



# BEYOND DEFINITIONS A CALL FOR ACTION AGAINST HATE SPEECH IN ALBANIA

A comprehensive study  
November 2021

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A CALL FOR ACTION  
AGAINST HATE SPEECH**

A comprehensive study  
November 2021

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# Introduction<sup>1</sup>

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The aim of this study is to provide relevant stakeholders with an updated and comprehensive approach to hate speech as well as some representative and reliable data on the perception of hate speech in Albania. Moreover, it provides some recommendations for relevant stakeholders on how to approach the problem of hate speech.

**Chapter 1** provides a conceptual framework to hate speech. Although being a relatively new topic in Albania, hate speech has already attracted a lot of attention by the media as well as in the public debate. However, there is still a lack of consistency, and awareness, on the definition of the topic, on its amplitude and on its implications for all the actors involved, beginning with the people that are affected by it and are expected to combat it. Without a clear frame of reference, a comprehensive approach to hate speech may look unrealistic, and actions to tackle hate speech phenomena may result in short sighted and fragmented strategies. Chapter 1 aims therefore at presenting some key terminological and conceptual aspects when dealing with hate speech, to put this study in a wider context and provide the readership with an updated overview of current issues and challenges.

In the light of this approach, **Chapter 2** provides data on hate speech at national level in Albania, in particular about people's perceptions, experiences, and trust in the institutions that should deal with hate speech in the country. This data has been collected through a survey - based on a questionnaire purposely designed for this study - which has involved a sample of 1511 participants randomly selected, plus a boost sample of 301 participants. It shows growing concerns, particularly among vulnerable groups, about the spread of hate speech in Albania (ca. 58% of the respondents think that hate speech is a national issue, even more during and after the pandemic) and the role of the media in spreading it. As far as triggers of hate speech are concerned, poverty (54 %), social status, political opinion, and physical appearance (44 %) are perceived as the main grounds of discrimination. However, this perception changes when considering vulnerable groups - by which ethnicity (50%) and Race (44%) are believed to be the two top triggers - and more specifically responses by LGBTI people, for which homo-bi-lesbo-transphobia is the most common motivation triggering hate speech (68 %). According to the respondents, hate speech propagates not only in Social media, but also in schools, universities, and workplaces, and about 46% of the respondents from vulnerable groups have personally experienced hate speech in their lives. Among the effects of hate speech - just to mention another section of the survey - anxiety, depression and emotional pain are perceived as the main feelings a person who is a target of hate speech may experience. However, awareness about what to do to contrast hate speech and what the available resources - including legal frameworks - are to protect 'victims' of hate speech, seems to be relatively low, also among vulnerable groups.

For the aforementioned reason, **Chapter 3** provides a legal analysis of issues concerning hate speech. First, the study focuses on the international standards addressing hate speech - UN legal instruments are introduced and summarised and some additional relevant national laws against hate speech are examined. Then, the European Union legal framework in relation with hate speech is granted a special emphasis, as it includes some major documents signed by the EU Commission and the Council. An important part of the international legal standards to be taken into consideration concerning this subject is thorough analysis of the standards laid down by the Council of Europe, especially through the European Convention on Human Rights and the decisions of the European Court of Justice. In a following section, this chapter focuses on the Albanian national approach to address issues concerning hate speech. In accordance with the legal framework's hierarchy in Albania, this section first discusses relevant Constitutional principles and then other national laws dealing exclusively or in part with hate speech. An important element of this analysis is the assessment of the national courts' decisions concerning the use of hate speech in civil and proceedings.

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<sup>1</sup> By Federico Faloppa

Finally, the discussion focuses on the decisions of the Albanian Commissioner for the Protection against Discrimination and their impact to combat hate speech.

As **fourth part of the study**, recommendations are provided. They aim to conclude the study and strengthen the effectiveness of combatting hate speech in Albania.

# THE STUDY

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## 1. A conceptual framework to hate speech<sup>2</sup>

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Although being a relatively new topic in Albania, hate speech has already attracted a lot of attention by the media, and in the public debate. However, there is still a lack of consistency, and awareness, on the definition of the topic, on its amplitude and on its implications for all the actors involved, beginning with the people that are affected by it and are expected to combat it. Without a clear frame of reference, a comprehensive approach to hate speech may look unrealistic and actions to tackle hate speech phenomena may result in short sighted and fragmented strategies. The following pages aim at presenting some key terminological and conceptual aspects when dealing with hate speech, to put the actual study in a wider context and provide the readership with an updated overview of current issues and challenges.

### 1.1 A challenging definition

A **universally accepted definition of *hate speech* does not exist** yet, despite the frequent usage of such expression. As Gianmarco Gometz argues, nowadays everyone deplores behaviours of hate speech, but no one knows exactly what *hate speech* is, given the unusual degree of vagueness that characterizes each of its available definitions.<sup>3</sup> Even if many states – in Europe and beyond – have adopted legislation banning expressions amounting to *hate speech*, definitions may diverge when determining what is being banned, to what extent speech can be “offensive” and convey “hate”, and – broadly speaking – what the content of hate speech really is.<sup>4</sup>

A critical and comprehensive – although not updated – overview of different definitions of *hate speech* can be found in Sellars (2016) who, by trying to systematize the plethora of available approaches and viewpoints, derives several concepts from academic and legal discourse to define hate speech.<sup>5</sup> The **common traits**, Sellars identifies refer to:

- the targeting of a group, or an individual as a member of a group, based on physical, social, cultural features
- The presence of a content that expresses hatred, causes harm, incites criminal actions beyond the speech itself, and has no redeeming purpose
- The intention of harm or offend
- The public nature of the speech

These common traits seem to be shared by most definitions, which use them as criteria to identify potential instances of hate speech. However, according to Sellars, they do not necessary form – or can be included in – a single, uncontroversial, and comprehensive definition.

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<sup>2</sup> By Federico Faloppa

<sup>3</sup> Gianmarco Gometz, L'odio proibito: la repressione giuridica dello hate speech, «Stato, Chiese e pluralismo confessionale», n. 32, 2017, pp. 1-38.

<sup>4</sup> See Nadine Strossen, Freedom of speech and equality: Do we have to choose?, «Journal of Law and Policy», 25 (1), 2016, pp. 185-225.

<sup>5</sup> Andrew Sellars, Defining Hate Speech, «Berkman Klein Center for Internet & Society Publication», No. 2016-20, Paper No. 16-48, Boston University School of Law, Harvard 2016, p. 4 [tinyurl.com/y9mtp58r].



Far from providing an ultimate clarification, this specification conversely recalls one of the main challenges (and limitation) when trying to describe hate speech: the **circularity of definitions** in which the *definiens* (hate/hatred) is employed to define the *definiendum* (hate speech, such as for instance “hate speech is any form of expression through which speakers intend to... incite hatred...”).

On the other hand, ***hate and speech are already challenging terms per se***, as *speech* first and foremost alludes to “communication or expression of thoughts in spoken words” and/or “public discourse” – and neither of the two meaning cover all possible cases – and *hate* can convey a broad variety of meaning depending on the discipline and the perspective adopted to describe it.<sup>6</sup> As Bhikkhu Parekh claims, *hate* would in fact be deeply unsatisfactory as it would emphasise emotional reactions and neglect premeditated provocations (which on the contrary, according to Parekh, would play a huge role in the making of hate speech);<sup>7</sup> the focus on *hate* – as Waldron and Perry utter – could also distract one’s attention from respectively the very speech act and its nuances, and systemic disempowerment of targets of hate speech.<sup>8</sup> For its unclear nature and problematic definition, *hate* – scholars suggest – should then be replaced by less controversial words like *extreme*, *dangerous*, or *harmful*.

Aside circularity and semantic blurriness, **empiricism** has proved to be another limitation that definitions of hate speech may incur in. As known, the most authoritative definition available in Europe of hate speech, i.e. the definition included in the European Commission against Racism and Intolerance’s *General Policy Recommendation no. 15 on Combating Hate Speech* (adopted by the Council of Europe Committee of Ministers’ on the December 8<sup>th</sup>, 2015)<sup>9</sup> maintains that hate speech is to be understood “as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of “race”, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status”.<sup>10</sup>

Although this definition looks more comprehensive than others, it is based on a list of concrete cases, i.e., a) grounds already recorded in history or in the news (racial, religious, homophobic, misogynistic hatred, etc.), and b) a limited but quite heterogenous sample of linguistic forms deemed to incite hatred (such as insults, stereotypes, threats, etc.).

These limitations have been addressed, among the others, by linguistics (pragmaticians), who have suggested that instead of focusing on specific forms of expressions or grounds of discrimination, scholars should maybe look for **pattern of linguistic-discursive structures/strategies**, i.e. roles and functions discursively assigned to the ‘hater’ and to the ‘hated’, with the former breaking the dialogic relation with the latter by confining him/her to the role of “person outside the interlocutory relationship” and therefore by disregarding its role and legitimacy of interlocutor. Pragmaticians have also proposed to mainly look at hate speech as a set of speech acts (illocutionary and perlocutionary) or actions, without distinguishing between the different forms of hate speech but instead by considering the functions and effect of hate speech utterances once they are said or communicated.<sup>11</sup> This shortcoming has also been acknowledged by the Committee of Experts in combating Hate Speech of the Council of Europe, which in drafting an updated definition of hate speech is considering the opportunity to overcome close lists by a) mentioning first any “presumed or real personal characteristics or status” (and then some possible examples, such as “‘race’, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity and sexual orientation”) and b) referring to “all forms of expressions” – with no further specifications – “which spread, incite to, promote or justify violence, hatred, discrimination or prejudice against a person, or a group of persons”.<sup>12</sup> The broader the definition, the higher the number of cases it can encompass.

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<sup>6</sup> See Federico Faloppa, #Odio. Manuale di resistenza alla violenza delle parole, UTET, Torino 2020, pp. 26-27.

<sup>7</sup> Bhikkhu Parekh, «Is There a Case for Banning Hate Speech?», in Michael Herz, Peter Molnar (eds), *The Content and Context of Hate Speech: Rethinking Regulation and Responses*, Cambridge University Press, Cambridge 2012, pp. 37-56.

<sup>8</sup> See Faloppa, #Odio, cit.

<sup>9</sup> See <https://tinyurl.com/c7naaz6x>.

<sup>10</sup> See *ibid.*

<sup>11</sup> See Raffaella Petrilli (ed), *HATE SPEECH. L’odio nel discorso pubblico*. Politica, media, società, Roma, Round Robin Editrice 2020; Claudia Bianchi, *Asymmetrical Conversations. Acts of Subordination and the Authority Problem*, «Grazer Philosophische Studien», Volume 96, Issue 3, 2019, pp. 401-418; *Id.*, *Hate Speech. Il lato oscuro del linguaggio*, Laterza, Roma-Bari, 2021.

<sup>12</sup> See <https://tinyurl.com/s55bc9vk>.

The definition provided by the *General Policy Recommendation* no. 15 also poses another matter that needs to be pondered. Among the forms of advocacy, promotion or incitement of hatred or vilification it counts threat and harassment that in many countries are criminal offense, as well as insult, negative stereotyping, and stigmatization, which on the contrary are barely touched upon by criminal law.

From a conceptual point of view, all these forms may still be related, as clearly illustrated by the “Pyramid of Hate” of the Anti-Defamation League, where bias – and “normalized bias” – discrimination, and hate are organized in escalating levels of attitudes and behaviour that grow in complexity from bottom to top, from stereotypes to genocide through non-inclusive language, slurs, dehumanization, systemic discrimination, threats, assault, etc.<sup>13</sup>

From a **legal point of view and in terms of accountability**, however, they refer to a broad spectrum of instances stretching from types of expression that are not entitled to protection under international human rights law (e.g., incitement to various specified acts), to types of expression that may or may not be entitled to protection, depending on the existence and weighting of a number of contextual variables (e.g. extremely offensive expression), to types of expression that presumptively would be entitled to protection, despite their morally objectionable character (e.g. negative stereotyping of minorities). In fact, the right to freedom of expression necessarily covers expression that may offend, shock, or disturb certain groups in society, as in any democracy tough talk is part of the cut and thrust of public debate and discourse. It also covers negative stereotyping which, although being legal, may trigger illegal hate speech (as the “Pyramid of hate” claims), and are perceived as hugely harmful and deeply concerning by their targets – as the survey clearly reveals – to the extent that they are labelled as the most frequent perceived form of hate speech by LGBTI people in Albania. And this cannot be underestimated.

## 1.2 Exclusive vs contextual definitions

Recognition of **contextual factors** and variables can help to navigate across the spectrum of hate speech forms (and therefore to calibrate responses to, or formulate policies for, different types of hate speech). In terms of severity, applicable liability and required responses, for instance, a distinction should certainly be made between:

- a) hate speech that is subject to criminal liability;
- b) hate speech that does not reach the threshold for criminal liability, but is subject to civil or administrative liability;
- c) hate speech that does not entail criminal, civil or administrative liability, but nevertheless intentionally or unintentionally causes prejudice and hate and raises concerns in terms of tolerance, civility, inclusion and respect for the rights of others, and should be addressed through other, non-legal, means.

This latter category, however, still involves a possible conflict between freedom of speech/expression and the defence of human dignity against discrimination.<sup>14</sup> This conflict, and the need to carefully balance freedom of expression with anti-discriminatory norms, has not by chance received significant attention from scholars and legislators, as the recent discussions on online hate speech legislation is clearly showing.

According to Sellars (2016), different approaches to define hate speech can be indeed linked to a particular inclination to favour either one or the other: “Some do not overtly call for legal sanction for such speech and seek merely to understand the phenomenon; some do seek to make the speech illegal and are trying to guide legislators and courts to effective statutory language; some are in between”.<sup>15</sup>

Advocates of the **free speech** rights invoke the principle of “content neutrality”, which prohibits bans on the expression of viewpoints based on their substantive message.<sup>16</sup> This is what happens in the U.S. legislation

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<sup>13</sup> See <https://tinyurl.com/ekn6xmb>.

<sup>14</sup> Amanda R. Greene, Robert M. Simpson, Tolerating Hate in the Name of Democracy, «The Modern Law Review», 80 (4), 2017, pp. 746-765.

<sup>15</sup> See Sellars, Defining Hate Speech, cit.

<sup>16</sup> See Corey Brettschneider, Value democracy as the basis for viewpoint neutrality: A theory of free speech and its implications for the state speech and limited public forum doctrines, «Northwestern University Law Review», 107, 2013, pp. 603-646.

(under the First Amendment of the Constitution),<sup>17</sup> where such neutrality would be guaranteed by the “market of ideas”, in which all ideas are theoretically free to compete and circulate, unless they constitute a “clear and present danger” to the national security, as recognised by the iconic “*Brendenburg vs Ohio*” decision by the Supreme Court,<sup>18</sup> or they include fighting words, threats, or incitement to riot (which is why the former President Donald Trump was criminally charged for the events on 6 January 2021 at Capitol Hill).<sup>19</sup> This protection therefore extends to speech that expresses ideas that most people would find distasteful, offensive, disagreeable, or discomforting, and thus extends even to many cases of hate speech.<sup>20</sup> From this perspective, hate speech laws would not only violate the cardinal viewpoint neutrality, but also the “emergency principles”, by permitting government to suppress speech solely because its message is disfavoured, disturbing, or feared to be dangerous, by government officials or community members, and not because it directly causes imminent serious harm.

As known, the right to freedom of expression is recognized as **a human right under article 19 of the Universal Declaration of Human Rights (UDHR)** and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). However, if the UDHR states that “everyone shall have the right to hold opinions without interference” and “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”, the ICCPR claims that the exercise of these rights carries “special duties and responsibilities” and may “therefore be subject to certain restrictions” when necessary “[f]or respect of the rights or reputation of others” or “[f]or the protection of national security or of public order (order public), or of public health or morals”.<sup>21</sup> Similarly, Article 10 of the European Convention of Human Rights lists in its paragraph 2 specific limitations to the exercise of this right which “are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”<sup>22</sup>.

**Freedom of speech and expression, therefore, may not be recognized as being absolute**, and may not cover – for instance – slander, obscenity, pornography, sedition, incitement, fighting words, dignity, i.e. expressions offensive to individuals and society. This is the reason why many insist that it is necessary to “take the evils of hate speech seriously” and that “certain kinds of speech are beyond tolerance” when they are harmful to others.<sup>23</sup>

The neutrality concept can therefore be legitimately criticised on the principle that a **balance needs to be found between competing principles**, as the protection of vulnerable minorities/subjects is as important as freedom of expression: “people must enjoy absolute freedom to advocate and debate ideas – Cohen-Almagor argues – but this is so long as they refrain from abusing this freedom to attack the rights of others or their status in society as human beings and equal members of the community”.<sup>24</sup>

Within this “protection” frame, an alternative remedy to censoring hate speech would be to create the conditions for more speech, as Nadine Strossen, former president of the American Civil Liberties Union and professor of law at New York Law School and – more in general – the UNESCO study *Countering On-line Hate Speech* suggest by claiming that that counter-speech should be preferable to the suppression of hate speech.<sup>25</sup> By advocating for a more robust positive and cultural action through counter and alternative narratives, and by raising social awareness, such a proposal – critics say – could not be easily implemented by law, as it would require long-term strategies and policies based on the pedagogical and moralising role of institutions.

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<sup>17</sup> See <https://tinyurl.com/b2xbn6ku>.

<sup>18</sup> See <https://tinyurl.com/bu95xx97>.

<sup>19</sup> See <https://tinyurl.com/77y9tk9m>.

<sup>20</sup> Lauren E. Beausoleil, Free, hateful, and posted: rethinking first amendment protection of hate speech in a social media world, «Boston College Law Review», 60 (7), 2019, pp. 2101-2144.

<sup>21</sup> See <https://tinyurl.com/7w7nu8s>; <https://tinyurl.com/tja32hsj>.

<sup>22</sup> See [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf).

<sup>23</sup> Raphael Cohen-Almagor, Hate and racist speech in the United States: A critique, «Philosophy and Public Issues», 6 (1), 2016, pp. 77-123.

<sup>24</sup> Id., Racism and hate speech: A critique of Scanlon’s contractual theory, «First Amendment Studies», 53 (1-2), 2019, pp. 41-66.

<sup>25</sup> Iginio Gagliardone, Danit Gal, Thiago Alves, Gabriela Martinez, *Countering Online Hate Speech*, UNESCO Publishing, Paris, 2015. [<https://tinyurl.com/2mb5sfk>]

Another proposition to tackle hate speech by at the same time limiting the control on freedom of expression/speech is to set up more rigorous criteria in deciding when a form of expression (offline and online) merits a restriction, and what that restriction should be. According to the OHCHR Rabat Plan of Action (2013),<sup>26</sup> to decide what is permissible and what is not, States and non-State actors – such as Internet providers – should then scale their interventions according to some contextual factors:

- 1) the social and political context at the time the speech was made
- 2) the status and the purpose of the speaker
- 3) the intent to incite the audience against a target group
- 4) the content and form of the speech
- 5) the extent of its dissemination
- 6) the nature of the audience
- 7) the likelihood of harm, including imminence.

Contextual criteria have been adopted, for instance, by the **European Court of Human Rights**, which not by chance has never provided an exclusive definition of hate speech and does not consider itself bound by the domestic courts' classification and national level. It instead "analyse[s] each case submitted to it on its own merits and to ensure that its reasoning – and its case-law – is not confined within definitions that could limit its action in future cases".<sup>27</sup> In the absence of a definition, some clarification has been (slowly) provided by a **growing body of case-law**:

In its seminal ruling in *Handyside v. United Kingdom* (1976), the Court claimed that freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there would be no democratic society".<sup>28</sup> The *Handyside v. United Kingdom* judgment recognised that in democratic society, space must be created and sustained for public discussion and pluralistic debate, which may involve disagreement and confrontation – even when expressed in strong terms – between opposite points of view, under the protection offered by Article 10 ("Freedom of expression") of the European Convention of Human Rights.<sup>29</sup>

The Court strengthened this point with its judgment in the *Jersild v. Denmark* case (1993),<sup>30</sup> which involved the conviction of Jens Olaf Jersild, a Danish journalist, for aiding and abetting in the dissemination of racist statements in a televised interview he had conducted. The statements in question were uttered by members of an extreme right-wing group, and Jersild was convicted in Denmark mainly because he had failed to explicitly contradict, or distance himself from, the racist and xenophobic statements of the interviewees. The Court however held that his conviction was not "necessary in a democratic society" and that it violated his rights under Article 10. This conclusion rested on considerations of context in (news) reporting, and the importance of journalistic autonomy for the functioning of democracy. The Court held that the journalist's right to freedom of expression had been infringed, inter alia, because it was not for the courts to determine which journalistic techniques (e.g. "the methods of objective and balanced reporting") should be used.

On the other hand, in other cases the Court applied Article 17 ("Prohibition of abuse of rights"). Article 17 was designed to prevent the Court from being misused or abused by those whose intentions are contrary to the letter and spirit of the Convention and can be invoked in order to ensure that Article 10 protection is not extended to racist, xenophobic or anti-Semitic speech, statements denying, disputing, minimising or condoning the Holocaust, or (neo-)Nazi ideas.

In the *Seurot v. France* case (2004), a teacher was sanctioned for an article he wrote that was published in a school bulletin. In the article, he deplored the "hordes of Muslims" from North Africa that were invading

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<sup>26</sup> See <https://tinyurl.com/mej4zwcw>.

<sup>27</sup> See Françoise Tulkens, «When to say is to do: Freedom of expression and hate speech in the case-law of the European Court of Human Rights», in Josep Casadevall, Egbert Myjer, Michael O'Boyle, Anna Austin (eds), *Freedom of Expression: Essays in honour of Nicolas Bratza*, Wolf Legal Publishers, Oisterwijk - The Netherlands 2012, pp. 279-295 [281].

<sup>28</sup> See <https://tinyurl.com/rmp8kdt5>.

<sup>29</sup> See <https://tinyurl.com/6ktdufd5>.

<sup>30</sup> See <https://tinyurl.com/3nv4rbek>.

France. Court found that this sanction did not violate the Seurot's rights under Article 10 for the undeniably racist tone of the article, and the responsibilities of the applicant in his capacity as a teacher.<sup>31</sup>

In the *Norwood v. United Kingdom* case (2004), the applicant – a regional organiser for the British National Party – displayed in the window of his flat a poster depicting the Twin Towers in flame, the words “Islam out of Britain – Protect the British People”, and the symbol of the crescent and star in a prohibition sign. The applicant had been convicted of a public order offence by the domestic courts and the European Court agreed with this decision arguing that Norwood's conviction did not breach Article 10 as “the words and images on the poster amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination”.<sup>32</sup>

### 1.3 Hate speech and political discourse

The latter case, as many others that could be brought to our attention, also introduces another crucial point: **to what extent political expression, and political discourse in general, can be exempted by regulations concerning hate speech**, provided that freedom of political debate is at the very core of the concept of a democratic society?

The ECtHR has again adopted a contextual approach, by **distinguishing between the roles of a variety of political actors**, such as political activists (like in the *Norwood v. United Kingdom* case), elected representatives (to what extent parliamentary immunity can cover their expression?), political parties, the government, etc., and through its jurisprudence has explained how the right to freedom of expression of each actor is shaped by the nature of the position exercised, or the status enjoyed.

For example, the “limits of acceptable criticism” look wider for elected politicians than for private individuals as the former “inevitably and knowingly” lay themselves “open to close scrutiny of [their] every word and deed by both journalists and the public at large, and [they] must consequently display a greater degree of tolerance”.<sup>33</sup> These limits appear to be even wider as regards the government, as in a democratic system “the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion”.<sup>34</sup> Furthermore, “the dominant position” occupied by the government requires clear norms that prevent it to resort to criminal proceedings against its adversaries.

**Political discourse must therefore be carefully scrutinised through specific contextual variables**, e.g., the content, context, or form of the expression; the status and intent of the speaker or party; the nature and severity of the interference and sanction. Distinctions should be made between live debates or election meetings or rallies, where there can be a high incidence of heated, off-the-cuff remarks, as well as limited practical possibilities for corrective (editorial) expression, and concerted, calculated political or election manifestos or campaign communications, from which a greater seriousness of political intent can be inferred. As the survey reveals, political speeches and political participation to talk shows are seen as a highly potential source of harmful and inflammatory speech, and concerns on unmoderated content in these contexts has been raised and should be considered.

**This of course calls into question politicians' relevant duties and responsibilities**, as the exercise of freedom of expression is governed precisely by duties and responsibilities.<sup>35</sup> On this matter the Court has been very clear stressing that: “[as] the struggle against all forms of intolerance is an integral part of human rights protection, it is crucially important for politicians, in their public discourse, to avoid expression that is likely to foster intolerance”. Which implies that despite robust protection that should be granted to freedom of political expression in democratic society that freedom does not, and cannot, include “freedom to express racist opinions or opinions which are an incitement to hatred, xenophobia, antisemitism and all forms of

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<sup>31</sup> See <https://tinyurl.com/y4272x2a>.

<sup>32</sup> See <https://tinyurl.com/ue88dkn7>.

<sup>33</sup> See *Lingens v. Austria*, Judgment of the European Court of Human Rights (1986). [<https://tinyurl.com/22ztdkek>].

<sup>34</sup> See *Incal v. Turkey*, Judgment of the European Court of Human Rights (1998). [<https://tinyurl.com/rjwfd3cc>].

<sup>35</sup> See <https://tinyurl.com/amj6r4jr>.

intolerance”.<sup>36</sup> Given their position of influence, politicians and public officials – particularly those in leadership positions – should then not only avoid engaging in, endorsing or disseminating hate speech, but also be encouraged to condemn hate speech expeditiously and publicly. On the other hand, parliaments, other elected bodies and political parties, while subject to the applicable legislation on hate speech, should also be encouraged to set up specific policies to address and combat hate speech, in particular in the context of electoral campaigns and in the debates of representative assemblies. To this end, they should adopt a code of conduct which relies on the existing definition of hate speech provided by national law and provides for an internal complaint and sanction procedure.

**Appealing to the sense of “duties and responsibilities” provides also ample scope for non-legal, promotional measures to encourage best practices** among politicians and political parties, as much as media professionals, which may play both a negative role in the propagation of hate speech, and a positive contribution to countering hate speech. Politicians and – as well as public officials and civil servants – are under a special responsibility to refrain from making statements (to the public and to the media) which could be understood as, or have the effect of, hate speech. At the same time, media should publicly reject such statement whenever they occur, and whenever possible they should provide moderation (in talk shows, for instance) and promote a culture of tolerance through a more pro-active involvement.

Whereas some types of hate speech could be best dealt with by regulatory measures, others are more suitably dealt with by educational, cultural, and other non-regulatory measures. If a regulatory framework is necessary to counter hate speech, it should be not only as much comprehensive as possible in terms of liability, in recognition of the fact that hate speech covers a range of different types of expression, but also complemented by a framework for non-legal action.

## 1.4 Duties and responsibilities in the media sector

This looks particularly relevant in the media sector, whose lack of moderation policies in live shows raises several concerns. Broadcasters, especially those with public service mandates, should be encouraged – via incentives and soft law recommendations – to make adequate provision for programme services, also at popular viewing times, which help promote the integration of all individuals, groups and communities as well as proportionate amounts of airtime for minority groups. Also, they should provide much more inclusive work environments, and promote values of multiculturalism not only in their programming, but also in their structures. They should also be encouraged to reject ads showing negative stereotyping.

**As for hate speech, media organisations should make a substantial and effective contribution to address it**, in particular by developing, updating and applying, as appropriate, professional standards and codes of conduct, adhering to self-regulatory standards and implementing training programmes for journalists and members of staff. Public service media should also avoid using and disseminating hate speech targeting individuals and groups, and, as part of their public mission, promote intergroup dialogue and understanding, including through participation and representation in editorial decision making, the airing of content that portrays the diversity in the community they serve, the effective moderation of inflammatory political discussions, which otherwise may spread among the audience harmful stereotypes and biased representation of minorities, which easily can result in hate speech and foster discrimination.

Media organisations should be encouraged **to report in a context-specific manner and to ensure that hate speech incidents are brought to the attention of the public** in a way which does not amplify the hateful message. Given the triggering role of *infodemic* (i.e. the circulation of too much information and disinformation, including false or misleading information) on hate speech, they should also provide accurate and reliable information and, in doing so, give voice to diverse groups and communities in society, especially when reporting on matters of particular public interest and in election periods. Last but not least, they should be alert to the dangers of proliferating prejudice and pay attention to avoiding any unnecessary references to personal characteristics or status.

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<sup>36</sup> See *Erbakan v. Turkey*, Judgment of the European Court of Human Rights (2006). [<https://tinyurl.com/n7ysxrv6>]. For further discussion, See. Tarlach McGonagle, *The Council of Europe against online hate speech: Conundrums and challenges*, Republic of Serbia Ministry of Culture and Information, Belgrade, 2013.

## 1.5 Digital media and their challenges

**The context is constantly changing**, though. In the last fifteen years, the ways in which people have received news, and communicated with one another, have been revolutionised by the Internet, and especially by social networks. From an era in which individuals communicated their ideas, usually orally and only to small numbers of other people, we have moved on to an era in which individuals can make free use of a variety of diffusion channels to communicate, instantaneously, without mediation, with people who are a long distance away; in addition, more and more people make use of online platforms not only to interact with each other, but also to share most of the news (often without verifying if from mainstream media of authoritative source), and this use has so much accelerated in the last twelve months to spread a severe *infodemic* in digital and physical environments during the Sars-cov-2 outbreak.<sup>37</sup>

In recent years, **also mainstream media have been undergoing profound changes**; they are generally becoming increasingly instantaneous, international, and interactive. At the same time, ideas, information, and content of all kinds have generally become more abundant, accessible and amplified to wider sections of society. As a result of these changes, the current media offering is more plentiful than it has been at any point in history. However, these advances in information and communications technologies can clearly have far-reaching consequences for how hate speech is disseminated and processed. There is **reduced dependence on traditional points of mediation**, anyone can, in principle, set up a website or communicate via social media, and hate speech enjoys a high degree of mobility. Moreover, technological features allow hate-mongers to offer content via Internet Service Providers (ISPs) based in a jurisdiction of their choice (and this is clearly relevant for the struggle against online hate speech as national laws can vary quite considerably in the extent to which they tolerate hate speech); it is common practice for hate websites to be hosted in jurisdictions that are considered to be favourable to, or tolerant of, hate speech, and where is possible to evade legal liability for hateful content.

**Determining legal liability for hate speech online** is not only complicated from a jurisdictional perspective, though. Potentially, a multiplicity of different actors could be involved in the creation and dissemination of hateful content: creating or sourcing it; publishing it; developing it; hosting it or otherwise facilitating its dissemination, accessibility or retrievability. But liability could attach to each of the implicated actors in different ways, depending on the nature of the communication; the scope and details of relevant national laws, and other “contextual variables” we have already mentioned. Different actors may also have different relationships with content, and the level of editorial involvement/control (and, as a consequence, the level of responsibility/liability) may vary a lot. For example, to what extent can a newspaper be held liable for racist comments posted by readers on its online discussion forum? Can Twitter be held liable for racist tweets? Or YouTube for racist videos?

## 1.6 Specific measures for online hate speech?

In terms of content production, the detachment created by being enabled to write without any obligation to reveal oneself directly means that virtual communication allows people to feel greater freedom in the way they express themselves. Unfortunately, though, there is also a dark side to this, and social media have become a fertile ground for heated discussions which frequently result in the use of insulting, offensive, and threatening language, or for comments that create a general sense of danger, threat, and insecurity and that cause harms to their direct targets by attacking, humiliating, dehumanising them.

The relative ease of maintaining anonymity in an online environment had definitely contributed to an exacerbation of the emotional or psychological harm inflicted on victims of hate speech (and has led to an ongoing discussion for and against anonymity online).<sup>38</sup> When the true identities of those responsible for cyber-bullying, or hateful messages disseminated by social networks, are cloaked in anonymity or pseudonymity, the very suspicion that those persons may live nearby the victim, or frequent the same social, educational, or professional circles, is likely to compound distress. On the other hand, hateful messages can be frequently produced also when the victim is totally unknown, and the real target becomes the group

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<sup>37</sup> See Matteo Cinelli, Walter Quattrociocchi, Alessandro Galeazzi et al., The COVID-19 social media infodemic, «Scientific Reports», 10, 16598 (2020), <https://doi.org/10.1038/s41598-020-73510-5>.

<sup>38</sup> See <https://tinyurl.com/enpd7nhx>.

he/she belongs. In this case, circulating hate may just be the easiest way for the author of the message – who in this case does not have any interest to be disguised – to attract attention, likes, visibility.

Whatever the reason, when messages of hate are circulated via social networking services, **the actual amplification of those messages, coupled with a perception that their dissemination is uncontrollable, can increase victims' distress levels.** So, too, can the apparent social validity or authority conferred on such messages by the large numbers of likes, mentions, favourites, friends, or followers they may attract.

The potential permanency of content made available online is also a relevant consideration when quantifying the nature and extent of the harms caused by hate speech. Online manifestations of hate speech are generally more refractory than their traditional, offline equivalents. The durability of online content is also assured by hyperlinking and online search ability: content remains traceable and largely retrievable after its original dissemination to an unprecedented extent when that dissemination takes place online, even when the original content has been cached or removed.<sup>39</sup> This means that there is a danger that victims of hate speech will continuously, or at least repeatedly, be confronted by the same instances of hate speech after their original articulation.

**Hate speech online does more than merely express ideas or dissent: it promotes fear, intimidation, and harassment of individuals and groups.** This may result in serious violation of human dignity, up to causing traumas and PTS, depression, and possibly suicide attempts of the hate speech victims. It can even be an incitement to murder and genocide of those against whom it is targeted.<sup>40</sup>

Not surprisingly, so, **transnational institutions and national governments have more and more recognised hate speech as a serious problem.** This has led to a number of national and international initiatives being proposed, aimed at defining and addressing the problem, and trying to develop effective counter-measures. Although many advocates for freedom of expression have feared that laws limiting speech can be easily misused by authorities to silence critics, minorities, oppositions – and therefore claim that, for this danger, it might not be worth limiting freedom of expression online – the international community seems to agree, at least up to some degree, that hate speech online needs to be somehow regulated.

At European level, the Council of Europe's *Additional Protocol to the Convention on Cybercrime*, which was adopted in 2003 and entered into force in 2006 to foster "substantive, procedural and international cooperation provisions [...] to cover [...] offences of racist or xenophobic propaganda", was particularly important for introducing some regulations.<sup>41</sup> Not only it was a step towards clarifying the definitions of online hate speech (intended as "any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors"), but it also obliged State Parties to adopt legislative and other measures to establish as criminal offences under its domestic law against online hate speech.

This has effectively brought to severe measures against online hate speech in several European countries such as Denmark, Britain, Germany, France, just to name a few.<sup>42</sup> However, the rendition of the Council of Europe's *Additional Protocol* to different national legal systems has proved to be challenging. Internet is a global transnational medium, and much material that can be viewed with stricter regulation in some countries may actually be outside the jurisdiction of the courts of those countries. If some extremist content could be illegal and subject to removal in a European country, for instance, this does not mean that it could be always removed as social media servers are often located in US, where there may be no legal grounds for its removal.

Also, the collaboration of social media providers to the implementation of such protocol and further regulations has been inconsistent and discontinuous. For long time, for instance, Twitter has taken action only upon reports or requests, without any kind of filter system of its own and without taking any responsibility for hateful tweets. And despite initiatives like INHOPE and INACH<sup>43</sup> – which, to a network of Internet Hotlines and companies, provided a mechanism for receiving complaints from the public about alleged illegal content on

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<sup>39</sup> See Alexander Brown, What is so special about online (as compared to offline) hate speech?, «Ethnicities», 18 (3), 2018, pp. 297-326.

<sup>40</sup> See <https://tinyurl.com/26tps4ff>.

<sup>41</sup> See <https://tinyurl.com/48rpfswu>.

<sup>42</sup> See <https://tinyurl.com/ft4ew495>.

<sup>43</sup> See [www.inhope.org](http://www.inhope.org); [www.inach.net](http://www.inach.net).



the Internet – things have moved forward only after the European Commission released its *Code of conduct on countering illegal hate speech*, which was agreed by key-players like Facebook, Microsoft, Twitter, and YouTube in May 2016 (and later also by Instagram, Snapchat, Dailymotion and TikTok).<sup>44</sup>

However, commercial ISPs may have willingly agreed to prohibit users from posting hate speech over their services, but a lot of **law enforcement can take place mainly through voluntary international cooperation** and there is still no way of forcing them to have a regular monitoring mechanism. **It has been crucial therefore the role of civil society organisations in carrying out monitoring of the circulation of hate speech on the Internet** and social media, as long as initiatives to include Internet users in the fight against hate speech, and to develop education programmes to make them realise that hate speech is liable, it may be a crime, and it should not be considered acceptable. **The harmonisation of the legislation (at European level) is desirable and advisable, but it is too unlikely to be set as a goal without international cooperation between states, media partners, and civil society actors.**

## 1.7 Online hate speech and law enforcement: what are the options?

Among the most recent initiatives, the **German Network Enforcement Act** (NetzDG) passed in 2017 has set a term of reference and comparison for many countries.<sup>45</sup> The Network Enforcement Act (NetzDG) elicited howls of protest from free speech crusaders when it was passed in 2017: critics of the law said its measures, which require social media platforms to quickly take down incendiary material or face big fines, could repress political speech or be used as a model for authoritarian governments to crack down on online dissent.

On the contrary, other critics say it did not go far enough — people posting hate speech should be unmasked and brought to justice – and required an upgrade that would force platforms to proactively report hate speech to law enforcement and reveal users' identity to authorities without a court order, as is currently required in Germany. According to privacy advocates, this would however violate rule-of-law guarantees in the German constitution. Forged in the late 1950s, Germany's robust hate speech laws were a direct response to the country's experience with Nazism and an acknowledgment that the rise of authoritarianism was partly made possible by the fact that it was legal to use incendiary propaganda that drew on racist tropes and was designed to stoke prejudice. For decades now, incitement to hatred against national, religious, ethnic, or racial groups has been illegal in Germany, which has some of the strictest laws on what is acceptable speech, including the NetzDG.

Not even the NetzDG, however, has managed to prevent hate speech to spill over into real violence, as it happened in June 2019, when Walter Lübcke, a local German politician in Kassel, was shot dead by a neo-Nazi, after becoming a target of the extreme right-wing for defending Germany's open border policy and being seen as the face of Germany's refugee policy. Or as it happened in February 2020 (just hours after Merkel's government approved one of two updates to NetzDG), when a man – who had previously published videos and documents online in which he cited internet conspiracy theories and called for the "extermination" of certain ethnic groups – killed nine people at two hookah bars in the city of Hanau.

Lübcke's murder and Hanau's massacre validated the urgency for further implementations of the NetsDG in order to tackle and combat hate speech online and hate crime, which despite the country's efforts had been widely disseminated through an increasingly dangerous network of radicalized far-right activists. Under these new implementations, platforms like Facebook and Twitter have now the obligation to flag particularly egregious examples of hate speech to law enforcement, the idea being to apprehend a potential attacker before he/she turns to violence. Companies are also forced to disclose more information about how — and with the use of what technology — they handle cases when content is flagged to them as potentially illegal.

For NGOs like Digitale Gesellschaft, however, further tightening up the law by outsourcing parts of **law enforcement to private companies** and enabling the collection of data on a massive scale will not solve the problem with right-wing extremism, and will not fully address the victims' concerns, such as the difficulty of taking action against anonymous posters of hate speech, demonstrating what legally qualifies as hate speech,

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<sup>44</sup> See <https://tinyurl.com/7bbm2f9z>.

<sup>45</sup> See <https://tinyurl.com/nvbhuvyf>.

bringing perpetrators to justice at no costs (victims normally have to advance the costs of legal proceedings) and without being exposed to retaliation.

On the other hand, opponents of NetzDG warn that the law could do long-lasting damage to the country's data protection standards. Moreover, they take particular issue with the fact that **content moderators (massively) employed by the platforms** to comply with regulations will be making the first call on whether a particular comment or post falls foul of German hate speech laws (the NetzDG does not redefine what is illegal and what is not, it only aims at better enforcement of existing law) – something judges often struggle to ascertain; the content moderators will then be expected to report the authors of those posts to investigators at Germany's Federal Criminal Police Office.

This will not just lead to a tsunami of cases for authorities to deal with: forcing platforms to reveal the identity of users will allow authorities to build up ever-growing databases of highly sensitive information, as it has happened in Russia with the approval of its own hate speech bill (which referred explicitly to the German law),<sup>46</sup> and with reporting tools – often manipulated by trolls – used to silence oppositions and members of marginalized groups, and further jeopardise freedom of speech in the country. The same has occurred in Hungary, Turkey and, more recently, in Poland.

Despite its challenging points – recently addressed by the German government's conference *Unboxing hate speech* (February 2021)<sup>47</sup> – since 2017 more than a dozen countries, from Venezuela to the Philippines and Malaysia, have passed online hate speech legislation which to some extent recall the NetzDG, all of them paying close attention to how Berlin has handled the delicate balance between policing online hate speech and maintaining civil liberties.

In May 2020, the French parliament approved an anti-hate speech bill (the "**Loi Avia**")<sup>48</sup> – supported by many civil society organisations – that shared a good deal of resemblance with the German law, but that suffered a major rebuke when, in June, the French Constitutional Court knocked down several sections of it as unconstitutional, forcing lawmakers to redraw the text. In the original text online platforms were asked to remove illegal content very quickly or face large fines (up to 4% of their global revenue), giving them a one-hour deadline to remove terrorism and paedophilia-related content or a twenty-four-hour deadline, when it comes to other "manifestly illicit" contents, such as hate speech, racist comments, or religious bigotry.

As much as NetzDG, the bill was designed to induce responsibility from online service providers, by also setting up a prosecutor specialized in digital content and a government unit to observe online hate speech. However, it got openly criticised by the National Consultative Commission on Human Rights for increasing the risk of censorship: online civil liberties groups said it would be unrealistic to think that illegal content could be removed so rapidly, and that short removal times and large fines for non-compliance would mainly punish smaller intermediaries – and therefore be detrimental to the plurality of the market – and incentivize any platform to over-remove content and entrust the policing of thought and expression to private businesses mostly based in foreign countries. According to the Constitutional Court, the deadlines for the removal of illicit content could not be realistic because the determination of what is illicit and what is not could not be demanded to private companies (but only to republican institutions), and the request for the public administration to deal with such a presumably huge amount of cases in such a short time would be totally unmanageable. The law was finally signed by Emanuel Macron on 24 June 2020, but in order to be promulgated, it got "largement retoqué" (severely adjusted) and mainly included "dispositions mineures" (minor regulations) which clearly downsized its scope and remits.<sup>49</sup>

In Summer 2020, Austria discussed the **Kommunikationsplattformen-Gesetz (KoPI-G)**, a law on online hate speech (based on the NetzDG too) which would enable users to notice potentially illegal content and report it, for platforms to decide whether the content is "obviously illegal" (in which case it must be deleted within 24 hours of reporting). Again, the text leaves to companies themselves to decide within the deadline whether content is illegal or not ("the privatization of law enforcement", as critics say),<sup>50</sup> and courts can only check afterwards whether the platform has acted unlawfully. As in Germany, fearing high fines platforms may prefer to delete too much rather than too little content, prompting concerns about freedom of speech.

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<sup>46</sup> See <https://tinyurl.com/5bvjk7sf>.

<sup>47</sup> See <https://tinyurl.com/phe3jms4>.

<sup>48</sup> See <https://tinyurl.com/erwzd5a4>.

<sup>49</sup> See <https://tinyurl.com/vas3h6k>.

<sup>50</sup> See <https://tinyurl.com/42pmdnsj>.

The Austrian law, however, also introduces some important innovation: while the NetzDG only targets social media, the Austrian government makes all platforms with user-generated content subject to it, which means that also news forums, portals like Wikipedia, WhatsApp-like platforms or video-conferencing software like Zoom – through which a huge amount of hate speech has indeed circulated during the pandemic – should be covered by the regulation. This could be problematic to smaller companies which would need to set up intensive moderation to meet the deadline, could also effectively help institutions to deeply monitor and target hate speech also beyond social media, and follow the evolution of the phenomenon more carefully. The NetzDG, the French bill and the Austrian law have shown that when it comes to fighting online hate speech there are no easy answers, and that common standards to regulate online hate speech are not easy to achieve and be shared and implemented.

A study conducted in Spring 2020 by the Council of Europe looking at recent innovations in governance tools for online hate speech – initiated by national governments, intergovernmental organisations and Internet intermediaries across Europe in recent years – however suggested that common standards for the regulation of online hate speech in Europe, while necessary to avoid a patchwork effect, do need not to be implemented in identical way for every country and should ensure pluralism and freedom of speech. Common standards to regulate online hate speech in Europe should retain important decentralisation elements, especially for “grey area” cases (when there are doubts about illegality of the content), which should be dealt with competent independent oversight institutions, or initiatives aiming to enhance cooperation among actors and users’ awareness, or more victim-sensitive approach, which may need to be designed and implemented nationally to maximise existing networks already including governmental agencies, Internet platforms and civil society organisations, including associations of people which are commonly target of hate speech.

Furthermore, **mechanisms should be put in place to mitigate the incentive to over-remove content increasing censorship and victim-sensitive method** – rather than a punitive approach – should be at the core of the governments’ efforts. As for the victims, at the moderation level they should be notified of the decisions taken, hate speech reporting mechanisms should be explained in plain words and multiple languages, and they should be empowered to influence inform moderation strategies and influence moderation outcomes, where feasible. Oversight bodies should explain the reasoning behind their decisions and help facilitate the recovery of victims, e.g., provide them with access to restorative justice. At the regulatory level, reporting mechanisms should minimise a risk of re-traumatisation and victims should be enabled to play an active part in legal or administrative processes, including by testifying.

## 1.8 A step forward: the Digital Services Act

Within this context, on 15 December 2020, the European Commission published its long-awaited proposal for a **Digital Services Act (DSA)**: the result of several years of dealing with the difficulties inherent in the dissemination of illegal content online and growing concerns about the amplification of ‘toxic’ content and disinformation.<sup>51</sup>

The DSA seeks to consolidate various separate pieces of EU legislation and self-regulatory practices that address online illegal or ‘harmful’ content. It also seeks to harmonise rules about the provision of digital services across the EU, and reducing patchwork of potentially conflicting legislation, such as Germany’s NetzDG or the Avia Law in France.

According to the DSA, **Internet intermediaries should fulfil their duty of care, under which they should comply with legal obligations**, and act upon their corporate social responsibility to address hate speech, taking due account of the Recommendation CM/Rec (2016) on of the Committee of Ministers to member States on Human Rights and Business, i.e., on business enterprises’ responsibility to respect human rights.<sup>52</sup>

Also, it ambitiously seeks to protect users’ fundamental rights – such as free speech – while at the same time making online platforms and Internet intermediaries comply with legal obligations, act upon their corporate social responsibility to address hate speech and be accountable to public authorities through new significant transparency obligations.

All intermediaries, in fact, will be required to:

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<sup>51</sup> See <https://tinyurl.com/w4s32ske>.

<sup>52</sup> See <https://tinyurl.com/266m9n78>.

- **produce transparency reports** – categorised by the type of illegal content concerned – stating a) the number of notices received, b) any action taken and the average time to take it, c) whether this action was taken based on law or the terms and conditions of the provider, d) and any content moderation engaged at the providers initiative;
- **submit information about the number of disputes** filed with out-of-court dispute settlement bodies, the outcome of such disputes and time taken to resolve them, as well as about the application of suspension measures in response to the posting of manifestly illegal content, manifestly unfounded notices, and the submission of manifestly unfounded complaints;
- **be transparent and provide information** about any use of automatic means for the purposes of content moderation, including indicators of the accuracy of the filters used and safeguards applied.<sup>53</sup>

Very large online platforms (VLOP) will be also subject to additional transparency online advertising requirements, to publish their self-assessments in relation to systemic risks on their platforms, and to declare the related mitigation measures they have adopted in response.

If (when) fully implemented, **the DSA should streamline reporting and data collection**, making it easier to scrutinise social media companies' statement of reasons when removing content, and compare how they handle and improve content moderation in their platforms. From this perspective, the DSA looks like a step forward in seeking to make the largest online platforms accountable for the way in which they carry out content moderation.

However, **the DSA also includes controversial aspects on media providers' liability and discretionary power**. It empowers hosting providers to make decisions about the legality of content upon receipt of a substantiated notice of alleged illegality (Art. 14), i.e. to decide what should be protected as freedom of speech and what should not, which again means delegating to private companies jurisdictional and legal power. It also provides that VLOPs are required to conduct risk assessments of their content moderation systems at least annually (Art. 26), without giving them any guidance on how conflict between the dissemination of illegal content and the exercise of fundamental rights (particularly the rights to privacy and data protection, freedom of expression, the prohibition of discrimination and the rights of the child) should be resolved, and therefore leaving them with an enormous amount of discretion on how those risks should be mitigated; although independent regulators are recommended, very large online platforms will be subject to supervision only by the European Commission, which is not an independent regulator but the EU's executive arm.<sup>54</sup>

The need of **balancing the online market** is indeed another challenging area. Without sufficiently addressing their power or without settling limits on their business model based on the massive collection of personal data, profiling, and targeted advertising, VLOPs' dominance – instead of being challenged – could be cemented. The vast majority of public discourse (and hate speech) takes place on a very small number of platforms, which hold excessive power over information flows, and content moderation rules might not be sufficient to address this problem, which could instead be tackled by opening the market to new platforms and decentralising the channelling of public discourse.

## 1.9 Some open questions (and some opportunities)

Recent discussions and initiatives on the possible containment of online hate speech have not only challenged existing definitions of hate speech, or questioned legislative approaches to it, or reminded us of the difficult balance between freedom of expression and measures to tackle discrimination. They have also introduced **new items on the agenda** regarding:

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<sup>53</sup> On hate speech automatic detection and filtering, See. Anne Schmidt, Michael Wiegand, A Survey on Hate Speech Detection using Natural Language Processing, proceedings of the Fifth International Workshop on Natural Language Processing for Social Media, Valencia, 2017. [<https://tinyurl.com/45b4xa7z>]; See. also Paula Fortuna, Sérgio Nunes, A Survey on Automatic Detection of Hate Speech in Text, "ACM Computing Surveys (CSUR)", 51 (2018), pp. 1-30; Sean MacAvaney et al., Hate speech detection: Challenges and solutions, "PloS one", vol. 14 (8), 2019. [<https://tinyurl.com/8xcj9b96>]

<sup>54</sup> See. Article 19, At a glance: Does the EU Digital Services Act protect freedom of expression? [<https://tinyurl.com/3m6n36kh>]

- EU's and Council of Europe's recommendations vs state/national regulations vs **Internet intermediaries' responsibility and liability** (and the **need for an intervention of third-party independent equality bodies** holding relevant expertise in addressing hate speech);
- the request of **transparent policies and data sharing mechanisms**;
- the urge for Internet intermediaries' content **moderators to be properly trained** and be provided with an adequate support, a solid expertise in hate speech and human rights, and a sound understanding of relevant local, cultural, socio-political, and historical contexts;
- the possibility for state and Internet actors to develop and **apply alternatives, in particular for content that is not likely to be subject to criminal, civil or administrative liability**, in order to support initiatives that encourage and promote counter-speech, human rights, and positive social values to address hate speech;
- the crucial importance of non-legal frameworks to enhance user's media literacy and awareness;
- generally, the **unavoidable cooperation between institutions, media providers, civil society and communities of practice**. In particular, states and Internet intermediaries should establish effective cooperation with civil society groups – including groups that are potentially affected by hate speech – and support their efforts for improved policies and practices in monitoring, analysing and addressing hate speech.

In addition to adopting legal and regulatory measures, the challenge is to **prevent and combat hate speech by developing and implementing comprehensive strategies or action plans** that contain concrete measures not only from a legal point of view, but also in fields such as awareness-raising, education, promotion of counter-speech and intercultural dialogue. These strategies should embrace the critical exploration of the roots of hate speech, including those stemming from the use of disinformation about, and negative stereotyping and stigmatisation of, individuals and groups. Human rights education, education for democratic citizenship, and media and information literacy, should therefore be part of the general **education curriculum**, as much as appropriate teacher training and periodic reviews of textbooks to filter out stereotypes and promote equality and non-discrimination discourse.

**Training programmes for relevant public bodies, their representatives, civil servants and public employees**, including law enforcement agents and security forces, the judiciary and others involved in the administration of justice, the personnel of medical services, should be designed to enable the prompt recognition of hate speech, tackle the phenomenon of under recording, avoid its use and limit its impact on those affected. They should also embed training on the needs of persons victims by hate speech and refraining from resorting to unconscious or explicit biases, hostility and stereotyping, which may undermine the readiness of persons affected to seek redress. The data the survey shows on the perception of hate speech in public transports and public offices is striking and very concerning and suggests that further qualitative investigation in these areas should be conducted to better understand responsibilities, dynamics, training needs and challenges.

States should encourage public figures, such as politicians, high-level officials, religious, economic and community leaders, to **promote counter and alternative narratives, condemn the use of hate speech and promote intergroup understanding**, including by expressing solidarity with those victims of hate speech.

Without jeopardising the independence of media, **media professionals and journalists** should also receive, as part of their initial and ongoing education, training on recognising, reporting on and reacting to hate speech as well as on avoiding its use and dissemination, as well as, more generally, on journalists/media's role in promoting a inclusiveness under the umbrella of human rights.

**National human rights institutions, equality bodies, internet intermediaries, and civil society organisations** should be encouraged to work together to develop and promote communication of counter and alternative narratives to all categories of hate speech and to involve victims of hate speech into this process, also by facilitating their access to the media.

In general, awareness should be increased on the risks that hate speech poses to individuals, communities and democratic societies as a whole. States should support awareness-raising and training programmes that engage with perpetrators of hate speech in order to address their prejudices, discriminatory actions and utterances. Such programmes could be imposed as alternative sanctioning by a court with the aim of achieving **restorative justice** in the interest of involved parties in a community.

Effective support mechanisms, including legal aid and assistance, medical, housing and psychological counselling, should of course be put in place to **help the ‘victims’ not to feel isolated or abandoned – if not discriminated – by the institutions, to effectively cope with the harm caused by hate speech.** As the survey shows, the risk of being victims twice, and “victimised”, is real and present. Also, easily accessible and understandable awareness raising and educational activities for groups and individuals that **directly and indirectly** are **targeted by hate speech**, tailored to their specific needs, should be encouraged, promoted, and financially supported, not only to make victims aware of their rights (and enable them to enforce their rights), but also to **foster a culture of care, solidarity, and inclusion** at national and local level, which entails active (and empathic) participation of welfare agencies, civil society organisations, and educational institutions.

**Hate speech reporting by victims and witnesses** should be properly facilitated. Removing any legal and non-legal obstacles to such reporting, and addressing underreporting should be an institutional priority, as much as ensuring that persons reporting hate speech are protected against any adverse treatment or adverse consequence as a reaction to a complaint, and that, where such victimisation occurs, perpetrators are punished; people victims of hate speech should also be reassured that they do not have to bear court and administrative fees or representation fees.

**Standing for those targeted by hate speech** to challenge hate speech and seek redress before competent authorities or through legal proceedings under civil, administrative or criminal law **should be embedded in any strategy or framework to combat hate speech.** And an institutional support should be granted to national human rights organisations, equality bodies, and civil society associations, which stand for – or represent, also legally – the victims and more and more often are targeted by hate speech and systematic aggression also by politicians and the media. Such an inclusive approach may not be easy to coordinate and implement but would provide all the actors involved in hate speech dynamics with a **comprehensive approach**, and a chance not only to better define and further understand a complex, multifaceted and ongoing phenomenon, but also to collectively react and support each other. Which a society – and its institutions – should care about.

## 2. Hate speech in Albania - data and analysis<sup>55</sup>

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### 2.1 Executive Summary of findings

**This chapter aims to provide data at the national level about the situation of hate speech in the country.**

This is quite a new terminology and phenomenon in Albania, but it affects the general population and vulnerable groups in particular. This part of the report will provide data about perceptions, experiences, and trust in the institutions that should deal with hate speech with the purpose to fill the gap of information on how this phenomenon is perceived among individuals. The sample constitutes of 1511 participants randomly selected and additionally a boost sample of 301 respondents.

**Data show that there is a good understanding of what hate speech is.** About 96 percent of the population know what hate speech is and only 6 percent do not know what it implies. The people who do not know what hate speech is, are not part of the subsequent questions in the analysis. This percentage is lowest among the vulnerable group LGTBIQ and Roma/Egyptian community. The level of knowledge for the vulnerable groups, seems to be lower since about 16 percent do not know what hate speech is. When they are asked an open-ended question, the majority of the respondents associate hate speech with offending someone or placing epithets toward someone.

Around 58 percent of the respondents think **that hate speech prevails to a great extent in the country.** In the vulnerable groups, more than nine out of ten respondents, think that hate speech is very dispersed.

The most common TV programs that are perceived as **spreading hate speech** more often, are Political talk shows (69 %) and Reality shows (46 %). The responses among the vulnerable groups are quite similar regarding this question. More specifically they think that reality shows, general talk shows, and political talk shows, favour the spread of hate speech quite extensively. (73%, 67 %, 56 %) respectively.

What is inferred by the data as the most common motivations triggering hate speech, are **Poverty (54 %), Social status, political opinion, and Physical appearance (44 %)**. Data by gender show that more women think that hate speech is triggered by physical appearance, compared to men who think that political opinion trigger more the use of hate speech. In contrast, the above responses are quite different for the boost sample, who think that ethnicity (50 %) and Race (44 %) are the two top motivations that trigger the use of hate speech. Results for the LGBTI show that they specifically think homo-bi-lesbo-transphobia is the most common motivation triggering hate speech (68 %).

The act of damaging the good reputation of someone, is mostly perceived to be a **form of hate speech**, followed by Incitement to hatred (69 %) and ethnic slurs or insults (66 %). Results for the boost sample of the most vulnerable groups show that Ethnic slurs, Incitement to hatred, and jokes about ethnic minorities are mostly perceived as forms of hate speech (respectively, 69 %, 69 %, and 58 %).

**Anxiety, depression and emotional pain are perceived as the main feelings a person that is targeted of hate speech, experiences**, respectively by 69 % and 66 % of total sample. Loss of confidence in oneself is mostly perceived by young compared to older respondents. The results are similar with the most vulnerable groups that again think that anxiety, depression, and emotional pain are the most likely to be experienced by a targeted person of hate speech.

About one out of ten thinks that the **COVID-19 pandemic** has increased the use of hate speech in general, and about 13 % think that COVID-19 has increased the use of hate speech to specific individuals or groups.

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<sup>55</sup> By Xheni Karaj

Results for the boost sample show that half of them do not know how the pandemic might have influenced the use of hate speech.

Social media, schools or universities, and workplaces (respectively 64 %, 59 %, 54 %) are thought to be the **context/ environments where hate speech is mostly used**. Results among the vulnerable groups are quite similar except the transport which is a category mentioned by the vulnerable groups in the top three contexts that hate speech is used.

Data about the experience with hate speech show that the **majority of the respondents have not been exposed personally to hate speech**, 61 %, and around 32 % have heard about other people and 14 % have experienced personally hate speech. More than half of participants, when they have witnessed a case of hate speech toward someone else, declared to have taken actions, about 22 % have not taken any action and about 19 % wanted to do something but did not what do to. Analogously, **vulnerable group analysis** shows different results. More specifically, about 46 % of the respondents among the vulnerable groups have experienced personally hate speech, and the same percentage declared to have heard for others experiencing it. Around 62 % say to have to take action when they have witnessed hate speech, and only 7 % have not taken any action. These results show that vulnerable groups are more active in taking action in case they witness a hate speech situation compared to the general population.

**About 80 % of the respondents have never been exposed to online hate speech**, and around 11 % have been exposed to it few times. Results by age groups show that young respondents are more likely to have experienced online hate speech compared to older respondents. Results for the vulnerable groups show that only 21 % have never been exposed to online hate speech. About 28 % have experienced it a few times and 32 % declared to have experienced it very often. This category is fairly high among LGBTI group that almost half of them declare to have been exposed to online hate speech.

**The level of knowledge for the laws that protect people from hate speech seems to be moderately low**, with only 8 % of the respondents being aware of such laws, and about 37 % have heard something but are not very well informed. Results for the vulnerable groups show that this category has a slightly higher level of knowledge (19%) of laws that protect people from hate speech.

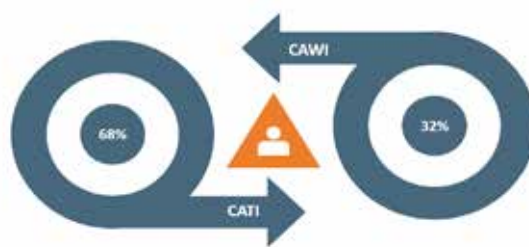
**Family and/or friends are the main channels of asking for help in case of hate speech** (55 %), followed by a doctor and psychologist (25 %), and the police officer (24 %). Around 11 % of the respondents declared that they would not go to talk to anyone in case of experiencing hate speech. The dominant grounds for this inclination, is their acknowledgement of thinking no one actually cares about it (roughly 56 %), or because no one would take them seriously (21 %). Results for the vulnerable groups, show that family and friends are the main channels of asking for help (33 %), but the ascendant choice among alternatives, is Civil Society Association, 37 %, which shows that this community holds faith in favour of them, in case they need help. About 10 % would not ask for help due to the common belief that no one would care (68 %) and because they are ashamed to tell others their experience (60 %).

## 2.2 Methodology of the survey

The survey included a sample size of 1.500 respondents among all regions of Albania representative at the national level. The interviews were carried out through two methodologies CATI (Computer Assisted Telephone Interviewing) methodology, and CAWI (Computer assisted Web Interviewing), between 14 January to 1 February 2020. More specifically, about 68 % of the interviews were carried out by telephone and 32 % by web interviewing. The average length of the interview was about 15 minutes. A detailed description of this methodology is provided in the Annex of this report. The survey included a boost of about 300 respondents from the LGBTI and Roma/Egyptian community, in order to provide insight about hate speech specifically for this target groups.



Figure 1. Methodology for the data collection



## 2.2.1 Sample distribution

The target population of the study included the age group 18-64 years old, which is considered to be the eligible population for this survey. The distribution of the sample was based on the official data of the population estimates for the eligible target group of the population. Based on these official data, was projected the number of interviews per each region, and for each region, the urbanity distribution was respected.

Figure 2. Sample distribution for each region

	Percentage	Number
<b>Berat</b>	5%	82
<b>Diber</b>	4%	59
<b>Durres</b>	9%	135
<b>Elbasan</b>	10%	150
<b>Fier</b>	11%	165
<b>Gjirokaster</b>	3%	46
<b>Korce</b>	8%	120
<b>Kukes</b>	3%	49
<b>Lezhe</b>	5%	75
<b>Shkoder</b>	8%	120
<b>Tirane</b>	28%	420
<b>Vlore</b>	6%	90
<b>Total</b>	100%	1511

A sample size of 1500 interviews ensures a representative study with a margin of error  $\pm 2.5$ , at a 95% confidence interval.

## 2.2.2 Design of the survey instrument

The questionnaire of the final survey included a series of about 20 closed questions (a copy of the questionnaire is annexed to this report). The questions followed a specific order, collecting, first, the level of knowledge about hate speech, followed by questions different perceptions that respondents might have regarding this topic in the country; next the questionnaire included some questions on measuring experience in relation to hate speech and in the end some questions regarding the level of trust in institutions in the country in addressing hate speech. The data are analysed for each question at the national level, as well as by the sex, age groups, and area to have an understanding of whether there are differences among different groups of the population, regarding the specific topics that the survey addresses (a full list of tables is annexed to this report). Data for the boost sample is analysed by the two main groups of vulnerability, specifically LGBTI and Roma/Egyptian.

### **2.2.3 Selection of the survey participants**

The selection of the respondents was made through the CATI Platform (Computer Assisted Telephone Interviewing) and CAWI methodology. Based on the decided geographical quotas for the survey, the operators have carried a quick screening before starting the actual interviews. This ensured that the total randomness of generating numbers have been applied within the specified quotas of each region. The screening also is important to understand the profile of the respondent considering the demographic parameters such as age, gender, etc. (a description of the CATI platform and CAWI methodology are annexed to this report). Once the quota has been checked and verified, then the main interview has started. Before starting it, verbal consent from the respondents was required. The operators had to state the voluntary participation in the survey and no data at the individual level will be disseminated, as well that all the information provided during the interviews will be used only the sake of the data analysis.

### **2.2.4 Ethics, Privacy and Confidentiality**

The operators during the data collection phase have made clear that there is no explicit or implicit coercion so that survey respondents can make an informed and free decision on their possible involvement in the survey. Respondents were aware of the voluntary nature of their involvement, and that they can withdraw from the survey at any time without any negative consequences. All study participants have been informed that the study was done respecting anonymity and that participation in the survey is completely voluntary. Operators have made clear to the participants that their answers would be interpreted only cumulatively and that no personal information will be used, or revealed to another party or in the written outputs. Given that research respondents share some personal information (i.e., age, gender, telephone number/email address) it is the research team's responsibility to ensure that their confidentiality is maintained and personal information is protected. This will be operationalized by ensuring that all datasets are anonymized, in the sense that all personal data of respondents are removed before the data is shared publicly.

### **2.2.5 Limitations of the study**

Due to the situation created by COVID-19, the interviews have been through telephone interviews and web base data collection. CATI methodology guarantees the benefits of the face-to-face and online approaches as it ensures a heterogeneous target and the call operator that can help the respondent during the interview. However, the CATI approach has some limitations as described below: Often telephone calls sometimes are perceived as telemarketing and consequently received negatively by the respondents. Overall, it is estimated that the operators had to contact on average two telephone calls, for one successful interview. The length of the interview is perceived as an issue in telephone interviews. Due to the lack of direct contact, the respondent may require that the questions be repeated so he/she understands their adequate meaning.

## **2.3 Main findings**

This section will provide a comprehensive analysis of the findings of the hate speech survey. The order of analysis does not follow strictly the order of the questionnaire, but it is based on a logical flow on different topics that the questionnaire included.

More specifically the analysis will start with a demographic back group of the respondents; it will continue with perceptions about hate speech; the next section will be on experience concerning hate speech and the last section will be dedicated to the level of awareness regarding laws in addressing hate speech and the level of trust in the institutions that should deal with these topics and issues in the country.

Due to different methodologies, the analysis will be separated into the national population which is based on a random selection of respondents, and the boost sample who were reached through targeted interviews.

### 2.3.1 Profile of the surveyed population

In total, there were 1,511 participants<sup>56</sup> in the survey, aged between 18-64 years old. The mean age of the surveyed population was 39 years, and the median age was 37 years. Around 49 per cent of the respondents were males and 51 per cent were females, and 4 respondents didn't prefer to state their gender.<sup>57</sup>

Figure 3. Respondents by sex



Around 57 percent of the surveyed lived-in urban areas and 43 percent in rural areas. Data by region show that about 28 of the respondents live in Tirana, about 20 per cent in North area, 19 percent in the Center and 33 per cent in the South.<sup>58</sup>

Figure 4. Respondents by urbanity

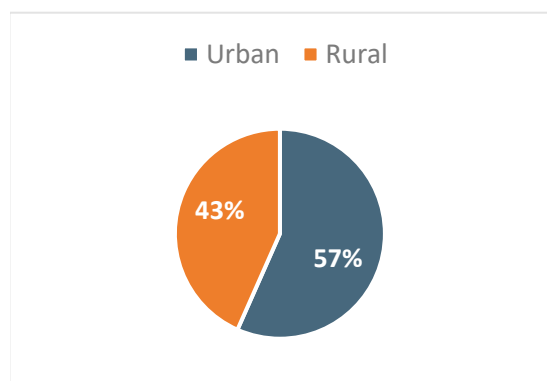
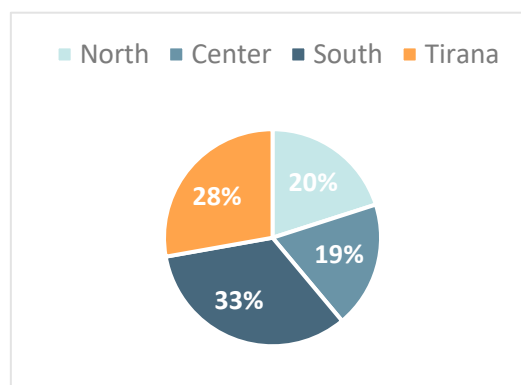


Figure 5. Respondents by region



Approximately 33 per cent of surveyed youth were between 18-29 years old, which will be considered a young population<sup>59</sup>. About 39 percent were between age 30 to 49 years and 28 percent were in the range of 50 to 64 years old.

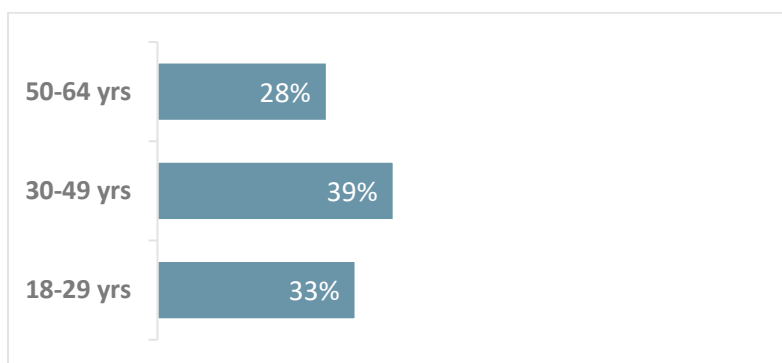
<sup>56</sup> Participants here are considered the respondents who have fulfilled the whole questionnaire.

<sup>57</sup> When the data will be disaggregated by sex, respondents who did not prefer to say they gender will be not included, due to the very low number.

<sup>58</sup> South: Berat Fier Gjirokastër Korçë Vlorë; North: Dibër Kukës Lezhë, Shkodër Center: Durrës Elbasan

<sup>59</sup> Eurostat definition of youth.

Figure 6. Respondents by age group



Data about the level of complete education show that the majority of the respondents (36 %) are employed in secondary school, 26 % have at least a university degree. Around four out of ten respondents are unemployed, and about six out of ten are employed, with the majority working in the private sector.

Figure 7. Respondents by education level

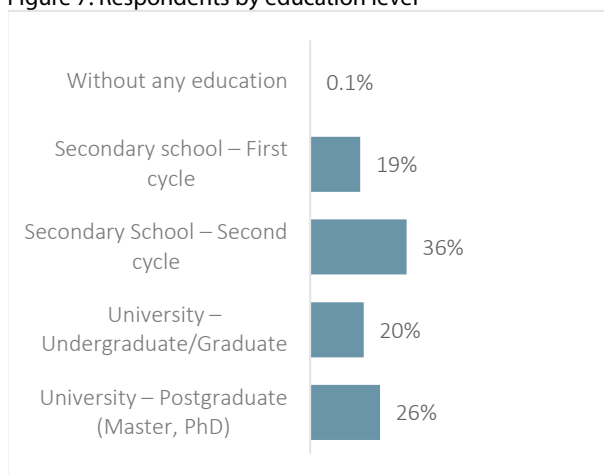
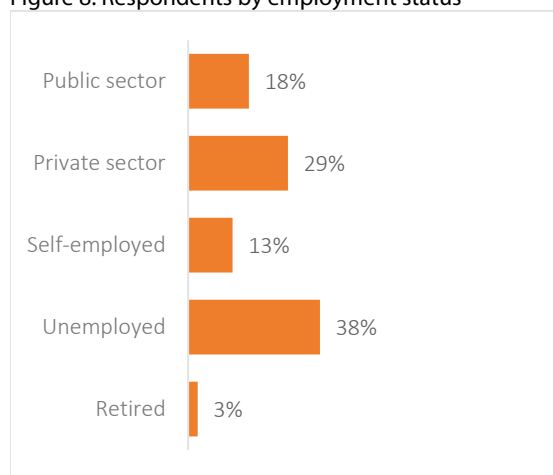
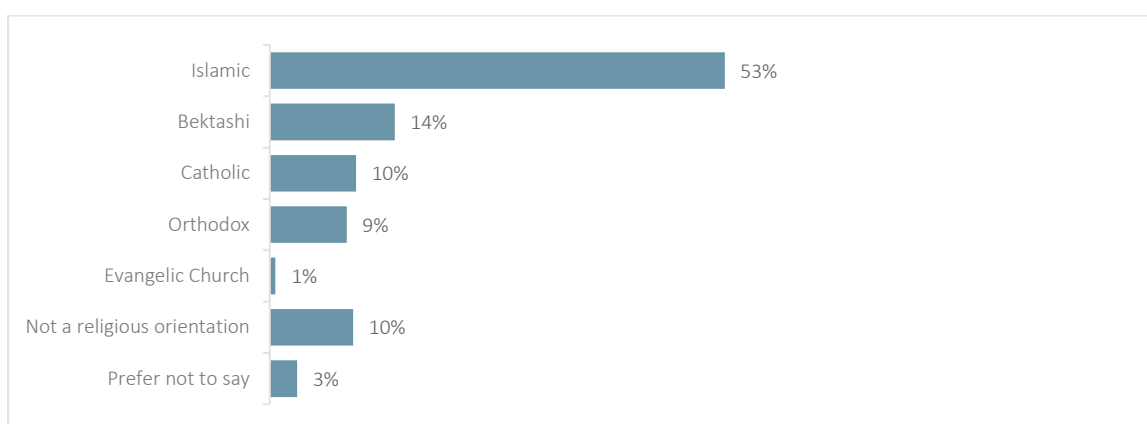


Figure 8. Respondents by employment status



The data instrument included a question about religion. Data showed that more than half of the respondents declared to be Islamic (53 %), Bektashi about (14 %), catholic about 10 %, and orthodox around 9 %. One out of ten stated to not have a religious orientation.

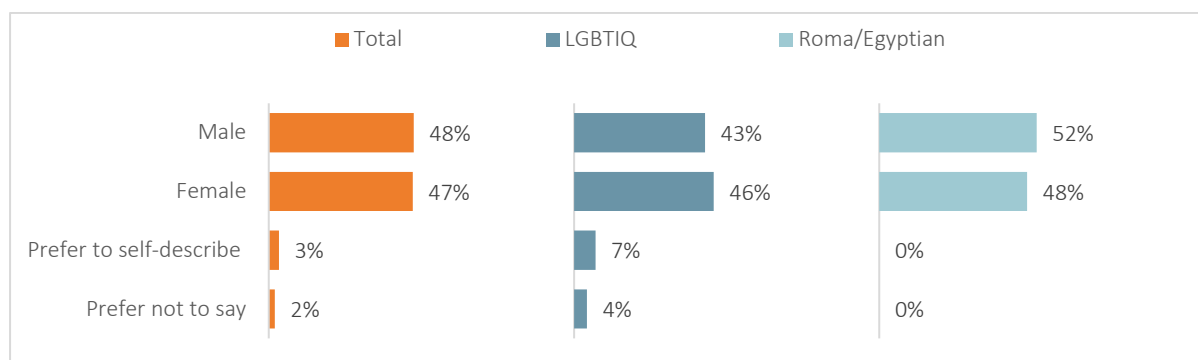
Figure 9. Respondents by religion



### 2.3.2 Profile of the boost sample

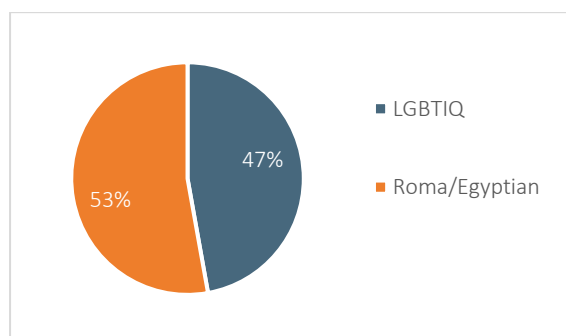
In alignment with the main sample of 1511 participants, a boost sample of 301 members is interviewed. The main idea behind this technique lies under the fact that participants of this group are mostly exposed to the hate speech phenomenon. Despite Albanian's advancement toward laws regulating social issues, it still prevails a tendency of discrimination toward those people, hence they can be labelled as part of a community at risk. This subsample comprises 47% female, 48% male, 5% prefer not to say self-describe (mostly consisting of non-binary).

Figure 10. Distribution of boost by sex



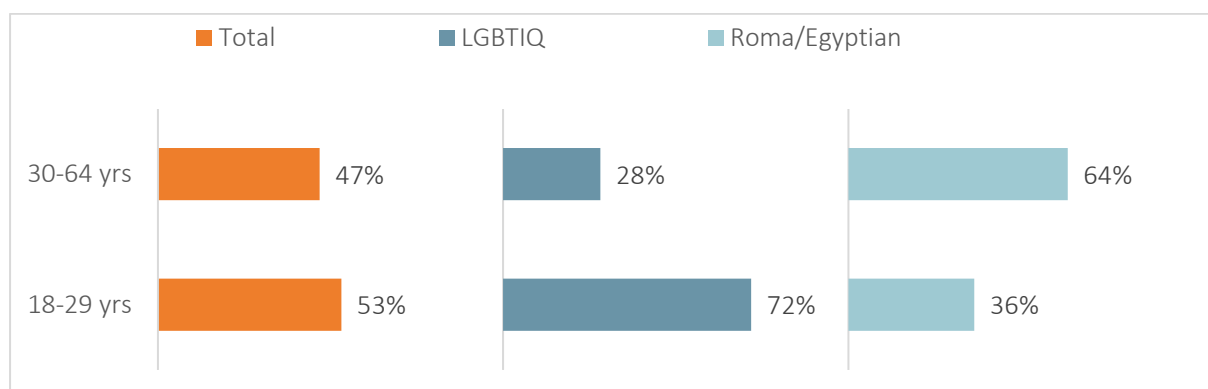
Worth mentioning is the segmentation between LGBTIQ and Roma & Egyptian community having portions of 53% and 47% respectively.

Figure 11. Distribution of boost by the vulnerability



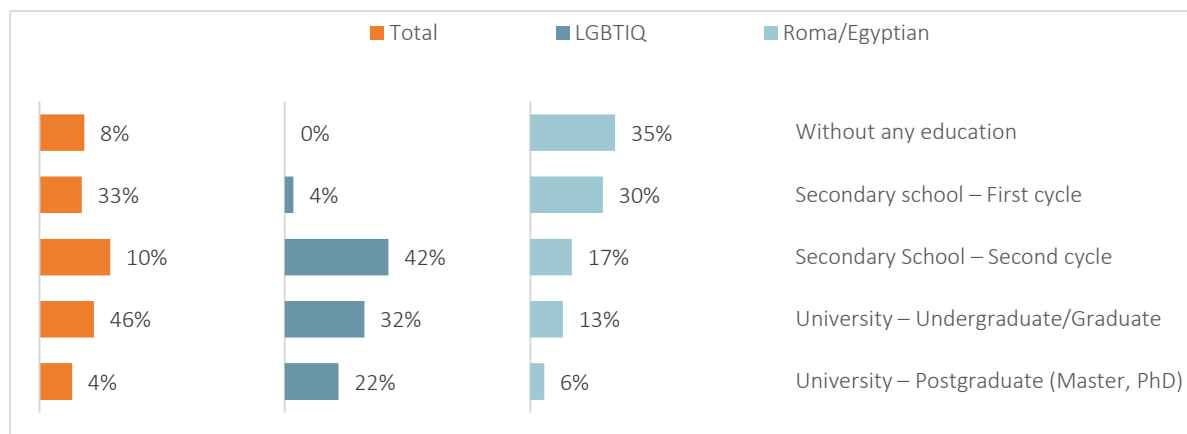
Among the participants in the boost survey, roughly 53% are between 18-29 years old, and about 47% are between age 30 to 49 years old.

Figure 12. Distribution of boost by age group



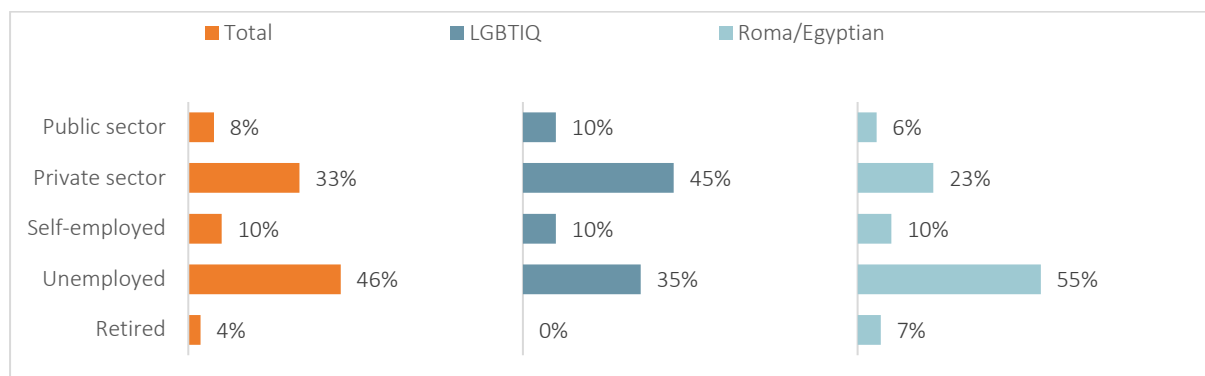
Data according to the level of education consists mainly of people with a university degree, 22% of them possess a graduate/undergraduate degree, 13% claim to have a postgraduate degree (master, Ph.D.), while 29% of the results show to have completed secondary education of the second cycle. The other remaining part of the population affirms to have a first cycle secondary education, around 17% and the rest 18% without any education.

Figure 13. Distribution of boost according to the level of education



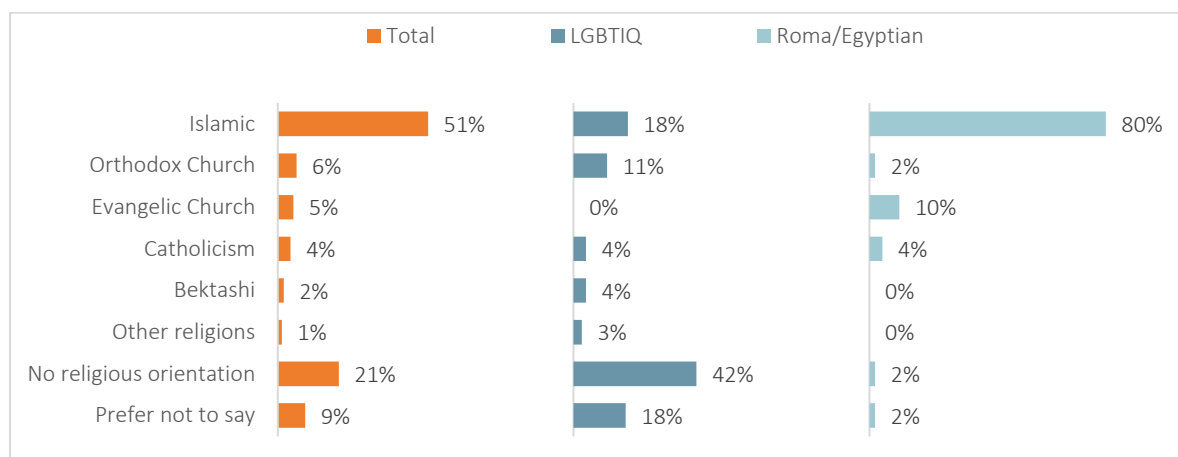
Breaking down the data by workplace, 46% result to be unemployed and 33% work in the private sector, however, the 46% is not surprising since the sample comprises a relatively vulnerable and discriminative partition. The minority of them either work in the public sector or are self-employed, whereas a negligible share of only 4% is retired.

Figure 14. Distribution of boost according to level the employment status



Amid the particularly designed questions, another variable of religion indicator is included, considering that religion is an important measure that shapes people’s behaviour. Nevertheless, it is interesting to observe that 51% of the respondents belong to Islamic belief. Around 21% of the participants claim to have no religion and the remaining ones include orthodox, catholic, Bektashi, and a small group that does not prefer to say.

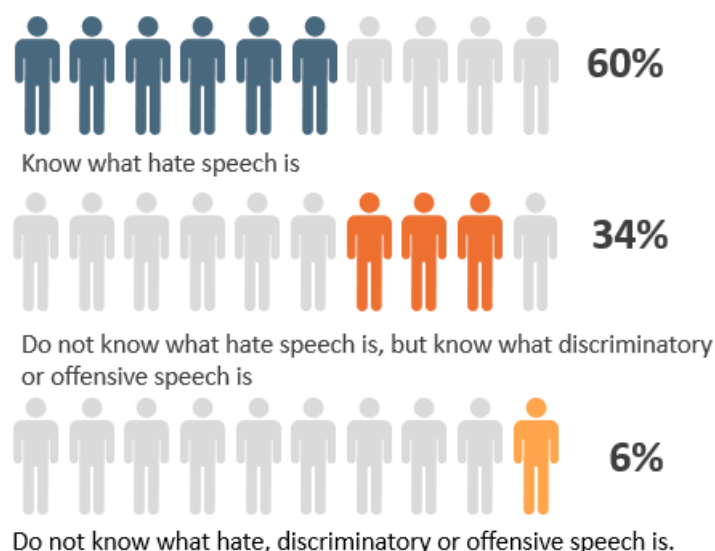
Figure 15. Distribution of boost according to religion



### 2.3.3 Understanding of 'hate speech'

Assessment of the understanding of **what 'hate speech' means** was measured through a set of questions such as: As a first step the respondents had to answer whether they know what hate speech was, without any instruction or help. As a second step, those who answered to not know what hate speech was, were asked another question, whether they knew what is offensive/discriminatory speech. In case they knew, the questionnaire continued with an open question **'What do you understand by the term 'hate speech?'** Data show that around six out of ten respondents knew what hate speech was. About 3 out of ten say that they did not know, but they knew what discriminatory or offensive speech is. About 6% of the respondents interviewed answered that they do not know what hate speech or offensive/discriminatory speech was, of which about 56 % were females and 44 % were males. As such, **we can conclude that about 94 % of the respondents knew what hate/discriminatory/offensive speech is and 6 % did not know about hate speech.**<sup>60</sup>

Figure 16. Do you know what hate speech is?

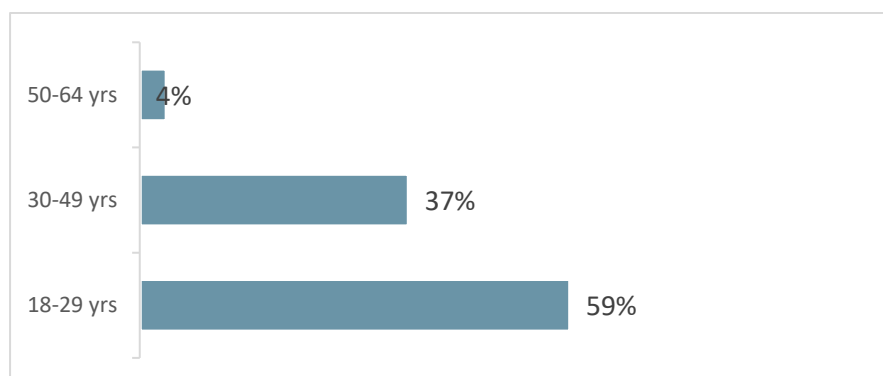


Data by gender show that among the respondents **who did not know** what hate speech was 56 % were females and 44 % were male. Age seems to be more relevant when talking about the level of knowledge about

<sup>60</sup> Data analysis of further topics in the report, will refer only to 1511 respondents who were aware about hate speech (which are the 94 % of the contacted persons).

hate speech. Young respondents seem to have less knowledge about hate speech, respectively 59 % of the respondents who did not know about hate speech were young and only 4 % were respondents were in a higher age group, 50-64 years old.

Figure 17. The age structure of the respondents who do not know what hate/discriminatory/offensive speech is



The study included an open-ended question to show more specifically what respondents understand with the term 'hate speech'. The purpose of this question was to measure the knowledge on what the term 'hate speech' means, and understand whether surveyed associate it with other terms. **The majority, about 40 percent understood hate speech to offend other persons.** Around 20 percent identified it with hating someone. For about 10 percent 'hate speech' included discrimination, denigration because of racial grounds. The table below identified the most identified categories associated with hate speech.

Table 1. Key categories for the question on what hate speech

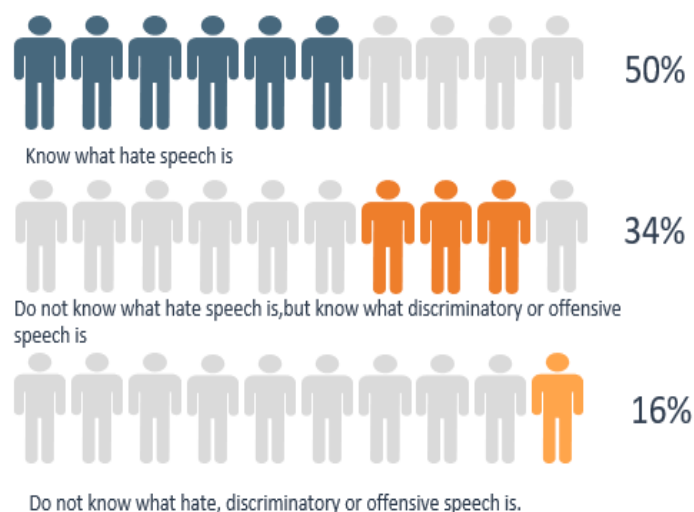
Category	Percentage
To offend	40%
To hate someone	20%
Hatred, discrimination, denigration on racial grounds	10%
Hatred, discrimination, denigration based on religion	10%
Discrimination	10%
Contempt	7%
Bullying	6%
To speak badly about someone	4%
Anger towards someone/envy	4%
Hatred because of appearance	4%
Hatred, discrimination, denigration due to economic status	4%
Hatred, discrimination, denigration on ethnic grounds	4%
Nationalism	3%
Prejudices	2%
Hatred, discrimination, gender-based denigration	2%
Hatred, discrimination, denigration on sexual grounds	2%
Hatred, discrimination, denigration based on politics	2%
Verbal Violence	2%
Xenophobia	1%
Abuse	1%
Other terms	9%



### 2.3.4 Knowledge about hate speech of boost sample

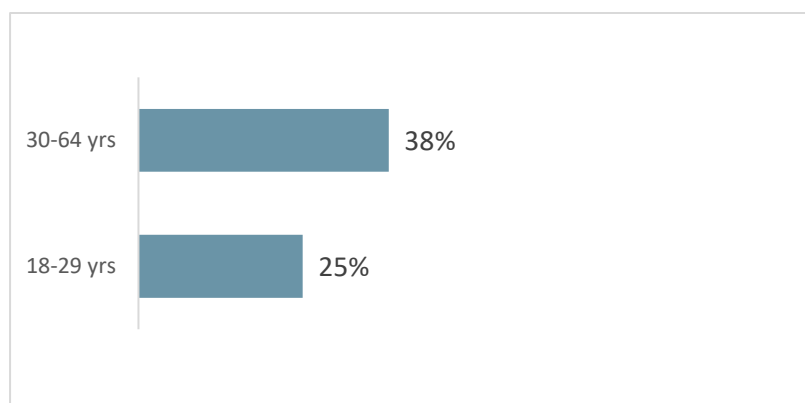
Within the subsample of those people who are called at risk, regarding exposure toward hate speech, the same method was implemented to measure the knowledge about hate speech. Hence, the question of what hate speech means for you was asked at first, and then the questionnaire went on with other questions accordingly. It turns out that 50% of them know what hate speech means, 34% of them do not know what hate speech is but they know what discriminatory or offensive speech is and 16% neither know hate speech nor discriminatory or offensive speech. <sup>61</sup>

Figure 18. Level of knowledge about hate speech for the boost sample



Among 16 % of respondents that did not know what hate/discriminatory or offensive speech is (49 respondents), 28% are from Roma & Egyptian community and 44% LGBTI. By age group their distribution is for 18-29 years old, 25% claim to not know what hate speech is while 38% of them fall within the range between 30-64 years old.

Figure 19. The age structure of the boost respondents who do not know what hate/discriminatory/offensive speech is



An open-ended question is asked to those who responded yes in the first part and it comprises some key categories to measure the degree of accuracy of hate speech definition. The majority of them, 44% seem to associate the term hate speech with offending, meanwhile, 18% identified it with hatred, discrimination, denigration on racial grounds, 15% with discrimination, and 12% hatred because of appearance. The remaining respondents connect hate speech with contempt, hatred based on ethnicity, hating someone, hatred on sexual grounds, etc., (see fig.21).

<sup>61</sup> In total 49 respondents, do not know what hate or discriminatory/offensive speech is, therefore the questions will go on only for those who know about it, in other words, sample is now reduced to 252 participants

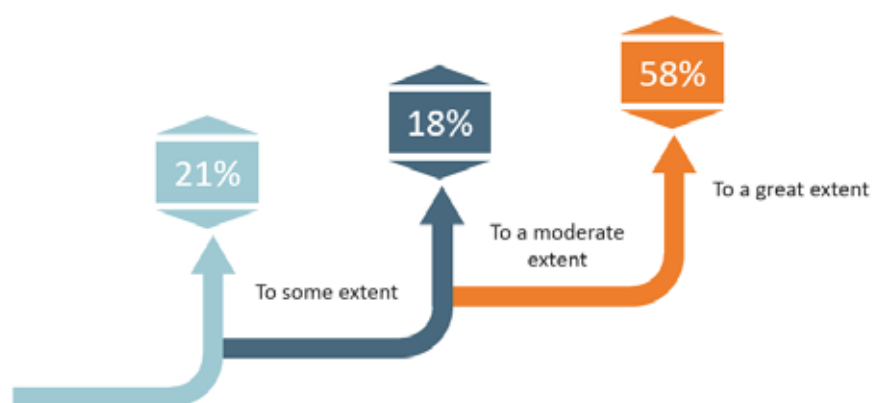
Figure 20. What hate speech means to those the boost who responded yes

Category	Percentage
To offend/place epithets	44%
Hatred, discrimination, denigration on racial grounds	18%
Discrimination	15%
Hatred because of appearance	12%
Contempt	8%
Hatred, discrimination, denigration on ethnic grounds	8%
To hate someone	7%
Hatred, discrimination, denigration on sexual grounds	6%
Hatred, discrimination, denigration based on religion	5%
Verbal Violence	5%
Bullying	4%
Hatred, discrimination, denigration due to economic status	3%
Prejudices	2%
Hatred, discrimination, gender-based denigration	2%
Abuse	2%
Hatred, discrimination, denigration due to social status	1%
Anger towards someone/envy	1%
Nationalism	1%
To speak badly about someone	0%
Xenophobia	0%
Hatred, discrimination, denigration based on politics	0%
Ignorance	0%
Other	9%

### 2.3.5 Perceptions about hate speech

Respondents were asked about their opinion on what extent they think that hate speech was spread in the country. Data show that 21 % think that hate speech is spread to a small extent in the country, around 18 per cent think that it is spread to a moderate extent and 58 per cent think it is spread to a great or very great extent. About 3 percent do not have any idea about how spread in the country hate speech is.

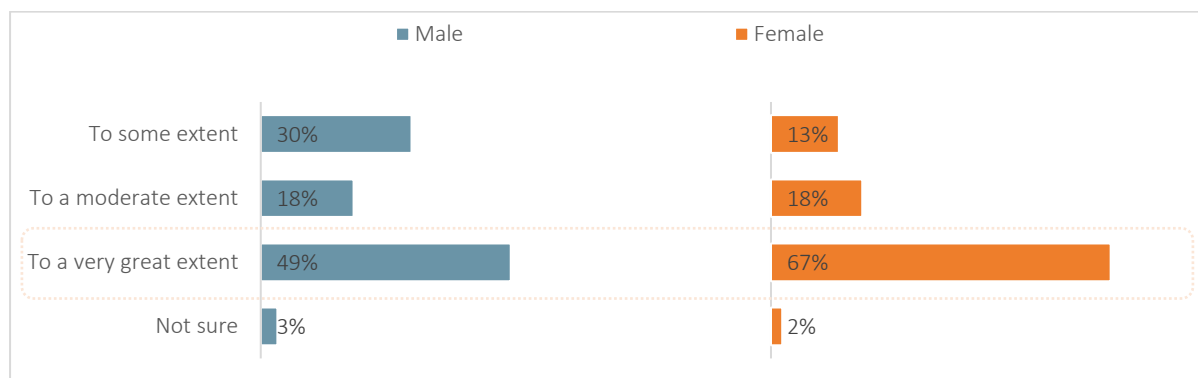
Figure 21. In your opinion, to what extent Hate Speech is spread in Albania?



**Perceptions about the level of widespread hate speech in Albania show differences between genders.**

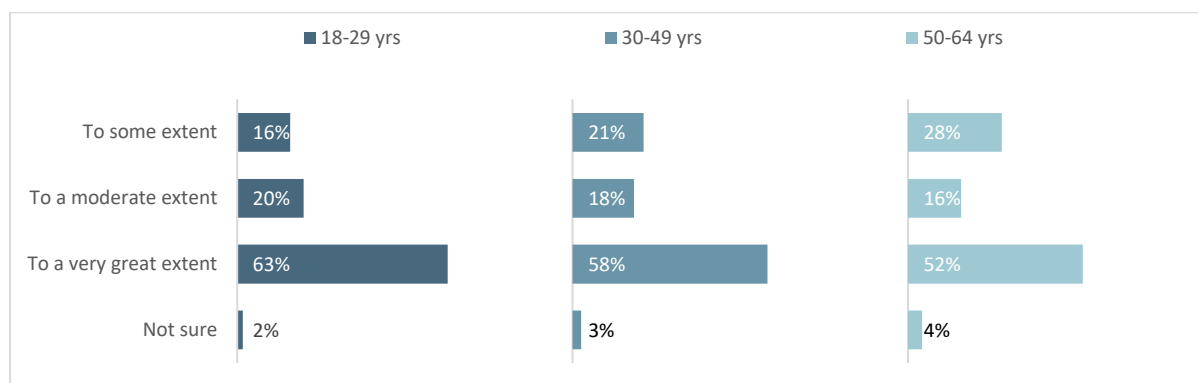
The level of perceptions about how much hate speech is spread by gender shows that about 67 % of women think that hate speech is spread to a great or very great extent in the country, versus 49 % of men. About one in three men that hate speech is spread to a small or some extent in the country and only one out of ten women think this.

Figure 22. In your opinion, to what extent Hate Speech is spread in Albania, by sex



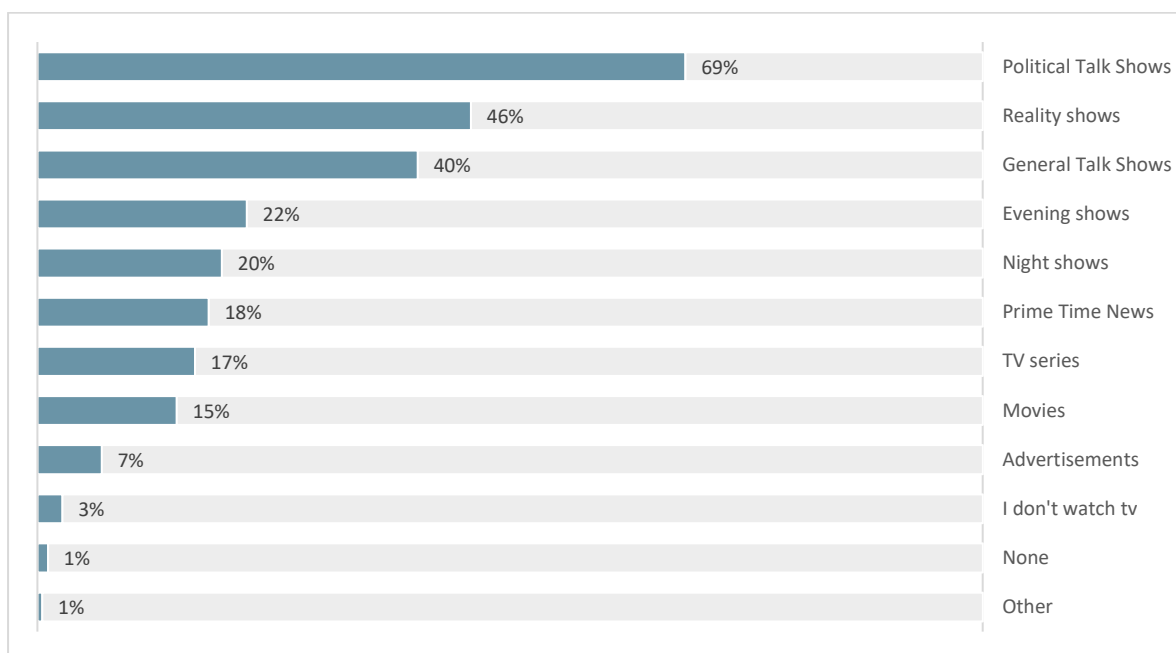
Data by age group show that **young respondents think more that hate speech is widespread in the country to a great extent, compared to other age groups.**

Figure 23. In your opinion, to what extent Hate Speech is spread in Albania, by age group



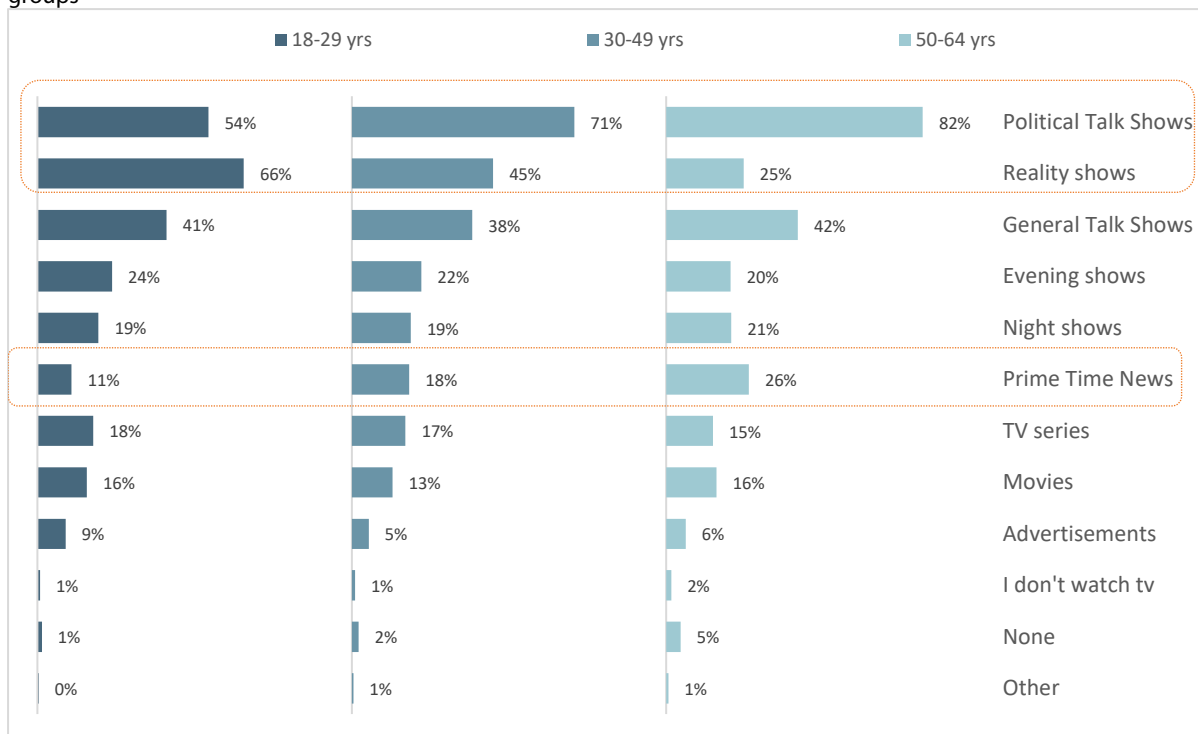
Moreover, respondents were asked what TV programs according to their opinion contribute to the spread of hate speech. About seven out of ten think that are Political Talk show that contributes to the spread of hate speech. The second TV program perceived as contributing to the spread of hate speech is reality shows, respectively by 46 % of the respondents. Around four out of ten think that in general, all types of talk shows contribute to the use of hate speech.

Figure 24. In your opinion, what TV programs (if any) are more likely to spread Hate Speech across their audience?



Different age groups think differently in respect to what contributes more to spreading hate speech. Young respondents think that reality shows are the TV programs that mostly contribute to the use of hate speech, 66 % of them compared to only 25 % for the 50-64 years old. On the other hand, older age groups perceive more political shows as contributing most to the use of hate speech. As well as the Prime-time News is perceived more for spreading the use of hate speech by older age groups.

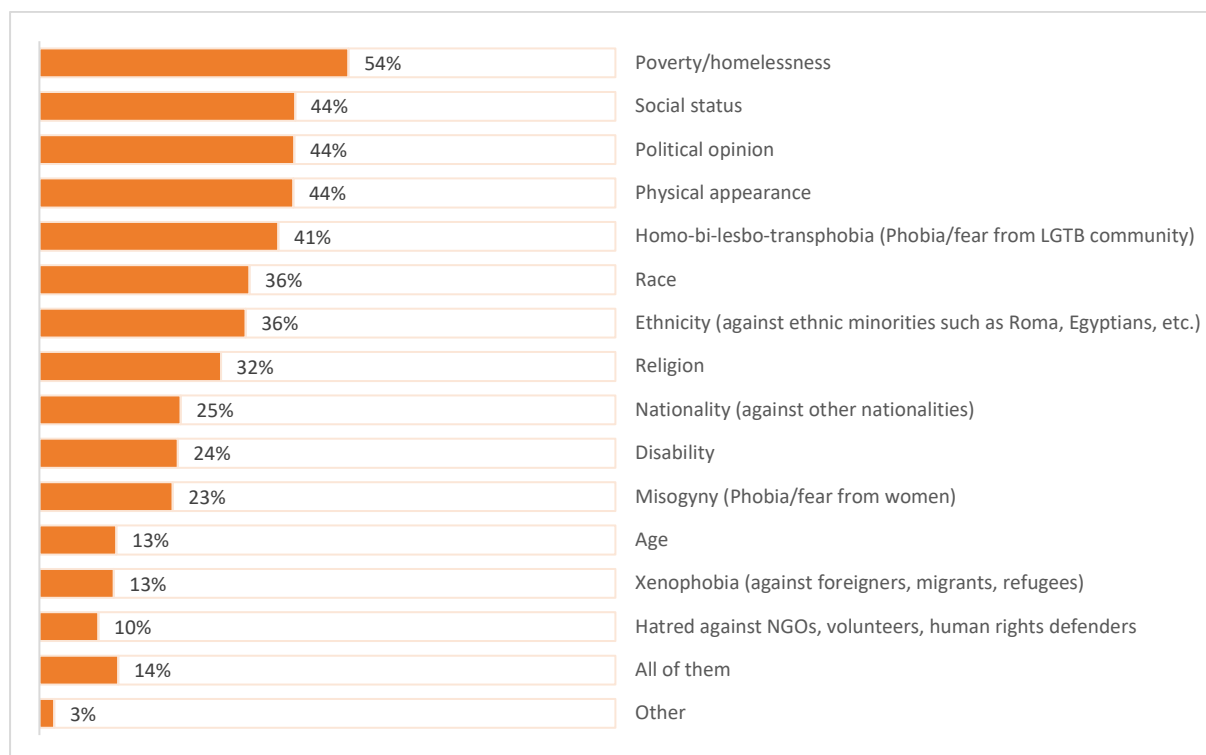
Figure 25. In your opinion, what TV programs (if any) are more likely to spread Hate Speech across their audience? by age groups



Respondents were asked what they think was the most common motivation triggering the use of hate speech. They could choose more than one alternative to state all the motives that were relevant for them. Data show that more than half of the respondents think that is the poverty of being homeless that triggers the use of

hate speech. Around four out of ten respondents think that social status, political opinion, or physical appearance are the motives of hate speech.

Figure 26. In your opinion, what is the most common motivation triggering Hate Speech



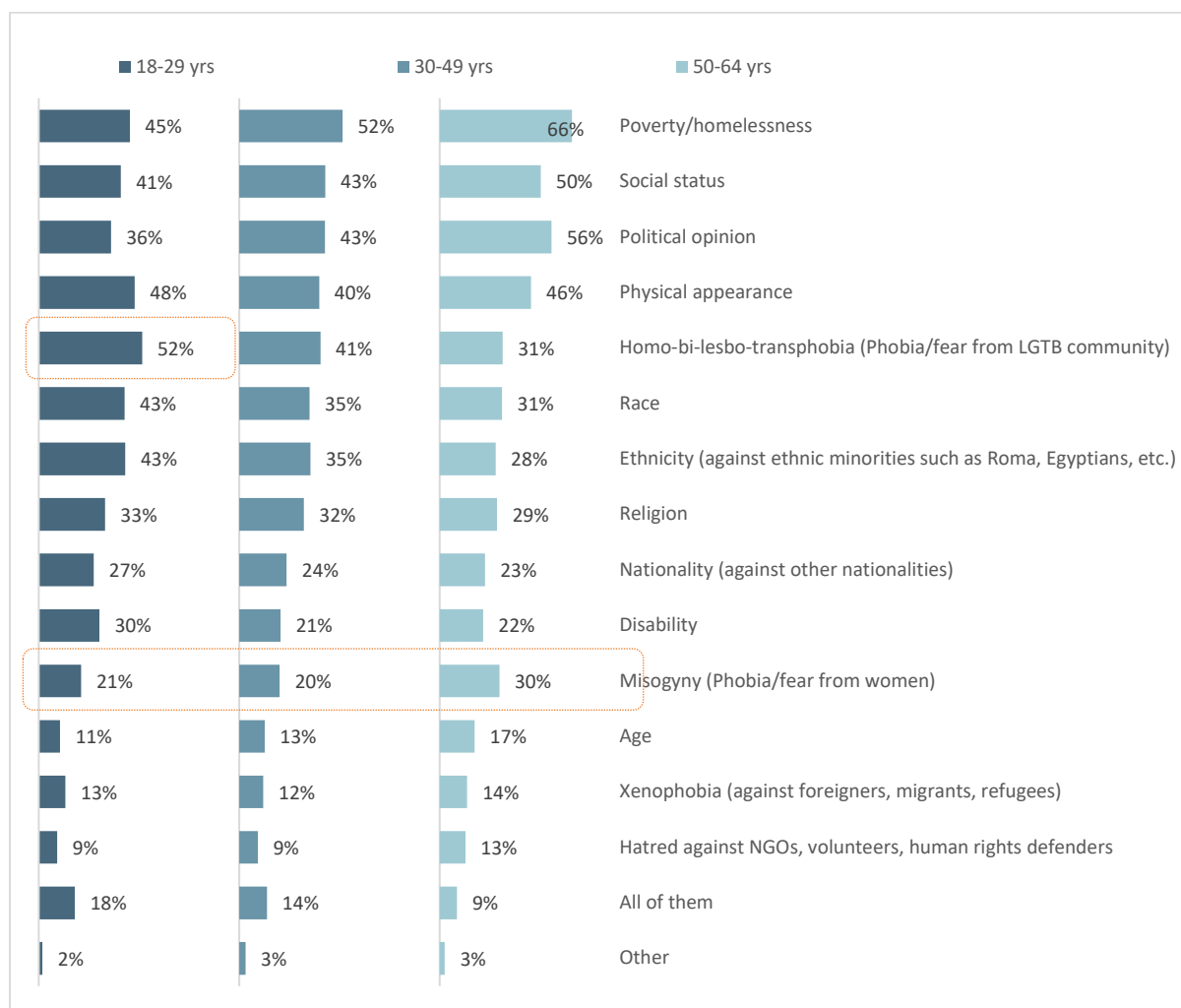
Data by gender show that poverty is slightly perceived as more triggering hate speech by men compared to women. On the other hand, political opinion is perceived as the second most common motive of causing hate speech by men. For women, physical appearance seems to be the second motive of hate speech.

Figure 27. The top three most common perceived motives of hate speech, by gender



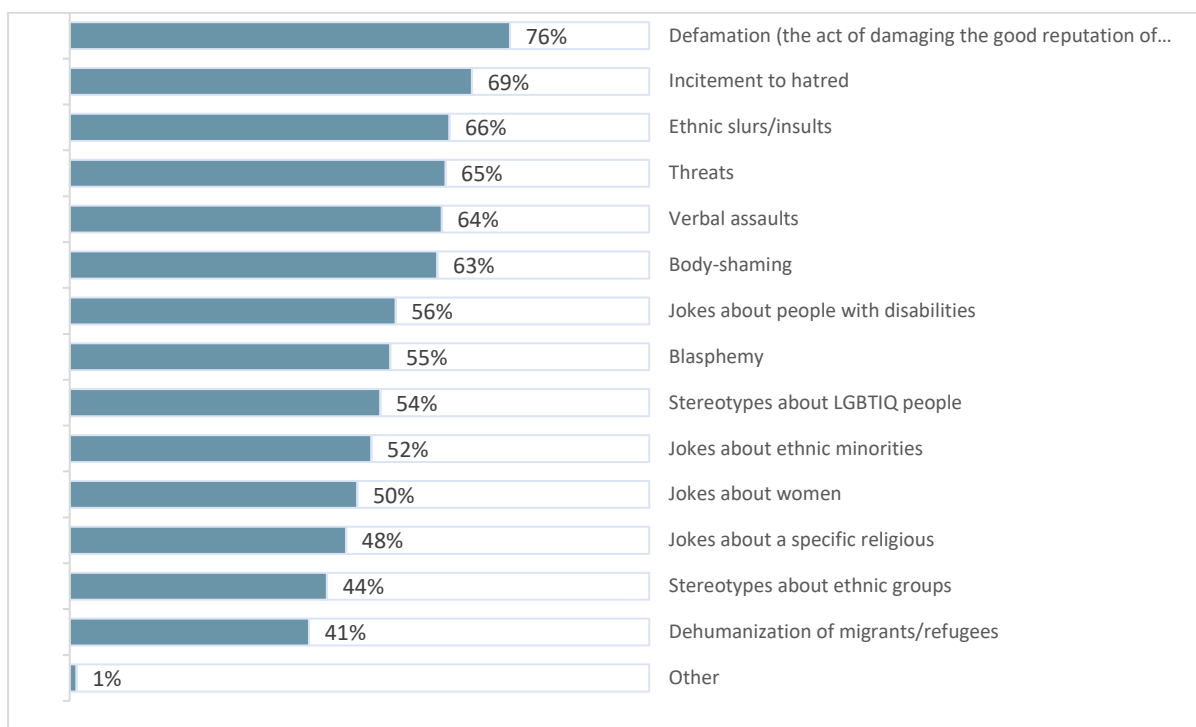
Data show that different age groups show different opinions on what can trigger hate speech. Young respondents think that phobia or fear from the LGTB community is the most common cause of triggering hate speech. The fear from women is perceived more among older age groups (50-64 years old) as a motive of hate speech compared to other age groups.

Figure 28. In your opinion, what is the most common motivation triggering Hate Speech, by age groups



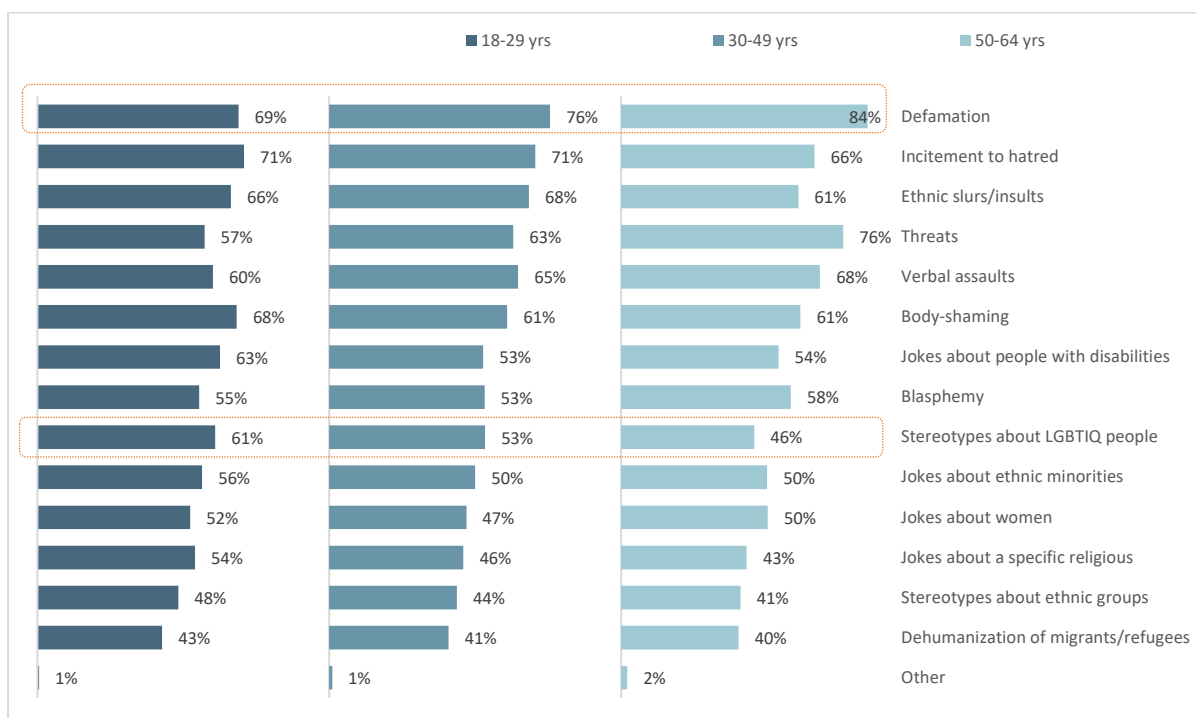
Being asked about the forms of expression that can be labelled or identified as hate speech, around 76 % of the respondents think that the act of damaging the reputation of someone can be labelled as hate speech. Incitement to hatred is perceived as a form of hate speech by 69 % of the respondents and 66 % perceive ethnic insults as forms of hate speech. Results by gender do not show any significant changes in the perception between women and men about forms of expressions of hate speech.

Figure 29. In your opinion, what kind of the following forms of expression can be labelled as Hate Speech



Results by age groups show that defamation is perceived as a form of expression of hate speech by a very high percentage among older age groups (50-64 years old). Stereotypes about LGTBQ people are perceived more by young people as a form of expression of hate speech.

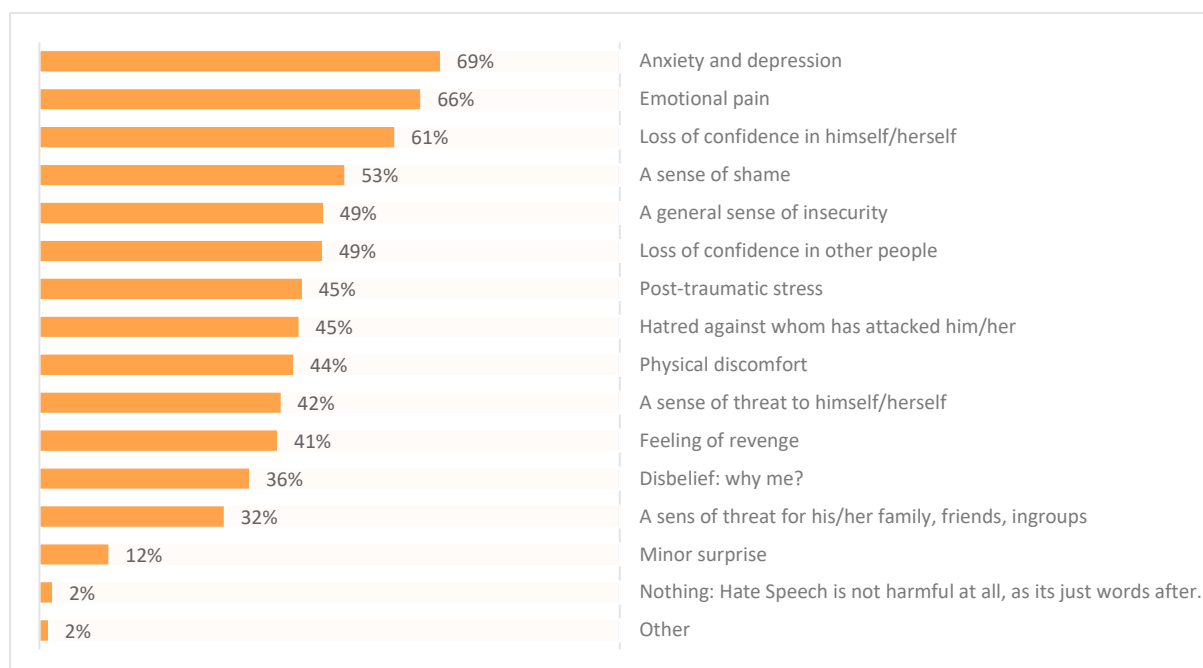
Figure 30. In your opinion, what kind of the following forms of expression can be labelled as Hate Speech by age group



Respondents were further asked about their opinion on what a person or a group targeted by Hate Speech might experience because of the use of this language toward them. Around 69 % of the respondents think that a person/group targeted by hated speech might experience anxiety or depression; 66 % think that they experience emotional pain; 61 % think they experience loss of confidence in themselves; about half of the

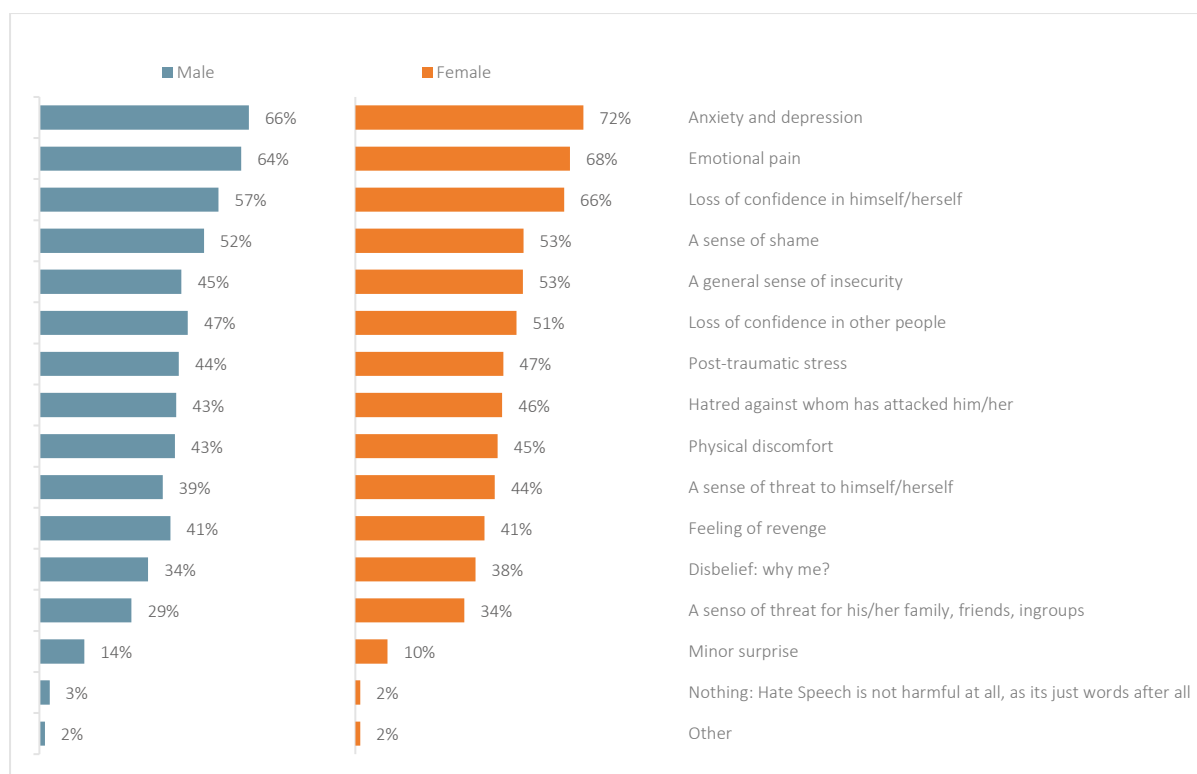
respondents think that these people might experience shame, insecurity, and loss of confidence in other people. Only 2 % think that hate speech is not harmful and they are only words. This show that respondents how high level of empathy toward people or groups who are a target by hate speech.

Figure 31. Which of the following a person/group targeted by Hate Speech target is likely to experience:



Results by gender show that women have higher percentages among all the categories of feeling a person or a group targeted by hate speech might experience. This might show that women think more compared to men that these persons suffer from being targeted by hate speech.

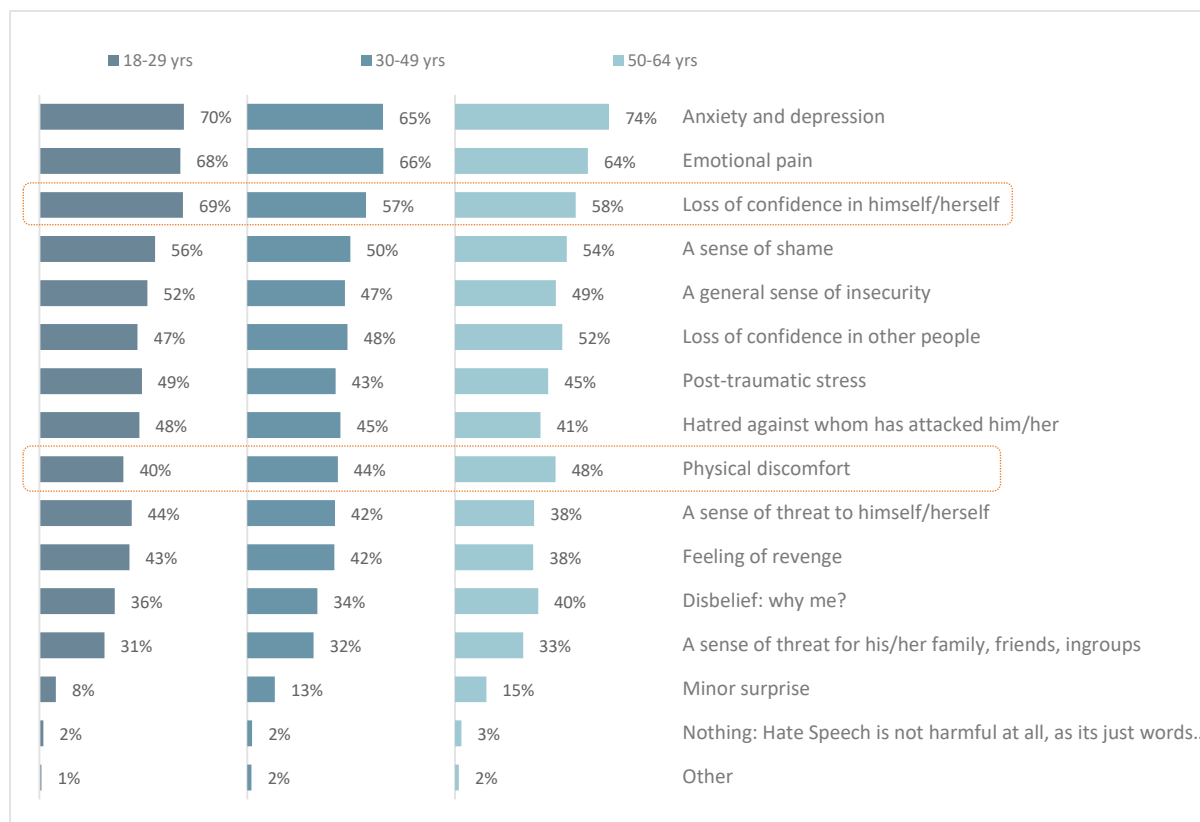
Figure 32. Which of the following a person/group targeted by Hate Speech target is likely to experience, by sex





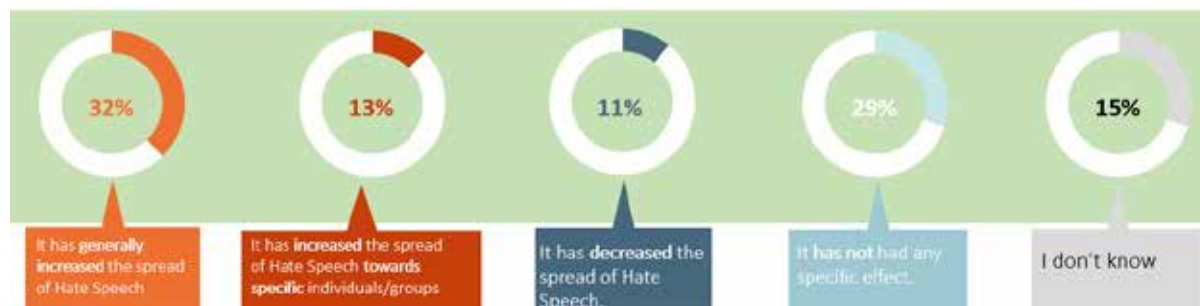
Results by age group show that loss of confidence because of hate speech is perceived more by young respondents, respectively by 69 % of people 18-29 years old. Physical discomfort is perceived more by older age groups 50-64 years old, compared to other age groups, respectively by 48 %.

Figure 33. Which of the following a person/group targeted by Hate Speech target is likely to experience, by age group



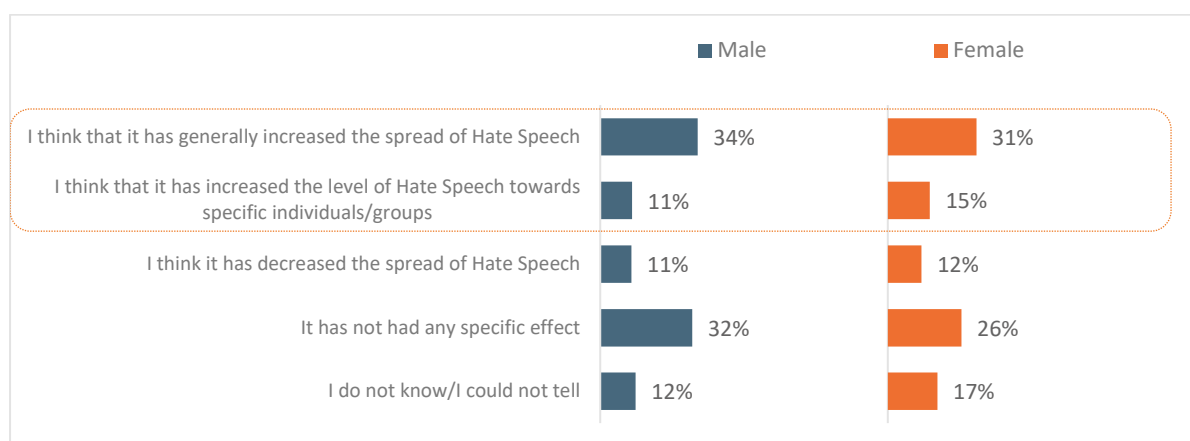
Amid the Covid-19 pandemic, the survey included a dedicated question to measure the opinion of whether the pandemic was perceived as have impacted the use of hate speech. About 45 % think that the pandemic has affected the increase of hate speech, respectively 32 % think that hate speech has increased generally and 13 % think that it has increased toward specific individuals or groups. Around 11% think that the spread of hate speech has decreased as a result of Covid-19 and 29 % think that the pandemic has had no impact on the use of hate speech. Around 15 % cannot say or do not have any idea of the impact of Covid-19 on the use of hate speech.

Figure 34. In your opinion, to what extent the epidemic of Covid-19 has affected the circulation of Hate Speech?



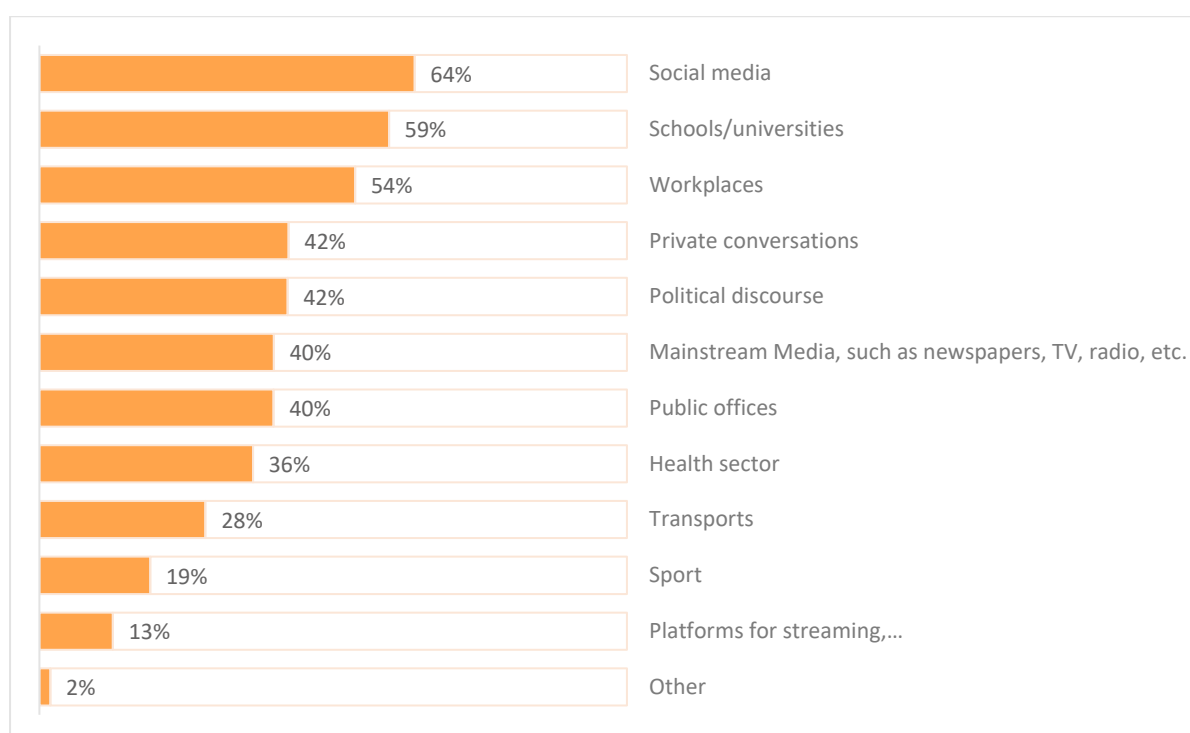
Results by gender show that more women think that the pandemic has increased the level of hate speech toward specific individuals or groups of people, respectively 15 % of women versus 11 % of men. On the other hand, more men think that the pandemic has had no impact on the use of hate speech, respectively 32 % of men versus 26 % of women.

Figure 35. In your opinion, to what extent the epidemic of Covid-19 has affected the circulation of Hate Speech? by sex



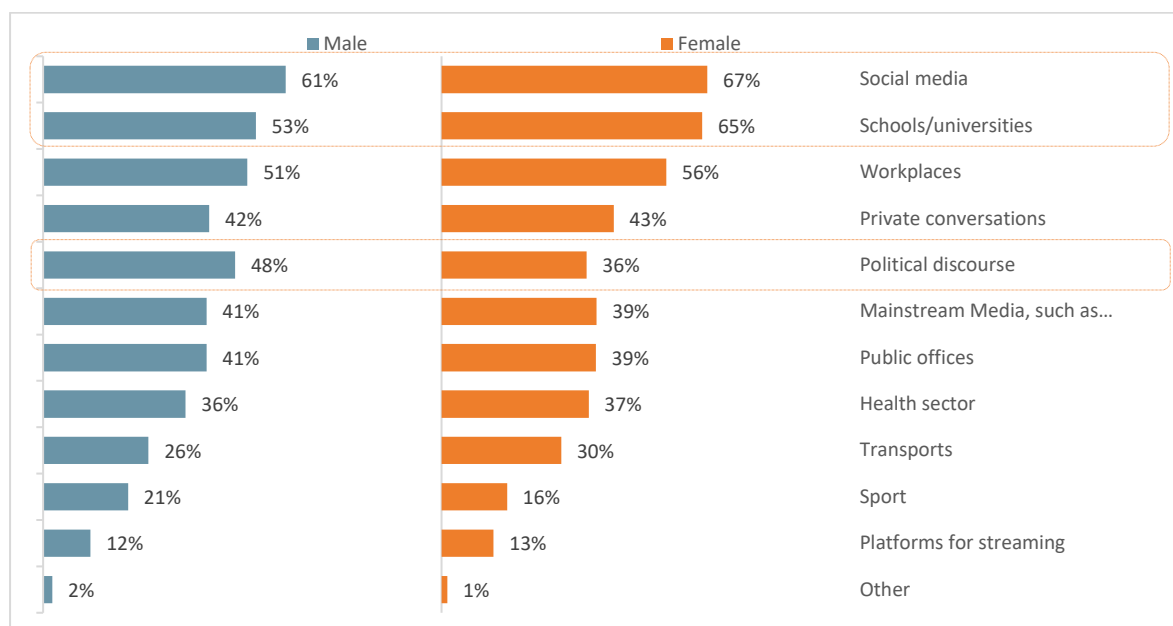
The respondents were asked in which context they think hate speech is mostly experienced in the country. They could choose all the contexts that they think apply. According to their opinion, about 64 percent of the respondents think that Social media a context is in which hate speech is mostly experienced. About six out of ten thinks that schools or universities are a context that people might experience hate speech. More than half think that workplaces are another context in which people might experience hate speech. Sports environments and platforms for streaming such as Zoom, are the least perceived as a context of experiencing hate speech, respectively by 19 % and 13 % of the respondents.

Figure 36. Where/in which context is Hate Speech mostly experienced in Albania?



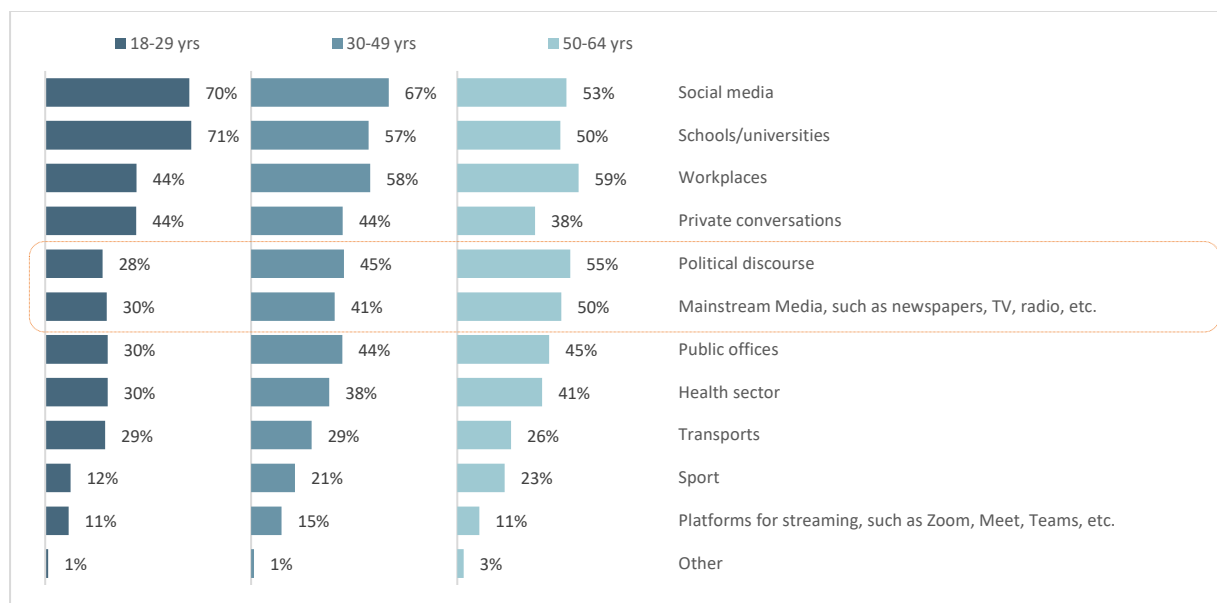
There are some differences by gender regarding the perception of the contexts in which hate speech might be experienced. Social media and schools/ universities are perceived more by women than men to favour the use of hate speech. **This could be a good indirect measure that women might experience hate speech more than men in the social media or schools/ universities in these contexts.** On the other hand, men think that political discourse favours more the use of hate speech, respectively 48 % of men compared to 36 % of women.

Figure 37. Where/in which context is Hate Speech mostly experienced in Albania? by sex



Results by age groups show that different age groups perceive different contexts that hate speech might be experienced. Social media and schools/universities are more perceived by younger age groups compared to older age groups; 50-64 years old. For older age groups, political discourses and media such as TV, radio is more perceived as favour the use of hate speech. Workplaces as well show differences among age groups, with older age groups perceive it more as places that hate speech might be experienced.

Figure 38. Where/in which context is Hate Speech mostly experienced in Albania? by age groups

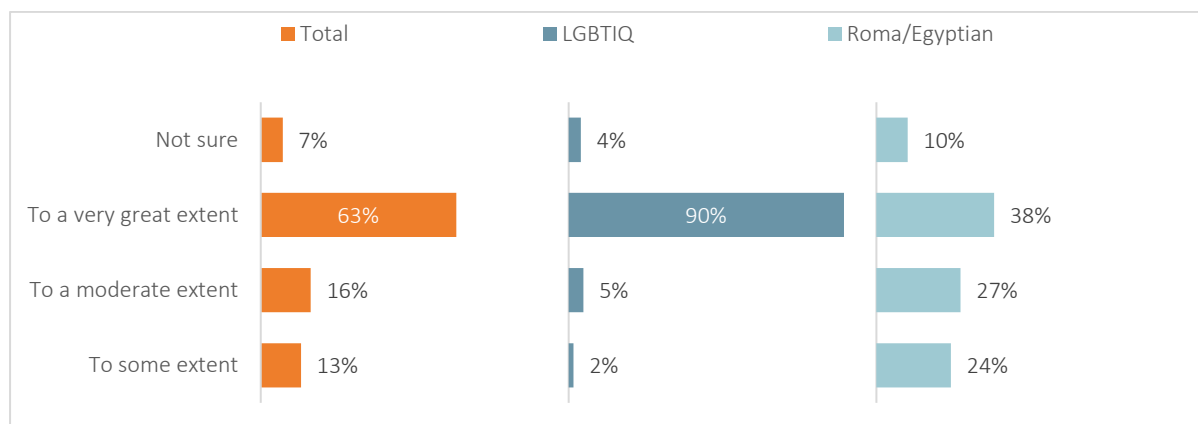


### 2.3.6 Perceptions of Hate Speech of boost sample

Vulnerable groups were asked the same way the national population was asked about perceptions. Data about the degree to which the hate speech is spread in Albania shows that in total 63% of the boost sample think that hate speech is spread to a very great extent, respectively 90% among LGBTI and 38% Roma & Egyptian, whereas 16% in total, think that hate speech is only spread to a moderate extent, from where 5% are part of LGBTI and 27% Roma & Egyptian. Regardless of the above percentages, there is still 13% in total that think hate speech is

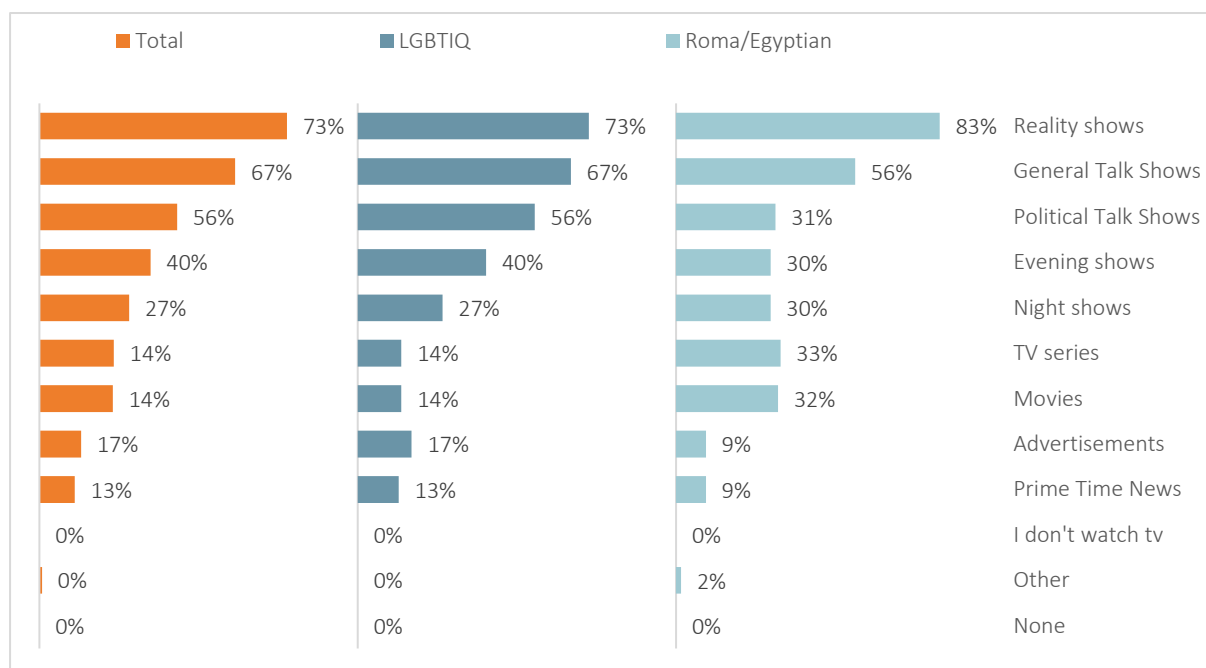
only spread to some extent, 24% of Roma & Egyptian, most probably due to lower education of their community which might contribute to less knowledge about recognizing this phenomenon.

Figure 39. In your opinion, to what extent Hate Speech is spread in Albania? boost sample



When asked about the means of communication regarding hate speech spread, data shows that in total 73% think that hate speech is spread through reality shows, respectively 73% are part of LGBTIQ and 83% Roma & Egyptian. Nearly 67%, believe that hate speech is spread from general talk shows by 67% being part of LGBTIQ and 56% Roma & Egyptian. Another important instrument for spreading hate speech happens to be political talk shows, 56% of people who think political shows spread hate speech happen to be LGBTIQ, and 31% Roma and Egyptian. The list through which hate speech can be spread in their opinion carries on with evening shows, night shows, tv series, movies, advertisements, etc. As expected, Roma & Egyptian community seem to have a smoother share when comparing diverse channels through which hate speech can be spread, except for reality and general talk shows, thus it can be concluded that for this category, almost all means of communication can trigger hate speech.

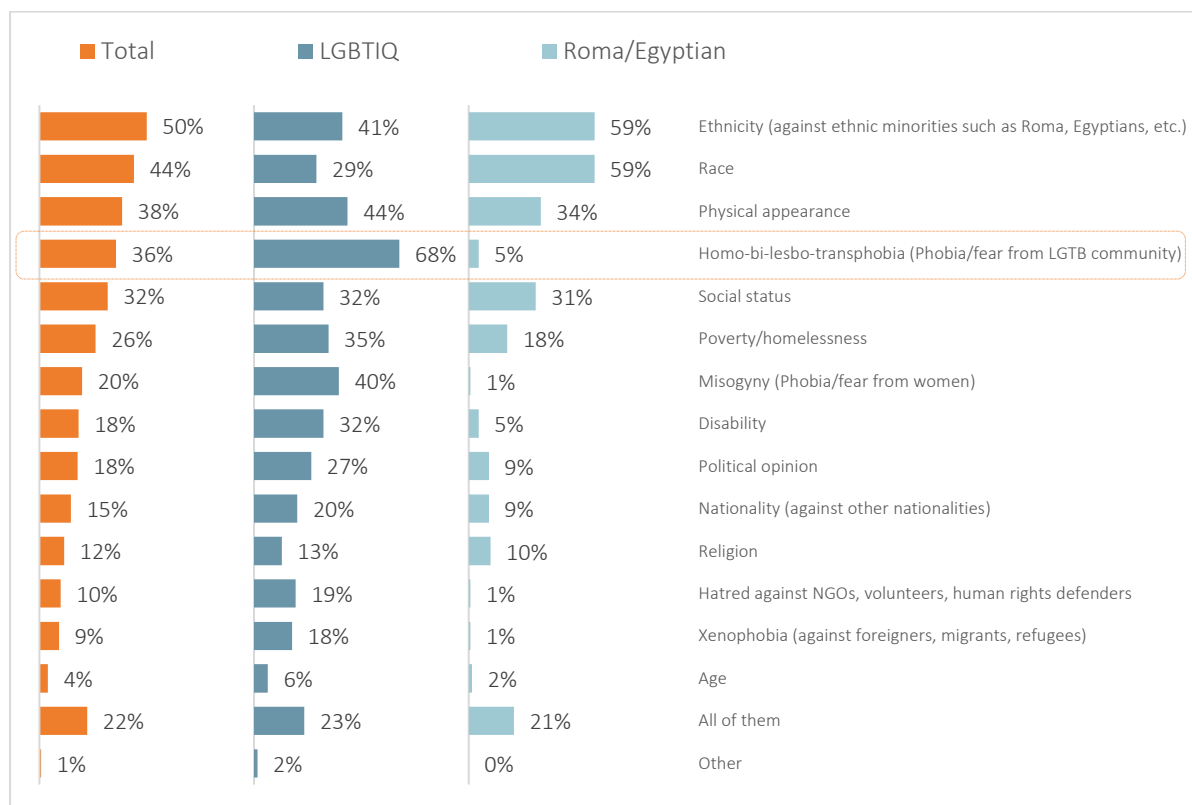
Figure 40. What TV programs are more likely to spread Hate Speech, boost sample



Furthermore, participants are asked about the most common inducement triggering hate speech. The underlying reason behind this question is very intuitive to get as much information as possible when it comes to the cognition of hate speech.

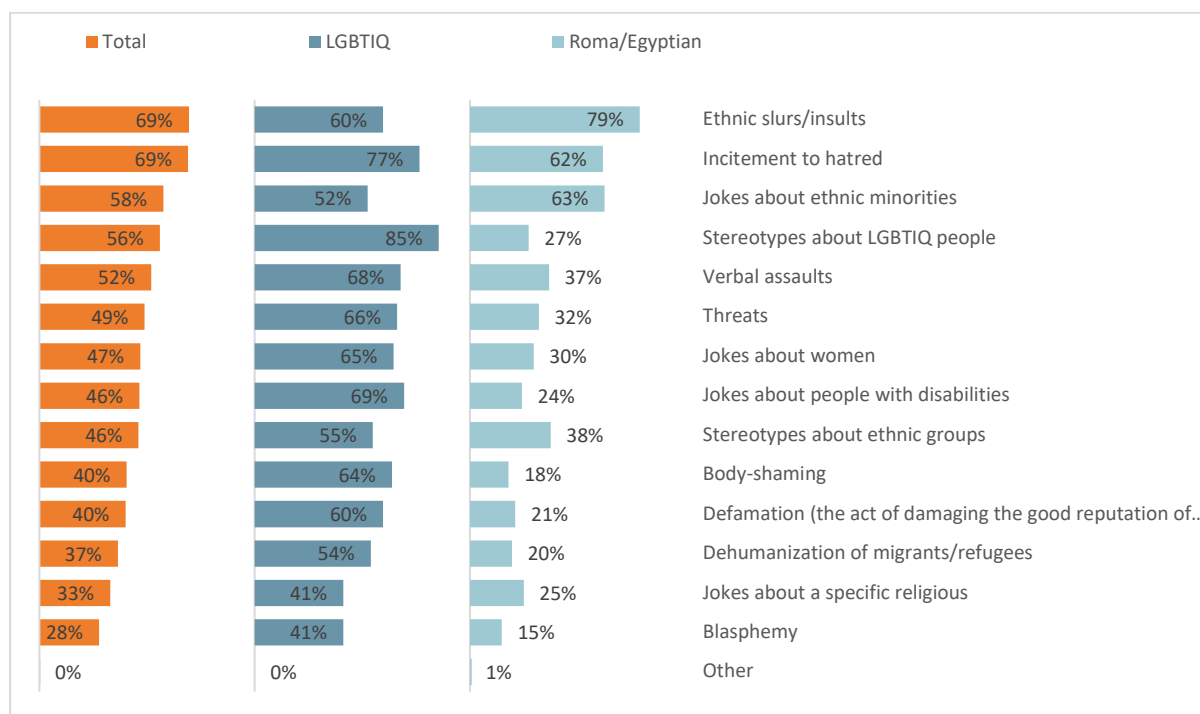
About 50% of the respondents seem to believe that hate speech is mostly triggered by ethnicity (especially that against ethnic minorities), where 41% are from LGBTI and 59% are Roma& Egyptian. However, the largest percentage to which LGBTI community thinks that hate speech is initiated, is of 68% who think that hate speech is triggered through homo-bi-lesbo-transphobia (fear/phobia from LGBT community), while 59% of Roma & Egyptians think that hate speech is triggered by Race, hence they hold a common belief that two main reasons corresponding to hate speech are race and ethnicity. Physical appearance constitutes another important role when determining what initiates hate speech, as 44% of LGBTI and 34% of Roma& Egyptians hold the belief that hate speech is triggered by this characteristic. Other determinants triggering hate speech, are social status and poverty, which make up around 30-35% of the boost sample believing those two are important components. Not surprisingly, is the fact that 40% of the LGBTI community believe that hate speech is prompt by misogyny. Other crucial motives causing hate speech disability, political orientation, nationality, religion, xenophobia, etc.

Figure 41. What is the most common motivation triggering Hate Speech? boost sample



Another relevant question is about the forms of expression that can be labelled as hate speech, among where the largest percentage, 69% in total believe that ethnic insults are labelled as hate speech, respectively 60% are LGBTI and 79% Roma& Egyptian. Though an extensively large amount of LGBTI, 85% of them believe that stereotypes about LGBTI people constitute serious hate speech labelling. Other notable labels are parallels important within LGBTI, where 64%-68% believe that verbal assaults, ethnic insults, incitement to hatred, threats, jokes about women, jokes about people with disabilities, body shaming, and defamation are among them. The degree to which this labelling accounts for being a serious problem in hate speech changes for Roma& Egyptian, the majority of whom think that ethnic insults make up the largest part, for continuing with jokes about ethnic minorities (about 63%) and incitement to hatred (about 62%).

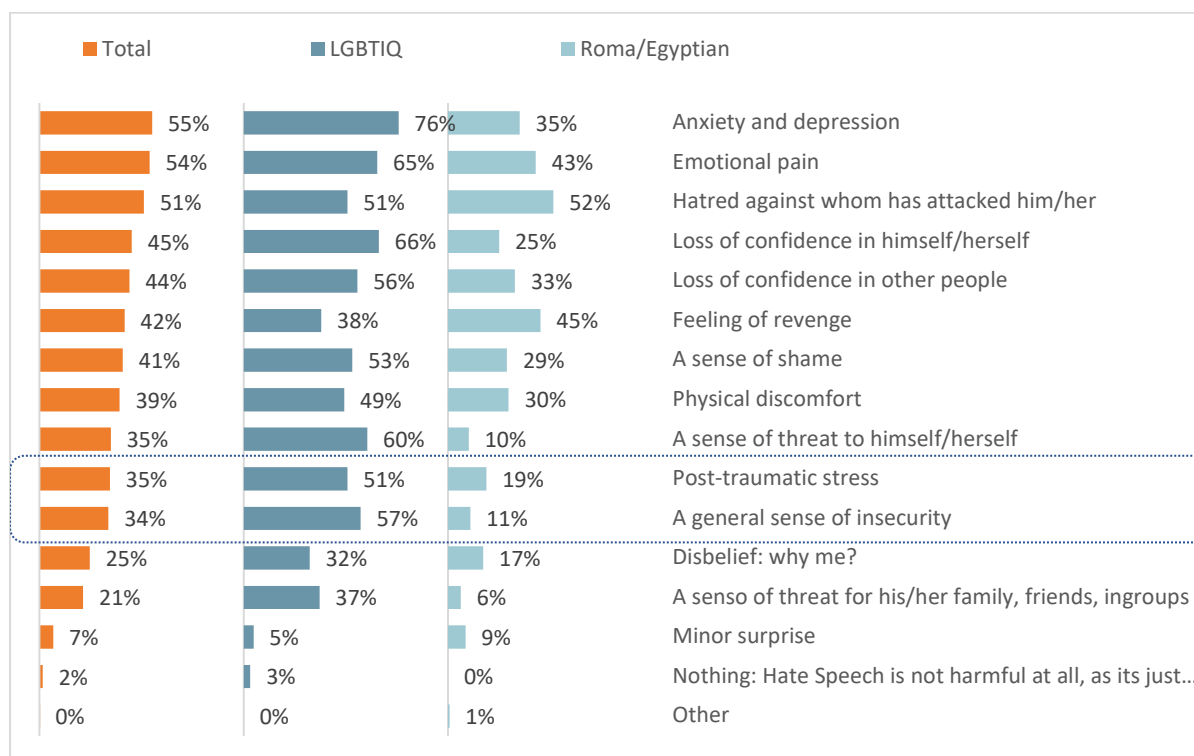
Figure 42. What kinds of the following forms of expression, can be labelled as hate speech? boost sample



Once a particular individual is targeted by threatening social issues, he/she is likely to experience a negative sentiment, hence a particularly designed question is asked to the participants of the subsample. The results show that 76% from LGBTI community have responded to have felt anxiety and depression once faced by hate speech, whereas 35% of the Roma&Egyptian community responded to have felt the same, hence there is a huge difference between these two communities when it comes to experiencing hate speech.

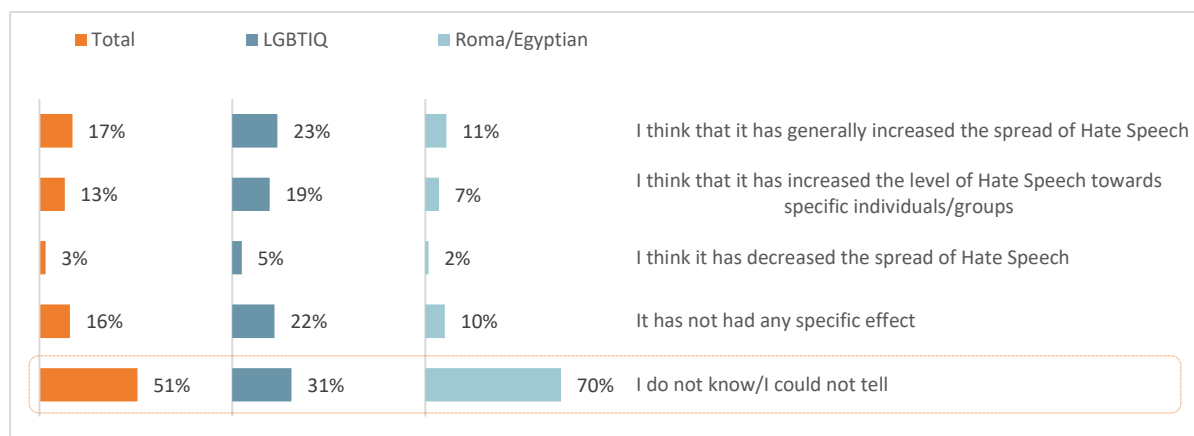
Similarly, LGBTI seems to experience emotional pain, loss of confidence in himself or the others, a sense of shame physical discomfort, a sense of threat to himself, post-traumatic stress, a general sense of insecurity, etc., more intensely than the Roma& Egyptian community. Although both groups, LGBTI, and Roma&Egyptian seem to experience rigorously in common hatred against the person who attacked them. What stands out in Roma& Egyptian community is the fact that they are more inclined toward taking revenge compared to LGBTI, thus this is the only feeling where Roma& Egyptian seem to experience more profoundly in contrast to LGBTI. Yet, in total, the percentages are quite high for most of the feelings experienced when faced with hate speech, for instance, totally 55% are likely to experience anxiety and depression, 54% emotional pain, 51% hatred against the person who attacked them, 45% loss of confidence in themselves, 44% loss of confidence in others and so on, this can be concluded that this part of society is even more worrisome once their dignity is blemished.

Figure 43. Which of the following a target person/group by hate speech is likely to experience?



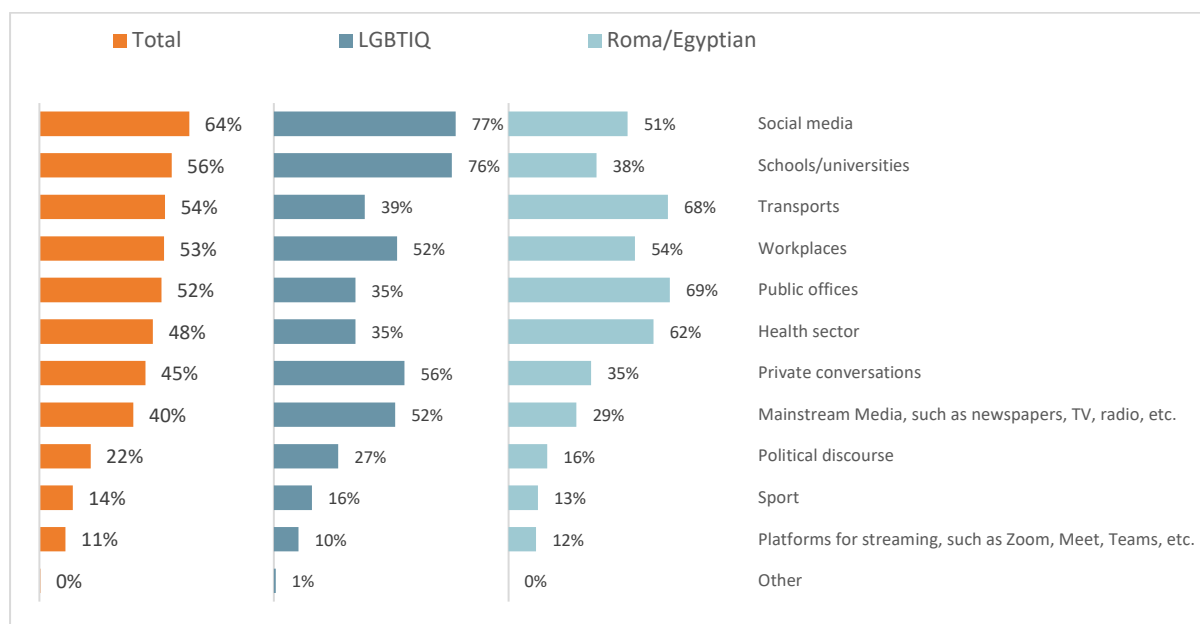
Considering Covid-19 pandemics is directly related to many ultimate social aspects, there is an exclusive question of whether pandemics affects the circulation of hate speech. The outcome displays that 51% of the subsample do not know whether pandemics affects or not the spread of hate speech, however, 70% of them are part of Roma&Egyptians (their community is more likely to know less about the latest developments).

Figure 44. To what extent, the pandemics covid19 has affected the circulation of hate speech?



Certainly, there are differences between whereabouts the hate speech is experienced, for LGBTI community social media and education institutions (school, university) seems to occupy the most important roles, adding up to 77% and 76% respectively. On the other side, the situation for Roma & Egyptian seems to be considerably different, where 69% of them seem to experience hate speech in public offices, 68% in public transportation, and 62% in the health sector. Surprisingly this category seems to be facing critical issues with hate speech in public places, where supposedly those who are at risk concerning hate speech, should be protected by authorities. Other places where these groups are faced with hate speech are the workplace, private conversation, mainstream media, and political discourse.

Figure 45. Where/in which context is Hate Speech mostly experienced in Albania? boost sample

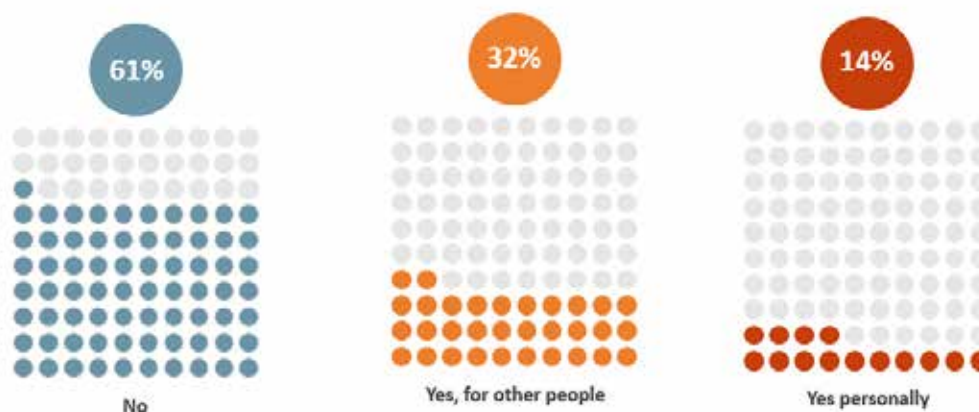


### 2.3.7 Experience with hate speech

The next session of questions included in the survey was dedicated to the experiences of the respondents concerning hate speech. After analysing their perceptions and knowledge, the survey tries to explain what the experiences in the country are with regard to this phenomenon.

Respondents were asked whether they have recently heard or been exposed personally or about other people of Hate Speech. Results show that the majority, about 64% have never been personally exposed to hate speech nor have heard that other people around them have been exposed. About one out of three have heard that other people around them have been exposed to hate speech, and around 14 %.

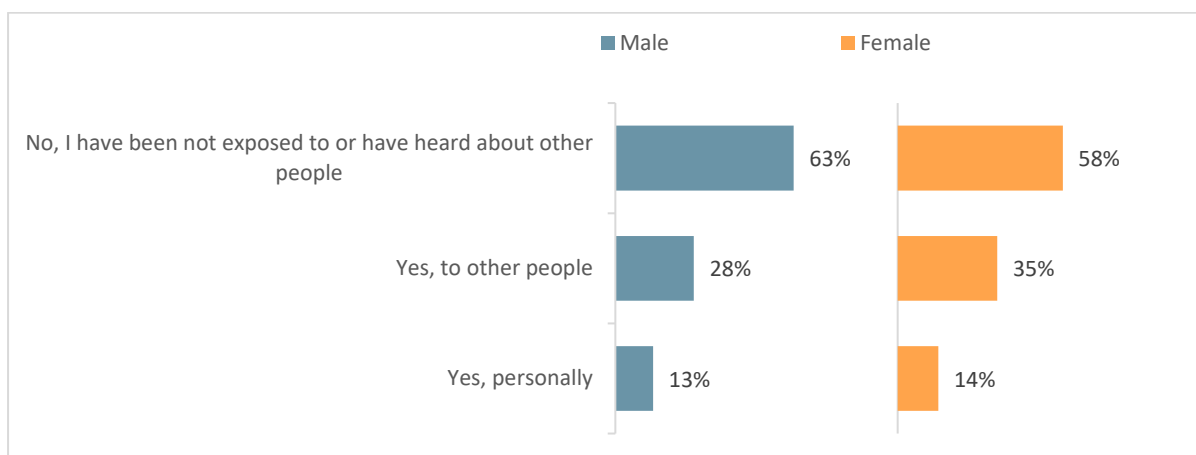
Figure 46. Have you recently heard or been exposed personally or about other people of Hate Speech?



Results by sex show that men are less likely to have been exposed or have heard about other people being exposed to hate speech. Women, on the other hand, are most likely to have heard about other being exposed to hate speech.

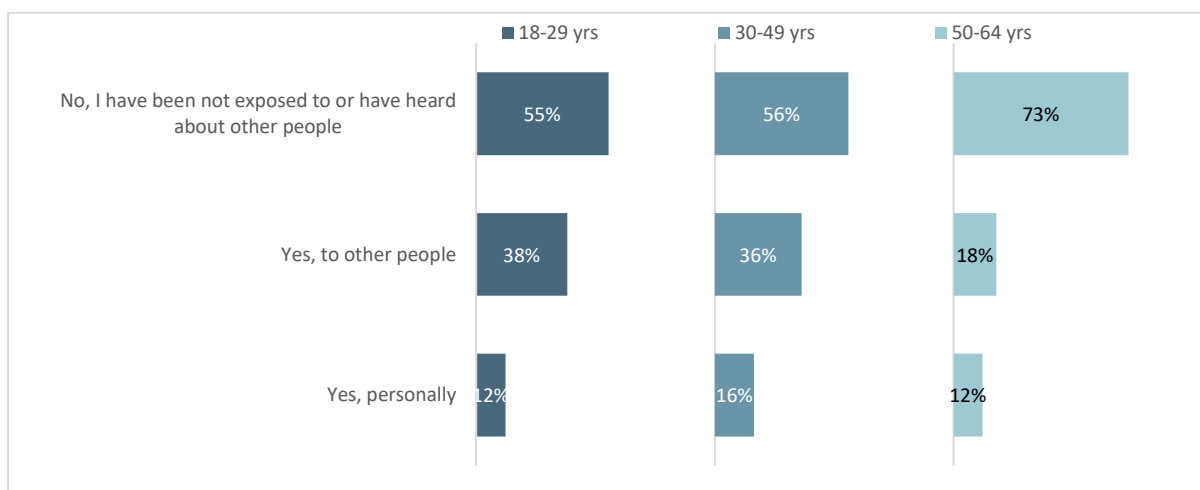


Figure 47. Have you recently heard or been exposed personally or about other people of Hate Speech? by gender



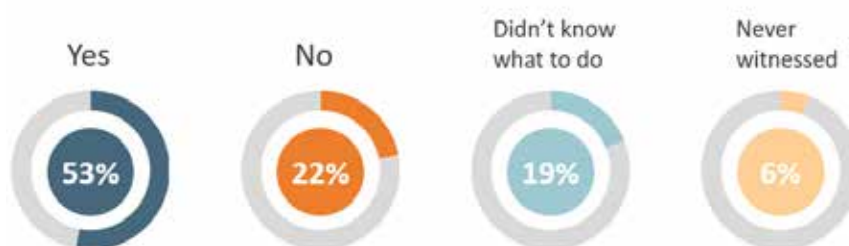
Results by age group show that young people are more likely to have been exposed to hate speech, especially when talking about other people. Around four out of ten young respondents have heard about others being exposed to hate speech, compared to two out of ten among older age groups.

Figure 48. Have you recently heard or been exposed personally or about other people of Hate Speech? by age group



Furthermore, respondents were asked in case that they have witnessed hate Speech towards someone else, whether or not they have taken any action. Results show that more than half of the respondents have taken an action. About 41 % did not take any action, but 19 % wanted to do something but did not know what to do.

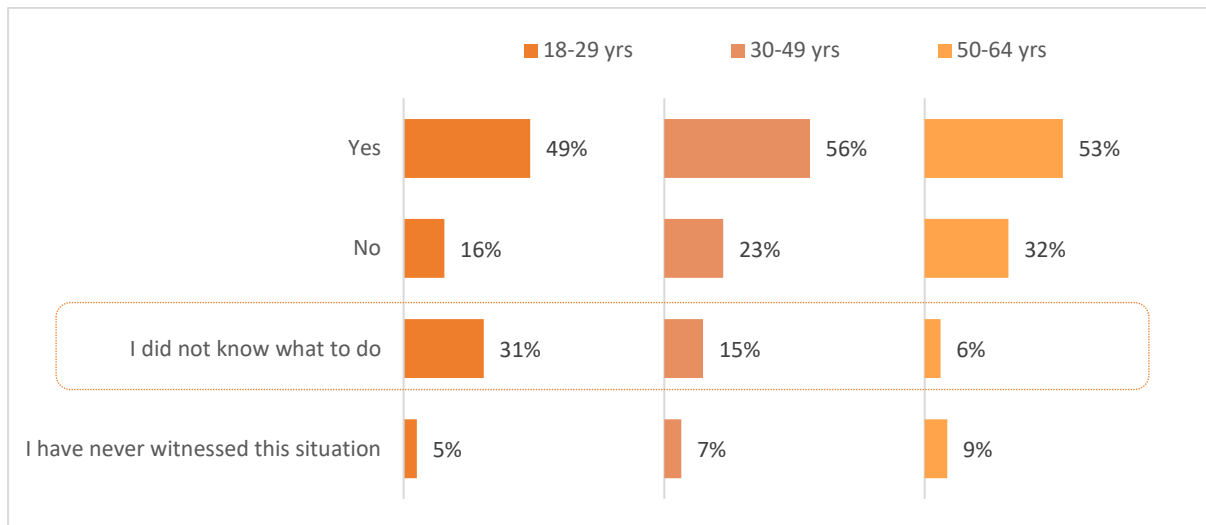
Figure 49. In case you have witnessed Hate Speech towards someone else, have you taken any action?



Results by gender do not show any differences among the reaction of different sexes in these situations. On the contrary, results by age groups show that older age groups are more likely to take action under these

circumstances. Younger age groups are more likely to be confused and not knowing what to do in case of witnessing hate speech situations.

Figure 50. In case you have witnessed Hate Speech towards someone else, have you taken any action? by age groups



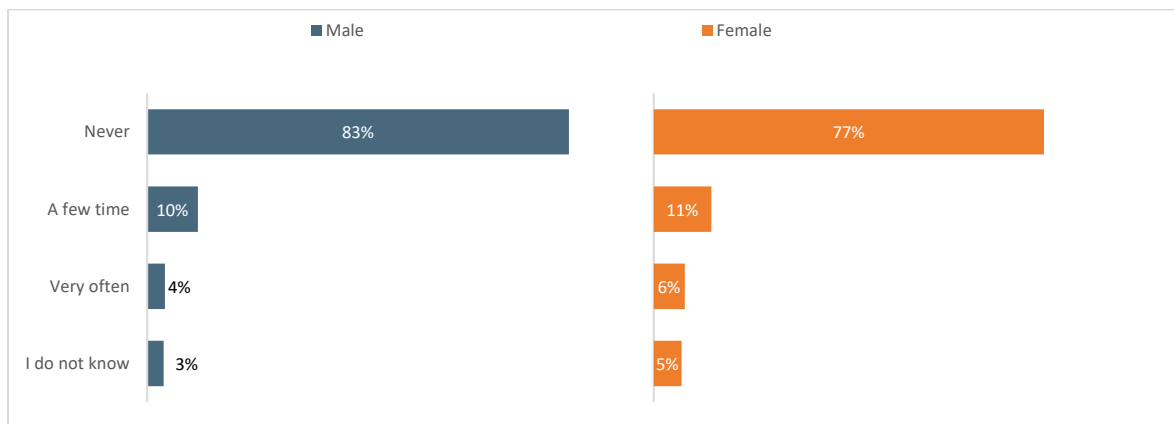
The respondents were asked about their experience regarding online exposure to hate speech. Results show that eight out of ten respondents have never been exposed to hate speech. About one out of ten have been exposed a few times and 5 percent have been exposed very often. About 4 percent have responded that they don't know.

Figure 51. Have you ever been exposed to online Hate Speech?



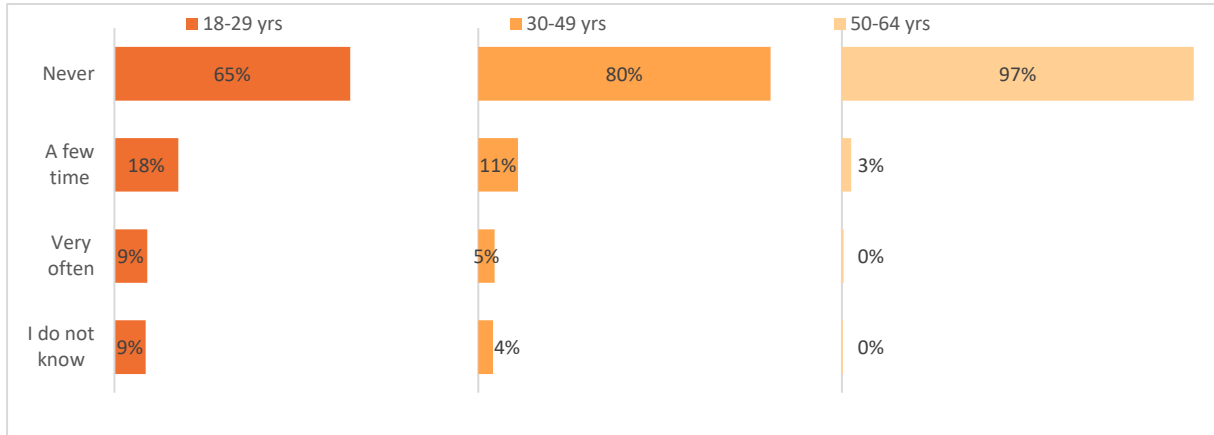
Results by gender show that fewer women have never been exposed to hate speech compared to men.

Figure 52. Have you ever been exposed to online Hate Speech? by gender



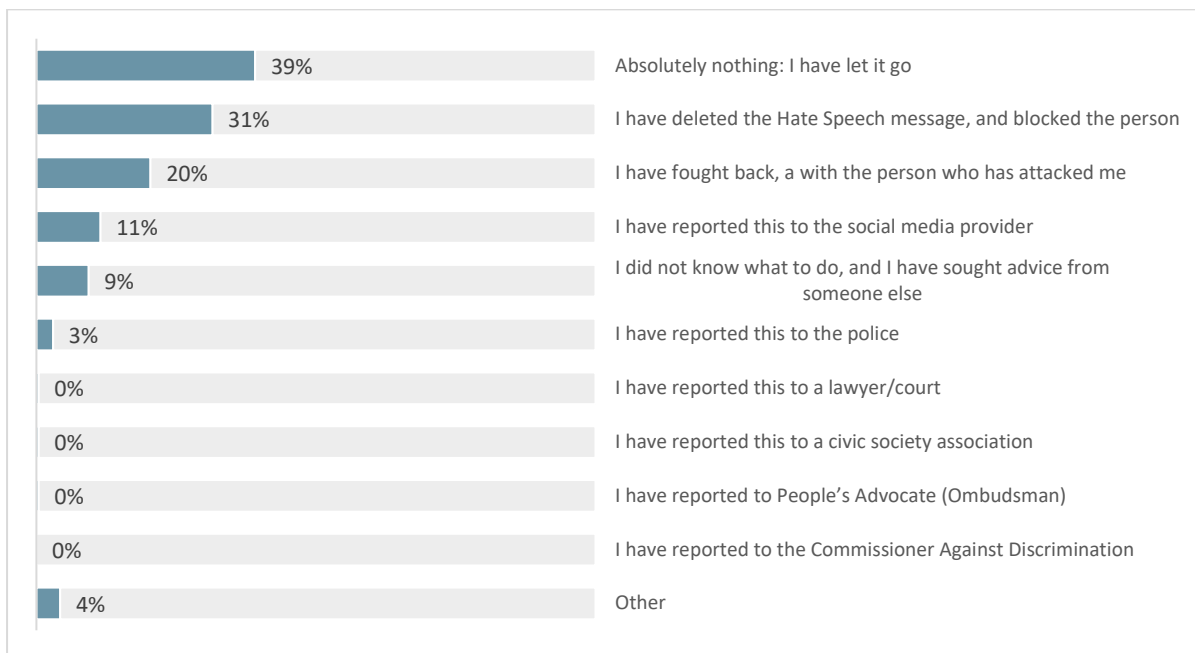
**Data by age groups show that young age groups are more likely to be exposed to hate speech.** About no respondents of 50-64 years old have been exposed to online hate speech. On the contrary, about 27 percent of the young respondent, 18-29 years old, have been exposed to online hate speech, a few times or very often, compared to 16 percent among 30-49 years and 3 % among older age groups.

Figure 53. Have you ever been exposed to online Hate Speech? by age groups



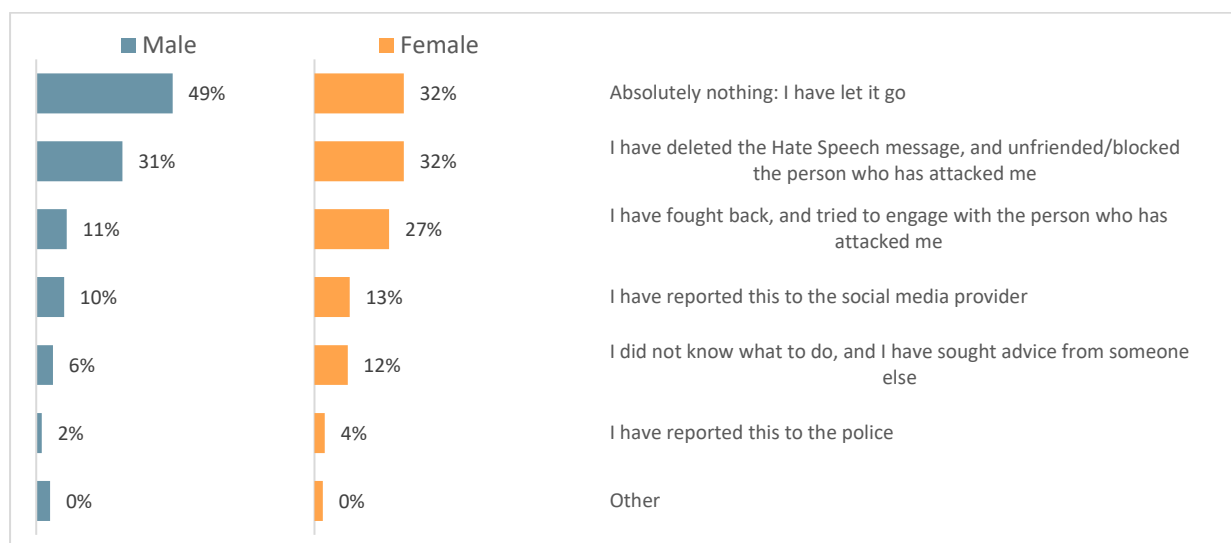
Respondents who have been exposed to online hate speech, are further asked what they have done afterward. The majority, about 39 % percent have responded to have done nothing. About 31 % have deleted the speech and blocked the person. Around 20 percent responded to have fought back, and only 3 % responded to have reported it to the police.

Figure 54. In case you have been exposed to online Hate Speech, what have you done?



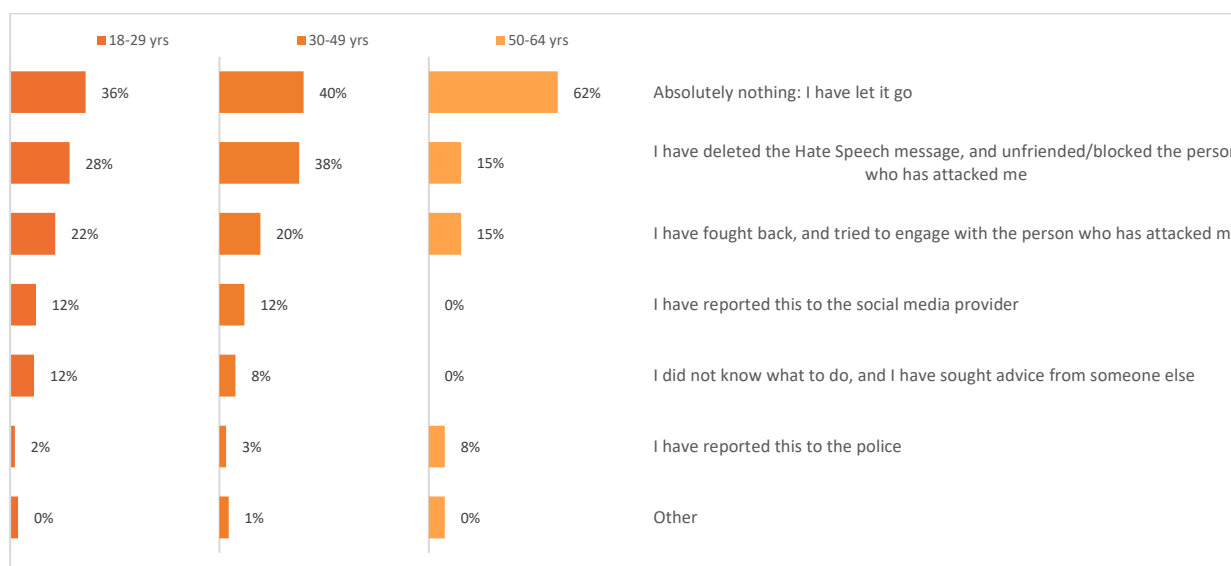
Results by sex show that men are more likely to not do any action after experiencing online hate speech compared to women. On the other hand, women are more likely to fight back the person who attacked them.

Figure 55. In case you have been exposed to online Hate Speech, what have you done? by gender



Results by age groups show that younger respondents are more likely to have deleted the message and to fight back with the person who attacked them. On the other hand, older age groups are more likely to report to the police compared to younger age groups.

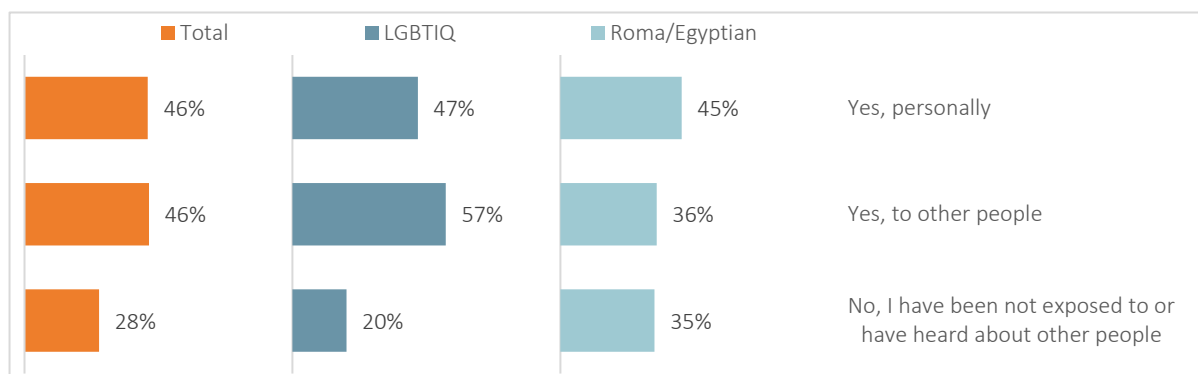
Figure 56. In case you have been exposed to online Hate Speech, what have you done? by age groups



### 2.3.8 Experience with hate speech of boost sample

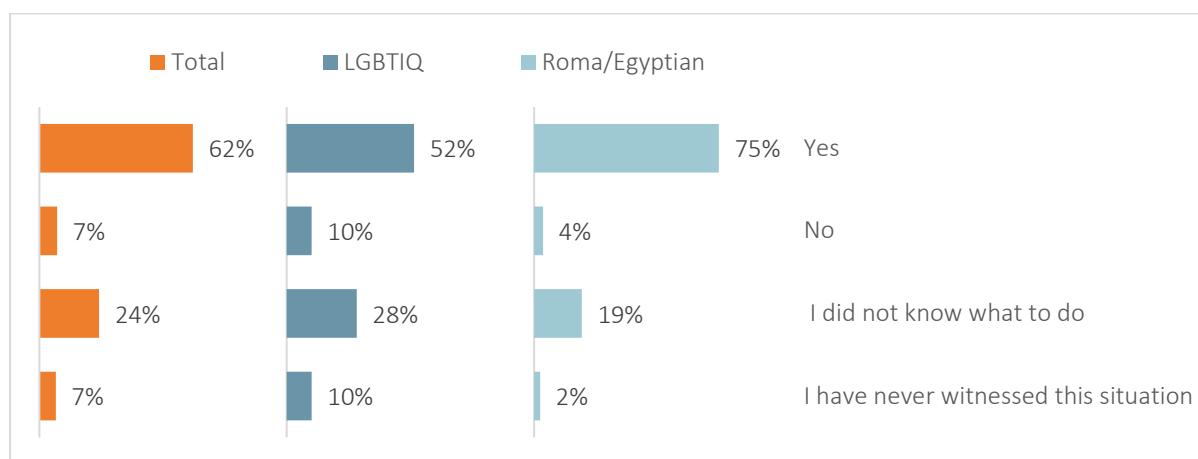
Some of the questions included in the survey are dedicated to the experiences of the respondents concerning hate speech. Respondents are asked whether they have recently heard or been exposed personally or about other people of hate speech. Results show that the majority, about 46%, have been personally exposed to hate speech, and similarly, they have heard that other people around them have been exposed. In a lower percentage (28%) some persons have never heard or been exposed to hate speech. Roma&Egyptian (about 35%) respondents have had fewer experiences or have heard fewer hate speech situations compared to LGBTI people (about 20%).

Figure 57. Have you recently heard or been exposed personally or about other people of Hate Speech? boost sample



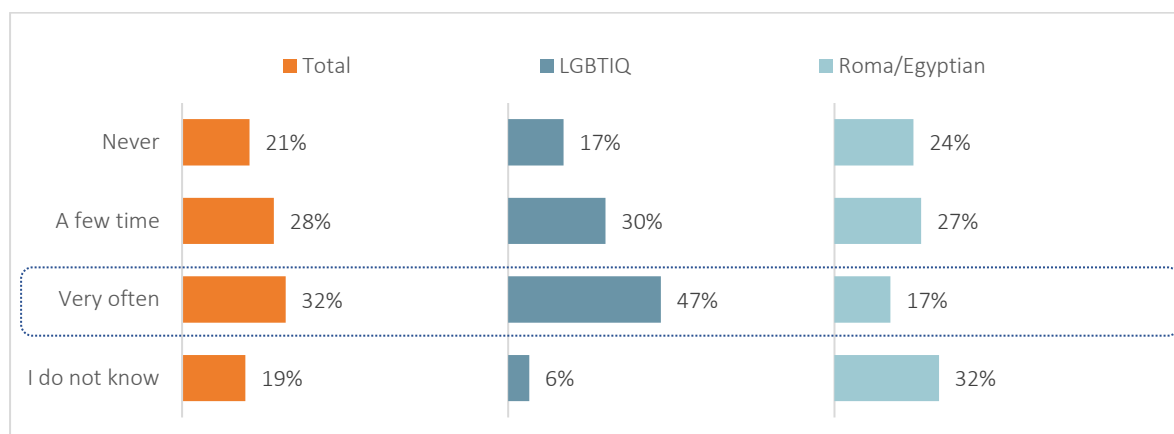
Another significant question asked only to those who have heard or been exposed personally to hate speech, is how predisposed they are to take action, when others are affected by hate speech. Evidence shows that overall, 62% of them have taken action at the moment they are faced with such a situation. While 2 out of 10 of them have not taken any action. Data shows that Roma&Egyptian (75%) seem to have a larger share when it comes to taking action against hate speech compare to LGBTI, for whom 52% responded that they have taken action.

Figure 58. In case you have witnessed Hate Speech towards someone else, have you taken any action? boost sample



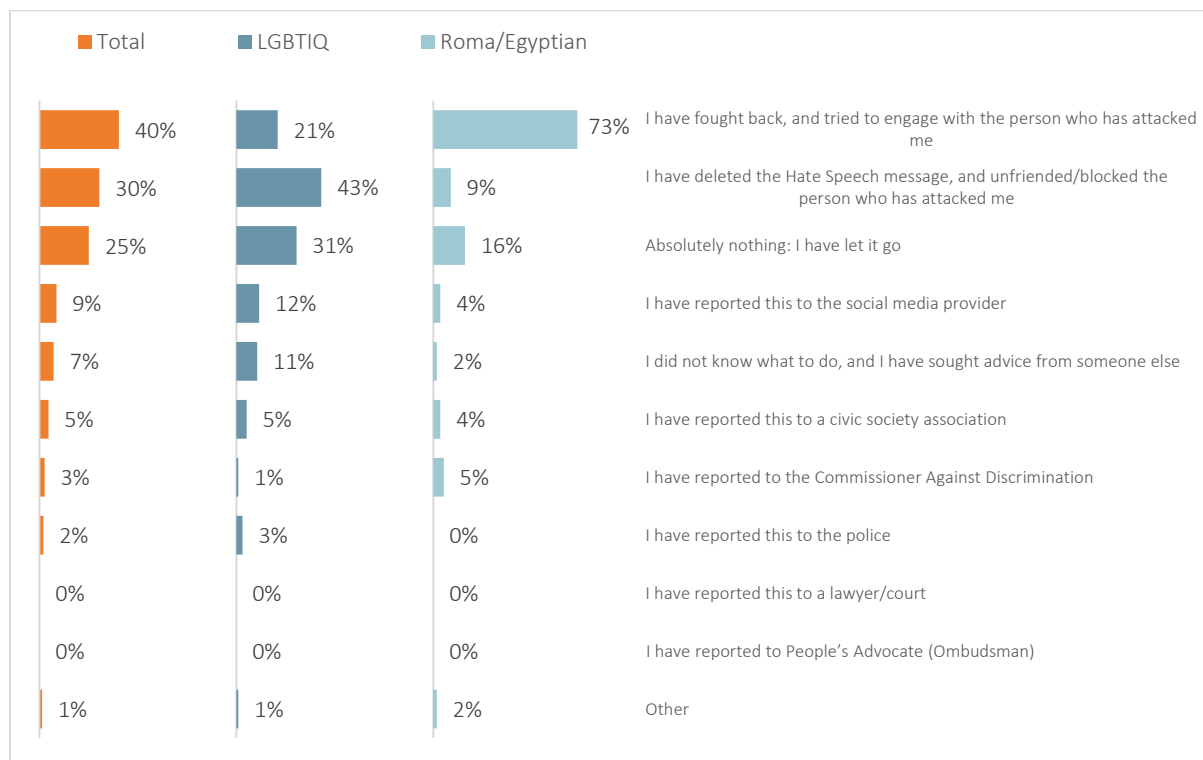
Furthermore, respondents were asked in case they have been exposed to online Hate speech. Results show that there exists a vast difference between LGBTI and Roma&Egyptian community when it comes to the frequency of hate speech encounters. About half of LGBTI respondents have been exposed very often to online hate speech compared to 17% of Roma& Egyptian. In total 6 out of 10 people in this group have experienced online hate speech at least once.

Figure 59. Have you ever been exposed to online Hate Speech? boost sample



Moreover, participants are asked if they have undertaken any action at the moment, they have experienced online hate speech. Almost 40% of the respondents claim to have fought back the person who attacked them and about 30% have chosen to delete the hate message. Data shows that only 10 percent of respondents chose to report to public institutions such as the police, the commissioner against discrimination, court, etc. On the other hand, Roma&Egyptian communities are more likely to fight back against the person who attacked (around 73%), compared to LGBTI people who prefer to delete messages with discriminatory content or to overlook the problem rather than facing it.

Figure 60. In case you have been exposed to online Hate Speech, what have you done? boost sample



### 2.3.9 Level of awareness and trust in the institutions

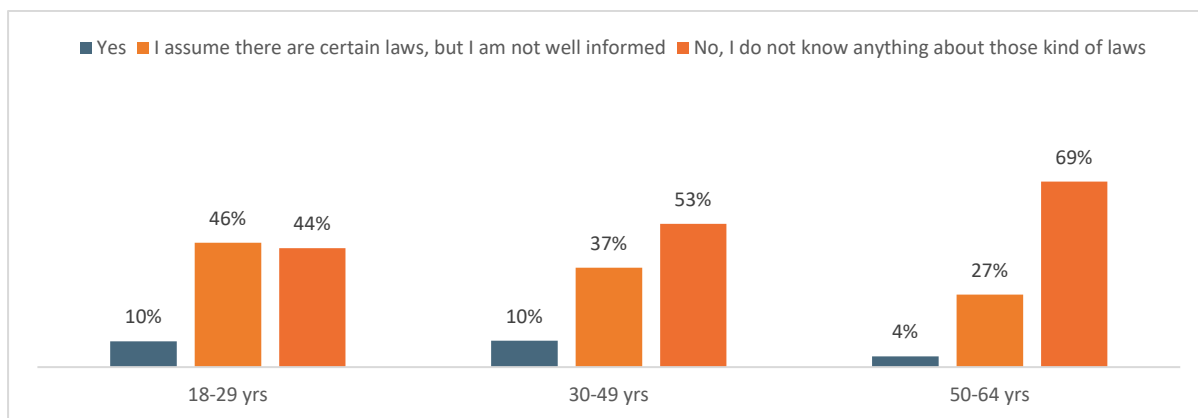
Respondents were asked whether they were aware of the existence of a law in the country that protects people from hate speech. Results show that only 8 percent of the respondents were aware of the existence of such a law in the country. About 37 percent knew about the existence of certain laws, but nothing in concrete. More than half of the respondents were not aware of the existence of these laws in the country.

Figure 61. Are you aware of any law protecting people from Hate Speech?



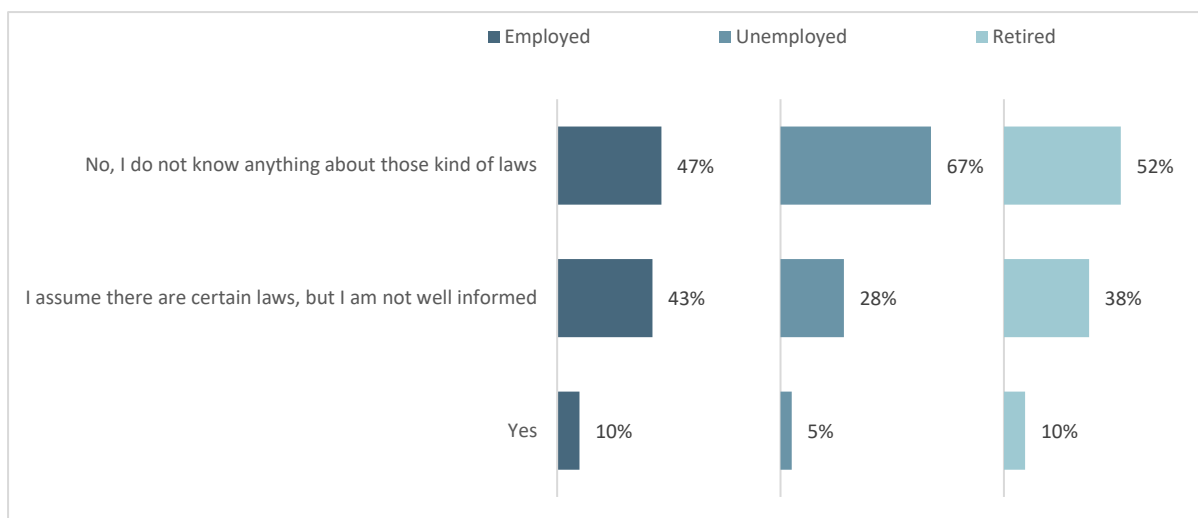
Results by age group show that more young people are aware of laws that protect people from hate speech, compared to older age groups. About seven out of ten respondents do know nothing about these kinds of laws in the country.

Figure 62. Are you aware of any law protecting people from Hate Speech, by age group?



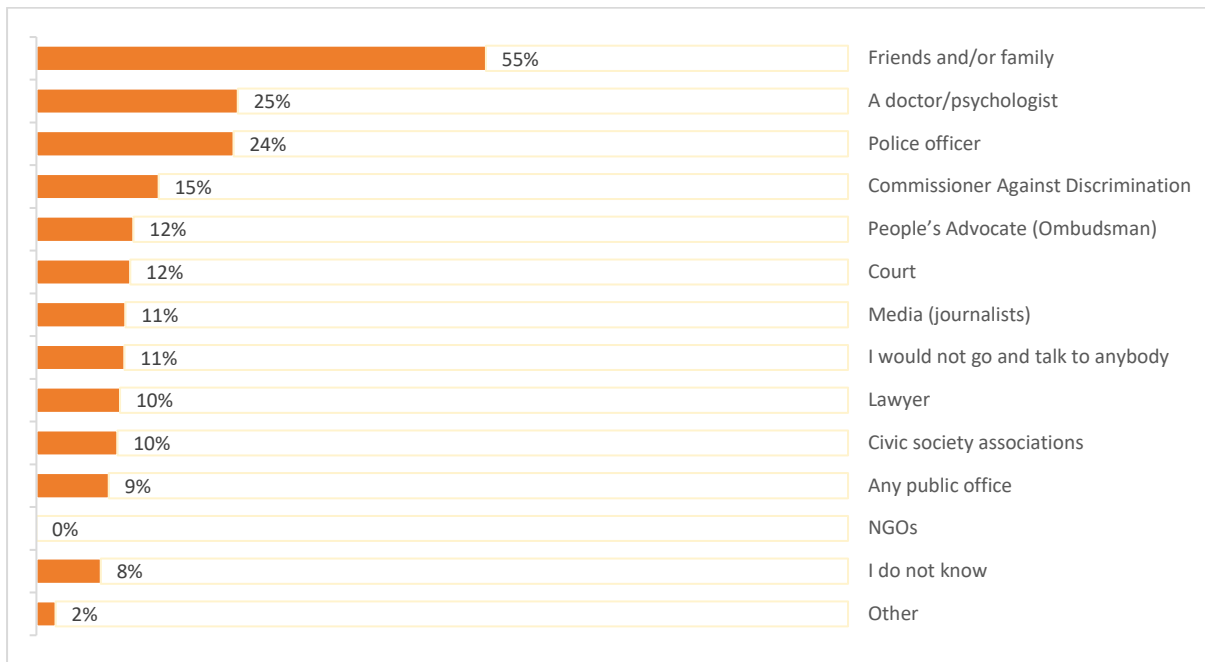
The employment status seems to play a role in the level of awareness of these kinds of laws in the country. About 67 % of unemployed do not know anything of these laws, compare to 47 % of employed. Employment looks to be important not only in increasing the level of awareness, but at the same time, it might influence in protecting people from such phenomena.

Figure 63. Are you aware of any law protecting people from Hate Speech, by age group? by employment status



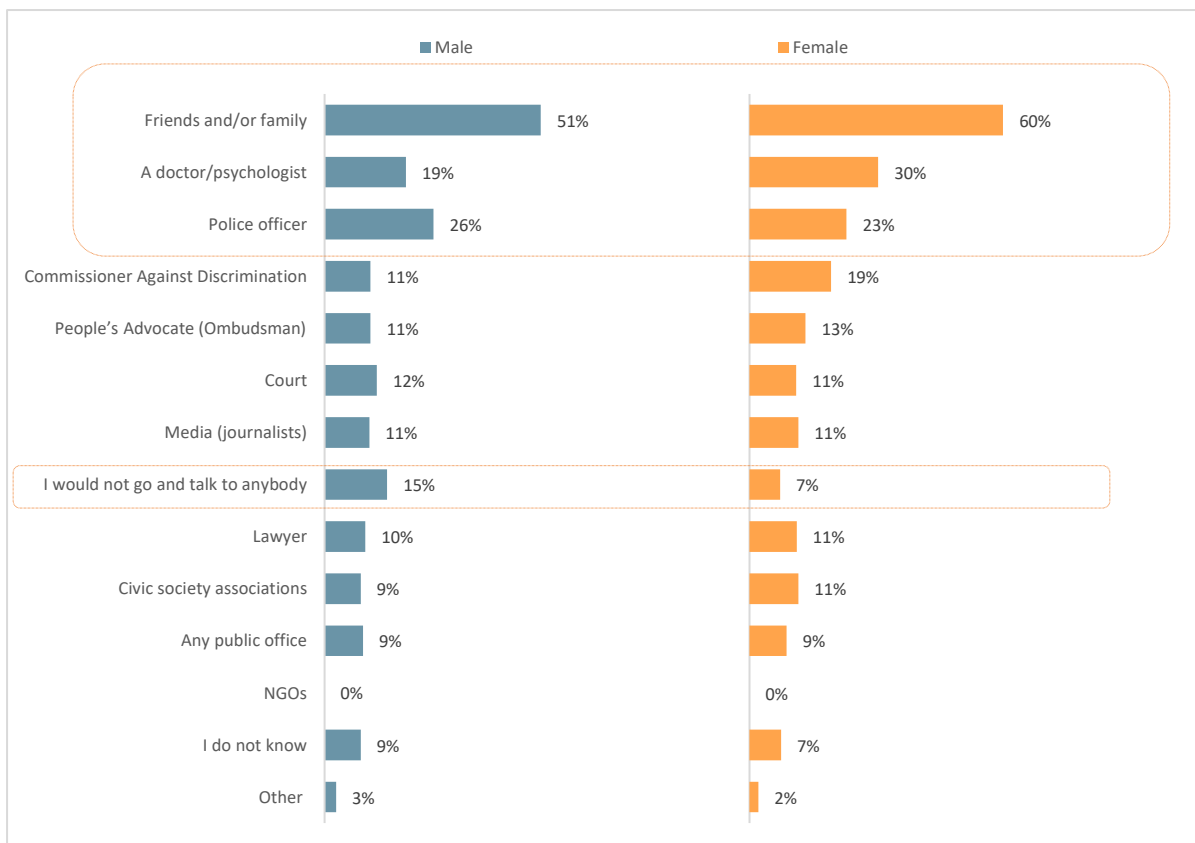
Being asked about a hypothetical situation if the respondents would be in a condition or situation of being targeted of Hate speech, the majority have responded that they would ask for help in their family or go to their friends. About 25 % would go to a doctor or physiologist. About 24 % would go to the police officer and 15 % would to the Ombudsman.

Figure 64. If you were to become a target of Hate Speech, where would you go to ask for help?



Results by sex show that there are some differences among gender in the level of trust of different people or institutions. More women would go to their friends and family. More women would go to a doctor/psychologist. Men are more likely not to take any action compared to women, respectively 15 % to 7 %. **This is a strong indication that more attention should be paid to men since their tendency of not telling anyone about this problem could cause other problems to them.**

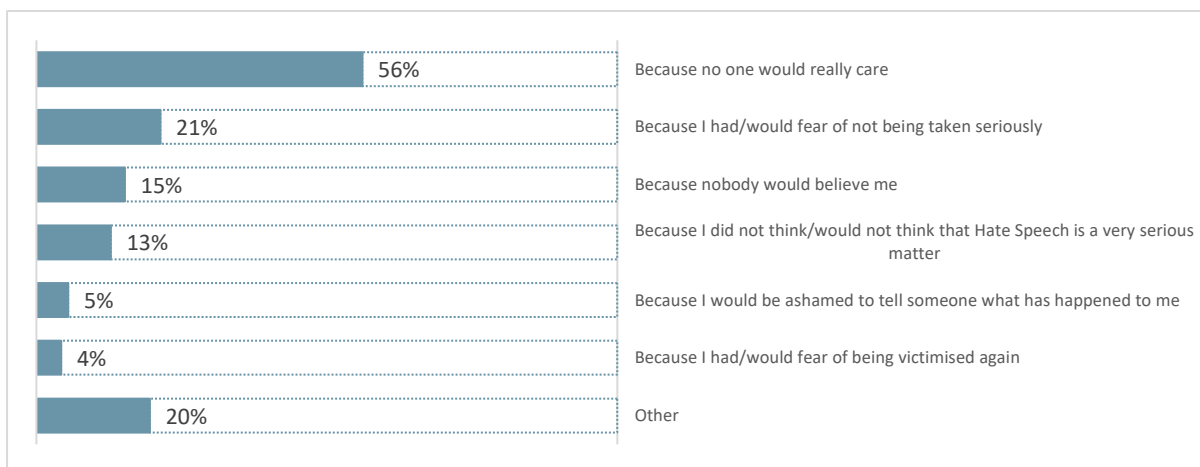
Figure 65. If you were to become a target of Hate Speech, where would you go to ask for help? by sex





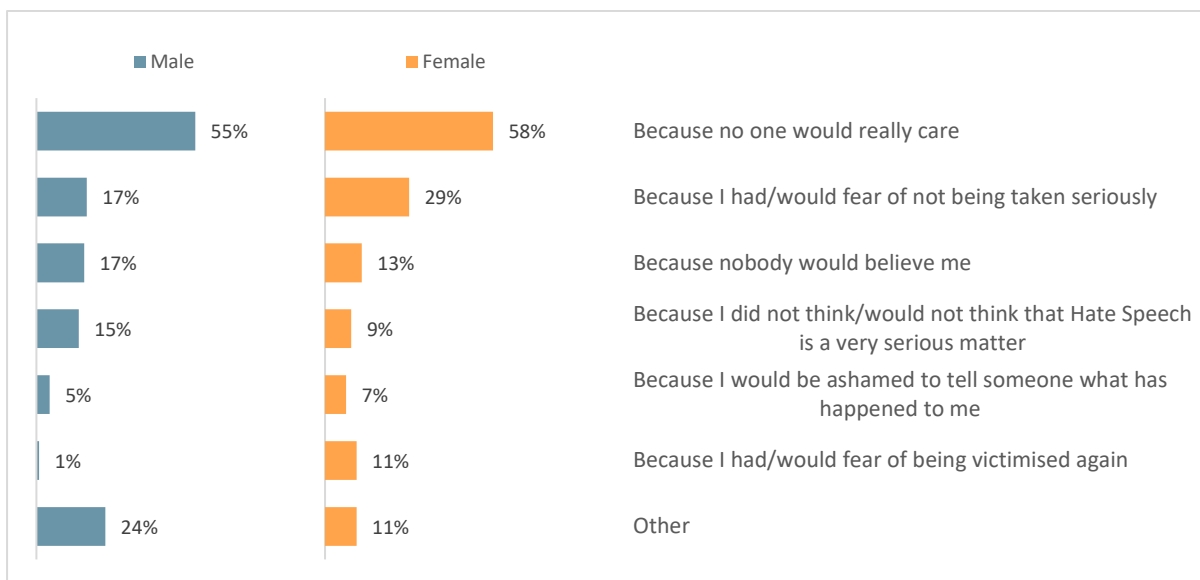
The questionnaire went further in trying to explore the reasons why people would hesitate to ask for help. Results show that more than half of the respondents think that no one would care if they ask for help. About 21 % fear not being taken seriously and about 15 % think that others would not believe them.

Figure 66. Could you explain why? (only those who wouldn't go to ask for help)



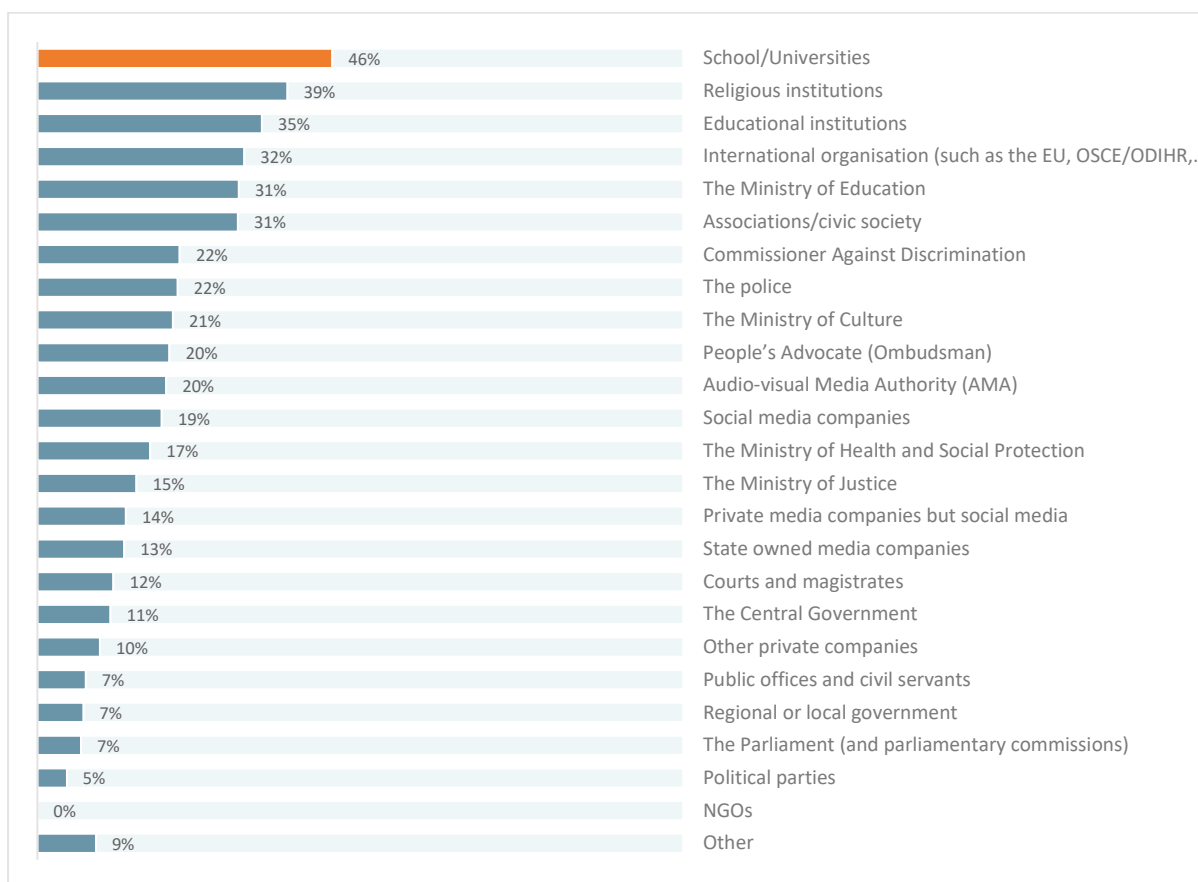
Results by sex show that more women fear not being taken seriously and more men think that hate speech is not a serious matter. Men have a higher percentage of other reasons not listed in the questionnaire.

Figure 67. Could you explain why? (only those who wouldn't go to ask for help), by sex



In the end, respondents were asked their opinion regarding their perception about which institutions they consider to be more committed to combating hate speech in the country. This is a question that indirectly measures the level of trust of people in such institutions in addressing such issues in the country. Schools and universities are institutions that are mostly perceived as being committed against hate speech in the country, by 46 % of the respondents. Public officers, local government, parliament, and political parties are less perceived by the respondents as being committed to combating hate speech in the country.

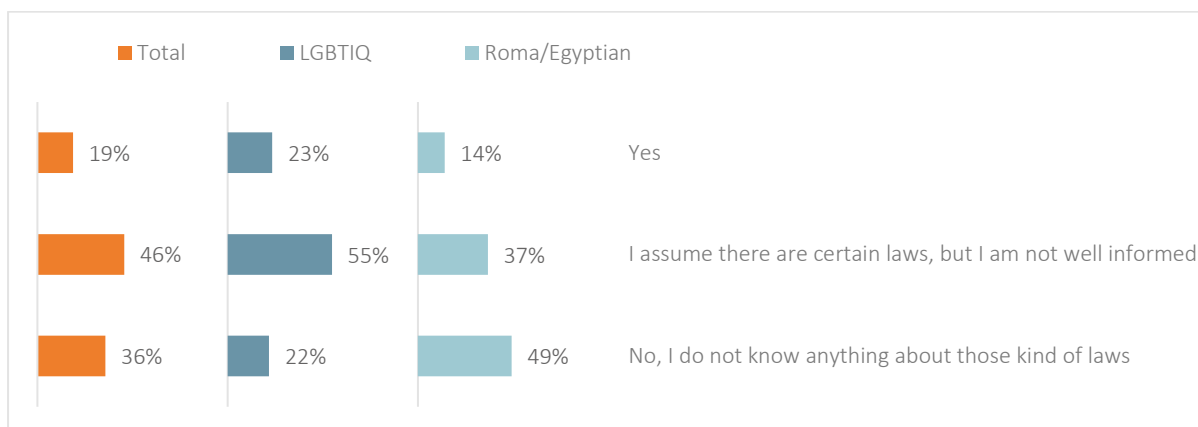
Figure 68. In your opinion, what are the institutions which are more committed to combating Hate Speech in Albania



### 2.3.10 Level of awareness and trust in the institutions of Boost Sample

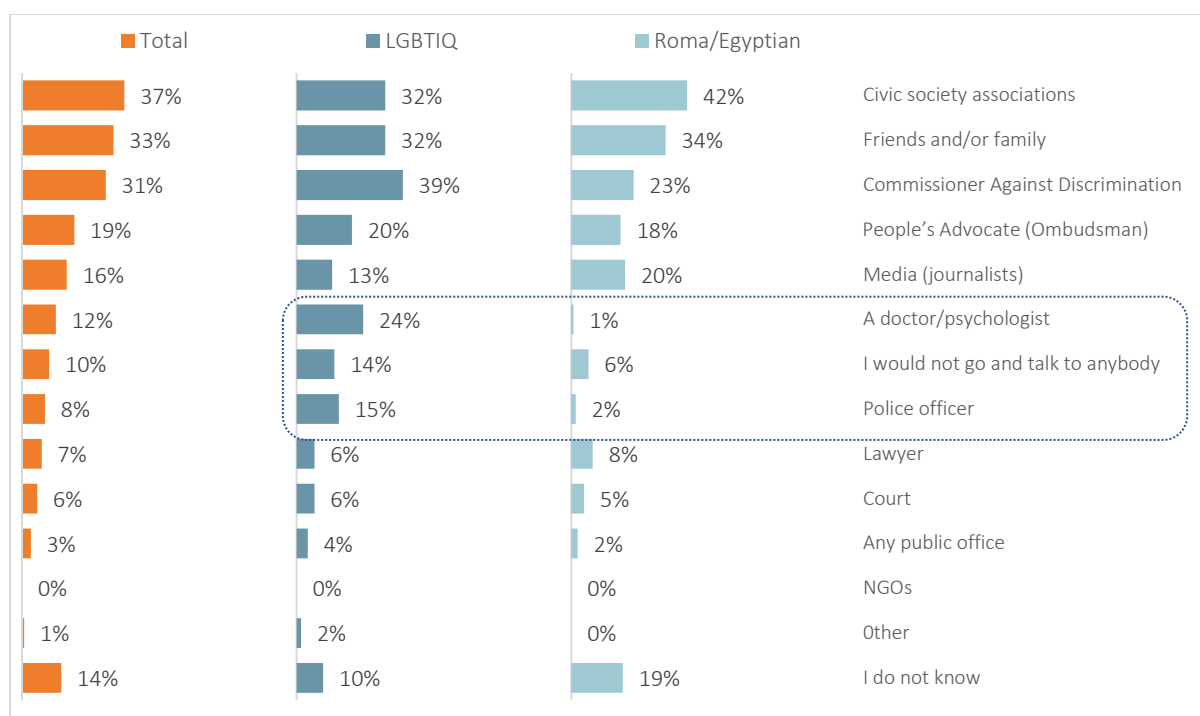
One of the main questions asked to the respondents was about recognizing the existence of laws that protect people against hate speech. It follows, that only 19% in total, are aware that such laws exist, from where 23% are LGBTIQ and 14% Roma&Egyptians. Consequently, 55% of the LGBTIQ community and 37% of Roma&Egyptians, know there exist certain laws but they are not informed about them. Roma& Egyptians are the least informed part of the society, where 49% declare they are not aware of any law existing in the country, however, the situation alters for the LGBTIQ community were 22% seem to not be aware of laws protecting people from hate speech.

Figure 69. Are you aware of any law protecting people from Hate Speech?



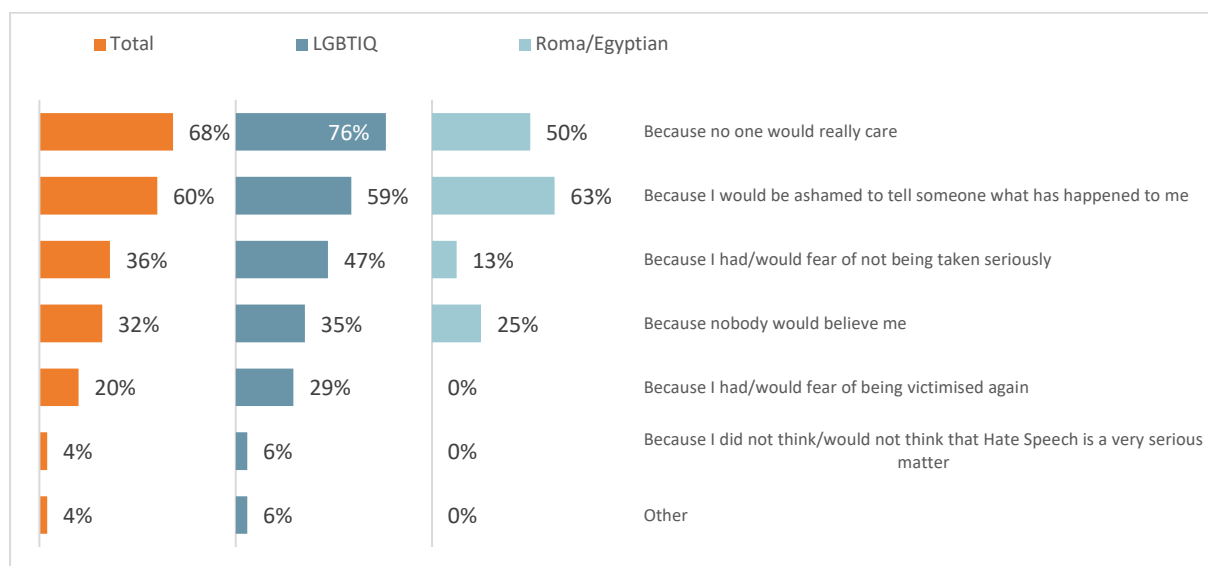
Additional metrics for measuring the trust of the people towards some of the specialized institutions that can help the persons affected by hate speech are introduced in the survey. Data implicates that, in total most of the respondents are more inclined to seek help from a civic society, which follows by 33% seeking help from a family/friend, 31% seeking help from a commissioner against discrimination, Ombudsman, Media Etc. When comparing Roma&Egyptian community with LGBTI, data show that the Roma community would first seek help from civil society (42%), while 39% of LGBTI prefer to ask for help mostly by a Commissioner Against Discrimination. As illustrated in the below graph, there are foundations/organizations where Roma&Egyptian would not go and ask for help, like a doctor/psychologist, police officer, public offices or NGOs, nevertheless LGBTI slightly changes their directives of asking for help, where the only place they would not head to, are NGOs. **Under these circumstances, it is implied that groups who risk more dealing with hate speech, are not prone to go and ask for help in NGOs when they face this incident.**

Figure 70. If you were to become a target of Hate Speech, where would you go to ask for help? boost sample



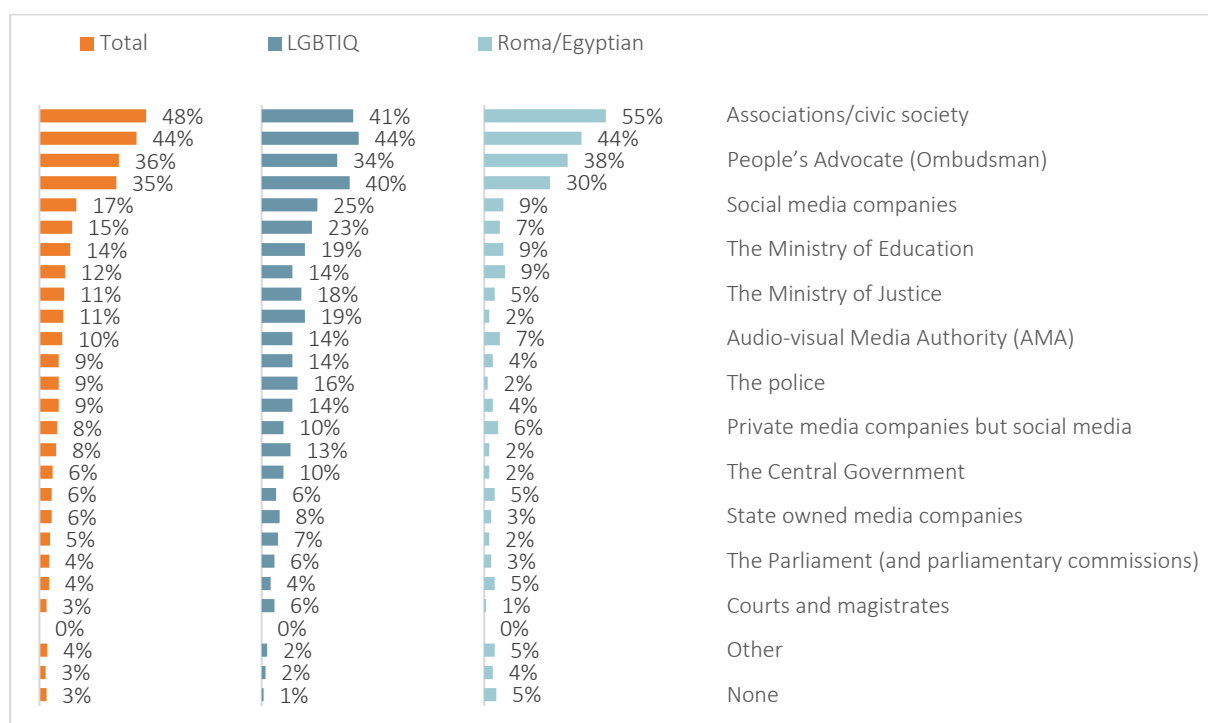
Trying to comprehend why a considerable number of people would not ask for help or talk to anybody, a specific question is designed, only for those who responded in this mode. Most of the sample, on average 68% tend to think that they would not ask for help because nobody cares followed by 60% who think they feel ashamed to tell someone what has happened to them. Although there are changes between LGBTI and Roma& Egyptians responses regarding why they would not ask for help, the two above-mentioned reasons are the most prevailing ones which determine the causes of their reluctance. Respectively 76% of LGBTI and 50% of Roma& Egyptian, think nobody cares whether or not they need help, while less of LGBTI and more Roma& Egyptian think they would be ashamed if they acted so. Therefore, it can be concluded that the 2 major reasons why segmented areas of society do not ask for help when faced with discrimination are the fact that nobody cares and that they would feel ashamed.

Figure 71. Could you explain why? (only those who wouldn't go to ask for help)



Lastly, an indicator of their knowledge about institutions that are most committed to combating hate speech in Albania is deducted through the responses. Institutions that take more weight regarding commitment to fighting hate speech are civic society associations (48%), international organizations (44%) such as the EU, Council of Europe, USAID, UN...etc, Ombudsman (36%), and Commissioner against discrimination (35%). A significant difference is observed between LGBTI versus Roma& Egyptian community regarding the level of trust in the public institutions, given that the percentage of people who selected public institutions as mostly devoted to combating hate speech, is higher in the LGBTI community than in Roma & Egyptians. For instance, 19% of LGBTI think that the Ministry of Health and Social Protection is committed to combatting hate speech in Albania whereas only 2% of Roma& Egyptians believe that this institution fights hate speech. Roughly, 18% of LGBTI think that Ministry of Justice is another institution for combatting hate speech, although only 5% of Roma& Egyptians hold the same belief. Both communities share a common belief regarding the Role of NGOs in fighting hate speech in Albania.

Figure 72. In your opinion, what are the institutions which are more committed to combating hate speech in Albania?



## 3. Hate speech - international standards and best practices for Albania<sup>62</sup>

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### 3.1 International Standards

#### 3.1.1 The legal framework on hate speech in the context of the United Nations - Regulating 'Hate Speech' in international law on human rights of the United Nations<sup>63</sup>

*International Covenant on Civil and Political Rights - ICCPR*

The *International Covenant on Civil and Political Rights* is the key document under the auspices of the United Nations that lists the civil and political rights and freedoms of the citizens. It ensures fully and thoroughly the rights and elements concerning the freedom of speech and obligates member states of the United Nations to maintain the same formulation or standard in their national legislations in order to realize those.

Thus, Article 19 guarantees that “Everyone shall have the right to hold opinions without interference and the right to freedom of expression. The freedom of expression shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. On the other hand, the exercise of these rights is subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the respect of rights or reputation of the others, and for the protection of national security, public order, public health or morals”.

Meanwhile, article 20 of the ICCPR specifically provides for the elements concerning hate speech, sanctioning that any propaganda for war shall be prohibited by law, and the fact that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. These are general standards that each state ratifying the ICCPR should implement, in the same way as if it had adopted them in the national legislation. Nonetheless, the fact that an international convention or agreement is ratified by the Albanian Parliament implies that all elements or standards it provides for are similarly obligatory to be applied.

*The Rabat Plan of Action*

The *Rabat Plan of Action* is a document adopted in the framework of four meetings organized under the auspices of the High Commissioner for Human Rights of the United Nations, concerning the incitement of national, racial, or religious hatred in different countries, and the elaboration of strategic responses to the legal and extra-legal approach following the assessment of the situation on the implementation of legislation, jurisprudence, and policies on advocating for matters constituting national, racial, or religious hatred, which incite discrimination, hostility, or violence, at national or international level.

Regrettably, individuals or groups that have suffered from various types of discrimination, hatred or due to their ethnic or religious origin, bear the negative effects of manipulation of race, ethnic or religious origin, to defending concepts of national unity or identity, which are often instrumentalized, among others, for political

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<sup>62</sup> By Mirela Bogdani

<sup>63</sup> Promotion and protection of the right to freedom of opinion and expression\* Note by the Secretary-General

or electoral purposes. Also, there is a growing concern about the impunity of individuals who have committed such crimes or caused such incidents, which have reached the level of Article 20 of the ICCPR, whereas other members of minority groups are criminally prosecuted, thus creating a deterring effect for others due to the abusive application of the unclear domestic legislation, of jurisprudence or policies related to such matters. Such contrast between the impunity in cases concerning incitement of hatred and prosecution of minorities under the cloak of national laws against hatred seems to be a growing phenomenon. The Plan of Action envisages a series of concrete measures to prevent incitement of hatred in the area of legislation, judicial infrastructure and state policies, along with guidelines for all actors in implementing the international prohibition of any type of advocacy for national, racial, or religious hatred, which constitutes or results in incitement or stimulation of discrimination, animosity or violence.

For this purpose, the States should engage to the maximum in combatting negative stereotypes of discrimination due to nationality, ethnic affiliation or religious belief, to promote intercultural, including gender sensitivity, to create a culture of peace and give an end to the impunity in such cases, to train teachers about the human rights values and principles with a focus on intercultural understanding and to make such matters part of teaching curricula, to train and sensitize police forces of law enforcement agencies in administering justice to stop incitement of hatred, to establish special institutions for such purposes or to increase capacities of existing institutions to resolve such issues or to strengthen the social dialogue, adopt the regulatory framework or public policies that encourage pluralism and diversity in the media for a thorough access without discrimination towards communication means, in collaboration with the Office of the High Commissioner for Human Rights of the UN.

Some of the elements that this document presents to evaluate the severity of incitement of hatred concern the severity or purpose of statements made, justification of damages resulting from incitement of hatred, the frequency, quantity and scope of communication. For this, a minimal text comprising of 6 steps has been compiled, as a proposal to evaluate the expressions that constitute a criminal act if they are likely to incite discrimination, animosity or violence against a target group:

- **Context** – It is of great importance when assessing whether there is a direct effect on the purpose and/or accusations made. The context analysis should be placed in the social and political context of when the statement was made;
- **Speaker** – the position or status of the person who made the statement, the individual position or the position of the organization towards the audience the expression/statement addresses should be considered;
- **Purpose** – Article 20 of International Covenant on Civil and Political Rights - ICCPR envisages the purpose of making statements; negligence or imprudence do not suffice for a statement or action to be considered in violation of Article 20, as it envisages advocating and incitement rather than mere dissemination or circulation of a given material. In this context, the activation of the triangle connecting the object with the subject of statements of interaction with the audience is required;
- **Content and form** – The content and form of the speech/statement constitutes a key element in court decisions and is, at the same time, an element of incitement. Content analysis may comprise of the degree to which the statement was provocative, direct, as well as the form, style, and nature of arguments made in the statement, or even the balance between them;
- **Extent of statement action** – The extent includes elements such as the dissemination or impact of the statement, its public nature, and the magnitude and size of the audience. Other elements that can be assessed whether the speech or statement was public are the means by which it was disseminated/circulated, i.e., a brochure or broadcast on key media, or via the Internet; the frequency of dissemination, the quantity and extent of dissemination of communications; whether the audience possessed tools to counter the incitement; whether the statement of actions circulated within a limited environment or broadly accessible by the general public;
- **Probability**, including the proximity/possibility for the occurrence of the criminal act – incitement (of hatred) as an act, due to its limitation is an undeveloped/committed crime, it relates to its initial stages, with the preparation or conceiving of a criminal act. The action committed through incendiary

speech does not have to be committed for a statement to be considered a criminal act or crime. However, it should be identified to a certain degree, no matter how small of the risk to cause damage. This means that the courts should decide whether there has been a reasonable probability for the speech to end up into a factual incitement against a targeted group, assessing that this causal relation was direct.

*International Convention on the Elimination of All Forms of Racial Discrimination, Article 4<sup>64</sup>*

The *International Convention on the Elimination of All Forms of Racial Discrimination* is a document adopted by the Assembly of the United Nations (1965), and envisages the general international standards for the elimination of racial discrimination, qualifying it as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>65</sup>

In its preamble, the Convention envisages that all people are equal before the law and have the right to equal protection by the law against any discrimination and any incitement for discrimination. Additionally, the United Nations, being convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere, or discrimination among people because of race, colour, or ethnic origin.

Specifically, Article 4 of the Convention envisages that member states should take measures to condemn the propaganda and all organizations based on ideas or theories of superiority of any race or group of people off a certain colour or ethnic origin, or who attempt to justify and assist any form of racial hatred or discrimination.

The measures taken by the states must be immediate in eliminating any incitement for discrimination or discriminatory act by:

- a) Declaring as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, (and also the provision of any assistance to racist activities, including the financing thereof);
- b) Declaring illegal and prohibiting organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- c) By not permitting public authorities or public institutions, national or local, to promote or incite racial discrimination.

While Article 4 of the Convention has functioned as the key tool to fighting hate speech, its other articles give notable contribution in achieving these objectives by guaranteeing the right of equality before the law, in particular the right to freedom of opinion and expression; Article 7 emphasizes the role of learning, education, culture and information in promoting understanding and interethnic tolerance; Article 2 concerns the guaranteeing of measures that states must undertake to eliminate racial discrimination; and Article 6 focuses on guaranteeing effective protection and provides for defence mechanisms for victims of racial discrimination, and guarantees the right to seek 'fair or satisfactory reparation' for damages caused in these cases.

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<sup>64</sup> The translation of the full text of the Convention may be accessed from this link <http://www.magjistratura.edu.al/media/users/4/Konventa%20kunder%20diskriminimit%20racial.pdf>

<sup>65</sup> For more information, please refer to Article 1/1 of the Convention on the Elimination of All Forms of Racial Discrimination.

*General Recommendation No. 35 (2013) of the Committee on the Elimination of Racial Discrimination<sup>66</sup> to counter racial hate speech*

The Committee for the Elimination of Racial Discrimination was established under the auspices of the Convention on the Elimination of All Forms of Racial Discrimination (Article 8). It comprises of eighteen experts (famed for their morals and impartiality, selected by the member states) and prepares reports concerning measures of a legislative, judicial, administrative character that states have adopted to eliminate racial discrimination, thus applying the provisions of the Convention. The Committee may also give suggestions and recommendations based on the analysis of reports and information obtained from the states, informing the General Assembly. In this context, the Committee has adopted the General Recommendation No. 35 (2013) to combat racial hate speech, providing that identification and the fight against hate speech is part of the achievements of the Convention for the Elimination of All Forms of Racial Discrimination.

The Recommendation emphasizes that the importance of Article 7 of the Convention has growing over time; its broadly educational approach with regards to the elimination of racial discrimination is a necessary addition to other approaches for fighting racial discrimination. Since racism may be *inter alia* a product of indoctrination or inadequate education, particularly effective antidotes of racial hate speech should include education on tolerance and counter-speech. In this context, the Committee recommends the promotion of educational, cultural and information strategies to combat racist hate speech, which should be supported by systemic collection and analysis of data to assess the circumstances in which hate speech emerges, the affected or targeted groups, the means they are reached, and the media response to hate messages. International collaboration in this field helps not only increase the opportunities for comparing data, but also the knowledge and means to fight hate speech by overcoming national borders.

*General Comment No. 34 (2011) of the UN Committee on Human Rights<sup>67</sup>*

The *General Comment No. 34 (2011) of the Committee for Human Rights* refers in detail to all elements and clauses of Article 19 of the International Covenant on Civil and Political Rights with regards to the freedom of opinion and expression. This comment does not refer specifically to hate speech or discrimination but specifies the standards established by the communication between the Committee and different states on matters of the freedom of speech and makes valuable reference to specific issues, such as the regulation of the freedom of speech in the media and the Internet, matters concerning slander, access to information, the right to expression in relation to a political context, matters concerning restrictions to the freedom of speech, etc.

*The United Nations Strategy and the Plan of Action for hate speech*

The world is facing a troubling emergence of xenophobia, racism, and intolerance, including an increase of anti-Semitism, anti-Muslim hatred, and persecution of Christians. Social media and other forms of communication are being used as platforms for fanaticism. Hate speech is a threat to the democratic values, the social stability and peace. As a matter of principle, the United Nations should confront hate speech at every step.<sup>68</sup>

Currently, the international law lacks a definition of hate speech. Nonetheless, in the context of this document, the term "hate speech" is understood to be any spoken or written communication, or any behaviour, that assaults or uses pejorative or discriminatory language when referring to a person or a group, based on who they are – in other words – based on their religion, ethnicity, nationality, race, colour, background, gender or any other identity factor. This is often rooted and generates intolerance and hatred, and in specific contexts, may be humiliating and divisive. In order to put a stop to hate speech as such, the international law prohibits incitement for discrimination, animosity or violence (referred to as 'incitement'). Incitement is a highly dangerous form of speech, as it clearly aims and purposefully encourages discrimination, animosity and

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<sup>66</sup> You may access the full text of the Recommendation 35/2013 of the Committee for the Elimination of Racial Discrimination at the link [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralRecommendationNo35Combatingracisthatespeech\(2013\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralRecommendationNo35Combatingracisthatespeech(2013).aspx)

<sup>67</sup> You may access the full text of the General Comment 34(2011) of the Committee for Human Rights at the link <https://www.refworld.org/docid/4ed34b562.html>

<sup>68</sup> For more information, please see the speech of the Secretary General of the United Nations António Guterres in the framework of the adoption of the United Nations Strategy and Plan of Action on hate speech that you may access online at the link <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>



violence, which may also lead to or involve terrorism or cruel crimes. Hate speech that does not reach the threshold of incitement is not something that the international law requires states to prohibit. Therefore, it is important to point out that even when it is not prohibited, hate speech may be harmful.

Hate speech is an attack to tolerance, inclusion, diversity and essence of our norms and principles of human rights. More broadly, it undermines social cohesion, it ruins common values and may lay the foundations of violence by countering the peace cause, stability, sustainable development and the fulfilment of human rights for all.<sup>69</sup> The Strategy and Plan of Actions on Hate Speech determine the strategic guidelines for the United Nations system to address hate speech at the national and global level, and includes ways how the Secretariat of the United Nations may support the work of Permanent Coordinators of the United Nations to address and counter hate speech. Its objectives are two-fold: firstly, to increase the efforts of the United Nations to address basic causes and instigators of hate speech; and secondly, to enable reactive responses on the part of the United Nations on the impact of hate speech on the society.

The United Nations Strategy for hate speech is guided by the following principles:

- The Strategy and its implementation should be in compliance with the right to freedom of thought and expression. The UN supports speech more, as they key tool to addressing hate speech;
- Dealing with hate speech is the responsibility of everyone – governments, societies, private sector, starting with individuals both women and men. All are responsible, all must act;
- In the digital era, the UN should support a new generation of digital citizens, to empower them to recognize, refuse, and face hate speech;
- We should know in order to act effectively – this requires coordinated collection of data and research, including essential causes, factors and favourable conditions for hate speech.

The key obligations of the UN Strategy and Plan of Action on hate speech include:

- Monitoring and analysing hate speech;
- Addressing the essential causes, the instigators and actors of hate speech;
- Engaging and supporting victims of hate speech;
- Coordinating with the relevant actors;
- Engaging new and traditional media to strengthen the partnership with the new and traditional media in addressing hate speech and promoting the values of tolerance, non-discrimination, pluralism, and freedom of speech and thought;
- Using technology and encouraging more research/investigation into the relationships between misuse of the Internet and social media in spread of hate speech, as well as into the factors that drive individuals towards violence. The UN Should also engage private sector actors, including social media companies, in the further steps to be taken to address and counter hate speech, encouraging a partnership between the government, the industry, and the civil society;
- Using education as a tool to address and counter hate speech;
- Encouraging peaceful, inclusive and fair societies to address the main causes and instigators of hate speech;
- Engaging in advocacy to highlight hate, the trend for disturbing speech, and to express sympathy and support for targeted individuals or groups;
- Developing guidelines on external communications to address, counter, and mitigate the impact of hate speech, and to counter its existence, without restricting the right to freedom of speech;
- Supporting Member States in increasing capacities and development policies to address hate speech.

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<sup>69</sup> For more information please take a look at the context of the adoption of the United Nations Strategy and Plan of Action on hate speech that you may access online at the link <https://www.un.org/en/genocideprevention/hate-speech-strategy.shtml>

### 3.1.2 Regulating hate speech online

*Manilla Principles on Intermediary Liability (2015) (Electronic Frontier Foundation)*<sup>70</sup>

The *Manilla Principles on Intermediary Liability* contain guidelines on best practices in restricting the intermediary liability about content, to promote freedom of expression and innovation. This is a global initiative of the civil society, adopted on 24 March 2015, with the purpose of protecting freedom of speech and creating an innovation enabling environment, which balances the needs of governments and other actors. Civil society groups from all over the world came together to propose this framework of protective measures and best practices that are based on international human rights instruments and other international legal frameworks.

The entire Internet communication is facilitated by such intermediaries such as Internet access providers, social media, and search engines. The policies that regulate the legal intermediary liability on the content of such communications have direct impact on user rights, including freedom of expression, freedom of gathering, and the right to privacy. Non-unified policies of intermediary liability, open and strict regulatory measures and the absence of sustainability in all these policies has resulted in censorship and other abuse of human rights on the part of governments and private parties, thus restricting the individual rights on freedom of expression, and creating an unsafe environment that also obstructs innovation on the Internet.

It is suggested that the Manilla Principles are considered by policymakers and intermediaries in the Internet service when developing, adopting and reviewing legislation, policies, and practices that regulate their liability concerning the content of third-party comments, in order to encourage development of interactive liability and harmonized regimes that can promote innovation while observing the user rights in compliance with human rights.

The Manilla Principles list the following elements:

- Intermediaries should be protected from the liability of content of publications/comments of third parties;
- Their content should not be asked to be restricted without an order/decision by a judicial authority;
- The requests for restriction of content in Internet comments should be clear, unequivocal (immediately understandable), and observe the principles of due process;
- Laws, orders, and practices for limiting Internet content should be in with the need test and proportionality;
- Laws, policies, and practices for limiting Internet content should observe the principles of due legal process;
- Transparency and responsibility should be the foundation of the laws, policies, and practices for restricting Internet content.

*The Christchurch Call (New Zealand) on the Elimination of Terrorist and Extremist Violent Content on the Internet*<sup>71</sup>

On 15 March 2019, people watched live, in horror, for 17 minutes, a terrorist attack against two mosques in Christchurch (a city in New Zealand), which was broadcast live. Fifty-one people were killed and another 50 injured. The live broadcast was viewed some 4,000 times before it was removed. The attack was broadcast live, it became viral and remains available on the Internet despite measures taken to remove it. This terrorist attack clearly showed the damages that can be caused by terrorist and extremist violent content on the Internet, a threat that continues to evolve. Two months later, on 15 May 2019, the Prime Minister of New Zealand Jacinda Ardern and the French President Emmanuel Macron gathered the Heads of States and Governments, and leaders from the technology sector to adopt the Christchurch Call. The Call is the pledge of Governments and technology companies to eliminate terrorist, extremist and violent content on the Internet,

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<sup>70</sup> You may access the full text of the document at the link [https://www.eff.org/files/2015/10/31/manila\\_principles\\_1.0.pdf](https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf)

<sup>71</sup> The information may be accessed at the link <https://www.christchurchcall.com/>. New Zealand and France were the two initiating countries to establish the Call. They aim to spread the Call to other countries, organizations, and companies to drive forward its goals also through other fora. Currently, the Call has been adopted by France, New Zealand, Canada, Indonesia, Ireland, Jordan, Norway, Senegal, United Kingdom, Australia, Germany, India, Italy, Japan, the Netherlands, Spain and Sweden, and the European Commission, as well as by Amazon, Facebook, Dailymotion, Google, Microsoft, Qwant, Twitter and YouTube.

and it is based on the belief that a free Internet, open and safe, provides extraordinary benefits to the society. Respect for freedom of speech is fundamental; yet nobody has the right to create and share terrorist, extremist and violence content on the Internet.

The Christchurch Call was adopted in Paris and is an action plan that engages the governments (the leaders of 10 states) and technology companies in a series of measures, including the development of tools to prevent uploading extremist, terrorist and violent content on the Internet. These concern the uprooting of violent extremism, the increase of transparency about removing and detecting content on the Internet and reviewing how company algorithms direct users towards extremist violent content. For the first time, the Governments and technology companies agreed on a series of commitments and continued collaboration to make Internet safer. The Call admits that regulation at the national/state level shall not resolve the problem. There exists a need to build a new cyberspace, a free, open and safe Internet, which allows everyone to share, learn, renew, and also allows states to support their values, and their citizens to uphold those.

### *The German Net Regulation Act (2017)*

The *German Net Regulation Act*<sup>72</sup> is a law that determines the practices of blocking and filtering hate speech in specific online media. The law is applied with for profit tele-media service providers operating in 'Internet platforms designed to allow users to disseminate varied content with other users or make such content accessible by the public (social media)'. This law also envisages the obligation for reporting and following an effective and transparent procedure to handle complaints. The procedure should ensure that the legality of a comment in such social networks, referring to the provisions in the German Criminal Code, is immediately checked and the network removes or blocks access to such comments within the determined timeframes.<sup>73</sup>

**Reporting obligation** – social network service providers receiving **more than 100 complaints within a calendar year** in relation to illegal content are obligated to compile **6-month reports** on handling complaints for illegal content in their platforms and are obligated to publish these reports in the federal newspapers and on their webpages, no later than one month after the 6-month period end. The reports published on their webpages should be easily recognizable, directly accessible and available forever.<sup>74</sup> The obligatory content of the reporting is determined clearly and in details in Article 1, Section 2(2) of the law.

**Review of complaints** – the obligation to have a transparent and effective procedure in handling complaints constitutes an important regulation of this law. The procedure should ensure that the legality of a comment, referring to some provisions in the German Criminal Code, is immediately checked and the network '**removes or blocks access to any content that is clearly illegal, within 24 hours of receiving the complaint**' and all other problematic content '**generally within 7 days of receiving the complaint**'.<sup>75</sup>

**Fines** – the German Net Regulation Act also envisages the possibility of imposing fines on subjects of this law should they violate this law. If the competent German administrative authority wishes to issue a decision on a fine, based on the fact that the content which was neither removed nor blocked by the subject is illegal, there should first be a court decision establishing its illegality. The court that has jurisdiction in this case is the competent court for deciding on the appeal against the fine. The requirement for a preliminary decision is submitted to the court along with the claims of the social network service provider. The court may decide without needing to have a verbal hearing. The decision of this court is not disputable and is mandatory for the competent administrative authority.

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<sup>72</sup> For more information, please visit Act to Improve Enforcement of the Law in Social Networks 12.07.2017: [https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf;jsessionid=20142B62A606A9F5ECFD9655F514FD4A.1\\_cid324?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf;jsessionid=20142B62A606A9F5ECFD9655F514FD4A.1_cid324?__blob=publicationFile&v=2)

<sup>73</sup> For more information, please visit the law commentary: <https://rm.coe.int/dgi-2019-update-chapter-germany-study-on-blocking-and-filtering/168097ac51>

<sup>74</sup> Article 1, Section 2(1) of the German Net Regulation Act.

<sup>75</sup> Article 1, Section 3(1),(2) and (3) of the German Net Regulation Act.

### *The French Law on Prohibition of Online Hate Speech (2019)*

Similarly with Germany, France has introduced the law on '*Fighting Online Hate Content*'<sup>76</sup> (2019), otherwise known in France as the '*Avia Law*' due to the surname of the person who proposed it to the Parliament. This law is applied on "online platform operators that provide online public communication services on the Internet based on connection of multiple parties with the purpose of spreading public content or based on the classification or reference of content via computer algorithms, provided on the Internet by third parties, when such activity exceeds a threshold in the French territory, which is determined by decree"<sup>77</sup>.

**Obligation to delete materials** – Online platform operators for which this law is applicable are obligated that within 24 hours from the notice from one or more parties to render inaccessible any content that constitutes openly a criminal act pursuant to the Avia Law or other French laws.<sup>78</sup>

**Fines** – refusal to delete a clearly illegal message or content has now been added as a criminal act to the French criminal legislation. According to the Avia Law, the High Audio-Visual Council of France may fine an online platform operator up to 4% of its global turnover in case of "serious and repeated failures" to fulfil its obligation of removing clearly illegal content.<sup>79</sup>

This draft-law was adopted by the National French Assembly (one of the Chambers of the French Parliament) but not by the Senate (the other Chamber of the French Parliament). The latter proposed some amendments, which were not approved by the Joint Parliamentary Committee comprising of representatives of both chambers. In compliance with the provisions in the French legislation, the National Assembly had the final say, and it adopted this law. However, the French Constitutional Council that was put into motion by the Senate considered that the majority of the articles in this law were not compliant with the French Constitution. This law was criticized not only by the associations defending free speech but also by the European Commission, which considered that his law goes against the EU legislation on online trade and the principle of freedom to disseminate information.

### *Report of the Special Rapporteur of the United Nations on the Promotion and Protection of Freedom of Opinion and Speech*

The report of 2019 on addressing hate speech by the Special Rapporteur of the United Nations on Promotion and Protection of Freedom of Opinion and Speech<sup>80</sup> focuses on the application of human rights in the fight against online hate speech. In the case of restricting freedom of speech to combat hate speech, the report emphasizes that it is essential for the state to demonstrate the necessity and proportionality of undertaking actions restricting the freedom of speech: the more severe the sanction, the greater the need to prove the necessity of a measure.<sup>81</sup> Regarding the abovementioned, the Report determines some principles:

- Restriction of the freedom of expression is not favoured in cases when such speech demonstrates lack of respect towards religion. For this reason, blasphemy (insult towards a religion) should be decriminalized as a criminal act if the states have not done so yet.<sup>82</sup>
- According to this report, denying the historical accuracy of events of the past should not be an object of criminal sentencing or other restrictions without a further detailed assessment.<sup>83</sup>
- The report emphasizes that expressions which may be offensive or are characterized by prejudice and may raise serious concerns about intolerance often may not reach the threshold of severity to face any type of restriction. Such an example are the prejudiced statements against protected groups, which do not call for or incite hatred or violence.<sup>84</sup>

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<sup>76</sup> For more information please visit:

<https://www.legifrance.gouv.fr/download/pdf?id=CP05NSqcP15IPNu3MsP2PSu1fmt64dDetDQxhvJZNMc=>

<sup>77</sup> Ibid. Article 1.

<sup>78</sup> Ibid. Article 1.

<sup>79</sup> Ibid. Article 4.

<sup>80</sup> To access the full text of the Report, please visit: <https://www.undocs.org/A/74/486>

<sup>81</sup> The report of 2019 about addressing hate speech by the Special Rapporteur of the United Nations on Promotion and Protection of Freedom of Opinion and Speech, page 10.

<sup>82</sup> Ibid, page 11.

<sup>83</sup> Ibid, page 11.

<sup>84</sup> Ibid, page 12.

- In compliance with the Convention on Prevention and Sentencing of the Crime of Genocide, countries should criminalize not only genocide, but also incitement for genocide.<sup>85</sup>

In conclusion, the report summarized the following **recommendations** for the countries:

- The national laws should strictly define the ‘prohibited content’ in compliance with Article 20 (2) of the International Covenant on Civil and Political Rights, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. However, such content should not be criminalized with the exception of severe situations, e.g., advocating for national, racial, or religious hatred, which constitutes incitement for discrimination, animosity or violence. Also, states should adapt the interpretations of the legislation on human rights included in the Rabat Plan of Action;
- The existing national laws must be reviewed and develop more the legislation on hate speech, to meet the requirements of legality, necessity, proportionality, legitimacy, etc;
- Measures for good governance must be taken into account and established, including the ones recommended in the Resolution 18/18 of the Council on Human Rights and in the Rabat Plan of Action, in order to fight hate speech and decrease the need to restrict freedom of speech;
- Rules of intermediary liability must be adopted or reviewed to observe rigorously the standards of human rights and to not require from companies to restrict content that States would not be able to do so directly through the legislation;
- Independent judicial mechanisms should be established or strengthened to ensure that individuals have access to justice and compensation when suffering from recognized damages related to Article 20 (2) of the International Covenant on Civil and Political Rights, or Article 4 of the International Convention on the Elimination of All Forms of Discrimination;
- Laws should be approved to request companies to describe in detail and publicly how they define hate speech and how they apply their rules against it, and how they create their database of actions undertaken against hate speech. Companies should also be encouraged to observe standards of human rights in their rules;
- States should be actively involved in international processes compiled as learning fora to address hate speech.<sup>86</sup>

### 3.2 The legal framework on hate speech in the context of the EU Regulations

#### *The EU Code of Conduct against Illegal Hate Speech on the Internet*

The *EU Code of Conduct against Illegal Hate Speech on the Internet*<sup>87</sup> is a legal instrument signed by the European Commission and the large companies operating on the Internet (IT companies) such as: Facebook, Microsoft, Twitter, YouTube (2016), Instagram, Snapchat & Dailymotion (2018), Jeuxvideo.com (2019) and TikTok (2020). These companies have agreed to support the European Commission and the EU Member States to ensure that the online platforms do not provide space for the illegal hate speech to be spread virtually.<sup>88</sup> For the time being, this Code has no direct effect on Albania. Nonetheless, with the opening of negotiations for Albania’s membership to the European Union, this Code constitutes not only an important legal instrument to be analysed in the framework of this study but also a document of practical importance, which will be automatically effective for Albania at the moment of its membership.

The EU Code of Conduct against Illegal Hate Speech on the Internet initially provides the definition of ‘illegal hate speech.’ It emphasizes that ‘the illegal hate speech, as defined by the Framework Decision 2008/913/JHA of 28 November 2008 on fighting the specific forms and expressions of racism and xenophobia by means of the criminal law and national laws means all behaviours that incite publicly violence or hatred directed towards a group of people or one member of such group referring to race, colour, religion, background or

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<sup>85</sup> Ibid. page 12.

<sup>86</sup> Ibid. page 22.

<sup>87</sup> For more information please visit: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-counteracting-illegal-hate-speech-online\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-counteracting-illegal-hate-speech-online_en)

<sup>88</sup> The EU Code of Conduct Against Illegal Hate Speech on the Internet, paragraph 4.

national or ethnic origin.’<sup>89</sup> This Code assigns an important role in this mission to the organizations of civil society for the prevention of increased online hate by promoting non-discrimination, tolerance, and respect among others via raising the awareness of the population.

The IT companies, taking the lead to fight the spread of illegal hate speech on the Internet agreed with the European Commission to take over twelve key duties under this framework.<sup>90</sup> These duties are summarized below<sup>91</sup>:

- The IT companies should follow clear and effective procedures to evaluate notifications concerning illegal hate speech in their services, to have an opportunity to prohibit access to such content. These companies shall be guided by the EU Guidelines concerning the prohibition of promotion of violence and hatred.
- Upon receiving notification of deletion, the IT Companies dedicated teams should assess these requests vis-a-vis the rules and guidelines of the EU or Member States.
- The IT companies should assess the notification for deletion of illegal hate speech within less than 24 hours and, should they deem necessary, to delete or disable access to this material.
- The IT companies should educate and raise the awareness of their users with regards to prohibited content of language in compliance with their rules and the EU guidelines. The mechanization of notifications can be used as a tool to achieve this.
- The IT companies should inform the Member States about how to receive notifications in the framework of improving speed and efficiency of communication between the IT companies and the Member States. The information shall be conveyed through national channels determined by the IT companies and the Member States. This procedure shall serve the Member States to become familiar with the methods of detection and notification of IT companies about illegal hate speech.
- The IT companies should strengthen relations of information exchange with the civil society organization by expanding their geographic map of such partnership and when deemed necessary, to provide support and training for the members of these organizations, so that they function as 'reliable rapporteurs'.
- The IT companies should be supported by the Member States and the European Commission to access the network of partners of the Civil Society Organizations and the 'reliable rapporteurs.' The notifications for 'reliable rapporteurs' should be posted on the webpages of these companies.
- The IT companies should provide continuous training for their staff and exchange opinions on further improvements.
- The IT companies should intensify the collaboration with the social media platforms.
- The IT companies and the European Commission, recognizing the value of independent speech against the rhetoric of hate and prejudice, aim to continue their work in identifying and promoting independent initiatives, new ideas and initiatives, and support educational programs that encourage critical thinking.
- The IT companies should intensify their work with the Civil Society Organizations to provide training on best practices of countering the rhetoric of hate and prejudice, and to assist them with providing effective campaigns against hate speech. The European Commission, in collaboration with the Member States, contributes by undertaking steps to map the needs and specific requirements of the Civil Society Organizations in this respect.
- The European Commission, in coordination with the Member States, should promote adherence to this Code and platforms of other social media companies. At the conclusion of this Code of Conduct, parties have agreed to assess the applicability of the Code periodically.

Since its approval in 2016, the Code of Conduct is making continuous progress: the recent assessments indicate that on average, companies ascertain 90% of illegal hate speech content within 24 hours and 71% of the content deemed illegal hate speech is deleted.<sup>92</sup>

*The Council Framework Decision 2008/913/JHA of November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law*

*The Council Framework Decision 2008/913/JHA of November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law* plays a crucial role in addressing problems

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<sup>89</sup> The EU Code of Conduct Against Illegal Hate Speech on the Internet, paragraph 2.

<sup>90</sup> The EU Code of Conduct Against Illegal Hate Speech on the Internet, paragraph 8.

<sup>91</sup> Note: The description of duties is a detailed summary but not a literal translation of the Code items.

<sup>92</sup> For more information please visit the European Commission Monitoring Reports: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en)

that are closely related to hate speech in the EU. Firstly, the term 'Framework Decision of the European Council' refers to the decision-making of the EU in the area of *police and judicial cooperation in criminal justice matters* up to the moment when the Lisbon Treaty came into effect. According to the latter, decisions in this area are approved through the regular legislative procedure. In the year when this decision was taken (2008), the Lisbon Treaty was not officially in effect, therefore, this legal instrument was named 'framework decision' and not, for example, a 'directive' (as it would have been considered nowadays). At the time when this Framework Decision was signed, it introduced a restricted harmonization of the legislation of Member States against racism and xenophobia.<sup>93</sup>

As discussed in the case of the EU Code of Conduct against Illegal Hate Speech on the Internet, this Framework Decision, too, currently bears no direct effect on Albania. However, with the opening of negotiations for Albania's membership to the European Union, it constitutes not only an important legal instrument to be analysed under the auspices of this study, but also a decision of a practical importance that would automatically take effect for Albania at the moment of its membership. Thus, it is crucial to be known and understood, and for as much as possible, to be implemented, albeit being non-mandatory.

One of the goals of this Framework Decision is the further approximation of criminal legislation of Member States in order to ensure effective application of a comprehensive and clear legislation to fight racism and xenophobia<sup>94</sup>. Before this Framework Decision was signed, there existed other legal instruments to combat racism and xenophobia. However, as determined in the preamble of this document, a new regulation was deemed necessary given the conditions as a result of new developments (including technological). However, this decision took care to mention the respect for other fundamental human rights by Member States while implementing these rules; in particular, the freedom of speech, in compliance also with the provisions of Article 6 of the European Union Treaty (Article 7 of the Framework Decision).

According to this Framework Decision, it is suggested that criminal acts concerning racism and xenophobia include:

- Public incitement of violence or hatred directed at a group of individuals or one member of such group, referring to race, colour, religion, background, or national or ethnic origin (Article 1(a) of the Framework Decision);
- The commission of one of the abovementioned acts through public dissemination of tracts, pictures or other materials (Article 1(b) of the Framework Decision);
- Publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group (Article 1(c) of the Framework Decision);<sup>95</sup>
- Publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945<sup>96</sup> directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group (Article 1(d) of the Framework Decision);<sup>97</sup>
- Incitement to commit acts defined by Article 1(c) and (d) should also be criminally punishable (Article 2(1) of the Framework Decision);
- Each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred to in Article 1 is punishable (Article 2(2) of the Framework Decision).

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<sup>93</sup> For more information, please see the Report:

<https://publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xxxiv/8328.htm>

<sup>94</sup> The Preamble of the Council Framework Decision 2008/913/JHA of November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia via means of Criminal Law, Paragraph 4.

<sup>95</sup> The Framework Decision determines only the minimum standards that Member States must meet in their fight against racism and xenophobia. Paragraph 10 of the Decision Preamble allows Member States to expand this item into crimes against groups defined by other elements apart from the ones specified in Article 1(c) of the Decision.

<sup>96</sup> This includes: crimes against peace, war crimes, crimes against humanity, with their respective definitions.

<sup>97</sup> The Framework Decision determines only the minimum standards that Member States must meet in their fight against racism and xenophobia. Paragraph 10 of the Decision Preamble allows Member States to expand this item into crimes against groups defined by other elements apart from the ones specified in Article 1 (d) of the Decision.

In each of the abovementioned cases, the Framework Decision defines that Member States must take all measures necessary to ensure that the abovementioned conduct is punishable to a maximum of 1 and 3 years of imprisonment (Article 3(2) of the Framework Decision). Likewise, in cases when an act does not constitute a criminal act pursuant to this Decision, the Member States should take measures to ensure that courts consider racist or xenophobic motivations as aggravating circumstances or, alternatively, for the courts to consider while adjudicating (Article 4). In any case, Member States should take the necessary measures to ensure that investigation into these acts shall not depend solely on the victims' reporting (Article 8).

The Framework Decision also addresses the liability of legal persons in combating racism and xenophobia. By 'legal person' this instrument refers to 'any entity having such status under the applicable national law, with the exception of States or other public bodies in the exercise of State authority and public international organisations' (Article 5(4) of the Framework Decision). In cases when the criminal acts determined by Articles 1 and 2 of this Framework Decision are established to have been committed by legal persons, the measures taken by Member States should be 'effective, proportionate, and dissuasive'<sup>98</sup> including sentences such as: exclusion from the right to public benefits or subsidies, temporary or permanent disqualification from practising trade, placement under judicial supervision, or closure of the activity by means of a court decision (Article 6(1) of the Framework Decision).

#### *Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content Online*

The *Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content Online*<sup>99</sup> is an EU act in the sense of a 'soft law'(it contains no obligatory provisions, but the Commission may request data concerning its observance by the Member States). This Recommendation acknowledges that it is necessary to take due notice of the specifics of tackling different types of illegal content online, which require specific responses, including specific legal measures.<sup>100</sup> Since the purpose of this recommendation is to address risks associated with the illegal content affecting EU consumers, it concerns the activities of all online service providers regardless of their seat in the EU or in a third country, for as long as the latter provide services in the EU. The rules of this Recommendation are divided into two main groups: rules applied on illegal content online in general, and rules applied on illegal content related to terrorism.

- With regards to the first group (Rules applied to illegal content online in general), the Recommendation emphasizes that precise rules must be determined with regards to submission of notifications for illegal content online. Such mechanisms should be easy to use, user friendly, and enable submission of notifications via electronic means.<sup>101</sup> Further to this procedure, this Recommendation envisages the obligation of the users of online service to inform the authors of the illegal content of the reason why the content was deleted. This rule does not apply in case of content indicating serious crimes that endanger the life or safety of people. On the other hand, the authors of such content may appeal the deletion through a counter-notification submitted to the online service providers.<sup>102</sup> In this context, Member States should take effective and suitable measures to ensure that service providers act proportionally with the content they keep, especially when processing notifications and counter-notifications, and upon deciding on deleting content that is considered illegal. In any case, Member States should undertake effective and suitable measures to prevent commission of acts related to the notifications or counter-notification submitted in confidence, and other forms of abusive behaviour.<sup>103</sup>
- With regards to the second group (Rules applied on illegal content concerning terrorism), the Recommendation emphasizes that online service providers should explicitly define in their service terms that they shall not store terrorist content.<sup>104</sup> Likewise, online service providers must take proportionate

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<sup>98</sup> Article 6(1) of the Framework Decision

<sup>99</sup> To familiarize oneself with the text of this Recommendation please visit: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018H0334>

<sup>100</sup> Recital 7 of the Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content Online.

<sup>101</sup> European Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content online, Chapter II, Item 5.

<sup>102</sup> European Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content online, Chapter II, Item 11.

<sup>103</sup> European Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content online, Chapter II, Item 21.

<sup>104</sup> European Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content online, Chapter III, Item 30.



and specific proactive measures, including use of automated tools, to detect, identify and remove or deactivate promptly access to terrorist content.<sup>105</sup> In the case of addressing terrorist-related content, the collaboration between online service providers and the competent state authorities takes on a special importance. In this framework, these two parties should enter into agreements, and when suitable with Europol too, on matters related to terrorist content online, including the increase of terrorist activity on the Internet, improving referral mechanisms, prevention of unnecessary duplication of efforts, and facilitating legal requirements for purposes of criminal investigation in relation to terrorism.<sup>106</sup>

### 3.3 The legal framework on hate speech at the Council of Europe and the ECHR – related case law

#### *The European Convention on Human Rights, Article 10*

The international agreements ratified in the Republic of Albania play a key role in the Albanian legal framework, as the Constitution of the RA itself, Article 116, places them in the hierarchy right after the Constitution, above any law or bylaw. Of the international agreements ratified in the RA, it is important to discern the European Convention on Human Rights (ECHR), to which, the Constitution of the RA, through its Article 17, attributes a special and superior status. This article, in paragraph 2, provides that restriction of constitutional rights and freedoms cannot impair the essence of rights and freedoms, and in no case can exceed the restrictions envisaged by the ECHR. Therefore, with regards to the **restriction of constitutional rights, the ECHR is at the pinnacle of the hierarchy of the law resources, along with the Constitution.** Specifically due to the special nature of the ECHR in the Albanian legal system, it is important to acknowledge its provisions related to the freedom of speech.

ECHR regulates the freedom of speech in Article 10. This article provides that:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Paragraph 1 of Article 10 of ECHR defined the right to freedom of expression in several components, such as the freedom of thought and the freedom to give or take information and ideas. As is to be elaborated further, Article 10(1) of the ECHR protects even cases when information and ideas are offensive, shocking or troubling to the State or specific segments of the population.<sup>107</sup>

On the other hand, hate speech goes beyond information that offends, shocks or troubles. Currently, there is no broadly accepted definition of 'hate speech'. However, a definition quoted in the jurisprudence and legal doctrine is the one provided by the Committee of Ministers of the Council of Europe (to be elaborated further) which has determined that the term 'hate speech' is to be understood as "all forms of expressions that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on

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<sup>105</sup> European Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content online, Chapter III Item 36.

<sup>106</sup> European Commission Recommendation (EU) 2018/334 dated 1 March 2018 on Measures to Effectively Tackle Illegal Content online, Chapter III Item 40.

<sup>107</sup> For more information please visit: [https://www.echr.coe.int/documents/fs\\_hate\\_speech\\_eng.pdf](https://www.echr.coe.int/documents/fs_hate_speech_eng.pdf), page 1.

intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin".<sup>108</sup>

Freedom of expression is not an absolute right; the Convention itself provides instruments for restricting freedom of speech in cases of abuse of such freedom. Hate speech is one of the most typical cases of the abuse of freedom of speech. In case of hate speech, the freedom of speech envisaged by Article 10(1) of the ECHR is restricted in two ways:

- Firstly, this hate speech is excluded from the protection offered by the Convention through the application of Article 17 of the ECHR (Prohibition of Abuse of Rights), when hate speech negates the fundamental values of the Convention. In this case, the ECHR does not begin with the review of the fact whether there has been any violation of the rights envisaged by the Convention (i.e., freedom of speech), since this speech cannot be an object of protection. Further down, the study provides a more detailed discussion and analysis on the application of this article in cases of hate speech.
- Secondly, in case hate speech is not proved to negate the fundamental values of the Convention, it again is restricted through the application of Article 10(2) of the ECHR. In this case, the speech under investigation shall be subjected to the 'three-step test' to determine whether it shall be restricted pursuant to Article 10(2) or not. The three-step test involves the responses to three questions:
  1. Does the national legislation envisage restriction of the freedom of speech?
  2. Did the restriction of the freedom of speech occur for legitimate reasons, determined by Article 10/2?
  3. Is the restriction of the freedom of speech necessary in a democratic society, to achieve one or more of the legitimate purposes mentioned in Article 10?<sup>109</sup>

If the answers to the three questions are cumulatively 'Yes', then the restriction of the freedom of speech is legitimate. Nowadays, hate speech is often manifested via the Internet. For this reason, the jurisprudence of the European Court of Human Rights (ECtHR) has confirmed that Article 10 and 17 of the ECHR are fully applied also for the freedom of speech on the Internet.<sup>110</sup>

In handling cases concerning hate speech and Article 10 of the ECHR, the European Court on Human Rights (ECtHR) considers other elements too. According to the Manual on Hate Speech<sup>111</sup> referred by the Council of Europe as well, some of the elements the Court considers in determining whether there has been violation of Article 10 or not concerning the restriction of hate speech are:

- **The intention** of the person, whose freedom of speech was restricted;
- **Content of speech** that was restricted;
- **Context**, e.g., whether the person who made the statement is **a journalist or politician**;
- **The profile of people harmed** by the speech;
- **Publicity** and potential impact of the speech, i.e., whether the statement was made in a broadly disseminated newspaper or poetry;
- **Nature and severity of the restriction.**

However, not all these elements bear the same weight in the Court's assessment. According to the same Manual, the main criterion for the ECtHR considers while handling a case on restriction of the freedom of speech due to hate speech is **whether the author of the statement was purposefully spreading racist or intolerant ideas via the use of hate speech or was trying to inform the public on matters of general interest**. The response to this question enables determination as to which expressions, albeit shocking or offensive, are protected by Article 10, and which are the ones not to be tolerated in a democratic society and are excluded from the protection of the Convention based on Article 17.<sup>112</sup>

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<sup>108</sup> For more information please visit: <https://rm.coe.int/168071e53e>

<sup>109</sup> For more information on the Three-Step Test please visit: <https://rm.coe.int/168071e53e>

<sup>110</sup> For more information please visit: [https://www.echr.coe.int/Documents/FS\\_Neë\\_technologies\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Neë_technologies_ENG.pdf)

<sup>111</sup> The Manual on Hate Speech, Jaime Rodríguez, Council of Europe, 2009: <https://rm.coe.int/168071e53e>

<sup>112</sup> Ibid.

Additionally, according to the Manual, the Court considers **the profile of people spreading hate speech**. In general, the Court considers that the boundaries of acceptable criticism are broader when the subject at issue is a politician as opposed to a private individual. As opposed to the latter, the former unavoidably and consciously is placed under detailed media and public scrutiny for any word or action. Nevertheless, with regards to the spread of **hate speech in particular, the Court is stricter with politicians and insists upon their responsibility not to use speech that contributes to instigation of intolerance**. With regards to the media, the manual differentiates between two situations: when journalists **are the authors of the statements, which is not acceptable**, and when they are mere intermediaries in conveying statements made by others and which they did not make or support. **The court is strict with regards to potential restriction of media freedom due to the important role they play in democratic societies**. It highlights that the press should not exceed imposed limits, among others, for the 'protection of the reputation of the others'. However, the media are entitled in giving information and ideas on political matters and other areas of the public interest. Furthermore, the media not only have the duty to convey such information and ideas, but the public also is entitled in receiving those.<sup>113</sup>

*The Committee of Ministers of the Council of Europe Recommendation No. R 97(20) 30.10.1997 on Hate Speech*

The *Committee of Ministers of the Council of Europe Recommendation No. R 97(20) 30.10.1997 on Hate Speech (Recommendation No. R97(20) of the EC)* was adopted with the purpose of achieving greater unity among members, in particular in relation to protecting and achieving ideals and principles that constitute joint heritage.<sup>114</sup> This recommendation is based on punishment of all forms of expression that generate racial hatred, xenophobia, anti-Semitism and all forms of intolerance that undermine democratic security, cultural cohesion and pluralism. It emphasizes that the above can become more dangerous if spread via the media. On the other hand, the Recommendation keeps in mind the importance of respecting freedom of expression, in particular referring to the media editorial independence and autonomy.

Albania has been a member state of the Council of Europe since 13 July 1995. This means that the above-mentioned Recommendation is directly applicable in Albania too. However, are the Committee of Ministers of the Council of Europe Recommendations obligatory? From the technology used for this instrument, it may be concluded that the Recommendations are not of obligatory nature. Such a position is confirmed by the Statute of the Council of Europe, which clearly determines that the Recommendations are not obligatory for the Member States. However, the Statute allows the Committee of Minister to request from member governments 'to inform it about actions they have undertaken' with regards to the Recommendations.<sup>115</sup>

In its Appendix, this Recommendation defines hate speech as '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.'<sup>116</sup> Although there is no widely accepted definition of hate speech, this version is among the most quoted in relation to hate speech.<sup>117</sup>

This Recommendation of the Council of Europe focuses on four key points to be applied by the Council of Europe Member States:<sup>118</sup>

1. Member States are recommended to take appropriate steps to combat hate speech based on principles laid down in this Recommendation.
2. Member States are recommended to ensure that such steps form part of a comprehensive approach to the phenomenon, which also targets its social, economic, political, cultural and other root causes;

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<sup>113</sup> Ibid.

<sup>114</sup> The Committee of Ministers of the Council of Europe Recommendation No. R 97(20) 30.10.1997 on Hate Speech [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680505d5b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b), page 1.

<sup>115</sup> Article 15(b) of the Statute of the Council of Europe.

<sup>116</sup> Appendix to Recommendation No. R 97(20) 30.10.1997 of the Council of Europe Committee of Ministers on Hate Speech, paragraph 1.

<sup>117</sup> For more information please visit: <https://rm.coe.int/168071e53e>

<sup>118</sup> Recommendation No. R 97(20) 30.10.1997 of the Council of Europe Committee of Ministers on Hate Speech [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680505d5b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b) page 2.

3. Where they have not done so, it is recommended that Member State sign, ratify and effectively implement in national law the United Nations Convention on the Elimination of All Forms of Racial Discrimination, in accordance with Resolution (68) 30 of the Committee of Ministers on measures to be taken against incitement to racial, national and religious hatred.
4. It is recommended that Member States review their domestic legislation and practice in order to ensure that they comply with the principles set out in the Appendix to this recommendation, to be elaborated further.

The principles determined in the Appendix to the abovementioned Recommendation all serve the purpose of combating hate speech, especially the one spread via the media. The Appendix contains a total of seven important principles in this framework, which may be summarized as follows:

- Principle 1: The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.
- Principle 2: The governments of the member states should establish a legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others. To this end, governments of member states should examine ways and means to: stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice; review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks; develop a co-ordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation; add community service orders to the range of possible penal sanctions; enhance the possibilities of combating hate speech through civil law, for example by allowing interested; non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction; provide the public and media professionals with information on legal provisions which apply to hate speech.
- Principle 3: The governments of the member states should ensure that in the legal framework referred to in Principle 2, interferences with freedom of expression are circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.
- Principle 4: National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the ECHR. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.
- Principle 5: National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.
- Principle 6: National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas. To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media and media professionals contributing to their spread as part of their mission to communicate information and ideas on matters of public interest on the other hand.

- Principle 7: In furtherance of Principle 6, national law and practice should take account of the fact that: reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision; the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10, as established in the case law of the Convention's organs, having regard, inter alia, to the manner, content, context and purpose of the reporting; respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.

*General Policy Recommendation No. 15 on Combating Hate Speech of the European Commission against Racism and Intolerance (ECRI-Council of Europe)*

The *General Policy Recommendation No. 15 on Combating Hate Speech*<sup>119</sup> (Recommendation No. 15) is focused on addressing the phenomenon of hate speech and its harmful consequences on individuals, specific groups of persons, and the society in general and it is addressed to Member States of the Council of Europe. The operational part of the Recommendation focuses on measures to be taken by the Member States, such as raising public awareness; combatting any use of hate speech; supporting persons targeted by the use of such speech; encouraging self-regulation; taking regulatory measures; determining the administrative and civil responsibility; withdrawing support to certain organizations and prohibiting others; imposing criminal sanctions under very specific and limited circumstances, etc. However, the Recommendation emphasizes that any attempt to deal with hate speech should not exceed the legal restrictions of freedom of speech as an acknowledged right envisaged by the ECHR.<sup>120</sup> This Recommendation was introduced at a decisive moment with regards to problems pertaining to the use of hate speech, which intensified with the advancement of technology. The country monitoring by the European Commission against Racism and Intolerance showed that: the use of harsh tones by many parliamentarians and by state officials is contributing to a political discourse that is increasingly becoming offensive and intolerant; coded language is being used more to spread prejudice and hate; people online attempt to create fora that spread hate speech against certain groups etc.<sup>121</sup>

As elaborated above, the Recommendations of the European Commission are addressed to the Council of Europe Member States, including Albania. These Recommendations are guidelines not legally binding meant to inform states on effective ways to address different phenomena related to racism and intolerance. Nonetheless, ECRI uses these recommendations as parameters to monitor the compatibility of national laws and practice with these general standards in the area of combating discrimination, hate speech and hate crimes. Moreover, the European Court of Human Rights has quoted in more than 100 judgements ECRI country monitoring reports and also ECRI General Policy Recommendations, as useful documents to understand the national context or definition of terms such as hate speech. In particular, relevant parts of General Policy Recommendation no. 15 were quoted in the 2018 judgement on the case of *Mariya Alekhina and Others v. Russia*<sup>122</sup>.

The introductory Recital of Recommendation No. 15 provides a comprehensive definition for 'hate speech': "for the purpose of this Recommendation of the General Policy, hate speech should be understood as advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation and other

<sup>119</sup> Adopted on 8 December 2015. For more information on the original text of this Recommendation, please visit: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>120</sup> For more information please read: Explanatory Report on the European Commission General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraph 2.

<sup>121</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraphs 24-31.

<sup>122</sup> *MARIYA ALEKHINA AND OTHERS v. RUSSIA* (coe.int)

personal or status features".<sup>123</sup> The explanatory report appended to the Recommendation No. 15 provides a detailed definition of the terms used above.<sup>124</sup> Definition of hate speech as per this Recommendation, albeit similar to the one presented in Recommendation No. R 97(20) 30.10.1997 of the Committee of Ministers of the Council of Europe on Hate Speech (elaborated further above), seems to provide a broader view of expressions deemed hate speech. This may relate to the fact that Recommendation No. 15 was adopted some 18 years after Recommendation No. R 97(20), during which time the phenomenon of hate speech underwent new dynamics and has taken on new dimensions due to technological developments, consequently, has been dealt with more care increasingly.

The operational part of this Recommendation focuses on ten key points that Council of Europe Member States should implement:<sup>125</sup>

1. It is recommended that Member States ratify the Additional Protocol to the Convention on Cybercrime (concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems); the Framework Convention for the Protection of National Minorities (concerning the guarantee of the right of equality before the law and equal protection by the law for persons belonging to national minorities); and Protocol No. 12 to the European Convention on Human Rights (concerning the guarantee of enjoying any right determined by law and not only the special rights and freedoms guaranteed by the ECHR) if they have not yet done so.
2. It is recommended that Member States withdraw any reservations concerning the freedom of gathering, organization and expression, envisaged by Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 20 of the International Covenant on Civil and Political Rights and to recognise the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals claiming to be victims of violation of rights envisaged by the International Covenant on the Elimination of All Forms of Racial Discrimination, as guarantee to failure to address hate speech at a national level.
3. It is recommended that Member States seek to identify the conditions conducive to the use of hate speech as a phenomenon and the different forms it takes, as well as to measure its extent and the harm that it causes, with a view to discouraging and preventing its use and to reducing and remedying the harm caused. In accordance with the abovementioned, it is recommended that Member States take measures, the key ones being: adopt reliable means to achieve these goal, ensure there exist public authorities to use these means, ensure the collection of data regarding hate speech is not limited to the criminal justice sector, support monitoring of hate speech by the civil society, the bodies for equality and the national institutions on human rights, and promote collaboration between the latter and the public authorities etc.<sup>126</sup>
4. It is recommended that Member States undertake a vigorous approach not only to raising public awareness of the importance of respecting pluralism and of the dangers posed by hate speech but also to demonstrating both the falsity of the foundations on which it is based and its unacceptability, so as to discourage and prevent the use of such speech. Accordingly, Member States should, among others: promote the need for diversity and dialogue within a framework of democracy, human rights and the rule of law; promote and exemplify mutual respect and understanding within society; facilitate and exemplify intercultural dialogue; and combat misinformation, negative stereotyping and stigmatisation.<sup>127</sup> The Explanatory Report of the Recommendation No. 15 provides concrete examples about raising public awareness against hate speech, such as: commemorating hate events of the past and lessons learned (e.g., the case of the Holocaust); appropriate training of teachers and professors with regards to hate speech so they are ready to provide such type of education (in a school context it is

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<sup>123</sup> Recital of the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraph 6.

<sup>124</sup> Paragraphs 7, 8, 9, 10 and 11 of the Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech.

<sup>125</sup> The items below summarize the original text, to read the full text please visit: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>, page 5-10.

<sup>126</sup> For the full list of measures, please visit the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, page 6.

<sup>127</sup> Ibid.

important for this education to applied in such manner how students treat one another); promote diversity via organization of film festivals, concerts, culinary activities, plays and role plays, exhibitions, lectures and seminars, special projects with schools, as well as broadcasts and publications; the police and the judiciary should inform of the ethnic origin of suspected perpetrators of criminal acts only when this is strictly necessary and serves a legitimate purpose, as disclosure of such information would unjustifiably reinforce prejudice, whereas their subsequent acquittal may be eschewed or not reported, etc.<sup>128</sup>

5. It is recommended that Member States provide support for those targeted by hate speech both individually and collectively: endeavouring to help them, through counselling and guidance, to cope with any trauma and feeling of shame suffered; ensuring that they are aware of their rights to redress through administrative, civil and criminal proceedings and are not prevented from exercising them through fear, ignorance, physical or emotional obstacles or lack of means; encouraging and facilitating for these persons their reporting of the use of hate speech etc.<sup>129</sup> The Explanatory Report for Recommendation No. 15 provides concrete examples of supporting victims of hate speech, mentioning: therapy counselling (which should be provided as soon as possible); organizing awareness campaigns so that victims are aware of their rights, simplifying complaint procedures for the victims etc.<sup>130</sup>
6. It is recommended that Member States provide support for self-regulation by public and private institutions (including elected bodies, political parties, educational institutions and cultural and sports organisations) as a means of combating the use of hate speech, through such actions among which key are: encourage the adoption of appropriate codes of conduct which provide for suspension and other sanctions for breach of their provisions, as well as of effective reporting channels; encourage political parties to sign the Charter of European Political Parties for a non-racist society; promote the monitoring of misinformation, negative stereotyping and stigmatisation; encourage the unambiguous condemnation of breaches of these codes; etc.<sup>131</sup> The Explanatory Report often considers that bodies, institutions, and respective organizations are better placed to identify certain uses of hate speech and to prevent its use, either by dissuading users through persuasion, or through punishing them via sanctions in effect. Quite often, self-regulation may be the most suitable and effective way to address hate speech. However, although self-regulatory measures often exclude the need to address other forms of solutions as provided for by law, they should not be and should never become an obstacle to seek other solutions.<sup>132</sup>
7. It is recommended that Member States use regulatory powers with respect to the media (including internet providers, online intermediaries and social media), to promote action to combat the use of hate speech, while ensuring that such action does not violate the right to freedom of speech and opinion, through actions such as: ensure effective use is made of any existing powers suitable for this purpose, while not disregarding self-regulatory mechanisms; encourage the adoption and use of appropriate codes of conduct and/or conditions of use with respect to hate speech, as well as of effective reporting channels; encourage the monitoring and condemnation of the use and spread of hate speech; etc.<sup>133</sup> The term 'media and Internet' includes written media (newspapers, magazines, and books, as well as leaflets, brochures, posters), but also the audio-visual and electronic media (radio, television, digital voice and image recording, webpages, applications, emails, and large number of social media and video games) and undoubtedly, other forms of communication that will be developed onwards. In any case, Recommendation No. 15 points out that these measures should always be considered from the viewpoint of respecting freedom of expression.
8. It is recommended that Member States clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech which is intended or can reasonably be expected to incite

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<sup>128</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraphs 91-94.

<sup>129</sup> For the full list of measures, please visit the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, page 7.

<sup>130</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraphs 104-113.

<sup>131</sup> Ibid.

<sup>132</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraphs 114-129.

<sup>133</sup> Ibid.

acts of violence, intimidation, hostility or discrimination against those who are targeted by it while respecting the right to freedom of expression and opinion, through such actions among which key can be: determine the particular responsibilities of authors of hate speech, internet service providers, web fora and hosts, online intermediaries, social media platforms, online intermediaries, moderators of blogs and others performing similar roles; ensure, for as much as possible, the availability of a power, subject to judicial authorisation or approval, to require the deletion of hate speech from web-accessible material and to block sites using hate speech; ensure, for as much as possible, the availability of a power, subject to judicial authorisation or approval, to require media publishers (including internet providers, online intermediaries and social media platforms) to publish an acknowledgement that something they published constituted hate speech; ensure, as much as possible, the availability of a power, subject to judicial authorisation or approval, to enjoin the spread of hate speech and to compel the disclosure of the identity of those using it; etc.<sup>134</sup>

9. It is recommended that Member States withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech or fail to sanction its use by their members and provide, while respecting the right to freedom of association, for the possibility of prohibiting or dissolving such organisations regardless of whether they receive any form of support from public bodies where their use of hate speech is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it. Thus, Item 9 of Recommendation No. 15 envisages double response towards the use of hate speech: *firstly*, withdrawal of support to organizations using hate speech which is applicable across all forms of the use of hate speech. Therefore, it covers not only the award of grants, loans, or other forms of financing for activities of political parties and other interested organizations, but also making available to them buildings or premises, or the possibility of using personnel or any other kind of practical assistance.<sup>135</sup> *Secondly*, prohibition or dissolution of these organizations is another measure against hate speech. However, prohibition or dissolution of a political party or another organization must be ordered only by a court and the order at issue should be subject of immediate appeal. Observing these conditions is essential to protecting the freedom of gathering and organization.<sup>136</sup>
10. It is recommended that Member States take appropriate and effective action through the use of criminal law against the use, in a public context, of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected, through actions key among which are: ensure that the offences are clearly defined and take due account of the need for a criminal sanction to be applied; ensure that the scope of these offences is defined in a manner that permits their application to keep pace with technological developments; ensure that prosecutions for these offences are brought on a non-discriminatory basis and are not used in order to suppress criticism of official policies, political opposition or religious beliefs; ensure the effective participation of those targeted by hate speech in the relevant proceedings etc.<sup>137</sup> Important factors in a certain case of the use of hate speech which indicate that threshold of criminal liability has been reached is ascertained when the use at issue discloses a severe nature – specifically, is used on purpose or in a reasonable way and it predicted it may cause acts of violence, intimidation, enmity or discrimination and it takes place in a public context.<sup>138</sup> While making the determination and imposing the particular sanction after a sentence concerning the use of hate speech, the Recommendation identifies two important items to be taken into account, specifically the grave consequences stemming from the use of hate speech, and the principle of proportionality.

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<sup>134</sup> For the full list of measures, please visit the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, page 8.

<sup>135</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraph 157.

<sup>136</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraph 170.

<sup>137</sup> For the full list of measures, please visit the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, page 9.

<sup>138</sup> Explanatory Report on the Council of Europe General Policy Recommendation No. 15 against Racism and Intolerance to Combat Hate Speech, paragraph 173.



*Recommendation No. R (97) 21 of the Committee of Ministers to Member States on the Media and the Promotion of a Culture of Tolerance*

Recommendation No. R (97) 21 of the Committee of Ministers to Member States on the Media and the Promotion of a Culture of Tolerance<sup>139</sup> seeks to equip Member States with non-exhaustive examples of professional practices conducive to the promotion of a culture of tolerance particularly applicable in the media sectors.<sup>140</sup> This recommendation focuses on the media for the promotion of a culture of tolerance, as it is considered an actor that may give a positive contribution to the fight against intolerance, especially when it encourages a culture of understanding among various ethnic, cultural and religious groups in the society. At the same time, the Recommendation is prudent in respecting the provisions in Article 10 of the ECHR under the framework of the media independence and autonomy.

This recommendation is accompanied by the appendix, specifying the entirety of actions or professional practices to be undertaken in the framework of promoting a culture of tolerance.

Recommendation No. R (97) 21 is addressed to Council of Europe Member States with regards to raising the awareness of the following subjects within the jurisdiction of each Member State:

- Press, radio and television enterprises, as well as the new communications and advertising sectors;
- The representative bodies of media professionals in these sectors;
- Regulatory and self-regulatory bodies in these sectors;
- Schools of journalism and media training institutes.

Additionally, Member States are instructed under this recommendation to review from a perspective viewpoint each request to support initiatives undertaken in application of the objectives of this recommendation.<sup>141</sup>

With regards to the above-mentioned subjects, the Appendix of this Recommendation determines the professional practices that encourage promotion of a culture of tolerance. According to this Appendix, these practices concern:

- **Training**, which the appendix divides into: *Initial training*, where schools of journalism and media training institutes might usefully introduce specialist courses in their core curricula with a view to developing a sense of professionalism which is attentive to the involvement of the media in multi-ethnic and multicultural societies; the contribution which the media can make to a better understanding between different ethnic, cultural and religious communities. *Further training*, media enterprises might usefully provide in-house training or opportunities for outside training for their media professionals at all levels, on professional standards on tolerance and intolerance.
- **Media enterprises**: The problem of intolerance calls for reflection by both the public and within the media. Media enterprises can have a positive impact by reporting factually and accurately on acts of racism and intolerance, reporting in a sensitive manner on situations of tension between communities, avoiding derogatory stereotypical depiction of members of cultural, ethnic or religious communities in publications and programme services, treating individual behaviour without linking it to a person's membership of such communities where this is irrelevant, etc.<sup>142</sup>
- **Representative bodies of media professionals**: Representative bodies of the various categories of media professionals might usefully undertake action programmes or practical initiatives for the promotion of a culture of tolerance.
- **Codes of conduct**: Such initiatives and actions could go hand in hand with professional codes of conduct drawn up within the different media sectors, which address the problems of discrimination and intolerance by encouraging media professionals to make a positive contribution towards the development of tolerance and mutual understanding between the different religious, ethnic and cultural groups in society.

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<sup>139</sup> Adopted by the Council of Europe Committee of Ministers on 30 October 1997.

<sup>140</sup> Appendix to the Recommendation No. R (97) 21 of the Committee of Ministers to the Member States on the Media and the Promotion of a Culture of Tolerance, paragraph 1.

<sup>141</sup> Recommendation No. R (97) 21 of the Committee of Ministers to the Member States on the Media and the Promotion of a Culture of Tolerance, page 2.

<sup>142</sup> For a full list of practices to be undertaken by media enterprises, see Recommendation No. R (97) 21 of the Committee of Ministers to the Member States on the Media and the Promotion of a Culture of Tolerance, pages 2-3.

- **Broadcasting:** While public service broadcasters have a special commitment to promote a culture of tolerance and understanding, the broadcasting media as a whole are a potent force for creating an atmosphere in which intolerance can be challenged. Such examples can be broadcaster who: make provision for programme services, also at popular viewing times, which help promote the integration of all individuals, groups and communities as well as proportionate amounts of airtime for the various ethnic, religious and other communities; develop a multicultural approach to programme content so as to avoid programmes which present society in mono-cultural and mono-linguistic terms, etc.<sup>143</sup>
- **Advertising:** The Appendix to this Recommendation emphasizes that although the multi-ethnic and multicultural character of consumer society is already reflected in certain commercial advertisements and although certain advertisers make an effort to prepare advertising in a way which reflects a positive image of cultural, religious and ethnic diversity, practices such as those set out hereafter could be developed by the professional circles. In certain countries, codes of conduct have been drawn up within the advertising sector which prohibit discrimination on grounds such as race, colour, national origin, etc; There are media enterprises which refuse to carry advertising messages which portray cultural, religious or ethnic difference in a negative manner, for example by reinforcing stereotypes; Certain public and private organisations develop advertising campaigns designed to promote tolerance. The media could be invited to co-operate actively in the dissemination of such advertisements.

*Recommendation 1085 (2007) on Blasphemy, religious insults and hate speech against persons on grounds of their religion*

Recommendation 1085 (2007) on Blasphemy, religious insults and hate speech against persons on grounds of their religion<sup>144</sup> is addressed to the Committee of Minister of the Council of Europe with regards to its activity in the framework of combating hate speech. Unlike other recommendations elaborated above, which directly addressed the Member States, this recommendation has an indirect effect on Member States as it addresses the Committee of Minister of the CE. The latter, referring to the abovementioned recommendation, must ensure that the stated measures are forwarded to the competent authorities of Member States. With regards to blasphemy, religious insults and hate speech against people due to their religion, this recommendation states in its Recital that **the state is responsible for determining what should count as criminal offences within the limits imposed by the case law of the European Court of Human Rights.** With regards to this, the Recommendation emphasizes that **blasphemy, as an insult to a religion, should not be deemed a criminal offence.**<sup>145</sup> Also, the recommendation clarifies that any margin of appreciation that Member States have concerning the restriction of freedom of speech and freedom of conscience and religion can be an object of review by the ECtHR.

The Recommendation 1805 (2007) may be summarized in the following items:

- It is recommended that the Committee of Minister of the CE take note of Resolution 1510 (2006) on freedom of expression and respect for religious beliefs<sup>146</sup> together with this Recommendation and forward both texts to the relevant national ministries and authorities.
- It is recommended that the Committee of Minister of the CE to undertake adequate measures so that national laws and practices: permit open debate on matters relating to religion and beliefs and do not privilege a particular religion in this respect, which would be incompatible with Articles 10 and 14 of the ECHR; penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion as on any other grounds; prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention; are reviewed in order to decriminalise blasphemy as an insult to a religion.

<sup>143</sup> For a full list of practices to be undertaken by media enterprises, see Recommendation No. R (97) 21 of the Committee of Ministers to the Member States on the Media and the Promotion of a Culture of Tolerance, page 3.

<sup>144</sup> Adopted by the Parliamentary Assembly of the Council of Europe on 29.06.2007.

<sup>145</sup> Paragraph 4 of the Recital of the Recommendation 1085 (2007) Blasphemy, religious insults and hate speech against persons on grounds of their religion.

<sup>146</sup> For the full text of this resolution, please visit: <https://pace.coe.int/en/files/17457>

- It is recommended that the Committee of Minister of the CE encourages Member States to sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177)<sup>147</sup>, which focuses on combatting discrimination.
- It is recommended that the Committee of Minister of the CE instruct the competent steering committee to draw up practical guidelines for national ministries of justice intended to facilitate the implementation of the recommendations contained in Item 2 (above).
- It is recommended that the Committee of Minister of the CE instruct the competent steering committee to draw up practical guidelines for national ministries of education intended to raise understanding and tolerance among students with different religions.
- It is recommended that the Committee of Minister of the CE initiate, through their national ministries of foreign affairs, take action at the level of the United Nations in order to ensure that: the national law and practice of signatory states of the International Convention on the Elimination of All Forms of Racial Discrimination do not privilege persons with a particular religion; and the work of the Alliance of Civilizations avoids the stereotype of a so-called western culture, widens its scope to other world religions and promotes more open debates between different religious groups and with non-religious groups.
- It is recommended that the Committee of Ministers of the CE condemn on behalf of their governments any death threats and incitements to violence by religious leaders and groups issued against persons for having exercised their right to freedom of expression about religious matters.
- It is recommended that the Committee of Ministers of the CE **invite member states to take more initiatives to promote tolerance**, in cooperation with the European Committee against Racism and Intolerance.

### 3.3.1 Media Regulatory Authorities and hate speech

The Media Regulatory Authorities have a special responsibility with regards to the spread of hate speech. Some of the key aspects of the relation between these authorities and hate speech are summarized in the *Regional Publication of the European Union and Council of Europe in the framework of a legal expertise on the freedom of speech and media in Southeast Europe, entitled 'Media Regulatory Authorities and Hate Speech'*.<sup>148</sup>

The publication initially focuses on the current debate concerning hate speech. The emphasis is on the importance of the freedom of speech as a fundamental freedom not only to express ideas and opinions but also to receive information: freedom of speech is part of democracy; where it ends there is no democracy.<sup>149</sup> However, **freedom of speech**, envisaged by Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), **is not an absolute right**. Among others it is subject to restrictions mentioned in Article 10(2) of the ECHR and Article 20 of the ICCPR. The latter addresses hate speech more directly, providing for legal prohibitions on any propaganda for war or advocating national, racial or religious hatred that may incite discrimination, hatred or violence.<sup>150</sup> In this framework, the European societies have determined some formal and informal limitations to freedom of speech thus demonstrating their commitment to creating a social stability and national security without which, the freedom of speech could not be achieved.<sup>151</sup> An important part of the Criminal Codes of Europe envision hate speech as a criminal act.

<sup>147</sup> For the full text of Protocol No. 12 of the European Convention on Human Rights, please visit: [https://www.echr.coe.int/Documents/Library\\_Collection\\_P12\\_ETS177E\\_ENG.pdf](https://www.echr.coe.int/Documents/Library_Collection_P12_ETS177E_ENG.pdf)

<sup>148</sup> For the full text of the document please visit: Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018: <https://rm.coe.int/media-regulatory-authorities-and-hate-speech/16807338f5>

<sup>149</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 9.

<sup>150</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 10.

<sup>151</sup> Ibid.

*Definition and characteristics of hate speech in accordance with the EU and CE Publication 'Media Regulatory Authorities and Hate Speech'*

Despite the absence of a broadly accepted definition of hate speech, this publication mentions the definition from Recommendation R (97) 20 (elaborated above), as an example of a comprehensive definition for this term. However, the publication emphasizes that, since 20 years have passed from the time when this recommendation was adopted, the new forms may be added to the definition of hate speech. Upon an analysis of the definitions provided by other instruments and the ECtHR caselaw, this publication reaches the conclusion that hate speech is *"a term used to refer to certain types of aggressive expression that spreads and justifies hatred, intolerance and prejudice, as well as call for an encourages violence of discrimination against certain vulnerable or discriminated groups. However, regardless of its various presentation, from 'politically incorrect' jokes to public appeals for lynching, verbally and non-verbally, in all forms and means of public communication, hate speech is considered an undesired phenomenon which endangers the values which any civilized and democratic society is built upon"*.<sup>152</sup>

In its chapter one, the publication emphasizes that since **any form of expression takes place within a historical and cultural context, the content and moral and emotional meaning it conveys are inseparable from this context**. Therefore, a form of expression which is not dangerous in one context may be hate speech in another one. The publication underlines that while analysing hate speech it is important to **determine and assess and circumstances** in which hate speech occurred or which are deemed to encourage violence, intimidation, enmity or discrimination against groups it targets.<sup>153</sup> It is important to mention that the publication considers hate speech as an **emotional concept**, which degrades, intimidates, encourages hatred, violence and/or discrimination against an individual or a group. Furthermore, hate speech seeks to convey feelings of contempt or stereotyping based on negative connotations about certain groups or individuals, and their characteristics.<sup>154</sup> One of the problems with hate speech concerns its presentation as a 'normal' speech, whose users seek to treat such speech as acceptable. This is deemed **highly dangerous, as by tolerating hate speech it may become part of acceptable discourse in the society**.

*The relation between hate speech and the media in accordance with the EU and CE Publication 'Media Regulatory Authorities and Hate Speech'*

The abovementioned publication underlines that when assessing the role of the media in spreading hate speech, it is important to determine its origin. This is especially true in cases of media coverage of certain events, including viewers/listeners to programs, lack of sufficient time to prepare, especially when program guests are changed at the last moment, etc. Hate speech can be found even in programs broadcast as SMS, email, Facebook and Twitter messages sent by the audience. When the media broadcast such messages, the competent persons of the media should be liable. According to this publication, some of the techniques a media outlet may use not to be deemed a perpetuator of hate speech are excluding viewers/listeners who spread hate speech, publishing a disclaimer about hate speech, refusal to secure airtime to persons who spread hate speech (including politicians and public servants), public apology etc. The responsibility of the media is more direct in cases when the spread of hate speech involves reporters and journalists.<sup>155</sup> With the increase of Internet use, the users may now react publicly by commenting on news or various notices. This further complicates combating hate speech. As this publication attests, the Balkans is caught in a considerable number of cases in which the rules against hate speech have not been observed.

*Cases of hate speech use in media in Albania according to the EU and CE Publication 'Media Regulatory Authorities and Hate Speech'*

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<sup>152</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 13.

<sup>153</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 14.

<sup>154</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 14.

<sup>155</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 15.

Albania is the first country to be dealt with in this publication in the framework of hate speech cases from the region. However, in this publication, only one case is reported in Albania as opposed to other countries in the region, which according to this publication, have encountered more cases.<sup>156</sup>

The case encountered in Albania concerns the way how the host of a popular TV show expressed himself, saying that “The chams are good people, they are so good it is not enough to kill them. I am joking, of course it was a joke, I am a cham myself’ and ‘You are wrong, people from Saranda are not like that, they are... ok, they are very bad, killing them too is not enough, but they do not say anything about the chams”.<sup>157</sup> According to this publication, the monitoring revealed that this TV program impaired the legal principles determining that audio-visual services operators shall not permit during their activity broadcasts that promote intolerance among citizens or promote and justify violence. The action of the program host was qualified as an impairment of the abovementioned principles, and therefore, the media regulatory authority in Albania (AMA) decided to handle this case as ‘hate speech’ as it was harmful to the public to listen to that type of discrimination. In the framework of this decision, AMA imposed a fine of some 3.000 Euro.<sup>158</sup>

*A summary of some recommendations and important conclusions from the EU and CoE Publication ‘Media Regulatory Authorities and Hate Speech’*

This publication attributes a special importance to the **transparency** of media regulatory authorities. In this framework, these authorities should be careful with their regular and timely publication of their decisions. This would encourage the public to believe in the efficiency of their complaints. Also, the publication of full and detailed reports by these authorities would greatly help the public, and in particular the academia.<sup>159</sup> **Inclusion** is another recommendation for the media regulatory authorities at the end of this publication. These authorities should keep direct communication with the citizens, handling and responding to each complaint at full readiness and respectfully. In any case, authorities must inform the complainants about the results of their complaints, regardless of whether the result is a sanction, referral or decision that there is no violation. Public consultations too should not only be regular but should be considered seriously by these authorities. Also, due to the expertise and experience, the media regulatory authorities must **collaborate with other institutions** in order to contribute to the adoption of relevant legislation, strategic and policy acts, international reports in the area etc.<sup>160</sup> The Media Regulatory Authorities also should **create conditions and means** to allow any person who is in contact with information to analyse, decipher, and understand it. In this framework, it is necessary to approve new approaches, policies and systems.<sup>161</sup> Lastly, these authorities must play **an important self-regulatory and co-regulatory role**. This includes the contribution these authorities should give in drafting codes of conduct for journalists, promoting freedom of speech of journalists upon condition that this freedom does not become abusive, a new regulation to applied for social media etc.

### 3.2.2 The Hate Pyramid of the Anti-Defamation League

The Hate Pyramid of the Anti-Defamation League (ADL)<sup>162</sup> illustrates the forms of hatred placing them in a hierarchy by the risk they represent. It focuses on the spread of prejudice and hatred in the society. The pyramid offers a hierarchy of levels of attitudes and behaviours that grow into their complexity, from bottom to top. This pyramid has been developed by the Anti-Defamation League (ADL), which is a Jewish non-governmental organization based in the USA.<sup>163</sup>

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<sup>156</sup> For example, the cases of hate speech in the media in Bosnia and Herzegovina (page 22); Croatia (page 39); North Macedonia (page 45); Montenegro (page 60); Serbia (page 77).

<sup>157</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, pae 21.

<sup>158</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 21.

<sup>159</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 85.

<sup>160</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 86.

<sup>161</sup> Media Regulatory Authorities and Hate Speech, A. Zubcevic, S. Bender, J. Vojvodic (Authors), E. Kamenjarova, M. Todorovic, M. Tafarshiku, M. Stafa (Contributors), Regional Publication of European Union and Council of Europe, May 2018, page 87.

<sup>162</sup> To see the illustration of the Pyramid of Hate please visit: <https://www.adl.org/sites/default/files/documents/pyramid-of-hate.pdf>

<sup>163</sup> To read more about this organization, please visit: <https://www.adl.org/>

**The first level** of the pyramid and the lowest by its risk is titled '**Biased Attitudes**' and involves 'stereotyping, fear of differences, justification of prejudice by communicating only with people who think the same, seeking information to confirm existing belief or bias, lack of self-reflection or self-awareness on the privileged status someone enjoys.'<sup>164</sup>

**The second level** (further up) of this pyramid is titled '**Acts of Bias**' and includes 'use of exclusionary language, insensitive remarks, micro-aggressions, biased and belittling jokes, cultural appropriation, social avoidance and exclusion, use of slurs, ridicule, bullying, rumours and name-calling, dehumanization'.<sup>165</sup>

**The third level** (further up) of this pyramid is titled '**Systemic Discrimination**' and includes 'Criminal justice disparities, unequal distribution of school resources, lack of equal access to certain neighbourhoods or residence areas, salary disparities, voter restriction and suppression and unequal representation in the media'.<sup>166</sup>

**The fourth level** (further up) of this pyramid is titled '**Bias Motivated Violence**' and includes 'threats, desecration, vandalism, arsony, assaults, rape, murder and terrorism'.<sup>167</sup>

**The fifth level** (top of the pyramid) is entitled '**Genocide**' and constitutes the most extreme form of manifestation of hatred based on prejudice, and it includes the 'act or intent to deliberately and systemically annihilate an entire people.'

Like a pyramid, the upper levels are supported by the lower levels. The explaining paragraph of this pyramid clarifies that prejudice at any level influences negatively on the individuals, institutions, and the society, and becomes increasingly hard to challenge or dissolve through the escalation of behaviours and progressing up the pyramid. When a prejudice does not dissolve, it is "normalized" and contributes to the acceptance of discrimination, hatred, and injustice in the society. Although not every biased attitude or act leads to genocide, every genocide is built upon the acceptance of attitudes and behaviours described in the lower levels of the pyramid. The explaining paragraph of the Pyramid of Hate emphasizes that should we challenge the biased attitudes and behaviours that we have, that others and institutions have, we may put an end to prejudice and render difficult the escalation of discrimination and hatred.

### 3.2.3 ECtHR case law regarding hate speech

The European Court of Human Rights (ECtHR) has paid special attention to cases related to freedom of speech and hate speech through its voluminous case law. In cases when the use of hate speech has been ascertained, the ECtHR has justified restriction of freedom of expression through two ways (as has been analysed in this study). In cases when hate speech is used, the freedom of expression envisaged by Article 10(1) of the ECHR is restricted by the ECtHR in two ways: *Firstly*, this hate speech is excluded from the protection offered by the Convention through the application of Article<sup>168</sup> of the ECHR (Prohibition of Misuse of Rights), when hate speech negates the fundamental values of the Convention. *Secondly*, in case it is not proved that hate speech negates the fundamental values of the Convention, it again is restricted by the application of Article 10(2) of the ECHR<sup>169</sup>. In this case, the speech under investigation in many cases was subjected to the 'three-step test' used by the ECtHR to define whether it shall be restricted pursuant to Article 10(2) or not. This test shall be elaborated below.

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<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Article 17 of the ECHR envisages that: none of the provisions of this Convention can be interpreted that is grants a State, a group or individual the right to be involved in any activity or commit any act that aims to impair the rights and freedoms defined by this Convention or broader restrictions of these rights or freedoms as envisaged by the Convention.

<sup>169</sup> Article 10(2) of the ECHR envisages that: 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

The ECtHR acknowledges there exists a **positive obligation** for Member States to defend persons targeted by the use of hate speech and any violence or impairment of their rights that may be incited against others.<sup>170</sup> Among others, the Court has acknowledged that failure to respond to insulting expressions, especially in the form of negative stereotyping towards a certain group of persons may constitute a violation of this positive obligation, and pursuant to Article 8 to ensure effective observance of the right to private life to a member of this group.<sup>171</sup>

The list below of adjudications to be elaborated under this study is non-exhaustive, however, the study aims to identify some of the most important standards imposed by the ECtHR with regards to hate speech.

#### *Exclusion of hate speech from ECHR protection pursuant to Article 17*

Usually, ECtHR finds Article 17 of the ECHR is applicable in cases when hate speech has been particularly flagrant and dangerous. A typical example of the application of Article 17 of the ECHR is the case when the speech used **promotes terrorism**. Thus, in case *ROJ TV A/S vs Denmark*<sup>172</sup>, a Danish media outlet was issued a fine and revocation of license because through several years it promoted the Workers' Party of Kurdistan, which according to the Danish legislation and the previous positions of the ECtHR was considered a terrorist organization. In its assessment, the Court took into consideration the following elements: firstly, *the nature of the programs at issue*, which include incitement of violence and support to terrorist activity, elements that were thoroughly reviewed by the national courts, and secondly, the fact that the viewpoints expressed there *were spread to a broad audience* via TV broadcast, and thirdly, the fact that programs directly concerned a *matter that is essential for the modern European society* – prevention of terrorism and speech related to terrorism that promote use of violence. For this reason, the Court decided to reject the basic application of Article 17 of the ECHR, excluding the protection granted by its Article 10.<sup>173</sup>

**Spread of ethnic hatred expressions** is also a typical case of exclusion from the protection of the Convention. In the case *Ivanov vs Russia*,<sup>174</sup> the complainant had written and published articles that considered Jews as the source of evil in Russia, thus calling for their exclusion from social life. With regards to this case, the national Russian court found the complainant guilty of inciting racial, national, and religious hatred and prohibited him from engaging in journalism, publishing and dissemination in mass media for a three-year period. With regards to the above, the ECtHR decided that the freedom of his speech in this case was excluded from the protection of the Convention, given that such a direct and harsh attack against an ethnic groups contravenes the values of the Convention, such as tolerance, social peace, and non-discrimination.<sup>175</sup>

The Court deems that any type of expression which in essence contains **racial hatred** is excluded from the protection of the Convention. In the case *Glimmerveen and Hagenbeek vs. The Netherlands*,<sup>176</sup> the complainants had been sentenced by the competent authorities of the Netherlands because they had distributed leaflets addressed against 'the white Dutch' stating that: "The largest part of our population is tired now for a long time from the presence in our country of several hundred thousand Surinami, Turkish and other citizens so-called 'invited workers', who furthermore are not at all needed here, and... the authorities should look to it that these unwanted foreigners leave our country as soon as possible". Even in this case, the application was deemed inadmissible, given that Article 17 of the ECHR does not allow the use of Article 10 of the ECHR (Freedom of Speech) to spread ideas that are discriminatory on the basis of race.<sup>177</sup>

**Religious hatred**, for the same reasons mentioned above, shall not be considered protected speech, pursuant to Article 17 of the ECHR. In the case *Noorwood vs United Kingdom*,<sup>178</sup> the complainant had displayed outside of his window a poster containing the Twin Towers aflame, accompanied by the tagline 'Islam outside of Britain – Defend the British people'. As a result, he was sentenced by the competent British authorities for

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<sup>170</sup> Ouranio Toxo et al., vs Greece, Decision No. 74989/01, date 20.10.2005.

<sup>171</sup> For more information, visit Recommendation No. 15 of the General Policy of ECRI to Combat Hate Speech, adopted on 8 December 2015, paragraph 40:

: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech-alba/16809eb58e>

<sup>172</sup> Decision No. 24683/14 date 24 May 2018: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-183289%22%5D%7D>

<sup>173</sup> Ibid. Paragraph 47 of the decision.

<sup>174</sup> Decision No. 35222/04, dated 20.02.2007: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-79619%22%5D%7D>

<sup>175</sup> Ibid. paragraph 1.

<sup>176</sup> Decision No. 8348/78 and 8406/78, dated 11.10.1979: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-74187%22%5D%7D>

<sup>177</sup> Ibid. Page 10.

<sup>178</sup> Decision No. 23131/03 dated 16.11.2004:

<https://hudoc.echr.coe.int/eng#%7B%22mdocnumber%22%3A%5B%22708788%22%22%22itemid%22%3A%5B%22001-67632%22%5D%7D>

racial hatred. With regards to this case, the Court found his appeal inadmissible, given that 'such general, harsh attack against a religious group that links the group in general with a grave act of terrorism, is unacceptable for the values proclaimed and guaranteed by the Convention, especially tolerance, social peace and non-discrimination. The act of the complainant displaying the poster on his window constituted an act pursuant to Article 17, and for this reason does not enjoy the protection of Articles 10 or 14'.<sup>179</sup>

**The actions of hatred that constitute threat against democratic order** are also an object of Article 17 of the ECHR. Thus, in the case *Schimanek vs Austria*,<sup>180</sup> the complainant, a manager of an association, has conducted among others the following activities: organization of special events where association members were introduced to a historical view that glorified the dictators of the Third Reich, its army, the SA and SS forces, denying at the same time the systemic killing by using toxic gas under the National Socialist regime. Also, the complainant had organized the distribution of pamphlets with similar content. Further, it was discovered that the complainant had organized by the end of 1987 paramilitary training camps by mobilizing members of various associations organized in the extreme right to strengthen the feeling of solidarity among the participants, to tactically prepare them for violent conflicts and establish a military personnel that would impose, if necessary, through the use of force, its goals, namely taking power in Austria and incorporating Austria in a Greater Germany. Based on the abovementioned, the complainant claimed (among others) the violation of freedom of speech by the Austrian authorities. With regards to this case, the Court decided that Article 10 of the Convention could not be invoked in contravention of Article 17, which advocates for tolerance, social peace, and non-discrimination.<sup>181</sup>

#### *Restriction of hate speech based on Article 10(2) of the ECHR*

Article 10(2) of the ECHR envisages cases of exclusion from protection of the freedom of expression and is applied in cases which, although not considered 'outside of the protection sphere of the Convention' in compliance with its Article 17, are nonetheless problematic. Just like the ECtHR has expressed on many occasions, to determine whether this paragraph is applicable, it should pass the 'three-step test'. The three-step test involves the answers to three questions: 1. Does the national legislation provide for restriction of the freedom of expression? 2. Did the restriction of the freedom of expression occur for legitimate reasons defined by Article 10? 3. Is the restriction of the freedom of expression necessary in a democratic society to achieve one or more of the legitimate purposes mentioned in Article 10?<sup>182</sup> If the answers to three questions cumulatively are 'Yes', then the restriction of freedom of expression is legitimate.

The restriction of the freedom of expression was found to be legitimate in the cases of **justifying violence or inciting enmity**. In the case *Altıntaş vs Turkey*<sup>183</sup> the complainant had published an article in his newspaper in 2007 describing the authors of 'Kızildere events' among others as 'idols for the youth'. The events at issue took place in March 1972, when three British nationals working for NATO were abducted and executed by the abductors. The national courts found the complainant guilty of glorifying the authors of this crime. With regards to this case, the ECtHR did not find a violation of Article 10 by Turkey. The expressions in the article concerning the authors of the 'Kızildere events' and their actions may be understood to glorify or at least, justify the violence. The court took into account the measure taken against the complainant, which was a fine. Furthermore, the Court emphasized that it is important to not eschew the risk that such articles may encourage or incite youth, especially members or followers of outlawed organizations, to commit similar acts of violence in order to become 'idols for the youth'.<sup>184</sup>

**Homophobic hate speech** is also deemed a case of abuse of freedom of expression, legitimating the application of Article 10(2). In the case *Vejdeland et al., vs Sweden*, the complainants were sentenced by the national authorities for distributing offensive leaflets about homosexuals nearby a high school. Statements in the leaflets included claims that homosexuality was a 'deviant sexual orientation', it had 'a morally destructive effect for the society' and was 'responsible for the spread of HIV and AIDS'. Initially, the ECtHR established that the condition of 'provision of restriction in the legislation' was applicable in this case, considering that the Criminal Code of Sweden explicitly envisaged such an act as criminal. With regards to the condition of 'the

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<sup>179</sup> Ibid, page 2.

<sup>180</sup> Decision No. 32307/96 dated 01.02.2000: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-24075%22%5D%7D>

<sup>181</sup> Ibid.

<sup>182</sup> For more information regarding the three-step test please visit: <https://rm.coe.int/168071e53e>

<sup>183</sup> Decision No. 50495/08 dated 10.07.2020: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-201897%22%5D%7D>

<sup>184</sup> Ibid.



need for restriction in a democratic society', the Court took into account several elements. Firstly, it re-emphasized that freedom of expression is applicable not only for the "information" or "ideas" accepted in the society or that are considered non-offensive, but also for the ones that insult, shock or disturb.<sup>185</sup> However, the Court underlined that "...although these statements do not directly recommend that individuals commit actions of hatred against homosexuals, they are serious and prejudiced accusations."<sup>186</sup>

According to the Court, **incitement of hatred does not necessarily mean an appeal for committing an act of violence or other criminal acts.** Assaults against persons via insults, ridicule, or slander against specific groups of population may be sufficient for the authorities to favour combating racist expressions versus freedom of expression that is exercised in an irresponsible manner.<sup>187</sup> The proportionality of punishment is also an important indicator in the analysis of restriction of freedom of expression. Since the complainants were not sentenced to imprisonment, the administrative measure imposed on them was proportionate.

**Inciting ethnic hatred** was considered a typical case of legitimizing the restrictions towards freedom of expression. In the case *Balsytė-Lideikienė vs Lithuania*<sup>188</sup> the complainant had published and disseminated the 'Lithuanian Calendar 2000', which, according to the conclusions from political science experts, promoted ethnic hatred. The calendar described numerous events involving the killing of Lithuanians for which Polish, Russian, and Jewish citizens were blamed. The back cover of the 'Lithuanian Calendar 2000' contained a map of the Republic of Lithuania. Neighbouring territories in the Republic of Poland, the Russian Federation and the Republic of Belarus were marked as 'ethnic Lithuanian territories under temporary occupation'. The competent national authorities confiscated the remaining copies and prohibited the further distribution of the calendar. With regards to this case, the Court found that the complainant had expressed aggressive nationalism and ethnocentrism, also hatred against Polish and Jewish people, which could constitute a cause for concern for the Lithuanian authorities. Initially, the ECtHR determined that the condition of 'envisaging restriction by law' was applicable in this case given that the Lithuanian Code of Administrative Offences explicitly envisaged such an act as administrative offence.<sup>189</sup> With regards to the condition for the existence of a legitimate purpose in restricting the freedom of expression, the Court underlined that the sentence was imposed with the purpose of defending the values defined by Article 10(2) of the Convention, in particular the reputation and rights of ethnic groups living in Lithuania.<sup>190</sup> With regards to the condition of the 'need for restriction in a democratic society', the Court underlines that national courts noted the negative reaction the publication was met with by a certain part of the Lithuanian society and some foreign embassies. They also took into account the conclusions of experts that the statements of the complainant could be attributed to the "ideology of extreme nationalism", which promoted national hatred, xenophobia, and territorial claims.<sup>191</sup> Ultimately, the measure taken by the national Lithuanian authorities was accepted as being aligned with the provisions of Article 10 of the ECHR.

The Court handled with care also the cases of **hate speech online**. In the case of *Delfi AS vs Estonia*<sup>192</sup>, the complaining company, one of the biggest news portals in Estonia that bases its income on advertisement, provided in the news it posted the option for anonymous comments or using nicknames. However, there existed a notification system: any reader could mark a comment as offensive and the comment would be deleted by the portal. Furthermore, the comments including vulgar words would be deleted immediately. Apart from this, the victims of slanderous comments could notify directly the company managing the portal (the complainant company) and the comment would be deleted. The complainant company had made attempts to advise users that comments did not reflect its opinion and that the authors of the comments were responsible for their content. On 24 January 2006, the complainant company published an article on the Delfi portal entitled "SLK destroyed the Planned Ice Road". Ice roads are public roads on the frozen sea that in wintertime connect the Estonian territory with some islands. SLK is a company that provides public transportation services via ferry boats between the Estonian land and certain islands. At the time of the publication, the article generated 185 comments, some 20 of which contained personal threats and offensive language directed at one of the members of the SLK Supervisory Board. At the request of the lawyers' team of

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<sup>185</sup> Ibid. Paragraph 53.

<sup>186</sup> Ibid. Paragraph 54.

<sup>187</sup> Ibid. Paragraph 55.

<sup>188</sup> Decision No. 72596/01) dated 04.02.2009: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-89307%22%5D%7D>

<sup>189</sup> Ibid. Paragraph 72.

<sup>190</sup> Ibid. Paragraph 73.

<sup>191</sup> Ibid. Paragraph 80.

<sup>192</sup> Decision No. 64569/09 dated 16.06.2015: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-155105%22%5D%7D>

SLK, the portal deleted the comments six weeks following the publication. Initially, the ECtHR noted the contradictory realities between the benefits of the Internet, as an unprecedented platform for the freedom of expression, and on the other hand, of risks, for example the possibility that hate speech and speech that incites violence can be spread around the world within a matter of seconds and remain online for a long time. The Court emphasized that the illegal nature of the comments at issue concerned the fact that such comments incited hatred or violence against the owner of the ferryboat company. In such cases when the user comments, as third parties, are made in hate speech form or direct threats against the physical integrity of individuals, the Court underlined that **to respect the rights and interests of the others, and of the society as a whole, Member States may hold responsible the online news portals**, without contradicting Article 10 of the ECHR, **should they fail to undertake measures towards removing without delay comments that are clearly illegal, even without notification by the alleged victim or third parties**. Based on the abovementioned, the insufficient measures taken by the complainant business to remove without delay the comments under the publication that constituted hate speech and speech that incited violence, and the proportionality of the sanction (320 euro) imposed on the applicant, made the Court conclude that establishing responsibility towards the applicant company had been a justified and proportionate restriction of the freedom of speech.

In the case *Aksu vs Turkey*,<sup>193</sup> two applicants (via separate claims) addressed the ECtHR with regards to some actions from the public authorities of the Turkish state. In the case of the first complaint, the Ministry of Culture of Turkey had published and distributed the book 'Romani of Turkey', which, among others wrote that Romani people were involved in illegal activities and lived as 'thieves, robbers, usurers, beggars, drug dealers, prostitutes' etc. The applicant, a Roma citizen, found this discriminatory information. In the case of the second claim, another Roma citizen of Turkey accused the Turkish state of publishing two dictionaries of Turkish language, which included among others the following descriptions: Gypsy tent – a poor and dirty place; Gypsy wedding – a noisy and very populated event; Gypsy fight – an exchange of vulgar words, etc. With regards to these applications, the ECtHR made a statement (among others) about hate speech, determining that in this case, the Court should balance the right of the claimant for private life (Article 8) versus the public interest for the protection of the freedom of speech (Article 10), keeping in mind that there is no hierarchy between these two articles. According to Article 10 of the Convention, Member States have a certain assessment margin to determine whether an interference in the freedom of expression is "necessary in a democratic society." However, this difference goes in parallel with the European supervision, embracing the Convention and the decisions applying it.<sup>194</sup> In this case, respecting the margin of state assessment, the Court decided that Article 8 had not been breached.

### 3.4 National context of hate speech in Albania

#### 3.4.1 Albanian legislation on hate speech

##### *Constitution of the Republic of Albania*

The Constitution of the Republic of Albania (CRA)<sup>195</sup> does not explicitly provide the term 'hate speech'. However, by means of the **principles** it defines, it is clear that hate speech is unacceptable and intolerable at the level of constitutional principles in Albania. In its Preamble, this Constitution states the "*guarantee of fundamental human rights and freedoms, with the spirit of religious tolerance and coexistence, with the pledge to protect the human dignity and personality, and for the prosperity of the entire nation, for peace, wellbeing, culture, and social solidarity... deeply convinced that justice, peace, harmony and cooperation between nations are among the highest values of humanity.*"

Further to this position, the Constitution envisages in the **First Part (Fundamental Principles)** that: "*...the dignity of a person, his rights and freedoms, social justice, ... religious coexistence and coexistence and understanding between the Albanians and the minorities are the foundations of this state, which is obligated*

<sup>193</sup> Decision No. 4149/04 and 41029/04 dated 15.03.2015.

<sup>194</sup> Ibid. Paragraph 65.

<sup>195</sup> Law No. 8417, dated 22.11.1998 'Constitution of the Republic of Albania'.

to respect and protect them.”<sup>196</sup> These articles determine the **positive obligation** of the state to protect the dignity, human rights, coexistence and understanding between Albanians. Again, in the First Part, this Constitution emphasizes that **hatred or instigating it is unacceptable**, envisaging that political parties and other organizations, the programs and activities of which are based on totalitarian methods, which incite and support **racial, religious, regional or ethnic hatred** are prohibited by law.<sup>197</sup>

**The second part of the** Constitution of the RA is dedicated to the fundamental human rights and freedoms. An important provision to be mentioned in this respect is **Article 17 of the ECHR**, which attributes **a special and superior status to the ECHR** compared to the ratified international agreements. This Article, in paragraph 2, envisages that the restriction of constitutional rights and freedoms **cannot harm the essence of rights and freedoms and in no case shall exceed the restrictions envisaged by the ECHR**. I.e., with regards to the restriction of constitutional rights, the ECHR is at the pinnacle of the hierarchy of the law resources, along with the Constitution. It is specifically due to the special nature of the ECHR in the Albanian legal system and to the ECtHR case law concerning the treatment of hate speech or cases when the restriction of such speech constitutes impairment or not of the freedom of expression that it is essential to be referred by the national Albanian authorities. In the same Part, the Constitution of the RA envisages the principle of non-discrimination,<sup>198</sup> the principle of equality of national minorities,<sup>199</sup> the freedom of conscience and religion<sup>200</sup> etc.

All these principles protected by the Constitution would contravene with what hate speech conveys. Therefore, despite the fact that the term ‘hate speech’ is not explicitly mentioned in this Constitution, the latter defines all principles to fighting phenomena like hate speech. The Constitutional provisions are applied directly, unless the Constitution provides otherwise.<sup>201</sup> Therefore, the Albanian authorities may refer directly (also) to the abovementioned constitutional principles in their fight against hate speech.

On the other hand, an important principle to be kept in mind while reviewing hate speech cases is freedom of expression. That is envisaged by Article 22 of the CRA, under the Chapter ‘Personal freedoms and rights’. This article envisages that: “1. Freedom of speech is guaranteed. 2. Freedom of press, radio and television is guaranteed. 3. Preliminary censorship of communication means is prohibited.” Freedom of speech, radio and television is only one of the subtypes of freedom of expression. Nonetheless, the Constitution of RA grants it special importance by specifically mentioning it in Article 22(2). Although Article 22(3) does not provide for cases when this right is restricted, Article 22 is subject to the rule for foreseen restrictions in Article 17(2), as discussed above. Freedom of expression is closely related to other constitutional rights, such as the freedom of information, which ECtHR considers as an integral part of the freedom of expression. This freedom is envisaged by Article 23 of the Constitution of RA. This article provides that: “1. The right to information is guaranteed. 2. Everyone is entitled, in compliance with the law, to receive information on the activity of state bodies, and of persons exercising state functions. 3. Everyone is given the opportunity to attend meetings of collectively elected bodies.”

### *Criminal Code of the Republic of Albania*

The *Criminal Code of the Republic of Albania (CC)*<sup>202</sup> addresses criminal acts related to hate speech in several of its articles. This code **does not provide a definition of ‘hate speech’**, and therefore, the summary below includes Articles which address hate speech via a literal interpretation as well as other articles which, via a more expanded and contextual interpretation of the term ‘hate speech’ are of importance to be analysed.

Firstly, **Article 74/a of the CC** envisaged that **public offering** or deliberate **spread** to the public, via computer systems, **of materials that deny, minimize, significantly approve or justify acts that constitute genocide or crimes against humanity**, is punishable to three up to six years of imprisonment. Although this provision does not use the term ‘hate speech’, the interpretation of this article and of the existing definitions about hate speech, it is clear that the meaning is overlapping. However, the concept of ‘hate speech’ is broader than the

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<sup>196</sup> Article 3 of CRA.

<sup>197</sup> Article 9(2) of CRA.

<sup>198</sup> Article 18 of CRA.

<sup>199</sup> Article 20 of CRA.

<sup>200</sup> Article 24 of CRA.

<sup>201</sup> Article 4(3) of CRA.

<sup>202</sup> Law No. 7895, dated 27.1.1995 Criminal Code of the Republic of Albania (as amended).

object of the criminal act envisaged by this Article. The measure of sentence envisaged in this criminal act proves the high social risk represented by the use of hate speech, especially in cases of approving or justifying genocide or crimes against humanity.

Due to the social risk it bears, hate speech is dealt with also in the section of criminal acts against public order and safety of the CC. **Article 265** of this Code, under the title 'Incitement of hatred and brawls', envisages that **incitement of hatred and brawls** due to race, ethnicity, religion or sexual orientation, and the **preparation, spread or storing, with the intention of distributing writings of such content**, committed by any means or form, is punishable to two up to ten years of imprisonment. Based on the severe measure of sentence, CC reflects the high social risk that the commission of this criminal act bears. An important element concerning the provision of Article 265 of the CC is the fact that it suffices to prove one of the elements, such as: preparation, distribution or even storing hate speech, and the criminal act shall be deemed committed. Also, the article itself emphasizes that the form of expression of such speech is not important in establishing this criminal act. Therefore, such a call does not necessarily have to be written for Article 265 of the CC to be applicable. Over the years this article has been subject to amendments,<sup>203</sup> increasing the measure of sentence in proportion with the increase of the social risk of this criminal act.

Hate speech is addressed also in Article 266 of the CC (under the same section as Article 265 of CC), which under the title 'Call for national hatred', envisages that **risking public peace by calling for hatred against segments of the population**, by insulting them or slandering them, **asking the use of violence or other arbitrary actions against them**, is punishable by two to eight years of imprisonment.' Again, this article intends to restrict abuse of freedom of expression and envisages among others the call for hatred against segments of the population or requests for use of violence or arbitrary actions against certain segments of population as forms of such abuse.

Another criminal act (although not in direct form) related to hate speech is **the insult**, envisaged by Article 119 of the Criminal Code. This article envisages that deliberate insult of a person constitutes a criminal offence and is fined from fifty thousand to one million ALL. When such an act is committed publicly, to the detriment of some persons or more than once, it constitutes criminal offence and is punishable by fifty thousand to three million ALL. This article was subject to two amendments from the time the CC came into effect. The first amendment concerned the increase of aggravating circumstances of this article, in particular cases when the act is committed **'to the detriment of some person or more than once'**, which brings insult closer to hate speech. The second amendment excluded the imprisonment sentence for this criminal act by envisaging fines (with the abovementioned minimum and maximum limits) as the only form of a sentence. This amendment serves as an indicator that nonetheless, insult is characterized of having **lower social risk compared to hate speech**.

Another criminal act worth mentioning as part of the discussion on hate speech is **'Distribution of racist or xenophobic materials via computer systems'** envisaged by Article 119/a of the CC.<sup>204</sup> This article envisages that public provision or deliberate public distribution via computer systems of materials having racist or xenophobic content constitutes criminal offence and is punishable by fine or imprisonment up to two years. Although this Article does not mention the term 'hate speech', from a comparative viewpoint between this provision and the broadly known definitions of hate speech, a conclusion may be reached that Article 119/a of the CC is applicable for hate speech online. Another indicator regarding the above mentioned is the provision for the imprisonment measure, which is an indicator of the considerable social risk this criminal act bears.

Along the same line, another criminal act to be elaborated under this chapter is **the Racist or xenophobic motivated insult via computer systems**, envisaged by Article 119/b of the CC.<sup>205</sup> This article envisages that deliberate public insult via computer systems targeting a person due to the ethnic background, nationality, race or religion constitutes a criminal offence and is punishable by fine or imprisonment up to two years. Even in this case, despite the fact that the term 'hate speech' is not directly mentioned, it may be concluded that his article is applicable in addressing such speech. An indicator to this conclusion is the provision for the

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<sup>203</sup> The amendments were made by means of the law 144/201 'On some additions and amendments to the law 7895, dated 27.1.1995 'Criminal Code of the Republic of Albania', as amended.

<sup>204</sup> This article was added by the law no. 10 023, dated 27.11.2008 'On some amendments to the law no. 7895, dated 27.1.1995 the Criminal Code of the Republic of Albania'

<sup>205</sup> This article was added by the law no. 10 023, dated 27.11.2008 'On some amendments to the law no. 7895, dated 27.1.1995 the Criminal Code of the Republic of Albania'

measure of imprisonment, which is an indicator of the considerable social risk this act bears.

Article 120 of the CC, under the heading '**Slander**', envisages that the deliberate spread of statements, and any other information, knowing it is false, and that harm the honour and dignity of a person, constitutes criminal offence and is punishable by fine from fifty thousand up to one million and fifty thousand ALL. When such an act is committed publicly to the detriment of some persons or more than once, it constitutes criminal offence and is punishable by fine from fifty thousand up to three million ALL. This article was subject to two amendments following the coming into effect of this Code. Thus, the second paragraph of this article was amended, adding to it other qualifying circumstances of the criminal act, including **commission of slander to the detriment of some persons or more than once**. Even in this case, similarly to insult, adding these qualifying circumstances bring this act closer to hate speech. The second amendment to this law replaced the maximum sentence with imprisonment for commission of this criminal act, with the actual value of the fine for this act, which indicates the lower social risk of slander compared to more direct forms of the use of hate speech.

### *Civil liability for hate speech in Albania*

As mentioned above, hate speech in Albania is mainly addressed by the criminal legislation. The *Civil Code of the Republic of Albania (CiC)*<sup>206</sup> and the *Civil Procedure Code of the Republic of Albania (CPC)*<sup>207</sup> do not directly address the regulation of the compensation procedure for damages caused specifically by hate speech. The Albanian civil courts have not yet dealt with compensation cases related to hate speech. However, this remains a constant concern especially with regards to the publication of news on online media, which has been addressed by various independent institutions, such as the Commissioner for the Protection from Discrimination, the Ombudsperson, the communities of journalists, civil society organizations, the donor community in Albania, and the Albanian citizens themselves, something that will result in submission of cases to our courts in a not so far future.

Despite the abovementioned, at the moment that an individual has suffered property or non-property damages (even from the use of hate speech), this legislation envisages the possibility that the injured party addresses the competent court to seek compensation for the damage suffered. Since there is not yet a civil court practice for the damage caused by hate speech, the case law concerning other cases of abuse of freedom of expression (e.g., slander or insult) may assist with creating a general idea with regards to the standards of the civil damage compensation process in these cases.

In the civil court proceedings for damages caused (non-contractual) based on Article 608 and further in CiC, in cases of harming the reputation of the plaintiff or the resulting damages, the Albanian court have mentioned in continuity that **freedom of speech is guaranteed by the Constitution but up to the limit of inviolability of the dignity and personality of an individual**.

In dealing with the damage compensation due to abuse of freedom of expression, the **Albanian courts have paid attention to four elements**: unlawful conduct, existence of the damage, existence of the guilt, and the direct causal link between the damage and the guilt.

With regards to the **existence of the unlawful conduct**, the Court has stated that in order to assess whether such action of the sued party is unlawful or not the court analysis simultaneously two aspects: *the objective aspect*, i.e., whether the statements of the respondent are against any concrete norm of the legal order, and the *subjective aspect*, i.e., whether the statements are illegal or not, beginning with the harming or not of the rights and interests of all three parties, legitimating thus the restriction of the freedom of expression while making such statements (decision no. 6616 dated 27.03.2019, case *V. Vs V.*).

With regards to the conditions of the **existence of damage**, the Albanian courts have usually considered the **non-property damage** as damage in cases involving exceeding of the freedom of speech, which results from suffering due to the unlawful actions of the respondent. The joint collegiums of the High Court have included in the meaning of the non-property damage: **damage to health** or **biological damage** (which in essence constitutes of harm against the health good, physical and/or psychological integrity of a person. Such non-

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<sup>206</sup> Law No.7850, dated 29.7.1994 on the Civil Code of the Republic of Albania (as amended).

<sup>207</sup> Law No. 8116, dated 29.3.1996 'Civil Procedure Code of the Republic of Albania' (as amended).

property damage, envisaged by item "a" of Article 625 of the Civil Code is an object of requesting and receiving compensation independently of other property or non-property damages the injured party has suffered due to the same unlawful fact)<sup>208</sup>; **moral damage** (which is the expression of the internal, temporary, unfairly troubled (non iure perturbatio) emotional state of a person, emotional pain and suffering or a state of anxiety and emotional burden as a result of the unlawful fact. Whoever is harmed in the area of his health and personality through the action or lack thereof and at the fault of a third party is entitled to seek compensation for the moral damage suffered. Such entitlement, in the capacity of the injured party, belongs individually (*ius proprius*) and to each of the close family members of the person who lost his life or harmed his health due to the unlawful fact, if the particular family, emotional and cohabitation relationship is proved. The moral damage suffered by the close members is therefore considered an immediate and direct consequence of the same unlawful fact)<sup>209</sup> and **existential damage** (because when the unlawful fact of the third party harms the rights of personality of a person, thus damaging almost permanently the expression and actualization of the injured party as a person, the manifestation of his personality externally, disturbing objectively the daily life and routine activities, causing an aggravation of the quality of life by changing and disrupting the balance, behaviour and life habits, as well as personal and family relations. Due to such psycho-physical state, the injured party can no longer carry out certain activities that were positive characteristics of his being or could be positive characteristics in the future, forcing the person towards choices in life that are different from the desired and expected ones or in giving up on the latter due to the establishment of the unlawful fact. The existential damage, despite its simply emotional and internal nature, is objectively verifiable).<sup>210</sup>

However, the possibility that these lawsuits request compensation of **property damage** if the plaintiff proves that the statements or speech of the respondent resulted in a direct economic damage is not excluded. With regards to the property damage, Articles 486 and 640 of the Civil Code differentiate between the loss suffered through reduction of property, which is acknowledged as current or emergent damage (*damnum emergens*) and the missed profit (*lucrum cessans*).<sup>211</sup> In their decisions, the Albanian courts have acknowledged the lawsuit for damage compensation only with regards to that part of the damage that the plaintiff could prove (decision no. 1502 dated 18.02.2013, case *V. Vs G.*).

**The existence of guilt in** lawsuits concerning causing damage due to the abuse of the freedom of expression plays a fundamental role in the final court decision. The specifics of civil proceedings such as these is the shifting of the burden of proof to prove guilt: from the plaintiff to the respondent. In decision No. 5245 dated 13.05.2013, the case *B. Vs B.*, the District Court of Tirana stated that 'unlike the criminal act that is based on the presumption of innocence, the law on obligations regarding the causing of damage is based on the presumption of guilt having in mind that the plaintiff has the sole obligation to prove that the statements of the respondent harmed his honour and personality, and the burden of proof shifts to the respondent to prove the facts at the foundation of his statements'. Therefore, the burden of proof to establish or reject the third element (guilt) is shifted upon the respondent.

The Albanian courts have paid special attention to the **direct causal link between the guilt and damage** suffered. In cases of failure to prove this direct link, the plaintiff's lawsuit receives no legitimacy. Thus, in decision 6187 dated 04.06.2013, case *T. vs company S.sh.p.k.*, the District Court of Tirana rejected the lawsuit for damages caused upon the rationale that the article published in the newspaper had not resulted in immediate damages for the plaintiff.

*Administrative liability (the Law on the Media, the Law on E-Trade, the Law on E-Communication)*

**The Law 'On the Media Services in the Republic of Albania'**<sup>212</sup> (formerly the Law on Audio-Visual Media in the RA) is a law that regulates the activity of audio-visual media and their support services (with the exception of written media). This law addresses the problem of the use of hate speech through several provisions. Firstly, it sanctions principles such as: the activity of audio-visual broadcasts **observes without bias the right to information, the political beliefs and religious faith, personality, dignity, and the other fundamental human rights and freedoms** (Article 4(1)(b) of the law); the audio-visual service operators, while carrying out their activities, are led also by the principle of **not allowing broadcasts that incite intolerance between**

<sup>208</sup> Decision No. 12 dated 13.09.2007 of the Joint Collegiums of the High Court, page 15.

<sup>209</sup> Ibid. page 17.

<sup>210</sup> Ibid. page 18.

<sup>211</sup> Ibid. page 10.

<sup>212</sup> Law No. 97/2013 On the Audio-Visual Media in the Republic of Albania (the title of the law was amended in 2019).

**citizens** (Article 4(2)(d) of the law); the principle of **not allowing broadcasts that incite or justify violence** (Article 4(2)(dh) of the law); etc.

Also, this law envisages that one of the general rules for the providers of audio and/or audio-visual media services is the **obligation to not broadcast any programs with content that incites hatred** on bases of race, gender, ethnicity, religion, or any other form of discrimination (Article 32/4). Along the same lines, the law envisages that providers of the audio-visual media services should observe the rules of public ethics and moral and **not broadcast programs that may instigate criminal acts** (Article 33(1)(d) of the law). Should the audio-visual media operators fail to apply the above mentioned in the programs they broadcast, any interested party may submit a complaint, justified in writing, which the operators are obligated to review (Article 51(3) of the law). Also, with regards to the programs that are broadcasted, the complaints may be submitted to the Complaints Council (assigned by AMA), which decides with regards to the resolution of the complaint within the shortest deadline possible. During the procedures for resolving the complaint, the Complaint Council may decide to organize hearings with the parties (Article 52(6) of the law).

Likewise, listing the conditions on the provision of the audio and/or audio-visual media service, as per the request of the user, the law envisages that **services offered in accordance with the request of the user are not allowed to include programs that incite hatred** on basis of race, ethnicity, gender, nationality, or religion (Article 76).

The Law 'On Media Services in the Republic of Albania' is in the review process, and consequently, it may include in the future new or amended provisions related to addressing the increasing problem such as the use and spread of hate speech.

**The Law 'On E-Trade'**<sup>213</sup> despite not directly addressing the issue of hate speech, it regulates an important element that relates to this phenomenon with regards to the responsibility of spreading information online. According to this law, when the information company providing its service consists in broadcasting in a communication network of **information obtained by the recipient of the service**, or in giving access to a network of communication, **the service provider is not responsible** for the information that is transmitted if the service provider: does not initiate transmission; does not choose or modify the content of the transmitted information or does not choose the recipient of the transmission (Article 15(1) of the law). Another article of this law which is applicable even in the case of transmitting information that convey hate, it envisages that the service provider **is obligated to terminate or prevent a violation**, if this is requested by the **court or the responsible authorities**, in compliance with the legislation in power.

**The Law 'On Electronic Communication in the Republic of Albania'**<sup>214</sup> intends to promote competition and efficient infrastructure in electronic communication, and to guarantee the appropriate and suitable services in the territory of the Republic of Albania through the principle of technological impartiality. In the general authorization of entrepreneurs forecasting to provide a network or service of electronic communications, the Authority of Electronic and Postal Communications (AKEP) imposes the conditions to (among others) observe restrictions with regards to unlawful or harmful content as per the respective legal regulations in effect (Article 15(e) of the law). However, Article 18 of this law envisages cases when the above referenced authorization may be revoked. One of the objectively justified cases is the **public interest**. The latter is a classic classification of the freedom of expression in general, which may apply in cases of abuse of such freedom, such as hate speech. Given that the electronic communication services are linked with the enjoyment of the freedom of expression and to be informed, the abovementioned law envisages that it should be of a universal nature. This means that services included in the universal service should be available to users all over the territory of the Republic of Albania, despite the geographical location, of the quality and with the terms determined in the regulatory act issued by the AKEP.

Some of the other institutions engaged in the combat against hate speech in Albania are the Ombudsperson, the Commissioner for Protection from Discrimination etc. These institutions influence on minimizing hate speech cases through their decisions and recommendations to defend persons who are harmed by the abusive use of the freedom of expression and moving towards hate speech. The decisions of the Commissioner for the Protection from Discrimination shall be elaborated under sub-chapter II of this Part.

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<sup>213</sup> Law No. 10128 dated 11.05.2009 'On E-trade'(as amended).

<sup>214</sup> Law No.9918, dated 19.5.2008 'On Electronic Communication in the Republic of Albania'(as amended).

Whereas in the Annual Report 2017, the Ombudsperson elaborated on the issue of the intensification of hate speech in Albania. In this report, the Ombudsperson considers hate speech as a direct initiator of other crimes against a person or a group of persons. Also in this report, the Ombudsperson underlines that ‘..this hate speech is cultivated in a pyramid form, bottom to top, it shapes to its image those who refer to it. Aggravated hate speech in political campaigns, at the Assembly and institutions, is transferred unchanged to the subordinate offices...Hate speech, awareness about it and healing from it remains one of our greatest challenges in the years to come.’

### 3.4.2 The Code of Ethics of Journalists

The Code of Ethics of Journalists<sup>215</sup> is a self-regulatory instrument that aims to strengthen and improve the quality of journalism and the sense of responsibility among journalists in Albania. The principles of this Code are equally applied towards all media and journalism platforms, both offline and online, including journalism through social media and online portals.<sup>216</sup> The publisher and the editor are responsible for publishing news and articles, also letters to the editor, comments or responses to the media online pages, including cases when the author’s by-line has been removed or the by-line is a pseudonym.<sup>217</sup> The media outlet and the editorial team should agree and publish clearly defined conditions on the selection and publication of public comments. The media should monitor and review these comments and undertake steps to ensure that publication conditions are observed.

This Code of Ethics addresses hate speech in a dedicated article, emphasizing that the Media Outlet should **not publish material that incites hate or violence** against individuals on the basis of race, religion, nationality, colour, ethnic origin, affiliation, gender, sexual orientation, civil status, disability, disease or age. **Publications should not specify the origin, ethnicity, nationality, race, religion or sexual orientation of a group or individual, apart from cases when this is deemed important and necessary** to better understand the facts and opinions presented in the publication.

#### *Ethical guidelines for online journalism and their importance in addressing hate speech*

In the framework of regulating ethical matters, especially in conditions when online media has taken on an extraordinary growth with the advancement of information technology, a group of experts and the Albanian Media Council have compiled a document titled ‘Ethical Guidelines for Online Journalism’. These Guidelines are based on international standards and best practices for ethical matters, addressing hate speech included. These guidelines include guiding and suggested rules in the framework of a “soft law” – they **are not mandatory, but it is recommended they are taken into consideration** by journalists and publishers of online media any time they draft, publish, or spread information.

As a general rule, online journalism should observe all rules of the professional ethics and the fundamental values of journalism regardless of the forum of format it uses. With regards to avoiding the use of hate speech these guidelines envisage some principles concerning the information published by the online media, which should be **verified and non-sensationalist** and published **without the intention to harm a third party**.

According to these guidelines, the editorial room or the page operators should not publish online **articles or comments that incite hatred and violence, or cause direct or indirect discrimination** based on gender, age, marital status, language, physical or mental disability, sexual orientation, political belief, religious conviction, ethnic or social background. In some online pages there are no genuine editorial rooms, however, the person legally and ethically responsible is the page operator(s).

These guidelines emphasize the fact that the editorial room should be aware that it bears ethical and legal responsibility also on the content generated by third parties and published on its page. They should be careful that hyperlinks to a media placed on its page may lead the user to images containing fake and malicious content or that fail to observe the Code of Ethics of Journalists.

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<sup>215</sup> To get familiar with the full text of the Code, please visit: <https://kshm.al/kodi-i-etikes-se-gazetarit/>

<sup>216</sup> Ibid.

<sup>217</sup> Ibid, Article 7.



The guidelines address matters related to the content generated by third parties. The editorial room or the operators should **monitor** their online page (and the respective pages on social media) and **undertake measures to prevent or terminate publication of unlawful content**, which harm the human privacy and dignity, **or constitute hate speech**. Whenever possible, monitoring should take place before publication. The editorial room or the operators should approve and publish visibly on their page the policy for administering content generated by third parties, and the rules that the latter should follow to comment or add content to the page – the rules should clearly define what is allowed to be published on the page, how to handle anonymous comments, and the complaint procedures on the part of the public due to breach of these rules or the violation of the law.

Content administration policies should clearly define what type of monitoring of third pages is done on the page (preliminary, ex post etc) and what technologies or techniques are used to monitor the page. The editorial room or the operators are recommended to use standard sector technologies (filters, software etc) to block vulgar or easily controllable content and to make available to the users **a simple mechanism to report third party comments alleged to be illegal** or flagrantly in violation of page policies. With regards to comments constituting hate speech, risk to the physical safety or integrity of persons or other grave violations of human rights, especially of minors, there should be a mechanism to identify and remove those as soon as possible. The editorial room and operators should undertake immediate steps to investigate and remove unacceptable content as soon as they become aware of it, by acting mainly (even in the absence of a complaint by persons harmed or third parties) or by undertaking immediate measures upon receipt of a legitimate complaint. **In certain cases, comments and content by third parties may be entirely prohibited.**

The Guidelines also contain detailed rules on the **complaint procedures** and **removal of comments**, rules on using material taken from social media or made available by the public, online archives, and republication of content from third parties.

### **3.5 Case law of the Commissioner for the Protection from Discrimination in the framework of combatting hate speech**

The *Commissioner for Protection from Discrimination (CPD)* is envisaged by the Law on Protection from Discrimination<sup>218</sup> as an independent public legal person that ensures effective protection from discrimination and from any form of behaviour that incites discrimination (Article 21). The competences of the Commissioner include review of complaints from persons or groups of persons claiming to have been discriminated against, even in the framework of hate speech. Upon completion of the complaint review the Commissioner makes a statement via a decision, which is communicated to the parties within 90 days from the date of the receipt of the complaint, or if a public hearing has taken place, within 90 days from the day of the hearing. The decision contains the appropriate rules and measures, setting even a deadline for their execution (Article 33). The measures taken by the Commissioner for the Protection from Discrimination may be the obligation for a public apology and/or fine, in compliance with the provisions of Article 33(13) of the law. Some of the decisions of the Commissioner for the Protection from Discrimination shall be elaborated further.

The Commissioner has dealt with the **problems concerning homophobic hate speech** in his decision No. 125 dated 01.08.2014. In compliance with the complaint filed with the Commissioner by two organizations protecting the LGBT community, the complaint subject (subject AK) had posted on Facebook publications like: *"All protest against the socialist initiative for men marrying men! Pro family, pro moral, prolife"; "Stop Gay Parade in Albania! Any suggestion for the prevention of this phenomenon is welcome!"* etc. The post was followed by many comments from Facebook platform users, such as: *"Only TNT does the job"; "Kill these evils alive"; "We should kill all homosexuals in the world"*, etc. With regards to this case, the CPD said that sexual orientation and gender identity are causes for which the law 'On Protection from Discrimination' provides support from discriminatory behaviour.<sup>219</sup> Furthermore, the Commissioner referred to Article 3 of the CRA concerning the protection of human dignity and rights, as well as the positive obligation of the state to protect these rights, and the Recommendations of the CM/Rec (2010)5 of the Committee of Ministers of the Council

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<sup>218</sup> Law No.10 221, dated 04.02.2010 'On Protection from Discrimination'

<sup>219</sup> Decision of the CPD No. 125 dated 01.08.2014, page 3.

of Europe 'On measures to combat discrimination based on sexual orientation and gender identity. In this framework, quoting this Recommendation, the Commission has emphasized that **hate speech against homosexuals concerns all forms of expression spread via the media and online, which spread, promote or justify hatred, discrimination or animosity against LGBT persons**. The Commissioner stated that it is exactly the above-mentioned expressions that create among the public, in particular among people who are not well-informed, **feelings of misunderstanding, refusal and among some, hatred against the LGBT community**. The Commissioner considered the Facebook posts and ensuing comments as **flagrant and conveying unjustified hate speech**. Failure to punish such open discriminatory behaviour would gravely undermine the mere reason for the existence of the law 'On Protection from Discrimination'.<sup>220</sup> In its decision, the Commissioner kept in mind the fact that the subject of the complaint had deleted the Facebook posts, but on the other hand, also the fact that he had not made any efforts to collaborate with the Commissioner. For all these reasons, the CPD decided that there have been discriminations of the LGBT community due to the sexual orientation and gender identity recommending that subject AK ask for a public apology and be fined with 60,000 ALL. This decision was made effective by the First Instance Administrative Court Tirana.<sup>221</sup>

Also, the matter of the **homophobic hate speech** was dealt with by the Commissioner in another case too. The Commissioner, dealing with data concerning the statements of the citizen P.B. in a show broadcast in one of the Albanian TV stations, decided to pursue the matter ex officio. The statements of P.B. can be summarized as follows: "*Marriage between persons of the same gender is not normal... the world is deviating so much that in a few years, it will be normal to accept persons who have intercourse with children*" and "*I would not want a person from the LGBT community, more specifically a lesbian, to be participate in Miss Albania or Miss Globe*". With regards to the abovementioned, the Commissioner decided that the language used by P.B. is a **flagrant case of violation of the dignity of fundamental rights and freedoms of the individual** sanctioned by the Constitution of the Republic of Albania and failure to punish such an open discriminatory behaviour would seriously undermine the mere existence of the Law No. 10 221/2010 "On the Protection from Discrimination".<sup>222</sup> With regards to the abovementioned, the Commissioner established that the expressions used were discriminatory as they **generated the effect of prejudice, incitement, spread or promotion hatred** or other forms of discrimination against persons due to gender identity and sexual orientation. The CPD decided to obligate P.B. **to ask for public apology** within 15 (fifteen) days from the date he became aware of this decision and to avoid using in the future language that produces the effect of prejudice, incitement, spread or promotion of hatred or other forms of discrimination against persons due to their gender identity and sexual orientation. This decision was upheld by the First Instance Administrative Court Tirana.<sup>223</sup>

The matter of **hate speech due to ethnicity and language** was dealt with by the CPD in its decision No. 28 dated 04.04.2013. The complaint addressed to the Commissioner denounced the case of the statements of subject AK in her official page. These statements contained expressions such as: "*AK considers unacceptable the fact that in the Municipality of Liqenas in the District of Korça, the signs on streets and institutions do not constitute the official language of the Republic of Albania, the Albanian language. Upon establishing such fact that is not at all fair or legal, AK left for the Municipality of Liqenas to reinstate the national symbols*" and "*Tens of activists of AK circulated in the Municipality of Liqenas and placed on the road signs and institution signs of this Municipality the national symbol of the Republic of Albania and the tables "this is Albanian land."* AK pledges before its supporters and the entire Albanian people that we will travel to every city in the Republic of Albania to place the national symbol and reinstate the dignity of Albanians in the deserved and legitimate place." With regards to the abovementioned, the CPD decided that such actions are a typical expression of an **aggressive nationalism** and **discrimination of minorities** by denying their rights guaranteed by international acts and the internal legislation. For this reason, the Commissioner decided to establish discrimination in this case, obligate the subject AK to ask for public apology and avoid in the future stances that incite violence or other forms of discriminatory behaviour towards the national minorities. At the moment the deadline to execute the above mentioned actions passed, subject AK was fined by the Commissioner. The First Instance of the Administrative Court Tirana upheld this decision.<sup>224</sup>

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<sup>220</sup> Decision of CPD No. 125 dated 01.08.2014, page 7.

<sup>221</sup> Decision No. 3127 dated 09.06.2015.

<sup>222</sup> Decision of CPD No. 108, dated 21.08.2019.

<sup>223</sup> Decision No. 4319 dated 18.12.2019.

<sup>224</sup> Decision No. 2337 date 13.05.2014.

## 4. Recommendations concerning hate speech in Albania<sup>225</sup>

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In conclusion of the study, it is noted that in Albania there are efforts to address the most extreme cases of the use of hate speech, envisaged as criminal acts in the Criminal Code of the Republic of Albania. Also, public institutions such as the Commissioner for the Protection from Discrimination, through its decision-making, have addressed other instances of hate speech, which could not be qualified under any of the criminal act envisaged by the Criminal Code, but still represent a danger to the society. However, Albania has not yet addressed effectively hate speech, which recently (and in line with international trends) is spread more easily due to social networks. Therefore, the recommendations below aim to strengthen the effectiveness of combatting this phenomenon in Albania:

- The Albanian doctrine and jurisprudence lacks a consolidated stance with regards to the **definition of the term ‘hate speech’**. This is due to the fact that Albania does not yet have any normative act that would define this term, which would serve in determining elements that facilitate identification of hate speech by the competent authorities. As mentioned in the study, the issue of defining this term is a problem of international dimensions, as various international instruments give various definitions of this term, expanding of narrowing down the spectrum of actions/expressions constituting hate speech. However, in the context of Albania, a definition of Hate Speech is necessary, especially in the framework of the Albanian criminal legislation, where for example the Criminal Code addresses various acts that are directly related to hate speech. Thus, courts and any other public institution would take a similar approach to the categorization of an act as hate speech or not. In this case, amending the Criminal Code by adding the most extreme forms of hate speech as a criminal act on its own, and providing a definition of this term would serve as an efficient tool to combatting this phenomenon through the use of the criminal law provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected,
- Raising and giving priority to **specialized units among the police and the prosecutors to investigate and prosecute the use of online hate speech which reach the criminal act threshold** would serve to organize a new combat, faster and more efficient, against hate speech in particular in its online dimension. The latter, currently being the most common form of spreading hate speech and due to technological developments, the hardest to trace and punish, requires special tools and training to address, suitable for the constant changes of the online technology.
- Approving a special program by the public bodies (e.g., the Commissioner for the Protection from Discrimination) which focuses on **giving assistance and raising the awareness on the rights of victims of hate speech**. Something like this is very needed in the Albanian society, given that the Albanian case law still lacks civil processes for compensation of damages (property and/or non-property) caused by the use of hate speech. This is among others, testimony of limited awareness of victims with regards to their legal opportunities to seek justice. Therefore, offering rehabilitation and victim awareness raising programs would serve not only to improving the situation and status of the victims, but also on deterring the users of hate speech in the future.
- Increasing **collaboration between the Albanian public authorities** which address hate speech issue (starting with the courts to continue on with the Commissioner for Protection from Discrimination, Ombudsperson etc.) and the international bodies or organizations established for the same objective. Due to a greater and multi-dimensional experience in combatting hate speech, collaboration and

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<sup>225</sup> By Mirela Bogdani

exchange of experiences in combatting hate speech shall be essential in updating information, training the staff of these bodies, and approximating the international approach related to hate speech.

- **The independent equality institutions such as Commissioner for Protection from Discrimination, Audio Visual Media Authority (AMA) and Peoples Advocate** should develop data collection mechanisms to promote empirical and other research on discrimination on various grounds, including sexual orientation and gender identity. Any comprehensive policy for tackling inequality, discrimination and other forms of prejudice against LGBTI people should be evidence-based. Information collected by equality institutions is important for identifying policy priorities, identifying key actors as well as obstacles, and for monitoring and evaluating the effectiveness of policy. Civil society organizations should be encouraged to play an active role in relation to monitoring incidents of intolerance and prejudice and providing data to equality bodies.
- **Public awareness and information campaigns.** Public information and awareness campaigns are essential to combating negative stereotypes, and discrimination against, LGBTI and Roma people and fostering safe environments for them in the society. Equipped with information, people may identify and confidently challenge manifestations of intolerance in their day-to-day interactions. In particular, public information and education campaigns should be integrated into primary, secondary and tertiary education, and complemented with concrete anti-bullying policies, including the provision of support services for victims of bullying, including peer-led initiatives. Civil society organizations can and should be encouraged to play a central role in leading or collaborating with States on public information campaigns.
- **Equality training:** Albanian government should provide trainings for **public officials** and other public figures on the right of LGBTI and Roma people to equality and non-discrimination, particularly where discrimination is institutionalized and has a history of going unchallenged. Areas of priority in this respect should include schools and other educational settings, the medical profession, the armed forces, the police, the judiciary, legal services, political associations or religious institutions.
- **Albanian Politicians** and other influential people in society should be made aware of the importance of avoiding statements that might incite discrimination or undermine equality and should take advantage of their positions to promote understanding, including by contesting, where appropriate, discriminatory statements or behaviour. Political parties should consider to adopt ethical codes and “no discrimination” policies.
- **Mobilisation of influential actors and building of institutional alliances:** Enhancing public understanding around issues of race, ethnicity and sexual orientation or gender identity and tackling intolerance and prejudice towards LGBTI and Roma people requires the fostering of dialogue and engagement between government, civil society, and society at large. Key actors should attempt to forge **alliances to collaborate** on tackling manifestations of intolerance and prejudice in society – in particular seeking the support of non-government organizations, equality bodies, religious institutions, police, policymakers and international organizations to collaborate on tackling manifestations of intolerance and prejudice in society.
- **The broadcast media,** any regulatory framework should promote the right of LGBTI and Roma people to freely access and use media and information and communications technologies for the production and circulation of their own content and for the reception of content produced by others. All forms of mass media should recognize that they have a moral and social responsibility to promote equality and non-discrimination, including race, ethnicity, disability and sexual orientation or gender identity. In respect of their own constitutions, mass media entities should take steps to:
  - Ensure that their workforces are diverse and representative of society as a whole;
  - Address as far as possible issues of concern to all groups in society, including LGBTI, Roma and people with disabilities;
  - Seek a multiplicity of sources and voices within the LGBTI, Roma communities, rather than.
  - Adhere to high standards of information provision that meet recognized professional and Ethical standards;

- Professional codes of conduct for the media and journalists should reflect equality principles and effective steps should be taken to promulgate and implement such codes.
  
- **In order to the combat discrimination, media entities should consider:**
  - Taking care to report in context and in a factual and sensitive manner, while ensuring that acts of discrimination are brought to the attention of the public;
  - Being alert to the danger of discrimination or negative stereotypes of LGBTI and Roma people being furthered by the media;
  - Avoiding unnecessary references to sexual orientation or gender identity that may promote intolerance;
  - Raising awareness of the harm caused by discrimination and negative stereotyping of LGBTI and Roma people;
  - Reporting on different groups or communities and giving their members an opportunity to speak and to be heard in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities.

# Annexes

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## 1. Glossary

**Body-shaming:** the act of deriding or mocking a person's physical appearance. The scope of body shaming is wide, and can include, although is not limited to, fat-shaming, shaming for thinness, height-shaming, shaming of hairiness (or lack thereof), of hair-colour, body-shape, one's muscularity (or lack thereof), shaming of looks (facial features), and in its broadest sense may even include shaming of tattoos and piercings or diseases that leave a physical mark such as psoriasis. Sometimes body shaming can extend to a perception that one does not sufficiently display masculinity or femininity. For example, men with wide hips or prominent breasts or lack of facial hair are sometimes shamed for appearing feminine. Similarly, women have been body-shamed for their lack of femininity for appearing to have a man-bulge, or for having broad shoulders, traits that are typically associated with men. Extensive levels of body-shaming can have negative emotional effects, including a reduction in self-esteem and other issues such as eating disorders, anxiety, body dysmorphia and depression. Also, body shaming can lead to serious depression, especially when people feel their body cannot meet social criteria.

**Death threat:** a death threat is a threat, often made anonymously, by one person or a group of people to kill another person or group of people. These kinds of threats are often designed to intimidate victims to impede or manipulate their behaviour, and thus a death threat can be a form of coercion. For example, a death threat could be used to dissuade a public figure from pursuing a criminal investigation or an advocacy campaign.

**Defamation:** also known as calumny, vilification, libel, slander, traducement, or injury, is the oral or written communication of a false statement about another person or group that unjustly harms their reputation and usually constitutes a tort or crime. Some common law jurisdictions distinguish between spoken defamation, called slander, and defamation in other media such as printed words or images, called libel. In some jurisdictions, defamation is treated also as a crime.

**Dehumanization:** the denial of full humanness in others and the cruelty and suffering that accompanies it. More broadly, the viewing and treatment of other persons as though they lack the mental capacities that are commonly attributed to human beings. Dehumanization is also a 'technique' in incitement to genocide, and has been used to justify war, judicial and extrajudicial killing, slavery, the confiscation of property, denial of suffrage and other rights, and to attack enemies or political opponents.

**Denigration:** the attack on the capacity, character, or reputation of one or more persons in connection with their membership of a particular group of persons.

**Discrimination:** any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, as well as descent, belief, sex, gender, gender identity, sexual orientation or other personal characteristics or status, which has no objective and reasonable justification.

**Ethnic joke:** a remark aiming at humour relating to an ethnic, racial, or cultural group, often referring to an ethnic stereotype of the group in question for its punchline. Perceptions of ethnic jokes are ambivalent: while many find them racist and offensive (and even a call for violence), some people find them acceptable, within the field of humour. However, most scholars maintain that ethnic jokes may reinforce ethnic stereotypes and have heavy psychological effects on their targets.

**Gender:** the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for women and men.

**Gender identity:** each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical, or other means) and other expressions of gender, including dress, speech, and mannerism.

**Hate speech:** entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation. The use of such forms of expressions is not just intended to incite the commission of acts of violence, intimidation, hostility, or discrimination but also deemed to have that effect. In this context, expression is understood to cover speech and publications in any form, as well as their dissemination and storage, and can take the form of written or spoken words, or other forms such as pictures, signs, symbols, paintings, music, plays or videos. In addition, forms of expression can also include the public denial, trivialisation, justification, or condemnation of crimes of genocide, crimes against humanity or war crimes which have been found by courts to have occurred and the glorification of persons for having committed such crimes.

**Hatred:** is normally considered as a state of mind characterised as intense and irrational emotions of opprobrium, enmity and detestation towards the target person or group. However, it can be also defined as a deep psychological response to feeling trapped or being unable to understand certain sociological enforcements, as well as a rational response for self-preservation and strategically manage conflict and aggression.

**Homophobia:** prejudice against, hatred towards, or fear of homosexuality or of people who are identified or perceived as being bisexual, gay, lesbian or transgender.

**Incitement:** statements about groups of persons that create an imminent risk of discrimination, hostility or violence against persons belonging to them.

**Islamophobia:** mean prejudice against, hatred towards, or fear of the religion of Islam or Muslims.

**Negative stereotyping:** the application to a member or members of a group of persons of a generalised belief about the characteristics of those belonging to that group that involves viewing all of them in a poor light regardless of the particular characteristics of the member or members specifically concerned.

**Racism:** the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

**Sexual orientation:** each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual.

**Stigmatisation:** the labelling of a group of persons in a negative way.

**Slur:** a racial or ethnic slur is a remark or statement designed to defame, vilify, belittle, and insult members of a racial or ethnic group, usually by those who are not members of that racial or ethnic group. In English, examples of racial and ethnic slurs include expressions such as “nigger,” “coon,” and “kike.”

**Transphobia:** prejudice against, hatred towards, or fear of transsexuality and transsexual or transgender people, based on the expression of their internal gender identity.

**Verbal abuse:** also, verbal attack or verbal assault, is the act of forcefully criticizing, insulting, or denouncing another person. Characterized by underlying anger and hostility, it is a destructive form of communication

intended to harm the self-concept of the other person and produce negative emotions. Verbal abuse is a maladaptive mechanism that anyone can display occasionally, such as during times of high stress or physical discomfort. For some people, it is a pattern of behaviours used intentionally to control or manipulate others or to get revenge.

**Vilification:** the abusive criticism of one or more persons in connection with their membership of a particular group of persons.

**Violence:** the use of physical force or power against another person, or against a group or community, which either results in, or has a high likelihood of resulting in, injury, death, psychological harm, maldevelopment or deprivation. In the field of hate speech and hate speech contrast, however, violence is also intended as psychological, i.e. the intentional act against a person or group of people that results in physical, mental, spiritual, moral, and social harm, including insults, threats, attacks, verbal abuse.

**Vulnerable groups:** those groups who are particularly the object of hate speech, which will vary according to national circumstances but are likely to include asylum seekers and refugees, other immigrants and migrants, Black and Jewish communities, Muslims, Roma/Gypsies, as well as other religious, historical, ethnic, and linguistic minorities and LGBT persons; in particular it shall include children and young people belonging to such groups.

**Xenophobia:** is defined as the fear or hatred of what is perceived to be foreign or strange. It is an expression of (both perceived and unaware) conflict between an in-group and an out group and may manifest in suspicion by the one of the other, a desire to marginalise, silence, or eliminate the presence of the out-group, and fear of losing national, ethnic, or racial identity.



## 2. Questionnaire

### HATE SPEECH AND DISCRIMINATION IN ALBANIA

This survey deals with hate speech and discrimination in Albania.  
The survey aims to assess and increase the awareness of hate speech in society. Its results will be used to support and implement actions for combating hate speech and hate speech effects.  
For this reason, we would be very grateful if you could fill in the questionnaire which will provide us your views on the topic.  
The questionnaire is anonymous.  
Thank you for your cooperation.

#### Background information (B)

B1: Sex/Gender

1. Male
2. Female
3. Prefer to self-describe as \_\_\_\_\_ (non-binary, gender-fluid, agender; please specify)
4. Prefer not to say

B2: Age

\_\_\_\_\_ (the respondent will fill out his/her own age)

B3: Nationality/ Ethnic group

1. Montenegrin
2. Serbian
3. Albanian
4. Bosnian
5. Greek
6. Bulgarian
7. Roma
8. Egyptian
9. Aromanian
10. North Macedonian
11. Other nationality (please specify) \_\_\_\_\_

B4: Level of completed education

1. Without any education
2. Secondary school – First cycle
3. Secondary School – Second cycle
4. University – Undergraduate/Graduate
5. University – Postgraduate (Master, Ph.D.)

B5: Are you employed in:

1. Public sector
2. Private sector
3. Self-employed
4. Unemployed
5. Retired

B6: Religion (one answer only)

1. Orthodox Church
2. Islamic
3. Catholicism

4. Evangelic Church
5. Bektashi
6. Other religions
7. No religious orientation
8. Prefer not to say

**How would you define yourself?**

1. Heterosexual
2. Lesbian
3. Gay
4. Girl/Women bisexual
5. Girl/Women transgender
6. Boy/Men transgender
7. Intersexual
8. Other, specify

**Are you a person with any disability?**

1. Yes
2. No

Hate Speech related information (HS)

HS1: Do you know what hate speech is?

1. Yes
2. No
3. I don't know/ Not sure

Hs1.1 Do you know what offensive/discriminatory speech is?

*For example the use of specific words that offend persons because of sexual orientation, physical characteristics, etc.*

1. Yes
2. No-End of the questionnaire

HS2: If you have replied 'yes' to the previous question, could you explain in a few words what this means to you?

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HS3: In your opinion, to what extent Hate Speech is spread in Albania?

1. To a small extent
2. To some extent
3. To a moderate extent
4. To a great extent
5. To a very great extent
6. Not sure

HS4: In your opinion, what is the most common motivation triggering Hate Speech (you can choose more than one motivation)?

1. Homo-bi-lesbo-transphobia (*Phobia/fear from LGTB community*)
2. Misogyny (*Phobia/fear from women*)
3. Physical appearance
4. Nationality (against other nationalities)
5. Ethnicity (against ethnic minorities such as Roma, Egyptians, etc.)
6. Xenophobia (against foreigners, migrants, refugees)
7. Race
8. Religion
9. Political opinion

10. Social status
11. Poverty/homelessness
12. Hatred against NGOs, volunteers, human rights defenders
13. Age
14. Disability
15. All of them
16. Other (please specify) \_\_\_\_\_

HS5: From your experience, where/in which context is Hate Speech mostly experienced in Albania (you can choose more than one motivation)?

1. Workplaces
2. Schools/universities
3. Sport
4. Public offices
5. Health sector
6. Transports
7. Mainstream Media, such as newspapers, TV, radio, etc.
8. Social media
9. Platforms for streaming, such as Zoom, Meet, Teams, etc.
10. Political discourse
11. Private conversations
12. Other (please specify) \_\_\_\_\_

HS6: In your opinion, what TV programs (if any) are more likely to spread Hate Speech across their audience?

(you can choose more than one)

1. Prime Time News
2. Political Talk Shows
3. General Talk Shows
4. Evening shows
5. Night shows
6. Reality shows
7. TV series
8. Movies
9. Advertisements
10. Other (please specify) \_\_\_\_\_

HS7: In your opinion, what kind of the following forms of expression can be labelled as Hate Speech? (you can choose more than one)

1. Blasphemy
2. Ethnic slurs/insults
3. Defamation (the act of damaging the good reputation of someone)
4. Threats
5. Verbal assaults
6. Incitement to hatred
7. Body-shaming
8. Stereotypes about LGBTI people
9. Stereotypes about ethnic groups
10. Dehumanization of migrants/refugees
11. Jokes about people with disabilities
12. Jokes about women
13. Jokes about ethnic minorities
14. Jokes about a specific religious
15. Other (please specify) \_\_\_\_\_

HS8.1 Have you recently heard or been exposed personally or about other people of Hate Speech?  
(you can choose more than one)

1. Yes, personally
2. Yes, to other people
3. No, I have been not exposed to or have heard about other people

HS8.2: Can you make an example of Hate Speech you have recently heard or been exposed to? (if the question above has a Yes)

HS9: In your opinion, what are the institutions which are more committed to combat Hate Speech in Albania (you can choose more than one motivation)?  
(you can choose more than one)

1. The Central Government
2. The Ministry of Justice
3. The Ministry of Health and Social Protection
4. The Ministry of Education
5. The Ministry of Culture
6. The Parliament (and parliamentary commissions)
7. Regional or local government
8. Political parties
9. Public offices and civil servants
10. School/Universities
11. State owned media companies
12. Audio-visual Media Authority (AMA)
13. Private media companies but social media
14. Social media companies
15. Other private companies
16. Religious institutions
17. Commissioner Against Discrimination
18. People's Advocate (Ombudsman)
19. The police
20. Courts and magistrates
21. Educational institutions
22. NGOs
23. Associations/civic society
24. International organisation (such as the EU, OSCE/ODIHR, Council of Europe, UN, etc.)
25. Other (please specify) \_\_\_\_\_

HS10: Are you aware of any law protecting people from Hate Speech?

1. Yes
2. I assume there are certain laws, but I am not well informed
3. No, I do not know anything about those kind of laws

HS11: If you were to become a target of Hate Speech, where would you go to ask for help?  
(you can choose more than one)

1. Police officer
2. Court
3. Lawyer
4. Commissioner Against Discrimination
5. People's Advocate (Ombudsman)
6. Any public office
7. A doctor/psychologist

8. Media (journalists)
9. NGOs
10. Civic society associations
11. Friends and/or family
12. I do not know
13. I would not go and talk to anybody
14. Other (please specify) \_\_\_\_\_

HS12: If you have answered 13 to the previous question, could you explain why?  
(you can choose more than one)

1. Because I had/would fear of not being taken seriously
2. Because I had/would fear of being victimised again
3. Because no one would really care
4. Because I did not think/would not think that Hate Speech is a very serious matter
5. Because nobody would believe me
6. Because I would be ashamed to tell someone what has happened to me
7. Other (please specify) \_\_\_\_\_

HS13: Have you ever been exposed to online Hate Speech?

1. Never
2. Once
3. A few times
4. Several times
5. Very often
6. I do not know

HS14: In case you have been exposed to online Hate Speech, what have you done?  
(you can choose more than one)

1. Absolutely nothing: I have let it go
2. I did not know what to do, and I have sought advice from someone else
3. I have reported this to the social media provider
4. I have reported this to the police
5. I have reported this to a lawyer/court
6. I have reported this to a civic society association
7. I have reported to the Commissioner Against Discrimination
8. I have reported to People's Advocate (Ombudsman)
9. I have fought back, and tried to engage with the person who has attacked me
10. I have deleted the Hate Speech message, and unfriended/blocked the person who has attacked me
11. Other (please specify) \_\_\_\_\_

HS15: In case you have witnessed Hate Speech towards someone else, have you taken any action?  
(if question HS8.1 have a Yes answer)

1. Yes
2. No
3. I have thought of it, but then I did not know what to do
4. I have never witnessed this situation

HS16: In your opinion, which of the following a person/group targeted by Hate Speech target is likely to experience:

()

(you can choose more than one)

1. Nothing: Hate Speech is not harmful at all, as its just words after all
2. Minor surprise
3. Disbelief: why me?
4. A sense of threat to himself/herself
5. A senso of threat for his/her family, friends, ingroups
6. A sense of shame
7. Physical discomfort
8. Emotional pain
9. A general sense of insecurity
10. Anxiety and depression
11. Loss of confidence in himself/herself
12. Loss of confidence in other people
13. Hatred against whom has attacked him/her
14. Feeling of revenge
15. Post-traumatic stress
16. Other (please specify) \_\_\_\_\_

HS17: In your opinion, to what extent the epidemic of Covid-19 has affected the circulation of Hate Speech?

1. I think that it has generally increased the spread of Hate Speech
2. I think that it has increased the level of Hate Speech towards specific individuals/groups
3. I think it has decreased the spread of Hate Speech
4. It has not had any specific effect
5. I do not know/I could not tell

### 3. CAWI methodology

**CAWI approach** (online interviewing) has been applied to collect the interviews in Albania. IDRApoll platform has been used in this case. IDRApoll ([www.idrapoll.com](http://www.idrapoll.com)) is an online survey panel (in our knowledge the only poll panel in the Albanian market) created by IDRA Research and Consulting ([www.idracompany.com](http://www.idracompany.com)), with a view to expanding market research and surveys through online platforms.

To create a representative community, in geography, age, and social status, it is also created a reward system through points, for each survey conducted by IDRApoll, in which users accumulate points that are spendable in various gifts. Each registered user of IDRApoll has filled the information regarding the demographic such as gender, age, social status etc, thus creating the profile of each user. Based on this information it is designed the sample for surveys, and in case there is a specific information which is not present in the platform concerning the profile, the pre-selection of respondents is carried out. Meaning that only those users who are "fit" for the project can be part of the survey sample.

The survey is distributed via email to each selected user. In case he/she is not replying within the deadline, the IDRApoll platform sends automatically other reminders to the user. For this purpose, an SMS to the selected user is sent to remind of the survey. The access to the survey link which is delivered to the user is encrypted and only the selected user can access it. Once he/she fills in the online interview, IDRApoll team checks for the data quality and validates the responses. Most of these checks are carried out by the platform algorithms. There are many checks that the platform performs and flags in case of something inconsistent. Only when the data are validated, the user gets the reward.

The sampling and distribution of IDRApoll users is designed according to the specifics of the project. The sampling takes into consideration the proportions of the demographics in the country. To make sure the sample is not affected by the "over-sampling" issue (i.e., young and urban users' over-representative in our panel as more internet savvy), we use filtering procedure which ensures to select users in each region or category being proportional to the population distribution in our country. IDRApoll guarantees the necessary universe of citizens to be sampled and then to take part in the survey. To summarise the process, the sampling procedure consists in the following steps:

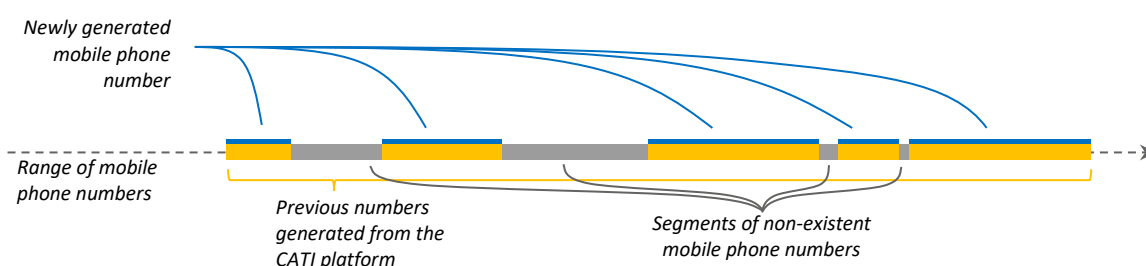
1. Step one – **filter out all users who do not correspond to scope of the study**. This will make sure the inclusion of any user who is not "fit" to be part in the questionnaire. In case of a project which deals with smokers, we filter out all users who do not smoke.
2. Step two – **group the users** by regions, age segments and gender. This step makes sure the proper distribution and coverage for the survey in geographical and demographical terms is maintained. The grouping is done according to the specifics of the project. In case the survey is national representative, the above-mentioned grouping (geographic and demographic) is applied.
3. Step three – **select randomly within the group**. After the groups are created, randomly the number of users needed are selected. The random selection is done automatically by a "build-in" algorithm in the IDRApoll platform.

In case there is a certain group which will turn out to be under-representative for the study, IDRA boost the survey with another launch of the survey in the online platform, targeting only those "quotas" which need to be achieved. Another way to deal with this issue is by applying CATI approach instead (Computer Assisted Telephone Interviewing) to fill in the remaining "quotas" of respondents. Both, boost and CATI approach guarantee the results are representative for all Albania (geographical and demographical wise). Selection of respondent procedure is random within the filtered category or strata. However, the results will be checked and weighted (if needed) so they reflect the representative distribution of citizens in Albania.

## 4. CATI methodology

The CATI (telephone interviewing) methodology is implemented by a system of **random generation of mobile numbers**. This system functions based on a “built-in” algorithm which detects segments of mobile numbers which are in use. This algorithm self improves its efficiency, which implies that based on the information that operators provide during each telephone data collection, the status of mobile numbers that have been contacted, is continuously updated. Moreover, during the data collection of each survey, the database of mobile numbers is enriched with data on geographical locations of the previously contacted numbers. In conclusion, former generated and attempted contacts, help in improving the algorithm to better predict the newly generated numbers, in order that they will not fall under a non-existent mobile phone-number segment. The figure below helps in presenting the logic behind CATI methodology implementation.

Figure. Random generation of mobile numbers algorithm



This advanced tool ensures the contacts are randomly generated by employing the random digit dialing (RDD) method.<sup>226</sup> The numbers that are generated have no limitation on geographical coverage. There is no restriction that prevents a certain “valid/existent” segment of mobile phone numbers. The overall contacts generated reflect the market share of the mobile operators in the country (Vodafone Albania, One and Albtelecom). Within the operator, all numbers have the same probability to be generated.

Once the number is generated, a call is attempted with the newly generated mobile phone number. After introduction and providing the necessary information about the survey such as the aim and the fact that the selection is random, the operator asks for the respondent a verbal consent participate in the survey. The interview will be terminated if the respondent does not give the consent and willingness to be included in the study. Then there will be a quick “screening” questionnaire for the respondent to see whether he fits our sampling requirements:

- The geographical location (Region)
- The settlement type (city or village)
- Age,
- Gender.

Once the quota will be checked and verified, then the **main interview** will be conducted. The screening helps the monitoring of data collection phase as it ensures each interview fits in the planned distribution of interviews. After calculating (designing) the sample the quotas are monitored to fill in the strata for every parameter described in the sample.

Randomly generated numbers (total randomness) for the survey will be used. As the data collection progresses according to the decided geographical quotas for this survey, those numbers that come up to be located in an area already completed will be avoided. Of course, this is only related to those numbers for which information is known and only for them a creation of mobile number segment to avoid is possible. There might be numbers that are still generated for which no information is available and they still come up to be located in “already-completed area”. Then the quick screening will be carried out and once it is understood that this number follow under an area which quotas are completed, the interview will stop. So, total randomness of generating numbers will be applied, but quotas will be monitored in order not to conduct more interviewees than it is necessary in a certain region.

<sup>226</sup> The mobile phone numbers are generated and not obtained by any other party such as mobile operators in the country.



The screening is used also to understand the profile of the respondent considering the demographic parameters such as age, gender, etc. In case the respondent is under 18 years old, he/she will be considered not eligible for the survey and the interview will be terminated. Another attempt with a different contact will replace it. Quotas are monitored to make sure the total sample is distributed as planned which reflects the distribution of the population in the country. The parameters which will be monitored are as follows:

Region (qark),  
Urbanity (city vs village),  
Gender and  
Age.

## Tables of main sample

Table A. 1. Respondents by sex

Gender	Count	Column N %
Male	741	49%
Female	766	51%
Prefer not to say	4	0%
Prefer to self-describe as ___ (non-binary, gender-fluid, agender; please specify)	0	0%
Total	1511	100%

Table A. 2. Respondents by age groups

Age1	Count	Column N %
18-29 yrs	489	32%
30-49 yrs	592	39%
50-64 yrs	430	29%
Total	1511	100%

Table A. 3. Respondents by Level of completed education

Level of completed education	Count	Column N %
Without any education	2	0%
Secondary school – First cycle	280	19%
Secondary School – Second cycle	540	36%
University – Undergraduate/Graduate	299	20%
University – Postgraduate (Master, PhD)	390	26%
Total	1511	100%

Table A. 4. Respondents by area

Urban/Rural	Count	Column N %
Urban	852	56%
Rural	659	44%
Total	1511	100%

Table A. 5. Respondents by employment

Are you employed in:	Count	Column N %
Public sector	265	18%
Private sector	435	29%
Self-employed	194	13%
Unemployed	575	38%
Retired	42	3%
Total	1511	100%

Table A. 6. Respondents by Region

Region	Count	Column N %
North	303	20%
Center	285	19%
South	503	33%
Tirana	420	28%
Total	1511	100%

Table A. 7. Respondents by Religion

Religion	Count	Column N %
Islamic	798	53%
Bektashi	219	14%
Catholicism	151	10%
Orthodox Church	135	9%
Evangelic Church	10	1%
No religious orientation	146	10%
Prefer not to say	48	3%
Other religions	4	0%
Total	1511	100%

Table A. 8. Respondents mean and median for age

	Mean	Median
Age	39	37

Table A. 9. Do you know what hate speech is?

	Count	Column N %
Yes	910	60%
No	448	30%
I don't know/Not sure	153	10%
Total	1511	100%

Table A. 10. Do you know what hate speech is?

		Yes	No	I don't know/Not sure	Count
Gender	Male	61%	32%	7%	741
	Female	60%	27%	13%	766
Age	18-29 yrs	51%	30%	19%	489
	30-49 yrs	63%	30%	7%	592
	50-64 yrs	67%	29%	5%	430
Area	Urban	62%	28%	10%	852
	Rural	59%	32%	10%	659
Total		60%	30%	10%	1511

Table A. 11. Do you know what offensive/discriminatory speech is?

	Count	Column N %
Yes	601	100%
No	0	0
Total	601	100%

Table A. 12. If you have replied 'yes' to the previous question, could you explain in a few words what this means to you?

	Gender		Age Group			Area		Total
	Male	Female	18-29	30-49	50-64	Urban	Rural	
To hate someone	20%	20%	14%	21%	26%	18%	23%	20%
To offend / place epithets	43%	38%	42%	41%	38%	39%	41%	40%
Contempt	7%	7%	7%	8%	4%	7%	6%	7%
To speak bad about someone	4%	5%	4%	4%	4%	4%	4%	4%
Hatred because of appearance	4%	4%	4%	4%	3%	4%	4%	4%
Prejudices	1%	3%	4%	1%	1%	2%	2%	2%
Anger towards someone / envy	4%	5%	6%	3%	4%	4%	5%	4%
Bullying	5%	7%	7%	7%	4%	7%	5%	6%
Discrimination	7%	13%	15%	11%	3%	12%	7%	10%
Hatred, discrimination, denigration on ethnic grounds	3%	4%	5%	5%	1%	4%	3%	4%
Hatred, discrimination, denigration on racial grounds	11%	10%	11%	12%	8%	11%	10%	10%
Xenophobia	1%	1%	1%	1%	0%	1%	0%	1%
Hatred, discrimination, denigration based on religion	11%	10%	11%	10%	10%	12%	8%	10%
Hatred, discrimination, gender-based denigration	1%	3%	2%	3%	1%	2%	1%	2%
Hatred, discrimination, denigration on sexual grounds	2%	2%	3%	2%	1%	2%	2%	2%
Hatred, discrimination, denigration due to economic status	5%	3%	1%	4%	7%	3%	5%	4%
Ignorance	0%	1%	0%	1%	0%	0%	0%	0%
Nationalism	3%	3%	3%	3%	3%	4%	2%	3%
Hatred, discrimination, denigration due to social status	0%	0%	0%	0%	0%	0%	0%	0%
Hatred, discrimination, denigration based on politics	2%	2%	1%	2%	3%	2%	2%	2%
Abuse	1%	1%	1%	1%	0%	1%	0%	1%
Verbal Violence	1%	2%	2%	2%	1%	2%	2%	2%
Other	9%	10%	9%	8%	11%	9%	10%	9%
Total	741	766	489	592	430	852	659	1511

Table A. 13. In your opinion, to what extent Hate Speech is spread in Albania?

		To some extent	To a moderate extent	To a very great extent	Not sure	Total
Gender	Male	30%	18%	49%	3%	741
	Female	13%	18%	67%	2%	766
Age group	18-29 yrs	16%	20%	63%	2%	489
	30-49 yrs	21%	18%	58%	3%	592
	50-64 yrs	28%	16%	52%	4%	430
Area	Urban	20%	18%	59%	3%	852
	Rural	23%	18%	56%	3%	659
Employment	Employed	23%	20%	54%	2%	894
	Unemployed	18%	14%	64%	3%	575
	Retired	21%	29%	48%	2%	42
Total		21%	18%	58%	3%	1511

Table A. 14. What is the most common motivation triggering Hate Speech?

	Gender		Age Group			Area		Total
	Male	Female	18-29	30-49	50-64	Urban	Rural	
Homo-bi-lesbo-transphobia (Phobia/fear from LGTB community)	40%	43%	52%	41%	31%	44%	38%	41%
Misogyny (Phobia/fear from women)	18%	28%	21%	20%	30%	20%	27%	23%
Physical appearance	42%	46%	48%	40%	46%	44%	44%	44%
Nationality (against other nationalities)	24%	26%	27%	24%	23%	25%	24%	25%
Ethnicity (against ethnic minorities such as Roma, Egyptians, etc.)	32%	40%	43%	35%	28%	37%	34%	36%
Xenophobia (against foreigners, migrants, refugees)	13%	13%	13%	12%	14%	12%	14%	13%
Race	34%	39%	43%	35%	31%	37%	35%	36%
Religion	30%	33%	33%	32%	29%	32%	31%	32%
Political opinion	50%	39%	36%	43%	56%	43%	46%	44%
Social status	46%	43%	41%	43%	50%	45%	44%	44%
Poverty/homelessness	57%	51%	45%	52%	66%	52%	56%	54%
Hatred against NGOs, volunteers, human rights defenders	11%	10%	9%	9%	13%	9%	11%	10%
Age	13%	14%	11%	13%	17%	12%	15%	13%
Disability	20%	28%	30%	21%	22%	24%	24%	24%
All of them	8%	19%	18%	14%	9%	13%	14%	14%
Other	3%	2%	2%	3%	3%	3%	2%	3%
Total	741	766	489	592	430	852	659	1511

Table A. 15. Where/in which context is Hate Speech mostly experienced in Albania?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Workplaces	51%	56%	44%	58%	59%	53%	54%	54%
Schools/universities	53%	65%	71%	57%	50%	60%	59%	59%
Sport	21%	16%	12%	21%	23%	18%	20%	19%
Public offices	41%	39%	30%	44%	45%	38%	42%	40%
Health sector	36%	37%	30%	38%	41%	36%	36%	36%
Transports	26%	30%	29%	29%	26%	28%	28%	28%
Mainstream Media, such as newspapers, TV, radio, etc.	41%	39%	30%	41%	50%	37%	44%	40%
Social media	61%	67%	70%	67%	53%	65%	62%	64%
Platforms for streaming, such as Zoom, Meet, Teams, etc.	12%	13%	11%	15%	11%	12%	13%	13%
Political discourse	48%	36%	28%	45%	55%	40%	45%	42%
Private conversations	42%	43%	44%	44%	38%	44%	40%	42%
Other	2%	1%	1%	1%	3%	2%	2%	2%
Total	741	766	489	592	430	852	659	1511

Table A. 16. What TV programs (if any) are more likely to spread Hate Speech across their audience?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Prime Time News	21%	16%	11%	18%	26%	17%	20%	18%
Political Talk Shows	73%	65%	54%	71%	82%	67%	70%	69%
General Talk Shows	39%	41%	41%	38%	42%	41%	39%	40%
Evening shows	23%	21%	24%	22%	20%	22%	22%	22%
Night shows	20%	19%	19%	19%	21%	19%	21%	20%
Reality shows	38%	54%	66%	45%	25%	51%	39%	46%
TV series	16%	17%	18%	17%	15%	17%	16%	17%
Movies	14%	16%	16%	13%	16%	14%	16%	15%
Advertisements	6%	7%	9%	5%	6%	7%	7%	7%
I don't watch tv	1%	1%	1%	1%	2%	1%	1%	1%
Other	1%	0%	0%	1%	1%	0%	1%	1%
None	4%	1%	1%	2%	5%	2%	3%	3%
Total	741	766	489	592	430	852	659	1511

Table A. 17. What kind of the following forms of expression can be labelled as Hate Speech?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Blasphemy	57%	54%	55%	53%	58%	54%	57%	55%
Ethnic slurs/insults	66%	65%	66%	68%	61%	67%	63%	66%
Defamation (the act of damaging the good reputation of someone)	76%	76%	69%	76%	84%	75%	77%	76%
Threats	67%	63%	57%	63%	76%	64%	65%	65%
Verbal assaults	64%	64%	60%	65%	68%	64%	65%	64%
Incitement to hatred	68%	71%	71%	71%	66%	70%	69%	69%
Body-shaming	60%	67%	68%	61%	61%	62%	65%	63%
Stereotypes about LGBTI people	50%	58%	61%	53%	46%	56%	51%	54%
Stereotypes about ethnic groups	41%	47%	48%	44%	41%	46%	43%	44%
Dehumanization of migrants/refugees	39%	44%	43%	41%	40%	41%	42%	41%
Jokes about people with disabilities	53%	59%	63%	53%	54%	54%	59%	56%
Jokes about women	46%	53%	52%	47%	50%	48%	52%	50%
Jokes about ethnic minorities	51%	54%	56%	50%	50%	52%	52%	52%
Jokes about a specific religious	46%	50%	54%	46%	43%	48%	48%	48%
Other	2%	1%	1%	1%	2%	1%	2%	1%
Total	741	766	489	592	430	852	659	1511

Table A. 18. Have you recently heard or been exposed personally or about other people of Hate Speech?

		Yes, personally			No, I have been not exposed to or have heard about other people		Total
		Yes, personally	Yes, to other people	No, I have been not exposed to or have heard about other people	Total		
Gender	Male	13%	28%	63%	741		
	Female	14%	35%	58%	766		
Age Group	18-29 yrs	12%	38%	55%	489		
	30-49 yrs	16%	36%	56%	592		
	50-64 yrs	12%	18%	73%	430		
Area	Urban	14%	34%	59%	852		
	Rural	14%	29%	63%	659		
Total		14%	32%	61%	1511		

Table A. 19. Can you make an example of Hate Speech you have recently heard or been exposed to?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Economic reason	8%	10%	8%	10%	9%	8%	10%	9%
As a consequence of religious belief	8%	4%	6%	6%	7%	7%	5%	6%
Jealousy/defamation	2%	3%	2%	2%	4%	1%	4%	2%
Workspace	10%	10%	6%	13%	11%	12%	7%	10%
Political beliefs	6%	1%	1%	3%	11%	3%	5%	4%
Race	16%	13%	19%	14%	7%	15%	13%	14%
Physical appearance	6%	14%	16%	8%	4%	10%	11%	10%
Use of offensive words	19%	17%	13%	19%	25%	18%	18%	18%
To people with different abilities	3%	5%	7%	3%	1%	5%	4%	4%
Sexual preferences	2%	5%	5%	3%	1%	4%	3%	4%
Due to social status	1%	1%	0%	2%	0%	1%	2%	1%
Origin	6%	4%	6%	5%	2%	6%	2%	5%
Ethnicity	3%	2%	2%	3%	1%	2%	2%	2%
Hatred on social media	1%	1%	1%	0%	1%	0%	2%	1%
Hatred on gender base	0%	1%	0%	1%	0%	1%	0%	1%
Prefer not to say	3%	2%	4%	2%	2%	2%	3%	2%
Other	17%	13%	11%	15%	20%	14%	15%	14%
Total	272	315	217	259	114	347	243	590



Table A. 20. What are the institutions which are more committed to combat Hate Speech in Albania ?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
The Central Government	13%	10%	9%	11%	14%	10%	13%	11%
The Ministry of Justice	14%	16%	16%	13%	17%	14%	17%	15%
The Ministry of Health and Social Protection	15%	20%	20%	14%	18%	16%	19%	17%
The Ministry of Education	31%	32%	31%	30%	33%	30%	33%	31%
The Ministry of Culture	20%	22%	20%	21%	22%	20%	22%	21%
The Parliament (and parliamentary commissions)	7%	7%	8%	7%	5%	6%	8%	7%
Regional or local government	7%	7%	6%	7%	8%	6%	8%	7%
Political parties	4%	5%	5%	5%	4%	5%	4%	5%
Public offices and civil servants	6%	9%	7%	8%	8%	7%	8%	7%
School/Universities	46%	46%	43%	44%	51%	44%	48%	46%
State owned media companies	13%	13%	12%	13%	16%	12%	15%	13%
Audio-visual Media Authority (AMA)	20%	20%	22%	19%	18%	19%	21%	20%
Private media companies but social media	15%	13%	13%	12%	17%	11%	17%	14%
Social media companies	19%	19%	21%	18%	19%	19%	20%	19%
Other private companies	10%	10%	11%	9%	10%	9%	10%	10%
Religious institutions	40%	38%	36%	38%	43%	36%	42%	39%
Commissioner Against Discrimination	18%	26%	28%	21%	17%	21%	23%	22%
People's Advocate (Ombudsman)	18%	23%	21%	21%	20%	18%	23%	20%
The police	23%	21%	18%	20%	28%	19%	25%	22%
Courts and magistrates	12%	12%	9%	12%	14%	10%	15%	12%
Educational institutions	36%	33%	31%	35%	39%	32%	39%	35%
NGOs	0%	0%	0%	0%	0%	0%	0%	0%
Associations/civic society	30%	32%	31%	29%	33%	31%	31%	31%
International organisation (such as the EU, OSCE/ODIHR, Council of Europe, UN, etc.)	30%	34%	38%	31%	26%	32%	32%	32%
Other	11%	7%	6%	10%	11%	10%	8%	9%
Total	741	766	489	592	430	852	659	1511

Table A. 21. Are you aware of any law protecting people from Hate Speech?

		Yes	I assume there are certain laws, but I am not well informed	No, I do not know anything about those kind of laws	Total
Gender	Male	8%	34%	58%	741
	Female	8%	40%	52%	766
Age Group	18-29 yrs	10%	46%	44%	489
	30-49 yrs	10%	37%	53%	592
	50-64 yrs	5%	27%	69%	430
Area	Urban	10%	38%	52%	852
	Rural	7%	35%	58%	659
Total		8%	37%	55%	1511

Table A. 22. If you were to become a target of Hate Speech, where would you go to ask for help?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Police officer	26%	23%	21%	25%	27%	22%	27%	24%
Court	12%	11%	9%	13%	12%	11%	12%	12%
Lawyer	10%	11%	10%	12%	9%	11%	10%	10%
Commissioner Against Discrimination	11%	19%	17%	18%	9%	16%	14%	15%
People's Advocate (Ombudsman)	11%	13%	9%	15%	11%	11%	14%	12%
Any public office	9%	9%	7%	8%	12%	7%	12%	9%
A doctor/psychologist	19%	30%	30%	22%	23%	23%	27%	25%
Media (journalists)	11%	11%	7%	12%	14%	10%	13%	11%
NGOs	0%	0%	0%	0%	0%	0%	0%	0%
Civic society associations	9%	11%	9%	11%	10%	10%	10%	10%
Friends and/or family	51%	60%	56%	53%	58%	53%	59%	55%
I do not know	9%	7%	8%	8%	8%	9%	7%	8%
I would not go and talk to anybody	15%	7%	9%	11%	13%	12%	10%	11%
Other	3%	2%	1%	4%	3%	3%	2%	2%
Total	741	766	489	592	430	852	659	1511

Table A. 23. If you have answered 13 to the previous question, could you explain why?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Because I had/would fear of not being taken seriously	17%	29%	23%	20%	21%	23%	19%	21%
Because I had/would fear of being victimised again	1%	11%	7%	5%	2%	4%	5%	4%
Because no one would really care	55%	58%	53%	54%	61%	54%	59%	56%
Because I did not think/would not think that Hate Speech is a very serious matter	15%	9%	12%	12%	14%	11%	16%	13%
Because nobody would believe me	17%	13%	19%	12%	16%	18%	11%	15%
Because I would be ashamed to tell someone what has happened to me	5%	7%	7%	6%	4%	7%	3%	5%
Other	24%	11%	19%	22%	18%	19%	21%	20%
Total	109	55	43	65	56	101	63	164

Table A. 24. Have you ever been exposed to online Hate Speech?

		Never	Once	A few times	Several times	Very often	I do not know	Total
Gender	Male	83%	5%	5%	3%	1%	3%	741
	Female	77%	5%	6%	4%	2%	5%	766
Age Group	18-29 yrs	65%	8%	9%	7%	2%	9%	489
	30-49 yrs	80%	5%	6%	3%	1%	4%	592
	50-64 yrs	97%	1%	2%	0%	0%	0%	430
Area	Urban	78%	6%	7%	4%	2%	4%	852
	Rural	82%	4%	5%	4%	1%	4%	659
Total		80%	5%	6%	4%	1%	4%	1511

Table A. 25. In case you have been exposed to online Hate Speech, what have you done?

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Absolutely nothing: I have let it go	49%	32%	36%	40%	62%	37%	43%	39%
I did not know what to do, and I have sought advice from someone else	6%	12%	12%	8%	0%	6%	15%	9%
I have reported this to the social media provider	10%	13%	12%	12%	0%	13%	9%	11%
I have reported this to the police	2%	4%	2%	3%	8%	2%	4%	3%
I have reported this to a lawyer/court	0%	0%	0%	1%	0%	1%	0%	0%
I have reported this to a civic society association	1%	0%	1%	0%	0%	1%	0%	0%
I have reported to the Commissioner Against Discrimination	0%	0%	0%	0%	0%	0%	0%	0%
I have reported to People's Advocate (Ombudsman)	1%	0%	1%	0%	0%	0%	1%	0%
I have fought back, and tried to engage with the person who has attacked me	11%	27%	22%	20%	15%	23%	16%	20%
I have deleted the Hate Speech message, and unfriended/blocked the person who has attacked me	31%	32%	28%	38%	15%	33%	29%	31%
Other	5%	3%	4%	4%	8%	4%	4%	4%
Total	100	134	130	92	13	146	89	235

Table A. 26. In case you have witnessed Hate Speech towards someone else, have you taken any action?

		Yes	No	I have thought of it, but then I did not know what to do	I have never witnessed this situation	Total
Gender	Male	53%	29%	14%	5%	273
	Female	53%	16%	23%	8%	318
Age Group	18-29 yrs	49%	16%	31%	5%	218
	30-49 yrs	56%	23%	15%	7%	261
	50-64 yrs	53%	32%	6%	9%	115
Area	Urban	57%	19%	18%	6%	349
	Rural	47%	25%	20%	7%	245
Total		53%	22%	19%	6%	594

Table A. 27. Which of the following a person/group targeted by Hate Speech target is likely to experience:

	Gender		Age Group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
Nothing: Hate Speech is not harmful at all, as its just words after all	3%	2%	2%	2%	3%	3%	2%	2%
Minor surprise	14%	10%	8%	13%	15%	10%	15%	12%
Disbelief: why me?	34%	38%	36%	34%	40%	33%	40%	36%
A sense of threat to himself/herself	39%	44%	44%	42%	38%	40%	44%	42%
A senso of threat for his/her family, friends, ingroups	29%	34%	31%	32%	33%	31%	33%	32%
A sense of shame	52%	53%	56%	50%	54%	51%	55%	53%
Physical discomfort	43%	45%	40%	44%	48%	42%	46%	44%
Emotional pain	64%	68%	68%	66%	64%	64%	68%	66%
A general sense of insecurity	45%	53%	52%	47%	49%	47%	51%	49%
Anxiety and depression	66%	72%	70%	65%	74%	67%	73%	69%
Loss of confidence in himself/herself	57%	66%	69%	57%	58%	61%	62%	61%
Loss of confidence in other people	47%	51%	47%	48%	52%	48%	50%	49%
Hatred against whom has attacked him/her	43%	46%	48%	45%	41%	46%	44%	45%
Feeling of revenge	41%	41%	43%	42%	38%	41%	41%	41%
Post-traumatic stress	44%	47%	49%	43%	45%	43%	48%	45%
Other	2%	2%	1%	2%	2%	2%	2%	2%
Total	741	766	489	592	430	852	659	1511

Table A. 28. In your opinion, to what extent the epidemic of Covid-19 has affected the circulation of Hate Speech?

	Gender		Age group			Area		Total
	Male	Female	18-29 yrs	30-49 yrs	50-64 yrs	Urban	Rural	
I think that it has generally increased the spread of Hate Speech	34%	31%	26%	32%	40%	31%	34%	32%
I think that it has increased the level of Hate Speech towards specific individuals/groups	11%	15%	16%	13%	10%	13%	13%	13%
I think it has decreased the spread of Hate Speech	11%	12%	13%	11%	10%	12%	10%	11%
It has not had any specific effect	32%	26%	27%	30%	29%	29%	28%	29%
I do not know/I could not tell	12%	17%	19%	13%	12%	15%	15%	15%
Total	741	766	489	592	430	852	659	1511

## Tables of boost sample

Table B. 1. Respondents by sex, boost sample

Gender	Count	Column N %
Male	143	48%
Female	142	47%
Prefer to self-describe as	10	3%
Prefer not to say	6	2%
Total	301	100%

Table B. 2. Respondents by age group, boost sample

Age group	Count	Column N %
18-29 yrs	160	53%
30-64 yrs	141	47%
Total	301	100%

Table B. 3. Respondents by religion, boost sample

Religion	Count	Column N %
Islamic	153	51%
No religious orientation	62	21%
Orthodox Church	19	6%
Evangelic Church	16	5%
Catholicism	13	4%
Bektashi	6	2%
Other religions	4	1%
Prefer not to say	28	9%
Total	301	100%

Table B. 4. Respondents by education level, boost sample

Level of completed education	Count	Column N %
Without any education	55	18%
Secondary school – First cycle	52	17%
Secondary School – Second cycle	87	29%
University – Undergraduate/Graduate	67	22%
University – Postgraduate (Master, PhD)	40	13%
Total	301	100%

Table B. 5. Respondents by employment status, boost sample

Employment	Count	Column N %
Public sector	23	8%
Private sector	100	33%
Self-employed	30	10%
Unemployed	137	46%
Retired	11	4%
Total	301	100%

Table B. 6. Distribution of population by vulnerability, boost sample

Vulnerability	Yes	No	Total
Roma/Egyptian	4%	96%	142
LGBTI	2%	98%	159
Total	3%	97%	301

Table B. 7. Do u know what hate speech is, boost sample

	Yes	No	I don't know/Not sure	Total
LGBTI	71%	14%	15%	142
Roma/Egyptian	30%	51%	19%	159
Total	50%	34%	17%	301

Table B. 8. Do you know what offensive/discriminatory speech is? boost sample

		Yes	No	Total
Vulnerability	LGBTI	56%	44%	41
	Roma/Egyptian	72%	28%	111
Age group	18-29 yrs	75%	25%	68
	30-64 yrs	62%	38%	84
Total		68%	32%	152

Table B. 9. Key categories for the question on what hate speech is, boost sample

	Count	Column N %
To offend / place epithets	110	44%
Hatred, discrimination, denigration on racial grounds	46	18%
Discrimination	37	15%
Hatred because of appearance	30	12%
Contempt	20	8%
Hatred, discrimination, denigration on ethnic grounds	19	8%
To hate someone	18	7%
Hatred, discrimination, denigration on sexual grounds	15	6%
Hatred, discrimination, denigration based on religion	12	5%
Verbal Violence	12	5%
Bullying	10	4%
Hatred, discrimination, denigration due to economic status	7	3%
Prejudices	6	2%
Hatred, discrimination, gender-based denigration	6	2%
Abuse	4	2%
Hatred, discrimination, denigration due to social status	3	1%
Anger towards someone / envy	2	1%
Nationalism	2	1%
To speak bad about someone	1	0%
Xenophobia	1	0%
Hatred, discrimination, denigration based on politics	1	0%
Ignorance	0	0%
Other	23	9%
Total	252	100%

Table B. 10. In your opinion, to what extent Hate Speech is spread in Albania? boost sample

		To some extent	To a moderate extent	To a very great extent	Not sure	Total
Vulnerability	LGBTI	2%	5%	90%	4%	124
	Roma/Egyptian	24%	27%	38%	10%	128
Age group	18-29 yrs	9%	11%	73%	7%	143
	30-64 yrs	18%	23%	51%	7%	109
Total		13%	16%	63%	7%	252

Table B. 11. What TV programs (if any) are more likely to spread Hate Speech across their audience? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Prime Time News	13%	9%	12%	10%	11%
Political Talk Shows	56%	31%	43%	43%	43%
General Talk Shows	67%	56%	65%	57%	62%
Evening shows	40%	30%	35%	35%	35%
Night shows	27%	30%	22%	36%	28%
Reality shows	73%	83%	76%	81%	78%
TV series	14%	33%	20%	28%	23%
Movies	14%	32%	21%	26%	23%
Advertisements	17%	9%	16%	9%	13%
Other	0%	2%	1%	1%	1%
I don't watch tv	0%	0%	0%	0%	0%
None	0%	0%	0%	0%	0%
Total	124	128	143	109	252

Table B. 12. What is the most common motivation triggering Hate Speech? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Homo-bi-lesbo-transphobia (Phobia/fear from LGTB community)	68%	5%	48%	20%	36%
Misogyny (Phobia/fear from women)	40%	1%	29%	8%	20%
Physical appearance	44%	34%	38%	39%	38%
Nationality (against other nationalities)	20%	9%	18%	10%	15%
Ethnicity (against ethnic minorities such as Roma, Egyptians, etc.)	41%	59%	47%	54%	50%
Xenophobia (against foreigners, migrants, refugees)	18%	1%	11%	6%	9%
Race	29%	59%	39%	50%	44%
Religion	13%	10%	11%	12%	12%
Political opinion	27%	9%	22%	12%	18%
Social status	32%	31%	31%	32%	32%
Poverty/homelessness	35%	18%	30%	21%	26%
Hatred against NGOs, volunteers, human rights defenders	19%	1%	13%	6%	10%
Age	6%	2%	3%	5%	4%
Disability	32%	5%	20%	16%	18%
All of them	23%	21%	24%	20%	22%
Other	2%	0%	0%	2%	1%
Total	124	128	143	109	252

Table B. 13. What kind of the following forms of expression can be labelled as Hate Speech? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Blasphemy	41%	15%	32%	22%	28%
Ethnic slurs/insults	60%	79%	66%	73%	69%
Defamation (the act of damaging the good reputation of someone)	60%	21%	45%	33%	40%
Threats	66%	32%	56%	39%	49%
Verbal assaults	68%	37%	55%	48%	52%
Incitement to hatred	77%	62%	71%	67%	69%
Body-shaming	64%	18%	47%	32%	40%
Stereotypes about LGBTI people	85%	27%	64%	45%	56%
Stereotypes about ethnic groups	55%	38%	52%	39%	46%
Dehumanization of migrants/refugees	54%	20%	42%	29%	37%
Jokes about people with disabilities	69%	24%	51%	40%	46%
Jokes about women	65%	30%	52%	39%	47%
Jokes about ethnic minorities	52%	63%	53%	63%	58%
Jokes about a specific religious	41%	25%	37%	28%	33%
Other	0%	1%	1%	0%	0%
Total	124	128	143	109	252

Table B. 14. Which of the following a person/group targeted by Hate Speech target is likely to experience: boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Nothing: Hate Speech is not harmful at all, as its just words after all	3%	0%	3%	0%	2%
Minor surprise	5%	9%	5%	9%	7%
Disbelief: why me?	32%	17%	29%	18%	25%
A sense of threat to himself/herself	60%	10%	43%	25%	35%
A senso of threat for his/her family, friends, ingroups	37%	6%	27%	14%	21%
A sense of shame	53%	29%	41%	41%	41%
Physical discomfort	49%	30%	42%	36%	39%
Emotional pain	65%	43%	53%	55%	54%
A general sense of insecurity	57%	11%	42%	23%	34%
Anxiety and depression	76%	35%	62%	46%	55%
Loss of confidence in himself/herself	66%	25%	56%	31%	45%
Loss of confidence in other people	56%	33%	52%	34%	44%
Hatred against whom has attacked him/her	51%	52%	53%	49%	51%
Feeling of revenge	38%	45%	42%	41%	42%
Post-traumatic stress	51%	19%	43%	23%	35%
Other	0%	1%	1%	0%	0%
Total	124	128	143	109	252



Table B. 15. In your opinion, to what extent the epidemic of Covid-19 has affected the circulation of Hate Speech?, boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
I think that it has generally increased the spread of Hate Speech	23%	11%	22%	10%	17%
I think that it has increased the level of Hate Speech towards specific individuals/groups	19%	7%	15%	10%	13%
I think it has decreased the spread of Hate Speech	5%	2%	4%	2%	3%
It has not had any specific effect	22%	10%	15%	17%	16%
I do not know/I could not tell	31%	70%	43%	61%	51%
Total	124	128	143	109	252

Table B. 16. Where/in which context is Hate Speech mostly experienced in Albania? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Workplaces	52%	54%	49%	59%	53%
Schools/universities	76%	38%	70%	39%	56%
Sport	16%	13%	16%	12%	14%
Public offices	35%	69%	47%	59%	52%
Health sector	35%	62%	43%	55%	48%
Transports	39%	68%	52%	55%	54%
Mainstream Media, such as newspapers, TV, radio, etc.	52%	29%	43%	36%	40%
Social media	77%	51%	72%	53%	64%
Platforms for streaming, such as Zoom, Meet, Teams, etc.	10%	12%	12%	10%	11%
Political discourse	27%	16%	21%	23%	22%
Private conversations	56%	35%	51%	38%	45%
Other	1%	0%	1%	0%	0%
Total	124	128	143	109	252

Table B. 17. Have you recently heard or been exposed personally or about other people of Hate Speech? boost sample

		Yes, personally	Yes, to other people	No, I have not	Total
Vulnerability	LGBTI	47%	57%	20%	124
	Roma/Egyptian	45%	36%	35%	128
Age group	18-29 yrs	45%	46%	30%	143
	30-64 yrs	48%	47%	25%	109
Total		46%	46%	28%	252

Table B. 18. In case you have witnessed Hate Speech towards someone else, have you taken any action? boost sample

		Yes	No	I did not know what to do	I have never witnessed this situation	Total
Vulnerability	LGBTI	52%	10%	28%	10%	99
	Roma/Egyptian	75%	4%	19%	2%	83
Age group	18-29 yrs	57%	9%	27%	7%	100
	30-64 yrs	68%	5%	21%	6%	82
Total		62%	7%	24%	7%	182

Table B. 19. Have you ever been exposed to online Hate Speech? boost sample

		Never	A few time	Very often	I do not know	Total
Vulnerability	LGBTI	17%	30%	47%	6%	124
	Roma/Egyptian	24%	27%	17%	32%	128
Age group	18-29 yrs	18%	27%	41%	14%	143
	30-64 yrs	24%	29%	20%	27%	109
Total		21%	28%	32%	19%	252

Table B. 20. In case you have been exposed to online Hate Speech, what have you done? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Absolutely nothing: I have let it go	31%	16%	29%	19%	25%
I did not know what to do, and I have sought advice from someone else	11%	2%	8%	6%	7%
I have reported this to the social media provider	12%	4%	6%	13%	9%
I have reported this to the police	3%	0%	2%	2%	2%
I have reported this to a lawyer/court	0%	0%	0%	0%	0%
I have reported this to a civic society association	5%	4%	4%	6%	5%
I have reported to the Commissioner Against Discrimination	1%	5%	1%	6%	3%
I have reported to People’s Advocate (Ombudsman)	0%	0%	0%	0%	0%
I have fought back, and tried to engage with the person who has attacked me	21%	73%	33%	54%	40%
I have deleted the Hate Speech message, and unfriended/blocked the person who has attacked me	43%	9%	35%	22%	30%
Other	1%	2%	0%	4%	1%
Total	95	56	97	54	151

Table B. 21. Are you aware of any law protecting people from Hate Speech? boost sample

		Yes	I am not well informed	No	Total
Vulnerability	LGBTI	23%	55%	22%	124
	Roma/Egyptian	14%	37%	49%	128
Age group	18-29 yrs	19%	49%	32%	143
	30-64 yrs	18%	41%	40%	109
Total		19%	46%	36%	252

Table B. 22. If you were to become a target of Hate Speech, where would you go to ask for help? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Police officer	15%	2%	9%	7%	8%
Court	6%	5%	5%	6%	6%
Lawyer	6%	8%	7%	7%	7%
Commissioner Against Discrimination	39%	23%	31%	29%	31%
People's Advocate (Ombudsman)	20%	18%	17%	22%	19%
Any public office	4%	2%	1%	6%	3%
A doctor/psychologist	24%	1%	16%	7%	12%
Media (journalists)	13%	20%	15%	18%	16%
NGOs	0%	0%	0%	0%	0%
Civic society associations	32%	42%	31%	45%	37%
Friends and/or family	32%	34%	34%	32%	33%
I do not know	10%	19%	13%	16%	14%
I would not go and talk to anybody	14%	6%	11%	8%	10%
Other	2%	0%	1%	1%	1%
Total	124	128	143	109	252

Table B. 23. If you have answered 13 to the previous question, could you explain why? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
Because I had/would fear of not being taken seriously	47%	13%	56%	0%	36%
Because I had/would fear of being victimised again	29%	0%	31%	0%	20%
Because no one would really care	76%	50%	81%	44%	68%
Because I did not think/would not think that Hate Speech is a very serious matter	6%	0%	6%	0%	4%
Because nobody would believe me	35%	25%	38%	22%	32%
Because I would be ashamed to tell someone what has happened to me	59%	63%	63%	56%	60%
Other	6%	0%	0%	11%	4%
Total	17	8	16	9	25

Table B. 24. What are the institutions which are more committed to combating Hate Speech in Albania? boost sample

	Vulnerability		Age group		Total
	LGBTI	Roma/Egyptian	18-29 yrs	30-64 yrs	
The Central Government	10%	2%	7%	5%	6%
The Ministry of Justice	18%	5%	13%	8%	11%
The Ministry of Health and Social Protection	19%	2%	15%	6%	11%
The Ministry of Education	19%	9%	18%	8%	14%
The Ministry of Culture	14%	9%	15%	7%	12%
The Parliament (and parliamentary commissions)	6%	3%	6%	2%	4%
Regional or local government	4%	5%	3%	6%	4%
Political parties	7%	2%	6%	4%	5%
Public offices and civil servants	6%	5%	6%	6%	6%
School/Universities	23%	7%	20%	8%	15%
State owned media companies	8%	3%	8%	3%	6%
Audio-visual Media Authority (AMA)	14%	7%	12%	8%	10%
Private media companies but social media	10%	6%	9%	6%	8%
Social media companies	25%	9%	22%	10%	17%
Other private companies	14%	4%	13%	4%	9%
Religious institutions	13%	2%	10%	5%	8%
Commissioner Against Discrimination	40%	30%	34%	36%	35%
People's Advocate (Ombudsman)	34%	38%	34%	39%	36%
The police	16%	2%	10%	6%	9%
Courts and magistrates	6%	1%	4%	2%	3%
Educational institutions	14%	4%	11%	6%	9%
NGOs	0%	0%	0%	0%	0%
Associations/civic society	41%	55%	45%	52%	48%
International organisations (such as the EU, OSCE/ODIHR, Council of Europe, UN, etc.)	44%	44%	46%	40%	44%
Other	2%	5%	2%	6%	4%
Don't know	2%	4%	1%	5%	3%
None	1%	5%	1%	6%	3%
Total	124	128	143	109	252

## MORE INFORMATION

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This study was prepared by consultants, within the joint European Union and Council of Europe action "Promotion of diversity and equality in Albania". The views expressed herein can in no way be taken to reflect the official opinion of either party.

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