

Hate Speech and Political Discourse in the Countries of the Former Yugoslavia: A Comparative Legal Analysis

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This paper aims to critically analyze the regulation of hate speech within political discourse in the post-Yugoslav region. Emphasis is placed on two interconnected aspects: the conceptual and normative foundations behind the idea of hate speech, and a comparative review of legal frameworks and judicial responses across selected jurisdictions. The first section conducts a normative and theoretical analysis to clarify the legal and theoretical foundations of hate speech and political expression in general. Using international human rights instruments, relevant jurisprudence, and key theoretical literature, this section outlines the definitional boundaries and core characteristics of hate speech. Special emphasis is placed on the normative tension between protecting political discourse, which is considered the foundation of democratic society, and the legal limits used to protect individuals and groups from incitement to discrimination, hostility, or violence. The analysis also tackles the difficulties in differentiating hate speech from controversial or offensive, yet legally acceptable, political expression, especially when discussing sensitive topics like ethnicity, religion, or historical memory. The second section uses a comparative legal approach to examine the regulatory frameworks governing hate speech in the successor states of the former Socialist Federal Republic of Yugoslavia. Although all these jurisdictions have officially aligned their legal systems with international standards, especially those of the Council of Europe, differences remain in how hate speech is implemented, interpreted, and treated by courts. While Slovenia and Croatia, as EU member states, are bound by the relevant *acquis communautaire*, the other states, although still outside the EU, have pursued similar legislative paths in anticipation of

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joining. This section, therefore, examines both the common elements and jurisdiction-specific differences to identify patterns, inconsistencies, and potential best practices. Special focus is given to instances of hate speech that have been influenced by, and still reflect, the ethno-political conflicts and wartime narratives of the 1990s. The main goal of the research is to develop analytically based criteria for distinguishing hate speech from protected political expression, considering the specific contexts of post-conflict, transitional societies in the former Yugoslav countries.

KEYWORDS: hate speech / political discourse / freedom of expression / former Yugoslav countries / informed society

Introduction

Freedom of expression is widely recognized as a cornerstone of a democratic society, and some commentators even describe it as a *sacred* principle, essential for safeguarding individual autonomy and ensuring the vitality of public discourse. Nevertheless, the unrestrained exercise of this freedom inevitably raises difficult questions: what costs does society bear, and what forms of harm may result? These concerns are particularly acute in relation to hate speech. Unlike mere offensive expression, hate speech threatens the dignity of targeted individuals and groups, disrupts social cohesion, and, in its most pernicious forms, may foster discrimination, hostility, or even violence. The enduring dilemma for democratic systems, therefore, is how to reconcile the high regard for free expression, which is sometimes elevated to the level of the sacred, with the parallel duty to protect equality, human dignity, and the integrity of the democratic order (Abrams, 1992).

Despite certain differences between the so-called U.S. model and the European model, rooted in the continental legal tradition, the prohibition of hate speech may nonetheless be regarded as a form of *ius cogens* (Abrams, 1992, p. 743; Phillipson, 2015, p. 1). Viewed through the lens of socio-cultural patterns, the content of the notion of hate speech, as well as legal responses to it, is often shaped by the political, religious, and cultural identities of a given society.²

² For example, countries where national identity is closely tied to a dominant religion frequently enact legislation that prioritizes the protection of that religion. The Afghan Law on Mass Media, for instance, prohibits content that contravenes the principles of Islam, offends other sects, or promotes non-Islamic religions. Likewise, Iranian media law forbids

Beyond this consensus, however, disagreements are widespread, particularly concerning the fundamental definition of “hate speech”, the scope and methods of its regulation, and the suitable legal responses. These differences can be explained by the fact that the boundaries of acceptable public discourse are shaped by a complex interaction of sociocultural factors that together form a society’s “cultural identity.” As noted in the literature, the most notable differences between countries lie not only in how the meaning and importance of hate speech issues influence policy responses but also in how that very meaning and importance are themselves shaped through specific historical, political, legal, economic, demographic, social, and cultural contexts (Brown & Sinclair, 2019). The expression of thoughts, opinions, and beliefs is inherently fluid and resists any attempt at uniform regulation aimed at enforcing dominant norms of acceptability (Stevanović, 2023). Therefore, constitutional approaches to hate speech have been far from uniform, as the line between impermissible hate speech and protected expression varies across jurisdictions and is often dependent on context.

In the following sections, we seek to articulate a foundational conceptual framework for ‘hate speech’ that is both precise and ethically robust across diverse political and cultural settings.

The Content of the Term Hate Speech

The concept of hate speech is relatively new (Stevanović, 2023). It took shape in academic, legal, and public discourse from the turn of the twentieth century to the twenty-first, as a response to the pressing need to regulate hostile and discriminatory language directed against minority groups. Its emergence was strongly influenced by the collective memory of the Nazi regime’s virulent anti-Semitic and racist propaganda, which served as a tool for implementing racist and anti-Semitic policies (Nikolić, 2018, p. 26). This historical context fueled a broader normative project to legally address xenophobia and intolerance towards historically marginalized and disenfranchised communities. The modern legal and academic discourse on hate speech crystallized in the late twentieth century, shaped by U.S. legal scholars who responded to the escalating

the publication of material that violates Islamic codes or public rights. See more in: Global Handbook on Hate Speech Laws, <https://futurefreespeech.com/global-handbook-on-hate-speech-laws>

wave of racially charged and socially destructive expression. Finally, the rise of social media has elevated hate speech into a pressing societal challenge that can no longer be ignored (Hietanen & Eddebo, 2023, p. 441). Within digital spaces, the modes of its expression and the forms of victimization it generates are simultaneously more immediate and less susceptible to conventional oversight. This dynamic necessitates a reevaluation of existing legal and regulatory frameworks, which must be recalibrated to address the complexities of online communication.

From a sociological perspective, hate speech is not limited to offensive words because it is a part of a more complex discourse based on prejudices and stereotypes. In this regard, the views of Michel Foucault and Manuel Castells help us understand how discourse, and hate speech in particular, functions as a mechanism that constructs hierarchies and a struggle for social power. Foucault noted that discourse shapes reality, while Castells extended this concept to the level of symbolic manipulation, explaining that hate speech is often a tool for political and social domination (Nikolić, 2018, p. 31).

Accordingly, hate speech should be conceptualized as an *active form of social expression* that generates tangible harm, or, as stated in the literature, it is a *belief-formation practice* (Badino, 2024, p. 47). As such, it constitutes what legal theory refers to as a *performative utterance*, which is speech that not only conveys meaning but also acts upon the world. Reflecting this, the Supreme Court of Canada has held that hate speech must blur the distinction between speech and conduct to be actionable, thereby underlining its performative and impactful nature.³

The key element of any legal definition of hate speech, along with its performative nature, is its grounds, that is, the characteristics or identities that such speech targets (Stevanović, 2023). The scope and practical enforceability of hate speech laws mainly depend on how broad and clear these protected grounds are. Common categories included in both

³ R. V. Keegstra 3 SCR 697, 748 (1990).

As previously noted in the paper on the analysis of hate speech (Stevanović, 2023), the United States and Europe have historically adopted different approaches to the legal regulation of hate speech. While U.S. jurisprudence, shaped by landmark cases like *Schenck v. United States* and *Brandenburg v. Ohio*, has focused on protecting even offensive speech unless it constitutes a direct incitement to imminent unlawful action, the European approach is more restrictive. European legal systems are founded on the principle that certain forms of speech can be inherently dangerous and must be prohibited, even without a clear link to a specific unlawful act (Heinze, 2006, p. 555).

international and domestic legal laws are race, ethnicity, nationality, language, religion, gender, sexual orientation, political affiliation, social origin, and health status, among others. Importantly, these categories are not fixed; they change in response to shifting societal contexts (Stevanović, 2023).

The dehumanisation of a targeted group is seen by some scholars as the fundamental characteristic of hate speech. In this regard, Parekh similarly conceptualizes three key features of hate speech, identifying *discrimination*, *derogation*, and the *exclusion* of individuals or groups (Parekh, 2012).

Normative Approach and Analysis in the Context of Political Discourse

The legal conceptualization of hate speech begins with a fundamental question about the nature of its harm: Does speech cause harm, or does specific speech inherently constitute harm? (Barendt, 2019). How this question is answered is critical, as it is the starting point for defining the legal boundaries of speech.

As previously outlined in an analysis of hate speech (Stevanović, 2023), international human rights law does not offer a single, clear definition of hate speech. However, a commonly accepted legal framework makes distinctions between expressions of hatred into three specific categories based on their severity and the required response from states. The first category includes severe forms of speech that must be prohibited, such as incitement to violence or discrimination. The second category, which states may choose to restrict, covers intermediate forms of hate speech like threats or harassment. Finally, the third category consists of speech that, while not illegal, raises concerns about intolerance and may require a non-binding state response (Article 19, 2018).

Political speech is often granted privileged protection in democratic societies. In Australia, the High Court's ruling in *Theophanous* provided a broad definition, stating that political speech includes any communication relevant to a citizen's formation of public opinion. Similarly, in German jurisprudence, the Constitutional Court has also emphasized the need for intensified protection of discourse on matters of legitimate public interest, as seen in the *Lüth* case (Barendt, 2009).

Political discourse, in its broadest sense, may encompass virtually any matter of public concern (Van Dijk, 1997, p. 25). To address this, scholars have proposed three main approaches, as follows: the personal, realistic, and mixed principles (Stevanović, 2023). The *personal principle* is a simple method that identifies political speech based on the speaker's role, such as a public official. In contrast, *the realistic principle* prioritizes the content, and it defines political discourse as any speech on public matters, regardless of who is speaking. The most effective model, however, is *the mixed approach*, which combines both the speaker's identity and the content of the speech. This strategy allows for a more balanced assessment that protects democratic dialogue while also setting clear limits on harmful expression.

To clearly distinguish between protected political speech and illegal hate speech, legal systems must employ clear, objective standards. While international guidance like the Rabat Plan of Action, adopted by UN human rights experts, provides a clear six-part test for identifying hate speech, its application in the digital age presents unique challenges. Overall, the test considers factors such as context, speaker, intent, content, and form, as well as the extent of dissemination and likelihood of harm, including imminence. This framework ensures that legal restrictions on speech are applied only to the most severe and socially harmful expressions of speech.

Context is indispensable in determining whether particular speech constitutes incitement to discrimination, hostility, or violence. Judicial bodies consistently take into account the historical, cultural, and political circumstances within which the expression occurs. Germany, for example, in light of its singular historical experience with Nazism, justifiably maintains more stringent prohibitions on anti-Semitic expression (Rosenfeld, 2002, p. 1566). This move has sparked concerns about the possible weakening of established hate speech norms and underscored the need for consistent global standards in this area. The content and presentation of speech can still indicate hate speech, particularly when symbolic or historically charged language is used. A pertinent example is the chant "*For Home – Ready*" (*Za dom – spremni*), employed by certain Croatian nationalist groups. Although seemingly innocuous, the phrase is historically associated with the fascist Ustaše regime and its genocidal actions. In *Šimunić v. Croatia*, the European Court of Human Rights upheld sanctions against a football player who used the expression in front of a stadium crowd, emphasizing the symbolic weight of the phrase, the

contextual circumstances, and the speaker's influential role (Stevanović, 2023).

The speaker's identity plays a complex and ambivalent role. In many jurisdictions, lawmakers and government officials enjoy parliamentary immunity, even when engaging in speech that is deemed harmful or offensive. Public figures and individuals, regardless of their profession, possess greater potential to influence public opinion, and consequently, to incite or provoke hatred, among other effects.

Importantly, intent is a necessary element for establishing incitement. As previously noted, a distinctive feature of hate speech is its performative nature, which sets it apart from mere insults.

The extent of a speech act, its reach, audience size, and public accessibility, also increases the likelihood of legal classification as hate speech. Widely disseminated speech that meets other Rabat Plan criteria is more likely to provoke real-world harm and warrant legal consequences. Hate speech can be expressed through any means of communication; however, when disseminated via mass media, it carries a significantly greater potential to cause harm and has often preceded large-scale violent conflicts (Ćirić, 2006, p. 2013).

Furthermore, in that regard, the immeasurable impact of the Internet and social media must be acknowledged, as they have become platforms where hate speech is practiced almost routinely (Pavlović, 2022). Such a state of affairs has engendered an extensive and continuing debate that concerns not only the accountability of internet platforms and online media outlets but also the methods and approaches for eliminating hate speech from the public sphere. In this context, it is of considerable importance to highlight the judgment delivered by the Grand Chamber of the ECtHR on 19 June 2015, in the case of *Delfi AS v. Estonia*.⁴ In this case, the Court determined that Delfi AS, as the operator of an online portal, was held liable for defamatory speech that undermined the honor and reputation of individuals, published by anonymous commentators on its platform.

⁴ Delfi As v. Estonia, 64569/09.

Hate Speech – The Case of the Countries that Emerged from the Former Yugoslavia

The countries that emerged from the dissolution of the former Yugoslavia are marked by deeply rooted socio-political complexities that continue to shape both the legal regulation of hate speech and the broader contours of political culture and public discourse. These complexities are historically grounded in the divergent legacies of the Ottoman and Habsburg empires, whose respective legal, administrative, and religious frameworks left a lasting imprint on the region's cultural and institutional development.

While the constituent nations of the former Yugoslavia maintained a form of relative cohesion under a shared federal structure for over seven decades, the violent dissolution of the federation in the 1990s gave rise to enduring collective trauma. War, without question, stands as the most potent generator of negative emotions; emotions which, in this context, were shaped and magnified by a shared sense of betrayal and abrupt collapse of a once-common political and cultural identity. Hatred, as expressed during and after the conflict, does not emerge as a singular emotional state but rather as a complex, layered affective response. It often manifests as anger, a need for distancing, self-protection, and ultimately, through mechanisms of dehumanization (Sternberg, 2003). These affective processes are deeply embedded in public discourse, where hate speech serves as both a symptom and a catalyst of broader societal divides. Importantly, doctrinal perspectives have long emphasized that hatred is rarely unilateral; rather, it is often a form of reactive antagonism, or a counter-hatred, motivated by a perception (real or imagined) of prior hatred emanating from the target group (Delić, 2015).

The Yugoslav Wars, particularly the civil conflict from 1991 to 1995, played a transformative role in exacerbating these latent tensions and entrenching hate-based rhetoric as a salient feature of political communication. Without delving into the broader geopolitical or ideological causes of the conflict, it is essential to highlight the international community's inadequate response, not only in terms of preventing or halting hostilities, but also in addressing the structural ruptures that the war exposed and exacerbated. This failure contributed to the entrenchment of collective trauma, leaving societies susceptible to resurgent hate speech in response to renewed political tensions or nationalist provocations. It is often said, and history persistently confirms,

that truth is the first casualty of war. In the fog of armed conflict, facts are not merely distorted but are systematically sacrificed on the altar of strategic narrative-building. Competing sides do not merely exchange firepower, but also unleash waves of disinformation and symbolic aggression, weaponizing language itself to obscure realities, mobilize fear, and justify violence (Ćirić, 2015, p. 33).

During the war, political leaders systematically misused domestic media⁵ for propaganda purposes, often portraying themselves as victims by fabricating narratives of suffering and atrocities committed by the opposing side, aiming to elicit sympathy and protection from the international community. A frequently employed strategy in the context of the Yugoslav conflict involved launching a coordinated media campaign to prepare the ground for war, followed by a phase marked by the systematic demonization of the designated enemy. In this stage, the enemy was deliberately dehumanized in public discourse, reduced to an abstract embodiment of evil rather than recognized as individuals. However, the narrative shaped by the international community, and particularly Western one, was itself driven by strategic political interests, frequently at the expense of truth and justice.⁶ In line with their foreign policy interests, Western powers sought to portray one side, namely, the Serbian side as the sole aggressor and principal culprit by relying on distorted claims about the war and its causes, or by exaggerating specific military actions, in a manner that itself amounted to hate speech, exhibiting all its constitutive elements.⁷ Such a narrative not only failed to contribute to the resolution of the conflict but, on the contrary, served to inflame it further.

⁵ As noted in Mark Thompson's *Forging War: The Media in Serbia, Croatia and Bosnia-Herzegovina*, propaganda played a pivotal role in shaping national narratives during the conflicts of the 1990s: "In Belgrade, it enabled the Serb authorities to encourage all Serbs to see themselves as the tragic, blameless scapegoats in an international conspiracy to destroy the Serb people and their homeland. In Croatia, it permitted the government to portray itself (falsely) as the last bastion of Western 'democratic' values. At the same time, it enabled the Muslim-dominated government of Bosnia to present itself as an innocent victim, which it has not always been." (Thompson, 1996).

⁶ In accordance with the principle of political opportunism, when it comes to external communication, there is no informational pluralism, as there is no plurality of interests (Vuković, 2009, p. 42).

⁷ Helmut Kohl was explicit when, in early 1998, he reportedly declared that "the Serbs should drown in their own stench." Similarly, the European of October 5, 1998, offers a stark example of what constitutes hate speech: "The Serbs are a pariah people—the rotten apples in Europe's barrel. They must be neutralized." Such statements can hardly be interpreted as anything other than incitement to hatred, if not genocide itself. This becomes

Such rhetoric, often infused with overt chauvinism, not only impedes democratic consolidation but sustains a volatile communicative environment in which hate speech remains a powerful tool for political mobilization and social polarization in terms that they are exploiting diversity of historical memory (Ramet, 2007, p. 26).⁸ This form of narrative deeply permeated the general population, thereby multiplying the problem of hate speech in the years that followed.⁹ This is especially

even more disturbing in the context of the 1999 NATO bombing campaign, during which the London-based *The Sun* published a headline reading: “Bomb them like dogs!” (Ćirić, 2015, p. 34).

⁸ It is therefore not surprising that, even decades after the end of the conflicts, many politicians continue to employ chauvinistic rhetoric and hate speech targeting other ethnic groups from the former Yugoslav republics. This discourse often glorifies unlawful military and paramilitary actions while relativizing or denying their criminal nature, frequently using language that dehumanizes others. For instance, Croatia officially commemorates Operation Storm every year on August 5, marking it as the Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders. The state holds ceremonies in Knin with top officials, military honors, and public events. While celebrated in Croatia as a symbol of liberation, the operation is viewed in Serbia and among many Serbs as a day of mourning due to the mass exodus and crimes committed against Serb civilians. In Serbia, certain public gatherings, most frequently sports events, are often marked by chants such as ‘Nož, žica, Srebrenica,’ a slogan with an explicitly hostile and threatening connotation toward the Bosniak population.

⁹ For instance, the European Court of Human Rights unanimously held that the applicant’s conviction for inciting national, racial, and religious hatred did not violate Article 10 of the European Convention on Human Rights. Mr. Smajić, a Bosnian lawyer, had posted comments on a publicly accessible website speculating about potential actions by Bosniacs in the event of renewed conflict and the secession of Republika Srpska. Domestic courts—the Basic and Appellate Courts of the Brčko District—found that the forum, although requiring registration to post, was publicly accessible and therefore constituted a public space. They concluded that the applicant’s statements were objectively capable of inciting interethnic hatred and could not be protected under the right to freedom of thought or opinion, as they amounted to hate speech. The Constitutional Court of Bosnia and Herzegovina upheld these findings, ruling that the restriction on expression complied with Article 10(2) of the ECHR. The ECtHR confirmed that the interference was lawful, pursued a legitimate aim, and was necessary in a democratic society. The judgment underscores the principle that freedom of expression may be restricted where it poses a threat to interethnic tolerance in post-conflict societies. Also, on June 17, 2022, the Oversight Board ruled that Meta had wrongly upheld a Facebook post depicting ethnic Serbs as rats. The post, which was shared by a Croatian news portal, featured an edited Disney video with the city of Knin overrun by rats, symbolizing ethnic Serbs. Initially, Meta did not remove the content, claiming it did not violate the Hate Speech policy. However, after an appeal and further review, Meta conceded that the post breached both the Hate Speech and Violence and Incitement standards, as it was dehumanizing and could incite harm. The Board emphasized the need for content removal to prevent further harm, aligning with Meta’s human rights responsibilities.

evident in the use of social media, which has become a battleground for hate speech, particularly when private users comment on certain phenomena and events. This reflects a universal problem regarding online hate speech, as it transcends borders and presents significant challenges for regulating and mitigating its impact on a global scale.

What is essentially at play is the exploitation of deep-seated negative emotions present within societies of the region, sentiments that had been simmering even prior to the outbreak of the Yugoslav Civil War and were further amplified by the subsequent chain of events. The Jasenovac camp was the largest concentration and extermination camp on the territory of the Independent State of Croatia (NDH) (today's Croatia) during World War II. Established in August 1941, the camp remained operational until April 1945. The Ustaše regime administered it with the explicit aim of exterminating Serbs, Jews, Roma, and political opponents of the regime, including communists, anti-fascists, and other dissenters. During the Yugoslav conflict itself, numerous events occurred that profoundly shaped the region's collective memory, such as *Operation Storm*, during which hundreds of thousands of Serbs were expelled from what is now Croatia to the territory of present-day Serbia, or the *Srebrenica*, in which a certain number of local Bosniak (Muslim) civilians were killed. These and similar events have revealed the full destructive force of war, not least in terms of the proliferation of hatred and intolerance disseminated through public discourse. On one hand, numerous representatives of the regime in Serbia issued overtly nationalist messages, frequently resorting to hate speech and the incitement of interethnic animosity.¹⁰ This rhetoric served to justify the fact that the population was subjected to international sanctions, despite the reality that the majority of the territory of present-day Serbia did not witness active combat during the Yugoslav Civil War (Kojić, 2022).

More details on: <https://globalfreedomofexpression.columbia.edu/?s=Oversight+Knin>.

¹⁰ Vojislav Šešelj, leader of the Serbian Radical Party, was indicted before the International Criminal Tribunal for the former Yugoslavia (ICTY) for inciting hatred, violence, and discrimination, with a particular focus on his role in spreading hate speech during the wars of the 1990s. In the 2018 ruling, Šešelj was sentenced to 10 years in prison, although the sentence was reduced for the time he had already spent in detention. The court found that his public speeches, particularly those targeting ethnic and religious minorities, were inciteful in nature, contributing to an atmosphere of hatred and ethnic persecution. Šešelj was convicted for inciting persecution, including forced displacement, deportations, and inhumane treatment of Croats and Muslims (Bosniaks) in Hrtkovci in 1992, within the broader context of the Yugoslav wars. For more details, see Kojić, T. (2022). *Govor mržnje u sferi javnog obraćanja*. U Z. Pavlović & M. Ljubičić (Ur.), *Govor mržnje* (str. 131–154). Institut za kriminološka i sociološka istraživanja .

Instead, atrocities were primarily committed against ethnic Serbs residing in the territories of what are now Croatia and Bosnia and Herzegovina. A particularly emblematic example is an earlier statement by the current President of Serbia in which he declared that for every Serb killed, 100 Muslims would be killed. On the other hand, representatives of the emerging regimes, particularly in Croatia and Bosnia and Herzegovina, used anti-Serb rhetoric and hate speech to justify military operations and the suffering inflicted upon populations and territories under their military and political control.^{11,12}

Within the broader framework of political discourse in the post-Yugoslav region, the normalization of hate speech is often reinforced not only through political rhetoric but also through cultural expressions that carry significant symbolic and emotional weight. There are numerous instances in which state officials, during official ceremonies and public events organized or endorsed by government institutions, invite performers who have gained notoriety for promoting explicitly militaristic and incendiary rhetoric through their music. Notably, such artists often sell hundreds of thousands of tickets for a series of scheduled concerts,¹³

¹¹ In the case of *Prosecutor v. Dario Kordić*, the International Criminal Tribunal for the former Yugoslavia (ICTY) found Kordić, a high-ranking political leader of the Bosnian Croats, guilty of crimes against humanity and violations of the laws and customs of war, particularly for his role in the ethnic persecution of Bosniak civilians in Central Bosnia. While the judgment did not explicitly isolate hate speech as a standalone offense, it highlighted the instrumental role of inflammatory nationalist rhetoric and propaganda in legitimizing and inciting violence against the Muslim population. Kordić's political speeches and public statements were cited as part of a broader campaign that fostered an environment conducive to mass atrocities, notably the massacre in Ahmići. Thus, the case exemplifies how political discourse, when infused with ethno-religious animosity, can function as a vehicle for incitement and be legally relevant in establishing intent and participation in a joint criminal enterprise.

¹² During the 1991–1995 armed conflict in Croatia, instances of hate speech directed against Serbs were documented in both political rhetoric and the media. Slogans such as “*Serbs to the willows*” (“*Srbe na vrbe*”), a historically loaded incitement to violence and expulsion, were used at public rallies and in graffiti. Public discourse frequently conflated Serbs with “Chetniks” and aggressors, framing them collectively as enemies of the state. This rhetoric intensified during unlawful military operations such as *Operation Storm* and was often reflected in statements by public officials and nationalist politicians (Amnesty International, 1996). In parallel, media outlets and various local radio stations published dehumanizing portrayals of Serbs, depicting them as “butchers,” “aggressors,” or even “genetically defective.” These narratives contributed to the stigmatization of the Serb population and fostered an atmosphere of ethnic hostility (Human Rights Watch, 1999).

¹³ <https://velikeprice.com/en/society/baja-vs-thompson/>, Accessed May 1st, 2025.

reflecting a deeply troubling level of societal normalization and, in some cases, endorsement of war-mongering narratives.

Another pivotal event that significantly shaped and intensified the narrative of hate speech, particularly in relation to Serbia, was the unlawful 1999 NATO bombing of the Federal Republic of Yugoslavia. As the bombing of Yugoslavia was conducted in direct contravention of the rules of international law and without the requisite authorization of the United Nations Security Council, and given that its victims included innocent civilians, among them children, as well as non-military civilian infrastructure, it has been widely criticized as a breach of both the UN Charter and international humanitarian law. The critical stance toward this event has, in some cases, escalated into hate speech directed not only at proponents of the NATO intervention, but also at representatives of the Kosovo Albanian community, who, in diplomatic terms, strongly lobbied for the bombing. At the same time, their militant¹⁴ Organization, the Kosovo Liberation Army (KLA), opposed the legitimate authorities by engaging in anti-Serb terrorist activities.

Regarding the legal mechanisms for combating and preventing hate speech, it can be stated that all states that emerged from the former Socialist Federal Republic of Yugoslavia (SFRY) have an appropriate normative framework that, for the most part, aligns with relevant international documents, notably the Council of Europe's legal framework. As Slovenia became a member of the European Union in 2004 and Croatia in 2013, EU law related to the suppression of hate speech has been applied in these countries. This framework also serves as a reference for legislators in other republics that are candidates for EU membership, as harmonization with EU law is one of the key elements in the process of acquiring Union membership status.

Regarding the criminal law response, which constitutes the most significant mechanism for countering hate speech, it is possible to identify notable differences among the successor states of the former SFRY. All of these countries, as a rule, criminalize expressions aimed at inciting or inflaming national, ethnic, or religious hatred and intolerance. However,

¹⁴ In Serbia, the Kosovo Liberation Army (KLA) was officially designated as a terrorist organization, while certain U.S. officials similarly characterized the group as such. The United Nations, through Security Council Resolution 1160 of 1998, condemned the violent acts occurring in Kosovo, including those perpetrated by the KLA, yet refrained from formally classifying the organization as a terrorist entity.

distinctions emerge in terms of normative interpretation and the systemic classification of these offenses. In Serbia and Montenegro, such acts are categorized as offenses against the constitutional order and state security; in North Macedonia, as offenses against the state; whereas in Bosnia and Herzegovina, they fall within the framework of protecting fundamental human rights and freedoms, and in Croatia and Slovenia, they are treated as offenses against public order and peace.

These differences are also reflected in the scope of potential passive subjects, ranging from individuals belonging to specific socio-biological groups to entire nations and ethnic communities residing within a given state. As for the conduct constituting the offense, it typically consists of incitement (i.e., the creation of a new state of hostility) or exacerbation (i.e., the intensification of an existing one) of violence, hatred, or intolerance, and in some jurisdictions even discord. The latter reflects the most stringent legislative approach, as exemplified by Bosnia and Herzegovina and North Macedonia.

Despite being a socialist and non-democratic state, the SFRY included in its criminal code the offence of inciting national, racial, or religious hatred,¹⁵ an offence which, in substance, corresponds to contemporary hate speech legislation widely accepted in liberal democracies, and which serves as a notable example of high-quality legislative drafting, demonstrating a clear and early understanding of the principles underlying what is now recognized as hate speech. This is evident in the precise legal distinction drawn between mere insults and hate speech, the latter being conceptually well-defined due to its performative nature.¹⁶ In terms of the normative framework, all present-day countries that emerged from the

¹⁵ Restrictions on freedom of expression in the Socialist Federal Republic of Yugoslavia (SFRY) can also be analyzed through the lens of Article 134 of the ex Federal Criminal Code, entitled “Incitement of National, Racial, and Religious Hatred, Discord, or Intolerance”: “Anyone who, through propaganda or in any other way, incites or stirs up national, racial, or religious hatred or discord among the nations and nationalities living in the SFRY shall be punished by imprisonment for a term of one, to ten years.

Anyone who, by insulting citizens or otherwise, incites national, racial, or religious intolerance shall be punished by imprisonment for a term of three months to three years.

If the act referred to in paragraphs 1 or 2 is committed systematically, by abuse of position or authority, in a group, or if it results in disorder, violence, or other serious consequences, the offender shall be punished for the act under paragraph 1 by imprisonment of not less than one year, and for the act under paragraph 2 by imprisonment ranging from six months to five years.”

¹⁶ It is also noteworthy that the prescribed penalty is twice as severe as the corresponding criminal provisions in the legal systems of the successor republics of the former SFRY.

former Yugoslavia (Serbia, Bosnia and Herzegovina, Croatia, Slovenia, North Macedonia, and Montenegro) have legal systems that, to varying degrees, align with international standards, although there remains room for improvement. It should not be overlooked that these states inherited a notably well-developed legal framework for regulating hate speech from the legislation of the former SFRY. However, the most pressing issue is the frequent normalization and legitimization of hate speech by state actors, which in turn influences judicial decision-making in hate speech-related cases and undermines institutional capacity to combat online hate speech effectively.

Serbia

The Republic of Serbia is the legal successor of the former Yugoslavia and the largest of its former constituent republics. Although it is not a member of the European Union, Serbia is a member of the Council of Europe, which significantly influences its normative response to hate speech. As a member state, Serbia is bound by the principles and provisions of the ECHR, particularly those relating to the protection of freedom of expression and the prohibition of hate speech. This framework is further shaped by the rulings of the ECtHR, which has developed substantial jurisprudence on hate speech. In this regard, the provision of Article 18, Paragraph 3 of the Constitution of Serbia¹⁷ This is significant, as it stipulates that the provisions on human and minority rights shall be interpreted in favor of advancing the values of a democratic society, in accordance with applicable international standards of human and minority rights, as well as the practice of international institutions that oversee their implementation.

In the legal system of the Republic of Serbia, hate speech is primarily regulated through several key legal instruments, each addressing different aspects of the issue. The Constitution of the Republic of Serbia, in its Articles 21 and 49, guarantees the fundamental right to freedom of expression but provides for its limitation in cases where it undermines public order, the rights of others, or the values of a democratic society.

¹⁷ *Constitution of the Republic of Serbia*, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

Based on the fact that hate speech is criminalized in various ways in most modern legal systems, the primary response to hate speech is typically realized through the criminal law mechanism. Given the previously presented conceptualization of the term hate speech, we consider that the criminal offenses most directly opposing hate speech are prescribed in Articles 317 and 387 of the Criminal Code.¹⁸ because in both cases, the *actus reus* of the offense consists in inciting or fanning hatred.¹⁹

An important general feature of Serbian criminal legislation is that if a criminal offense is committed out of hatred based on race, religion, national or ethnic origin, sex, sexual orientation, or gender identity of another person, such a circumstance must be considered by the courts as an aggravating factor in sentencing, unless this motive is already an element of the criminal offense itself, in order to avoid the impermissible double assessment of the same circumstance.²⁰

The Criminal Code of Serbia explicitly criminalizes actions that incite hatred, as outlined in Article 317, which prohibits the incitement and

¹⁸ Criminal Code of the Republic of Serbia, *Official Gazette of the RS*, Nos. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024.

¹⁹ In addition to the above-mentioned offenses, there exists a range of other criminal provisions aimed at protecting honor and reputation, as well as the freedoms and rights of individuals and citizens, whose protected legal object may also be harmed or endangered through the expression of hate speech.

²⁰ Art. 54a of the Criminal Code of the Republic of Serbia.

exacerbation²¹ of national, racial, and religious²² hatred among nations or ethnic communities living in Serbia.^{23,24}

For such acts, the law prescribes a penalty of imprisonment from six months to five years. The specificity of this incrimination lies in the fact that the passive subject of the offense is the nations and ethnic communities (which should also be understood to include national minorities)²⁵ living in Serbia. This implies that nations and ethnic communities not officially recorded in the population census as residing in Serbia cannot be considered the passive subjects of this criminal offense. Consequently, even if all other elements of the offense are present, it will not be regarded as a criminal act in relation to those communities, since they do not fall within the scope of legal protection provided by this incrimination.

²¹ The relevant incrimination does not explicitly require that expressions amounting to incitement or exacerbation of hatred be made publicly, as is the case with corresponding provisions in the criminal legislation of Croatia, Bosnia and Herzegovina, or Montenegro. However, it is to be understood that such expressions, by their very nature, are communicated in a manner that places them outside the private sphere

²² Although the title of the offense explicitly mentions it, the legal description fails to list religious groups as potential passive subjects of the act, despite the fact that religious affiliation is not necessarily tied to ethnic or national identity.

²³ The Republic of Serbia is a multi-ethnic country, home to a diverse array of nations and ethnic communities. The largest ethnic group in the country is the Serbs, who comprise more than 80% of the population. Alongside the Serbs, several minority communities contribute to the ethnic diversity of Serbia. These include the Hungarians, primarily located in the Vojvodina region, particularly in the Banat area, and the Bosniaks, who predominantly reside in the southeastern part of the country, particularly in the Raška region. Croats, although a smaller group, are also present in Vojvodina and certain central regions of Serbia. Other notable ethnic groups in Serbia include the Albanians, who are concentrated in the Preševo Valley and in the southern part of Serbia, specifically in the autonomous province of Kosovo, as well as the Roma, a significant community present in urban areas across the country. Additionally, there are smaller communities of Montenegrins, Macedonians, Slovaks, Rusyns, Bulgarians, Russians, and Ukrainians, with the majority of these groups residing in Vojvodina or southeastern Serbia. In addition to these, Serbia is home to other smaller ethnic communities, such as Czechs, Italians, Jews, Arabs, and others, all of which contribute to the country's multicultural makeup.

²⁴ Incitement refers to any activity aimed at generating ethnic, racial, or religious hatred or intolerance—implying that such hatred or intolerance did not previously exist among the peoples or ethnic communities living in Serbia. In contrast, ‘inflaming’ denotes activities that intensify or deepen pre-existing hatred or intolerance, suggesting that animosity or hostility already existed, albeit in a latent or lower-intensity form, prior to the act.

²⁵ For a more detailed explanation, see Stojanović, Z. (2022). *Commentary on the Criminal Code*. Službeni glasnik, p. 998.

Given that this criminal offense is classified under the group of crimes against the constitutional order and security of the Republic of Serbia, it follows that if the act is directed solely at an individual with the intention of causing personal harm, the offense in question will not be constituted. In other words, the criminal liability under Article 317 arises only when the act is aimed at inciting hatred against a collective, specifically a nation or ethnic community, rather than targeting a person as an individual.²⁶ The dominant interpretation in judicial practice holds that the offense is complete once the conduct has the potential to incite or inflame hatred or intolerance (abstract danger), regardless of whether such consequences actually occur (Borka, 2024, p. 157).

There are also qualified forms of this criminal offense, which depend either on the manner of commission, such as through coercion, abuse, or threats to personal security, or on the status of the perpetrator, particularly when the act is committed through the abuse of official position or authority.

The criminal offense of racial and other forms of discrimination,²⁷ as defined in Article 387 of the Criminal Code of the Republic of Serbia, is

²⁶ Judgment of the Court of Appeals in Belgrade under the case number Kž1 250/14.

²⁷ „Whoever on grounds of race, colour, religion, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by Serbia, shall be punished with imprisonment of six months to five years.

The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organisations or individuals due to their commitment for equality of people.

Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination, shall be punished with imprisonment of three months to three years.

Who spreads or otherwise makes publicly available texts, images or any other representation of ideas or theories advocated or encourages hatred, discrimination or violence against any person or group of persons based on race, colour, religious affiliation, nationality, ethnic origin or other personal property, shall be punished with imprisonment of three months to three years.

Whoever publicly approves of, denies the existence or significantly impairs the gravity of genocide, crimes against humanity and war crimes committed against a group of persons or a member of the group designated on the grounds of their race, colour of skin, religion, origin, state, national or ethnic affiliation, in the manner that may lead to violence or inciting hatred towards such a group of persons or a member of such a group, where such criminal offences are determined by a final judgement of a court in Serbia or of the International Criminal Court, shall be punished with imprisonment of six months to five years.

Whoever publicly threatened that, against a person or group of persons because of a particular race, colour, religion, nationality, ethnic origin or because of other personal

aligned with the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid.²⁸ This broad model of criminalization has been further reinforced by the Council Framework Decision 2008/913/JHA of 28 November 2008,²⁹ which introduced the criminalization of public approval, denial, or gross trivialization of certain serious international crimes, such as genocide, crimes against humanity, and war crimes.

When it comes to the regulation of hate speech in other sector-specific laws, in some cases, the regulation of hate speech is done in a rather procedural manner, with hate speech generally prohibited without specifying criminal or civil liability. For example, the Law on Public Information and Media³⁰ prohibits hate speech but does not foresee liability for media editors or journalists if they violate this prohibition. In contrast, the Law on Electronic Media³¹ provides for misdemeanor liability for violations of the rules prohibiting hate speech. At the same time, the regulator may impose protective measures on broadcasters that air content constituting hate speech.³²

property, committed a criminal offence punishable with imprisonment of four and more years, shall be punished with imprisonment of three months to three years.”

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, entered into force 4 January 1969, 660 UNTS 195.

²⁹ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, *Official Journal of the European Union*, L 328, 6.12.2008.

³⁰ Law on Public Information and Media, *Official Gazette of the RS*, Nos. 83/2014, 58/2015, 12/2016 – authentic interpretation, 54/2019, 52/2021, and 92/2023.

³¹ Law on Electronic Media, *Official Gazette of the RS*, Nos. 83/2014, 6/2016 – authentic interpretation, 129/2021, and 92/2023.

³² In addition to the mentioned laws, other legal acts in Serbia also contain provisions aimed at combating hate speech. For instance, the Law on the Prohibition of Manifestations of Neo-Nazi and Fascist Organisations and Prohibition of the Use of Neo-Nazi and Fascist Symbols and Marks prohibits the production, dissemination, glorification, or storage of propaganda materials, symbols, or insignia that incite or spread hatred or intolerance based on citizens' affiliations, or on racial, ethnic, or religious grounds. The Law on Public Assembly, in Article 8, stipulates that assemblies may be prohibited if their purpose includes incitement to racial, ethnic, religious, or other forms of hatred, inequality, or intolerance. Similarly, the Law on Political Parties forbids political party activities that involve incitement or promotion of racial, ethnic, or religious hatred (Borka, 2024, p. 156).

Slovenia and Croatia

Both Slovenia and Croatia, as successor states of the former SFRY and current members of the European Union, have aligned their legal systems with European standards in addressing hate speech. Their approaches are grounded in international obligations, notably the ECHR, the Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, and relevant *acquis communautaire*. Nonetheless, each jurisdiction incorporates additional domestic instruments reflecting its specific legal and socio-political context.

In Slovenia, hate speech is criminalized under Article 297 of the Criminal Code,³³ which penalizes public incitement to hatred, violence, or intolerance based on national, racial, religious, or other personal grounds. This provision requires that the incitement be committed in a manner likely to disturb public order or pose a threat to public peace. A range of media and sector-specific legislation provides for supplementary civil and administrative measures, particularly in relation to media conduct and public discourse.

In one landmark and influential case,³⁴ the Supreme Court of Slovenia redefined the legal interpretation of the criminal offence of public incitement to hatred, violence, or intolerance. The Court concluded that the offender's conduct does not need to result in an immediate threat to public order; it suffices that the act is objectively capable of creating a concrete danger to public order.

As has already been established in Serbia, Slovenia took a more assertive stance toward curbing hate speech with a 2023 amendment to its Criminal Code, introducing “hate crime” as an explicit aggravating circumstance that the courts must take into account in determining the punishment when the crimes are committed with hateful or discriminatory motives (Kapelańska-Pręgowska & Pucelj, 2023).

In Croatia, hate speech is addressed under Article 325 of the Criminal Code,³⁵ which prohibits public incitement to violence or hatred against

³³ Criminal Code, Official Gazette RS, št. 50/12—official consolidated text, 6/16—corr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22—ZZNŠPP and 16/23.

³⁴ Vrhovno sodišče Republike Slovenije, Sodba II Kp 65803/2012.

³⁵ Criminal Code of the Republic of Croatia (Official Gazette, Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24).

groups or individuals based on race, religion, ethnicity, sexual orientation, or other grounds. Furthermore, the Criminal Code imposes stricter penalties for certain types of hate speech, such as directly and publicly inciting genocide, the crime of aggression, and terrorism, as is also the case in the legislation of other former Yugoslav republics.

In addition to criminal provisions, a range of media and sector-specific legislation imposes obligations on broadcasters and online platforms to refrain from and prevent the dissemination of hate speech.

Croatian courts have shown particular sensitivity in cases involving the legacy of war-related rhetoric. This approach is evident in the Šimunić case discussed above, where the courts underscored that expressions evoking fascist or nationalist sentiment, especially in a post-conflict society, can be lawfully restricted when they pose a risk to social cohesion and interethnic relations. In the Miljak case, the Constitutional Court upheld the convictions of the applicant, who, as the president of the Croatian Pure Party of Rights, organized a commemoration in Slunj honoring Ustaše officer Jure Francetić.

During the event, he made a speech praising the NDH, the Black Legion, and Francetić's wartime path. Following his speech, he shouted "God and Croats, for the homeland", while another person in the group shouted "ready" and performed a Nazi salute (Hlebec & Gardašević, 2021, p. 23). The court ruled that his actions publicly promoted unacceptable political messages, incited the crowd to disrupt public order, and encouraged hostile behavior, violating public peace.³⁶

While both Slovenia and Croatia maintain a dual-track approach, combining criminal sanctions with civil and regulatory mechanisms, their legislative design reflects contextual nuances. Slovenian law places particular emphasis on the condition that hate speech must endanger public order and peace. In contrast, Croatian law includes broader criteria and integrates post-conflict sensitivities more directly into interpretation and enforcement.

³⁶ The decision of the Constitutional Court of the Republic of Croatia, U-III-1296/2016, dated May 25, 2016

North Macedonia and Montenegro

Both North Macedonia and Montenegro, as post-Yugoslav states and Council of Europe members, have adopted legal and institutional frameworks to combat hate speech, aiming to align with international standards, including the ECHR and the Framework Decision 2008/913/JHA. Although not EU members, both countries have undertaken legal harmonization as part of their respective EU accession processes.

In North Macedonia, hate speech is criminalized under Article 319 of the Criminal Code,³⁷ which penalizes incitement to national, racial, or religious hatred, discord, or intolerance.³⁸ The provision applies to acts committed through the press, broadcasting, or other public means and carries heavier penalties if committed via computer systems. Additionally, a range of media and sector-specific legislation imposes obligations on broadcasters and online platforms to refrain from and prevent the dissemination of hate speech.

In Montenegro, hate speech is addressed through Article 370 of the Criminal Code,³⁹ which prohibits the incitement to violence and hatred based on nationality, race, religion, or ethnic affiliation. The *actus reus* under this criminal provision is defined more narrowly than in the observed

³⁷ Criminal Code of the Republic of North Macedonia (Official Gazette of the Republic of Macedonia, Nos. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 170/13, 27/14, 199/14, 226/15, 97/17, 248/18, 198/18, etc.).

³⁸ The Criminal Code of North Macedonia currently does not recognize hate- or bias-motivated offenses as distinct criminal acts, nor are they classified as qualified forms of basic offenses carrying stricter criminal sanctions, or as aggravating or enhancing circumstances explicitly tied to the motive of the perpetrator. The introduction of hate crimes into Macedonian criminal legislation began with the 2009 amendments to the Criminal Code, which established a general sentencing provision in Article 39, paragraph 5. This provision obliges courts to take into account certain motives of bias and discrimination based on the victim's membership in a particular social group when determining sanctions. Specifically, Article 39(5) unequivocally stipulates that, in sentencing, courts shall give special consideration to whether the offense was committed against an individual, a group of individuals, or property, directly or indirectly, due to their sex, race, skin color, gender, membership in a marginalized group, ethnic origin, language, nationality, social origin, religion or belief, other types of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition, or any other ground established by law or ratified international treaty (Nicević & Dečković, 2024).

³⁹ Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro, Nos. 70/2003, 13/2004 – corr. and 47/2006, and Official Gazette of Montenegro, Nos. 40/2008, 25/2010, 32/2011, 64/2011 – other law, 40/2013, 56/2013 – corr., 14/2015, 42/2015, 58/2015 – other law, 44/2017, 49/2018, and 3/2020).

comparative jurisdictions, as it pertains solely to incitement (a term that may semantically encompass both provocation and instigation) of violence and hatred, but not of intolerance or discord. Similar to North Macedonia, the law includes enhanced sanctions if the act is committed through the media or public gatherings. Complementary regulations can be found in sector-specific legislation that prohibits the dissemination of hate speech in print, broadcast, and digital formats.

There are examples in Montenegrin case law where the courts have demonstrated a readiness to sanction hate speech, particularly in politically or ethnically sensitive contexts. A notable example includes the 2019 case before the Basic Court in Podgorica,⁴⁰ in which a journalist was fined for using pejorative language targeting a religious group. The court reasoned that journalistic freedom does not extend to speech that incites hatred or undermines social cohesion. The Constitutional Court of Montenegro, invoking Article 47 of the Constitution, has affirmed that freedom of expression may be restricted to protect the rights of others, including protection against hate speech.

Both jurisdictions rely on a combination of criminal law, anti-discrimination frameworks, and media regulation to address hate speech. While North Macedonia emphasizes the protection of interethnic relations in a multiethnic society, Montenegro's approach reflects its sensitivity to tensions between religious and national identities. In both cases, the balance between free expression and social cohesion is framed within the broader post-conflict and transitional context of the region.

Bosnia and Herzegovina (BiH)

Bosnia and Herzegovina (BiH), as a state with a uniquely complex constitutional structure stemming from the Dayton Peace Agreement,⁴¹ operates through a highly decentralized legal system composed of two entities (the Federation of BiH and Republika Srpska), the Brčko District, and multiple cantonal jurisdictions. This fragmentation extends to the criminal law domain, resulting in the coexistence of three separate criminal codes, one at the state level, and one each for the two entities, each containing its own provisions on hate speech.

⁴⁰ The decision of the Constitutional Court of Montenegro, U-III-6/2016.

⁴¹ *General Framework Agreement for Peace in Bosnia and Herzegovina* (signed 14 December 1995, entered into force 14 December 1995) 35 ILM 75 (1996).

At the state level, hate speech is regulated under Article 145a of the Criminal Code of BiH,⁴² which criminalizes incitement to national, racial, and religious hatred, discord, or hostility among the constituent peoples and others. This provision is generally reserved for acts that cross entity borders or threaten the sovereignty and integrity of the state.⁴³ In addition to criminal law, sector-specific legislation also prohibits the dissemination of hate speech in print, broadcast, and digital formats.

The multiconfessional and multiethnic character of BiH, enshrined in the Constitution through the recognition of Bosniaks, Croats, and Serbs as constituent peoples, makes the legal and social regulation of hate speech exceptionally sensitive. Public discourse is often shaped by the legacy of the 1990s conflict, with religious and ethnic identity deeply intertwined with political representation and social narratives. Consequently, hate speech often emerges in political rhetoric, media, and online platforms, targeting groups along ethnic or religious lines.

One illustrative case is *Smajić v. BiH*,⁴⁴ adjudicated at all domestic levels and ultimately before the European Court of Human Rights, where a Bosnian lawyer was convicted for online incitement of national and religious hatred. The domestic courts upheld the conviction, emphasizing the public nature of internet communication and the potential to disrupt interethnic relations. The ECtHR confirmed that the conviction did not violate Article 10 of the ECHR, reinforcing the principle that speech threatening post-conflict reconciliation may be legitimately restricted.

In summary, while BiH has incorporated international standards on hate speech into its legislation, the institutional fragmentation, combined with deep-rooted ethno-religious sensitivities, presents enduring challenges in ensuring consistent, depoliticized, and effective enforcement of anti-hate speech norms.

⁴² Criminal Code of Bosnia and Herzegovina (*Official Gazette of BiH*, No. 3/2003, as amended by Nos. 32/2003 – corr., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023 and 47/2023).

⁴³ In the Federation of BiH, hate speech is addressed under Article 163 of the Criminal Code, while the Criminal Code of Republika Srpska contains a similar provision under Article 359. Both criminalize public incitement to hatred, discord, or intolerance on national, racial, or religious grounds. The Brčko District also mirrors these standards in its own criminal code (Article 160). However, there is no unified judicial practice or prosecutorial policy across the entities, which has led to inconsistent enforcement and divergent interpretations of what constitutes hate speech.

⁴⁴ *Smajić v. BiH*, 48657/16.

Conclusion

Even decades after the end of the Yugoslav conflicts, hate speech remains deeply embedded in political discourse across the former Yugoslav republics. The wars of the 1990s appear to have profoundly shaped the dominant narrative of hate speech in the region. However, this does not mean that other protected grounds are not also frequently encountered in the context of hate speech narratives. A key feature of the local context is that such discourse is largely initiated and fueled by political elites, who exploit divisive rhetoric to construct a putative enemy. In doing so, they govern through fear, emphasizing the need for security and protection, while manipulating public emotions for their own political gain. To that end, pro-government media outlets are often established to perpetuate this narrative continuously. Public resources often fund these outlets despite their routine violations of journalistic codes of ethics.

Following the dissolution of the SFRY, the newly formed states were not only transitioning from socialist to liberal democratic systems but also shifting from a centralized to a decentralized structure. However, they also needed to update their legal frameworks to reflect the changing political and social conditions. In terms of hate speech, it is notable that the criminal code of the former Yugoslavia already criminalized conduct that closely aligns with modern standards for criminal law responses to hate speech. Over time, through a continuous process of legal development, these new states have largely aligned their national laws with international norms in this area. Structurally, their legal systems are quite similar and generally include constitutional limits on freedom of expression. At the same time, criminal laws prohibit acts that incite or promote hatred and intolerance based on traditionally protected grounds. Additionally, media laws and various sector-specific regulations have been created to explicitly ban hate speech across different forms of public communication. However, as is often the case with efforts to fight hate speech and broader rule of law issues, the main challenge lies in implementing existing, well-crafted legal provisions. This is primarily due to the state's implicit or explicit acceptance of hate speech narratives, which leads to selective enforcement of the applicable laws.

Another important factor contributing to the current state of affairs in this field is the inadequate response of the international community, which, in some cases, has even actively complicated regional dynamics by lobbying and promoting its own political interests at the expense of truth

and genuine social reconciliation. Finally, it is important to note that among the peoples of the former Yugoslav republics, there is a significantly higher number of individuals, particularly within the younger population, who are immune to the narrative of hate speech or who are increasingly freeing themselves from its effects. This provides optimism that the situation regarding hate speech, fueled by the wartime events of the 1990s in the former Yugoslav space, will continue to improve at an accelerated pace.

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Govor mržnje i politički diskurs u zemljama bivše Jugoslavije: Komparativna pravna analiza*

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Cilj rada je kritička analiza pravnog regulisanja govora mržnje u kontekstu političkog diskursa na prostoru bivše Jugoslavije. Poseban fokus usmeren je ka dva međusobno povezana aspekta i to konceptualne i normative osnove pojma govora mržnje, kao i uporedni pregled zakonodavnih okvira i sudske prakse u odabranim zakonodavstvima. U prvom delu rada izvršena je normativna i teorijska analiza posmatranih pitanja radi obuhvatnijeg sagledavanja pravnih i teorijskih temelja govora mržnje i političkog izražavanja uopšte. Polazeći od međunarodnih pravno-političkih instrumenata za zaštitu ljudskih prava, relevantne sudske prakse i značajnih doktrinarnih stavova, u ovom delu rada se izlaže o pojmovnim određenjima i suštinskim karakteristikama govora mržnje. Posebna pažnja posvećena je svojevrsnoj normativnoj tenziji između zaštite političkog diskursa, koji se smatra osnovom demokratskog društva, te pravnih ograničenja usmerenih na zaštitu pojedinaca i grupa od podsticanja diskriminacije, neprijateljstva odnosno nasilja. Analiza je, takođe, upravljena i na problematiku razlikovanja govora mržnje od kontroverznog ili uvredljivog, ali pravno dopuštenog političkog izražavanja, naročito kada je reč o osetljivim temama poput etniciteta, religije ili kolektivnog sećanja na istorijske događaje. U drugom delu rada se daje pravno komparativni prikaz načina na koje se zemlje bivše Jugoslavije uredile pitanje

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zabrane govora mržnje. Iako su načelno posmatrane države to pitanje regulisale u skladu sa međunarodnim standardima, a naročito onim uspostavljenim u okviru Saveta Evrope, primećuje se različit pristup sudova u pogledu tumačenja i primene odredbi koje se odnose na govor mržnje. Slovenija i Hrvatska, kao članice EU, manje-više su uskladile svoju regulativu sa tzv. *acquis communautaire*, ali su i druge posmatrane države usled procesa pridruživanja EU na tragu takvog načina kreiranja pravnog okvira koji se odnosi na govor mržnje. Stoga, razmotreni su zajednički elementi i specifičnosti predmetnih jurisdikcija kako bi se identifikovali obrasci postupanja, nedoslednosti i moguće najbolje prakse. Posebna pažnja posvećena je pojavama govora mržnje koje su oblikovane etno-političkim sukobima i ratnim narativima devedesetih godina prošlog veka, a koji i dalje snažno utiču na savremeni politički diskurs na prostoru bivše Jugoslavije. Osnovni cilj istraživanja jeste razvijanje analitički utemeljenih kriterijuma za razlikovanje govora mržnje od političkog izražavanja, uz uvažavanje specifičnih izazova postkonfliktnih i tranzicionih društava na prostoru bivše Jugoslavije.

KLJUČNE REČI: govor mržnje / politički diskurs / sloboda izražavanja / zemlje bivše Jugoslavije / informisano društvo

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