



Kingdom of the Netherlands



HATE SPEECH AND CRIMES IN KOSOVO

ANALYSIS OF ACTUAL CASES

Views and interpretations expressed in this document
do not necessarily reflect the views of the Embassy of the
Netherlands in Kosovo.

This report was prepared under the “Combat Hate in Kosovo” Project, implemented by ATRC in partnership with RADC and supported by the Embassy of the Netherlands in Kosovo.

Introduction

In continuing the survey on hate speech and crimes in Kosovo, this report presents the second part of the analysis of reports submitted by monitoring activities in the framework of the "Combat Hate in Kosovo" project implemented by ATRC in partnership with RADC and supported by the Embassy of Netherlands in Kosovo.

While the first report, "Hate Speech and Crimes in Kosovo: role of institutions in their prevention",¹ focused on the legal analysis of the concepts of hate speech and crimes within the legal system of Kosovo, as well as in terms of international standards and norms, this report's main focus is on the legal treatment of cases from the practices that have been analyzed and described by local organizations' activists and students, who have been previously trained on human rights topics and monitoring hate speech and crimes.

The report seeks to provide an analytical approach so that the content of individual reports is enriched with legal references in order to help the citizens of the Republic of Kosovo to better understand and recognize the legal concept of hate speech and crimes and to adequately respond to them. The report is also enriched by emphasizing the role of state authorities and civil society in combating and preventing hate speech and crimes.

Therefore, through this report and the presentation of concrete cases, citizens will be provided with an easier opportunity to identify the public use of hate speech on religious, ethnic, gender, racial and other grounds, and to combat this phenomenon which incites hate acts or crimes.

It should be noted that although the report presents the monitored activities, the facts described have not been verified, so the cases presented represent the memory, perception and research of the respective authors of the monitoring activities. We believe that they are written in good faith and serve as a practical indication of cases which are potentially believed to constitute the use of hate speech or the perpetration of hate crimes.

¹ ATRC, "Hate Speech and Crimes in Kosovo: Institutions' Role in their Prevention" (Prishtina, 2021), https://advocacy-center.org/wp-content/uploads/2021/08/Raporti_monitorimit.pdf, accessed on 4 September 2021.

Introduction.....	2		
2. Methodology.....	4	3.6. INCITEMENT OF HATRED DURING THE VIDOVDAN HOLIDAY IN GAZIMESTAN.....	17
2.1. Evidencing of Hate Speech	4	3.7. NOVO BRDO MUNICIPALITY HATE SPEECH CASE	18
2.2. Evidencing of Hate Speech Crimes.....	6	3.8. Hate speech through literary works case.....	19
3. Monitored actual cases of alleged expressions such as hate speech or hate crime	7	4. INTIMIDATION AS A HATE CRIME AND MONITORING OF THE WORK OF THE POLICE AND PROSECU- TOR'S OFFICE RELATED TO THIS OFFENSE	20
3.2. CASE OF ATTACK IN FERIZAJ AGAINST PERSON BECAUSE OF VICTIM'S SEXUAL ORIENTATION	9	5. Case monitored in the Mitrovica Municipality: Difference between discrimination and hate speech or crime	25
3.3. INCITEMENT OF HATRED TOWARDS THE TURKISH COMMU- NITY THROUGH FLAG BURNING	11		
3.4. INCITEMENT OF HATRED (DENIAL OF THE RECAK MASSACRE) BY THE MINISTER OF ADMINISTRATION AND LOCAL GOVERNMENT.....	12		
3.5. INCITEMENT OF HATRED ON SOCIAL MEDIA IN PEJA	16		

2. Methodology

2.1. Evidencing of Hate Speech

In identifying hate speech, the basis on which this report will be oriented is the definition by the Committee of Ministers of the Council of Europe in Recommendation R (97) 20. According to this definition: Hate speech is defined as “*all forms of expression that propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by nationalism and aggressive ethnocentrism, hostility and discrimination against minorities, migrants and people of immigrant origin*”.² In this sense, hate speech is a public expression of a discriminatory attitude, which is necessarily directed against a particular person or group of persons, and which may spread prejudice and may create a relationship of intolerance, hostility, or provoke violence against groups or individuals who belong to these groups.

Meanwhile, in order to determine the formal legal aspect, we will employ Article 141 of the Criminal Code of Kosovo, which states that: “*Anyone who publicly incites or spreads hatred, dissension and intolerance between national, racial and religious, ethnic and other groups, or on grounds of sexual orientation, gender identity and other personal characteristics, in a manner which may disrupt public order, shall be punished with a fine or imprisonment of up to five (5) years*”³; as well as Article 4 paragraph 1 sub-paragraph 1.4 of the Law on Protection from Discrimination, which refers directly to hate speech: “Incitement to discriminate is considered discrimination on

the grounds set out in Article one (1) of this Law protected personal characteristics, and includes any promotion of hatred when it is done intentionally”. Based on these definitions, we will analyze whether the reported cases constitute hate speech.

Hate speech, as a legal concept in the legal system of Kosovo, can be addressed in criminal and civil terms. The categorization of hate speech as a criminal offense arises when the perpetrator uses language that publicly incites or spreads hatred, dissension and intolerance between national, racial, religious, ethnic and other groups, or on grounds of sexual orientation, gender identity and other personal characteristics, in a way that may disrupt public order. Thus, the essential element to consume the criminal offense in the case of hate speech in a criminal sense, is the possibility to disrupt public order. Consequently the offense must have encouraged “grave” consequences for the liberty and rights of others or a grave humiliation of others on discriminatory grounds.

Meanwhile, in the context of the contested procedure, in order to conclude that an expression constitutes *intentional* hate speech, it must be done intentionally, expressed in a *context* that may incite discrimination and that *leads* to the promotion of hatred. Unless these preconditions are met, one cannot consider that a certain expression is hate speech.

However, since hate speech as a legal concept can be perceived in different ways by people,

² Council of Europe, “CoE Hate Speech Factsheet” www.coe.int/t/DC/Files/Source/FS_hate_en.doc, accessed in September 2021.

³ Code No. 06/L-074 Criminal Code of the Republic of Kosovo, Article 141 para. 1 (OJ, no. 2/2019, January 14, 2019).

then the analysis of cases when an expression constitutes hate speech, and the definition of the boundary between the objectionable and offensive but not punishable expression and hate speech which is against the law, will also be based on the analysis of several cumulative conditions:

- a. Context of speech;
- b. Speaker;
- c. Intent;
- d. Content of speech;
- e. Speech reach and intensity; and
- f. Likelihood of speech creating grave social consequences

a. Social context and circumstances

As a first step in assessing whether an expression constitutes hate speech, we will look at the context and social circumstances when that expression was made.

In general, a contextual analysis should include consideration of the following elements:

- Existence of conflicts within the society. Namely, the fact whether there have been previous conflicts between different groups or outbreaks of violence.
- Existence and institutionalized history of discrimination. Existence of structural inequality and historical discrimination against a certain group. Lack of opposition to speech addressed to a particular group.
- History of clashes and conflicts between the group to which the speaker belongs and the group to which the speech is addressed

b. Speaker

- Speaker identity, especially their position and status in society as well as attitudes or influence, will be analyzed.

Issues to be considered include:

- Official position of the speaker - if he/she is in a position of authority over the audience;
- Level of authority of the speaker or influence on the audience and his/her charisma;
- Whether the statement was made by a person in his/her official capacity, in particular if that person performs special duties and functions.

c. Purpose

Analysis of the speaker's intent, namely:

- Willingness to engage in promoting hate;
- Intention to target a certain group on grounds of protected characteristics;
- Having knowledge of the consequences of actions knowing that the consequences will occur or may occur.

d. Content of speech

Content analysis will include focusing on issues such as: form, style, tone, whether the expression contained direct calls for discrimination or violence, the nature and manner in which the arguments are presented.

e. Speech reach and intensity

An important factor in examining whether the expression reaches the threshold of incitement to hatred should be an examination of the extent and intensity of the expression. In this sense we will consider, in particular, three main issues:

- Public Nature of speech
- Means of spreading of speech; and
- Impact caused by speech

f. Likelihood of speech creating grave social consequences

In order for an expression to be analyzed if it reaches the threshold of incitement to hatred, we will analyze the cause-and-effect relationship between communication from the speaker and how the audience is expected to react and how the audience might potentially react. In this way we will analyze whether there was a reasonable and direct probability that a speech would succeed in inciting the audience to cause discrimination, violence or hostility against a particular group because

of their personal characteristics. The criteria for assessing the probability or risk of inciting discrimination, hostility or violence, should be analyzed on a case-by-case basis, but by analyzing the criteria as follows:

- Was the speech understood by the audience as a call for acts of discrimination, violence or hostility?
- Was the speaker able to influence the audience?
- Was it possible for the audience to be encouraged through speech to commit acts of discrimination, violence or hostility?
- Was the target group of victims recently subjected to discrimination, violence or hostility?

2.2. Evidencing of Hate Speech Crimes

In analyzing whether a 'hate crime' has been committed, we will rely on finding two basic elements, which are also the main elements of a hate crime:

- The fact of committing a "predicate" criminal offense (e.g., murder); and
- The offense committed by a "biased motivation" (e.g., against ethnicity), which means that the perpetrator has chosen the target of the crime based on the protected personal characteristics of the victim.

Evidencing of hate crime means that when the Court establishes guilt, if the offense was committed on the basis of biased motivation towards the protected characteristics, this will be classified as an aggravating circumstance which the court must take into account in the case of sentencing.

3. Monitored actual cases of alleged expressions such as hate speech or hate crime

3.1. INCITEMENT OF HATE THROUGH SOCIAL MEDIA AGAINST SERB POLICE OFFICER IN ISTOG MUNICIPALITY⁴

A common form of inciting or spreading hatred is through social media. Specifically, on October 14, 2020, through his profile through on FB, a user publicly incited hatred between national groups, namely between Albanians, Bosniaks and Serbs, in a way that could disrupt the legal order, with which he committed the criminal offense of “incitement to discord and intolerance” under Article 141 paragraph 1 of the Criminal Code of Kosovo, for which the Basic Prosecution in Peja filed an indictment.

A FB page published the article entitled “Alarming, 15,000 citizens of Istog apply for visas”, and the defendant, who was a top fan of this page, comments on this article, and among other things he publicly writes “*they have to leave this place, where we are still mistreated by Bosniak and Shkije (derogato-*

ry for Serbs, plural – sing. Shka) cops in Istog, backed by Shipecas (derogatory for Albanians used by Albanians)... Like at the times of Shkije, even now in Istog, if a tractor bumps into the rear end of a car, the car’s driver is found guilty and is mistreated...”.

During the preliminary hearing, after the reading of the indictment by the State Prosecutor, the defendant pleaded guilty to the criminal offenses with which he was charged, saying that it was not his intention to harass anyone or incite discord and intolerance between ethnic or racial groups, but he did it out of anger because of a case his father had with the police in which he was wronged, and deleted the published article from the page.

⁴ Basic Court in Peja, Case P.no. 319/20, https://peje.gjyqesori-rks.org/wpcontent/uploads/verdicts/PE_IS_P_2020-151382_SQ.pdf, accessed on 6 September 2021.

As mitigating circumstances for the defendant, the court found that the defendant showed correct behavior in the Court, and moreover admitted his guilt and expressed regret for the acts he committed, and also stated that he regretted his actions, and apologized to the injured party in court. Therefore, based on the factual situation and the gravity of the criminal offenses, the Court imposed a single fine on the defendant in the amount of 400 (four hundred) Euros.

3.1.1. Assessment of existence of hate speech

First of all, it should be said that the Court in the reasoning of the enacting clause with regards to establishing the criminal offense “incitement to discord and intolerance” under Article 141 paragraph 1 of the Criminal Code, does not provide any analysis on the basis of which creates the connection between substantive law and factual situation. The court, in its judgment seems to be content with the guilty plea of the defendant. However, although the court does not issue a lengthy reasoning of the enacting clause, *prima facie* the existence of hate speech can be ascertained. This is due to the fact that the expression “*they have to leave this place, where we are still mistreated by Bosniak and Shkije (derogatory for Serbs, plural – sing. Shka) cops in Istog...*”, presents a clear case in which the language used is possible to offend, shock or disturb the concerned communities, but also proclaiming that Serb and Bosniak police officers were actually abusing the majority community, expresses a tendency of inciting hatred towards the police officers of this community that could escalate into violence against them.

Social context and circumstances assessment

The court had to assess the context of Kosovar society. In this regard, it had to assess whether it was possible to incite violence in this context, since there have been previous conflicts between the respective groups. The conclusion in this case would be that in such a situation of previous conflicts in our society, such an expression represents a tendency to incite hatred towards police officers of Bosniak and Serb origin. This is because such an expression revives the memories of previous conflicts, and attributes an individual event to a community in general, and claims that the allegedly unfavorable treatment of the defendant occurred due to the Bosniak and Serb ethnicity of police officers.

Speaker’s position assessment

The court had to assess the position and status of the defendant in society. In this sense, it is noted from the judgment that the defendant by profession is a teacher. Therefore, being in such a position, the possibility that the defendant could have influenced a wider audience, especially his students, is great. In a local community like Istog, a teacher who expresses such tendentious language on the basis of ethnicity poses a risk of inciting hatred.

Speaker’s intent

The reasoning of the judgment does not explain whether the intent was eventual or intentional. From the way the speaker expressed himself, it can be analyzed that there was intentional intent to target police officers

on the basis of their ethnic characteristics. The defendant should have been aware that his action could have caused such consequences, leading to a chain of hatred incited against these police officers, causing a situation of insecurity for them.

Speech reach and intensity

The speaker, being a 'top fan' on the Facebook page, should have known that his expression, especially on social media of public nature, could have an impact on a wide audience.

Likelihood of speech creating grave social consequences

There is a reasonable probability that the expression would incite hatred, as the speaker attributes the large number of visa applications in the municipality of Istog to the conduct of police officers of Serb and Bosniak ethnicity.

3.2. CASE OF ATTACK IN FERIZAJ AGAINST PERSON BECAUSE OF VICTIM'S SEXUAL ORIENTATION⁵

The Basic Prosecution in Ferizaj had filed an indictment against the two defendants for the criminal offenses of incitement to hatred, disension or intolerance on national, racial, religious or ethnic grounds, as well as the criminal offense of minor bodily injury.

On June 11, 2016, inside the train station in Ferizaj, the defendants had a conversation to beat up two persons because "*they are fags*". Although the interlocutor initially refused to do so, he was still persuaded to take part in the beating. Thus, they used violence against the injured party, causing bodily injuries, which were also confirmed by the forensic expertise. The injured ran again into the defendants at a restaurant, where they continued to launch insults, and the injured called the

police. Based on the evidence, the Basic Court in Ferizaj found the first defendant guilty of both criminal offenses and sentenced him to a single sentence of imprisonment of five (5) months, which he will serve after the judgment becomes final.

While the other defendant, the Court found him guilty of the criminal offense "minor bodily injury" and imposed a prison sentence of four (4) months, which will not be executed if the defendant within one year from the day when the judgment becomes final does not commit another criminal offense. As for the criminal offense of inciting hatred, discord or intolerance on national, racial, religious or ethnic grounds, he was acquitted, in the absence of evidence.

⁵ Basic Court in Ferizaj, Case P.no.620/16, https://ferizaj.gjyqesori-rks.org/ep-content/uploads/verdicts/FE_P_620_16_SO.pdf, accessed on 8 September 2021.

3.2.1. Assessment of existence of hate speech

In the case in question, *prima facie* it can be concluded that the Court and the Prosecution have erroneously qualified the criminal offense, as in the present case we are not dealing with the criminal offense 'incitement to hatred, discord or ethnic intolerance'. This is due to the fact that from the factual description of the situation it can be understood that the first defendant did not publicly state "*let's go and beat them because they are fags, and I have beaten them several times*", and did not manage to incite the other defendant to cause violence. This is understood from the fact that the second defendant responded by saying "*let it go, you have nothing to do with them*". Thus, the first defendant, through his speech – made in a private context – in a position over which he had no authority over the second defendant, fails to promote to effectively incite the second defendant towards violence.

However, although the case had nothing to do with the legal notion of hate speech,⁶ the offense in question certainly reflects the hatred or biased motivation of the first defendant, on the basis of sexual orientation. In this sense we are dealing with a hate crime by the first defendant, because the two elements that make up the legal notion of '*hate crime*' are met.

Initially, the first defendant committed the act which constitutes a criminal offense under positive criminal law, namely the criminal offense of '*minor bodily injury*', and the motiva-

tion for committing this criminal offense was the prejudice he has against the target due to their real or perceived connection or affiliation to or support for a protected group based on their sexual orientation as their protected personal characteristic.

Consequently, for the first defendant the court had to consider the biased motive (hatred) and impose a heavier sentence. With the Criminal Code in force,⁷ this offense would be considered as a special qualifying circumstance on the basis of which a special aggravated form of the basic criminal offense is determined, with more severe sentence imposed than the one provided for the predicate form of the criminal offense in question (in the case in question, the criminal offense under Article 185, paragraph 3, subparagraph 1). However, the offense occurred when the old Criminal Code was in force,⁸ which has now been repealed. This code did not define the special and aggravated form of the predicate criminal offense, i.e., it did not define hatred as a legal element of the criminal offense, however it defined hatred (biased motive) as a required aggravating circumstance, based on which a harsher sentence is imposed. Consequently, the court has erroneously established in its reasoning that particularly aggravating circumstances were absent. The first defendant, therefore, should have received a harsher sentence, since he committed the criminal offense due to biased motivation, while for the second defendant, despite committing the criminal offense, from the description of the situation we can conclude that he was not motivated by the sexual orientation of the victim.

⁶ For more, see: ATRC (n1).

⁷ Code No. 06/L-074 Criminal Code of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

⁸ Code No. 04/L-082 Criminal Code of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

3.3. INCITEMENT OF HATRED TOWARDS THE TURKISH COMMUNITY THROUGH FLAG BURNING⁹

On 24.09.2018, the Basic Prosecution in Gjakova filed an indictment against W.B. and A.B., accused of inciting national, racial, religious or ethnic hatred, discord, or intolerance. The defendants, on August 2, 2018, had knowingly and publicly incited and spread hatred, discord and intolerance among national, racial, religious, ethnic groups living in the Republic of Kosovo in order to disrupt public order, namely they publicly burned the national flag of the Republic of Turkey, which they presented on social media, shouting "Down with Turkey", "Down with Erdogan". Consequently, they were accused of creating dissatisfaction, insult and hatred towards the Turkish nation and the Turkish ethnic group living in Kosovo. The Government of the Republic of Kosovo has also reacted to this act. The Government statement reads "any vandal act that desecrates the national and state symbols of the Republic of Turkey is strongly condemned", and "the Government of Kosovo is committed to building good relations with all countries in the region and has special consideration for the good cooperation with countries that have recognized and helped Kosovo's independence. The Government of the Republic of Kosovo is determined and requires the law enforcement agencies to take all measures against those who do not respect the state interests of Kosovo and against those who disrupt the harmony and coexistence of its citizens, regardless of their ethnicity".¹⁰

Therefore, against each of the defendants the Court imposed a fine in the amount of 2,500 Euros, and if the defendants do not pay the fine, it will be replaced by imprisonment for a term of 180 (one hundred eighty) days.

3.3.1. Assessment of existence of hate speech

The court, in the case in question, bases the finding of guilt on the admission of guilt of the defendants, but this is actually a very controversial issue.

The court based its decision on the fact that "at a family celebration at hotel P, they knowingly and publicly incited and spread hatred, discord and intolerance among national, racial, religious, ethnic groups living in the Republic of Kosovo in order to disrupt public order, namely they publicly burned the national flag of the Republic of Turkey, which they presented on social media, shouting "Down with Turkey", "Down with Erdogan", creating dissatisfaction and insults and hatred towards the Turkish nation and the Turkish ethnic group living in Kosovo."

In this sense, if we look at the context in which the event took place, we are dealing with a family celebration on the one hand; second-

9 Basic Court in Gjakova, P. no. 655/18, https://gjakove.gjyqesori-rks.org/wp-content/uploads/verdicts/GJK_P_P_nr.655_18_SQ.pdf.
10 <https://boldnews.al/2018/08/03/turajit-kane-bere-gjenocid-ndaj-shqiptare-ne-kosove-djegin-flamurin-turk-reagon-qeveria/>

ly if we look at the qualities of these people, we are dealing with ordinary people whose actions were made in private quality. Moreover, they did not specifically target the Turkish community living in Kosovo, but expressed their dissatisfaction with the state of the Republic of Turkey and its leader. On the other hand, at no point in the analysis of the content is there any intention to incite discrimination or hatred against the Turkish community. While the Turkish community felt offended by the burning of the flag, it is clear from the case that the action of the accused persons did not violate the social position of members of the Turkish community.

In this regard, if we look at the jurisprudence of the European Court of Human Rights in the case of the Christian Democratic Party v. Moldova,¹¹ The ECtHR considers that burning flags can be, in certain contexts, a legitimate way of disseminating political opinions: *"In the present case, the Court finds that the plaintiff's slogans, even if accompanied by*

the burning of flags and photographs, were a form of expression of an opinion on an issue of great public interest, namely the presence of Russian troops on the territory of Moldova. The Court recalls in this context that freedom of expression refers not only to "information" or "ideas" which are favorably received or regarded as non-offensive or indifferent, but also to those that offend, shock or disturb."

Therefore, in the present case, although the action of the defendants may have offended the community of Turkish ethnicity, such action of the defendants could not be justified as inciting hatred against the Turkish community, and in essence presented a form of dissatisfaction of the defendants regarding the political situation in Turkey. In fact, it would be the duty of the court in this case to ascertain the intent of the defendants, whether the intent was to incite hatred towards the Turkish community, or because of indignation towards the policies of the Turkish state, which the court has failed to prove.

3.4. INCITEMENT OF HATRED (DENIAL OF THE RECAK MASSACRE) BY THE MINISTER OF ADMINISTRATION AND LOCAL GOVERNMENT¹²

The Special Prosecution of the Republic of Kosovo on June 28, 2019, filed an indictment against the defendant I.T. due to the criminal offense: Incitement of national, racial, religious or ethnic hatred, discord or intolerance.

The defendant, in the capacity of the Minister of Administration and Local Government in the Government of the Republic of Kosovo, by abusing his position or authorizations, intentionally committed the criminal offense under

¹¹ <http://hudoc.echr.coe.int/eng?i=001-72346>

¹² Basic Court in Prishtina, PS. no. 20/19, https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_PKR_20_19_SQ.pdf

Article 141 paragraph 2 of the Criminal Code of Kosovo, inciting and disseminating publicly hatred, discord and intolerance between national, racial and ethnic groups living in the Republic of Kosovo.

This is because on March 24, 2019, as a participant and speaker in the civic gathering against NATO's intervention, the defendant stated that: *"The reason for the aggression in our country was the so-called humanitarian catastrophe in Kosovo and Metohija... The Recak massacre was a fabrication... It is the Albanian terrorists who fabricated all this and committed the greatest crimes in Kosovo and Metohija... For this, today no one has claimed responsibility... They have committed crimes before NATO's aggression, they killed good Serb housewives and police officers in their workplace... they continued their bloodshed both during the aggression and after the arrival of the so-called peacekeeping mission in Kosovo and Metohija"*, and with these actions could disrupt public order or cause other more serious consequences in the Republic of Kosovo.

Therefore, based on various material evidence: listening to and watching the video recording, articles published on various portals and newspapers, the Court sentenced him to imprisonment for a term of 2 years.

On the other hand, the defense claimed that in this case the *'legal conditions for the existence of the criminal offense were not met, because under paragraph 1 of Article 147 it is necessary for the incriminating action to endanger public order, which in this case did not happen... , there were no public rallies, street demonstrations, roadblocks or the like.'* Also, their client *did not abuse his official position, because although he was a minister at the time, he was able to address the citizens as a*

citizen in an individual capacity, and he could speak at any gathering as a citizen, because if he were to address a rally in the capacity of minister, surely he would have asked the Prime Minister to go there to speak, or he would have asked for an order for an official car and would have asked for a per diem for work performed on Sunday, none of which happened.'

In view of these allegations, the defendant's attorney appealed the first instance judgment, requesting the Court of Appeals to acquit his client as the act for which the defendant is charged is freedom of expression, which is protected by Article 10 of the European Convention on Human Rights (ECHR).¹³

The defense also considers that the case cannot proceed further due to procedural obstacles, because I.T. is an MP, and as such has immunity from prosecution. The main trial is ongoing.¹⁴

3.4.1. Analysis of existence of hate speech

This case aligns with the jurisprudence of the European Court of Human Rights, directed between the contrast of the criminalization of genocide denial on the one hand, and the protection of freedom of expression on the other.

As is well known, Article 10 of the ECHR states that everyone has the right to have opinions and to receive information *'without interference by public authorities and regardless of frontiers'*. The second paragraph of the provision imposes certain restrictions on the exercise of this freedom that may be subject to *"formalities, conditions, restrictions or sanc-*

13 <https://betimipredrejtisi.com/deputeti-qe-u-denua-per-deklaratat-e-tij-fyese-per-masakren-e-recakut-kerkon-pafajesine-ne-apel-prokuroria-kerkon-te-refuzohet-ankesa-e-tij/>

14 <https://betimipredrejtisi.com/avokati-thote-se-ceshtja-penale-ndaj-deputetit-ivan-todosijeviq-nuk-mund-te-vazhdoje-tutje-pasi-i-njeiti-ka-imunitet-ndaj-ndjekjes-penale/>

tions as prescribed by law and 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."

The traditional interpretation of Article 10, given by the European Court, was quite rigid in relation to the definition and application of the restrictions mentioned, given the fundamental role of freedom of expression in a democratic society and the extraordinary character that the restrictions must take.¹⁵

Despite this general trend – for the protection of freedom of speech – the Court has shown a different approach to decisions on Holocaust denial, in which restrictions on the right protected by Article 10 were justified through the need to protect the values of other fundamental values, such as justice and peace,¹⁶ honor and reputation.¹⁷ In fact, the Court found that the criminal convictions handed down by national courts against genocide deniers were in conformity with the Convention, on the ground that a person could not call upon a fundamental right to commit an act intended to destroy the rights and freedoms protected by the Convention.

Holocaust denial has been considered by the Court as a very destructive phenomenon of social structure, dangerous to public order and cohesion between groups. The court considers it to be in contrast to justice and peace – both values protected by the convention – and therefore does not deserve any protection.¹⁸

In particular, in the *Marais v. France* case, the denial of the existence of crimes against humanity was judged as an attempt to erase the memory of the victims of Nazism and damage the reputation of others. These statements took on a full definition in the *Garaudy v. France* case, in which the Court went on to say that "*denial of crimes against humanity is one of the most serious forms of racial slander against Jews and incitement to hatred against them.*" Freedom of expression cannot be exercised in connection with historical confirmed and defined events, such as the Holocaust. Therefore 'Holocaust denial cannot be considered a product of scientific research because it aims to restore the Nazi regime, accusing Holocaust victims of misrepresentation.' *'It violates democracy, human rights and fundamental freedoms protected by the Convention.'*

However in the *Perincek* case,¹⁹ the court considered that the prison sentence against a Turkish politician who in his speeches in Switzerland constantly proclaimed that the Armenian genocide had not taken place, had violated his freedom of expression, saying that there was no indication that the statement of Mr. Perincek was likely to incite hatred or violence, pointing out that there is a big difference between inciting violence and statements that simply deny genocide, because they do not have the same implications and the same consequences. For this reason, the Court stated that criminal punishment did not seem 'necessary in a democratic society'.

Consequently, comparing this analogy of the European Court of Human Rights, we see that the case in question has been handled by the European Court in such a way that the differ-

15 *Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979); *Vogt v Germany* App no 1785/91 (ECtHR, 2 September 1976).

16 *T v Belgium* App no 9777/82 (Commission Decision, 14 July 1983).

17 *X v Federal Republic of Germany* App no 9235/81 (Commission Decision, 16 July 1982).

18 *H, W, P and K v Austria*, App no 12774/87 (Commission Decision, 12 October 1989); *Walendy v Germany* App no 21128/92 (Commission Decision, 7 January 1992); *P v Germany* App no 19459/92 (Commission Decision, 20 March 1993); *Otto EFA Remer v Germany* App no 25096/94 (Commission Decision, 6 September 1995); *Gert Honsik v Austria* App no 25062/94 (Commission Decision, 18 October 1995); *DI v Germany* App no 26551/95 (Commission Decision, 26 June 1996).

19 *Perinçek v Switzerland* App no 27510/08 (ECtHR, 17 December 2013).

ence is a thin thread of interpretation whether the sentence was in accordance with guarantees for the protection of freedom of expression.

In this sense, we will assess whether the statements of the defendant, Mr. Teodosijevic, can be characterized as the type of expressions entitled to increased or diminished protection under Article 10 of the European Convention on Human Rights. First of all, it must be clarified whether these statements were of a historical, legal and political nature: did he speak as a politician, or as a historical or legal scholar.

In this sense, Mr. Teodosijevic spoke at a rally in the capacity of the Minister of the Republic of Kosovo, despite the fact that he considers that he spoke as a natural person, at the moment addressing a large mass of people, a person who carries high authority, such as the Minister, should have known that the public perception is that he is speaking in an official capacity.

Secondly, in terms of geographical and temporal context, only 20 years have passed between the defendant's statement and the events to which he refers, and especially when these memories are still fresh, and the horrors of the war are directly related to the place where the statements were made, Mr. Teodosijevic should have distanced himself from the atrocities that were committed. While on the other hand, the case of Mr. *Perincek* had

no direct connection between Switzerland and the events that took place in the Ottoman Empire. Moreover, there was a significant passage of time between the criminalized statements and the Armenian genocide.

If we analyze the statement of the defendant, he states that the reason for the bombing of the state of Serbia is the fabrication of the Recak Massacre, adding that no one has claimed responsibility for this. This part is an incitement to take action against "*Albanian terrorists who invented all this and committed the greatest crimes in Kosovo and Metohija*", in this sense he defines the Albanian people as terrorists and bloodthirsty. By stating that the Albanians fabricated the Recak massacre, and that the damage to the Serb people was caused by this fabrication, this represents one of the most serious forms of defamation, which basically incites hatred based on ethnicity. Moreover, these statements were made by a minister, whose authority makes the impact of his statements great to the point that it creates a climate of discord between ethnicities in Kosovo. Therefore, it can be said that the case in question represents a typical case of the use of hate speech, because the context was not merely a statement based on any fact whether the Recak massacre took place or not; but the statement was such as to incite hatred, because it stressed that due to the alleged fabrication of the Recak massacre, which was committed by the entire Albanian people, the Serbian people were bombed.

3.5. INCITEMENT OF HATRED ON SOCIAL MEDIA IN PEJA²⁰

On 11.06.2020, the Basic Prosecution in Peja filed an indictment against the defendant V.M. for to the criminal offense of inciting discord and intolerance, under Article 141 para. 1 of the CCRK. The defendant, on 08.10.2019, around 20:00, through social media publicly incited and spread hatred, discord and intolerance between ethnic groups, since the defendant, at the time mentioned above, commented on a photo of the police officer S.K., with the words: *"Why the hell don't you post a photo of an Albanian, rather than that of a Bosniak. Why the hell don't you take of photo of A., rather than of this hound raised in the litter of Shkije... insult a Shka and see what happens, you will side with that piece of shit"*.

During the main hearing, the defendant pleaded guilty to the criminal offense which he is charged with, adding that he feels remorse, promised that in the future he will not repeat the criminal offense, he no longer has any dispute with the injured party, and has apologized to the injured party.

With the evidence provided, as well as the admission of guilt by the defendant, it undoubtedly follows that in the actions of the defendant V.M. all elements of the criminal offense of incitement to discord and intolerance, are present. The court did not find circumstances that preclude prosecution or criminal liability of the defendant, and he is criminally liable. With regard to guilt, the defendant committed the crime intentionally.

Therefore, the defendant was sentenced to imprisonment for a period of 6 (six) months, but this sentence will not be executed if the

defendant does not commit a new criminal offense within a period of 1 (one) year.²¹

3.5.1. Analysis of existence of hate speech

In the case in question, the court, despite not analyzing the context, purpose or content of the statement, decides correctly in the enacting clause regarding the finding of hate speech and the sentence.

This is because although the defendant comments on a personal photo, he complains why should a photo of a Bosniak police officer be published, since he is hound raised in the litter of Shkije. He also invites to offending a 'shka', and then see what happens. According to this, the defendant incites others to offend 'shkije [derogative for persons of Serb ethnicity]', therefore this in itself constitutes hate speech directed at persons of Serb ethnicity, and incitement to hatred against them, in such a way that a call is made to offend them.

²⁰ Basic Court in Peja, P.no. 377/20, https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/PE_P_377_20_SQ.pdf

²¹

3.6. INCITEMENT OF HATRED DURING THE VIDOVADAN HOLIDAY IN GAZIMESTAN

This section deals with the case of the defendant Risto Jovanovic, citizen of Montenegro, who was found guilty by the Court in Prishtina for the criminal act of 'inciting discord and intolerance'. Jovanovic is accused that on June 28, 2021, around 14:00 in the village of Mazgit, Municipality of Obiliq, respectively at the monument of "Gazimestan", he intentionally incited and spread public hatred, discord and intolerance between ethnic and religious groups living in the territory of the Republic of Kosovo, in such a way that during the manifestation of the anniversary known as "Vidovdan", publicly and in the presence of a considerable number of citizens, he shouted the words "kill Albanians", "We will wash Kosovo in blood", "Kosovo is Serbia". While in front of the journalists and media present he stated "... when I turn right, where I see Albanians, they will feel the pressure, for us it will be better..." by which he publicly spread hatred endangering public order, and with these actions the defendant committed the criminal offense under Article 141 of the Criminal Code of Kosovo, "Incitement to hatred, discord and intolerance".

tory and aware of the historical context of the country, thus he has publicly spread hatred risking the disruption of public order, because in such a situation there is a real possibility to trigger measures and escalate situations with unforeseen consequences.

He attempted to evade criminal responsibility by arguing in the main trial that: by "they - meaning Serbs, will feel the pressure from Albanians" he referred to the difficult position of Serbs in Kosovo, but the court determined that even in this way he shows hatred towards the ethnic Albanian group and presents them as dangerous and threatening to the Serb ethnic group in the Republic of Kosovo. Therefore, according to the Court, the defendant is considered criminally responsible for his conduct and actions for which the court found him guilty and sentenced him according to the law.

3.6.1. Analysis of existence of hate speech

In this case, the Court correctly assessed that the defendant used hate speech. This is because the defendant R.J. publicly chanted the words "kill Albanians", "Kosovo will be washed in blood", "Kosovo is Serbia", and stated in front of journalists and present media: " ... when I turn to the right, where I see Albanians, they'll feel the pressure, for us it will be better"; referring to them as *Šiptari*, aware that the use of the term *Šiptari* is offensive and discrimina-

3.7. NOVO BRDO MUNICIPALITY HATE SPEECH CASE

In the Basic Court in Gjilan was filed the indictment against the defendant Srdjan Ivkovic from the village of Izvor. He was found guilty by the Court on the grounds that on 29.03.2010, around 10:15, in the village Boston, Municipality of Novo Brdo, in the building of the municipality of Novo Brdo, in order to incite and publicly spread hatred and ethnic division of other ethnic-national groups living in Kosovo, he entered the building of the municipality in question and addressed the security officer Rr.M. with divisive and hateful words: *“it would have been better for Serbia to be here, we’d have had more freedom, and you’ll see Serbia return with tanks in Kosovo like in 1988/99, and we’ll make it much worse for you”* and continued by insulting the Kosovo police and institutions of Kosovo, thus disrupting public order and public security in the state of Kosovo, therefore he has committed the criminal offense of “inciting national, racial, religious, ethnic hatred, discord or intolerance under Article 115 paragraph 1 of the CCK”, therefore, the court imposed a sentence of imprisonment for a period of 6 (six) months, provided that the defendant, within the term of 2 (two) years, from the day the judgment enters into force, does not commit another criminal offense, otherwise the sentence will be revoked.²²

Analysis of existence of hate speech

The case in question presents a complex legal situation as to whether the offense in question constitutes merely a misdemeanor, meaning

that by using offensive words, it was intended to provoke a disturbance of public order and peace, or it could also be considered a criminal offense in the sense of inciting hatred and division on ethnic grounds.

Thus, undoubtedly the case in question constitutes a misdemeanor sanctioned by Article 5 paragraph 3 of Law No. 03/L-142 on Public Order and Peace, because in the way the person in question expressed himself - given the historical context of the Serbian regime - he was able to provoke the reaction of the persons to whom he was addressed, so as to provoke the disturbance of public order and peace.

If we look at the context, the person is of Serb ethnicity and he uses these words in the municipal building in a public place, and the fact that he uses the expression “we’ll make it much worse for you”, it is considered that he connects his Serb ethnicity with the words he says. In this sense, he does not give an opinion on whether or not there was more freedom during the Serbian occupation. But by linking his ethnicity through the words “we’ll make it much worse for you”, he thinks that Serbs will make it much worse for others. Such an expression incites hatred and discord, so that the possible consequences could have been extremely dangerous. This is because addressing the official with such words tended to provoke his reaction, so that his reaction could be perceived as committed on ethnic grounds. Consequently, the risk of inciting hatred within a small multi-ethnic community, such as the municipality of Novo Brdo, has been quite high. Therefore, given that the expression is made in a public place in the municipality and

²² https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/GJ_P_1133_15_SQ.pdf - pp. 43,43.

on purpose, in such a sense that persons of Serb ethnicity will make it much worse for

persons of Albanian ethnicity, this constitutes hate speech.²³

3.8. Hate speech through literary works case

H.M. is accused that on August 12, 2021, in Gjakova, during the promotion of his book, he incited and publicly spread hatred and discord. The defendant was sentenced by the Basic Court in Gjakova to imprisonment for a period of 150 days, but he was replaced by a fine of 2 thousand Euros. This is because according to the judgment, the defendant H.M. from Gjakova, residing in Austria, is guilty because on 12.08.2021, in Gjakova, he incited and publicly spread hatred, discord and intolerance between Turkish and Albanian national groups, as well as among the Muslim and Christian religious communities, in a way that may disturb public order, in such a way that the defendant, after publishing the book entitled "Thunder of the Soul", promotes it at an event held at a Hotel, and on this book, in pp.114-115, 181-182, 195-196, are published the poems entitled "Rise Enver", "Get lost once and for all" and "Msitnia", which among others have content of religious and national hatred, as follows: "Rise Enver from your grave, because we have no face or honor left, get up and destroy these mosques that have been built by every house, rise and tie their hands and fingers, and turn the mosques into churches, because they are full of the Taliban, they know no father or mother", "Get lost you Turkish shit once and for all from my lands, get lost for good and leave no wife and child behind", "please return earthquake, bring everything to the ground, many they have here no home, and no more mosques", "Baba Sheh curse on you,

may you never rest in peace, you took care of your daughters, may they never live through spring, may the hyenas drag your bones out", and with these actions the defendant could disrupt public order in the Republic of Kosovo.

Analysis of existence of hate speech

In this situation we are dealing with a typical case of hate speech. This is because the defendant uses a public forum and also through his publications incites hatred against the Muslim community, where he not only offends them, but calls for the use of violence against them. This call is not limited to violence, but also to the use of denigrating and humiliating vocabulary, to the extent that there is a call for the extermination of this community in general.

23 https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/GJ_P_1133_15_SQ.pdf

4. INTIMIDATION AS A HATE CRIME AND MONITORING OF THE WORK OF THE POLICE AND PROSECUTOR'S OFFICE RELATED TO THIS OFFENSE

The following cases represent a fairly common form of hate crime. As we said earlier, for an offense to be considered a hate crime, the act committed must constitute a criminal offense under positive criminal law and be motivated by a prejudice. In this sense, all monitored cases listed below constitute hate crimes and meet the elements of the criminal offense of 'intimidation' sanctioned by Article 181 of the Criminal Code of Kosovo. As we will see, these threats have occurred because of the perpetrator's prejudice against victims because of their real or perceived connection or belonging to or support for a protected group based on their sexual orientation. In this respect, in the case of intimidation, the commission of the criminal offense of hatred is not a legal element of this criminal offense, but a required aggravating circumstance as expressly defined by the criminal code in Article 70. In other words, when calculating the punishment for the perpetrator, in the case of proving that the offense was committed out of prejudice, the

court must take this into account as an aggravating circumstance, so that the punishment is harsher.

From the monitored cases we can see, also that the police during the investigation on whether the criminal offense has been consumed, have not taken all reasonable steps to unmask any motive which may be prejudiced against sexual orientation. The police should conduct investigative activities, in addition to finding the perpetrator and evidence of what the crime was committed, also to find evidence of a *biased motivation on a discriminatory basis* that is presented as a reason for committing the crime, which in the following proceedings may serve as the basis for qualification as an aggravating circumstance for the sentence. The police should take such action regardless of the injured party's report and its assessment of whether or not such a basis exists.

4.1. Kosovo Police Monitoring - Center Station

On 2 May 2021, a case was reported by L.M. against a group of persons, one of whom had spat in the face of the plaintiff, and had threatened to kill him subsequently. Immediately after the incident, the victim was taken to the police station in charge of the area, which was surrounded by various public and private business cameras.

Further, the Kosovo Police - Center Station has continued with the investigations into the case, and they contacted the victim informing him that the person cannot be identified through cameras.

In a meeting with the chief investigator on the monitoring of hate crime cases, the victim was informed that the case has been under investigation since May and that the person has not yet been identified.

Questions posed to the Chief Investigator in this case:

- Have all security cameras been monitored?
- Since the victim was informed that the person could not be identified, why was the victim not invited for cooperation, although the victim had requested this option?

- The victim was spat in the face during the pandemic. Have you also qualified it as a violation of the rules and laws for the prevention of COVID-19?
- What are the follow-up steps?

The chief investigator at the meeting announced that all the cameras were monitored, noting that some of them were probably not paid by businesses and were not actually in operation. This case has not been confirmed by the Kosovo Police. The reason why the victim was not contacted to cooperate in identifying the persons who were caught on some of the cameras, was that the investigator was on leave due to her pregnancy.

The chief investigator also stressed that the victim's saliva would not be considered an added risk without being tested and proving that the assailant tested positive for COVID-19.

In the end it was said that the case will continue to be investigated further and they will try to identify the person. Kosovo Police added that we will be informed about further steps that will be taken against the persons after the investigation, and the case will be sent to the Basic Prosecution.

4.2. Kosovo Police Monitoring - Center Station

On July 1, 2021, L.M. reported to the Police Center Station that he had been threatened by an individual through social media. The

reason for the threat was the reaction of L.M. after the invitation to debate in the show Debat+, in which also participated an Imam.

The victim refused to be part of this show, calling the invitation to such a debate an incitement to hatred, easily anticipating the following situation. After the rejection, L.M. had reacted publicly on social media Facebook, emphasizing that "... *an imam cannot question human rights in a democratic state.*" This post on Facebook has raised numerous reactions of religious individuals, one of whom started threatening the victim on social media.

Questions posed to the Chief Investigator:

- Has the person been identified, since social media have had a real profile?
- How was the case qualified and did you

consider it a hate crime based on sexual orientation?

- Has the person been questioned?

Kosovo Police has not provided much information regarding this case. The person in question has been identified by the Kosovo Police and is currently abroad. He has informed the Kosovo Police that he will go to the station voluntarily as soon as he returns to Kosovo as it is currently impossible for him to return. The case is classified as Intimidation and no further details have been provided regarding this case. The person is expected to give a statement after returning to Kosovo.

4.3. Basic Prosecution Monitoring - Prishtina

Emira Murati, during the Pride Week's launched the project funded by the organization CEL Kosovo, in which a gay couple in national clothes was presented, symbolizing that LGBTI people have always existed in all countries, including traditional people.

This picture provoked numerous reactions from a wide mass, directly attacking even the creator of the picture. Some of these cases have been reported to the Kosovo Police - South Station, and according to the information of the Basic Prosecution in Prishtina the case has been qualified as Intimidation.

Ermira Murati's experience of reporting the case has been uncomfortable and she has said that: *"There were two different approaches from the police; at the Center Station the approach was neutral and for the sole purpose of obtaining information. After the transfer to South Station, the approach of some of the officials was judgmental, during the contact there were expressions such as: "You shouldn't have done it", "You have humiliated the national dress".*

And:

"The behavior of the interviewing police officer, Liridon, was generally good. He listened to the case and offered advice. It is worth mentioning that he said: "there is a law on inciting hatred, you have to be careful because the offense can be turned against you."

The lower-ranking police officers I had quick and little contact with, mostly had non-positive views on the case.

Liridon, a high-ranking official, has had more positive behavior except when making the above-mentioned remark."

The Basic Prosecution of Kosovo was contacted regarding the above case, and it indicated that on 24.08.2021 an indictment was filed against one (1) person for the criminal offense "intimidation" under to the CCRK.

The Basic Prosecution in Prishtina has not added any other information and currently additional questions have been sent to them regarding this case.

4.4. Basic Prosecution Monitoring - Prishtina

In December 2019, the organization CEL Kosovo received calls on the official phone from an unknown individual trying to get information about the organization and the location of the organization. The organization CEL Kosovo further learned that the individual who called was the parent of a person from the LGBTI community. The person's parent had threatened to harm the organization and members of the CEL organization, threatening physical assault.

The case was presented at the Center Police Station by B.M., the representative of the organization CEL Kosovo. Further, the Kosovo Police has identified the person and the case has been referred to the Basic Prosecution in Prishtina.

After the interview with B.M., it is stated that he did not receive any information after the last

contact with the prosecution, and the plaintiff does not expect this case to be clarified.

The Basic Prosecution in Prishtina was contacted for the case in question, asking for more information about the case and how this case will be handled further.

Subsequently, the Basic Prosecution in Prishtina provided very little information regarding this case, saying that the Prosecution has filed an indictment against one (1) person for the criminal offense "intimidation" under to the CCRK.

Additional requests have been submitted to the Prosecution for detailed information regarding the case and we are awaiting responses.

4.5. Basic Prosecution Monitoring - Prishtina

From the Center Police Station was requested information on the case 2017-AB-3184 on some threats against an activist for the rights of the LGBTI community in Kosovo, and the motive was the visibility of this community during the 2017 Pride Week. During this period, the activist L.M. received over 150 threats, which were reported to the Center Police Station in Prishtina.

After reporting the threats, L.M. was asked to select some of the threats which are considered more serious, judging that some cases may not pose a risk.

L.M. was asked by the Kosovo Police if he was feeling in danger, to which he answered "YES". Further, L.M. was contacted by the Kosovo Po-

lice to let him know that it is very difficult to identify these persons as they have fake profiles and hidden identities.

The 2017 Pride Week cases have been forwarded to the prosecution and the plaintiff has never been notified of what is happening with these cases. When the chief investigator was asked why the party was not notified of additional information regarding the case, we did not receive a clear answer.

Further, the Basic Prosecution in Prishtina was contacted and additional information was requested regarding the case and a report about which we were informed by the Chief Investigator F.Sh., but we did not receive it during the monitoring.

4.6. Basic Prosecution Monitoring - Gjilan

In March 2020, L.M. was threatened on social media because of his sexual orientation, by a person ready to use physical violence as soon as they meet on the street. The intimidation was received on the social media "Instagram"

The Basic Prosecution in Gjilan has concluded that the reported case is a hate crime based on the sexual orientation of the victim. During the informative meeting with the Basic Prosecution in Gjilan, the victim was notified that the aggressor was contacted by the Basic Prosecution in Gjilan, in which case it was announced that the person in question is a minor and their family was also contacted.

The victim was asked how he wanted to proceed with the case given that the person who had threatened him was a minor.

from a real profile, and then the case was reported to the Kosovo Police, Center Station. Kosovo Police has processed the case in the Basic Prosecution in Gjilan, which contacted the victim in March 2020.

Given the situation, the victim had withdrawn the complaint on condition that the person who had made threats with regards to human rights issues be educated. His mother was involved in civil society for gender equality and the case has been resolved without court intervention so far.

However, the Basic Prosecution has announced that the case is still pending. The victim was not further contacted regarding the case in question.

4.7. Basic Prosecution Monitoring - Prishtina

The victim reported the case (Case number: 2019-AB-1078) to the Kosovo Police for intimidation on social media, based on sexual orientation, on 08.05.2019. After the statement to the KP and the investigation of the case, the case was processed in the Basic Prosecution in Prishtina on 23.07.2019. The Basic Prosecution in Prishtina has filed an indictment against one (1) person for the criminal offense of "intimidation" under the CCRK.

The Kosovo Police has withdrawn to provide further information regarding the case, concluding that the work of the Kosovo Police institution has been completed and the Prosecution should complete the monitoring of this case.

The Basic Prosecution in Prishtina did not provide enough information regarding the case in question and stated that the case is still pending.

After additional questions regarding the case, the BPP repeated the answer stating:

"We inform you once again as follows, regarding the cases submitted in your request: Case no. 2019-AB-1078, was received on 18.07.2019, while the Basic Prosecution in Prishtina, on 23.07.2019, has filed an indictment against one (1) person for the criminal offense of "intimidation" under the CCRK."

5. Case monitored in the Mitrovica Municipality: Difference between discrimination and hate speech or crime

The case in question concerns an official in the Office for Communities and Returns in the Municipality of Mitrovica. E.B. was employed since 2003, first in the UNMIK office, then in the Municipality of Mitrovica. Since her transfer within the Municipality of Mitrovica, E.B. has been posted alone in an office in the '2 July' neighborhood, separated from other colleagues of the Office for Communities and Returns, in such a way that she felt lonely and segregated. The Office for Communities and Returns within the Municipality of Mitrovica employees 6 people. Among the employees are Serbs, Bosniaks and members of the Turkish community. One of them was the employee in question, E.B., who, although she was placed in a separate office in another neighborhood from other colleagues, after a while was fired by the disciplinary commission, as she did not inform her supervisor for her two-day absence, as required by the Labor Law.

According to the Law on Protection against Discrimination, discrimination means any distinction, exception, restriction or preference based on personal characteristics protected by law, and which have the purpose or effect of invalidating or impairing recognition, enjoyment or exercise in the same way as others, of the fundamental rights and freedoms recognized by the Constitution and other laws applicable in the Republic of Kosovo. Therefore,

the situation in question is a possible case of discrimination, if it is proven by the court that due to her Roma ethnicity, the victim was treated differently by being placed in a special office, and then fired.

The case in question does not constitute hate speech because we are not dealing with a public expression of a discriminatory attitude, i.e., there is no call to incite to discriminate. Consequently, although hate speech is presented as discrimination, discrimination as a concept is broader and can be presented not only as hate speech, but also as unfavorable treatment, discrimination, preference or exclusion.

Bibliography

Legal resources:

- Official Gazette of the Republic of Kosovo, Constitution of the Republic of Kosovo 2008.
- Official Gazette of the Republic of Kosovo, Code No. 06/L-074 Criminal Code of the Republic of Kosovo, 2019.
- Official Gazette of the Republic of Kosovo, Law No. 05/L-021 on Protection from Discrimination.

per-masakren-e-recakut-kerkon-pa-fajesine-ne-apel-prokuroria-kerkon-te-refuzohet-ankesa-e-tij/

- <https://betimiperdrejtesi.com/avokati-thote-se-ceshtja-penale-ndaj-deputetit-ivan-todosije-iviq-nuk-mund-te-vazhdoje-tutje-pasi-i-njejt-ka-imunitet-ndaj-ndjekjes-penale/>

Judicial Practice:

- Basic Court in Peja, Case P.no. 319/20;
- Basic Court in Ferizaj, Case P.no.620/16;
- Basic Court in Gjakova, P. no. 655/18;
- Basic Court in Prishtina, PS. no. 20/19;
- Basic Court in Gjilan, P. no. 1133/15;
- *Sunday Times v United Kingdom* App no 6538/74;
- *Vogt v Germany* App no 1785/91;
- *T v Belgium* App no 9777/82;
- *Perinçek v Switzerland* App no 27510/08.

News articles and reports:

- <https://betimiperdrejtesi.com/deputeti-qe-u-denua-per-deklaratat-e-tij-fyese->

This report was prepared under the “Combat Hate in Kosovo” Project,
implemented by ATRC in partnership with RADC and
supported by the Embassy of the Netherlands in Kosovo.



Kingdom of the Netherlands

