

FREEDOM OF EXPRESSION AND HATE SPEECH IN THE ONLINE COMMUNICATION

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Abstract

Freedom of expression is one of the basic human rights guaranteed by the European Convention on Human Rights since 1950. Also, freedom of expression continues to be the main pillar on which a democratic state such as the Republic of North Macedonia is built, where freedom of expression is guaranteed by the 1991 Constitution.

With the creation of social networks and the development of online communications, the freedom of expression has exceeded its limits, occasionally turning into hate speech, which is considered one of the most resilient manifestations of cyber violence.

The purpose of this paper is to analyse the social aspect of the transition of freedom of expression to hate speech. In this paper, scientific, theoretical and empirical methods will be used in order to reach the collection and scientific analysis of data.

Initially, through the method of content analysis, we will investigate the definition of hate speech and the problems related to its regulation, to continue with a summary of the relevant literature and the researches that have been done so far on this issue.

In the final part of this paper, the results of the survey questionnaire will be analysed and interpreted, through which the statistical data will be collected, where the respondents will completely anonymously share their opinions on the added problem.

Keywords: Freedom of expression, hate speech, communication, discrimination, violence.

1. Introduction

Perceptions of freedom of speech have changed from the past to today, in parallel with the changing socio-political circumstances. If in the past, freedom of speech was only considered as the realization of the right to express one's personal opinion, today, freedom of speech has expanded and, as such, includes individuals and phenomena that surround us, from our country, region, and the world. The broader the scope of freedom of expression, the greater the risk that this very right can turn into injustice by offending, insulting, or bullying. According to the literature examined in this research paper, freedom of speech reached its maximum momentum with the development of online communication, where the use of social media has provided everyone with the opportunity to express themselves as they think, without limiting themselves in any way.

Communication in various, sometimes unconventional, forms has led to the creation of hate speech. This situation is further evidenced by the results of the survey questionnaire, where respondents state that there are no criteria or measures to control how people express themselves

in online communication, and as a result, hate speech manifests itself through insults, offenses, and humiliations.

2. The Meaning of Freedom of Speech

Free speech is the shield of liberty; without it, no free and democratic society has ever been founded or flourished. Free expression has been the basis of scientific and social progress and has represented political progress that has benefited individuals, communities, nations, and humanity itself. (Alkiviadou, Mchangama, Mendiratta, 2020). Freedom of thought is an absolute civil right, meaning that no one can endanger it or limit human thinking, while freedom of expression is considered a political right. As a political right, it may be subject to certain legal limitations. (Mihailova, Bachovska, Shekerjiev, 2013)

According to the European Court of Human Rights, everyone has the right to freedom of expression. This right includes the freedom of thought and the freedom to receive or give information and ideas without interference by public authorities and regardless of boundaries. This article does not prevent states from requiring audiovisual, television, or cinematographic transmission companies to be licensed. (European Court of Human Rights, 1950). Also, in our country, according to the Constitution of the Republic of Macedonia, Article 16, adopted by the Assembly of the Republic of Macedonia in 1991, the right and freedom of speech is guaranteed by law.

Article 16:

Freedom of belief, conscience, thought, and public expression of opinion is guaranteed. The freedom of speech, public presentation, public information, and the free establishment of institutions for public information are guaranteed. Free access to information, the freedom to receive and distribute information is guaranteed. Censorship is prohibited. (Constitution of the Republic of Macedonia, 1991)

However, today, technological change brings new challenges and threats, and free speech must continue to serve as an essential ideal and a fundamental right for all people, regardless of race, ethnicity, religion, nationality, sexual orientation, gender, or social position. (Alkiviadou, Mchangama, Mendiratta, 2020)

Although protected by law, the dynamics of communication carried out through social networks has placed the realization of free speech "at risk" because on these communicative platforms, everyone has the right to express their opinion, which, in some cases, may involve insults or offensive language. The same individual who degrades another person may continue to maintain their anonymity.

3. Hate Speech and Online Communication

The issue of hate speech is a complex linguistic and political phenomenon. This complexity is further increased when we refer to the physical reality in which we live; situations can escalate where the use of hate speech can lead to ethnic, religious, or even gender-based conflicts. Human communication today has changed in form and scope, as communication now occurs

more through technological intermediaries than directly. At such a time, it is extremely important to maintain the ethics of communication between individuals and the public. (Memeti, 2022).

The realization of hate speech through online communication poses a risk in itself, as this global medium is suitable for the rapid and widespread distribution of messages. Furthermore, thanks to the multimedia nature of this medium and the numerous possibilities for transforming images, sounds, or even movements, such content can remain posted for a long time, and anyone can access it. (Ordanoski, Trajkoska, Georgievski, 2018).

In the rule-of-law states where appropriate laws are functioning, freedom of expression is protected by law, while hate speech is sanctioned based on the prescribed measures. The following situation describes a case handled by the European Court of Human Rights regarding the sanctioning of hate speech used in comments on an online portal in Estonia.

Example:

Delfi AS v. Estonia

June 16, 2015 (Grand Chamber)

This is the first case in which the national court was called to examine an appeal concerning liability for comments made by its users on the internet. The complainant company, which operates a news portal on a commercial basis, complained that it was held responsible by the national courts for offensive comments posted by its readers below one of its online news articles concerning a ferry company. At the request of the ferry company's lawyers, the complainant company removed the offensive comments about six weeks after they were published. The Court further noted that the illegal nature of the comments was clearly based on the fact that most of the comments amounted to incitement to hatred or violence against the owner of the ferry company. The Court considered that states must establish liability for news portals if they violate Article 10 of the Convention, and they should take measures to remove obviously illegal comments without delay, even without notification from the victim or third parties. (European Court of Human Rights, 2023).

Thus, in this specific situation, the state of Estonia sanctioned the company that allowed the degradation of another commercial entity through comments made by active readers, which the court considered to be hate speech.

4. Legal Framework for the Sanctioning of Hate Speech

Just like in any democratic country, the Republic of North Macedonia has legally regulated measures against hate speech. The Criminal Code is the main law containing provisions that prohibit and punish hate speech and the distribution of materials via the internet that promote or incite hatred, discrimination, or violence against any person or group on any discriminatory basis.

This national legal framework is relatively comprehensive in addressing phenomena related to hatred. Hate speech, though not explicitly named as such, is sanctioned under the Criminal Code. The criminal offense titled "Incitement of hatred, division, or intolerance towards

national, racial, religious groups, and other discriminatory causes" (Article 319) carries a penalty ranging from one to five years of imprisonment (Paragraph 1), and in the case of severe consequences, up to ten years in prison (Paragraph 2).

The provision regulating "Endangerment of security" (Article 144, Paragraph 4) foresees sanctions for individuals who, through an information system, threaten to commit a crime against others due to their gender, "race," skin color, belonging to a marginalized group, ethnicity, language, nationality, social origin, religion or belief, education, political belief, disability, age, or any other basis. (Netkova, Peri, 2022)

The Criminal Code also sanctions hate speech through computer systems and the media. The criminal offense is titled "Spread of racist and xenophobic material via the computer system" (Article 394-d). The prescribed penalty is one to five years (Paragraph 1), and in the case of serious consequences, up to ten years (Paragraph 3). (Netkova, Peri, 2022)

The final provision that regulates and sanctions hate speech in the Criminal Code and constitutes a criminal offense in the field of discrimination is titled "Racial and other discrimination" (Article 417), where the prescribed penalty is six months to five years in prison, including for those who persecute individuals or organizations fighting discrimination on any basis. Paragraph 3 defines a criminal offense related to hate speech: "Anyone who spreads ideas of the superiority of one 'race' over another or promotes racial hatred or incites racial discrimination will be sentenced to imprisonment from six months to three years." (Constitution of the Republic of North Macedonia, amendments I - XXXII, 2011).

To prevent hate speech carried out through computer systems, North Macedonia has also established the Department of Cyber Crimes and Digital Forensics, which will continue to monitor abuses in online communication and invites all citizens to report such cases to the nearest police station or the address cybercrime@moi.gov.mk. (MPB, 2024)

Thus, freedom of expression is legally protected, and laws for sanctioning hate speech are established. However, there is widespread skepticism regarding the effectiveness of laws aiming to limit hate speech, especially among defenders of freedom of expression. (Mc Gonagle, 2001)

Skepticism arises as a result of the non-enforcement of laws on hate speech sanctioning. There are many cases where individuals who have been threatened via online communication platforms hesitate to report these incidents to the authorities because they have lost trust in the institution's role in protecting their privacy.

4.1. Sanctioning Hate Speech in North Macedonia:

Based on the legal framework of North Macedonia, the Ministry of Interior, as the competent institution for penalizing crime, has legally taken action to sanction hate speech in online communication. Some of the actions include:

Case 1: Criminal report for death threats and calls for violence on Facebook

Due to the existence of suspicion for the criminal offense "dissemination of racist and xenophobic material via the computer system," on January 8, 2021, police officers from the Kočani police station summoned D.Gj. (26) from the village of Zërnovci, Kočani, for an official interview. On January 7, 2020, he had posted a message on his "Facebook" profile calling for violence and threatening death. D.Gj.'s mobile phone was seized, and the Public Prosecutor was

informed. After the full documentation of the case, a criminal report will be filed against D.Gj. (<https://www.facebook.com/mvr.gov.mk/>, viewed on October 7, 2024)

Case 2: A villager arrested after threatening to kill

Due to suspicion of committing the criminal offenses "endangering security" and "dissemination of racist and xenophobic material via the computer system," on January 4, 2021, police officers from the Struga police station arrested G.P. (45) from Vevčani. On his "Facebook" profile, as well as on several electronic portals, he had posted a video with threatening content, promoting and inciting hatred, discrimination, and violence against other people. During the search conducted at his home, by order of the previous procedure judge, his laptop and other items related to the criminal offense were confiscated. After the full documentation of the case, a criminal report will be filed against him. (<https://mvr.gov.mk/default>, viewed on May 7, 2024)

Case 3: The Ministry of Interior filed a criminal report against a minor who sent bomb threats to high schools

The Ministry of Interior (MPB) filed a criminal report against a minor from Skopje for the criminal offense "terrorism" after on November 4, he created an email address through which he sent threatening messages about planting explosive devices in four high schools. During the interrogation on November 7, the minor confessed to the crime and explained how the crime was committed. (<https://360stepeni.mk>, viewed on October 7, 2024)

5. Research Methodology

To concretize the research problem in this scientific paper, the method of content analysis was first used to define the meaning of free speech and the importance of hate speech in online communication. In the second part, using the quantitative method of surveys and statistical analysis, data collected from various respondents of different ages and genders were analyzed.

5.1 Research Methods and Techniques:

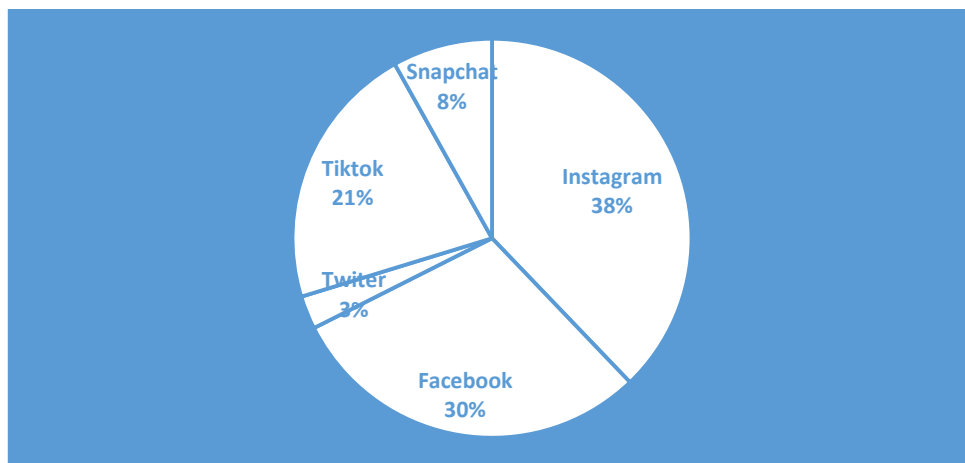
5.1.1 Structured Survey Questionnaire: For the empirical part of this research, a survey questionnaire consisting of 15 relevant questions related to the study problem was prepared. For each question, respondents had different options to choose from by clicking/marking the most appropriate one. The survey questionnaire was completely anonymous, which made respondents more honest in their answers.

5.1.2 Statistical Method: The data collected through the survey were analyzed using the statistical method, which allowed for the accuracy of results and comparison with the aim of reaching scientific data. Initially, general questions from the survey were analyzed to gather socio-demographic data about the respondents, and then the answers to questions directly related to the research problem were analyzed.

5.2 Survey Results: A total of 50 individuals, from different age groups and professions, responded to the survey. Of the 50 respondents, 24 were male and 26 were female. Given that social media is mostly used by younger individuals, the majority of surveys were distributed to this age group. Thirty-two individuals answered that they belonged to the age group from 18 to 29 years old, 10 individuals were between 30 and 39 years old, and 8 individuals were over 40 years old.

Four respondents had completed only primary education, 16 had completed secondary education, 25 had higher education, and 5 had postgraduate education. Ten of these individuals are employed in the public sector, 13 in the private sector, 10 are unemployed, and 17 are students.

When asked if they use social media, all respondents answered that they were regular users of social media.

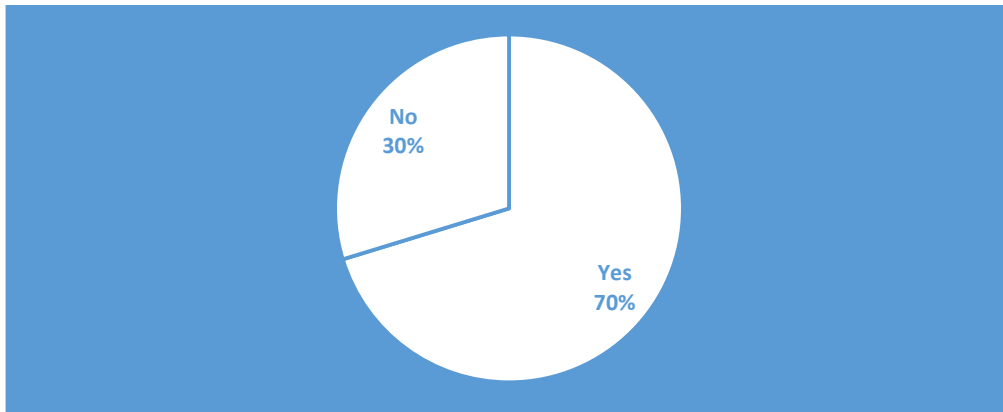


Graph 1: Which social network do you use the most?

In response to the question of which social network is used the most, we see that the respondents primarily use Instagram, followed by Facebook, and then other social networks.

How much time do you spend online during the day?

25 people answered that they spend around 1 to 3 hours on their mobile phones, 18 people answered that they spend around 4 to 6 hours online, and 7 of them responded that they spend about 7 to 9 hours online.

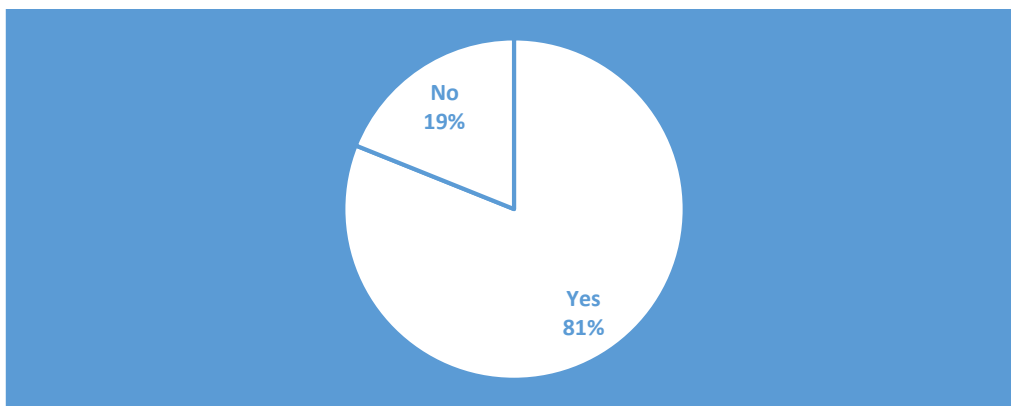


Graph 2: Are you active on social networks?

One of the questions in the survey was whether you are active on social networks by posting statuses, making comments, sharing posts, etc. We see that 30 respondents answered that they are active, while 20 responded that they are not active in liking, commenting, posting statuses, etc.

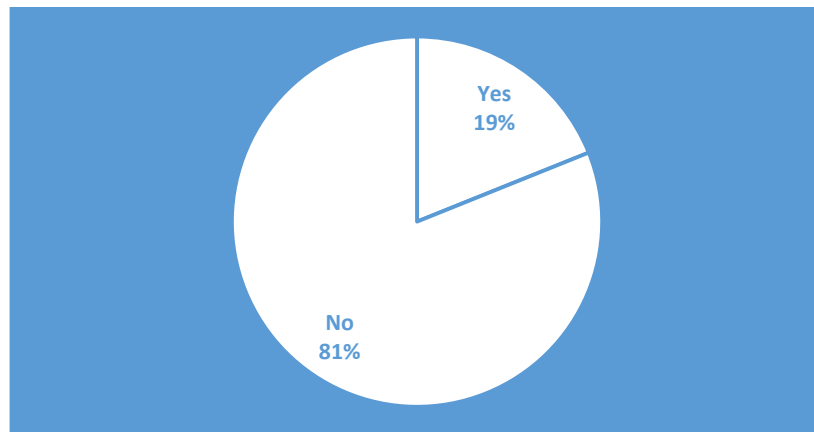
Question 9 of the survey was: Which category of posts do you follow the most?

5 people answered that they follow news the most, 4 people answered that they follow showbiz, 10 follow politics, and 30 others follow various news, including all types of posts.



Graph 3: Have you encountered offensive comments, insults, or slurs on social networks?

The respondents were asked if they had encountered offensive comments or insults on their social networks, and we see that 37 respondents answered yes, they have encountered such comments, while 12 of them answered that they have not encountered these types of comments.



Graph 4: Do you trust state institutions to protect you in case your personal integrity is violated during online communication?

11 citizens of the Republic of North Macedonia responded that they trust state institutions to protect them legally if someone attempts to violate their integrity. Meanwhile, 39 others responded that they do not trust state institutions.

What do you think about hate speech used in online communication?

In this question, citizens were given the opportunity to express their opinions on hate speech in online communication. Some of the responses were that hate speech in online communication should be legally punished by the relevant institutions. Others responded that preventive measures should be taken because it harms social integrity. Some also stated that social networks allow individuals to express themselves with offensive and insulting language toward others, and there are no limits on open pages created by different people who do not disclose their real names but comment and bully in a very ugly way.

6. Conclusion

Freedom of expression, as a necessity for the individual realization of every person, is a right guaranteed by law. Through online communication, this freedom can be misused by certain individuals for various purposes, misuse which is sanctioned by the relevant law to ensure fair and equal communication.

In such cases, legal intervention is necessary to address hate speech in online communication, which would lead to the prevention and sanctioning of this socially threatening phenomenon. The activation of monitoring mechanisms, methodologically supported by measuring hate speech in cyberspace, as well as categorizing data through statistical processing in terms of geography, age groups, gender, and ethnic affiliation, would enable the detection of hate speech users.

Ultimately, it would also be important to mobilize civil society in the fight against hate speech on the internet, by formalizing the networking of non-governmental organizations to raise awareness among social media users, encouraging them to use these platforms for healthy

communication and daily information, where they can also express their free opinions in a fair manner.

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