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MA THESIS

**"HOW COULD VULNERABLE SOCIAL GROUPS BE PROTECTED FROM HATE
SPEECH UNDER INTERNATIONAL LAW?"**

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I hereby declare, that all the data used in this work have been obtained and processed according to the rules of the academic ethics as well as the laws that govern research and intellectual property. I also declare that, according to the above mentioned rules, I quote and refer to the sources of all the data used and not constituting the product of my own original work.

Ioulia Vlachodimou



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ABBREVIATIONS AND KEYWORDS

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CERD: Convention on the Elimination of All Forms of Racial Discrimination

CoE: Council of Europe

CRPD: Convention on the Rights of Persons with Disabilities

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

EU: European Union

FCNM: Framework Convention for the Protection of National Minorities

FRA: Fundamental Rights Agency

GBV: Gender-Based Violence

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

KKK: Ku Klux Klan

LGBTI: Lesbian, Gay, Bisexual, Transgender and Intersex

NSM: National Socialist Framework

OHCHR: Office of the High Commissioner for Human Rights

OSCE: Organization for Security and Co-operation in Europe

PWD: Persons with Disabilities

SDGs: Sustainable Development Goals

UDHR: Universal Declaration of Human Rights

UN HRC: United Nations Human Rights Council

UN: United Nations

UNESCO: United Nations Educational, Scientific and Cultural Organization

WHO: World Health Organization

Keywords: Discrimination, hate speech, human rights, international law

ABSTRACT

The issue of hate speech has been a matter of concern from time immemorial. It is likely to occur everywhere, regardless of time and place. Nowadays, more and more people are constantly experiencing hate speech both in an online and an offline environment. Vulnerable social groups (e.g. persons with disabilities, homosexuals, ethnic and religious minorities, etc.) are the most frequent targets of such practice.

The hate speech phenomenon has been thoroughly analyzed on behalf of legal scholars, sociologists, historians as well as psychologists since it constitutes a multi-dimensional issue which needs to be approached from various perspectives.

Unfortunately, not many people are familiar with the concept of hate speech and, as a result, there is not much awareness concerning this issue. For this reason, the present thesis seeks to present, first, a clear-cut picture of this complex - as well as ubiquitous – phenomenon. Another scope of this thesis is to acquaint the reader with the international legal framework through which vulnerable social groups can be protected from hate speech as this phenomenon clearly constitutes a highly deplorable human rights violation. Persons with disabilities, women and girls, the LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) community and ethnic and religious minorities are specifically the groups which are going to be examined in this dissertation.

This thesis functions as a continuum of the scientific research conducted by the author in the “UNESCO Chair for Intercultural Policy for an Active and Solidary Citizenship” of the University of Macedonia in 2018. In particular, the internship’s thematic area concerned the issue of hate speech and the analysis of various legal cases under the European legislation. As a result, the author decided to further investigate the hate speech phenomenon, but - this time - through the prism of international law.

The first chapter provides a detailed introduction to the concept of hate speech while the second chapter explains the dissertation’s basic concepts with the scope to offer the reader a clear-cut understanding of the subject. The third chapter, on the other hand, presents each one of the social groups that are going to be examined along with cases of hate speech that each of these groups has experienced. This chapter also introduces the reader to the international legal framework pertaining to every social group under examination. Finally, the last chapter demonstrates a survey analysis which has been operated with the intention to explore the public’s opinion on the hate speech phenomenon and to discover whether the participants had been afflicted by hate speech themselves at least once in their lives. This survey was a combination of both qualitative and quantitative research.

It should be noted that the present dissertation combines a set of scientific methods: legal, sociological, historical and statistical. This means that the author adopted a mixed approach in her work.

One major difficulty encountered during the research process of the present dissertation was, firstly, the fact that there is not a concrete and universally accepted definition of the concept of hate speech. This happens because the issue of hate speech is perceived differently in various national legislations. As a result, this had been a rather challenging issue for the author as she experienced some minor difficulties in an attempt to precisely define this concept. Secondly, the fact that there is not a clear-cut international legal framework when it comes to hate speech constituted a significant problem as well. Indeed, there is not an international Convention referring explicitly to this problem. Also, the strong contradiction whether hate speech is equal to free speech is a rather controversial issue in the academic community. Therefore, given that there is not a

common agreement upon this subject, it was hard to describe exactly the problem in question. Moreover, not much has been written about disablist hate speech in the academic literature. Thus, selecting an appropriate and adequate material regarding this topic had been a quite difficult task for the author. Finally, many people who responded in the survey conducted for the needs of this thesis seemed not to be fully aware of the concept of hate speech, judging from their answers. For this reason, this prevented the author from collecting specific and relevant to the topic data and easily drawing conclusions.

The aim of this work is to raise awareness not only to the academic community but also to the general public on such a burning question like hate speech. At the same time, it also aims at enriching the academic bibliography by providing a comprehensive study on issues pertaining to hate speech.

In a nutshell, the existent international legal framework does not sufficiently protect vulnerable social groups from hate speech and the international community must come up with a more effective means of protection. It is also vital that people be more aware as far as hate speech is concerned. In this way, the creation of a healthier and a more viable society will be feasible.

CHAPTER 1.

AN INTRODUCTION TO THE CONCEPT OF “HATE SPEECH”

1.1. Defining "hate speech"

“Hate speech is difficult to define. There's a reason why it's not really done”.¹

~ Steve Huffman ~

There is not a universally accepted definition of the term “hate speech”. This means that it can be characterized as a rather broad and vague concept. Nevertheless, it is an undeniable fact that hate speech constitutes a term, which can be applied in order to describe a form of discriminatory expression that poses a great challenge to democratic values, social stability and peace.² It undoubtedly constitutes *“a serious human rights concern”*.³ This chapter is going to present a few definitions of the term for the reader’s convenience.

To begin with, the United Nations (UN) define hate speech as *“any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor”*.⁴ It can also refer to *“all forms of expressions that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance”*.⁵ Moreover, it can be described as a type of *“speech or expression that denigrates a person or persons on the basis of (alleged) membership in a social group identified by attributes such as race, ethnicity, gender, sexual orientation, religion, age, physical or mental disability, and others”*.⁶

¹ “Steve Huffman Quote - Hate speech Is Difficult to Define. There's A Reason Why It's Not Really Done. Additionally, We Are Not the Thought Police. It's Not the Role of a Private Company to Decide What People Can and Cannot Say”, Quotes of Famous People, accessed February 5, 2020, <https://quotepark.com/quotes/1767444-steve-huffman-hate-speech-is-difficult-to-define-theres-a-reas/>.

² *United Nations Strategy and Plan of Action on Hate Speech* (United Nations Office on Genocide Prevention and Plan of Action on Hate Speech: New York, 2019), 1, https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf.

³ Despoina Anagnostopoulou et al., *Training for a European Area of Justice: Combatting Hate Speech and Hate Crimes in the EU Training Manual* (Thessaloniki: Centre of International and European Economic Law, 2019), 63.

⁴ *United Nations Strategy*, op. cit., 2.

⁵ “Hate Speech”, Council of Europe, accessed February 5, 2020, <https://www.coe.int/en/web/freedom-expression/hate-speech>.

⁶ William M. Curtis, “Hate Speech”, Encyclopedia Britannica, last modified November 29, 2016, <https://www.britannica.com/topic/hate-speech>.

According to Article 1(1) of the Council Framework Decision 2008/913/JHA on combatting certain forms of racism and xenophobia by means of criminal law of the Council of the European Union (EU), hate speech can be manifested in the following forms:

- a. *“Publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin”.*
- b. *“Public dissemination or distribution of tracts, pictures or other material that incites to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin”.*
- c. *“Publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group”.*
- d. *“Publicly condoning, denying or grossly trivializing the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of August 1945, directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group”.*⁷

Typically, hate speech is expressed by offensive verbal practices which encourage the advancement of negative stereotypes and speech aiming at instigating hatred or violence against a social group or an individual. It can also involve nonverbal expressions and symbols. For instance, various people have characterized pornography as a form of hate speech.⁸

Lastly, another definition of hate speech, which is prevalent in national and international jurisdiction, might be the following:

*“Expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts”.*⁹

Most of the times, the scope of hate speech is to ruin the reputation of individuals on the grounds of disability, ethnicity, gender identity, race, religion, sexual orientation, etc. Subsequently, this leads in *“making them seem worthless in the social sphere”*.¹⁰

⁷ “Council Framework Decision 2008/913/JHA of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia By Means Of Criminal Law”, conclusion date: December 6, 2008, *Official Journal of the European Union*, act no. III, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0913&from=EN>.

⁸ William M. Curtis, “Hate Speech”, *Encyclopedia Britannica*, last modified November 29, 2016, <https://www.britannica.com/topic/hate-speech>.

⁹ Iginio Gagliardone et al., *Countering Online Hate Speech* (Paris: United Nations Educational, Scientific and Cultural Organization, 2015), 10.

¹⁰ Tuula Jääskeläinen, “Countering Hate Speech through Arts and Arts Education – Addressing Intersections and

It has been observed that, historically, hate speech has known no limits when it comes to time and place. In fact, it has been employed by public officials as well as others in Nazi Germany, by the Ku Klux Klan (KKK) in the United States, by multiple actors in Bosnia in the 1990s, and during the Rwandan genocide in 1994. However, there is a common thread in the concept of hate speech: it aims at harassing, persecuting and rationalizing the deprivation of human rights. It is also employed with the objective of justifying murder as it happened to be the case in Rwanda.¹¹

Hate speech can also be seen as a form of political speech that includes opinions on, and taking part in a discussion of, debatable issues such as “*immigration and asylum policy, terrorism, the role and the extent of the influence of religion in the society, international conflicts, and historical events*”.¹²

1.2. Why should the term “hate speech” be employed?

Precisely characterizing certain expressions as "hate speech" can be very significant in an attempt to advance the ideals of dignity and equality by which international human rights law is established. Nevertheless, the direct identification of an expression as "hate speech" should also be avoided given that its use can have its negative effects as well. Hate speech is a rather stirring term. It can be abused to rationalize unsuitable restrictions when it comes to the right to freedom of expression, especially as far as marginalized and vulnerable groups are concerned. Therefore, the British human rights organization “Article 19” has provided a few advantages and disadvantages regarding the use of this term.¹³

First and foremost, one main advantage of adopting this term would be the public recognition and rejection of the bias around "hate speech", and its correlation to contemporary and historical events. Similarly, its use would require a broader discussion concerning the involvement of "hate speech" for the protection of human rights. Also, it would serve to indicate solidarity and support to the people being discriminated by recognizing their dignity and urging them - at the same time - to speak out. Furthermore, speakers and their supporters would be exposed to counterarguments and, as a result, the society would be more aware of the negative effects of hate speech. Consequently, the public's inclination towards hate speech would be minimized. Finally, the adoption of the term acts as a monitoring mechanism of social discrimination and has an informative role as far as policy - making on effective responses are concerned.¹⁴

On the other hand, there are significant disadvantages related to the use of the term "hate speech". Firstly, legitimate discourse on subjects of public interest will cease, especially on behalf

Policy Implications”, *Policy Features in Education* (May 2019): 1, doi: <https://doi.org/10.1177/1478210319848953>.

¹¹ Michael Herz, and Peter Molnar, eds., *The Content and Context of Hate Speech* (New York: Cambridge University Press, 2012), 499.

¹² Loc. cit.

¹³ ARTICLE 19/ Free Word Centre, *Hate Speech Explained: A Toolkit* (London: Article 19, 2015), 16, <https://www.article19.org/data/files/medialibrary/38231/'Hate-Speech'-Explained---A-Toolkit-%282015-Edition%29.pdf>.

¹⁴ Loc. cit.

of those in power. Secondly, this will mistakenly suggest that every kind of hate speech is illegal and criminal or other sanctions may be required which - at the end of the day - might prove to be unsuitable or unsuccessful. Moreover, the audience of speakers will be maximized, particularly in case they can frame themselves as "martyrs" of censorship or frame unsuccessful attempts at censorship as a vindication of their views. Lastly, too readily employing the term "hate speech" will lead to a maximization of "policing and state or private surveillance of discourse", even the online one as well. At the same time, this will encourage a strong reliance on censorship "instead of addressing institutional discrimination."¹⁵ Thus, some alternative, more narrowly - defined, concepts are recommended (e.g. "*dangerous speech*"¹⁶ or "*fear speech*"¹⁷) which "*focus more on the propensity of expression to cause violence*".¹⁸

1.3. An indicative typology of "hate speech"

For the abovementioned reasons, Article 19 suggests a typology of "hate speech", which is scaled, based on its severity. Specifically, "hate speech" can be classified into the following categories:

- a. "Hate speech that must be prohibited":** international criminal law and Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) requires States to prohibit certain severe forms of "hate speech", including through criminal, civil, and administrative measures.
- b. "Hate speech that may be prohibited":** States may prohibit other forms of "hate speech," provided they comply with the requirements of Article 19(3) of the ICCPR.
- c. "Lawful hate speech":** It should be protected from restriction under Article 19(2) of the ICCPR. Nevertheless, it raises concerns in terms of intolerance and discrimination, and merits a critical response by the State.¹⁹

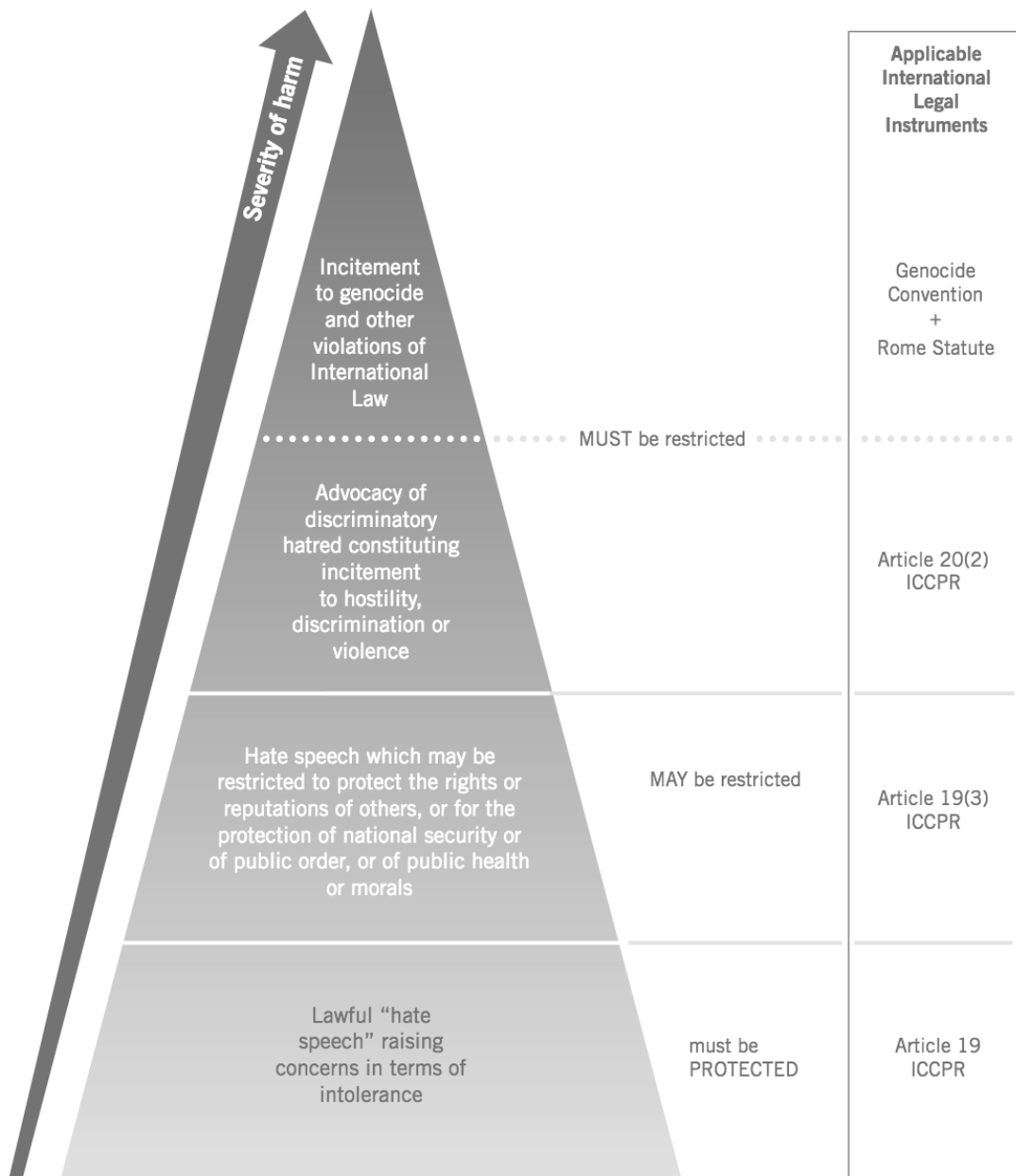
¹⁵ Loc. cit.

¹⁶ Susan Benesch, "Dangerous Speech: A Proposal to Prevent Group Violence" (2012): 1-2, <https://worldpolicy.org/wp-content/uploads/2016/01/Dangerous-Speech-Guidelines-Benesch-January-2012.pdf>.

¹⁷ Antoine Buyse, "Words of Violence: 'Fear Speech', or How Violent Conflict Escalation Relates to the Freedom of Expression", *Human Rights Quarterly* 36, no. 4 (November 2014): 779, <https://muse.jhu.edu/article/557745>.

¹⁸ ARTICLE 19/ Free Word Centre, *Hate Speech Explained*, op. cit., 19.

¹⁹ ARTICLE 19/ Free Word Centre, *Hate Speech Explained*, op. cit., 18.



*The "Hate Speech Pyramid"*²⁰

²⁰ ARTICLE 19/ Free Word Centre, *Hate Speech Explained*, op. cit., 19.

1.4. Prohibited Forms of Hate Speech: content, intention, (potential) target, context and consequences

The European Court of Human Rights (ECtHR) has observed various elements of hate speech in its case law based on the level of the “severity” and the impact of hate speech statements. It should be noted that the range of “severity” in hate speech is different in each case. For this reason, the following parameters are taken into consideration ²¹:

- a. Content:** There is a wide spectrum when it comes to the content and the tone of hate speech. This spectrum ranges from mild insults and generalized stereotypical assumptions about a group or an individual to strongly insulting language and incitement to violence. ²² Also, as the ECHR clearly mentions, “*a distinction needs to be made between statements of fact and value judgments in that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof*”. ²³ The Court draws a particular attention as far as the truthfulness of the remarks are concerned. Consequently, it makes a clear-cut distinction, between matters that “*are part of an ongoing debate among historians*” and “*clearly established historical facts*”. ²⁴ The Court stresses that “*there can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth*”. ²⁵
- b. Intention:** It is an undeniable fact that hate speech describes an expression with an underlying “*intention to incite, promote or justify hatred towards a person or a group*”. ²⁶ A statement might probably indicate hatred and incite violence. However, it might be made with very different intentions in two different situations. ²⁷ The intention to incite or promote intolerance, racism, homophobia, violence or other hatred should be distinguished from the intention to inform the public on issues of general interest. ²⁸
- c. (Potential) target:** The subject of protected characteristics is a significant component of the hate speech concept. Hate speech aims at targeting “*the aspects of a person’s identity that are fundamental to a person’s realization of self and their dignity*”. ²⁹ It is true that certain individuals or groups are more susceptible to hate speech than others. Among other things, this depends on the general depiction of a particular group in society, or by the way they are portrayed by the media. ³⁰ What is more, certain groups are likely to be less capable of

²¹ “What Exactly Is Hate Speech?”, Alternarratief, accessed February 5, 2020, <https://alternarratief.mediawijs.be/dossiers/what-exactly-hate-speech>.

²² Loc. cit.

²³ Anne Weber, *Manual on Hate Speech* (Strasbourg: Council of Europe, 2009), 36.

²⁴ Loc. cit.

²⁵ Loc. cit.

²⁶ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 13.

²⁷ Elena Mihajlova et al., *Freedom of Expression and Hate Speech* (Skopje: Organization for Security and Co-operation in Europe Mission to Skopje, 2013), 26.

²⁸ Loc. cit.

²⁹ “What Exactly Is Hate Speech?”, Alternarratief, accessed February 5, 2020, <https://alternarratief.mediawijs.be/dossiers/what-exactly-hate-speech>.

³⁰ Loc. cit.

defending themselves (i.e. undocumented immigrants).³¹ Race, color, religion, descent, national or ethnic origin are part of the protected characteristics which are embodied in the Framework Decision.³² Nonetheless, some States have extended the list of protected characteristics when implementing the Framework Decision in their national legislation. For instance, sexual orientation, gender identity and disability are part of the protected groups according to the Greek law N. 4285/2014.³³

- d. Context:** Estimating whether a particular expression can be viewed as “hate speech” will depend not only on the contents of the expression, but also on numerous other parameters, e.g., the context of a specific expression. For instance, if the messenger is a politician, a journalist, an artist, a plain citizen, in which case, at which place and time, etc. Apart from historical and cultural factors, current tensions and social prejudices are included in this context.³⁴ It is extremely important to understand the history of oppression and discrimination in a certain State, as well as its actual social problems. Furthermore, “*the medium, the manner of distribution, the size of the audience and the authority of the messenger*”³⁵ are of paramount importance as well.
- e. Consequences, results and (potential) impact:** Hate speech, along with offending the dignity of the individual(s) whom it is addressed to, is also “*a speech with the ability to disturb public peace and order or incite violence, such as instantaneous incidents or stirring up violence between the respective groups in the society, as well as hate crime towards persons targeted with the hate speech*”.³⁶ Numerous parameters can render the impact of hate speech more severe and extreme. This depends on the kind of “*the message, the context, the personal characteristics of the target, the influential factor of the messenger, etc.*”.³⁷ Thus, a statement’s impact may differ by “*ranging from deep hurt of the target to complete indifference*”.³⁸

³¹ Loc. cit.

³² EU High Level Group on Combating Racism, Xenophobia and Other Forms of Intolerance, *Guidance Note on the Practical Application of Council Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law* (Brussels: European Commission, 2018), 4, https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55607.

³³ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 14.

³⁴ Mihajlova et al., *Freedom of Expression*, op. cit., 26.

³⁵ Weber, *Manual on Hate Speech*, op. cit., 36.

³⁶ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 14.

³⁷ “What Exactly Is Hate Speech?”, Alternarratief, accessed February 5, 2020, <https://alternarratief.mediawijs.be/dossiers/what-exactly-hate-speech>.

³⁸ Loc. cit.

1.5. Other concepts and forms of expressions associated with hate speech

a. Blasphemy and Religious insult

Blasphemy may be described as:

1. “The act of insulting or showing contempt or lack of reverence for God or the act of claiming the attributes of deity”³⁹;
2. “Irreverence toward something considered sacred or inviolable”.⁴⁰

According to the Committee on Culture, Science and Education of the Parliamentary Assembly of the CoE, blasphemy can be defined as “the offence of insulting or showing contempt or lack of reverence for God and, by extension, towards anything considered sacred”.⁴¹ Moreover, religious insult may be defined as “insult based on belonging to a particular religion”⁴² and “insult to religious feelings”.⁴³

Sometimes, expressions regarded as “blasphemy” may also express “hatred against a particular group on the basis of a protected characteristic such as their religion or belief, or at least raise concerns around religious intolerance”.⁴⁴

b. Defamation and Insult

In general, defamation laws have been designed for the protection of the reputation of individuals from fake statements of fact which can destroy their reputation.⁴⁵ When it comes to legal actions for defamation, the individual is not expected to demonstrate any “advocacy of hatred”.⁴⁶ As a result, it should be differentiated from hate speech. Most importantly, hate speech is prohibited for the damage caused to the dignity of the individual as a member of a group, which cannot be merely perceived as insult or defamation.⁴⁷

³⁹ European Commission for Democracy through Law (Venice Commission), *Blasphemy, Insult and Hatred: Finding Answers in a Democratic Society*, (Strasbourg: Council of Europe, 2010), 19, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e).

⁴⁰ “Blasphemy”, Merriam-Webster Dictionary, accessed February 5, 2020, <https://www.merriam-webster.com/dictionary/blasphemy>.

⁴¹ European Commission for Democracy through Law (Venice Commission), *Report on the Relationship between Freedom of Expression and Freedom of Religion: The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*, (Strasbourg: Council of Europe, 2010), 8.

⁴² Loc. cit.

⁴³ Loc. cit.

⁴⁴ ARTICLE 19/ Free Word Centre, *Hate Speech Explained*, op. cit., 32.

⁴⁵ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 16.

⁴⁶ Loc. cit.

⁴⁷ Mihajlova et al., *Freedom of Expression*, op. cit., 35.

c. Historical revisionism and negationism

Historical revisionism describes “*the reinterpretation of facts and records introducing contrary evidence or reinterpreting the motivations and decisions of the people involved based on new discoveries of fact, evidence, and interpretation*”.⁴⁸ The term has received a negative connotation when revisionists attempted the distortion of historical records so as to create fake histories. Although revisionism constitutes a historiographical legacy, the negationist perspective refers to an extreme case of revisionism where facts are demonstrated while concealing others in an attempt to establish a new narrative. Illegitimate historical revisionism might employ certain techniques which are unacceptable in proper historical discourse. This can be seen in “*presenting known forged documents as genuine, inventing ingenious but implausible reasons for distrusting genuine documents, attributing conclusions to books and sources that report the opposite, manipulating statistical series to support the given point of view, and deliberately mistranslating texts*”.⁴⁹

Any expression, which denies the existence of historical events, frequently associated with periods of relentless persecution, genocide or other violations of international criminal law, constitutes a direct attack against the dignity of victims and those related to them. Most of the times, it favors insubstantial conspiracy theories and enhances the practice of further discrimination.⁵⁰

d. Incitement to terrorist acts and glorification of violence

Concepts such as “incitement to terrorism”, “violent extremism” and “radicalization” are sometimes conflated with hate speech.⁵¹ Statements which may be held to amount to the glorification of violence or to incitement to war cannot be regarded as equivalent to the notion of tolerance. Intent to incite hatred might also be established where there is an unambiguous call by a person using hate speech to others to commit the impugned acts.⁵²

⁴⁸ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 18.

⁴⁹ Loc. cit.

⁵⁰ ARTICLE 19/ Free Word Centre, *Hate Speech Explained*, op. cit., 32.

⁵¹ ARTICLE 19/ Free Word Centre, *Hate Speech Explained*, op. cit., 34.

⁵² Platform to Promote the Protection of Journalism and Safety of Journalists, *Hate Speech, Apology of Violence, Promoting Negationism and Condoning Terrorism: The Limits to The Freedom of Expression* (Strasbourg: Council of Europe, 2018), 1, <https://rm.coe.int/factsheet-on-hate-speech-july2018-docx/16808c168d>.

1.6. Online hate speech

“Of course, hate speech and racism have no place on Facebook”.⁵³

~ Mark Zuckerberg ~

Online hate speech has been a matter of concern in recent years. Undoubtedly, there has been a tremendous increase of such a phenomenon worldwide. Online hate speech may include threats, abuses and bullying via electronic platforms. It can spread very easily and, as a result, it may have dramatic consequences on the victims' lives.

It is uncertain whether online hate speech is an outcome of the rise in the number of online hateful content, or whether the problem is more apparent due to the improvements in the monitoring and reporting techniques. In numerous States, the growing number of reports of cyberhate is rather worrying. Still, it has been observed that despite the existence of various mechanisms to tackle hate, there has been an increase in online hate speech in certain States. Indeed, there are a few States which do not acknowledge cyberhate as being a problem. For instance, the Former Yugoslav Republic of Macedonia stated that there have been no racist websites, whereas the authorities in Monaco assume that racist attacks do not frequently occur.⁵⁴

Hate websites are perilous since messages of hate are constantly being circulated. These messages are frequently depicted via violent images and words. This happens because they are easily accessible to a mass audience and are likely to appeal to new members and mainly the youth.⁵⁵

During the past few years, this practice has been transferred online as well through the medium of technology.⁵⁶ As a matter of fact, technology encourages the dissemination of innumerable information and ideas. Few people would dispute that hate speech has received digital dimensions very quickly in our days. This has boosted its prevalence and visibility. Thereupon, it cannot be neither comprehended nor encountered with ease.⁵⁷

Similarly to offline hate speech, there are numerous definitions of “online hate speech”. It is attributed to the circulation of hateful public messages against people or groups possessing specific characteristics, with varying levels of emphasis associated with a certain tone of expression, the intention to cause harm, etc. Nonetheless, the difference

⁵³ “Of Course, Hate Speech and Racism Have No Place on Facebook”, AZ Quotes, accessed February 5, 2020, <https://www.azquotes.com/quote/1486038>.

⁵⁴ Chara Bakalis, *Cyberhate: An issue of Continued Concern for the Council of Europe's Anti-Racism Commission* (Strasbourg: Council of Europe, 2015), 11.

⁵⁵ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 20.

⁵⁶ Matthew L. Williams and Pete Burnap, “Cyberhate on Social Media in the Aftermath of Woolwich: A Case Study in Computational Criminology and Big Data”, *The British Journal of Criminology* 56, no. 2 (June 2015): 211, doi: <https://doi.org/10.1093/bjc/azv059>.

⁵⁷ *Hacking Online Hate: Building an Evidence Base for Educators* (SELMA, 2019), 19, <https://hackinghate.eu/assets/documents/hacking-online-hate-research-report-1.pdf>.

lies in the use of online means of expression. This constitutes the digital medium for hate speech in order to approach the victims, potential defenders and the general audience.⁵⁸

There are specific features, which distinguish online hate speech from the offline one. During 1984, Kiesler, Sigel and McGuire referred to the term “flaming” which was described as the phenomenon of uncivilized behavior and angry messages in an anonymous online environment.⁵⁹ This could be characterized as an early effort to determine the concept of “online hate speech”.⁶⁰ Currently, online hate speech is disseminated via online systems (e.g. websites, social media, online games, etc.).⁶¹ People intending to use hate speech can approach their victims more easily in an online environment. In this way, they can exert greater influence both in online and physical settings.⁶² As reported by Hawdon, Oksanen and Räsänen, online hate speech can be interpreted as a kind of cyberviolence throughout information communication technology attempting to “*advocate violence against, separation from, defamation of, deception about or hostility towards others.*” Others claim that it is associated with “*any use of electronic communications technology to spread antisemitic, racist, bigoted, extremist or terrorist messages or information*”.⁶³ The internet (e.g., websites, blogs, online games, e-mail, etc.), and other computer - and cell phone-based information technologies comprise these electronic communication technologies. Online hate speech can be traced in various forms (i.e. through texts, music, online radio broadcasts, or visual images) given that it can be circulated via electronic media.⁶⁴

Historically, it has been observed how traditional mass media (e.g., newspapers, radio, etc.) can be abused for stigmatizing, discriminating, excluding, and inciting to hatred and violence. In extreme cases, mass media propaganda is responsible for the extensive marginalization of groups or even mass murder and genocide. This can be seen in the case of Nazi Germany, where Joseph Goebbels distinguished radio and film as “the eighth great power”, being the most contemporary and scientific means to manipulate the masses. Additionally, in 1994, Radio Rwanda and Radio Télévision des Mille Collines highly contributed in the Rwandan Genocide through conducting anti-Tutsi propaganda with the incitement to hatred and violence. The newspaper “Kangura” was also involved by characterizing the Tutsis as “cockroaches” to be exterminated. Consequently, lots of people

⁵⁸ Loc. cit.

⁵⁹ Sara Kiesler et al., “Social Psychological Aspects of Computer-Mediated Communication”, *American Psychologist* 39, no. 10 (October 1984):1125.

⁶⁰ *Hacking Online Hate*, op. cit., 20.

⁶¹ Loc. cit.

⁶² Yulia Timofeeva, “Hate Speech Online: Restricted or Protected? Comparison of Regulations in the United States and Germany”, *Journal of Transnational Law and Policy* 12, no. 2 (Spring 2003): 253-254.

⁶³ James Hawdon et al., “Online Extremism and Online Hate: Exposure among Adolescents and Young Adults in Four Nations”, *Nordicom Information* 37, no. 3-4 (2015): 30.

⁶⁴ *Responding to Cyberhate: Toolkit for Action* (New York: Anti-Defamation League, 2010), 4, <https://www.adl.org/sites/default/files/documents/assets/pdf/combatting-hate/ADL-Responding-to-Cyberhate-Toolkit.pdf>.

were killed.⁶⁵ Similar situations still continue to exist in books, magazines, newspapers, on the radio or on television, though in less dramatic dimensions. At the same time, the media environment is being digitally altered with the internet and social media having a tremendous effect on the way mass media approach and guide their audiences.⁶⁶ Throughout history, hate groups have been extremely familiar with technology. They usually are more aware of how to handle technology in relation to the authorities or the public.⁶⁷

Of equal importance is the fact that there are multiple methods of spreading and promoting hateful content in a digital environment. These methods are constantly varying and multiplying. One prominent example is that of websites promoting extremist groups. Without doubt, all extremist organizations have their own websites. Most of the times, they even have more than one. These websites disseminate hateful propaganda, lies and incitements to violence. There is an infinite number of online hate groups. These groups include neo-Nazi organizations, racially motivated movements (e.g. offshoots of the KKK) or extremely racist and conservative quasi-religious groups.⁶⁸

There is a huge number of organizations ran by hate groups. One striking example is the website “Stormfront.com”.⁶⁹ Stormfront was one of the earliest extremist websites with a strong online membership. Its founder was Don Black, a KKK veteran who had been imprisoned for three years for taking parting in an armed attempt to seize power in Dominica. Stormfront constitutes an internet forum with a vast number of posts, an online radio program, a site which maintains user-generated blogs, and an immense library with propagandistic content.⁷⁰

Moreover, Hammerskin Nation is a white supremacist group, which was established in 1988 in Dallas, United States.⁷¹ It is perceived to be the most violent and well-organized neo-Nazi skinhead group throughout the United States. It primarily aimed at recruiting rebellious youngsters via music and racist propaganda. Many of the group’s members have been convicted due to the commitment of several crimes. It is an interesting fact that lots of famous rock bands (i.e., Pink Floyd) are connected with Hammerskin Nation.⁷²

Furthermore, the National Socialist Movement (NSM) is at present the largest neo-Nazi group in the United States with plenty of members. It was established during the

⁶⁵ David Yanagizawa-Drott, ‘Propaganda and conflict: Evidence from the Rwandan Genocide’, *The Quarterly Journal of Economics* 129, no. 4 (November 2014):1948.

⁶⁶ *Hacking Online Hate*, op. cit., 23.

⁶⁷ Loc. cit.

⁶⁸ Abraham X. Foxman and Christopher Wolf, *Viral Hate: Containing Its Spread on the Internet* (New York: St. Martin’s Publishing Group 2013), 12.

⁶⁹ “Stormfront”, Stormfront.org, accessed February 7, 2020, <https://www.stormfront.org/forum/>.

⁷⁰ Foxman and Wolf, *Viral Hate*, op. cit., 13.

⁷¹ “Hammerskin Nation”, Terrorism Research and Analysis Consortium, accessed February 7, 2020, <https://www.trackingterrorism.org/group/hammerskin-nation>.

⁷² Foxman and Wolf, *Viral Hate*, op. cit., 13.

1970s and Jeff Schoep is currently its leader. The NSM spreads its strong anti-Semitic and racist attitude all over the United States. During 2009 – 2011, the group was chiefly concerned with anti-immigration rhetoric. Among other things, the group’s message is circulated through its website and violent, propagandistic video games.⁷³

Online recruitment has facilitated many hate groups to extent their membership. Another astonishing fact is that certain hate-oriented websites target specific individuals. One notable example is that of the Nuremberg Files site, established by the anti-abortion activist, Neal Horsley. More specifically, Horsley publicized the names and the personal data of doctors who conducted abortions in an attempt to invite physical attacks against them.⁷⁴

Hate speech has a strong presence in social media as well. Websites like Facebook, YouTube, Instagram and Twitter are free, easy to use and very popular worldwide. As a result, they constitute a rather fertile ground for perpetrators to detect their potential victims and spread messages of hate. Sexism, homophobia, xenophobia, Islamophobia, Romaphobia, anti-Semitism are nowadays usual phenomena in the social media. These discriminatory acts aim at humiliating, harassing, threatening and inciting violence. Manifestations of hate, anger and aggressiveness have become common place in the online environment.⁷⁵ Since social media have gained great popularity, hate has been more easily detected.⁷⁶ Hate speech in social media can have a negative psychological effect on potential victims. The constant, undetected presence of hate speech in social media might have a silencing effect on minorities, women, and others. Instead of encouraging these people to take part in public discourse, hate speech may restrict the amount of content produced by such individuals. Thus, this discourages them from speaking out against the numerous discriminatory forms they experience. For example, there is little possibility that a woman continues to take part in a debate on Facebook about campus sexual assault after being called a “slut” by another user. As reported by the legal scholars Danielle Citron and Helen Norton, hate speech restricts civic engagement online, “*thus curtailing the process of what they call digital citizenship*”.⁷⁷ That is to say, “*the virtual environment created by hate speech dissuades the political speech of people of color, women, and members of the lesbian, gay, bisexual and transgender (LGBT) community*”.⁷⁸

What is more, hate speech is highly visible in online gaming as many gamers exchange hate comments via online game platforms. As Foxman and Wolf point out, “*the violent nature of the games themselves, combined with the anonymity prevalent in online*

⁷³ Loc. cit.

⁷⁴ Foxman and Wolf, *Viral Hate*, op. cit., 15.

⁷⁵ Alex Cabo Isasi and Ana García Juanatey, *Hate speech in Social Media: A State-of-the-Art Review Executive Summary* (Barcelona: Ajuntament de Barcelona, 2016), 1.

⁷⁶ *Hacking Online Hate*, op. cit., 28.

⁷⁷ Daniel Keats Citron and Helen Norton, “Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age”, *Boston University Law Review* 91, no. 2011 (February 2011): 1447.

⁷⁸ Caitlyn Carlson, “Censoring Hate Speech in U.S. Social Media Content: Understanding the User’s Perspective”, *Communication Law Review* 17, no. 1 (2017): 33.

*gaming sites, encourages players to indulge freely in fantasy behaviors that would be unacceptable in real life. These behaviors can include the use of hate speech – such as racist, ethnic, anti-Semitic, misogynistic, and homophobic slurs – against opponents”.*⁷⁹

Lastly, cloaked websites are another example of the manifestation of online hate speech. This kind of websites challenge the notions of ethnicity and racial equality.⁸⁰ Certain writers have been concerned about the danger of the recruitment of unaware internet users into white supremacist groups in overt racist websites.⁸¹

On the other hand, cloaked white-supremacist websites are easily noticeable and they frequently use popular search platforms like Google to search information about civil rights leaders like Martin Luther King.⁸² Jessie Daniels describes cloaked websites as “*those published by individuals or groups that conceal authorship or feign legitimacy in order to deliberately disguise a hidden political agenda*”.⁸³ Cloaked websites are very much alike to earlier forms of print and electronic media propaganda in which the authorship, source or intention of a publication or broadcast is concealed.⁸⁴

⁷⁹ Abraham X. Foxman and Christopher Wolf, *Viral Hate*, op. cit., 20.

⁸⁰ Josh Adams and Vincent J. Roscigno, “White Supremacists, Oppositional Culture and the World Wide Web”, *Social Forces* 84, no. 2 (December 2005): 761.

⁸¹ Phyllis B. Gerstenfeld et al., “Hate Online: A Content Analysis of Extremist Internet Sites”, *Analyses of Social Issues and Public Policies* 3, no. 1 (2003): 31.

⁸² Jessie Daniels, “Cloaked Websites: Propaganda, Cyber-racism and Epistemology in The Digital Era, *New Media & Society* 11, no. 5 (2009): 661.

⁸³ Loc. cit.

⁸⁴ Loc. cit.

1.7. Hate speech vs. freedom of expression

*“There is a fine line between free speech and hate speech. Free speech encourages debate whereas hate speech incites violence”.*⁸⁵

~ Newton Lee ~

It is a commonly held belief that living in a democratic society is equal to freely expressing, exchanging and publicly disseminating views and ideas.⁸⁶ Freedom of expression “constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man”.⁸⁷ Therefore, it constitutes one of the most fundamental human rights. Simply put, freedom of expression refers to one’s right to express whatever he/she desires. Articles 19 and 10(1) of the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR) respectively define freedom of expression as “the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.⁸⁸ They also emphasize that “everyone has the right to freedom of opinion and expression”.⁸⁹ If not a broad guarantee of the right to freedom of expression is provided by independent and impartial courts, no free States nor democracy can exist.⁹⁰

Nonetheless, as the great philosopher Immanuel Kant has mentioned: “One person’s freedom ends where another’s freedom begins”. Indeed, even though freedom of speech is a core axiom of a democratic society, it has ambivalent repercussions. On the one hand, everyone is permitted to launch insulting and aggressive comments. On the other hand, everyone is free to speak against such views and oppose to anti-Semitism, racism, sexism and similar discriminatory forms.⁹¹ Freedom of expression is of “constitutional” importance, as it is not simply a right per se, but it underpins other rights and freedoms

⁸⁵ “There Is A Fine Line between Free Speech and Hate Speech. Free Speech Encourages Debate Whereas Hate Speech Incites Violence.”, Quotes of Famous People, accessed February 5, 2020, <https://quotepark.com/quotes/1847615-newton-lee-there-is-a-fine-line-between-free-speech-and-hate/?page=2>.

⁸⁶ *Hacking Online Hate*, op. cit., 19.

⁸⁷ Press Unit, *Hate Speech* (Strasbourg: European Court of Human Rights, 2020), 1, https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

⁸⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, art. 19, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, and “Convention for the Protection of Human Rights and Fundamental Freedoms”, opened for signature November 4, 1950, art. 10 (1), *European Treaty Series* no. 5. <https://www.coe.int/en/web/conventions/fulllist/-/conventions/treaty/005>.

⁸⁹ Loc. cit.

⁹⁰ Anagnostopoulou et al, *Training for a European Area of Justice*, op. cit., 52.

⁹¹ Matthias Quent, “Opinion: The Clear Line between Hate Speech and Free Speech”, Deutsche Welle, last modified November 24, 2019, <https://www.dw.com/en/opinion-the-clear-line-between-hate-speech-and-free-speech/a-51393218>.

under the ECHR.⁹² Nevertheless, apart from the immense scope of freedom of expression, certain limitations to the exercise of this right are occasionally required, given that it does not constitute an absolute right. Having said that, there are certain “duties” and “responsibilities” pertaining to the right of freedom of expression. Similarly, this right is subject to certain restrictions, which are provided in Article 10(2) and touch upon, inter alia, with the protection of the rights of others. More specifically:

*“The exercise of these freedoms, since it carries with it duties and responsibilities, 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”.*⁹³

Moreover, it has to be stressed that the content of freedom of expression is not standard at all, as reported by the European Court of Human Rights (ECtHR) in labelling the ECHR as a “*living instrument*”⁹⁴ and with the scope of actually guaranteeing the protection of the rights protected in practice.⁹⁵ The protection of the right to freedom of expression has to be constantly and carefully observed not only because of technological and societal alterations, but also because of the continuous threats encountered.⁹⁶

Reciprocal understanding and acceptance are probably the primary concern of a democratic modern society.⁹⁷ The Grand Chamber of the ECtHR claims: “*the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of its enrichment*”.⁹⁸ Diversity is definitely a positive thing but living with people of distinct backgrounds and ideas requires a new ethic of solid intercultural relations worldwide. In the present-day societies, in which a wide range of cultures, religions and lifestyles are embodied, it is sometimes needed to coordinate freedom of expression with other conflicting human rights (e.g., the right to freedom of thought, conscience and religion or the right to non-discrimination).⁹⁹ The ECtHR has verified that “*it is particularly conscious of the vital importance of combating racial discrimination in all its*

⁹² Anagnostopoulou et al, *Training for a European Area of Justice*, op. cit., 52.

⁹³ “Convention for the Protection of Human Rights and Fundamental Freedoms”, opened for signature November 4, 1950, art. 10 (2), *European Treaty Series* no. 5. <https://www.coe.int/en/web/conventions/fulllist/-/conventions/treaty/005>.

⁹⁴ George Letsas, “The ECHR as a Living Instrument: Its Meaning and its Legitimacy” (March 14, 14, 2012): 2, available at SSRN: <https://ssrn.com/abstract=2021836> or <http://dx.doi.org/10.2139/ssrn.2021836>.

⁹⁵ Despoina Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 52.

⁹⁶ Loc. cit.

⁹⁷ Loc. cit.

⁹⁸ *Nachova and others v. Bulgaria*, nos. 43577/98 and 43579/98, §145, ECHR 2005, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22001-69630%22%5D%7D>.

⁹⁹ Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 52-53.

forms and manifestations".¹⁰⁰ As it stressed by the ECtHR in numerous judgments, "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 (including religious intolerance), provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued".¹⁰¹

Per contra, the Charlie Hebdo attacks in January 2015 were a tragic instance for freedom of expression and revealed the extent to which this freedom is under threat because of intolerance and fundamentalism. As a result, it is crucial to trace specific elements to discern expressions, which, though at times offensive, might be totally protected.¹⁰²

Any restriction, condition, limitation or any form of interference with the freedom of expression may only be applied to the exercise of this freedom. In particular, Article 5(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) highlights that "nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant".¹⁰³

In a similar way, the ICCPR acknowledges that freedom of expression may only be restricted as provided by law and to the extent required "for the respect of the rights or reputations of others" and "for the protection of national security or of public order (*ordre public*), or of public health or morals".¹⁰⁴

In conclusion, even though freedom of speech appears to be a quite simple concept, it is rather difficult to determine which kinds of speech should be protected and under which circumstances.¹⁰⁵ Freedom of expression constitutes a fundamental right, which all

¹⁰⁰ *Jersild v. Denmark* [GC], no. 15890/89, §30, ECHR 1994, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57891%22%7D>.

¹⁰¹ *Erbakan v. Turkey*, no. 59405/00, §56, ECHR 2006, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-1728198-1812055&filename=003-1728198-1812055.pdf>.

¹⁰² Anagnostopoulou et al., *Training for a European Area of Justice*, op. cit., 53.

¹⁰³ "International Covenant on Economic, Social and Cultural Rights", opened for signature December 16, 1966, art. 5(1), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 993, no. 14531 (1976): 3. https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf.

¹⁰⁴ "International Covenant on Civil and Political Rights", opened for signature December 19, 1966, art.19(3), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 999, no. 14668 (1976): 178. <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

¹⁰⁵ Michael Gonchar, "Why Is Freedom of Speech an Important Right? When, If Ever, Can It Be Limited?", *The New York Times*, last modified September 12, 2018, <https://www.nytimes.com/2018/09/12/learning/why-is-freedom-of-speech-an-important-right-when-if-ever-can-it-be-limited.html>.

citizens of Western democracies can enjoy. Still, it is not absolute since each State imposes certain limitations on it.¹⁰⁶

¹⁰⁶ “Abu Hamza Sentenced to Life in Prison after Years of Abusing the Limits of Free Speech”, The Conversation, last modified January 9, 2015, <https://theconversation.com/abu-hamza-sentenced-to-life-in-prison-after-years-of-abusing-the-limits-of-free-speech-36087>.

CHAPTER 2.

KEY CONCEPTS: “VULNERABLE SOCIAL GROUPS” & “PROTECTED CHARACTERISTICS”

2.1. A definition of the term “vulnerable social groups”

At this point, it is important - first of all - to provide a definition of the term “vulnerable social groups”. More specifically, this term refers to “*groups of people considered to be at risk of poverty or social exclusion because of physical disabilities, age factors, ethnic origins, lack of housing, or substance abuse.*”¹⁰⁷ It can also be attributed to “*individuals in need of particular protection*”.¹⁰⁸ Vulnerable social groups can also be characterized as “marginalized social groups”. Sue interprets marginalized social groups as “*confined to existing on the margins of our social, cultural, political, and economic systems,*” leading to the “*exclusion from the mainstream of life in our society, unequal treatment, and social injustice*”.¹⁰⁹ Another characterization ascribed to vulnerable social groups could be that of “*socially devalued groups*”.¹¹⁰

There is a wide perception that these groups “*exist on the lower or outer limits of social desirability and consciousness*”.¹¹¹ Women and girls, children, refugees, internally displaced persons, stateless persons, religious and ethnic minorities, indigenous peoples, migrant workers, persons with disabilities, elderly persons, HIV positive persons and AIDS victims, Roma/Gypsies/Sinti and LGBTI people also belong to this category. Apparently, this does not constitute a comprehensive list given that many other groups face discrimination and oppression.¹¹² For this reason, the present dissertation will simply touch upon the cases of persons with disabilities, women and girls, LGBTI people and ethnic and religious minorities.

¹⁰⁷ “Vulnerable Social Groups: Before and after the Crisis”, European Parliament Think Tank, last modified July 11, 2016, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2016\)586605](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)586605).

¹⁰⁸ “The Human Rights Protection of Vulnerable Groups”, Icelandic Human Rights Centre, accessed February 5, 2020, <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>.

¹⁰⁹ Derald Wing Sue, *Microaggressions and Marginality: Manifestation, Dynamics, and Impact* (New Jersey: John Wiley & Sons, 2010), chap. 1, https://books.google.gr/books?id=7WZxpPnnjzC&printsec=frontcover&hl=el&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

¹¹⁰ Loc. cit.

¹¹¹ Loc. cit.

¹¹² “The Human Rights Protection of Vulnerable Groups”, Icelandic Human Rights Centre, accessed February 5, 2020, <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>.

2.2. Protected characteristics

Vulnerable social groups possess certain characteristics based on which they are discriminated. These characteristics are called “protected characteristics”. Protected characteristics are basic characteristics of the individual and collective identity. Protected characteristics are those basic elements, which are considered common among the members of a particular group, and, consequently, they differentiate the groups with one another. They constitute the relation between the common sense of belonging and participation within a group of individuals.¹¹³ Gender, sexual orientation, age, disability, race, color, language, religion, political or other ideologies, ethnic or social background, ethnic minority membership, property, birth are included within the spectrum of protected characteristics.¹¹⁴

The present list, notwithstanding, is not exhaustive and it should be mentioned that, when it comes to a protected characteristic, there are different provisions which have been and continue to be established by different States and during different times. For instance, race and religion, in contrast with sexual orientation and ideology – the recognition of which as characteristics of an equal fundamental importance for the individual’s identity, was a more recent one – historically speaking they were faster and more widely accepted as determiners of self-determination of the individual’s self and afterwards they were adopted faster and widely as characteristics protected under the law. The reasons vary, but to a certain extent, they all connect with the sociopolitical particularities and the needs of each State and society as they evolve from time to time.¹¹⁵

For example, - and in particular - due to the colonial past, labor and the movements against them which steadily led to their abolition – the issue of racial segregation and discrimination became a deplorable aspect of social life much earlier than that of the discrimination based on sexual orientation. As far as the latter is concerned, it dynamically dominated during the 1970s, after massive movements for the respect of the rights of homosexuals and lesbians, as opposed to the others, the legal roots of which are found already from the 19th century in the United States after the civil war.¹¹⁶

¹¹³ *Εγκλήματα Μίσους: European Training Judicial Project* (Αθήνα: Ελληνικό Συμβούλιο για τους Πρόσφυγες, 2018), 6, <https://www.gcr.gr/media/k2/attachments/EN-Hate-Crimes.pdf>.

¹¹⁴ *Εγχειρίδιο Σχετικά με την Ευρωπαϊκή Νομοθεσία κατά των Διακρίσεων* (Βιέννη και Στρασβούργο: Οργανισμός Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης και Συμβούλιο της Ευρώπης, 2010), 105-139, https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_EL.pdf.

¹¹⁵ *Εγκλήματα Μίσους*, op. cit., 6, <https://www.gcr.gr/media/k2/attachments/EN-Hate-Crimes.pdf>.

¹¹⁶ *Εγκλήματα Μίσους*, op. cit., 7, <https://www.gcr.gr/media/k2/attachments/EN-Hate-Crimes.pdf>.

CHAPTER 3.

THE PROTECTION OF VULNERABLE SOCIAL GROUPS FROM HATE SPEECH UNDER INTERNATIONAL LAW

3.1. Persons with Disabilities

*“Disability is not a hindrance to reach the sky”.*¹¹⁷

~ Tiffany Brar ~

According to Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD), the term "persons with disabilities" (PWD) is attributed to the individuals *“who have a long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”*.¹¹⁸ The word “disabled” is associated with the individuals that are *“impaired or limited by a physical, mental, cognitive, or developmental condition”*¹¹⁹ and are *“incapacitated by illness or injury”*.¹²⁰ According to estimations, there over 650 million people with disabilities, accounting for approximately 10% of the global population. What is more, a disproportionate number of persons with disabilities lives in developing countries, often marginalized and in extreme poverty conditions.¹²¹

There is not an explicit definition of the concept of disability. As it is noted in the preamble of the CRPD: *“disability is an evolving concept”* and it *“results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”*.¹²² This interaction is affected by both personal and environmental factors. Personal factors are divided into physical and

¹¹⁷ “Disability is not a Hindrance to Reach the Sky”, Quotes From Famous People, accessed February 5, 2020, <https://quotepark.com/quotes/1790914-tiffany-brar-disability-is-not-a-hindrance-to-reach-the-sky/>.

¹¹⁸ “Convention on the Rights of Persons with Disabilities”, opened for signature March 30, 2007, art. 1, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 4, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

¹¹⁹ “Disabled”, Merriam-Webster Dictionary, accessed February 5, 2020, <https://www.merriam-webster.com/dictionary/disabled>.

¹²⁰ Loc. cit.

¹²¹ “Convention on the Rights of Persons with Disabilities”, Department of Economic and Social Affairs: Disability, accessed February 5, 2020, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

¹²² “Convention on the Rights of Persons with Disabilities”, opened for signature March 30, 2007, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 1, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

socioeconomic. The physical ones are inherent and may refer to visual, hearing, physical or intellectual impairments. However, the socioeconomic ones have an individual impact and determine the socioeconomic position of the individual (i.e., whether he/she is poor, rich, illiterate or marginalized).¹²³

There are four approaches concerning the concept of disability: the charity, the medical, the social and the human rights approach. The charity approach states that PWD are in a tragic situation, they are unable to take care of themselves, they inspire pity and compassion and thus, they are viewed as objects of benevolence. Benevolent individuals, charity houses, homes, foundations, religious institutions constitute the duty bearers on disability issues among others.¹²⁴

The medical approach supports that PWD need to be cured since they are seen as patients; they are considered abnormal and are unable to have an independent life. This approach proposes to treat disability by providing the individuals as much rehabilitation as possible in order for them to reach the highest extent of normality so as to gain access to rights and hence participation in society. In this case, doctors, health authorities and the Ministry of Health constitute the duty bearers on disability issues.¹²⁵

Nonetheless, there are numerous consequences when it comes to both the charity and the medical approach. To begin with, these approaches cause a feeling of disempowerment and submission in disabled individuals. Also, they are perceived as subjects of optional benevolence given that not everyone is willing to help them. Moreover, this approach has led to the stigmatization and segregation of these individuals as well as their image disparagement. Furthermore, it has provoked a feeling of dependence and low self-esteem in these people as they may tend to feel unable to satisfy their needs and live independently. Last but not least, forced institutionalization is set up through the social and the medical approach as more and more charity institutions for PWD are being established.¹²⁶

On the other hand, the social approach perceives disability as the outcome of a disorganized society. Therefore, disability is not considered an individual problem, but it mainly lies in an either limiting or overpowering social environment. Through this approach, the ability and the obligation of PWD to actively participate in the society is highly stressed. The social approach suggests that, in an attempt to treat disability, environmental barriers should be eliminated and the participation in public policy-making and public services should be of crucial importance. In this way, accessibility and inclusiveness in the society will be granted more easily to such individuals. The State, ministries and the society bear the responsibility on disability issues, according to the social approach.¹²⁷

¹²³ *Convention on the Rights of Persons with Disabilities: Training Guide Professional Training Series No.19* (New York and Geneva: United Nations Publication, 2014), 7-8,

https://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf.

¹²⁴ *Convention on the Rights of Persons with Disabilities*, op. cit., 9-11.

¹²⁵ Loc. cit.

¹²⁶ *Convention on the Rights of Persons with Disabilities*, op. cit., 11.

¹²⁷ *Convention on the Rights of Persons with Disabilities*, op. cit., 10-11.

Lastly, the human rights approach stresses the importance of providing full and equal enjoyment of all human rights to PWD and encouraging the promotion of respect for their inherent dignity. Equal opportunities and inclusion in the society should be offered and discrimination on the basis of disability should be excluded. Authorities have to ensure these peoples' rights and not restrict them and PWD should be viewed as right-holders. The human rights approach proposes the enforcement of laws to ensure full inclusion in all social aspects. Also, policies for awareness-raising and equal recognition before the law should be implemented and private sector should be regulated. Again, the State, ministries and the society bear the responsibility on disability issues throughout this approach. The major principles of human rights approach incorporate the inclusion, active participation and easy accessibility in the society for PWD. Not only is there a lack of discrimination, but also the respect for difference, diversity and inherent dignity are stressed along with the right for equal opportunities. It could be said that the human rights approach builds upon the social approach as they both concern the effective participation and inclusiveness of PWD disabilities in the society.¹²⁸

The World Health Organization (WHO) describes the word "disabilities" as an umbrella term which involves "*impairments, activity limitations, and participation restrictions*". An impairment is connected to a problem in body function or structure; an activity limitation is a difficulty experienced by an individual in an attempt to execute a certain task or action; whereas a participation restriction refers to a problem encountered by a person when it comes to the involvement in life situations.¹²⁹

Undoubtedly, disability is not merely a health problem. It is a complicated phenomenon, depicting the interaction between features of a person's body and features of the society in which the disabled individual lives. PWD are likely to experience a more limited margin of health, not only due to poverty and social exclusion, but also due to their vulnerability to secondary conditions, e.g. pressure sore.¹³⁰

It is evident that the concept of disability has greatly evolved throughout the years. The approach towards PWD has switched from the so-called "medical and charity" approach to a human rights-based approach. This reflects the issue that PWD are no more regarded as patients or service receivers who need to be pitied and "fixed" in order to be accepted in the society. PWD are seen as full and active members of society, provided they receive the essential support and assistance.¹³¹

Evidence has shown, notwithstanding, that people with disabilities experience various barriers on a daily basis.¹³² On the flip side, many cases of violations of the rights of PWD have been noticed throughout the centuries. Firstly, in ancient Sparta, if a child was born with a physical or mental disability, it was doomed to die by being thrown at the River Keadas. Secondly, on July

¹²⁸ Loc. cit.

¹²⁹ "Disabilities", World Health Organization, accessed February 5, 2020, <https://www.who.int/topics/disabilities/en/>.

¹³⁰ Loc. cit.

¹³¹ *Persons with Disabilities and Ensuring their Right to Participate in Political and Public Life* (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2017), 3, <https://www.osce.org/odihr/340246?download=true>.

¹³² "Disabilities", World Health Organization, accessed February 5, 2020, <https://www.who.int/topics/disabilities/en/>.

14, 1933, the Nazi government inaugurated the “Law for the Prevention of Progeny with Hereditary Diseases”. This law aimed at the sterilization of all persons who suffered from diseases considered hereditary (e.g., mental illnesses, learning disabilities, physical deformity, etc.). During the autumn of 1939, Adolf Hitler secretly authorized a medically administered program of “mercy death” code-named “Operation T4”. It is estimated that approximately 275.000 PWD were killed via this program.¹³³

Unfortunately, such violations occur even nowadays, despite all the remarkable efforts that have been made in promoting the rights of PWD. For instance, in parts of Eastern and Southern Africa (e.g., Malawi, Tanzania, Ethiopia, etc.), there is the mistaken belief that albino body parts have magical powers. Therefore, people with albinism are either dismembered or executed and their body parts are given to unscrupulous dealers who in turn can gain up to \$75.000 by selling a complete dismembered set.¹³⁴

To sum up, it is undeniably true that there has recently been a radical change when it comes to the protection and the verification of the rights of PWD around the world. Yet, these people are constantly facing discrimination and their legitimate rights are not fully ensured as they do not enjoy social protection and they do not have an easy access to justice.¹³⁵ In addition, constant violations of these peoples’ rights are a product of a firmly established stigma and an inadequacy of community-based services which play a vital role to the insurance of their rights that are embodied in the UN CRPD.¹³⁶

¹³³ “People with Disabilities”, United States Holocaust Memorial Museum, accessed February 9, 2020, <https://www.ushmm.org/collections/bibliography/people-with-disabilities>.

¹³⁴ “Albinos in East Africa Fear for Lives after Killings: 10,000 Displaced or in Hiding Due to Demand for Body Parts, Red Cross Says”, last modified November 28, 2009, http://www.nbcnews.com/id/34182250/ns/world_news-africa/t/albinos-east-africa-fear-lives-after-killings/#.XjGBvmgzbc.

¹³⁵ “Human Rights of Persons with Disabilities”, United Nations Human Rights Office of the High Commissioner, accessed February 5, 2020, <https://www.ohchr.org/en/issues/disability/pages/disabilityindex.aspx>.

¹³⁶ “Disability Rights”, Human Rights Watch, accessed February 5, 2020, <https://www.hrw.org/topic/disability-rights>.

3.2. Persons with Disabilities and Hate Speech

Lots of people face disability hate speech on a daily basis. Apparently, this phenomenon is likely to have a great psychological impact on the victims.¹³⁷ Hate speech against PWD has been a rather pertinent issue throughout the centuries. It is an undeniable fact that PWD are often seen as an easy target for hate speech. Various stereotypes have been formed, according to which, they are portrayed as “*dependent, uneducable, unemployable and unproductive*”.¹³⁸ This prejudice is mainly attributed to the disabled person's health which leads to his/her discrimination. As a result, this clearly functions as the driving force of hate speech against him/her. It should be noted that PWD, or individuals who are considered to have a disability, may be targeted by the perpetrators due to their “vulnerability”.¹³⁹ Not surprisingly, PWD are more likely to be victims of hate speech than non-disabled individuals.¹⁴⁰

Not until recently, the phenomenon of hate speech against persons with disabilities has been a matter of concern. There has also been a gap when it comes to its reporting as well as to the realization to its scope. According to a 2014 report of the Office of Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE), there is an under-reporting as far as incidents of hate speech are concerned. Indeed, there are very few States which tend to report such issues. As the OSCE has observed, there is a major factor concerning the case of under-reporting: the victims’ fear that they and their request will not be taken seriously on behalf of the authorities.¹⁴¹ Therefore, PWD tend to adopt an avoidance behavior owing to their fear of hate speech.¹⁴²

Moreover, disability hate speech can be demonstrated through micro – aggressions. Gonzales et al. define micro-aggression as “*a subtle verbal or behavioral communication of disparaging messages to people based upon membership in a socially marginalized group*”.¹⁴³ These micro-aggressions occur very often in social settings and most of the times they remain unsanctioned. Yet, they tend to diminish the recipients.¹⁴⁴

¹³⁷ Mark Sherry et al., *Disability Hate Speech: Social, Cultural and Political Contexts* (Oxon and New York: Routledge, 2020),

https://books.google.gr/books/about/Disability_Hate_Speech.html?id=3kG9DwAAQBAJ&printsec=frontcover&source=hp_read_button&redir_esc=y#v=onepage&q&f=false.

¹³⁸ *Hate Crime against People with Disabilities* (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2016), 1.

¹³⁹ *Hate Crime against People with Disabilities*, op. cit., 2.

¹⁴⁰ Sherry et al., *Disability Hate Speech*, op. cit.

¹⁴¹ *Hate Crime against People with Disabilities*, op. cit., 2, <https://www.osce.org/odihr/hate-crime-against-people-with-disabilities>.

¹⁴² Marianne Schulze, Freedom from Exploitation, Violence and Abuse of Persons with Disabilities Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities (Strasbourg: The Council of Europe, 2017), 18.

¹⁴³ Lauren Gonzales et al., “Microaggressions Experienced by Persons with Mental Illnesses: An Exploratory Study”, *Psychiatric Rehabilitation Journal* 38, no. 3 (2015): 234, doi: <https://doi.org/10.1037/prj0000096>.

¹⁴⁴ Loc. cit.

Paradoxically, not much has been written about disability hate speech in the academic literature. Consequently, this hinders its effective monitoring and it can neither be comprehended nor encountered with ease.

3.3. The Case of Dalibor Đorđević

On July 12, 2010, Dalibor Đorđević and his mother, Radmila Đorđević, filed an application against the Republic of Croatia under Article 34¹⁴⁵ of the Convention for the Protection of Human Rights and Fundamental Freedoms. It was reported that the two applicants had been harassed between July 2008 and February 2011. More specifically, the applicants claimed that they were frequently harassed by underaged students from a nearby primary school many times during the day. It was the first applicant who had been harassed the most. The attacks were more frequent, especially when the students returned home from school in groups and late in the afternoon and during the evening they gathered on and around a wooden bench in front of the balcony of the applicants' flat. These students were totally unsupervised. The harassment was driven by the first applicant's disability and both applicants' Serbian origin. A bigger group of underaged children came to a park in front of the applicants' flat, used vulgar vocabulary against the first applicant, swore at him and wrote offensive messages on the pavement. The children usually rang the applicants' bell and they were asking when the first applicant was going out. The first applicant was often being spat. The applicants alleged further incidents occurred as well. For example, on February 10, 2011, while the applicants were going to the hairdresser's, they met a group of children who provocatively shouted "Dalibor!".¹⁴⁶

The ECtHR unanimously decided that a violation of Article 3 of the Convention¹⁴⁷ occurred against the first applicant when it comes to his disability issue.¹⁴⁸ It also concluded: *(a) that the respondent State is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into the currency of the respondent State at the rate applicable on the date of settlement: (i) EUR 11.500 (eleven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; (ii) EUR 4.706 (four thousand seven hundred and six euros), less EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points; "*¹⁴⁹ Finally, it dismissed the rest of the applicants' claim for just satisfaction.¹⁵⁰

¹⁴⁵ "Convention for the Protection of Human Rights and Fundamental Freedoms", opened for signature November 4, 1950, art. 34, *European Treaty Series* no. 5, <https://www.coe.int/en/web/conventions/fulllist/-/conventions/treaty/005>.

¹⁴⁶ *Đorđević v. Croatia*, no. 41526/10, §§8-57, ECHR 2012, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-112322%22%7D>.

¹⁴⁷ "Convention for the Protection of Human Rights and Fundamental Freedoms", opened for signature November 4, 1950, art. 3, *European Treaty Series* no. 5, <https://www.coe.int/en/web/conventions/fulllist/-/conventions/treaty/005>.

¹⁴⁸ *Đorđević v. Croatia*, no. 41526/10, §2, Section C, ECHR 2012, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-112322%22%7D>.

¹⁴⁹ *Đorđević v. Croatia*, no. 41526/10, §5, Section C, ECHR 2012, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-112322%22%7D>.

¹⁵⁰ *Đorđević v. Croatia*, no. 41526/10, §6, Section C, ECHR 2012,

3.4. Persons with Disabilities and Hate Speech: International Law Protecting Mechanisms

Although there are punishments for specific kinds of hate speech in international agreements, disability is not regularly included. For example, the second part of Article 20 of the ICCPR stresses that “*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*”.¹⁵¹ However, there is not any protection under such Conventions when it comes to disability. The exclusion of disability constitutes a significant failure both on behalf of international treaties and national legislations.¹⁵²

The existence of the CRPD is of great importance when it comes to the promotion of the rights of PWD under international law. The Convention was adopted by the UN General Assembly on December 13, 2006 in New York. It was open for signature on March 30, 2007 and it entered into force on May 3, 2008. The first conference of States parties was held on October 13 and on November 3, 2008, whereas the second conference was on December 2-4, 2009. The first session of the Committee on the Rights of PWD took place on February 23-28, 2008.

This Convention can be characterized as a successful one given that there are 175 ratifications/accessions and 160 signatories to the convention while its Optional Protocol includes 92 ratifications/accessions and 160 signatories. More specifically, the United States, Libya and Ireland are included among the countries which have only signed the Convention. Chad, Cameroon and Iceland include some of the States that have signed both the Convention and its Optional Protocol and countries such as Russia, Norway, the Netherlands, India and China represent a sample of those who have ratified the Convention. It is remarkable to note that Greece and Cyprus are incorporated into the many countries which have ratified both the Convention and its Optional Protocol. Conversely, Equatorial Guinea, South Sudan, Eritrea, Somalia, Botswana, Western Sahara, Tajikistan and Timor-Leste are the only countries in the world which have not taken any particular action as far as the Convention is concerned.

Pre-existing Human Rights Conventions promise the potential of the promotion and protection of the rights of PWD. Nevertheless, this potential was not exploited. It should be taken into account that this Convention sets out the legal obligations of States regarding the promotion and the protection of the rights of PWD and it does not create new rights. In fact, it builds upon the Human Rights Convention.

Non-discrimination, effective and full participation and inclusion in society and respect for difference and acceptance of PWD as a part of human diversity and humanity are of utmost importance. The general obligations embodied in Article 4 suggest “*to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and*

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-112322%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-112322%22]}).

¹⁵¹ “International Covenant on Civil and Political Rights”, opened for signature December 19, 1966, art. 20(2), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 999, no. 14668 (1976): 178, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

¹⁵² Sherry et al., *Disability Hate Speech*, op. cit.

practices that constitute discrimination against persons with disabilities".¹⁵³ For many people occupying with disability rights, the core element of disablist hate speech is not only discrimination per se, but also a call for further discrimination based on the disability of any individual by underestimating, thus, the value of the CRPD. Nevertheless, the promise of this Convention has not been fulfilled in many aspects let alone that of hate speech.¹⁵⁴

As it is stated in Article 1, the purpose of the Convention is *"to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity"*.¹⁵⁵ What is remarkable about this Convention is that it constitutes a development and a human rights instrument at the same time. It is a policy-instrument as it is cross disability and cross sectoral and, most importantly, it is legally binding. The CRPD signals a "paradigm-shift" concerning the approaches and attitudes towards persons with disabilities. Indeed, persons with disabilities are not perceived as "objects" of charity, medical treatment and social protection, but as "subjects" with rights. As a result, the CRPD gives universal recognition to the dignity of such persons.

As reported in Article 3, the general principles of the Convention include the *"respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence"*.¹⁵⁶ The right to non-discrimination is also highlighted. Another point worth noting is *"the respect for difference and acceptance of persons with disabilities as part of a human diversity and humanity"*.¹⁵⁷

Furthermore, the CRPD calls for awareness-raising on behalf of the States parties *"throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities"*.¹⁵⁸ They are also called *"to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life"*¹⁵⁹ and *"to promote awareness of the capabilities and contributions of persons with disabilities."*¹⁶⁰ Awareness-raising is crucial for the protection of PWD from hate speech. In this way, the society will be more conscious about the harmful effects of hate speech against PWD. As a result, hate speech incidents against these individuals will be considerably reduced.

¹⁵³ "Convention on the Rights of Persons with Disabilities", opened for signature March 30, 2007, art. 4(2), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 6, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

¹⁵⁴ Sherry et al., *Disability Hate Speech: Social*, op. cit.

¹⁵⁵ "Convention on the Rights of Persons with Disabilities", opened for signature March 30, 2007, art. 1, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 4, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

¹⁵⁶ "Convention on the Rights of Persons with Disabilities", opened for signature March 30, 2007, art. 3, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 5, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

¹⁵⁷ Loc. cit.

¹⁵⁸ "Convention on the Rights of Persons with Disabilities", opened for signature March 30, 2007, art. 8(1), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 8, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

¹⁵⁹ Loc. cit.

¹⁶⁰ Loc. cit.

Last but not least, the protection of the integrity of PWD should be seriously taken into consideration in order to tackle disablist hate speech. As it is written in Article 17 of the CRPD: *“Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.”*¹⁶¹

¹⁶¹ “Convention on the Rights of Persons with Disabilities”, opened for signature March 30, 2007, art. 17, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 2515, no. 44910 (2008): 13, https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf.

3.5. Sexism

*“Of all the evils for which man has made himself responsible, none is so degrading, so shocking or so brutal as his abuse of the better half of humanity; the female sex.”*¹⁶²

~ Mahatma Gandhi ~

Sexism can be understood as *“the ideology and practice of relegating women to a lower rung on the social hierarchy than men simply by virtue of their femaleness”*.¹⁶³ Despite the fact that its roots are unidentified, sexism came to the surface already from the “second-wave” feminism of the 1960s through the ’80s. Sexism is based on the perception of the superiority of the one sex to another sex. It poses certain limits regarding a male’s or a female’s “expected” actions by the society. Sexism was established in order to raise awareness when it comes to the male oppression towards women.¹⁶⁴

The term sexism is correlated with that of “gender or sex stereotyping”. It is an undeniable fact that stereotyping impedes the accomplishment of real gender equality and intensifies gender discrimination. According to the CoE, it *“can limit the development of the natural talents and abilities of boys and girls, women and men, their educational and professional experiences as well as life opportunities in general”*.¹⁶⁵ Stereotypes against women are a product of deeply rooted perceptions regarding the attitudes, values, norms and prejudices against women. They are used to support and consolidate the historical unequal relations of power between women and men. Thus, sexist attitudes hold back the female progress.¹⁶⁶

Historically, sexism has been mostly applied against women and girls with the scope to enhance the notions of “patriarchy” and “male domination”. This kind of oppression often leads to economic exploitation and social domination. It is obvious that *“sexist behaviors, conditions, and attitudes perpetuate stereotypes of social (gender) roles based on one’s biological sex”*.¹⁶⁷ “Fixed” gender roles are attributed to both males and females. It is believed that women represent the “weaker sex” and, as a result, they are “not as capable as men”. It is thought that women are destined for the domestic sphere and, consequently, they do not possess leadership skills. Even

¹⁶² “Mahatma Gandhi”, Goodreads, accessed February 5, 2020, <https://www.goodreads.com/quotes/593503-of-all-the-evils-for-which-man-has-made-himself>.

¹⁶³ Donna L. Lillian, A thorn by any other Name: Sexist Discourse as Hate Speech, *Discourse and Society* 18, no. 6 (2007): 720, doi: <https://journals.sagepub.com/doi/pdf/10.1177/0957926507082193>.

¹⁶⁴ Gina Masequesmay, “Sexism”, Encyclopedia Britannica, last modified March 7, 2019, <https://www.britannica.com/topic/sexism>.

¹⁶⁵ “Combating Gender Stereotypes and Sexism”, Council of Europe, accessed February 5, 2020, <https://www.coe.int/en/web/genderequality/gender-stereotypes-and-sexism>.

¹⁶⁶ Loc. cit.

¹⁶⁷ Gina Masequesmay, “Sexism”, Encyclopedia Britannica, last modified March 7, 2019, <https://www.britannica.com/topic/sexism>.

though women are perceived to be excellent caretakers, their roles are underestimated in contrast with men's work.¹⁶⁸

Misogyny constitutes an extreme form of sexism. Misogyny can simply be explained as the hatred towards women. A society in which misogyny is prevalent has high rates of brutality against women. For instance, there are extreme forms of domestic violence, rape, and the commodification of women and their bodies. In this case, women are viewed as “*property or as second-class citizens*”.¹⁶⁹ They are often mistreated not only at an individual, but also at an institutional level. For example, a woman who has been raped (the individual or personal level) might be told by a judge and jury (the institutional level) that she was responsible due to the way she was dressed.¹⁷⁰

As it is reported by UN Women, in 143 out of 195 States gender equality is ensured in their constitutions. Still, female discrimination is prevalent in many domains, both directly and indirectly, via laws and policies, gender-based stereotypes as well as social norms and practices. Gender equality before the law does not automatically mean that, practically, women can enjoy equal rights with men. It is important to note that women are not part of a homogeneous group and they do not encounter discrimination in the same way. They are likely to experience multiple and often intersecting forms of discrimination. To illustrate, they may face discrimination in terms of age, religion, place of birth or residence, social or economic status, race and ethnicity, disability, sexual orientation, etc.¹⁷¹

Besides, there is a huge gender gap in the economic and political sphere. Even though remarkable progress has been made in this day and age, on average women's wages are 24% less than those of men worldwide. In 2015, only 22% of all national parliamentarians were female indicating, thus, a slow increase from 11.3% in 1995.¹⁷²

Women's right to equality in every domain is incontestable. Thus, it must be one of the top priorities in every legal system worldwide. It goes with saying that the achievement of gender equality and the empowerment of all women and girls are part of the Sustainable Development Goals (SDGs) which were introduced by the UN. Women have an integral role to play in the society as every aspect of life is associated with gender equality. This is why efforts must be made so that gender discrimination will cease to exist.¹⁷³

¹⁶⁸ Loc. cit.

¹⁶⁹ Loc. cit.

¹⁷⁰ Loc. cit.

¹⁷¹ “Infographic: Human Rights of Women”, UN Women, last modified December 8, 2020, <https://www.unwomen.org/en/digital-library/multimedia/2015/12/infographic-human-rights-women>.

¹⁷² *Women and Sustainable Development Goals* (Nairobi: UN Women, 2016), 12, <https://sustainabledevelopment.un.org/content/documents/2322UN%20Women%20Analysis%20on%20Women%20and%20SDGs.pdf>.

¹⁷³ *Women and Sustainable Development Goals* (Nairobi: UN Women, 2016), 12-13, <https://sustainabledevelopment.un.org/content/documents/2322UN%20Women%20Analysis%20on%20Women%20and%20SDGs.pdf>.

3.6. Sexist Hate Speech

Sexist hate speech can be defined as “*a form of violence against women and girls that perpetuates and exacerbates gender inequality*”.¹⁷⁴ It occurs both online and offline and in all social settings. Indeed, sexist hate speech is very much likely to occur at school, in family and social circles, in the public space, at work, via emails, websites and (social) media. Nowadays, this form of hate speech has taken new dimensions throughout the use of technology. Yet, the root causes of sexist hate speech preceded the technology and are fundamentally linked to the persistent unequal power relations between women and men.¹⁷⁵

It constitutes a form of sexism and it is viewed as “*any supposition, belief, assertion, gesture or act that is aimed at expressing contempt towards a person, based on his/her sex or gender, or to consider that person as inferior or essentially reduced to her or his sexual dimension*”.¹⁷⁶ Sexist hate speech includes expressions aiming at spreading, inciting, promoting or justifying hatred based on sex. It is a remarkable fact that sexist hate speech is often under-reported.¹⁷⁷

Young women happen to be regular victims of sexist hate speech. They are afflicted by it in various settings. Female public figures, such as politicians, observe that the hate speech they face is multiplied due to their public status. Similarly, female journalists and bloggers are notable victims of both online or offline violence and hate speech. They are subjected to sexist hate speech not only from the public but also from their professional settings. Women’s rights defenders receive more attacks than male human rights activists. One frequent situation of sexist hate speech occurs “*when women stand against discriminatory or traditional cultural and religious beliefs or customs*”.¹⁷⁸ Another particular platform through which sexist hate speech could take place is that of video games. Indeed, it is a very common fact that female players are frequent victims of abuse and misogyny.¹⁷⁹

Lee et al. present three forms of sexist hate speech: (a) sexist hate speech in the form of an expression or opinion, (b) sexist hate speech which constitutes disparagement or insult and (c) sexist hate speech amounting to violence or incitement. In the first case, expression of opinion can be determined as “*an expression of hatred against women, the women’s movement, and/or women’s policies that contains hate words targeting specific gender groups but does not directly target or violate the rights of certain individuals or groups or incite violence*”.¹⁸⁰ The second

¹⁷⁴ *Combating Sexist Hate Speech: Council of Europe Gender Equality Strategy* (Strasbourg: Council of Europe, 2016), 2, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592>.

¹⁷⁵ Loc. cit.

¹⁷⁶ Loc. cit.

¹⁷⁷ Loc. cit.

¹⁷⁸ *Combating Sexist Hate Speech: Council of Europe Gender Equality Strategy* (Strasbourg: Council of Europe, 2016), 4, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592>.

¹⁷⁹ Loc. cit.

¹⁸⁰ Sooyeon Lee et al., *Measures for Institutional Responses against Sexist Hate Speech* (Seoul: Korean Women’s Development Institute, 2019), 18, http://webcache.googleusercontent.com/search?q=cache:y_4uE3PBkogJ:eng.kwdi.re.kr/inc/download.do%3Fut%3D

case contains hate words towards a particular gender with the intention to denigrate specific groups of people on the grounds of gender stereotypes. Examples include posts aiming either at the sexual objectification of women or at the humiliation of particular women.¹⁸¹ The third case, however, includes instances of “*sexist hate speech amounting to violence or incitement, shared expressions of incitement to severe violence against women with certain perspectives of national security or radical ideologies*”.¹⁸² Phrases like: “Go beat them up” or “They should be raped” are instances of such category.¹⁸³

There is no denying that the startling rise of the Internet and social media has led to an alarming number of instances of sexist hate speech.¹⁸⁴ Online hate speech against women is considered to be a form of Gender-Based Violence (GBV).¹⁸⁵ The UN Committee on the Elimination of All Forms of Discrimination against Women General Recommendation 19 describes GBV as “*violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty*”.¹⁸⁶ GBV is apparently a serious human rights violation since “*it denies the human dignity of the individual and hurts human development*”.¹⁸⁷ Similarly to offline settings, women, and especially those women possessing intersecting identities and vulnerabilities, face an online continuum of aggressions which varies from undesirable sexual advances, sexist and/or racist (e.g. homophobic) insults, to frequent, harmful, frightening, occasionally life-threatening abuse.¹⁸⁸ As with offline sexist hate speech, the online one might also take the following forms: victim blaming and re-victimization; “slut-shaming”; body-shaming; “revenge porn” (the dissemination of explicit or sexual images without consent); brutal and sexualized threats of death, rape and violence; offensive comments on appearance, sexuality, sexual orientation or gender roles; as well as false compliments or supposed jokes, using humor to humiliate and ridicule the victim.¹⁸⁹ Additionally, the UN Human Rights Council has reported that “*the Internet has become a site of diverse forms of violence against women, in the form of pornography, sexist games and breaches of privacy. For women*

[A%26upIdx%3D102439%26no%3D1+%&cd=2&hl=en&ct=clnk&gl=gr.](#)

¹⁸¹ Loc. cit.

¹⁸² Lee et al., *Measures for Institutional Responses*, op. cit., 19,

[http://webcache.googleusercontent.com/search?q=cache:y_4uE3PBkogJ:eng.kwdi.re.kr/inc/download.do%3Fut%3DA%26upIdx%3D102439%26no%3D1+%&cd=2&hl=en&ct=clnk&gl=gr.](http://webcache.googleusercontent.com/search?q=cache:y_4uE3PBkogJ:eng.kwdi.re.kr/inc/download.do%3Fut%3DA%26upIdx%3D102439%26no%3D1+%&cd=2&hl=en&ct=clnk&gl=gr)

¹⁸³ Loc. cit.

¹⁸⁴ “Combating Sexist Hate Speech”, Council of Europe, accessed February 5, 2020,

[https://www.coe.int/en/web/genderequality/sexist-hate-speech.](https://www.coe.int/en/web/genderequality/sexist-hate-speech)

¹⁸⁵ Adriane Van Der Wilk, *Cyber Violence and Hate Speech Online against Women: Women’s Rights and Gender Equality* (European Union: European Parliament, 2018), 11,

[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU\(2018\)604979_EN.pdf.](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU(2018)604979_EN.pdf)

¹⁸⁶ “General Recommendations Made by the Committee on the Elimination of Discrimination against Women”, UN Women, accessed February 5, 2020,

[https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19.](https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19)

¹⁸⁷ “Sexual and Gender-Based Violence”, UNHCR: The UN Refugee Agency, accessed February 5, 2020,

[https://www.unhcr.org/sexual-and-gender-based-violence.html.](https://www.unhcr.org/sexual-and-gender-based-violence.html)

¹⁸⁸ Van Der Wilk, *Cyber Violence*, op. cit., 20.

¹⁸⁹ *Combating Sexist Hate Speech: Council of Europe Gender Equality Strategy* (Strasbourg: Council of Europe, 2016), 3,

[https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592.](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592)

who engage in public debate through the Internet, the risk of harassment is experienced online, for example, an anonymous negative campaign calling for the gang rape of a woman human rights defender, with racist abuse posted in her Wikipedia profile".¹⁹⁰ This is clearly illustrated by a study of the prevalence of threatening messages sent to online accounts which was carried out by researchers in the University of Maryland. This study revealed that accounts with female usernames received approximately 100 sexually explicit or threatening messages daily whereas user accounts operated by males merely received, on average, 3.7 such messages on a daily basis.¹⁹¹

The seriousness and potential harm of sexist hate speech is usually neglected and “women are explicitly or implicitly told to bear with it”.¹⁹² Nevertheless, sexist hate speech truly undermines freedom of speech for women and girls. To make matters worse, its psychological, emotional and/or physical consequences may prove to be highly damaging. Sexist hate speech aims at humiliating or objectifying women, undervaluing their skills and opinions, destroying their reputation, making them feel vulnerable and fearful, and controlling and punishing them for not following specific behavioral patterns. Sexist hate speech has the power of imposing women to be silent, adapting their behavior and restricting their movements and participation in various human activities.¹⁹³ Another important aspect that must be considered is that women can also experience sexist hate speech through video games. Without doubt, female players are often victims of abuse and misogyny via these platforms.

In retrospect, it remains unquestionable that sexist hate speech constitutes an escalating and underestimating problem which needs to be effectively confronted. It is every State’s duty to fight against it with great decisiveness. Appropriate legal and political measures shall be taken so as to strictly condemn it and prosecute the perpetrators. Violent discourse against women is not characteristic of a democratic society; hence under no circumstances should it be condoned.¹⁹⁴

¹⁹⁰ United Nations General Assembly, *Report of the Working Group on The Issue of Discrimination against Women in Law and in Practice* (Geneva: Human Rights Council, 2018), 15, <https://reliefweb.int/sites/reliefweb.int/files/resources/G1813285.pdf>.

¹⁹¹ Jamie Bartlett et al., *Misogyny on Twitter* (London: Demos, 2014), 3, https://www.demos.co.uk/files/MISOGYNY_ON_TWITTER.pdf.

¹⁹² *Combatting Sexist Hate Speech: Council of Europe Gender Equality Strategy* (Strasbourg: Council of Europe, 2016), 6, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592>.

¹⁹³ Loc. cit.

¹⁹⁴ “Hate Speech against Women Should Be Specifically Tackled”, Council of Europe, last modified March 6, 2014, <https://www.coe.int/en/web/commissioner/-/hate-speech-against-women-should-be-specifically-tackl-1>.

3.7. *The case of Malala Yousafzai*

Malala Yousafzai is a young Pakistani activist for female education. She was born on July 12, 1997, in Mingora, Pakistan, and she is currently a student of Philosophy, Politics and Economics at the University of Oxford.¹⁹⁵ Yousafzai developed a strong passion for knowledge already from a very young age.¹⁹⁶ Her father, Ziauddin Yousafzai, ran a girls' school in the region and, for this reason, he strongly supported his daughter's right to education. During 2012, Yousafzai spoke out in public for the girls' right to education. However, this made her a target. On her way home after the speech, she was shot on the left side of her head by a member of the Taliban. She was, then, transferred to a hospital in the United Kingdom in order to recover. After undergoing multiple surgeries and rehabilitation for a long period of time, she stayed in the United Kingdom with her family. However, she did not give up fighting for the girls' right to education. Yousafzai and her father established Malala Fund; a charity committed to empowering girls to achieve their potential.¹⁹⁷ As a reward, she received the Nobel Peace Prize in 2014 along with the Indian children's right activist Kailash Satyarthi. At the age of 17, she was the youngest Nobel Peace Prize laureate in history.¹⁹⁸ Consequently, this made Malala Yousafzai a prominent figure regarding the advocacy of the girls' right to education worldwide.

At the other end of the spectrum, not everyone praises Yousafzai for her initiatives. Evidently, she has been a target of sexist hate speech by many critics. One case in point is when she expressed her concern for Kashmiri residents and girls who have a strong fear of leaving their homes. Throughout a considerable number of Tweets, Yousafzai reported that certain Kashmiris had approached her and narrated her their stories. She then tried to seek help from the UN General Assembly to establish peace in Kashmir, and help children restart school. Her statements were characterized as hypocritical by Indians and received a strong criticism with the claim that they were representing more of a "Pakistani agenda" that ignored other Muslim States that experienced atrocities. Such tweets were also launched by sports personalities, celebrities and politicians. The Indian athlete Heena Sidhu snapped at Yousafzai for her statements and questioned her for abandoning Pakistan. More specifically, Sidhu wrote: "*Ok, so you propose handing over Kashmir to Pakistan because over there girls like yourself have had tooooo good of an education that you nearly lost your life and ran away from your country never to return. Why don't you show us by going back to Pakistan first?*". At the same time, there were some Indians who accused Yousafzai of defaming the country while others accused her of disseminating fake news. In order to support their argument, they characteristically claimed that a Kashmiri schoolgirl missed her examination in August.¹⁹⁹

¹⁹⁵ "Malala's Story", Malala Fund, accessed February 5, 2020, <https://malala.org/malalas-story>.

¹⁹⁶ "Malala Yousafzai Biographical", The Nobel Prize, accessed February 5, 2020, <https://www.nobelprize.org/prizes/peace/2014/yousafzai/biographical/>.

¹⁹⁷ "Malala's Story", Malala Fund, accessed February 5, 2020, <https://malala.org/malalas-story>.

¹⁹⁸ "Malala Yousafzai Biographical", The Nobel Prize, accessed February 5, 2020, <https://www.nobelprize.org/prizes/peace/2014/yousafzai/biographical/>.

¹⁹⁹ "Indians Unhappy with Malala Yousafzai's Tweets about Kashmir, Slam Activist for Spreading "Pakistani Agenda", The Economic Times, last modified September 16, 2020,

Moreover, many Pakistani Twitter users characterized her as “shameful and traitorous”. Some even stated that *“there’s nothing special about Malala. Many Pakistani children suffer worse fates than Malala. What has Malala ever done for Pakistan? Why does the world love Malala so much? And if Malala really cares about Pakistan, why doesn’t she come back?”* There has also been an extraordinary but common conspiracy theory that Yousafzai’s shooting was staged. Unfortunately, despite the fact that this girl is praised by many abroad, she is deeply scorned by many in Pakistan, including middle-class people.²⁰⁰

Furthermore, many Pakistanis have expressed their strong disapproval of Yousafzai through media interviews. This kind of disapproval sometimes tends to be more organized. In particular, just a month after the girl received the Nobel Peace Prize, the All Pakistan Private Schools Federation declared an “I Am Not Malala” day and called for her memoir, “I Am Malala”, to be boycotted. Hostile attitudes emerge from her own community as well. In 2013, the website of *Dawn*, a Pakistani newspaper aimed at the country’s English-speaking, well-educated elite, launched a strongly satirical blog post on Yousafzai’s shooting. It claimed that a CIA mission orchestrated her shooting. Many other people embrace these ideas as well. These include prominent figures of the political sphere, and even Pakistani-Americans. A young, well-educated Pakistani immigrant falsely reported that it was the CIA and not the Taliban that shot Yousafzai.²⁰¹ Not a few people did they accuse her for *“bringing shame to her country, trading in Pakistan’s name for personal fame and wealth”* because of that.²⁰²

To recapitulate, many people would wonder why there is so much hatred against Malala Yousafzai. Obviously, misogyny is the best answer to this question. Perhaps it is also the sincerest one. Malala Yousafzai portrays everything that is unacceptable in a patriarchal society: a woman who speaks up for herself. An individual who does not cease to fight for her gender’s rights, and who, after a murder attempt against her, continued struggling for a better society for women.²⁰³

https://economictimes.indiatimes.com/magazines/panache/indians-unhappy-with-malala-yousafzais-tweets-about-kashmir-slam-activist-for-spreading-pakistani-agenda/articleshow/71143599.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

²⁰⁰ Michael Kugelman, “Why Pakistan Hates Malala”, *Foreign Policy*, last modified August 15, 2017, <https://foreignpolicy.com/2017/08/15/why-pakistan-hates-malala/>.

²⁰¹ Loc. cit.

²⁰² Asad Hashmim, “Why Do They Hate Malala So Much?”, *The Jakarta Post*, last modified April 5, 2018, <https://www.thejakartapost.com/academia/2018/04/04/why-do-they-hate-malala-so-much.html>.

²⁰³ Loc. cit.

3.8. Sexist Hate Speech: International Law Protecting Mechanisms

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a key international legal instrument which promises the full protection of women's right to non-discrimination. According to the CEDAW, discrimination against women is described as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.²⁰⁴ The right to non-discrimination is fundamental in countering sexist hate speech, which constitutes one of the gravest discriminatory forms. As it is written in Article 2, “States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”.²⁰⁵ As a result, it is an undeniable fact that gender equality constitutes one of the basic mandates of the UN.²⁰⁶

Without a doubt, this Convention lays the foundations for equality between the two sexes. To put it another way, it guarantees the right to gender equality. The CEDAW was adopted by the General Assembly in 1979 by votes of 130 to none and 10 abstentions. It was open for signature on March 1, 1980, and it entered into force on September 3, 1981. It was the first Convention that entered into force faster than any other human rights treaty had done so. Therefore, this was a turning point for the UN efforts “to codify comprehensively international legal standards for women”.²⁰⁷ The CEDAW has 99 Signatories while its States parties are 189. Argentina, Australia, Austria, Greece, Italy and Hungary are among the 99 Signatories. Also, it is remarkable to note that Greece and Cyprus have ratified not only the Convention, but also its Optional Protocol.

Furthermore, the UN Committee on the Elimination of Discrimination against Women, which was established in 1982, comprises 23 experts on matters regarding women worldwide. The Committee's duty is to supervise the progress for women made in those countries that are the States parties to the 1979 CEDAW. It is essential to mention that “a country becomes a State party by ratifying or acceding to the Convention and thereby accepting a legal obligation to counteract discrimination against women”.²⁰⁸ The Committee has a monitoring role in implementing

²⁰⁴ “Convention on the Elimination of All Forms of Discrimination against Women”, opened for signature March 1, 1980, art. 1, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 1249, no. 20378 (1981): 16, <https://treaties.un.org/doc/Publication/UNTS/Volume%201249/v1249.pdf>.

²⁰⁵ “Convention on the Elimination of All Forms of Discrimination against Women”, opened for signature March 1, 1980, art. 2, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 1249, no. 20378 (1981): 16, <https://treaties.un.org/doc/Publication/UNTS/Volume%201249/v1249.pdf>.

²⁰⁶ “Convention on the Elimination of All Forms of Discrimination against Women: Short History of CEDAW Convention”, UN Women, accessed February 5, 2020, <https://www.un.org/womenwatch/daw/cedaw/history.htm>.

²⁰⁷ Loc. cit.

²⁰⁸ “Convention on the Elimination of All Forms of Discrimination against Women: Committee on the Elimination of Discrimination against Women”, UN Women, accessed February 5, 2020, <https://www.un.org/womenwatch/daw/cedaw/committee.htm>.

national measures to perform this duty. What is more, another duty of the Committee is to make recommendations on any matter affecting women to which it believes the States parties should pay a closer attention.²⁰⁹ As Article 21 of the CEDAW points out, “*the Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties*” and “*the Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information*”.²¹⁰

Finally, the UDHR is one of the basic international law instruments which can also include the protection of the rights of both sexes. Article 7 of the Declaration highlights that “*all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*”.²¹¹ Besides, the ICESCR and the ICCPR explicitly mention that the rights set forth pertain to every person without any distinction whatsoever by putting forth sex as such an element of impermissible distinction. In particular, Articles 2(2) and 26 of the ICESCR and the ICCPR respectively underline that “*the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”.²¹² However, the UN CEDAW constitutes a more explicit international law protecting mechanism which guarantees the full protection of the rights of women given that “*humanity proved insufficient to guarantee them the enjoyment of their internationally agreed rights*”.²¹³

²⁰⁹ Loc. cit.

²¹⁰ “Convention on the Elimination of All Forms of Discrimination against Women”, opened for signature March 1, 1980, art. 21, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 1249, no. 20378 (1981): 22, <https://treaties.un.org/doc/Publication/UNTS/Volume%201249/v1249.pdf>.

²¹¹ UN General Assembly, *Universal Declaration of Human Rights*, adopted on 10 December 1948, art. 7, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

²¹² “International Covenant on Economic, Social and Cultural Rights”, opened for signature December 16, 1966, art. 2(2), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 993, no. 14531 (1976): 2, https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf.

²¹³ “Convention on the Elimination of All Forms of Discrimination against Women: Short History of CEDAW Convention”, UN Women, accessed February 5, 2020, <https://www.un.org/womenwatch/daw/cedaw/history.htm>.

3.9. The LGBTI

It is widely known that the abbreviation LGBTI stands for Lesbian, Gay, Bisexual, Transgender and Intersex. The initials “LGB” are connected to sexual orientation. The American Psychological Association (APA) describes sexual orientation as “*an often-enduring pattern of emotional, romantic and/or sexual attractions of men to women or women to men (heterosexual), of women to women or men to men (homosexual), or by men or women to both sexes (bisexual). It also refers to an individual’s sense of personal and social identity based on those attractions, related behaviors and membership in a community of others who share those attractions and behaviors*”.²¹⁴ Some people who are attracted to the same sex may identify themselves as “queer,” or, due to several reasons of personal, social or political nature, may decide not to self-identify with these or any characterizations.²¹⁵

As for “T”, this stands for transgender (or simply trans). Amnesty International defines transgender people as those “*individuals whose gender identity or gender expression is different from typical expectations of the gender they were assigned at birth*”.²¹⁶ However, not all transgender individuals identify as male or female. In fact, there are those who identify as more than one gender or no gender at all. Certain trans people undergo transition, which is the gradual process of the acquisition of their true gender. No transitioning process is single-sided. Some individuals are likely to adopt new pronouns, change their name, ask for a legal gender recognition, and/or choose a gender affirming surgery or hormone therapy. Being transgender is not related at all to one’s sexual orientation. For instance, a trans man might be gay or a trans woman might be a lesbian. At this point, it is interesting to note that, in certain States, transgender individuals can obtain a legal recognition of their gender. Most of the times, however, they must encounter a series of humiliating processes, such as receiving a psychiatric diagnosis and undergoing irreversible sterilization, which is apparently a violation of their human rights. There are only seven States which do not follow such processes: Argentina, Belgium, Colombia, Denmark, Ireland, Malta and Norway.²¹⁷

The term “intersex” refers to people who are born with sex characteristics which are distinct from what is usually perceived as female or male. One typical example of this is when a person possesses both male and female characteristics. Another case is where a person’s chromosomal make-up can neither be identified as male nor as female. Such characteristics may be acquired by birth or become more apparent during or after adolescence. A considerable number of intersex individuals undergo invasive, non-emergency and irreversible “normalizing” surgeries, usually during childhood or maybe later. Sadly, these procedures have a detrimental effect on people as it leaves them with everlasting physical or mental problems.²¹⁸

²¹⁴ “Lesbian, Gay, Bisexual, Transgender”, American Psychological Association, accessed February 5, 2020, <https://www.apa.org/topics/lgbt/>.

²¹⁵ Loc. cit.

²¹⁶ “LGBTI Rights”, Amnesty International, accessed February 5, 2020, <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/>.

²¹⁷ Loc. cit.

²¹⁸ Loc. cit.

Nowadays, there has been a great deal of controversy about same-sex marriage. Evidence has shown that there are only 27 States which have legalized it. These States include, inter alia, Argentina, Canada, Ireland, Malta, South Africa and Uruguay.²¹⁹ Greece and Cyprus do not belong to those 27 States that have legalized same-sex marriage. Nevertheless, both of them have recognized same-sex civil unions since December 2015.²²⁰

At the other extreme, engaging in sexual intercourse with a same-sex partner constitutes an illegal act in 70 States. For example, in Bangladesh, Barbados, Guyana, Sierra Leone, Qatar, Uganda and Zambia, one could receive life sentence in prison by doing so. Also, Afghanistan, Brunei, Iran, Iraq, Mauritania, Pakistan, Saudi Arabia, Sudan and Yemen have imposed the death penalty to those engaging in homosexuality.²²¹ According to the Sharia Law, homosexuality constitutes the most despicable act under the Holy Quran and, consequently, *“this highlights the fact that such sexual acts are a crime”*.²²² Moreover, it is clearly stated that *“if two men (or two women) are guilty of lewdness, give them suitable punishment”*²²³ and *“those two men who commit such shameful act, should be suitably punished. The word in this verse is a masculine gender (i.e. two men) but by deduction it can also be ‘two women’ ”*.²²⁴

Lastly, one of the most notable phenomena today is the celebration of “Pride”. The term “Pride” describes a series of festivals which may include gatherings, or even parades, floats and parties. This celebration concerns the LGBTI population. LGBTI individuals publicly claim their right to inherent dignity - a core right for every human being – as well as their right to an open manifestation of their sexual identity. During the celebration of “Pride”, the LGBTI community openly celebrates its culture and diversity. In parallel, “Pride” also constitutes a form of claiming one’s rights on behalf of such a vulnerable social group as is the LGBTI. Its main goal is to exterminate all these negative stereotypes which are tangled in the minds and practices of many people.²²⁵ “Pride” is celebrated in many parts of the world, including Greece and Cyprus. Undoubtedly, this celebration could be seen as a ray of hope for the full and equal recognition of the LGBTI rights.

²¹⁹ Loc. cit.

²²⁰ “Same-Sex Marriage: Global Comparisons”, Council of Foreign Relations, last modified October 29, 2019, <https://www.cfr.org/backgrounders/same-sex-marriage-global-comparisons>.

²²¹ “LGBTI Rights”, Amnesty International, accessed February 5, 2020, <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/>.

²²² *Islamic Sharia Law Based on Quran, Sunnah and Ijtihad*, 66, http://www.islamic-laws.com/download/Islaamic_Sharia_Law_sunni.pdf.

²²³ Loc. cit.

²²⁴ Loc. cit.

²²⁵ “Σχετικά με το Pride”, Thessaloniki Pride, accessed February 5, 2020, <https://thessalonikipride.com/sxetika-me-to-pride/>.

3.10. The LGBTI and Hate Speech

Homosexuals - and generally the whole LGBTI community - are undoubtedly perceived as one of the most popular groups afflicted by hate speech. LGBTI - phobic hate speech could be defined as the “*violence and speech and/or aggression towards LGTBI people due to their actual or perceived sexual orientation, gender identity and/or sex characteristics*”.²²⁶

LGBTI individuals belong to one of the groups which have been subjected to expressions of hostility from law enforcement institutions throughout history. Although this situation has improved significantly in certain states, there is still “*a lack of mutual trust and confidence between LGBTI victims and law enforcement authorities*” in others. These are partly attributed to the fact that a great deal of LGTBI-phobic crimes remains under-reported.²²⁷ As it is confirmed by a 2012 FRA survey, 50% of all victims of violence and harassment considered that the authorities would ignore them.²²⁸ Reporting LGTBI- phobic crimes happens to be risky as well as LGBTI individuals are afraid of disclosing one's sexual orientation, gender identity and/or gender expression. Consequently, these lead to the under - reporting of LGBTI crimes.

It is a commonly held belief that there had been serious outbreaks of violence and hate towards LGTBI people throughout the centuries. As it is depicted in the same FRA survey of 2012, more than 1 of 4 LGBTI people has been subjected to violent threats within the last five years.²²⁹ For instance, a homosexual man from Belgium characteristically reported: “*My situations of harassment/discrimination/violence are mainly random acts of verbal aggression. They were from unknown people on the street, mostly at night, mostly youngsters, mostly of a non-native European ethnic background. The situation is worse now than it was, for example, four years ago.*”²³⁰

It is a general truth that hate speech against the LGTBI community opt for undermining the dignity and value of the individual. Similarly, it conveys negative messages at the expense of the LGBTI communities along with their supporters and the society as a whole. In other words, it implies that the LGBTI people are not entitled to be recognized, respected and equal. This situation also attempts to make attacks on LGBTI members legitimate.²³¹

There has not been any systematic monitoring, documenting and data collection of hate and violence towards LGTBI individuals. However, the FRA's 2012 survey confirmed the universality of the nature of such a problem.²³² As a matter of fact, 26% of LGTB people had

²²⁶ “Hate Crime & Hate Speech”, ILGA Europe, accessed February 5, <https://www.ilga-europe.org/what-we-do/our-advocacy-work/hate-crime-hate-speech>.

²²⁷ Loc. cit.

²²⁸ *EU LGBT Survey: European Union Lesbian, Gay, Bisexual and Transgender Survey* (Luxembourg: European Union Agency for Fundamental Rights, 2014), 26, https://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results_tk3113640enc_1.pdf.

²²⁹ *EU LGBT Survey*, op. cit., 22-23.

²³⁰ *EU LGBT Survey*, op. cit., 23.

²³¹ “Hate Crime & Hate Speech”, ILGA Europe, accessed February 5, <https://www.ilga-europe.org/what-we-do/our-advocacy-work/hate-crime-hate-speech>.

²³² Loc. cit.

experienced violent threats and attacks over the past five years while 66% of respondents residing in EU Member States hesitated to publicly hold hands with their same-sex partner.²³³

Furthermore, as it has already been mentioned in the previous section, homosexuality constitutes the most gruesome act according to the Sharia Law. Obviously, this is an undeniable sign of hate speech towards LGBTI people.

What is more, the high prevalence of online hate speech has also been discussed in the present dissertation. Not surprisingly, the LGBTI are not an exception to this case. This is clearly illustrated by the fact that the LGBTI youth in the United States is five times more likely to commit suicide attempts than the heterosexual youth owing to the growing number of hateful messages in social media. Apparently, this practice leads the LGBTI youth to isolation, depression and suicidal tendencies. Indeed, studies have shown the “devastating effects” of online hate speech towards the LGBTI community.²³⁴

Finally, a national LGBTI report submitted by Serbia stressed that *“although hate speech is prohibited by legislation, and suppression of hate speech is among the strategic antidiscrimination priorities of the Government, it remains widespread – particularly in the run up to Pride Parades”*.²³⁵ As a matter of fact, the European Commission has repeatedly highlighted in its Progress Reports that LGBTI individuals in Serbia are frequent victims of hate speech and threatening comments. Hate speech and threats are usually disseminated through the media, social networks and the Internet, and in graffiti. Hate speech is prevalent in readers’ comments on websites including acute statements like threats, and in reality TV shows. Political figures have also breached legislations banning hate speech, despite the fact that, recently, a member of the parliament was dismissed from examination due to parliamentary immunity.²³⁶

In a nutshell, LGBTI individuals are considered to be an easy prey for hate speech in society. Homophobic speech is used worldwide with the intention to denigrate the human dignity of the LGBTI individual. Notwithstanding, it is high time that LGBTI hate speech came to an end. In the words of the UN Rights Chief, Michele Bachelet, *“we need to fight strongly against it (LGBTI discrimination) because it’s undermining people’s dignity, people’s possibilities, and people’s lives.”*²³⁷

²³³ *EU LGBT Survey*, op. cit., 24-25.

²³⁴ “Hate Speech in the Digital World a ‘Critical Obstacle for LGBTI People’: UN’s Bachelet”, UN News, last modified September 24, 2019, <https://news.un.org/en/story/2019/09/1047322>.

²³⁵ *Being LGBTI in Eastern Europe: Serbia Country Report* (Serbia: UNDP Europe and Central Asia, 2017), 16, https://www.eurasia.undp.org/content/rbec/en/home/library/democratic_governance/being-lgbti-in-eastern-europe--albania-country-report.html?cq_ck=1511872189984.

²³⁶ Loc. cit.

²³⁷ “Hate Speech in the Digital World a ‘Critical Obstacle for LGBTI People’: UN’s Bachelet”, UN News, last modified September 24, 2019, <https://news.un.org/en/story/2019/09/1047322>.

3.11. The case of Section 28

Section 28, which was part of the Local Government Act 1988, was introduced by the former UK's Prime Minister, Margaret Thatcher, and her Conservative Government. This clause prohibited the “promotion” of homosexuality by local authorities and in schools throughout Britain. More specifically, this clause implied that teachers were strictly forbidden to touch upon the possibility of a homosexual relationship with students.²³⁸ It was underlined that:

“A local authority shall not— by teaching or by promoting:

(a) Intentionally promote homosexuality or publish publishing material with the intention of promoting material.

*(b) Promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship”.*²³⁹

At the same time, Councils were not allowed to provide libraries with literature or films with gay or lesbian content. As a result, young people were forced to search elsewhere for educational material.²⁴⁰

LGBTI activists launched a series of complaints against Thatcher's legislation. One remarkable movement was the storming of BBC on 23 May 1998, when activists handcuffed themselves to a TV camera and disrupted the broadcast of certain TV programs. Also, a march of protest against Section 28 took place with more than 20.000 people participating. Also, the actor Ian McKellen expressed for the first time his opposition in public.²⁴¹

Thatcher declared her opposition towards gay rights at the 1987 Conservative Party in Blackpool and she was the one to introduce the first new homophobic law in a century.²⁴² She characteristically claimed that:

*“Children who need to be taught to respect traditional moral values are being taught that they have an inalienable right to be gay” and “all those children are being cheated of a sound start in life”.*²⁴³

It can be conceded that Section 28 had a dramatic impact on the British LGBTI community. For instance, the Scottish Executive Central Research Unit had issued a study which concluded that homosexual men residing in Edinburgh were faced with considerable discrimination,

²³⁸ Joe Sommerland, “Section 28: What was Margaret Thatcher’s Controversial Law and How Did It Affect the Lives of the LGBT+ People?”, The Independent, last modified May 24, 2018, <https://www.independent.co.uk/news/uk/politics/section-28-explained-lgbt-education-schools-homosexuality-gay-queer-margaret-thatcher-a8366741.html>.

²³⁹ *Local Government Act 1988* (London: HMSO, 1995), 27, http://www.legislation.gov.uk/ukpga/1988/9/pdfs/ukpga_19880009_en.pdf.

²⁴⁰ Joe Sommerland, “Section 28: What was Margaret Thatcher’s Controversial Law and How Did It Affect the Lives of the LGBT+ People?”, The Independent, last modified May 24, 2018, <https://www.independent.co.uk/news/uk/politics/section-28-explained-lgbt-education-schools-homosexuality-gay-queer-margaret-thatcher-a8366741.html>.

²⁴¹ Loc. cit.

²⁴² Loc. cit.

²⁴³ Harvey Day, “Section 28: What was it and how did it affect LGBT+ people?”, BBC, last modified November 1, 2019, <https://www.bbc.co.uk/bbcthree/article/cacc0b40-c3a4-473b-86cc-11863c0b3f30>.

harassment and violence because of their sexual orientation.²⁴⁴ Discrimination and bullying in educational settings and in the workplace had been a highly frequent phenomenon. Moreover, according to a study funded by Glasgow City Council, indicated that the majority of the respondents had first been victims of “*overt forms of social exclusion based on homophobia at school*”.²⁴⁵

On the other hand, as it was reported in a 1997 survey conducted by the University of London, 82% of the schools surveyed were aware of verbal homophobic bullying and 26% were aware of physical attacks on individuals driven by homophobia. Unfortunately, only a mere 6% of the schools had adopted a bullying or discipline policy related to homophobic bullying. For these reasons, Section 28 contributed in the creation of a confusing atmosphere and fear which led to the ignorance of homophobic harassment and bullying on behalf of teachers. Still, there were other factors (e.g., inexperienced staff, inadequate policies or parental disapproval) that basically hindered the targeting of homophobic bullying.²⁴⁶ As a result, Section 28 had definitely fulfilled what its advocates desired, by restricting the debates on homosexuality in educational settings.²⁴⁷

Thatcher's clause remained into force until its repeal on June 21, 2001, in Scotland and on November 18, 2003, in the rest of the United Kingdom. Yet, despite the remarkable progress being made regarding LGBTI rights, the “*damaging legacy of Section 28 remains*” and only a small percentage of students say that they have learnt about being part of a healthy homosexual relationship at school.²⁴⁸

²⁴⁴ The Local Government Bill [HL]: The ‘Section 28’ Debate”, *Research Paper 00/47* (2000): 16, <http://researchbriefings.files.parliament.uk/documents/RP00-47/RP00-47.pdf>.

²⁴⁵ “The Experience of Violence and Harassment of Gay Men in the City of Edinburgh - Research Findings”, Scottish Government, last modified March 3, 2020, <https://www2.gov.scot/Publications/2000/03/70c1f9c5-0fe3-4f64-ac34-00a7c492417f>.

²⁴⁶ “The Local Government Bill [HL]: The ‘Section 28 Debate’”, *Research Paper 00/47* (2000):16, <http://researchbriefings.files.parliament.uk/documents/RP00-47/RP00-47.pdf>.

²⁴⁷ “The Local Government Bill [HL]: The ‘Section 28’ Debate”, *Research Paper 00/47* (2000): 13, <http://researchbriefings.files.parliament.uk/documents/RP00-47/RP00-47.pdf>.

²⁴⁸ Joe Sommerland, “Section 28: What was Margaret Thatcher’s Controversial Law and How Did It Affect the Lives of the LGBT+ People?”, *The Independent*, last modified May 24, 2018, <https://www.independent.co.uk/news/uk/politics/section-28-explained-lgbt-education-schools-homosexuality-gay-queer-margaret-thatcher-a8366741.html>.

3.12. *The LGBTI and Hate Speech: International Law Protecting Mechanisms*

Surprisingly, there are not any explicit UN mechanisms for the rights of the LGBTI community. Subsequently, certain States do not even acknowledge violations against LGBTI people. It is, thus, vital that the UN adopts an explicit resolution so as to inform the international community that LGBTI rights are unquestionably part of human rights.

It is an undeniable fact that the rights of the LGBTI community should be protected in many aspects, especially that of hate speech. There are a number of reasons behind this logic. First and foremost, it is everyone's right to feel proud of who they are and who they love. All people have the right to express themselves openly. The UDHR refers to the right to freedom of expression in Article 19.²⁴⁹ Also, ending homophobia and transphobia will be a life-saver. Anti-LGBTI harassment puts LGBTI people at a profound risk of experiencing physical and psychological damage. As it is written in Article 3 of the UDHR: "*Everyone has the right to life, liberty and the security of person*".²⁵⁰ By accepting LGBTI people and realizing their identities, people can learn how to get rid of gender stereotypes. Such stereotypes have detrimental effects upon the society since they outline and restrict people's way of living. Getting rid of them enables everyone to achieve their full potential, without discriminatory social restrictions. LGBTI individuals, particularly transgender ones, are frequently faced with the danger of economic and social exclusion. Striving for a more inclusive legislation for people irrespective of their sexual orientation and gender identity will guarantee an easier access to their rights.²⁵¹

But which is the international law framework for the protection of the LGBTI rights and – in this case – the LGBTI's protection of a homophobic hate speech? First and foremost, the right to equality and non-discrimination are fundamental human rights principles, embodied in the UN Charter, UDHR and human rights treaties. The opening statements of the Universal Declaration of Human Rights are indisputable: "*All human beings are born free and equal in dignity and rights*".²⁵² The equality and non-discrimination principles pertains to all people according to international human rights law, irrespective of sex, sexual orientation and gender identity or "other status." None of the human rights treaties do they make any distinctions by excluding individuals on the grounds of sexual orientation and gender identity. Furthermore, UN human rights treaty bodies have stressed that sexual orientation and gender identity constitute some of the prohibited elements of discrimination under international human rights law. Thus, it is illegitimate to distinguish an individual's rights judging from the fact that they are LGBTI as it is also illegitimate to do so on the basis of skin color, race, sex, religion or any other status. This position has been confirmed continuously in decisions and general guidance issued by a number of treaty bodies,

²⁴⁹ United Nations General Assembly, adopted December 10, 1948, *Universal Declaration of Human Rights*, art. 19, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

²⁵⁰ United Nations General Assembly, adopted December 10, 1948, *Universal Declaration of Human Rights*, art. 3, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

²⁵¹ "LGBTI Rights", Amnesty International, accessed February 5, 2020, <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/>.

²⁵² United Nations General Assembly, adopted December 10, 1948, *Universal Declaration of Human Rights*, art. 1, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

like the UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture, and the Committee on the Elimination of Discrimination against Women.²⁵³

Lastly, on June 30, 2016, the UN HRC adopted a resolution on the “Protection against Violence and Discrimination Based on Sexual Orientation, and Gender Identity”. This resolution stated, inter alia, that it “*strongly deplores acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation or gender identity*” and that it appoints “*for a period of three years, an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*”.²⁵⁴ The duties of the Independent Expert will include, among other things: (a) the assessment and “*the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, while identifying both best practices and gaps*”, (b) awareness-raising on issues pertaining to “*violence and discrimination against persons on the basis of their sexual orientation or gender identity*” and the identification and “*address the root causes of violence and discrimination*”.²⁵⁵ Apparently, this can be characterized as “a historic victory for the human rights” of any person at risk of discrimination and violence due to his/her sexual orientation or gender identity. It should be noted that this resolution builds upon two previous resolutions which were adopted by the Council in 2011 and 2014.²⁵⁶

²⁵³ *International Human Rights Law and Sexual Orientation & Gender Identity* (Geneva: United Nations Office of the High Commissioner, 2017), 1-2, <https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf>.

²⁵⁴ Resolution Adopted by the Human Rights Council on 30 June 2016 32/2, *Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity* (Geneva: Human Rights Council, 2016), 2, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2.

²⁵⁵ Loc. cit.

²⁵⁶ “UN Makes History on Sexual Orientation, Gender Identity: Human Rights Body Establishes an Independent Expert”, Human Rights Watch, last modified June 30, 2016, <https://www.hrw.org/news/2016/06/30/un-makes-history-sexual-orientation-gender-identity>.

3.13. Ethnic and religious minorities

To begin with, Article 1(1) of the 1992 UN Minorities Declaration describes minorities as based on “national or ethnic, cultural, religious and linguistic identity” and requires that “States shall protect [the] their existence”.²⁵⁷ It should be highlighted that there is not a universally accepted definition of the term “minority”. It is frequently mentioned that “the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority)”.²⁵⁸

It is rather difficult for a commonly accepted definition to be established since there is a wide variety of situations in which minorities live. Indeed, certain minorities reside in well-defined areas, away from the dominant part of the population. Others, however, are dispersed in various parts of the country. Despite the fact that there are specific minorities that possess a strong sense of collective identity and recorded history, others simply cling to a fragmented notion of their mutual heritage.²⁵⁹ Subsequently, providing an accurate definition of the term has been a real challenge throughout the centuries. Actually, neither the UN Charter nor the UDHR makes any reference to minorities, although there were suggestions to include a provision on minorities in the latter.²⁶⁰ The UN General Assembly had stressed that “the United Nations cannot remain indifferent to the fate of minorities” and additionally stated that agreements could not be established due to the problem of adopting “a uniform solution [to] this complex and delicate question, which has special aspects in each State in which it arises.”²⁶¹

The term “minority” employed by the UN human rights system is typically used to describe national or ethnic, religious and linguistic minorities, according to the UN Minorities Declaration. It goes without saying that there are one or more minority groups within a State’s national territory which possess their own national, ethnic, linguistic or religious identity. Of course, this identity is distinct from that of the dominant population.²⁶²

In 1977, the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti, provided a definition of the term “minority”. More specifically, he defined “minority” as “a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the

²⁵⁷ “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”. Conclusion date: December 18, 1992, art. 1(1), *United Nations Office of the High Commissioner*, General Assembly resolution 47/135. <https://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf>.

²⁵⁸ *Minority Rights: International Standards and Guidance for Implementation* (New York and Geneva: United Nations, 2010), 2, https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.

²⁵⁹ Loc. cit.

²⁶⁰ Jelena Pejic, “Minority Rights in International Law”, *Human Rights Quarterly* 19, no. 3 (August 1997): 668, <https://www.jstor.org/stable/762728>.

²⁶¹ Loc. cit.

²⁶² *Minority Rights*, op. cit., 2.

*population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.*²⁶³

Even though the element of nationality included in the present definition has been questioned many times, the requirement of a non-dominant position is still significant. Most of the times, a minority group will constitute a numerical minority while in others a numerical majority may also fall under the category of a minority-like or non-dominant position. One striking example of this is the case of Blacks under the apartheid regime in South Africa. Also, in certain cases, a group which forms the majority in a given State as a whole may be in a non-dominant position within a particular area of the State in question.²⁶⁴

It remains unquestionable that there has not been a general agreement regarding the issue of minority protection. Though the title of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities would entail the definition of the national minority, the UN has not achieved to agree upon a definition as far as the concept of minority is concerned. There are those who argue that attempting an accurate definition would exclude certain rights of certain groups of people in some States.²⁶⁵

What is more, there have been unsuccessful attempts on the defining concept of minority within the CoE. CoE's Framework Convention for the Protection of National Minorities (FCNM), the only legally binding international instrument for minority protection, does not include a definition of the notion “national minority”. Pragmatic approach has been adopted given that member States of CoE were not capable of mustering consensus to a mutual definition.²⁶⁶ Nonetheless, the Proposal for an Additional Protocol on the Rights of National Minorities to the ECHR embodied a definition of the term “national minority group.” In particular, the term “national minority” characterizes a “*group of persons in a state who reside on the territory of the state and are citizens thereof; mainly longstanding, firm and long-lasting ties with a state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of the state or of a region of the state.*”²⁶⁷

Besides, the Venice Commission claimed that “*a minority consists of group of persons which is smaller in number than the rest of the population of the State, whose members, who are not nationals of the State, have ethnical, religious or linguistic features different from those of the rest of population, and are guided by the will to safeguard their culture, traditions, religion and language.*”²⁶⁸

²⁶³ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (New York: United Nations, 1979), 5, <https://digitallibrary.un.org/record/10387?ln=en>.

²⁶⁴ *Minority Rights*, op. cit., 2-3.

²⁶⁵ Antonija Petričušić, “The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations”, *Croatian International Relations Review* 6, no. 38/39 (2005): 3-4.

²⁶⁶ Loc. cit.

²⁶⁷ “Additional Protocol on the Rights of National Minorities to ECHR”, adopted January 19, 1993, art.1, *Parliamentary Assembly*, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=6772&lang=en>.

²⁶⁸ European Commission for Democracy through Law (Venice Commission), *Explanatory Report on the Proposal For A European Convention For The Protection of Minorities* (Strasbourg: Council of Europe, 1991), 4,

Apart from this, the OSCE has attempted to provide a definition as well, but, most of the times, experts argue that seeking a commonly accepted definition might delay the work on the documents regarding minority issues.

Finally, Article 27 of the ICCPR declares that *“in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”*.²⁶⁹ In other words, Article 19 implies that the individuals who are to be protected are those who are part of a group and who have common a culture, a religion and/or a language. Consequently, the rights protected under Article 27 involve the right of persons in community with others, to engage in economic and social relationships which are part of the culture of their community.²⁷⁰

Taking everything into consideration, as there is not a precise definition of “minority” in international law, one could draw the conclusion that *“the existence of a minority is a question of fact and not of definition”*.²⁷¹ Nevertheless, the lack of a concrete definition of minority in international law could be replaced by the saying that *“to belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice. Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will.”*²⁷²

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)002-e).

²⁶⁹ “International Covenant on Civil and Political Rights”, opened for signature December 19, 1966, art. 27, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 999, no. 14668 (1976): 179, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

²⁷⁰ Antonija Petričušić, “The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations”, *Croatian International Relations Review* 6, no. 38/39 (2005): 4, http://webcache.googleusercontent.com/search?q=cache:k1UcUj0fBY4J:bib.irb.hr/datoteka/421246.CIRR_Petricusi_c_MR_IL.pdf+&cd=1&hl=en&ct=clnk&gl=gr.

²⁷¹ Loc. cit.

²⁷² *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (Copenhagen: CSCE, 1990), 18, <https://www.osce.org/odihr/19394?download=true>.

3.14. Ethnic and Religious Minorities and Hate Speech

Hate speech against ethnic and religious minorities is one of the most deplorable cases in the present-day world. As it is reported by UN-experts, hate speech has “*exacerbated societal and racial tensions, inciting attacks with deadly consequences around the world*”.²⁷³ Experts also maintain that there has currently been an increase when it comes to hateful messages and incitement to discrimination towards migrants and various ethnic groups, as well as the defenders of their rights, in a great number of States. Besides, they claim that hate speech “*has become mainstream in political systems worldwide and threatens democratic values, social stability and peace*”.²⁷⁴ As a result, it “*coarsens public discourse*”²⁷⁵ and “*weakens the social fabric of countries*”.²⁷⁶

It is a widespread belief that hateful comments against members of ethnic and religious minorities are a result of xenophobia. More specifically, xenophobia constitutes a broad notion, which is related to a variety of meanings. “Xenophobia” derives from the Greek words “ξένος” (xénos), which means “foreigner”, “stranger”, and “φόβος” (fóvos), which means “fear”. Typically, manifestations of xenophobia are driven by “*intense dislike or hatred against people that are perceived as outsiders, strangers or foreigners to a group, community or nation, based on their presumed or real descent, national, ethnic or social origin, race, color, religion, gender, sexual orientation or other grounds.*”²⁷⁷

What is more, a survey conducted in Poland justifies the strong prevalence of hate speech against ethnic and religious minorities during the past few years. From 2014 to 2016, there had been a remarkable increase in the percentage of minorities encountering hate speech not only through the media, but also on a daily basis. In 2014, one out of five adult Poles came across extreme anti-Muslim or anti-Ukrainian statements on TV. Additionally, almost a 50% claimed that they came across offensive statements against Muslims on TV, and one out of four Poles came across anti-Ukrainian hate speech on TV. There had also been a considerable rise when it comes to incidents of hate speech in the press. Indeed, the number of young and adult Poles who came across offensive statements against Muslims doubled as Muslims had been the most offended against group in the press.²⁷⁸

Lastly, Miškolci et al. referred to cases of hate speech against the Roma community in Slovakia. They notably stressed that the Roma were consistently depicted negatively by being characterized as “*asocial criminals misusing welfare benefits*” and that users adopting anti-Roma

²⁷³ “Hate Speech Exacerbating Societal, Racial Tensions with ‘Deadly Consequences around The World’, Say UN Experts”, UN News, last modified September 23, 2019, <https://news.un.org/en/story/2019/09/1047102>.

²⁷⁴ Loc. cit.

²⁷⁵ Loc. cit.

²⁷⁶ Loc. cit.

²⁷⁷ *Xenophobia* (Geneva: Office of the High Commissioner for Human Rights, 2013), 1, <https://nhri.ohchr.org/EN/Themes/Racial/Documents/Xenophobia.pdf>.

²⁷⁸ Mikołaj Winiewski et al., *Contempt Speech, Hate Speech: Report from Research on Verbal Violence against Minority Groups* (Warsaw: Stefan Batory Foundation, 2017), 3, <http://www.ngofund.org.pl/wp-content/uploads/2017/03/ContemptSpeechHateSpeech.pdf>.

attitudes were not relied upon any research evidence in order to support their arguments.²⁷⁹ Facebook discussion participants also characterized the Roma as “*unwilling to work*” “*insects (e.g., cockroaches)*”, “*things*”, etc.²⁸⁰

Given the above, it seems that hate speech towards ethnic or religious minorities is an escalating issue. Certainly, this practice is manifested both in an online and an offline environment. As it has been observed by a research team ran by University of Warsaw psychologist, Wiktor Soral, “*when being frequently exposed to hateful online commentaries, people become increasingly desensitized to them. Ultimately, the contents of these commentaries come to shape their perceptions of [perceived outsiders such as] minorities*”.²⁸¹ The researchers continue by stating that “*people who frequently encounter examples of hate speech are less inclined to perceive hate speech as an offensive and abusive phenomenon. This desensitization to the harmfulness of hate speech was in turn a risk factor of greater prejudice [toward minority groups]*.”²⁸² Therefore, what should be done in order to tackle this problem? Clearly, UN-experts have the best answer to such a problem as they have reported that “*strong action against racist and xenophobic speech*” has to be taken since “*such rhetoric aims to dehumanize minority groups*” and “*fosters discriminatory discourse about who ‘deserves’ to be part of a community*”.²⁸³

²⁷⁹ Josef Miškolci et al., “Countering Hate Speech on Facebook: The Case of the Roma Minority in Slovakia”, *Social Science Computer Review* 20, no. 10 (2018): 1, doi: <https://doi.org/10.1177/0894439318791786>.

²⁸⁰ Miškolci et al., “Countering Hate Speech”, op. cit., 8.

²⁸¹ Tom Jacobs, “How Hate Speech Boosts Bigotry and Intolerance: Research from Poland Reveals Regular Exposure to Such Material Desensitizes Us to Its Cruelty”, accessed February 7, 2020, <https://psmag.com/social-justice/how-hate-speech-boosts-bigotry-and-intolerance>.

²⁸² Loc. cit.

²⁸³ “Hate Speech Exacerbating Societal, Racial Tensions with ‘Deadly Consequences around The World’, Say UN Experts”, UN News, last modified September 23, 2019, <https://news.un.org/en/story/2019/09/1047102>.

3.15. The case of the Rohingya Muslims

The Rohingya constitute an ethnic group, the majority of whom are Muslim, who have resided from time immemorial in the majority Buddhist Myanmar, a State in Southeast Asia. They speak Rohingya or Ruaingga, a dialect which differs from others spoken in the State. The Rohingya population in Myanmar is more or less equal to 1 million. As it has been reported by historians and Rohingya groups, the Rohingya dwelled in the region now known as Myanmar approximately since the 12th century. Nonetheless, they are perceived to be illegal immigrants from Bangladesh by the Myanmar government; hence they are not considered to be Burmese nationals. Almost all of the Rohingya in Myanmar live in the western coastal state of Rakhine and it is forbidden for them to leave, unless they get a government permission. Owing to persistent violence and persecution, hundreds of thousands of Rohingya have fled to neighboring Bangladesh, Malaysia, Thailand or other Southeast Asian States. It is remarkable to note that the Rohingya are not considered one of Myanmar's 135 official ethnic groups and have been denied citizenship since 1982. Specifically, the 1982 citizenship law introduced three levels of citizenship. In order to receive the most basic level (naturalized citizenship), proof that the person's family residence in Myanmar before 1948 was required and fluency in one of the national languages was a prerequisite. A great number of Rohingya do not possess such paperwork due to the fact that it was unavailable or refused to them. Consequently, their rights to study, work, travel, marry, practice their religion and access health services have been and continue to be limited because of the law. The Rohingya have no voting rights, and even if they navigate the citizenship test, they are required to identify as "naturalized" as opposed to Rohingya, and restrictions are imposed on them entering certain professions like medicine or law. Apparently, this situation has effectively rendered them stateless.²⁸⁴ As it is underlined in Article 1 of the UN Convention Relating to the Status of Stateless Persons, the term "stateless person" refers to "a person who is not considered as a national by any State under the operation of its law".²⁸⁵ As a result, the Rohingya are perceived to be a "stateless minority". Other notable examples of stateless minorities include the Karana of Madagascar as well as the Pemba of Kenya.²⁸⁶

Admittedly, the international community has characterized the Rohingya as "the world's most persecuted minority"²⁸⁷ as an alarming number of their human rights is being violated on a continuous basis. It is no wonder, therefore, that they are frequent victims of hate speech, too. According to an Aljazeera documentary on the Rohingya population, the Buddhist monk U Par Mount Kha, characteristically claimed that the Burmese are not concerned with the Rohingya's

²⁸⁴ "Who Are the Rohingya? – Myanmar", Aljazeera, last modified April 18, 2018,

<https://www.aljazeera.com/indepth/features/2017/08/rohingya-muslims-170831065142812.html>.

²⁸⁵ "Convention relating to the Status of Stateless Persons", opened for signature June 6, 1960, art. 1, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 360, no. 5158 (1960): 3, https://treaties.un.org/doc/Treaties/1960/06/19600606%2001-49%20AM/Ch_V_3p.pdf.

²⁸⁶ "This Is Our Home": *Stateless Minorities and Their Search for Citizenship* (Geneva: UNHCR, 2017) 10-17, 28-35, https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf.

²⁸⁷ "Rohingya Refugee Crisis", USA for UNHCR: The UN Refugee Agency, accessed February 5, 2020, <https://www.unrefugees.org/emergencies/rohingya/>.

human rights. He also added that they are not eligible to acquire the Burmese citizenship and that they are obliged to follow the laws and value the Burmese culture, should they want to live in Myanmar. Moreover, he accused the Rohingya of “*working for other countries’ interests, like Bangladesh, even though they are living on our land and eating its food*”.²⁸⁸ Finally, the monk continued by making the following statements: “*I don’t accept the Rohingya because they’ve never existed. They created the name Rohingya and lied to the world because they want Maungdaw and Buthidaung as their own areas*”.²⁸⁹ These provocative and derogatory remarks on behalf of U Par Mount Kha can unavoidably be seen as an overt discriminatory act against the Rohingya and, by extension, they undoubtedly constitute a hate speech act.

All things considered, it can be inferred that the Rohingya face constant discrimination and are subjected to the most appalling human rights violations.²⁹⁰ These include, inter alia, the violation of their right to self-determination and the continuous refusal of the acquisition of citizenship on behalf of the Burmese government. Blatantly denying the Rohingya’s mere existence and constantly marginalizing them is nothing but a manifestation of hate speech against this particular minority.

²⁸⁸ Salam Hindawi, Ali Kishk, and Harri Grace, *The Rohingya: Silent Abuse* (2017; Doha: Grain Media), <https://www.aljazeera.com/programmes/aljazeeraworld/2017/07/rohingya-silent-abuse-170730120336898.html>.

²⁸⁹ Salam Hindawi, Ali Kishk, and Harri Grace, *The Rohingya: Silent Abuse* (2017; Doha: Grain Media), <https://www.aljazeera.com/programmes/aljazeeraworld/2017/07/rohingya-silent-abuse-170730120336898.html>.

²⁹⁰ “Hate Speech, Interethnic Violence and ‘Muslim-Free’ Villages: The Rohingya Crisis in an Era of International Indifference”, Minority Rights Group International, last modified February 20, 2019, <https://minorityrights.org/2019/02/20/hate-speech-interethnic-violence-and-muslim-free-villages-the-rohingya-crisis-in-an-era-of-international-indifference/>.

3.16. Ethnic and Religious Minorities and Hate Speech: International Law Protecting Mechanisms

Few people would deny that hate speech greatly torments minorities. As Susan Benesch puts it, hate speech against this particular social group is continually spreading “*like a disease that afflicts only certain populations*”.²⁹¹ Benesch also stresses that hate speech has the power to make certain people to suffer, while at the same time others remain passive and different. It is able to cause both a psychological and a physical trauma, and it exerts a strong influence upon numerous minorities.²⁹² But how could ethnic and religious minorities be protected from this scourge of hate speech? Are there any international law provisions that can grant them full and equal protection from this phenomenon?

From the very first glance it is a well-known fact that hate speech towards ethnic and religious minorities derive from racism and racial discrimination.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) interprets racism as “*a theory of races hierarchy which argues that the superior race should be preserved and should dominate the others. Racism can also be an unfair attitude towards another ethnic group. Finally, racism can also be defined as a violent hostility against a social group*”.²⁹³ That is to say, racism is a question of the “supremacy” of one race and/or social group over another race and/or social group.

On the other hand, the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) defines racial discrimination as “*any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*”.²⁹⁴

It is imperative that States parties guarantee the prohibition from racial discrimination and ensure equality, effective protection and remedies regarding their human rights. Discrimination because of one’s race has no place whatsoever in international law. This provision is entailed, inter alia, in Articles 55 and 56 of the UN Charter and Articles 2 and 7 of the UDHR.²⁹⁵

Specifically, Article 55 of the UN Charter aims at “*the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples*”.²⁹⁶ Article 56

²⁹¹ Susan Benesch, *Defining and Diminishing Hate Speech* (London: State of the World’s Minorities and Indigenous Peoples, 2014), 19, <https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg-state-of-the-worlds-minorities-2014-chapter02.pdf>.

²⁹² Loc. cit.

²⁹³ “Learning to Live Together: Racism”, United Nations Educational, Scientific and Cultural Organization, accessed February 5, 2020, <https://wayback.archive-it.org/10611/20160908121217/http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/racism/>.

²⁹⁴ “International Convention on the Elimination of All Forms of Racial Discrimination”, opened for signature January 4, 1969, art. 1, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 660, no. 9464 (1969): 3, https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf.

²⁹⁵ Malcom N. Shaw, *International Law 6th Edition* (New York: Cambridge University Press, 2008), 286.

²⁹⁶ “Charter of the United Nations and the Statute of the International Court of Justice”, opened for signature October 24, 1945, art. 55, *Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations*, (1945): 11-12, <https://treaties.un.org/doc/Publication/CTC/uncharter-all-lang.pdf>.

emphasizes that “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”²⁹⁷ should be established.

Moreover, Article 2 of the UDHR underlines that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.²⁹⁸ Besides, it is stressed in Article 7 that “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.²⁹⁹

Apart from this, as it is written in Article 2(1) of the ICCPR: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.³⁰⁰

The principle of non-discrimination calls for the formation of equality in fact and formal equality in law. Indeed, “equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations”.³⁰¹ The CERD also urges States Parties to “condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”.³⁰² States parties are obliged, inter alia, to deem as punishable “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities”.³⁰³

Similarly, hate speech against ethnic and religious minorities constitutes a remarkable violation of the right to self-determination. The first Article of the ICCPR clearly mentions that

²⁹⁷ “Charter of the United Nations and the Statute of the International Court of Justice”, opened for signature October 24, 1945, art. 56, *Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations*, (1945): 12, <https://treaties.un.org/doc/Publication/CTC/uncharter-all-lang.pdf>.

²⁹⁸ United Nations General Assembly, adopted December 10, 1948, *Universal Declaration of Human Rights*, art. 2, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

²⁹⁹ United Nations General Assembly, adopted December 10, 1948, *Universal Declaration of Human Rights*, art. 7, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

³⁰⁰ “International Covenant on Civil and Political Rights”, opened for signature December 19, 1966, art. 2(1), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 999, no. 14668 (1976): 173. <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

³⁰¹ Malcom N. Shaw, *International Law*, op. cit., 288.

³⁰² “International Convention on the Elimination of All Forms of Racial Discrimination”, opened for signature January 4, 1969, art. 4, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 660, no. 9464 (1969): 4-5, https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf.

³⁰³ Loc.cit.

everyone has the right to self-determination. This means that all people have the right to “*freely determine their political status and freely pursue their economic, social and cultural development*”.³⁰⁴

Furthermore, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is a key international law instrument which can protect religious minorities from hate speech. Intolerance and discrimination based on religion or belief is associated with “*any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis*”.³⁰⁵ Evidently, according to Article 1(1) of the Declaration, “*everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching*”.³⁰⁶ Nobody should be enforced to coercion “*which would impair his freedom to have a religion or belief of his choice*”.³⁰⁷ Also, nobody should experience discrimination by any State, institution, group of persons, or person on the basis of religion or other belief.³⁰⁸

Finally, apart from the Declaration, States parties are required under Article 5 of the CERD to “*guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law*”.³⁰⁹ Among other things, this includes “*the right to freedom of thought, conscience and religion*”.³¹⁰

All in all, hate speech against ethnic and religious minorities is a highly manifested problem nowadays and, for this reason, international law has a vital role to play in countering it. Consequently, it should not be forgotten that minority rights constitute a big part of human rights as well.

³⁰⁴ “International Covenant on Civil and Political Rights”, opened for signature December 19, 1966, art. 1(1), *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 999, no. 14668 (1976): 1, https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf.

³⁰⁵ “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief”, United Nations Human Rights Office of the High Commissioner, accessed February 10, 2020, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

³⁰⁶ Loc. cit.

³⁰⁷ Loc. cit.

³⁰⁸ Loc. cit.

³⁰⁹ “International Convention on the Elimination of All Forms of Racial Discrimination”, art. 5, *Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations* 660, no. 9464 (1969): 5, https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf.

³¹⁰ Loc. cit.

CHAPTER 4.

SURVEY ANALYSIS

In the present chapter, there will be an analysis of a survey conducted for the purpose of the present dissertation. The author decided to conduct this survey given that there is little awareness on the phenomenon of hate speech in the society. Throughout this survey, the author intended to raise the public's awareness on the hate speech problem.

The central aim of the survey was to examine the public's perspective when it comes to the issue of hate speech. In other words, its objectives included, inter alia, the respondents' opinion on this particular subject as well as any possible experiences of hate speech that they themselves might have had.

First and foremost, it should be emphasized that the author's goal was to design a survey that would be accessible to the general public since it touches upon a social issue. For this reason, it was not designed to simply address a strictly scientific community. Also, it should be noted that the survey was open to everyone and no distinctions were made upon the respondents' age, sex or academic background. It took place from September 17-23, 2019, in Thessaloniki, Greece. The survey's unique criterion was to have at least a sample of 50 respondents. In this way, the author aimed at gathering a satisfactory number of responses so that the survey results were as objective, representative and reliable as possible. It must be stressed that this survey was strictly anonymous as none of the respondents' personal data were included.

The total number of the participants was 102. Participants' age groups were 18-24 (32.4%), 25-34 (30.4%), 35-44 (19.60%), 45-54 (11.8%) and 55-64 (5.9%). The majority of the participants' gender was female (81.4%) as opposed to male (16.7%) while only a 2% preferred not to mention their gender.

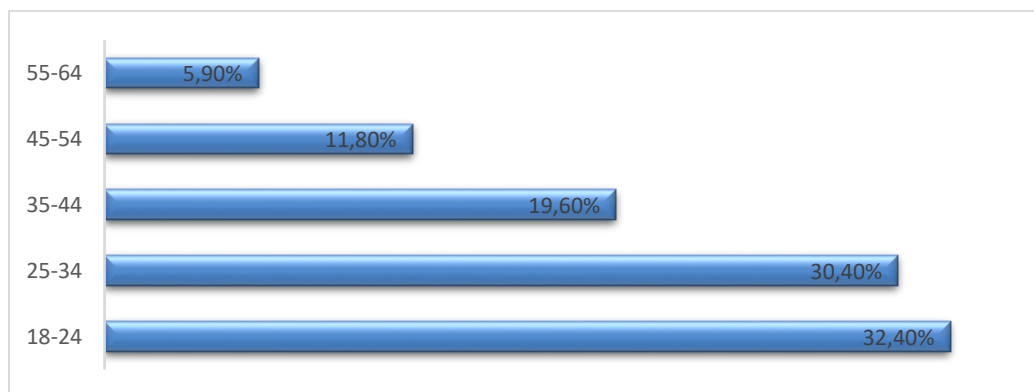


Table (a): Participants' age

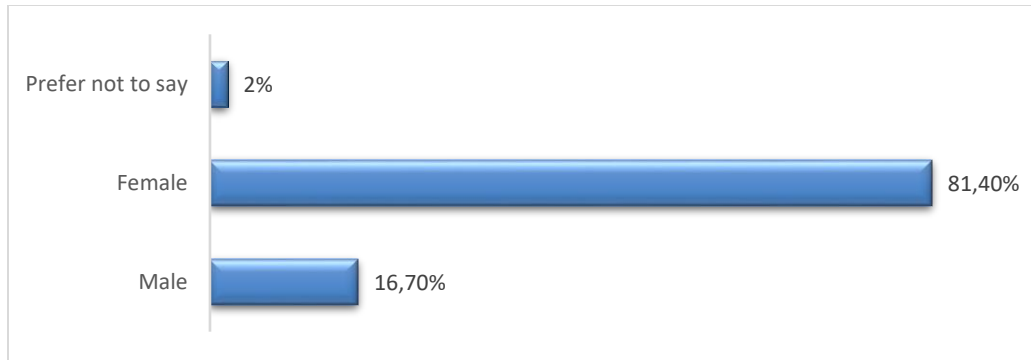
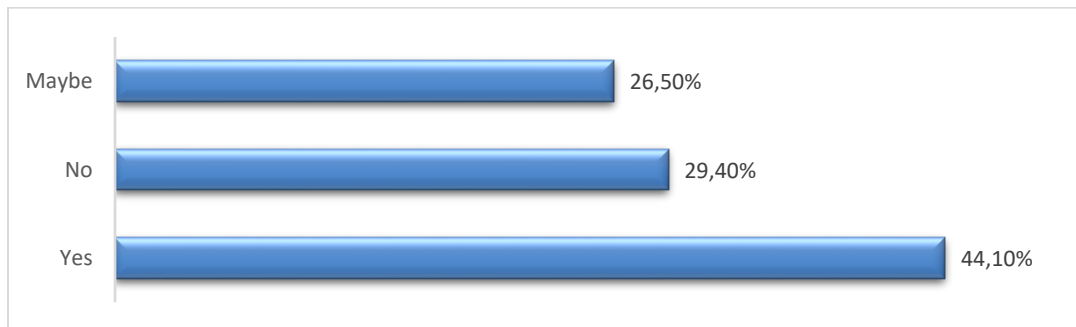


Table (b): Participants' gender

After reviewing the definition of hate speech provided by the encyclopedia Britannica, the participants responded whether they used hate speech themselves in the past even without realizing it. The majority responded positively (44.10%) whereas the negative answers reached a 29.4%. A 26.5%, on the other hand, responded that they may have used hate speech in the past even without noticing it.

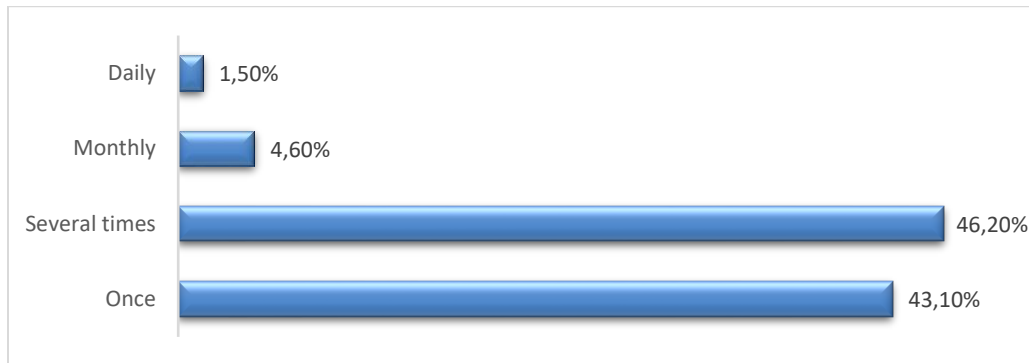


Question 1: “‘Hate speech: speech or expression that denigrates a person or persons on the basis of (alleged) membership in a social group identified by attributes such as race, ethnicity, gender, sexual orientation, religion, age, physical or mental disability, and others’.³¹¹ After reviewing the present definition of hate speech, do you believe that you may have used hate speech yourself in the past even without realizing it?”³¹²

³¹¹ William M. Curtis, “Hate Speech”, Encyclopedia Britannica, last modified November 29, 2016, <https://www.britannica.com/topic/hate-speech>.

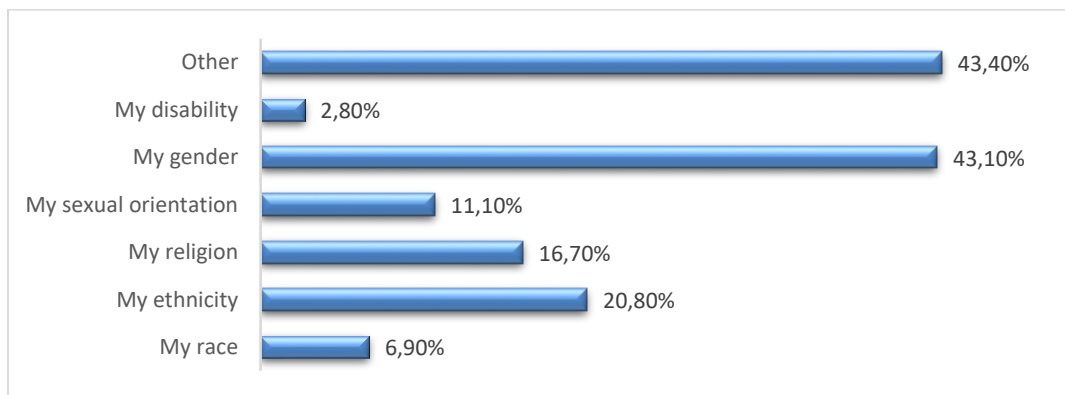
³¹² “Hate Speech Survey 2”, Survey Monkey, accessed February 10, 2020, <https://www.surveymonkey.com/r/QJLTYG8>.

In the second question, participants were interrogated how often they used hate speech in case they gave a positive answer in the previous question. Surprisingly enough, a high percentage (46.2%) responded that they have done so several times while the percentage of those who responded that they have once used hate speech was rather high as well (43.10%). Only a minor percentage responded that they have used hate speech in the past once a month (4.6%) and on daily basis (1.5%).



Question 2: "If you answered "yes" in the previous question, how often did you use hate speech?" ³¹³

Moreover, a significant percentage of 43.1% stressed that they had been victims of hate speech on the grounds of gender. Ethnicity (20.8%), religion (16.7%), sexual orientation (11.1%), race (6.9%) and disability (2.8%) were next. However, the majority of the survey-takers (43.4%) claimed that they had faced hate speech based on other factors. One typical example is the fact that one of the survey-takers had been subjected to hate speech because of being an atheist.

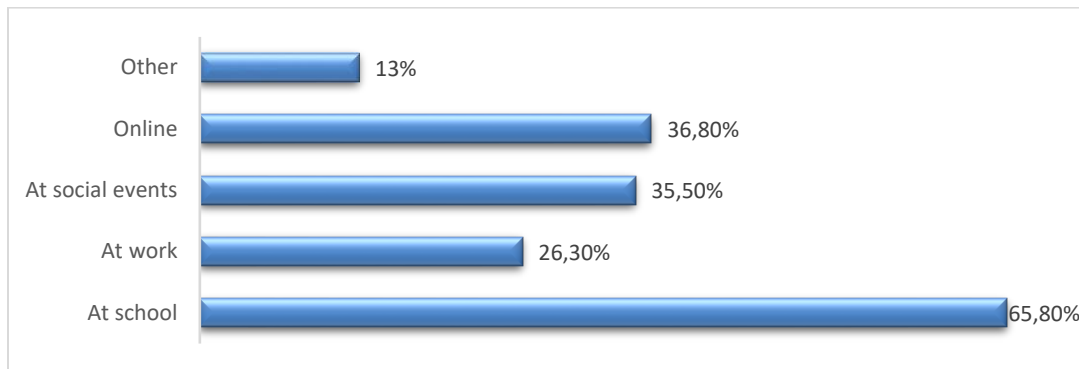


Question 3: "Have you personally been a victim of hate speech? If 'yes', on which grounds do you believe you were being stigmatized (you may choose more than one answer)? If 'no', please skip to the fifth question". ³¹⁴

³¹³ Loc. cit.

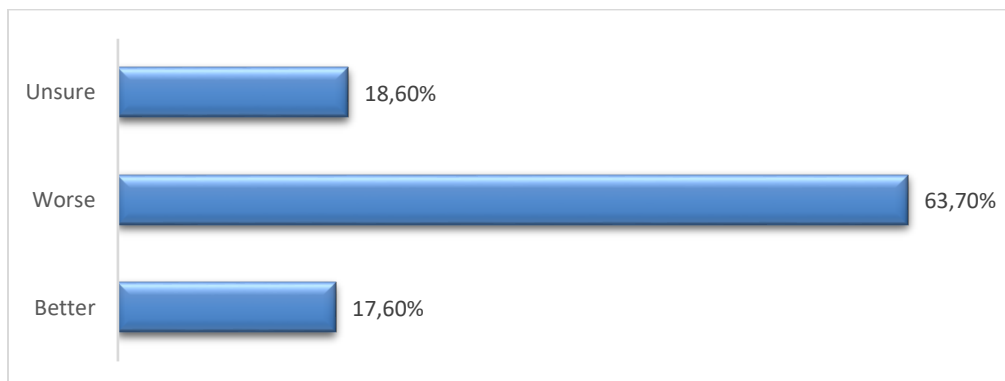
³¹⁴ Loc. cit.

Furthermore, most of the respondents who answered that they had been a victim of hate speech themselves mentioned that they experienced such a situation at school (65.8%). Responses included those who have faced such a problem online (36.8%), at social events (35.5%) and at work (26.3%). Others reported that they had been victims of hate speech in other environments.



*Question 4: "Where have you experienced hate speech (you may choose more than one answer)?"*³¹⁵

What is more, a 63.7% responded that hate speech nowadays is getting worse compared to a 17.6% which declared that it is getting better. At the other end of the spectrum, an 18.60% were unsure of that. In an attempt to justify their answers, those who responded positively reported, for instance, that, even though awareness has lately increased, extremists use hate speech on purpose. Although awareness has risen up lately, extremists use hate speech on purpose more and more. Others maintained that proper education is still inadequate, both in the family and school settings which will lead to a better understanding of the society without any incidents of hate speech. Nonetheless, those who responded negatively held that people tend to become more open-minded during the course of time while others perceived that awareness has raised and people are more educated on these matters in this day and age.

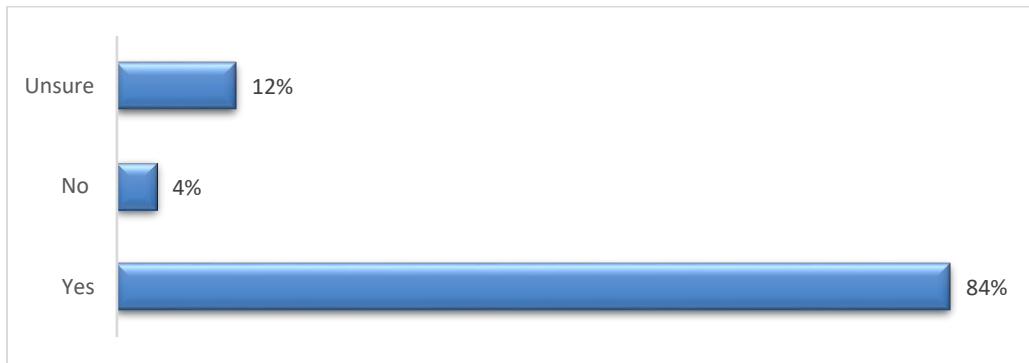


Question 5: "Do you believe that hate speech is getting better or worse nowadays?"

³¹⁵ Loc. cit.

Additionally, an 84% of the respondents declared that States should be more effective in tackling hate speech while a mere 4% did not agree with that statement. A 12% did not respond with certainty upon that fact. People who gave a positive response reported that *“it is one of States’ duties to tackle hate speech for their citizens’ well-being”* as well as *“a state cannot be called civilized if it does not protect everybody living in it. In most states it is the governments and its officials who use hate speech instead of tackling it”*.

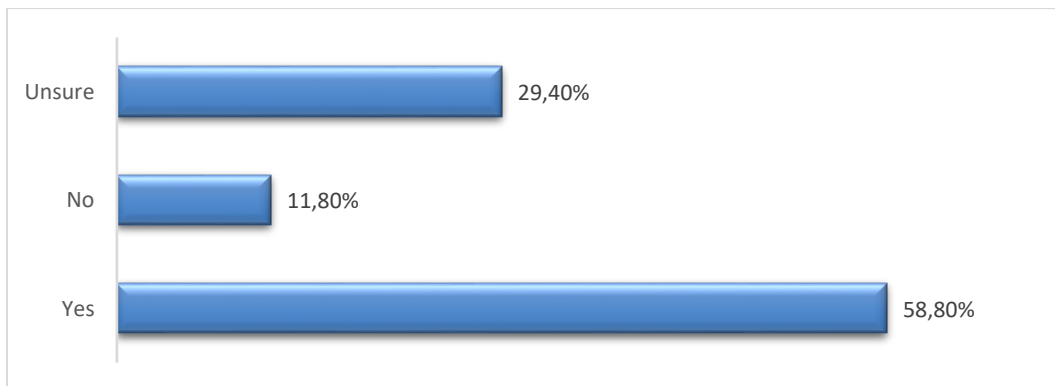
Nevertheless, one of the negative responses included the following statement: *“The state cannot intervene in every aspect of our lives. However, when it comes to people working in the public spheres, hate speech should be restricted. If we talk about private life, the state does not have anything to say”*.



Question 6: *“Do you believe that States should be more effective in tackling hate speech?”*

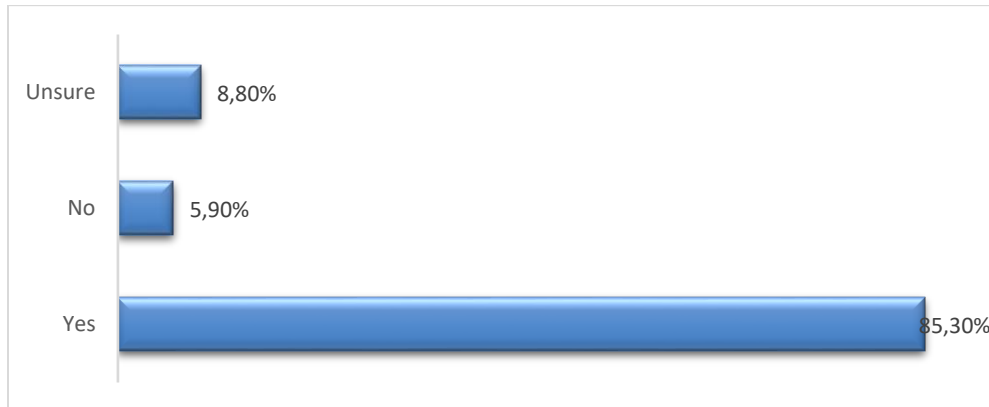
In parallel, when asked whether sanctions should be imposed on those who use hate speech a 58.8% agreed upon that statement contrary to an 11.8%. A 29.4%, however, were unsure of that. Some of those who supported this view maintained that people who use hate speech should be punished because they violate other peoples’ basic rights.

Conversely, some of those who were opposed with the idea highlighted that *“tackling hate speech would be more productive, if we focused on education rather than punishment”* and that punishment would not be a solution to the problem.



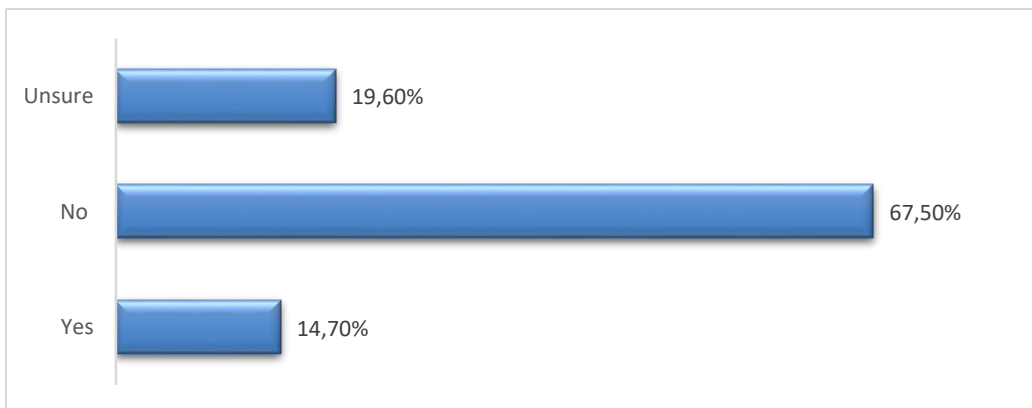
Question 7: *“Should sanctions be imposed on people who use hate speech?”*

Besides, a high percentage (85.30%) of the survey-takers believed that hate speech is more reported nowadays than it used to be in the past in relation to a 5.9% who did not support this idea and an 8.8% who were unsure of it. Supporters of that view held, for example, that today there the society has been aware and more sensitive nowadays whereas an opposing view stressed that still nothing has changed.



Question 8: “Do you believe that hate speech is more reported nowadays than it used to be in the past?”

Finally, a 65.7% claimed that hate speech is not equal to hate speech in contrast to a 14.70% who had the exact opposite opinion. A 19.6%, on the other hand, reported that they were not certain about this issue. Some of the defenders of that view mentioned that freedom of speech is a human right but is only valid when one’s right to freedom of expression does not suppress the rights of others. Another respondent stated that “*there is a difference between stating one's opinion and being offensive*”. An opposing view, however, underlined that one cannot be stopped from talking.



Question 9: “In your opinion, is hate speech free speech?”

CONCLUSIONS

This thesis examined the international legal framework regarding the protection of vulnerable social groups from hate speech.

In the first chapter, there has been an attempt to define the concept of hate speech along with explaining why such a term must be employed. This chapter also presented an indicative typology of the term. Moreover, it touched upon the issue of prohibited forms of hate speech on the basis of content, intention, (potential) target, context and consequences. It referred to other concepts and forms of expressions associated with hate speech and it analyzed the hate speech phenomenon in the digital environment as well. The last section, on the other hand, concerned the highly contradictory issue whether hate speech is equivalent to free speech.

The second chapter provided an explanation of the terms “vulnerable social groups” and “protected characteristics”.

The third chapter presented each one of the social groups that were examined along with cases of hate speech that each of these groups has faced. It has also provided the international legal framework for each social group. More specifically, persons with disabilities, women and girls, the LGBTI and ethnic and religious minorities were the groups which were examined in the present dissertation.

Finally, the last chapter concerned a survey analysis which aimed at exploring the public’s view on the hate speech phenomenon as well as to figure out whether the survey takers had experienced hate speech themselves at least once in their lives. This study has provided lots of interesting facts and opinions when it comes to hate speech. Nonetheless, the survey’s results have shown that there is little awareness concerning the hate speech phenomenon and its repercussions for the society. This conclusion could be drawn by the fact that some of the respondents equated hate speech with free speech. Subsequently, this denotes that several people have a distorted view of freedom of expression and, by extension, of hate speech.

To conclude, it is an undeniable fact that lots of people are constantly being victims of hate speech on several grounds, be it, for example, on the grounds of disability or religion. The European legal framework of protection is undoubtedly interrelated to the international one, but it only has a complementary function. Certainly, it cannot be regarded as an independent instrument of protection. Nevertheless, the current international legal framework cannot provide an adequate protection from hate speech. For this reason, it is urgent that the international community takes an effective action on hate speech matters and urge the States to rally against this extremely problematic phenomenon. Besides, the establishment of an international Convention concerning specifically the right to be protected from hate speech shall be taken into consideration. As a result, awareness-raising will be achieved, and this will eventually lead to a decrease concerning the instances of hate speech.

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