

INTERNATIONAL STANDARDS FOR THE NATIONAL LEGAL FRAMEWORK ON HATE SPEECH

Abstract.....	1	III. International Standards for the National Civil and Administrative Legal Framework on Hate Speech	7
I. International Standards for the National Legal Framework on Hate Speech – general overview.....	1	IV. Conclusion.....	11
II. International Standards for the National Criminal Legal Framework on Hate Speech ...	4		

-Abstract-

The purpose of this paper is to present the existing international standards concerning national legislation regulating hate speech, focusing particularly on the instruments of the Council of Europe. Namely, Council of Europe’s Recommendation CM/Rec(2022)16 on combating hate speech and the “General Policy Recommendation No. 15 on Combating Hate Speech” by the European Commission against Racism and Intolerance (ECRI) elaborate in detail on the conditions necessary to fulfill the provisions of hate speech in the areas of criminal, civil, and administrative law, in accordance with international human rights standards. Due to their particular importance for the national contexts, a summary of these instruments will be provided.

Keywords: hate speech; freedom of expression; human rights; Council of Europe instruments

I. INTERNATIONAL STANDARDS FOR THE NATIONAL LEGAL FRAMEWORK ON HATE SPEECH – GENERAL OVERVIEW

Developing comprehensive strategies to prevent and combat hate speech by the state also entails adopting a comprehensive and effective legal framework consisting of appropriately established provisions in criminal, civil, and administrative law. When national authorities do this, they should carefully balance the right to private life, the right to freedom of expression, and the prohibition of discrimination.

* Elena Mihajlova Stratilati, PhD, Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, email: e.mihajlova@pf.ukim.edu.mk

According to international and European standards, states should make distinctions between, first, the most serious cases of hate speech that should be prohibited by criminal law¹; second, hate speech subject to civil and administrative law; and finally, offensive, or harmful forms of expression that do not reach the threshold for legitimate restriction but may still invoke alternative responses.² Specifically, international law requires states to prohibit the most severe forms of “hate speech,” such as incitement to genocide and other violations of international law; the calling for discriminatory hatred constituting incitement to discrimination, hostility, or violence; the propagation of racist ideas or the dissemination of ideas based on racial superiority or hatred.³ International human rights law allows states to restrict freedom of expression, provided that these prohibitions/restrictions are: 1) prescribed by law, 2) serve a legitimate purpose (such as the protection of the rights of others), and 3) necessary in a democratic society. This typically includes forms of hate speech that can be understood as individually targeting an identifiable victim.⁴ Finally, there may be expression characterized by prejudice or raising concerns in terms of tolerance, but it does not meet the seriousness threshold that justifies its restriction. This does not prevent states from taking legal and policy measures to address fundamental prejudices and negative stereotypes arising from such expressions or on which it is based, or from maximizing the opportunities for all people, including public officials and institutions, to engage in counter-speech.

In this sense, the European Court of Human Rights states that criminal sanctions, including those against individuals responsible for the most serious expressions of hate or incitement to violence, may only be applied as a last resort. However, when actions constituting serious offenses are

¹ Member States have a positive obligation under Article 8 of the Convention to protect victims of hate speech when it reaches a certain level or threshold of seriousness, including through criminal law (*Delfi AS v Estonia*, §§ 153 and 159; *Beizaras and Levickas v Lithuania*, § 125; *Budinova and Chaprazov v Bulgaria*, §§ 62). It cannot be excluded that hate speech with a certain level of intensity, and depending on the context, may also constitute inhuman or degrading treatment and thus violate Article 3 of the Convention (see more *Kiraly and Demeter v Hungary*, no.10851/13, 17 January 2017, § 41–42). Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.21-22 1680aada1b (coe.int).

² See suggested typology of Article 19, ‘Hate speech’ explained: A summary - ARTICLE 19

³ It is punishable [...] direct and public incitement to commit genocide: Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect; Any propaganda in favor of war will be prohibited by law. Any conspiracy of national, racial or religious hatred inciting discrimination, hostility or violence shall be prohibited by law: Article 20 of the International Covenant on Civil and Political Rights International Covenant on Civil and Political Rights | OHCHR; The member states undertake in particular: a) to establish as a criminal offense any dissemination of ideas based on superiority or racial hatred, any incitement to racial discrimination as well as all acts of violence or causing such violence, directed against all races or any group of persons from another color or other ethnic origin, as well as providing assistance to racist activities, including their financing; b) to declare that they are illegal and to prohibit organizations and activities of organized propaganda and any other type of propaganda activity that incites and helps racial discrimination, as well as to declare that participation in these organizations or in their activities is punishable by law deed; c) not to allow public authorities or public national or local institutions to incite racial discrimination or to assist it: Article 4 of the International Convention for Elimination of All Forms of Racial Discrimination International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR

⁴ See Article 19 (3) of International Covenant on Civil and Political Rights International Covenant on Civil and Political Rights | OHCHR and Article 10 (2) of European Convention for Protection of Human Rights and Fundamental Freedoms, European Convention on Human Rights (coe.int)

directed against the physical or mental integrity of a person, only effective criminal law mechanisms can guarantee adequate protection and serve as a deterrent. The Court also accepted that criminal legal measures are necessary for direct verbal attacks and physical threats motivated by discriminatory attitudes.⁵ Less serious expressions should be dealt with under civil and administrative law. Cases that do not reach the minimum threshold for action under Article 8 of the European Convention on Human Rights should be addressed through non-legal measures, such as awareness-raising and education.

Legislation related to hate speech should contain clear and precise terminology and definitions rather than vague and general terms. The legal clarity of hate speech legislation, including the minimum threshold for criminalization, should allow individuals to regulate their behavior and anticipate the consequences of their actions. Furthermore, it should distinguish hate speech protected by freedom of expression and, finally, serve as a safeguard against abuse. Legal clarity also helps national courts develop consistent judicial practices. According to the case law of the European Court of Human Rights, it is of vital importance that provisions of criminal law directed against expressions that incite, promote, or justify violence, hatred, or intolerance clearly and precisely define the scope of relevant criminal offenses.⁶

Equally important is that legal regulation related to hate speech should not be abused, for example, to hinder public debate, silence political opponents, journalists, media, minority groups, or others contributing to public discourse, including critical voices. Legal and practical protective measures against the abuse of hate speech legislation, in addition to the aforementioned clear formulation of hate speech laws, include a transparent legislative process with consultation with stakeholders, rules of immunity for elected officials, a human rights-compliant framework for content moderation, regular evaluation of hate speech legislation, content moderation systems for internet intermediaries, and oversight by the media and academic community of cases of hate speech and possible abuses of hate speech legislation.⁷

Furthermore, states should ensure that their legal regulation empowers equality bodies, national human rights institutions, and civil society organizations with a legitimate interest in combating hate speech to provide assistance and represent those targeted by hate speech in legal proceedings and initiate legal actions related to hate speech, including where applicable, on their behalf. It is important to ensure that there are institutions that can represent or initiate legal action on behalf of those who are directly or indirectly targeted by hate speech but are afraid or unwilling to report and initiate legal proceedings themselves. Additionally, equality bodies and national human rights institutions should have a mandate to provide legal advice and assistance to those targeted by hate

⁵ Beizaras and Levickas v. Lithuania, § 111

⁶ See Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, 1680aada1b (coe.int), p.23

⁷ Ibid.

speech where appropriate and represent them before institutions, judicial bodies, and courts in accordance with national provisions.⁸

Finally, to counter hate speech on the internet, states should provide clear and predictable provisions for effectively removing prohibited hate speech online under criminal, civil, or administrative law, along with procedural requirements for hate speech removal, compensation and appeal mechanisms, and full incorporation of transparency and proportionality principles. They should also establish by law effective measures to prevent its spread.

The Council of Europe instruments elaborate on the conditions necessary to fulfill the provisions of hate speech in the areas of criminal, civil, and administrative law, in accordance with international human rights standards. Due to their particular importance for our national context, a summary of these instruments will be provided below.

II. INTERNATIONAL STANDARDS FOR THE NATIONAL CRIMINAL LEGAL FRAMEWORK ON HATE SPEECH

As part of the state's positive obligation to protect those targeted by hate speech, it is necessary to criminalize the most serious expressions of hate speech. This serves not only the punitive function of criminal law but also sends a clear signal to potential offenders and society as a whole (the general preventive function of criminal law) that such expressions constitute criminal offenses. Specifically, while sanctions for serious instances of hate speech are desirable in themselves, such measures also have the additional benefit of emphasizing the unacceptability of hate speech in a democratic society. Therefore, such benefits should not be diminished by inappropriate qualification of the contested type of behavior. Thus, incitement to violence or threats of violence and other forms of content should be clearly established in national law based on national prevalence, relevance, and the seriousness of other forms of hate speech.⁹

- Circumstances requiring criminal liability

For specific hate speech to surpass the threshold for criminal liability, it must be of a more serious nature – namely, it should aim, or it can reasonably be expected to incite acts of violence, threats, hostility, or discrimination, while also being publicly disseminated.

According to ECRI General Policy Recommendation No. 15 on combating hate speech, it is a matter of criminal law in each state to determine how such liability will be prescribed. However, what is essential here is not only to meet the two factors mentioned above but also to have

⁸ Ibid.

⁹ See Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, Explanatory Memorandum, para.54 1680aada1b (coe.int).

provisions that allow for liability for each of the different elements that qualify as hate speech for the purposes of the Recommendation.¹⁰

- **Formulation of criminal offences**

When defining in its criminal legislation which expressions of hate speech constitute criminal offenses, the state should primarily consider relevant international binding and nonbinding standards, especially those already mentioned: the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Genocide, the Additional Protocol to the Convention on Cybercrime, the 2008 EU Framework Decision on combating certain forms and expressions of racism and xenophobia through criminal law, the case law developed by the European Court of Human Rights, Council of Europe Recommendation CM/ Rec(2022)16 on combating hate speech, and ECRI General Recommendations, such as Recommendation No.7 on national legislation to combat racism and racial discrimination, and Recommendation No.15 on combating hate speech, along with their explanatory memoranda.¹¹

Therefore, states should specify and clearly define in their criminal laws which expressions of hate speech are subject to criminal liability, such as, for example: publicly inciting genocide, crimes against humanity, or war crimes; publicly inciting hatred, violence, or discrimination; racist, xenophobic, sexist, and LGBTI-phobic threats; racist, xenophobic, sexist, and LGBTI-phobic public insults under conditions like those specified for internet insults in the Additional Protocol to the Convention on Cybercrime; publicly denying, trivializing, or justifying genocide, crimes against humanity, or war crimes; and intentionally disseminating material containing such expressions of hate speech listed above, including ideas based on racial superiority or hatred.¹²

Additionally, it is essential that the relevant provisions be formulated in a clear and precise manner. Without such clarity and precision, there is likely to be legal uncertainty about the scope of the prohibited conduct.¹³[26] Therefore, in accordance with ECRI General Recommendation No. 15 on combating hate speech, when formulating the relevant provisions, the definitions given for the various terms used in the interpretation of what qualifies as hate speech for the purposes of the

¹⁰ ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.66 ЕКРИ-Генерална-препорака-бр.15.-,Борба-со-говорот-на-омраза.pdf

¹¹ Most of the above standards focus on racist hate speech, however, some of them, as well as other international documents, call on member states to criminalize hate speech on other grounds, such as sex, sexual orientation or gender identity. For example, § I.A.1. of CM/Rec(2019)1 on preventing and combating sexism invites member states to implement legislative reforms and criminalize sexist hate speech, and ECRI's country monitoring reports and the Yogyakarta Principles (Principle 5B) recommend criminalization of hate speech based on sexual orientation and gender identity.

¹² Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.24-25 1680aada1b (coe.int)

¹³ This would support claims that there is an interference with freedom of expression that is not prescribed by law and consequently that there is a violation of Article 10 of the European Convention on Human Rights (which would potentially also apply to Article 7's prohibition of extrajudicial punishment) notwithstanding the fact that the imposition of a criminal sanction would otherwise be consistent with the right to freedom of expression.

Recommendation should be taken into account.¹⁴ According to the case law of the European Court of Human Rights, it is of vital importance that the provisions of criminal law aimed at expressions that incite, promote, or justify violence, hatred, or intolerance clearly and precisely define the scope of the relevant criminal offenses. This also assists national courts in developing a consistent judicial practice.¹⁵

Furthermore, when formulating the relevant provisions, it is crucial to avoid introducing other conditions for imposing criminal liability, such as those related to public order, the size of the audience exposed to hate speech, or the extent of the dissemination of the hateful speech. Such conditions may be relevant for assessing the risk of reasonable incitement but specifying them as separate elements of criminal liability creates additional barriers to securing a conviction.¹⁶

While the clarity and precision of the provisions are crucial, the specific linguistic expressions used in defining various forms of expressions qualifying as hate speech should still be sufficiently general to accommodate technological developments. Therefore, for example, they should not rely solely on well-known formulations and expressions (such as those found in print media and social networks) but should focus more on the essential character of the expression and be able to encompass other forms of expressions that may develop in the future.¹⁷

In addition to the relevant criminal law provisions related to hate speech, international standards also foresee an obligation for states to declare illegal and prohibit organizations that promote and incite racial discrimination. Furthermore, there is a need to introduce criminal liability for forming and leading groups that promote or support hate speech, participating in the activities of such a group with the intent to contribute to the use of hate speech, and intentionally inciting, aiding, or abetting the use of such hate speech or attempting to use hate speech. According to the International Convention on the Elimination of All Forms of Racial Discrimination, this is yet another obligation for states that can make an important contribution to the effective fight against hate speech.¹⁸

¹⁴ ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.66 ЕКРИ-Генерална-препорака-бр.15.-,Борба-со-говорот-на-омраза.pdf

¹⁵ Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.22-23 1680aada1b (coe.int)

¹⁶ ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.67 ЕКРИ-Генерална-препорака-бр.15.-,Борба-со-говорот-на-омраза.pdf

¹⁷ Ibid.

¹⁸ According to the jurisprudence of the European Court of Human Rights under Article 11 of the Convention, a state has the right to take preventive measures for the protection of democracy in relation to associations or movements. This can be done if a sufficiently immediate violation of the rights of others threatens to undermine the fundamental values on which a democratic society rests and functions (e.g. the coexistence of members of society free from racial segregation). Also, according to the jurisprudence of the Court, associations that are involved in activities contrary to the values of the Convention cannot enjoy the protection of Article 11 because of Article 17 which prohibits the use of the Convention in order to destroy or unduly limit the rights guaranteed by it. Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.25, Recommendation on combating hate speech + Memorandum - MKD (PREMS 083822 GBR 2018).pdf

- **Measures to prevent abuse of criminal prosecution**

A particularly important issue is preventing the abuse of criminal-law provisions for hate speech. In order to prevent the risk of unjustified use of criminal liability for hate speech as a means of suppressing criticism of official policies, political opposition, and religious beliefs, it is necessary for the unacceptability of such use of criminal liability to be clearly derived from the conditions provided for the imposition of criminal liability. In this regard, it is recommended that this element be strengthened by introducing explicit provisions in the relevant laws stating that these criminal sanctions are not applicable to such criticism, opposition, or beliefs.¹⁹

- **Sentences**

The prescribed sentences for hate speech should take into account the serious consequences arising from the use of hate speech and the principle of proportionality. The consequences include not only the effects suffered by individuals who are the specific target of the hate speech but also the impact such use may have on other members of the group to which the respective individual belongs, as well as the harmful influence hate speech can have on society as a whole. The specific penalties that may be imposed should reflect these consequences.

Therefore, the prescribed sentences should be effective and deterrent in order to remedy the damage already caused and to discourage the further use of hate speech. Such penalties may include imprisonment, fines, or the seizure and forfeiture of the offending publication. Additionally, temporary loss of political rights or orders to visit one or more Holocaust memorial centers or orders to undertake activities for practical restitution of the harm caused to the individuals who were the target of hate speech could also be considered.²⁰

III. INTERNATIONAL STANDARDS FOR THE NATIONAL CIVIL AND ADMINISTRATIVE LEGAL FRAMEWORK ON HATE SPEECH

In addition to criminal law, administrative and civil law represent another important legal means of protecting the rights of those targeted by hate speech. Therefore, states should ensure effective legal protection against hate speech under their civil and administrative law, especially in general misdemeanor law, anti-discrimination law, and law on administrative offenses. In cases of hate speech that do not reach the highest level of severity in terms of triggering criminal provisions, civil and administrative procedures may be the appropriate legal avenue for addressing hate speech. The two legal paths lead to different outcomes: while criminal proceedings generally lead to punishment, civil and administrative proceedings often result in compensation or injunctions against engaging in hate speech. Thus, civil and administrative proceedings are generally a less severe form of interference with the right to freedom of expression. At the same time, the rules of

¹⁹ Ibid, p.68

²⁰ Ibid, p.69

evidence and the level of proof required differ between the two methods, and it is often easier for the author of hate speech to be held accountable under civil and administrative law.²¹

- Circumstances requiring civil and administrative liability

In order to ensure that there is no unjustified interference with the right to freedom of expression, any liability should be limited to the most serious cases of hate speech, specifically those cases that aim to or could reasonably be expected to incite acts of violence, threats, hostilities, or discrimination against the individuals who are its target. Thus, to establish liability, it is not sufficient to merely demonstrate harm or loss as a result of a specific instance of hate speech;²² the specific instance must also be of such seriousness as to warrant the imposition of such liability, namely, in the specific case, there must be an intention to incite or an imminent risk that this will occur.²³

Under civil law, violations of dignity, psychological integrity, and reputation of an individual generally result in claims for compensation and court orders, often under general misdemeanor law and specific rules on state liability for violation of the right to protection of human dignity, reputation, and well-being. This protection is usually broader than that provided under criminal law because it covers a wide range of offenses, including insults and defamation, related to various prohibited grounds, even when such forms of hate speech do not constitute a criminal offense.²⁴

- Formulation of hate speech in civil and administrative law

Unlike the provisions of criminal law concerning hate speech, comparative analyses indicate that specific provisions under general administrative law or state liability rules that would enable a more precise description of what expressions of hate speech are prohibited by law have not been developed. Certain expressions of hate speech may also be prohibited and defined as administrative offenses under media laws or electronic communication laws.

Hate speech may also fall under the definition of discrimination according to European and national anti-discrimination legislation, where the author treats the targeted individual differently

²¹ Ibid, p.26

²² ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.66 ЕКРИ-Генерална-препорака-бр.15.-,Борба-со-говорот-на-омраза.pdf

²³ Ibid.

²⁴ Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.26 1680aada1b (coe.int)

from others in similar situations without objective and reasonable justification, or may constitute harassment as defined in anti-discrimination legislation.²⁵

However, according to international standards, states should ensure that their anti-discrimination legislation is applied to all expressions of hate speech prohibited under criminal, civil, or administrative law to create a system in which all those targeted by hate speech can obtain legal assistance and, in particular, compensation for hate speech without having to appeal to law enforcement authorities. Through this clarification, individuals targeted by hate speech can also seek assistance from equality bodies, which should have an explicit mandate to address hate speech and the right to initiate legal actions either on behalf of the targeted individual or, where applicable, in their own name.

Furthermore, states should introduce the obligation in their legislation for public authorities or institutions and their representatives to avoid using hate speech, actively prevent it, and combat hate speech and its dissemination, while promoting the use of tolerant and inclusive speech. Such duties and encouragement to speak out against hate speech can be included in legislation or codes of conduct that regulate the behavior of public officials and civil servants.²⁶

- **Legal remedies**

As stated in the Council of Europe's Recommendation on combating hate speech, states should provide that civil and administrative remedies for the violation of the prohibition of hate speech include compensation, deletion, blocking, court orders, and the publication of confirmations that a statement constitutes hate speech. Additionally, according to administrative law, these remedies can include fines and the revocation of licenses.²⁷

Namely, the damage resulting from the use of hate speech in most cases is of a moral nature. However, there may be cases where those targeted by hate speech can demonstrate that they have suffered material harm (for example, cases where hate speech can be linked to job loss or loss of capability due to deteriorated health, etc.). Therefore, the law needs to clearly define the specific circumstances in which material compensation may be paid and the grounds under administrative and civil law for claiming such compensation. Hate speech may also harm the reputation of an entire community or group of people. However, even though specific individual damages do not necessarily have to be significant in all such cases, the possibility of requesting a statement that the reputation of members of the affected community or group of individuals has been violated

²⁵ According to Article 2.3 of Directive 2000/43/EC, harassment will be considered discrimination within the meaning of the directive, when unwanted behavior related to racial or ethnic origin occurs with the aim or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or abusive environment, Ibid, p.27

²⁶ Ibid.

²⁷ Recommendation CM/Rec(2022)16 of Committee of Ministers of Council of Europe on combating hate speech, p.27, Recommendation on combating hate speech + Memorandum - MKD (PREMS 083822 GBR 2018).pdf

and/or some symbolic compensation may be appropriate, and such legal remedies should be provided by law.²⁸

In addition to compensating for damage, there are other legal remedies for addressing cases of hate speech that should be available according to national legislation. These remedies consist of removal, blocking of websites, publication of acknowledgments, banning dissemination, and orders to disclose identity. However, as mentioned above, since all these measures impede the right to freedom of expression, it is necessary to ensure that they are used only in cases where hate speech reaches a certain level of seriousness: namely, in cases where there is intent or a reasonable expectation that hate speech will incite violence, threats, hostility, or discrimination against those targeted by hate speech, and the respective measure is realistically necessary to correct the situation and is not broader than necessary.

Furthermore, in some cases, the possibility of certain facilities being exploited for the purposes of hate speech may be indicative of non-compliance with regulatory requirements. In such cases, consecutive administrative sanctions imply fines or the withdrawal of licenses or franchises.

States should also provide for administrative and other sanctions for the use of hate speech by political parties and other organizations, as well as by their members.²⁹ In these cases, there should be a two-fold response to the use of hate speech. First, there should be a provision for the withdrawal of financial and other forms of support from public authorities when political parties or other organizations use hate speech or when their members have used hate speech, and they have not sanctioned it.³⁰ Second, there should be a provision for the prohibition or dissolution of political parties or other organizations—regardless of whether they receive such support—when their use of hate speech is of a more serious nature, namely, when such hate speech aims or reasonably can be expected to incite violence, threats, hostility, or discrimination.³¹

International standards for the legal regulation of hate speech in this context emphasize the importance of judicial oversight when imposing civil and administrative liability. Namely, the need for the use of such powers to be subject to judicial authorization or approval reflects the essential role of the courts in exercising supervisory control and thereby ensuring protection against the potential for unjustified interference with the right to freedom of expression. In most cases, the execution of such powers should require prior approval from the court. However, it is also recognized that there may be urgent situations in which it is not appropriate to wait for a request

²⁸ ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.56-57 ЕКРИ-Генерална-препорака-бр.15.-,Борба-со-говорот-на-омраза. pdf

²⁹ These measures should be taken both in relation to political parties and in relation to organizations that have a formal legal status and those that are of an informal or de facto character. – Ibid.

³⁰ Thus, the request for a ban refers not only to grants, loans and other forms of financing the activities of political parties and other concerned organizations, but also refers to providing assistance by enabling the use of funds and premises, the ability to use staff and other types of practical help.

³¹ See ECRI General Policy Recommendation No.15 on Combating Hate Speech, p.59-60 ЕКРИ-Генерална-препорака-бр.15.-,Борба-со-говорот-на-омраза.pdf

for such approval before taking action. In such cases, judicial oversight can be achieved after the relevant authority has been exercised.³²

Finally, to ensure that appropriate action is taken against cases of hate speech, it is necessary to expand the active standing to initiate appropriate proceedings—not only to the individuals targeted by hate speech but also to equality bodies, national human rights institutions, and interested non-governmental organizations. This reflects the idea that all these bodies can have a role in monitoring the use of hate speech. Moreover, these bodies may be in a particularly good position to provide arguments for the need to perform the duties and initiate the proceedings that will lead to the implementation of such duties. By providing specific provisions that enable these bodies to act in this direction, such duties could theoretically be transformed into practical and effective remedies that can be used against hate speech.³³

IV. CONCLUSION

Hate speech is particularly concerning because it often marks the first step towards real violence. An appropriate response to hate speech involves measures taken by the authorities responsible for law enforcement (criminal and administrative penalties, civil proceedings), as well as other mechanisms to address its harmful consequences, such as self-regulation, prevention, and counter-speech.

As for the national legislation, the legal measures taken against hate speech are most effective when the legislator is aware of and evaluates the historical and current social context in the country, and when the legislation is structured in a way that can provide special protection to those groups most frequently targeted by this speech. Thus, while sanctions for serious cases of hate speech are desirable, such measures also have the additional benefit of emphasizing the unacceptability of hate speech in a democratic society. Therefore, such benefits should not be diminished through inappropriate or insufficient qualification of the contested behavior.

As we have seen above, the instruments of the Council of Europe specifically dedicated to hate speech, relying on broader international and European human rights standards, offer concrete guidelines whose consistent observance ensures the creation of national legislation adequate to effectively fight this phenomenon, i.e. comprehensive and effective legal framework consisting of appropriately established provisions in criminal, civil and administrative law.

³² Ibid, p.58-59

³³ Ibid, p.56, p.59

Bibliography

1. Article 19. (2020, December 7). 'Hate speech' explained: A summary - ARTICLE 19, Available at: 'Hate speech' explained: A summary - ARTICLE 19.
2. Council of Europe. (2013). The Convention for the Protection of Human Rights and Fundamental Freedoms. Available at: European Convention on Human Rights (coe.int).
3. Council of Europe. (2023). Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech. Available at: 1680aada1b (coe.int).
4. Council of Europe. (2019). The Recommendation CM/ Rec(2019)1 on preventing and combating sexism. Available at: PREMS 055519 GBR 2573 CMRec(2019)1 WEB A5 MK v2_ MK.docx (live.com).
5. ECHR, Beizaras and Levickas v Lithuania, Application No. 41288/15, Judgement January 14, 2020.
6. ECHR, Budinova and Chaprazov v. Bulgaria, Application no. 12567/13, Judgment February 16, 2021.
7. ECHR, Delfi AS v. Estonia [GC], Application No. 64569/09, Judgment June 16, 2015 [GC]
8. ECHR, Kiraly and Demeter v Hungary, Application no.10851/13, Judgement 17 January 17, 2017.
9. ECRI. (2015, December 8). ECRI GENERAL POLICY RECOMMENDATION NO. 15 ON COMBATING HATE SPEECH. Available at: 16808b5b01 (coe.int).
10. International Service for Human Rights. (2007, March 1). Yogyakarta Principles on the Application of Human Rights Law in relation to Sexual Orientation and Gender Identity. Available at: Yogyakarta Principles on the Application of Human Rights Law in relation to Sexual Orientation and Gender Identity | ISHR.
11. UN. (1965). International Convention on the Elimination of All Forms of Racial Discrimination. Available at: International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR.
12. UN. (1966). International Covenant on Civil and Political Rights. Available at: International Covenant on Civil and Political Rights | OHCHR.
13. UN. (1948). The Convention on the Prevention and Punishment of the Crime of Genocide (The Genocide Convention). Available at: United Nations Office on Genocide Prevention and the Responsibility to Protect.