

## **HATE SPEECH IN THE CONTEXT OF MACEDONIAN SOCIETY**

### **Summary**

The multicultural historical experience of the Republic of Macedonia has always enabled some social tolerance and a relatively small number of incidents, as examples of hate speech and hate crimes. But Macedonia failed to revive the tolerance or this inherited sensibility from "value in itself" to "value for itself." Even the political ruling elites stopped understanding it as a value. Often they will come to a view that the restriction of hate speech is weakness imposed by the political correctness of our multicultural living. And my intention is to analyze the consequences of the current political usurpation of this legal concept.

In this regard the paper will focus primarily on the infused confusion about the very concept of hate speech, and the limited understanding that prevails in view of its harmful consequences or damage which this speech imposes on its targets - stigmatizing them, reducing them to uniform samples of the stigmatized group and denying them the capacity to live as responsible members of society, in short, refusing to accept them as equal members of the society.

**key words: hate speech, freedom of expression, dignity**

### **Introduction**

The past few decades have been characterized by an almost universal trend of prohibition of hate speech directed at individuals or groups based on their ethnicity, religion, race, nationality and (more recently) sexual orientation. Bans vary from one country to another, but the basis on which they rest is the same.

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Additionally, regulation or legal sanctioning of hate speech receives special importance in transitional, post-conflict and multicultural societies. The importance of the political responsibility of the elites and well composed hate speech legislation appear as fundamentally important for these countries on their path to democracy and the rule of law. The extra-legal mechanisms that the developed democracies rely on, in transitional societies are not yet strong enough to absorb the consequences of hate speech, so the importance of legislation or legal regulation here receives its high relevance.

The multicultural historical experience of the Republic of Macedonia has always enabled some social tolerance and a relatively small number of incidents, as examples of hate speech and hate crimes. But Macedonia failed to revive the tolerance or this inherited sensibility from "value in itself" to "value for itself." Even the political ruling elites stopped understanding it as a value. Often they will come to a view that the restriction of hate speech is weakness imposed by the political correctness of our multicultural living. And my intention is to analyze the consequences of the current political usurpation of this legal concept.

In this regard my paper will focus primarily on the infused confusion about the very concept of hate speech, and the limited understanding that prevails in view of its harmful consequences or damage which this speech imposes on its targets - stigmatizing them, reducing them to uniform samples of the stigmatized group and denying them the capacity to live as responsible members of society, in short, refusing to accept them as equal members of the society.

The starting thesis in this respect is that *the legal regulation or prohibition of hate speech is in direct interest of protecting and strengthening of freedom of expression*. Also applies the opposite, namely that the legal neglect of this abrasive speech directly restricts the space for freedom of expression and damages in long-terms the capacity for civil liberties and the sensitivity towards discrimination and violation of the rights and liberties.

## I.

The current political usurpation of the legal concept of hate speech takes place in the following manner:

*Firstly, confusion is being brought in terms of the meaning of hate speech as a legal concept. And in this regard I would like to focus on the very notion of hate speech.*

Hate speech can be defined as a speech that is designed to promote hatred based on race, religion, ethnicity, national origin, gender, sexual orientation, physical or mental disability. This speech brings defining message of inferiority of the members of the respective group and it condemns, humiliates and spread hatred. Practically all racist, xenophobic, homophobic and other related declinations of identity-attacking expression could come under the concept of hate speech.<sup>1</sup>

Namely, hate speech attacks aspects of the identity of the individual that are immutable or in some sense fundamental to her/him, such as belonging to a particular culture<sup>2</sup> or other identity characteristics such as sexual orientation, physical and mental disability. It is important to highlight that this group of features leaves out the political affiliation of the person or his political conviction. And this is the usual misconception here. The politicians, journalists, experts, and the general public treat the insults made on the basis of political affiliation or membership as a typical or blatant examples of hate speech in our society.

The political affiliation can certainly be a basis for discrimination, and in Macedonia it is one of the most common grounds for discrimination. However, the insult made on this basis shall not constitute hate speech, because the basis does not work as the fundamental marker of identity of the person.<sup>3</sup>

It is extremely important to hold the concept of "hate speech" on to its legal limits. When we stretched it to incorporate things that are not included in the definition of this term, it becomes *disused or abused*. In other words, this introduces confusion as to the general legal mechanisms and criminal law provisions which protect us against hate speech (what is the law that protects us?). Additionally, it opens up a possibility for turning the concept into a censorship tool by which any public reasoning unfavorable to authorities can easily be characterized as hate speech (against them) and simply be banned. And there are already examples in this regard.

This means that beyond the concept remains the everyday insults and defamation of political opponents, critical journalists and so on. And it is important this condition to be defined as deviant or criticized as such, but not as hate speech.

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<sup>1</sup> E. Mihajlova, *Hate Speech and Cultural Differences*, Templum, Skopje, 2010, pp. 49-50.

<sup>2</sup> The notion of culture often comes as an "umbrella term" for characteristics such as ethnicity, race, color, religion, nationality, etc.

<sup>3</sup> See Mihajlova E., Bachovska, *Freedom of expression and Hate Speech*, OSCE, Skopje, 2013, pp. 27- 29.

Again, the concept of hate speech is a tool that democratic societies are using to deal with a particular type of bias - in terms of race, ethnicity, religion, sexual orientation. Other verbal denunciations and organized labeling and discrediting are more to be seen as abnormality of the democratic rule of law and characteristic of an undemocratic political climate. And therefore should be treated as such, non-democratic mechanisms that are not to be handled with the same way as hate speech.

In addition to the confusion about what the concept of hate speech actually means, there also prevails a limited understanding of its consequences or *the harm that this speech inflicts*. The need for sanctioning the hate speech in Macedonia is tied closely if not exclusively to the logic of public disorder or potential violence - situations in which the speech could lead to ethnic tensions, riots, civil unrest and protests. Moreover, the violence in the context of hate speech is understood primarily as a reaction of the victims rather than as violence that hate speech is leading up to - in the sense that hate speech potentially leads to acts of hatred or hate crimes.

In this context I would like to enlighten the harm that hate speech inflicts. Namely, it primarily harms the dignity of the members of the group towards which it is directed.<sup>4</sup> From this aspect, for example, hate speech cannot be characterized simply as an insult or defamation. Insult and libel are a social evil because of the damage that they cause to the injured in the eyes of others, damaging his social standing and/or harming his/her reputation. But unlike defamation, hate speech demeans the individual for a certain characteristic that may not be perceived as socially unacceptable (race, gender, ethnicity, religion, etc.) meaning that her/his self-respect is being harmed.<sup>5</sup> Here he/she is targeted not as an individual, but as a member of a particular community with which he/she shares a specific cultural or other identity characteristics. This is what Avishai Margalit refers to as "mediated rejection" - which entails no direct denial of a person as a human being, but rather a refusal of the group to which the person belongs as a whole, a group which in turn determines the way this person shapes his/her life as a human being. As we can observe, the humiliation here consists in rejecting the way a person expresses him/herself as a person. It is this fact, says Margalit, that gives content of the abstract concept of humiliation as rejection of

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<sup>4</sup> See J. Waldron, Chapter V: Protecting Dignity or Protection from Offense in *The Harm in Hate Speech*, Harvard University Press, Cambridge, Massachusetts, London, England, 2012.

<sup>5</sup> E. Mihajlova, *Hate Speech and Cultural Differences*, Templum, Skopje, 2010, p. 113.

human beings as human beings. The feeling of devaluation is especially strong because the humiliation involves existential threat. "The humiliation as rejection of human beings as humans - even if performed ritualistically or symbolically without any physical cruelty - serves as a signal of the existential refusal that is not symbolic at all."<sup>6</sup>

Although the violation of dignity is not easy to identify and quantify (such as moral injury, limited life opportunities, etc), it can be very serious. Because hate speech humiliates, degrades and intimidates directly or indirectly, members of the group to which the speech aims have difficulties to participate in the collective life and even to lead autonomous and fulfilling personal lives.<sup>7</sup>

So, in this regard we can say that hate speech stigmatizes the members of the targeted community, reduces the uniform samples of the stigmatized group and denies them the capacity to live as responsible members of society, in short, refuses to accept them as equal members of the society.

Hate speech produces further undesirable consequences. Unsanctioned stigmatizing and demonizing of the groups over time weakens the sensitivity of the society and encourages a climate in which their discriminatory treatment is accepted as normal. Then the violence or the existential threat that is implicit in hate speech emerges on the surface. When a particular group is being stigmatized, dehumanized and held outside the "community of equals", then the group can easily become a target of physical attacks and violence (this is what happens to the Roma people in Macedonia).

Furthermore, hate speech inflicts serious damage to the society as a whole. It violates the ideal of equality or equal treatment and the principle of non-discrimination which are fundamental to any democratic society. It creates barriers of distrust and animosity between individuals and groups and obstructs the normal relations between them, in other words, it has an abrasive impact on the collective life or capacity to damage the social fabric and to separate the communities. In this sense it is often noted that hate speech has a detrimental effect on the social order, the peace and the quality of life in the community.

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<sup>6</sup> Margalit, Avishai, *The Decent Society*, Harvard University Press, Cambridge, Massachusetts, 1996., p.137, p.143.

<sup>7</sup> See Bhikhu Parekh, „Hate Speech: Is there a case for banning?“, *Public Policy Research* - December 2005- February 2006.

However, although hate speech brings this spirit of intolerance and destruction, it does not necessarily result in violence or public disorder. It is quite possible those who should be motivated by this speech not to act on it. Also, the group that is being targeted may refrain from reactions or may be too intimidated to resist at all.<sup>8</sup>

If the reasons for banning hate speech are seen first and foremost in the threats to public order and peace, we are losing sight of the original injury or harm that this speech causes to the relevant individuals. And further, we in some way encourage violence. In other words, there are indirect indications that the protection comes to the "most angry ones". For example, we are more aware of instances of hate speech towards some ethnic communities in Macedonia in situations where they will express their anger through protests, riots and other unrest, and not in the instances of explicit hate speech (and acts of hatred) towards for example, Roma community - that have not caused such unrest. The effect of this understanding of the harm is that the most vulnerable groups in the society will become even more vulnerable, since their injury is invisible to the institutions, who primarily connect it with violence / riots.

## II.

*As for the second line of political usurpation of this legal concept, in parallel with its proper understanding, its application is completely absent.* So, despite existing legal mechanisms, the clearest, most explicit examples of hate speech remain unpunished.

Moreover, not only that the ruling authorities are not sanctioning hate speech, but they are also encouraging it or sometimes directly producing it (images with Kalashnikovs in the electoral processes; slogans death to "Kauri", death to "Shiptari", etc.). In fact, the hate speech began to play an important role in ensuring the political mobilization of hostility against certain groups, and in election periods (and Macedonia in the last decade is in a continuous pre-election process) it allows political elites to play the "ethnic card" achieving personal

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<sup>8</sup> Usually we say that hate speech is the worst verbal violence and the victim cannot respond to it rationally since the words are striking the very core of her being. The victim is so affected by this speech that she is not able to reflect immediately, so either stays absolutely mute or is only able to react with violence. That is why there is a link between hate speech and the flare of violence, and the ECHR case law recognizes its character of "inflammatory speech".

partisan gains. Frequent radicalization of this "ethnic game" gives expression to hate speech and acts of hatred. So, the genuine building of relationships between communities involves (among other things) legal sanctioning of hate speech and hate crimes, and not some kind of political trades of the political/ruling elites.

Finally, the government must understand its power of a speaking subject. To understand what it means to be a signifier in the political discourse. Democratic government does not speak in a way that endangers the speech. It does not use its power (within and out of the realm of the speech) to make the free social space for speaking completely impossible. When the speech of the unreasonable and violent imposes itself as a political speech, then the reasonable and tolerant speech begins to be prohibited, suppressed, choked, to stand trial.

## **Conclusion**

As a conclusion I would like to emphasize that free expression is possible only under certain circumstances, such as social stability, intergroup harmony and culture of decency. When the state prohibits hate speech in order to create and maintain these conditions, it restricts free speech not only in the interest of other values, but also in its own interest. In other words, while it limits the expression on one level, it consolidates and deepens it on another. Thus, "narrowing" of freedom of expression by banning hate speech allows greater social space for freedom of expression of all groups in society, i.e. it enables a live debate with various aspects of the public interest, which gives voice to different perspectives and views.

And in this sense conceptualization of hate speech (for the reason of its sanctioning) is more than just creating a legal category. It is also establishing a moral category that promotes tolerance, respect for the dignity of the other and fight prejudice.

Beyond this analysis remains the question about the consequences of punishing hate speech that can be analyzed in countries with existent jurisprudence. This problem seems completely abstract here. Macedonia needs to start applying the legal provisions that punish hate speech (which are today unquestionable international standards). There is a practice developed by the European Court of Human Rights, which should be applied. And finally, a general raising of sensitivity to these phenomena is also needed.

**Bibliography:**

- Margalit, Avishai, *The Decent Society*, Harvard University Press, Cambridge, Massachusetts, 1996;
- Mihajlova, Elena, *Hate Speech and Cultural Differences*, Templum, Skopje, 2010;
- Mihajlova Elena, Bachovska J, Shekerdziev T., *Freedom of expression and Hate Speech*, OSCE, Skopje, 2013;
- Parekh, Bhikhu, „Hate Speech: Is there a case for banning?“, *Public Policy Research* - December 2005- February 2006;
- Waldron, Jeremy, *The Harm in Hate Speech*, Harvard University Press, Cambridge, Massachusetts, London, England, 2012.