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Lawyers' Committee
for Human Rights



**INCITEMENT TO NATIONAL,
RACIAL AND RELIGIOUS
HATRED AND INTOLERANCE
– PRACTICE AND CHALLENGES**

Publisher:

Lawyers' Committee for Human Rights – YUCOM
Kneza Miloša 4, 11103 Belgrade
www.yucom.org.rs/en/

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**Design and layout:**

KONČAR Brand Studio

The publication “Incitement to National, Racial and Religious Hatred and Intolerance – Practice and Challenges” was created within the framework of the project “Enhancing Victims’ Rights through Regional Legal Action”, implemented by the Lawyers’ Committee for Human Rights – YUCOM in cooperation with the Human Rights House Zagreb, with the support of the Human Rights House Foundation (HRHF). The views expressed in this publication do not necessarily reflect those of the donor.



INTRODUCTION

Freedom of expression represents one of the most important political rights of the 21st century. It is a fundamental freedom for the development of a democratic society and one of the essential preconditions for its progress and advancement. At a time when the media face threats to their very existence precisely because they express critical opinions, and when citizens are being arrested for what is archaically referred to as a “verbal offense,” freedom of expression occupies a central place in the defense of all other rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.¹

However, while on the one hand journalists are being persecuted, with hooligans breaking their equipment with impunity, and citizens are being prosecuted on the basis of unlawfully obtained evidence through grave violations of the right to privacy, on the other hand - while invoking freedom of expression, we are witnessing the spread of hate speech and discrimination against citizens on various grounds by different social actors. These range from public officials and pro-government tabloids to individuals who simply do not accept those whom society labels as the “Others.”

Therefore, freedom of expression is not absolute. As expressly provided by the above-cited European Convention, it is limited precisely by the prohibition of its abuse to the detriment of overriding interests: *Since the exercise of these freedoms carries with it duties and responsibilities, it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

This is further confirmed by Article 17 of the European Convention, which prohibits the abuse of rights: Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

¹ Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11; the Protocols to the Convention for the Protection of Human Rights and Fundamental Freedoms; Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms not included in the Convention and the First Protocol thereto; Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty; Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms; Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms; and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances (“Official Gazette of Serbia and Montenegro - International Treaties”, Nos. 9/2003, 5/2005 and 7/2005 - corr.; and “Official Gazette of the Republic of Serbia - International Treaties”, Nos. 12/2010 and 10/2015).

The analysis presented to the reader focuses on freedom of expression that has exceeded the boundaries of permissible conduct and evolved into a toxic narrative that fuels hatred and intolerance among different groups of citizens. This is because, alongside freedoms, there are also certain prohibitions that enable the effective enjoyment of human rights - most notably, the prohibition of discrimination.

As prohibitions are measures to be resorted to only as a last and ultimate means, after all less restrictive measures have been attempted and have failed to produce results, it is clear that this prohibition serves to underscore the importance of equal treatment of all citizens in society. For this reason, Article 49 of the Constitution of the Republic of Serbia provides: *Any incitement to, or instigation of, racial, national, religious or other inequality, hatred or intolerance is prohibited and punishable.*²

*...Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued.*³

Faced with the systematic erosion of the guarantees enshrined in the Constitution and in ratified international instruments, this analysis examines the practice of the institutions responsible for the implementation of these norms. It primarily focuses on the practice of domestic courts and public prosecution offices with regard to the criminal offence prescribed under Article 317 of the Criminal Code of the Republic of Serbia - Incitement to National, Racial and Religious Hatred and Intolerance.⁴ The analysis further examines the work of the independent institution competent to apply the Law on the Prohibition of Discrimination, as well as to initiate proceedings for the protection of the rights of citizens and vulnerable groups. Finally, it considers the positions and findings on hate speech expressed by independent bodies, international organizations and non-governmental organizations in Serbia, considering the case-law of the European Court of Human Rights, which - through the standards it has developed - guides the distinction between permissible and abused freedom of expression.

This document was developed within the framework of the project Enhancing Victims' Rights through Regional Legal Action, jointly implemented by the Lawyers' Committee for Human Rights – YUCOM and the Human Rights House Zagreb. The project aims to strengthen the position of victims of discrimination and hate speech within the criminal justice system by fostering the exchange of experience and good practice. The project is supported by the Human Rights House Foundation.

² Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", Nos. 98/2006 and 115/2021).

³ European Court of Human Rights, *Erbakan v. Turkey*, judgment of 6 July 2006, § 56. Available at: https://www.echr.coe.int/documents/d/echr/fs_hate_speech_eng

⁴ Criminal Code of the Republic of Serbia ("Official Gazette of the Republic of Serbia", Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024).

HATE SPEECH IN SERBIA: STATISTICAL OVERVIEW AND JUDICIAL PRACTICE

There are no comprehensive data on hate speech in Serbia. Different records are kept by various state authorities (the Ministry of the Internal Affairs, public prosecution offices, courts, and the Commissioner for the Protection of Equality), yet the vast majority of cases remain unrecorded and unreported. Although the Amendments to the Law on the Prohibition of Discrimination introduced an obligation to establish a unified judicial database ⁵, the by-law intended to regulate in greater detail the manner of data collection has still not been adopted - even four years later - despite the fact that the competent Ministry was required to adopt this act within six months from the entry into force of the Law.

As a result, it is extremely difficult to present a comprehensive picture of the state of a society deeply affected by hatred. A full thirty years after the wars in the territory of the former Yugoslavia, by avoiding confrontation with the past, hatred toward our closest neighbors - Croats and Bosniaks - continues to persist. Hatred toward the Albanian national minority has become a deep-rooted pattern, while new forms of hatred have emerged, directed at newly arrived migrants from the Middle East. For the purposes of this research, the analysis will therefore rely on the available statistical data on criminal proceedings.

According to data from the Statistical Office of the Republic of Serbia ⁶, in the period from 2020 to the end of 2024 a total of 223 adults were reported for the criminal offence of Incitement to National, Racial and Religious Hatred and Intolerance under Article 317 of the Criminal Code. Out of the total number of criminal complaints filed, only 21 convictions were rendered. There were two acquittals. A total of 171 criminal complaints were dismissed, noting that data on dismissed criminal complaints for 2024 are missing from the publication Adult Perpetrators of Criminal Offences.

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In the cases examined, the following groups most frequently appeared as injured parties: Albanians, Roma, Hungarians, Croats and Bulgarians. However, in a significant number of cases (five cases), this criminal offence was committed against members of the majority population. No cases of religious hatred were identified in the judgments reviewed.

⁵ Article 44b of the Law on the Prohibition of Discrimination ("Official Gazette of the Republic of Serbia", Nos. 22/2009 and 52/2021).

⁶ Statistical Office of the Republic of Serbia, Adult Perpetrators of Criminal Offences, available at: www.stat.gov.rs/oblasti/pravosudje/punoletni-ucinicni-krivicnih-dela/, accessed on 1 December 2025.

Higher Court in Zaječar – Lack of Consistency in Judicial Practice

The inconsistency of judicial practice is particularly illustrated by three cases that occurred in Zaječar, involving the same defendant and the same injured parties, in situations based on almost identical factual circumstances. In the first case, the defendant was sentenced to a suspended sentence; in the second case, the defendant was again convicted, and the suspended sentence was revoked; while in the third case, the defendant was acquitted on the grounds that no criminal offence had been committed.

The defendant was acquitted of the charge that on the relevant date and while criminally responsible, she addressed the words to the minor victims: “Let’s go, gypsies, I am going to fuck your mom, I’m going to fuck you, poo, poo, die, I’m fucking you in the damned mouth” and “you want to see my pussy, now I’m going to show you”. In explaining the verdict, the court stated that the described action does not constitute a criminal offense under the law. From the reasoning of the judgment:

“In the present case, the elements of the criminal offence of Incitement to National, Racial and Religious Hatred and Intolerance under Article 317 of the Criminal Code were found not to be met, on the grounds that the indictment merely states the ethnic affiliation of the injured parties, while none of the words cited in the operative part of the judgment demonize that ethnic group, single it out, or in any way call for discrimination, destruction, or similar conduct. Rather, the ethnic and national affiliation of the injured parties is mentioned only to the extent that they are identified as Roma. According to the court, the insults referred to in the operative part of the judgment were the result of a long-standing neighborly dispute and were unrelated to the ethnic or national affiliation of the injured parties. The court further stated that the mere use of the term referring to Roma was not derogatory, asserting that this term, alongside “Roma,” constitutes a designation for an ethnic-national group that members of the group themselves allegedly use interchangeably when declaring their national affiliation. From the reasoning of the judgment, it is evident that the court lacks a proper understanding of the subject matter of the case. The court repeatedly makes terminological errors, consistently using the term ethic instead of ethnic, and fails to distinguish between ethnic and national minorities. Moreover, as early as 1971, at the First World Romani Congress, the term rejected by the court was explicitly identified as a derogatory designation for members of the Romani national minority, and replaced by the term Roma, precisely because of its pejorative and dehumanizing connotations, with the meaning “dirty, leprous and untouchable persons”.⁷

In the previous case, the same court reached a completely different decision and found the defendant guilty, establishing that on the relevant date she had incited “national intolerance against members of the Romani nationality.” This conclusion was based on the finding that the defendant addressed the injured parties with severely offensive and degrading statements: “I’ll shit in your mouth, you gypsy bastards, I’ll fuck your blood, you’re thieves, there are no worse thieves than you, you motherfucking cunt, if Hitler were alive, he’d kill you too”.

The defendant was sentenced to six months’ imprisonment, which would not be enforced provided that she did not commit another criminal offence within a period of one year (a suspended sentence). In its reasoning, the court stated that invoking Adolf Hitler and addressing individuals as “Gypsies” undoubtedly constitutes insulting conduct on national grounds.

The same convicted person was subsequently subject to revocation of the suspended sentence and sentenced to imprisonment after repeating the offence against the same injured party. The court established that she again addressed the injured parties with severely offensive, degrading and hate-based verbal insults: “Let’s go, gypsies, I am going to fuck your mom, I’m going to fuck you, poo, poo, die, I’m fucking you in the damned mouth” and “you want to see my pussy, now I’m going to show you”. As a result, the defendant was sentenced to ten months of house arrest.

⁷ Commissioner for the Protection of Equality, Opinion and Recommendations No. 781-22 - Discrimination Established on the Grounds of Belonging to the Romani National Minority in the Field of Service Provision, available at: <https://ravnopravnost.gov.rs/rs/781-22-utvrđena-diskriminacija-na-osnovu-pripadnosti-romskoj-nac-manjini-u-oblasti-pruzanja-usluga/>, accessed on 1 December 2025.

It is important to note that the acquittal was rendered chronologically last, following two convictions against the same defendant for acts committed against the same injured parties, who were minors at the time the offences were committed.

Although the first case did not involve references to Hitler, it did include references to death (e.g. wishes for death), which places these three highly similar cases decided by the same court into two opposing outcomes. Such judicial decision-making generates significant legal uncertainty, both for suspects and for injured parties. Moreover, the court's choice of terminology and its reasoning point to a clear need for additional training and education of judicial professionals.

Higher Court in Zrenjanin – Suspended Sentences for Death Threats Made in the Presence of Minors and Extortion

The Higher Court in Zrenjanin convicted three defendants of the criminal offence under Article 317(2) of the Criminal Code, sentencing them to suspended terms of imprisonment for inciting national, racial and religious hatred and intolerance. The offence was committed in such a manner that one of the defendants remained on the premises of a bakery owned by the injured party, while the other two went to the injured party's home, forcibly opened the locked entrance door, and entered the room where the injured party, his wife, and their two minor children aged six and four were sleeping. During the incident, one of the defendants shouted ethnically derogatory: "Get up, you fucking mother of Shqiptar for not answering" and threatening statements directed at the injured party, after which both defendants verbally abused and threatened to kill the injured parties. This caused severe distress to the injured parties, and the children began to cry. The injured party then asked the defendants to leave the house and wait for him near their vehicle, to which they responded by threatening him with a deadline to come to the bakery, stating that they would be waiting for him outside.

Only after the defendants had left the room, the injured party called the police, got dressed, and went to his vehicle. He then drove after the defendants' vehicle, which stopped in front of the bakery. The defendants exited their vehicle and approached the injured party, who also stepped out of his car. They searched him, threatened to kill him and his family, including threats of slitting his throat and setting him on fire in his vehicle, and addressed him with ethnically derogatory and insulting remarks. One of the defendants then told the injured party that he had three minutes to return home and bring EUR 1,000 so that he could continue working "in peace" and so that no one would harm him. Upon noticing police officers, the defendants threatened the injured party that they would eventually be released from prison and that the consequences would then be even worse, stating that he should not have contacted the police. When an unidentified defendant exited the bakery and passed by the injured party, he again directed insulting and threatening remarks at him "What are you doing, now the police have come, we are going to fuck you Shqiptar mother", after which the police officers prevented him from attacking the injured party. The defendants acted with awareness of the unlawfulness of their conduct and with intent to commit the offence. The offence was committed while the defendants were under the influence of alcohol.

In the reasoning of the judgment, the court identified the following mitigating circumstances for all three defendants: that they had no prior convictions, that they behaved appropriately before the court, and that they were young persons who were "in regular employment." According to the court, no aggravating circumstances were established.

Following an appeal lodged by the Higher Public Prosecutor's Office in Zrenjanin, the Court of Appeal in Novi Sad reclassified the sentences, imposing custodial sentences - two sentences of six months' imprisonment and one sentence of three months' imprisonment - to be served under a prohibition on leaving the place of residence (imprisonment served at home).

What is particularly concerning in this case is the fact that no security measure prohibiting approach to the injured parties was imposed, despite the defendants having threatened the injured party with killing in the presence of his children, and despite one of the defendants having threatened the injured party in the presence of an official person. Moreover, in the proceedings, only the injured party AA, the owner of the bakery, was granted the status of an injured party, while his family was not treated as injured parties, although the convicted persons forcibly entered their home. This indicates a serious misunderstanding by the court of the position of injured parties in such cases, particularly when children of a very sensitive age - four and six years - are involved.

Higher Court in Zrenjanin – House Arrest and Prohibition of Approach for an Attack on Minors

A sentence of six months' imprisonment, to be served at the premises in which the convicted person resides, without the application of electronic monitoring, was imposed on a person who committed the criminal offence under Article 317(2) in conjunction with paragraph 1 of the Criminal Code. The offence was committed in such a manner that the defendant approached a group of minors of Hungarian nationality and addressed one injured party who was wearing a Red Star Belgrade football club jersey, instructing him to remove the jersey. When the injured minor refused to do so, the defendant removed a plastic knife with a yellow blade measuring 9.5 cm from the back pocket of his trousers and issued a threat to the injured parties, stating that the knife could end up in someone's throat. He continued to demand that the injured minor remove the jersey, which the minor again refused. The defendant then asked the injured minor why he did not wish to do so and whether he was Hungarian, and further asked the other injured parties whether they were Hungarians. After the injured minor asked the defendant whether he had something against Hungarians, the defendant replied that he did, stating that Hungarians hate Serbs and that he therefore hated Hungarians as well. While the defendant continued to hold the knife in his hand, which caused fear among the injured parties, they attempted to call the police using their mobile phones, whereupon the defendant told them not to do so. When a police patrol arrived at the scene shortly thereafter, the defendant attempted to escape and disposed of the knife, but was detained by the police patrol, which also recovered the knife. The defendant acted with awareness of his conduct and intent to commit the offence, and was aware that his actions were prohibited.

A security measure prohibiting communication with and approaching the injured parties was imposed on the defendant, consisting of a prohibition on approaching the injured parties within a distance of 100 meters, a ban on access to the area surrounding the injured parties' place of residence within the same distance, and a prohibition on communication with the injured parties. The measure was imposed for a period of two years, provided that the time spent serving the sentence is not included in the duration of the measure.

We have singled out this judgment as an example of good practice, as the court considered the position of the injured minors and the need to impose a measure prohibiting approach, which was not the case in the previous example.

Higher Court in Pirot – Acquittal in a Case Involving Hate Speech against the Bulgarian National Minority

The Higher Court in Pirot acquitted the defendant, who had been charged with criminal offence under Article 317(1) of the Criminal Code. While in pre-trial detention, the defendant sent a letter from detention to a third person, in which he, inter alia, insulted members of the judiciary, referred to them in highly degrading terms “Do not contact these bandits from the Pirot judiciary... They are all thieves and do not think I’m paranoid because you do not even know what kind of shit Bulgaria and semi-Bulgarian (Pirot) are. Bole, they all should be hanged!”. The letter was forwarded by fax from the detention unit to the Basic Court in Dimitrovgrad for the purpose of monitoring detainees’ correspondence, by V. F., President of the Court. On the following day, while serving a prison sentence in the District Prison in Leskovac, the defendant submitted a written motion to V. F., President of the Basic Court in Dimitrovgrad, entitled as a request, in which he explicitly stated that he hated Bulgarians, repeated derogatory expressions directed at Bulgarians saying “and in my village they say “a green house and a good Bulgarian do not exist, just make it possible for the Bulgarians to stop judging me and arresting me in my Serbia and you... to Sofia!”, suggesting that they should all return to Bulgaria.

The court acquitted the defendant on the following grounds: The court finds that the above-mentioned words contained in the letter and the request were not addressed to a person of Bulgarian nationality, as the person who carried out the monitoring of the correspondence was a judge of Serbian nationality. Furthermore, it follows from all of the above that the defendant had been in detention for several months and that, by using these words, he was expressing his personal revolt and frustration due to the fact that criminal proceedings were being conducted against him at that time. In that sense, the court finds that the above-mentioned words constitute insult, denigration and ridicule of members of another nationality; however, there is no evidence that this was done with the intent to incite national hatred, specifically against members of Bulgarian nationality.

The Higher Court in Pirot, through this judgment, advances several highly problematic positions. First, it takes the view that the criminal offence of Incitement to National, Racial and Religious Hatred and Intolerance cannot be committed unless the perpetrator directly addresses a person belonging to a specific group. Such a position can hardly be considered correct. Incitement to national, racial and religious hatred and intolerance precisely begins with the dissemination of negative speech among members of the same group about members of another social group, thereby propagating ideas that one group is less valuable or less worthy than another. Furthermore, the court’s view that insulting, denigrating and ridiculing members of another nationality was not carried out with the aim of inciting hatred lacks any grounding in logic.

Other cases reviewed:

- A member of the Albanian national minority from Bujanovac threatened members of the majority population (Serbs) via the social media platform Facebook, stating that the problem in Bujanovac could be resolved only by armed means. The defendant concluded a plea agreement with the Higher Public Prosecutor’s Office in Vranje and was sentenced to six months’ imprisonment, which will not be enforced provided that the defendant does not repeat the offence within a period of two years (a suspended sentence).
- The Higher Court in Pančevo rendered a convicting judgment against the defendant for inciting racial, national and religious hatred and intolerance, finding that the defendant incited national hatred among persons living in Serbia by directing ethnically derogatory threats and statements advocating violence at the injured parties: “I am going to fuck your Shqiptar mother, I am going to slaughter you all, never to see you again, I am going to kill you, you scumbag.” Following the criminal proceedings, the defendant was sentenced to six months’ imprisonment, and a security measure of compulsory treatment for alcoholism was imposed.

- The Higher Court in Pančevo convicted the defendant who, while in a state of diminished criminal responsibility, smashed the window of a bakery owned by a member of the Albanian national minority with a stone. In the course of the proceedings, the court established that the offence was motivated by hatred based on the injured party's national affiliation and, in addition to a four-month term of imprisonment, imposed security measures consisting of mandatory psychiatric treatment and placement in a medical institution, as well as a prohibition on approaching and communicating with the injured party.
- The Higher Court in Pančevo approved a plea agreement concluded between the Higher Public Prosecutor's Office in Pančevo and the defendant, under which the defendant admitted to inciting racial, national and religious hatred and intolerance. The admission related to conduct whereby the defendant entered a bakery owned by one of the injured parties, a member of the Albanian national minority, insulted an employee that she works for Shqiptar, made ethnically derogatory remarks toward the injured party, and challenged him to a fight. The defendant was sentenced to a suspended sentence with a probation period of three years. The court also imposed a security measure of compulsory treatment for alcoholism.
- The Higher Court in Zrenjanin convicted the defendant who, while in a bakery owned by members of the Albanian national minority, made a statement calling for violence against Albanians "I want Albanian blood to be spilled!", after which he threatened the bakery owner and an employee that he would return and attack them if they reported the incident to the police. The defendant was sentenced to a suspended sentence with a probation period of two years, and a security measure prohibiting approach to and communication with the injured party was imposed.
- The Higher Court in Subotica imposed a security measure of compulsory psychiatric treatment and placement in a medical institution on a person who incited racial, national and religious hatred by directing severely offensive remarks toward the mayor on religious grounds at the mayor's security staff: "Fuck the Orthodox mother of the mayor", and then continued threatening to kill the mayor: "I am going to kill the mayor".
- The Higher Court in Subotica imposed a security measure of compulsory psychiatric treatment and placement in a medical institution on a person who incited racial, national and religious hatred by entering a bakery owned by a member of the Albanian national minority and insulting and threatening the employees, including statements threatening armed violence against Albanians, alleging that weapons and explosives were prepared for use against them, that Serbs would come and kill Albanians - Shqiptars, and making claims that Albanians were sending money to Kosovo.
- The Higher Court in Subotica approved a plea agreement concluded between the Higher Public Prosecutor's Office and the defendant, under which the defendant admitted to inciting national, racial and religious hatred and intolerance. The defendant, identifying as a member of the Muslim faith, published on his Facebook profile titled "Sanitet Peja Kosova" a video recording of the arrest of perpetrators of a terrorist attack carried out by individuals of the Muslim faith on 22 March 2024 at the Crocus concert hall in Moscow, Russian Federation, in which more than 200 members of the Orthodox Russian population were killed or injured. Following the publication of the video, the defendant added a caption in the Arabic language expressing religious praise and exhortation: "Glory to God, God is the greatest, God wakes us up".

- The Higher Court in Subotica approved a plea agreement concluded between the Higher Public Prosecutor's Office in Subotica and the defendant, under which the defendant admitted committing the criminal offence of Incitement to National, Racial and Religious Hatred and Intolerance. The offence was committed in such a manner that the defendant approached a parked passenger vehicle bearing Croatian plates, in which an injured party was seated in the front passenger seat and two minor children were seated in the back. He addressed the injured party in a raised and aggressive manner, directing ethnically motivated insults and threats of killing: "Fuck you Ustasha mother, how do you park, is that how you park in Croatia too, you should all be slaughtered, I will slaughter you!". The defendant then addressed another injured party with similar ethnically derogatory threats: "You are all Ustasha, I will teach you how to park, I will slaughter you all!", grabbed him by the neck area and pushed him away, and, upon a third injured party approaching, pushed him in the chest as well. The defendant was sentenced to three months' imprisonment, to be served at the premises in which the defendant resides.

- The Higher Court in Novi Sad convicted the defendant for inciting racial, national and religious hatred and intolerance against members of the majority of the population (Serbs). The offence was committed in such a manner that, in the presence of a larger number of citizens, patients, medical staff, and police officers who had brought him to the emergency centre to receive medical assistance, the defendant directed severely offensive and ethnically motivated insults "Fuck you Serbia!", "Fuck you Vučić!", identified himself with an armed group associated with violence "I am a KLA soldier!" and made threats against Serbian children "We will fuck your Serbian children in Kosovo!". After entering the medical office, the defendant continued to verbally abuse police officers, addressed those present with sexually degrading remarks, and at one point kicked an injured police officer in the left lower leg. Thereafter, he was placed in an official police vehicle of the Novi Sad Police Directorate, where he attacked an official in the performance of public security duties by repeatedly kicking the interior doors of the vehicle, causing the right hand of the injured police officer to be trapped. For the criminal offence of Incitement to Racial, National and Religious Hatred and Intolerance, the defendant was sentenced to four months' imprisonment; for the criminal offence of Assault on an Official in the Performance of Official Duties, to ten months' imprisonment; and for the criminal offence of Unauthorized Possession of Narcotic Drugs, to one month's imprisonment. The court imposed a single custodial sentence of one year's imprisonment.

- The Higher Court in Kragujevac imposed a measure of compulsory treatment at liberty on the defendant who, while criminally irresponsible, used colored spray paint to write graffiti on the Serbian Orthodox Church "Saint Sava". The graffiti included the inscriptions "God is love," "Jesus Akbar," "Serbia," as well as a drawing of a red heart accompanied by the inscriptions "Albania, Allahu Akbar" and "Kosovo is Serbia." According to the court, both the content of the graffiti and the location where they were displayed were such as to incite and fuel hatred and intolerance between Serbs and Albanians, as well as between citizens of the Orthodox Christian and Islamic faiths.

Practice of the Commissioner for the Protection of Equality

As an independent institution vested with competence to oversee the implementation of the Law on the Prohibition of Discrimination, the opinions of the Commissioner for the Protection of Equality are of particular importance in cases of incitement to national, racial and religious hatred and intolerance. In the judicial practice of criminal courts, however, the use of this institution's opinions is not observed, although such use would be highly beneficial for clarifying the meaning of certain concepts and for achieving a better understanding of this form of hatred as a social phenomenon. Although the type of responsibility incurred before the Commissioner for the Protection of Equality and before criminal courts is not the same, the Commissioner's practice has established certain standards for speech that is considered hate speech. While, in the context of civil responsibility, the intent to incite hatred or discriminatory conduct is not relevant for establishing responsibility, criminal law requires direct intent, which constitutes the main distinction between these two types of responsibility. Given the nature and severity of criminal sanctions, this difference is fully justified. At this point, we will present several of the most significant examples from the Commissioner's practice, as a response to the examples from judicial practice analyzed above.

The Term “Ciganin” (Gypsy) Is Offensive and Derogatory

Hate speech, the use of derogatory terms, and the dissemination of stereotypes and prejudices in the media and on social networks can fuel discrimination, particularly when public figures and officials set a negative example through their statements and thereby contribute to the “normalization” of such narratives. According to the Survey on the Perception of the Romani Community regarding Discrimination, as many as 79% of respondents believe that hate speech targeting Roma is present in the media and on social networks. By way of example, Member of Parliament Branimir Nestorović referred to representatives of the opposition in the National Assembly using the derogatory term “Ciganin” (“Gypsy”) and described their behaviour as “gypsies.” Shortly thereafter, the MP made a similar statement in a television program, again using the derogatory term “Cigani,” accompanying that he reflected negative stereotypes and prejudices. In this regard, the Commissioner for the Protection of Equality established that discrimination had occurred and recommended that the MP issue a written apology, as well as that he ensure, in the future, that in the course of his duties and activities he complies with anti-discrimination legislation and refrains from making statements that violate the dignity of members of the Romani national minority.⁸

Hate Speech Targeting the Albanian National Minority

In a complaint submitted by the National Council of the Albanian National Minority, reference was made to a graffiti reading “Death to Shqiptars”, written in green paint on the parking area of a health centre, as well as to a message written on paper stating “Death to Shqiptars, we do not want you, Kosovo is Serbia,” which was posted on the entrance door of the children's department. Immediately following the recommendation of the Commissioner, the Municipality of Bujanovac and the Health Centre informed the Commissioner that the graffiti had been painted over and that the paper bearing the message had been removed and handed over to the police as evidence. Graffiti and messages of this kind may contribute to the creation of an atmosphere of hostility and misunderstanding among different groups, which is particularly dangerous in multi-ethnic communities.⁹

⁸ Commissioner for the Protection of Equality, Regular Annual Report for 2024, Belgrade, 2025, p. 230, available at: <https://ravnopravnost.gov.rs/wp-content/uploads/2025/09/RGI-2024-eng.pdf>, accessed on 1 December 2025.

⁹ Ibid.

Antisemitism

The escalation of armed conflict in the Middle East has triggered a range of serious problems worldwide, and as a reaction to these conflicts, graffiti containing unlawful speech and even hate speech have appeared. The Commissioner strongly condemned the writing of such graffiti, emphasizing that agreement or disagreement with the policies or decisions of a particular state cannot be used as an excuse or justification for hatred or attacks against all members of a person. The Commissioner also issued a public warning regarding antisemitic graffiti at the Sephardic Jewish Cemetery in Belgrade, which were written several days after the commemoration of the Holocaust Remembrance Day. She stressed that, in a country that suffered enormous losses in the fight against fascism, the writing of graffiti that glorify fascism is incomprehensible and unacceptable, as it insults not only the Jewish community but all citizens of the Republic of Serbia.¹⁰

Hate Speech Targeting Migrants

The civil society organization Atina also submitted a complaint to the Commissioner for the Protection of Equality, pointing out that, in the morning hours of March 2021, posters were displayed on Belgrade city bus line No. 96 bearing, inter alia, the message “STOP THE SETTLEMENT OF MIGRANTS IN SERBIA,” thereby expressing hatred and intolerance toward migrants. In response, the Commissioner issued a recommendation of measures to achieve equality to Public Transport Company Belgrade (GSP Beograd), urging it to remove, without delay, any posters expressing hatred and intolerance toward migrants from public transport vehicles, and to conduct daily inspections of city and suburban transport vehicles in the future in order to remove any discriminatory content.¹¹

European Commission against Racism and Intolerance (ECRI) on Serbia

The European Commission against Racism and Intolerance (ECRI) published a report on Serbia in 2024, within the sixth monitoring cycle.¹² The report places particular emphasis on hate speech in Serbia, noting its presence especially in relation to Roma and other ethnic minorities, LGBTI persons, as well as refugees and migrants.

Roma and members of other ethnic minorities are also particularly exposed to hateful rhetoric. In March 2023, the Mayor of Belgrade stated that the capital city's Roma live on stealing and do not want to comply with “civilized” standards. At the time of the ECRI visit, court proceedings were pending as regards the use of the word “Shqiptar”, a pejorative equivalent for “Albanian”, by a Minister of Interior when referring to a senior representative of the Albanian minority. In November 2023, it was announced that Serbia's football stadium would be partially closed when the country would host Bulgaria in a Euro 2024 qualifier game as punishment for fans' racist behavior during a win over Montenegro.

The report further states: Around 2020, there was a significant increase in anti-refugee/anti-migrant rhetoric in the run-up to the local and parliamentary elections. Refugees and migrants were increasingly portrayed by the media and on the internet as a threat to the safety of Serbian citizens. During a protest that took place in Belgrade in October 2020, far-right politicians were referring to “deviant migrants”, encouraging reporting them to groups on social networks and encouraging people to apprehend them. Moreover, far-right “people's patrols” harassed refugees and migrants as well as individuals assisting them. For instance, in Sombor, in north-western Serbia, the owner of a hostel hosting migrants was the target of hate speech by right-wing extremist groups, who made death threats against him on social media.

ECRI identified the preparation of a comprehensive study on hate speech as a priority issue and issued a specific recommendation to public figures, senior officials, and political and religious leaders to refrain from hate speech and to actively promote understanding between different social groups, including by expressing solidarity with those who are targeted by hate speech.

¹⁰ Commissioner for the Protection of Equality, Regular Annual Report for 2023, Belgrade, 2024, available at: <https://ravnopravnost.gov.rs/wp-content/uploads/2024/05/RGI-2023-Engleski.pdf>, accessed on 1 December 2025.

¹¹ Commissioner for the Protection of Equality, Regular Annual Report for 2022, Belgrade, 2023, available at: https://ravnopravnost.gov.rs/wp-content/uploads/2023/06/RGI-2022_15.3.2023_EN.pdf, accessed on 1 December 2025.

¹² European Commission against Racism and Intolerance (ECRI), ECRI Report on Serbia (Fourth Monitoring Cycle), adopted on 9 April 2024, published on 27 June 2024, Council of Europe, available at: <https://rm.coe.int/fourth-ecri-report-on-serbia/1680b06413>, accessed on 1 December 2025.

Combating Hate Crimes and Hate Speech in Croatia

In the context of Croatia's accession to the European Union, a comprehensive mechanism for monitoring and combating hate crimes was established in the Republic of Croatia. The Office for Human Rights and the Rights of National Minorities of the Government of the Republic of Croatia serves as the central authority responsible for collecting, consolidating and publishing data on hate crimes, as well as for coordinating cooperation with civil society organizations and international organizations.

At the core of this system are the Protocol on the Handling of Hate Crime Cases adopted in 2011 and the Working Group for Monitoring Hate Crimes, which is composed of representatives of authorities competent in combating hate crimes (the Ministry of the Internal Affairs, Ministry of Justice, courts, state attorney's offices, and the Government Office for Human Rights), as well as representatives of civil society organizations and the academic community. The Office for Human Rights and the Rights of National Minorities acts as the coordinator of the Working Group's activities.

To further strengthen the system, on 8 April 2021 the Government of the Republic of Croatia adopted a new Protocol on the Handling of Hate Crime Cases, which sets out in detail the obligations of the competent authorities involved in the detection, handling and monitoring of the outcomes of proceedings related to hate crimes. The Protocol also regulates the composition and competences of the Working Group, the modalities of inter-institutional cooperation, and activities related to education and training on combating hate crimes.

Special attention has been devoted to improving statistical monitoring. The Protocol introduced standardized data collection forms, including a form for the statistical monitoring of criminal offences related to Article 87(21) of the Criminal Code, a form for monitoring hate speech, and a form for monitoring misdemeanors motivated by hatred.

The legal framework for combating hate crimes in the Republic of Croatia is based on a series of laws and by-laws, among which the key instruments include the Criminal Code, the Act on the Prevention of Disorder at Sports Events, the Anti-Discrimination Act, the Public Assembly Act, the Act on Misdemeanors against Public Order and Peace, the Ordinance on the Manner of Conducting an Individual Victim Assessment, and the Protocol on the Handling of Hate Crime Cases.

The Human Rights House Zagreb actively monitors the work of the Working Group and, with the aim of strengthening efforts to combat hate speech in Croatia, proposed in early 2024 to enhance the implementation of the Protocol. It further proposed that the Working Group starts the drafting of recommendations aimed at improving the system for combating hate crimes, with a particular focus on hate speech. These recommendations are to be developed in consultation with civil society organizations and experts active in this field, as well as other relevant stakeholders.

CONCLUSIONS

The analysis of judicial practice and publicly available statistics indicates an insufficient understanding of the issue of incitement to national, racial and religious hatred and intolerance in Serbia. While international and domestic institutions consistently note the widespread presence of hate speech in Serbia, the response of the judiciary is characterized by a predominance of dismissed criminal complaints and a comparatively low number of convictions.

The judiciary has demonstrated a lack of understanding of hate speech as a social phenomenon and of the threat it has to the community. The position of injured parties in criminal proceedings in Serbia, which is generally not particularly strong, is further weakened in cases concerning the criminal offence under Article 317 of the Criminal Code. Security measures prohibiting approach were imposed in only four cases, despite the fact that in some instances minors appeared as injured parties. In no case were injured parties awarded a property claim within the criminal proceedings; instead, they were referred to civil litigation. In this regard, it should be noted that in certain cases the acts constituting the offence involved damage to the injured party's property, most often the breaking of bakery shop windows owned by members of the Albanian community, which constitutes damage of minor value that could have been readily established and awarded within the criminal proceedings. Courts also frequently used incorrect terminology, demonstrated a lack of awareness that certain expressions are offensive, and failed to distinguish between national and ethnic affiliation.

Although both the European Commission against Racism and Intolerance (ECRI) and the Commissioner for the Protection of Equality have identified the presence of hate speech targeting migrants, none of the criminal judgments examined in this analysis addressed this social group. Cases of incitement to religious hatred are also absent, despite the fact that human rights defenders are well aware that such incidents are very much present in Serbian society.

While not all instances of hate speech reach the threshold required to result in a conviction for the criminal offence of incitement to national, racial and religious hatred and intolerance, the lack of response by the competent judicial authorities, particularly the public prosecution, remains a serious cause for concern. This is especially the case with hate speech disseminated by public figures and through the media, which constitutes one of the most dangerous forms of spreading hatred in society. Anti-migrant rallies and messages calling for the killing of members of certain social groups (Albanians, Roma, Slovaks, migrants, etc.) require particular and sustained attention from the justice system.

The competent authorities to which the recommendations set out below are addressed include the Ministry for Human and Minority Rights, the Ministry of Justice, the Judicial Academy, the Supreme Court of Cassation, the Supreme Public Prosecutor's Office, as well as all individual courts and public prosecutor's offices. The recommendations are also addressed to civil society organizations and the Commissioner for the Protection of Equality.

RECOMMENDATIONS

- The Ministry of Justice should urgently adopt, without delay, the general act referred to in Article 40b of the Law on the Prohibition of Discrimination, regulating the procedure for courts to submit judgments to the Commissioner for the Protection of Equality.
- The competent authorities should establish a unified registry and statistical system covering all cases of discrimination, hate speech, and hate-motivated criminal offences, encompassing the Commissioner for the Protection of Equality, courts, public prosecutor's offices, and misdemeanor courts, and ensure that this data is publicly accessible.
- The Ministry for Human and Minority Rights should implement a nationwide public campaign promoting diversity and respect for differences among all citizens living in Serbia, including the active involvement of well-known public figures from popular culture.
- The Judicial Academy, in cooperation with courts and public prosecutor's offices, should continue and strengthen specialized training for judicial professionals, with a particular focus on handling cases of hate speech and hate crimes, including the direct application of international legal sources and standards developed by the European Court of Human Rights.
- Judicial authorities should work towards harmonizing judicial practice concerning the criminal offence of Incitement to National, Racial and Religious Hatred and Intolerance under Article 317 of the Criminal Code, particularly with regard to terms and expressions generally recognized as offensive when referring to protected social groups, in order to reduce legal uncertainty and prevent divergent decisions in factually identical cases.
- Courts and public prosecutors' offices should give due consideration to the vulnerability of injured parties when adjudicating hate-motivated offences and systematically assess the need to impose security measures under Article 79 of the Criminal Code, especially in cases involving minors or other particularly vulnerable individuals (due to health status, social position, or similar circumstances).
- Criminal courts should decide on property claims within criminal proceedings whenever such decisions do not unduly prolong the proceedings or complicate adjudication, particularly in cases involving low-value and easily ascertainable damage, in order to avoid secondary victimization and additional financial burdens resulting from referral to civil litigation.
- The Republic of Serbia should, without delay, take concrete steps to implement ECRI recommendations, in particular those relating to the spread of religious and national hatred targeting migrants and refugees from the Middle East.
- The Republic of Serbia should consider, drawing on the example of the Republic of Croatia, establishing a unified multi-sectoral body responsible for combating discrimination, hate speech, and hate crimes, as well as adopting a single, comprehensive protocol governing institutional responses to such cases.