



COMBATING HATE SPEECH IN THE MEDIA IN THE REPUBLIC OF MOLDOVA

Guide for assessing and processing hate speech cases

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Promo - LEX

Advancing democracy and human rights

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Contents

Introduction

1. International standards and mechanisms for combating hate speech

1.1 Relevant standards

1.2 Changed and changing media landscape

1.3 Other mechanisms for combatting hate speech

2 The Moldovan national legislative and regulatory framework

3 Evaluation of potential hate speech cases

3.1 Rabat Action plan and ECtHR three-test explained

3.2 Qualitative evaluation of potential hate speech cases

3.3 Analysis of hate speech in the audio-visual media: case study

4 Guiding principles on procedural and administrative matters

4.1 Reporting the alleged violation

4.2 The collegial nature of the decision-making process

4.3 Sanctions

4.4 Transparency and publishing disaggregated data on hate speech

5 Selection of hate speech cases

5.1 Cases of the European Court of Human Rights

5.2 Cases of media regulatory authorities

5.3 Cases examined based on the Moldovan protection mechanisms

6 Conclusions and recommendations

Appendix 1. Overview of relevant international standards

Appendix 2. Glossary of useful definitions

Introduction

The project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in the Eastern Partnership” is part of

the Partnership for Good Governance Programme, phase II. Funded by the EU and implemented by the Council of Europe, the programme aims to strengthen governance in the Eastern Partnership region. Among its objectives, the project has a priority focus on strengthening the capacities of national public institutions and civil society organisations in combating hate speech and in monitoring the extent of the problem. In this regard, the project uses as a reference the monitoring work of the European Commission against Racism and Intolerance and its general policy recommendations (notable GPR No. 15 on combating hate speech), as well as the jurisprudence of the European Court of Human Rights and other Council of Europe and international standards. In this context, and specifically in the Republic of Moldova, the role of media regulators appeared as crucial in ensuring an appropriate monitoring and sanctioning of hate speech cases. This led to the development of this guide in co-ordination with other projects of the Council of Europe specifically in the media field, and for the use of the Audiovisual Council of the Republic of Moldova.

The importance of, and the need for, this guide is justified the increasing number of cases of hate speech and discrimination in the public space and the media in the Republic of Moldova. Only in 2019, according to the monitoring reports of the Promo-LEX Association, 62 cases of hate speech were registered on TV stations[1].

The election campaign for the presidential elections of 1/15 November 2020 was marked by intolerant public speeches, and, according to Promo-LEX, the dynamics of hate speech and incitement to discrimination increased in intensity during the pre-election and election period and decreased after the end of the election campaign[2].

The Moldovan Constitutional Court, in the context of examining the referrals of the Central Electoral Commission confirming the election results and validating the mandate of President of the Republic of Moldova, issued an Address to the Parliament, calling for the regulation of "*prompt control and sanctioning mechanisms in this regard, in order to prevent and combat hate speech between electoral contestants, including in the online environment and social networks*[3]".

The relevant Moldovan media legislation, and in particular the Audiovisual Media Services Code (the Code) provides the Audiovisual Council with legal leverage for monitoring and sanctioning cases of hate speech and discrimination recorded in the audiovisual media, including in election campaigns. However, for the effective application of the provisions of the Code, the Audiovisual Council needs an enhanced internal mechanism for monitoring hate speech and collecting disaggregated data.

In this regard, the present guide provides methodological and practical support for the development of the internal mechanism for monitoring hate speech and discrimination, as well as for the development of disaggregated data by the Audiovisual Council.

The **aim** of this Guide is to assist the Audiovisual Council and the relevant authorities in identifying the cases of hate speech in the media environment and in effectively combating unacceptable forms of expression in the public domain, especially in audiovisual media services.

Methodology

The guide is based on a specific methodology. The regulations in the field of freedom of expression, hate speech and discrimination have been analysed in the light of international standards and the national legislative framework. The decisions of the European Court of Human Rights and the decisions to sanction hate speech at national level, in particular of the Audiovisual Council, were also analysed.

In addition to the analysis of the work of the Audiovisual Council in this field, the Council of Europe invited 20 media institutions and non-governmental organisations to participate in interviews with the authors of this guide. Thus, seven interviews were organised with representatives of audiovisual media institutions (TV and radio) and representatives of non-governmental organisations in this field. Two other interviews were organised with the employees of the Audiovisual Council. Subsequently, the preliminary version of the Guide was consulted with media service providers, NGOs and the Audiovisual Council.

The guide is structured in five main chapters and provides a set of recommendations for the development of the internal mechanism for monitoring and sanctioning hate speech by the Audiovisual Council. More in detail,

Chapter I presents international standards and mechanisms for combating hate speech, including in line with the new changes in the online media landscape.

Chapter II contains the main provisions of the national legislation regarding freedom of expression, discrimination and hate speech.

Chapter III presents the practical elements of the process of identifying, monitoring and evaluating cases of alleged hate speech, according to the triple test of the European Court of Human Rights (EctHR) and the Rabat Action Plan.

Chapter IV sets out the guiding principles for ensuring the quality and effectiveness of procedural and administrative issues in cases of hate speech: reporting, sanctioning, decision-making and transparency.

Chapter V includes brief presentations of the decisions and / or judgments on freedom of expression cases from the jurisprudence of the ECtHR, from the decisions of regulators from other countries, as well as courts and the Council for the Prevention and Elimination of Discrimination and Ensuring Equality in the Republic of Moldova.

This Guide is available in Romanian and English.

Within this project, it will be distributed free of charge to various actors, including deputies, academic institutions, self-regulatory bodies, journalists, etc.

I. International standards and mechanisms for combating hate speech

“If your hate could be turned into electricity, it would light up the whole world.”

Nikola Tesla

This chapter presents the international standards on freedom of expression and hate speech, as well as the mechanisms used internationally and nationally to combat hateful or intolerant speech. The current trends in the regulation of the activity of audiovisual institutions in the online environment at the level of European states are also introduced.

Hate speech is a wide concept that refers to the intention to degrade, intimidate, incite hate, violence and discrimination, exploiting primal and strong emotions, and based on

the repetition of stereotypes. Hate speech usually identifies a particular person or a group of persons as an enemy to vilify based on their characteristics, leading to exacerbated marginalisation, stigmatisation and discrimination of, *inter alia*, persons and groups who might already be in a vulnerable position within the society. Hate speech encourages a climate of violence and repression against these groups, including by legitimising the use of violence against them. Those who publicly disseminate hate speech wish to present it as "normal" and their views acceptable, even justified. In situations when the spread and influence of hate speech is not prevented, such malignant ideas find fertile soil, become socially acceptable and can produce negative and dangerous consequences in societies. Words matter. They are the connective fabric of collective life and, and the omission in perceiving how people can be influenced by words can lead to serious and dangerous situations.

Hate speech must be analysed from the perspective of the intended purpose and the effect that such speech induces or wishes to induce or is likely to induce. It must also be assessed in the context of a given society and its historical, cultural, political and all other important aspects. In that respect, since each form of speech occurs within a certain historical and cultural context, a speech which is not hate speech in one context, may become hate speech in another one.



Decisions on hate speech should be framed in the context of the right to freedom of expression and its limitations, and deem hate speech as such only in cases of speech that humiliates, intimidates or incites hatred, violence or discrimination against a person or group on the grounds of sex, "race", ethnicity, nationality, religion or belief, disability, age, sexual orientation, social origin or any other circumstance which prevents or endangers any person's recognition, enjoyment or exercise on an equal basis of their rights and freedoms. Such cases inevitably arbitrate between "rival" freedoms, such as the protection of the right to freedom of expression and protection of public policy objectives, e.g., protection of the public from dissemination of harmful content, and, in that context, a special care and particular attention should be given to each case, its particularities and context. These arbitrations must be made in a subtle manner, ensuring that a fragile balance between legal and legitimate restrictions to the right to freedom of expression and the need to protect that this right is respected. As these arbitrations may result in restrictions on freedom of expression, they must respect international standards and general principles of law, and in particular fulfil the following conditions:

- **Legality:** restrictions must be provided for by law;
- **Legitimacy:** restrictions must pursue one of the legitimate purposes of the same law;
- **Proportionality:** they must be strictly necessary, in the context of a democratic society, to achieve this legitimate purpose, and must therefore be proportionate to the objective pursued.

1.1 Relevant standards

Freedom of expression

A closer look at the international standards offers a deeper insight into freedom of expression, but also its legitimate derogations, first and foremost found in combating hate speech and other forms of discriminatory expressions. While the full array of standards is too vast to be included in this Guide, an overview is provided in Appendix[4]. Standard-setting documents provided are those at the level of the United Nations, the European Union and the Council of Europe, offering a wide range of legally binding instruments for the protection of human rights, as well as recommendations and guiding principles, focusing on the matters related to the right to freedom of expression and its derogations, as well as the prohibition of discrimination, sexism, racial hatred, etc. For the purpose of this Guide, the emphasis is placed on the instruments of the Council of Europe, because of its position as the central European human rights institution, but also because the case-law of the European Court of Human Rights, one of the Council of

Europe's fundamental institutions for the protection of human rights, provides a rich and all-encompassing pool of decisions in key cases.

The premise of the right to freedom of expression is the principle which is at the core of democratic public policy, and its preservation and development must be clear of any attempt of censorship or control. The European Court of Human Rights (ECtHR) expressed it back in 1976 ([Handyside v. the United Kingdom](#) and subsequent decisions), highlighting the meaning of the term "*right to freedom of expression*" and its role in a democratic society, establishing that:

"Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every individual". It is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that **offend, shock or disturb** the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society".

The right to freedom of expression found, *inter alia*, in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 19 of the International Covenant on Civil and Political Rights is a fundamental human right and a basic prerequisite for any democratic society, the lack of or misuse of which indicates a serious breach in the democratic fabric of a society. The right to freedom of expression enables the debate, the confrontation of opinions and the presentation of different and differing argumentation. Without it, and in particular without the belief in its values and importance, democracy stops, and authoritarian or even totalitarian approaches of the society may block free will.

Hate speech

Unlike some other human rights, the right to freedom of expression is not an absolute right. Since it carries with it duties and responsibilities, the relevant international treaties prescribe that the exercise of the right to freedom of expression may be subject to formalities, conditions, restrictions or penalties as are prescribed by law and 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*[5]". The derogatory forms of the right to freedom of expression can be found in hate speech and other impermissible forms of sexist, discriminatory and alike communications, which, as mentioned in numerous occasions by the ECtHR, are "*communication contents whose placement on the "market of ideas and information" is significantly susceptible to the so-called limiting exceptions*[6]".

When it comes to the legal definitions of the term, it should be noted that many criminal codes throughout the world have defining provisions and prohibition of hate speech, treating it as a criminal offence. While there is no universal definition of hate speech, for example the European Commission against Racism and Intolerance (ECRI), in its General Policy Recommendation No. 15 on Combating Hate speech from 2016, provides a definition of hate speech which:

"entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or a group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national

or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.”

Further guidance can be found in the [Camden Principles](#), a set of principles developed by the international organisation ARTICLE 19, a progressive interpretation of international legislation and standards on the balance between the right to freedom of expression and equality. In the context of hate speech, the Camden Principles state:

- *“The terms “hatred” and “hostility” refer to intense and irrational emotions of opprobrium, enmity and detestation towards a target group.*
- *The term “advocacy” is to be understood as requiring an intention to promote hatred publicly towards the target group.*
- *The term “incitement” refers to statements about national, racial or religious groups that create an imminent risk of discrimination, hostility or violence against persons belonging to these groups.”*

Lack of a specific and universal definition of hate speech in international standard-setting documents is not exceptional, as it is also the case of other commonly used notions, such as extremism or radicalism. This is taking into account many issues surrounding hate speech, particularly national and even local ones, which need to be considered. While there are potential dangers that national definitions might be misused to silence free expression, the justification of the lack of a clear definition of hate speech on any level other than the national one can be understandable, provided it is being drafted taking into consideration the international human rights instruments. It is in any case recommended to provide for as broad a definition as possible, emphasising the framework around the prohibition of forms of expression that intimidate or incite hatred, violence or discrimination against a person or group of persons and in particular that create a clear and immediate threat of inciting hatred, violence or discrimination against a person or groups on various grounds mentioned above.

1.2 Changed and changing media landscape

While hate speech in broadcasting is unfortunately quite a familiar issue for many regulators in Europe, the changing media landscape, the proliferation of online services, the platformisation of media services and offers, coupled with the market dominant position and the business models of the major online platforms, negatively effecting and endangering the core fabric of the democratic societies, brought about intensive discussions and initiatives regarding hate speech online, where the current focus of the public debate on hate speech (as well as other pressing matters, such as disinformation) revolve almost exclusively around the online space and the regulation of social networks. In that regard, many public authorities in Europe have started to act, both at the European and at the national level.

The EU Code of conduct on countering illegal hate speech online^[7], intended to prevent and counter the spread of illegal hate speech online, was agreed in May 2016, with Facebook, Microsoft, Twitter and YouTube. In the course of 2018, Instagram, Snapchat and Dailymotion joined the Code of Conduct. Jeuxvideo.com joined in January 2019, and TikTok in September 2020. The effects of this Code are evaluated by the European Commission via the implementation of monitoring, based on a unified methodology, in collaboration with a network of organisations located in different EU countries. The most recent evaluation of the implementation of this Code, published in June 2020, shows that it provides for some positive results, e.g., the notifications of illicit content are reviewed

within 24 hours and 71% of that content is removed. While the average removal rate is stable with respect to previous monitoring exercises, some divergences exist among the platforms, emphasising that the companies in question must improve their feedback to users' notifications ^[8].

The revised Audiovisual Media Service Directive^[9] (revised AVMSD) includes obligations on the part of audiovisual media services providers to have appropriate measures in place to combat, *inter alia*, content inciting violence, hatred and terrorism. It extends the scope of regulation to video-sharing platforms (VSPs), such as YouTube, as well as the audiovisual content shared on social media services, such as Facebook, which, *inter alia*, will have to take appropriate measures to protect the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group. While it is the obligation of the VSPs to adopt the measures foreseen by the revised AVMSD, it explicitly gives regulators the task of assessing the appropriateness of the measures put in place by VSPs when deciding on the appropriate levels of protection measures to be applied by both audiovisual media service providers and VSPs, and of taking a proportionate approach based on such an assessment. On that basis, regulators will be required to understand more than ever what content to inciting violence, hatred and terrorism is, and how it can affect the public, in order to be able to undertake a proportionate regulatory measure. It should be emphasised that the principles of jurisdiction apply in this case, as well, noting that the majority of these services, while originating in the US, are, for the provision of services in Europe, registered in the Republic of Ireland, and fall under its jurisdiction. Many other initiatives are currently being undertaken^[10], too vast to mention here, but a quick recapitulation of some of the national approaches is provided:

Table 1: Selection of examples of national approaches to online challenges

Country	Approach
Republic of Ireland	Draft General Scheme of the Online Safety and Media Regulation Bill attempts to address the pressing online issues in a comprehensive manner, and will establish a new Media Commission, which will be responsible for the implementation of the revised AVMSD with additional regulatory powers in respect to harmful online content.
France	The French law related to combatting hate speech online (the so called Avia law), which envisaged the obligation for online platforms to take down hateful content flagged by users within 24 hours, or face severe penalties, was deemed unconstitutional by the French Constitutional Council, which noted in its ruling that these measures infringe upon the exercise of freedom of expression and communication in a way that is not necessary, suitable, and proportionate. The provisions relative to the creation of an Observatory of hatred online is being taken up by the French regulatory authority CSA (comprising of platforms, academics, NGOs, French institutions), with the task to prepare the analysis of hateful contents, and encourage cooperation, etc.
United Kingdom	While the transposition of the revised AVMSD has been done, the overall approach to online harms is visible in the proposed Online Harms framework, with the duty of care that will require companies (including VSPs) to take responsibility for the safety of their users and to tackle harm caused by content or activity in their services.
Germany	A reform of the Network Enforcement Act (NetzDG), which, in 2017, put an obligation on social network platforms to remove hate speech within set deadlines (24 hours for easy cases) with fines of up to €50M if not applied, has been adopted in 2020, which makes it easier for authorities to prosecute crimes committed on the Internet and obliges social media platforms to proactively report serious cases of hate speech to law enforcement. These provisions are questioned by some from the perspective of the right to freedom of expression, privacy rights, etc ^[11] .

It still remains to be seen to what extent the efforts to combat challenges online will be successful, but it is visible that the forthcoming period will be quite intensive for the regulatory authorities throughout Europe, with some noticeable features:

- Experience in regulating traditional media is valid and will be of crucial importance for new challenges
- The emphasis is put on the need to ensure the retention of experienced professional staff and their additional training, which should be intensified and expanded to more areas and from more sources
- Cooperation with a wide range of actors is the most prominent point, where it is important to note that the regulator must find a balance between intensified cooperation with some actors and preserving its independence now more than ever, in the light of new obligations and challenges.

As the regulatory framework needs to gradually be adapted to current market changes and media habits, public policy goals, based on the fundamental democratic principles of the right to freedom of expression, do not lose their importance, but should be additionally highlighted and should always be guaranteed, if we do not want to turn the battle for the reconstruction of democratic values into their irreversible collapse.

1.3 Other mechanisms for combatting hate speech

Some notions related to the work of the regulators, in addition to their core mandate and powers, are important to emphasise for effectively preventing hate speech. This is because the sole usage of sanctioning tools can never be effective enough in the prevention of hate speech. Some of these include:

- **Transparency** of the regulator, from the perspective of raising awareness on particular issues and providing the public with the incentives to become more engaged in these issues, as these actions tell the public that submission of complaints is desirable and that the public can expect a certain level of protection against the inappropriate content made available to them.
- **Inclusiveness** is important, not only from the perspective of mechanisms such as complaint submitting procedures, but also in relation to, e.g., promulgations of rules, where the public consultation procedure should be a very much needed and respected tool.
- **Co-operation** is pivotal, as the regulators, with their expertise and experience, can significantly contribute to the process of adoption of relevant public policies. Also, regional and international cooperation plays an instrumentally vital role, as it provides for exchange of expertise and practice, improvement of knowledge and work through constant updates on policies and practices, and continued support for everyone's benefit.
- **Media and information literacy activities** benefit greatly from regulators' contribution, from various research activities, that are reliable, independent and regular in production. There are different ways in which the regulators can get engaged with other stakeholders in the development and implementation of many media and information literacy projects, making efforts in the direction of enhancing the principles of integrity, humanity, professionalism and ethics. Since such matters are beyond the scope of any law, the co-operation with other levels of the government, in particular, educational institutions, is needed.
- **Raising the level of professional standards** should continuously be emphasised, including the efforts dedicated to self and co-regulatory schemes. The regulator can be instrumental in the drive towards the establishment of an effective self and co-regulatory scheme, with the appropriate backstop powers in

case of failure and remembering that the mere existence of these mechanisms is not enough, but their adoption and implementation is very important in all aspects of a profession and can be an asset in the efforts to combat the hate speech in an all-encompassing manner.

- **Counter-narratives initiatives and campaigns** against stereotypes and populism should be supported. It should be the task of the regulator, the media, particularly public service media, and other public players to call out the use of stereotypes, propaganda and hate speech for what they are – a danger to society and humanity and to offer strong counter-narratives.

One all-encompassing word, accountability, is the paradigm to be respected by the regulator. It is only when the accountability of journalists, media, politicians, national regulatory authorities, towards all the people is present, that a positive contribution to the public good can be achieved, based on tolerance and the respect for the rights of every person.

2 The Moldovan national legislative and regulatory framework

This chapter lists and explains the main provisions of the legislation of the Republic of Moldova on ensuring freedom of expression, but also the legal limits of this right. The authors also introduce the provisions of national law prohibiting the use of incitement to discrimination, hate speech or other related forms.

There are several laws, at national level, governing **freedom of expression** and **hate speech**. Regarding **freedom of expression**, **the Constitution of the Republic of Moldova**, in Article 32, para. (1), states that “every citizen shall be guaranteed the freedom of thought, opinion, and freedom of expression in public by speech, image or other possible means”.

Furthermore, the **Law on freedom of expression no. 64/2010**, in Article 3, para. (1), defines freedom of expression as follows: “every person shall have the right to freedom of expression. This right shall include the freedom to seek, receive and communicate facts and ideas”.

At the same time, both the Constitution and the Law on Freedom of Expression no. 64/2010 establish that this right is not an absolute one and may be subject to limitations. According to the Constitution, Article 32, para. (2), freedom of expression may not prejudice the honour, dignity or rights of another person to their own vision, and Law no. 64/2010 provides that although freedom of expression protects the content and form of information, including that which offends, shocks or disturbs, nevertheless, in accordance with Article 3 para. (3), this freedom may be restricted under certain conditions, namely: “for national security, territorial integrity or public safety, to defend order and prevent crime, to protect the health and morals, reputation or rights of others”.

These limitations correspond to the provisions of the International Covenant on Civil and Political Rights (ICCPR), Article 19.

In the case of the activity of journalists and media institutions, the Criminal Code, in Article 180/2, provides sanctions for censorship, in two situations, on the one hand, the

censorship imposed by the public media management, and, on the other hand, the censorship imposed on the indication of the public official or a person exercising a function of public dignity, namely:

(1) The unjustified distortion of the journalistic material or the unjustified prohibition to disseminate certain information, imposed by the management of the public media, shall be punished by a fine from 650 to 850 conventional units with (or without) the deprivation of the right to hold certain positions or exercise a specific activity for up to 5 years.

(2) The indication of a civil servant or person exercising a public dignity position in respect of editorial activity given to the media or media employees, as well as any other form of impediment to circulation or dissemination of information shall be punished by a fine from 650 to 1350 conventional units with (or without) the deprivation of the right to hold certain positions or exercise a specific activity for up to 5 years.

Moreover, freedom of expression is the basic principle of the Audiovisual Media Services Code of the Republic of Moldova and directly of the Audiovisual Council, which through Article 7 acts, *ex officio* and upon referral, in order to ensure freedom of expression.

Regarding hate speech, at the national level, there are several laws, governing **hate speech**, but there is no uniformity of provisions.

The Constitution of the Republic of Moldova, through Article 32 para. (3) contains provisions about hate speech:

The law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order.

This regulation contains gaps as it combines concepts that differ in essence: a) manifestations addressing the state and its integrity, and b) manifestations addressing groups of people. At the same time, the Constitution of the Republic of Moldova (Article 16) has a closed list of characteristics that limits the applicability of safeguards to social groups.

Moreover, the **Law no.64/2010 on freedom of expression** provides a definition of hate speech (Article 2) which is a combination of the concepts provided by the UN treaties and the notions proposed by the Council of Europe:

hate speech - any form of expression causing, propagating, supporting or justifying racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance.

The definition provided by Law is rather permissive, due to the phrases "any form of expression" and "other forms of hatred based on intolerance". At the same time, in the context of the lack of additional regulations and a supporting legislative framework, the definition has a limited list of protected features and does not meet the practical needs of legal classification and sanctioning.

Another law that regulates a form that is similar to hate speech is the **Law on ensuring equality no. 121/2012**. Through its Article 2, the law defines the incitement to discrimination as

any conduct by which a person exerts pressure or displays intentional conduct for the purpose of discriminating against a third party on the basis of the criteria set forth in this law.

Referencing this definition to the elements that should be cumulatively met by hate speech, established by the General Comment no. 34 of the UN Human Rights Council, shows the existence of a discrepancy related to the exhortation capable of generating discriminatory actions or behaviours.

In 2020, work was conducted on a draft amendment to the Law on ensuring equality, taking into account the analysis performed by the Council of Europe in 2016, which showed that the definition of incitement to discrimination does not refer to the “perceived” link between a person and a protected criterion, nor to the announced intention to discriminate, instigate to discrimination and support someone to discriminate. This draft law is to be submitted to the Parliament of the Republic of Moldova.

The **Contraventional Code (Misdemeanour Code)** does not contain any definition or rule that would regulate hate speech, and the **Criminal Code** provides a limited classification of dangerous forms of expression, in Article 346:

Deliberate actions, public calls including through mass-media, either printed or electronic, aimed at inciting national, racial, or religious hostility or discord, the humiliation of national honour and dignity, direct or indirect limitations of rights, or that offer direct or indirect advantages to citizens based on their national, racial, or religious affiliations.

This article is considered to be a limiting one, as it includes a limited list of the protected characteristics: national, ethnic, racial and religious affiliation. Thus, Article 346 of the Criminal Code does not meet the current needs because it cannot provide protection to several groups affected by hate speech.

In 2019, the Ministry of Justice revised [the Draft law no. 301 of 01.07.2016](#). The draft law no. 301/2016 constitutes a set of legislative amendments of the Criminal Code and the Contraventional Code regarding the definition of grounds for prejudice, review of basic crimes and of aggravating circumstances that refer to acts motivated by hatred and prejudice. At the moment of writing this study in March 2021, the draft law no. 301/2016 had not been completed and adopted in the second reading by the Parliament of the Republic of Moldova.

In this context, the **Audiovisual Media Services Code**, adopted in 2018, remains the only organic law that regulates hate speech in an extended version (Article 1) and establishes clear sanctions for this type of speech in the audiovisual media:

Hate speech - message that disseminates, incites, promotes or justifies racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination on grounds of sex, race, nationality, religion or belief, disability or sexual orientation.

Furthermore, this Code, in Article 11, prohibits audiovisual programmes that may propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination on grounds of sex, race, nationality, religion, disability or sexual orientation. Furthermore, the Audiovisual Council is obliged to monitor whether audiovisual media service providers promote or generate content that incites violence, hatred or discrimination on their web pages.

Thus, the Audiovisual Council can sanction the use of hate speech with fines from Lei 40,000 to Lei 70,000 for the first violation, from Lei 70,000 to Lei 100,000 for repeated violations and withdrawal of the broadcasting license after the gradual application of these sanctions (Article 84 para. (9)).

At the same time, the Audiovisual Media Services Code, in Article 18, prohibits the use of **sexist language**, a form that is close to hate speech, and scenes of violence and degrading behaviour towards women and men in the audiovisual media services. Sexist language is defined in the **Law no. 5/2006 on ensuring equal opportunities for women and men** as expressions and addresses that present women and men in a humiliating, degrading and violent manner, offending their dignity.

As mentioned, Law no. 121/2012 defines discrimination and incitement to discrimination, which in the audiovisual commercial communications is prohibited by the Audiovisual Media Services Code by Article 63, para. (4):

include and/or promote any discrimination based on grounds of sex, race, nationality, religion, age, disability or sexual orientation, freedom of conscience, thought.

Article 13 (6) (b) of the Audiovisual Media Services Code mentions that correct information is provided by avoiding any form of discrimination in audiovisual news and debate programmes, information in matters of public interest, of a political, economic nature, social or cultural nature.

For violating the provisions of Article 13, the Code provides for the sanctioning of the media service provider with public warning, in case of the first violation, and a fine from 5 000 lei to 10 000 lei.

The **Law on Advertising no. 1227/1997** defines and prohibits sexist advertising in Article 11/1, which:

- a) *presents women or men as sexual objects, in humiliating or degrading, violent situations that offend human dignity;*
- b) *promotes sexist stereotypes in a discriminatory manner, while maintaining the traditional perception of women as weak, vulnerable and dependent beings, of a lower social position.*

and this according to the Contravention Code, in Article 364, para. (6)

shall be sanctioned with a fine from 18 to 90 conventional units applied to the natural person, with a fine from 120 to 240 conventional units applied to the person in position of responsibility, with a fine from 240 to 300 conventional units applied to the legal person.

It is important to note that in the process of monitoring and identifying potential cases of hate speech, the Audiovisual Council is obliged to take into account the provisions of the Audiovisual Media Services Code, national law and international treaties to which the Republic of Moldova is part.

3 Evaluation of potential hate speech cases

This chapter constitutes the practical part of this guide and provides the main elements in the process of monitoring, identifying, analysing and evaluating alleged cases of hate speech in the audiovisual media. The subchapters provide a detailed overview of two international tools used in the process of evaluating and sanctioning hate speech, namely the Rabat Action Plan and the triple ECtHR test.

3.1 Rabat Action plan and ECtHR three-test explained

Whether offline or online, distinguishing between legitimate freedom of expression and illegitimate hate speech and discrimination has never been easy, especially in the framework of the contemporary media landscape, with the abundance of cases. Not all cases can be a clear-cut example of hate speech, nor do hateful statements necessarily need to be blunt in their expression. Important to add here is that “sophisticated” forms of hate speech cannot be “detected” by algorithms, artificial intelligence and software, and, hence, human oversight is necessary.

Having in mind the political, historical, social and economic national circumstances, but also keeping in mind the importance of the permissible forms of the right to freedom of expression, and judging each case on its own merit, the assessments should be based on the [Rabat Plan of Action](#), inclusive of: “(1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence [12]”. Each potential case should also be assessed from the perspective of the [ECtHR three-test](#):

- Restrictions to the right to freedom of expression must be provided for by law
- Restrictions must pursue one of the legitimate purposes of the law
- Restrictions must be strictly necessary and proportionate to the objective pursued.[13]

The aforementioned criteria from the Rabat Plan of Action must be regarded from the principles related to the right to freedom of expression, and every decision against the media service provider substantiated by a proven and legitimate need to interfere with it. This is where the application of ECtHR triple-test is important, always having in mind that deciding on the interference with the right to freedom of expression implies the need to examine whether the freedom of expression can be appropriately restricted, and if so, it must be in accordance with the three conditions:

- interference must be provided for by law
- it must pursue a legitimate purpose
- it must be necessary to achieve that purpose

The national regulatory authority must assess all elements of any potential hate speech case on the basis of public interest (promoting cultural diversity, promoting gender equality, next to protection of minors, etc.), based on democratic foundations and procedures in order to maintain the balance between different rights and freedoms and to keep at a distance many special interests. One of the requirements to consider is the likely effect on the audience of the speech that can potentially be regarded as hate speech. More specifically, the regulator must: “*determine whether the speech encourages or appears to encourage or incite crime and whether either explicit or implicit calls to action are included; what statements are made and how they are made; what are the audience expectations; the identity of the speaker; and the wider context in which statements are made (e.g., were the individual speaker’s statements challenged within a programme, for example, by an interviewer)*”[14]. It is important to note that the potential incitement to crime does not mean that the actual actions which are suggested by hate speech must have been carried out, because the incitement in itself is a non-permissible act.

CAUTION:

The regulator must be aware that a vast number of people tend to find hate speech where it does not exist, having the situation of a great number of complaints submitted to the regulator, creating pressure to respond to the demands, but the regulator must, at all times, resist the pressure and apply the rules objectively.

The danger of hate speech is that it can indeed create a clear and immediate risk of incitement to hatred, violence or discrimination against a person or group on various grounds, or, more importantly, which may be interpreted by the public as incitement to hatred, violence, disorder and riots, or which could provoke or incite crimes. Extreme example of this can be found in, for example, practices of Rwanda's Radio Télévision Libre des Mille Collines (RTLM), a radio station which projected hate propaganda against Tutsis, moderate Hutus, etc., where it appears that such broadcasting played a very important role in creating the atmosphere of charged racial hostility that allowed the Rwandan genocide to occur[15].

Hate speech does not always come in direct, blunt forms and statements. It is in fact more often the case that it appears disguised or in a "sophisticated" form, harder to detect, but equally damaging. For example, expressing that the members of the LGBTI are "*sick and deranged*", and are all paedophiles and should be all "*taken care of*" are blunt and clear-cut examples of hate speech. However, hate speech can also be expressed in the context of talks which include religious references and elaborations relative to "attacks" towards the religious or moral values of the population.

Another element to consider is the way journalists and/or media service providers are involved in potential hate speech cases. Journalists or media outlets are not to be held liable for the proliferation of hate speech if they indicate an issue as being of public interest and do not in any way contribute to the dissemination of hateful statements. Shading light on key events in society, for example by reporting or debating on racist, nationalist and so on, issues, is a matter of public interest and falls within the protection of the right to freedom of expression, as long as the journalists and media outlets do not take an active part or join in and/or reinforce hate speech.

A good example is the French "Zemmour" case[16], related to the broadcast on the CNews television channel of the debate in relation to the stabbing of several people outside the former offices of the Charlie Hebdo satirical magazine in Paris. Zemmour's statements included: "*Young people with an immigrant background [...] are all thieves, they are all murderers, they are all rapists... They have nothing to do here, they are thieves, they are murderers, they are rapists, that's all they are...*"; "*We must send them back, they must not even come, and if for that we have to get out of the European Convention on Human Rights, which is the origin of the evil [...], will have to get out*" and "*You think of these children who are in pain, I think of the women who are raped by these people, who are murdered by these people, of the French who are brutalised and traumatised by these kids. Stop that. We must think of the French before we think of the others.*" While the anchor of the station stated: "*These words belong to you, it is not CNews*" and the station debunked itself off, the French media regulator CSA forwarded the case to the prosecutorial bodies for criminal investigation[17], which is not the first time for Mr. Zemmour.[18] In contrast to that, the CSA issued a warning to the same station for live broadcast of the Zemmour's speech during the "right-wing convention" which was held at the end of September 2020.

Hate speech can be found in live broadcasts of political rallies or important events, where the participants or speakers at the events might use hate speech or derogatory and discriminatory statements. Even if the event is broadcasted, the media service provider is not to be found liable, if it distanced or dissociated itself from such statements. Furthermore, the relevant judicial authorities should be, as a rule stemming from criminal codes, notified of a circumstance of hate speech since they are then in charge of prosecuting that particular individual for the proliferation and usage of hate speech in the public arena.

NOTE:

Negative campaigning, populist rhetoric and hate speech in pre-election campaigns is not rare in the contemporary global politics. Hateful rhetoric, targeting, for example, minority groups, is an established technique to mobilise political supporters, delegitimise political opponents and to deepen political polarisation[19]. In the short-term, such practice of political subjects can win them the elections, but, in the long run, it can lead to severe consequences in societies, felt by all, if not more by the propagators of such election campaigns. Political subjects should be held responsible for the usage of hate speech in pre-election campaigns, not by the media regulator, but by election commissions and/or

judicial bodies. While the media should not be held liable for reporting on such incidents in the course of the election campaigns (as long as the media clearly dissociated itself from such statements and has not further promoted and joined in usage of hate speech), the liability for unlawful practices then lies in the hands of the originators – political subjects themselves (see Chapter VII, the decision of the ECtHR *Féret v. Belgium*, 2009). In ambiguous situations, in which the media could be found to judge for itself whether to broadcast a political ad, rally, speech, etc. the rules should stipulate the referral mechanisms (to the courts or, in some instances, to the media regulator)^[20].

3.2 Qualitative evaluation of potential hate speech cases

This subchapter contains a grid of questions recommended for the use of the employees of the Audiovisual Council involved in the process of monitoring, evaluating and sanctioning potential cases of hate speech in the audiovisual media. This grid is intended, on the one hand, to establish the technical information about the alleged hate speech case (when and where the case was recorded; who the perpetrator is; who the person / group affected by the hate speech is, etc.), and on the other hand, together with the assessment of the case based on the qualitative assessment questions, to provide the necessary support in order to formulate the argumentation / justification of the decision of the Audiovisual Council for or against the sanction.

Note: For specific terms, see Annex - Glossary.

GENERAL INFORMATION

1. The licensee information: legal person, name of the station, responsible person(s), contact information.

2. Type of licensee:

- a) Linear audiovisual media service (indicate which):
- b) Non-linear audiovisual media service (indicate which):

3. Type of programme:

- a) Children's programme
- b) News-information programme
- c) Sports programme
- d) Entertainment programme
- e) Current affairs programme
- f) Documentary programme
- g) Humour / satire programme
- h) Interactive programme (allowing for audience participation via phoning in, texting, etc.)
- i) Reality TV programme
- j) Religious programme
- k) Other (indicate which):

4. Time of broadcast:
- Prime-time
 - Before prime-time
 - After prime-time
5. Title of the programme:
6. Where the alleged hate speech case was registered:
- TV show
 - Radio show
 - TV reportage
 - Radio reportage
 - Title of TV reportage
 - Title of Radio reportage
 - TV live streaming
 - Radio live streaming
 - Non-linear service (indicate which):

CONTEXT

It is very important to analyse the context during the process of evaluating certain statements that may incite to discrimination, hostility or violence against a person or a group of people and that may have a direct influence on both intent and causation. This is about analysing the social and political context prevalent at the time the discourse took place or was disseminated. Consider the questions below to assess the context of hate speech.

- What is the topic/subject matter of the programme during which the alleged hate speech occurred?
- The subject matter resonates in the society as:
 - Important
 - Sensitive
 - Highly sensitive
 - Controversial

Note: A controversial topic is a topic around which there are at least two differing views on certain key issues and on which no consensus or generally accepted opinion has been reached.

- Is the topic of public interest?
 - No
 - Yes
 - Can become

Note: Sometimes a topic can become of public interest, if it is introduced into the public discourse by well-known people and/or people with authority, and/or when the topic is frequently prompted and discussed.

- What is the specific social and political context in the society regarding the topic and the manner in which it is presented?

Note: Consider the elements related to important societal processes, such as elections, religious holidays, gay parades, markings of historical events, exceptional events, such as social unrests, important global occurrences having an impact on the society, etc.

5. When and where the speech occurred?

SPEAKER(S)

The more public influence the author of the speech has, the more serious the speech can be. Consider the questions below to assess the role and position of the speaker in the dissemination of hate speech.

1. Do the statements incite to discrimination, hostility or violence against a person or a group of people and / or are they expressed in order to incite the audience to act against a person or a group?

- a) No b) Yes

2. Write here the statement which includes potential hate speech and its description:

3. What is the position or status of speaker(s) in the society?

- a) Citizen
 b) Public personality
 c) Politician
 d) Journalist / moderator
 e) Public servant
 f) Mayor / local or regional councillor
 g) Another status, please indicate which:

Note: The position or status of the speaker must be taken into account. This includes their position in society, and also their position or that of the institution / organisation that they represent towards the audience to which the speech is addressed.

4. Author(s) of hate speech, this should include also the journalist if they were the source of hate speech (indicate first and last name):

5. Sex of the author(s):

6. Age of the author(s):

7. How is the speaker(s) perceived by the audience?

- a) Popular figure
 b) Respected figure
 c) Not respected figure

8. Are the authors of the hate speech influential individual(s) or not?

- a) No b) Yes

9. What is the degree of influence the speaker has? Can it be quantified?

- a) Limited
 b) Small
 c) Large
 d) Very large

Note: Consider the possibility of determining the level of influence - see social media sources, electoral results, etc.

10. Do the authors of the alleged hate speech participate often as guests in public debates?

- a) No b) Yes
 11. Do the speakers represent a known institution/organisation?

- a) No b) Yes

Note: If the author of the speech is a high-ranking official, the impact of that message will therefore be much greater. In addition to being well known in society, such personalities are also influential and can establish and direct the public discourse and influence public opinions and attitudes and their changes.

12. How is the institution/organisation the speaker(s) represents perceived by the audience?

- a) As an important institution/organisation
 b) As an active institution/organisation
 c) As a less known institution/organisation
 d) Another perception, indicate which:.....

INTENT

During the assessment process, it is recommended to analyse the intention of the author(s) of the alleged hate speech, that refers to the action of "urging" and "instigating" the action. In that regard, there must be a triangular relationship between the object and the subject of the speech, and the audience to whom it is addressed. Consider the questions below to assess the intent of the author(s) to incite the public against a person or target group.

1. Are the statements inclusive of elements of advocacy and incitement against certain groups or their representatives?

- a) No
 b) Yes

2. Does the speech identify the group or the representative of the group that is being portrayed in a negative, stereotypical, resentful and insulting manner, with hateful statements, etc.?

- a) No
 b) Yes

3. What is the target group?

- a) A person negatively identified due to their protected characteristic or their association with them
 b) A group negatively identified
 c) Both

4. Persons/groups affected by potential hate speech:

- a) Women
 b) Men
 c) Politicians
 d) Migrants
 e) Persons with disability

- f) LGBTI
- g) Roma
- h) Jews
- i) Arabs
- j) Elderly
- k) Other, please explain:

5. The protected characteristic underlying the alleged hate speech:

- a) Age
- b) Gender
- c) Political affiliation
- d) Opinion
- e) Religion/beliefs
- f) Nationality
- g) Disability
- h) Sexual orientation
- i) Social origin
- j) Other, please explain:

6. The person affected by the speech (indicate name and surname):

7. Sex:

8. Age:

9. Are the audience invited to act?

- a) No
- b) Yes

10. How does the audience react to the discourse (if this can be analysed)?

- a) The audience support the speech
- b) The audience react against the speech
- c) The audience does not take any stance regarding the speech
- d) Other, please explain:

CONTENT AND FORM

Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style and nature of the arguments presented in the speech or the balance between the arguments. It is important to analyse whether the media institution respected the balance of opinions (points of view / counter-arguments). Consider the questions below to analyse the content and form of the alleged hate speech.

1. Is the speech direct and provocative?

- a) No
- b) Yes
- c) Unclear

2. What is the style used?

- a) Scientific
- b) Official (juridical -administrative)
- c) Artistic
- d) Colloquial
- e) Other, please explain:...

3. What is the nature of the arguments used?

- a) Arguments related to the person
- b) Arguments related to the use of force
- c) Arguments related to authority
- d) Arguments based on scientific data
- e) Arguments based on religious dogma
- f) Other, please explain:...

4. Is there a balance in presenting views and opinions in the TV/radio programme?

- a) No
- b) Yes
- c) Unclear

5. Were the opinions presented neutrally or in a documented manner by the media institution?

- a) No
- b) Yes

6. Were the opinions presented using biased statements, or discriminatory and false statements by the media institution?

- a) No
- b) Yes

7. Are there insults used against the targeted group (explicit or implied)?

- a) No
- b) Yes

8. Can the statements trigger strong negative emotions in a common viewer/listener?

- a) No
- b) Yes
- c) Unclear

9. Is the speech praising or glorifying, promoting and justifying violence and spreading racist ideas and stereotypes, stigmatisation, etc.?

- a) No
- b) Yes

10. Is the speech praising or glorifying the Holocaust or other genocides, or negative historical figures etc.?

- a) No
- b) Yes

11. Does the discourse deny, minimise, approve, or justify crimes of genocide or crimes against humanity?

- a) No
- b) Yes

EXTENT OF DISSEMINATION

The greater the dissemination of hate speech, the greater its impact. Consideration must be given to whether the speech is public, what means of broadcasting are used, whether the speech was delivered in prime time or not, and so on. Consider the questions below to assess the dissemination of hate speech.

1. What is the extent of the dissemination of the alleged hate speech?
2. What is the magnitude and size of the audience?
3. Is the speech widely accessible to the public?

- a) No
- b) Yes

Note: Coverage of linear audiovisual media services, subscription rates for non-linear audiovisual media services, etc.

4. What is the estimated size of the audience of the alleged hate speech? (considering the coverage, availability of programme, popularity, etc.)?
5. Do the audience have the means to act against the targeted group as a consequence of the act of incitement?
6. Does the speech appear on the webpage of the audio-visual media service provider?

- a) No
- b) Yes
- c) The provider does not have a webpage

Note: Compare audiovisual materials presented on TV / radio, as well as on the web pages of the audiovisual media service provider. Comments in the footnote of the audiovisual material can also be analysed for are any comments that incite hatred, discrimination, intolerance, etc. (if there is such a section).

LIKELIHOOD OF HARM, INCLUDING IMMINENCE
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Incitement is, by definition, an incipient crime. It is not necessary that the action to which the public is prompted by a particular speech to be committed in order for that speech to constitute an offense. However, a certain level of risk must be identified. This means that one has to determine whether or not there is a reasonable likelihood that the speech will succeed in inciting real action against the target group, recognising that such causation should be fairly direct. Consider the widespread reaction of society to the statements / events in question, such as the increased presence of public debates, the increased number of complaints, the coverage of other media, etc. The questions below can help assess the likelihood and imminence of har.

1. Is there an imminence of danger or risk of potential harm that could be caused by promoting the speech?

- a) No
- b) Yes, in this case, explain the risk or danger:....

2. Does the speech call on certain actions that could be understood by an average audience member to incite hatred towards a group or a representative of that group?

- a) No
- b) Yes
- c) Unclear

3. Does the speech clearly identify a particular "enemy", disparaging and denigrating the identified targets?

- a) No
- b) Yes, indicate which:....

Note: In an alleged case of hate speech, both individuals and groups can be presented as „enemies“.

4. Is there a risk of conflict escalation?

- a) No
- b) Yes

THE ROLE OF THE JOURNALISTS / MEDIA SERVICE PROVIDERS

The manifestation of hate speech in the audiovisual media increases the scope of this speech, and the lack of reaction of journalists and/or media service providers makes television and radio become platforms for the manifestation and spread of hate speech. We recommend that you consider both the situations in which journalists and/or media outlets are the source of hate speech, and the situations in which they may or may not take steps to stop the spread of hate speech. Consider the questions below to assess the role of journalists/media service providers in preventing and combating hate speech in the audiovisual media.

1. Has the media institution promoted the alleged hate speech?

- a) No
- b) Yes

2. If you ticked "No" to question 1, indicate in which way the journalist/media institution intervened to stop the dissemination of hate speech:

- a) Intervened to stop the message

- b) Condemned the message and fenced the media provider
- c) Turned off the microphone
- d) Took an advertising break
- e) Stopped the message and explained why
- f) Ensured a second point of view (an independent expert)
- g) In another way, please explain:

If you ticked "Yes" to question 1, please specify in what manner the media institution engage in disseminating the alleged hate speech?

- a) Did not react
- b) Accepted the message and agreed with its author
- c) Encouraged the further dissemination by providing air time
- d) Contributed to the message dissemination by words, or screen messages, videos, etc.
- e) Used the hate speech again
- f) Others (indicate which):

Note: Consider whether the speech is part of a) covering certain live events and b) including viewers / listeners in programmes. We also recommend that you consider special circumstances, such as last minute changes to the guest list of the programme, lack of sufficient time for editorial preparation of the broadcast, etc.

3. Has hate speech been disseminated in the form of SMS, e-mails, Facebook and Twitter messages sent to the media provider by the audience subsequently shown in the programme (e.g., in the scroll)?

- a) No
- b) Yes

4. The alleged hate speech disseminated in the media programme was:

- a) Shown on the screen
- b) Read out by the moderator
- c) Another situation, please explain:

After receiving the answer of the media service provider in relation to the alleged misconduct, consider this question:

5. What was the reasoning the media service provider offered in response to the alleged violations (provide details)?

VALIDATION - FINAL STEP

Validation: verification and data collection

The Head of the TV/Radio monitoring department will evaluate the potential hate speech cases reported by the employees of the department, in order to ensure the correctness of the data entered.

Note: Any error in data entry will in turn generate an error in the disaggregated data processing. It is recommended that the Audiovisual Council digitize the questionnaire included in this Guide and apply it. After each monitoring cycle, the Audiovisual Council should review the monitoring methodology and, if necessary, adjust the methodology and the questionnaire.

If the information entered in the monitoring report does not contain sufficient details, the head of the TV/Radio monitoring department shall reanalyse the potential hate speech case with the responsible team / person.

Before drawing up the draft decision, interdepartmental co-operation is suggested in terms of the establishment of an internal interdepartmental commission, comprised of the Monitoring Department and Legal and Regulations Department, to assess all the elements of the case, including the legal framework, namely:

- Expressions protected by freedom of expression → **No action**
- Expressions protected by freedom of expression, but that raise concerns of tolerance, dignity and respect for others → **Monitoring**
- Expressions which abuse freedom of expression and require the intervention of the Audiovisual Council
- Expressions which abuse freedom of expression and require the intervention of the responsible institutions:
 - Council for Preventing and Eliminating Discrimination and Ensuring Equality
 - Central Electoral Commission
 - Judicial bodies

Note: At this phase, it is important that the departments of the Audiovisual Council ensure that they had registered all the details which will support the decision according to the aspects mentioned in the Rabat Plan of Action presented above.

Viability of interference to the right to freedom of expression

Relevant departments should meet regularly (depending on the frequency and quantity of potential cases), for collectively assessing violations of rules and regulations, managing and combining the efforts of the relevant departments (monitoring and legal).

Also, the application of the ECtHR triple-test is needed, meaning that when deciding on the interference with the right to freedom of expression, based on the Article 10 of the ECHR, the examination of whether the freedom of expression can be appropriately restricted must be provided for by law, pursue a legitimate purpose and must be necessary to achieve that purpose.

Reference to the case-law of the ECtHR and some regulatory authorities provided in this Guide and elsewhere should be used, being mindful of the importance of the right to freedom of expression and, at the same time, being mindful of the responsibility to address and sanction hate speech.

Application of the right to a fair trial principle

1. In case there are grounds for initiating the sanction procedure, the right to a fair trial must be respected, which stipulates that everyone is entitled to address the charges brought against them, either by providing for a hearing of the party concerned or provision of a written submission.
2. A formal letter requesting the submission of a response to allegations brought against the licensee must be prepared, indicating briefly what programme content is in question and what provisions of the applicable rules are allegedly being violated.
3. The response of the media service provider must be considered in its entirety.
This request for submission of the response must allow for a sufficient time for the licensee to express their opinion and allow for the organisation of a hearing.

3.3 Analysis of hate speech in the audio-visual media: case study

Ofcom United Kingdom – Sanction: Worldview Media Network Limited

Worldview Media Network Limited is the legal person holding the licence for the satellite television channel Republic Bharat, broadcasting news and current affairs to the Hindi speaking community in the United Kingdom, predominantly in the Hindi language.

Details of the broadcast in question (from the aforementioned decision):

“On 6 September 2019 at 14:26 Republic Bharat broadcast Poochta Hai Bharat, a daily current affairs discussion programme in Hindi presented by the journalist Arnab Goswami... The debate in this episode featured a debate between the host, Mr Goswami, and his guests (three Indian and three Pakistani) relating to India’s attempt to send the spacecraft Chandrayaan 2 on its mission to the moon... This included a discussion of India’s record of space exploration and other technological advancements in comparison to Pakistan’s, the ongoing dispute between Pakistan and India over Kashmir, and Pakistan’s alleged involvement in terrorist activities against Indian targets... This debate was set against the backdrop of increased tension in the ongoing dispute between India and Pakistan over the region of Kashmir which is claimed by both countries. In the programme, the presenter and some of his guests conveyed the view that all Pakistani people are terrorists, including that: “their scientists, doctors, their leaders, politicians all are terrorists. Even their sports people”; “every child is a terrorist over there. Every child is a terrorist. You are dealing with a terrorist entity”. One guest also described Pakistani scientists as “thieves”, while another described Pakistani people as “beggars”. In the context of these criticisms, the presenter, addressing Pakistan and/or Pakistani people, said: “We make scientists, you make terrorists”... Another guest, General Sinha said, “Oh you useless people. Beggars. Oh beggars, oh beggars. We will douse you with 1.25kg, .75kg-, with two inches. PoK[21]8 , PoK, we are coming to the PoK. We are coming to the Gilgit, Baltistan, in Khyber Pakhtunkhwa...We are going to come, be ready. People in your country are shivering with fear that the Indian army may come. We will barge inside your home in Baluchistan, in Khyber Pakhtunkhwa, in Karachi, in your area, in Multan, in Rawalpindi and kill you. From Lahore, from Karachi to Gilgit-Balistan when we will have control.” This episode hosted a participation of one Pakistani guest who expressed strong criticisms of Indian policy and its leaders, but also: “expressed the view three times that the success of India’s space programme was “a victory for humanity” and “a matter of happiness...welcomed any advances by India in technology, in education, in health and in protection of minorities and indicated that Pakistan wished to learn from Indian surgeons and cooperate in sectors such as education and technology.”

On 22 December 2020, Ofcom issued the decision, finding the broadcaster in breach of the applicable rules, in particular, the following parts of the Ofcom [Broadcasting Code](#):

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to [...] offensive language, [...] discriminatory treatment or language (for example on the grounds of [...] religion or belief [...]).”

Rule 3.2: “Material which contains hate speech must not be included in television [...] programmes [...] except where it is justified by the context”.

Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television [...] services [...] except where it is justified by the context..."

When deciding on this case, as in all cases, Ofcom applied its procedure and submitted its preliminary findings to the broadcaster in question for their response to the allegations, and took great care in examining it against the alleged violations, respecting the rights of the broadcaster to be able to not only respond to allegations brought against it, but also fully considering the reasoning provided by the broadcaster.

The broadcaster disassociated itself from the comments made in the programme in question, stating that: *"the presenter was not involved in this discussion"* and that the statements expressed in the programme were *"figures of speech not intended to be taken literally, which Asian viewers would have understood clearly"*. The broadcaster *"argued that these statements were justified by reference to the political context of heightened tension between India and Pakistan at the time of broadcast, that the programme as a whole was "calling for peace and unity and uplift of the entire region regardless of nationality", and that the discussion was balanced by the inclusion of some more conciliatory statements in the programme and the participation of guests from both India and Pakistan."*

By the application of rules in place, Ofcom found that the programme in question *"contained comments made by the host and some of his guests that amounted to hate speech against Pakistani people, and derogatory and abusive treatment of Pakistani people. The content was also potentially offensive and was not sufficiently justified by the context"*. The broadcaster was issued with a financial penalty of £20,000 and an *"obligation to broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom; and to ii. not repeat the programme."*

The decision and its reasoning provides for an excellent example of application of all relevant issues, when deciding on hate speech cases, both from the perspective of Rabat Plan of Action (social and political context, status of the speaker, intent to incite the audience against a target group, content and form of the speech, extent of its dissemination and likelihood of harm, including imminence) and the ECtHR three-test (restrictions to the right to freedom of expression must be provided for by law; must pursue one of the legitimate purposes of the law; must be strictly necessary and proportionate to the objective pursued.)

In particular, the context of this case revolved around *"contentious issues of Kashmir and India-Pakistan relations"* and, as the broadcaster itself noted *"heightened tension between India and Pakistan at the time of broadcast."* Hence, it was clear that, while valid to discuss these matters, the topic of the programme was considered very important and sensitive to a great number of people, but the manner in which the topic was discussed was very offensive, and likely to incite discrimination, hostility or violence. The programme directly and undoubtedly identifies the particular "enemy", disparaging and denigrating the Pakistani people, portraying them in a very negative and insulting matter, but also included statements which can be perceived as advocacy and incitement against them, understood to produce highly negative emotions in an average viewer/listener, targeting strong emotions. These can be found in very direct and provocative statements, such as: *"their scientists, doctors, their leaders, politicians all are terrorists. Even their sports people"; "every child is a terrorist over there. Every child is a terrorist. You are dealing with a terrorist entity"..."thieves"..."beggars"..." "We make scientists, you make terrorists"*.

The statements of the Indian army representative: *"Oh, you useless people. Beggars. Oh beggars, oh beggars. We will douse you with 1.25kg, .75kg-, with two inches. PoK 8 , PoK, we are coming to the PoK. We are coming to the Gilgit, Baltistan, in Khyber Pakhtunkhwa..."*

We are going to come, be ready. People in your country are shivering with fear that the Indian army may come. We will barge inside your home in Baluchistan, in Khyber Pakhtunkhwa, in Karachi, in your area, in Multan, in Rawalpindi and kill you. From Lahore, from Karachi to Gilgit-Balistan when we will have control" could very well be understood by an average audience member to incite not just hatred, but harm and violence towards Pakistani people, potentially carrying a risk of escalating conflict.

The role of the journalist and the broadcaster can be seen as not fending themselves against such statements and allowing such derogatory and inflammatory speech to be presented uninterruptedly. Furthermore, the journalist himself engaged in such a discourse, as Ofcom found: "*comments made by the host and some of his guests that amounted to hate speech against Pakistani people, and derogatory and abusive treatment of Pakistani people.*" Finally, it is reasonable to expect that this programme had a wide reach among the populations in question.

Qualitative evaluation of potential hate speech cases and ECHR triple-test

Rabat Plan of Action:

1. Context

The topic is the contentious issue of Kashmir and India-Pakistan relations, broadcast at the time of heightened tension between India and Pakistan. It is considered important, highly sensitive and of great interest for the audience of the broadcaster and revolved around the contentious issue of Kashmir and India-Pakistan relations.

2. Speakers

Both the journalist and the guests are well known persons, and include high-ranking military officers, and can be assumed to be perceived as important public figures of significant authority with a high degree of influence over an average viewer. The participation of representatives of the Pakistani people has been provided, but the overall impact of this participation did not result in discussing this highly volatile topic in an objective manner or in a matter that would sufficiently represent all sides of the topic or mitigate and neutralise certain viewpoints that were presented in the programme.

3. Intent to incite the audience against a target/person group; content and form of hate speech; likelihood of harm, including imminence

The programme included content which clearly identifies the "enemy", can be understood to be directly and provocatively biased, discriminatory and insulting, inclusive of elements of advocacy and incitement against Pakistani people and/or intended to incite discrimination, hostility or violence against them, understood to be able to produce high negative emotions in an average viewer/listener, targeting strong emotions and especially included propagation of violence in the form of military threats, which could be understood by an average audience member to incite hatred towards Pakistani people and to escalate in terms of real danger to representatives of the target group.

4. Role of the journalist(s)/media service provider

The journalist did not fence himself or the media service provider against the statements in the programme and allowed such derogatory and inflammatory speech to be presented uninterruptedly, himself engaging in such a discourse. In its responses to allegations of violations of rules, the media service provider itself did not offer substantial reasoning to prove otherwise.

5. Extent of the dissemination

In this particular case, it should be noted that the broadcaster is a satellite television channel broadcasting news and current affairs to the Hindi speaking community in the

UK, predominantly in the Hindi language, presumed to attract its targeted audience to a great extent. Another indication to consider is that the Ofcom received a number of complaints in relation to this programme. Finally, it can be noted that there was a coverage in this case in a number of media outlets[22].

ECtHR triple-test

Ofcom took particular care to weight accurately the right to freedom of expression and its legitimate derogatory elements, exercising: *"its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim."* It based its decision on its legal duty, stemming from of the UK Communications Act 2003: *"to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets"* (Section 3(1))... requirement: *"to secure, among other things, the application to all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services"* (Section 3(2)(e))...and being required: *"to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice"* (Section 3(3)); and *"where relevant, to have regard to a number of other considerations including the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression."* (Section 3(4)(g)). Noted here is the UK Equality Act 2010, as well, which determines: *"race a protected characteristic, and race includes both nationality and ethnic or national origins"*. When determining the sanction, Ofcom took into account the seriousness of this violation, containing *"statements which amounted to hate speech against, and was abusive and derogatory about, Pakistani people on the basis of their nationality"*, taking into account the political context of the case and the time in which it occurred, as the *"disputed region of Kashmir had become particularly tense in the months leading up to the broadcast"* and serious *"potential to cause significant harm to Pakistani people"*, concluding also that *"statements would potentially be harmful and highly offensive to any person who did not share the sentiment being expressed by the presenter and his Indian guests"*. Ofcom further noted that *"the material posed a risk of harm to the Pakistani community in the UK, and to good relations particularly between members of the UK's Indian and Pakistani communities."* It also took into account the fact that there were *"a number of complaints about the service including in relation to "highly pejorative references to members of the Pakistani community (e.g., continually referring to them as "filthy")"*. Ofcom also took note of the fact that there was no re-broadcast of the programme in question and that the broadcaster *"had taken steps to ensure that such incidents would not happen again (albeit only after being contacted by Ofcom about the content)." This way, the ECtHR tripe-test is found to be satisfying the principles of the Ofcom decision as the restriction was provided for by law, pursuing the legitimate purposes of the law and being necessary and proportionate.*

4 Guiding principles on procedural and administrative matters

This chapter sets out guidelines for the procedural and administrative aspects that an audiovisual regulatory authority should take into account when combating hate speech, with a focus on reporting hate speech, the evaluation and decision-making process, and sanctioning such cases while ensuring transparency.

Internal procedures of the regulatory authority for handling cases and decision-making processes are very important, because they might result in civil proceedings and issuance of sanction, and in that sense, they must respect legal administrative procedures. Also, in the appeal procedure before the courts, the procedural matters are equally, and in some cases, exclusively, important as much as the merits of the case, and this is where the abidance by the internal procedures, which are based on provisions relative to administrative law, are best visible. Principles to be observed in the internal procedures are those of protection of the public interest as the fundamental mandate of the media regulator, as well as legality and legal certainty, reliability, predictability and transparency.

The internal procedures and the flow of activities should be well-organised, clear, practical and enforceable, enabling easy communication and cooperation among Audiovisual Council members, employees and departments. The hierarchy of decision-making must be clear and every employee familiarised with it. It is recommended to ensure the possibility of amending the procedures, in case of future developments in the Moldovan Audiovisual Council, such as the expansion of monitoring department, the acquisition of software, etc.

The main principles related to the internal procedure for handling cases of potential violations of applicable rules and regulations and hate speech in particular, include:

4.1 Reporting the alleged violation

The regulator can be alerted of possible cases of hate speech, discriminatory speech, etc. (just as any breaches of the rules) in the following manner:

○ **By a complaint**

Following the regular internal procedure of post and task assignment, the complaint should be referred to the monitor, who needs to verify whether all necessary information is provided for, i.e., the identification of licensee in question, indicative date and (approximate) time of broadcast of the programme in question and indication of the nature of the programme. Should this not be the case, the monitor should request a supplement to the complainant, to be able to get a proximate date and time of the broadcast in question. Telephone received complaints should be handled by following a standardised form for this purpose.

In this regard, it is recommended to develop a standard complaint form for potential hate speech cases (in print and electronic formats). This complaint form should be connected with the digital questionnaire which will be filled by the Audiovisual Council employees authorised to monitor and review the content.

The complaint should include the following elements:

- Indication of the complainant and their contact details, as well as legality of submission of complaint in case of a legal person (signed by the person in charge), except in the case where the complainant has declared anonymity. In this regard, it is suggested to reconsider the position of Moldovan authorities on rejection of anonymous complaints, and indeed allow for it.
- Indication of alleged violated provisions, which does not necessarily have to guide the regulator in its deliberation, as the case may be found groundless or expanded to include other provisions of the rules, such as gender discriminatory statements, etc.
- Name of the audiovisual media service, indicative time and date of the programme in question.

- Time limits for filling a complaint, which should be mindful of the period during which the licensees are obliged to preserve and keep their programme recordings.

- **Ex officio procedure**

The preliminary assessment of the potential violation of applicable rules can be based on *ad hoc* or permanent monitoring. In this, the human, as well as technical and financial capacities of the regulator, must be kept in mind, inclusive of monitoring, archiving and storing capacities. The selection of programmes to be monitored, or, in the case of *ad hoc* monitoring, particularly in periods such as election campaigns, when many regulatory authorities strengthen their regulatory and/or monitoring activities, should be carefully planned. It is important to emphasise that, in principle, when the regulator pursues monitoring activities, such endeavours include TV programmes, while the radio content is normally not included, due to, *inter alia*, nature of radio content, which abound in musical content. Hence, the indication of potential violations in relation to radio content is best dealt with by the complaint submission procedure.

Monitors should be regularly trained in all matters pertaining to relevant rules and regulations, their application and potential violations. This is especially relevant in potential cases of hate speech, due to the inherent difficulty in assessing these forms of expression, where sound judgement and expertise are needed to assess the speech from the perspective of its legitimacy and when, at times, regulators walk the thin line between distinguishing between permissible forms of expression and forms of expression which can be restricted. Also, a standardised monitoring form should be strictly followed, and monitors trained in their drafting. Besides the usual technicalities (name of licensee, programme details, etc.), the form should include sections where the transcripts of questionable parts of the content are included.

4.2 The collegial nature of the decision-making process

While understanding and fully respecting the role of each department and its employees and management, as well as the functioning collaboration of the departments, it is still suggested to consider establishing an internal interdepartmental commission (IIC), which should meet regularly (depending on the frequency and quantity of potential cases), for collegial assessment of violation of rules and regulations and measures, mirroring the collegial nature of the Audiovisual Council's decision-making process, which ultimately decides. The collegial nature of the decision-making process in the drafting phase, as well as in the Council itself, is welcomed for the purpose of preservation of the integrity and independence of the decision-making process itself. These are necessary elements for the protection of public interest, but also in case of the appeal procedure, when the regulator must additionally substantiate its reasoning for its decisions. The IIC should combine the efforts of the monitoring and legal departments, which are both crucial in the preparation of a valid argumentation for the Council's decisions, but also as it additionally allows for transparency, efficiency and joint expertise. The IIC can easily be established by the decision of the upper management of the Council, be flexible in its operations, and provide for administrative track-record, documentation preservation, etc.

a) **Personal stamina**

Personal stamina of the people appointed and employed in the regulatory authority also plays a part, especially in cases of hate speech. Numerous elements can influence the ultimate decisions-making process related to such cases, but full personal and professional commitment to human rights and rule of law and determination to abide by all applicable constitutional, legal and internal rules must always be the key avenue. In cases of hate speech, it can get personal, and the only avenue is to stick to the paradigms

of free speech and abidance by the rules in an objective, impartial and professional manner.

b) Response to allegations

After the IIC deliberations on the case(s), and in case the collective opinion is that there are no grounds for further action, the licensee and the complainant (if applicable) are formally informed of the closure of the proceedings.

In case the opinion is that there are grounds for initiating the sanctioning procedure, the regulator must ensure the observation of the principles embedded in the Article 6 of the ECHR (Right to a fair trial), which stipulates that everyone is entitled to address the charges brought against them, either by providing for a hearing of the party concerned or by provision of a written submission. This principle is not only applicable for court proceedings but is an essential element to be included in the procedure of the regulatory decision-making process. Formal correspondence with the licensee must be respected, including clearly informing the licensee what provisions of the applicable rules are allegedly being violated, and allowing for a sufficient time for the licensee to express their opinion. It must also allow for the direct hearing of the licensee's views, if needed. In cases of emergency proceedings, for example, during the election periods, the period for responding to allegations may be shortened, but still allowing for an adequate response to the allegations.

c) Preparation of the decision

Upon the reception of the response from the licensee, and/or upon the completion of the hearing organised, the IIC is informed of its content, and the Head of Monitoring undertakes the process of drafting the decision, which is to be sent to the IIC members for review.

While there is not a rigid set of rules for preparing a sound administrative decision, taking into account the unique characteristics of each case, there are some fundamental principles to observe:

Fairness – relates to the duty of the administrative body, in this case the Moldovan regulatory authority, to ensure that its decisions are reached following an open and fair procedure, having accounted for all circumstances surrounding the case and making sure the affected party has the right of effective appeal against the decision.

Professionalism – ensuring the necessary level of training and expertise of staff and managers of the institution, but also ensuring no arbitrary decisions are reached, fully implementing the principles of independence of the regulator in decision-making, without any interference or pressure from any party, and strictly abiding by relevant rules.

Proportionality – refers to the fundamental task of applying the principles that achieve the desired end and legitimate aim which is pursued, again taking into account all the conditions of the case, making sure that the sanction issued is not excessive, that it is proportional to the level of gravity of the violation of rules, and that it does not amount to a form of censorship intended to discourage the media service providers from performing their vital role of watchdog in the society.

Necessity – the ECtHR has referred to the necessity of establishing the existence of a “pressing social need” and whether the reasons for interfering with the right to freedom of expression are relevant and sufficient, taking into consideration that the margin of appreciation of this pressing social need (to interfere) should be carefully weighed against the wide freedoms attached to the free speech (including statements that offend, shock or disturb).

Arguments of the licensee

The regulator must include in its decision the response received from the licensee in question, taking each argument used by it and answering to it in a logical and factual manner. In case a licensee's substantiation of a certain claim is accepted as reasonable, this must be clearly stated in the decision, especially in the part pertaining to the imposition of the sanction (in case this substantiation led to the determination of a lighter

sanction). The reasons why the licensee's submissions were accepted or rejected must be clearly explained as well.

Legal basis

The Audiovisual Council must refer to the national legislation and include the relevant provisions of the laws which refer to hate speech, incitement to discrimination, and so on. It is recommended to include the international standards, the provisions of international law regarding hate speech and relevant examples of case-law of the ECtHR. Parts of the decision related to the legal basis sanctioning and legal remedies are to be written in a legal style and include necessary quotes of applicable rules and regulations. The decision must include references to the legal procedural matters and clear legislative references, particularly relating to available avenues of review or appeal.

Rationale of the decision

The rationale of the decision should be written in a clear and easy to understand language and as specific as possible, using the actual quotes of the programme in question, providing reasoning why these parts represent a breach of rules, avoiding repetitions, jargon or unnecessary additions. The active voice should be used, avoiding passive tenses, complex technical terms and jargon. Facts of the case and professional application of legal and administrative principles should be adhered to.

Reliance to the case-law of the Audiovisual Council, national and international courts, the data regarding tolerance index and others, if applicable, is recommended, providing for additional legal argumentation. The reasons for the decision, the findings and the explanation how they are supported by the evidence must be provided. Especially in borderline cases, the rationale behind the decision must be given, with specific examples. In that, all of the Rabat plan of action plan steps must be adhered to and reflected in the language of the decision, with as many clear explanations as possible.

Sanctions applied and legal remedies

The most important question to which a clear answer must stem from the written decision is the question why it was necessary to interfere with freedom of expression in that particular case (protection of rights of others, national security, public health, etc.) and why it was legitimate to do so and for what reason. The decision should avoid relying on irrelevant considerations and emotionally-charged statements and comments, as well as accusatory or demeaning language. Ultimately, the decision must be easily understandable for an average person with no legal background, clearly and unambiguously explaining the procedure, the reasoning and factuality of the case.

4.3 Sanctions

Another essential element is the determination of the applicable sanction. The guiding argumentation is to be found in the applicable Moldovan legislation, which provides for a range of sanctions depending on the gravity, repetition and frequency of the offence (as stipulated in Articles 11 (2), 27 f and 84 (9) of the Moldovan Code of audiovisual media services). For clarification purposes, these provisions are applicable to cases in which hate speech occurs in whatever form (spoken statements, video footage, messages in the screen scroll, songs, audio materials, etc.) and irrespective of its longevity in the programme, whether occurring in just a portion of the programme or its entirety. In that regard, the regulator must weigh the violation considering all the elements of the case, and factors or circumstances determining the sanctions, such as seriousness of the breach, the extent of damage, the repetitive character of the same violations, the coverage and reach, etc. Most of all, the regulator must be mindful of the vital role media plays in generating a culture of tolerance which is far wider than any political system and of the mandate of the regulator to preserve, develop and cherish the right to freedom of expression. Hence, the powers to issue sanctions for the breaches of the adopted and applicable rules and regulations must not be taken lightly. This is the power that should

be handled and enforced with the most serious care of duty, responsibly and vigilantly, always keeping in mind the consequences it can have on free speech, and the derogatory effects it can leave in the society.

In cases where accidental violations in relation to rules pertaining to hate speech and discrimination occur, combined with the attitude of the service provider which shows full respect to abide by the rules, usually a warning can be a sufficient sanction, but this has to be regarded from the perspective of the Moldovan legislation in force. For cases which are more serious in nature, coupled with the active participation of the audiovisual media service provider in the dissemination of hate speech, a financial fine, normally allocated based on the coverage and reach of the provider, should be considered, which could be doubled in case of repetitive offence in a dedicated period of time. The revocation of the licence, as a rule, is very seldom used in extreme cases which have a clear evidence of causing serious damage in the society, coupled with extensive reach and coverage of the expressions and repeated violations of these provisions by the same service provider who blatantly and openly refuses to abide by the rules and shows clear disregard to the sanctions.

4.4 Transparency and publishing disaggregated data on hate speech

Once the decision has been reached, its publication and subsequent “public” life provide for clear visibility of the three basic principles of functioning of the regulatory authority, i.e., independence, transparency and accountability. Decisions are also excellent educational tools on raising awareness on this issue in the society.

There are a number of ways in which the regulatory authority can enhance and increase its visibility in the society, always bearing in mind the importance of preservation of these fundamental principles and keeping in mind its role in the society in terms of the “fine-tuning[23]” of democracy, preservation of the right to freedom of expression, legitimate interference with the impermissible forms of expression, and above all, guarding the public interest. Transparency of the regulator is directly linked to its independence and accountability, which cumulatively represent the fundamental paradigm of its role in the society. The complaint procedure in this regard is emphasised, as it represents one of the most important relationships of the regulatory authority with the citizens. This is of paramount importance in the regulator’s activities related to building or restoring the audience’s trust in their regulatory authority.

Appendix to Council of Europe’s [Recommendation Rec\(2000\)23](#) Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector states:

“21. Regulatory authorities should have the power to consider complaints, within their field of competence, concerning the broadcasters’ activity and to publish their conclusions regularly.

44. It is recommended that complaints concerning broadcasters’ activity which fall under the field of regulatory authorities’ competencies (in particular in relation to programme content) or the

violation of licensing procedures or laws (on broadcasting, rules governing advertising and sponsorship, competition etc.) be examined by the latter. In order to make the procedure for examining complaints more efficient, both in the public interest and to provide legal certainty for operators, the regulatory authorities should publish the conclusions of such examinations regularly.”

While the relationship with citizens includes annual or periodical reports, information bulletins or newsletters, public meetings, public consultations, the complaint procedure is considered the most direct form of this relationship. It does not suffice that the complaint procedure is prescribed by law, as is also the case within the Moldovan legislation, but it must be enforced and promoted by the regulator constantly. The communication strategy of the regulatory authority must include and emphasise the benefits of submitting

complaints and provide for clear guidance on the actual procedure. This procedure, at its minimum, should include the possibility to submit complaints in writing or orally as well as through a user-friendly online form on the website of the regulator. Most European regulators also have social network accounts, but whether to include the complaint provision mechanisms on these platforms should be weighed against the capacities of the regulator to effectively handle them.

The enforcement procedure generally provides for a certain degree of due process before the decision is reached, which is important in order to ensure transparency and accountability, as well as the credibility of the regulator. Regulators sometimes fail to take responsibility for the dissemination of hate speech by the media, or do so either on the basis of complaints (and therefore at the risk of leaving certain speeches unpunished) or under procedures that lack transparency and diligence (which also fosters a sense of impunity). This explains why, in its [Recommendation](#) No. 15 on combating hate speech, ECRI stresses that *"the powers actually conferred are useful only if the relevant agencies actively monitor the entities they are supposed to regulate - including by taking the initiative to examine how certain groups of people are represented - and react quickly when a case of hate speech is brought to their attention."*

In a complementary way to this, it is worth stressing the importance of the regulator's reputation, as a little or unknown regulator is a regulator to whom no complaints will be addressed, which can feed as much a feeling of impunity as the lack of effectiveness. For this reason, in the same recommendation, ECRI reiterates that *"in order to be effectively informed of such facts, regulators must ensure that public opinion is sufficiently aware of their existence and role."*

Hence, a very important part of this procedure is the communication with the citizens, and in particular, citizens who submit complaints, ensuring a two-way communication, and providing feedback on the outcome of their complaint. While the citizens who submit complaints are not a party to the legal case relative to hate speech, as the regulatory authority decides based on the public interest and possible violations of the law, they should nonetheless be informed of the outcome.

Likewise, the transparency includes disaggregated data publishing in the monitoring reports. It is important that this data, as well as the Audiovisual Council's decisions on hate speech and discrimination, can be identified through a search engine on the institution's website. For decisions regarding cases of hate speech, we recommend that disaggregated data be published regarding:

- the number of cases of hate speech recorded by the CA (in how many cases the CA has decided to sanction and what the types of sanctions there were; in how many cases the CA has considered that it is not hate speech);
- which were the media institutions that used hate speech, incitement to discrimination, etc.
- in which types of programmes the cases of hate speech were recorded;
- who used hate speech;
- which were the groups affected by hate speech;
- what forms did hate speech take, etc.

Note: The Audiovisual Council may publish other relevant data that it considers important or that the media service providers, civil society, and the public consider relevant.

Finally, transparency enhances collaboration with, for example, the Council for preventing and eliminating discrimination and ensuring equality, as well as with the representatives and organisations of the civil society and important stakeholders in this field. Whether a formal co-operation with relevant stakeholders is provided for (in the form of, e.g., a signed memorandum of understanding), the transparency of the media regulator, in any case, provides the basis for the development of fruitful co-operation, resulting in combined efforts to protect public interest and maintain the media space in line with the human rights protection mechanisms.

Examples of transparency applied:

- Publishing the regulator's decision on its website and issuing press releases, informing the public of the outcomes, which further enhances the rapport of the regulator with the citizens and helps build reinforced trust in its efforts to work in the public interest.
- Publishing the minutes of the meetings of the Audiovisual Council. Some parts of the minutes, if legal provisions require it, can be left out of the published minutes, but in principle, their publication is a fundamental principle of the observation of the principles of transparency and accountability, while also providing for evidence of independent decision-making process, clear of any outside interference or pressure, be it political or from other centres of power.
- Producing summaries of decisions, regular reports, including the annual reports, which provide for quantitative as well as qualitative indications and trends in the media market and the types and nature of the violations and, most importantly, the regulator's assessment and reasoning for each case.
- Establishing a regular (periodical) newsletter, inclusive for free subscription to all interested parties.
- Establishing social network accounts, and ensuring timely and accurate communication with the public.
- Fully respecting the principles of the right to access to free information, respecting each request for access to information in full.

The regulator's ability to withstand many pressures, from attempts at political interference to pressure from the regulated players, as well as the ability to constantly monitor the public interest instead of following a particular interest in the circumstances, can all be mentioned in regulatory texts. But beyond this, this ability is effective only when implemented and demonstrated in a tangible way in the transparency of the regulator's decision-making process and in the impartial and fair exercise of its decision-making^[24].

5 Selection of hate speech cases

This chapter presents a number of decisions and/or rulings on freedom of expression in the jurisprudence of the ECtHR, regulators in other countries, as well as courts and the Council for the Prevention and Elimination of Discrimination and Ensuring Equality in the Republic of Moldova. The cases are presented with the purpose of helping readers understand the process of analysing and evaluating hate speech, as well as how to develop arguments to justify final decisions in alleged cases of hate speech.

Some of the ECtHR notable cases are presented here, as guiding principles for the Moldovan authorities, as an invaluable source of information, but also as the legal practice which is recommended to be used when determining the cases of hate speech. It is important to reiterate the triple-test used by the ECtHR in such deliberations, providing for the main criteria to be relied upon while deciding whether the sanctioning of a certain speech is in compliance with the legitimate limitations of the freedom of speech or prohibition of abuse of rights, which is presented below. In this regard, the emphasis is put on the Article 10 – Right to freedom of expression of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Its wording, and in particular, the provisions of paragraph 2 are important to consider at all times when deliberating on the possible breach of the applicable rules and determining whether a certain form of expression can be derogated against.

5.1 Cases of the European Court of Human Rights

Role of journalists in reporting about hate speech

[Jersild v. Denmark, 1994](#)

The applicant, a journalist, had made a documentary containing extracts from a television interview he had conducted with three members of a group of young people, who had made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The applicant was convicted of aiding and abetting the dissemination of these racist remarks. The ECtHR drew a distinction between the interviewed persons, who made openly racist remarks, and the journalist, who had sought to expose, analyse and explain this particular group of young people and to deal with a topic of “great public concern”. The documentary as a whole had not been aimed at propagating racist views and ideas, but at informing the public about a social issue. Accordingly, the Court found a violation of Article 10 of the ECHR.

Hate speech in a political context

[Féret v. Belgium, 2009](#)

The applicant was a Belgian member of Parliament and chairman of the political party Front National/National Front in Belgium. During the election campaign, several types of leaflets were distributed carrying slogans including “*Stand up against the Islamification of Belgium*”, “*Stop the sham integration policy*” and “*Send non-European job-seekers home*”. The applicant was convicted of incitement to racial discrimination and sentenced to community service and was disqualified from holding parliamentary office for 10 years. The ECtHR held that there had been no violation of Article 10 and stated that the applicant’s comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant’s conviction had been justified in the interests of preventing disorder and protecting the rights of others.

Discrimination and right to protest

[Baldassi and others vs France, 2020](#)

The 11 applicants are members of the “Collectif Palestine 68”, which is a local relay for the international campaign “Boycott, Divestment and Sanctions” (BDS). This campaign was launched following an appeal from Palestinian non-governmental organisations a year after the opinion issued by the International Court of Justice which stated that the construction of the wall being built by Israel, the occupying power, and its associated regime, was contrary to international law. By distributing leaflets and presenting a petition to be signed at a hypermarket, supported by a campaign on the Internet, the BDS-activists had been calling for a boycott of Israeli products. They were prosecuted and finally convicted for incitement to discrimination on the basis of the French Law on Press Freedom and the French Criminal Code. The Court of Appeal imposed on each of the activists suspended fines of EUR 2 000 and ordered them to jointly pay EUR 4 000 in respect of non-pecuniary damages to each of the four civil parties (the International League against Racism and Antisemitism, the Lawyers without Borders association, the “Alliance France-Israel” association and the “Bureau national de vigilance contre l’antisémitisme”), and to pay another EUR 6 000 for the civil party expenses.

The ECtHR observed that the activists were ordinary citizens and that their campaign aimed to trigger or stimulate a debate among supermarket customers. Furthermore, the Court observed that the applicants had not been convicted of making racist or antisemitic remarks or of inciting hatred or violence, hence the Court found that the domestic courts had failed to establish that the activists’ conviction on account of their call to boycott products from Israel had been necessary in a democratic society to attain the legitimate aim of the protection of the rights of others, and unanimously found a violation of Article 10 of the ECHR.

Hate speech based on ethnic and national identity

[Pavel Ivanov v. Russia, 2007](#)

The owner and editor of a newspaper, convicted of public incitement to ethnic, racial and religious hatred through the use of mass-media, authored and published a series of articles portraying the Jews as the source of evil in Russia, calling for their exclusion from social life. He accused an entire ethnic group of plotting a conspiracy against the Russian people and ascribed a fascist ideology to the Jewish leadership. Both in his publications, and in his oral submissions at the trial, he consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The ECtHR found the case inadmissible, agreeing with the national courts that he sought to incite hatred towards the Jewish people through his publications.

Hate speech against LGBTI people

[Carl Jóhann Lilliendahl vs Iceland, 2020](#)

As a reaction to an online news article about LGBTI-education and counselling in elementary and secondary schools, the applicant expressed a series of negative statements about homosexuals and homosexuality on a not very prominent online platform, referring to "sexual deviation" and copulation by animals, qualified the plan of introducing education and counselling on homosexuality in schools as "disgusting", and was prosecuted for publicly threatening, mocking, defaming and denigrating a group of persons on the basis of their sexual orientation and gender identity, in violation of the criminal code. He was first acquitted by the District Court of Reykjavík, but convicted by the Supreme Court of Iceland, with the financial fine.

The ECtHR found his statements highly prejudicial but considered that it was not immediately clear that they aimed at inciting violence and hatred or destroying the rights and freedoms protected by the ECHR. Therefore, Lilliendahl was not barred from invoking his right to freedom of expression in this instance. What remained to be decided was whether his conviction complied with Article 10 of the ECHR, and in particular, whether it could be justified as being necessary in a democratic society. In that respect, the Court stated that, although Lilliendahl's comments were not specifically directed at vulnerable groups or persons, it agreed with the Icelandic Supreme Court reasoning, reiterating that discrimination based on sexual orientation is as serious as discrimination based on race, origin or colour. The Court rejected the complaint as inadmissible.

5.2 Cases of media regulatory authorities

Incitement to hatred and violence

[TV Alfa, Bosnia and Herzegovina](#)

This was about a TV broadcast programme called "Sacrifice", produced by the Iranian TV Sahar and the topic of the programme in question was dedicated to the conflict between Palestine and Israel. The programme included a video spot of the duration of 5 minutes and 20 seconds. This is a short description of this video: "A young man is decorating the car for his wedding and is preparing to leave. At the same time, there are scenes of consequences of conflicts between Palestinians and Israelis. The young man is being sent off by his mother and probably a girlfriend. He starts the car and after a short drive he stops and opens the trunk with an explosive device within. He releases the device and puts a piece of cloth around his head with the sign «Kuds47 is ours», after which he continues his drive towards the Israeli military checkpoint. They open fire on him and the car, but he continues to drive towards them and the Israeli flag with the clear intention to kill and sacrifice himself. The next scene shows the mother crying, then a big explosion and the Israeli flag is burning. In the background of the spot, a song in Arabic is heard and translation of the song is sub-titled".

Each scene from this spot was followed by the text and one of the lines states: "Hurry brother, it is time of my Sehadet48, it is time of my sacrifice, it is time to save the homeland. The weapon is mine; my stone is breaking the glass of the night. My scream, as

an axe is cutting roots of the night. Tekbir, o Muslims. We need to sink the boat of the night as a storm. Let's break the night. Hurry brother."

After the broadcast of this spot, the anchor addresses viewers with the following words:

"Dear viewers, we have watched the fourth and final edition of programme «Sacrifice». With due respect and gratitude to all fighters for a right cause who fight throughout the world, who fight to secure reforms in their societies and changes in the world scene, we thank you for being with us through all four editions of programme «Sacrifice»."

The Communications Regulatory Agency (CRA) of Bosnia and Herzegovina instigated the proceedings. The TV station alleged that it had broadcast the news and that it aimed to present information from other sources for its audience. The CRA deemed that presenting news either from domestic or international political scene in a fair and balanced manner is an editorial task. However, the video spot is not news nor does it represent another source, but it is a symbolic description of unfortunate happenings in Palestine and Israel, which indirectly sends a clear message of incitement. The broadcast in question may arouse emotions in many people simultaneously and the TV station had a responsibility to ensure that all programmes are presented factually and in a way which minimises the possibility of encouraging violence or of reinforcing attitudes of national hatred. It was determined that the TV station failed to show responsibility for the broadcast content, and it additionally breached relevant hate speech provisions in the comments made by the presenter, based on which the station was issued a financial penalty.

Sexism and unacceptable forms of expressions

[TV Sitel](#), North Macedonia

This TV show was dedicated to the inauguration of the United States' at that time elected President Donald Trump, with live broadcasting of the inauguration (through the Internet); conversation and comments in the studio by the host and his guests; and some additional interviews and an option for viewers to call in the programme.

Donald Trump was named "a bad mother fucker," and then "a boor". When Hillary Clinton appeared, the host commented: "She ran away into the woods to hide... see how she schizophrenically changes her look," and then he simulated Bill Clinton speaking: "I fucked her, fucked her, banged her, and you... and then, you, in my office, good for him, he humped everybody, I didn't do you, hello, how are you – I am well, that granddaughter of yours, and you, grandma, no, I would not. Now, that grandma fucker, no..... go away, you're fat." Tiffany Trump, Donald Trump's younger daughter, was called by the guest a "playboy girl". Melania Trump was named a "MILF65". Concerning Michelle and Barack Obama, the host said: "Will they finally admit that they are in a gay marriage? That Michelle is male? Let her pee standing, why should she hide it!" and then, he named her, "Michael" and "a potential future candidate for a shitter, oops, a senator." Washington was said to be a city with 60% African Americans but there were hardly six at the broadcast, upon which the guest said: "They are busy breaking shop-windows, goods are free there." There was also a comment of the type: "The cameraman is searching for Blacks in the audience, it is his most difficult job." After Melania Trump appeared on the screen for a moment, he said: "My nipple is, wow, you can hang a coat, I got excited."

The Audio and Audiovisual regulatory agency of North Macedonia asserted that the show was abundant in vulgarism, rude comments, indecent descriptions, public exposure to mockery, abusive expressive language, and insults that related to race, nationality, sex and age. It was stated that there was no hate speech, but rather a violation of programme principles that related to cherishing and development of people's humane and moral values and the protection of privacy and dignity of the person; equality of freedoms and rights independent on the sex, race, national, ethnic, and social background, political and religious beliefs, property status and social position of the individuals; encouraging the spirit of tolerance, mutual respect and understanding between individuals of different ethnic and cultural backgrounds, and the TV station has been notified accordingly (as the rules did not stipulate the sanctions for breach of this kind).

Hate speech on web portals

[Dnevno.hr web portal](#), 2015, Croatia

Based on complaints from readers, an analysis was undertaken of the article "Forward Croatia – to the new chaos!". The commentary, among other things, contained the following statements:

"And why is it that among Africans and people from the Middle East there are almost no Nobel Prize winners, no astrophysicists, and no world-famous chemists?"

"There is an unwritten rule for every white citizen of America that it is wise to have at home a recoilless Beretta-Xtrme2, and preferably for a white German woman who jogs late at night in Berlin's Kreuzberg to have a multipiped mortar in her vehicle."

"For the transgender, liberal and anti-fascist agitators, the responsibility for all the misery on earth and the distress of the Africans and Asians always lies with the proverbial white people and the economic and political environment. They do not want to hear a word about heredity, biological inheritance, and the genes that play an important role in the political or criminal behaviour of every person. After all, the reason that Croatia is in a difficult situation should be primarily sought in the negative biological selection resulting from the killing of the most intelligent layer of the Croatian population after Bleiburg – and the violent imposition of criminal communist chromosomes."

"Because, even an ordinary man without a lot of education knows that the human character and intelligence cannot be learned– they can only be inherited."

The Agency for Electronic Media of Croatia found the text to have been aimed at presenting immigrants and refugees from Asia and Africa as a threat to the overall security in Croatia and the rest of Europe. The author of the text presented unverified, false and blanket information without any statement of origin and/or investigation they used as a source. The text was found abusive, it propagates superiority of the white race through a series of insults against members of other races, promoting animosity towards them and discriminates them on the basis of race and ethnicity. Besides, the text also implied indirectly discrimination based on political beliefs through a series of derogatory names. The Agency issued a warning.

5.3 Cases examined based on the Moldovan protection mechanisms

At national level, the protection mechanisms applicable to cases of hate speech, incitement to discrimination or sexist discourse do not differ much from the general protection mechanisms against discrimination.

These mechanisms are both in the field of justice (courts, criminal prosecution bodies, the Constitutional Court) and through equality bodies or similar institutions (the Council for the Prevention and Elimination of Discrimination and Ensuring Equality - CPEDEE, the Ombudsperson's Office, the Audiovisual Council, the Central Electoral Commission).

Hate speech in the election campaign

[Confirmation of the results of the elections of November 13, 2016 and validation of the mandate of President of the Republic of Moldova, pursuant to Article 135 para. \(1\) let. e\) of the Constitution](#)

Following the notification of the Central Electoral Commission regarding the confirmation of the results of the 13 November 2016 elections and the validation of the mandate of the President of the Republic of Moldova, the Constitutional Court found that the campaign for the 2016 presidential elections was marked by the active involvement of the Church in the electoral activity. One of the leaders of the Moldovan Orthodox Church, Bishop Marchel, during a press conference, specifically expressed his support for Igor Dodon and had made several sexist statements against another electoral contestant, Maia Sandu. The Court found that Bishop Marchel's statements were indeed sexist and discriminatory, and that the involvement of religious figures in the electoral processes was inadmissible. The Court made several recommendations to the authorities, in particular regarding the revision of laws and the creation of mechanisms to prevent such interference in the future and to sanction it, if necessary.

Hate speech based on ethnicity

Case of Radița vs. Plugaru

In 2012, during the press conference entitled "Political crisis, constitutional crisis - another solution", Anatol Plugaru (political analyst) stated the following: *"The impression is created that Mr Mihai Ghimpu and his political partners act exactly like gypsies with an unwashed child - rather than wash him, better do another one."*

The court ruled that the contested expression was racist and discriminatory against the Roma, but ordered the defendant only to pay the costs related to the state tax, of 200 Lei, although the plaintiffs had requested the non-material damage in the amount of 60,000 Lei.

Hate speech on grounds of nationality

Case of Mohamed Abobakar vs. Mihail Musteață

In 2016, Mohamed Abobakar, a citizen of Syria, who worked as a manager at the "H.S. Kebab" establishment, was threatened and cursed by the client Mihail Musteață. Both the threats and the insults were based on his skin colour and race and were rooted in prejudice against Arabs and Muslims, such prejudices being expressed in public and by using his work position (lawyer within the local public administration).

In February, 2018, the court found that Mihail Musteață's behaviour was racist, and the attitude expressed in public was an action of racial segregation and incitement to discrimination. The court asked Mihail Musteață to pay non-material damages in the amount of 5,000 Lei.

Hate speech on grounds of religious beliefs and sexual orientation

Case of GENDERDOC-M vs. Bishop Marchel

In September 2012, in a televised interview with Publika TV, Bishop Marchel of the Diocese of Bălți and Fălești of the Metropolitan Church of Moldova stated: *"The law of equal opportunities that widely opened the door for, I would say, creating in this sense conditions of Eden, a paradise for homosexuals, should stop them a little bit, so they are not allowed to even get employed in the field of work in educational institutions, health care institutions and public food service institutions, imagine that a homosexual, 92 percent of whom are HIV-positive AIDS sufferers, is employed at a blood transfusion station, this is a catastrophe."*

In September 2015, the court ruled that the bishop's statements constituted hate speech and incitement to discrimination against LGBT people. The court ordered Bishop Marchel to refrain, during the examination of the case, from statements inciting hatred and discrimination, to address public apologies and decided to collect from his account 10,000 (ten thousand) Lei as non-material damage.

However, the Supreme Court of Justice over-ruled the ruling, noting that the bishop's speech referred to his way of expressing his religious beliefs and fell under the scope of freedom of expression.

Case of GENDERDOC-M vs. Ghenadie Valuța

In 2014, during the "Fabrika" show at the Publika TV channel, Ghenadie Valuța (religious activist) splashed Angelica Frolov (LGBT activist) with Holy Water in order to perform a religious ritual. The CPEDEE qualified these facts as incitement to discrimination on grounds of sexual orientation and recommended that Ghenadie Valuța address a public apology to the petitioner.

Case of Igor Dodon

On 12.05.2017, during the "In depth" show with Lorena Bogza on the PRO TV station, Igor Dodon, President of the Republic of Moldova at that time, stated the following: "It is very difficult to be the president of all. Today I had a meeting with partners, with 30 or so, 40 ambassadors, EU, CIS, USA, China and some of the ambassadors of EU member states told me: "Look, in a week or two, there will be some protests or marches of sexual minorities in Chișinău." Well, I probably won't be able to represent them now either, I mean, I am sure I will never be able to represent them in such category. They are all citizens of the Republic of Moldova."

On 20.06.2017, during the “Персональный акцент” show on Accent TV station, Igor Dodon stated: “Regarding what the lady said, in order to be representatives of all the people, I never tried to divide, but there are certain principles, certain categories, certain things that I will never support. There are four main things that for me cannot be negotiated and discussed: 1) This is the statehood of the Republic of Moldova (...); 2) I am a supporter of neutrality; (3) I am an advocate of our Christian values. Yes, there are other religious cultures, we should respect absolutely all of them, but 98 percent are Orthodox Christians and this... I am categorically against, if someone will try to say, look, let's register sexual minorities and so on. Therefore, those who are in favour of liquidating the church, those who are in favour of registering sexual minorities, excuse me, but I will not be your representative and I cannot be your president.”

The CPEDEE established that Igor Dodon's statements represented an incitement to discrimination on grounds of sexual orientation. The CPEDEE recommended that Igor Dodon addresses a public apology for the discriminatory statements and statements inciting to discrimination on grounds of sexual orientation. The CPEDEE also recommended that he shows more responsibility in his public positions and refrains from discriminatory statements and statements inciting to hatred.

Sexist discourse

Case of Dorin Chirtoacă

In 2015, during a press conference, Dorin Chirtoacă (at that time General Mayor of Chişinău Municipality) made the following statements:

“I want to thank Mrs Greceanii for participating. To congratulate her for having the courage to get involved in this campaign. Worse for the men in the PSRM and further, from Kremlin, who hid behind her skirt. They should have come forward, as it is appropriate in such circumstances. Not a lady, who is already at the end of her activity, at 59 years old, at retirement age - come on, go and run for mayor for Chişinău Municipality. From the start it was clear that it was a problem. I understand when a lady in full rise, both professionally and personally, as you wish, comes to compete; like Mrs Crudu in Cruzeşti [...], yes, we are for it, but not when someone is forced and placed in the circumstance to stand as a candidate. [...] Therefore, we recommend to Kremlin, and to the socialists at least not to be, not to commit acts of cowardice, not to hide behind a finger or behind the skirt of some ladies.”

The CPEDEE found that Dorin Chirtoacă's statements were an incitement to discrimination on grounds of sex and age, constituting sexist and ageist discourse (on grounds of gender and age). The CPEDEE recommended to Dorin Chirtoacă to make public apologies via the same mass media through which he spread the sexist and ageist discourse, using the following text: “I apologise for my discriminatory statements against women and men in politics and I apologise for my sexist statements against women.”

Case of Gherman vs. Dodon

In 2020, during episode no. 10 of the show “The President responds”, Igor Dodon, President of the Republic of Moldova at that time, commented on the initiative of the Action and Solidarity Party to sign a non-aggression pact with right-wing parties, as follows: *“This non-aggression pact ... I do not understand who is the offering there, who is above, who is underneath. Who assaulted whom: Maia assaulted Andrei or Andrei assaulted Maia? The PUN, the “sumn”, or what other names are there? And, in general, dear men of the right wing, a lady came with an initiative, but you, as gentlemen, what did you do? You sent her on. Не по-пацански как-то, не по-мужски. Mrs Sandu, if they don't want to sign, come to me, I will sign this non-aggression pact with you, or whatever it is called ... This is a joke, but seriously now: who is the offering there?”*

The CPEDEE drew the attention to the fact that although freedom of expression is one of the fundamental freedoms, it is not an absolute one and that it can and must be restricted when the forms of expression of ideas, information or opinions take the form of a discourse inciting to discrimination or that is sexist. Furthermore, the CPEDEE noted that the limits on the freedom of expression of a politician and public figures are more limited than those of other members of society. Unlike the latter, politicians should inevitably and consciously accept the strict verification of every word and every deed, both by journalists

and the public, and should therefore prove a greater degree of responsibility in public speeches.

Thus, the CPEDEE found that Igor Dodon's speech was an incitement to discrimination and sexist speech. It recommended to the ex-President of the Republic of Moldova to make a public apology for the sexist and inciting to discriminatory statements in the same way and via the same means by which they were disseminated. The CPEDEE also recommended to Igor Dodon to make all efforts and responsibility in his public positions and to refrain in the future from sexist and inciting to discrimination statements.

Hate speech in the online environment

[Case of Brega vs.Privesc.eu](#)

In 2011, in the context of a live broadcast of the press conference of the "GENDERDOC-M" Information Centre, the moderator and other participants in discussions in the "Comments" section of the ww.privesc.eu website, addressed several insults to the LGBT community.

Oleg Brega (civic activist) got involved in the discussions and tried to explain to interlocutors the objectives of the project discussed during the press conference and drew the attention of the moderator of the chat on the hate messages expressed towards the LGBT people. As a result, Oleg Brega became the target of attacks, being associated with the LGBT community.

In 2012, the Supreme Court of Justice found that the courts of first instance and appeal courts had correctly established that the statements of the moderator "Csiting" and of the visitors of the chat on the ww.privesc.eu website constituted hate speech and insult to alleged or homosexual persons, as well as to the civic activist Oleg Brega, as being offensive. Moreover, SRL "PRIVESC.EU" and A.O. "Privesc.Eu" were recognised as responsible for hate speech towards people alleged to be of homosexual orientation and of insulting Oleg Brega by not moderating the chat on its website, www.privesc.eu. The court ordered the owners of the ww.privesc.eu website to present a public apology to Oleg Brega and to reimburse him for non-material damages and court costs in the amount of 5,200 Lei.

6 Conclusions and recommendations

The phenomenon of hate speech is one of the challenges that require comprehensive and continuous prevention and countering mechanisms, from national to the global level. The complexity of hate speech given the diversity of forms it can take, as well as the areas in which it can manifest itself, makes it difficult to reach a general consensus on its definition, but the vast pool of existing definitions, international standards and practices provide sufficient theoretical and practical support for monitoring, identifying and sanctioning hate speech, including in the audiovisual media. The importance of their immediate application is given by the long-term risks and dangers of hate speech that can lead not only to humiliation and denigration, but also to discrimination, acts of violence and hate crime, and their worst forms, such as genocide.

In this respect, this guide, on the one hand, presents qualitative useful for monitoring hate speech, and on the other, draws attention to some practical actions and measures that the Audiovisual Council can take in order to enforce monitoring and to have tools to justify sanctions against hate speech.

The guide should not be seen as an exhaustive and sufficient tool. In the future, it must be supplemented by: a) the digitization of the monitoring questionnaire, b) ensuring the transparency of the data collected through the monitoring questionnaire, c) training of the Audiovisual Council staff in the field of equality, non-discrimination, hate speech and other forms of intolerance and d) development of support tools (instructions, guides, explanatory notes, etc.) for media service providers in order to prevent the use of hate speech. These actions will contribute not only to establishing the necessary areas of intervention of the Audiovisual Council and other responsible institutions and civil society, reducing cases of unmonitored and unsanctioned hate speech in the audiovisual media, but also increasing the level of training of media representatives and raising awareness and knowledge of this phenomena in the wider society.

At this moment, disaggregated data regarding the manifestation of hate speech in the audiovisual media are missing, its dynamics, the groups most often affected by hate speech, the contexts in which this type of discourse manifests itself in the audiovisual media, etc. This makes it impossible to identify the types of actions needed to be taken by the Audiovisual Council in order to improve the legal framework, develop new practical tools for its own employees and the media service providers, and establish strategic areas at national level to prevent the use of this type of discourse in audiovisual products.

Both the guide and the related instruments need to be regularly reviewed and supplemented, depending on the monitoring results which will be carried out by the Audiovisual Council, as well as the public debates and consultations with the relevant actors.

Another tool that can contribute to the process of hate speech monitoring in the Republic of Moldova, and which is absolutely important to be improved by the Audiovisual Council, is that of the complaint submission. The lack of a standardised form, but also the lack of its promotion and actions stemming from their reception, make it inefficient both for the Audiovisual Council and for the society.

The sanctioning of the use of hate speech in the audiovisual media must be preceded by an analysis and a detailed assessment of the case according to the Rabat Plan of Action and ECtHR's three-test, as presented in this document. In the evaluation process, the Audiovisual Council must ensure that the right to freedom of expression is not violated and that its limitation is imposed in accordance with the provisions of the law.

At the moment of writing this guide, in early 2021, the decisions of the Audiovisual Council are incomplete and do not contain sufficient arguments to develop precedents regarding the sanctioning of hate speech in the audiovisual media at national level or to be perceived by the media service providers and the public as support in order to prevent potential future sanctions. That is why the Audiovisual Council should take into account all the information obtained from the monitoring and evaluation process. As the Audiovisual Council is obliged to monitor whether the audiovisual media service providers promote or generate content that incites violence, hatred or discrimination on their web pages, this should be regarded from the perspective of the right to freedom of expression, as much as ensuring that there is no repeated sanction issued for the media service provider for the same violation.

The process of monitoring, identifying and sanctioning hate speech requires compliance with, and application of, national legislation, as well as with international standards. However, the work of the Audiovisual Council should not be limited to the basic mandate and competence that are conducive to an effective framework for the prevention of hate speech. The only use of sanctioning tools to prevent what is unfortunately a recurring problem cannot be effective enough in preventing hate speech. That is why the

Audiovisual Council should ensure the transparency of the regulatory process, the inclusion of mechanisms and procedures, interinstitutional, regional and international cooperation, the organisation of media and information literacy activities, the increase of professionalism and the development of counter-narrative initiatives and campaigns.

RECOMMENDATIONS

1. Legislative framework

Due to the fact that the definition of hate speech is different in various relevant laws and somewhat lacking in adequately providing for the necessary protection mechanisms, the suggestion is to adopt a unified definition of hate speech. In that, international standard-setting documents should be consulted, such as the aforementioned suggested terms from the ECRI General Policy Recommendation No. 15 on Combating Hate speech.

It is noted that the lack of provisions in the Electoral Code regarding hate speech in election (advertising) materials, inevitably leads to impunity in cases of hate speech of the political subjects, including in the audiovisual media. In this context, it is recommended to consider amending the relevant legislation, coupled with the need for the Audiovisual Council to cooperate in this matter with the other national authorities: the Council for preventing and eliminating discrimination and ensuring equality, the Ombudsman's Office, the Central Electoral Commission, etc.

2. Audiovisual Council

2.1. Ensuring the transparency of the regulatory process

- Adjusting the format of the decisions of the Audiovisual Council by developing the sections based on: the relevant national and international law, the arguments and explanations of the Audiovisual Council in the process of evaluating the case discussed, as well as ensuring their depersonalisation.
- The firm and consistent reaction of the Audiovisual Council in all cases of hate speech and discrimination, including in cases where this type of speech was not generated or promoted by media institutions, and the representatives of audiovisual service providers took all measures to preventing and stopping the spread of intolerant messages in terms of forwarding the case to relevant institutions, such as judicial bodies.
- Adjusting the design of the Audiovisual Council's website by including a topical search engine for the Audiovisual Council's decisions, including the decisions on hate speech and discrimination in order to ensure transparency and the inclusivity of mechanisms and procedures.
- Presentation of disaggregated data on cases of hate speech and discrimination in the monitoring reports and on the institution's website (context, the most common types of hate messages, topics covered by the registered cases; affected groups etc.).
- Streamlining communication with the media service providers through the use of traditional information tools, as well as through digital tools (social networks, online platforms, etc.).
- Improving the external communication of the Audiovisual Council with public institutions, civil society and the public through the website, social networks and media institutions.

2.2. Enhancing of regulatory mechanisms and procedures

- Development of a complaint standardised form (including in electronic format) for notifying the Audiovisual Council in potential cases of violations of applicable rules and regulations, including for alleged cases of hate speech and discrimination, for individuals and legal entities, allowing for an anonymous complaint procedure as well and ensuring follow-up communication.
- Organising public debates with media service providers, civil society, public institutions, etc. on specific topics identified in the monitoring process or on topics of public interest.

2.3. Improving interinstitutional cooperation

- Seeking the opinion of the Council for the prevention and elimination of discrimination and ensuring equality or contracting national experts to assess complex cases of hate speech and incitement to discrimination, including through the participation of CPEDEE representatives or experts in the meetings of the Audiovisual Council.
- Co-operation and referral by the Audiovisual Council to other public authorities (CPEDEE, Central Electoral Commission, judicial bodies, etc.). In this regard, a particular attention should be paid to consideration of amendments to the Electoral Code, providing for the Central Electoral Commission's or judicial bodies' responsibility to decide on violations of provisions relative to hate speech, incitement to hatred and discrimination by the political subjects.
- Recognition of the expertise of some institutions/organisations (e.g., NGOs) by the Audiovisual Council and contracting their services in cases where the Audiovisual Council does not have sufficient human resources for thematic monitoring.

2.4. Increasing the level of co-operation and professionalism

- Development of continuous internal training to identify hate speech, sexism, racism, homophobia and so on, protected characteristics and prejudice in society, for employees and members of the Audiovisual Council in partnership with the CPEDEE, international partners and non-governmental organisations in the field from the Republic of Moldova.
- Digitization of the questionnaire for reporting and collecting disaggregated data on cases of hate speech and discrimination recorded by Audiovisual Council both in the process of monitoring and in the process of analysing complaints.
- Collaboration between the Audiovisual Council, the CPEDEE, the Central Electoral Commission and non-governmental organisations in order to develop instructions/guides/explanatory videos, etc. on preventing and combating hate speech and discrimination in the audiovisual media products for journalists, editors, etc.
- Organising regular external trainings on preventing and combating hate speech and discrimination in TV and Radio reportages and shows for journalists, redactors, editors, etc. by the Audiovisual Council, the CPEDEE, the Press Council and specialised non-governmental organisations.

2.5. Developing initiatives and campaigns of counternarratives

- Organising information campaigns to discourage the use of hate speech and incitement to discrimination in the audiovisual media and in the public space by the Audiovisual Council in partnership with media service providers, the Press Council, civil society organisations, etc.

The fight against hate speech cannot be limited to its repressive aspect. As a UNESCO study points out, *"to focus exclusively on enforcement measures, we risk missing out on the complexity of a still misunderstood phenomenon that requires tailored and coordinated responses from a wide range of actors in society."*^[25] An effective policy to combat hate speech must also, and above all, be accompanied by a preventive (to avoid the spread of hate speech) and educational (to decipher hate speech and explain its potential for harm), in order to promote a culture of tolerance. This is a mission for public authorities, media regulators, media organisations, platforms, civil society organisations, etc, which they can fulfill by undertaking and supporting awareness-raising activities, encouraging the adoption of codes of conduct by the media institutions, encouraging ongoing training in the management of hate speech, discrimination and stereotypes in the media and promoting ethical journalism and tolerance in journalism.

Appendix 1. Overview of relevant international standards

United Nations

International standard-setting norms

Instrument	References
<p>International Covenant on Civil and Political Rights (ICCPR)</p>	<p>Article 2</p> <p>1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>Article 3</p> <p>The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.</p> <p>Article 19</p> <p>1. Everyone shall have the right to hold opinions without interference</p> <p>2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice</p> <p>3. The exercise of the rights provided for in paragraph 2 of this article carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> <p>(a) For respect of the rights or reputations of others;</p> <p>(b) For the protection of national security or of public order, or of public health or morals.</p> <p>Article 20</p> <p>1. Any propaganda for war shall be prohibited by law.</p> <p>2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.</p>
<p>Convention on the Elimination of All Forms of Discrimination Against Women</p>	<p>Article 1</p> <p>For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</p> <p>Article 7</p> <p>States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:</p> <p>(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;</p> <p>(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;</p> <p>(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.</p>
<p>Convention on the Rights of the Child</p>	<p>Article 2</p>

	<p>1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.</p> <p>2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.</p> <p>Article 13</p> <p>1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.</p> <p>2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination</p>	<p>Article 5</p> <p>In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:</p> <p>...(d)</p> <p>(viii) The right to freedom of opinion and expression.</p>
<p>General Recommendation No. 35 on combating racial hate speech (2013)</p>	<p>II. Racist hate speech</p> <p>6. Racist hate speech addressed in the Committee's practice has included all the specific speech forms ... directed against groups ...which forbids discrimination on grounds of race, colour, descent, or national or ethnic origin — such as indigenous peoples, descent-based groups, and immigrants or non-citizens, including migrant domestic workers, refugees and asylum seekers, as well as speech directed against women members of these and other vulnerable groups. The Committee also stated that "Racist hate speech can take many forms and is not confined to explicitly racial remarks...speech attacking particular racial or ethnic groups may employ indirect language in order to disguise its targets and objectives... The principles articulated in the present recommendation apply to racist hate speech, whether emanating from individuals or groups, in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events."</p> <p>In Article 4.10, the Committee adopts a fairly broad definition of racial hate speech, which must be "understood as a form of discourse directed against others, which rejects the fundamental principles of human rights, human dignity and equality, and aims to weaken the position of individuals and groups in society."</p> <p>Article 4.16. refers to the concept of incitement, it "generally refers to any act intended to influence others to engage in certain forms of behaviour, including the commission of a crime, through encouragement or threats. Incitement may be explicit or implicit, through acts such as displaying racist symbols, distributing materials, or using certain words."</p>
	<p>Further references:</p> <ol style="list-style-type: none"> 1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2. Convention on the Rights of Persons with Disabilities 3. Convention on the Prevention and Punishment of the Crime of Genocide 4. UN Security Council Resolution 1624 (2005)

5. [UN Human Rights Council "From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance" \(2019\)](#)
6. [Strategy and Plan of Action on hate speech](#)

The European Union

<p>Charter of Fundamental Rights of the European Union</p>	<p>Article 11. Freedom of expression and information</p> <ol style="list-style-type: none"> 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. 2. The freedom and pluralism of the media shall be respected. <p>Article 21. Non-discrimination</p> <ol style="list-style-type: none"> 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 Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.
<p>The Audiovisual Media Services Directive (Directive (EU) 2018/1808 of the European Parliament amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities)</p>	<p>Article 6</p> <ol style="list-style-type: none"> 1. Without prejudice to the obligation of Member States to respect and protect human dignity, Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any: <ol style="list-style-type: none"> (a) incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter; (b) public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541. 2. The measures taken for the purposes of this Article shall be necessary and proportionate and shall respect the rights and observe principles set out in the Charter
<p>Framework Decision on Combating Certain Forms and Manifestations of Racism and Xenophobia through Criminal Law</p>	<p>Article 1. Offences concerning racism and xenophobia</p> <ol style="list-style-type: none"> 1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: <ol style="list-style-type: none"> (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. 2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.

	<p>3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.</p> <p>4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.</p> <p>Article 2. Instigation, aiding and abetting</p> <p>1. Each Member State shall take the measures necessary to ensure that instigating the conduct referred to in Article 1(1)(c) and (d) is punishable.</p> <p>2. Each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred to in Article 1 is punishable.</p>
<p>The EU Code of conduct on countering illegal hate speech online</p>	<p>The aforementioned Framework Decision criminalises public incitement to violence or hatred directed against a group of persons and defines that hate speech is a criminal offence also online. As a result, this Code of Conduct has been presented by the European Commission and the major platforms, such as Facebook, Microsoft, Twitter and YouTube, followed by Instagram, Google+, Snapchat, Dailymotion and Jeuxvideo. The European Commission performs monitoring evaluations regularly, and these findings will be taken into account in the ongoing preparation of the Digital Services Act Package, public consultations for which are being evaluated. The European Commission is considering ways to prompt all platforms dealing with illegal hate speech, to set up effective notice-and-action systems.</p>

The Council of Europe

<p>Convention for the Protection of Human Rights and Fundamental Freedoms</p>	<p>ARTICLE 8 Right to respect for private and family life</p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>ARTICLE 10 – Freedom of expression</p> <p>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.</p> <p>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.</p> <p>ARTICLE 14 Prohibition of discrimination</p> <p>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</p>
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<p>Recommendation No. R97(20) to member states on hate speech (1997)</p>	<p>minority, property, birth or other status.</p> <p>Defines the term hate speech: it "must be understood as covering all forms of expression that propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in the form of aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, immigrants and people from immigrant backgrounds."</p> <p>Principle 5</p> <p>National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.</p> <p>Principle 6</p> <p>National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas. To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.</p> <p>Principle 7</p> <p>In furtherance of Principle 6, national law and practice should take account of the fact that:</p> <ul style="list-style-type: none"> - reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision; - the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10, as established in the case law of the Convention's organs, having regard, inter alia, to the manner, content, context and purpose of the reporting; - respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.
<p>The European Commission Against Racism and Intolerance (ECRI) General Policy Recommendation No. 15 on combating hate speech (2015)</p>	<p>This document offers a vaster insight into the definition of hate speech: "Advocating, promoting or encouraging in any form, denigration, hatred or defamation of a person or group of persons, harassment, insult, negative stereotypes, stigmatization or threat to a person or group of persons and justification of all previous types of expression on the grounds of 'race', colour, family, national or ethnic origin, age, disability, language, religion or beliefs, gender, gender identity, sexual orientation, other personal characteristics or status."</p> <p>Such a definition "differs from many other documents in that it applies:</p> <ul style="list-style-type: none"> • calling and inciting, in any form, to denigrate, hate or defame, and to encourage such demonstrations, as well as harassment, name-calling, negative stereotypes, stigma or threats; • practices that are not only intended to incite the commission of acts of violence, intimidation, hostility or discrimination, but which can reasonably be expected to have this effect and • grounds other than "race," skin colour, language, religion or belief, nationality or national or ethnic origin, and ancestry."

<p>Committee of Ministers Declaration on freedom of political debate in the media (2004)</p>	<p>I. Freedom of expression and information through the media</p> <p>Pluralist democracy and freedom of political debate require that the public is informed about matters of public concern, which includes the right of the media to disseminate negative information and critical opinions concerning political figures and public officials, as well as the right of the public to receive them.</p> <p>II. Freedom to criticise the state or public institutions</p> <p>The state, the government or any other institution of the executive, legislative or judicial branch may be subject to criticism in the media. Because of their dominant position, these institutions as such should not be protected by criminal law against defamatory or insulting statements. Where, however, these institutions enjoy such a protection, this protection should be applied in a restrictive manner, avoiding in any circumstances its use to restrict freedom to criticise. Individuals representing these institutions remain furthermore protected as individuals.</p> <p>III. Public debate and scrutiny over political figures</p> <p>Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.</p> <p>IV. Public scrutiny over public officials</p> <p>Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions.</p> <p>V. Freedom of satire</p> <p>The humorous and satirical genre, as protected by Article 10 of the Convention, allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts.</p> <p>VI. Reputation of political figures and public officials</p> <p>Political figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures. This principle also applies to public officials; derogations should only be permissible where they are strictly necessary to enable public officials to exercise their functions in a proper manner.</p>
<p>Committee of Ministers Recommendation to member States on gender equality and media (2013)</p>	<ol style="list-style-type: none"> 1. Unless already in place, member States should adopt an appropriate legal framework intended to ensure that there is respect for the principle of human dignity and the prohibition of all discrimination on grounds of sex, as well as of incitement to hatred and to any form of gender-based violence within the media. 2. Member States should particularly ensure, through appropriate means, that media regulators respect gender equality principles in their decision making and practice. 3. Member States should support awareness-raising initiatives and campaigns on combating gender stereotypes in the media.
<p>Parliamentary Assembly Resolution on freedom of expression and respect for religious beliefs (2006):</p>	<p>The Assembly is of the opinion that freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups. At the same time, the Assembly emphasises that hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and the case law of the European Court of Human Rights.</p>
<p>Parliamentary assembly Resolution on a strategy for the prevention of racism and intolerance (2014)</p>	<ol style="list-style-type: none"> 8. In the light of these considerations, the Assembly calls on the Council of Europe member States to: <ol style="list-style-type: none"> 8.1. as regards the legal framework on hate speech and hate crime, and its implementation:

	<p>8.1.1. ensure that the legal framework on hate speech and hate crime includes the broadest possible range of discriminatory motives, including sex, race, colour, ethnicity, language, religion, disability, migrant status, sexual orientation and gender identity;</p> <p>8.1.2. require mandatory recording, investigation and public prosecution of suspected hate crimes.</p>
<p>Recommendation of the Committee of Ministers to member States on Internet freedom (2016)</p>	<p>2.4. Legality, legitimacy and proportionality of restrictions</p> <p>2.4.1. Any restriction of the right to freedom of expression on the Internet is in compliance with the requirements of Article 10 of the Convention, namely it:</p> <ul style="list-style-type: none"> - is prescribed by a law, which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct. The law ensures tight control over the scope of the restriction and effective judicial review to prevent any abuse of power. The law indicates with sufficient clarity the scope of discretion conferred on public authorities with regard to the implementation of restrictions and the manner of exercise of this discretion; - pursues a legitimate aim as exhaustively enumerated in Article 10 of the Convention; - is necessary in a democratic society and proportionate to the legitimate aim pursued. There is a pressing social need for the restriction, which is implemented on the basis of a decision by a court or an independent administrative body that is subject to judicial review. The decision should be targeted and specific. Also, it should be based on an assessment of the effectiveness of the restriction and risks of over-blocking. This assessment should determine whether the restriction may lead to disproportionate banning of access to Internet content, or to specific types of content, and whether it is the least restrictive means available to achieve the stated legitimate aim. <p>2.4.2. The State does not impose undue restrictions to freedom of expression on the Internet in its legislation. Defamation laws are specific and narrowly defined as to their scope of application. They do not inhibit public debate or criticism of State bodies and do not impose excessive fines or disproportionate awards of damages or legal costs. Severe sanctions, such as imprisonment, are applied only when the fundamental rights of other people have been seriously impaired such as in cases of incitement to violence or hatred.</p> <p>2.4.3. Laws addressing hate speech or protecting public order, public morals, minors, national security or official secrecy and data protection laws are not applied in a manner which inhibits public debate. Such laws impose restrictions of freedom of expression only in response to a pressing matter of public interest, are defined as narrowly as possible to meet the public interest and include proportionate sanctions.</p>

Appendix 2. Glossary of useful definitions

Hate advocacy - an intention to promote hatred publicly towards the target group.

Antisemitism - prejudice against, hatred of, or discrimination against Jews as an ethnic or religious group.

Crimes against humanity - shall mean any of the acts listed in Article 7 of the Rome Statute of the International Criminal Court when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Discrimination – any difference, exclusion, restriction or preference in the rights and freedoms of the person or group of persons, as well as the support of discriminatory behaviour based on the real criteria, stipulated by law or on presumed criteria.

False statement (disinformation) – a verifiably false or misleading information which, cumulatively: (a) "Is created, presented and disseminated for economic gain or to intentionally deceive the public"; and (b) "May cause public harm", intended as "threats to democratic political and policymaking processes as well as public goods such as the protection of EU citizens' health, the environment or security".

Genocide - any of the acts listed in Article 6 of the Rome Statute of the International Criminal Court committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

Glorification – the celebrating or praising of someone for having done something.

Hatred and hostility - intense and irrational emotions of opprobrium, enmity and detestation towards a target group.

Holocaust – the systemic persecution and annihilation of Jews, Roma, people with mental and physical disabilities, homosexuals and other social groups, by Nazi Germany, as well as by its allies during 1933-1945.

Homophobia - prejudice against, hatred towards, or fear of homosexuality or of people who are identified or perceived as being bisexual, gay, lesbian or transgender.

Hostility - a manifestation of hatred beyond a mere state of mind.

Incitement to discrimination - any conduct by which a person exerts pressure or displays intentional conduct for the purpose of discriminating against a third party on the basis of the criteria stipulated in this law.

Incitement to hate - statements about national, racial or religious groups that create an imminent risk of discrimination, hostility or violence against persons belonging to these groups.

Insult – verbal, written or nonverbal expression that intentionally offends the person and that contravenes the generally accepted norms of conduct in a democratic society.

Islamophobia - prejudice against, hatred towards, or fear of the religion of Islam or Muslims.

Justifying – providing arguments and reasons for acts and/or statements of hate and discrimination.

Neutral tone (neutrality) – reporting all sides of an issue without favouring any one of them.

Prejudice – an attitude (positive or negative) towards a group or its members, which forms or maintains hierarchical statuses between groups.

Racism - the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

Sexism - any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of:

- i. violating the inherent dignity or rights of a person or a group of persons; or
- ii. resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or

- iii. creating an intimidating, hostile, degrading, humiliating or offensive environment;
- iv. constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or
- v. maintaining and reinforcing gender stereotypes

Spreading – an act of publicly promoting and expanding the proliferation of hateful and discriminatory opinions.

Stereotype – shared beliefs or thoughts about particular groups and may be positive or negative (or neutral). It becomes damaging when they are applied rigidly to individuals and are used as a reason for different treatment or behaviour or value representations of a specific phenomenon or people... false, misguided or at least oversimplified and overgeneralised conceptions of the social world, prejudice relating to negative emotionally charged stereotypes (in other words, representation of particular social groups pertaining to inborn and acquired characteristics of individuals and social groups that are accentuated in order to differentiate groups and their members from others and not considering an individual in his or her essence.

Stigmatisation - the labelling of a group of persons in a negative way.

Transphobia - prejudice against, hatred towards, or fear of transsexuality and transsexual or transgender people, based on the expression of their internal gender identity.

Violence - the use of physical force or power against another person, or against a group or community, which either results in, or has a high likelihood of resulting in, injury, death, psychological harm, maldevelopment or deprivation.

Xenophobia - prejudice against, hatred towards, or fear of people from other countries or cultures.

[1] Promo-LEX Association, [Monitoring Report: Hate speech and incitement to discrimination on the public space and media in the Republic of Moldova, 2019/2](#) and [Monitoring Report: Hate speech and incitement to discrimination on the public space and media in the Republic of Moldova, 2019/1](#)

[2] Promo-LEX Association, [Monitoring Report: Hate speech and incitement to discrimination on the public space and media in the Republic of Moldova in the election campaign for the presidential elections of 1/15 November 2020 \(Summary\)](#)

[3] Constitutional Court of the Republic of Moldova, [Address](#) to Parliament of the Republic of Moldova No. PCC-01/189e/597 from 01.12.2020

[4] The links and references to the international standard-setting documents mentioned in the text are all to be found in the aforementioned table.

[5] Paragraph 2 of ECHR Article 10.

[6] Council of Europe's publication: "[Media regulatory authorities and hate speech](#)", 2017.

[7] European Commission, The EU [Code of conduct](#) on countering illegal hate speech online.

[8] European Commission, [5th evaluation of the Code of conduct](#) on countering illegal hate speech online.

[9] Which entered into force on 19 December 2018 to be transposed by EU Member States into national legislation by 19 September 2020; this deadline has been somewhat prolonged, due to the COVID-19

pandemic and for which, on 23 November, the European Commission started the infringement [procedures](#) against 23 member-States for failing to transpose the revised AVMSD, requesting them to provide further information, within two months.

[10] For example, the current draft of the [Digital Services Act](#) and [Digital Markets Act](#), prepared by the European Commission, encompass new rules applicable across the whole EU, intended to create a safer and more open digital space. The European Parliament and Member States will discuss the proposal in the forthcoming period. Once adopted, the new rules will be directly applicable across the EU.

[11] TechCrunch, Article: [Germany tightens online hate speech rules to make platforms send reports straight to the feds](#), June 19, 2020.

[12] Freedom of expression vs. incitement to hatred. Rabat Plan of Action <https://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>.

[13] European Court for Human Right, [Guide on Article 10 of the European Convention on Human Rights](#), 2020.

[14] EPRA paper: "Hate Speech – Old Enemy, New Battles", Summary of the Answers to the Hate Speech Questionnaire, Asja Rokša – Zubčević, https://cdn.epra.org/attachments/files/2396/original/plenary2_hate_speech.pdf?1401292242.

[15] Danning, Gordon (2018). "Did Radio RTLM Really Contribute Meaningfully to the Rwandan Genocide?".

[16] Éric Zemmour, French essayist, political journalist and writer, notoriously famous for his anti-liberal and anti-immigration positions.

[17] Liberation, Article: [Discours de Zemmour sur LCI: le CSA a-t-il déjà effectué d'autres signalements à la justice](#), October 28, 2019.

[18] Le Point, Article: [Conviction de la droite: Semmour condamné à 10 000 euros d'amende](#), September 25, 2020.

[19] The Conversation, Article: [When politicians use hate speech, political violence increases](#), September 28, 2020.

[20] For further reference, please see, for example, the case of TV Vikom from the Council of Europe's publication: "[Media regulatory authorities and hate speech](#)", 2017.

[21] Referring to Pakistan-Occupied Kashmir.

[22] For example:

<https://www.thehindu.com/news/national/hindi-news-channel-republic-bharat-fined-by-uk-regulator-for-hate-speech/article33399933.ece>.

<https://thewire.in/media/uk-govt-body-slaps-20000-fine-on-republic-bharat-for-hate-speech-against-pakistan>.

<https://www.freepressjournal.in/india/arnab-goswamis-programme-poochta-hai-bharat-fined-20000-pounds-by-uk-communications-regulator-ofcom>.

[23] EPRA: « Challenges of ensuring compliance and enforcement in a changing media ecosystem », 2016, <https://cdn.epra.org/attachments/files/2978/original/Yerevan%20Plenary%202%20-%20Keynote%20%28Furn%C3%A9mont%29.pdf?1477488801>

[24] For more details, please see, e.g., EPRA paper: Plenary Session 2: Compliance and Enforcement Policies, Strategies and Methods of NRAs put to test, 2016:

https://cdn.epra.org/attachments/files/2858/original/BCN_Compliance_enforcement_final.pdf?1463756793.

[25] UNESCO, [Countering online hate speech](#), 2015.