

Pregledni rad  
UDC: 004.087 (497.11)  
Priljeno: 21.09.2019.  
Odobreno: 17.10.2019.

Ana Marjanović Rudan MA<sup>1</sup>

## THE ROLE OF THE REGULATORY AUTHORITY FOR ELECTRONIC MEDIA IN CURBING HATE SPEECH IN SERBIA

### Abstract

*Hate speech entices discrimination and jeopardizes security, thus presenting a threat to democracy. In both the Western Balkans and the European Union, such speech is increasingly present in the public space. Television, as the medium with the strongest influence on citizens, is of crucial significance in its normalization. However, regulatory authorities for electronic media rarely respond to hate speech in television programs, which can be explained by political opportunism, failure to grasp the severity of the threat, or by the existence of other priorities, but also by technical reasons. Preventive action on curbing hate speech requires fostering tolerance and developing a critical approach to reality by the citizens, i.e. improving of media literacy through education and information dissemination. Regulatory authorities for electronic media can play a central role in these efforts, as exemplified in the paper. The issue of the role of the Regulatory Authority for the Electronic Media in curbing hate speech in Serbia is a topical issue given the ongoing planning of media policy. The paper examines the practice of this body so far in curbing hate speech and proposes measures to improve its role.*

**Key words:** *electronic media, television, Regulatory Authority for Electronic Media, hate speech, media literacy.*

---

<sup>1</sup> Ana Marjanović Rudan is a doctoral student at the Faculty of Political Science, University of Belgrade. Email: ana.marjanovic.rudan@gmail.com.

## INTRODUCTION

Freedom of expression is a prerequisite for deliberative democracy and a traditional civil right guaranteed by international and domestic acts. According to the United Nations (UN) definition, freedom of expression means a person's right "to hold opinions without interference and to seek, receive and impart information and ideas". At the same time, acts establishing freedom of expression also stipulate the possibility of it being restricted by law in order to protect national security, the rights of others, public order, etc.<sup>2</sup>

When the exercise of freedom of expression disqualifies certain categories of persons from public debate because of their personal attributes or belonging to a group, and thus threatens their equality, then it does not enable, but threaten, democracy. This is the case with hate speech, "verbal expression that contains messages of hatred or intolerance against a racial, national, ethnic or religious group and its members," according to "gender and sexual orientation", "different political and other opinions, national and social background", which "creates negative stereotypes" and "encourages discrimination and hostility" because of personal characteristics or belonging to a group.<sup>3</sup> Persons and groups who are the target of hate speech are discredited as participants in political debate and threats and violence against them is normalized. In order to protect their rights, freedom of expression is restricted by the prohibition of hate speech.

Hate speech should be distinguished from hate crimes, crimes in which the perpetrator's motive is a person's personal attribute or their belonging to a group. Also, hate speech should be distinguished from politically different views, defamation and insult, and criticism of the authorities, except where their expression involves discrimination on the basis of personality or belonging to a group.

Comparative solutions regulate hate speech in different ways, and the basic problem is the answer to the question of what can be considered incitement.<sup>4</sup> The UN Human Rights Council created the Rabat test in 2013, as guidelines on how

---

<sup>2</sup> According to Milenkovic, D., (2016), *Medijsko pravo i medijske politike – rider [Media Law and Media Policies – Reader]*, 2016/17 School Year, pp. 6–7.

<sup>3</sup> According to Milenković, D. (2016), p. 24.

<sup>4</sup> According to *Govor mržnje u medijima [Hate Speech in the Media]* (2014), Republic Broadcasting Agency of the Republic of Serbia, p. 20.

states should limit freedom of speech in order to prevent hate speech.<sup>5</sup> They instruct states to evaluate the circumstances related to the speaker, the context, the intention, the gravity of the act, and the potential for harm. The European Court of Human Rights, in adjudicating in lawsuits related to restrictions on freedom of expression for the prohibition of hate speech, applies a “three-part test” which establishes the existence of a legal basis for the limitation, its justification under the meaning of the European Convention on Human Rights and the necessity of such limitation in a democratic society.<sup>6</sup>

Serbia’s progress in normative regulation of hate speech was praised in the 2017 report of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe. At the same time, the report warns of a “steady rise in hate speech in public discourse, enhanced by broad media coverage”, and similar assessments are made by the European Commission (EC) 2018 report and others, which will be discussed later.

Due to the influence they have on public discourse, the media play a central role in the dissemination of hate speech. Despite the growing importance of the Internet as a source of information in Serbia, according to the 2018 Ipsos survey, television continues to have the greatest impact as it reaches up to five million citizens and enjoys their utmost trust. Therefore, the Regulatory Authority for Electronic Media (hereinafter: REM), as an independent institution of government that controls the public broadcasting service and electronic media, plays a key role in curbing hate speech in the electronic media in Serbia. The issue of the role of REM is topical in the context of the ongoing strategic planning of the development of the public information system in Serbia and the forthcoming adoption of a strategy for the development of electronic media. In order to point out possible solutions for enhancing the role of the REM in curbing hate speech, the paper will present comparative practices of regulatory bodies’ engagement in this field, and discuss the circumstances regarding curbing hate speech in electronic media in Serbia.

---

<sup>5</sup> *Rabat Plan of Action on the Prohibition of Advocacy of a National, Racial or Religious Hatred That Constitutes Incitement to Discrimination, Hostility or Violence*, UNHRC Human Rights Annual Report, UN Assembly HRC, January 11, 2013.

<sup>6</sup> According to *Procesuiranje zločina iz mržnje i govora mržnje u pravu Srbije i evropski standardi [Hate Crimes and Hate Speech Prosecutions in Serbian Law and European Standards]* (2018), YUCOM Human Rights Committee, p. 26.

## **THE ROLE OF THE REGULATORY AUTHORITIES FOR ELECTRONIC MEDIA IN CURBING HATE SPEECH THE EU AND THE WESTERN BALKANS COUNTRIES**

### **Curbing Hate Speech in Reactive and Preventive Manner by Regulatory Authorities for Electronic Media in the EU Countries**

The conclusions of the 2018 report by Article 19, a freedom of the media and human rights organization, point to an increase in hate speech in the media of 6 EU member states: in the UK during the 2016 Brexit campaign, in Germany and Austria during the 2017 election campaigns and in Poland, Hungary, and Italy as part of the usual rhetoric of government officials during the same period. The increase in the presence of hate speech in the media is explained by the consequences of the economic crisis, the influx of migrants and the rise of Euroscepticism. In the absence of publicly available quantitative data on the incidence of hate speech in the television programs of these countries, examples involving the highest representatives of the government and the opposition over the observed period are indicative. The UK Prime Minister, David Cameron, spoke in an ITV news release of migrants as “a swarm of people coming”. The Polish President, Andrzej Duda, told TVN24 that migrants carry the risks of spreading epidemics. The Italy’s Minister of Interior, Matteo Salvini, during a visit to Hungary on the national MTV said that “unless we take control of our roots, Europe will become an Islamic caliphate” and that “Islamic minorities have taken control of our capitals.” On the same channel, the Hungarian President, Viktor Orban, said “we do not want minorities with different cultural characteristics among us.” The presidential candidate of the ruling Libertarian Party of Austria, Norbert Hofer, in his final duel with his counterpart on ATV, criticized the EU’s openness to migrants, which he said allowed “terrorists to walk through Austria”. During a German government crisis over the adoption of a migrant plan, the Federal Minister of the Interior, Horst Seehofer belittled this group with a cynical joke about the extradition of 69 Afghan citizens on the day of his 69th birthday, in a speech broadcast by Deutsche Welle TV. With these statements, politicians encourage intolerance towards migrants, portraying them in a derisive way or labelling them a health, security or cultural identity threat. In the context of political tensions over the “migrant crisis”, they constitute hate speech.

These examples are indicative of the presence of hate speech in television programs and in the aforementioned societies in general, because they come from leading politicians who shape the mainstream social discourses. Statements of hate speech by persons enjoying social authority, often without condemnation in the form of comments by media anchors or reporters, are a message to other public figures, as well as to persons professionally engaged in producing television content, that such behaviour is socially acceptable. This mechanism of normalization helps to understand the increase in the presence of hate speech in the media discussed in the Article 19 report.

In the EU countries, television has maintained its position as medium with dominant influence on citizens: according to a 2017 Eurobarometer survey, it is the medium most used by citizens – 84% of citizens watch television every day, and 51% trust it. Given the role of the media as a channel for spreading of hate speech, there is a need for both reactive and preventive action of regulatory authorities for electronic media.

All the more perplexing are the findings of individual reports prepared in 2018 for 5 out of 6 above countries on the role of regulatory authorities in sanctioning hate speech, which, with the exception of the United Kingdom, similarly testify to their inefficiency. Thus, the Austrian Regulatory Authority for Broadcasting and Telecommunications (KommAustria) can suspend broadcasting and impose fines, but there is no indication that these measures have ever been used. The Italian AGCOM has similar powers, but rarely implements them. The passivity of the 14 regulatory authorities for electronic media in the federal states against hate speech is also a practice in Germany, which is additionally faulted for, despite numerous appeals, still lacking a comprehensive hate speech strategy. In addition to the warnings, the Polish National Broadcasting Council (KRiTT) can also impose fines, but only 16 proceedings were initiated between 2011 and 2016; at the same time, there is no reaction to the increasing frequency of hate speech on state television. Much narrower powers are vested in the Hungarian Media Council (NMHH), which has no control over public broadcasting corporation and state-owned media. Since 2011, it has sanctioned only 4 hate speech cases. The UK Office of Communications (Ofcom), on the other hand, is praised as the number of sanctioned hate speech cases has increased since media regulations changes in 2016, with widely reported recent cases of revoking licenses to television broadcasters and pronouncing fines of £ 75,000 for racist speech.

With the exception of progress in the UK, a common problem for all states observed is that electronic media regulatory authorities rarely process hate speech despite the availability of mechanisms. Also, some of them have the authority to supervise the implementation of regulations that instruct broadcasters to actively promote tolerance and combat discrimination, but there is no record of results in that segment of their work.

Based on this, we conclude that electronic media regulatory authorities in the observed EU countries are rarely engaged in curbing hate speech in reactive manner, except recently in the UK. The credit for this progress is attributed to the new Broadcasting Code of 2016, which more specifically defined the notion of hate speech, following the criteria of the Rabat test. To the extent that narrow normative determination of hate speech being a reason for the passivity of regulatory authorities, the lessons from the British example may be helpful.

When it comes to curbing hate speech in a preventive manner, the reports on the 6 EU countries experiencing a rise in hate speech generally highlight the role in the fight against the social causes of this speech played by authorities dealing with the protection of equality and the prevention of discrimination. Despite the existence of oversight and sanctioning powers, the preventive role of regulatory authorities for electronic media in practice comes down to a more detailed regulation of the general obligation to protect equality and the prohibition of hate speech within the conditions for obtaining broadcasting licenses and within the code of conduct of broadcasters. In addition, regulators may in some cases impose obligations on broadcasters to promote human rights, minority rights, equality and non-discrimination in their programs. However, the implementation of these measures is ultimately in the hands of media services providers. A directly applicable positive measure of hate speech prevention is available to the regulatory authority in Poland, where KRiTT grants financial support to the production of television content promoting the equality of national minorities.<sup>7</sup>

The suppression of hate speech, as well as the other two types of “information disorders”, misinformation and fake news, requires preventive action in the field of strengthening “media literacy”. It is a skill of critical evaluation of media content, which at the same time should not produce “absolute media distrust and selective

---

<sup>7</sup> According to Free Word Centre (2018-5), p. 37.

research that reinforces existing beliefs”.<sup>8</sup> “Media literacy” directly opposes hate speech because it aims to understand the importance of the concept of equality, to develop tolerance as a “social value that enables us to respect ourselves and others”<sup>9</sup> and adopting a critical attitude toward violating these principles. Media literacy is indirectly related to the degree of democracy and economic development of the countries, and directly related to the content of the education system, the accessible cultural content and level of informedness of citizens. Because of the latter, as well as the role of television programs in disseminating information, it is clear that regulatory authorities for electronic media, as a key part of the media system in countries, can play an important role in media literacy. However, in the 6 observed EU countries, the activities of regulatory authorities to promote media literacy, although provided for by the acts regulating the work of these bodies, boil down to the preparation of research.

The literature cites the Finnish model as exemplary in terms of the role of the regulatory authority in the development of media literacy. It involves a media literacy strategy that combines policy measures relevant to the issue – educational, cultural, media, youth, and social care policies, as well as the involvement of a range of stakeholders – ministries, educational institutions, cultural institutions and civil society organizations. The electronic media regulatory authority, the National Audiovisual Institute’s Department for Media Education and Audiovisual Media (MEKU), coordinates the implementation of this strategy and manages individual projects, such as the preparation and distribution of promotional and educational materials intended for different target groups within the Media Literacy Week, child and youth work programs focused on understanding of the culture of contemporary communications, professional and scientific conference and education of media employees.<sup>10</sup>

In the Irish model, which also contains hands-on lessons, the Broadcasting Authority of Ireland (BAI), as a single regulatory authority for telecommunications, is the key institution for the promotion of media literacy. The BAI proposes and manages the implementation of a multi-year cross-sector media literacy policy,

<sup>8</sup> According to Boyd, in Wardle, K. and Derakshan, H., (2017), *Information Disorder: Toward an interdisciplinary framework for research and policy making*, Council of Europe, p. 67.

<sup>9</sup> Simeunović, D., (2009), *Uvod u političku teoriju [Introduction to Political Theory]*, Institute for Political Studies, p. 87

<sup>10</sup> Tomljenović, R., (2018), *Regulatorna tela za elektronske medije i medijska pismenost [Regulatory Authorities for Electronic Media and Media Literacy]*, Council of Europe, pp. 35–44.

developed in consultation with government and non-governmental institutions. Its measures include education at all levels, formal and informal, training of media employees, professional meetings and financial support for projects that help develop media literacy.<sup>11</sup>

### **Curbing Hate Speech in Reactive and Preventive Manner by Regulatory Authorities for Electronic Media in the Western Balkans and in Croatia**

With regard to the Western Balkans (WB) and Croatia, hate speech in television programs provided discursive support to conflicts after the breakup of the SFRY and later outlived them. It focuses primarily on nationality, but has expanded over time to other groups, most recently migrants. As in the EU, hate speech dissemination is contributed to by originating from leading politicians, as well as by being presented on the most watched television channels. Thus, recently, Kadri Veseli, the then speaker of the Kosovo Parliament, invited Macedonia and Montenegro on KTV to “join us against Serbia”. During his time as President of Republika Srpska, Milorad Dodik argued on Serbian Happy TV against the construction of mosques in Sarajevo, saying that mosques were disturbing him. “Do not play to me the sound of that one out there, howling on the tannoy, because I’m not that,” he said. The Croatian President, Kolinda Grabar-Kitarović, said that “For the Homeland Ready” was an old Croatian greeting expression, thus disregarding the meaning it had for the victims of the Independent State of Croatia regime during World War II. Frequent statements by leaders containing hate speech reflect the tone of the media and the atmosphere in societies in the Balkans.

According to the 2017 findings of the CoE, the electronic media regulatory authorities in the WB do not contribute significantly to sanctioning hate speech. Their powers in regulating and overseeing broadcasters are similar and their role is largely reactive. Regulatory authorities may impose reprimands, sometimes fines too, and suspend licenses, but they seldom do so, and the report also warns of “diminishing independence” of those bodies.<sup>12</sup> The situation is somewhat different in Croatia, where, at the end of 2018, the regulatory authority (AEM) sus-

---

<sup>11</sup> Ibid, pp. 45-48.

<sup>12</sup> As a rule, sanctions are imposed only a few times a year, and there have been years without a single one – according to the findings of the Rokša Zupčević Report (2017), pp. 95–117 and pp. 21–78.

pended broadcast licenses to as many as 31 local television stations because of the program that contained hate speech against migrants.

The involvement of regulatory bodies for broadcast media in the region in curbing hate speech in the preventive manner through the promotion of media literacy is generally in its infancy. The exception is Croatia, where AEM conducts media literacy campaigns – organizes Media Literacy Week, promotional campaigns, maintains a media literacy portal, sponsors projects of production companies and civil society organizations and conducts research on the basis of these activities. The AVMU, the regulatory body in Northern Macedonia, has started work on improving media literacy through the organization of professional forums and a promotional campaign, while other countries in the region are limited to periodic analyses and publications that touch on the issue of hate speech among others.

### **Conclusions on the Comparative Practice of the Engagement of Regulatory Authorities for Electronic Media on Curbing Hate Speech**

Based on the review of the practice of curbing hate speech by the regulatory authorities for electronic media in the EU countries where the increase of incidence of hate speech has been noticed, as well as in the countries of the WB and in Croatia, low activity in the domain of reactive action is observed.

Decision makers in the creation and implementation of media policies tolerate hate speech because of political opportunism and misunderstanding of the gravity of the problem. The existence of awareness of the social dangers of hate speech is evidenced by the efforts that have been made in recent years in the observed 6 EU countries to reactively curb it in online media. Given the trend of media convergence, one can optimistically assume that the mechanisms being developed today to monitor hate speech in online media and for rapid response (such as the ‘Permanent Observatory of Guarantees and Protection of Minors and of the Fundamental Rights of the Person on the Internet’ of the Italian regulator) will soon expand the scope of application to include the “traditional” electronic media. The fact that television programs are increasingly viewed through the broadcasters’ online portals may speak in favor of this assumption. The political reasons for this lack of motivation include the question of the substantive independence of these bodies from the executive branch of government. Deterioration of independence is not an issue exclusive to the WB, since there are indications of the regular prac-

tice of exposing the heads of regulatory authorities to political influence in Italy, Hungary, and Poland.<sup>13</sup> Lastly, the technical reasons for being passive with regard to sanctioning hate speech may relate to the logistical complexity of more detailed monitoring of television programs and lack of knowledge.

Also common to Austria, Germany, Italy, Poland, Hungary, the United Kingdom, as well as the Western Balkans, with the exception Northern Macedonia to some extent, is the absence of a preventive approach by regulatory authorities in curbing hate speech. On the other hand, concrete ways of preventive action in Finland, Ireland and Croatia, and to some extent in Northern Macedonia, through a strategic approach, coordination and implementation of activities that enhance citizens' media literacy, contain potentially useful lessons for Serbia.

## **CURBING HATE SPEECH IN ELECTRONIC MEDIA IN SERBIA**

### **Normative Framework for the Prohibition of Hate Speech in Serbia**

The legal framework for the prohibition of discrimination and hate speech in the Republic of Serbia rests on the constitutional guarantee of equality of citizens, the prohibition of violations of human and minority rights and the incitement of racial, national and religious hatred, as well as the guarantee of freedom of expression, which may be restricted in order to protect the rights of others. The Constitution also proclaims an obligation to develop a spirit of tolerance in the fields of education, culture and information and to take measures to advance understanding, respect and cooperation. The Law on Public Information and Media defines the notion of hate speech and the prohibition of this speech, but also provides for cases where it will not exist – when it comes to information that is part of objective reporting and which does not aim to entice discrimination. According to the Law on Electronic Media, the regulatory authority for electronic media may impose some of the measures for violating the ban on hate speech. This law empowers the regulatory authority to lay down more detailed rules pertaining to program content regarding the prohibition of hate speech. The Law on Advertising prohibits the enticing of discrimination on any grounds. The Criminal Code of the Republic of Serbia does not recognize hate speech as a type of criminal offense,

---

<sup>13</sup> Mutu, A., (2018), *The regulatory independence of audio-visual media regulators: A cross-national comparative analysis*, European Journal of Communication I-20, pp. 11-12.

but hate speech, discrimination, intolerance and calls for violence can be elements of several offenses, in particular violations of equality (Article 128), incitement of national and religious hatred and intolerance (Art. 317) and racial and other discrimination (Art. 387).

### **Hate Speech in Electronic Media in Serbia**

The prevalence of hate speech in Serbia is evidenced by the data of the Republic Public Prosecutor's Office on the number of filed and prosecuted criminal charges in connection with the three mentioned offenses. According to this data, in the period between 2011 and mid-2016, 216 criminal complaints were filed for offenses containing elements of hate speech, 211 for inciting national and religious hatred and intolerance, three for racial and other discrimination and two for violating equality. Of these, 207 complaints concerned national origin. Based on these complaints, 106 indictments were filed and 41 were convicted.<sup>14</sup> Hate speech in a television program has been the subject of criminal proceedings only once, when two reality television show participants on Happy TV were convicted at the court of first instance of making statements about Jews, to be acquitted by the court of appeals.<sup>15</sup>

There is no statistics on the incidence of hate speech in electronic media in Serbia. Its frequency can be inferred from the Liber Centre for New Media's research on extreme speech in media in Serbia, which observed, among other things, the spread of ethnic intolerance, indicating that this type of hate speech was present in 15% of media reports, mainly through "chauvinistic reporting and highlighting national pride". The 2018 EC progress report also warns about the danger of hate speech. The 2017 ECRI report states that "politicians and the media use inflammatory, pejorative and nationalistic language" and that the current public discourse is 'reminiscent of the hate speech used before the recent wars in the region', and that media have a special role in this "witch hunts" of sorts against journalists who denounce representatives of government. As the most frequent targets of hate speech in the media, the report cites non-Serbs, LGBT persons, and civil society activists speaking out about war crimes in conflicts in the territory of the former

<sup>14</sup> According to ECRI Council of Europe (2017), p. 17.

<sup>15</sup> *Maja Nikolić i Miloš Bojanić pravosnažno oslobođeni optužbi [Maja Nikolic and Milos Bojanic Acquitted of Charges]*, Blic, July 1, 2014, <https://www.blic.rs/vesti/hronika/maja-nikolic-i-milos-bojanic-pravosnazno-oslobodeni-optuzbi/2zwbme2>

SFRY at the end of the 20th century. ECRI particularly emphasizes the responsibility of the media outlets because they “continue to give coverage to hate speech from politicians and other public figures, amplifying its effect”.

### **Legal-organizational Framework and Practise of the Electronic Media Regulatory Authority in Curbing Hate Speech in Serbia**

As an independent regulatory authority for electronic media, REM was established in 2003 by the Broadcasting Law, called the Republic Broadcasting Agency (hereinafter: RBA). Its name was changed in 2014, since its organization and operation is governed by the Law on Electronic Media (LEM), based on the Audiovisual Media Services Directive rules of the European Parliament and of the Council. REM exercises public authority in the implementation of media policy – adopts acts that regulate the work of electronic media more closely, issues licenses for the provision of media services, monitors and controls their work, reviews applications and measures, and, together with the regulatory authority responsible for electronic communications and the Commission for Protection of Competition, proposes a strategy for the development of electronic media to the Government. The REM bodies are the Council, which has 9 members and is authorised to take decisions, and the President, who represents this body. REM has four specialist services: general affairs, legal affairs, finance, and monitoring and analysis. There are 73 employees, of whom 45 are employed by the Monitoring and Analysis Service, which deals with media content monitoring. The annual budget of REM is around EUR 4 million, and the source of revenue is fees from broadcasters for the right to provide media services.<sup>16</sup>

With respect to the work on curbing hate speech, based on the LEM, the REM Council adopts rules that more closely regulate the content of television and radio programs regarding the protection of personality rights and the prohibition of hate speech, and controls their implementation. It has the right to temporarily restrict the broadcasting of programs if they violate the prohibition of hate speech and the obligation to ensure that the program content does not contain hate speech, which also applies to advertising. With the Rulebook on the Protection of Human

<sup>16</sup> Irion, K. et al, (2017), *Nezavisnost i rad Regulatornog tela za elektronske medije u Republici Srbiji – procena na osnovu uporebe metode INDIREG [Independence and Work of the Regulatory Authority for Electronic Media in the Republic of Serbia – the INDIREG Method Based Assessment]*, Council of Europe, p. 20–21.

Rights in the Field of Media Services, the REM Council has further defined the concept of hate speech, which is the most detailed definition of the prohibition of hate speech in the system of regulations of the Republic of Serbia, as well as the manner in which media service providers have to publish the content which constitutes violation of hate speech ban. In curbing hate speech, REM, through its Monitoring and Analysis Service, controls the program content of broadcasters and may impose measures: a warning for minor violations of the rules, a warning for more severe violations, and temporary and permanent revocation of the license. In addition, it can file misdemeanour and criminal charges. In addition to stipulating the authority to regulate programming in relation to hate speech, LEM contains provisions on REM powers that provide the basis for some forms of preventive action to curb hate speech – REM can promote the preservation of the culture and language of national minorities and the availability of media services to persons with disabilities and the development of professionalism. However, there are no specific commitments regarding the development of media literacy.

The performance of REM in curbing hate speech so far suggests that it has never been one of the priorities of this in this authority's operation. The 2014 report of this regulatory authority even stated that "the number of hate speech cases is not that high" and that this problem "perceived in the appropriate perspective". The annual activity reports for 2017 and 2018 show that REM did not imposed any hate speech measures. However, it is not possible to determine from these documents whether and to what extent citizens and legal entities filed hate speech complaints which REM then did not act on, as they state only the total number of complaints filed (193 in 2017 and 296 in 2018) without specifying what they pertain to. This non-transparency is also a feature of previous years' reports, so we have only indirect information about REM's actions pertaining to hate speech, and when they took place.<sup>17</sup> Specifically, the 2017 CoE report, based on data provided by REM, states that during 2016 this body reacted once (and before that back in 2011). On that occasion, a hate speech warning was issued on a reality television show on Happy TV, in which one participant said about the Albanians that "they breed like

<sup>17</sup> Numerous testimonies from the media and research community in Serbia also speak of the non-transparency of REM's work, stating that "it is difficult, if not impossible, to obtain what is requested from REM by requests for access to information of public importance," according to Djuric, R and Dobrilovic, J., (2019), *Zaštita javnog interesa i medijskog pluralizma u Srbiji [Protection of Public Interest and Media Pluralism in Serbia]*, Conference Working Paper, CRTA and Slavko Curuvija Foundation, p. 25.

cockroaches, now an atomic bomb goes off, a strain of them dies, but the other is immune to that radiation and they just keep breeding". Apart from this example, REM did not respond to similar excesses during other reality television shows.<sup>18</sup> In fact, according to a Cenzolovka website report, since its inception to 2017, REM acted in only 15 hate speech cases.

It is therefore not surprising that the 2018 EC report criticizes REM for its tolerance of hate speech and discriminatory terminology and emphasizes the need to strengthen the independence of this body. According to the joint assessment of professional associations in the field of media, the obstacles to REM independence are in the organizational and financial dependence on the Parliament, as well as the functional dependence on the executive branch of government.<sup>19</sup> The 2017 CoE study on the work of REM, based on a specialized Indireg method for assessing the independence and performance of electronic media regulatory authorities, highlights some other obstacles to independence: lack of horizontal legislation in the area of oversight and regulatory authorities that would prevent political influence, lack of independence of REM in creating electronic media development policy, lack of qualifications and expertise within REM and lack of transparency.

---

<sup>18</sup> For example, in the *Dvor [Court]* reality television show, one participant was disqualified for hate speech against Muslims, and the participant called the other a "Roma tramp", but this had no consequence – in *Higher Court in Belgrade Dismisses Hate Speech Charges! Maya: I was speaking from the heart about what I think, it's not hatred*, Blic, November 29, 2013, <https://www.blic.rs/zabava/vesti/visi-sud-u-beogradu-odbacio-optuzbe-za-govor-mrznje-maja-govorila-samiz-srca-sta/lw5cfn9>.

<sup>19</sup> *Zajednički stavovi NUNS, NDNV, ANEM, ALNM i AOM, Prilozi za izradu Strategije razvoja sistema javnog informisanja do 2023.godine [Common Positions of IJAS, IJAV, AIEM, ALIM and AOM, Contributions to the Development of the Public Information System Development Strategy by 2023*, September 19, 2018, pp. 48-51. <http://www.nuns.rs/reforma-public-information/38089/applications-and-useful-bases-appendix-for-development-strategy-development-system-public-information-to-2023-year.html>.

## POSSIBLE DIRECTIONS FOR ENHANCING THE ROLE OF THE ELECTRONIC REGULATORY AUTHORITY IN CURBING HATE SPEECH

### Strengthening Independence as a Precondition

There is consensus among the experts in the field regarding the solutions needed to formally disable political influence on this body. In addition to the adoption of regulations defining the position of independent bodies in the legal system, they include: amendments to the law that would allow REM to perform tasks stemming directly from its mandate and not tasks entrusted to it; abolishing mandatory consent for REM acts from other state bodies; abolishing the status of civil servants of employees; exclusion of political bodies from the process of nominating and dismissing Council members; discontinuity with the existing Council and professionalization of REM, i.e. selection of Director in public competition, and division of administrative function between the two bodies into strategic and operational ones. Most of these measures are foreseen in the Draft Strategy for the Development of the Public Information System of the Republic of Serbia until 2023 (hereinafter: the Draft Media Strategy).

These proposals contain elements of comparative solutions that should ensure formal independence. However, as a survey of 46 media systems in Europe and North America has shown, a higher degree of formal independence only partly explains the variations in the factual situation.<sup>20</sup> *De iure* the most independent regulatory authorities for electronic media are in post-communist countries, with the Nordic countries at the opposite end of the table where *de facto* independence is the strongest. These findings are explained by the “culture of independence” and further point to the development of education for democracy, inter alia through preventive action to curb hate speech through the development of media literacy.

### Curbing Hate Speech by Preventive Action

According to the Draft Media Strategy, Serbia should get a strategy for improving media literacy of citizens. It should be based on research into the information disorders it targets and contain measurable goals for curbing hate speech and strengthening society’s resilience to disinformation and fake news. In comparative

<sup>20</sup> Mutu, A., (2018).

practice, measures to counter these social phenomena include formal and non-formal education, training of media employees, cultural projects and promotional campaigns. That is why, the line ministries for education, culture, information, and youth, as well as educational institutions, cultural institutions and companies working in the field, and civil society organizations, youth organizations, media and others should take part in in the development and implementation of the Media Literacy Strategy. Following the examples from Finland and Ireland, where telecommunications regulatory authorities (unified regulators), as key media system institutions, have central responsibility, the strategy should foresee the central role of REM in coordination and implementation, possibly in cooperation with the regulatory agency for electronic communications competent for the online media (RATEL) and the Press Council as the self-regulatory body of print media.

In the domain in which it already has legal authority, REM is expected to draft a strategy for the development of a radio media service and audio-visual media services (Electronic Media Development Strategy) for a period of 7 years, with mandatory public debate. The draft media strategy provides guidelines, some of which are indirectly related to the curbing hate speech in a preventive manner, through the development of media pluralism.<sup>21</sup> Thus, Measure 4.1 envisages increased diversity of media content in languages of national minorities, Measure 4.2 envisages providing conditions for equal access to media content for persons with disabilities, Measure 4.4. points to the co-financing of the production and distribution of media content in the public interest, and Measure 4.7 to increased media visibility and non-discriminatory reporting on vulnerable social groups. When drafting the Strategy for the Development of Electronic Media, REM could further envisage the activities to which it is bound by Chapter 23 Action Plan, in the Measure 3.5.2.9 which relates to strengthening the professional conduct of journalists through training in the fields of human rights, media ethics, and hate speech.

The measures foreseen in the Draft Media Strategy should not restrict REM in planning for the development of electronic media. The low level of attention given

---

<sup>21</sup> According to the CoE Recommendation for the advancement of media pluralism, this term implies "the existence of wide range of independent and autonomous media as well as various types of content (views and opinions) offered to the public," according to Rakic I., (2014) *Zaštita medijskog pluralizma u Srbiji prema novim zakonskim rešenjima [Protection of media pluralism in Serbia under new legal solutions]*, Proceedings of the University of Novi Sad Faculty of Law, vol. XLVIII, no. 3, pp. 337–349.

to hate speech in Serbia in the Draft Media Strategy is the reason more for REM, within its proposal for the Strategy for Electronic Media Development, to anticipate and develop a Plan for Curbing Hate Speech, the implementation of which would fall under its responsibility (and partly be financed by its funds). This plan could exist on its own, as part of the Electronic Media Development Strategy, or as part of the interdepartmental Media Literacy Strategy foreseen in the Draft Media Strategy. For the purposes of the Plan for Curbing Hate Speech, it would be necessary to operationalize the concept of hate speech so that its indicators can be developed, measurable goals set, and progress monitored. The plan should include similar activities and a range of actors just like the Media Literacy Strategy, to a lesser extent. For its implementation, it would be necessary to improve the system of monitoring media content, which brings us to the topic of curbing hate speech in reactive manner.

### **Curbing Hate Speech by Reactive Action**

The implementation of a potential Plan for Curbing Hate Speech would be facilitated by the implementation of Measure 3.2 of the Draft Media Strategy. This measure relates to the promotion of the professionalism of REM and its accountability to the public and includes the adoption of a media monitoring plan with the prior conduct of a public hearing and the mandatory presentation of monitoring results and the measures taken. It is a measure crucial to curbing hate speech by reactive action.

In order for monitoring to be effective and its findings transparent, it is important to train employees in recognizing hate speech and to sensitize them to the societal dangers of such speech. Also, REM may urge citizens to report hate speech cases. According to the Italian model, REM, together with RATEL, may create a joint online portal dedicated to curbing hate speech and an application for “smart devices” that would facilitate the filing. Measure 3.2 of the Draft Media Strategy envisages a change in regulations to allow REM to impose fines, which, among other measures, will make it more effective in reactively curbing hate speech.

## CONCLUSION

The paper presents possible ways to advance the role of REM in curbing hate speech, informed by examples from comparative practice. In the field of preventive action, the suggestion is put forward to entrust REM with the role of coordinator of the future Media Literacy Strategy, foreseen in the Draft Media Strategy. Also, in proposing the Electronic Media Development Strategy, a task within its purview, it could propose a series of measures as preventive action against the spread of hate speech, as elaboration of the existing measures of the Draft Media Strategy, but also as elaboration of its obligations under the Chapter 23 Action Plan. Finally, the paper puts forward a recommendation that REM develop a Plan for Curbing Hate Speech, as part of its proposal of Electronic Media Development Strategy, which could be implemented independently or as part of the Media Literacy Strategy. In the plan of curbing hate speech in a reactive manner, in addition to the measures already postulated in the Draft Media Strategy, cooperation with RATEL and the Press Council is proposed, which would facilitate the detection and response to hate speech through a common platform on the Internet.

### Literature:

*Akcioni plan za poglavlje 23 [Action Plan for Chapter 23]*, Group for Negotiations for Chapter 23, Republic of Serbia <https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nact-%20Konacna%20verzija1.pdf>

*Austria: Responding to Hate Speech – country report*, (2018), ARTICLE 19, Free World Centre

*Austria's presidential rivals clash over Trump, EU in TV debate*, The Times of Israel, November 28 2016 <https://www.timesofisrael.com/austrias-presidential-rivals-clash-over-trump-eu-in-tv-debate/>

European Commission (2018) *COMMISSION STAFF WORKING DOCUMENT Serbia 2018 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2018 Communication on EU Enlargement Policy*,

*David Cameron criticized over migrant 'swarm' language*, BBC News, July 30, 2015, <https://www.bbc.com/news/uk-politics-33716501>

Đurić, R. i Dobrilović, J., (2019), *Zaštita javnog interesa i medijskog pluralizma u Srbiji*, radni izveštaj za konferenciju [*Protection of public interest and media pluralism in Serbia – conference report*], CRTA and Slavko Ćuruvija Foundation, <https://crt.rs/wp-content/uploads/2019/01/Za%C5%A1tita-javnog-interesa-i-medijskog-pluralizma-u-Srbiji.pdf>

*ECRI Report on Serbia (fifth monitoring cycle)*, ECRI Council of Europe, May 16, 2017

*German interior minister presents his migration master plan*, Deutsche Welle TV, July 10, 2018 <https://www.dw.com/en/german-interior-minister-presents-his-migration-master-plan/a-44601059>

*Germany: Responding to Hate Speech – country report*, (2018), ARTICLE 19, Free World Centre

*Procesuiranje zločina iz mržnje i govora mržnje u pravu Srbije i evropski standardi [Hate Crimes and Hate Speech Prosecutions in Serbian Law and European Standards]* (2018), YUCOM Human Rights Committee

*Govor mržnje u medijima [Hate Speech in the Media]* (2014), Republic Broadcasting Agency of the Republic of Serbia

*Hrvatska: 31 lokalna TV privremeno ostala bez koncesije zbog govora mržnje [Croatia: Licences Ssuspended for 31 Local TV Stations Due to Hate Speech]*, Novosti, November 26, 2018, <http://www.novosti.rs/vesti/planeta.300.html:762762-Hrvatska-31-lokalna-tv-privremeno-ostala-bez-koncesije-zbog-govora-mrznje>

Irion, K. et al, (2017), *Nezavisnost i rad Regulatornog tela za elektronske medije u Republici Srbiji – procena na osnovu uporebe metode INDIREG [Independence and Work of the Regulatory Authority for Electronic Media in the Republic of Serbia – the INDIREG Method Based Assessment]*, Council of Europe

*Italy: Responding to Hate Speech – country report*, (2018), ARTICLE 19, Free World Centre

*Kolinda Grabar-Kitarović: „Za dom spremni“ je stari hrvatski pozdrav, ali kompromitiran je [Kolinda Grabar-Kitarović: „For Homeland Ready“ is an Old Croatian Salute, But It has Been Compromised]*, HINA, July 4, 2017 [http://novilist.hr/Vijesti/Hrvatska/Kolinda-Grabar-Kitarovic-Za-dom-spremnije-stari-hrvatski-pozdrav-ali-kompromitiran-je?meta\\_refresh=true](http://novilist.hr/Vijesti/Hrvatska/Kolinda-Grabar-Kitarovic-Za-dom-spremnije-stari-hrvatski-pozdrav-ali-kompromitiran-je?meta_refresh=true)

*Maja Nikolić i Miloš Bojanić pravosnažno oslobođeni optužbi [Maja Nikolic and Milos Bojanic Acquitted of Charges]*, Blic, July 1, 2014 <https://www.blic.rs/vesti/hronika/maja-nikolic-i-milos-bojanic-pravosnazno-oslobodeni-optuzbi/2zwbme2>

*Media use in the European Union – Report (2017)*, Standard Eurobarometer 88, European Commission

*Mediji i ekstremni govor – rezultati istraživanja [Media and Extreme Speech – Research Results]* (2017), Center for new Media LIBER, <http://www.blogopen.rs/wp-content/uploads/2017/11/Rezultat-istrazivanja-eksternog-govora-u-medijsima.pdf>

*Migrants may bring epidemics, warns Polish president*, AFP, October 28 2015 <https://news.yahoo.com/migrants-may-bring-epidemics-warns-polish-president-171724958.html>

Milenkovic, D., (2016), *Medijsko pravo i medijske politike – rider [Media Law and Media Policies – Reader]*, 2016/17 School Year

Mutu, A., (2018), *The regulatory independence of audio-visual media regulators: A cross-national comparative analysis*, European Journal of Communication I-20

*Nacrt strategije razvoja sistema javnog informisanja [Draft Strategy of Public Information System Development]* <https://www.srbija.gov.rs/dokument/386723/izvestaj-o-sprovedenoj-javnoj-raspravi-o-medijskoj-strategiji.php>

*Ofcam revokes Ausaf TV broadcast licence*, BBC News, September 6 2018 <https://www.bbc.com/news/entertainment-arts-45435919>

*Pravilnik o zaštiti ljudskih prava u oblasti pružanja medijskih usluga (2015) [Rulebook od Protection of Human Rights in Provision of Media Services]*, Savet REM-a

*Pravo na medije: govor mržnje u Srbiji kao devedesetih [Right to Media: Hate Speech in Serbia Same as in the Nineties]*, Cenzolovka, June 30, 2017 <https://>

[www.cenzolovka.rs/mediologija/pravo-na-medije-govor-mrznje-u-srbiji-kao-devedesetih/](http://www.cenzolovka.rs/mediologija/pravo-na-medije-govor-mrznje-u-srbiji-kao-devedesetih/)

*Procesuiranje zločina iz mržnje i govora mržnje u pravu Srbije i evropski standardi [Hate Crimes and Hate Speech Prosecutions in Serbian Law and European Standards]* (2018), YUCOM Human Rights Committee

*Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, Annual report of the United Nations High Commissioner for Human Rights, UN Assembly Human Rights Council

Rakic I., (2014) *Zaštita medijskog pluralizma u Srbiji prema novim zakonskim rešenjima [Protection of media pluralism in Serbia under new legal solutions]*, Proceedings of the University of Novi Sad Faculty of Law, vol. XLVIII, no. 3

*REM pokrenuo prekršajni postupak protiv SBB [REM Initiates Misdemeanor Proceedings Against SBB]*, Politika, 25. mart 2019, <http://www.politika.rs/scc/clanak/425852/REM-pokrenuo-prekršajni-postupak-protiv-SBB>

*Responding to hate speech: Comparative overview of six EU countries*, (2018), ARTICLE 19, Free World Centre

Rokša Zupčević, A., (2017), *Medijska regulatorna tela i govor mržnje [Media Regulatory Bodies and Hate Speech]*, Council of Europe

*Salvini claims he is saving Europe from Islam – what are the facts?*, EuroNews, May 6, 2019 <https://www.euronews.com/2019/05/03/europe-will-become-an-islamic-caliphate-if-we-don-t-take-back-control-salvini-tells-hunga>

*Serbia 2018 Report*, (2018) Commission Staff Working Document, European Commission

Simeunović. D., (2009), *Uvod u političku teoriju [Introduction to Political Theory]*, Institute for Political Studies

*Sramne izjave Dodika u Beogradu: S džamija BiH se arlauče, Srbi su istraumirani... [Shameful Statements by Dodik in Belgrade: Howling from the Mosques in BiH, Serbs are traumatised... ]*, klix.ba, July 19, 2018, <https://www.klix.ba/vijesti/bih/sramne-izjave-dodika-u-beogradu-s-dzamija-u-bih-se-arlauce-srbi-su-istraumirani/180719087>

*Sumanute izjave: Hajde da se svi okupimo protiv Srbije [Crazy Statements: Let Us All Rally Against Serbia]*, Kurir, February 21 2019. <https://www.kurir.rs/vesti/politika/3209395/sumanute-izjave-veselji-sokirao-u-tv-intervju-hajde-da-se-svi-okupimo-protiv-srbije-ako-bog-da-suocicu-se-sa-njima-i-vise-nece-bit-borbe>

*The man who thinks Europe has been invaded*, BBC, [https://www.bbc.co.uk/news/resources/idt-sh/Viktor\\_Orban](https://www.bbc.co.uk/news/resources/idt-sh/Viktor_Orban)

Tomljenović, R. (2018), *Regulatorna tela za elektronske medije i medijska pismenost [Regulatory Authorities for Electronic Media and Media Literacy]*, Council of Europe

*TV i Internet glavni izvori informisanja u Srbiji, dnevne novine na začelju [TV and Internet Key Sources of Information, Daily Papers at the Frontend]*, Online Danas, December 20, 2018 <https://www.danas.rs/drustvo/tv-i-internet-glavni-izvori-informisanja-u-srbiji-dnevne-novine-na-zacelju/>

*UK: Responding to Hate Speech – country report*, (2018), ARTICLE 19, Free World Centre Zakon o elektronskim medijima, Službeni glasnik RS, br. 83/2014 i 6/2016

*UK-based TV station fined for anti-Ahmadi Muslim hate speech*, The Guardian, April 19, 2019 <https://www.theguardian.com/world/2019/apr/15/uk-based-tv-station-channel-44-fined-anti-ahmadi-muslim-hate-speech>

*Higher Court in Belgrade Dismisses Hate Speech Charges! Maya: I was speaking from the heart about what I think, it's not hatred*, Blic, November 29, 2013 <https://www.blic.rs/zabava/vesti/visi-sud-u-beogradu-odbacio-optuzbe-za-govor-mrznje-maja-govorila-sam-iz-srca-sta/lw5cfn9>

Wardle, K. and Derakshan, H., (2017), *Information Disorder: Toward an interdisciplinary framework for research and policy making*, Council of Europe

*Zajednički stavovi NUNS, NDNV, ANEM, ALNM i AOM, Prilozi za izradu Strategije razvoja sistema javnog informisanja do 2023. godine [Common Positions of IJAS, IJAV, AIEM, ALIM and AOM, Contributions to the Development of the Public Information System Development Strategy by 2023]*, September 19, 2018 <http://www.nuns.rs/reforma-public-information/38089/applications-and-useful-bases-appendix-for-development-strategy-development-system-public-information-to-2023-year.html>

*Zakon o elektronskim medijima R Srbije [Law on Electronic Media of the Republic of Serbia]*, Official Gazette RS 83/2014 i 6/2016

*Zakon o javnom informisanju i medijima R Srbije [Law on Public Information and Media of the Republic of the Republic of Serbia]*, Official Gazette RS 83/2014, 58/2015 i 12/2016

Official web presentations of the regulatory bodies for electronic media:

AEM (Montenegro) – <http://aemcg.org/>

AEM (Croatia) – <https://www.aem.hr/>

AGCOM (Italy) – <https://www.agcom.it/>

AMA (Albania) – <http://ama.gov.al/?lang=en>

AVMU (North Macedonia) – <http://avmu.mk/>

KommAustria (Austria) – <https://www.rtr.at/de/rtr/OrganeKommAustria>

KRITT (Poland) – <http://www.krrit.gov.pl/en/>

NMHH (Hungary) – <http://english.nmhh.hu/media-council>

NKM (Kosovo\*) – <http://www.kpm-ks.org/?gjuha=2>

RAK (Bosnia and Herzegovina) – <https://www.rak.ba/>

REM (Serbia) – <http://www.rem.rs/>

Office of Communications (United Kingdom) – <http://www.ofcom.org.uk>

Ана Марјановић Рудан

## УЛОГА РЕГУЛАТОРНОГ ТЕЛА ЗА ЕЛЕКТРОНСКЕ МЕДИЈЕ У СУЗБИЈАЊУ ГОВОРА МРЖЊЕ У СРБИЈИ

### Апстракт

*Говор мржње подстиче дискриминацију и угрожава безбедност, због чега представља претњу демократији. И у региону Западног Балкана и у Европској унији такав говор је све присутнији у јавном простору. Телевизија, као медиј који на грађане има највећи утицај, има пресудан значај у његовој нормализацији. Ипак, регулаторна тела за електронске медије ретко реагују на говор мржње у телевизијским програмима, што се може објаснити политичким опортунитетом, неразумевањем озбиљности претње или постојањем других приоритета, али и техничким разлозима. Превентивно сузбијање говора мржње захтева неговање толеранције и развој критичког односа грађана према стварности, тј. унапређење медијске писмености кроз образовање и информисање. Регулаторна тела за електронске медије могу имати централну улогу у тим напорима, за шта се у раду наводе примери. Питање улоге Регулаторног тела за електронске медије у сузбијању говора мржње у Србији је актуелно с обзиром на текуће планирање медијске политике. У раду се разматра досадашња пракса овог тела у сузбијању говора мржње и предлажу мере за унапређење његове улоге.*

**Кључне речи:** *електронски медији, телевизија, Регулаторно тело за електронске медије, говор мржње, медијска писменост.*