



MEDZINÁRODNÝ PRÁVNÝ RÁMEC PRE RIEŠENIE NENÁVISTNEHO PREJAVU

INTERNATIONAL LEGAL FRAMEWORK FOR DEALING WITH HATE SPEECH

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Rozsiahle využívanie sociálnych sietí vyvoláva šírenie nenávisťných prejavov. Je ťažko rozlíšiteľné či ide o nenávisťný prejav, zločin z nenávisťi alebo iné formy diskriminácie. Právne predpisy v tejto oblasti nie sú jasné, a sociálne siete zvyčajne zostávajú mimo právneho rámca, čo vytvára pre inštitúcie ďalší zmätok. V skutočnosti, nenávisťné prejavy nie sú v mnohých krajinách penalizované. Z toho dôvodu je potrebné nájsť iné mechanizmy na predchádzanie a zníženie výskytu nenávisťného prejavu na najnižšiu možnú úroveň. Všetky formy médií, či už online alebo offline, môžu zohrávať kľúčovú úlohu pri šírení a boji proti nenávisťným prejavom. Hlavným cieľom tohto článku je preukázať, že súčasný systém je nedostatočný, a zároveň navrhnúť aj opatrenia (iné ako legálne) na prevenciu nenávisťných prejavov, nakoľko absentuje ich penalizácia trestným právom, ale ktoré zraňujú city a dôstojnosť ľudí.

Kľúčové slová: sloboda prejavu, nenávisťný prejav, dohovor, výhrady

The extremely large usage of social networks has provoked wide spread of hate speech. One is not being able to make a difference whether it comes to hate speech, hate crime or other form of discrimination. Legislation in this area is not clear and social networks usually remain outside the laws and this creates further confusion for the institutions. In fact, in many countries the

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hate speech is not penalized. Therefore, we need to find other mechanisms to prevent and reduce the occurrence of hate speech to the lowest possible level. All forms of media, whether online or offline, can play crucial role both in disseminating and combating hate speech. The aim of this paper is to show that the current system is insufficient and to introduce hate speech prevention means, other than legal, because hate speech is not penalized with the criminal law and it is violating the feelings and dignity of people.

Key words: freedom of expression, hate speech, convention, reservations

JEL: K33, K38

1 INTRODUCTION

Hate speech is severe violation of the foundational axiom of international human rights: inherent dignity and equality of every individual. There are various definitions of hate speech, but in general, the term is usually used to refer to expressions that are abusive, insulting, intimidating or harassing and/or which incite violence, hatred or discrimination against groups identified by a specific set of characteristics (Mafeza 2016). Hence, hate speech may take the form of the public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes which have been found by courts to have occurred, and of the glorification of persons convicted for having committed such crimes. There is, however, a big divide between the United States and other western democracies. In the United States, hate speech is given wide constitutional protection, whereas under international human rights covenants and in other western democracies, such as Canada, Germany, and the United Kingdom, it is largely prohibited and subjected to criminal sanctions (Herz & Molnar 2012).

Hate speech has huge negative effect on the harmed persons but also may harm "the dignitary order of society" (Waldron 2012). Indeed, not only do individuals exposed to hate speech suffer a loss of dignity, self-esteem and sense of belonging to the community, but the targeted group also suffers estrangement from society, a loss of cultural identity, and group reputation (Bakircioglu 2008). As Alexander Tsesis has observed, "Prejudicial speech initiates, perpetuates, and aggravates socially accepted misrepresentation about outgroups.... The greater the barrage of misethnic and subordinating stereotypes, the more likely it is that persons with intense hatreds will release their pent-up frustration and angers on vulnerable minorities" (Shaw 2012). Freedom of expression and opinion, tolerance and respect for the equal dignity of all human beings is of paramount significance for a democratic and pluralistic society. However, that freedom of expression and opinion is not an unqualified right and it must not be exercised in a manner inconsistent with the rights of others.

Even though hate speech is not definitively defined or enshrined in international law, there are provisions that identify expressions considered as hate speech (Sirmed 2015). Promoting substantive equality among human beings, including freedom from discrimination, is a foundational idea in human rights, and this is reflected in the very first article of the Universal Declaration on Human Rights (UDHR), adopted by the UN General Assembly in 1948, which states: "All human beings are born free and equal in dignity and rights" (Mendel 2010). All these

international documents which refer to the prevention and punishment of hate speech can be divided in three groups: UN treaties, The European Convention of Human Rights and other European treaties. Implementation of these documents in the member states of the UN and the Council of Europe, will surely contribute to the prevention and successful dealing with hate speech.

Therefore, in this paper we will focus on discovering alternative ways to prevent the hate speech as this issue is generally not being addressed in the criminal laws today.

2 UN DOCUMENTS PERTAINING TO THE PREVENTION AND PUNISHMENT OF HATE SPEECH

In order to achieve the goal of this paper, we have to make insight in the existing international human rights documents pertaining to hate speech.

As already mentioned above, the spread of social networks has motivated the hate speech to rise in very large sizes. Therefore, it is necessary for the states to adopt certain international documents and withdraw their reservations to the documents dealing with hate speech. The most important document is International Covenant on Civil and Political Rights.² The International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1976, guarantees equality and non-discrimination in the enjoyment of rights in terms similar to the UDHR.³

As of July, 2016, there are more than 17 countries who, while ratifying, acceding to or signing the ICCPR, entered reservations concerning the obligations for advocacy of hatred on national, racial or religious grounds set forth in Article 20 (2) of the ICCPR or even to the whole article. In order to promote greater participation and cooperation, and in order to overcome differences of opinion and interests of the states, the Vienna Convention on the Law of Treaties allows countries (and international organizations) to declare stocks of contracts when signing, ratifying or acceding to the treaty.

The most controversial article in terms of hate speech is article 20, which reads: “Any propaganda for war shall be prohibited by law. Any advocacy of national, racial or religious hatred that consists incitement to discrimination, hostility or violence shall be prohibited by law”.

This article urges states to prohibit by law certain form of extreme speech, thus not only allowing for a special restriction on free speech but in fact, obliging State parties to fight a certain form of extreme speech through prohibitive efforts.

²Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

³ Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred, A study prepared for the regional expert meeting on article 20, Organized by the Office of the High Commissioner for Human Rights, Vienna, February 8-9, 2010

The wording of article 20 of the ICCPR is rarely, if ever, found enshrined in domestic legislation and this absence of reference to “incitement” in domestic legislation suggests that states are either unwilling to take on the language of the ICCPR’s Article 20 or are simply ignorant of it (OCHCR 2010).

Nevertheless, Article 20(2) has proven highly controversial and is variously criticised as being overly restrictive of free speech or as not going far enough in the categories of hatred it covers (Article 19 2017).

However, most of the reservations (to this article) are intended not to uphold the constitutional rights, but simply to cancel treaty-mandated rights and hence we can legitimately ask the question about the real intention of the countries - parties to Article 20, whether they intend to ratifying or acceding to contribute to the development of human rights in the area of hate speech or doing it only as a symbolic gesture?

The same practice is found in the similarly reserved article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, considered as the “key article” of the Convention. Article 4 condemns all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention.⁴

A number of parties have reservations on this article, and interpret it as not permitting or requiring measures that infringe on the freedoms of speech, association or assembly which makes them incompatible with the object and purpose of the treaty.

This UN Convention defines and punishes racial discrimination and obliges states to amend their national laws and policies that create or support racial discrimination. The Convention contains a non-exhaustive list of rights and freedoms, especially where racial discrimination should be prohibited and eliminated.

The chapeau of article 4 incorporates the obligation to take “immediate and positive measures” to eradicate incitement and discrimination, a stipulation that

⁴ article 4 of ICERD. According to this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

complements and reinforces obligations under other articles of the Convention to dedicate the widest possible range of resources to the eradication of hate speech. In general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee summarized “measures” as comprising “legislative, executive, administrative, budgetary and regulatory instruments...as well as plans, policies, programmes and...regimes”.⁵ The Committee recalls the mandatory nature of article 4, and observes that during the adoption of the Convention, it “was regarded as central to the struggle against racial discrimination”,⁶ an evaluation which has been maintained in Committee practice. Article 4 comprises elements relating to speech and the organizational context for the production of speech, serves the functions of prevention and deterrence, and provides for sanctions when deterrence fails. The article also has an expressive function in underlining the international community’s abhorrence of racist hate speech, understood as a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.⁷

Most liberal democracies conform international human rights law obligations to the contours of local law via reservations and related mechanisms, and many do not permit the treaties to be enforced in domestic courts. As Tyagi accurately notes, "It is apparent that, in spite of assuming the leadership of the human rights movement, the West remains unwilling to accept international human rights law wholeheartedly" (Tyagi 2001).

In addition, we will give an example of hate speech which confirms that these documents can not help punishing the hate speech. The famous TV show "Milenko Nedelkovski Show" is, broadcasted in the Republic of Macedonia for over 12 years. In his January-February 2016 issue, the TV host said that in his opinion the homosexuality is a disease. In this particular case, Article 20 of the abovementioned convention can not be applied because it is an opinion expressed by an appellant (freedom of expression). Furthermore the article 20 is widely reserved article by the States, including the Republic of Macedonia. In such cases, acting preventively against the expression and repetition of such views is crucial and this can be done if the competent bodies for equality and electronic communications warn the journalists who use such speech not to do so until their consciousness changes. Besides there are other ways to prevent hate speech, such as early education and political will to change

⁵ Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 18 (A/64/18), annex VIII, para. 13.

⁶ General recommendation No. 15, para. 1.

⁷ United Nations, International Convention on the Elimination on of All Forms od Racial Discrimination , CERD/G/gc35, 26.09.2013, Recomendations 35

citizens' awareness to ensure a shared understanding of hate speech and hate crime in general.

3 EUROPEAN CONVENTION ON HUMAN RIGHTS AND ITS PROTOCOLS IN PREVENTION AND PUNISHMENT OF HATE SPEECH

It is regulated in Article 10 of European convention stipulating that everyone has the right to freedom of expression. This right shall include 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.

On the other hand, the exercise of these freedoms, may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society for the reasons of national security, territorial integrity or public safety, for prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁸

It is evident that this Convention does not regulate the penalties that have to be taken for the abusers of the right to freedom of expression. This means that the reasons for the punishment should be sought in the domestic law.

Under article 14 discrimination is prohibited. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

It considered that the content of the applicant's remarks had amounted to Holocaust denial, and pointed out that denying crimes against humanity was one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. Disputing the existence of clearly established historical events did not constitute scientific or historical research; the real purpose was to rehabilitate the National Socialist regime and accuse the victims themselves of falsifying history. As such acts were manifestly incompatible with the fundamental values which the Convention sought to promote, the Court applied Article 17 (prohibition of abuse of rights) and held that the applicant was not entitled to rely on Article 10 (freedom of expression) of the Convention.

Although the article contains the basis for discrimination prohibition, there is no penalty for its violation, as well. Therefore, the penalty again needs to be provided in the domestic law. Furthermore, the mentioned article is directly connected with Article 1 of Protocol No.12 but it does not contain any provision directed specifically

⁸ European Convention on Human Rights, Council of Europe F-67075 Strasbourg article 10 paragraph 1, 2

to the use of hate speech. In fact, according to the latter, the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, and no one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.⁹

Therefore, we again have same situation about the domestic law though there is possibility of the European Court of Human Rights to address such use when considering complaints about the imposition of criminal sanctions and other restrictions on certain statements. However, the Court excludes hate speech from protection by means of two approaches provided for by the Convention:

(a) by applying Article 17 (Prohibition of abuse of rights) where the comments in question amount to hate speech and negate the fundamental values of the Convention, or

(b) by applying the limitations provided for in the second paragraph of Article 10 and Article 14 (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention) (European Court of Human Rights 2012).

In the famous *Garaudy v. France* case¹⁰, the applicant, former politician and Marxist humanist wrote a book entitled *The Founding Myths of Modern Israel* was found guilty of denial of crimes against humanity, defamation in public of a group of persons (Jewish community) and racial hatred. He lodged complaint before the European court arguing that his right to freedom of expression (article 10 of ECHR) had been violated. The Court declared the application inadmissible (incompatible *ratione materiae*) and pointed out that negation or revision of clearly established historical facts of this type undermines the Convention's underlying values that support the fight against racism and anti-Semitism, and is capable of seriously troubling the public order (it is worth noticing that the fight against racism and anti-Semitism here is explicitly associated with the fundamental values protected by the Convention) (Cannie & Voorhoof 2011).

In contrast to this case, in *Aksu v. Turkey*¹¹, Court had different wording. The applicant - Roma origin alleged that three publications – a book and two dictionaries – that had received government funding included remarks and expressions that reflected anti-Roma sentiment. He complained of a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and

⁹ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.2000, Article 1 Para.1,2

¹⁰ ECtHR (Decision) 23 June 2003, Case No. 65831/01, *Garaudy v. France*.

¹¹ ECtHR (Judgement) 15 March 2012, Case No. 4149/04 and 41029/04, *Aksu v. Turkey*.

family life). In the judgment the Court found that the mentioned publication were not intended at insulting the Roma community but they highlighted the present prejudice in society, and that the wording of the publication was metaphorical. Hence, there is no violation of Article 14 taken in conjunction with Article 8.

These two cases of practice prove that the provisions of the international conventions are not sufficient because they do not provide a sufficient basis for punishing hate speech. On the other hand, it is very difficult for the domestic legislation to go beyond and provide for additional protection and prevention of hate speech. Therefore, additional means for prevention of hate speech are needed. One may conceive the European Court of Human Rights judgements as compulsory, but should bear in mind that there are not always identical or similar cases. On the other hand, the Court needs to be prepared to permit for greater restrictions on the freedom of expression, especially as it was highlighted in the dissenting opinion in the Perinçek case. In that way only it will be possible to combat hate speech and to develop a common European standard in this regard.

4 OTHER EUROPEAN TREATIES AND INTERNATIONAL STANDARDS IN THE PREVENTION AND PUNISHMENT OF HATE SPEECH

Sometimes authoritative international bodies have a major impact on important issues. One of the most important is Venice Commission. In that direction, the Commission participated in the report on European legislation on blasphemy, religious insult and incitement to religious hatred, the report concluded that incitement to hatred, including religious hatred, should be the object of criminal sanctions and that it would be appropriate to have an explicit requirement of intention or recklessness.¹² The present report was discussed and adopted by the experts of the Commission at its 76th Plenary Session. Chapter II established Applicable international standards. Besides basic international standards in Article 9, 10 and 13 of ECHR, and Article 1 of Protocol 12 to the ECHR, it is very important point to the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.¹³

According to the Convention convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international co-operation.¹⁴

¹² Report on the Relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, CDL-AD (2008) 026, Strazbourg, 23 October 2008.

¹³ Convention on Cybercrime European Treaty Series - No. 185, Budapest, 23.XI.2001

¹⁴ Convention on Cybercrime European Treaty Series - No.185, Budapest, 23.XI.2001, Preamble

Thus in article 3 of the Convention, dissemination of racist and xenophobic material through computer systems Each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system. A Party may reserve the right not to attach criminal liability to conduct as defined by paragraph 1 of this article, where the material, as defined in Article 2, paragraph 1, advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available. Notwithstanding paragraph 2 of this article, a Party may reserve the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.¹⁵

Concerning racist and xenophobic motivated threat Each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or a group of persons which is distinguished by any of these characteristics.¹⁶

Although racist and xenophobic motivated insult each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: insulting publicly, through a computer system, persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or a group of persons which is distinguished by any of these characteristics. A party may either: require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or reserve the right not to apply, in whole or in part, paragraph 1 of this article.¹⁷

Under article 6 denial, gross minimisation, approval or justification of genocide or crimes against humanity, each party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right: distributing or

¹⁵ Convention on Cybercrime European Treaty Series - No.185, Budapest, 23.XI.2001, Article 3

¹⁶ Convention on Cybercrime European Treaty Series - No.185, Budapest, 23.XI.2001, Article 4

¹⁷ Convention on Cybercrime European Treaty Series - No.185, Budapest, 23.XI.2001, Article 5

otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law.¹⁸

A party may either require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise reserve the right not to apply, in whole or in part, paragraph 1 of this article. A party may either: a require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or b reserve the right not to apply, in whole or in part, paragraph 1 of this article.¹⁹

Very similar to this document is the Convention on Transfrontier Television, which requires that programme services shall not in be likely to incite to racial hatred.²⁰

In domestic law it is very important that the equal treatment is regulated within the constitutional and criminal law. The constitution should enshrine the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin. The constitution may provide that exceptions to the principle of equal treatment may be established by law, provided that they do not constitute discrimination. Criminal law should penalise the following acts when committed intentionally: public incitement to violence, hatred or discrimination, public insults and defamation or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, the public dissemination or public distribution, or the production or storage aimed at public dissemination or

¹⁸ Convention on Cybercrime European Treaty Series - No.185, Budapest, 23.XI.2001, Article 5

¹⁹ Report on the Relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, CDL-AD(2008)026, Applicable international standards. P.4

²⁰ European Convention on Transfrontier Television European Treaty Series - No. 132, Strasbourg, 5.V.1989,

public distribution, with a racist aim, of written, pictorial or other material containing manifestations.²¹

Another authoritative international body which have a major impact on important issues is the Committee of Ministers of the Council of Europe. In their Recommendation No. R (97) on “Hate Speech” the Committee proposed 5 relevant principles to Government of member states to combat hate speech (2-7), as follows:

1. Take appropriate steps to combat hate speech on the basis of the principles laid down in this recommendation;

2. Ensure that such steps form part of a comprehensive approach to the phenomenon, which also targets its social, economic, political, cultural and other root causes;

3. where they have not done so, sign, ratify and effectively implement in national law the United Nations Convention on the Elimination of All Forms of Racial Discrimination, in accordance with Resolution (68) 30 of the Committee of Ministers on measures to be taken against incitement to racial, national and religious hatred;

4. Review their domestic legislation and practice in order to ensure that they comply with the principles set out in the appendix to this recommendation.²²

Regarding the Recommendation, we should emphasise the principle 5 from the Appendix which refers to the domestic law procedures when dealing with hate speech:

“National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality”.²³

Principle 5 covers the most sensitive issues in dealing with hate speech, especially given the freedom of expression. Accordingly, the competent authorities in the states should be careful to observe the principles of freedom of expression when imposing criminal sanctions for possible hate speech.

Finally, under these principles, states can do much to improve awareness and legislation, but according to them, it is also evident that other measures are needed to combat hate speech. These measures, as already mentioned above, must necessarily

²¹ Report on the Relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, CDL-AD(2008)026, Applicable international standards p.5

²² Recommendation No. R (97) 20 Of the Comitee of Ministers to Member States on "Hate Sreech" (Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies), 107, 108

²³ Appendix to Recommendation No. R (97) 20

include raise of awareness through education and clearly expressed political will to change this awareness and ensure that shared understanding of hate speech and hate crime is established.

5 CONCLUSIONS

It is evident that legislation in the area of hate speech is not clear. First of all, this is due to the fact that the social networks usually remain outside the laws and such situation makes confusion among the institutions that should make a decision in this regard. In fact, hate speech, in accordance with international standards and domestic laws, cannot be penalized. Although states are required to adopt certain international documents and withdraw reservations entered to the documents in order for easier hate speech dealing, article 20(2) of the International Covenant on Civil and Political Rights, has proven to be highly controversial hence variously criticised as being overly restrictive of free speech or as not going far enough in the categories of hatred it covers. However, most of the reservations (to this article) are intended not to uphold the constitutional rights, but simply to cancel treaty-mandated rights.

The general conclusion is that there is no real ground for punishment and protection of hate speech, in international standards, and more in the domestic law. The international community should not discuss and repeat the same issues from the existing regulative on hate speech. It should foreseen the necessity to create a new substance, a new material that will regulate the hate speech in its clear meaning and not through the lens of other already existing documents.

As we can observe in recent years, the level of hate speech increases and strengthens. This practice will continue unless there is a concretization of this issue by means of specific documents that will entail hate speech punishment however not under the Criminal Codes but according to the mentioned specified documents.

Some of these ways include prevention provided by the competent institutions such as equality bodies and electronic communications agencies. In addition, other way to prevent hate speech is continuous education starting from the earliest age and further. The political will of the state to invest more funds in the prevention is also crucial and it should be emphasized mostly in the field of education and media marketing.

REFERENCES:

1. BAKIRCIOGLU, O. (2008): Freedom of Expression and Hate Speech. *Tulsa Journal of Comparative and International Law*, Vol. 16, No. 1, s. 1-49
2. CANNIE, H. – VOORHOOF, D. Hannes Cannie and Dirk Voorhoof. (2011): The Abuse Clause and Freedom of Expression in the European Human Rights

- Convention: An Added Value for Democracy and Human Rights Protection?
In: *Netherlands Quarterly of Human Rights*, 2011, 29/1, pp. 54–83
3. EUROPEAN COURT OF HUMAN RIGHTS. (2012). Hate speech [Online]. In Riga Graduate School of Law [cited 22.4.2017]. Available online: http://www.rgsl.edu.lv/uploads/files/ECtHR_fact_Sheet_on_hate_Speech.pdf
 4. HERZ, M. - MOLNAR, P. (eds). (2012). *The Content and Context of Hate Speech: Rethinking Regulations and Responses*. Cambridge: Cambridge University Press, ISBN: 9780521138369
 5. MAFEZA, F. (2016): Preventing Genocide by Fighting Against Hate Speech. In: *International Journal of Advanced Research*, 2016, 4, 3, pp. 117-132
 6. MENDEL, T. (2010): *HateSpeechRulesUnderInternationalLaw*. [Online]. In: Centre for Law and Democracy, 2010. [Cited 27.5.2017] Available online: <http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf>
 7. SHAW, L. (2012): Hate Speech in Cyberspace: Bitterness without Boundaries. In: *Notre Dame Journal of Law, Ethics & Public Policy*, 2012, 25, 1, pp. 279-304
 8. SIRMED, M. (2015): Hate speech and restricted speech: striking a balance. [Online]. In: Pak Institute for Peace Studies. [Cited 15.5.2017]. Available online: <http://pakpips.com/downloads/pdf/MarviSirmed-Curb-Hate-Speech.pdf>
 9. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS. (2010). Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred Work in Progress [Online]. In: United Nations Human Rights Office of the High Commissioner [cited 19.4.2017]. Available online: <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP7Callamard.pdf>
 10. TYAGI, Y. (2001): The Conflict of Law and Policy on Reservations to Human Rights Treaties. In: *British Yearbook of International Law*, 2001, 71, 1, pp.15-32
 11. WALDRON, J. (2012): *The Harm in Hate Speech*. Cambridge MA: Harvard University Press, 2012, 304 pages, ISBN 9780674416864