



OMBUDSPERSON

REPORT

Ex officio No. 146/2021

Language in public discourse, in relation to the obligations that the state has in ensuring freedom of expression and preventing hate speech





Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

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Language in public discourse, in relation to the obligations that the state has in ensuring freedom of expression and preventing hate speech

Addressed to:

Mr. Glauk KONJUFCA, Speaker
Assembly of the Republic of Kosovo

Mr. Albin KURTI, Prime Minister
Government of Kosovo

Ms. Arbërie NAGAVCI, Minister
Ministry of Education, Science, Technology and Innovation

Mr. Kreshnik RADONIQI, Chairman
Central Election Commission

Mr. Enver FEJZULLAHU, Executive Director
Academy of Justice

Mr. Jeton MEHMETI, Chairman
Independent Media Commission

Mr. Behar EJUPI, President
Kosovo Bar Association

Prishtina, 5 December 2023

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EXECUTIVE SUMMARY

This report aims to reflect the state of language used in the discourse of public communication in Kosovo. The report is based on monitoring, research and analysis of data collected from parliamentary sessions, TV debates and comments on social media for the period covering 2020 through 2022.

The design of datasets and the choice of the timeframe were determined by the ultimate goal of the research: *provide not only an updated and comprehensive overview of the various instances and groups that may be targets of hate speech in public discourse in Kosovo but also potential instigators of hatred (with or without intent).*

The research methodology is based on international and local legal standards. The report provides an overview of the analysis of public and media discourse, combining quantitative and qualitative approaches, following the examination of transcripts from: 8 parliamentary sessions (January 2022 – March 2022); 23 online TV debate shows; 4 social media platforms; 43.511 comments and 313 news posts on social networks. The research has identified recurring patterns, such as reasons and targets for the language used (political beliefs and affiliation; ethnic affiliation; religion; sex, gender and sexual orientation), forms of expression (threats and curses; insults based on racial and ethnic grounds; dehumanising metaphors); as well as media discourse that triggers hate comments from social media users. It also highlights the lack of moderation in the media, exposing public opinion to instances of hate speech.

Attention has also been paid to the rhetorical discourse and language used towards LGBTI individuals, the impact of public discourse, the agenda in mainstream and social media, as well as public reactions to them.

The data has been analysed both manually, using a qualitative approach, and by artificial intelligence, through Sketchengine¹ and Crowdtangle², with the aim of studying the language used by searching large text collections based on linguistically motivated queries, i.e. keywords or key expressions. Crowdtangle is a public knowledge tool from META that allows users to analyze Facebook trends and measure posting performance.

Among other things, this report aims to draw attention to public awareness and institutions regarding international and local standards, the right to freedom of expression, and the concept of hate speech. It also aims to contribute to understanding the discourse patterns of language used in social media and public communication in the country, including hate speech, discriminatory language, offensive rhetoric that involves disagreements with certain ideas or thoughts, challenging ideas or beliefs, rhetoric that includes nonviolent negative actions or characterisations and insults, and specifications of dehumanising characteristics of individuals or affected groups. Furthermore, it aims to enhance society's ability to react and develop a narrative that promotes human rights, diversity and tolerance. The report provides examples retrieved from research on the language used in public discourse, with a focus on television shows and the country's parliament that trigger debate, even in **social media**.

¹ It is a text analysis software developed by Lexical Computing Limited.

² <https://www.crowdtangle.com/>.

INTRODUCTION



*There is a fine line between free speech and hate speech.
Free speech encourages debate, whereas hate speech incites violence .*

*Newton Lee*³

The issue of freedom of expression and hate speech presents complex challenges regarding how state authorities can and should balance their responsibility to respond promptly and effectively in cases where a specific expression is identified as potentially causing harm to legitimately protected goals . Hate speech in public discourse, generally in Europe, has been more evident during the time of the Covid-19 pandemic, highlighting the need for continuous work in monitoring, preventing and combating hate speech and other forms of expression both online and offline⁴. Continuous work in this regard involves a series of actions and activities, ranging from awareness campaigns in pre-school institutions and beyond, the effectiveness of responses from justice authorities, to a variety of concrete measures in the fight against discrimination. All these actions and measures should be undertaken by public institutions in partnership and coordination with civil society in the country.

It is important to emphasise the sensitive and complex challenge posed by establishing a balance between freedom of expression, as a fundamental right in any democratic society, and defining its limits in relation to other rights. Establishing a balance between freedom of expression and its limits remains a continuous challenge even in high-level international institutions, such as the European Court of Human Rights (ECtHR). However, determinations in key international documents and especially the case law of the ECtHR have set a standard for ensuring freedom of expression and defining necessary limits.⁵

The European Convention on Human Rights (ECHR), in its Article 10, establishes the protection of freedom of expression, freedom of thought and the expression of beliefs (paragraph 1), but also specifies the conditions for its limitation (paragraph 2). Therefore, the concept of freedom of expression implies a broader framework of rights encompassing the freedom to hold opinions without interference (freedom of opinion), the freedom to seek, receive and share information and ideas (verbally, in writing, in artistic form, through the media, including not only the content but also the means of expression). etc.⁶). Freedom of expression is the right of everyone to express himself/herself, the right to speak, to be heard, and to participate in political, artistic and social life.

³ Speak Peace! Hate speech is not an option! See at <https://shorturl.at/arG47> , p. 7

⁴ ECRI, *Annual Report on ECRI's activities covering the period from 1 January through 31 December 2017*, <https://rm.coe.int/annual-report-on-ecri-s-activities-covering-the-period-from-1-january-/16808c168b>.

⁵ Report with recommendations from the Ombudsman of Kosovo, Ex officio 707/2017, regarding freedom of expression (media) and the safety of journalists, can be found at <https://bit.ly/3RL8gDR>

⁶ Ex officio Ombudsperson Report No. 707/2017, 2 November 2017, para.24, p. 5., see at: <https://oik-rks.org/2017/11/02/ex-officio-report-related-to-freedom-of-expression-and-safety-of-journalists/>

Article 10 of the ECHR

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 does not prevent States from requiring from enterprises of audiovisual, television or cinematographic broadcasters to get a license.*
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.”*

Paragraph 2 of Article 10 defines the circumstances in which a state can legitimately intervene in the exercise of freedom of expression. It primarily requires states not to interfere with the exercise of such rights⁷. What distinguishes positive obligations from negative ones is that the former requires a positive intervention by the state, while the latter require the state not to intervene. So, paragraph 2 of Article 10 of the European Convention on Human Rights implies the system of limitations on the exercise of the right to freedom of expression.⁸

Through Article 10, paragraph 2, the Convention confirms that the realisation of freedom of expression also involves responsibilities and obligations and may only be restricted or sanctioned under strict conditions if necessary measures are presented for the security of state integrity, territorial integrity, and public safety, the maintenance of order, the prevention of disorder and crime, the protection of health and morals, dignity, or the rights of others, as well as limiting the dissemination of confidential information or preserving the authority and impartiality of the judiciary.⁹

In assessing whether the limitation of freedom of expression by the state is legitimate or not, the ECtHR also determines this through the criteria outlined in Article 10, paragraph 2, which must be necessarily complied with: *be prescribed by law; have a legitimate purpose; be necessary in a democratic society and proportionate to the pursued aim.*¹⁰

Freedom of expression, in its context, enables the exchange of ideas and pluralism, allowing the richness of thought to be realised, and through communication, democracy and political discourse to be achieved. Therefore, its limitations must undergo a strict filter to ensure that it is not endangered or abused. During the review of cases of restricting freedom of expression, instances can be identified where a specific expression may cause harm to legitimately protected interests. This mechanism prevents the abuse of freedom of expression and avoids it being directed towards the complete

⁷ Positive obligations according to the European Convention on Human Rights, Guide to the Implementation of the European Convention on Human Rights, Human Rights Handbooks No. 7, Directorate General of Human Rights, Council of Europe, see at: <https://rm.coe.int/handbook-7/16806fc13f>, (07/03/2023)

⁸ Freedom of Expression, A Guide to the Implementation of Article 10 of the European Convention on Human Rights, No. 2, see at: [handbook-2.indd](https://rm.coe.int/handbook-2.indd) (coe.int), (07/03/2023)

⁹ Elena Mihajlova, Jasna Bačovska, Tome Shekerxhiev. Freedom of Expression and Hate Speech - Skopje: OSCE, 2013. See at <https://www.osce.org/files/f/documents/0/1/116609.pdf> (07/03/2023)

¹⁰ Ibid, page 4.

opposite of this freedom, such as hate speech, which is the most serious abuse of the possibility of expression¹¹.

The concept of hate speech

The complexity of this issue necessitates a balanced and careful approach in preventing hate speech and ensuring other human rights.

There is no universally recognised and generally agreed-upon definition of hate speech; however, the European Court of Human Rights, in its jurisprudence, defines hate speech as “...all forms of expression that spread, incite, promote and justify racial hatred, xenophobia, anti-semitism, or other forms of hatred based on intolerance...”, while the European Commission against Racism and Intolerance (ECRI) defines forms of hate speech as follows: “all types of expressions that incite, promote, disseminate, or justify violence, hatred, or discrimination against an individual or group of individuals, or that denigrate them, due to their real or attributed personal characteristics or status such as race, colour, language, religion, nationality, national or ethnic origin, age, disability, gender, gender identity, and sexual orientation”.

Despite the lack of a universally recognised and agreed-upon definition by everyone, we encounter two elements that distinguish hate speech:

- *Labelling a group or individual as a member of a specific group based on physical, social and cultural characteristics against which that language is directed.*
- *The presence of a defining reason characterising a targeted group, such as race, religion, ethnicity, nationality, sexual orientation, gender and other protected bases, with content expressing hatred, the intent to harm or offend, and the public nature of the language.*

Rabat Plan of Action¹² helps in defining the boundaries of freedom of expression by evaluating each case individually on its merits, taking into account: 1) *The social and political context*, 2) *The speaker's status*, 3) *The intent*, 4) *The content and form of the language*, 5) *The extent of its dissemination*, 6) *The probability of damage, including imminence*.

Similarly, it is necessary to be assessed from the case law perspective of the European Court of Human Rights, whether limitations on freedom of expression are prescribed by law, pursue a legitimate¹³ purpose, and are necessary and proportionate to the pursued aim¹⁴. Freedom of expression cannot be used to justify hate speech. Discourses that may be offensive should be distinguished from hate speech. The Committee of Ministers of the Council of Europe has described the “hate speech” as “forms of expression that spread, incite, promote or justify racial hatred, xenophobia, anti-semitism, or other forms of hatred based on intolerance.”¹⁵

¹¹ Ibid, page 23.

¹² Rabat Plan of Action, accessible at: https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf

¹³ National security, territorial integrity, public safety, crime prevention, and the maintenance of order, protection of health, morality, reputation, or the rights of others, prevention of the disclosure of confidential information, and ensuring the independence of the judiciary.

¹⁴ ECtHR, Freedom of Expression, A Guide to the Implementation of Article 10 of the European Convention on Human Rights, accessible at: <https://rm.coe.int/handbook-2/16806fc139>

¹⁵ See Recommendation No. R(97)20 of the Committee of Ministers of the Council of Europe on the “Hate Speech”, 30 October 1997, available at: <https://rm.coe.int/1680505d5b>

“All types of expressions that incite, promote, disseminate, or justify violence, hatred, or discrimination against an individual or group of individuals, or that denigrate them, due to their or attributed personal characteristics or status such as race, colour, language, religion, nationality, national or ethnic origin, age, disability, gender, gender identity, and sexual orientation”¹⁹.

Taking into account the diverse nature of hate speech and its effects on its target(s) and, in general, on society, in the *Preamble* (Committee of Ministers Recommendation CM/Rec (2022)16), emphasis has been placed on the severity of hate speech, the harm it causes, and its impact on members of specific groups in various contexts. The goal is to ensure that a series of properly calibrated measures are in place to prevent and effectively combat hate speech at different levels.

Such an approach, fully aligned with the European Convention on Human Rights and the case law already mentioned of the European Court of Human Rights, intentionally distinguishes between three levels of hate speech:

- a.** *hate speech as a criminal offence*
- b.** *hate speech that is not considered a criminal offence but may be the subject to and administrative proceedings;*
- c.** *offensive or harmful forms of expression that are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights but still require alternative responses, as defined below, such as counter-speech and other countermeasures; measures that promote intercultural dialogue and understanding, including the media and social media; and relevant educational activities, information exchange, and awareness-raising.*

In doing so, the *Preamble*²⁰ addresses the multifaceted nature of hate speech and the diversity of its expressions and manifestations, which in many cases may neither be legally punishable nor clear-cut. Not coincidentally, an increasing number of contemporary literature insists that explicitness cannot be the sole determining criterion in identifying hate speech.²¹ According to research, cases of hate speech encountered in parliamentary sessions not only advocate for hatred but also fundamentally provide a purportedly discriminatory justification.

This claim would be further substantiated by noting that the hate speech “does not necessarily manifest through expressions of “hatred” [and therefore] can be hidden in statements that may initially seem reasonable or normal”.²²

Hate speech can actually be expressed, verbalised and disseminated in *subtle forms*:

- a.** *does not explicitly and publicly encourage hatred and aggression*
- b.** *appears to be rational and normal and can become even more harmful by normalising the respective perspective in public debates, desensitising the public opinion to discriminatory hatred.*²³

¹⁹ Council of Europe, *Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to Member States on combating hate speech* (https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955).

²⁰ The new Committee of Ministers Recommendation CM/Rec (2022) <https://shorturl.at/Imp89>

²¹ See for example Assimakopoulos S., *Incitement to hate, discriminatory ilocution and perlocution*, “Pragmatics and Society” 11 (2), 2022, p. 177-195; Faloppa F., *#Odio*. Manual of resistance to verbal violence, UTET, 2020.

²² See Weber A., *Manual on hate speech*, Council of Europe, 2009, p. 5.

²³ See Soral W., Bilewicz M., Winiewski M., *Exposure to hate speech increases prejudice through desensitisation*, “Aggressive behaviour”, 44 (2), 2018, p. 136-146.

From an analytical perspective, acknowledging the existence of subtle manifestations of hate speech that do not reach reprehensible thresholds also implies the distinction of two types of hate speech, according to a recent critical and discourse analytical perspective:

“On one hand, there is what can be called the harsh hate speech, which includes punishable forms that are prohibited by law, and on the other hand, there is a soft language of hatred, which is legal but raises serious concerns regarding intolerance and discrimination.”²⁴

If the harsh hate speech can be identified to some extent (more) easily for clear incitement of hatred, the presence of threats, demeaning insults, slanders, “hate words” and metalinguistic data (such as the verb *hate*: “I hate/we hate, etc.”), the soft hate speech can emanate from a broader group of discriminatory discourses that may circulate in the public sphere and have been thoroughly examined from a critical and discursive analytical perspective²⁵. For example, the soft hate speech may appear in discriminatory statements against immigrants (even though not explicitly as hate speech), “othering” mechanisms²⁶, techniques to dehumanise specific categories of people (such as ethnic minorities, foreigners, Jews, LGBTI, etc.), conceptual metaphors (flow, wave, infection, disease, etc.), implications and assumptions, silence and concealment, etc.

The power (and spread) of the soft hate speech can also rely on its persuasiveness, i.e. the potential internal discourse that implicitly triggers argumentative movements in a dual *stance-argument*²⁷t, ultimately justifying and therefore normalising hatred. According to Amossy, discourse “always answers an explicit or hidden question or at least suggests a way of seeing the world around”²⁸, and it therefore fundamentally develops an “argumentative dynamics”²⁹ that can highlight and justify possible implied perspectives on the issues debated in a specific context.

This implicitness of hate speech becomes evident, for example, in cases of multimodal objects/artefacts (newspaper covers, social media posts, memes), implications and assumptions when much of the meaning that could justify hatred remains inconspicuous.³⁰ As part of broader discriminatory discourses, soft hate language can be seen as the development of an argumentation that implicitly

²⁴ See Assimakopoulos S., Baider F., Millar S., *Online hate speech in the European Union*, qu. p. 4.

²⁵ See for example Reisigl M., Wodak R., *Discourse and Discrimination: The Rhetoric of Racism and Anti-Semitism*, Routledge, 2001; Richardson J., *(Mis)Representation of Islam*; *Racism and the Rhetoric of British Broadsheet Newspapers*, John Benjamins, 2004; Baker P., Gabrielatos C., Mcenery T., *Sketching Muslims: A Corpus Driven Analysis of Representations Around the Word ‘Muslim’ in the British Press 1998–2009* “Applied Language”, 34 (3), 2013, p. 255–278; Breazu P., Machin D., *Racism toward the Roma through the affordances of Facebook: bonding, laughter and spite*. “Discourse and Society”, 30 (4), 2019, p. 376–394.

²⁶ Other: this is a broad term encompassing many expressions of prejudice based on group identities. It also provides a clarifying framework revealing a series of common processes and conditions that perpetuate inequality and marginalisation based on group identities. In fact, others can be defined as a dynamic set of processes and structures that bring about continuous marginalisation and inequality across the full range of human differences based on group identities. Through these dynamics, processes and structures, people can: 1) be categorised based on perceived differences, such as ethnic affiliation, skin colour, religion, gender, or sexual orientation, etc.; 2) be identified as inferior and alienated by the “us, against them” opposition. Others also involve devaluing/neglecting in a difference and using that difference to undermine a sense of similarity or connection among people. Ultimately, it creates grounds for discrimination or persecution by reducing sensitivity and preventing genuine dialogue.

²⁷ Amossy R., *The New Rhetoric’s Inheritance. Argumentation and Discourse Analysis*, “Argumentation”, 23 (3), 2009, p. 313–324; Reisigl M., Wodak R., *The Discourse-Historical Approach*, in R. Wodak, M. Meyer (eds.), *Methods of Critical Discourse Studies*, 3rd ed., Sage, 2016, p. 23–61.

²⁸ See Amossy R. *Argumentation in Discourse: A Socio-discursive approach to arguments*, “Logic Informal”, 29 (3), 2009, p. 252–267 (254).

²⁹ See Amossy R., *The argumentative dimension of discourse*, in FH van Eemeren, P. Houtlosser, *Practices of Argumentation*, John Benjamins, 2005, p. 87–98.

³⁰ See Breazu P., Machin D., *Racism toward the Roma through the affordances of Facebook*, quo.

justifies hatred against targeted groups, even if it does not explicitly incite hatred and aggression. This strategy is particularly common in political and public discourse, allowing authors to circumvent the detection of hate speech and the violation of codes of conduct by letting them provoke strong negative reactions (from their followers, from the public) towards their targeted groups.

Understanding the fundamental context/circumstances can help navigate through the spectrum of expressed language forms (and thus, determining reactions or formulating policies against different types of hate speech).³¹

MANDATE AND POWERS OF THE OMBUDSPERSON INSTITUTION

The Ombudsperson Institution is a constitutional independent institution that protects, supervises and promotes human rights and freedoms. It acts as the National Human Rights Institution (NHRI), Equality Body (EB), and also as the National Mechanism for the Prevention of Torture (NMPT), monitoring all places where individuals are deprived of their liberty.

The Ombudsperson Institution, as a guide in fulfilling its mission, adheres to the *Paris Principles*³² and the *Venice Principles*³³, which are the minimum international criteria that any national institution for human rights in a state must meet to be considered credible and worthy of fulfilling its mandate.

The mandate of the Ombudsperson Institution is determined by the Constitution of the Republic of Kosovo and the Law on Ombudsperson, Law on Protection from Discrimination, Law on Gender Equality, and later also by Law on Child Protection. However, it has additional powers in several other laws.³⁴

OI is independent in exercising its duties.³⁵ It has organisational, administrative and financial independence to fulfil the tasks specified by the Constitution and the law³⁶, and public authorities are obliged to respond to the Ombudsperson's requests and provide all requested documents and information, in accordance with the law.³⁷

Within many other powers, it may also conduct investigations on its own initiative (Ex Officio), under which this report has been initiated. The Ombudsperson may give recommendations and propose measures if it observes violations of human rights and freedoms by public administration bodies and other state authorities³⁸; draw attention to cases where authorities violate human rights and make

³¹ Beyond Definitions, a call for action against hate speech in Albania, see at: A comprehensive study, November 2021 <https://rm.coe.int/beyond-definitions-alb/1680a465f8>

³² The Paris Principles are the minimum criteria set by the United Nations that a national institution for human rights must have to be considered credible, independent, and effective on the international stage.

³³ The Venice Commission, the Principles on the Protection and Promotion of the Ombudsman (Venice Principles), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

³⁴ Law on Access to Public Documents; Law on Disciplinary Responsibility of Judges and Prosecutors; Law on the Kosovo Intelligence Agency; Law on the Tax Administration and Procedures; Law on General Administrative Procedure; Law on Administrative Conflicts; Law on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo; Civil Law against Defamation and Insult; Law on the Execution of Criminal Sanctions; Criminal Procedure Code of Kosovo; Law on the Use of Languages; the Law on Contested Procedures.

³⁵ Constitution of the Republic of Kosovo, Article 132, paragraph 2.

³⁶ Law No. 05/L-019 on Ombudsperson, Article 3.

³⁷ Ibid, Article 132, paragraph 3.

³⁸ Constitution of the Republic of Kosovo, Article 135, paragraph 3.

recommendations to put an end to such cases, and as appropriate, express its opinion on the positions and responses of relevant authorities regarding such cases³⁹; recommend to the Government, Assembly and other competent authorities of the Republic of Kosovo issues related to the advancement and protection of human rights and freedoms, equality and non-discrimination.⁴⁰

³⁹ Law No. 05/L-019 on Ombudsperson, Article 19, paragraph 1, subparagraph 1.2

⁴⁰ Ibid, Article 18, paragraphs 1, subparagraph 1.5

LOCAL LEGAL FRAMEWORK

Constitution of Kosovo

Equality⁴¹ and non-discrimination⁴² are the basic principles of the Constitution. Freedom of expression is guaranteed by Constitutions. Article 40 provides that freedom of expression implies the right to express oneself, to disseminate and receive information, opinions and other messages without impediment. However, the same provision stipulates that freedom of expression may be restricted by law when necessary to prevent the incitement or provocation of violence and hostility based on race, nationality, ethnicity, or religion.

Freedom of the media and pluralism are explicitly addressed in Article 42 of the Constitution as guaranteed rights, while censorship is only allowed in cases where it is necessary to prevent the incitement or provocation of violence and hostility based on race, nationality, ethnicity or religion. The right to correct untrue, incomplete and inaccurate information is recognised by the same article. The right to association as a form of freedom of expression is defined in Article 44 of the Constitution.

It includes the right of everyone to establish an organisation without obtaining any permission, to be or not to be a member of any organisation and to participate in the activities of an organisation. There are limitations that can be applied to organisations or activities that endanger the constitutional order, violate human rights and freedoms, or incite racial, national, ethnic, or religious hatred, which can be prohibited by the decision of the competent court.

Article 22 of the Constitution provides for the direct applicability of a series of international conventions guaranteeing human rights and fundamental freedoms, which are given priority in case of conflict with the provisions of laws and other acts of public institutions.⁴³

Pursuant to Article 53 of the Constitution, human rights and fundamental freedoms guaranteed by Constitution are interpreted in accordance with the ECtHR judicial decision.

International standards and instruments play a crucial role in shaping the ways in which states should respond to and fulfil their obligations regarding individual rights and freedoms. The same principle applies to freedom of expression, including hate speech, discriminatory language, and offensive discourse in public discourse, as components considered in cases of restricting freedom of expression or imposing sanctions if it is deemed to jeopardise state security, territorial integrity, public safety, maintaining order and preventing irregularities and crimes, protecting health and morality, dignity, or

⁴¹ Article 3 (Equality Before the Law) and Article 7 (Values) of the Constitution of Kosovo refer to equality.

⁴² Article 24 of the Constitution of Kosovo.

⁴³ *Universal Declaration of Human Rights*, see at https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/aln.pdf; *European Convention for the Protection of Human Rights and Freedoms and its Protocols* see at: https://www.echr.coe.int/documents/convention_sqi.pdf; *International Convention on Civil and Political Rights and its Protocols* see at <https://hrrp.eu/alb/docs/CCPR-a.pdf>; *Framework Convention of the Council of Europe for the Protection of National Minorities*, see at <https://rm.coe.int/16800c131a>; *Convention on the Elimination of All Forms of Racial Discrimination* see: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>; *Convention on the Elimination of All Forms of Gender Discrimination*, see at: <https://hrrp.eu/alb/docs/CEDAë-a.pdf>; *Convention on the Rights of the Child*, see: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; *Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment*, see at: <https://rm.coe.int/16806dbac6>; *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)* see: Amendment to the Constitution of the Republic of Kosovo No. 07-v-058, 25 September 2020, amendment no. 26, see in <https://rm.coe.int/168064d3f6>.

the rights of others, as well as restricting the dissemination of confidential information or preserving authority and impartiality.

Law on Ombudsperson

Protection of human rights and equality is ensured by the Ombudsperson Institution⁴⁴. The role and fundamental powers of the institution are defined by the Constitution and the Law on the Ombudsperson⁴⁵. The Ombudsperson represents the mechanism of equality, which promotes, monitors and supports equal treatment without discrimination based on the criteria specified by the Law on Gender Equality and the Law on Protection from Discrimination.⁴⁶

Law on Protection from Discrimination

Law No. 05/L-021 on Protection from Discrimination (LPD) provides a non-exhaustive list of protected grounds, such as nationality or affiliation with any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political opinion or other opinion, social or personal status, age, family or marital status, pregnancy, fertility, wealth status, health condition, disability, genetic heritage, or any other basis.⁴⁷

LPD applies to all actions or omissions of all state institutions, individuals and legal entities, the public and private sectors, that violate, have violated, or may violate the rights of any person or legal entity in all areas of life.⁴⁸ The types of unequal treatment are specified as direct and indirect discrimination, perception-based discrimination, multiple discrimination, harassment, incitement to discrimination, victimisation, segregation, discrimination based on association, and failure to make reasonable accommodation for persons with disabilities. Violation of the principle of equal treatment on the grounds mentioned in LPD is considered discrimination⁴⁹.

Civil Law against Defamation and Insult

The Civil Law against Defamation and Insult⁵⁰ establishes civil liability for defamation and insult by guaranteeing the principles of freedom of expression, providing effective compensation for victims, and recognising the role of the media in a democratic process. The law aims to promote a tolerant and democratic society by complying with international standards for human rights, freedom of expression, and preventing the use of defamatory and insulting language. This law prioritises the principle of freedom of expression and ensures that its provisions are interpreted in accordance with the European Convention on Human Rights and Fundamental Freedoms, as applied in the case law of the European Court of Human Rights.

⁴⁴ Article 133, Constitution of the Republic of Kosovo.

⁴⁵ Law No. 05/L-019 on Ombudsperson

⁴⁶ Law No. 05/L-021 on Protection from Discrimination, Article 9, and Law No. 05/L-020 on Gender Equality, Article 13.

⁴⁷ Article 1, Law on Protection from Discrimination.

⁴⁸ Article 2, *ibid.*

⁴⁹ Article 4, *ibid.*

⁵⁰ Law No. 02/L.65 against Defamation and Insult

Criminal Code No. 06/L-074 of the Republic of Kosovo

The Criminal Code of the Republic of Kosovo does not define and specify hate speech as a separate criminal offence. However, according to the Code, if a criminal act involves hate, it will be considered as an aggravating circumstance and significantly influences the determination of the prescribed punishment in the Criminal Code. Therefore, hate speech alone, without being accompanied by any act that constitutes a punishable criminal offence according to the Criminal Code, does not qualify as a criminal offense⁵¹. On the other hand, incitement and dissemination of hatred, intolerance among national, racial, religious, ethnic groups, etc., or based on sexual orientation, gender identity, and other personal characteristics in a manner that may disrupt public order is sanctioned under the Criminal Code⁵². In a specific number of criminal offences defined by the Criminal Code, more severe forms are stipulated when the motive for such offences has been hatred/prejudice (see Articles 173, 184, 185, 186, 190, 321).

Law on General Elections

The Law on General Elections clearly defines the obligation of political parties to comply with the Code of Conduct for political entities, their supporters and candidates, with *“the aim of creating conditions in which the people of Kosovo may choose their representatives through free, fair, and well-informed elections in an atmosphere of democratic tolerance, peace, and respect for the rule of law”*⁵³

Additionally, the law has defined as a prohibited action *“Using language, in oral or written form, which incites or provokes, or is likely to incite or provoke, another person to commit an act of violence against other persons or property, or which incites or is likely to incite hatred towards others, or publishing or using pictures, symbols or any other material that has or is likely to have such effects”*. It should be noted that these prohibitions are imposed only *“During the campaign period”*.

These obligations are also reflected in the Electoral Regulation No. 11/2013, Code of Conduct for political entities, their supporters and candidates

MEDIA REGULATION

The Independent Media Commission (IMC) is defined by the Constitution of the country as an independent body regulating the broadcasting spectrum in the Republic of Kosovo. It licenses public and private broadcasters, establishes and enforces broadcasting policies, and exercises other powers specified by law.⁵⁴

⁵¹ CRIMINAL CODE 06/L-074 OF THE REPUBLIC OF KOSOVO, Article 70 [General rules on mitigation or aggravation of punishment], paragraph 2, subparagraph 2.12: [...]

2.12. if the criminal offence is a hate act, which is any crime committed against a person, group of persons, or property, motivated upon the race, colour, gender, genderidentity, language, religion, national or social origin, relation to any community, property, economic condition, sexual orientation, birth, disability or other personal status, or because of their affinity with persons who have the aforementioned characteristics, except if one of the enumerated characteristics constitutes an element of a criminal offence;[...].

⁵² Ibid, Article 141

⁵³ Law No. 03/L-073 on General Elections <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2544>

⁵⁴ Constitution of the Republic of Kosovo, Article 141

The IMC is an independent body for regulating, managing and supervising the broadcasting frequency spectrum.⁵⁵ It issues and renews licenses for all audiovisual media services, granting the right to use frequencies in the broadcasting frequency spectrum, and imposes sanctions for violations of rules and license terms. The IMC Code of Ethics is applicable to all its members or those holding a license. Article 5 of the Code of Ethics for Media Service Providers in Kosovo specifically prohibits the incitement of hatred, including the prohibition of the use of certain protected characteristics, including sexual orientation to denigrate, ridicule or mock.⁵⁶ The IMC Broadcasting Strategy is subject to Government approval. The IMC conducts periodic monitoring of television and radio stations to check if they are fulfilling their obligations. It also addresses citizens' complaints regarding the conduct of media organisations, whether on television or radio, regulated by the IMC. According to the Law on IMC, Article 27, paragraph 4, any direct or indirect discrimination expressed by media editors, journalists, or other individuals involved in the field of public information broadcasting is prohibited.

Based on the Regulation on Audiovisual Commercial Communications, Article 26 stipulates: *"Noncompliance with this Regulation shall result with the application of sanctions as foreseen in the Law on Independent Media Commission."* This implies that, according to Article 30 of the Law on the Independent Media Commission, fines, program suspension, modification of license terms, or its suspension can be imposed for hate speech.

MEDIA SELF-REGULATION

The Press Council of Kosovo (PCK) is a self-regulatory body for print and online media in Kosovo. It is a self-regulatory body based on membership and can only regulate those members registered therein. It may receive and handle complaints from public members against entities that are members of the PCK. Its decisions on third-party complaints are based on its Code of Ethics, which was last updated in December 2019. The PCK Board, which has the right to decide on complaints, consists of media representatives.

International standards, including hate speech-related measures

As mentioned in the introductory part, there is no globally recognised definition of hate speech in international legal standards. However, this issue has been addressed in various conventions, mainly through guarantees for the right to freedom of expression, including freedom of thought.

- **International Covenant on Civil and Political Rights (ICCPR)⁵⁷**

Article 19 (2) of the ICCPR is specific, acknowledging that freedom of expression is guaranteed for everyone. It further stipulates that *"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"*. The reference to

⁵⁵ Law No. 04/L-044 on the Independent Media Commission, Article 3.

⁵⁶ Available at [1476189555.8908.pdf \(kpm-ks.org\)](https://www.kpm-ks.org/1476189555.8908.pdf).

⁵⁷ Adopted by General Assembly Resolution 2200A (XXI) of the United Nations on 16 December 1966.

access to information, regardless of its boundaries and selected media, means that the guarantee has stood the test of time, even though it was drafted at a time when technological advancements we see today were not even on the horizon.

At the same time, and most importantly, Article 19(3) explicitly acknowledges that exercising the right to freedom of expression “*carries with it special duties and responsibilities*”. In particular, Article 19(3) stipulates that the right to freedom of expression may be subject to restrictions, provided that these are prescribed by law and necessary to respect the rights and reputation of others or to protect national security, public order, health or public morality. Furthermore, Article 20 prohibits certain types of speech, such as war propaganda, which must be prohibited by law, as well as any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination.

- **Human Rights Committee (HRC) – General Comment No. 34⁵⁸**

HRC General Comment No. 34 focuses on the well-known freedom of thought and expression stipulating: “*Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person...essential for any society. They constitute the foundation stone for every free and democratic society.*”⁵⁹ They are necessary for transparency, accountability and the promotion and protection of human rights. States parties are required to implement the rights contained in Article 19, as well as the instructions given by the Committee in domestic legislation.⁶⁰ Regarding restrictions, the Committee notes that any limitation “*shall not put in jeopardy the right itself*”.⁶¹ Furthermore, the Committee emphasises that paragraph 3 of Article 19 outlines specific conditions, and only under these conditions can be restrictions imposed.⁶²

- **Rabat Plan of Action**

In the context of the rights provided by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the limitations stipulated in Article 20 of the ICCPR, the Office of the United Nations High Commissioner for Human Rights organised a series of seminars resulting in the Rabat Plan of Action.⁶³ The Rabat Plan of Action focuses on preventing incitement to discrimination, hostility, or violence based on national, racial or religious hatred. If a statement is to be considered a criminal offence, a six-part threshold test is proposed consisted of the following:

1. **Context** - This is crucial to consider when assessing whether specific statements are likely to incite discrimination, hostility, or violence against a targeted group.
2. **Speaker** - Their position or status should be taken into account, as well as their intended audience.
3. **Purpose** - Article 20 of the ICCPR outlines the purpose. Negligence and omissions are not sufficient for an act to be a criminal offence. This requires activation of the triangular relationship between the object, the subject of the speech, and the audience.

⁵⁸ 102nd Session, Geneva, 11 – 29 July 2011.

⁵⁹ Ibid, paragraph 2.

⁶⁰ Ibid, paragraph 8.

⁶¹ Ibid, paragraph 21.

⁶² Ibid.

⁶³ Published on 5 October 2012 and available at [OHCHR | The Rabat Plan of Action](#).

4. **Content and form** - The analysis of content may include how provocative and direct the speech was, as well as the form, style and nature of the arguments used.
5. **Dissemination of the speech act** - This involves considering the reach of the language, its public nature, the means of distribution, and whether the audience had the means to act upon the incitement.
6. **Probabilities, including imminence** - The instigation through inciting language should not be considered a crime. However, there must be an identified risk of harm. Courts must determine that there was a reasonable probability that the language would succeed in inciting the actual act against the targeted group, acknowledging that such a cause must be direct.

- **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁶⁴**

Article 4 of ICERD requires states parties to condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. In addition, it requires states to adopt immediate and positive measures, “*designed to eradicate all incitement to, or acts of, such as discrimination*”. In particular, it requires states to:

- Declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- Declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law;
- Not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

- **Committee on the Elimination of Racial Discrimination (CERD) – General Comment No. 35⁶⁵**

CERD General Comment No. 35 on combating racist hate speech recognises 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.*”⁶⁶ As a result, and in accordance with their obligations, states are required to pay due attention to all manifestations of racist hate speech and take effective measures to combat them.

ICERD recommends that the criminalisation of racist expression should be reserved for serious cases, which are proven beyond reasonable doubt. While less serious cases should be addressed by means other than criminal law, taking into account the nature and impact on the targeted groups or individuals. When applying criminal sanctions, they must be guided by the principles of legality, proportionality and necessity.⁶⁷

⁶⁴ Adopted by General Assembly Resolution 2106 (xx) of the United Nations on 21 December 1965.

⁶⁵ Adopted on 26 September 2013.

⁶⁶ Ibid, paragraph 7.

⁶⁷ Ibid, paragraph 12.

However, it also acknowledges that some issues in accordance with the obligations set out in ICERD should be sanctioned as offences punishable by law⁶⁸, which are:

- All dissemination of ideas based on racial or ethnic superiority or hatred by any means;
- Incitement to hatred, contempt or discrimination against members of a group based on race, colour, descent, or national or ethnic origin;
- Threats or incitement to violence against individuals or groups for the reasons mentioned above;
- Insults, mocking or slandering individuals or groups or the justification of hatred, contempt, or discrimination on the grounds mentioned above, when it clearly constitutes hatred or discrimination;
- Participation in organisations and activities that promote and incite racial discrimination.

Furthermore, ICERD recommends that public denials or attempts to justify acts of genocide and crimes against humanity, as defined by international law, should be declared punishable offences, provided that they clearly constitute incitement to racial violence or hatred.

However, expressing opinions on historical facts should not be prohibited or punished.⁶⁹

• **European Convention on Human Rights (ECHR)**

Similarly to the ICCPR, at the European level, Article 10(1) of the ECHR stipulates that everyone has the right to freedom of expression. This includes the freedom of thought and the freedom to receive or give information and ideas without interference by public authorities.

However, Article 10(2) also acknowledges that these freedoms are subject to certain duties and responsibilities. Moreover, they may be subject to formalities, conditions, restrictions, or penalties as long as these are prescribed by law and are necessary in a democratic society. Article 17 of the ECHR is also important and provides that nothing in the Convention may be interpreted as implying for any state, group or person any right to engage in any activity to carry out any act aimed at the destruction of any right and freedom provided for or their restriction to a greater extent than provided for. The ECtHR has dealt with numerous cases where an applicant, using hate speech or incitement to hatred, has attempted to argue the freedom of expression. In the case of *Glimmerveen and Hagenbeek v. the Netherlands*⁷⁰, the applicants were convicted for possessing leaflets addressed to “white Dutch people”, delivering a message that all those who were not white should leave the Netherlands. The case was found inadmissible by the Court, stating that Article 17 (Prohibition of abuse of rights) of the ECHR did not allow the use of Article 10 (Freedom of expression) for the dissemination of ideas that are discriminatory in a racial aspect.

⁶⁸ Ibid, paragraph 13.

⁶⁹ ICERD, General Comment No. 35, paragraph 14.

⁷⁰ Decision of the European Commission of Human Rights (before the establishment of the permanent Court), 11 October 1979.

RECOMMENDATIONS FROM THE COUNCIL OF EUROPE

- **Recommendation (97) 20 on Hate Speech**⁷¹

The Committee of Ministers through this recommendation of 1997 defined hate speech as *“forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”*.⁷² The focus of the Recommendation was on hate speech including dissemination through the media and made a number of recommendations.⁷³

- **Recommendation CM/Rec (2022) 16 on combating hate speech**⁷⁴

This latest Recommendation of the Committee of Ministers updates the definition of hate speech by defining it as *“all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as race, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.”*⁷⁵ Furthermore, the Recommendation acknowledges that hate speech encompasses a range of expressions of hatred that vary in their severity, the harm caused, the impact on specific groups, and in this regard, member states are required to ensure a set of measures to prevent and effectively combat hate speech. Such measures should be consistent with the ECHR and ECtHR jurisprudence and should distinguish between:

- Hate speech prohibited by criminal law;
- Hate speech that does not reach the level of severity required for criminal liability but is subject to civil or administrative law;
- Insulting or harmful types of expression that are not sufficiently serious to be legitimately restricted under the ECHR but require alternative responses such as counter-speech, promotion of dialogue and intercultural understanding, including through the media and social media, and relevant educational activities, information exchange and awareness-raising.⁷⁶

When assessing the severity of hate speech and determining the type of responsibility that should be applied, the ECtHR jurisprudence should be followed. Furthermore, it is recommended to take into account the following factors:

- The content of the expression;
- The political and social context at the time of the expression;
- The speaker’s intent;
- The role and status of the speaker in society;
- How the expression is disseminated or reinforced;

⁷¹ Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of Deputy Ministers.

⁷² Annex to Recommendation No. R(97) 20, Scope.

⁷³ Ibid, Principle 6.

⁷⁴ Adopted by the Committee of Ministers on 20 May 2022 at the 132th of the Committee of Ministers .

⁷⁵ Annex to Recommendation CM/Rec (2022) 16, para 2.

⁷⁶ Ibid, para 2.

- The ability of the expression to lead to harmful consequences, including the imminence of such consequences;
- The nature and size of the audience;
- Characteristics of the targeted group.⁷⁷

Recommendation [CM/Rec \(2022\) 16](#) also provides a number of recommendations that member states should implement, emphasising the importance of raising awareness and education to address the grassroots causes of hate speech,⁷⁸ and provide support to those targeted by hate speech through psychological, medical, and legal assistance.⁷⁹ At the same time, it acknowledges that monitoring and analysing hate speech are crucial⁸⁰, along with national coordination and international cooperation.⁸¹

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

The European Court of Human Rights interprets Article 10 of the European Convention on Human Rights as a strong safeguard for the right to freedom of expression. It describes it as *“one of the main pillars of a democratic society and a fundamental condition for its progress and the self-fulfilment of every individual”*.⁸² In its base decision in the case of *Handyside v. United Kingdom*, the Court emphasises that freedom of expression *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 requirements are essential for pluralism, tolerance, and an open mind, without which there is no “democratic society”*.⁸³ This principle creates the necessary space for a strong and pluralistic public debate in a democratic society.⁸⁴

Regarding the relation between robust debate and reputation interests, the European Court of Human Rights emphasises that *“in this field, political invective often spills over into the personal sphere; such are the risks of politics and the free debate of ideas, which constitute the guarantees of a democratic society”*.⁸⁵ In the *Handyside* Decision, the Court interpreted the doctrine of the margin of appreciation, which considers how the Convention is interpreted at the national level. According to this doctrine, states are granted a certain degree of freedom in how they regulate expression. While states enjoy a narrow margin of appreciation concerning expression in the political field, they have a broader margin when it comes to matters of morality, decency and religion. This contradiction is usually explained by the long-standing recognition of the importance of political expression in a democracy and the lack of a European consensus on how issues such as public morality, human behaviour, and religion should be regulated.⁸⁶

⁷⁷ *Ibid*, para 4.

⁷⁸ *Ibid*, section 4.

⁷⁹ *Ibid*, section 5.

⁸⁰ Annex to Recommendation [CM/Rec \(2022\) 16](#), section 6.

⁸¹ *Ibid*, section 7.

⁸² Case *Lingens v. Austria*, paragraph 41, in conjunction with the case *Handyside v. United Kingdom*, paragraph 49.

⁸³ Case *Handyside v. United Kingdom*, paragraph 49

⁸⁴ Freedom of Expression and Insult, A Case Study of the European Court of Human Rights, Tarlach McGonagle, supported by the European Union and the Council of Europe, June 2018.

⁸⁵ Case *Lopes Gomes da Silva vv Portugal*, paragraph 34; as well as the case *Kuliš v. Poland*, paragraph 52.

⁸⁶ Freedom of Expression and Insult, A Case Study of the European Court of Human Rights, Tarlach McGonagle, supported by the European Union and the Council of Europe, June 2018, see at: <https://rm.coe.int/liria-e-shprehjes-dhe-fyerja-alb-sep-2018-final/16808e529e>

- **Vejdeland and others v. Sweden**⁸⁷

In this case, the applicants distributed 100 leaflets in a high school to a group called National Youth. The statements in the leaflets claimed that homosexuality was a *“deviant sexual inclination”*, had a *“morally destructive effect on the fabric of society”* and was responsible for the development of HIV and AIDS. Furthermore, organisations advocating for the rights of homosexuals were accused of attempting to *“minimise paedophilia”*. The applicants were convicted by Swedish courts for agitation against a national or ethnic group. In presenting their case before the ECtHR, the applicants argued that the Swedish courts had violated their right to freedom of expression, that they did not intend to express contempt for homosexuals, and that the purpose of the activity was to initiate a debate on the lack of objectivity in the Swedish school system. The ECtHR found that there was no violation of Article 10 (Freedom of expression), as the interference with their right to freedom of expression by the applicants was considered reasonable by the Swedish authorities as *“necessary in a democratic society”* to protect the reputation and rights of others. Furthermore, the ECtHR stated that the statements made constituted serious and prejudiced claims, even if they had not been a direct call for acts of hatred. The Court emphasised that *“discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour”*.⁸⁸

- **Jerslid v. Denmark**⁸⁹

The applicant, a journalist, had produced a documentary featuring some individuals referring to themselves as the *“green jackets”*, who were engaging in abuses and derogatory comments against immigrants and ethnic groups in Denmark. He was convicted for aiding and abetting in the dissemination of racist comments. The applicant claimed a violation of his right to freedom of expression. The ECtHR made a distinction between the members of the *“green jackets”*, who openly made racist comments and the applicant, a journalist seeking to expose them so that the public could be informed. Furthermore, the purpose of the documentary was not to promote racist views but to inform the public of an important issue, and as such the applicant’s right to freedom of expression had been violated. The ECtHR noted that *“News reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of public watchdog. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so”*.⁹⁰

- **Feret v. Belgium**⁹¹

The applicant was a member of the Belgian Parliament and the leader of the political party National Front. During an election campaign, a number of leaflets were distributed with slogans including *“rise against the Islamisation of Belgium”*, *“stop the false integration policy”* and *“send foreign jobseekers home”*. The person responsible was convicted for incitement to racial discrimination, received a community sentence, and was disqualified from holding parliamentary office for 10 years. The applicant claimed that his conviction violated his right to freedom of expression. The ECtHR found that there was no

⁸⁷ (Application No. 1813/07), 9 May 2012).

⁸⁸ Ibid, paragraph 55.

⁸⁹ (Application No. 15890/89), 23 September 1994.

⁹⁰ Ibid, paragraph 35.

⁹¹ (Application No. 15615/07), 16 July 2009.

violation of his right to freedom of expression. It noted that his comments could have stirred feelings of distrust, rejection or hatred towards foreigners. The context of such comments made during an election process was an important consideration and clearly led to the incitement of racial hatred. In these circumstances, the applicant's conviction was justified in the interest of preventing disorder and protecting the rights of others.

- **Delfi AS v. Estonia**⁹²

The applicant runs a commercial basis news portal. He was held liable by Estonian national courts for defamatory comments posted by his readers in an online news article about a ferry company. After a request from the ferry company, the applicant removed the defamatory comments approximately 6 weeks after publication. The applicant claimed that holding him liable for third-party comments was a violation of his right to freedom of expression. Furthermore, the Court held that the extreme nature of the comments concerned, the fact that they were published in response to an article published by the applicant on a platform managed and exploited professionally for commercial purposes, and the measures taken by the applicant were insufficient to promptly remove them. While the imposed fine was moderate and thus finding the applicant liable in these circumstances was a justified and proportionate limitation of his freedom of expression.

- **Smajic v. Bosnia and Herzegovina**⁹³

The applicant was convicted for incitement to national, racial and religious hatred, discord, or intolerance following a series of posts on an Internet forum describing military actions that could be taken against Serbian villages in the Brčko District in the event of another war. The applicant claimed that his conviction was a violation of his right to freedom of expression, as he had expressed his opinion on a matter of public interest. The ECtHR found the case inadmissible as clearly unfounded. However, it noted that the domestic courts had carefully examined the applicant's case and provided sufficient reasoning for his conviction. In particular, they observed that the language he had used was offensive towards Serbs, touching upon the sensitive issue of ethnic relations in Bosnian society after the conflict. Furthermore, the imposed penalties, namely the suspended sentence and computer confiscation, were not excessive. Overall, the intervention in the applicant's right to freedom of expression was prescribed by law and pursued a legitimate purpose to protect the reputation and rights of others.

⁹² (Application No. 64569/09), 16 June 2015.

⁹³ (Application No. 48657/16), 8 February 2018.

OTHER EUROPEAN STANDARDS

There are other standards worth mentioning within the Council of Europe that provide useful insights. They are:

Convention on Cybercrime⁹⁴

This addresses a series of offences that can be carried out through the use of computer systems and calls for the contracting parties to use this framework in presenting national legislation, as well as to cooperate in the criminal prosecution of such offences. It does not specifically address the hate speech. However, this gap has been partially corrected through the Additional Protocol to the Convention on Cybercrime, regarding the criminalisation of acts of a racist and xenophobic nature carried out through computer systems⁹⁵ (Protocol). It defines “*racist and xenophobic materials*” as any material, image or other representation of ideas or theories that advocate, promote or incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors. The Protocol requires contracting states to adopt legislative and other measures to establish criminal offences under local laws where computer systems are used for:

- distributing racist and xenophobic materials;
- making threats or insults motivated by racism and xenophobia;
- denying, minimising, approving or justifying acts constituting genocide or crimes against humanity;
- assisting or inciting any of the issues mentioned above.

General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance (ECRI) - Combating hate speech⁹⁶

ECRI makes a series of important recommendations as to how states can address hate speech, including:

- Conducting research to identify favourable conditions for the use of hate speech, measuring its extent and the harm it causes, with the aim of discouraging, preventing and mitigating/correcting the damage caused.
- Using robust approaches to increase awareness of pluralism, the risks posed by hate speech, and demonstrating the falsehood of its underlying principles and its unacceptability.
- Providing support for those targeted by hate speech, both individually and collectively.
- Extending support for self-regulation by public and private institutions (including elected bodies, political parties, educational institutions and cultural and sports organisations) as a means to combat the use of hate speech.
- Using regulatory powers concerning the media (including Internet service providers, Internet intermediaries and social media) to promote actions against hate speech, challenging its acceptability, but ensuring that such actions do not violate the right to freedom of expression and opinion.

⁹⁴ Adopted in Budapest on 23 November 2001

⁹⁵ It entered into force on 1 March 2006.

⁹⁶ Adopted on 8 December 2015

- Clarifying the scope and applicability of civil and administrative liability for the use of hate speech that incites or aims to incite acts of violence, intimidation, hostility or discrimination against those targeted, while respecting the right to freedom of expression and opinion.
- Withdrawing all forms of financial support and other forms of support from public authorities to political parties and other organisations that use hate speech or do not sanction its use by their members. Ensuring, while respecting the right to freedom of association, the possibility of banning or dissolving the organisation regardless of whether they receive any form of public support when using hate speech.
- Taking appropriate and effective actions against the use of hate speech in a public context through the use of criminal law, provided that no other, less restrictive measure is effective and the right to freedom of expression and opinion is respected.

DOMESTIC CASE LAW IN HATE SPEECH CASES

Our country still lacks a consolidated system for collecting data on hate crimes and hate speech, as well as reporting on them. Cases that have ended up in court and have been decided upon can be found on the website of the Kosovo Judicial Council. However, their publication is not based on the nature of the offence committed and punishable, which complicates the identification of cases related to hate speech. From the cases reported by the media and those available on the official website of the Kosovo Judicial Council, we are presenting some below:

- **Case - PS.No.20/19 - Basic Court of Prishtina, Special Department, 5 December 2019⁹⁷**

I.T., who was the Minister in the Government of Kosovo at that time, participated in a gathering organised by citizens, which was not organised by the Government of the Republic of Kosovo or the Ministry he led. This gathering was organised by some citizens who opposed NATO intervention. On this occasion, the defendant addressed the crowd of Serbian community citizens with the words *“The reason for the aggression in our country was the so-called humanitarian catastrophe; Reçak was invented in Kosovo and Metohija, and it was the Albanian terrorists who invented all this, committing the greatest crimes in Kosovo and Metohija for which no one has taken responsibility to this day. They committed crimes before the NATO aggression; they killed innocent Serbian civilians and police officers at their workplace, continued the bloody feast during the aggression and after the so-called peacekeeping mission arrived to Kosovo and Metohija”*.

The Basic Court in Prishtina – Special Department issued Judgment PS.no.59/2021 on 19.10.2022, finding the accused (former Minister in the Government of Kosovo) guilty of the criminal offence of Incitement of National, Racial, Religious or Ethnic Hatred under Article 147, paragraph 1 of the CCRK, and sentencing him to one year of imprisonment for the commission of the criminal offence, which would be executed after the judgment becomes final. After the appeal, the case went to the Court of Appeal. The Court of Appeals - Special Department issued Ruling No. 2/2023, upholding the Judgment of the Basic Court.⁹⁸

⁹⁷ The following is a summary of the Judgment issued by the Court, which is currently not available online. Alternatively, the case has been covered by various media outlets. An example of this case can be found here: <https://shorturl.at/hmwCV>

⁹⁸ The ruling was issued while the Ombudsperson was compiling this report.

- **Case P. No. 160/20 - Basic Court of Prizren - 24 August 2021**⁹⁹

In this case, an individual made a series of posts on the social network Facebook regarding Islam in Kosovo and its influence on the traditions of the Albanians in Kosovo. For example, he is reported to have said, *“Since the independence of Kosovo, we are proving that Kosovo is an Arab state within Europe”*. Furthermore, *“the Islam Clergy in Albanian lands, with its entire arsenal, fights against traditional Albanian symbols and emblematic national personalities, such as Skanderbeg and Mother Teresa, against Albanian traditions, and for the destruction of the Albanian nation by ‘serbianizing’ it*. This prompted a number of users to comment on his posts. The court found him guilty and fined him. The court found him guilty and imposed a fine on him.

- **Case P. No. 613/21 - Basic Court of Gjakova - 24 March 2022**¹⁰⁰

In this case, two individuals have been found guilty of incitement to hatred, division and intolerance between ethnic groups (Albanian and Serbian) under Article 141 (1) of the Criminal Code. These individuals distributed some pictures depicting persons killed during the war in Kosovo in a residential building where they resided (ethnically Serbian). The pictures targeted this individual of Serbian ethnicity, and the case ended up in court where both individuals were fined for the offence committed.

- **Case P. No. 28/2021 - Basic Court of Mitrovica - 25 March 2022**¹⁰¹

An individual had sprayed on the wall of a school attended by ethnically Serbian students and had written the word “UÇK” (Kosovo Liberation Army). The accused was charged and convicted of incitement to hatred, division and intolerance between ethnic groups. The court granted the appeal as it was not convinced that the elements of the crime under Article 141, paragraph 1 of the Criminal Code, were proven in the circumstances of this case. The court held that the graffiti should be examined in the light of the circumstances at the time it was painted and, in this case, did not constitute incitement to hatred as it did not call for revenge, violence, mockery or derision. The “language” through the graffiti referred to a past event and not a call to action 20 years later.

- **Case – Case number 2021: 137347 - Basic Court of Prishtina - 9 August 2021**¹⁰²

A citizen of Montenegro, during the annual manifestation of “Vidov Dan” in Mazgit, the Municipality of Obiliq, in the vicinity of “Gazimestan” monument, publicly and in the presence of a number of citizens, made calls such as “kill the Albanians”, “We will bathe Kosovo in blood” and “Kosovo is Serbia”. The court issued a judgment finding this person guilty of incitement to hatred and sentenced him to 6 months in prison, taking into account the pre-trial detention period, and for the remaining part imposed a fine of 6700 Euro. Additionally, a deportation order with a 5-year entry ban was issued against him.

⁹⁹ Available at [0191-Aktgjykimi \(gjyqesori-rks.org\)](https://www.gjyqesori-rks.org/0191-Aktgjykimi).

¹⁰⁰ Available at [0191-Judgment \(judge-rks.org\)](https://www.judge-rks.org/0191-Judgment).

¹⁰¹ Available at [0191-Judgment \(judge-rks.org\)](https://www.judge-rks.org/0191-Judgment).

¹⁰² Available at [0191-Aktgjykimi \(gjyqesori-rks.org\)](https://www.gjyqesori-rks.org/0191-Aktgjykimi).

- **Case - P. No. 319/20 - Basic Court of Peja - 2 March 2021**¹⁰³

An individual was convicted for incitement to ethnic hatred based on Article 141 (1) of the Criminal Code due to comments posted on a social media page. In an instance, the defendant commented on an article on a social media platform titled *“Alarming: 15,000 citizens of Istog have applied for a visa”*. The defendant was a distinguished commentator (top fan) of this page. His comment stated *“They have necessarily to leave this country, where Bosnians and “Shkitë” (Serbs) are still maltreating us in the Istog police...”*. Another comment targeted a police officer at the local station. The defendant was fined.

EX OFFICIO CASE DEALT WITH BY THE OMBUDSPERSON

Institution No. 468/2019 - related to the positive obligations of the state.¹⁰⁴

Regarding the impact of social media on daily life and the potential risks to victims, including the omission or delayed action of responsible authorities, the Ombudsperson’s Report (ex officio 468/2019) also underlines this. Ex officio investigations into the case concerned were initiated by the Ombudsperson after an article titled *“Police speaks about ‘mysterious’ woman seen around Kosovo”* was published on an online portal. In social networks and other online portals, it was reported that a woman had abducted several children in different municipalities. On the social network Facebook, there was also a post with a woman at a bus station with the caption *‘Beware of this woman, she is kidnapping children’*. The information quickly spread through social media and online portals, thus disseminating false information that the identified person could be a male dressed as a female, leading to suspicion that the person might be transgender, fuelling hatred towards the individual. Subsequent media reports continued, including the police’s public statement that the woman concerned had not committed any criminal act, but her photo was spread on social networks by some young people to mock her. Later on, she was attacked by some young people in Lipjan and a few days later in Ferizaj. The information spread through social media and television escalated the situation quickly, resulting in a physical assault and public humiliation of the victim. After concluding the investigation related to this case, the Ombudsperson found that the relevant authorities had not fulfilled their constitutional and legal obligations or international standards in protecting the woman from the attacks she suffered. Consequently, violations of a series of human rights and freedoms were identified, and recommendations were addressed to the relevant authorities.

LANGUAGE IN PUBLIC DISCOURSE, ACCORDING TO THE ICM

The Independent Media Commission (hereinafter: ICM) is a constitutional independent institution, the mandate and operation of which are defined under Chapter XII of the Constitution of the Republic of Kosovo, as well as the Law on ICM. According to the Constitution, the ICM is the only institution regulating the broadcasting spectrum frequencies in the Republic of Kosovo, licensing public and private broadcasters, defining and implementing the broadcasting policy, and exercising other competencies stipulated by law.¹⁰⁵

¹⁰³ Available at [0191-Aktgjykimi \(gjyqesori-rks.org\)](https://www.gjyqesori-rks.org).

¹⁰⁴ Ex officio case from the Ombudsperson Institution, 9 December 2019 can be found at <https://shorturl.at/enIN0>

¹⁰⁵ Article 141, Independent Media Commission

The Ombudsperson has been provided with information by responsible IMC officers¹⁰⁶ regarding the measures that the ICM has taken regarding the language used on the country's television, as well as complaints submitted to IMC regarding hate speech on public broadcasters in Kosovo.

According to the ICM, from the 24/7 monitoring conducted on licensed broadcasters, it can be said that the level of public communication on local television has improved relatively in recent years. They state that there are more cases of the use of vulgar language than hate speech. Over the years, there have been no complaints about hate speech related to sexual orientation, religious basis, marital status, mental health, etc. Regarding complaints about the use of hate speech on local television, the ICM states that there is no data system, but there is data that they publish through annual reports or keep in internal data usage tables, which are also made available to the Ombudsperson.

From the ICM data, it is understood that in 2020, the ICM received only 3 complaints related to the language used on television. In 2021, out of 17 complaints processed for violations of the Code of Ethics, none of them specifically involved hate speech. However, in 2022, the ICM received 10 complaints for violations of the Code of Ethics, but none for hate speech. In 2022, the ICM opened two ex officio cases against a local frequency television for the use of inappropriate language. The ICM claims that they have a practice of action in cases of submitting complaints, their goal is not always to issue a warning or impose a fine. According to them, they first go through a reconciliation or apology procedure from the television for the language used, and if the case recurs from by the same television, the option of issuing a warning or imposing a fine is considered. For this reason, the ICM states that so far, they have not identified any cases in which a fine has been imposed for the use of hate speech by local television.

LANGUAGE IN PUBLIC DISCOURSE, ACCORDING TO THE PRESS COUNCIL OF KOSOVO (PCK).

The Press Council of Kosovo (PCK) is a self-regulatory body primarily responsible for implementing the Code of Conduct for the print media of Kosovo and the Code of Ethics, respectively. The Council has over 40 members from newspapers, portals, and news agencies. PCK consists of three independent members who perform the functions of the chairman and vice-chairmen, the Secretariat, as well as the Assembly of members, which is composed of representatives of the affiliated print media – chief editors or their delegates.

During the time span under consideration in this report, PCK dealt with a significant number of cases. However, it seems that many of them do not raise concerns about hate speech.

In 2022, the Council received six complaints from parties alleging violations of Chapter III (incitement and hate speech) of the Media Code. PCK decided not to grant five complaints, while one was granted. Regarding the article referred to, PCK finds that the publication of an opinion on a portal is not based on facts or evidence.¹⁰⁷

During 2021, PCK dealt with 10 complaints from parties alleging violations of Chapter III (incitement and hate speech) of the Code of Ethics. Out of this number, the Council approved only two complaints,

¹⁰⁶ The meeting between OI officers and ICM officers took place on 22 February 2023.

¹⁰⁷ Available at [vendim KMSHK 1289-2022.pdf](https://www.vendim.com/kmsmk/1289-2022.pdf) ([presscouncil-ks.org](https://www.presscouncil-ks.org)).

essentially the same but submitted by different individuals. The Council found that two online media outlets reported an article describing MPs as Islamic, and the complainant argued that this constituted incitement to hatred in violation of the Code. PCK agreed that the title should not have included the formulation it had.¹⁰⁸

In 2020, the Council dealt with 12 complaints related to allegations of violations of Chapter III (incitement and hate speech). The majority of these complaints were not granted by the Council. In some cases, the Council did not find reader comments on the respective news on certain portals to which the complaints were addressed. Only in one case, PCK found a violation of Chapter III, in a media outlet that continuously published news on suicides in the country. The Council highlighted that media are prohibited from promoting criminal or violent actions, where such news is continuously published, and even accompanied by details of the methods and photographs of individuals involved.¹⁰⁹

¹⁰⁸ Available at [vendim_KMSHK_1168-2021.pdf \(presscouncil-ks.org\)](#).

¹⁰⁹ Available at [vendim_KMSHK_1078-2021.pdf \(presscouncil-ks.org\)](#).

LANGUAGE USED IN PARLIAMENTARY SESSIONS

Duties of MPs in the light of the debate in the Assembly of Kosovo

The language used in public debates by politicians significantly influences the general public as it shapes the themes and tone of public discourse. Politicians have a political duty and moral responsibility to refrain from using hate speech and stigmatising language, and to immediately and unequivocally condemn its use by others, as silence can be interpreted as approval or support. The enhanced protection of their freedom of expression also strengthens their responsibility in this field.¹¹⁰ Article 7 of the Constitution stipulates that *“The constitutional order of the Republic of Kosovo is based on the principles of freedom...equality, respect for human rights and freedoms and the rule of law, non-discrimination...social”*. Similarly, Article 21 of the Constitution stipulates that *“Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo”*.

The exercise of the function of a member of Assembly in the best interest of the country is guaranteed by Article 74 of the Constitution of Kosovo: *“deputies of the Assembly of Kosovo shall exercise their function in the best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly”*.

Pursuant to Article 75 of the Constitution, deputies of the Assembly enjoy immunity from criminal prosecution, civil lawsuits and dismissal for actions or decisions within the scope of their responsibilities as deputies. However, it is important to note that this article also acknowledges that immunity shall not obstruct the criminal prosecution of deputies of the Assembly for actions beyond the scope of their responsibilities as deputies.

The Constitutional Court of Kosovo has expressed its stance on parliamentary immunity in its Judgment No. K098/11,¹¹¹ emphasising that *“Deputies must be free to exercise their functions and not be held accountable for their actions, decisions, votes, and thoughts expressed during the time they are performing their duties as Members of the Assembly”*. It further clarifies that *“They enjoy immunity for their actions and decisions within the scope of their responsibilities as deputies. It is essential to highlight that this privilege is not granted to deputies for their personal interest but for the benefit of the people who elected them. This reflects the significance of the immunity, encompassing actions within the scope of their responsibilities as deputies of the Assembly”*.

The Rules of Procedures of the Assembly of the Republic, in Article 2, paragraph 1, subparagraph 1.10, defines non-parliamentary language as *“the usage of words, expressions and synonyms, which hurt or insult the dignity of the Members of the Parliament and other persons, incites hatred, intolerance and violence”*¹¹².

¹¹⁰ Parliamentary Assembly of the Council of Europe, Resolution 2275(2019), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=27636>

¹¹¹ https://gjk-ks.org/wp-content/uploads/vendimet/KO98-11_SHQ_AKTGJYKIM.pdf

¹¹² Article 2, paragraph 1, subparagraph 1.10 of the Regulation of the Assembly of the Republic of Kosovo (entered into force on 22 July 2022) see at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61266>.

Furthermore, in its Article 65, the possible measures that may be applied in case of the use of non-parliamentary language are specified: *“When a Member of Assembly or member of Government uses non-parliamentary language, or conduct that obstructs the plenary session or violates its order, the Chairperson of the plenary session issues an “admonition” by stating that he/she is using non-parliamentary language. If the admonition is not implemented or is repeated by the member of Assembly or member of Government within the same plenary session, the chairperson of the session issues an “admonition with advance notice of removal from the plenary session”.* According to Article 66 of the Rules of Procedure, the chairperson of the session may take the measure of removal from the plenary session for that day *“When a Member of Assembly or member of Government uses offensive language, insults the personality of the Chairperson of the Session or a Member of the Assembly, or continues the conduct against which other measures are imposed.* This measure is accompanied by the removal of the MP’s per diem for that day. Article 129 of the Regulation states that: *“The Code of Conduct for the MPs of the Assembly of the Republic of Kosovo is a separate act and is approved by the Assembly with the proposal of the relevant Committee for Assembly Rules of Procedure.”*

The Council of Europe’s comprehensive study on hate speech and its perception in Albania¹¹³ sheds light on the tolerance margin based on the case law of the ECtHR when it comes to elected politicians, political parties, the government, etc., and political discourse and hate speech. Moreover, in interpreting the extent to which parliamentary immunity can cover the expressions of MPs, the study refers to the *Norwood v. United Kingdom* case, where the ECtHR assessed that to distinguish between political activists, elected representatives, political parties, etc., a contextual approach was used. It explained how the right to freedom of expression is shaped by the nature of the position exercised and the status enjoyed. Furthermore, in reference to the ECtHR case law, the study¹¹⁴ highlights the ECtHR’s assessment in the Decision on the case *Lingens v. Austria*¹¹⁵, where the court clarified that when *“the battle against all forms of intolerance is part of the defence of human rights, it is crucial for politicians, during their political discourse, to avoid expressions likely to incite intolerance”.* Thus, despite the strong defence required for political freedom of expression in a democratic society, freedom does not encompass and cannot encompass *“the freedom to express racist opinions or opinions that incite hatred, xenophobia, anti-Semitism, and all forms of intolerance”.*¹¹⁶

Research findings

The Ombudsperson has monitored and analysed several parliamentary sessions in the Assembly of Kosovo during the period from 2020 to 2022. For the purpose of this research, nine parliamentary sessions have been selected within the time period covering January 2020 through March 2022, based on the topics and issues addressed, the language used, and the public interest¹¹⁷ they have generated. The transcription of these sessions has generated a data corpus of around 33,000 words. The data corpus was then analysed both manually, using a qualitative approach, and automatically, through

¹¹³ Beyond Definitions, A Call for Action Against Hate Speech in Albania, A Comprehensive Study, Council of Europe, November 2021, see at: <https://rm.coe.int/beyond-definitions-alb/1680a465f8>, page 12.

¹¹⁴ Ibid, page 12

¹¹⁵ Lingens case See at: [https://hudoc.echr.coe.int/fre#{"itemid":\["001-57523"\]}](https://hudoc.echr.coe.int/fre#{)

¹¹⁶ Ibid, page 12.

¹¹⁷ The parliamentary sessions covered the following dates: 3 February 2020 – elections in the country; 25 March 2020 – vote of no confidence in the government; 3 June 2020 – elections in the country; 5 May 2021 – debates on Covid-19; 17 and 19 May 2021 – new government program; 4 October 2022 – the issue of the north; 24 January 2022 – electricity price hike issue; 15 March 2022 – Civil Code.

Sketchengine¹¹⁸, using selected keywords. From the analysis of the data, it is revealed that the hate speech i.e. the direct incitement of hatred, has not been encountered in the analysed parliamentary sessions.

Although no direct incitement to hatred was encountered in the analysed parliamentary sessions, it does not mean that hate speech is completely absent from the session transcripts. In fact, expressions that cannot be defined as a criminal offence, or what is referred to as soft hate speech¹¹⁹, appear several times. These include insults directed at politicians/political parties and labels for criminalising political opponents (“Thieves”, “Criminals”, “Bandits”). Another frequently used word is “Theft” followed by words such as “corruption”, “crime”, “blackmail” to reinforce the concept and emphasise the alleged “criminal” behaviours. Even though this may not be considered an example of legally punishable hate speech, it can certainly be seen as an example of defamation, an action that falls under the broader definition of hate speech, as **damaging the reputation of the targeted person or group can lead to hatred towards them** (as indicated by the analysis of television debate comments: 27% of hate speech comments are related to political beliefs, see Fig 4.)

The findings from this research indicate that *defamation*, whether supported by arguments or not, is quite repetitive as a form of attack and a potential trigger for hate speech. For example, one of the main narratives of parliamentary groups is accusing the Government of smuggling, theft and “greed”, “causing degeneration”, inciting “corruption”, “nepotism”, “servility”, “clientelism”, “lack of human dignity”, being connected to the “mafia”, etc., and an accusation can be added to another for emphasis and rhetorical effect.

Alongside defamation, delegitimisation and silence are other strategies not only to attack but also to marginalise the opponent (“the way you speak is shameful”). The opposition is often accused of manipulating public opinion, following “mercenary logic”, engaging in “blackmail”, “lynching and activation of lynching against MPs”, of renouncing a “coup d’état” through “media mercenaries”. Cursing and insulting, although not explicitly mentioned, indicate a perception that would certainly deserve further investigation. Assumptions and conversational implications - i.e. the relevant assumptions implied regarding the belief context in relation to a statement, the truth of which is taken for granted, and the meanings the speaker suggests or implies with a statement, even though not expressed word by word, can be another way to implicitly point at undesirable behaviours and imply long-term responsibility. These also fall into the data group as a form of attack and a potential trigger for hate speech.

Even though sensitive political issues related to the political and ethnic composition of Kosovo were at the core of some parliamentary sessions, especially the session on the “Issue of the North” (4 October 2021), there is no trace of insults or ethnic stereotypes in the transcripts of the analysed sessions. However, in the transcript of the debate on the Draft Civil Code and the introduction of same-sex marriage, insults, defamation and indirect hate speech are very clear. In this case, it is important to clarify that the names of MPs and their discussions in these sessions have not been presented in the report for two reasons:

¹¹⁸ Sketchengine is a corpus management and text analysis software developed by Lexical Computing Limited since 2003 with the aim of studying linguistic behaviour through searching large text collections based on linguistically motivated queries (www.sketchengine.co.uk).

¹¹⁹ See above in this Report, pages 11, 12 and 13.

- firstly, the report doesn't aim to analyse the language used in the individual context, as this would limit the purpose of the report,
- secondly, all analyses are based on publicly available session transcripts. Additionally, the focus is on the content of the language, its impact on the public, and the stimulation of comments from the public, rather than on the individual

In this case, the "abstract obligations" of the Code of Conduct seem to have been taken over with arguments in favour of exercising freedom of expression without adhering to public opinion on the rights of LGBTI persons.

Language used against LGBTI persons

The Draft Civil Code project was not completely unknown to citizens, as it has been discussed in the public discourse since 2014. In August 2020, after the Civil Code Project was approved by the Government, it was forwarded to the Parliamentary Committee on Legislation¹²⁰. However, due to a lack of quorum, no vote was taken in 2020. Whereas in March 2021, the Draft Code was sent back to the Ministry of Justice for review. Its latest version was approved on 29 December 2021, and finally brought Assembly for debate on March 16¹²¹.

In this session, the members of the Kosovo Assembly were asked to vote for/against the amended document of the Civil Code, which addresses, among other things, civil partnerships of the same sex (Article 1138, para. 2 *"Registered partnerships between persons of the same sex shall be allowed. Conditions and procedures shall be regulated by a special law"*). This article of the Code, as noted by the media and social platforms, faced opposition from a significant number of citizens and some MPs, ultimately being rejected. Out of 77 MPs present in the Assembly session, 28 voted in favour, 29 against, 4 abstained and 16 did not vote at all. One of the main justifications raised by the MPS to oppose the proposed Code was that civil partnerships of the same sex posed a threat to the preservation of the institution of the family.

Before parliamentary discussion, some MPs made public statements explaining why they should not vote in favour of the Draft Civil Code. These positions generated negative comments on social media and in the public opinion, further revealing homophobic narratives and attitudes, undermining the equal rights of individuals in public opinion.

The statements of some MPs on their social media generated many comments filled with hate speech. Comments like *"[LGBTI] are sick people"* and *"I would hang these people in the middle of the square"*, which could potentially incite violence. During the same period, some negative and homophobic posts were spread online through Facebook, urging the public to *"say no to the Civil Code, which legitimises same-sex marriage and jeopardises family and nation, in the name of God and the nation"*. Among the comments, phrases like *"you cannot be homosexual and a patriot. Either you are with the Albanians, religion and tradition, morality and humanity, or you are their enemy"* were noted.

¹²⁰ Full name: Committee on Legislation Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency

¹²¹ Regarding the Draft Civil Code, the Ombudsperson submitted the Ex Officio Opinion No. 307/2022 to the Ministry of Justice concerning the recognition of family relationships of persons of the same sex under the Draft Civil Code. Accessible at: <https://oik-rks.org/wp-content/uploads/2022/05/Opinion-307-2022.pdf>

In the session of 16 March 2022, negative statements against LGBTI persons continued and were expressed vocally by some MPs, who not only openly advocated for the “natural family” and the “preservation of species” and “traditions” but also verbalised prejudiced content against same-sex couples. According to some MPs, the new Code would endanger “public morality” and introduce “sexual perversion”, “moral degeneration”, “disease”, “corruption”, behaviours “contrary to human nature”, “violation of the sanctity of the family”, “constitutes an act that seriously damages public health, causing serious and incurable diseases, such as HIV/AIDS”, and ultimately results in “social trauma”.

Civil society organisations have reacted against the language used towards the LGBTI community in the debate on the Draft Civil Code. In their responses, they emphasised that discrimination and social stigma harm the psychological, physical, social and economic well-being of LGBTI persons.¹²² They also addressed criticism towards the Government for remaining silent and not condemning the spread of hate speech in institutions and public forums.¹²³ Among other things, civil society organisations, through letters addressed to MPs and other relevant parties, have called for action in accordance with the Constitution of Kosovo and bring to an end the exclusion of same-sex couples from marriage.¹²⁴ They have addressed the same call to the President of the Republic of Kosovo, the Prime Minister of Kosovo, the Minister of Justice, and all members of the Assembly, reminding them that “*the Constitution of Kosovo does not provide gender-based restrictions on the freedom to marry... and prohibits discrimination based on gender, sexual orientation, or other personal status.*”¹²⁵

¹²² Faculty of Philosophy, Statement, https://filozofiku.uni-pr.edu/page.aspx?id=1,35,1390&fbclid=IwAR0o-L8WRhM7a_nosnH-kakBBf-oG49f582EjMTY6hBnfl_MQBny0gpsJGDA.

¹²³ See <https://kosovotwopointzero.com/en/we-dont-know-what-its-like-to-be-free/>; see also <https://cel-ks.org/en/>.

¹²⁴ Shih <https://www.lgbti-era.org/news/letters-support-civil-society-organizations-and-human-rights-defenders-western-balkans-and>.

¹²⁵ See [https://www.hrw.org/sites/default/files/media_2022/03/Marriage letter in Kosovo 3.16.22 for Web 0.pdf](https://www.hrw.org/sites/default/files/media_2022/03/Marriage%20letter%20in%20Kosovo%203.16.22%20for%20Web%200.pdf).

LANGUAGE IN MEDIA DISCOURSE

Media plays a crucial role in the development of democratic culture because it disseminates information that has an extraordinary impact on shaping public opinion and how citizens perceive various processes. They are also platforms that generate debates through the news and topics they choose to publish. Consequently, they must be free and independent, and voluntarily take on social responsibility. If they allow within their scope forums where citizens exercise their freedom of expression, they must also take responsibility to ensure that the debates transmitted through them do not incite hate speech and violence based on hatred, violating the dignity and rights of others.

Combating hate speech while ensuring media freedom is a complex issue that requires careful analysis. The Code of Ethics for Media Service Providers in the Republic of Kosovo¹²⁶ establishes ethical rules for Media Service Providers (MSP). Regarding the incitement of hatred, Article 5 of this Code specifies that *“MSPs should not encourage or promote, intentionally or indirectly, any form of discrimination and intolerance and must not broadcast any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity”*. Further, it lists the grounds protected in accordance with the Law on Protection against Discrimination and specifies that: *“MSPs during the broadcast of the content will not allow the use of denigrating language expressions, with the purpose of harming and the threat of an individual or a group on the basis of ethnicity, religion, gender, race, marital status, age or physical disability or mental disability”*. Furthermore, they *“...should not broadcast program contents that incite hatred and inequality and that may result in criminal or violent actions against an individual or a group”*. Whereas Article 11 defines the sanctions that are applied based on the Law of the Independent Media Commission and in specific cases *“when an MSP through its program encourages actions that violate the national interest and general safety, IMC will order MSP immediately to interrupt the broadcast of such content, which may result with **revocation of MSP’s license.**”*

TV debates

For the purpose of this research, and to explore inappropriate, discriminatory, prejudiced and hate speech in the media discourse, data has been collected and analysed from TV debates and the comments they generated from followers on social media.

The dataset for TV debates was created based on the data from parliamentary sessions, examining how parliamentary discourse was commented on and reported in the media discourse. Media monitoring was conducted over various months from 2020 to 2022, specifically monitoring TV shows and debates in three different mediums: *Debat Plus*, *Pressing* and *Rubikon*, selected based on their audience numbers¹²⁷. During this period, 23 TV debates were analysed: 17 were collected from the show pages on Facebook, where they were live-streamed, while 6 were collected from TV channels on YouTube. The sample also included a television show in the Serbian language, “Slobodno Srpski”, but no comments were found on the show page on Facebook for the selected dates.

¹²⁶ Code of Ethics for Media Service Providers in the Republic of Kosovo, Articles 5 and 11, accessible at: <https://kpm-ks.org/assets/cms/uploads/files/Legjislacioni/1476189555.8908.pdf>

¹²⁷ These data were collected through Crowdtangle – Page Followers, 1 February 2022.

The monitoring data are presented as aggregated data for all TV debate shows since the main goal of the study is to provide an overview of the extent and type of inappropriate, discriminatory, prejudiced and hate language in the public discourse.

The data for content analysis include a total of 12,581 comments from 17 live-streamed TV debates on the show pages on Facebook, from January 2020 to March 2022. These comments were written by citizens as a continuation of TV debates and may include both direct comments on the topics covered during the show and comments on other comments. (See Fig. 1.)

	Number of shows	Number of live broadcasts	Number of views during live broadcast	Number of comments	Number of likes	Number of shares
RUBIKON	5	3	21,284	450	157	7
DEBAT PLUS	9	7	156,86	4585	1343	42
PRESSING	9	7	412,480	7546	5583	578

Figure 1. The number of live broadcasts, comments, likes, and shares collected from the Facebook pages of Rubikon, Debat Plus, and Pressing.

Figure 2 shows that there is a statistically significant difference in the quantity of expressions used and hate speech between the analysed years. This is also illustrated in Figure 2, which divided 100% of comments into expressions used and hate speech in the analysed TV debate shows.

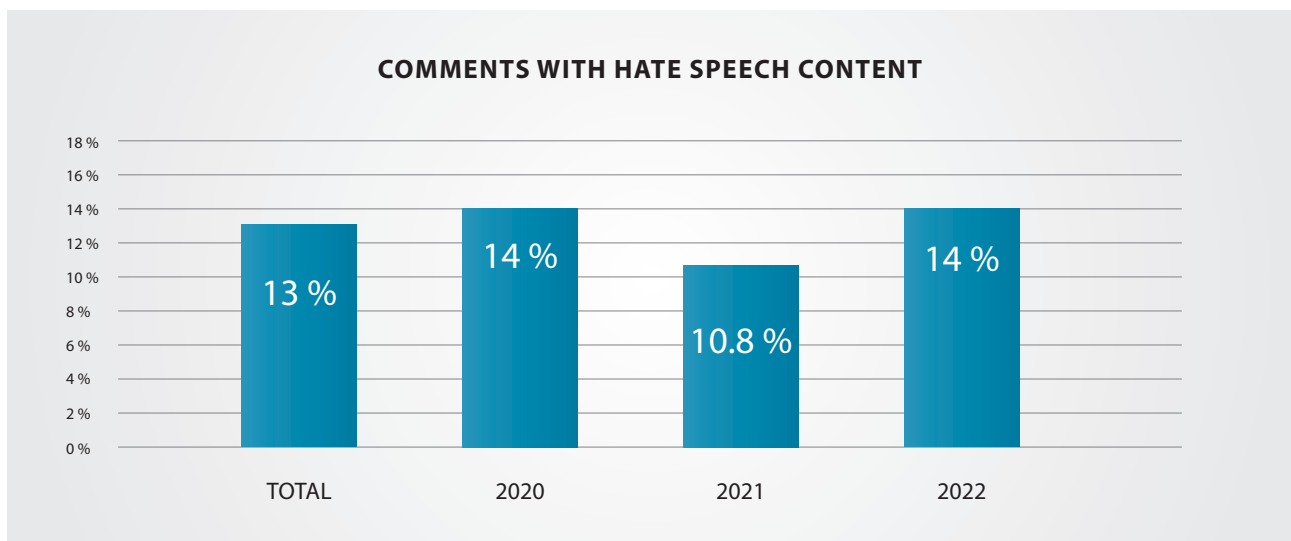


Figure 2. Percentage of hate speech comments. The column "Total" is based on 12,581 comments on from Facebook pages of Rubikon, Debat Plus and Pressing. The column "2020" is based on 9,109 comments from Facebook pages of the three TV debate shows. The column "2021" is based on 2,074 comments from Facebook pages of the three TV debate shows. The column "2022" is based on 1298 comments from Facebook pages of the three TV debate shows.

1,692 out of 12,581 comments on the Facebook social network analysed are categorised as hate speech, according to the criteria specified in the introduction. This means that comments with hate speech content were found in 1 out of 7 comments posted on the selected dates on the Facebook pages of the three TV debate shows in the three monitored media. This also implies that individuals or groups were the target of hate speech comments in 13% of cases, which is indeed a considerable percentage.

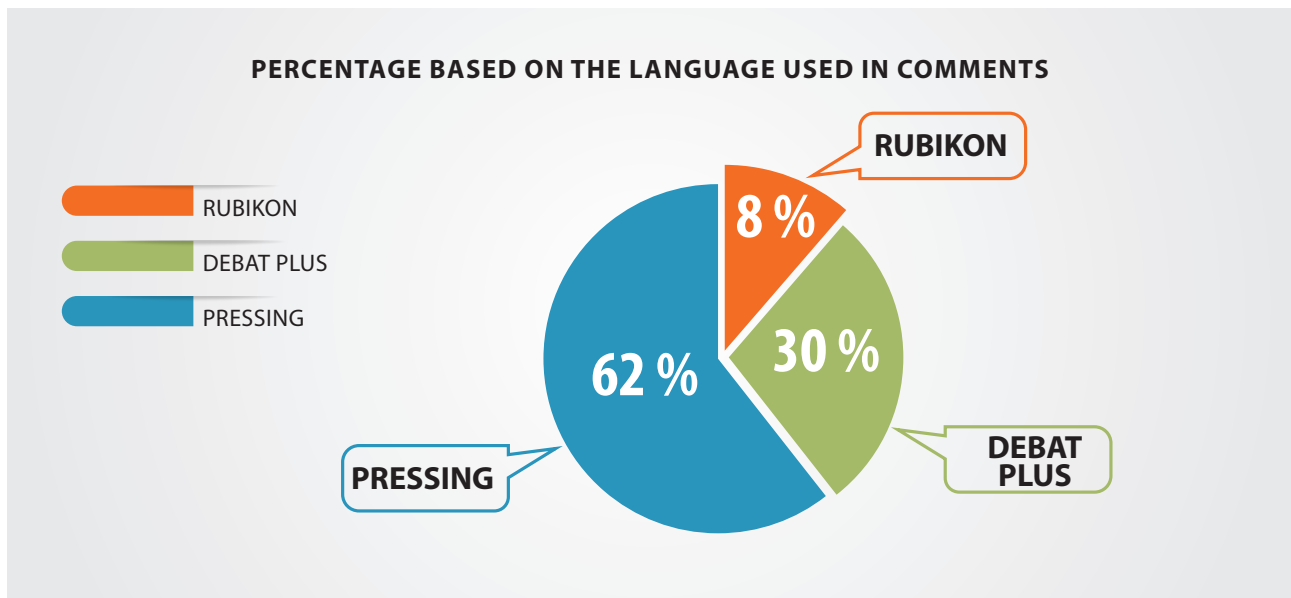


Figure 3. Percentage in 1,692 comments with hate speech content on the Facebook pages of TV shows

The majority of comments were related to the debated topics in the shows; 31 comments out of 1,692 were written in capital letters, which may indicate anger.¹²⁸ Some comments were clear cases of body-shaming, and some included death threats against political actors.

Categories of comments of the speech used in Facebook social network

The hate speech comments have been categorised into eight categories, selected based on the categories highlighted in the Introduction for their importance and quantitative relevance within the data corpus: political belief, ethnic affiliation, religion, dehumanising metaphors, sexual orientation, disability, cursing and others. Some comments have been placed in more than one category, resulting in a total of 1,803 cases of hate speech. These are clear cases of “intersectional hate speech”¹²⁹, which may combine, for example, derogatory remarks about political beliefs and sexuality.

¹²⁸ See Gómez-Zaragozá, Lucía and Sara Hinojosa Pinto, *Profiling Hate Speech Spreaders on Twitter using stylistic features and word embeddings*, CLEF (2021).

¹²⁹ See SCAN Project, *Intersectional Hate Speech Online*, http://scan-project.eu/wp-content/uploads/sCAN_intersectional_hate_final.pdf.

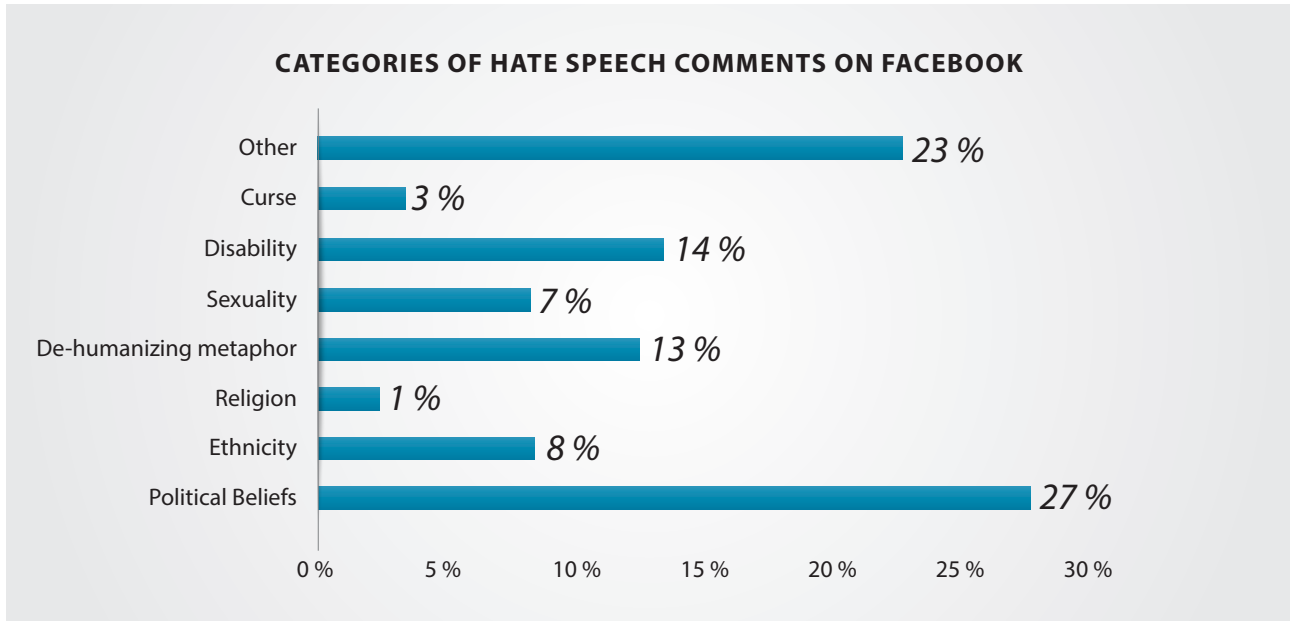


Figure 4. Percentage of hate speech comments divided into eight categories, based on 1,692 comments on the Facebook social network.

Looking at the four main categories of hate speech (political belief, disability, dehumanising metaphors and ethnic affiliation), we find some interesting data.

Comments targeting individuals or groups for their political beliefs are 459 out of 1,692 (27% of the total). This category includes derogatory expressions towards parties or politicians, such as “thieves”, “communists”, “dictator”, etc.

Such remarks were directed at a wide range of politicians; hate comments against older political parties¹³⁰ are predominant.

Comments related to disabilities are the second-largest category: 244 comments, or 14% of the total. “Animal”, “stammerer”, “idiot”, “blind”, “illiterate”, etc., were some of the expressions found in the data analysis.

The third-largest number of hate comments (220 comments, or 13%) involves dehumanising metaphors, such as “Sheep”, “Cow”, “Dog”, “Monkey”, “Snake”.

Hate speech targeting ethnic affiliation constituted 8% of the total hate comments. People used derogatory terms to refer to Serbs or other ethnic groups, even though the target of the insult was generally a citizen of Albanian ethnic identity.

Some categories had a smaller percentage of hate speech, while 23% of the comments were categorised as “other”, which is the second-largest number of hate comments. This category includes expressions such as “criminal”, “scoundrel”, “mercenary”, “trash”, “killer”, “hillbilly”, “bandit”, “corrupt person”, “spy”, “grave”, “destroyer of the country”, etc., representing negatively connoted professions and characteristics.

¹³⁰ “Old parties” is a term commonly used in Kosovo to refer to political parties created during the 1990s and early 2000s.

In 7% of the hate speech comments, the target was sexuality and mostly related to sexual orientation. Meanwhile, 3% were hate comments containing curses, mainly against politicians but sometimes against guests on TV shows. It is worth noting that insults based on religion are very rare, less than 1%.

Language in TV debates

Comments with hate speech content are not only the result of other comments during the live broadcast of the debate on Facebook; they are directly related to the topic discussed by the guests in TV debate shows. The data show that when inappropriate, discriminatory, offensive, or hate speech is used by a guest in the show, there is a high probability that comments on Facebook may contain hate speech (52%), while there is a 48% probability that comments may contain hate speech when inappropriate expressions or harsh speech are not used.

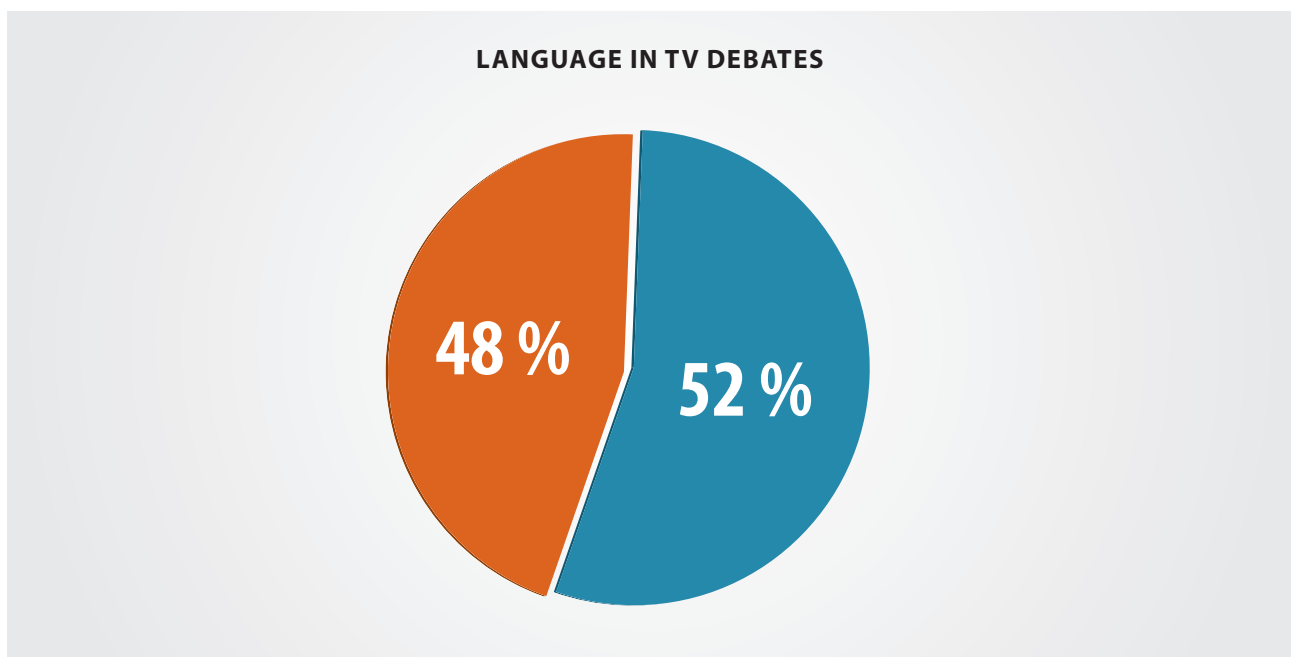


Figure 5. Language used in television debate expressed in percentage, according to whether the discussion by guests contains (52%) or does not contain (48%) inappropriate language.

Out of 1,692 total comments with hate speech content, 1,308 (77.3%) were caused by the harsh/inappropriate language used by guests during TV debates. This clearly indicates that if inappropriate/harsh language is used in TV debates, viewers are more likely to post hate comments on Facebook pages when the debate is broadcast live.

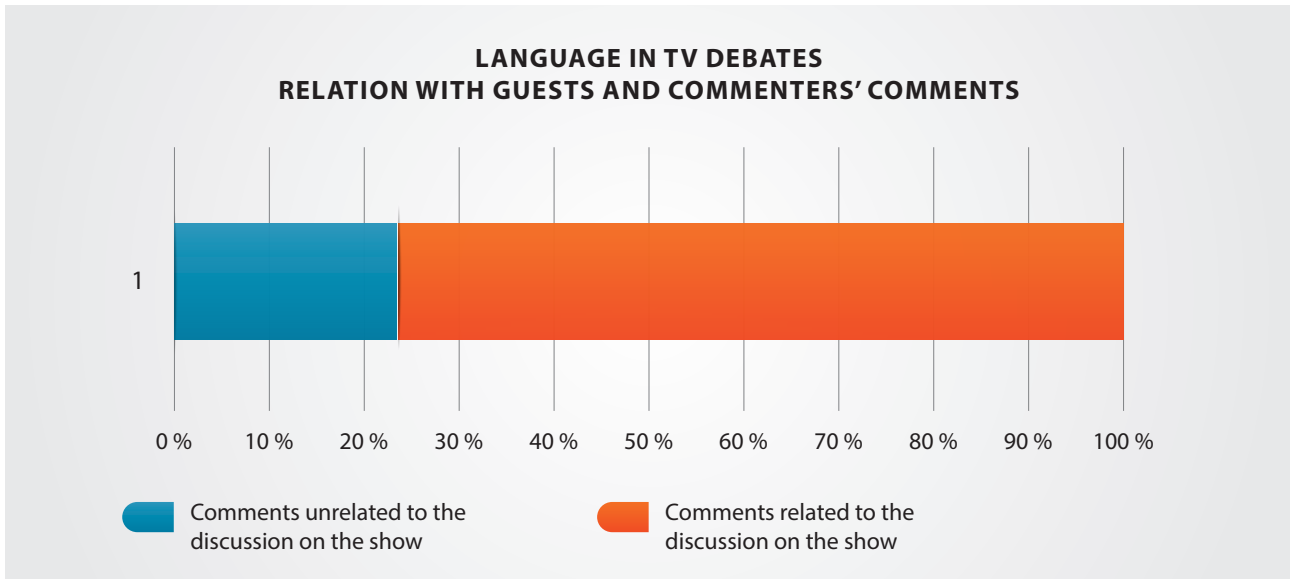


Figure 6. Language used in a TV debate expressed in percentage, when Facebook user comments were related or not related to the discussion of the guests on the show.

Authors and targets of hate speech comments

Based on user names and profile photos, a gender analysis was also conducted. This analysis took into account the fact that Facebook user profiles are not verified, and determining the gender of users is not always easy. It was also sometimes difficult to determine whether the profiles were fake or real.

The data show a significant difference between men and women, while around 5% of users were classified as unidentified because it was not easy to determine their gender from their name and profile photo. According to our classification, 86% of comments with inappropriate and hate speech content were posted by men, while 9.3% were posted by women. The majority of comments in the data set were written by men, explaining their over-representation as authors of inappropriate and hate speech.

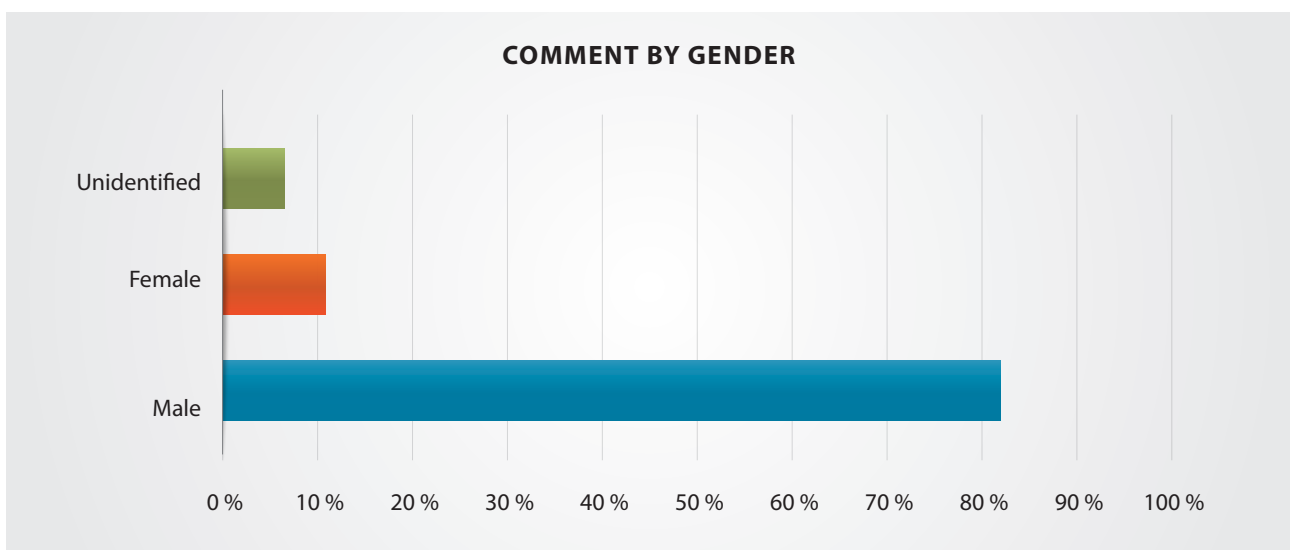


Figure 7. Percentage of comments with hate speech content categorised by the gender of Facebook users.

Comments on Facebook social network were also analysed to see who they specifically targeted. There was a tendency for hate comments to primarily target public personalities, such as political leaders, politicians in general, or analysts invited to TV debates (68% of all hate comments). Meanwhile, 22% targeted a group, such as political parties, ethnic groups, etc., with an additional 8.8% targeting both groups and individuals. In general, hate speech targeted specific individuals in 8 out of 10 cases and groups of people in 3 out of 10 cases.

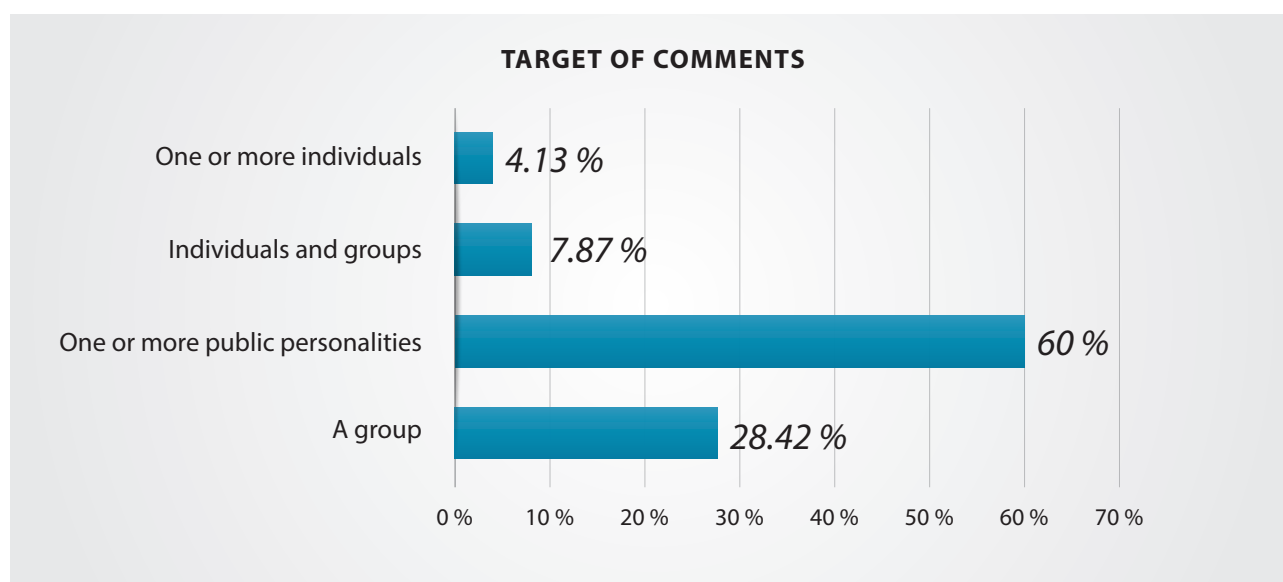


Figure 8. Percentage of hate speech comments categorised by comment target

Language used against LGBTI persons: media discourse

The parliamentary session held on 16 March 2022, regarding the Draft Civil Code to introduce the same-sex marriage, was the key topic of discussion in a TV debate on one of the three local media outlets monitored for the purpose of this report. (This parliamentary discussion was the key topic in the *Debat Plus* TV debate, while it was not discussed in the other debate shows, *Pressing* and *Rubikon*, which was not broadcasted on that date).

Comments with hate speech content related to the debate topic in this show mostly revolved around gender and sexual orientation, such as terms like “peder”, “bulash”, (derogatory), “dylber” (derogatory), the law of “bulash”, “sick people”, etc. *Translator’s note: Terms ‘peder’, ‘bulash’, ‘dylber’ stand for gay in local context.* Other comments focused on dehumanising metaphors: “Monkey”, “cow”, “dog”, parrot, and derogatory terms like “scoundrel”, “psychopath”, “idiot”, etc. There were also comments containing curses. The majority of comments were addressed to the guests of the TV debates who were in favour of modifying the Civil Code and included instances of language with derogatory connotations of names.

LANGUAGE ON SOCIAL MEDIA PLATFORMS IN KOSOVO

Findings regarding the language used on social media platforms

The Internet and technology have changed the way information is communicated and disseminated. Social media platforms also play an increasingly significant role, experiencing widespread use in Kosovo due to the relatively young demographic structure of the population. It remains concerning that there is currently very little content moderation on social media platforms, and comments generated by followers of these pages are not adequately controlled.

To explore examples of hate speech content comments on social media platforms, comments have been collected from the Facebook pages of four online media outlets - "Gazeta Express", "Telegrafi", "IndeksOnline", and "Kosovo Online". The selection of these four online media outlets has been made based on the number of followers.¹³¹

So, to see how commenting and reporting were done in the discourse of social media, data were collected based on session data. Social media monitoring was conducted in different months from 2020 to 2022. The selected online media in the Albanian language were: "Gazeta Express", "Telegrafi" and "IndeksOnline"; while "Kosovo Online" in Serbian. In the given time frame, 43,511 comments on 313 news posts were selected and analysed.

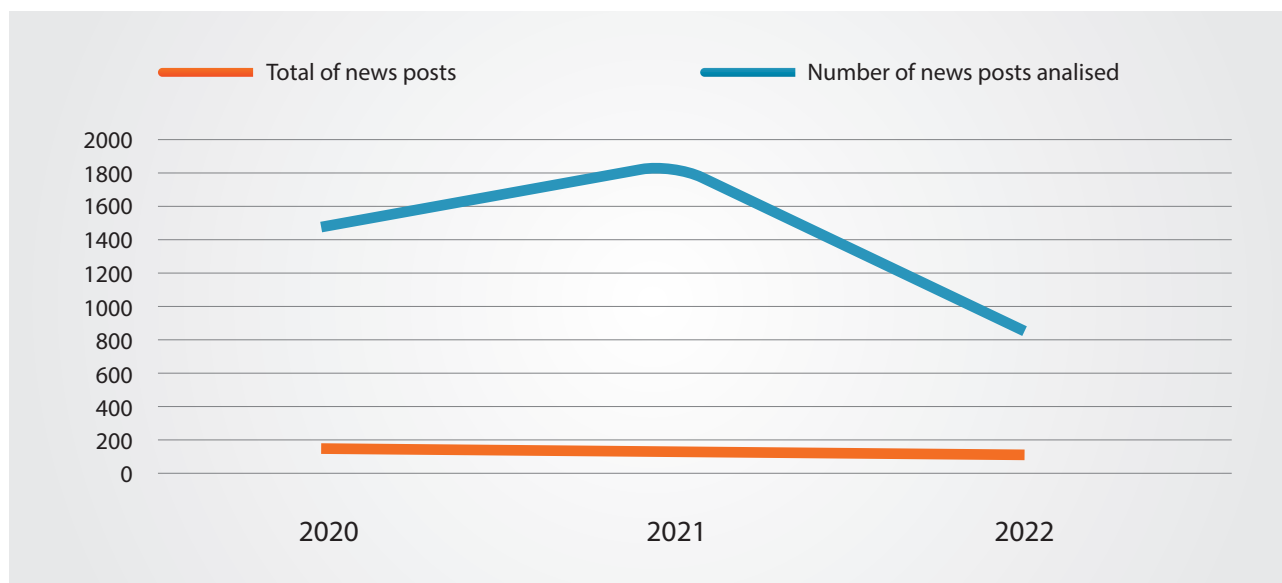


Figure 9. Number of news posts in the analysis sample

Out of 43,511 comments, 3,043 were categorised as hate speech. This means that in every fifteen (15) comments (7% of the total) hate speech was encountered in one (1) comment.

¹³¹ The data were collected using Crowdtangle, 01 February 2022.

Date	Total news posts	Total news posts analysed	Total comments	Number of hate speech comments
03 February 2020	389	47	3487	412
25 March 2020	513	42	10.476	639
03 June 2020	584	42	6518	463
06 May 2021	557	28	6989	218
17 & 19 May 2021	999	61	3226	368
04 October 2021	249	27	1734	317
24 January 2022	404	28	2489	161
16 March 2022	479	38	8592	465
T O T A L	4174	313	43511	3043

Figure 10. Data on content analysis. The number of posts and comments collected from the Facebook pages of Gazeta Express, Telegrafi, IndeksOnline and Kosovo Online.

The overwhelming majority of comments (93%) were not classified as containing hate speech content. Meanwhile, 7% of the online public discourse on the four Facebook pages contained hate speech comments targeting individuals or groups.¹³²

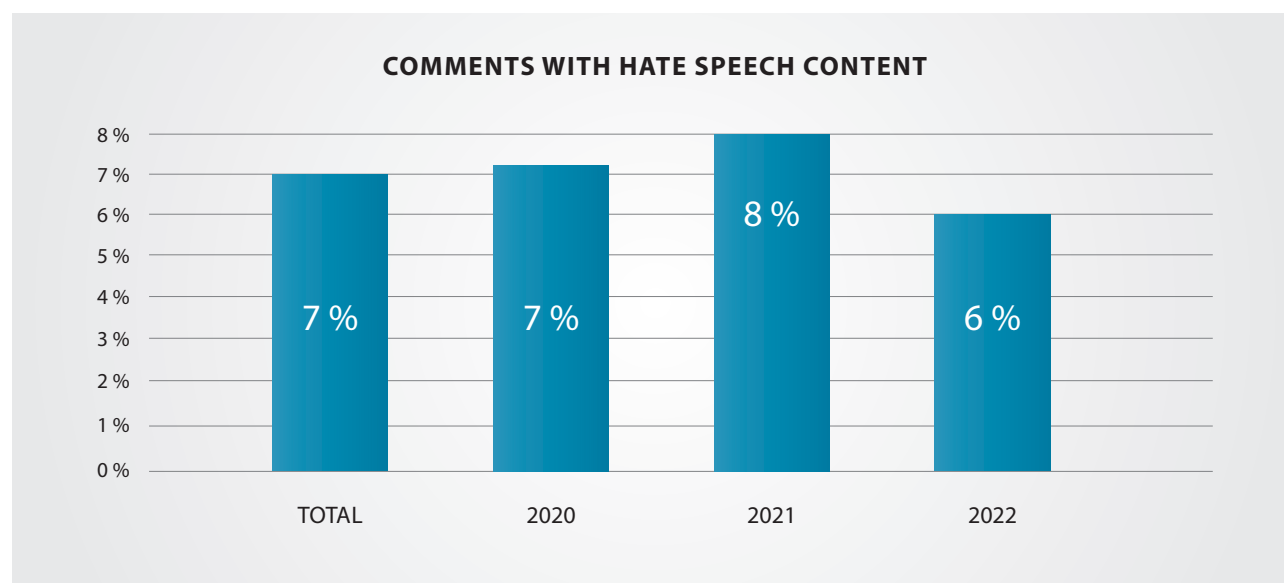


Figure 11. Percentage of comments with hate speech content on the four Facebook pages of the monitored online media .

¹³² The column "Total" is based on 43,511 comments from Facebook pages of Rubikon, Debat Plus and Pressing. The column "2020" is based on 20,481 comments from four Facebook pages on online media. The column "2021" is based on 11,949 comments from four Facebook pages on online media. The column "2022" is based on 11,081 comments from four Facebook pages on online media.

Categories of comments with hate speech content on the monitored Facebook pages of the media outlets

Comments have been categorised into eight categories, selected based on the categories highlighted in the Introduction for their importance and quantitative relevance within the data corpus: *political belief, ethnic affiliation, religion, dehumanising metaphors, sexuality, disability, cursing and others*. Some comments contain elements of more than one category, resulting in a total of 3,717 comments with hate speech content out of 3,043 comments. These may be comments that simultaneously target both ethnic affiliation and religion, for example. The majority of the 3,717 comments fall into three categories: dehumanising metaphors, political beliefs and limited abilities. There were 913 comments (25% of all comments) in which users used animal-related metaphors, plant metaphors, etc. Political beliefs and limited ability are equally and widely targeted (24%). Sexuality and ethnicity are often targeted, while cursing or religion can barely be categorised.

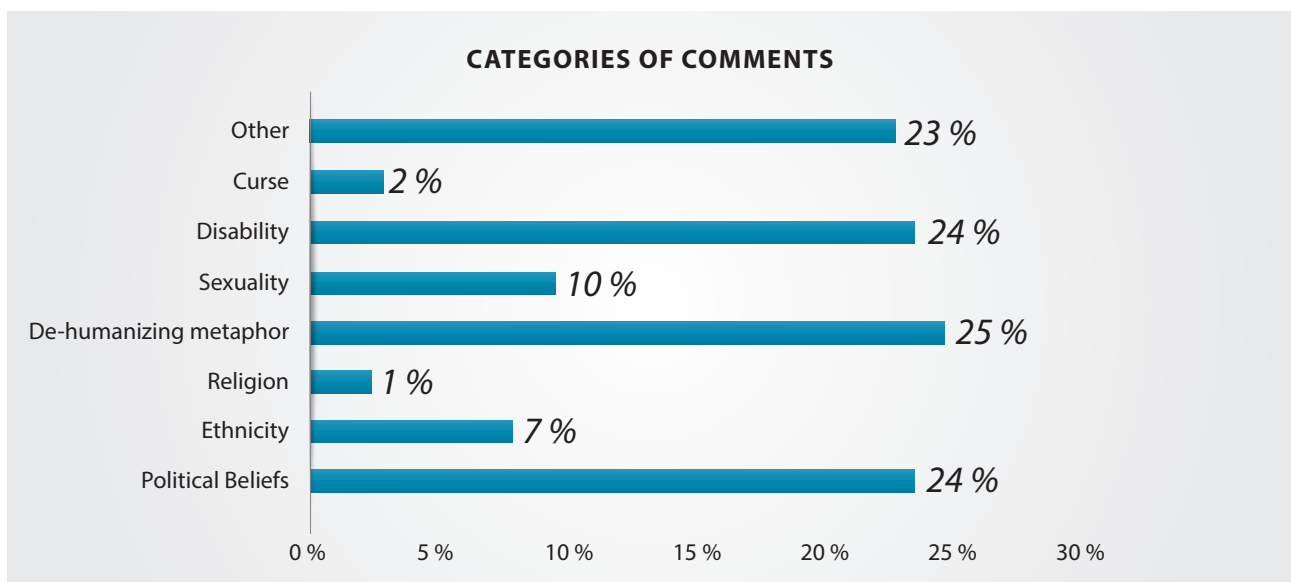


Figure 12. Percentage of comments with inappropriate and hate speech content divided into eight categories, based on 3,043 comments including those under more than one category.

If we look at the four main categories of hate speech (dehumanising metaphors, political beliefs, limited ability and sexuality), we find more detailed information.

Dehumanising metaphors, such as “cow”, “horse”, “monkey”, etc., constituted the majority of the 3,717 comments, including those under more than one category.

The second-largest number of hate speech comments pertains to political beliefs (889 comments, i.e. 24% of the total), especially targeting former governing parties or their current and past leaders. Comments related to limited abilities make up 24% of the total (886 comments), with expressions like “crazy” and “retarded” being some of the derogatory terms found during the analysis.

Hate speech concerning sexuality was found in 10% of the comments. This data was particularly evident in the comments following the parliamentary session on 16 March 2022, discussing same-sex marriages.

23% of the comments were categorised as “other”, representing the fourth-largest number of hate speech comments. This category includes expressions like “criminal”, “evil person”, “mercenary”, “trash”, “killer”, “hillbilly”, “bandit”, “corrupt person”, “spy”, “grave”, “destroyer of the country”, etc.

7% of hate speech comments targeted ethnic affiliation, mainly including derogatory names for Albanians or Serbs. Ethnic insults are more common on “Kosovo Online” than on Albanian-language portals. 2% of comments contained curses addressed more often towards politicians but sometimes in response to other comments. It is worth noting that religion is rarely targeted: only 31 comments in total, and 28 of them were found on a single date, 16 March 2022.

Authors and targets of the comments

Based on user names and profile photos, a gender analysis was also conducted. This analysis took into account the fact that Facebook user profiles are not verified, and determining the gender of users is not always easy. It was also sometimes difficult definitions whether the profiles were fake or bait.

The data show a significant difference between men and women, while around 6% of users were classified as unidentified because it was not easy to determine their gender from their name and profile photo. According to the classification of this research, 83.4% of hate speech comments are posted by men, while 10.4% of them are posted by women. The majority of comments in the data set were written by men, explaining their over-representation as authors of hate speech.

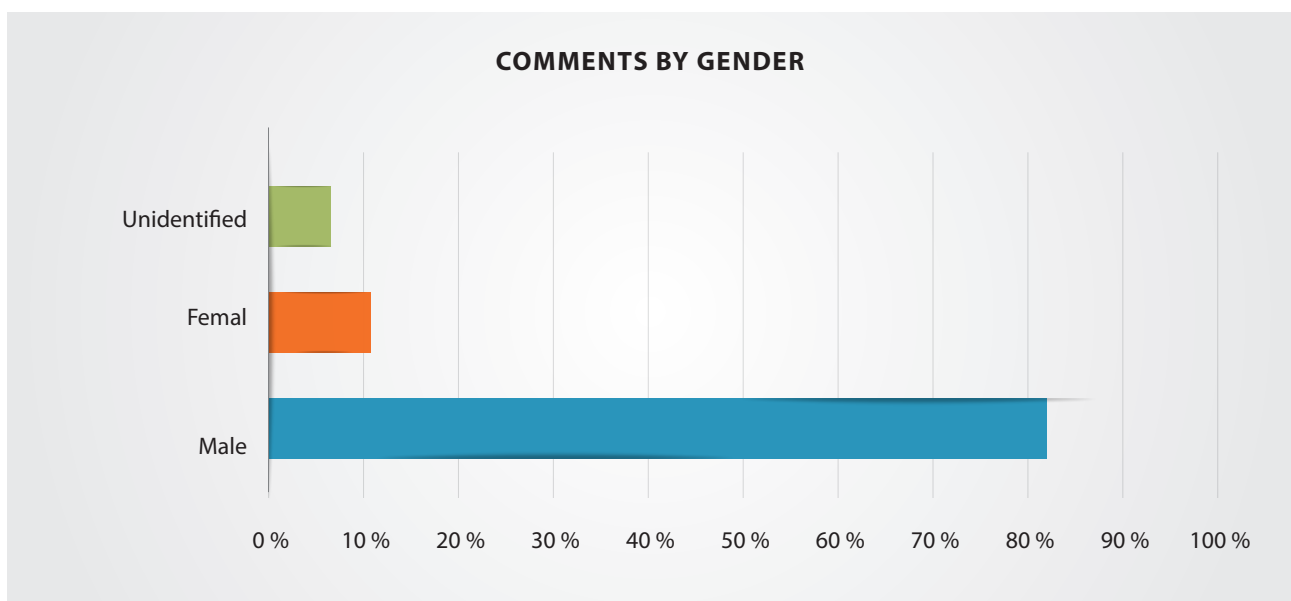


Figure 13. Percentage of comments with hate speech content categorised by the gender of Facebook users.

These comments were also analysed to see who they specifically targeted. There was a tendency for hate content comments to primarily target public personalities, such as political leaders, politicians in general, or analysts invited to TV debates (60% of all hate comments). Meanwhile, 28.4% targeted a group, such as political parties, ethnic groups, etc., with an additional 7.8% targeting both groups and individuals. About 4% of the comments are among Facebook users. In general, comments containing hate speech targeted specific individuals in 6 out of 10 cases and groups of people in 3 out of 10 cases.

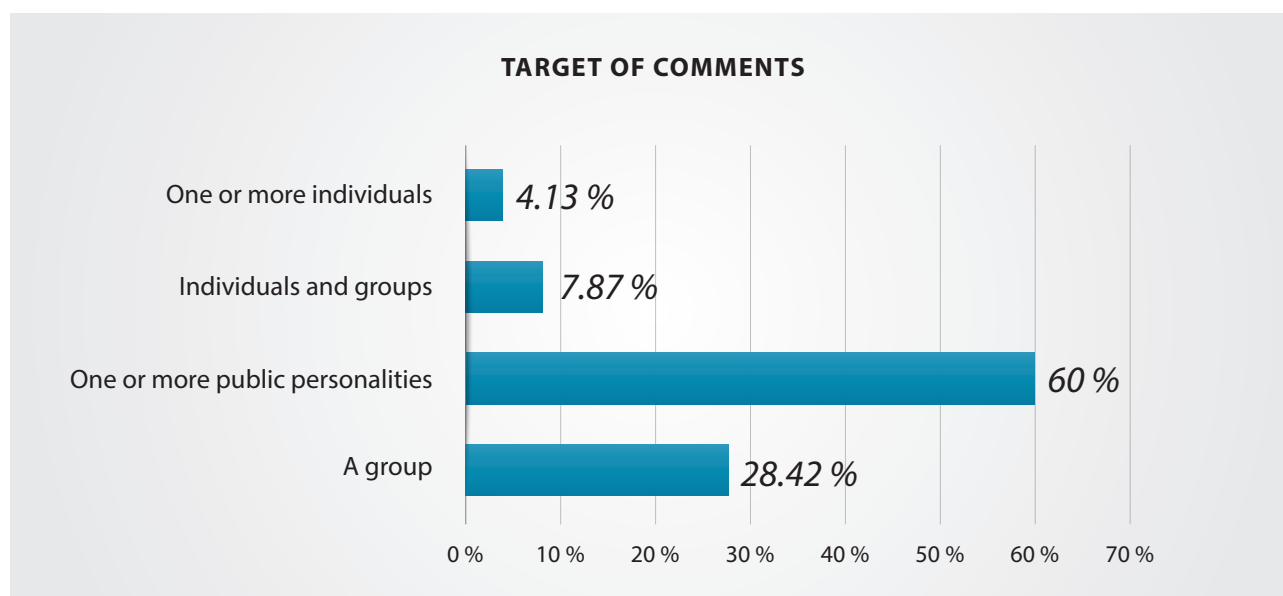


Figure 14. Percentage of inappropriate and hate speech content comments categorised by comment target

When comparing the selected pages of the four online media outlets on Facebook, a significant difference in the comment targets on the Facebook page of the Serbian-language online media outlet is observed compared to the other three portals. On the Serbian-language portal, almost 40% of the comments target a group, which is almost double compared to the figures shown by the analysis of the three Albanian-language media. This result can be explained by the fact that the main topic of comments on the Facebook page of the Serbian-language media outlet is related to ethnic relations between Albanians and Serbs. In other online media outlets, comments often target public personalities (67% of the total comments).

Headlines

News posted on Facebook by the media outlets were specifically examined to see if they included any instances of hate speech in the headlines, which may have triggered hate speech. In the news headlines, hate speech appears through prejudiced comments against a group of people, stereotypes and source quotes that include derogatory remarks. Out of a total of 43,511 comments on the posted news headlines, 659 of them referred to or recreated content of hate speech. We can say that this reflects two things: a) hate speech is extremely rare in news posts; and b) hate speech is often provoked not only by the topic being discussed but also by the comments of readers at the beginning of the debate. Expressed as a percentage, it means that 22% are comments with hate speech when the news headlines contain hate language or expressions, while 78% are comments with hate speech when the news headlines do not contain hate language.

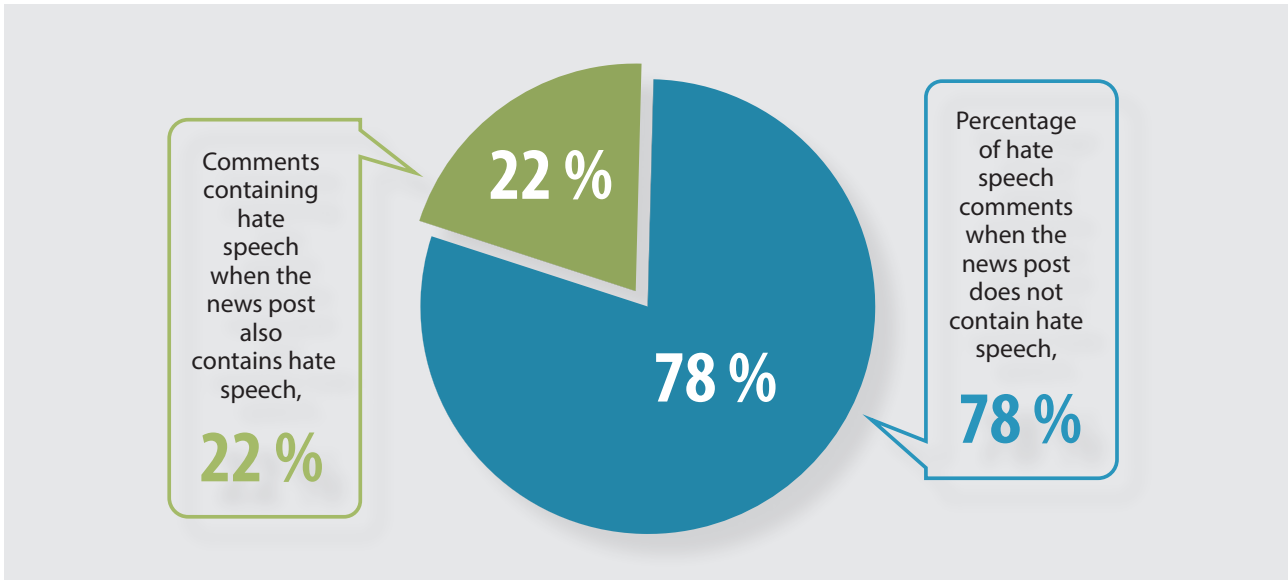


Figure 15. Percentage of comments classified by assessment of whether the news post contains hate speech or not.

Hate speech against LGBTI persons: social media discourse

As mentioned earlier, the parliamentary debate held at the session on 16 March 2022 regarding the approval in the first reading of the Civil Code, and some of the political positions expressed by the members of the Assembly in a specific context, have caused and stimulated homophobic reactions and comments on social media by social media users. In the analysis, more than 700 comments containing hate speech have been identified. This is the highest number of comments from the nine analysed dates in the two-year period. It is not surprising that sexuality is the dominant category (25% of hate speech comments), and the difference between these findings and findings from the other 8 dates considered is remarkable. A considerable increase in comments classified as curses also appears immediately after 16 March 2022.

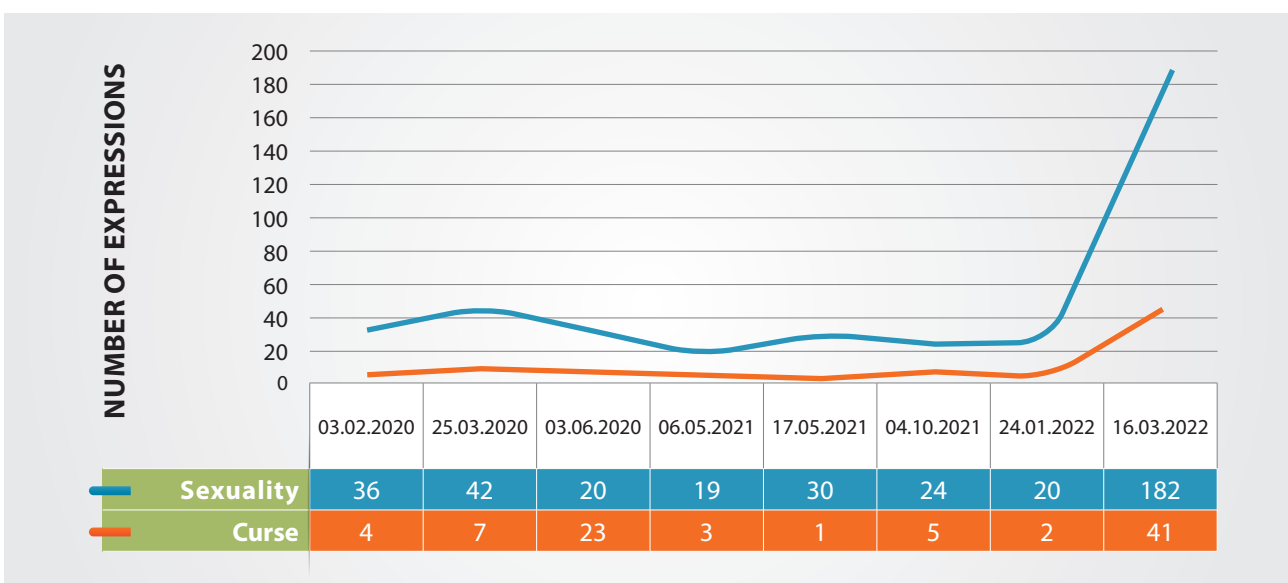


Figure 16. Number of expressions used in the two-year period

In Albanian-speaking online media, this was the only case where hate speech comments related to religion were found (i.e., the term *muxhahidat* to refer to mujahideen or Taliban).

A language containing hate speech and curses against others was evident in the comments of citizens on the news published by the media on 16 March 2022, having the same-sex marriages as a topic.

The issue of the North and interethnic relations: Social media discourse

Another interesting period to analyse was October 2021, when the issue of the North was discussed in the Assembly (the extension of the legitimacy of the state of Kosovo in the northern municipalities). This discussion caused some ethnic comments both from the Albanian and Serbian communities, especially on the Facebook page of the online media in the Serbian language, where about 20% of hate speech comments were related to interethnic relations. Most of these hate speech comments contained derogatory terms for the Albanians of Kosovo.

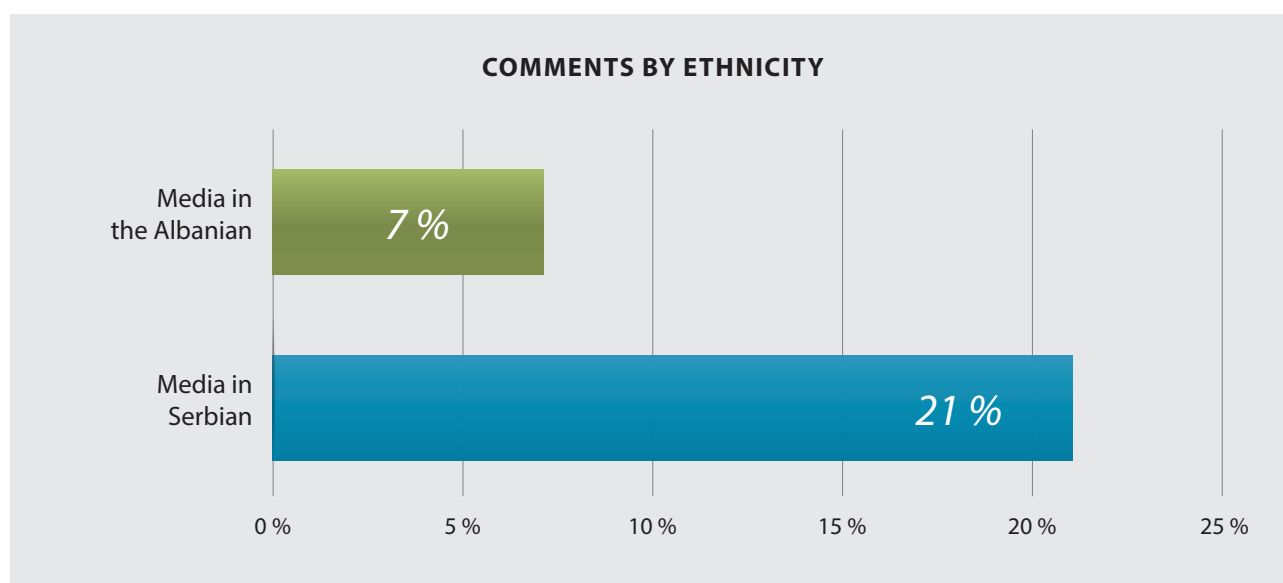


Figure 17. Hate speech comments in online media related to ethnicity

Unlike the observation of hate speech against ethnicity seen on the Facebook pages of Albanian-speaking online media, where derogatory surnames for Serbs were also used by individuals of Albanian ethnicity when aiming to offend another person from the same ethnic group, this was not found on the Facebook pages of Serbian-speaking online media. There, hate speech comments with ethnic connotations aimed only at Albanians.

FINDINGS

Research findings related to monitoring parliamentary sessions of the Assembly of Kosovo

From monitoring 9 parliamentary sessions in the Assembly of Kosovo within the period from January 2020 through March 2022, the Ombudsperson found no direct incitement of hatred. However, in these parliamentary sessions, other expressions of the language used were identified, which in the findings of this report were assessed as soft hate speech. Also, the Ombudsperson finds that cases of hate speech found in the analysis of parliamentary sessions do not simply say that someone should be hated but offer support for the alleged discriminatory hatred. Thus, hate speech may not necessarily manifest through explicit expressions of hatred but can be concealed in statements that may seem reasonable or normal at first glance.

Findings from monitoring media and the impact on language used by followers on social networks

From monitoring 23 TV debate shows broadcasted on various media¹³³, including online platforms, and the comments generated by followers on social networks, the Ombudsperson finds that hate speech is quite prevalent.

The Ombudsperson emphasises that comments containing hate speech and other expressions are not only a result of other comments in the live broadcast of the debate on Facebook but are directly related to the topic discussed by the participants in the TV debate shows.

Also, based on user names and profile photos on Facebook, considering that profiles have not been verified regarding gender determination and the authenticity of profiles, the research finds that 86% of comments containing hate speech and other expressions were posted by men, while 9.3% were posted by women, and 5% of profiles were not identified.

Regarding the indicators of whom specifically these hate speech comments were targeting, the research finds that the majority of these comments primarily targeted public personalities (political leaders, politicians in general, or analysts invited to TV debates). In general, hate speech targeted specific individuals in 8 out of 10 cases and groups of people in 3 out of 10 cases.

Regarding the quantitative relevance within the data corpus, the most numerous comments target political beliefs, followed by comments related to professions and negatively connoted moral traits categorised as other, then limited abilities, dehumanising metaphors, ethnicity, sexuality, curses and religious beliefs.

Also, if harsh/inappropriate language is used in TV debates, viewers are more likely to post hate comments on Facebook pages when the debate is broadcasted live. On the other hand, when the key topic in a TV debate was the discussion in the parliamentary session on 16 March 2022 regarding the Draft Civil Code (this parliamentary discussion was the key topic in the TV debate "Debat Plus",

¹³³ 17 were collected from the show pages on Facebook, where they were live-streamed, while 6 were collected from TV channels on YouTube. The sample also included a television show in the Serbian language, "Slobodno Srpski", but no comments were found on the show page on Facebook for the selected dates.

while it was not discussed in "Pressing", and "Rubikon" was not broadcasted on that date), comments containing hate speech related to the debate topic in this show, in most cases, were about gender and sexual orientation. The majority of comments were addressed to the guests of the TV debates who were in favour of modifying the Civil Code and included instances of language with derogatory connotations of names.

Findings regarding the language used on social media platforms

To explore examples of hate speech content comments on social media platforms, comments have been collected from the Facebook pages of four online media outlets - "Gazeta Express", "Telegraf", "IndeksOnline", and "Kosovo Online". The selection of these four online media outlets has been made based on the number of followers.

The research finds that one (1) comment in every fifteen (15) comments contains hate speech. The majority of comments fall into three categories: dehumanising metaphors, political beliefs and limited abilities. There have been comments in which users have used metaphors related to animals, plant metaphors, etc. Political beliefs and limited abilities are equally and widely targeted. Sexuality and ethnic identity are also frequently highlighted in the comments. Hate speech concerning sexuality was found in 10% of the comments. This data was particularly evident in the comments following the parliamentary session on 16 March 2022, discussing same-sex marriages. In general, comments containing hate speech targeted specific individuals in 6 out of 10 cases and groups of people in 3 out of 10 cases.

When comparing the selected pages of the four online media outlets on Facebook, a significant difference in the comment targets on the Facebook page of the Serbian-language online media outlet is observed compared to the other three portals. On the Serbian-language portal, almost 40% of the comments target a group, which is almost double compared to the figures shown by the analysis of the three Albanian-language media. This result can be explained by the fact that the main topic of comments on the Facebook page of the Serbian-language media outlet is related to ethnic relations between Albanians and Serbs.

The highest number of comments with hate speech content, predominantly focusing on sexuality, was evident in the comments from citizens on news articles from the media on 16 March 2022, which had the topic of same-sex marriages (25% of hate speech comments).

Findings related to discussions on the issue of the North and interethnic relations:

When the issue of the North was discussed in the Assembly (extension of the legitimacy of the state of Kosovo in the northern municipalities - October 2021), it also reflected in the language of comments on the Facebook pages of the media. It was noted that some ethnic comments both from the Albanian and Serbian communities, especially on the Facebook page of the online media in the Serbian language, where about 20% of hate speech comments were related to interethnic relations. Most of these hate speech comments contained derogatory terms for the Albanians of Kosovo.

Unlike the observation of hate speech against ethnicity seen on the Facebook pages of Albanian-speaking online media, where derogatory surnames for Serbs were also used by individuals of Albanian ethnicity when aiming to offend another person from the same ethnic group, this was not

found on the Facebook pages of Serbian-speaking online media. There, hate speech comments with ethnic connotations aimed only at Albanians.

The Ombudsperson, based on the findings of this research and in accordance with the recommendations arising from the Committee of Ministers Recommendation CM/Rec(2022)161 addressed to member states on combating hate speech, assesses that more work needs to be done on collaborative initiatives, which should involve a broader range of stakeholders, including the third sector, encompassing independent institutions, NGOs, civil society organisations; professional bodies; social media platforms that may need to be more effectively challenged for their active engagement in secondary markets. Efforts should be aimed at better combating hate speech and hate crime phenomena by strengthening anti-discrimination legislation, ensuring effective codes of conduct, and promoting prevention through continuous awareness education campaigns in education, as well as in public and media sectors. The following observations are noted:

The Ombudsperson observes that the Assembly of Kosovo has not adopted the Code of Conduct for MPs, as required by the Rules of Procedure of the Assembly of the Republic of Kosovo. The Ombudsperson notes that it is necessary for the Assembly of Kosovo to adopt the Code of Conduct for MPs in order to sanction the inappropriate, offensive, denigrating, derogatory and hate speech expressions.

Taking into account the complexity of the topic and the comprehensive approach to preventing hate speech, as well as recognising the importance of freedom of expression and its limitation in cases where a specific expression may cause harm to legitimate purposes, the Ombudsperson emphasises the need for the commitment of educational institutions to create educational programs for students to learn about the consequences of using hate speech in both the public and private sectors. This is particularly important due to the widespread use of social media and the lack of understanding that actions and language used on social networks can be just as impactful as physical actions. For the purpose of media literacy in society, it is crucial for students to learn about and in relation to media, both as an audience and as users, including diversity, social tolerance, and non-discrimination at all levels of education.

Considering the complexity of the topic and the comprehensive approach to preventing hate speech, as well as the importance of freedom of expression and its limitation in cases where a specific expression may cause harm to legitimate purposes, the dissemination of jurisdiction for prosecutors and judges should be open, and developments in the case law of the ECHR should be transmitted when dealing with the treatment (prosecution/defence/judgment) of hate crime cases to ensure a human rights-based approach. The Ombudsperson notes that in the training programs of the Academy of Justice, there are no specific or included modules in the ongoing training program that address issues related to hate speech and the judicial practice of the ECtHR regarding this topic.

The Ombudsperson observes that the language used in public debates and political speeches by politicians significantly influences the general public and shapes the themes and tone of public discourse. In this regard, the Ombudsperson considers the active role and responsibility of the Central Election Commission important in overseeing the implementation and compliance with the Code of Conduct for political entities, their supporters and candidates, **specifically to enforce the prohibition of hate speech.**

The Ombudsperson notes that there is a lack of moderation in the media that expose public opinion to cases of hate speech. Additionally, the Ombudsperson observes that the IMC has not shown a real-time response in the continuous monitoring of hate speech. The Ombudsperson appreciates the IMC commitment to continuous campaigns against hate speech, including how complaints can be filed and cooperation with media and journalists for the prevention of hate speech, real-time response and prompt action against hate speech can be ensured.

The Ombudsperson highlights the need for increased public awareness of the consequences of hate speech and its impact on society. Therefore, the Ombudsperson considers it highly important for all branches of power in the country to work together, including professional organisations and non-governmental organisations, to raise awareness, identify best practices, condemn acts of hate speech or hate crimes, and reaffirm the principles of democracy, rule of law, equality and non-discrimination.

The Ombudsperson also emphasises the crucial ongoing commitment of self-regulatory bodies such as the PCK in terms of education campaigns regarding complaints related to hate speech, cooperation with the Ombudsperson to support complainants in filing complaints against hate speech, working with media outlets to allow comments on their websites but urging them to filter such comments instead of disabling them altogether. Media and social media platforms should engage in reviewing their codes of conduct to encourage content moderation and, when necessary, remove hate speech content. They should establish processes for immediate user complaint tracking when hate speech content is flagged, not neglect providing professional training on hate speech for their employees, and facilitate the distribution of awareness campaigns to prevent hate speech.

Consequently, the Ombudsperson

RECOMMENDS

To the Assembly of the Republic of Kosovo:

- Adopt the Code of Conduct, as stipulated in Article 129 of the Rules of Procedure of the Assembly. This code should, among other things, specify the imposition of measures against MPs who do not adhere to the Code of Conduct regarding the language used during the exercise of the MP's function. Additionally, establish a mechanism for investigating complaints against MPs who do not comply with the Code of Conduct.

To the Government of the Republic of Kosovo:

- Develop a specific program for the general public on education and prevention regarding the inappropriate use of language and hate speech, along with its consequences.
- Organise through its mechanism's continuous awareness-raising campaigns for the general public on education and prevention regarding the inappropriate language and hate speech based on the program developed.

To the Ministry of Education, Technology and Innovation:

- Develop a national strategy on media literacy at the pre-university and university education levels. Include media literacy in compulsory subjects in pre-university education curricula.

To the Central Election Commission:

- Adopt in accordance with legal obligations of the Law on General Elections guidelines for political subjects to prevent hate speech.
- Create an internal and effective mechanism for monitoring and overseeing the compliance with the Code of Conduct for political subjects, their supporters, and candidates, specifically aimed at preventing the use of hate speech.
- Harmonise the content of the political party registration form, similar to the Certified Political Subjects form approved, in line with the obligations set out in the Law on General Elections to implement the code of conduct and prevent hate speech that incites hatred and discrimination.

To the Academy of Justice:

- Include the treatment of hate speech and the case law of the ECtHR regarding this issue in a specific module in the continuous training program for judges and prosecutors of the state of the Republic of Kosovo.

To the Kosovo Chamber of Advocates:

- Provide training on preventing the use of hate speech and train lawyers on prosecution/protection/adjudication of cases of hate crimes so that they can apply the ECtHR jurisprudence.

To the Independent Media Commission:

- Establish mechanisms for monitoring and real-time response of audiovisual media outlets in the country with the aim of preventing inappropriate language and hate speech.
- Organise continuous awareness-raising campaigns for media employees and the general public on educating and preventing the inappropriate use of language and hate speech.

Pursuant to Article 132, paragraph 3 of the Constitution of the Republic of Kosovo (*“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law”*).

Pursuant to Article 28 of Law No. 05/L-019 on Ombudsperson *“Authorities to which the Ombudsperson has addressed recommendation, request or proposals for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”*. Please inform us of the actions you will take regarding the content of this Report and the Recommendations addressed.

Sincerely,

Naim Qelaj

Ombudsperson

This report was produced with the financial support of the European Union and the Council of Europe, through the joint action “Combating discrimination and hatred”, that is a part of the joint programme “Horizontal Facility for the Western Balkans and Türkiye”. Its contents are the sole responsibility of the author(s). Views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

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