

# Analysis on the legal framework

in North Macedonia

# on regulating hate speech



# ANALYSIS ON THE LEGAL FRAMEWORK IN NORTH MACEDONIA ON REGULATING HATE SPEECH

**Publisher:**

**Helsinki Committee for Human Rights represented by the president  
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**Skopje, 2023**



Funded by the  
European Union



Заякнунане на националните  
заштитни механизми против  
говор на омразва во РС Македонија



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# INTRODUCTION

The hate speech trend in the Republic of North Macedonia is extremely concerning, and to a large extent, remains unchecked. Ethnicity, sexual orientation, and gender identity are the main grounds for prejudices, and most victims and perpetrators are young people. Hate speech, including racism and homophobia/transphobia, is often used in the context of nationalist discourse, where ethnic, religious, and sexual minorities, as well as moderate politicians and human rights activists, are labeled as traitors and foreign agents. Hate speech by politicians remains common.

As in many other countries, the internet and social media have become the primary platform and source of hate speech, so racist and homophobic/transphobic hate speech is on the rise, especially through electronic forms of communication. Anonymous as well as non-anonymous inflammatory comments are predominantly present on social networks and in user-generated content, such as the comment sections of online news portals. The lack of willingness on the part of the owners of these portals and internet service providers to address this issue contributes to the persistence of hate speech.

Hate speech is particularly concerning because it often marks the first step towards real violence. An appropriate response to hate speech involves measures taken by the authorities responsible for law enforcement (criminal and administrative penalties, civil proceedings), as well as other mechanisms to address its harmful consequences, such as self-regulation, prevention, and counter-speech.

The Criminal Code lists several criminal offenses related to hate speech, including those committed through the internet. The Law on Audio and Audio-visual Media Services prohibits the broadcast of media content that incites or spreads discrimination, intolerance, or hatred. The Law on Protection and Prevention of Discrimination prohibits incitement to discrimination and harassment based on discriminatory grounds.

The purpose of this analysis is to examine the existing legal framework regulating hate speech and its adequacy in effectively combating this phenomenon, while also aligning with international agreements of the United Nations and the Council of Europe, as well as other relevant instruments for setting standards. This analysis utilizes the findings and recommendations of monitoring bodies, particularly the Council of Europe's Recommendation CM/Rec(2022)16 on combating hate speech and the "General Policy Recommendation No. 15 on Combating Hate Speech" by the European Commission against Racism and Intolerance (ECRI), as well as broader international and European human rights standards. The analysis also includes reports from non-governmental organizations active in this field, such as the Helsinki Committee for Human Rights and ILGA Europe. Additionally, the analysis encompasses comparative examples from other countries regarding hate speech legislation, especially in the context of addressing hate speech on the internet.

The analysis will be structured into two parts:

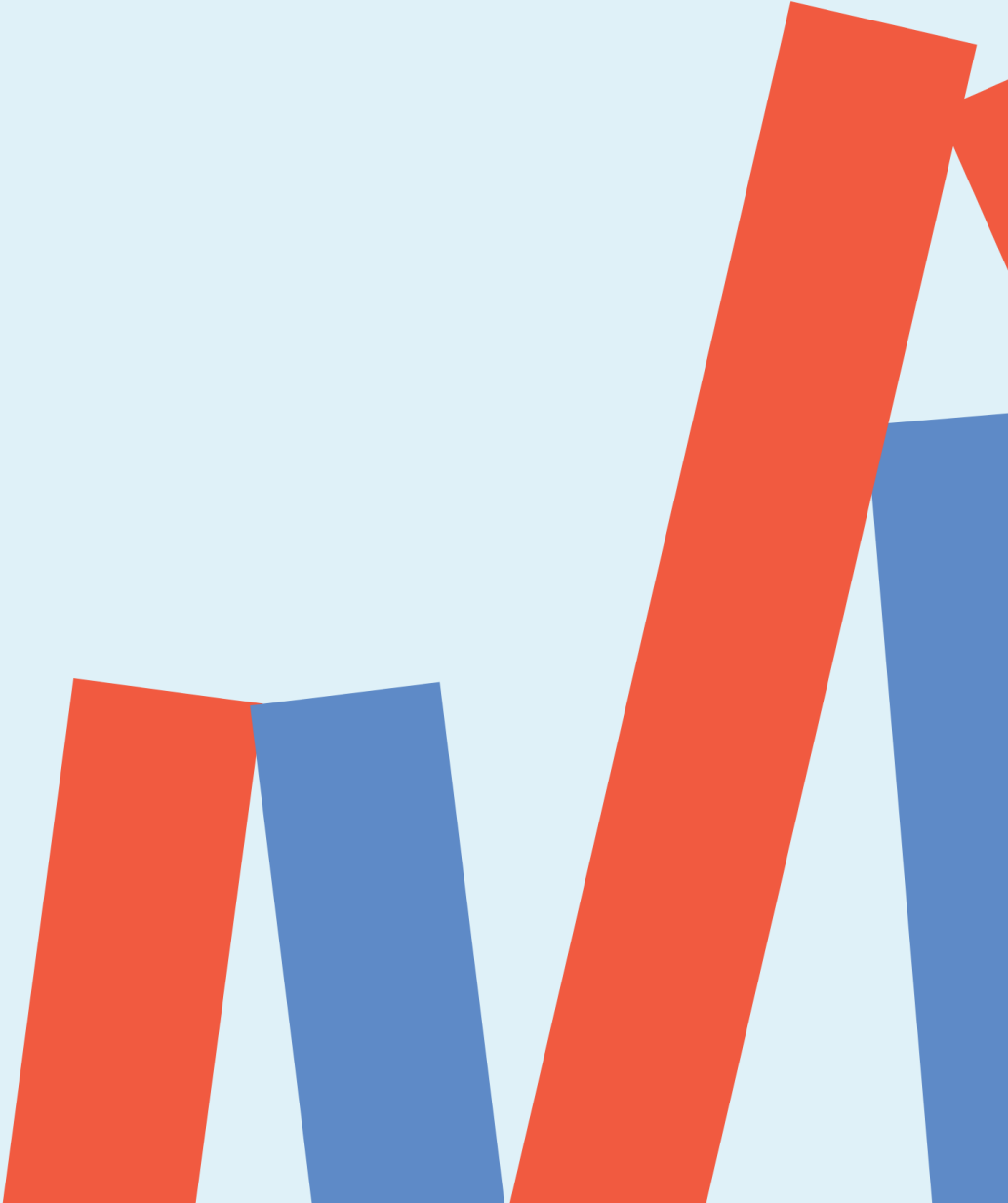
## **I. Conceptual Framework of Hate Speech and International Standards**

**and**

## **II. National Legislation on Hate Speech (criminal law provisions, civil and administrative law provisions).**

The first part will examine the conceptual understandings of hate speech and the international standards that relate to national legislation on hate speech. Special attention will be given to international standards and European acts concerning national legislation regulating hate speech on the internet.

The second part will focus on the legal framework for hate speech in North Macedonia, specifically the criminal law, civil law, and administrative law provisions. Detailed analysis will be conducted on the hate speech provisions contained in the Criminal Code, the Law on Prevention and Protection against Discrimination, and the Law on Audio and Audio-visual Media Services of North Macedonia. The goal of this section is to analyze the respective legal regulations and assess their adequacy in effectively addressing hate speech by institutions. It will also offer recommendations in this regard. These recommendations are based on theoretical conceptual understandings of hate speech, international standards for addressing it through the legislations of states as outlined in the first part, as well as specific recommendations from international and European bodies in this field directed at North Macedonia and the opinions of experts in the field.





I.

# CONCEPTUAL FRAMEWORK AND INTERNATIONAL STANDARDS

1. HATE SPEECH AS A CONCEPT

2. INTERNATIONAL STANDARDS FOR THE NATIONAL LEGAL  
FRAMEWORK ON HATE SPEECH

2.1. Criminal Law

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# 1. HATE SPEECH AS A CONCEPT

Despite the frequent use of this term, there is no universally accepted definition of hate speech. Instead, hate speech is presented as a multi-layered concept encompassing various forms of hatred and harmful expressions typically directed towards groups of people with specific characteristics, such as “race,” ethnic origin, religious affiliation, or sexual orientation. Racial and ethnic groups are typical examples of the types of groups protected by international and national hate speech provisions, but this protection has also been extended to religious groups and, more recently, to the LGBT population and persons with disabilities.<sup>[1]</sup>

Therefore, the concept of hate speech functions as a broad umbrella term for various forms of communication that denigrate individuals based on their affiliation with a specific identity group and includes a range of negative discourses that promote hostility. In practical terms, all racist, xenophobic, homophobic, transphobic, sexist, and other related forms of identity-based offensive expression could be categorized under this concept.<sup>[2]</sup>

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1. Unlike in Western countries where hate speech refers to most immutable and essential characteristics (racial, religious, gender, sexual orientation or disability), internationally, the focus is still primarily on racial and ethnic divisions. Global Regulations on Online Hate Speech Content: Where We Stand in 2022, ActiveFence, [Global-Regulations-on-Hate-Speech-Content\\_-Where-we-stand-in-2022.pdf](#).

2. Elena Mihajlova, Hate Speech and Cultural Diversity, Templum, Skopje, 2010, p.50-51.

In North Macedonia, there is still a general conceptual problem with understanding hate speech, which does not sufficiently differ from acts of personal insult and defamation and does not focus on inciting hatred and discrimination against specific identity groups, such as ethnic, religious, or sexual minorities.<sup>[3]</sup>

Insult and defamation are social wrongs because of the harm they cause to the victim in the eyes of others. They damage their social status and harm their reputation. Unlike insult and defamation, hate speech devalues the individual because of a characteristic that should not be perceived as socially unacceptable (“race,” gender, ethnic origin, religion, sexual orientation, etc.). It transforms the key components of their self-concept, such as gender, sexual orientation, or culture, into objects of ridicule and attack—meaning their self-respect is violated. For example, the statement “Politicians are greedy, money-hungry, evildoers” is a statement that may harm the status or reputation of a politician. The same statement directed towards an identity group, such as “All Jews are greedy, money-hungry, evildoers,” can have entirely different effects as it contains the devaluation provoked by hate speech.<sup>[4]</sup>

Although the recognition of hate speech has significantly improved over the past few years, primarily as a result of the activities of international organizations and civil society, further efforts are needed to address conceptual misunderstandings and clarify that not all hatred constitutes hate speech. In addition to training relevant authorities to deal with hate speech, appropriate formulations of legal

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3. See ECRI Report on “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), adopted on 18 March 2016, p.17, available at [ECRI\\_report\\_FR \(coe.int\)](#).

4. See more in E. Mihajlova, J. Bachovska, T. Shekjerdjiev, Freedom of expression and hate speech, Skopje, 2013. Available at: <https://www.osce.org/files/f/documents/e/8/116610.pdf>.

provisions reflecting European and international standards will be crucial in this direction.

## Definitions of Hate Speech

As mentioned earlier, hate speech does not enjoy a universally accepted formulation, and this is a result of two main factors, namely: different interpretations among countries or regions regarding freedom of speech and mutually connected differentiations in the conceptualization of harm. As emphasized, hate speech is in a complex relationship with freedom of expression and freedom from discrimination, as well as concepts of dignity, freedom, and equality.<sup>[5]</sup>

Due to the absence of a legally binding definition of hate speech at the European or international level, the legal definition of hate speech in relevant national laws varies at the moment and reflects the scope, prevalence, and impact of specific types of hate speech in different societal contexts. This situation is in line with the principles of proportionality and necessity to minimize measures for criminalization to the extent necessary to combat unlawful harm. However, EU member states are encouraged to continue the ratification and implementation of international instruments (such as the United Nations International Convention on the Elimination of All Forms of Racial Discrimination<sup>[6]</sup>, the International

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5. See Leandro Silva, Mainack Mondal, Denzil Correa, Fabricio Benevenuto, 'Analyzing the Targets of Hate in Online Social Media' Proceedings of the Tenth International AAAI (Association for the Advancement of Artificial Intelligence) Conference on Web and Social Media (2016) 688, cited at: Natalie Alkiviadou, Jacob Mchangama and Raghav Mendiratta, Global Handbook on Hate Speech Laws, Justitia and the authors, 2020, p.3

6. International Convention on the Elimination of All Forms of Racial Discrimination, [International Convention on the Elimination of All Forms of Racial Discrimination](#) | OHCHR

Covenant on Civil and Political Rights<sup>[7]</sup>, the Genocide Convention<sup>[8]</sup>, the Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed via computer systems<sup>[9]</sup>, as relevant, to ensure more homogeneous international standards and to avoid fragmentation, especially regarding the prevention and combating of hate speech on the internet. EU member states are also bound by instruments such as the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.<sup>[10]</sup>

Furthermore, there are important international guidelines in this regard, such as those contained in the Council of Europe instruments for setting standards. Thus, the latest implicit definition of hate speech is contained in the Council of Europe Recommendation CM/Rec (2022)16 of the Committee of Ministers on combating hate speech, from 2022. In the Appendix to the Recommendation, hate speech is defined as **“any form of expression which promotes, spreads or justifies violence, hatred or discrimination towards a person or group of persons, or which belittles, on the grounds of real or attributed personal characteristics or status such as ‘race,’ color, language, religion, nationality, national or ethnic origin, descent, age, disability, gender, gender identity, and sexual**

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7. International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights | OHCHR

8. The Convention on the Prevention and Punishment of the Crime of Genocide, (Genocide Convention), [United Nations Office on Genocide Prevention and the Responsibility to Protect](#)

9. Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 2003, [First Additional Protocol - Cybercrime \(coe.int\)](#)

10. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, [EUR-Lex - 32008F0913 - EN - EUR-Lex \(europa.eu\)](#)

## orientation.”<sup>[11]</sup>

A similar definition is provided in ECRI’s General Policy Recommendation No. 15. Hate speech, for the purposes of this Recommendation, encompasses the use of one or more specific forms of expressions, namely incitement, promotion or advocacy, of denigration, hatred or vilification against a person or group of persons, as well as any form of harassment, insult, negative stereotyping, stigmatization, or threat against such persons or groups; and any justification for all of these forms of expression, based on an open list of personal characteristics or status, which includes ‘race,’ color, language, religion or belief, nationality or national or ethnic origin, descent, age, disability, gender, gender identity, and sexual orientation.<sup>[12]</sup>

In this way, hate speech covers a wide range of different expressions. These include direct and public incitement to commit genocide; incitement to hatred, violence, or discrimination; racist, xenophobic, sexist, and LGBTI-phobic threats and insults; denial, trivialization, and approval of genocide, crimes against humanity, and war crimes that courts have found to have been committed, and the glorification of persons convicted of having committed such crimes; calling for, promoting, or inciting in any form of denigration, hatred, or vilification of a person or group of persons; as well as any form of harassment, negative stereotyping, or stigmatization regarding such persons or groups; and the intentional dissemination of material containing such expressions.<sup>[13]</sup>

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11. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, 1680aada1b (coe.int)

12. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, [EUR-Lex - 32008F0913 - EN - EUR-Lex \(europa.eu\)](#)

13. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.18 1680aada1b (coe.int) and ECRI General Recommendation no.15, p.16-17: [ЕКРИ-Генерална-препорака-бр.15.-„Борба-со-говорот-на-омраза.pdf](#)

## 2.

# INTERNATIONAL STANDARDS FOR THE NATIONAL LEGAL FRAMEWORK ON HATE SPEECH

Developing comprehensive strategies to prevent and combat hate speech by the state also entails adopting a comprehensive and effective legal framework consisting of appropriately established provisions in criminal, civil, and administrative law. When national authorities do this, they should carefully balance the right to private life, the right to freedom of expression, and the prohibition of discrimination.

According to international and European standards, states should make distinctions between, first, the most serious cases of hate speech that should be prohibited by criminal law<sup>[14]</sup>; second, hate speech subject to civil and administrative law; and finally, offensive or harmful forms of expression that do not reach the threshold for legitimate restriction but may still invoke alternative responses.<sup>[15]</sup> Specifically, international

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14. Member States have a positive obligation under Article 8 of the Convention to protect victims of hate speech when it reaches a certain level or threshold of seriousness, including through criminal law (Delfi AS v Estonia, §§ 153 and 159; Beizaras and Levickas v Lithuania, § 125; Budinova and Chaprazov v Bulgaria, §§ 62). It cannot be excluded that hate speech with a certain level of intensity, and depending on the context, may also constitute inhuman or degrading treatment and thus violate Article 3 of the Convention (see more Kiraly and Demeter v Hungary, no.10851/13, 17 January 2017, § 41–42). Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.21-22 1680aada1b (coe.int).

15. See suggested typology of Article 19, ‘Hate speech’ explained: [A summary - ARTICLE 19](#)

law requires states to prohibit the most severe forms of “hate speech,” such as incitement to genocide and other violations of international law; the calling for discriminatory hatred constituting incitement to discrimination, hostility, or violence; the propagation of racist ideas or the dissemination of ideas based on racial superiority or hatred.<sup>[16]</sup> International human rights law allows states to restrict freedom of expression, provided that these prohibitions/restrictions are: 1) prescribed by law, 2) serve a legitimate purpose (such as the protection of the rights of others), and 3) necessary in a democratic society. This typically includes forms of hate speech that can be understood as individually targeting an identifiable victim.<sup>[17]</sup> Finally, there may be expression characterized by prejudice or raising concerns in terms of tolerance, but it does not meet the seriousness threshold that justifies its restriction. This does not prevent states from taking legal and policy measures to address fundamental prejudices and negative stereotypes

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16. It is punishable [...] direct and public incitement to commit genocide: Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect; Any propaganda in favor of war will be prohibited by law. Any conspiracy of national, racial or religious hatred inciting discrimination, hostility or violence shall be prohibited by law: Article 20 of the International Covenant on Civil and Political Rights International Covenant on Civil and Political Rights | OHCHR; The member states undertake in particular: a) to establish as a criminal offense any dissemination of ideas based on superiority or racial hatred, any incitement to racial discrimination as well as all acts of violence or causing such violence, directed against all races or any group of persons from another color or other ethnic origin, as well as providing assistance to racist activities, including their financing; b) to declare that they are illegal and to prohibit organizations and activities of organized propaganda and any other type of propaganda activity that incites and helps racial discrimination, as well as to declare that participation in these organizations or in their activities is punishable by law deed; c) not to allow public authorities or public national or local institutions to incite racial discrimination or to assist it: Article 4 of the International Convention for Elimination of All Forms of Racial Discrimination International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR

17. See Article 19 (3) of [International Covenant on Civil and Political Rights International Covenant on Civil and Political Rights](#) | OHCHR and Article 10 (2) of European Convention for Protection of Human Rights and Fundamental Freedoms, [European Convention on Human Rights \(coe.int\)](#)



arising from such expressions or on which it is based, or from maximizing the opportunities for all people, including public officials and institutions, to engage in counter-speech.

In this sense, the European Court of Human Rights states that criminal sanctions, including those against individuals responsible for the most serious expressions of hate or incitement to violence, may only be applied as a last resort. However, when actions constituting serious offenses are directed against the physical or mental integrity of a person, only effective criminal law mechanisms can guarantee adequate protection and serve as a deterrent. The Court also accepted that criminal legal measures are necessary for direct verbal attacks and physical threats motivated by discriminatory attitudes.<sup>[18]</sup> Less serious expressions should be dealt with under civil and administrative law. Cases that do not reach the minimum threshold for action under Article 8 of the European Convention on Human Rights should be addressed through non-legal measures, such as awareness-raising and education.

Legislation related to hate speech should contain clear and precise terminology and definitions rather than vague and general terms. The legal clarity of hate speech legislation, including the minimum threshold for criminalization, should allow individuals to regulate their behavior and anticipate the consequences of their actions. Furthermore, it should distinguish hate speech protected by freedom of expression and, finally, serve as a safeguard against abuse. Legal clarity also helps national courts develop consistent judicial practices. According to the case law of the European Court of Human Rights, it is of vital importance that provisions of criminal law directed against expressions that incite, promote, or justify violence, hatred, or intolerance clearly and precisely

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18. *Beizaras and Levickas v. Lithuania*, § 111

define the scope of relevant criminal offenses.<sup>[19]</sup>

Equally important is that legal regulation related to hate speech should not be abused, for example, to hinder public debate, silence political opponents, journalists, media, minority groups, or others contributing to public discourse, including critical voices. Legal and practical protective measures against the abuse of hate speech legislation, in addition to the aforementioned clear formulation of hate speech laws, include a transparent legislative process with consultation with stakeholders, rules of immunity for elected officials, a human rights-compliant framework for content moderation, regular evaluation of hate speech legislation, content moderation systems for internet intermediaries, and oversight by the media and academic community of cases of hate speech and possible abuses of hate speech legislation.<sup>[20]</sup>

Furthermore, states should ensure that their legal regulation empowers equality bodies, national human rights institutions, and civil society organizations with a legitimate interest in combating hate speech to provide assistance and represent those targeted by hate speech in legal proceedings and initiate legal actions related to hate speech, including where applicable, on their behalf. It is important to ensure that there are institutions that can represent or initiate legal action on behalf of those who are directly or indirectly targeted by hate speech but are afraid or unwilling to report and initiate legal proceedings themselves. Additionally, equality bodies and national human rights institutions should have a mandate to provide legal advice and assistance to those targeted by hate speech where appropriate and represent them before institutions, judicial bodies, and courts in accordance with national provisions.<sup>[21]</sup>

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19. See Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, [1680aada1b \(coe.int\)](#), p.23

20. Ibid

21. Ibid

Finally, to counter hate speech on the internet, states should provide clear and predictable provisions for effectively removing prohibited hate speech online under criminal, civil, or administrative law, along with procedural requirements for hate speech removal, compensation and appeal mechanisms, and full incorporation of transparency and proportionality principles. They should also establish by law effective measures to prevent its spread.

The Council of Europe instruments elaborate on the conditions necessary to fulfill the provisions of hate speech in the areas of criminal, civil, and administrative law, in accordance with international human rights standards. Due to their particular importance for our national context, a summary of these instruments will be provided below.

## 2.1.

# CRIMINAL LAW

As part of the state's positive obligation to protect those targeted by hate speech, it is necessary to criminalize the most serious expressions of hate speech. This serves not only the punitive function of criminal law but also sends a clear signal to potential offenders and society as a whole (the general preventive function of criminal law) that such expressions constitute criminal offenses. Specifically, while sanctions for serious instances of hate speech are desirable in themselves, such measures also have the additional benefit of emphasizing the unacceptability of hate speech in a democratic society. Therefore, such benefits should not be diminished by inappropriate qualification of the contested type of behavior. Thus, incitement to violence or threats of violence and other forms of content should be clearly established in national law based on national prevalence, relevance, and the seriousness of other forms of hate speech.<sup>[22]</sup>

## Circumstances requiring criminal liability

For specific hate speech to surpass the threshold for criminal liability, it must be of a more serious nature – namely, it should aim, or it can reasonably be expected to incite acts of violence, threats, hostility, or discrimination, while also being publicly disseminated.

According to ECRI General Policy Recommendation No. 15 on combating hate speech, it is a matter of criminal law in each state to determine how such liability will be prescribed.

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22. See Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, Explanatory Memorandum, para.54 [1680aada1b \(coe.int\)](#).

However, what is essential here is not only to meet the two factors mentioned above but also to have provisions that allow for liability for each of the different elements that qualify as hate speech for the purposes of the Recommendation.<sup>[23]</sup>

## Formulation of criminal offenses

When defining in its criminal legislation which expressions of hate speech constitute criminal offenses, the state should primarily consider relevant international binding and non-binding standards, especially those already mentioned: the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Genocide, the Additional Protocol to the Convention on Cybercrime, the 2008 EU Framework Decision on combating certain forms and expressions of racism and xenophobia through criminal law, the case law developed by the European Court of Human Rights, Council of Europe Recommendation CM/Rec(2022)16 on combating hate speech, and ECRI General Recommendations, such as Recommendation No.7 on national legislation to combat racism and racial discrimination, and Recommendation No.15 on combating hate speech, along with their explanatory memoranda.<sup>[24]</sup>

Therefore, states should specify and clearly define in their criminal laws which expressions of hate speech are subject to criminal liability, such as, for example: publicly inciting genocide, crimes against humanity, or war crimes; publicly inciting hatred, violence, or discrimination; racist, xenophobic, sexist, and LGBTI-phobic threats; racist, xenophobic, sexist,

23. [ЕКРИ-Генерална-препорака-бр.15, „Борба-со-говорот-на-омраза.pdf](#)

24. Most of the above standards focus on racist hate speech, however, some of them, as well as other international documents, call on member states to criminalize hate speech on other grounds, such as sex, sexual orientation or gender identity. For example, § I.A.1. of CM/Rec(2019)1 on preventing and combating sexism invites member states to implement legislative reforms and criminalize sexist hate speech, and ECRI's country monitoring reports and the Yogyakarta Principles (Principle 5B) recommend criminalization of hate speech based on sexual orientation and gender identity.

and LGBTI-phobic public insults under conditions like those specified for internet insults in the Additional Protocol to the Convention on Cybercrime; publicly denying, trivializing, or justifying genocide, crimes against humanity, or war crimes; and intentionally disseminating material containing such expressions of hate speech listed above, including ideas based on racial superiority or hatred.<sup>[25]</sup>

Additionally, it is essential that the relevant provisions be formulated in a clear and precise manner. Without such clarity and precision, there is likely to be legal uncertainty about the scope of the prohibited conduct.<sup>[26]</sup> Therefore, in accordance with ECRI General Recommendation No. 15 on combating hate speech, when formulating the relevant provisions, the definitions given for the various terms used in the interpretation of what qualifies as hate speech for the purposes of the Recommendation should be taken into account.<sup>[27]</sup> According to the case law of the European Court of Human Rights, it is of vital importance that the provisions of criminal law aimed at expressions that incite, promote, or justify violence, hatred, or intolerance clearly and precisely define the scope of the relevant criminal offenses. This also assists national courts in developing a consistent judicial practice.<sup>[28]</sup>

### Furthermore, when formulating the relevant provisions, it is

25. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.24-25 1680aada1b (coe.int)

26. This would support claims that there is an interference with freedom of expression that is not prescribed by law and consequently that there is a violation of Article 10 of the European Convention on Human Rights (which would potentially also apply to Article 7's prohibition of extrajudicial punishment) notwithstanding the fact that the imposition of a criminal sanction would otherwise be consistent with the right to freedom of expression.

27. ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.66 [ЕКРИ-Генерална-препорака-бр.15.-„Борба-со-говорот-на-омраза.pdf](#)

28. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.22-23 1680aada1b (coe.int)

crucial to avoid introducing other conditions for imposing criminal liability, such as those related to public order, the size of the audience exposed to hate speech, or the extent of the dissemination of the hateful speech. Such conditions may be relevant for assessing the risk of reasonable incitement but specifying them as separate elements of criminal liability creates additional barriers to securing a conviction.<sup>[29]</sup>

While the clarity and precision of the provisions are crucial, the specific linguistic expressions used in defining various forms of expressions qualifying as hate speech should still be sufficiently general to accommodate technological developments. Therefore, for example, they should not rely solely on well-known formulations and expressions (such as those found in print media and social networks) but should focus more on the essential character of the expression and be able to encompass other forms of expressions that may develop in the future.<sup>[30]</sup>

In addition to the relevant criminal law provisions related to hate speech, international standards also foresee an obligation for states to declare illegal and prohibit organizations that promote and incite racial discrimination. Furthermore, there is a need to introduce criminal liability for forming and leading groups that promote or support hate speech, participating in the activities of such a group with the intent to contribute to the use of hate speech, and intentionally inciting, aiding, or abetting the use of such hate speech or attempting to use hate speech. According to the International Convention on the Elimination of All Forms of Racial Discrimination, this is yet another obligation for states that can make an important

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29. ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.67 ЕКРИ-Генерална-препорака-бр.15.-, [Борба-со-говорот-на-омраза.pdf](#)

30. Ibid

contribution to the effective fight against hate speech.<sup>[31]</sup>

## Measures to prevent abuse of criminal prosecution

A particularly important issue is preventing the abuse of criminal-law provisions for hate speech. In order to prevent the risk of unjustified use of criminal liability for hate speech as a means of suppressing criticism of official policies, political opposition, and religious beliefs, it is necessary for the unacceptability of such use of criminal liability to be clearly derived from the conditions provided for the imposition of criminal liability. In this regard, it is recommended that this element be strengthened by introducing explicit provisions in the relevant laws stating that these criminal sanctions are not applicable to such criticism, opposition, or beliefs.<sup>[32]</sup>

## Sentences

The prescribed sentences for hate speech should take into account the serious consequences arising from the use of hate speech and the principle of proportionality. The consequences include not only the effects suffered by individuals who are the specific target of the hate speech

31. According to the jurisprudence of the European Court of Human Rights under Article 11 of the Convention, a state has the right to take preventive measures for the protection of democracy in relation to associations or movements. This can be done if a sufficiently immediate violation of the rights of others threatens to undermine the fundamental values on which a democratic society rests and functions (e.g. the coexistence of members of society free from racial segregation). Also, according to the jurisprudence of the Court, associations that are involved in activities contrary to the values of the Convention cannot enjoy the protection of Article 11 because of Article 17 which prohibits the use of the Convention in order to destroy or unduly limit the rights guaranteed by it. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.25, [Recommendation on combating hate speech + Memorandum - MKD \(PREMS 083822 GBR 2018\).pdf](#)

32. Ibid, p.68



but also the impact such use may have on other members of the group to which the respective individual belongs, as well as the harmful influence hate speech can have on society as a whole. The specific penalties that may be imposed should reflect these consequences.

Therefore, the prescribed sentences should be effective and deterrent in order to remedy the damage already caused and to discourage the further use of hate speech. Such penalties may include imprisonment, fines, or the seizure and forfeiture of the offending publication. Additionally, temporary loss of political rights or orders to visit one or more Holocaust memorial centers or orders to undertake activities for practical restitution of the harm caused to the individuals who were the target of hate speech could also be considered.<sup>[33]</sup>

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33. Ibid, p.69

## 2.2. CIVIL AND ADMINISTRATIVE LAW

In addition to criminal law, administrative and civil law represent another important legal means of protecting the rights of those targeted by hate speech. Therefore, states should ensure effective legal protection against hate speech under their civil and administrative law, especially in general misdemeanor law, anti-discrimination law, and law on administrative offenses. In cases of hate speech that do not reach the highest level of severity in terms of triggering criminal provisions, civil and administrative procedures may be the appropriate legal avenue for addressing hate speech. The two legal paths lead to different outcomes: while criminal proceedings generally lead to punishment, civil and administrative proceedings often result in compensation or injunctions against engaging in hate speech. Thus, civil and administrative proceedings are generally a less severe form of interference with the right to freedom of expression. At the same time, the rules of evidence and the level of proof required differ between the two methods, and it is often easier for the author of hate speech to be held accountable under civil and administrative law.<sup>[34]</sup>

### Circumstances requiring civil and administrative liability

In order to ensure that there is no unjustified interference with the right to freedom of expression, any liability should be limited to the most serious cases of hate speech, specifically

34. Ibid, p.26

those cases that aim to or could reasonably be expected to incite acts of violence, threats, hostilities, or discrimination against the individuals who are its target. Thus, to establish liability, it is not sufficient to merely demonstrate harm or loss as a result of a specific instance of hate speech;<sup>[35]</sup> the specific instance must also be of such seriousness as to warrant the imposition of such liability, namely, in the specific case, there must be an intention to incite or an imminent risk that this will occur.<sup>[36]</sup>

Under civil law, violations of dignity, psychological integrity, and reputation of an individual generally result in claims for compensation and court orders, often under general misdemeanor law and specific rules on state liability for violation of the right to protection of human dignity, reputation, and well-being. This protection is usually broader than that provided under criminal law because it covers a wide range of offenses, including insults and defamation, related to various prohibited grounds, even when such forms of hate speech do not constitute a criminal offense.<sup>[37]</sup>

## Formulation of hate speech in civil and administrative law

Unlike the provisions of criminal law concerning hate speech, comparative analyses indicate that specific provisions under general administrative law or state liability rules that would enable a more precise description of what expressions of hate speech are prohibited by law have not been developed. Certain expressions of hate speech may also be prohibited and defined as administrative offenses under media laws or electronic communication laws.

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35. [ЕКРИ-Генерална-препорака-бр.15.-„Борба-со-говорот-на-омраза.pdf](#)

36. Ibid.

37. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.26 [1680aada1b \(coe.int\)](#)

Hate speech may also fall under the definition of discrimination according to European and national anti-discrimination legislation, where the author treats the targeted individual differently from others in similar situations without objective and reasonable justification, or may constitute harassment as defined in anti-discrimination legislation.<sup>[38]</sup>

However, according to international standards, states should ensure that their anti-discrimination legislation is applied to all expressions of hate speech prohibited under criminal, civil, or administrative law to create a system in which all those targeted by hate speech can obtain legal assistance and, in particular, compensation for hate speech without having to appeal to law enforcement authorities. Through this clarification, individuals targeted by hate speech can also seek assistance from equality bodies, which should have an explicit mandate to address hate speech and the right to initiate legal actions either on behalf of the targeted individual or, where applicable, in their own name.

Furthermore, states should introduce the obligation in their legislation for public authorities or institutions and their representatives to avoid using hate speech, actively prevent it, and combat hate speech and its dissemination, while promoting the use of tolerant and inclusive speech. Such duties and encouragement to speak out against hate speech can be included in legislation or codes of conduct that regulate the behavior of public officials and civil servants.<sup>[39]</sup>

## Legal remedies

As stated in the Council of Europe's Recommendation on

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38. According to Article 2.3 of Directive 2000/43/EC, harassment will be considered discrimination within the meaning of the directive, when unwanted behavior related to racial or ethnic origin occurs with the aim or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or abusive environment, Ibid, p.27

39. Ibid

combating hate speech, states should provide that civil and administrative remedies for the violation of the prohibition of hate speech include compensation, deletion, blocking, court orders, and the publication of confirmations that a statement constitutes hate speech. Additionally, according to administrative law, these remedies can include fines and the revocation of licenses.<sup>[40]</sup>

Namely, the damage resulting from the use of hate speech in most cases is of a moral nature. However, there may be cases where those targeted by hate speech can demonstrate that they have suffered material harm (for example, cases where hate speech can be linked to job loss or loss of capability due to deteriorated health, etc.). Therefore, the law needs to clearly define the specific circumstances in which material compensation may be paid and the grounds under administrative and civil law for claiming such compensation. Hate speech may also harm the reputation of an entire community or group of people. However, even though specific individual damages do not necessarily have to be significant in all such cases, the possibility of requesting a statement that the reputation of members of the affected community or group of individuals has been violated and/or some symbolic compensation may be appropriate, and such legal remedies should be provided by law.<sup>[41]</sup>

In addition to compensating for damage, there are other legal remedies for addressing cases of hate speech that should be available according to national legislation. These remedies consist of removal, blocking of websites, publication of acknowledgments, banning dissemination, and orders to disclose identity. However, as mentioned above, since all

40. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.27, [Recommendation on combating hate speech + Memorandum - MKD \(PREMS 083822 GBR 2018\).pdf](#)

41. ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.56-57 ЕКРИ-Генерална-препорака-бр.15.-„Борба-со-говорот-на-омраза.[pdf](#)

these measures impede the right to freedom of expression, it is necessary to ensure that they are used only in cases where hate speech reaches a certain level of seriousness: namely, in cases where there is intent or a reasonable expectation that hate speech will incite violence, threats, hostility, or discrimination against those targeted by hate speech, and the respective measure is realistically necessary to correct the situation and is not broader than necessary.

Furthermore, in some cases, the possibility of certain facilities being exploited for the purposes of hate speech may be indicative of non-compliance with regulatory requirements. In such cases, consecutive administrative sanctions imply fines or the withdrawal of licenses or franchises.

States should also provide for administrative and other sanctions for the use of hate speech by political parties and other organizations, as well as by their members.<sup>[42]</sup> In these cases, there should be a two-fold response to the use of hate speech. First, there should be a provision for the withdrawal of financial and other forms of support from public authorities when political parties or other organizations use hate speech or when their members have used hate speech, and they have not sanctioned it.<sup>[43]</sup> Second, there should be a provision for the prohibition or dissolution of political parties or other organizations—regardless of whether they receive such support—when their use of hate speech is of a more serious nature, namely, when such hate speech aims or reasonably can be expected to incite violence, threats, hostility, or

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42. These measures should be taken both in relation to political parties and in relation to organizations that have a formal legal status and those that are of an informal or de facto character. – Ibid.

43. Thus, the request for a ban refers not only to grants, loans and other forms of financing the activities of political parties and other concerned organizations, but also refers to providing assistance by enabling the use of funds and premises, the ability to use staff and other types of practical help.

discrimination.<sup>[44]</sup>

International standards for the legal regulation of hate speech in this context emphasize the importance of judicial oversight when imposing civil and administrative liability. Namely, the need for the use of such powers to be subject to judicial authorization or approval reflects the essential role of the courts in exercising supervisory control and thereby ensuring protection against the potential for unjustified interference with the right to freedom of expression. In most cases, the execution of such powers should require prior approval from the court. However, it is also recognized that there may be urgent situations in which it is not appropriate to wait for a request for such approval before taking action. In such cases, judicial oversight can be achieved after the relevant authority has been exercised.<sup>[45]</sup>

Finally, to ensure that appropriate action is taken against cases of hate speech, it is necessary to expand the active standing to initiate appropriate proceedings—not only to the individuals targeted by hate speech but also to equality bodies, national human rights institutions, and interested non-governmental organizations. This reflects the idea that all these bodies can have a role in monitoring the use of hate speech. Moreover, these bodies may be in a particularly good position to provide arguments for the need to perform the duties and initiate the proceedings that will lead to the implementation of such duties. By providing specific provisions that enable these bodies to act in this direction, such duties could theoretically be transformed into practical and effective remedies that can be used against hate speech.<sup>[46]</sup>

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44. See ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.59-60 [ЕКРИ-Генерална-препорака-бр.15.-,„Борба-со-говорот-на-омраза.pdf](#)

45. Ibid, p.58-59

46. Ibid, p.56, p.59

### 3.

## GLOBAL REGULATIONS FOR ONLINE CONTENT WITH HATE SPEECH

Online hate speech is a rapidly growing phenomenon of significant proportions that puts pressure on states to find effective responses to mitigate the harm it causes. Faced with growing terrorism, racial tensions, and challenges of globalization, online hate speech has broad social and political implications for minority groups, such as refugees and immigrants, impacting democratic nations committed to the right to freedom of expression and equality. However, due to vast cultural differences and political inequalities, countries around the world support incredibly different regulatory systems to combat online hate speech. What can be observed is that, unlike the initial phase of internet governance characterized by decentralization of technological control and marginalization of the state's role, the beginning of the second decade of the 21st century completely departs from that liberal but sometimes anachronistic regulatory regime. This is evident through the multitude of recently enacted laws and regulations to combat online hate speech worldwide.<sup>[47]</sup>

Primarily, Europe leads in these legislative activities. The most well-known example is the German Network Enforcement Act (NetzDG) from 2017, which requires the removal of hate

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47. Ge Chen (2022) How equalitarian regulation of online hate speech turns authoritarian: a Chinese perspective, *Journal of Media Law*, 14:1, 159-179, DOI: 10.1080/17577632.2022.2085013



speech content within 24 hours of notification.<sup>[48]</sup> Platforms must also prepare biannual transparency reports for evaluation. Non-compliance risks fines ranging from 500,000 to 5,000,000 euros.<sup>[49]</sup> Italy's Regulation No. 157/19/CON from 2019 mandates video-sharing platforms to implement systems for detecting and reporting the distribution of discriminatory content based on ethnicity, sexual orientation, and religious beliefs. Platforms must also prepare quarterly transparency reports for evaluation. Non-compliance risks fines ranging from 10,300 to 258,000 euros.<sup>[50]</sup> Austria's Communications Platform Act from 2021 (inspired by NetzDG) requires platforms to remove illegal hate speech content from social media within 24 hours of notification (with a maximum of 7 days for complex cases). Non-compliance risks fines ranging from 10,000 to 58,000 euros.<sup>[51]</sup>

The approach of the European Union is based on the Council Framework Decision of 2008 on combating certain forms and expressions of racism and xenophobia through criminal law.<sup>[52]</sup> This regulation requires EU member states to make violence or hatred against any person or group (based on race, skin color, religion, descent, nationality, or ethnic origin) punishable by law.

48. [NetzDG - Act to Improve Law Enforcement in Social Networks \(gesetz-im-internet.de\)](#) It is this law that is the focus of debates on the regulation of online hate speech given its potential advantages and disadvantages.

49. Outside the EU, the NetzDG legislative model has found an echo in legislation in at least Australia, Belarus, Honduras, India, Kenya, Malaysia, the Philippines, Russia, Singapore, Venezuela and Vietnam. For an overview of these online hate speech laws, see Jacob Mchangama and Joel Fiss, *The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship* Ge Chen (2022) *How equalitarian regulation of online hate speech turns authoritarian: a Chinese perspective*, *Journal of Media Law*, 14:1, 159-179, DOI: 10.1080/17577632.2022.2085013

50. [ARTICLE 19 comments on new Italian regulation on 'hate speech' - ARTICLE 19](#)

51. *Global Regulations on Online Hate Speech Content: Where We Stand in 2022*, ActiveFence, [Global-Regulations-on-Hate-Speech-Content\\_-Where-we-stand-in-2022.pdf](#)

52. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, [EUR-Lex - 32008F0913 - EN - EUR-Lex \(europa.eu\)](#)

Additionally, the EU's Code of Conduct on countering illegal hate speech online from 2016<sup>[53]</sup> requires signatories (IT companies)<sup>[54]</sup> to remove “illegal hate speech” within 24 hours of receiving removal notifications. The Code of Conduct mandates IT companies to have community rules and standards prohibiting hate speech and establish systems and teams to review content reported for violating those standards. While the Code of Conduct has proven to be a crucial tool in fostering closer collaboration among key stakeholders in addressing hate speech, it remains insufficient in responding to the growing demand for greater accountability of social media platforms in combating hate speech due to their increasing influence, profits, and power.<sup>[55]</sup>

From here, building on the Code of Conduct, on July 5, 2022, the European Parliament adopted the new Digital Services Act.<sup>[56]</sup> As emphasized, the Digital Services Act represents a significant step forward in combating online hate speech and imposing greater responsibility on internet intermediaries for hate speech and other human rights violations on major social

53. The EU Code of conduct on countering illegal hate speech online, [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en)

54. The Code covers Facebook, Microsoft, Twitter, YouTube, Instagram, Snapchat, Dailymotion, Jeuxvideo.com, TikTok, LinkedIn, while Viber and Twitch has announced that it will join the Code of Conduct in 2022. The Code now covers 96% of the EU market share of online platforms that may be affected by hateful content.

55. More about the results of the seventh monitoring conducted in 2022, which show a decline in the results of companies in terms of reporting and acting on hate speech, see Tina Djakovic, Regulation and fight against hate speech in the European Union and in Croatia – an approach from a position of human rights?, Skopje, November, 2022 [Регулирање и борба против говорот на омраза во Европската Унија и во Хрватска – приод од позиција на човековите права? - EPI](#)

56. European Commission, The Digital Services Act: ensuring a safe and accountable online environment), available at: <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-servicesact-ensuring-safe-and-accountable-online-environment>) The Digital Services Act: ensuring a safe and accountable online environment (europa.eu),

media platforms. It has the potential to have a significant impact not only in EU member states but potentially in other countries as well.<sup>[57]</sup> The Act includes obligations for online intermediary services related to clear reporting and action systems, prioritized treatment of reports from trusted notifiers, feedback to users on their reports, and extensive transparency obligations. At the same time, it ensures that online platforms are not overly encouraged to control people's expression on the internet.<sup>[58]</sup>

Within the framework of the Council of Europe, on the other hand, Recommendation CM/Rec(2022)16 by the Committee of Ministers on combating hate speech offers detailed guidelines for states regarding legal regulation related to online hate speech. In this regard, it builds upon Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries of the Council of Europe<sup>[59]</sup> and the Guidelines on Content Moderation adopted by the Steering Committee

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57. Such looming regulations derive from doctrines of free speech protection and equality rights rooted in the heterogeneous contours of the constitutional and legal traditions of European liberal democracies. As noted, liberal democracy requires the limitation of public power, including that of the media, with respect to the potential infringement of individual rights. However, “media power” is different from state power in that it derives from civil freedom of free expression, and restricting the media in the same way that restrictions are imposed on public authorities can infringe on media freedom itself. As a result, digital media often enjoy greater freedom of speech and convey such freedom to their users. On the other hand, the protection of the right to equality could be disproportionately weakened if the potential conflicts between these two fundamental rights (right to freedom of expression and right to equality) cannot be reconciled in this new context. Ge Chen (2022) How equalitarian regulation of online hate speech turns authoritarian: a Chinese perspective, *Journal of Media Law*, 14:1, 159-179, DOI: 10.1080/17577632.2022.2085013

58. Tina Djakovic, Regulation and fight against hate speech in the European Union and in Croatia – an approach from a position of human rights?, *Skopje*, November, 2022 [Регулирање и борба против говорот на омраза во Европската Унија и во Хрватска – приод од позиција на човековите права? - EPI](#)

59. Council of Europe Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries [16808e2c50 \(coe.int\)](#)

on Media and Information Society (CDMSI) in May 2021.<sup>[60]</sup>

Recommendation CM/Rec(2022)16 for combating hate speech emphasizes the positive obligation of states to effectively protect individuals targeted by hate speech in the digital environment. According to this, states should ensure that their legislation addressing hate speech covers both non-digital and digital hate speech and contains clear and predictable provisions for the rapid and effective removal of prohibited hate speech online according to criminal, civil, or administrative law. Given the large volume of online hate speech and the need for swift action to prevent its widespread dissemination, states should ensure through their legislation that internet intermediaries contribute to fulfilling this positive obligation. Additionally, states should define and distinguish the roles and responsibilities of internet intermediaries, the duties, and responsibilities of state and non-state actors in addressing online hate speech in their legislation.

Therefore, states should develop a clear legal framework for preventing and combating online hate speech prohibited by criminal, civil, or administrative law. In their legislation on online hate speech, it is especially important to outline the roles and responsibilities of all stakeholders clearly and distinguish those belonging to state actors<sup>[61]</sup> from those of private actors.<sup>[62]</sup>

**States should establish mechanisms for reporting online hate speech to public authorities and private actors, including**

60. Guidance Note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation, CDMSI, [Guidance Note on Content Moderation - Freedom of Expression \(coe.int\)](#)

61. According to the Recommendation, state actors include police and prosecution services, regulatory authorities, independent national human rights institutions and equality bodies.

62. According to the Recommendation, private actors include the media, relevant internet intermediaries, self-regulatory bodies and civil society organizations, including so-called trusted flaggers (an individual or entity that is considered by the hosting service provider to have certain expertise and responsibilities in order to dealing with illegal content on the internet).

internet intermediaries, along with clear rules for handling such reports. Furthermore, states should legislate that internet intermediaries must take effective measures to fulfill their duties and responsibilities to prevent access to or dissemination of prohibited hate speech under criminal, civil, or administrative law. Important elements for fulfilling this obligation include the following: prompt processing of reports of hate speech; immediate removal of such hate speech;<sup>[63]</sup> respect for privacy and data protection requests; provision of evidence related to prohibited hate speech under criminal law; reporting cases of such criminal hate speech to the authorities; providing evidence related to criminal hate speech to law enforcement agencies based on an order issued by the competent authority;<sup>[64]</sup> addressing unclear and complex cases

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63. In this context, some member states have imposed an obligation on Internet intermediaries to withdraw content that is in violation of the law within 24 hours. On the other hand, such short timeframes may be insufficient to carefully assess cases that require extensive factual research or complex legal reasoning (obscure and complex cases). Longer time frames are defined for cases that often require a factual or legal in-depth assessment; member states also provide for the possibility for internet intermediaries to refer such complex or unclear cases to an independent regulatory body. This body can be a public authority such as a public media regulator, a human rights or equality body, an independent self-regulatory body organized by one or more internet intermediaries, or a co-regulatory body organized by public and private entities. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, Explanatory Memorandum, para 95, [Recommendation on combating hate speech + Memorandum - MKD \(PREMS 083822 GBR 2018\).pdf](#)

64. In a significant number of cases, online hate speech is removed, but the associated evidence is not secured and handed over to law enforcement. To remedy this situation, member states should specify that online intermediaries should provide evidence of online hate speech that may violate criminal, civil or administrative law (see § 2.3.6 of CM/Rec(2018) 2 on the roles and responsibilities of internet intermediaries). Member States should also clearly define the conditions under which they should hand over this evidence to law enforcement. The surrender of such evidence should be subject to a prior order from a competent authority. Data protection legislation and principles should be respected by all stakeholders in order to avoid excessive data processing. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, Explanatory Memorandum, para 96, [Recommendation on combating hate speech + Memorandum - MKD \(PREMS 083822 GBR 2018\).pdf](#)

that require further assessment by relevant self-regulatory or co-regulatory bodies or authorities, and providing the possibility of implementing temporary measures such as priority removal or contextualization in unclear and complex cases.<sup>[65]</sup> Additionally, procedures and conditions for removal, as well as related responsibilities and accountability rules imposed on internet intermediaries, should be transparent, clear, and predictable, and these procedures should be subject to appropriate oversight. They should guarantee users the right to an effective remedy through transparent oversight and timely, accessible, and fair complaint mechanisms, ultimately subject to independent judicial review.<sup>[66]</sup>

Finally, states should legislate an obligation for electronic media not to disseminate hate speech prohibited under criminal, civil, or administrative law. In this context, they should provide for an appropriate (legal) provision to restrict

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65. In unclear and complex cases, interim measures may be taken to prevent hasty removal of potentially legal content. Rather than being removed entirely, such content can be de-prioritized or contextualized. In this context, deprioritization would mean that the content moderator or the algorithm governing the distribution of content would give a lower priority to the content in question and thus lead to less widespread distribution. Contextualization means that the content is published with a notice indicating that the content in question may constitute hate speech. Deprioritization and contextualization can also be considered less serious interferences according to the principle of proportionality, pending the final decision of the responsible body of the platform or other mechanism. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, Explanatory Memorandum, para 97, [Recommendation on combating hate speech + Memorandum - MKD \(PREMS 083822 GBR 2018\).pdf](#)

66. It is equally important that legal and regulatory frameworks do not result in excessive compliance or discriminatory enforcement. This is particularly relevant for content that is legal but arguably undesirable in a democratic society and where it is recognized that human rights must also be respected. For these reasons, member states should clarify in their legislation that internet intermediaries will not be liable if they decide, on the basis of a sound factual and legal assessment, not to remove content that is later qualified by the competent authorities as a violation of criminal law, civil or administrative law or to remove content that is later qualified as legal. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, Explanatory Memorandum, para 93, [Recommendation on combating hate speech + Memorandum - MKD \(PREMS 083822 GBR 2018\).pdf](#)

or disable access to such hate speech published by third parties in their comment sections or collaborative spaces on their platforms, with such restrictions ultimately subject to independent judicial review.<sup>[67]</sup>

As we can see, online hate speech presents unprecedented challenges for protecting the right to equality compared to traditional legal approaches to discriminatory practices. The European contours of regulating online hate speech require a redefinition of the roles of the state, private actors, and media organizations. Above all, multinational digital companies now play a decisive role in various jurisdictions because the power to review content has shifted from public authorities to private content reviewers. In this sense, the fear of extended “private censorship” is legitimate. However, it can also be said that such a “privatized process” is channeled into the reasonable calculations of European judicial practice.

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67. Ibid, p.33.





# II.

## NATIONAL LEGAL FRAMEWORK FOR HATE SPEECH

### 1. CRIMINAL LAW PROVISIONS

### 2. CIVIL AND ADMINISTRATIVE LAW PROVISIONS

2.1. Law on Prevention and Protection against Discrimination

2.2. Law on Audio and Audiovisual Media Services

2.3. Dealing with Online Hate Speech

# 1.

## CRIMINAL LAW PROVISIONS

Hate speech is not explicitly defined in the Criminal Code of North Macedonia.<sup>[68]</sup> Nevertheless, it is encompassed within the criminal provisions that prohibit:

- 1) Incitement to hatred towards the Macedonian people and members of communities;
- 2) Incitement to hatred, discord, or intolerance on national, racial, religious, and other discriminatory grounds;
- 3) Dissemination of racist and xenophobic material through computer systems;
- 4) Approval or justification of genocide, crimes against humanity, or war crimes through an information system, especially when such approval or justification is done with the intention of inciting hatred, discrimination, or violence against a person or group based on any of their identity characteristics; and
- 5) Dissemination of ideas of superiority of one race over another, propagation of racial hatred, or incitement to racial discrimination.

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68. Criminal Code of North Macedonia, [Krivicen-zakonik.pdf](#).

### To be more specific:

Exposure of the Macedonian people and nationalities to ridicule Article 179 Whosoever, with the intent to ridicule publicly, mocks the Macedonian people and the members of communities living in the Republic of Macedonia, shall be fined.

## Causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground

### Article 319

(1) Whosoever by force, maltreatment, endangering the security, mocking of the national, ethnic, religious and other symbols, by burning, destroying or in any other manner damaging the flag of the Republic of Macedonia or flags of other states, by damaging other people's objects, by desecration of monuments, graves, or in any other discriminatory manner, directly or indirectly, causes or excites hatred, discord or intolerance on grounds of gender, race, color of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or in any other ground foreseen by law on ratified international agreement, shall be sentenced to imprisonment of one to five years.

(2) Whosoever commits the crime referred to in paragraph (1) of this Article by abusing his position or authorization, or if because of these crimes, riots and violence were caused against the people, or property damage to a great extent was caused, shall be sentenced to imprisonment of one to ten years.

## **Spreading racist and xenophobic material via information system**

### **Article 394-d**

(1) Whosoever via a computer system spreads in the public racist and xenophobic written material, photo or other representation of an idea or theory helping, promoting or stimulating hatred, discrimination or violence, regardless against which person or group, based on sex, race, skin color, class, membership in a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement, shall be sentenced to imprisonment of one to five years.

(2) The sentence referred to in paragraph (1) of this Article shall be also imposed against whosoever commits the crime via other public information means.

(3) Whosoever commits the crime from paragraphs (1) and (2) of this Article by abusing his position or authorization or if those crimes resulted in disorder and violence against people or in property damage of greater extent, he shall be sentenced to imprisonment of one to ten years.

## **Approving or justifying genocide, crimes against humanity or war crimes**

### **Article 407-a**

(1) Whosoever publicly negates, roughly minimizes, approves and justifies the crimes stipulated in Articles 403 to 407, through information system shall be sentenced to imprisonment of one to five years.

(2) If the negation, minimizing, approval or the justification is performed with the intent to instigate hate, discrimination or violence against a person or a group of persons due to their race, skin color, national, ethnic origin, religion or conviction, mental or bodily disability, sex, gender identity, sexual orientation and political beliefs, the offender shall be sentenced to imprisonment of at least four years.

## Racial or other discrimination

### Article 417

(3) Whosoever spreads ideas about the superiority of one race over another, or who advocates racial hate, or instigates racial discrimination, shall be sentenced to imprisonment of six months to three years.

Based on the aforementioned provisions of the Criminal Code, it can be concluded that the formal legal framework for recognizing and sanctioning hate speech is diffuse (spanning across many articles), imprecise, and lacks a clear definition and scope for hate speech.<sup>[69]</sup> The broad list of protected characteristics in the key provisions, while simultaneously not explicitly mentioning sexual orientation and gender identity (see Article 319 and Article 394-d), contributes to a conceptual problem in understanding hate speech. It does not focus on incitement to hatred and discrimination against a specific identity group, such as ethnic, religious, or sexual minorities.<sup>[70]</sup> The conceptual ambiguities related to hate speech also affect the development of judicial practice. As emphasized, if hate speech does not have appropriate formal legal qualification, it remains outside the visible scope of

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69. See also White paper on the situation with hate speech in the Republic of Macedonia, Helsinki Committee for Human Rights of the Republic of Macedonia, p.11. Available at [Bela\\_kniga\\_mk.pdf](#)

70. ECRI Report on “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), adopted on 18 March 2016, p.17, available at [ECRI\\_report\\_FR \(coe.int\)](#)

official statistics and other sources of data. In this way, not only is there no consistent prosecution of hate speech as a protective function of criminal law, but prevention of its commission and further spread in the public sphere of society also remains lacking.<sup>[71]</sup> Furthermore, conceptual ambiguities open the door to excessive discretion of law enforcement authorities and potential abuses (for example, for political persecution of dissidents or criminal liability for insults that do not fit within this concept). As mentioned above, while sanctions for serious cases of hate speech are desirable in themselves, such measures also have the additional benefit of highlighting the unacceptability of hate speech in a democratic society. Therefore, such benefit should not be diminished by inappropriate or inadequate qualification of the contested form of behavior.

Hence, there is a need for introducing a specific provision in the criminal code that clearly criminalizes hate speech. Additionally, in this regard, it is important to explicitly criminalize publicly uttered racial (or other identity-based) insults and defamation, as pointed out by the European Commission against Racism and Intolerance (ECRI).<sup>[72]</sup> This way, the ambiguities in understanding hate speech by all parties involved in criminal-law proceedings would be eliminated. In its development, special attention should be paid to the following:

## A) OBJECT OF CRIMINAL LEGAL PROTECTION

Hate speech offenses are spread across various chapters of the Law, defining different objects of protection, which

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71. Sasho Ordanovski, Freedom of expression v. Hate speech in the media in Macedonia, Institute for Communication Studies, High school of Journalism and Public Relations, Skopje, 2018, p.8

72. ECRI Report on “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), adopted on 18 March 2016, p.11, available at [ECRI\\_report\\_FR \(coe.int\)](https://www.coe.int/t/doh/ECRI/ECRI_FTHD/ECRI_Report_FR_2016/ECRI_report_FR_(coe.int).pdf)

complicates their legal interpretation. For example, “incitement to hatred, discord, or intolerance based on national, racial, religious, and other discriminatory grounds” falls under the category of criminal offenses against the state (Chapter 28); “dissemination of racist and xenophobic material through a computer system” is part of criminal offenses against public order (Chapter 33); and finally, “approving or justifying genocide, crimes against humanity, or war crimes” and “propagating ideas of superiority of one race over another, promoting racial hatred, or inciting racial discrimination” are grouped under criminal offenses against humanity and international law (Chapter 34).

Hate speech causes significant harm to individuals, groups, and society as a whole. It alienates, marginalizes, and undermines the personal dignity of the victims. Hate speech also violates the dignity and security of anyone identifying with groups targeted by hate speech. Hate speech disrupts the very “marketplace of ideas” and the ideal of equality – equal treatment and the principle of non-discrimination that are fundamental to any democratic society. Hate speech can and does lead to hate crimes. Hate speech has a detrimental impact on social order, peace, and the quality of life within a community.

Therefore, it is considered necessary to criminalize expressions that discriminate, disturb, incite, promote, or justify hatred based on intolerance. Criminal responses to hate speech are most commonly justified on the grounds of public order or national security but can also be found within the framework of offenses protecting the state or in cases of war crimes and crimes against humanity.

The new provision on hate speech should follow the majority approach of states and be part of the group of criminal offenses against public order.<sup>[73]</sup>

Public order, in addition to preventing violence (the narrow sense of “maintaining peace”), also encompasses society’s interest in maintaining a proper sense of social and legal status towards one another. This means that there is also a deeper issue of public order – the dignitary order of society. Criminal law is interested in this as well. Laws on hate speech in this context are designed to protect public order, not only by preventing violence but also by supporting the defense against attacks on the shared sense of the fundamental elements of one’s status, dignity, and reputation as a citizen or member of society, especially against attacks based on the characteristics of a specific identity group. Society has a systematic and structural interest in securing this public good. Those group slanders made by hate speech, if allowed to continue on a wide front, could undermine the basic but important status of citizenship of the members of the group in question.<sup>[74]</sup>

## B) INTENT TO INCITE VIOLENCE, HATRED, OR DISCRIMINATION

When formulating the relevant provision for hate speech, special attention should be given to clearly defining the circumstances appropriate for imposing criminal sanctions for a specific case of hate speech. According to the standards and interpretations of international courts and expert bodies

73. See also Elena Mihajlova Stratilati, *Лож закон, вечни реформи – колку се суштински измените во кривичниот законик за говор на омраза?*, Institute for media and analytics IMA, Skopje, 20.10.2022, *Анализи Archives - ИМА (ima.mk)*

74. Ibid. See also Jeremy Waldron, *The Harm in Hate Speech*, Harvard University Press, 2009.



(European Court of Human Rights, European Commission against Racism and Intolerance), these circumstances relate to whether (a) there is a genuine intent to incite acts of violence, threats, hatred, hostility, or discrimination, or (b) there is a probability that they will be incited.

Furthermore, when formulating the relevant provision, it is also crucial to avoid introducing additional conditions for imposing criminal liability, beyond those previously mentioned. These additional conditions could relate, for example, to the disruption of public order, the size of the audience perceiving hate speech, or the extent of the dissemination of such hate speech. Such conditions may be relevant for assessing the risk of reasonable expectation of incitement but their separate inclusion as elements of criminal liability creates additional obstacles to securing a conviction.<sup>[75]</sup>

**Based on the above, the suggestion is for the new provision to use the formulation “advocates, incites, promotes, disseminates, or justifies violence, hatred, or discrimination.”**

In this sense, the term “advocates” in the context of derogation, hatred, or vilification means explicit, intentional, and active support for such behavior and attitudes towards a particular group of individuals, and the term “incitement” means making statements about groups of individuals that create an immediate risk of discrimination, hostility, or violence against members of such groups. By including the expressions advocacy, promotion, incitement, or dissemination, it becomes possible to hold someone accountable in cases where there is an intent for or an immediate risk of violence, threats, hostility, or discrimination as a result of the specific hate speech used.

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75. ECRI GENERAL POLICY RECOMMENDATION NO. 15 ON COMBATING HATE SPEECH ADOPTED ON 8 DECEMBER 2015. [16808b5b01 \(coe.int\)](#)

## C) FORMS OF EXPRESSION

The term “expression” encompasses speech and publications in any form, including through the use of electronic media, as well as their dissemination and storage. Hate speech can take the form of spoken or written words or other forms such as photographs, signs, symbols, images, music, games, or videos. The term also includes a certain type of behavior, such as gestures conveying a specific idea, message, or opinion.

While clarity and precision are of paramount importance, as previously emphasized, the specific linguistic expressions used to define the various forms of expression that qualify as hate speech should be sufficiently general to accommodate technological developments. Such linguistic expressions should not rely on well-established formulations and expressions (such as print media and social networks) but should focus more on the essential character of the expression and be able to encompass other forms of expression that may develop in the future.<sup>[76]</sup>

Our suggestion is to follow this approach when formulating the provision on hate speech and to use sufficiently general expressions instead of listing all possible forms of expression (such as through print media, radio, television, social networks, etc.) that will allow for technological developments and prevent unwarranted restrictions on sanctioning only those forms of hate speech explicitly mentioned in the provision. A formulation like “any form of expression, including through the use of electronic media/computer systems, as well as its dissemination and storage” satisfies this condition.

76. Ibid

However, forms of expression that fall within the scope of hate speech may also include public denial, gross minimization, approval, or justification of acts such as genocide, crimes against humanity, or war crimes for which courts have determined that they have been committed. The requirement for the court to have to establish that the act has been committed aims to ensure that unfounded accusations of a certain type of behavior do not become the basis for claims that certain statements may qualify as hate speech. Furthermore, the glorification of individuals who have committed such acts may qualify as hate speech only when such individuals are involved in or have committed the act and does not cover positive assessments of any other activities of the affected individuals that are unrelated to the act itself.<sup>[77]</sup>

As already emphasized, Article 407-a of the Criminal Code relates to public denial, gross minimization, approval, or justification of genocide, crimes against humanity, or war crimes (via an information system). In this regard, for the sake of greater conciseness and a clear framework for defining and delineating hate speech, **our suggestion is to delete Article 407-a, and its content should be modified and incorporated into the new hate speech provision as follows: “Anyone who commits the criminal offense from paragraph 1 of this Article with public approval, denial, gross trivialization, or justification of crimes within the meaning of Articles 403 to 407, established by a final decision of a domestic or international court, shall be punished with imprisonment for up to 3 years or a fine.”<sup>[78]</sup>** (see

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77. Ibid

78. On the question on sentences see below.

## Annex 2)

At the same time, the definition of hate speech explicitly excludes any form of expression, such as satire or fact-based news, reporting, and analysis, which only insult, harm, or disturb. This reflects the protection of such expression, as determined by the European Court of Human Rights, which is necessary under Article 10 of the European Convention on Human Rights. However, it should be emphasized that the European Court has also found that incitement to hatred can result from insulting, ridiculing, or slandering certain population groups when such a form of expression is used irresponsibly – which may mean being unnecessarily offensive, promoting discrimination, or using language filled with contempt and derogatory terms, or it may involve imposing on the audience in a way that cannot be avoided – and these forms of expression would also be part of the definition contained in the Recommendation.<sup>[79]</sup>

In this sense, our suggestion is to add the following formulation to the hate speech provision: “Anyone who commits the criminal offense from paragraph 1 of this Article with public insult or slander of one of the groups listed in paragraph 1 in a way that may make this group despised or belittled in public opinion shall be punished with imprisonment for up to 3 years or a fine.” (See Annex 2)

Hate speech, as mentioned, pertains to various forms of expression directed against a specific individual or group of individuals based on personal characteristics or the status of the person or group. Actions taken against hate speech do not necessarily have to involve imposing criminal sanctions.

79. Féret v Belgiu, App. No. 15615/07, Judgment from 16 July 2009; Vejdeland and others v Sweden, App No. 1813/07, Judgment from 9 February 2012

However, when hate speech takes the form of behavior that is in itself a criminal offense, such as behavior that harasses, disturbs, or insults, then such behavior may also be labeled as a hate crime.

In this sense, Article 319(1) encompasses actions that fall within the description of hate speech but also hate crimes. **Again, in order to provide greater conciseness and a clear framework for defining and delineating hate speech, our suggestion is to delete this article (319), and its content should be modified and incorporated into the new hate speech provision as follows: “Anyone who commits the criminal offense from paragraph 1 of this Article with coercion, maltreatment, threats to security, exposure to contempt for national, ethical, religious, and other symbols, with damage to others’ property, with desecration of monuments, memorials, or graves, shall be punished with imprisonment for up to 5 years or a fine.”** (see Annex 2)

Furthermore, a qualified form of the offense is prescribed in paragraph 2 of Article 319 and paragraph 3 of Article 394, according to which anyone who commits the offense described in paragraphs (1) or (2) of the respective articles by abusing their position or authority or if these acts result in disorder and violence towards people or significant property damage shall be punished with imprisonment for one to ten years. **Our suggestion is to delete such a provision, considering that a wide range of penalties is introduced for the hate speech offense, resulting in disproportionality in punishment. This can also act as a deterrent**

to the application of the relevant provision in practice. It is clear that incitement to hatred against certain groups in society by state representatives can take on the character of institutional hatred, which should be more severely punished. However, this can be achieved within the range of a 5-year prison sentence. Furthermore, as mentioned earlier, when formulating the relevant provision, it is also crucial to avoid introducing additional conditions for imposing criminal liability, beyond those mentioned previously, which could, for example, relate to the disruption of public order, the size of the audience perceiving hate speech, or the extent of the dissemination of the hate speech. Such conditions may be relevant for assessing the risk of incitement, but their separate specification as an element of criminal liability creates additional obstacles to securing a conviction.<sup>[80]</sup>

## D) PUBLIC CONTEXT OF EXPRESSION

The definition of hate speech is not limited to expressions used in public. However, the use of hate speech in this context is a particularly important element relevant to certain forms of hate speech, such as denial, trivialization, justification, or approval of atrocities such as genocide, crimes against

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80. ECRI GENERAL POLICY RECOMMENDATION NO. 15 ON COMBATING HATE SPEECH ADOPTED ON 8 DECEMBER 2015. [16808b5b01 \(coe.int\)](#)

humanity, or war crimes. Furthermore, this can be a significant factor in determining whether or not a specific instance of hate speech can reasonably be expected to result in incitement to violence, threats, hostilities, or discrimination against those targeted by hate speech. Additionally, the existence of a public context is a crucial condition when considering imposing criminal sanctions for a specific use of hate speech, as it restricts the scope of limitations on the right to freedom of expression. Thus, we can conclude that hate speech should be used in a public context to justify criminal liability. The expression should be considered as used publicly when it is used at any physical location or through any electronic means of communication accessible to the general public.<sup>[81]</sup>

## E) PROTECTED CHARACTERISTICS

The question of protected characteristics is one of the key issues in hate speech and hate crime legislation.

Although there is no precise answer as to which characteristics should be included, and the decision should be made in accordance with the needs of each state, there are certain factors that must be taken into account, stemming from the very concept of hate speech,<sup>[82]</sup> as well as the historical and

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81. ECRI GENERAL POLICY RECOMMENDATION NO. 15 ON COMBATING HATE SPEECH ADOPTED ON 8 DECEMBER 2015. 16808b5b01 (coe.int)

82. Hate speech attacks aspects of a person's identity that are immutable or fundamental to a person's sense of self. Such characteristics are usually visible, such as facial skin colour. Also, those characteristics should function as markers of group identity. However, not all immutable or fundamental characteristics are also markers of group identity. For example, blue eyes may be an invariable characteristic of a person, but people with blue eyes do not identify themselves as a group, nor do others perceive them as a group, so eye colour is not a typical marker of group identity. E. Mihajlova, J. Bachovska, T. Shekjerdjiev, Freedom of expression and hate speech, Skopje, 2013. Available at: <https://www.osce.org/files/f/documents/e/8/116610.pdf>.

current social context.<sup>[83]</sup>

Some of the provisions in the Criminal Code related to hate speech (specifically Articles 319 and 394-d) include the following protected characteristics: sex, race, skin color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social origin, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status, or any other basis provided by law or ratified international agreement. In contrast to these provisions, Article 407 (2) includes the following protected characteristics: “race, skin color, nationality, ethnic origin, religion or belief, mental or physical disability, sex, gender identity, sexual orientation, and political belief.”

The list in Articles 319 and 394-d is an open and broad list that includes a number of characteristics that are not immutable and are not markers of group identity. At the same time, it does not explicitly include sexual orientation and gender identity as protected characteristics. This defined scope of protected characteristics could inadvertently dilute the concept of hate speech.

Hate speech implies expressing hatred towards a specific group. It is used to harm an individual through their racial, ethnic, religious, or other group affiliations. This message could be lost if the number of protected groups is too extensive or

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83. Determining the protected characteristics also requires an understanding of the history of repression and discrimination in the particular country as well as its current social problems. Therefore, protected characteristics should include those characteristics that were the basis for past discrimination or oppression and those that are the basis for current or contemporary incidents of discrimination or oppression. In the case of the previous example, people with blue eyes have no history of oppression, nor are they currently facing oppression or discrimination, so expression targeting this characteristic does not/cannot constitute hate speech. Lawrence, Frederick M., *Punishing Hate: Bias crimes under American Law*, Harvard University Press, Cambridge, Massachusetts, 1999. OSCE, *Hate Crime Laws: A Practical Guide*, Published by ODIHR, Warsaw, Poland, 2009, pp. 38-39.



if the concept of what constitutes a group is overly broad. Therefore, when defining protected characteristics, the legislator should consider whether including a particular characteristic will improve the enforcement of the law or if it will be difficult to enforce in practice. In the case of, for example, political belief, it is noted that although it is sometimes provided as a protected characteristic in domestic legislation, it is not an immutable and fundamental characteristic and could change over time. Additionally, it should be emphasized that hate crimes may be misused through criminal prosecution, targeting critics of official policies, political opposition, etc., rather than addressing hate speech itself. **For these reasons, following international standards suggests providing an open list of personal characteristics or status, which explicitly includes the following protected characteristics: “race,”<sup>[84]</sup> skin color, language, religion or belief, nationality, national or ethnic origin, disability, sex, gender identity, and sexual orientation.**

When deciding on the list of protected characteristics, the legislator should also fundamentally consider the social and historical context in the given country. The text of the law should reflect an understanding of current social issues and potential historical oppression, which should be taken into account when determining the characteristics. In the context of North Macedonia, Roma people are a group that has

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84. Since all human beings belong to the same species, international human rights law rejects theories based on the existence of different “races”. However, international bodies, such as the Committee of Ministers, as well as the European Commission against Racism and Intolerance (ECRI), insist that the term “race” continues to be used as a protected characteristic in order to ensure that those persons who are generally and erroneously are perceived as “members of another race” are not excluded from the protection provided by legislation and the implementation of policies to prevent and combat hate speech.

often been victimized and subjected to severe hate speech. Another group frequently targeted by hate speech and hate crimes is the LGBT population. Ethnic affiliation is also high on the list of protected characteristics attacked by hate speech. The proposed list of protected characteristics fully aligns with the historical and societal context of North Macedonia.

The new provision should also encompass cases in which the individual targeted by hate speech is considered to have a particular personal characteristic or status, while in reality, they do not possess it. For example, the perpetrator may insult the individual based on their religious affiliation, but in reality, they belong to a different religion or do not belong to any religion. **The phrase “based on/owing to real or attributed personal characteristics or status such as” ... satisfies this condition.**

## F) SENTENCES

Both when prescribing and when imposing certain sentences following a criminal conviction for hate speech, two relevant elements should be taken into account: the serious consequences arising from the use of hate speech and the principle of proportionality. The consequences encompass not only the effects on the individuals targeted by hate speech but also the impact such use of hate speech has on other members of the group to which the individual belongs and the detrimental effect hate speech can have on social cohesion in society as a whole. The specific sentences that can be imposed should, therefore, reflect these consequences. They should be effective and have a deterrent effect to demonstrate the harm that has already been caused and to discourage further use of hate speech.<sup>[85]</sup> Such penalties can

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85. ECRI GENERAL POLICY RECOMMENDATION No. 7 ON NATIONAL LEGISLATION TO COMBAT RACISM AND RACIAL DISCRIMINATION, \*16808b5aae (coe.int)

include imprisonment or fines, or alternatively, confiscation and forfeiture of the publication in question.

However, the penalties can also be specifically influenced by the behavior being challenged. For example, the penalties may consist of temporary loss of political rights or an order to visit one or more Holocaust memorial centers, or an order to undertake activities for practical compensation for the harm caused to the group of individuals who were targeted by a particular use of hate speech.

Again, when imposing sanctions, the risk that a particular penalty, in the specific circumstances of the case, may result in an undue restriction on freedom of expression should also be taken into account. Although the European Court of Human Rights has not expressed specific principles regarding the imposition of fines, imprisonment, loss of political rights, in certain cases, the Court may conclude that imposing the first two mentioned penalties constitutes a disproportionate restriction on freedom of expression. It is clear that each case must be assessed on its merits, but imprisonment and significant fines are unlikely to be considered compatible with the right to freedom of expression under Article 10 of the European Convention on Human Rights, except in very serious cases of hate speech. On the other hand, relatively small symbolic fines and other sentences that have the potential to change the offender's attitude, such as requiring them to perform certain tasks for the individuals targeted by hate speech or voluntary work in non-governmental organizations with the perpetrators based on hate grounds, are less likely to be considered disproportionate in most cases.<sup>[86]</sup>

The sentences provided for in the hate speech provisions of the Criminal Code of North Macedonia include fines, imprisonment sentences ranging from one to five years, and

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86. ECRI GENERAL POLICY RECOMMENDATION NO. 15 ON COMBATING HATE SPEECH ADOPTED ON 8 DECEMBER 2015. [16808b5b01](#) (coe.int)

for aggravated offenses, imprisonment sentences ranging from one to ten years.<sup>[87]</sup> When making a comparison with sentences for hate speech in other European legislations, which often include fines and imprisonment sentences typically ranging from three months to three years, or from three months to five years, **our suggestion would be to reduce the imprisonment sentences provided in the hate speech provision to imprisonment sentences ranging from three months to three years, or from three months to five years, or from one to five years. It would also be desirable to consider greater inclusion (where appropriate) of fines, following the example of formulations such as “shall be punished with imprisonment for up to three years or a fine” or “shall be punished with imprisonment for up to five years or a fine,” which are found in the national legislations of EU member states. At the same time, it is suggested that when imposing sentences, recourse should also be made to imposing a measure of community service under Article 58-b (1) if the conditions for it are met. Examples of performing specific tasks for individuals targeted by hate speech or voluntary work in non-governmental organizations with the perpetrators based on hate grounds yield better results in the reintegration and rehabilitation process**

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87. The German legislation, which for example is considered an example of one of the stricter criminalizations of hate speech, given the national historical circumstances, provides for the most severe prison sentences ranging from three months to five years. See German Penal Code, section 130 incitement to hatred [Criminal Code - Criminal Code \(gesetze-im-internet.de\)](http://www.gesetze-im-internet.de)

of perpetrators alongside the imposed imprisonment or fine.<sup>[88]</sup>

## G) GROUP THAT PROMOTES OR SUPPORTS HATE SPEECH AND RACIST ORGANIZATION

Furthermore, international acts emphasize the need to introduce criminal liability for the formation and leadership of a group that promotes or supports hate speech, participation in the activities of such a group with the intent to contribute to the use of hate speech for which criminal sanctions can be imposed, and deliberate incitement, assistance, and facilitation of the use of such hate speech or an attempt to use hate speech.

In this regard, it is recommended that the new provision on hate speech also include formulations such as: “Anyone who organizes or leads a group of three or more persons to commit acts from the above provisions of this article shall be sentenced to imprisonment for one to five years.” “A member of the group from the previous paragraph shall be punished by imprisonment for three months to three years.”

Additionally, addressing the issue of racist organizations is essential in efforts to improve the criminal legal response to racism and racial intolerance.

**As the European Commission against Racism and Intolerance**

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88. See also White paper on the situation with hate speech in the Republic of Macedonia, Helsinki Committee for Human Rights of the Republic of Macedonia, p.11. Available at [Bela\\_kniga\\_mk.pdf](#)

(ECRI) points out in its latest report on North Macedonia, there is no provision in the Criminal Code that incriminates the formation or leading of a group for promoting racism; assisting such a group and participating in its activities. Specifically, the authorities consider that the formation of a racist organization and participation in the commission of its activities are prohibited and penalized under Article 394 of the Criminal Code, which prohibits and punishes the formation of criminal groups, in connection with Article 319 of the Criminal Code. However, as suggested by ECRI, it is necessary to have separate offenses related to racism.<sup>[89]</sup>

For these reasons, we suggest introducing a new article “Racist Organization” as a new provision within Article 394 formulated on the same principle as the respective article:

## Racist Organization

### Article 394-a

(1) Whoever establishes a group or gang with the aim of spreading ideas of racial superiority or propagating racial hatred or inciting racial discrimination shall be punished by imprisonment for one to ten years.

(2) A member of the group or gang shall be punished by imprisonment for six months to five years.

(3) If the group or gang aims to commit criminal offenses punishable by imprisonment of at least eight years, the organizer shall be punished by imprisonment of at least four years, and a member of the group or gang shall be punished by imprisonment for one to five years.

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89. ECRI Report on “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), adopted on 18 March 2016, p.11, available at [ECRI\\_report\\_FR \(coe.int\)](#).

(4) A member of the group or gang who discloses the group or gang before committing any criminal offense in its composition or for it shall be exempt from punishment.

(5) The objects and means used by the group or gang to prepare for the offenses, as well as the means for their financing, shall be confiscated.

## 2.

# CIVIL AND ADMINISTRATIVE PROVISIONS

## 2.1.

### Law on the Prevention of and Protection against Discrimination

The Law on Prevention and Protection against Discrimination<sup>[90]</sup> was adopted in 2010. While the adoption of anti-discrimination legislation is a positive step, the Law was adopted with several significant shortcomings, even at a time when international standards and comparative experiences were well-established. In this regard, international bodies have pointed out several persistent shortcomings, particularly related to:

- The fact that the Law did not provide associations with a legitimate interest in combating racism and racial discrimination (including hate speech) the ability to initiate legal proceedings on behalf of the victim and to pursue civil or administrative proceedings or intervene in administrative proceedings without specific reference to an individual victim.

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90. Law on prevention and protection against discrimination, [diskriminacija\\_konsolidiran \(mtsp.gov.mk\)](http://diskriminacija_konsolidiran(mtsp.gov.mk))



- The Law did not contain an obligation for state authorities to promote equality and prevent discrimination, as well as to ensure that those with whom they enter into contracts and cooperate with adhere to non-discrimination principles.
- Segregation and discrimination by association were not explicitly included.
- Sexual orientation and gender identity were missing from the list of enumerated grounds/protected characteristics.

Regarding the Commission for Protection against Discrimination as an independent equality body established by the Law, it was recommended:

- To change the status of the Commission for Protection against Discrimination to make it fully independent. Concerns were raised that some of the Commission's members were employed in the Ministry of Labor and Social Policy, which raised questions about the Commission's full independence.
- To expand the mandate and powers of the Commission to include the right to initiate legal proceedings even when not referring to a specific victim.
- In terms of the effectiveness of the Commission, it was noted that its work was seriously hindered by the lack of any professional staff or administrative support.<sup>[91]</sup>

In 2020, the New Law on Prevention and Protection against Discrimination<sup>[92]</sup> was adopted, directly addressing the key shortcomings mentioned earlier, including dealing with hate speech. As a result:

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91. See more ECRI Report on "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" (fifth monitoring cycle), adopted on 18 March 2016, p.11, available at [ECRI\\_report\\_FR \(coe.int\)](#).

92. ЗАКОН ЗА СПРЕЧУВАЊЕ И ЗАШТИТА ОД ДИСКРИМИНАЦИЈА (\*) (kss.mk)

The New Law on the Prevention of and Protection against Discrimination has a strong definition section and a broad and inclusive list of discrimination grounds, **explicitly including sexual orientation and gender identity**, in line with international standards for discrimination protection. It enables protection against all forms of racism and intolerance.<sup>[93]</sup>

ECRI's Recommendation No.7 regarding national legislation to combat racism and racial discrimination<sup>[94]</sup> specifically names certain acts that should be considered forms of discrimination under the law, such as segregation, discrimination by association, declared intent to discriminate, instruction to discriminate, incitement to discriminate, and aiding and abetting discrimination. In theory, the application of general legal principles and definitions of discrimination should cover these acts. However, in practice, these acts are often neglected or excluded from the scope of the legislation. Therefore, for the sake of effectiveness, it may be useful for the law to explicitly state that these acts are considered forms of discrimination, as our Law does (see Articles 8, 9, 10, 11, 12, and 13), which also adds segregation and defines discrimination by association.

It is equally important for national legislation to obligate state authorities to promote equality and prevent discrimination in the exercise of their functions. This obligation should be articulated as clearly as possible, as it is done in Article 3,

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93. This, according to international standards, includes anti-Semitism, anti-Muslim racism and intolerance and discrimination against Christians and persons belonging to religious or religious minorities, as mentioned in Article 9 of the European Convention on Human Rights and the case law of the Strasbourg Court, as well as anti-Gypsyism. , racism against blacks and xenophobia, in general, but also related to migration.

94. ECRI GENERAL POLICY RECOMMENDATION No. 7 ON NATIONAL LEGISLATION TO COMBAT RACISM AND RACIAL DISCRIMINATION ADOPTED ON 13 DECEMBER 2002 AND AMENDED ON 7 DECEMBER 2017, [16808b5aae](#) (coe.int)

paragraph 3 of the Law on Prevention and Protection against Discrimination.<sup>[95]</sup>

However, the Recommendation also provides an obligation for state authorities to respect and promote a non-discrimination policy when entering into agreements and providing loans, grants, or other benefits to third parties. Specifically, the law should stipulate that state authorities must make the allocation of contracts, loans, grants, and other benefits conditional on respecting and promoting the non-discrimination policy on the other side. The law should also specify that a breach of this condition may result in the termination of the contract, grant, or other benefits.

Furthermore, organizations such as associations, trade unions, and other legal entities with a legitimate interest in combating racism and racial discrimination should have the right to initiate proceedings, even if they do not refer to a specific victim (provided they have the victim's consent when referred to). Such a provision is important, for example, in cases where the victim fears retaliation. Moreover, the ability of these organizations to initiate a case of racial discrimination without referencing a specific victim is of paramount importance for addressing those cases of discrimination where it is difficult to identify such a victim or cases that affect an unspecified

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95. To this end, state authorities could be obliged to create and implement 'equality programmes' drawn up with the help of the equality body. Here, the Commission could play an important role in terms of regular assessment of equality programs, monitoring of their effects and as a mechanism for implementing these programs. The equality program could for example include nominating a contact person to deal with issues of racial discrimination and harassment or organizing staff training courses in the area of discrimination. The recommendation covers only public authorities, however, it would be desirable to place the private sector under a similar obligation, as provided by our Law (see Article 3 of the Law).

number of victims.<sup>[96]</sup>

With the new Law on Prevention and Protection against Discrimination, a “Lawsuit for protection against discrimination of public interest” is introduced. With this provision, associations, foundations, or other civil society organizations and informal groups that have a legitimate interest in protecting the interests of a particular group or are engaged in anti-discrimination activities within their scope of work can file a lawsuit if they make it probable that a larger number of individuals are discriminated against by the defendant. This eliminates the need for written consent from the parties when dealing with group cases, and organizations will have the right to file lawsuits if they prove their interest, rather than just participating as interveners in the proceedings.<sup>[97]</sup>

The new Law on the Prevention of and Protection against Discrimination<sup>[98]</sup> also envisions the establishment of a professional and independent Commission for Prevention and Protection against Discrimination.

The need for an independent and effective Commission has been a continuous demand from the non-governmental sector, experts, and the academic community since the formation of this body in 2010. Necessary protective measures for de jure and de facto independence and effectiveness of the Commission have been identified, which should be incorporated into the legal provisions establishing this equality body, specifically in the Law on the Prevention of and Protection against Discrimination. These include changes to the status of the Commission members, an expansion of its

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96. See para.25 of OPP No.7 ECRI GENERAL POLICY RECOMMENDATION No. 7 ON NATIONAL LEGISLATION TO COMBAT RACISM AND RACIAL DISCRIMINATION ADOPTED ON 13 DECEMBER 2002 AND AMENDED ON 7 DECEMBER 2017, [16808b5aae \(coe.int\)](#)

97. See Article 35 of Law on prevention and protection against discrimination [ЗАКОН ЗА СПРЕЧУВАЊЕ И ЗАШТИТА ОД ДИСКРИМИНАЦИЈА \(\\*\) \(kss.mk\)](#)

98. [ЗАКОН ЗА СПРЕЧУВАЊЕ И ЗАШТИТА ОД ДИСКРИМИНАЦИЈА \(\\*\) \(kss.mk\)](#)

mandate and powers to initiate legal proceedings even when not referring to a specific victim, and the necessity of having professional support or administrative assistance.<sup>[99]</sup>

The provisions of the new Law on the Prevention of and Protection against Discrimination related to the status of Commission members, criteria for their selection, the selection process itself, and the composition of the Commission (the structure of the Commission's composition - representing all social groups; the principle of adequate and fair representation of community members and gender-balanced participation) reflect the standards of ECRI defined in General Recommendation No.2<sup>[100]</sup> and the UN Paris Principles<sup>[101]</sup> concerning the establishment of a high-quality and integrity-driven body as a precondition for achieving its independence and effectiveness. This requires the selection of members through a transparent, participatory process based on competitiveness with protective measures against any decisive influence by the executive authority at any stage of the selection process. Being elected by the Assembly in an open and transparent process - as provided for in the provisions of the Law on the Prevention of and Protection against Discrimination, under which the selection of Commission members took place in January 2021 - is one way to meet these conditions.

With the new Law, the Commission's competence is also being changed or expanded. The Commission will have to work on prevention in addition to protection and will be able to initiate and participate as an intervener in legal proceedings for

99. See specifically ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF NORTH MACEDONIA SUBJECT TO INTERIM FOLLOW-UP Strasbourg, 23 May 2008 (coe.int)

100. ECRI GENERAL POLICY RECOMMENDATION NO. 2: EQUALITY BODIES TO COMBAT RACISM AND INTOLERANCE AT NATIONAL LEVEL ADOPTED ON 7 DECEMBER 2017, [ECRI General Policy Recommendation N°2 revised \(coe.int\)](#)

101. Principles Relating to The Status of National Institutions (The Paris Principles) [ohchr | principles relating to the status of national institutions](#)

protection against discrimination.

Another important protective measure is the adequacy of funding and sufficient personnel for equality bodies (to carry out all their functions and responsibilities with real impact). The provisions in the new Law on the Commission's budget and the introduction of a professional service for the Commission align with international standards for independent and effective equality bodies.

In conclusion, there is a comprehensive legal framework for non-discrimination. Although we are aware that legal means alone are not sufficient, national legislation for protection and prevention of discrimination is essential for effective anti-discrimination efforts. The Law further invests in and strengthens the Commission for combating discrimination and achieving equality and social cohesion.

However, the practical application of the Law on Prevention and Protection against Discrimination has identified specific inconsistencies. Namely, as experts point out, the law establishes the authority of the Commission for the Prevention and Protection against Discrimination to initiate legal proceedings and intervene in ongoing legal proceedings. Still, another provision of the law limits the ability of both the Commission and civil organizations to intervene in proceedings of public interest. Ambiguous provisions that are not in line with the Law on Civil Procedure (where such limitations do not exist) leave room for arbitrary application. As a result, in practice, the court often rejects requests from the Commission and civil organizations to intervene in proceedings for protection against discrimination, although there have been cases where the court approved the intervention of a civil organization.<sup>[102]</sup>

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102. Cited Natasha Boshkova, lawyer and expert in International Law on Human Rights, involved in drafting the amendments to the Law on Prevention and Protection from Discrimination.

Due to this and other identified issues in the application of the Law on Prevention and Protection against Discrimination, amendments are being prepared to clearly and unambiguously allow the Commission and other entities with a legal interest to intervene in ongoing proceedings for protection against discrimination, regardless of the type of proceeding involved.

In terms of the authority to initiate a civil court procedure for protection against discrimination by the CPPD, there is no practice so far to be able to evaluate the application of this provision.<sup>[103]</sup>

As for the jurisdiction of the Commission to address hate speech, it can be noted that the Law on the Prevention of and Protection against Discrimination does not use the term “hate speech” at all, and the Commission for the Prevention and Protection against Discrimination does not have an explicit mandate regarding hate speech. Its mandate to address hate speech arises from Articles 9 and 10 of the Law, which prohibit incitement, encouragement, and instruction for discrimination or harassment on discriminatory grounds.

Hate speech as a phenomenon targeting groups covered by anti-discrimination legislation based on gender, sexual orientation, race or ethnic origin, religion or belief, and disability inevitably falls within the purview of equality bodies with their legal mandates to promote equality and combat discrimination on these grounds. Therefore, according to European standards, the mandate of equality bodies should

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103. Ibid

be expanded to explicitly include addressing hate speech.<sup>[104]</sup>

What the data from the European Network of Equality Bodies (EQUINET) show is that few equality bodies have an explicit mandate regarding hate speech.<sup>[105]</sup> According to this, the strategic starting point for most equality bodies in addressing hate speech is to interpret their mandate in a way that includes a focus on hate speech. This is clearly enabled when the body is a multi-mandate human rights institution where hate speech is treated as a violation of human rights.

The mandates or competencies from which equality bodies have found that they can extract their competence to act on hate speech and perform their various duties regarding hate speech include the following:

- **The role of the equality body to promote equal treatment without discrimination** - this provides a basis, as is the case with the Danish Institute for Human Rights, the Ombudsman for Gender Equality in Finland, the Equality Commission for Northern Ireland, and the Office of the Ombudsman for Discrimination in

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104. For example, the European Commission's 2018 Recommendation on Standards for Equality Bodies states that "Member States should consider extending the mandate of equality bodies to cover - on all prohibited grounds of discrimination - areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, including hate speech related to these grounds in these areas": [2\\_en\\_act\\_part1\\_v4.pdf](#) (europa.eu). Furthermore, the ECRI of the Council of Europe also recommended that the mandates of equality bodies should include "Promoting and achieving equality, preventing and eliminating discrimination and intolerance, including structural discrimination and hate speech, and promoting diversity and good relations between persons belonging to all different groups in society" in its (revised) General Recommendation no. 2 on Equality Bodies of 2017 [ECRI General Policy Recommendation N°2 revised \(coe.int\)](#)

105. The Ombudsman in Cyprus, the Commissioner for the Protection of Equality in Serbia and the Institute for Equality between Women and Men in Belgium reported on an explicit mandate, Extending the Agenda. Equality Bodies addressing Hate Speech is published by Equinet, European Network of Equality Bodies., 2018, [hate\\_speech\\_perspective\\_-\\_web.pdf](#) (equineteurope.org)



Croatia. Article 21 of the Law on the Prevention of and Protection against Discrimination in North Macedonia also lists “undertaking activities of the Commission for the promotion, protection, and prevention of equality, human rights, and non-discrimination” as a basis for competence to act on hate speech and carry out various duties related to hate speech.

- **The mandate to prevent discrimination** provides a basis, as is the case with the Office of the Ombudsman for Equal Treatment in Latvia and the Commission for Prevention and Protection against Discrimination in North Macedonia, in accordance with the aforementioned provision regarding the undertaking of activities for the promotion, protection, and prevention of equality, human rights, and non-discrimination. With the new law, the competence of the Commission is expanded to include prevention, in addition to protection.
- **Provisions regarding harassment and sexual harassment in anti-discrimination legislation** provide a basis, as is the case with the Ombudsman for Equal Treatment in Austria, the Ombudsman for Gender Equality in Croatia, the Board for Equal Treatment in Denmark, the Public Defender of Rights in the Czech Republic, the Ombudsman for Non-Discrimination in Finland, the Defender of Rights in France, the Commission for the Rights of Persons with Disabilities in Malta, and our Commission (as defined in Article 10 of the Anti-Discrimination Law, which clearly defines harassment and sexual harassment) and provide a basis for competence to act on hate speech.<sup>[106]</sup>

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106. Otherwise, Article 9 of our Law on Non-Discrimination, which defines the invocation, incitement and instruction of discrimination, is a clear basis for the competence of the Commission for dealing with hate speech.

- The provision that the Equality Body should perform its function in order to encourage and support the development of a society in which there is respect for the dignity and worth of every individual and mutual respect between groups based on understanding and valuing differences is treated as providing a basis, as is the case with the Equality and Human Rights Commission in the UK.
- When the Equality Body has a role in promoting good practices in intercultural relations, promoting tolerance and acceptance of differences, and respecting the freedom and dignity of every person, it is also interpreted as providing a basis for addressing hate speech, as is the case with the Irish Human Rights and Equality Commission.
- Also, when the Equality Body has a broad role in protecting and advancing the rights of persons with disabilities, as is the case with the Ombudsman for Persons with Disabilities in Croatia.

However, it is emphasized that this approach, although necessary, should not suggest that the current work on hate speech by equality bodies means that an explicit mandate is unnecessary, as this would imply ignoring the negative effects of a lack of an explicit mandate, such as limiting the strategic approaches that the equality body can take and limited visibility of the mandate of the equality body.

Comparative experience shows that it is difficult for equality bodies to effectively address this issue when their mandate to do so needs to be implied. In such cases, they may lack appropriate powers or adequate funding to effectively respond to this issue. For example, the absence of an explicit mandate for hate speech in the mandates of many equality bodies results in a lack of strategy. Their response tends to be primarily reactive (dealing with cases) or project-based, limiting the potential of their response. Typically, the lack of a focus on causality explains why equality bodies have limited activities in the field of communicating alternative narratives with a different value basis than what fuels hate speech. Recently, there has been a special focus on this segment.

In essence, the Commission for the Prevention and Protection against Discrimination gives high priority to addressing hate speech due to its prevalence, expansion, and its tendency to lead to discrimination and harassment. However, in practice, it is prevented from fully realizing this commitment due to various real barriers, such as limitations in its mandate and inadequacy of its resources.

From this, it can be concluded that an explicit mandate for hate speech should be provided in Article 21 of the Law on the Prevention of and Protection against Discrimination, which defines the competencies of the Commission for the Prevention and Protection against Discrimination. This mandate explicitly enables the Commission to address hate speech in all segments of dealing with it, such as case work, research, policy advice, promotion of good practices, and communication. This will ensure that the Commission can undertake comprehensive and strategic activities to address hate speech. The

inclusion of hate speech in the Commission's mandate, as recommended by the European Commission, creates the most favorable situation for allocating the necessary resources for this issue.

## 2.2.

# Law on audio and audiovisual media services

The Law on Audio and Audiovisual Media Services was enacted in 2013. It prohibits the broadcasting of media content that encourages or spreads discrimination, intolerance, or hatred. In the initial version of the Law, this prohibition only covered discriminatory grounds such as race, gender, religion, or nationality.<sup>[107]</sup> In case of non-compliance with this prohibition, however, it was envisaged that the Agency for Audio and Audiovisual Media Services - the state regulatory body for radio and television broadcasting - could take certain measures against media publishers, providers of audiovisual services upon request, or operators of public electronic communication networks that rebroadcast program services, such as: issuing a written warning; filing a request for conducting misdemeanor proceedings in cases where, despite the issued warning, the same violation that prompted the written warning continues during the year; submitting a proposal to the Council for the withdrawal of the license or making a decision to remove from the Register.<sup>[108]</sup>

Specifically, while the previous legislation prohibited certain forms of hate speech broadcasting,<sup>[109]</sup> the Law on Audio

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107. Article 48 of the Law on audio and audio-visual media services, [ZAAMU\\_konsolidiran\\_032018 \(mioa.gov.mk\)](#)

108. Article 23 of the Law on audio and audio-visual media services, [ZAAMU\\_konsolidiran\\_032018 \(mioa.gov.mk\)](#)

109. Article 69 of the Law on Broadcasting Activity (2005) prohibits programs that incite national, racial, sexual or religious hatred and intolerance and foresees a fine of 200,000 to 300,000 denars (3300 - 5000 euros).

and Audiovisual Media Services from 2013 does not contain administrative penalties for it. According to it, the regulatory body for audiovisual media acts on complaints filed by viewers and listeners and investigates alleged incidents of hate speech. If the regulatory body determines that a specific broadcast may contain hate speech, the case is referred to the public prosecutor's office for further criminal investigation. Unfortunately, experience has shown that the regulatory body does not receive feedback on the outcome of the procedure and is unable to assess the relevance of the materials it has been provided with. Furthermore, there is no possibility for other interventions in cases where the conditions for criminal prosecution are not met, such as requesting an apology or obtaining a commitment that the broadcast will not be repeated by the editors.<sup>[110]</sup>

So, even after the enactment of the Law on Audio and Audiovisual Media Services, racist and homophobic/transphobic hate speech in the media continued to persist without sanctions because the Agency itself lacked sufficient measures to react.<sup>[111]</sup> The European Commission against Racism and Intolerance (ECRI) of the Council of Europe, in its 2016 report on the country, recommended: introducing administrative fines in the Law on Audio and Audiovisual Media Services of 2013; giving the regulatory body for audio and audiovisual media services (the Agency for Audio and Audiovisual Media Services) the power to issue warnings or demand apologies in cases of hate speech and similar

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110. ECRI Report on "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" (fifth monitoring cycle), adopted on 18 March 2016, p.16-17, available at [ECRI\\_report\\_FR \(coe.int\)](https://www.coe.int/t/e/treaties/ECRI/ECRI_FilesandDocuments/ECRI_Report_FR_2016.pdf), see also Nenad Zivanovski, Analysis of the effectiveness of the legislation on protection against hate speech. Macedonian Institute for Media, 2017, p.6, available at [https://mim.org.mk/attachments/article/1032/Analiza\\_Efikasnost\\_na\\_zakonskata\\_regulativa\\_za\\_zastita\\_od\\_govor\\_na\\_omraza.pdf](https://mim.org.mk/attachments/article/1032/Analiza_Efikasnost_na_zakonskata_regulativa_za_zastita_od_govor_na_omraza.pdf)

111. See Guide on monitoring hate speech. Agency for audio and audio-visual services, *Водич за мониторинг на „говорот на омразата“* (avtm.mk), p.20, p.45

violations of journalistic professional standards and ethics; establishing information-sharing systems through which the regulatory body for audio and audiovisual media services would receive data from public prosecutors for cases referred to it, with the aim of optimizing its media monitoring activities; and establishing effective regulatory bodies, respecting the principle of media independence, which could monitor hate speech incidents in print media and on the internet.<sup>[112]</sup>

With the Law amending and supplementing the Law on Audio and Audiovisual Media Services of December 31, 2018, key changes were made to align with European standards in the field.<sup>[113]</sup> Thus, the Law on Audio and Audiovisual Media Services now prohibits the broadcasting of media content that encourages or spreads discrimination, intolerance, or hatred based on race, skin color, origin, national or ethnic origin, gender, sex, sexual orientation, gender identity, affiliation with 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 condition, personal property, and social status or any other basis.<sup>[114]</sup> Furthermore, the Agency for Audiovisual Media Services can receive complaints about hate speech from audiovisual media and can act *ex officio*. Specifically, the Agency for Audio and Audiovisual Media

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112. See ECRI Recommendation No.4. ECRI Report on “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), adopted on 18 March 2016, p.16-17, available at [ECRI\\_report\\_FR \(coe.int\)](#), p.39

113. Law on amending the Law on Audio and Audio-visual Services 31 December 2018. [Закон-за-измена-ЗААВМУ\\_МК.pdf \(avmu.mk\)](#)

114. See new Article 48 [Закон-за-измена-ЗААВМУ\\_МК.pdf \(avmu.mk\)](#) This wording is in line with the 2018 EU Audiovisual Media Services Directive, see Article 6(a) of the Directive: DIRECTIVE (EU) 2018/ 1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - of 14 November 2018 - amending Directive 2010/ 13/ EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (europa.eu)

Services “may take measures when it identifies hate speech in the content of audiovisual media (Article 48), such as: public warning, request for misdemeanor proceedings, proposal for revocation of licenses, and decision to remove the media from the register (Article 23). A fine of up to 5,000 euros is provided for a violation of this article by a legal entity, and criminal liability is not excluded (Article 147).”<sup>[115]</sup>

The Agency has observed a significant shift in hate speech from traditional media to the internet, over which there are no regulatory powers.<sup>[116]</sup> Additionally, new forms of content, such as videos or user-generated content, have gained increasing importance and introduced new participants. Video-sharing platform services offer audiovisual content that is accessed by the general public, especially young people, to a greater extent. This also applies to social media services, which have become an important medium for sharing information, entertainment, and education, including providing access to user-generated programs and videos. Such social media services have a significant influence as they facilitate users’ ability to shape and influence the opinions of other users.<sup>[117]</sup>

## Such media convergence calls for an updated

115. Vesna Nikodinoska, Regulatory and self-regulatory framework for dealing with hate speech and disinformation in North Macedonia, Macedonian Institute for Media, Skopje, Peace Institute, Ljubljana and SEENPM, Tirana December 2021, p. 7.

116. However, the Agency engaged in preventive efforts such as the establishment of the Media Literacy Network together with the Media Ethics Council, which is the self-regulatory body of the RSM media sector. The Media Literacy Network also conducts activities in schools, in coordination with the Ministry of Education and Science, teaching about prejudices and stereotypes and how to identify them.

117. EU Audiovisual Media Services Directive, see especially para 1 and para 4 of the Introduction [DIRECTIVE \(EU\) 2018/ 1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - of 14 November 2018 - amending Directive 2010/ 13/ EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\) in view of changing market realities \(europa.eu\)](#)



legal framework to reflect market developments and achieve a balance between access to internet content services, consumer protection, and competitiveness. It is essential to further align the Law on Audio and Audiovisual Media Services with European standards, specifically the EU Directive on Audiovisual Media Services from 2018. This alignment is necessary to create a legal framework that encompasses all services offering audiovisual content, regardless of the technology used to transmit the content.

Furthermore, the revision of the EU Directive on Audiovisual Media Services<sup>[118]</sup> itself was prompted by significant market changes resulting from the convergence of television and internet services.<sup>[119]</sup> Among other things, the update aimed to extend certain audiovisual rules to video-sharing platforms and audiovisual content shared on certain social media services, as well as to more effectively address hate speech.<sup>[120]</sup>

In any case, the harmonization of the Law on Audio and

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118. Directive 2010/13/EU for the purpose of coordinating certain provisions established by laws, regulations or administrative acts in the member states regarding the provision of audio-visual media services (Audio-visual Media Services Directive), [EUR-Lex - 32010L0013 - EN - EUR-Lex \(europa.eu\)](#)

119. Emilia Janevska, “What will the announced changes to the media regulation bring?”, ResPublica, 13.03.2023 [Што ќе донесат најавените измени на медиумската регулатива? | Медиуми | ResPublica](#)

120. [DIRECTIVE \(EU\) 2018/ 1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - of 14 November 2018 - amending Directive 2010/ 13/ EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\) in view of changing market realities](#) [DIRECTIVE \(EU\) 2018/ 1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - of 14 November 2018 - amending Directive 2010/ 13/ EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\) in view of changing market realities \(europa.eu\)](#)

Audiovisual Media Services with the EU Directive on Audiovisual Media Services is currently underway, and it is expected to be completed by the end of May 2023 as the first phase of the media regulatory changes.<sup>[121]</sup> In this process, in addition to the Ministry of Information Society and Administration, other involved institutions and actors, including the Agency for Audio and Audiovisual Media Services, the Ministry of Justice, the Ministry of Labor and Social Policy, and others, are participating with the assistance of the European Union within the framework of the Freedom of Expression Project: Aligning National Media Legislation with EU Legislation and Media Standards.

According to experts, the Draft Law amending and supplementing the Law on Audio and Audiovisual Media Services<sup>[122]</sup> “will amend existing and introduce new obligations for broadcasters, ‘video on demand’ services, and the regulatory body. It will also expand regulation to cover new subjects in the media market.”<sup>[123]</sup> Specifically, the changes to the Law on Audio and Audiovisual Media Services will bring video-sharing platforms such as YouTube, Dailymotion, and other platforms under regulation. Additionally, audiovisual content shared through social media services like Facebook, Twitter, TikTok, Instagram,

121. The media regulation, consisting of the Law on Audio and Audio-visual Media Services and the Law on Media, will be changed in two phases. The second phase of the amendments to the media regulation will be focused on issues related to media pluralism and ownership, the functioning of the market, the Public Broadcasting Service, the legal framework for exercising the journalistic profession, etc. Emilia Janevska, “What will the announced changes to the media regulation bring?”, ResPublica, 13.03.2023 [Што ќе донесат најавените измени на медиумската регулатива? | Медиуми | ResPublica](#)

122. Draft Law on Amending the Law on Audio and Audio-visual Services [final\\_draft\\_avmu\\_07\\_03\\_2023.pdf \(mioa.gov.mk\)](#)

123. Emilia Janevska, “What will the announced changes to the media regulation bring?”, ResPublica, 13.03.2023 [Што ќе донесат најавените измени на медиумската регулатива? | Медиуми | ResPublica](#)

and others will be regulated. This also applies to independent sections of websites of newspapers or online media that contain user-generated audiovisual programs or videos if they meet the criteria for audiovisual media services. The Agency for Audio and Audiovisual Media Services will be responsible for video-sharing platforms that are established or will be established in the country, as well as those that meet the criteria to be under the jurisdiction of North Macedonia.<sup>[124]</sup>

As for the sphere of **media self-regulation**, according to the Journalists' Code of Ethics, journalists will not use hate speech or incite violence and discrimination on any basis (national, religious, racial, gender, social, linguistic, sexual orientation, political, etc.).<sup>[125]</sup> However, this prohibition is only provided as a moral obligation, and no sanctions, disciplinary procedures, or other forms of reaction to violations of professional standards are prescribed.<sup>[126]</sup>

The self-regulatory body of the media industry, the Council for Ethics in the Media, examines complaints of unprofessional behavior by journalists and issues decisions and recommendations that do not have legally binding effects. Nevertheless, the level of compliance with the remarks and public warnings is improving. In 2019, the Council for Ethics in the Media promoted the established network for combating

124. Ibid.

125. Macedonian Journalists' Codex, para 10. [Кодекс на новинарите на македонија \(semm.mk\)](#)

126. Also, the media and journalists who are not members of the Association of Journalists of Macedonia can exempt themselves from the application of the Code in their work, regardless of the fact that it promotes universally accepted ethical values for the journalistic profession, Nenad Zivanovski, Analysis of the effectiveness of the legal regulation on protection against hate speech. Macedonian Institute for Media, 2017, p.6. Available at [https://mim.org.mk/attachments/article/1032/Analiza\\_Efikasnost\\_na\\_zakonskata\\_regulativa\\_za\\_zastita\\_od\\_govor\\_na\\_omraza.pdf](https://mim.org.mk/attachments/article/1032/Analiza_Efikasnost_na_zakonskata_regulativa_za_zastita_od_govor_na_omraza.pdf)

hate speech in the media, and in that regard, the Declaration against Hate Speech in the Media and the Internet was signed.<sup>[127]</sup>

The Council for Ethics in the Media has become more effective as a watchdog for online media.<sup>[128]</sup> In 2020, a Register of Professional and Ethical Online Media was established. This register provides advertisers with information about which online media outlets adhere to professional journalistic standards, such as the use of multiple sources, fact-checking, presenting multiple sides of the story, and refraining from publishing hate speech. This is a positive approach to encourage professionalism in the media and prevent the publication of incendiary content.<sup>[129]</sup> To better and more effectively implement the Journalists' Code of Ethics in the online sphere, Guidelines for Ethical Reporting in Online Media were introduced in 2021.<sup>[130]</sup> The first part of the Guidelines provides explanations for the application of provisions of the Journalists' Code of Ethics, while the second

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127. The declaration states, among other things, that the members of the network will work on developing mechanisms for recognizing and reporting cases of hate speech to the competent institutions and bodies, they will advocate for affirming the role of the media, but also of service providers and social networks. in the prevention of hate speech, as well as the coordinated initiation of programs, self-regulatory mechanisms and internal codes of the media and service providers, as well as other preventive measures that will prevent the use of hate speech in the public sphere, without jeopardizing the right of freedom of expression. 00 (semm.mk)

128. Advisory Committee on the Framework Convention for the Protection on National Minorities (ACFC), FIFTH OPINION ON NORTH MACEDONIA, § 66, Published on 21/09/2022, Available at: 0900001680a82967 (coe.int)

129. This registry provides information to advertisers about which online media outlets follow professional journalistic standards, such as using multiple sources, fact-checking, presenting multiple sides of the story, and not publishing hate speech. This is a positive approach to encourage professionalism in the media and prevent the publication of inflammatory content. Marko Pankovski and Misha Popovikj (2021) Hate speech as a currency of nationalism: institutional response in North Macedonia, p. 13. Hate-Speech-As-a-Currency-of-Nationalism-Institutional-Response-In-North-Macedonia-1.pdf (balkaninsight.com)

130. Насоки за етичко известување во онлајн медиумите.pdf (semm.mk)

part adds specific provisions that apply exclusively to online media. The Guidelines will be applied to all members of the Council for Ethics in the Media (CEM) and all online media for which complaints are filed with CEM. This means that, when considering complaints, the Complaints Commission at CEM will take into account these Guidelines in addition to the provisions of the Journalists' Code and the codes of international journalistic associations. The Guidelines also apply to all information and content that online media publish on social networks or other internet platforms.<sup>[131]</sup>

Recognizing that self-regulation and voluntarily adopted codes of conduct can be effective tools in preventing and condemning the use of hate speech, their use should be encouraged. Ongoing initiatives against online hate speech, such as the Council for Ethics in the Media and the Register of Professional and Ethical Online Media, should receive the necessary support.<sup>[132]</sup>

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131. Ibid.

132. See para 68 Advisory Committee on the Framework Convention for the Protection on National Minorities (ACFC), FIFTH OPINION ON NORTH MACEDONIA, Published on 21/09/2022, достапно на: [0900001680a82967 \(coe.int\)](#)

## 2.3. Dealing with online hate speech

In the country, there is no regulatory body for the internet, and this area does not fall under the jurisdiction of the regulatory body for audiovisual media. The Sector for Computer Crime and Digital Forensics within the Ministry of Interior (Mol) is responsible for handling internet-related incidents and preventing the further spread of hate speech. In 2015, the Ministry of Internal Affairs established a Hotline through which complaints can be filed or cases of hate speech can be reported easily via the internet.<sup>[133]</sup>

Research conducted indicates that the ability to respond to online hate speech often depends on the willingness of international platforms to cooperate with Mol. Mol has established cooperation with all service providers outside its jurisdiction, following the cooperation policies that social media have with law enforcement agencies. Since these platforms exist outside the jurisdiction of the Ministry of Interior, they are not obligated to cooperate; they do so voluntarily. Additionally, it should be noted that Mol, through a court order, can only access subscriber data (user's IP address and timestamps). Access to traffic data and content data can only be obtained through international legal assistance, significantly prolonging the process. Even in cases where Mol identifies the person responsible for spreading hate speech, they cannot link their digital and physical identity without

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133. Marko Pankovski and Misha Popovikj (2021) Hate speech as a currency of nationalism: institutional response in North Macedonia, p. 15. [Hate-Speech-As-a-Currency-of-Nationalism-Institutional-Response-In-North-Macedonia-1.pdf](https://balkaninsight.com) (balkaninsight.com)

cooperation from social media.<sup>[134]</sup>

Considering that states bear the ultimate responsibility for protecting human rights and freedoms in the digital environment, North Macedonia is expected to enact effective legislation to prevent and combat internet hate speech. In the process of developing harmonized legislation, the EU Digital Services Act will be of great importance. Additionally, North Macedonia's legal framework for preventing and combating internet hate speech will need to incorporate the guidelines provided in Recommendation CM/Rec(2018)2 on roles and responsibilities of internet intermediaries and the Guidelines for Good Practices on effective legal and procedural frameworks for self-regulatory and co-regulatory content moderation mechanisms (Content Moderation Guidelines), as well as Recommendation CM/Rec(2022)16 on combating hate speech by the Council of Europe. Ultimately or perhaps initially, the relevant legislation will need to reflect a multitude of key principles that should guide a human rights-based approach to content moderation, including broader international and European human rights standards, transparency, a clear legal and operational framework, proportionality, safeguards against over-compliance and discrimination, and mechanisms for independent review.

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134. Ibid, p.23

# CONCLUSION

Hate speech in the Macedonian legal system is criminalized through a series of legal provisions and is also regulated by independent regulatory and self-regulatory bodies. Although there is no single provision that regulates all forms of hate speech, hate speech in North Macedonia is still significantly regulated.

However, hate speech is not clearly and directly criminalized as a separate criminal offense in the Criminal Code of North Macedonia. Its formal legal framework is diffuse, spread across multiple criminal provisions with different lists of protected characteristics, contributing to a conceptual problem in understanding it. The conceptual ambiguities related to hate speech also affect the development of judicial practice. As emphasized, if hate speech does not have an appropriate formal legal qualification, it remains outside the visible field of official statistics and other sources of data. In this way, not only is there no consistent prosecution of hate speech offenses as a protective function of criminal law, but prevention of their commission and further spread in the public sphere of society is also neglected.<sup>[135]</sup> Furthermore, conceptual ambiguities also open up space for excessive discretion on the part of law enforcement authorities and potential abuses (e.g., for political persecution of dissenters or criminal liability for insults that do not fall under this concept).

The legal measures taken against hate speech are most effective when the legislator is aware of and evaluates the historical and current social context in the country, and when

135. Sasho Ordanovski, Freedom of expression v. Hate speech in the media in Macedonia, Institute for Communication Studies, High school of Journalism and Public Relations, Skopje, 2018, p.8



the legislation is structured in a way that can provide special protection to those groups most frequently targeted by this speech. Thus, while sanctions for serious cases of hate speech are desirable, such measures also have the additional benefit of emphasizing the unacceptability of hate speech in a democratic society. Therefore, such benefits should not be diminished through inappropriate or insufficient qualification of the contested behavior. Finally, only through direct and meaningful participation of all bodies within the criminal justice system, civil society, especially marginalized and minority groups, and other stakeholders in the process of amending criminal legislation to prevent and combat hate speech will contribute to increasing the overall understanding of the various factors involved, building trust and ownership of the adopted legislation, and ultimately improving its implementation.

Furthermore, regulating hate speech on the internet, similar to other European countries, remains a significant challenge. Hate speech on the internet presents unprecedented challenges to protecting the right to equality compared to traditional legal approaches to discriminatory practices. Firstly, appropriate legislation may lag behind technological advancements. Given that anonymity, immediacy, and internet interoperability make it exceptionally convenient to disseminate messages worldwide, automatic sharing and the “volatility” (ability to rapidly deteriorate) of hate speech make it difficult to provide timely remedies for equality rights violations. Moreover, the nature of digital media presents significant obstacles to direct oversight by government authorities, as it is almost impossible for them to thoroughly remove discriminatory information, even when it is explicit but unidentified. Other websites use various methods (such as neutral domain names and deceptive user interfaces) to conceal their discriminatory intentions. These potentially harmful websites are barely visible to regulatory bodies,

which must actively seek out discriminatory content. Finally, despite ongoing international standards, courts around the world interpret cross-border hate speech in entirely different legal, political, and cultural contexts.<sup>[136]</sup>

These new challenges require collaborative efforts for regulation and a careful response to potential harms from online hate speech. The global landscape and European responses to regulating internet hate speech call for a redefinition of the roles of the state, private actors, and media organizations. Above all, multinational digital companies now play a decisive role in various jurisdictions because content moderation power has shifted from public authorities to private content reviewers. In this sense, concerns about expanded “private censorship” are legitimate. However, it can also be argued that such a “privatized process” is within the reasonable boundaries of European judicial practice. In this sense, relevant legislation will need to reflect a significant number of key principles that should guide a human rights-based approach to content moderation. These principles include broader international and European human rights standards, transparency, a clear legal and operational framework, proportionality, safeguards against excessive compliance, discrimination, and mechanisms for independent review.

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136. Ge Chen (2022) How equalitarian regulation of online hate speech turns authoritarian: a Chinese perspective, *Journal of Media Law*, 14:1, 159-179, DOI: [10.1080/17577632.2022.2085013](https://doi.org/10.1080/17577632.2022.2085013)

# ANNEX 1

## NATIONAL PROVISIONS RELEVANT TO ADDRESSING HATE SPEECH

### Criminal law:

The **Criminal Code**, in **Article 179**, prohibits the act exposure to ridicule of the Macedonian people d the members of communities living in the Republic of North Macedonia. **Article 319** establishes causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground as a criminal offense. **Article 394-d** bans spreading racist and xenophobic material via information system, as well as the promotion or incitement of hatred, discrimination, or violence against any person or group based on their gender, race, skin color, ethnic origin, language, etc. **Article 407-a** considers approving or justifying genocide, crimes against humanity or war crimes through an information system as a criminal offense, especially when such approval or justification is done with the intent to incite hatred, discrimination, or violence against a person or group due to any of their identity characteristics. **Article 417** (racial and other discrimination) in paragraph 3 provides for punishment of spreading ideas about the superiority of one race over another, or advocating racial hate, or instigating racial discrimination.<sup>[137]</sup>

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137. Consolidated text. Available at [https://www.legislationline.org/download/id/8145/file/fYROM\\_CC\\_2009\\_am2018\\_en.pdf](https://www.legislationline.org/download/id/8145/file/fYROM_CC_2009_am2018_en.pdf)

## Other provisions relevant to addressing hate speech include:

**The Law on Prevention and Protection against Discrimination of 2020** prohibits encouragement, stimulation, instruction, and incitement of discrimination (**Article 9**). It also forbids harassment as unwarranted behavior towards a person or a group of persons on grounds of discrimination the purpose or consequence of which is undermining the dignity or creating a demeaning, hostile, humiliating or fear-provoking environment, approach or practice (**Article 10**).<sup>[138]</sup>

**The Law on Audio and Audiovisual Media Services of 2013** prohibits audio and audiovisual media services from containing programs that incite or disseminate discrimination, intolerance, or hatred based on race, color, origin, national or ethnic affiliation, sex, gender, sexual orientation, gender identity, belonging to marginalized groups, language, citizenship, social origin, education, religion or belief, political belief, other belief, disability, age, family or marital status, property status, health condition, personal characteristics, and social status or any other basis (**Article 48**).<sup>[139]</sup>

**The Law on Media of 2013** prohibits, through publication or broadcasting, the dissemination of content in the media that incites or spreads discrimination, intolerance, or hatred based on race, sex, religion, or nationality (**Article 4**).<sup>[140]</sup>

**The Law on the Prevention of Violence and Unsportsmanlike Conduct at Sporting Events of 2004** prohibits the “introduction and display of banners, flags, and other items with text, images, signs, or other markings, as well as singing songs or throwing messages that provoke and incite hatred or violence based on racial, national, and religious affiliation

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138. ЗАКОН ЗА СПРЕЧУВАЊЕ И ЗАШТИТА ОД ДИСКРИМИНАЦИЈА (\*) (kss.mk)

139. ZAAMU\_konsolidiran\_032018 (mioa.gov.mk)

140. Zakon\_zo\_mediumi\_mkd.pdf (avmu.mk)

or other characteristics” (Article 3, paragraph 1, subparagraph 3).<sup>[141]</sup>

The Law on Political Parties of 2004 prohibits political parties’ programs, statutes, and actions from being directed towards inflaming national, racial, or religious hatred or intolerance (Article 3, paragraph 1, subparagraph 2).<sup>[142]</sup>

The Law on Associations and Foundations of 2010 prohibits the establishment of organizations if their program and activities are directed, among other things, “to inflame national, racial, or religious hatred or intolerance” and involve activities that infringe upon the freedoms and rights of other individuals (Article 4(2)).<sup>[143]</sup>

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141. 26\_Закон за спречување на насилството и недостојното .pdf (ener.gov.mk)

142. Zakon-za-politichkite-partii-20-10-2004.pdf (pravdiko.mk)

143. Zakon-za-zdruzenija-i-fondatsii-16-04-2010.pdf (pravdiko.mk)

# ANNEX 2

## PROPOSALS FOR AMENDMENTS AND ADDITIONS TO THE CRIMINAL CODE REGARDING THE DEFINITION, PROSECUTION, AND SANCTIONING OF CRIMES OF HATRED AND THE FORMATION, LEADERSHIP, ASSISTANCE, OR PARTICIPATION IN GROUPS PROMOTING RACISM

Introduction of a new Article 394-a “Racist Organization”

### Racist Organization

#### Article 394-a

(1) Whoever establishes a group or gang with the purpose of spreading ideas of superiority of one race over another or propagating racial hatred or inciting racial discrimination shall be punished with imprisonment for a term of one to ten years.

(2) A member of the group or gang shall be punished with imprisonment for a term of six months to five years.

(3) If the group or gang aims to commit criminal offenses for which a minimum prison sentence of eight years can be imposed, the organizer shall be punished with a prison sentence of at least four years, and a member of the group or gang shall be punished with a prison sentence of one to five years.

(4) A member of the group or gang who discloses the group or gang before committing any criminal offense as part of it or for it shall be exempt from punishment.

(5) The objects and means used by the group or gang in preparing the offenses, as well as the means for their financing, shall be confiscated.

The existing articles “394-a,” “394-b,” “394-c,” and “394-d” become “394-b,” “394-c,” “394-d,” and “394-e,” respectively.

Article 394-d, which now becomes 394-e, is amended to read: “Advocating for and Incitement of Hatred”

## Advocating for and Incitement of Hatred

### Article 394-e

(1) Whoever, in any way, including through the use of the Internet and electronic media, and in any form, including through written material, images, or other representations of ideas or theories, publicly advocates for, promotes, or incites hatred, violence, hostility, or discrimination against any person or group based on real or attributed characteristics such as “race,” skin color, language, religion or belief, nationality, ethnic origin, as well as birth origin, disability, gender, gender identity, and sexual orientation or other personal characteristics or status, shall be punished with imprisonment for up to 3 years or a fine.

(2) Whoever commits the criminal offense from paragraph 1 of this article by publicly insulting or defaming one of the groups listed in paragraph 1 in a way that could make this group contemptible or disparaged in public opinion shall be punished with imprisonment for up to 3 years or a fine.

(3) Whoever commits the criminal offense from paragraph 1 of this article by publicly endorsing, denying, grossly

trivializing, or justifying atrocities within the meaning of articles 403 to 407, established by a final decision of a domestic or international court, shall be punished with imprisonment for up to 3 years or a fine.

(4) Whoever commits the criminal offense from paragraph 1 of this article by force, maltreatment, security threat, exposure to contempt for national, ethical, religious, and other symbols, by damaging others' property, desecrating monuments, memorials, or graves, shall be punished with imprisonment for up to 5 years or a fine.

(5) The organizer or leader of a group of three or more persons for the commission of acts from paragraph (1) of this article shall be punished with imprisonment for one to five years.

(6) A member of the group from the previous paragraph shall be punished with imprisonment for three months to three years.

(7) Materials and objects carrying the message from paragraph 1 of this article, as well as the means for their production, reproduction, or distribution, shall be confiscated.

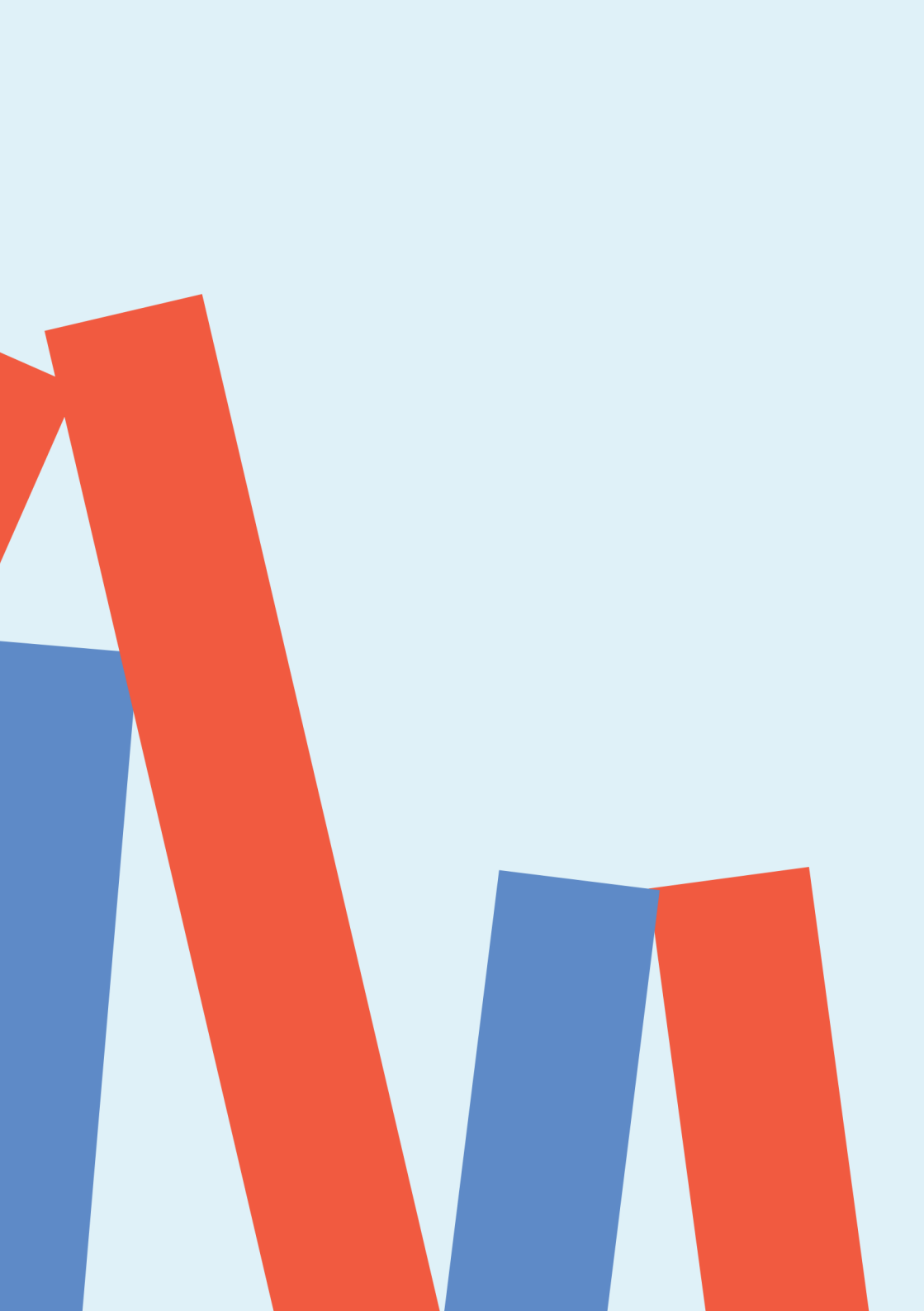
**Article 179 (Exposure of the Macedonian people and nationalities to ridicule) is deleted.**

**Article 319 (Causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground) is deleted.**

**Article 407-a (Approving or justifying genocide, crimes against humanity or war crimes) is deleted.**

**Article 417, paragraph 3 (racial and other discrimination), is deleted. An alternative is for it to remain, in which case the penalty in this provision should be harmonized with the new Article 394-e, paragraph 1.**





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