

# **HATE SPEECH IN PUBLIC SPACE - DANGER FOR THE INDIVIDUALS, SOCIETIES AND DEMOCRACY**

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## **Introduction**

Hate speech in public space has recently been increasingly understood and considered as one of the key threats to democratic values, public debate and modern society. In addition to the widespread forms of hate speech in the online space, which are mainly manifested in the form of comments and posts on social networks, one of the more recent problems, especially in less democratic societies, is the spread of hate speech aimed towards journalists in order to damage their reputation, as well as to intimidate them and prevent them from doing their job. At the same time, more and more often some forms of inappropriate, but less harmful, speech in the public are being called "hate speech", which only further complicates the preventive and reactive activities of the state and society to hate speech. In order to qualitatively approach the development of policies and strategies against hate speech in the public sphere, including in the online sphere, it is necessary to provide answers to several key questions, ie to define some key concepts:

- First, how to reach consensus in defining hate speech? It is well known that there is no clear and precise, comprehensive and pertinent definition of hate speech (although there is a consensus on the scope and meaning of the term globally) and, therefore, this question relates to how to set clear categories in assessing what is and what is not hate speech.
- How to reach consensus in defining public space and whether it includes both online and offline space, and, if so, what is in the online space a public and what is a private attitude and action?
- How to reach consensus on the limits of free speech and hate speech prevention? While it is undoubted that the expression of hate speech cannot be considered as exercise of the right to free speech, the key question is how to prevent hate speech with proactive and reactive action while at the same time protecting freedom of speech?
- How to reach consensus on who should / must create strategies to combat hate speech? This is primarily due to the need to prescribe precisely which agents / actors of society can and should be in charge of preventing and sanctioning hate speech, in order to protect the right to

freedom of expression, by normative regulation, ethical standards, guidelines and strategies and at the same time to free the public space of this kind of deviant behavior.

This analysis will attempt to answer some of these questions / dilemmas, drawing on the experience of Bosnia and Herzegovina and the European context, and making some recommendations on how to combat hate speech in the public space and prevent its negative impact on individuals, society and democracy.

### **Hate Speech - Definition and Context**

As mentioned already, the term “hate speech” is widely used to describe inappropriate and unacceptable practices in public communication.

As described by Franjo Dragičević<sup>1</sup> "The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was the first international document to regulate hate speech in a specific way. Namely, the term hate speech was not used in the convention, but its essence was related to the prohibition of racist speech, in a way that required signatory states not only to prohibit, but also to prescribe as a crime, some manifest form of racist speech. Article 4 of the CERD identifies four forms of what we today call hate speech, namely the spread of ideas based on racial superiority, the spread of ideas based on racial hatred, incitement to racial discrimination and incitement to acts of racially motivated violence. "

Today, in the practice of the European Court the term "hate speech" is used to describe forms of expression that spread, provoke, promote or justify hatred based on intolerance, including religious intolerance (according to: Rokša-Zubčević, Bender, Vojvodić, 2017: 10). Furthermore, General Recommendation no. 15 - The fight against hate speech by the European Commission against racism and intolerance, hate speech defines as "the use of one or more specific forms of expression - namely, advocating, promoting or inciting the humiliation, hatred or condemnation of a person or group of people, as well as harassment, insults, negative stereotypes, stigmatization or threats to a person or persons and any justification for all these forms of expression - which is based on an illustrative list of personal characteristics or status that includes race, color, language, religion or belief,

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<sup>1</sup> [http://fcjp.ba/analize/Franjo\\_Dragicevic-Govor\\_mrznje\\_izborni\\_proces\\_i\\_pravo\\_na\\_slobodu\\_izrazavanja.pdf](http://fcjp.ba/analize/Franjo_Dragicevic-Govor_mrznje_izborni_proces_i_pravo_na_slobodu_izrazavanja.pdf)

nationality or national, ethnic or other origin, age, disability, gender, gender, gender identity and sexual orientation ”. (according to: Rokša-Zubčević, Bender, Vojvodić, 2017).

In academic discourse, hate speech is widely considered in an attempt to give a serious and precise definition to it. Stjepan Malovic et al. (2007: 61) define hate speech as any "type of speech that promotes, incites or justifies national and racial intolerance, xenophobia, anti-Semitism, religious and other forms of hate based on intolerance." Gordana Vilović (2011: 68) refers to hate speech as verbal expression of aggression towards minority groups. Zoran Tomić (2002: 130) refers to hate speech as a speech that spreads hatred and intolerance as well as calls for violence against a group of people who can be identified by race, ethnic origin, ethnicity, skin color, religion, gender, or other characteristics. Alaburić (according to Turčilo, 2017: 104) defines hate speech as “aggressive speech that spreads hatred, intolerance, and calls for violence directed against a group of people determined by race, national or ethnicity, skin color, religion, gender, or other characteristics.” So, in general, hate speech can be defined as expression that contains messages of hatred or intolerance towards a racial, national, ethnic or religious group, or to individuals belonging to one of these groups. Hate speech has spread over time to both gender intolerance and sexual orientation, as well as intolerance of different political opinions and national and social status.

In essence, when defining hate speech, there are several key factors to keep in mind. Those are:

- *Intent*: Hate speech always aims to attack, intimidate, provoke a negative attitude and emotion towards a person or group of people;
- *Communication channel*: Hate speech is a public speech uttered in a public space, by which, in the broadest sense, we mean anything outside a person's private sphere, including the media sphere and the Internet;
- *Object*: An individual or group of people is exposed to hate speech because of its specificity: sex, gender, race, sexual orientation, social status, personal characteristics, age, specificity in needs and / or health status, etc.;
- *Form of expression*: Hate speech includes messages that use inappropriate vocabulary, insults, threats, discriminatory words, etc.

As is evident from the aforementioned breakdown of the term hate speech, the key point in defining hate speech is actually contextual in nature. More specifically, the basic determinant in the definition of hate speech is the intent behind the messages that directly or indirectly spread hate speech, the target group towards which hate speech is directed, and the way in which messages are directed to it (or about it). It is also crucial to understand that hate speech prevention and regulation strategies are based on the regulation of public space, including physical space, as well as media and online space. Public space is characterized by openness, availability and accessibility for all, and, as Atkinson (2003) notes, a key problem in regulating public space is reflected in the "tension between citizens' access rights and their security." Public space, in the communicological sense of the term, originates in Habermas's ideology of the public sphere, and the tension that Atkinson talks about in the media and online environment relates to the obligation to ensure access to communication channels for all citizens without discrimination, as well as the obligation to protect them from deviance. In other words, it raises the question of protecting free speech and simultaneously fight against hate speech.

All policies and strategies of prevention of hate speech in the public space start from the clear fact that hate speech is not a free speech. The International Pact on Civil and Political Rights<sup>2</sup> has defined a right to free speech, but also stated that there was a need to prohibit spread of hate. Article 10 of the European Convention on Human Rights also states that "everyone has the right to freedom of expression, including freedom of thought and freedom to receive and impart information and ideas, without interference of public authority and regardless of frontiers". However, the Convention also states that the exercise of these freedoms can be limited by states in certain circumstances, including the purpose of preventing the violation of the reputation or rights of others". This, of course, does not mean that freedom of speech can be limited in any case. Clear regulations, standards and procedures of states must guarantee freedom of thought and expression, freedom of critical thought and argumentative debate, but prevent hate speech and other inappropriate forms of public appearance (s).

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<sup>2</sup> Adopted by the Resolution 2200A (XXI) of the General Assembly of the UN on 16. 12. 1966, implemented from 23. 03. 1976.

## **Hate Speech Against Journalists - Specific Form of Pressure on Freedom of Public Speaking**

The specific form of hate speech in recent times, especially with the expansion of social networks and the lowering of overall standards of communication, is manifested through insults, incitement, and even threats to journalists, in response to their published journalistic stories, or to their views expressed on social networks and in the public space in general. What is important to underline in this context is the fact that hate speech aimed at journalists is not only a threat to themselves, but also a threat to the public interest, because, by definition, journalists should be defenders of that public interest and bearers of critical thought in society. However, it is equally important to note that, unfortunately, there are those members of the media community who not only do not take this definition of journalism as their obligation, but do the opposite, and by spreading sensationalism themselves, writing by order, running "wars" on behalf of their clients (mainly from political circles) they contribute to jeopardizing the right of the public to be properly informed, that is, raise tensions in the public space, and also encourage the spread of hate speech. Not so rarely, hate speech against journalists is also expressed through the media, that is, spread by other "colleagues", which not only speaks about the lack of journalistic solidarity, but essentially justifies Dinko Gruhonjic's definition that "there are journalists and anti-journalists in the media today"<sup>3</sup>. Furthermore, there are examples of public writing of media employees in the online space (mainly through the social networks: Facebook and Twitter), which are discriminatory, incitement, nationalist, often abusive and hateful, which are justified as the freedom of speech of journalists in their private, free time on their private websites. This is of course no argument, since journalists (like all other public figures) have a responsibility for everything they say in public, whether it is their personal opinion or professional writing, and in this context, any extreme (or extremist) writing on social networks can much less be tolerated for them. In other words, a journalist is not only a journalist when he writes for his medium, he is that in every occasion, so he bears responsibility for everything that is said, no matter what platform is used. Another specific form of journalistic or media responsibility in the context of suppression of hate speech lies in their obligation to moderate comments on the portals and social networks in which their content is transmitted. The cheap sensationalism, the incitement, the tabloid approach of the media provokes hate speech in the comments, which are filtered a little and insufficiently, that is, moderated and removed poorly. Often, the media

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<sup>3</sup> <http://www.autonomija.info>

counts on a large number of comments and inflames the hate narrative in the comments, because it raises the readership, so for some media, the lowest level of communication culture, both in the texts and in the comments, brings clicks, and unfortunately the click becomes a measure of the value of the content. Hate speech often becomes a means of achieving a goal, and the goal is to position the text well on the most read list.

These examples (which we cannot even claim to be exceptions or a rule without detailed analysis and serious research), of course, do not in any way justify, nor can they be an argument for tolerating any hate speech in the public space, especially not one geared towards journalists, but it is also important to remind everyone involved in the media space on their responsibility to suppress, and not to spread, hate speech. Hate speech directed at journalists, who do their job professionally and responsibly, not only endangers their right to work in a safe environment, but also seeks to undermine their integrity in the public. It is dangerous not only because of the fact that hate speech can provoke violence and attacks on journalists, but also because hate speech towards journalists, in fact, aims at intimidation and, consequently, self-censorship. Of course, most responsible journalists will not agree to such thing, but in order to be able to defend themselves against hate speech systematically, and not only individually, when it happens to them personally, journalists must first have the support of the media in which they work, then of other colleagues and media associations, as well as organizations dealing with the protection of journalists and media freedoms, and the general public. This requires a greater degree of solidarity within the media community, but also a greater degree of trust in the media and journalists among general public, which is achieved through quality journalistic work and respect for ethical standards.

If we were to summarize the “recipe” for solving hate speech towards journalists in one sentence, it would imply higher solidarity and a stronger reaction to hate speech addressed to journalists, as well as their greater responsibility to themselves, the profession and the public.

### **Hate Speech - European Experience**

In the European context, a set of documents, including some of the judgments of the European Court of Human Rights, addresses the issue of freedom of speech and hate speech, with the very prevention of hate speech being considered as a justifiable reason for restricting freedom of expression. The main reason for understanding hate speech as an unacceptable practice

despite widely understood that right to freedom of expression is essential, is the fact that such speech violates the rights of persons who are the object of hate speech and as such cannot be considered free speech. However, in the practice of the European Court of Human Rights, when considering hate speech, a contextual approach is crucial. Specifically, when it comes to promoting Nazism, denying the Holocaust and invoking racial discrimination, the Court considers the European Convention on Human Rights to be crucial, namely Article 17 which states: "Nothing in this Convention shall be interpreted in a way to imply the right of any state, groups or persons to engage in an activity or to perform an act aimed at the abrogation of any of the aforementioned rights and freedoms or to restrict them to a greater extent than that provided for in the Convention."<sup>4</sup> However, when it comes to hate speech that does not directly negate the values of the European Convention on Human Rights, the Court considers the legality, legitimacy and necessity of the domestic authorities' intervention in restricting such speech in the context of the overall case, taking into account the objective of the intervention, the imperative social need for its use, and on that basis assesses the legitimacy of interfering with such speech. "This does not mean that the supervision of the European Court of Human Rights is limited to determining whether the domestic authority exercised its discretionary powers reasonably, carefully and in good faith; but it will examine whether the interference in right given by the Article 10 of the European Convention on Human Rights, in the particular case as a whole, was in proportion to the legitimate aim sought to be achieved and whether the reasons and justifications given for interfering with this right were "relevant and sufficient". The European Court has to make sure that local authorities applied principles embodied in Art. 10 of the European Convention on Human Rights."<sup>5</sup> It is precisely from this approach of the European Court of Human Rights we can, even if we are not legal experts, see that the aim of the Court's intervention in individual cases is to protect the right to free speech while preventing hate speech that is contrary to the European Convention on Human Rights, and that the Court carefully evaluates the legitimacy of state intervention in free speech in order to prevent the limitation of liberty of critical thought in society under the guise of preventing hate speech, but also to support the removal of hate speech from the public space where it is undoubtedly proven that it did exist.

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<sup>4</sup> [https://advokat-prnjavorac.com/zakoni/Evropska\\_konvencija\\_o\\_ljudskim\\_pravima\\_i\\_osnovnim\\_slobodama.pdf](https://advokat-prnjavorac.com/zakoni/Evropska_konvencija_o_ljudskim_pravima_i_osnovnim_slobodama.pdf)

<sup>5</sup> [http://fcjp.ba/analize/Franjo\\_Dragicevic-Govor\\_mrznje\\_izborni\\_proces\\_i\\_pravo\\_na\\_slobodu\\_izrazavanja.pdf](http://fcjp.ba/analize/Franjo_Dragicevic-Govor_mrznje_izborni_proces_i_pravo_na_slobodu_izrazavanja.pdf)

When it comes to hate speech online, the European Commission and four major social media platforms in 2016 have published a Code of Conduct to combat illegal hate speech online<sup>6</sup>. Within that Code, Facebook, Twitter, YouTube and Microsoft have made a number of commitments to prevent the spread of inappropriate content in Europe. Under the Code, companies are required to set out community policies and guidelines that will clearly prohibit incitement to harassment, and to evaluate reported content and remove such content when necessary. Since the creation of this Code to date, the European Commission considers that significant progress has been made in the implementation of the Code online, which was evident already in the first year of its existence.<sup>7</sup>

From the above practices of the European institutions in the online and offline space, it is quite clear that in the European context, zero tolerance for hate speech is promoted, while at the same time one hundred percent protection of free speech. This approach, or its key starting point that hate speech is not freedom of speech, but also that freedom of speech must not be compromised under the guise of combating hate speech, must also be applied at the national level of the Member States.

### **Hate Speech Regulation - Some Applicable Solution**

When it comes to possible and enforceable solutions to the fight against hate speech, they must be based on the protection of the right to free speech, but also on the protection of the rights of all participants in public communication to be protected from hate. This is especially true for journalists, as carriers of public opinion and critical thoughts in society, that is, it is important to protect their right to work in a safe environment free from the pressures and threats to their safety through the use of hate speech against them. Returning to the starting points at the beginning of this text, we can propose a set of measures that can help not only prevent hate speech and protect free speech, but also raise the quality and standard of public communication.

- When we ask ourselves how to reach a consensus in defining hate speech, it is clear that European documents, experiences of the European Court of Human Rights, principles of the European institutions, as well as definitions created by academic and NGO community in

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<sup>6</sup> [https://europa.eu/rapid/press-release\\_IP-16-1937\\_hr.htm](https://europa.eu/rapid/press-release_IP-16-1937_hr.htm)

<sup>7</sup> <https://europa.ba/?p=50293>



B&H can serve as a standard, ie a starting point for understanding the concept of hate speech. In this context, it is not difficult to agree on a broad definition of hate speech, noting that it is necessary to take care for it to be sufficiently clear and precise to reduce the possibility of its (mis)use for repressive purposes and to restrict freedom of speech.

- If we are wondering how to reach a consensus in defining public space and whether it includes both online and offline space, and, if so, what is public and what is a private opinion and action online, the Code of Conduct of the European Commission and social media companies, which specifies how IT companies treat hate speech in the online space and to what extent they regard it as a public space, can be a starting point. In this context, it is important to note that in the online space anonymity and concealment of true identity are not taken as mitigating circumstances, on the contrary, and (due to the possibility of transferring views from social networks easily and simply to online and offline media), a modern approach is such that all that is said in online networks is a public statement.
- When considering how to reach consensus on the limits of free speech and prevention of hate speech, it is important to bear in mind that proactive and reactive action can and must prevent hate speech, while protecting freedom of speech, which is achieved through continuous monitoring of the decisions of relevant institutions and through cooperation between media community, NGOs, regulatory and self-regulatory bodies, government institutions in order to protect freedom of speech and prevent misuse of hate speech prevention to limit it
- Finally, in response to the question of who should / must create strategies to combat hate speech, we can say that it is necessary to involve the government and non-governmental sectors, the media community, but also new media actors such as bloggers and youtubers in the discussion and adoption of normative regulations, ethical standards, guidelines and strategies, which will prevent hate speech in the public arena and treat it as an immediate, direct danger to individuals, society and democracy.

Clearly, the fight against hate speech must be reactive (sanctioning hate speech carriers in the public space and removing controversial content from the media and social networks), but also proactive (through media education and media literacy programs aimed at the general population, all actors in society can clearly say (and teach) that freedom of expression does

not include the right to hate speech), because only by combining these two approaches, ie by promptly responding to cases of hate speech and sanctioning their perpetrators, and by raising the overall culture of dialogue and level of communication in society, effective and lasting results can be achieved. It is also extremely important to work on raising the standards of media quality and social responsibility, minimizing sensationalism and click-bait journalism, which in turn undermines the quality of public debate and thus in a certain way legitimizes the low level of communication culture in the public space, which contributes to developing and uncontrollably booming of the inappropriate speech, even hate speech.

Bosnia and Herzegovina needs to start developing more precise media policies, ie standards, procedures and strategies, in order for the public and media space to truly reflect democratic values and to be a ground for constructive and quality debate for all its citizens, free from hate speech, but also with much higher quality standards and social responsibility when it comes to media work.

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