

YOUTH AND HATE SPEECH

Summary

This document deals with the problem of hate speech in Serbia, with a special emphasis on the use of hate speech among youth. The first part of this document analyses legal regulations in this area and distinction between free speech and hate speech, and the second part of this document deals with youth and hate speech. Concrete solutions that the government should implement are proposed at the end of the document.



Introduction

As a result of the wars that have marked the last decade of the last century in Serbia, as well as in other countries in the region, various forms of intolerance emerged, including the dominant ethnic and religious intolerance. One of the manifestations of this intolerance is the hate speech that we encounter every day in the daily newspapers, on television, the Internet and in verbal communication with male and female citizens of Serbia. Young people who had grown up during 1990s were exposed to hate speech on a daily basis under the influence of the media. Despite the long time aspirations of civil society organizations, only in the last few years the government has raised a number of issues relating to the respect for human rights, due to the process of European integrations. Political agenda contained issues of regional cooperation, dealing with the past, political and religious freedoms, gender equality, LGBT rights, etc. Respect for human rights was unknown to certain number of citizens, because for many years they had been exposed to politics that was led by different values.

In line with the strategic goals and values of the Center E8 and due to the increasing prevalence of hate speech among young people, the process of analyzing the situation was initiated resulting in a document that aims to draw attention to this problem and to offer some potential solutions for this particular problem.

Hate speech and free speech:

the concept and positive legal regulations in Serbia and at the international level

Although there is no generally accepted definition of hate speech, any expression that contains hate messages or intolerance towards a racial, national, ethnic or religious group or its members, as well as speech that is directed to producing hatred and intolerance towards sex and sexual orientation, but also towards different political or other opinion will be considered hate speech in this text. A message expressed in hate speech is always directed to personal characteristics or to the specificity of characteristics of vulnerable groups and is based on race, national or ethnic origin, religion, language, gender, sexual orientation, political or other opinion and belief, social origin, or other personal characteristics. Hate speech is most often manifested through the creation of contempt, negative stereotypes, encouraging discrimination and hostility; causing feelings of insecurity and fear, inflicting physical and psychological pain, making threats, incitement and provocation of violence against a specific person or group.

The Recommendation of the Council of Europe no. R(97)20 states that: "The term 'Hate speech' shall be understood 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"¹. Recommendation of the Council of Europe has no legally binding effect, but it certainly is an important document for all Member States, and therefore for Serbia. Important characteristics and components of hate speech are that, besides the spoken words, hate speech implies other forms of expression such as written words or different forms of art, that never serves to itself but always and in every situation they have a "higher goal" to promote and spread hatred against individuals or groups of individuals, on the basis of their belonging to certain groups, and other features and differences. A clear definition of hate speech is very important because it allows for

1 · The Recommendation no. 97(20) was adopted on 30 October 1997. The full version can be seen at: http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281997%29020&expmem_EN.asp

differentiation and setting the boundary between free speech and hate speech. Freedom of expression is a fundamental assumption of personal freedom and the democratic system.

In Serbia, the right to freedom of speech is guaranteed by the Constitution as the highest legal act of the state, by the Criminal Law² and media laws in the context of the freedom of press³, and also by other international documents: the International Covenant on Civil and Political Rights (ICCPR), which was adopted in 1966, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), rendered in 1950.

However, in all international documents, except in the American Convention on Human Rights, which explicitly prohibits indirect restrictions on freedom of expression, restrictions on free speech are assumed because of the occurrence of hate speech. Freedom of expression cannot be protected if it leads towards restriction or destruction of other human rights and freedoms. The only restriction in the content of the information is related to hate speech, i.e. dissemination of ideas that promote racism and discrimination.

The Constitution of the Republic of Serbia⁴ on the declarative level guarantees equality of citizens and prohibits discrimination. Article 1 of the Constitution defines the Republic of Serbia as a state of the Serbian people and all citizens who live in it, based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values. The second part of the Constitution that is called Human and minority rights and freedoms further regulates matters relating to prohibition of discrimination, freedom of speech and the prohibition of hate speech. Article 21 of the Constitution prohibits discrimination, and it specially emphasizes the prohibition of discrimination on grounds of race, sex, ethnicity, social origin, birth, religion, political or other beliefs, economic status, culture, language, age, and mental or physical disability. Article 46 guarantees the freedom of opinion and expression, but it is already stated in Article 49 that any provocation and incitement of racial, ethnic, religious or other inequality, hatred and intolerance is prohibited and punishable.

It can be concluded that the Constitution as the supreme law provides relatively good framework despite the fact that it does not use the term hate speech and allows for the adoption of laws and by-laws to further regulate

2 · The Criminal Code. "Official Gazette of the Republic of Serbia", no. 85/2005, 88/2005 – correction, 107/2005 - correction, 72/2009, 111/2009 and 121/2012

3 · The Public Information Law. "Official Gazette of the Republic of Serbia", no. 43/2003, 61/2005, 71/2009, 89/2010 - Decision of the Constitutional Court and 41/2011 - Decision of the Constitutional Court, and The Law on Broadcasting "Official Gazette of the Republic of Serbia", no. 42/2002, 97/2004, 76/2005, 79/2005 – state law, 62/2006, 85/2006, 86/2006 – corrected, and 41/2009

4 · The Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, 2006

this area. This is partly done by the Criminal Code, because it incriminates acts of ethnic, racial and religious hatred and intolerance (Article 317), but it is unduly limited only to the peoples and ethnic communities living in Serbia, which is contrary to the Covenant on Civil and Political Rights of the UN. The same mistake was made in Article 387, paragraph 3, which incriminates the spread of ideas on the superiority of one race over another, propagating racial hatred and incitement to racial discrimination. However, progress has been made by the changes to Article 387 of the Criminal Code. Paragraph 1 of this Article incriminates discrimination, i.e. violation of basic human rights and freedoms on the basis of race, color, religious affiliation, nationality, ethnic origin or other personal characteristics. Paragraph 4 of the same Article prohibits the dissemination and promotion of ideas or theories, which advocates or incites hatred, discrimination or violence based on race, color, religious affiliation, nationality, ethnic origin or other personal characteristics. It is clear that changes to Article 387 significantly improved legal protection against hate speech, despite the omission in the paragraph 3.⁵ However, the greatest progress was achieved by the adoption of the Law on Amendments to the Criminal Code in 2012.⁶ Article 6 provides for the introduction of Article 54a of the Criminal Code, which provides for special considerations for determining penalty for a crime committed out of hatred. "If the criminal offense was committed out of hatred because of race and religion, national or ethnic origin, sex, sexual orientation or gender identity of another person, the court will take that circumstance as an aggravating circumstance, unless it is prescribed as a feature of the criminal offense."⁷

Anti-discrimination Law explicitly prohibits hate speech, which is defined as "the expression of ideas, information and opinions which encourages discrimination, hatred or violence against a person or group of persons because of their personal characteristics, in the media and other publications, on gatherings and places accessible to the public, writing and displaying messages or symbols and in another way" (Article 11)⁸. Also, the Public Information Law prohibits "publishing ideas, information and opinions which encourages discrimination, hatred or violence against a person or group of persons because of their belonging or not belonging to any race, religion, nation, ethnic group, sex or sexual orientation" (Article 38)⁹. Finally, the Public Information Law provides an opportunity to file a complaint against the hate speech.

5 · The Criminal Code. "Official Gazette of the Republic of Serbia", no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009 and 121/2012

6 · Law on Amendments to the Criminal Code

7 · The Criminal Code. "Official Gazette of the Republic of Serbia", no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009 and 121/2012 Article 54a

8 · Anti-discrimination Law "Official Gazette of the Republic of Serbia", no. 22/2009

9 · The Public Information Law "Official Gazette of the Republic of Serbia", no. 43/2003, 61/2005, 71/2009, 89/2010 - Decision of the Constitutional Court and 41/2011 - Decision of the Constitutional Court

Youth and hate speech in Serbia

Hate speech is quite present among the young people. Hate speech among young people is most often based on national and religious affiliation, sexual orientation and affiliation to fan groups.

The result of the wars that have marked the last decade of the last century is the hate speech against male and female members of Croatian, Bosniak and Albanian ethnic group. Aside from these ethnic groups, among young people there is a high level of intolerance toward American citizens, as well as citizens of most EU member states. In multi-ethnic communities, mainly in Vojvodina and southern Serbia and in the south-west Serbia hate speech is especially prevalent. Also, hate speech against Roma men and women is ubiquitous throughout Serbia. Since the issues of respect for human rights have been raised in Serbia due to the process of European integrations, new forms of hate speech emerged, especially against members of the LGBT community. The results of the research that has been conducted as a part of the project Young Men as Allies in Preventing Conflict and Violence in the Western Balkans show a high level of homophobia, because as many as 58% of respondents said they would never have a friend who is gay.¹⁰ According to the research findings of the Fund for an Open Society on top of the list of persons against whom young people have negative attitudes are persons of different sexual orientation (36%), atheists (23%), members of other ethnic groups (21.8%) and HIV-positive persons (19, 8%)¹¹. Every day we witness hate speech among young people which is most often based on one of the above distinct identities of victims of hate speech and discrimination. The most com-

10 · The research is fully available at:

<http://www.e8.org.rs/wp-content/uploads/2012/02/M-Istrazivanje-2011.pdf>

11 · The research of the Fund for an Open Society. Stated here according to: Strategy of the Center E8 2013-2015, Belgrade, 2013, page 5

mon form of hate speech that young people will use is the hate speech on the Internet. For this reason, the Directorate General of Democracy of the Council of Europe launched campaign to combat hate speech on the Internet, which focuses on the young people aged between 13 and 30 years. The campaign aims to raise awareness of hate speech on the Internet and of danger it poses on democracy. The Republic of Serbia is actively involved in the campaign, and the National Committee against hate speech on the Internet has been established. The results of research conducted by the Institute of Psychology within the project School without violence show just how real this problem is in Serbia. According to the data every fifth student has been harassed on social networks.¹² Hate speech on the Internet is especially prevalent among young people for many reasons. First, young people are more present on the Internet, especially on social networks. Even 98% of male and female high school students use computers. Secondly, young people, especially male and female high school students who are in adolescence, have a need to prove themselves among their peers, but they are also quite scared and insecure, and the Internet allows them physical distance and anonymity. Practice has shown that hate speech from the Internet¹³ can easily escalate from the negative comments and encouraging intolerance into hate speech and violence among peers in schools, at sporting events, in clubs and other places where young people spend their time. That is why the disclosure of hate speech over the Internet is incriminated as a specific form of hate speech in Croatia. In Serbia, the most prominent hate speech is the one against members of Roma ethnic group and LGBT population. Young people see politicians, representatives of the Serbian Orthodox Church and celebrities as role models for behavior, and since hate speech can often be heard in their public appearances the weight of their words is evident. Experience in recent decades warns us that hate speech can be and is a powerful tool to inspire discrimination, violence, lynching and other forms of human rights violations. In addition to the hate speech on the Internet, it is obvious that the young people lose their individuality in the crowd and as a part of wider groups they tend to use the hate speech and spread violence. The best examples are the fans at sports events and participants in rallies and campaigns directed against certain political decisions.

12 · Stated according: <http://www.politika.rs/vesti/najnovije-vesti/Upozoravajuci-podaci-uoci-Dana-bezbednog-interneta.lt.html>. See also: <http://www.b92.net/sid/>

13 · One of the most drastic forms are groups on the social network Facebook calling for intolerance, violence and lynching. For example, a few years ago Facebook group "I hate women" that promoted violence against women was registered. The group was suspended through the activity of women's group activists.

YOUTH AND HATE

Recommended steps to eliminate hate speech among young people

In order to eliminate hate speech it is necessary to make several important moves. These moves should be directed in several directions: public campaign against hate speech, educating young people about these issues, changes of laws and by-laws, and by strengthening civil society.

1. The National Assembly should adopt the amendment of the Law on Ministries with an aim to introduce i.e. re-establish the Ministry for Human and Minority Rights, which would primarily perform state administration affairs relating to: the improvement of human rights, protection of minority rights, the protection of marginalized groups and the protection of fundamental rights and freedoms of all individuals and citizens of Serbia. Alternatively, the Office for Human and Minority Rights, which was established by the Decree of the Government may perform professional services for the needs of government and ministries. Prerequisite for high-quality work of the Office is that the government and all ministries see this Office as a partner with which they must work together. The Office as a professional body of the Government can more easily initiate intersectoral cooperation, and it can also be open to cooperation with civil society. In the case of retention of the Office for Human and Minority Rights it is necessary to incorporate issues of hate speech in their field of activity and internal documents, as previous practice shows that not enough work has been done to promote measures against hate speech.

2. The government, through the cooperation of the Ministry of Justice and public administration, the Ministry of Internal Affairs, Ministry of Youth and Sports and Ministry (Office) for Human and Minority rights, must set the issue of hate speech high on the agenda of priorities in the coming period. The judiciary and prosecutor's office must prosecute all cases of hate speech, starting with politicians and public figures. In the past few years several cases of hate speech were filed¹⁴ on the basis of the Anti-discrimination Law and the Criminal Code, but nevertheless hate speech is still ubiquitous. It is also supported by the fact that it

often happens in practice that the legal regulations governing these issues are subject to interpretation of the law and it is often not possible to issue a ruling.

3. The government should provide additional support to the independent bodies, the so-called fourth branch of government. It is necessary to work on strengthening the institution of the Commissioner for the Protection of Equality, as the youngest independent body, in order to increase compliance with recommendations and opinions that this institution provides. Experience with institutions of Protector of citizens and the Commissioner for Information of Public Importance and Personal Data Protection suggests to us that the position of the independent bodies depends upon personal dignity and individual capacities in the fight against systemic obstruction. It is therefore important to increase the visibility of the institution of the Commissioner for the Protection of Equality and Capacity Building. One of the potential solutions in the absence of partnership between the government and the institution of the Commissioner for the Protection of Equality is expansion of its jurisdictions from current making recommendations and giving opinions, filing lawsuits and criminal charges to the adoption of binding, final and executable decisions.

4. It is necessary to work on the education of young people, both through formal and informal education. The Ministry of Education, Science and Technological Development should provide full support to the civil sector in the field of informal education and that through the accreditation of quality programs it allows that these programs reach male and female students of primary and secondary schools. Also, it is necessary to revise the content, method and methodology of the work of Civic Education teachers in primary and secondary schools. Civic Education is the heritage of the process of democratization of society and it is the only thing that allows young people to learn about human rights, democracy, anti-discrimination and tolerance and it is necessary to have a status of the compulsory subject. This case represents an important mechanism for working with young people, but the question is whether the implementation of the program is at an enviable level. In this process, the state and the relevant ministry should consult representatives of civil society, whose experience in the field of human rights education and working with young people can contribute to the quality of the process.

14 · Cases: GSA vs. Dragan Marković Palma; GSA vs. Nebojša Bakarec; YIHR vs. Z. Grbić, Đ. Vukadinović; Higher Public Prosecutor vs. M. Nikolić and M. Bojanić. For more details see: Application of standards of fair trial in the judicial system in Serbia, Youth Initiative for Human Rights, 2013, page 44-56

10 5. The first step in a campaign to raise public awareness on hate speech has already been made by the inclusion of Serbia into the Council of Europe campaign against hate speech on the Internet and by establishing National Committee against hate speech on the Internet. However, it is necessary to create a campaign at the national level to raise awareness of the citizens that will target issues and problems that are specific to Serbia. The campaign of the Council of Europe may be sufficient mechanism, but only under the condition that the additional funds are invested by the state and by ensuring that it would be continued upon the completion of the campaign in 2014. It is necessary to develop and implement campaign against hate speech in general, not just on the Internet, and that new face of the campaign is a celebrity who is role models for young people and the highest representative of the Serbian authorities. It is especially important to include football clubs¹⁵ as well as other sports associations in the campaign, because the hate speech is particularly associated with the young members of fan groups. Awareness campaign is very important because it is not possible to protect human rights only by legal regulations.

Conclusion

Freedom of speech is a basic human right, but freedom of expression must be limited to speech that is not insulting, does not call for hatred, discrimination, and that does not endanger the safety of a group or an individual. Only with a clear legal definitions of the free speech and hate speech Serbia can be a democratic, pluralist and tolerant society with young people who appreciate diversity and believe in the inviolability of human rights and fundamental freedoms. It is a vision to which Center E8 aims, world in which young people freely and equally express their personalities and manage their own lives.

15 · The first step has already been made when the players of FC Red Star and FC Partizan wore T-shirts saying "No to the hate speech on the Internet", before the 144th "eternal" derby.

We would hereby like to thank the civil organizations that contributed with their comments and suggestions in development of this document:

**Komitet pravnika za ljudska
prava (YUCOM)**

Građanske inicijative

**Krovna Organizacija
Mladih Srbije**

**Inicijativa mladih za
ljudska prava**

**Helsinški odbor za
ljudska prava**

Centar za bezbednosne studije

Libero

Autonomni ženski centar

**Inicijativa za demokratsko
društvo**

Centar za regionalne politike

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Young Men Initiative (YMI) is promising, evidence-based strategy for engaging young men across the western Balkans in promoting gender equality and violence prevention.

The document "Youth and hate speech" was written as part of the program "Young Men as Allies in Preventing Conflict and Violence in the Western Balkans", which is conducted by Center E8 and CARE NWB and funded by the Ministry of Foreign Affairs of the Kingdom of Norway.
