

HATE
SPEECH?



MANUAL FOR CIVIL SERVANTS IN BOSNIA AND HERZEGOVINA FOR RECOGNISING AND DEALING WITH HATE SPEECH CASES



“Promotion of diversity and equality in
Bosnia and Herzegovina”

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**MANUAL FOR
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Council of Europe

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PREFACE

The Manual for civil servants in Bosnia and Herzegovina (BiH) for recognising and dealing with hate speech cases (the Manual) is part of a project implemented by the Council of Europe and the European Union entitled Promotion of diversity and equality in Bosnia and Herzegovina. Its main goal is to demonstrate, in an understandable way, the inadmissibility and harmfulness of hate speech and explain the existing mechanisms for prevention, protection of victims and sanctioning of perpetrators. Moreover, the Manual intends to point out the difference between freedom of expression, as a fundamental human right, and hate speech.

The Manual is designed to be an easily applicable tool in the fight against hate speech in BiH institutions and it is written in a simple language that can be understood also by persons without legal knowledge.

The development of the Manual was preceded by a survey conducted in the period July-August 2020, which included 310 persons working as civil servants at various levels of government in BiH: state, entity, cantonal and local, including Brcko District. The aim of the survey was to identify data on hate speech concerning civil servants with regards to the standards of Human Rights, to which BiH has committed itself by ratifying international on the protection of freedom of expression and prohibition of hate speech, in its laws and mechanisms established for their implementation. The survey questionnaire with 24 questions was distributed with the help of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (Ombudsman Institution) to the email addresses of the following institutions: ministries, directorates, agencies, and institutes at the state, entity and cantonal levels, and local government units.

The analysis “Hate speech in Bosnia and Herzegovina - knowledge, perceptions and experiences of civil servants” developed by Zlatiborka Popov-Momčinović, PhD can be found in Appendix No. 1 of the Manual. This document provided an understanding of the perception, level of knowledge and experience of civil servants in BiH related to hate speech. The general conclusions of the Analysis indicate that civil servants are aware that hate speech is a negative phenomenon, they believe that it is very present in BiH, and that it should be better regulated. Moreover, bearing in mind that civil servants only partially and/or insufficiently know/recognize hate speech, the need for their training in order to prevent and combat hate speech was emphasised.

The content of the Manual is based on the findings of the Analysis, which sums up in five sections/chapters the information that serve as a guide for the civil servant in the prevention and sanctioning of hate speech.

Chapter No. 1 consists of: an introduction which provides an overview of the current situation in Bosnia and Herzegovina with regards to hate speech, explanations of hate speech, the boundary between freedom of speech and hate speech, how to recognize hate speech, which specific characteristics of the individual or group exposed to hate speech are most often present, which forms of hate speech are most commonly encountered and why it is important to sanction hate speech.

The first part of Chapter no. 2 deals with topics related to the international legal framework addressing hate speech and lists the documents that regulate it (documents of the United Nations, Council of Europe, European Union and the OSCE) with a brief overview of their content in the context of Bosnia and Herzegovina. It also provides an overview of the mechanisms and bodies for monitoring the implementation of the relevant conventions. The second part of the Chapter deals with topics related to domestic legislation, lists the laws (criminal laws in BiH, Law on Prohibition of Discrimination, Election Law of BiH, Law on Gender Equality and Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH) and documents (Code of Audio-visual and Radio Media Services adopted by the Communications Regulatory Agency for the field of electronic media and the Press Code of Bosnia and Herzegovina adopted by the Press Council in Bosnia and Herzegovina) governing hate speech, and shortcomings in the domestic legislation as compared to international standards.

Chapter 3 presents in detail the mechanisms for the sanctioning of and protection against hate speech, which consist of: Institution of the Human Rights Ombudsman of BiH, Ministry of Human Rights and Refugees of BiH, Gender Equality Agency of Bosnia and Herzegovina (Gender Centre of Republika Srpska and Gender Centre of the Federation of Bosnia and Herzegovina), Central Electoral Commission, Communications Regulatory Agency and the Press Council in BiH. The competences of each of the institutions/organizations were listed, as well as the procedures that can be used to prevent and protect against hate speech. The second part of this Chapter deals with topics related to criminal proceedings, with an emphasis on the role of the police, prosecutor's office and the courts. There is also an overview related to civil proceedings, as well as the difference in prosecution between defamation and hate speech.

Chapter 4 deals with the perception of civil servants in relation to hate speech, the legislation governing their status and position and presents the conduct of civil servants in cases where there are indications of the occurrence of hate speech. The Chapter offers responses to the following questions: whether the laws regulating the functioning of the civil service in the prevention and sanctioning of hate speech, are effective, in particular whether the sanctions, if prescribed, are effective, what is the position of civil servants in relation to online hate speech, what should civil servants do if a person is incited to hate speech, what should civil servants do if they consider themselves victims of hate speech.

Chapter 5 is dedicated to preventive measures provided by institutions with emphasis on training of civil servants, monitoring and evaluation of guidelines, organising public awareness campaigns, cooperation of institutions with media and civil society organizations, and other measures that can contribute to hate speech prevention.

Jasminka Džumhur, PhD, the Human Rights Ombudsman in BiH, contributed in the process of drafting the Manual, by providing useful advices, guidelines and comments on its content. I would like to take this opportunity to thank her sincerely for her support, as well as to Zlatiborka Popov-Momčinović, PhD who contributed in the process of drafting and finalising the Manual.

Moreover, a number of analyses and documents listed in Appendix 4 were used in the development of the Manual. They provided understanding of the situation in BiH in terms of hate speech from various aspects. Council of Europe's *Manual for civil servants, civil society and the media for recognizing and dealing with cases of discrimination* was used in Chapter 3 for the topic of the Institution of the Human Rights Ombudsman of BiH as a mechanism for protection against hate speech.

ACRONYMS

ARS BiH - Agency for Gender Equality of Bosnia and Herzegovina
BDBiH - Brcko District of Bosnia and Herzegovina
BiH - Bosnia and Herzegovina
CEC - Central Electoral Commission
CRA - Communications Regulatory Agency
CSCE - Conference on Security and Cooperation in Europe
CSO - civil society organisation
ECHR - European Convention on Human Rights
ECRI - European Commission against Racism and Intolerance
ECtHR - European Court of Human Rights
EQUINET - European Network of Equality Bodies
EU - European Union
FBiH - Federation of Bosnia and Herzegovina
GC FBiH - Gender Centre of the Federation of Bosnia and Herzegovina
GC RS - Gender Centre of Republika Srpska
GEA BiH - Gender Equality Agency of Bosnia and Herzegovina
LCT - Law of Contracts and Torts
OI - Ombudsman Institution
OSCE - Organisation for Security and Cooperation in Europe
RS - Republika Srpska
RSNA - Republika Srpska National Assembly
UN - United Nations

CHAPTER 1. HATE SPEECH

Chapter 1 includes: an introduction which provides an overview of the current situation in Bosnia and Herzegovina with regards to hate speech, explanations of hate speech, the boundary between freedom of speech and hate speech, how to recognize hate speech, which specific characteristics of the individual or group exposed to hate speech are most often present, which forms of hate speech are most commonly encountered and why it is important to sanction hate speech.

1.1. Introduction

Words can destroy. What we call each other ultimately becomes what we think of each other, and it matters.

Jeanne J. Kirkpatrick

Wars in the former Yugoslavia resulted in mass violations of human rights and crimes against humanity, especially during the 1992-1995 war in Bosnia and Herzegovina (BiH). Although the war ended 25 years ago, the legacy of this period still burdens peace-building attempts, coexistence, respect for human rights, democracy and the rule of law. One of the consequences of the war in BiH is the lack of dialogue and tolerance, the presence of national and religious hatred, the deep division of communities along ethnic lines, and the rejection of others and those who are different. Hate speech is present on a daily basis in political life, media outlets and social media, and hate messages are visible in almost any place in public areas. Individuals, groups of people, and even entire communities are exposed to it.

Research conducted in the period 2015-2019 by the Coalition for the Fight against Hate Speech and Hate Crimes in BiH indicate that hate speech in BiH

is still mostly aimed at people who are representatives of the constituent peoples and who live in areas de facto populated by minorities, to returnees, members of national minorities, persons with disabilities, members of gender and sexual minorities, and in the last three years to people on the move (migrants). Hate speech messages usually contain elements based on the affiliation of an individual/group to a particular religion/belief. Hate speech is used by various groups, from ordinary citizens to representatives of government and institutions. The development of new technologies and the Internet has enabled faster spread of hate speech without the possibility of effective control. Online hate speech has become an everyday part of Bosnian life, and thus very dangerous for building a democratic, modern and secure society for the citizens of BiH.

ECRI notes in its 2016 report that: the inter-ethnic tensions and corresponding levels of hate speech are still high. Politicians and the media use hate speech, while the authorities do not take sufficient action against it. Hate speech against LGBT persons is also a problem and attacks against LGBT events did not result in the necessary prosecutions, thus not providing an effective deterrent against the repetition of such crimes.

1.2. What is hate speech?

The research conducted provides us with significant understanding concerning the knowledge, perceptions and experience of civil servants in Bosnia and Herzegovina related to hate speech. Based on the results obtained and their analysis, we can conclude that hate speech is partially and insufficiently known/recognized, which can be seen from the way in which the respondents have formulated their definitions of hate speech and its difference compared to freedom of speech. Numerous responses indicate some elements that constitute hate speech or are related to hate speech, but there is a lack of more precise knowledge to connect these segments more adequately in order to speak unequivocally about hate speech. *More details in the Analysis Hate speech in Bosnia and Herzegovina - knowledge, perceptions and experiences of civil servants (Analysis), Appendix 1, p. 110.*

There is no generally accepted definition of hate speech in international law because it is not easy to define hate speech without jeopardizing freedom of expression. Any speech that aims to hurt an individual or a group of people is not necessarily hate speech.

One of the most accepted definitions of hate speech used in Europe is that by the Committee of Ministers of the **Council of Europe** in **Recommendation 97 (20)**, worded as follows:

Hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin¹.

At the European Union level, hate speech has been defined by the **Council Framework Decision 2008/913/JHA** on combating certain forms and expressions of racism and xenophobia by means of criminal law. See the chapter on international standards.

There are other definitions, but they all contain and emphasize two important elements that must exist at the same time:

- expressing certain hateful and offensive content/messages (i.e., content that expresses, advocates or incites hatred, discrimination or violence or that mocks, belittles, humiliates, dehumanizes or devalues).
- directing hate speech against certain groups and their members who can be identified by certain common objective characteristics such as race, colour, national or ethnic origin, religion, gender, sexual orientation and the like.²

Hate speech implies *derogatory and hurtful speech, expressions, names and designations based on certain characteristics of certain people, groups or populations that they cannot independently choose, and which are expressed for the purpose of ridiculing, labelling or slandering a certain person, group or population*³

It is important to point out that hate speech, in addition to words and sentences that call for hatred and violence, represents an entire system of values that an individual or group has towards another individual or group, based on prejudices and stereotypes.

“It needs to be emphasised that **hate speech should not include: 1) ideologically and politically different positions** (provided that such a position does not imply discrimination and incitement to violence due to certain personality traits or group affiliation), **2) slander and insult**

¹ Council of Europe Recommendation No. R (97) 20, available at: http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dhlgbt_docs/CM_Rec%2897%2920_en.pdf

² See more Alaburic, V. (2003). Restriction of “hate speech” in a democratic society- theoretical, legislative and practical aspects - Part I, https://www.pravo.unizg.hr/download/repository/Alaburic_1_dio.pdf

³ See more at: Matic, J., Mrsevic, Z. (2007). Free Speech vs. Hate Speech, Pushing Boundaries, available at: https://www.idn.org.rs/biblioteka/Pomeramo_granice.pdf

which has no discrimination as a motive or a call for violence against one of the protected groups, 3) **critical attitude towards the government, political parties, public figures** etc., which also does not have a recognizable motive characterizing it as hate speech (intends to incite violence and discrimination) ⁴

1.3. Hate speech is not freedom of expression!

The public often raises the question of: **Where does freedom of expression end and hate speech begin?** There is a justified fear in society that the authorities would restrict freedom of expression, under the pretext of preventing and sanctioning hate speech. Freedom of expression is sometimes seen as a conflicting interest to hate speech, which is not the case. We often hear statements such as that by protecting individuals and groups from hate speech, we risk freedom of speech and introduce censorship, which is not true. It is the obligation of the authorities, while respecting international and domestic norms, to find the right measure and strike an appropriate balance between these two rights.

The results of the Analysis showed that civil servants in BiH, when asked whether they were able to define the difference between hate speech and freedom of speech, in “most of the responses point to the essential difference between freedom of speech and hate speech, and that there are certain variabilities arising from different definitions of hate speech, primarily due to its equating with insults and rudeness, as well as with untrue and unsubstantiated speech, and the like“; that “the respondents provided broader formulations describing the differences that they consider significant and that are in line with the existing norms and standards”. In 18% of cases, no concrete response to this question was obtained. *More details in the Analysis, Appendix 1, p. 95.*

It is important to underline that the right to freedom of expression is not absolute, and that it can be subject to restrictions prescribed in **Article 10, para. 2 of the European Convention on Human Rights**, according to which the state may restrict the right to freedom of expression if such restrictions:

- a) are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime,
- b) 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,
- c) for maintaining the authority and impartiality of the judiciary

Additionally, the **Council of Europe Recommendation No. R (97) 20 on "Hate Speech"** advises member states, as part of their comprehensive approach to hate speech, that they “should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech”. It contains a warning that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. It is recommended in particular that the possibilities of combating hate speech through civil law should be used, including the possibility to allow non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech.

This means that interferences with freedom of expression must be “narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria and that it must be subject to independent judicial control”⁵.

In societies that have not yet established a high degree of democracy and the rule of law, there is a possibility to misinterpret freedom of expression and hate speech. Just as the rights and security of other individuals and groups must not be jeopardized under the pretext that someone has the right to freedom of expression, so the introduction of restrictive measures aimed at preventing and sanctioning hate speech by the authorities must not call into question freedom of expression.

⁴ Mladen Mandić, PhD (2015) The Concept of Hate Speech and Its Comparative Legal Overview with Special Reference to Bosnia and Herzegovina, p. 8, available at: http://www.gfpn-au.com/sites/default/files/gfpn_broj_4.pdf

⁵ Predrag M. Nikolic (2018) Hate speech in internet communication in Serbia, PhD thesis, available at: http://www.fpn.bg.ac.rs/wp-content/uploads/2018/07/Nikolic_Predrag_Disertacija_FPN.pdf

It should be pointed out that a distinction should be made between hate speech and other phenomena such as insults, slanders and the like. If insults and slanders are based on stereotypes and prejudices towards an individual/person based on his presumed or actual group affiliation (national, ethnic, religious, sexual ...) and are aimed at hurting him, then they can be subsumed under hate speech.

Council of Europe documents point out that "insult or defamation through the media should not be sanctioned by imprisonment, unless where it is absolutely necessary and proportionate to the violation of another person's rights or reputation, and especially if other fundamental rights are violated through defamation or offensive statements in the media, which is the case with hate speech".⁶⁴

Whenever it renders a decision relating to hate speech, the European Court of Human Rights (ECtHR), carefully distinguishes between actual and grave incitement to extremism

⁶ Raosavljevic, Predrag (2015). Hate speech in Bosnia and Herzegovina - improving regulations in BiH in line with international standards. Banja Luka: Institution of the Human Rights Ombudsman of Bosnia and Herzegovina

on the one hand, and the **rights of individuals** (including journalists and politicians) to express their views freely, on the other hand.

In terms of limiting hate speech, based on the European Convention, the ECtHR has two approaches in its practice:

- ▶ **applying the restrictions provided for in Article 10(2) of the ECHR,**
When rendering a decision on freedom of expression being violated or justifiably limited, the ECtHR answers three questions:
 - **whether interference with freedom of expression is prescribed by law,**
 - **whether such interference has a legitimate aim (see Article 10(2) of the ECHR),**
 - **whether interference with freedom of expression was "necessary in a democratic society",**
- ▶ **applying Article 17 Prohibition of abuse of rights**⁷ - when it considers that the disputed statements constitute hate speech and deny the fundamental values of the European Convention.

The ECtHR stresses that when it comes to matters of political and public interest, the basis of a democratic society is freedom of expression, which includes freedom of the press. In its decisions, the ECtHR does not include a precise definition of hate speech, but it **"would emphasise that tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society"**. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued⁸ (Müslüm Gündüz v. Turkey, judgment of 4/12/2003, application no. 35071/97.)⁹.

In practice, the ECtHR pointed out that some statements, even when they do not amount to a direct call for violence, can be serious and detrimental to

persons who have certain protected characteristics, and therefore contrary to the European Convention.

For example, the court emphasized that discrimination based on sexual orientation was as serious as racial discrimination, or discrimination based on colour or origin".¹⁰

1.4. How to recognize hate speech?

In practice, it's sometimes hard to distinguish between discrimination and hate speech. Both discrimination and hate speech involve violation of the rights of individuals or groups, their relatives or otherwise related individuals, based on **actual or presumed grounds** (race, skin colour, language, religion, ethnicity, disability, age, national or social origin, affiliation with a national minority, political or other beliefs, property status, membership in a trade union or other association, education, social status and gender, sexual orientation, gender identity, sexual characteristics). One of the ways to distinguish between them is to be guided by definitions where discrimination refers to **different treatment related to the stated grounds including any exclusion, restriction or giving preference**, as well as any other circumstance that has the purpose or consequence to **disable or endanger any person's recognition, enjoyment or exercise on an equal basis, rights and freedoms in all areas of life**, while **hate speech** represents any form of **communication, verbal or non-verbal**, which promote discrimination, expresses hatred and incites violence towards a particular group or individual.

In order to distinguish a form of hate speech from the speech that has offensive content, we must establish the following:

- Who is the object (hate speech targets an individual or a group of people because of a specific characteristic),
- What is the intention of the speaker (hate speech always aims to attack, intimidate, provoke a negative attitude and emotions towards a person or group of people),
- Where is it manifested (hate speech is always public speech, uttered in public domain, including the media and the Internet),
- What messages does it include (hate speech includes inappropriate vocabulary, threats, insults and words that discriminate),
- In what context is speech used (is it a political or historical context),
- Who is the speaker (one should distinguish those who have a greater impact on society and the audience).¹¹

¹⁰ Ibid 8, p. 11

¹¹ Andrew Smith, legal officer at Article 19, lists these categories to make it easier to spot hate speech and distinguish it from other types of communication.

⁷ Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Convention

⁸ Sevim Sali Terzić, Hate speech: international human rights standards and the legal framework in Bosnia and Herzegovina. Sarajevo, January 2013, available at: [http://www.fcip.ba/analyze/Sevima Sali Terzic7 Govor mrznje na internetu medjunarodni standardi i za stita.pdf](http://www.fcip.ba/analyze/Sevima%20Sali%20Terzic7%20Govor%20mrznje%20na%20internetu%20medjunarodni%20standardi%20i%20za%20stita.pdf)

⁹ Müslüm Gündüz v. Turkey of 4/12/2003, application no. 35071/97 available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-61522%22%7D>

1.5. What specific characteristics of an individual or group exposed to hate speech are most often present?

- race, colour,
- language, religion
- ethnicity
- national, minority or social origin
- political or other belief
- material status
- membership of a trade union or other association
- education
- social status and gender sexual orientation or gender identity

1.6. What forms of hate speech do we encounter most often?

Hate speech is not always immediately noticeable, seemingly it can be a very harmless statement, but a detailed analysis of the ways and means used in communication can reveal the following forms:

- **jokes** which have a racist, anti-Semitic, chauvinistic, xenophobic, sexist, homophobic, stereotype and insinuation
- **derogatory terms** - “labels” which stigmatize certain social groups and their members, e.g. “Niggers”, “faggots”, and the like.,
- **making various baseless accusations**, lies and stereotypes to justify hatred towards someone, e.g. “Jews rule the world and they are to be blamed for the Holocaust themselves“,
- **instigating speech or symbolic acts** in face-to-face communication which can directly injure the victim or provoke the victim into physical conflict,
- **verbal intimidation** of members of certain groups to force them to leave their workplace, place of residence, school, and the like,
- **displaying various symbols or symbolic actions** in order to intimidate the target groups and show them that they are undesirable in a certain environment, e.g. swastika, burning of the cross, attack on religious and cultural institutions, and the like
- **denying or diminishing the crimes of the Holocaust** and other Nazi war crimes and crimes against humanity, displaying Nazi symbols, advocating Nazi ideas, and the like.,
- **unfounded blaming of certain groups** for various social evils, e.g. “homosexuals for spreading immorality and disease“,

■ **expressing intent to discriminate**, for example “Blacks and Jews barred from entering!” etc,

■ **direct incitement** to different types of discrimination towards certain social groups, e.g. by persuading others not to employ members of certain groups, by denying services,

■ **open threats** to victims of various types of violence, incitement to violence,

■ **encouraging and provoking feelings** of hostility and hatred to incite persons to physical violence against others,

■ **direct calling** for and incitement to physical extermination, such as genocide, and ethnic cleansing.¹²

1.7. Why is it important to sanction hate speech?

Hate speech always precedes violence and hate crimes. It creates a sense of humiliation, violation of human dignity and continuous fear in individuals, and a sense of vulnerability and insecurity of the groups towards which it has been expressed.

Hate speech leaves consequences that can be divided into three categories: (1) consequences that are physical in nature: i.e., when hate speech precedes hate crime and causes death, injury or abuse of individuals/groups or damage to their belongings. (2) Consequences concerning social relations, that is, it creates permanently disturbed social relations, professional cooperation and in some cases permanently disrupts relations between states. (3) Consequences related to reactive damage caused by emotional and intellectual reactions of individuals/groups to the content of hate speech directed at them

Hate speech can be considered an indicator of a sick society, because the spread of hatred and intolerance towards other members of society due to their biological, cultural or socially conditioned identity not only denies the fundamental legal principles of equality of people on which every civilized and democratic society rests, but also creates such a social environment in which discrimination of those perceived by most as “others and different” and violence against them are not only “normal” but also socially desirable.¹³

¹² The division used is the one from the publication, Vesna Aliburić, Hrvatska pravna revija (20013), available at: https://www.pravo.unizg.hr/download/repository/Alaburic_1_dio.pdf

¹³ Ibid 7

Non-sanctioning of hate speech sends a message to the perpetrators that it is an acceptable mode of communication, which multiplies hate speech and leads to much more serious consequences for victims such as attacks on their lives and property. Individuals and groups subject to hate speech are forced to leave the community in which they live or to become victims. Societies which tolerate hate speech are not democratic, they have no rule of law and no equality of citizens.

CHAPTER 2. PROHIBITION OF HATE SPEECH IN THE INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK

The first part of this Chapter deals with topics related to the international legal framework governing hate speech and lists the documents that regulate it (United Nations, Council of Europe, European Union and OSCE documents) with a brief overview of their content in the context of Bosnia and Herzegovina. It also provides an overview of the mechanisms and bodies for monitoring the implementation of conventions and decisions. The second part of the Chapter deals with topics related to domestic legislation, lists the laws (criminal laws in BiH, Law on Prohibition of Discrimination, Election Law of BiH, Law on Gender Equality and Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH) and documents (Code of Audio-visual and Radio Media Services adopted by the Communications Regulatory Agency for electronic media and the Press Code of BiH adopted by the Press Council in BiH) which regulate hate speech, as well as shortcomings in domestic legislation compared to international standards.

2.1. What is the international legal framework governing hate speech?

Although there is no internationally accepted definition of hate speech, there are numerous international documents that indicate the need to prevent and sanction hate speech, and to restrict freedom of expression.

2.2. Documents governing hate speech

The oldest of all documents, the **Charter of the United Nations (24/10/1945)**, obliges all Member States to universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, Article 55(c).

2.2.1. United Nations (UN)

■ Universal Declaration of Human Rights,

■ International Covenant on Civil and Political Rights (1966)

■ International Convention on the Elimination of All Forms of Racial Discrimination (1965)

■ Convention on the Elimination of All Forms of Discrimination Against Women

■ UN Human Rights Council Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet (27-6-2016).

2.2.2. Council of Europe

■ Convention for the Protection of Human Rights and Fundamental Freedoms, including Protocol No. 12 thereto (2000)

■ European Social Charter

■ Framework Convention for the Protection of National Minorities
■ Convention on Cybercrime (23/11/2001)

■ Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)

■ Council of Europe Committee of Ministers' Declaration on freedom of political debate in the media (12/2/2004)

■ Council of Europe Committee of Ministers Recommendation (97) 20 on "hate speech" (30/12/1997)

■ ECRI General Policy Recommendation N° 15 on Combating Hate Speech (08/12/2015)

■ Recommendation CM/Rec(2011) of the Committee of Ministers to member states on the protection and promotion of the universality, integrity and openness of the Internet

■ Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment (4/7/2018)

■ Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism (27/3/2019)

■ Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law of 28/11/2008

2.2.3. European Union (EU)

■ Recommendation on combating discrimination and hate speech in election campaigns, the European Network of Equality Bodies (EQUINET) (20/3/2019)

■ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by Criminal Remedies from 28/11/2008

2.2.4. OSCE

■ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Conference on Security and Co-operation in Europe) of 29/06/1990.

■ Decision no. 6 on tolerance and non-discrimination, Tenth Meeting of the OSCE Ministerial Council, Lisbon, December 2002.

As for hate speech in the context of BiH, the starting point is **Article 10 of the European Convention on Human Rights (ECHR)**¹⁴, which stipulates that everyone has the right to freedom of expression, that includes freedom to hold opinions and freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers. However, **Article 10(2)** states that the exercise of freedom of expression "carries with it duties and responsibilities", and that it is subject to prescribed and necessary restrictions deriving from a number of legitimate goals listed in Art. 17 of the ECHR,¹⁵ and especially in connection with **Art. 14 of the ECHR**, which prohibits discrimination in the enjoyment of any other right set forth in the Convention.

The 2000 Protocol No. 12 to the ECHR regulates the enjoyment of all rights set forth in law without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination requires that states declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, as well as all incitement to racial discrimination, and requires a prohibition of racist hate speech even when it does not incite discrimination, hostility or violence".

¹⁴ See the Constitution of Bosnia and Herzegovina, Article 2, available at:

http://www.mvp.gov.ba/dobro_dosli_u_bih/drzavno_uredjenje_ustav_bih/?id=261

¹⁵ Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Convention

The following Articles are also important: **Article 5** which speaks of the right to equal treatment before the tribunals and all other organs administering justice and the **right to security of person and protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual group or institution**; **Article 6** which speaks of the right to **effective protection and remedies**, through the competent national tribunals and other state institutions, as well as the right to seek from such tribunals **just and adequate reparation or compensation for any damage** suffered as a result of such discrimination and **Article 7** which speaks of **undertaking to adopt immediate and effective measures with a view to combating prejudices** which lead to racial **discrimination** and to promoting understanding, tolerance and friendship among nations, racial or ethnic groups.

International Covenant on Civil and Political Rights, Article 20, signed and ratified by BiH, stipulates that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law.

Revised European Social Charter ratified by BiH on 24/02/2015 prohibits any discrimination based on race, colour, religion or national origin in the exercise of the rights recognized in the Charter¹⁶. States Parties of the **Framework Convention for the Protection of National Minorities** are prohibited any discrimination based on belonging to a national minority and they are ordered to undertake to adopt, where necessary, adequate measures in order to promote full and effective equality between persons belonging to a national minority and those belonging to the majority.

The purpose of the Council Framework Decision 2008/913/JHA is to ensure that racism and xenophobia constitute a criminal offence and that they are punishable by effective, proportionate and dissuasive criminal penalties throughout the European Union. Member states are obliged to ensure punishment for: a) public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin; b) public dissemination or distribution of written materials, images or other material containing racist and xenophobic expressions; c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6-8)

and crimes defined in Article 6 of the Charter of the International Military Tribunal, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or a member of such a group.

Additional Protocol to the 2003 Convention on cybercrime obliges the States Parties to the Protocol to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law acts of a racist and xenophobic nature committed through computer systems when committed intentionally and without right.

In addition to binding documents, the Parliamentary Assembly of the Council of Europe has adopted recommendations and resolutions that serve as guidelines for the Committee of Ministers, national governments or legislatures.

Recommendation No. R (97) 20 adopted in 1997, stresses out that forms of expression may have a greater and more damaging impact when disseminated through the media, and states that national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand. Council of Europe Recommendation 97 (21) emphasises that the media can make a positive contribution to the fight against intolerance, especially where they foster a culture of understanding between different ethnic, cultural and religious groups in society.

Resolution 1510 (2006) on freedom of expression and respect for religious beliefs and Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion underline that hate speech directed against any religion or religious group is not in line with the ECHR and the case law of the European Court of Human Rights.

The Committee of Ministers' **Declaration on freedom of political debate in the media (2004)** emphasizes that freedom of political debate does not include freedom to express racist opinions or opinions that are an incitement to hatred, xenophobia, antisemitism and all forms of intolerance.

¹⁶ Chapter 5, Article E,

<https://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/SerbCyrillic.pdf>

2.3. Mechanisms and bodies for monitoring the implementation of conventions and decisions

In order to monitor the implementation of the said conventions and recommendations, the UN has established **committees** tasked with reviewing the periodic reports of the Member States, and with issuing concluding remarks and recommendations. When analysing the reports of UN member states, the Committees must consider whether equal treatment of persons in the enjoyment of the rights set out in a particular convention is ensured.¹⁷

At the level of the Council of Europe, the bodies in charge of monitoring the human rights situation in relation to the adopted conventions, decisions and recommendations are:

- ▶ Council of Europe Commissioner for Human Rights
- ▶ European Commission against Racism and Intolerance (ECRI),¹⁸
- ▶ European Court of Human Rights
- ▶ European Social Committee
- ▶ Advisory Committee on the Framework Convention for the Protection of National Minorities.

European Commission against Racism and Intolerance (ECRI), set up by the Council of Europe, has the task to combat racism and racial discrimination in the broader area of Europe in view of human rights protection. This Commission makes recommendations to Member States on general policies and publishes reports on the degree of implementation of commitments made by States.¹⁹

Appendix No. 2 to this Manual contains a list of international documents governing hate speech.

¹⁷ [Committee on the Elimination of Racial Discrimination \(CERD\)](#), [Committee on Economic, Social and Cultural Rights \(CESCR\)](#), [Human Rights Committee \(CCPR\)](#), [Committee on the Elimination of Discrimination against Women \(CEDAW\)](#), [Committee Against Torture \(CAT\)](#), [Committee on the Rights of the Child \(CRC\)](#), [Committee on the Protection of the Rights of All Migrant Workers and Members of their Families \(CMW\)](#), [Subcommittee on Prevention of Torture \(SPT\)](#), [Committee on the Rights of Persons with Disabilities \(CRPD\)](#), [Committee on Enforced Disappearances \(CED\)](#)

¹⁸ In 2005, ECRI adopted the Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse, condemning such acts as “ethically unacceptable” and in 2008 the Declaration on the occasion of the UEFA European Football Championship on tackling racism in football

¹⁹ In its General Policy Recommendation no. 7, ECRI defines racism as “the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.” The same recommendation requires states to include into their criminal laws provisions aimed at sanctioning racist conduct

2.4. What is the domestic legal framework governing hate speech

The question *Do you know which laws regulate hate speech in BiH?* from the survey was answered by as many as 170 respondents with "I can not tell", which represents more than half of the sample (55%). A small number of respondents, more precisely 19 of them (6.2%), answered that they knew, but did not state which laws were in question. *More details in the Analysis, Appendix 1, p. 101.*

Although Bosnia and Herzegovina has adopted a number of regulations governing the prohibition of hate speech, there is no separate legislation that would regulate this area in a uniform way. The legal framework governing hate speech is contained in the provisions of the Constitution of Bosnia and Herzegovina, criminal, anti-discrimination, media and election legislation.

Article 2 of the Constitution of Bosnia and Herzegovina²⁰ states that the international conventions ratified by BiH have supremacy compared to domestic legislation, which has created a broad constitutional and legal basis for the protection of human rights and freedoms. Direct application of international standards provides protection against discrimination and racism. It also provides a framework for BiH legislation to regulate hate speech. The Constitution of the Federation of BiH and the Constitution of Republika Srpska regulate the supremacy of international standards in the same way, which should reflect on the legislation of the FBiH and RS.

Article II, § 4 of the Constitution of BiH prohibits discrimination, *inter alia*, based on race, colour, language, religion, national origin or affiliation with a national minority. However, it is important to stress that the legal framework for the prevention of hate speech is not yet fully in line with all international standards.

In its 2016 report, ECRI emphasizes that in BiH "The country's criminal, civil and administrative law provisions are still not entirely in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. The inter-ethnic tensions and corresponding levels of hate speech are still high. Politicians and the media use hate speech, while the authorities do not take sufficient action against it."²¹

ECRI therefore recommended that the authorities should bring the criminal, civil and administrative legislation, in general, into line with ECRI's General Policy Recommendation No. 7²² on national legislation to combat racism and racial discrimination, and to develop a comprehensive strategy to combat hate speech, and undertake activities to promote tolerance towards LGBT persons

²⁰ Constitution of Bosnia and Herzegovina, available at: <http://www.mvp.gov.ba/dobro-dosli-u-bih/drzavno-uredjenje/ustav-bih/?id=261>

²¹ CRI Report on Bosnia and Herzegovina, adopted on 6 December 2016, available at: <http://www.mhrr.gov.ba/PDF/LjudskaPrava/ECRI%20Final%20160117.pdf>

²² ECRI General Policy Recommendation N°7 on National Legislation to Combat Racism and Racial Discrimination, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislation/16808b5aaa>

2.5. Laws in Bosnia and Herzegovina governing hate speech

2.5.1. Criminal laws

- ▶ Criminal Code of Bosnia and Herzegovina (Article 145a, § 1),²³
- ▶ Criminal Code of the Federation of Bosnia and Herzegovina (Articles 163 and 363),²⁴
- ▶ Criminal Code of Republika Srpska (Article 359),²⁵
- ▶ Criminal Code of the Brcko District (Articles 160 and 357).²⁶

Sanctions for hate speech are also not uniform, with a minimum sentence of six months to one year and a maximum sentence of five to ten years. “The BiH Criminal Code prescribes a prison sentence of six months to five years for a person who, on any prohibited basis, denies or restricts civil rights or gives citizens unjustified privileges or benefits. The Criminal Code of the Federation of BiH prescribes a prison sentence of one to ten years for a person who publicly provokes or stirs up ethnic, racial or religious hatred, discord or intolerance among the constituent peoples and others living in the Federation, with the sentence being fixed according to the severity of the consequences that occurred. The Criminal Code of Republika Srpska prescribes a maximum sentence of eight years in prison for similar crimes, and also provides for the confiscation of hate speech materials and items, as well as instruments used to produce them. The Criminal Code of the Brcko District prescribes a maximum sentence of ten years in prison if hate speech has resulted in riots, violence or other grave consequences to the coexistence of the constituent peoples and others living in the Brcko District”.²⁷

2.5.2. Other laws governing hate speech

- ▶ Law on Prohibition of Discrimination of Bosnia and Herzegovina, Article 2,²⁸
- ▶ Election Law of Bosnia and Herzegovina, Article 7. 3,²⁹
- ▶ Law on Gender Equality in Bosnia and Herzegovina, Article 3,³⁰
- ▶ Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH, Article 5.³¹

2.5.3. Documents governing hate speech in the media

- ▶ Code of Audio-visual and Radio Media Services adopted by the Communications Regulatory Agency for the area of electronic media,³²
- ▶ Press Code of Bosnia and Herzegovina adopted by the Press Council of BiH.³³

2.5.4. What are the shortcomings of the existing legislation compared to international standards?

According to ECRI’s 2016 report, the **Criminal Code of BiH** does not contain provisions that criminally sanction public insults, slander or threats, or public speech with racist intent, ideology that advocates supremacy, or that underestimates or denigrates, based on race, colour, language, religion, nationality, or national or ethnic origin. There are no provisions sanctioning the establishment or leadership of a group that promotes racism, nor the provision of support to such a group and participation in its activities. Dissemination or distribution in public of written, illustrated or other material for racist purposes, and its production or storage for the purpose of dissemination or distribution in public is not criminally sanctioned. Publicly challenging, downplaying, justifying or forgiving, with a racist aim, crimes of genocide, crimes against humanity or war crimes is also not expressly prohibited.

²³ Criminal Code of BiH, Official Gazette of Bosnia and Herzegovina nos. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, 47/14, 22/15, available at:

http://www.sudbih.gov.ba/files/docs/zakoni/ba/krivichni_zakon_3_03_-_bos.pdf

²⁴ Criminal Code of the FBiH, Official Gazette of the Federation of Bosnia and Herzegovina nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, available at:

http://www.oss.ba/dokumenti/Krivichni_zakon_FBiH.pdf

²⁵ Criminal Code of RS, Official Gazette of RS nos. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13, available at: http://www.tuzilastvobih.gov.ba/files/docs/zakoni/Krivichni_zakon_lat_RS_49_03.pdf

²⁶ Criminal Code of the Brcko District of BiH, Official Gazette of the Brcko District of BiH nos. 6/05, 21/10, 9/13, 26/16, 13/17 and 50/18, 19/20, available at: <https://skupstinabd.ba/3-zakon/ba/Krivic--ni%20zakon%20Brc--ko%20Distrikta%20BiH/05B19-20%20Krivic--ni%20zakon%20-precisceni%20tekst.pdf>

²⁷ Raosavljević, p. 7

²⁸ Law on Prohibition of Discrimination of BiH, Official Gazette of BiH, nos. 59/09, 66/16, available at: <http://www.mhrr.gov.ba/PDF/LjudskaPrava/Zakon%20o%20zabrani%20diskriminacije.pdf>

²⁹ B&H Election Law, Official Gazette of BiH, nos.: 07/02, 09/02 and 20/02, 25/02, 04/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 07/14, 31/16, 41/18, available at:

https://izbori.ba/Documents/documents/ZAKONI/Izborni_zakon_PRECISCENI_TEKST-bos.pdf

³⁰ Law on Gender Equality in BiH, Official Gazette of BiH, no. 32/10, available at: https://arsbih.gov.ba/wp-content/uploads/2014/01/ZoRS_32_10_B.pdf

³¹ Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH, Official Gazette of BiH no. 05/04, available at:

<http://www.mpr.gov.ba/biblioteka/zakoni/bs/ZAKON%20o%20slobodi%20vjere.pdf>

³² Text of the Code available at: <https://docs.rak.ba/articles/333eb24f-ca18-4ef2-a9ab-8f402e8a4f40.pdf>

³³ Text of the Code available at:

https://www.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9

CHAPTER 3. HATE SPEECH PROTECTION MECHANISMS

Law on Prohibition of Discrimination, although partially in line with ECRI's recommendations, remains deficient in terms of: (i) not including citizenship and gender identity as illicit grounds, (ii) not prohibiting acts of discrimination by association and announced intention to discriminate, (iii) not including an obligation to amend or declare invalid the provisions contained in contracts and rulebooks in the field of employment, as well as internal acts, rules of associations and professional bodies. Moreover, there are no provisions suspending public funding of racist political parties or organizations.

Law on the Freedom of Religion and Legal Status of Churches and Religious Communities prohibits any discrimination based on religion or belief, and prescribes, inter alia, that churches and religious communities "are prohibited, when preaching their faith and performing other actions, from spreading intolerance and prejudice against other churches and religious communities, against their believers or citizens without religious affiliation, from preventing the free public practising of faith or other belief, from acting in a manner that is contrary to law and order, public safety, morals or detrimental to life and health, or to the rights and freedoms of others". Although this provision essentially constitutes a prohibition of hate speech, the law does not prescribe sanctions, which means that protection should be of criminal law nature.

In the Law on Prohibition of Discrimination, Law on Gender Equality and the Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH prosecution of hate speech is formally regulated and faces implementation limitations due to a lack of procedural provisions.

Appendix No. 3 to this Manual contains a list of all laws with Articles governing hate speech.

Chapter 3 will present in detail all the mechanisms for the promotion, suppression and protection against hate speech, which consist of: Institution of the Human Rights Ombudsman of BiH, Ministry of Human Rights and Refugees of BiH, Gender Equality Agency of Bosnia and Herzegovina (Gender Centre of Republika Srpska and Gender Centre of the Federation of Bosnia and Herzegovina), Central Electoral Commission, Communications Regulatory Agency and the Press Council in BiH. The mandate and procedures that can be used in the procedure of prevention and protection against hate speech are listed for each of the above institutions/organizations. The second part of this Chapter deals with topics related to procedures concerning judicial review of hate speech in criminal proceedings, with an emphasis on the role of the police, prosecutor's office and the courts. Moreover, an overview of information related to civil proceedings is included, as well as of differences between defamation and hate speech in terms of prosecution thereof.

3.1. What mechanisms are in place in BiH?

BiH legislation has established various mechanisms to protect against hate speech. One part of these mechanisms is intended to **prevent**, and the other to **sanction hate speech**.

Criminal laws in BiH govern the role of the police, prosecutors and courts in terms of sanctioning hate speech.

Bearing in mind that **hate speech is closely linked to discrimination** of a certain individual/group, **provisions of two laws govern hate speech**. **Law on Prohibition of Discrimination** regulates the role of the Institution of the Human Rights Ombudsman of BiH and the role of the Ministry of Human Rights and Refugees of BiH in terms of combating and preventing discrimination. **Law on Gender Equality in BiH** established mechanisms for protection against gender-based discrimination, and it also regulates the role of the **Gender Equality Agency of BiH, Gender Centre of RS and Gender Centre of the F BiH**. Both of these laws also set forth the possibility of judicial review against discrimination and provide special procedures for such cases.

The Election Law of BiH regulates the mandate of the Central Electoral Commission (CEC) in terms of hate speech during the "election campaign".

Law on Communications and Code of Audiovisual and Radio Media Services, regulate the mandate of the **Communications Regulatory Agency (CRA)**, while the Press Code of Bosnia and Herzegovina, adopted by the **Press Council in Bosnia and Herzegovina** regulates its role and mandate.

3.2. Institution of the Human Rights Ombudsman of BiH as a mechanism for protection against hate

Law on the Human Rights Ombudsman of BiH, Article 1³⁴ defines the nature of the Ombudsman Institution (OI), while Article 2, which refers to the powers and duties, gives powers to the BiH OI for human rights to **act on complaints or ex officio in cases of poor functioning or violation of human rights and freedoms, committed by any authority.**

Law on Prohibition of Discrimination in BiH designated the Ombudsman Institution as a central institution for protection against discrimination.

In cases of discrimination as a form of human rights violation, the competences of the OI have been extended so that its actions can concern all entities, both legal and natural, unlike other violations of rights when the prescribed competence concerns only public authorities.

3.2.1. What can the Institution of the Human Rights Ombudsman of BiH do in the case of hate speech?

The role of the OI in the case of discrimination, and thus hate speech, is set out in Article 7 of the Law on Prohibition of Discrimination. For other matters not governed by this Law, as well as those related to the proceedings conducted by the OI, the Law on the Human Rights Ombudsman of BiH and the Rules of Procedure of the Institution of the Human Rights Ombudsman of BiH apply.

The OI has a proactive role in terms of suppressing hate speech by initiating various activities that contribute to raising awareness of the harmfulness of hate speech and the importance of its timely prevention and raise the level of knowledge about hate speech. Accordingly, the OI collects and analyses statistics on cases of discrimination; submits annual and, if necessary extraordinary reports on discrimination to the Parliamentary Assembly of BiH, the Parliament of the FBiH, the National Assembly of RS and the

Assembly of the BD BiH; informs the public about the occurrences of discrimination; on its own initiative, conducts research in the field of discrimination; gives opinions and recommendations with the aim of preventing and combating discrimination, and proposes appropriate statutory provisions and other mechanisms to the competent institutions in BiH; monitors legislation and provides advice to legislative and executive bodies; works on the promotion of the Law on Prohibition of Discrimination, informs the public, raises awareness, conducts campaigns and in other ways actively promotes the fight against discrimination for the purpose of its prevention; promotes policies and practices aimed at ensuring equal treatment.

Reactive action of OI on complaints of citizens that includes:

- ▶ **receiving individual and group complaints in connection with hate speech;**
- ▶ **providing to natural and legal persons** who have filed a complaint against hate speech **with the necessary information on their rights and obligations, and the possibilities of judicial review and other forms of protection;**
- ▶ **decision making** on the admissibility of the complaint and conducting an inquiry in accordance with the Rules of Procedure of the Institution of the Human Rights Ombudsman of BiH;
- ▶ **making a recommendation** in cases where hate speech was established;
- ▶ **proposing to initiate a mediation procedure** in accordance with the provisions of the Law on Mediation;
- ▶ **initiating and participating in proceedings for protection against discrimination** (hate speech) for misdemeanours prescribed by the Law on Prohibition of Discrimination.

In order to be able to perform these activities effectively, the Ombudsman Institution has established a special organizational unit, the Division for the Elimination of All Forms of Discrimination, which deals with discrimination issues, and thus with hate speech.

It is important to note that the OI has created a database containing information on all complaints submitted to the Institution of the Human Rights Ombudsman of BiH related to discrimination, including the type or form of discrimination.

³⁴ Article 1 of the Law - The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina and the international agreements appended thereto, monitoring to this end the activity of the institutions of Bosnia and Herzegovina, its entities, and the Brcko District, in accordance with the provisions of the present Law

3.2.2. Complaints procedure³⁵

3.2.2.1. Who may address the Ombudsman Institution?

“ Ombudsmen may be addressed by any natural or legal person who claims to have a legitimate interest, without any restrictions. Nationality, citizenship, place of residence, sex, minority, ethnic origin, religion, legal incapacity, imprisonment of any kind, and, in general, special relations with and dependence on a government body cannot restrict the right to file a complaint to Institution”.³⁶

The Law on Prohibition of Discrimination regulated the participation of third parties by giving an opportunity for the Ombudsman Institution to **provide support to victims of discrimination in anti-discrimination proceedings via interveners**. An intervener in anti-discrimination proceedings is often referred to as a sui generis intervener, or a public interest intervener, who participates as a kind of friend of the court (*amicus curiae*). The participation of the intervener is still possible only with the consent of the plaintiff. Until the revocation of his consent, the intervener may take part and take actions in the proceedings”.³⁷

In practice, the complainant may address the Ombudsman directly and submit a complaint by filling out a special form. **However, a complaint to the Ombudsmen will not initiate criminal and disciplinary proceedings; instead, the Ombudsman’s recommendations are the basis for initiating misdemeanour proceedings, while failure to act by a state institution, enterprise or responsible officer pursuant to the Ombudsman’s recommendations is punishable by relatively high fines.**

3.2.3. Receiving individual and group complaints

In practice, the complaint is submitted in writing, and the complaint form is available on the OI website https://www.ombudsmen.gov.ba/documents/obudsmen_doc2018031212420940bos.pdf

The complaint should state the requested information, circumstances, actions and facts that support the allegations of discrimination (hate speech). The complaint should be filed within 3 (three) months of learning of the discrimination, or no later than 12 (twelve) months from the events, facts or decisions complained of by the victim of discrimination, as non-compliance with this time limit results in rejection without consideration of the discrimination complaint.

3.2.3.1. Providing the complainants with the necessary information on their rights and obligations, as well as on the possibilities of judicial review and other forms of protection

According to the law, ombudsmen are obliged to provide assistance in filling out the complaint form or to provide the necessary information on the rights and obligations, as well as on the possibilities of judicial review and other forms of protection to persons who have filed a discrimination-based complaint. Moreover, in order to make it easier for complainants to fill in the complaint form, the ombudsmen have developed special **Guidelines for completing the complaint form in cases where citizens complain of discrimination.**

3.2.4. Decision taking on the admissibility of the complaint, determining its merits and conducting an inquiry

Before taking a decision on the merits of the complaint, **it is determined whether the complaint is admissible**. According to Article 21, paragraph (2) of the Law on the Human Rights Ombudsman of BiH, the OI may refuse to consider anonymous complaints which are considered to be malicious, unfounded, without complaints, which harm the legitimate rights of a third party or are presented to the institution after 12 months of the occurrence of the facts, events or decisions complained of. The Rules of Procedure of the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina³⁸, Article 26 and Article 27, define in detail all the reasons why a complaint may be considered inadmissible. If the OI of BiH decides not to accept the complaint, it will inform the complainant in writing as soon as possible, stating the reasons for non-acceptance, with possible advice on other possibilities for resolving the case for which the complaint was filed.

³⁵ More details in the Ombudsman Manual for Handling Discrimination Cases, available at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2016101419280006ser.pdf

³⁶ *Manual for civil servants, civil society and the media for recognizing and dealing with cases of discrimination*, Council of Europe, 2018, p. 30, available at: <https://rm.coe.int/prirucnik-page-by-page/16807baefd>

³⁷ Squaring the Anti-Discrimination Triangle in BiH - Legal Framework, Policies and Practices 2012-2016, Analitika - Center for Social Research, Sarajevo 2016, p. 27, available at: <https://www.analitika.ba/sites/default/files/publikacije/kvadratura%20antidiskriminacijskog%20trougla%20-%20WEB.pdf>

³⁸ Rules of Procedure of the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, no. 104/2011)

In case when the acting lawyer determines that the complaint is admissible, he examines its merits. **Examination of the merits of the complaint implies verification of all allegations made by the complainant concerning the discrimination suffered, that is, concerning the violation of his right.** The complaint will be unfounded if the acting lawyer finds at any moment of its examination that the allegations, i.e., the facts from the complaint, are not true.

When the ombudsmen, i.e., the acting lawyer, judge that the complaint indicates to a possible violation of rights, **the inquiry is initiated** in such a way that the designated responsible party is required to make a statement regarding the allegations from the complaint, to provide all the necessary information and all relevant evidence, while setting the time limit for submitting a response.

3.2.5. Issuing recommendations

Following the inquiry, the OI judge all the facts obtained during the inquiry and issue an appropriate recommendation.

It is very important to point out that in case the Ombudsman finds during the inquiry that the execution of the administrative decision may result in irreparable damage to the complainant's rights, he may propose to the competent government body to suspend the execution of the disputed measure for no longer than ten days.

That body may refuse to comply with such a proposal, if it explains the reasons to act that way in a written act sent to the OI and within three days of receiving the proposal and in any case before the execution of the disputed measure. If it fails to do so, the proposal becomes binding on that body.

3.2.6. Example of handling a complaint

Example (1): The Network for Building Peace, a coalition of 194 members, organizations and schools from Bosnia and Herzegovina, filed a complaint to the OI indicating the content published by the online media outlet **Antimigrant.ba** The complaint mentions the text published on 15 2019³⁹which declared the person N.S, who provides assistance to migrants

(primarily children) together with a group of volunteers, a criminal who is "importing" migrants from Serbia. A new complaint was received on 11/12/2019, emphasizing the inflammatory nature of the content, which suggests hate speech and other criminal acts, as well as a series of unacceptable statements and positions published on the Antimigrant.ba portal, to which the Press Council in Bosnia and Herzegovina reacted. After considering both cases, the OI sent a recommendation to the Prosecutor's Office of Bosnia and Herzegovina; to the Communications **Regulatory Agency and the Federal Police Administration:** "Articles published on the online media outlet Antimigrant.ba, which are listed above, constitute incitement to discrimination and indicate the spread of hate speech and the commission of other crimes. The above-mentioned are invited to **take measures in accordance with their competences and to inform the Ombudsman Institution thereof within 30 days from the date of receipt of the recommendation**".

Are the competent authorities obliged to act upon the requests of the Institution of the Human Rights Ombudsman of BiH? Under the Law on Prohibition of Discrimination, Article 7(6), all state institutions, entity, cantonal and bodies of the Brcko District of Bosnia and Herzegovina, municipal bodies, institutions and legal entities with public authorities, and other legal and natural persons are obliged to submit all required information and documents, at the request of the Ombudsman of Bosnia and Herzegovina, **no later than 30 days from the date of receipt of the request, and under § 7 competent institutions in Bosnia and Herzegovina are obliged to cooperate with the Ombudsman of Bosnia and Herzegovina and to provide written responses and information within the time limit set by the Ombudsman of Bosnia and Herzegovina including on the effect of recommendations made with the aim of eliminating discrimination**

Under Article 26 of the Law on the Human Rights Ombudsman of BiH, competent authorities are required to provide to the Institution appropriate assistance in the inquiry and control, submit the requested information, ensure the conduct of personal interviews and access to all relevant documents and records. The institution of the Human Rights Ombudsman of BiH must not be denied access to files or administrative documents or other documents related to activities.

³⁹ The title of the text is "Tuzla's make-up artist Nihad Suljic part of the criminal network importing migrants from Serbia," and it was published on the following link: <https://antimigrant.ba/tuzlanski-sminker-nihad-suljic-dio-kriminalne-mreze-uvoza-migranata-iz-srbije/>

“ Civil servants and other persons exercising public authorities in their work shall ensure that they act with maximum professionalism in their interactions with the Institution of the Human Rights Ombudsman of BiH, which includes making statements and submitting the required documentation; providing access to all documentation, including documentation marked confidential and carrying a classification label; ensuring accessibility to all premises and ultimately acting on the recommendations of the Institution of the Human Rights Ombudsman of BiH in a timely manner, that is, within the time limits set. In case there are reasons why the recommendation made cannot be implemented, they shall inform the Institution of the Human Rights Ombudsman of BiH thereof, within the time limit set for the implementation of the recommendation.”⁴⁰

40 Squaring the Anti-Discrimination Triangle in BiH - Legal Framework, Policies and Practices 2012-2016, Analitika - Center for Social Research, Sarajevo 2016, p. 33, available at: <https://www.analitika.ba/sites/default/files/publikacije/kvadratura%20antidiskriminacijskog%20trougla%20-%20WEB.pdf>

32.7. Are there any consequences if the competent authorities do not act upon the requests of the Institution of the Human Rights Ombudsman of BiH?

When the Ombudsman Institution establishes that there are deviations from the conduct set forth by law, it is obliged to initiate misdemeanour proceedings.

In its Article 19(4) the Law on Prohibition of Discrimination provides for liability for administrative offences and fines for non-compliance with the OI's instructions in the following cases:

- ▶ **Legal entity failing to act on the recommendation of the OI** - fine in the amount of 2,500 KM to 6,500 KM
- ▶ **Responsible officer in a legal entity or a natural person failing to act on the recommendation of the OI** - fine in the amount of 1,000 KM to 3,000 KM.

Article 20 of the Law on Prohibition of Discrimination provides that:

- ▶ **A legal entity will be fined for a misdemeanour by a fine in the amount of 1,000 KM to 5,000 KM if it fails to submit information or documents at the request of the Ombudsman of Bosnia and Herzegovina, that is, if it fails to submit them within the prescribed time limit and does not allow access to them, does not cooperate with the Ombudsman of Bosnia and Herzegovina and does not provide written responses or information, or does not report on the effect of recommendations** given with the aim of eliminating discrimination, contrary to Article 7(7)
- ▶ **Responsible officer in a state, entity and cantonal institution, institution of the Brcko District of BiH, municipal institution, in a legal entity with public authorities and in other legal entity shall be punished for the same omissions by a fine in the amount of 500 KM to 1,500 KM.**
- ▶ **Natural persons shall be punished for the same omissions by a fine in the amount of 450 KM to 1,000 KM.**

32.8. What is the role of the Institution of the Human Rights Ombudsman of BiH in court proceedings proving discrimination?

The role of the OI is defined by the following laws:

- ▶ **Article 4(2) of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina** provides that the ombudsmen may "initiate court proceedings or intervene in the course of proceedings whenever they find, in the performance of their duties, that such action is necessary".

- ▶ **Article 17 of the Law on Prohibition of Discrimination of Bosnia and Herzegovina** also sets forth legal capacity to sue for protection against discrimination to institutions and bodies that deal with protection against discrimination of a certain group of persons as part of their activity.

Although there is a statutory possibility for the ombudsmen to be active in terms of initiating court proceedings, the dominating position and interpretation is that the OI should primarily act to prevent discrimination and hate speech, and that interfering in litigations would reduce its independence.

According to Recommendation No. 12 of the 2016 ECRI Report on Bosnia and Herzegovina, the authorities should grant the Ombudsman Institution the right and the capacities to represent victims in proceedings before the courts in discrimination cases.

32.9. Judicial review of discrimination cases in BiH

As for hate speech, it is always necessary to emphasize its close connection with discrimination. Although the Law on Prohibition of Discrimination does not provide clear instructions on how to prohibit hate speech in practice, it is very important to know how judicial review can be sought in cases of discrimination.

The prohibition of discrimination is regulated by the Law on Prohibition of Discrimination: "Article 2(1) For the purposes of this Law, discrimination means any different treatment including any exclusion, restriction or preference based on actual or presumed grounds against any person or group of persons and those who are related or otherwise associated to them, based on their race, colour, language, religion, ethnicity, disability, age, national or social origin, association with a national minority, political or other opinion, material status, membership of a trade union or other association, education, social status and gender, sexual orientation, gender identity, sexual characteristics, as well as any other circumstance that has the purpose or effect to nullify or to impair the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in all fields of life".⁴¹ Paragraph (2) **The prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, in all areas, notably: employment, membership of professional organisations, education, training, housing, health, social protection, goods and services intended for the public and public places, exercise of economic activity and public services.**⁴²

⁴¹ Law on Prohibition of Discrimination of BiH, Official Gazette of BiH nos. 59/09, 66/16, available at: <http://www.mhrr.gov.ba/PDF/LjudskaPrava/Zakon%20o%20zabrani%20diskriminacije.pdf>

⁴² Ibid 41

Victims of discrimination or group of persons who feel discriminated against **can request to be protected** against discrimination in **judicial or administrative proceedings**. **The procedure is initiated by a lawsuit or a complaint**. All protection against discrimination proceedings are **urgent** under law, in order to investigate allegations of discrimination as soon as possible

In the existing procedure under Article 11(2) of the Law on Prohibition of Discrimination, in cases where the violation of the right to equal treatment arises from an administrative act, a **complaint in administrative proceedings and the possible initiation of an administrative dispute** for the purpose of protection against discrimination, which requires the annulment of such an administrative act, **shall not prevent the person referred to in § 1 of this Article from initiating court proceedings for protection against discrimination**. Hence, according to the cited provision it is **possible to conduct an administrative procedure (or an administrative dispute) in parallel with a special civil procedure** for protection against discrimination.

Court proceedings may be initiated by victims of discrimination in any case by starting a lawsuit **before the court of appropriate jurisdiction**. **The competent court is the municipal/basic court** of the municipality in which the person, state institution or company against which the court proceedings are initiated resides or has its head office. Victims of discrimination must respect the general statutory time limit for filing a lawsuit. The procedure is initiated by filing a complaint and it is conducted according to the rules from entity laws on civil procedure.

In court proceedings the **victim of discrimination does not prove discrimination**. The victim of discrimination presents facts before the court, submits documents that will make it plausible to the court that he has been discriminated against. The person who acted in a discriminatory manner is obliged to prove in the court proceedings that there was no discrimination.

“Where the victim of discrimination initiates the procedure for exercising a social or health care right before an administrative body (**administrative procedure**), which proves the existence of discrimination grounds, the person may initiate proceedings before a court, either in parallel or after the completion of administrative proceedings, but taking into account the statutory time limits for initiating proceedings for discrimination. The same is valid as regards the initiation of proceedings before the The same is valid

as regards the initiation of proceedings before the OI”.⁴³

You can read more about judicial review in discrimination cases in the Council of Europe publication: *Manual for civil servants, civil society and the media for recognizing and dealing with cases of discrimination*, Chapter 2. Mechanisms for protection against discrimination, section 4, p. 37-46, available at the link: <https://rm.coe.int/prirucnik-page-by-page/16807baefd>

⁴³ Fedra Idžaković, Vesna Vukmanić, Manual: Non/Discrimination in BiH institutions, Implementation of the Law on Discrimination in BiH, available at: https://www.diskriminacija.ba/sites/default/files/Vodi%25C4%258D%2520NEDISKRIMINACIJA%2520U%2520INSTITUCIJAMA_0.pdf

3.2.10. Mediation in cases of discrimination

Under the Law on Prohibition of Discrimination, Article 7(2)d the **Ombudsman Institution may propose the initiation of mediation proceedings in cases of discrimination**. Mediation is conducted in accordance with the provisions of the Law on Mediation⁴⁴ which does not provide for a time limit within which such proceedings must be completed. A mediator is a third neutral person who "assists the parties in their efforts to reach a mutually acceptable agreement".⁴⁵ Regardless of their success in the dispute, the parties bear the costs of the mediator and other costs of mediation equally.

3.3. The role of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina

According to the Law on Prohibition of Discrimination and the Law on Gender Equality the **role of the Ministry of Human Rights and Refugees** of BiH (Ministry) in providing protection against discrimination is **indirect**.

3.3.1. Law on Prohibition of Discrimination

The Ministry's role is to monitor the implementation of the Law on Prohibition of Discrimination. Article 8 of the Law on Prohibition of Discrimination defines its obligations as follows:

- ▶ collecting information on the occurrence of discrimination and keeping a central database,
- ▶ based on the information collected, it prepares a report for the Council of Ministers and the Parliamentary Assembly of BiH on the occurrences of discrimination,
- ▶ proposing legislative or other measures to combat discrimination.

⁴⁴ Law on Mediation Procedure, Official Gazette of BiH, no. 37/04, available at: http://www.oss.ba/dokumenti/Zakon_o_postupku_medijacije_BiH.pdf

⁴⁵ Ibid 44, Article 2

The Ministry regulated the procedure of information collection in the **Rulebook on the method of collecting data on cases of discrimination in BiH** (Rulebook)⁴⁶. The Rulebook prescribes the layout and contents of the questionnaire for collecting information on cases of discrimination, methods of collecting information, establishment and maintenance of a central database on acts of discrimination, forms of cooperation between competent institutions in the process of exchanging information on cases of discrimination of which records are kept and other matters related to the procedure of collecting information on cases of discrimination in BiH.

The Law on Prohibition of Discrimination and the Rulebook stipulate that the institutions responsible for information collection and submission are all institutions and bodies at the level of BiH, entities, cantons, Brcko District of BiH, municipal services and legal entities with public authorities, and other natural and legal persons. According to the Rulebook, the above-mentioned institutions, bodies, services, natural and legal persons should regularly and faithfully submit to the Ministry information from official records on reported and processed cases of discrimination.

3.3.2. Why is it important to establish a central database?

The central database on discrimination cases in BiH is an analytical **tool in the process of creating new policies or modifying the existing ones**. It provides an overview of outcomes of all proceedings conducted in BiH, both those examining allegations or establishing discrimination. It is very important that all institutions and bodies that are obliged to collect and submit information on discrimination to the Ministry have mutually aligned databases and that the same forms are used to collect information. A single, updated and operational **central database is a prerequisite for the Ministry to analyse efficiently and accurately the occurrences of discrimination and prepare annual reports**. Based on the findings from the report, the Ministry should **propose to the Parliamentary Assembly of BiH legislative and other measures to prevent and suppress discrimination**.

Moreover, the information from the central database enable the public administration to act so as to prevent discrimination by implementing the **process of harmonization of all laws and general regulations in BiH with the Law on Prohibition of Discrimination**.

The Ministry is also obliged to develop an **Action plan for the**

implementation of proposed measures to prevent discrimination in BiH, which is an integral part of the Report on Discrimination in BiH submitted by the Ministry to the Council of Ministers of BiH and the Parliamentary Assembly of BiH. It includes an overview of occurrences noticed in certain areas that may be discriminatory and of the institutions responsible for their prevention and suppression.

Implementation of the **Law on Gender Equality in BiH** is supervised by the Ministry of Human Rights and Refugees of BiH. The Gender Equality Agency of Bosnia and Herzegovina (GEA BiH) operates under the Ministry.

3.4. Role of the Gender Equality Agency of Bosnia and Herzegovina, the Gender Centre of Republika Srpska and the Gender Centre of the Federation of Bosnia and Herzegovina

Based on the provisions of the Law on Gender Equality, the Gender Equality Agency of Bosnia and Herzegovina (GEA BiH), Gender Centre of the Federation of Bosnia and Herzegovina and the Gender Centre of Republika Srpska (GC RS) are in charge of monitoring the compliance of laws and other acts, policies, strategies, plans and programmes with domestic and international standards for gender equality in BiH. GC FBiH and GC RS monitor the implementation of the Law on Gender Equality in BiH at the level of entities.

Moreover, according to the provisions of the Law on Gender Equality in BiH, GEA BiH, GC FBiH and GC RS have competences to receive and process applications, complaints and petitions of persons or groups of persons alleging violations of a right under this law. The procedure of receiving and handling applications for examination of violations of the Law on Gender Equality is regulated by uniform rules

You can read more about the process of receiving and processing applications in the Council of Europe publication: *Manual for civil servants, civil society and the media for recognizing and dealing with cases of discrimination*, Chapter 2. Mechanisms for protection against discrimination, p. 36-37, available at the link: <https://rm.coe.int/prirucnik-page-by-page/16807baefd>

⁴⁶ Rulebook on the method of collecting data on cases of discrimination in Bosnia and Herzegovina, Official Gazette of BiH 27/13

3.5.Role of the BiH Central Electoral Commission (CEC)

The Central Electoral Commission of BiH conducts the election process, performs financial checks of political parties and judges whether candidates for the chairman, ministers and deputy ministers in the BiH Council of Ministers and candidates for the director and deputy director of the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption (APIK) meet the appointment requirements, and thus contributes to the strengthening of democratic processes in BiH. The CEC bears full responsibility for the elections, which includes the adoption of detailed regulations on the election procedure, the printing of ballots, and the confirmation and publication of election results.

3.5.1. Hate speech in an election campaign

In the 2016 report, ECRI reiterated the recommendations made in its 2010 report concerning the need to combat ethnically inflammatory discourse and statements by politicians (§§ 46-48), and those concerning hate speech in the media (§§ 51-53).⁴⁷

In an election campaign, hate speech may be subject to sanctions under criminal law or election law provisions. According to the information available, so far there are no known cases of criminal proceedings for hate speech committed by members of political parties during the pre-election period, nor outside that period. That is why it is important to mention the sanctions prescribed by the BiH Election Law.

According to Article 1.1. of the Election Law of Bosnia and Herzegovina, “election campaign” means the period in which a political entity, in a manner determined by law, informs voters and the public of its programme and candidates for elections. The Election Law, Article 7.3 (§ 7) sets forth: “Candidates and supporters of political parties, lists of independent candidates and coalitions, as well as independent candidates and their supporters, and employees or those otherwise engaged in the election administration shall not be allowed to **use language that could induce or incite violence or hatred; nor to post or use images, symbols, audio and video recordings, SMS messages, online communication or other materials that may have such an effect**”.⁴⁸

“The Central Electoral Commission (CEC) has a mandate to monitor election campaigns in Bosnia and Herzegovina and can sanction candidates who use hate speech. The CEC may obtain information on violations of the rules of conduct during the pre-election period based on the candidate’s objections, but also based on any other information ex officio. Where it is established that rules of conduct were violated on account of using hate speech, the CEC mostly imposes fines, and in exceptional cases, the penalty of removal from the list of candidates”.⁴⁹

The shortcomings which arise when it comes to sanctioning hate speech consist of the CEC monitoring and sanctioning hate speech only during the period of the official election campaign, while the actual election campaign lasts much longer. In its 2016 report, ECRI noted that hate speech is still employed by politicians prior to the 30-day period which is monitored.

3.5.2. Filing a complaint with the CEC

If a voter or a political entity considers that a right of theirs has been threatened, they may file a complaint to the Election Commission or the CEC no later than within 48 hours, or 24 hours from the violation within the election period, unless otherwise provided by the BiH Election Law.

The CEC **laid down a form for submitting reports**⁵⁰ which is to include information such as the place, time, brief description of the violation, perpetrator and evidence confirming the allegations of the complaint, then the provisions of the Election Law of BiH which the complainant considers violated, fax number to which the decision on the complaint will be delivered and signature of the complainant. The complaint is to be accompanied by written evidence and, if witnesses are proposed, their written statements. **The complaint is submitted personally or by fax during the election period.** The complaint can also be submitted by e-mail, certified by a qualified electronic signature in accordance with a separate law.

3.5.3. Decision-making process by the CEC

The Central Electoral Commission of BiH issues a decision in writing within 48 hours after the expiration of the time limit set forth in Article 6.3(2) of the Election Law of BiH. The CEC BiH is obliged to inform the complainant immediately about its decision, as well as other parties mentioned in the complaint.

In its decision, the CEC may order that measures be taken to remedy the irregularities to which the complaint relates. These are measures from **Article 6.4 of the Election Law of BiH**, which includes, but is not limited to, adding or deleting voter names from the Central Electoral Roll, initiating the dismissal of a person working at the Electoral Roll Centre or removing a member of a polling board, or ordering a designated person or a party to suspend the activities violating provisions of the Election Law of BiH or

⁴⁷ ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle), adopted on 7 December 2010, available at: <https://rm.coe.int/second-report-on-bosnia-and-herzegovina-bosnian-version-/16808b55fe>

⁴⁸ Election Law of BiH, Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16, available at: https://izbori.ba/Documents/documents/ZAKONI/Izborni_zakon_PRECISCENI_TEKST-bos.pdf. Law on Amendments to the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, no. 41/20)

⁴⁹ Franjo Dragičević, Hate Speech, Election Process and the Right to Freedom of Expression, available at: http://www.fcjp.ba/analize/Sveske_za_javno_pravo_broj-37.pdf

⁵⁰ Form available here:

https://www.izbori.ba/Documents/Opcilzbori2014/Dokumenti/Prigovorilzbe/Obrazac_za_podnosenje_prijav_a_izbornim_komisijama-bos.PDF

imposing a fine. When fixing a fine,⁵¹ the CEC BiH and the Election Commission will judge the following circumstances as aggravating: **use of speech that could induce or incite someone to commit violence or spread hatred, or publishing of images, symbols or other materials that may have such an effect**; frequency of violations, including recidivism; the time and place of the violation committed; violation of electoral silence and perpetrator's attitude towards the violation committed. The CEC issues its decision in writing, including: session number and date, introduction, operative part, reasoning, instruction on the possibility of appeal, signature and seal.

⁵¹ When deciding on objections and complaints or ex officio, the BiH CEC may impose a fine not exceeding the amount of 10,000 convertible marks

3.54. Appeals against CEC decisions

An appeal is allowed against the decision issued by the CEC. The parties to the proceedings are informed of the right to appeal in the instruction on the possibility of appeal which is an integral part of the decision issued by the CEC. **The appeal is submitted to the Appellate Division of the Court of BiH, via the Central Electoral Commission of BiH, within two days** from the day of receipt of the decision of the Central Electoral Commission of BiH.

You can read more on the method of filing complaints to the CEC and the Election Commission, the CEC's decision-making on complaints, the CEC's decision issuance and appeal filing against CEC decisions in the publication: Pod lupom: Analysis of complaints and appeals against the electoral process in Bosnia and Herzegovina, which is available at the link: <http://www.pm.rs.ba/wp-content/uploads/2018/02/Analiza-prigovora-i-zalbi-na-izborni-proces-u-BiH.pdf>

3.55. Appeal to the Court of Bosnia and Herzegovina

The Court of Bosnia and Herzegovina has jurisdiction to decide on appeals against CEC decisions. Complaints can be lodged by individuals, political parties and political coalitions. Section III of the Appellate Division of the Court of BiH does not act on anonymous complaints. All complaints are published, unless otherwise specified in the detailed Rules of Procedure for exceptional circumstances. Article 6.9. §§ 1 and 2 of the Election Law of Bosnia and Herzegovina stipulates that an appeal against the decisions of the Central Electoral Commission of Bosnia and Herzegovina is to be submitted to the Appellate Division of the Court of Bosnia and Herzegovina, through the Central Electoral Commission of Bosnia and Herzegovina, within two days of receiving the decision.

The appeal is submitted in writing, and it contains a brief description of the reasons and the signature of the complainant. Section III of the Appellate Division decides on the appeal within 3 days.

Examples of two CEC decisions and decisions of the Court of BiH

Example (2): On 20 September 2020 the political party Ujedinjena Srpska published a video on the social media

Facebook and Twitter showing a dialogue between three people, person no. 1 Albanian, person no. 2 Croat and person no. 3 Bosniak. In the video, person no. 1 says: We have chased away and expelled all Serbs from Kosovo, all of them! Person no. 2 says: What about us, we have wiped the floor with them in the Operation Storm? Person no. 3 says: Now that we have divided them, we will finish them off in an instant! **After analysing the video, the CEC found that video could induce or incite violence or the spread of hatred in terms of Article 7.3 § (1) item 7 of the Election Law of BiH.** Furthermore, it concluded that the described actions are contrary to the General Framework Agreement for Peace, which needs to be respected for the purposes of certification to participate in the elections in terms of Article 1.13. of the Election Law. The CEC made a decision and found that the imposed measure is necessary and urgent in order to preserve the democratic order of BiH, which functions in accordance with the law, and to protect the electoral process, the goal of which is to hold free elections. Accordingly, the CEC annulled the certification of the political party Ujedinjena Srpska for participation in the local elections in 2020 and imposed a fine on the president of the political party Ujedinjena Srpska on account of personal accountability in the amount of 10,000 KM. **Ujedinjena Srpska filed an appeal against the decision of the CEC with the Appellate Panel of the Court of BiH.** By its decision, the Court of BiH upheld the appellant's appeal, and annulled CEC's decision because the controversial video of Ujedinjena Srpska was published before the official start of the electoral campaign. That is, the decision of the CEC was annulled by the Appellate Panel of the Court of BiH due to the application of a wrong provision of the Election Law. The video of Ujedinjena Srpska was published on 20 September, and the electoral campaign begun on 16 October 2020. CEC decision available at: https://www.izbori.ba/Documents/Lokalni_izbori_2020/10/Odluka_15102020.pdf

Example (3): The organizing committee of the BiH pride parade filed a **complaint to the CEC against the Facebook post** by Adna Pandzic, who called the pride parade a shame parade. Adna Pandzic was a candidate for mayor of Novo Sarajevo on behalf of the coalition Democratic Front (DF) - Civic Alliance (GS) in the 2020 local elections.

The CEC found that “the candidate unequivocally intended to spread hate speech with her messages, which could have negative consequences for the LGBTIQ people. Primarily, such speech can create contempt and hostility towards community members, but also provoke violence”.

The CEC also found that Adna Pandzic expressed intolerance on her Facebook profile and that it constituted prohibited behaviour, because it could ultimately encourage violence against the LGBTIQ community due to the hostility expressed. Under its decision, the CEC fined the DF-GS coalition, and imposed a fine of 1,500 convertible marks (KM), half of that amount for each of the parties, and fined the candidate Adna Pandzic 3,000 KM. Acting on an appeal against the CEC decision, the Court of Bosnia and Herzegovina annulled the CEC decision. In the reasoning of the decision, the Court of BiH stated that in its decision the CEC invoked a provision of the Election Law that regulates conduct during the electoral campaign, and that the hate speech spread by Adna Pandzic happened in the period before the electoral campaign. The Decision of the Court of BiH is available at:

https://www.izbori.ba/Documents/Lokalni_izbori_2020/10/16/Rjesenje_Suda_BiH_1610555.pdf

3.5.6. Complaint to the Constitutional Court of Bosnia and Herzegovina

In accordance with Article VI/3.b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court of BiH has appellate jurisdiction in matters contained in this Constitution when they become the subject of a dispute due to a judgment rendered by any court in Bosnia and Herzegovina.⁵²

In accordance with Article 18(1) of the Rules of the Constitutional Court, the Constitutional Court may consider a complaint only if all effective legal remedies offered by the law have been exhausted against the judgment, or the decision contested by it, and if it is filed within 60 days from the date on which the complainant⁵³ received the decision on the last effective remedy used.

3.6. Role of the Communications Regulatory Agency in the field of electronic media (CRA)

Media outlets still frequently succumb to one-sided reporting, intentional misrepresentation and stereotyping. In addition, quoting expressions of hate speech verbatim without the necessary explanations, criticism and editorial distance is a common problem that leads to conveying hate messages.

ECRI Report on Bosnia and Herzegovina 2016

Media regulation and self-regulation in Bosnia and Herzegovina is under the competence of the Communications Regulatory Agency for electronic media and for print and online media under the competence of the Press Council of BiH, which is the self-regulatory body in our country.

The Communications Regulatory Agency (CRA) operates at the state level and its mandate is defined by the Law on Communications of BiH (Official Gazette of BiH, no. 31/03)⁵⁴. In November 2011, the CRA adopted the Code of Audio-visual and Radio Media Services, which governs hate speech in this area.

⁵² Constitution of Bosnia and Herzegovina, available at: http://www.ustavnisud.ba/public/download/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf

⁵³ More about the appeal procedure before the Constitutional Court of BiH can be found at the link: <http://www.ccbh.ba/za-apelante/cesto-postavljana-pitanja/?title=cesto-postavljana-pitanja>

⁵⁴ Law on Communications, <https://docs.rak.ba/articles/da724391-4a61-429b-8859-14d77fbfbf43.pdf>

The CRA has executive powers, that is, the possibility to impose sanctions, which are in line with the European regulatory practice, in order to ensure compliance with labour codes and rules. The Law on Communications provides for the possibility to impose verbal or written warnings, fines proportional to the gravity of the violation, orders to suspend broadcasting, licence revocations. Moreover, this Law stipulates that the CRA prepares an overview of violations and appropriate penalties, which is adopted by the Council of Ministers of BiH. The mode of imposing fines is regulated by the by-law “Overview of violations and appropriate penalties imposed by the Communications Regulatory Agency”⁵⁵, which identifies violations of the Law on Communications, codes, rules, decisions and other acts and conditions stipulated in the licences issued by the CRA within its competence, as well as appropriate penalties that the CRA may impose in the process of resolving violations of the Law, CRA regulations and conditions stipulated in the licences.

Moreover, Chapter 16 of the Election Law of BiH is dedicated to the media in the electoral campaign. Article 6.1 stipulates that “The media in BiH shall fairly and professionally monitor election activities with consistent respect for the journalistic code, and generally accepted democratic principles and rules, especially the basic principle of freedom of expression. Pursuant to Article 16.16 § (1) of the Election Law of BiH, “The body in charge of governing the activities of electronic media, responsible for enforcing media laws and regulations, shall be competent in all cases of violation of media provisions related to elections established by this law and other laws governing media activities“.⁵⁶ The Rulebook amending the Rulebook on the media presentation of political entities in the period from the date of calling elections to the date of holding elections (Official Gazette of BiH, 65/08)⁵⁷ stipulates that: “As the body responsible for monitoring the activity of electronic media, the CRA shall apply its Rulebook on the procedure for resolving violations of conditions, licences and regulations of the Communications Regulatory Agency (Official Gazette of BiH, 18/05), in all cases of non-compliance with Chapter 16 of the Election Law of BiH and with the provisions of this Rulebook by the electronic media“.⁵⁸

⁵⁵ Overview of violations and appropriate penalties imposed by the Communications Regulatory Agency, <http://www.sluzbenilist.ba/page/akt/Xcgtz5k76kin45hS76a2uN0=>

⁵⁶ Election Law of BiH, Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16, available at:

https://izbori.ba/Documents/documents/ZAKONI/Izborni_zakon_PRECISCENI_TEKST-bos.pdf

⁵⁷ Rulebook amending the Rulebook on the media presentation of political entities in the period from the date of calling elections to the date of holding elections, available at:

<http://www.sluzbenilist.ba/page/akt/iMWzgFQos0c=>

⁵⁸ Rulebook on the procedure for resolving violations of conditions, licences and regulations of the Communications Regulatory Agency, available at: <https://docs.rak.ba/articles/bf1b05e2-2830-4edd-a258-0e7d5294e82a.pdf>

Article 2 (§ 4) of the Communications Regulatory Agency's Code of radio and television programme broadcasting prohibits hate speech - "speech intended to humiliate, intimidate or incite to violence or prejudice against persons or groups based on their sex, race, age, nationality, sexual orientation, sexual/gender orientation, disability, moral or political beliefs, socio-economic status or profession".⁵⁹ Article 4 (§§ 1 - 4) of the Code obliges radio and TV stations not to transmit content that constitutes a clear and immediate risk of inciting ethnic or religious hatred between communities in BiH, or that may be interpreted as representing incitement to violence, disorder, violation of guaranteed freedoms and rights of man and citizen, incitement to national, racial and religious intolerance or hatred, incite discrimination, violence based on affiliation related to ethnicity, sex or sexual orientation, or encourage harassment or sexual harassment. The exception relates, exclusively, to materials in which hate speech is used as part of scientific, copyright or documentary work, provided that they are part of objective journalistic information and that they are published without the intention to encourage prohibited acts, or with the intention to critically draw attention to such actions. For violation of the above provisions, the Code prescribes sanctions in the form of "enforcement measures" prescribed in the Law on Communications. Those can be verbal and written warnings or licence revocation, or sanctions based on the already mentioned Overview of violations and appropriate penalties.

3.6.1. Filing a complaint to the CRA

In accordance with the Rulebook on the procedure for resolving violations of conditions, licences and regulations of the Communications Regulatory Agency, a complaint may be filed by any natural or legal person. As a rule, **complaints** are submitted in writing.⁶⁰ In order for the Agency to act within its competences, the complaint must contain certain information: the name of the station to which the complaint relates, the date and approximate time of broadcasting the disputed programme, and a brief explanation of what the complaint refers to. The complaint should be filed within the time frame in which the stations are obliged to keep recordings of the programme, **which is 6 weeks for public services and 14 days from the date of broadcasting for other broadcasters.**⁶¹

⁵⁹ Code of radio and television programme broadcasting, available at: https://www.parlament.ba/data/dokumenti/press-kutak/kodeks_o_emitiranju_radiotelevizijskog_programa_bs.pdf

⁶⁰ In order to facilitate the submission of complaints, the Communications Regulatory Agency has posted on its website the link for HOW TO FILE A COMPLAINT, available at: <https://www.rak.ba/bs-Latn-BA/complain>. Complaints can be sent by mail on the forms that can be downloaded at the following link: <https://www.rak.ba/bs-Latn-BA/complaint-templates>

⁶¹ Article 39 (2) of the Law on Public Radio and Television System of BiH (Official Gazette of BiH, nos. 78/2005, 35/2009, 32/2010, 51/2015 and 25/2016); available at: <https://www.paragraf.ba/propisi/bih/zakon-o-javnom-radio-televizijskom-sistemu-bosne-i-hercegovine.html>

3.6.2. CRA's decision issuance procedure

The CRA examines all complaints ex officio in order to protect the public interest, and processes only specific cases of complaints in a particular case. **Procedural provisions are regulated by the Law on Communications. Articles 45 and 46 regulate the manner of submitting complaints and the enforcement measures taken by the CRA.**⁶²

The procedure has several stages:

- ▶ Preliminary examination of the report or application,
- ▶ The preliminary procedure of examining a possible violation of applied rules and regulations in the field of broadcasting. The procedure is initiated if established, during the preliminary examination of the report, that the reason for complaining is valid.
- ▶ If the complaint/report is filed against the CRA licensee for a possible violation of CRA regulations regarding the content of the programme broadcast, the competent CRA department sends a written order to the licensee to submit the relevant recordings of the programme content broadcast to the CRA within the time limit set.
- ▶ Upon receipt, programme recordings are analysed with the aim to establish if a possible violation of applicable regulations concerning programme standards happened or not. If found that the programme in question does not have elements of violation, the procedure is discontinued after the preliminary phase, and the licensee and the complainant are notified about the outcome of the inquiry in a letter
- ▶ If the programme broadcast contains elements that are potentially in conflict with the applicable provisions of the rules concerning programme standards, the licensee is allowed to state in writing its opinion regarding their potential violation.
- ▶ If a violation is established, the holder of the license is imposed an appropriate enforcement measure in a decision. The complainant is notified in writing of the outcome of the proceedings.

⁶² Law on Communications of BiH, Official Gazette no. 31/03, available at: <https://docs.rak.ba/articles/da724391-4a61-429b-8859-14d77fbfbf43.pdf>

Law on Communications, Article 46(d): “The amount of the fine may not exceed 150,000 KM, and in case of repeated violation the fine may be up to 300,000 KM”. Moreover, paragraph (e) states that the CRA may impose a penalty suspending broadcasting or provision of public communications services for a period not exceeding three months.

Document *Overview of violations and appropriate penalties imposed by the Communications Regulatory Agency*⁶³, Official Gazette of BiH, no. 8/17, adopted by the Council of Ministers of BiH, stipulates in Article 37 that the fines imposed by the CRA for contents that disrupt the mental, physical and moral development of minors may be in the amount of 5,000 to 150,000 KM. The fines will also range from 5,000 to 150,000 KM

Example (4): In 2018, HTV Oscar C rebroadcast and replayed the show Bujica by Zagreb’s Z1 television, with migrant crisis in the Republic of Croatia as its topic, described by the show’s host as a “migrant invasion of Croatia”. In the show, migrants were characterized as “raping savages”, “growing poppies and producing opium and heroin - so they do have some skills after all”. They are infected with AIDS, hepatitis, tuberculosis: “When they come and slaughter, rape and kill Croats, it makes no difference if they came legally or illegally. **In its decision sanctioning HTV Oscar C, the CRA pointed out that “statements classifying and profiling the migrant population in a way that directly links racial grounds with possible misdemeanours or crimes are based on personal opinions, more precisely prejudices, representing a blatant example of discrimination on racial grounds, which is contrary to Article 3 § 3 of the Code.** In the present case, the above discriminatory views, due to the fact that they incite and justify racial hatred and even violence, indisputably led to hate speech directed against the migrant population, which is explicitly covered by Article 4 of the Code.

Moreover, the CRA further underlines in its decision that since this case is about content that directly manifests discrimination and hate speech and which is not allowed as such, it is important to note that the aim of the Agency’s decision in this case is to strike a balance between different rights, primarily the right to freedom of expression and the right to freedom from discrimination, which is necessary in a democratic society. Acting in accordance with the competences set forth by the Law on Communications, which include, inter alia, the regulation of broadcasting and public telecommunications networks and services, it is important to note that the Agency does not question the fundamental values and principles of freedom of expression provided by the European Convention. The CRA stated that HTV Oscar C, as the responsible licensee of the Agency, did not react during the

broadcasting of the show, just as it did not publish any reaction after the broadcast to publicly distance itself from the stated content, but instead replayed the programme at the same time slot.

In this case, the CRA found a violation of Article 3 §§ (1), (3), (4) and (6) Basic principles and Article 4 §§ (1) and (2) Hate speech of the Code, and fined the station in the amount of 6,000 KM. Taken from the Report of the Communications Regulatory Agency on the enforcement measures imposed in the field of broadcasting in 2019, available at: <https://docs.rak.ba/documents/c9e72fd0-7902-45c6-b458-85dd9d5a03f6.pdf>

3.6.3. Appeals against CRA decisions

According to the Law on Communications, Article 47, when deciding on appeals against decisions of the CRA Director General, the Agency Council acts under the Law on Administrative Procedure of Bosnia and Herzegovina and reviews decisions against which an appeal has been filed in their entirety. It is important to keep in mind that an appeal against a decision of the Director General does not delay enforcement (§ 2). Decisions of the Agency Council are final and binding in the administrative procedure. Judicial review of the decision may be initiated by filing a lawsuit before the Court of Bosnia and Herzegovina. The Administrative Division is competent to decide the lawsuits against the CRA decisions, in the case of an appeal against the decision of the Administrative and Appellate Divisions of the Court of Bosnia and Herzegovina. The time limit for filing a lawsuit with the Administrative Division of the Court of BiH is 60 days from the date when the plaintiff was notified, i.e., when he received the decision of the Agency Council which is being challenged⁶⁴.

In accordance with Article VI/3.b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court of BiH has appellate jurisdiction in matters contained in this Constitution when they become the subject of a dispute due to a judgment rendered by any court in Bosnia and Herzegovina.

⁶³ Ibid 49

⁶⁴ Law on Administrative Disputes of BiH, Article 5, available at: <http://www.mpr.gov.ba/biblioteka/zakoni/hr/Zakon%20o%20upravnom%20sporu%2019-02.pdf>

3.7. Role of the Press Council in Bosnia and Herzegovina

The Press Council in Bosnia and Herzegovina is a **self-regulatory body for print and online media** which acts as a mediator between dissatisfied readers of both the print and online media, monitors the implementation of the Code of the Print and Online Media of BiH, improves professional standards in print and online media in BiH, protects the public from unprofessional and manipulative journalistic reporting, protects media from political, economic and all other pressures that threaten freedom of information and freedom of the media.

The Council enables the protection of human rights of citizens by filing complaints against inaccurate, unprofessional or incompletely published content. There is an advisory body within the Council - the Complaints Commission, which has nine members chosen from among the members of the Association, civil society, the media and academia. It examines public complaints against print and online media content in Bosnia and Herzegovina. In accordance with the principles of media self-regulation, the Council cannot fine, suspend or close media outlets. Potential disputes between the public and the print and online media are resolved by the Council using exclusively journalistic means, such as: the right of reply, publication of corrections, apologies and denials.

Article 3 of the **BiH Code of Print and Online Media** sets forth the following regarding hate speech: Rabble-rousing - Journalists will be aware, at all times, of the danger that arises when the media incite discrimination and intolerance through hate speech. Given this danger, journalists will do their best not to rabble-rouse and/or incite hatred and/or inequality based on ethnicity, nationality, race, religion, sex, sexual orientation, disability or mental state. Under no circumstances will journalists incite crime or violence. Article 4: Discrimination - Journalists must avoid prejudiced and offensive allusions to one's ethnic group, nationality, race, religion, sex, sexual orientation, disability or mental state. Allusions to one's ethnic group, nationality, race, religion, sex, sexual orientation, disability, or mental state will only be made when they are directly related to the case being reported. Article 4a: Gender equality and respect for particularities - Journalists shall avoid direct or indirect comments that disadvantage or discriminate against persons based on their sex, gender, gender identity, sexual identity, gender expression and/or sexual orientation.⁶⁵

3.7.1. How to file a complaint?

- ▶ A written complaint against the content, which citizens consider inconsistent with the Code of Print and Online Media of BiH, should be sent to the address of the media outlet that published the content, requesting the publication of a denial, additional information, a correction or apology.
- ▶ In parallel to that, a reaction statement should be sent to the Council Secretariat, by mail or e-mail to info@vzs.ba, with an explanation and precise indications as to where and when the text whose content the complaint relates to was published. If possible, a copy of the disputed text should be sent.

- ▶ The Press Council accepts only those complaints received within one month for daily newspapers and two months for magazines after the publication of the disputed content, or after the editor's response to an earlier complaint addressed directly to journalists or the media outlet. For online media, the time limit to file a report lasts as long as the disputed content is available on the web portal.

3.7.2. Examination of complaints

- ▶ The Secretariat will subsequently contact the editorial board in question and, if necessary, it will send a copy of the report to the editor, requesting his comment and explanation and it will attempt to resolve successfully the case through mediation and publication of the reaction statement.
- ▶ If no agreement is reached to publish a reaction statement or a denial, the Secretariat submits the case for examination to the Complaints Commission, which consists of 9 members, representatives of the BiH public: newspaper publishers, journalists and academic citizens.
 - ▶ Members of the Complaints Commission will examine the article published, reaction statement, clarification provided by the editor and take a decision exclusively according to the prescribed standards from the Code of Print and Online Media of BiH. Decisions are adopted by consensus..

Example (5): The Association for Democratic Initiatives from Sarajevo reacted to the article “As houses burn in Tuzla, pro-migrant activists kneel against racism”, published on the antimigrant.ba portal on 6 June 2020. The complaint submitted to the Press Council in BiH states that the very name of the website invites all visitors to intolerance and negative actions towards migrants. In addition, the content of the mentioned website spreads hate speech, discriminates and violates human rights of migrants, spreads religious and national hatred and intolerance towards migrants and among the constituent peoples of BiH.

⁶⁵ BiH Code of Print and Online Media, Press Council, available at: https://www.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9

The Press Council of BiH accepted the complaint of the Association for Democratic Initiatives and found a violation of Articles 5 and 15 of the Code of Print and Online Media in BiH. In the reasoning of its decision, the Press Council of BiH determined that the name of the portal is inflammatory, including a call for intolerance and negative actions towards migrants, which is subject to criminal liability in accordance with the criminal laws in BiH. The decision also states that “The complainant, who alleges that the reporting breached this Code, shall address the publisher or editor responsible for the print or online publication in question, with a denial not longer than the originally published article. The Complaints Commission of the Press Council in BiH recommended to the editorial board of the antimigrant.ba portal to publish this Decision“. The decision of the Press Council is available in the archives of the Association for Democratic Initiatives from Sarajevo.

The decisions of the Complaints Commission of the Press Council do not contain mechanisms for sanctioning those who violate the principle of prohibition. Instead, that depends on cooperation with the competent prosecuting authorities.

3.8. Judicial review of hate speech cases

3.8.1. Criminal proceedings

Police, prosecutor's offices and courts have a major role to play in prosecuting hate speech as a criminal offence. The work of police officers and prosecutors in these cases is crucial for their identification, detection and resolution. "The police and the prosecutor's office are equally responsible for finding and examining indicators of prejudice in the preliminary investigation and are obliged to exchange such information with each other. The identification of these crimes is strongly influenced by the training level of police officers and prosecutors on hate crimes, as well as by their mutual communication".⁶⁶ The role of judges in the trial is also great, because judges fix the sanction for the crime at hand based on the content of the indictment, the evidence presented during the trial, the existing legislation and case law.

3.8.1.1. Role of the police in criminal proceedings

In their daily work, police officers are in a position to be informed by citizens about the commission of certain criminal offences, but they can also be found on the scene when such offences are being committed. Having in mind the specific nature of hate speech as a criminal offence, it is very important that police officers first have enough knowledge to recognize the criminal offence and not to take it as a violation of public order and peace. In their work, the police should be guided by all the characteristics listed in Chapter 1 of this Manual, and by the laws listed in Chapter 2.

The conduct of the investigation and its quality depend on the first step taken by police officers. In the case of hate speech, it is their responsibility to establish whether the victim and the perpetrator are of different racial, religious, ethnic/national, sexual, cultural or other background,⁶⁷ and then check to see if there are any other indicators of hate crime.⁶⁸ If the police officer is unsure, he should inform his superior and the prosecutor thereof, who will give him guidance for further work.

When a hate speech offence occurs, the police officer should secure the crime scene, prevent the potential escalation of the incident, and take action to apprehend the perpetrator.

As regards the victim, the police officer should be careful when establishing contact, mindful of the trauma suffered by the victim - some victims will not immediately want to talk about the incident (there are reasons such as victims do not want to reveal their affiliation with one of the protected categories or they are afraid that they will not be protected as they should under law) which may result in deficiencies in the investigation itself.

The police officer is obliged to collect all evidence of the commission of a criminal offence, which may be in the form of testimonies obtained from the victim or witness and substantive evidence from the crime scene. Based on the evidence collected, the **police officer prepares an appropriate report submitted to the prosecutor's office.**

It is very important that the report made by the police officer of the facts indicating motives for committing the crime, that it does not use vague and ambiguous sentences, and that it contains a preliminary qualification of the crime.

Jedan od važnih segmenata rada policije u fazi prikupljanja dokaza i istrage je **saslušanje žrtve i svjedoka**. Policijski službenici ne trebaju koristiti stereotipe i pristrasne termine koji bi mogli utjecati na sekundarnu viktimizaciju ili "povlačenje žrtve".

One of the important segments of police work in the evidence gathering and investigation phase is **hearing the victim and witnesses**. Police officers should not use stereotypes and biased terms that could result in secondary victimization or "victim withdrawal".

The effective work of police officers in the process of detecting and investigating hate crimes is of paramount importance to the community, as it sends messages that perpetrators will be prosecuted and victims protected from further violence.

⁶⁶ Almir Maljević & Srđan Vujović, A Guide to Prosecuting Hate Crimes in Bosnia and Herzegovina, Analitika 2013, available at:

https://www.analitika.ba/sites/default/files/publikacije/vodic_hatecrimes_final_final_10jan2014.pdf

⁶⁷ OSCE/ODIHR, Understanding Hate Crimes: A Handbook for Bosnia and Herzegovina, p. 25, available at: <https://tandis.odhr.pl/bitstream/20.500.12389/21200/10/06995bos.pdf>

⁶⁸ American Prosecutors Research Institute, A Local Prosecutor's Guide for Responding to Hate Crimes, p. 29, available at: https://biblioteca.cejamerica.org/bitstream/handle/2015/4796/hate_crimes.pdf?sequence=1&isAllowed=y

3.8.12. Role of the prosecutor's office in criminal proceedings

The position of prosecutors in criminal proceedings in BiH is characterized by two important components: the right to initiate and conduct an investigation and the right to propose and present evidence at trial. In criminal proceedings, the prosecutor performs prosecutorial activity within the limits of his statutory rights and obligations⁶⁹.

Upon receipt of a report from the police on the crime committed, the competent prosecutor takes a decision whether to initiate prosecution, based on his professional assessment and evidence collected. The prosecutor may also request additional information or verification of certain allegations from an authorized police agency or law enforcement agency.

If reasonable and probable grounds exist, the prosecutor will initiate an investigation in accordance with the provisions of the Criminal Procedure Code. **The prosecutor will launch an investigation** if he finds that the collected facts/evidence indicate reasonable and probable grounds that a criminal offence has been committed.

“It is important to mention that when a criminal investigation is conducted, the prosecutor must direct authorized employees towards finding the motive for the crime, which is not the case with numerous other types of crimes. In doing so, the prosecutor will take into account the indicators (listed in section 6.1) and the limitations thereof”.⁷⁰

When he finds that there is a **well-founded suspicion, the prosecutor will bring an indictment.**

In the event that the suspicion of a hate crime is not confirmed after the investigation, **the prosecutor will issue an order suspending the investigation.**

Collecting information on hate crimes is a powerful tool for law enforcement. That is why it is extremely important to underline that only an adequate investigation will result in **raising the level of suspicion from reasonable and probable grounds to well-founded suspicion, and enable the prosecutor to bring an indictment against the suspect(s), which will be confirmed by the court, if the statutory requirements have been met, which will in turn enable criminal proceedings before the court of appropriate jurisdiction and the resolution of the criminal matter in question.** It is important to note that **the prosecutor decides personally on the contents of the order to conduct an investigation and on the contents of the indictment and qualification of the offence.** The content of the indictment is crucial for the further course of the case because the court

will judge only its contents. **Representation of the indictment** in court is another important task for the prosecutor. It depends on his strategy, the content of the indictment and his representation skills whether the court will reject or confirm the indictment. If the court confirms the indictment, the role of the prosecutor in the continued trial is very important, because his further actions will serve as the basis for the court to either acquit the accused or declare him guilty.

3.8.13. Role of courts in criminal proceedings

Having in mind the specific nature of hate speech as a criminal offence, one of the most important roles of judges is to examine thoroughly the case before choosing the type of criminal law sanction. To that end, it is very important for the court to exercise its right to order the presentation of certain evidence.

“Just as the police and the prosecutor's office had to find a subjective element, that is prejudice, for prosecuting a hate crime, so the court should evaluate this subjective element on the part of the perpetrator as accurately as possible in order to choose an adequate criminal law sanction, which will fulfil the purpose of punishment in terms of special prevention. The court should not determine the presence of prejudice only in order to confirm the elements of a hate crime, but also in order to assess which sanction will deter the perpetrator from re-offending. Thus, most often, the punishment for thrill seekers will be milder than the punishment for mission offenders. Therefore, it is important to pay special attention to the conduct of the perpetrator after the commission of the crime, e.g. to his remorse (is it sincere remorse or an effort to obtain a milder sanction?)”.⁷¹

3.8.14. Which courts have jurisdiction in criminal cases of hate speech?

As regards the subject-matter jurisdiction, in first instance criminal proceedings for crimes punishable by a fine or imprisonment of up to 10 years, municipal courts are competent in the FBiH, basic courts in the RS, and the basic court in the Brcko District.⁷²

Appeals against decisions of first instance courts in the FBiH are decided by the cantonal courts, in the RS by the district courts and in the Brcko District by the BD Court of Appeals.

⁶⁹ Ibid 66, p. 64

⁷² See more at: Law on Courts of the FBiH, Articles 27a and 28 (para. 2a): <https://www.oss.ba/dokumenti/ZAKON%20O%20SUDOVIMA%20U%20FEDERACIJI%20BOSNE%20I%20HERCEGOVINE.pdf>, Law on Courts in RS, Articles 30 and 31 (para. 2a): <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Documents/закон%20о%20судовима%20рс,%20интегрални%20текст-.pdf>

⁶⁹ More in the Law on Prosecutor's Office (BiH, RS, FBiH)

⁷⁰ Ibid 66, p. 51.

More information in the publication: Hate Crime Victims in the Criminal Justice System: Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2020, available at: <https://www.osce.org/files/f/documents/e/2/468792.pdf>

3.8.2. Civil proceedings

The first Chapter of the Manual states that only extreme forms of hate speech that constitute incitement or instigation to violence against others who have certain protected characteristics should be criminalized and prosecuted. “However, there are hate speech forms that are not necessarily crimes and which do not have to fall under the protection provided by criminal laws. However, the injured person should still be provided protection. The European Court has pointed out in its case law that some statements, even when they do not represent a direct call for violence, can be serious and harmful for persons who have some protected characteristics, and therefore contrary to the European Convention. In such cases, the actions of the Press Council as a mechanism of self-regulation are insufficient, because it does not provide adequate protection to the injured parties. Seeing that **there is no separate law on this, nor is it possible to apply the Law on Protection against Defamation, lawsuits for damages for injury to honour and reputation remain available under the relevant provisions of the Law on Contracts and Torts (LCT).**⁷³

3.8.2.1. Law of Contracts and Torts⁷⁴

Article 198 of the LCT prescribes compensation for material damage in case of injury to honour and false accusations spreading.

(1) Whoever injures the honour of another and whoever discloses or disseminates false accusations about the past, knowledge, ability of another person, or about any other matter, although he knows or should know that they are untrue, and thus causes material damage, shall compensate such damage.

(2) However, the one who makes a false statement about another without knowing that it is untrue, where either he or the person to whom he made the statement had a serious interest in it, shall not be held liable for the damage caused.

Monetary compensation for this act is prescribed by **Article 200 of the LCT**.

(1) Where the court finds that the circumstances of the case, and in particular the severity of pain and fear and their duration justify doing so, it shall award a fair monetary compensation for the physical suffering sustained, for the mental anguish suffered due to the reduction of vital activity, disfigurement, injury to reputation, honour, freedom or right of personality, death of a close person as well as for fear, irrespective of the compensation in respect of the pecuniary damage, as well as in the absence thereof.

3.8.2.2. Which courts are competent to act?

In the absence of appropriate separate regulations, compensation in respect of the non-pecuniary damage may be sought in civil proceedings under Article 200 of the LCT, and courts should apply this provision in accordance with the stated privacy protection standards under Article 8 of the European Convention, taking into account that it does not disproportionately restrict the freedom of expression of websites.

Where hate speech is present in user comments that they have not prevented or removed without delay and without being requested to do so, online portals can be held liable and can be sued for damages on account of injury to reputation as part of the right to privacy.

As for subject-matter jurisdiction, municipal courts are competent for the first instance procedure in the FBiH, basic courts in RS, and the Basic Court in the Brcko District. Appeals against decisions of first instance courts in the FBiH are decided by the cantonal courts, in the RS by the district courts, and in the Brcko District by the BD Court of Appeals.

3.8.3. Law on Protection against Defamation

Defamation is the act of causing harm to the reputation of a natural or legal person by disclosing or **disseminating untrue accusations** and by identifying that natural or legal person to a third party.

Hate speech is not defamation. In cases of hate speech, it is not possible to apply the Law on Protection against Defamation. The responses given in the survey show that some public servants do not distinguish between defamation and hate speech, which is why we provided an overview of the basic facts related to the Law on Protection against Defamation and court proceedings.

⁷³ Sevima Sali-Terzic, Hate speech on the Internet: international standards and protection, available at: <https://analiziraj.ba/2019/08/23/govor-mrznje-na-internetu-medunarodni-standardi-i-zastita/>

⁷⁴ Law on Contracts and Torts of the FBiH, RS, author's consolidated text, available at: <http://www.nados.ba/dokumenti/hr/zakon/Zakon-o-obligacionim-odnosima-FBiH-RS.pdf>

3.8.31. How is defamation regulated in BiH?

There are three defamation laws in force in BiH that regulate this matter similarly: The Law on Protection against Defamation in the Federation of BiH, the Law on Protection against Defamation of Republika Srpska and the Law on Protection against Defamation in the Brcko District of BiH. Upon enactment of the above laws, defamation has been decriminalized in BiH. Defamation is no longer a criminal offence in BiH and criminal proceedings for defamation cannot be initiated. In practice, this means that journalists and publishers cannot be punished by imprisonment, but only by a fine. New laws regulate compensation for the damage caused to someone's reputation by defamatory speech.

All three laws define the following elements of defamation and the conditions that define the term defamation: **disclosing/disseminating an untrue allegation (FBiH) or disclosing/disseminating something untrue (RS and BD)**, damage suffered by a natural and legal person, identification of the injured party, transmission to third parties (that is, publication or dissemination of information in another manner) and intent and(or) negligence). It is important to note that, pursuant to the Law, the injured party is obliged to take all measures to mitigate the damage caused by the untrue allegation, and in particular to submit a request to correct the expression.

3.8.32. Who initiates court proceedings, when and how?

Only natural and legal persons have the right to initiate an action for damages. Defamation lawsuits cannot be initiated by government institutions and public institutions, but they can be initiated on their own behalf by public officials (members of the government, public officials, judges). In that case, their lawsuit is not a lawsuit by the Prime Minister, a minister or a judge, but only a personal lawsuit in their capacity of a citizen.

3.833. Which courts are competent to act?

The first step is bringing a civil procedure defamation action. The courts of appropriate jurisdiction in the first instance proceedings are: in FBiH municipal courts, in RS basic courts. The courts of appropriate jurisdiction in the second instance procedure are: in FBiH cantonal courts, in RS district courts. An appeal against a second instance judgment can be lodged with the FBiH Supreme Court, the RS Supreme Court and ultimately, with the BiH Constitutional Court.

3.834. Claim for compensation for damages

The time limit for filing a claim for damages from all three laws is three months from the date when the injured party learns or should have learned of the untrue allegation and of the identity of the person who caused the damage. The amount of compensation should be proportionate to the damage caused and it is fixed solely to compensate the damage.⁷⁵ Proceedings on claims for compensation for damages for defamation made in the mass media are considered urgent and the court is obliged to act on claims for damages for defamation in the mass media within thirty (30) days from the date of receipt of the lawsuit by the court of appropriate jurisdiction.

Matters that are not regulated by this Law are governed by the relevant provisions of the Law on Contracts and Torts and the Law on Civil Procedure.

⁷⁵ See more in Articles of the Law on Protection against Defamation, Article 15 (FBiH) (available at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2003/zakoni/13bos.htm>), Article 11 (RS) (available at: https://www.parlament.ba/data/dokumenti/press-kutak/zakon_o_zastiti_od_klevete_republike_srpske_hr.pdf) and Article 10 (BD) (available at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20zas--titi%20od%20klevete/000%2014-03%20Zakon%20o%20zas--titi%20od%20klevete.pdf>)

CHAPTER 4.

ROLE AND POSITION OF CIVIL SERVANTS IN THE PREVENTION OF AND PROTECTION AGAINST HATE SPEECH

Chapter 4 aims to demonstrate the perception of civil servants in relation to hate speech and the legislation governing their status and position, and presents the actions taken by civil servants in cases where there are indications of occurrence of hate speech. The Chapter offers responses to the following questions: whether the laws prescribing the functioning of the civil service set forth the prevention and sanctioning of hate speech, whether the sanctions, if prescribed, are effective, what is the position of civil servants in relation to hate speech on the Internet and social media, what should civil servants do if a citizen is incited to hate speech, what should civil servants do if they consider themselves victims of hate speech.

4.1. Public administration and competencies of civil servants

Public administration of a country performs a very wide range of tasks; among other things, informs the public authorities about public needs, prepares appropriate measures to be taken by such public authorities, implements measures chosen by the public authorities and provides public services. Citizens play a crucial role in the evaluation of public administration based on the contact they have with civil servants when they are provided services. In order for civil servants to be able to respond to the needs of the tasks performed by them, they need to have certain competencies. The competencies required for the work of a civil servant are a set of knowledge, skills, characteristics, positions and abilities that a civil servant possesses, which shape his conduct and lead to the achievement of expected workplace success. They are an indicator that when one works in the civil service “what is done” is not the only thing that will be determined, but also “how it is done”, that is, how civil servants apply their knowledge, technical and management skills. In the context of hate speech, it is important to mention *behavioural competencies* that are required of civil servants, especially those relating to information management, building and maintaining professional relationships, and conscientiousness, commitment and integrity.

4.1.1. Duties and tasks of civil servants in which it is especially important to be mindful of hate speech

Civil servants represent a significant communication chain between the government and public policies on the one hand and citizens on the other. The ethics of public service and its professionalism certainly dictate that civil servants know and need to recognize hate speech, and that they do not employ it, both in mutual and in their communication with citizens. In this regard, special attention should be paid to the **Council of Europe** Recommendations to member states, whose Principle no. 1 states:

The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.

One of the most important roles of civil servants is their **participation in the public policy-making process**. In their daily work, they are in a position to collect, store and analyse information related to hate speech. In the process of drafting any law and by-law or general act, a civil servant must consult all the international standards and laws listed in Chapter no. 2. If a civil servant has a dilemma regarding the regulations, he can consult all the institutions that are enumerated in Chapter no. 3.

In the process of monitoring the implementation of existing policies, civil servants collect and analyse information and work on various types of reports (domestic and international institutions). It is very important that these reports include information on hate speech and the method of (not) implementing decisions by institutions concerning hate speech. In order to be able to monitor objectively public policies, civil servants need to develop databases and uniform reporting formats so that all information related to hate speech can be captured, categorized and stored in the same way.

In the area of public service delivery, civil servants must use all behavioural competencies to work adequately on hate speech prevention and sanctioning. Adherence to the ethics and codes of civil servants, refraining from hate speech not only in the workplace but also in private life, reporting incidents to competent officials within their institution and reporting hate speech to competent institutions where the case needs to be handled outside the institution are measures that need to be observed.

4.2. Which laws prescribe the functioning of the civil service?

The role of civil servants in the prevention of hate speech is related to compliance with laws and bylaws governing their conduct.

The process of employment in state administration bodies varies, depending on whether it is entered into in state, entity-level or administrative bodies of the Brcko District, and at which position it is entered into - that of civil servants or state employees⁷⁶.

The Law on Civil Service in BiH Institutions⁷⁷, Law on Work in BiH Institutions⁷⁸, Law on Civil Service in the Federation of BiH⁷⁹, Law on Employees in Civil Service Bodies in FBiH⁸⁰, Law on Civil Servants of RS⁸¹ and the Law on Civil Service in Public Administration Bodies of the Brcko District of BiH⁸² regulate the functioning of the civil service and the position of civil servants and employees.

In order to prevent hate speech, the Federal Parliament adopted the Declaration Condemning Hate Speech in 2016. The same text of the Declaration was also adopted by the National Assembly of Republika Srpska (NARS). In 2019, the Government of the Brcko District adopted the Declaration and the proposed Decision adopting the Action Plan 2 for strengthening cohesion in the BD BiH community in response to incidents motivated by prejudice and hatred. The declarations adopted invite, inter alia, to condemning hate speech and expressing readiness of the authorities to further commitment to the fight against it, and they call for the engagement of all institutions with the aim of preventing and sanctioning it. They also call on authorities at all levels of government, as well as holders of all public offices, being aware of their influence, to refrain from and fight against hate speech. In addition, the mentioned declarations point to the need for consistent application of criminal legislation and possible tightening of provisions in criminal laws on hate crimes and to the growing problem of misuse of the Internet for spreading hate speech.

⁷⁶ Transparency International, Employment in Public Administration Bodies with Special Reference to the Application of Legal Principles, 2016, available at: <https://ti-bih.org/wp-content/uploads/2014/12/Zapošljavanje-u-organima-javne-uprave-sa-posebnim-osvrom-na-primjenu-zakonskih-principa.pdf>

⁷⁷ Official Gazette of BiH, nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12

⁷⁸ Official Gazette of BiH, nos. 26/04, 7/05, 48/05, 60/10 and 32/13

⁷⁹ Official Gazette of the Federation of Bosnia and Herzegovina, nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06 and 04/12

⁸⁰ Official Gazette of the Federation of Bosnia and Herzegovina, no. 49/05.

⁸¹ Official Gazette of RS, nos. 118/2008, 117/2011, 37/2012 and 57/2016. Official Gazette of the Brcko District of BiH, nos. 09/14, 37/15, 48/16, 9/17. Official Gazette of BiH, no. 15/17

⁸² Official Gazette of the Brcko District of BiH, nos. 09/14, 37/15, 48/16, 9/17. Official Gazette of BiH, no. 15/17

4.3. Do the laws that prescribe the functioning of the civil service explicitly prescribe the prevention and sanctioning of hate speech?

These laws do not explicitly prescribe the prevention of hate speech. For example, **Law on Civil Service in BiH Institutions**, Article 55 states that: a civil servant may be subject to disciplinary action for violation of official duties laid down by this Law as a result of his guilt in case of inappropriate conduct towards citizens, colleagues and other persons while performing civil service. Article 56 states that in case a civil servant violates his official duty referred to in Article 55 of this Law, the following disciplinary measures may be imposed: a) written public reprimand; b) suspension of the right to participate in open public service promotion competitions during a maximum of two years; c) punitive suspension of duties and salary for a period ranging from 2 to 30 days; d) demotion to a lower position referred to in Article 6 of this Law; e) dismissal from the civil service. The Law on Civil Servants of the FBiH regulated the matter of civil servants in the FBiH in the same way. In RS, this area is similarly regulated by Article 68 of the RS Law on Civil Servants.

4.4. Codes of conduct for civil servants

The rules and principles of good conduct of civil servants can be regulated by codes of conduct (ethical codes).

“In order to help states, fight corruption and raise the ethical standards of civil servants, many international organisations have begun, since the mid-1990s, to issue various recommendations and draft codes of ethics proposed to states for adoption. Thus, in 1996, the United Nations adopted the International Code of Conduct for Public Officials as an integral part of the then resolution on the fight against corruption. In 1998, the OECD adopted the Recommendation on OECD Legal Instruments Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service, and in 2000, Council of Europe adopted Codes of conduct for public officials “.⁸³

The codes of conduct of civil servants in BiH adopted so far do not include a provision regarding hate speech, but all of the codes govern mutual relations of civil servants and treatment of clients in a similar way.

The BiH Civil Service Agency adopted the Code of Civil Servants in BiH Institutions⁸⁴ in 2013. Article 12 which regulates the treatment of clients states in § 1 that civil servants have to treat **their clients professionally, with kindness and politeness, to respect the personality and dignity of the client, show interest and patience, especially towards unlettered client.** Paragraph 2 states that **civil servants are guided by the principle of equality, that they have to treat all citizens equally, without discrimination or preference based on age, nationality, ethnicity or origin, social affiliation or origin, linguistic and racial origin, political, religious or other beliefs or inclinations, disability or handicap, education, gender, marital or family status, sexual orientation, material status, entity citizenship or another status.** Article 13 regulates mutual relations of civil servants which should be based on mutual respect, trust, cooperation, decency and patience. Moreover, Article 16 defines that **a civil servant must not be placed at a disadvantage compared to other civil servants, nor exposed to harassment** when performing his duties and exercising his rights in the institution.

According to the Code, citizens and civil servants may file a complaint with the head of the institution against the conduct of a civil servant, which they consider to be contrary to the provisions of the Code. Complaints are examined by the head of the institution and, if necessary, a request for disciplinary action is submitted in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina, which laid down that the violation of this Code represents professional misconduct.

The FBiH Civil Service Agency enacted the first Code of Ethics for Civil Servants in the Federation of Bosnia and Herzegovina in 2003, and the new Code of Ethics⁸⁵ in 2020. This Code regulates the conduct of civil servants in the same way as the Code for Civil Servants in Institutions in BiH.⁸⁶

Compared to the previous Code, Article 11, which regulates **conduct during public appearances**, is a novelty: (1) Civil servants shall present the views of the state body in all forms of public appearances and activities in which they represent the state body, in accordance with regulations, authorities, professional titles and the Code of Ethics. (2) During their public appearances in which they do not represent the state body, civil servants may not present information from the scope of work of their state body or the duties entailed by their position, which could damage the reputation of the state body and citizen's trust in its activities. (3) When presenting personal views and opinions, as well as other information through social media and other media,

⁸⁴ Code of Ethics for Civil Servants in the Institutions of Bosnia and Herzegovina, Official Gazette no. 49, 2013, available at: http://www.ads.gov.ba/v2/attachments/2953_Kodeks_drzavnih_sluzbenika.pdf

⁸⁵ Code of Ethics for Civil Servants in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH, no. 63, 2020, available at: <https://www.adsfbih.gov.ba/Content/DownloadAttachment?id=93598ae2-7df1-480b-9eb5-e2157430b263>

⁸⁶ See more: Code of Ethics for Civil Servants in FBiH, Article 13. Treatment of clients, Article 14. Mutual relations of civil servants, Article 21. Complaints against non-compliance with the Code

⁸³ Gordana Marčetić, Etički kodeksi i etika javnih službenika, HKJU-CCPA, 2013, str. 512.

civil servants shall be mindful of their personal reputation and the reputation of the civil service.

Republika Srpska's Civil Service Agency adopted the Code of Conduct for Civil Servants of Republika Srpska⁸⁷ in 2002. Article 9 of the Code states that when performing their duties, civil servants will treat equally all citizens who come into contact with the body for which they work. **Article 10 states that even in private life, civil servants shall refrain from conduct that could have a negative impact on their reputation**, or which could undermine the trust in impartial, lawful and professional administrative service.

Pursuant to the provisions of these codes, civil servants are not allowed to discriminate against clients nor to use language that does not respect the person and dignity of the client. They are also obliged to treat each other with respect. Non-compliance with the code by a civil servant entails disciplinary action.

Disciplinary accountability of civil servants and sanctioning procedures are regulated by the laws prescribing the functioning of the civil service in BiH, rulebooks/decrees issued by agencies and internal regulations of institutions.

Article 15 (Improper Conduct) of the **Rulebook on the disciplinary accountability of civil servants in the institutions of Bosnia and Herzegovina**⁸⁸ states that a civil servant who behaves inappropriately towards citizens, colleagues and other persons in the performance of civil service will be punished with a written caution or a written reprimand, and where his inappropriate conduct is manifested in the form of insults on national, religious, sexual or racial grounds, he shall be punished by suspension of the right to participate in public competitions in the civil service for a period of up to two years or by a measure of termination of civil service employment.

Under Article 16 (§ 1) of the **Decree on the disciplinary action rules for the disciplinary accountability of civil servants in civil service bodies in the Federation of Bosnia and Herzegovina**⁸⁹ in cases of civil servant's improper conduct towards citizens, colleagues and other persons in the performance of civil service, he will be punished by a disciplinary measure of a written public reprimand. Where inappropriate conduct of

a civil servant is manifested in the form of insults on national, religious, sexual or racial grounds, he shall be punished by a disciplinary measure of suspension of the right to participate in public competitions for civil service promotion for a maximum of two years or by termination of civil service employment.

Decree on the disciplinary and material accountability of civil servants in the republican administrative bodies of Republika Srpska⁹⁰ defines in Article 3 violence based on any form of discrimination (race, sex, language, nationality, religion, social origin, birth, education, material status, political and other beliefs, social status or other personal characteristics) as grave professional misconduct.

You can find more about the procedures and content of the rulebook governing disciplinary accountability in the publication "Analysis of regulations governing disciplinary accountability of civil servants in the institutions of: Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District of Bosnia and Herzegovina"⁹¹.

Each institution adopts its own internal regulations governing the disciplinary accountability of civil servants and the initiation of disciplinary actions.

In the survey, civil servants were asked about legislation and normative acts. Based on the responses given to the questions, relatively speaking, we can conclude that there is less than half knowledge, or half knowledge of normative acts in these institutions. This also points to the need to provide training to civil servants, as also indicated by the responses to other questions that will be analysed in the next section. *More details in the Analysis, Appendix 1, p. 104.*

⁸⁷ Code of Conduct for Civil Servants of Republika Srpska, Official Gazette of Republika Srpska no. 83. 2002

⁸⁸ Rulebook on the disciplinary accountability of civil servants in the institutions of Bosnia and Herzegovina, Official Gazette no. 20/03, available at:

http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=124%3Apravilnik-o-disciplinskoj-odgovornosti-dravnih-slubenika-u-institucijama-bosne-i-hercegovine&catid=39%3Arights-and-responsibilities-in-civil-service&Itemid=91&lang=bs

⁸⁹ Decree on the disciplinary action rules for the disciplinary accountability of civil servants in civil service bodies in the Federation of Bosnia and Herzegovina, available at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2004/uredbe/28bos.pdf>

⁹⁰ Decree on the disciplinary and material accountability of civil servants in the republican administrative bodies of Republika Srpska, Official Gazette of Republika Srpska no. 104, 2009, available at: <http://adu.vladars.net/cyrl/?page=28>

⁹¹ Transparency International, Analysis of regulations governing the disciplinary accountability of civil servants in institutions of: Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina, 2017, available at: <https://ti-bih.org/wp-content/uploads/2018/05/Analiza-propisa-koji-regulisu-disciplinsku-odgovornost.pdf>

4.5. Position of civil servants in relation to hate speech on the Internet and social media

Online media are used increasingly to disseminate hate speech, especially the space for comments on news portals, in online editions of print media and in specialized Internet fora.

Transparency International BiH, 2013.

The Internet is a means of communication that allows social media to create a sense of closeness among like-minded people. If members of groups on social media tend to promote negative positions, they become very dangerous and destructive. The specific thing about sending messages via the Internet is that a person gives himself the freedom to say and do what he would never do or say in reality, because of the anonymity and because he is not afraid that he may be caught and punished for his actions. Victims of an attack, or of hate speech on the Internet, are often seen by the attackers only as dehumanized digital images. In Bosnia and Herzegovina, hate speech on the Internet is constantly on the rise. In its 2016 Report, the Council of Europe emphasises that online media are increasingly used to disseminate hate speech, especially the space for comments on news portals, in online editions of print media and in specialized Internet forums. According to a 2019 research that included both surveying the positions of Internet users and monitoring 30 websites, hate speech was present in Bosnia and Herzegovina predominantly in the comments by anonymous readers.

Civil servants are not explicitly prohibited by civil service laws and codes of conduct from posting content, comments containing hate speech and disseminating hate speech messages on the Internet, but the articles governing the conduct of civil servants in relation to public appearances state that such conduct must not harm the reputation of the institution.

Rulebook on acceptable use of the Internet by employees of the Civil Service Agency⁹² Article 4. Article 4 (Acceptable Use) of the Rulebook on acceptable use of the Internet by employees of the Civil Service Agency

states that the spread of intolerance on racial, national, religious, political and other grounds is not allowed.

A number of institutions in BiH have adopted rulebooks governing the use of computer equipment and the Internet by civil servants. The rulebooks prohibit the use of social media via computer equipment in the institution, except with special permits.

However, civil servants are not prohibited from using social media during working hours via personal mobile phones.

Civil servants have the right to use the Internet and social media and they cannot be deprived of that right outside institutions and outside their working hours. However, civil servants should always keep in mind their position in the community, and that their personal views must not conflict with the values associated with the office they perform and the reputation of their institution.

4.6. What should a civil servant do if a citizen is incited to hate speech??

According to the Analysis, majority (total 73%) of the respondents believe they have never used hate speech. Previously analysed responses to the questions about the definition of hate speech indicate that numerous respondents do not know the difference between hate speech, insult and slander and that there was a high percentage of those who said they were unsure that hate speech was used in the institution. This leads to the conclusion that hate speech was sometimes used, and that the respondents noticed it. Just like other negative phenomena in the society hate speech is more often recognized when employed by other people (in this case, colleagues). Moreover, analysis of responses to the open-ended questions in which the respondents stated that they had witnessed hate speech shows that those were often situations involving insults. In some cases, they may have possibly been associated with hate speech (e.g., insults on national grounds) while in some they may have not (e.g., insults on professional grounds). This also confirms that there is a certain misunderstanding of hate speech. *More details in the Analysis, Appendix 1, p. 106.*

⁹² Rulebook on acceptable use of the Internet by employees of the Civil Service Agency, available at: http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=87%3Apravilnik-o-prihvatljivom-koritenju-interneta-od-strane-uposlenika-agencije-za-dravnu-slubu&catid=38%3Atrainings-and-it-in-civil-service&Itemid=90&lang=bs

All the laws, by-laws and documents mentioned so far provide for an obligation of the state and its representatives to refrain from hate speech. Use of hate speech by civil servants qualifies as grave professional misconduct. Civil servants need to observe, in their daily work, the codes which govern their obligations and duties.

As already explained, every position or statement does not have to be hate speech. In direct communication with a civil servant, a client may justifiably consider that he is a victim of hate speech, but also without the existence of elements of hate speech. Results of the Analysis clearly show that numerous civil servants do not know exactly what hate speech is. Moreover, numerous citizens use hate speech as a synonym for other occurrences such as insult and slander. In any case, when a client complains that hate speech has been used in communication, the civil servant should thereafter refrain from any comments and instruct the client of his rights and of the way in which he can exercise them (right to complain).

Where a client believes that he is a victim of hate speech during his communication with a civil servant, it is most likely that he will exercise his right to file a complaint for non-observance of the civil service code. Citizens may address the head of the body with a complaint against the conduct of a civil servant that they consider to be contrary to the provisions of the Code of Ethics.

If another civil servant witnesses hate speech used by his colleague in communication with a client, he should report him to their manager, citing evidence to support his allegations.

It is the duty of the head of the body to examine complaints and, if necessary, submit a request for disciplinary action in accordance with the Law on Civil Service and the Decree on the Rules of Disciplinary Procedure for Disciplinary Accountability of Civil Servants Applicable in Civil Service Bodies. In case of non-compliance with the principles and rules of the code of ethics, the head of the civil service body will take appropriate measures in accordance with the regulations relating to the application of the civil service principles, responsibilities and obligations.

4.7. What should a civil servant do if he considers himself a victim of hate speech??

According to the Analysis, more than a quarter of respondents (27%) state that they have experienced/witnessed hate speech in their institution. According to the responses to the question "Who was the target of hate speech", in 50% of cases it was another employee, 20% answered that they were personally the target, and in 18% of cases it was a client. The information obtained show that, at least in the opinion of the respondents, hate speech is most present among the civil servants themselves. *More details in the Analysis, Appendix 1, p. 105.*

If a civil servant considers that he is a victim of hate speech by a client or another civil servant, he should still adhere to the code of conduct. A civil servant should not start discussion that will lead to a greater conflict. Instead, he should warn the person(s) about inappropriate behaviour. If he deems it necessary, he should call another employee who will loosen up the current situation by denying the client/other civil servant the opportunity to communicate further using hate speech. In any case, it is advisable to write a short statement immediately and to submit it to the competent civil servant. If the hate speech used may have consequences for the safety of the civil servant, it should be reported to the police and the prosecutor's office. When doing so, it is important to have evidence (audio, video recording or other evidence) or the testimony of another person present.

In addition, civil servants may also use other mechanisms depending on the situation, which are described in Chapter no. 3.

The analysis has shown that almost all civil servants indicate an inadequate reaction of the authorities, which was described as passive, non-existent, inadequate, or silence. In three cases it is stated that there was a cover-up in order to prevent escalation, i.e., as stated in one response, because both the superior and the one who used hate speech were of the same nationality. *More details in the Analysis, Appendix 1, p. 109.*

CHAPTER 5. MEASURES TO PREVENT HATE SPEECH IN INSTITUTIONS IN BOSNIA AND HERZEGOVINA

Chapter 5 is dedicated to preventive measures provided by institutions with emphasis on training of civil servants, monitoring and evaluation of guidelines, organising public awareness campaigns, cooperation of institutions with media and civil society organizations, and other measures that can contribute to hate speech prevention.

In the area of hate speech prevention, institutions should ensure the following measures: **investigation** of possible risks, **analysis** of the identified risk causes based on the information obtained, and **development of an action plan** to prevent the spread of hate speech. The plan should include activities and tasks with time limits and potential partners involved in the implementation. Activities can be educational in nature, with clearly defined training content for civil servants or promotional in the form of awareness raising campaigns for both civil servants and the public. In order to monitor whether the preventive measures taken had an effect, it is necessary to **monitor the implementation** of activities and to **make regular reports on their implementation**.

5.1. Training of civil servants

Training and development of civil servants is an important aspect for improving their competencies and one of the activities that institutions should undertake in the framework of prevention of the spread of hate speech. The conclusions of the Analysis state that it is important to emphasize that there is an awareness that hate speech is very present in BiH and that it is a very negative occurrence that needs to be better regulated and which requires further training. Only 20% of respondents state that they participated in training sessions on this topic, and 82% believe that hate speech should be an integral part of the training of civil servants on human rights. It is also significant that hate speech is identified as an extremely negative phenomenon and freedom of speech as an important value of civilization and democratic standard. The responses obtained indicate that there is an awareness of the focus of hate speech on vulnerable groups (such as the LGBT population, the migrant population) and its connection with the political framework and climate that is constantly being created in the broader society.

(...) many of the respondents evaluate well the level of awareness in their institution, as shown by the distribution of responses to the question "How would you rate the level of awareness in your institution with reference to the issue of hate speech?" Only 4% of respondents think that it is very bad, 16% that it is weak, 32% that it is good, 18% that it is very good and 12% that it is excellent. "I can not tell" was the response chosen by 18% of the respondents. Even if it is obvious that there is a certain dose of loyalty to the institution for which they work and to their colleagues, these responses should also be viewed in the context of previously analysed questions that indicate that hate speech is insufficiently known. *More details in the Analysis, Appendix 1, p. 109.*

One of the measures for preventing hate speech in institutions in BiH would be the adoption of annual plans for the training of civil servants, including hate speech topics. Moreover, all civil servants should be covered by such training. Seeing that civil servants have stated that they were not always satisfied with the quality of prior training sessions, before designing the training sessions, and in order to determine the specific needs for certain categories of civil servants, it is necessary to analyse their competencies.

It is worth pointing out that it is not only important to know what hate speech is, but also the ways to monitor it, and to report on the occurrences of hate speech, both to domestic and international institutions.

Some institutions have the mandate to monitor regularly the human rights situation (including hate speech) and to emphasise in their reports the causes of the problem, provide an overview of the current legislation and practice, and create recommendations that will contribute to improving the existing situation. In order for their reports to be used to create future policies, institutions need to develop capacities in the areas of analysis and research, documentation of human rights violations, creation and maintenance of databases containing complaints related to human rights violations, as well as complaint handling databases.

For now, according to available reports of BiH institutions dealing with hate speech, it can be concluded that civil servants have modest knowledge in this area.

5.2. Monitoring and evaluating guidelines to prevent hate speech

Analysing the existing codes and aligning them is the next activity that can contribute to the prevention of hate speech. The existing codes of conduct for civil servants do not clearly define hate speech. One of the activities of institutions that would contribute to the prevention of hate speech is the introduction of the term hate speech and its definition in codes of conduct, in order to distinguish it better from any other unacceptable behaviour. This would enable a more precise definition of the internal acts of the institutions - their codes of conduct and rulebooks governing disciplinary accountability for violations committed. Clearly prescribed bylaws leave no dilemma as to whether hate speech was committed and allow for more effective sanctioning of perpetrators.

5.3. Campaigns to prevent the spread of hate speech

Campaigns to prevent the spread of hate speech are a great tool in the fight against hate speech. Based on the perceived hate speech related risks in institutions, institutions can organize campaigns to raise the awareness of civil servants and the public. The campaigns send a clear message to the public that hate speech is not acceptable and that the institution has envisaged other measures to prevent it. Moreover, if institutions lack capacity, they can support campaigns already organized by other institutions, media and civil society organizations.

5.4. Cooperation with the media and civil society organizations

The authorities should develop, together with NGOs and international organisations, a comprehensive strategy to combat hate speech as well as activities to promote tolerance towards LGBT persons. They should also evaluate the hate crime-related training activities in order to make any necessary changes when expanding them.

ECRI Report on Bosnia and Herzegovina 2016.

In the process of creating reports and policy proposals, in addition to relying on their own data sources, institutions should establish mechanisms for cooperation with civil society organizations (CSOs), the media, academia representatives, professional associations and other institutions and bodies in the country and abroad.

5.5. Other measures that can contribute to reducing the spread of hate speech

5.5.1. Role of judicial office holders and the police

The entity-level judicial and prosecutor training centres have already included the topic of hate speech in their annual training plans. The purpose of these activities is focused more on improving the protection of victims of hate speech in court proceedings. However, given the court proceedings and the number of convictions of persons who have used hate speech, both in criminal and civil cases, further efforts are needed. Moreover, prosecutor's offices have established mechanisms for cooperation with Civil Society Organizations and citizens in the form of a hotline assisting victims of crime. For the purpose of better cooperation between victims and prosecutors, the entity-level training centres have designed and posted educational material on their websites explaining the importance of cooperation of victims and witnesses in criminal proceedings.

The police have a preventive role in the community. It organises various events, thus increasing public awareness about the harmfulness and punishability of hate speech. Owing to CSO projects, there are a number of events involving representatives of CSOs, citizens and the police. Another role of the police is in the process of protecting victims of hate speech, gathering evidence and investigating. In this process, it is very important to establish protocols for the treatment of victims and witnesses. Bearing in mind that numerous hate speech crimes in BiH do not get prosecuted because the police applies the Law on Violation of Public Order and Peace, there is a lot of room for additional police training in the field of hate speech as a crime.

Based on the monitoring of hate speech cases and court proceedings and by providing legal advice to victims of hate speech, Civil Society Organizations work in an organized manner on data collection and classification. They use the data collected to develop analyses and reports, which are additional sources of information for the institutions. In the context of hate speech, it is important to mention the role and activities of Civil Society Organizations and institutions in BiH in preparation of the Universal Periodic Review (UPR)⁹³. That is a relatively new mechanism for monitoring the respect of human rights in United Nations Member States, mandated by the Human Rights Council by UN General Assembly Resolution 60/251 of 15 March 2006. In total there are six recommendations from the third cycle of the UPR for BiH regarding the hate speech, available on: http://www.mhrr.gov.ba/ljudska_prava/UPR/5%20BHS%20TABELARNI%20PRIKAZ%20UPR%20PREPORUKA%20PO%20OBLASTIMA.pdf

Some organisations work on drafting policy proposals that are important for the prevention and sanctioning of hate speech, organise campaigns to inform the public about the specific elements of hate speech and the consequences of its impunity, as well as joint educational workshops for representatives of institutions, media, CSOs and citizens.

Media outlets play a major role in BiH society. They inform, educate, mediate political debates and hold the actors of the political scene accountable for their actions. Due to their role in informing the public and in creating public opinion, the media have the power to participate in creating or even to create themselves, an atmosphere of intolerance or violence between certain groups, but also to promote tolerance as the basis of an organized society and a necessary precondition for individual development. In terms of hate speech and cooperation with institutions, the media are primarily a tool for raising public awareness of the harmfulness of hate speech. The media are also a source of a wealth of information for institutions that monitor hate speech. Institutions and the media have already participated together in creating preventive measures such as monitoring hate speech during elections. Cooperation in the field of joint training is another opportunity for joint action in the prevention of hate speech.

⁹³ The UPR mechanism allows each UN member state the opportunity to present the actions taken to improve the human rights situation and fulfil its international obligations, and is based on a national report prepared by the state, data from the UN Office of the UN High Commissioner for Human Rights, and information provided by other stakeholders - national human rights institutions such as the Ombudsman Institution, civil society organizations and regional organisations. More about the UPR mechanism at: <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

ANNEX 1: ANALYSIS: HATE SPEECH IN BOSNIA AND HERZEGOVINA

KNOWLEDGE, PERCEPTIONS AND EXPERIENCES OF CIVIL SERVANTS

Zlatiborka Popov-Momčinović, PhD¹

Introduction

Hate speech occurs in most societies but manifests itself in different ways and to different degrees, depending on the social and political context and experience, political culture, media and information literacy of the population, rule of law and efficiency of judicial bodies and police services.

As noted, hate speech is a multidisciplinary and complex phenomenon. Communicologist Aleksandar Bogdanic states that hate speech should be viewed from the standpoints of: linguistics - through messages and (mostly) unfounded claims attributing negative characteristics to a group or to a person belonging to that group; communicology - which reveals the intention of the sender, but opens a special issue: in some cases the intention is unambiguous and in some it is not, and the intended meaning is not the same as the interpreted one; psychology - since hate speech causes negative emotional consequences; political science - since hate speech is often used as a propaganda technique; sociology - bearing in mind that it is always situated in a certain social context and reflects the relations of power(lessness) in society (according to Popov-Momčinović, 2013:2).

This complexity increases if we keep in mind that there is no generally accepted definition of hate speech and that they also vary in international documents (Sali-Terzić, 2013:2). Nevertheless, at the international level, United Nations documents such as *the International Covenant on Civil and Political Rights*, and *the International Convention on the Elimination of All Forms of Discrimination* are important for its definition.

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At the regional level, decisions, conventions and protocols of the Council of Europe are key ones. By signing them, member states (including Bosnia and Herzegovina) commit themselves to prescribe hate speech as a criminal offence (Sali-Terzić, 2013:3). According to the Recommendation adopted by the Committee of Ministers of the Council of Europe No. R (97) 20, hate speech covers:

„[...] ‘[...] all forms of expression which disseminate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed in the form of aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin’ (according to Međedović, 2015:4). Additionally, ‘The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech [...]’.

It is very important to underline that the Council of Europe recommends that the issue of hate speech should not be used by those in power for suppressing freedom of speech. One of the principles is that Member State governments should ensure that ‘interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria’ and ‘must be subject to independent judicial control’. The question that arises is ‘whether the unhindered dissemination of hate speech is more harmful to democracy than additional restrictions on freedom of expression’ (Nikolić, 2015:25). It is this aspect in societies of unconsolidated democracy and weak rule of law such as BiH society that leaves room for misunderstanding the difference between hate speech and freedom of speech, that is, for abusing that misunderstanding.

For these reasons, a distinction is made between hate speech that is sanctioned by law and that which is not. As stated in the OSCE Handbook, member states differ on this issue: ‘speech that is criminally sanctioned in one state is protected by freedom of expression in another’ (OSCE, 2009: 63). In fact, some countries criminalise only speech that represents a real or immediate threat of violence, with the aim of protecting human rights and freedoms.

In addition to the relationship between hate speech and freedom of speech, there is also the question of a clear distinction between hatred and other phenomena, especially its relation to discrimination.

Namely, both discrimination and hate speech are jeopardizing the rights of individuals or groups, based on actual or perceived characteristics such as race, skin color, religion, nationality, ethnicity, social origin, association with a national minority, political belief, level of education, property status, sex, sexual orientation, gender identity or any status and basis for which there is a difference in treatment or exclusion, restriction or preference in all areas of life. The one who is experiencing it, describes it as belittling, disparagement, humiliation, rejection, violence, etc. Some individuals can be subject to multiple discrimination on various grounds. On the other hand, hate speech represents public speech that expresses hate or encourages violence towards a person or a group based on the above mentioned characteristics. Individuals can (like in case of discrimination) be the target of hate speech on several grounds. Discrimination and hate speech have similar causes, and those are most often stereotypes and prejudices as simplified, non-critical attitudes that attribute certain characteristics to a particular social group. With regard to that, hate speech is a broader language system too, which consists of complete value systems that an individual or group may have towards another group and which is based in deep-rooted prejudices and stereotypes (Nikolić, 2018: 30). One of the important differences between hate speech and discrimination is that hate speech is a wholly negative social phenomenon, whereas when it comes to discrimination, there is also positive discrimination. Positive discrimination represents legally regulated preference for a vulnerable group that cannot achieve equality without special treatment, noting that this preference must not have long-term consequences for the position of other groups in society (Terzić i Dračo 2011: 17).

There is also the issue of a clear distinction between hate speech and other forms of negative use of speech (such as insult, slander, and the like). Certain forms of insult can be classified as hate speech (such as insults on ground of nationality, religion, sex/gender and sexual orientation and other prohibited characteristics) because they are motivated by stereotypes and prejudices against a person based on his or her presumed or actual group affiliation, and they aim to hurt someone because of irrational hatred towards a certain group (Nikolić, 2018:37). Council of Europe documents and recommendations also point out that ‘insult or defamation through the media should not be sanctioned by imprisonment, unless where it is absolutely necessary and proportionate to the violation of another person’s rights or reputation, and especially if other fundamental rights are violated through defamation or offensive statements in the media, which is the case with hate speech.’ (Raosavljevic, 2015:5). As already pointed out, hate speech is a broader language system and it consists, in addition to words and sentences that are in themselves offensive or directly call for hatred and violence, of complete value systems that an individual or group may have towards another group and which is based on deep-seated prejudices and stereotypes (Nikolić, 2018:30).

The emergence of social media has shifted the boundaries between public and private, while web portals that operate on different principles than the so-called traditional media create new challenges. As for the very phenomenon of hate speech, it is receiving increasing attention with the emergence and development of new information technologies. In fact, more attention started to be paid to hate speech in the eighties of the last century, and in the nineties and especially in the new millennium, it became an indispensable part in the analysis and study of communication, democracy and respect for human rights.

Another reason for such a development was that the so-called “anonymity” of the Internet that made it easier for the hater to express him/herself in ways that decency would discourage in a world of face-to-face interactions (Waltman and Mattheis, 2017). Some previous research by the Council of Europe indicate that as many as 78% of Internet users have encountered some forms of hate speech (Nikolic, 2018:2). The availability and speed of the Internet has also enabled greater connectivity between hate advocating individuals and groups and opened up vast spaces for their recruitment, mobilization and radicalization as well as for the socialization of new members (Waltman and Mattheis, 2017).

Hate speech in Bosnia and Herzegovina

Bosnia and Herzegovina is often defined as a divided society and an unstable state, then as a post-conflict and transitional society of unconsolidated democracy. Additionally, the behaviour and actions of political elites and their everyday rhetoric further deepens these divisions, which creates a general climate for various forms of use and abuse of hate speech.

There are several laws in Bosnia and Herzegovina that directly or indirectly criminalize hate speech. It is first the criminal law at the state, entity and Brcko District level: Criminal Code of Bosnia and Herzegovina (Article 145, para 1),² Criminal Code of the Federation of Bosnia and Herzegovina (Articles 163 and 363),³ Criminal Code of Republika Srpska (Article 359),⁴ and the Criminal Code of the Brcko District (Articles 160 and 357).⁵ Laws related to this subject matter are the Law on Prohibition of Discrimination, the Law on Gender Equality, the Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH and the Election Law. Additionally, Bosnia and Herzegovina has ratified all major international acts that directly and indirectly relate to freedom of expression and the prohibition of hate speech, and the European Convention on Human Rights and its protocols are an integral part of the Constitution of Bosnia and Herzegovina, directly applicable in Bosnia and Herzegovina and with priority over all other laws (Jelec, 2015:3). Given that hate speech manifests itself in the public domain and the role of the media, which is not only informative but also educational, codes of professional media reporting are important in this context. They are laid down by the Communications Regulatory Agency, which is in charge of electronic media and has the possibility to impose sanctions and the Press Council, which is responsible for the print media and portals and which operates on the principle of self-regulation.

2. Criminal Code of BiH, Official Gazette of Bosnia and Herzegovina nos. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, 47/14, 22/15, available at: http://www.sudbih.gov.ba/files/docs/zakoni/ba/krivicni_zakon_3_03_-_bos.pdf

3. Criminal Code of the FBiH, Official Gazette of the Federation of Bosnia and Herzegovina nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, available at: http://www.oss.ba/dokumenti/Krivicni_zakon_FBiH.pdf

4. Criminal Code of RS, Official Gazette of RS, nos 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13, available at: http://www.tuzilastvobih.gov.ba/files/docs/zakoni/Krivicni_zakon_lat_RS_49_03.pdf

5. Criminal Code of the Brcko District of BiH, Official Gazette of the Brcko District of BiH nos. 6/05, 21/10, 9/13, 26/16, 13/17 and 50/18, 19/20, available at: <https://skupstinabd.ba/3-zakon/ba/Krivic-ni%20zakon%20Brc--ko%20Distrikta%20BiH/05B19-20%20Krivic-ni%20zakon%20-pre-cisceni%20tekst.pdf>

It is important to mention the Universal Periodic Review (UPR) too, which is a relatively new mechanism for monitoring the respect of human rights in the United Nations member states, giving each one of them the opportunity to present the actions undertaken to improve the human rights situation and fulfill its international commitments. It is based on the national report prepared by the state, UN data available to the Office of the UN High Commissioner for Human Rights and on the information submitted by national human rights institutions, such as the Ombudsman Institution, civil society organizations and regional organizations. There are in total six recommendations from the third cycle of UPR for BiH regarding hate speech.⁶

Although regulations have been adopted and institutions responsible for combating hate speech have been established, other international mechanisms are also available (such as the UPR), practice shows that the implementation of measures is not effective (Raosavljevic, 2015:2). Legislation is continuously improving but not enough has been done to promote the existing legislation and the need for harmonization of laws is also recognized (Blazevic, 2019:7, 8). Additionally, the institutions established do not have sufficient capacity in terms of human resources and their budgets are continuously decreasing (Raosavljevic, 2015:10). Statistics indicate a very small number of reports and court proceedings, and the main reported problem is that hate speech is most present on the Internet, which is largely unregulated (Raosavljevic, 2015:2). One of the problems is the unsystematic management of data, especially with reference to the police and the judiciary (Blazevic, 2019: 9).

Civil society organizations dealing with human rights, as well as by media or journalists' associations work on the prevention and suppression of hate speech. It is often emphasised that the main burden with reference to sensitization and training of the authorities, but also of citizens, is taken over by civil society organizations as well as by international organizations active in BiH (Blazevic, 2019:7). These organizations also participate in the development of the report and contribute to a more systematic and analytical approach in the analysis of hate speech. Much attention is being paid to media and information literacy (e.g. within the UN project *Dialogue for the Future*, and within the activities carried out by the CRA), while the campaign of the Press Council *Stop Hate Speech - Citizens and the Media Fighting for the Truth Together* is certainly important.

6. Recommendations are available at: http://www.mhrr.gov.ba/ljudska_prava/UPR/5%20BHS%20TABELARNI%20PRIKAZ%20UPR%20PREPORUKA%20PO%20OBLASTIMA.pdf

The public is becoming more and more aware of the activities of analytical portals such as *Analiziraj.ba* which, from a communication aspect, analyzes media and other contents and also promotes the concept of media and information literacy. The emphasis is also on the of fake news (e.g. *Raskrinkavanje.ba*), which is of no small importance given the connection of fake news with hate speech. Numerous surveys focus on media content and there are discussions related to legislation, especially with reference to web portals, social media and platforms, given that this segment is actually the least regulated in Bosnia and Herzegovina. Significant conferences and round tables on these topics have been organized for many years by the Association of BH Journalists. These were attended by both media and non-media actors. There are also surveys and monitoring related to the use of hate speech and inappropriate speech in general by politicians, especially in the periods of the election campaign when there is an increase in inappropriate political communication, including the presence of hate speech.

What is certainly lacking is hate speech research in the context of institutions that are of public importance and in which political decisions are actually implemented. This aspect is of great importance given that civil servants represent a significant communication link between the authorities, that is, public policies and citizens. The ethics of public service and the professionalism it implies certainly dictates that civil servants know and need to recognise hate speech, and that they do not use it, both in mutual nor in their communication with citizens. In this regard, special attention should be paid to the Recommendation of the Council of Europe to member states, whose Principle no. 1 states:

“The governments of the member states, public authorities and public institutions at the national, regional and local levels, **as well as officials,**⁷ have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, disseminating or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.”

⁷ Underlined by Z.P.M

This survey is therefore a sort of an effort to pay adequate attention to this important segment. We are grateful to the Ombudsman Institution of Bosnia and Herzegovina, especially the Ombudsman Jasminka Džumhur, PhD for cooperation and support in carrying out and developing this Analysis, and to the expert adviser at Ombudsman's office Ivona Raznatovic, MA for the distribution of the questionnaire to the institutions.

Research methodology

The research is part of a project implemented by the Council of Europe and funded by the European Union and the Council of Europe under the name *Promotion of Diversity and Equality in Bosnia and Herzegovina*. It was implemented based on an initiative by the Ombudsman Institution of BiH, who have already noticed in their work that special attention should be paid to civil servants as the target group. It was designed in accordance with the norms of these institutions regarding hate speech, which is a standards of civilisation and democracy to which Bosnia and Herzegovina has committed itself by ratifying international acts relating to freedom of expression and prohibition of hate speech, in its laws and mechanisms it has set up for their implementation.

The goals of the research are scientific in nature - to obtain relevant data on the occurrence of hate speech with reference to civil servants, which is related to the Principle no. 1, and therefore they are also advocacy goals - to improve the awareness of civil servants about the importance of hate speech and their own role or responsibility and to contribute to the formulation of necessary recommendations.

The research used quantitative and qualitative methodology with the aim of acquiring systematic, reliable knowledge as well as deeper understanding that allow, in addition to precise and statistical data,

to gain a more nuanced view of the knowledge, experience and perceptions of respondents. A survey questionnaire (*Google form*) in both Latin and Cyrillic alphabets was used as a research technique. It contained 24 questions, of which 6 questions were open-ended. Closed-ended questions were analysed with the help of descriptive statistics, and open-ended questions in a qualitative way. The survey questionnaire was distributed with the help of the Ombudsman Institution to the email addresses of the following institutions: ministries, directorates, agencies, and institutes at the state, entity and cantonal levels, as well as to local government units. The completion took a total of 15 days and after that the data were transferred to spreadsheets and the survey questionnaires in Latin and Cyrillic were merged for joint processing using Excel.

The sample included 310 persons working as civil servants at different levels of government in Bosnia and Herzegovina: state, entity, cantonal and local, including the Brcko District. In the methodology formulating stage, an attempt was first made to form a representative random sample, then a quota sample that would include an equal number of respondents from different administrative levels. The research process itself using a *Google* questionnaire, as well as the mode of its distribution did not enable such an approach, which was also influenced by the unavailability of a precise database with employee contact details.

Like any research, this one has certain limitations. They primarily arise from the methodological approach itself, which to some extent does not allow gaining some understanding of the dynamics of a complex occurrence such as hate speech, especially in the context of the internal functioning of institutions in which civil servants work. However, the impossibility to organize focus groups and apply other techniques, especially considering the COVID-19 pandemic, as well as the goal of gaining general understanding, directed us to apply the aforementioned methodological approach.

The sample, as partially pointed out, shows a certain imbalance in terms of the representation of responses received from different administrative levels. Most responses were received from the state, then the entity, cantonal and finally from the local level. Nevertheless, given the large number of responses obtained (310) as well as the fact that, based on the examination of the results, the respondents answered the questions quite honestly; it is possible to analyse the results obtained with a high degree of certainty. The sample included civil servants who work with clients (52% of them), then those who do not (41%) while the remaining number are those who have stated that it is so sometimes or when needed. Numerous respondents have many years of experience in the civil service: almost 20% have been working as a civil servant for 1-5 years, 44% for 6-15 years, and 32% for more than 15 years, which also speaks in favour of the relevance of the data obtained

Analysis of results

The research survey is based on three groups of questions concerning knowledge, experience and perceptions. Knowledge, experience and perceptions are interconnected and even mutually conditioned, and there is a distinction between broader or general knowledge, experiences and perceptions that relate to the context of BiH society and narrower ones, i.e., more specific ones that relate to the job and the specific nature of the civil service. We will analyze the results based on the responses to the above groups of questions.

What is hate speech

An open-ended question was asked in the survey: *In your opinion, what is hate speech?* Half of the responses obtained, offered a definition that we can consider acceptable or which states at least some of the elements of hate speech. On the other hand, 22 respondents stated that they did not know or could not answer the question, which is 7% of the sample. A small part of the respondents equated hate speech primarily with nationalism, then with racism, chauvinism and sexism, as well as with discrimination and intolerance, without offering further explanation. In a number of cases, the definition listed examples or domains in which it is manifested. It is also noticeable that hate speech is very often identified with insults and belittling, for example: 'open expression of insults and derogatory words', 'everything that offends anyone is hate speech', 'use of vulgar words, insults, swearing, and the like', 'insults on a national basis', 'insulting everything that is not close to you and is not of the same opinion as you'.

Hate speech was defined as a form of insincere, ill-intentioned and untrue speech that was recognized even as gossiping about someone, e.g. 'communication in which someone is belittled or untruth is told', 'gossiping'. In some cases, causes were mentioned as a definition, e.g.: 'personal restlessness', 'Hate speech is the personal unfulfillment of an individual or a group', 'improper parenting, primitivism, frustration'. There are also too broad definitions such as: 'verbal definition of hatred', 'articulation of negative emotions', 'lack of culture and intolerance', 'lack of empathy and acceptance of diversity', 'call for violence', 'crime'. In several cases, hate speech was defined based on the channels through which it is manifested and spread, e.g. 'Using social media for hate speech.'

In 90 responses (29% of the sample) offered definitions that were more comprehensive and acceptable, e.g.:

"Oral or written discourse that comes down to publicly inciting or provoking hatred towards a certain group (or individual) due to any of the person's characteristics, in order to create intolerance, discord, discrimination and violence and/or stir up pre-existing hatred by developing, strengthening and deepening it through public hate speech";

"Hate speech is speech that aims to attack, denigrate, devalue, dehumanize, demonize, disenfranchise, intimidate or pit against a person or group of people, and those are most often members of minority groups living in a society or other groups that have been discriminated against or marginalized because of their position".

As in some other surveys of citizen positions, which have shown that they are more likely to have a hunch and a sense of hate speech, without being sufficiently familiar with it (Medjedovic, 2015: 3,4) we can say that it is so with reference to civil servants as well. Hate speech is associated with insults and name calling, most often on national and religious, as well as other grounds, involving negative emotions, discrimination, intolerance and violence. Based on the responses we received in this survey, we can say that there is a lack of more precise knowledge connecting these segments more adequately in a way that allows us to talk about hate speech.

Another open-ended question that was asked was to name some **examples of hate speech**. Even more varied responses were received to this question: 'There are too many of them,' 'If I were to give examples, I do not think I would have enough time or space'. I could not give a concrete example because there are different forms of hate speech - ranging from those that are quite clear even without the context in which such speech takes place, to those that can be discerned only in the context in which such speech takes place.

Therefore, I believe that giving examples would be essentially a simplification of a certain hate speech and that a particular example could make this very negative phenomenon either too obvious, or on the other hand contentious, in terms of whether that example constitutes hate speech at all.“

Here, too, a number of respondents either indicate insults and belittling as an example of hate speech: “Look what s/he looks like”, “S/he should better tend cattle“.

Examples of the use of inappropriate offensive terminology were also given, e.g. 'calling someone a Chetnikⁱ, an Ustashaⁱⁱ, a Baliyaⁱⁱⁱ, a fagot, a nigger ...' while more specifically, examples of the use of these terms including incitement to discrimination and violence were given, e.g. 'Why don't they ban Roma from entering the tram? Everyone taking part in the LGBT parade should be beaten.' Hate speech was equivocated with some forms of discrimination, such as human rights violations of a certain group, or mobbing. A number of respondents referred in the context of hate speech by politicians: 'It is enough to hear politicians from all three sides', 'The majority of hate speech comes from 'our' politicians, certain groups and individuals on the Internet and social media and in comments on web portals'. Examples of online hate speech were often mentioned, especially on portals, social media, and anonymous profiles and comments e.g. 'most of the comments on the klix.ba portal'. Responses were given indicating that it is speech that prevents freedom of opinion, religious, national or other form of expression: 'Anyone who does not declare himself as e.g. a Bosniak is a traitor to his people' 'insulting another person because s/he goes to a place of worship.'

Insults and calls for intolerance and violence on racial, ethnic and religious grounds, gender and sexual orientation were most often mentioned as examples, and some of the respondents gave examples that are more concrete in this case, pointing to the context of BiH society. Here is one example of such a response, which also pointed out to the consequences of hate speech on the person it is aimed at, is the following:

"Writing frightening graffiti with threatening messages on national and religious grounds, or chanting 'Kill the Serb', 'Hang Serbs', 'Kill Baliya', 'Kill Ustasha', 'We'll f** your mothers and daughters,' 'We'll kill your children', at certain sports events, political gatherings of extreme groups, or supposed concerts. After that, no one can feel safe."

The glorification of war crimes and criminals, that is, denial of war crimes, use of hate speech on the occasion of the anniversaries of such ordeals, was also mentioned as an example: 'Denial of Srebrenica Genocide' 'Knife, Barbed Wire, Srebrenica^{iv} ...'. There were also mentioned, examples of hate speech targeting migrants, Roma, the LGBTI population and other marginalized groups were given, for example: 'Current statements as well as the actions of some countries and politicians, related to the issue of migrants in BiH, and especially in countries such as Hungary, Austria, Greece ...'; 'homosexuals are sick people who need to be treated';

'Public call for the lynching of a certain group of people (transgender people)'; 'Graffiti in the city on the topic of the pride parade, discrimination against women in politics, comments on social media and BiH portals, belittling Roma and migrants, insulting sports opponents, ridiculing members of sensitive social groups ... there are really many examples of hate speech all around us, in the media, on public surfaces, among children attending schools, etc."

Difference between hate speech and freedom of speech

The clear line between freedom of speech and hate speech is not easy to draw, although these two concepts are fundamentally different. The recommendations of the Council of Europe also indicate this in terms of protecting freedom of speech from excessive arbitrariness by the state/government, since the sanctioning of hate speech must not be used in a way that endangers freedom of speech.

As it is important to distinguishing these two phenomena, we asked the following open-ended question in the survey questionnaire *Can you define the difference between hate speech and freedom of speech?* A total of 29 respondents stated that they did not know or could not define this difference. Some of them (28 in total) stated that they knew it but did not offer an explanation. Therefore, in 18% of cases, no concrete responses to the question were obtained. Some respondents pointed out, in a general sense, to the essential difference between freedom of speech and hate speech, e.g. 'The right to freedom of speech ends where hate speech begins,' 'Hate speech is an abuse of freedom of speech,' then 'Freedom of speech is always constructive and hate speech is destructive'. A number of responses point to a thin line between these two phenomena: 'There is a thin line between those two concepts. Many, under the pretext of freedom of speech, spread hate speech', 'Obviously, they do not

exclude each other. Freedom of speech, which does not exclude hate speech, has led to general ignorance, arrogance, stupidity ...', 'In

Bosnia and Herzegovina, it is one and the same."

The importance of having a clearer definition of the difference between hate speech and freedom of speech, of providing training and of the danger of possible abuse of that difference that may lead to restrictions on freedom of speech was recognized in several cases, precisely because of issues faced when identifying the boundary line between hate speech and freedom of speech.

"[...] All sorts of things are nowadays understood to mean 'freedom of speech,' but they are not. The meaning of freedom of speech must be defined first, because it is often called and declared as hate speech. Therefore, people are afraid and they are hesitant to say anything, because that can usually be subsumed under hate speech [...]"

"Unfortunately, many are not familiar with this difference, so the boundaries are increasingly not being identified between the two, both in the public and private domains. I think that these matters and our rights, freedoms and other human privileges should be developed from an early age, starting at the level of basic education to lifelong learning. Society's awareness of these important matters will then be different."

"It is difficult to define this difference, because a statement is understood as criticism and an insult to someone, while at the same time the other person has the right to express his/her opinion.

I think that some boundaries should be introduced, that is, that statements on the Internet and social media should be regulated by law, especially that everyone must use their name and surname, and not hide behind anonymity or false profiles. However, one should be very careful when prescribing these restrictions, because politicians (whether from the position or opposition) can use this to ban criticism of their work or lack thereof."

The majority of responses provide broader formulations describing the differences that respondents consider significant and that are in line with the existing norms and standards, e.g.:

“Hate speech calls for national, racial or religious hatred that incites hostility or violence and freedom of speech is a democratic right to express one’s opinion without restrictions but in a spirit of tolerance and respect for a different opinion“;

“Freedom of speech is the right of every individual and it is contrary to hate speech. The term ‘hate speech’ refers to speech that incites to violence and hatred towards an individual or certain social groups because of their characteristics such as race, ethnic origin, sexual orientation, religion, etc., which as such is not compatible with freedom of speech precisely because it violates other people’s rights and it is completely incompatible with equality and non-discrimination as principles of a democratic society.“

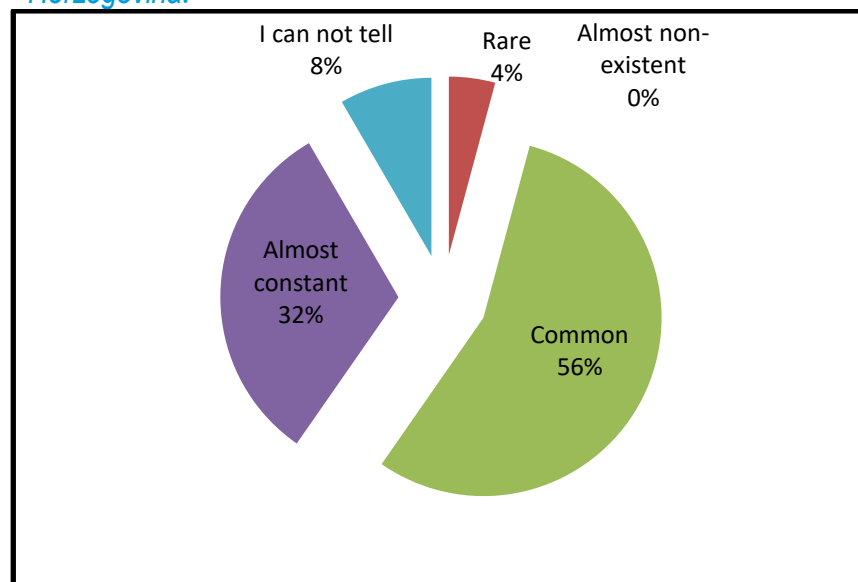
It is noticeable that the terms insult and name-calling are mentioned in numerous responses, which is also the case as regards the previously analysed question *What is hate speech in your opinion?* Insult is considered to be a key determinant for defining the difference between freedom of speech and hate speech and it is mentioned in a total of 97 responses (about 31%). A number of responses mention name calling as such without describing what forms of insults those are, so that they can be classified as hate speech, e.g. ‘We directly offend someone with hate speech’, ‘Freedom of speech means expressing the truth, our opinion, arguments, and hate speech means a conscious wish to offend others’, ‘Freedom of speech should imply that other people are not insulted when opinions are expressed’, ‘The difference is that with freedom of speech we express our own point of view and there is no nuance of insult, while hate speech aims exactly at insulting and humiliating the other side’. A number of responses emphasise that these are insults based on nationality, religion, sex/gender and other characteristics as a key determinant by which hate speech differs from free speech, and some respondents have stated that these are insults that encourage and disseminate hatred and violence based on some of the above characteristics.

We can conclude that most of the responses underline the essential difference between freedom of speech and hate speech, and that there are certain variabilities arising from different definitions of hate speech, primarily due to its equating with insults and rudeness, as well as with untrue and unsubstantiated discourse, and the like, e.g. ‘Freedom of speech means well-intentioned criticism,

presentation of facts, and hate speech is malicious criticism, without facts or presentation of untrue allegations.“

It needs to be underlined that respondents judge freedom of speech positively and emphasise that it is an important standard of civilisation and normative standard, while they perceive hate speech negatively. There is also an awareness among civil servants about the great presence of hate speech in Bosnia and Herzegovina (Figure no.1) which is confirmed by numerous analyses indicating that hate speech occupies a special place in the everyday life of BiH citizens (Raosavljevic, 2015:2).

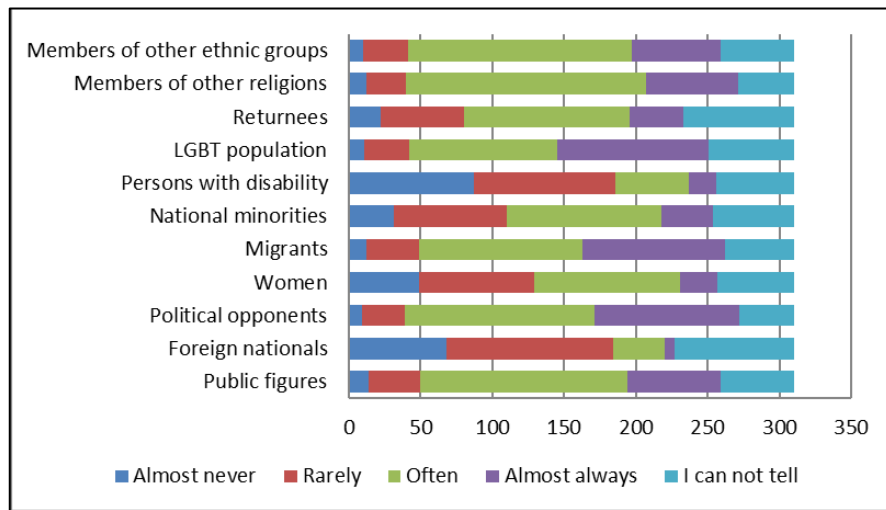
Figure no.1: Distribution of responses to the question *In your opinion, what is the degree of hate speech presence in Bosnia and Herzegovina?*



The responses indicate that they are sensitised to different forms of hate speech or groups to which it is directed (Figure no. 2). According to civil servants, hate speech is most present towards political opponents, people of different religious affiliation and people from different ethnic groups. It is the least present towards foreign citizens, which results from the fact that this is a rather heterogeneous category, and to people with disabilities. As for people with disabilities, these results certainly stem from the fact that BiH society is sensitised when it comes to this marginal group, but there is also pathos and a kind of ignoring of their position, which is often warned about.

It is significant that the LGBT population received most of responses 'almost always' (106 in total), which is in line with actual trends and the results indicate that there is sensitization towards this marginal group. Respondents also believe that the migrant population is highly exposed to hate speech, which also speaks in favour of the sensitization of civil servants towards vulnerable groups.

Figure no. 2: Distribution of responses to the question *To what extent are the following groups exposed to hate speech in Bosnia and Herzegovina?*



There is a certain rift in the positions, especially with reference to the boundaries of freedom of speech, having in mind the distribution of the degree of agreement with the claim *Hate speech is given too much importance* (Figure no. 3) as well as a considerable amount of support for the claim *Every person, including civil servants, can and should say what they think without restriction*, seeing that 45% of respondents agree with this claim strongly or partly (Figure no. 4.). On the other hand, there is an awareness of the need for adequate sanctioning of hate speech (Figure no. 5) and of the dangers present on the Internet and social media, but it is recognized that the Internet and social media represent a space whose adequate use ensures freedom of speech (Figure no. 6 and Figure no. 7). Additionally, the importance of training was recognized, which is confirmed by the extremely high degree of agreement (a total of 82% of respondents) with the claim *The issue of hate speech should be an integral part of civil servants' training on human rights* (Figure no. 8).

Nevertheless, it is necessary to improve the knowledge and awareness of civil servants to know and recognize the differences between freedom of speech and hate speech, bearing in mind variability of responses and the impossibility to formulate this difference by a number of respondents, of which they are aware themselves. This is confirmed by the responses to the question under number 11 in which the respondents stated to what extent they agree or disagree (through Likert scale) with the claims offered.

Figure no. 3: Distribution of the degree of agreement with the claim
Hate speech is given too much importance

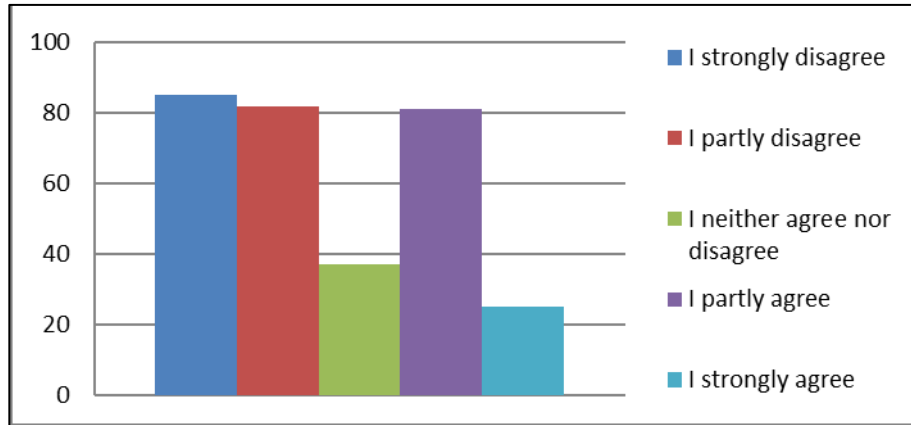


Figure no. 4: Distribution of the degree of agreement with the claim
Every person, including civil servants, can and should say what they think, without restrictions

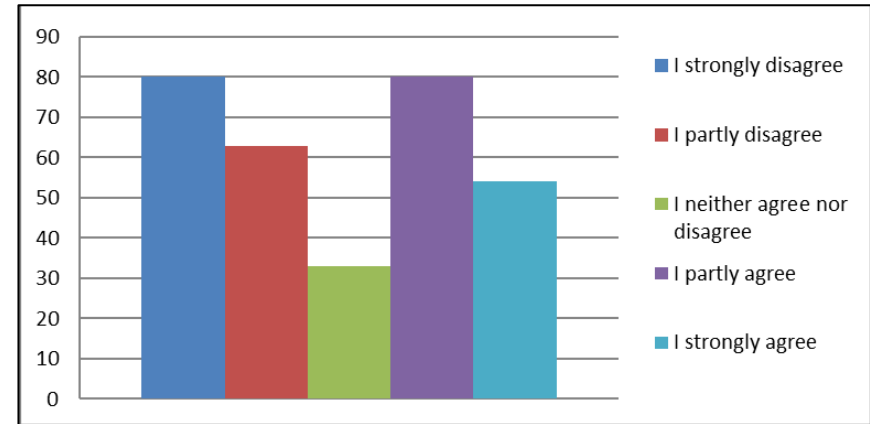


Figure no. 5: Distribution of the degree of agreement with the claim
Hate speech should be sanctioned as severely as possible

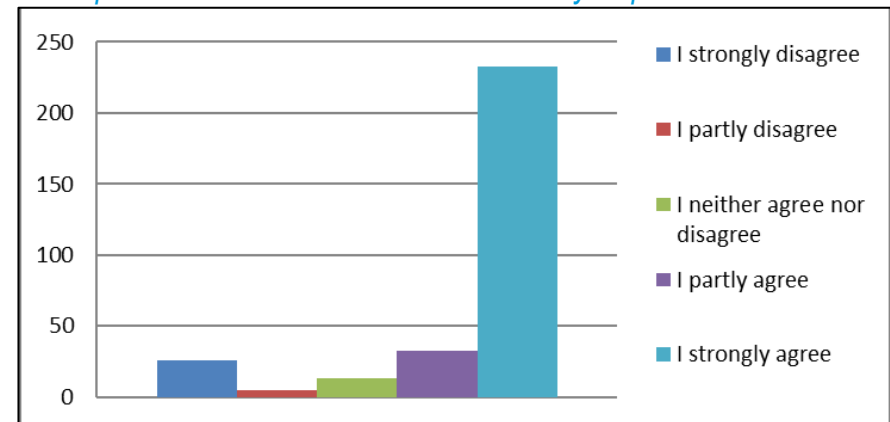


Figure no. 6: Distribution of the degree of agreement with the claim *It is better for people who work in public institutions not to use social media*

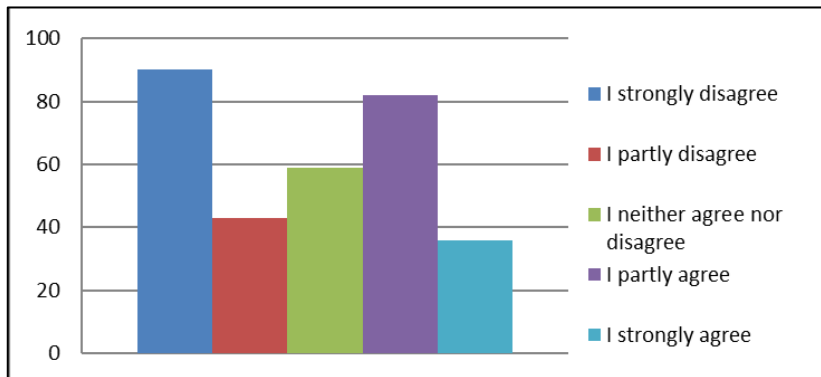


Figure no. 7: Degree of agreement with the claim *Before I post something on social media, I think twice about the consequences of my post*

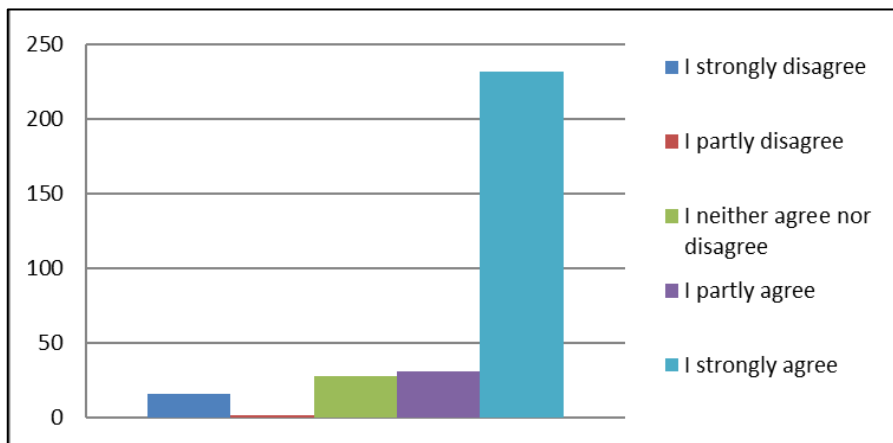
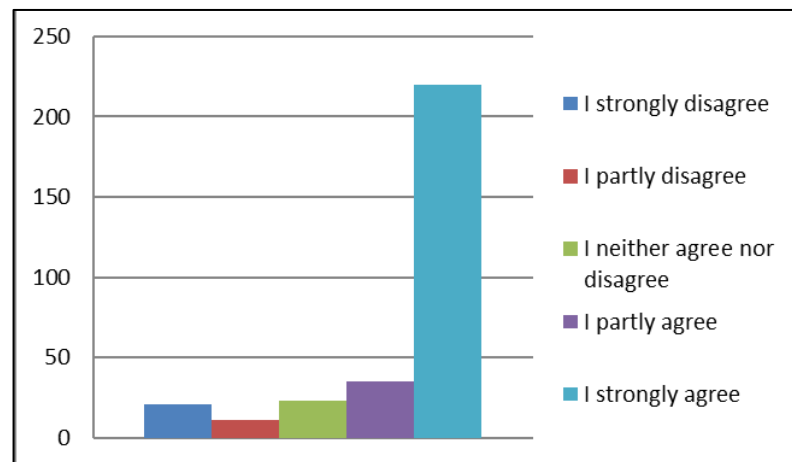


Figure no. 8: Distribution of the degree of agreement with the claim *The issue of hate speech should be an integral part of civil servant training on human rights*



About legislation and other regulatory rules

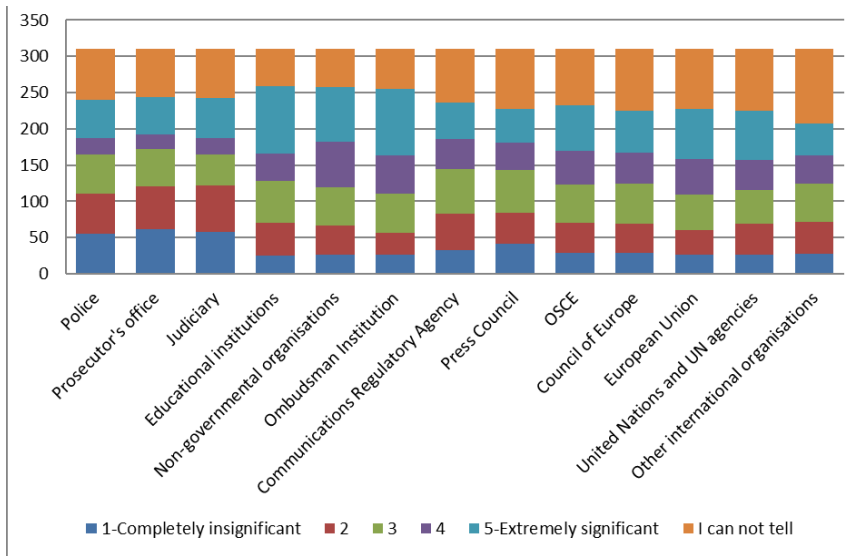
The survey questionnaire also included an open-ended question *Do you know which laws regulate hate speech in BiH?* As many as 170 respondents stated that they did not know, which is more than half of the sample (55%). A few of the respondents, more precisely 19 of them (6.2%), answered that they knew, but they did not state which laws. Those who mentioned specific laws mentioned the Criminal Code most often, and a number mentioned criminal code at various levels of government (state, entity, and Brcko District levels). In a few cases, the responses were formulated in the form of questions: 'Maybe the Criminal Procedure Code?' or they were stated in a way that indicates uncertainty: 'I guess it's the Criminal Code'. Criminal Code or codes are mentioned in 79 responses, which is 25% of the sample. Other laws such as the Law on Prohibition of Discrimination, the Law on Gender Equality, the Election Law, the Law on the Freedom of Religion and Legal Status of Churches and Religious Communities are mentioned in 33 responses, which is about 11% of the sample. In 22 responses, only some of the mentioned laws are listed, while in 21 responses they are listed together with the Criminal Code. A few of the respondents (a total of 9) also pointed out some of the international acts or conventions, while at the same time either not mentioning the laws that exist in BiH.

In 4 cases, laws and codes concerning the media domain and journalistic reporting were mentioned. Three responses include broader explanations that describe the legislation related to hate speech, for example:

“In Bosnia and Herzegovina, there is no special legislation that fully regulates hate speech. Given the division of competences, criminal legislation criminalises incitement to national, racial and religious hatred. Additionally, hate speech is prohibited by the Law on Prohibition of Discrimination, the Law on Gender Equality, the Law on the Freedom of Religion and Legal Status of Churches and Religious Communities in BiH, as well as the Election Law of Bosnia and Herzegovina”

Apart from knowing the legislation, implementation of laws is also important. In this regard, we asked the respondents to assess the effectiveness of various institutions and organizations (Figure no. 9). We had in mind the complexity of hate speech and the fact that various state and regional/international mechanisms have a significant role in its prevention or suppression/sanctioning.

Figure no. 9: Distribution of responses to the question *Evaluate the contribution of the following institutions to the prevention and suppression/sanctioning of hate speech in Bosnia and Herzegovina on a scale from 1-completely insignificant to 5-extremely significant.*



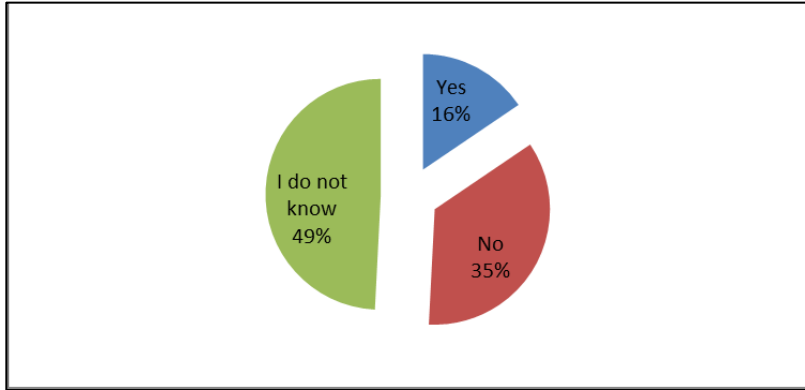
Analysis of the scores obtained shows a certain variability with reference to the distribution of the worst and best scores, but the average (arithmetic mean) is around the score 3. In addition, the question was asked in a way that included both prevention and suppression/sanctioning, given their interrelationship. With reference to domestic institutions, the worst rated are the prosecutor's office (average score 2.8) and the police and judiciary (average score 2.9). The contribution of the Ombudsman Institution was rated much better (average score 3.6), followed by educational institutions (3.5) and non-

governmental organizations (3.4). The contribution of the Ombudsman Institution, educational institutions and non-governmental organizations is recognized/known more than that of other domestic institutions, as demonstrated by the fewer responses 'I cannot tell' which concern them. The average score of the Communications Regulatory Agency (CRA) is 3.1 and that of the Press Council is 3. It is noticeable that many respondents cannot determine the contribution of the CRA and the Press Council compared to other domestic institutions, which is telling given the presence of hate speech in the media mentioned by the respondents themselves in their responses to previous questions. With reference to international/regional organizations, they are rated more positively as compared to the domestic judiciary, prosecutor's office and police.

The contribution of the European Union was rated the most positive (3.3), followed by the United Nations and UN agencies (3.2), while the contribution of the OSCE and the Council of Europe was rated 3.1. In assessing their contribution, a significant number of 'I cannot tell' responses were also obtained, indicating insufficient knowledge of international/regional mechanisms and their role in BiH. One can say that ignorance or indecision is greatest precisely with reference to these institutions that are not as known as the domestic ones. Ignorance is also not negligible with reference to other institutions and mechanisms and it ranges from 1/5 to 1/4 of the respondents. This indicates the need for more activities of promotion, training and preventive action, as well as networking (Raosavljevic, 2015:13).

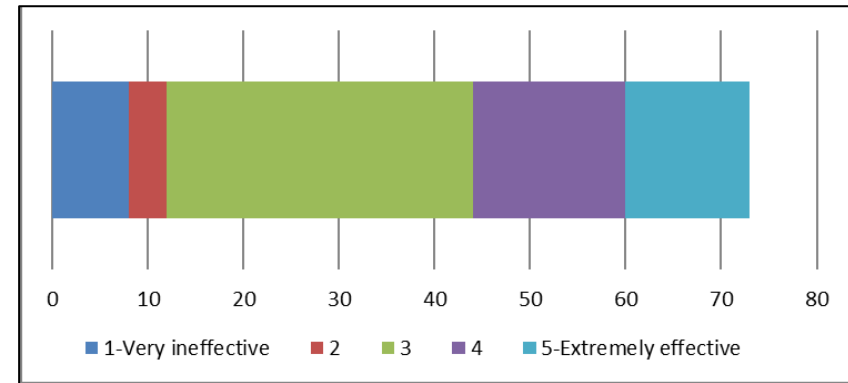
There was a question regarding the legislation and normative acts *Are there any bylaws or rulebooks against the use of hate speech in your institution?* The distribution of responses is shown in Figure no. 10. A total of 16% of respondents answered in the affirmative, 35% answered that they do not exist, and as many as 49% stated that they did not know.

Figure no. 10: Distribution of responses to the question *Are there any bylaws or rulebooks against the use of hate speech in your institution?*



Respondents who have stated that there are laws and bylaws were given a chance to evaluate their effectiveness in the following question. On average, their effectiveness is regarded as good and most of them opted for the average score. Additionally, one part of the respondents (29 in total) gave higher grades, and a slightly smaller number (12 in total) gave lower grades. The average score (arithmetic mean) for the entire sample is 3.6.

Figure no. 11: Distribution of responses to the question *If yes, how effective are they in preventing and sanctioning hate speech? (Opt for a response on a scale from 1 - very ineffective to 5 - extremely effective)*

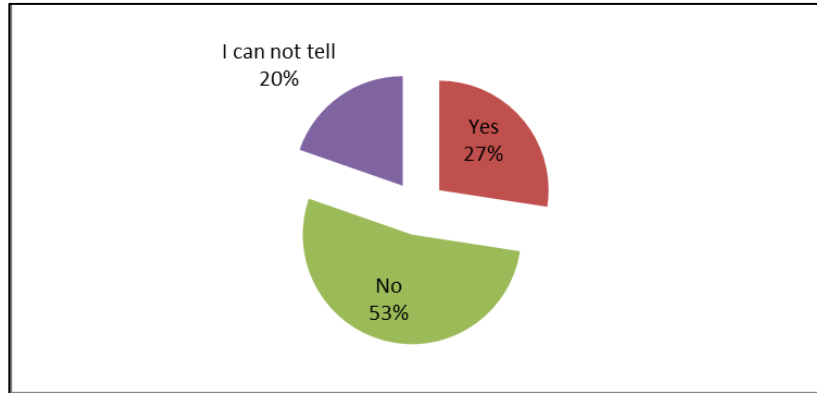


Based on the responses obtained, relatively speaking, we can conclude that there is less than half knowledge, or half knowledge of normative acts in force in one's institution. This also implies the need to train civil servants, which is indicated by the responses to other questions that will be analysed in the next section.

Experiences with hate speech in the workplace

In addition to knowing the essence of hate speech and the value of freedom of speech, being familiar with the legislation and generally aware of the presence of hate speech in society, its forms and its targeting of specific groups, experience with this phenomenon in the workplace is of great importance. First, we wanted to determine whether, to what extent and in what way hate speech is present in public institutions and then to see what is the level of awareness of the issue itself. Therefore, this question was asked in the questionnaire *Have you witnessed/experienced hate speech in the workplace?* The distribution of the responses to this question is shown in Figure no.12.

Figure no. 12: Distribution of responses to the question *Have you witnessed/experienced hate speech in your institution?*



More than a quarter of the respondents (27%) state that they have experienced/witnessed hate speech in the institution where they work. Most of them (53% in total) states that they have not, and a significant number (20% in total) are not able to tell. The next question was aimed at getting an even more concrete answer - to whom was hate speech directed. The distribution of responses in Figure no. 13 shows that in 50% of cases it was another employee, 20% answered that they were personally the targets of hate speech, and in 18% of cases it was a client. Since the respondents were offered an option to write the answer themselves, the category 'Other' included cases that cannot be adequately subsumed under other options. If the respondent stated 'to me', those responses were added to the response 'You personally', but in situations such as e.g. 'in general', such a response was subsumed under the category 'Other'. The information obtained show that, at least in the opinion of the respondents, hate speech is most present among the civil servants themselves.

Figure no. 13: Distribution of responses to the question *If yes, towards whom? You can opt for more than one response offered and you can also add a situation that was not offered*

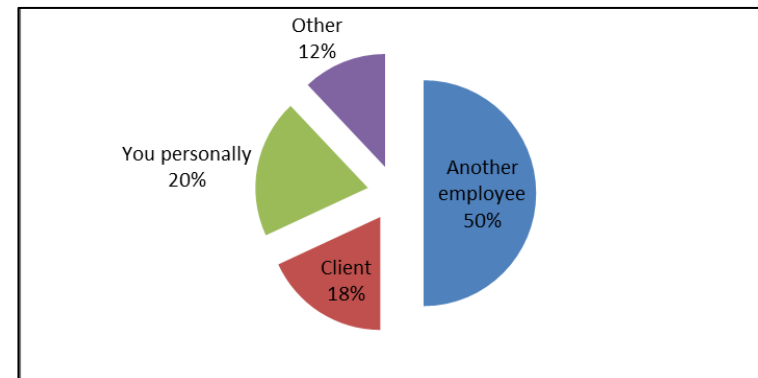
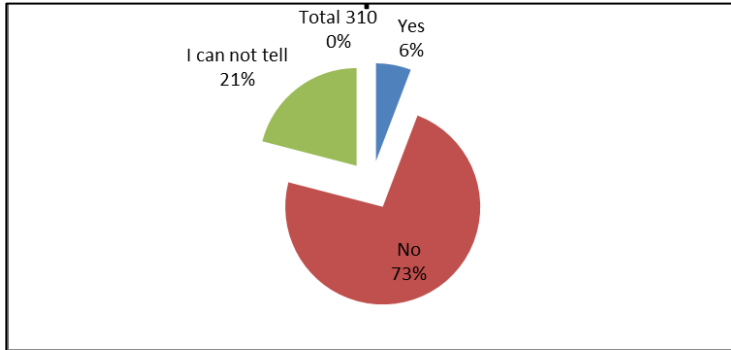
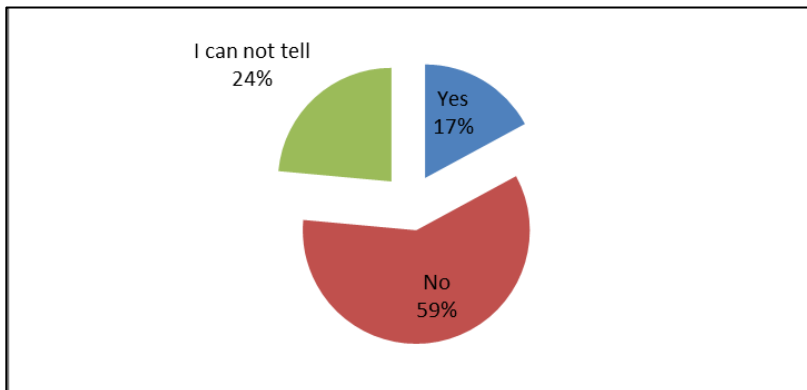


Figure no. 14: Distribution of responses to the question *Do you think that you have ever used hate speech?*



The following question was *Do you think that you have ever used hate speech?* As can be seen from Figure no. 14, the majority (73% in total) believe that they have never used hate speech. A total of 21% of them cannot tell. That is also not a negligible number. Just like other negative social phenomena, hate speech is more often recognized when employed by others (in this case, colleagues), which is demonstrated by the distribution of responses to the next question from the questionnaire *Have you ever witnessed your colleague using hate speech in the workplace towards other colleagues or clients?*

Figure no. 15: Distribution of responses to the question *Have you ever witnessed your colleague using hate speech in the workplace?*



These data too, especially given the response to the following question, which describes such situations, also point to insufficient knowledge. Responding to the open-ended question *If yes, towards whom?*, numerous respondents mention situations that fall under mobbing as a form of discrimination in the workplace or under the unprofessional attitude of superiors towards lower-ranking employees and vice versa, followed by insolence, gossiping and indefinite forms of insults for which we can not determine whether and to what extent they can relate to or be subsumed under hate speech. Respondents who stated that they had witnessed hate speech had often witnessed situations involving insults. In some cases, they may possibly be associated with hate speech (e.g. insults on a national ground) while in some they may not (e.g. insults on a professional ground). This also confirms that there is a certain misunderstanding of hate speech. For the sake of clarity, we have enumerated most of the responses, while excluding those that are almost identical:

“ Towards other colleagues and service users. Lies and slander’.

‘A colleague gave the wrong information to her superior in order to diminish the reputation of other colleagues.’

‘It is a matter of inability to understand different ‘worldviews’ and consequently uncollegial condemnation of such behaviour(s).’

‘By insulting, belittling and behaving insolently.’

‘One of the managers used insulting language towards a colleague.’

‘Defining based on one’s way of behaving and dressing, in the above context’

‘Head of institution towards an employee’

‘Towards a colleague who was not present’

‘Towards another employee who partially refused obedience.’

‘Arrogant and intolerant approach by superiors.’

‘Towards colleagues, wanting to diminish their value as a person’

‘The previous Director used vulgar language and swear words towards my colleague and me, insulted us, shouted at us, humiliated us.’

‘Most often, hate speech is directed by an employee towards the managing officer, the reason being lack of knowledge on the merits of topics from the field for which the managing officer is in charge.’

‘People who feel unrealised in their own professional career always envy people with titles such as MSc and PhD ‘

‘Towards colleagues, superiors’

‘Towards the immediate superior, threats accompanied by swear words’

‘Towards lower-ranking employees’

‘Towards a colleague due to personal disagreements’

‘Informal conversations of colleagues about each other’

‘These are immature jokes about personal backgrounds and other differences addressed to the broader work environment.’

‘He addresses his colleague insolently, gossiping about him, hates his guts.’

‘Towards me on a national ground’

‘Towards me’.

‘I do not want to’

‘Provocations by the superior officer’

‘Towards migrants in terms of their rights.’

‘Towards other colleagues mainly out of jealousy and with reference to cash benefits’

‘Making judgments on the intelligence of other colleagues.’

‘Insults on the professional level’

‘It’s about creating a climate that is encouraged by backstage gossip from third parties who are not present, I was personally a victim of insults and I informed my superiors thereof by email.’

‘Underestimating and improper attitude towards colleagues who come from the Republika Srpska entity’

‘Use of religious holidays’

‘Various ways, occurring every day’

‘Towards me, a colleague said, ‘Is such crime committed by those like you who are close to Dodik?’’

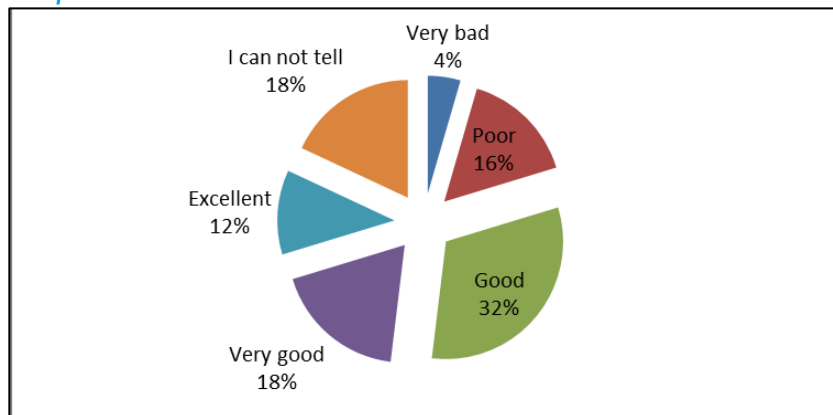
‘Former director to the deputy director on a gender, political and professional ground. The same towards the secretary of the institution.’

‘Mostly on a personal ground.’

The next question, which was also open-ended, inquired about the reactions of the authorities. Almost all responses indicate an inadequate reaction of the authorities, which was described as passive, non-existent, inadequate, or silence. In three cases it is stated that there was a cover-up in order to prevent escalation, i.e., as stated in one response, because both the superior and the one who used hate speech were of the same nationality. One response state that a reprimand was sent including a warning that disciplinary action might be taken. However, if we keep in mind the above situations which were listed as examples of hate speech, we cannot interpret these responses either to analyse the adequateness of reaction of civil servants to the occurrence of hate speech.

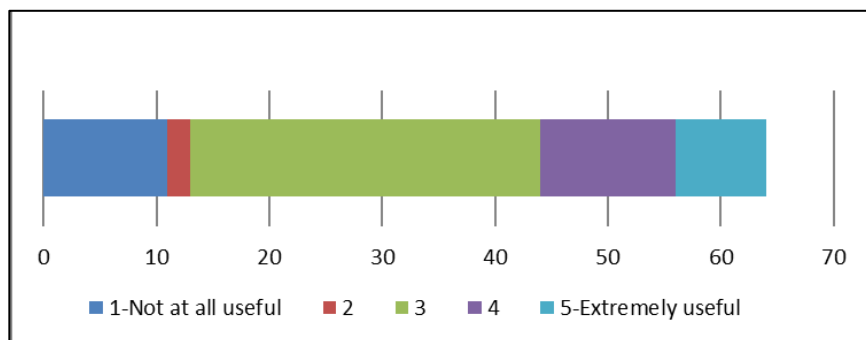
Nevertheless, many evaluate well the level of awareness in the institution in which they work, as shown by the distribution of responses to the question *How would you rate the level of awareness in your institution with reference to the issue of hate speech?* Only 4% of respondents think that it is very bad, and 16% that it is weak. Even if it is obvious that there is a certain dose of loyalty to the institution for which they work and to their colleagues, these responses should also be viewed in the context of analysed questions that indicate that hate speech is insufficiently known.

Figure no. 16: Distribution of responses to the question *How would you rate the level of awareness in your institution with reference to the issue of hate speech?*



Regarding the issue of awareness, additional training is of great importance given the complexity of hate speech, the ongoing changes in the forms of its manifestation and the special responsibility of civil servants, as already discussed. In our sample, a total of 63 (or 20%) respondents participated in such training sessions, which indicates the need for a broader and more comprehensive training. It is even more so if we keep in mind the fact that such training sessions are viewed positively, which is confirmed by the responses to the question *If you participated in training sessions on hate speech, how would you rate them? (Opt for a response on a scale from 1- not at all useful to 5 - extremely useful)*. The average score (arithmetic mean) is 3.

Figure no.17: Distribution of responses to the question *If you participated in training sessions on hate speech, how would you rate them? (Opt for a response on a scale from 1- not at all useful to 5 - extremely useful)*.



Concluding review

The research performed provides us with significant understanding of the knowledge, perceptions and experience of civil servants in Bosnia and Herzegovina related to the occurrence of hate speech. Based on the results obtained and their analysis, we can conclude that hate speech is partially and insufficiently known/recognized, which can be seen from the way in which the respondents have formulated their definitions of hate speech and described its difference to freedom of speech. Numerous responses state some elements that make up or are related to hate speech, but there is a lack of more precise knowledge for connecting these segments more adequately in order to unequivocally refer to hate speech. Although the responses given include acceptable ones, compliant with norms and standards, less than half knowledge of laws and other regulations, given that as many as 49% of respondents do not know whether their institutions has bylaws or rulebooks against the use of hate speech.

It becomes even more obvious that we are faced with insufficient knowledge and even ignorance once we analyse concretely described situations in the workplace that are being subsumed under hate speech. It should also be noted that the response 'I cannot tell' was chosen by between 1/4 to 1/5 of the respondents to the group of questions related to testimony/experience with hate speech in the workplace. Although 27% state that they have witnessed/experienced hate speech in their institution, and 17% that they have witnessed a colleague at work using hate speech, the situations described do not constitute hate speech, and may possibly be associated with it in only a couple of isolated cases (such as insults on national or other grounds). On the other hand, since the questionnaire is anonymous, one can assume that the respondents

used the opportunity to point out the forms of non-professional and similar behaviours in the workplace, which make them feel dissatisfied and frustrated. From a more positive point of view and with a dose of free interpretation, we can also interpret these responses to mean that hate speech is not significantly present in public institutions.

It is important to emphasize that there is an awareness that hate speech is very present in BiH and that it is a very negative occurrence that needs to be regulated better and on which they also need to be trained further. Only 20% of respondents state that they participated in training sessions, and 82% believe that the issue of hate speech should be an integral part of the training on human rights. It is also significant that hate speech is identified as an extremely negative phenomenon and freedom of speech as an important value of civilisation and democratic standard. The responses obtained indicate that there is an awareness of the focus of hate speech on vulnerable groups (such as the LGBT population, the migrant population) and its connection with the political framework and climate that is constantly being created in the broader society.

It is especially important to underline numerous positive comments to the survey questionnaire within the open-ended question numbered 25: *List anything you consider relevant that is not included in the questionnaire or your comments.* Only 2 comments out of a total of 91 were full of negative charge towards the survey itself. In some of the responses, the survey questionnaire itself is evaluated in a positive way ('Everything is covered', 'Questions are interesting and relevant to the topic', 'Useful for further analysis and further action', 'Well developed questionnaire that encourages you to think about a topic that is discussed very little').

A lot of the responses/comments underline the need for further training of children and youth, of the society as a whole as well as of civil servants themselves, for example 'More attention and training should be paid to this issue,' 'More attention should be paid to the training of civil servants on hate speech prevention.'

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The comments suggest the need for more adequate sanctioning of hate speech, consistent application of the law and especially the importance of better regulation of online activity. On the other hand, some of the comments indicate to problems arising from over-regulation, thus reflecting the main controversies that are being debated at the global level, e.g. 'Although absolute freedom of speech entails the danger of hate speech, an attempt to restrict freedom of speech would certainly lead to preventing opposing views in law and thus to uniformity of opinion. 'A society ruled by uniformity of opinion imposed by law cannot be called a democratic and free society.' Suggestions were given regarding the importance of the role of the media and that their role, as well as the role of politicians, should have been covered more adequately in the survey (3 responses/comments), e.g. 'It is not stated what is the impact of hate speech by high political officials, especially in election campaigns.'

The responses/comments received also speak of the existence of awareness of the importance of this topic. Once again, we thank all those who made time to participate in the survey.

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¹ Translator's note: an ethnic slur for Serbs

¹ Translator's note: an ethnic slur for Croats

¹ Translator's note: an ethnic slur for Bosniaks

¹ Translator's note: a Serbian-chauvinist hate slogan which glorifies the Srebrenica massacre of Bosniaks during the Bosnian War

ANNEX 2: INTERNATIONAL STANDARDS

United Nations (UN)

- ▶ Universal Declaration of Human Rights (1948)
- ▶ International Covenant on Civil and Political Rights (1966)
- ▶ International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- ▶ Convention on the Elimination of All Forms of Discrimination against Women (1979)
- ▶ UN Human Rights Council Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet (2016)

Council of Europe

- ▶ Convention for the Protection of Human Rights and Fundamental Freedoms, including Protocol No. 12 thereto (2000)
- ▶ European Social Charter (1996)
- ▶ Framework Convention for the Protection of National Minorities (1998)
- ▶ Convention on Cybercrime (2001)
- ▶ Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)
- ▶ Council of Europe Committee of Ministers' Declaration on freedom of political debate in the media (2004)
- ▶ Council of Europe Committee of Ministers Recommendation (97) 20 on "hate speech" (30/12/1997)
- ▶ ECRI General Policy Recommendation N° 15 on Combating Hate Speech (08/12/2015)
- ▶ Recommendation CM/Rec(2011) of the Committee of Ministers to member states on the protection and promotion of the universality, integrity and openness of the Internet (21/9/2011)
- ▶ Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment (4/7/2018)
- ▶ Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism (27/3/2019)
- ▶ Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law of 28/11/2008

EUROPEAN UNION (EU)

- ▶ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Conference on Security and Co-operation in Europe) of 29/06/1990.
- ▶ Decision no. 6 on tolerance and non-discrimination, Tenth Meeting of the Ministerial Council, Lisbon, December 2002

OSCE

- ▶ Document of the Copenhagen Conference on the Human Dimension of the CSCE (Conference on Security and Co-operation in Europe) of 29/06/1990
- ▶ Decision no. 6 on tolerance and non-discrimination, Tenth Meeting of the Ministerial Council, Lisbon, December 2002

ANNEX 3: DOMESTIC LEGISLATION

Criminal Code of Bosnia and Herzegovina

- **Provoking ethnic, racial and religious hatred, conflicts and intolerance Article 145a**
 - ▶ (1) Whoever publicly provokes or inflames national, racial or religious hatred, conflicts or intolerance among the constituent peoples and others, as well as among other people living or residing in Bosnia and Herzegovina, shall be punished by a prison sentence ranging from three months to three years.
 - ▶ (2) Whoever perpetrates the criminal offence referred to in paragraph (1) of this Article by abusing his office or official authority, shall be punished by a prison sentence ranging from one to ten years.

Criminal Code of the Federation of Bosnia and Herzegovina

- **Provoking national, racial or religious hatred, division or intolerance Article 163**
 - ▶ (1) Whoever publicly provokes or stirs up national, racial or religious hatred, division or intolerance among the constituent peoples and others who live in the Federation shall be punished by imprisonment from one to five years.
 - ▶ (2) Whoever commits the offence under paragraph 1 above by employing duress, ill-treatment, jeopardizing the safety of any person, exposing national, ethnic or religious symbols to mockery, damaging other people's symbols, desecrating monuments, memorials or graves shall be punished by imprisonment from one to eight years. Whoever commits the offence under paragraph (1) of this Article by abuse of office or authority shall be punished by imprisonment from one to ten years.
 - ▶ (3) Whoever commits the offence under paragraph 1 above by abuse of office or authority, or if the offence results in riots, violence or any other grave consequences to the coexistence of the constituent peoples and others who live in the Federation shall be punished by the punishment stipulated in paragraph 2 of this Article.
 - ▶ (4) Whoever commits the offence under paragraph 2 of this Article by abuse of office or authority or if the offence results in riots, violence or other grave consequences to the coexistence of the constituent peoples and others who live in the Federation shall be punished by imprisonment from one to ten years.
- **Unauthorized possession of a radio or television station or endangering public order by means thereof Article 363**
 - ▶ (1) Whoever, in breach of regulations on communication systems, is in possession of a radio or television station or uses a radio or television station without the proper authorization shall be fined or punished to up to one year in prison.
 - ▶ (2) Whoever in gross breach of the professional standards of conduct for media outlets and journalists uses inflammatory speech or hate speech or speech which clearly incites or instigates to violence, national or ethnic conflicts and thereby endangers public peace and order shall be fined or sentenced to up to three years in prison.

Criminal Code of Republika Srpska

Public provocation and incitement to violence and hatred Article 359

- ▶ (1) Whoever uses press, radio, television, computer system or social media, at a public gathering or in a public place or by other means to publicly call for, incite to or provoke or make available any leaflets, pictures, or any other materials that call for violence or hatred against a specific person or groups because of their national, racial, religious or ethnic affiliation, colour, sex, sexual orientation, disability, gender identity, origin or any other characteristics shall be punished by a fine or imprisonment of up to three years.
- ▶ (2) Where the offence under paragraph 1 of this Article was committed by coercion, ill-treatment, endangering of safety, exposing national, ethnic or religious symbols to mockery, damaging other person's goods, desecrating monuments, memorials or graves the offender shall be punished by imprisonment from one to five years.
- ▶ (3) Where the offence under paras. 1 and 2 of this Article has caused riots, violence or other grave consequences to the co-existence of the peoples and others who live in Republika Srpska the offender shall be punished by imprisonment from two to twelve years.
- ▶ (4) Any material or articles bearing messages set out in paragraph 1 above and instruments for their production, duplication or distribution shall be forfeited.

Criminal Code of the Brcko District of Bosnia and Herzegovina

Provoking national, racial or religious hatred, division or intolerance Article 160

- ▶ (1) Whoever provokes or stirs up national, racial or religious hatred, division or intolerance among the constituent peoples and others who live in the Brcko District shall be punished by imprisonment from one to five years.
- ▶ (2) Where the offence under paragraph 1 of this Article was committed by coercion, ill-treatment, endangering of safety, exposing national, ethnic or religious symbols to mockery, damaging other person's goods, desecrating monuments, memorials or graves the offender shall be punished by imprisonment from one to eight years.
- ▶ (3) Whoever commits the offence under paragraph 1 of this Article by abuse of office or authority or if the offence results in riots, violence or other grave consequences to the coexistence of the constituent peoples and others who live in the Brcko District shall be punished by imprisonment from one to ten years.
- ▶ (4) Any materials or articles bearing messages set out in paragraph 1 above and instruments for their production, duplication or distribution shall be forfeited.
- ▶ **Unauthorized possession of a radio or television station or endangering public order by means thereof Article 357**
- ▶ (2) Whoever, in gross breach of the professional standards of conduct for media outlets and journalists, uses inflammatory speech or hate speech or speech that clearly incites or instigates to violence, national or ethnic conflicts and thereby endangers public peace or order shall be fined or punished by up to three years in prison.

Law on Prohibition of Discrimination of Bosnia and Herzegovina

Article 2.

- ▶ (1) For the purposes of this Law, discrimination shall be deemed to be any different treatment including any exclusion, restriction or preference which is based on actual or presumed grounds against any person or group of persons on the basis of their race, colour, language, religion, ethnicity, national or social origin, association with a national minority, political or other opinion, material status, membership of a trade union or other association, education, social status and gender, gender expression or sexual orientation, as well as any other circumstance that has the purpose or effect of nullifying or impairing any person's recognition, enjoyment or exercise on an equal footing, of rights and freedoms in all fields of life.
- ▶ (2) The prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, in all areas, notably: employment, membership of professional organisations, education, training, housing, health, social protection, goods and services intended for the public and public places, exercise of economic activity and public services.

Election Law of Bosnia and Herzegovina

Article 7.3.

- ▶ (1) Candidates and supporters of political parties, lists of independent candidates, list of members of national minorities and coalitions, as well as independent candidates and their supporters, and election administration officials or those otherwise hired in the election administration shall not be allowed to:
- ▶ (7) use language which could provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, audio and video recordings, SMS messages, Internet communications or any other materials that could have such effect.

Law on Gender Equality in Bosnia and Herzegovina

Article 3.

- ▶ (1) Gender-based discrimination shall be putting any person or groups of persons into a less favourable position based on gender due to which such person or group of persons are rights of some persons or groups of persons are hindered or denied the recognition, enjoyment or exercise of human rights or freedoms.
- ▶ (2) Discrimination may occur in different forms: direct, indirect, harassment, sexual harassment, incitement to discriminate and gender based violence.

Law on the Freedom of Religion and Legal Status of Communities in Bosnia and Herzegovina

Article 5.

- ▶ (1) All discrimination based upon religion or belief as defined in Art. 2.1. of this Law is prohibited.
- ▶ (2) The following acts are also prohibited:
 - ▶ a. attacks upon or insults against religious officials;
 - ▶ b. attacks against or damage to the religious buildings or other property of churches and religious communities;
 - ▶ c. activities or actions aimed at the dissemination of religious hatred against any church or religious community or its members;
 - ▶ d. the denigration or ridiculing of any religion;
 - ▶ e. the public use of religious symbols, signs, attributes or the name of a church or religious community without the consent of the said church or religious community;
 - ▶ f. the formation of associations of religious officials or believers without the consent of the relevant church or religious community authorities, nor such existing associations, established without relevant church authority, may exist without such a competent consent;
 - ▶ g. incite, encourage or call for religious hatred and prejudices.

ANNEX 4: BIBLIOGRAPHY

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Translator's note: an ethnic slur for Serbs

Translator's note: an ethnic slur for Croats

Translator's note: an ethnic slur for Bosniaks

Translator's note: a Serbian-chauvinist hate slogan which glorifies the Srebrenica massacre of Bosniaks during the Bosnian War

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