

Online Hate Speech in the Time of the Covid-19 Crisis and Challenges for Serbian Criminal Justice System

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Abstract

The author presents the results of research on how young people from three multicultural regions of Serbia perceive hate speech on the Internet, as well as their experiences when it comes to hate speech on the Internet during the crisis with the COVID-19 virus. After that, analyzing the conclusions of the research conducted within the project "Combating discrimination, online hate speech and toxic narratives in multicultural regions of Serbia", the author gives an overview of criminal law provisions that sanction hate speech in the Republic of Serbia, and then gives certain recommendations for amendments of criminal law with the aim to adequately respond to the current state of hate speech, with a special focus on online hate speech, and to provide adequate and equal protection for all groups that most often occur as victims of hate speech in Republic of Serbia.

Keywords: online hate speech, criminal law, research, victims, protection.

I. Introduction

This paper will first present the results of a project called "Combating discrimination, online hate speech and toxic narratives in multicultural regions of Serbia" which was implemented in Serbia from June until September 2020, and then, based on the analysis of these results, the challenges facing the criminal justice system of the Republic of Serbia when it comes to online hate speech will be pointed out with special focus on time of crisis with virus COVID-19.

The project "Combating discrimination, online hate speech and toxic narratives in multicultural regions of Serbia" was implemented by CSO MONITOR¹ from Novi Pazar

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¹ Association of citizens MONITOR has been founded in March 2011, as a non-governmental non-profit association of citizens, which mission include the indication of current social problems and raising awareness of citizens about the same, as well as proposing concrete recommendations and directing social actions towards their resolution. Through its work, MONITOR strives to point out the current problems of the society from the field of human rights, security, culture, information and ecology by conducting research, monitoring and transparent presentation of the state of socio-economic and socio-political circumstances, relationships and processes, as well as by education of citizens raise awareness of the same, all in order to build the capacity of society to solve them. In previous three years MONITOR realize several projects which dealing with issues of hate speech, hate crimes, discrimination, extremism, nationalism, radicalism and human security. Association of citizens MONITOR operates in different parts of Serbia, through projects and activities. Most activities of Monitor for now are located in South-west part of Serbia. The focus of MONITOR is promoting

(Republic of Serbia), with the financial support of the European Union and the Council of Europe through their joint program "Horizontal Facility for the Western Balkans and Turkey 2019-2022". and a project within it entitled "Promotion of Diversity and Equality in Serbia". This project was created with the aim of combating the consequences that the COVID-19 virus pandemic had on already vulnerable groups in society. Within the project conducted research through anonymous questionnaires in which the project team sought to determine the existence of certain forms of hate speech and discrimination, patterns that appeared during the state of emergency and after the state of emergency, as well as young people's perception of these phenomena in which over 300 young people participated. Before we present results of conducted research we will first briefly explain background of this intervention.

Many of research before crisis with virus COVID-19 shows that there are presence of serious amount of online hate speech and toxic narratives based on of national, religious or racial belonging, and sexual orientation in the territory of Republic of Serbia. Considering the pronounced overlap of religious and national identities among the most represented social groups living in the territory of Serbia (Serbs-Orthodox, Hungarians-Catholics, Bosniaks-Muslims, Croats-Catholics, Albanians-Muslims...)², project team start from the assumption that the areas in who has the greatest concentration of these social groups (both majority and minority) will be most sensitive to the spread of hate speech and toxic narratives based on ethnical and religious belonging. The World Health Organization (WHO) declared a pandemic on March 11, 2020, and the state of emergency in Serbia was declared on March 15, 2020, and lasted until May 6, 2020. During the state of emergency, a number of human rights and freedoms were abolished or restricted (eg freedom of movement). This has had consequences for the enjoyment of numerous rights, and has particularly affected minority groups and encouraged the now desirable "distance" between people, which particularly affects members of minority groups. Even after the lifting of the state of emergency, numerous measures remain that restrict human rights and freedoms. The WHO has not declared an end to the COVID-19 virus pandemic, and it can be expected that, given the unforeseen circumstances, the reintroduction of restrictive measures, and one educational and research project could be very important to prevent future negative consequences for members of minority groups such as intolerance, discrimination and hate speech. The Internet is a suitable ground for such activities, as social distance is recommended and freedom of movement is restricted. Within educational part of the project team plan was to organize trainings for trainers who will in the future train other trainers. On this way a base is created for future work related to the prevention of hate speech on the Internet, which is a modern and "desirable" form of communication among young people. The state of emergency and restriction of freedom of movement have shown this in practice. Through the survey, project team tended to determine the consequences and patterns that occurred during

social, environmentally sustainable, multicultural, multinational and multiconfessional interaction in society. Its main office is located in Novi Pazar (www.monitor.org.rs).

² According to the 2011 census, Serbia has 7,186,862 inhabitants. By ethnicity, 5,988,093 (83.3%) of persons declared themselves Serbs, and another 20 ethnic communities has more than 2,000 members each (Hungarians 253,889 (3.52%), Roma 147,604 (2.05%), Bosniaks 145,278 (2.02%), Croats 57,900 (0.81%), Slovaks 52,750 (0.73%), Montenegrins 38,527 (0.54%), Vlachs 35,330 (0.49%), Romanians 29,332 (0.41%), Yugoslavs 23,303 (0.32%), Macedonians 22,755 (0.32%), Muslims 22,301 (0.31%), Bulgarians 18,543 (0.26%), Bunjevci 16,706 (0.23%), Rusyns 12,246 (0.20%), Gorani 7,767 (0.11%) Albanians 5,809 (0.08%), Ukrainians 4,903 (0.07%), Germans 4,064 (0.06%), Slovenians 4,033 (0.06%), Others 17,558 (0.24%).

the state of emergency and measures after the state of emergency regarding online hate speech and discrimination. Regarding to that, project team identified three areas (regions) in Serbia which are most diverse in national, ethnic and religious composition and where the concentration of inhabitants from biggest minority groups is highest. That are: Southwestern Serbia, South Serbia and North Serbia. When it comes to racially based hate speech, among almost all ethnic groups there is intolerance toward Roma population. According to the latest 2011 census, the Roma population in Serbia is mostly represented in the southern part of Serbia, where about 38.7% live, then in the northern part of Serbia (Vojvodina), where 28.7% live, Belgrade region (18.6%) and the region of central and southwestern Serbia where there are about 14%.

According to the aforementioned, the areas most suitable for appearance of hate speech and toxic narratives on Internet in Serbia are those areas where we have the largest concentration of different national and religious groups that have a long history of conflicts and numerous unresolved issues from the past with each other or with the majority (Serbian) ethnic group, as well as those areas where their motherland states is in the neighborhood. These are the territories of Southwestern Serbia, South Serbia and North Serbia. At the same time, these three regions of Serbia are the area's most populated by members of the Roma population. Also, these areas represent migrant routes and these areas have the highest number of migrant reception centers, which, after Roma population are most vulnerable to hate speech based on racial belonging (Ivanović & Soltvedt, 2020:73).

The problem addressed by this project is hate speech and toxic narratives on the Internet in certain local communities and regions of Serbia, with a particular focus on ethnic, religious and racial hatred. Namely, due to various unresolved problems from the past, although there are no open conflicts, there is a high level of hate speech in local electronic media and social networks in this region on ethnic, religious and political basis. Namely, hate speech and toxic narratives in local media and on social networks in this regions of Serbia (South Western, South Serbia and North Serbia) is very pronounced, perhaps more than in relation to the rest of Serbia. In this areas, there are numerous of local electronic media for which publicly does not know who stand behind, but on the basis of the reporting method, it can be concluded that they are close to some ethnic, religious or political options and are at the same time hostile to members of other ethnic, religious and shallow ones. Almost every local political option (mostly from minority groups) operating at the local level uses one or more electronic media to promote their ideas, and to make insults, and even direct discredit and threat to members of other political options. In these media, professional journalists are mostly not employed, which results in the fact that the news or texts that are published are not written in accordance with the ethical codex and standards of the journalistic profession (Ivanović, 2018:413). All of this has for result that often news at local electronic media as well as journal texts on these portals has been written in a way to contain hate speech or to encourage hate speech among its readers, according to members of a particular ethnic, religious, political group, or members of certain sexual orientation or fan groups. What makes the problem of hate speech and toxic narratives on local electronic media and on social networks makes it even more dangerous in this regions is the fact that there is lack of reaction of local officials, competent institutions, representatives of political parties, religious institutions, educational institutions, representatives of civil society etc. the appearance of this form of speech from hatred. This is a problem because the hate speech and toxic narratives at local electronic media and on social networks can represent a generator

of some future conflicts and discriminatory behaviors on a national, religious, political or any other basis, that is, the emergence and adoption of radical and extreme ideologies that promote the application of faith. This state of affairs is the result of above all the lack of will to discuss this problem, as well as to take action in terms of reducing of hate speech in local electronic media and on social networks, as well as the lack of knowledge among citizens, and above all young people, about causes of manifest forms, and the consequence of hate speech on these media, as well as the issues of legal regulation of these issues, referral mechanisms in charge of preventing and suppressing such phenomena.

II. Analysis of research results

The conducted survey within the project “Combating discrimination, online hate speech and toxic narratives in multicultural regions of Serbia” included 303 respondents, of which 110 (36.30%) were male and 193 (63.70%) were female. Participants were of the following age structure: one person (0.33%) was aged 10 to 15 years, 155 (51.16%) persons aged 15-25 years, 147 (48.51) aged 25 to 30 years. Regarding the geographical structure of the research participants, 126 respondents (29.04%) are from South and South-eastern Serbia, followed by 88 respondents (29.04%) from South-Western Serbia, while 89 participants (29.37%) from North Serbia participated.

When asked if they know what is meant by hate speech, 263 respondents (86.80%) answered in the affirmative, while 40 respondents (13.20%) answered in the negative. When asked to answer what is meant by hate speech, the respondents gave a wide range of different answers. For these answers, as well as for the answers about what discrimination is, the largest number of respondents gave incorrect or incomplete definitions of hate speech, and the conclusion is that it is necessary to organize additional trainings in order to introduce the younger population to the concept of hate speech and its manifestations, all with the aim of detecting and effectively suppressing hate speech.

By analyzing the given answers to question regarding source of their knowledge about hate speech, respondents stated that mostly of them have got their knowledge of hate speech over the Internet, more precisely, this option is marked by 101 (33,33%) of respondents, while 74 (24,42%) of respondents have chosen option that their knowledge about hate speech is mainly based on what they learned at school or university, or through their formal education, 61 (20,13%) of them marked option from newspapers or from television as the basis of their knowledge regarding this term. Personal experience as the basis for knowing about notion of hate speech is marked by 37 (12,21%), while only 30 (9,90%) of respondents tagged option that this knowledge have been acquired in some other way.

Also, on the base of given answers, we can see that half of the respondents know that the hate speech is sanctioned by national legislation, namely, 178 (58,75%) chose this option, while 125 (41,25%) of respondents declared themselves that hate speech is not sanctioned by national legislation. So, we can conclude that opinions on this issue are divided among respondents. Namely, around 58% stated that national legislation provides sanctions for hate speech, while 41% think that national legislation do not prescribes sanctions for this kind of behavior. When asked what are the key causes of

hate speech, two thirds of respondents (201 – 66.34%) answered in the affirmative, while one third of respondents (102 – 33.66%) answered in the negative. Respondents who stated that they know the key causes of hate speech, stated a large number of alleged causes (media, social networks, politicians, intolerance, (in) openness of society, insufficient education, but also religion, upbringing, jealousy and the environment). The most present answers were: media, social networks, politicians, intolerance and insufficient education (Stojanović, 2020:6). When asked whether they are familiar with the ways in which hate speech manifests itself on the Internet, 223 respondents (73.60%), therefore, almost three quarters of respondents answered in the affirmative, and 80 respondents (26.40%) answered in the negative. When asked whether it is justified to respond to hate speech with the same measure, 259 respondents (85.48%) answered in the negative, while 44 respondents (14.52%) answered in the affirmative. Looking at the regions, the answers of the respondents are almost identical – a significantly larger number of respondents are of the opinion that hate speech should not be answered with the same measure (Stojanović, 2020:8).

When asked whether since the beginning of the crisis caused by the COVID-19 virus pandemic, they felt insulted, injured, discriminated against with content on the Internet, 212 respondents (69.97%) answered that they did not, 38 respondents (12.54%) did, once, and 53 respondents (17.49%) answered yes several times. Regarding the answers on this question according regions, and focus groups situation is as follows:

Responses from participants from South and South Eastern Serbia

Offered answers	Yes, once	Yes, several times	No	Sum
Number of participants	17	19	90	126
Percentage	13,49	15,08	71,43	100

Responses from participants from South Western Serbia

Offered answers	Yes, once	Yes, several times	No	Sum
Number of participants	15	18	56	89
Percentage	16,85	20,22	62,92	100

Responses from participants from North Serbia

Offered answers	Yes, once	Yes, several times	No	Sum
Number of participants	6	16	66	88
Percentage	6,82	18,18	75	100

Responses from participants who belongs to Serbian nation

Offered answers	Yes, once	Yes, several times	No	Sum
Number of participants	24	35	154	303
Percentage	11,27	16,43	72,30	100

Responses from participants who belongs to national minorities

Offered answers	Yes, once	Yes, several times	No	Sum
Number of participants	32	32	129	193
Percentage	16,58	16,58	66,84	100

The results obtained in the survey, which refer to the fact that during the interaction on the Internet, 173 respondents (57.10%) out of 303 respondents witnessed a situation in which someone was attacked or harassed over the Internet, are worrying. Regarding the answers on this question according to regions, and focus groups situation is as follows:

Responses from participants belonging to South and South Eastern Serbia

Offered answers	Yes	No	No answer	Sum
Number of participants	55	71	0	126
Percentage	43,65	56,35	0,00	100

Responses from participants belonging to South Western Serbia

Offered answers	Yes	No	No answer	Sum
Number of participants	56	33	0	89
Percentage	62,92	37,08	0,00	100

Responses from participants belonging to North Serbia

Offered answers	Yes	No	No answer	Sum
Number of participants	62	26	0	88
Percentage	70,45	29,55	0,00	100

Responses from participants belonging to Serbian nation

Offered answers	Yes	No	No answer	Sum
Number of participants	116	97	0	213
Percentage	54,46	29,55	0,00	100

Responses from participants belonging to national minorities

Offered answers	Yes	No	No answer	Sum
Number of participants	52	33	0	85
Percentage	61,18	38,82	0,00	100

A particularly high percentage was recorded in the south-west regions (62.92%), namely 56 out of 89 respondents and north 62 (70.45%) out of 88 respondents. Also, more than half of the affirmative answers regarding the fact that they witnessed a situation of attack or harassment over the Internet were recorded among the majority Serb population, as well as among members of national minorities, but also among members of both sexes.

Regarding the manner in which the abuse was committed, the largest number of respondents, as many as 192 (63.37%), responded to the abuse committed by pronouncing and naming a person with derogatory names due to some specific trait or affiliation. Respondents in all these regions listed this form of abuse as the most common, with 64 (73.73%) out of 88 respondents in the North region listing this form of abuse as the most common, as well as 61 (68.54%) out of 89 respondents from the South-West region.

By analyzing the affiliation of the group on which these harassments were based, the largest number of respondents stated national or ethnic affiliation – 42.90% of respondents, followed by political affiliation 38.61%, religion 37.95%, sexual orientation 29.70%, and sex 19.47%.

When asked whether they were victims of hate speech on the Internet or a social network, 35 respondents (11.74%) gave an affirmative answer, while 236 (88.26%) respondents gave a negative answer. Based on the answers related to group affiliation on which online hate speech addressed them was based on we can see that 39 (12,87%) cases they were victims of the hate speech on the religious basis, then 32 (10,56%) cases were marked hatred on political affiliation, 12 (8,25%) cases were marked hatred for ethnic or national grounds and 10 (3,30%) cases hatred for sex and 8 (2,64%) cases were marked hatred for age range, 6 (1,98%) cases hatred because sexual orientation, and 5 (1,65%) cases because gender identity. Here, looking at regions, ethnicity and gender, there were no discrepancies in the answers given.

When asked whether, in the opinion of the respondents, the reaction of society and responsible state bodies to hate speech on the electronic media and on social networks in the local community in which they live is adequate, the statistical data are also worrying. Thus, according to only 11 respondents – 11 (3.69%), the reaction is adequate, while according to as many as 164 respondents (54.36%) it is not. As a partially adequate reaction of the society, 94 respondents (31.54%) recognized it, and 31 respondents (10.40%) believe that it is mostly adequate. Also, no major discrepancies in the answers of the respondents were recorded either by regions, or by the national and gender structure of the respondents.

When asked whether the method of reporting online hate speech, only one third of the respondents answered in the affirmative – 100 (33.56%), while two thirds of the respondents stated that they did not know – 198 (66.44%). Here, too, looking at regions, ethnicity and gender, there were no discrepancies in the answers given.

When asked immediately after the question whether they know how to report hate speech online, and referred to whom they would report a case of hate speech on social networks, the results nominally showed that respondents do not know how to report hate speech. Thus, almost three quarters of the respondents answered that they did not know – 217 (72.82%), while only 81 respondents (27.18%) answered that they knew. Those who responded to know who to report to also cited a wide range of entities – portals and social network administrators, the Equality Commissioner, the Press Council, SOS state and non-state telephones (without specifying which telephones are and who provides such assistance), civil society organizations, and to a lesser extent the police and the judiciary. The school psychologist was mentioned among the answers. Based on the analysis of the given answers, it is clear that young people are generally aware, at least in small numbers, that there are types of reporting hate speech, but without a clearly defined way of reporting and sanctioning, as well as not knowing the competencies of the authorities (Stojanović, 2020:12).

Based on the data processed, in accordance with the assumptions set by the project team, as well as the goals defined by the project, we make the following conclusions regarding the processed data:

1) More than 10% of respondents do not know meaning of notion hate speech. Also, respondents are not fully aware of the meaning of hate speech. Namely, although 86,80% of respondents answered to this question positively, when it comes to defining hate speech, the processed data show that its meaning is not clearly familiar to the respondents. Namely, to question number where from participants were asked to describe by their own words meaning of hate speech, we can see that most of them (approximately 60% of them) hate speech define through notions such as nationalism, racism, discrimination, threats, insults, mostly identifying hate speech with the meaning of these terms. And that most of them do not identifying in its definition of

hate speech hatred motive because of some personal character or affiliation of person. Also, very small numbers of them mention in his description that hate speech encourages, promotes, or justifies intolerance, discrimination and hostility towards a member of another race, gender, sexual orientation, origin and other personal belonging of an individual or group. Also there is no offered definition by respondents according to which hate speech include communications that foster climate of prejudice and intolerance which may fuel discrimination, hostility and violent attacks later on. Because of everything foregoing mentioned we can conclude that the majority of the respondents are not familiar clearly with truly meaning of the term hate speech.

Also, we can conclude that among the half of respondents knowledge regarding hate speech is mainly based on information from the Internet, that is, information from the media, because about 50% of the respondents stated Internet, newspapers or televisions as a source of their knowledge of hate speech. In addition to that, 41% of respondents think that hate speech is not sanctioned by national legislation.

From results of survey we can conclude that 85,48% do not justifying responding on hate speech with the same measure. However, 14,52% of the respondents think that such response is justified.

2) Also, we can conclude that around 30% of respondents felt offended, insulted or discriminated due to some Internet content once or several time during crisis caused by the COVID-19. Besides that, 57% of the participants were witnesses of a situation in which someone else was assaulted or harassed over the Internet on some basis. From this number of respondents 63,37% participants stated that they were mostly witnesses of online insults, which were manifested in the calling and naming of a person with offensive names because of some personal property or some affiliation, while 21,12% of them answered that they were witnesses of online threatening by a physical attack on life and body to some other person, and 15,51% sexual harassment.

3) On the basis of the results of survey we can see that 42,90% of participants were the witnesses of cases where someone was victim of hate speech based on national or ethnic affiliation, and 38,61% hatred because political belonging and 37,95% religious belonging, 29,70% sexual orientation, and 19,47% sex.

4) Based on the results of survey we can see that 88,26% of the participants were not victims of hate speech on the Internet or social networks. Those who were victims of hate speech on the Internet stated that those speeches were based on hatred towards religious (12,87%), political belonging (10,56%), national affiliation (8,25%), sex (2,64%), sexual orientation (1,98%), and gender identity (1,65%).

5) Around half of respondents think that reaction of state authorities on the presence of hate speech on electronic media and on social networks in their local communities is inadequate. Also, more than a half or precisely 72,81% of respondents do not know to whom can be reported hate speech.

6) The processed data tells us even though they were not directly victims of hate speech, almost half of respondents met with hate speech on the Internet, i.e. with the situation that they were witnesses of such situation, or situation in which someone was offended, insulted, discriminated mainly based on religious affiliation, sexual orientation, national or ethnic and political affiliation. At the end, we can say that respondents are only in general aware of the meaning of the notion of hate speech, that they do not have a clear idea of the detailed meaning of this term, as well as the elements of hate speech and concrete forms of the expression of the hate speech on the Internet.

III. Criminal law sanctioning of hate speech on the Internet in the Republic of Serbia

Criminal Code of the Republic of Serbia³ Article 317 prescribes the criminal offense of Instigating National, Racial and Religious Hatred and Intolerance. The protective object of this crime is the national, religious and racial equality of the citizens of the Republic of Serbia. Equality and unity of citizens in the Republic of Serbia is built on mutual respect and trust of all who live in it. This unity is preserved by constant nurturing, respect for all the characteristics of national, religious, racial, cultural and other values that characterize certain peoples and ethnic communities in the Republic of Serbia (Jović, 2011:240). The Code prescribes the basic, qualified and special form of this criminal offense. Intent is the only form of guilt for this criminal offence.

The act of committing the basic form of this crime is set alternatively as instigating or exacerbating national, racial or religious hatred, or intolerance (paragraph 1). This further means that the act will exist both in a situation when there is no national, racial, religious hatred or intolerance between peoples or ethnic communities, so it is provoked in different ways (i.e. it creates, causes), and when it exists as latent, a state or as a state of lesser intensity, and then further inflamed (Stojanović, 2017:936). Instigating implies the creation of hatred or intolerance on the mentioned grounds, in a situation where such phenomena did not exist, while exacerbating is an increase (deepening, i.e. expansion) of already existing hatred, intolerance and bigotry. Thus, Instigating or exacerbating national, racial or religious hatred or intolerance can be done in different ways and by different means: speech, inscription and other actions, which influences the creation or strengthening of certain feelings or attitudes towards a nation or ethnic community. In terms of the nature of this crime, hatred is understood as a negative feeling of high intensity which represents a very fertile ground for undertaking various excessive behaviors towards members of a certain people or ethnic community. When it comes to intolerance, it is understood in relation to hatred as a negative feeling of "milder" intensity (the so-called vestibule of feelings of hatred), which can also cause certain negative behaviors that may ultimately contribute to the commission of this crime. It should be noted here that in criminal law theory, the question arises, and there are conflicting opinions, as to whether contempt for a nation or ethnic community can be included in the notion of intolerance. Namely, unlike hatred and intolerance, contempt for a nation or ethnic community, is a negative attitude that is most often expressed in the form of ignoring and as such does not contain the potential to perform certain activities and actions against a nation or ethnic community, so that provoking and inciting contempt would still not be sufficient for the existence of this crime (Stojanović, 2017:936). The passive subject in this criminal offense is represented by peoples, national minorities and ethnic communities living in the Republic of Serbia, and in connection with this, committing actions under this criminal offense against national or ethnic groups not living in the Republic of Serbia cannot constitute this criminal offense.

The criminal offence has been done by undertaking an activity with the aim of instigating or exacerbating hatred or intolerance, i.e. it is not necessary that these activities have led to the provocation or incitement of hatred or intolerance, or that a

³ Criminal Code of Republic of Serbia ("OG", no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

consequence has occurred. Therefore, the very consequence of this act is endangering the equality of citizens regardless of national, racial or religious affiliation. This form of criminal offence is punishable by imprisonment from six months to five years.

The qualified form of this criminal offense exists when some of the legally established qualifying circumstances (paragraph 2) have been met, which indicate the commission of the basic form of the criminal offense: a) coercion, b) abuse, c) endangering security, d) exposing national, ethnic or religious symbols, e) damage to other people's property, f) desecration of monuments, memorials or graves (Simonović, 2010:624). For this form of criminal offence is punishable by one to eight years in prison.

The second qualified form will exist when the basic form or the first serious form of this criminal offense is committed by abuse of position or authority or if as a result of these acts there were riots, violence or other serious consequences for the common life of peoples, national minorities or ethnic groups living in Serbia (paragraph 3). For this form of offense, in the event that under the qualifying circumstances the offense referred to in paragraph 1 was committed, a sentence of imprisonment of one to eight years is prescribed, and if the offense referred to in paragraph 2 is committed, imprisonment of two to ten years.

In addition to the aforementioned criminal offense, Article 387 prescribes the criminal offense of Racial and Other Discrimination, paragraph 3 of which prescribes the conduct of this criminal offense, which is reflected in: a) spreading the idea of superiority of one race over another, b) propagating racial hatred or inciting racial discrimination. These are actually three forms of racist propaganda (Ivanović & Randelović, 2019:55). For this form of crime, a prison sentence of three months to three years was listed. Also, paragraph 4 of this criminal offense prescribes the act of committing this offense, the form of which is reflected in the dissemination or otherwise making publicly available texts, images or any other presentation of ideas or theories that advocate or incite hatred, discrimination or violence against any persons or groups of persons based on race, color, religion, nationality, ethnic origin or any other personal characteristic. This form of crime is punishable by imprisonment from three months to three years.

Article 174 prescribes the criminal offense of Infringement of Reputation Due to Racial, Religious, National or Other Affiliation, which stipulates that whoever publicly exposes a person or group for belonging to a certain race, skin color, religion, nationality, ethnic origin or any other personal characteristic shall be punished with a fine or imprisonment for up to one year.

Article 138 prescribes the criminal offense of Endangering Security, Article 1 of which stipulates that whoever endangers the security of a person by threatening to attack the life or body of that person or a person close to him, shall be punished by a fine or imprisonment for a term not exceeding one year. The act of committing the basic form of a criminal offense (paragraph 1) is the use of the threat to attack the life or body of a person or a person close to him. So, it is not ordinary, but the so-called a qualified threat, given that it is necessary to threaten a specific evil – an attack on the life or body of a passive subject or a person close to him. It can be threatened either only by an attack on life, or only by an attack on bodily integrity (therefore, the threat of inflicting light bodily injuries is sufficient), or cumulatively by an attack on life and an attack on the body. Under the notion of a close person in the sense of this incrimination should be considered blood relatives in the direct line, brother and sister, spouse and a person living in a permanent extramarital union, adoptive parent

and adoptee, custodian and custodian. As the criminal offense of endangering security in Serbian criminal law is set as a consequential criminal offense, it is understood that the passive subject knows about the threat. Also, for the existence of the criminal offense is not affected by whether passive subject find out for threat directly from the perpetrator or from another person (so-called "indirect threat"). Paragraph 2 stipulates that whoever commits the act referred to in paragraph 1 of this Article against several persons, or if the act caused disturbance of citizens or other severe consequences, shall be punished by imprisonment for a term between three months and three years (Ivanović, 2020).

IV. Instead of conclusion

Considering that, when it comes to online hate speech, there is certainly a pronounced dark figure of this type of criminal manifestation, and that official police, prosecutorial and court records do not give a true picture of the state of this type of criminal manifestation, we took the results of research of perception and experience regarding online hate speech. Also, we deliberately took into account the attitudes of young people on this issue during the crisis with the COVID-19 virus because they moved to the online world to a large extent due to measures of social distancing and isolation of mutual interaction of young people from the real world. Based on the results of the research presented in this paper, we can conclude that about 30% of young people felt offended by some Internet content during the crisis with the COVID-19 virus, that about 42% witnessed a situation in which someone was insulted or belittled on the Internet. the basis of some group affiliation, while about 12% of young people pointed out that they were direct victims of hate speech on the Internet in this period. Also, we can see that in most cases it was about calling people a derogatory name and threatening to attack, and when it comes to group affiliations on which hate speech was based, we can conclude that it was based on national affiliation, religious affiliation, political affiliation, gender, sexual orientation and gender identity. The question we want to address in this paper is whether the current criminal legal protection against online hate speech in the Republic of Serbia is adequate, and in which direction it can be improved.

The first thing we can notice is that the criminal justice system of the Republic of Serbia explicitly recognizes only national, racial and religious hatred, stating the wording "and other personal characteristics". The question is what about political belief, sexual orientation, gender or gender identity as the basis of hatred? Does this mean that public incitement to hatred towards these groups is not covered by the being of incriminated behavior? Namely, the legislator did not limit the groups, ie personal characteristics that are protected by the aforementioned incriminations, but listed the most typical ones and then, through the formulations of "another personal characteristic", enabled those that are not explicitly listed to be included (Ćorović, et. al. 2020:90). Taking into account that the law does not contain certain what is considered personal characteristics, such a formulation can create a problem when applied in practice when other personal characteristics are in question, such as sexual orientation, gender, gender identity etc. The problem of political affiliation may arise in particular, because there are conflicting opinions in the literature as to whether it can be considered a personal property or not. Can we, therefore, state that the existing criminal law provisions do not represent a satisfactory and comprehensive solution in

terms of achieving an adequate fight against hate speech and that, probably, the legal incrimination of the aforementioned crimes should be formulated in such a way as to explicitly recognize personal characteristics such as sexual orientation, gender, gender identity, disability, age, property status, political affiliation etc. In addition, we can state that there is no explicit criminal offence of hate speech, but hate speech can occur as a way of committing several crimes. In this regard, the provisions of the criminal legislation of the Republic of Serbia should be amended in the manner in which it is done in Croatia or the Republika Srpska. Namely, the criminal laws of Croatia⁴, as well as the Republika Srpska⁵, recognize a criminal act called "Public incitement to violence and hatred".

The act of this criminal offence is committed by a person who through the press, radio, television, computer system or network, at a public gathering or otherwise publicly encourages or makes available to the public leaflets, pictures or other materials calling for violence or hatred directed at a group of people or a member groups of people because of their racial, religious, national or ethnic affiliation, language, origin, skin color, gender, sexual orientation, gender identity, disability, or any other characteristics. We believe that the introduction of such incrimination in the criminal legislation of the Republic of Serbia would greatly contribute to better criminal legal protection than online hate speech. First of all, because the current provisions do not contain a definition of the meaning of the element "public", since we believe that this is an essential feature of the commission of criminal acts related to hate speech. What, then, is meant or is meant by public incitement to hatred, discord, or intolerance? Will this element be satisfied for the purposes of prosecuting perpetrators if hatred is spread or transmitted to a narrow circle of people, at protests or demonstrations in public, if it spreads on the Internet, either through portals or social networks? Will the action of the act be done if it is provoked or transmitted on an online closed forum, which you can enter only if you have registered and thus gained access? Therefore, in terms of the area or space in which acts related to hate speech can be committed, the current provisions do not provide a clue. By prescribing a general criminal offense of hate speech, such a shortcoming would be compensated, and doubts would be resolved. Also, prescribing such a crime would have an encouraging effect on the victims themselves to report the crime, because due to ignorance and current legal wording, many victims are not sure whether they enjoy protection in terms of the aforementioned crimes, so they decide not to report. Finally, this formulation, in addition to explicitly listing other characteristics, also provides equality in terms of recognizing personal characteristics as a motive for insulting and inciting attacks on a certain group or individual.

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⁴ Criminal law of Republic of Croatia [Kazneni zakon Republike Hrvatske] (OG 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19).

⁵ Criminal code of Republica Srpska [Krivični zakonik Republike Srpske] ("OG", no. 64/2017 i 104/2018 – decision CC).

2. Criminal Code of Republic of Serbia ("OG", no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019);
3. Criminal code of Republica Srpska [Krivični zakonik Republike Srpske] ("OG", no. 64/2017 i 104/2018 – decision CC)
4. Criminal law of Republic of Croatia [Kazneni zakon Republike Hrvatske] (OG 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19).
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