

COMPARATIVE STUDY: “STRENGTHENING EQUALITY BODIES IN THE WESTERN BALKAN REGION IN THE FIELD OF HATE SPEECH”



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Abbreviations

BiH – Bosnia and Herzegovina
CEJ – Code of Ethics for Journalists (Albania, North Macedonia)
CJEU – Court of Justice of the European Union
CoE – Council of Europe
CPD – Commissioner for Protection from Discrimination (Albania)
CPD – Commission for Protection of Discrimination (North Macedonia)
CPE – Commissioner for the Protection of Equality (Serbia)
CSO – civil society organisation
EB – equality body
ECHR – European Convention on Human Rights
ECtHR – European Court of Human Rights
ECRI – European Commission against Racism and Intolerance
EQINET – European Network of Equality Bodies
EU – European Union
GIZ – Deutsche Gesellschaft für International Zusammenarbeit
GRP – General Policy Recommendation
HCNM – Helsinki Committee of Human Rights (North Macedonia)
HRD – human rights defender
IHRO – Institution of Human Rights Ombudsman of Bosnia and Herzegovina
JCE – Journalists’ Code of Ethics (Montenegro)
KPC – Kosovo Press Council
LAAVMS – Law on Audio and Audio-Visual Media Services (North Macedonia)
LEM – Law on Electronic Media (Montenegro, Serbia)
LGBTI – Lesbian, Gay, Bisexual, Transgender, Intersex.
LGBTIQ – Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
LIMC – Law on the Independent Media Commission (Kosovo)
LoM – Law on Media (North Macedonia)
LPD – Law on Prohibition of Discrimination (Montenegro)
LPIM – Law on Public Information and Media (Serbia)
MoC – Memorandum of Cooperation
MoI – Ministry of Interior
MoU – Memorandum of Understanding
MP – Member of Parliament
NGO – Non-governmental Organisation
NPO – Non-profit Organisation
OIK – Ombudsperson Institution (Kosovo)
OPAV – Protection and Assistance of Victims (Kosovo)
PA – People’s Advocate (Albania)
PHRF – Protector of Human Rights and Freedoms (Montenegro)
PPO – Public Prosecutor’s/Prosecution Office
SCCDF – Sector for Computer Criminal and Digital Forensics (Kosovo)
SJCE – Serbian Journalists’ Code of Ethics (Serbia)

Executive Summary

Hate Speech, specifically on grounds of ethnic affiliation as well as towards members of LGBTI populations (but not only) is still wide spread in the countries of the Western Balkans. Although legislation to combat acts of hate speech is in place and in line with the European Union, Council of Europe and international standards, it is still not easy to tackle hate speech effectively. This is due to various factors, starting with the fact that there is no standard legal definition of hate speech. Acts that could be subsumed under hate speech as defined by ECRI GPR No 15 can be qualified as criminal acts, if they fit into the category of incitement to hatred and/or as acts to be tackled by administrative or civil law in case they qualify as harassment as included in equality legislation. Only in **Serbia, Montenegro** and **Albania**, legal definitions of hate speech are embedded in the relevant laws protecting against discrimination.

There are differences in protection depending on the discrimination ground someone is affected by, as criminal law is not as comprehensive as equality law in this regard. In Bosnia and Herzegovina, Kosovo* and Montenegro, an incident can/should be qualified as incitement to hatred only if committed in the public sphere. Indeed, when it comes to a check of proportionality in relation to freedom of expression, the threshold is generally higher. If an act can be considered harassment or hate speech as defined by the relevant provision in equality law, this opens the way to assistance provided by equality bodies, allows for a shift of the burden of proof and makes a wider range of sanctions and remedies available.

Equality bodies in the Western Balkans are entitled to receive and handle individual and collective complainants, provide legal advice, represent victims at court, intervene in court proceedings, act as *amicus curiae*, issue enforceable decisions and recommendations (**Albania, Serbia – North Macedonia**¹), issue sanctions (**Albania, Serbia – North Macedonia**), provide expert opinions (**Albania**), act *ex officio* (**Albania, Bosnia and Herzegovina, Montenegro, Kosovo – North Macedonia**), initiate misdemeanour procedures in cases of non-compliance (**Bosnia and Herzegovina**² – **North Macedonia**) and make decisions public (**Albania, Serbia**). The **Serbian** equality body is also very active in litigating strategically, and it frequently applies its competence of issuing warnings and public announcements in case its recommendations are not complied with. The instruments of a public apology and of executable fines are considered as effective tools by the **Albanian** CPD.

Notwithstanding the institutional set-up provided and more and more readiness also from the side of the police, prosecution and courts to recognise and handle cases of hate speech, high levels of under-reporting are still prevalent due to a fear of victimisation, especially, when it comes to national minorities and LGBTI persons (**Albania** and **Bosnia and Herzegovina**). A high threshold for qualifying an incident as incitement to hatred as well as unclarity about the boundaries vs. harassment are further obstacles for reporting cases. The latter leads to persisting unclarity, of who is in charge, which in those cases, where awareness and responsiveness at the side of police/public prosecution/courts is low can block access to justice entirely – and calls on the readiness of equality bodies to act as a first entry point into the system of accessing justice. On the side of some equality bodies unclarity especially regarding their mandate limit their level of proactivity, limits of legal protection are increased by a lack of enforcement of and compliance with equality bodies' recommendations.

All countries have established a mixture of independent regulatory bodies and self-regulatory bodies responsible for the media, which are potential strategic partners for equality bodies as they fulfil two

* All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

1. At the time of writing this report, there is no Law on the Prevention of and Protection Against Discrimination in place, nor is the Commission for the Protection against discrimination in the Republic of North Macedonia – we have presented the situation as it was before, since it is very likely that a new law will provide for a similar level of protection as well as institutional set up.
2. In BiH this is applicable only in relation to discrimination cases.

important functions: support individuals directly affected by hate speech in gaining access to justice and raise awareness among the general public that hate speech is prohibited.

All the independent media regulators have a legal basis for handling complaints related to the use of hate speech. They have different measures and kinds of sanctions at their disposal regarding this matter. Almost all of them can issue warnings or revoke or at least temporarily suspend licenses or ban publications. Three regulators (**Bosnia and Herzegovina, Kosovo, Montenegro**) can become active on an *ex officio* basis when it comes to complaints and some can issue fines (**Albania, Bosnia and Herzegovina, Kosovo**). In **Bosnia and Herzegovina, Kosovo, North Macedonia** and **Serbia** the regulators can publish their decisions either on their web-sites or in their annual report. However, the country reports show that the regulators handle a negligibly low number of complaints on hate speech. No cases of hate speech are reported for **Albania** and **Kosovo**. Media regulators are not perceived as easily accessible and effective entry points for redressing cases of hate speech in the media.

Even though the self-regulatory mechanisms have not processed such a vast number of complaints on hate speech, they have still dealt with more cases compared to the media ones. In **Bosnia and Herzegovina**, the Press Council receives quite a high number of complaints on hate speech, which might be an indicator that it is more easily accessible and visible than other institutions that could process reports on this matter. The self-regulatory bodies in **Kosovo, North Macedonia** and **Serbia** have also handled some complaints on hate speech. A strategic and sustainable cooperation between self-regulatory media mechanisms and equality bodies has so far not been established. The No Hate Alliance of the CPD, the PA, the Audio-Visual Media Authority and the Media Council in **Albania** could be an adequate forum for developing a more strategic and sustainable cooperation. Beyond cooperation at the national level, regional conferences among self-regulatory mechanisms could be an opportunity for exchanging experiences and developing ideas on how to become more accessible and effective as a complaint mechanism.

Equality bodies should be the first entry points to the system of redress mechanisms on cases of (online) hate speech, so that individuals directly affected do not need to know where to enter the system, but can be sure that they are directed to the most competent organisation for handling their specific case.

People affected by (online) hate speech need easy access to redress mechanisms. This means that organisations dealing with (online) hate speech have established a strategic cooperation on taking in and forwarding cases. Currently, equality bodies compete with CSOs, self-regulatory media mechanisms and the police as first entry points, in spite of the fact that they are not perceived as such. In **Albania, Bosnia and Herzegovina** and **Serbia** CSOs are especially active in referring hate speech cases to the equality body, as they trust in the effectiveness of the case work of equality bodies. When the latter take the lead in establishing a referral system for cases of (online) hate speech, it is important to also further strengthen the cooperation within different departments of the Ombud institutions, which are also equality bodies, and between equality bodies and Ombud institutions with a focus on the local level.

Equality bodies have potentials for developing strategies for raising awareness and for promotional and public relations activities on (online) hate speech. Important prerequisites for strengthening these potentials of these authorities are a clear mandate on hate speech, adequate resources, and ideally cooperating with relevant stakeholders when developing such strategies. As key players in combating and preventing hate speech equality bodies should strongly advocate for freedom of expression and take on a more pro-active role in their awareness raising and public relations work by promoting success stories, positive messages and counter narratives. It would also be essential to continuously build internal capacities on (online) hate speech and on how to train other relevant stakeholders on combating and preventing (online) hate speech.

Few equality bodies have done surveys (**Serbia**) and special reports (**Bosnia and Herzegovina**) also covering aspects of (online) hate speech, so far, no studies, surveys or special reports of equality bodies have exclusively focused on (online) hate speech. The prerequisites for equality bodies to make effective use of the results of studies, special reports and surveys are a clear mandate on hate speech, adequate resources as well as research and analytical capacities and an overall strategy for such research activities. Equality bodies would need to strengthen their cooperation with relevant stakeholders to commission or jointly conduct research on (online) hate speech (esp. CSOs) and to widely disseminate these research results (CSOs and media). The results of research on why people potentially affected by (online) hate speech are reluctant to report their experiences and on a systematic approach towards data collection

could guide the future work of equality bodies and make them more effective in combating and preventing (online) hate speech.

So far few of the equality bodies have been involved in projects exclusively focusing on hate speech. Often projects are often foreign donor driven like in **Albania** and **Serbia**, whereas **Montenegro** has shown considerable efforts in guaranteeing national funding. The prerequisites for developing projects that systematically support the work of equality bodies in the area of (online) hate speech are needs assessments, the development of a strategic plan and adequate (administrative) capacities for developing and implementing projects.

Equality bodies have experience in cooperating at the bilateral, regional and international level. They are all members of EQUINET, which has initiated several activities on (online) hate speech, they are all (except for OI in **Kosovo**) party to an MoU among Equality Bodies of South-East Europe and some of them have participated in joint training activities, mutual study visits (**Montenegro**) and exchange programs (**North Macedonia**) for equality bodies in the region. A more strategic approach for developing and establishing cooperation activities at the local, national, bilateral, regional and international level could give equality bodies the opportunity to become more visible, to increase their outreach and to gain access to peer-to-peer learning.

Based on the information provided in the country reports and the comparative analysis of the data, recommendations targeting the CoE, the EU and equality bodies in the Western Balkans have been drafted. They aim at harmonising laws and regulations with international/European standards on combating and preventing hate speech, increasing legal certainty as well as facilitating access to justice and direct support for those potentially affected by (online) hate speech. Furthermore, the recommendations focus on promoting systematic data collection on incidents of (online) hate speech as well as capacity building tailored to the needs of a broad range of stakeholders (equality bodies, Ombud institutions, CSOs, media regulators and self-regulatory mechanisms, the police, and the judiciary) and by way of peer-to-peer learning among equality bodies in the region of the Western Balkans.

Not only equality bodies should play a key role in strengthening the culture of (human) rights by raising awareness, making information on (online) hate speech easily accessible, promoting freedom of expression together with respect for human dignity and diversity but also should they take on a pro-active role through promoting successful stories aimed at empowering those affected by hate speech and motivating the general public to become actors in the fight against (online) hate speech.

Introduction

The Project “Promotion of diversity and equality in the Western Balkans” is part of the “Horizontal Facility for the Western Balkans and Turkey II”, a joint program of the Council of Europe and the European Union that aims at supporting South East Europe and Turkey to comply with Council of Europe standards and European Union *acquis* in the framework of the enlargement process. The project is focused on supporting beneficiaries in the region on countering hate speech and hate crime, promoting and protecting rights of LGBTI persons as well as strengthening anti-discrimination institutions/mechanisms and coordination in line with standards of the Council of Europe, notably the recommendations of the European Commission against Racism and Intolerance (ECRI) and the relevant case law of the European Court of Human Rights (ECtHR).

The aim of this research is to analyse the role of equality bodies in **Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia** and **Serbia** in responding to hate speech and to develop recommendations on how to strengthen their capacities taking into account their respective mandates. The study looks into the legal framework for combating hate speech and identifies areas of competencies of the equality bodies in responding to it. It identifies how equality bodies address the needs of the victims of hate speech, report cases, collect data and monitor hate speech and what systemic obstacles equality bodies have to face to combat hate speech in an effective way. Furthermore, the study maps out potentials of cooperation and/or competition of equality bodies with other relevant stakeholders (e.g., Ombud institutions, law enforcement authorities, intermediaries³, etc.). Last but not least, the study identifies good practices put in place by equality bodies when addressing the use of hate speech.

When we indicate (a) country report(s) in this study we refer to the report(s) drafted by independent experts (see References) on each of the six countries between April and May in 2020. These country reports applied a mixed methodology. The country experts did desk research taking into account ECRI reports, EU progress reports, relevant laws and case law, annual reports of equality bodies/Ombud institutions, relevant reports/publications of CSOs, as well as surveys and research on hate speech. They altogether conducted 53 expert interviews with staff of equality bodies (6)/Ombud institutions (7), representatives of CSOs (12) handling cases of hate speech and/or doing awareness raising, representatives of the police (4), the prosecution (3), the judiciary (2), media regulatory mechanisms (9) and ministries (5), people working in victim support (3) as well as representatives of ECRI and the OSCE (2). The country experts drafted their reports based on a methodology containing guiding questions for all sections of their reports.

3. Any public body, organization or person who functions as intermediary between victims of hate speech and securing justice by playing roles in providing information on rights and how to make a claim, providing legal advice and assistance and other supports to victims of hate speech, and working towards building a positive attitude and environment for promoting equality and the protection of the right to non-discrimination. Potential intermediaries are: lawyers, representatives of CSOs, victim support organisations, trade unions and other professionals (e.g., mediators, private company counsellors, etc.).

International Legal Framework

There is no standard definition of hate speech in international human rights law, and definitions in national legislation are scarce and lack clarity. Courts have to deal with cases of hate speech more often as a limitation to the freedom of expression, a right guaranteed by all constitutions and clearly defined by the **European Convention on Human Rights (Article 10 ECHR)** than in the context of discrimination.

There is rich case law of the European Court of Human Rights (ECtHR) on where to draw the lines between freedom of expression and hate speech, on what has to be accepted as a *demand of that pluralism, tolerance and broad mindedness without which there is no 'democratic society'* even if it includes information or ideas that *offend, shock or disturb*⁴ and what would have to be considered as an abuse of other rights (Article 17 ECHR) or require restrictions of protection (Article 10 para 2 ECHR).

ECRI General Policy Recommendation (GPR) No 15 on combating hate speech served as a guidance for this report. It understands hate speech as *the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or a group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the grounds of {perceived} 'race', colour, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.*⁵

National legislation is dealing with hate speech mostly as a subject of criminal law. It usually refers to incitement to hatred towards specific individuals or groups of society, and criminalizes the use of hate speech, when it takes place in public. Most national legislations also foresee a motivation based on racism, xenophobia or related intolerance as an aggravating circumstance or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties. The inclusion of the respective provisions was mostly stimulated by obligations imposed by **the International Covenant on Civic and Political Rights** (Article 20/2)⁶ and the **International Convention on the Elimination of All Forms of Racial Discrimination** (Article 4)⁷ and consequently they usually only refer to persons or groups of persons protected in this field. This limitation is also valid for the CoE **Recommendation No R (97) 20 of the Committee of Ministers to the member States on "hate speech", adopted on 30 October 1997** defining hate speech as *covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin* and the European Union **Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (Framework Decision)**. The latter requires Member States to criminalize *public incitement to violence or hatred 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.*

GPR No 15 is clear in referring also to other *grounds that go beyond 'race', colour, language, religion or belief, nationality, national or ethnic origin and descent* and also to incidents of *harassment, insult, negative stereotyping, stigmatisation or threat*, which need not necessarily be countered by means of criminal law.

4. ECtHR/ 5493/72 (07.12.1976), *Handyside v. the United Kingdom*, para 49.

5. ECRI General Policy Recommendation No 15, p. 3.

6. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

7. State Parties . . . (a) Shall declare 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) Shall declare illegal and prohibit 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) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

National reports drafted by experts at the national level⁸ provided the contextual information on how exactly national legislation is tackling issues of hate speech, which groups are protected and also where it sets limits to the protection against hate speech.

Equality bodies usually are not explicitly in charge of hate speech as a criminal offence. Most equality bodies have been installed in order to implement the requirements of EU Directives 2006/54/EC (Gender Recast Directive), 2004/113/EC (Gender Goods and Services Directive) and 43/2000/EC (Race Equality Directive). These Directives oblige Member States of the European Union and in practice also those seeking accession to the EU to *set up or designate an organisation or organisations to promote equal treatment and assist victims of discrimination on grounds of gender and race* (national equality bodies). The *EU acquis*, when it comes to Equal Treatment and Non-Discrimination does not include a specific reference to hate speech and has a clear focus on the private law sphere. Its point of reference is the prohibition of discrimination in the fields of the labour market and the provision of goods and services. Discrimination according to the Directives and the subsequent case law of the Court of Justice of the European Union (CJEU) can occur in the forms of direct and indirect discrimination, harassment, incitement to discrimination, discrimination on grounds of association and victimization.

Harassment as defined by the Directives describes *an unwanted conduct related to any of the grounds protected by equal treatment legislation⁹ with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment* and in many cases can constitute an incident that could also be characterized as hate speech.

The prohibition of discrimination is considered as a general principle of EU law, enshrined in Article 21 of the Charter of Fundamental Rights of the EU with guidance provided by a set of five EU Directives. In its case law the CJEU thus mostly acted as an interpreter of the respective Directives. Only recently, due to a growing tendency to refer to the Charter of Fundamental Rights as a point of reference, the CJEU has acted as a human rights court balancing the trade-off between the right not to be discriminated against and the freedom of expression.¹⁰

Given these differences in legislation and in institutional responsibilities, it should be clarified where to draw the line between a form of hate speech that raises a civil or administrative liability (such as harassment) and a form of hate speech that actually qualify as a crime for its seriousness and thus justify the imposition of a criminal sanction. In this regard, it should also better-defined where to locate the competencies of the equality bodies and those of (criminal) courts. There are some aspects that might be relevant for a differentiation. *Mihajlova et al.*¹¹ refer to the question, if there was a discriminatory motive defining '*hate speech as a speech spreading hatred*' that '*can include advocating or inciting discrimination, and the hate speech itself can also be/mean/be treated as discrimination. For instance, in the case of Aksu v. Turkey, the European Court of Human Rights, observing whether there were elements as for the case to be considered from the aspect of prohibition of discrimination, was determining whether the concerned publications including expressions and notes expressing anti-Roma feelings had "discriminatory intent or effects"*.

On the other hand, hate speech, when addressed by criminal law might even require a higher degree of intent/fault and a higher threshold of evidence provided that an incident of harassment that is addressed by civil law and for which the procedural requirements of the relevant EU Directives¹² have to be followed.

8. A. Gugu Bushati (2020) *Country Report – Albania*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Tirana, E. Hodžić (2020) *Country Report – Bosnia and Herzegovina*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Sarajevo, N. Avdiu (2020) *Country Report – Kosovo*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Pristina, A. Spaić (2020) *Country Report – Montenegro*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Podgorica, M. Mirceska (2020) *Country Report – North Macedonia*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Skopje, G. Miletić (2020) *Country Report – Serbia*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Belgrade.
9. The Directives refer to gender/sex, race or ethnic affiliation, age, religion or belief, sexual orientation and disability.
10. See for example NH v. Associazione Avvocatura per i diritti LGBTI — Rete Lenford, C-507/18, Judgement 23.04. 2020.
11. E. Mihajlova/J. Bacovska/T. Shekerdjiev (2013): Freedom of Expression and Hate Speech. OSCE – Polyesterday: Skopje. OSCE (2018), <https://www.osce.org/files/f/documents/8/e/413027.pdf> (30.06.2020), pp. 34 and 35.
12. According to Racial Equality Directive (Article 8), Employment Equality Directive (Article 10), Goods and Services Directive (Article 9) and Recast Gender Directive (Article 19) Plaintiffs have to establish ... facts from which it may be presumed that there has been direct or indirect discrimination. If so, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

Another question that could be relevant for a differentiation would be if hate speech needs the public sphere in order to be fulfilled, like it is regulated in most criminal codes for incitement to hatred, whilst harassment does not.

GPR No 15 in its recommendation No 10 is elaborating on the requirements for an act of hate speech to be qualified as a criminal act stressing that criminal sanctions should be imposed only exceptionally and need to reflect the principle of proportionality. In order to reach the threshold for criminal responsibility an act has to be of serious character, meaning that it intends *or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination – and the use concerned occurs in a public context*. This clarification however does not entirely solve the question, how a differentiation between harassment, which is mentioned as an example for hate speech in GPR No 15, could be undertaken in practice. So, the decision, which legal provisions and which institutional framework would be the one applicable in a concrete case will have to be taken by the bodies in charge, be it police, public prosecution, equality bodies and/or courts. Guidance will be provided by future case law and might require strategic litigation in this regard.

The Role of Equality Bodies in countering hate speech

ECRI in its **General Policy Recommendation No 2: Equality Bodies to Combat Racism and Intolerance at National Level** recommends the mandates of Equality bodies to cover:

- a. *The promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all the different groups in society (equality mandate)*. It further elaborates in its explanatory memorandum that the text establishing the equality body or the anti-discrimination legislation should explicitly set out that hate speech constitutes a form of discrimination and that equality bodies are mandated to counter hate speech at least through the means of civil and administrative law. In cases where the police and prosecution services are the authorities primarily competent for dealing with hate crime, equality bodies should be competent to provide personal support and legal advice to people exposed to hate crime and refer them to the competent authorities.¹³

The already mentioned ECRI **General Policy Recommendation No 15 on combating hate speech** recommends Council of Europe State Members to:

- a. Support the monitoring of hate speech by civil society, **equality bodies** and national human rights institutions and promote cooperation in undertaking this task between them and public authorities (paragraph 3.e);
- b. Support non-governmental organizations, **equality bodies** and national human rights institutions working to combat hate speech (in the context of raising awareness and counter speech) (paragraph 4, f);
- c. Provide standing for those targeted by hate speech, **equality bodies**, national human rights institutions and interested non-governmental organizations to bring proceedings that seek to delete hate speech, to require an acknowledgement that it was published or to enjoin its dissemination and to compel the disclosure of the identity of those using it (Paragraph 8, e).

The **European Commission Recommendation on Standards for Equality Bodies** of 2018 underlines the link between hate speech and discrimination, when it recommends that Member States should consider extending the equality bodies' mandate so that it covers, for all prohibited grounds of discrimination, the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, including hate speech related to these grounds in these areas.¹⁴

13. ECRI General Policy Recommendation No 2, p. 4.

14. European Commission Recommendation on Standards for Equality Bodies, p. 6.

Legal Framework on Combating and Preventing Hate Speech – Western Balkans

Hate Speech is addressed by the legislative framework of all countries of the Western Balkans in similar ways. What is lacking in most legislations is a clear definition of what hate speech would/could cover – a fact that hampers the effectiveness of the legal protection. Equal treatment legislations in **Serbia** and **Montenegro** have included definitions of hate speech as a form of discrimination. Still, those definitions are only valid for the scope of equal treatment legislation and not for the criminal law sphere – a harmonization in this regard would be desirable. They also show different approaches and different levels of alienation with GPR No 15.

In **Serbia**, the Law on the prohibition of discrimination includes a definition of hate speech. According to Article 11 it is forbidden to *express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.*¹⁵

In **Montenegro**, the Law on the Prohibition of Discrimination, in Article 9a refers to hate speech as *any form of expression of ideas, statements, information and opinions that spreads, stirs up, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in form of nationalism, discrimination and hostility against minorities.*¹⁶

In **Albania**, a recent amendment to Law on the Prohibition of Discrimination,¹⁷ includes hate speech as a form of discrimination in Article 3/10 as follows: *Hate speech is any form of expression, promotion, incitement to denigration, hatred, slander, as well as any harassment, insult, negative stereotype, stigmatization or threat to a person or group of persons, as well as any justification of all forms of expression, based on a non-exhaustive list of personal characteristics under Article 1 of this law.*¹⁸

Only the recently adopted approach of the Albanian definition ticks all the boxes required by GPR No 15, whilst the Serbian and the Montenegrin provisions lack a coverage of incidents of *insult, negative stereotyping, stigmatisation or threat*. In **Serbia**, there is also a need of commitment in public, while the Montenegrin definition even if generally referring to personal characteristics as a point of reference, shows a focus on characteristics connected with race, ethnic affiliation and minority status, which might impede its application to other grounds in practice.

Constitutional and Legal Provisions Relevant for (Online) Hate Speech

The constitutions of all countries of the Western Balkans include a non-discrimination clause that provides for equality before the law and prohibition of discrimination. Like other rights and freedoms guaranteed by the constitutions the right not to be discriminated against can be limited by public interest or by other rights provided, such as freedom of expression, only, when legal, legitimate, necessary and proportionate. All countries are Member States of the Council of Europe and therefore bound by the European Court of Human Rights and its case law, when it comes to violations of the principle of non-discrimination guaranteed by Article 14 ECHR and Protocol 12 (if the country has ratified it).

15. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 11.

16. Montenegro/Official Gazette, no 64/11, *Law on Prohibition of Discrimination*.

17. Law no. 124/2020 for some amendments and addendum to the Law no. 10221, dated 4.2.2010 "On the protection from discrimination" was approved in plenary session of the assembly on 15.10.2020. It was published in Official Journal no.191 dated 3.11.2020, will enter into force on the 18 of November 2020 (15 days after the publication in the Official Journal).

18. Albania/Article 3/10 of the draft *Law on Protection from Discrimination*.

The Constitution of **Serbia** includes a specific reference to national minorities, and prohibits any discrimination based on belonging to a national minority.¹⁹ The constitutions of **Montenegro** and **Kosovo** explicitly allow for a limitation of the freedom of expression, when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion. Article 7 of the **Montenegrin** constitution prohibits infliction or encouragement of hatred or intolerance on any grounds,²⁰ whilst Article 49 of the **Serbian** constitution stipulates prohibition and punishment for *inciting of the racial, ethnic, religious or other inequality or hatred*.²¹

The constitution of the Republic of **North Macedonia**, in Article 54 determines that restrictions of freedoms and rights *inter alia* cannot be applied to the freedom of personal conviction, conscience, thought and religious confession. The very same Article though also contains a non-discrimination clause. The freedom of association according to Article 20 of the constitution includes the establishment of political parties, but also makes clear that the *programmes and activities of political parties and other associations of citizens may not be directed (...) at encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance*. The constitution of the **Republika Srpska** in **Bosnia and Herzegovina** does not entail a non-discrimination clause as such, but does proclaim that the “constitutional organization of the Republic shall be based upon”, *inter alia*, *protection of the rights of ethnic groups and other minorities*.²²

Freedom of media and pluralism is explicitly addressed in Article 42 of the Constitution of **Kosovo** as guaranteed rights, whilst censorship is permitted only in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion. Freedom of the media is also guaranteed by the **Serbian** constitution, but could be restricted if *competent court (...) prevent the dissemination of information through means of public informing only when this is necessary in a democratic society (...) to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence*.²³

Criminal Law Provisions

Incitement to hatred is considered as a criminal offence by the criminal codes of all countries. Most of the criminal codes initially referred to hatred related to race, ethnic affiliation, religion and related intolerance only. However, in the last ten years, with the exception of **Serbia**, **Bosnia** and **Herzegovina** and **Montenegro**, they were amended and extended also to sexual orientation (**Albania**) or even based on an open list of grounds (**Kosovo**, **North Macedonia**, **Republika Srpska**). In addition, certain laws, such as the Law on Gender Equality in **Bosnia and Herzegovina** stipulate that, among other things, gender-based harassment is a criminal offence (Article 29 of the Law on Gender Equality of BiH).

A commitment of the crime in public is required in **Bosnia and Herzegovina** and **Montenegro**, whilst in **Kosovo** the threshold is even higher as the incitement has to be such that it is likely to disturb public order.

In line with international requirements the Criminal Codes also know the principle of a discriminatory motive to be considered as an aggravating circumstance to be taken into account, when deciding on the sanction. Motives, in line with ECRI GPR No 15 tend to be more comprehensive than in most Western European countries and include gender, race, colour, ethnicity, language, sexual orientation, gender identity, political, religious, or philosophical convictions, health status, genetic predispositions or disability (**Albania**, Article 50 Criminal Code), *race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity* (**Serbia**)²⁴, religion, national or ethnic origin, gender, sexual orientation or gender identity (**Montenegro**, Article 42a CC), race, color, gender, gender identity, language, religion, national or social origin, relation to any community, property, economic condition, sexual orientation, birth, disability or other personal status, or the affinity with persons with the aforementioned characteristics (**Kosovo**), gender, race, skin colour, breed, membership in marginalized group, ethnic background, language, nationality, citizenship, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property

19. Serbia/Official Gazette, no 98/06, *Constitution of the Republic of Serbia*, Article 76.

20. Article 7 Infliction or encouragement of hatred or intolerance on any grounds shall be prohibited.

21. Serbia/Official Gazette, no 98/06, *Constitution of the Republic of Serbia*, Article 49.

22. *Constitution of Republika Srpska*, Article 5.

23. Serbia/Official Gazette, no 98/06, *Constitution of the Republic of Serbia*, Article 50.

24. Serbia/Official Gazette, no 85/2005, corr. 88/2005, corr. 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, *Criminal Code*, Article 387.

status, health condition, or any other ground foreseen by law or ratified international agreement (**North Macedonia**), race, colour, religious belief, national or ethnic origin, language, disability, sex, sexual orientation or gender identity (**Bosnia and Herzegovina**).

The Criminal Codes of **North Macedonia** (Article 417), **Montenegro** (Article 443/3) and **Serbia** (Article 387) also refer to racial or other discrimination as a criminal offence on its own, which in **North Macedonia** and **Montenegro** also include the spreading of ideas about the superiority of a race over another, advocating racial hate, or instigating racial discrimination.

Table 1: Criminal Law Provisions related to Hate Speech

Country	Incitement to Hatred	Aggravating Circumstances	Discrimination
Albania	racial, ethnic, sexual orientation and religious groups	gender, race, colour, ethnicity, language, sexual orientation, gender identity, political, religious, or philosophical convictions, health status, genetic predispositions or disability	No
Bosnia & Herzegovina	nationally/ethnically, racially and religiously gender (law on gender equality) Republika Srpska: national, racial, religious or ethnic identity, skin colour, sex, sexual orientation, disability, gender, origin or other characteristics in public	race, colour, religious belief, national or ethnic origin, language, disability, sex, sexual orientation or gender identity Republika Srpska: + health status	No
Kosovo	national, racial, religious, ethnic or other such groups, sexual orientation, gender identity and other personal characteristics likely to disturb public order	race, color, gender, gender identity, language, religion, national or social origin, relation to any community, property, economic condition, sexual orientation, birth, disability or other personal status, or the affinity with persons with the aforementioned characteristics	No
Montenegro	race, skin colour, religion, origin, nationality or ethnic affiliation in public	religion, national or ethnic origin, gender, sexual orientation or gender identity	race, gender, disability, sexual orientation, gender identity or other personal characteristics
North Macedonia	gender, race, colour of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or in any other ground foreseen by law on ratified international agreement	gender, race, skin colour, breed, membership in marginalized group, ethnic background, language, nationality, citizenship, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement.	race, colour of skin, nationality or ethnic belonging
Serbia	national, racial or religious hatred or intolerance	race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity	race, colour, religion, nationality, ethnic origin or other personal characteristic

Equality and non-discrimination legislation

All countries of the Western Balkans have incorporated the *EU acquis* in relation to non-discrimination into their legislative framework by ways of adopting specific laws that protect against discrimination. All of these laws refer as one ground of discrimination to harassment. Equality legislations in **Serbia** and **Montenegro** refer to hate speech as a form of discrimination explicitly. In **Albania**, the Commissioner for the Protection from Discrimination (CPD) has been interpreting hate speech as a form of harassment²⁵ and it had been one of the promoters of introducing hate speech as a form of discrimination into the recently amended Law on Protection from Discrimination (LPD).

The Law on the Prohibition of Discrimination in **Bosnia and Herzegovina** prohibits discrimination not only on specific grounds corresponding with international standards in this field, but also on “any other circumstance serving the purpose of or resulting in prevention or restriction of any individual from enjoyment or realization, on equal footing, of rights and freedoms in all areas of life”.²⁶ The Law on Protection from Discrimination in **Kosovo** provides protection on a number of grounds such as nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds²⁷.

It applies to all acts or omissions, of all state institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life²⁸. In **Montenegro**, along with multiple discrimination, repeated discrimination, extended discrimination, Article 20 of the Law for the Protection against Discrimination recognizes discrimination disseminated through public media as well as by writing and displaying the materials and symbols of discriminatory content in public places, as grave forms of discrimination.²⁹

In the Republic of **North Macedonia**, the Law on the Prevention of and Protection Against Discrimination that had been in force only since May 2019, has been annulled by the Constitutional Court on 14 May 2020 due to formal issues.³⁰ For the purpose of this research we will refer to the text of the annulled Law as we presume that a similar approach will be chosen for a new law. The Law had an open list of grounds and defined discrimination as *any act of distinction, exclusion, restriction or preference based on any of the discriminatory grounds, by doing or not, aimed at, or resulting in preventing, restricting, recognising, enjoying or exercising the rights of a person or group on an equal basis; it covers all forms of discrimination, including accessibility of infrastructure, goods and services*.

In **Serbia**, Article 13 of the Law on the Prohibition of Discrimination defines severe forms of discrimination as *causing and inciting inequality, hatred and enmity on the grounds of national, racial or religious affiliation, language, political opinions, gender, gender identity, sexual orientation or disability, advocating or exercising discrimination on the part of state organs or in the course of proceedings conducted before state organs and advocating discrimination through public outlets*.³¹

The main difference for those affected by hate speech and protected in this regard not only by criminal law, but also by the national equal treatment legislation is that they can benefit from the procedural guarantees and the institutional framework provided and do not have to rely on criminal law to have their case solved. This includes:

25. Interview with R. Gajdja, Commissioner from Protection from Discrimination, 11 May 2020.

26. Bosnia and Herzegovina/Official Gazette of BiH, no 59/09 and 66/16, *Law on Prohibition of Discrimination*, Article 2, para 2.

27. Article 1, *Law on Protection from Discrimination*.

28. Article 2(1), *Ibid*.

29. Article 20 para 4 of LPD. In addition Article 34 of LPD further provides that “a fine of 500 EUR to 20,000 EUR shall be imposed for misdemeanour on a legal person, if by expression of ideas, statements, information, opinions, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism, or other forms of hatred based on intolerance, including intolerance expressed in the form nationalism, discrimination and hostility against minorities.

30. In its decision the Constitutional Court ruled that there was a violation of the procedure for adoption of this law (lack of required majority of votes of Assembly’s members for its adoption).

31. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 13.

- ▶ the shift of the burden of proof in cases, where plaintiffs manage to establish facts, from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment;³²
- ▶ the competence of the Equality Bodies to handle their cases;
- ▶ the wider range of remedies that is provided by equal treatment legislation in comparison to criminal law.

For **Serbia** this means for example, that a victim according to Article 43 of the Law on prohibition of discrimination can demand *imposing a ban on an activity that poses the threat of discrimination, a ban on proceeding with a discriminatory activity, a ban on repeating a discriminatory activity, that the court should establish that the defendant has treated the plaintiff or another party in a discriminatory manner, taking steps to redress the consequences of discriminatory treatment, compensation for material and non-material damage, that the decision passed on any of the lawsuits referred... be published.*³³ Request for a temporary measure is also possible.³⁴ These civil lawsuits could also be initiated by human rights organizations or the Commissioner for the Protection of Equality.³⁵ Similar lawsuits are also possible according to the Law on Prevention of Discrimination Against Persons with Disabilities, since this law stipulates “inciting” or “propagation” as severe forms of discrimination.³⁶

When analysing the legal framework more generally, we see that -similar to most European Union countries-, there is a focus on incitement to hatred and the protection in the field(s) of race, nationality and ethnic affiliation, whilst other forms of hate speech like insult, negative stereotyping, stigmatization or threat are rarely addressed in the criminal sphere. Equal Treatment legislation shows a more comprehensive approach, when it comes to groups protected, but covers hate speech only in those cases, where it would qualify as harassment in **Bosnia and Herzegovina, Kosovo and North Macedonia.**

Case Law

Cases of hate speech are frequent in the countries of the Western Balkans, especially in the political sphere and in online media. This is not necessarily reflected by a high number of cases brought to court or to other institutions in charge, and collection of data on those cases is also not done in a systematic way.

In **Albania**, most high-profile defamation disputes in recent years have involved members of parliament and senior politicians suing each other over allegations of corruption. Many of these cases have been brought directly to the Supreme Court because the latter had original jurisdiction over cases involving criminal prosecution of members of parliament and high officials. The second categories of cases are those against terrorism and terrorist activities, adjudicated by the former Court on Serious Crime³⁷ involving also hate crimes (art 265 of Criminal Code).³⁸ The promotion of hate speech on grounds of religion and race has been identified as a part of terrorist activities. Social media or religious places have been used to promote hate declarations with the aim of recruiting or convincing other persons to serve the activities of terrorist organizations³⁹.

In **Bosnia and Herzegovina**, hate speech most frequently occurs in the political discourse and is usually based on ethnic or associated religious identities.⁴⁰ Consequently, the most relevant cases from the perspective of hate speech are those related to the specific crime of inciting and inflaming national, racial and religious hatred, discord and hostility, which is included in all four criminal codes in **Bosnia and Herzegovina.**

32. Racial Equality Directive (Article 8), Employment Equality Directive (Article 10), Goods and Services Directive (Article 9) and Recast Gender Directive (Article 19).

33. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 43.

34. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 44.

35. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 46.

36. Serbia/Official Gazette, no 33/06, 13/16, *Law on Prevention of Discrimination Against Persons with Disabilities*, Article 9.

37. Albania/ Serious crime court is named Special Court for Organized Crime and Corruption.

38. Albania/ Gjykata e shkallës së parë për Krimet e Rënda, Vendimi no 58 (03.05.2016), Vendimi no 46, (04.05.2017), Vendimi no 1 (24.01 2018).

39. S. Simoni, M. Xhaxho (2019) *Report on Prevention of violent extremism and radicalisation in Municipality of Roskovec and rural area*, Center for Women, Community and Environment at www.qag-al.org (30.04.2020), referred to by A. Gugu Bushati in her country report on Albania.

40. ECRI (2017) ECRI Report on Bosnia and Herzegovina (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602> (21.09.2020), p. 13.

Criminal Cases

An Albanian citizen converted to Islam during his studies abroad. Back in **Albania** he organized a group of persons, which via the Internet promoted views of radical political Islam and Jihad war in Syria. They were sued for incitement to hatred and violence against other faiths, supporting of the terrorist organization ISIS and preacher of its radical and terrorist ideas and at the same time usage of drugs. The group was accused among other things for violating article 265 of the Criminal Code.

A former Minister of Administration and Local Government in **Kosovo** in public statements had referred to Kosovan Albanians as “terrorists and killers”. He was sued and sentenced for incitement to hatred as set out in Article 147 (1) of the Criminal Code. Evidence consisting of a video recording of the Minister making the speech which contained the alleged hate speech, as well as articles published on online media, was accepted by the Court. Arguments of the defence that there was no specific criminal offence in place referring to hate speech in Kosovo and that the action did not fulfil the criteria for an application of Article 147 (1) as it did not endanger public order could not convince the Court in its reasoning that the defendant had exceeded the limits of freedom of expression. The defendant was sentenced to two years imprisonment.⁴¹

An employee of an NGO representing the LGBTI community was attacked in **Kosovo** whilst dispensing condoms and other items. He was verbally abused for the work he was doing and his actual or perceived sexual orientation and was physically attacked by two other persons. The perpetrators were charged for incitement to hatred and light bodily injury, and the Court moreover stated that it had taken into account the rules on aggravation of a punishment recognizing that the offence was motivated by hate for the victim’s actual or perceived sexual orientation.⁴²

In **Montenegro**, cases of hate speech most often are addressed by misdemeanour courts, while the conduct of criminal proceedings is still an exception.⁴³ Despite the existence of relevant provisions and a rising number of cases of hate speech towards members of the LGBTI community, criminal prosecution for those cases is low.⁴⁴

No cases of hate speech in the criminal sphere have been reported for the Republic of **North Macedonia** in the recent years. According to ECRI’s last report, there are also not official statistics available about the use of hate speech, but a rise in cases was acknowledged by international organisations and NGOs.⁴⁵ Due to the fact that there has been legal uncertainty in this regard, the Appellate Court (Civil Department)⁴⁶ of the Republic of **North Macedonia** has published guidelines on the liability of the editor in charge for the contents of electronic publications and other media.

There are no comprehensive and transparent statistics on cases of hate speech before the courts in **Serbia**, while *centralised official records on crimes motivated by hate are still missing*.⁴⁷ However, hate speech (especially online) is recognized by citizens, and local human rights organizations who are submitting both criminal and civil complaints, as well as complaints to independent and self-regulatory bodies.⁴⁸ There is no available data about the on-going cases, but according to the latest ECRI report, criminal charges for hate speech were pressed against 216 individuals during the 2011-2016 period,⁴⁹ while according

41. PS.no20/19 – Basic Court of Pristina, Special Department, 05.12.2019.

42. P. no 620/16 – Basic Court of Ferizaj, 26.09.2016.

43. The Protection of human rights and freedoms (2019) Report on protection against discrimination from the view of the operation of the institution of the Protection of human rights and freedom of Montenegro, p.39, available at: http://www.ombudsman.co.me/docs/1574422728_izvjestaj-za-prvih-sedam-mjeseci-2019.-godine.pdf, referred to by A. Spaic in her country report on Montenegro.

44. The Protection of human rights and freedoms (2019) Report on protection against discrimination from the view of the operation of the institution of the Protection of human rights and freedom of Montenegro, p. 39-40, available at: http://www.ombudsman.co.me/docs/1574422728_izvjestaj-za-prvih-sedam-mjeseci-2019.-godine.pdf, referred to by A. Spaic in her country report on Montenegro.

45. ECRI (2016) ECRI Report on the Former Yugoslav Republic of Macedonia (fifth monitoring cycle), available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b> (21.09.2020), p. 13.

46. Appellate court Skopje, Bilten no 12, Civil law, Conclusions brought at the meeting of judges of civil department of Appellate court Skopje held on 19 April 2019, published in Skopje March 2020 p. 11.

47. Serbia/Commissioner for the Protection of Equality, *Redovni godišnji izveštaj Poverenika za zaštitu ravnopravnosti za 2019. godinu*, referred to by G. Miletić in his country report on Serbia.

48. For example: Belgrade Centre for Human Rights, *Anonimna mržnja: Mehanizmi zaštite od govora mržnje na internetu* (2018), referred to by G. Miletić in his country report on Serbia.

49. ECRI (2017) ECRI Report on Serbia (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4> (21.09.2020).

to the Public Prosecutor's Office, a total of 565 criminal charges were filed against persons, including elements of hate speech on various grounds during the period 2017- 2018.⁵⁰ Despite some important recent judgements related to hate speech,⁵¹ the number is still very low, considering that hate speech is a recognized problem in the society⁵².

Interpretation of hate speech provisions by courts

- ▶ a public declarations, with no 'intention of information', can constitute an abuse of the freedom of expression (namely article 22 of Albanian Constitution and article 10 of ECHR) as long as they remain opinions and do not turn into proven facts by the one who provides them publicly.⁵³
- ▶ provisions concerning incitement as a form of criminalization of hate speech, "need to be sufficiently defined and precise enough so that they are not detrimental to freedom of speech and not jeopardizing the principle of legal certainty..." but "it would not be realistic to expect that these terms are accompanied by a precise legal definition or that the legislator provides an exhaustive list of meanings or potential acts that could be encompassed by these terms."⁵⁴
- ▶ statements and other forms of speech on the internet necessarily fulfil the criterion of public, given its wide reach and availability.⁵⁵
- ▶ speech that is upsetting, offensive or causing emotional distress among members of particular groups does not necessarily amount to incitement to hatred, discord or hostility.⁵⁶
- ▶ it is not necessary that an act results in concrete negative consequences in terms of actual incitement to hatred; rather, it is sufficient that "the content of the concrete action is objectively predisposed to produce such an effect."⁵⁷
- ▶ context (the occasion of a sports events rather than a political or religious discussion) and the size of the audience (the fact that the petitioner has published the offensive comment in question – for which he was sentenced to prison by the court of second instance – on his Facebook page which was available to a relatively small number of people before the media took it on and promoted it widely) are particularly important factors.
- ▶ by deliberately inciting and spreading hatred, division or intolerance between national, racial and ethnic groups that live in **Kosovo** public order can be disrupted or other more serious consequences in the Republic of **Kosovo** can be caused (no need of inciting the public on purpose).⁵⁸

50. Advisory Committee on the Framework Convention for the Protection of National Minorities, (04.11.2019), *Comments of the Government of Serbia on the Fourth Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Serbia*, referred to by G. Miletić in his country report on Serbia.

51. Youth Initiative for Human Rights (2018), *Higher Court Confirms Hate Speech from Informer Directed at Anita Mitic*, <http://www.yihr.rs/en/higher-court-ruling-confirms-hate-speech-from-informer-directed-at-anita-mitic/> (20.03.2020), referred to by G. Miletić in his country report on Serbia.

52. Serbia/Commissioner for the Protection of Equality, *Redovni godišnji izveštaj Poverenika za zaštitu ravnopravnosti za 2019. godinu*, referred to by G. Miletić in his country report on Serbia.

53. Albania/ Gjykata e Rrethit Gjyqësor Tiranë, Vendimi nr. 208 (21.01.2019) www.gjykatatiranes.gov.al.

54. Constitutional Court of Bosnia and Herzegovina.

55. Constitutional Court of BiH, AP-1020/11 (25.04.2014).

56. Court of BiH, S1 3K 020812 17 Kz2, para 36 (15.11.2017); District Court Bijeljina, 80 0 K 001888 15 Kž 2 (24.06.2015).

57. Appellate Court of Brcko District BiH, 96 0 K 006861 12 Kz (28. 11.2012).

58. PS. no 20/19 – Basic Court of Pristina, Special Department, 05.12.2019.

Access to Justice in Cases of Hate Speech

Table 2: Overview of entry points to access to justice in cases of (online) hate speech

Country	Police	Public Prosecutor	Equality Body	Ombud	CSOs	Courts	Media
Albania	Entry points criminal cases investigate	Not in charge	Decision (binding) can be appealed at court Represents Intervenes Expert opinion Ex officio Actio popularis	People's Advocate Violation by state/ public body	Bring cases to EB <i>Actio popularis</i> represent at Court	1 st instance Legal Aid available	Council of Complaints of the Albanian Media Authority can order publication of a correction or reply and issue a fine Board of Ethics of the Albanian Media Council (NGO) can do mediation and issue recommendations
Bosnia & Herzegovina	Entry points criminal cases investigate	Investigation Starts court procedures	Gives opinions and recommendations Recommendations (not binding) Entitled to initiate court proceedings (in theory) Amicus curiae Provide necessary information to natural and legal persons who have filed a complaint against discrimination about their rights and obligations, as well as the possibilities of judicial and other protection Propose to initiate a mediation procedure Has the right to initiate and participate in the procedure for protection against discrimination for misdemeanours prescribed by this Law initiating misdemeanour proceedings		Forward cases to press council	General Courts	Communications Regulatory Agency can act ex officio, issue warnings, concrete demands for action or cessation, issue fines and revoke licenses Press Council can mediate – remove content and publish apology

Country	Police	Public Prosecutor	Equality Body	Ombud	CSOs	Courts	Media
Kosovo	Entry points criminal cases investigate	Investigation Starts court procedures	Directing victims Amicus curiae Ex officio Actio popularis Taking case, when police/court not acting adequately	 Bring cases to the EB Actio popularis	General Courts	Independent Media Commission can act ex officio, issue written warnings, demand publication of the decision, impose fines and revoke licenses Board of Kosovo Press Council can request correction, publish an apology, mediate and issue a decision
Montenegro	Entry points criminal cases investigate	Investigation Starts court procedures	Recommendation Entitled to initiate court proceedings May intervene at court Actio popularis		Legal Aid Bring cases to EB	Ordinary courts Misdemeanour Courts	Council of the Agency for Electronic Media can act ex officio, issue warnings and suspend licenses Media self-regulatory body, self-regulatory Council for local and periodical newspapers, various ombudspersons of print media and broadcasters
North Macedonia	Sector for Computer Criminal and Digital Forensics	Investigation Starts court procedures	Decision Recommendation Ex officio Amicus curiae Actio popularis	Violation by state/public body Forward cases to prosecution	Actio popularis	Judgement Temporary measures	Agency for Audio and Audio-Visual Media Services can issue public warnings, propose initiation of misdemeanour proceedings, revoke licenses Press Complaints Commission of the Council of Media Ethics can ask for correction, removal, apology Council of Honour of the Association of Journalists can issue warnings or temporarily exclude journalist from membership
Serbia	Entry points criminal cases investigation	Investigation Starts court procedures	Opinion Recommendation Sanction Represent Intervene at court	Violation by state/public body	Initiate cases	Higher Court	Council of the Regulatory Authority for Electronic Media can issue a warning, revoke licenses Press Complaints Commission of the Press Council can take decisions and mediate

The Role of Equality Bodies in countering hate speech

Equality bodies as a core part of their mandate have to provide independent assistance to victims of discrimination. According to the European Commission Recommendation on Standards for Equality Bodies, in conjunction with ECRI GPR No 2, independent assistance should include:

- ▶ *receiving and handling individual or collective complaints;*
- ▶ *providing legal advice to victims, including in pursuing their complaints;*
- ▶ *engaging in activities of mediation and conciliation;*
- ▶ *representing complainants in court;*
- ▶ *acting as amicus curiae or expert where required;*
- ▶ *monitoring the execution of decisions of institutions, adjudicatory bodies, and the courts dealing with equality, discrimination and intolerance.*

There should also be the possibility to gather relevant evidence and information.

The Commission Recommendation also refers to the possibility of strategic litigation in order to address structural and systemic discrimination – either in the name of the victim(s) or in the name of the body itself.

What equality bodies can do in concrete in an individual case very much depends on whether they are a tribunal type body with the legal capacity to take binding decisions or a promotional type body.⁵⁹

Tribunal type equality bodies should have the competence to:

- ▶ *Receive, examine, hear and conciliate individual and collective complaints of discrimination and make decisions on these complaints based on the relevant legislation including the provisions on the shared burden of proof.*
- ▶ *Decide whether there has been a breach of civil or administrative anti-discrimination legislation.*
- ▶ *Issue legally binding decisions that require action to put an end to discrimination, achieve full equality, and avert future discrimination and impose effective, proportionate and dissuasive sanctions including payment of compensation for both pecuniary and non-pecuniary damage, fines and the publication of the decision and the name of the perpetrator.*
- ▶ *Ensure the execution and implementation of their decisions and publish their decisions and recommendations.⁶⁰*

Promotional type equality bodies should be provided with the competence to:

- ▶ *Issue non-binding recommendations requiring action to put an end to discrimination, achieve full equality, and avert future discrimination.*
- ▶ *Ensure the implementation of its recommendations and, as appropriate, publish its decisions and recommendations.⁶¹*

In some instances, the equality body itself - due to the scope of national equality legislation- might not be competent to handle a hate speech case at all (as hate speech being considered a criminal act is to be handled by police/prosecution/criminal court), still this would not mean that it has to send people away, but that it could document the case and direct victims to the institution in charge (police, public prosecution, Ombud institution).

Both types of equality bodies are present in the western Balkans with tribunal type Equality Bodies in charge in **Albania, North Macedonia and Serbia** and promotional type equality bodies in **Bosnia and Herzegovina, Kosovo and Montenegro**. In the latter countries the mandate of the equality body has

59. This typology was developed *inter alia* by the authors of these guidelines in the course of a project implemented on behalf of the European Commission – Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights (2010) *A Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, available at: <http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en> (17.02.2020).

According to this typology promotional type equality bodies spend most of their time and resources on a broader mix of activities that encompass supporting good practice in organisations, raising awareness of rights, developing a knowledge base on equality and non-discrimination, and providing legal advice and assistance to individual victims of discrimination. Tribunal type equality bodies spend most of their time and resources hearing, investigating and deciding on individual instances of discrimination brought before them. They are impartial in this work.

60. ECRI General Policy Recommendation No 2, p. 7.

61. ECRI General Policy Recommendation No 2, p. 7.

been attributed to the national ombudsperson institutions. In principle, all of these bodies, when it comes to their role of providing independent assistance to victims of discrimination – including harassment/hate speech – formally are in line with the requirements presented above.

Table 3: Powers of equality bodies in cases of (online) hate speech

	Albania CPD	Bosnia and Herzegovina IHRO	Kosovo Ombud-person	Montenegro PHRF	North Macedonia CPD	Serbia CPE
type of EB	tribunal	promotional	promotional	promotional	tribunal	tribunal
individual complaint	x	x	x	x	x	x
collective complaint	x	x	x	x	x	x
non-binding decision/ re-commen- dation		x	x	x		
binding decision with sanction	x				x	x
ensure execution of decision	x	monitoring procedure, can initiate misdemean- our proceed- ings in case of non-fulfilment			monitoring procedure, can initiate misdemean- our proceed- ing in case of non-fulfilment	x
publish decision	x	x				in case of non- fulfilment
represent at court	x	no	no	when group is affected	x	x
<i>amicus curiae</i>	x	unclear	x	x	x	x
expert opinion	x	no	no		x	
<i>ex officio competence</i>	x	x	x	when group is affected	x	no

In **Albania**, the Commissioner for Protection from Discrimination (CPD) is the main institution in charge of handling complaints of discrimination, and it has considered hate speech as a form of discrimination, namely *annoyance* (in the English translation of Article 3/5 of the Law on Protection from Discrimination, with the same meaning as harassment as defined in *EU acquis*) before the entering into force of the Law on the Protection from Discrimination in November 2020. It reviews the complaints of individuals or group of individuals, who claim/state that they have been discriminated against, carries out administrative investigations and applies administrative sanctions (Article 32 LPD). The CPD represents individuals and groups affected by discrimination in courts and submits written opinions on any discrimination related issue, upon the request of the court reviewing that case.

In the last two years (2018-2019) the CPD has treated a few cases related to hate speech. In 2018, the CPD has reviewed five complaints, where hate speech was at stake and it has found discrimination (annoyance/harassment) in three of them. Whereas in 2019 it has reviewed twelve complaints and started two *ex officio* procedures related to hate speech against members of the LGBTBI community. Out of twelve complaints, discrimination was found in three cases. As of April 20, CPD has not received any complaints, nor has it initiated *ex officio* cases.

The cases handled by the CPD involved hate speech used in media but also in parliament. Some of those cases, initiated by the Roma and Egyptian Youth Movement Association, involved the use of insulting language and negative stereotyping of the Egyptian community. The CPD has found discrimination based on Articles 7 (Protection from Discrimination) and 3/5 (Annoyance/ Harassment) of the Law on Protection Against Discrimination (LPD), as well as discrimination based on Article 14 ECHR. The CPD reasoning included also the interpretation of Articles 10 ECHR and 22 of the Albanian Constitution in combination. The CPD argued for a limitation of the freedom of speech based on the need of protecting the dignity of the person and referring to the negative influence that such statements might have on individuals in line with the ECtHR judgement on the case *Féret v. Belgium*⁶².

In the two *ex officio* cases, the CPD addressed the language used in two TV programs against the LGBT community. The CPD found discrimination on grounds of Articles 1, 7 and 3/5 (harassment/annoyance) of the LPD and on grounds of limitation of freedom of speech as provided in the ECtHR jurisprudence. The second case involved a public declaration of a public figure expressing repeatedly his statement against the LGBTI community. Again, discrimination was found based on Articles 7 and 3/5 of the law, while the limitation of freedom of speech was argued on the basis of the jurisprudence of the ECtHR.

Two other cases were initiated by the Down Syndrome Foundation for the language used by public figures on Facebook using derogative language associated with people with disability such as Down syndrome and Autism. Discrimination was found based on article 7 and 3/1 (general discrimination clause) of the LPD coupled with the need of proportional limitation of the freedom of expression dictated by the fact that there is a need to prevent all forms of expression that promote, spread and justify hate based on intolerance (see the ECtHR judgement on the case of *Erbakan v. Turkey*⁶³).

In three cases, in which the CPD established discrimination, it required as a sanction a public apology to be made by the person having caused the discrimination (using hate speech). In one case it has sanctioned with a fine the person causing discrimination. The fine is subject to execution.

As provided by law, all CPD decisions can be appealed in court; the CPD has the right to represent individuals in court proceedings; the court has the obligation to notify the CPD each time it handles a discrimination case; and it has the right to ask the CPD at any stage of the process to investigate and present the findings of its investigation. Moreover, the recent amendments of the Albanian Constitution (Article 134 (e) have listed the CPD as one of the parties, who has the right of recourse to the Constitutional Court for issues falling under its competences. As a consequence of these legislative provisions, the interaction between the CDP and courts has increased in number of cases. The CPD reports that courts are gradually assuming their role for the protection of discrimination.

During the reporting period (2018-2020) only one CPD decision related to hate speech was appealed by the defendant to the Administrative Court of First Instance. The case involved a declaration made by a well-known Director and Producer of Beauty Competitions, who during a TV interview was using discriminatory language against the LGBTI community. The Court has upheld the CPD decision and highlighted that there has been discrimination because of the language used against the claimant.⁶⁴

The CPD is comparably active in acting *ex officio*, with two cases related to hate speech in 2019. In both occasions it concerned the language used during TV programs against the LGTBI community. In the first case the CPD found that the language used during the TV program amounted to annoyance/harassment against the LGTBI community as defined by article 3/5 of the LPD. the CPD concluded the case by asking the person concerned to make public apologies within 15 days. In a similar case, there was no need to ask for further actions, since the CPD found out that the person concerned had already made public apologies soon after its discriminatory statements.

In **Bosnia and Herzegovina**, the Human Rights Ombudsman (IHRO) has the mandate of a national equality body. It handles individual complaints and issues non-binding recommendations, proposes the initiation of mediation proceedings in accordance with the provisions of the Law on Mediation and of misdemeanour proceedings, collects and analyses statistical data related to discrimination. It can be qualified as a “promotional type” equality body. The institution according to the findings of the national

62. ECtHR, *Féret v. Belgium* (application no 15615/07), Judgement 16.07.2009.

63. ECtHR, *Erbakan v. Turkey* (application no 59405/00), Judgement 06.07.2006.

64. Administrative Court of First Instance Decision no 4319/2019 (30.04.2020).

report⁶⁵ is largely reactive, rather than proactive in performing its tasks. Whilst for 2015 no cases of hate speech were reported, in 2016, two complaints alleging, *inter alia*, hate speech have been registered. One concerned an inappropriate comment by a public official regarding betting shops (comparing them to criminal activities) and the other involved threats to a journalist by a politician. In none of the two cases hate speech was established, as the identity element was missing. In 2017, out of 4963 cases handled by the Institution, for only one it can be concluded that it concerned hate speech. The case was related to offensive comments on ethnic grounds among colleagues in an academic institution. The IHRO issued a recommendation requesting the Institution in question to address the problem and to ensure that their employees refrain from hate speech in mutual communication and public events. Also, in 2018 the institution processed one case of hate speech. The case concerned a shop, which announced that it would not provide access to migrants, and published offensive comments on migrants on its Instagram profile. The Institution issued a recommendation requesting the shop in question to remove the offensive comments from Instagram and to respect the Law on Prohibition of Discrimination in its future activities. No information was available for 2019.

The IHRO issues recommendations based on individual complaints. Recommendations are not legally binding, and compliance remains problematic although the IHRO can initiate misdemeanour proceedings in discrimination cases. ECRI reported in 2017 that only around 50 percent of recommendations of the IHRO were fully implemented.⁶⁶ When it comes to recommendations concerning discrimination, the ratio is even lower with only six have been fully implemented out of 28 recommendations issued in individual cases of discrimination. ECRI recommended in its 2017 report that the authorities should intensify their efforts to promote compliance with the recommendations of the Ombudsman Institution. In 2019, ECRI concluded that despite its recommendation, it had not received any information indicating that the authorities have intensified their efforts to promote compliance with the IHRO's recommendations⁶⁷.

After the case is concluded, there is a system for electronic and technical support to monitor the implementation of recommendations.⁶⁸ According to a staff member of the Institution, this means that each response to an individual recommendation is registered in the database and the lawyer working on a case is automatically notified on all relevant developments in the case. Nonetheless, in practice this monitoring is not continuous and not systematic and is mainly limited to contacting the responsible institution or organization and enquiring about the status of the recommendation in question. It was noted that if the response is not received, or if the recommendation is not implemented, further measures are usually not taken.⁶⁹ As representatives of the Institution confirm, however, they as a rule do take the measures envisaged by the law: they inform the immediately subordinate institution and publish the case in their annual reports. These activities, however, obviously produce limited results.

The effects of the recommendations of the IHRO in individual cases need to be understood in the context of the general implementation rate of their recommendations. Although there is no official statistics on that issue, an interviewee from the Institution of Human Rights Ombudsman notes that it can be generally said that public bodies are more responsive to their recommendations, especially in cases of hate speech. According to an IHRO representatives, when it comes to (online) hate speech, the fact that the most popular internet portals and (online) media in Bosnia and Herzegovina are by and large privately-owned poses additional challenges to the implementation of their recommendations. This is so even though the Law on Prohibition of Discrimination, as already noted, extends the authority and competence of the Institution to the private sphere as well.

The Law on the IHRO states that the IHRO is entitled, *inter alia*, to forward cases to the courts of supreme authority for issues of human rights and to initiate court proceedings. In practice, this competence is rarely applied. The only intervention towards the judiciary that the institution has used – albeit in only two cases of discrimination since 2013 – is the option of initiating misdemeanour proceedings in case of

65. E. Hodžić (2020) *Country Report – Bosnia and Herzegovina*, "Strengthening Equality Bodies in the Western Balkan Region in the Field of Hate Speech", Sarajevo.

66. ECRI (2017) ECRI Report on Bosnia and Herzegovina, para 83.

67. ECRI (2020) ECRI Conclusions on the Implementation of the Recommendations in Respect of Bosnia and Herzegovina subject to Interim Follow-Up, adopted 10 December 2019, p. 5.

68. Mario Reljanović et al. (2016) *Kvadratura antidiskriminacijskog trougla: Zakonski okvir, politike i prakse 2012-2016*, Sarajevo: Analitika, pp. 60-61, referred to by Edin Hodžić in his national report in BiH.

69. OSCE BiH, Procjena rada institucija BiH u borbi protiv diskriminacije (undated), p. 43, referred to by Edin Hodžić in his national report in BiH.

non-implementation of its recommendations in individual cases. It needs to be noted that this option is available only for cases of discrimination, as it was introduced by the Law on Prohibition of Discrimination. Interlocutors from the IHRO have confirmed that this could be potentially an effective tool for improving the implementation of their recommendations. Nonetheless, they still seem to hesitate to use this option more frequently, partly due to the lack of internal resources to initiate and conduct such misdemeanour proceedings. The unwillingness of the judiciary to recognise the role of the IHRO poses a further challenge in this regard.

In addition, the IHRO is entitled to act *ex officio*, including in cases of hate speech. The case concerning hate speech towards migrants referred to above is an example of a case initiated by the institution itself based on media reports. Despite the wide presence of hate speech in Bosnia and Herzegovina, however, the *ex officio* work of the Institution in this area remains negligible. Reasons for this are complex and concern the internal structure of the institution and the lack of agreed criteria for reacting to instances of hate speech. All such decisions need to be based on internal consensus of all three ombudsmen, which is often hard to reach, especially when it comes to reacting to hate speech. An interviewee from the Institution pointed out that the focus of their work is placed on public authorities, while hate speech implies sanctioning of personal attitudes and behaviour, which poses additional challenges. In addition, difficulties of differentiating between freedom of expression and the use of hate speech have also been reported by two interlocutors. One interviewee from the Institution offered a particularly interesting perspective on this issue: given that hate speech is often political and indeed used by politicians, there is a fear that the Institution would be dragged into political disputes if it reacts to such cases. Thus, guidance would be useful for the Institution as to how effectively use its *ex officio* powers in cases of hate speech without jeopardizing the public perception of its independence and impartiality in a sensitive political and social context in Bosnia and Herzegovina.

The Ombudsperson Institution (OIK) is the main independent human rights body in **Kosovo** and since 2015 also serves as national equality body. Its competences include receiving of discrimination complaints, on which opinions and recommendation can be provided, supporting victims in the preparation of court submissions, acting as a friend of court (*amicus curiae*), initiating *ex-officio* investigations, addressing cases of discrimination which affect groups of persons to the responsible court, for which the consent of the members of the group is not required, requesting investigation from the prosecution and other independent institutions, monitoring of the law, cooperation with CSOs, gathering data on discrimination practices, informing the public and reporting to the Assembly of Kosovo. Submissions of discrimination complaints before the OI do not require or prevent victims to file a lawsuit before the courts. Organizations or other legal entities can assist or represent victims with their consent in procedures before the OI. The Ombudsperson has limited rights to intervene in regular courts in **Kosovo** and does not have a general right to represent victims of any crime whether it is hate speech or any other crime. The Law on the Ombudsperson allows for the OIK to provide for general recommendations on the functioning of the judicial system, may appear in the capacity of a friend of the court (*amicus curiae*) in judicial proceedings dealing with human rights, equality and protection from discrimination, may initiate matters in the Constitutional Court in accordance with the Constitution and the Law on the Constitutional Court. For discrimination cases, the competencies of the OIK are broader and also include giving opinions and recommendations on concrete cases of discrimination, providing assistance to victims of discrimination in preparing complaints, *ex officio* competence in cases of public authorities as suspects, requests to initiate investigations of criminal offences, making cases of discrimination public, acting as *amicus curiae*.⁷⁰ Article 18 of the LPD also enables the OIK to undertake a group action on behalf of a group, even without the consent of members of the group,⁷¹ which was used by the OIK in a law suit against the Central Election Commission, which did not fulfil the requirement of a representation of fifty percent of both genders.

During an interview with the Ombudsperson, he clarified that for Kosovo it is important to remind that the Ombudsperson Institution is not and cannot be the first port of call for various complaints including on hate speech and hate crime as all existing remedies have to be exhausted beforehand.⁷² According to the existing legal framework these types of complaints should be dealt with by other public institutions such as the police, the prosecution and/or courts or through other independent mechanisms such

70. Law on the Protection from Discrimination, Article 9.

71. Law on the Protection from Discrimination, Article 18.

72. Interview with the Ombudsperson of Kosovo on 18 June 2020 conducted by the national expert for Kosovo Natyra Avdiu.

as the Independent Media Commission or self-regulatory bodies such as the Kosovo Press Council. The Ombudsperson institution would only then become competent, when the case is not dealt with properly by the institution in charge.

After the adoption of the Law on Prohibition of Discrimination (LPD) in 2010 in **Montenegro**, the competences of the Protector of Human Rights and Freedoms (PHRF) have been extended *inter alia* with the mandate of the equality body. The Law provides that a complainant, who is considered to have been discriminated against shall be given the necessary information about his/her rights and obligations. In addition, it provides that the Protector may institute proceedings for protection against discrimination before the court or appear as an intervener in such proceedings. Intervention in court as well as *ex officio* investigation however is limited to cases, where a whole group is affected.

The practice of the Montenegrin PHRF with respect to hate speech does not include many cases, but in most of cases brought before the Protector a violation of rights has been found. The Protector handled two cases of hate speech on the social network Facebook. Both proceedings were conducted and completed in 2017 and were related to ethnicity. In one case, the Protector was addressed by a complainant, the executive director of an NGO dealing with the protection of Roma rights, with a complaint on hate speech, harassment and insult on Facebook referring to a post of "Vijesti" on 21.10.2017, informing on the return to Kosovo of four Roma families from Camp 2 Konik (headline: "Camp Konik 2 closed after 16 years"). The above-mentioned post featured comments that contained hate speech and intolerance against Roma in Montenegro, consciously participating in spreading racial and national hatred against all members of the Roma community by calling them parasites ("let them disappear from earth"; "let the bus crash into abyss and all gypsies die before they arrive in Kosovo"; "skinny gypsy in gypsydom"; "I would through [sic] them away. The war is long over, you parasites", etc.). In the second case, a complainant referred to a group called "Podgoricki vremepolov" that had on 15.02.2017 allowed the publishing of offensive comments and insults about the Roma community ("No one will accuse you, the worst that can happen to you is to delete your comment as it happens to me once, they only bark they do not bite anyone, none cares about gypsy") on its Facebook site. In both cases, the recommendations of the Protector have been followed and fulfilled. One of the most striking cases brought before the Protector is a complaint by an NGO dealing with the protection of the rights of LGBTI persons, pronounced offline. It is related to the use of hate speech by a priest of the Serbian Orthodox Church on the occasion of the Orthodox New Year on 13.01.2016, organized by a political party. The priest used blatantly homophobic expressions against the LGBT community while making an allusion to the logo of Montenegro Pride. The PHRF has condemned this incident and issued a recommendation.

The recently adopted Law on prevention and protection against discrimination in the Republic of **North Macedonia** had provided the power of the Commission for the protection against Discrimination (CPD) to act upon grievances of persons, who suffered discrimination, to provide information to parties on their rights against discrimination, to act, upon request of the party or by its own initiative, as *amicus curiae* (friend of the court), initiate and participate in court proceedings as a party, to initiate *ex officio* legal procedures in discrimination cases, to request information and access to documents. The Commission can give opinions and to decide in cases of discrimination, to determine whether there was a violation or not and/or to recommend removal of the consequences of violation. For all these powers it can be considered a tribunal-type equality body. In the Law, the CPD has the mandate to monitor the implementation of its opinions/ recommendations and in cases of non-fulfilment could have initiated misdemeanour procedures before the court.

In 2018, the Commission issued 119 opinions, of which in 19 cases it had determined the existence of discrimination and issued recommendations. In one case, which was initiated by the Agency for Audio and Audio-Visual Media Services, a radio message used in campaign of three radio networks about 'over-emancipated' women were qualified as amounting to harassment by the Commission. It decided to halt the campaign and issued a recommendation not to broadcast messages with such or a similar content.

In **Serbia**, the Commissioner for the Protection of Equality (CPE)⁷³ is the stand-alone equality body with the mandate to promote equality and combat discrimination⁷⁴ including hate speech. The Commissioner

73. See: <http://ravnopravnost.gov.rs/> (21.09.2020).

74. Liegl, Barbara (2016) *Legal Protection against Discrimination in South East Europe – Synthesis Report*, in: Center for South Eastern Law Schools (SEELS) (ed.) *Legal Protection against Discrimination in South East Europe – Regional Study*, Skopje, p. 33.

is a tribunal-type equality body that receives and reviews complaints about violations of the Law for the prohibition of discrimination (LPD). According to the law, the CPE provides opinions and recommendations, while a public announcement and/or a warning are options, if the violator fails to implement recommendations⁷⁵ Since hate speech is defined by Article 11 of the Law on the prohibition of discrimination,⁷⁶ the mandate of the CPE is relevant to cases of hate speech that are submitted according to the complaint procedure. Assistance to victims is defined as the provision of *information to the person complaining about his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection or recommended reconciliation.*⁷⁷ While an opinion aims to establish whether there has been a violation of the law, a recommendation aims to suggest a way of redress. The Commissioner is regularly using press releases and warnings as a tool for countering hate speech. There were 35 press releases in 2015, 25 in 2016, 20 in 2017, 24 in 2018 and 34 in 2019. The majority of them were related to speeches at different events or meetings, and seven press releases in 2019 mention hate speech. Nine warnings were issued in 2015, 9 in 2016, 13 in 2017, 17 in 2018 and 23 during 2019. Out of all warnings in 2019, 91.3% were related to hate speech.⁷⁸

The CPE is entitled to bring cases before the court and to represent complainants after consent for such action is received. In some cases, first-instance judgements were changed by higher courts upon intervention of the Commissioner. In the case of homophobic statements in an interview published by a Serbian weekly magazine, the Higher Court in Belgrade found opinions that LGBT people are deviant, paedophiles and sick as amounting to harassment and violating the human dignity of the LGBT community. After an appeal submitted by the defendant, the case is still pending before the Court of Appeal in Belgrade. The Commissioner also submitted a civil lawsuit against the author of a text published online on 8 November 2017. In this article, violence against women in some cases is justified by the author (if she has a lover, if she is not in a good mood, etc.). A similar 'opinion' was expressed about the LGBTI community as well. On 8 May 2018, the Higher Court in Novi Sad delivered a judgement, in which the Commissioners' claim was accepted. According to the judgement, the defendant had to stop spreading biased opinions in the media or at public events in the future, as well as to publish the judgement at his own expenses. However, the Court of Appeal in Novi Sad overturned the first-instance judgement and rejected the claim submitted by the Commissioner. The case is now pending before the Supreme Court of Cassation.

The CPE is active in strategic litigation, intending to contribute to the full implementation of the law, improvement of legal practice, motivate victims of discrimination to submit lawsuits by themselves as well as to educate the public on the problem of discrimination. The CPE also considers good judgements with adequate sanctions as an important tool to communicate to the public, how to fight against discrimination and to properly interpret the anti-discrimination law. In practice, cases eligible are related to severe forms of discrimination, which are widely spread and recurrent, thus making (online) hate speech cases useful for strategic litigation purposes.

The Commissioner is not entitled to act *ex officio*. However, some efforts have been made to facilitate access to justice for the victims. In 2016, the Commissioner reminded the Ministry of Justice and the Higher Court in Belgrade about the adopted recommendation of measures for achieving equality that was sent to all courts in Serbia.

Good Practice

In 2018, the Commissioner published Guidelines for strategic litigation, which contain criteria for selection of cases, examples of strategic cases initiated by the Commissioner and challenges concerning strategic litigation, as well as the practice of national and international courts and comparative experiences. The document is not focused on hate speech but contains several references to hate speech cases.⁷⁹

75. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 33, 40.

76. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 11.

77. Serbia/Official Gazette, no 22/09, *Law on the prohibition of discrimination*, Article 33.

78. See: <http://ravnopravnost.gov.rs/misljenja-i-preporuke/upozorenja/> (03.04.2020).

79. See: <http://ravnopravnost.gov.rs/smernice-za-strateske-panice-cir/> (21.09.2020).

(Online) Hate Speech and the Case Data Base of Equality Bodies

Almost all equality bodies have a case data base in place. The former CPD in **North Macedonia** did not have a central system for collecting, registering and analysing data on cases of discrimination. The equality bodies in **Albania, Bosnia and Herzegovina, Montenegro, Kosovo** and **Serbia** all have a case data base, however, only the IHRO have established hate speech as a specific category of individual cases. The PHRF in **Montenegro** is currently working on improving its data base in the area of discrimination. However, it is not clear whether hate speech will be included as a separate category.

In some countries like **Bosnia and Herzegovina** and **Montenegro**, legal provisions aim at centralising the collection of data on discrimination cases. The PHRF is obliged to collect statistics on discrimination cases from all judicial and administrative bodies, according to the country report only misdemeanour courts forward their statistics to the equality body. In **Bosnia and Herzegovina**, the Ministry for Human Rights and Refugees should establish and maintain a central data base of all cases of discrimination, the data base is still not operational though.

Roles and Mandates of other Institutions and Organisations (beyond Equality Bodies)

In most cases, civil society organisations (CSOs) are the first entry points for victims hate speech. In **Albania** there are several organisations that have been active not only in promoting human rights, but in bringing forward complaints against individuals that demonstrate discriminatory behaviours or use of hate language. Civil society organisations are eligible parties to take cases to the CPD in case they have a legitimate interest. Although the latter are satisfied with the outcome of the decisions taken by the CPD, they would like to see more positive impact through proper dissemination and enforcements of these decisions. These issues are addressed by the amendments of the law on protection from discrimination. Representatives of the IHRO in **Bosnia and Herzegovina** confirm that cases, especially in the field of discrimination and hate speech, are often forwarded to them by CSOs and journalist associations. Discussions with NGOs such as Roma Versitas⁸⁰ in **Kosovo** revealed that they have referred cases to the OI including cases of hate speech or hate crimes, as they greatly trust them. The OI has properly dealt with the cases the NGOs referred to it and intervened wherever possible within its mandate. The cases involved members of the Roma, Ashkali and Egyptian communities and a range of alleged violations.

Good Practice

The LGBT+ organisation *DaSeZna!* in Serbia created a simple questionnaire⁸¹ in order to register cases and to forward them to the competent institutions obliged to react in accordance with the law. The mechanism was initiated so that the victims and witnesses could safely report violence and discrimination against LGBTI persons.

The CSO LGBT Forum Progress in Montenegro has assisted victims of discrimination in access to courts with the project *Promotion of Free Legal Assistance to LGBTIQ Persons*, supported by the Ministry of Justice of Montenegro, for over a decade.⁸²

The Helsinki Committee for Human Rights in **North Macedonia** (HCNM)⁸³ has created a web-site where everyone may file a complaint on (online) hate speech, and where also statistical data and analyses are provided.

Police stations serve as a first entry point for cases of hate speech that could be considered as criminal offences. According to statistics collected by the PHRF in **Montenegro** the largest number of complaints related to hate speech was submitted to the Police Directorate. Hesitance on the side of the police to acknowledge the illegality of incidents to hate speech can therefore limit access to justice at the very

80. Kosovo/Interview with G. Salijevic, Roma Versitas, June 16 2020.

81. See: <https://dasezna.lgbt/submit.html> (25.09.2020).

82. Montenegro/LGBT Forum Progress (2019) *Pravna zaštita LGBTIQ osoba u Crnoj Gori*, available at: <https://lgbtprogres.me/publikacije/pravna-zastita-lgbtiq-osoba-u-crnoj-gori-primjeri-iz-prakse/> (14.04.2020).

83. Helsinki Committee of Republic of North Macedonia, Report hate crime web-site where citizens may file complaint online by filling in a form, by e-mail, applications for Android and I-phone, twitter, all available at: <http://www.govornaomraza.mk/> (25.09.2020).

start of the victim's journey. This can be due to insecurities on the side of police officers, whether they should qualify a case as a hate crime or not as indicated by the country report on **Kosovo**.⁸⁴ In its 2017 report on **Serbia**, ECRI notes that according to civil society groups, police was not very open towards receiving complaints about hate speech incidents, especially when concerning Roma and LGBTI persons. Good experience is reported for the designation of some police officers as special contact persons for the LGBTI community. Also reporting worked better in the South of Serbia, where Albanian citizens were proactively recruited in order to create a multi-ethnic police force.⁸⁵

Once the police have accepted a complaint on hate speech, they forward the case to the public prosecutor, except for Albania, where the latter is not in charge. According to the criminal procedure code in **Bosnia and Herzegovina**, criminal proceedings can be initiated and conducted only upon a request of a prosecutor, who conducts and oversees the investigation and directs the work of the police on concrete cases. After an investigation is completed, the prosecutor decides, based on collected evidence, if the proceedings should be continued (by issuing an indictment) or stalled. A study from 2013⁸⁶ based on interviews and focus groups with prosecutors from across the state, attempted to identify factors contributing to the relatively small number of cases when compared to the number of reports on hate motivated incidents. Several impeding factors have been identified in this sense: the lack of official indicators for recognising a hate-motivated crime; perception of omnipresence of manifestations of hatred and the related problem of distinguishing the more serious ones from those that could be ignored; and the perceived uncertainty in proving bias as a motive and a practical decision to focus on prosecuting for the basic crime instead. In **Kosovo**, the State Prosecutor has issued mandatory instructions, how to deal with cases of hate crimes. The instruction provides for appointing a coordinator for dealing with hate crimes and obliges all regional prosecution offices in the seven regions of **Kosovo** to each appoint a prosecutor to deal with hate crime cases.⁸⁷

Good Practice

Underreporting has been successfully addressed in **Albania** by several projects and training courses on cooperation of law enforcement agencies and NGOs in response to hate crime and discrimination of LGBTI persons within the justice chain.⁸⁸ In 2019, the Netherlands Helsinki Committee, the Dutch National Police and the Albanian State Police jointly organised a training course in Tirana on collaborating in the response to hate crime and LGBTI discrimination for justice chain partners from Tirana, Vlorë, Lezhë and Kukësi. This activity has brought together 15 police representatives, nine prosecutors, nine municipal gender equality officers, eight NGO representatives, and one representative from the office of the Commissioner for Protection from Discrimination. The training material was based on the Council of Europe tool-kit on 'Policing Hate Crime against LGBTI persons: Training for a Professional Police Response' and facilitated by two certified trainers from the Dutch National Police. In addition, the police, which are the first entry points for receiving information on hate crime, have a manual in place on how to handle discrimination and hate crime.⁸⁹

In **Kosovo**, an Office for the Protection and Assistance of Victims (OPAV) has been created within the office of the State Prosecutor with representations in all the regional prosecution offices of the seven regions of **Kosovo**. The OPAV's mandate is to provide victims of crime with representation, advice and support to access the justice system. OPAV lawyers are authorised to inform victims of their rights, represent

84. Kosovo/Interview with S. Dragidella, 17 June 2020.

85. ECRI (2017) ECRI Report on Serbia (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4> (21.09.2020), pp. 23-24.

86. Bosnia and Herzegovina/M. Lucic-Catic and A. Bajric (2013) Procesuiranje kaznenih djela pocinjenih iz mrznje u Bosni i Hercegovini: Perspektiva tuzitelja, Sarajevo: Analitika-Center for Social Research, available at: http://analitika.ba/sites/default/files/publikacije/procesuiranje_kaznenih_djela_-_web_-_final_24decembar.pdf (20.05.2020).

87. Kosovo/State Prosecutor (2020) Annual Report for 2019, available at: <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/PSH/Raporte/Raport%20i%20pun%C3%ABs%20s%C3%AB%20Prokurorit%20t%C3%AB%20Shtetit%2C%20p%C3%ABr%20vitin%202019.pdf> (25.09.2020), p. 39.

88. For example, trainings within the project Countering Discrimination and Protecting LGTB rights in Albania, see: <https://www.nhc.nl/themes/building-up-rule-of-law/promoting-rights-trafficked-persons/countering-discrimination-and-protecting-lgbti-rights-in-albania/> (30.04.2020).

89. The training was part of the project Countering Discrimination and Protecting LGTB rights in Albania, available at: <https://www.nhc.nl/themes/building-up-rule-of-law/promoting-rights-trafficked-persons/countering-discrimination-and-protecting-lgbti-rights-in-albania/> (30.04.2020).

them in legal proceedings before the prosecution and/or the court, refer victims to other institutions/ services and act where necessary to seek necessary actions to realise their rights.⁹⁰ There are, however, some doubts about the competence of the OPAV for cases of hate speech.⁹¹

In **North Macedonia**, within the Ministry of Internal Affairs, there is a Sector for Computer Criminal and Digital Forensics (SCCDF) competent to act on complaints filed by physical and legal persons for cases of online hate speech crimes. The SCCDF first analyses if the reported activity is incriminated as online hate speech crime, in case of doubt it requests confirmation by the relevant Public Prosecution Office (PPO), in charge of the investigation. If the response of the PPO is that the activity reported does not qualify as an online hate speech related crime, the SCCDF promptly informs the complainant that it is not competent to act and advises to refer the case to the competent court or institution (e.g., to civil proceeding for insult and defamation).

If the alleged offender is known and there are sufficient indications for online hate speech crime, the SCCDF starts to collect evidence and information needed from relevant institutions, internet access providers in the country, etc., and then calls the offender for enquiring and presenting the evidences (phones, computers etc.).

If the alleged offender is unknown (fake or many profiles, etc.) the SCCDF contacts the relevant providers of internet-related services (e.g., Google) and social media platforms (Facebook, YouTube, etc.) asking for information on the identity of the alleged offender. The request has to contain solid justifications about the indicated online hate speech crime allegations. For more severe criminal acts involving life threats etc. there is an urgent procedure that SCCDF may initiate with the respective service provider. It is then up to the latter to decide whether to provide the information required or to remove the incriminated content, or the profile (in cases of repetitions), based on its own analyses of the activity reported. The SCCDF is the only authorised body to file such requests.

Criminal Courts decide on cases of hate speech, when they fulfil the requirements of incitement to hatred or discrimination as a criminal offence and they should take into account a discriminatory motive as an aggravating factor.

In **Albania**, cases of hate speech are adjudicated by courts of general jurisdiction⁹², whilst discrimination cases are adjudicated by both specialised administrative courts and courts of general jurisdiction. Courts have to notify the CPD on any case of discrimination. In **Serbia**, jurisdiction on discrimination cases is within the competence of higher courts. The courts are not collecting data on hate speech, and judgements are usually made visible in reports of the independent bodies and NGOs. The role of the courts in relevant criminal, civil and misdemeanour cases is crucial, but due to excessive length of judicial proceedings and low capacity, they are often not providing justice for victims according to the relevant international standards.

In **Montenegro**, the LPD in its Article 33 may require courts, the state prosecutor's offices, misdemeanour authorities, the police and inspection authorities to keep separate records of filed complaints, initiated proceedings and decisions taken within their own jurisdiction in relation to discrimination, but only the misdemeanour courts do comply with this requirement.⁹³ The vast majority of cases before the misdemeanour courts are related to hate speech occurring on Facebook against LGBTI population.

Role of Regulatory Authorities and Self-Regulatory Mechanisms of the Media

An adequate mixture of regulation of and self-regulation by the media and the Internet has proven effective in combating hate speech and in ensuring "that any control exercised over freedom of expression is as limited as possible"⁹⁴. Appropriate mechanisms for achieving this aim are "the establishment of national, independent regulatory bodies [...] with powers to monitor hate speech in the media, receive reports

90. Mandate of the OPAV, available at: <https://prokuroria-rks.org/psh/zmnv/68/misoni> (25.09.2020).

91. Kosovo/Interview with B. Kastrati, 16.06.2020.

92. Albania/*Criminal Procedure Code* law no7905, 31.05.1995 amended with Law no 35/2017 (30.03.2017).

93. Montenegro/Official Gazette, no 18/14, *Law on Prohibition of Discrimination*.

94. ECRI General Policy Recommendation No 15, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01> (17.02.2020), p. 43.

from the public in relation to hate speech, receive and support complaints, and make recommendations”⁹⁵. All countries reported having established such mechanisms, which can fulfil two important functions: people directly affected by hate speech can gain access to remedy and the general public can be made aware that hate speech is prohibited.

Media Regulatory Agencies and Complaints Mechanisms

All countries have established independent media regulatory agencies responsible for monitoring traditional broadcasters (radio & TV) as well as (audio) and audio-visual media services (both linear and on demand). In some countries – such as **Montenegro**, **North Macedonia** and **Serbia** – they are also responsible for overseeing print media. Almost all these authorities, agencies or commissions can take in complaints on inciting and spreading hatred based either on legal provisions in various media laws or on provisions in special codes established by the media regulators. While the lists of discrimination grounds prohibited and whether open or closed vary, gender/sex, race, religion, disability, age, belief/believes (political, religious) as well as sexual orientation (except for **North Macedonia**) are grounds prohibited in all countries.

The Law on Audio and Audio-Visual Media Services⁹⁶ of **Albania** provides that audio and/or audio-visual media services providers cannot broadcast programs with content inciting *hate on grounds of race, gender, religion, ethnic, national, and any other form of discrimination* (Article 32). On demand services are not allowed to include programs that incite hatred on the grounds of race, ethnicity, gender, nationality or religion (Article 76). The Audio-Visual Media Broadcasting Code⁹⁷ is an implementing instrument to the Law on Audio and Audio-Visual Media Services and stipulates principles for Audio-Visual Media Service Providers such as the *discouragement of hatred, of intolerance, and of discrimination grounds of race, sex, political beliefs sexual orientations* (Section 1.5). The country report states that the code has been drafted in line with EU Directive 2010/13 (Audiovisual Media Services Directive) and international acts on human rights protection such as ECHR. A Complaints Council was established to handle complaints alleging breaches of *fundamental human rights and dignity*, focusing especially on protection of child rights, right to information and to raise public opinion awareness on the respect of moral and ethical norms (Audio-Visual Media Broadcasting Code, Section 2.1). However, this Complaints Council is not expressly mandated to deal with complaints on the use of hate speech.

In **Bosnia and Herzegovina**, the Communications Regulatory Agency has jurisdiction over telecommunications, broadcasting and audio-visual media services (linear and on demand) and is mandated to monitor the implementation of the Code on Audio-Visual and Radio Media Services⁹⁸. The Code provides that media services must not broadcast or publish content that *humiliates, intimidates or incites hatred, violence or discrimination against a person or group of persons on the grounds of sex, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or on the basis of any other circumstances which have the purpose or consequence of preventing or endangering any person's recognition, enjoyment or exercise of rights and freedoms on equal basis* (Article 4 (1)). Furthermore, they shall *not create a clear and imminent risk of incitement to hatred, violence or discrimination against a person or group on the grounds referred to above, or which may be interpreted by the public as incitement to hatred, violence, disorder and riots, or which could provoke or incite a crime* (Article 4 (2)). When a violation of the Code is established in the context of hate speech, the Agency can issue warnings, fines and suspensions against broadcasters or providers of audio-visual media services. It can publish its decisions on its web-site and in its annual report. Although the Agency has certain powers to act *ex officio*, it customarily relies on receiving individual complaints.⁹⁹ However, according to the country report on **Bosnia and Herzegovina** the Agency receives few complaints and seldom establishes violations of the Code concerning hate speech, despite the wide perception of a high number of instances of hate speech on radio and television.

95. ECRI General Policy Recommendation No 15, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01> (17.02.2020), p. 29.

96. Albania/Law no 97/2013 On Audio and Audio-Visual Media Services in Republic of Albania, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)007-e) (24.09.2020).

97. Albania/AMA Decision no228 (11.12.2017) Audio-Visual Media Broadcasting Code, available at: <http://ama.gov.al/wp-content/uploads/2019/06/AUDIOVISUAL-MEDIA-BROADCASTING-CODE-.pdf> (30.04.2020).

98. Bosnia and Herzegovina/Official Gazette of BiH, no 3/16, *The Code on Audio-Visual and Radio Media Services*.

99. See: ECRI (2017) ECRI Report on Bosnia and Herzegovina (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602> (21.09.2020), p. 17.

The Constitution of **Kosovo** provides for the Independent Media Commission (Article 141), which monitors the audio and audio-visual media services as specified in the Law on the Independent Media Commission¹⁰⁰ (LIMC). Its Code of Ethics is applicable to media services who have been granted a license as well as to its members. The media services are obliged not to use hate speech in any programs they transmit (Section 10). The Commission may initiate and receive complaints with regard to a failure to comply with among others their code of conduct (Article 29 (1), LIMC). It issues a decision giving consideration to all facts and circumstance of the relevant case upon completion of an investigation (Article 29 (4), LIMC)) and has quite powerful measures and sanctions at hand (Article 30 (1), LIMC). On the basis of the nature and extent of the breach, it can issue written warnings, order the broadcasting of a correction or apology, impose a fine (€10,000-€100,000), or require the suspension, change of conditions or termination of a broadcasting license. All the Commission's decisions, including imposed sanctions, shall be published (Article 30 (7), LIMC). The latest IMC Annual Report (of 2018) does not contain any complaints related to hate speech. According to the country report, the monitoring report for the media services during the parliamentary election in 2019¹⁰¹ identified violations of the Code in terms of language used, but remains unclear whether these incidents constituted hate speech.

In **Montenegro**, the Agency for Electronic Media monitors audio-visual media services. The Law on Electronic Media¹⁰² (LEM) obliges services *not to incite, enable incitement or spread hatred or discrimination on the grounds of race, ethnic background, skin color, sex, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation* (Article 48, LEM). Furthermore, the provision of on demand audio-visual media services allows for derogation from freedom of reception and retransmission in case the service endangers or seriously threatens *the fight against incitement to hatred based on race, sex, religion or nationality, endangering dignity can be restricted or prohibited* (Article 6, LEM). The Council of the Agency has also established a Rulebook on Program Standards in Electronic Media, which defines hate speech *as all forms of incitement to, enabling incitement to or spreading of hatred or discrimination on the grounds of race, ethnicity, skin color, sex, language, religion, political or other belief, national or social origin, property status, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic inheritance, gender identity or sex orientation* (Article 4). It prohibits *stimulating, enabling, instigating or spreading hate speech* (Article 6 (d)) as well as *aiming at provoking national, racial and religious intolerance or hatred* (Article 17 (1)). The Agency can initiate or react to complaints, which are submitted to the Agency Council¹⁰³ (Article 14, LEM), and it can issue warnings and suspend licenses (Article 140, LEM). In 2018, the Agency dealt with two allegations of hate speech, in the case of TV Srpska vs Radio Cool¹⁰⁴ a violation of the standards was established. In early 2020, the Agency's Council found spreading of hate speech – incitement to hatred, intolerance and discrimination against Montenegrins – and suspended the broadcasting of some programs of two foreign TV stations (TV Happy and TV Pink M) for three months.¹⁰⁵

The Agency for Audio and Audio-Visual Media Services in **North Macedonia** oversees broadcasters and the providers of audio-visual media services according to the Law on Audio and Audio-Visual Media Services¹⁰⁶ (LAAVMS) as well as print media according to the Law on Media¹⁰⁷ (LoM). Both laws prohibit inciting and spreading of discrimination, intolerance and hatred – the LoM includes a closed list of grounds covering *race, gender, religion and nationality* (Article 4) and the LAAVMS an open list of grounds adding *colour, sexual orientation, breed identity, membership of marginalised group, language, social origin,*

100. Kosovo/Law no 04/L-044, available at: <http://kpm2.spinagency.com/assets/cms/uploads/files/LAW%20No.%2004%20L-044%20ON%20THE%20INDEPENDENT%20MEDIA%20COMMISSION.pdf> (21.09.2020).

101. Kosovo/Independent Media Commission, Audio-Visual Media Service Provider Monitoring Report during the 2019 Elections Campaign, available at: <https://www.kpm-ks.org/assets/cms/uploads/files/Raport%20monitorimi%20-%20OSHMA%20gjat%20fusht%20-%20p%20p%20-%20gjedhjet%20e%20jasht%20-%20zakonshme%20lokale%202019.pdf> (21.09.2020).

102. Montenegro/Official Gazette, no 046/10, 040/11, 053/11, 006/13, 055/16, *Law on Electronic Media*, available at: <https://aemcg.org/wp-content/uploads/2011/11/Electronic-Media-Low-17.08.2016.pdf> (21.09.2020).

103. NGOs may nominate Council members (Article 21 (1), LEM).

104. Montenegro/AEM/02-212 (09.02.2018), available at: <https://aemcg.org/wp-content/uploads/2018/05/Upozorenje-Srpska-TV-09.02.2018.pdf> (25.09.2020).

105. Montenegro/AEM/ 01 – 147 (10.02.2018), Montenegro/AEM/ 01 – 141 (10.02.2018), available at: <https://aemcg.org/obavjestenje/odluke-i-rjesenja-savjeta/> (25.09.2020).

106. North Macedonia/Official Gazettes no 184/2013, 13/2014, 44/2014, 101/2014, 132/2014, 142/2016, 132/2017, 168/2018, 248/2018, 27/2019, 42/2020, *Law on Audio and Audio-Visual Media Services*.

107. North Macedonia/Official Gazettes no 184/2013, 13/2014, *Law on Media*.

education, religious believe, political or any other conviction, disability, age, family or marital status, property status, health condition, personal characteristic, or any other base (Article 48), but not including nationality. The Agency based on the LAAVMS can issue a public warning, submit a proposal to the Agency Council for revoking a license or adopt a decision for deletion from the Registry on Professional Online Media¹⁰⁸. Furthermore, the Agency can propose the initiation of misdemeanour proceedings in cases in which – despite the adoption of a warning – the same violation continues occurring during the current year (Article 23, LAAVMS). A misdemeanour procedure can only be started after a mediation, which can result in a fine of € 500, whereas the misdemeanour proceedings can result in a fine of € 1,000 (Article 23, LAAVMS). The measures referred to shall be published on the Agency’s web-site, including a detailed rationale, within three days from their execution (Article 23, LAAVMS). Since 2019, the Agency has processed two complaints on hate speech, in which it conducted extraordinary inspections and issued decisions, which, however did not establish a violation of the legal provisions inciting hatred.

In **Serbia**, the Law on Electronic Media¹⁰⁹ (LEM) provides for the mandate of the Regulatory Authority for Electronic Media and covers broadcasting, program content available on request by electronic communication networks and content of electronic publications. The Authority ensures that the program of the media service provider does *not contain information which overtly or covertly encourages discrimination, hatred or violence based on race, colour, ancestry, citizenship, national origin, language, religion or political beliefs, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health status, disability, marital and family status, criminal record, age, looks, membership in political, trade union and other organizations, and other actual or presumed personal characteristics* (Article 51, LEM). The law also allows for temporary restrictions of the freedom of reception and retransmission of television broadcast in case of content inciting hatred based on race, gender, or religious or national affiliation repeated at least twice in the previous 12 months (Article 46, LEM). Based on the prohibition of hate speech the Authority may issue a warning to the media service provider, temporarily impose a ban on publishing program content (up to 30 days), or revoke its license, due to violation of obligations related to program content (Article 29, LEM). The Authority adopted a Regulation on the protection of human rights in providing media services,¹¹⁰ which also prohibits hate speech. Complaints on hate speech can be submitted by completing a simple form¹¹¹ on the web-site of the Authority, while decisions are available on the same site. The Authority is not obliged to collect data on hate speech, so statistics are neither displayed on the web-site nor in the Annual Report. One of the decisions available is related to hate speech¹¹² targeting a(n) (Albanian) professor who was on a morning show of Happy TV. In this case the Authority ordered the broadcaster to stop broadcasting hate speech related content and to publish its decision on their program. The EU Progress Report (2019) notes that media often use and tolerate hate speech and discriminatory terminology, which is *rarely tackled by regulatory authorities or prosecutors*.¹¹³ The ECRI report on Serbia (2017) analyses the reasons for the Agency’s lack of action – namely *political influence, facilitated by the [Agency’s] limited de facto independence*.¹¹⁴ The country report states that the Authority often rejects complaints based on formal reasons (e.g. missing data on the form), which does not facilitate access to justice.

According to the country reports on **Montenegro** (Article 23 para 2, LoM & Article 18, LEM) and **Serbia** (Article 76, LPIM) information, which is either part of scientific or authorial/documentary work or of an objective report or which has the intention of critically documenting discrimination or hatred that instigate or could instigate such a behaviour, is not considered hate speech.

The media regulators have a legal basis for handling complaints related to the use of hate speech. They have different measures and kinds of sanctions at their disposal when it comes to handling complaints on hate speech. Almost all of them can issue warnings or revoke or at least temporarily suspend licenses or ban publications. Three regulators (**Bosnia and Herzegovina, Kosovo, Montenegro**) can become active on an *ex officio* basis when it comes to complaints and some can issue fines (**Albania, Bosnia**

108. North Macedonia/The Registry on Professional Online Media, available at: www.promedia.mk (25.09.2020).

109. North Macedonia/Official Gazettes no 184/2013, 13/2014, 44/2014, 101/2014, 132/2014, 142/2016, 132/2017, 168/2018, 248/2018, 27/2019, 42/2020, *Law on Audio and Audio-Visual Media Services*.

110. Serbia/Official Gazette, no 55/15, *Regulation on protection of human rights in providing of media services*.

111. See: <http://www.rem.rs/sr-lat/prijave/podnesite-prijavu> (25.09.2020).

112. Serbia/Republičko telo za elektronske medije, 07-1793/19-6 (15.11.2019).

113. European Commission (2019), Commission Staff Working Document: Serbia 2019 Report, SWD(2019) 219 final, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf> (10.04.2020), p. 26.

114. ECRI (2017) ECRI Report on Serbia (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4> (21.09.2020), p. 22.

and Herzegovina, Kosovo). In **Bosnia and Herzegovina, Kosovo, North Macedonia** and **Serbia** the regulators can publish their decisions either on their web-sites or in their annual report. No cases of hate speech are reported for **Albania** and **Kosovo**. Media regulators are not perceived as easily accessible and effective entry points for redressing cases of hate speech in the media.

Self-Regulatory Mechanisms

Print media and online media are less often regulated by law than by self-regulatory codes and mechanisms. Only those that have become members to the respective soft law and its enforcement mechanism are bound. There is no media law which enables protection from hate speech on online editions of print media in **Albania, Kosovo** and **North Macedonia**. The self-regulatory codes in **North Macedonia** and **Serbia** prohibit hate speech, but do not connect hate speech to any prohibited grounds of discrimination. All other codes provide closed lists of prohibited grounds of discrimination covering gender/sex, race, religion, disability, age and sexual orientation (the code in **Montenegro** does not include the last two grounds mentioned) The self-regulatory mechanisms can mediate, most of the times issue decisions and sometimes can ask for correcting or removing content or for publishing an apology. Their decisions are not legally binding and they cannot issue sanctions. They can however make their decisions public.

Point 8 (hate speech) of the Code of Ethics for Journalists¹¹⁵ (CEJ) in **Albania** provides that media must not publish materials that incite *hatred or violence towards individuals based on race, religion, nationality, color, ethnic origin, membership, gender, sexual orientation, civil status, disability, illness or age. Any publication should refrain from specifying the origin, ethnicity, nationality, race, religion or sexual orientation of a group or an individual, unless it is deemed relevant and necessary to better understand facts and opinions presented in the publication.* This Code is an initiative by non-profit organisations (NPOs) and was developed by national and international experts (including journalists) in the framework of the Council of Europe project JUFREX. The country report assesses the CEJ to respect the spirit of the Constitution, the Universal Declaration of Human Rights and the European Convention on Human Rights. The Albanian Media Council and the Board of Ethics were established to monitor the implementation of the CEJ.

Complaints on hate speech can be filed via a form on the web-site of the NPO-initiative. The Board of Ethics investigates a complaint and after a careful review based on the CEJ it issues a recommendation. The Council may determine to call a hearing on a complaint. In case the complaint is deemed valid, the media organisation involved is notified and the process of mediation starts. If the mediation is not successful, the parties can go to court.¹¹⁶ Violations of the CEJ are collected in a data base, which is accessible to the public and a search mode allows for easy identification of hate speech cases.

In **Bosnia and Herzegovina**, print and online media are regulated by the Press and Online Media Code¹¹⁷, which states *that journalists shall do their utmost not to incite and/or inflame hatred and/or inequality based on ethnicity, nationality, race, religion, gender, sexual orientation, physical disability or mental disability* (Article 3). The Press Council is the self-regulatory mechanism overseeing the implementation of the Code. The Council aims at resolving complaints on hate speech by mediation and conciliation with the aim of removal of the offensive content and the publication of an apology. The Council cannot issue sanctions and its decisions are not legally binding. Despite its rather weak powers, the Council receives hundreds of complaints on hate speech each year. The Council's reports contain statistics on complaints – separately displaying cases of hate speech. ECRI (2017) identified the working relationship of the Press Council and the prosecutorial authorities as a weak spot, as prosecutors have not followed up on the hate speech cases submitted by the Council.¹¹⁸

The Code of Ethics (CE) in **Kosovo** covers print and online media. The Code requires the press to do their utmost not to incite or inflame hatred or encourage discrimination (Section III, 2 (a) and (b)) by engaging in any of the following: treat with contempt or employ derogatory terms likely to hurt and intimidate an individual or group *on the basis of ethnicity, religion, sex, race, color, marital status, age or disability.* References

115. Albania/Code of Ethic of Journalists (2018), available at: <https://kshm.al/en/about-us/code-of-ethics/> (30.4.2020).

116. See: Albanian version, available at: <https://kshm.al/ankesat/si-postohet-ankesa/> (07.08.2020) of the English sub-page "How to file a complaint", Google Translate Albanian to English.

117. Bosnia and Herzegovina/The Press Council in BiH (2010) *Press and Online Media Code of BiH*, available at: http://english.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9&lang=bs (21. 5.2020).

118. ECRI (2017) ECRI Report on Bosnia and Herzegovina (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602> (21.09.2020), p. 17.

to a person's ethnic group, race, religion, gender, sexual orientation or physical or mental illness or [disability] can only be made when directly relevant to the story being reported (Section III, 3). The Kosovo Press Council (KPC) who monitors the implementation of the Code can only receive complaints on members. Its Board is composed by the representatives of the media members and entitled to decide on complaints, it can order the correction of an article, the publication of an apology, it can mediate between the parties and/or issue a decision that a member is in breach of the CE, it cannot issue fines though. Since 2018, the Council has handled 11 complaints on hate speech – four were approved, one was partly approved, six were not approved. The great majority of online media no longer allow comments on their web-sites and social media pages.

The CoE and the OSCE supported the adoption of the Journalists' Code of Ethics of 2016 (JCE) in **Montenegro**. It includes provisions discouraging the fostering of hostility or hatred towards persons on the grounds of their race, ethnic origins, nationality, gender, physical disabilities, religion or political affiliation and the publishing of certain materials when they have a high probability of instigating such hostility and hatred. When reporting on crimes mentioning a suspects' religious, ethnic or other minority belonging is prohibited unless this information can be justified as relevant to the audience's understanding of the incident, as it could stir up prejudices against minority groups in need of protection. Several self-regulatory mechanisms monitoring the implementation of the JCE have been established. The main media self-regulatory body covers 19 media outlets (90%)¹¹⁹ and conducts mediation between the complainant and the media outlet. The only self-regulatory mechanism that has become active on hate speech since 2018, is the Ombudswoman of the daily news *Vijesti* who took up a case related to spreading of hatred and normalising of violence against women and their sexual objectification in an article containing misogyny.

In **North Macedonia** everyone has the right to ask the publisher or the editor-in chief to publish a correction of information within 30 days from publishing if it contains false information violating a person's rights (Article 17 (1) & (2), Law on Media¹²⁰). In case this request is refused, an urgent procedure of judicial protection can be initiated and if decided in favour of the complainant, the correction must be published citing the court ruling (Article 23, Law on Media). Furthermore, the Code of Ethics of Journalists¹²¹ (CEJ) regulates print media and news agencies, broadcasting and the internet media. It stipulates that journalist shall not consciously create or process information that jeopardise the human rights and freedoms, shall not use hate speech and shall not encourage discrimination of any sort (nationality, religion, sex, social class, language, sexual orientation, political orientation) (Article 10). Two self-regulation bodies have been established to monitor the CEJ.

Firstly, the Council of Media Ethics¹²² and its Press Complaints Commission can handle complaints on hate speech filed by e.g., institutions, NGOs, International Organisations according to the Rules of Operation of the Press Complaints Commission¹²³. It has to decide on complaints within 30 days and can mediate with the aim of getting the truth or a correction published, the published information removed, or an apology published. In case of repeated violations of membership rules the respective media can be excluded from the Registry on Professional Online Media¹²⁴ until they comply with the relevant regulations. According to Article 17 of the Rules of Operation decisions¹²⁵ are published on the web-site, Facebook and Twitter. Between 2018 and 2019 98 violations were established out of which 21 were cases of hate speech, most of them on internet portals.¹²⁶ The Council, supported by the OSCE wants to establish a data base, which the wider public should be able to access and search according to specific categories, which will include hate speech. The Council advises journalists who become the target of hate speech to notify the Mol.

119. Freedom of House, Annual Report 2014, available at: <https://freedomhouse.org/report/freedom-%20%20%20press/2014/montenegro#.VcwUuWCFPIU> (08.08.2020).

120. North Macedonia/Official Gazettes no 184/2013, 13/2014, *Law on Media*.

121. North Macedonia/*Code of Ethics of Journalists of North Macedonia*, available at: <https://semm.mk/en/pravna-ramka-3/2015-11-01-07-10-08/kodeks> (25.09.2020).

122. The members of the CME include print, audio visual media, internet portals, news agencies and professional news and media associations and organizations, information received during interview with Marina Tuneva, Executive director of the Council, via Skype on 5 May 2020.

123. North Macedonia/*Rulebook of the Press Complaints Commission of the CMEM*, available at: <https://semm.mk/en/komisija-za-zalbi-3/delovnik> (25.09.2020), statute and rulebooks.

124. North Macedonia/The Registry on professional online, available at: www.promedia.mk (25.09.2020).

125. For more info on the Councils decisions and opinions please follow the link: <https://semm.mk/komisija-za-zalbi/arhiva-odluki-i-mislenja> (25.09.2020).

126. For more information please follow the link: <https://semm.mk/en/komisija-za-zalbi-3/statistical-findings> (25.09.2020).

Good practice

The Council of Media Ethics in cooperation with the OSCE Mission to Skopje has established a Network for Combating Hate Speech in the Media in **North Macedonia**. Members of the network are institutions, media, NGOs and other organisations, however the network lacks continuity in its activities mainly due to lack of financial means. One of its recent activities was a joint press conference for professional reporting in the upcoming elections, including hate speech, supported also by the OSCE Mission to Skopje. The Helsinki Committee for Human Rights, which is also a member of the Network, provides a user-friendly web-site for reporting hate speech. They are active in filing complaints to the police or the Public Prosecutor's Office; the latter is however not deemed as very responsive by the Helsinki Committee. The Committee introduces misdemeanour proceedings, when no criminal offence is involved.

Secondly, the Association of Journalists (830 members) has established a Council of Honour. Everyone (not only victims of violations) may submit complaints, proceedings before the Council are initiated by internal structures of the Association (Article 3, CEJ). The procedure is initiated latest 10 days from the reporting of the violation and lasts between two to three weeks. The procedure is not public except for the voting part, unless the Council members decide to conduct a secret voting. The Council can ask for publishing the truth or a correction, the removal of the published information or for a public apology. It can issue a warning or decide on the temporary exclusion from membership of a journalist. When the Council decides to issue its opinion in public, the decision is published on its web-site. The web-site does not display any statistics. The Council cooperates with the Ombudsperson to protect the rights of journalists, when they become victims of physical and verbal violence, and against the misconduct of Mol officials.¹²⁷

The Law on Public Information and Media¹²⁸ (LPIM) in **Serbia** stipulates that *ideas, opinions or information published in the media shall not incite discrimination, hate or violence against an individual or a group of individuals on grounds of their race, religion, nationality, sex or their sexual orientation, or other personal inclination, notwithstanding whether a criminal offence has been committed by such publication* (Article 75). It prohibits the *distribution of information or other media content, if this is necessary in a democratic society, and if it invokes an act of direct violence towards a person or a group of people based on their race, nationality, political affiliation, religion, sexual orientation, disability or other personal characteristic, and if the publication of the information poses an immediate threat and has an incorrigible effect which cannot be stopped in any other way* (Article 59, LPIM)). In case of violation of these hate speech provisions, the victim may file a law suit requesting a determination of whether the information violated public interest, with the aim of banning the republishing of such information, or of having the record removed or destroyed (Article 101, LPIM). Apart from the victim, a law suit concerning hate speech can be submitted by a legal person engaged in the protection of human rights upon obtaining the consent of the person who the information refers to (Article 102, LPIM). The LPIM also stipulates the right to material and non-material damage (Article 112) as well as the liability of the journalist and editor-in-chief (Article 113) and publishers (Article 114). Even though this prohibition is mostly related to the traditional media, courts in **Serbia** were granting protection in cases of hate speech in online comments on news of media outlets.¹²⁹

Two leading journalists' associations have adopted the **Serbian** Journalists' Code of Ethics¹³⁰ (SJCE). It establishes that journalists are primarily responsible to their readers, listeners and viewers and they must oppose all those who violate human rights or promote any kind of discrimination, hate speech and incitement to violence. The Press Council monitors the implementation of the SJCE and has laid down the requirements for complaints in its Rules of Procedure¹³¹. Victims, attorneys or relevant human rights organisations can submit complaints (Article 3), which are evaluated and decided on by the Press Complaints Commission consisting of eleven members both journalists and representatives of CSOs.

127. European Commission Progress Report on North Macedonia, 29 May, 2019, 2.2 Rule of law, Chapter 23, 2.2.1 Judiciary and fundamental rights, Fundamental rights, Freedom of expression, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf> (25.09.2020), p. 27.

128. Serbia/Official Gazette, no 83/14, 58/15 and 12/16, *Law on Public Information and Media*.

129. Serbia/Tanjug (2012), „Presuda za govor mržnje prema LGBT“ in: *Mondo* (15.02.2012), available at: <https://mondo.rs/Info/Drustvo/a235158/Presuda-za-govor-mrznje-prema-LGBT.html> (27.03.2020).

130. Serbia/Press Council, *Serbian Journalists' Code of Ethics* (2013), available at: <http://www.savetzastampu.rs/english/serbian-journalists-code-of-ethics/105/2015/11/03/serbian-journalists-code-of-ethics.html> (25.09.2020).

131. Serbia/Press Council, *Commission Rules of Procedure* (2016).

The Press Council has developed a mobile application¹³², through which complaints can be submitted. When the Commission accepts a complaint, it can propose mediation (Article 7) and can order the media to publish its decision shortly (Article 19). The Press Council and Complaints Commission publish the decisions on their web-site¹³³ and annual reports¹³⁴ containing findings relevant for combating hate speech. Violations of the Code have been identified in connection to LGBTI persons¹³⁵ and Roma¹³⁶ (3 cases in 2018). Currently the Council implements a project on monitoring the implementation of the Code by daily media, which to a large extent targets hate speech. This project could tackle an issue identified by ECRI (2017) namely that a large number of violations of the SJCE are not dealt with.¹³⁷ The country report sees the effectiveness of this self-regulation mechanism challenged by the tabloids that most commonly spread hate speech, but are not members of the Press Council. ECRI (2017) established that the Press Council *is widely considered to be weak*, and several media actors refused to publish the Council's decisions.¹³⁸

Three countries have developed soft law targeting online media, aiming at establishing mechanisms and procedures for monitoring their web-sites and social media pages, for taking in and reviewing complaints and for taking measures to remove content or ban users frequently violating the prohibition of hate speech.

In **Albania** a system for supervision and prevention of publication of comments promoting hate speech covering web-sites and social media based on the Ethical Guidelines for Online Journalism was established. Point 9 of the Guidelines define hate speech as speech intended to generate intense hatred or is incitement to actual violence or discrimination against individuals or groups, especially minorities of all kinds. Editors and web-site operators must monitor their web-sites (and their respective social media pages), take measures to prevent or stop publication of content that constitutes hate speech and make use of effective mechanisms to identify and disable hate speech as expediently as possible. Content management mechanisms and reviewing mechanisms of public complaints have to be made available to the users. Moderators should be properly trained in the basics of relevant national legislation and international standards on protection of vulnerable groups. The suggested amendments to the Law on Audio and Audio-Visual Media Services would make it possible to submit complaints to the Albanian Audio-Visual Media Authority when electronic publication service providers violate the provision on not inciting, enabling *incitement or spreading hatred or discrimination on the grounds of race, ethnic background, skin color, sex, language, religion, national or social background, financial standing, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation* (proposed Article 33/1 (4), LAAVMS). In such cases a publication of a correction or reply or the insertion of a pop-up notification could be ordered, and a fine could be imposed. Ordering the removal of content would however not be possible (proposed Article 132, LAAVMS).

The Guidelines for Applying Section 2.8 of the Journalists' Code of Ethics¹³⁹ in **Montenegro**, expands the number of grounds stipulated by the JCE by referring to the definition and the grounds of hate speech of GPR 15. Section 1.1 of the Guidelines states that comments shall not contain any hate speech or be discriminatory nor have any other clearly unlawful contents. The Guidelines aim at countering intentions of temporarily or permanently banning comment sections for posts. They were adopted by a majority of media outlets and define procedures like registration of users and automatic filtering, reporting mechanisms and sanctions like the removal of comments, and the temporary or even permanent ban on posting comments. The New Law on Media, which has not been adopted yet, will incorporate provisions from the Guidelines.

In **Serbia**, the Code of Association of Online Media¹⁴⁰ stipulates principles for formulating a list of illicit conduct, i.e., content, as an integral part of internal rules. Among these principles, it can be found the pro-

132. See: <https://play.google.com/store/apps/details?id=rs.savetzastampu> (25.09.2020).

133. See: <http://zalbe.rs/> (26.03.2020).

134. See: <http://www.savetzastampu.rs/latinica/izvestaji> (26.03.2020).

135. Press Complaints Commission, *Minutes for the meeting 30.8.2018*, available at: <http://www.zalbe.rs/zalba/4411> (25.09.2020).

136. Press Complaints Commission, *Žalba/Udruženje građana produkcija Roma World*, available at: <http://www.zalbe.rs/zalba/4389> (25.09.2020)

137. ECRI (2017) ECRI Report on Serbia (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4> (21.09.2020), p. 22.

138. ECRI (2017) ECRI Report on Serbia (fifth monitoring cycle), available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4> (21.09.2020), p. 22.

139. OSCE (2018), <https://www.osce.org/files/f/documents/8/e/413027.pdf> (08.08.2020).

140. Serbia/Association of Online Media, *Kodeks Asocijacije Onlajn Medija* (2017).

hibition of discrimination and hate speech. However, no self-regulatory mechanism has been established to monitor the implementation of this code yet.

The self-regulatory mechanisms have not processed a vast number of complaints on hate speech, but a few more in comparison to the media regulators. In **Bosnia and Herzegovina**, the Press Council receives quite a high number of complaints on hate speech, which might be an indicator that it is more easily accessible and visible than other institutions that could process complaints on hate speech. The self-regulatory bodies in **Kosovo**, **North Macedonia** and **Serbia** have also handled some complaints on hate speech. Furthermore, media have tried to fill a gap in the regulation of online media in the context of hate speech and have prepared guidelines and codes supporting journalists in monitoring and moderating, as well as in smoothly handling reports on hate speech and in deciding on whether the reported comments should be removed. A strategic and sustainable cooperation between self-regulatory media mechanisms and equality bodies has not been established so far. The No Hate Alliance of the CPD, the PA, the Audio-Visual Media Authority and the Media Council in **Albania** could be an adequate forum for developing a more strategic and sustainable cooperation. Beyond cooperation at the national level, regional conferences among self-regulatory mechanisms could be an opportunity for exchanging experiences and developing ideas on how to become more accessible and effective as a complaint mechanism. The Council of Media Ethics of **North Macedonia** used to organise such a conference in the past, where the prevention of hate speech was discussed among other issues.

Good practice

A good practice example of cooperation among the equality body, the PA, mechanisms of media regulation and CSOs is the No Hate Alliance established in **Albania** with the support of the Council of Europe and as a result of the 2019 Annual Conference of the PA on “Freedom without Hate, Freedom of Speech against other Human Rights”. The MoU signed by the CPD, the PA, the Audio-Visual Media Authority and the Albanian Media Council aims at promoting collaboration among the members of the network also including CSOs and public institutions. State institutions involved must contribute with human and financial resources, which supports the sustainability of the initiative. The focus is on regularly publicising statistics on hate speech/crimes, on providing information, engaging in awareness raising, conducting studies and providing recommendations as well as increasing capacities of responsible institutions by way of training activities. Although the initiative does not focus on case work, closer and more systematic cooperation on other tasks might pave the way for a more strategic cooperation on case work.

Challenges in Access to Justice for Victims of Hate Speech

Trust in the institutions in charge and their capacities to recognize and handle cases of hate speech in an adequate manner were mentioned as decisive factors for an adequate access to justice for victims of hate speech in all countries researched. Deficiencies in this regard lead to high levels of underreporting. High levels of this phenomenon were identified especially for **Bosnia and Herzegovina**, where minorities and marginalized groups are affected in specific regions. The national expert refers to reports on the functioning of the anti-discrimination framework in **Bosnia and Herzegovina**, which suggest that a fear of victimization remains one of the biggest obstacles for victims to report discrimination.¹⁴¹ With the regard to **Albania**, underreporting of hate crime and discrimination was mentioned in relation to LGBTI persons particularly. Three quarters of LGBTI people, report suffering psychological abuse in **Albania** (76%) and 65% LGBTI persons are exposed to discrimination.¹⁴²

Other issues identified included the level of responsiveness of the Institutions in charge, the level of awareness of victims about the legal and the institutional framework, the effectiveness of the system in

141. Dzenana Radoncic, Edin Hodžić and Midhat Izmirlija (2018) Kvadratura antidiskriminacijskog trougla u BiH: Zakonski okvir, politike i prakse 2016-2018, Sarajevo: Analitika, p. 40; M. Jovanovic and D. Trlin (2018), 'Istrazivanje sudske prakse u podrucju antidiskriminacijske zastite u Bosni i Hercegovini' [Exploration of antidiscrimination jurisprudence in Bosnia and Herzegovina], in: S. Dvornik (ed.) Suzbijanje diskriminacije: Uloga pravosudja [Elimination of discrimination: The role of the judiciary], Sarajevo: Heinrich Boll Stiftung, pp. 44-46, referred to by national expert Edin Hodžić in his country report on BiH.

142. NDI (2015) Poll on LGBTI issues in the Balkans, available at: https://www.ndi.org/LGBTI_Balkans_poll (30.04.2020), referred to by national expert A.Gugu in her national report on Albania.

handling the cases as well as length and outcomes of procedures. Hate crime and discrimination incidents that are reported, are often not properly registered, investigated and prosecuted in Albania. There is a limited cooperation among justice institutions and there is a need for an enhanced regard for victims throughout the justice chain. As a result, there are few convictions for hate crimes against LGBTI persons.

When it comes to independent bodies, victims of hate speech in **Serbia** are often reluctant to use these mechanisms, since decisions of the latter are for the most merely recommendations. For example, the Regulatory Authority for Electronic Media, often rejects complaints when they do not mention the *full name of the media outlet, date and time of the programme content relevant for the complaint, allegations that offend or threaten someone's personal interest of the applicant of public interest, name, family name and address of person or name and address of the head office of legal entity and signature of a person or signature of authorised person and stamp of a legal entity*.¹⁴³ Since the idea of providing the opportunity to submit complaints to independent bodies is to make them accessible to all citizens by completing a simple online questionnaire, rejections due to formal reasons, including signature, are not facilitating access to remedy.

Legal aid for persons/groups affected by hate speech can be a boost in easier access to their rights. New laws on legal aid in **Albania** and **Serbia** might constitute promotional factors in this regard in the future. In Albania, access to legal aid *inter alia* has been provided for people who have been subject to direct or indirect discrimination upon decision of the CPD regardless of their economic status. Effectiveness of the new provisions will depend on the training of judges and awareness of the parties¹⁴⁴. The amendments to the law on protection from discrimination, submitted at the beginning of 2020, might foster the implementation and improve the protection of the victims of discrimination and of hate speech. In addition to introducing a hate speech definition, the amendments would allow the NGOs to represent collective interests of the victims directly to CPD¹⁴⁵.

Another issue of concern that remains is the enforcement of decisions, like for example those of the CPD in **Albania**. The CPD has difficulties with regard to the notification of its decision and execution of fines. In many cases, especially when journalists are involved, addresses of the recipients are not found. In the amendments to the law on protection from discrimination, submitted in 2020, the CPD has proposed a notification of its decision to be done with a public announcement. National media would be obliged to publicly announce CPD decisions involving hate speech. With regard to the execution of fines, the CPD has proposed that an anti-discrimination decision resulting in a fine should become an executive title, after the deadline of 30 days for its execution has expired.

143. For example: <http://www.rem.rs/uploads/files/Resenja%20Prijave/Resenje%20o%20odbacivanju%20prijave%20I.M.%2007-2088-19.pdf> (21.09.2020).

144. E.Toska (2018) Albania Helsinki Committee *Raport studimor Për aksesin në drejtësi të grupeve vulnerabël*, at http://www.ahc.org.al/wp-content/uploads/2019/02/Studimi-legal-aid-KShH_Shkurt-2018.pdf (21.09.2020).

145. Article 33 of the Draft law on Some amendments and addenda to the Law no 10221/2010 On the protection from discrimination, available at: <https://www.parlament.al/Files/ProjektLigje/20200227103137prligji%20PER%20MBROJT%20JEN%20NGA%20DISKRIMINIMI.pdf> (30.04.2020).

Mapping the Cooperation on Cases between Equality Bodies and Relevant Stakeholders

People affected by (online) hate speech need easy access to redress mechanisms. Easy access means that organisations handling cases of (online) hate speech have established a strategic cooperation on taking in and forwarding cases, so that people affected do not need to know where to enter the system of redress mechanisms, but can be sure that they are directed to the most competent organisation for handling their specific case.

First Entry Points for Victims of (Online) Hate Speech

Currently, equality bodies are not perceived as first entry points for gaining access to justice by individuals affected by (online) hate speech. The highest number of complaints on (online) hate speech seems to be submitted to the CPD in **Albania** and the CPE in **Serbia**. The reports on **Albania**, **North Macedonia** and **Serbia** mention CSOs as first entry points. Similar experiences regarding the role of NGOs have been recorded in **Bosnia and Herzegovina** – especially the BH Journalists Association. In **Montenegro** CSOs appear to play an important role in supporting submissions of complaints to the police. CSOs working with communities often affected by discrimination and (online) hate speech (e.g., LGBTI, Roma, Egyptians, persons with disabilities) and offering services in the context of (online) hate speech are most active, as they engage in activities (e.g., pro-active monitoring of (social) media, initiating legal action) making them visible as actors in the field of (online) hate speech. In **Bosnia and Herzegovina**, a self-regulatory mechanism of the media, the Press Council, responsible for print and online media, receives a large number of complaints. Limited resources reduce the IHRO's capacities to act as first entry point for people seeking access to justice in cases of (online) hate speech. For **Kosovo**, it is difficult to assess, which of the redress mechanisms available are most frequently addressed. The OIK's mandate on discrimination does not explicitly cover (online) hate speech, nevertheless the OIK can act on any information received that affects human rights, which includes human rights violations by print and online media.

Forwarding of Cases by Equality Bodies to other Institutions

Equality bodies have not established strategic and systematic structures or procedures for referring or cooperating on cases on (online) hate speech. The assessment of the cooperation of equality bodies on cases of (online) hate speech with other relevant institutions providing access to justice depends on a rather low overall number of (online) hate speech complaints submitted to the equality bodies. In **Bosnia and Herzegovina** as well as in **Serbia**¹⁴⁶ the equality bodies are quite content with their cooperation with the public prosecutor. The CPE is also largely content with the cooperation with the police; however, an absolute statute of limitation makes misdemeanour proceedings challenging. In **Albania** the CPD was not satisfied with the public prosecutor's reaction to their complaints and identified a lack of expertise within the public prosecution in handling both hate speech cases as well as hate crimes.¹⁴⁷ The IHRO saw the judiciary as rather closed and often not responsive to recommendations issued by the equality body, an issue pertaining to the overall relationship between the equality body and courts and not necessarily connected to cases of (online) hate speech. In **Kosovo** and **Montenegro**, the equality bodies do usually neither refer (online) hate speech cases to other institutions nor cooperate on such cases with other stakeholders. The CPD in **Albania** regularly targets the prosecution office, courts and the Assembly with

146. Serbia/Commissioner for the Protection of Equality, *Redovni godišnji izveštaj Poverenika za zaštitu ravnopravnosti za 2019. godinu*, p. 8.

147. Interview with Commissioner on Protection from Discrimination, R. Gajdja, 11 May 2020.

written requests in order to avoid parallel proceedings. As the CPD in **North Macedonia** is currently not operational, there is no data available on the equality body's cooperation when it comes to case work in the context of (online) hate speech.

Cooperation of Equality Bodies and Ombud Institutions

The cooperation of equality bodies and Ombud institutions has to be seen in the context of different approaches of these independent institutions. Ombud institutions or people's advocates work more often with a community and group-based approach. For **North Macedonia** it was stated that the OI forwarded cases to the CPD in the past, but was not content with their untimely and inefficient responses due to the CPD's lack in professionalism and impartiality. In **Serbia**, the CPE and the Protector of Citizens have established the practice of commonly reacting to severe cases of hate speech and issuing preventive statements before events likely to increase (online) hate speech (i.e., elections, Gay Pride). In **Albania**, potential was seen in strengthening the cooperation between regional offices of the CPD and the PA to more effectively address hate speech at the local level, which however does not always guarantee smooth cooperation within these institutions when discrimination or hates speech cases can be dealt with from different perspectives and departments. In **Bosnia and Herzegovina, Kosovo** and **Montenegro** the equality body is part of the Ombud institution. The IHRO of **Bosnia and Herzegovina** gives priority to members of the anti-discrimination section when it comes to handling cases of (online) hate speech and the PHFR in **Montenegro** has these cases handled by the Department on Protection against Discrimination, Minority Rights and Gender Equality. The OIK in **Kosovo** has initiated *ex officio* cases which focused on state institutions not complying with their duties to protect the rights of individuals or communities affected by hate speech. These three examples show that cooperation between departments focusing on anti-discrimination issues and those doing traditional Ombud institution work might be beneficial, as more different aspects of a case might be identified and recommendations could be more comprehensive and aim at systemic changes.

Cooperation between Equality Bodies and CSOs

CSOs are active in referring cases on (online) hate speech to the independent institutions in all countries. In **Albania**, the CPD has witnessed an increase in the number of cases submitted by CSOs with a legitimate interest since 2015. The CSOs are quite content with how the CPD handles the cases, but would like to see more impact of the decisions of the CPD by a more effective dissemination and enforcement of their decisions.¹⁴⁸ The strategic plan of the CPD foresees CSOs as main implementing partners, which means involving CSOs in awareness raising activities and increasing the CPD's outreach but less in case work. In **Serbia**, the CPE assesses its cooperation with CSOs (and also the media and other institutions) on the central level as its strengths, whereas it sees further potential in the cooperation with local communities.¹⁴⁹ Especially in hate speech cases involving public figures a strategic cooperation between the CPE and CSOs could be helpful, as it is more difficult for the CPE to handle these cases. However, it has to be kept in mind that CSOs often lack funding for legal representation. The Helsinki Committee for Human Rights in **North Macedonia** has cooperated with the CPD and the Ombudsman Office in the area of protection against discrimination, but finds it difficult to cooperate on (online) hate speech cases due to a lack of clarity of the mandates of these two independent bodies in this area.¹⁵⁰ In **Bosnia and Herzegovina**, both the IHRO and the CSOs positively assessed their cooperation, when CSOs forward cases to the equality body.

5.5 Needs of Equality Bodies to Establish/Improve Cooperation with Relevant Stakeholders

Equality bodies should take the lead in establishing a well-coordinated system of redress mechanisms, which efficiently refers cases to the competent institutions and strategically cooperates on cases of (online) hate speech. Such strategic cooperation should ideally include Ombud institutions or people's advocates, the police, public prosecutors, media regulators, self-regulatory media mechanisms, and CSOs actively working on cases of (online) hate speech or with communities most likely affected by (online) hate speech.

148. Interview with Commissioner on Protection from Discrimination, R. Gajdja, 11 May 2020.

149. Serbia/Commissioner for the Protection of Equality, (2016), *Strateški plan Poverenika za zaštitu ravnopravnosti (2016-2020)*, p. 16.

150. Information provided at viber interview with Aleksandar Jovanoski Legal advisor/project coordinator and Slavica Anastasovska, Legal advisor/project coordinator, HCNM program for online/hate speech, held on 15 May 2020.

The Role of Equality Bodies in Raising Awareness for and Promoting Information about Hate Speech

Equality bodies can play a central role in giving visibility to the phenomenon of (online) hate speech by raising awareness for the legal situation, informing about how to successfully gain access to justice and achieving an adequate solution from the perspective of those affected by (online) hate speech and increasing the (legal) knowledge of relevant stakeholders.

Activities of Equality Bodies for Raising Awareness on the danger of (Online) Hate Speech

Equality bodies do not have a specific strategy for raising awareness on (online) hate speech. The equality bodies in **Kosovo** and **North Macedonia** are reported not to have implemented any awareness raising activities due to lack of (explicit) mandate on (online) hate speech. The IHRO of **Bosnia and Herzegovina** is assessed as moderately active in raising awareness, i.e., not systematic and on an *ad hoc* basis. The CPD in **Albania** is reported to have intensified its awareness raising activities on (online) hate speech. Actors working on combating hate speech participated in a series of events organised in various cities during the Week against Discrimination marking the tenth anniversary or the LPD in **Albania**. Within the framework of the No Hate Campaign supported by the CoE, the Ministry of Education, Youth and Sport together with CSOs are discussing the option of developing a joint plan on combating (online) hate speech. The PHRF in **Montenegro** covers awareness raising by cooperating with CSOs focusing on hate speech targeted at marginalised groups. Furthermore, the PHRF implements training activities targeting professionals as well as the general public together with line ministries, CSOs, the Electronic Media Agency and the Judicial and Public Prosecutorial Training Center. The publication of opinions on cases of hate speech on the PHRF's web-site is seen as promoting what constitutes hate speech and making visible protection mechanisms available. The CPD in **Serbia** does awareness raising by warning the public of the most frequent, typical and severe cases of discrimination which often involve (online) hate speech, which are disseminated via social media. The CPD has also published a Manual on Fighting for Equality targeting journalists, which offers recommendations for non-discriminatory reporting, based on examples of hate speech identified in the media as well as a dictionary of tolerance, defining key terms and explaining which terms should (not) be used.¹⁵¹

Annual Report of Equality Bodies and (Online) Hate Speech

Most of the annual reports of equality bodies do not contain designated sections on (online) hate speech. In **Montenegro**, the PHRF's Annual Report displays a section on hate speech as special form of discrimination, which contains the most important observations on its prevalence, the number of cases received, how they are addressed and processes, an overview of the cases in which hate speech was established, and specific recommendations for remedying and improving the situation. The annual reports of the equality bodies of **Albania**, **Bosnia and Herzegovina** and **Serbia** present cases of (online) hate speech, but either in the sections related to grounds or areas of discrimination. A closer analysis of these reports is necessary in order to identify the (online) hate speech cases. Only the CPD's Annual Report (**Albania**) displays statistics showing cases of hate speech.

151. Serbia/Commissioner for Protection of Equality (2016), *Priručnik za novinare i novinarkе – Borba za ravnopravnost*.

Promotional and Public Relations Activities of Equality Bodies on (Online) Hate Speech

Equality bodies do not have a specific strategy for their promotional and public relations activities on (online) hate speech. The PHRF in **Montenegro** issues press releases via its web-site condemning specific cases of hate speech and asking competent authorities to effectively investigate and prosecute hate speech offences in both misdemeanour and criminal cases. The PHRF as well as the IHRO of **Bosnia and Herzegovina** cooperate with CSOs to organise conferences, other public events and meetings. The CPD in **Serbia** touches upon (online) hate speech in interviews, events and press releases, which are also disseminated via social media and in training activities.

Good practice

In **Serbia**, the CPD in cooperation with law schools started implementing a Moot Court Competition on discrimination cases in 2012. The Moot Court also involves CSOs. In 2020, the case will be related to hate speech. The competition among students of Serbian law schools increases their practical knowledge on cases, rules and procedures of the European Court of Human Rights. The project is financially supported by the Fund for an Open Society Serbia.

Needs of Equality Bodies for Effectively Doing Awareness Raising and Promotional Activities on (Online) Hate Speech

Prerequisites for doing effective awareness raising, promotional and public relations, adequate resources and the development of a communication strategy on (online) hate speech are a clear mandate. Ideally, such a strategy should be developed based on consultations with other relevant stakeholders, which would later on make a strategic cooperation with these stakeholders easier. Staff of equality bodies engaging in awareness raising and other communication activities should have the opportunity to continuously build their capacities. Equality bodies could gain in more effectively combating (online) hate speech by strengthening and building capacities of local actors as well as by taking on a more pro-active role in shaping public discourse, disseminating information on successful cases, promoting counter-narratives and counter-speech. Together with CSOs equality bodies could empower and mobilise those affected by (online) hate speech to play an active role in addressing hate speech and in supporting the development of campaigns and dissemination activities. Equality bodies should strongly advocate for freedom of expression, as when newspapers and online portals remove the comment sections on their web-sites or social media channels, online hate speech happens in a more hidden way namely on the profiles of social media users or within closed groups. Evaluating the impact of training activities targeting a broad range of professionals could help equality bodies improve their training concepts on raising awareness for (online) hate speech.

Research and Surveys on (Online) Hate Speech

Research and surveys are important tools for gaining more in-depth insight about the phenomenon of (online) hate speech, its developments and trends, as well as the impact of measures preventing and combating (online) hate speech.

Involvement of Equality Bodies in Conducting Studies and/or Surveys

So far none of the equality bodies have implemented any studies, surveys or special reports exclusively focusing on (online) hate speech. Few equality bodies have implemented such activities which also covered hate speech. Some of the special reports published by the IHRO in **Bosnia and Herzegovina** also cover hate speech (e.g., one on the rights of LGBT persons). These special reports are often used by CSOs as advocacy tools targeting relevant stakeholders. In **Serbia**, the CPD had surveys on attitudes towards discrimination conducted among representatives of public institutions, journalists and the public, which display findings on the knowledge about hate speech being illegal, the visibility of hate speech in the media and in the right of the freedom of expression as an excuse for tolerance of hate speech as well as the ability of recognising hate speech. The reports on **Albania** and **Montenegro** mention CSOs implementing studies and surveys on different aspects of hate speech as well as on certain groups especially affected by hate speech (e.g. LGBTI).

Needs of Equality Bodies to More Effectively Implement and Disseminate Results of Studies/Surveys

Prerequisites for making effective use of the results of studies, special reports and surveys for guiding future work and for defining priorities are a clear mandate, adequate resources as well as research and analytical capacities and an overall strategy for such research activities. Equality bodies would need to strengthen their cooperation with CSOs (either focusing on (online) hate speech or on working with communities (such as LGBTI, national minorities, HRDs) and other relevant actors to either commission or jointly conduct research on (online) hate speech based on a well-developed methodology and a strategic division of research work. Furthermore, the results of the research should be more widely disseminated also by cooperating with relevant stakeholders like CSOs and the media. When CSOs are not active in proactively and systematically monitoring (social) media content and the discourse triggered by (online) hate speech, equality bodies should build capacities among their staff members and do monitoring within designated time periods. Research should be done on data collection, e.g., on establishing a system for collecting data from all the different complaints mechanisms in order to provide a coherent and integrated overview of (online) hate speech cases and to find out more about why people potentially affected by hate speech are reluctant to report their experiences and submit complaints.

Involvement in Projects and Cooperation Activities on Combating Hate Speech

A strategic approach for developing and establishing cooperation activities at the local, national, bilateral, regional and international level gives equality bodies the opportunity to become more visible, to increase their outreach and to gain access to peer-to-peer learning.

Involvement of Equality Bodies in Projects Combating (Online) Hate Speech and their further Needs

Only few of the equality bodies are involved in projects focusing on hate speech, which are largely foreign donor driven. In **Albania**, the CPD organised the Week against Discrimination at the beginning of 2020, which also targeted actors combating hate speech, and the CPD is part of the No Hate Alliance supported by the CoE (see section 4.3.2). In **Serbia**, the CPE has quite a few capacity building projects also covering hate speech targeting police officers, CSOs and other stakeholders. Furthermore, the CPE is member of a board of a project supporting different stakeholders in combating hate speech and hate crime. An exception to foreign donor driven projects is one funded the Ministry of Human and Minority Rights in **Montenegro** and implemented by the NGO 35mm.¹⁵²

Good practice

In **Montenegro**, the PHRF contributed to a publication of recommendations by the NGO 35mm, which aimed at reducing discrimination and hate speech against LGBTI persons with particular reference to the prevention and prosecution of attacks on the community. The recommendations by the PHRF focus on training judges, prosecutors and police officers, the education of representatives of regulatory bodies, media and other actors, the systematic collection of data and the promotion of tolerance and equality. Information on the recommendations was disseminated via print and electronic media as well as social networks.

Important requirements for conceptualising, developing and implementing projects that systematically support the work of equality bodies in the area of (online) hate speech, would be needs assessments (which issues, activities and target groups), the development of a strategic plan (especially, when it comes to involving which institutions/organisations) as well as adequate (administrative) capacities, particularly when an equality body takes on the role of the leading institution.

Bilateral Cooperation and Regional/International Networking of Equality Bodies and their further Needs

The report on **Montenegro** mentions a bilateral MoC between the PHRF and the Protector of Citizens of **Serbia**, with the aim of ensuring more effective measures when citizens' human rights and freedoms (which might include (online) hate speech) are either denied or restricted in either of the two countries. The OIK in **Kosovo** has signed an MoU with the CPD in **Albania** and another one with the CPD and the PA of **Albania**, the CPD and the Ombudsman of **North Macedonia**.

¹⁵². See: <http://www.nvo35mm.org/category/projekti/> (25.09.2020).

All equality bodies, except for the OIK in **Kosovo**, have signed the MoU among Equality Bodies of South-East Europe, which primarily aims at implementing an annual conference, which in the past have indirectly touched upon hate speech, similar events and exchanging experiences and best practices. The PHRF in **Montenegro** has been involved in trainings activities and study visits with equality bodies and Ombud institutions of the region, the CPD in **North Macedonia** has participated in an exchange program for equality bodies in the region supported by GIZ. All equality bodies are members of EQUINET, which has organised a seminar on “Not on Our Watch! Equality Bodies fighting Hate Speech” (2018), published a study on “Extending the Agenda. Equality Bodies addressing Hate Speech” (2018) and issued a “Recommendations on combating discrimination and hate speech in election campaigns” (2019).

Furthermore, equality bodies in all countries had the opportunity to participate in EQUINET working groups dealing with different aspects of (online) hate speech – equality bodies’ perspective on the fight against hate speech, including racist and sexist hate speech, mapping sexist hate speech as a specific form that affects women and combating (online) hate speech with positive narratives.

Good practice

During the 2019 election campaign the IHRO in **Bosnia and Herzegovina** and the 2020 election campaign the PHRF in **Montenegro** called on all political parties, candidates and the media to take into account the EQUINET Recommendation on Combating Discrimination and Hate Speech in Election Campaigns. The recommendation reminds politicians to abide by the general principle of equality and the prohibition of discrimination as well as taking responsibility for preventing and combating hate speech.

Equality bodies in the region could initiate an MoU solely focusing on (online) hate speech with the aim of cooperating on cases (taking into account the differing mandates) and jointly reacting to most severe cases.

Conclusions and Recommendations

Defining hate speech

It is difficult to assess if a concrete case qualifies as hate speech – or rather harassment. This qualification would in most national contexts however lead to different paths of accessing justice. National legislation should provide for clearer definitions in this regard that take into account relevant ECRI recommendations as well as case law of the ECtHR, the CJEU and national courts. **Equality bodies** should develop clear guidance for themselves as well as for those affected by discriminatory speech on where to draw the line between hate speech and freedom of expression and on their responsibilities towards individuals affected by (online) hate speech. The **Council of Europe and the EU** could assist them in this process by organising a conference or expert workshops, where different concepts are discussed/compared and guiding principles are elaborated – in cooperation with national equality bodies, civil society and judicial academies, EQUINET, and MPs.

Harmonising the protection against (online) hate speech

The protection against hate speech and remedies are not equal for each and any person affected as it might differ according to the feature of identity involved, the sphere of life where the act takes place and the legal qualification according to national legislation. **Equality bodies** with support of the **Council of Europe and the EU** in line with ECRI recommendations in the relevant country reports should proactively support a harmonisation of all provisions at the national level as well as ideally also in the region and an extension of the protection to all areas and grounds suggested by European and international standards.

Capacity building in dealing with cases of hate speech

The **Council of Europe and the EU** should join their efforts and assist **equality bodies** in strengthening their capacities to deal with cases of hate speech. This should include trainings and the development of guidelines on applying the international and EU legal framework, making use of ECtHR and CJEU case law and implementing and putting into practice recommendations of monitoring bodies such as ECRI at the national level. This should also include exchange of experience by ways of facilitating bilateral and regional networking activities and exchange of experience in regional networks as well as within EQUINET. Such activities could include exchanging information on case law and decisions on cases of (online) hate speech, and experiences on what works best and what has not proved successful in cases of (online) hate speech. Furthermore, such regional activities could result in peer-to-peer learning on becoming more pro-active in reacting to hate speech especially of public figures.

Strengthen access to justice

Unclearities about the definition of hate speech result in uncertainties about where and how to get access to justice: **Equality bodies** should be ready to be this first entry point, and consequently either take care of the case themselves or refer complainants to the institution in charge. **Equality bodies** together with other relevant stakeholders should carefully and systematically work towards improving confidence in institutions handling complaints, as a lack in confidence results in underreporting of cases on (online) hate speech and establishes a culture of impunity. Building trust should include intense networking with other stakeholders like the police and public prosecution, but also CSOs and (self-)regulatory media bodies. The designation of contact persons for groups likely to be affected by hate speech within police and prosecution services like in **Serbia** and regular dialogue between these contact persons, the relevant societal groups and the equality bodies as recommended by ECRI in its 2017 report on Serbia could contribute to increasing trust in institutions in charge of handling complaints on (online) hate speech.

Promote legal certainty

Legal provisions on hate speech are covered by different laws (e.g., anti-discrimination, criminal, media) and tend to be rather in-concrete. Courts as well as equality bodies and independent media regulatory agencies are the ones in charge of interpreting the legal provisions and applying them to concrete cases. **Equality bodies** could collect the interpretation provided by courts and independent media regulatory agencies in order to gain more legal certainty and pass on this knowledge to persons affected, who approach them and/or make it available on their web-site. The **Council of Europe and the EU** could support equality bodies in this effort by providing guidance on the interpretation and examples from other European countries.

Becoming more pro-active

Equality bodies and other stakeholders, who have *ex officio* capacities, should strategically step up their case work activities, which might also include reporting cases to e.g., the police, the prosecution or (self-) regulatory media bodies in order to make them aware of cases that fall within their competence. Those equality bodies, who are not entitled to submit claims in the name of a group affected, could enhance their usage of other tools, like *amicus curiae*, to create a sound base of case law, which could contribute to clarifying legal provisions in place and to a changing the attitude towards the legitimacy of using speech reflecting hatred.

Strengthening legal aid

Making legal aid available to persons and groups affected by discrimination/hate speech can be a boost in accessibility of the justice chain. **Equality bodies** in alliance with NGOs, Ombud institutions, **the Council of Europe and the EU** should support the introduction of an effective system of legal aid for cases of discrimination/hate speech.

Overcoming the limited knowledge on (online) hate speech of the judiciary

Equality bodies, ideally together with staff members of Ombud institutions and representatives of NGOs, should be involved in the training of judges and public prosecutors on issues of (online) hate speech. Trainings should include guidance on the definitions of hate speech and harassment and they should provide room for the development of criteria that clarify the responsibility of courts, Ombud institutions and equality bodies.

Increasing the effectiveness of the institutional architecture to combat and prevent (online) hate speech by strengthening the role, capacities and resources of equality bodies

Complaints – clarify the role of **equality bodies**, Ombud institutions, NGOs, media regulators and self-regulatory mechanisms, the police, and courts and develop a strategic approach fostering synergies and a meaningful division of labour by forwarding cases of (online) hate speech to the institution most suitable for handling the respective cases. Strategic cooperation with Ombud institutions, who can hold public institutions accountable for dealing with (online) hate speech in a broader sense than equality bodies, could increase the effectiveness of recommendations issued by equality bodies.

Awareness raising – **equality bodies** should develop a strategy on raising awareness for how (online) hate speech can be identified, and where and how it can be reported. Awareness could be effectively increased by reaching out to the local level (e.g., regional offices of equality bodies/Ombud institutions, local authorities and CSOs, and communities) and those especially exposed to (online) hate speech (LGBTI population and national minorities like Roma).

Promotional and public relation activities – **equality bodies** should develop a comprehensive communication strategy on combating (online) hate speech, which should ideally be done in cooperation with stakeholders such as relevant ministries, independent institutions, (self-)regulatory media bodies, CSOs and media.

Research/surveys – equality bodies should develop a strategy on conceptualising and implementing research and surveys. This would include the identification of potential and adequate partners for jointly commissioning or conducting research on (online) hate speech, which both strengthen and complement the work of the equality body. Developing methodologies and establishing an effective division of labour among relevant stakeholders should guarantee that the findings can be used to guide the future priorities and activities of equality bodies.

Training activities – target groups are staff of equality bodies/Ombud institutions, police, prosecutors, judges, (self-)regulatory media bodies, journalists, CSOs, communities, and the general public. **Equality bodies** should develop a strategic approach on how to continuously train their own staff on (online) hate speech and on how to train their staff to train other relevant stakeholders on combating and preventing (online) hate speech.

Promote data collection

Equality bodies should manage a data base of all cases with a discrimination aspect, which would ideally include a separate category for (online) hate speech cases. Equality bodies could also collect data on cases of hate speech processed by courts, Ombud institutions or media councils without replacing the respective authorities' duty to collect data on hate speech cases. ECRI recommends in its 2020 report on Albania that authorities should cooperate with the equality body, the Ombud institution, CSOs (esp. those from communities particularly affected by hate speech), the police and the prosecution with the aim of establishing a comprehensive monitoring system on (online) hate speech incidents.

Make information on (online) hate speech as easily accessible as possible

Equality bodies should publish successfully resolved cases of (online) hate speech in order to encourage people to demand the protection of their rights. The web-page, the annual report and other relevant publications should have separate sections on (online) hate speech. Special/thematic reports should focus on relevant aspects of (online) hate speech. Ideally equality bodies could involve communities particularly affected by hate speech in developing easily accessible information tailored to the needs of those potentially affected by hate speech.

Promote freedom of expression and diversity of opinions

Equality bodies should play a key role in promoting freedom of expression and diversity of opinions by countering strategies of generally banning comments on web-sites and social media and supporting media outlets in their responsibility of moderating content and establishing complaints mechanisms, which handle complaints in a transparent way. (Self-)regulatory media bodies could be potent partners of equality bodies in advocating for freedom of expression and respect for human dignity and diversity.

Tackle (online) hate speech of politicians and other public figures

Equality bodies should seek strategic cooperation with CSOs to combat (online) hate speech by politicians and other public figures. It might be easier for CSOs to report cases of (online) hate speech by politicians, but they might lack resources for supporting persons affected by this kind of (online) hate speech. Furthermore, it could strengthen equality bodies if public national media were obliged to publish all decisions on hate speech attributed to politicians and public figures issued by courts or equality bodies.

Strengthen the culture of (human) rights with the aim of more frequently addressing (online) hate speech and overcoming underreporting

Equality bodies and other relevant stakeholders should raise awareness for the detrimental impact of hate speech on individuals and society by clearly establishing (online) hate speech as illegal, violating the dignity and the rights of others. Promoting a culture of (human) rights should aim at raising awareness among those more likely to be affected by (online) hate speech, but should also motivate people to become allies in combating (online) hate speech. **Equality bodies** and other relevant stakeholders should promote success stories, positive messages and counter narratives.

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