



HATE SPEECH AND THE MEDIA

Background paper prepared by

Nadia Volkova
Martina Silvestri
Sergio López

COUNCIL OF EUROPE

"Hate speech" is a moment in the process of forming national identities and its intensity varies depending on historical, social and political circumstances which may provide the conditions for establishing a more or less inflated national "self" as against the "others".¹

Hate speech: (re)producing the opposition between the national "self" and the "others"

Nafsika Papanikolatos

The concept of hate speech

"Laying siege to trains and robbing them have become traditional occupation of whole kins of the dark-skinned" – Bulgarian media about Roma²;

"Much shorter than Croats; with small, unintelligent and conic heads and all their complexes and crimes they commit are the result of those physical features" - statement made by a representative of the radical Croatian Democratic Union describing Serbs³;

"Wise people know that the present day Greeks have nothing to do with the ancient Greeks. On the contrary – the former are in every aspect the negative side of the latter." – Albanian media about Greeks⁴.

It has been concluded by Greek social scientists that the original source which makes people susceptible to nationalism, to the authoritarian mentality and, therefore, to hate speech is education. In modern societies the fundamental «mechanism of cultural homogenization in the shaping of a collective national identity» is provided by the institution of education⁵. Not all people are able to defend themselves from becoming conditioned to conceptualize the world around them in linguistic images which violate the principles of liberty, equality, solidarity and human dignity. A language of a limited vocabulary which permits one to get rid of the ambiguity and the uncertainty in human coexistence and communication. This is achieved through the use of very precise discriminatory and selective vocabulary which tries to legitimize negative thinking about all those who are not «us», those who are the «others». Hate speech is limited precisely to such a language. This language in fact reflects the type of national identity a people develops, the level of cultural, ethnic, religious homogeneity that is cultivated in order for the national "self" to "prove its uniqueness in relation and contradistinction to other nations" As it is explained in the research by the Greek scientists: "describing national identity means also describing and evaluating the "others". This is why "a structural element of a national identity is the existence of the "other"". National identity is shaped through a two-fold process: structuring and differentiating and incorporation and exclusion. National, religious and linguistic stereotypes are among the most visible

¹ Lenkova, M. (editor), *"Hate Speech in Balkans"*, The International Helsinki Federation for Human Rights (IHF), 1998: <http://www.greekhelsinki.gr/pdf/hatespeech.pdf>

² 24 Chasa, 30/08/1995. 24 Chasa (24 Hours) is an independent Bulgarian daily, which is published by Pressgroup 168 Chasa Ltd.

³ Novi List 29/08/1995, a Croatian daily newspaper. Statement by Tudjman's personal representative Sime Djodan, one of the radicals of the Croatian Democratic Union.

⁴ E Djabat Kombetare, 23/01/1996, an Albanian newspaper.

⁵ Frangoudaki, Anna and Thalia Dragona, *"What is our fatherland? Ethnocentrism in education"*, Alexandria publications, 1997 (in Greek), pp.12-13 & 25.

examples of hate speech that function as means of differentiation and exclusion in the process of national identity formation.

Council of Europe standards: where is the balance?

No universally accepted definition of the term “hate speech” exists, despite its frequent usage. Though most states have adopted legislation banning expressions amounting to “hate speech”, definitions differ slightly when determining what is being banned. Only the Council of Europe’s Committee of Ministers’ Recommendation 97(20) on “hate speech” defined it as follows: “the term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”

The concept of “hate speech” encompasses a multiplicity of situations:

- incitement of racial hatred or in other words, hatred directed against persons or groups of persons on the grounds of belonging to a race;
- incitement to hatred on religious grounds, to which may be equated incitement to hatred on the basis of a distinction between believers and non-believers;
- incitement to other forms of hatred based on intolerance “expressed by aggressive nationalism and ethnocentrism”.
- homophobic speech also falls into what can be considered as a category of “hate speech”.

The European Convention of Human Rights and its Article 10 which guarantees freedom of expression remains the incontrovertible reference point, there are other non-binding texts, treaties and instruments which have been adopted by the Council of Europe which reflect the organisation’s standards and principles in order to create a balance between combating the hate speech and protecting freedom of expression.

While the media may contribute to dialogue and understanding, they can also be a factor in generating social tension through stereotyping and inaccurate reporting. What’s worse, the media can disseminate “hate speech” or remarks based on racial or ethnic discrimination. Naturally, this is not desirable in an inclusive society, possibly even intolerable. The question is where to draw the line between freedom of expression, hate speech and the right not to be discriminated against.

When faced with the conflict between the right to freedom of expression and another right guaranteed by the Convention, it can be resolved through the loss of the right to rely on Article 10, under Article 17 of the Convention, or, by conciliation, in which case the Court proceeds to a balance of the interests involved. Although the European Court of Human Rights (ECtHR) has not adopted a precise definition of hate speech there are a number of principles from its case-law⁶. The leading judgment on the subject was in the case of *Jersild v. Denmark*⁷:

⁶ For a complete list of relevant ECtHR judgements and decisions see appendix III of the “Manual on Hate Speech” (2009) by Anne Weber, Council of Europe Publishing

⁷ Judgement of 23 September 1994. Available at:

The ECtHR in this case considered that the condemnation of the journalist was contrary to Article 10 of the ECHR. The ECtHR usually puts emphasis on the medium of communication used, and on the fact that broadcasting media have a more immediate and powerful impact than the written press. However, a criterion used by the ECtHR in such cases is the attitude of the journalist, and whether he made himself any racist or extremist comments. It is therefore appropriate to distinguish between journalists' comments and comments relayed by journalists.

Hate speech – National regulation and practice⁸

Bosnia & Herzegovina⁹

Articles 3 and 4 of the self-regulatory Press Code contain provisions against incitement to racial, ethnic or religious hatred and against making prejudicial, insulting or irrelevant references to a person's racial, ethnic or religious background. The independent, self-regulatory Press Council monitors the implementation of these provisions. As regards electronic media, the Communications Regulatory Agency, an independent public authority, has sole jurisdiction over telecommunications and broadcasting throughout the territory of Bosnia and Herzegovina and deals with individual complaints regarding breaches of the Broadcasting Code of Practice. The authorities of Bosnia and Herzegovina have been encouraged to support initiatives aimed at reaching all communities simultaneously and to impress on the media the need to ensure that reporting does not contribute to creating an atmosphere of hostility or rejection towards members of any ethnic or religious group. The authorities have indicated that, acting in accordance with international standards, Bosnia and Herzegovina continuously makes efforts, together with the Communications Regulatory Agency, to take the necessary measures against the dissemination through the press, audiovisual and electronic media and new communication technologies of messages of incitement to violence motivated by hatred. However there is a deep concern over reports from a number of sources indicating that hate speech in the media is on the rise and that nationalistic and inflammatory language is increasingly used in the media. The latter are reported frequently to relay without criticism or to amplify intolerant discourse employed by politicians, to present news in an ethnically biased manner, or to disclose the ethnic origins of suspects regardless of whether these are relevant to a story. There is further concern that the media are increasingly seen as being instrumentalised, inter alia by politicians who use messages of national, ethnic or religious intolerance as a means to gain influence. In this regard, the electronic media reportedly have a particularly strong impact as economic conditions are such that it is beyond the means of many to buy print media publications regularly.

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695768&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

⁸ All the relevant excerpts in this part are taken from the European Commission against Racism and Intolerance (ECRI) Country Reports: http://www.coe.int/t/dghl/monitoring/ecri/library/publications_en.asp

⁹ Excerpts from ECRI second Country Report on Bosnia and Herzegovina published on 8 February 2011. For ECRI's relevant recommendations to the Bosnian authorities see the Report at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bosnia_Herzegovina/BIH-CBC-IV-2011-002-ENG.pdf

*Bulgaria*¹⁰

The Radio and Television Act contains provisions prohibiting programmes that incite ethnic, racial, national or religious intolerance.¹¹ The Act also provides that national radio and television must produce programmes for people whose mother tongue is not Bulgarian. The Electronic Media Council is, among other things, responsible for monitoring the application of the Act and inflicting penalties if it is not observed. In 2004, media professionals adopted a code of ethics, which provides, inter alia, that the race, colour, religion and ethnic origin of an individual must not be mentioned unless this is relevant. In addition, a National Council of Ethics has been set up by associations of journalists to establish a self-regulatory framework for implementing the code. This was done later in the wake of the establishment, in 2006, of two bodies responsible for receiving complaints about radio and television programmes.

*Croatia*¹²

There are still cases of the media expressing prejudices and stereotypes about members of minority groups such as Roma, ethnic Serbs, immigrants, refugees and asylum-seekers and members of other minority groups. According to several sources, however, the situation has improved in the last few years, and in some cases significantly. The level of intolerance in the media is decreasing, even if the overall results are not yet satisfactory, particularly at the local level where there are still instances of racist remarks in the media and cases where an offender's ethnic origin is mentioned although this is irrelevant to the news report concerned. It is suggested that the Croatian authorities raise awareness of the dangers of racism and intolerance among media professionals and their organisations. Similarly, in cases where racist articles are published, the Croatian authorities should make every effort to prosecute and punish those responsible.

*Romania*¹³

In the national press there has been a certain decrease in the number of derogatory articles about Roma. This improvement is due to several factors: NGOs and supervisory bodies have increased their vigilance, journalists have received training courses on discrimination issues and the law has been amended. The National Council for Combating Discrimination has imposed many penalties on the media for articles and opinions it considers discriminatory. This body has been criticised in this respect, since some consider that it has infringed the principle of freedom of expression. The principle of freedom of expression is still all too often invoked to justify the failure to apply the law to media that publish racist articles. Local media still publish racist articles and opinions

¹⁰ Excerpts from ECRI fourth Country Report on Bulgaria published on 24 February 2009. For ECRI's relevant recommendations to the Bulgarian authorities see the Report at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>

¹¹ Articles 10 (1), paragraphs 5 and 6, and Article 17 (2) of the Radio and Television Act of Bulgaria.

¹² Excerpts from ECRI third Country Report on Croatia published on 14 June 2005. For ECRI's relevant recommendations to the Croatian authorities see the Report at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/HRV-CbC-III-2005-24-ENG.pdf

¹³ Excerpts from ECRI third Country Report on Romania published on 21 February 2006. For ECRI's relevant recommendations to the Romanian authorities see the Report at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/ROM-CbC-III-2006-3-ENG.pdf

about Roma. Several studies on the subject have demonstrated that the Roma are still mentioned chiefly in the context of criminal behaviour and that the majority population have a negative image of them. For example, 78% of the majority population do not wish to have Roma neighbours. Although the Centre for Independent Journalism and a number of NGOs and journalists drew up a code of conduct, it is not applied. The Romanian Press Club has also adopted a code of conduct, but no penalties have been imposed under this code.

*Serbia*¹⁴

There remains a degree of intolerance in Serbia as concerns minority religious groups and ethnic minorities. The press, mostly tabloids, continue to label smaller multiethnic Christian churches and minority religious groups, as dangerous “sects”. Some newspapers recurrently use derogatory terms for Albanians and Bosniaks. Roma are targeted in the media and there is a general climate of intolerance against them. The ethnic identity of crime suspects is often disclosed when they are of Roma origin. A number of right-wing youth groups refer to non-traditional religious groups as sects posing a threat to Orthodox Christian society in the country. The Independent Association of Journalists of Serbia have adopted a code of ethics which bans stereotyped information on minorities and limits the disclosure of the ethnic origin of a person to duly defined circumstances. Training sessions have been organised by NGOs with the assistance of international organisations on issues of non-discrimination and reporting on cultural diversity. However, the portrayal of certain minorities, such as the Bosniak or the Albanian minority, is still associated almost exclusively with negative events in the Serbian mainstream media. The current criminal legislation does not include a specific provision on hate speech and the wording of the existing provisions makes it difficult to prosecute such acts. The Republican Broadcasting Agency (RBA), which is the state body regulating mass media, has among its main tasks the prevention of the dissemination of information that could be discriminatory as well as to monitor the work of broadcasters in this respect. However, there is currently no representative of national minorities among the members of the Republican Broadcasting Agency which, in minority representatives’ view, does not allow for an adequate reflection on the concerns of national minorities in its work.

*The “former Yugoslav Republic of Macedonia”*¹⁵

According to non-governmental sources, expressions of interethnic intolerance have recently become more frequent. The attitude of certain political figures, who are tempted to fan ethnic tensions as a means of vote-catching, is particularly problematic, especially during election campaigns. Division of the media along ethno-linguistic lines and ethnically tinted reporting of events are still very widespread. The dividing line is primarily between media and news published and broadcast in Macedonian and those in Albanian. According to non-governmental sources, the key problem is that there is significant political interference in the media and the country's politics are focalised on

¹⁴ Excerpts from ECRI second Country Report on Serbia published on 31 May 2011.

For ECRI's relevant recommendations to the Serbian authorities see the Report at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_04/04_CbC_eng/SCG-CbC-IV-2011-021-ENG.pdf

¹⁵ Excerpts from ECRI fourth Country Report on the “former Yugoslav Republic of Macedonia” published on 15 June 2010. For ECRI's relevant recommendations to the authorities of the “former Yugoslav Republic of Macedonia” see the Report at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_04/04_CbC_eng/MKD-CbC-IV-2010-019-ENG.pdf

ethnic issues. For instance, most private television channels - which constitute the majority of the audiovisual media - are reportedly linked to political figures or parties. Further, the fact that the state is a major client of the media has apparently permitted successive governments to favour those media outlets deemed to be pro-government.

The role of self-regulation in combating hate speech¹⁶

According to one report, there have been many attempts and praiseworthy examples of professional bodies being established to raise standards and protect professional and journalistic ethics in the Balkans. But their power remains highly limited – confined mainly to issuing press releases and condemnations. Self-regulatory bodies have not been successful in setting up journalistic ethical standards and maintaining them throughout mainly due to the lack of power to sanction those who chose not to follow those standards. Those dealing with the electronic media and with broadcasting issues soon became the focus of politicians' attention and found their independence undermined. They have been "colonized" by the political elite.

According to another report, forms of self-regulation and professional standards do not only need to be established; they also need to be promoted. There are different ways of achieving this, such as the initiation of professional fora to discuss controversial and more publicly sensitive issues regarding media practice, and the development of databases with case studies. If collaboration with universities was enhanced it could contribute to embed ethics and professional standards in the curriculum for journalism students. As part of the promotion of media quality, professional contests could be organized drawing on international patterns and expertise.

Some of the suggested actions to be taken are an exchange of experiences and face-to-face meetings with counterparts from countries with well-functioning self-regulatory bodies or the development of effective networks and cooperation between the various international journalists' organisations in sharing their experiences of self-regulation with the local journalism communities. It is also suggested that in the current global economic crisis and because of the underdeveloped media markets in the region, international organisations such as UNESCO, OSCE and the Council of Europe should coordinate and streamline their support in order to raise greater funds, thus possibly achieving better results. It is noted that international support should however be provided using a tailored approach which takes into consideration the local culture and stage of media development.

¹⁶ All the relevant excerpts in this part are taken from Gordana Igric, "Media Freedom and Its Enemies in the Balkans", available at: <http://www.balkaninsight.com/en/article/media-freedom-and-its-enemies-in-the-balkans>; and UNESCO, "Professional Journalism. New Media, Old Dilemmas in South East Europe and Turkey", available at: <http://unesdoc.unesco.org/images/0019/001908/190810e.pdf>

Hate speech and the Roma¹⁷

According to the Council of Europe's Commissioner for Human Rights, anti-gypsy stereotypes continue to be spread and perpetuated in some media across Europe. The media have an important role to play in countering prejudices – but a number of printed and broadcast media have not lived up to their responsibility when it comes to Roma and Travellers. They have contributed to xenophobia through biased reporting and cheap sensationalism. In opinion of the Commissioner, ethical journalism and codes of conduct can contribute to end the all-negative portrayal of Roma in the media.

Anti-gypsyism is exploited by extremist groups in some European countries and the media sometimes contribute to this dangerous trend. Even media reporting which does not include outright hate speech can perpetuate stereotypes by, for example, only reporting on Roma and Travellers in the context of social problems and crime, promoting stereotypes such as that of the Roma as living perpetually outside the law, or describing the Roma as responsible for their own exclusion, because they have chosen to be different.

According to the Commissioner, it is a basic ethical principle that a whole group should not be blamed for what some of its members might have done. The widespread stigmatising of all Roma – the overwhelming majority of whom are not in conflict with the law – shows a great need for self-regulation and ethical journalism. Training for journalists, for example as provided by the Council of Europe Dosta!¹⁸ Campaign, can help to improve reporting.

There are several media outlets that serve the Roma community¹⁹, and there are networks for Roma journalists who want to empower each other. But there are few Roma who work within or are consulted by mainstream media, which leaves the Roma perspective unknown to the majority. Through so called Twinning Projects of the European Commission more Roma journalists can find their way into mainstream media, and non-Roma journalists can build contacts in the Roma communities so that instead of only seeking problems they are better equipped to find explanations and solutions.

¹⁷ All the relevant excerpts in this part are taken from Thomas Hammarberg, "European media and anti-Gypsy stereotypes", 7 July 2011, available at:

http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=151

¹⁸ <http://www.dosta.org/>

¹⁹ <http://www.romea.cz/>

Hate speech on the Internet²⁰

Racism and intolerance were a pressing social problem long before the emergence of the digital age. The advancement of communication technologies such as the Internet has, however, added a new dimension to the problem, providing individuals and organisations “with modern and powerful means to support racism and xenophobia” which “enables them to disseminate easily and widely expressions containing such ideas”²¹.

The global, decentralised and borderless nature of the Internet creates a potentially infinite and unbreakable communications complex which cannot be readily bounded by one national government or even several or many acting in concert. The decentralised nature of the Internet means simply that there is no unique solution for effective regulation at the national level. Harmonisation efforts to combat illegal content, even for universally condemned content such as child pornography, have been protracted and are ongoing. Efforts to harmonise laws to combat racist content on the Internet have proved to be even more problematic. While child pornography is often regarded as a clear cut example of “illegal content,” racist content has been much more difficult to categorise. So far, differing views of the limits to freedom of expression have resulted in different legal responses to racist discourse in Europe. There are also varied approaches within Europe in terms of what constitutes illegal content. Harm criterion remain distinct within different jurisdictions with individual states deciding what is legal and illegal. Content regarded as harmful or offensive does not always fall within the boundaries of illegality in all states.

Achieving a proper balance between the desire to control racist content and to protect freedom of expression has inevitably proved challenging on the Internet. Despite an attempt at regional harmonisation at the Council of Europe level with the Additional Protocol Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, there is no uniformed approach to the dissemination and availability of racist content on the Internet.

²⁰ All the relevant excerpts in this part are taken from Yaman Akdeniz. “*Stocktaking on efforts to combat racism on the Internet.*” Intergovernmental working group on the effective implementation of the Durban declaration and programme of action, 9 January 2006, available at: http://www.cyber-rights.org/reports/ya_un_paper_int_06.pdf

²¹ *Explanatory Report of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, as adopted by the Committee of Ministers on 7 November 2002, available at <http://conventions.coe.int/Treaty/en/Reports/Html/189.htm>, Para 3.

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