



REPORT ON THE USE OF HATE SPEECH IN SERBIAN MEDIA



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Contents

INTRODUCTION	5
1. THE FREEDOM OF EXPRESSION AND ITS LIMITATION IN A FORM OF HATE SPEECH	7
1.1. Scope of freedom of expression	7
1.2. Definition of hate speech	8
1.3. Standards concerning the prohibition of hate speech and duty of media to refrain from hate speech	10
2. RELEVANT EUROPEAN STANDARDS	11
2.1. ECHR and the relevant case-law	11
2.1.1. Racial hate and incitement to ethnic hatred	11
2.1.1.1. Hate speech against Jews	11
2.1.1.2. Hate speech against migrants	12
2.1.1.3. Hate speech against Roma	13
2.1.2. Homophobic hate speech	15
2.1.3. Hate speech and the Internet	15
2.2. ECRI standards	17
2.2.1. ECRI Recommendation on combating Hate Speech	17
2.2.2. ECRI Recommendation on Combating the dissemination of racist, xenophobic and antisemitic material via the Internet	18
2.3. Committee of Ministers	19
2.3.1. Recommendation on the media and the promotion of culture of tolerance	19
2.3.2. Recommendation on hate speech	19
2.3.3. Recommendations concerning sexual orientation and gender	20
2.4. Commissioner for Human Rights	21
2.4.1. Ethical journalism and human rights	21
2.5. Other sources	21
3. DOMESTIC LEGAL FRAMEWORK ADDRESSING HATE SPEECH	23
3.1. Constitutional Guarantees	23
3.2. Legislation concerning discrimination	24
3.2.1. Law on the Prohibition of Discrimination	24
3.2.2. Penal provisions	24
3.3. Media legislation	25
3.3.1. Law on Public Information and Media	25
3.3.2. Law on Electronic Media	26
3.3.3. Law on Public Services Broadcasting	27
3.3.4. Journalists Code of Ethics	27
3.4. Policy framework	28

4. DOMESTIC PRACTICE ADDRESSING HATE SPEECH	30
4.1. Commissioner for Protection of Equality	30
4.2. Court practice	33
4.2.1. Civil cases	33
4.2.2. Criminal cases	35
4.3. Regulatory Body for Electronic Media (REM)	39
4.4. Press Council	40
5. PRESENCE OF HATE SPEECH IN SERBIA	42
5.1. International reports concerning Serbia	42
5. 1.1. ECRI recommendations concerning Serbia	42
5. 1.2. EU Serbia Report	43
5. 1.3. UN Committee's Reports on Serbia	44
5. 1.3.1. ICCPR	44
5. 1.3.2. ICERD	44
5. 1.3.3. CEDAW	45
5. 2. Domestic Reports and Researches	46
5. 3. Interviews conducted	48
5. 4. Research on media content covering 20 November to 20 December 2020	57
6. CONCLUSIONS AND RECOMMENDATIONS TO TACKLE HATE SPEECH IN MEDIA IN SERBIA	63

INTRODUCTION

The report is prepared within the project “Promotion of diversity and equality in the Western Balkans”, which is part of the Horizontal Facility for the Western Balkans and Turkey II, a joint programme of the Council of Europe (COE) and the European Union aiming at supporting South East Europe and Turkey to comply with European standards.

The report contains a presentation and analysis of international and primarily European standards concerning the prohibition of hate speech, as well as domestic legal and strategic framework, with the aim to identify possible legal and practical constraints which lead to an ineffective system of protection from hate speech in media in Serbia. Also, a report refers to the incidence of hate speech, its forms, and the conditions conducive to its use in the Serbian media.

Although the report contains a general overview of the legal and strategic framework in Serbia, the focus is on two, the most exposed to hate speech groups in Serbia: LGBT+ and Roma, but it also tackles some other groups, such as women, migrants, national/ethnic minorities.

In order to present the most comprehensive overview of legal framework and practice in Serbia, different methodologies were implemented in the report:

1. desk research - collection and analysis of relevant international sources (different legal instruments and reports, courts cases, relevant case-law of the European Court of Human Rights), as well as domestic sources (primarily general recommendations and opinions of the Commissioner for Protection of Equality and a court case-law).

2. qualitative and quantitative analysis of hate speech in media - the forms of a hate speech, its occurrence and incidence in: two daily newspapers (Blic and Informer); two weekly newspapers (Pecat and Nedeljnik); two portals Alo and Kurir; and two TV shows Hit Tvit (TV Pink) and Cirilica (TV Happy). The monitor covered the period 20 November - 20 December 2020, although the report also refers the period before this date in order to show that hate speech is persisting problem in Serbia.

3. *structured interviews in person or online* (depending on the Covid-19 situation) conducted with the relevant stakeholders: the Commissioner for Protection of Equality staff; the Protector of Citizens (Ombudsman) staff; NGOs: Center for Professionalization of Media and Media Literacy (CEPROM), Journalists' Association of Serbia, Independent Association of Journalists' of Serbia; representatives of the Press Council; members of the Council of Regulatory Authority for Electronic Media; judges of Appellate courts specialized in non-discrimination law; representatives of the Special Prosecution Office for High Tech Crime; representatives of the Department for the Suppression of High-tech crime of the Ministry of the Interior. This part was the most challenging as the situation with Covid-19 pandemic was extremely hard in mid of November until the end of December. Therefore, structured questionnaires were prepared for each stakeholder. Majority of them responded to the request to fulfill it, and also offered additional information either by sending some materials, or either by telephone call. Also, with a group of judges, an online meeting was held on 23 November through the Webex platform in order to discuss the issue.

The results presented in this report should serve primarily to the Commissioner for Protection of Equality, the main beneficiary of the project, in order to target specific groups and shape future training activities.

1. THE FREEDOM OF EXPRESSION AND ITS LIMITATION IN A FORM OF HATE SPEECH

1.1. Scope of freedom of expression

Every democratic political process and development of every human being requires the realization of freedom of expression. It is a special right, but it is also a significant component of other human rights, such as the right of association or political rights. For this reason, freedom of expression occupies a central place in the exercise of other human rights, provided for by universal and regional international human rights instruments. However, it can also conflict with some rights, such as fair trial rights, the right to private life, or freedom of religion.

Freedom of speech is protected by all international human rights instruments. It was proclaimed for the first time in Article 19 of the Universal Declaration, which states: "Everyone has the right to freedom of opinion and expression, including the right not to be disturbed by his opinion, and the right to seek, receive and impart information and ideas through any media and regardless of frontiers." Thus, the right to receive and communicate information and ideas without measuring public authority is an essential component of any democratic society. Criticism of public authorities is an integral part of the daily political process. It follows from the above that freedom of expression implies freedom of communication and freedom of receiving information. This right is also guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which goes further and prescribes that the opinion can be expressed "either orally, in writing or in print, and in the form of art, or through any other media of his choice."

Article 10 of the European Convention on Human Rights (ECHR) guarantees freedom of expression to everyone. Oral and written expression, expression through the press, as well as expression in the artistic form, are also protected. This means that any expression is protected.

Guaranteeing freedom of political expression is especially important for preserving the pluralism of opinion in society. The right to criticize the government and to send and receive information that is by its nature a political link relates primarily to the media's right to communicate information to the public and the public's right to receive it without government interference.¹ Thus, the limits of expressing critical views are more comprehensive when it comes to the government than when it comes to individuals. Commercial speech is also guaranteed by Article 10 of the ECHR; in terms of information on economic issues, the state retains a broader margin of appreciation.² Freedom of artistic expression is a major contribution to exchanged ideas and opinions. It is an indispensable component of democracy as "those who create, perform, distribute or exhibit works of art contribute to exchange of ideas and opinions and to the personal fulfilment of individuals, which is essential for a democratic society."³ Thus, it influences the shaping of public opinion and the critique of the main events, which mark the period in which the artist lives.

However, despite its fundamental nature, the freedom of expression can be limited. Freedom of expression cannot be protected when it leads to the restriction or destruction of other human rights and freedoms. Article 19 of the ICCPR prescribes that the exercise of the freedom of expression is subject to certain restrictions, when it is provided by law and are necessary for respect of the rights or reputation of others, and for the protection of national security, public order, public health or morals. Also, Article 10 of the ECHR prescribes that this freedom can be limited when it is "prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

1. 2. Definition of hate speech

The "hate speech" is a prohibited form of speech, limiting freedom of expression as it does not contribute to debate in democratic societies. Quite contrary. It is a dangerous speech that discriminates against certain vulnerable groups in society and incites hatred, amity, and hostility. As it is described, hate speech is the special scourge for minorities.⁴ However, there is no universally accepted definition of hate speech.⁵ International human rights conventions only contain legal basis for its prohibition. Thus, Article 20 of the ICCPR prohibits any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or

1 *Lingens v. Austria*, App. no. 9815/82, 8 July 1986, *Sener v. Turkey*, App. no. 26680/95, 18 July 2000, *Dichand et al. v. Austria*, App. no. 29271/95, 26 February 2002.

2 *Markt Intern Verlag GmbH and Klaus Beermann v. FR Germany*, App. no. 10572/83, 20 November 1989.

3 *Müller and Others v. Switzerland*, App. no. 10737/84, 24 May 1988, para. 33.

4 Susan Benesch, "Defining and diminishing hate speech", in *Freedom from hate, State of the World's Minorities and Indigenous Peoples 2014*, Peter Grant, ed. (London, Minority Rights Group International, July 2014).

5 Report of the Special Rapporteur on minority issues, Rita Izsak, Human Rights Council, 5 January 2015, para. 52.

violence". Also, Article 4 of the International Convention on the Elimination of Racial Discrimination (ICERD) prescribes that States will prohibit "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." Article 10, para. 2 of the ECHR also contains legal basis for prohibition of hate speech.

One of the first definitions of hate speech is provided in the Committee of Ministers Recommendation No R 97 (20), under which hate speech is any form "of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism 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."⁶ Also, more specific definition is given in the General Policy Recommendation of the European Commission against Racism and Intolerance (ECRI), as "the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes race, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation."⁷ Further, the Recommendation on discrimination on the basis of sexual orientation and gender identity insists that gender and sexual minorities are protected from "all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination."⁸

Although it is not expressly mentioned in the ECHR, the ECtHR uses term "hate speech" in its jurisprudence and also provides its definition. The Court makes distinction between the hate speech and the information and ideas, which "offend, shock or disturb the State or any sector of the population" but which are still protected as these are the demands of the "pluralism, tolerance and broadmindedness without which there would be no democratic society."⁹ Contrary, hate speech is necessary to be sanctioned or prevented as it represents "all forms of expression which spread, incite, promote or justify hatred based on intolerance."¹⁰ Yet, there is no precise meaning of and no specific test or criteria for hate speech. Instead, the ECtHR applies a case-by-case approach. In order to determine the degree of protection of freedom of expression, a distinction is made between the types of expression (political, commercial, artistic expression), the way of expression (oral, written, media), and the audience to which the message is addressed (children, adults, particular group, entire population), and includes the context and the intention (there must be clear and present danger).

6 Committee of Ministers of the Council of Europe Recommendation No R 97 (20), 30 October 1997.

7 European Commission against Racism and Intolerance, General Policy Recommendation No. 15, 8 December 2016.

8 Committee of Ministers of the Council of Europe Recommendation CM/Rec (2010) 5 on measures to combat discrimination on grounds of sexual orientation or gender identity, para. 6.

9 *Handyside v. the United Kingdom*, App. No. 5493/72, 7 December 1976, para. 49.

10 *Erbakan v. Turkey*, App. No. 59405/00, 6 July 2006, para. 56.

Although there is no widely accepted definition of a hate speech, it must be considered as a speech which spread, incite, promote and justify hatred, discrimination and victimization of vulnerable group in a society. In other words, this term encompasses a wide array of hateful messages, ranging from offensive, derogatory, abusive and negative stereotyping remarks and comments, to intimidating, inflammatory speech inciting violence against specific individuals and groups.¹¹

1. 3. Standards concerning the prohibition of hate speech and duty of media to refrain from hate speech

The positive obligation by state authorities to secure the effective enjoyment of the rights and freedoms enshrined in international human rights instruments, including the ECHR, is of particular importance for persons holding unpopular views or belonging to minorities. Authorities are to combat hate speech and homophobic hate crimes, as a justified and necessary interference with the right to freedom of expression.

Combating hate speech is a complex and multidimensional task, that requires coordination of different stakeholders: parliamentarians, law-makers, political leaders, judges, prosecutors, lawyers, journalists, national media regulatory authorities and self-regulatory bodies, civil society, academics, educators, and internet companies.

National media regulatory authorities play an important role in promoting democracy, respect for human rights and dignity, culture of tolerance and diversity. Their engagement in combating hate speech includes transparency, professionalism, accountability, inclusiveness, and continued cooperation with all relevant institutional bodies and organizations. Therefore, ethical standards and codes of conduct, quality journalism, involvement, development of critical skills through media and information literacy activities, human rights education, campaigns against stereotypes and populism, regional and international cooperation must be promoted, developed and supported. Media self-regulatory bodies are encouraged to adopt and disseminate recommendations and guidelines on countering hate speech offline and online and to offer trainings to their members.¹²

Media are a powerful force in society and have a corresponding responsibility in addressing hate speech. The media community should establish a system of collective self-regulation based on agreed codes of ethics and mechanisms to receive and respond to complaints on hate speech. Media should engage comprehensively with the public attitudes towards discriminated groups in a society, not only by refraining from hate speech, but also by emphasizing positive and value-driven arguments about members of certain group, in order to break predominant stereotypes and prejudices.

11 Report of the Special Rapporteur on minority issues, para. 52.

12 International Society Department, Addressing Hate Speech in Media: The Role of Regulatory Authorities and the Judiciary, November 2018.

2. RELEVANT EUROPEAN STANDARDS

2.1. ECHR and the relevant case-law

The case-law of the ECtHR has been developed under Article 10 and Article 17 of the ECHR. Article 17 prescribes that “Nothing in this Convention may be interpreted as implying for any State, group or person any rights to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.” The approach of exclusion from the protection of the Convention exist when the comments in question amount to hate speech and negate the fundamental values of the Convention. Applying this Article, the ECtHR has found inadmissible applications, or no violation of freedom of expression in majority of cases involving criminal convictions for hate speech. It also prevents consistent substantive engagement and analysis of speech restrictions in the form of a three-fold test under Article 10: restriction which is prescribed by law, necessary in a democratic society and pursuing a legitimate aim. However, the case-law under Article 10 is relevant for clarifying relationship between freedom of expression and hate speech. This approach is adopted where the hate speech is not apt to destroy the fundamental values of the ECHR.¹³

2.1.1. Racial hate and incitement to ethnic hatred

2.1.1.1. Hate speech against Jews

In many cases, the ECtHR dealt with a speech, which was capable of inciting racial hatred. The Court has a very solid jurisprudence that Holocaust denial and incitement of hatred against Jews has been recognized as hate speech. For example, in *Garaudy*,¹⁴ the applicant was the author of the book “The Founding Myths of Modern Israel”, who received suspended sentences of imprisonment and fines for disputing the existence of the Holocaust. The ECtHR held that disputing the existence of clearly established historical events, such as Holocaust, did not constitute historical research but was

¹³ Factsheets - Hate speech, press Unit, September 2020, p. 1.

¹⁴ *Garaudy v. France*, App. No. 65831/01, 7 July 2003.

rather and effort to rehabilitate the Nazi regime and accuse Holocaust victims of falsifying history, which represents the incitement of hatred of Jews. Importantly, the Court emphasized that this underlie the fight against racism and anti-Semitism and are likely to seriously disturb public order. Also, in another case,¹⁵ the owner and editor of newspaper *Russkoye Veche* was convicted for calling for the exclusion of Jews from social life and portraying them as a source of all evils. The Court reasoned that this expression underlies values of the ECHR, such as tolerance, social peace and non-discrimination, and incite hatred towards Jews. In another case against France,¹⁶ the comedian hosted a show and invited an academic who had denied the existence of gas chambers in concentration camps, whom he gave the prize for unrequitedness and insolence in the clothing worn by Jewish deportees. The ECtHR found that the show lost its entertainment value demonstrating hatred and anti-Semitism.¹⁷

2.1.1.2 Hate speech against migrants

Hate speech against migrants is also very much present in Europe, and therefore in a jurisprudence of the ECtHR. In *Serout v. France*,¹⁸ the two applicants were convicted and sentenced for possessing leaflets with intent for distribution to the general public. They advocated an ethnical homogenous society, and also made reference to “our white people” and the need to come to power in order to remove from the country, “hundreds of thousands of Muslims, Turks and other guest workers who, are not at all needed here”. The ECtHR found that the writings of the leaflet represented racially discriminatory views of the applicants which are strictly forbidden in the ECHR.¹⁹ Also, in *Jersild*, the applicant was a journalist, who had made a documentary containing extracts from a television interview he had conducted with three members of a group “Greenjackets”, who had made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. In this case, the ECtHR found that the members of the “Greenjackets” made openly racist remarks. However, the applicant made a documentary that had not been aimed at propagating racist views and ideas, but at informing the public about a social issue, which was a matter of great public concern. This judgment showed that the Court took several elements into account: 1) journalistic autonomy and the fact that he did not substitute his own view; 2) the form of an interview; 3) context: the journalist did not involve in racist statements and in introduction invited viewer to see programme in context of Danish debate on racism; and 4) the purpose: was not racist as reporting sought to expose, analyze and explain the group. Politicians also very often use an offensive language against migrants. In *Féret*,²⁰ the applicant was a Belgian member of Parliament and chairman of the political party Front National. During the election campaign, several types of leaflets were distributed carrying slogans including “Stand up against the Islamification of Belgium”, “Stop the sham integration policy” and “Send non-European job-seekers home”. The applicant was convicted of incitement to racial discrimination, but he

15 *Pavel Ivanov v. Russia*, App. No. 35222/0, 20 February 2007.

16 *M'Bala v. France*, App. No. 25239/13, 20 October 2015.

17 *Ibid*, para. 39.

18 *Seurot v. France*, App. No. 57383/00, 18 May 2004.

19 See also *Soulas and Others v. France*, App. No. 15948/03, 10 July 2008.

20 *Féret v. Belgium*, App. No. 15615/07, 16 July 2009.

alleged a violation of his right to freedom of expression. The ECtHR held that the applicant's comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant's conviction had been justified in the interests of preventing disorder and protecting the rights of others, namely members of the immigrant community. Similarly, in *Le Pen v. France*²¹ the applicant was president of the French "National Front" party. He was held responsible for statements made about Muslims in France in an interview with *Le Monde* daily newspaper. *Le Pen* had asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge" – had breached his right to freedom of expression. The ECtHR observed that the applicant's statements had been made in the context of a general debate on the problems linked to the settlement and integration of migrants in their host countries. Moreover, the varying scale of the problems concerned, which could sometimes generate misunderstanding and incomprehension, required considerable latitude to be left to the State in assessing the need for interference with a person's freedom of expression. In this case, however, the applicant's comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French on the one hand against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people.

In its later jurisprudence, the Court focused on the issue if sweeping remarks had contributed to any public debate and if they stir up emotions, prejudices and ethnic hatred,²² expressed aggressive nationalism and ethnocentrism,²³ or is the manifestation of racist ideology.²⁴

2.1.1.3. Hate speech against Roma

Anti-Romani hate speech is not so much present in a jurisprudence of the ECtHR and it seems that unless it occurs in the context of physical threats, it does not constitute a legitimate limitation to the freedom of expression.²⁵ In *Aksu*,²⁶ the Court dealt with the use of derogatory stereotypical images of Roma as "miserly" and thieves in government sponsored publications. The Grand Chamber found that "the case does not concern a difference in treatment, and in particular ethnic discrimination, as the applicant has not succeeded in producing prima facie evidence that the impugned publications had a discriminatory intent or effect."²⁷ Although this part of the findings is regrettable,²⁸ the Court further had to balance conflicting rights under Article 8

21 *Le Pen v. France*, App. No. 18788/09, 20 April 2010.

22 *Atamanchuk v. Russia*, App. No. 11 February 2020.

23 *Balsytė-Lideikienė v. Lithuania*, App. No. 4493/11, 4 November 2008.

24 *Simunic v. Croatia*, App. No. 2037/17, 22 January 2019.

25 *Lilla Farkas*, Hate speech against Roma and Travellers, 17 May 2016, p. 2.

26 *Aksu v. Turkey* (GC), App. No. 4149/04, 15 March 2012.

27 *Ibid*, para. 45.

28 See for more Alexandra Timmer, Stereotypes of Roma: *Aksu v. Turkey* in the Grand Chamber, *Strasbourg Observers*, 20 March 2020.

and Article 10 and found that it is “preferable to label such expressions as “pejorative” or “insulting”, rather than merely stating that they were metaphorical. Such a precaution would also be in line with ECRI’s General Policy Recommendation No. 10, which stipulates that States should promote critical thinking among pupils and equip them with the necessary skills to become aware of and react to stereotypes or intolerant elements contained in the material they use.”²⁹ I

n *R.B.*, a woman of Roma origin, was outside her home in her garden with her child and several acquaintances. Four men passed by her house yelled, “Go inside, you damned dirty gypsies!” One of the men threatened her and her acquaintances, saying that he would build a house in the Roma neighborhood “out of their blood” and stepped towards the fence swinging an axe in her direction. The Hungarian authorities failed to adequately investigate harassment and violence aimed at her by demonstrators during an anti-Roma rally. Regrettably, the Court held that the conduct by the anti-Roma protestors did not meet the minimum level of severity required to establish a violation of Article 3.³⁰ However, it has several very important findings. First, the ECtHR stressed that that “any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group’s sense of identity and the feelings of self-worth and self-confidence of members of the group.”³¹ She was abused because she belonged to an ethnic minority, and thus her private life was affected by the treatment she received within the meaning of Article 8 of the ECHR. The Court then reiterated that under Article 8, the state must not only abstain from discriminatory practices, but also complete positive obligations to adopt “measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.”³² The Court also emphasized that in its precedent, it had already established “inflicting minor physical injuries and making verbal threats may require the States to adopt adequate positive measures in the sphere of criminal-law protection.”³³ Moreover, the Court stressed that when there are “patterns of violence and intolerance against an ethnic minority,” then the states have a higher standard of positive obligations to respond to alleged bias-motivated incidents.³⁴

Finally, in *Vona v. Hungary*,³⁵ the Court found that the dissolution of the Hungarian Guard Association by domestic courts, based on the fact that the activities run counter to human dignity and prejudiced the rights of the Roma, was a lawful restriction of the applicant’s rights under Article 11 of the ECHR. In this case, the Court has taken a firm stance against anti-Roma expressions and activities that reflect a race-based opposition and a policy of racial segregation vis a vis the Roma minority.³⁶ While reiterating that even shocking, disturbing or disrespectful ideas cannot be excluded from the protection of the Convention, the Court established that ‘the activities and expressions of the Movement relied on a race-based opposition of the Roma

29 *Ibid*, para. 85.

30 *Ibid*, para. 51.

31 *Ibid*, para. 78.

32 *Ibid*, para. 81.

33 *Ibid*, para. 83.

34 *Ibid*, para. 84.

35 *Vona v. Hungary*, App. No. 3594/10, 9 July 2013.

36 More on the case see *Vona v. Hungary: Freedom of association and assembly can be restricted to protect Minority Rights*, Strasbourg Observers, 7 August 2013.

minority to the ethnic Hungarian majority³⁷ and went beyond the use of peaceful and legal means of articulating political views.³⁸

2.1.2. Homophobic hate speech

Homophobic hate speech was not present in a case-law of the ECtHR before 2012 and the judgment in *Vejdeland* case.³⁹ Here, the applicants were convicted for distributing in a secondary school around 100 leaflets against homosexuals by an organization called National Youth. The applicants left leaflets in the pupils' lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS. The applicants claimed that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools, and not to express contempt for homosexuals. The ECtHR found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. Importantly, the Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour.

In one case against Lithuania,⁴⁰ two young men in a relationship, were exposed to hate comments on the Facebook page of one of them who posted their photograph. Some negative comments were about LGBT+ people in general, while others personally threatened the applicants. The ECtHR found that comments affected the applicants' psychological well-being and dignity, as being "offensive and vulgar."⁴¹ Further, the Court held that the hateful comments were instigated by a bigoted attitude towards that community, and that the very same discriminatory state of mind was at the core of the failure on the part of the relevant public authorities to discharge their positive obligation to investigate in an effective manner whether those comments regarding the applicants' sexual orientation constituted incitement to hatred and violence.⁴² By downgrading the danger of such comments, the authorities at least tolerated them. This case revealed the problem of inactivity of state authorities who usually tolerate homophobic speech. Finally, in *Lilliendahl*,⁴³ the applicant was convicted for homophobic comments he had made in response to an online article. The applicant alleged that his conviction had breached his right to freedom of expression. The Court held that the applicant's comments had amounted to hate speech, as they were "serious, severely hurtful and prejudicial".

2.1.3. Hate speech and the Internet

The Internet continues to be perceived as unregulated place, although governments seek to monitor online activities. Initiatives to combat online hate speech

37 *Ibid*, para. 62.

38 *Ibid*, para. 66.

39 *Vejdeland and Others v. Sweden*, App. No. 1813/07, 9 February 2012.

40 *Beizaras and Levickas v. Lithuania*, App. no. 41288/15, 14 January 2020.

41 *Ibid*, para. 117.

42 *Ibid*, para. 129.

43 *Lilliendahl v. Iceland*, App. No. 29297/18, 12 May 2020.

threaten to neuter the Internet's most progressive attribute – the fact that anyone, anywhere, who has a computer and a connection, can express themselves freely.⁴⁴ While online hate speech is similar to offline expressions, it is peculiar in a way that its permanence, itinerancy, anonymity and complex cross-jurisdictional character requires special regulation. The proliferation of hate speech online poses a new set of challenges. Therefore, the Additional Protocol to the Convention on Cybercrime, seeks to prohibit “racist and xenophobic material” on the Internet. The Additional Protocol defines such material as “any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors”.

In its jurisprudence, the ECtHR for the first time dealt with hate speech on the Internet in a famous *Delfi v. Estonia* case.⁴⁵ The Court upheld liability of commercially-run Internet portal for offensive comments of readers as reaction to an article discussing how the SLK ferry company had destroyed territory traditionally used to drive from Estonia's mainland to its islands. The article inspired 185 reader comments, and approximately 20 of them could be considered threatening or offensive to SLK's sole shareholder, L. There are many important findings in this case, but only few will be underlined. First, the Court found that *Delfi* was the “publisher” or “discloser” of the comments. Second, the Court held that despite this knowledge and multiple avenues to prevent defamation, *Delfi* failed to stop the defamatory comments and left them up on the website for six weeks. Third, the ECtHR added that defamation had reached a new age of legal analysis when it was contained in electronic communication, which compared to traditional print or broadcast media, could potentially remain there indefinitely and cause much greater harm. Moreover, the Grand Chamber underlined the uncontrollable spread of potentially defamatory and hateful rhetoric. Therefore, the Court found liability only for clearly unlawful comments, and obligation to remove or block them without delay, even without notice from the alleged victim or from third parties.

However, in *MTE and Index v. Hungary*,⁴⁶ the applicants, self-regulatory body of Internet content providers and Internet news portal, complained about obligation imposed upon them to moderate contents of comments made by readers on their websites, including offensive and vulgar ones following opinion criticizing misleading practices of two real estate sites. The ECtHR found that the Internet news portals were not publishers, but as intermediaries they had to assume certain responsibilities. The Court underlined the importance of the notice-and-take-down system and underlined that “if accompanied by effective procedures allowing for rapid response, the notice-and-take-down-system could function in many cases as an appropriate tool for balancing the rights and interests of all those involved”. This would reduce what was decided in the *Delfi* case, which appeared to encourage the duty of general

44 Sandy Starr, Understanding Hate Speech in hate Speech on the Internet, OSCE, p. 134, available at <https://www.osce.org/files/f/documents/9/c/13846.pdf>.

45 *Delfi v. Estonia* (GC), App. No. 64569/09, 16 June 2015.

46 *MTE and Index v. Hungary*, App. No. 22947/13, 2 February 2016.

monitoring of information.⁴⁷ Now, the scope of that ruling appears to be narrowed to cases of hate speech and incitement to violence. Otherwise, more liability would lead to chilling effect on the freedom of expression on the Internet.

In *Jeziar*,⁴⁸ the courts held the applicant responsible for defamatory comments about a mayor, posted by an Internet user, since he had not prevented the posting online in election time period. The disclaimer on his website and the prompt removal after obtaining knowledge was insufficient to exonerate Jeziar from liability for third-party comments. The Court considered the following: 1) the context in which the online comments were posted (here the website was administered by Jeziar, free of charge and with limited local reach); 2) the measures adopted by the medium that published them to prevent or eliminate defamatory comments (the blog was open to comments of the authors without their prior registration, but users have been explicitly asked to post only comments that are considerate, true and not offensive; users were also invited to sign comments using their real identity, instead of posting them anonymously; the website had a content notification system, but in practice notifications were rarely followed; Jeziar immediately removed the comments from his website, and later activated access control through the mandatory registration system using the user's email address); 3) whether the author of the comment should be held accountable rather than the mediator (the author of the comments were never subjected to a lawsuit); and 4) consequences of court orders to the medium that published them (here sanctions have a chilling effect). The Court underlined that imposing an obligation of pre-monitoring would require excessive and impracticable forethought capable of undermining freedom of the right to impart information on the Internet. Thus, there is no liability when platform removes defamatory content upon request or information.

It is important to emphasize that the Court found that targeting online media or websites with blocking measures because they are critical of the government or political system can never be considered a necessary restriction on freedom of expression.⁴⁹ The wholesale blocking of access to a website is an extreme measure to be compared to banning a newspaper or television station.

2.2. ECRI standards

2.2.1. ECRI Recommendation on combating Hate Speech

According to ECRI's General Policy Recommendation No. 15,⁵⁰ hate speech "entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expres-

47 *MTE v. Hungary*: the ECtHR rules again on intermediary liability, EDRI, 10 February 2016.

48 *Jeziar v. Poland*, App. No. 31955/11, 4 June 2020.

49 *OOO Flavius a.o. v. Russia*, App. No. 12468/15, 23 June 2020.

50 ECRI, General Policy Recommendation No. 15 on Combating Hate Speech, 8 December 2015.

sion – that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.”⁵¹ The significant elements as to what constitutes hate speech that differ from those found in many other documents are its application to: 1) advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification as well as; harassment, insult, negative stereotyping stigmatization or threat; 2) use that is not just intended to incite the commission of acts of violence, intimidation, hostility or discrimination but also such use that can reasonably be expected to have that effect; and 3) grounds that go beyond “race”, colour, language, religion or belief, nationality national or ethnic origin and descent.⁵²

Also, importantly, hate speech is based on the unjustified assumption that a person or a group of persons are superior to others. This aspect is also emphasized by the ICERD, which in its Preamble expresses that “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere”. Thus, it is very important that the Recommendation No. 15 insists on this aspects. It is further explained that the hate speech incites acts of violence or discrimination, condemning respect for minority groups and damaging social cohesion as a consequence.

ECRI calls for speedy reaction by public figures to hate speech, and insist to introduce several measures: promotion of self-regulation of media; raising awareness of the dangerous consequences of hate speech; withdrawal of financial and other support from political parties that actively use hate speech; and criminalization of its most extreme manifestations. It also underlines that measures must be well-founded, proportionate, non-discriminatory, and not be misused to curb freedom of expression or assembly not to suppress criticism or official policies, political opposition and religious beliefs.

2.2.2. ECRI Recommendation on Combating the dissemination of racist, xenophobic and antisemitic material via the Internet

Another important policy document is Recommendation No. 6 that deals with racist, xenophobic and antisemitic material on the Internet.⁵³ It requests governments to take the necessary measures, at national and international level, in order to act effectively against the use of Internet for racist aims. States are obliged to ensure that relevant national legislation applies also to racist, xenophobic and antisemitic offences committed via the Internet and prosecute those responsible. It is important to clarify the responsibility of content host and content provider and site publisher, and to support the self-regulatory measures taken by the Internet industry to combat racism, such as anti-racist hotlines, codes of conduct and filtering software, and to encourage further research in this area. States should also undertake sustained efforts for the

51 Preamble, Explanatory Memorandum, para. 9.

52 Explanatory Memorandum, para. 10.

53 ECRI General Policy Recommendation No. 6 on Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, 15 December 2000.

training of law enforcement authorities in relation to the problem of dissemination of racist, xenophobic and antisemitic material via the Internet. However, this issue deserves broader action and States are obliged to increase public awareness of the problem of the dissemination material via the Internet, paying special attention to young Internet-users.

2.3. Committee of Ministers

There are many recommendations, adopted by the Committee of Ministers, which are of relevance for the media, and internet users and which insist on the promotion of culture of tolerance, equality and prohibition of hate speech. Only few will be mentioned here.

2.3.1. Recommendation on the media and the promotion of culture of tolerance

The Committee of Ministers adopted a Recommendation⁵⁴ stressed its commitment to guarantee the equal dignity of all individuals and the enjoyment of their rights and freedoms without discrimination. School of journalism and media training institutes should introduce specialist courses in their core curricula on multi-ethnic and multicultural societies and the contribution of the media and their role in better understanding between different communities. Media enterprises should, among others, report factually and accurately on acts of racism and intolerance; avoid derogatory stereotypical depiction of communities in publications and programme services; treating individual behaviour without linking it to a person's membership of such communities where this is irrelevant; depicting communities in a balanced and objective manner and with their perspective and outlook; and challenging the assumptions underlying intolerant remarks made by speakers. The representative bodies of media professionals should undertake action programmes or practical initiatives for the promotion of a culture of tolerance. In a media sector professional code of conduct must be drawn up, addressing the problems of discrimination and intolerance. Finally, media enterprises must refuse to carry advertising messages which portray cultural, religious and ethnic difference in a negative manner, such as by reinforcing stereotypes.

2.3.2. Recommendation on hate speech

The Committee of Ministers adopted Recommendation⁵⁵ that concerns particularly the hate speech, which is understood as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive

54 Committee of Ministers, Recommendation No. R (97) 21 to member states on the media and the promotion of a culture of tolerance, 30 October 1997.

55 Committee of Ministers, Recommendation No. R (97) 21 to member states on "hate speech", 30 October 1997.

nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”The document contains 7 principles:

- 1) Public officials have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech,
- 2) The State should establish a legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.
- 3) The legal framework must be implemented in a way that interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria.
- 4) National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups that are not protected by the freedom of expression.
- 5) National law and practice should allow the competent prosecution authorities to give special attention to cases involving hate speech.
- 6) National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyze and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas.
- 7) National law and practice should protect reporting on racism, xenophobia and other forms of intolerance and public authorities should not impose their own views on the media as to the types of reporting techniques to be adopted by journalists.

2.3.3. Recommendations concerning sexual orientation and gender

Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity⁵⁶ sets out the principles in relation to discrimination on grounds of sexual orientation. The recommendation identifies specific measures to be adopted and effectively endorsed by member states to combat discrimination, ensure respect for LGBTI persons, promote tolerance towards them and ensure that victims have access to legal remedies. These measures include, among many, (1) promotion of mutual tolerance and respect in schools; (2) (2) protecting asylum seekers from any discriminatory policies or practices. Recommendation on gender equality and media⁵⁷ recognizes gender dimension to media pluralism and diversity of media content. The media can either hinder or hasten structural change towards gender equality. Inequalities in society are reproduced in the media. Media coverage of political events and election campaigns is particularly telling in this respect, as

56 Committee of Ministers, Recommendation 2010 (5) on measures to combat discrimination on grounds of sexual orientation or gender identity, 31 March 2010.

57 Committee of Ministers, Recommendation CM/Rec (2013)1 of the Committee of Ministers to member states on gender equality and media, 10 July 2013.

are the persistence of sexist stereotypes and the scarcity of counter-stereotypes. Therefore, it is required from States to: 1) adopt adequate policies which can create the appropriate conditions under which the media can promote gender equality; 2) to raise awareness among the relevant stakeholders and the media about the central role of gender equality for democracy and the full enjoyment of human rights; and 3) to bring the recommendation to the attention of the media sector, journalists and other actors and their respective organizations, as well as the regulatory authorities for the media and new communications and information services for the preparation or revision of their regulatory and self-regulatory strategies and codes of conduct.

2.4. Commissioner for Human Rights

2.4.1. Ethical journalism and human rights

In 2011, the Commissioner for Human Rights issued discussion paper on Ethical Journalism and Human Rights.⁵⁸ In this document, the role of media in the protection of human rights was highlighted. However, the power of the media can also be misused and been used to incite xenophobic hatred and violence against minorities and other vulnerable groups. Ethical journalism is defined as the manner in which reporters, editors and others provide commentary on the events that shape people's lives. It is rooted in moral values and serve the public's right to know. It is also emphasized that unprofessional and biased journalism in covering migration, religious freedom and inter-cultural relations is widespread in Europe, and usually is present at a time when economic and social uncertainty fuels anxiety in communities.⁵⁹ It is also marked that the role of media is to confront extremism and protect vulnerable communities from bigotry and intolerance. However, there must be a fair balance between the prohibition of speech or journalism just because it offends the sensitivities of one group or another and real hate speech which is prohibited.

The fourth section deals with the practical means through which ethical journalism may materialize: codes of conduct for journalists and self-regulation. Codes of conduct reflect the aspirations of journalists to be responsible and accountable having detailed guidelines and training that should be developed by media professionals with the support of states. Also, self-regulation of the media is presented as a valuable means of resolving conflicts, protecting the independence of journalism, promoting ethical standards and reducing the risk of legal sanctions against journalists.

2.5. Other sources

There are many other sources that calls for the prohibition of hate speech and the role of the authorities in combating speech that incited violence and hatred. Among others, it is worth mentioning the Resolution 2275.⁶⁰ Here, the Parliamentary

58 Commissioner for Human Rights, Ethical Journalism and Human Rights, 8 November 2011.

59 *Ibid*, p. 15.

60 Parliamentary Assembly, Resolution 2275 (2019) on the Role and responsibilities of political leaders in combating hate speech and intolerance.

Assembly stresses out that Europe is facing an upsurge in hate speech, and intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against national or ethnic, religious and linguistic minorities, immigrants and people of immigrant origin, women and LGBTI people. The political arena is no exception to that and insists that the politicians have both a political obligation and a moral responsibility to refrain from using hate speech and stigmatizing language, and to condemn promptly and unequivocally its use by others, as silence may be interpreted as approval or support.⁶¹ The Assembly believes that a wide range of measures is necessary to counter hate speech, ranging from self-regulation, particularly by political movements and parties, and in the statutes and rules of procedure of national and local elected bodies, to civil, administrative and criminal legislation prohibiting and sanctioning its use. It also highlights the importance of media and social media in limiting the impact of hate speech by providing accurate, unbiased information and not giving excessive visibility to instances of stigmatizing or abusive language, including by political leaders.⁶²

Also, in 2014, the Strategy to prevent racism and intolerance in Europe was adopted in order to address a strategic approach to racism. This policy document stresses out that it is important to introduce or strengthen a comprehensive legal framework, accompanied by greater efforts to ensure its effective implementation. The strategy places emphasis on prevention, awareness raising and human rights education, while relying on the Internet and social media as valuable tools to reach out to a wider public.⁶³ It requires that that legal framework on hate speech and hate crime includes the broadest possible range of discriminatory motives. States are called to introduce binding guidelines for law-enforcement officials to ensure that any alleged hate motive associated with a crime is promptly, impartially, effectively and thoroughly investigated and duly taken into account in the prosecution and sentencing of those crimes.⁶⁴ They should also encourage victims and witnesses to report hate speech and hate crimes to the authorities, by: 1) circulating, as widely as possible, information on how to report them; 2) ensuring that reporting can be done on the Internet and in other ways that are easily accessible; 3) waiving any fee for reporting or lodging a complaint; and 4) ensuring that, when they are in an irregular situation, those who report cannot be expelled while co-operating with law-enforcement authorities.⁶⁵ States should also collect and publish on an annual basis disaggregated data on hate speech and crime, thereby enabling a better understanding and comparability of patterns of victimization and offending.⁶⁶ Prevention measures are also relevant and they should be in a form of large-scale awareness-raising campaigns, promotion of publications of educational materials and training in schools, as well as the training of law-enforcement officials in diversity and equality.⁶⁷

61 *Ibid*, para. 5.

62 *Ibid*, para. 8.

63 *Ibid*, para. 6.

64 *Ibid*, para. 8.1.3.

65 *Ibid*, para. 8.1.6.

66 *Ibid*, para. 8.2.

67 *Ibid*, para. 8.3.

3. DOMESTIC LEGAL FRAMEWORK ADDRESSING HATE SPEECH

3.1. Constitutional Guarantees

The Constitution of the Republic of Serbia⁶⁸ guarantees freedom of expression in Article 46, para. 1 similarly in the same way as Article 10, para. 1 of the ECHR: This freedom “may be restricted by law, if necessary for the protection of the rights and reputation of others, the protection of the authority and impartiality of the court and the protection of public health, the morals of a democratic society and national security of the Republic of Serbia.”⁶⁹ Here, the three-part test for assessing restrictions on freedom of expression, although the wording used in this provision is not perfectly clear. Namely, the restriction to freedom of expression must be prescribed by law and necessary in a “democratic society” and must protect some legitimate aim. Article 46, para. 1 of the Serbian Constitution has shorter list of legitimate aims which can restrict freedom of expression.⁷⁰ Further, the Constitution further prohibits in Article 43, para. 4, the expression of beliefs that provoke or incite religious, national or racial hatred. Also, any incitement or incitement to such hatred or other inequality and intolerance must be prohibited and punishable.⁷¹

Freedom of the media is especially guaranteed and the Constitution provides that the dissemination of information and ideas through the media is possible when necessary to prevent the advocacy of racial, national or religious hatred, which encourages discrimination, hostility and violence.⁷² This gave the ban on hate speech a constitutional rank, but such speech is also limited to racial, national or religious

68 The Constitution of the Republic of Serbia, *Official Gazette of RS*, no. 98/2006.

69 Article 46, para. 2 of the Constitution.

70 Article 10 of the ECHR prescribes the following list: “in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

71 Article 49 of the Constitution.

72 Article 50, para. 3 of the Constitution.

hatred, although it is illustrated that this speech before international bodies largely refers to members of the LGBTI population, as also shown by domestic practice. However, this shortcoming has been overcome by legal framework.

3.2. Legislation concerning discrimination

3.2.1. Law on the Prohibition of Discrimination

While the Constitution does not explicitly prohibit hate speech, it has been introduced into the anti-discrimination framework and recognized as one of the seven forms of discrimination. Thus, Article 11 of the Law on Prohibition of Discrimination prohibits hate speech.⁷³ Commendably, the Law defines what is meant by this speech. It is “the expression of 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.” The goal of such speech is to act towards third parties, and it is encouraged by expressing ideas and opinions that lead to discrimination, hatred or violence.⁷⁴ The problem with this provision is that it is broadly construed, but it does not give more elements of hate speech. First, it is not aligned with definition given in ECRI Recommendation no. 15, and also does not make a clear distinction with another form of discrimination, such as harassment and humiliating treatment, prohibited in Article 12. It prohibits “to expose an individual or a group of persons, on the basis of his/her or their personal characteristics, to harassment and humiliating treatment aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, humiliating or offensive environment.”

Also, it is important to underline that hate speech can be recognized as severe form of discrimination if it can fall under two situations: 1) 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; and 2) discrimination that results in severe consequences for the individual discriminated against, other persons or property, especially if it involves an act punishable by law, predominantly or solely motivated by hatred or enmity towards the aggrieved party on the grounds of a personal characteristic of his/hers. The severe form of hate speech was never recognized in our case-law thus far.

3.2.2. Penal provisions

Protection from criminal act caused by discrimination is regulated by the Criminal Code,⁷⁵ which, in addition to several criminal offenses against human rights, prescribes four criminal offenses related to the prohibition of discrimination: 1) violation of

⁷³ The Law on Prohibition of Discrimination, *Official Gazette of RS*, no. 22/2009.

⁷⁴ Nevena Petrušić, Ivana Krstić, Tanasije Marinković, *Commentary of the Law on Prohibition of Discrimination (Komentar Zakona o zabrani diskriminacije)*, Službeni glasnik, 2016, 81.

⁷⁵ Criminal Code, *Official Gazette of RS*, no. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012 i 104/2013, 108/2014, 94/2016.

equality; 2) violation of the right to use language and script; 4) racial discrimination and 3) incitement to national, racial and religious hatred and intolerance.

Article 387 criminalizes acts of racial discrimination, which exist when someone violates fundamental human rights based on differences in race, color, religion, nationality, ethnic origin, or some other personal characteristic, for which a prison sentence of six months to five years is prescribed. Persecution of organizations or individuals for their commitment to equality is also punishable. It is also punishable to spread the idea of the superiority of one race over another or to propagate racial hatred or incite racial discrimination. Disseminating and making available texts, images, or any other representation of ideas or theories that advocate or incite hatred, discrimination, or violence against any person or group of persons, based on race, color, religion, nationality, ethnic origin, or any other personal characteristic is also criminalized. Finally, a public threat that against a person or group of persons belonging to a certain race, color, religion, nationality, ethnic origin, or other personal characteristics, a criminal offense will be committed, will be punishable by imprisonment for more than four years. The prescribed prison sentence for these three forms of criminal act is from three months to three years. It is important to notice that the last two forms of committing this crime provide broader protection through the use of words “and some other characteristics”, which means that they do not refer only to racial discrimination.

Article 317 of the Criminal Code criminalizes inciting national, racial and religious hatred and intolerance, for which a sentence is ranging from six months to five years. If the act is committed by coercion, abuse, endangering security, exposing national, ethnic or religious symbols, damaging other people’s property, desecrating monuments, memorials or graves, the perpetrator will be punished by imprisonment for one to eight years. Also, if the act was committed by abuse of position or authority or if the act resulted in riots, violence or other serious consequences for the common life of peoples, national minorities or ethnic groups living in Serbia, the perpetrator will be punished by imprisonment for one to eight years, or imprisonment for two to ten years.

3.3. Media legislation

3.3.1. Law on Public Information and Media

The Law on Public Information and Media⁷⁶ prescribes the rules on public information, reception and exchange of information, ideas and opinions through the media in order to promote the values of a democratic society, prevent conflicts and preserve peace, truthful, timely, credible and complete information and enable free personal development.⁷⁷ Article 5 further proclaims that the role of media is to inform public on the topics of public interest, and that every person has the right to be informed truthfully, completely and in a timely manner about issues of public importance and the media are obliged to respect that right. Further, Article 15 deals with public

⁷⁶ The Law on Public Information and Media, *Official Gazette of RS*, no. 83/2014, 58/2015, 12/2016.

⁷⁷ Article 2 of the Law on Public Information and Media.

interest and defines that it is, among others, “support for the production of media content in order to protect and develop human rights and democracy, improve the rule of law and social state, free development of personality and protection of children and youth, development of cultural and artistic creativity, development of education, including media literacy as part of education system, development of science, development of sports and protection of the environment and human health,”⁷⁸ as well as the “promotion of media and journalistic professionalism.”⁷⁹ Under special rights and obligations in public information, the Law prohibits hate speech, which is not defined identically as in Article 11 of the Law on Prohibition of Discrimination. It reads: “Ideas, opinions, or information published in the media must not encourage discrimination, hatred or violence against a person or group of persons because of their belonging or non-belonging to a race, religion, nation, gender, because of their sexual orientation or other personal characteristics, regardless of whether the crime was committed by publishing.”⁸⁰ However, there is no hate speech if the information is part of an objective journalistic report and there was an intention to critically point out discrimination, hatred or violence against a person or group of, or to phenomena that represent or may constitute incitement to such behavior.⁸¹

3.3.2. Law on Electronic Media

The Law on Electronic Media,⁸² regulates the organization and work of the Regulatory Body for Electronic Media (REM), conditions and manner of providing audio and audio-visual media services, conditions and procedure for issuing licenses for providing audio and audio-visual media services, and other issues of importance in the field of electronic media.

The Law prescribes that the media service is provided in a way that respects human rights and the dignity of person in all program contents, particularly avoiding scenes of violence and torture, unless there is justification for that.⁸³ According to Article 51, the REM shall ensure that the program content of the media service provider does not contain information that incites, in an overt or covert manner, discrimination, hatred or violence due to race, color, ancestry, citizenship, nationality, language, religious or political beliefs, gender, gender identity, sexual orientation, property status, birth, genetic characteristics, health status, disability, marital and family status, conviction, age, appearance, membership in political, trade union and other organizations and other real or assumed personal characteristics.

78 Article 15, para. 7 of the Law on Public Information and Media.

79 Article 15, para. 8 of the Law on Public Information and Media.

80 Article 75 of the Law on Public Information and Media.

81 Article 76 of the Law on Public Information and Media.

82 The Law on Electronic Media, *Official Gazette of RS*, no. 83/2014, 6/2016.

83 Article 50 of the Law on Electronic Media.

3.3.3. Law on Public Services Broadcasting

The Law on Public Services Broadcasting,⁸⁴ governs the operation of public service broadcasters, namely the Public Broadcasting Institution Radio and Television of Serbia and the Public Broadcasting Institution Radio and Television of Vojvodina, their business activities and the guiding principles for performing these activities, the public interests that they serve, the transparency of their operation, the process of selecting authoritative bodies and their jurisdiction, the adoption of acts, and the provision of resources for operation and their funding model. Article 3 prescribes that their main activity is to entail the production, purchase, post-production, and publishing of radio, television, and multimedia content – particularly informational, cultural and artistic, children’s, entertainment, sports, religious, and other content of public interest to the citizens aimed at realizing human rights and freedoms, exchanging ideas and opinions, nurturing the values of democratic society, advancing political, gender, international and religious tolerance and understanding, as well as preserving the national identity of the Serbian people and national minorities.⁸⁵ One of the guiding principles of the broadcaster’s operation is “implementation of internationally recognized standards and principles, and particularly observance of human rights and freedoms and democratic values”,⁸⁶ which also means that it has to avoid information that can incite hatred and discrimination.

3.3.4. Journalists Code of Ethics

Serbian Journalists’ Code of Ethics was adopted in 2006 by the Independent Journalists’ Association of Serbia and the Journalists’ Association of Serbia. The journalist associations amended the Code in 2013 adding provisions regarding the prevention of corruption and conflict of interest. This Code represents an ethical standard for professional conduct of journalists, and prescribes that it is journalists’ duty to follow ethical and professional principles contained in the Code, and to resist pressures to violate these principles. The Code emphasizes that the media are obliged to place above all other interests, the interest of the public, providing comprehensive, timely and truthful informing. In the context of this Code, the public interest includes publishing all important information which is helpful to the reader/listener/viewer in forming their judgment/opinion regarding various phenomena and events. In section IV withing the Journalists’ responsibilities, the Code insists that a journalist is primarily responsible to their readers, listeners and viewers. This responsibility must not be subordinate to the interests of others, particularly the interest of publishers, government and other state institutions. A journalist must oppose all those who violate human rights or promote any kind of discrimination, hate speech and incitement to violence.

In a Guidelines to this provision it is clearly stated that journalism as a profession is incompatible with the spread of any kind of sexual, gender, ethnic, racial, social, or

84 The Law on Public Services Broadcasting, *Official Gazette of RS*, no. 83/2014, 103/2015, 108/2016, 161/2020.

85 Article 3, para. 1 of the Law on Public Services Broadcasting.

86 Article 4, para. 1, item 5 of the Law on Public Services Broadcasting.

religious stereotypes. Prejudices that journalists have privately must not be broadcast / published in any context, neither openly nor covertly. Further, it is unacceptable to name specific groups colloquially, in a derogatory manner and imprecisely. Also, in reporting crimes, national, racial, religious, ideological and political affiliation, as well as sexual orientation, social and marital status of suspects or victims, are mentioned only in case when the orientation, citizenship or status are directly related to the type and nature of a committed criminal offense.

3.4. Policy framework

After 4 years of expiry of the previous policy document, the Government adopted in January 2020 the Strategy for the Development of the Public Information System in the Republic of Serbia, covering the period 2020-2025.⁸⁷ The Strategy stipulates one general and five specific goals. Thus, the general aim is to improve public information system through a harmonized positive legal framework that guarantees freedom of expression, freedom of the media, security of journalists, media pluralism, developed media market, strengthened journalistic profession, educated citizens and institutions capable of enforcing regulations. Specific objectives are: 1) improved security, socio-economic and professional working conditions for journalists and media workers; 2) established functional, sustainable and fair media market protected from political influence; 3) that functional, competent, professional and open institutions have mechanisms for protection against external pressures and consistently apply public policies and regulations; 4) quality, plural and diverse media content meet the needs for informing different social groups; and 5) improved professional knowledge and developed digital competencies of citizens, institutions, media, journalists and media workers.

The Strategy underlines that the State fails to create a favorable environment for the development of freedom of expression, taking into account, among others, violation of legal obligations and human rights in the media content of certain media (endangering the privacy of people, their dignity, hate speech, false news, disrespect for special rights of children and minors and victims of violence, promotion of problematic lifestyles. The Government also needs to immediately react and publicly condemn hate speech.

Specific problem is marked by an increase in tabloid content in all types of media. Reality programs take significant time in the electronic media, and the front pages of the print media are full of sensationalist headlines and unethical photographs. The presumption of innocence is often violated, there is hate speech, there is a lack of journalistic attention, the content has no more sources, etc. The regulatory body for electronic media is in charge of monitoring the media content on electronic media, controlling the compliance of that content with legal and program obligations and imposing measures provided by law, for which there is a perception that they are not sufficiently pronounced.⁸⁸

87 Strategy for the Development of the Public Information System in the Republic of Serbia (2020-2025), *Official Gazette of RS*, no. 11/2020.

88 Strategy, para. 4.9.

It is also highlighted in the Strategy that the Internet and digital technologies are fundamentally changing the media ecosystem, the way content is produced, distributed and received. Digital media is characterized by convergence, simultaneity, mobility, interactivity. New opportunities for the creation and improvement of journalistic expression are opening up, as well as new forms of journalism (for example, data-based journalism, mobile journalism). However, the new era has transformed the media audience itself, which has become an active participant in the debate and a creator of content from passive recipients of information, and today “user-generated content” differs from “editorially designed content”. The public in the digital environment also needs digital rights, which include protection of users’ privacy (including the right to forget), information security, blocking of advertisements and transparency of algorithms, etc. Changing audience preferences and technical capabilities have also led to negative phenomena that are reflected in the spread of hate speech or misinformation (fake news).

This overview of the existing situation in media in Serbia demonstrates that despite very solid legal framework for combating hate speech, media climate is very negative and requires implementation of different measures in order to combat discrimination, hate speech, sensationalism and other negative phenomena which violates human rights and dignity of persons.

4. DOMESTIC PRACTICE ADDRESSING HATE SPEECH

4.1. Commissioner for Protection of Equality

Since its foundation, the institution of a Commissioner for Protection of Equality didn't have many complaints in which hate speech was recognized. In those cases in which hate speech was recognized, that speech referred almost exclusively to members of LGBTI.⁸⁹ In 2010, the Commissioner adopted a first opinion finding that article published in a daily newspaper A. "Doctor for Gays" contain hate speech,⁹⁰ although the opinion itself didn't contain any firm reasoning.

Another case was decided in 2011, when the Commissioner found a hate speech of Metropolitan, who called the participants of the Pride "the stench of Sodom that poisoned and polluted Belgrade".⁹¹ He also justified the violence that took place on the streets of Belgrade on October 10, 2010: "And you see, one violence, the violence of those ungodly and strange people were provoked by other violence. So now they are wondering who is to blame and they call those children hooligans! ". He also threatened: "God will know when he will strike with his whip and warning, but that is slowly being prepared".

The president of the United Serbia party, who gave an interview in the weekly A. in 2016, is an illustrative case.⁹² On that occasion, the president said that he could not support the Pride because it was illegal, contrary to Serbian tradition and the future of Serbian children. The Commissioner determined that expressing such an attitude is an act of discrimination because it insults the dignity of persons of the same sexual orientation and creates a humiliating and insulting environment concerning them,

89 One exception is an opinion of the Commissioner in which hate speech was found against atheists. See The Commissioner for Protection of Equality, Complaint *Organisation A.S. v. D. C. from N*, no. 1080, 30 July 2012.

90 The Commissioner for Protection of Equality, Complaint *Udruženje L. protiv dnevnog lista "Alo" i Dragoljuba Kovačevića*, no. 159/2010, opinion from 23 December 2010.

91 The Commissioner for Protection of Equality, Complaint *Organisation L. v. Metropolitan A.R.*, no. 171/2011, opinion from 28 February 2011.

92 The Commissioner for Protection of Equality, Complaint *R.I.C. v. Dragan Marković*, no. 07-00-182/2016-02, opinion from 27 May 2016.

contributing to the spread of stereotypes and prejudices, well as stigmatization and intolerance.⁹³ It was especially taken into account that the statement was given by a public figure, an official of a political party, when homophobia is ubiquitous in Serbian society.

Another public figure was convicted of hate speech because of a statement given at the municipal assembly session when the question was asked who gave the “fagots” money from the budget.⁹⁴ The Commissioner again pointed out the fact of the special weight of the spoken word in the public space and by the holders of public functions. She underlined that homophobia and transphobia have deep roots in Serbian society and are an expression of negative stereotypes and prejudices. Precisely for these reasons, the responsibility of public office holders is enormous, as they have the opportunity “to contribute to a society of equal opportunities for all, to fight stereotypes and prejudices and contribute to building a society that respects the dignity of all citizens and where there will be no exclusions based on any differences.”⁹⁵ In this opinion the Commissioner revoked directly judgment in *Delfi As v. Estonia*, where the ECHR found direct responsibility of the legal entity that posted the news on a website, and for the comments that followed, which in their content constituted illegal speech.⁹⁶

Also, in one case the Commissioner found hate as A. T. with his posts on Facebook and by posting a photo of P.P., encouraged threatening comments. P.P. stated that because of the comments he feels threatened, and fears for his own safety and for the safety of his closest ones.⁹⁷ Some of the comments were: “Like! On the square, then on the bonfire, in public! “So lubricate him, then charge him until he dies “accompanied with several photos of stoning gays, and calling to Sharia to punish homosexuality” by throwing from high rocks, now we have a lot of buildings so we don’t need to climb”, “Throwing from a height and sprinkling with stones” as well as “burning”.

However, in most cases, the Commissioner found a violation of Article 12 of the Law on Prohibition of Discrimination, and not Article 11, which prohibits hate speech, although there are cases in which the existence of both forms has been recognized.⁹⁸ This form of discrimination, provided for in Article 12, is called harassment and degrading treatment, which is committed with the aim of “or violating the dignity of a person or group of persons on the basis of their personal characteristics, especially if it creates fear or a hostile, degrading and abusive environment. ” Thus, in

93 *Ibid*, para. 3.6.

94 The Commissioner for Protection of Equality, Complaint *Organisation G. v. Councilor of Trstenik*, no. 07-00-120/2016-02, opinion from 23 May 2016. See also the Commissioner for Protection of Equality, Complaint *R I C v. daily newspaper S.*, no. 07-00-270/2016-02, opinion from 1 September 2016.

95 *Ibid*, para, 3.11.

96 *Ibid*, para. 3.13.

97 The Commissioner for Protection of Equality, Complaint *P.P. v. A.T.*, no. 07-00-734/2015-02, 21 March 2015.

98 See, for example, the Commissioner for Protection of Equality, Complaint *CSO v. the Portal*, no. 07-00-174 / 2019-02, opinion from 29 May 2019. In this case, the Commissioner found that the portal published comments that insulted the dignity of the LGBTI population, but also those that encouraged discrimination, hatred or violence against persons of different sexual orientation.

one case, the Commissioner found that the calendar with pictures of women with the following comments: “As many white crows, so many good women”, “You should not have a beautiful woman and a vineyard by the road” and “Coffee poured and a woman discovered no I can wait,” belittles women, promote their inferiority, their objectification and support gender stereotypes.⁹⁹

At the press conference after the premiere of his film, our famous actor stated that there is someone who “does not treat the Serbian people as a line of gypsies, as a gang of murderers and as madmen from the Balkans without a future.”¹⁰⁰ The Commissioner emphasized that the actor put the Roma in a negative context with his statement and violated their dignity. At the same time, it does not matter whether his goal was to violate the dignity of the Roma community, and his obligation to refrain from such statements is more outstanding precisely because he is a public figure. Roma is often hit by offensive speech. An example of an article published in a regional newspaper, which deals with citizens’ problems with attacks by stray dogs, is also illustrative.¹⁰¹ The text states that the city budget is under a significant burden due to the large number of citizens’ compensation claims due to the bite of stray dogs due to false reports, mostly of Roma. The article is entitled “Bite in the ‘Roma’ way” and is the largest on the cover. Based on the information received from the City Public Attorney’s Office, it was determined that in the mentioned period, only 10% of the requests were submitted by the residents of the Roma settlement.

The Commissioner gave the opinion that the regional newspaper published a controversial text, which expressed attitudes and ideas that were disturbing and humiliating, thus violating the dignity of members of the Roma national minority. This case represents a borderline case between these two forms of discrimination, as well as the case of a scientific advisor, who published an article in a daily newspaper entitled “School Handbook for Combating Homosexuality”.¹⁰² The author, among other things, blames homosexuality for destroying the family and calls it lies, ugliness, brainwashing, and pure lies. The author is also against the Law on Protection from Domestic Violence because it is used further to destroy the family and family relations in Serbia and is used to promote “homosexuality and pornography, encourage child sexuality and experiments in this field, as well as slander the traditional family.”. The Commissioner concluded that it is inadmissible for an attitude about a particular social phenomenon, no matter how critical, to be expressed in a way that insults an entire social group just because it has a specific personal characteristic,¹⁰³ and those

99 Commissioner for Protection of Equality, Complaint Group of MPs v. the Association D.D.K. in N., no. 07-00-638 / 2016-02, opinion from 27 March 2017. See also the Commissioner for Protection of Equality, Complaint CSO F. v. S.D., no. 07-00-200 / 2019-02, opinion from 17 June 2019.

100 Commissioner for Protection of Equality, Complaint Association R. c.m. v. Dragan Bjelogrić, no. 622/2011, opinion from 25 May 2011.

101 Commissioner for Protection of Equality, Complaint P. and S. f. v. list N. N., no. 07-00-533 / 2013-02, opinion from 14 October 2013.

102 Commissioner for Protection of Equality, Complaint R.I.C. v. M. Đ., no. 07-00-202 / 2017-02, opinion from 15 August 2017. See also some other cases in which a violation of Article 12 of the LPD has been recognized, which relate to speech directed against the LGBTI population: Commissioner for Protection of Equality, Complaint DSZ v. J. F., no. 07-00-444 / 2017-02, opinion from 25 January 2018; Commissioner for Protection of Equality, Complaint R.I.C. v. the daily I., no. 07-00-521 / 2016-02, opinion from 3 February 2017.

103 *Ibid*, par. 3.12.

expressed ideas create fear, hostility, humiliation, and insult. Environment for members of sexual minorities.¹⁰⁴ With his views, the author questions gender, i.e., gender identity and spreads prejudices and stereotypes on this issue, and indirectly sends a message that justifies and encourages possible violence. This text is not characterized as hate speech, but it contains some elements of this speech. The same can be said for the statement of the vice president of the city board of one party, who stated at the press conference on the possible construction of a refugee hospital that this “would be a real danger to the lives of all residents of this city” because there are certainly terrorists among them.¹⁰⁵ She especially advocated the construction of a wall towards Macedonia due to the uncontrolled influx of migrants to not later, like the French, create a “crying wall”. The Commissioner found that presenting such an attitude is an act of discrimination because it insults refugees’ dignity, creates a humiliating and insulting environment concerning them, and contributes to the spread of prejudice, intolerance, and intolerance.¹⁰⁶ However, the weight of the spoken word and the context in which it was used before didn’t qualify as hate speech.

4.2. Court practice

4.2.1. Civil cases

Civil cases against hate speech can be initiated either by the Law on Prohibition of Discrimination or by the Law on Public Information and Media. These two proceedings differs in terms of who can file a lawsuit and against whom (either discriminator or the editor who published information, news). Although hate speech was widespread in the Republic of Serbia for the past 10 years, there have not been many cases in which the court has found its existence. However, it should be emphasized that the court does not have a statistics on hate crime cases, and that many judgments are not available to public, so this statement should be taken with reservation.

The High Court in Belgrade pronounced its first judgment for hate speech on the basis of Article 11 of the Law on Prohibition of Discrimination due to the comments of readers on the website of a daily newspaper regarding the published article. The newspaper was found to have discriminated against members of the LGBTI population, allowing very derogatory comments to be published.¹⁰⁷ Although this judgment is very important for establishing the limits of tolerance for speech that can be offensive to members of certain groups, the court rejected the claim for damages, which best illustrates that the harmful impact of such expression was not understood.

Also, an interesting case is against a well-known politician, who gave a statement that he is “against every gathering where homosexuals demonstrate on the streets of Belgrade and want to show that a disease is a normal thing.” The Gay Straight

¹⁰⁴ *Ibid*, par. 3.13.

¹⁰⁵ Commissioner for Protection of Equality, Complaint NP organization v. G. J., no. 07-00-698 / 2015-02, opinion from 24 May 2016.

¹⁰⁶ *Ibid*, para. 3.8. See also Commissioner for Protection of Equality, Complaint, CSO v. the President of the Municipality of Kanjiža, no. 07-00-409 / 2015-02, opinion from 26 October 2015.

¹⁰⁷ Belgrade Center for Human Rights, Human Rights in Serbia in 2011, Belgrade, 2012, 265, 266. This decision was confirmed by the Court of Appeals in February 2012.

Alliance submitted a claim against the well-known politician, Dragan Markovic Palma, because of a statement he gave to journalists from print and electronic media: 'The attitude of the United Serbia party and my personal view is: we are against any gathering where homosexuals demonstrate in the streets of Belgrade and want to show something which is a disease as a normal thing.' The first instance court found that this claim was unfounded, as the politician issued a statement on behalf of an organization that stands for the 'healthy family, which means that individuals are born within the marriage between a man and a woman and are not children of a "surrogate family" in which two people of the same sex play at being mum and dad.'¹⁰⁸ In addition, the court found that political parties have the right to express their views. It recalled that freedom of expression is one of the fundamental values of a democratic society, which is protected even in the case of information which may shock or offend others, as it requires pluralism in society. It is particularly shocking that the court found that, during a time when hate speech and open calls for various forms of discrimination are common in political life and in the media in Serbia, this statement did not meet the conditions enshrined in the Law on the Prohibition of Discrimination to be discriminatory behaviour. Fortunately, the Court of Appeal in Belgrade, as a second instance court in this case, held that limiting the freedom of expression is not unlawful, as it is 'the prohibition of speech which spreads the ideas that incite discrimination, and which may have harmful effects on the democratic process and the development of society as a whole.'¹⁰⁹ Thus, the court found that the defendant behaved in a discriminatory manner.

However, there are cases in which lower courts will more adequately apply the provisions of the Law on Prohibition of Discrimination. Very important and illustrative case is the case for which the Commissioner for Protection of Equality, initiated strategic litigation proceedings concerning discrimination on the grounds of sex and sexual orientation against the dean of a law faculty. In June 2017, the dean, who was also a professor at his university, published an article with the title 'Domestic Violence and Violence against the Family'. The author stated that the Law on the Prevention of Domestic Violence, which was finally adopted in 2016, does not intend to only protect the poor but also; 'women regardless of whether they are weak or strong, loved or unloved, nervous, unusual or well-off, whether they have a lover or not, whether they earn their own money or are financially dependent, whether they own property or have moved into their husband's apartment.' The author believed that the Law will further initiate the breakup of families, as various measures can be imposed, including the expulsion of men from their home prohibiting contact with their wife and children. The author further advocated for a traditional and patriarchal organization of a family, where the man is the head of the family in charge of all important decisions regarding the family, placing women in an unequal position. Furthermore, the author described the LGBTI community as 'primitive', 'violent' and as 'prostitutes'. The Commissioner emphasized that protection from domestic violence should apply to all, and should not depend on the personal circumstances of women. The Commissioner highlighted the fact that the attitude that only 'weak' women deserve protection is based on stereotypes of the role of women. The Higher

¹⁰⁸ First basic court in Belgrade, 73. P. no. 15378/2012, 17 September 2013.

¹⁰⁹ Appellate court in Belgrade, Gž. 2426/14 November 2014.

Court in Novi Sad delivered its decision in May 2018, finding that the author of the text committed an act of discrimination on the basis of gender and sexual orientation. The court of first instance found that the author, as a public figure, should not advocate discrimination or ideas that encourage discrimination, which can have detrimental effects on democratic processes and human rights guarantees in a society.¹¹⁰ Surprisingly, the Appellate Court in Novi Sad found that the author has the right to freedom of expression and that his profession (university law professor and a dean) is irrelevant in this case.¹¹¹ In its decision, the Court invoked Article 10 of the European Convention on Human Rights and relied on principles deriving from the jurisprudence of the European Court of Human Rights, but did not refer to any particular case. The court particularly emphasized that Article 10 also protects information that can offend, shock, or disturb others, finding no discrimination in this case. Therefore, the finding of discrimination was quashed in this case. Unfortunately, on 3 August 2020, the Commissioner for the Protection of Equality was informed that the Supreme Court of Cassation upheld the Appellate Court's decision.¹¹² The highest court found that the author did not offend people based on sex or sexual orientation and neither had the intention to offend. On the contrary, he merely expressed his value judgment about the Law on the Prevention of Domestic Violence, and criticized the manifestation of sexual orientation at the Gay Pride. Also, the court found that the Commissioner's position set forth in the complaint (that the decision of the Appellate Court which legitimizes the discriminatory speech is unacceptable for combating discrimination and should not be a part of the Serbian legal order) can be viewed as a special pressure on the court. The court did not take into account the possible effects of the statements of the defendant expressed in a position as a public figure.¹¹³ This decision was the reason why some other academics, also known for unacceptable speech, advocated to dismiss the Commissioner arguing that she 'violates the legal order and discriminates and persecutes persons whose views she doesn't like.'

4.2.2. Criminal cases

There is also no available statistics on cases in which incitement to hatred was criminalized. However, in some cases in which the Commissioner initiated criminal charged, it is clear that the Prosecutor's office didn't act to penalize some criminal acts.

In 2012, the Commissioner filed the first criminal complaint with the Higher Public Prosecutor's Office in Belgrade against NN, the author of the text "Robbery of Serbia and the Serbian people as aid to Gypsies", which was published on the blog "Roma in Serbia".¹¹⁴ The Commissioner assessed that this is a criminal offense under Article 317, para. 1 of the Criminal Code, or the act inciting national, racial and religious hatred and intolerance. The criminal complaint in this case was dismissed.

110 Higher court in Novi Sad, II. 1344/2017, judgment from 8 May 2018.

111 Appellate court in Novi Sad, Gž.3576/2018, 17 October 2018.

112 Supreme Court of Cassation, Rev 195/2019, judgment from 29 January 2020.

113 See Supreme Court of Cassation, Rev 1855/2017, judgment from 30 June 2017.

114 Commissioner for the Protection of Equality, Regular Annual Report for 2012, Belgrade, March 2013, p. 89.

In 2014, six criminal charges were filed, all due to a well-founded suspicion that a criminal offense under Article 317 had been committed in the form of inciting racial hatred and intolerance towards Roma. The first criminal charge was filed against the owner of the Internet portal "Vaseljenska TV" and the author of the text "(White) washing of the history of Gypsies". The author deals with the history and life of Roma and explains that the use of the word "Gypsies" contains what members of the Roma national minority through the centuries, by their actions and inactions, self-challenged in the perception of the people they came in contact with. Also, the author writes about "typical problems related to the presence of Roma", which relates to the following topics: crime rate, resistance to inclusion, birth rate, as well as non-fulfillment of social obligations. The author wrote that Gypsies are a source of infection, crime and many children who are automatically transferred to social assistance, i.e. at the expense of all taxpayers. At the same time, the white plague is affecting Serbs to a large extent instigated by poverty, which does not leave enough resources to raise offspring in the spirit of a quality strategy. "The author concluded that the Roma do not pay anything, which can provoke the anger of "loyal" citizens, which "can spill over into the streets and in a mass lynching produce much more dramatic consequences for the Gypsies themselves." In addition to a number of other insulting words and solutions to the problem, the author raised the question of whether the state has the right to discriminatory limit the birth rate of Roma and states that it can "apply the policy of one child" to solve a large number of "other problems Gypsy". No action was taken in this case.

The second criminal complaint was filed against the author VV, who wrote the text "Serbia-Gypsy", and N.N., the owner of the internet portal "Intermagazin", where the text was published.¹¹⁵ In the text, the author states, among other things, that after 2000, "more than a million and a half Gypsies" immigrated to Serbia from all over the world, and that this number seems more than worrying, that is, worrying, and that Serbs have to wait decades for "their state" to help them, while the Roma problems are solved as soon as possible. The author constantly calls Roma Gypsies, and describes the entire Roma population as an antisocial and very dangerous people who "pollute our environment, who expose us to dangers, who suck this land because this state has enabled them to do so by keeping them as an endangered species." No action was taken in this case.

Three criminal charges were also filed against NN for writing graffiti and handing out leaflets "Serbs, get organized!" In Belgrade, Novi Sad and Krusevac.¹¹⁶ The leaflets presented ideas and attitudes against Roma. Citizens were warned, among other things, that the spread of "wild gypsy settlements" leads to consequences such as: unhygienic, garbage, fecal water, unbearable stench, frequent quarrels and fights, as well as loud gypsy music. "In addition to reminding that the Roma bring with them "an increase in crime and violence", the leaflet ends with a dramatic warning and a call for organized action - "Save your home, your family, your region." Get organized!" All three criminal charges were dismissed. The criminal complaint was also filed

115 Higher Public Prosecutor's Office in Belgrade, no. 07-00-15 / 2014-02, 29 January, 2014.

116 Higher Public Prosecutor's Office in Belgrade, no. 7-00-9 / 2014-02, 1 December 2014; Higher Public Prosecutor's Office in Novi Sad, no. 7-00-12 / 2014-02, 2 December 2014; Higher Public Prosecutor's Office in Kruševac, no. 7-00-11 / 2014-02, 2 December 2014.

against the president of the local community Sirča, against whom a strategic lawsuit was initiated. Criminal charges were filed with the Higher Public Prosecutor's Office in Kraljevo for a statement he gave on the occasion of a protest organized by about 50 residents of the village of Sirca, against the Roma families in their village. They blocked the access to the household that this Roma family had previously bought, and the president of the local community supported the protest and on that occasion presented ideas and attitudes that directly provoke and incite racial hatred and intolerance towards Roma.

In 2015, one criminal complaint was filed against the unidentified person for the text "Truth about homosexuals" published in electronic newspaper "Sandžak press".¹¹⁷ The text states, among other things, that "homosexual groups are a breeding ground for a dozen very serious diseases"; "they follow raw quasi-animal instincts and deviant perverted passions"; that their goal is "homosexuality of the public, especially young people"; and "such the mentality leads directly to pedophilia, zoophilia, incest and the like."

In 2016, the Commissioner filed one criminal complaint for the text "LGBT caravan of strangers banned in Krusevac, director of the cultural center insulted the participants", which provoked readers' comments, such as: "In the refrigerator, in the chamber to close", "Serbia started to fight against the Turks from Krusevac," "The LGBT population should be treated in all psychiatric wards in Serbia."¹¹⁸ According to the Commissioner, the owner of the internet portal Krusevac has made publicly available texts that advocate and incite hatred, discrimination and violence against members of sexual minorities.

In 2017, three criminal charges were submitted by the Commissioner. The first case concerns a Roma child who was hit in school by a police officer, who threatened to set fire to his village, insulting him and cursing his 'Gypsy mother'. However, the Basic Public Prosecutor's Office in Novi Sad rejected the criminal complaint, stating that there were no grounds for suspicion that a criminal offence, which is prosecuted *ex officio*, was committed. Another two criminal charges concern the incitement of ethnic, racial and religious or other hatred or intolerance in comments to a news outlet published on a local website. Some comments were: 'It's good that you mentioned that the perpetrator is Roma, so we know whom to beat up', 'Kill the Gypsy', 'The Hitler knew what he was doing', etc. By means of Article 54a of the Criminal Code, racial, religious, national, ethnic and sexual hatred are considered to be aggravating circumstances. However, this is rarely applied in practice. The ECRI welcomed the introduction of this provision as it was intended to improve the protection against hate crime. However, it found that the application of the legislation against hate speech and violent hate crime is inefficient and that, 'there is no decisive action against the activities of racist, homophobic and transphobic hooligan groups'. In order to address the problem of hate speech underreporting and given that it is increasingly disseminated on the internet, it is necessary to provide specialist knowledge to police

117 Higher Public Prosecutor's Office in Belgrade, no. 07-00-685 / 2013-02, 21 January 2015.

118 Commissioner for the Protection of Equality, Regular Annual Report for 2016, Belgrade, 15 March, 2017, p. 153.

officers and prosecutors and technical tools in order to conduct investigations in an efficient manner.¹¹⁹

In 2018, three criminal charges have been filed. In the first case, a complaint was filed against A. B., who publicly insulted members of the LGBTI community because of their sexual orientation with his disparaging and humiliating statements on the Facebook.¹²⁰ The news about a man who shot at a woman, and then at himself, was published on Facebook. Below the published text, A.B. left comments such as: "Everyone let your whore, guess and she'll be fine", "And as for my sister, if she cheats on her husband and her husband finds out, let her kill her", "Not all whores are killed for whoring, some bark on the Internet" and the like. The Commissioner expressed opinion that A. B. made a series of comments on domestic violence, which incite hatred, discrimination and violence against women. It justifies violence against women and provokes the reaction of other users in the form of emoticons and likes. The Commissioner especially reminded that domestic violence is a widespread phenomenon that leads to negative physical, psychological, social and financial consequences for women, children, the family and the community. She points to the number of women who have lost their lives from partners and ex-partners in recent years.

The second complaint was filed regarding the comments on the Facebook page "K. RS".¹²¹ The comments were published on the occasion of the text inspired by the TV show about Srebrenica "Shame! Morgan Freeman insulted Serbs: The actor accused us of genocide!" Among the published comments were the following: "That soot doesn't even know where Serbia is because it hung on a tree until yesterday, and his ancestors hang even more, and he will say that Serbia is genocidal and his ancestors are still cannibals," "Who allowed this slave to speak. Beat him now", "Ordinary monkey in a cage" and the like. The Commissioner pointed out that such comments express attitudes that directly provoke and incite racial hatred and intolerance.

The last application submitted in 2018 refers to the public figure A. V., who in the show C. exposed to scorn LGBTI people.¹²² He stated, among other things, that their human rights were not endangered, that they were above the others, that their brains were endangered, that they were threatening him with the Parade, using the derogatory words "fagot" and "fuck". The Commissioner considered that these were disparaging and humiliating statements by which he publicly insulted members of sexual minorities and thus committed a criminal offense.

These cases show that the largest number of criminal charges relate to Roma and members of the LGBT population. Also, the analysis shows that the highest number of suspicions in the existence of a criminal offense is expressed for statements made in the media or for comments on news published on Internet portals. Of particular concern is the fact that in a small number of cases, the prosecution informed the Commissioner about the actions taken. Furthermore, in a large number of cases, the criminal report was rejected despite the existence of serious suspicions that a criminal

119 ECRI, report on Serbia (fifth monitoring cycle), Council of Europe, adopted on 22 March 2017, p. 23.

120 Higher Public Prosecutor's Office in Belgrade, no. 07-00-00035 / 2018-02, 12 February 2018.

121 Higher Public Prosecutor's Office in Belgrade, no. 07-00-139 / 2018-02, 16 March 2018.

122 Second Basic Public Prosecutor's Office in Belgrade, no. 07-00-44 / 2018-02, 2 February 2018.

offense had been committed. This is particularly interesting data, as all these cases are clear cases of hate speech but they didn't led to the conviction of perpetrators.¹²³

Thus, the prosecution shows that it is still not sufficiently sensitized to issues of discrimination, and that it still does not recognize the social danger of statements that can provoke incitement to hatred and intolerance.

Both law, the Law on Prohibition of Discrimination and the Law on Public Information and Media, as well as other media laws, contain penal provisions, but there are no information on the number of cases and the result of the misdemeanor proceedings.

4.3. Regulatory Body for Electronic Media (REM)

The REM is an independent regulatory body with the status of a legal entity, which exercises public authority in order to, among others, effectively implement the established media services policy; improve the quality and diversity of electronic media services, and to contribute to the preservation, protection and development of freedom of expression.¹²⁴ Article 22 specifies that the REM control the work of media service providers,¹²⁵ in terms of consistent application and improvement of principles on which the regulation of relations in the field of electronic media is based.¹²⁶ Importantly, it also determines closer rules related to program contents in connection with the protection of the dignity of the person, protection of human and minority rights, as well as the prohibition of hate speech.¹²⁷ In carrying this control, the REM is obliged to take special care that media service providers respect the obligations related to program content provided by this Law and the conditions under which the license was issued.¹²⁸ The Law specifies that the REM impose measures on media service providers.¹²⁹ It can issue a warning, temporary ban on the publication of program content, or may revoke its license,¹³⁰ respecting objectivity, impartiality and proportionality. The REM shall initiate proceedings before a competent court or other state body against a media service provider or its responsible person, if act or omission has the characteristics of an act punishable by law.

According to its Report, during 2017, regular supervision was performed over reality programs for the purpose of timely registration and response in potentially incidents cases.¹³¹ Number of reports have been made regarding the content that violates

123 According to statistics from the prosecution services, criminal charges on hate speech were pressed against 216 individuals between 1 January 2011 and 30 May 2016: 207 concerned the victim's national or ethnic origin, five their religious affiliation, one their citizenship and one their sexual orientation. Most offences target Roma and LGBTI persons; 106 persons were indicted and 41 persons convicted. Another 138 complaints were filed for racial (20) and homo- and transphobic (118) cybercrime. These cases led to the conviction of 20 persons. ECRI, ECRI Report on Serbia, fifth monitoring cycle, 22 March 2017, p. 17.

124 Article 5 of the Law on Electronic Media.

125 Article 22, para. 8 of the Law on Electronic Media.

126 Article 24, para. 1 of the Law on Electronic Media.

127 Article 22, para. 15 of the Law on Electronic Media.

128 Article 24, para. 2 of the Law on Electronic Media.

129 Article 22, para. 9 of the Law on Electronic Media.

130 Article 28 of the Law on Electronic Media.

131 REM, Report for 2017, Belgrade, 2017, p. 24.

human rights and is unsuitable for children and youth. Activities due potential violations of this type were undertaken on the basis of reports from citizens or ex officio. Attention is also given to hate speech and discriminatory speech. However, in 2017, a total of three measures were imposed (warning and reprimand against TV Happy and one reprimand against TV Pink). Out of 167 applications in 2019, the largest part (as many as 162 applications) refers to the content of the programs broadcast by reality shows, which is recognized as hate speech. All these applications were rejected by the REM as incomplete. There is no data on any proceedings initiated ex officio by the REM, although it is obvious that the content of such programs upsets a large number of citizens.¹³²

For the last 7 years, the REM has imposed 67 measures on media service providers, while in the same periods citizens and organizations have submitted 1.030 complaints by August 2020.¹³³ All these applications were dismissed as incomplete.¹³⁴ The largest number of citizens' applications refers to two televisions with a national frequency which broadcast reality shows (TV Pink and TV Happy). During 2020, in January alone, a total of 78 charges were filed against TV Pink in connection with reality programs, which are related to animal protection and hate speech. Until September 2020, REM did not file any criminal or misdemeanor charges against media service providers for discriminatory speech, violations of the protection of minors and hate speech in electronic media, although this falls within its competence and with evident daily broadcasting of such content.¹³⁵ Thus far, only one warning measure for non-compliance with the program study was issued against Radio NS plus from Novi Sad. The penal policy is noticeably stricter: while from 2014 to June 2020, REM imposed only one measure of temporary suspension of the program, from June to September 2020, as many as three such measures were imposed.

The REM is of the opinion that the absence of pluralism of media content, discrimination, hate speech and gross violation of the Law on Electronic Media and bylaws have marked TV programs in Serbia with national coverage from 2014 until today. However, it must be concluded that the REM also does not act in accordance with its competences to combat hate speech in Serbia.

4.4. Press Council

The Press Council is an independent, self-regulatory body that brings together publishers, print, online media and news agency owners, and professional journalists. It was established to monitor compliance with the Code of Journalists of Serbia in print and online media, as well as in news agencies, and to resolve complaints from individuals and institutions about the content of those media. The Council is also responsible for mediation between aggrieved individuals, i.e. institutions,

132 Vida Petrovic Skero, Natasa Jovanovic, Analysis of the Effect of the Work of REM, 2017-2020, Slavko Curuvija Foundation, Belgrade, p. 25.

133 N1, Danas, REM: Discrimination and hate speech marked the program of national television in Serbia, 26 October 2020, available at <https://www.danas.rs/drustvo/rem-diskriminacija-i-govor-mrznje-obelezili-programe-nacionalnih-televizija-u-srbiji/>.

134 Ibid, p. 25.

135 Vida Petrovic Skero, Natasa Jovanovic, *Op.cit.*, p. 53, 68.

and newsrooms, as well as issuing public warnings for violating ethical standards established by the Code of Journalists of Serbia. The Press Council also deals with education for acting in accordance with the Code of Journalists and works on strengthening the role of the media in Serbia. The Press can bring a decision on violation of the Code for members, and public warning for a non-member media. This type of self-regulation does not know sanctions in the true sense of the word, but exposes the media to moral sanctions (the obligation to publish a decision that they have violated the Code). The Press Council also monitors the content of a number of dailies and regularly publishes reports of potential violations of the Code. The Press Council is the only body that gives an “opinion on the ethics” of media that apply for call on project co-financing of media content in the public interest. Although not disqualifying, the criterion of respecting ethical standards is one of the factors influencing competition commissions.

In 2017, the Press Council received 95 complaints, submitted by individuals (49), non-governmental organizations (37), by the media (4), Commission members (3) and by bodies or institutions (2). The decision was brought in 65 cases, and the violation was found in 53 cases (32 decisions were related to media that do not accept the full authority of the Press Council and they were issued public warnings). Some media outlets did not respect the obligation to publish the decisions of the Commission.¹³⁶ In 2018, the Press Council received 117 complaints. The largest number of complaints were filed by individuals (70), then state bodies and institutions (20), and non-governmental organizations (16). Seven complaints were filed by media, while two complaints each were submitted by Commission members and companies. The violation of the Code of Journalists of Serbia was decided on in 42 cases (27 decisions referred to media that did not accept the full authority of the Press Council, and they were issued with public warnings). In 2019, the Press Council received 81 complaints. Most complaints were filed by individuals (61), then non-governmental organizations (11), state bodies and institutions and the media each filed four complaints, while one complaint was filed by a member of the Complaints Commission. In 42 cases, the Complaints Commission ruled that the Code had been violated, of which in 33 cases it issued public warnings, because media question did not accept the competence of the Press Council. The most public warnings, nine, were issued to ePancevo, which has campaigned for months against journalist Nenad Zivkovic. The decisions of the Commission were not published by: Alo (twice), Kurir and Blic zena one time. There is no information on the number of cases in which the decision relied on hate speech.

136 This obligation was avoided by “Politika” (which did not publish any of the five decisions), while two decisions were not published by “Blic”, “Večernje novosti”, “Alo” and “Telegraf.rs”, and one by portal “Blic Žena”.

5. PRESENCE OF HATE SPEECH IN SERBIA

5.1. International reports concerning Serbia

5.1.1. ECRI recommendations concerning Serbia

ECRI has published the Third Report for Serbia in 2017.¹³⁷ ECRI is highly concerned about a continued rise in hate speech in Serbian public discourse, which is amplified by wide media coverage.¹³⁸ Politicians and the media use inflammatory, pejorative and nationalistic language and regional tensions in the area of former Yugoslavia have risen sharply. The current public discourse is reminiscent of the hate speech used before the recent wars in the region and surveys show high levels of underlying social distance between different parts of the population. Media outlets continue to give coverage to hate speech from politicians and other public figures, amplifying its effect. The inflammatory language used in the media makes an additional contribution to the increasing tensions between ethnic groups in the country and in the region.¹³⁹ Hate speech is increasingly disseminated via the Internet; football hooligans and their organizations also contribute to spreading hatred. The ECRI also criticizes the system of (self) regulation of the media for not working properly. Thus, the Press Council is too weak and social media operators do not prevent and remove hate speech.

Many offences are not reported to the police and the police are not always open to receiving complaints, in particular from LGBTI persons and Roma. The application of the legislation against hate speech and violent hate crime is inefficient and there is no decisive action against the activities of racist, homo- and transphobic hooligan groups.¹⁴⁰ Furthermore, ECRI criticizes as there are no comprehensive statistics on hate speech in Serbia.¹⁴¹

137 ECRI, ECRI Report on Serbia, fifth monitoring cycle, 22 March 2017.

138 *Ibid*, p. 9.

139 *Ibid*, p. 19.

140 *Ibid*, p. 10.

141 *Ibid*, p. 17

ECRI recommends to Serbia to adopt the following measures: 1) to adopt codes of conduct for the Serbian Parliament and Government which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels; 2) to initiate intensive training for journalists on the journalists' Code of Ethics; 3) (i) to ensure full independence of the REM and refrain from any political influence; (ii) that the Press Council take up cases *ex officio*, (iii) that the Press Council's decisions are followed up with financial sanctions, (iv) that the REM, the Press Council and the Commissioner for the Protection of Equality take up all cases of hate speech in the media, (v) that these institutions impose effective, proportionate and dissuasive sanctions (vi) and widely publicize their decisions; 4) to develop a strategy on combating cyber hate speech, without encroaching on the editorial independence of the media; 5) that the Serbian police and prosecution services designate, throughout the country, contact persons for vulnerable groups targeted by hate speech and hate crime; 6) to establish and operate a system for recording and monitoring racist, homo- and transphobic incidents and the extent to which these incidents are brought before prosecutors and are eventually qualified as racist, homo- or transphobic offences. The police and prosecution services should investigate all reported cases of hate speech promptly and thoroughly and work towards effective and dissuasive punishment; 7) that the Commissioner for the Protection of Equality and the Ombudsperson continue assisting victims of hate speech to bring cases before the courts; and 8) that the authorities take immediate action to investigate, prosecute and punish racist behaviour of sports fans, ban racist sports fan clubs. According to ECRI conclusions from April 2020, there is no progress on these recommendations, especially in relation to the code of conduct.¹⁴²

5.1.2. EU Serbia Report

Eu Serbia Report for 2020 contains several very sharp remarks concerning hate speech in Serbia.¹⁴³ The Commission first stresses out that inflammatory language against political opponents and representatives of other institutions expressing diverging political views was used during parliamentary debates, and that all politicians have a responsibility to avoid inflammatory language and to counter hate speech.¹⁴⁴ It also found that Serbian authorities continue to provide public space to convicted war criminals, and permit hate speech. Denial of the Srebrenica genocide by certain members of parliament continued without sanctions.¹⁴⁵

Further, hate speech and discriminatory terminology are often used and tolerated in the media and are rarely tackled by regulatory authorities or prosecutors. The Press Council continued to record an increase of breaches of the journalistic code of professional conduct in print media. Recurrent statements by high-ranking state officials

142 ECRI, ECRI Conclusions on the implementation of the recommendations in respect of Serbia, subject to interim follow-up, 7 April 2020.

143 European Commission, Serbia 2020 Report, Brussels, 6 October 2020.

144 *Ibid*, p. 11.

145 *Ibid*, p. 25.

on the daily and investigative work of journalists are preventing the creation of an environment where freedom of expression can be exercised without hindrance.¹⁴⁶

Finally, human rights defenders, together with LGBTI persons, often face hate speech, threats and violence. These abuses need to be promptly and properly investigated and penalized. The Commissioner for Protection of Equality raised concerns over the increased occurrences of discriminatory and hate speech during the state of emergency, which were targeting in particular women, the elderly, people infected with COVID-19, those returning from abroad, and LGBTI persons.¹⁴⁷

5.1.3. UN Committee's Reports on Serbia

5.1.3.1. ICCPR

The latest report of the Human Rights Committee (HRC) from 2017 does not include any comment on hate speech, but it deals with hate crimes.¹⁴⁸ The HRC is concerned that, despite the State party's efforts to prevent offences motivated by hatred, hate crimes, particularly against Roma, continue to be a serious problem. While noting the amendments to article 54 (a) of the Criminal Code introducing aggravating circumstances for crimes committed by individuals who feel hatred for a particular race, religion, nationality or ethnicity, sex, sexual orientation or gender identity, it regrets that the State party has not provided any example of the practical implementation of those amendments. Therefore, the State party should: (a) increase its efforts to promote tolerance for persons belonging to ethnic, national, racial, religious and other minorities, including persons belonging to the Roma community; and (b) effectively implement article 54 (a) of the Criminal Code, including by ensuring that hate crimes are identified and promptly investigated, that alleged perpetrators are prosecuted and, if convicted, that they are punished with appropriate sanctions.¹⁴⁹

5.1.3.2. ICERD

The last report of the Committee on Elimination of Racial Discrimination (CERD) from 2018 includes several important comments on hate speech.¹⁵⁰ The Committee is alarmed by reports of a rise in hate speech, including online, against ethnic and ethno-religious minorities; by the continuing incidence of racist speech and behaviour in the context of football events; and by reports that authorities have failed to timely intervene during such incidents. The CERD is concerned by indications that hate speech remains underreported and by the absence of comprehensive statistics on investigations, prosecutions and convictions for acts of racist hate speech and incitement to racial hatred. While noting that article 387 of the Criminal Code provides that hate speech is generally criminalized, the Committee is concerned that pursuant to article 344a of the Criminal Code, incitement to hatred at sporting events

¹⁴⁶ *Ibid*, p. 35.

¹⁴⁷ *Ibid*, p. 36.

¹⁴⁸ HRC, Concluding Observations on the third periodic report of Serbia, 10 April 2017.

¹⁴⁹ *Ibid*, para. 11.

¹⁵⁰ CERD, Concluding Observations on the combined second to fifth report of Serbia, 8 December 2017.

or public assemblies is criminalized only insofar as it leads to violence or physical conflict (arts. 2 and 4). Recommendations given by the CERD are as follows: 1) to provide statistics, disaggregated by ethnicity of the victim, concerning investigations, prosecutions, convictions, sanctions and remedies for acts of racist hate speech and incitement to racial hatred; 2) to ensure that its laws criminalize incitement to racial hatred, whether or not it incites violence; 3) to strengthen measures to ensure that racist hate speech, including in its written, spoken and online forms, is effectively identified, investigated and punished; 4) to take appropriate measures to combat the proliferation of acts and manifestations of racism on the internet, including by blocking websites devoted to inciting racial discrimination and hatred, and by requiring social media networks and other websites featuring online comments to monitor their sites for and promptly remove hate speech; 5) to vigorously combat racist behaviour in sports, particularly in football, including by disseminating strong anti-racism messages at sporting events; 6) to increase efforts to inform and sensitize the public about racist hate speech and relevant complaint mechanisms; 7) to ensure that political leaders and educators actively promote inter-ethnic tolerance and understanding; and 8) to ensure that persons convicted by the International Criminal Tribunal for the Former Yugoslavia are not promoted as heroes in any part of the country.

The CERD acknowledged that many activities has been undertaken to implement recommendations relating to the efforts of the State party to enforce Article 54a of the Criminal Code, and notably by: 1) ensuring that all reported incidents, investigations, prosecutions, sanctions and remedies relating to racist hate crimes are recorded; 2) ensuring that sanctions commensurate with the gravity of racist hate crimes are imposed on perpetrators and that victims obtain full redress; 3) designating within law enforcement services contact persons for racist incidents, training those persons to conduct investigations and ensuring that they engage in regular dialogue with targeted groups, in order to ensure adequate reporting of racist hate crimes.¹⁵¹ However, there is no mention of measures undertaken to combat hate speech.

5.1.3.3. CEDAW

The Committee on Elimination of Discrimination of Women (CEDAW) in its latest Concluding Observations on Serbia does not specifically mentions hate speech.¹⁵² However, the CEDAW expressed its concern about reports of high levels of discriminatory gender stereotypes that hinder the advancement of women's rights.¹⁵³ The CEDAW referred to increased instances of anti-gender discourse in the public domain, and the public backlash in terms of the perception of gender equality, and misogynistic statements expressed in the media, including by high-ranking politicians, religious leaders and academics, with impunity. Therefore, the CEDAW recommended to Serbia to monitor the use of misogynistic language referring to women in public statements and media reporting, encourage the media to institute

151 CERD, Information received from Serbia on follow-up to the concluding observations, 27 December 2018.

152 CEDAW, Concluding Observations on the forth periodic report of Serbia, 18 February - 8 March 2020.

153 *Ibid*, para. 21.

an effective self-regulatory mechanism to address the use of such language, introduce legislative amendments, as appropriate, to hold the authors accountable, and use the education system to enhance positive and nonstereotypical portrayals of women.¹⁵⁴

5.2. Domestic Reports and Researches

In the past several years, several researches on hate speech in Serbia were conducted.

In 2018, Belgrade Center for Human Rights published a study on protection mechanisms against hate speech on the Internet.¹⁵⁵ The study shows that hate speech is very much present in Serbian media. Also, the authors conclude that fight against hate speech cannot be based only on legal protection mechanisms as its prevalence indicate serious social deviations. Therefore, the focus should be on preventive measures, particularly education. Criminal protection due to the length of the proceedings is not the most effective protection mechanism in cases of hate speech. However, it is the only mechanism that can be used in a case of unidentified person, whose identity can be obtained during the procedure. A complaint to the Press Council can be an effective mechanism since prohibited speech is removed from public space. It should be noted that it can be used exclusively by media publishers and it mostly depends on the willingness of the media to act on decisions of the Press Council. Proceedings before the Commissioner for the Protection of Equality with regard to efficiency is an adequate protection mechanism, but it is not possible to be conducted against a person whose identity is not possible to determine.

One dissertation at the Faculty of Political Sciences from 2018 was dedicated to hate speech on the Internet in Serbia.¹⁵⁶ The author finds that hate speech is very present in the Internet communication. However, hate speech that is considered a criminal offense is very rare. Hate speech makes up about 20% of the total online content reported for violating the Code of Conduct of Journalists on various bases. In the analysis of data for a period of four years, it was not possible to determine the increase in hate speech online. The key conclusion of this research is that events that polarize the public are the most common trigger of hate speech, especially towards minorities. In a period when all media are intensively dealing with an event that polarise society, there is an increased online activity of all participants who often use harsh terms, conspiracy theories, insults and a dictionary that can be considered a hate speech. Hate speech towards Roma and LGBTI people is particularly high, as well as towards Albanians and Croats, and in some extent toward women. Hate speech is recognized as a factor that impedes a quality debate on issues of social importance, makes it difficult to make democratic decisions and thus directly undermines the stability of democratic values in society. Hate speech can be seen as a tool which certain groups and individuals use in a struggle for domination, struggle to gain power and reaffirm their own identity within the public sphere. By gaining the power of communication they can disqualify the others and promote discrimination

154 *Ibid*, para. 22 b).

155 Milos Stojkovic, Dusan Pokusevski, *Anonymous Hate, Protection mechanisms against hate speech on the Internet*, Belgrade Center for Human Rights, Belgrade, 2018.

156 Predrag M. Nikolic, *Hate speech on the Internet Communication in Serbia*, Faculty of Political Sciences, Belgrade, 2018.

against minorities, which in wider context influence participation and leads to the decline of democracy.

Center for Media Professionalization and Media Literacy (CEPROM) conducted a study from September 15 to October 15 2019,¹⁵⁷ which showed that during this period in print and online media, around 20,000 texts were published with elements of aggressive communication, hate speech and sensationalism. One of the conclusions of this study is that although the practice for years shows that the media, instead of explicit hate speech, most often use extreme speech and sensationalist narratives in their texts, this research reveals that 2019 brought even more alarming phenomena on the media scene. During this year, the media further pushed the boundaries of aggression and became even more brutal than before. An increasing number of media do not abide to professional principles, codes of ethics, and the language of tolerance. Aggressive communication has already become a media standard. The conducted research detected several different categories of problematic texts that should not be viewed separately. The seemingly “milder” forms of aggressive communication are actually an overture to increasingly brutal and explicit forms. When the “milder” forms raise the threshold of tolerance to the readers’ extent and when they become a common and “normal” phenomenon, they move on to more and more extreme forms. The best proof of this is the aggressive and disturbing terminology used by the media on a daily and increasingly intensive basis, which has influenced the desensitization of citizens to the language of aggression to such an extent that once inappropriate words in public space or expressions used only in exceptional situations have become commonplace—part of the media, but also everyday vocabulary. Although at first glance it may seem that the only goal of using such terminology is the intention of the media to attract as many readers as possible, and thus provide higher earnings through advertisers, it is true that the effects of such language in the media are much more dangerous than we can imagine. Every day in Serbia, the most readable media publish 125 texts under the slogan “scandalous” (which is usually highlighted in capital letters in the title), almost 100 with the phrase “brutal” and 85 with the warning “disturbing.” All this is accompanied by extreme brutality and sensationalist narratives, embodied in everyday examples down to the details of the described crimes, incidents, and disturbing contents of various kinds. Interestingly, the most readable media publish daily around 44 texts in which they labeled someone as a “traitor;” even their family members and friends, are called “foreign mercenary,” “thief,” and “terrorist”. there is also an increasing use of labeling that contains hate speech elements. Thus, in the analyzed period, as many as 508 texts with the term “Ustasa” and 491 texts with the term “Siptar” were published. In online media, even six times more aggression and sensationalism has been noticed. The research also reveals that texts with elements of aggression, sensationalism and hate speech are predominantly present in online media in which as many as 86% of such texts were published in the analyzed period (17,169 texts), while 14% (2795 texts) were published in the daily press. It is especially problematic that the language of aggression in online media texts spreads geometrically after publication, which can best be seen in the increasingly harsh comments of readers on these texts, both

¹⁵⁷ CEPROM, Communication aggression in Serbia, Belgrade, 2019.

on the sites of the given media and on social networks, so that the negative effects are visible almost instantaneously.

5.3. Interviews conducted

One of the proposed and implemented methodologies in this study was to conduct interviews with relevant actors in the area of combating hate speech. Due to Covid-19 situation in a period from November to December majority of answers were obtained through a questionnaire, while in vivo interview was conducted with the representative of the Commissioner for Protection of Equality, and an online meeting was organized with judges of higher and appellate courts specialized in anti-discrimination law. The response was not given by Independent Association of Journalists' of Serbia, while the problem was to get response from the police due to their long-lasting procedure to obtain permission for an interview, which couldn't be obtained until the end of the study. Also, the response from the Special Prosecution Office for High Tech Crime was immediate, but until the end of the study answers were not obtained. Other interlocutors were extremely responsive and all underlined the importance of dealing with hate speech.

There are several conclusions that can be drawn from their answers:

1. They all agree that the legal framework for hate speech is very solid, although some further clarifications are needed and their alignment with ECRI's definition on hate speech stipulated in Recommendation No. 15.
2. Implementation of the existing legal mechanisms for the protection against hate speech must be more effective, appropriate and dissuasive.
3. The existence of hate speech and discriminatory speech is very high in Serbia, especially against LGBTI persons, Roma, women and migrants, and the greatest responsibility for this situation has public institutions, politicians and media itself.
4. In order to combat hate speech different measures on different levels need to be implemented in order to promote human rights, diversity and tolerance in the society.
5. Freedom of speech and its limitations needs to be taught at schools and universities, while further trainings on hate speech for politicians, judges and prosecutors and media workers are necessary.

1. Commissioner for the Protection of Equality

The Commissioner's position is that the definition of hate speech in the domestic legal system is clear and in line with relevant international standards. The existing legal framework also contains a number of mechanisms for protection against hate speech. In a complaint procedure, the Commissioner issues an opinion and recommends to the person against whom the complaint was filed the manner of eliminating the violation. The Commissioner can file a criminal or misdemeanor charge, initiate a strategic lawsuit, and issue a warning. If the speech contains elements of a criminal offense, it is sanctioned in criminal proceedings. In addition, there is protection defined in civil proceedings. The REM also has the authority and may issue a warning,

temporary ban on the publication of program content to the media service provider, or may revoke its license, for violation of obligations related to program content, as well as for violation of conditions contained in the license or authorization to provide media services in accordance with the provisions of the Law on Electronic Media. By the Law on Public Information and Media, at the proposal of the competent public prosecutor, the competent court may prohibit the distribution of information or other media content. Also, at the proposal of the prosecutor, the court may issue a decision on the temporary ban on the distribution of information until the final decision on the ban. The Press Council also monitors the application of the Code of Journalists in print media and publications on all platforms, portals and news agencies; decides on complaints regarding specific contents, and conducts trainings. If the Commission of the Press Council finds a violation of the Code of Journalists, the media to which the complaint refers must publish a decision. However, for the more efficient protection from hate speech, amendments to the Criminal Code and introduction of stricter penalties, as well as prescribing fines should be considered.

There is also a need for better regulation of the legal responsibility of the portal in relation to user-generated content and hate speech on social networks and generally in the online environment. It is necessary to regulate the issues of self-regulation of Internet portals and other platforms in terms of previous and subsequent moderation, which the Commissioner pointed out in 2018 in its recommendation of general measures. The recommendation also pointed out to the Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to combat illegal content on the Internet. In addition, in its regular annual reports, the Commissioner uses the opportunity to acquaint all MPs, citizens, civil society organizations with the recommendations and reports of the European Union, as well as the current case law of the ECHR, European Commissioners for Human Rights, etc.

When it comes to the Commissioner's practice, it should be noted that more cases were decided under Article 12 of the Law on Prohibition of Discrimination, which prohibits harassment and humiliating treatment aimed at or violating the dignity of a person or group of persons based on personal characteristics, especially if this creates fear or a hostile humiliating and offensive environment. In cases in which hate speech was found, the Commissioner issued several opinions, filed several criminal charges, issued warnings to the public, and initiated strategic litigation (in one case the court accepted, and in another rejected the lawsuit (higher instances)). This another case was a trigger for attacking the institution of the Commissioner and for accusing her to suppress freedom of expression.

The Commissioner also issued general recommendations, such as the one sent to all registered internet portals, and another recommendation issued to all advertising agencies, as well as TVs, and which have a preventive role. The Commissioner also published a media handbook which serves as educational material for journalists, editors and other media workers. Numerous trainings on this occasion were held, publications were issued, research was done. Since 2012, the Commissioner has been implementing the project "Don't appreciate a book by its cover - Living Library in Serbia", with the support of the Council of Europe, where citizens have the opportunity to get in direct contact with victims of discrimination, and also gives annual awards for tolerance to journalists dealing with equality issues.

According to the Commissioner's experience, the most common grounds for hate speech are gender, sexual orientation and nationality or ethnic origin (Roma). Given that freedom of speech and the principle of non-discrimination are human rights that enjoy special protection, and which are opposed to hate speech, it is a challenge to set a limit on how far freedom of speech can go. The most difficult are the so-called borderline cases, where it is especially important to take into account the temporal and spatial context. Unlike many countries, Serbian Law on Prohibition of Discrimination prescribes harassment and degrading treatment as a special form of discrimination, so in practice there is sometimes a dilemma whether a certain act is hate speech or this form of discrimination. What is noticeable from practice is that there are more and more cases where explicit hate speech has been replaced by speech that is essentially hate speech, but is not recognizable at the first sight. The most recent case concerns comments on the social network, using words "polar bears" for Roma.

Also, due to the Covid-19 pandemic, the world has moved to the online sphere, which is the least regulated. Having in mind new habits and a changed way of life, it is necessary to establish the rules as soon as possible, as well as the issue of responsibility in all potential cases of hate speech. Due to the existing challenges, it is no longer enough to put emphasis on the education of certain groups, such as e.g. editors, journalists, inspectors, prosecutors, etc. it is already necessary to organize the broadest campaigns that will cover all citizens. It is especially important to constantly educate citizens, especially children and young people, but also media editors, about the harmfulness of hate speech and its recognition. The capacity of the police and the prosecution in this area needs to be strengthened. The biggest challenge is certainly to establish the identity of persons who make hate speech on the Internet, as well as to provide evidence.

In order to reduce hate speech in Serbia, it is necessary to organize trainings addressed to certain actors, but also vulnerable groups in order to timely recognize hate speech and manners to seek protection, to promote good practices and values of a tolerant society, and to insist on harmful effects of hate speech.

2. Protector of Citizens (Ombudsman)

The Protector of Citizens also agrees with the assessment that the legal provisions in the domestic order are in compliance with the relevant international standards, while the biggest problem is their ineffective application. However, the Protector of Citizens notes that the definition of Article 11 of the Law on Prohibition of Discrimination is not fully in line with ECRI's General Recommendation no. 15.

At the end of 2019, the Protector of Citizens submitted to the Ministry of Labor, Employment, Veterans and Social Affairs a contribution for the development of a new Strategy for Prevention and Protection against Discrimination for the period 2020-2025, where he proposed that one of the measures to be adopted are appropriate rules of conduct and adequate sanctions for holders of public office for discriminatory speech and hate speech against LGBTI people. In its written contribution from 2019 to an independent United Nations expert on protection against violence and discrimination based on sexual orientation and gender identity, the Protector of

Citizens, among other things, pointed out to the problem of hate speech by public officials towards LGBTI people, which must be adequately sanctioned. It was also underlined that hate speech is widespread in the comments of readers, which is why it is necessary to continuously implement measures and activities dedicated to raising public awareness of the importance of respecting the rights of LGBTI people. The Protector of Citizens also pointed out that consistent application of criminal and anti-discrimination legislation is necessary in order to suppress hate speech.

When it comes to sanctions, the Regular Annual Report of the Protector of Citizens for 2019 states that the media often publishes content that insults reputation or privacy, the dignity of the victim, and that there is no adequate protection in those cases. In this regard, the Protector of Citizens considers that prescribing a legal obligation or prohibition is not sufficient if the obligation or prohibition is not accompanied by appropriate sanctions and authorizations of the competent authorities. For this reason, the Protector of Citizens sent an Opinion to the Ministry of Culture and Information on amendments to the Law on Public Information and Media, advocating for appropriate sanctions and consistent implementation of legal obligations and prohibitions. Also, the Protector of Citizens sent an Opinion to the Ministry of Culture and Information on the Proposal of the Strategy for the Development of the Public Information System in the Republic of Serbia for the period from 2020 to 2025, in which he emphasized the importance of improving the position of persons with disabilities, national minorities and other vulnerable groups.

When it comes to the fight against hate speech in the media, the competent authorities are, above all, the judicial authorities, the police, the REM, the Press Council, as well as the Commissioner for the Protection of Equality, given that hate speech is a form of discrimination. The Commissioner, however, has no right to act *ex officio*. The Protector monitors media announcements in which hate speech is present and reacts to them with his announcements. In certain cases, the Protector of Citizens also initiated proceedings due to hate speech, mostly on his own initiative, but also on complaints from citizens. Nevertheless, there is no accurate record of the number of initiated cases, as they are sometimes related to other violations of rights. Thus, for example, in 2020, the protector acted on the basis of texts published in the media, in which it is stated that a group of about two hundred high school pupils self-organized through social networks and protested in Leskovac against the announcement that a Pride Parade would be held in that city. During the protest, there were incidents and the pupils shouted inappropriate and insulting slogans. The Protector of Citizens initiated on his own initiative procedures to control the legality and regularity of the work of the competent authorities in this case. In his statements, the Protector of Citizens pointed out that women are often exposed to hate speech, especially those in important and responsible positions. Also, the Protector of Citizens points out that members of the LGBTI community are undoubtedly the most exposed to hate speech. In their case, not only insulting words, but also calls for lynchings and death threats are often sent.

When it comes to hate speech on social networks, it can be suppressed by raising awareness, ie sensitizing the general public in order to eliminate stereotypes and prejudices about vulnerable groups, informing the public about their guaranteed rights and available protection mechanisms, and by providing examples of good

practice in protecting the rights of victims. It is necessary to constantly point out to the prohibition, harmfulness and punishability of hate speech. Also, it is necessary that the administrators of social networks, who moderate the content, are capable to recognize hate speech, which texts or reader's comments contains it, as well as to react accordingly.

In order to reduce hate speech in Serbia, it is necessary to spread the culture of human rights, conduct raising awareness campaigns of the rights of vulnerable social groups, conduct education starting with preschool education, and at all levels of education in order to respect diversity and tolerance. The Protector of Citizens has been pointing out for years that it is necessary to include human rights education in the education system to a greater extent in order to reduce intolerance towards vulnerable social groups and combat prejudices and stereotypes. The goal of the institution is to determine the measures undertaken by schools, in order to increase the knowledge of children and students in this area, and to develop tolerance towards differences. It is also necessary to conduct trainings dedicated to the recognition of hate speech, including online hate speech, in addition to the relevant international standards and judgments of the European Court of Human Rights for judicial office holders, as well as for journalists and media editors.

3. Judges specialized in anti-discrimination law

The judges interviewed on the report have specialization on anti-discrimination law and are, therefore, particularly relevant interlocutors. However, out of 8, only two judge had experience in a case involving hate speech. All interviewed judges believe that hate speech is clearly defined in the legal order, although it is somewhat different in the Law on Prohibition of Discrimination, the Law on Public Information and Media and the Criminal Code. Also, the judges believe that a clear distinction has been made between hate speech and degrading and humiliating treatment, and that with hate speech a person addresses like-minded people and he/she clearly expresses himself, while in another form of discrimination the person addresses the person against whom the action is directed and does not have to be expressed in public. Judges consider that it is their obligation, pursuant to Article 18 para. 3 of the Constitution, to invoke the international standards contained in the case law of the ECtHR whenever decisions are made in cases where a human right is a matter, such as freedom of expression.

The judges declared the presence of hate speech in the media to be moderate to very present. According to their opinion, it mostly affects women, LGBTI people and Roma, mostly on the Internet, and on TV.

Everyone is responsible for this situation in society, but primary responsibility goes to state institutions, media, family, educational institutions, and politicians.

Judges also agree that the established system of protection is good, but very often hate speech is not sanctioned, and sometimes even because it has not been noticed.

Judges believe that it would be desirable to establish the misdemeanor responsibility of the editor by amending Article 140 of the Law on Public Information and Media. However, this is not enough and in order to reduce the presence of hate speech, it is

necessary to act on several levels, from school and education seminars on equality issues, to other more complex measures.

All judges expressed the opinion that the amendments to the Law on Prohibition of Discrimination should introduce mandatory training of judges who judge in cases of judicial protection against discrimination organized by the Judicial Academy.

4. The REM

In 2020, REM did not have any complaint on hate speech, but there were several for discrimination. The last such case was the case of *Lukas v. Zaklina Tatalović*. Thus, there was no answer to the question against which media the complaints refer to and for which personal grounds. Also, no sanctions were imposed under Article 28 of the Law on Electronic Media in order to assess whether they were adequate. There was also no referral of hate speech cases to other bodies, and there were no other preventive activities in the area of suppression of hate speech.

However, a member of REM expressed the view that hate speech is largely present in all media (electronic, print, on the Internet), mostly in tabloid media and on various portals. It is also present in some TVs with national frequency (Pink, Happy), as well as sometimes in some other televisions (N1, Nova S, some local TVs).

Also, the assessment is that the legal framework is good, but that it is not implemented adequately. Politicians and other public figures who influence public opinion bear the greatest responsibility for the high presence of hate speech in media. He is also of the opinion that the trainings would not contribute too much, if there is no consistent implementation of the law. However, freedom of expression and hate speech should be introduced to a greater extent into the education system.

5. Press Council

The representative of the Press Council points out that there are two places in the Journalists' Code that refer to hate speech and discrimination, so it is often difficult to separate those two in order to give precise answer to the question of the number of complaints of hate speech in 2020. It is common that between 10 to 15 percent of complaints relate to discrimination and hate speech each year. In 2020, there were about 20 complaints (out of 160 received until mid of December). While usually most complaints concern LGBTI people and Roma, in 2020, most complaints were received regarding migrants (as a rule, to readers' comments) - 7 complaints, one complaint related to discrimination against Roma and one to women. The others referred to hatred in relation to political affiliation.

The Code of Journalists of Serbia contains adequate provisions prohibiting hate speech - one provision prohibiting hate speech and another requiring a journalist to oppose it (paragraph 1 of Section IV and paragraph 4 of Section V). The Press Council, ie the Appeals Commission, either makes a decision that the Code of Journalists has been violated (in the case of media that have accepted the full competence of the Press Council) or issues public reprimands (media that are not its members). The Commission cannot impose any other measure. Also, significant part of the complaints related to hate speech and discrimination is resolved through mediation,

and they do not even appear before the Commission. Media are mostly willing to react and to remove generated comments, as the most common sanction in these cases. It also happened that they remove the entire text, most often regarding the organization's complaints about comments against LGBTI people.

As for the issue of the prevalence of hate speech in Serbia, no research has been done on this topic, but at first glance it can be said that it is very present, especially in the comments of readers in online media. These comments are often not provoked by the content of the text, although there are many cases where the text is written in such a way as to provoke such reactions. Also, frequently, the media uses to call the interlocutor who is known for homophobic attitudes in order to say what journalists are not allowed to express openly. In those situations, journalists defend themselves as just conveying someone's opinion.

The trainings would certainly contribute to the reduction of hate speech. The Press Council often holds trainings for journalists and editors, and occasionally for judicial staff on a variety of topics. It is especially useful when journalists and judges are at the same table, so they have the opportunity to assess issues from other's perspective. Outside the field of the Press Council, trainings are needed to government officials and politicians, as they have a great influence on the creation of public opinion.

6. Journalists' Association of Serbia

The representative of the Journalists' Association of Serbia expressed the opinion that hate speech is defined in the domestic legal order in accordance with international and European standards, but could require more detailed guidelines than existing ones, although they sufficiently exist in the Code of Journalists of Serbia as a duty of journalists to prevent hate speech and to protect marginalized groups.

in Serbia, the competence for the fight against hate speech belongs to the prosecution and courts, the Commissioner for the Protection of Equality, the Protector of Citizens. In terms of the media, it belongs to the REM and the Press Council (Complaints Commission). Recently, with the development of the Internet, media sites (for which the Press Council is also responsible) and social networks, the Prosecutor's Office for High-Tech Crime has become increasingly important.

The Association protects the rights of journalists, and is member of the Working Group for the Safety of Journalists, whose members are the Ministry of the Interior and the Prosecutor's Office for High-Tech Crime. The group regularly, several times a month, and sometimes weekly, reports cases of physical and verbal attacks on journalists. At the same time, the Association is the founder and a member of the Press Council who actively imposes measures on the media. Since recently, they have a representative in the REM, who actively submits petitions on hate speech in electronic media. The Press Council's Complaints Commission responds to complaints, although it can be in a greater extent.

Institutions such as the courts and the REM Council also make decisions based on the context, intent and action resulting from hate speech, given the delicate nature of defining such language in relation to freedom of expression. There is no insight into the complaints submitted to the competent institutions, but it is certain that

hate speech is more represented in the public, media and on social networks than it is in court reports. Misdemeanour proceedings, warrants or a court decision make sense in print and electronic media. For the effect caused by poorly arranged internet space, the procedure is slow.

In order for hate speech to be adequately sanctioned, it is necessary to have a society who appreciates pluralism and dialogue, in which understands the necessary to be inform about everything, and not only about pleasant and acceptable issues. Punishment must be a last resort, because its greater use in undefined situations easily becomes an act of censorship and self-censorship. Greater civic and professional responsibility is a far more effective tool than sanctions. The government is most responsible for hate speech, and calls for hatred are often heard from the National Assembly itself, while the media are in second place for generating hate speech.

According to reports from the Press Council, hate speech complaints are rare, most often filed by organizations and most often related to the rights of the LGBTI population, Roma and migrants. Hate speech is most present in social networks in the form of calls for the destruction of individuals or groups, where there is even denial of the victims of the Second World War (e.g. Jasenovac). That language also comes from university professors and other citizens. The tabloids are exposed to numerous warnings for unprofessional attitude and even for endangering individuals. On the other side, there are no many cases on hate speech in the print media. Still, there are few portals that do not remove readers' comments after a warning. However, when it comes to social networks, they are outside the domain of national competencies, and such a comment is removed by the decision of supranational companies. Domestic institutions have some communication with these companies and they can abide to the request of the prosecution, but they are not obliged to do so. In exceptional situations, the Ministry of Culture and Information initiates misdemeanour proceedings against media outlets to pay fines (for other types of offenses) before removing the text, issuing a warning or apologizing to the public.

In order to reduce hate speech in a society, it is necessary to seek an argumentative discussion, invest in media, empower media workers economically to reduce their dependence on owners and dominant politics, enable dialogues whose lack is one of the reasons for the polarization that causes hatred on the internet. For a start, labor disputes, which are also initiated by journalists, should be dealt with within reasonable time. Above all, institutions should work independently, free from all pressures and in accordance with the public interest. The media should return the facts to where they belong and make the exchange of arguments in only acceptable way again.

When it comes to training, the first necessary step would be to present media literacy as a subject in education system. At the faculties where media workers are educated, the sensibility for public speech and knowledge about journalistic attention and obligations should be strengthened interdisciplinary. The independence of regulatory bodies, such as the REM and the influence of self-regulatory bodies such as the Press Council, need to be strengthened. Citizens, even public officials, are often not sufficiently familiar with the mechanisms of protection against hate speech. In that sense, a continuous campaign would be welcome.

7. CEPROM

During 2020, the organization focused on hate speech and aggression on the Internet. On this occasion, five papers were written and published in media. Although there are no precise indicators of whether the occurrence of hate speech has changed compared to previous years, the subjective impression is that the situation has further deteriorated.

Hate speech is most prevalent in online media (last year's survey shows it is as much as six times more prevalent than traditional media). The most frequent terms in hate speech texts are "Siptar", "Ustasa" and "Idajnik (Traitor)". Intolerance, aggression and hate speech have become the most recognizable characteristics of online debates in recent years, and the initiators of such communication are mostly journalists and media editors as they publish texts that directly encourage hate speech and aggressive behavior. Citizens are bombarded with words "shocking", "horror", "tragedy", "unremembered". These negative contents have completely overwhelmed persons, the growth of the intensity of sensationalism is incredible, and together with it, the threshold of tolerance for violence, abuse, accidents, and all kinds of threats to vulnerable groups is growing. It is concluded that people are used to this type of content, which is a significant problem.

Since the content in online media in Serbia has not been charged, their creators make money precisely thanks to sensationalist titles and texts that bring them greater readability, and thus more advertisers. This is one of the reasons why journalists and editors, although aware of the possible negative consequences, justify this way of reporting, while some do it due to incompetence and ignorance.

Hate speech is not adequately sanctioned in Serbia. Another problem is that hate speech under the Law on Public Information and Media requires intent, and journalists are acquitted because they prove that they did not intend to provoke an avalanche of hatred and violence. Thus, it is the practice for a judge to decide to apply the Law on Public Information instead of the Law on Prohibition of Discrimination and make a decision that the editor of a digital edition is not responsible for hate speech for readers comments on the internet portal. Thus, the work of the competent institutions could be assessed as unsystematic, insufficiently active and inconsistent. Politicians, the media and some public figures are largely responsible for the very presence of hate speech.

In order to reduce hate speech, it is necessary to adequately sanction it and proclaim zero tolerance, which means that everyone, regardless of political position and orientation, will be sanctioned for every case of hate speech. The media, which should be under active control when it comes to hate speech, also play a very important role. The judiciary should also be more efficient, and consistent in dealing with such cases. Since the media is the most important factor in the public sphere, trainings are primarily needed for journalists and editors. It is also very important that topics related to hate speech are included in the education system, which currently does not provide an adequate information on this issue.

5.4. Research on media content covering 20 November to 20 December 2020

The research was conducted for a month, covering period 20 November to 20 December 2020. The research included:

- ▶ two daily newspapers (Blic and Informer)
- ▶ two weekly newspapers (Pecat and Nedeljnik)
- ▶ two portals Alo and Kurir
- ▶ two TV shows Hit Tvit (TV Pink) and Cirilica (TV Happy)

The research was conducted immediately after the scandalous sexist comments made by popular singer Aca Lukas against journalist Zaklina Tatalovic, in a TV show Hit Tvit on 8 November 2020. As very sharp reaction against these comments and singer were made in public, that was probably the reason why TV shows, otherwise known for vulgar comments, during the monitored time, haven't produced similar comments by guests which can be considered to be hate speech.

The monitor covered the period 20 November - 20 December 2020, although the report also refers the period before this date in order to show that hate speech is persisting problem in Serbia.

Periodicals

It is interesting to note that "Pecat" and "Nedeljnik" had different topics covered during the monitored time. While "Nedeljnik" dealt with topics of greater public interest, "Pecat" was more oriented towards daily political issues.

Pecat

On 20 November "Pecat" published an article on how the borders are immutable in the Balkans unless they are to the detriment of Serbia, the celebration of Biden's election in Sarajevo (which is again against Serb's interests), while at the same time USA was presented as a country in which democracy failed (text "A requiem for democracy in the United States"). Texts, published on 27 November include the question of "small" Schengen and the Western Balkans, the action of the Albanian terrorist in Vienna, and the significant strengthening of the Serbian army. Similarly, texts published on 4 December include diplomatic clash between Serbia and Montenegro, and new Montenegrin government, as well as the Serbia's confrontation with the past and Serbia and geopolitics. On 11 December while most of the topics include obligatory vaccination, construction of a gas pipeline, conflict in Donbas, and such, one problematic text was published. Namely, Nevenka Stojcevic is an author of the text "Portrait of the Serbian "Clero-Fascist" (pp. 60-63), in a form of an interview with artist Cali Carli. Several times in the text NGOs were negatively presented. For example, it is written: "Since the 90's, NGOs have been injecting their destructive germ of chauvinism into our culture, our health, education, journalism and politics with a lot of money." Finally, 18 December brings also brings some interesting text, such as on constitutional reform of Bosnia which would "bury" the entities, signing of the Kumanovo agreement in June 1999, etc. Again, one controversial text was

published, Nikola Vrzic, "Riding the Apocalypse", (pp. 6-8). The author wrote that Madeleine Albright and Sonja Biserko are again on a common task, which means that the "disgusting Serbs" do not have many choices in front of them, but only the right one. The author further says: "Madeleine Albright is evil - and therefore disgusting, isn't it a natural reaction to evil - because she is a war criminal and a war profiteer. In a word, a set of the worst that the human spirit is able to produce. ... And the (re) vampiric Sonja Biserko who threateningly announces that their work has not been finished, and that Serbia is standing in its way, which "did not close the Serbian issue". The leading Serbian elite believes that it will be "closed" just with "Serbian liberation", and not by engaging in Euro-Atlantic integration or some surrogate creation.

Nedeljnik

On the contrary, "Nedeljnik" has offered more balanced texts, which are of greater interest to everyday life of citizens. On 19 November, some topics covered were: How odorless people live, why American politics will not change much with Biden, Has the fall of Yugoslavia killed general culture, Building better lives for communities in need of support, what the world will look like in 2021, the role of free media in the development of democracy. In this issue, Dragoljub Petrovic published an article "Alley of Undeserving Citizens, The Case of Seka Sabljici, Dragan Bjelogrić and the Party Service for a Bitter Life" (pp. 18-19). This is a sharp text, which describes MPs from the ruling party on the following manner: "This is a special kind of homosapiens who elaborates in practice Goebbels' theories about a thousand times told lies, playing much more on theories of a million times uttered nonsense ... It turned out that every fool can be a representative of the people. ... As every fool was given the opportunity to represent the bare-handed Serbian people in the Serbian Parliament, the onslaught of fools is marked to those people whose careers cannot be built by every fool." However, although sharp and satiric, this speech is allowed by international standards as it can contribute to public debate and concerns politicians. Another issue of *Nedeljnik* mostly deals with the US elections and Biden's victory, vaccines, Trumpism, the hidden consequences of the Covid-19. On 3 December the following texts were published: As Podgorica expelled Ambassador Bozovic - this text is much more balanced and objective than those published in "Pecat", all secret vaccine purchases, Finnish success against the Covid-19, analysis of Serbian economic growth from 1868 to 2025, the survival of airlines during the crisis, unauthorized recording of citizens. On 10 December, some of the topics covered in this issue were: air pollution, the right to privacy in the age of Covid, organized crime groups in Serbia, waiting for the vaccine, the Crisis Staff and the position of doctors. There is also one text by Branko Rosic (pp. 36-39), where Jean-Paul Gauthier underlined that: "We will have gender equality only when male models will start earning more than women." 17 December brought topics such as the local government reform for a better life of citizens, the first ten months of fighting with Covid-19, research on the attitude of people in the Western Balkans in conspiracy theories about Covid-19, procurement of vaccines. It also brings the texts against corporal punishment and psychological aggression of parents towards children, text about French MPs who passed a law that strictly prohibits discrimination based on someone's accent (glotophobia). Also, Branko Rosic is an author of the text concerning the singer

Dzej's death, expressing his opinion that reality shows and folk have done more for LGBTI people than all Prides, as folk singers and populist stars are able to "tame" the public. Finally, 24 December, although was not initially covered by research, brings very interesting text on tabloid culture and how to neutralize the energy of bad news. It can be concluded that during the same time, "Pecat" and "Nedeljnik" had very different approach towards the selection of topics and manner on how they were presented. Thus, while "Pecat" focused on geopolitical issues and in most of the texts presented some tendencies against Serbs, with one text which can be considered to be hate speech against Madeleine Albright and Sonja Biserko. On the contrary, "Nedeljnik" had more balanced approach when dealing with the same or similar issues, and also published more topics of general interest, including some dealing with equality and media.

Two daily newspapers

When it comes to two daily newspapers - "Blic" and "Informer", several topics repeated in a greater sense, so for the "Blic" general topics were Irinej's illness and death, Trump's loss in the elections, Covid-19 measures and vaccination, and singers Dzej's death. During the same time, "Informer" wrote on vaccines, US elections, and Irinej's death, but also very much on the elections and the political scene in Montenegro, the trial of Taci in the Hague, on Russians friends and Putin who sends vaccines and provides equipment to Serbia, as well about the film "Dara from Jasenovac" and monstrous crimes committed by "Ustase" in the death camp and political opponents.

BLIC

During the monitored time, "Blic" had several 4 texts on vulnerable groups and topics of public interest. Also, Blic has published at least 6 texts showing a positive image of women, and 3 text describing the horror of domestic and gender based violence and calling for its zero tolerance. One text was published concerning the arrest of a couple in Sabac for sexually exploiting women in their tavern. In this text, compared to other monitored newspapers, word prostitutes for victims of human trafficking has not been used. One text was dedicated to the film "The Danish girl" which deals with the life of a person who first went through gender reassignment surgery, informing also public on the life of transgender person.

"Blic" also published some daily political texts, but they were written in a much balanced way than in "Informer." For example: two text on the new Government in Montenegro (5 December, p. 9 and 13 December, pp. 6-7), Madeline Albright and the plan for the Balkans (9 December, pp. 6-7), All evils of Madeline Albright (10 December, pp. 2-3), what Serbia can expect after the return of the toughest Albanian lobbyists (11 December, pp. 6-7), and two texts on the film "Dara from Jasenovac" (while one is balanced - 26 November, p. 32), another reports that "the system of both Auschwitz and Jasenovac camps were evil, very cruel, and sadistic. Nazis and Ustasa brutally exterminated people, suppressing any moral code. There was neither compassion nor mercy, according to historian Gideon Greif. Text on p. 22-23; the subtitle to this text was In Jasenovac, people were hanged, shot, burned, raped, tortured, cooked (6 December, pp. 22-23). Although these are historical facts, this article is the only

one, published during the reporting period, which was able to shock readers and to trigger negative emotions.

INFORMER

During the same time, "Informer" was full of sensational news, many which can cause negative emotions toward Serbian neighbors: 4 against Croats (one as potentially hate speech), 5 against Albanians (one as potentially hate speech), one against Bosnians, and 3 against Montenegrins. There were many texts which gives women very negative image (at least 6), or are extremely humiliating (British female airline workers offers sex for money in order to earn extra money during corona pandemic). Many of these texts have sensational title which is big and has is either on the cover page or in a middle of the new covering two pages. Also, at least 10 articles in a very sensational way report on domestic violence and femicide, using words: "Horrific", "Chaos", "Shock", "Bloody", "Horrible", "Creepy". There are also sensational news on car accidents, sometimes with very disturbing images from the scene, as well as a sensational way on reporting on Hungarian politician who resigned after he was caught at gay party in Brussels. During the reporting time, only one text on LGBTI people was written: "That's right, I'm gay, I like Bora", also in a sensational way. Although the journalist conveys words of homosexual, the text is very problematic. The text is about Nenad Lazić, better known as Neca Tiktoker, who revealed in reality show that he is a homosexual. His words are marked in yellow in the text, which are literally transmitted: "I never told anyone that I was gay, I only admitted it here. Still, my parents probably felt it. My father got drunk once and quarreled with my mother, and I stood up for her. Then he started beating me and saying, "You're gay! The whole village says you're gay and fuck your ass. Well, you're not gonna be that." I asked him, "What do I do with it now?" And he said, "Take this knife, kill yourself, show that you're a man." Then I tried to kill myself, I cut my veins with a knife." (19/20 December, pp. 16-17).

Two portals

When it comes to two portals, ALO and Kurir, they also had some general topics posted during the reporting period: measures against Covid-19, vaccination, Irinej's and Dzej's death. Kurir: election in Montenegro, coronavirus and vaccines, Dzej's death, threats to the President of the Republic, and constant attacks on the opposition.

ALO portal

During the reporting time, ALO published many texts which can cause negative emotions towards Serbian neighbors: 9 against Albanians, using words in a title, such as "murdered", "tortured", "OVK beasts killed", "mass graves discovered", "butchers", "Plan from Hell", 2 against Bosnians, 2 against Croats, and 2 against Montenegrins. ALO also has a very sensational way of reporting on domestic violence and femicide, and numerous texts with very negative images of women (at least 12 texts which shows women as prostitutes, starlets, influencers, etc). During the same time, only 3 texts deals with gender equality and send message that women still needs to achieve

substantive equality in a society. There are also several texts with negative connotations against LGBTI people. One of them can be considered to be hate speech. On 1 December the text "God created Adam and Eve, not Adam and Steve! Some MPs do not want the law on same-sex partnerships" was posted. The text conveys the announcement of Gordana Comic that the law will be adopted by the end of the year, as well as the words of Vladimir Đukanović: "I am one of the 50 founders of the SNS. However, I certainly love God and our Orthodox faith, my homeland Serbia and my family far more than SNS. The Law on Same-Sex Partnerships is NOT POSSIBLE! Let Gordana Comic say it nicely." Here, as in many other cases, politicians and public officials, who should spread the idea of tolerance, calls for inequality and emphasized that being LGBTI is against Serbian faith and is, thus, not acceptable. However, during this time, there were 5 texts which were published from 9 December to 16 December including extremely negative information against the members of one sect. These articles incites to violence as there is also many speculations on the event that happened in August 2020. For example, text "A mother from sect crippled her only son!", posted on 15 December, deals with a woman who committed a suicide and was allegedly a member of the sect. The text clearly states that it is not known what the circumstances of her fall from the apartment were, although the title of the article indicated that she committed a suicide. Also, some neighbors claimed that there is a possibility that she was a member of zealot sect, which does not recognize the Serbian Orthodox Church. The text also insists on the fact that the child remained permanently disabled.

KURIR

During the reporting time, "Kurir" also posted many texts, which can cause negative feelings towards Serbian neighbors: 7 against Albanians (titles included wording "electocuted", "killed", "abduction", "Serb hater"), one against Bosnians which advocates for disintegration of Bosnia, 2 against Croats (in one text it was not Croatian volleyball female players were accused to sang Ustasha songs, and in another Croatian writer Dezulovic was attacked for his words that Belgrade is "kasaba", ie "Dubai for the poor and Jagodina for the rich." Many celebrities reacted to that and gave a statement . For example, Momo Kapor's wife Ljiljana that he wallows in his mud of hatred, while Dusan Savic, a football player said: "Once again Croatian complexes, complexes of small people surfaced ... And once again it was confirmed that the mouse envies the lion, not the lion to the mouse.)," and 5 against Montenegrins. Also, a very sensational way of reporting on domestic violence and femicide, has been noticed, in at least 12 texts, using in a title words, such as "Creepy", "Horror", "Beaten", "Abducted and Tortured", "Terrible", "Horrible", "Strangled". There are also several articles sending negative messages about women. For example, on 15 December sensational headline of the text was posted: "Kurir reveals, Prostitution with a degree, in Serbia more and more highly educated women are selling their bodies in apartments every day." At the same time, there were 5 text positively reporting on equality and domestic violence and calling to stop gender violence. When it comes to sensational reporting in general, there were at least 7 texts of such kind (e.g.

5 December - "Creepy, worker had his head blown up in an explosion on the RTS parking lot," subtitle Horrible explosion, Worker's head was blown up in the RTS

parking lot, huge picture published). There were also two negative texts on LGBTI. In text "Modern. 40 years after his father Irfan, Pavle plays gay", posted on 1 December, text is dedicated to a young actor who plays in the film "Matura" at the Merlinka festival, while his dad entered the history of cinema with the role of Simke in the film "National class". The text quotes Azdejković who says that he is glad that every year we have more and more films that deal with LGBT topics. The text states the following at the end: "There are no more details about the story, and it is interesting that critics in the National Class saw another, very subtly portrayed gay man - it is about Papiga (Voja Brajović). Unlike Simke, this young man is "suspicious" mostly because of his resemblance, which not so long ago was, in a sense, a signal that there are not exactly "fair business" with this man. Not clear why this last wording has been included in the text. However, the most problematic text posted during the reporting time is on migrants. First, on 29 November, the text: "Aleksandar Vulin: About 450 migrants returned to the camps," was posted. It was written that migrants were brought to the camps and reception centers because their health and the health of all Serbian citizens, which must be taken into account. The statement says: "At the time of Covid, at the time of this epidemic, no migrant must be outside the reception center, where they are provided with everything they need, where they are also provided with medical care." On a next day, another text: has been posted - "It is unclear what is behind the attack of NGOs", Minister Vulin stated that they work according to the law, migrants are obliged to be in reception centers, and it is not clear why the minister was attacked when migrants have to be in centers according to current regulations." In this text, the Police Director Vladimir Rebić stated: "We are doing everything we can to prevent the movement of migrants in Serbia from causing unrest among citizens. So far, there have been no significant threats to citizens. We can say that we are keeping the situation under control." it disturbs citizens, but mostly all crimes take place between members of migrant populations. Most often they are in conflict for religious, national, cultural reasons." He reminded that one migrant was arrested in Bosnia for murder, and that some of them were involved in human trafficking and smuggling. This is a clear example of hate speech. First, at the moment, there is no legal basis to prohibit migrants to leave reception centres. Also, these two statements were given by public officials. The statement of the Director of the Police is particularly problematic as he refers to criminal activities of migrants, and also totally out of context mentioned one migrant in Bosnia who killed another migrant.

During the reporting period, many negative and sensational texts were published. However, it was not found that comments of readers were so negative to incite violence or hatred among members of certain groups. It is also interesting to note that only few comments were left to those news, or even no comments at all. As many researches shows that comments on the Internet generate hate speech in Serbia, reasons for small number of comments can be explained by very unfavorable epidemiological situation and engagement of citizens with their health.

6. CONCLUSIONS AND RECOMMENDATIONS TO TACKLE HATE SPEECH IN MEDIA IN SERBIA

Hate speech poses grave dangers for the cohesion of a democratic society, the protection of human rights and the rule of law. Serbia has a very solid legal basis for combating hate speech, which is mostly aligned with relevant international standards. Furthermore, international law and standards enshrined in the jurisprudence of the ECtHR is an integral part of Serbian legal order. However, some further guidelines on hate speech and its elements would be an asset for all actors dealing with this matter.

Hate speech is defined in several legal documents. There is also a range of legal mechanisms for the protection from hate speech, based on two legal frameworks: the Law on the Protection from Discrimination, and the Law on Information and Media. If hate speech incites to violence and hatred, the Criminal Code applies. However, the research showed that many of the available mechanisms are not effective, proportionate and dissuasive. While the complaint before the Commissioner proven to be efficient, the institution is facing with a problem of unclear definition of two forms of discrimination - hate speech and harassment and humiliating treatment, which overlap in practice. Also, the research showed that the prosecutors very often do not recognize hate speech and do not act according to criminal charges. Court practice is also very problematic as in some cases, the judges didn't recognize hate speech. On contrary, Serbian courts seems to give preference to freedom of expression. While freedom of expression is an essential element of every democracy and it is protected even if information can shock and disturb others, freedom of expression must be limited when the speech is considered to be hate speech. This is of particular importance in societies which are in transition, facing with difficult past and with low level of human rights culture and media literacy. Therefore, zero tolerance to hate speech must be proclaimed.

Also, the REM and the Press Council seems not to use all available means to combat hate speech and aggressive speech. Warnings that aggressive communication, hate speech and sensationalist narratives in the media have become one of the biggest

problems in the field of public communication have become more and more justified, but this topic is still not given much importance and there is very little research to this problem. Sanctions are mild and inappropriate, while hate and aggressive speech is very much present in everyday life of citizens. It is noticeable that the number of complaint to the Press Council decreases each year, which can demonstrate that citizens got used to it, or that hate speech is less visible. This research showed that many texts are not problematic, but their titles are (especially the use of offending words, the size of the title, colours - underlying titles, usually in red, placed in headlines). Also, only a long lasting research can show the effects of those words and their potential to provoke certain reaction after some time.

In Serbia, not so many texts which can be considered hate speech have been identified during the reporting period. However, this research shows that it is not appropriate to draw this conclusion only from reading one particular text. Very often, the assessment can be done only after careful consideration of the editorial policy on a longer run. For example, it was identified that several texts on the members of one particular sect were published during one week. They all, taken together, can be considered as hate speech.

It is important to notice that only few texts during the reporting time deals with topics of public interest. In addition, media are not promoting diversity and tolerance in a society, and there is almost totally a lack of positive texts on minority groups (LGBT+, persons with disabilities, migrants, etc.). On a contrary, several negative texts were identified, and particular problem is that they are usually inspired by public officials or politicians. The notion is also that journalists use interlocutors which are infamous for their racist and discriminatory comments to openly say what they are not allowed to.

In addition, there are many texts that presents women in a very negative connotation, as prostitutes, starlets, humiliating beings. Even if those newspapers publish some positive news, or allegedly advocate to stop domestic violence, the negative image of women prevails over those attempts. Therefore, they can be considered to be "bogus worry for women's rights." During the reporting period, no negative text on Roma was identified. On contrary, Dzej's death, his charisma and caregiving was underlined in many texts dedicated to his life, as well as the fact that he was buried in "Alley of Honour". However, it does not means that Serbian media space is free of texts in which Roma are not exposed to hate speech.

There are many texts published which cause very negative feelings towards Croats, Albanians, Bosnians, Montenegrins. The rhetoric of these texts, and their message hits up public and definitely leads to increase of social distance, which is also measured in researches done by the Commissioner for Protection of Equality on the attitude of citizens towards discrimination.

There are many texts that use aggressive terminology in which expressions such as "disturbing, brutal, creepy, hell, horror, scandal, shock" dominate. While the texts are not so imbalanced, the titles are particularly disturbing for readers and able to provoke negative reactions. However, it is particularly dangerous to say that this increased the threshold of readers' tolerance for the language of aggression, as it cannot lead to conclusion that it should be tolerated. However, for that, Serbia needs to have better

media space, where citizens will be informed on issues of public concern, where text will raise, in a balanced way, arguments pro and cons, where a debate will be vivid, democratic and media professionalism developed on a much higher level. While it is important to include freedom of expression as a topic in educational system at all levels, it is also important to introduce or continue with trainings of legal and media professionals on Code of Ethics, freedom of expression and hate speech. However, trainings on hate speech need to be carefully planned, in order to include part on combating stereotypes and prejudices, definition and elements of hate speech, its mechanisms, and examples from practice.

1. Recommendations concerning the legal and policy framework

- ▶ The parliament and government should adopt codes of conduct prohibiting hate speech
- ▶ Clearer division between hate speech and harassment and humiliating treatment as two forms of discrimination must be drawn
- ▶ Definition of hate speech to be aligned with definition given in ECRI recommendation no. 15
- ▶ The Law on Prohibition of Discrimination should include provision on compulsory training of judges acting in discrimination cases
- ▶ Strategy on Prevention and Prohibition of Discrimination needs to be adopted as soon as possible including measures to tackle hate speech and discrimination of women, LGBTI persons, Roma, and migrants
- ▶ hate speech in the Internet needs to be regulated in a comprehensive manner, in a way that it incorporates all principles and standards enshrined in the jurisprudence of the ECtHR and determining the particular responsibilities of authors of hate speech, internet service providers, web fora and hosts, online intermediaries, social media platforms, online intermediaries, moderators of blogs and others performing similar roles
- ▶ to develop a strategy on combating cyber hate speech

2. Recommendations concerning media regulation and self-regulation

- ▶ Promoting the monitoring of misinformation, negative stereotyping and stigmatization, as well as aggressive and hate speech
- ▶ the Press Council to conduct a comprehensive research on hate speech in Serbia
- ▶ to ensure that the Press Council take up cases *ex officio* and that that its decisions are followed up with financial sanctions
- ▶ the members of the Press Council and the REM to undergo extensive and continuous trainings on aggressive and hate speech
- ▶ to ensure full independence of the REM
- ▶ the REM to use all available mechanisms to actively combat hate speech

3. Recommendations concerning better implementation of existing norms and standards

- ▶ to establish recording, investigation and punishment of hate speech by the prosecution and the court
- ▶ to publish all judgments concerning hate speech in order to make them available to public
- ▶ to organize comprehensive trainings for prosecutors and judges on freedom of expression and hate speech
- ▶ to develop specific educational programmes for children, young persons, public officials and the general public, as well as to members of vulnerable groups who are mostly exposed to hate speech
- ▶ to support non-governmental organizations and the Commissioner for Protection of Equality in their activities against hate speech
- ▶ to encourage speedy reactions by public figures to hate speech that not only condemn it but which also seek to reinforce the values that it threatens
- ▶ 4. Recommendations on promoting professionalism of media
- ▶ to raise public awareness of the importance of respecting pluralism and of the dangers posed by hate speech
- ▶ to support promotion and publishing of internal code of ethics for public media services
- ▶ to continuously organize trainings for journalists and editors on Code of Ethics, non-discrimination and hate speech
- ▶ to assess the position of journalists in Serbia and to adopt measures for the improvement of their position
- ▶ to review the Code of Ethics of Journalists in order to include more provisions on hate speech and aggressive speech
- ▶ to provide Guidelines on hate speech with extensive guide on the relevant jurisprudence of the ECtHR and practical examples
- ▶ to insist that if a journalist transmits someone's offensive words, he/she needs to reflect on those word in order to promote a message of tolerance and diversity
- ▶ to insist on better inclusion of texts that support civil society and members of vulnerable groups
- ▶ to organize activities that promote professionalism (awards for journalists, moot courts for students of journalism, etc.)

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