pp.204-205.

256. The fact that every minute of the day Twitter users send 347,222 tweets speaks for how extensive the investigations dealing with social networks can be. Instagram users, on the other hand, click “like” on 1,736,111 images. Source: Stern, J./Berger, J.M, Op. cit., 34.

limited, primarily taking the form of “pamphlets” for quick awareness of the phenomenon.^[257] However, most recently, a significant achievement has been the introduction of the new criminal offense of “Stalking” (Article 144–a) through amendments to the Criminal Code in 2023.^[258]

The introduction of this criminal offense represents a display of political will to address the problem after a long period because the core of the issue has been known to the Macedonian professional community for quite some time.^[259] As Sasho Ordanoski would say: “Hate speech rarely appears without genuine social conditions in which group hatred objectively exists. Its suppression is not primarily a matter of law enforcement but a socio-political issue. Therefore, politicians are still the biggest source of incitement to hate speech in public, but also the biggest resource – along with civil society – for its condemnation and discouragement.”^[260]

When it comes to the registration and processing of data regarding online hate speech cases, this also involves conducting statistical operations, as previously mentioned when discussing how state authorities can implement this using existing legislation. However, due to the specificity of the digital space, it would be beneficial in this case to use sophisticated tools. This is because relying solely on the technique of searching (Googling) for a “keyword”^[261] has proven to be insufficient (given that communication often involves metaphors, sarcasm, or irony, and a significant number of statements have contextual or

257. See: Brochure “Cyberviolence...is violence!”, Metamorphosis, Skopje, 2011.

258. Official Gazette of RNM No.36/2023.

259. The question arises as to whether amendments need to be made to the parliamentary rules of procedure in order to introduce a monetary fine for a Member of Parliament if they engage in hate speech within the Legislative Assembly. Such a decision would be similar to that of the European Parliament in Luxembourg, where a penalty exists for such an offense. Additionally, it raises the question of whether the Committee on Human Rights and Freedoms in the Assembly of North Macedonia could provide assistance by continuously monitoring, examining, and analyzing the implementation of ratified international acts regulating protection against hate speech. In the meantime, it is expected that Members of Parliament will adhere to the provisions of the Code of Conduct that relate to mutual respect, objectivity, and dignified communication with other Members of Parliament and the public.

260. Electronic edition: “FREEDOM OF EXPRESSION AGAINST HATE SPEECH IN THE MEDIA IN MACEDONIA” Institute for Communication Studies - High School of Journalism and Public Relations, Skopje, 2018, p.9, Source: <https://iks.edu.mk/attach/Govor-na-omraza-vo-mediumite-vo-Makedonija-rezime.pdf>

261. Poljak, Op. cit., p.2736.

semantic specificity). Therefore, it is necessary to consider how artificial intelligence (AI) can be used as a tool for cognitive recognition of non-verbal communication processes by identifying emotional sentiment in verbal and non-verbal expression.

RECOMMENDATIONS

In regard to education:

- Printing of manuals and other supplementary educational materials for the needs of practitioners which will address the issue of identifying hate speech, especially when it comes in the form of euphemisms and is concealed by the expertise of journalists and bloggers.
- Training for representatives of the Commission for Prevention and Protection against Discrimination, Agency for Audio and Audiovisual Media Services, Public Prosecutors Offices, Ministry of Exterior Affairs, journalists, parliamentarians, political party officials, and religious leaders for their additional specialization in the field of combating offline and online hate speech.
- Additional forensic and criminological training for members of the Ministry of Interior on how to gather evidence in cases of hate speech from online sources, starting from the simplest approach – using open sources of information (OSI), through the use of tools offered by social media on the internet, and up to the use of the 24/7 contact network established under the Cybercrime Convention.
- Within the framework of the Ministry of Education and Science, it is necessary to organize school competitions in “media literacy,” in which the phenomenon of “hate speech” is already included in the program, and symbolic awards and recognitions should be given to successful students from primary schools.

- Introduction of specific educational content at the secondary education level, which will relate to “media literacy,” with a special focus on the phenomenon of freedom of speech and its correlate - hate speech, similar to what exists at the “primary education” level, but suitable for the age of high school students.
- Encouragement and support for further scientific and activist research on the phenomenon of online hate speech, using the most modern tools such as AI.

In regard to civil society sector:

- Action against the “dark figure” of hate speech offenses of a misdemeanor nature, with continuous reporting of such incidents at sports events and parallel cooperation in that direction with the associations of fan groups.
- The state must take into account and establish a mechanism for the prevention of hate speech in cooperation with the civil society sector, and such activities should be registered. For this purpose, the “Network against Hate Speech,” formed by state and CSOs in 2019 and which has already issued a declaration with similar content, should be utilized. On the other hand, there is also a need for greater mobilization of the civil society in the fight against online hate speech, again using the “Network against Hate Speech,” which could be expanded to involve other CSOs dedicated to this issue.
- It is necessary to introduce mandatory state registration of religious preachers in order to prevent sermons by religious figures that are filled with hate speech.

In regard to media:

- Creating an online and media campaign titled: “Don’t say online what you wouldn’t say to someone’s face.” To establish such a media space that can serve as an example for broader use, professional assistance from international journalistic organizations should be sought.
- Regarding the “Registry of Professional Online Media” expand the mandatory criteria with a new criterion - there should be an obstacle to entry into the registry if the responsible person for the online media has a legally imposed penalty - Prohibition of practicing a profession, activity, or duty according to Article 38-b of the Criminal Code.
- Use the public broadcaster - MRTV for public campaigns that would include specialized regular segments for detecting hate speech in the country and broadcasts similar to “Fact checkers” concerning hate speech, similar to those shown on major public (state) European television services. Additionally, MRTV could have periodic talk shows where instances of hate speech are reported, followed by public debates with citizen contributions, in the style of morning programs hosted by major private TV networks in the Republic of North Macedonia.
- Regarding the media sphere and professionalism, as an example of balanced journalism that avoids bias and ethnic or other hatred, there is a need in crime news sections not to label perpetrators with an emphasis on their ethnicity as a prefix. Instead, if they are foreigners, there should be a suffix at the end of the headline that clarifies the nationality of the perpetrator, such as a citizen of that “extraterritorial” country.

In regard to executive authorities:

- For easier detection of hate speech offenses (criminal offenses and misdemeanors) and the collection of verbal evidence, there is a need for newly hired psychologists who would work and assist the inspectors of the Ministry of Interior (Mol);
- In the work of the Criminal Code of the Republic of North Macedonia, the Agency for Audio and Audiovisual Media Services, the Interdepartmental Working Group of the Government, MARnet, and the Sector for Criminal Offenses and Digital Forensics at the Ministry of Interior, the introduction of methodologically sustainable and technologically supported mechanisms for monitoring and measuring hate speech in the Macedonian cyberspace and the possibility of its categorization and statistical processing (geographical, age groups, thematic, etc.) should be introduced, enabling appropriate forecasting and trend analysis;
- Urgent resolution of the gap in the Ministry of Interior regarding the registration and processing of data on hate speech offenses, whereby in the Skopje Unit for Criminal Intelligence Analysis and the units for criminal intelligence analysis in the cities in the interior of the country, the technical insertion of the opinions of the members of the criminal offenses as separate columns in electronic tables (not just the members, as it is now) where evidence of committed offenses by these bodies is kept. The specific and precise legal qualifications should then be confirmed or corrected by the public prosecutor's office during the criminal procedure;
- Due to the inhibition of victims of hate speech offenses in reporting these offenses to the competent authorities (which consequently results in a high "dark figure" for this type of crime),

it is necessary to popularize the “red button” at the Ministry of Interior, meaning to establish a specific telephone number, in a similar manner as the campaign to popularize the phone number for reporting corruption from some time ago.

- The Interdepartmental Working Group within the Government needs to expand its scope to include other severe cases of hate speech in our society, in addition to those identified in the “Second Bilateral Protocol for the Implementation of the Agreement with Bulgaria on Good Neighborly Relations and Friendship from 2017” and then take the initiative to develop a future National Strategy to combat disinformation and hate speech.
- The monthly and annual reports of the Ombudsman need to include cases of registered hate speech offenses, even if it falls under the category of “disturbance.”
- Regarding MARnet, it is necessary to modify the contract it concludes with registrars, so that registrars can be obligated to require registrants to make statements that they will not practice hate speech on their websites; that they will be proactive in deleting such comments within a reasonable time frame, and that they will strive to meet the “Commitment Criteria” of the “Register of Professional Online Media.”
- A bylaw of the Agency for Audio and Audiovisual Media Services should be enacted for additional registration of “hate speech” and processing of such data, as well as for the formation of a special department for statistical management that is currently lacking.
- In the future, the Commission on Prevention and Protection against Discrimination should develop online tools to combat hate speech and provide legal assistance to hate speech victims (a portal and mobile applications for reporting hate speech, providing information on legal options, and offering legal and other advice to combat hate speech).

- The state and leaders of political parties should encourage public figures, such as party members, high-ranking officials, religious, economic, and societal leaders, to promptly and strongly condemn the use of hate speech. They should use alternative narratives and promote understanding among groups, including expressing solidarity with those targeted by hate speech. Members of parliament should also respect the provisions of the Code of Ethical Conduct related to mutual respect, objectivity, and dignified communication with other members of parliament and the public, while refraining from hate speech.
- The State Election Commission should take a more proactive role by issuing warnings and even taking preemptive measures regarding media outlets and party spokespersons to ensure they adhere to “balanced journalism” and avoid hate speech.

In regard to statistical challenges:

- Introduction of a centralized, functional, and unified administrative mechanism for registering hate speech, with the software and records of hate speech primarily located in the judiciary. This is because the court, in accordance with both the Criminal Code and the Law on Criminal Procedure, maintains the criminal records. The AKMIS system should be upgraded in the direction of registering such cases. Additionally, a separate database for hate speech offenses should be created, as these two phenomena require different responses.
- State entities that should contribute to the registration of hate speech offenses, if they do not have sufficient capacity for it, should be able to use such services from the private sector through service agreements in accordance with the positive law of North Macedonia.

- The statistics maintained by the State Statistical Office include the judiciary, but in the so-called electronic database “Makstat,” there should be specific statistics regarding hate speech offenses as a category of criminal offenses.
- There is no direct legal obligation for MARnet to register hate speech, although it is required to “maintain a database and process data” without specific designation of what data to work with. In this regard, there should be guidance and assistance from the Ministry of Public Administration and Information Society, which oversees MARnet’s activities in accordance with Article 19 of the MARnet Law.
- The state should regularly publish reports containing comprehensive information and statistical data on internet hate speech, including content restrictions and requests from state authorities to content removal platforms based on the fact that it involves hate speech. State reports should contain, to the extent possible, information on: the protected characteristics involved; different forms of hate speech; disaggregated statistical data on cases handled by the police, the prosecution, and the judiciary under criminal law, including the outcomes of investigations, charges, judgements, and content restrictions; and cases handled by the civil and administrative courts.

In regard to the judicial authorities:

- State authorities should respect the provisions of the Law on Free Access to Information and ensure transparency and openness in the activities of information holders. They should enable both individuals and legal entities to exercise the right to free access to public information, even in cases involving criminal prosecution for hate speech (limited and in compliance with the principle of maintaining the confidentiality of investigative proceedings).

- In practice, judges handling criminal cases involving hate speech should take a broader perspective when determining sanctions for committed offenses. They should consider the option of justifying alternative measures, such as probation with protective supervision and community service.

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