

# COMPARATIVE STUDY

on legislation sanctioning hate speech  
and discrimination in the member states  
of the European Union



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# I. General Considerations on the Regulation of Hate Speech in Enactments

## **An attempt to define the term**

The vast majority of European states, among which all member states of the European Union can be found, have adopted legislative provisions prohibiting hate speech in its various forms of expression. However, at present there is no universally accepted definition of the term, despite its very common use. A possible definition was provided by the Council of Europe, in Recommendation 97 of the Council of Ministers, which states that hate speech is represented by *“all forms of expression that disseminate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, immigrants and descendants of immigrants”*.

Hate speech is a manifestation associated with related phenomena such as intolerance, discrimination, social exclusion of certain groups or individuals belonging to the groups, the use of stereotypes and prejudices. It is usually manifested by: incitement to exclusion or violence toward people or groups of people, spread of negative stereotypes against them or denial of historical events in which these groups have suffered (i.e. The Holocaust, slavery, periods of denial of civil and political rights).

## **The conflict between „freedom of expression and other rights”**

When it comes to regulations that prohibit and combat hate speech, we must have in mind that they inevitably set limitations on the right to free speech (or freedom of expression). These limitations, however, are accepted as necessary in a democratic society to prevent the abuse of law and to protect human dignity.

Dignity and equal rights for all individuals are the fundamental axiom of international human rights. Therefore, it is not surprising that international law condemns statements denying the equality of all human beings. Article 20 (2) of the International Covenant on Civil and Political Rights requires states to prohibit hate speech:

*“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”*

The fundamental value of human dignity is mentioned in the preamble of the Universal Declaration of Human Rights<sup>1</sup>, which proclaims that „recognition of the inherent dignity of

<sup>1</sup> Universal Declaration of Human Rights

all members of the human family and of the equal and inalienable rights is the foundation of freedom, justice and peace in the world”.

Human dignity is protected by Article 1 of the Universal Declaration of Human Rights which states that „all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood „.

The two fundamental documents in the European Human Rights (European Convention on Human Rights and the Charter of Fundamental Rights of the European Union) contain a number of provisions restricting hate speech. The Convention prohibits the abuse of law and discrimination, and the Charter is based on the concept of human dignity.

The European Convention on Human Rights governing the right to freedom of expression states in Article 10 (2):

*„1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary“.*

Also, Article 17 of the European Convention on Human Rights<sup>2</sup> prohibits the abuse of law:

*“ Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.“.*

Article 14 of the Convention prohibits discrimination:

*„The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.“<sup>3</sup>*

European Union Charter of Fundamental Rights<sup>4</sup> also establishes in its preamble that:

*“[...] The Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It*

<sup>2</sup> European Convention on Human Rights, [http://www.echr.coe.int/Documents/Convention\\_ROM.pdf](http://www.echr.coe.int/Documents/Convention_ROM.pdf)

<sup>3</sup> European Convention on Human Rights, [http://www.echr.coe.int/Documents/Convention\\_ROM.pdf](http://www.echr.coe.int/Documents/Convention_ROM.pdf)

<sup>4</sup> European Union Charter of Fundamental Rights <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>

*places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.”*

This value is guaranteed right from the first article of the Charter, which states that *“Human dignity is inviolable. It must be respected and protected”*

In turn, the Charter takes restrictive definition of freedom of speech in the Convention (Article 11) prohibits the abuse of law (Art 54) and discrimination:

*„Article 21. Non-discrimination*

*1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

*2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*

*Article 22. Cultural, religious and linguistic diversity*

*The Union shall respect cultural, religious and linguistic diversity.*

*Article 23. Equality between men and women*

*Equality between men and women must be ensured in all areas, including employment, work and pay.*

*The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.”*

The subsidiary legislation of the European Union provides a range of equality measures, both between men and women and between people of different ethnicity and race. In the European Union there were adopted several laws that implement the principles of equality, non-discrimination and which sanction hate speech. This legislation was then transposed into the national law of the member countries.

The two important directives on equality are: Directive 2000/78/EC of 27 November 2000<sup>5</sup> implementing the principle of equal treatment in employment and Directive 2000/43/EC<sup>6</sup> that combat discrimination based on race or ethnic origin.

Both directives define four types of discriminatory behaviour:

- ⇒ direct discrimination;
- ⇒ indirect discrimination;
- ⇒ harassment;

5 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>  
6 [file:///C:/Users/valen\\_000/Downloads/Directiva%20Consiliului%202000\\_43%20CE\\_RO.pdf](file:///C:/Users/valen_000/Downloads/Directiva%20Consiliului%202000_43%20CE_RO.pdf)

⇒ incitement to discrimination.

Extremely relevant to combating hate speech is prohibiting harassment, an action accomplished by words. The difference between the two lies in the field of application. The first combats discrimination on all grounds in labour relations, while the second prohibits discrimination based on race or ethnicity in general.

Relevant texts of Directive 2000/78/EC are:

#### *Article 1*

##### **Purpose**

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

#### *Article 2*

##### **Concept of discrimination**

1. For the purposes of this Directive, the „principle of equal treatment“ shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating

an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others”.

Another European regulation that is crucial in combating hate speech is the Decision - Council Framework 2008/913/JHA<sup>7</sup> to punish by criminal law certain expressions of xenophobia and racism. In this way the states are obliged to punish crimes committed by xenophobic or racist words or deeds. The text of Decision alleges the states will punish:

*“Article 1*

*Offences concerning racism and xenophobia*

*1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:*

*(a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;*

*(b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;*

*(c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;*

*(d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.”*

These fundamental rights have been transposed to a greater or lesser extent into the national laws of the member states in accordance with the legal tradition and history of each country.

<sup>7</sup>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF>

Thus, at present, almost all European Union member states have regulations against hate speech. The purpose of these regulations is, on the one hand, to draw boundaries between freedom of expression and other rights, and on the other hand, to prevent some harm to the potential victims of this phenomenon. *First, hateful speech can interfere with other human rights and „public active“ values: dignity, non-discrimination and equality, (effective) participation in public life (including public speaking), freedom of expression, association, religion, and so on. Second, prevention of certain damages suffered by individual victims should also be considered: psychological damage, damage of self-esteem, self-fulfilment inhibition, fear, etc.*

In general, *the right to freedom of expression includes the right to express unpopular ideas or making statements that „shock, offend or disturb“.* However, as „Article 19“, a number of human rights treaties, including International Covenant on Civil and Political Rights show that not only did not stop states prohibit hate speech, but even ask them to actually do so.

In addition, a particular form of hate speech - *incitement to genocide* - is one of only a few types of acts recognized as crimes under international law, like war crimes and crimes against humanity.

Following the Second World War, the Nuremberg Tribunal was set up to be judged the most important of those responsible for the atrocities committed by the Nazi regime. In the decision given during the trial against Julius Streicher, the Court held that incitement to genocide is a crime under international law and should be punished even if the act was not illegal under local law at the time.

Streicher was the editor of the virulently anti-Semitic *Der Stürmer*, which strongly encouraged the German people to persecute and exterminate the Hebrew. Although the Nuremberg Tribunal legitimacy was often questioned on the grounds that the applied retrospectively a „new“ law, today the principles established by it are generally recognized in both common law and in a number of international regulations.

In a study conducted by the Council of Europe<sup>8</sup>, Dr. Tarlach McGonagle - Senior researcher at the Institute for Information Law (IViR), Faculty of Law, University of Amsterdam shows that: *„the range of damage that must be prevented or minimized is varied and complex.“* The challenge is therefore to identify *„what criteria allow us to distinguish between prejudices which to justify restrictions and prejudices which do not justify it.“* The idea that he supports is that while some types of hate speech - the most blatant forms - can be best addressed through regulations, including criminal field, others can be addressed, rather, through educational, cultural, informational activities and other measures „non-regulation“ (and necessarily non-criminal). The extent to counter hate speech requires a regulatory framework which should be holistic, due to the fact that this type of speech covers various types of expression. But this is not enough. There is a need for approaches that are determined to be also differentiated, and that regulatory framework should be complemented by a non-statutory framework for action.

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8 <sup>8</sup>“The Council of Europe against online hate speech: Conundrums and challenges”

## Hate speech in the public sphere

The issue of the way combating hate speech is regulated and the implementation of those regulations acquires a special connotation when referring to political competition. This type of discourse is, in recent years, a growing problem in many EU countries. The fact that it is used by politicians to attract votes, often successfully, contributes to its spread in the society, which can lead to violent action not only against individuals but also against groups. In addition, this helps to perpetuate the marginalization of certain categories of the population, such as, first Roma, and Muslims (in some Western European countries). Thus, although we can say that the responsibility for combating hate speech is for all members of society, politicians have a special responsibility, given that their words often have a greater impact, reaching larger masses of people and multiplying.

## II. Regulatory models against hate speech in European Union

### II.1. Regulations found in the 28 EU member states

#### II.1.1. Austria

##### Constitutional Texts

There are no specific provisions in the Constitution<sup>9</sup> for civil and political rights, but when the current Constitution was adopted (1920) the Basic Law on the rights of individuals represented in the Council of the Nation - an edict of Emperor Franz Josef from 1867 remained in force. That law provides:

*“Article 13 of the edict of Franz Josef*

*Everyone has the right, within the law, to freely express their opinions orally, in writing, printing or imaging.*

*The media cannot be censored or restricted by a licensing system. The mail distribution veto can not be applied within the country.”*

##### Provisions in the Criminal Code

By the art.283 the Criminal Code of Austria condemns the incitement to hate „against a church or a religious community” or a person or group for reasons of „race, colour, language, religion or belief, nationality, descent or national or ethnic origin, sex, disability, age or sexual orientation”.

Those who are found guilty of committing such acts are liable to imprisonment of up to two years.

##### Special Laws

Unlike Romania, other countries do not punish twice the hate speech. In most countries, regulations against hate speech can be found only in the penal code, not in the laws transposing the Directives of equality. Austria is one such example. Federal Equal Treatment Act does not punish hate speech separately, only adds to the responsibilities of the Ombudsman the obligation to defend its citizens against discrimination.<sup>10</sup>

<sup>9</sup> The Constitution of Austria, [http://www.servat.unibe.ch/icl/au00000\\_.html](http://www.servat.unibe.ch/icl/au00000_.html)  
<sup>10</sup> Legea Federală a Tratatului Egal, <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=55789>

## II.1.2. Belgium

### Constitutional Texts

In the Belgian Constitution (adopted originally in 1831, but subsequently changed to 1993)<sup>11</sup> Title II - „About Belgians and their rights“, there are several articles and paragraphs that refer to the fight against discrimination. If we consider, however, only the hate speech, the most interesting one is the Article 19: *„Freedom of religion, freedom of religious practice and public expression of opinions on all aspects are covered, but offenses against when using this freedom may be punished“.*

#### Article 10

No class distinctions exist in the State. Belgians are equal before the law; they alone are eligible for civil and military service, but for exceptions that can be created by a law for particular cases. Equality between women and men is guaranteed.

#### Article 11

Enjoyment of the rights and freedoms recognised for Belgians must be provided without discrimination. To this end, laws and federate laws guarantee among others the rights and freedoms of ideological and philosophical minorities

#### Article 19

Freedom of worship, its public practice and freedom to demonstrate one’s opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.

#### Article 23

Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.

These rights include among others:

1. The right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation;
2. The right to social security, to health care and to social, medical and legal aid;
3. The right to decent accommodation;

<sup>11</sup> Constitution of Belgium, [http://www.dekamer.be/kvocr/pdf\\_sections/publications/constitution/grondwetEN.pdf](http://www.dekamer.be/kvocr/pdf_sections/publications/constitution/grondwetEN.pdf)

4. The right to the protection of a healthy environment;

5. The right to cultural and social fulfilment

### *Article 25*

The press is free; censorship can never be introduced; no security can be demanded from authors, publishers or printers. When the author is known and resident in Belgium, neither the publisher, the printer nor the distributor can be prosecuted.

## **The Criminal Code**

The Belgian Criminal Code does not contain provisions against hate speech, all regulations related to this subject being contained in the „Act sanctioning acts of racism or xenophobia“ (see below), which is a criminal law. In this Act a reference is made to a particular article of the Criminal Code (444), but only to define the conditions that apply to certain provisions of the law - i.e., the same conditions in which the provisions of the Criminal Code on defamation are applied.

The circumstances referred to in Article 444 of the Belgian Criminal Code are as follows:

- ⇒ either in public meetings or places;
- ⇒ or in the presence of several people, in a place that is not public but accessible to a number of people who are entitled to meet or visit there;
- ⇒ or in any place in the presence of the offended person and in front of witnesses;
- ⇒ or through documents, printed or otherwise, illustrations or symbols that have been displayed, distributed, sold, offered for sale, or publicly exhibited;
- ⇒ or finally by documents that have not been made public but which have been sent or communicated to several people.

## **Special laws**

The main regulation against hate speech in Belgium is the “Act sanctioning acts of racism and xenophobia” adopted on July 30, 1981, which is also known as „Moureaux Law“ (after the name of the initiator of the law - Philippe Moreaux, Minister of Justice at the time).

With the adoption of this law, the following acts became illegal:

- ⇒ Incitement to discrimination, hatred or violence against a person on account of race, colour, origin or national or ethnic descent, in the circumstances given in Article 444 of the Belgian Penal Code;
- ⇒ Incitement to discrimination, segregation, hatred or violence against a group, community or its members on account of race, colour, origin or national or ethnic descent, in the circumstances

given in Article 444 of the Belgian Penal Code; and

⇒ Announcing the intention to commit any of the aforementioned offences, in the circumstances given in Article 444 of the Belgian Penal Code.

In 2003 the Act was amended by including the protection against discrimination based on sex and sexual orientation. The law was replaced by a similar law in 2007.

After the changes in 2003 and 2007, anti-discrimination laws include additional penalties for hate crimes based on gender and sexual orientation (among others).

On November 29, 2013, the federal government approved an extension of anti-discrimination law to include gender identity and gender expression. This Act shall come into force after approval by the Federal Parliament.

Besides this law, the following acts were adopted:

⇒ Law of February 15, 1993 creating a Centre for Equal Opportunities and Opposition to Racism

⇒ Law of March 23, 1995 tending to repress negation, minimization, justification or approbation of the genocide committed by the German National-Socialist regime during the Second World War (Belgian Holocaust denial law)

## II.1.3. Bulgaria

### Constitutional texts

Among other things, the Bulgarian Constitution (adopted in 1991)<sup>12</sup> states in art. 6, paragraph (2), that:

“(2) All citizens shall be equal before the law. Neither abridgement of rights nor any privileges whatsoever shall be admissible on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property status.”

The art.37 states that: “(1) Freedom of conscience, freedom of thought, and choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among believers adhering to different denominations, as well as between believers and non-believers. (2) Freedom of conscience and religion may not be directed against national security, public order, public health and morals, or against the rights and freedoms of other citizens.”

<sup>12</sup> The Constitution of Bulgaria: <http://www.parliament.bg/en/const>

The art.40 refers to the fight against violence and incitement to violence: “(1) The press and the other mass communication media are free and shall not be subjected to censorship. (2) A suppression and seizure of a print publication or of another information medium shall be admissible solely in pursuance of an act of the judiciary, by reason of moral turpitude or incitement to a change of the constitutionally established order by force, to the commission of a criminal offence, or to personal violence. Unless seizure follows within 24 hours, the effect of any suppression shall lapse.”

## Provisions in the Criminal Code

Bulgarian Penal Code refers directly to hate-speech, specifically in Article 162, which provides that: “(1) An individual who preaches or abets to racial, national or ethnical hostility, hatred or racial discrimination through the means of communication as the press, mass media, electronic information systems or through the use of another means, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration. (2) An individual who uses violence against another or damages his property in view of his nationality, race, religion or political convictions, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration. (3) An individual who forms or leads an organization or a group that has set itself the task of doing activities under para.1 and 2, or systematically tolerates the performance of such activities, is subjected to a penalty of imprisonment for a term from one to six years, a fine from ten to thirty BGN and a public execration.”

## Special laws

In 2004 the Bulgarian Parliament adopted the „Law on protection against discrimination“ that covers cases of hate speech. Thus, art. 4, paragraph (1) states that: “(1) Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden”. And the art.5 states that: “The harassment on the grounds referred to in Article 4, Paragraph 1, sexual harassment, instigation to discrimination, persecution (persecution) and racial segregation, as well as building and maintenance of an architectural environment hampering the access of people with disabilities to public places shall be deemed discrimination”.

The „Additional Regulations“ chapter provides that: “(1) “Harassment” shall be any unwanted conduct on the grounds referred to in Article 4, Paragraph 1, expressed in a physical, verbal or any other manner, which has the purpose or effect of violating the person’s dignity or creating a hostile, degrading, humiliating or intimidating environment, attitude or practice.”

The institution responsible for law enforcement is the Commission for the Protection Against Discrimination that “shall be an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities”. “The

Commission is a collegial body comprised of 9 persons, of which at least 4 jurists. The National Assembly selects 5 and the President of the Republic appoints 4 of the members of the Commission”.

The penalties that can be imposed for acts of discrimination are as follows:

- ⇒ pentru o persoană care comite un act de discriminare, în sensul prezentei legi, se prevede amendă de la 250 la 2 000 BGN, cu excepția cazului în care actul respectiv este de natură să necesite pedepse mai severe;
- ⇒ A person who commit discrimination, within the meaning of this Law, shall be punished with a fine of 250 to 2 000 BGN, unless he/she is liable to more severe punishment.
- ⇒ A person who does not present in term evidence or information demanded by the Commission, or impedes, or do not provide access to sites subject of examination shall be punished with a fine of 500 to 2 000 BGN.
- ⇒ A regularly subpoenaed witness who fails to appear without good reasons before the Commission to testify shall be punished with a fine of 40 to 100 BGN.
- ⇒ A person who does not implement an obligation deriving from this Law shall be punished with a fine of 250 to 2 000 BGN, unless he/she is liable to more severe punishment.
- ⇒ When the violation has been committed during performing the activity of a legal person, the latter shall be imposed with a material sanction of 250 to 2 500 BGN.
- ⇒ In case the violations are committed for the second time, a fine, respectively a material sanction of double size of the amount of the initially imposed fine/sanction shall be imposed.

## II.1.4. Croatia

### Constitutional Laws

Croatian Constitution (1990)<sup>13</sup> guarantees freedom of expression through a series of articles, as follows:

Art.14. Citizens of the Republic of Croatia shall enjoy all rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. All shall be equal before the law.

Art.38. Freedom of thought and expression of thought shall be guaranteed.

Freedom of expression shall specifically include freedom of the press and other media of

<sup>13</sup> Croatian Constitution: <http://www.sabor.hr/Default.aspx?sec=729>

communication, freedom of speech and public expression, and free establishment of all institutions of public communication.

Censorship shall be forbidden.

Journalists shall have the right to freedom of reporting and access to information.

The right to correction shall be guaranteed to anyone whose constitutionally determined rights have been violated by public communication.

Art. 39. Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable.

## **Criminal Code**

Since the Constitution guarantees freedom of speech, the Croatian Criminal Code prohibits and punishes with imprisonment from six months to five years on anyone whoever, on the basis of a difference in race, religion, political or other belief, property, birth, education, social position or other characteristics, or on the basis of gender, colour, national or ethnic origin, violates fundamental human rights and freedoms recognized by the international community (art.174, al.(1)).

Article 89 states that hate crime as „any crime committed out of hatred for someone’s race, skin colour, sex, sexual orientation, language, religion, political or other belief, national or social background, asset, birth, education, social condition, age, health condition or other attribute“.

Art. 174 of the Croatian Criminal Code, which relate to racial discrimination and other stipulates also that:

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever persecutes organizations or individuals for promoting equality between people.

(3) Whoever publicly states or disseminates ideas on the superiority or subordination of one race, ethnic or religious community, gender, ethnicity or ideas on superiority or subordination on the basis of colour for the purpose of spreading racial, religious, sexual, national and ethnic hatred or hatred based on colour or for the purpose of disparagement shall be punished by imprisonment for three months to three years.

It is worth noting that Article 89 was introduced in the Criminal Code (in 2006), after some advocacy initiated by a coalition of civic organizations.

## **Special laws**

In Croatia, there is an anti-discrimination law (Anti-Discrimination Act)<sup>14</sup>, which, however, contains strict provisions related to combating discrimination based on any ground (in employment, work,

<sup>14</sup> <http://www.ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/40-the-anti-discrimination-act>

school, etc.) and has only default effects in combating hate speech. The law does not punish hate speech separately and assigns responsibility for combating discrimination to Ombudsman.

## II.1.5. Czech Republic

### Constitutional texts

Unlike the fundamental laws of many other countries, the Czech Constitution (1992)<sup>15</sup> does not contain articles that refer directly to prohibiting or combating the discrimination of citizens or residents based on various criteria. In Article 3, however, it states that „an integral component of the constitutional system of the Czech Republic is the Charter of Fundamental Rights and Freedoms and art.4 provides that „the fundamental rights and freedoms shall be protected by the judiciary power“.

The Czech Constitution doesn't state rights within its content but it provides them through the Charter of Fundamental Rights adopted by the Czechoslovak Parliament in 1991 that has the same value as the Constitution<sup>16</sup>.

#### Article 3

(1) Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

#### Article 10

(1) Everyone has the right to demand that her human dignity, personal honor, and good reputation be respected, and that her name be protected.

#### Article 15

(1) The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change her religion or faith or to have no religious conviction.

#### Article 17

(1) The freedom of expression and the right to information are guaranteed.

(2) Everyone has the right to express her opinion in speech, in writing, in the press, in pictures, or in any other form, as well as freely to seek, receive, and disseminate ideas and information irrespective of the frontiers of the State.

<sup>15</sup> Czech Constitution: <http://www.psp.cz/cgi-bin/eng/docs/laws/1993/1.html>

<sup>16</sup> Charter of Fundamental Rights: [http://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/prilohy/Listina\\_English\\_version.pdf](http://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/prilohy/Listina_English_version.pdf)

## Provisions in the Criminal Code

Czech Criminal Code contains several provisions on hate speech in „Art. 198 - Defamation of a nation, a race or convictions“.

(1) A person who publicly defames

(a) a nation, its language or a race; or

(b) a group of inhabitants of the Republic because of their political conviction, religion or lack of religious faith,

shall be sentenced to imprisonment for a term of up to two years.

(2) An offender who commits an act under sub-provision (1) together with at least two other persons shall be sentenced to imprisonment for a term of up to three years.

In the “Art.198a - Incitement to racial and national hatred“, we find the following:

(1) Whoever publicly incites hatred of another nation or race or calls for restriction of the rights and freedoms of other nationals or members of a particular race shall be sentenced to a term of imprisonment of up to two years.

(2) The same sentence shall apply to a person who aids and abets an offender to commit an act under sub-provision (1).

## Special Laws

Law 198/2009<sup>17</sup> does not punish hate speech separately. Ombudsman receives powers to combat discrimination

## II.1.6. Cyprus

### Constitutional Laws (Constitution from 1960)<sup>18</sup>

*Article 18*

1. Every person has the right to freedom of thought, conscience and religion.

*Article 19*

1. Every person has the right to freedom of speech and expression in any form.

<sup>17</sup> [http://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Antidiscrimination\\_Act.pdf](http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Antidiscrimination_Act.pdf)

<sup>18</sup> Constitution of Cyprus: [http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf)

2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.

3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

Article 28 (2) provides that "2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution."

## Provisions of the Criminal Code

Criminal Code of the Republic of Cyprus<sup>19</sup> provides:

In the „Action against sovereignty of others“ section:

Article 47 (1) Any person's act that, at any public gathering and intentionally,

(a) propose a touch of the sovereignty of the Republic, or

(b) promotes hatred between communities, religious groups based on race, religion, colour or sex, is an offense and may be punished with imprisonment up to five years.

## Special Laws

In 2004 the Law (42) to combat racism and other forms of discrimination was adopted. This law empowers the „Commissioner for Administration (or „ombudsman“ - an independent authority appointed by the President of the Republic), as a specialized body to combat direct and indirect discrimination racism and all forms of discrimination prohibited by law and in generally, discrimination on grounds of race, community, language, colour, religion, political or otherwise, and national or ethnic origin. It also empowers it to promote equality in the enjoyment of rights and freedoms guaranteed by the Constitution of Cyprus or by one or several conventions ratified by Cyprus and referred to explicitly in the law, regardless of „race“, community, language, colour, religion, political or other opinion, national or ethnic origin, such as equal opportunity in employment, access to vocational training, working conditions, including pay, membership of trade unions or other associations, or on social security and health care, education and access to goods and services, including housing. The law, however, does not make direct reference to incitement to hatred.

<sup>19</sup> The Criminal Code of Republic of Cyprus: [http://www.cylaw.org/nomoi/enop/non-ind/0\\_154/full.html](http://www.cylaw.org/nomoi/enop/non-ind/0_154/full.html)

## II.1.7. Denmark

### Constitutional Texts

The Danish Constitution (1849, as amended to 1953)<sup>20</sup> only guarantees the right to free expression. Thus, Section 77 states that: „Everyone is free to publish their ideas in written, printed or by word of mouth, with legal responsibilities arising from it. Censorship and other preventive measures will never be adopted again.”

### Provisions within the Criminal Code

Denmark prohibits hate speech, connecting it with the public statements through which a group is threatened (trues), insulted (forhånes) or denigrated (nedværdiges) on the grounds of race, colour, national or ethnic origin, belief or sexual orientation. The regulations are found in the Criminal Code, art. 266b and state that:

„(1) Any person who publicly or with the intention of dissemination to a wide circle of people makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years.”

„(2) When handing down the punishment, it is to be considered as an aggravating circumstance that the statement is in the nature of propaganda.”

### Special Laws

In Denmark there are a number of laws that guarantee equal treatment, such as the Equal Treatment Act or law banning ethnic discrimination in the labour market, but none of them separately punish hate speech. In 2009 the Equal Treatment Board, a quasi-judicial body was established<sup>21</sup>.

## II.1.8. Estonia

### Constitutional texts

The Constitution of Estonia (1992)<sup>22</sup> makes clear references to combat hate speech and provides the basis for the legal framework through which to achieve this.

<sup>20</sup> Constitution of Denmark [http://www.thedanishparliament.dk/Publications/~~/media/Pdf\\_materiale/Pdf\\_publicationer/English/My%20Constitutional%20Act\\_omslag\\_version12\\_samlet\\_web.pdf.ashx](http://www.thedanishparliament.dk/Publications/~~/media/Pdf_materiale/Pdf_publicationer/English/My%20Constitutional%20Act_omslag_version12_samlet_web.pdf.ashx)

<sup>21</sup> [http://www.equineteurope.org/IMG/pdf/PROFILE\\_BET\\_DK.pdf](http://www.equineteurope.org/IMG/pdf/PROFILE_BET_DK.pdf)

<sup>22</sup> The Constitution of Estonia: <http://www.president.ee/en/republic-of-estonia/the-constitution/index.html>

## Article 10

The rights, freedoms and duties set out in this Chapter shall not preclude other rights, freedoms and duties which arise from the spirit of the Constitution or are in accordance therewith, and conform to the principles of human dignity and of a state based on social justice, democracy, and the rule of law.

## Article 11

Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted.

## Article 12

Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable.

## Article 45

Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honour and good name of others [...].

## Provisions of the Criminal Code

Estonian Criminal Code contains an entire chapter on „offenses to the civil and political rights“. Of all the items listed in this chapter, 151 and 152 are the ones that directly relate to hate speech:

### § 151. Incitement of hatred

(1) Activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person are punishable by a fine of up to 300 fine units or by detention.

(2) Same act,

- 1) if it causes the death of a person or results in damage to health or other serious consequences, or
- 2) it was committed by a person who has previously been punished by such act, or
- 3) it was committed by a criminal organization, - is punishable by pecuniary punishment or up to

3 years' imprisonment.

(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

#### § 152. Violation of equality

(1) Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, and political opinion, financial or social status is punishable by a fine of up to 300 fine units or by detention.

(2) The same act, if committed:

1) at least twice, or

2) significant damage is thereby caused to the rights or interests of another person protected by law or to public interests, is punishable by a pecuniary punishment or up to one year of imprisonment.

### Special Laws

Gender equality law does not punish hate speech separately. It just creates a special ombudsman for gender equality that defends the rights of those affected in normal courts<sup>23</sup>.

## II.1.9. Finland

### Constitutional Texts

The Constitution of Finland (2000)<sup>24</sup> contains two sections relevant to the discussion of hate speech, as follows:

#### *Section 1 - Constitution*

[...] The constitution of Finland is established in this constitutional act. The constitution shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society [...].

23 <http://www.svv.ee/index.php?id=484>

24 The Constitution of Finland: <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>

## *Section 6 - Equality*

Everyone is equal before the law.

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person [...].

## *Section 12 - Freedom of expression and right of access to information*

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programs that are necessary for the protection of children may be laid down by an Act.

## **Provisions of the Criminal Code**

In Finland there is still a considerable debate about the definition of „hate speech“ (vihapuhe), which is punishable under the provisions of Chapter XI of the Criminal Code - „War crimes and crimes against humanity“ in Section 10 - „Ethnic agitation“ where it states that: A person who makes available to the public or otherwise spreads among the public or keeps available for the public information, an expression of opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis, shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years. In aggravating cases, such as incitement to genocide, imprisonment can be up to four years.

On the other hand, there are critics who argue that in certain political contexts, labelling opinions and statements as „hate speech“ can be used to silence unfavourable or critical opinions, which may lead to lowering the level public debate. Moreover, there are even members of Parliament who claim that punishment, by law, to „hate speech“ can be dangerous given that it is not easy to define this concept.

## **Special laws**

In Finland a law on equality between women and men<sup>25</sup> is in force as well as the law against discrimination, but both referring to acts of discrimination and only tangentially or implicitly to hate speech.

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25 <http://www.tasa-arvo.fi/en/publications/act2005>

## II.1.10. France

### Constitutional texts

The French Constitution (1958)<sup>26</sup> does not expressly provide rights but the Bill of Human and Citizen Rights of 1793 is considered part of the French constitutional law by the preamble to the Constitution.

It states: „The free communication of ideas and opinions is one of the most important human rights. Every citizen has the right to speak, write, and print freely, unless this freedom is abused in cases determined by law.”

### Provisions of the Criminal Code

France prohibited by way of the criminal code and press law, public and private communication that is defamatory or insulting or inciting discrimination, hatred or violence against a person or group of persons on grounds of place of origin, ethnicity, nationality, race, religion, sex, sexual orientation or disability. The law also prohibits declarations that justify or deny crimes against humanity, such as the Holocaust (Gayssot Act).

The Criminal Code, Chapter V - offenses brought to dignity, provides at the art.225 that:

„Discrimination is any distinction to be made between individuals on the basis of their origin, gender, family situation, physical appearance or patronymic, health, disability, genetic characteristics, morals or sexual orientation, age, political opinion, trade union activities or membership or non-membership, true or supposed, of an ethnic group, nation, race or religion.

Discrimination also includes any distinction to be made between legal persons based on their origin, gender, family situation, physical appearance or patronymic, health, disability, genetic characteristics, morals or sexual orientation, age, political opinion, trade union activities or membership or non-membership, true or supposed, of an ethnic group, nation, race or religion of one or more members of these legal entities.”

### Special laws

In France, there is since 2006, a „framework law on equal treatment“. Its object is directly the discrimination, particularly discrimination in employment and in the workplace.

But a law that has references to the hate speech is the Press Law that punishes, among others: efforts to justify war crimes and crimes against humanity and incitement to discrimination, hatred and violence.

<sup>26</sup> French Constitution: <http://www.assemblee-nationale.fr/english/index.asp>

## II.1.11. Germany

### Constitutional texts

The articles of the Constitution of the Federal Republic of Germany (1949)<sup>27</sup> that form the basis of the regulations in combating discrimination and hate speech are:

#### *Article 1*

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

#### *Article 3*

(1) All persons shall be equal before the law. (2) Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist. (3) No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavored because of disability.

#### *Article 4*

(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

#### *Article 5*

(1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.

(2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.

### Provisions of the Criminal Code

In Germany, „incitement to hatred“ (Volksverhetzung) is considered an offense punishable under Section 130 of the German Criminal Code<sup>28</sup>, which may reach up to five years in prison. Section 130 ranks as a crime:

<sup>27</sup> Constitution of Germany: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

<sup>28</sup> German Criminal Code: [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1438](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1438)

(1) Whosoever, in a manner capable of disturbing the public peace

1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or
2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population,

shall be liable to imprisonment from three months to five years.

(2) Whosoever

1. with respect to written materials (section 11(3)) which incite hatred against segments of the population or a national, racial or religious group, or one characterised by its ethnic customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group
  - (a) disseminates such written materials;
  - (b) publicly displays, posts, presents, or otherwise makes them accessible;
  - (c) offers, supplies or makes them accessible to a person under eighteen years; or
  - (d) produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of Nos (a) to (c) or facilitate such use by another; or
2. disseminates a presentation of the content indicated in No 1 above by radio, media services, or telecommunication services

shall be liable to imprisonment not exceeding three years or a fine.

(3) Whosoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism of the kind indicated in section 6 (1) of the Code of International Criminal Law, in a manner capable of disturbing the public peace shall be liable to imprisonment not exceeding five years or a fine.

(4) Whosoever publicly or in a meeting disturbs the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying National Socialist rule of arbitrary force shall be liable to imprisonment not exceeding three years or a fine.

(5) Subsection (2) above shall also apply to written materials (section 11(3)) of a content such as is indicated in subsections (3) and (4) above.

(6) In cases under subsection (2) above, also in conjunction with subsection (5) above, and in cases of subsections (3) and (4) above, section 86(3) shall apply mutatis mutandis.

### *Section 86 - Dissemination of propaganda material of unconstitutional organizations*

(1) Whosoever within Germany disseminates or produces, stocks, imports or exports or makes publicly accessible through data storage media for dissemination within Germany or abroad, propaganda material

1. of a political party which has been declared unconstitutional by the Federal Constitutional Court or a political party or organization which has been held by final decision to be a surrogate organization of such a party;
2. of an organization which has been banned by final decision because it is directed against the constitutional order or against the idea of the comity of nations or which has been held by final decision to be a surrogate organization of such a banned organization;
3. of a government, organization or institution outside the Federal Republic of Germany active in pursuing the objectives of one of the parties or organizations indicated in Nos 1 and 2 above; or
4. propaganda materials the contents of which are intended to further the aims of a former National Socialist organization, shall be liable to imprisonment not exceeding three years or a fine.

(2) Propaganda materials within the meaning of subsection (1) above shall only be written materials (section 11(3)) the content of which is directed against the free, democratic constitutional order or the idea of the comity of nations.

(3) Subsection (1) above shall not apply if the propaganda materials or the act is meant to serve civil education, to avert unconstitutional movements, to promote art or science, research or teaching, the reporting about current or historical events or similar purposes.

(4) If the guilt is of a minor nature, the court may order a discharge under this provision.

### *Section 86a - Using symbols of unconstitutional organisations*

(1) Whosoever

1. domestically distributes or publicly uses, in a meeting or in written materials (section 11(3)) disseminated by him, symbols of one of the parties or organizations indicated in section 86(1) Nos 1, 2 and 4; or
2. produces, stocks, imports or exports objects which depict or contain such symbols for distribution or use in Germany or abroad in a manner indicated in No 1,

shall be liable to imprisonment not exceeding three years or a fine.

(2) Symbols within the meaning of subsection (1) above shall be in particular flags, insignia, uniforms and their parts, slogans and forms of greeting. Symbols which are so similar as to be mistaken for those named in the 1st sentence shall be equivalent to them.

(3) Section 86(3) and (4) shall apply mutatis mutandis.

### Section 166 - Defamation of religions, religious and ideological associations

(1) Whoever publicly or through dissemination of written materials (section 11(3)) defames the religion or ideology of others in a manner that is capable of disturbing the public peace, shall be liable to imprisonment not exceeding three years or a fine.

(2) Whoever publicly or through dissemination of written materials (section 11(3)) defames a church or other religious or ideological association within Germany, or their institutions or customs in a manner that is capable of disturbing the public peace, shall incur the same penalty.

### Special laws

The General Equal Treatment Act<sup>29</sup> does not punish hate speech separately. Instead, the law establishes a Federal Anti-Discrimination Agency in Support of Family, Senior Citizens, Women and Youth.

## II.1.12. Greece

### Constitutional texts

The Greek Constitution (1975)<sup>30</sup> contains a number of provisions which condemns hate speech:

#### Art. 5

(2) All persons within the Greek State enjoy full protection of their life, honour, and freedom, irrespective of nationality, race, creed, or political allegiance. Exceptions shall be permitted in such cases as are provided for by international law. Aliens persecuted for acts carried out in defence of their freedom shall not be extradited.

#### Art. 14

(1) Any person may express and propagate his opinion orally, in writing, or in print, with due adherence to the laws of the State.

(2) The press is free. Censorship and all preventive measures are prohibited.

(3) The seizure of newspapers and other printed matter, either before or after circulation, is prohibited. By exception, seizure after publication is permitted upon instruction by the Public Prosecutor because of: a) insult to the Christian and all other known religions, b) insult to the person of the President of the Republic, c) a publication which discloses information relating to the composition, armament, and disposition of the armed forces or the fortifications of the country, or aims at violently overthrowing the political system or is directed against the territorial

<sup>29</sup> [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/EN/publikationen/agg\\_in\\_englischer\\_Sprache.pdf?\\_\\_blob=publicationFile](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/EN/publikationen/agg_in_englischer_Sprache.pdf?__blob=publicationFile)  
<sup>30</sup> Greece Constitution: <http://www.hri.org/docs/syntagma/>

integrity of the State, d) obscene publications which manifestly offend public decency, in the cases specified by law.

## Provisions of the Criminal Code

### *Article 198 - Treacherous blasphemy*

1. One who publicly and maliciously and by any means blasphemes God shall be punished by imprisonment for not more than two years.
2. Except for cases under paragraph 1, one who by blasphemy publicly manifests a lack of respect for the divinity shall be punished by imprisonment for not more than three months."

### *Article 199 - Religious Kathyvrisi*

One who publicly and maliciously and by any means blasphemes the Greek Orthodox Church or any other religion tolerable in Greece shall be punished by imprisonment for not more than two years."

## Special laws

In Greece, the Law 3304/2005 refers to „the implementation of the principle of equal treatment regardless of ethnic origin, religious or other beliefs, disability, age or sexual orientation“ which provides in Art. 16 (1) that „anyone who violates the prohibition of discrimination on grounds of racial or ethnic origin or religious beliefs or other disability, age or sexual orientation in respect of the supply of goods or supply of services to the public, is punishable by six months' imprisonment and a fine of 1,000 to 5,000 Euro."

## II.1.13. Hungary

### Constitutional texts

The starting point of the legislation on freedom of expression in terms of combating hate speech lies in Article IX of the Constitution of Hungary (2011)<sup>31</sup>, which reads:

#### *Article IX*

- (1) Everyone shall have the right to freedom of speech.

31 Constitution of Hungary: [http://www.servat.unibe.ch/icl/hu00000\\_.html](http://www.servat.unibe.ch/icl/hu00000_.html)

(2) Hungary shall recognise and protect the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion.

(3) In the interest of the appropriate provision of information as necessary during the electoral campaign period for the formation of democratic public opinion, political advertisements may only be published in media services free of charge, under conditions guaranteeing equal opportunities, lay down in a cardinal Act.

(4) The right to freedom of speech may not be exercised with the aim of violating the human dignity of others.

(5) The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community, invoking the violation of their human dignity, as provided for by an Act.

(6) The detailed rules relating to the freedom of the press and the organ supervising media services, press products and the communications market shall be laid down in a cardinal act.

#### *Article XV*

(1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(2) Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

(3) Women and men shall have equal rights.

(4) By means of separate measures, Hungary shall promote the achievement of equality of opportunity and social inclusion.

(5) By means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities.

### **Provisions of the Criminal Code**

The article on hate speech in the new Criminal Code of Hungary (adopted at the end of 2012 and which entered into force in 2013) is short and clear:

#### *Section 269*

„Any person who publicly incites hatred against:

a) the Hungarian nation;

b) any national, ethnical, racial or religious group; or

c) certain social groups, particularly on the grounds of disability, gender identity or sexual orientation;

is guilty of an offense punishable with imprisonment up to three years.”

## Special laws

Another law that lists provisions against hate speech is „Law on freedom of the press“ („Media Freedom Act“). In the article 17 of this Act, paragraph (1) states that it is prohibited to promote any materials in mass media whose content „incite hatred against any nation, community, national minority, ethnic, linguistic or other or any majority, and any church or religious group „. And in paragraph (2) of the same article states that: „The content of a material in the media cannot promote the idea of excluding any nation, community, national minorities, ethnic, linguistic or other or of a majority as well as any church or religious group“.

The article 14 of the law has also got an interesting content: „viewers or listeners will receive a warning before broadcasting any image or any sound effect that could affect a person because of his religious beliefs related to his/her faith or other ideological convictions or who are violent or may be disturbing in another way“.

## II.1.14. Ireland

### Constitutional texts

In Ireland the right to the freedom of expression is guaranteed by the Constitution (1937)<sup>32</sup> (Article 40.6.1.i). However, this right is only one default, depending on the condition that freedom of expression „is not used to undermine public order or morals or state authority.“

### Provisions of the Criminal Code

Irish Penal Code does not contain provisions on hate speech, all provisions relating to this subject being included in „The Prohibition of Incitement to Hatred Act“ from 1989, which is a criminal law.

## Special laws

The Prohibition of Incitement to Hatred Act, 1989 prohibits words or behaviours of that are „dangerous, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred“ against „a group of persons, the State or elsewhere, for reasons of race, colour, nationality, religion, national or ethnic origin, of belonging to the community of emigrants

<sup>32</sup> Ireland Constitution: <http://www.irishstatutebook.ie/en/constitution/>

or sexual orientation”.

The Article 2 of the Act provides:

(1) It shall be an offence for a person-

(a) to publish or distribute written material,

(b) to use words, behave or display material - written

(i) Any place other than inside in a private residence, or

(ii) That it inside a private residence the words, behaviour or material has seen or Heard by persons Outside the residence, or

(c) to distribute, show or play a recording of visual images or sounds,

if the written material, words, behaviour, visual images or sounds, as the case may be, is threatening, abusive or insulting and is Intended or, having regard to all the circumstances, to stir up hatred has likely.

A person who is guilty of an offense under this article (and other regulated articles that hate speech) is punishable by:

⇒ simple conviction to a fine not exceeding £ 1,000 or to imprisonment for a term not exceeding six months or to both, or

⇒ following conviction on indictment, to a fine not exceeding £ 10,000 or to imprisonment for a term not exceeding two years or to both.

## II.1.15. Italy

### Constitutional texts

Article 3 of the Italian Constitution (1947)<sup>33</sup> states that all citizens are equal before the law as being carriers of social dignity, irrespective of sex, race, language, religion, political opinion, personal or material circumstances. It is the duty of the Italian Republic to remove those obstacles that constrain economic and social freedom and equality of citizens, preventing the full development of the person and the effective participation of all workers in the political, economic and social development of the country.

33 The Constitution of Italy : [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

## Article 21

Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorization or censorship. Seizure may be permitted only by judicial order stating the reason and only for offences expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offences.

In such cases, when there is absolute urgency and timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately and in no case later than 24 hours refer the matter to the Judiciary for validation. In default of such validation in the following 24 hours, the measure shall be revoked and considered null and void.

The law may introduce general provisions for the disclosure of financial sources of periodical publications.

Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of prevention and repressive measure against such violations shall be established by law.

## Provisions of the Criminal Code

### *Art. 402 - Insult to the state religion*

(1) The Constitutional Court ruling no. 508 of November 20, 2000, established the unconstitutionality of this article, which stated „Public Insulting state religion, shall be punished with imprisonment up to one year“

### *Article.403 - Offences against a religious and those they represent.*

(1) Whoever publicly insults a religion by defaming those they represent, shall be punished by a fine of € 1,000 to € 5,000.

Apply a fine of € 2,000 to € 6,000 for those who offend religious cult, the defamation of a priest of that cult.

### *Art. 594 - Insult*

Damaging the honour or the dignity of a person is punished with detention up to 6 months or with a fine up to 516€. The same punishment is applied if the mean of realising the act are telegram, phone, written act or painting.

In case the infraction implies the attribution of a determined deed, the punishment applied is with detention up to one year or a fine up to 1.032 €. The punishment is higher in case the infraction is committed in the presence of several persons.

### Article. 595 - Defamation

Whoever harms the reputation of others when communicating with many people, apart from the cases provided for in the preceding article shall be punished with imprisonment up to one year or a fine of up to € 1.032.

If the offense consists in assigning a determined fact, the penalty will be applicable with imprisonment up to two years, or a fine of up to € 2.065.

If the crime is done through the media or by any other means of publicity, or in a public act, the penalty is imprisonment applicable to six months to three years or a fine of not less than 516 €.

## Special Laws

Law of 9 July 2003<sup>34</sup> does not punish separately hate speech. It establishes the „Ufficio Nazionale Antidiscriminazioni Razziali“ (UNAR) - an independent authority for promoting the equality.

## II.1.16. Latvia

### Constitutional Texts

Constitution of the Republic of Latvia (1993)<sup>35</sup> does not contain texts with direct reference to the prohibition of discrimination and incitement to hatred, but some articles refer more or less implicitly to this issue.

#### Preamble

Latvia as democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom; it recognises and protects fundamental human rights and respects ethnic minorities.

Art.95 The State shall protect human honour and dignity [...].

100. Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.

### Provisions of the Criminal Code

Provisions against hate speech can be found in „Section 150. Violation of the right to equality of persons based on their attitudes towards religion“ but refer, as the title indicates, only to discriminatory speech on grounds of religion: „For a person who commits a direct or indirect restriction of the rights of persons or create the preferential benefits to certain individuals based

<sup>34</sup> <http://www.asgi.it/wp-content/uploads/public/decreto.legislativo.9.luglio.2003.n.215.pdf>

<sup>35</sup> Constitution of the Republic of Latvia: <http://www.saeima.lv/en/legislation/constitution>

on their attitude towards religion, except for the activities of religious institutions denominated or harm to religious sensibilities of people or hate about the attitude of these people towards religion or atheism, the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage”.

As shown in a series of reports of local organizations or international organizations or bodies, Latvian Criminal Code does not recognize hate speech against persons belonging to the LGBT community, for example.

On the other hand, it is considered to be an important achievement for LGBT rights the including in the Labour Code of provisions prohibiting discrimination in employment and at work for reasons of sexual orientation.

## Special laws

There is no special law on anti-discrimination. Latvian Ombudsman has, by its law, responsibilities in terms of promoting and assuring the equality<sup>36</sup>.

## II.1.17. Lithuania

### Constitutional texts

Lithuanian Constitution (1992)<sup>37</sup> contains several articles that contribute to combating discrimination and hate speech, namely:

#### *Article 25*

The human being shall have the right to have his own convictions and freely express them.

The human being must not be hindered from seeking, receiving and imparting information and ideas.

Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life, and morals of a human being, or to defend the constitutional order.

Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.

<sup>36</sup> [http://www.equineteurope.org/IMG/pdf/PROFILE\\_OO\\_LTV.pdf](http://www.equineteurope.org/IMG/pdf/PROFILE_OO_LTV.pdf)

<sup>37</sup> The Constitution of Lithuania: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions.

#### *Article 26*

Freedom of thought, conscience and religion shall not be restricted.

Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his beliefs.

No one may compel another person or be compelled to choose or profess any religion or belief.

Freedom of a human being to profess and spread his religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, the public order, the health and morals of the people as well as other basic rights and freedoms of the person.

Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions.

#### *Article 29*

All persons shall be equal before the law, the court, and other State institutions and officials.

The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.

### **Provisions of the Criminal Code**

In Lithuania, the main regulations to combat hate speech are included in the Criminal Code. Thus, „Article 170 - Incitement against a group on grounds of nationality, race, ethnicity, religion or any other group of people” states that:

“1. A person who, for the purposes of distribution, produces, acquires, sends, transports or stores the items ridiculing, expressing contempt for, urging hatred of or inciting discrimination against a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views or inciting violence, a physical violent treatment of such a group of persons or the person belonging thereto or distributes them shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to one year.

2. A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.

3. A person who publicly incites violence or a physical violent treatment of a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views or finances or otherwise supports such activities shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

4. A legal entity shall also be held liable for the acts provided for in this Article.”

Moreover, Article 170 (1) - The set up and the activity of the groups and organizations for the purposes of discrimination against a group of persons or incitement against it” provides that:

“1. A person who creates a group of accomplices or an organised group or organisation aiming at discriminating a group of persons on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views or inciting against it or participates in the activities of such a group or organisation or finances or otherwise supports such a group or organisation shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to one year.

2. A legal entity shall also be held liable for the acts provided for in this Article”.

## Special laws

In Lithuania there are two special laws that relate to combating discrimination - Law on Equal Opportunities for Women and Men and the Law on Equal Treatment -, but they have only tangential links to hate speech though<sup>38</sup>.

## II.1.18. Luxembourg

### Constitutional texts

In the Constitution of Luxembourg (1868 to 2009 with subsequent amendments)<sup>39</sup> we find three articles that relate more or less directly, to combating discrimination and hate speech, and ensuring freedom of expression:

#### *Article 11*

1. The State guarantees the natural rights of the human person and of the family.
2. Women and men are equal in rights and duties. The State sees to active promotion of elimination of impediments which may exist in matters of equality between women and men.

38 <http://www.lygybe.lt/en/legal-acts.html>

39 [https://www.constituteproject.org/constitution/Luxembourg\\_2009.pdf](https://www.constituteproject.org/constitution/Luxembourg_2009.pdf)

### *Article 19*

Freedom of religion and of public worship as well as freedom to express one's religious opinions is guaranteed and the offenses committed in the exercise of such freedoms are subject of repression.

### *Article 24*

Freedom of speech in all matters and freedom of the press is guaranteed, subject to the repression of offenses committed in the exercise of these freedoms. No censorship may ever be introduced.

## **Provisions of the Criminal Code**

### *Article 443*

The one who, according to the cases mentioned below, falsely attributes to someone facts affecting the honour or expose that person to public contempt is guilty of libel, if the law allows for proof of truth. In situations where the law does not support verity the act is called defamation. The person responsible under Article 21 of the Law of 8 June 2004 on freedom of expression in the media is not guilty of libel or defamation if:

1. the law recognizes legal proof of the fact, the proof has not been submitted, but the person responsible under Article 21, after the necessary procedures done, proved by all the ways there are sufficient reasons to conclude veracity of the facts reported so is in the public interest to know the information at issue;
2. If during a direct communication with the public and with reference to the situation:
  - a) endeavour to avoid offense to reputation and honor
  - b) clearly cites the opinion's author presented
  - c) communication to the public is justified by the public interest.

### *Article 444*

The fine is from 251 Euros to 2,000 Euros if slander was made in public places or in the vicinity of several persons in a private place, but open to the general public that the right to gather and to visit it:

- ⇒ In any place in the presence of the person defamed and before witnesses
- ⇒ If the offense is committed by means of written or printed, images or emblems posters, distributed or communicated to the public by any means, including the media, sold, offered for sale or public display or written texts, images or logos that are not intended for the public, but are sent to the one by any means including media, being addressed to several persons.

The offender shall be punished by imprisonment for a period from one month to one year and a fine of 251 Euros to 25,000 Euros, if calumnies are made as indicated in par. 1 of this article and contains one of the subjects in article 454 of this Code.

#### *Article 454*

The distinction between persons on grounds of origin, colour, sex, sexual orientation, family status, age, health, disability, morals, political or philosophical opinions, trade union activity or association, real or assumed to an ethnic group, nation, race or religion is considered discrimination.

It's also considered discrimination any distinction between legal persons, groups or communities on the grounds of origin, colour, sex, sexual orientation, family status, age, health, disability, morals, political or philosophical activities, union or association, real or assumed to an ethnic group, nation, race or religion of individuals within that legal person, group or community.

#### *Article 457-1*

It shall be punishable with imprisonment from 8 months to 2 years and a fine between 251 and 25,000 Euros or only one of the two punishments:

- 1) the person who through speech or threats in public places or meetings or in writing, prints, drawings, engravings, paintings, emblems, images, or images sold or distributed, offered for sale or displayed in public places or public meetings, or through posters or posters displayed in public, or by any means of audiovisual communication incite acts referred to in Article 455, hatred or violence against a person or entity, group or community based on the criteria specified in art. 454;
- 2) the person who belongs to an organization whose objectives are committing actions referred to in paragraph 1 of this Article;
- 3) the person who prints, manufactures, transports, holds, imports, exports, put into circulation in Luxembourg, helps transport outside Luxembourg, post or transmit offers professional other means of distribution, documents, prints, engravings, paintings, posters, photos, videos, logos, pictures or other media text or images, liable to incite acts under Article 455, hatred or violence against any natural or legal person, group or community, or commit an offense under Article 454. Confiscation of items listed will be required in all cases.

#### *Article 457-2*

All offenses defined under article 453 that were committed on the ground of a person's membership or non-membership to an ethnic group, nation, race or religion is punishable by imprisonment from 6 months to 3 years and a fine from 251 Euros to 37,500 Euros or one of the two penalties.

#### *Art. 457-3*

Any person who through speeches, shouting or threats uttered in public places or meetings or

documents, drawings, engravings, paintings, emblems, pictures or other media of transmission of a written text, spoken or images sold or distributed, offered for sale or displayed in public places or meetings, or by placards or posters displayed in public or by any means audiovisual communication, disputes, minimize, justify or deny the existence of one or more crimes against humanity or war crimes as defined in Article 6 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 and were committed either by members of an organization declared criminal under Article 9 of this law, or by a person convicted of such offenses by either a court of Luxembourg, or a foreign or an international one is punishable by imprisonment from eight days to six months and a fine of 251 to 25,000 Euros or one of these penalties. It shall be punishable with the same punishment or one of these penalties any person who, by means presented in the previous paragraph, contested, minimized, justified or denied the existence of one or more genocide as defined by the Law of 8 August 1985 on the suppression of genocide or recognized by a court in Luxembourg or international authority.

## Special Laws

Equal Treatment Act<sup>40</sup> does not contain special provisions against hate speech.

## II.1.19. Malta

### Constitutional texts (1964)<sup>41</sup>

#### Article 41

(1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of sub-article (1) of this article to the extent that the law in question makes provision -

(a) that is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or

<sup>40</sup> <http://eli.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1>

<sup>41</sup> Constitution of Malta: <http://www.constitution.org/cons/malta/chapt0.pdf>

the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically:

Provided that provision may be made by law -

(a) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty one years of age; and

(b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a prima facie case of such offence, that edition shall be returned to the person from whom it was seized.

(5) No person shall be deprived of his citizenship under any provisions made under article 30(1) (b) of this Constitution or of his juridical capacity by reason only of his political opinions.

#### *Article 40*

(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.

### **Provisions of the Criminal Code**

Maltese Criminal Code contains two very specific articles that condemn hate speech:

82A. (1) Whosoever uses any threatening, abusive or insulting words or behaviours, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic, origin, religion or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

(2) For the purposes of the foregoing sub-article „violence or racial hatred“ means violence or racial hatred against a person or against a group of persons in Malta defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion. Condoning, denying or trivializing genocide, etc., against a group.

82B. Whosoever publicly condones, denies or grossly trivializes genocide, crimes against humanity and war crimes directed against a group of persons or a member of such a group defined by reference to race, colour, religion, citizenship, descent or national or ethnic origin when the conduct is carried out in a manner -

(a) likely to incite to violence or hatred against such a group or a member of such a group;

(b) likely to disturb public order or which is threatening, abusive or insulting, shall, on conviction, be liable to imprisonment for a term from eight months to two years:

For the purposes of this article „genocide“, „crimes against humanity“ and „war crimes“ shall have the same meaning assigned to them in article 54A.

## Special laws

Equality laws do not punish hate speech. It establishes the National Commission for the Promotion of Equality, which is a body of support for victims of discrimination.<sup>42</sup>

## II.1.20. Netherlands

### Constitutional texts

The Dutch Constitution (1815, as amended to 1983)<sup>43</sup> includes quite specific references relating to freedom of expression and combating hate speech:

#### *Article 1*

All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.

#### *Article 7*

1. No one shall require prior permission to publish thoughts or opinions through the press,

<sup>42</sup> [http://msdc.gov.mt/en/NCPE/Documents/Home/Welcome/Chapter%20456\\_updated.pdf](http://msdc.gov.mt/en/NCPE/Documents/Home/Welcome/Chapter%20456_updated.pdf)

<sup>43</sup> <http://msdc.gov.mt/en/NCPE/Documents/Home/Welcome/LN%20181%20updated.pdf>

<sup>43</sup> Dutch Constitution: <http://www.legislationline.org/documents/section/constitutions/country/12>

without prejudice to the responsibility of every person under the law.

2. Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast.

3. No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals.

4. The preceding paragraphs do not apply to commercial advertising.

## Provisions of the Criminal Code

Dutch penal code prohibits both insulting to a group (Article 137c) and inciting hatred, discrimination or violence (Article 137d). The definition of offenses in the Criminal Code is as:

Article 137c: Any person who, in public, orally, in writing or graphically intentionally expresses by insulting about a group of people based on race, religion or philosophy of life, as heterosexual or homosexual orientation or their physical, psychological or mental disability, is punished with imprisonment of up to one year or a fine of 3rd category.

Article 137d: Any person who, in public, orally, in writing or graphic, incites to hate, discrimination and acts of violence against a person or property by reason of race, religion or philosophy of life, sex, heterosexual or homosexual orientation or physical, psychological or mental disability, is punished with imprisonment of up to one year or a fine of 3rd category.

## Special laws

The Equal Treatment in the Labour Market Act and the Gender Equality Act do not specifically punish hate speech. The Netherlands Institute for Human Rights is established as a quasi-legal institution.<sup>44</sup>

## II.1.21. Poland

### Constitutional texts

In Poland, regulations against hate speech are found in the Constitution (1997)<sup>45</sup>, the Criminal Code and the Broadcasting Law. Those regulatory condemn any behavior inspired by hatred

<sup>44</sup> <http://mensenrechten.nl/sites/default/files/2013-05-08.Legislation%20Equal%20Treatment.pdf>

<sup>45</sup> Poland Constitution: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

racial, national, or sectarian. On the other hand, it can be seen that in this country, laws designed to discourage hate speech focuses particularly on combating this type of discourse when they refer to certain religions or religious communities. Those laws punish, for instance, those who offend religious feelings intentionally, by disrupting a religious service or by public slander, and those who use in public expressions that insult a person or group for reasons of national affiliation, ethnic, racial or religious or lack of religious affiliations.

As regards the Constitution, beyond the fact that Article 54 protects freedom of expression, the Article 13 prohibits political parties and other organizations that have programs based on totalitarian methods and ways of activity specific to Nazism, fascism and communism. Article 13 also prohibits programs or activities that promote racial or national hatred. Article 35 gives national and ethnic minorities the right to establish educational and cultural institutions and institutions designed to protect religious identity.

#### *Article 32*

1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason what so ever.

#### *Article 53*

1. Freedom of conscience and religion shall be ensured to everyone.
2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.

#### *Article 54*

The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.

### **Provisions of the Criminal Code**

As regards the Criminal Code, the Article 196 states that anyone found guilty of offending religious feelings intentionally, by public defamation of an object or place of worship is liable to a fine, to restriction of liberty or imprisonment for a period of up to two years.

Article 256 states that anyone found guilty of promoting a fascist or any other kind of a totalitarian system based on differences of national, ethnic, racial or religious reasons, or reasons related to non-adherence to a religious cult is liable to a fine, a restriction of liberty or imprisonment of up to two years.

Moreover, Article 257 states that everyone who is guilty of publicly insulting a group or a person on grounds of nationality, ethnicity, race or religious reasons or due to accede to any religious denomination shall be liable to a fine of restriction of liberty or imprisonment up to three years.

## Special Laws

The broadcasting law establishes, through Article 18, paragraph 2 that programs or other TV shows must respect the religious beliefs of the public, especially the Christian value system.

## II.1.22. Portugal

### Constitutional texts

The Constitution of Portugal (1976)<sup>46</sup> also contains some pretty clear and detailed articles that relate to the prohibition of discrimination and hate speech. It is also worth noting that it is the only Constitution, where the list of possible reasons or grounds of discrimination that are prohibited refers to the sexual orientation.

#### *Article 13*

*(Principle of equality)*

1. All citizens possess the same social dignity and are equal before the law.
2. No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

#### *Article 26*

*(Other personal rights)*

1. Everyone is accorded the rights to personal identity, to the development of personality, to civil capacity, to citizenship, to a good name and reputation, to their image, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination.

#### *Article 37*

*(Freedom of expression and information)*

1. Everyone has the right to freely express and divulge his thoughts in words, images or by

<sup>46</sup>

Constitution of Portugal: <http://www.tribunalconstitucional.pt/tc/conteudo/files/constituicaoingles.pdf>

any other means, as well as the right to inform others, inform himself and be informed without hindrance or discrimination.

2. Exercise of these rights may not be hindered or limited by any type or form of censorship.

3. Infractions committed in the exercise of these rights are subject to the general principles of the criminal law or the law governing administrative offences, and the competence to consider them shall pertain to the courts of law or an independent administrative entity respectively, as laid down by law.

4. Every natural and legal person shall be equally and effectively ensured the right of reply and to make corrections, as well as the right to compensation for damages suffered.

## **Provisions of the Criminal Code**

### *Article 180 - Defamation*

1. Any person who, speaking to a third party attributes to another person, even if only creates suspicion, a fact or making a judgment about it or reproduce such an award or judgment, it is considered defamation and punishable by imprisonment of up to six months or a fine equivalent to payment of 240 days.

2. The conduct is not punishable if: a) the attributing is made to achieve the legitimate interests and b) the person proves the truth of the facts attributed or that being in good faith and with good cause, he believed them true.

3. Notwithstanding the provisions of subparagraphs b), c) and d) of the Article 31.2 the above paragraph provisions do not apply when attributing a fact that the regards private and family life

4. Good faith referred to in point b) of paragraph 2 shall be excluded if the person has not fulfilled its obligation to be aware of circumstances of the fact attributed and the truth of the accusation.

5. When a crime is attributed to a person, proof of truth is also permissible, but only pending a final judgment in question.

### *Article 181 - Insult*

1. Any person who insults another person, accusing her of facts, even by creating a suspicion, or by sending words insulting their honour, is punished with imprisonment of up to three months or a fine equivalent to payment of 120 days.

2. As regards the attribution of facts the provisions of paragraphs 2, 3 and 4 of the preceding Article are applied accordingly.

### *Article 187 - Offense against legal persons or bodies*

1. Any person who, without good reason and being of bad faith claims untrue things, able to affect the credibility and prestige owed to institutions, organizations or institutions exercising

public authority is punishable by up to six months in prison or a fine payment equivalent to 240 days.

#### Article 240 - Racial and religious discrimination

##### 1. Any person who

a) set up an organization or participates to an activity that publicly incites to discrimination or incites to discrimination, hate or violence, racial or religious or

b) participates to the organization of such activities or offer assistance, including financial, shall be punished with imprisonment from 1 to 8 years.

##### 2. Any person who publicly, in writing or by diffusion through any media channels:

a) causes of violence against a person or group of persons because of race, color, ethnic or national origin or religion; and

b) defame or insult a person or group of persons based on race, color, national or ethnic origin or religion, particularly by denying war crimes or crimes against humanity, with the intent to incite racial or religious discrimination or to encourage it, is punished with imprisonment from six months to five years.

### Specific Laws

The Law of December 3rd, 2010 does not punish separately hate speech. The Human Rights Ombudsman is established as an institution to support victims of discrimination.<sup>47</sup>

## II.1.23. Slovakia

### Constitutional texts<sup>48</sup>

Article 12 is the one that refers to combating discrimination and hate speech:

“(1) People are free and equal in dignity and their rights. Basic rights and liberties are inviolable, inalienable, secured by law, and unchallengeable.

(2) Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds”.

<sup>47</sup> <http://www.rpo.gov.pl/en/content/act-3rd-december-2010-implementation-some-regulations-european-union-regarding-equal>  
<sup>48</sup> <http://www.slovakia.org/sk-constitution.htm>

On the other hand the Article 26 guarantees the right to free speech:

“(1) The freedom of speech and the right to information are guaranteed.

(2) Everyone has the right to express his views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to licensing procedures. Enterprise in the fields of radio and television may be pegged to the awarding of an authorization from the state. The conditions will be specified by law.

(3) Censorship is banned.

(4) The freedom of speech and the right to seek out and spread information can be restricted by law if such a measure is unavoidable in a democratic society to protect the rights and liberties of others, state security, public order, or public health and morality.”

## **Provisions of the Criminal Code**

There are a number of items (sections) within the Slovak Criminal Code that condemns hate speech as follows:

### *Section 423 - Defamation of Nation, Race and Belief*

(1) Any person who publicly defames

a) any nation, its language, any race or ethnic group, or

b) any individual or a group of persons because of their affiliation to any race, nation, nationality, complexion, ethnic group, family origin, religion, or because they have no religion,

shall be liable to a term of imprisonment of one to three years.

(2) The offender shall be liable to a term of imprisonment of two to five years if he commits the offence referred to in paragraph 1

a) with at least two more persons,

b) in association with a foreign power or foreign agent,

c) in the capacity of a public official,

d) under a crisis situation, or

e) by reason of specific motivation.

### *Section 424 - Incitement of National, Racial and Ethnic Hatred*

(1) Any person who publicly threatens an individual or a group of persons because of their affiliation to any race, nation, nationality, complexion, ethnic group, family origin or their religion,

if they constitute a pretext for threatening on the aforementioned grounds, by committing a felony, restricting their rights and freedoms, or who made such restriction, or who incites to the restriction of rights and freedoms of any nation, nationality, race or ethnic group, shall be liable to a term of imprisonment of up to three years.

(2) The same sentence as referred to in paragraph 1 shall be imposed on any person who associates or assembles with others with a view to committing the offence referred to in paragraph 1.

(3) The offender shall be liable to a term of imprisonment of two to six years if he commits the offence referred to in paragraphs 1 or 2

- a) in association with a foreign power or foreign agent,
- b) in public,
- c) by reason of specific motivation,
- d) in the capacity of a public official,
- e) in the capacity of a member of an extremist group, or
- f) under a crisis situation.

*Section 424(a) - Incitement, Defamation and Threatening to Persons because of their Affiliation to Race, Nation, Nationality, Complexion, Ethnic Group or Family Origin*

(1) Any person who publicly

- a) incites to violence or hatred against a group of persons or an individual because of their affiliation to any race, nation, nationality, complexion, ethnic group, family origin or their religion, if they constitute a pretext for the incitement on the aforementioned grounds, or
- b) defames such group or individual, or threatens them by exonerating an offence that is deemed to be genocide, a crime against humanity or a war crime under Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court, or an offence that is deemed to be a crime against peace, a war crime or a crime against humanity under Article 6 of the Statute of the International Military Tribunal annexed to the Agreement of 8 August 1945 for the Prosecution and Punishment of the Major War Criminals of the European Axis, if such crime was committed against such group of persons or individual, or if a perpetrator of or abettor to such crime was convicted by a final and conclusive judgement rendered by an international court, unless it was made null and void in lawful proceedings, publicly denies or grossly derogates such offence, if it has been committed against such person or individual, shall be liable to a term of imprisonment of one to three years.

(2) The offender shall be liable to a term of imprisonment of two to five years if he commits the offence referred to in paragraph 1 by reason of specific motivation.

## Special laws

In 2004, the Slovak Parliament passed the „Law on equal treatment in certain areas and protection against discrimination, consisting of amending and supplementing certain other laws“. Shorter version of the name is „Law against Discrimination“.<sup>49</sup>

This law makes few direct references to combat hate speech. The first reference is found in article 2, par. (2) where „discrimination“ is defined: „(2) Discrimination is direct discrimination, indirect discrimination, harassment and victimization; discrimination is also an instruction to discriminate and incitement to discrimination. ... The paragraph (5) leads us closer to hate speech, by the definition it gives to the notion of „harassment“: „(5) Harassment is a type of treatment of a person who is perceived by that person in a way that can justify as being unpleasant, inappropriate or offensive and which has the purpose or effect occurs that could be considered damage dignity of a person and of creating a hostile, degrading or offensive“.

Another reference to hate speech is contained in Article XV of the Act, which amends, among others Article 58 (a) paragraph 2 of Law No. 29/1984 Coll on primary and secondary education system: „No activity aimed at or which is directly in inciting racial and ethnic hatred, religious intolerance and intolerance based on sexual orientation, which is contrary to human dignity and traditional values of the European culture and inciting xenophobia will not be permitted in primary schools, primary schools of arts, apprenticeship and training centers, schools, special schools and school facilities within and also outside the educational activities“. The law does not punish hate speech separately. It regulates the establishment and operation of the Slovak National Centre for Human Rights - the institution entitled to enforce and respect the law and has, among others, the following task: „to collect and provide, upon request, information on racism, xenophobia and anti-Semitism in the Slovak Republic.“

## II.1.24. Slovenia

### Constitutional texts

The Article 14 of the Constitution of Republic of Slovenia<sup>50</sup> states that “In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance”.

It is interesting to note that, by 2004, disability was not included in the enumeration in this article, but it was introduced with amendments to the Constitution in that year. Also, it can be seen that sexual orientation is not mentioned in this article.

<sup>49</sup> [http://www.snsfp.sk/CCMS/files/OPR\\_AntidiskriminacnyZakon\\_ENG-1.pdf](http://www.snsfp.sk/CCMS/files/OPR_AntidiskriminacnyZakon_ENG-1.pdf)  
<sup>50</sup> The Constitution of Slovenia: [http://www.pf.uni-mb.si/datoteke/janjja/Angleska%20PT/anglesko-slovenska\\_urs.pdf](http://www.pf.uni-mb.si/datoteke/janjja/Angleska%20PT/anglesko-slovenska_urs.pdf)

Article 15 refers to „exercise and limitation of rights“:

Human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

The manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution provides so or where this is necessary due to the particular nature of an individual right or freedom. Human rights and fundamental freedoms shall be limited only by the rights of others and in such cases as are provided by this Constitution.

Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed.

No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognize that right or freedom or recognizes it to a lesser extent.

And the article 39 (Freedom of Expression) states that:

Freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions. Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law.

## **Provisions of the Criminal Code**

In the Slovenian Penal Code there are provisions contained in the Article 297 - Public incitement to hatred, violence or intolerance“ that combat hate speech. Here is the text of the article:

(1) Whoever publicly provokes or stirs up ethnic, racial, religious or other hatred, strife or intolerance, or provokes any other inequality on the basis of physical or mental deficiencies or sexual orientation, shall be punished by imprisonment of up to two years.

(2) The same sentence shall be imposed on a person who publicly disseminates ideas on the supremacy of one race over another, or provides aid in any manner for racist activity or denies, diminishes the significance of, approves disregards, makes fun of, or advocates genocide, holocaust, crimes against humanity, war crime, aggression, or other criminal offences against humanity.

(3) If the offence under preceding paragraphs has been committed by publication in mass media, the editor or the person acting as the editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent the actions referred to in the preceding paragraphs.

(4) If the offence under paragraphs 1 or 2 of this Article has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols,

damaging the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to three years.

(5) If the acts under paragraphs 1 or 2 of this Article have been committed by an official by abusing their official position or rights, he shall be punished by imprisonment of up to five years.

(6) Material and objects bearing messages from paragraph 1 of this Article, and all devices intended for their manufacture, multiplication and distribution, shall be confiscated, or their use disabled in an appropriate manner.

## Special laws

There is a law that does not, however, directly refer to hate speech. This law<sup>51</sup> was created to draw the Ombudsman - a quasi-judicial body under the Ministry of Labour, Family and Social Affairs.

## II.1.25. Spain

### Constitutional texts

As regard as Spain Constitution<sup>52</sup>, the following sections have to be taken into account:

Section 14

Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

1. The following rights are recognised and protected:

a) the right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction.

b) the right to literary, artistic, scientific and technical production and creation.

c) the right to academic freedom.

d) the right to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms.

2. The exercise of these rights may not be restricted by any form of prior censorship.

51 <http://www.zagovornik.gov.si/en/legislation/constitution-and-legislation/act-implementing-the-principle-of-equal-treatment/index.html>  
52 [http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist\\_Normas/Norm/const\\_espa\\_texto\\_ingles\\_0.pdf](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf)

3. The law shall regulate the organization and parliamentary control of the mass communication media under the control of the State or any public agency and shall guarantee access to such media by the significant social and political groups, respecting the pluralism of society and of the various languages of Spain.

4. These freedoms are limited by respect for the rights recognised in this Part, by the legal provisions implementing it, and especially by the right to honour, to privacy, to the own image and to the protection of youth and childhood.

5. The seizure of publications, recordings and other means of information may only be carried out by means of a court order.

## Provisions of the Criminal Code

The main texts condemning hate speech are found in art.510:

“1. Those who provoke discrimination, hate or violence against groups or associations due to racist, anti-Semitic reasons or any other related to ideology, religion or belief, family situation, belonging to an ethnic group or race, national origin, gender, sexual preference, illness or handicap, shall be punished with a sentence of imprisonment from one to three years and a fine from six to twelve months.

2. Those who, with knowledge of its falseness or reckless disregard for the truth, were to distribute defamatory information on groups or associations in relation to their ideology, religion or belief, belonging an ethnic group or race, national origin, gender sex, sexual preference, illness or handicap shall be punished with the same penalty.”

Article 525 refers to hate speech as well, but in regard with discrimination on religious grounds:

“1. Whoever, in order to offend the feelings of the members of a religious confession, publicly disparages their dogmas, beliefs, rites or ceremonies in public, verbally or in writing, or insult, also publicly, those who profess or practice these, shall incur the punishment of a fine from eight to twelve months.

2. The same penalties shall be incurred by those who publicly disparage, verbally or in writing, those who do not profess any religion or belief whatsoever.”

## Special laws

Law 62/2003<sup>53</sup> establishes the „Racial and Ethnic Equality Council“. The law does not punish hate speech separately.

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53 [http://www.igualdadynodiscriminacion.org/en/discriminacion/portada/docs/ley62\\_2003.pdf](http://www.igualdadynodiscriminacion.org/en/discriminacion/portada/docs/ley62_2003.pdf)

## II.1.26. Sweden

### Constitutional texts

Constitution of Sweden<sup>54</sup>, Chapter 2 - Fundamental Rights and Freedoms (1991)

#### *Article 1*

All citizens shall be guaranteed the following in their relations with the public administration: 1) the freedom to communicate information and to express ideas, opinions and emotions, whether orally, in writing, in pictorial representations, or in any other way; [...]

#### *Article 15*

No Act of law or other statutory instrument may entail the discrimination of any citizen because he belongs to a minority on grounds of race, skin color, or ethnic origin.

#### *Article 16*

No Act of law or other statutory instrument may entail the discrimination of any citizen on grounds of sex, unless the relevant provision forms part of efforts to bring about equality between men and women or relates to compulsory military service or any corresponding compulsory national service.

### Provisions of the Criminal Code

Sweden prohibits hate speech, and defines it as the statements made in public, threatening or expressing disrespect for an ethnic group or another group for reasons of race, colour, national or ethnic origin, religion, or sexual orientation. The regulations are contained in the Criminal Code but they don't prohibit a meaningful and responsible debate on these issues, any statements made in a completely private sphere either. There are also constitutional restrictions regarding acts that are condemned as well as the limits set by the European Convention on Human Rights.

The text that refers to hate speech can be found at Chapter XVI, Section 8 and has the following content: „A person who, within a broadcast statement or communication, threatens or expresses contempt for a national, ethnic or other group, such as a group of persons with allusion to race, colour, ethnic origin or nationality or religious beliefs should be prosecuted for agitation against a national or ethnic group to imprisonment up to two years or if the offense is of little importance, at a fine.“

### Special laws

Since 2008, in Sweden there is a special law against discrimination („Discrimination Act“)<sup>55</sup> that

<sup>54</sup> Constitution of Sweden: [http://www.servat.unibe.ch/icl/sw00000\\_.html](http://www.servat.unibe.ch/icl/sw00000_.html)  
<sup>55</sup> <http://www.government.se/content/1/c6/11/81/87/36dc60a5.pdf>

prohibits and condemns all forms of discrimination in areas and situations (e.g. employment, education, health service provision) but that does not make direct reference to incitement to hatred.

## II.1.27. The United Kingdom of Great Britain and Northern Ireland

### Constitutional texts

There is no written constitution. The limits of free speech have been tested over time for various cases. Freedom of expression itself is considered as established under the common law. In 1689 Bill of Rights ensured freedom of speech in Parliament for MPs. In 1998 the Human Rights Act was adopted, which includes the Charter of Fundamental Human Rights within the UK written law.

The main regulations

In the UK, several laws criminalize hate speech against several categories of people. Those laws prohibit communication, speech that is hateful, threatening, abusive or insulting and aimed at a person on grounds of colour, race, disability, nationality (including citizenship), ethnic or national origin, religion or sexual orientation. The penalties for hate speech include fines, imprisonment or both<sup>56</sup>.

The UK is also one of the few countries where it is considered that an act of aggression committed against a person presents aggravated when the act is determined by religious or racial grounds, leading thus to increase penalties. Thus, in the „Crime and Disorder Act - 1998“, art. 29 states that:

(1) A person is guilty of an offence under this section if he commits–

- (a) an offence under section 20 of the Offences Against the Person Act 1861 (malicious wounding or grievous bodily harm);
- (b) an offence under section 47 of that Act (actual bodily harm); or
- (c) common assault,

which is racially or religiously aggravated for the purposes of this section.

(2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable–

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;.
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a

<sup>56</sup> <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2236942>

fine, or to both.

(3) A person guilty of an offence falling within subsection (1)(c) above shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

And the 2003 Penal Code states:

„... Increased penalties for aggravated cases of racial or religious nature:

(1) This section applies where a court is considering the seriousness of an offense, other than as provided in sections 29 - 32 of the „Crime and Disorder Act 1998“ (serious attacks, racial or religious, criminal damage, order offenses public harassment, etc.).

(2) If the offense was aggravated by racial or religious references, the court must:

a) treat it as one aggravating and

b) shall state in open court that the offense was serious.”

## II.1.28. Romania

### Constitutional Texts

The Romanian Constitution (adopted in 1991 and revised in 2003)<sup>57</sup> includes a series of texts that criminalize discrimination, even if they are expressed in very general terms, namely:

„Article 4

(2) Romania is the common and indivisible homeland of all its citizens, without distinction of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin”.

„Article 16

(1) All citizens are equal before the law and public authorities, without any privilege or discrimination.”

57 The Romanian Constitution, <http://www.cdep.ro/pls/dic/site.page?id=339>

### *Article 29*

No one may be compelled to adopt an opinion or to adhere to a religion contrary to his/her beliefs.

(2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.

(3) All religions are free and are organized according to their own regulations under the law.

(4) Within the relations between religions any forms, means, acts or actions of religious enmity are banned."

### *Article 30*

(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, images, sounds or other means of communication in public are inviolable.

(2) Any censorship is prohibited. [...]

(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and the right to their own image.

(7) Any defamation of the country and the nation, calls to war and aggression, ethnic, racial, class or religious incitement to discrimination, territorial separatism or public violence, as well as any obscene, indecent deeds contrary to morality are prohibited by law.

(8) Civil liability for any information or creation made public falls upon the publisher or producer, author of the artistic performance, the owner of the copying facilities, radio or television station, under the law. Press offenses are established by law."

Another article that protects citizens against discrimination forms and phenomena is Article 29. There is also an article dedicated to combating discrimination of one of the most discriminated groups of citizens, namely people with disabilities, namely „Article 50. Protection of Disabled Persons“, which states: „Persons with disabilities enjoy special protection. State ensures a national policy of equal opportunities, prevention and treatment of disability to enable effective participation of persons with disabilities in community life while respecting the rights and duties of parents or guardians.“

## **Provisions in the Criminal Code**

In the Criminal Code there is an article dedicated to hate speech, namely „Art.369. Incitement to hatred or discrimination“, with the following text: “public incitement by any means, hatred or discrimination against a class of persons shall be punished with imprisonment from 6 months to 3 years or a fine.” The article also exists in the previous version of the Criminal Code. That form contained the listing criteria or grounds of discrimination. The adoption of the new Criminal Code, however, dropped that list because it is present in the special law relating to discrimination, namely Ordinance 137/2000, republished in 2014.

## Special Laws

Main regulations designed to combat hate speech (with discrimination) are found in Order 137 of 2000 (completed later by several other ordinances and laws).

In article 2, paragraph (1) provides that: „(1) According to this ordinance, discrimination shall mean any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social , belief, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, membership in a disadvantaged group and any other criteria which has the purpose or effect of restricting, removing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or rights recognized by law in the political, economic, social and cultural or any other field of public life.”

If, overall the text of the law refers to the phenomenon of discrimination, which hate speech circumscribes to, Article 15 of this Ordinance relates directly to hate speech: „Under the present ordinance, unless the act is subject to criminal law, any public behaviours, having the character of nationalist-chauvinistic propaganda, incitement to racial or national hatred or conduct which has the purpose or aim at affecting dignity or creating an intimidation, hostile, degrading, humiliating or offensive atmosphere directed against a person, group of persons or a community and related to their belonging to a certain race, nationality, religion, social category or to a disadvantaged category or belief, sex or sexual orientation thereof.”

## Penalties

Article 26 of the law provides that, for the offenses referred to in article 15, the sentence consists of a fine of 1,000 to 30,000 lei, if perpetrated against a person or a fine of 2,000 lei to 100,000 lei, if perpetrated against a group of people or a community.

The law states also that the Council or, where appropriate, the court may compel the person that committed the act of discrimination to publish in public media a summary of judgment finding, respectively the court sentence.

Penalties are also applicable to legal persons.

The application of sanctions provided in par. (1) shall be prescribed within 6 months from the date of settlement petition by the Council.

## Law Enforcement Authorities

In the same order there is provided that that law enforcement authority is the National Council for Combating Discrimination (NCCD).

According to Article 19 of the Ordinance, the Council's powers are:

„(1) In order to combat acts of discrimination, the Council shall exercise its powers in the following areas:

- a) Prevention of discrimination;
- b) Mediation of acts of discrimination;
- c) Investigation, finding and punishing acts of discrimination;
- d) Monitoring cases of discrimination;
- e) Providing specialized assistance to victims of discrimination.

(2) The Council shall exercise its powers at the request of any natural or legal persons or ex officio."

Council is headed by a Steering Board whose appointment is provided for in Article 23 of the Ordinance:

*„Art. 23*

(1) The Steering Board is a collegial, deliberative and decision-making body responsible for carrying out the duties prescribed by law.

(2) The Steering Board shall be composed of 9 members with the rank of Secretary of State, nominated and appointed within a joint session of the two Houses of Parliament.

(3) May be appointed to the Steering Board any Romanian citizen who meets the following conditions:

- a) has full legal capacity;
- b) has a University Bachelor's degree;
- c) has no criminal record and a good reputation;
- d) has a recognized activity in defense of human rights and anti-discrimination;
- e) was not an agent or employee of the communist political police;
- f) did not cooperate with Securitate (Secret Services of the Communist Regime) organs and did not belong to them."

## II.2. Some Remarks on Case Law Related to Hate Speech

Although in most states, the law requires quite drastic sanctions in cases of hate speech, due to causes related to weaknesses in the law or to a certain caution, that is sometimes exaggerated, or even due to the „shyness“ displayed by the courts of law or public authorities and institutions responsible for law enforcement (where they exist and are entitled to apply sanctions), we find many cases in which defendants are acquitted or the modest fines penalties apply.

An example of a more drastic sanction and punishment in a case of hate speech is that of Wim Elbers, a Belgian senior police officer, who was also an alderman in Brussels from Vlaams Blok extreme right party and was sentenced on December 22, 1999, to a fine of 2,500 Euros and six months in jail (suspended) for the propagation of hate messages on Usenet, against immigrants and ethnic groups.

Vlaams Blok Party itself, through three of its affiliates (Omroep Stichting Nationalistische, Nationalistisch Vormingsinstituut and Vlaamse concentratie), was sentenced on April 21, 2004 by the Court of Appeal in Ghent. Each association was sentenced to a fine of 12,395 Euros. Civil parties involved in the process were the Centre for Equal Opportunities and Combating Racism and Human Rights League. The decision was confirmed on November 9, 2004 by the Court of Cassation and Justice. As a consequence, shortly afterwards, the party was reorganized as the Vlaams Belang.

Another example of a case of incitement to hatred on grounds of race, sanctioned in court comes from the Czech Republic. In 2000, the owner of a restaurant in Rokycany was found guilty of incitement to national and racial hatred pursuant to Rule 198 (a) of the Criminal Code and sentenced to pay a fine of 8,000 Czech crowns (about 225 Euros) by a judge of the district court. The owner in question was accused of inciting national and racial hatred after it was reported that he told his employees not to serve Roma people, an event that happened in 1995.

In France was recently issued (in 2014) by an appellate court, the final verdict in the case of the mayor who said he regretted that „Hitler did not kill enough Roma“. Angers Court had convicted the mayor of Cholet to pay a 3,000 Euro fine for this statement in 2013. Gilles Bourdouleix was punished for „condoning crimes against humanity“ and sentenced to probation in the first instance. Attorney general asked for six months of imprisonment and a fine of 5,000 Euros, estimating that the sentence spoken after an altercation that sparked a scandal after it was taken over by mass media, „is clearly an apology“ and „praises murders committed „against humanity during the third Reich.

On the other hand, we have here a counter example in the Netherlands, in January 2009, when a court in Amsterdam ordered the prosecution of Geert Wilders, Dutch Member of Parliament for breach of the Articles 137c and 137d (which refer to hate speech), and on June 23, 2011, that parliament member was acquitted of all charges. The decision was made while the leader of the Party for Freedom, Wilders had generated great controversy in the society (and abroad) through his criticism of Islam and what he describes as the Islamisation of the Netherlands. At trial, he

faced five accusations. The first was related to insults against Muslims because of their religion. The other four were related to inciting hatred and discrimination against Muslims, Moroccans, and other non-Western immigrants because of their race or ethnicity. Those counts were based on a series of articles that Wilders had published between 2006 and 2008, and which called for banning the Koran, warned against a „Muslim invasion“ and a „tsunami of Islamisation“. Also, he labelled Islam as a fascist religion, described the Dutch- Moroccan youth as violent and compared the Koran to Hitler’s Mein Kampf. He also compared Mohammed with the „devil“.

Another example of a case of xenophobia, linked even to the conduct of elections, happened in Slovenia. Following the elections in December 2011, on the Slovenian Democratic Party website was displayed a comment whereby Zoran Janković won the elections of 4 December in that he scared voters who were not ethnic Slovene not to vote for SDS (Democratic Party). In addition, in the same comment also appeared the assertion that „most of the people who voted for Jankovic in December 4 elections had „a foreign accent“ and „came to the polling stations in sweat suits“. Both the incumbent president at the time, and a number of other politicians, and journalists and political commentators thought that the comment was a clear case of hate speech. However, no one has been punished or sued.

In Poland - one of the countries that condemns „religious insult“ and the Criminal Code gives special attention to the protection of the church and religions against insults and hate, we find quite a rich portfolio of allegations of „insulting religion“ punishable under the Criminal Code.

For example, on May 4, 2010, police fined pop singer Doda Rabczewska for violation of the Criminal Code in that she stated that the Bible is an „unreliable“ document and it was written by people „drunk of wine and who were smoking some herbs“. This came after, on March 8, 2010, police fined vocalist and guitarist Adam Darski, from the death metal band Behemoth, for violation of Criminal Code. The charge was related to a Behemoth show in September 2007 in which Darski would had called the Catholic Church „the most murderous cult on the planet“ and tore a copy of the Bible.

There were, however, cases in which courts did not satisfy to complainants. For example, in February 2006, readers complained about an issue of Machina magazine which included the singer Madonna image superimposed on a representation of Mary with Jesus. Prosecutors refused to initiate investigation.

In December 2001, members of the League of Polish Families complained that the work of art called „Passion“ of Nieznalska artist was a breach of Article 196 of the Polish Criminal Code. In July 2003, the Provincial Court in Gdansk Nieznalska found her guilty and sentenced her to six months of „restricted freedom“ and ordered to do community service and pay all costs. But on April 28, 2004, the District Court quashed the first-instance judgment.

In August 1994 the Regional Prosecutor’s Office in Poznan received complaints about magazine Wprost which included the cover image of Mary and Jesus wearing gas masks. The prosecutor refused to open the case.

Greece, another country where law and practice pays particular attention to religious insult and blasphemy, provides another case of hate speech in the online environment, this time, the author was punished (quite drastically). Specifically, in late September 2012, for the case of Elder Pastitsios the Greek justice showed that online satire could not be tolerated. A man aged 27 years, who published a derisive message on Facebook of a well-known Orthodox monk, was arrested on charges of blasphemy and insulting religious maliciously.

Related to online incitement to hatred Spain is an example of a country where the state authorities at the highest level began to be particularly concerned with the extent of hate speech in social networks took (and the virulence reached). During this period, the Government has launched a legal attack against this type of discourse present on micro-blogging Twitter website. The initiative began in April 2014 with an order of the Interior Ministry to 'clean web', which resulted in 21 arrests for glorifying terrorism. Some of the suspects had sought the Basque terrorist group ETA to kill again and uttered insults and reproaches to the victims of this organization in the last few decades.

But the crackdown on hate speech gained urgency after recent assassination of Isabel Carrasco politician, member of the Popular Party (PP), precisely after the event had given rise to a flood of messages from people who celebrated crime and expressed their expectation for murder of other members of PP.

In the same period, Hebrew associations reported more than 18,000 of offensive messages on Twitter after Israeli basketball team Maccabi Tel Aviv defeated Real Madrid in the final of Euro League.

In this context, The Ministry of Justice and the Ministry of Interior requested assistance from state prosecutors to act against Twitter users who incite to violence and hatred. The attorney in charge with combating online crime highlighted the difficulty of acting against these posts online, in a generalized way, and asked government representatives to exercise caution and law enforcement authorities to investigate each individual case. He explained that Internet users are subject to the same laws that punish crimes such as threats, slander, defamation, glorification of terrorism, but also showed that it was not possible to apply the rules against „incitement to hatred“ for each online insult case.

In many EU countries, the LGBT community is one of the main targets of hate speech. In some cases, the facts come to be sanctioned, in others not.

For example, in Bulgaria, the Commission for Protection against Discrimination condemned the newspaper for hate speech against LGBT and promotion of negative stereotypes against this community and forced the publisher to introduce self-control and to pay a fine.

In Sweden, the provision condemning incitement to hatred on grounds of sexual orientation added to the Criminal Code in 2002, was used to convict a Pentecostal pastor Åke Green for hate speech in a sermon in 2003. His conviction was, however, subsequently revoked by a higher court.

In Romania, all surveys in the last years indicate that most discriminated groups, the ones that are the most frequent targets of hate speech are sexual minorities and Roma. It is significant that even

President Traian Băsescu was penalized twice for hate speech against them. Thus, in 2011, he was fined by the National Council for Combating Discrimination (NCCD) with a fine of 600 lei for some statements concerning the nomadic Roma, made in November 2010 in the Slovenian capital, Ljubljana. The President then stated that „we have a problem that needs to be told and that makes it difficult to integrate Roma nomads - very few want to work. Many of them traditionally live off stealing“. This was the second case in which President Băsescu was sanctioned by NCCD for hate speech against Roma people, the first being one in which, in a conversation with his wife, that he believed to be private (but which was recorded by a mobile phone which he „seized“), referred to a journalist with the phrase „stinking gypsy“. Only in that case, the High Court of Cassation and Justice quashed the strike on the NCCD but kept finding discriminatory act. However it's interesting to see the NCCD's motivation for the decision that they took at that time: „the court determined that the head of state, as a public person should be responsible for statements he makes regardless of where he is. The applicant (Traian Băsescu - Ed), as a public person, shall, wherever he is, show responsibility and restraint in speech „.

According to NCCD activity report in 2013, the Council found violations of the Ordinance 137 of 2000 in 36 cases, ordering sanctions against defendants under the ordinance text. Of the 36 cases, some were cases of hate speech.

## II.3. Typologies Identified in the Regulations Present in the 28 States

The information presented in Section II.1. of this study show that all Member States of the European Union adopted at one time or another regulations against hate speech as part of anti-discrimination legislation. Moreover, in many cases, the emergence of such regulation occurred after the extension of existing anti-discrimination legislation.

From the description of regulations against hate speech, we realize that there are many differences, but also similarities between the laws in the area of the 28 states analyzed, which make the models found in these countries able to be grouped into different categories according to the criterion considered. In what follows, we try to emphasize these categories, depending on a number of criteria.

### Constitutional Practice

Country	The year the constitution was adopted <sup>58</sup>	Rights and freedoms guaranteed by the constitution					
		Freedom of speech / conscience	Freedom of belief and religion	Prohibition of abuse of rights	Equality between citizens / non-discrimination	Human dignity	Banning Hate speech
Austria	1920	Yes <sup>59</sup>	x	x	Yes	x	x
Belgium	1993	Yes	Yes <sup>60</sup>	x	Yes	Yes	x
Bulgaria	1991	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	1992	Yes	Yes	x	Yes	Yes	x
Cyprus	1960	Yes	Yes	Yes	Yes	x	x
Croatia	1990	Yes	x	x	Yes	x	Yes
Denmark	1953	Yes	x	x	x	x	x
Estonia	1992	Yes	x	Yes	Yes	x	Yes
Finland	2000	Yes	x	x	Yes	Yes	x
France	1958	Yes	x	Yes	x	x	x
Germany	1949	Yes	Yes	Yes	Yes	Yes	x

<b>Greece</b>	1975	Yes	x	x	Yes	Yes	x
<b>Hungary</b>	2011	Yes	x	Yes	Yes	Yes	Yes
<b>Ireland</b>	1937	Yes	x	Yes	x	x	x
<b>Italy</b>	1947	Yes	x	x	Yes	x	x
<b>Latvia</b>	1993	Yes	x	x	Yes	Yes	x
<b>Lithuania</b>	1992	Yes	Yes	Yes	Yes	x	Yes
<b>Luxembourg</b>	2009	Yes	Yes	Yes	Yes <sup>61</sup>	x	x
<b>Malta</b>	1964	Yes	Yes	Yes	Yes	x	x
<b>Netherlands</b>	1983	Yes	x	x	Yes	x	x
<b>Poland</b>	1997	Yes	Yes	x	Yes	x	x
<b>Portugal</b>	1976	Yes	x	Yes	Yes	x	x
<b>Romania</b>	2003	Yes	x	Yes	Yes	Yes	Yes
<b>Slovakia</b>	1993	Yes	x	Yes	Yes	x	x
<b>Slovenia</b>	1991	Yes	x	Yes	Yes	x	x
<b>Spain</b>	1978	Yes	x	Yes	Yes	x	x
<b>Sweden</b>	1991	Yes	x	x	Yes	x	x
<b>UK<sup>62</sup></b>	N/a	N/a	N/a	N/a	N/a	N/a	N/a

58 Or the year of most recent changes.

59 Within the limits of the law.

60 But crimes committed in the exercise of this freedom will be punished.

61 The equality between women and men is guaranteed.

62 UK was not included in this table because the purpose of the analysis is to see if freedom of expression is regulated and/ or restricted by law with higher status (constitution). In the UK, all laws have the same status.

As can be seen, all constitutions that were analyzed guarantee the right to freedom of expression - the main right that allows incitement to hatred - and this is one of the oldest fundamental rights and freedoms. Other rights that may be invoked to limit it, such as equality among citizens, human dignity, were subsequently included in European constitutions. Express prohibition of „hate speech is largely a phenomenon that occurred after the Second World War.“ The regulation of this type of expression in various international conventions and countries such as Germany was due to the obvious connection between it and the racist propaganda of the Holocaust<sup>63</sup>. Therefore, due

63 Michael Rosenfeld, "Hate Speech in Constitutional Jurisprudence: A comparative Analysis", Cardozo Law School, Public Law Research Paper No. 41.

to its historical experience, Germany is the major example in sanctioning hate speech.

However, the prohibition of incitement to hatred and violence is not explicitly stipulated in the German Constitution, being derived only from other provisions such as the prohibition of abuse of rights or protection of human dignity. As Brugger remarked in 2002 „no modern constitution or instrument of international law is consistent in protecting or prohibiting hate speech. Within the world community, such speech is sometimes protected, sometimes not.”<sup>64</sup> But this was changed once the tide of revision of constitutions Central and Eastern Europe states in the 2000s in order to join the European Union. Thus, countries such as Bulgaria, Croatia, Estonia, Lithuania, Romania and Hungary have included banning hate speech in their constitution, subsequently adopting ordinary laws that sanction it. It is noteworthy, however, that explicit regulation of hate speech is a constitutional tendency in Europe.

## Ordinary Laws That Combat Hate Speech

A first aspect that differentiates the 28 states among them is related to the type of laws that include provisions against hate speech. If in all countries we find texts that condemn this type of discourse through articles included in Criminal Codes, some states have found it necessary to adopt a more comprehensive legislation and detailed in this area and „special laws” thus appeared.

We should emphasize that the vast majority of EU member states have adopted special laws that combat discrimination. Among these, however, only in a few countries those (special) laws contain articles that refer directly and explicitly to hate speech, namely: Belgium, Bulgaria, Greece, Ireland, Romania and Slovakia. In other countries, laws are intended to combat discrimination on various criteria, in situations such as - employment, work, school, medical services, cultural institutions, etc., but the link between those laws and hateful speech is rather implicit.

There are other countries where we can find regulations against hate speech in the legislation regulating media activity. This is the case in France, where we find within the content of Press Law texts prohibiting efforts to justify war crimes and crimes against humanity and incitement to discrimination, hatred and violence, in Poland, where audio-visual media law establishes that programs must respect the religious beliefs of the public, especially Christian value system and in Hungary, where the law on freedom of the press contains even more comprehensive references to hateful speech (see II.1.27).

Country	Source of regulations against hate speech			
	Constitution <sup>65</sup>	Criminal Code	Special law (with reference to incitement to hatred)	Mass media law
Austria		X		
Belgium	X	X	X	
Bulgaria	X	X	X	
Czech Republic	X <sup>66</sup>	X		
Cyprus	X	X		
Croatia	X	X		
Denmark		X		
Estonia	X	X		
Finland	X	X		
France	X <sup>67</sup>	X		X
Germany	X	X		
Greece	X	X	X	
Hungary	X	X		X
Ireland	X	X	X	
Italia		X		
Latvia	X	X		
Lithuania	X	X		
Luxembourg	X	X		
Malta	X	X		
Netherlands		X		
Poland		X		X
Portugal	X	X		
Romania	X	X	X	
Slovakia	X	X	X	
Slovenia	X	X		
Spain	X	X		
Sweden		X		
United Kingdom		X		

<sup>65</sup> We included in this table only the constitutions who express provisions against hate speech and free speech limitations to prevent abuse of law or to protect human dignity.

<sup>66</sup> Czech Constitution contains no provisions regarding discrimination or hate speech, but states that "part of the constitutional order of the Czech Republic is the Charter rights and fundamental freedoms".

<sup>67</sup> The French Constitution does not contain articles that relate to combating discrimination or hate speech, but human dignity is protected. Declaration of the Rights of Man and of the Citizen of 1793 is considered part of the French constitutional law by the preamble of the Constitution.

## **Public Authorities and Institutions Specifically Established for the Enforcement of the Law against Hate Speech**

In all countries of the European Union there are public authorities or institutions responsible for combating discrimination and hate speech<sup>68</sup>. The differences are given by the degree of specialization and hence the scope of areas covered by those authorities or institutions. Thus, we find cases in which combating these phenomena fall within the scope and responsibility of the institution of the Ombudsman, as happens, for example, in Croatia, Cyprus, Greece and Latvia. In other countries, authorities and institutions specifically designed meet some special laws that prevent discrimination. In some of these countries, the authority called „Ombudsman for...” the continuation might be „equal”, „equality between women and men”, „human rights”, etc. An important thing to remember is that, in many of these countries, authorities and institutions to which we refer (whatever their name may be) only deal with monitoring compliance with legal provisions of information, promotion, supervision, support, studies and reports, etc., not being entitled, by law, to apply sanctions. This is the case, for example, in Austria, Croatia, Czech Republic, Estonia, France, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain, Sweden and United Kingdom.

Interestingly, among the countries identified in this study as having special laws relating directly (and) to hate speech in all public authorities established under respective laws and that are responsible for their application are entitled to apply sanctions, except for Slovakia, where the Slovak National Centre for Human Rights has only the role of promotion and provision of „legal support”.

## **Grounds of Discrimination and Hate Speech Mentioned in Legislation**

A complete list of the reasons that usually generate hate speech (and which are controlled by the relevant legislation) would include: race, nationality, ethnicity, skin colour, birth status, religion or religious beliefs (including atheism), sex, sexual orientation, disability. In most of the laws studied all of these criteria are present (possibly with other names).

There are a number of cases, however, when the legislature had in mind (explicitly) some considerations that may underlie hate speech, and one of them is sexual orientation. And this happens considering that a number of studies and surveys reveal that in almost all countries, sexual minorities are at the top categories of people most discriminated and that in some Member States, up to 50% of LGBT people were, at least once, victims of hate speech or hate crime. European Union Agency for Human Rights states that ‚in the absence of a single standard for the European Union, Member States adopt different approaches in relation to hate speech and hate crimes’ and the LGBT community is one of the main victims of these perspectives.

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68 <http://www.equineteurope.org/-Member-organisations>

In thirteen of the European Union Member States - Belgium, Denmark, Germany, Estonia, France, Ireland, Lithuania, Malta, Netherlands, Portugal, Romania, Spain and Sweden, plus Northern Ireland in the United Kingdom - incitement to hatred, violence or discrimination based on sexual orientation is punishable by law.

In three Member States - Austria, Bulgaria and Italy - hate speech is criminalized in relation to specific groups, but people in the LGBT community are not included among them. This makes it difficult to apply the law to cases of homophobia.

In other Member States, hate speech against LGBT people is not specifically defined as a criminal offense, but the law is formulated in a general way and could be used to protect them (by including the LGBT community in „other groups“ category).

In Member States such as Belgium, Denmark, Finland, France, Netherlands, Portugal, Romania, Spain, Sweden and United Kingdom, homophobia and transphobia represent the aggravating factor if they underlie crimes directed against certain persons, although some Member States restrict this aspect only to certain specific offenses.

On the other hand, in 15 Member States (Austria, Bulgaria, Czech Republic, Cyprus, Estonia, Germany, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Slovenia, Slovakia and Spain), homophobia and transphobia are not explicitly defined as an aggravating factor. However, in six of them (Czech Republic, Germany, Latvia, Malta, Austria and Slovakia), the general notion of hate crime is recognized in law and, therefore, it is possible that, in court, homophobia and transphobia to be considered as aggravating circumstances.

## **Incitement to Hatred on Religious Grounds and „Anti-blasphemy Law“**

There are a number of countries, among the 28 Member States, where the legislation that combats hate speech puts a particular emphasis not only on banning defamation or incitement to hatred on grounds of religion or belief, but also on punishing acts of insulting church or religious communities. EU Member States where „religious insult“ is punishable by law are: Czech Republic, Cyprus, Croatia, Denmark, Finland, Germany, Greece, Italy, Lithuania, Netherlands, Poland, Portugal and Slovakia.

In some states, the law makes a difference between „religious insult“ and „blasphemy“, meaning that the second defines the term as „disrespect of sacred personages, religious artefacts, customs and beliefs.“ Condemnation by law, of blasphemy is the most controversial aspect of the discussion on combating hate speech in relation to respecting the right to free expression. Moreover, on 29 June 2007, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion. This recommendation has established a number of guidelines for the Member States of the Council of Europe, based on Articles 10 (freedom of expression) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

On October 23, 2008, the Venice Commission, the Council of Europe consultative forum on constitutional matters, issued a report on blasphemy, religious insults and inciting religious

hatred. The report emphasized the fact that of all EU Member States, blasphemy was considered, at that time, an offense only in Austria, Denmark, Finland, Greece, Italy and the Netherlands. The chapter "Findings" shows that „it is neither necessary nor desirable to have in the states legislation on the offense of religious insult“ and that „offense of blasphemy should be abolished“.

On the other hand, we note that, despite the fact that there is a distinction between „religious insult“ and „blasphemy“, the two notions are quite close. Moreover, in Poland, a country which, according to the report of the Venice Commission, does not criminalize blasphemy, there were convictions given under the provisions of the Criminal Code for acts, as defined above, would fit perfectly in the „blasphemy“ category (see II.1.20).

## **Hate Speech against Persons with Disabilities**

Hate speech against persons with disabilities is a hate crime offence arising from the hostility of the offender towards disability, or perceived disability of the victim. It is one of the most widespread and at the same time, less recognized types of hate speech and, despite this, a significant number of countries are not sanctioned by law. Specifically, of the 28 EU Member States, there are, either in the Criminal Code, or in special anti-discrimination legislation, provisions on which sanctioned hate speech against persons with disabilities may be:

- ⇒ Bulgaria - special law to combat discrimination
- ⇒ Cyprus - Criminal Code
- ⇒ Estonia - the Constitution refers to prohibition of discrimination on grounds of disability
- ⇒ Finland - the Constitution and the Criminal Code
- ⇒ France - Criminal Code
- ⇒ Germany - using the Criminal Code, the phrase ‚categories of persons‘ (against which hate speech is prohibited)
- ⇒ Greece - Criminal Code
- ⇒ Hungary - Criminal Code
- ⇒ Italy - Criminal Code
- ⇒ Luxembourg - Criminal Code
- ⇒ Netherlands - Criminal Code
- ⇒ Romania - Criminal Code (using the term „groups of people“ and especially the anti-discrimination law (Ordinance 137 of 2000))
- ⇒ Slovenia - Criminal Code

### III. Regulations System Combating Hate Speech in Romania in Comparison with Various Models Encountered in the European Union. Recommendations for Improvement

As shown in previous chapters, Romania is among the countries where hate speech is sanctioned both by the Criminal Code and, in particular, by a special law, namely Emergency Ordinance 37/2000. That ordinance regulates also the establishment and operation of an authority responsible for combating discrimination and hate speech - National Council for Combating Discrimination.

A positive aspect is that, in terms of the criteria of discrimination and incitement to hatred combated by law, Romania is among the countries where this list of these criteria is the maximum one, practically containing all the possible elements that may underlie these phenomena: *„... race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, non-contagious disease, HIV infection, affiliation to a disadvantaged category, and any other criteria that aims or effect the restriction, prevention of recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms and legal rights in the political, economic, social, cultural or any other field of public life.”*

Here, for instance, Romania also combats discrimination and hate speech based on sexual orientation, along with countries such as Belgium, Denmark, Germany, Estonia, France, Ireland, Lithuania, Malta, Netherlands, Portugal, Spain and Sweden.

Also, the fact that disability is one of the criteria explicitly mentioned among the criteria for discrimination and incitement to hatred combated by law puts Romania among the countries such as Bulgaria, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Luxembourg, Netherlands, and Slovenia.

Another pleasing aspect is that, by the provisions of Article 77, subparagraph (h) of the Criminal Code, Romania is among the countries where hate speech is an aggravating factor for a series of violent crimes:

*“Art. 77. Aggravating circumstances*

*The following are aggravating circumstances:*

.....

*h) an offense for reasons of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, non-contagious disease or infection, HIV / AIDS or under other similar circumstances, considered by the perpetrator as causes of inferiority in relation to the other persons."*

On the other hand, Romania is not among the countries that sanction by law the religious insult and blasphemy. We recall that these are different aspects of discrimination or hate speech based on religious beliefs or membership of certain religions as they refer to allegations related not to certain people, but the characters and symbols of religions or religious denominations. Opinions about the lack of provisions to penalize religious insult and blasphemy are divided. But the fact that a number of European institutions and bodies draw attention to the dangers that may require sanctioning by law, especially in the case of blasphemy, and show that „it is neither necessary nor desirable to have in the legislation of the Member States the offense of religious insult” and that “offense of blasphemy should be abolished” (Venice Commission), entitles us to believe that from this point of view, Romania is among the countries with the most accurate legal provisions.

If we consider the above observations, we can quite easily conclude that Romania has one of the best legislation in the fight against discrimination and hate speech, among EU states.

And, despite of all these, every year the reports of the National Council for Combating Discrimination and a series of studies indicate that the phenomenon of hate speech is not diminishing, but on the contrary. One of the elements that contribute to this situation, by the fact that it facilitates communication and spread of ideas among large masses of people, is the social networks (Facebook, Twitter, etc.), web pages or blogs. Given that they have experienced in recent years an exponential growth, they bring, with a number of benefits for those who use them, new problems that society must face. Perhaps the first of these is the fact that they provide a ground for expression of xenophobic, racist, homophobic, intolerant feelings and attitudes toward the one that is different and, therefore, a means of promoting and propagating hate speech. And as reality shows, propagate ideas and initiatives discussed within social networks, turn, lead, often, to actions in the real world.

Romania appears not to be ready to face the phenomenon of hate through social networks. It's true that in art.369 of the Criminal Code the phrase „public incitement by any means” (our emphasis) appears, which leads to the conclusion that people who incite to hates within the online environment must be accountable to the law like anyone holding a hate speech in a public meeting on the street or one that distributes materials containing hateful messages. But the law, in the shape it is, is much harder to be applied in the case of discriminatory and hateful messages promoted on social networks, considering that these individuals act, in the overwhelming majority of cases, under the protection of anonymity. And this is reinforced by the fact that the actions of public authorities in the area of social networks would require a much higher budget compared to their funds at the moment (if we refer especially to NCCD).

Noteworthy is the fact that Romania has made progress in terms of fine offenses for acts of discrimination (including hate speech), currently being between 1,000 and 30,000 lei if perpetrated against an individual or a fine of 2,000-100,000 lei if perpetrated against a group of

people or community<sup>69</sup>. The penalty also applies to legal entities<sup>70</sup>.

In addition to the material side, fines and warnings have a symbolic value. For example, sanctioning the President with a fine of 600 lei (minimum provided by law for such cases at the time) had an important role in transmitting the message to society that denigrating an entire ethnic group is a fact that is not allowed not even to „the first man in the state“.

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69 Art. 26 (1) of Government Ordinance no.137 / 2000, republished.

70 Art. 26 (2) of Government Ordinance no.137 / 2000, republished.

## IV. Conclusions and Recommendations on Improving the Legislative Framework in Romania to Combat Hate Speech

There is a consensus in the specific literature about the fact that the most effective long-term way to combat this phenomenon is education. This applies, of course, to Romania too. But beyond that, Romanian public education is still far from being an inclusive environment where girls skills are valued equal to those of boys, in which students learn to respect the other fellow who has another ethnicity or may come from a poorer environment or has a physical disability or other (it would be interesting and useful to study the role that school plays in combating hate speech in Romania), the more a generation has withdrawn more (by passing years) from school, the harder it can be to find effective means of education for that generation.

Thus, even during school years the Holocaust and Roma community history should be taught, as integral part of the history curriculum and not as optional class. Also, civic culture classes should be increased and diversity study should be part of them. In addition, informing the public about the law provisions that combat and sanction hate speech could be done within training at the workplace; employers may be required to pay these courses for their employees. As we outlined in previous chapters, Romania has an anti-discrimination and anti-hate speech legislation that can be regarded as being among the best in the European Union. This however, seems not to be reflected in the everyday reality, which indicates that there are still improvements that can be made.

One aspect that should be considered and treated with increasingly more seriousness is the issue of hate speech within social networks. Perhaps it is worth considering the idea to clearly provide, within Ordinance 37/2000 as amended, prohibiting hate speech in social networks and online in general (even if, at present, the phrase „by any means“ covers these environments too). Nevertheless, the concerns of the leading Spanish authorities to identify legislative solutions and other measures to combat this scourge which in recent years has taken a special scale - inciting hatred through social networks, should be shared by the governments of the other countries, including that of Romania.

Currently besides *Electoral Speeches without Discrimination!* Project, with a limited duration in time, there is no other systematic process for monitoring hate speech and discrimination in the online environment, as it exists for the other communication media. It would require, therefore, the need of a body - regardless of administrative form - either under the tutelage of NCCD or CNA or independently - to monitor, at least during the electoral campaign, if not always, the incidence of this type of speech within the online environment. This body could refer to recommended institutions; it could centralize and analyze data, and possibly make proposals to the institutions that have regulatory role.

Despite the fact that the political parties and the Parliament occupy the lowest positions in the population's top of the most confident entities, there are many politicians who are taken as models

by their voters and are inspired by the latter. And when this does not happen, we can observe another phenomenon, namely that people who tend to make a bad thing justify their attitude and behaviour by stating that they have seen the same thing done by public officials or persons holding important positions.

We also consider the impact that people known in the mass media have towards the masses and their increased capacity to promote their messages.

Knowing the two main factors of propagation of this type of speech, projects and programs could be initiated by member institutions or NGOs with this goal. In this way it would go beyond the legal dimension that already exists, but does not seem to have the desired effect, and might work on the awareness of this information, both by the members of political parties and the mass media people.

It is clear however that the envisaged measures, whether legislative or other type, should to be adopted in a very short term, given that it seems that there is a revival in recent years of a number of phenomena associated with discrimination - xenophobia, racism, anti-Semitism, homophobia and hate speech that propagates such feelings and attitudes, in almost entire European Union, including Romania.

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