

ARTICLE¹⁹



Hungary: Responding to 'hate speech'

2018

Country Report

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Table of Contents

Executive summary	4
Introduction	8
International human rights standards	11
The right to freedom of expression	11
The right to equality	12
Limitations on ‘hate speech’	12
Obligation to prohibit	12
Permissible limitations	15
Lawful expression	15
Freedom of expression online	15
International law	15
European law	16
Basic legal guarantees in national law	18
An enabling environment for the rights to freedom of expression and equality	18
Legal protection of the right to freedom of expression	18
Legal protection of the right to equality	18
Prohibitions of ‘hate speech’ in criminal law	19
Criminal provisions directly restricting ‘hate speech’	19
Analysis of the relevant jurisprudence	21
Criminal provisions indirectly restricting ‘hate speech’	23
Measures against ‘hate speech’ in administrative law	25
Administrative provisions directly restricting ‘hate speech’	25
Prohibition of harassment	25
Analysis of the application of administrative decisions on harassment	26
Civil actions against ‘hate speech’	30
Analysis of the application of civil action against ‘hate speech’	32
Role of equality institutions in relation to public discourse and ‘hate speech’	35
Media regulation and ‘hate speech’	37
Government frameworks on media policy	37
‘Hate speech’ under media laws	37
Enforcement of ‘hate speech’ provisions in media law	39
Media self regulation and ‘hate speech’	41
Relationship between proceedings of self-regulatory bodies and other proceedings	42
Actors promoting ethical journalism	43
Approaches to media convergence	44
Intermediary liability	44
Initiatives on ‘hate speech’ on social media	45
Advertising self-regulation	46
Conclusions and Recommendations	47
Endnotes	50

Executive summary

This report examines legislation and practices related to ‘hate speech’ in Hungary, with a particular focus on the media. It examines the compliance of the national legislation with international freedom of expression standards and offers recommendations for their improvement.

During the last few years, ‘hate speech’ against disadvantaged groups, in particular the Roma, Jews, LGBTQI people, migrants, and asylum seekers, has been an issue of growing concern in Hungary. The rise of prejudice and intolerance in Hungarian society can be closely linked to the Hungarian government’s own policies and communications strategies, as well as the lack of political will to deal with instances of hate crime and ‘hate speech’. In recent years, the government has run public campaigns against refugees, migrants, and, more recently, against non-governmental organisations (NGOs) and George Soros, a Hungarian-American businessman and philanthropist. This has created a forum for the rise of ‘hate speech’ and facilitated its legitimisation in Hungarian public discourse.

At the same time, there have been some progressive developments in Hungary’s ‘hate speech’ legislation in administrative, civil, criminal, and media law. However, prohibitions of incitement in criminal law do not fully comply with international freedom of expression standards, and criminal law also prohibits a range of vague and overbroad offences, contravening international law. Most importantly, the interpretation and implementation of the existing criminal law protection is problematic. Public authorities are failing to apply the available mechanisms against ‘hate speech’ in an effective manner. As a result of law enforcement agencies’ inertia in this regard, the relevant criminal provisions remain effectively dormant, with even the most severe cases reaching the incitement threshold going unpunished.

Beside the protections provided for in the criminal law, victims of ‘hate speech’ have three types of remedies available to them under Hungarian civil and administrative law. They can either: a) initiate a civil action under the new provisions on ‘hate speech against a community’ of the Civil Code; or b) file a complaint with the Equal Treatment Authority under the harassment provisions of the Equal Treatment Act (ETA); or c) initiate a civil action before the courts for harassment under the provisions of the ETA together with the provision on inherent rights under the Civil Code. In practice, however, victims rarely bring actions under these provisions. Since 2009, a number of ‘hate speech’ cases concerning harassment have been initiated under the ETA, especially by NGOs against public officials. However, Hungarian courts restricted the applicability of these provisions by applying a strict interpretation of the anti-discrimination legislation and narrowly defining what constitutes an utterance made in an ‘official capacity’.

Under the media law, the Hungarian Media Council (the Media Council) has the authority to investigate cases of infringement, both ex officio and in response to complaints in ‘hate speech’ cases, and impose administrative sanctions. Since its creation in 2011, the Media Council has examined only a few cases of ‘hate speech’; again, this is due to the strict test applied by the Media Council in the respective cases. Moreover, the Media Council does not have oversight powers over public service media and other state-controlled media, which have broadcast problematic governmental campaigns.

Under the media law, the Hungarian media established self-regulation mechanisms for print media. However, this system has not been effective in practice to tackle instances of ‘hate speech’ in the media. More positively, a number of constructive initiatives, including those promoting ethical journalism at the Editor’s Forum, can be noted.

Certain forms of ‘hate speech’ are prohibited in advertising (commercial communications), and the Self-Regulatory Advertising Organisation (ÖRT) has adopted a code of conduct that addresses some issues related to discrimination in advertising. It has not yet received any complaints regarding ‘hate speech’ in advertising.

Summary of recommendations:

- The Hungarian government should immediately discontinue its various ‘hate speech’ campaigns. Instead, it should make a commitment to equality and undertake measures to promote tolerance in society. As all public officials, including politicians, have a key role to play in recognising and promptly speaking out against intolerance and discrimination, they should express support to the targeted individuals or groups, and refrain from engaging in ‘hate speech’ themselves. This is particularly important where inter-communal tensions are high, or are susceptible to being escalated, and where political stakes are also high, such as in the run-up to elections;
- All Hungarian legislation – in particular the relevant criminal law provisions – should be revised for their compliance with international human rights standards applicable to ‘hate speech’. The advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence should be prohibited in line with Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights (ICCPR), establishing a high threshold for limitations on free expression, as set out in the Rabat Plan of Action, as well as prohibitions on direct and public incitement to genocide and incitement to crimes against humanity;

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- The criminal provision on incitement against a community, in Section 332 of the Criminal Code, should include the reference to incitement to discrimination. Criminal offences of “public denial of sins of national socialist or communist regimes”, “desecration of national symbols”, and “the use of symbols of totalitarianism” should be abolished;
 - The Hungarian nation should be omitted from the list of protected groups in the legislation;
 - The judiciary, law enforcement agencies, and public bodies should be provided with comprehensive and regular training on relevant international human rights standards applicable to ‘hate speech’;
 - In collaboration with experts and civil society, law enforcement agencies should develop investigative guidelines on the prosecution of incitement cases, based on international human rights law. The government should ensure that all law enforcement agencies are made aware of the guidelines during their trainings and in their work;
 - The provisions on harassment in the Equal Treatment Act should be amended. It should state that harassment can also be committed against groups, and the provisions should apply to all statements of public officials made in public while they are acting in their official capacity;
 - The provisions of the Civil Code pertaining to ‘hate speech’ should be revised. In particular, the list of the protected groups in the provisions on ‘hate speech against a community’ should be non-exhaustive, and the statute of limitations for initiating cases should be extended to 12 months. The provisions on ‘community reputation’ should be rephrased and narrowly tailored to provide civil law protection in ‘hate speech’ cases;
 - The law enforcement agencies (prosecutors) should not be involved in civil law actions. The requirement for legal representation in civil proceedings is unnecessary and unjustified, and places a disproportionate burden on the claimant;
 - The Media Council should develop and publish clear policy guidelines on ‘hate speech’ in order to circumscribe vague concepts of illegal media content. Further, by applying clear policy guidelines, it should take a less restrictive approach, and it should hear complaints against hateful media contents, particularly with regard to the content disseminated by public service media;

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- Media self-regulatory bodies should actively promote existing self-regulatory complaint procedures and invite the public to use alternative dispute resolutions in media-related cases; and
 - The civil courts should refrain from taking an objective liability approach in cases when content providers make publication of third-party content possible. As a general rule, web-hosting providers or hosts should be immune from liability for third-party content when they have not been involved in modifying the content in question.

Introduction

Since the fall of communism in 1989, Hungary has experienced the rise of intolerance, prejudice, discrimination, and hate crimes against various minorities. The most frequently targeted groups are the Roma, Jews, LGBTQI people¹, and, most recently, migrants and refugees.² Research demonstrates that:

- Racist violence against the Roma is one of the most severe discrimination problems in Hungary. Paramilitary groups have been organising marches, demonstrations, and illegal patrols in villages, and harassing and intimidating Roma in the Romani neighbourhoods.³ Between January 2008 and September 2012, 61 separate attacks took place resulting in the death of nine Roma, including two minors, and dozens of injuries;⁴
- For LGBTQI people, harassment and various forms of violence are an everyday experience. The annual Budapest Gay Pride Parade, which used to be a peaceful and successful event, has since 2007 been the target of homophobic attacks by neo-Nazi groups;⁵
- Anti-Semitism has also been on the rise in Hungary. In a 2016 poll, 23% of respondents claimed to be strongly anti-Semitic, and 12% said that they had a somewhat negative opinion of the Jewish community;⁶ and
- Additionally, since the onset of the so-called refugee and migration 'crisis' in Europe in 2015, which affected Hungary, a rise of xenophobic attitudes towards other minorities, in particular migrants and refugees, has been documented. In a 2016 poll, the highest levels of xenophobia were expressed towards Arabs (rather than Roma, as in previous polls).⁷

The rise of prejudice and tolerance in Hungarian society in the last three years can also be closely linked to the government's own policies and communications strategies, as well as the lack of political will to deal with instances of hate crime and incitement to violence by the public authorities. Despite reforms that have improved legal and policy protection in this area, the Hungarian authorities often fail to put the available mechanisms to use in an effective manner. In most hate crime cases, law enforcement agents fail to even launch official proceedings, or if they do, they generally do not consider relevant bias motivations; and they terminate proceedings on the grounds of a lack of evidence or find that no offence was committed.⁸ This sends the message to society that such acts are to be tolerated.

Most concerning are the government's official communications campaigns that have had a major impact on both the form and content of public discourse in Hungary. In

the wake of the Charlie Hebdo attacks in January 2015, Viktor Orbán, the Hungarian Prime Minister, declared:

Economic migration is a bad thing in Europe. It shouldn't be seen as something that has any benefits whatsoever, as it only brings trouble and loss to Europeans, this is why immigration must be stopped, this is the Hungarian position (...) we don't want to see significant groups of minorities with cultural traits and backgrounds that are different from our own. We want Hungary to keep on being Hungary.⁹

Statements of this type have been steadily on the increase since 2015, when the government's response to the large number of migrants and refugees attempting to transit through the country became one of the most significant human rights problems in Hungary. The government's response was marked by xenophobic rhetoric and a lack of humanitarian aid;¹⁰ it spent over 20 million EUR on an official communication campaign labelling refugees and migrants 'criminals' and threats to national security.¹¹ The government argued that the aim of the campaign was to provide Hungarians with information before the referendum on whether to accept the European Union's (EU) proposed mandatory quotas for relocating refugees. During the campaign, public spaces and the media were inundated by large "Did you know...?" billboards, with messages such as "Did you know... that more than 300 people were killed in terrorist attacks in Europe since the start of the migrant crisis?", "Did you know... that Brussels wants the forced resettling of a city's worth of illegal immigrants into Hungary?", "Did you know... that almost one million immigrants want to come to Europe from Libya alone?", and "Did you know... that since the start of the immigration crisis, sexual harassment of women has increased in Europe?", among others.¹² A similar "Let's stop Brussels" campaign was also initiated.¹³

In October 2016, Hungary held the so-called 'quota referendum' on the EU's refugee relocation plans. Whilst an overwhelming majority of voters rejected the EU's quotas, actual turnout was too low to make the referendum results valid. However, the Prime Minister declared it to have been an unprecedented success, trumpeting that 92% of voters had rejected the EU proposal.¹⁴ This 'anti-Brussels' message continues to be part of the government's discourse; moreover, the government has also started to target critical voices in Hungarian society, in particular human rights non-governmental organisations (NGOs) and the Central European University (CEU), as well as George Soros who is one of CEU's funders.¹⁵ The summer 2017 government billboard campaign depicted Soros in a large black and white picture and urged Hungarians not to let him "have the last laugh".¹⁶ There were also posters placed on the floors of Budapest trams, such that passengers have to tread on Soros' face. Some billboards have been defaced with graffiti that read 'stinking Jew'.

Meanwhile, hostility and prejudices against refugees and migrants have been replicated in news and talk shows of both state-funded and many state-controlled media outlets. These media outlets have focused on and juxtaposed themes such as terrorism, the influx of migrants and refugees, the increase in crime and violent offences, and the burdens associated with providing care and services to migrants and refugees, among others.¹⁷ Although a limited number of media outlets and social media are providing a platform for counter-speech, they are not able to reach a significant section of the population. Rhetoric based on hatred and divisiveness, however, constitutes an integral part of contemporary Hungarian public discourse.

This report aims to explore these problems and offer solutions based on international human rights standards.¹⁸ It examines legislation, policy, and practices in relation to 'hate speech' in Hungary, with a particular focus on the media. It examines the compliance of the respective legislation with international freedom of expression standards and offers recommendations for their improvement.

The report is part of a broader project by ARTICLE 19 in six EU countries (Austria, Germany, Hungary, Italy, Poland, and the United Kingdom) to identify commonalities and differences in national approaches to 'hate speech', specifically in the media, and to recommend good practices for replication, as well as concerns to be addressed.

International human rights standards

In this report, the review of the Hungarian framework on ‘hate speech’ is informed by international human rights law and standards, in particular regarding the mutually interdependent and reinforcing rights to freedom of expression and equality.

The right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR)¹⁹ and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).²⁰

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive, or impart information or ideas of any kind, regardless of frontiers, through any media of a person’s choice. The United Nations (UN) Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States’ compliance with the ICCPR, has affirmed the scope extends to the expression of opinions and ideas that others may find deeply offensive,²¹ and this may encompass discriminatory expression.

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR, provided that the limitation is:

- **Provided for by law**, so any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;
- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (*ordre public*), or of public health or morals; or
- **Necessary in a democratic society**, requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.²²

Thus, any limitation imposed by the State on the right to freedom of expression, including limiting ‘hate speech’, must conform to the strict requirements of this three-part test. Further, Article 20(2) of the ICCPR provides that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence must be prohibited by law (see below).

At the European level, Article 10 of the European Convention on Human Rights (European Convention)²³ protects the right to freedom of expression in similar terms to Article 19 of the ICCPR, with permissible limitations set out in Article 10(2).²⁴ Within the EU, the right to freedom of expression and information is guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union.

The right to equality

The right to equality and non-discrimination is provided in Articles 1, 2, and 7 of the UDHR.²⁵ These guarantees are given legal force in Articles 2(1) and 26 of the ICCPR, obliging States to guarantee equality in the enjoyment of human rights, including the right to freedom of expression and equal protection of the law.

At the European level, the European Convention prohibits discrimination in Article 14 and, more broadly, in Protocol No. 12.

Limitations on ‘hate speech’

While ‘hate speech’ has no definition under international human rights law, the expression of hatred towards an individual or group on the basis of a protected characteristic can be divided into three categories, distinguished by the response international human rights law requires from States:²⁶

- Severe forms of ‘hate speech’ that international law *requires* States to prohibit, including through criminal, civil, and administrative measures, under both international criminal law and Article 20(2) of the ICCPR;
- Other forms of ‘hate speech’ that States *may* prohibit to protect the rights of others under Article 19(3) of the ICCPR, such as discriminatory or bias-motivated threats or harassment; or
- ‘Hate speech’ that is lawful and should therefore be protected from restriction under Article 19(3) of the ICCPR, but which nevertheless raises concerns in terms of intolerance and discrimination, meriting a critical response by the State.

Obligation to prohibit

Article 20(2) of the ICCPR obliges States to prohibit by law “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. In General Comment No. 34, the HR Committee stressed that while States are *required* to prohibit such expression, these limitations must nevertheless meet the strict conditions set out in Article 19(3).²⁷

The Rabat Plan of Action,²⁸ adopted by experts following a series of consultations convened by the UN Office of the High Commissioner for Human Rights (OHCHR), advances authoritative conclusions and recommendations for the implementation of Article 20(2) of the ICCPR.²⁹

- **Incitement.** Prohibitions should only focus on the advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence, rather than the advocacy of hatred without regard to its tendency to incite action by the audience against a protected group.
- **Six-part threshold test.** To assist in judicial assessments of whether a speaker intends and is capable of having the effect of inciting their audience to violent or discriminatory action through the advocacy of discriminatory hatred, six factors should be considered:
 - **Context:** the expression should be considered within the political, economic, and social context prevalent at the time it was communicated, for example the existence or history of conflict, existence or history of institutionalised discrimination, the legal framework, and the media landscape;
 - **Identity of the speaker:** the position of the speaker as it relates to their authority or influence over their audience, in particular if they are a politician, public official, religious or community leader;
 - **Intent** of the speaker to engage in advocacy to hatred; intent to target a protected group on the basis of a protected characteristic, and knowledge that their conduct will likely incite the audience to discrimination, hostility, or violence;
 - **Content of the expression:** what was said, including the form and the style of the expression, and what the audience understood by this;
 - **Extent and magnitude of the expression:** the public nature of the expression, the means of the expression, and the intensity or magnitude of the expression in terms of its frequency or volume; and
 - **Likelihood of harm occurring, including its imminence:** there must be a reasonable probability of discrimination, hostility, or violence occurring as a direct consequence of the incitement.
- **Protected characteristics.** States' obligations to protect the right to equality more broadly, with an open-ended list of protected characteristics, supports an expansive interpretation of the limited protected characteristics in Article 20(2)

of the ICCPR to provide equal protection to other individuals and groups who may similarly be targeted for discrimination or violence on the basis of other recognised protected characteristics.

- **Proportionate sanctions.** The term “prohibit by law” does not mean criminalisation; the HR Committee has said it only requires States to “provide appropriate sanctions” in cases of incitement.³⁰ Civil and administrative penalties will in many cases be most appropriate, with criminal sanctions an extreme measure of last resort.

The Committee on the Elimination of all forms of Racial Discrimination (the CERD Committee) has also based their guidance for respecting the obligation to prohibit certain forms of expression under Article 4 of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) on this test.³¹

At the European level, the European Convention does not contain any *obligation* on States to prohibit any form of expression, as under Article 20(2) of the ICCPR. However, the European Court of Human Rights (European Court) has recognised that certain forms of harmful expression must necessarily be restricted to uphold the objectives of the European Convention as a whole.³² The European Court has also exercised particularly strict supervision in cases where criminal sanctions have been imposed by the State, and in many instances it has found that the imposition of a criminal conviction violated the proportionality principle.³³ Recourse to criminal law should therefore not be seen as the default response to instances of harmful expression if less severe sanctions would achieve the same effect.

At the EU level, the Council’s framework decision “on combating certain forms and expressions of racism and xenophobia by means of criminal law”³⁴ requires States to sanction racism and xenophobia through “effective, proportionate and dissuasive criminal penalties”. It establishes four categories of incitement to violence or hatred offences that States are required to criminalise with penalties of up to three years. States are afforded the discretion of choosing to punish only conduct which is carried out in “a manner likely to disturb public order” or “which is threatening, abusive, or insulting”, implying that limitations on expression not likely to have these negative impacts can legitimately be restricted. These obligations are broader and more severe in the penalties prescribed than the prohibitions in Article 20(2) of the ICCPR, and do not comply with the requirements of Article 19(3) of the ICCPR.³⁵

Permissible limitations

There are forms of ‘hate speech’ that target an identifiable individual, but that do not necessarily advocate hatred to a broader audience with the purpose of inciting discrimination, hostility, or violence. This includes discriminatory threats of unlawful conduct, discriminatory harassment, and discriminatory assault. These limitations must still be justified under Article 19(3) of the ICCPR.

Lawful expression

Expression may be inflammatory or offensive, but not meet any of the thresholds described above. This expression may be characterised by prejudice and raise concerns over intolerance, but does not meet the threshold of severity at which restrictions on expression are justified. This also includes expression related to the denial of historical events, insult of State symbols or institutions, and other forms of expression that some individuals and groups might find offensive.

This does not preclude States from taking legal and policy measures to tackle the underlying prejudices of which this category of ‘hate speech’ is symptomatic, or from maximising opportunities for all people, including public officials and institutions, to engage in counter-speech.

Freedom of expression online

International law

At the international level, the UN Human Rights Council (HRC) recognised in 2012 that the “same rights that people have offline must also be protected online”.³⁶ The HR Committee has also made clear that limitations on electronic forms of communication or expression disseminated over the Internet must be justified according to the same criteria as non-electronic or ‘offline’ communications, as set out above.³⁷

While international human rights law places obligations on States to protect, promote, and respect human rights, it is widely recognised that business enterprises also have a responsibility to respect human rights.³⁸ Importantly, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur on FOE) has long held that censorship measures should never be delegated to private entities.³⁹ In his June 2016 report to the HRC,⁴⁰ the Special Rapporteur on FOE enjoined States not to require or otherwise pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression, whether through laws, policies, or extra-legal means. He further recognised that “private intermediaries are typically ill-equipped to make determinations of content illegality”,⁴¹ and reiterated criticism of notice

and take-down frameworks for “incentivising questionable claims and for failing to provide adequate protection for the intermediaries that seek to apply fair and human rights-sensitive standards to content regulation”, i.e. the danger of “self- or over-removal”.⁴²

The Special Rapporteur on FOE recommended that any demands, requests, and other measures to take down digital content must be based on validly enacted law, subject to external and independent oversight, and demonstrate a necessary and proportionate means of achieving one or more aims under Article 19(3) of the ICCPR.⁴³

In their 2017 Joint Declaration on “freedom of expression, ‘fake news’, disinformation and propaganda”, the four international mandates on freedom of expression expressed concern at “attempts by some governments to suppress dissent and to control public communications through [...] efforts to ‘privatise’ control measures by pressuring intermediaries to take action to restrict content”.⁴⁴ The Joint Declaration emphasises that intermediaries should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it, and they have the technical capacity to do so. They also outlined the responsibilities of intermediaries regarding the transparency of and need for due process in their content-removal processes.

European law

At the EU level, the E-Commerce Directive requires that Member States shield intermediaries from liability for illegal third party content where the intermediary does not have actual knowledge of illegal activity or information and, upon obtaining that knowledge, acts expeditiously to remove or disable access to the content at issue.⁴⁵ The E-Commerce Directive prohibits Member States from imposing general obligations on intermediaries to monitor activity on their services.⁴⁶ The regulatory scheme under the E-Commerce Directive has given rise to so-called ‘notice-and-takedown’ procedures, which have been sharply criticised by the special mandates on freedom of expression for their lack of clear legal basis and basic procedural fairness.

The limited shield from liability for intermediaries provided by the E-Commerce Directive has been further undermined by the approach of the European Court. In *Delfi AS v. Estonia*, the Grand Chamber of the European Court found no violation of Article 10 of the European Convention where a national court imposed civil liability on an online news portal for failure to remove “clearly unlawful” comments posted to the website by an anonymous third party, even without notice being provided.⁴⁷ A joint dissenting opinion highlighted that this “constructive notice” standard

contradicts the requirement of actual notice in Article 14 para 1 of the E-Commerce Directive, necessitating intermediaries to actively monitor all content to avoid liability in relation to specific forms of content, thus additionally contradicting Article 5 of the E-Commerce Directive.⁴⁸

Decisions subsequent to *Delfi AS* appear to confine the reasoning to cases concerning 'hate speech'.⁴⁹ More recently, the European Court rejected as inadmissible a complaint that the domestic courts had failed to protect the applicant's right to privacy by refusing to hold a non-profit association liable for defamatory comments posted to their website by a third party. The Court noted that the comments were not 'hate speech' or direct threats and were removed upon notice (though a formal notice-and-takedown procedure was not in place).⁵⁰ The position and resources of the intermediary were also relevant factors.⁵¹

Lastly, the 2016 European Commission's Code of Conduct on Countering Illegal Hate Speech,⁵² developed in collaboration with some of the major information technology companies, constitutes a (non-legally binding) commitment to remove "illegal hate speech", defined on the basis of the Framework Decision on Combatting Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law,⁵³ within 24 hours. While the Code of Conduct is ostensibly voluntary, it is part of a concerning trend whereby States (including through intergovernmental organisations) are increasing pressure on private actors to engage in censorship of content without any independent adjudication on the legality of the content at issue.⁵⁴

In short, the law on intermediary liability remains legally uncertain in Europe, with tensions between the European Court's jurisprudence and the protections of the E-Commerce Directive, as well as the guidance of the international freedom of expression mandates.

Basic legal guarantees in national law

An enabling environment for the rights to freedom of expression and equality

Legal protection of the right to freedom of expression

The Hungarian **Constitution** – the Fundamental Law⁵⁵ – provides for the protection of the right to freedom of expression and freedom of the press in Article IX (1).⁵⁶

According to the Constitution, freedom of expression is not an absolute right and should not be exercised with the purpose of violating the human dignity of others. The fourth amendment of the Constitution provides for remedies against ‘hate speech’ through the introduction of the following provision:

The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community.⁵⁷

The main laws addressing the freedom of the media in Hungary are the **Media Act** (dealing with media regulation)⁵⁸ and the **Press Act** (dealing with media content);⁵⁹ both were adopted in 2010.

Legal protection of the right to equality

The Constitution provides for the protection of equality in two articles: rights to human dignity (the function of which is to ensure equality and to provide the substantive content of the right to be treated without discrimination) in Article II of the Fundamental Law⁶⁰ and freedom of discrimination in Article XV (2).⁶¹

The general ban on discrimination set forth by this constitutional provision is detailed in the **Act on Equal Treatment and Promotion of Equal Opportunities**.⁶²

Prohibitions of ‘hate speech’ in criminal law

Criminal provisions directly restricting ‘hate speech’

The Hungarian criminal law does not use terms equivalent to the English terms ‘hate crime’ and/or ‘hate speech’. However, several crimes in the Criminal Code fall into this category. These include the crimes of genocide, apartheid, violence against a member of a community, incitement against a community, public denial of sins of national socialist or communist regimes, blasphemy of a national symbol, and the use of symbols of totalitarianism.⁶³

The prohibition of incitement (as per Article 20 (2) of the ICCPR) is provided for in the crime of incitement against a community, found in Section 332 of the Criminal Code, which stipulates:

Any person who, before the public at large, incites violence or hatred against: a) the Hungarian nation; b) any national, ethnic, racial or religious group or a member of such a group; or c) certain societal groups or a member of such a group, in particular on the grounds of disability, gender identity or sexual orientation is guilty of a felony punishable by imprisonment not exceeding three years.⁶⁴

This provision has been amended twice over the past few years,⁶⁵ with the most relevant and recent changes being made in October 2016, in order to comply with the EU Council Framework Decision on Combating Racism⁶⁶ and to avoid infringement proceedings by the Commission.⁶⁷ The changes concerned two main elements of the crime:

- The new provision has been expanded to include “incitement to violence” alongside “incitement to hatred”; and
- The amendment provided protection in cases where incitement targets individual members of protected groups – previously, protection was provided only to “groups”.⁶⁸

There are several problems with the provisions of Section 332 in terms of compliance with Article 20 (2) of the ICCPR:

- There is no reference to **incitement to discrimination**;

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- The **protected characteristics** are set out in Section 332 (b) as nationality, ethnicity, race, and religion. Section 332 (c) further specifies that “certain societal groups” sharing other protected characteristics are also protected, explicitly referencing disability, sexual orientation, and gender identity. The wording “in particular” suggests that the list provided is non-exhaustive, as is affirmed by available jurisprudence.⁶⁹ Since the list of protected characteristics is non-exhaustive, theoretically, any human community which is based on a “shared criterion which is closely connected to one’s personal identity” can benefit from heightened protection.⁷⁰

One of the controversial aspects of the legislation is the specific inclusion of the Hungarian nation among the groups protected against incitement. It is, however, not clear which specific ‘group’ is protected by these provisions. Although it is possible that one could incite hatred and violence against a majority population, some argue that belonging to the majority Hungarian ethnic group is hardly an element of one’s identity which would put one in a vulnerable, threatened position, and which would permit the individual to benefit from increased protection under the criminal law in Hungary. This is problematic also in light of existing trends, by which law enforcement agencies and the courts are more likely to find perpetrators guilty of violent offences if they are committed by members of minority groups against members of the majority population, rather than the other way round.⁷¹ Guilty verdicts in cases where minorities, such as the Roma or LGBTQI people, are targeted are extremely rare;⁷²

- One of the key elements of Section 332 is the requirement that the act be committed in front of “**the public at large**”. The legislation fails, however, to define the term ‘public at large’. According to the case law, this condition is interpreted as requiring either a large number of people to be present at the time that the offence is committed, or for there to be a real possibility of a greater, unforeseeable, number of people – one which cannot be ascertained *prima facie* – gaining knowledge of the speech at issue;⁷³ and
- Incitement to hatred can be also committed online or through digital communication technologies. The Criminal Code stipulates (in closing provisions that “a crime is committed, *inter alia*, through publication in the press, or through other media services, by way of reproduction or by means of publication on electronic communication networks”).⁷⁴

The Criminal Code additionally provides for more severe sanctions in cases when certain crimes are committed with “bias motivation or purpose”. The term ‘bias motive or purpose’ is not defined in the law; however, it is used as an aggravating circumstance in crimes of homicide, bodily harm, defamation, unlawful deprivation

of liberty, and insulting a subordinate.⁷⁵ In its recent country report on Hungary, European Commission against *Racism* and Intolerance (ECRI) recommended that the authorities introduce specific provisions in the criminal law that establish that racist motivations for committing ordinary offences will constitute an aggravating element.⁷⁶

Analysis of the relevant jurisprudence

The Constitutional Court of Hungary (the Constitutional Court) has examined the constitutionality of the criminal law provisions on incitement against a community on several occasions,⁷⁷ and defined how criminal liability should be balanced with the protection of the right to freedom of expression.⁷⁸ The Constitutional Court has established that criminal sanctions are only deemed to be constitutional in the case of “acts leading to the clear and present danger of violent actions or to individual rights”.⁷⁹

Although the test of ‘clear and present danger’ is not provided explicitly in the criminal law, the Hungarian higher courts nonetheless consider themselves to be bound by this test, and have set the threshold even higher than the Constitutional Court. The threshold set by the Curia (Supreme Court)⁸⁰ and used in practice can be summarised as follows:

- The expressive conduct incites to hatred to such an extent that it can lead to violence;
- The expressive conduct constitutes a concrete and direct threat to the rights of others;
- The risk of violence is concrete (i.e. it is probable that the incitement will lead to violence); and
- Direct intent is not required for the *actus reus* of the crime. It is sufficient for the perpetrator to be aware that the expressive conduct, made before the public at large, is objectively likely to incite to hatred to such an extent that it can lead to violence.⁸¹

Both the lower courts and public prosecutors take a more restrictive approach in their interpretation of the relevant decisions of the Constitutional Court. As a result, barely any reported incidents are considered as falling within the scope of the criminal provision contained in Section 332 of the Criminal Code. Law enforcement agencies tend to conclude that the expressive conduct did not constitute a call for a violent act and did not create a direct threat of danger, and criminal proceedings are terminated at the investigation phase or the prosecution drops the charges.

This tendency renders Section 332 of the Criminal Code effectively a dormant provision, with even the most severe cases (when the expressive conduct could be said to have reached the threshold of incitement) going unpunished. For example, according to the 2015 report of ECRI, between 2009–2013 the police recorded 201 incidents as possible violations of Section 332; however, only six cases reached trial stage, all resulting in convictions.⁸²

Civil society organisations and minority groups believe that law enforcement authorities wrongly interpret the criteria set by the Constitutional Court and have objected against this narrow interpretation.⁸³ The European Court came to a similar conclusion in its 2017 decision in *Király and Dömötör v Hungary*.⁸⁴ It concluded that the fact that the authorities conducted only a limited investigation into openly racist demonstrations in Romani settlements, with sporadic acts of violence, violated Article 8 of the European Convention.

The case concerned a 2012 demonstration in Devecser, in which approximately 400–500 people participated, including members of a right-wing political party and nine far-right groups known for their militant anti-Roma attitudes. Speakers at the demonstration made racist threats against the Roma, called for the reintroduction of the death penalty, and urged the Hungarian people to revolt against the Roma community. Afterwards, the demonstrators marched to the Romani neighbourhood, chanting racist slogans and calling on the police not to protect the Roma. Certain demonstrators dismantled the police cordon and threw pieces of concrete, plastic bottles, and stones into gardens, where the applicants (Mr Király and Mr Dömötör) were present. The police had remained passive and took no steps to identify the violent demonstrators attacking the Roma. The law enforcement agencies later concluded that they were able to identify only one violent protester (who was convicted in June 2015 of violence against a member of a specified group and received a suspended custodial sentence) and that speeches during the demonstration did not reach the threshold of incitement.

In its decision, the European Court found that the Hungarian authorities had failed to consider both the broader context in which the demonstrations took place and the direct threats made against the Roma during the demonstrations. As for the context, it noted that the expressive conduct took place during a demonstration attended by groups known for their militant behaviour and anti-Roma stance, at a time when there had been large-scale, coordinated intimidation of Roma in the form of marches involving large groups of people. The Court also noted that the speeches had made direct threats against the Roma and had demanded the police not to protect the Roma minority.

Criminal provisions indirectly restricting ‘hate speech’

The Hungarian Criminal Code contains three criminal offences that indirectly might criminalise some instances of ‘hate speech’; all three raise concerns for their compatibility with international standards on freedom of expression.⁸⁵ However, the Constitutional Court has found the criminal law restrictions imposed by all three offences to be constitutional.

- The crime of **public denial of sins of national socialist or communist regimes** as stated in the Criminal Code prohibits denying or questioning the occurrence or belittling the significance of the genocide and other grave crimes against humanity committed by the National Socialist or Communist regimes or attempting to justify such crimes in public.⁸⁶ The provision was expanded in 2013,⁸⁷ and the crime can also be committed online (as had already been confirmed by the courts). The first person convicted under the new provision for making an online comment under an article, in which she denied the Holocaust, was given an unconventional sanction: in addition to an 18-month suspended prison sentence, she was ordered to visit the Budapest Holocaust Memorial Centre, Auschwitz/Birkenau, or the Yad Vashem memorial in Israel and record her observations.⁸⁸
- The crime of **desecration of national symbols** prohibits any expression which dishonours or degrades the national anthem, the flag or the coat of arms, or the Holy Crown of Hungary, or the committing of “any other similarly slanderous act” in front of the public at large.⁸⁹ In its jurisprudence, the Constitutional Court has stated that national symbols are the constitutional symbols of the country’s internal and external integrity, thus warranting their protection under the criminal law.⁹⁰ To date, there has not been any court decision related to these provisions, as all initiated cases have been terminated by law enforcement. For example, the police terminated an investigation into the desecration of a national symbol in the case of a rapper known as Dopeman. His song contained excerpts from the national anthem of Hungary combined with explicit language and harsh criticism of the current political regime. According to the police, “it was apparent from the video clip that the person speaking was expressing criticism of the current political/economic/social issues in his own style and did not commit an offence”.⁹¹
- **The crime of the use of symbols of totalitarianism**⁹² prohibits the distribution, usage in front of the public at large, or public exhibition of, certain symbols (namely, the swastika, the insignia of the SS, the arrow cross, the hammer and sickle, the five-pointed red star, or any symbol depicting the above) in a manner which violates public peace – specifically, in a way to offend the dignity of the victims of totalitarian regimes and their right to sanctity. The Constitutional

Court had found the previous version of this provision to be unconstitutional, considering it to be construed too broadly and that it therefore disproportionately limited the right to freedom of expression.⁹³

Several cases have been initiated at the European Court for violation of the right to freedom of expression under these provisions. For example, *Vajnai v Hungary*⁹⁴ concerned the conviction of Attila Vajnai, the then vice-president of Hungary's Labour Party, for wearing a five-pointed red star measuring five centimetres wide during his speech at a party demonstration in Budapest. The European Court considered this to be a political opinion and found that there had been a violation of Article 10 of the European Convention. The European Court came to the same conclusion in a further three cases with similar facts.⁹⁵

There is no available case law on the application of these provisions since the amendment of the Criminal Code in 2013; although some cases are still pending before the courts.

Measures against ‘hate speech’ in administrative law

Administrative provisions directly restricting ‘hate speech’

In the field of administrative law, ‘hate speech’ is addressed only in two areas: the Equal Treatment Act⁹⁶ (ETA), analysed in this section of the report; and legislation on media regulation, analysed in a dedicated chapter on media regulation below.

Prohibition of harassment

Under the ETA, harassment is considered a violation of the requirement of equal treatment.⁹⁷ It is defined as “conduct of sexual or other nature violating human dignity, related to the relevant person’s characteristics defined [in Article 8 of the ETA], with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around the particular person”.⁹⁸ The list of protected grounds is non-exhaustive.⁹⁹

Under the ETA, it is primarily public authorities that are obliged to comply with the requirement of equal treatment in relation to their activities;¹⁰⁰ the ETA also applies to ‘private actors’ in four defined circumstances, including in relation to employment and contractual relations, and where private entities receive state funding or provide public services.¹⁰¹ Hence, a statement which might be considered to constitute harassment, when made by a person in circumstances which fall outside of the limited scope of the ETA (e.g. a public figure writing an article or posting a comment on social media inciting discrimination), then no action can be taken under anti-discrimination law. Such action can, however, be taken under civil law or under legislation governing media regulation (see below).

Depending on the choice of the applicant, cases of discrimination, including harassment, can be adjudicated either by the Equal Treatment Authority (the Authority) in administrative procedures or by civil courts in judicial procedures. The Authority is an independent public administrative body with overall responsibility for ensuring compliance with the principle of equal treatment. The Authority conducts complaint-based or *ex officio* investigations to establish whether the principle of equal treatment has been violated, and – if necessary – applies sanctions on the basis of the investigation. In public administration proceedings, procedures against discrimination result from class action (*actio popularis*) as these can be initiated by NGOs (“the social and interest representation organisations”).¹⁰² The Authority can offer a relatively wide range of remedies¹⁰³ ranging from injunctions to fines in cases of violations of the principles of equal treatment. Their decision cannot be appealed, but can be subject to judicial review.¹⁰⁴

Analysis of the application of administrative decisions on harassment

Human rights NGOs defending the rights of marginalised groups have, since 2009, sought to apply the ETA's concept of harassment to some forms of 'hate speech', in particular in relation to statements made in public and/or made by public officials. This was primarily driven by the limited available protections against 'hate speech' prior to the 2013 adoption of new Civil and Criminal Codes.¹⁰⁵ NGOs have argued that such public statements violate human dignity and create an intimidating, hostile, degrading, or offensive social environment; as such, they argue that the harassment provision can be applied in these cases.¹⁰⁶ Although these proceedings did not always find in favour of the complainant, it is of note that the Authority and the courts did not exclude this type of case on principle.

According to available statistics, the Authority receives between six and ten complaints of harassment per year, and findings of violations are reached in two to four of these.¹⁰⁷ Although the majority of these cases concern harassment in the workplace, there has been a marked increase in complaints submitted in relation to offensive statements or conduct by local government public officials or employees of state-funded institutions (hospitals, public transportation, or the police force). The growing number of relevant decisions¹⁰⁸ in the field of administrative law should be considered a positive development, indicating a more effective mechanism than the criminal law.

The Authority publishes its decisions on its website, and the media widely cover these decisions. In 2016, for example, three cases concerning public discriminatory speech against the Roma were the subject of substantial press coverage.

- The first case concerned two Roma adults, travelling with their children, who wanted to board a local bus. After showing their tickets to the bus driver, they asked him to open the middle door of the vehicle so that they could put the pushchair on board as well. The driver, however, refused to open the door, allegedly making reference to "freeloading Gypsies". An argument broke out between the complainant and the driver, during the course of which the driver, *inter alia*, stated: "You migrants get the hell out of the country." The Authority imposed a fine of 100,000 HUF (approx 320 EUR) for harassment on the grounds of ethnicity.¹⁰⁹
- In the second case, a Romani woman alleged that she was a victim of harassment whilst she was in hospital, delivering her baby. The hospital midwife told her that if she did not stop screaming and making so much noise, she would slap her and stuff a pillow in her face. Meanwhile, the attending doctor commented: "Anyway, you Gypsies just give birth for money." The Authority found this to constitute harassment on the grounds of ethnicity, and fined the hospital 500,000 HUF (approx 1,600 EUR).¹¹⁰

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- In the third case, the Mayor of Mezőkeresztes (a town in north-east Hungary) had an open letter to the inhabitants of the municipality published in a newspaper. In the letter he encouraged them to sell their properties to companies or private people with regular incomes, who are capable of accumulating savings or starting viable enterprises. He suggested that “if they can [they should] refrain from selling their real estate to Roma people coming from other settlements”. The open letter was also published on the council’s website. The Hungarian Civil Liberties Union launched an *actio popularis* proceeding before the Authority, claiming that the Mayor had committed harassment on the basis of ethnicity. The Authority found in favour of the applicants, and imposed a fine of HUF 100,000 (approx 320 EUR). It also required the article to be removed from the website and for the Mayor to publish a notice on the website and in the newsletter informing the public of its decision.¹¹¹

On the other hand, the application of harassment provisions under the ETA in ‘hate speech’ cases determined by the Authority is not consistently interpreted in the judicial review process. This problem is demonstrated by the following two case examples.

- *Edelény case*: The case concerns a speech delivered by the Mayor of Edelény (a town in north-east Hungary) at a municipal council meeting, which was widely covered in the media. The Mayor, *inter alia*, declared:

In the neighbouring settlements, in settlements with a Gypsy majority, for instance in Lak, for instance in Szendrőlád, pregnant women take medication so that they would give birth to demented children so that they would be entitled to increased family allowance. Women during their pregnancy, I looked into this and it is true, keep hitting their bellies with rubber hammers so that they would give birth to disabled children.

The Authority launched an *ex officio* proceeding against the Mayor and established that the statement was potentially capable of creating a hostile, degrading, humiliating, and offensive environment for Roma women living in the two identified towns. The Authority sanctioned the Mayor, prohibited him from committing future offending behaviour, and ordered that the decision was made public for 90 days.¹¹²

However, in the judicial review, the Curia rejected the case arguing that the provisions of the ETA (stipulating that public entities are only bound by the ETA in their legal relations, in the course of establishing legal relations, and in the course of their proceedings and measures) should be interpreted in a limited way. It held that under the relevant provisions, public entities and office-holders are required by law to comply with the requirement of equal treatment only *vis-à-vis* those persons to whom they are assigned tasks and functions by law. It concluded that since the Mayor of Edelény made the statements in relation to Roma women living in two

settlements outside of his jurisdiction, he did not fall under the scope of the ETA.

- *Kiskunlacháza case*: The case concerns a 2008 rape and murder of a young girl in the town of Kiskunlacháza (in the Central Hungary Region). The investigation later established that the murder was committed by a non-Romani individual. After the incident, however, the town's Mayor, József Répás, organised a public demonstration during which he gave a speech, stating, *inter alia*, "in Kiskunlacháza, there is no room for violence, no room for criminals. Kiskunlacháza has had enough of Roma violence! (...) We shall not allow our valuables to be stolen, old people beaten and children raped. Today we are still the majority". A few months later the Mayor published an article in the local newspaper in which he wrote, among other things, that "brutal crimes are committed by Roma people, they are terrorising society and this must come to an end". The Hungarian Helsinki Committee (HHC) filed an *actio popularis* claim with the Authority, claiming that the statement was capable of promoting negative attitudes towards and creating a hostile environment for the Roma community, and alleging that the Mayor's statement constituted harassment of the Romani population in the region.

The Authority found in favour of the applicants: it established that there had been harassment, forbade continuation of the harassment, and ordered that its decision be published.¹¹³ It concluded that, on the basis of the facts and documents provided, it was clear that the Mayor knew that there was ethnic tension in the town and generally strong negative attitudes towards the Roma among the community. Hence, his statements were capable of creating fear among the Roma and contributing to a hostile environment. In a judicial review, following extensive analysis of whether the Mayor's statement fell under ETA, the Curia upheld the Authority's decision:¹¹⁴ it concluded that when the Mayor of a settlement makes a public statement in such circumstances, he/she exercises a protocol function that creates a sufficiently strong link between him/her and the residents of the settlement to make such instances fall within the scope of the ETA. Furthermore, the Curia found that although the definition of harassment refers to actions creating a hostile environment *vis-à-vis* a single person, it is obvious that harassment can be committed against a group of persons.¹¹⁵

Although it is difficult to make any far-reaching conclusions from this small sample of cases, it seems that the scope of harassment provisions in the ETA can be applied in 'hate speech' cases only in certain limited circumstances:

- The practice indicates that when provisions on harassment have been applied to 'hate speech', the Authority tends only to prohibit public officials (e.g. mayors) from future violations and order the decisions be published;

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- The courts restricted the applicability of the provisions to statements delivered as part of official public ‘proceedings’. These are defined in the strict sense as legally regulated procedures. Statements made by someone who holds a public function is insufficient to attract liability under the ETA, if the statement does not target those to whom the speaker holds responsibility for. For instance, although universities fall within the scope of the ETA, they may be held liable for ‘hate speech’ in harassment cases (e.g. in relation to students belonging to certain racial or ethnic groups) only if such statements specifically concern their own students. However, if the dean of a university engages in ‘hate speech’ of a general nature at an official event (e.g. a widely publicised graduation ceremony), this would fall outside of the ETA protection; and
 - It remains unclear whether harassment provisions can be applied in cases targeting groups as well as individuals. The ETA defines harassment as “conduct violating human dignity related to the relevant person’s characteristics”. The problem was raised in the Kiskunlacháza case, and both the Authority and the Curia concluded that the Hungarian Constitution had to be taken into account. As such, the ETA should be understood as prohibiting harassment committed not only against individuals but also against groups.

Civil actions against ‘hate speech’

Victims of ‘hate speech’ have two types of civil remedies available to them. They can:

- Initiate civil action under the provisions on “hate speech against community” under the Civil Code; or
- Initiate civil action before the courts for violation of inherent rights under the Civil Code amplified by the provisions of the ETA for harassment¹¹⁶.

As outlined earlier (in the section on administrative law), victims can also bring complaints to the Authority under the provisions of the ETA for harassment. They can, however, only bring one type of action: initiating simultaneous proceedings concerning the same matter before the Authority and civil courts is not permitted.¹¹⁷ Civil claims can also be initiated by associations with a legitimate interest in engaging in procedures against discrimination (*actio popularis*). Proceedings in civil cases fall under the competence of county courts. These courts are different from the courts that perform the judicial review of the decisions of the Authority.

As for the civil claims, the 2013 Civil Code¹¹⁸ provides for civil causes of action for “hate speech against a community” in Section 2:54 para 5, as follows:

Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.

The provisions are notable in several aspects:

- In an improvement of the previous provision, the Civil Code now gives **standing** to any member of a community to bring a claim against expression that resulted in injury to the reputation of his or her community.¹¹⁹ Associations and NGOs with legitimate interest are not entitled to bring legal action on behalf of the community. They can, however, provide legal representation to members of the communities;
- The list of **protected characteristics** in the Civil Code is exhaustive and includes

the Hungarian nation, national, ethnic, racial, and religious groups. Other groups – e.g. LGBTQI people or people with disabilities – are excluded from protection. Similarly, as in relation to criminal protections, the protection of “the Hungarian nation” in the Civil Code is problematic (see above);

- The 30-day **statutory limitation** for initiating legal action is extremely short. The government did not provide any justification for this short period at the time of the adoption. This is problematic as general legislation provides a five-year statute of limitation period for pursuing other civil causes of action;
- The legislation provides that if the violation infringes the public interest (including in cases of ‘hate speech’), the public prosecutor¹²⁰ may also launch legal action to seek sanctions, regardless of attributability. Such legal action can be brought before the court by the prosecutor without the victim’s consent.¹²¹ This measure is based on the principle that the violation must be sanctioned, even in cases where the affected parties do not bring a claim.¹²² In such cases, however, if the prosecutor achieves “the financial advantage”, this should “be relinquished for public purposes”; meaning that the damages are retained by the state. Affording the capability to the public prosecutor to initiate civil actions on behalf of victims of ‘hate speech’ might be problematic; however, in practice, the public prosecutor has not yet initiated any cases under this legislation so the implementation of this measure cannot be assessed; and
- In terms of **remedies**, any member of the community affected may ask the court to declare a violation, issue an injunction to stop the violation, and seek restitution (damages). The 2013 Civil Code introduced a substantial change wherein damages, previously defined as “non-pecuniary damages”, were replaced by “restitution.” Restitution serves both as monetary compensation for the breach of inherent rights as well as a civil law sanction. In contrast to non-pecuniary damages, to claim restitution the plaintiff need not prove that he or she has suffered any disadvantage as a result of the violation: the injured party will always have a right to some amount of restitution. The amount of restitution that is set by the court depends on evidentiary elements and the judgment of the tribunal.¹²³

Additionally, the 2014 reform of the Code of Civil Procedure introduced new “actions to enforce a claim in relation to inherent rights connected to membership in a community”.¹²⁴ This was introduced to clarify the legal interpretation of provisions on “hate speech against a community” in the following aspects:

- If several complainants initiate a claim in relation to the same matter, the court shall join the cases and treat them as a single claim;

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- The complainant must make a statement to the effect that he/she is a member of the community affected by the violation of rights;
 - The court reviews whether the violation which was injurious to the community is likely to violate the inherent rights of individuals belonging to the community;
 - When awarding restitution, the court considers the circumstances of the violation; in particular, the gravity of the violation, whether it was a repeat offence, the degree of culpability, and the impact of the violation on the community. In light of all these, it determines a lump sum to be paid to the complainant. In the case of several complainants, it is paid on a joint and several basis – that is, the restitution amount is divided equally among them; and
 - Legal representation in the proceedings is compulsory.

Analysis of the application of civil action against 'hate speech'

The case law of civil courts in 'hate speech' cases is extremely limited and does not allow for any broad conclusions to be drawn on the effectiveness of the relevant provisions. Two cases are included for consideration.

- *László Mohácsi case*: So far, there has been only one final court decision under the relevant civil provisions.¹²⁵ The case was initiated by a Roma activist, with the help of the Legal Defence Bureau for National and Ethnic Minorities (NEKI), against László Mohácsi, a representative of the extreme right Jobbik Party. It concerned a speech delivered by Mohácsi at a meeting of the Hajdú-Bihar County Council in April 2015 when, in relation to one of the towns in the county, he declared:

It is a Gypsy ghetto with third-world conditions. There are teachers whose daily work is a nightmare. This is the whole country's problem, not just the problem of settlements, these people are under-educated, they do not want to study or work. According to the Prime Minister, the Roma are the unrecognised resources of Europe.(...) If the Gypsies are Europe's unrecognised resources, then they should be deported so that they could fulfil their potential.

In its decision, the Debrecen Regional Court concluded that the statement amounted to a violation of human dignity.¹²⁶ Under the relevant 'hate speech' provisions, a violation targeting a community is transferred to the individual members only if it is sufficiently severe. The Court found that in the case of an ethnic minority, especially the Roma community, reference to the possibility of 'deportation' definitely reaches this threshold. It emphasised that the defendant made his statement at an official forum as the representative of a national political party capable of influencing important political decisions, which enhances the statement's ability to incite fear among the members of the targeted

minority group. The Court ordered Mohácsi to publish a public apology, to pay restitution to the plaintiff of 100,000 HUF (approx 320 EUR), and prohibited him from committing future violations.¹²⁷

The decision was upheld by the Debrecen Court of Appeal.¹²⁸ The Appeal Court added the references to the Appendix to Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'Hate Speech'¹²⁹ and to the decision of the Hungarian Constitutional Court,¹³⁰ which outlines the conditions under which violations caused through statements made in relation to certain communities transfer to individual members. Namely, that “the violation must concern a community which fundamentally defines a person’s position in life, and affiliation which may not be terminated by the individual or would result in the individual having to give up his/her dignity (identity), or in significant infringement of his/her dignity. Furthermore, it must be examined whether, according to perception within society, the actual violation is capable of inciting fear in the members of the community(...)”.¹³¹

- *Máté Kocsis case*: An *actio popularis* case, initiated by the HHC, is currently pending at courts. It concerns Máté Kocsis, Mayor of Budapest’s District 8 and member of the ruling Fidesz Party, who, during 2006 refugee crisis, posted the following text on his public Facebook page:

The wandering peoples (i.e. migrants) have completely destroyed our recently restored Pope John Paul II Square. They set up tents and light campfires in the park, litter and steal, there are fights, stabbings and vandalism. Such a quantity of human excrement has never been seen in a public place.

The HHC claimed that the statement violated the human dignity of migrants and asked the Mayor to make a public apology for the post. The Budapest-Capital Regional Court held that the Facebook posts did not fall within the scope of the law on equal treatment, and thus rejected the claim. The Court thereby took a similar approach to that of the courts adjudicating judicial reviews of decisions made by the Authority (see above), concluding that no legal relationship, as provided for in the municipality’s law, had been created between Mayor Kocsis and the refugees, and thus the law on equal treatment could not apply to them.¹³²

On appeal, the HHC argued that the Mayor represents the local population and continues to serve this function when he publishes items in the press or in other media, and when he makes statements or gives interviews. In this role, he is not merely exercising his right to freedom of expression but he is also performing his role in the local government. In his Facebook post, it is notable that Kocsis mentioned which measures he had taken as Mayor to deal with the refugee crisis (ordering the public area supervisory force to reorganise its resources).

On appeal, the Budapest Court of Appeals ruled that Kocsis had appeared on Facebook in his function as Mayor, and his posts clearly referred to the measures which he had taken in connection with the refugee crisis, pursuant to his powers granted under the law on municipalities.¹³³ It further found that when a Mayor publishes, makes statements, or gives interviews in the press or other media, he is performing protocol-related, representational tasks. Accordingly, the court of first instance should have reviewed the issue of harassment under the ETA. The Court of Appeals thus quashed the ruling of the lower court, and ordered a retrial.

At the time of the publication of this report, there has not been a final decision in this case. The decision is expected to have an important and symbolic impact in similar cases.

Given the inconsistency in the application of the provisions of the ETA and the lack of clarity regarding the civil provisions, it is important that the courts provide clarity on the issue of whether the offence of harassment can be applied in cases of discriminatory speech by public officials, and if so, to specify the framework for and boundaries of its application.

Role of equality institutions in relation to public discourse and ‘hate speech’

Two equality institutions play an important role in countering ‘hate speech’ in Hungary: the **Equal Treatment Authority** (described above) and the **Commissioner for Fundamental Rights** (the Commissioner).

The Commissioner is an ombudsman-type institution responsible for the protection of fundamental rights in Hungary, whose remit extends to the whole spectrum of fundamental rights.¹³⁴ He or she can take action in response to complaints or proceed *ex officio* in case of human rights violations, and generally has soft powers to remedy them. The recommendations and reports of the Commissioner have an impact beyond individual cases: they often provide interpretive guidance on human rights provisions in the Constitution in a way that may be useful in other cases and be taken into consideration by other institutions such as the courts.

In 2013, the Commissioner launched the project *Using Communication for Equal Dignity – Integrating Speech vs. Hate Speech*,¹³⁵ which included several thematic studies examining different ways to prevent hate speech. This comprehensive study also included issues related to media regulation and analysis of the case law of the Media Council. The Commissioner made two important findings in this respect, finding that:

- The Media Council very rarely launches proceedings against media outlets for ‘hate speech’ and for violations of human dignity in the media; and
- If the Media Council does initiate proceedings, it applies an extremely restrictive interpretation of the law (similar to that used in the application of the criminal law) to these cases.

The Commissioner also highlighted some positive measures by the Media Council in relation to ‘hate speech’, such as efforts to hold round-table discussions and carry out research, alongside their work to monitor and analyse the portrayal of vulnerable groups by the media. Nonetheless, these findings prompted sharp criticism of the Media Council’s current approach.

In 2012 and 2013, the Commissioner launched *ex officio* proceedings in connection with two specific media cases, and concluded that the Media Council had failed to discharge its obligation to protect the right to dignity and enforce the provisions of the Press Act.¹³⁶ The case concerned a documentary film about relations between

the Hungarian and Roma ethnic groups aired on M1 (a public service television broadcaster) in 2012.¹³⁷ The one hour documentary presented a very simplified view of the coexistence of the two groups and conveyed the message that any social tensions between them could be solely attributed to the Roma, and that the Roma community had the means to remedy these tensions through its social integration.

The Media Council received complaints about this broadcast from NGOs and individuals, and the protests and debates about the broadcast were widely covered in the media.¹³⁸ However, the Media Council decided not to launch official proceedings against the Media Service Provider for violating the law.¹³⁹ The Commissioner also investigated the case but reached a different conclusion, finding that the broadcast violated the provisions on human dignity in the Constitution and in Section 14 of the Press Act.¹⁴⁰ The Commissioner found the broadcast problematic because:

[T]he problem (“Gypsy/Hungarian co-existence”) is found to be in the habits of a minority group and in its conflicts with the majority; as well, the issue is shown out of its usual context in such a manner as to convey a distorted and misleading picture in the film broadcast. Neither the freedom of the filmmaker nor the editorial principles that can be deduced from the programme can be cited as grounds for exoneration.

The Commissioner concluded that the state bodies, state service providers, and authorities had failed to fulfil their obligation to provide institutional protection to the right to equal dignity and non-discrimination. They highlighted that the editorial freedom of the film-maker could be restricted “with regards to his unique approach to the issue; especially considering that the primary goal of publicly funded media providers is not to act as a forum for individual self-expression, but to provide information necessary for the formation of democratic public opinion”.¹⁴¹

The Commissioner has not directly addressed the issue of ‘hate speech’ on social media platforms, as its authority only extends to the activities of state institutions. It made an indirect reference to the topic in an investigation launched in 2016, in which it reviewed the practical enforcement of local media understanding and education, focusing on the risks of social media use by young people.¹⁴²

Media regulation and ‘hate speech’

Government frameworks on media policy

There are two laws primarily addressing the media in Hungary, both adopted in 2010: **the Media Act** (dealing with media regulation)¹⁴³ and **the Press Act** (dealing with media content).¹⁴⁴

The legislation does not distinguish between types of media (e.g. print and broadcasting). Both Acts regulate ‘media services’ and press products; these include public and commercial broadcasting, Internet TV and radio, on-demand media, print and online press, and foreign media ‘aimed at’ Hungary. These laws do not protect the rights of individuals, but rather are aimed at protecting societal values.

The adoption of these laws prompted a wave of strong criticism both domestically¹⁴⁵ and internationally, in particular by the Commissioner for Human Rights of the Council of Europe,¹⁴⁶ for their failure to meet international standards on freedom of expression and media pluralism.

The Media Authority is responsible for overseeing all media sectors and all areas of media regulation – from tendering, licencing, and spectrum management, to monitoring compliance with and issuing sanctions for breaches of the media laws.

‘Hate speech’ under media laws

The Press Act and the Media Act include both negative and positive obligations for the media in relation to ‘hate speech’. In 2011, the Constitutional Court examined the constitutionality of certain provisions of the Press Act and reaffirmed that the restrictions set out in Article 17 on the right to the freedom of the press – which apply to all forms of media content – were necessary and could be justified by constitutional values and objects.¹⁴⁷

In the Press Act, these include:

- The obligation of the media service providers to respect human dignity in the media content that it publishes. No “wanton, gratuitous and offensive presentation of persons in humiliating, exposed or defenceless situations” are allowed in media content,¹⁴⁸ and media content should not violate the constitutional order.¹⁴⁹ These provisions have been subject to criticism for being vague and overbroad and therefore open to abuse,¹⁵⁰ and should be amended to comply with international freedom of expression standards;

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- The prohibition of incitement to hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group in media content.¹⁵¹ The prohibition of “incitement to hatred” in the Press Act reflects the Criminal Code; in two decisions, the Constitutional Court confirmed that the provisions on incitement in the Press Act and in the criminal law bear one and the same meaning.¹⁵² The list of **protected characteristics** in the Press Act is non-exhaustive. For the same reasons as outlined in the section on criminal law (see above), the protection of the ‘majority’ in these provisions is problematic;
 - The prohibition of the exclusion of any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group in media content;¹⁵³ and

The prohibition of presenting a commercial communication that offends religious or ideological convictions.¹⁵⁴

In the Media Act, the relevant provisions include:

- The obligation to include “a warning prior to the broadcasting of any image or sound effects in media services that may offend a person’s religious, faith-related or other ideological convictions, or which are violent or otherwise disturbing”.¹⁵⁵

The Media Act also sets out positive obligations on public media service providers and community media services regarding communities and minority groups;¹⁵⁶ these include:

- The obligation to provide comprehensive pluralistic media content in both the social and the cultural sense, aiming to address as many social classes and culturally distinct groups and individuals as possible, and to support, sustain, and enrich national, community, and European identity, culture, and the Hungarian language;
- A set of obligations on public media service providers to fulfill the linguistic and cultural rights of national and ethnic minorities recognised by Hungary;¹⁵⁷ and
- The series of obligations that linear community media services have regarding minorities, communities, and groups.¹⁵⁸

All media, including print and online press, can be sanctioned for breaches of content regulations specified in the Press Act and the Media Act. The Media Council has the authority to investigate cases of infringement, both *ex officio* and in response

to complaints, and to impose administrative sanctions.¹⁵⁹ Available remedies include: warnings; requests to cease unlawful conduct or to refrain from future infringement; fines; prohibiting the unlawful conduct; ordering violators to publish the decision on their webpage; and temporary suspension from providing media services. The maximum fine available is capped and depends on the type of media service and its influence on the media market.¹⁶⁰

Decisions by the Media Council can be appealed to an administrative court; however, appeals do not automatically suspend the Council's decisions. The administrative court may only review whether the Council's decision complies with the provisions in the media laws, and cannot review the Council's decisions on the basis of any other laws or legal precedents. Decisions of the administrative court are final.

Enforcement of 'hate speech' provisions in media law

Since its creation in 2011, the Media Council has examined only a handful of 'hate speech' cases under the provisions on incitement and on the exclusion of particular groups found in Hungarian legislation on the media. It initiated investigations in twelve cases, and in five of these found violations. The five cases were:

- The case of *TV2* (a commercial television channel) which, as part of a documentary news show, broadcast a piece entitled 'Stench and Filth in the Pedestrian Underpass', which portrayed homeless people in a humiliating manner. The Council found that the depiction violated human dignity and reached the threshold of exclusion of a particular group, imposing a fine of 5,500,000 HUF (approx 17,800 EUR);¹⁶¹
- The case of *Magyar Hírlap* (an online and print outlet) which, in an editorial on the 2015 Paris terrorist attacks, called Muslims potential murderers. The Council found that the content violated the provision on incitement to hatred, and on the exclusion of groups in the Press Act, imposing a fine of 250,000 HUF (approx 810 EUR) and ordering the removal of the article from the site;¹⁶²
- The case of *Channel Six* (a community television channel) which, as part of a news programme, broadcast an interview in which disabled people were described as the reincarnation of bad people. The Council found that the failure of the show's anchor to counterbalance this assertion meant that the channel fell foul of the provisions on the exclusion of groups. The Council imposed a fine of 50,000 HUF (approx 162 EUR);¹⁶³

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- The case of *Hír TV* (a commercial television channel) which, in an interview news broadcast, presented all gypsies as criminals. The Council found a violation of the provisions on the exclusion of groups and imposed a fine of 100,000 HUF (approx 324 EUR);¹⁶⁴ and
 - The case of *Magyar Hírlap* (an online and print media outlet) which, in an editorial, presented Roma people as animals and said “they shouldn’t be allowed to exist”. The Council found that this violated incitement to hatred provisions and imposed a fine of 250,000 HUF (approx 810 EUR).¹⁶⁵

From these five cases it can be seen that the Media Council applies the principles of proportionality when imposing sanctions.

With regards to the notably low number of proceedings taken forward by the Media Council, in relation to potentially problematic statements made in the media, there are two principal reasons:

- First, the Media Council applies a strict test of what constitutes incitement and the exclusion of particular groups:
 - It defines “incitement to hatred” as “an extreme and forceful expression of antipathy or hatred directed towards the given community, and which is likely to arouse similar feelings in others and thus provoke the risk of violations of the rights of this community. Thus, incitement to hatred as defined in the law is literally the emotional preparation for violence, and means incitement to the violent resolution of conflicts”,¹⁶⁶ and
 - It defines “media content that results in exclusion” as content that “attempts to reach – or argues in favour of – the isolation of a given community, its alienation from other segments of society, or its segregation. In practice this effect can be brought about if the content in question reinforces misleading or stereotypical ideas or opinions in the target audience, or aims to do so”.¹⁶⁷ The Council has further specified that in its proceedings, it does not take into consideration whether the publication did in fact result in members of a given community experiencing negative consequences of this kind; rather, for the purposes of determining whether an offence was committed the relevant consideration is whether the person who made the statement intended to have such an effect at the time that his/her views were published.¹⁶⁸
- Second, and of serious concern, is the fact that the Media Council fails to address ‘hate speech’ content found in public service media (funded by the state) and other state-controlled media outlets. The remit of the Media Council does not cover the content of public service media. This is important in light of the

different approach taken by the Commissioner for Human Rights in the case of the *MI* documentary (see above).¹⁶⁹

The Council's limited approach in considering only cases linked to commercial media has been striking in the context of the state of media content since the 2015 refugee crisis. As already highlighted, the tone of public discourse is dominated by state sponsored 'hate speech' campaigns (billboard campaigns). The majority of media outlets, encouraged by the tone adopted by public service media, cover those topics promoted by the government. Typically, this means that the public service media outlets were juxtaposing the issue of terrorism, the influx of migrants, increases in crime and violent offences, and were repeating messages about the economic burden migrants impose on society.¹⁷⁰ The public service media have become the government's mouthpiece in their coverage of the refugee situation with news and talk shows regularly promoting 'hateful' messages towards refugees and migrants. In this context, the lack of action by the Media Council – in particular against public service media – is highly problematic and reinforces the increasing prevalence of intolerance and prejudice in society.

Media self-regulation and 'hate speech'

The Media Act provides for the establishment of a co-regulation system as an alternative to official control. Excluding television and radio media services, this allows operators within the media market to themselves implement the regulations concerning media content, within the framework of self-regulatory bodies with exclusive legal powers.¹⁷¹ Four principal self-regulatory bodies have been established: the Hungarian Publishers' Association,¹⁷² the Association of Hungarian Television Broadcasters,¹⁷³ the Association of Hungarian Content Providers,¹⁷⁴ and the Advertising Self-regulatory Body.¹⁷⁵

Each entity has its own code of conduct or code of ethics containing provisions on 'hate speech'.¹⁷⁶ The codes apply to members of the respective associations and to media content providers that have agreed to be bound by these codes. Each self-regulatory body also creates a designated body responsible for conducting disciplinary proceedings against members in case of violation of the rules set out in the respective self-regulatory code or in applicable legislation. As a general rule, self-regulatory bodies conduct disciplinary proceedings in 'hate speech' cases, implicating their members in response to complaints received under a set procedure.¹⁷⁷ They can also impose various remedies in cases of violations.¹⁷⁸

Since the establishment of self-regulatory bodies, no 'hate speech' complaint has been submitted to any of them.

Each self-regulatory body also entered into a so-called 'public administration agreement' with the Media Council.¹⁷⁹ The agreements set up a co-regulation model through which complaints regarding alleged breaches of certain provisions

of the Press Act, the Media Act, and the Co-regulatory Code of Conduct of the self-regulatory body are to be handled primarily by the committee of experts of that body. The codes of conduct specify in detail — within the context of the authorisations granted in the Media Act - how the respective bodies should conduct the proceedings to enforce the codes.

The self-regulatory bodies remit to conduct these tasks extends both to their registered members (except those that expressly objected to being bound by the co-regulation) and to the media content providers that agreed to be bound by the code of conduct. The self-regulatory bodies perform the tasks within their own sphere of competence and not as tasks ultimately overseen by the authorities. In so doing, their involvement has priority to and supplements the activities of the Media Council.

It should be noted that the codes of conduct of other professional bodies also contain codes of ethics that might deal with the issues of ‘hate speech’ by members of these professional bodies¹⁸⁰ and some of these bodies have in the past condemned ‘hate speech’ by their members.¹⁸¹

Relationship between proceedings of self-regulatory bodies and other proceedings

The disciplinary proceedings of self-regulatory bodies do not halt proceedings of other enforcement mechanisms. Namely, those media providers who breached provisions of the applicable codes of conduct can also be held liable under administrative, civil, or criminal law. However, given the varying approach adopted by different Hungarian authorities, it is unlikely that one entity would be found liable for the same conduct under the criminal and civil law as well as under the code of conduct.

However, as mentioned, codes of conduct do provide against parallel proceedings before the self-regulatory body and the Media Council. Under the above-mentioned agreements, claims submitted to the Media Council must be transferred automatically to self-regulatory bodies if two conditions are met:

- The claim concerns specific provisions of the Press Act, including those prohibiting the publication of content that could potentially incite hatred, or the corresponding provisions (i.e. provisions prohibiting the publication of content potentially capable of inciting hatred) contained in the self-regulatory bodies’ codes of conduct; and
- The concerned media service providers are bound by the rules set out in the self-regulatory bodies’ codes of conduct.

The existence of these agreements means there is no clarity about the status of

the codes of conduct and the scope of self-regulatory bodies' powers. The situation has been subject to international criticism. For example, the Venice Commission recommended that the Media Council should develop and publish its own policy guidelines. It added that the primary aim of the Council's guidelines should be to limit the Media Council's discretion in interpreting legal provisions on illegal media content and on applying its sanctioning powers. These guidelines should be regularly updated to reflect recent developments in the case law related to the application of the Media Act and the Press Act, in particular the case law of the Constitutional Court and the European Court. The guidelines should be clear and allow for predictable and coherent interpretation by the Media Council of the general principles contained in the law, and help media operators fully exercise their freedom of expression without any chilling effect possibly resulting from the vagueness of the concepts employed in the law. These guidelines should not be binding on the courts, which remain the ultimate guarantors of the freedom of the press.

Beyond a critique of the legislation and its application, however, the self-regulation and co-regulation system has not been very effective in practice at addressing 'hate speech' in the media. The existing bodies have received very few complaints, due principally to the changing media landscape in the country, and other societal, social, and cultural factors. These include: the gradual nationalisation of the media; an ever-decreasing number of media outlets taking part in the self-regulatory mechanisms; readers' lack of awareness of self- or co-regulatory complaints system, exacerbated by the media's failure to publicise the availability of the complaints mechanism; the absence of a culture of alternative dispute resolution in Hungary; and the lack of media literacy education.

Actors promoting ethical journalism

One of the most active actors promoting ethical journalism in Hungary is the Editors' Forum. Founded in 2012, the Forum brings together 44 editors from all the major electronic, print, and online media in Hungary, who together outline ethical standards and values of journalism, such as impartiality, thoroughness, rules for obtaining and handling information, the prohibition of conflict of interest, the relationship between editorial content and advertisers, as well as human rights and human dignity.¹⁸² The Forum has not formed an administrative agreement with the Media Council.

In December 2015, the Forum created a system called Korrektor,¹⁸³ which attempts to resolve disputes through cooperation rather than through legal means or official proceedings. Any publication can be the subject of a complaint if a complainant considers it to be against the Ethical Guidelines, and any person or legal body has a right to file a complaint – and can do so for free. If an agreement cannot be reached, complaints are brought before the Forum's Committee of Experts. Media outlets who join the Korrektor system also agree to accept the decisions of this committee.

The Korrektor system has resulted in a faster, more flexible, and less costly solution for parties filing complaints. Eighteen complaints were filed in the course of the first year of the system's existence. One of these concerned an anti-Semitic headline of an article published on the main online news portal in Hungary, Index.hu. Although the complaint was refused by the Committee of Experts, the news portal voluntarily corrected the allegedly anti-Semitic headline.

Approaches to media convergence

As noted above, under Hungarian law print, broadcast, and online media are all subject to the same regulation. Social media and most online content are not subject to media regulation, however. The National Media and Info-communications Authority has explicitly stated that “private or company websites and Internet blogs featuring both text and embedded video content are generally not covered by the statute”.¹⁸⁴

However, theoretically, if media providers (that are covered by the media regulation) publish hyperlinks or undertake other forms of electronic republication, the media provider can be sanctioned if the hyperlinked content violates the requirements of the Press Act (Articles 14-20). The Media Council has not yet delivered any decision on this issue.

Intermediary liability

Civil or criminal procedures, including for ‘hate speech’, can be initiated for posts and comments made by third parties on websites that the media providers host, as well as for posts and comments on their social media pages.

Intermediary liability for comments posted by third parties is a growing area of concern in Hungary, with several cases initiated before the courts. The civil courts have adopted an intermediary liability approach under which media providers who enable the publication of posts or comments by third parties on their sites are also held liable for such content.¹⁸⁵ Liability is construed objectively in such cases, meaning that the content provider is liable even if it is not aware of the unlawful content.

This approach was upheld by the Constitutional Court in the MTE-Index case.¹⁸⁶ In this case, *Magyar Tartalomszolgáltatók Egyesülete* (‘MTE’) published an article critical of a major real-estate website. A major online news portal managed by Index.hu, *Zrt*, republished the article verbatim. Both publications generated comments that criticised the real-estate website, and some comments used vulgar phrases. The company managing the real-estate website sued MTE and Index for injuries to its business reputation. This case was later challenged at the European Court,

which ruled that domestic courts failed to properly balance the right to freedom of expression and the right to reputation, and thus reversed the decision and held that there was a violation of Article 10. ¹⁸⁷

Further, the Hungarian courts have held that media service providers can be held liable for posting a hyperlink to a video or article containing unlawful content. There have not been any cases related to hyperlinking and ‘hate speech’ at domestic courts; however, a similar case involving the Hungarian news portal, 444.hu, concerning defamation, is currently pending before the European Court. ¹⁸⁸

Initiatives on ‘hate speech’ on social media

At present, informal communications are ongoing between Facebook, representatives of online news portals, and NGOs about certain content issues, including the problem of ‘fake news’ and ‘hate speech’ and measures that social media companies can pursue in response in Hungary. Specific initiatives to expedite the removal of ‘hate speech’ by social media, and monitor instances of ‘hate speech’, have also been developed. These include:

- The **Internet Hotline Service**, operated by the National Media and Infocommunications Authority since 2011. ¹⁸⁹ This Hotline provides for the reporting of “illegal and harmful content”, including “online harassment, racism, and xenophobia”. Once a report is filed, the Media Council calls on the operator (content provider) of a website or server and asks them to delete the content in question, referring to relevant legislation. The Hotline and the Media Council cannot order content to be removed or any other action;
- The **Get The Trolls Out!** campaign was a civil society initiative, run as a part of an international project by the Centre for Independent Journalism. During 2014 and 2015, the Centre monitored traditional and new media to identify “anti-Semitic conduct and speech” by journalists and public figures. The Centre exposed the most emblematic cases and also undertook various other activities, such as writing letters to the editors, articles, and complaints to the the Media Council, and creating cartoons and posters; ¹⁹⁰ and
- The **Action and Protection Foundation** monitors online and offline ‘hate speech’ and reports all potentially anti-Semitic hate related incidents to the police. They also promote non-violent and inclusive public discourse. ¹⁹¹

Advertising self-regulation

The Media Act prohibits certain forms of ‘hate speech’ in broadcast commercial communications or those published by media service providers. Namely, the Media Act provides that advertisements cannot “violate human dignity” and “cannot contain and support discrimination on grounds of gender, racial or ethnic origin, nationality, religion or ideological conviction, physical or mental disability, age or sexual orientation”.¹⁹²

As part of the Media Council’s public administration agreement, supervising the enforcement of some advertising regulations falls to the Self-Regulatory Advertising Organisation (ÖRT).¹⁹³ Accordingly, complaints related to commercial communications issued in print and Internet press materials, as well as to on-demand media services, are reviewed on the basis of the Code of Conduct. The Code of Conduct is part of the public administration agreement with the Media Council.

Further, under the ÖRT’s 2015 Advertising Code of Ethics, advertising may not contain any discriminatory elements, in particular based on ethnicity or national group, gender, age, sexual orientation, religious affiliation, or disability, nor may it promote any such views nor incitement to hatred.¹⁹⁴

According to available reports, no complaints related to these ‘hate speech’ provisions have been filed under the co-regulatory and self-regulatory system.

The ÖRT also monitors advertisements by product category and media type published within a given period to ascertain whether they are in compliance with the requirements of the Advertising Code of Ethics. In case of infringement, the ÖRT requests the concerned company to correct the erroneous elements. Thus far, no infringements have been found relating to the ‘hate speech’ provision of the Code.¹⁹⁵

Conclusions and recommendations

In the light of this analysis, we make the following recommendations to the Hungarian government to ensure that the problem of ‘hate speech’ in Hungary is tackled in a way that complies with the right to freedom of expression.

General recommendations:

- The Hungarian government should immediately discontinue its campaigns that generate hate in society. Instead, the government should make a commitment to equality and take measures to promote tolerance in society. All public officials, including politicians, have a key role to play in recognising and promptly speaking out against intolerance and discrimination, including instances of ‘hate speech’. This requires recognising and rejecting the conduct itself, as well as the prejudice of which it is symptomatic; expressing sympathy and support to the targeted individuals or groups; and framing such incidents as harmful to the whole of society. These interventions are particularly important where inter-communal tensions are high, or are susceptible to being escalated, and where political stakes are also high, such as in the run-up to elections;
- All Hungarian legislation – in particular the criminal law provisions – should be revised to ensure compliance with international human rights standards applicable to ‘hate speech’. The advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence should be prohibited in line with Articles 19(3) and 20(2) of the ICCPR, establishing a high threshold for limitations on free expression, as set out in the Rabat Plan of Action, and establishing prohibitions on direct and public incitement to genocide and incitement to crimes against humanity. The criminal provision on incitement against a community, contained in Section 332 of the Criminal Code, should include reference to incitement to discrimination;
- The judiciary, law enforcement authorities, and public bodies should be provided with comprehensive and regular training on relevant international human rights standards applicable to ‘hate speech’; and
- In collaboration with experts and civil society, law enforcement authorities should develop investigative guidelines on the prosecution of incitement cases, based on international human rights law. The government should ensure that all law enforcement authorities are made aware of the guidelines during their trainings and in their work.

Recommendations on ‘hate speech’ and criminal law:

- The criminal provision on incitement against a community, contained in Section 332 of the Criminal Code, should include reference to incitement to discrimination;
- The Hungarian nation should be omitted from the list of protected groups; and
- Criminal offences of “public denial of sins of national socialist or communist regimes”, “desecration of national symbols”, and “the use of symbols of totalitarianism” should be abolished.

Recommendations on ‘hate speech’ and administrative law:

- The provisions on harassment in the ETA should be amended. The ETA should state that harassment can also be committed against groups; and
- The harassment provisions should apply to all statements of public officials made in public while they are acting in their official capacity.

Recommendations on ‘hate speech’ and civil law:

- The list of protected groups in the Civil Code provisions on ‘hate speech against a community’ should be non-exhaustive;
- The statute of limitation for initiating cases should be extended to 12 months;
- The provisions on ‘community reputation’ should be rephrased and narrowly tailored to provide civil law protection in ‘hate speech’ cases;
- The prosecution should not be involved in civil law actions; and
- The requirement of legal representation in civil proceedings should be abolished, as it is unnecessary and unjustified, and places a disproportionate burden on the claimant.

Recommendations on ‘hate speech’ and media law:

- The Media Council should develop and publish clear policy guidelines on ‘hate speech’ in order to circumscribe vague concepts of illegal media content;
- The Media Council – by applying clear policy guidelines – should take a less restrictive approach: it should hear complaints against hateful media content, particularly with regard to the content disseminated by public service media;

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- Media self-regulatory bodies should promote and advertise their self-regulatory complaint procedures and invite consumers to use alternative dispute resolutions in media-related cases; and
 - The civil courts should not apply the objective liability approach in cases when content providers make the publication of content produced by third parties possible. As a general rule, web hosting providers or hosts should be immune from liability for third-party content when they have not been involved in modifying the content in question.

Endnotes

- ¹ LGBTQI stands for “Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex”.
- ² European Union Fundamental Rights Agency (2013) Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary. Thematic Situation Report. Luxembourg: Publications Office of the European Union.
- ³ European Commission Against Racism and Intolerance (2015) ECRI Report on Hungary (fifth monitoring cycle), para 56. Strasbourg: Council of Europe. Available from: <http://bit.ly/2tfKMgj>.
- ⁴ *Ibid.*, para 54.
- ⁵ *Ibid.*, para 58.
- ⁶ Hann, E. and Róna, D. (2016) *Anti-Semitic prejudice in contemporary Hungarian society: Research report*. Action and Protection Foundation; available (in Hungarian) from: <http://bit.ly/2tg7IS7>.
- ⁷ Ádám, K. (2016) The highest-ever levels of xenophobia in Hungary. Research commissioned and published by online news portal *Index.hu*. 11 November; available from: <http://bit.ly/2g4fu3y>.
- ⁸ Submission of the Working Group against Hate Crimes (GYEM) to the UN Universal Periodic Review of Hungary, September 2015, Section 3; available from: <http://bit.ly/2ppRTi2>.
- ⁹ *Mandier.hu* (2015) Orban: We want Hungary to keep on being Hungary, 11 January; article concerning an interview given by Viktor Orban in Paris; available from: <http://bit.ly/2uJjKeY>.
- ¹⁰ Amnesty International Annual Report for Hungary 2017–18; available from: <http://bit.ly/1OPGBvn>.
- ¹¹ *Ibid.*
- ¹² See, for example, Human Rights Watch (2016) Hungary’s xenophobic anti-migrant campaign, 13 September; available from: <http://bit.ly/2d2IVVj>.
- ¹³ See, for example, European Commission (2017) “Stop Brussels”: European Commission responds to Hungarian national consultation, 27 April; available from: <http://bit.ly/2GcHqhH>.
- ¹⁴ BBC News Europe online (2016) Hungary PM claims EU migrant quota referendum victory, 3 October; available from: <http://bbc.in/2dFOv0T>.
- ¹⁵ Göbl, G. (2017) Orban vs. the world: Background context of the Lex CEU, *Heinrich Böll Stiftung*, 3 May; available from: <http://bit.ly/2sLFm9f>.
- ¹⁶ Byrne, A. (2017) Hungary’s Jews recoil at Fidesz portrayal of George Soros, *Financial Times*, 8 July; available from: <http://on.ft.com/2tsKYc6>.
- ¹⁷ G. Bernáth & V. Messing, *Smashed*; The government campaign on refugees and the independent lobbying camps, Media Research, March 2015.
- ¹⁸ The report is based on the review of existing legislation and its application by relevant authorities, as well as on interviews with key stakeholders. All the analysis in the report is made on the basis of unofficial translation of the Hungarian version of respective laws. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation.
- ¹⁹ Through its adoption in a resolution of the UN General Assembly, the UDHR is not strictly binding on states. However, many of

its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

²⁰ The ICCPR has 167 States parties, including Hungary.

²¹ See HR Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 11.

²² *Op cit.*, para 22.

²³ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 September 1950.

²⁴ Article 10 (1) of the European Convention reads: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises; Article 10 (2), 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.”

²⁵ Article 1 of the UDHR states: “All human beings are born free and equal in dignity and rights”; Article 2 provides for the equal enjoyment of the rights and freedoms contained in the declaration “without distinction of any kind”; and Article 7 requires protection from

discrimination.

²⁶ For a full explanation of ARTICLE 19’s policy on ‘hate speech’, see Hate Speech Explained: A Toolkit; available at <http://bit.ly/1UvUQ9t>.

²⁷ General Comment 34, *op.cit.*, para 52.

²⁸ The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, A/HRC/22/17/Add.4, Appendix, adopted 5 October 2012; available at <http://bit.ly/2fTNMG6>.

²⁹ The Rabat Plan of Action has been endorsed by a wide range of special procedures of the UN Human Rights Council; see, e.g. the Report of the Special Rapporteur on FOE on hate speech and incitement to hatred, A/67/357, 7 September 2012; Report of the Special Rapporteur on freedom of religion or belief on the need to tackle manifestations of collective religious hatred, A/HRC/25/58, 26 December 2013; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on manifestations of racism, racial discrimination, xenophobia and related intolerance on manifestations of racism on the Internet and social media, A/HRC/26/49, 6 May 2014; and the contribution of the UN Special Advisor on the Prevention of Genocide to the expert seminar on ways to curb incitement to violence on ethnic, religious, or racial grounds in situations with imminent risk of atrocity crimes, Geneva, 22 February 2013.

³⁰ HR Committee, General Comment 11: prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20), 29 July 1983, para 2.

³¹ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 35: Combating racist hate speech, 26 September 2013, paras 15 - 16. The CERD Committee specifies that five contextual factors

should be taken into account: the content and form of speech; the economic, social and political climate; the position or status of the speaker; the reach of the speech; and the objectives of the speech. The CERD Committee also specifies that States must also consider the intent of the speaker and the imminence and likelihood of harm.

³² European Court, *Erbakan v. Turkey*, App. No. 59405/00 (2006), para 56; or *Gündüz v. Turkey*, App.No. 35071/97 (2004), para 22.

³³ European Court, *Jersild v. Denmark*, App. No 15890/89 (1992), para 35.

³⁴ 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; available at <http://bit.ly/2nTmRAi>.

³⁵ For a full analysis, see ARTICLE 19, Submission to the Consultations on the EU Justice Policy, December 2013; available at <http://bit.ly/2APKRZ9>.

³⁶ HRC Resolution 20/8 on the Internet and Human Rights, A/HRC/RES/20/8, June 2012.

³⁷ General Comment No. 34, *op cit.*, para 43.

³⁸ Guiding Principles on Business and Human Rights: Implementing the UN “Protect, Respect and Remedy” Framework (The Ruggie Principles), A/HRC/17/31, 21 March 2011, Annex. The HRC endorsed the guiding principles in HRC resolution 17/4, A/HRC/RES/17/14, 16 June 2011.

³⁹ Report of the Special Rapporteur on FOE, 16 May 2011, A/HRC/17/27, paras 75-76.

⁴⁰ Report of the Special Rapporteur on FOE, 11 May 2016, A/HRC/32/38; para 40 – 44,

⁴¹ *Ibid.*

⁴² *Ibid.*, para 43.

⁴³ *Ibid.*

⁴⁴ Joint Declaration on Freedom of Expression and “Fake News,” Disinformation and Propaganda, adopted by the UN Special Rapporteur on FOE, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 March 2017; available at <http://bit.ly/2meFQ6g>.

⁴⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, Article 14(1).

⁴⁶ *Ibid.*, Article 5.

⁴⁷ Grand Chamber of the European Court, *Delfi AS v. Estonia*, No. 64569/09, 16 June 2015.

⁴⁸ *Ibid.*, Judges Sajó and Tsotsoria’s Joint Dissent Opinion. See also ARTICLE 19, *Delfi AS v Estonia Case Comment: Strasbourg Undermines Freedom of Expression*, 1 October 2015; available at <http://bit.ly/2zQTEur>.

⁴⁹ For example, in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, No. 22947/13, 2 February 2016, the European Court found a violation of Article 10 of the European Convention where a self-regulatory body of Internet content providers and an owner of an online news portal were held liable for defamatory comments posted by a third party, which the parties removed on receipt of notice.

⁵⁰ European Court, *Pihl v. Sweden*, No.

74742/13, 9 March 2017.

⁵¹ For further analysis, see: Dirk Voorhoof, *Pihl v. Sweden*: non-profit blog operator is not liable for defamatory users' comments in case of prompt removal upon notice, Strasbourg Observers, 20 March 2017; available at <http://bit.ly/2zMUQB8>.

⁵² European Commission, Code of Conduct on Countering Illegal Hate Speech, signed on 31 May 2016; available at <http://bit.ly/1XLcJVo>.

⁵³ Council Framework, Decision *op.cit.*

⁵⁴ For the criticism of the Code of Conduct, see ARTICLE 19, EU Commission Code of Conduct for Countering Illegal Hate Speech Online and the Framework Decision, June 2016; available at <http://bit.ly/29BVUJh>.

⁵⁵ Hungary's Fundamental Law; available from: <http://bit.ly/2hzaRm0>.

⁵⁶ *Ibid.*, Article IX (1) states: "Everyone shall have the right to freedom of expression. (2) Hungary shall recognize and protect the freedom and diversity of the press, and shall ensure the conditions for the freedom to receive and impart information as is necessary in a democratic society. (3) The detailed rules relating to the freedom of the press and to the supervision of media services, press products and the communications market shall be laid down in an implementing act."

⁵⁷ *Ibid.*, Article IX (4), (5). These provisions were introduced in 2013, through legislative amendment to the Fundamental Law, entered into force on 1 April 2013.

⁵⁸ Act CLXXXV of 2010 on Media Services and Mass Media (Media Act).

⁵⁹ Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content.

⁶⁰ Article II, the Fundamental Law, *op.cit.*,

stipulates that human dignity is inviolable, and that all humans have the right to life and to human dignity. The Hungarian Constitutional Court affirmed that "human dignity is shared by all human beings, irrespective of the extent to which they have realized their human potential, and why"; ruling of the Constitutional Court 23/1990 (X.31), concurring opinion by Justice László Sólyom.

⁶¹ Article XV (2), the Fundamental Law, *op.cit.*, states that Hungary guarantees fundamental rights to everyone without discrimination, and in particular, without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

⁶² Act CXXV of 2003 On Equal Treatment and the Promotion of Equal Opportunities; available from: <http://bit.ly/2nWuIMg>.

⁶³ Act C of 2012 Criminal Code, Articles 142, 144, 216, 332, 333, 334, 335, respectively; available from: <http://bit.ly/2nElzXC>.

⁶⁴ *Ibid.*, Section 332.

⁶⁵ The new Criminal Code, effective from 1 July 2013, also made minor corrections to the crime of incitement against a community.

⁶⁶ Council Framework Decision 2008/913/JHA, *op.cit.*

⁶⁷ The new provision has been in force since 28 October 2016.

⁶⁸ The text before amendment read as follows: "Any person who before the public at large incites hatred against: a) the Hungarian nation; b) any national, ethnic, racial or religious group; or c) certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation; is guilty of a felony punishable by imprisonment not exceeding three years."

⁶⁹ J. Belegi, (2016) Summary opinion on the analysis of adjudication practices with regards to offences constituting infringements of certain fundamental rights. April 7; available from: <http://bit.ly/2oDxp7j>.

⁷⁰ *Ibid.*

⁷¹ E. Jovánovics & A.L. Pap, (2013/4) Collective crimes in 21st century Hungary: The charge of anti-Hungarian-ness against Gypsies in two emblematic cases. *Fundamentum*. 153–157.

⁷² *Ibid.*

⁷³ Study about the explanatory provisions of the Criminal Code by Felegyiné Dr. A. Szabó, Criminal Judge of the Debrecen County Court, 9 April 2013; available from: <http://bit.ly/2tMDctZ>.

⁷⁴ Criminal Code, *op.cit.*, Articles 459 (22).

⁷⁵ Criminal Code, *op.cit.*, Articles 160 (2), 164 (6), 194 (2), 226 (1), 304 (2), 449 (2).

⁷⁶ The ECRI report on Hungary, *op.cit.*

⁷⁷ Constitutional Court decisions 30/1992 (VI.10.), 12/1999 (V.21), 18/2004 (V.25.), 95/2008. (VII.3.).

⁷⁸ It has to be noted that the criminal law sanctioned the offence of “use of abusive language” as well, but the Constitutional Court held the provision to be unjustifiably restrictive, repealing it in its decision 30/1992 (VI.10).

⁷⁹ Constitutional Court decisions 30/1992 (V. 26.); 18/2004 (V. 25.); 95/2008 (VII. 3.).

⁸⁰ Curia (previously Supreme Court), Bf. IV.2211/1997. For more information, see <http://bit.ly/2strpl5>.

⁸¹ BH1998.521./EBH 1999.6.

⁸² ECRI report on Hungary, *op.cit.* The report states that 62% of these incidents involved alleged ‘hate speech’ against Roma, 20%

against Jews, 7% against LGBT persons, and the remainder concerned ethnic origin and skin colour.

⁸³ Submission of the Working Group against Hate Crimes (GYEM) to the UN Universal Periodic Review of Hungary, September 2015, page 6; available from: <http://bit.ly/2ppRTi2>.

⁸⁴ European Court, *Király and Dömötör v Hungary*, App. No. 10851/13, 17 January 2017.

⁸⁵ Opinion of the Hungarian Civil Liberties Union (TASZ); available from: <http://bit.ly/2oxAOFr>.

⁸⁶ Article 333 of the Criminal Code. The penalty is an imprisonment of up to 3 years.

⁸⁷ The wording of the offence provision, as set out in Article 333 of the current Criminal Code, differs from that of the previously existing offence provision. There are three main differences, one substantive and two linked to the legal terminology used in the provision. The substantive change relates to the list of criminal conducts, which was extended. The former version of the Criminal Code penalised the acts of denial, doubt, and trivialisation of defined facts. The current version also penalises the criminal conduct of justifying the commission of genocide or other crimes committed by national socialist or communist regimes. The other two differences, linked to the wording of the offence provision, were introduced with the aim of ensuring the provision’s compliance with international law. The previous law was also reviewed by the Constitutional Court. The Court concluded that the provision was in line with the Fundamental Law (Decision 16/2013 (VI.20)).

⁸⁸ *Bírószág* (2015) Tribunal of Szeged: Public denial of the sins of national socialist or communist systems, 16 April; available from: <http://bit.ly/2o1QfVv>.

⁸⁹ Article 334, the Criminal Code, *op.cit.* According to the application of the provision, the main element of the crime is the use of degrading or dishonouring expressions, or desecration of these symbols through any other means. Furthermore, the offence must be committed in a manner which is seen by ‘the public at large’, and desecration must be directly aimed at the protected symbols, in a manner which is direct and unequivocal. This offence is a misdemeanour punishable by imprisonment of up to one year, unless the act did not result in a more serious criminal offence.

⁹⁰ Constitutional Court decision 13/2000 (V.12.).

⁹¹ Hungarian Civil Liberties Union (TASZ) (2012) Dopeman has not dishonoured the hymn, 7 February; available from: <http://bit.ly/2sqoTb6>.

⁹² Article 335, the Criminal Code, *op.cit.* This misdemeanour is punishable by custodial arrest, unless the act resulted in a more serious criminal offence.

⁹³ The Constitutional Court in its decision 4/2013 (II.21) found the following provision of the Act IV of 1978 on the Criminal Code unconstitutional: “Article 269/B – The use of totalitarian symbols: 1. A person who (a) disseminates, (b) uses in public, or (c) exhibit a swastika, an SS-badge, an arrow-cross, a symbol of the sickle and hammer or red star, or a symbol depicting any of them, commits a misdemeanour – unless a more serious crime is committed – and shall be sentenced to a criminal fine. 2. The conduct prescribed under paragraph 1 is not punishable, if it is done for the purpose of education, science, art or in order to provide information about history or contemporary events. 3. Paragraphs 1 and 2 do not apply to the insignia of States which are in force.”

⁹⁴ European Court, *Vajnai v Hungary*; 8 July 2008, App. No. 33629/06.

⁹⁵ European Court, *Fratanoló v Hungary*, App. No. 29459/10; *Horváth and Vajnai v Hungary*, App. Nos 55795/11 and 55798/11; *Vajnai (No. 4.) v Hungary*, App. No. 6061/10.

⁹⁶ Act CXXV of 2003 on equal treatment and on ensuring equal opportunities (ETA); available from: <http://bit.ly/2nWuIMg>.

⁹⁷ *Ibid.*, Article 7 para 1.

⁹⁸ *Ibid.*, Article 10 para 1.

⁹⁹ *Ibid.*, Article 8: “Direct discrimination shall be constituted by any action [including any conduct, omission, requirement, order or practice] as a result of which a person or group based on its real or assumed sex, racial affiliation, colour of skin, nationality, belonging to a national or ethnic minority, mother tongue, state of disability, health condition, religion or belief, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, sexual identity, age, social origin, financial status, part-time nature of employment legal relation or other legal relation aimed at labour, or determined period thereof, belonging to an interest representation, other situation, attribution or condition (hereinafter together: characteristics) is treated less favourably than another person or group is, has been or would be treated in a comparable situation.”

¹⁰⁰ Under Article 4 of ETA, these include: the Hungarian state, municipal councils and nationality self-governments and their organs, public authorities, the army, the police, prison services, border guards, public foundations and associations, organisations representing employees’ and employers’ interests, bodies providing public services, schools and universities, persons and institutions providing social and child protection services, museums,

libraries, private pension schemes, voluntary mutual insurance schemes, health service providers, political parties and other organs funded from central budget. The ETA stipulates that these entities shall respect the requirement of equal treatment (i) when establishing legal relations, (ii) in their legal relations, and (iii) in the course of their proceeding and measures.

¹⁰¹ *Ibid.*, Article 5 of ETA states that those are (i) persons offering a public contract or making a public offer (e.g. putting up an apartment for rent), (ii) persons providing public services or selling goods, (iii) entrepreneurs, companies and other private legal entities provided with state funding in the legal relations they establish within the framework of using that funding, and (iv) employers and contractors in regard to employment or contractual relationships aimed at performance of work.

¹⁰² *Ibid.*, Article 18.

¹⁰³ *Ibid.*, Article 17/A, the Authority may: (i) order that the situation constituting a violation of the law be terminated; (ii) prohibit the future continuation of the conduct constituting a violation of the law; (iii) order that its decision establishing the violation of the law be published; (iv) impose a fine ranging from EUR 160 (HUF 50 000) to EUR 19 000 (HUF 6 million); and (v) apply a legal consequence determined in a special act. These sanctions can be applied jointly.

¹⁰⁴ The decision of the Authority may not be appealed within a public administrative procedure, but its judicial review – before the Metropolitan Administrative and Labour Court – is possible. The court's decision is subject to extraordinary review by the Curia (Hungary's highest court).

¹⁰⁵ The majority of proceedings were launched by the Hungarian Helsinki Committee (www.helsinki.hu).

¹⁰⁶ Kadar, A. and Haller, I. (2016) Using anti-discrimination remedies for discriminatory speech – the Hungarian and Romanian experiences. *European Equality Law Review*, 2; available from: <http://bit.ly/2swJfPU>.

¹⁰⁷ Decisions of the Authority are available from: <http://bit.ly/2tkIT1Q>.

¹⁰⁸ The Authority took action in two cases in 2013, 5 cases in 2015, 11 cases in 2016. Decisions of the Authority are available from: <http://bit.ly/2tkIT1Q>.

¹⁰⁹ The Authority, Decision No. EBH/25/2016; available from: <http://bit.ly/2uNX2CH>.

¹¹⁰ The Authority, Decision No. EBH/349/2016; available from: <http://bit.ly/2uNX2CH>. Same link as above.

¹¹¹ The Authority, Decision No. EBH/549/2016; available from: <http://bit.ly/2sQsTB7>.

¹¹² The Authority, Decision No. 1475/2009/6; available from: <http://bit.ly/2sPUyIC>.

¹¹³ The Authority, Decision No. EBH/187/1/2010; available from: <http://bit.ly/2uumDkO>.

¹¹⁴ Curia judgement No. Kfv. III.37.848/2014/6; available from: <http://bit.ly/2tQe85L>.

¹¹⁵ *Ibid.*

¹¹⁶ This means that victims of discrimination may sue in civil courts based on Articles 2:42 and 2:43 of the Civil Code, claiming that inherent rights are protected by the Civil Code, and that the right to non-discrimination is an inherent right.

¹¹⁷ Article 15 of Act CXXV of 2003 on equal treatment and on ensuring equal opportunities (ETA).

¹¹⁸ Act V of 2013 on the Civil Code.

¹¹⁹ There have been several recent attempts in Hungary to declare as unlawful verbal attacks made against a community (usually a minority group). When the Civil Code was amended in 2007, the Constitutional Court objected to such initiatives, stating that legislation of this type would result in a disproportionate limitation on the right to freedom of expression.

¹²⁰ An integral part of Hungarian legal history, dating back to the early 1900s, is that the prosecution has many changing roles in civil procedure with regards to the enforcement of the public interest. The Constitutional Court reviewed the role of the prosecution in civil proceedings in the following cases, and found it to be constitutional: 9/1992. (I. 30.), 1992, 59–71; 1/1994. (I. 7.) 1994, 29–40; 20/1997. (III. 19.) 1997, 85–102.

¹²¹ Civil Code, *op.cit.* Section 2:54: “(1) Inherent rights must be enforced in person. (4) If the violation of inherent rights infringes upon the public interest, the public prosecutor shall be entitled to bring action upon the victim’s consent, and to invoke the sanctions independent of attributability. Pursuant to the public prosecutor’s action the financial advantage achieved shall be relinquished for public purposes. This Subsection shall apply to the infringement referred to in Subsection (5) with the exception that the public prosecutor shall be entitled to bring action without the victim’s consent within the applicable limitation period.”

¹²² According to the reasoning for these provisions, the “legislation addresses the public interest aim of ensuring that violations affecting collective inherent rights are sanctioned even if a member of the community fails to enforce the claim within the thirty-day deadline;” see F. Gárdos-Orosz & A.L. Papp, Comments On Legal and Political background of Hate Speech legislation in the Civil Law, *Állam és Jogtudomány*, year LV, issue 2014.2.

¹²³ Section 2:52 states: “(1) Any person whose rights relating to personality had been violated shall be entitled to restitution for any non-material violation suffered. (2) As regards the conditions for the obligation of payment of restitution – such as the definition of the person liable for the restitution payable and the cases of exemptions – the rules on liability for damages shall apply, with the proviso that apart from the fact of the infringement no other harm has to be verified for entitlement to restitution. (3) The court shall determine the amount of restitution in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of responsibility, the impact of the infringement upon the aggrieved party and his environment.”

¹²⁴ Act. No. III of 1952 on Civil Procedure, Section XXII., 348/A.

¹²⁵ *Hajdu Online* (2015) The Jobbik MP has to pay for his words. 26 November; available from: <http://bit.ly/2sTaXpq>.

¹²⁶ Decision 6.P.20.750/2015/9, 14 September 2015.

¹²⁷ This was the amount the claimant originally claimed.

¹²⁸ The Debrecen Court of Appeal, Pf.I.20.623/2015/7, 26 November 2015.

¹²⁹ Adopted on 30 October 1997. The Court referred to the following provisions: “The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimizing, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based

on intolerance.”

¹³⁰ Decision of the Constitutional Court No. 96/2008. (VII. 3.) AB.

¹³¹ Quotation from the final judgement, the Debrecen Court of Appeal.

¹³² *Index.hu* (2016) Kocsis Mate won the case against the Hungarian Helsinki Committee. 8 November; available from: <http://bit.ly/2uCATqB>.

¹³³ See Hungarian Helsinki Committee (2017) Update on the case, 23 July; available from: <http://bit.ly/2veBUWV>.

¹³⁴ Act CXI of 2011 on the Commissioner for Fundamental Rights.

¹³⁵ Report of the Commissioner for Fundamental Rights, AJB-1199/2013; available from: <http://bit.ly/2sTzxXa>.

¹³⁶ Under Article 8 para 4 of the Act on the Commissioner, *op.cit.*, the Commissioner may launch proceedings *ex officio*, which can involve the review of cases which are not connected to a specific natural person, abuses affecting a larger group, or the enforcement of a fundamental right.

¹³⁷ An abridged, 7-minute version of the documentary is available from: <http://bit.ly/2sjhL01>.

¹³⁸ *Index.hu* Many protested against the Roma documentary of Pest; available from: <http://bit.ly/2uRk4s5>.

¹³⁹ Decision of the Commissioner, Case No. 952/2012, 23 May 2012. Available from: <http://bit.ly/2sNPsv5>.

¹⁴⁰ Decision of the Commissioner, Case No. AJB-3395/2012. Abbreviated version available from: <http://bit.ly/2oOzpdo>.

¹⁴¹ *Ibid.*, p.12.

¹⁴² Report of the Commissioner, AJB-479/2016; available from: <http://bit.ly/2oRbBW2>.

¹⁴³ Act CLXXXV of 2010 on Media Services and Mass Media (Media Act).

¹⁴⁴ Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content.

¹⁴⁵ Hungarian Media Law, Mertek Media Monitor, Mertek Booklets Volume 1, January 2015; available from: <http://bit.ly/2tK5uX6>.

¹⁴⁶ Commissioner for Human Rights (2011) Opinion of the Commissioner for Human Rights, Hungary's Media Legislation in light of Council of Europe Standards on Freedom of the Media. 25 February. (Strasbourg: Council of Europe); available from: <http://bit.ly/2pCku6W>.

¹⁴⁷ Decision of the Constitutional Court 165/2011 (VI.20.).

¹⁴⁸ Press Act, *op.cit.*, Article 14 para 1.

¹⁴⁹ *Ibid.*, Article 16.

¹⁵⁰ See, for example, Opinion on Media Legislation of Hungary adopted by the Venice Commission at its 103rd Plenary Session, Venice, 19–20 June 2015.

¹⁵¹ *Ibid.*, Article 17 para 1.

¹⁵² Decision of the Constitutional Court 165/2011 (XII.20.).

¹⁵³ *Ibid.*, Article 17 para 2.

¹⁵⁴ *Ibid.*, Article 20 para 5.

¹⁵⁵ The Media Act, *op.cit.*, Article 14.

¹⁵⁶ The Media Act, *op.cit.*, Article 83.

¹⁵⁷ Article 99 of the Media Act states that these

minorities have a right to support and sustain their culture and mother tongue, and to be regularly informed in their mother tongue by way of separate programs aired through public media service. “Public media service provider via national or, having regard to the geographic location of the national or ethnic minority, via local media services by airing programs satisfying the needs of the national or ethnic minority in question, or via audio-visual media services using subtitles or broadcasting in multiple languages, as required. The national self-government bodies of national and ethnic minorities, or in the absence of such their national organizations, shall independently decide on the principles of allocation of the transmission time made available to them by the public media service provider. The public media service provider shall abide by these principles, but these may not affect the contents and editing of the program.”

¹⁵⁸ Under Article 66 of the Media Act, linear community media services: a) are intended to serve or satisfy the special needs for information of and to provide access to cultural programs for a certain social, national, or ethnic minority, cultural or religious community or group; or b) are intended to serve or satisfy the special needs for information of and to provide access to cultural programs for residents of a given settlement, region or reception area; or c) in the majority of their transmission time such programs are broadcasted which are aimed at achieving the objectives of public media services (as defined in Article 83 of the Act). Article 66(2) of the Media Act states that “the media service provider providing linear community media services shall define in its media service policy a) the objective of its activity, b) the cultural areas and topics which it has undertaken to present, c) the objectives of public media services which it has undertaken to serve, d) the community or communities (social groups or residents of a specific geographic area) that it intends to serve, e) if

it serves the needs of a specific community as per Paragraph (1) (a)-(b), then such community and the minimum percentage ratio of the programs targeted at such community as compared to the total transmission time shall be defined. (3) The media service provider shall report annually to the Media Council on compliance with the applicable legislative provisions governing community media services and with the media service policy.”

¹⁵⁹ Under Article 3 para 4 of the Press Act, rules applicable to imposing sanctions, as well as the list of sanctions that may be imposed against media content providers, are set out in the Media Act.

¹⁶⁰ The maximum amount of the fine for a media service provider with significant market power is 200 million HUF (approx 650,000 EUR), while the maximum amount of the fine for an online press product is 25 million HUF (approx 80,000 EUR); the Act specifies that legal consequences should be applied in line with principles of ‘progressivity and proportionality’, and that any sanction must be levied “in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal consequence”, Media Act, Article 185 and 187 (3).

¹⁶¹ Decision of the Media Council, 126/2017. (V.17.).

¹⁶² Decision of the Media Council, 551/2016. (V.17.).

¹⁶³ Decision of the Media Council, 505/2016. (V.17.).

¹⁶⁴ Decision of the Media Council, 758/2014. ((VII.30.).

¹⁶⁵ Decision of the Media Council, 802/2013. (V.8.).

¹⁶⁶ Decision of the Media Council, 551/2016.

(V.17.).

¹⁶⁷ Decision of the Media Council, 126/2017.
(V.17.).

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ G. Bernáth & V. Messing, The government campaign on refugees and forums for expression independent from this campaign, Médiakutató, 2015/3.

¹⁷¹ The Media Act, Article 190-202/A.

¹⁷² Hungarian Publishers' Association; available from: <http://bit.ly/2sBdkhi>.

¹⁷³ The Association of Hungarian Television Broadcasters; available from: <http://bit.ly/2uD0eBB>.

¹⁷⁴ The Association of the Hungarian Content Providers; available from: <http://bit.ly/2sRYs2h>.

¹⁷⁵ The Advertising Self-Regulatory Body; available from: <http://bit.ly/2sYUyjp>.

¹⁷⁶ See, e.g., the Co-regulation Code of Conduct of the Association of Hungarian Content Providers, available at <http://bit.ly/2tF11BY>; the Co-regulation Code of Conduct of the Advertising Self-regulatory Body, available at <http://bit.ly/2tEUcAE>; the Co-regulation of Code of Conduct of the Hungarian Publisher's Association, available at <http://bit.ly/2sG91kM>; and the Co-regulation Code of Conduct of the Association of Hungarian Television Broadcasters, available at <http://bit.ly/2u3M4eS>.

¹⁷⁷ The procedures shall be pursued upon request or *ex officio* (in cases defined in the applicable Code of Conduct). Before requesting the procedure of the self-regulatory body, the petitioner (the person whose rights or lawful interests are directly affected by the media

content) is obliged to inform the concerned content service provider of the complaint (this obligation is not included in ÖRT's co-regulation agreement) and to attempt to find a solution. These solutions could include an apology, a published retraction, correction or explanation. If no such agreement is reached, proceedings before the self-regulatory body may be initiated, subject to the payment of the required procedural fees. If the problem is not solved this way, the petitioner can initiate the co-regulation procedure. The self-regulatory body has 30 days to complete such procedure; this may be extended by 15 days based on the complexity of the case and the difficulties that may arise from the facts of the case. The committee shall have the right to hold a hearing if it is necessary or if there is an attempt to reach consent. Parties may appeal the committee's resolution on the grounds of a breach of the Media Act or the Code of Conduct. The appeal shall be adjudged by the self-regulatory body's appeal committee of experts. Parties may request the review of the final resolution from the Media Council, but only on the grounds of unlawful proceedings (the procedure of MEME does not contain such an "in-house" appeal system). The Media Council shall exercise supervision over the activities of the self-regulatory bodies under the public administration agreements. In so doing, the Media Council shall have the right to check the fulfilment of the provisions of the agreements on a continuous basis and their delivery in accordance with the agreement.

¹⁷⁸ The self-regulatory bodies have the following options when deciding on complaints: a) to declare the occurrence of the infringement; b) to order the perpetrator to cease its unlawful behaviour (and – if applicable – to restore it to the original state); c) to oblige the perpetrator to make restitution (e.g., in a statement) either publicly disclosed or otherwise; d) to oblige the perpetrator to make a non-pecuniary restitution by other suitable means and to reimburse

the procedural fees and costs paid by the petitioner; e) to suspend the perpetrator's right to participate in the co-regulation procedure (in this case the perpetrator shall be subject to the procedure of the authority during the suspension); or f) to disclose to the public its decision containing the perpetrator's name and the committed infringement.

¹⁷⁹ The administration agreements are available from: <http://bit.ly/2uCCdkq>.

¹⁸⁰ See, e.g., the 2015 Judicial Code of Ethics, the National Council of the Judiciary; available from <http://bit.ly/2tJwt53>.

¹⁸¹ For example, the National Council of Judiciary and the Hungarian Association of Judges condemned statements of the presiding judge in the Regional Court of Gyula in March 2014. The judge justified her decision to refuse dissolution of an extreme right-wing paramilitary group for its unlawful anti-Roma activities in Gyöngyöspata in 2011, with stereotypical and derogatory remarks about 'Gypsy crime' and Roma lifestyle; see, e.g., "Judicial ethics body: citing 'Gypsy crime' unethical"; available from: <http://bit.ly/2tjsadu>.

¹⁸² Ethical Guidelines of the Editor's Forum; available from: <http://bit.ly/2tF12bC>.

¹⁸³ Self-regulatory body of the Editor's Forum; available from: <http://bit.ly/2tUmCsR>.

¹⁸⁴ Hungary's New Media Regulation, National Media and Infocommunications Authority, November 2011, p. 134; available from: <http://bit.ly/2uDwyn1>.

¹⁸⁵ B. Bodrogi & J. Kárpáti, Inherent Rights and Press Freedom, 2014, p. 35; available from: <http://bit.ly/2sZ8olS>.

¹⁸⁶ Constitutional Court decision, 19/2014 (V.30).

¹⁸⁷ European Court, *Magyar Tartalomszolgáltatók Egyesülete (MTE) – Index v Hungary*, App. No. 22947/13. Available from: <http://bit.ly/1RXqe2X>. See also, B. Bodrogi, The European Human Rights rules again on liability of third party comments LSE Media Policy Project blog; available from: <http://bit.ly/2t4tjE7>.

¹⁸⁸ European Court, *MAGYAR JETI ZRT v Hungary*, App. no. 11257/16; available from: <http://bit.ly/2tjvISE>.

¹⁸⁹ Internet Hotline, operated by the National Media and Info-communications Authority; available from: <http://bit.ly/2ttgAhO>.

¹⁹⁰ 'Get the Trolls Out!' project led by the Media Diversity Institute; available from: <http://bit.ly/2uCqyvL>.

¹⁹¹ Possibilities to Counter Extremist Discourse, Research project of the Action and Protection Foundation, April 2016; available from: <http://bit.ly/2tUbxIO>.

¹⁹² The Media Act, *op.cit.* Article 24 (1).

¹⁹³ Co-regulation of Conduct of the Advertising Self-regulatory Body; available from: <http://bit.ly/2tEUcAE>.

¹⁹⁴ The Hungarian Advertising Code of Ethics; available from: <http://bit.ly/2oQtkfY>.

¹⁹⁵ Interview with the Secretary-General of ÖRT, Ildikó Fazekas, 10 July 2017; on the file.

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