

# MEDIA REGULATORY AUTHORITIES AND HATE SPEECH



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Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)

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# MEDIA REGULATORY AUTHORITIES AND HATE SPEECH

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*Audiovisual media and radio are powerful mediums. It is important that its power is exercised responsibly and a balance is struck between freedom of expression and fair and responsible journalism.*



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1 Kosovo\* – This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.





# 1. Introduction

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**W**ithin the Council of Europe and the European Union project **“Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)”**, the Regional conference **“European standards and best practices in relation to hate speech and the protection of minors”** was held on 7–8 July 2016, in Montenegro. With the aim of talking about important topics for all regulatory bodies, the conference promoted the regional cooperation in the fight against hate speech and the protection of minors from potentially inappropriate and harmful media content. Since the conference was the first gathering organised in the framework of the JUFREX project – it enabled the discussion about future cooperation and other activities related to the field of media regulation.

The conference was attended by the representatives of Albanian, Bosnian and Herzegovinian, Croatian, Kosovar, Montenegrin, Macedonian, and Serbian regulatory bodies with guests from Croatia and Slovenia. The participants exchanged experiences related to regulation in this area and proposed to prepare a publication on hate speech that would contain information about significant cases that were dealt with by the regulators in the region. Also, it was agreed that one part of the publication should be devoted to the role of national regulatory authorities in this respect, including their legal and regulatory mandates. As suggested, these examples could serve as guidelines and recommendations for further action in similar cases.

As this proposal was accepted by the JUFREX team, the meeting took place in early February of 2017 in Belgrade, where the representatives of national regulatory authorities discussed further steps, format, methodology and structure of the publication as well as overall coordination, division of tasks and contributions to be made by each regulatory authority. Accordingly, this publication has been prepared as a joint effort and endeavour of representatives of aforementioned national regulatory authorities, including those of Croatia, which is not a direct participant of this project, but its contributions are also very much valuable from the perspective of proximities of the region, and understandability of languages. National regulatory authorities facilitated meaningful and thoughtful interaction through examination of an issue that requires collaborative action and exchanges of good practice.

This publication is available in both electronic and print format, as well as in languages of all JUFREX countries. Within the framework of the JUFREX project, it will be shared with the representatives of national judicial branches. Furthermore,

it will be widely disseminated to various stakeholders including parliaments, academic institutions, self-regulatory bodies, journalists, etc.

The aim of this publication is, among other things, to contribute to a wider understanding of the concept of hate speech, what it does and does not constitute, to offer a starting point in terms of providing recommendations and mechanisms for fighting against and preventing it, and to facilitate further efforts and initiatives. It should represent a useful and important tool in further activities of not only media regulatory bodies, but within the discourse of wider societal stakeholders.

## 2. Hate speech discourse

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**T**he right to freedom of expression is one of the most valuable human rights, guaranteed by various international conventions of human rights and national constitutions. Such a right encompasses not only the right of everyone to disseminate different information and ideas (factual statements and value judgements), but also everyone's right to receive information which others want to communicate to them (the so-called "right of the public to know").

The right of expression of thought is today an unavoidable political principle which is not theoretically questionable any more. It is one of the fundamental freedoms of man and citizen whose protection is ensured by international conventions and national legislations. Being an inherent and inalienable human right, it is a direct expression of human personality in a society and therefore it does not depend on the approval of state. At the same time, it is one of the fundamental rights of citizens, as there is no democracy without it. By ensuring the confrontation of opinions and presentation of different argumentation, it paves the way to fruitful syntheses which is a step forward on the way to social progress. Freedom of expression constitutes democracy, and where it stops, democracy does as well. Therefore, it is the basis of survival of each democratic society. In certain situations, the freedom of expression of thought may question another fundamental human right of the same importance, and that is the right to protection of personality. In all such cases, what needs to be solved is the issue of relations among such rights and which of these deserves higher rank<sup>2</sup>.

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of expression. This is not an absolute right. Since it carries with it duties and responsibilities, Article 10 of the ECHR prescribes that the exercise of the right to freedom of expression 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.

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2 Similarly sc. Igor Bojanić (2007), PhD, Special Part of Criminal Law, Zagreb, 2007., p. 183.

Additionally, Article 20 of ICCPR foresees legal prohibition of any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Regardless of which argument is used in the discussion on the scope and power of some state authority, one thing cannot be denied by anyone, and that is its primary function of protection of human security. Namely, free thinking, free speech and expressions are possible only under certain conditions, such as security, social stability, tolerance, etc. In the absence of these conditions, society can hardly live in the atmosphere of harsh discussions and disagreements, and it equally lacks the ability to tackle consequences to which such discussions might lead. Therefore, European societies impose some formal and non-formal limitations on the freedom of speech and thus demonstrate their commitment to social stability and national security, without which any freedom of speech would not be possible. Social stability is a prerequisite of the freedom of speech and expression. Even when certain speech is prohibited or only discouraged, such as that entailed under the term “hate speech”, then one prohibits it to ensure and maintain these conditions.

Limitations on the freedom of expression are visible on all levels – international, European and national. National regulation as well as European Court of Human Rights case-law show that “hate speech” belongs to communication contents whose placement to the “market of ideas and information” is significantly susceptible to the so-called limiting exceptions.

Many criminal codes throughout Europe have prohibited hate speech and treat it as a criminal offence. However, there is no universal definition of hate speech, which is a matter of large debate on many international fora. Some critics have argued that the term hate speech is used to silence critics of social policies that have been poorly implemented. On the other hand, there are many issues surrounding hate speech and global definition might not be the best tool to dealing with them.

Certain guidance as to defining hate speech can be found in the Council of Europe Recommendation No. R (97) 20 on “hate speech”, where the term has been defined as: *“.....covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”*

Considering the fact that 20 years have passed since the adoption of this Recommendation, some protected values are not covered within the definition of said Recommendation. The text also mentions some “other forms of hate” and thus allows one to extend the scope of activity on other grounds, such as age, language, sexual orientation, health state, etc.<sup>3</sup> In that respect, the European Commission

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3 Although Recommendation No. R (97)20 explicitly mentions “hostility towards minorities”, hate which is directed by minority towards any majority also, in legal sense, is not excluded from being classified as hate speech. Namely, the consequences of hate speech may be equally distorting regardless of whether such hate is shown by a majority or minority.

against Racism and Intolerance (ECRI), in its General Policy Recommendation No. 15: Combating Hate speech from March 2016, provides for the definition of hate speech, for the purpose of this Recommendation, to: “entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race”, color, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation”.<sup>4</sup> Since many national and even local issues are to be considered when discussing the issue of hate speech, one line of thought justifies the lack of clear definition of hate speech on any level other than national. It does leave the possibility of subjective interpretation, inconsistent interpretation and (or) arbitrary imposition. Consequently, the laws on hate speech are frequently subject to objections<sup>5</sup> such as, among others, they demolish the freedom of expression, they lack respect towards the autonomy of individual, they block discovery of truth and acquisition of knowledge, they inhibit self-accomplishment of individual, prevent free participation in shaping free thinking, they threaten legitimacy of the state, and they are ineffective, unnecessary and responsible for blocking free forms of speech and expression. However, advocates of legal regulation of “hate speech” consider that laws may help in the prevention of bringing damage to people (psychological and physical), reduce uncertainty (objective and subjective), preserve the autonomy of individuals, emancipate people from inferiority, act like a protection against many forms of suppression, protect human and civil dignity in public, ensure recognition of cultural identities, facilitate intercultural dialogue and provide everyone with full access to acting in the creation of democratic public opinion.

What is important, though, is that the legally binding documents do recognize the importance of freedom of expression and prescribe its possible derogations. In that respect, the case-law of the European Court of Human Rights provides an invaluable source of information, and prescribes the term as language or phrases which spread, promote and/or justify hatred based on intolerance. The European Court of Human Rights had by 1976 already expressed its opinion on what it indicates in the term ‘right to freedom of expression’ and what its role is in democratic society, establishing that “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”. It is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter

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However, as ‘people’s government’ practically means the will of the most numerous and most active part of population – in other words, majority, or those who have become accepted as “majority”– it was warned long time ago that besides the protection from tyranny of state officials, what was also needed is the protection against the “tyranny of majority”, i.e. the protection of minority from majority.

4 [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N15/REC-15-2016-015-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf), accessed on June 7, 2017.

5 Alexander Brown (2015), *Hate Speech Law: A Philosophical Examination*, Routledge, 2015.

of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. This means, amongst other things, that every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.<sup>6</sup> In its decisions, the Court has frequently emphasized that the prohibition of racist speech is of fundamental importance in a democratic society<sup>7</sup>, and that hate speech (which is the act of discrimination in view of Article 14 of the European Convention) is not protected by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the freedom of expression<sup>8</sup>. Main criteria on which the European Court of Human Rights relies while deciding whether the sanctioning of certain speech is in compliance with Article 10, paragraph 2 of the European Convention of Human Rights (legitimate limitations of the freedom of speech) or Article 17 (prohibition of abuse of right) includes:

- a) Purpose of speech – primarily whether the intention is to spread racist ideas or speech whose goal is to inform the public on issues of public interest;
- b) Content of speech – whether the respective speech encourages feelings of unacceptance, animosity or even hate towards target population;
- c) Context – what is the status and role of the offender in society; what is the dominant social climate; what led to the expression and through which medium; and what was the target audience<sup>9</sup>.

In addition to the ECHR and ICCPR, limits which surround the freedom of expression are also found in the International Convention on the Elimination of All Types of Racial Discrimination (CERD). It moves a step forward and, in its Article 4, binds all signatories (i.e. member states) to judge “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”<sup>10</sup>.

Further, the Declaration of Committee of Ministers on the freedom of political debate in the media<sup>11</sup> from 2004 emphasized how the freedom of political debate fails to include the freedom of expression of racist opinions and opinions which encourage hate, xenophobia, anti-Semitism or any other form of intolerance. Four years earlier, the Council of the European Union adopted Directive 2000/43/

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6 Handyside v. the United Kingdom from 7 December 1976., § 49 [http://hudoc.echr.coe.int/eng#{"dmdocnumber":\["695376"\],"itemid":\["001-57499"\]}](http://hudoc.echr.coe.int/eng#{)

7 European Court of Human Rights, Sugg and Dobbs v. Sweden [http://www.concernedhistorians.org/content\\_files/file/LE/380.pdf](http://www.concernedhistorians.org/content_files/file/LE/380.pdf)

8 European Court of Human Rights, Jersild v. Denmark, Gunduz v. Turkey, Norwood v. UK, Pavel Ivanov v. Russia

9 Weber, A. (2009). Manual on Hate Speech. Strassbourg, pp. 30–47.

10 International Convention on the Elimination of All Forms of Racial Discrimination <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

11 Declaration on freedom of political debate in the media [https://www.ebu.ch/CMSimages/en/leg\\_ref\\_coe\\_decl\\_political\\_debate\\_120204\\_tcm6-11947.pdf](https://www.ebu.ch/CMSimages/en/leg_ref_coe_decl_political_debate_120204_tcm6-11947.pdf)

EC<sup>12</sup> implementing the principle of equal treatment among persons irrespective of racial or ethnic origin (the so-called anti-discrimination directive), in which introductory remarks (item three) explicitly emphasize that the right to equality before law and everyone's right to protection from discrimination are universal human rights recognized by numerous international documents on human rights. Article 3 of the Directive, however, defines "disturbing" as a special type of discrimination: Disturbing is considered discrimination in view of paragraph one (i.e. in the context of prohibition of direct and indirect discrimination) in case of undesirable conduct related to racial or ethnic origin aimed at damaging the reputation of a person and the creation of an environment in which intimidation, animosity, degradation, humiliation or assault exist.<sup>13</sup>

Therefore, it may be established that hate speech, despite everything, has proportionately precise meaning<sup>14</sup>. Certainly, it is a "colloquial expression for certain types of assaulting speech which spreads and justifies hate, intolerance and prejudices, and calls for and encourages violence or discrimination<sup>15</sup>" against certain vulnerable or discriminated groups. However, despite being presented in a wide range of forms – from "politically incorrect" jokes to open calls for lynching – both verbally and non-verbally through all forms and means of public communication, "hate speech" is detected as unwanted phenomenon which jeopardises fundamental values on which each civilized and democratic society has been based.

For defining and, more importantly, for determining whether a speech is hate speech, it is of vital importance to perceive it from the larger perspective in terms of the intended purpose and/or effect such speech induces or wishes to induce, as well as within the wide context of a given society and its historical, cultural, political and all other important connotations.

Since each form of speech occurs within certain historical and cultural context, its content and moral and emotional meanings are inseparable from such context. A speech which is not dangerous in one context, may be hate speech in another one<sup>16</sup>. In other words, during each consideration of hate speech, it is necessary to determine and assess all *circumstances* in which hate speech occurs or in which it is believed that such speech is expected to encourage violence, intimidation,

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12 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

13 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <http://eur-lex.europa.eu/legal-content/HR/TXT/?qid=1490190105325&uri=CELEX:32000L0043>

14 See examples of judgements of the European Court for Human Rights in *Factsheet – Hate speech* [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)

15 Vesna Alaburić, Limiting "hate speech" in a democratic society – Theoretical, legislative and practical aspects – Part I. Croatian Legal Review 2003

16 Bhikhu Parekh (2012), Hate speech, Is there a case for banning? in *The Content and Context of Hate Speech, Rethinking Regulation and Responses*, edited by: Michael Herz, Cardozo School of Law, Peter Molnar, Center for Media and Communications, Central European University, Budapest, 2012. <https://www.cambridge.org/core/books/the-content-and-context-of-hate-speech/0ED4A911E2138A440BB379BCCC8E2AAB>

animosity or discrimination against those towards which it is directed<sup>17</sup>. This stems from the very nature of the speech. Namely, the use of offensive words in the conversation with acquaintances and friends may lead to the opposite; to a range of desirable social effects, such as humour, social cohesion and the like. Linguistic researchers have clearly indicated that there is no universal statement of which speech might be considered as offensive<sup>18</sup>.

Hate speech is an emotive concept. It degrades, intimidates, incites hate, violence and/or discrimination against an individual or a group. Further, hate speech wants to create feelings of contempt and stereotype based on negative connotations towards persons or groups and their characteristics. Hate speech operates on primal and strong emotional concepts, it creates and disseminates discrimination, threats, fear, and hatred.

As part of a public discourse, those who disseminate hate speech wish to present it as “normal”, sometimes very strongly and bluntly, other times subtly and in a “sophisticated” form. Those who disseminate hate speech want to make their views a paradigm and wish for such speech to be completely acceptable, even justified in a given historical, cultural and other contexts. Therein lies one of the biggest dangers of hate speech: if we allow it to prosper, it can indeed become a part of a socially acceptable discourse.

It is important to consider who is spreading hate speech and how. Many actors can be generators of hate speech – such as journalists and editors, but also non-journalists, like politicians and elected officials, religious representatives and leaders, etc. In that respect, it has been long established that politicians and other persons regularly exposed to the public via different media outlets must have a wider threshold of tolerance. They must expect much wider limits of acceptable criticisms, since, as opposed to a private person, politicians seek media attention / coverage and are widely and regularly present in media.

In that respect, when considering the role of the media in dissemination of hate speech, the origin of it is of vital importance. This is especially true for the coverage of certain live events, inclusion of viewers/listeners in programmes, and lack of sufficient time to editorially prepare the broadcast, including last minute switches in guest panels, etc. The question to ask is whether, in such instances, the media only provided a platform, joined in, or fenced itself off from such statements.

As some of the cases that will be presented further on show, hate speech can even be found in broadcast programmes in the form of SMS, e-mail, Facebook and Twitter messages sent to the provider of programmes from the audience. It is then necessary to see how and what steps, if any, the media outlet took in relation to such messages. Showing them on screen is surely not the way to go and, in such instances, the provider of such programmes is to be deemed responsible.

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17 ECRI General policy recommendation No. 15 on combating hate speech [https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N15/REC-15-2016-015-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N15/REC-15-2016-015-ENG.pdf)

18 Jay, T. B., & Janschewitz, K. (2008). The pragmatics of swearing. *Journal of Politeness Research: Language, Behavior, Culture*, 4, 267–288.



There are great number of techniques and tactics media can use when they are not the actual generator of hate speech. These include exclusion of viewers/listeners who disseminate hate speech, issuance of an immediate disclaimer, refusal to provide air time to those who disseminate it (including politicians and public officials), the publication of an apology at a later stage and other similar methods.

In that respect, a wider consideration of hate speech must include deliberation on the effect of the public receiving this language. Questions such as “Has there been unrest, violence, clashes and ultimately armed conflicts?” should be asked. More substantial responsibility for the media comes when their reporters consciously, or even deliberately, use hate speech, thereby supporting it and causing its reoccurrence and reinforcement in society, as the cases presented also show. It creates an atmosphere of imperilment and general anxiety with constant labelling of enemies.

Unfortunately, the Balkans region is a prime example of such practices. Ethnic intolerance, as the epilogue of cleverly devised propaganda in the media, resulted in practically general public support to the ferocious wars. The state media supported war campaigns with a whole arsenal of unfair media coverage at their disposal and a vocabulary dominated by insulting phrases. Sensationalism, propaganda, insistence on one’s own ethnic purity, prejudice, and justification of pretentious political goals was to become an introduction to the expansion of the authorities’ territorial and political ambitions. In addition, the specific historic experience served as justification for the most varied political combinations, usually in simplified versions of journalistic interpretations. History became an argument for accusing the opponents, justification for military and political aspirations, as well as a source of permanent hostility through constant reminiscence on the past and on past historic clashes. Thus, the entire public was almost systematically being prepared for imminent clashes, through constant intimidation based on inherited national and religious intolerances. In support of this thesis, there are numerous studies and research addressing the role of media in the ex-Yugoslav conflict that undoubtedly indicated that media, while serving the regime, greatly helped in the production of wars and hatred. In his book, “Forging the War”, Mark Thompson states that «verbal violence produced physical violence» and that wars firstly started in media<sup>19</sup>.

At the end of the last century, the concept of what qualifies as “hate speech” has broadened to ideological standpoints. Not everyone accepts that there is a difference between classic forms of “hate speech”, such is incitement to hatred and even physical violence, on one hand, and usage of offensive language, on another. Despite a proliferation of studies and analyses, hate speech remains a very pervasive phenomenon difficult to clearly define, contextualize and explore.

This is indeed confirmed by examination of cases of hate speech which dealt with national regulatory authorities participating in this project. Hate speech towards minorities, different national origins, LGBTI population etc. is present and at

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19 Mark Thompson (1999) *Forging War: Media in Serbia, Croatia and Bosnia-Herzegovina*, University of Luton Press, London.

times, depending on a given political climate, increased. Hate speech is also used to disparage and ridicule political opponents.

The entire world is a witness to a revolutionary expansion of different media platforms and the proliferation of various content. Currently, many important global issues that are being shaped before our very eyes and ears, many times with emotive arguments, use border-line hate speech or even clear-cut hate speech. The past years have witnessed a fair share of crises, be it wars and conflicts, terrorist attacks, or natural and man-made disasters. During crises, conflicts and distress, truth is as a rule the first victim. In times of crises, with numerous media outlets on different platforms, it is often the case that biased, untrue and unreliable information, including “propaganda” and hate speech, may spread within minutes. Examples of inappropriate language used in the media is in abundance in today’s world – including hate speech. It is used as a catalyst of societal changes, it re-invents itself and, as seen above, is seriously becoming an integral part of the public discourse.

The era of Internet and the on-line world has brought many new players into the creation and distribution of communications channels. It has raised issues of user-generated content and open journalism. People can now comment on the news and otherwise interact with others about different media output. People can now easily create and disseminate video content and news. Internet, new media, social networks, etc., have allowed people to act in public as they never have before. A recent case from the European Court of Human Rights, *Delfi AS v. Estonia*, dealt with the responsibility of publishers and tackled hate speech on Internet and the responsibility of web portals for anonymous defamatory comments of users i.e. readers. In this case, the Court concluded that intervention into the right of expression was in compliance with the law and that the hate speech expressed in users’ comments does not enjoy the protection of Article 10 of the European Convention of Human Rights. What is important for this decision is the fact that the Court refused the arguments of publishers from the company Delfi which manages one of the greatest media portals in Estonia, which stated that the role of such a portal as the provider of information services and storage of data was only technical, i.e. passive and neutral. The Court has the opinion that though Delfi was not the author of such comments, that does not mean that it did not have control over the space in which comments were created.

This important step towards more democratic expression on the Internet and a place where European values and laws are adhered to, was only the beginning to discouraging racism, xenophobia and other phenomena on the “network of all networks”. An initiative of the European Union from 2016 and measures of the governments of member states, such as Germany, Britain and France, are directed to encourage websites and social media to remove hate speech on the Internet<sup>20</sup>. An online “code of conduct”<sup>21</sup> is aimed at the fight against hate speech on four of the largest Internet companies: Facebook, Twitter, YouTube and Microsoft. This

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20 Along with “hate speech”, such tendencies are also directed towards the removals, the so-called *fake-news*.

21 Code of Conduct—Illegal online hate speech, Questions and answers [http://ec.europa.eu/justice/fundamental-rights/files/code\\_of\\_conduct\\_hate\\_speech\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/code_of_conduct_hate_speech_en.pdf)

code represents the first great attempt to define how technological companies should react to hate speech on the Internet. Hate speech, in this document, is defined as “all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin”.<sup>22</sup>

Unfortunately, fact-checks are neglected, objective facts hidden and investigative journalism is often forgotten and tagged as tedious and expensive. These developments led the Oxford dictionary to make “Post-truth” the word of 2016, defining it as where “objective facts are less influential in shaping public opinion than appeals to emotion and personal belief<sup>23</sup>.” Some observers noted that famous “Five ‘W’s” in journalism (“Who,” “What,” “When,” “Where,” and “Why.”), no longer present the golden rule. Proposed additional questions, like “Am I dreaming?”, “Seriously?”, “How did this happen?”, “Have you no shame?”<sup>24</sup> and other similar questions might be a witty way of expression in today’s paradigm, but in fact present a chilling retrospect of many occurring changes.

Curious, but also quite alarming, is an interesting trend produced by such occurrences in the media. Namely, a recent poll of young people in several countries from different continents, including Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Israel, Italy, Japan, New Zealand, Nigeria, Russia, South Africa, South Korea, Turkey, the UK and the US, conducted by a research firm Populus, on behalf of the Varkey Foundation<sup>25</sup>, an educational charity, shows that young people hold broad support for respecting and expanding various rights, like those of historically marginalized minority groups, and for equality for women and rights for transgender people. This is fully in line with the fact that young people have always been more liberal. However, the study shows that young people do not have such liberal views in terms of the right to say what you want. Polling data bolsters the view that today’s youth are embracing a right to not be offended, which could be found to squelch free speech and free debate<sup>26</sup>.

Such developments, fueled by, among other things, technological revolutions should not derive us from the leading star – quality content provided for the public. If there is no quality content to be offered to the public, technological platforms and such developments as described above become nothing else but a bunch of wires and bulbs in boxes, providing depressing and dangerous discourse.

Looking back at history, legislations of European countries were aimed at the protection from all types of xenophobia and anti-Semitic propaganda which led

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22 European Commission and IT Companies announce Code of Conduct on illegal online hate speech [http://europa.eu/rapid/press-release\\_IP-16-1937\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1937_en.htm)

23 <https://en.oxforddictionaries.com/definition/post-truth>, accessed on February 14, 2017.

24 <http://www.newyorker.com/humor/daily-shouts/additions-to-the-five-journalistic-ws>, accessed on February 15, 2017.

25 Press release of Varkley Foundation: Generation Z survey, <https://www.varkeyfoundation.org/news/press-release-generation-z-survey>, accessed on March 31, 2017.

26 <http://www.economist.com/blogs/graphicdetail/2017/02/daily-chart-10?fsrc=scn%2Ftw%2Fte%2Fbl%2Fed%2F>, accessed on February 17, 2017.

to the Holocaust. Today's laws on "hate speech" are increasingly directed towards discouraging speech which is offensive towards somebody's national or gender belonging, health condition, age, and the like. An influx of large numbers of asylum seekers and migrants to the European Union since 2015, in combination with reactions on a range of terrorist attacks to EU member states, has contributed to more frequent manifestations of racism, xenophobia and intolerance within public space, particularly on-line<sup>27</sup>. Extremists of all types have used open forums and places on the Internet as well as numerous new technologies to promote their poisonous ideologies. However, what is also worth attention is, as shown by a research study from the Great Britain, that most hate speech comes not from extremists or radicals, but from ordinary people<sup>28</sup>. (A similar conclusion was also drawn by Hannah Arendt in her study "Eichman in Jerusalem – -- – Report on the Banality of Evil"<sup>29</sup>, establishing that mostly ordinary people, not criminals and monsters, had committed the most terrifying crimes after being adequately encouraged to do so.)

When determining priorities in this area, it is important to reiterate the vital role media plays in generating democratic culture which is far wider than any political system. Media is instrumental for the public's ability to generate its experiences and learn from others. A constructive political debate is hence formed. Dialog is vital and media is crucial in including all actors in a dialog. However, despite many practices, especially in the era of the on-line world, journalism should hold the premises of an ethical framework. Despite all the possible gadgets that offer us a vast variety of services and content, and the many different players in this arena, underneath it all lies, or should lie, the basic principle of ethical journalism. This should not be perceived as some old-school mantra which is obsolete in the modern world. Considering the issues raised by the wide-spread practices of open journalism, one must consider whether such principles should be expected to be adhered to by several non-journalistic players which are an integrated part of services provided. Every single person on-line can potentially become a journalist since every post, every piece of user-generated content is potentially offered to a vast number of users, etc. Not all "journalist" occurrences enabled by modern technological solutions are included in national/international/supranational regulation. This is especially important from the perspective of offering of local and national news services, where these questions come into light. The development of new media, the emergence of open journalism as well as the plethora of media services offered throughout Europe are contextual factors which provide fresh angles for the debate on hate speech.

When debating on these issues, a crucial issue to underline is that insurance of full enjoyment of the right to freedom of expression should be a paradigm which is vital in any democratic society or ones that wish to become democratic. It

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27 Fundamental Rights Report 2016 – FRA opinions <http://fra.europa.eu/en/publication/2016/fundamental-rights-report-2016-fra-opinions>

28 IGLYO On Online Hate Speech <http://www.iglyo.com/wp-content/uploads/2014/01/Online-Hate-Speech-WEB.pdf>

29 Hannah Arendt, Eichman in Jerusalem – Report on the Banality of Evil, Politička kultura, Zagreb 2002.

is therefore imperative to ensure a firm legal basis for the right to freedom of expression, on the one hand, but also ensure that hate speech and offensive language do not become acceptable forms of expression. This requires an interdisciplinary approach and the involvement of a wide platform of actors. An honest and sustainable dedication to ensuring independence of the media and independence of regulatory authorities, as vital prerequisites to democratic functioning of any society, present a concrete and measurable contribution to this endeavour.

“If we don’t believe in free expression for people we despise, we don’t believe in it at all.”

Noam Chomsky

On the other hand, vast numbers of people tend to find hate speech where it does not exist. Therefore, it is very important that decisions on labelling a certain speech as such should be based on the premises related to the right to freedom of expression, and deem hate speech as that which is absolutely against all ethical and professional norms.

In that respect, national regulator authorities (NRA) in charge of regulation of audiovisual media services and media services of radio, to a bigger or lesser extent, face this important issue. Reports prepared under the auspices of the European Platform of Regulatory Authorities (EPRA) suggest that most European countries include elements related to hate speech in media related law and/or criminal codes. While it is presented that constitutive elements of hate speech lie in various national definitions, a legal basis provides information on the extent of prohibition. Hence, legislative and sub-legislative frameworks refer to hatred/discrimination based on race, gender, religion and nationality, but also ethnic groups, colour of skin, language, morale, sexual orientation, etc.

A number of NRAs do not have the power to issue sanctions for breaches of these rules, while the others are directly empowered with the range of sanctions at their disposal, as this publication will later present. This can be seen from the part of publication dealing with overview of national legislations and powers of NRAs. In some instances, tendencies or even direct measures have been taken to reduce powers of NRA’s. Usually, this comes in the form of a withdrawal of sanctions that were previously provided for NRAs, and most prominently, this includes withdrawal of financial sanctions and introduction of referral mechanisms, including cases of hate speech.

It is important for regulators to be open-minded in their response if they want to play a role in finding solutions. The need for stakeholders to recognize the need for legislation that provides for a strong and vibrant NRA is extremely important. Politically influenced and controlled NRA with no executive powers (or limited ones) just serves the political elites’ benefits. The main characteristics of a strong and vibrant NRA are different aspects of its full independence, ensuring that they are legally distinct and functionally independent from the industry and

government (e.g. they neither seek nor take instructions<sup>30</sup>). Further, NRAs need to have sufficient powers and resources and must operate in a transparent and accountable manner as set out in a law. Many guiding principles set out in detail the necessary prerequisites for functioning NRAs<sup>31</sup>, but there are also some not quite so tangible that this publication wishes to emphasize. They relate to overall climate (both social and political) of the society in which an NRA operates, which should have an established understanding and respect for independence of a certain state body and regard it as a needed and reasonable part of the institutional framework. Personal stamina of people appointed and employed in an NRA also plays a part, especially in cases of hate speech. Numerous elements can try to form the ultimate decisions-making process in NRAs related to such cases, but full personal and professional commitment and determination to abide by rules must always be the first and the only avenue.

As is seen from this publication, hate speech, both online and offline is becoming more frequent in our societies. Further chapters offer full insight into these cases, and provide an avenue of possible remedies to this situation.

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30 These principles are recognised by the new draft of the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive, codified version).

31 For example, INDIREG FINAL REPORT: Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive”, [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf), accessed on February 24, 2017.

## 3. Cases of hate speech and offensive language in the region

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**H**ereinafter is the list and short description of case related to hate speech and offensive language regional NRAs dealt with within the scope of their work and mandate.

### Albania

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#### TV Klan, 2015, Hate speech

Audiovisual Media Authority (AMA) monitored this station and in particular the program "Free Zone". In the last part of the show, during a discussion with a guest singer, the host of the show directly used phrases and expressions, such as: *"Why, they don't say that one can't trust the Çams<sup>32</sup> for no reason"* And then adds: *"(Çams) ... are good people, so good that killing them is not enough! I am joking, of course, it was a joke, I'm a Çam myself!"*.

In the course of the conversation, the host of the show argues with the guest singer saying: *"You're wrong, people from Saranda<sup>33</sup> are not like that, they are... ok, they are very evil, killing them is not enough either, but they don't say anything about the Çams."*

Monitoring showed that the show violated principles of law, stipulating that audiovisual service operators, during the course of their activity, shall not allow broadcasts that promote intolerance among citizens, which promote or justify violence. Based on the above statements of the host of this program, it was concluded that this was violation of the requirements, according to which, stations should not broadcast shows with content that promotes hate based on race, gender, religion, ethnicity, nationality, and any other kind of discrimination, they shall not violate the dignity and fundamental human rights and they shall not broadcast shows that might encourage criminal acts.

#### AMA action

AMA has decided to treat this case as a hate speech because it was harmful for the public to hear this kind of discrimination. So it decided to impose a financial sanction in the amount of cca 3,000 EUR.

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32 Chams are a sub-group of Albanians who originally resided in the western part of the region in northwestern Greece.

33 A place in Albania close to Greek border.

## Bosnia and Herzegovina

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Outline of hate speech cases in Bosnia and Herzegovina processed by the Communications Regulatory Agency (1998–2016)

### TV EROTEL, 1999, Hate speech

Communications Regulatory Agency BH (CRA) was advised by OSCE Croatia that TV Erotel re-broadcast the HRT<sup>34</sup> program “Ecology and Ethics–Cuttlefish” on 16 December 1998 at 20:50, TV Erotel, as a BiH broadcaster was responsible for the content of this program.

Examples of the comments made in the program included:

- “...the main individual is certainly George Soros, crazy broker and malicious speculator. He stole billions, gives millions, and makes sure to pick up the interest rate in terms of black ink”;
- “...the disgusting Serbian – Jewish lobby which always reemerges so that Croatia can be battered down. These are prudent masons. Many of whom are sexually peculiar” and
- “Therefore the cuttlefish looks for and flawlessly finds its collaborators within the editorial staffs. They are physically ugly, some deformed, psychologically feeble, lovers of themselves, stupid. In private eye, they are generally queer. Guys like guys, girls like to be with girls”.

### CRA action

The program in question was determined to contain anti-Semitic, anti-Serbian and homophobic comments framed in the ecological metaphor based on the cuttlefish, to illustrate how Serbs, Jewish people and homosexuals have harmful influence on Croatian economy and society. This is considered as language which may cause offense and it represents violation of hate speech provisions, based on which the station was issued a financial penalty in the amount of 1000 EUR.

### RTV SREBRENICA, 1999, Hate speech

CRA received UNMBiH<sup>35</sup> report which alleged that on 8 February 1999 at 19:45, TV Srebrenica news program included a statement from the local Serb Radical Party Municipal Board that reads:

“This is to inform the citizens of Srebrenica that on Saturday 6 February, a group of Serbs, so called “Poturica<sup>36</sup>”, have organized a visit to Tuzla and offered their hands to make peace with our enemies. This group was invited

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34 Hrvatska radio televizija – javni RTV servis u Hrvatskoj.

35 UN Mission to Bosnia and Herzegovina.

36 A pejorative word, describing Serbs who had converted to Islam in the Ottoman Empire.



by Hakija Meholic, the biggest butcher of the Serb people. On behalf of the Serb people of Srebrenica, we want to say that this kind of visit is not allowed and is forbidden”.

### ***CRA action***

In this case CRA determined violation of article which forbids use of language which could incite to violence, disorder or hatred, based on which the station was issued a financial penalty in the amount of 450 EUR.

### **Radio Postaja Drvar, 1999, Hate speech**

On 21 June 1999, CRA received an information about possible inflammatory comments made during a radio show of Radio postaja Drvar on 16 June 1999. Allegedly, callers were threatening to “complete what they initiated on 24 April 1998”. It referred to a violent incident in Drvar that occurred in April 1998 when a mob attacked Serb properties and International Organization offices. Mayor of Drvar (of Serb nationality) was seriously injured, and great number of Serb properties was damaged.

The following content was broadcast:

Listener: „I would like to give a message to Serbs if they are listening. Last year in April they had the first part of the game and they will have the second and the second always leads to victory...I would like to say that Serbs wanted to see our reaction to this. But they know that we can revenge our police officers in many ways... “

Listener: “I am supporting the previous caller in what he said. They had the first part last year and they will have the second very soon.”

Anchorman did not react to these statements.

### ***CRA action***

It was concluded that the comments made by the listeners threatened listeners of Serb nationality. There appeared to have been no effort on the part of anchorman of the program to moderate or challenge the views of these listeners. Due to the broadcast and failure of the station to present editorial responsibility for the comments made, it was determined that the station breached provisions related to hate speech based on which the station was issued a financial penalty in the amount of 450 EUR.

### **RTV SV. Georgije, 2001, Hate speech**

RTV Sveti Georgije broadcast a program on 8 May 2001, between 20:45 and 22:02 hours that was produced in a form of an interview referring to coverage of event occurred in Banja Luka during the cornerstone ceremony for Ferhadija mosque in Banja Luka, when serious incidents took place causing injuring of people and

material damages. The program was rebroadcast the following day. Namely, an interview was made with Aleksandar Sopot, painter who commented on the events occurred following the cornerstone ceremony.

The interview included the following:

Viewer: "And this relies on the past that was bloody anyway and it is known what have they done and they were (here is an unclear part) they are making traps to the Serb people non-stop, they would not be here if there is no problem, if there was no problem they would leave. However, they find an interest to be here to provoke, to make Serb people headless and to provoke. Simply, they are not peaceful and tolerant people to live with, but to wage war, however, I think that everything here is being done forcefully. I know two brothers who cannot live together and not to mention three peoples that were waging war in the last century three times stained with blood."

Viewer: "Why do Bosniaks, who consider us as vandals and destroyers, why do they push so much to build this Mosque in the center of Banja Luka, isn't Kozarac, Kotor Varos and soon maybe even Celinac enough to them. What is their point? Didn't they remember on this great Serb celebration the year '92 when it was destroyed, when will they learn. I think that our youth that did it, that is the support for their future and it is better. I consider that they should not be let even near. That would be it, thank you."

Anchor: "But here we can hear words like Baliija (pejorative for Muslim) and Turk. What does it mean? How could it in this environment like this....."

Guest in studio: "It is simple, with Serb people this word Turk means someone who is, who does crimes, who..."

Anchor: "Who we do not like."

Guest in studio: "Mister, I will tell you, this Mr. Klein and those who were here yesterday, well, it makes me happy, were of those they brought with themselves. You know that Muslim are taking their shoes of when they enter the house. You can imagine now, after the 5 hours they spent in the bus, when they came into this little house and took their shoes of. You can imagine how Mr. Klein and others felt after 5 hours when 1000 of them came into the house and took their shoes of. I thank those Muslims because they came and took their shoes of."

### ***CRA action***

CRA concluded that the program was broadcast without exertion of any editorial control. It did not only denigrate the religious beliefs of others, but it also caused a considerable risk of public harm. Due to determined breach, RTV Sveti Georgije was issued a license suspension for the period od 90 days. This suspension

followed previous similar determined violations by RTV Sv. Georgije. Bearing the fact that the station had broadcast programs that were qualified as serious examples of hate speech, adding that the station did not comply with decision and sanctions issued by CRA, RTV Sv. Georgije license was afterwards revoked, after which RTV Sv. Georgije initiated a process at Human Rights Chamber<sup>37</sup> against the state of BiH for alleged violation of Article 10. of European Convention of human rights and fundamental freedoms. The Court decided that BiH, through CRA's decision, did not breach Article 10 of the Convention.

### **Radio Naba, 2002, Hate speech**

On 18 January 2002, CRA received complaints from citizens concerning program broadcast by Radio Naba in the evening of 17 January 2002, which was re-broadcast the following morning of 18 January 2002. This program was a live coverage of the events taking place in Sarajevo, in the night of 17 January 2002, regarding "The Algerian Group"<sup>38</sup>.

This program included live calls for gathering in front of the Sarajevo Central Jail, such as:

Anchor: "So, you make the call through air one more time to brothers and sisters, whoever can, right?"

Spouse of one of the prisoners: "So, dear brothers and sisters, whoever can, at least these from Sarajevo, who are closer. I do not guarantee that you will not come for nothing, but if you can, you have a reward for that, come here, be here with us."

Anchor: "All right, one more information, which jail is it?"

Spouse of one of the prisoners: "Central jail, on the other side of the Court".

Anchor: "Central Court, on the other side of the Court....."

Listener: "Since we are down in Nedjarici<sup>39</sup> area, if they manage to break these tampons, for us to organize over here and to gather by UN, and since they are passing here on the way to the airport, to try to make a barricade, for them not to be able to break."

Anchor: "What do you recommend then?"

Listener: "I recommend, that is, we will be in touch with some brothers who are in front of the jail."

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37 Court that was founded on principles of European Court for Human Rights only for BiH.

38 The events related to extradition of six persons from Algeria to Guantanamo, Cuba. During this process, a group of citizens gathered and demonstrated in front of Sarajevo Central Jail building in the evening of 17 January 2002.

39 Southern part of Sarajevo.

Anchor: "All right."

Listener: "I suggest to all of those who listen to Naba, and are here in Nedjarici area, I will call again when they contact us again from up there, if they break that cordon and tampon, for them to come out when I call them through this same radio. Can it go like that?"

Anchor: "All right, it will not be a problem. In principle, it is important to satisfy the justice and the core of our country, and that is, if they are innocent and free, to be innocent and free."

Listener II: "I want to Selam you all and these in Sarajevo these brothers, to Selam them and give them support. Inshallah, we have planned to, after Sabah-namaz<sup>40</sup> to go up there."

Anchor: "Where are you calling from?"

Listener II: "From Visoko."

Anchor: "So, after Sabah-namaz, start for Sarajevo, is it?"

Listener II: "And Selam to Osama bin Laden."

Anchor: "He probably cannot hear this Selam. Here, it was another Selam to Osama bin Laden. He does not hear that Selam, that is for sure....."

Field Reporter (not known whether he was an employee of Radio Naba): "I am calling all those from Sarajevo, Visoko, whole Bosnia, come here asap. The more there are of us, better will we able to defend ourselves."

Also, the program included the jingle which stated:

"Step by step, slowly but surely, we go forward. Battle by battle, we are slowly but surely fighting for our faith, our Islam. Our Constitution is Kur'an, our anthem is Ezan<sup>41</sup>, and our hearts are Islamic countries. Step by step we continue. Do you wish to be with us, dare you to be with us, do you want to be with us? Radio Naba."

The comments from anchor, listeners and reporters from the field included statements, such as:

Reporters: "It is better to get beaten here, rather than lay in bed while the brother goes to death.....That is why they have surrounded us, so we cannot go up there for help.....Be awarded by Allah, after all, this is one of the thing because of which Muslims needs media, so they do not get murdered in silence as they were murdered during the war and before the war while

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40 Early morning prayer.

41 Call for pray from Minarets.

they were Young Muslims. Therefore, Muslims are not to allow ever again to be murdered in silence..... The situation is out of control here, while our ministers who are paid 10 000 each, receiving salaries regularly, brothers are beating us on the snow, this is real.....”

Anchor: “Well, that is for you not to be able to react at all. If you hear tekbir<sup>42</sup> up there, beware that it is on the way, in five minutes they will attack.... Here, this sister wonders if it is true. The sun will rise, if God allows, morning will come soon, Muslim blood will see the morning light. In the morning, whoever goes out on streets, Muslim blood will see the dawn..... Unfortunately, this happened to us, unfortunately, we did not make coverage from some other country, some God forbidden place, but from our Sarajevo, which was surrounded. Those Markale<sup>43</sup>, if you remember those pictures and those streets and Vase Miskina<sup>44</sup>, and who knows what else, that is our Sarajevo tonight. Now we move on.”

Listeners views included:

Listener: “This is really an event, I think it can not be stopped on this, we should massively gather there, this morning, and to request resignations from Lagumdžija, and Minister of Internal affairs, and not to disperse until they resign.”

Listener II: “I think they dragged down “Chetniks” from Pale, let God them turn into stones! If I only had “zolja<sup>45</sup>” to throw it among them, even if our brothers go with them, at least they would be sehids<sup>46</sup>..... This is big, I don’t know, I can’t find the words, one should take all of them down, hang them. Half of Sarajevo should be hanged, this is disgraceful. Those who listen to this, those “old farts” do not listen, they sleep, they have their houses full of money envelopes, they don’t care for the sufferings off the poor. They don’t care, half of Sarajevo should be hanged. Nobody even tried to get out, those bastards, may God stone them all.”

### ***CRA action***

Appeals for gatherings could have seriously jeopardized the public safety and security of citizens, members of the law enforcement agencies and the international community. Radio Naba’s continued support in terms of soliciting and using the station as a logistical center for gatherings represented a threat to public harm and rioting, since there was no guarantee that the protest would be peaceful. Similarly, re-broadcast of this program the following morning also

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42 Allahu ekber (Allah is the greatest), the beginning of all prayers.

43 Sarajevo market-place where two big massacres of civilians happened during the war (first in February 1994, and second in August 1995)

44 Former name of Ferhadija Street, where the first big massacre of civilians occurred in Sarajevo during the war, in 1992.

45 Anti-tank weapon.

46 Muslim fighter who has sacrificed his life in the name of God.

risked a deterioration of public order. The responsible personnel of Radio Naba has not given any consideration as to moderate and balance the views and emotional statements which could lead to incitement of violence, encourage intolerance and hatred and possible cost lives. Contrary to this, anchors and reporters actively participated in inciting such speech in program. Radio Naba has systematically promoted partial opinions, supporting one side, and it dedicated extremely disproportional amount of time to broadcast the program in question. In addition, responsible staff of the station had not only supported one opinion regarding the topic, but it continually portrayed “soft” approach in asking questions, presenting the facts and broadcasting statements that entirely upheld views of protesters and listeners. CRA contacted relevant bodies in order to inquire whether this program violated laws related to ensuring national and public safety, and received a negative response. Consequently, CRA processed the case in terms of possible applicable rules and regulation, and determined Radio Naba in breach of provisions related to hate speech, decency and civility, fair and balanced reporting, based on which the station was issued a financial penalty in the amount of 500 EUR.

### **RTV Alfa, 2004, Hate speech**

RTV Alfa broadcast program called “Sacrifice”. The program was produced by Iranian TV Sahar and the topic of the program in question was dedicated to conflict between Palestine and Israel. The program included video spot in the duration of 5 minutes and 20 seconds (short description of the spot):

Young man is decorating the car for his wedding and is preparing to leave. At the same time, there are scenes of consequences of conflicts between Palestinians and Israelis. The young man is being sent off by his mother and probably a girlfriend. He starts the car and after a short drive he stops and opens the trunk with an explosive device within. He releases the device and puts a piece of cloth around his head with the sign «Kuds<sup>47</sup> is ours», after which he continues his drive towards Israeli military checkpoint. They open fire on him and the car, but he continues to drive to them and Israeli flag with clear intention to kill and sacrifice himself. Next scene shows mother crying, then the big explosion and Israeli flag is burning. In the background of the spot, a song in Arabian was heard and translation of the song is sub-titled.

Each scene from previously described spot was followed with the text and one of the lines states:

“Hurry brother, it is time of my Sehadet<sup>48</sup>, it is time of my sacrifice, it is time to save the homeland. The weapon is mine; my stone is breaking the glass of the night. My scream, as an axe is cutting roots of the night. Tekbir, o Muslims. We need to sink the boat of the night as a storm. Let’s break the night. Hurry brother.”

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47 Jeruzalem.

48 A prayer.

After the broadcast of this spot, anchor addresses to viewers with following words:

“Dear viewers, we have watched fourth and final edition of program «Sacrifice». With due respect and gratitude to all fighters for a right cause who fight throughout the world, who fight to secure reforms in their societies and changes in the world scene, we thank you for being with us through all four editions of program «Sacrifice».”

### **CRA action**

Concerning this case, the station alleged that it had broadcast the news and that it aimed to present information from other source for its audience. CRA deemed that presenting news either from domestic or international political scene in fair and balanced manner is an editorial task. However, the video spot is not news nor does it represent another source but it is a symbolic description of unfortunate happenings in Palestine and Israel, which indirectly sends a clear message of incitement. The broadcast in question may arouse emotions in many people simultaneously and the stations has a responsibility to ensure that all programs are presented factually and in a way which minimizes the possibility of encouraging violence or of reinforcing attitudes of national hatred. It was determined that the station failed to show responsibility for the broadcast content, and it additionally breached relevant hate speech provisions in comments made by the presenter, based on which the station was issued a financial penalty in the amount of 3 000 EUR.

### **RADIO NABA, 2005, Hate speech**

CRA has received an information that Radio Naba had broadcast program named Innehul Hak on 30 January 2005 from 20.30 to 23.30 hours. As the analyses showed, the guest of the program was lecturer – professor Samir Avdić, talking on the topic “Behavior of unbelievers”.

First part of the program mainly consisted of Avdić’s lecture concerning behavior of Muslims towards religious holidays of other religions. Second part was interactive, including responding to listeners’ questions. In some segments of the lecture, members of other religions were mentioned in the following context:

“.....My dear brothers, take one rule, Jewish hand are behind every evil in the world. There isn’t any problem, especially when it comes to morals, that is not made by Jews’ hands. Even Christians were not that immoral, and you can see that clearly. Christians were not that immoral, nor have they gone into debauchery, corruption, delusion, prostitution, homosexuality and drugs, so much, until Jews started making policy for them, until the Jews came and taught them how to do it. It is because Jewish inverted based on their knowledge. They know the truth, they knew the truth, they know that Prophet Mohammed was a messenger of God, but they did not want to accept that and they moved away by clear instruction. Unlike Christians

who also made mistake, but they left because they were ignorant. Because of this, Christians will much easily accept the truth than Jewish. Even though there is no difference when it comes to unbelievers, kafirs.....This is, why we Muslims, especially Muslims living on this region, must understand Allah's laws, especially regarding these issues, so we can avoid to be in company with some, to eat, drink, broach this or that animal, and expect to live to the year, that happened twelve years ago when some Muslims were put to the skewer themselves. ....”

### **CRA action**

In this case, CRA assessed that interpretation of religious book used in this program, portrays inherent negation of spiritual significance of others, predominantly Jewish people. Open and public discrediting of certain national values in such a manner, can exert presence of religious antagonism in this region. CRA determined that Radio Naba, as a station which mostly broadcasts religious programs, its expediency considered from the aspect of ethnic and national tolerance, made severe omission to evaluate content of the program, language used to incite national and religious hatred. The station was found in breach of hate speech provisions and issued a financial penalty in the amount of 10,000 EUR.

### **TV OBN, 2008, Hate speech**

On 30 August 2008, TV OBN broadcast a talk show “Mimohod” which was dedicated to Queer Festival in Sarajevo and reactions following this event that resulted in incidents and in attacking participants of the Festival shortly after the broadcast of the program. On 18 September 2008, the station also broadcast talk show Telering, hosting Dragan Čović, president of the party HDZ BiH – topic of the program was “Should the Croats be a national minority?”. Realization of both programs as to concept, topics, and conversations with guests was not disputable. What was determined as breach is the content of SMS messages aired on the ticker during the shows.

Content of some SMS messages broadcast in talk show „Mimohod” include:

Beware, you have been damned in all religious books, it's a disease, especially what you've been doing during Ramadan, it is perversion. Be afraid....

It will be worse that in Belgrade. Maniacs<sup>49</sup> are ready!

You peders<sup>50</sup>, if you decide to attend the parade, you only risk to be beaten up, lesbians too.

It's a disease, they need to be cured. This is a religious state, and this what you are doing, will never pass. There will be problem, Belgrade was a warning.

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49 Title of a fan group of one Sarajevo soccer club.

50 Pejorative term for homosexuals, a French language term used in BiH as well.



Aaa, I have not kicked for a while, I look forward to your parade.

Maniacs can't wait for the parade! We are waiting for you! You're what we need!

Send a message where we will gather against evil, where we will be waiting, ready.

Fukare will come to help Maniacs, Hords and pitari to bear off fagots<sup>51</sup>.

Just try to come, you will get beaten! Stones and sticks over your backs.

BE AFRAID. You only need to pass by the mosque and expect us to watch peacefully. Well, it will not be like that, it will not be peaceful.

There are more believers that you and yours protectors and we are ready, ready.

Many of those like you, from Hare Krishna and Jahve witnesses ended up in the emergency with knives in their stomachs, I will be humble, I wish you the same

HZ and TM87 first team together against gay sick persons

Be sure that this manifestation will not take place, there will be problems, and you scum should go away from here

How are you not ashamed of making Sarajevo dirty, not just Sarajevo but whole BiH, on Ramadan. We will do anything to stop that Red Army Mostar

Muslims, Christians, Catholics, Jews it is time to unite and banish these imbeciles

I am waiting for this parade in the first lines, to shoot at you. Many will be hurt.

Horde zla will judge you. We are looking forward to this day more than Bairam! Mimo<sup>52</sup>, beware that your son does not bring the son-in-law to the house!

Here is our chance to unite and kick down all these sick people (homosexuals). Death to gays.

There will be problems, there will be beating, death to perverts, freedom to the people.

Sarajevo people banish the cattle!!! Regards from Banja Luka.

the whole BiH is sick of you, no parent wants his child to be like you. Stop this shame.

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51 All reference to names of soccer clubs fan in BiH.

52 Employee of the station.

Content of some SMS messages broadcast in talk show Telering:

Bosniaks are a cock and bull story of Alija Izetbegović, you stupid, you are all poturica – made of Croats and Serbs.

Croats and Serbs should make amends for all times, we are all Christians, and those.....

Muslims, do not make mistake as Milošević in Yugoslavia, with bloody decomposition!

Dame of Sinj, should you be able, take Komšić, and return Franjo. Regards to Croats and Serbs.

Serbs are a minority, not Croats. Regards from Tomislavgrad.

BiH has always been Serbian and Croatian, and you Muslims came from somewhere, go to Turkey and flaunt there.

Serbs and Croats should be smart; they should make an agreement on join goals and leave Muslims “cup-size state”.

Bosniaks do not exist, their origin is of Serbs and Croatians, and they would have given everything to have a Croatian passport. Unite all Christians.

If anyone is a poturak, that your Catholics are of Tuđman. If you want your entity, then you want a war, and Bosnia will live forever, because Bosniaks are watching over her, not the HVO

Only Serbs can save Croats in BiH from filthy Muslim politics.

If you Serbs and Croats continue to behave as such, you will disappear from Bosnia one day, and Belgrade will be a pashaluc, Croats will be Gypsies in Belgrade. Selam to Bosnians.

Croats were and will be a nation. Honest and diligent people. Serbs unfortunately a crack. Bosniak.

### ***CRA action***

The station tried to justify its omission explaining that it did not expect such messages to come from the audience, which shows that the station did not accept responsibility for the program, portraying high level of non-compliance with relevant provisions. CRA considers that one of the main functions of the media is to inform the public, which is especially true for a TV station, due to the weight of the message that is visualized and due to the impact of this media. In this case, this argument is even more significant bearing the fact that TV

OBN with its signal covers most part of BiH population which is also received in many countries in the region. The station should have been aware that allowing public to take the responsibility and enabling inflammatory contents and messages of hatred, inciting to violence and discrimination without any control, will open the path to freedoms of expression abuse and potentially contribute to creation of hostile atmosphere. Since SMS messages are widely used communication mean in TV programs which allows active participation of the audience, the station should have showed higher level of responsibility and sensitivity towards specific mood of BiH public regarding topics covered by the programs in questions. Broadcast of these programs led to the violation of hate speech provision, based on which that station was issued a financial penalty in the amount of 15 000 EUR.

### **TV Vikom, 2008, Hate speech**

During the period of election campaign for local elections in September 2008, TV Vikom had broadcast music spot „Radovan, Serb son“, performed by Miško Cvijetić and orchestra named Vikomice. Performers in the spot were dressed in white T-shirts with visibly placed emblem of the Serb Radical Party of Republika Srpska, whose president and candidate on local election is also owner and director of TV Vikom.

During the spot, the station inserted video part of director of TV Vikom in the company of a person look alike Dragan Dabić, alias of Radovan Karadžić, who was shortly before the broadcast of the program arrested in Serbia and extradited to the Hague Tribunal. These video inserts were completed with audio recordings of Karadžić's war-time speeches.

The spot starts with the inserted scene of person who looks like Dragan Dabić, alias of Radovan Karadžić, with the director of TV Vikom, who was also a candidate at the local elections, overtoned with audio of Radovan Karadžić's speech: "Ladies and gentlemen, dear brothers and sisters..."

Lines of the song:

Radovan, Serb son,  
Why did you get off the mountain?  
Radovan, why did you leave Pale,  
Romanija would never betray you.  
Radovan bespeaks from the Hague,  
Do not be afraid, my dear brothers.  
Radovan bespeaks from the Hague,  
I am with you, my dear brothers.

Another inserted scene of person who looks like Dragan Dabić with the director of TV Vikom and audio of Radovan Karadžić's speech: "Esteemed guests, friends, neighbours..."

Lines of the song:

NATO division looked for you,  
You walked at Terazije.  
Rašo walks wherever he wants,  
From city to city, without panic.  
Rašo walks wherever he wants,  
From city to city, without panic.  
Radovan, Serb son,  
You are the pride of your homeland.  
Radovan, Serb son,  
You are the pride of your homeland.

Another inserted scene of person who looks like Dragan Dabić with the director of TV Vikom and audio of original Radovan Karadžić's speech: "May we continue to gather in good circumstances, in good relations, to preserve our country, our citizens, our cultures, our customs..."

Lines of the song:

Oh Serb, who many leaders have you betrayed,  
Today you betrayed Rašo, yesterday Karađorđe.  
You be damned by God and by blood  
Whoever betrays and sells Karadžić  
He be damned from the God and blood,  
Whoever betrays and sells Karadžić  
You were defending you Serbs,  
From eradication  
You were defending you Serbs,  
From eradication.

Another inserted scene of person who looks like Dragan Dabić with the director of TV Vikom and audio of original Radovan Karadžić's speech: "May we not leave to our heirs less than we were given by our ancestors..."

Lines of the song:

Radovan, Serb son,  
You have loved you brothers across Drina.  
Praise the God, you have mended  
Serb unity and division  
Praise the God, you have mended  
Serb unity and division.  
Radovan, put up the Calvary,  
Serb patriots will be with you.  
Radovan, put up the Calvary,  
Serb patriots will be with you.

Another inserted scene of person who looks like Dragan Dabić with the director of TV Vikom and audio of original Radovan Karadžić's speech: "We have done many things to make the world recognize our right to have our own state. Now we hear many saying a lot about the right to sovereignty and right to unite. We

expect next year to be the year of definite success of Serbian national program, liberation and unification of all Serb countries.”

Lines of the song:

Radovan, our hawk,  
The world hates you, but admires you.  
Rašo, people celebrates you,  
You are a true Serb hero.  
Rašo, people celebrates you,  
You are a true Serb hero.  
Rašo has a pal, Šešelj,  
They'll be out in a year.  
Radovan bespeaks from The Hague,  
I'll be with you, my dear brothers.

### ***CRA action***

In this case, CRA assessed that a song broadcast within TV Vikom program, especially in combination with inserted audio recording of Radovan Karadžić's speech, considered to be threatening and carrying immediate risk of inciting ethnic hatred in BiH. The content of music spot with clear political messages represents potential incitement of ethnic hatred, especially having in mind recent war in BiH, and the fact that many war consequences were present even at that moment in the context of national emotions intensified with the arrest of Radovan Karadžić. The fact that the content was broadcast during election period and obviously directed to motivate deepening of national divisions should be additionally taken into consideration. Actors of the spot "Radovan, Serb son", wore white T-shirts with the emblem of the political party that TV Vikom director represents on the elections, while the program was broadcast during election campaign when special rules regarding political presentation applied. Frequent representation of political party's symbols during election campaign, apart from usual segment of political advertising, is considered as direct communication with citizens and political promotion of the party, especially bearing that each inserted scene contains video with Mr. Vinko Perić, director of TV Vikom, president and candidate of this political party for Gradiška municipality. The stations breached provisions regarding hate speech and relevant election rules, based on which it was issued a financial penalty in the amount of 10 000 EUR. By the decision of relevant body, the director of TV Vikom, as a candidate at the elections, was removed from the list and issued financial penalty.

### **Radio Siroki Brijeg, 2009, hate speech**

Within the CRA monitoring of certain number of stations regarding reporting on fan riots between fan clubs of Sarajevo and Siroki Brijeg soccer teams on 4 October 2009, which occurred prior to the football game scheduled for 15:30, which ultimately resulted in a death of a young fan of Sarajevo club, CRA requested program recordings from Radio postaja Siroki Brijeg broadcast on 4,

5 and 6 October. Analysis of the program showed that on 4 October 2009, as of 15:37 Radio Siroki Brijeg started with reporting related to fan riots. Field reporter made live-streamed reports until 18:00 on what was happening at the streets of Siroki Brijeg.

Some of live-streamed journalistic statements included:

Dear listeners, fans of sports, I wish you a good day from Pecara, the place where football match between Siroki Brijeg and Sarajevo was supposed to start at these moments. However, this derby will not be remembered by good, no matter how it ends considering what was happening here thirteen minutes ago and still on. Those are fan riots of two opposing fan clubs that were initiated by Sarajevo fan club „Horde zla“. Two hundred of them, as soon as they got to Pecara, were running riots and demolishing what was on their way. Police tried to oppose them, however insufficient number of policemen and special forces were not able to intervene in time and stop what has been happening, and still is going on, because great number of them was concentrated to another derby football game that is taking place in Mostar. A few could imagine that this will happen in Siroki Brijeg, but rambunctious gang of Sarajevo fans, more than 200 of them, demolished everything on their way to Pecara. I am trying to get information on whether the match will take place at all, it is under a big question.

Dear listeners, once again Mario Marušić reporting live from Pecara. Injured heads, broken windows, demolished cars, injured policemen. At this moment, it is not certain that the match will take place. Tear gas, water cannons, around 150 fans of Sarajevo made such a mess on Pecara... Few policemen were not able to calm Sarajevo fans down. They came twenty minutes ago with obvious subversive intentions, bottles were flying... Captain of Sarajevo team Alaim was trying to get into the fans to calm the situation, if they could be called fans at all, but there is a complete chaos among them..... Is it possible to calm down Sarajevo fans at all?... I think that it will be difficult to stop this destruction without reinforced policemen, this destruction, this warlike behavior which has nothing to do with a football game... Bottles, firecrackers are flying around, tear gas, chairs, anything that could be used to demolish property and attack domestic fans and citizens....

Dramatic situation at Pecara continues, they are now moving to the center of the city.... Sarajevo fans are moving towards the center, breakage, rubbles... I am afraid that Horde zla (Hordes of evil), I think it is the right name for them, will continue devastation of some buildings at the town center, they are still kicking things and throwing stones. New clashes, I think things will not end up well at Pecara today, new clashes and, if I may say so, continuance of warlike situation here at the streets of Siroki Brijeg...

Shotguns resound in front of the stadium, they are trying to rout out these robbers, I think I can call them like that because of their behavior.

War on the streets of Siroki Brijeg is still on... War on the streets of Siroki Brijeg initiated by Sarajevo fans, 150 of them, is still on.... In addition to the information from Pecara, there is another trouble, the main pipeline was damaged, there is no water in the larger part of Siroki Brijeg and it is uncertain until this situation will last...But, what we saw here today was incredible, such wantonness, destructive march, that desire to destroy what was not theirs... I said, more than 150 guesting fans in their destructive riot here on Pecara. Domestic fans responded.... Now, situation seems calm... Riots and problems in Mostar. Rumors are that there are those seriously injured, even dead. Luckily, this is not the case here at Pecara, I was here all the time. There is a lot of material damage, demolished cars, one police car was on fire, few cars that were parked was crashed, a lot of injured heads, but it is calm now and without most sever outcome... Unfortunately, the worse happened. Per information I received from Emergency, I think it is true, one Sarajevo fan is dead, the most difficult case took place on BiH football terrains. Apparently, it was a gunshot wound. One person from Sarajevo died during reanimation. So, one person from Sarajevo died in riots in Pecara caused by around 200 of them, let's call them, Sarajevo fans. But this is a true tragedy.... Hordes of evil have directed an unseen incident here today, something that we had never seen before, these scenes, I said there were fan riots before, but what Sarajevo fans initiated here today, and after the clash with the police forces and domestic fans, exceeds any proportions, something unremembered of in Siroki Brijeg... So, bloody Sunday in Siroki Brijeg, devastating riots of Hordes of evil, unseen serious incidents with severe, tragic consequences.... Sarajevo fans were accompanied by the police on their way out of Siroki Brijeg, couple of personal vehicles and buses, of course followed by throwing objects, bottles and stones towards them, but they were forced out and I believe the peace has come... We are on Pecara again. Police is inspecting the place where unseen riots in Siroki Brijeg took place, riots caused by fans of Sarajevo, per estimations 150–200 of them who came with buses and immediately after they came to Siroki Brijeg they started with demolishing incident, clashed with police forces and domestic fans. Blood, breackage, rubbles, shotguns, broken windows and cars, tear gas and water cannons, real war was taking place on the streets of Siroki Brijeg for an hour, destruction, wantonness hard to describe. I already reported, one person from Sarajevo was mortally hurt in these riots, and dozens was hurt on both sides...

### ***CRA action***

While considering this case, CRA focused exclusively on reporter's live reporting from the streets of Siroki Brijeg. Selection of other official information regarding fan riots in Siroki Brijeg was not disputable thus not analyzed. Reason for this focus was the fact that responsibility of journalists and reporters who deliver live news and reports, especially when it comes to reporting on events which might involve any kind of violence or disarrays, is indisputable and of essential value having in mind the power of the media to arouse different emotions in many

people simultaneously. In such situations, journalists, reporters and editors have responsibility to ensure presentations of information and opinions in a manner that will minimize possibility of encouraging, direct or indirect, explicit or implicit incitement to violence. Journalists and reporters should control their emotions, because it is necessary while reporting on events involving violence.

Some of the reporter's live statements broadcast during ongoing fan riots might have prompted some listeners to conclude that fans of Sarajevo football club came to Siroki Brijeg intending to cause disorder and violence, despite the police efforts to stop them. It is reasonable to expect that such statements might arouse revolt and lead listeners to involve in the incident themselves, because the reporter presented the whole incident as an attack directed by Sarajevo fan club, focused not just on Siroki Brijeg fans but to the city of Siroki Brijeg in general. In such a context, content of the program could be characterized as inflammatory, namely as a content that could have aroused certain emotions by listeners and which could have encouraged them to act indignantly causing additional negative consequences. Negative consequences in situations as this might gain on intensity unless media reporting is not realized in responsible and sensitive manner, with appropriate reaction by journalist or reporter in a way which will minimize emotional charge. This is especially important having in mind that one person was killed in these tragic events. In this context, radio and TV stations, particularly public media, have great responsibility to uphold high standards in journalism and professionalism in broadcasting. It should also be noted that no one in the studio made any effort that would have contributed to calming tensions, to extend the appeal to listener and citizens to keep cold head during tragic events. Based on the above mentioned it was concluded that the station breached provision related to hate speech, based on which it was issued a financial penalty in the amount of 500 EUR.



# Croatia

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## Overview of excerpts from the cases of hate speech in Croatia that were processed by the Agency for Electronic Media (AEM)

### Z1 televizija (Z1 TV), 2016, Hate speech

On 19 January 2016, the media outlet Z1 Television Ltd broadcasted the show Mark's square (Markov trg). The host ended the show with the following words:

“We do not know whether the priests of the Serbian Orthodox Church ... Namely, two priests of the Serbian Orthodox Church were declared saints in 2005, while their biographies contain a lot of cut-throat elements ... namely, a lot of witnesses that these Chetnik ... that, one was called Maca<sup>53</sup>, as a diminutive of Macola<sup>54</sup>, and the other one was called „priest Slaughterer“... that they did, that they have bloodied their hands, yet they were declared saints. We do not know whether the Serbian Orthodox Church will continue with such action, so I wish to warn the people of Zagreb who walk around Cvjetni trg<sup>55</sup>, especially mothers with children ... please, be careful when you pass by the Cathedral of the Transfiguration of the Lord<sup>56</sup>, to avoid that someone with a knife runs out and engages in a bloody Chetnik feast”.

### **AEM Action**

The concession for provision of media services television was temporarily seized from this broadcaster, for a period of three days. Based on the presentation of evidence and the facts established, the Electronic Media Council found that the broadcaster has violated the Electronic Media Act referred to in Article 12, Paragraph 2, by inciting and spreading hatred and discrimination based on religion. Article 12 Paragraph 2 of the Law on electronic media.

The Council took as, a relevant definition of hate speech, the one according to which hate speech is defined as an expression containing messages of hatred or intolerance towards a racial, national, ethnic or religious group or its members. The main threat of expressing opinions with elements of hate speech is that the message, which is sent to the citizens through such an expression, aims to cause certain negative consequences for a particular person or group of persons in relation to his/ their personal characteristics or affiliation to a particular group.

53 Milorad Vukojičić (1917–1945) known as “priest Maca” was Montenegrin priest SPC (Serbian Orthodox Church), the leader of the Chetnik troupe in the Second World War. He is sanctified by Synod of Bishops of the Serbian Orthodox Church in 2005. together with Slobodan Šiljak (1881–1943), which was also Montenegrin priest in the SPC.

54 A mallet.

55 A square in Zagreb.

56 Serbian Orthodox Cathedral in Zagreb.

The consequence of this expression may be manifested through the creation of despect against a single person or a group, creation of a negative stereotype against a particular person or group, incitement of discrimination and hostility, condemnation of an individual or group, inducing a feeling of uncertainty and fear in a person or among members of a group, causing physical and psychological pain to a particular person or member of a particular group, posing threats to a particular person or group, inflicting and causing violence to a person or a group, creating the feeling among major part of the citizens that such behavior towards a person/group is socially desirable and justified, creating the feeling among a wide range of citizens that such behavior will be tolerated, and will not be subject to liability. In this legal context, the Council found that the closing statement of the show Markov trg (Mark's Square) on 19 January 2016, by the editor and host of the show, Marko Jurič, met the description of the prohibition in Article 12, Paragraph 2 of the Electronic Media Act, by inciting and spreading hatred and discrimination on the basis of religion against the clergy and members of the Serbian Orthodox church. The Council also decided to submit the case file to the competent State Attorney's Office for further action. Subsequently, Z1 filed a lawsuit against decision of the Council and this case is currently pending in the competent Administrative Court in Zagreb.

### **Glas Podravine Ltd./ Radio Glas Podravine, 2014, Hate speech**

During control over recordings in the show Coolturna ispovjedaonica (Cooltural confessional), broadcasted on 10 April 2014, spreading and inciting hatred and discrimination was observed. As part of the show, during the music break, a song was aired that speaks about the war events during the nineties. In the song, the Serbs are called "wicked and evil people," "rage dogs", "angry brothers counting bullets", "bandits".

In the east, all is rotten, people are rotten and evil, the Danube runs peacefully in vain when mad dogs are on the other side.

The nineties have passed full of blood, war, evil, wounds hurt, bitter wounds of Croatia.

Oh Croatia, my sorrow, where is the eastern brother now, there is no fraternal harmony any more, it brought a crazy war.

Oh Croatia, my sorrow, Croats are healing your wounds, in the east all is rotten, and the Danube runs peacefully in vain.

In the east, all is the same, angry brothers count their bullets, the Danube runs peacefully in vain when bandits are on the other side.

Our history of peace knows ... Ustashas to defend their Croatian home.

There is no forgiveness for sins, and there is no oblivion, for all the dead that have fallen so that Croatia can sleep in peace.

The Ustasha brothers Croats in defense of their home, rose to defend their Croatian home ...

### ***AEM Action***

It was found that the broadcasted material is contrary to the provisions of Article 12, Paragraph 2 of the Electronic Media Act. The Electronic Media Council issued a warning to the media outlet for broadcasting this song and informed it to pay more attention in the future to the compliance with professional standards and the provisions of the Electronic Media Act.

### **Dnevno.hr, web portal, 2015, Hate speech**

Based on complaints from readers, an analysis was undertaken of the article *Naprijed Hrvatska – u novi kaos!* (Forward Croatia – to the new Chaos!), published on the web portal Dnevno.hr, on 7 October 2015. The commentary, among other things, contained the following statements:

“And why is it that among Africans and people from the Middle East there are almost no Nobel Prize winners, no astrophysicists, and no world-famous chemists?”

“There is an unwritten rule for every white citizen of America that it is wise to have at home a recoilless Beretta-Xtrme2, and preferably for a white German woman who jogs late at night in Berlin’s Kreuzberg to have a multipiped mortar in her vehicle.”

“For the transgender, liberal and anti-fascist agitators, the responsibility for all the misery on earth and the distress of the Africans and Asians always lies with the proverbial white people and the economic and political environment. They do not want to hear a word about heredity, biological inheritance, and the genes that play an important role in political or criminal behavior of every person. After all, the reason that Croatia is in a difficult situation should be primarily sought in the negative biological selection resulting from killing of the most intelligent layer of the Croatian population after Bleiburg – and the violent imposition of criminal communist chromosomes.”

“Because, even an ordinary man without a lot of education knows that the human character and intelligence can not be learned– --- – they can only be inherited.”

### ***AEM Action***

The text is aimed at presenting immigrants and refugees from Asia and Africa as a threat to the overall security in Croatia and the rest of Europe. The author of the

text presented unverified, false and blanket information without any statement of origin and/or investigation they used as a source. The text is abusive, it propagates superiority of the white race through a series of insults against members of other races, it promotes animosity towards them and discriminates them on the basis of race and ethnicity. Besides, the text also implies indirectly the discrimination based on political beliefs through a series of derogatory names. Council of AEM issued a warning to the provider of this electronic publication for violation of Article 12, Paragraph 2 of the Electronic Media Act.

### **Dnevno.hr, web portal, 2015 Hate speech**

The article Secret plan of the “Jews” who rule the world: War in Ukraine contests the “devil’s tribe”, which was published on the portal Dnevno.hr on 18 February 2015, presented a series of insults against Jews and with its writing the author of the text incited and spread hatred against them. She calls the Jews the “race of innate psychopathic pagan priests”, who “are in the highest positions in banking, commerce, drugs, Satanism, pedophilia, mass murders and crimes against humanity”, and accused them of the bloody conflict in Ukraine and sufferings of Christians. “As stated in the report, the Jewish money and military equipment circulate in Ukraine while the Ukrainian Christians (non-Jews) are slaughtered and exterminated, and their assets are given to the Jewish oligarchs. All the rest is a theatre play for unconscious masses”, says the article.

#### ***AEM Action***

Council issued a warning to the provider of this electronic publication for violation of Article 12, Paragraph 2 of the Electronic Media Act.

### **Dnevno.hr, web portal, 2014, Hate speech**

The electronic publication Dnevno.hr published an article titled “Vukovarci pozivaju Hrvate na bojkot srpskih proizvoda! Evo popisa trgovina u kojima neće kupovati dok ‘ćirilica ne izađe iz Vukovara! (People from Vukovar invite the Croats to boycott Serbian products! Here is a list of stores where you will not shop until ‘Cyrillic alphabet leaves Vukovar!’” Together with the text there was a list of “Serbian” stores that should be boycotted published for a while. The list was subsequently removed.

#### ***AEM Action***

The Electronic Media Council concluded that the provider of this electronic publication enabled for the incitement and spreading of hatred or discrimination based on nationality. The media outlet was sanctioned with a warning.

### **Nezavisna televizija (Independent television), 2013, Hate Speech**

In the TV show hosted by Velimir Bujanec, caused by the double murder that happened in Vojišnica, there was an incitement and spreading of hatred or discrimination based on nationality. One of the interlocutors in the show said as

follows: “The key months when incidents occur are July and August, when a huge number of these Serbian, if you allow me, bastards come ... I call them summer Chetniks”. This statement was considered as hate speech against the Serbian national minority, and the host did not dissociate from this statement.

### ***AEM Action***

The Electronic Media Council issued a warning to the media outlet.

### **Hrvatska radiotelevizija Dnevnik 3, (Croatian PBS, News 3), 2013. Hate speech**

In his guest appearance in the Dnevnik 3 on HRT1 channel, on 16 March 2013, MP Ruza Tomasic put forward the views that insult human dignity and incite hatred against the leaders and members of national minorities. HRT failed to dissociate or distance itself from these intolerant statements. When asked by the news presenter to explain her statement given the day before in city Slatina, at a political rally, to which Mr Milorad Pupovac (SDSS) referred saying that it should be reviewed by the relevant parliamentary committee and which reads: “I think this is Croatia and all others are guests in this country. If they do not like it, they should leave it, but they should at least respect it”, Ms. Tomasic responded: Mr. Pupovac has the guts to ask such a question after he had Stanimirović who was with the Chetniks<sup>57</sup>, who was pointing with his finger who should be taken to Ovčara<sup>58</sup>, who used to say that Vukovar is the holy Serbian land and that the last Ustasha<sup>59</sup> stronghold finally fell when the hospital in Vukovar fell, so he had the guts to ask such questions (!)

### ***AEM Action***

The Electronic Media Council issued a warning to the provider of this electronic publication for the violation of Article 12, Paragraph 2 of the Law on electronic media.

### **Regional radio station Šibenik, 2013 Offensive speech**

In the central news the radio station gave a report on the extraordinary press conference of the HDZ (political party) regional office for Sibenik and Knin region, and the association of war veterans, on the occasion of the statement by the Prime Minister Zoran Milanovic, in which he said that Croatia had a civil war. In this report, they aired the audio recording with the statement in which

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57 Chetniks – members of the Serbian paramilitary organization with a highly nationalistic and chauvinistic goal of the Greater Serbia, that is creation of a Serb state which would incorporate all regions of traditional significance to Serbs, including regions outside Serbia that are populated by Serbs.

58 Ovčara is the name of the farm southeast of city Vukovar where Croatian prisoners of war and civilians were killed by Serb paramilitaries Chetniks and the Yugoslav People's Army (JNA) on 20 November 1991, during the Croatian War of Independence.

59 Ustashe were members of Croatian fascist, ultranationalist and chauvinist organization motivated by desire to create an ethnically pure state that resulted in mass exile, imprisonment, and murders of Serbs, Jews, Roma as well as political dissidents in Yugoslavia during World War II.

the President of the HVIDR-a<sup>60</sup> for Sibenik and Knin region called the Prime Minister “small cattle”, including the following sentence: “It’s not the parents’ fault that they produced an idiot and a fool.” Although many people spoke at the conference, the editors incorporated the quoted statement as one of the two they aired, and they failed to dissociate from it. The quoted was assessed to be an insult to human dignity.

### ***AEM Action***

The Electronic Media Council issued a warning to the media outlet.

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60 HVIDR-a – Association of Croatian Military Invalids of the Homeland War (Hrvatski vojni invalidi Domovinskog rata).

## MACEDONIAN REGULATORY AUTHORITY

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Selection of cases of hate speech and insulting speech subject of monitoring of Agency for Audio and Audiovisual Media Services of the Republic of Macedon (AVMU)

### TV SITES 3 DOOEL, 2017, Insulting speech

On 13 February 2017, AVMU carried out *ex officio* programme monitoring of the show “Jadi burek” broadcast on 20 January 2017. The show was dedicated to the inauguration of the United States’ newly elected President Donald Trump, and in terms of genre it was a hybrid that also contained: live broadcasting of the inauguration (through the Internet); conversation and comments in the studio by the host Janko Ilkovski and his guests Cvetin Čilimanov<sup>61</sup> and Boris Damovski<sup>62</sup>; an interview with Jason Miko<sup>63</sup> through Skype; phone calls with viewers and other audiovisual content.

Content of the programme included:

Donald Trump was named “a bad mother fucker,” and then “a boor”.

When Hillary Clinton appeared, the host commented: “She ran away into the woods to hide...see how she schizophrenically changes her look,” and then he simulated Bill Clinton speaking: “I shtupped<sup>64</sup> you, shtupped her, banged her, and you... and then, you, in my office, good for him, he humped everybody, I didn’t .... you, hello, how are you – I am well, that granddaughter of yours, and you, grandma, no, I would not.... you, that grandma fucker, no..... go away, you’re fat...”

Tiffany Trump, Donald Trump’s younger daughter, was called (by the guest, Čilimanov) a “playboy girl,” and former US Vice President Dick Cheney was described as a “man who has had his fourth-or-fifth heart installed” and “a Robocop.”

For congressmen, the host commented: “...what geriatrics are those?”

Melania Trump was named a “MILF”<sup>65</sup>.

Concerning Michelle and Barack Obama, turning to his guest Čilimanov, he said: “Will they finally admit that they are in a gay marriage? That Michelle is male? Let her pee standing, why should she hide it!” and then, he named

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61 Journalist.

62 Director of the satiric TV series “Ednooki”.

63 US analyst and lobbyist.

64 Macedonian slang for sexual intercourse.

65 Acronym of “Mother I’d Like to Fuck”.

her, “Michael” and “a potential future candidate for a *serator* (wordplay for shitter), oops, a senator.”

Washington was said to be a city with 60% African Americans but there were hardly six at the broadcast, upon which Boris Damovski said: “They are busy breaking shop-windows, goods are free there.”

There was also a comment of the type: “The cameraman is searching for Blacks in the audience, it is his most difficult job.”

The comments about Macedonian President Gjorge Ivanov included: “Jerk, he left those Branko Crvenkovski’s<sup>66</sup> *Sorospij* (wordplay, meaning Soros-whores) to work for him.”

The host Ilkovski reacted to the presence of men in the field of view: “Hey, is the director a gay?”

After Melania Trump appeared on the screen for a moment, he said: “My nipple is, wow.... you can hang a coat, I got excited.”

Some host’s statements could be hardly categorised and contextualised, e.g.: at one point, he put on a red cap with an inscription “Trump”, and when asked by one of the guests where he had bought it, he said: “It was lent to me with a gun pointed at my head, greetings to Antonio, I am very thankful to him...”

There were also comments like: “The scum of the World joined together against (Trump, n.b.)!”

During the show, the host and guests referred to the usage of alcohol (whiskey and vodka) with the host even inviting the whole crew working on the show to join them, and then they referred to the rolling of a joint, with the host holding a cigar in his hand. Quotes: “...when did I have two cameramen, hey? What whiskey can do, bro! Bring some glasses, seriously! (looking towards the crew in the studio, n.b.). Must do it for Trump, don’t...f..... ing joke...e...e,, must do it for Trump! I’ll give you a little, I cannot give you a lot because I have a lot of guests. For vodka, I’ll give you a little more! That’s from Putin for you.” In communicating comments from the Internet, the swastika, recognisable as a symbol of the Third Reich and fascism, appears on several occasions.

## ***AVMU action***

The conduct and communication between the host and the guests was inappropriate and improper for a public communication broadcast on television.

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66 Former President of the Republic of Macedonia from the Social Democratic Union of Macedonia.



The show was abundant in vulgarism, rude comments, indecent descriptions, public exposure to mockery, abusive expressive language, and insults that related to race, nation, sex and age. It was stated that there was no hate speech, but rather violation of programme principles that related to cherishing and development of man's humane and moral values and protection of privacy and dignity of the personality; equality of freedoms and rights independent on the sex, race, national, ethnic, and social background, political and religious belief, property and social position of the man and citizen; encouraging the spirit of tolerance, mutual respect and understanding between individuals of different ethnic and cultural background; and encouraging international understanding and cooperation, the public sense for fairness and defence of the democratic freedoms. The relevant law does not have penalty provision on violation of principles that are the subject of self-regulation, because of which AVMU notified in writing TV Sitel 3 about the violation and published the Report of the monitoring on its website<sup>67</sup>.

### **TV SITEL DOOEL, 2016, Hate speech**

On 30 December 2016, AVMU carried out *ex officio* programme monitoring of the *Dnevnik* (Daily News) programmes on TV Sitel at 19:00 and 23:00h., broadcast on 2, 3, 4, and 5 December 2016, during the election campaign for the Early Parliamentary Elections that took place on 11 December.

Content of the programme included:

In eight successive daily information programmes *Dnevnik*, a series of four reports (continuations) on the topic "Bilingualism Comes with a Price," were broadcast earmarked as editorials. They claimed that, if bilingualism is extended to include wider use in country, that will mean the compulsory use of Albanian in the public and public-private sectors in places in which no Albanians reside, because of which people who are already employed will be fired and Albanians brought from the northwest of country<sup>68</sup> will be employed in their place. Disadvantaged groups of citizens were then listed as endangered, under several grounds: by ethnic origin ("Macedonian, Turkish, Vlach, Bosniak, Serbian, Roma"), by towns and municipalities, by vocation/profession ("police and army", "state administration, institutions in health, education taxi driver services, private schools, faculties as well as pharmacies", "any counter clerk, police officer, firefighter, teacher, doctor, postman, or taxi driver will have to know Albanian, to speak Albanian with any client who chooses to communicate with them in Albanian"), by age ("adults aged above 50 who would realistically not be able to learn Albanian," "adults aged above 40 who would not be able to learn Albanian on time, which would mean

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67 The whole Written Report of the programme surveillance is available at: [http://www.avmu.mk/images/Sitel\\_3-progrmski\\_nadzor\\_13.02.2017.pdf](http://www.avmu.mk/images/Sitel_3-progrmski_nadzor_13.02.2017.pdf).

68 The issues of the scope of use of the Albanian language and of whether federalisation/cantonisation of the state was being prepared were the most compelling themes at the Early Parliamentary Elections on 11 December 2016, particularly between the largest coalitions – one led by the ruling VMRO DPMNE and the other headed by the opposition SDSM.

dismissal and loss of job for at least 30,000 current employees in the state and private public sector”.....“because in the health sector, nurses and doctors’ experience is their greatest strength, and experienced doctors and nurses will have most difficulties to learn Albanian after which they will have to lose their job and leave it to somebody without knowledge and experience, only because somebody else speaks Albanian better than them. Staff of at least 1,000 experienced doctors and 10,000 nurses will face dismissal”).

Formulations like the following were used day by day: “Bilingualism is a problem that will destroy the Macedonian character of the Macedonian state, introduce an ambiance and rules similar to what happened in Kosovo,, which is a sufficient reason for Macedonians to worry and take their destiny into their own hands. If bilingualism becomes a legal obligation, as Zaev<sup>69</sup> plans, analyses show a cost of more than EUR 50 million in the public sector and dismissal for at least 30,000 employees who will not manage to speak Albanian for various reasons. Additionally, about 70,000 ethnic Albanians will move to municipalities in which Albanian is not spoken, which will change the ethnic map,” and this will “reflect on security, create resistance and frustration with the local population with a clear possibility for permanent ethnic tensions and conflicts.”

The last report in the series claimed that “by requiring cantonisation and bilingualism on the whole Macedonian territory, five parties – DUI, DPA, Besa, Zijadin Sela’s Alliance, and the Social Democratic Union, are championing for the ethnic rights of Albanians in the upcoming elections. Only VMRO DPMNE has remained on the Macedonian side, and they stay with their opinion that they neither support change of the Constitution nor will they allow bilingualism on the whole territory, especially not cantonisation, as Zaev calls the federalisation of country.” It is said that the issue involves “territorial division that would soon lead to war and cession of Albanian cantons from Macedonia and their annexation to Kosovo, according to experience in the region and Europe.”

Texts written on chyron were used to reinforce the messages; in the last report, a graphic was shown with a map of the Macedonian territory where areas to which ethnic Albanians would move in were shown with arrows. Other reports in which the messages were conveyed by persons represented as the “voice of authority” (mayors from VMRO DPMNE, a politician from a party – member of Coalition led by VMRO DPMNE, a doctor, a former head at the Ministry of Internal Affairs) were also used to reinforce the context.

### ***AVMU action***

AVMU made analysis in order to establish whether the three-party test of ECtHR was met, i.e. whether the limitation of freedom of expression was stipulated by law, whether it pursued a legitimate goal and was necessary in a democratic society<sup>70</sup>.

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69 President of the opposition political party Social Democratic Union of Macedonia.

70 Relevant cases from the ECtHR case law were *Soulas and Others v France* (of 10 July 2008) available on: <http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-87370%22%5D%7D>}, *Feret v Belgium* (16 July 2009) available on: <http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-93626%22%5D%7D>}

As for the first precondition, it was decided that both bases on which discrimination was spread were prohibited by law.

The series of reports was broadcast in the last week of the election campaign for the 2016 Early Parliamentary Elections and were earmarked as editorials. Provision of Electoral Code under which neither a medium nor a journalist could be sanctioned for expressing opinion, which still had to be distinguished from the news, applied for these elections. Such provision meant that the broadcasters were expected to make clear distinction between a comment (editorial), as a mainly analytical journalist genre that conveys opinion, and other journalist genres such as news, reports, interviews, reportages, etc. In context of this provision, AVMU was of the opinion that it was a guarantee for freedom of expression but should not be understood as protection of hate speech, publishing incorrect and untrue information, insults, lies, and defamation, or protection of incomppliance with the professional journalist principles and standards. The reports in question were earmarked as editorials, however, they did not comply with the professional journalist standards and represented abuse of the genre, i.e. propaganda and discrimination were broadcast under the caption of an editorial, and hence, AVMU decided that protection under the Electoral Code could not apply to them.

To establish the other two conditions, the contents of the reports were analysed in line with Guide to Monitoring “Hate Speech”<sup>71</sup> and relevant issues identified<sup>72</sup>.

The analysis showed that the limitation of freedom for such type of expression pursued a legitimate goal and was necessary in a democratic society because, as a national television, TV Sitel broadcast reports in several subsequent daily information programmes, in which the genre – comment was abused for the purpose of spreading hate speech based on national/ethnic origin. The series of these reports was an example that “hate speech” could be veiled in statements that might seem reasonable or normal at first sight<sup>73</sup>, and were broadcast during the election campaign, with a clear intention to achieve a certain political objective using discrimination, one-sided information and intimidation. Through the use of tactics of naming professions, cities/municipalities and ethnic communities that should feel endangered and fearful, the audience was subject to persuasion, imposition of opinion, manipulation of information and intimidation with the loss of jobs; the report strived to incite, among the ethnic Macedonians as well as Turks, Serbs, Vlachs, Roma and Bosniaks, a feeling of abandonment and antagonism towards ethnic Albanians, who were pointed to them as a threat to

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and *Surek v Turkey* (8 July 1999) available on:<http://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22696156%22%22itemid%22:%5B%22001-58279%22%22%7D>.

71 Prepared by AVMU, 2014, [http://www.avmu.mk/images/Guide\\_to\\_monitor\\_hate\\_speech.pdf](http://www.avmu.mk/images/Guide_to_monitor_hate_speech.pdf).

72 Including: 1. What was the context of the expression; 2. Who was the person responsible for the expression; 3. Was there any intent to provoke hate speech; 4. What were the contents of the expression; 5. What were the degree and scope of the expression; 6. What was the probability of influencing the audience and its further actions.

73 “Manual on ‘hate speech’”, Anne Weber, Council of Europe, September 2009, p. 5, available at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/hate\\_speech\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/hate_speech_en.pdf)

the state as the latter were named the potential perpetrators of movement that will change the Macedonian character of the country and lead to a danger of losing the state, ethnic tensions, conflict and war, which was repeatedly imposed on the public as inevitability.

Given the fact that the relevant law does not provide for a penalty measure for broadcasting contents that make discrimination and for hate speech, AVMU advised TV Sitel about the violation in writing, and published the Report from the Monitoring on its website<sup>74</sup>, and submitted the Written Report from the Programme Monitoring to the Commission for Protection against Discrimination and the Public Prosecutor's Office<sup>75</sup>.

## **TV SITEL DOOEL, 2016, Insulting Speech**

Based on several complaints by the Social Democratic Union of Macedonia, on 27 September 2016 AVMU carried out *ex officio* programme monitoring of the News at 7.00 p.m. broadcast on TV Sitel on 28 August. The analysis included several reports but only one is presented here, due to its specificities. It is a hybrid of two analytical genres – a comment and an interview, entitled “Football Fans Sent a Message to Zoran Zaev Not to Come to Macedonian Matches”. The report related to the presence of Zoran Zaev, the President of the (then) opposition political party Social Democratic Union of Macedonia (SDSM), at the match between the Macedonian (Shkëndija) and Belgian football clubs that took place in Skopje within the Europa League.

Content of the programme included:

The announcement of the report claimed: “I don't believe that there is a Macedonian, even in SDSM and even in his wider family, and let alone SDSM, to support his (Zaev) appearance as part of the radical fans of Macedonian club, who advocate a Greater Albania and in their supporting, they renounce Macedonia all the time seeking its division between Kosovo and Albania”.

The report inter alia included:

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- 74 The whole Written Report of the Programme Monitoring is available at: [http://www.avmu.mk/images/TV\\_Sitel\\_vonreden\\_nadzor\\_po\\_sluzbena\\_dolznost.pdf](http://www.avmu.mk/images/TV_Sitel_vonreden_nadzor_po_sluzbena_dolznost.pdf).
- 75 In February 2017, they informed AVMU that according to them the reports were aired with an intention to obtain a political goal and thus they did not find basis to pursue TV Sitel on the ground of the Criminal Code. AVMU sent a letter to the Higher Public Prosecution asking for a supervision of the work of the Public Prosecutor's Office, since the role of the media during the elections is not to pursue political goals but to report about the parties' campaigns in a balanced manner. In May 2017, the Commission for Protection against Discrimination informed AVMU that they did not find discrimination because the topic of the use of language was of public interest, and therefore legitimate in a democratic society. The AVMU position is that the public interest and the legitimacy of the topic was never in question, and it was one of the most compelling topics during the whole pre-election period starting on 2 September 2016. The problem was in the manner in which this media used a topic of public interest to spread propaganda, fear, discrimination and hate speech i.e. that the Commission's deliberation stopped where the analysis of AVMU started.

“Shkëndija lost the match with 4:0 but that is least important. What should be most worrying is: Which country does Shkëndija represent”? Although the club issued a press release stressing that it represented country throughout Europe, it is enough to look at the pictures from the match to notice that the flags of Albania, KLA and maps of a Greater Albania are waved. SDSM leader Zoran Zaev has supported them in that. He bragged himself on the social networks. The public, and especially fan groups did not like that at all. Some groups sent the SDSM leader a message that he was not welcome to any match where they would play, and said that they had Goce Delčev<sup>76</sup>, Jane Sandanski<sup>77</sup> and Dame Gruev<sup>78</sup>, not Xhem Hasa<sup>79</sup>. Condemnation also came from a member of the Bitola fans Čkembari<sup>80</sup> who publicly invited Zaev to attend a Pelister match, sending him a message that he would not leave Tumbe Kafe<sup>81</sup>.”

Among other, there were several visual/graphic illustration used, such as recordings/screenshot – (probably) from Zoran Zaev’s Twitter profile (quote): “We support #Shkëndija and new success for #Macedonia”, photographs from graffiti against Zoran Zaev: “Zaev is a persona non grata for Vardar<sup>82</sup>”, “Komiti have Goce, Jane and Dame! Zaev has Xhem Hasa! Shame on you, traitor!”, a photo-montage of Zoran Zaev with an Albanian qeleshe<sup>83</sup>, with an accompanying text – “Balist No. 121 Brigada Xhem Hasa Selling tickets to this person for Macedonian matches is prohibited”.

### **AVMU action**

The report used a manipulative strategy of the so called “character (personality) assassination” in terms that: “By attacking an individual’s personal life, facts of a biography, and specific individual features (which we will call them “character” for convenience) the attacker tries to hurt the victim politically, morally, socially, or psychologically and thus, depending on circumstances, remove him or her from a contest, sway public opinion, or achieve some other goal. We will call these attempts character assassination, which is a deliberate attempt to seriously damage the reputation, character, social status, or achievements of another person. The motivation for character assassination is typically rooted in the attackers’ (assassin’s) desire to harm the victim psychologically and reduce public support for the victim. This should

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76 Goce Delčev (1872 – 1903), a Macedonian national hero, an ideologist, organiser and leader of the Macedonian Revolutionary National Liberation Movement in the late 19th and early 20th centuries.

77 Jane Sandanski (1872 – 1915) — a Macedonian national hero, war leader (*voivode*) and leader of the Macedonian Revolutionary Organisation.

78 Dame Gruev (1871 – 1906) — a Macedonian revolutionary, founder and one of the most distinguished members of the Macedonian Revolutionary Organisation.

79 Xhem Hasani (1908 – 1945), the leader of Balli Kombetar for West Macedonia

80 The name of a group supporting the football club from Bitola, Pelister.

81 The City Stadium in Bitola is located on a hillock, Tumbe Kafe in Bitola.

82 The name of a group supporting the football club from Skopje, Vardar.

83 Traditional Albanian hat.

ultimately devastate or even destroy his or her chances to succeed. In other cases, character assassination is conducted to hurt the cause that the victim symbolizes or defends”<sup>84</sup>

In the specific example, Zoran Zaev’s physical presence at the bleachers of the football stadium and the support Zaev gave to the football players of FC Shkëndija (“We support #Shkëndija and new success of #Macedonia”) were misused. Both the intro and the report itself identified these circumstances/aspects with unacceptable public conduct of a part of a supporting group whose iconography suggest ideology of ethnic separatism. Thus, a danger of interpreting the audiovisual item as a tendency for populist, ethnically stereotypical identification of sport rivalry with - interethnic rivalry emerged.

The logical non-sustainability and malevolence of such type of manipulation of public opinion become evident if the following questions are posed: Did condemnation of the alleged – “support of ethnic radicalism”, which was attributed to the leader of an opposition party, apply for all others who were present at the stadium and which is the role of ethnic Macedonians, according to those measurements, who work for and compete for FC Shkëndija.

AVMU concluded that there was a violation of the principles that related to: cherishing and development of man’s humane and moral values and protection of privacy and dignity of a personality; equality of freedoms and rights independent on the sex, race, national, ethnic, and social background, political and religious belief, property and social position of individual and citizen; encouraging the spirit of tolerance, mutual respect and understanding between individuals of different ethnic and cultural background; encouraging international understanding and cooperation, public feeling for fairness and defence of the democratic freedoms; and objective and unbiased presentation of events with equal treatment of different views and opinions and enabling audience to freely form opinion on particular events and issues. Since relevant law does not provide for any measure for the incompliance with the principles thereof, TV Sitel was notified of the violation in writing, and the Report was published on the AVMU website<sup>85</sup>.

## **TV Kanal 5 Skopje, 2016, Hate speech**

On 8 March 2016, AVMU carried out *ex officio* monitoring of several editions of “Milenko Nedelkovski Show”, broadcast on the national terrestrial TV Kanal 5 on 15, 22, 29 January, and 5, 12 and 19 February 2016. The same shows were broadcast on the satellite TV Kanal 5 Plus on 20 and 27 January, and 3, 10, and 17 February 2016.

Content of the programme included:

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84 Shiraev Eric, essay – “Character Assassination: an Interdisciplinary Approach”, available at <https://characterattack.wordpress.com/our-publications/>

85 The whole Written Report of the conducted Programme Monitoring is available at: [http://www.avmu.mk/images/lzveshtaj\\_po\\_pretstavka\\_na\\_SDSM.pdf](http://www.avmu.mk/images/lzveshtaj_po_pretstavka_na_SDSM.pdf).

The topic was opened through comments for the Additional Deputy Minister of Agriculture, Ljupčo Nikolovski<sup>86</sup>, with Milenko Nedelkovski referring for several times to his sexual orientation. For example: "I will put this pink thing on him (he sticks a photograph of Ljupčo Nikolovski with a pink pin) because in Kriva Palanka, they say that he is a homosexual. In Macedonian, it is called "peder" (gay); "Actually, I think that I do not lie, at least people convince me that I do not lie, however, if they file a lawsuit, I will appear at the court and first, I will request expertise, i.e. court expert opinion about Ljupčo Nikolovski (the word is covered with high frequency audio signal) so that we can establish, and if I am wrong, I will apologize, I will pay, and if I am not wrong, the whole Macedonian public will be informed about what the situation with his buttocks is..."

Commenting on the campaign which the Coalition "Sexual and Health Rights of Marginalised Communities" used in December 2015 to mark the International Day of Human Rights in the way that proclaimed the message ".....Homophobes are also people" on billboards, Milenko Nedelkovski said: "...I do not have money to lease (billboards), however, I would say: "Homosexuals are also sick people." However, that is... and I think that there should be medical care." Besides, he said: "Last year, I had two or three shows with Cvetin Čilimanov, where we came into conflict, where I claimed that (the word is covered with high frequency audio signal), that it is disease and should be treated, that it is disease, mental and physical and some kind of disorder. And it was not so, it was that their rights were endangered because I think that they should be treated etc., that this has to be restricted by law, so that the traditional values of our Orthodox religion, of our people, our church and so on, our living, are protected."

In one of the shows, there is a long speech where he says: "...Well, there are two men kissing in this picture. And I do not feel comfortably to see it. Probably, most of my viewers do not feel either. However, I am trying to ask, why do SDSM and Sorosoids and the Sorosoid portals suddenly... but wait, now Ljupčo Nikolovski? That should be a virtue. I praised him in my show, I did not say to him you are doing wrong (high frequency audio signal), OK, be it (high frequency audio signal), it suits you and your position and your party and future. Furthermore, I have other photographs that are, say, let's say that this is the President of the Youth Organisation of SDSM of Skopje, actually, Ljubomir Danailov Frčkovski's son<sup>87</sup>, Jon is his name, who is of full age and as such he has the right to choose what ass he will grab (a blurred photograph is shown). He can have girls if he wants, but he has not chosen girls."

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86 At that point, the Republic of Macedonia had a transition government for implementation of elections of MPs, formed under the Pržino Agreement, which also had members from the ranks of SDSM, including Nikolovski.

87 Former Minister of Internal Affairs and of Foreign Affairs, a candidate for the President of the Republic of Macedonia from SDSM in 2009.

“There is no need for Miki<sup>88</sup> to call me, actually, for what I am, I have information from Kriva Palanka that he (Nikolovski) is a homosexual, for reason that there is nothing shameful here. European values that we see, that they promote, are that same sex marriages are normal, adoption of children by same sex couples is also normal. The last two, how to say, Ambassadors of the European Union in Macedonia have such promiscuity, which is odd for us here, however, that is their choice... In any case, it means that Miki Vujić does not need to call me, there is no need of lawsuits, if they want let them sue me, because following the European values Ljupčo Nikolovski should be proud to be a homosexual, since, see, he is ahead....much ahead of all of us”; “I thought that I did not insult him, I was really glad that, here, the man is homosexual, at least, that’s what they say in Kriva Palanka, and that is good, our Euro-Atlantic integration implies as little homophobia as possible, and the more homosexuals, the easier our path will be. So, here, he is paving that way.”; ... “I was subject to a whole campaign, that I am homophobic, that I hate them, and whatever, and actually, I made promotion for them, see if, for example, it happens that SDSM wins the elections on 24 April, I propose that this (high frequency audio signal) from Kriva Palanka is the Minister for Euro-integration because he will be able to integrate there most easily with his body, and maybe mentally, if his mind can do it, and to promote us, because, now, those are some values, the Berlin Mayor said he was a homosexual, I don’t know how many congressmen, senators, America, this and that, everybody tells everything, and now, it is a virtue. As for me, I am, say, conservative, a bigot, I am not forward-looking, etc., but OK, that’s me, I cannot change now, however, those progressive....” etc.

### **AVMU action**

With a view of establishing whether the six editions of “Milenko Nedelkovski Show” featured hate speech and discrimination based on sexual orientation, analysis was made to determine whether the three-party test of ECCHR was met. The sexual orientation is not explicitly stated as the discriminatory basis in relevant law; however, following the ECCHR case law and actions of the Macedonian Commission for Protection against Discrimination, it was demonstrated that limitation of freedom of expression due to discrimination based on sexual orientation was stipulated by law. A parallel was made between the Law on Audio and Audiovisual Media Services, the Law on Prevention and Protection against Discrimination and the Protocol for Determining the Procedure for Action in Case of Protection against Discrimination Based on Sexual Orientation and Gender Identity<sup>89</sup> of the Commission for Protection against Discrimination on the one hand, and application of Articles 10 and 14 of the ECHR by ECCHR on the other<sup>90</sup>.

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88 Miroslav Vujić, a lawyer who requested apology for the broadcast contents on behalf of Ljupčo Nikolovski.

89 Available at: <https://zaokruzi20.files.wordpress.com/2015/11/protokol-mk.pdf>

90 Relevant cases of the ECtHR case law are *Vejdeland and Others v Sweden* available at: [http://hudoc.echr.coe.int/eng#{%22sort%22:\[%22docnamesort%20Descending-%22\],\[%22languageisocode%22:\[%22ENG%22\],\[%22kpthesaurus%22:\[%22148%22\],\[%22documentcollectionid%22:\[%22JUDGMENTS%22\],\[%22itemid%22:\[%22001-109046%22\]\]](http://hudoc.echr.coe.int/eng#{%22sort%22:[%22docnamesort%20Descending-%22],[%22languageisocode%22:[%22ENG%22],[%22kpthesaurus%22:[%22148%22],[%22documentcollectionid%22:[%22JUDGMENTS%22],[%22itemid%22:[%22001-109046%22]]) and *Mladina D.D.*



Given the fact that the show is a project of an independent producer, an important aspect was also the question of the editorial responsibility of TV Kanal 5 for the broadcast contents.<sup>91</sup>

A part of comments related to three high-level officials – a Deputy Minister and two Ambassadors of the European Union to the country, therefore it was necessary to see whether the comments related to them were within the expectation that they should accept greater criticism than another citizen. In this context, the Declaration on Freedom of Political Debate in the Media was taken into account<sup>92</sup>. It was stated that Milenko Nedelkovski's statements were not a reply to statements of any of the mentioned officials on anybody's sexual orientation, and they were not relevant for the manner in which they performed their function.

Concerning the allegation that homosexuality is disease, the Macedonian case law was consulted – more specifically, the case of the authors in the handbook "Pedagogy" for the third class<sup>93</sup>. A part of homophobic statements were veiled in the seemingly normal and reasoned language, using the words: "promotion," "normal", "progressive", expression of "European values" and alike. AVMU believed that this did not diminish their discriminatory contents because "hate speech" could be veiled in statements that might seem reasonable or normal at first sight. Still, it was possible to single them out in applicable texts on this issue and the principles found in the ECtHR case law or other bodies<sup>94</sup>, as to which statements are homophobia and hate speech and which fall under the right to freedom of expression, although they are insulting and shocking.

Then, it was necessary to establish whether the limitation of freedom of expression pursued a legitimate goal and was necessary in a democratic society. Because of that, the contents of the Milenko Nedelkovski Show were analysed in terms of questions from instructions on monitoring of hate speech from the *Guide to Monitoring of "Hate Speech"* of AVMU (see above).

The monitoring established that TV Kanal 5 violated relevant law by making an editorial decision as a national television, to enable the author of the show – in several consecutive, pre-recorded current-informational talk show programmes of Milenko Nedelkovski Show, to encourage and spread discrimination, intolerance and hate based on sexual orientation. Analysis showed that sexual orientation as the prohibited basis for discrimination was stipulated by law, and that limitation

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Ljubljana v Slovenia available at: <http://hudoc.echr.coe.int/eng#%7B%22sort%22:%5B%22kdate%20Descending%22%2C%22languageisocode%22:%5B%22ENG%22%2C%22kphthesaurus%22:%5B%22148%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-142424%22%5D%7D>.

91 The relevant case of the ECtHR case law used here was *Surek v Turkey* available at: <http://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22696156%22%2C%22itemid%22:%5B%22001-58279%22%5D%7D>

92 Available at: [http://www.avmu.mk/images/Dec2004PoliticalDebate\\_mk.pdf](http://www.avmu.mk/images/Dec2004PoliticalDebate_mk.pdf)

93 Marija Kostova, Ph.D., Aneta Barakoska, Ph.D., and Eli Makazlieva, Ph.D., against columnist Irena Cvetkovic (2011) and the piece: "Homosexuals Are Not Neurotic", published in *Vest* of 19 July 2011 and "Report on Sexual and Health Rights of Marginalised Communities in the Republic of Macedonia", <http://xa.yimg.com/kq/groups/23471982/269959960/name/Analiza+finalna+verzija.pdf>

94 "Manual on 'hate speech'", Anne Weber, Council of Europe, September 2009, p. 5, available at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/hate\\_speech\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/hate_speech_en.pdf)

of freedom of such type of expression had a legitimate goal and was necessary in a democratic society.

Relevant law does not provide for a penalty measure for broadcasting hate speech and discriminatory speech because of which AVMU notified TV Kanal 5 about the violation in writing, published the Report from the Monitoring on its website<sup>95</sup>, and submitted the recordings of the shows and the Written Report to the Commission for Protection against Discrimination<sup>96</sup>.

### **TV Kanal 5 Skopje, 2011, Hate speech, December 2011**

In the period in which the monitoring was carried out, the previous Law on Broadcasting was in force, according to which the Agency's name was the Broadcasting Council, actions of the regulatory body were stipulated differently and there was a penalty measure for hate speech and discrimination.

Based on a complaint, monitoring of the Milenko Nedelkovski Show broadcast on TV Kanal 5 on 18 November 2011 was made. This edition of the show was initiated due to one-year marking of inspections entering companies at Pero Nakov bb, including A1 Television<sup>97</sup>. The complaint related to "presentation of rough lies and defamation, and what was most worrying, hate speech"; and showing of "photographs of around 20 journalists from several media who the host (Milenko Nedelkovski, n.b.) called traitors and homosexuals that seriously interfered with their fundamental human rights and freedoms."

Content of the programme included:

Nedelkovski said that his intention was to "reveal details about an attempt to revive the dragon that moved from Pero Nakov toward the town, in particular the Kliment Ohridski Boulevard." From the whole presentation, it was derived that the "dragon" was opposition political party SDSM and "an army of bribed journalists and vagrants who did not manage to persuade and 'knead' the people..." Nedelkovski further said that an attempt was made for the place of the former TV A1, Vreme and Špic to be taken by other media with the "pro-SDSM orientation" – TV 24 Vesti, TV A2, the Plusinfo web portal, the daily issue of the weekly Fokus.

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95 The whole *Written Report of the conducted Programme Monitoring* is available at: [http://www.avmu.mk/images/lzvestaj\\_KANAL\\_\\_DOOEL\\_Skopje.pdf](http://www.avmu.mk/images/lzvestaj_KANAL__DOOEL_Skopje.pdf).

96 There was a written communication between the Commission and AVMU on this issue. In March 2017, the Commission informed AVMU that they could not establish discrimination due to technical reasons. Namely the Commission claimed that SVMU did not state who was the person that was discriminated and whether s/he authorized the Agency to represent it; that AVMU did not precise the discriminatory basis; that more than one year passed so the issue could not be pursued etc. AVMU believed that the Commission was trying to find excuses not to deliberate on the issue and wrote a letter to the Parliament (that appoints the members of the Commission) informing it about Commission's conduct.

97 This TV station was closed, and its owner Velija Ramkovski and several persons were sentenced to imprisonment for money laundering, criminal conspiracy, tax evasion and abuse of office. The dailies "Vreme", "Špic" and "Koha e re", also owned by Ramkovski, ceased to exist. Thus, a number of journalists and media workers were left without job. The names of some of them were mentioned in this show.

The host enlisted more than 30 journalists, most of them formerly employed in TV A1, Vreme and Špic, who he tried to discredit as much as possible, he problematised their employment in other media and used expressions such as: “incomplete persons, non-journalists, mercenaries and traitors,” “chickens”, “informers,” “police snitches,” “Svinjevac from Ribarici”, “homosexuals”. “... His deputy, actually Ljupčo Cvetanovski’s deputy, is a journalist, a recognised homosexual, who comes from the village of Izvor, Veles area, and is also a journalist in Fokus and vice president of the trade unions of journalists of Macedonia. So, a complete new cobweb comes into force in 24, and actually, there is a cobweb with homosexual persons. Among other, not only them, but they also employ normal people there, and I do not say that those normal people are homosexuals, but they have come from A1 Television such as Bogdanka Kuzevska, Ejdin Hajderpasic, Seat Rizvanovic nicknamed Spec...” Nedelkovski showed photographs of journalists who he named by name and surname, as well as photographs of the then leader of SDSM Branko Crvenkovski and of Ljubomir Danailov – Frčkovski.

### ***Broadcasting Council action***

The monitoring established that the host and author of the show, when giving names to and stigmatising those with different political opinion than his – above all, a group of journalists, showed open intolerance with elements of hate speech and created an adversary atmosphere. TV Kanal 5 was issued temporary two-day prohibition for advertising and tele-shopping promotion, due to broadcast of programmes which incite hate and intolerance<sup>98</sup>.

### **MRT (PBS), 2009, Insulting speech**

In the period in which the monitoring was carried out, the previous Law on Broadcasting was in force, according to which the Agency’s name was the Broadcasting Council, actions of the regulatory body were stipulated differently and there was a penalty measure for hate speech and discrimination.

The Broadcasting Council conducted a monitoring of the show, “Overtly with the people” with Slobodan Tomik, broadcast on MRT channel of the Public Broadcaster on 6 December 2009. That was the second continuation of a show dedicated to Johan Tarčulovski<sup>99</sup>, entitled “12 years imprisonment: Johan Tarčulovski ‘destiny of betrayal?’”, which was dedicated to identifying Ljube Boškosi<sup>100</sup> as a traitor.

Content of the programme included:

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- 98 The report was not published because the obligation of the Agency to publish reports and measures was based on the Law on Audio and Audiovisual Media Services, which entered into force in early 2014.
- 99 Johan Tarculovski (1974) was the participant in the armed conflict in Macedonia in 2001, charged and convicted by the Prosecution of the Hague Tribunal for violation of laws and customs in warfare at the village of Ljuboten in Skopje area in August 2001.
- 100 Ljube Boškosi (1960) is Macedonian politician, Minister of Internal Affairs at the time of the armed conflict in Macedonia in 2001, charged and acquitted by the Hague Tribunal for the events at the village of Ljuboten in Skopje area in August 2001.

As an introduction to the topic, an editorial was broadcast in which, through emotional discourse, the Christian morality, patriotism, and humaneness were set as some of the values that were the paradigm for proper conduct, which man should encroach to make betrayal. Illustrations used included feature action showing fights of *komiti* and the Ottomans in the Ilinden period, a service at a Macedonian Orthodox Church temple; records of Ljube Boškoski's statement shown on YouTube; recordings of the trial to Boškoski and Tarčulovski in the Hague Tribunal.

The report portrayed the two against one another – Johan Tarčulovski as a man of “values, different from others” who “does not accept non-values and injustice” and Ljube Boškoski, who was described as Tarčulovski's traitor without any reserve. Boškoski was put in the same group with the traitors of Goce Delčev, Metodija Andonovski – Čento<sup>101</sup>, Todor Aleksandrov<sup>102</sup>, Gjorgi Sugare<sup>103</sup>, people who discovered the secret way on Belasica that led behind the position of Tsar Samoil's army<sup>104</sup>, the orderer of the murder of Gjorče Petrov<sup>105</sup>, the traitor of Aleksandar Turundžev<sup>106</sup>. The editorial stated that betrayal was a “sociological phenomenon that has nestled in the Macedonian substrate” and that the relation of Ljube Boškoski to Johan Tarčulovski was the latest betrayal.

During the show, recording of the historian Prof. Zoran Todorovski's statement from the previous show “Overtly with the People” was broadcast. He spoke of the table of punishment and awarding in the revolutionary organization VMRO in the first decades of the 20th century. He pointed that there were seven examples where the punishment was death – the first being “spying or informing, which means betrayal”. During the discussion, deconstruction of the myth for the patriot “Brother Ljube” was made, where, besides the frequent use of the terms betrayal, traitor, informer, and similar, the syntagm “Sister Ljube” was repeated, using gender stereotypes in order to assign pejorative meaning to him.

### **Broadcasting Council action**

The public service was warned that it violated the general principle of objective and unbiased presentation of events with equal treatment of different views

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- 101 Metodija Andonov – Čento (1902 – 1957), Macedonian national fighter, creator and politician and the first President of the Presidium of ASNOM, because of which he was often named as the first President of Macedonia.
  - 102 Todor Aleksandrov (1881 – 1924) — a Macedonian political leader, war leader (voivode) and one of the leaders of VMRO.
  - 103 Gjorgi Sugarev (1876 – 1906) a Macedonian revolutionary, a member and war leader (voivode) of the Bitola Revolutionary District of the Macedonian Revolutionary Organization.
  - 104 Tsar Samoil (958 – 1014), a mediaeval Macedonian ruler at the turn of the eleventh century.
  - 105 Gjorge Petrov (1865 – 1921), a professor, publicist, historian, ideologist of the Macedonian Revolutionary Organisation
  - 106 Aleksandar Turundžev (1872 – 1905) a Macedonian revolutionary, the participant in the Macedonian revolutionary movement, member and war leader (voivoda) of the Macedonian Revolutionary Organization.

and opinions and enabling the audience to freely form opinion about events and issues, as well as the obligation of MRT, for accomplishing the public interest, to promote respect of the fundamental human rights and freedoms, democratic values and institutions, to respect privacy, dignity, reputation and honor of an individual. Station was referenced that it should be attentive not to create an atmosphere of encouraging hate that could lead to threatening one's safety, because it has the complete editorial responsibility for the broadcast contents and should be independent in creating editorial policy. Besides, it was stressed that media should have in mind that the freedom of a journalistic genre comment (editorial) did not imply its liberation to derive from respecting the basic journalistic principles of objectivity, impartiality, lack of bias, and above all, hearing of the other party. A special announcement was issued by the Council to inform the public of the measure taken.

## MONTENEGRO

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### Review of extracts from the hate speech cases in Montenegro processed by the Agency for Electronic Media of Montenegro (AEM) (2003–2016)

#### TV ELMAG, 2005, Offensive speech

AEM noted, *ex officio*, that the minimum programme standards for the operation of electronic media were violated in the programme of TV Elmag, on the TV serials “Oči u oči” (“Face to Face”) broadcast during the first quarter of 2005, and on the show “Izazov istine” (“Truth Challenge”) broadcast on 9 June 2005 with the following topic “War as means to the Greater Kosovo”.

The disputable moments in the contents of the show “Face to face” include:

TV hostess’s question: “Will future generations in Montenegro hate Serbs as Croats do?”

Answer: “The government is working on it”

TV hostess uses the terms of Shiptars<sup>107</sup> and “Titogorci<sup>108</sup>”

TV hostess’s question: “Is this about a propaganda being spread around Montenegro that Montenegrins do not want to be with Serbia?”

Guest’s comment: “... Montenegro anthem was written by an Ustasha<sup>109</sup>”.

Comment/question: “Ljuđuraj is a Shiptar from Montenegro who was appointed a Head of the Mission in the US, how come that Đukanović<sup>110</sup> appointed as a Head of the Mission in New York a Shiptar who says that his mother tongue is Albanian... how does he represent Montenegro”.

Repeated references to Albanians as “Shiptars”.

SMS subtitles – comments by viewers who wrote about how all Montenegrins should be expelled from Serbia, mentioning that there would be more apartments, work and food left if Montenegrins were no longer there.

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107 Term, when used by others than Albanians, has a pejorative conotation.

108 Pejorative term for Montenegrins suggesting that they had not existed before Tito’s rule.

109 Pejorative term for Croats.

110 Montenegrin politician, who held positions of Prime-minister and President of Montenegro.

Disputable moments in the contents of the show “Truth Challenge” include:

“Clandestine Shiptar organisations were tasked with reinforcing their operation during 2005 against Serbia, i.e. against political actors in Serbia, to create divisions within it, as well as with helping the political regime of Milo Đukanović with the secession of Montenegro”.

“Terrorist commanders fear the interventions by the Serbian security forces”.

“The Kosovo Independence Plan reads that the Government of Kosovo will seek from Serbia to pay war damages of 100 billion dollars, which Serbia will not be able to pay, thus they will demand the south of Serbia in exchange”.

“The members of the Kosovo Protection Corps are already undergoing training, in the event that Kosovo becomes independent and the Serbian army engages in military interventions. Even in the event of an attack by KFOR<sup>111</sup>, they will be ready to defend themselves. Also, there are plans for the shipment of military equipment from western countries and for the arrival of “Holy warriors” – Al Qaeda and Islamic members”.

“The state of Albania and Albanian drug-dealing mafia supply the Kosovo Protection Corps with military equipment, light weaponry and howitzers.”

“While preparing for the future war in the territory of Balkans, Albanian National Army formed the core also in Montenegro, with three terrorist detachments, which can mobilise 600 people.”

Comment of the journalist at the end of the show: “The Greater Albania movement is prepared to threaten and has already threatened the stabilisation of the Balkans”.

### ***AEM Action***

The broadcasting of the mentioned programme contents violated the principle of equality of citizens on the ground of religious, national or ethnic affiliation. Claims and judgments about certain national minorities were published (specifically Albanians) accompanied by qualifications and in the manner that is offensive and inappropriate for broadcasting. This manner of public communication is a classical form of violation of basic moral values and principles through insulting a certain number of people on the ground of their national affiliation. By using the manner of expression (referring to Albanians as Shiptars and terrorists), the broadcaster failed to take into account the structure of listeners and failed to take into account a particularly important fact that a substantial portion of the broadcast material was inappropriate for broadcasting

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111 International military mission to Kosovo.

as it offended certain social groups that were in a position to see such contents that could, eventually, lead to fuelling up national hatred. By broadcasting the mentioned programme contents, TV Elmag failed to be mindful of the statutory obligation to show objectively and in a balanced fashion all cultural and ethnic communities thereby promoting cultural and ethnic diversity as a natural and positive element in the society.

When imposing a sanction, AEM took into account that the TV Elmag, up until that moment has never had any administrative and surveillance measures undertaken against it, and that a sanction of a warning would be commensurate to the nature and seriousness of the offence, and that it may be expected that the warning would be sufficient for the broadcaster not to repeat unlawful conduct in the future. The warning was imposed and the broadcaster was ordered to be mindful of the compliance with the minimum programme standards prescribed for the operation of electronic media, and to be particularly mindful of the following:

- a. That it shall not use in the programmes unconventional language and negative ideological stereotypes (Shiptars, "Titogorci", etc.);
- b. That by broadcasting programme contents it shall not violate the interest, safeguarded under the law, of persons the information refers to, i.e. that it shall not violate the principle of equality of all citizens irrespective of cultural, religious or ethnic differences;
- c. That it shall not violate in public communication basic moral values and principles, rules of good taste and decency and offend the sentiments of the public.

### **TV ELMAG, 2006, Hate speech**

AEM noted, *ex officio*, that the TV show "Oči u oči..." ("Face to Face") was broadcast on 29 May 2006 at 20:00 hrs, as well as the incoming SMS messages stressing, with negative connotations, the affiliation with certain national groups, accompanied by qualifications and in the manner that is offensive and inappropriate.

Instances of viewers' SMS messages broadcast during the show include:

"Look, let the traitor feel shame about his/her faith".

"Milo cannot extinguish the Serbianhood, and we pray to God for Serbs to get along".

"This is not Montenegro, but a heroic Serbian nest".

"Oh dear Montenegrins, do read "Gorski vijenac"<sup>112</sup>, o wretched extinguished Serbianhood, I survived all kinds of your evils, and I wish to fight the worst of them all, read it, do not disgrace yourselves".

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112 "The Mountain Wreath" – famous literary work of Petar II Petrovic – Njegoš.



“Greetings to the Serbs in Montenegro! There is more than enough of them! Montenegro and Serbia, they are the dearest brothers. Albanians, congratulations on your state”.

“It is apparent who is majority with Shiptars, good luck with your state”.

“And Serbia shines happily, being clean ecologically, Montenegrins wait for the brotherly hands from Croatia, they might as well arrive before from the neighbouring Albania. King Nikola”.

“I am Bulajić, you will not deprive me of my right to be a true Montenegrin, however I am ashamed of it today, because of these, I do not know how to call them, these who have bred something shameful with Turks, wretched souls “.

“Njegoš, not so long ago had been proclaimed a genocidal writer. Out of the blue right before the referendum he had been abolished and was allowed to lobby for it” (*trans. note: sentence unintelligible in Serbian, particularly the end of it*).

### **AEM Action**

By broadcasting the disputable SMS messages, the information and opinions were broadcast stressing, with negative connotations, the affiliation with certain national groups, accompanied by qualifications in the manner that is offensive and inappropriate. This manner of public communication, with the presence of elements of national and religious hatred, constitutes a form of violation of basic moral values and principles and the insult to a number of citizens of Montenegro on the ground of national and ethnic affiliation. By using this manner of expression (when broadcasting SMS messages), the broadcaster failed to take into account the fact that a substantial number of the broadcast messages was inappropriate for broadcasting, as it might initiate elements of national and religious hatred. Broadcasting SMS messages of such contents “incites to discrimination, hatred and violence against persons or groups of persons over their affiliation or non-affiliation with some ... religion, nation, ethnic group....”.

When imposing a fine, AEM took into consideration the seriousness of the offence, as well as the written statement of the broadcaster reading that omissions were not made deliberately and that they were the consequence of irresponsible attitude and lack of professionalism of individuals, thus in this case a fine commensurate to the nature and seriousness of the offence was imposed. When reaching a decision, AEM particularly took into account that the broadcaster previously demonstrated a responsible attitude to the warnings from this Agency to bring the programme in line with the programme standards defined in relevant legislation. A fine in the amount of EUR 2,500 was imposed and an order was issued for a notification on the imposed sanction to be announced in the programme.

AEM Council dismissed the broadcaster's appeal against the imposed fine. In so doing, the AEM Council took into account that the broadcaster acknowledged that the disputable programme contents were broadcast during "the period of the referendum process, divided political positions and opinions and in a heated verbal atmosphere...". Presenting the data on the selection of SMS messages and an appeal to have understanding for a dire financial situation of the broadcaster, which is improved by the revenues collected from the broadcast SMS messages, confirm the absence of the broadcaster's sensibility and responsibility for the role that a medium, particularly an electronic medium, may have in such circumstances. Without expecting from a broadcaster to neglect the anticipated commercial aspect of broadcasting certain programme contents, AEM Council held that the protection of human rights must be primary always, i.e. via consistent application of the defined minimum programme standards. The broadcaster demonstrated a degree of responsibility regarding this rather important issue, by adopting a decision on the structure and time of broadcasting programme contents and by engaging competent and professional staff that are familiar with and know how to apply the programme standards. In the opinion of AEM Council, in the respective case the offence occurred due to the absence of a mechanism ensuring that a certain form of programme contents is not used in a way constituting a recognised violation of programme standards. AEM Council noted that, irrespective of financial situation or a decision whether certain contents would be edited by a competent person or not, it is up to the editorial freedom and the responsibility of every broadcaster individually whether they would broadcast or not certain programme contents, and the very editorial freedom is restricted by the interests of individuals safeguarded under the Constitution and laws. Thus, the competence of AEM is not to arbitrate concerning the matters whether it is financially justified to broadcast SMS messages or concerning the competence of the staff appraising such contents, as that would lead to prohibited interference of AEM with the editorial policy and non-compliance with the principle of independence and autonomy of the media. On the other hand, it is the obligation of the regulatory authority to identify and sanction the violations of programme standards.

### **TV ELMAG, 2006, Hate speech**

AEM noted, *ex officio*, that the TV show "Hoće li se poništiti referendum?" ("Will referendum be annulled?") was broadcast on 22 May 2006 at 21:40 hrs, along with the incoming SMS messages stressing, with negative connotations, the affiliation with certain national groups, accompanied by qualifications and in the manner that are offensive and inappropriate.

Instances of viewers' SMS messages broadcast during the show include:

"If the Serbian Montenegro must be sovereign with the votes of Muslims, Shiptars and Gypsies, mafia and the inhabitants of Duklja, then evil times have arrived, we spat on Njegoš".

"If you do not love Saint Sava, may you not celebrate a family Patron Saint. If you do not accept the Bishop Rade, may you lose every hope. If you do not

love Karađorđe, may Demaći be your leader, if you hate your brother Serb, may you hide your eyes behind a door. And if you betray your grandfather, and sell your Serbian faith now, may you be ashamed before God, Vasilije and Ostrog “.

“NO to the sect of defrocked priest Miraš, NO to the largest hotbed of mafia, NO to drugs and sale of souls, NO to the murderer of JOVANOVIĆ Duško, NO to injustice, malice and spite. NO to the betrayal of the world and the past, NO to the playing with glorious history, NO to the border with brotherly Serbia, No to this judiciary and police, NO to terror, No to corruption, No to the sale of honour.....”

“Greetings to all the Serbs. Let it be credit to the reputation and honour of those individuals who have sold their vote, their faith, may the curse of Tsar Lazar catch up with them”.

“The Serbianhood cannot be extinguished by Turks, even if they were twice as many”.

“Is our Serbian Montenegro decided about by converts to Islam, Albanians and local *Brankovići*. SHAMEFUL”.

“Good luck with that (Croatian) checkerboard in Cetinje, Montenegrins!”

“Montenegro, you are black, and you will be even darker and sadder, sold for someone else’s goal, planned long ago, of the Greater Albania. And brothers Serbs will not be there then, as you turned your back on them on 21 May”.

“Hold your head high, do not lower it before the Duklja inhabitants, be proud of what you are. Long live Serbia”!

“Shame on you, you sold souls, Zeta is Serbian, you go Serb Mašan”.

“We had the Greater Serbia and Montenegro and minor hatred among people, now we have a miniature Serbia and Montenegro and great hatred among people.”

“Greetings to all the Serbs, let us not allow Albanians to walk all over us”.

“You have started celebrating before the end of the vote. You want to have a state by force. Shame on you thieves. You are destroying everything that is sacred”.

“I am not giving away the cap of my grandfather, my honourable grandfather. It has four letters on it, a Montenegrin cap it is. Long live Serbia and Montenegro, long live the Serbian countries”.

“Do not allow the Turks to decide about us. Cetinje, shame on you, for breaking out a (Croatian) checkerboard”.

"At full throttle, Europe is the goal, with checkerboard in your hands, as tonight in Cetinje, Montenegrins".

"I had learnt about a military coup in school 30 years ago, and my grandchildren will learn in the future about the last night's coup".

"Pitiful we are with such a state, Lipka sold himself for a bag of potatoes".

"To me this resembles the war in Bosnia".

"For 500 years, brothers, we had fought against the Turks, and they divided us, separated us. Hug with them brothers Montenegrins, for I WILL NOT, even if my bones should perish".

"Boka is not Montenegro, but a heroic Serbian nest, greetings from Igalo".

"Damned be the one who has betrayed and sold our country, our people and set a brother against a brother, do not give away the land, preserve the peace".

"Damned the state won in this way, mother Serbia, do you see us?"

"I do not get it, where is this celebration? Is it in Zagreb or in onetime glorious Cetinje. I see more (Croatian) checkerboards than these new flags, Montenegrin flags".

"You sold souls who have sold your ID cards and fell before God, separated the inseparable brothers and divided Montenegro, do you have your conscience?"

"Good luck with Montenegro you sold Montenegrin souls with your brothers Gypsies, Shiptars and Turks. Today you are Montenegrins, tomorrow Albanians already".

"They want to separate me from Serbia, to rip out from the heart the dearest ones! They want to introduce the Montenegrin language, so that I have to translate the Mountain Wreath from the Serbian language".

"Who does not want to have a brother for a brother will have Dinoš as a master".

"Milo may it be credit to your honour for bringing us together with the Turks, and setting us against the Serbs".

"Stay here to enjoy the Sun of our heaven with Shiptars and Albanians, enjoy with your Shiptar state and bring Enver Hodža as a president".

"O shameful Montenegrins, don't you feel shame? You are sold souls, your conscience will never be pure. Your brothers are Muslims so enjoy it now ....., the question though is how long for".

“As soon as you have changed your faith, you have replaced Serbia. Sbutega is your hope, you have settled down with Ustahas. You are not ashamed of people at all, let history marvel at it, for EUR 100”.

### **AEM Action**

By broadcasting the disputable SMS messages, the information and opinions were broadcast stressing, with negative connotations, the affiliation with certain national groups, accompanied by qualifications and in the manner that are offensive and inappropriate. This manner of public communication, with the presence of elements of national and religious hatred, constitutes a form of violation of basic moral values and principles and the insult to a number of citizens of Montenegro on the ground of national and ethnic affiliation. By using this manner of expression (when broadcasting SMS messages) the broadcaster failed to take into account the fact that a substantial number of the broadcast messages was inappropriate for broadcasting, as they might initiate elements of national and religious hatred. When imposing a fine, AEM took into consideration the circumstances as in the previous case. A fine in the amount of EUR 2,500 was imposed and an order was issued for a notification on the imposed sanction to be announced in the programme. AEM Council dismissed the broadcaster's appeal against the imposed fine providing a similar statement of reasons as in the previous case.

### **TV ATLAS, 2010, Hate speech**

The Protector of Human Rights and Freedoms addressed AEM with a request for an opinion in relation to the address by the nongovernmental organisations and representatives of LGBT population regarding the show “Glamour noir” broadcast on TV Atlas on 11 October 2010.

“Glamour noir” was a contact entertainment show of TV “Atlas”, which was broadcast live on Mondays between 21 and 22 hrs, and re-broadcasted on Tuesdays between 14 and 15 hrs. It was planned and conceived to deal with topics and phenomena from popular culture in a “pop art” style: men-women relations, popular trends in show business, phenomena of pop culture, counterculture and such like. The format and author's vision of the show were shown in the contents of the TV telop broadcast at its beginning, made up of the text written across the screen (while being read simultaneously by a newsreader). The text reads: *“WARNING: Glamour has little, or none at all, everlasting aesthetic value. Its manifestations have no artistic goals. The goal is fantasy, and not art, and the intention is not to uncover some truth to a viewer, but rather to conceal it. Glamour usually has no taste. This show is marked by exhibition – it endeavours at the same time to attract people and to divert their thoughts. Our intention is to delude and enchant by means of spectacle in order to conceal the ordinary and commercial.”*

The topic of the show: Quest for an answer to the question: “Does a postmodern subject drive away the burden of freedom with violence” –

phrasing by the TV hostess. Based on the contents of the show, it is possible to conclude that the cause was the then current affairs from the pride parade held a day earlier in Belgrade, and the essence of addressing the topic was: "The freedoms and rights of LGBT population in Montenegro."

Guests in the studio: a psychology teacher in the Grammar School in Podgorica, a representative of NGO "Juventas" and students of the third grade of the Grammar School.

Description of the course and contents of the show: the opening segment of the show, scenography, lighting, TV hostesses' wardrobe, seating arrangements for guests – did not announce a turnaround vis-à-vis the conception of this show from light and entertaining contents to a serious and extremely sensitive social topic, which requires that authors engage in serious preparation, with excellent knowledge about the problem area and a total sense for subtleness and nuances in communicating with the public. The total visibility – scenography in the studio, jingles separating internal programme blocks and the appearance of TV hostesses – confirmed the already recognisable orientation of the show towards the light contents from the areas of popular culture and "current trends in show business".

The seating arrangement of guests was unusual considering the selected topic and the type of debate. A psychology teacher, a representative of NGO "Juventas" and TV hostesses were seated on a three-seater sofa and two armchairs, in the centre of the studio, and sitting sideways from them, unnaturally separated, almost "masked" behind ribbon curtains with pearls, were the students of the third grade of the Grammar School from Podgorica, who were announced as guests on an equal footing.

After extensive and rather improvised introduction by TV hostesses, introduction of guests, communication of the topic of the show and announcement of the planned programme, the footage recorded in Belgrade the previous year, on the eve of the announced, and delayed in the last minute, pride parade in the capital of Serbia, was played. The statements of citizens and personalities from political and public walks of life from Serbia and Montenegro were recorded. Differences in opinions were illustrated through the presentation of summary statements by the psychology teacher and the representative of NGO "Juventas" that followed.

Psychology teacher held that the name "pride parade" is inadequate and she asked: "What is it that those people are proud of and why parade when sexuality is an intimate matter of a person"? Comments included:

"Some twenty years ago homosexuality was registered in official registers as a disorder in sexual behaviour. This is to say not a disorder of personality, but a disorder of a segment of behaviour – sexual behaviour.

“After that the World Health Organisation “decided” that it was no longer a disorder, but that it was a sexual choice.

“We know that homosexual lobby is very strong across the world, that they entered the World Health Organisation and that they were bothered by the term disorder...”

“At a seminar held in May the latest research was presented, which uncovered that homosexuals have a certain genetic anomaly and that now they are going back to the earlier formulation that it is a disorder in sexual behaviour.”

“A disorder in sexual behaviour does not mean that this is a disorder of personality. Homosexuals are normal persons, in a sense that they have normal intelligence, they are capable of working, conducting themselves normally in social contexts and have no other disorders.”

“That disorder can be “treated” and I am aware of examples where people changed their orientation.”

“We are talking about the tolerance of adults, and we are forgetting that we have children and youth..... we also know that the principal carriers of HIV virus are homosexuals and drug addicts. If something is a threat to us, then we should not promote it publicly.”

“Our attitude to homosexuals is an attitude to differences. We should try to understand, but not to stimulate and teach youth to be homosexuals.”

The representative of NGO “Juventas” held the stance that this disorder, or deviant behaviour, on the one hand, is the result of prejudices, stereotypes and intolerance, and partly a consequence of the lack of sexual education in secondary schools...

“Since 1991 the World Health Organisation has not treated homosexuality as a disease, and Montenegro has adopted that, but as one of the options, one of the sexual orientations”

“The name “pride parade” is used to show that they have nothing to be ashamed of and that they are as equally complete, as equally healthy beings as those of heterosexual orientation.”

“It has been proven that sexual orientation cannot be changed. The more recent research speaks about possible causes why someone is born as a homosexual person, and there are differences in opinions there. However, the official and final position of science is that it is not a disease.”

“We are not teaching the youth to be homosexuals, we are teaching people to understand themselves and others and to behave in accordance with their identity.”

“Homosexuals do not endanger anyone and the society has the obligation to secure full equality to them....”

As for the participation of students<sup>113</sup>

TV hostess, when introducing them, said: “Tonight you will participate on an equal footing with our guests, irrespective of your teacher being together with you here. I can see that somehow she has singled you out to give your respective opinions.”

Students were, objectively speaking, under the pressure to meet the expectations of an undisputed authority for them – the teacher, as well as of the entire surroundings (family, environment, peers.....) – which could have indisputably (and most probably did), to a certain measure, had a negative impact on their experience of the freedom of public expression of their own opinion.

For the main part, they were given the floor when called out to serve as a confirmation of the positions of those who called on them to state their opinions (they answered the questions put by guests one time each) not without additions of paternalistic and patronising relations.

The recorded feature stories and the poll served their purpose for the major part. They faithfully pictured the dominant orientations in the society, generation gaps and dilemmas people encounter when thinking about the topic that has been treated for decades, most likely for centuries too, as an eccentricity and unnatural perversion, a disease and such like. Authors provided sufficient number of very illustrative statements and representations of different social structures and layers, thus perhaps it was advisable to think about omitting some, admittedly sparse, offensive statements containing the hate speech.

### ***AEM Action***

AEM concluded that the disputed show went by in accordance with the Law on Electronic Media, the bylaw on programme standards and relevant European standards, in an atmosphere of a tolerant dialogue, mutual consideration among unlike-minded persons, basically showing realistically the social reality of the controversial issue.

In a somewhat inadequate atmosphere for shows on current affairs, with the opening segment and the studio promising more of a cabaret-like entertainment rather than a debate on a very complex and sensitive social issue, once a brave decision was made to move from a light conversation on the show business happenings to a debate related to complex social problems, it was necessary

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113 Students are from the school where the teacher (guest) teaches and she participated in selecting the students to feature as guests on the show.



to engage in a more serious preparation for the debate requiring superior knowledge of the substance, a great deal of caution and skill to avoid risks for anyone in a public communication involving a number of participants, even without a genuine intention, to feel hurt on any ground. Since “TV Atlas” had had on its repertoire such shows, it would have been logical if they remained consistent genre-wise. However, this choice falls within their editorial freedom and is a legitimate choice.

It is possible to make serious objections to the overall manner of realisation of an otherwise positive idea to include in the conversation the students of the third grade of a grammar school. Emphasis were put on the following:

- It was not professionally correct to allow one of the guests in the studio, concerning the topic that is the subject-matter of opposite views, to select according to one’s discretion other guests on the same show, who happen to be representatives of a very significant target group, who are at the same time, more than realistically, expected to be under the influence of her/his authority when stating their positions; in other words, participants from among the young generation were supposed to be selected by the authors themselves, thereby making sure that they are spared of pressures as much as possible. That was not the case on this show.
- The position in the studio, the space where students were seated and “the glitter” which “separated” them from the rest of the participants and TV hostesses, suggested their marginal and somewhat pejorative position and treatment (although it is clear that was not the intention of the author).
- The manner in which students were involved in the conversation could have been much more appropriate; students replied two times after being directly called out by other guests (the teacher and the NGO representative), more to confirm their positions; besides, questions were phrased in such a way as to emphasise their statement of opinions on their own orientations and experiences, instead of voicing their opinions on the phenomenon, which was not the case with other guests.

Although that falls within the domain of editorial freedom, in the context of sharp social polarisations vis-à-vis the topic of the show, the broadcaster could have been more cautious when selecting the opinions of citizens in the polls, and possibly leave out the most extreme views and messages, for, in the opinion of the AEM, there were sufficient number of very representative illustrations of public opinion and mood.

The broadcast programme contents were analysed in detail in terms of its harmonisation with the law and the AEM bylaws, as well as the Recommendation of the Council of Europe No. R (97) 20 on “hate speech”. AEM particularly took into account that in practice and when applying provisions of law in the area

of hate speech, it is necessary to take into account the role of the media in the transmission of information and ideas presenting, analysing and clarifying the character of specific cases of hate speech and that phenomenon in entirety, as well as the right of the public to receive such information and ideas. For that purpose, a clear distinction should be made between the responsibility of the author of hate speech, on the one hand, and the responsibility of the media and media workers who contribute to the spreading thereof as part of their task to communicate information and ideas on the matters of public interest, on the other hand. Media and media workers should be mindful when reporting on hate speech or intolerance, since there is a risk for the public to interpret their work as a token of support to views that are worthy of condemnation. That, however, is a matter of professionalism, particularly of professional ethics, which the media and media workers themselves should deal with, and not the authorities. Complying with professional rules and principles on the part of the media is not a matter to be regulated by the state bodies, since that would constitute a great threat to the freedom of expression and editorial independence and autonomy. It is another matter that certain legislative provisions that restrict the freedom of expression may correspond to certain rules of conduct, which the media workers abide by.

AEM deemed that this topic, as well as numerous other rather important social topics, were insufficiently and sporadically addressed in the Montenegrin media, as well as that there are regular and, as a rule, harsh reactions of a part of dissatisfied public to all the so-called controversial topics. Thus, there was a realistic risk for the media to start avoiding such topics and to turn even more to the commercial and less “risky” topics. In that context, imposing lightly any restrictive measures or sanctions against broadcasters, which were not sufficiently justified or necessary, may have had a discouraging effect on them to deal with complex (or controversial) phenomena or processes. Finally, AEM concluded that it suffices to send a recommendation to the broadcaster TV Atlas and other electronic media in Montenegro to dedicate maximum professional attention to treating all aspects of sensitive problem areas related to the exercise of human rights and to avoiding the danger of promoting or inciting intolerance or hate (speech).

### **TV Pink M, 2011<sup>114</sup>, Hate speech**

On 19 February 2011, AEM instituted, *ex officio*, a summary procedure with a view to establishing whether the minimum programme standards were violated during the broadcast of “Dnevni pregled” (“Daily overview”), or during direct tune-ins into the reality show programme “Dvor” (“Castle”) on 18 February or 25 February 2011, during the TV Pink M programme.

While analysing the footage of direct tune-ins into the programme, broadcast on 18 February and 25 February, as well as during the overall broadcasting of the

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<sup>114</sup> Upon the entry into force of the Law on Electronic Media in 2010, the Agency for Electronic Media shall have no right to impose fines.

respective reality programme, participants in the programme continuously used insults and profanities thereby contributing to the promotion of unconventional language and manner of speaking.

During the direct tune-ins broadcast on 25 February 2011 (around 4 a.m.) the conversation among participants contained their opinions and stances related to an attitude to an ethnic group (Jews). These statements could be qualified as opinions inciting hatred.

### ***AEM Action***

By broadcasting direct tune-ins and daily overviews containing instances of unconventional language and manner of speaking, as well as instances of violence (even the emphasis thereof) during the time when it is likely that minors might hear or see it in usual circumstances (10:00, 13:00, 15:00 and 20:00 hrs), the broadcaster violated the provisions of the law, for it failed to broadcast during the watershed periods the programmes that might affect the protected viewers (minors) as endorsing, promoting or glorifying violence and failed to mark them visually and audibly as contents inappropriate for minors, or for watching with family.

The warning was issued for the violations of prohibition to publish information and opinions encouraging discrimination, hatred or violence against persons or groups of persons for their affiliation or non-affiliation with some race, religion, nation, ethnic group, sex or sexual orientation and rules of scheduling and marking contents inappropriate for minors during the broadcast of direct tune-ins and daily overviews of the reality programme "Dvor" beyond the watershed period and without adequate warning about the contents.

When imposing the sanction, AEM took into account that the broadcaster during earlier broadcasts of similar contents complied with the AEM requirement and broadcast this type of programme, as inappropriate for children and youth, exclusively during the watershed period (after 23 hrs). In that sense, a measure was imposed commensurate with the nature and seriousness of the offence. The broadcaster was ordered to announce the notification on the imposed sanction, to be mindful of standards and rules of scheduling and marking the contents that are inappropriate for minors, which may endanger their physical, health, moral, mental, intellectual, emotional and social development, and not to broadcast information and opinions possibly encouraging discrimination, hatred or violence against persons or groups of persons over their affiliation or non-affiliation with some race, religion, nation, ethnic group, sex or sexual orientation.

### **RADIO SVETIGORA, 2011, Hate speech**

On 30 March 2011, AEM instituted, *ex officio*, a procedure with a view to establishing whether the minimum programme standards were violated during the broadcast of the show "Pitajte sveštenika" ("Ask a priest"), on 27 March 2011, during the Svetigora Radio programme.

During the contact show, conceived and realised in a way that the TV host asks a guest on the show questions sent by listeners, the radio host asked, *inter alia*, the following:

“Father, here is the next question of our listener: How to declare oneself during the next census in the event where a father of the family declares himself as a Montenegrin, and children as Serbs, and to avoid family disputes while doing so.”

To the question, among other things, the guest (at the time Abbot of the Dajbabe Monastery in Podgorica) answered: “... No one can bless such creations as not created by God, definitely the Montenegrin nation is not created by God, rather it is a fruit of human vanities and weaknesses etc. Generally, the creator of the Montenegrin nation is actually the Devil, in essence and the Church cannot bless that”.

### ***AEM Action***

By broadcasting the disputable content, the broadcaster made possible and tolerated the use of offensive terms that may be linked to a certain social group. In doing so, it violated the standard prescribing that the programme contents of electronic media shall not be directed at the violations of guaranteed freedoms and rights of a human and citizen or at the provocation of national, racial and religious intolerance or hatred, as well as that their programmes shall not broadcast the programme contents stressing the affiliation with an ethnic group, gender or sexual orientation as a form of discrimination against them. Also, this violated the standard that the media are obliged to avoid the use of offensive terms that might be linked to a certain social group.

While being considerate of the freedom of expression and information, AEM bylaw stipulated that the broadcasting of the programme contents carrying offensive terms is allowed exclusively if they are part of a scientific, author-penned or documentary work and are published without the intention to incite to discrimination, hatred or violence and are part of an objective journalist report or are published with the intention to critically point to discrimination, hatred, violence or to phenomena representing, or that may represent, the incitement to such behaviour. Bearing in mind that it is a contact show, it is clear that in this case it is not possible to talk about some of the conditions for exemption from general prohibition. AEM particularly kept in mind that the statement was given on the eve of the census, which organisation and implementation were viewed in unjustifiably pronounced political context. The show host had to be aware of that, thus it is possible to talk about the responsibility of the media for a possible contribution to any deterioration of relations among the advocates of different views (inciting intolerance). The warning was issued and the station was ordered to air the notification on the imposed sanction to be announced in the programme, to take account of prescribed programme standards during future broadcast of radio programme, particularly:

- Not to incite or spread, or enable the incitement or spreading of hatred or discrimination on any ground;
- Not to broadcast the programme contents directed at the violations of the guaranteed freedoms and rights of a human and citizen, or at the provocations of national, racial and religious intolerance or hatred, or stressing the affiliation with an ethnic group, sex or sexual orientation as a form of discrimination against them;
- To avoid the use of or enabling or tolerating the use of offensive terms that may be linked to a certain social group.

When imposing a sanction, AEM had in mind the hitherto operation of the broadcaster, the given statement of opinion, that the imposed measure was commensurate to the nature and seriousness of the offence, as well as that it may be expected that the warning will be sufficient for the broadcaster not to repeat its unlawful conduct in the future. In particular, AEM had in mind that the broadcaster reacted in a timely fashion and did not repeat the disputable contents, although it was announced so in the programme schedule, which implied that it did recognise and thwart further violation of standards. Also, the broadcaster recognised that it was an omission on the part of the host/journalist, because adequate reaction to the uttered statements did not happen, which could be construed as the position of the broadcaster/media. In that sense, when reaching the decision AEM appraised the clear difference between the responsibility of the hate speech author, on the one hand, and the responsibility of the media and media workers contributing to its spreading as part of their task to communicate information and ideas on the matters of public interest, on the other hand.

## KOSOVO\*

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### **Tribuna channel, offensive speech**

Independent Media Commission received a complaint from a person against the program of Tribuna Channel, where it is noted that the complainant had suffered irreparable damage from insults and defamation made by the guest in the studio, calling him names such as “Spy of UNMIK and Serbia.” Furthermore, the Complainant requested defamatory or offensive expressions to be corrected by the broadcaster. Otherwise, the complainant as a journalist would suffer damage to reputation as a genuine journalist who exercises this profession with dignity and independence.

### **IMC’s action**

IMC found this program to be in breach of relevant provisions which state

“During live programs (debates/interviews, etc.) it is MSP’s obligation to undertake proper actions to avoid the use of vulgar or offensive language by participants.”

IMC sent the Notice of Violation to the station.

### **Radio Television of Kosovo, hate speech**

IMC received a complaint from the Association of Journalists of Serbia. The complainant alleged that the Public Television of Kosovo published the names and photographs of several people in the story, in the context of a Russian espionage network that operates in Kosovo. Given that the persons mentioned are of Serbian nationality, this could incite hatred, danger and contribute to the increase of inter-ethnic tensions, and it poses the risk of causing harm, which could result in death, injury, damage to property or any other form of violence.

The complainant alleged that by presenting the people in the story as being part of an espionage network, the story of RTK1 constitutes an insult, rumor, and an attack against their honour and integrity, and it violates the right of persons to be presumed innocent until proven guilty by law.

### **IMC action**

IMC considered that the publication of names, photos or other personal attributes can incite hatred and may risks and contribute to the increase of inter-ethnic tensions, and this is in violation with the article 5, paragraph 5 of the Code of Ethics, which states that:

“MSPs should not broadcast program contents that incite hatred and inequality and may result in criminal or violent actions against an individual or group.”

The RTK1 published the reaction of this association.

IMC sent the Notice of Violation to the station.

## SERBIA

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### RADIO FOKUS, 2011, Hate speech

Radio Fokus broadcasted the programme on the territory of the entire Republic of Serbia at the time of the broadcast of the programme in question. The Service for Oversight and Analysis of the Republic Radio-Diffusion Agency (presently: the Regulatory Authority for Electronic Media - REM) prepared a report on the broadcasted programme of *Radio Fokus*, based on the official monitoring.

The subject of the programme was a live broadcast of a rally of the Serbian Progressive Party (the largest opposition party at the time), during which the usual programme scheme was cancelled and the whole day was dedicated to the stories about the rally, with listeners tuning-in, the request to call elections, the health condition of Toma Nikolić, politicians in power and topics related to SNS and opposition. The broadcaster broadcasted in its programme the following content:

The statement of the broadcaster's programme host: "Vesa Simonović, with new authority in Serbia being in place, not only that he should not be in this job, not that he should be lustrated to the end of the world and time and his miserable traitorous life, but for something like this there are ethical courts, journalists' associations etc. He should be sent off, get the sack from all journalists' associations and he should be banned from working in the media for some ten years, for that was anyway just like Nazis after the Second World War, like Gebels and his whole Nazi propaganda machinery (...) that is as if Nazis would publish a title reading that Jewish fertiliser is the best for Nazi crops. For instance, that title published by "Blic" today, deserves to go into the annals of dishonour, villainy that the traitorous DOS regime started here and led by the mafia boss Zoran Đinđić, that bloody feast in 2000.";

Listener tuning in: "They are chinks, mugs, they should perish, starve to death!";

Host: "No, do not do that, we interrupt that, please, we interrupt here, we cannot allow any form of hate speech concerning anyone!". After that, the same listener tuned in again: "Pole, just a pole and a pitchfork, what police". Host: "Please, what poles and pitchforks?!", listener: "I have nothing to eat, I will bite their throat, do you understand!";

Listener tuning in: "Boris relax, drop down and relax, drop dead...", Host: "we are interrupting here!", listener: "...die, I fuck your mother in her pussy!", host: "Please do not get offensive, you cannot talk like that, dear listeners of Fokus Radio, I, I would kindly ask you not to use hate speech...".



## **REM action**

Taking into account the content of the described statement by the host, the manner in which it was made and the context in which it was given, the Agency Council held that such conduct amounts to hate speech, since the host, believing that Mr. Simonović belonged to a certain political orientation and therefore did not exercise his call professionally, presented a series of offensive words at his expense that constituted an incitement to hatred, or intolerance, particularly if one bears in mind the aforementioned tension in relation to the current social and political developments. In particular, in a part of our society the belief that a certain person is “a traitor” (collaborator of “the enemy” side; the one working against “our” interest) is a reason for hatred, intolerance, discrimination, even violence, therefore the word “traitor” is used in the public, particularly political, discourse for the purpose of discrediting the person whom that qualification referred to. Therefore, to call a certain person a traitor (or his life traitorous) at the time of the described tension, on the grounds of different political opinion, is very irresponsible and, what is more, dangerous and undoubtedly may be qualified as inciting to discrimination, hatred or violence against Mr. Simonović on the grounds of different political orientation (hate speech). The Agency Council held that it was irrelevant whether the broadcaster’s host expressed himself in the described manner with the intention to incite to discrimination, hatred or violence, or it was done without any intention whatsoever, since the case at hand concerns the communication of own thoughts to the public through the means of mass communication (radio program), which requires exemplary, moderate and thoughtful language, which criteria the broadcaster’s host failed to meet through his expression. Besides, the host’s language was offensive, by its nature, given that the qualification of someone’s life as pitiable, miserable, and traitorous, in our society undoubtedly constitutes an insult, taking into account its value system, which obligates a member of that society to live an exemplary life, not conducting oneself in a manner that may be referred to as pitiable, miserable or traitorous.

In addition, based on the appearance of the mentioned host, one can presume justifiably that in the case at hand he was presenting his point of view as a sympathiser of the politics of the Serbian Progressive Party or other associated politics, and not as a journalist who is bound to impartiality by the rules of journalists’ ethics. Namely, the manner in which he presented (processed) the information on the manner of the reporting by the daily “Blic” – the style of expression (words that were used – villainous, dishonour, villainy, pitiable, miserable, traitorous) and the analogy employed in the presentation (comparison with the Nazi regime and methods of that regime) – are undoubtedly indicative of the presence of partiality during the presentation of his opinion, which substantially affected the manner of the presentation of the mentioned topic and making for the said presentation to have the nature of hate speech. The Agency Council imposed a measure of warning.

## **HAPPY TV, 2016, Hate speech**

The media service provider “HAPPY TV” is a licensee for the provision of media services throughout the entire Republic. “HAPPY TV” broadcasted a reality programme TV show “Parovi” /eng. “Couples”/ in which Kristijan Golubović

(multiple recidivist) and his attorneys took part. During the show, Kristijan Golubović, while speaking about his serving a prison sentence in Greece, stated the following: “And you cannot control it, that is a full corridor of raging mob hitting you with drawers, throwing coca colas at you, stabbing you with knives. That is a mass fight, you hit them with a finger in the eye, you twitch their mouth, pull them by the hair, try to get as many of them as possible on their knees, try to make a turf of people so that they cannot get near you, but that they keep tripping over them. And the inarticulate ones (he gets up and gesticulates). They were like Neanderthals. They are not stopping; I have not seen such bravery in any other people. They are pushing forward with an intent to kill”; The host asked Kristijan: “Is it true that the Albanians had forced out the Serbian mafia first from the streets of European metropolis and then they went?” Kristijan: “We are comparing sparrows and cockroaches. They are breeding like cockroaches, if an atomic bomb dropped now, a series of them would die but others are immune to that radiation and they just keep on breeding. They do not fight in between their own clans, Albanian versus Albanian, only foreigners. Then they make peace. They showed it, they should be the ones having four S letters on their flag or “only unity saves Albanians”. And they respect it, they are in a bloody feud, but they make peace if a foreigner is concerned. If we had that, we could run them over in a day, we would conquer their state. It is not so though, a Serb would go against a Serb, engage in frivolous exchange of goods with an Albanian and hammer another Serb. Albanian with an Albanian on the other hand, they may not talk to each other, and they would not engage in frivolous exchange of goods, because they are not on good terms. They pay attention to it! And that is the respect they are talking about.”

### ***REM action***

The show “Couples” is a reality programme content presenting, mainly for the purpose of entertainment, in a naturally or artificially generated environment (e.g. artificially generated cohabitation of people in a restricted physical space), the manner in which one or more participants act in specific life situations anticipated in advance, spontaneously or occurring in any other way (e.g. cohabitation in a certain community of people, mutual communication, work, leisure, solving certain given or unanticipated specific life problems and such like) in a specific time period, in which participants take part, as a rule, in order to obtain certain pecuniary or non-pecuniary gain.

The participant in the reality show presented information and details relating to his serving a prison sentence in the Republic of Greece and about fights with other prisoners of Albanian nationality, and used on that occasion vulgar names for the members of Albanian population, compared them inadequately with the members of other peoples using descriptions involving genetic peculiar features. The mentioned information involved discrimination, hatred, violence on the grounds of racial, national affiliation, language, religious and political beliefs, genetic peculiar features, concerning the prisoners from among the Albanian people. “HAPPY TV” was obliged to make sure that the mentioned programme content did not contain the contents inciting to discrimination, hatred, violence on

the grounds of racial, national affiliation, language, religious and political beliefs, genetic peculiar features. The Regulator's Council issued a measure of warning.

#### **4. Cases Related to No Violation of Hate and offensive Speech**

##### **Radio Television of Serbia, TV Pink, 2007, Hate speech**

Lesbian Human Rights Organisation Labris filed a number of applications during the first half of 2007, pointing to a hate speech targeting first and foremost the persons of homosexual orientation (Labris case). Applications were related to TV Pink (show "Bravo show" and "Pyramid" – on two occasions) and RTS (show "Ključ" /eng. Key/). The disputed allegations are, in brief, the following: "Man and woman is normal. Man and man is not normal ("Bravo show"); And all normal people think so. If lesbians are entering into marriages, if that is a western creation for us to enter Europe, thank you to both Europe and America... Then I will join penguins..... The thing is that that is very abnormal and we, the Serbs, are not famous for being gays. However, since that is a ticket to Europe, I believe that some, I will vote against it, I think all of you here too. ("Key"). God's will is to repopulate the species, the genuine sexual orientation is well-known, everything else is a disease. However, that disease needs not parade the streets, as it may generate an effect rather attractive to some wretched souls who do not have enough sexual courage, or courage to start a relationship with a normal partner... And when you deny gays the right to parade, they complain about their rights. And when did you hear their physicians complain, or those who are supposed to treat them in sanatoriums from those vicious diseases, to make normal people out of them?", "in cases where it is a disease, that disease should be rendered help, but where it is a sphere of interest..." ("Pyramid").

##### **REM action**

The REM Council rejected as ill-founded the applications filed against TV Pink and RTS. The reasoning for decisions stated that although the mentioned shows presented a stance unfavourable to the persons of the same sex orientation, they are not of such nature so as to constitute incitement to discrimination and hatred. Also, it was mentioned that granting allegations stated in the application would jeopardise fundamental values guaranteed by law relating to the freedom of spreading and publishing ideas.

##### **TV PRVA, 2011, Offensive speech**

The Service for Oversight and Analysis of REM instituted, *ex officio*, a procedure against TV Prva (the permit holder for the provision of media services throughout the entire Republic), over the show "Veče sa Ivanom Ivanovićem" /eng. "A night with Ivan Ivanović", on an intervention by Democratic Community of Croats from Subotica, for the reason that abusive language was used to talk about Croats and Catholic Church, as well as that "Al Qaida was called upon to set an atomic bomb once Croatia joins the European Union".

### **REM action**

Having established that the allegations made were part of a stand-up comedy genre, which, *inter alia*, implies a sneering attitude to taboos, and bearing in mind that each show carries at the end an inserted message showing that the objective of the show is not to offend or belittle, but exclusively to provide entertainment and humour, the REM Council made a decision to suspend the procedure.

### **TV KRALJEVO, 2012, Offensive speech**

During the show "Uz šank" /"At a Bar"/ broadcasted on TV Kraljevo, with a guest Dejan Lučić, while talking about his book the guest presented views spreading racial and religious hatred and intolerance toward Roma population. The disputed statement was that the European Union had the intention to populate Serbia with the Roma people from the former Yugoslav republics "who have proliferated in great quantities".

### **REM action**

In the declaration of opinion the broadcaster stated that it did not concern a hate speech, or spreading fascist ideas, but open presentation of views, which Dejan Lučić also presented in his book. The REM Council considered whether the show was about the presentation of critical views about specific public personalities (which is an undisputed right), or it was about belittlement and offensive notions inciting to discrimination of individuals for being affiliated to a certain ethnic group, irrespective of their personal features and specific activities. The broadcaster was warned and attention was drawn to increasing editorial control and necessary reaction of a host-author regarding the views presented by participants in the show.

### **TV STUDIO B, 2011, Hate speech**

An application was filed against the broadcaster TV Studio B, wherein a citizen raised an objection to the fact that one of the guests on the show involving debate spoke untruthfully and offensively about a Partisan movement, holding that this case was not about a freedom of speech, but about hate speech. The disputed were the allegations wherein an anti-fascist nature of the Partisan movement was denied, as well as the claims that the Partisan leader Tito (who was qualified as Ustasha) was to be blamed for many crimes, first and foremost against the Serb people. He stated that "Partisans failed to save a single American officer, Partisans used to kill American officers, as Stalin's servants".

### **REM action**

The REM Council did not deem that this case concerned a hate speech. The Agency was guided by the fact that, despite extreme views being presented regarding the interpretation of history, the participants in the show did not refer to hatred or violence against a certain person or a group of persons. It was also

taken into account that the rest of the participants in the show, as well as the host himself, opposed the mentioned points of view, or relativized them.

### **RADIO B92, 2013, Offensive speech**

At the beginning of 2003, the REM Council took action concerning the broadcaster, which ran the show with potentially offensive speech and extremism. The procedure was conducted against the broadcaster Radio B92, against which a procedure was instituted over the show "Mental Workout" wherein political comments were presented in a humorous fashion regarding the news that Papua New Guinea recognised the independence of Kosovo and Metohija. The disputed moment concerned the fact that authors imitated the peoples of Africa and their culture with monkey screams.

#### ***REM action***

Following the completion of the procedure, the REM Council suspended the issuance of measures against the broadcaster. In the present case it was established that the show was entertaining by nature, thus the comments of hosts were aimed at drawing attention to certain issues in a humorous form, that is to say they were not made for sheer discreditation and discrimination, but that the words uttered can nevertheless constitute racism *vis-à-vis* the inhabitants of African states. The REM Council issued a sharp warning to the broadcaster and ordered that they increase the level of editorial control of the content of the said show.



## 4. Recommendations and conclusions

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**F**reedom of expression is a fundamental human right important both from an individual aspect of the protection of rights of individual, and from the aspect of the development of democratic society. Therefore, it is not surprising that such a right, as we have seen above, is protected through a range of international documents.

International standards related to freedom of expression place it high on the agenda, albeit not providing an absolute status for this right. In that respect, hate speech is identified as an unacceptable form of expression, also confirmed by the practices of the European Court of Human Rights.

As this publication focuses on the work and the activities of regional NRAs, it is natural to emphasize the possible avenues of these institutions. Apart from the activities related to powers of NRAs to issue sanctions against media service providers, there are other aspects of their work that are conducive to an effective framework for preventing hate speech. They include, but are not limited to, NRAs' transparency, professionalism, accountability, inclusiveness as well as continued cooperation with all relevant institutional bodies/organisations on the national level. A more and more important field for their engagement and contribution to raising awareness and understanding about media standards, including those related to hate speech, is media literacy.

### TRANSPARENCY

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In this respect, the transparency of the NRAs' work is considered from the perspective of raising awareness on particular issues, rather than from their legal obligation to produce and publish annual reports, decisions, etc. Regular and timely publication of all NRAs decisions (in full or at a least summary justification) is a tool which helps wider public and different stakeholders' insights into the application of relevant rules. But, more importantly, it provides the public with the incentives to become more engaged in these issues, as these transparency actions tell the public that submission of complaints is desirable and that the public can expect a certain level of protection against the inappropriate content offered or made available to them. This is very important for the protection of consumers and there should be no excuse for not fulfilling NRAs' transparency obligation.

Additionally, the publication of NRAs' regular reports is another great tool as it allows comprehensive insight into NRAs' activities and presents concrete data and trends. Although at times such activities seem tedious and unnecessary, the end results are quite the contrary. Full and detailed reported accounts of the NRAs work and findings allow public, academia and other stakeholders access to valuable information which can be used in initiating many activities. This is particularly true for academic institutions, who can use this data and information to reinforce certain issues in their curricula.

## **INCLUSIVENESS**

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NRAs have direct contact with citizens. This comes in many shapes and forms. Not only is the avenue of submission of complaints one of these contact points, but also an important democratic tool. In this respect, NRAs should be able to treat every single complaint with due diligence and respect. There should be no restrictive measures in relation to procedures related to reception and processing of complaints and should, as a must, include interaction with the complainant. NRAs should always inform the complainant of the outcome of the complaint, whether it results in sanction, referral or decision on no breach of relevant rules. Of course, not all complaints constitute a possible breach of relevant rules. However, it is of vital importance for complainant to know that their grievance, whatever it might be, is dealt with and processed with care and dedication.

The adoption process of relevant rules, the openness, inclusiveness and full transparency of the process is crucial. NRAs (or other bodies in charge of adoption) must not approach the public consultations procedures in terms of pure satisfaction of legal obligations, but with the honest intention of fully opening the process for everyone's participation. Technical norms in this process should also not be neglected, as it is important that as vast an outreach as possible is achieved. All and any contributions to the public consultations must be seriously taken into account.

## **INSTITUTIONAL COOPERATION**

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Apart from instances in which NRAs are legally bound to refer a certain case to relevant bodies, there are other avenues of cooperation. With their expertise and experience, NRAs can significantly contribute to the process of adoption of relevant legislation, strategic and policy documents, reports to international fora, etc. in the area of hate speech and offensive language. Having in mind the power of the media, especially TV and radio, as well as the role of the NRAs to ensure supervision of the laws and by-laws' enforcement, the NRAs' insight into the trends of the media (industry) behaviour can indicate the limitations or advantages of the current or planned/desired legal or policy initiatives.

## **MEDIA LITERACY**

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A more and more essential and critical skill for the modern citizen and consumer is media literacy. It is defined as the ability to access, analyse, evaluate, and create



media. Media literate youth and adults are better able to understand the complex messages received from television, radio, Internet, newspapers, magazines, books, billboards, video games, music, and all other forms of media.

As seen above, we live in a complex world, with intricate webs of information provided to us through an interwoven system of media technologies. Many countries have recognized its importance in today's world and are interdisciplinary in their approach to it.

Media literacy is an effective and engaging way to apply critical thinking skills to a wide range of issues. The accented issue here is the development of critical thinking. Having access to media is not sufficient. Instead, it is important to develop skills and tools which enable anyone to navigate through the sea of available information and apply reason to deciphering and digesting it. This surely does not include only some groups of the population, like youngsters or elderly, but the entire population. Knowing that the target is a global population, the importance of these activities becomes clear. As we are deep into a totally redefined relationship with the media, new approaches, policies and systems are clearly needed.

## **SELF-REGULATION AND CO-REGULATION**

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It is equally important to continuously dedicate efforts to raising the level of professional standards. There is a vast pool of good journalist practices but they should be further developed and reinforced to promote dialogue and the democratic processes. This is especially true in case of turbulent times as present times show us. NRAs can and do play a vital role in this. As many NRAs are involved in or consulted during the preparation of codes of conduct for media under their jurisdiction, the importance of this role becomes increasingly significant.

From that perspective, several factors must be regarded. First, an NRA's regional and international cooperation plays an instrumentally vital task, as it provides for exchange of expertise and practice, improvement of knowledge and work through constant updates on policies and practices, and continued support for everyone's benefit. Cooperation further helps NRAs work together to achieve a common goal or derive mutual benefits, as this publication clearly shows. Excellent examples of such cooperative efforts are continued activities under the auspices of Council of Europe in this region, via many regional and bilateral events. Another one is that of the EPRA, as mentioned earlier, a voluntary, independent network of European audiovisual regulatory authorities.

The way that rights to freedom of expression are exercised depends on the regulatory framework and the media – especially the journalists. For media to fulfil its important “watchdog” role, a good regulatory structure must be in place and it is imperative that reporters are able to access information from a variety of sources in order to root out malpractice. Journalist should be free to publish stories in the public interest without fear of censorship, recrimination or being sued. On the other hand, journalists themselves have the responsibility to

maintain and protect the culture of objectivity and to report accurately, fairly and in good faith at all times and in all circumstances.

In line with political changes, broadcasting must play a democratic role as well. Democratic roles come with the imperatives of respecting and upholding freedom of expression and a free flow of information and ideas. State control and regulation has to give way to independent regulation. Independent regulation requires institutional arrangements, which are inclusive and transparent. In that respect, national policy makers and legislative bodies should create a regulatory environment in which full independence of regulatory authorities for media is respected and implemented.

It is important to realize that the rules and regulations, either directly adopted by an NRA or a legislative body (and consequently, an NRA is in charge of implementing them) must be based on principles of protection of the right to freedom of expression, promotion of the highest level of professionalism and business viability in audiovisual community, encouragement of development of a market-orientated and competitive audiovisual sector for the benefit of all citizens, stimulation of conditions for the development of media freedom, and, in so doing, establishment and maintenance of an open society, protection of interests of all users in terms of non-discriminatory access and quality services, as well as encouragement of the introduction of new technologies and services according to citizen's needs.

Once adopted, rules and regulations should be instruments for strengthening this sector, including public broadcasters, all in the interest of contributing to a high level of professional standards, media quality, accountability and independence. In particular, when determining the potential cases of hate speech, it is advisable to consider all possible angles of the case, as has been shown with the examples of Macedonian cases.

In this respect, collaboration between regulatory and self and/or co-regulatory bodies is equally important. The countries of the region included in the JUFREX project all have in place certain levels of self-regulatory mechanisms, usually in the form of self-regulatory bodies for press and, as some examples show, on-line media. These organizations are based on voluntary membership of the industry itself and are designed to assist journalists and editors to understand and adopt the highest international standards of journalistic, editorial, ethical, legal, and technical media activity. Further, tasks of these bodies usually include review of citizens' and public complaints against press reports and resolution of disputes in a simple manner, quickly and free of charge.

Promulgation of Codes of Ethics and Practices adopted by the profession itself is the ultimate test of introspection and self-initiative in efforts to abide by professional norms and standards. Such Codes usually outline acceptable standards of professional conduct for journalists. Codes state that journalists and their publications have an obligation to the public to maintain high ethical standards at all times and under all circumstances.

An on-going debate related to the powers of self-regulatory bodies is ever-present. One line of thought states that self-regulatory mechanisms lack effectiveness, due to absence of powers to impose legally binding sanctions, except for their own members and dependent on each country's arrangement.

The other, however, stands on the principle that full regulation of print and on-line media is not applicable as is the case with media which uses limited resources (such as frequency spectrum). This also opens the question of balance or rather lack of it in regulation of media itself. As was stated, AVMS Directive covers all audiovisual media services – traditional television (linear service) and video-on-demand (VOD – non-linear services). These services must be directed at the general public and intended to inform, entertain and educate under the editorial responsibility of a media service provider. AVMS Directive introduces graduated regulation where only a basic tier of rules applies to on-demand services simply because users have different degrees of choice and control over on-demand audiovisual media services. This gets even more complicated when we add press and on-line media-like news portals.

Some countries, such as Croatia and Montenegro, do have legal provisions which refer to NRAs' responsibilities regarding electronic publications, but only to a limited extent:

The influence of social networks, easily and eagerly used by the global population, which were inconceivable in the analogue world, has dumbfounded even the most supportive technological enthusiasts and visionaries. Social networks are dominant players today, with no competition or other form of regulation, at present. However, there are increasing issues related to some content found on social networks, one of them naturally being hate speech. As shown previously, people tend to disengage in open dialogues and debates due to overwhelming "sources" of information and, especially, due to content such as hate speech. In that sense, some studies show the return of a higher trust of people into what we now call "traditional" news rooms, with emphasis on professional standards and a long history of journalistic practice. Social networks' plans of engagement into some sort of self-regulation of content is an open issue, which at present opens more questions than provides answers. It is a topic which deserves much more deliberation on issues of regulation and governance and what the best models of application are to such services, provided for with Internet age, based on defined values for the emerging structure of global Internet regulation.

This also leads to the long discussed issue of convergence. The regulatory framework needs to evolve to fully embrace and accommodate all practices and cultures in a meaningful manner. As previously stated, guiding principles in these endeavours are fairness, openness and transparency. Beneath it all is editorial responsibility, which has been the same from the early practices of journalism and is still very much alive and kicking. It should be based on integrity, humanity, professionalism and ethics. Since such matters are beyond the scope of any law, these principles should be embodied in the heart of every person engaged in offering such services. In that sense, we must go back to where these principles were acquired. We must regard the societies in large, looking at family values and

schooling practices since these are the institutes from which we as individuals inherit the basic values we carry throughout our lives.

The tendency seen in this region in respect to the functioning of NRAs is important to emphasize. A fair share of attempts and actual changes to legislations related to functioning and powers of NRAs are visible in the sense of reduction of NRAs' independence and powers, particularly related to budgetary issues, issuance of sanctions and referral mechanisms. Insurance of a fully functioning NRA means that all parties and stakeholders start from the premise of independence as a paradigm for an effective regulation of this important sector. Without this understanding, no transparent, independent and effective regulation can be conceived. Independent NRAs, with sufficient financial and human resources, appointment procedures free of political influence, and a professional operating staff makes for a functioning and vibrant media environment.

In addition, it is equally important to increase activities related to creation of counter-narratives, different campaigns against stereotypes and populism. As hate speech and stereotypes increasingly proliferate, balanced and fair media reporting is needed more than ever.

Further, a number of projects aimed at fighting hate speech, racism and discrimination should be increased, as they provide for raising awareness, advocacy, and creative solutions. They should all be designed to be real tools for action and intervention. These include campaigns against hate speech off-line and online in all its forms, which are to be based upon human rights education and media literacy. All such endeavors lead to reducing the level of acceptance of hate speech, mobilization, and ultimately, solidarity and reinforcement of principal humanity.

What is extremely important in establishing and maintaining a healthy media environment is:

- the free flow of expression, speech, press and access to information
- editorial independence
- encouraging broadcasters to develop own codes of practice that would cover issues in programming regarding protection of children, hate speech, the portrayal of violence, fair and accurate programmes, safeguards against the portrayal of people in a manner that encourages denigration of, or discrimination against, sections of the community on any account
- the existence of independent regulatory bodies empowered to adopt by-laws and issue sanctions. The legal status of these bodies should be clearly defined in law. Their institutional autonomy and independence should be guaranteed and protected by law.
- strong public broadcasters that are producing a variety of programs, objective news and general programs that are free of political and commercial influence and pressure

- an environment that provides possibilities of balance between private and public media in an open market, the existence of a wide range of independent broadcasters and programming that represents and reflects society as a whole
- training for journalists
- a healthy and active involvement of civil society.

Last, but certainly not least is the area encompassed in one word – accountability. It is defined as an obligation or willingness to accept responsibility or to account for one’s actions<sup>115</sup>. Accountability for their actions– – from journalists, media, national regulatory authorities, supra and international organizations– – to every single individual person, leads to behaviour that contributes to the public good. It can be argued that societies’ needs are in danger of derogating from principles of human rights, with democratic processes jeopardized. It should not be a dilemma whether this is the time for action. If avenues recommended by this publication are taken, coupled with a strong emphasis on accountability, many open issues can be tackled. A level of ownership and personal commitment is required, one that helps all stakeholders engage in rising above the circumstances and working towards a common desired goal – that of helping the public good. A good that is based on openness, tolerance, forbearance, liberality, respect for other’s rights.

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115 <https://www.merriam-webster.com/dictionary/accountability>, accessed on March 7, 2017.



# Annex

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# Annex 1:

## Legal framework overviews of participating countries

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### ALBANIAN LEGAL AND INSTITUTIONAL CONTEXT

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#### 1. National regulatory authority establishment, mandate and powers

National regulatory authority of Albania is Authority of Audiovisual Media (AMA), established by the Audiovisual Media Authority Broadcasting Code. AMA is regulatory authority in the field of audio broadcasting services and audiovisual and other support services. AMA's competencies include: review of applications for the exercise of broadcasting services, including applications for digital broadcasting and providing relevant authorizations or licenses, ensurance of fair competition, while ensuring further development, cooperation with the Consumer Protection Commission to guarantee consumer protection in the field of electronic media, imposition of sanctions for breaches of relevant rules, development of strategies for the provision of broadcasting services, drafting and approval of the audiovisual broadcasting code and regulations and other subsidiary legislation, defining fees for licenses, preparation and issuance of guidelines to the PBS in relation to fulfillment of its obligations, establishing criteria and regulatory measures for co-use of the transmission infrastructure of PBS, resolution of disputes between providers of audio or audiovisual broadcasting services, including disputes with PBS, cooperation with the ministry on drafting the National Frequency Plan, collaboration with other bodies for the fulfillment of obligations specified in this law. Additionally, AMA collects, manages and publishes information on the audiovisual media sector, monitor the development of the audiovisual media activities at the international level conduct, organize, support and promote research on issues related to audiovisual media, cooperate with other bodies, including representative bodies within the audiovisual media sector, to help training activities in the audiovisual media sector, cooperate with its counterparts in other countries, initiate, encourage and take care of research and related activities, related to the role of media, including cooperation with broadcasters and other entities in the field, monitors the entirety of programs broadcast. The appeleate procedure includes procedure within AMA and its Complaint's Council, but cases can also be appealed before the Court.

web-site: [www.ama.gov.al](http://www.ama.gov.al).

All the decisions are published. At the beginning of each year AMA reports on its annual activities are submitted to the Committee on Education and Public Information Media and to the Assembly.

## **2. Legislation related to hate speech**

### ***a) Law On Audiovisual Media in the Republic of Albania***

#### **Article 4**

##### **“Basic principles on the operation of audiovisual broadcast”**

“1. Audiovisual broadcasting is performed on the basis of the following principles:

- a) Operation of audiovisual broadcast is free;
- b) The operation of audiovisual broadcast impartially respects the right to information, political and religious beliefs, the personality, dignity and other fundamental human rights and freedoms. This activity particularly respects the rights, interests and moral and legal requirements for the protection of minors;
- c) Audiovisual broadcasting activity shall not infringe the constitutional order, sovereignty and national integrity; ... ”

2. Audiovisual service operators are guided by these principles in the course of their activities:

“... ”

- d) prohibition of broadcasts that incite intolerance among citizens;
- h) prohibition of broadcasts that incite or justify violence; ... ”.

#### **Article 32**

##### **“General rules for audio media and/or audiovisual service providers”,**

“...4. OSHMA's shall not broadcast shows with a content which incites hate on the grounds of race, gender, religion, ethnic background, national background and any other form of discrimination .... ”.

#### **Article 76**

##### **“Requirements for provision of audio media and/or audiovisual media service on request of users”**

“ 1. Services provided at the request of users shall not include shows that encourage hate on a racial, ethnic, gender, national or religious basis... ”.

4. The AMA broadcasting Code states: "... 1.13 Audiovisual broadcasts shall not contain harmful messages, inciting crime, physical violence or hate..."

"1.5. Audiovisual broadcasts shall not incite intolerance or justify violence between citizens ...";

"4.8. OSHMA's shall not broadcast news that violate the rules of ethics and public morals, which can cause criminal acts or violate the authority of the state ... "

"4.10. Broadcasting audiovisual information must not directly contain or imply any discriminatory messages on grounds such as gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic status, educational or social status or any other cause ... ".

## **BOSNIAN AND HERZEGOVINIAN LEGAL AND INSTITUTIONAL CONTEXT**

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### **1. National regulatory authority establishment, mandate and powers**

National regulatory authority of Bosnia and Herzegovina is Communications Regulatory Agency of Bosnia and Herzegovina (CRA), established by the Law on Communications. CRA is a converged regulator, regulating the sectors of broadcasting, telecommunications and frequency spectrum. CRA's competences are: development and promotion of rules in the sectors of telecommunications and broadcasting; cooperation on development of all strategic rules and decisions regarding this sector, licensing of operators in the broadcasting and telecommunications sectors; planning, management and allocation of the frequency spectrum; implementation of technical and other standards related to quality; establishing and maintenance of license fees and tariffs; issuance of sanctions for breaches of relevant rules. Sanctions at CRA's disposal include: oral and written warnings, financial fines, suspension and revocation of licence. CRA consists of sectors and departments led by Director General, who issues first-instance decisions. CRA Council acts as second-instance body related to all decisions of CRA. Administrative dispute procedure can be initiated before the Court of BiH. Procedure can be initiated before the Constitutional Court of BiH in cases related to ECHR.

web-site: [www.rak.ba](http://www.rak.ba).

CRA is currently working on technical prerequisites for publishing all decisions. CRA prepares annual reports, as well as regular reports on decisions of CRA, together with trends in breaches, which are all published on web-site.

## **2. Legislation related to hate speech**

### ***a) Criminal Code of Bosnia and Herzegovina***

#### **Article 145a**

#### **Inciting national, racial and religious hatred, discord or hostility**

(1) Whoever publicly incites or inflames national, racial or religious hatred, discord or hostility among the constituent peoples and others who live in Bosnia and Herzegovina shall be punished by imprisonment for a term between three months and three years.

(2) Whoever perpetrates the criminal offence referred to in paragraph (1) by abuse of office or authority shall be punished by imprisonment for a term between one and ten years.

### ***b) Criminal Code of Federation of Bosnia and Herzegovina***

#### **Article 163**

#### **Inciting National, Racial or Religious Hatred, Discord or Hostility**

(1) Whoever publicly incites and inflames national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation, shall be punished by imprisonment for a term between three months and three years

(2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article by employing duress and abuse, jeopardizing the safety, exposing national, ethnic or religious symbols to derision, damaging other people's belongings, desecrating monuments or graves, shall be punished by imprisonment for a term between one and eight years.

(3) By the punishment referred to in paragraph 2 of this Article shall be punished whoever perpetrates the criminal offence referred to in paragraph 1 of this Article by abusing his official post or authority or if that act resulted in riots, violence and other grave consequences to life of constituent peoples and others who live in the Federation. Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article by abusing his official post or authority, shall be punished by imprisonment for a term between one and ten years.

(4) Whoever perpetrates the criminal offence referred to in paragraph 2 of this Article by abusing his official post or authority or if that act resulted in riots, violence and other grave consequences to life of constituent peoples and others who live in the Federation, shall be punished by imprisonment for a term between one and ten years.

(5) Whoever perpetrates the criminal offence referred to in paragraph (1) of this Article by public denial or justification of genocide, crimes against humanity or perpetrated war crimes established under a final and binding decision of the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY) or any domestic court, shall be punished by imprisonment for a term between three months and three years.

### **Article 363**

#### **Unauthorized Possession and Violation of the Public Order through Radio or Television Station**

(1) Whoever, contrary to regulations on communication systems, possesses a radio or television station or uses radio or television station without proper authorization, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) Whoever, by severely violating the standards of professional conduct of media and journalists, uses inciting or hate speech or speech that obviously calls for or incites to violence, national or ethnical conflicts, and thereby brings public peace and order in danger, shall be punished by a fine or imprisonment for a term not exceeding three years.

## ***c) Criminal Code of Republika Srpska***

### **Article 294a (1)**

#### **Inciting National, Racial or Religious Hatred, Discord or Hostility**

(1) Whosoever incites and inflames national, racial or religious hatred, discord or hostility, or spreads ideas of superiority of one race or nation over another, shall be punished by a fine or imprisonment for a term of not more than two years.

(2) Whosoever commits an offence under paragraph 1 above by employing duress and torture, jeopardizing the safety of any person, exposing national, ethnic or religious symbols to derision, damaging other people's belongings, desecrating monuments or graves, shall be punished by imprisonment for a term of between six months and five years.

(3) Where an offence under paragraphs 1 and 2 above results in riots, violence or any other serious consequence to the co-existence of the constituent peoples and others who live in the Republika Srpska, the offender shall be punished by imprisonment for a term of between one and eight years.

(4) Any material or article bearing messages under paragraph 1 above and equipment for their production, duplication or distribution shall be subject to forfeiture.

## ***d) Code on audiovisual media services and radio media services***

### **Article 4**

#### **(Hate Speech)**

(1) Audiovisual media services and radio media services will not humiliate, intimidate or incite hatred, violence or discrimination against persons or groups based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or based on any other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or exercise on an equal basis, of any person's rights and freedoms.

(2) Audiovisual media services and radio media services shall not include material which carries a clear a clear and immediate risk of inciting hatred, violence or discrimination against persons or groups on the grounds referred to in paragraph (1) of this Article, or which could be interpreted by the audience as incitement of hatred, violence, disorder or rioting, or which could cause or incite criminal acts.

(3) The exception to paragraphs (1) and (2) of this Article, are the audiovisual media services and radio media services which are part of the scientific, copyright or documentary work and/or are part of an objective journalistic reporting and are published without intent to incite acts referred to in paragraphs (1) and (2) above, i.e. with the purpose to critically point out such activity.

## ***e) Code on commercial communications***

### **Article 3**

#### **(General Principles of Commercial Communication)**

(4) Commercial communications will not:

- a) bring into question the respect for human dignity;
- b) humiliate, intimidate or incite hatred, violence or discrimination against persons or groups based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or based on any other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or exercise on an equal basis, of any person's rights and freedoms;
- c) be offensive or contrary to generally accepted standards of decency;
- d) encourage behaviour that is detrimental to health or safety;
- e) encourage behaviour that is harmful to the environment.

## CROATIAN LEGAL AND INSTITUTIONAL CONTEXT

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### **1. National regulatory authority establishment, mandate and powers**

The Electronic Media Council, national regulatory authority of Republic Croatia, manages the Electronic Media Agency and carries out the duties of a regulatory body in the area of electronic media in Croatia. The Council has seven members one of which the president of the Council is the Director of the Agency. The president and other members of the Council are appointed for a five-year term by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia. The Electronic Media Agency is in itself not a “converged” regulator, as it shares its competences with HAKOM (Croatian Post and Electronic Communications Agency) which is dealing with frequency allocation. The law relating to electronic media, Electronic Media Act, regulates the rights, obligations and responsibilities of legal and natural persons that provide audio and audiovisual media services and services of electronic publications by electronic communication networks, and the interest of the Republic of Croatia in the field of electronic media. AEM competences are regulation of audiovisual and audio media services, including supervision over programmes, protection of minors and development of pluralism. Additionally, AEM ensure fair competition, conducting the procedure of granting concessions, monitoring the purposeful spending of the Fund for Promotion of Pluralism and Diversity of Electronic Media, encourage and take care of research and related activities, promoting media literacy and other competencies following from Article 69 of the Electronic Media Act.

web-site: [www.e-mediji.hr](http://www.e-mediji.hr)

### **2. Legislation related to hate speech**

#### ***a) Electronic Media Act***

##### **Article 12**

(2) In audio and/or audiovisual services it shall be prohibited to promote, favour the promotion of and spreading of hatred or discrimination based on race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation, as well as anti-Semitism and xenophobia, ideas of the fascist, nationalist, communist and other totalitarian regimes.

##### **Article 16**

(4) Audiovisual commercial communications shall not:

- prejudice respect for human dignity,
- include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation,
- encourage behaviour prejudicial to health or safety,

## ***b) Criminal Law***

Public incitement to violence and hatred

### **Article 325**

(1) Whoever, through the press, radio, television, computer system or network, at a public rally or otherwise publicly incites or publicly make available pamphlets, pictures or other material that calls for violence or hatred directed against a group of persons or a member of group for their racial, religious, national or ethnic background, origin, colour, sex, sexual orientation, gender identity, disability or any other characteristic, shall be punished by imprisonment for three years.

4) With punishment from paragraph 1 of this Article, to be punished anyone who publicly approves, denies or significantly reduces crime of genocide, crimes of aggression, crimes against humanity or a war crime, directed against a group or member of group because of their racial, religious, national or ethnicity, origin or skin colour, in a manner appropriate to encourage violence or hatred against such group or members of this group.

(5) An attempted criminal offense referred to in paragraphs 1 and 2 of this Article shall be punished.

## **MACEDONIAN LEGAL AND INSTITUTIONAL CONTEXT**

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### **1. National regulatory authority establishment, mandate and powers**

National regulatory authority of Macedonia is Agency for Audio and Audiovisual Media Services of the Republic of Macedonia (AVMU), established by the Law on Audio and Audiovisual Media Services. AVMU competencies are: ensuring transparency of broadcasters; protection and development of pluralism in the audio and audiovisual media services; encouragement and support to the existence of diverse and independent audio and audiovisual media services; undertaking measures in cases of violation of relevant law, by-laws and of licence conditions; ensuring protection of minors; adoption of sub-legislation; protection of citizen's interests in the audio and audiovisual media services; determination of illegal media concentration; awarding, revoking or extending licenses for



television or radio broadcasting; undertaking measures for temporary termination of transmission and reception of audio and audiovisual media services from third countries; adoption of a list of major events; encouragement of media literacy; performing program, administrative and expert supervision; maintaining the registries of TV, radio, press and AV media services on demand; conducting research and analysis related to issues concerning the audio and audiovisual media services; conducting measuring of the viewers and listeners of the programme services of the Macedonian etc. The decisions adopted in cases of violation of the provisions of law, licence conditions, registration certificate, by-laws and other Agency acts are final. These decisions may be subject to administrative dispute before a competent court.

web-site: [www.avmu.mk](http://www.avmu.mk).

AVMU is legally obliged to publish all reports from the monitoring and its measures on web site (since new legislation in 2014). Annual report is also published each year. Besides, analyses of the measures undertaken and the repetitious violations, as well as analyses of second-instance legal proceedings are regularly published on web-site.

## **2. Legislation related to hate speech**

### ***a) Law on Audio and Audiovisual media services:***

#### **Article 48**

##### **Special prohibitions**

(1) The audio and audiovisual media service must not contain programmes that threaten the national safety, call for violent destruction of the constitutional order of the Republic of Macedonia, call for military aggression or armed conflict, incite or spread discrimination, intolerance or hatred based on race, sex, religion or nationality.

(2) The specific prohibitions of paragraph (1) of this Article shall be in accordance with the practice of the European Court of Human Rights."

#### **Article 53**

##### **Audiovisual commercial communication**

...

(4) Audiovisual commercial communication shall not:

- Call into question the respect of human dignity;
- Participate in or promote any discrimination on the grounds of gender, race, ethnicity, nationality, religion or conviction, disability, age or sexual orientation;

- Incite behavior detrimental to health or safety;
- Incite behavior which considerably would endanger the environment.

...

## **Article 61 Principles**

Broadcasters shall follow the following principles while conducting their business activities:

- fostering and development of humane and moral values of human beings, and protection of the privacy and dignity of each person;
- equality of freedoms and rights irrespective of the sex, race, national, ethnic or social background, political or religious convictions, wealth and social status of the individual and the citizen;
- promotion of the spirit of tolerance, mutual respect and understanding of all individuals of diverse ethnic and cultural backgrounds;

...

- promotion of international understanding and cooperation, the public notion of fairness and the need to protect the democratic freedoms;

...

- objective and unbiased presentation of events, with equal treatment of diverse views and opinions, enabling the free creation of a public opinion on individual events and issues;

...

## ***b) Law on Prevention and Protection Against Discrimination***

### **Basis for discrimination**

#### **Article 3**

Any direct or indirect discrimination, invocation and stimulation of discrimination and helping in discriminatory treatment on the grounds of sex, race, skin color, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, education, political belonging, personal or social status, mental and physical disability, age, family or marital status, property status, health condition or on any other grounds established by the law or by ratified international agreements (hereinafter: discriminatory basis).

## **Meaning of the terms used in this Law**

### **Article 5**

Certain terms used in this Law shall have the following meaning:

.....

3. Discrimination is any unjustified legal or actual, direct or indirect differentiation or unequally acting i.e. permission (excluding, limitation or giving priority) related to persons or groups on the grounds of sex, race, skin color, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, education, political belonging, personal or social status, intellectual and body disability, age, family or marital status, property status, health condition or on any other grounds;

4. Discriminatory behavior or acting is any active or passive behavior of any person by the public authorities, as well as by legal and natural persons from the private and public sector within the public life, which creates grounds for unjustified privilege and non-privilege of any individual or which exposes to unjustified or degrading behavior compared to other individuals in similar situation on any of the discriminatory basis.

## ***d) Criminal Code***

### **Endangering security**

#### **Article 144**

...

(4) Whosoever, by means of an information system, threatens to commit a crime entailing a sentence of five years' imprisonment or a more serious sentence against a person because of their sex, race, color of the skin, gender, belonging to a marginalized group, ethnic origin, language, nationality, social origin, religion or religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or any other ground foreseen by law or a ratified international agreement, shall be sentenced to an imprisonment of one to five years.

...

### **Causing hate, discord and intolerance based on national, racial, religious or other discriminatory basis**

#### **Article 319**

(1) A person who by force, maltreatment, endangering the security, mocking the national, ethnic, religious and other symbols, by burning, destroying or in any other manner damaging the flag of the Republic of Macedonia or the

flags of other states, by damaging other people's objects, by desecrating monuments, graves, or in any other discriminatory manner, directly or indirectly, causes or excites hatred, discord or intolerance on the grounds of sex, race, color of the skin, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or on any other ground foreseen by law or a ratified international agreement, shall be sentenced to an imprisonment of one to five years.

(2) A person who commits the crime referred to in Paragraph (1) of this Article by abusing his position or authorization, or if these crimes led to riots and violence against people or property damage of great proportions, shall be sentenced to imprisonment of one to ten years.

#### **Dissemination of racist and xenophobic material through computer systems Article 394(g)**

(1) Any person who, through a computer system, is distributing racist and xenophobic written material, photo or other representation of an idea or theory helping, promoting or stimulating hatred, discrimination or violence in the public against any person or group, based on sex, race, skin color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical impairment, age, family or marital status, property status, health condition, or any other ground foreseen by law or a ratified international agreement, shall be sentenced to imprisonment of one to five years.

(2) The sentence referred to in paragraph (1) of this article shall be also imposed upon any person who commits the crime through other means of public information.

(3) Any person who commits the crime referred to in paragraphs (1) and (2) of this Article by abusing his position or authorization or if these crimes result in disorder and violence against people or in property damage of greater extent, shall be sentenced to an imprisonment of one to ten years.

#### **Approving or justifying of a genocide, crimes against humanity or war crimes Article 407-a**

(1) One that will publicly negate, roughly minimize, approve and justify the crimes stipulated in the articles 403 through 407<sup>116</sup>, through an information system, shall be sentenced with imprisonment of one to five years.

---

116 Articles 403–407 regulate the issues of: genocide, crime against humanity, war crime against civilians, war crime against wounded and sick, war crime against prisoners of war and use of illegal means of combat.

(2) If the negation, minimizing, approval or the justification is performed with intention to incite hatred, discrimination or violence against a person or group of persons due to their national, ethnic or racial origin or religion, the perpetrator, shall be sentenced with imprisonment of at least four years.

### **Racial or other discrimination**

#### **Article 417**

(1) A person who based on the difference in sex, race, skin color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical impairment, age, family or marital status, property status, health condition, or any other ground foreseen by law or a ratified international agreement, violates the basic human rights and freedoms acknowledged by the international community, shall be sentenced to imprisonment from six months to five years' imprisonment.

(2) The sentence referred to in Paragraph 1 shall also be imposed upon whosoever prosecutes organizations or individuals because of their efforts towards people's equality.

(3) Whosoever spreads ideas about the superiority of one race over another, or advocates racial hate, or instigates racial discrimination, shall be sentenced to an imprisonment from six months to three years' imprisonment.

## **MONTENEGRIN LEGAL AND INSTITUTIONAL CONTEXT**

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### **1. National regulatory authority establishment, mandate and powers**

National regulatory authority of Montenegro is Agency for Electronic Media of Montenegro (AEM), established by the Law on Electronic Media. AEM's competences are: drafting of audiovisual media services Development Programme; approving draft radio frequency allocation plan; issuance of broadcasting and on-demand audiovisual media services licences; determination of licence fees; keeping a register of AVM service providers and electronic publications; deciding as per complaints regarding the operation of AVM service providers; overseeing implementation of the law; adoption and implementation of secondary legislation accompanying the law; performing other tasks. AEM Director is the first instance body, while

AEM Council acts as appellate body. Administrative dispute procedure can be initiated before the Administrative Court of Montenegro. Procedure can be initiated before the Constitutional Court of Montenegro against any rulebook or other general by-laws regulating the work of the audiovisual media service providers.

web-site: [www.ardcg.org](http://www.ardcg.org).

All decisions related to the complaints' procedures or ex officio procedures in relation to the licences' conditions' breaches are published on the web site. Also, all annual financial and operational plans and reports as well as annual audit reports are published on the web site.

## **2. Legislation related to hate speech**

### ***a) Criminal Code***

#### **4. Special provisions regarding criminal liability for criminal offences committed through the public information media**

##### **Article 28**

(1) For criminal offences committed through the public information media criminal liability is assigned to an editor-in-chief or a person who replaced him/her at the time when the information was published:

1. if the author remains unknown until the end of the hearing before a first instance court;
2. if the information was published without the author's consent;
3. if at the time when the information was published the factual or legal impediments for prosecution of the author existed and they still last.

(2) An editor-in-chief or a person who is replacing him/her shall not be held liable if out of justifiable reasons s/he did not know about some of the circumstances referred to in Items 1–3, Paragraph 1 of this Article.

##### **Article 29**

(1) If the conditions set forth in Article 28 of the present Code exist, the following persons shall be held criminally liable:

1) a publisher – for a criminal offence committed through regular press publications and, if an editor-in-chief does not exist or there are actual or legal obstacles for his/her prosecution, the type-setter who had the knowledge of it.

2) a manufacturer – for the criminal offence committed through compact disc, phonograph record, magnetic tape and other audio means, film for public or private display, slides, videos or other similar means of communication intended for wider audience.

(2) If a publisher, type-setter or manufacturer is a legal person or a state authority, the person in charge of publishing, type-setting or manufacturing shall be held criminally liable.

## **Article 30**

The provisions on criminal liability of the persons defined in Articles 28 and 29 of the present Code shall be applied only provided that these persons cannot be considered perpetrators of criminal offence by general provisions of this Code.

## **Article 42a**

If a criminal offence has been committed out of hatred based on the race, religion, nationality or ethnicity, gender, sexual orientation or gender identity of another person, the court shall consider this to be an aggravating circumstance, unless it is prescribed as an element of the basic or serious form of the criminal offence.

## **Causing national, race and religious hatred, divisions and intolerance**

### **Article 370**

(1) Anyone who publicly incites to violence or hatred towards a group or a member of a group defined by virtue of race, skin color, religion, origin, national or ethnic affiliation shall be punished by a prison term from six months to five years.

(2) The punishment under para. 1 above shall also apply to anyone who publicly approves, renounces the existence, or significantly reduces the gravity of criminal offences of genocide, crimes against humanity and war crimes committed against a group or a member of group by virtue of their race, skin color, religion, origin, national or ethnic affiliation in a manner which can lead to violence or cause hatred against a group of persons or a member of such group, where such criminal offences have been established by a final judgment of a court in Montenegro or of the international criminal tribunal.

(3) Where the offence under paras 1 and 2 above was committed by coercion, ill-treatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging property of another person, by desecration of monuments, memorials or tombs, the perpetrator shall be punished by a prison term from one to eight years.

(4) Where the offence under paras 1 to 3 above was committed by misuse of office or where such offence results in riots, violence or other severe consequences for the joint life of nations, national minorities or ethnic groups living in Montenegro, the perpetrator shall be punished for the offence under para. 1 above by a prison term from one to eight years and for the offence under paras 2 and 3 by a prison term from two to ten years.

## **Racial and other discrimination**

### **Article 443**

(1) Anyone who, on grounds of a difference in race, colour of skin, nationality or ethnic origin, or some other individual peculiarity violates fundamental human rights and freedoms guaranteed by generally recognized principles of the international law and international treaties ratified by Montenegro, shall be punished by imprisonment for a term of six months to five years.

(2) The punishment referred to in Paragraph 1 of this Article shall be imposed on a person who persecutes organizations or individuals for their efforts to ensure equality of people.

(3) Anyone who spreads ideas about the superiority of one race over another, or promotes hatred or intolerance based on race, gender, disability, sexual orientation, gender identity or another personal peculiarity, or instigates racial or other discrimination, shall be punished by imprisonment for a term of three months to three years.

(4) Where the offence under paras 1 to 3 above was committed by misuse of office or where such offence results in riots or violence, the perpetrator shall be punished for the offence under paras 1 and 2 above by a prison term from one to eight years and for the offence under para. 3 above by a prison term from six months to five years.

## ***b) Media Law***

### **Article 11**

On the basis of the State Attorney's proposal, the competent court may ban the distribution of the publicised media programming that: invites forceful destruction of the constitutional system and violation of the territorial integrity of Montenegro; infringes on the guaranteed human and citizen's freedoms and rights; or instigates national, racial or religious intolerance or hatred.

### **Article 23**

It is forbidden to publicise information and opinions that instigate discrimination, hatred or violence against persons or group of persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation.

The founder of the media outlet and the author shall not be held accountable if the published information and opinions referred to in paragraph 1 of this Article are part of scientific or authorial work the subject of which is a public issue and are publicised:



- without intention to instigate discrimination, hatred or violence, and are part of an objective news report;
- with intention to critically indicate the discrimination, hatred or violence or any phenomena which represent or might represent instigation to such behaviour.

### **c) Law on Electronic Media**

#### **Article 48**

(2) An AVM service must not incite, enable incitement or spread hatred or discrimination on the grounds of race, ethnic background, skin colour, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation.

#### **Article 85**

.....

(3) Audiovisual commercial communication shall not:

...

2) promote discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation.

#### **Rulebook on Programme Standards in Electronic Media**

##### **Article 4**

Hate speech: all forms of incitement to, enabling incitement to or spreading of hatred or discrimination on the grounds of race, ethnicity, skin colour, sex, language, religion, political or other belief, national or social origin, property status, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic inheritance, gender identity or sexual orientation.

##### **Article 6**

The electronic media shall be prohibited to broadcast the programme that:

.....

e) stimulates, enables instigation or spreads hate speech

##### **Article 17**

- (1) Programmes of the electronic media shall not be aimed at violating the guaranteed human freedoms and human and citizen rights or provoking national, racial and religious intolerance or hatred.

- (2) The electronic media shall not broadcast the programmes promoting the belonging to an ethnic group, sex or sexual orientation as a form of discrimination.
- (3) The electronic media are obliged to avoid using offensive terms that might be associated with certain social group.

### **Article 18**

Broadcasting of the programmes referred to in Article 17 is allowed if they are part of scientific, author's or documentary work, published:

- a) with no intention to instigate discrimination, hatred or violence, or as a part of an objective report;
- b) with the intention of critically pointing at the discrimination, hatred, violence or factors that instigate or could instigate such a behaviour.

## **KOSOVAR LEGAL AND INSTITUTIONAL CONTEXT**

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### **1. National regulatory authority establishment, mandate and powers**

National regulatory authority of the Republic of Kosovo is Independent Media Commission (IMC), established by the Constitution of the Republic of Kosovo and Law no. 04/L-44 on the Independent Media Commission. IMC is an independent body, responsible for regulation of audio and audiovisual media services, including adoption of sub-legislation, licencing procedures, management and supervision of the broadcasting frequency spectrum, determination and collection of licence fees, as well as imposition of sanctions for breaches of rules and regulations. IMC is in charge of preparation of strategy documents, such as that related to transition to digital broadcasting, as well as other strategic documents for audiovisual media services, for approval by the Government. The IMC consists of: Commission, Chief Executive Office and Appeals Board. Members of Commission and Appeals Board are elected by the Assembly, while the Chief Executive Officer is appointed by the Commission. The decisions of the IMC can be appealed to the Appeals Board. Consequently, the second-instance appellate procedure can be initiated before the Court.

web-site: [www.kpm-ks.org](http://www.kpm-ks.org).

IMC prepares annual reports, which are published, following its approval by the Assembly of the Republic of Kosovo.

### **2. Legislation related to hate speech**

#### ***Code of Ethics for Media Service Providers***

##### **Article 3 Harmful and offensive content**

1. Media service providers should not broadcast any material, which promotes or incites crime and criminal activities or, which carries the risk

of causing damage that could result in death, injury, damage to property or any other form of violence.

3. Media service providers shall make sure that the material that may cause damage or constitute a violation, is justified by context. Such materials may include, but are not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language. The appropriate information should also be transmitted in cases where it would help avoid or minimize any violation.

#### **Article 4. Vulgar and offensive language**

1. Media service providers should not broadcast any materials that contains vulgar and offensive language before the time with restrictions (from 24:00 05:00).

2. Vulgar or offensive language shall not be used in programs intended for children and minors, except in more special cases assessed based on the context.

3. During live programs (debates/interviews, etc.) it is the duty of the media service provider to undertake the necessary actions to avoid the use of vulgar or offensive language by the participants.

4. Vulgar and offensive language must not be used in broadcasting before the time with restrictions (in the case of television broadcasters), or in particular when children are likely to be listening (in the case of radio broadcasters), unless justified by the context.

#### **Article 5 Inciting hatred**

1. Media service providers should not incite or promote, intentionally or indirectly, any form of discrimination and intolerance and should not broadcast any material that denigrates an ethnic or religious group or, which implies that an ethnic or religious group is responsible for criminal activities.

2. Race, colour, sex, language, religion, political or other opinions; national or social origin; association with a community; property; sexual, economic and social orientation; birth, disability or any other personal status, should not be used in a way in which individuals are put in a denigrated, unfavourable position, ridiculed or mocked.

3. When broadcasting the content, Media service providers will not allow the use of denigrating linguistic expressions aimed at hurting and threatening an individual or group based on ethnicity, religion, gender, race, marital status, age or physical or mental disability.

4. Media service providers will ensure that they use proper, suitable and acceptable terminology for the category of persons with disabilities.

5. Media service providers should not broadcast program contents that incite hatred and inequality and may result in criminal or violent actions against an individual or group.

6. Media service providers should not broadcast program contents that incite hatred on the grounds of ethnicity, religion, gender, race, marital status, sexual orientation, age, mental or physical disability, regardless of the situation or circumstances.

7. References concerning affiliation based on race, colour, sex, language, religion, political or other opinion, national or social origin, association with a community, property, economic and social status, sexual orientation, birth, disability or any other personal status can only be made in cases when this information is of direct importance for the event being reported.

8. Media service providers will not broadcast program contents that incite riots or rebellion.

## **SERBIAN LEGAL AND INSTITUTIONAL CONTEXT**

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### **1. National regulatory authority establishment, mandate and powers**

National regulatory authority of Serbia is Regulatory authority for electronic media (REM), established by the Law on Electronic Media. REM competencies are: defining the proposal of a strategy for the development of the media service of radio and audiovisual media services, and forward it to the Government for approval; adoption of the Statute; issuance of general bylaws prescribed by the Act; issuance of licenses for the provision of media service of television and radio linear media service; detailing the procedure, requirements and criteria for licensing in accordance with the provisions of the Law and prescription of the form and content of the license; issuance of licenses for the provision of media services upon request and specification of the procedure for issuing the license; maintenance of the Register of media services and keep record of on-demand audiovisual media service providers; control of the operation of media service providers and insurance of consistent application of the provisions of the Law; imposition of measures on media service providers in accordance with the Law; prescription of rules that are binding for media service providers, especially those that ensure implementation of the strategy referred to at the beginning; deciding on charges in connection with the programming activities of media service providers; specification of logical channel numbering; providing its opinion to the competent state authorities in connection with the accession to international conventions related to the field of providing broadcasting services; initiation of the preparation and amendment of laws, regulations and general acts for the effective performance of tasks within their scope of work; determination of specific rules relating to programme content in relation to the protection of human dignity and other personal rights, protecting the rights of minors, prohibition of hate speech etc.; performing analysis of the relevant media market, in cooperation with the body responsible for the

protection of competition in accordance with the methodology prescribed by act passed by the Regulator; conducting research of the needs of the users of media services and protect their interests; cooperation and coordination of work with the body in charge of electronic communications and the body responsible for the protection of competition, as well as other Regulatory bodies in accordance with the Law; encouragement of preservation and protection of Serbian culture and language as well as the culture and languages of national minorities; promotion of improved access to media services for persons with disabilities; encouragement of development of creativity in the field of radio, television and other audiovisual media services; promotion of the development of professionalism and high level of education of employees in the electronic media in the Republic of Serbia, as well as improvement of the editorial independence and autonomy of providers of media services;, etc. Administrative dispute procedure can be initiated before the Administrative Court against any final decision of the REM Council adopted in cases of licence breach.

web-site: [www.rem.rs](http://www.rem.rs).

All decisions of REM related to applications procedures or ex officio procedures are published on the web site.

REM's annual reports contain key data about the structure of the measures issued against the AVMS providers.

## **2. Legislation related to hate speech**

### ***Constitution of Republic of Serbia***

#### **Article 49 Prohibition of inciting racial, ethnic and religious hatred**

Any inciting of racial, ethnic, religious or other inequality or hatred shall be prohibited and punishable.

### ***Law on public information and media***

#### **Article 75 Prohibition of hate speech**

It is forbidden to incite discrimination, hate or violence against persons or groups of persons based on their belonging or not to race, religion, nation, sex, sexual orientation or other characteristic, with ideas, opinion or information published in media, regardless of whether the crime has been committed by publishing.

### ***Law on prohibition of discrimination***

#### **Article 11 Hate speech**

It is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and

other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.

## ***Law on electronic media***

### **Article 51 Prohibition of hate speech**

The Regulator shall ensure that the programme content of the media service provider does not contain information which overtly or covertly encourages discrimination, hatred or violence based on race, color, ancestry, citizenship, national origin, language, religion or political beliefs, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health status, disability, marital and family status, criminal record, age, looks, membership in political, trade union and other organizations, and other actual or presumed personal characteristics.

## ***Criminal Code***

### **Article 38 Editor's responsibility**

(1) An author of information in press, radio, television or any other public promulgator is to be regarded as persons responsible for committing a criminal offence by publishing of that information.

(2) With the exception of provisions from para 1. of this Article, editor in chief or his replacement at the time is regarded as persons responsible for committing a criminal offence:

- 1) if, by the time of the first proceedings before the first-instance court, the author remains unknown;
- 2) if the information is published without the authorization of the author;
- 3) if, at the time of publishing of information, there were real or legal limitations to persecuting the author, and such limitations are still valid.

(3) Editor's responsibility or the responsibility of his replacement is annulled if he was in unreplaceable denial regarding some of the circumstances from para 2. point 1) to 3) of this Article.

### **Article 387 Racial and other discrimination**

(1) Whoever, based on difference in race, skin color, religious belonging, nationality, ethnic origin or any other personal characteristic, violates basic human rights and freedoms guaranteed by generally accepted rules of the international law and ratified international agreements by Serbia, shall be punished by six months to five years' sentence.

(2) Punishment from para 1. of this Article will be applicable to whoever persecutes organizations or individuals for their engagement in equality of people.

(3) Whoever spreads ideas of superiority of one race over the other or propagates racial hatred or incites racial discrimination will be punished by three months to three years' sentence.

(4) Whoever spreads or in any other way makes public the texts, pictures or any other representation of ideas or theories which advocates or incite hatred, discrimination or violence against any person or group of persons, based on race, skin color, religious belonging, nationality, ethnic origin or any other personal characteristic will be punished by three months to three years' sentence.

(5) Whoever makes public threats of committing a felony for which the foreseen jail time is up to four years, to a person or group of persons for their belonging to a certain race, religion, nationality, ethnic origin or any other personal characteristic, will be punished by three months to three years' sentence.

## ***Rulebook on the protection of human rights in the field of media service provision***

### **Article 27 Prohibition of hate speech**

Media service providers may not publish programme material including information inciting, either overtly or covertly, discrimination, hate or violence against individuals or groups of individuals on account of their race, colour, ancestry, nationality, ethnic affiliation, language, religious or political opinion, sex, gender identity, sexual orientation, property, birth, genetic features, health condition, disability, marital or family status, criminal record, age, appearance, membership of political, unionist or other organisations or other actual or assumed personal characteristics.

Media service providers may not publish material glorifying, justifying or downplaying discrimination, hate or violence against individuals or groups of individuals referred to in paragraph 1 of this Article.

The prohibitions referred to in paragraphs 1 and 2 of this Article shall apply whether or not the publication of the programme material amounts to a criminal offence.

Assessments of whether specific programme material has the features referred to in paragraphs 1 and 2 of this Article shall particularly take into consideration the character and objective of the programme material, the current social and political situation in the country and abroad, the current

public opinion, as well as prior events of relevance to the events, occurrences or individuals the material regards.

The prohibitions referred to in paragraphs 1 and 2 of this Article shall not prejudice the right of media service providers to:

- 1) Publish information that is part of an objective press report, without the intention to incite discrimination, hate or violence against individuals or groups of individuals, or
- 2) Publish information with the intention of critically alerting to discrimination, hate or violence against individuals or groups of individuals or occurrences actually or potentially amounting to incitement of such conduct.



## Annex 2

# Relevant case-law of the European Court of Human Rights

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**T**his part is an excerpt from the European Court of Human Rights Factbook on its case-law, as part of a regularly updated Court's publication, available at:

[http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)

### HATE SPEECH

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"Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], it is applicable not only to 'information' or 'ideas' that are favourably 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 demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued." (Handyside v. the United Kingdom judgment of 7 December 1976, § 49).

"..... [T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ....., provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued." (Erbakan v. Turkey judgment of 6 July 2006, § 56)

1. When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches which are provided for by the European Convention on Human Rights:

- the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights), where the comments in question amount to hate speech and negate the fundamental values of the Convention; and
- the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention (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).

2. Internet news portals which, for commercial and professional purposes, provide a platform for user-generated comments assume the “duties and responsibilities” associated with freedom of expression in accordance with Article 10 § 2 of the Convention where users disseminate hate speech or comments amounting to direct incitement to violence.

## **Exclusion from the protection of the Convention**

“[T]here is no doubt that any remark directed against the Convention’s underlying values would be removed from the protection of Article 10 [freedom of expression] by Article 17 [prohibition of abuse of rights] (.....)” (Seurot v. France, decision on the admissibility of 18 May 2004)

## **ETHNIC HATE**

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### **Pavel Ivanov v. Russia, 20 February 2007 (decision on the admissibility)**

The applicant, owner and editor of a newspaper, was convicted of public incitement to ethnic, racial and religious hatred through the use of mass-media. He authored and published a series of articles portraying the Jews as the source of evil in Russia, calling for their exclusion from social life. He accused an entire ethnic group of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. Both in his publications, and in his oral submissions at the trial, he consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The applicant complained, in particular, that his conviction for incitement to racial hatred had not been justified.

The Court declared the application inadmissible (incompatible *ratione materiae*). It had no doubt as to the markedly anti-Semitic tenor of the applicant’s views and agreed with the assessment made by the domestic courts that through his publications he had sought to incite hatred towards the Jewish people. Such a general, vehement attack on one ethnic group is directed against the Convention’s underlying values, notably tolerance, social peace and non-discrimination. Consequently, by reason of Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not

benefit from the protection afforded by Article 10 (freedom of expression) of the Convention.

See also: *W.P. and Others v. Poland* (no. 42264/98), decision on the admissibility of 2 September 2004 (concerning the refusal by the Polish authorities to allow the creation of an association with statutes including anti-Semitic statements – the Court held that the applicants could not benefit from the protection afforded by Article 11 (freedom of assembly and association) of the Convention).

## **NEGATIONISM AND REVISIONISM**

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### **Garaudy v. France 24 June 2003 (decision on the admissibility)**

The applicant, the author of a book entitled *The Founding Myths of Modern Israel*, was convicted of the offences of disputing the existence of crimes against humanity, defamation in public of a group of persons – in this case, the Jewish community – and incitement to racial hatred. He argued that his right to freedom of expression had been infringed.

The Court declared the application inadmissible (*incompatible ratione materiae*). 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.

See also: *Honsik v. Austria*, decision of the European Commission of Human Rights of 18 October 1995 (concerning a publication denying the committing of genocide in the gas chambers of the concentration camps under National Socialism); *Marais v. France*, decision of the Commission of 24 June 1996 (concerning an article in a periodical aimed at demonstrating the scientific implausibility of the "alleged gassings").

### **M'Bala M'Bala v. France 20 October 2015 (decision on the admissibility)**

This case concerned the conviction of Dieudonné M'Bala M'Bala, a comedian with political activities, for public insults directed at a person or group of persons on account of their origin or of belonging to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith. At the end of a show in December 2008 at the "Zénith" in Paris, the applicant invited Robert Faurisson, an academic who has received a number of convictions in France for his negationist and revisionist opinions, mainly his denial of the existence of gas chambers in concentration camps, to join him on stage to receive a "prize for unfrequentability and insolence". The prize, which took the form of a three-

branched candlestick with an apple on each branch, was awarded to him by an actor wearing what was described as a “garment of light” – a pair of striped pyjamas with a stitched-on yellow star bearing the word “Jew” – who thus played the part of a Jewish deportee in a concentration camp.

The Court declared the application inadmissible (incompatible *ratione materiae*), in accordance with Article 35 (admissibility criteria) of the Convention, finding that under Article 17 (prohibition of abuse of rights), the applicant was not entitled to the protection of Article 10 (freedom of expression). The Court considered in particular that during the offending scene the performance could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism through the key position given to Robert Faurisson’s appearance and the degrading portrayal of Jewish deportation victims faced with a man who denied their extermination. In the Court’s view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention. The Court thus concluded that the applicant had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

## **RACIAL HATE**

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### **Glimmerveen and Haggenbeek v. the Netherlands 11 October 1979 (decision of the European Commission of Human Rights))**

In this case, the applicants had been convicted for possessing leaflets addressed to “White Dutch people”, which tended to make sure notably that everyone who was not white left the Netherlands.

The Commission declared the application inadmissible, finding that Article 17 (prohibition of abuse of rights) of the Convention did not permit the use of Article 10 (freedom of expression) to spread ideas which are racially discriminatory.

## **RELIGIOUS HATE**

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### **Norwood v. United Kingdom 16 November 2004 (decision on the admissibility)**

The applicant had displayed in his window a poster supplied by the British National Party, of which he was a member, representing the Twin Towers in flame. The picture was accompanied by the words “Islam out of Britain – Protect the British People”. As a result, he was convicted of aggravated hostility towards a

religious group. The applicant argued, among other things, that his right to freedom of expression had been breached.

The Court declared the application inadmissible (*incompatible ratione materiae*). It found that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The Court therefore held that the applicant's display of the poster in his window had constituted an act within the meaning of Article 17 (prohibition of abuse of rights) of the Convention, and that the applicant could thus not claim the protection of Article 10 (freedom of expression) of the Convention.

## **THREAT TO THE DEMOCRATIC ORDER**

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As a rule, the Court will declare inadmissible, on grounds of incompatibility with the values of the Convention, applications which are inspired by totalitarian doctrine or which express ideas that represent a threat to the democratic order and are liable to lead to the restoration of a totalitarian regime.

See, among others: *Communist Party of Germany v. the Federal Republic of Germany*, decision of the European Commission on Human Rights of 20 July 1957; *B.H., M.W., H.P. and G.K. v. Austria* (application no. 12774/87), decision of the Commission of 12 October 1989; *Nachtmann v. Austria*, decision of the Commission of 9 September 1998; *Schimanek v. Austria*, decision of the Court on the admissibility of 1 February 2000.

### **Restrictions on the protection afforded by Article 10 (freedom of expression) of the Convention**

Under Article 10, paragraph 2, of the Convention, the Court will examine successively if an interference in the freedom of expression exists, if this interference is prescribed by law and pursues one or more legitimate aims, and, finally, if it is necessary in a democratic society to achieve these aims.

## **APOLOGY OF VIOLENCE AND INCITEMENT TO HOSTILITY**

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### **Sürek (no.1) v. Turkey 8 July 1999 (Grand Chamber)**

The applicant was the owner of a weekly review which published two readers' letters vehemently condemning the military actions of the authorities in south-east Turkey and accusing them of brutal suppression of the Kurdish people in their struggle for independence and freedom. The applicant was convicted of "disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people". He complained that his right to freedom of expression had been breached.

The Court held that there had been no violation of Article 10 (freedom of expression). It noted that the impugned letters amounted to an appeal to bloody

revenge and that one of them had identified persons by name, stirred up hatred for them and exposed them to the possible risk of physical violence. Although the applicant had not personally associated himself with the views contained in the letters, he had nevertheless provided their writers with an outlet for stirring up violence and hatred. The Court considered that, as the owner of the review, he had been vicariously subject to the duties and responsibilities which the review's editorial and journalistic staff undertook in the collection and dissemination of information to the public, and which assumed even greater importance in situations of conflict and tension.

See also, among others: *Özgür Gündem v. Turkey*, judgment of 16 mars 2000 (conviction of a daily newspaper for the publication of three articles containing passages which advocated intensifying the armed struggle, glorified war and espoused the intention to fight to the last drop of blood); *Medya FM Reha Radyo ve İletişim Hizmetleri A. Ş. v. Turkey*, decision on the admissibility of 14 November 2006 (one- – year suspension of right to broadcast, following repeated radio programmes deemed to be contrary to principles of national unity and territorial integrity and likely to incite violence, hatred and racial discrimination).

### **Gündüz v. Turkey 13 November 2003 (decision on the admissibility)**

The applicant, the leader of an Islamic sect, had been convicted of incitement to commit an offence and incitement to religious hatred on account of statements reported in the press. He was sentenced to four years and two months' imprisonment and to a fine. The applicant argued, among other things, that his right to freedom of expression had been breached.

The Court declared the application inadmissible (manifestly ill-founded), finding that the severity of the penalty imposed on the applicant could not be regarded as disproportionate to the legitimate aim pursued, namely the prevention of public incitement to commit offences. The Court stressed in particular that statements which may be held to amount to hate speech or to glorification of or incitement to violence, such as those made in the instant case, cannot be regarded as compatible with the notion of tolerance and run counter to the fundamental values of justice and peace set forth in the Preamble to the Convention. Admittedly, the applicant's sentence, which was increased because the offence had been committed by means of mass communication, was severe. The Court considered, however, that provision for deterrent penalties in domestic law may be necessary where conduct reaches the level observed in the instant case and becomes intolerable in that it negates the founding principles of a pluralist democracy.

### **Gündüz v. Turkey 4 December 2003**

The applicant was a self-proclaimed member of an Islamist sect. During a televised debate broadcast in the late evening, he spoke very critically of democracy, describing contemporary secular institutions as "impious", fiercely criticising secular and democratic principles and openly calling for the introduction of Sharia

law. He was convicted of openly inciting the population to hatred and hostility on the basis of a distinction founded on membership of a religion or denomination. The applicant alleged a violation of his right to freedom of expression.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention. It noted in particular that the applicant, who had represented the extremist ideas of his sect, with which the public was already familiar, had been taking an active part in an animated public discussion. That pluralist debate had sought to present the sect and its unorthodox views, including the notion that democratic values were incompatible with its conception of Islam. The topic had been the subject of widespread debate in the Turkish media and concerned a problem of general interest. The Court considered that the applicant's remarks could not be regarded as a call to violence or as hate speech based on religious intolerance. The mere fact of defending sharia, without calling for violence to introduce it, could not be regarded as hate speech.

### **Faruk Temel v. Turkey 1 February 2011**

The applicant, the chairman of a legal political party, read out a statement to the press at a meeting of the party, in which he criticised the United States' intervention in Iraq and the solitary confinement of the leader of a terrorist organisation. He also criticised the disappearance of persons taken into police custody. Following his speech the applicant was convicted of disseminating propaganda, on the ground that he had publicly defended the use of violence or other terrorist methods. The applicant contended that his right to freedom of expression had been breached.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention. It noted in particular that the applicant had been speaking as a political actor and a member of an opposition political party, presenting his party's views on topical matters of general interest. It took the view that his speech, taken overall, had not incited others to the use of violence, armed resistance or uprising and had not amounted to hate speech.

See also, among others: *Dicle (no. 2) v. Turkey*, judgment of 11 April 2006 (conviction for inciting to hatred and hostility on the basis of a distinction between social classes, races and religions, following the publication of a seminar report); *Erdal Taş v. Turkey*, judgment of 19 December 2006 (conviction for disseminating propaganda against the indivisibility of the State on account of the publication of a statement by a terrorist organisation, following the publication in a newspaper of an article consisting of analysis of the Kurdish question).

## **CIRCULATING HOMOPHOBIC LEAFLETS**

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### **Vejdeland and Others v. Sweden 9 February 2012**

This case concerned the applicants' conviction for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants had distributed leaflets by an

organisation called National Youth, by leaving them in or on the pupils' lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS. The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools.

The Court found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour. It concluded that there had been no violation of Article 10 (freedom of expression) of the Convention, as the interference with the applicants' exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others.

## CONDONING TERRORISM

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### **Leroy v. France (2 October 2008)**

The applicant, a cartoonist, complained of his conviction for publicly condoning terrorism following the publication in a Basque weekly newspaper on 13 September 2001 of a drawing representing the attack on the twin towers of the World Trade Center with a caption imitating the advertising slogan of a famous brand: "We all dreamt of it... Hamas did it". He argued that his freedom of expression had been infringed.

The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention in respect of the applicant's conviction for complicity in condoning terrorism. It considered, in particular, that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. In this regard, the Court based its finding on the caption which accompanied the drawing, and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims. In addition, it had to be recognised that the drawing had assumed a special significance in the circumstances of the case, as the applicant must have realised. Moreover, the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked; the weekly newspaper's limited circulation notwithstanding, the Court noted that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region. Consequently, the Court considered that the grounds put forward by the domestic courts in convicting the applicant had been relevant and sufficient and, having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, it found



that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.

## **CONDONING WAR CRIMES**

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### **Lehideux and Isorni v. France 23 September 1998**

The applicants wrote a text which was published in the daily newspaper *Le Monde* and which portrayed Marshal Pétain in a favourable light, drawing a veil over his policy of collaboration with the Nazi regime. The text ended with an invitation to write to two associations dedicated to defending Marshal Pétain's memory, seeking to have his case reopened and to have the judgment of 1945 sentencing him to death and to forfeiture of his civic rights overturned, and to have him rehabilitated. Following a complaint by the National Association of Former Members of the Resistance, the two authors were convicted of publicly defending war crimes and crimes of collaboration with the enemy. They alleged a violation of their right to freedom of expression.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention. It considered that the impugned text, although it could be regarded as polemical, could not be said to be negationist since the authors had not been writing in a personal capacity but on behalf of two legally constituted associations, and had praised not so much pro-Nazi policies as a particular individual. Lastly, the Court noted that the events referred to in the text had occurred more than forty years before its publication and that the lapse of time made it inappropriate to deal with such remarks, forty years on, with the same severity as ten or twenty years previously.

## **DENIGRATING NATIONAL IDENTITY**

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### **Dink v. Turkey 14 September 2010**

Firat (Hrank) Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of a bilingual Turkish-Armenian weekly newspaper published in Istanbul. Following the publication in this newspaper of eight articles in which he expressed his views on the identity of Turkish citizens of Armenian origin, he was found guilty in 2006 of "denigrating Turkish identity". In 2007 he was killed by three bullets to the head as he left the offices of the newspaper. The applicants, his relatives, complained in particular of the guilty verdict against him which, they claimed, had made him a target for extreme nationalist groups.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention, finding that there had been no pressing social need to find Firat Dink guilty of denigrating "Turkishness". It observed, in particular, that the series of articles taken overall did not incite others to violence, resistance or revolt. The author had been writing in his capacity as a journalist and editor-in-chief of a Turkish-Armenian newspaper, commenting on issues concerning the Armenian minority in the context of his role as a player on the political scene. He

had merely been conveying his ideas and opinions on an issue of public concern in a democratic society. In such societies, the debate surrounding historical events of a particularly serious nature should be able to take place freely, and it was an integral part of freedom of expression to seek historical truth. Finally, the impugned articles had not been gratuitously offensive or insulting, and they had not incited others to disrespect or hatred.

## **DISPLAY OF A FLAG WITH CONTROVERSIAL HISTORICAL CONNOTATIONS**

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### **Fáber v. Hungary 24 July 2012**

The applicant complained that he had been fined for displaying the striped Árpád flag, which had controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred.

The Court held that there had been a violation of Article 10 (freedom of expression) read in the light of Article 11 (freedom of assembly and association of the Convention). It accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining the applicant for refusing to take down the flag in question. The mere display of that flag did not disturb public order or hamper the demonstrators' right to assemble, as it had been neither intimidating, nor capable of inciting violence.

## **INCITEMENT TO ETHNIC HATRED**

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### **Balsytė-Lideikienė v. Lithuania 4 November 2008**

The applicant owned a publishing company. In March 2001 the Polish courts found that she had breached the Code on Administrative Offences on account of her publishing and distributing the "Lithuanian calendar 2000" which, according to the conclusions of political science experts, promoted ethnic hatred. She was issued with an administrative warning and the unsold copies of the calendar were confiscated. The applicant alleged in particular that the confiscation of the calendar and the ban on its further distribution had infringed her right to freedom of expression.

The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention. It found, in particular, that the applicant had expressed aggressive nationalism and ethnocentrism and statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian

authorities cause for serious concern. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court found that in the present case the domestic authorities had not overstepped their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant. The Court also noted that even though the confiscation measure imposed on the applicant could be deemed relatively serious, she had not had a fine imposed on her, but only a warning, which was the mildest administrative punishment available. Therefore, the Court found that the interference with the applicant's right to freedom of expression could reasonably have been considered necessary in a democratic society for the protection of the reputation or rights of others.

## **INCITEMENT TO NATIONAL HATRED**

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### **Hösl-Daum and Others v. Poland 7 October 2014 (decision on the admissibility)**

The applicants were charged with insulting the Polish nation and inciting national hatred. They alleged a breach of their right to freedom of expression on account of their conviction for putting up posters in the German language describing atrocities committed after the Second World War by the Polish and the Czechs against the Germans.

The Court declared the application inadmissible (non-exhaustion of domestic remedies). It found that, by failing to lodge a constitutional complaint against the impugned provisions of the Criminal Code, the applicants had failed to exhaust the remedy provided for by Polish law.

## **INCITEMENT TO RACIAL DISCRIMINATION OR HATRED**

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### **Jersild v. Denmark 23 September 1994**

The applicant, a journalist, had made a documentary containing extracts from a television interview he had conducted with three members of a group of young people calling themselves the "Greenjackets", who had made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The applicant was convicted of aiding and abetting the dissemination of racist remarks. He alleged a breach of his right to freedom of expression.

The Court drew a distinction between the members of the "Greenjackets", who had made openly racist remarks, and the applicant, who had sought to expose, analyse and explain this particular group of youths and to deal with "specific aspects of a matter that already then was of great public concern". The documentary as a whole had not been aimed at propagating racist views and ideas, but at informing the public about a social issue. Accordingly, the Court held that there had been a violation of Article 10 (freedom of expression) of the Convention.

## **Soulas and Others v. France 10 July 2008**

This case concerned criminal proceedings brought against the applicants, following the publication of a book entitled “The colonisation of Europe”, with the subtitle “Truthful remarks about immigration and Islam”. The proceedings resulted in their conviction for inciting hatred and violence against Muslim communities from northern and central Africa. The applicants complained in particular that their freedom of expression had been breached.

The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention. It noted, in particular, that, when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as the main enemy, and to lead the book’s readers to share the solution recommended by the author, namely a war of ethnic re-conquest. Holding that the grounds put forward in support of the applicants’ conviction had been sufficient and relevant, it considered that the interference in the latter’s right to freedom of expression had been necessary in a democratic society. Finally, the Court observed that the disputed passages in the book were not sufficiently serious to justify the application of Article 17 (prohibition of abuse of rights) of the Convention in the applicants’ case.

## **Féret v. Belgium 16 July 2009**

The applicant was a Belgian member of Parliament and chairman of the political party Front National/Nationaal Front in Belgium. During the election campaign, several types of leaflets were distributed carrying slogans including “Stand up against the Islamification of Belgium”, “Stop the sham integration policy” and “Send non-European job-seekers home”. The applicant was convicted of incitement to racial discrimination. He was sentenced to community service and was disqualified from holding parliamentary office for 10 years. He alleged a violation of his right to freedom of expression.

The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention. In its view, the applicant’s comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant’s conviction had been justified in the interests of preventing disorder and protecting the rights of others, namely members of the immigrant community.

## **Le Pen v. France 20 April 2010 (decision on the admissibility)**

At the time of the facts, the applicant was president of the French “National Front” party. He alleged in particular that his conviction for incitement to discrimination, hatred and violence towards a group of people because of their origin or their

membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with Le Monde daily newspaper – he had asserted, among other things, that “the day there are no longer 5 million but 25 million Muslims in France, they will be in charge” – had breached his right to freedom of expression.

The Court declared the application inadmissible (manifestly ill-founded). It observed that the applicant’s statements had been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries.

Moreover, the varying scale of the problems concerned, which could sometimes generate misunderstanding and incomprehension, required considerable latitude to be left to the State in assessing the need for interference with a person’s freedom of expression. In this case, however, the applicant’s comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French on the one hand against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting the applicant had thus been relevant and sufficient. Nor had the penalty imposed been disproportionate. The Court therefore found that the interference with the applicant’s enjoyment of his right to freedom of expression had been necessary in a democratic society.

### **Perinçek v. Switzerland 15 October 2015 (Grand Chamber)**

This case concerned the criminal conviction of the applicant, a Turkish politician, for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire in 1915 and the following years had not amounted to genocide. The Swiss courts held in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The applicant complained that his criminal conviction and punishment had been in breach of his right to freedom of expression.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention. Being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, it found that the dignity of the victims and the dignity and identity of modern-day Armenians were protected by Article 8 (right to respect for private life) of the Convention. The Court therefore had to strike a balance between two Convention rights – the right to freedom of expression and the right to respect for private life – taking into account the specific circumstances of the case and the proportionality between the means used and the aim sought to be achieved. In this case, the Court concluded that it had not been necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the

Armenian community at stake in the case. In particular, the Court took into account the following elements: the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; the context in which they were made had not been marked by heightened tensions or special historical overtones in Switzerland; the statements could not be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland; there was no international law obligation for Switzerland to criminalise such statements; the Swiss courts appeared to have censured the applicant simply for voicing an opinion that diverged from the established ones in Switzerland; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.

## **INCITEMENT TO RELIGIOUS INTOLERANCE**

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### **İ.A. v. Turkey (no. 42571/98) 13 September 2005**

The applicant, the owner and managing director of a publishing company, published 2,000 copies of a book which addressed theological and philosophical issues in a novelistic style. The Istanbul public prosecutor charged the applicant with insulting "God, the Religion, the Prophet and the Holy Book" through the publication. The court of first instance sentenced the applicant to two years' imprisonment and payment of a fine, and immediately commuted the prison sentence to a small fine. The applicant appealed to the Court of Cassation, which upheld the judgment. The applicant alleged that his conviction and sentence had infringed his right to freedom of expression.

The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention. It reiterated, in particular, that those who chose to exercise the freedom to manifest their religion, irrespective of whether they did so as members of a religious majority or a minority, could not reasonably expect to be exempt from all criticism. They had to tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the present case concerned not only comments that were disturbing or shocking or a "provocative" opinion but an abusive attack on the Prophet of Islam. Notwithstanding the fact that there was a certain tolerance of criticism of religious doctrine within Turkish society, which was deeply attached to the principle of secularity, believers could legitimately feel that certain passages of the book in question constituted an unwarranted and offensive attack on them. In those circumstances, the Court considered that the measure in question had been intended to provide protection against offensive attacks on matters regarded as sacred by Muslims and had therefore met a "pressing social need". It also took into account the fact that the Turkish courts had not decided to seize the book in question, and consequently held that the insignificant fine imposed had been proportionate to the aims pursued by the measure in question.

## **Erbakan v. Turkey 6 July 2006**

The applicant, a politician, was notably Prime Minister of Turkey. At the material time he was chairman of Refah Partisi (the Welfare Party), which was dissolved in 1998 for engaging in activities contrary to the principles of secularism. He complained in particular that his conviction for comments made in a public speech, which had been held to have constituted incitement to hatred and religious intolerance, had infringed his right to freedom of expression.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention. It found that such comments – assuming they had in fact been made – by a well-known politician at a public gathering were more indicative of a vision of society structured exclusively around religious values and thus appeared hard to reconcile with the pluralism typifying contemporary societies, where a wide range of different groups were confronted with one another. Pointing out that combating all forms of intolerance was an integral part of human-rights protection, the Court held that it was crucially important that in their speeches politicians should avoid making comments liable to foster intolerance. However, having regard to the fundamental nature of free political debate in a democratic society, the Court concluded that the reasons given to justify the applicant's prosecution were not sufficient to satisfy it that the interference with the exercise of his right to freedom of expression had been necessary in a democratic society.

## **INSULT OF STATE OFFICIALS**

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### **Otegi Mondragon v. Spain 15 March 2011**

The applicant, the spokesperson for a left-wing Basque separatist parliamentary group, referred at a press conference to the closure of a Basque daily newspaper (on account of its suspected links with ETA) and to the alleged ill-treatment of the persons arrested during the police operation. In his statement he referred to the King of Spain as “the supreme head of the Spanish armed forces, in other words, the person in command of the torturers, who defends torture and imposes his monarchic regime on our people through torture and violence”. The applicant was sentenced to a term of imprisonment for the offence of serious insult against the King. He alleged a breach of his right to freedom of expression.

The Court held that there had been a violation of Article 10 (freedom of expression) finding that the applicant's conviction and sentence had been disproportionate to the legitimate aim pursued, namely the protection of the King of Spain's reputation, as guaranteed by the Spanish Constitution. The Court observed in particular that, while it was true that the language used by the applicant could have been considered provocative, it was essential to bear in mind that, even if some of the words used in the applicant's comments had been hostile in nature, there had been no incitement to violence and they had not amounted to hate speech. Furthermore, these had been oral statements made in the course of a press conference, which meant that the applicant had been unable to reformulate, rephrase or withdraw them before they were made public.

# Hate speech and the Internet

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## **Delfi AS v. Estonia 16 June 2015 (Grand Chamber)**

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The applicant company, which runs a news portal run on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, the applicant company removed the offensive comments about six weeks after their publication.

The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention. It first noted the conflicting realities between the benefits of Internet, notably the unprecedented platform it provided for freedom of expression, and its dangers, namely the possibility of hate speech and speech inciting violence being disseminated worldwide in a matter of seconds and sometimes remaining persistently available online. The Court further observed that the unlawful nature of the comments in question was obviously based on the fact that the majority of the comments were, viewed on their face, tantamount to an incitement to hatred or to violence against the owner of the ferry company. Consequently, the case concerned the duties and responsibilities of Internet news portals, under Article 10 § 2 of the Convention, which provided on a commercial basis a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engaged in clearly unlawful speech, which infringed the personality rights of others and amounted to hate speech and incitement to violence against them. In cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, the Court considered that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. Based on the concrete assessment of these aspects and taking into account, in particular, the extreme nature of the comments in question, the fact that they had been posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction (320 euro) imposed on the applicant company, the Court found that the Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression.



## **Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary 2 February 2016**

This case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites following the publication of an opinion criticizing the misleading business practices of two real estate websites. The applicants complained about the Hungarian courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention. It reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites. It is to be noted that the applicants' case was different in some aspects from the *Delfi AS v. Estonia* case (see above) in which the Court had held that a commercially-run Internet news portal had been liable for the offensive online comments of its readers. The applicants' case was notably devoid of the pivotal elements in the *Delfi AS* case of hate speech and incitement to violence. Although offensive and vulgar, the comments in the present case had not constituted clearly unlawful speech. Furthermore, while Index is the owner of a large media outlet which must be regarded as having economic interests, Magyar Tartalomszolgáltatók Egyesülete is a non-profit self-regulatory association of Internet service providers, with no known such interests.

## **Pihl v. Sweden 7 February 2017 (decision on the admissibility)**

The applicant had been the subject of a defamatory online comment, which had been published anonymously on a blog. He made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment. The claim was rejected by the Swedish courts and the Chancellor of Justice. The applicant complained to the Court that by failing to hold the association liable, the authorities had failed to protect his reputation and had violated his right to respect for his private life.

The Court declared the application inadmissible as being manifestly ill-founded. It noted in particular that, in cases such as this, a balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal. In

light of the circumstances of this case, the Court found that national authorities had struck a fair balance when refusing to hold the association liable for the anonymous comment. In particular, this was because: although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days.



The aim of this publication is to contribute to a wider understanding of the concept of hate speech, to offer a starting point in terms of providing recommendations and mechanisms for fighting against and preventing it, and to facilitate further efforts and initiatives. It should represent a useful and important tool in further activities of not only media regulatory bodies, but within the discourse of wider societal stakeholders.

The Council of Europe wishes to extend its gratitude to national regulatory authorities in the field of electronic media from South-East Europe for their involvement in producing this publication, dedicated work, initiative, responsiveness and team-spirit that resulted in the creation of this very valuable publication.

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