

THE NORMATIVE FRAMEWORK OF HATE SPEECH IN SERBIA AND SERBIAN MEDIA

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Abstract. *The paper analyses the concept of hate speech and tries to define its essence and to highlight the problems of its legal regulation. Relying on the fact that the international documents related to hate speech have been signed by many countries (including Serbia), there are prominent positive tendencies towards recognizing, monitoring, and sanctioning hate speech. After providing a conceptual framework of hate speech, the paper first focuses on different legal provisions on hate speech embodied in relevant international documents. The subsequent analysis of the national legislative framework on hate speech includes relevant provisions of the Serbian Constitution, the Anti-Discrimination Act and the Serbian Criminal Code. In particular, the paper focuses on the regulation of hate speech in the media-related legislation in Serbia, including the Public Information and Media Act, the Electronic Media Act, the Public Media Services Act, and the Journalists' Code of Ethics. Finally, the author suggests that a possible solution for suppression of hate speech should be sought in its roots and a better understanding of its ethical aspects. In this respect, the role of media and self-regulatory bodies is very important.*

Key words: *hate speech, discrimination, normative framework, media legislation.*

1. INTRODUCTION

The concept of human rights is founded on the ideological understanding of basic human rights that exist independently of national regulations of a state. However, when in a direct collision with national regulations, human rights must hold priority. Human rights are based on human dignity and freedoms, with the freedom of an individual being inviolable. However, the freedom of one individual is restricted by the freedom of another individual. In this regard, the question concerning the boundaries of these freedoms may be raised, i.e., how far one can

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consume its freedom without harming another individual. This boundary is far clearer when it comes to an attack on someone's life and body, which implies a physical destruction of someone's freedom. However, the boundary is far more difficult to define in case of verbal attacks, when one person is verbally abusing another person, especially on discriminatory bases. Discriminatory messages and incitement to violence are closely related to *hate speech*, the phenomenon which has been gaining more attention due to the developments in mass media, especially the extensive use of online media and the Internet in general.

This paper examines the concept of hate speech, its content and forms of expression. Then, we look at the ways it is defined in international law documents, from the very beginning of its regulation to the current conventions which define and ban hate speech. After that, hate speech will be viewed from the standpoint of Serbian lawmakers, by examining the Constitution of the Republic of Serbia and the legislative acts which are directly or indirectly related to hate speech. Then, hate speech will be analyzed within the framework of the Journalists' Code of Ethics in Serbia. After providing some examples of hate speech reported in Serbian media, the analysis will focus on the existing normative framework aimed at sanctioning hate speech. Finally, the paper includes some suggestions for the prevention of hate speech in Serbian media.

2. HATE SPEECH – DEFINITION AND RELEVANCE

As Weber (2009: 3) has noticed, there is no universally accepted definition of the term "hate speech", despite its frequent usage. Among numerous theoreticians who try to provide the most comprehensible definition of hate speech, it is worth quoting Nockleby (Nockleby, 2000) who sees hate speech as "any communication that disparages a person or a group on the basis of some characteristic such as race, color, ethnicity, gender, sexual orientation, nationality, religion, or other characteristic." Warner & Hirschberg (2012: 19) noted that hate speech is "...a particular form of offensive language that makes use of stereotypes to express an ideology of hate".

In defining 'hate speech', a vast majority of European countries are guided by the Council of Europe's Committee of Ministers Recommendation 97(20): "The term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."¹

Commenting on the aforementioned definition, Weber (2009: 4) says that "hate speech" covers comments which are necessarily directed against a person or a particular group of persons. The term is also found in European case-law even though the European Court of Human Rights (ECtHR) has never given a precise definition of hate speech. In some of its judgments, the Court simply refers to all forms of expression aimed to spread, incite, promote or justify hatred based on intolerance (including religious intolerance). The same author (Weber, 2009) remarks that the concept of "hate speech" encompasses three groups of incitements: 1) incitement of racial hatred (the hatred directed against persons or groups of persons on the grounds of belonging to a race); 2) incitement to hatred on religious grounds, including the distinction between believers and non-believers; and 3) incitement to

¹ Council of Europe. Committee of Ministers. Recommendations 97(20) on 'hate speech', October 30, 1997.

other forms of hatred based on intolerance expressed by aggressive nationalism and ethnocentrism. Weber also notices that, although the Court has not yet dealt with this aspect, homophobic speech can also be considered as “hate speech” (Weber, 2009: 5).

The question which could be raised here is: who are the people who create hate speech messages and who are the targets of these messages? This is usually (but not necessarily) correlated with the size of a social group; a majority group is the one which creates hate speech, whereas a minority group is a target group solely due to affiliation with that particular group. However, anyone can be a target of hate speech. Some people might become targets because they are of a particular race, nationality or religion, while others could be targeted because of their disabilities, or because of their gender, age, or sexual orientation.

Thus, it can be said that hate speech is related to physical or personal characteristics of the individual to whom it is addressed, and it is aimed at highlighting the differences between the sender of such messages and the recipient (addressee). This means that a form of communication or a type of message is recognized as hate speech if it is focused in a discriminatory way either on someone’s personal characteristics or his/her affiliation with a specific vulnerable group. There is a wide range of personal features which can be subjected to hate speech, such as: race, national and ethnic origin, religion, language, sex/gender, sexual orientation, political belief or other opinions, social status, etc.

How is hate speech manifested? There is a huge variety of diverse forms of hate speech which may be expressed by: 1) showing contempt for a person or a group; 2) making negative comments and using stereotypes pertaining to particular individuals or groups; 3) provoking hostility and discrimination; 4) encouraging neighbors to condemn a particular person or group; 5) causing a sense of insecurity and fear in a particular person or a person belonging to a particular group; 6) inflicting mental and physical pain to a particular person or a person belonging to a particular group, 7) posing a threat to a particular person or group; 8) encouraging and inciting violence against a particular person or group; 9) creating a belief in a large part of the population that such behavior towards a particular person or group is socially desirable and justified; 10) provoking feelings in the majority of citizens that hate speech will be tolerated and that such behavior will not be sanctioned.²

To sum up, hate speech comprises any kind of publicly expressed intolerance defined in terms of race, ethnicity, nationality, gender, religion, political orientation, sexual orientation, and the like, which is demonstrated in different forms and modes.

3. HATE SPEECH IN INTERNATIONAL DOCUMENTS

As already mentioned, the concept of hate speech is difficult to define. It is said that hate speech comes as a side effect of the freedom of expression. By its nature, the generic concept of hate speech should be distinguished from the concept of hate speech in legal sense. In this regard, hate speech may be defined and regulated in different terms in different areas of law. This means that hate speech is not comprehensively regulated in a single legal act or document, but is included in a variety of documents.

² Source: Yucom - Komitet pravnik za ljudska prava [Lawyers’ Committee for Human Rights], <http://www.yucom.org.rs/rest.php?tip=vestgalerija&idSek=24&idSubSek=70&id=1&status=drugi> – Retrieved 10. 3. 2016.

At the international level, there are a lot of documents on human rights which prohibit discrimination, including hate speech as a form of discrimination. By ratifying an international document, a state is obliged to respect it in its original form, or to pass some domestic laws through which this document will be implemented. Considering the international regulation of hate speech, the most important institutions that deal with this concept are the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), and the Council of Europe (CoE). These institutions have adopted numerous charters, declarations and conventions for combating hate speech in respect to race, gender, religion, ethnic and national affiliation, and other forms of discrimination.

The foundation of human rights protection was laid down in 1948 by *the Universal Declaration of Human Rights*, which is primarily concerned with human dignity. This area is further regulated in detail by the *International Covenant on Civil and Political Rights*, enacted in 1966 within the UN in order to put forward the prohibition of any “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.³

Among a great number of international documents enacted by the UN, one of special importance is *the Convention on the Elimination of All Forms of Racial Discrimination* of 1965, which proclaims that State Parties should condemn 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”.⁴

In the domain of the Council of Europe, the most important document is the European Convention for the Protection of Human Rights and Fundamental Freedoms (1948). It is important to note that the Council of Europe’s Committee of Ministers Recommendation 97(20) has offered a comprehensible definition of hate speech. *The Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 14) states that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.⁵ For this purpose, the Council of Europe has also formed the European Commission against Racism and Intolerance (ECRI), whose aim is to combat against racism, racial discrimination, (especially intolerance against Roma and Muslims), xenophobia, anti-Semitism and intolerance (especially on the basis of religion).

Besides the stated documents, some other conventions from this area are also important, such as: *The Convention on the Elimination of All Forms of Discrimination against Women*, *the Convention on the Rights of the Child* and, finally, *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which entered into force in 1987. All of these conventions are aimed at protecting different kinds of human rights and indirectly preventing hate speech.

³The International Covenant on Civil and Political Rights, 1966.

⁴The Convention on the Elimination of All Forms of Racial Discrimination, 1965.

⁵The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

4. THE NATIONAL NORMATIVE FRAMEWORK ON HATE SPEECH

Besides the *Constitution of the Republic of Serbia*, the normative framework of the Republic of Serbia includes a wide range of legislative acts including provisions on hate speech: *the Anti-Discrimination Act*, *the Criminal Code of the Republic of Serbia*, and others.

4.1. The Constitution of the Republic of Serbia

In the very first article, the Constitution of the Republic of Serbia declares that Serbia “is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.”⁶ This declarative statement is further elaborated in different articles. For example, Article 5 states that... “the activities of political parties aiming at forced overthrow of constitutional system, violation of guaranteed human or minority rights, inciting racial, national or religious hatred are prohibited”. Other articles guarantee the protection of national minorities (Article 14), gender equality (Article 15), etc.

The most important provisions of the Constitution related to hate speech are provided in Section 2, titled: Human and Minority Rights and Freedoms. Besides Article 18 which guarantees the implementation of human and minority rights, Article 21 prohibits “All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability.”

Articles 43 and 44 are related to the freedom to manifest religion or religious beliefs, while Article 46 deals with the freedom of thought and expression. In Article 48, the Constitution promotes respect for diversity; in Article 49, it prohibits inciting racial, ethnic and religious hatred. It also prohibits activities of social groups aiming at any kind of discrimination (Article 55), especially against national minorities (Article 76). All these articles are indirectly related to different types and forms of hate speech.

4.2. The Anti-Discrimination Act

The most important legislative act related to hate speech is the Anti-discrimination Act, passed in line with the responsibilities accepted by the Republic of Serbia as one of signatories of the international documents in the area of human rights. This Act defines the concept of ‘discrimination’ and ‘discriminatory treatment’, and precisely defines and expands the list of personal characteristics. Article 4 proclaims the principle of equality of all citizens, regardless of their personal characteristics, while Article 5 classifies hate speech as a form of discrimination. Article 11 directly refers to 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 bodies of authority and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.”⁷ These elements

⁶Ustav Republike Srbije [The Constitution of the Republic of Serbia]. *Službeni glasnik RS [Official Gazette RS]* No. 98/06.

⁷Zakon o zabrani diskriminacije [The Prohibition of Discrimination Act or Anti-Discrimination Act]. *Službeni glasnik RS [Official Gazette RS]* No. 22/09.

are also included in defining serious forms of discrimination (Article 13), so it can be concluded that hate speech is considered a basic and serious form of discrimination.

The articles that follow display some special cases of discrimination and prohibition of discrimination in the course of proceedings conducted before public administration authorities, as well as different forms of discrimination: in the sphere of employment, provision of public services, religious discrimination, education and professional training, gender discrimination, discrimination on the grounds of sexual orientation, age, discrimination against national minorities, political party or trade union membership, discrimination of persons with disabilities, and discrimination on the grounds of health.

The next part of this Act deals with establishing of a Commissioner for the protection of equality. The next part is dedicated to the provisions which guarantee a judicial protection to a discriminated person. Here, one must notice that penalty provisions do not treat hate speech as a special violation, while on the other hand, according to the Public Information Act, it can be the subject of a separate civil procedure.

4.3. The Criminal Code of the Republic of Serbia

In Chapter 12, dealing with Criminal Offences against Freedoms and Rights of Man and Citizen, the Serbian Criminal Code prescribes penalties for a violation of the guaranteed human rights, including different forms of hate speech. Articles 128, 129, 130 and 131 are of special importance.

Article 128 deals with the violation of equality, and states that “whoever denies or restricts the right of man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties on grounds of nationality or ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property or other personal characteristic, or pursuant to such difference grants another privileges or benefits, shall be punished with imprisonment up to three years”.⁸ In case of a public official in discharge of duty, this punishment will be three months to five years of imprisonment. Article 129 envisages punishment for the violation of the right to use a language or alphabet of peoples or members of national and ethnic groups, which is punishable by a fine or a term of imprisonment up to one year. Article 130 deals with the violation of the right to expression of national or ethnic affiliation; it states that “whoever coerces another to declare his national or ethnic affiliation” will be punished by a fine or up to one year imprisonment, while an official in discharge of duty will be punished by imprisonment up to three years. Article 131 deals with the violation of the freedom of religion and performing religious service, which is punishable by a fine or a term of imprisonment ranging from one up to three years.

Articles 317, 375 and 387 are also important for the regulation of hate speech. Article 317 regulates the issue of instigating national, racial and religious hatred and intolerance; anyone who commits these offences shall be punished by a term of imprisonment ranging from six months to 5 years, or up to 10 years’ imprisonment for the commission of most serious offences. A number of other articles also deal with the consequences of violating some human rights. Chapter 34 of the Serbian Criminal Code deals with Criminal Offences against humanity and other rights guaranteed by international law. Thus, Article 375 discusses the punishment for

⁸Krivični zakonik [The Criminal Code of the Republic of Serbia]. *Službeni glasnik RS*. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013 i 108/2014.

organizing and incitement to genocide and war crimes, which are punishable by a minimum of up to 3 months imprisonment for less serious violations to a term of 15 years' imprisonment for the most serious violations. The last article related to hate speech is Article 387 which deals with racial and other discrimination, stating that "Whoever on grounds of race, colour, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by Serbia and Montenegro, shall be punished by imprisonment of six months to five years".

The Amendments to the Criminal Code 121/2012 provided for a better regulation of hate speech. Thus, Article 54a envisages a hate-related crime as a special aggravating circumstance for imposing criminal punishment: "If a criminal offence is committed as a result of hatred based on race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating, except when it is not stipulated as a feature of the criminal offence".

The last article which has to be discussed in this short review of the Serbian Criminal Code provisions pertaining to hate speech is Article 344a, which deals with violent behavior during sport events; thus, in case where some behavior or slogans in sports events cause national, racial and religious hatred, or intolerance that results in physical violence with participants in sports events, the imposed punishment may range from 5 years to 12 years' imprisonment.

5. HATE SPEECH AND MEDIA LEGISLATION

The power of media is well known. Thus, for example, directly expressed intolerance towards a certain person on the basis of his/her personal characteristics never produces as powerful consequences as the words spoken publicly or spread via mass media. Hence, there should be an immediate reaction to any case of hate speech produced or disseminated by media. However, one should make a distinction between the concept of hate speech within documents and legislative acts stated above (the Serbian Constitution, the Criminal Code, the Anti-Discrimination Act, etc), and hate speech in the media, which is recognized by the legislator both within the corpus of media laws and beyond. The major media laws are embodied in a set of legislative acts adopted in August 2014, including: the Public Information and Media Act, the Electronic Media Act, and the Public Media Services Act.⁹ The Public Media Services Act does not contain any specific provisions on hate speech other than those which have been covered in the first two legislative acts which directly regulate the issues pertaining to hate speech.

5.1. The Public Information and Media Act

This Act comprises numerous legal provisions which directly or indirectly prohibit hate speech. If (in line with the latest tendencies) political beliefs or choices are included in the category of personal capacity, Article 4 of this Act prohibits any direct or indirect discrimination expressed by media editors, journalists or other persons involved in the area of broadcasting public information. Article 59 states that "...the competent court may

⁹ Zakon o javnim medijskim servisima [The Public Media Services Act]. *Službeni glasnik RS [Official Gazette RS]*. No. 83/14, 103/15.

prohibit the distribution of information or another media content, if this is an act of direct violence towards a person or a group of people based on their race, nationality, political affiliation, religion, sexual orientation, disability or other personal characteristic, and if the publication of the information poses an immediate threat and has an incorrigible effect which cannot be stopped in any other way”.¹⁰

Article 75 is the most important article which directly deals with and explicitly prohibits hate speech: “Ideas, opinions or information published in the media shall not incite discrimination, hate or violence against an individual or a group of individuals on grounds of their race, religion, nationality, sex or their sexual orientation, or other personal inclination, notwithstanding whether a criminal offense has been committed by such publication”.

In Article 76, the legislator states the exemption from the journalist responsibility. It is cited that journalist may be exempt from responsibility when the information which is part of a journalist’s text has been published: 1) without the intent to incite discrimination, hate or violence against an individual or a group of individuals referred to in Article 75 hereof, especially if such information is part of an objective journalistic report; 2) with the intent to provide a critical view of the discrimination, hate or violence against an individual or a group of individuals referred to in Article 75 hereof, or of occurrences that constitute or might constitute incitement of such behavior.

The last two articles directly pertaining to hate speech are Articles 101 and 102. Article 101 deals with the content of the particulars of claim, stating that: “If the publication of information or record violates the presumption of innocence, prohibition of hate speech, rights and interests of minors, ban of public display of pornographic content, right to personal dignity, right to authenticity or right to privacy, in accordance with the provisions hereof, an injured person may file a claim requesting to ban the republishing of such information, or to have the record removed from publications or destroyed”. Article 102 refers to a person who is individually affected by the publication of information or record, and has the right to file a claim. This right also pertains to a legal person engaged in the protection of human rights in case of violation of prohibition of hate speech and rights and interests of minors. In a case the information or record refers to a particular person, the legal person may file a claim only upon obtaining consent of the person who the information refers to.

5.2. The Law on Electronic Media Act

Article 22 (paragraph 15) of this Act envisages the scope of work of the Regulatory body for electronic media (the Regulator), stating that the Regulator shall “determine 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.”¹¹ Article 46 of this Act refers to the temporary restrictions of the freedom of reception and retransmission of television broadcast.. in case of obvious, serious and severe violations of the provisions under Article 68 para. 1 of this Act, as well as in case of incitement to hatred based on race, gender, or religious or national affiliation repeated at least twice in the previous 12 months. In Article 51, the legislator prohibits hate speech and authorizes to the Regulator to “ensure that the programme

¹⁰Zakon o javnom informisanju i medijima [The Public Information and Media Act]. *Službeni glasnik RS [Official Gazette RS]*. No. 83/14, 58/15.

¹¹ Zakon o elektronskim medijima [The Electronic Media Act]. *Službeni glasnik RS [Official Gazette RS]*. No. 83/14.

content of the media service provider does not contain information which overtly or covertly encourages discrimination, hatred or violence based on race, colour, 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”.

As compared to other legislative acts, we may note that *the Electronic Media Act* contains the longest list of personal characteristics, which is much longer than the one provided in the former *Broadcasting Act*.

When it comes to penalties, Article 110 of this Act specifies that a fine of RSD 500,000 to RSD 2,000,000 shall be imposed on a legal person who fails to comply with the provisions of this Act pertaining to the prohibition of hate speech, while a fine of RSD 10,000 to RSD 500,000 shall be imposed on an entrepreneur who fails to comply with the provisions of this Act pertaining to the prohibition of hate speech.

5. 3. Other legislative acts containing provisions on hate speech

In addition to the legislative acts discussed above, there is a number of media-related legislative acts which play an important role in preventing hate speech in Serbian media. Before examining these acts, it is necessary to draw attention to a very important provision (Article 50) envisaged in the Serbian Constitution (2006) which proclaims the freedom of establishing media and specifies the circumstances under which public dissemination of information shall be prohibited: “The competent court may prevent the dissemination of information through public media only when it is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution, or to prevent a violation of the territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence.”

The media-related legislative acts which have an important role in regulating and preventing hate speech in Serbian media are: *the Advertising Act*, *the Act on Free Access to Information of Public Importance*, *the Anti-discrimination Act*, and *the Criminal Code of the Republic of Serbia*.

Article 7 of *the Advertising Act* is significant as it explicitly provides that: “Advertising may not directly or indirectly encourage discrimination on any grounds, especially on the grounds of race, skin colour, sex, nationality, social background, birth, religion, political or other convictions, economic status, culture, language, age, mental or physical disability”; moreover, it stipulates that: “Advertising or publishing may not be denied due to racial, national or ethnic convictions, sex or some other personal feature of a person asking publication or broadcast of an advertisement”.¹²

Article 6 of *the Act on Free Access to Information of Public Importance* promotes free access to the information of public importance by introducing the principle of equality: “Everyone shall be entitled to exercise the rights envisaged in this Act under equal conditions, regardless of their nationality, temporary or permanent residence or place of establishment, or any personal characteristic such as race, religion, national or

¹² Zakon o oglašavanju [The Advertising Act]. *Službeni glasnik RS [Official Gazette RS]*. No. 79/05, 83/14 - dr. zakon.

ethnic background, gender, etc.¹³ This automatically implies non-discrimination of journalists and media outlets.

Article 17 (paragraph 1) of the *Anti-Discrimination Act* deals with discrimination in the course of providing public services, which occurs “...if a legal or physical entity, within the framework of its/his/her activity or discharging a professional duty, refuses to provide a service on the grounds of a personal characteristic of an individual or a group of persons, or if the said entity, in order to provide the service in question, requires the fulfillment of some condition that is not required of other individuals or a group of persons, or if the said entity unwarrantedly gives priority to another individual or a group of persons when it comes to providing a service.”

Finally, we shall mention the legal provisions envisaged in the *Criminal Code of the Republic of Serbia* which are indirectly related to hate speech in media. The most important are special provisions on crimes committed through the press or other media. They concern the responsibility of media for crimes (including hate speech) committed through the publication of information in the media, where the perpetrator is the author of the information. They also take in consideration the conditions under which the editor-in-chief shall be considered a perpetrator, and discuss the responsibilities of a publisher, an imprinter and a producer, as well as the conditions under which these provisions will be applied (Articles 38, 39, 40 and 41).

In addition to these legislative acts, it is important to consider relevant provisions of the General Binding Instructions on the Conduct of Broadcasters (*Broadcasters' Code of Conduct*) issued by the RBA (Republic Broadcasting Agency). In case of non-compliance with these instructions, the Regulatory Body for Electronic Media (RBEM) is authorized to impose measures of temporary or permanent revocation of the broadcasting license. Thus, the instructions explicitly prohibit discrimination in media programs, stating that “broadcasters shall not enforce discrimination against individuals or social groups based on sexual, racial, ethnic, religious, social or national background”.¹⁴ In the binding instructions on religion, it is said that “Broadcasters must respect freedom of different religious beliefs and prevent such conduct and forms of expression that are aimed at humiliating, insulting and making fun of symbols and doctrines of traditional churches and religious communities. It is forbidden to broadcast religious programs that call upon jeopardizing members of other religions and freedoms recognized in the Constitution (ban on religious fundamentalism)”. The concept of hate speech is mentioned in the following context: “It is forbidden to broadcast religious programs which incite violence and hate, or discrimination against a particular person or a group of people on the basis of their religion.”

5.4 The Journalists' Code of Ethics in Serbia

Media self-regulation is a way to ensure more professionalism and responsibility in journalism. This can be accomplished through the process in which self-regulatory bodies will gradually take over the duties of regulatory bodies, which will encourage media to

¹³ Zakon o slobodnom pristupu informacijama od javnog značaja [The Act on Free Access to Information of Public Importance]. *Službeni glasnik RS [Official Gazette RS]*. No. 120/04, 54/07, 104/09, 36/10.

¹⁴ Obavezujuće uputstvo o ponašanju emitera [General Binding Instruction on Broadcaster's Conduct: Broadcasters' Code of Conduct]. *Službeni glasnik RS [Official Gazette RS]*. No. 63/07, 60/14, 25/15 - dr. pravilnik.

abide by the ethical and professional principles in reporting and other media activities. In Serbia, the supreme self-regulatory body for the press and online media is the Press Council, which was established in 2006. Its activities are based on the professional codex, *the Journalists' Code of Ethics*. This self-regulatory body has resolved many cases concerning the violation of ethical standard governing the professional conduct of journalists in different media. In comparison to litigation proceedings, self-regulation is free of charge and its major advantage is the speed and efficiency of handling complaints related to media.

The Journalists' Code of Ethics contains several articles related to hate speech. Part 4 of this code deals with journalists' responsibilities and envisages that: "A journalist must challenge all those who violate human rights or advocate any type of discrimination, hate speech and incitement to violence"¹⁵ Part 5 of the Journalists' Code of Ethics deals with due professional diligence; the concept of discrimination is referred to in item 4, which reads as follows: "A journalist must be aware of the dangers of discrimination that can be disseminated by the media and shall do his best to avoid discrimination based on, among other things, race, gender, age, sexual orientation, language, religion, political or other views, national or social origin." It means that a journalist's duty is to permanently combat different forms of hate speech.

5.5. Examples of Hate Speech in Serbian Media

In Serbia, there is a growing number of cases and judicial decisions on the subject matter of hate speech. As already noted, the *Criminal Code of the Republic of Serbia* does not envisage a separate provision on hate speech as a criminal offense *per se*, but the concept of hate speech is included in definitions of other criminal offences. Moreover, hate-related crimes are introduced in the amended legal provision in Article 54a, which specifies that a hate-related crime shall be regarded as an aggravating circumstance in the commission of a criminal offense.

Hate speech as a form of discrimination is not explicitly envisaged in the Serbian Criminal Code as a qualified criminal offence; however, a lot of cases have been recorded lately, mostly concerning attacks on the members of the LGBT population. According to Articles 11, 12, 13 and 21 of the *Anti-discrimination Act*, these attacks have been qualified as severe forms of discrimination. There are a few examples of judicial decisions on hate speech, two of which involved politicians; the first judgment was based on the discrimination of the LGBT population in a text ("The 2nd October 2011") written by Nebojša Bakarac¹⁶; the second judgment was based on the oral statement given to the media by Dragan Marković Palma¹⁷, who spoke about the LGBT population in derogatory terms. In both cases, the courts found that the politicians had violated the right to sexual orientation, and they were issued a court order prohibiting them to repeat the discriminatory act. These judgments are important because they were the first judgments of this kind in Serbia. On the basis of these decision, the Higher Court

¹⁵Kodeks novinara Srbije [The Serbian Journalists' Code of Ethics], Council of Europe, 2006.

¹⁶ Newspaper article: Presuda Nebojši Bakarecu za diskriminaciju LGBT populacije postala pravosnažna [Judgment issued to Nebojša Bakarec for discrimination against LGBT is final and enforceable, October 2012]. Retrieved 10. 3. 2016.

<http://www.blic.rs/vesti/politika/presuda-nebojsi-bakarecu-za-diskriminaciju-lgbt-populacije-postala-pravosnazna/cbnfr9g>

¹⁷ Dragan Marković Palma kriv za diskriminaciju LGBT populacije, 11. 7. 2014. [Dragan Markovic Palma found liable for discrimination against LGBT population, November 2011]. Retrieved 13. 3. 2016.

<http://www.blic.rs/vesti/drustvo/dragan-markovic-palma-kriv-za-diskriminaciju-lgbt-populacije/7bnm5jc>

in Belgrade ruled in 2011 that the readers' comments published on the website *Press online* involved hate speech against the LGBT population; the judgment was based on relevant provisions of *the Anti-Discrimination Act* and *the Public Information Act*.¹⁸ Of equal importance is the first judgment concerning hate speech on the Internet, when the defendant Sima Vladičić was convicted in March 2012 for endangering safety of the LGBT population by posting comments on the Facebook group "500.000 Serbs against Gay Parade".¹⁹

The Regulatory Authority for Electronic Media (RAEM) has the most significant role in prohibiting the dissemination of hate speech by means of electronic media. This regulatory body provides instructions for broadcasters on hate speech and has the authority to impose relevant measures for temporary or permanent revocations of the broadcasting license. One of many examples is the case of a TV reality show on TV PINK (November 2013), where the statements of some participants in the program incited discrimination on the grounds of nationality. The broadcaster was issued a public reprimand, and the broadcaster promptly responded by apologizing and disqualifying the participant.²⁰

As far as the press and the respective regulatory bodies are concerned, it is essential to underscore the importance of media self-regulation for making journalism more ethical and sensitive to all forms of discrimination. As mentioned earlier, the supreme self-regulatory body in Serbia is the Press Council, whose activities are based on the Journalist's Code of Ethics. This self-regulatory body has already discussed several cases concerning violations of this code. One of the examples is the complaint of the Gay Lesbian Info Centre against a text published in the magazine *Informer*. In September 2015, The Council decided that the author of this article violated two principles envisaged in this code: the principle of journalist's responsibility, according to which a journalist has to counteract hate speech, and the principle of due professional care/diligence, according to which a journalist "must be aware of the dangers of discrimination that can be disseminated by the media, and shall do his/her best to avoid discrimination based on, among other things, ...sexual orientation..." Thus, the Council issued a public reprimand to the magazine for violating the Journalists' Code of Ethics²¹.

¹⁸ Prva presuda za govor mržnje prema LGBT, 7. 6. 2011. [First judgment for hate speech against LGBT, November 2011]. Retrieved 13. 3. 2016.

http://www.b92.net/zivot/vesti.php?yyyy=2011&mm=06&dd=07&nav_id=517248.

¹⁹ Presuda zbog govora mržnje na internetu, 2. 3. 2012. [First judgment for hate speech on the Internet, March 2012]. Retrieved 13. 3. 2016.

<http://www.blic.rs/vesti/hronika/presuda-zbog-govora-mrznje-na-internetu/lg3etnr>

²⁰ Source: Републичка радиодифузна агенција (PPA), *Говор мржње у медијима, Преглед и анализа случајева у домаћој и међународној пракси*, Служба за надзор и анализу програма, Београд, април 2014, стр. 15 [Republic Broadcasting Agency : *Hate Speech in the media: Overview and Analysis of Cases*, Service for monitoring and analyzing broadcasted programs, April 2014, p. 15]. Retrieved 12. 3. 2016. <http://www.rra.org.rs/uploads/useruploads/izvestaji-o-nadzoru/Govor-mrznje-u-medijima.pdf>

²¹ Savet za štampu, žalbeni postupci: *Gej lezbejski info centar protiv dnevnog lista Informer*, Odluka Komisije za žalbe Saveta za štampu od 24. 9. 2015. povodom žalbe, [Press Council: Decision of the Press Council Complaints Committee upon a Complaint filed by the Gay Lesbian Info Center against the daily magazine *Informer*, Sept. 2015]. Retrieved 12. 3. 2016. <http://www.savetzastampu.rs/cirilica/zalbeni-postupci/3066>.

6. CLOSING REMARKS

The concept of hate speech is gaining momentum in Serbian legislation, primarily due to a number of international documents on hate speech which have been signed by many countries (including Serbia). In this respect, Serbia has made significant attempts to adjust domestic legislation to the international standards in this area. The main difficulty in the regulation of hate speech is the nature of hate speech, which is often justified by the freedom of speech. Given the thin line between the two concepts, hate speech is treated quite differently in the USA and European documents and laws. The concept of hate speech is difficult to define primarily due to the difference underlying the broader (generic) and the narrower (legal) concept of hate speech.

The legal concept of hate speech is embodied in different legal provisions, while the generic concept of hate speech is perceived in a wider context; unlike to legal definition of hate speech, the generic one contains some elements of subjectivity in terms of qualifying some speech as hate speech. The problem underlying the definition and regulation of hate speech is the thin line between hate speech and the freedom of expression, which may be illustrated by a famous case of the French *Charlie Hebdo* Magazine, where this line is perceived quite differently by two groups of people.

Finally, a possible solution to the suppression of hate speech may be sought in its roots and a better understanding of its ethical aspects. Therefore, instead of relying merely on the legal concept of hate speech, it may be much more useful to turn to the underlying ethical considerations. In addition, the role of media self-regulation and media self-regulatory bodies is of immense importance in preventing hate speech, alongside with raising awareness of all relevant factors about the powerful media impact and the role media may play not only in combating hate speech but also in suppressing all forms of discrimination, which unfortunately seem to be a very fertile soil for human rights' violation in modern times.

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GOVOR MRŽNJE I PRAVNI OKVIRI GOVORA MRŽNJE U SRBIJI I SRPSKIM MEDIJIMA

U radu se analizira pojam govora mržnje, definiše njegova suština i raspravlja o problemima njegove pravne regulacije. Polazi se od činjenice da je potpisivanje međunarodnih dokumenata koji se odnose na govor mržnje, a čiji je potpisnik i Srbija, dovelo do pozitivnih tendencija u pogledu prepoznavanja govora mržnje, njegovog razmatranja i sankcionisanja. Pošto je ovaj koncept definisan, razmatran je kroz analizu različitih pravnih odredbi, a zatim sagledavan kroz pravne okvire Srbije. Poseban deo rada je posvećen regulaciji govora mržnje u zakonima koji se odnose na medije u Srbiji, kao što su: Zakon o javnom informisanju i medijima, Zakon o elektronskim medijima i Zakon o javnim medijskim servisima, kao i Kodeks novinara Srbije. Na kraju rada, daje se sugestija da je za sprečavanje govora mržnje potrebno, najpre, razmotriti korene ove pojave i bolje je sagledati, a takođe se navodi i važna uloga medija i njegovih samoregulatornih tela u pogledu sprečavanja govora mržnje.

Ključne reči: govor mržnje, diskriminacija, pravna regulacija, zakon, mediji.