

# Mapping national responses to hate speech in Ukraine

**Systemic research and policy proposals for combating hate speech in Ukraine**

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# Introduction

In recent years, across the European continent awareness has been raised on the threats hate speech poses to societies, undermining human rights, democracy and the rule of law. The [No Hate Speech Movement](#) of the Council of Europe, and the leading role undertaken by the organisation in responding to hate speech by developing standards and case-law, provided a good contribution to this effort.

Member states of the Council of Europe are developing different initiatives to address hate speech, including in the internet space, such as legislation, improving investigation and judicial remedies, dialogue with media and support to education and awareness raising. While such efforts are laudable, a comprehensive and coherent approach is needed within a human rights framework to achieve sustainable results. The evolving case law of the European Court of Human Rights<sup>1</sup>, Council of Europe's standards, and monitoring findings<sup>2</sup> provide the framework needed to develop national strategies and action plans on hate speech.

Based on the country monitoring findings of European Commission against Racism and Intolerance (ECRI), it has issued the [General Policy Recommendation 15 on Combatting Hate Speech](#), outlining that a comprehensive approach must reconcile freedom of expression and other rights, notably those of vulnerable groups, which are jeopardised by hate speech. Such an approach should also increase society's resilience against it. The Recommendation provides an inclusive definition of hate speech and outlines key components needed to ensure a comprehensive approach to combatting it, including legislative and administrative measures; self-regulation; support to victims; education and awareness raising measures including through use of counter speech.

ECRI's general policy recommendation is particularly concerned with the use of hate speech falling within ECRI's work, but its provisions are envisaged as being applicable to all forms of such speech, i.e., on grounds additional to "race", colour, language, religion, nationality, national or ethnic origin, gender identity or sexual orientation.

## **A holistic approach to the challenge**

As mentioned above, a comprehensive national response to hate speech needs to address the rights of the individuals, in particular of vulnerable groups which are most often targeted by hate speech both online and offline. It also needs to facilitate social cohesion and clarify the

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<sup>1</sup> See: [https://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)

<sup>2</sup> ECRI's 5<sup>th</sup> country monitoring reports providing recommendations to member states on addressing hate speech are available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/country-monitoring>  
Council of Europe's work on hate speech and some of the relevant standards are summarised at: <https://www.coe.int/en/web/no-hate-campaign/coe-work-on-hate-speech>

responsibilities and roles of the national authorities and other key stakeholders (state regulatory bodies, parliaments, Ombudsperson's offices and Equality bodies, Internet service providers and operators, online media entities, the education sector, NGOs, etc).

The Council of Europe engages with member State authorities and other stakeholders to support the design of effective strategies against hate speech, based on a systemic approach. This approach involves as a first key step a systemic analysis of the national approach to hate speech which maps how members of society are impacted by hate speech and the redress available to them. The analysis maps the interaction individuals or targeted groups have with institutions, public bodies, NGOs and the private sector throughout the process of addressing hate speech. A systemic analysis is not restricted to legal redress but encompasses all possible responses as outlined in ECRI GPR No. 15, for example self-regulatory procedures, public condemnation, victim support and educational responses. By breaking down a system into its components and studying how those components interact to accomplish their purpose, gaps, challenges and new actions and tools can be identified.

The EU-Council of Europe project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries”<sup>3</sup> conducted systemic analyses of hate speech responses in Georgia, Ukraine, and Armenia.

The systemic mapping had the following objectives

- facilitate the process of reviewing and mapping existing policies, structures, tools and actions in the Member States to prevent and combat hate speech
- understand the role of the different public and private actors involved and their interactions in addressing hate speech
- analyse the results and identify emerging challenges, as well as ways to deal with them strategically in the process of combating hate speech.

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<sup>3</sup> For more information: <https://www.coe.int/en/web/inclusion-and-antidiscrimination/eap-regional-project>

## **Systemic mapping of responses to hate speech in Ukraine**

The systemic analysis of national responses to hate speech in Ukraine aimed at including stakeholders from various institutions and organisations in a programme to prevent the use of hate speech at all levels of society.

For the purposes of this report, hate speech is the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation (GPR no. 15).

The methodology of the research was based on systems thinking and design (combined, this is known as systemic design), with a system map of the hate speech mechanisms among the main deliverables. Several systemic design models were created, based on the evolving understanding of hate speech. These models were exposed to key actors during interviews and workshops and subsequently amended and enriched. The system map then served as a tool to identify main challenges and, afterwards, to support the development of a roadmap to combat hate speech in Ukraine.

The project involved a mixed research team, including two national experts, Olena Bondarenko and Irene Fedorovych, and researchers from the company Namahn.

The main phases of the systemic mapping were the development of a situational analysis (through desktop research), an initial multi-stakeholder training on hate speech, interviews with key stakeholders and a final multi-stakeholder workshop. The process had the following objectives:

- to develop a deeper understanding of the phenomenon of hate speech and the related responses in Ukraine, as well as a graphic representation of this problem
- to gather stakeholders to discuss different perspectives on the problem of hate speech

- to discuss with stakeholders the road ahead on strengthening national responses to hate speech<sup>4</sup>.

During the desk research phase, researchers analysed relevant domestic and international documentation, such as monitoring reports by ECRI, state bodies and non-governmental institutions, international and domestic legal standards, etc. Through desk research, a list of relevant national stakeholders to involve in the research was set up to ensure an inclusive and participatory approach.

This research aimed at unveiling the mechanisms involved in the development of the phenomenon of hate speech. The representation of these mechanisms takes the form of a map, with various loops corresponding to the areas concerned by the phenomenon. This map was developed on the basis of the initial desk research and several interviews with national stakeholders (see list in Appendix) and was enriched thanks to the feedback of stakeholders during a multi-stakeholder workshop.

This report introduces the key findings related to the current state of responses to hate speech in Ukraine, explains the system map and its key elements, and provides a roadmap for further action against hate speech.

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<sup>4</sup> The report concerns the situation and response mechanisms on the national level with the exception of the parts of the territory of Ukraine which are temporarily not under the effective control of the Ukrainian government, notably the Autonomous Republic of Crimea and the city of Sevastopol as well as the non-government-controlled areas of the Donetsk and Luhansk regions.

# Hate speech in Ukraine: situational analysis

The analysis below follows step-by-step the standards and recommendations outlined in ECRI GPR No. 15 on combating hate speech, as a framework for understanding the current situation and the responses to hate speech in Ukraine. It was developed based on a previous baseline study conducted within the project, the review of available information on hate speech prevalence and responses and the data received during stakeholder workshops and interviews. Each sub-section analyses how each recommendation set out in the GPR No. 15 is reflected currently in the Ukrainian context. The text in italics at the beginning of each sub-section is quoted from the GPR No. 15, as recommendations addressed to the governments of the member States of the Council of Europe.

## **1. Ratification of treaties**

- *ratify the Additional Protocol to the Convention on Cybercrime, concerning criminalisation of acts of a racist and xenophobic nature committed through computer systems, the Framework Convention for the Protection of National Minorities and Protocol No. 12 to the European Convention on Human Rights, if they have not yet done so*

Ukraine has ratified the Additional Protocol to the Convention on Cybercrime of the Council of Europe, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>5</sup>, which entered into force in Ukraine on 1 April 2007. In Ukraine, the state agency responsible for cybercrime was the Directorate on Cybercrime of the National Police, which in 2015, was reorganised and transformed into the Cyberpolice Department<sup>6</sup>. However, the law on Cybersecurity<sup>7</sup> does not specify hate speech among the competences of the Department. According to the information provided during the interviews, this Department does not work on cybercrimes linked with hate speech, neither does it have an operational definition

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<sup>5</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189>

<sup>6</sup> <https://zakon.rada.gov.ua/laws/show/831-2015-%D0%BF#Text>

<sup>7</sup> <https://zakon.rada.gov.ua/laws/show/2163-19>

of hate speech. Police representatives suggested that the lack of a clear working definition also stems from the ambiguity of Article 161 of the Criminal Code, which incorporates elements of discrimination, hate speech and hate crimes at the same time. Moreover, the Police representatives have mentioned that the investigation of alleged cases of hate speech is further impeded by the lack of understanding of the distinction between criminal and administrative or civil liability for hate speech and the lack of effective mechanisms for countering hate speech.

Ukraine has submitted to the Council of Europe a declaration which states that it does not guarantee the implementation of the Convention obligations for the period of occupation of the Autonomous Republic of Crimea and the city of Sevastopol and in certain districts of the Donetsk and Luhansk oblasts of Ukraine, which are temporarily not under the control of Ukraine<sup>8</sup>.

Ukraine has been a state party to the Framework Convention for the Protection of National Minorities (FCNM) since 1998. In the context of its monitoring mechanism, Ukraine has received recommendations to “increase efforts to combat manifestations of intolerance, racism, xenophobia and hate speech present in the Ukrainian society and investigate these incidents and apply adequate sanctions when necessary”<sup>9</sup>.

Ukraine has ratified the European Convention of Human Rights in 1997, and later – its Protocol 12<sup>10</sup>. Importantly, when the guarantees of human rights enshrined in the Convention are deemed as incomplete at the Constitutional level, priority is given to the Convention and the case law of the European Court of Human Rights (ECtHR), and the Court’s case law in relation to other countries is binding on judges of national courts in resolving disputes. Therefore, while there have been no decisions against Ukraine specifically in relation to hate speech at the ECtHR, national courts are equipped with the ability to reference key EctHR decisions regarding hate speech (Jersil v. Denmark, Vejdeland and others v. Sweden, MTE and Index v. Hungary, Delfi v Estonia, Norwood v UK, Ivanov v. Russia and others).

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<sup>8</sup><https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185?module=declarations-by-treaty&numSte=189&codeNature=0>

<sup>9</sup> <https://rm.coe.int/fourth-opinion-on-ukraine-adopted-on-10-march-2017-published-on-5-marc/16807930cf>

<sup>10</sup> [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177/signatures?p\\_auth=CeilRFhE](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177/signatures?p_auth=CeilRFhE)



## **2. Recognition of the competence of the Committee on the Elimination of Racial Discrimination (CERD)**

- *withdraw any reservations to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and to Article 20 of the International Covenant on Civil and Political Rights and recognise the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals under Article 14*

Ukraine recognises the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by it of any of the rights set forth in the Convention under the CERD<sup>11</sup>. However, no individual complaints against Ukraine have been submitted to the Committee so far.

In the last reporting cycle, CERD recommended to the Ukrainian authorities to strongly condemn and distance themselves from racist hate speech and discriminatory statements in public discourse, including by public figures, and to “call upon those responsible to ensure that their public statements do not contribute to incitement of racial hatred”. It also recommended that such cases are adequately prosecuted<sup>12</sup>. The next state report to the Committee was due in April 2020 but its submission was postponed.

## **3. Identifying causes and measuring the extent of hate speech**

- *seek to identify the conditions conducive to the use of hate speech as a phenomenon and the different forms it takes, as well as to measure its extent and the harm that it causes, with a view to discouraging and preventing its use and to reducing and remedying the harm caused.*

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<sup>11</sup> <https://indicators.ohchr.org/>

<sup>12</sup> CERD/C/UKR/CO/22-23,

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UKR&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UKR&Lang=EN)

The ECRI GPR No. 15 requires that states provide support to identify conditions conducive to the use of hate speech, and also ensure that such research is undertaken. In Ukraine, there is no state strategy based on evidence or research data for combating hate speech, or mention of such intent in the National Strategy on Human Rights<sup>13</sup>.

At the same time, mentions of hate speech are contained in the Strategy for Promoting the Rights and Opportunities of Persons Belonging to the Roma National Minority in Ukrainian Society until 2030, approved by the order of the Cabinet of Ministers of Ukraine dated 28.07.2021 № 866-r<sup>14</sup>. In this strategic document, hate speech is mentioned as 1) one of the problems that necessitated the adoption of the Strategy; 2) the phenomenon to be prevented, monitored and counteracted by measures within the framework of Objective 2 of the Strategy. The Strategy also emphasises the need to develop a methodology for monitoring and responding to manifestations of hate speech in society.

In the academia, research is limited to few articles<sup>15</sup>, often referring to the same reports and data. There is no information on State support for any of the research efforts dedicated to monitoring hate speech, with a few exceptions, for example the analytical note<sup>16</sup> prepared by the Institute of Strategic Studies. The Institute is a state research institution which identifies key problems of governance and social development and submits suggestions in the form of, *inter alia*, analytical notes to the President of Ukraine. The note in question identifies that forms of hate speech exist against Roma, Crimean Tatars, and other ethnic groups (referring to the latter as “Russian information attacks”). Among the manifestations of hate speech against the Roma, the note mentions public statements by officials, including anti-Roma comments by the head of the Odessa regional administration, decisions of local authorities supporting anti-Roma actions, as well as activities of radical groups.

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<sup>13</sup> <https://www.president.gov.ua/documents/1192021-37537>

<sup>14</sup> <https://zakon.rada.gov.ua/laws/show/866-2021-%D1%80#Text>

<sup>15</sup> As examples, <https://journals.indexcopernicus.com/api/file/viewByFileId/559991.pdf>, <http://ideizmin.com.ua/wp-content/uploads/2019/03/Soroka-Hate-speech-in-the-perspective-of-sociology-of-culture.pdf>, and <http://ippi.org.ua/sites/default/files/isakova.pdf>

<sup>16</sup> <https://niss.gov.ua/sites/default/files/2016-12/mova-8e1e2.pdf>

During the interviews with national stakeholders carried out as part of this research, it was recommended that hate speech monitoring should be carried out by the Ministry of Information Policy of Ukraine, as the Ministry's mandate in this area indirectly stems from Art. 28 of the Law on Information, which states that information cannot be used for incitement of interethnic, racial, or religious hatred. However, the draft Strategy of Information Security, which is the main strategic document in the field, does not mention hate speech among threats or issues to be dealt with<sup>17</sup>.

#### *Official data on the prevalence of hate speech*

ECRI, in its General Policy Recommendation No. 15, recommends establishing a mechanism for collecting disaggregated data on hate speech incidents, recording the specific bias motivation, as well as the follow-up given by the justice system, and publishing this data.

A proper mechanism for disaggregated data collection would require a definition of hate speech, in view of monitoring and coordination between relevant entities involved in the process. During this analysis, the absolute majority of interviewees from state agencies reported no definition of hate speech in the legislation and the absence of operational instructions on how to deal with hate speech. A few civil society organisations, that conduct monitoring regularly, base their definitions on relevant European/international standards or on the methodology developed by specialised organisations (for instance, the SOVA Center methodology). This lack of an agreed definition leads to confusion among actors regarding the nature of hate speech, its relation to other phenomena, such as discrimination and hate crime, responsible entities, applicable legal framework, and so on.

Law enforcement agencies publish official data only on criminal forms of hate speech (see details on legislation below, in the sub-section on GPR No. 15 Recommendation 8). The Prosecutor General's Office publishes statistics on crime in Ukraine<sup>18</sup> which do not distinguish between hate crime and hate speech. In this report, a number of cases are listed for violations related to Article

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<sup>17</sup> <https://mkip.gov.ua/files/pdf/45698712365.pdf>

<sup>18</sup> [https://old.gp.gov.ua/ua/stst2011.html?dir\\_id=114140&libid=100820&c=edit&\\_c=fo](https://old.gp.gov.ua/ua/stst2011.html?dir_id=114140&libid=100820&c=edit&_c=fo)

161 of the Criminal Code of Ukraine<sup>19</sup>. It is therefore not possible to make conclusions about the extent of criminal prosecutions or recorded incidents that enter the criminal justice system. Similarly, no disaggregation is provided by groups or other factors, such as location, type of offender, victims, etc. Moreover, only a limited number of grounds are covered under Article 161 (see below the sub-section of ECRI GPR No. 15 Recommendation 10).

At the same time, the statistical forms of the Prosecutor General's Office contain reporting on "ethnic criminality", and the National Police sometimes reports on "ethnic gangs" or states the ethnicity of people suspected of crimes<sup>20</sup>. However, criminal laws do not establish such category of criminal groups, nor is there a clear definition in national laws as to what the term means.

Another actor with a mandate to collect data on hate speech, the Ukrainian Parliamentary Commissioner for Human Rights (the Ombudsperson's Office), dedicates a section related to countering forms of discrimination in its annual report. The report does not include a specific breakdown by categories of hate speech, rather mentioning isolated examples of such instances. For instance, the media monitoring by the Ombudsperson's Office found examples of:

- hate speech on the basis of sexual orientation and gender identity by a TV channel, by the Presidential Ombudsperson for children's rights, and by a member of the National Parliament
- reports containing information about racial discrimination or hate speech aimed to incite interethnic hatred.

The Ombudsperson's Office has also been publicly condemning emblematic incidents of hate speech.

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<sup>19</sup> Article 161 of the Criminal Code of Ukraine establishes liability for "deliberate acts aimed at incitement to national, racial or religious hatred, to humiliate the national honour and dignity or to hurt the feelings of citizens in connection with their religious beliefs, as well as direct or indirect limitation of rights or the establishment of direct or indirect privileges of citizens on the grounds of race, colour, political, religious and other beliefs, sex, disability, ethnic and social origin, property status, place of residence, by language or other features"

<sup>20</sup> There is a question about the nationality and also citizenship in the administrative and criminal protocols that are filed by the police in each case. This statistic covers both national minorities and foreigners.

### *Civil society monitoring results*

Several civil society organisations conduct monitoring of hate speech incidents targeting different protected characteristics, such as hate speech against the Roma or LGBTI. For example, the Nash Svit NGO includes hate speech in its reports (in 2020, 8 incidents were reported)<sup>21</sup>. There were also threats and insults reflected in the report, and it is not clear whether they fall under hate speech or hate crime provisions in this instance.

Interviewees have mentioned that groups targeted by hate speech most commonly include the Roma, other ethnic and religious minority groups, the LGBTI community, and women. Also, newly emerging trends were mentioned, such as hate speech against internally displaced persons (IDPs) in connection with the armed conflict that started in 2014, or against Chinese residents in relation to the COVID-19 pandemic. According to interviews, in some regions, human rights defenders were also targeted by hate speech statements due to their social and human rights engagement.

According to interviewees, the subjects that use and spread hate speech are often hate groups (extreme right-wing organisations). The media use hate speech as a tool to gain visibility and attract more readers, according to some opinions. Finally, state officials and politicians sometimes also generate hate speech in their statements or even official reports, as mentioned above.

Another important point mentioned by many interviewees from civil society and state institutions is the role of social media; their use has grown tremendously in the last years, including as platforms for generating and spreading hate speech. There is little research or monitoring into this phenomenon, or reports by social networks on the use of hate speech in the Ukrainian platforms/portals.

### *Hate speech in the media: prevalence and target groups<sup>22</sup>*

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<sup>21</sup> [https://gay.org.ua/publications/Situation\\_of\\_LGBT\\_in\\_Ukraine\\_2020\\_UKR.pdf](https://gay.org.ua/publications/Situation_of_LGBT_in_Ukraine_2020_UKR.pdf)

<sup>22</sup> Note on context: the illegal annexation of the Republic of Crimea and the city of Sevastopol and the armed conflict in eastern Ukraine have had an impact on the media landscape and the use of hate speech against specific groups of populations respectively in the government non-controlled and the government-controlled areas.

The majority of monitoring efforts in Ukraine at the moment is focused on hate speech in the media, including internet media (websites and official communication channels of media outlets), TV, printed media, with limited monitoring of social media, depending on the structure of the research.

Among the efforts in monitoring media, there is the work of the Commission on Journalism Ethics, a self-regulatory body of the Ukrainian media, which publishes reports on complaints about the violations of the Ethics Code and the Commission's decisions (see more about media self-regulation below in the sub-section on GPR No. 15 Recommendation 7). The monitoring definition developed by the Commission on Journalism Ethics identifies hate speech (outside the legal field) as "an aggressive expression that demeans a person or group of people on the grounds of sex, ethnicity, religion, race, capacity or sexual orientation"<sup>23</sup>.

In their capacity as a complaint body, during the period of 2015-2019, the Commission identified 14 complaints under Article 15 of the Ethics Code, which states "No one shall be discriminated against on the grounds of sex, language, race, religion, national, regional or social origin or political affiliation". The majority of those complaints were found to be in violation of the above Article in 2020<sup>24</sup>.

Among the examples provided by the Commission in its 2021 report, notable cases included statements against LGBTI persons in an interview with a religious leader; anti-Semitic statements voiced by a listener intervening during a radio programme; anti-Roma hate speech by a political figure during a TV programme, and statements against the Ukrainian-speaking population of the country<sup>25</sup>.

Notably, four out of ten cases highlighted during the above-mentioned reporting period by the Commission on Journalism Ethics, concerned hate speech, namely giving space for hate speech

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<sup>23</sup> Methodology for Monitoring Online Media and Social Networks, CJE. URL: <https://cje.org.ua/library/metodologiya-monitoryngu-onlayn-zmi-ta-socmerezh/>

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[http://www.cje.org.ua/ua/complaint/search?page=2&title=&code=100&date\\_later=01.01.2020&date\\_before=31.12.2020&form\\_build\\_id=form-y7GvdSslczNzKvGt-Y\\_jsZEzkgG9h\\_DS16SEh079po&form\\_id=giz\\_filter\\_complaint\\_form&op=%D0%A8%D1%83%D0%BA%D0%B0%D1%82%D0%B8%20%D1%81%D0%BA%D0%B0%D1%80%D0%B3%D0%B8](http://www.cje.org.ua/ua/complaint/search?page=2&title=&code=100&date_later=01.01.2020&date_before=31.12.2020&form_build_id=form-y7GvdSslczNzKvGt-Y_jsZEzkgG9h_DS16SEh079po&form_id=giz_filter_complaint_form&op=%D0%A8%D1%83%D0%BA%D0%B0%D1%82%D0%B8%20%D1%81%D0%BA%D0%B0%D1%80%D0%B3%D0%B8)

<sup>25</sup> <https://cje.org.ua/library/samoregulyaciya-v-ukrayinskyh-media-yak-ce-pracyuye-komisiya-z-zhurnalistskoyi-etyky/>

in media programmes, which points to this being an important issue in Ukraine. Such hate speech incidents concern different groups, as mentioned.

In addition to the gaps in understanding their respective mandate regarding hate speech, institutions also lack qualified staff dedicated to monitoring manifestations of hate speech which makes it impossible to conduct systematic and comprehensive monitoring that can produce relevant data.

During the interviews, several institutions reported the lack of know-how on how to monitor and control the use of hate speech in social media. From police to media-related bodies, there seems to be a gap between existing mandates, the growing role of social media and the increased use of hate speech.

#### **4. Raising public awareness and counter-speech**

- *undertake a vigorous approach not only to raising public awareness of the importance of respecting pluralism and of the dangers posed by hate speech but also to demonstrating both the falsity of the foundations on which it is based and its unacceptability, so as to discourage and prevent the use of such speech.*

##### *State actors*

While there are sporadic events dedicated to promoting the diversity of cultures in Ukraine, they are not systematic or guided by a common strategy. It is illustrated, for example, by the list of various events of different themes and scope related to the implementation of the National Human Rights Strategy (up to 2020)<sup>26</sup>.

For example, the Ministry of Youth provided support to several events of the No Hate Speech Movement in Ukraine, such as trainings and conferences in collaboration with civil society actors<sup>27</sup>. However, these activities are not continuing at the moment of writing this report (August 2021).

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<sup>26</sup> [http://hro.org.ua/index.php?r=9#435\\_3](http://hro.org.ua/index.php?r=9#435_3).

<sup>27</sup> <https://www.kmu.gov.ua/news/249440295>

The Ombudsperson's Office has cooperated with civil society organisations in public awareness campaigns, such as the public campaign led by several members of the NGO Coalition against Discrimination in 2015 - 2019<sup>28</sup>, and in publishing reactions and assessments of hate speech incidents (for instance, anti-Roma hate speech by the Ukrainian Railways, Children's Ombudsman, local officials, etc.).

In the area of interethnic/interreligious activities, the State Service for Ethnic Policy and Freedom of Conscience has undergone several consecutive changes in its structure, mandate and subordination. Its current mission is to promote the development of openness, responsibility, friendliness and unity in the diversity of the Ukrainian society. The Service is specifically tasked with the "prevention of interethnic, racial, interreligious and interfaith conflicts and hostility"<sup>29</sup>. It started its work in autumn 2020, following a transition of functions from the Ministry of Culture. Prior to that, the Ministry of Culture published reports about events organised by international partners related to the topic of hate speech<sup>30</sup>, in which the Ministry was involved.

According to the 2020 annual report, the Service cooperated with the Ukrainian Cultural Fund regarding the possibility of state funding of projects aimed at establishing intercultural dialogue and promoting diversity<sup>31</sup>. The public reports of the Service refer to activities involving representatives of different ethnic groups, religious organisations, etc. The Service has not yet published a specific strategy related to its role in combating hate speech.

### *Secondary education*

The Law on Education<sup>32</sup> and official regulations related to addressing hate speech in the field of education, such as the Concept for Civic Education<sup>33</sup>, and the model subject curriculum for civic education have<sup>34</sup> equality, tolerance and respect for diversity among key competencies and core values. However, the Strategy and the Action Plan envisioned by the Concept for Civic Education

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<sup>28</sup>The Campaign page is still active on social media, see <https://www.facebook.com/discrimi.net>

<sup>29</sup> <https://zakon.rada.gov.ua/laws/show/812-2019-%D0%BF#Text>

<sup>30</sup> [http://mincult.kmu.gov.ua/control/uk/publish/article?art\\_id=245049835&cat\\_id=244940177](http://mincult.kmu.gov.ua/control/uk/publish/article?art_id=245049835&cat_id=244940177)

<sup>31</sup> <https://dessa.gov.ua/wp-content/uploads/2021/02/Report-DESS-2020.pdf>

<sup>32</sup> <https://zakon.rada.gov.ua/laws/show/2145-19#Text>

<sup>33</sup> <https://zakon.rada.gov.ua/laws/show/710-2018-%D1%80#Text>

<sup>34</sup> <https://mon.gov.ua/storage/app/media/zagalna%20serednya/programy-10-11-klas/2018-2019/program-hromadyanska-osvita-24.11.2017.doc>



have not yet been adopted. It is therefore unclear how these values will be practically implemented in practice.

The online version of the textbook<sup>35</sup> for the civic education course developed in collaboration between Pact, an international non-governmental organisation, and the Ministry of Education, covers the topics of diversity, tolerance, and hate speech (more in the Media section).

Hate speech is the object of several projects supported by donor organisations, which include teacher training, educational material development, online courses<sup>36</sup>, blended learning programmes, and so on. For example, IREX, a non-profit organisation committed to global development and education, has been implementing the "Learn to Discern in Education" programme, with the support of the British and US Embassies in partnership with the Ministry of Education and Science of Ukraine and the Academy of the Ukrainian Press. The programme involved adapting the curriculum to the local context, training grassroots trainers, working in 650 schools across the country, and training over 1100 teachers, as well as creating massive open online courses on media literacy – Very Verified<sup>37</sup>, which includes a module on hate speech. In the Very Verified course, over 8,000 people engaged within three months from its launch. Learning outcomes show improvements in all areas of media and information literacy and the ability to detect and resist manipulation. Among blended learners (those taking the course in addition to the in-person trainings), a two-fold increase in participants' ability to identify hate speech was identified.

### *Civil society*

Several actors work individually and in cooperation with state agencies to provide training to professional groups, such as judges or police, focused on addressing hate speech against particular groups.

According to interviews, the Industrial Gender Committee (a self-regulation body of the Ukrainian Marketing Association) has worked with the justice system to support the adjudication

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<sup>35</sup> [https://citizen.in.ua/topic-YAk\\_media\\_provokuyut\\_konflikti-ua](https://citizen.in.ua/topic-YAk_media_provokuyut_konflikti-ua)

<sup>36</sup> For example, <https://www.living-democracy.com.ua/>, <https://stophate.ed-era.com/>, <https://verified.ed-era.com/>.

<sup>37</sup> <https://verified.ed-era.com/>

of complaints against sexist advertising. They provided training for judges on adjudication of such cases, as the earlier developed national case law showed a lack of common approach and difficulties in properly sanctioning sexist content.

Other civil society organisations have developed courses for journalists relating to the use of hate speech. The ZMINA Human Rights Centre has created a Human Rights Academy for Journalists, which brings together professors of journalism from across Ukraine. The Academy includes modules on hate speech. Moreover, their publication<sup>38</sup> (a compilation of syllabi developed by lecturers of different media programmes) also covers the topic of hate speech.

Another open-access course, which focuses on how to write about LGBTI people, was developed by the NGO Insight and is available online<sup>39</sup>.

While the GPR No. 15 recommends that states help perpetrators who wish to leave groups that use hate speech, there are no reports of programmes that provide such services in Ukraine.

## **5. Support for those targeted by hate speech**

- *provide support for those targeted by hate speech both individually and collectively*

Similar to the situation of hate crime victims, those targeted by hate speech do not enjoy support of any kind from the government.

Civil society organisations provide assistance in filing complaints with regards to hate speech. For instance, according to interviews, the Coalition of Roma organisations supports community members in bringing complaints before the relevant institutions.

## **6. Support for self-regulation by public and private institutions**

- *provide support for self-regulation by public and private institutions (including elected bodies, political parties, educational institutions and cultural and sports organisations) as a means of combating the use of hate speech.*

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<sup>38</sup> <https://www.undp.org/content/dam/ukraine/docs/Training.pdf>

<sup>39</sup> [https://courses.prometheus.org.ua/courses/course-v1:Insight+Journ301+2017\\_T2/about](https://courses.prometheus.org.ua/courses/course-v1:Insight+Journ301+2017_T2/about)

### *State agencies*

The Ethics Code for Prosecutors<sup>40</sup> and the Police Code of Ethics<sup>41</sup> have general provisions obliging prosecutors and police not to discriminate or express bias based on different characteristics. The violations of the Ethics Code by prosecutors can result in disciplinary sanctions determined by a competent body of the Prosecutor's Office, up to termination of employment<sup>42</sup>.

The Police Code of Ethics prescribes that supervisors have to prevent the manifestations of unethical behaviour of their subordinates by supporting the development of professional ethics, including through training and outreach. The disciplinary statute of the National Police, however, does not directly mention ethics violations as grounds for disciplinary sanctions<sup>43</sup>.

The Code of Ethics of State Officials and Local Governance<sup>44</sup> only contains broad references to the prohibition of discrimination on the grounds of race, colour, political, religious or other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, as well as language or other grounds. There are no specific references to the use of hate speech, for example in the communication by state officials. Violations of the Code can also lead to disciplinary sanctions up to the termination of employment<sup>45</sup>.

None of these Codes were mentioned in the interviews with stakeholders.

### *Political parties*

While a code of ethics for Parliament members is a standard practice in many countries, there is no such document for the Ukrainian Parliament, despite suggestions and specific drafts developed with international assistance<sup>46</sup>. Among political parties, only two parties so far have published their ethics codes. Syła Lydei ("People's Power") party's code of ethics directly lists unbiased attitude among its core principles<sup>47</sup>. The European Solidarity's code has no references

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<sup>40</sup> <https://zakon.rada.gov.ua/laws/show/n0001900-17#Text>

<sup>41</sup> <https://zakon.rada.gov.ua/laws/show/z1576-16#Text>

<sup>42</sup> <https://zakon.rada.gov.ua/laws/show/1697-18#Text>

<sup>43</sup> <https://zakon.rada.gov.ua/laws/show/2337-19#Text>

<sup>44</sup> <https://zakon.rada.gov.ua/laws/show/z1203-16#Text>

<sup>45</sup> <https://zakon.rada.gov.ua/laws/show/889-19#Text>

<sup>46</sup> See, for instance, [https://parlament.org.ua/wp-content/uploads/2017/09/Code-of-Conduct\\_Analytical-report.pdf](https://parlament.org.ua/wp-content/uploads/2017/09/Code-of-Conduct_Analytical-report.pdf).

<sup>47</sup> Prohibition of bias - in their activity, a Party member is obliged to avoid giving preferences or creating conditions for giving preferences to any persons, groups of persons on the grounds of race, colour, sex, nationality, language, origin, property or social

to hate speech or the promotion of equality. The Ukrainian Electoral Code provisions are described below, in the section related to liability and sanctions.

### *Advertising*

In advertising, the Ukrainian Marketing Association has developed Standards for Non-Discriminatory Advertising<sup>48</sup> enforced by the Industry Gender Committee, which include a disciplinary committee as well as a complaint mechanism and relevant sanctions. Though the title is exclusively linked to sexist advertising, the document also refers to discriminatory advertising against other groups as “advertising that degrades a person on the ground of sex in a context, or in combination with other grounds such as physical characteristics, disability, social status, employment, marital status and family responsibilities, motherhood and fatherhood, nationality, race, political interests, religion, other types and forms of socio-economic and personal human relations”.

### *Education*

In secondary education, there were attempts to develop the Code of Ethics of the Ukrainian teacher, but they were met with criticism and this Code has not yet been adopted. Yet, the Code is still published on the websites of schools which use it as an unofficial commitment<sup>49</sup>; however, there is almost no information available on its enforcement.

The majority of interviewees mentioned the gap in education and raising awareness about hate speech - from the formal education system to professional groups’ continuous education. While awareness raising efforts do exist, supported by various non-governmental entities, there is a lack of integration of issues related to hate speech across educational programmes.

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status, place of residence, attitude to religion, holding a position in the Party and on other grounds, <https://cabinet.sylaliudei.ua/kodeks-etyky-ta-povedinky-chleniv-politychnoyi-partiyi-syla-lyudej/>.

<sup>48</sup> <http://uam.in.ua/gkr/ukr/standarts/>

<sup>49</sup> [http://school110.zp.ua/index/etichnij\\_kodeks\\_vchitelja/0-107](http://school110.zp.ua/index/etichnij_kodeks_vchitelja/0-107)

## 7. Media regulation and self-regulation

- *use regulatory powers with respect to the media (including internet providers, online intermediaries and social media), to promote action to combat the use of hate speech and to challenge its acceptability, while ensuring that such action does not violate the right to freedom of expression and opinion.*

### *Self-regulation in the media*

The Commission on Journalism Ethics (CJE) is a self-regulation body of journalists and newsrooms in Ukraine, established at the Congress of Journalists, which includes representatives of the media industry, journalism universities, independent journalists, etc., which is important for balancing the Commission's composition and decision-making. The CJE operates as a non-governmental organisation established on September 16, 2001, during the inaugural meeting of the Journalists for Clean Elections journalistic initiative and registered with the Ministry of Justice of Ukraine in 2003. The Commission is a member of the Alliance of Independent Press Councils of Europe (AIPCE) and has been a member of the Ethical Journalism Network (EJN) since 2017.

The Code of Ethics of the Ukrainian Journalist is a document that contains specific references to hate speech. It was adopted by the Assembly of the journalists and independent media trade union on 24 April 2004, and later updated at the Congress of Signatories of the Code in 2013.

The CJE works as a monitoring body for this Code receiving complaints about alleged violations of the Code. The CJE establishes the rules, monitors observance, and provides several forms of response - mediation of the conflict between parties, decision of the Commission as a friendly warning, statement of condemnation, recommendations of the CJE on good practice for journalists (e.g., COVID 19 response, talking to victims etc.). In addition, the Code of Ethics of the Ukrainian Journalist states in paragraph 19: "Consideration of ethical and professional conflicts is carried out by the Commission on Journalism Ethics". The Commission does not receive state funding.

Among the top examples of the Commission's work are its conclusions regarding hate speech. For instance, the Commission has condemned the use of hate speech against the LGBTI

community, Roma people, and other groups. As to the mechanism for complaints, the Commission receives complaints from the public or initiates reviews on its own initiative. In addition to conclusions and recommendations for specific cases, the Commission prioritises mediation, awareness raising and advocacy.

In 2021, the Commission published an overview of self-regulation in the Ukrainian media, in which it provided several recommendations for those who wish to complain about hate speech in the media. The overview also describes several cases of hate speech in the media along with the Commission's assessment of the individual situations and general recommendations for avoiding such content in the future<sup>50</sup> (see section 8 of the Report).

The Independent Media Council is an expert body operating in the field of self-regulation. The Council was established by five media NGOs, namely the Centre for Democracy and the Rule of Law, the Institute of Mass Information, Internews-Ukraine, Detector Media NGO and the Sospilnist Foundation. The Council is not a registered organisation but is an association of several public organisations under a common goal. Each of the five organisations that have signed the Memorandum on the Establishment of the Council delegates three representatives. The Council considers disputes regarding non-compliance with media legislation, international standards related to media coverage, as well as violations of journalism ethics. In addition to expert opinions on resolving controversial situations, the Independent Media Council provides recommendations to the authorities and other stakeholders in order to improve their regulation in the media sphere<sup>51</sup>.

The study "Practice of application of national legislation in the field of combating hate speech" provides an example in which the National Council of Ukraine on Television and Radio used the conclusion of the Independent Media Council as an expert opinion in conjunction with other relevant materials<sup>52</sup>.

### *National regulatory authority*

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<sup>50</sup> <https://cje.org.ua/library/samoregulyaciya-v-ukrayinskyh-media-yak-ce-pracyuye-komisiya-z-zhurnalistskoyi-etyky/>

<sup>51</sup> <https://mediarada.org.ua/pro-nas/>

<sup>52</sup> [https://www.ppl.org.ua/wp-content/uploads/2018/01/mova\\_vorozhnechi\\_platforma\\_prav\\_ludini.pdf](https://www.ppl.org.ua/wp-content/uploads/2018/01/mova_vorozhnechi_platforma_prav_ludini.pdf)

The Law on Television and Broadcasting<sup>53</sup> prohibits calls inciting conflicts or related propaganda and/or incitement to national, racial, or religious hatred and hostility; unjustified violence; propaganda of exclusiveness, superiority or inferiority of persons on the grounds of their religious beliefs, ideology, affiliation with one or another nation or race, physical or property status, social origin (Article 6).

In case of violations of the above law, the Law on Information, or the European Convention on Transfrontier Television, the National Council on TV and Radio Broadcasting may decide to impose sanctions in the form of a warning and a fine in the amount of 25 percent of the license fee or initiate the revocation of a broadcasting license through the courts (Article 72 of the Law on Television and Broadcasting)<sup>54</sup>. Exercising its powers as the national regulatory authority, in 2019 – 2021 (as of 30 November 2021), the National Council applied 28 sanctions to broadcasters for inciting national, religious and racial hatred<sup>55</sup>.

Interviewees have mentioned, among the challenges they face, the lack of coordination between the self-regulatory body and the national regulatory authority. In the view of representatives of self-regulatory bodies, the state regulator does not have a firm understanding of self-regulation. The Council, however, states that it constantly calls for self-regulation, and regularly informs the media industry about the best practices of self-regulation in the Council of Europe and EU member states.

The new draft law on Media<sup>56</sup> does not refer to self-regulation either, while the Commission on Journalism Ethics has provided suggestions to include this into the draft law. According to the National Council, the concept of self-regulation does not imply legislative regulation, because its essence is the desire of broadcasters to develop common standards in those areas that are not covered by the legal framework.

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<sup>53</sup> <https://zakon.rada.gov.ua/laws/show/3759-12>

<sup>54</sup> <https://zakon.rada.gov.ua/laws/show/3759-12#Text>

<sup>55</sup> Official response of the National Council on TV and Radio Broadcasting.

<sup>56</sup> The draft Law on Media was registered in the Parliament in 2019 [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67812](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67812), it is still not adopted and raised some critics among national media NGOs <https://imi.org.ua/monitorings/zakonoprojekt-pro-media-novi-pravky-vs-reglament-i36492>

## 8. Responsibility under civil and administrative law

- *clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those who are targeted by it while respecting the right to freedom of expression and opinion.*

The Ukrainian legislative framework provides for a limited number of mechanisms in the legislation to counter hate speech. However, the lack of consistent case law and practice in their application, as well as lack of consistency between decisions issued by different entities (Ombudsperson's Office, National Council on TV and Radio, self-regulation bodies) makes it difficult to have a coordinated response to hate speech. In the sense of GPR No. 15 recommendations, however, the legislation lacks clearly defined roles and powers in relation to hate speech.

### *Administrative remedies*

The Law of Ukraine “On the Principles of Preventing and Combating Discrimination in Ukraine” does not specifically refer to hate speech. However, it mentions a form of discrimination, which can constitute hate speech: “incitement to discrimination – orders, instructions or calls for discrimination against a person and / or a group of persons on certain grounds”<sup>57</sup>. In the context of this law, the list of protected grounds includes actual or perceived race, colour, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, language or other characteristics. In case of this law being violated, the victim has the right to seek legal remedies in court.

However, no other authorities are envisaged by the law to adopt legally binding decisions on combating discrimination, except for courts, and the provisions in the civil and administrative codes do not provide clearly defined legal remedies for addressing hate speech.

As the main body tasked with preventing and combating discrimination in Ukraine, the Ombudsperson's Office conducts monitoring of media and social networks and sends response

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<sup>57</sup> <https://zakon.rada.gov.ua/laws/show/5207-17#Text>



letters to state bodies or media organisations in relation to hate speech used by officials or journalists<sup>58</sup>. The Office has representatives across Ukraine who can act on behalf of the Ombudsperson in relation to its mandate. The Office, however, does not hold the powers to impose administrative sanctions. This was one of the criticisms of the current anti-discrimination law, and draft laws have since incorporated provisions to allow for administrative sanctions to be imposed by the Ombudsperson's Office.

Among administrative remedies, the Law on Television and Broadcasting has a definition of incitement of hatred which is limited in terms of protected characteristics. Namely, the range of protected characteristics for "hate speech" in this law, as well as in the Law on Information, is limited to race, nationality and religion, completely excluding other motives mentioned in other laws, such as social status, disability, sexual orientation, gender identity, etc.

In the election campaigns, the Electoral Code<sup>59</sup> prohibits, *inter alia*, dissemination in any form of materials calling for "[...] violence and incitement of interethnic, racial, religious enmity, encroachment on human rights and freedoms [...]. If such materials are found in the programme of a candidate for the position of a president, parliament member, local council member or village/town mayor, the election commissions (Central or local) can deny registration to such candidate". There is no publicly available information as to how this norm is exercised.

Entities endowed with the task to monitor observance of the Code are the Central Election Commission (CEC), the National Council on Television and Radio Broadcasting, and the State Committee on Television and Radio Broadcasting, a central body with an executive power, which implements the state policy in the information and publishing spheres<sup>60</sup>. According to the Code on Administrative Violations, the chairperson, deputy chairperson, secretary, other members of the CEC, referendum commission (Articles 212-7, 212-9, 212-11 - 212-20, 212-22-212-24) can draw up a protocol based on administrative violations, thus sanction the violations of the

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<sup>58</sup> [https://ombudsman.gov.ua/files/2021/zvit\\_2020\\_rik\\_.pdf](https://ombudsman.gov.ua/files/2021/zvit_2020_rik_.pdf), p. 211.

<sup>59</sup> <https://zakon.rada.gov.ua/laws/show/396-20#Text>

<sup>60</sup> <https://zakon.rada.gov.ua/laws/show/341-2014-%D0%BF#Text>

Electoral Code, including incitement to hatred. However, there is no public information on the application of these provisions.

During the recent election campaigns (presidential and parliamentary elections), the National Council initiated the creation of working groups involving representatives of government agencies, public and international organisations, as well as the media industry. Information on the results of monitoring of the coverage of election campaigns in the media is publicly available on the official website of the National Council<sup>61</sup>. The results of monitoring were provided to the Central Election Commission for response.

In 2021, an amendment was introduced to the existing law “On Advertisement”, providing new definitions. Article 1 of the Law has now a definition of what discriminatory advertisement and gender discriminatory advertisement are. Another change is the liability, the Parliament increased fines for such advertising. These changes will enter into force on 10 December 2021<sup>62</sup>.

### *Civil remedies*

In terms of civil liability, according to Article 297 of the Civil Code of Ukraine<sup>63</sup>, every individual has the right to enjoy respect for honour and dignity, which are inviolable. In case of violation of these rights, the victim has the right to seek their protection in court. However, there is no particular provision regarding civil redress in cases of hate speech against individuals or legal entities.

In a Supreme Court resolution on cases regarding the protection of honour and dignity<sup>64</sup>, the Court states that claims for protection of dignity, honour or business reputation may be filed by an individual in case of dissemination of inaccurate information that violates their personal

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<sup>61</sup> <https://www.nrada.gov.ua/category/vybory/>

<sup>62</sup> For more information, <https://ips.ligazakon.net/document/JI02003I?an=3>

<sup>63</sup> <https://zakon.rada.gov.ua/laws/show/435-15>

<sup>64</sup> [https://zakon.rada.gov.ua/laws/show/v\\_001700-09#Text](https://zakon.rada.gov.ua/laws/show/v_001700-09#Text)

inalienable rights, as well as those of other interested persons (including family members, relatives), if such information directly or indirectly violates their personal non-property rights. There is no comprehensive research on the use of this type of remedy in cases of hate speech. According to an OSCE report<sup>65</sup>, civil and administrative cases described on the Ombudsperson's website in relation to discrimination, are not related to hate speech.

Given the lack of remedies in the civil and administrative law to specifically address hate speech, it is unclear which mechanism victims can use to address hate speech depending on the severity and sphere.

While the legislative gaps need to be addressed to provide remedies in cases of hate speech, there is also a need for enhanced training of judges in addressing these situations. According to interviewees, the judiciary is not sufficiently prepared to handle alleged cases of hate speech. Such training can be incorporated as part of the broader equality/anti-discrimination courses with particular attention to the specificities of hate speech and to the relevant legal norms across the Ukrainian legislation that would allow judges to apply the existing provisions in such cases.

## **9. Support for political parties and organisations that use hate speech**

- *withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech or fail to sanction its use by their members and provide, while respecting the right to freedom of association, for the possibility of prohibiting or dissolving such organisations regardless of whether they receive any form of support from public bodies where their use of hate speech is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it*

Financing of extreme right-wing groups has been raised previously as a concern by several organisations, including Bellingcat which published an investigative report on funding provided to right-wing groups. According to Bellingcat, far-right organisations run some of the projects

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<sup>65</sup> ODIHR observes that Ukraine has not reported on cases of hate crimes separately from cases of hate speech or discrimination. Data submitted by Ukraine available here <https://hatecrime.osce.org/ukraine>

funded by state national patriotic education grants, allowing these groups to grow and recruit new members.<sup>66</sup>

Funding of political parties can be terminated if the party is banned. Grounds for banning political parties, according to the Law on political parties<sup>67</sup>, include propaganda of war, violence, incitement of interethnic, racial or religious hatred, encroachment on human rights and freedoms. Therefore, if a court bans a political party on these grounds, its funding shall be withdrawn. The Ministry of Justice reported that, overall, 28 parties have been banned<sup>68</sup> by courts on various grounds. There is no detailed breakdown about the grounds for banning, and further research of court case law is necessary to identify whether these have been related to incitement to hatred.

## 10. Criminal sanctions

- *take appropriate and effective action against the use, in a public context, of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it through the use of the criminal law provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected.*

The Criminal Code of Ukraine contains some provisions related to hate speech. First, as mentioned above, the main article used for initiating proceedings in such situations is Article 161 of the Criminal Code of Ukraine

Violation of equality of citizens based on their race, nationality, religious beliefs, disability and other grounds:

1. Intentional actions aimed at inciting national, racial or religious hatred and hostility, humiliating national honour and dignity, or insulting the feelings of citizens in connection with their religious beliefs, as well as directly or indirectly restricting the rights or establishing direct or indirect privileges of citizens on the

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<sup>66</sup> <https://www.bellingcat.com/news/uk-and-europe/2019/07/16/ukrainian-far-right-extremists-receive-state-funds-to-teach-patriotism/>

<sup>67</sup> <https://zakon.rada.gov.ua/laws/show/2365-14#Text>

<sup>68</sup> <https://www.ukrinform.ua/rubric-society/2459624-za-cas-nezaleznosti-cerez-sud-rozpustili-28-partij.html>

grounds of race, colour, political, religious and other beliefs, sex, disability, ethnic and social origin, property status, place of residence, language or other grounds [...]

2. The same acts, combined with violence, deception or threats, as well as committed by an official [...]

3. Actions provided for in parts one or two of this article, which were committed by an organised group of persons or caused serious consequences [...]

Sanctions provided by Article 161 range from a fine to up to eight years of imprisonment.

In addition, Article 67(3) of the Criminal Code provides that “committing an offence on the grounds of racial, national, religious hatred or discord or on the grounds of sex” is an aggravating circumstance. However, this is an optional provision, so courts may choose not to apply it, and case law shows that it is not being used in practice.

The provisions contained under Article 161 are insufficiently clear in terms of the nature of the offences covered by this Article, the range of protected characteristics under each part of the Article, as well as the nature of actions that fall under its scope. There is a lack of distinction between different forms of statements - Article 161 combines conduct defined as “incitement”, “humiliation of national dignity”, “insult of feelings”, which may include an overly broad set of actions.

ECRI has found the following with regard to criminal sanctions for hate speech in Ukraine in accordance with international standards in its latest country monitoring report:

“...the elements of incitement to discrimination and to violence are missing as well as defamation. Regarding the grounds, ECRI notes that language, citizenship and ethnic origin are not mentioned in relation to the offence of incitement [...] As concerns public insults, these are only criminalised in relation to religion, and the grounds of race, colour, language, citizenship and national or ethnic origin recommended by ECRI are not covered”<sup>69</sup>.

ECRI also points out that several forms of hate speech that fall under criminal provisions according to established international standards, are missing in the Criminal Code of Ukraine.

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<sup>69</sup> <https://rm.coe.int/fifth-report-on-ukraine/16808b5ca8>

An overview of the cases from the court decisions registers shows the following results<sup>70</sup>:

“In total, on request, the Register, which has been updated since 2007, shows 139 court decisions (procedural - 90, substantive - 49), including 18 decisions related to hate speech, including 7 decisions of the courts of appeal, which reviewed the verdicts of first instance courts. In 11 criminal cases over 10 years, courts gave assessment of one or another manifestation of hate speech. Of these cases, 1 case concerned the spread of hate speech in the media (against Jews). Persecution of the religious group "Jehovah's Witnesses" - 4 cases. Persecution of the Crimean Tatar ethnic group - 3 cases. The actual punishment was applied in the form of fines in 3 cases (2 times - UAH 8,500, UAH 1 - 3,400). In 5 cases, the sanction was the release from serving a sentence with a probationary period. In other 3 cases, the case was closed due to the expiration of the statute of limitations (1 case), due to effective repentance (1 case) and due to the refusal of the victims to press charges (1 case)”.

Overall, criminal liability for hate speech lacks clarity and distinction between the degree of severity that falls under the Criminal Code provisions. In addition, it is difficult to assess the effectiveness of criminal sanctions for hate speech in the absence of disaggregated official data.

In its country monitoring report of 2017 (Part I par. 1.2 of Findings and Recommendations), ECRI supports the legislative initiative to decriminalise that part of Article 161 of the Criminal Code of Ukraine, which is related to discrimination, as it considers that discrimination is more appropriately dealt with under civil and administrative law channels, as indicated in its General Policy Recommendation No. 7.

People hesitate to bring complaints to the police due to the lack of trust in law enforcement in relation to reporting hate speech. This lack of trust stems from ineffective investigation, dismissal of complaints, fear of repeated victimisation, among others. According to NGOs, complaints of threats and incitement to hatred online, in particular on social networks, which mostly target

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<sup>70</sup> [https://www.ppl.org.ua/wp-content/uploads/2018/01/mova\\_vorozhnechi\\_platforma\\_prav\\_ludini.pdf](https://www.ppl.org.ua/wp-content/uploads/2018/01/mova_vorozhnechi_platforma_prav_ludini.pdf)

Roma and LGBTI persons, are usually dismissed or not investigated properly by the police, mainly due to the lack of capacity or because they are considered insignificant<sup>71</sup>.

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<sup>71</sup> <https://rm.coe.int/fifth-report-on-ukraine/16808b5ca8>

# System map of the mechanisms of hate speech in Ukraine

Following the desk research, as well as interviews and a final multi-stakeholder workshop, the system map of the mechanisms of hate speech was developed. It shows the existing policies, structures, instruments and actions in Ukraine to prevent and combat hate speech. This map was constructed using the causal loop analyses method (see Methodology for more explanations). This method was chosen because of the intertwined causal nature of hate speech. Causal loop analyses are intended to reveal the intertwining and to point to those places where rather small interventions can lead to big changes when implemented together.

The map was constructed based on data gathered through literature on hate speech in Ukraine, including reports of civil society organisations, state institutions, insights from the interviews and workshops carried out within this process, and using ECRI's GPR No. 15 on combating hate speech as guidance. The result systematises the situation related to hate speech in Ukraine.

**For a detailed visualisation of the map, please go to**

**<https://rm.coe.int/hate-speech-ukraine-system-map-20210915/1680a52784>**



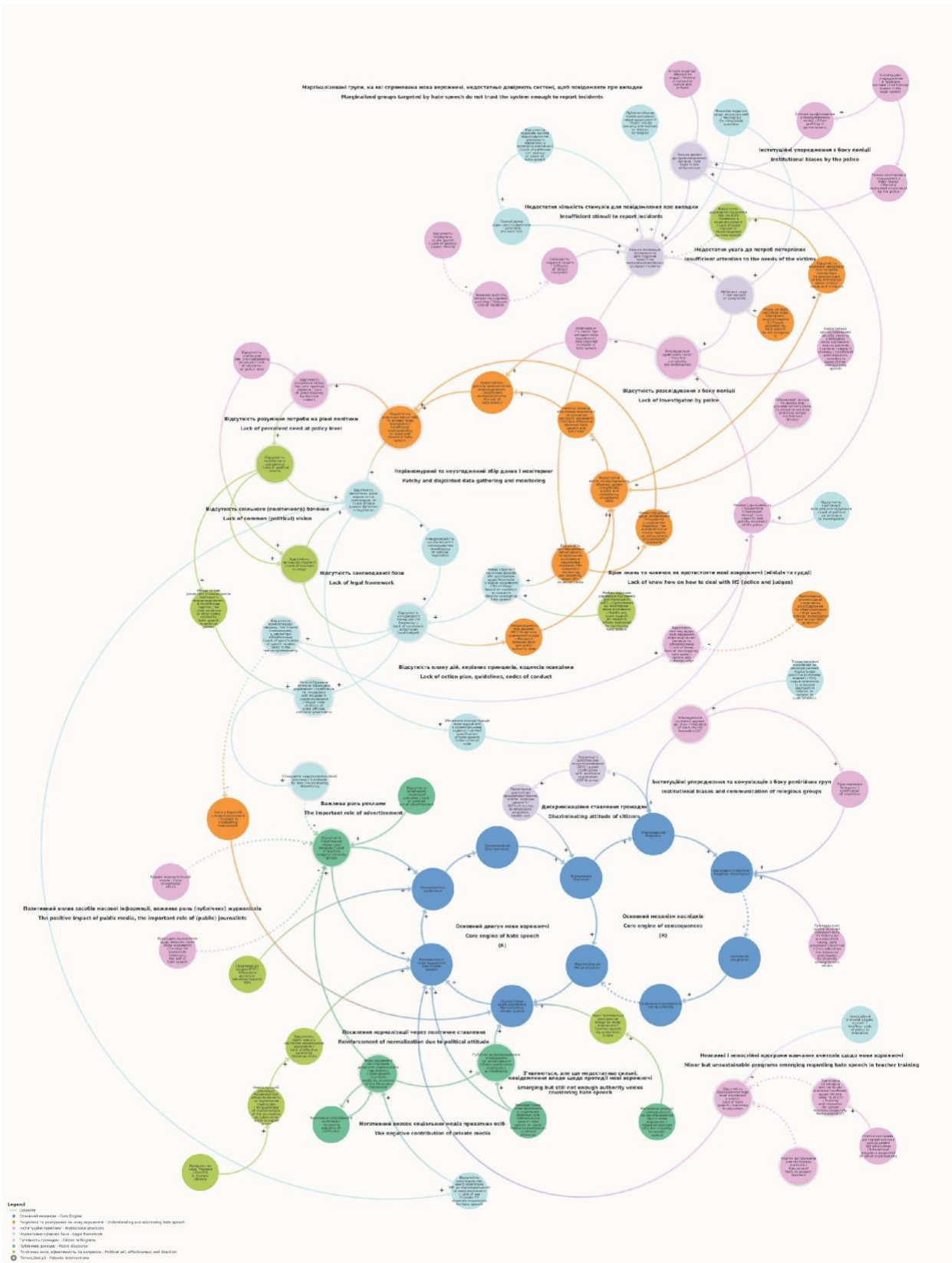


Fig. 1: The system map

## General structure

The map is structured around three types of **factors, connections, and loops**.

The **core engine** (the two blue “core” loops) depicts the core mechanism of hate speech and its consequences. Both loops are reinforcing.

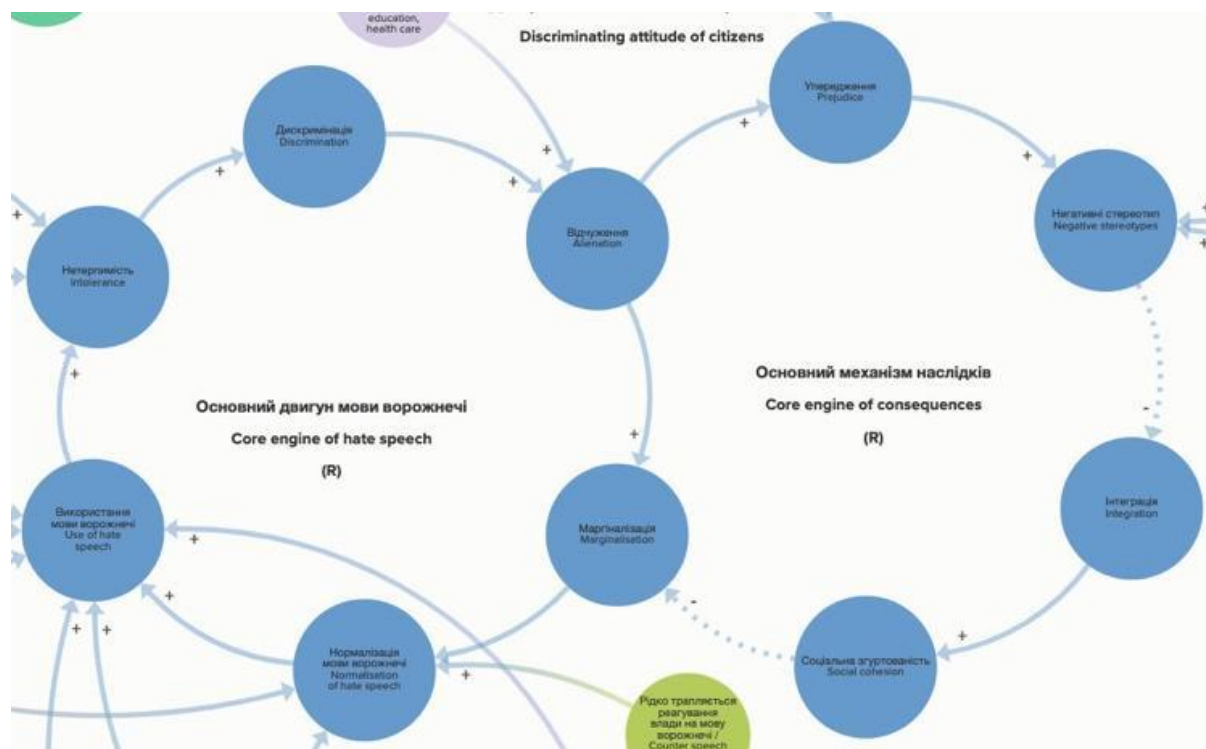


Fig. 2: The core loop

The left loop, the *core engine of hate speech*, visualises how hate speech leads to a self-reinforcing mechanism as it leads to more intolerance and more discrimination, thus leading to alienation and marginalisation of the groups targeted by hate speech, and notably minority groups. The alienation and marginalisation in turn confirm the “we/them” divide and result in the normalisation of hate speech, leading to more hate speech.

The right loop depicts the *consequences of hate speech*, which again leads to a reinforcing mechanism starting from alienation: the less the minority groups are in contact with the majority, the more there are prejudice and stereotypes in society. The stereotypes in turn hinder integration and cohesion, leading to even more marginalisation and again confirmation of the “we/them” divide.

The factors and connections in the upper part of the map are those contributing to the current approaches to tackling hate speech in Ukraine undertaken mostly by state actors. The factors on the top part of the map show how groups targeted by hate speech do not trust the system enough to report hate speech. This is caused by several underlying mechanisms:

- *Institutional biases by the police* shows how the broader, institutional biases led to ethnic profiling and discriminatory misconduct by the police. This results in low trust in law enforcement by citizens and consequently low motivation and confidence to report incidents.
- *Insufficient attention to the needs of victims* shows how there is insufficient understanding of the victims’ needs by law enforcement agencies, again leading to low motivation to report incidents and very few complaints.
- *Insufficient stimuli to report* show how there is a lack of state support of those targeted by hate speech, again causing low motivation and confidence to report incidents. This low motivation is reinforced by the lack of civil redress and sanctions in cases of hate speech.
- *Lack of investigation* by the police depicts how very few complaints are investigated. This is mainly caused by lack of know-how of investigating hate speech and a lack of specification of speech related tasks in the law on cybersecurity.
- *The lack of know-how to deal with hate speech* (police and judges) is also caused by the lack of research dedicated to monitoring hate speech, the lack of social media reports on enforcement of community standards and the lack of qualitative training and prosecution guidelines.

- Underlying all the above is the *lack of a common (political) vision* resulting in a lack of common strategy on all levels and domains concerned. A first step is a clear hate speech definition in legislation.
- An important loop is the *patchy and disjointed data gathering and monitoring* which leads to insufficient quality and consistency of gathered data, insufficient evidence and insufficient understanding of the scale and impact of hate speech. A direct consequence is the lack of understanding of hate speech and its impact by decision makers resulting in low political priority.

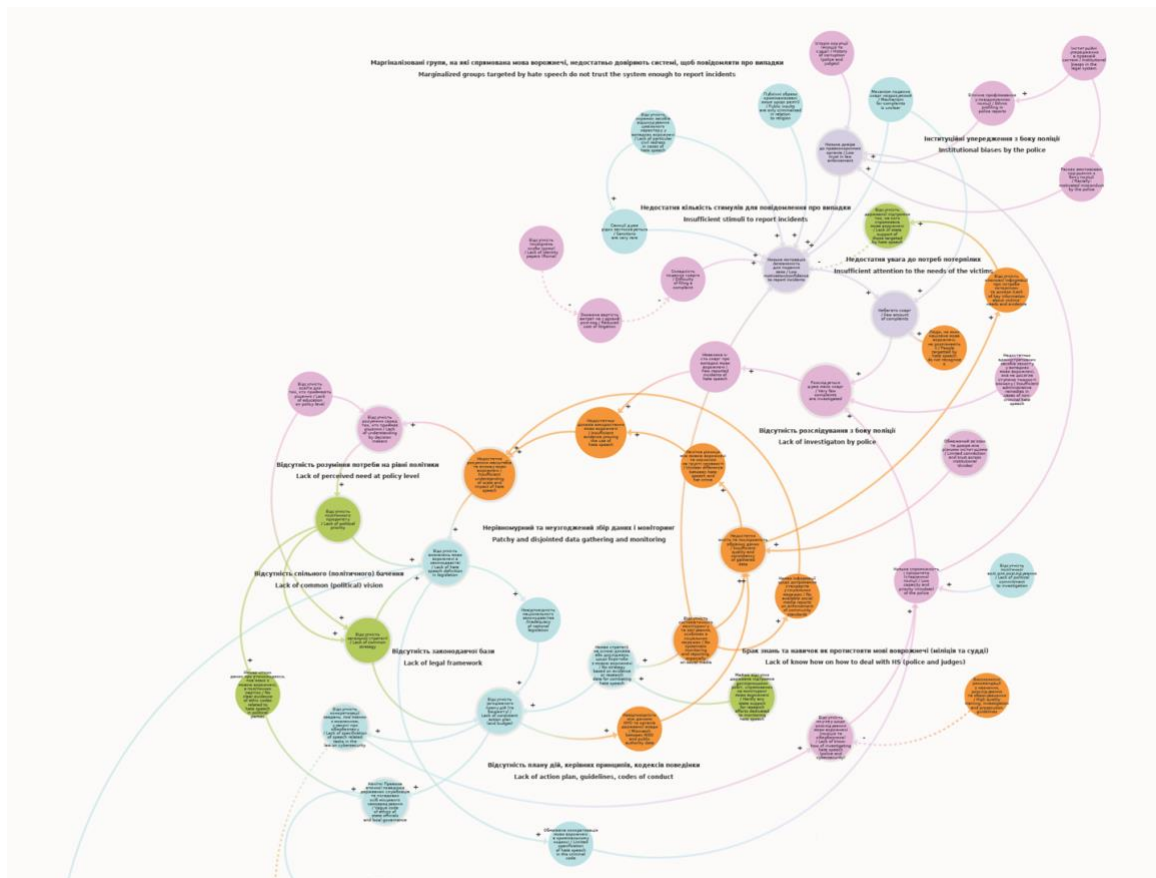


Fig. 3: The upper part of the map

The factors and connections in the lower part of the map relate predominantly to non-state actors.

- *The important role of advertisement* shows how ethical advertising can help to foster a positive image of minority groups, thus lowering intolerance in the Ukraine society.
- *The role of (public) media and journalists* refers to how *private media seem to perpetuate hate speech* by offering a public stage to political actors that use hate speech.
- An underlying reason for the use of hate speech by politicians on private (TV and social) media is the fact that it draws the attention of the public and increases the politician's popularity. This reinforces *the normalisation of hate speech in the society*.
- Countering hate speech is also not always well received by the general population which contributes to the fact that *too few authority voices are standing up to counter hate speech*. In general, there is a *discriminating attitude of Ukraine citizens* towards minority groups and especially *some religious groups are contributing to a negative perception of LGBTI*.
- Remains the issue with the alleged funding of groups expressing right wing views from national and local budgets within budget allocations for the patriotic education, as shown by investigative reporters, and lack of condemnation from the public authorities such extreme right-wing activities.
- The ongoing conflict in Eastern Ukraine leads to *increased discrimination of Roma, LGBTI and IDP* in the affected regions.
- A promising approach can be found in the *emerging programmes for tackling hate speech in education*. However, they would need both upscaling and stronger sustainability to have a longer-term impact.

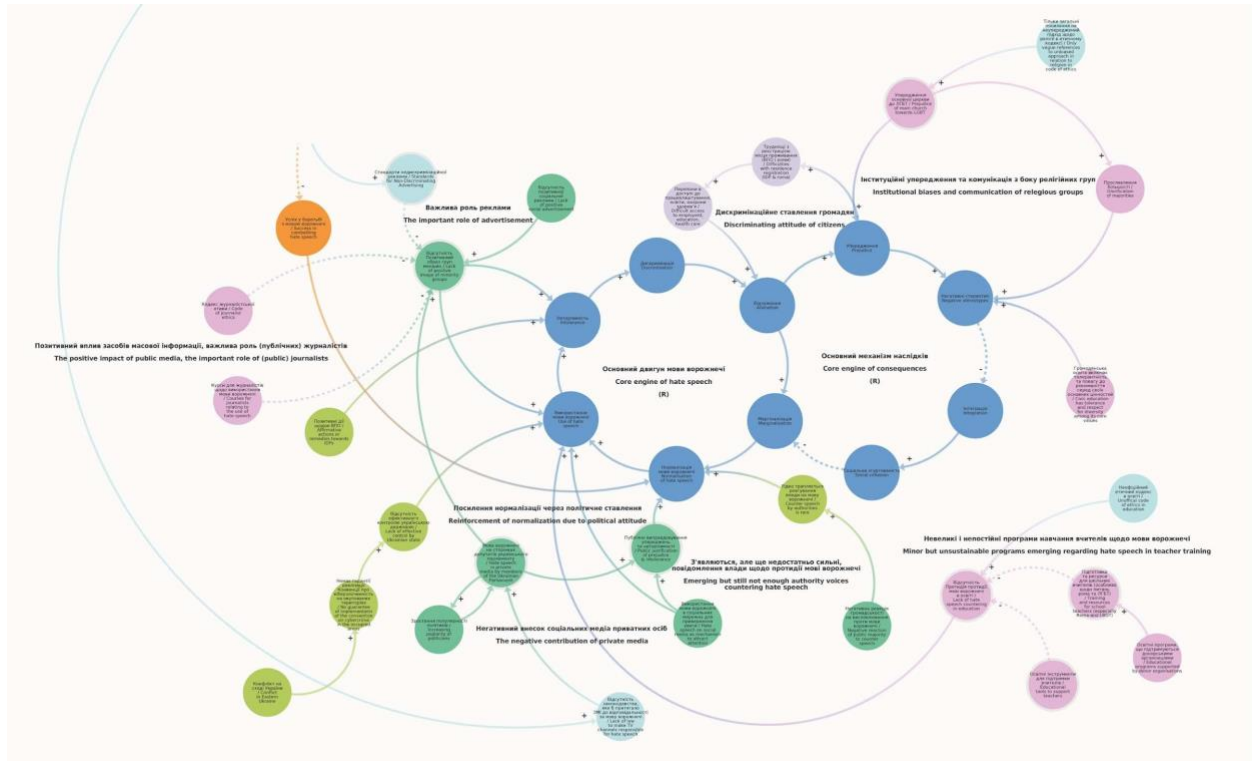


Fig. 4: The lower part of the map

The upper and lower factors are regrouped in cluster themes, which are both challenges and opportunities. They are visualised and explained below.

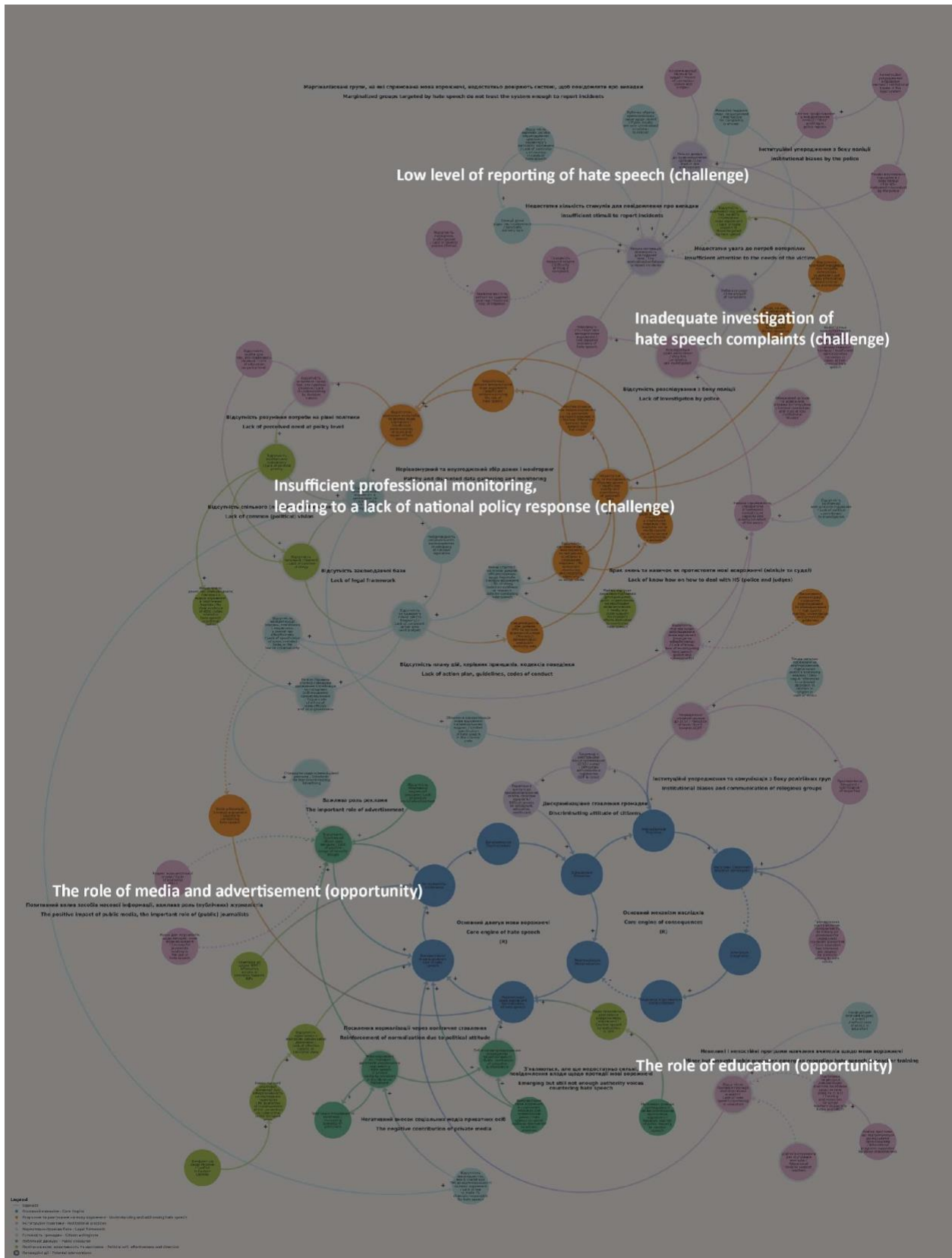


Fig. 5: The themes on the map

The map can be summarised in four themes which reveal the connections between the loops:

### **Low level of reporting of hate speech (challenge)**

Hate speech incidents are rarely reported due to several reasons:

- *Insufficient awareness or willingness to report*

Not everyone targeted by hate speech recognises it as being hate speech, as it is regarded as normal by the public and by many public figures. Marginalised groups targeted by hate speech do not trust the system enough to report incidents. This is linked to a history of corruption of the police and the justice system and still existing biases among judges and police officers. The other reasons for not reporting are gaps in the legislation, the length and complexity of the criminal procedures and the little awareness of other possible remedies such as use of media self-regulations or filing a complaint to the Ombudsperson.

There is also insufficient support from the state to help victims to report incidents.

- *Insufficient ways to report*

There are insufficient channels to report hate speech. The two main channels available are filing a complaint at the police or going to court, but these channels are hardly used due to the lack of follow up by the police and the burden/cost of going to court.

Civil redress in cases of hate speech is barely a practice, as mentioned earlier.

When hate speech is reported to the police, it is merely ignored when not linked to hate crime and hardly followed up. According to the police, the main reason is the lack of legislative clarity that prevents them from investigating minor cases of hate speech within the existing provisions of the Criminal Code.

If hate speech incidents are reported, this is mainly done to the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) by NGOs that provide victim support. In the



field of media, reports are mainly sent to the Commission on Journalism Ethics, or to the Independent Media Council.

The shortcomings in reporting hate speech are a major issue because this prevents adequate response to hate speech and, therefore, leads to the lack of understanding of the situation by authorities, underreporting, and low trust in the capacity of the state to respond to this phenomenon. This is also linked to the lack of response from policy makers.

### **Inadequate investigation of hate speech complaints (challenge)**

The lack of successful response to hate speech complaints by the police stems from several reasons, such as:

- A lack of capacity of the police results in hate speech investigation not being a priority
- A lack of know-how on how to investigate hate speech.

This challenge is linked to the lack of legal framework and consequently the lack of a clear definition of hate speech, action plan, guidelines and codes of conduct. This is again linked to the lack of commitment and response from policy makers.

### **Insufficient monitoring, leading to a lack of national policy response (challenge)**

Most monitoring today is conducted by NGOs, but this is not leading to a high impact due to the following reasons. The data gathering is patchy and disjointed due to a lack of coordination. The data gathered is of insufficient quality and consistency due to lack of know-how, common guidelines and training. This is also linked to the mismatch between data gathered by the NGOs and by public authorities. This is also linked to the lack of a national definition of hate speech and the difference with hate crime. There is insufficient data due to the lack of reporting. This lack of professional monitoring has several consequences, among which the insufficient understanding of the victims' needs and the consequences of hate speech for the targeted groups and the society in general. Insufficient evidence about the extent and impact of hate speech leads also to a lack of understanding of the issue by decision makers at policy level and consequently the absence of a common vision of the importance and ways of combating hate speech. This understanding is improving, but there are still not enough authority voices countering hate

speech. This lack of understanding is one of the main reasons why hate speech is not a political priority and explains the lack of a national definition, appropriate legal framework, a common strategy, and a related national action plan.

In addition, monitoring of social media is very rare, mainly due to a lack of knowledge and the specific nature of hate speech regulation on social media.

### **The role of media and advertisement (opportunity)**

The media plays an important role in combating hate speech. The media can, for example, change the public opinion by disseminating positive images and stories about minority groups and raising public awareness about the negative impact hate speech has on everyone.

The national media and advertisement coordination bodies are indeed aware of the importance of their roles and working on codes of ethics and training. However, they do not reach sufficient professionals in their sectors yet.

Yet, the negative contribution of the media (TV and social) remains a big problem. Hate speech on these channels is often openly expressed by public figures, including politicians, leading to the normalisation of hate speech in society and the justification of prejudice and intolerance.

This negative contribution is due to several reasons, such as:

- Hate speech attracts attention and increases the popularity of politicians and other public figures.
- Counter speech by official authorities is rare and even leads to negative reactions from the public.
- The legal framework does not include effective sanctions.

### **The role of education (opportunity)**

Education around hate speech, from kindergartens up to universities and in the professional context, has been mentioned several times as potentially being the most effective long-term approach. There are currently training and resources available for teachers, but they are not scaled up and not used sustainably.

Next to the official education, attention should be paid to the education of the public through campaigns, communication, and dialogue. The media can play an important role here.

### **Leverage points**

An important and unique outcome of a causal loop system map is the identification of leverage points: the elements in the systems with a higher potential of success when intervening on them. They are recognisable by their multiple connections to other elements, thus being more influential. In the map, they are indicated with a grey border.

In order of importance per theme (more connection to fewer) these leverage points are:

- Motivation/confidence of victims to report incidents (9)
- Hate speech definition in legislation (9)
- Capacity and knowledge on how to investigate and prosecute hate speech (8)
- A common strategy of monitoring and evaluation of hate speech among public institutions (7)
- Positive image of minority groups (7)
- Consistent action plan (and budget) for the state actors and self-regulations bodies (6)
- Quality and consistency of gathered data (5)
- Counter speech by public persons and state officials (5)
- Trust in law enforcement by citizens (4)
- Number of complaints by victims (4)
- Number of complaints investigated by the police (4)
- Political priority (4)
- Understanding of the scale and impact of hate speech at policy level (4)
- Systematic monitoring and reporting, especially on social media (4)

- Reinforcing the role of education in countering hate speech (4)
- Evidence proving the use of hate speech to policy makers (3)
- Understanding of hate speech and its impact by policy/decision makers (3)
- Codes of ethics for state officials and local governance (3)
- Addressing prejudice of leading religious bodies towards LGBTI (3)
- Justification of hate speech in the media and social media (3).

These leverage points were used to draft the roadmap and can be considered as points for further analysis when developing further plans on combating hate speech in Ukraine.

### **Collaborations among national stakeholders**

The mapping process had a participatory and inclusive approach regarding the involvement of stakeholders, from public institutions and civil society. The final report includes the inputs and points of view of many concerned by the common issue of hate speech in Ukraine<sup>72</sup>.

Some entities are already active in combating hate speech and in ensuring also a collaborative approach in this process, in other words they act as hubs in combating hate speech. At the national level, such hubs among state actors are the Ombudsperson's Office and the State Service for Ethnic Policy and Freedom of Conscience. International hubs supporting state actors and local civil society organisations are the Council of Europe and the United Nations, both actively promoting actions to combat hate speech in Ukraine. These hubs work closely together with NGOs and other human rights organisations.

The existing collaborations of different entities in combating hate speech are related to:

- Monitoring hate speech and analysing its evolution
- Awareness raising about the need to address the issue of hate speech
- Provision of training to various professional groups

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<sup>72</sup> The complete list of stakeholders involved in the process is in the Appendix.

- Advocating for legal changes to effectively combat hate speech.

The following needs for future collaboration were mentioned during the analysis:

- Collaboration between minority organisations, such as the Roma coalition, and media partners to raise more awareness and to raise the level of understanding about minority groups in society
- Collaboration between the National Police of Ukraine and civil society organisations on identifying the problem of hate speech, the targeted communities etc.
- Collaboration between the National Television and Broadcasting Council and similar bodies from other countries to gain more knowledge on how to tackle hate speech
- Collaboration between the State Service on Ethnic Policy and Freedom of Conscience and public broadcasting companies in relation to the media representation of minority groups
- Collaboration between the State Service on Ethnic Policy and Freedom of Conscience and the Ministry of Education in relation to the inclusion of minority issues in the school curriculum
- Collaboration between the National School of Judges and the Council of Europe for the training of judges
- Collaboration between NGOs and the Ombudsperson's Office regarding the monitoring of hate speech
- Collaboration between the Ombudsperson's Office and different institutions and minority groups in combating hate speech as a joint effort.

# Future steps in combating hate speech in Ukraine

The mapping process confirmed the complexity of the phenomenon of hate speech and the related consequences in Ukraine, as well as the fact that hate speech is not tackled consistently at the moment. Taking this into account, the following roadmap has the same structure built by the system map and concentrates on several scenarios needed to effectively approach this complexity and to tackle hate speech effectively and collaboratively. The response to hate speech cannot be the responsibility of just one stakeholder. There needs to be a complex response to a complex problem, with the involvement of several institutions and civil society organisations, ideally in a collaborative, transparent and mutually agreed manner. This kind of response needs a permanent reaction, not just one limited in time.

This roadmap includes an explanation of possibilities for future actions that arose from the system analysis. At the moment, several scenarios are possible, and stakeholders did not hint towards just one way of tackling hate speech. Given the current situation and the mandates of different institutions, collaboration and jointly approaching the problem of hate speech across institutions need to be enhanced.

As results from the previous chapters, the clusters of interventions that deserve further efforts in tackling hate speech in the shorter term are:

- Monitoring of hate speech,
- Increased liability and redress, and
- Awareness and education.

The clusters proposed are not placed in any hierarchical order as they are interconnected. Each cluster also includes short-term and long-term goals and refers to the issue of the resources<sup>73</sup> repeatedly mentioned by all actors within this mapping process. The final components of the

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<sup>73</sup> By resources we mean human, time and financial resources needed to effectively implement the whole roadmap or its parts.

roadmap are expected results which can also serve as a baseline for further development of the indicators of achievement once this roadmap is transformed into an action plan and approved jointly by all appropriate actors.

All proposed actions within these three clusters can be implemented simultaneously. Many of the proposed actions are not hierarchically linked due to the intersectional nature of many actions and various actors involved.

There is also one recommendation repeating itself and emerging throughout the long history of debating hate speech responses not only in Ukraine, but also in other Council of Europe member states. This is the definition of hate speech which should, in one way or another, be developed at the national level and regulated by policy and legal frameworks. It resulted as crucial for national stakeholders to start any action plan or policy development with a broad and inclusive dialogue about the need of a **hate speech definition**, the boundaries of such a definition, different legal models that can be used, and, most importantly, possible **redress mechanisms** that can be linked to this framework to ensure that complex issues of diverse hate speech manifestations are addressed at all levels. Without such a broad and inclusive forum to start the work, some important factors can be lost and ignored. The systemic mapping and its results showed some polarisation among national stakeholders in the ways hate speech is understood and how it should be regulated in the legislation. This polarisation was taken into account when drafting the roadmap. On the other hand, the system map also showed a great potential for the search for common ground and further dialogue in this sphere.

Another important issue raised which needs to be addressed at the level of each proposed cluster is the issue of **coordination or governance**, as there needs to be leading entities of the work on combating hate speech, in order to mobilise other entities and to ensure a consistent approach. This can also be an entity composed of representatives of different institutions, entrusted with responsibilities and resources to act as one coordinator of the whole complex process. The question of leadership of a national coordination among stakeholders to plan and implement any action plan, related to the following aspects mentioned in the process of the systemic analysis:

- Coordination is valued when it is connected with cooperation and shared ownership

- There is a possibility to have several coordinators and several cooperation hubs if the action plans to combat hate speech are built around a certain cluster of issues or solutions, for example there could be a media cluster at the initial stage to cooperate and develop solutions to hate speech in the media, another hub could be coordinated by the Ombudsperson's Office or the Police to work on the possible solutions on how to build an effective hate speech reporting mechanism, etc.
- Previous Ukrainian history of institutional development and lack of systemic institutional support rather calls for dividing the responsibilities and the need to increase cooperation rather than solely concentrate on choosing one coordinator and increasing specialisation
- There is a considerable potential of attracting new actors and inviting private sector companies to the dialogue on how to combat hate speech, as they can bring additional resources and support self-regulation approaches.

### **First cluster: monitoring hate speech**

The monitoring cluster of the roadmap addresses the gap of related to the lack of comprehensive data about hate speech in Ukraine, notably in relation to the prevalence of the phenomenon of hate speech, its targets, sources and impact. While data is needed, there needs to be also a rationale regarding what use should be made of the data, if monitoring is reinforced. Data can serve as a basis for regular analysis to define actions to combat hate speech. Another important issue when it comes to data collection and systematic monitoring for the purpose of further analysis and response-building is the issue of methodology mentioned by most actors participating in the process. Scattered and non-systematic monitoring efforts exist now in different spheres<sup>74</sup> and confirm the need to establish methodological approaches to the monitoring efforts and to have a broad dialogue on the further use of this data - who has access and who provides this comprehensive analysis. Another issue connected to the methodology is

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<sup>74</sup> For example, there is media monitoring led by self-regulation bodies and media NGOs and there is also monitoring led by community and human rights NGOs, as well as periodical short-term monitoring with a narrow focus.



the definition of the hate speech.

The **first short-term recommendation** is to create a forum for broad consultation on the specific data that needs to be regularly monitored for effective hate speech evaluation and response, actors that should be involved and resources needed. Such forum should be organised at the national level involving various actors. A possible hub for such forum could be the Ombudsperson's Office or one of the media self-regulation bodies, like the Commission on the Journalism Ethics. Such forum could also be established at the ministerial level as part of the Action Plan to the National Strategy on Human Rights.

The expected results of this first step are:

- To identify a common understanding of the subject, a possible definition of hate speech and possible monitoring methodologies needed to cover different spheres, targeted audience and complex nature of hate speech
- To establish a list of actors and spheres of public life that need to be monitored (media, social media, education, etc.)
- To identify types of hate speech to be monitored
- To define the timeline and resources needed.

The systemic mapping showed at least several actors that are already involved in some monitoring work, some of whom do not have regular connections with each other and do not share data among themselves. The mid-term goal in this area and the **second recommendation** in this cluster, after the establishment of mutual approaches to different monitoring needs, is to **agree on the ownership of the monitoring results and its sharing among the group of engaged actors** for further analysis and policy response measures.

The expected results of this second step are:

- To carry out regular / repetitive monitoring efforts that cover major areas of concern
- To increase the monitoring capacity of different involved institutions
- To define rules and expectations of cooperation between different actors

- To map cooperation between actors - how the results are shared and who is responsible to analyse them.

There were several concerns mentioned by the interviewed experts and during the workshops that need to be addressed in this cluster of activities. First, there is the challenge of the lack of legal definition of hate speech and its influence on monitoring hate speech methodology development. This will be addressed in the next cluster - liability and redress. The second concern is the lack of resources for systemic work on the issue in Ukraine.

This lack of resources, which was mentioned many times during the mapping process and shown by the core loop on the map, is driven by several factors. There is a lack of human and knowledge resources and monitoring tools for continuous monitoring and subsequent analysis of hate speech in many institutions involved. Related to that, there is a lack of support from the state in terms of regulation of cooperation between actors, financial stability of the institutions, dedicated human resources for the task and support for their capacity development. All these factors also should be taken into account when planning monitoring and developing a common data analysis platform.

Actors that should be invited in the design of actions within this monitoring cluster are state institutions, media self-regulation bodies, media NGOs and community and human rights NGOs.

### **Second cluster: liability and redress**

The **liability and redress cluster** is connected with the main recommendation on the development of a legal definition on hate speech, as one cannot build a redress mechanism without establishing what is behind the prohibited behaviour. The reason to make a cluster of recommendations united under the liability and redress name is to facilitate a discussion about the nature of hate speech in Ukraine, its consequences, the various types of liability for hate speech and possible redress for the individuals, groups and communities concerned. This discussion needs to be placed at the core of the broader legal definition discussion to make sure not just liability, but also the redress is an important part of it.

The expected results of the first step in this second cluster in the short term will be:

- To create a hub (platform) for engagement for as many relevant actors as possible (in the previous cluster we already indicated several possible hubs to host such multi-actor discussion)<sup>75</sup>
- To identify together the needed legal changes, establishing types of liability and redress mechanisms concerning different types of hate speech targeting different vulnerable groups and individuals
- To analyse best practices in countering different forms of hate speech in the most effective way, using as a basis ECRI GPR No. 15.

The expected results from the second step in the same cluster in the mid-term perspective, when necessary legal and procedural changes are implemented, are:

- To analyse monitoring results and evaluate how the redress models are working
- To train actors involved in the redress delivery regularly
- To increase awareness on hate speech and the need to report it
- To carry out survey on how people perceive hate speech and what mechanism of redress they use and/or consider effective
- To improve codes of conduct so that they include clear redress for hate speech,
- To develop additional self-regulation mechanisms (including codes of ethics, complaints chains, self-regulation for business, etc.).

Actors that should be invited to the design of actions within this cluster are state institutions, media self-regulation bodies, media NGOs and community and human rights NGOs. An additional important actor in this discussion is the business sector, or at least corporations owning social media platforms.

### **Third cluster: awareness raising and education**

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<sup>75</sup> This could be the Ombudsperson's Office as the national equality body, the National Commission for Journalism Ethics or one of the Ministries if this work is connected to the Action Plan for the National Strategy on Human Rights.

There is a need to increase reporting of hate speech and public discussion around its unacceptance in the Ukrainian society. For this, education and awareness raising are key steps. Many recommendations voiced during the systemic mapping process were connected with the need to educate, train and increase the general awareness about hate speech and also the specialised understanding of different groups and professionals.

One of the goals for awareness work and education is to prevent hate speech, teach people and show ways of expressing their thoughts respecting others, being heard without hurting and humiliating others. A part of the educational work needs to be related to the limits to freedom of expression, in hate speech cases. Awareness work should also be concentrated on campaigns to increase hate speech reporting (activities with minority groups, for example).

The expected results of educational and awareness raising work in the short-term perspective are:

- To development a pool of actors to be involved in the awareness raising and education
- To prioritise targets and areas for awareness raising and allocate sufficient resources for the purpose
- To establish priorities and targets for education and training, such as professional groups, minorities, general public
- To divide responsibilities in carryout out awareness raising and training and education with long-lasting effect.

In the mid-term perspective, the expected results are:

- To pilot awareness campaigns involving state institution and civil society organisations, with clear target groups
- To carry out regular human rights education for public authorities which includes modules on hate speech prevention
- To take steps in combating hate speech in the formal educational system.

Actors that should be invited to the design of actions within this cluster are state institutions, media self-regulation bodies, media NGOs and community and human rights NGOs.

# Appendix I. Systemic design methodology

The frameworks used for merging, classifying and processing the gathered data of this research come from the theory and methodology of systemic design. Throughout the project, we used the following frameworks and models:

- Causal loop diagram
- Intervention strategy
- Intervention models.

## **Causal loop diagrams (CLD)**

A causal loop diagram (CLD) is a causal diagram that visualises how different variables in a system are interrelated. Causal loops diagrams (also known as causal loop system maps) are used to display the behaviour of a system that is emerging from the interconnectedness of its parts. The process of creating a causal loop diagram or a system map is that of structuring parts of the problem in such structures. Causal loop diagrams are built out of three types of elements: factors, connection, and (feedback) loops, as follows:

- Factors are the elements that contribute to the issue, and on which we can act by increasing or decreasing them.
- Connections are the influences between the factors. The '+' and '-' and the plain and dotted lines indicate the way they influence each other.
  - '+' and plain lines indicate an influence in the same direction: if factor A increases, so will factor B. If factor A decreases, so will factor B.
  - '-' and dotted lines indicate an influence in the opposite direction: if factor A increases, factor B will decrease. If factor A decreases, then factor B will increase.
- We talk about loops when the factors are in a closed circle. These point out to underlying mechanisms in the system. There are two kinds of loops: reinforcing loops and balancing loops.

- When all the arrows in the loops are influencing in the same way, we speak about a 'reinforcing loop'. Reinforcing loops accelerate change in a system towards a positive or negative trend.
- When the arrows that are influencing in an opposite way are uneven, we have a balancing loop. Balancing loops maintain the system in the current state.

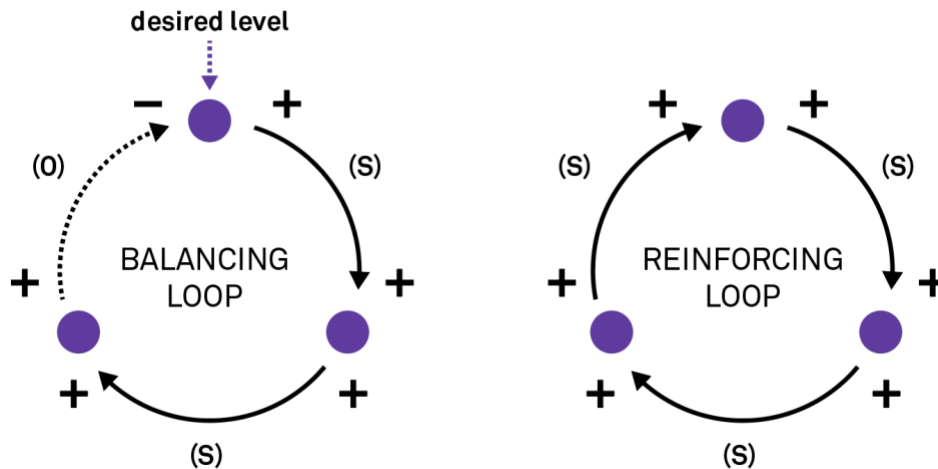


Fig. 6: Causal loops

The goal of a causal loop system map is to identify the leverage points: the factors and loops in the system that are crucial for change. They are recognisable by the number of connections (factors) and the circular behaviours (loops).

### Intervention strategy

The intervention strategy is a method to explore on which levels of the system should be intervened. The method we used is based on the seminal paper “Leverage points: places to intervene in a system” by Donella Meadows. In this paper, she describes a list of places within a complex system where a “small shift in one thing can produce big changes in everything.”

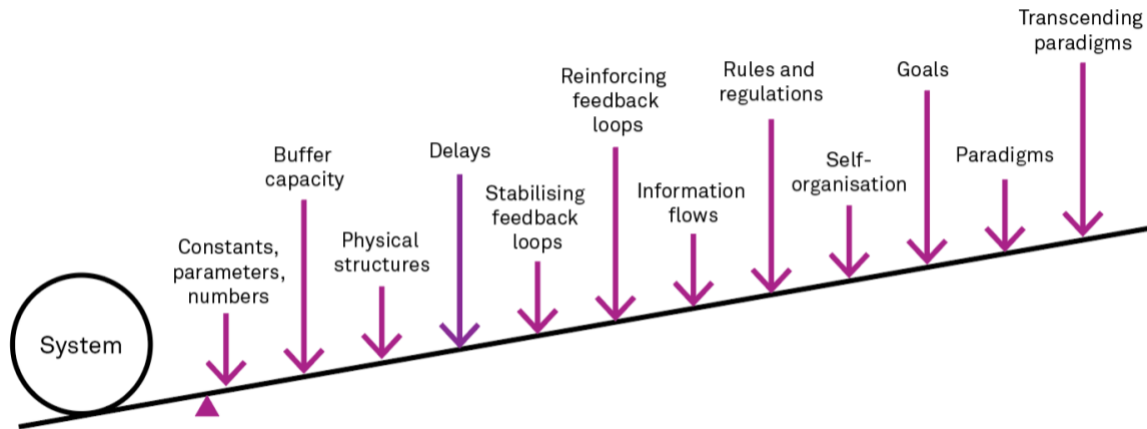


Fig. 7: The leverage areas in a system

Meadow also points to the hierarchy involved from left to right. The more to the right, the more effective, but also more difficult, and taking more time, to implement. The method was used to prioritise the recommendations gathered from the ECRI monitoring report, the ECRI GPR No. 15, and the interviews with national stakeholders.

### **Intervention models**

An intervention model is a visual representation of an intervention. It is composed of activities, touchpoints and boundary conditions. In this step of the process, people tend to focus on each intervention separately. To avoid this, we used hexagons to stimulate national stakeholders to look at how interventions connect and reinforce each other, and envision a more effective strategy for change.



# Appendix II. List of activities of the mapping process

The key activities undertaken as part of the systemic analysis were:

- First training course on hate speech in March 2021
- Drafting of an actor map and a situational analysis in April 2021
- Interviews in May 2021
- Multi-stakeholder workshop in June 2021
- Report development from March to December 2021, including a consultation process on the report with national stakeholders in October- December 2021.

## **First training course**

The objectives of this two-day training were

- To develop participants' common understanding on hate speech, its forms, its causes and consequences and familiarise participants with the definitions and approaches proposed by the ECRI GPR No. 15 on combating hate speech
- To introduce to participants the steps of the systemic mapping of responses to hate speech in Ukraine
- To gather first-hand input about the state of play of the problem of hate speech in Ukraine.

The session was held online on 16 and 17 March 2021 and was attended by 25 participants from Ukraine, representatives of state institutions and civil society organisations.

## **Development of the system and actor maps**

Following the desk research and the training, two maps - an actor map and a system map - were drafted. The goal of both maps was to inform the interviews. The system map was also used as input for the second workshop. The first version of the map was constructed based on data

gathered through desk research, with a key document being the ECRI GPR no. 15. After the interviews, the maps were supplemented with additional insights.

### **Interviews**

The main objectives of the interviews were:

- To understand the role of the interviewees regarding hate speech, including their role in monitoring hate speech
- To gather information about the process to respond to hate speech, as well as current and potential collaborations
- To identify missing actions in effectively combating hate speech.

15 interviews and 2 focus groups with 3 participants each were conducted between May and July 2021. The interviewees were a mix of state actors, self-regulation bodies, media organisations, and NGOs.

### **Multi-stakeholder workshop**

The objectives of this workshop were:

- To share insights from the interviews and discuss the system map and gaps identified
- To elaborate on and prioritise recommendations for future actions
- To identify the actors that should be involved to implement these interventions.

The workshop was held online on 15 and 16 June 2021 and was attended by 25 participants, representatives of state institutions and civil society organisations involved in this project.

<b>LAWS &amp; JUSTICE</b>	<b>LAWS &amp; JUSTICE</b> 14 Create a clear, official definition of hate speech, and make the difference clear with freedom of speech and hate crime	<b>LAWS &amp; JUSTICE</b> 15 Make a law to tackle the use of hate speech	<b>LAWS &amp; JUSTICE</b> 16 Make a law about the personal liability of public actors	<b>LAWS &amp; JUSTICE</b> 17 Improve the laws regarding the responsibility of media	<b>LAWS &amp; JUSTICE</b> 18 Make laws about hate speech education in schools	<b>LAWS &amp; JUSTICE</b> 19 Make hate speech fines higher	<b>LAWS &amp; JUSTICE</b> 20 Provide fines or other penalties if codes of ethics are not followed	<b>LAWS &amp; JUSTICE</b> 21 Provide free access to the justice system when necessary	<b>LAWS &amp; JUSTICE</b> 22 Create a law to punish groups that are promoting hate speech	<b>LAWS &amp; JUSTICE</b>
<b>MAKE GOVERNMENT MORE EFFECTIVE</b>	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 23 Establish a separate authority with qualified people trained specifically on this issue	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 24 Establish a common vision and strategy with regard to hate speech	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 25 Reform the Parliament: set very high criteria in terms of ethics and professionalism	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 26 Factor reactions of public authority on hate speech in the public debate and from opinion leaders	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 27 Give the Parliamentary Commissioner for Human Rights powers in order to combat racism	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 28 Improve the action plan for support and integration of refugees and people in need	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 29 Improve the action plan for support and reintegration IDPs	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 30 Set up a body independent of the police and prosecution to investigate alleged cases of racially-motivated misconduct	<b>MAKE GOVERNMENT MORE EFFECTIVE</b> 31 Increase the capacity of the cyber police to tackle hate speech	<b>MAKE GOVERNMENT MORE EFFECTIVE</b>
<b>ACTION PLANS</b>	<b>ACTION PLANS</b> 32 Identify and define the responsibilities regarding tackling hate speech	<b>ACTION PLANS</b> 33 Provide codes of conduct, guidelines & checklists	<b>ACTION PLANS</b>							
<b>COLLABORATION</b>	<b>COLLABORATION</b> 34 Improve coordination and collaboration between NGOs and with the enforcement agencies	<b>COLLABORATION</b> 35 Avoid ad hoc, dispersed and short time projects	<b>COLLABORATION</b> 36 Collaborate with the religious communities to find ways to tackle hate speech against LGBT	<b>COLLABORATION</b> 37 Collaborate with the Roma community to establish a strategy for protection and integration	<b>COLLABORATION</b>					
<b>EDUCATION</b>	<b>EDUCATION</b> 38 Provide hate speech education in schools, from kindergarten to university	<b>EDUCATION</b> 39 Ban educational material depicting stereotypes	<b>EDUCATION</b> 40 Create awareness campaigns on state level concerning the use of stereotypes	<b>EDUCATION</b> 41 Give citizens a better sense of self-worth and respect	<b>EDUCATION</b> 42 Create awareness campaigns around LGBT+ targeting the religious communities	<b>EDUCATION</b> 43 Create awareness through social media influencers	<b>EDUCATION</b> 44 Increase legal awareness among Ukraine people about being liable for hate speech	<b>EDUCATION</b> 45 Promote the benefits of diversity	<b>EDUCATION</b> 46 Provide training for the teachers	<b>EDUCATION</b>
<b>MONITORING &amp; REPORTING</b>	<b>MONITORING &amp; REPORTING</b> 47 Install a solid monitoring and reporting practice, for consulting the authorities	<b>MONITORING &amp; REPORTING</b> 48 Show the impact/positive results of tackling hate speech	<b>MONITORING &amp; REPORTING</b> 49 Establish a common monitoring methodology and indicators	<b>MONITORING &amp; REPORTING</b> 50 Increase monitoring on social media	<b>MONITORING &amp; REPORTING</b> 51 Engage qualified people to work with analytical data, and pay them as to standards	<b>MONITORING &amp; REPORTING</b> 52 Send reports to media	<b>MONITORING &amp; REPORTING</b>			
<b>TRAINING &amp; KNOW HOW</b>	<b>TRAINING &amp; KNOW HOW</b> 53 Train the core staff in police academies	<b>TRAINING &amp; KNOW HOW</b> 54 Train police to recognise and be less tolerant towards hate speech	<b>TRAINING &amp; KNOW HOW</b> 55 Provide education for Parliament members and government employees	<b>TRAINING &amp; KNOW HOW</b> 56 Train judges to recognise and deal with hate speech	<b>TRAINING &amp; KNOW HOW</b> 57 Train NGOs on monitoring and reporting	<b>TRAINING &amp; KNOW HOW</b> 58 Train journalists (and media actors in general)	<b>TRAINING &amp; KNOW HOW</b> 59			
<b>USER EXPERIENCE</b>	<b>USER EXPERIENCE</b> 60 Make sure people understand what hate speech is	<b>USER EXPERIENCE</b> 61 Make it clear for victims how to report hate speech	<b>USER EXPERIENCE</b> 62 Increase the possibilities to report hate speech	<b>USER EXPERIENCE</b> 63 Also allow witnesses to report hate speech	<b>USER EXPERIENCE</b> 64 Ensure a follow-up on hate speech files	<b>USER EXPERIENCE</b> 65 Give victims support and feedback	<b>USER EXPERIENCE</b> 66 Engage people who work full time as mediators			

Fig. 8: List of recommendation used as input for the second workshop

# Appendix III. Involvement of national stakeholders

The stakeholders involved in the activities related to the systemic mapping were:

## *State institutions*

- Ukrainian Parliament Commissioner for Human Rights (Ombudsperson's Office)
- Parliament Committee on Human Rights and Parliament Caucus on National Minorities
- State Service on Ethnic Policy and Freedom of Conscience
- Ministry of Justice
- Ministry of Education
- Ministry of Social Policy
- Institute of the Educational Modernization, under the Ministry of Education
- Central Electoral Commission
- National Police of Ukraine, Human Rights Department
- National Police, Cyber Police Department
- Department of monitoring of Human Rights, Ministry of Internal Affairs
- Security Service of Ukraine
- Office of the Prosecutor General
- National School of Judges
- Supreme Court of Ukraine, Criminal Chamber
- National Council of Television and Radio Broadcasting

## *Media and media NGO*

- Commission on Journalism Ethics

- Institute of Mass-Information
- Internews Ukraine
- Hromadske UA
- Suspilne TV
- Radio culture
- Suspilne Radio
- School of journalism
- Detector Media

*Civil society organisations and networks*

- Coalition of Non-governmental Roma Organisations
- Fight for Right NGO
- Freedom House
- Fulcrum UA NGO
- Gender Z
- “Harmoniya Rivnyh” (Women’s Rights League)
- Human Rights Centre ZMINA
- Hate Crime Monitor (Congress of National Minorities of Ukraine)
- Industrial Gender Committee on Advertising (Ukrainian Marketing Association NGO)
- Insight NGO
- International Charitable Organization Roma Women Fund "Chiricli"
- Lacho Drome
- Nash Svit NGO
- Public Alliance “Politychna Diya Zhinok”

- Ukrainian Helsinki Human Rights Union
- “JurFem” Ukrainian Women Lawyers Association

*International organisations*

- UN Human Rights Monitoring Mission in Ukraine.