

## **HATE SPEECH AND ITS DIRECT INFLUENCE ON SOCIAL STRATIFICATION OF INDIVIDUALS AND GROUPS**

### **Abstract**

Hate speech is first and foremost a social and a cultural problem, as its legal regulation is encumbered by the complexity of determining its notion and the distinction between freedom of expression as a fundamental human right and basic democratic value of modern society, and hate speech as a negative phenomenon that must be subjected to penal measures and legal bans. This distinction should be drawn and fixed by criminal legislation in accordance with the European Convention on Human Rights, which generally and expressly regulates the relationship between freedom of expression and its restrictions (Article 10), as well as with the positions of the European Court of Human Rights on hate speech.<sup>1</sup> Hate speech is understood as an expression of hatred toward a particular group. It is used to offend a person on the basis of the racial, ethnic, religious or other affiliation of the said person. Such speech basically strives to condemn or dehumanize an individual or a group, or to express anger, hatred, violence, or contempt toward them. It conveys a message of inferiority of the members of the concerned group, and expresses condemnation, humiliation and excessive hatred. All racist, xenophobic, homophobic, and other related declensions of identity-attacking expression intrinsically fall under the notion of hate speech<sup>2</sup>. Certain individuals and groups can express ideas of superiority of a particular race, religion, or nation with the intention of humiliating all those who do not belong to their "group" and call for persecution, isolation, and even genocide. In such cases, freedom of expression is interpreted too broadly and it turns into hate speech.<sup>3</sup> This paper analyzes the negative direct impact on the social division in our region, as well as its negative consequences on the destruction of human individual and morality, the destruction of human relations and the intensification of interethnic conflicts, etc. The paper also analyzes the main international documents adopted by the Council of Europe for proper identification of this problem and its prevention.

**Key words:** hate speech, social divisions, freedom of expression, target groups, hate speech in the media, hate speech effects.

## **I. INTRODUCTION**

Certain individuals or groups are increasingly using hate speech to exert strong negative direct influence and violence against other individuals or groups due to their different ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, mental or physical disability, age, family or marital status, property status and health condition.

The Republic of Macedonia has not yet registered an official court case for hate speech under our legislation, due to the complexity of determining the notion of hate speech and the distinction between freedom of expression and hate speech. Some foreign experts who monitor the situation with the media appeal to journalists to differentiate between freedom of expression

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<sup>1</sup>Excerpt from the publication Legal analysis of the concept of hate crime and hate speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.63

<sup>2</sup>Dr.Elena Mihajlova, Hate Speech and Cultural Diversity, Templum, Skopje, 2010, p.55-57

<sup>3</sup>An excerpt from the publication Freedom of expression and hate speech, published by Pravdiko on April 25, 2014

and hate speech, since they believe that Macedonia, as a signatory country of the European Convention on Human Rights, can apply judicial and legal remedies for this global issue.

The reason for the inadequate sanctioning is the apparent abuse of freedom of expression through journalist articles or statements in the public media, speeches and statements by representatives of political parties that encourage or defend violence, nationalist and extremist outbursts at sports events, flag desecration, upset religious sentiments at carnivals and other cultural manifestations, as well as the environment as an exogenous factor for the occurrence of this crime.

This paper will analyze only a few of the many examples of open use of hate speech in the media, which have been randomly selected.

## **II. HATE SPEECH IN THE MEDIA AND ITS PROFOUND INFLUENCE ON THE GENERAL PUBLIC**

A poster was shared on the social network "Facebook", on the bottom of which there were images of five Islamic religious buildings, i.e., mosques crossed out in red. The anti-hate speech platform strongly condemns the speech used in the poster and considers it to be hate speech inciting hatred and intolerance on religious grounds. Social networks and the media have already seen reactions of citizens caused by this speech. The poster was shared in response to the beginning of the construction of an Orthodox church in front of the municipal building in Kriva Palanka. At a press conference, the Mayor of the municipality, Arsencho Aleksovski, stated that he has the required permit, although some municipal council members disputed this statement. In his speech, the Mayor stated that building an Orthodox church or any other religious facilities does not constitute a violation of the rights and sentiments of the other religious communities, yet underlining that only Orthodox religious facilities will be built during his mandate. In response to this debate, the citizens launched an initiative for collecting signatures against the construction of a mosque in Kriva Palanka. The afore-stated poster was published the following day, encouraging intolerance towards the citizens of Islamic religion", the Platform reacted, expressing the stance of its constitutive member organizations Helsinki Committee for Human Rights, MIM, "Civil", the "Metamorphosis" Foundation and "Paktis".<sup>4</sup>

The Agency for Audio and Audiovisual Media Services (AAAMS) stated that TV channel Sitel spreads hate speech and encourages discrimination against the Albanians in Macedonia, according to the Association of Journalists of Macedonia. The AAAMS confirmed this occurrence through an extraordinary oversight conducted during the election campaign from December 2 to December 5, 2016, when the central news on Sitel TV at 19.00 and 23.00 broadcasted a series of feature stories and bulletins on bilingualism and the cantonization of Macedonia. "In the report, the Agency concludes that there is hate speech in the claims broadcasted by Sitel during the election campaign to achieve a certain political goal through discrimination, unilateral information and intimidation of the public. According to the Agency, the TV channel subjected the Macedonian public to persuasion, imposing an opinion, manipulating information and intimidation on the grounds of potential job losses, losing the state, tensions and war in view of creating a sense of jeopardy for the Macedonians and other

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<sup>4</sup>An excerpt from the attachment of Meta.mk (News Agency), Skopje - "The call for protest in Kriva Palanka is a hate speech" published by Pravdiko on November 6, 2015

communities from the Albanians who were presented as the enemies", the Association of Journalists of Macedonia (AJM) informed.

According to the AJM information, the report and its findings have already been submitted to the competent Public Prosecutor's Office and the Commission for Prevention and Protection against Discrimination. The Association of Journalists of Macedonia expects the Basic Public Prosecutor's Office in Skopje and the Commission for Protection and Prevention Against Discrimination to seriously review the allegations of AAAMS and make an appropriate decision.<sup>5</sup>

Metropolitan Povardarski, Agathangel issued his reaction to the adoption of the Law on the Use of Languages - "Yesterday, our lawmakers - traitors, without an eye twitch, brutally trod on the Macedonian people, as well as on all other people living in Macedonia. They chose their personal over the people's interests. It was more important for them to retain their power than the image and dignity of their families and their ancestors. They have teamed up with proven thugs and terrorists who have never stopped attacking our own country. Those who have supported this unconstitutional law will be forever remembered as the sowers of sorrow and despair in the hearts of the virtuous and honorable citizens of our fatherland".<sup>6</sup>

The afore-stated randomly selected examples of open use of hate speech in the media indicate that the media have a huge impact on the wider public, as they can stir up inter-ethnic tensions, affect those who have not adopted a stance on the political events and those who are not affiliated to a political party, sometimes even leading to war. Hence, the higher the awareness of the journalist (individual) and the editorial policy of the media, or more precisely, the commercial interest of the media owner, the clearer picture of the event in the public. However, there is only one truth - the primary goal of the media should always be informing objectively, freely, independently and with arguments, without being subjected to any pressures. The media should anticipate the consequences of the discussion on a specific sensitive topic and organize themselves by reviewing the messages to prevent statements that could incite hatred and violence.

Pursuant to Recommendation CM / Rec (2011) 7 of the Committee of Ministers of Member States on the new concept for the media, adopted on 21 September 2011, "The media should refrain from transmitting hate speech and other content which incites violence or discrimination for any reason".

The responsibility of broadcasters is the greatest when a journalist / reporter knowingly or deliberately provokes or uses hate speech; in such case, the source of the speech should be assessed, the context in which it is made available to the public, whether the journalist / editor has underlined that such speech does not reflect their editorial policy, whether the journalist / editor has pointed out that such hate speech may have negative consequences in society or, on the contrary, whether the journalist/editor has made a comment which additionally reinforces the specific form of hate speech.<sup>7</sup>

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<sup>5</sup> An excerpt from the attachment of Meta.mk (News Agency), Skopje, published on February 1, 2017 in Pravdiko

<sup>6</sup>Excerpt from the text "And the fools in their hearts" No Macedonia! "Of Metropolitan Povardarski, Agathangel published on the Diocese's website Religija.mk

<sup>7</sup>Extract from the Hate Speech Monitoring Guide prepared by the Agency for Audio and Audiovisual Media Services, p.41

Many external regulators have dealt with various cases of hate speech: gender discrimination, religious-fundamentalist issues, anti-Semitic and xenophobic language, abusive language against immigrants, language directed against the LGBT population, the Roma, etc. In determining hate speech, most regulatory bodies use the case-law of the European Court of Human Rights and domestic courts as a guiding principle. Several regulators have adopted their own guidelines integrated into the codes for programming standards (Ofcom, Gibraltar). In several countries, regulators co-operate with special bodies that determine whether certain content presented in the audiovisual media incites hatred on various grounds.

### **III. PROVISIONS RELATED TO HATE SPEECH PRESCRIBED IN THE CRIMINAL CODE, THE LAW ON PREVENTION AND PROTECTION AGAINST DISCRIMINATION AND THE LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES**

The Criminal Code contains criminal acts<sup>8</sup> related to hate speech "Endangering Security" (Article 144), which states: " A person who endangers the security of another by a serious threat to attack his life or body, or the life and body of some person close to him, shall be punished with a fine, or with imprisonment of up to six months. A person who, through an information system, threatens to commit a crime, for which a sentence of five years of imprisonment or a more severe punishment is prescribed, against a person on the grounds of gender, race, color of skin, class, belonging to a marginalized group, ethnic group, language, nationality, social origin, religious beliefs, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition or any other grounds regulated by law or ratified international agreement, shall be punished with imprisonment of one to five years".

Article 319 describes the crime that incites hatred, strife or intolerance on a national, racial, religious or any other discriminatory basis as follows: "A person who by force, mistreatment, endangering the security, ridicule of the national, ethnic, religious or other symbols, by burning, damaging or otherwise decorating the flag of the Republic of Macedonia or flags of other countries, damaging other people's objects, by desecrating monuments, graves, or in some other manner causing or exciting hate, discord or intolerance based on gender, race, color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, health condition, or in any other manner provided for by law or by a ratified international agreement, shall be punished with imprisonment of one to five years". "A person, who commits the crime from item 1 by misusing his position or authorization, or if because of these crimes, riots and violence were caused among people, or property damage with a large extent was caused, shall be punished with imprisonment of one to ten years".

Article 394 (d) describes the crime of spreading racist and xenophobic material by means of computer systems and prescribes the following: "Any person who, through a computer system, is distributing racist and xenophobic written material, image or other representation of an

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<sup>8</sup>Extracts from the Criminal Code (Consolidated text)

idea or theory that advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on sex, race, color of skin, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or by a ratified international agreement, shall be punished with imprisonment of one to five years. The sentence referred to in paragraph (1) of this article shall be also imposed upon any person who commits the crime through other means of public information. Any person who commits the crime referred to in paragraphs (1) and (2) of this article by abusing the official position or authority, or if such a crime has resulted in disturbances and violence against other people or in property damage of large proportions, shall be sentenced to imprisonment of one to ten years".

Acts related to racial or other discrimination are governed by Article (417): "A person who on the basis of sex, race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious beliefs, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition, or any other grounds provided for by law or a ratified international treaty, violates the fundamental human rights and freedoms recognized by the international community, shall be punished with imprisonment of six months to five years". "The punishment from item 1 shall apply also to a person who persecutes organizations or individuals because of their efforts for equality of the people". A person who spreads ideas about the superiority of one race above some other, or who advocates racial hate, or instigates racial discrimination, shall be punished with imprisonment of six months to three years".

The Law on Prevention and Protection against Discrimination<sup>9</sup>, stipulates in Article 4 that "This Law shall be applied by all state bodies, bodies of the local self-government, legal persons with public authorities and legal and natural persons in the area of ...., public information and the media".

Accordingly, the Agency for Audio and Audiovisual Media Services should be responsible for the implementation of the Law on Prevention and Protection Against Discrimination. Hence, one of the recommendations at the end of the text is that there must be close cooperation between the Agency and the relevant regulator of this law in the fight against discrimination. Article 5, item 3 of the said law defines the meaning of discrimination as "any unjustified legal or actual, direct or indirect differentiation or unequally acting i.e. permission (excluding, limitation or giving priority) related to persons or groups on the grounds of sex, race, skin colour, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, education, political belonging, personal or social status, intellectual and bodily disability, age, family or marital status, property status, health condition or on any other grounds".

With the adoption of the Audiovisual Media Services Directive, the European Union has taken concrete actions to deal with hate speech in the audiovisual media services. Article 6 of the Directive states that the authorities in each Member State "shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality". In December 2013,

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<sup>9</sup>Extracts from the Law on Prevention and Protection against Discrimination

the Audiovisual Media Services Directive was transposed into the new Law on Audio and Audiovisual Media Services of the Republic of Macedonia.<sup>10</sup>

#### **IV. IMPUNITY OF THE RECORDED CASES OF HATE SPEECH**

The text "Many Cases of Hate Speech, Only Few Punished"<sup>11</sup> by Vladimir Kalinski states that connoisseurs say hate speech causes hate crimes, pointing out that the attacks on buses between youths from two different ethnic communities in Macedonia are only a few of the cases that are a consequence of this phenomenon. According to the statistics of the internet platform "govornaomraza.mk" of the Helsinki Committee for Human Rights, more than 300 cases of hate speech have been registered spanning a period of four years, mostly on ethnic grounds, but also on the basis of political affiliation or sexual orientation. They mostly take place on the social networks, on internet portals, but also in the traditional media and political speeches.

According to Elena Brmbeska, MSc in Human Rights from the Helsinki Committee for Human Rights, when a hate speech is written on a social network, the number of people who have access to that hate speech is far greater and thus more harmful to society. It is dangerous from several aspects, first and foremost for the individuals who are the actual victims of that hate speech, because it causes psychological trauma, a sense of degradation, shame, humiliation, but it is also dangerous for the society, because the very foundations of hate speech are identity features taken on by larger groups.<sup>12</sup>

According to sociologist Tatjana Stojanovska Ivanova from the Faculty of Philosophy in Skopje, the phenomenon of hate speech, observed from a sociological point of view, is influenced by a number of factors. In Macedonian society, hate speech is prevalent in the family, the educational institutions, among political opponents, in the media, and contributes to the emergence of aggression and frustration among the targeted individuals. Within the family, which is the cell of every society, there is virtually less and less education as parents are preoccupied with work. Transition has taken its toll, and on the other hand, children are exposed on a daily basis to speech that is abundant with vulgar content, verbal violence and hatred directed toward those who are different on various grounds.<sup>13</sup>

According to Marina Tuneva, Executive Director of the Council of Media Ethics of Macedonia, hate crime and violence may be the consequence of the impunity of hate speech, as well as of the calls for violence that are frequent in the media and social networks. Public space, that is, the online and offline media, are often hijacked by a loud minority of individuals who promote ethnocentric ideas, arguing at the same time, that they are in support of the peace and well-being of the majority of citizens.<sup>14</sup>

#### **V. TARGET GROUPS AND CONSEQUENCES OF HATE SPEECH**

The specificity of hate acts is the choice of the victim as a member of a particular social group and making the group instrumental in achieving a far-reaching goal: the act is directed against the victim in his/her capacity of a representative of the group, and the victim is chosen as

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<sup>10</sup>Extract from the Hate Speech Monitoring Guide prepared by the Agency for Audio and Audiovisual Media Services, p.4

<sup>11</sup>Radio Free Europe, Vladimir Kalinski, March 2018

<sup>12</sup>Statement by Elena Brmbeska, Human Rights Master of the Helsinki Committee for Human Rights

<sup>13</sup>Statement by sociologist Tatjana Stojanovska Ivanova from the Faculty of Philosophy in Skopje

<sup>14</sup>Statement by Marina Tuneva, Executive Director of the Media Ethics Council in Macedonia

the means for conveying a message to the group to which it belongs. The goal that the perpetrator wants to achieve is to hurt not only the direct victim, but also the group to which it belongs.<sup>15</sup> Target groups differ by national or social background, national or ethnic origin, disability, race, religion, age, sex, marital status, belonging to a particular community, family status, sexual identity / expression / orientation / preferences, language, moral values, education, etc. In addition to formal social groups, i.e., groups that have a recognized legal status (national or ethnic groups - linguistic and other rights, religious groups - religious freedoms and rights, etc.), the act of hatred may also be directed to informal, or groups conceived by the offender and members of such groups.

The hate act is an act of discrimination, violence against individuals, in their capacity as members of certain groups, or against the groups themselves, real or imagined by the perpetrator. Thus, for example, an act of hatred is an attack on others over a certain age, only because of their belonging to that age, an attack on members of a sports team, or its fans, precisely because of their affiliation.<sup>16</sup>

One of the key aspects of the concept of hate speech is the issue of the protected characteristics that is regulated in the publication Freedom of Expression and Hate Speech by Dr. Elena Mihajlova, Dr. Jasna Bachovska and M.Sc. Tome Sekerdjiev. Albeit there is no specific answer on which characteristics should be included, as it should be a national decision based on the individual country's needs, there are nevertheless certain factors that must be taken into consideration:

- Invariable or fundamental characteristics. Hate speech attacks aspects from the identity of the person which are invariable or fundamental to the feeling of self-being. Such characteristics are usually visible, inter alia, race or skin color.
- Social and historical context. Defining the protected characteristics also requires an understanding of the history of repression and discrimination in a particular state, as well as its current social problems. Thus, the protected characteristics should include those that had been the basis for past discrimination or oppression and those that are the basis for the current or contemporary incidents of discrimination or oppression. As an illustration, blue-eyed people have no history of oppression, nor are they currently being subjected to oppression or discrimination, and therefore expression that targets this feature will not / cannot constitute a hate speech.<sup>17</sup>

Furthermore, the publication Freedom of Expression and Hate Speech states that compared to the prohibition of discrimination, there is a general list of protected characteristics provided for by national and international instruments for protection of human rights: for instance, Article 14 of the European Convention on Human Rights and Article 1 of Protocol No. 12 to the European Convention provide for an open and non-exhaustive list of protected characteristics in relation to the prohibition of discrimination such as gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, birth or any other status. Although the Convention does not explicitly state sexual orientation, physical or mental disability or age in the list of protected characteristics, the

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<sup>15</sup>An excerpt from the publication Legal Analysis of the Concept of Hate Crimes and Hate Speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.12

<sup>16</sup>An excerpt from the publication Legal Analysis of the Concept of Punishment of Hatred and Hate Speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.13

<sup>17</sup> Lawrence, Frederick M., Punishing Hate: Bias Crimes under American Law, Harvard University Press, Cambridge, Massachusetts, 1999. Same at the OSCE, Hate Crime Laws: A Practical Guide, Published by ODIHR, Warsaw, Poland, 2009, p. 38-39.

European Court of Human Rights has applied Article 14 in terms of characteristics that are not explicitly stated in this document (for example, in terms of sexual orientation, it is the judgment of 21 December 1999 in the case of *Salgueiro da Silva Mouta* against Portugal).

Article 3 of the Law on Prevention and Protection against Discrimination of the Republic of Macedonia also provides for a broad and open list of protected characteristics, *inter alia*: sex, race, color of skin, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property status, health condition or any other basis provided by law or a ratified international agreement.

Thus, the notion / concept of hate speech applies only to some of the general protected characteristics provided for by the national and international instruments for protection of human rights. Bearing in mind that hate speech involves racist, xenophobic, homophobic, and other related declensions of identity-attacking expression, the list of protected characteristics in hate speech would be limited to: race, skin color, religion or religious beliefs, ethnicity, national origin, citizenship, language; sex, gender, sexual orientation, physical or mental disability, class/social background. Namely, as we pointed out above, hate speech targets aspects of the identity of the individual that are invariable or in some sense fundamental to that particular individual. Such is, for instance, cultural affiliation. And this basis of belonging to a particular culture is used as an umbrella term that explains the nature of certain identity characteristics such as race, skin color, ethnicity, religion, national origin, citizenship or language. Their application comes in variations and they are often intertwined or used interchangeably. Identity or protected characteristics also include sex, gender, sexual orientation, class / social background (characteristic of societies with a history of class division), as well as physical and mental disability. The protected characteristics of hate speech do not include, for instance, the political affiliation of a person or his political conviction, as well as the economic or property status, marital status, education, etc. They can certainly be grounds for discrimination against the person, but insulting on the basis of belonging to such a group (for example, membership in a political party) will not be deemed as a hate speech. This is so because these belongings do not function as "markers" of the person's fundamental identity and / or do not draw lines of pre-suppression i. e. have no previous history of oppression.<sup>18</sup>

The negative consequences of these acts on individual freedoms and rights are expressed as: consequences on the individual who is the victim of such an act, in the form of psychological and affective disorder and anxiety, consequences on the victim's sense of identity and his/her self esteem, enhanced by the degree of violence that is usually higher compared to general acts; consequences on the targeted group, by creating a feeling of terror, fear and insecurity, as well as a feeling of exposure to possible injuries among its members, that may become the next victims; consequences on other vulnerable groups, such as minority groups, or groups that identify themselves with the target group, especially when the acts are based on a broader ideology or doctrine that tends to involve other groups; consequences on social relations in general, in the form of increased social disharmony and social conflicts, when the disadvantaged groups begin by apply different forms of reaction, thus creating a spiral of hatred and violence; and converting

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<sup>18</sup>Freedom of expression and hate speech, Dr. M. Mihajlova, Dr. J. Bachovska, M.Sc. T. Shekerdjiev, OSCE, Polyesterdej, Skopje, December, 2013, p. 27-29 (part of the protected characteristics), <https://www.osce.org/mk/skopje/116610?download=true>



the climate of intolerance, hatred and enmity into the gravest forms of terrorism and other acts of violence (genocide, mass destruction, etc.).<sup>19</sup>

Hate speech produces unwanted consequences. Unsanctioned stigmatization and demonization of the concerned groups over time weakens social sensitivity and encourages a climate in which their discriminatory treatment is accepted as normal. Violence or the existential threat that is implicit in hate speech rises to the surface and leads to acts of hatred. Hate speech causes great harm to society as a whole. Hate speech is never simply a repetition of a historical prejudice, but it is rather a way of repositioning such social antagonism or power relations (of superior and inferior communities). It creates barriers to distrust and enmity between individuals and groups and obstructs the normal relations between them, or in other words, it has a dilating influence on collective life or the capacity to damage the "social fabric" and divide the communities. The identity of the victim or group that is targeted by the alleged hate speech is also significant in the practice of balancing. The more vulnerable the individual or the group is, the greater the likelihood that the corresponding expression can lead to violence, cause psychological harm, and cause damage to the "sense of security" that vulnerable groups receive, knowing that they will acquire "decent treatment and respect, as they live their lives and do their work in public."<sup>20</sup>

Most of the crimes are committed by young people, vandals and robbers. The victims and perpetrators are mostly members of different ethnic communities (Macedonian or Albanian), while many victims are of Moroccan, Syrian, Iraqi and Afghan ethnic origin. The registered incidents are related to the criminal offenses provided for in the Criminal Code of the country. Most of the crimes include: bodily injury, including serious bodily injuries (32), violence (29), property damage (28), endangering safety (27), engaging in fights (10) and theft, including armed theft (9). Furthermore, 24 of the incidents include incitement of hatred, strife and intolerance on a national, racial, religious or other discriminatory basis, and 1 incident falls under racial discrimination. Often the crimes committed in one incident meet the criteria for two or more criminal offenses, hence the number of crimes increases. 43 of the incidents (70%) occurred in Skopje and in the Skopje city area. There were 8 incidents in Kumanovo, 4 in Bitola and Tetovo, 3 in Demir Kapija and Negotino, 2 in Kavadarci and 1 in Gostivar, Shtip and Kochani (in the cities or in the city outskirts).<sup>21</sup>

## **VI. HATE SPEECH PREVENTION**

The hate act attacks the equality of rights, security, public law and order, which are the basic legal values on which the functioning of social relations and social stability depend, and which increase the degree of conflict and social disorientation. In such circumstances, the basic functions of the state in the application of laws, judicial function and regulation of certain societal relations are threatened.<sup>22</sup>

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<sup>19</sup> Extract from the publication Legal Analysis of the Concept of Punishable Hate Act and Hate Speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.15-16

<sup>20</sup>Dr. Elena Mihajlova, "The legal regulation of hate speech with reference to the practice of the European Court of Human Rights", European Law, Volume 4, Volume 6, Issue 1 - 2/2015, p.41-47, Skopje, December 2015; <http://evropsko-pravo.info/mk/EP/Journal/Article/1e649350-75db-421e-99e4-ca7744a3c32c>

<sup>21</sup>Extract from the Annual Report on Hate Crimes in 2016, prepared by the Helsinki Committee for Human Rights of the Republic of Macedonia, p. 8-9

<sup>22</sup>An excerpt from the publication Legal Analysis of the Concept of Hate Crimes and Hate Speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.16

The general characteristic of the incrimination of hate speech in the Macedonian Criminal Code is the flexible determination of the legal traits of the acts. Their descriptions (incitement, exposure to ridicule, justification, etc.) do not refer to a specific action, leaving too much room for interpretation of the meaning of the perpetrator's behavior. Interpretation, which must respect the general context of expression, most often involves politically based assessments of the opportuneness of treating a particular act as prohibited hate speech and criminal prosecution of the perpetrator.

On that account, cases of undeniable abuse of freedom of expression remain outside the system of criminal justice: journalist articles or statements through the public media, speeches and statements by representatives of political parties that encourage or defend violence, nationalist and extremist outbursts in sports events, desecration of national flags, violation of religious feelings in carnivals and other cultural manifestations, etc.

The advancement of the penal-legal concept by prescribing strict descriptions of punishable acts and the consistent application of the standards and criteria of the European Court of Human Rights in the criminal justice system fall under the main challenges of the future reform of the Macedonian criminal legislation.

Prevention should include a broad spectrum of activities and stakeholders from civil society, political parties, the media, education and culture, with the aim to: clearly identify and qualify the negative phenomena; reach consensus on their condemnation and oppose by continuously taking initiatives for promotion of culture and the right to tolerance, dialogue and understanding and support of the court and other institutions in taking repressive activities for their prevention.<sup>23</sup>

## VII. CONCLUSION

All the afore-stated leads to the conclusion that hate speech has a huge negative direct impact on class division of certain individuals and groups. We are no longer in socialism, now all available instruments are used (hate speech, indecent and uncivilized behavior, disparaging different ethnicities or individuals for the purpose of gaining political advantages and destroying the Macedonian state for political or personal interests, etc.), which may eventually lead to the ruin of what little democracy has remained in this region.

According to Macedonian practice of detecting and prosecuting hate acts, there is no basic approach to their differentiation as special forms of crime. There is no particular observation and reporting, as well as statistics on hate crimes (such data are collected by Albania, Bosnia and Herzegovina, Montenegro and Serbia). The police do not keep separate records, and the criminal charges do not emphasize the existence of the motive of hatred even when there are clear indications that the perpetrator has acted upon such motives. There is also an evident tendency to avoid, or give a milder qualification to the indisputable cases of causing national, racial and religious hatred, discord and intolerance (Art.319 CC).<sup>24</sup>

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<sup>23</sup>An excerpt from the publication Legal Analysis of the Concept of Punishable Hate and Hate Speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.64

<sup>24</sup>An excerpt from the publication Legal Analysis of the Concept of Punitive Hate and Hate Speech by Academician Vlado Kambovski and Dr. Mirjana Lazarova Trajkovska, September 2012, Skopje, p.36

Specific measures and concrete actions are needed to eliminate the reasons that lead to hate speech and to create appropriate material, personnel and other conditions for the functioning of the institutions. New more comprehensive penal norms should be introduced for incriminating hate speech, which we addressed in item 6 Hate Speech Prevention. The specific punitive and legal treatment entails more severe punishment for the perpetrators of acts of hatred, separation of such acts as qualified forms of basic acts and prescription of more stringent punishments, or defining the motive itself as an aggravating circumstance in imposing the sentence.

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