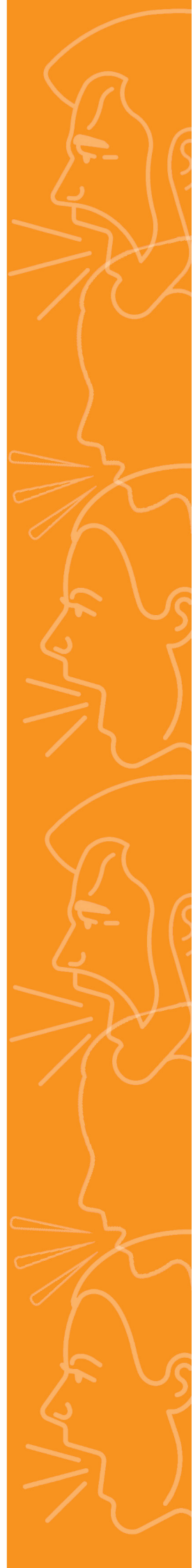




ANALYSIS OF HATE SPEECH IN THE WESTERN BALKANS



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ABBREVIATIONS

RNM	– Republic of North Macedonia
RS	– Republic of Serbia
RA	– Republic of Albania
RK	– Republic of Kosovo
EU	– European Union
RI	– Republic of Italy
RC	– Republic of Croatia
ECRI	– European Commission against Racism and Intolerance
COE	– Council of Europe
ECHR	– European Convention on Human Rights and Fundamental Freedoms
ECtHR	– European Court of Human Rights
CC	– Criminal Code of the Republic of North Macedonia
LPPD	– Law on Prevention and Protection against Discrimination of the Republic of North Macedonia
MLSP	– Ministry of Labor and Social Policy of the Republic of North Macedonia
MIA	– Ministry of Internal Affairs of the Republic of North Macedonia
HC	– Helsinki Committee for Human Rights
CPPD	– Commission for Prevention and Protection against Discrimination of the Republic of North Macedonia
NSEN	– National strategy for equality and non-discrimination 2022-2026 of the Republic of North Macedonia
LPD	– Law on Prohibition of Discrimination of the Republic of Serbia
LEM	– Law on Electronic Media of the Republic of Serbia
CC	– Criminal Code of the Republic of Albania
LPD	– Law on Protection Against Discrimination of the Republic of Albania
LAM	– Law on Audiovisual Media of the Republic of Albania
LPD	– Law on Protection Against Discrimination of the Republic of Kosovo
LIMC	– Law of the Independent Media Commission of the Republic of Kosovo
OIK	– Ombudsperson Institution of Kosovo
NAPEIPRE	– National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians in the Republic of Albania 2021 – 2025
CPD	– Commissioner for Protection against Discrimination of the Republic of Albania
UNAR	– National Office Against Racial Discrimination of the Republic of Italy
LEM	– Law on Electronic Media of the Republic of Croatia
AEM	– Agency for Electronic Media of the Republic of Croatia



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EXECUTIVE SUMMARY

The Helsinki Committee for Human Rights is currently implementing a project called “Anti-Hate Speech in the Western Balkans” supported by CIVIL RIGHTS DEFENDERS. The main objective of this project is to enhance the capacity of civil society organizations to monitor hate speech through evidence-based advocacy and target group engagement in the Western Balkans (North Macedonia, Albania, Serbia, and Kosovo). Additionally, it aims to raise awareness among the general public by launching an online public campaign which is based on systematic monitoring of hate speech and encourages people to recognize and report instances of hate speech online.

For this purpose, the project implemented by the Helsinki Committee for Human Rights involved a national expert drafting a regional policy document to combat hate speech in the Western Balkan countries (North Macedonia, Albania, Serbia and Kosovo). This document provides an analysis of the best practices and lessons learned (especially from legislative and institutional response to hate speech) and highlights the impact of EU membership on hate speech legislation.

The document is focused on:

- a regional legal analysis on the necessary changes in the legislation regarding the implementation of EU legal regulation and EU best practices in the field of hate speech;
- presenting the current institutional setup in the region and what national protective mechanisms are available against hate speech; and
- giving a set of recommendations for further improvement of the area of hate speech based on the data collected during the analysis and the project.

The analysis includes:

- the current state of affairs (mechanisms in place, main parties involved, roles, interaction, effectiveness) in relation to the relevant international standards;
- reference to international practices and experiences that could be relevant as good practices or lessons learned;
- existing shortcomings and challenges;
- possible solutions and approaches to improve coordination and effectiveness in the fight against hate speech;

This document provides an analysis of relevant legislation, positive trends, shortcomings and challenges, formulation of recommendations based on EU and Council of Europe standards and best practices, and identification of potential mitigation strategies. The Helsinki Committee on Human Rights project supports these strategies and presents the institutional framework and protective mechanisms in the region to combat hate speech.

The main purpose of this document is to provide a set of recommendations for further advancement of the hate speech area based on the data collected during the analysis and the project.

This analysis is structured into five parts. The first part explains the methodology used in preparing the document. The second part discusses international and European standards that are relevant to hate speech. The third part focuses on the legal framework for the regulation of hate



speech in the Western Balkan countries that are subject to this analysis, namely the Republic of North Macedonia, the Republic of Serbia, the Republic of Albania, and the Republic of Kosovo. The third part also covers the existing mechanisms for addressing hate speech. The fourth part sheds light on the legislative framework and existing mechanisms for addressing hate speech in two EU member states. The aim is to provide a comparative view of the regulation of hate speech. Finally, the fifth part presents the conclusions and recommendations for each country separately.

This analysis was made by Bojana Netkova, LLM, with the support of the Project Team of the Helsinki Committee for Human Rights. The expert and the Project Team worked closely together, shared information, provided relevant information and communicated continuously via e-mail.

I. METHODOLOGY

This document was prepared using a structured methodology that involved three phases: a. analysis of documents and established mechanisms for addressing hate speech, b. mission to determine the situation in the countries subject to this remote analysis, and c. preparation of the document.

Interviews

Prior to conducting the interviews, a discussion concept was created which emphasized the topic of the interviews and shared via email with the participants. The detailed interviews were conducted online using one of the Zoom platforms with representatives from partner organizations of the Macedonian Helsinki Committee for Human Rights. These organizations include:

- YUCOM from the Republic of Serbia
- Albanian Helsinki Committee
- YIHR from the Republic of Kosovo

During the research, open-ended interviews were conducted that allowed respondents to provide answers based on their complete knowledge, experience and understanding of the given topic. The reason behind choosing this type of interviews was because they represent qualitative research methods and provide the interviewee with ample space to express their views freely.

Document analysis

The literature analysis enabled the collection of contextual information and represents an important source of information regarding government activities, strategies and action plans and their implementation, as well as current data trends.

Various documents were consulted, including international and European standards in the field of hate speech, legislation of countries in the Western Balkans, comparative best practices, relevant reports and case law of the ECHR regarding hate speech, namely:

✕ International and European standards: UN International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly with Resolution 2106



(XX) of December 21, 1965¹, International Covenant on Civil and Political Rights², General Recommendation no. 15 of the ECRI regarding hate speech, General Recommendation no. 6 of the ECRI on combating the distribution³ of racist, xenophobic and anti-Semitic material via the Internet⁴, the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms⁵, Recommendation on Combating Hate Speech of the Council of Europe, CM/REC(2022)16⁶;

National legislation: Republic of North Macedonia (Constitution of the RNM, Criminal Code, Law on Prevention and Protection against Discrimination and the Law on Media, the Law on Amendments and Supplements to the Law on Audio and Audiovisual Media Services, the Law on Political Parties, the Law on Associations and Foundations, Strategy for Equality and Non-Discrimination 2016-2020, Strategy for Roma Inclusion 2022 – 2030); Republic of Serbia (Constitution of the RS, Law on Prohibition of Discrimination, Criminal Code, Law on Public Information and Media, Law on Electronic Media, Law on Public Broadcasting Services, Code of Ethics of Journalists, Strategy for the Development of a Public Information System in the Republic of Serbia, for 2020-2025, Commissioner for the Protection of Equality); Republic of Albania (Constitution of the RA, Criminal Code, Law on Protection from Discrimination, Law on Media Services, Law on E-Commerce, Law on Electronic Communications, Code of Ethics of Journalists, Commissioner for Protection from Discrimination) and Republic of Kosovo (Constitution of the RK, Criminal Code, Law on Independent Media Commission, Code of Ethics for Media Service Providers, Print Media Code)

✕ Relevant reports and analyses: Hate Crime and Hate Speech in Europe: Comprehensive Analysis of International Law Principles, EU-Wide / Study and National Assessments⁷, An Overview of Hate Crime and Hate Speech in 9 EU Countries Towards a Common Approach to Prevent and Tackle Hate⁸, Hate speech and hate crime in the EU and the evaluation of online content regulation approaches⁹, Responding to “Hate Speech”: Comparative Overview of Six EU Countries¹⁰, Resilience: For Media Free of Hate and Disinformation / Hate Narratives in the Western Balkans and Turkey¹¹, Monitoring Report on Hate Speech / A Regional Overview¹², Comparative Study “Strengthening

¹ Available at:

<http://healthrights.mk/pdf/Pravnici/Megjunradoni%20dokumenti%20i%20mehanizmi%20za%20zastita%20na%20covekovite%20prava/%D0%9E%D0%9A%D0%BE%D0%BD%D0%B2%D0%B5%D0%BD%D1%86%D0%B8%D1%98%D0%B0%D0%B7%D0%B0%D0%B5%D0%BB%D0%B8%D0%BC%D0%B8%D0%BD%D0%B8%D1%80%D0%B0%D1%9A%D0%B5%D0%B0%D0%B0%D0%B8%D1%81%D0%B8%D1%82%D0%B5%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%B0%D0%B0%D1%86%D0%B8%D1%98%D0%B0.pdf>

² Available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>

³ The translation was taken over from the RNM Government

⁴ Available at: https://adatabase.ohchr.org/IssueLibrary/ECRI_Recommendation%2006%20on%20combating%20the%20dissemination%20of%20racist%20xenophobic%20and%20antisemitic%20material%20via%20internet.pdf

⁵ Available at: https://www.echr.coe.int/documents/convention_eng.pdf

⁶ Available at: <https://rm.coe.int/recommendation-on-combating-hate-speech-memorandum-mkd-prems-083822-gb/1680aada1b>

⁷ Hate Crime and Hate Speech in Europe: Comprehensive Analysis of International Law Principles, EU-Wide/Study and National Assessments, available at: https://ec.europa.eu/migrant-integration/library-document/hate-crime-and-hate-speech-europe-comprehensive-analysis-international-law_en

⁸ An Overview of Hate Crime and Hate Speech in 9 EU Countries Towards a Common Approach to Prevent and Tackle Hate, available at: https://www.rissc.it/wp-content/uploads/2020/06/AN_OVERVIEW_ON_HATE_CRIME_AND_HATE_SPEECH.pdf

⁹ Hate speech and hate crime in the EU and the evaluation of online content regulation approaches, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU\(2020\)655135_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU(2020)655135_EN.pdf)

¹⁰ Responding to “Hate Speech”: Comparative Overview of Six EU Countries, available at: https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf

¹¹ Resilience: For Media Free of Hate and Disinformation/Hate Narratives in the Western Balkans and Turkey, available at: <https://seenpm.org/wp-content/uploads/2021/04/Resilience-E-book-research-2-all-reports-with-CIP-April-2021.pdf>

¹² Monitoring Report on Hate Speech/A Regional Overview, available at: https://www.reportingdiversity.org/wp-content/uploads/2022/08/MRHS_Regional.pdf



Equality Bodies in the Western Balkans Region in the Field of Hate Speech”¹³, Above Definitions / A Call for Action Against Hate Speech in Albania: Comprehensive Study¹⁴, Monitoring Report on Hate Speech in Albania¹⁵, Monitoring Report on Hate Speech in Kosovo¹⁶, Resilience: For Media Free of Hate and Disinformation / Media Landscape in Kosovo: Hate and Propaganda Influences¹⁷, Report on the Use of Hate Speech in Serbian Media¹⁸, Monitoring Report on Hate Speech in Serbia¹⁹, Hate Speech in the Western Balkans - The Case of North Macedonia²⁰, Analysis of the Situation with Hate Speech in the Republic of Macedonia²¹, Data Collection Analysis on Hate Speech and Hate Crimes²²

✕ The best European and regional practices in the field of hate speech: The comparative presentation of practices in certain European countries aims to indicate how those countries deal with hate speech and what mechanisms they have in place to combat hate speech. In the context of the analysis, the experience of the following European countries was covered: Italy and Croatia.

II. INTERNATIONAL REGULATION AND STANDARDS

Hate speech within the framework of international human rights law is not subject to formal definition. Most international instruments of the United Nations refer to “incitement to discrimination, hostility or violence.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the UN General Assembly in 1965, prohibits “propaganda” and the “dissemination of ideas” of racial superiority, racial hatred and racial discrimination, including by public authorities or public institutions (Art. 4).²³ The Convention requires states to criminalize certain

¹³ Comparative study “Strengthening equality bodies in the Western Balkans region in the field of hate speech, available at: <https://rm.coe.int/comparative-study-mk-final/1680a62c76>

¹⁴ Beyond Definitions/A Call for Action Against Hate Speech in Albania: A Comprehensive Study, available at: <https://rm.coe.int/beyond-definitions-eng/1680a464b2>

¹⁵ Monitoring Report on Hate Speech in Albania, available at: <https://www.annalindhoundation.org/sites/default/files/documents/network-news/Monitoring-Report-on-Hate-Speech-in-Albania-12072022.pdf>

¹⁶ Monitoring Report on Hate Speech in Kosovo, available at: https://www.reportingdiversity.org/wp-content/uploads/2022/07/MRHS_Kosovo.pdf

¹⁷ Resilience: For Media Free of Hate and Disinformation / Media Landscape in Kosovo: Hate and Propaganda Influences, available at: <https://seenpm.org/wp-content/uploads/2020/10/Resilience-research-publication-1-KOS-ENG.pdf>

¹⁸ Report on the use of hate speech in Serbian media, available at: <https://rm.coe.int/hf25-hate-speech-serbian-media-eng/1680a2278e>

¹⁹ Monitoring Report on Hate Speech in Serbia, available at: https://www.reportingdiversity.org/wp-content/uploads/2022/07/MRHS_Srbija_SR.pdf

²⁰ Hate Speech in the Western Balkans - The Case of North Macedonia, available at: https://www.reportingdiversity.org/wp-content/uploads/2022/07/MRHS_NORTH-MACEDONIA_FINAL.pdf

²¹ Analysis of the situation with hate speech in the Republic of Macedonia, available at: https://mhc.org.mk/wp-content/uploads/2019/05/Hate_Speech_web_mk.pdf

²² Data Collection Analysis on Hate Speech and Hate Crimes, available at: <https://rm.coe.int/data-collection-analysis-on-hate-speech-nm-mkd/1680a9485b>

²³ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), available at: <http://healthrights.mk/pdf/Pravnici/Megjunradoni%20dokumenti%20i%20mehanizmi%20za%20zastita%20na%20covekovite%20prava/%D0%9E%20%D0%9A%D0%BE%D0%BD%D0%B2%D0%B5%D0%BD%D1%86%D0%B8%D1%98%D0%B0%20%D0%B7%D0%B0%20%D0%B5%D0%BB%D0%B8%D0%BC%D0%B8%D0%BD%D0%B8%D1%80%D0%B0%D1%9A%D0%B5%20%D0%BD%D0%B0%20%D1%81%D0%B8%D1%82%D0%B5%20%D1%84%D0%BE%D1%80%D0%BC%D0%B8%20%D0%BD%D0%B0%20%D1%80%D0%B0%D1%81%D0%BD%D0%B0%20%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B0%D1%86%D0%B8%D1%98%D0%B0.pdf>



forms of hate speech and the incitement of acts of violence against any race, group of persons of another color or ethnic group; further, states must establish a legal and institutional framework that can provide effective protection and remedies against any act of racial discrimination and must provide reparation and compensation for damages suffered as a result of discrimination.²⁴

Since the focus of ICERD in most of its provisions is on the prohibition of acts of discrimination, the Committee on the Elimination of Racial Discrimination (CERD)²⁵ in order to clarify the scope of Article 4 of the Convention, issued several general recommendations for dealing with hate speech.²⁶

General recommendation no. 7 of the Committee on the Elimination of Racial Discrimination explicitly confirmed the mandatory nature of this norm, while **General Recommendation no. 15** of the Committee, specifically refers to measures to eradicate incitement to discrimination or acts of discrimination. The recommendation provides clear guidance: “Member States should not only enact appropriate legislation but also ensure that it is effectively implemented”.²⁷

The International Covenant on Civil and Political Rights (ICCPR) is one of the primary international legal instruments dealing with “hate speech”.²⁸ While generally protecting freedom of expression, ICCPR Article 19²⁹ permits restrictions on speech if provided by law, and if necessary and proportionate for a legitimate reason. The Covenant requires member states to prohibit by law any military propaganda and advocacy based on national, religious and racial hatred that constitutes incitement to discrimination, hostility and violence.³⁰ States must ensure that victims whose rights have been violated under the ICCPR are provided with an effective legal remedy, regardless of whether those rights were violated by state officials or by private individuals.

In order to draw a clear line between Article 19 and 20 of the Covenant, the Human Rights Committee in 2011 adopted **General Comment No. 34**³¹ which clearly explains the difference between these two Articles and contains an authentic interpretation of Article 20 (2). Point 51 of General Comment No. 34 states: “What distinguishes the acts addressed in Article 20 from other acts that may be subject to restriction under Article 19, paragraph 3, is that for the acts addressed in Article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that Article 20 may be considered as *lex specialis* with regard to Article 19”.³²

The Rabat Plan of Action³³ on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence provides key guidelines on the difference between freedom of expression and incitement to discrimination, hostility and violence

²⁴ Art. 4 paragraph 1 point a), b), and c), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

²⁵ Monitoring body of ICERD

²⁶ See: Recommendation No. 7 (1985) relating to the application of Article 4; Recommendation No. 15 (1993) on Article 4, which emphasized the compatibility between Article 4 and the right to freedom of expression; Recommendation no. 25 (2000) on the gender dimensions of racial discrimination; Recommendation No. 27 (2000) on discrimination against Roma; Recommendation no. 29 (2002) on descent; No. 30 (2004) on discrimination against non-citizens; No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system; No. 34 (2011) on racial discrimination against people of African descent, and No. 35. (2013) on combating racist hate speech

²⁷ Paragraph 2, General Recommendation no. 15 of the Committee for the Elimination of Racial Discrimination

²⁸ International Covenant on Civil and Political Rights (ICCPR), available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>

²⁹ ICCPR, art. 19 paragraph 3 “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

³⁰ Art. 20, ICCPR

³¹ General Comment No. 34 of the Committee of Ministers, available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

³² See page 13 of General Comment No. 34, item 51

³³ The Rabat Plan of Action, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf



and sets a clear line between freedom of expression and incitement to hatred and violence. It emphasizes the collective responsibility of civil servants, religious and community leaders, the media, civil society and all individuals to foster social unity, tolerance and dialogue to prevent incitement to hatred.

The Rabat Plan of Action proposes a high threshold for defining restrictions on freedom of expression, incitement to hatred, and for the application of Article 20 of the ICCPR. The Rabat Plan of Action sets out a six-part threshold test to help draw the line between obscene and offensive but not punishable expression/speech and illegal hate speech. The six-part threshold test³⁴ consists of six conditions that must be met in order for a statement or speech to be considered a criminal offense: 1) Context³⁵, 2) Speaker³⁶, 3) Intent³⁷, 4) Content and Form³⁸, 5) Scope of the speech act³⁹ and 6) Probability, including imminence.⁴⁰

General Policy Recommendation No. 15⁴¹ of ECRI regarding hate speech, considers that hate speech is based on an unjustified assumption that one person or group of persons is superior to others; incites acts of violence or discrimination, thereby undermining respect for minority groups and disrupting social cohesion. GPR No. 15 understands hate speech as “advocating, promoting or inciting, in any form, defamation, hatred or disparagement of a person or group of persons, as well as any form of harassment, insult, negative stereotypes, stigmatization or threat against that person or group of persons and any justification of all such forms of expression, based on “race”, skin colour, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status”.⁴²

The recommendation calls for quick reactions from public figures on hate speech; promotion of media self-regulation; raising awareness of the dangerous consequences of hate speech; withdrawal of financial and other support from the state bodies of political parties that actively use hate speech and criminalization of its most extreme manifestations, while respecting freedom of expression. Measures against hate speech must be justified, proportionate⁴³, non-discriminatory

³⁴ One page on “incitement to hatred”, ODIHR, available at: https://www.ohchr.org/sites/default/files/Rabat_threshold_test.pdf

³⁵ Context is of great importance when assessing whether certain statements are likely to incite discrimination, hostility, or violence against the target group, and this may have a direct impact on both intent and/or causation. Context analysis should situate the speech act within the social and political context that prevailed at the time the speech was delivered and distributed.

³⁶ The speaker’s position or status in society, in particular, should be considered, especially the position of the individual or organization in the context of the audience to whom the speech is directed;

³⁷ Article 20 of the ICCPR provides for the intention. Negligence and recklessness are not enough for the act to be regarded as an offense within the meaning of Article 20 of the ICCPR, bearing in mind that this Article provides for “representation” and “incitement” rather than mere distribution or circulation of the material.

³⁸ The content of the speech is one of the key focuses of the court’s deliberations and represents a critical element of incitement. Content analysis can include to what extent the speech was provocative and direct, as well as the form, style, and nature of the arguments deployed in the speech or the balance achieved between the deployed arguments

³⁹ Scope includes such elements as the reach of the speech act, its public nature, its size, and the size of its audience. Other elements to be considered include whether the speech is public, what means of dissemination are used, such as a leaflet or broadcast through the media or the Internet, the frequency, quantity, and scope of the communications, whether the audience had the means to act on the inducement, whether the statement (or thing) circulated in a restricted environment or was widely available to the general public;

⁴⁰ Incitement, by definition, is an unusual crime. The action represented by the inciting speech does not have to be committed for said speech to constitute a crime. However, a certain degree of risk of harm must be identified. That means the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causality should be fairly direct.

⁴¹ General Policy Recommendation No. 15 of ECRI, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech-mace/16808b5b06>

⁴² General Policy Recommendation No. 15 of ECRI, p. 3

⁴³ See the following cases regarding the disproportionality of measures applied against certain statements: *Hennicke v. Germany* (dec.), no. 34889/97, May 21, 1997, *Incal v. Turkey* [GC], no. 22678/93, June 9, 1998, *Lehideux and Isorni v. France* [GC], no. 24662/94, September 23, 1998, *Witzsch v. Germany* (dec.), no. 41448/98, April 20, 1999, *Karataş v. Turkey* [GC], no. 23168/94, July 8, 1999, *Erdoğan v. Turkey* [GC], no. 34889/97, May 21, 1997.



and not abused to limit freedom of expression or freedom of assembly, nor to suppress criticism of official policies and religious beliefs. GPR no. 15 refers to other grounds besides “race”, skin color, language, religion or religious belief, nationality, national or ethnic origin and ancestry, that is incidents of harassment, insult, negative stereotypes, stigmatization or threat, which are not necessarily to be resolved within the framework of criminal law.

General policy recommendation No. 6 of ECRI on combating the distribution⁴⁴ of racist, xenophobic and anti-Semitic material via the Internet⁴⁵ requires governments to take the necessary measures, at the national and international level, to effectively act against the use of the Internet for racist, xenophobic and anti-Semitic purposes; to make a clear distinction based on technical functions, and to emphasize the responsibility of content host, content provider and site publisher as a result of spreading racist, xenophobic and anti-Semitic messages; to raise public awareness of the problem of spreading racism, xenophobic and anti-Semitic material through the Internet with a special focus on young Internet users – especially children.

The Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms⁴⁶ does not contain specific provisions that prohibit or sanction hate speech. However, the European Court of Human Rights (ECtHR) interprets the Convention through the lens of Article 10, which protects freedom of expression, and Article 17, which prohibits the abuse of rights. Article 10 of the ECHR provides that:

“1. Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

Paragraph 1 of Article 10 of the ECHR defines the right to freedom of expression through freedom of thought and the freedom to share and disseminate information and ideas. While paragraph 2 establishes that the enjoyment of these rights (referring to the rights regulated by paragraph 1) carries with it duties and responsibilities and sets the possibility of restrictions on

İnce v. Turkey [GC], no. 25067/94, July 8, 1999, Özgür Gündem v. Turkey, no. 23144/93, March 16, 2000, Şener v. Turkey, no. 26680/95, July 18, 2000, Le Pen v. France (dec.), no. 55173/00, May 10, 2001, Osmani v. “the former Yugoslav Republic of Macedonia”, no. 50841/99, October 11, 2001, Gunduz v. Turkey (dec.), no. 59745/97, November 13, 2003, Gunduz v. Turkey, no. 35071/97, December 4, 2003, Seurot v. France (dec.), no. 57383/00, May 18, 2004, Maraşlı v. Turkey, no. 40077/98, November 9, 2004, Dicle v. Turkey, no. 34685/97, November 10, 2004, Gumus and Others v. Turkey, no. 40303/98, March 15, 2005, Alinak v. Turkey, no. 40287/98, March 29, 2005, İ A v. Turkey, no. 42571/98, September 13, 2005, Han v. Turkey, no. 50997/99, September 13, 2005, Koç and Tambaş v. Turkey, no. 50934/99, March 21, 2006, Aydın Tatlav v. Turkey, no. 50692/99, May 2, 2006, Erbakan v. Turkey, no. 59405/00, July 6, 2006, Güzel v. Turkey (No. 2), no. 65849/01, July 27, 2006, Düzgören v. Turkey, no. 56827/00, November 9, 2006, Yazar v. Turkey, no. 57258/00, December 19, 2006, Üstün v. Turkey, no. 37685/02, May 10, 2007, Birdal v. Turkey, no. 53047/99, October 2, 2007, Nur Radyo Ve Televizyon Yayıncılığı A Ş v. Turkey (dec.), no. 6587/03, November 27, 2007, Demirel and Ateş v. Turkey, no. 10037/03, November 29, 2007, Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey, no. 11369/03, December 14, 2007, Soulas, and Others v. France, no. 15958/03, July 10, 2008, Balsytė-Lideikienė v. Lithuania, no. 72596/01, November 4, 2008, Leroy v. France, no. 36109/03, October 2, 2008, Özer v. Turkey, no. 871/08, January 26, 2010, Willem v. France, no. 10883/05, 16 July 2009, Dink v. Turkey, no. 2668/07, September 14, 2010 and Perinçek v. Switzerland [GC], no. 27510/08, October 15, 2015

⁴⁴ The translation was taken over by the RNM Government

⁴⁵ General policy recommendation no. 6 of ECRI, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-6-on-combating-the-dissemination/16808b5a8d>

⁴⁶ ECHR, available at: https://www.echr.coe.int/documents/d/echr/convention_mkd



this right, including “for the prevention of disorder or crime” and “for the protection of the reputation of others.”⁴⁷

Article 17 of the ECHR on the prohibition of abuse of rights provides that “ No provision of the Convention may be interpreted in such a way as to confer on any State, group or individual the right to take actions or procedures which endanger any right or freedom recognized by this Convention, or to limit these rights and freedoms to a greater extent than that provided for by the Convention. *In cases related to incitement to hatred and freedom of expression, the ECtHR uses two approaches provided for by the ECHR:*

- *the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition due to abuse of rights), where the comments in question refer to hate speech and denial of the basic values of the Convention;*

- *the approach of setting limits on protection, provided by Article 10, paragraph 2, of the Convention (this approach is adopted when the speech in question, even though it is hate speech, is not inclined to destroy the basic values of the Convention).*⁴⁸

The Judicial practice of the European Court of Human Rights reaffirms the significance of freedom of speech as the basis of a democratic society through the *Handyside v. United Kingdom* decision of December 7, 1976 “The Court’s supervisory functions oblige it to pay the utmost attention to the principles characterizing a ‘democratic society’. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Article 10, Paragraph 2 is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the requirements for pluralism, tolerance and broad-mindedness without which there is no ‘democratic society’. This means, among other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.”⁴⁹

Individuals must be free, creative in expression and also have the right to be informed. However, some forms of speech are not protected by the right to freedom of expression. Such statements that incite violence, discrimination or hatred based on race, ethnicity or nationality, must be prohibited. The practice of the ECtHR has confirmed that hate speech can take many forms, such as written materials, flyers, verbal insults, illustrations, caricatures, advertising or promotional materials, symbols, graffiti or works of art published through various media, and particularly on the internet in recent times. The ECtHR acknowledges that in a democratic and pluralistic society it is necessary to prevent or sanction forms of speech that incite, encourage, support or justify hatred or violence based on intolerance. To this end, said sanctions or restrictions must be prescribed by law, have a legitimate aim and be proportionate to the legitimate aim they seek to achieve.”⁵⁰

⁴⁷ Relevant standards and policies of the Council of Europe on the prohibition and prevention of hate speech, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/ICCPR/Others2011/CouncilofEurope.pdf>

⁴⁸ See: https://www.echr.coe.int/documents/d/echr/fs_hate_speech_eng

⁴⁹ *Handyside v. United Kingdom*, December 7, 1976, 5493/72, para 49, available at: [https://hudoc.echr.coe.int/#%22tab-view%22:%22document%22,%22itemid%22:\[%22001-57499%22\]](https://hudoc.echr.coe.int/#%22tab-view%22:%22document%22,%22itemid%22:[%22001-57499%22])

⁵⁰ Analysis of the case law of the European Court of Human Rights in relation to hate speech and hate crime / [Mirjana Lazarova Trajkovska and Marharita Zhesko]. - Skopje: OSCE Mission, 2021



Hate speech goes beyond information that offends, shocks or disturbs. In 1997, the Committee of Ministers of the Council of Europe adopted **Recommendation no. (97)20 on hate speech**⁵¹ explaining that the term “hate speech” should be understood as “all forms of expression that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, emigrants and people of emigrant origin.”⁵² The Committee of Ministers recommends that the legislation and practices of each member state be guided and based on seven principles.

Principle 1: “Governments of member states, public authorities and public institutions at the national, regional and local level, as well as public servants, have a special responsibility to refrain from making statements, especially to the media, that may be interpreted as hate speech, or as speech that is likely to legitimize, spread or promote racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be banned and publicly condemned whenever they occur.”

Principle 2: The governments of member states should establish and maintain a robust legal framework that includes civil, criminal and administrative legal provisions on hate speech, which will enable administrative and judicial officials in each particular case to strike a balance between protecting freedom of expression and upholding human dignity, as well as safeguarding the reputation and rights of individuals. Because of this, the governments of the member states should find ways and means:

- to stimulate and coordinate research on the effectiveness of existing legislation and legal practice;
- review the existing legal framework to ensure that it is adequately applicable to the various new media and communication services and networks;
- to develop a coordinated prosecution policy based on national guidelines, respecting the principles of this Recommendation;
- to increase the powers of the local self-government with the possibility of imposing criminal sanctions;
- to increase opportunities to combat hate speech through civil law, for example by allowing interested non-governmental organizations to file civil lawsuits that would provide compensation for victims of hate speech and give them the opportunity to respond or deny the content of what was presented in the court decisions;
- to provide public and media professionals with information on legal provisions relating to hate speech.

Principle 3: Governments of member states should ensure that within the legal framework referred to in principle 2, impediments to freedom of expression are narrowly limited in a lawful and not arbitrary manner, based on objective criteria. Furthermore, in accordance with fundamental requirements in law, any restriction or interference with freedom of expression must be subject to independent judicial review. This requirement is particularly important when balancing freedom of expression against the protection of human dignity and the rights of others.

⁵¹ Recommendation no. (97)20 on hate speech, available at: https://search.coe.int/cm/Pages/result_details.aspx?Objec-tId=0900001680767c01

⁵² See: <https://rm.coe.int/168071e53e>



Principle 4: National law and practice should allow courts to take into account that specific instances of hate speech may be so offensive to an individual or group that it should not be protected by Article 10 of the European Convention on Human Rights like other forms of expression. This is the case when hate speech is aimed at destroying the rights and freedoms established in the Convention or is aimed at limiting them to a higher degree than was possible.

Principle 5: National law and practice should allow competent prosecuting authorities to pay special attention to cases involving hate speech if their discretion allows. In such cases, authorities should carefully consider the suspect's right to freedom of expression, bearing in mind that imposing criminal sanctions generally constitutes a serious impediment to that freedom. Competent courts should ensure strict adherence to the principle of proportionality when imposing criminal sanctions on persons accused of hate speech.

Principle 6: National law and practice in the field of hate speech should consider the role of the media in communicating information and ideas that present, analyze and explain specific examples of hate speech and the overall phenomenon, as well as the right of the public to access such information and ideas. To achieve this, it is important for national laws and practices to differentiate between the responsibility of the author of the hate speech statement on the one hand, and the responsibility of the media and media professionals for contributing to its distribution, as part of their function to present information and ideas about matters of public interest, on the other hand.

Principle 7: In line with principle 6, national law and practice should consider the fact that:

- the reporting of racism, xenophobia, anti-Semitism and other forms of intolerance is fully protected by Article 10, Paragraph 1 of the European Convention on Human Rights and can only be prevented under the conditions set out in Paragraph 2 of that provision;
- the standards applied by national authorities to determine the need to restrict freedom of expression must be consistent with the principles set out in Article 10, as established in the customary law of the Convention bodies, taking into account, inter alia, the manner, content, context and purpose of the notification;
- respect for journalistic freedom also implies that courts or public authorities should not impose on the media their views and dictate reporting techniques.

Council of Europe Recommendation on Combating Hate Speech, CM/REC (2022)16⁵³ adopted in Turin in May 2022 calls on governments to develop comprehensive strategies to prevent and combat hate speech.

The starting point of the Recommendation is the recognition that hate speech is a complex, multi-dimensional phenomenon, requiring properly calibrated and proportionate measures. The Recommendation encourages governments to adopt an effective legal and policy framework covering criminal, civil and administrative law and to establish and implement alternative measures, such as awareness-raising campaigns, educational programs. Additionally, to establish support mechanisms to help those who are targeted by hate speech and to conduct monitoring and to engage in international cooperation and national coordination. The new Recommendation provides clarifying guidelines that should assist member states and other relevant stakeholders in preventing and combating hate speech. Namely, the Recommendation covers key principles and guidelines in the area of criminal, civil and administrative law, as well as

⁵³ Recommendation on Combating Hate Speech CM/REC(2022)16, available at: <https://rm.coe.int/recommendation-on-combating-hate-speech-memorandum-mkd-prems-083822-gb/1680aada1b>



makes recommendations to key stakeholders (state officials, elected bodies, political parties, media, internet intermediaries and civil society organizations). Through these recommendations the member states and other relevant stakeholders would be able to respect and properly apply these principles and guidelines. The section on Principles and guidelines/Scope, definition and approach provides a clear definition of hate speech: “For the purposes of this Recommendation, hate speech is understood as any type of expression that incites, promotes, spreads or justifies violence, hatred or discrimination towards a person or group of persons, or which disparages, on the basis of real or ascribed personal characteristics or status such as “race”⁵⁴, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.” This Recommendation makes a clear distinction between the types of hate speech, their severity, the different layers of hate speech and the sanctioning mechanisms. Not all hate speech should be prosecuted and punished criminally. There must be a clear distinction between hate speech which is subject to criminal sanctions and hate speech subject to civil and administrative measures, as well as distinction and recognition between offensive statements and expressions that are not severe enough to be restricted under the ECHR, yet call for alternative answers. In terms of recognizing other types of speech such as offensive statements and expressions that are not sufficient to be criminally sanctioned or civilly and administratively regulated, the Recommendation refers to other alternative measures such as raising awareness through public campaigns, building capacities through trainings, etc. The Recommendation specifically encourages and emphasizes the importance of cooperation between institutions and other relevant stakeholders.

III. NATIONAL LEGISLATION OF THE WESTERN BALKAN COUNTRIES⁵⁴

III.1. Republic of North Macedonia

A) *Constitutional guarantees*

As the highest legal act in the country, **the Constitution of the Republic of North Macedonia**⁵⁵ regulates the civil and political freedoms and rights of its citizens, guaranteeing that the citizens of the Republic are equal in all freedoms and rights regardless of gender, “race”, skin color, national and social origin, political and religious beliefs, property and social status.⁵⁶ The Constitution guarantees freedom of belief, conscience, thought and public expression of thought, freedom of speech, public performance, public information and the free establishment of public information institutions, free access to information, freedom to receive and transmit information,⁵⁷ etc. The Constitution also empowers the Constitutional Court to protect the freedoms and rights of indi-

⁵⁴ Countries subject to this Analysis (North Macedonia, Serbia, Albania and Kosovo)

⁵⁵ Constitution of the Republic of North Macedonia with amendments to the Constitution I - XXXII, Official Gazette no. 2011, National and University Library “St. Kliment Ohridski”, Skopje 342.4 (497.7), ISBN 978-608-215-013-0, COBISS.MK-ID 89110026, available at: <https://www.slvesnik.com.mk/content/Ustav%20na%20RM%20-%20makedonski%20-%20FINAL%202011.pdf>

⁵⁶ Ibid, Article 9

⁵⁷ Ibid, Article 16



viduals and citizens, including freedom of belief, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination of citizens on the basis of gender, “race”, religion and nationality, social and political affiliation. While the Constitution prohibits citizens’ associations and political parties from activities aimed at subverting the constitutional order of the Republic and those that encourage, incite or call for military aggression or incite national, racial or religious hatred or intolerance,⁵⁸ it does not contain provisions that regulate the prohibition, prevention, and protection against hate speech.

B) Legislative framework

The national legislation of North Macedonia regulates hate speech within several laws.

The Criminal Code of North Macedonia is the primary law that contains provisions that prohibit and punish hate speech and the dissemination of materials via the Internet that promote or incite hatred, discrimination or violence against any person or group, on any discriminatory basis. Hate speech is sanctioned in the Criminal Code with the crime “Causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground” (Art. 319).⁵⁹ The prescribed prison sentence for this crime is from one to five years (Par. 1), and in case of severe consequences up to ten years in prison (Par.2). The provision of Art. 144⁶⁰ par. 3 which regulates the crime “Threatening the safety” provides for the sanctioning of any person who commits the crime while committing gender-based violence, violence against a women or family violence, or out of hatred or against a person who is particularly vulnerable due to their age, severe physical or mental disabilities or pregnancy, for which a prison sentence of three months to three years is prescribed. Paragraph 5 provides for sanctions for persons who, through an information system, threaten to commit a crime (for which a prison sentence of five years or a higher is prescribed) against a person because of their race, skin color, origin, national or ethnic origin, sex, gender, sexual orientation, gender identity, membership of a marginalized group, language, nationality, social origin, education, religion or religious belief, political opinion, other opinions, disability, age, family or marital status, property status, health status, personal characteristic and social status or any other basis provided by law or international agreement ratified in accordance with the Constitution of the Republic of North Macedonia. The prescribed punishment of this paragraph is a prison sentence of one to five years.

The Criminal Code also sanctions hate speech through computer systems and through the media with the crime entitled “Spreading racist and xenophobic material via information system”

⁵⁸ Ibid, Article 20

⁵⁹ “Whoever, by coercion, harassment, threat to security, exposure to mockery of national, ethnic, religious and other symbols, by burning, destroying or otherwise damaging the flag of the Republic of Macedonia or flags of other countries, by damaging other people’s objects, by desecrating monuments, graves or in any other discriminatory way, directly or indirectly, will cause or incite hatred, discord or intolerance on the basis of sex, “race”, color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status, or any other basis provided by law or by a ratified international agreement, shall be punished with imprisonment from one to five years”;

⁶⁰ With the Law on Amendments and Supplements of the CC, Official Gazette of the RNM No. 36/23 of February 17, 2023, this article has been completely changed.

⁶¹ The basic form of the crime Endangering safety: art. 144 par. 1 “An individual who seriously threatens another individual with an attack on their life or body or the life or body of a person close to them with the intention of disturbing or intimidating them shall be punished with a fine or imprisonment for up to six months”; and par. 2 “If the crime from paragraph (1) of this article caused a feeling of insecurity, threat or fear to the victim, the perpetrator will be punished with a fine or imprisonment for up to one year.”



(Article 394d)⁶². The prescribed punishment is from one to five years (Par. 1), and in case of severe consequences up to ten years (Par. 3).

The last provision that regulates and sanctions hate speech in the Criminal Code and constitutes a crime in the area of discrimination is the provision of Article 417 “Racial or other discrimination”⁶³ where the prescribed sentence is from six months to five years, including the one who victimizes individuals or organizations that fight against discrimination on any basis. The crime of hate speech is established in Par. 3: “Whoever spreads ideas of superiority of one “race” over another or propagates racial hatred or incites racial discrimination, shall be punished by imprisonment from six months to three years.”

The law on prevention and protection against discrimination⁶⁴ is compliant with EU directives⁶⁵ and regulates the prevention and prohibition of discrimination, all forms and types of discrimination, procedures for protection against discrimination, as well as the composition and work of the Commission for Prevention and Protection against Discrimination⁶⁶. The law prohibits any discrimination based on “race”, skin colour, origin, nationality or ethnicity, gender, sexual orientation, gender identity, membership of a marginalized group, language, nationality, social origin, education, religion or belief, political belief, other beliefs, disability, age, family or marital status, property status, health status, personal status and social status or any other basis.⁶⁷ The LPPD contains provisions that directly refer to hate speech such as: Invoking, inciting and instructing discrimination in Article 9: “Invoking, inciting and instructing discrimination is any activity that indirectly or directly invites, encourages, instructs or incites the act of discrimination on a discriminatory basis”⁶⁸.

The law defines harassment as a form of hate speech that is intended to provoke or create a threatening or degrading practice or approach. Article 10 paragraph 1 defines acts of harassment: “Harassment is unwanted treatment of a person or group of persons on discriminatory grounds

⁶² Whoever, through a computer system, publicly disseminates racist and xenophobic written material, an image or other representation of an idea or theory that aids, promotes or incites hatred, discrimination or violence, against any person or group, on the basis of sex, “race”, skin color, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status or on any other basis provided by law or a ratified international agreement shall be punished with imprisonment from one to five years.

With the penalty from paragraph (1) of this article, whoever commits the crime through other means of public information will also be punished.

Whoever commits the crime from paragraphs (1) and (2) of this article by abusing his position or authority, or if due to those crimes there is disorder and violence against people or large-scale property damage, will be punished with imprisonment from one to ten years.

⁶³ “Whoever, on the basis of sex, race, color, gender, membership of a marginalized group, ethnic origin, language, nationality, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status or any other basis provided by law or a ratified international agreement, violates basic human rights and freedoms recognized by the international community, shall be punished with imprisonment from six months to five years.”

With the penalty from paragraph 1 will be punished those who persecute organizations or individuals because of their commitment to the equality of people.

Whoever spreads ideas about the superiority of one “race” over another or propagates racial hatred or incites racial discrimination shall be punished with imprisonment from six months to three years.

⁶⁴ LPPD, Official Gazette no. 258, 30.10.2020, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status)

⁶⁵ Council Directive 2006/54/EC of July 5, 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in relation to employment and occupation (refined text); Council Directive 2004/113/EC of December 13, 2004 on the implementation of the principle of equal treatment of men and women in the access to and supply of goods and services; Council Directive 2000/78/EC of November 27, 2000 establishing a general framework for equal treatment in employment and occupation

⁶⁶ LPPD, art. 1

⁶⁷ Ibid, Article 5

⁶⁸ LPPD, Official Gazette no. 258, 30.10.2020, Art. 9, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status)



that has the purpose or effect of violating their dignity or creating a threatening, hostile, humiliating or intimidating environment, approach or practice.”

In the section on misdemeanor sanctions, the LPPD also provides in its misdemeanor provisions⁶⁹ a fine in the amount of 400 to 10,000 Euros in Denar equivalent for the legal person that has been determined by a competent authority to have committed discrimination in accordance with Article 9 and 10 of the law. A fine in the amount of 50 to 150 Euros in Denar equivalent will be imposed on a natural person who has been determined by a competent authority to have committed discrimination in accordance with Articles 9 and 10 of the law⁷⁰.

As a mechanism to combat discrimination, the law provides for the establishment of a Commission for Prevention and Protection from Discrimination and regulates its functioning and competences⁷¹.

Hate speech is also prohibited by several other laws.

The Law on Media⁷² guarantees freedom of expression and freedom of the media. Hence, this law provides for specific prohibitions such as publishing or broadcasting content in the media that incites the violent overthrow of the constitutional order of the Republic, incites military aggression or armed conflict, incites or spreads discrimination, intolerance or hatred based on “race”, gender, religion or nationality.⁷³ Although this law provides for specific prohibitions on spreading hatred, there are no criminal provisions if these specific prohibitions are not respected. The Code of Journalists of North Macedonia⁷⁴ states that hate speech or discrimination in the media is prohibited on several grounds, including “political basis”.⁷⁵ The Code is not a law, but it is the most important act of self-regulation and respect for professional rules in journalism, and was adopted in 2001.

The Law on Amendments and Supplements to the Law on Audio and Audiovisual Media Services⁷⁶ provides for specific prohibitions against content in the audio and audiovisual media services that threatens national security, calls for the violent overthrow of the constitutional order of the Republic of North Macedonia, incites military aggression or armed conflict, encourages or spreads discrimination, intolerance or hatred based on “race”, skin colour, origin, nationality or ethnicity, sex, sexual orientation, gender identity, belonging to a marginalized group, language, nationality, social origin, education, religion or religious belief, political belief, other belief, disability, age, marital status, property status, health status, personal and social status or any other basis⁷⁷. LAS of the LAAMS in its misdemeanor provisions foresees a fine for a committed offense in the amount of 1000 to 5000 Euros in Denar equivalent that will be imposed on a legal person for broadcasting and creating programs that threaten national security, for encouraging the overthrow of the constitutional order of the Republic of North Macedonia, for inciting military aggression or armed conflict, inciting or spreading discrimination, intolerance or hatred based on “race”, skin color, origin, nationality or ethnicity, sex, sexual orientation, gender identity, member-

⁶⁹ LPPD, art. 41 paragraph 1

⁷⁰ Ibid, par. 4

⁷¹ Ibid, art. 14

⁷² Law on Media, Official Gazette no. 144/2013; no. 13/2014, available at: https://mioa.gov.mk/sites/default/files/pbl_files/documents/legislation/Zakon_za%20mediumi_konsolidiran_15102015.pdf

⁷³ Ibid, art. 4

⁷⁴ Code of Journalists of North Macedonia, 2001, available at: <https://znm.org.mk/kodeks-na-novinarite-na-makedonija/>

⁷⁵ Code of Journalists of North Macedonia, 2001, Art. 10, <https://znm.org.mk/kodeks-na-novinarite-na-makedonija/>

⁷⁶ The Law on Amendments and Supplements to the Law on Audio and Audio-Visual Media Services, Official Gazette no. 248, 31.12.2018

⁷⁷ Ibid, art. 48, available at: <https://www.slvesnik.com.mk/Issues/b089570bacc436a9b39c585dca78b3f.pdf>



ship of a marginalized group, language, citizenship, social status, education, religion or religious belief, political belief, other disability, age, marital status, property status, health status, personal and social status or any other basis.⁷⁸ The AAMS Agency⁷⁹ can impose measures when it determines the incitement and spread of discrimination in audio-visual media content (Article 48), such as: a public warning, will initiate a misdemeanor procedure, a proposal for revocation of the license and will carry out a procedure for deletion from the register of providers of audiovisual media services or from the register of broadcasters (Article 23).

According to Article 3 of the **Law on Political Parties** “The program, statute and activities of political parties cannot be aimed at: violently overthrowing the constitutional order of the Republic of Macedonia, inciting or calling for military aggression and inciting national, racial or religious hatred or intolerance.” In its misdemeanor provisions, the law foresees a fine for a committed misdemeanor in the amount of 800 to 4800 Euros in Denar equivalent, which will be imposed on the political party that is organized and acts contrary to Article 3 of this law. At the same time, the person in charge of the political party will be sanctioned with a fine in the amount of 160 to 800 Euros in Denar equivalent for a committed offense.

The Law on Associations and Foundations in Art.2 provides for a ban on the formation of an organization if its program and activities are aimed at the violent overthrow of the constitutional order of the Republic of North Macedonia, incitement of military aggression and incitement of national, racial or religious hatred or intolerance, if it undertakes activities related to terrorism, if it takes actions contrary to the Constitution or the Law and if the freedoms and rights of others are being violated.

C) Strategies and mechanisms

The mechanisms for effectively and efficiently addressing and combating hate speech in North Macedonia include the National Strategy for Equality and Non-Discrimination 2022-2026⁸⁰, the National Strategy for Gender Equality 2021-2027⁸¹, the Commission for Prevention and Protection from Discrimination⁸², the National Coordinating Body for Anti-Discrimination, The network for combating hate speech in the media⁸³ and the Network for Protection against Discrimination⁸⁵.

The National Strategy for Equality and Non-Discrimination was adopted in 2022 and is a crucial document addressing issues of hate speech. NSEN is a fundamental strategic document in the

⁷⁸ Law on Amendments and Supplements to the Law on Audio and Audio-Visual Media Services, Art. 38 (Amendment to Art. 147 of the Law on Audio and Audio-Visual Media Services)

⁷⁹ Agency for audio and audiovisual media services regulated by art. 4 of the Law on Audio and Audiovisual Media Services, Official Gazette no. 184/13

⁸⁰ 2022-2026 NATIONAL STRATEGY FOR EQUALITY AND NON-DISCRIMINATION.; available at: https://www.mtsp.gov.mk/content/pdf/2022/strategija_/%D0%9D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%B%D0%BD%D0%B0%20%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%20%D0%B0%20%D0%B5%D0%B4%D0%BD%D0%B0%D0%BA%D0%B2%D0%BE%D1%81%D1%82%20%D0%B8%20%D0%B-D%D0%B5%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B0%D1%86%D0%B8%D1%98%D0%B0%20%20%202022-2026.pdf

⁸¹ National Strategy for Gender Equality 2021-2026, available at: https://mvr.gov.mk/Upload/Editor_Upload/%D0%9D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B0%20%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%20%D0%B7%D0%B0%20%D1%80%D0%BE%D0%B4%D0%BE%D0%B2%D0%B0%20%D0%B5%D0%B4%D0%BD%D0%B0%D0%BA%D0%B2%D0%BE%D1%81%D1%82%2021-26.pdf; https://www.mtsp.gov.mk/content/pdf/2022/strategija_/%D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%D0%B7%D0%B0%20%D1%80%D0%BE%D0%B4%D0%BE%D0%B2%D0%B0%D0%B5%D0%B4%D0%BD%D0%B0%D0%BA%D0%B2%D0%BE%D1%81%D1%82%2022_2027.pdf

⁸² CPD, see official website: <https://kszd.mk/?fbclid=IwAR0naqWG6RXI6ihmjpmYlgV40ebvzpJw3Z3GII-SwUxehWvCxYRGAIzP9XY>

⁸³ The network has no formal structure

⁸⁴ See: <https://semm.mk/soopshtenija/598-formirana-mrezha-za-borba-protiv-govor-na-omraza-vo-mediumite>

⁸⁵ NPAD, see official website: <https://mzd.mk/mk/>



national policy for equality and non-discrimination. Its primary objective is to ensure continuous development in the realization of these rights on any basis. As the fourth strategic document in a row, NSEN builds on the previous strategy 2016-2020 by establishing *a broad strategic framework that unites all areas of action to achieve equality and non-discrimination*.

The purpose of this strategy is *the realization of human rights and the establishment of equals opportunities and non-discrimination for all citizens of the Republic of North Macedonia across all aspects of social life while taking it into account the principle of intersectionality and the gender- transformative approach. The general objective of the National Strategy for Equality and Non-Discrimination is the efficient implementation of activities for prevention and protection from discrimination in order to raise the degree of realization of human rights, equality and non-discrimination*.

The strategy contains three strategic objectives: to advance the legal framework for equality and non-discrimination, to strengthen capacities, advance work and coordination of the institutional mechanisms for prevention and protection against discrimination and to promote equal opportunities and raising public awareness in recognizing the forms of discrimination and promoting the concept of non-discrimination and equal opportunities.

Within each of the strategic objectives there are five specific objectives.⁸⁶ The specific objectives are achieved through the implementation of various specific activities that are focused on the advancement and harmonization of legislation, building the capacities of institutions and organizations at the national and local level, cooperation with non-governmental organizations, establishing a database of conducted trainings, trained persons, trained trainers and training materials;

Regarding discrimination and hate speech in the specific strategic objective 2.4. – judiciary and administration, the following activities are plans:

- Building the capacities of judges and public prosecutors regarding the burden of proof, types of evidence and forms of discrimination.
- Continuous thematic trainings of judges, public prosecutors and lawyers on the treatment of persons with disabilities, children with disabilities in the educational system, hidden gender discrimination, hate speech versus discrimination, indirect discrimination, etc.
- Sensitization of police officers on non-discrimination and racial profiling.

As part of Strategic Objective e 3 - Raising public awareness to recognize the forms of discrimination and promotion of the concept of non-discrimination and equal opportunities, measures will be taken for the implementation of continuous activities to raise public awareness for the recognition of forms of discrimination, as well as strengthening awareness for the promotion of the concept of non-discrimination; for prevention of hate speech and violence and other types of discrimination based on ethnic community, LGBTI and persons with disabilities;

The responsible institutions for implementing this strategy are the Government of RNM and its competent institutions.

The National Strategy for Gender Equality was adopted on July 22, 2022. *The purpose of the National Strategy for Gender Equality 2021-2027 is the achievement of gender equality and the creation of a society in which women and men, girls and boys, have equal rights, equal access*

⁸⁶ Work and labor relations; education, science, sport and culture; social security; judiciary and administration; and access to goods and services



to resources, opportunities and protection in all spheres of life. This is a condition for overall and sustainable economic, demographic, social development and progress of the country, i.e., society in which women and men will have the same privileges and responsibilities that they will exercise in a true joint partnership.

NSGE has identified priority areas, including access to justice. It has been determined that vulnerable population groups, such as *women victims of violence, Roma, LGBTI people, asylum seekers, migrants, stateless persons, sex workers, and drug users, are in need of full and effective access to justice. It is also crucial to raise awareness and sensitize legal practitioners regarding gender equality issues. This is because there is a possibility of revictimization and discrimination of persons from vulnerable categories. Legal practitioners come into direct contact with them, and sexism and gender-based violence, including sexist hate speech.*⁸⁷ Therefore, it is important to promote equality and tolerance in educational and media content and effectively sanction sexist hate speech.⁸⁸

Hate speech is also included in the objectives and the expected results of the Strategy.

The specific objective 3.2.: Suppression of gender stereotypes and promotion of equality as a main initiative identifies discriminatory and sexist content and speech in the media and on Internet portals based on gender and gender identity for which it predicts expected results “Zero tolerance for sexism and sexist hate speech in the workplace, in sports, in the media.”

The Commission for Prevention and Protection from Discrimination was established in 2021 as an independent body that, in accordance with the law, acts on complaints submitted by natural or legal persons who believe they have suffered or experienced discrimination. The Commission within its competences undertakes activities for the promotion, protection and prevention of equality, human rights and non-discrimination; monitors the implementation of this law and gives opinions and recommendations; promotes the principle of equality, the right to non-discrimination and dealing with all forms of discrimination through increasing public awareness, information and education; contributes to the preparation and application of programs and materials in the field of formal and informal education; prepares and publishes special and thematic reports on specific issues in the field of equality and non-discrimination; makes general recommendations on certain issues in the field of equality and non-discrimination and monitors their implementation; advocates for the ratification of bilateral or multilateral international agreements in the field of human rights or for accession to them and monitors their implementation; contributes to the preparation of reports that the state is obliged to submit to international and regional human rights bodies and contributes to the implementation of their recommendations; promotes and proposes harmonization of national legislation, regulations and practices with international and regional human rights instruments; initiates amendments to regulations for the purpose of implementing and improving protection against discrimination; gives opinions on proposed laws of importance for preventing and protecting against discrimination; establishes cooperation with natural and legal persons, as well as with associations, foundations and social partners for the realization of the principle of equality and promotion of the prevention and protection against discrimination; cooperates with appropriate national bodies of other countries, as well as with international and regional organizations in the field of protection against discrimination; acts on complaints, gives opinions, recommendations and conclusions about specific cases of discrimination; initiates an ex officio procedure for protection against discrimination; provides information to the interested person about his or her rights and possibilities for initiating a judicial or other procedure for protection against dis-

⁸⁷ NSGE, p.72,73

⁸⁸ NSGE, p.74



crimination; monitors the execution of the opinions and recommendations for specific cases of discrimination until the recommendations given by the Commission are met; initiates and appears as an intervener in court proceedings for protection against discrimination; at the request of the litigant or on its own initiative, may be allowed to act as a friend of the court (*amicus curiae*); quarterly informs the public about cases of discrimination, in a manner determined by an act of the commission and shares its opinions, findings and recommendations and addresses the public through any media.

From its foundation until today, the Commission annually issues reports on its work, through which it presents statistical data related to its competences, that is, the number of submitted complaints, initiated procedures for protection against discrimination after the submitted complaints, etc.

As per the ["Annual report on the work of the commission for prevention and protection against discrimination for 2022"](#), *there were a total of 255 cases filed as of December 31, 2022. Out of these cases, 248 were filed through complaints, while the remaining 7 were initiated by the Commission ex officio. In 70 of these cases, discrimination was determined, with 23 of them being more serious forms of discrimination such as multiple, repeated, prolonged, and intersectional discrimination. The Commission found a violation of the right to equality on 22 different grounds, except for the "citizenship" ground. These grounds include 37 cases of discrimination in public information and media, 15 cases in work and labor relations, 10 cases in access to goods and services, 6 cases in education, 2 cases in health insurance and health care, 1 case in sports, and 1 case in the operation of associations, foundations, or other membership-based organizations.⁸⁹ In 2022, the Commission established 70 cases of discrimination after submitted complaints and ex officio procedures. The most common types of discrimination established in 2022 were harassment (present in 39 cases), direct discrimination (in 25 cases), and calling, incitement and instruction to discriminate (in 17 cases).⁹⁰*

In the area of public information and media, the Commission determined the existence of discrimination in 37 cases. Discrimination in the field of public information and media is most present on social networks (a total of 33 cases) and occurs in the form of harassment and/or calling, incitement and instruction, which is often present in more severe forms such as prolonged, repeated and multiple discrimination. The most common victims on social networks are members of the LGBTI+ community with 26 identified cases,⁹¹ while the most common basis for discrimination in the field of public information and media is sexual orientation (25 cases), gender identity (20 cases), belonging to a marginalized group (16 cases) and gender (14 cases).

The National Coordinating Body for Non-Discrimination⁹² was established by decision of the Government of the Republic of North Macedonia on March 27, 2018.⁹³ The competence of NCBN is to monitor the situation with non-discrimination and the implementation of laws, by-laws and strategic documents in this area. The NCBN is composed of 36 members, representatives of state institutions, local self-government units, associations, unions, employers' associations and independent experts.⁹⁴ According to the decision of the Government, "the work of the National

⁸⁹ Annual report on the work of the Commission for Prevention and Protection Against Discrimination, p.7

⁹⁰ Ibid, p. 26

⁹¹ Ibid, p. 29

⁹² NCBN, see: <https://www.mtsp.gov.mk/nedriksminacija.nspix>

⁹³ Official Gazette no. 60/2018, April 3, 2018, available at: <https://www.slvesnik.com.mk/Issues/7b5d2407fce-a4e91a124f34eb7fb7fd8.pdf>

⁹⁴ Members of the NCBN are the Ministry of Labor and Social Policy (six members); The General Secretariat of the Government of the Republic of Macedonia (one member); Ministry of Justice (one member); Ministry of Health (one mem-



Coordinating Body includes external experts and representatives of the OSCE Mission in Skopje, from the Office of the High Commissioner for Human Rights in Skopje and from the Office of the Delegation of the European Union in Skopje and other independent experts.”⁹⁵ The NCBN has the task of monitoring the situation with discrimination, participating in the development of an anti-discrimination strategy, monitoring the implementation of regulations in this area and informing the Government. The work of the NCBN is based on the National Work Program of the Coordinating Body for Monitoring Situations with Non-Discrimination and Implementation of Laws, Bylaws and Strategic Documents from this area for the period 2018-2020. The program for 2018-2020 foresees specific activities for the NCB in several areas:

- Area 1 - Monitoring and improvement of the legal framework and policies for equality and non-discrimination,
- Area 2 – Strengthening of capacities, promotion of work and coordination of institutional mechanisms for preventing and protecting against discrimination and promoting equality,
- Area 3 - Data collection and situation monitoring

*The NCBN has the following tasks: - to promote the concept of equality and non-discrimination in the general policies of all public institutions by proposing measures on an annual level; - to monitor the integration of the concept in sector policies in cooperation with social partners and institutions from individual areas; - to monitor the progress of harmonization of the national legislation with the legislation of the European Union and the European standards in the field of non-discrimination; - to participate in the preparation and provide guidance in the process of preparation of the Strategy for Equality and Non-Discrimination; - to monitor periodic reports from state institutions; - to monitor the implementation of legal, by-law and other strategic documents in the field of non-discrimination; - to follow the recommendations of the international community in the area of non-discrimination and to establish priorities on an annual level in this area.*⁹⁶

In 2019, a **Declaration against hate speech in the media and on the Internet**⁹⁷ was signed by all institutions in the Republic of North Macedonia.⁹⁸ With this Declaration, **the Network for Combating Hate Speech in the Media** was established. The signatories of this Declaration include representatives from professional media and journalistic associations, decision-makers, state and regulatory bodies responsible for protecting human rights, civil society organizations, as well as education, research, and other entities related to media and the protection of freedom of expression

ber); Ministry of Education and Science (one member); Ministry of Information Society and Administration (one member); Ministry of Transport and Communications (one member); Ministry of the Internal Affairs (one member); Ministry of Finance (one member); The Secretariat for European Affairs (one member); Agency for realization of the rights of communities (one member); The Agency for Youth and Sports (one member); The Employment Agency of the Republic of Macedonia (one member); Commission for protection against discrimination (one member); The Ombudsman of the Republic of Macedonia (one member); The Organization of Employers of North Macedonia (one member); The Federation of Trade Unions of North Macedonia (one member); The community of local self-government units (one member); The Margini Coalition (one member); - The Helsinki Committee (one member); NGO Hera (one member); The Non-Discrimination Network (two members); Macedonian Young Lawyers Association (two members); NGO Polio Plus (one member); The Institute for Human Rights (two members); Humanitarian and Charitable Association of the Roma - Mesechina (one member); NGO Subversive Front (one member); An independent expert distinguished in the field of human rights as a permanent member (one member).

⁹⁵ Decision on the formation of a National Coordinating Body for monitoring non-discrimination situations and implementation of laws, by-laws and strategic documents from this area, art. 2 par. 2

⁹⁶ Decision on the establishment of NCBN, Official Gazette No. 60, April 3, 2018, Art. 4, available at: <http://www.slvesnik.com.mk/Issues/7b5d2407fcea4e91a124f34eb7fb7fd8.pdf>

⁹⁷ Available at: <https://semm.mk/attachments/deklaracija.pdf>

⁹⁸ NGOs, Ministry of Internal Affairs, media, the Academy of Judges and Public Prosecutors, the Agency for Audio and Audiovisual Media Services, the Association of Journalists of Macedonia, the Ombudsman, the Ministry of Information Society and Administration, the Cabinet of the Minister without portfolio in charge of communications, accountability and transparency, etc.



and human rights. The main objective of the Network is to prevent the spread of hate speech in the public sphere, to strengthen the professional and ethical performance of journalistic activity and to raise the awareness of the wider population about the negative consequences of hate speech.

In the declaration, it is stated that the members of the network will work on developing mechanisms to recognize and report cases of hate speech to the competent institutions and bodies. They will also work within their competencies to develop forms of support and protect journalists and representatives of the media. Furthermore, they will advocate for the affirmation of the role of the media, service providers and social networks in the prevention of hate speech. They will also work towards the coordinated initiation of programs, self-regulation mechanisms, internal codes of the media and service providers, as well as other preventive measures that will prevent the use of hate speech in the public sphere, without jeopardizing the right to freedom of expression.

This Declaration is an expression of the will of the signatories to be involved in the prevention of hate speech and does not represent a document that imposes an obligation on the institutions and other signatories to fight against hate speech.

The Network for Protection Against Discrimination was established in December 2010 by several non-governmental organizations: Open Society Foundation - Macedonia; HERA – Association for Health Education and Research; HOPS - Options for a healthy life - Skopje; Helsinki Committee for Human Rights of the Republic of Macedonia and Association for Emancipation, Solidarity and Equality of Women of the Republic of Macedonia (ESE); Roma Organization for Multicultural Affirmation ROMA S.O.S. – Prilep; Coalition “Sexual and Health Rights of Marginalized Communities” and the Republican Center for Support of Persons with Intellectual Disabilities - PORAKA. The current members of the Network are: Open Society Foundation - Macedonia, Association for Health Education and Research (HERA), Macedonian Young Lawyers Association, HOPS - Options for a Healthy Life - Skopje, Helsinki Committee for Human Rights, LGBTI Support Center, ESE Association, Station PET – Prilep, MARGINI Coalition, ZAEDNO POSILNI and the National Network to end Violence against Women and Domestic Violence. The NPAD aims to provide representation in cases of discrimination by submitting cases before the CPPD and domestic and international courts. The NPAD provides representation in cases by providing free legal assistance in strategic cases of discrimination.⁹⁹

III.2. Republic of Serbia

A) *Constitutional guarantees*

The Constitution of the Republic of Serbia¹⁰⁰ includes a comprehensive list of human rights and guarantees, with a fundamental principle of equality for all before the law and a prohibition on discrimination based on any grounds.¹⁰¹ The Constitution expressly guarantees the equality of men and women,¹⁰² as well as equality before the law and the prohibition of discrimination against individuals who belong to national minorities.¹⁰³

⁹⁹ Facts about the work of the NPAD: represented cases 368, positively resolved cases 69%, submitted initiatives to change laws 6

¹⁰⁰ Constitution of the RS, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/>

¹⁰¹ Ibid, art. 21

¹⁰² Ibid, art. 15

¹⁰³ Ibid, art. 76



The Constitution of RS guarantees freedom of thought and expression in Art. 46 par. 1 “Freedom of thought and expression is guaranteed, as well as the freedom to seek, receive and transmit information and ideas through speech, writing, art or in any other way.” In par. 2 of ¹⁰⁴ this Article, the Constitution provides for legal restrictions on freedom of expression if it is necessary to protect the rights and reputation of others, to maintain the authority and objectivity of the court and to protect public health, the morals of a democratic society and the national security of the Republic of Serbia. Article 43 guarantees the freedom of thought, conscience and religion, and restrictions on these freedoms are foreseen only if it is necessary in a democratic society to protect the lives and health of people, the morals of a democratic society, the freedoms and rights guaranteed by The Constitution, public order and security, or to prevent the incitement of religious, national and racial hatred.¹⁰⁵ Also, any incitement to racial, ethnic, religious or other inequality or hatred is prohibited and punishable.¹⁰⁶

Article 50 of the Constitution guarantees the freedom of the media. However, the dissemination of information and ideas through the media is prohibited when it advocates or propagates racial, national or religious hatred, which leads to discrimination, hostility, and violence. This constitutional provision regulates the ban on hate speech, but such speech is limited exclusively to racial, national or religious hatred.

B) Legislative framework

In Serbia, there are multiple laws that address hate speech.

Criminal legal protection against discrimination is regulated by **the Criminal Code** that prescribes four criminal acts related to the prohibition of discrimination: a) violation of the principle of equality,¹⁰⁷ b) violation of the right to use language and writing,¹⁰⁸ c) incitement of national, racial and religious hatred and intolerance,¹⁰⁹ and d) racial and other discrimination.¹¹⁰

Violation of the principle of equality, as stated in Art. 128, is a punishable offense that can result in a prison sentence of up to three years. This applies if any individual’s constitutional rights, as well as the rights guaranteed by laws, acts, or international agreements are denied or limited based on their nationality, ethnicity, race, religion, political or other beliefs, sex, disability, sexual orientation, gender identity, language, education, social status, social origin, property, or any other personal characteristic. It is also considered a violation if any privileged status or benefits are given to others based on such differences.

The provision of Art. 129 “violation of the right to script” covers the violation of the right to use language and script. According to this Article, anyone who use the language and violates the regulations governing the use of language and script of the people or members of national and ethnic groups living in Serbia will be punished with a fine or a prison sentence of up to one year. Additionally, the Article prohibits denying or restricting citizens the right to use their native language or alphabet when addressing authorities or organizations.

It is a punishable offence in Serbia to incite or worsen national, racial, or religious hatred or intolerance among different communities living in the country. According to Article 317,

¹⁰⁴ Constitution of the RS, art. 46 paragraph 1, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/>

¹⁰⁵ Ibid, art. 43 paragraph 4

¹⁰⁶ Ibid, art. 49

¹⁰⁷ Criminal Code of RS, Official Gazette of RS, no. 85/2005, 88/2005 - ex., 107/2005 - ex., 72/2009, 111/2009, 121/2012 and 104/2013, 108/2014, 94/2016., art. 128

¹⁰⁸ Ibid, art. 129

¹⁰⁹ Ibid, art. 317

¹¹⁰ Ibid, art. 387



Section 1 of the Criminal Code of RS, the offender may face a prison sentence ranging from six months to five years. However, if the crime was committed through coercion, harassment, or by endangering security, exposing national, ethnic or religious symbols to ridicule, causing harm to individuals or objects, desecrating monuments or graves, then the guilty party may be punished with imprisonment ranging from one to eight years. The most severe form of committing this crime is by abusing one's position or authority, or if the acts mentioned in paragraphs 1 and 2 of this provision lead to riots, violence or other serious consequences among different communities living in Serbia (par. 3).

According to Article 387, spreading the idea of one race being superior to another, or inciting racial hatred or discrimination is a criminal offense. Racial discrimination is defined as any violation of basic human rights based on someone's race, color, religion, nationality, ethnic origin, or any other personal characteristic. The punishment for this crime is imprisonment for a period of six months to five years.

Disseminating and sharing texts, images, or any other form of representation of ideas or theories that advocate or incite hatred, discrimination or violence towards an individual or a group of people based on their race, color, religion, nationality, ethnic origin, or any other personal characteristic is considered a criminal offense under the paragraph 4 provision 387 of the Criminal Code of RS. This provision also prohibits the public endorsement or denial of the existence of genocide, crimes against humanity, and war crimes committed against a group of people or an individual based on their race, color, religion, origin, state, national or ethnic origin, in a manner that could lead to violence or incitement of hatred towards such a group or individual.¹¹¹ Publicly threatening to commit a crime punishable by imprisonment of four or more years against an individual or group of people because of their race, skin color, religion, nationality, ethnic origin, or other personal characteristic, shall be punished by imprisonment ranging from three months to three years.¹¹²

The Law on Prohibition of Discrimination defines the terms discrimination and discriminatory treatment as concepts or terms used to denote *"any unjustified discrimination or unequal treatment, i.e. omission (exclusion, restriction or preferential treatment) in relation to individuals or groups, and members of their families or persons close to them, whether overt or covert, on the basis of race, colour, ancestry, nationality, national or ethnic origin, language, religious or political belief, sex, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organizations and other real or assumed personal characteristics."*¹¹³

The LPD recognizes hate speech and defines it as "the expression of ideas, information and opinions that incite discrimination, hatred or violence against an individual or a group of people because of their personal characteristics, in the public media and other publications, at gatherings and places which are accessible to the public, by writing and displaying messages or symbols and in other ways."¹¹⁴ Article 12 prohibits "the subjecting of an individual or group of people, on the basis of their personal characteristics, to harassment and degrading treatment which is meant to violate or violates their dignity, in particular if it causes fear or creates a hostile, degrading or an abusive environment." Hate speech can be considered a

¹¹¹ CC of RS, art. 387 paragraph 5, provided for a prison sentence of six months to five years

¹¹² Ibid, paragraph 6

¹¹³ LPD, art.1

¹¹⁴ Law on Prohibition of Discrimination, Art. 11, available at: <http://azil.rs/en/wp-content/uploads/2017/04/antidiscrimination-law-serbia.pdf>



serious form of discrimination if it falls into two categories: a) causing and inciting inequality, hatred and hostility based on national, racial or religious affiliation, language, political opinions, sex, gender identity, sexual orientation or disability¹¹⁵ and b) discrimination that results in severe consequences for the individual who is discriminated against, other people or property, especially if it involves an act punishable by law, predominantly or solely motivated by hatred or hostility towards the injured party based on their personal characteristic.¹¹⁶

The Law on Prohibition of Discrimination establishes the Commissioner for the Protection of Equality as an independent state body, responsible for enforcing the tasks prescribed by this law.¹¹⁷

According to the **Law on Public Information and Media**¹¹⁸ hate speech is prohibited under Article 75 “Ideas, opinions or information published in the media must not incite discrimination, hatred or violence towards any individual or group based on their race, religion, nationality, gender, sexual orientation or any other personal characteristic, whether the publication constitutes a crime or not.” However, there are exceptions to this law which allow for exemption from liability.¹¹⁹ These exceptions apply in cases where information from a journalistic text is published objectively and without any intention of inciting discrimination, hatred or violence against individuals or groups.¹²⁰ In such cases, the information should aim to critically highlight instances of discrimination, hatred, or violence against individuals or groups, or events that could represent or incite such behavior.¹²¹

The Law on Electronic Media¹²² regulates the organization and work of the Regulatory Body for Electronic Media (REM),¹²³ the conditions and method of providing audio and audio-visual media services, the conditions and procedure for issuing licenses for the provision of audio and audio-visual media services and other matters of importance in the area on the electronic media.¹²⁴ The law provides for the prohibition of hate speech by providing guarantees by the regulator “that the program content of the media service provider does not contain information that incites, overtly or covertly, discrimination, hatred or violence because of race, skin color, origin, citizenship, nationality, language, religious or political beliefs, sex, gender identity, sexual orientation, property status, birth, genetic peculiarities, health status, disability, marital and family status, criminal record, age, appearance, membership in political parties, trade unions and other organizations and other actual or assumed personal characteristics.”¹²⁵ The LEM provides for a misdemeanor sanction in the amount of 500,000.00 dinars to 2,000,000.00 dinars for any legal person that will not act in accordance with the provisions prohibiting hate speech from Article 51 of the law, and with a fine in the amount of 10,000.00¹²⁶ dinars up to 500,000.00 dinars for the applicant who will not act in accordance with the provisions of the law that regulate the prohibition of hate speech.¹²⁷

¹¹⁵ Ibid, art. 13 paragraph 1 item 1

¹¹⁶ Ibid, art. 13 paragraph 1 item 7

¹¹⁷ Ibid, art. 1 paragraph 1

¹¹⁸ Law on public information and media, Official Gazette of RS, no. 83/2014, 58/2015, 12/2016, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2014/83/4/reg>

¹¹⁹ Ibid, art. 76

¹²⁰ Ibid, art. 76 paragraph 1 item. 1

¹²¹ Ibid, art. 76 paragraph 1 item. 2

¹²² Law on Electronic Media, Official Gazette of RS, no. 83/2014, 6/2016, available at: <https://www.wipo.int/wipolex/en/text/441520>

¹²³ LEM, see: <https://www.rirm.org/en/rem-regulatory-authority-of-electronic-media-2/>

¹²⁴ Ibid, art.1

¹²⁵ Ibid, art. 51

¹²⁶ Ibid, art. 110 paragraph 1 item 1

¹²⁷ Ibid, art. 110 paragraph 2 item 1



The Code of Ethics of Journalists¹²⁸ of Serbia was adopted in 2006 by the Association of Independent Journalists of Serbia and the Association of Journalists of Serbia, as an ethical standard for the professional conduct of journalists. The Code is a relevant act for self-regulation and protection against discrimination and hate speech in the media. The Code stipulates that “The journalist must be aware of the danger of spreading discrimination by the media and be ready to do everything to avoid discrimination based on, among other things, race, gender, age, sexual orientation, language, religion, political or other beliefs, nationally or social affiliation,”¹²⁹ as well as “The journalist must oppose all those who violate human rights or promote any kind of discrimination, hate speech and incitement to violence.”¹³⁰ The Press Council¹³¹ is an independent and self-regulatory body that acts on violations of the Code of Journalists and cases of hate speech in the media. Hence, the Press Council as a self-regulatory body provides decisions that are not legally binding, which limits their influence.¹³²

C) Strategies and mechanisms

In the Republic of Serbia, the mechanisms for dealing with and fighting against hate speech are the Strategy for Prevention and Protection Against Discrimination for the period from 2022 to 2023,¹³³ the Strategy for social inclusion of Roma in the Republic of Serbia, the Action plan 2022-2024 for the implementation of the Strategy for social inclusion of Roma in the Republic of Serbia, Commissioner for the Protection of Equality¹³⁴ and the Action Plan for Realizing the Rights of National Minorities.¹³⁵

The Strategy for Prevention and Protection Against Discrimination for the period from 2022 to 2023 aims at equal opportunities for members of groups at risk of discrimination to enjoy all human rights and freedoms on an equal basis with others, as well as improved efficiency of the system for prevention and protection against discrimination in all areas and at all levels.¹³⁶

The strategy is based on the following principles: equality and non-discrimination; equal opportunities and inclusive equality; gender equality; intersectoral and multidisciplinary approach through constant cooperation between all stakeholders at all levels; participation; constant collection of statistical data, analysis and evaluation of the achieved results in order to create new measures and activities and respect the human rights and freedoms of all citizens of the Republic of Serbia.

In order to achieve the fundamental objective of the Strategy, four specific strategic objectives should be implemented:

- 1) Harmonized national legislation with international standards and practice for anti-discrimination;
- 2) Systemically introduced anti-discrimination perspective in the creation, implementation and monitoring of public policies;

¹²⁸ Code of Ethics of Journalists, 2015, available at: https://savetzastampu.rs/en/wp-content/uploads/2020/11/Serbian_Journalists_Code_of_Ethics.pdf

¹²⁹ Ibid, chapter V point 4, p.18

¹³⁰ Ibid, chapter I point 1, p.15

¹³¹ Press advisory, see: <https://savetzastampu.rs/>

¹³² Reporting Diversity Network 2.0, Monitoring report on hate speech in Serbia, 2022, Media Diversity Institute and Media Diversity Institute Western Balkans, available at: https://www.reportingdiversity.org/wp-content/uploads/2022/07/MRHS_Serbia.pdf

¹³³ Strategy for prevention and protection against discrimination for the period from 2022 to 2030, “Official Gazette of RS”, number 12 of 01.02.2022, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2022/12/2>

¹³⁴ See the official website of the Commissioner for the Protection of Equality of Serbia: <https://ravnopravnost.gov.rs/en/>

¹³⁵ Action plan for realizing the rights of national minorities, available at: <https://mduls.gov.rs/obavestjenja/akcioni-plan-za-ostvarivanje-prava-nacionalnih-manjina/>

¹³⁶ Strategy for prevention and protection against discrimination, chapter 5, point 5.1 General objective



3) Improved equality and greater social inclusion of members of groups at risk of discrimination;

4) Improved system for prevention and protection against discrimination.

Hate speech is covered by the third special objective “Improved equality and greater social inclusion of members of groups at risk of discrimination”.

This special objective is based on the need to improve the equality of all citizens in the Republic of Serbia. The expected results of the successful implementation of this objective are improved equality for members of groups at risk of discrimination by removing the obstacles they face in various areas of social life and creating conditions for the enjoyment of all rights and freedoms equally with others, which contributes for increasing the social participation of members of groups exposed to the risk of discrimination.

The measures that contribute to the achievement of the third special objective are:

a) Reduced stereotypes and prejudices towards members of groups that are exposed to the risk of discrimination and have promoted a positive public image of these groups, which influenced the change of social understandings and values. The effects of this measure are expected to be reflected in the increase of media content aimed at promoting equality and a positive image for members of groups at risk of discrimination, as well as in the reduction of discriminatory language and terminology present in the media, including hate speech. An indicator of the result of this measure is the decrease in the number of measures imposed by the Regulatory Body for Electronic Media and the Press Council for violation of the ban on hate speech (Article 51 of the Law on Electronic Media) and violations of the provisions of the Code of Journalists of Serbia related to the prohibition of discrimination and hate speech.

The fourth special objective “Improved system for prevention and protection against discrimination” within the measures provided for its implementation, and measure no. 4 refers directly and exclusively to the Improved mechanism for suppression and prevention of hate speech.

This measure refers to strengthening the mechanism against hate speech, especially hate speech on the Internet, due to the prevalence of this negative social phenomenon and its significance, that is, the use of the Internet in the Republic of Serbia. The effect of this measure is to improve the system of preventing and suppressing hate speech, while respecting the specifics of hate speech on the Internet, which will enable better prevention and protection against hate speech for members of the groups against whom hate speech is most often directed. The improvement of the mechanism against hate speech also implies the improvement of policies and regulations against hate speech with special reference to the Internet as a tool for spreading hatred.

Indicators of successfully achieved results are:

- The number of legal entities that have adopted internal acts against hate speech, including hate speech on the Internet;
- The number of media outlets that have adopted and published anti-hate speech procedures on their website;
- The number of media (websites and portals) that have accepted the competence of the Press Council, as a self-regulatory body;
- Improved legal framework for banning hate speech on the Internet.

The Strategy for social inclusion of Roma in the Republic of Serbia¹³⁷ is based on international legal documents and national regulations governing the areas covered by it. They include

¹³⁷ The Strategy for social inclusion of Roma in the Republic of Serbia 2022-2030, available at: <chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://faolex.fao.org/docs/pdf/srb213718.pdf>



the following: justice and protection of human and minority rights, inclusion and equality of Roma in society, equality and non-discrimination, education, employment, housing, health, social protection and civil status. The Strategy rests on the following principles: Public authorities' responsibility and capacity for achieving strategic goals; – Solidarity with socially disadvantaged persons and groups; – Inclusion and empowerment leading to human safety, economic growth and promotion of human rights by adapting environments and systems and supporting people and groups; – Combating exclusion leading to losses in the state's social capital and inflicting real damage on excluded persons and groups; – Elimination of social inequality, i.e. fight against antigypsyism as a form of racism and discrimination; – Poverty reduction as a prerequisite for exercising human rights; – Human rights as an overall approach to achieving the Strategy goals, with a special focus on the right to equality, participation, education, housing, work, health care and social protection; – Roma's full participation in all policy stages relevant to them and in particular this Strategy; – Affirmative measures addressing actual inequality, which are limited in nature (limited in time or implemented until the equality goal is achieved) and which are not considered discrimination against other people; Respect for Roma identity, i.e. implementation of measures having a positive effect on the preservation and promotion of Roma culture, history, language and other aspects of Roma identity; – Diversity in the Roma community is also taken into account in order to address in an appropriate manner special challenges facing women, children, LGBTI persons, the youth, the elderly and others; – Budgetary support to the implementation of the Strategy and cooperation with donors supporting social inclusion of Roma; – Localisation of measures, i.e. adapting to the local context and supporting the local participation in the policy cycle relating to Roma.

The vision of the Strategy is that Republic of Serbia is a society where Roma exercise all human rights without discrimination. The goal of the Strategy is to improve the quality of life of Roma in the Republic of Serbia, by respecting human and minority rights; eliminating discrimination and antigypsyism, as a form of racism, and achieving greater social inclusion across all segments of the society.

Within the overall goal of the Strategy, and in order to implement this goal several priority areas are foreseen among which is the area for fight against antigypsyism, as a form of racism, and discrimination.

Within the measures of the Strategy, Objective 1 is foreseen in order to lower the level of discrimination and antigypsyism as a form of racism against the Roma national minority. The Strategy envisage that to achieve Objective 1, a legal and institutional framework needs to be set up to strongly control antigypsyism and discrimination against Roma, to empower Roma by strengthening their identity and access to rights, and to raise awareness of the general population, public services in particular, of the importance of fight against antigypsyism, as a special form of racism, and discrimination.

The third measure under Objective 1 tends to eliminate prejudices and stereotypes prevailing in the general population of the Republic of Serbia, impact the media so as to minimize negative and increase affirmative narratives in their contents, raise awareness of diversity and tolerance, support the gatherings of different communities, and suppress hate speech by public condemnation.

The Commissioner for Protection of Equality is an independent, autonomous and specialized state body established on the basis of the Law on Prohibition of Discrimination from 2009. The tasks of this state body are the prevention of all types, forms and cases of discrimination, protection of the equality of natural and legal persons in all areas of social relations, supervision over



the application of regulations for the prohibition of discrimination, as well as promotion of the realization and protection of equality. The Commissioner for Protection of Equality is authorized to carry out a procedure following submitted complaints for cases of discrimination against persons or groups of persons related to the same personal characteristic. The commissioner is competent to receive and consider complaints due to discrimination, to give opinions and recommendations in specific cases of discrimination and to impose measures established by law. The commissioner is obliged to provide the complainant with information about his rights and the possibility of initiating a judicial or other procedure for protection against discrimination, including the conciliation procedure, as well as to file lawsuits for protection against discrimination, with the consent of the person who has been discriminated against.

The commissioner is also responsible for filing misdemeanor charges for acts of discrimination criminalized by the anti-discrimination regulations.

The commissioner prepares and publishes annual reports on his work.

According to the Regular Annual Report of the Commissioner for the Protection of Equality for 2022, in the section on hate speech, it has been determined that one of the key problems during 2022 continues to be discriminatory speech in the public sphere, which is actually indicated by the 60 opinions of the Commissioner, which were adopted on the basis of violations of Article 12 of the Law on Prohibition of Discrimination, which refers to harassment, humiliating treatment, sexual and gender harassment. The most common case is illegal speech towards the Roma, LGBTI population, women and national minorities.¹³⁸

Among the complaints filed for discrimination based on nationality, the biggest share was due to discrimination against the Roma national minority (87.7%), although in several cases they referred to the same event. The fact that a large number of complaints are based on belonging to the Roma national minority clearly indicates the prevailing attitudes, social distance, stereotypes and prejudices faced by Roma men and women. In their daily interactions with neighbors, colleagues, and society, Roma individuals are regularly subjected to insults, belittlement, aggression, and hate speech.¹³⁹

As a result of the Commissioner's handling of complaints filed over the years for cases in which stereotypes about the Roma are openly promoted in certain TV shows and in daily newspapers and the opinions which clearly indicate that such speech in the public sphere causes numerous consequences and creates hostile and offensive environment in the everyday life of the Roma, in the procedures that the Commissioner acted upon in 2022, which mostly refer to graffiti in the public space, after the Commissioner's address, they were removed.

The Action Plan for Realizing the Rights of National Minorities was introduced on March 3, 2016 as a medium-term strategic document without setting a time frame for the validity of the document. The action plan consists of 11 chapters, the second of which is called Prohibition of Discrimination and refers to ensuring the rights and freedoms of members of national minorities under equal conditions throughout the territory of the Republic of Serbia, developing tolerance and preventing discrimination. With the Action Plan, activities are planned in the direction of achieving the objectives of the second chapter, and they relate directly to the fight against hate speech, its prevention and prohibition: a) suppression of hate speech in the media and on social networks; b) initiating a procedure for protection against hate speech; c) conducting effective investigation, ap-

¹³⁸ Regular Annual Report of the Commissioner for Protection of Equality 2022, p.28

¹³⁹ Regular Annual Report of the Commissioner for Protection of Equality for 2022, p.5 and 20, available at: https://ravnopravnost.gov.rs/wp-content/uploads/2023/03/RGI-2022_15.3.pdf



appropriate qualification and effective prosecution of perpetrators of acts with indication of national hatred and intolerance and racial, religious and other discrimination, including acts committed over the Internet, on social networks and public appearances; keeping special records and conducting trainings.¹⁴⁰

In 2022, the Ministry of Human and Minority Rights began to prepare the new Action Plan for the Realization of the Rights of National Minorities for the period from 2022-2025,¹⁴¹ which should improve the previously adopted Action Plan from 2016 and, through new legal regulations, improve the daily life of minorities.¹⁴²

III.3. Republic of Albania

A) Constitutional guarantees

The Constitution of the Republic of Albania¹⁴³ does not explicitly provide for the term hate speech. In its Preamble, this Constitution states “to guarantee the fundamental human rights and freedoms, with a spirit of religious coexistence and tolerance, with a pledge to protect human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity ... with a deep conviction that justice, peace, harmony and cooperation between nations are among the highest values of humanity.”¹⁴⁴ In the section on basic principles, the Constitution states: “... dignity of the individual, human rights and freedoms, social justice ... religious coexistence, as well as the coexistence and understanding of Albanians with minorities are the basis of this state, which has the duty of respecting and protecting them.”¹⁴⁵ The Constitution of RA covers hate speech through the wording incitement and support of racial, religious, regional or ethnic hatred, and emphasizes that hatred or incitement is unacceptable, providing that political parties and other organizations whose programs and activities are based on totalitarian methods that incite and support racial, religious, regional or ethnic hatred are prohibited by law.¹⁴⁶ The Constitution of RA provides for the principle of non-discrimination¹⁴⁷, the principle of equality of national minorities¹⁴⁸, freedom of conscience and religion¹⁴⁹, etc. In the area of basic freedoms and rights, the Constitution, through Article 18, stipulates that “Everyone is equal before the law.” No one may be unfairly discriminated against for reasons such as sex, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic, educational, social status, or their origin. No one may be discriminated against for the reasons mentioned in paragraph 2, provided that there is objective and reasonable justification.”¹⁵⁰ Persons belonging to national minorities enjoy their human rights in full equality before the law.¹⁵¹

¹⁴⁰ See: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/viewdoc?uuid=6e6ed1dd-5fec-471c-b40f-ad2020d778d4®actid=433497&doctype=reg>

¹⁴¹ Action plan for the realization of the rights of national minorities 2022-2025 (working ties), available at: <https://www.minlmpdd.gov.rs/doc/konsultacije/150722/Radna-verzija-Akcionog-plana.pdf>

¹⁴² See: <https://www.srbija.gov.rs/vest/645781/novi-akcioni-plan-za-bolje-ostvarivanje-prava-nacionalnih-manjina.php>

¹⁴³ Constitution of the Republic of Albania, Law no. 8417 of 22.11.1998, amended by Law no. 9675 of January 13, 2007; Amended by Law no. 9904 of April 21, 2008; Amended by Law no. 88/2012 of September 18, 2012; Amended by Law no. 137/2015 of December 17, 2015; Amended by Law no. 76/2016 of July 22, 2016; Amended by Law no. 115/2020, of July 30, 2020; available at: https://wipo.int/edocs/lexdocs/laws/en/al/al103en_1.pdf

¹⁴⁴ Preamble to the Constitution of RA

¹⁴⁵ Constitution of the Republic of Albania, Art. 3

¹⁴⁶ Constitution of the Republic of Albania, art. 9 paragraph 2

¹⁴⁷ Constitution of the Republic of Albania, Art. 18

¹⁴⁸ Constitution of the Republic of Albania, Art. 20

¹⁴⁹ Constitution of the Republic of Albania, Art. 24

¹⁵⁰ Constitution of the Republic of Albania, Art. 18

¹⁵¹ Constitution of the Republic of Albania, art. 20 paragraph 1



In the area of personal rights and freedoms, the Constitution regulates freedom of conscience and religion through Article 24 “Freedom of conscience and of religion is guaranteed.” Everyone is free to choose or change his/her religion or beliefs, as well as to express them individually or collectively, in public or private life,...

B) Legislative framework

The **Criminal Code**¹⁵² does not contain a definition of hate speech, but regulates it through several Articles that are directly related to hate speech.

The criminal offense related to hate speech falls under the category of insult, provided for by Article 119 of the Criminal Code. This Article stipulates that intentional insult to a person constitutes a criminal offense, punishable by a fine of fifty thousand to one million Albanian lek. The same act, when committed publicly, to the detriment of several persons or if repeated several times, constitutes a criminal offense punishable by a fine of fifty thousand to three million lek.

“Dissemination of racist or xenophobic themes through a computer system” provided for by Article 119/a of the CC regulates hate speech, although not under that name, in a way that provides that the public provision or intentional public dissemination through computer systems of materials that have racist or xenophobic content constitutes a criminal offense and is punishable by a fine or imprisonment of up to two years.

The act “Insult due to racist or xenophobic themes through the computer system” sanctions the intentional insult of a person in public, through a computer system, because of ethnicity, nationality, race or religion and constitutes a criminal offense punishable by a fine or imprisonment of up to two years.¹⁵³

Article 120 of the Criminal Code, titled “Defamation”, specifies a criminal offense that involves intentionally spreading false statements or information, with the knowledge that they are false, and which harm the reputation, honor, and dignity of a person. This offense carries a penalty in the form of a fine ranging from fifty thousand to one million five hundred thousand lek. In the event that this offense is committed in public to the detriment of several persons, or more than once, then the penalty can range from fifty thousand to three million lek.

Besides the provision itself, the Article that directly refers to hate speech, although it is not represented by that wording in the provision itself, is “Inciting hatred or disputes. This provision prescribes a prison sentence of two to ten years for hate speech that incites “hatred or disputes based on race, ethnicity, religion or sexual orientation, as well as the intentional preparation, dissemination, or preservation for the purpose of distributing records of such content through any means or forms.”¹⁵⁴

Hate speech is also covered in Article 266 of the CC, which under the title “Call for national hatred”, provides for endangering public peace by invoking national hatred against part of the population, by insulting or defaming, or by calling for the use of violence or other arbitrary actions against them. This crime carries a prison sentence of two to eight years.

¹⁵² Law No. 7895 of January 27, 1995, Criminal Code of RA (CC), (Amended by Law No. 36/2017; Amended by Law No. 89/2017), available at: https://track.unodc.org/uploads/documents/BRI-legal-resources/Albania/27_-Albania_Criminal_Code_1995_am2017_en.pdf

¹⁵³ RA CC, Article 119/b

¹⁵⁴ RA CC, Article 265



In terms of administrative responsibility for hate speech, two laws are crucial.

The Law on Protection against Discrimination (LPD)¹⁵⁵ regulates the implementation and observance of the principle of equality and non-discrimination in terms of race, ethnicity, skin color, language, citizenship, political, religious or philosophical beliefs, economic, educational or social status, gender, gender identity, sexual orientation, gender characteristics, living with HIV/AIDS, pregnancy, parentage, parental responsibility, age, family or marital status, civil status, residence, health status, genetic predispositions, appearance, disability, belonging to a particular group or any other basis.¹⁵⁶

*The purpose of this law is to ensure the right of every person to: a) equality before the law and equal protection by law; b) equal opportunities and opportunities to exercise rights, enjoy freedoms and participate in public life; c) effective protection against discrimination and against any form of behavior that encourages discrimination.*¹⁵⁷

The LPD defines “Hate speech” as any form of public expression, through any means of promotion, which incites disparagement, hatred or defamation, harassment, insult, negative stereotyping, stigmatization or threat against a person or group of persons, as well as any justification of all forms of expression based on the non-exhaustive list of grounds specified in Article 1 of this law.¹⁵⁸

*The law also defines the following forms of discrimination. The first form is “Inciting or assisting another to discriminate,” which occurs when one or more people incite or assist others to discriminate based on any of the grounds listed in Article 1 of the law.*¹⁵⁹ *This can include financing such discriminatory acts. The second form of discrimination is called “Harassment.” It occurs when someone behaves inappropriately towards another person based on any of the grounds listed in Article 1 of the law. This behavior is unwanted and intended to violate the dignity of the person, and can create an intimidating, hostile, humiliating or offensive environment for the victim. Additionally, the person targeted by such conduct may face less favorable treatment if they object to or disobey the behavior.*¹⁶⁰

According to Article 3/1 of the LPD, severe forms of discrimination are defined as any behavior that is discriminatory and motivated by multiple grounds, happens more than once, lasts for a long period of time, or causes particularly harmful consequences for the victim.

The law includes a provision that prohibits discrimination based on the grounds stated in Article 1 of this law. Additionally, the LPD prohibits missing an examination of a complaint or procedure related to the cases outlined in Article 3 of this law, as well as any other behavior that hinders the implementation of the principle of equal treatment.¹⁶¹

Also, the LPD provides for protection against discrimination through Article 7, which imposes an obligation on public authorities to promote equality and prevent discrimination in the performance of their functions.

¹⁵⁵ Law No. 10 221 of February 4, 2010 on Protection from Discrimination, amended by Law No. 124/2020, available at: https://equnet.europa.org/wp-content/uploads/2021/04/Law-on-Protection-from-Discrimination-Albania_amended-1.pdf

¹⁵⁶ LPD, art.1

¹⁵⁷ LPD, art. 2

¹⁵⁸ LPD, art. 3 item 8

¹⁵⁹ LPD, art. 3 item 10

¹⁶⁰ LPD, art. 3 item 13

¹⁶¹ LPD, art. 5



The law regulates the protection against discrimination in the field of labor relations,¹⁶² education¹⁶³ and in the field of goods and services.¹⁶⁴ In all three areas, the LPD provides for the prohibition of discrimination and harassment.

The law also regulates the issue of voting by the Commissioner for Protection against Discrimination, the competence and procedures before the Commissioner for Protection against Discrimination, as well as the enforceability of his decisions.¹⁶⁵

The Law on Media Services (LMS)¹⁶⁶ addresses the issue of hate speech through various provisions. The LMS states among its principles that “the activity of audio-visual broadcasting impartially respects the right to information, political and religious beliefs, personality and dignity and other basic human rights and freedoms”.¹⁶⁷ Electronic media service providers should adhere to the principle of banning transmissions that promote intolerance between countries¹⁶⁸ and those that simulate or justify violence.¹⁶⁹ In the section of the general rules for providers of audio and/or audiovisual media services, an obligation is stipulated for providers not to broadcast programs with content that incites hatred on a racial, gender, religious, ethnic, national and any other form of discrimination. The¹⁷⁰ duties of audio and/or audiovisual media service providers also include the prohibition of violation of dignity and basic human rights¹⁷¹ and respect for the rules of ethics and public morality, and the prohibition of broadcasting programs that may encourage the commission of crimes.¹⁷² If the audio-visual media operators do not act in accordance with the provision of Article 33 of the LMS in terms of the programs they broadcast and their content, any interested party can submit a complaint, explained in writing, which the operators are obliged to consider.¹⁷³ Additionally, complaints about broadcast programs can be submitted to the Complaints Council, which is responsible for resolving complaints as soon as possible.¹⁷⁴

The LMS also stipulates conditions for providing audio and/or audiovisual media services at the user’s request.¹⁷⁵ This provision stipulates that services provided at the request of users must not include programs that stimulate hatred based on race, ethnicity, gender, nationality or religion.

The jurisdiction of the LMS extends to the providers of electronic publishing services. Part of the domain of the duties of these providers is the obligation not to “incite, enable incitement or spread hatred or discrimination on the basis of race, ethnicity, skin color, gender, language, religion, nationality or social origin, financial situation, education, social status, marital or family status, age, health status, disability, genetic inheritance, gender identity or sexual orientation.”¹⁷⁶ If a provider of a publishing electronic services does not act in accordance with

¹⁶² LPD, art. 12

¹⁶³ LPD, art. 17

¹⁶⁴ LPD, art. 20

¹⁶⁵ LPD, art. 21 – 33/1

¹⁶⁶ Law No. 97/2013, amended by law no. 91/2019 from 18.12.2019 “Law on media services”, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)007-e)

¹⁶⁷ Law on media services, art. 4 paragraph 1 t.b

¹⁶⁸ Law on media services, art. 4 paragraph 2 et seq

¹⁶⁹ Law on media services, art. 4 paragraph 2 tf

¹⁷⁰ Law on media services, art. 32 paragraph 5

¹⁷¹ Law on media services, art. 33 paragraph 1 et seq

¹⁷² Law on media services, art. 33 paragraph 1, i.e

¹⁷³ Law on Media Services, Art. 51

¹⁷⁴ Law on Media Services, Art. 52

¹⁷⁵ Law on Media Services, Art. 76

¹⁷⁶ Law on media services, art. 33/1 paragraph 4



the provision of Article 33/1 of the LMS, any interested party may submit a complaint, justified in writing, which the provider is obliged to consider.¹⁷⁷

The Code of Ethics for Journalists¹⁷⁸ is a self-regulatory instrument that aims to guide, strengthen and improve the quality of journalism and the sense of responsibility of journalists in Albania. The principles of this Code apply equally to all media and journalism platforms, both offline and online, including journalism through social media and online portals.

The Code of Ethics contains a special provision on hate speech stating that “the media may not publish material that incites intense hatred or violence against individuals on the basis of race, religion, nationality, skin color, ethnic origin, membership, gender, sexual orientation, civil status, disability, illness or age; Any publication should refrain from mentioning the origin, ethnicity, nationality, race, religion or sexual orientation of a group or individual, unless it is considered relevant and necessary for a better understanding of the facts and opinions presented in the publication.”¹⁷⁹

The Code also covers the incitement of crime and violence by prohibiting the propagation of war, violence, outrage or malicious information intended to hurt the feelings of the public as a whole or sections of it.¹⁸⁰

C) Strategies and mechanisms

The Republic of Albania through the National Strategy for Gender Equality 2021-2030,¹⁸¹ the National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians in the Republic of Albania 2021-2025,¹⁸² the National Action Plan for LGBTI People in Albania 2021-2027¹⁸³ indirectly touches the surface of hate speech and through the Commissioner for Protection against Discrimination,¹⁸⁴ is directly involved in the fight against hate speech.

The National Strategy for Gender Equality 2021-2030 (NSGE) was developed by the Ministry of Health and Social Protection, civil society organizations, academic representatives, as well as international organizations working on gender equality and ending gender-based violence and domestic violence in Albania.¹⁸⁵ The NSGE has 4 strategic objectives:

Strategic objective 1 – Fulfilling the economic and social rights of women, young women, girls, men, young men and boys in society and empowering women, young women and girls in all their diversity, with the aim of improving and sustaining an ecological (green) economy and their equal participation in the digitization process;

Strategic objective 2 - Ensuring equal participation, representation and leadership rights of women and men, young women and men, girls and boys in all their diversity in political and public decision-making at the local level;

¹⁷⁷ Law on Media Services, Art. 51/1

¹⁷⁸ Code of Ethics for Journalists, available at: <https://kshm.al/en/code-of-ethics-for-journalists/>

¹⁷⁹ Code of Ethics for Journalists, Art. 8

¹⁸⁰ Code of Ethics for Journalists, Art. 11

¹⁸¹ The National Strategy for Gender Equality 2021 – 2030, available at: https://albania.unwomen.org/sites/default/files/2022-02/WEB_Strategjia%20Kombetare%20-%20EN.pdf

¹⁸² National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians in the Republic of Albania 2021 – 2025, available at: <https://www.rcc.int/romaintegration2020/files/admin/docs/cd16306dca78d27cb552b95ef91d8d3f.pdf>

¹⁸³ National Action Plan for LGBTI People in Albania 2021-2027, available at: <https://rm.coe.int/lgbti-nap-2021-2027-en-final-2022/1680a584cf>

¹⁸⁴ Commissioner for Protection against Discrimination, official website: <https://www.kmd.al/>

¹⁸⁵ See: <https://albania.unwomen.org/en/digital-library/publications/2022/02/national-strategy-for-gender-equality-2021-2030#:~:text=The%20National%20Strategy%20for%20Gender,governance%20units%2C%20independent%20institutions%2C%20civil>



Strategic objective 3 - Reduction of all forms of harmful practices, gender-based violence and family violence;

Strategic objective 4 - Implementation of the inclusion of gender aspects in the main policies as a main tool for achieving gender equality and gender justice in society.

Within these four strategic objectives, specific objectives and measures are foreseen in order to successfully implement the strategy.

In the section on combating and eliminating hate speech, the NSRE within the framework of strategic objective 3 “Reduction of all forms of harmful practices, gender-based violence and family violence” with measure III.1.1 provides for “Improvement of legislation for protection against all forms of gender-based violence, domestic violence, sexism and hate speech.” The activities planned for the realization and implementation of this measure are aimed at analyzing the national legislative framework that refers to gender-based violence, domestic violence, sexism and identification of the provisions that do not sanction and prohibit harmful practices.

The National Action Plan for Equality, Inclusion and Participation of Roma and Egyptians in the Republic of Albania 2021 – 2025 (NAPEIPRE) was adopted by the Government of Albania on November 18, 2021. This plan has seven priority strategic objectives¹⁸⁶ and its vision is to include targeted programs and actions for the Roma and Egyptian population living in Albania, in order to reduce the gap in access to quality public services compared to the majority population.¹⁸⁷

NAPEIPRE has identified five specific objectives within the framework of strategic objective 7 - “Anti-Gypsyism to be recognized and addressed in public policy as well as through systemic and structural changes, in order to ensure a society without discrimination against Roma and Egyptians.” The third objective is to reduce discrimination against Roma and Egyptians and improve their access to justice for equality. The fourth objective aims to minimize or eliminate hate speech and hate crimes against Roma and Egyptians, providing a platform to combat hate speech.

Specific objective 4 stipulates that *the most serious forms of discrimination and racism, hate speech and hate crimes must be minimized until they are eliminated. To reach the intended objective and targets, it is necessary to combine measures and activities that help professionals build their capacity to identify and prevent the use of hate speech (such as training for journalists, teachers, social workers, lawyers, police officers, etc.).*¹⁸⁸

The National Action Plan for LGBTI people in Albania 2021-2027 is a roadmap towards an inclusive, accepting and non-discriminatory society for all LGBTI+ people who have the freedom to be themselves; which are treated properly in accordance with national standards that are harmonized with international ones; have access to quality public services or specialized support services, available at national level and tailored to their specific needs; as well as to actively participate in all areas of life, regardless of the expression of gender identity, sexual orientation, gender characteristics or the entirety of their other individual characteristics.¹⁸⁹

The focus of NAP for LGBTI people is protecting rights, providing quality services, raising awareness and reducing the level of intolerance of society against LGBTI+ people in Albania.

¹⁸⁶ NAPEIPRE, p. 46; available at: <https://www.rcc.int/romaintegration2020/files/admin/docs/cd16306dca78d27cb552b95ef91d8d3f.pdf>

¹⁸⁷ NAPEIPRE, p.44

¹⁸⁸ NAPEIPRE, p.59

¹⁸⁹ Council of Europe, NAP for LGBTI People 2021-2027, p.9, available at: <https://rm.coe.int/lgbti-nap-2021-2027-en-final-2022/1680a584cf>



“NAP for LGBTI+ persons 2021-2027 contains (three) strategic objectives:

- Strategic objective 1: Improving the access of LGBTI+ persons to public services and specialized support services that are effective, of good quality and available throughout the country, in accordance with their specific needs and national standards aligned with European and international standards.
- Strategic objective 2: Ensuring protection and safety for LGBTI+ persons by improving the legal framework, its effective implementation, as well as increasing the access of LGBTI+ persons to the justice system.
- Strategic objective 3: Creating an inclusive, accepting and non-discriminatory society against LGBTI+ people in Albania.”¹⁹⁰

In order to effectively fulfill and implement strategic objective 2, the NAP for LGBTI people foresees two specific objectives: a) Strengthening the legal protection of LGBTI+ people from hate crime, hate speech and violence, through review and harmonization of national legislation with European/international standards and b) Professional and impartial implementation of legislation to combat discrimination and hate crime against LGBTI+ persons.

Meeting these specific objectives should result in improved legislation, in particular to ensure the prohibition of hate speech and hate crime, as well as violence against LGBTI+ people.

The Commissioner for Protection against Discrimination,¹⁹¹ (CPD) is established according to the Law on Protection from Discrimination. The CPD is a public legal person, responsible for providing effective protection against discrimination and against any form of behavior that encourages discrimination.¹⁹² The CPD is independent in the performance of its duties and is accountable only to the Constitution and the law.¹⁹³ The Commissioner for Protection against Discrimination is responsible for dealing with cases of discrimination of any kind following complaints submitted by persons or groups of persons who claim to have been discriminated against, including hate speech, but also has the authority to act ex officio. After the review of the appeal, the CPD issues a decision containing appropriate measures and monetary sanctions, as well as a deadline for their execution (Article 33 of the LPD). The decisions of the Commissioner have the force of an executive decision and if the party to whom the decision refers does not act within the given period, they shall be implemented through an executor.¹⁹⁴ The Commissioner has the authority to make recommendations on all kinds of issues related to discrimination, including initiatives to amend laws or proposals for new laws (Article 32).

For its work, the Commissioner submits and compiles annual reports which he presents to the Assembly.

*During the first 10 years of its existence, the CPD dealt with 24 cases of hate speech, and discrimination in the form of harassment was found in 40% of them.*¹⁹⁵

In 2019, the Commissioner for Protection against Discrimination acted on 14 cases (12 complaints and 2 ex officio) of hate speech, mainly related to LGBTI membership as well as the Roma

¹⁹⁰ NAP for LGBTI people 2021-2027, p.21

¹⁹¹ Commissioner for Protection against Discrimination, official website: <https://www.kmd.al/>

¹⁹² LPD, art. 21

¹⁹³ LPD, art. 22

¹⁹⁴ LPD, art. 33/1

¹⁹⁵ European Commission, Country Report – Non-discrimination - Albania, Reporting period January 1, 2021 –December 31, 2021, p.30, available at: <https://www.equalitylaw.eu/downloads/5718-albania-country-report-non-discrimination-2022-1-41-mb>



and Egyptian communities. At the end of the process of considering the above cases, in 3 cases the Commissioner determined the existence of discrimination against the complainants.¹⁹⁶

*According to the Annual Report of the CPD for 2021, there is an increase in the number of cases in which the complainants complain about suffered discrimination and for more than one basis, as well as in the findings of the administrative investigation conducted by the CPD for multiple discrimination. Political beliefs, race, disability, and health status are the most common grounds of discrimination in the areas of employment, goods and services, and education for which complainants claim to have experienced discrimination.*¹⁹⁷

III.4 Republic of Kosovo

A) Constitutional guarantees

The Constitution of the Republic of Kosovo¹⁹⁸ does not directly regulate hate speech, but it states that “No one can be discriminated against on the basis of race, color, sex, language, religion, political or other belief, national or social origin, relationship to any community, property, economic and social status, sexual orientation, birth, disability or other personal condition.”¹⁹⁹

The Constitution guarantees freedom of expression and it includes the right to self-expression, the right to disseminate and receive information, opinions and other messages without restriction. However, the Constitution foresees certain limitations of this right in the event that it encourages or provokes violence and hostility towards other people on the basis of nationality, race, ethnic background and religion.²⁰⁰

Regarding the media, the Constitution guarantees the freedom and pluralism of the media, and prohibits censorship. However, even here, the Constitution provides for restrictions if the dissemination of information or ideas through the media is intended to cause incitement or provocation of violence and enmity based on race, nationality, ethnic background or religion.²⁰¹

B) Legislative framework

In the Republic of Kosovo, hate speech is regulated through the Criminal Code,²⁰² the Law on Protection from Discrimination²⁰³ and the Law on the Independent Media Commission.²⁰⁴

The Criminal Code of the Republic of Kosovo sanctions hate speech through the crime of “Inciting Discord and Intolerance” regulated in Article 141 paragraph 1:

¹⁹⁶ Annual report of the Commissioner for Protection against Discrimination for the period 2019, available at: <https://www.kmd.al/wp-content/uploads/2021/04/5-Anglisht.pdf>

¹⁹⁷ European Commission, Country Report - Non-discrimination - Albania, Reporting period January 1, 2021 –December 31, 2021, available at: <https://www.equalitylaw.eu/downloads/5718-albania-country-report-non-discrimination-2022-1-41-mb>

¹⁹⁸ Constitution of the Republic of Kosovo, available at: <https://www.refworld.org/docid/5b43009f4.html>

¹⁹⁹ Constitution of the Republic of Kosovo, art. 24 paragraph 2

²⁰⁰ Ibid, art. 40

²⁰¹ Ibid, art. 42

²⁰² Law no. 06/L-074, Criminal Code of the Republic of Kosovo, Official Gazette of the Republic of Kosovo/ no. 2/ January 14, 2019, Pristina, available at: <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>

²⁰³ Law no. 05/L-021 on protection against discrimination, Official Gazette of the Republic of Kosovo/ no. 16 / June 26, 2015, Pristina, available at: https://equineteurope.org/wp-content/uploads/2019/10/Annex-LAW_NO_05_L-021_ON_THE_PROTECTION_FROM_DISCRIMINATION.pdf

²⁰⁴ Law No. 04/ L-044 on Independent Media Commission, available at: <https://www.kpm-ks.org/assets/cms/uploads/files/LAW%20No.%2004%20L-044%20ON%20THE%20INDEPENDENT%20MEDIA%20COMMISSION.pdf>



Anyone who publicly incites or publicly spreads hatred, discord and intolerance between national, racial, religious, ethnic and other groups or based on sexual orientation, gender identity and other personal characteristics in a manner which is likely to disturb the public order is punishable by fine or imprisonment of up to five (5) years.

Paragraphs 2 and 3 of the same Article describe the more severe ways in which the crime can be committed. These include committing the crime in a systematic way, using one's position or authority to do so, or causing disorder, violence, or other serious consequences (paragraph 2). Additionally, committing the crime with the help of coercion, endangering security, exposing national, racial, ethnic, or religious symbols to ridicule, damaging objects belonging to another person, or desecrating monuments or graves (paragraph 3), is also punishable by a prison sentence of one to eight years. If the crime from paragraph 3 is committed in a systematic way, using one's position or authority, or causing disorder, violence, or other serious consequences, it will be punished with imprisonment ranging from two to ten years.

The Law on Protection Against Discrimination²⁰⁵ aims to establish a general framework for preventing and combating discrimination based on nationality or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, nationality, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, financial status, health status, disability, genetic inheritance or any other basis, in order to implement the principle of equal treatment.²⁰⁶

Pursuant to the LPD, any violation or unequal treatment motivated by any of the protected grounds provided for in Article 1 of this law shall be considered as discrimination.

LPD covers hate speech through the wording "Incitement to Discrimination" which is prohibited when it comes to promoting hatred based on one or more of the protected grounds (nationality or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief... see Article 1 of the LPD) and when it was done with intent.²⁰⁷

The LPD also categorizes "Harassment" as discrimination when unwanted behavior (including but not limited to unwanted behavior of a sexual and/or psychological nature), has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, humiliating, or offensive environment based on the protected grounds.²⁰⁸

*It is considered a severe form of discrimination under the law when an individual's behavior is motivated by more than one protected ground, or when such behavior is repeated or lasts for a long period of time, or when it has particularly harmful consequences for the victim.*²⁰⁹

The law regulates the competence of the Ombudsman to act on cases of discrimination, including hate speech, the procedure and conditions for submitting complaints and complaints after suffered discrimination based on the protected grounds in the law.

²⁰⁵ Law no. 05/L-021 on protection against discrimination, Official Gazette of the Republic of Kosovo/ no. 16 / June 26, 2015, Pristina, available at: https://equineteurope.org/wp-content/uploads/2019/10/Annex-LAW_NO_05_L-021_ON_THE_PROTECTION_FROM_DISCRIMINATION.pdf

²⁰⁶ LPD of the Republic of Kosovo, art.1

²⁰⁷ LPD, art. 4 paragraph 1 item 1.4

²⁰⁸ LPD, art. 4 paragraph 1 item 1.3

²⁰⁹ LPD, art. 5



The LPD provides for judicial protection for any person who has suffered discrimination in accordance with the provisions of the law.²¹⁰ The law also regulates the possibility of a collective lawsuit, that is, the right to file a lawsuit by any non-organization, association or legal person on behalf of the person who suffered discrimination.

In the misdemeanor provisions, the law foresees fines from 400 Euros to 1350 Euros for individuals, legal entities and responsible persons in legal entities who will commit violations of Article 1 of the law. The funds collected from the fines are paid into the budget of the Republic of Kosovo.

When it comes to hate speech in the media, the Law on the Independent Media Commission,²¹¹ the Press Code of Kosovo²¹² and the Audiovisual Commercial Communications Regulation²¹³ condemn hate speech in their respective legal acts.

The Law on the Independent Media Commission aims to regulate the establishment of the Independent Media Commission in order to promote the development of a sustainable market for audiovisual media services, serving all citizens of the Republic of Kosovo.²¹⁴ It regulates the competences and responsibilities of the commission, the licensing of audiovisual service providers, as well as the sanctions for non-compliance with the provisions of the law.

The law defines terms as audiovisual media service, media service provider, program, editorial responsibility, broadcasting, broadcaster, network operator, etc.²¹⁵

The law stipulates that commercial audiovisual communications must not prejudice discrimination based on sex, race, ethnic origin, nationality, religion or belief, disability, age and sexual orientation;²¹⁶

For non-compliance with the provisions of the law, the Independent Media Commission may issue a written warning or impose one or more sanctions²¹⁷ such as a fine of not less than 1000 euros and a maximum of 100,000 euros;²¹⁸ may require the licensee to issue a correction or apology by broadcast;²¹⁹ may require the suspension of some or all of the licensee's programming schedules for a specified period of time;²²⁰ may revoke or refuse to renew a broadcasting license.²²¹

The Press Code of Kosovo was adopted on March 18, 2005 and amended and supplemented several times until 2023. This code is the basis for a system of self-regulation that morally and professionally binds reporters, editors, owners and publishers of newspapers and periodicals. According to the Code, all journalists and editors should respect the ethical principles provided by the code itself and protect the professional integrity of journalism. In the section of general provisions, the Code stipulates that it is the duty of all journalists and publishers to defend the principles of

²¹⁰ LPD, art. 13

²¹¹ Law No. 04/L-044 of the Independent Media Commission, Official Gazette of the Republic of Kosovo / No. 5 / 05 April 2012, Pristina, available at: <https://www.kpm-ks.org/assets/cms/uploads/files/LAW%20No.%2004%20L-044%20ON%20THE%20INDEPENDENT%20MEDIA%20COMMISSION.pdf>

²¹² Press Code of the Republic of Kosovo, available at: <http://presscouncil-ks.org/wp-content/uploads/2018/11/Press-Code-for-Kosovo-eng.pdf>

²¹³ CIMC Regulation 2009/04 audiovisual commercial communications, available at: <https://www.google.com/search?q=translate+macedonian+to+english&oq=translate&aqs=chrome.0.35i39i650j69i57j69i59j0i512l4j69i65.6274j0j7&sourceid=chrome&ie=UTF-8>

²¹⁴ LIMC, art. 1

²¹⁵ LIMC, art. 2

²¹⁶ LIMC, art. 27 paragraph 4 item 4.2

²¹⁷ LIMC, art. 30 paragraph 1

²¹⁸ Ibid, item 1.3

²¹⁹ Ibid, item 1.2.

²²⁰ Ibid, item 1.4

²²¹ Ibid, item 1.6



freedom of information;²²² to respect ethnic, cultural and religious diversity;²²³ as well as not to encourage discrimination and intolerance, intentionally or unintentionally.²²⁴

The Code contains special provisions that prohibit hate speech. In chapter III “Incitement and hate speech” the following prohibitions are provided:

1. *The press must under no circumstances incite crimes or violence.*
2. *The press will do its best not to incite or inflame hatred or incite discrimination by including the following:*
 - A) *treating an individual or group with contempt based on ethnicity, religion, sex, race, color, marital status, age or disability;*
 - B) *use derogatory terms likely to hurt and intimidate an individual or group based on ethnicity, religion, gender, race, color, marital status, age or disability.*
3. *References to a person’s ethnic group, race, religion, sex, sexual orientation, or physical or mental illness or disability will only be made when directly relevant to the event being reported.*

Guidelines for the Press Code of Kosovo entitled **Guidelines for the Code of Conduct were drawn up** in January 2012.²²⁵ The purpose of these guidelines is to strengthen the responsible use of freedom of expression in public communication, as well as to encourage discussion about the professional ethics of journalism. The guidelines offer additional clarification and explanation of the provisions of the Press Code, in order to facilitate their implementation in practice. These guidelines have an exclusively self-regulatory role of the print media and their editorial boards, with the aim of improving the ethical level of reporting, as well as the quality and the credibility of journalism.

These guidelines apply to print and electronic media (online journalism).

The Article 1 Guidelines specifically regulate hate speech with clear guidelines intended for the media not to publish any material that in any way contains or incites defamatory language, hate speech or criminal acts; not to publish articles that encourage or cause direct or indirect discrimination on the basis of gender, age, marital status, language, physical or mental disability, sexual orientation, national origin, opinion or political affiliation, religion or belief, ethnic or social origin, race or any other status.

Guidelines for online journalism are related to the content of comments and public reactions published in web media and news agency websites. Editorial boards should monitor their websites and make efforts to prevent the publication of content that in any way incites or uses derogatory speech and hatred or causes the commission of criminal acts and should not publish articles or comments that incite or provoke direct discrimination based on sex, age, marital status, language, physical or mental disability, sexual orientation, national origin, opinion or political affiliation, religion or belief, ethnic or social origin, race or any other status.

The Audiovisual Commercial Communications Regulation sets the basic principles of advertising, teleshopping, sponsorship and product placement for radio and television programs and

²²² Press Code of Kosovo, chapter I, item 1

²²³ Ibid, item 2

²²⁴ Ibid, item 3

²²⁵ Guidelines on the Code of Conduct, Guidelines on the Press Code of Kosovo, January 2012, Pristina, available at: <http://presscouncil-ks.org/wp-content/uploads/2015/04/Guidelines-on-the-Code-of-Conduct.pdf>



regulates the advertising content and ethics of the public broadcasting service and private media service providers.

The regulation stipulates that commercial communications must not violate human dignity, cause harm or serious and widespread offence,²²⁶ and shall not support or approve discrimination against any person or section of the community, in particular on the basis of age, sex, marital status, ethnic origin, nationality, sexual orientation, disability, race or religion,²²⁷

The regulation, in the section on sanctioning for non-compliance with its provisions, refers to the foreseen sanctions and the procedure that governs them in the Law on the Independent Media Commission.²²⁸

C) Strategies and mechanisms

The Strategy for the Advancement of the Rights of the Roma and Ashkali Communities in the Republic of Kosovo 2022-2026 and the Action Plan for 2022-2024²²⁹ is the only strategy in the Republic of Kosovo that deals with hate speech and foresees specific objectives and activities for dealing with, fighting and preventing the same. The main objective of the strategy is the inclusion of the Roma and Ashkali communities, which is expected to be fulfilled through five strategic objectives.

Strategic objective 1: *Effectively increasing the provision of opportunities, equal access and development of quality comprehensive education for the Roma and Ashkali communities;*

Strategic objective 2: *Increasing equal access to sustainable employment, as well as reducing poverty in the Roma and Ashkali communities;*

Strategic objective 3: *Improving the health of members of the Roma and Ashkali community and increasing equal access to quality health services;*

Strategic objective 4: *Increasing equal access to sustainable housing, basic services and public infrastructure for the Roma and Ashkali communities;*

Strategic objective 5: *Preventing and combatting discrimination, racism, hate speech, hate crimes, segregation, prejudice, stereotyping and bullying.*

Strategic objective 1: Effectively increasing the provision of opportunities, equal access and development of quality comprehensive education for the Roma and Ashkali community foresees three specific objectives for successful implementation, of which specific objective 3 refers to the fight against discrimination, racism, stigma, hate speech, hate violence and bullying in schools and promotion of the culture and history of the Roma and Ashkali community.

Strategic objective 5 addresses key forms of anti-Gypsyism, as envisaged by the EU Framework for National Roma Integration Strategies 2020-2030. In order to fulfill this strategic objective, five specific objectives have been foreseen, three of which are specifically focused on the fight against discrimination, hate speech, and anti-Gypsyism:

Specific objective 1: *Systematic fight against discrimination and racism through the development and implementation of comprehensive policies at all stages and levels;*

²²⁶ Regulation on audiovisual commercial communications, art. 5, paragraph 5.1.

²²⁷ Regulation on audiovisual commercial communications, art. 5, paragraph 5.2.

²²⁸ Regulation on audiovisual commercial communications, art. 20 paragraph 20.1

²²⁹ Strategy for the Promotion of the Rights of Roma and Ashkali Communities in the Republic of Kosovo 2022-2026 and the Action Plan for 2022-2024, available at: <https://www.rcc.int/romaintegration2020/files/admin/docs/b1623eaca78e740ce79f50af0e2f9c51.pdf>



Specific objective 2: Reducing the phenomenon of racism and discrimination and increasing the quality of life of the Roma and Ashkali community in a systematic way by drafting a draft law on equality, participation, inclusion and the fight against racism and discrimination;

Specific objective 3: Increasing the responsibility and punishment of the perpetrators of discrimination and raising the awareness of members of the Roma and Ashkali community about the importance and method of reporting cases of discrimination, racism, harassment, hate speech and violence and harassment;

The Institution of the **Ombudsman** (IOK)²³⁰ has a mission to promote freedom and rights, including protection against hate speech. Within its powers, the IOK conducts investigations following complaints received from any natural or legal person and may ex officio initiate investigations against public entities. The Ombudsman conducts investigations, makes recommendations, publishes reports and monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities. It can also issue recommendations to the relevant public authorities, publish reports on various issues and carry out activities aimed at raising awareness and promoting good equality practices and can act as *amicus curiae* (friend of the court) in legal proceedings that are related to human rights, equality and protection from discrimination.

For its operations, the IOK issues annual reports describing the general situation of human rights in Kosovo and the activities of the institution in the protection and promotion of human rights for the period in question.

Statistical data on the work of the IOK²³¹

	2015	2016	2017	2018	2019	2020	2020	2021
Number of cases acted upon	44	140	112	98	100	720	720	692
Number of investigations conducted	72	217	172	168	129	1419	1419	1612
Number of court cases					1	10	10	8

The annual report for 2022 of the IOK contains findings of the Ombudsman during 2022 on the cases of systematic and individual violations of human rights and fundamental freedoms, as well as recommendations, opinions and proposals for taking measures that contribute to the promotion of respect for human rights and the activities of the institution towards the promotion of human rights and raising awareness. In the report, the IOK in the direction of hate speech points out that a special report on hate speech in the public discourse in Kosovo is in the process of being prepared.

*This Report intends to prove that hate speech represents a serious problem for human rights and equality, by causing unnecessary tensions between different social groups, by disrupting public order and peace, which should be solved by responsible institutions. The report also aims to inform the public and institutions about international and local standards for what hate speech means and when the limit of freedom of expression has been exceeded.*²³²

²³⁰ Official site of IOK, <https://oik-rks.org/en/>

²³¹ Source: EQUINET, European Network of Equality Bodies, <https://equineteurope.org/eb/cp-slug-191/#:~:text=The%20Ombudsperson%20Institution%20was%20included,public%20authorities%2C%20which%20independently%20exercises>

²³² Annual report for the period of 2022 of IOK, p.42, available at: <file:///C:/Users/Bojana/Downloads/Kosovo%20-%20Ombudsperson%20-%20Annual%20Report%202022%20-%20EN.pdf>



V. COMPARATIVE PRACTICES

In this section, the focus of the analysis is an overview of the legislative framework and mechanisms used in Italy and Croatia to address and combat hate speech.

The constitutions of Italy and Croatia provide for the protection of the right to freedom of expression and the right to equality, providing a framework for permissible restrictions on the right to freedom of expression in line with Article 19(3) of the ICCPR.

IV.1. Republic of Italy

Italy has a relatively complete legal framework to deal with cases of hate speech, including hate speech in the media. Despite the fact that there is no official definition of hate speech or hate speech on the Internet, different legal provisions cover it through various laws and ordinances. When it comes to implementing the legal framework to combat hate speech, the Italian courts have established solid jurisprudence based on the existing legislation, which highlights the effectiveness of the legislation.

In the Republic of Italy, the main legal basis relevant to hate speech²³³ is the Constitution of Italy and its relevant laws. Law 112/2004 (“Gaspari Law”) on the regulation of broadcasting media, Legislative Decree 215/2003, comparing discrimination and harassment based on racial and ethnic origin, the establishment of the National Office against Racial Discrimination (UNAR) and Legislative Decree 216/2003 for equal treatment in employment and profession regardless of religion, personal convictions, handicap, age, sexual orientation. In the area of criminal legal regulation, hate speech is indirectly covered through the criminal provisions of Law 205/1993 (“Mancino’s Law”), which introduces measures to punish racial, ethnic and religious discrimination, Law 85/2006 on “Opinion Crimes”, where the protected categories are only those based on racial, ethnic, national or religious grounds, and Legislative Decree No. 21 of 2018 introducing new crimes in the Italian Penal Code, which repeals certain provisions of the above laws.²³⁴

The Italian legal system is based on **the Constitution**²³⁵ of the Italian Republic which entered into force in 1948. The Italian Constitution does not include a specific provision on hate speech, but does regulate issues of discrimination and freedom of speech. Article 2 and 3 of the Constitution in the part of fundamental principles regulate the right to equality. Article 2 recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where the human person is expressed and provides for the fulfillment of the basic duties of political, social and economic solidarity. The right to equal social dignity and equality before the law, regardless of gender, race, language, religion, political opinion, personal and social conditions belongs to all citizens of the Republic, while emphasizing the duty of the Republic to remove all obstacles from economic or social nature that limit the freedom and equality of citizens that hinder the full development of the human personality and the effective participation of all workers in the political, economic and social organization of the country.²³⁶ The right to freedom of religion is recognized by

²³³ See: https://www.inach.net/wp-content/uploads/070918_RELEVANT-LEGISLATION_ITALY.pdf

²³⁴ Ministry of Foreign Affairs and International Cooperation, Interministerial Committee on Human Rights, Contribution of Italy to the initial draft of the general recommendation no. 36 of the UN CERD Committee on Preventing and Combating Racial Profiling, June 2019, p. 2

²³⁵ RI Constitution, available at: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

²³⁶ Constitution of RI, Art. 3



Article 8 which provides that “All religious denominations are equally free before the law”²³⁷ while the right to freely exercise religious beliefs in any form, individually or with others, as well as the right to promote and celebrate rites in public or in private, provided they are not offensive to the public morality is governed by Article 19 of the Constitution.

“Article 21 of the Constitution represents a significant achievement, functioning as a pillar in the democratic order, which guarantees pluralism and dissemination of information. However, freedom of expression should be balanced with other fundamental rights, as per the sixth paragraph of the Article itself which contains limitations relating to decency and public morality.” Article 21 gives the right²³⁸ to every citizen to freely express their thoughts through speech, writing or any other form of communication, recognizing them as fundamental freedoms. Article 21 regulates the prohibition of censorship:

“The press must not be subject to authorization or censorship. Confiscation may be permitted only by a court order stating the reason and only for offenses expressly defined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offenses.”

Indirect protection against the phenomenon of hate speech in the Italian legal system can be found in other legal provisions, which regulate broader and more general issues such as discrimination and freedom of speech, which can include issues of hate speech.

The current legal framework criminalizes: racial discrimination and its incitement; racial violence and its incitement; promotion of ideas based on racial superiority or ethnic or racial hatred; forming or managing, participating in or supporting any organization, association, movement or group whose purpose is to incite racial discrimination or violence.

The most important Italian legal instrument for the prosecution of racist and other acts of hate violence is **Law no. 205 of 1993**, called “Mancino’s Law”.²³⁹ Article 1 provides that “Except where acts of a more serious offense are involved, for the purposes of implementing Article 4 of the Convention,²⁴⁰ the following penalties shall apply: “a) anyone who, in any way, disseminates ideas based on racial or ethnic superiority or hatred, or commits or encourages others to commit discriminatory acts motivated by racial, national, religious and ethnic grounds shall be punished with a maximum prison sentence of up to three years; b) anyone who, in any way, commits or incites others to commit acts of violence or acts intended to cause violence on a racial, ethnic, national or religious basis shall be punished with prison sentence from six months to four years.”²⁴¹

Article 3 states that “any organization, association, movement or group whose purpose is blasphemy, insult and hatred including incitement of discrimination or violence on racial, ethnic, national or religious grounds is prohibited. Anyone who participates in such organization, association, movement or group or assists it in such activities shall be subject to imprisonment from six months to four years solely by reason of such participation or providing such assistance. Anyone who promotes or leads such an organization, association, movement or group shall be subject to imprisonment from one to six years.”²⁴²

²³⁷ Constitution of RI, art. 8 paragraph 1

²³⁸ Hate crime and hate speech in Europe: Comprehensive analysis of Principles of international law, EU-wide / Study and national assessments, p.147

²³⁹ See: <https://legislationline.org/taxonomy/term/23389>

²⁴⁰ It refers to the 1966 New York Convention on the Elimination of All Forms of Racial Discrimination

²⁴¹ Hate crime and hate speech in Europe: Comprehensive Analysis of Principles of International Law, EU-wide/ Study and National Assessments, “PRISMA - Preventing, Correcting and Prohibiting Hate Speech in the New Media”, co-financed by the European Union and coordinated by Associazione Arci, p.152 (currently Article 604-bis of the Criminal Code)

²⁴² Ibid (currently Art. 604-bis of the Criminal Code)



The Mancino Law also prohibits the public display of symbols and emblems of such organizations and makes racial bias/prejudice an aggravating circumstance in connection with any crime pursuant to Article 3 of the Mancino Law (currently Art. 604-ter of the Criminal Code).

Law 85 of 2006 brought changes to the basis for sanctioning criminalized acts. Spread of hatred, which was previously considered a criminal act, no longer falls under this category. Instead, acts promoting ideas based on superiority or racial/ethnic hatred; causing/calling to commit or committing discriminatory acts based on racial, national, ethnic and religious grounds, as well as those who cause/call to commit or commit violence based on racial, national, ethnic and religious grounds are now subject to imprisonment of up to one and a half years or a monetary fine of up to 6,000 euros.²⁴³

The Penal Code of Italy²⁴⁴ includes regulations that classify propaganda and incitement to a crime based on racial, ethnic and religious discrimination as criminal offenses. These regulations were first introduced by Law no. 654/1975, which ratified the 1966 New York Convention on the Elimination of All Forms of Racial Discrimination. They were later amended by the Mancino's law, and then with Law no. 85/2006. In 2018, the legal decree no. 21 further updated these regulations;^{245 246} The Penal Code of Italy in addition to these, the code also penalizes the act of forming an association with the intent of inciting discrimination and violence on an ethnic, national, racial or religious basis.²⁴⁷

According to Article 415 "Inciting Disobedience of the Law" which criminalizes the incitement of social hatred: "Anyone who publicly incites disobedience to the laws of public order or hatred between social classes shall be punished with imprisonment from six months to five years. However, regarding this provision, the Constitutional Court of Italy with judgment no. 108 of April 23, 1974 determined the illegitimacy of this Article, in relation to the incitement of hatred between social classes, in the direction that it is not stated that such incitement must be carried out in a manner dangerous to public tranquility;

The Italian Penal Code has provisions for punishing two types of offenses: "Insult" and "Defamation". The former pertains to injuring the dignity or honor of a person,²⁴⁸ and can result in a prison sentence of up to six months or a fine of up to 516 euros. The latter refers to harming the reputation of others when communicating with many people, except in cases provided for in Article 594. A person convicted of defamation can face imprisonment of up to one year or a fine of up to 1,032 euros. If the crime involves emphasizing an established fact, the penalty can be imprisonment of up to two years or a fine of up to 2,065 euros. In case the crime is committed through public media or any other means of public information or publicity, the punishment could be imprisonment from six months to three years or a fine of not less than 516 euros.²⁴⁹

²⁴³ Law 85/2006, Art. 13

²⁴⁴ Penal Code of Italy, available at: https://www.imolin.org/doc/amlid/Italy/penal_code.pdf

²⁴⁵ Discrimination and hatred and sexist speech in Italian Law, Language, Gender and Hate Speech

A Multidisciplinary Approach edited by Giuliana Giusti and Gabriele Iannacaro, available at: <https://edizionicafoscari.unive.it/media/pdf/books/978-88-6969-479-0/978-88-6969-479-0-ch -09.pdf>

²⁴⁶ ²⁴⁵ Ministry of Foreign Affairs and International Cooperation, Interministerial Committee on Human Rights, Contribution of Italy to the initial draft of the general recommendation no. 36 of the UN CERD Committee on Preventing and Combating Racial Profiling, June 2019, p. 2

²⁴⁷ CC of RI, art. 604

²⁴⁸ CC of RI, art. 594; Hate Crime and Hate Speech in Europe: A Comprehensive Analysis of Principles of International Law, EU-wide/ Study and National Assessments, "PRISMA - Preventing, Correcting and Prohibiting Hate Speech in the New Media", co-financed by the European Union and coordinated by Associazione Arci, p.155

²⁴⁹ Ibid, art. 595; Hate crime and hate speech in Europe: Comprehensive analysis of Principles of International Law, EU-wide / Study and national assessments, "PRISMA - Preventing, correcting and banning hate speech in the new media", co-financed by the European Union and coordinated by Associazione Arci, p.155



Propaganda and incitement to commit crimes due to racial, ethnic and religious discrimination are covered by Article 604-bis which provides that “unless the fact constitutes a more serious crime, then anyone who propagates ideas based on racial or ethnic superiority or hatred, or incites to commit or commits acts of discrimination based on racial, ethnic, national or religious motivation shall be punished by imprisonment up to one year and six months or with a fine of up to 6,000 euros.²⁵⁰ Also, anyone who, in any way, incites to commit or commits violence or acts of provocation of violence for racial, ethnic, national or religious reasons will be punished with a prison sentence of six months to four years.²⁵¹

Any organization, association, movement or group that, in any way, incites discrimination or violence on racial, ethnic, national or religious grounds will be banned; Whoever participates in the listed organizations, associations, movements or groups or supports their activities, just by participating or supporting, will be punished with imprisonment from six months to four years; Whoever promotes or manages the mentioned organizations, associations, movements or groups, for that reason alone, will be punished with imprisonment from one to six years. If the propaganda or incitement are carried out in such a way as to present a real danger of its spread and is based in whole or in part on the denial, gross trivialization or approval of the Holocaust or the crimes of genocide, crimes against humanity and war crimes listed in Articles 6, 7 and 8 of the Statute of the International Criminal Court, the penalty shall be imprisonment from two to six years.²⁵²

As aggravating circumstances with Decree No. 21 on criminal matters, the following paragraph was introduced in Article 604-ter:

The penalty shall be increased to half of the penalty for crimes punishable by a penalty other than life imprisonment committed for the purpose of discrimination or ethnic, national, racial or religious hatred or to facilitate the activities of organizations, associations, movements or groups with the stated objectives.²⁵³

The law also sanctions “Harassment” by defining it as “Anyone who, in a public place or a place open to the public, or using telephone means, in a particularly rude manner or in another inappropriate and offensive manner, causes harassment or interference, will be punished with imprisonment of up to six months or a fine of up to 516 euros.”²⁵⁴

Legislative Decree no. 215 of July 9, 2003, implements directive 2000/43/CE on equal treatment between individuals irrespective of their race and ethnic origin. The aim of the decree, as stated in Article 1, is to enforce the provisions for equal treatment between persons “irrespective of their race and ethnic origin, by providing necessary measures to ensure that differences in racial or ethnic origin are not a reason for discrimination. The decree also takes into account the different impacts that the same forms of discrimination can have on women and men, as well as the existence of cultural and religious racism.”²⁵⁵ The decree defines harassment as “unwanted behavior related to racial or ethnic origin, taking place with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, humiliating, or offensive environment;²⁵⁶

²⁵⁰ Legislative Decree March 1, 2018 No. 21 on criminal matters, Official Gazette no. 68 March 22, 2018, which introduces new types of crimes in the penal code, art. 604-bis paragraph 6 point a), see: <https://www.passiamo.it/codice-penale-dal-6-aprile-2018-vigore-nuovi-reati/>

²⁵¹ Ibid, paragraph 7-point b)

²⁵² Art. 604-bis, See: <https://legislationline.org/taxonomy/term/23690>

²⁵³ Ibid

²⁵⁴ CC of RI, art. 660

²⁵⁵ Legislative Decree No. 215, Art. 1, available at: <https://tandis.odihhr.pl/bitstream/20.500.12389/20124/2/04073.pdf>

²⁵⁶ Ibid, art. 2 paragraph 3



any instruction to discriminate against persons based on their racial or ethnic origin shall be considered discrimination.”²⁵⁷

*The Decree regulates the establishment, functioning and competences of the National Office against Racial Discrimination (UNAR).*²⁵⁸

*“The print media and the regulation of the journalist profession in Italy are regulated by the Press Law. The Press Law defines “professional journalists” and “publicists”, and requires all journalists to be registered with the Association of Journalists, and to act according to the specific requirements established by law. The Press Law provides for the creation of a National Press Council and Regional or Interregional Press Councils. Regional or interregional press councils supervise the implementation of the Press Law, as well as the implementation of self-regulatory codes of conduct among their members. They can also take disciplinary action against their members when they breach the Codes of Conduct. The ethical code of conduct for journalists includes, among other things, the obligation to respect the right of every person not to be discriminated on the basis of race, religion, political opinion, gender, personal, physical or mental disability. Failure to comply with the duties contained in the Code is punishable by administrative monetary sanctions. Disciplinary sanctions available to the competent press councils range from simple warnings to formal reprimands and, in serious cases, suspension from practicing the profession for no less than 2 months to one year or permanent exclusion from the professional register.”*²⁵⁹

Law No. 112/2004, also known as “Gaspari’s Law”, is the main regulatory instrument for television, the printed press and new media which, through Articles 3 and 4, regulates the freedom of expression of every individual, including the freedom of opinion (Art. 3) and prohibits the broadcast of programs that contain incitement to hatred on any basis (Art. 4).²⁶⁰

Decree no. 208/2021 applies to providers of audiovisual and radio media services and radio concessionaires operating in Italy. With this Decree, prohibitions on inciting hatred and violence and a prohibition on public provocation for terrorist acts have been added. Decree no. 208/2021, implements specific regulation for video sharing platform services. Pursuant to Article 41, paragraph 7 of Decree no. 208/2021, the supervisory authority (Communications Regulator) may restrict the free circulation of user-generated programs and videos that are transmitted through a video sharing platform whose provider is located in an EU member state, and videos that are directed to the Italian public, for the protection of freedom of expression, prevention of discrimination and hate speech.²⁶¹

In Italy, anyone who has suffered discrimination or harassment based on race or ethnicity can go to court, in order to enforce the principle of equal treatment through quick and effective civil action. The procedure is rather simplified because a lawyer is not needed to file a suitable lawsuit or appeal before the competent court, and the rules of the procedure are regulated by the Law on Civil Procedure. Victims who have suffered discrimination, associations and non-profit institutions have the right to conduct such proceedings before the courts. *In addition, all cases of anti-discrimination can be resolved in a specific procedure called pre-trial mediation, which was initially intro-*

²⁵⁷ Ibid, art. 2 paragraph 4

²⁵⁸ Official site of UNAR, <https://www.unar.it/portale/web/unar-en/home>

²⁵⁹ Responding to “hate speech”: A comparative review of six EU countries, 2018, ARTICLE 19, p.34, available at: https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf

²⁶⁰ See: https://www.inach.net/wp-content/uploads/070918_RELEVANT-LEGISLATION_ITALY.pdf

²⁶¹ See: <https://www.lexology.com/library/detail.aspx?g=53213c66-4f71-4556-a433-19e28a7205d9>



*duced by Decree 216/2003, only in relation to employment and employment-related claims, but has now been extended to all cases of anti-discrimination.*²⁶²

In the Republic of Italy, there are a number of institutions and organizations that are responsible for combating discrimination, and in terms of hate speech, UNAR and the 21 July Association are active.

UNAR is an agency or office against racial discrimination that has been operating since November 2004 with the aim of promoting equal treatment and eliminating all forms of racial and ethnic discrimination, while monitoring the impact of discrimination on men and women, as well as investigating the relationship with other forms of discrimination, such as those based on culture or religion. The agency represents a kind of mechanism for dealing with racial discrimination, and the interventions implemented by UNAR go beyond providing free legal aid to victims of discrimination by identifying and breaking down the structural factors of discrimination. The decisions of UNAR are not legally binding and are in the form of a recommendation addressed to the involved parties, and the role of the Agency is primarily promotion and legal support.²⁶³ In 2004, the contact center of UNAR was also set up to help with issues related to discrimination, which provides relevant information and support to victims of discrimination through various types of activities, such as collecting – also online – complaints and fact reports, events and actions that impede equal treatment on the basis of ethnic or racial origin. The center provides emergency assistance and resolves cases or helps victims present their case in court.

The 21 July Association²⁶⁴ is an independent non-profit organization established in 2010, in charge of promoting the rights of the Roma and Sinti communities in Italy by tackling any form of discrimination or intolerance. It pays particular attention to the issue of discrimination and incitement of discriminatory behavior occurring in the media by continuously monitoring the media, blogs and websites throughout Italy that could potentially circulate discriminatory messages or incite racial hatred towards the Roma and Sinti. If necessary, the organization can take legal action before the courts in relation to situations of violations of human rights and incitement of racial hatred, even when those violations are committed through the media and websites.

IV.2. Republic of Croatia

There is no definition of hate speech in the legal framework of the Republic of Croatia.

The Constitution of Croatia guarantees the equality of all citizens.

*“All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other status. All men are equal before the law.”*²⁶⁵

Constitutional provisions also guarantee freedom of expression. “Hate speech is described as a real constitutional category in the sense that the related challenges are clearly positioned in the

²⁶² Hate crime and hate speech in Europe: Comprehensive analysis of Principles of International Law, EU-wide / Study and national assessments, “PRISMA - Preventing, correcting and banning hate speech in the new media”, co-financed by the European Union and coordinated by Associazione Arci, p.165

²⁶³ See: https://equineteurope.org/author/italy_unar/

²⁶⁴ Official site of the association: <https://www.21luglio.org/>

²⁶⁵ Constitution of RC, art. 14



context of human rights and freedoms.”²⁶⁶ The Constitution²⁶⁷ of Croatia ensures the freedom of rights,²⁶⁸ including freedom of the press and other media, freedom of speech, public performance, and freedom to establish all media institutions.²⁶⁹ It prohibits hate speech, which includes inciting war or violence, promoting national, racial, or religious hatred, or any form of intolerance.²⁷⁰

Hate speech is considered a crime under the Criminal Code,²⁷¹ and is also an offense under laws such as the Law on Suppression of Discrimination,²⁷² Law on Offenses against Public Order and Peace,²⁷³ and Law on Electronic Media.²⁷⁴

The Criminal Code²⁷⁵ of Croatia regulates the issue of hate speech through the wording “public incitement of violence and hatred”, which is prescribed in Art. 325, paragraph 1 *“Whoever through the press, radio, television, computer or network, at a public gathering or otherwise, publicly incites or makes available to the public leaflets, images or other materials that call for violence or hatred directed at a group of people or a member of the group because of their racial, religious, national or ethnic affiliation, language, origin, skin color, sex, sexual orientation, gender identity, disability or any other characteristics, shall be punished by imprisonment for up to three years.”* The paragraph stipulates a prison sentence of six months to five years for whoever organizes or leads a group of three or more persons in order to commit the acts provided for in paragraph 1 of this Article.

This Article also sanctions persons who publicly approve, deny or significantly underestimate the crime of genocide, the crime of aggression, a crime against humanity or a war crime, directed at a group of people or a member of that group, because of their race, religion, national or ethnicity, origin or colour, in a manner that incites violence or hatred against such a group or a member of such a group.²⁷⁶ At the same time, the Criminal Code stipulates that the attempt to commit the crime from Art. 325 paragraph 1 and 4 is also punishable.

The Law on Suppression of Discrimination²⁷⁷ regulates the concept of discrimination, forms, areas of application, mechanisms of judicial protection, the competence of the Ombudsman and special ombudsmen. The law regulates the possibility of filing a collective lawsuit, which allows associations, bodies, institutions or other organizations, which have a justified interest in protecting the interests of a certain group, to file a lawsuit against a person who violated the right to equal treatment, as well as the burden of proof is transferred from the side of the plaintiff to the side of the defendant.

²⁶⁶ Gardašević, G. Hate speech and the Croatian constitutional framework in: Kulenović, E. (ed.) Hate speech in Croatia, Political analyses, Zagreb, 2016, p. 151-185

²⁶⁷ Constitution of the Republic of Croatia, January 15, 2014, Official Gazette no. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14, available at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf

²⁶⁸ Constitution of RC, art. 16 and 17

²⁶⁹ Constitution of RC, Art. 38

²⁷⁰ Constitution of RC, Art. 39

²⁷¹ Criminal Code, Official Gazette no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, available at: <https://www.zakon.hr/z/98/Kazneni-zakon>

²⁷² The Law on Suppression of Discrimination, Official Gazette no. 85/08, 112/12, available at: <https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije>

²⁷³ Law on offenses against public order and peace, Official Gazette no. 41/77, 55/89, 05/90, 30/90, 47/90, 29/94, 114/22, 47/23, available at: <https://www.zakon.hr/z/279/Zakon-o-prekr%C5%A1ajima-protiv-javnog-reda-i-mira>

²⁷⁴ Law on Electronic Media, Official Gazette no. 111/2021

²⁷⁵ Criminal Code, Official Gazette no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, available at: <https://www.zakon.hr/z/98/Kazneni-zakon>

²⁷⁶ Criminal Code of the Republic of Croatia, art. 325 paragraph 4

²⁷⁷ The Law on Suppression of Discrimination, Official Gazette no. 85/08, 112/12, available at: <https://www.zakon.hr/z/490/Zakon-o-suzbijanju-diskriminacije>



The LSD prohibits discrimination in all its forms.²⁷⁸ Discrimination is defined as placing any person, persons related to them by family or otherwise at a disadvantage on the basis of race or ethnic origin or colour, sex, language, religion, political or other belief, national or social origin, wealth, union membership, education, social position, marital or family status, age, health condition, disability, genetic heritage, gender, identity, expression or sexual orientation.²⁷⁹

Within the framework of protection against hate speech, the LSD regulates “Harassment” as any unwanted behavior caused by any of the following grounds: race or ethnic origin or skin color, gender, language, religion, political or other belief, national or social origin, property condition, trade union membership, education, social position, marital or family status, age, health condition, disability, genetic heritage, gender, identity, expression or sexual orientation, which is intended or actually constitutes a violation of the dignity of the person, which causes fear, hostile, humiliating or abusive environment.²⁸⁰

The LSD in its misdemeanor provisions provides a sanction in the form of a fine in the amount of 5,000.00 Kuna to 30,000.00 Kuna for anyone who aims to cause fear in another or create a hostile, humiliating or offensive environment based on differences in race, ethnicity, skin colour, sex, language, religion, political or other belief, national or social origin, property status, trade union membership, social position, marital or family status, age, health condition, disability, genetic inheritance, gender identity or expression, sexual orientation, or violates their dignity.²⁸¹ The rest of the paragraphs provide sanctions for the responsible person in the legal person, state authority, legal person with public powers and local and regional self-governments, legal entities²⁸² and a craftsman or a person who performs other independent activity related to trade.²⁸³

The Law on Offenses against Public Order and Peace²⁸⁴ has a rather abstract definition of the content that can be referred to as hate speech. “It is forbidden to perform, reproduce songs, compositions and texts, wear or display symbols, texts, pictures or drawings that violate public order and peace,²⁸⁵ or that offend citizens or disturb their peace in a particularly brazen and indecent manner.²⁸⁶ Anticipated misdemeanor sanctions range from monetary sanctions²⁸⁷ to imprisonment,²⁸⁸ however, the two anticipatory penalties are not cumulative.

According to the **Law on Electronic Media**²⁸⁹ it is prohibited to incite hatred or discrimination and to encourage the spread of hatred or discrimination on the basis of racial or ethnic origin or color, gender, language, religion, political or other belief, national or social origin, property status, trade union membership, education, social position, marital or family status, age, health status, disability, genetic heritage, gender identity, expression or sexual orientation, anti-Semitism and xenophobia, fascist, Nazi, communist and other ideas from totalitarian regimes in audio and/or audiovisual media services.²⁹⁰

²⁷⁸ LSD, Art. 9

²⁷⁹ LSD of the Republic of Croatia, art.1

²⁸⁰ LSD, art. 3 paragraph 1

²⁸¹ LSD art. 25 paragraph 1

²⁸² With a fine in the amount of 10,000.00 to 200,000.00 Kuna

²⁸³ With a fine in the amount of 30,000.00 to 300,000.00 Kuna

²⁸⁴ Law on offenses against public order and peace, Official Gazette no. 41/77, 55/89, 05/90, 30/90, 47/90, 29/94, 114/22, 47/23, available at: <https://www.zakon.hr/z/279/Zakon-o-prekr%C5%A1ajima-protiv-javnog-reda-i-mira>

²⁸⁵ LOPOP, art. 5

²⁸⁶ LOPOP, art. 6

²⁸⁷ Amounts from EUR 300.00 to EUR 4,000.00

²⁸⁸ Imprisonment for up to 30 days

²⁸⁹ Law on Electronic Media, Official Gazette no. 111/2021, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html

²⁹⁰ LEM, art. 14 paragraph 1



In the area of competences and duties of electronic publications, LEM stipulates that the providers of electronic publications are obliged to take all measures to prevent the publication of content that incites violence or hatred, in accordance with Article 14.²⁹¹ The provider of the electronic publication is responsible for all content published on the electronic publication, including user-generated content, if it does not register the user and if it does not warn the user in a clear and easily visible way about the rules for commenting and about the violations of the provisions of paragraph 2 of this Article.²⁹²

Through Article 96, the LEM regulates the competence and duties of service providers of video sharing platforms in a way that imposes on them the obligation to take appropriate measures with regard to the protection of the general public from programs - videos generated by users and audiovisual commercial communications that contain incitement violence or hatred against a group of persons or a member of a group based on Article 14.²⁹³

The law provides for a misdemeanor sanction in the amount of 10,000.00 to 50,000.00 Kuna for the legal person that acts contrary to Article 94 and fails to register the user and warn them about the rules of commenting and violation of the provisions.²⁹⁴ A monetary sanction is foreseen for the responsible person in the legal person in the amount of 5,000.00 to 15,000.00 Kuna and for the natural person performing an independent activity in the amount of 10,000.00 to 30,000.00 Kuna.

This law provides for the establishment of the Agency for Electronic Media, as an online point of contact for providing information and receiving complaints regarding all accessibility issues, as well as its competences and duties regarding the work of electronic media.

In the Republic of Croatia, the competent mechanisms for dealing with hate speech are the Agency for Electronic Media and the Ombudsman and special ombudsmen.

The Agency for Electronic Media (AEM) is an autonomous, independent and non-profit legal person with public powers within the framework and competences prescribed by this law.²⁹⁵ AEM is responsible for regulatory and other tasks related to the operation of electronic media and audio-visual content. AEM submits regular reports to the Parliament of the Republic of Croatia and to the European Commission.²⁹⁶ AEM, through its council, is responsible for making decisions and other administrative acts of the Agency, as well as non-inforcable decisions for committed offenses in accordance with the law, with a legal instruction on the right to submit a legal remedy. No appeal is allowed against the decisions, warnings and other administrative acts of the Agency, but an administrative dispute can be initiated against them before the locally competent administrative court. In case of non-compliance with the executive decision or other administrative act of the Agency, the AEM Council can issue a misdemeanor order or submit a misdemeanor report for the initiation of misdemeanor proceedings.²⁹⁷

According to the LSD, the body that is competent and responsible for combating discrimination is the Central Body, managed by the Ombudsman. The tasks of the Central Body responsible for combating discrimination are performed by the Ombudsman. The Ombudsman, within the scope of his work, receives reports from all natural and legal persons, provides the necessary services

²⁹¹ LEM, art. 94 paragraph 2 paragraph 2

²⁹² LEM, art. 94 paragraph 3

²⁹³ LEM, art. 96, paragraph 1 paragraph 2

²⁹⁴ LEM, art. 99 paragraph 1 item 8

²⁹⁵ LEM, Art. 73, https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html

²⁹⁶ LEM, art. 74-78

²⁹⁷ LEM, Art. 82



in relation to information about their rights and obligations and the possibilities for judicial and other protection of natural and legal persons who have filed a complaint due to discrimination, if no court proceedings have been initiated, reviews the individual reports and independently takes actions necessary to eliminate discrimination and protect the rights of the discriminated person, informs the public about the occurrences of discrimination, with the consent of the parties conducts a reconciliation procedure with the possibility of concluding an out-of-court settlement, submits criminal complaint for cases of discrimination to the competent Public Prosecutor's office, collects and analyzes statistical data for cases of discrimination; submits annual reports to the Parliament of the Republic of Croatia on the occurrences of discrimination, etc.²⁹⁸

Special ombudsmen perform some of the above-mentioned tasks, only if it is expressly regulated by a special law.²⁹⁹ It is within the competence of the Ombudsman to request files and documents from state institutions, as well as to inspect the files, which, if they do not act on his request within 30 days, are subject to a misdemeanor sanction/fine in the amount of 1,000.00 to 5,000, 00 Kuna.³⁰⁰ For the offenses prescribed in the Criminal Code, criminal charges can be filed by the Ombudsman and a special ombudsman (Art. 29).

²⁹⁸ LSD, art. 12

²⁹⁹ LSD, art. 13

³⁰⁰ LSD; Art. 27



V. CONCLUSIONS AND RECOMMENDATIONS

V.1. Republic of North Macedonia

The Republic of North Macedonia has a relatively well established national legal framework for the prevention and protection of hate speech at the level of criminal sanctions and also good compliance with international standards.

However, in terms of preventing and sanctioning hate speech offenses, RNM has an insufficiently developed legal framework.

There is no provision within any law in the legal framework of the Republic of North Macedonia that defines hate speech or the specific types, actions or forms that hate speech can take in accordance with the General Policy Recommendation no. 15 of the ECRI and the Recommendation on combating hate speech CM/REC (2022)16 of the Council of Europe. The Criminal Code is the main law through which hate speech is sanctioned, but within it, the categories of hate speech and hate crimes overlap. The CC does not distinguish whether it is hate speech or hate crime when it comes to threats based on any protective feature³⁰¹ under General Policy Recommendation no. 15 of ECRI on combating hate speech.³⁰²

RECOMMENDATION

To introduce a definition of hate speech within the framework of Article 122 of the Criminal Code in accordance with GPR No. 15 of the ECRI³⁰³ and the Recommendation on Combating Hate Speech CM/REC (2022)16 of the Council of Europe³⁰⁴³⁰⁵

The Law on Prevention and Protection against Discrimination covers hate speech, including invocation, incitement, instruction, and harassment. However, the law lacks a clear definition of hate speech and does not regulate its different forms and levels of severity. Furthermore, it does not recognize hate speech as a more severe form of discrimination.

The law regulates the establishment, function and competences of the Commission for Protection against Discrimination. However, in the domain of competences, the Commission may produce opinions and recommendations for the elimination of discriminatory practices, which above all have no binding force in the sense of an executive title. Hence, despite the monetary fines provided in the misdemeanor provisions, the Commission does not have the authority to enforce them, therefore, a separate misdemeanor procedure must be initiated by a competent authority,

³⁰¹ "race", colour, origin, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status

³⁰² General Policy Recommendation no. 15 of the ECRI regarding the fight against hate speech, adopted on December 8, 2015, Strasbourg, March 21, 2016

³⁰³ "hate speech should be understood as advocating, promoting or inciting, in any form, disparagement, hatred or defamation against a person or group, as well as any harassment, insult, negative stereotyping, stigmatization or threat against such a person or group and justify all the preceding types of expression, on the basis of "race", colour, origin, national or ethnic origin, age, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status "

³⁰⁴ Recommendation of the Committee of Ministers on Combating Hate Speech CM/REC (2022)16 of the Council of Europe, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955

³⁰⁵ hate speech is understood as any type of expression that incites, promotes, spreads or justifies violence, hatred or discrimination against a person or group of persons, or which disparages, for real reasons or ascribed personal characteristics or status such as 'race', colour, language, religion, nationality, national or ethnic origin, age, disability, gender, gender identity and sexual orientation.



which will then impose fines once it determines that discrimination has occurred. This puts the Commission in a position to submit criminal charges to the competent authorities, which further complicates its work.

The system set up in this way has so far proved to be insufficiently efficient and slow in practice, bearing in mind the data from the Commission's report.³⁰⁶

RECOMMENDATIONS

- 1. LLPD - To introduce a definition of hate speech in accordance with GPR no. 15 of ECRI and the Recommendation on Combating Hate Speech CM/REC (2022)16 of the Council of Europe*
- 2. To revise Art. 9 "Invocation, incitement and instruction for discrimination" in terms of specific regulation of the characteristics of hate speech*
- 3. To introduce misdemeanors and misdemeanor provisions that will provide appropriate offenses that will sanction the use of hate speech*
- 4. To amend Art. 21 of the LPPD and add a new point/paragraph that will increase the authority of the Commission to issue Decisions on established discrimination in accordance with the provisions of the law (in which decisions the misdemeanor fines or the corresponding offense would be imposed) with a deadline to remove the discrimination, and a legal instruction for a legal remedy that an administrative dispute can be initiated against this Decision before a competent court.*

The Law on Audio and Audio-Visual Services does not regulate online content. The law defines an audio-visual service as a service provided by a provider of audio or audiovisual media services and which includes any type of economic activity whose primary purpose is to provide audio or audio-visual programs to inform, entertain and/or educate the general public through electronic communication networks and audio or audio-visual commercial communication.³⁰⁷ According to the law, services whose primary purpose is not the provision of programs, that is, where any audio-visual content is only secondary to the service and is not its primary purpose, such as: a) web pages that only contain accompanying audio-visual elements, such as animated graphic elements, short advertisements or information related to a product or service that are not audio-visual, b) search engines and c) electronic versions of newspapers and magazines are services that do not represent audio or audio-visual media services.³⁰⁸

Article 48 of the law provides for special prohibitions, namely: (1) Audio and audiovisual media services must not contain programs that threaten national security, encourage the violent

³⁰⁶ Annual report on the work of the CPPD for 2022: 14 requests were submitted to initiate misdemeanor proceedings against established discriminators, of which the courts-initiated misdemeanor proceedings for 9. 4 of the submitted 14 requests were rejected by decisions of the competent courts. For 2 of these 4 decisions, the Commission submitted appeals to the appellate courts. One of the complaints was rejected as untimely, and one was rejected as unfounded. Within these proceedings, 1 first-instance judgment was passed, declaring legal and natural persons guilty of offenses under Art. 6, Art. 8, para. 1, and punishable under 41, paragraphs 1, 2 and 3 of the Law on Prevention and Protection from Discrimination. 8 of the 9 misdemeanor proceedings initiated are still ongoing.

In 2022, **the first verdict was passed** by which the court punished a discriminator following a request submitted by CPPD.

³⁰⁷ Law on Amendments and Supplements to the Law on Audio and Audio-Visual Media Services, Art. 3 par. 1 point a

³⁰⁸ Ibid, art. 3 para. 2 point is



overthrow of the constitutional order of the Republic of Macedonia, call for military aggression or armed conflict, encourage or spread discrimination, intolerance or hatred on the basis of race, color, origin, national or ethnic origin, sex, gender, sexual orientation, gender identity, membership of a marginalized group, language, nationality, social origin, education, religion or religious belief, political belief, other belief, disability, age, family or marital status, property status, health status, personal characteristics and social status, or any other basis.

The Agency for Audio and Audiovisual Media Services³⁰⁹ can impose measures when it determines the spread or incitement of discrimination in audio-visual media content (Article 48), such as: public reprimand, initiate criminal proceedings, proposal to revoke the license and implement a procedure for deletion from the register of providers of audiovisual media services or from the register of broadcasters (Article 23).

The absence of legal regulations for hate speech on the Internet and online platforms results in uncontrolled proliferation of this type of speech through online services. The current inadequate protection and sanctioning of such speech further exacerbate the problem. Therefore, it is imperative to have criminal provisions in place to address hate speech, especially online hate speech.

RECOMMENDATIONS

- 1. LAAVMS - To introduce new provisions prohibiting hate speech on the Internet and misdemeanor provisions with provided misdemeanor sanctions for these provisions*
- 2. To introduce a new Article that will cover Internet pages that contain accompanying audio-visual elements, such as animated graphic elements, short advertisements or information related to a product or service that are not audio-visual, search engines and electronic versions of newspapers and magazines, internet platforms and portals as audio or audio-visual media services*
- 3. To introduce new provisions that will regulate the registration of users in order to monitor and limit malicious comments on internet sites, portals, electronic media, electronic versions of newspapers and magazines, internet platforms and portals.*
- 4. To amend the provisions in the area of competence of the Agency for Audio and Audiovisual Media Services in accordance with the newly added provisions.*

The Law on Media does not contain a specific definition of hate speech (Art. 4).³¹⁰ Despite the fact that it provides for special prohibitions on spreading hatred, the list of grounds provided for in Article 4 is not in line with the LPPD, and there are no criminal provisions if the special prohibitions are not respected, nor does the law refer to another law through which it could act in case of non-compliance with these prohibitions. The law in Article 29 provides that the measures that the competent regulatory body (the Agency for Audio and Audiovisual Media Services) can take,

³⁰⁹ Agency for audio and audiovisual media services regulated by art. 4 of the Law on Audio and Audiovisual Media Services, Official Gazette no. 184/13

³¹⁰ It is forbidden to publish or broadcast content in the media to threaten national security, to encourage the violent overthrow of the constitutional order of the Republic of Macedonia, to call for military aggression or armed conflict, to encourage or spread discrimination, intolerance or hatred on the basis of race, sex, religion or nationality.



which are established in the Law on Audio and Audiovisual Media Services, can be appropriately applied in case of violation of the provisions of this law, however considering that the “Penal provisions” of the law do not provide for sanctions for non-compliance with Article 4, and what those sanctions are (monetary fines), the Agency for Audio and Audiovisual Media Services cannot act.

RECOMMENDATIONS

- 1. LM - To amend Article 2 and add “via the Internet” for both media and editors*
- 2. LM To amend Article 4 in order to include a precise definition of hate speech in accordance with GPR no. 15 of EKRI and the Recommendation on Combating Hate Speech CM/REC (2022)¹⁶ of the Council of Europe, and to expand the grounds provided for in accordance with the LPPD and LAAVMS*
- 3. LM - To amend all other provisions of the Law on Media and bring it in line with Article 2*

V.2. Republic of Serbia

The Republic of Serbia has a relatively solid legal framework for dealing with and combating hate speech, which is generally in line with all relevant international standards.

The Criminal Code of Serbia does not contain a definition of hate speech. The CC covers hate speech through two Articles namely “Racial and other discrimination” and “Inciting or aggravating national, racial or religious hatred or intolerance” through spreading or inciting discrimination and of superiority etc. and is generally in accordance with GPR No. 15 of ECRI and the Recommendation of the Council of Europe CM/REC (2022)¹⁶. However, in the absence of a concrete definition of hate speech, recognizing and identifying the relevant provisions in the law related to hate speech is quite difficult.

RECOMMENDATION

To introduce a specific definition of hate speech in the CC which will be in line with GPR No. 15 of ECRI and the Recommendation of the Council of Europe CM/REC (2022)¹⁶.

The Law on Prohibition of Discrimination includes a definition of hate speech. However, the definition provided in Article 11, which says that hate speech is the expression of ideas, information, and opinions that incite discrimination, hatred or violence against a person or group of people based on their personal characteristics in public media, gatherings, or other accessible places, and through writing or displaying messages or symbols, is generally interpreted but lacks more specific elements of hate speech. Moreover, it does not conform to the definition given in General Policy Recommendation no. 15 of ECRI, nor does it make a clear distinction between hate speech and other forms of discrimination, such as harassment and degrading treatment, which are also prohibited by Article 12.



Additionally, the wording of “Harassment” contains elements more closely related to hate speech than the definition of hate speech itself. The provision set out in this way refers to a kind of hate speech, which is actually not contrary to GPR No. 15, which also provides for harassment as a form of hate speech, but it leads to a kind of confusion in the direction of interpreting this provision as the only one form of hate speech.

The Commissioner for the Protection of Equality, despite the fact of being an independent body in charge of preventing, combating and protecting against discrimination, including hate speech, within the scope of its powers can issue recommendations that are not legally binding and only initiate criminal proceedings, or submit misdemeanor charges to the competent court. Hence, instead of this mechanism being able to act directly, which will significantly increase efficiency, it is put in a position to lead procedures through which it has to prove that a third party committed discrimination. A system set up like this is inefficient when it comes to general prevention and inefficient and ineffective in terms of encouraging victims to report. Complex, lengthy and uncertain court proceedings lead to victim discouragement and distrust in the system.

RECOMMENDATIONS

- 1. LPD - To revise the definition of hate speech and to expand it in accordance with GPR. no. 15 of ECRI*
- 2. LPD - To make a clear distinction between hate speech and harassment, as two different forms of hate speech*
- 3. To amend the LPD in the area of the Commissioner for Protection of Equality's jurisdiction. The proposed amendment suggests expanding the authority of the Commissioner to issue Decisions that determine committed acts of discrimination. These Decisions will include information on the misdemeanor sanction or fine, the deadline for action and the right to a legal remedy such as a lawsuit before the Administrative Court. Once the legal remedy procedure is completed or if no legal remedy is submitted within the deadline, the Decisions will become final and enforceable and can be executed through an executor.*

The Law on Public Information does not provide a specific definition of hate speech. However, it explicitly prohibits hate speech through a separate Article (75). The law regulates the grounds for discrimination, which include protective characteristics, in compliance with GPR No. 15 of ECRI. The same provision also regulates responsibility for published information in journalistic texts that propagate hate speech. However, the law does not regulate who bears this responsibility. The law does not clarify the procedure for determining the responsibility of the journalist or editor or both, in case of a violation of Article 75. The misdemeanor provisions do not provide for a sanction or fine in accordance with Article 75. Nonetheless, the Law provides several general provisions in the part of compensation for damage. If the published information refers to a person as part of the journalistic text or the text as a whole, and its publication is prohibited by law, the person has the right to compensation for the damages incurred. This includes material and non-material damages.³¹¹ The

³¹¹ Law on public information and media, art. 112



responsibility for these damages falls on the journalist and editor if it is caused by their fault.³¹² The publisher bears objective responsibility for the damage caused by the publication of information or omission of publication, regardless of fault.³¹³ Finally, the journalist, editor, and publisher are jointly responsible for the damages caused by the publication of the information.³¹⁴

RECOMMENDATIONS

- 1. LPI - To introduce a specific definition of hate speech in accordance with GPR No. 15 of ECRI and the Recommendation of the Council of Europe CM/REC (2022)16*
- 2. LPI - To amend the law in the direction of clearly regulating the procedure for determining responsibility, who bears that responsibility (the journalist or the editor or both jointly) for a committed violation of Art. 75 and who is responsible for implementing the procedure*
- 3. LPI - To amend and supplement the misdemeanor provisions and to provide a sanction/fine for a violation of Article 75*

The Law on Electronic Media does not contain provisions regulating comments posted by users of electronic media (websites and portals). Hence, in order to regulate uncontrolled hate speech, it is necessary to regulate this issue legally.

RECOMMENDATIONS

- 1. To amend and supplement the LEM in order to regulate the obligation for every electronic media and its editors to register their users as a prerequisite for the possibility of leaving comments and the method and elements for limiting harmful comments.*
- 2. LEM - To introduce new provisions that will regulate the sanctioning procedure if the provision for registering users is not respected and to provide for new sanctions for violations committed in connection with the registration of users.*

V.3. Republic of Albania

The national legal framework for dealing with and protecting against hate speech in the Republic of Albania is insufficiently aligned with international standards in the area of criminal sanctions, while in the area of administrative protection the legislation is comprehensive and firmly established. The Law on Protection against Discrimination, the Laws that regulate media and audio and audio-visual content have solid provisions and protective mechanisms that are implemented in practice.

³¹² Ibid, art. 113

³¹³ Ibid, art. 114

³¹⁴ Ibid, art. 115



The Commissioner for Protection against Discrimination has the authority to issue Decisions that carry an executive title and are executed through an executor, an authority that is not available in any other country subject to this analysis. The principles of the Code of Ethics for Journalists apply equally to all media and journalism platforms, both offline and online, including journalism through social media and online portals.

On the other hand, what is missing in Albania is the compliance of criminal legal protection with international standards.

The Criminal Code of RA does not contain a definition of hate speech, but it regulates and sanctions hate speech through a series of provisions. The RA CC still criminalizes Insult (Art. 119), Insult due to racist or xenophobic motives through the computer system (Art. 119/b) and Defamation (Art. 120) despite clear guidelines in international instruments that these forms of hate speech must be decriminalized. On the one hand, insulting or defaming someone online can result in a monetary fine that is similar to other administrative sanctions. However, it should be noted that in such cases, the offender may also face criminal charges and a conviction. On the other hand, if the insult is motivated by racism or xenophobia, then the punishment can include both a monetary fine and a prison sentence. It is important to note that these two forms of punishment cannot be imposed simultaneously.

The CC of RA contains a series of provisions through which hate speech is sanctioned, however, the list of grounds according to GPR No. 15 of ECRI is too limited, that is, the CC recognizes only ethnicity, nationality, race or religion, in the provision of Art. 119 /b “Insult due to racist or xenophobic motives through the computer system” and race, ethnicity, religion or sexual orientation in the provision of Art. 265 “Inciting hatred or disputes”.

Hence, the provided bases, i.e., protective features, are far from compliant with GPR No. 15 of ECRI.

RECOMMENDATIONS

- 1. To introduce a specific definition of hate speech in accordance with GPR No. 15 of ECRI and the Recommendation of the Council of Europe on combating hate speech CM/REC (2022)16**
- 2. To expand the list of protective features/grounds according to GPR No. 15 of ECRI in Article 265 and to add the list of grounds as an element of the criminal acts from Articles 119/a and 266**
- 3. To decriminalize Insult and Defamation**
- 4. To amend the provision of Art. 266 and delete “through insult or slander”**

V.4. Republic of Kosovo

The Republic of Kosovo has a well-established national legal framework for dealing with hate speech and it is generally in line with international standards.

The Criminal Code does not contain a definition of hate speech and also provides only one Article³¹⁵ that directly refers to hate speech and which contains a non-exhaustive list of protected grounds.

³¹⁵ article 141 paragraph 1: “Whoever publicly incites or publicly spreads hatred, discord and intolerance between national, racial, religious, ethnic and other groups or on the basis of sexual orientation, gender identity and other personal characteristics, in a way that is likely to violate public order, will be punished with a fine or imprisonment for up to five (5) years”



RECOMMENDATION

To introduce a specific definition of hate speech in accordance with GPR No. 15 of ECRI

In terms of administrative protection, Kosovo has a relatively well-established national legal framework, especially in the area of specific laws related to media regulatory bodies, such as the Law on the Independent Media Commission and other by-laws arising from it. One of the most important by-laws is the Code of Ethics for Media Service Providers in Kosovo adopted by the Independent Media Commission. The other media regulatory body that monitors hate speech is the Kosovo Press Council, a self-regulatory body whose members include print and online media. One of the key documents adopted by the Press Council is the Print Media Code, which morally and professionally binds reporters, editors, owners and publishers of newspapers and periodicals.

In terms of the Law on Protection against Discrimination, the authority to act on complaints of suffered discrimination, including hate speech, according to its provisions, is the Ombudsman. However, the decisions of the Ombudsman are not legally binding and at the same time the Ombudsman acts at the state level for violations of human rights and freedoms, which implies that discrimination, including hate speech, is only one segment of the Ombudsman's powers. Despite the opportunity to participate in court proceedings as a friend of the court, the fact remains that Kosovo lacks a specialized institution, i.e., a body that will directly and exclusively deal with the area of discrimination and its injuries, and the establishment of this body should be foreseen in the Law on Protection against Discrimination as an independent body/agency, with competences, responsibilities, composition, budget, etc. In addition, the law provides for misdemeanor sanctions in the misdemeanor provisions, in the form of monetary fines, but it doesn't specify who is responsible for imposing them and how they should be collected.

RECOMMENDATIONS

- 1. To amend and supplement the Law on Protection against Discrimination and to introduce a whole new chapter which will regulate the establishment of a new independent body Commission for Protection against Discrimination or Commissioner for Protection against Discrimination, competences, composition, method of appointing members, budgeting, the procedure for complaints and the making of decisions, decisions that must have binding force, i.e. executive title, the procedure for a legal remedy after the adopted decision and the foreseen misdemeanor sanctions*
- 2. To supplement the LPD and introduce appropriate offenses for violation of each Article that regulates hate speech*

