

FROM THE OTHER SIDE OF THE KEYBOARD

hate speech through
the prism of citizens,
law, and case studies

Podgorica, 2023



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Education

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01 Introduction

The labyrinth of socio-political circumstances in Montenegro represents a particular burden in the gap between citizens of different ideological orientations, as well as their political representatives. This gap has existed for a long time, both during the last three decades in which the educational system was neglected, and the period following the change of the decades-long government. Today, the results are evident in various narratives of radicalized individuals, and it is especially worrying that we can identify it among young people as well. The neglect in strengthening civic education, followed by the marginalized position of media literacy in the formal education system, has contributed to the rapid increase in violent online communication in which almost no one is spared. Unfortunately, in this flame of intolerance and often hatred, the most common victims are minority groups, the LGBT population, and civic activists who consistently warn of social anomalies. Along with the absence of arguments, there's a noticeable rise in misogynistic and vulgar comments on social media. In these deeply chauvinistic narratives, there is no room for diversity, particularly undervaluing the role of women, making them frequent targets.

Hate speech does not solely exist in the online space or the media but there we have a written trail. Namely, it is present in everyday situations, outside our "echo chambers" where this topic is significant. Most of our neighbours, friends, and family sometimes unconsciously or indirectly participate, or even help the development of intolerant speech. Ignoring this problem can contribute to the erosion of the existence of civil society, so the fact that its presence is recognized by domestic and international organizations, as well as institutions responsible for stronger combating hate speech and taking legally prescribed actions, is encouraging.

Online bullies have their own identity, name, and surname. They are not much different from those who spread hatred and threats outside the online space. It is the state's obligation, in collaboration with relevant non-governmental organizations, to form coalitions aimed at combating hatred at all levels, but also to create educational platforms through which children and young people would learn about the harmful consequences of hate speech. Otherwise, there's a risk of deterioration in this area, both in terms of quantity and intensity of coarseness.

The role of social media in the fight against hate speech is enormous. Even in the European Union, which Montenegro aspires to join, the digital space of social media remains unregulated. The recently adopted Digital Services Act by the European Parliament aims to limit the spread of illegal content and create a safe online environment.¹ The core of this act is the basic human rights, which will be protected by self-regulatory mechanisms, not the corporate interests of large platforms such as Facebook (Meta) and Google.

It will take some time before Montenegro regulates the area of social media. However, currently, the country already has the Constitution of Montenegro, Law on Prohibition of Discrimination, Media Law, Electronic Media Law, Law on Public Order and Peace, the Law on Prevention of Violence and Misbehaviour at Sports Events, Law on Freedom of Religion or Belief and Legal Status of religious communities, Law on Election of Councillors and Members of Parliament – which, in various ways, protect individuals and groups from hate speech.

Media has enormous importance in preventing the spread of hatred, with self-regulation standing out as the strongest mechanism in this context. The provision of the Media Law regulating comments on internet portals, obliging the founders of Internet publications to remove comments of illegal content within 60 minutes of getting notification or receiving a report was adopted precisely at the

¹ More at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_hr

proposal of the Centre for Civic Education. It should be emphasized that such content has become a cover for targeting dissenters. Unfortunately, despite reports, some portals, especially unregistered ones, ignore legal provisions and consciously allow the spread of hate speech. It is difficult to talk about the professionalism of the media when they permit such content on their platforms. Media are accountable for their actions, even for what is found on their channels, portals, and similar, as they provide that platform to others. Investing in self-regulation rather than evading responsibility, contributes to improving the situation in this area.

Hate speech must not go unpunished, because it generates new cases, thereby spreading a spiral of intolerance. The growing trends of intolerance towards others and the different seriously undermine fundamental democratic principles. Therefore, institutional action against hate speech is particularly important, which includes strengthening the formal educational process, especially in the area of media literacy, which is a significant yet untapped chance for the general raising of standard of discourse and respect for the other and the different. Of course, accompanying informal education is also highly valuable.

This publication provides insight into the legal framework regulating this area, as well as relevant research and analyses by domestic and international organizations. Also, through monitoring and processing of specific cases, the CCE team illustrates how and in what way the institutions function regarding this issue. The recommendations, which are part of the publication, are aimed at filling the so-called 'legal loopholes', contributing to the strengthening of Montenegro's legislative framework in this field.

We owe special thanks to the Embassy of Canada, which recognized the importance of this issue and supported it through the project **'Stand up against discrimination, hate speech, misogyny and other forms of digital violence!'**.

02

Hate speech in online media through the perspective of institutions and NGOs

Hate speech in Montenegro has become a more prevalent issue in the last few years, particularly with the rise in interethnic and interreligious tensions, accompanied by extreme polarization between political parties, but also the media. This was preceded by an earlier intolerant narrative towards the RAE population (Roma, Ashkali, Egyptians), people with disabilities, members of the LGBT community, and women. This also raises the question of the response of institutions.

In the 2021 Report of the **Protector of Human Rights and Freedoms**, it is stated: *"In the majority of the mentioned cases and circumstances, the stage and source of numerous unacceptable and illegal statements that encouraged a climate of intolerance and bigotry in Montenegro originated from the online sphere of social media and through comments on portals. This problem was very pronounced in the reporting period and directed both towards the public figures and among the citizens themselves."*²

In 2021, ten cases related to hate speech that were reported to the Protector were closed. Of these, seven related to nationality, one to age, one to affiliation with a group or presumed affiliation with a group, political party, or other organization, and one case didn't specify the grounds for discrimination.

² 2021 Report of the Report of the Protector of Human Rights and Freedoms, p. 8, available at: https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

2021 / Hate speech - 10 subjects			
Basis /personal features	Number of subjects	The result of the procedure	Status of recommendations
National affiliation	7	Recommendation - 2 Pointing - 2 Failure to act (complaint not supplemented within the deadline) - 1 Suspension/Applicant withdrew the complaint - 2	In one case, two (2) recommendations were given that were not followed. In one subject two (2) recommendations were given, which are implemented continuously.
Age	1	Pointing - 1	
Affiliation with a group or presumed affiliation with a group, political party, or other organization	1	Lack of jurisdiction - The complaint did not apply to authorities in Montenegro - 1	
No grounds for discrimination	1	Lack of jurisdiction- 1	

Table 1. Overview of completed cases before the Protector of Human Rights and Freedoms in 2021³

The total number of hate speech cases, that were handled by the Protector, is 1.10% of the total number (904), and 5.78% of the cases related to the prohibition of discrimination (173). This is more than in 2020 when the total number of such cases was two, i.e. 0.20% of the total number (920), or 1.25% of the cases related to the prohibition of discrimination (159).

³ Report of the Protector of Human Rights and Freedoms for 2021, p. 226, available at: https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

2022 / Hate speech – 2 subjects			
Basis /personal features	Number of subjects	The result of the procedure	Status of recommendations
Sexual affiliation and/or intersex characteristics	1	Recommendation - 1	<p>In one (1) case, two (2) recommendations were given which were not followed;</p> <p>In one case, two (2) recommendations were given that were not followed.</p> <p>In one case, two (2) recommendations were given, which are implemented continuously</p>
Religion or belief	1	Referral to others legal means - 1	

Table 2. Overview of completed cases before the Protector of Human Rights and Freedoms in 2020⁴

The 2021 Report further states: *“In public and political discourse, insulting, belittling and violating the dignity of people who are placed in the context of belonging to a certain ideology or idea, has become an almost daily occurrence, even when there is neither convincing evidence nor convincing reasons for it. Quite often, the basic goal is essentially to hurt a person, and not to develop a debate of general interest, where under the auspices of a sharp polemic, those forms of expression that can offend or shock the public could be allowed. In this way, and bearing in mind that the only goal of such rhetoric is to offend or belittle, it seems that*

⁴ 2020 Report of the Report of the Protector of Human Rights and Freedoms, p. 231, available at: https://www.ombudsman.co.me/docs/1619074992_ivjestaj_01042021.pdf

hate speech is much closer to the definition of this phenomenon. The still strongly present and dominant themes from the domain of political, religious, and ethnic identity continue to be the subject of sharp confrontations and renunciation of individuality, which constitute a key aspect of the cultural and spiritual existence of entire nations and institutions.”⁵

The report also notes the responsibility of the media, which does not make sufficient efforts to suppress hate speech, especially towards women. *“In addition to political subjects, the responsibility for encouraging tolerant speech and preventing hate speech is borne by the media due to the content they publish, as well as the obligation to monitor comments on portals and remove inappropriate content with elements of hate speech. Since in recent years, the focus of the media has shifted to the online space, the pages of informative portals and social media have become a place that is flooded with discriminatory comments directed against different social groups (...) On the other hand, through clear statements, very often women are sent a message where their right place should be in society,”*⁶ it is stated in the Report.

The last published opinion regarding hate speech in the online space on the website of the Protector was from 21 June 2022, regarding the complaint of X.Y. from Podgorica against the portal *Borba* for attending a protest rally in Cetinje.⁷ The opinion of the Protector states: *“In addition to the fact that the controversial comments were deleted from the portal “Borba”, the Protector assessed the content of the comments as offensive, socially unacceptable and that they contain elements of hate speech and misogynistic speech. Also, the disputed comments contain stigmatizing statements towards persons of the female sex, where the sole aim is to disparage and treat women as objects. The Protector has previously warned about the emergence of misogyny and hate speech and the need to eradicate such speech. Although the complainant could have expected that her appearance in the social media in the form of a posted photo would cause certain comments and reactions from the interested public, the Protector believes that the controversial comments pointed out by the complainant do not contribute to the development of a debate of general interest and are not based on argumentation,*

5 2021 Report of the Protector of Human Rights and Freedoms, p. 8, available at: https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

6 2021 Report of the Protector of Human Rights and Freedoms, p. 239, available at: https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

7 Available at: https://www.ombudsman.co.me/docs/1656672092_21062022_preporuka_xx.pdf

but that they aim to belittle and insult the complainant as a woman, creating an intolerant and exclusively hostile environment. The controversial comments that followed the publication of the photo are full of sexist and degrading statements that insult the personality and dignity of the complainant.” Portal Borba was ordered “to promptly moderate and remove comments that represent illegal content, without delay.”

The Office of the Protector recently published two opinions regarding hate speech against female activists and politicians on the Internet. More precisely, [the Protector issued an opinion on the complaint of activist Bojana Jokić because the editorial office of Standard did not moderate the sexist and misogynistic posts of readers.](#)⁸ Also, the Protector, after reviewing the submitted documentation, determined that most of the comments on the Facebook page *Volim Podgoricu*, and in connection with the text published on the same portal under the title “Sekulić: With the blessing of the priest, if you choose to give birth in a certain municipality, you will receive 500 or 1000 euros”, reduces to misogynistic and sexist speech, insulting and humiliating comments against Dragica Sekulić, MP of the Democratic Party of Socialists (DPS).⁹

The Agency for Electronic Media (AEM), in the period from 1 January 2020 to 19 September 2022, did not issue a single warning regarding hate speech, nor did it conduct campaigns about hate speech in the media. “In the period from 01.01.2020 until 19.09.2022. in 2008, broadcasters were issued warnings for broadcasting content that encourages intolerance or discrimination, which violated Article 48 paragraph 2 of the Law on Electronic Media, i.e. Article 17 paragraphs 1 and 2 of the Rulebook on Programme Standards in Electronic Media, namely Act No. 02-871/2 from 16 June 2022 <https://aemcg.org/wp-content/uploads/2022/06/02-871-2-Rjesenje-o-upozorenju-TV-Prva-16.06.2022.pdf>, then 02-316/3 from 04.04.

⁸ More at: <https://www.vijesti.me/vijesti/drustvo/628916/zastitnik-standard-da-blagovremeno-moderira-i-ukloni-komentare-koji-sadrze-seksisticki-i-mizogini-govor>

⁹ More at: <https://www.cdm.me/drustvo/zastitnik-dragica-sekulic-bila-izlozena-mizoginim-sekstickim-i-uvredljivim-komentarima-koji-su-za-cilj-imali-da-je-uvrijede-kao-zenu/>

in 2022 <https://aemcg.org/wp-content/uploads/2022/04/Upozorenje-Srpska-TV-02-316.pdf> and 02-1129/4 from 24.11.2021. <https://aemcg.org/wp-content/uploads/2021/11/Upozorenje-Gradska-televizija-1.pdf> ", it is stated in the AEM's response to CCE's inquiry.

In the manual "Suppression of hate speech - European Standards and Practice", published by **Human Rights Action (HRA)**¹⁰, misogynistic hate speech; racist nationalist, ethnic, and xenophobic hate speech; hate speech based on religion and/or belief; hate speech against LGBTIQ+ persons are recognized. In this framework, relevant cases of the European Court of Human Rights are singled out, and one part also refers to hate speech in the online space. The HRA provides an overview of 37 cases based on hate speech, of which 25 refer to hate speech in the media and on social media. The CCE team specifically points to those related to hate speech in the media: Delfi against Estonia (June 2015), Lilliendahl against Iceland (May 2020), Beizaras and Levickas against Lithuania (January 2020), Volodina against Russia (September 2021), Khadija Ismayilova against Azerbaijan (May 2020), Høiness against Norway (March 2019).

Montenegro Media Institute (MMI) in the analysis "Hate Speech and Disinformation in Montenegro"¹¹ states that between November 2019 and April 2021, the police initiated 64 cases related to inciting national, religious, and racial hatred, causing panic and disorder and jeopardizing Internet security. They also state that data from the media indicate that from March 2020 to January 2021, 13 cases reached the courts.¹² AEM, in its response to the MMI letter, states that as a national regulatory body, since 2017, it has issued four warnings and other measures related to this area (two warnings to TV Boin, a warning to Srpska TV, and limited the broadcasting of TV Hepi and Pink M programmes from Serbia due to promotion of hatred, intolerance, and discrimination). MMI states that "for years, AEM has been the target of criticism from civil activists

10 Suppression of hate speech - European standards and practice, Peter Noorlander, Lejla Gačanica, Tea Gorjanc Prelević, HRA, Podgorica, 2022, available at: <https://www.hraction.org/wp-content/uploads/2022/05/Prirucnik-za-suzbijanje-govora-mrznje-esip-FINAL-19-7-2022.pdf>

11 Hate speech and misinformation in Montenegro, Milica Bogdanovic, MME, 2021, <https://www.mminstitute.org/wp-content/uploads/2021/10/Publikacija.pdf>

12 Study "Hate Speech and Disinformation in Montenegro", p. 8, available at: <https://www.mminstitute.org/wp-content/uploads/2022/02/Publikacija.pdf>

who believed that AEM tolerates serious violations of professional standards and that it only resorts to warning measures".¹³

In the earlier "Analysis of narratives containing hate speech and misinformation" ¹⁴, MMI focused on content related to four target groups - migrants, journalists, political opposition - opponents, and advocates of the Law on Freedom of Religion. Important cases/events/incidents related to those four target groups, which occurred from June 2019 to June 2020, were also identified. For each target group, a period of seven to fifteen days was chosen when the media reported on an important event related to that group, and the published editorial content was analysed, as well as accompanying comments from readers, content published on Facebook pages and reactions of users of that social media. Several narratives containing elements of hate speech were recorded: "A segment that is recognized as problematic in the work of established online media is the inadequate moderation of readers' comments. In the content of the comments, offensive speech against various ethnic, religious, and sexual minorities, and personal insults against political or ideological opponents of anonymous commentators often appear. This analysis has shown that there may be elements of hate speech in the editorial content of right-wing media and that these media nurture inflammatory rhetoric and, in unmoderated comments, encourage the further spread of hate speech, insults and, conspiracy theories," stands in the analysis.

In January 2022, the **Digital Forensic Center (DFC)** conducted an analysis of comments on portals and social media¹⁵, which confirmed similar research, the findings of which point to an increase in hate speech. The monitoring of comments covered the period of submission of initiatives for a vote of no confidence

13 Study "Hate Speech and Disinformation in Montenegro", p. 9, available at: <https://www.mminstitute.org/wp-content/uploads/2022/02/Publikacija.pdf>

14 *Analysis of narratives containing hate speech and misinformation*, Milica Bogdanović, IMCG, 2020, <https://seenpm.org/wp-content/uploads/2021/01/Resilience-research-publication-2-Montenegro-National-language.pdf>

15 Available at: <https://dfcme.me/govor-mrznje-ustaljeni-vid-komunikacije/>

in the 42nd Government of Montenegro and the formation of a minority Government, where hate speech directed towards representatives of the political parties URA and SNP dominates. *“The leader of the Civic Movement URA and Deputy Prime Minister Dritan Abazović, the leaders of the Citizens’ Association CIVIS Srđa Pavićević and the Socialist People’s Party (SNP) Vladimir Joković came under the attack of numerous offensive and threatening comments. Insulting content was also addressed to the representatives of the opposition, with special emphasis on their nationality,”* it is stated.

During two waves of monitoring comments¹⁶ on key information portals in March 2021, as well as in April 2022, **CCE** analysed 47,193 comments, within 1,240 texts on 11 portals for 59 days. Analysis of the content of those comments indicates that there were no portals that were free of comments with illegal content. More precisely, the content analysis of the comments showed that hate speech, incitement of intolerance or violence, misogyny, homophobia, but also other narratives contrary to the law, such as violation of the presumption of innocence, were noted in them. Comments often and significantly depended on the topic, tone, and equipment of the text on the portal, as well as on the person making the statement or to whom the text refers. In the context of **Article 36 of the Law on Media**, which prohibits, inter alia, the publication of comments expressing ideas, claims, and opinions that cause, spread, incite, or justify discrimination, hatred, or violence against a person or group of persons because of their characteristics, political, of religious and other beliefs, **comments with hate speech on national or religious grounds, usually aimed at persons of Montenegrin or Serbian nationality, and often members of minority nations, dominated**, followed by comments with hate speech towards **the LGBT population and comments of a misogynistic character**. Most of the violations of this article of the Law were recorded on the unregistered *IN4S* portal.

At the level of the European Union, in 2016, **the European Commission** and the four most important social media platforms **Facebook** (today Meta), **Twitter, YouTube, and Microsoft** have published a *Code of Conduct on countering illegal hate speech online*. The Code represents

¹⁶ I wave research available at: <https://media.cgo-cce.org/2021/03/Mediji-za-mene-PPT-PDF.pdf>, II wave of research available at: <https://media.cgo-cce.org/2022/05/Mediji-za-mene-PPT-II-talas.pdf>

a self-regulatory mechanism to combat racism and xenophobia on social networks. In this way, it contributes to large IT companies quickly solving problems of illegal Internet content, within 24 hours. Later, Instagram, Dailymotion, and Snapchat (2018), Jeukvideo.com (2019), TikTok (2020) and LinkedIn (2021) joined this mechanism. Companies react to the report and assess whether the request conflicts with their rules and community guidelines. In addition to the European Commission, IT companies, the governments of EU member states, as well as civil society, are involved in the entire process. Over four years, from 2016 to 2020, 90% of reported content was resolved within 24 hours, and 71% of content deemed illegal was removed.¹⁷ However, these percentages are slightly lower in 2021, as shown by the sixth evaluation of the Code of Conduct on countering illegal hate speech online (81% of reports were reviewed within 24 hours, while 62.5% of illegal content was removed). Nevertheless, it encourages the strengthening of self-regulation on the platforms Instagram (66.2% of removals in 2021, 42% in 2020), Twitter (49.8% in 2021, in comparison with 35.9% in 2020), TikTok (80.1% of removals in 2021)¹⁸. The last evaluation showed that the most hate speech on these social platforms is regarding sexual orientation - 18.2%, xenophobia (including hate speech against migrants) - 18% and hate speech against the Roma population - 12.5%.

17 Countering illegal hate speech online 5th evaluation of the Code of Conduct, European Commission. Available at: https://ec.europa.eu/info/sites/default/files/codeofconduct_2020_factsheet_12.pdf

18 Countering illegal hate speech online: 6th evaluation of the Code of Conduct, European Commission. Available at https://ec.europa.eu/info/sites/default/files/factsheet-6th-monitoring-round-of-the-code-of-conduct_october2021_en_1.pdf

03 Legal framework

The Constitution of Montenegro, as the highest legal act, contains several provisions applicable in the context of hate speech. Article 7 of the Constitution prohibits causing or inciting hatred or intolerance on any basis. Article 8 prohibits any direct or indirect discrimination, on any basis, whereby it won't be considered discrimination regulations and the introduction of special measures aimed at creating conditions for provision of national, gender, and overall equality and protection of persons who, on any basis, are in an unequal position. These special measures can only be applied until the goals for which they were taken are achieved.

Furthermore, Article 47 defines that everyone has the right to freedom of n by speech, writing, picture or in some other manner. However, in paragraph 2 of that article, it is foreseen that the right to freedom of expression can be limited only by the right to dignity, reputation, and honour of others and if it threatens public morality or the security of Montenegro.

The Constitution guarantees human dignity and security, as well as the inviolability of physical and mental integrity of a person, his privacy and individual rights, and no one may be subjected to torture or inhuman or degrading treatment (Article 28). Additionally, Article 10 of the Constitution stipulates that anything not prohibited by the Constitution and laws is be to free and everyone is be obliged to adhere to the Constitution and laws.

Ratified and published international treaties and generally accepted rules of international law, by Article 9 of the Constitution, are an integral part of the internal legal order. They have supremacy over domestic legislation and are directly applied when regulating certain relations differently than the internal law. Montenegro has ratified many international instruments, the provisions of which have been incorporated into the national legislation. One of the most important is the *European Convention on Human Rights (ECHR)* and its protocols. Among other things, Montenegro is also a signatory to the *International Covenant on Civil and Political Rights*, which is important for this topic.

In 2010, the Parliament of Montenegro adopted the *Law on Prohibition of*

*Discrimination*¹⁹, followed by amendments in 2011, 2014, and 2017. The first amendments prescribed fines for misdemeanours because the whole set of laws was aimed at harmonizing fines. More precisely, changes were made in terms of fines for legal entities, so instead of the amount related to the minimum wage in Montenegro, a nominal amount of the fine was determined for cases of non-compliance with this regulation, which primarily deals with the issue of discrimination. Also, responsibility for entrepreneurs is foreseen. The most important amendment from 2014 was reflected in the definition of hate speech, and under the recommendation of the Council of Europe.²⁰ Thus, Article 9a defines hate speech as any form of expression of ideas, claims, information, and opinions that spreads, incites, encourage, or justifies discrimination, hatred, or violence against a person or group of persons because of their features, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in the form of nationalism, discrimination and hostility against minorities. The latest amendments from 2017 carried out significant alignment with international standards, and to the greatest extent around the issue of discrimination and terminological alignment with issues in that area.

*The Law on Prohibition of Discrimination against Persons with Disabilities*²¹ stipulates that discrimination based on disability is considered to be hate speech and belittling of persons with disabilities, and that hate speech is any form of expression of ideas, claims, information, and opinions that spread, encourage or justify discrimination, belittling, hatred or violence against a person with disability or a group of persons with disability, due to their characteristics, based on non-acceptance of diversity and intolerance.

Article 14 of the *Law on Freedom of Religion or Belief and the Legal Status of Religious Communities*²² stipulates that any form of indirect or direct discrimination based on religion or belief and the incitement of religious hatred and intolerance is prohibited. Article 30 stipulates that, inter alia, a religious community may be denied entry into the Register or prohibited from operating if it incites racial, national, religious, or other discrimination and violence or encourages or incites racial, national, religious, or other type of hate, intolerance, strife, or persecution or

19 "Official Gazette of Montenegro ", no. 046/10, 040/11, 018/14, 042/17 7

20 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b accessed on 13/1/2023

21 "Official Gazette of Montenegro", no. 035/15, 044/15

22 "Official Gazette of Montenegro", no. 074/19, 008/21

in some other way harms or offends human dignity.

In the context of restrictions on the registration or operation of certain organizations that encourage hate speech, we should also point to the provision of the *Law on the Constitutional Court*²³, which stipulates that the Constitutional Court can ban of work of a political party or a non-governmental organization in the cases referred to in Article 55, paragraph 1 of the Constitution if their activity is directed at violent overthrowing of the constitutional order, violation of territorial integrity of Montenegro, violation of guaranteed human rights and freedoms or inciting ethnic, racial, religious and other hatred and intolerance. The ban on the work of a political party that spreads hate speech is also foreseen in the *Law on Political Parties*²⁴ where Article 5 states that the activities of a party whose goals are aimed at violently changing the constitutional order, violating the territorial integrity of Montenegro, violating human rights and freedoms guaranteed by the Constitution, causing and inciting national, racial, religious and other hatred or intolerance is prohibited.

Article 17 of the *Law on Public Gatherings and Public Events*²⁵ stipulates that, among other things, immediately before the beginning of a public gathering or during its duration, police officers are authorized to stop a public gathering if the participants invoke or encourage an armed conflict or violence, violation of human rights and the freedom of minority rights and the freedom of other persons, national, racial, religious or other inequality, hatred and intolerance. This is stated in Article 29 as a reason for discontinuing a public gathering. In the same law, in Article 16, it is also stated that participants in public gatherings may not wear uniforms, parts of uniforms, clothes, signs, or other features that invoke or incite armed conflict or violence, violation of human rights and freedoms and special minority rights and freedom of other persons, national, racial, sexual, religious, or other inequality, hatred, and intolerance.

Article 48 of the *Law on Electronic Media*²⁶ stipulates that audiovisual media services must not incite hatred or discrimination on the grounds of race, ethnic background, skin colour, sex, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family

23 "Official Gazette of Montenegro", no. 011/15, 055/19

24 "Official Gazette of Montenegro", no. 021/04, "Official Gazette of Montenegro", no. 073/10, 040/11, 059/11

25 "Official Gazette of Montenegro", no. 052/16

26 "Official Gazette of Montenegro", no. 046/10, 040/11, 053/11, 006/13, 055/16, 092/17, 082/20

status, age, health status, disability, genetic heritage, gender identity or sexual orientation. Additionally, Article 85 states that it is prohibited to endanger human dignity and promote hatred or discrimination based on gender, race, nationality, religion or belief, disability, age, or sexual orientation through commercial audiovisual communication.

*The Law on Media*²⁷ from 2020 eliminates certain deficiencies in the media's obligations when it comes to hate speech. Article 36 prescribes a prohibition on the publication of information in the media that expresses ideas, claims, and opinions that cause, spread, incite, or justify discrimination, hatred, or violence against a person or group of persons because of their characteristics, political, religious and other beliefs, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in the form of nationalism, discrimination and hostility against minority people and other minority national communities. Furthermore, Article 41 provides that the competent court may, at the proposal of the state prosecutor, limit further dissemination of media content that represents direct and intentional incitement to commit criminal offense defined in the Criminal Code of Montenegro in the following areas: violent endangerment or illegal changes to the constitutional order, terrorism, violation of the territorial integrity of Montenegro, violence or hatred towards a group or a member of a group determined based on race, skin colour, religion, origin, state or national affiliation or some other personal features. The most significant novelty of this law is the obligation it introduces for the founder of an online publication to remove a comment that represents illegal content, without delay, and within 60 minutes of receiving a notification or a report from another person on the illegal content.²⁸ That law foresees a sanction for a legal entity that, as the founder of the media, does not act following the law and does not remove a comment with problematic content, for which a fine of 1,000 to 8,000 euros is threatened for a legal entity, and from 300 to 1,000 euros for a responsible natural person in that legal entity.

*The Criminal Code of Montenegro*²⁹ prescribes the harm of the reputation of the people, minority peoples, and other minority national communities as a criminal offense. Article 199 of the CC, which does not deal directly with the problem of

27 "Official Gazette of Montenegro", no. 82/2020

28 Articles 34, 35, 36, 37, 38, 39 Law on Media

29 "Official Gazette of the Republic Montenegro ", no. 070/03, 013/04, 047/06, "Official Gazette of Montenegro", no. 040/08, 025/10, 073/10, 032/11, 064/11, 040/13, 056/13, 014/15, 042/15, 058/15, 044/17, 049/18, 003/20, 026/21, 144/21, 145/21

hate speech but is important for this topic, states that a fine of 3,000 to 10,000 euros will be imposed on a person who publicly insults a nation, a minority nation and another minority national community who lives in Montenegro. The fine does not apply to cases where the statement was given within a serious criticism in a scientific, literary, or artistic work, or while performing an official duty, journalistic profession, political activity, while defending a right or protecting justified interests, provided that the manner of expression or other circumstances show that he has not done it with the intention to discredit or where he proves the veracity of his allegation or that he had a well-founded reason to believe in the veracity of what he was stating or disseminating.

Article 370 of the CC prescribes the criminal offense of provoking national, racial, and religious hatred, specifying that public incitement to violence or hatred towards a group or member of a group defined by virtue of race, skin colour, religion, origin, nationality, or ethnic affiliation shall be punished by a prison sentence for a term from six months to five years.

That penalty shall also be imposed on whomever publicly approves, denies the existence, or significantly reduces the gravity of the crimes of genocide, crimes against humanity and war crimes committed against a group or a member of group by virtue of their race, skin colour, religion, origin, nationality or ethnic affiliation in a manner which can lead to violence or cause hatred against a group of persons or a member of such group, where such criminal offences have been determined by a final judgment of a court in Montenegro or of an international criminal tribunal. Qualified forms of this criminal offense are provided in paragraphs 3 and 4 of the same Article of the CC. They stipulate that if the acts referred to in this article were committed by coercion, ill-treatment, endangering of safety, exposure to mockery of national, ethnic, or religious symbols, damaging property of another person, desecrating monuments, memorials or tombs, the perpetrator shall be punished by a prison sentence for a term from one to eight years. Also, if the listed acts, including this third, qualified form, include the abuse of office or where such offences result in riots, violence or other severe consequences to the joint life of nations, national minorities or ethnic groups living in Montenegro, for the first mentioned offense s/he shall be punished by a prison sentence for a term from one to eight years, while the remaining two by a prison sentence for a term from two to ten years.

It is also worth pointing out article 399, which stipulates that Whoever endangers the tranquillity of citizens or disturbs public law and order by coarse insults or ill-treatment of another, acts of violence over another, causing an affray, or by insolent and reckless conduct, where such acts are committed by a group, or where they resulted in a light bodily injury or grave humiliation of citizens, shall be punished by a prison sentence for a term from three months to five years.

The next article of the CC of Montenegro, 399a, states that whoever physically assaults or engages in physical confrontation with participants of a sports event or public gathering, who provokes violence or acts violently, brings into a sports facility or throws onto the sports grounds, among the spectators or participants of a public gathering, objects, pyrotechnics, or other explosive, incendiary or harmful substances that may lead to bodily injury or that may endanger health of participants of a sports event or public gathering, who goes onto the playing area without authority or into the opponents' fan section and provokes violence, damages the sports facility, its equipment, devices, and installations, who by his conduct or chanting or banners displayed at a sports event or public gathering provokes ethnic, racial, religious or other hatred or intolerance on discriminatory grounds, which leads to violence or physical confrontation with participants, shall be punished by a prison sentence for a term from six months to five years and by a fine.

Qualified forms of this criminal offense are provided for in the following paragraphs, with the same punishment for the person who physically assaults or engages in physical confrontation with participants of a sports event or public gathering, who provokes violence or acts violently, or damages property whose value exceeds ten thousand euro on their way to and from the sports event or public gathering. Among other things, a more rigid punishment is foreseen for the leader of a group who commits such an act, for which the leader of the group who commits the act is threatened with three to twelve years in prison.

Article 42a stipulates a special circumstance for sentencing for a criminal offense committed out of hatred, so it is provided that if the criminal offense was committed out of hatred towards another person because of national or ethnic affiliation, race, or religion or because of the absence of such affiliation, disability, gender, sexual orientation or gender identity, the court will consider it as aggravating unless it is stipulated as an element of the basic or more serious form of that criminal offence. The same article prescribes that if a criminal offense is committed against a person who belongs to a particularly vulnerable category of persons (children, persons with disabilities, pregnant women, elderly persons, refugees), such a circumstance shall be taken as aggravating by the court.

Violation of equality as a criminal offense is defined in Article 159 of the CC of Montenegro, which states that whoever, due to national or ethnic affiliation, race or religion or due to the lack thereof, or due to the differences in terms of political or any other belief, sex, language, education, social position, social origin,

sexual orientation, gender identity, disability, financial standing or any other personal characteristic, denies or restricts to another human rights and freedoms enshrined in the Constitution, laws or other regulations or general acts or ratified international treaties, or provides to another privileges or benefits based on such differences, shall be punished by a prison sentence for a term not exceeding three years. If this crime was committed out of hatred towards a member of a group defined by virtue of race, skin colour, religion, origin, nationality or ethnic affiliation, the perpetrator shall be punished by a prison sentence for a term from three months to five years, while a prison sentence for a term from one to eight years is stipulated in another qualified form of this criminal offense committed by a public official while performing his duties.

Article 168 stipulates that whoever endangers the safety of a person by threatening to attack the life or body of that person or a person close to them shall be punished by a fine or imprisonment of up to one year and that whoever commits this criminal offense against several persons or if the offense caused disturbance of citizens or other serious consequences or is done out of hatred, shall be punished by imprisonment from three months to three years. If this offense was committed by an official in the performance of his duties, it would be punished by imprisonment from three months to three years.

A prison sentence for a term from six months to five years shall be imposed on anyone who, due to national or ethnic affiliation, race or religion or due to the lack thereof, or due to the differences in terms of political or any other belief, sex, language, education, social position, social origin, sexual orientation, gender identity, disability, financial standing or any other personal characteristic violates fundamental human rights and freedoms guaranteed by generally recognized rules of international law and international treaties ratified by Montenegro, as prescribed in Article 443 of the CC of Montenegro. The same penalty is provided for those who persecute organizations or individuals for their efforts to ensure equality of people. The same article stipulates a prison sentence for a term from three months to three years for a person who spreads ideas of superiority of one race over another, or propagates hatred or intolerance on grounds of race, sex, disability, sexual orientation, gender identity or other personal characteristics, or who incites to racial or other forms of discrimination. If these acts are committed by abuse of office or where such offences lead to riots or violence, for the first two criminal offenses the person will be punished by a prison sentence for a term from one to eight years, and for the third offense from this article by a prison sentence for a term from six months to five years.

Article 2 of the *Law on Prevention of Violence and Misbehaviour at Sports Events*³⁰ stipulates that violence and misconduct at sports events include, inter alia, individual or

30 "Official Gazette of Montenegro", no. 051/17

group shouting of offensive words that call for or incite armed conflict or violence, hatred, or intolerance, national or racial discrimination, or discrimination based on religion, gender or sexual orientation or other grounds, as well as inciting hatred or intolerance that may lead to a physical conflict between the participants of the sports event, as well as introducing or displaying banners, flags or other materials with a text, image, sign or other feature that calls for or incites armed conflict or violence, hatred or intolerance, national or racial discrimination, or discrimination based on religion, gender or sexual orientation or other grounds. This law prescribes a whole set of measures that police officers take when securing sports events to prevent the spread of hate speech at these events.

Ultimately, it is important to mention the Law on Public Order and Peace³¹, which, through Article 19, stipulates a fine ranging from 250 to 1500 euros or imprisonment for up to 60 days for anyone who, in a public place, verbally, in writing, or by other means, insults another person based on national, racial, or religious affiliation, ethnic origin, or other personal features. Additionally, Article 19a establishes a fine ranging from 2500 to 15000 euros for a legal entity that, in a public place through advertising displays or billboards, publishes inappropriate and misleading content causing disturbance and disapproval among citizens, whereby these contents are defined as those that promote the violation of Montenegro's territorial integrity or advocate fascist, chauvinistic, or Nazi ideas and ideologies. If this offense is committed by an entrepreneur, they shall be fined from 500 to 5000 euros, while the responsible person within the legal entity committing the offense will be fined from 300 to 2000 euros. Sanctions are also applicable if the offense is committed by natural person, in the form of a fine ranging from 300 to 1500 euros. Apart from fines, for this offense, a protective measure of content removal may be imposed, even if a sanction has not been imposed.

Furthermore, the Law on Public Order and Peace in Article 20 specifies that a legal entity that produces, markets, or in any other way makes a sign, drawing, or object available to the public, insulting another based on national, racial, or religious affiliation, ethnic origin, or other personal features, will be penalized for this offense with a fine ranging from 1000 to 15000 euros, while slightly milder penalties are prescribed in the case of entrepreneurs and responsible persons within the legal entity committing the offense.

31 Official Gazette of Montenegro, No. 064/11 dated 29.12.2011, 056/20 dated 15/06/2020



Responsibility for statements made on social media platforms/media

Today, social media is a platform for wide freedom of expression. Along with its advantages, it also has disadvantages that manifest through the harm suffered by individuals, groups, and society as a whole when such behaviours are not effectively sanctioned.

The CCE survey, conducted in October 2022³², shows that citizens who were the target of hate speech in 70% of cases were targeted more than once. In half of the cases, the victims of such comments decided to ignore it, 23% reported it to the social media or portal where the case happened, and only 4% of them reported the hate speech to the competent state authorities. As the reason for not reporting hate speech, a third cite a lack of trust in self-regulation on portals and social media, and more than a quarter stated distrust in the competent authorities that would process such cases.

According to the assessment of most citizens of the same survey, strengthening the legal framework for sanctioning hate speech on portals and social media platforms is the basis for suppressing hate speech on the Internet, and approximately one-third advocates for raising awareness about the mechanisms for reporting hate speech. For that cause, stronger efforts by the state are necessary, and this need is confirmed by the fact that citizens fundamentally do not think that the state is doing enough to combat hate speech on the Internet. There is an equal number of those (about 46%) who believe that the state does this partially or does not oppose hate speech at all. Only 7% of citizens recognize the state's efforts to combat this social problem.

When it comes to institutions competent for processing such reports, the Police Directorate is recognized by 43.5% of citizens as the competent institution for processing hate speech on the Internet. On the other hand, 28.5% of respondents believe that it is the responsibility of the media or social media that be the platform for that hate speech, and 27% of them consider the courts and prosecutor's offices to be responsible.

32 More on: <https://cgo-cce.org/en/2022/10/11/discrimination-remains-a-big-problem-in-montenegro-society/>

In this framework, an analysis of the work of misdemeanour courts and the Police Directorate was made through cases in which citizens demanded responsibility for the spoken word when individuals went too far in harassment, insults, and hate speech.

The legislative framework prescribes the punishment of hate speech by determining misdemeanour and criminal liability through the Criminal Code, the Law on Prohibition of Discrimination, the Law on Prevention of Violence and Misbehaviour at Sports Events, the Law on Public Order and Peace and the Law on Media. In addition, everyone is obliged to comply with the Constitution of Montenegro, which prohibits the expression or incitement of hatred or intolerance on any basis and prescribes the prohibition of direct or indirect discrimination on any basis.

*The Law on Public Order and Peace*³³ foresees misdemeanour fines for insulting and insolent behaviour in a public place ranging from 100 to 400 euros or a prison sentence of up to 30 days, i.e. in case of more serious insults from 250 to 1000 euros or a prison sentence of up to 60 days. Also, fines from 250 to 1,500 euros or imprisonment for up to 60 days are provided for insulting in a public place by speech, writing, picture or in another way based on national, racial, or religious affiliation, ethnic origin, or other personal features. Furthermore, for inappropriate and misleading content, disseminated through advertising displays and billboards, causing disturbance and disapproval among citizens (propaganda of violation of the territorial integrity of Montenegro or representation of fascist, chauvinist, or Nazi ideas and ideologies) penalties are stipulated as follows: for legal entities, fines range from 2500 to 15000 EUR, for entrepreneurs from 500 to 5,000 EUR, for a responsible person in a legal entity from 300 to 2,000 EUR, and for a natural person from 300 to 1,500 EUR or a prison sentence of up to 60 days.

The Law on Media prohibits the publication of information that discriminates, incites hatred, discrimination, and violence against a person or group of persons on various grounds.³⁴

The Law on Prohibition of Discrimination defines hate speech as any form of expression of ideas, claims, information, and opinions that spreads, incites, incites, or justifies discrimination, hatred, or violence against a person or group of persons based on their personal characteristics, xenophobia, racial hatred, anti-Semitism,

33 "Official Gazette of Montenegro", no. 064/11, 056/20

34 "Official Gazette of Montenegro", no. 82/2020

or other forms hatred based on intolerance, including intolerance expressed in the form of nationalism, discrimination, and hostility against minorities.³⁵

Law on Prevention of Violence and Misbehaviour at Sports Events defines violent and inappropriate behaviour that incites hatred and intolerance.³⁶

Misdemeanour reports before misdemeanour courts

Bearing in mind that the legislative framework provides significant opportunities for the suppression of hate speech and other related behaviours, the CCE team researched misdemeanour proceedings initiated and conducted before the courts for misdemeanours in Montenegro, as well as misdemeanour proceedings initiated by the Police Directorate, based on submitted reports and official duty in the period from 1 January 2021 to 1 October 2022, which were committed through social media platforms/media.

The following information was requested from the Misdemeanour Court in Podgorica, the Misdemeanour Court in Bijelo Polje, and the Misdemeanour Court in Budva under the Law on Free Access to Information:

- the number of misdemeanour proceedings initiated for the following misdemeanours: Articles 7, 19, and 19a of the Law on Public Order and Peace, Article 36 of the Law on Media, Article 9a of the Law on Prohibition of Discrimination, Article 4, para. 1, points 4 and 5 of the Act on the Prevention of Violence and Misbehaviour at Sports Events in the period from 1 January 2021 to 1 October 2022;
- copies of legally binding decisions that were made due to the execution of the mentioned misdemeanours in the period indicated in the first point of the request.

The misdemeanours court in Podgorica submitted copies of **274 anonymized, legally binding, through the RFandMR** (Register of Fines and Misdemeanour Records) **final decisions** that ended the misdemeanour proceedings initiated and conducted at this court, together with the departments within it (Royal Capital of Cetinje, Nikšić and Danilovgrad)) in the period covered by the request. This includes **268** decisions due to violations from Art. 7 paragraph 1 and paragraph 2 of the Law on Public Order and Peace and **6** due to misdemeanours from Art. 19 of the same Law. In the analysed period, there were no legally binding decisions that ended misdemeanour proceedings for misdemeanours from Art. 19a of the Law on

35 "Official Gazette of Montenegro", no. 046/10, 040/11, 018/14, 042/17 7

36 "Official Gazette of Montenegro", no. 051/17

Public Order and Peace, Art. 36 of the Law on Media, Art. 9a of the Law on Prohibition of Discrimination, and Art. 4 paragraph 1 points 4 and 5 of the Act on the Prevention of Violence and Misbehaviour at Sports Events.³⁷

The decisions that ended the misdemeanour proceedings, initiated and conducted in the specified period, related to the following misdemeanours from the Law on Public Order and Peace, Art. 7 - **1**, Art. 7 paragraph 1 - **23**, Art. 7 paragraph 2 - **36**, Art. 8 - **5**, Art. 8 paragraph 1 - **1**, Art. 10 paragraph 2 - **2** and Art. 19 - **4**, which were committed via social media/media.³⁸

Misdemeanour	Court in Podgorica	Department Danilovgrad	Department Nikšić	Department Cetinje	Total
Art. 7	1				1
Art. 7 paragraph 1	23				23
Art. 7 paragraph 2	8	11	17		36
Art. 8	3	1	1		5
Art.8 paragraph 1	1				1
Art. 10 paragraph 2	1		1		2
Art. 19	1	3			4
Total:	38	15	19		72

Table 3: Structure of misdemeanours prescribed by the Law on Public Order and Peace, prosecuted before the Misdemeanour courts in Podgorica, which were committed through social media/media

37 From the Decision on the request for free access to information submitted by the Court for Misdemeanors in Podgorica to the CCE

38 In addition to the misdemeanours under the Law on Public Order and Peace, for which information was requested by the request for free access to information, the misdemeanours of paragraphs 8, 9, and 10 were filed, which were charged to the accused in addition to the misdemeanours requested by the request.

Before the Misdemeanours Court in Podgorica, **56** misdemeanours committed through social media were recorded.

The most misdemeanour cases were in the Capital City - **25**, then in the department in Nikšić - **17**, in the Danilovgrad department - **14**, while in the department of the Royal Capital of Cetinje, there were no misdemeanour proceedings for these misdemeanours that were committed through social networks and media in the analysed period.

Misdemeanours prosecuted before the Misdemeanour Court in Podgorica (with departments) were most often committed on the social media platform Facebook - 46, via Instagram 7, Twitter - 1, while in 2 cases the name of the social network was not specified.

The most common penalty imposed in this court is a fine of 100 euros.

Misdemeanour Court in Podgorica					
	Court in Podgorica	Department Danilovgrad	Department Nikšić	Department Cetinje	TOTAL
number of exculpatory solutions	1	/	/	/	/
number of educational measures, increased supervision by parents	3	/	/	/	3
number of suspended sentences 10 days - 3 months	3	/	/	/	3
number of suspended sentences 10 days - 6 months	/	/	5	/	5
number of warnings	/	1	/	/	1
the number of suspended procedures	/	1	/	/	1
the number of imposed prison sentences of 15 days	/	1	/	/	1
number of fines of 30e	/	1	/	/	1
number of fines of 60e	1	/	/	/	1
number of fines of 80e	/	1	/	/	1

number of fines of 100e	8	1	/	/	9
number of fines of 150e	2	4	/	/	7
number of fines of 200e	/	3	2	/	5
number of fines of 250e	3	/	5	/	8
number of fines of 280e	2	/	/	/	2
number of fines of 300e	1	/	1	/	2
number of fines of 350e	/	/	1	/	1
number of fines of 400e	/	/	1	/	1
number of fines of 500e	/	1	1	/	2
number of fines of 550e	1	/	/	/	1
number of fines of 600e	/	/	1	/	1
TOTAL FINES	25	14	17		56

Table 4: Cross-section of punishments of the Court for Misdemeanours in Podgorica by department of this court

Before the Misdemeanour Court in Budva, collectively for the seat of the court and departments in Kotor, Herceg Novi, Bar and Ulcinj, in the period from 1 January 2021 to 1 October 2022, there were 625 requests to initiate misdemeanour proceedings for misdemeanours from Article 7, Article 19 and Article 19a of the Law on Public Order and Peace, while there were no requests for misdemeanours from Article 36 of the Law on Media; Article 4, Paragraph 1, points 4 and 5 of the Law on Prevention of Violence and Misbehaviour at Sports Events; Article 9a of the Law on Prohibition of Discrimination.³⁹

The Misdemeanour Court in Budva granted access to the requested information by allowing access to **348 legally binding final decisions**. The decisions that ended the misdemeanour proceedings, initiated, and conducted in the specified period, related to the following misdemeanours from the Law on Public Order and Peace, Art. 7 paragraph 1 - **8**, Art. 7 paragraph 2 - **22**, Art. 8 - **2**, and Art. 19 - **2**, which were committed via social media.

39 From the Decision on the request for free access to information submitted by the Misdemeanour Court in Budva to the CCE

Misdemeanour	Court in Budva	Department Bar	Department Kotor	Department Herceg Novi	Department Ulcinj	Total
Art. 7						
Art. 7 paragraph 1			6	1	1	8
Art. 7 paragraph 2	3	8	7	3	1	22
Art. 8				2		2
Art. 8 paragraph 1						
Art. 10 paragraph 2						
Art. 19	2					2
Total	5	8	13	6	2	34

Table 5: Structure of misdemeanours prescribed by the Law on Public Order and Peace, prosecuted before the Court for Misdemeanours in Budva, which were committed through social networks/media

Before the Misdemeanour Court in Budva **31** misdemeanours committed through social media were recorded. The most cases were in Kotor - **13**, then in Bar - **8**, in Budva - **5**, in Herceg Novi - **3**, while in the department of Ulcinj, there were **2** cases for these misdemeanours committed through social media in the analysed period.

Misdemeanours prosecuted before the Court for Misdemeanours in Budva (with departments) were mostly committed on the social media platform Facebook - 29, while 2 misdemeanours were committed via Instagram.

The most common penalty imposed in this court is a fine of 250 euros.

Misdemeanour Court in Budva						
	Court Budva	Department Bar	Department Kotor	Department Herceg Novi	Department Ulcinj	TOTAL
number of exculpatory solutions	/	1	3	/	1	5
number of warnings	/	/	2	/	1	3
number of suspended sentences 15 days – 3 months	/	/	1	/	/	1
number of suspended sentences 15 days – 6 months	/	/	1	/	/	1
number of suspended sentences 10 days – 3 months	/	/	/	2	/	2
number of fines of 100e	/	/	/	1	/	1
number of fines of 105e	/	1	4	/	/	5
number of fines of 150e	/	1	/	/	/	1
number of fines of 180e	/	/	1	/	/	1
number of fines of 250e	5	3	/	/	/	8
number of fines of 300e	/	2	/	/	/	2
number of fines of 420e	/	/	1	/	/	1
TOTAL FINES	5	8	13	3	2	31

Table 6: Cross-section of punishments of the Misdemeanour Court in Budva by department of this court

The Misdemeanour Court in Bijelo Polje with departments in Berane, Kolašin, Mojkovac, Rožaje, Plav, Žabljak, and Pljevlja had, in the period from 1 January 2021 to 1 October 2022, initiated **491** misdemeanour proceedings according to Art. 7 of the Law on Public Order and Peace; **13** initiated misdemeanour proceedings from Art. 19 of the Law on Public Order and Peace. At the same time, this court did not initiate misdemeanour proceedings under Art. 19a of the Law on

Public Order and Peace, Art. 36 Law on Media, Art. 9a of the Law on Prohibition of Discrimination, and Art. 4 paragraph. 1 point 4 and 5 of the Law on the Prevention of Violence and Misbehaviour at Sports Events.⁴⁰

The decisions that ended the misdemeanour proceedings, initiated, and conducted in the specified period, referred to the following misdemeanours from the Law on Public Order and Peace, Art. 7 - **1**, Art. 7 paragraph 1 - **16**, Art. 7 paragraph 2 - **5**, Art. 8 - **3**, Art. 10 paragraph 2 - **2**, and Art. 19 - **6**, which were committed through social media platforms.

Misdemeanour	Bijelo Polje	Rožaje	Kolašin	Pljevlja	Mojkovac	Žabljak	Berane	Total
Art. 7	1							1
Art. 7 paragraph 1	5		2	1	3	1	4	16
Art. 7 paragraph 2		1	2		1		1	5
Art. 8	1				2			3
Art. 10 paragraph 2					2			2
Art. 19	1		2		1	3	1	8
Total	8	1	6	1	9	4	6	35

Table 7: List of misdemeanours prescribed by the Law on Public Order and Peace, prosecuted before the Misdemeanour Court in Bijelo Polje

Before the Misdemeanour Court in Bijelo Polje, **27** misdemeanours committed through social media were recorded. The most misdemeanour cases were in Kolašin, Bijelo Polje, and Berane - **6** each, then in the department in Žabljak - **4**, in the department in Rožaje - **1**, in the department in Mojkovac - **3**, in the department in Pljevlja - **1** for these misdemeanours committed through social networks in the analysed period.

Misdemeanours prosecuted before the Misdemeanour Court in Bijelo Polje

⁴⁰ From the Decision on the request for free access to information submitted by the Court for Misdemeanors in Bijelo Polje to the CCE

(with departments) were mostly committed on the social media Facebook - 25, while 2 misdemeanours were committed via Instagram.

The most common penalty imposed in this court is a fine of 100 euros.

Misdemeanour Court in Bijelo Polje								
	Court Bijelo Polje	Department Rožaje	Department Kolašin	Department Pljevlja	Department Mojkovac	Department Žabljak	Department Berane	TOTAL
number of exculpatory solutions	3	/	1	/	1	3	/	8
number of suspended procedures	/	/	/	/	1	/	/	1
number of rejected requests	/	/	/	/	/	/	2	2
number of warnings	/	/	/	/	/	/	3	3
number of suspended sentences 10 days – 3 months	/	/	/	/	/	/	1	1
number of imposed fines of 100e	3	/	3	1	/	1	/	8
number of imposed fines of 120e	/	/	2	/	/	/	/	2
number of imposed fines of 250e	/	1	/	/	1	/	/	2
TOTAL FINES	6	1	6	1	3	4	6	27

Table 8: Structure of fines of the Misdemeanour Court in Bijelo Polje by departments of this court

Misdemeanour reports for hate speech initiated by the Police Directorate

When it comes to the analysed cases initiated upon the request for initiation of misdemeanour proceedings by the Police Directorate, the requested information related to misdemeanours by the following provisions – Articles 7, 19, and 19a of the Law on Public Order and Peace, Article 36 of the Law on Media, Article 9a Law on Prohibition of Discrimination, Article 4, para. 1, points 4 and 5 of the Act on the Prevention of Violence and Misbehaviour at Sports Events.

The Police Directorate does not keep records of misdemeanour reports based on the reported misdemeanour, that is, the legal qualification of a possible misdemeanour, but it is recorded as an event. Therefore, precise information on the number of reported misdemeanours requested by the request was not possible. Certainly, the number of reports is bigger than the number of submitted requests for initiation of misdemeanour proceedings, because sometimes the reported event does not have the elements of a misdemeanour to be prosecuted, or the perpetrator is unknown or the applicant withdraws it.⁴¹

Before the competent Misdemeanour Court, the Police Directorate initiated **288 misdemeanour proceedings based on submitted reports and 1 in the line of duty**, and **125 proceedings were concluded** before the court of first instance in the analysed period. All requests were submitted due to committed misdemeanours prescribed by Articles 7 and 19 of the Law on Public Order and Peace. A misdemeanour from Article 34a paragraph 1 point 4 of the Law on Prohibition of Discrimination is more difficult to prove than a misdemeanour from Article 19 of the Law on Public Order and Peace, and therefore the Police Directorate qualifies the committed action in this way. Also, the threatened punishment is greater in the Law on Public Order and Peace. All this does not prevent the court from applying another legal qualification, because it is not bound by the one given by the applicant.⁴²

The CCE team analysed the decisions made in the first instance by the competent courts that decided in misdemeanour cases at the request of the Police Directorate, which the CCE received from the Police Directorate.

41 From the Decision on the request for free access to information submitted by the Police Directorate to the CCE

42 From the Decision on the request for free access to information submitted by the Police Directorate to the CCE

Misdemeanour Court in Podgorica	
the number of suspended procedures	1
number of warnings	1
number of suspended sentences 10 days – 3 months	3
number of suspended sentences 10 days – 6 months	7
number of fines of 30e	1
number of fines of 60e	1
number of fines of 100e	6
number of fines of 150e	2
number of fines of 200e	4
number of fines of 250e	6
number of fines of 280e	1
number of fines of 300e	1
number of fines of 350e	1
number of fines of 400e	3
number of fines of 500e	1
number of prison sentences of 15 days	1
TOTAL FINES	40

Table 9: Structure of punishments of the Misdemeanour Court in Podgorica

Before the Misdemeanour Court in Podgorica, a total of **40** misdemeanours were recorded, which were committed through social media, in the analysed period, and whose proceedings before this court were initiated by the Police Directorate. Those decisions made in the first instance related to the following misdemeanours from the Law on Public Order and Peace: Art. 7 paragraph 1 – **9**, Art. 7 paragraph 2 – **30**, Art. 8 – **1**, and Art. 19 – **1**. The largest part was committed on the social media platform Facebook – **37**, and significantly less on Twitter – **2**, while **1** offense was committed via Instagram.

The most common punishment determined through these decisions is a **suspended sentence**, which establishes a prison sentence of **10 days**, at the same time stipulating that it will not be carried out if the defendant does not commit a new misdemeanour within six months of the decision's validity.

Misdemeanour Court in Budva	
the number of suspended procedures	1
number of warnings	2
number of suspended sentences 10 days -3 mo.	2
number of suspended sentences 15 days – 6 mo.	1
number of fines of 105e	4
number of fines of 150e	1
number of fines of 180e	1
number of fines of 250e	10
number of fines of 300e	4
number of fines of 420e	1
number of fines of 450e	1
TOTAL FINES	28

Table 10: Structure of fines of the Misdemeanour Court in Budva

Before the Misdemeanour Court in Budva were recorded **28** misdemeanours committed through social networks, whose proceedings before this court were initiated by the Police Directorate in the analysed period. More precisely, the decisions made in the first instance referred to the following misdemeanours from the Law on Public Order and Peace: Art. 7 paragraph 1 – **5**, Art. 7 paragraph 2 – **22**, Art. 19 – **2**, and Art. 8- **2**. Thereby, it is predominantly about misdemeanours committed on the social network Facebook – **25**, while **3** misdemeanours were committed via Instagram.

The most common penalty imposed in this court is a fine of **250 euros**.

Misdemeanour Court in Bijelo Polje	
number of exculpatory solutions	7
number of rejected requests	2
number of warnings	1
number of suspended sentences 10 days - 3 mo.	2
number of fines of 100e	7
number of fines of 120e	1

number of fines of 150e	1
number of fines of 170e	1
number of fines of 250e	2
TOTAL FINES	24

Table 11: Structure of sentences of the Misdemeanour Court in Bijelo Polje

Before the Misdemeanour Court in Bijelo Polje, **24** misdemeanours committed through social media were recorded, and the proceedings before this court were initiated by the Police Directorate in the analysed period. The decisions made in the first instance referred to the following offenses from the Law on Public Order and Peace: Art. 7 paragraph 1 - **16**, art. 7 paragraph 2 - **4**, art. 19 - **5**, and Art. 8-**1**, which were committed through social networks. Those misdemeanours were mostly committed on the social media platform Facebook - **22**, and **2** prosecuted misdemeanours were recorded via Instagram.

The most common penalty imposed in this court is a fine of **100 euros**.

Misdemeanour	Podgorica	Budva	Bijelo Polje	Total
Art. 7 paragraph 1	9	5	16	30
Art. 7 paragraph 2	30	22	4	56
Art. 8	1	2	1	4
Art. 19	1	2	5	8

Table 12: Presentation of misdemeanours prescribed by the Law on Public Order and Peace in proceedings initiated by the Police Directorate

The decisions that ended the misdemeanour proceedings initiated and conducted in the specified period before the Misdemeanour courts in Podgorica, Budva, and Bijelo Polje related to the following misdemeanours from the Law on Public Order and Peace: Art. 7 paragraph 1 - **30**, Art. 7 paragraph 2 - **56**, Art. 8 - **4** and Art. 19 - **8**, which were committed through social media platforms/media, whereby in some cases multiple misdemeanours were accumulated.

The analysed misdemeanour proceedings before the courts for misdemeanours in Montenegro were mostly resolved at the request of

the Police Directorate, and in unknown numbers at the request of natural persons (1 in Podgorica) or the Higher or Basic State Prosecutor's Office. More precisely, out of **114 reports of misdemeanour cases**, the Police Directorate submitted a request to initiate analysed misdemeanour proceedings in **111 cases**, i.e. in **97.3%** of all submitted applications.

Misdemeanour Court in Podgorica				
Applicant	Natural person	Police Directorate	Higher State Prosecutor's Office	TOTAL
Podgorica	/	25	/	25
Danilovgrad	1	12	1	14
Nikšić	/	17	/	17
Cetinje	/	/	/	0
TOTAL	1	56	1	56

Table 13: Structure of the applicants of the analysed requests for initiation of misdemeanour proceedings resolved before the Misdemeanour Court in Podgorica

Misdemeanour Court in Bijelo Polje			
Applicant	Police Directorate	Basic State Prosecutor's Office in Berane	TOTAL
Berane	4	2	6
Mojkovac	2	1	3
Kolašin	6	/	6
Žabljak	4	/	4
Pljevlja	1	/	1
Rožaje	1	/	1
Bijelo Polje	6	/	6
TOTAL	26	3	27

Table 14: Structure of the applicants of the analysed requests for initiation of misdemeanour proceedings resolved before the Misdemeanour Court in Bijelo Polje

Misdemeanour Court in Buda	
Applicant	Police Directorate
Kotor	13
Ulcinj	2
Herceg Novi	3
Budva	5
Bar	8
TOTAL	31

Table 15: Structure of the applicants of the analysed requests for initiation of misdemeanour proceedings resolved before the Misdemeanour Court in Budva

When it comes to the average amount of time from the submission of a request to initiate misdemeanour proceedings to the passing of a final judgment, it is noted that these proceedings are processed very slowly:

- Misdemeanour Court in Budva – almost 4 months
- Misdemeanour Court in Podgorica – almost 6 months
- Misdemeanour Court in Bijelo Polje – a little longer than 8 months

Gender structure of accused for misdemeanours

In **114** analysed misdemeanour cases conducted before the Misdemeanour Courts in Montenegro, **men** were **accused** in a significantly larger number - **107**, while **25 women** were accused of the misdemeanour.

The analyzed proceedings initiated before the competent courts by the Police Directorate, of which were **92**, men also dominated because the proceedings were conducted against **83 men and 18 women**.

Due to the anonymity of the persons in the submitted decisions on misdemeanour cases, it was not possible to determine the number of men and women initiating the misdemeanour proceedings, while the sex of the person subject to proceedings was identified by the provision in the court decision "He is guilty/She is guilty", based on which it was possible to determine the number men and women.

Sex	Podgorica	Nikšić	Danilovgrad	Cetinje	Total
Men	25	17	11	0	53
Woman	7	0	3	0	10

Table 13: Gender structure of accused in the cases of the misdemeanour courts in Podgorica

Sex	Budva	Kotor	Ulcinj	Bar	Herceg Novi	Total
Men	5	12	1	6	1	25
Woman	0	2	1	2	3	8

Table 14: Gender structure of the accused in the cases of the misdemeanour courts in Budva

Sex	Kolašin	Žabljak	Pijevlja	Mojkovac	Bijelo Polje	Berane	Rožaje	Total
Men	5	3	1	3	5	11	1	29
Woman	1	1	0	2	2	1	0	7

Table 15: Gender structure of accused in the cases of the misdemeanour courts in Bijelo Polje

Sex	Podgorica	Bijelo Polje	Budva	Total
Men	36	24	23	83
Woman	4	8	6	18

Table 16: Gender structure of person subject to proceedings in proceedings initiated before competent courts by the Police Directorate

05

Reports by the Centre for Civic Education (CCE) for hate speech via social media

In the past two decades, the Centre for Civic Education (CCE) has been profiled as a critically oriented non-governmental organization, which implies continuous public criticism of public policies or the actions of persons holding important public positions. Such statements also generated negative reactions, which intensified in the period of the change of the multi-decade government in 2020 in terms of the number of inappropriate comments directed at representatives of the CCE. Those comments came from users of social media who supported subjects that were criticized, whether it was political parties, political decision-makers, or certain religious communities.

During 2021 and 2022, CCE filed a total of 59 misdemeanour reports against 62 individuals with the Police Directorate of Montenegro for making comments of problematic content on social media platform Facebook and Twitter, in just three waves. Also, they were assessed by the CCE team as contaminating the public space, undoubtedly affecting social media but also being harmful to public interest and the individuals targeted by those comments. This approach, through which the content of the comments was analysed in just a few days and across several posts, was intended to indicate the extent of the problems we are facing in this area but also to test the level of institutional readiness for an appropriate response.

The applications were based on Article 7 of the Law on Public Order and Peace, which prescribes a fine of 100 to 400 EUR or a prison sentence of up to 30 days for those who insult others or behave insolently in a public place. A fine of 250 to 1000 euros or a prison sentence of up to 60 days is prescribed for the qualified form of this misdemeanour for those who grossly insult others in a public place or otherwise behave in a particularly

insolent, shameless, or offensive manner.

Although not all reported cases can be treated as hate speech, they can serve as indicators of the course of proceedings before the competent authorities (police and courts) and indicate deficiencies in their actions or legal deficiencies that should be more in the focus of the interested public.

In the majority of cases, the comments were found on Facebook pages of portals where links to articles with quotes from CGO representatives were published in their headlines. The readership and following of certain portals on social media did not play a key role in generating the number of comments on controversial content. Moreover, controversial comments were often found on less popular portals.

According to the information that the CCE has, at the time of publication, only 10 proceedings against 11 persons have been legally concluded, i.e. less than 18% of the total number of proceedings initiated. Concerning the reports against 20 persons, which is almost a third of the initiated proceedings, the CCE was not informed that there was any specific action by the police, nor did the police, by the regular procedure in those cases, address the representatives of the CCE to collect the necessary information.

In the notice submitted to the CCE at the end of 2022, the Police informed that they were unable to identify 6 persons, explaining that they used pseudonyms or fictitious names on social media.

Before the Courts for misdemeanours, 22 proceedings are pending. In most of these cases, hearings were held or scheduled, where representatives of the CCE were called as witnesses of the injured party. For some of those proceedings, even though they were concluded, the CCE did not receive a written copy of the decision, which is why it cannot be determined whether the proceedings against those persons were concluded with a legally binding decision.

Regarding the gender structure, 45 men and 10 women were reported, while the gender of 7 persons could not be determined. The CCE was informed by the Police that it was not possible to identify 6 persons, but also that no misdemeanour proceedings were initiated against one person, bearing in mind that the person moved abroad. In the police notification, it is also stated that the border police have no information about the fact that this person crossed the Montenegrin border, but that the possibility that he crossed the border illegally is not excluded.

When it comes to the punishments imposed by misdemeanour courts, in seven cases they were fines, in three cases suspended sentences, and in one case a warning was issued to the person. The fines ranged from a 60-euro fine with 10-euro court costs, which was imposed on one person, to a 250-euro fine and 30-euro court costs imposed on 4 people. In the case of other persons, the fine was 150 euros, with 30 euros in costs.

Under the threat of 10 months in the case of two persons, or 10 days in prison in the case of one person, a suspended sentence was given for a total of three persons. The CCE is not informed whether these persons have in the meantime committed new offenses that would result in the enforcement of prison sentences.

The CCE team deems that these procedures were accompanied by several shortcomings. Primarily, there was uneven practice before different misdemeanour courts, or even before different judges of the same misdemeanour court. The course of proceedings in these cases was accompanied by ignorance, but also by incompetence on the part of the acting judges, who often and openly expressed their ignorance of the procedures for this type of misdemeanour.

A certain number of accused hired attorneys in these proceedings, and some of them presented their defence independently. Some of the defendants appealed the decisions of the first-instance courts to the second-instance court, that is, the High Misdemeanour Court, which in all those cases confirmed the verdicts of the first-instance courts. About an acquittal decision of the Misdemeanour Court in Bijelo Polje, department in Berane, the CCE appealed to the High Misdemeanour Court, whose decision is still pending.

The Security Centre in Podgorica actively acted on the misdemeanour reports, promptly redirecting them to the competent police authorities in other Montenegrin cities, which did not necessarily demonstrated the responsibility that is necessary in such cases.

When delivered, some of the received letters received were sent to the address of the CCE as the official submitter of misdemeanour reports, while part of the letters was also delivered to the residence addresses of the injured persons, in this case, the employees of the CCE.

A large number of individuals remained unidentified, although the police,

in other similar cases involving certain public officials, had shown a keen interest and, with great efficiency, managed to identify the suspects' identities in a short period.

The CCE did not report these comments directly to Facebook, or Twitter through available support services, considering that this measure proved to be insufficiently timely and effective in previous experiences. Also, the need to file criminal charges against these persons has not been assessed, given that these are slow procedures, but also that there is no conviction that the prosecution would evaluate such user comments as a criminal offense, especially because previous actions of the prosecution leaned towards tolerating problematic public messages from prominent figures, which by all standards should have been assessed as hate speech.

The responsibility of portals for comments posted within their pages on social media is not defined by law, nor is the responsibility of natural persons for those comments posted by other users under their posts on social media. In the context of the judgment of *Sanchez v. France*⁴³, the question of the responsibility of the users of social media for the comments made within their post should be considered in some subsequent amendments to the national legislation.

On the other hand, the provisions of the Law on Media regarding the obligation to delete comments on portals upon user reports have significantly contributed to preventing incidents that could be considered hate speech. In the previous period, and since the entry into force of the Law on Media, the CCE submitted lots of reports to portals for controversial comments within the texts published on them. Some portals have shown responsibility through a high degree of readiness to remove problematic comments in the shortest possible time and to inform the CCE, as the reporting entity, about it. However, in the case of certain portals, reports did not always result in the removal of comments with illegal content. Certain right-wing portals engaged law firms that, on their behalf, informed CGO about comment deletions or simply ignored reports of illegal content in comments.

43 <https://globalfreedomofexpression.columbia.edu/cases/sanchez-v-france/#:~:text=The%20Fifth%20Section%20of%20the,of%20knowledge%20of%20the%20comments>, accessed on 7 February 2023

06

Conclusions and Recommendations

- Despite certain positive progress in the positioning of the issue of hate speech in the public domain, the institution of the Protector of Human Rights and Freedoms and the Agency for Electronic Media (AEM) must actively shed more light on these cases and emphasize the importance of this issue. Public communication regarding this matter shouldn't merely be statistics on the websites of relevant institutions, but a continuous reminder of the harmfulness of hate speech and the consequences that this phenomenon has on the direct victims, but also society.
- Insight into the situation and analysis of some cases indicates the necessity of strengthening the legislative framework in the area of sanctioning hate speech on portals and social media. In this regard, it is necessary to strengthen the provisions of the Law on Media in the part of the responsibility of the portal, especially for failure to act on reports requesting the removal of comments or failure to act within the stipulated period.
- The responsibility of portals for comments posted within their pages on social media is not defined by law, nor is the responsibility of natural persons for those comments posted by other users under their posts on social media platforms, which is one of the segments that must be legally regulated. In this respect, the judgment of *Sanchez v. France* is rather useful.
- It is necessary to work on raising the level of citizens' information about the reporting mechanisms for suppressing hate speech in the online space and encouraging citizens to fight for the protection of their rights.
- The way misdemeanour courts and the Montenegrin and the Police Directorate keep records is not standardized, which makes monitoring of their work impossible, especially in the context of a comprehensive assessment of efficiency. Efforts should be made to establish a system that addresses these deficiencies.

- Neither the misdemeanour courts nor the Police Directorate have submitted all the required documentation, as determined by a sample check. For example, the number of misdemeanour proceedings that were delivered by the Police Directorate (copies of decisions made in the first instance by the competent courts), which the Police Directorate initiated in 98% of cases, is less than the number of final decisions submitted by the misdemeanour courts that were competent in the given cases. This means that the courts have delivered to the CCE decisions on the procedures initiated by the Police Directorate, which are not in the documentation sent by the Police Directorate. Establishing a unified system or register that is regularly updated would prevent such discrepancies and omissions.
- It would be significant for the applicants if there was a register through which they could follow the case, from the initiation to the final decision, bearing in mind that these cases do not have any priority in the misdemeanour courts and that their length has a discouraging effect on the applicants who are often direct victims. Also, it would provide a good insight into the statistics of those cases and the penal policy.
- The fact that there is uneven treatment by the misdemeanour courts, as well as the noticeable lack of training of the misdemeanour judges, in the processing of these cases it would be important to work on capacity building of the misdemeanour judges when it comes to the importance and methods of effective handling in cases involving hate speech and related forms of inappropriate behaviour.
- The Prosecutor's Office must be more proactive in processing hate speech, especially when it comes to the statements of prominent public figures, which until now has not been recognized as hate speech, although this has been the case. The lack of an adequate response from relevant institutions towards such instances seems encouraging to supporters of these public figures, as well as others, to spread hate speech and other forms of inappropriate speech in the online space. Therefore, a more proactive approach by the prosecution could have a broader preventive impact, in addition to the directly repressive measures against individuals.
- It would be important to approach the adjustment of the legal framework in the direction of determining responsibility for hate speech expressed during election campaigns by political actors, aiming to reduce the tensions it often provokes.

