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## **Hate speech in public discourse and its impact on children's rights.**

**Abstract.** The article analyzes phenomenon of hate speech and its impact on children's rights. First part provides terms and key notes related to the submitted topic, as fundamentals for comprehensive understanding of this issue. Second part list and describe relevant law and soft law instruments in european context. This section examines the primary sources on protection of children's rights and regulations aiming to combat hate speech. Last part provides assessment of lawpractice in Slovakia with regards to protection of children before hate speech, where the author discusses the question of whether Slovakia fulfill sits positive obligation to protect children before hate speech.

**Keywords:** hatespeech; protection of child; children's rights.

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### **Introduction**

The phenomenon of hate speech has gained momentum in recent years. Still, due to the Covid-19 pandemic it has become even more visible, which locked us in our rooms and put us in front of computer monitors. The children's population will be particularly affected by lockdowns, as children, especially at a younger age learn and observe the patterns of behavior from surroundings easier in contrast to adults.<sup>54</sup>

The reason for choosing the topic of this paper was an increase in the exposure of children to the digital environment with the occurrence of hate speech, which sows the seeds of hatred towards specific minorities. Children can be also discriminated by receiving hateful communications.<sup>55</sup>On the other hand, hate speech can also influence a child to such an extent that it may embark on the path of discrimination.

A lack of critical thinking, a lack of external validation, absence of peer acceptance, lack of understanding or randomly surfing on the internet can be reasons to connect with groups that can initially create an environment that attracts children and is able to arouse hate. Some of

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<sup>54</sup> European Court of Human Rights (hereinafter as „*ECtHR*“), *Dahlab v. Switzerland*, 15 February 2001, App. No. 42393/98.

<sup>55</sup>Committee on the Rights of the Child, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, (CRC/C/GC/25), 2021, para 10.

these groups can create a feeling of acceptance and solidarity. Radicalization of children and youth is another reason for concern, that calls for greater awareness in building tolerance, education and intercultural dialogue.<sup>56</sup> Parents and teachers struggle to keep up with technological development, so the generation gap is increasingly visible.

Here the question arises, how the phenomenon of hatespeechis related to children's rights. To start with, we have 3 groups of children who are affected by hatespeech - the observer, the victim and the perpetrator. Most of the expert analysis and public policy measures concentrate on the problem from a victim perspective (when a child is directly affected by hate speech).<sup>57</sup> For the purposes of this article, the Author mainly focus on children in the role of the observers.

A starting point for further analysis is an assertion that hate speech (that is present in a public discourse and online) has got significant consequences and influence on children mental health and wellbeing.

The researched theme does not concern only one or two countries, but is a global problem that must be solved together on the basis of consensus. This issue is connected with several unresolved issues, such as responsibility for publishing posts with hate speech content, different settings for sanctioning such behavior, different approaches of states in the fight against hate speech, or the issue of victimization of children (child who is a member of a certain minority as a target of hate speech).

The paper is divided into three parts. The first one is focused on the definitions of the central terms of this research. Subsequently, the second part provides a brief overview of legal regulation of hate speech in Council of Europe and EU law, and of interrelated international standards on children's rights. In the third part the autor will evaluate the current situation of children protection from hate speech in Slovakia. The autor will address the most recent problems and efforts undertaken by Slovak authorities to combat hate speech.

### **1. Key notions and definitions**

One of the two central terms of this research is the term „*child*“. General legal definition of this term can be found in the United Nations Convention on the Rights of the Child (hereinafter as „CRC“), defining a child as „*every human being below the age of eighteen*

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<sup>56</sup>Committee of Ministers of the Council of Europe, *Declaration of the Committee of Ministers of the Council of Europe "United around our principles against violent extremism and radicalisation leading to terrorism"*, Brussels, 2015.

<sup>57</sup>OSCE, *Understanding the Needs of Hate Crime Victims*, Warsaw 2020, European Union - European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committe of the Regions - A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+)*, Brussels, 2022.

years unless under the law applicable to the child, majority is attained earlier”.<sup>58</sup>The CRC, the most important legally binding document on protection of children rights and has been ratified by 196 countries, what implies that there is a universal consensus on its provisions, including a definition of a „child”.

This definition leaves room for state-parties to adjust the upper age that limits adulthood, thus determining the status of an individual as a child. It means that states have the competence to exclude children below the age of 18 from the Convention’s protection.<sup>59</sup>On one hand, it has been acknowledged that because of different stages of development and evolving capacities of State Parties, there must be a space for accepting states’ implementation of the CRC in nuanced ways.<sup>60</sup>But on the other hand, the CRC Committee, a body that monitors implementation of the Convention<sup>61</sup>, pressed states to adopt the age of 18 as the threshold for maturity and demanded that states must at least justify any diversion from this rule. Therefore, CRC Committee has shown little tolerance for such approaches.<sup>62</sup> It has clearly stated that „where setting the age of majority lower than 18 undermines the objectives of the Convention, this should be deemed to be a violation of the Convention.”<sup>63</sup>

A principle of „the best interest of the child“ is one of the four general principles of the CRC.<sup>64</sup> It express one of the fundamental values of the CRC.<sup>65</sup>This principle is enshrined in art. 3 (1) of the CRC requiring that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The provision does not have a uniform, commonly agreed meaning since „the concept of the child’s best interests is flexible and adaptable“.<sup>66</sup>

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<sup>58</sup> CRC, *Announcement of the Federal Ministry of Foreign Affairs of Slovak republic No. 104/1991 Coll. on declaration of consent and ratification of CRC*, art.1.

<sup>59</sup>U. Kilkelly, T. Liefaard, *International Human Rights of Children*, Springer Singapore, 2018, p.136.

<sup>60</sup>Committee on the Rights of the Child, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence (CRC/C/GC/20 2016)*, 2016. p.3.

<sup>61</sup> CRC, *Announcement of the Federal Ministry of Foreign Affairs No. 104/1991 Coll. on declaration of consent and ratification of CRC*, art.43.

<sup>62</sup>Committee on the Rights of the Child, *Consideration of reports submitted by states parties under article 44 of the convention (CRC/C/PAK/CO/3-4)*, 2009, para 27.

<sup>63</sup> U. Kilkelly, T. Liefaard, *International Human Rights of Children*, Springer Singapore, 2018, p.153.

<sup>64</sup> Principles in general are considered guiding ideas in interpretation and application of pertinent articles. Also CRC should be applied with its four guiding principles (*right to nondiscrimination (Article 2); the principle of the best interests of the child (Article 3); the right to life, survival, and development (Article 6); and the right to participation (Article 12)*), in:Committee on the Rights of the Child, *General comment No. 5 (2003) - General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), (CRC/GC/2003/5)*, 2003, para.12.

<sup>65</sup>Tobin, J., *The UN Convention on the Rights of the Child, A Commentary*, UK, 2019, p.74.

<sup>66</sup>Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), (CRC/C/GC/14)*, para. 32.

In order to define „*hate speech*“, it is necessary to address a correlated concept - freedom of expression. It is considered as one of the essential foundations of a democratic society.<sup>67</sup> Freedom of expression is the fundamental right guaranteed by international law<sup>68</sup> and also by national constitutions. For the purpose of this paper, which is focused on the European context, the author will be using as point of reference the European Convention on Human Rights (hereinafter as „ECHR“). According to art. 10(1) of the ECHR freedom of expression includes „*freedom to hold opinions and to receive and impart information and ideas*“. An exercise of freedom of expression can be restricted. Limitations enshrined in art. 10(2) ECHR may be justified by „*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*“. It should be underlined that every limitation imposed has to be proportional to legitimate aim pursued, prescribed by law and necessary in a democratic society.<sup>69</sup>

Every State has a positive obligation to protect individuals from an unlawful exercising freedom of speech. Hate speech is one of the kinds of speech that does not enjoy protection on the basis of art. 10 ECHR.<sup>70</sup> This positive obligation can be fulfilled e.g. by adopting efficient law and establishing appropriate practices and implementing educational programmes.

The term „*hate speech*“ does not have an international legally binding definition. Since there is no commonly agreed definition, each case is assessed individually with regard to balancing freedom of expression with justified limitations (interference). There are, nevertheless, some basic criteria and factors that may be identified in the case-law and practice of international human rights protection bodies.

Case law of ECtHR provides some guidance as to what is considered as hate speech, although the Court has never offered any detailed definition. The Court only refers to „*all forms of expression which spread, incite, promote or justify hatred based on intolerance*“.<sup>71</sup> Thus, it may be useful to recall a definition suggested by the Committee of Ministers of the Council of

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<sup>67</sup> ECtHR, *Handyside v. United Kingdom*, 7 December 1976, Application no. 5493/72, Series A No. 24, para.49.

<sup>68</sup> ECHR, *Announcement of the Federal Ministry of Foreign Affairs of Slovak republic No. 209/1992 Coll. on declaration of consent and ratification of the ECHR*, art. 10, *Decree of the Minister of Foreign Affairs No. 120/1976 Coll. on the International Covenant on Civil and Political Rights*, art. 19, 20, Charter of Fundamental Rights of the EU, art. 11.

<sup>69</sup> ECtHR, *Handyside v. United Kingdom*, 7 December 1976, Application no. 5493/72, Series A No. 24, para.49.

<sup>70</sup> Bychawska-Siniarska D., *Protecting the right to freedom of expression under the European Convention on Human Rights*, Council of Europe, 2017, p.25.

<sup>71</sup> ECtHR, *Gündüz v. Turkey*, 4 December 2003, Application no. 35071/97, para. 40; ECtHR, *Erbakan v. Turkey*, 6 July 2006, Application no. 59405/00, para. 56.

Europe. It understands hate speech as „*all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin*“.<sup>72</sup>

A more comprehensive approach has been presented by the European Commission against Racism and Intolerance (hereinafter as „ECRI“) which define hate speech as „*the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of „race“, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status*“.<sup>73</sup>

By its progressive interpretation of the ECHR, the ECtHR developed a set of criteria according to which it can be assessed if a given expression is to be considered as hate speech: purpose of speech, content of speech, context of statement (role of offender, target audience, society or political situation).<sup>74</sup> ECRI also considers as determining factors the intensity of used language, the platform, and the nature of the audience

Rights of children have to be protected not only in the real environment, but also in a digital space. Children and adolescents are regarded as vulnerable groups. The vulnerability of a child is higher than that of an adult, who can assess the content of websites. This was stressed by the ECtHR which claimed that „*Children and other vulnerable individuals, in particular, are entitled to effective protection*“.<sup>75</sup> This is true also in the virtual environment and especially because they are more literate in new technologies. Nowadays is known that „*meaningful access to digital technologies can support children to realize the full range of their civil, political, cultural, economic and social rights*“.<sup>76</sup> Unfortunately, the digital environment exposes children to harmful content, including hate speech and incitement to violence.<sup>77</sup>

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<sup>72</sup>Committee of Ministers of the Council of Europe: *Recommendation No. R (97) 20 of the Committee of Ministers to member states on “hate speech”*, 1997, p. 107.

<sup>73</sup>ECRI: *General policy recommendation no. 15 on combating hate speech*, 2015, para 9.

<sup>74</sup>A. Webber, *Manual on hate speech*, France, 2009, p.33 – 48.

<sup>75</sup> ECtHR, *A and B v. Croatia*, 20 June 2019, Application no. 7144/15, para. 106.

<sup>76</sup>Committee on the Rights of the Child, *General comment No. 25 (2021) on children’s rights in relation to the digital environment*, (CRC/C/GC/25), 2021. para 5.

<sup>77</sup>Privacy and personal data protection issues, online sexual abuse, overexposure to sexualized images, etc.

States are obliged to protect groups targeted by hate speech.<sup>78</sup>With regards to the influence of hate speech on children, state's practice approach is particularly needed. Based on art. 10 (2) of ECHR, the state is entitled to adopt legislation containing justified restrictions on the exercise of right to freedom of expression. Efficiency of such tools depends on the will of the state to adopt law regulating those limitations, alternatively implement good practise, which can have significant effect as well. Pertinent measures should involve also precautionary ones.<sup>79</sup>

## 2. Legal framework

This chapter will be divided into two parts. Firstly, it describes the most important sources of child's rights. Later, it is focused on hate speech law regulation in the European context. The systematic description of pertinent legal texts will be ordered from the most important international documents to national regulations (focusing on the Slovak Republic's laws).

### 2.1 Children rights

The fundamental legally binding document considering children rights is the Convention on the Rights of the Child (herein as „CRC“). Its Preambul mentions that *„childhood is entitled to special care and assistance“* and that every child *„should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community“*.Lastly, *„the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection“*.The Preambulsets aims or purposes of the treaty and it is important for the interpretative process. The CRC has consensual nature, this is why it must be read as containing only the minimum standards of children's rights.<sup>80</sup>The CRC represents a guarantee for fundamental rights of children as vulnerable subjects and it is State's responsibility to take appropriate steps in order to implement those rights in their national legislation and politics.

Art. 2 (2) of the CRC that requires states to take all *„appropriate measures“* (what is *„appropriate“* is decided by each state) to ensure that children are protected against all forms of discrimination or punishment.<sup>81</sup>Art. 17 (e) of the Convention reads that: *„States Parties shall encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being“*.

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<sup>78</sup>ECRI: *General policy recommendation no. 15 on combating hate speech*, 2015, para 41.

<sup>79</sup>Committee on the Rights of the Child, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, (CRC/C/GC/25), 2021, para 22.

<sup>80</sup>S. Ruxton, *What about us? Children's Rights in the European Union - Next steps*, 2005, p.16.

<sup>81</sup> There is a conflict between right to welfare (art. 2 of CRC) with freedom of information (art. 3 of CRC).

In the European context there is no general instrument on the protection of human rights dedicated only to children. However, even though the ECHR does not explicitly mention „children” there is doubt that they are protected by the Convention. The Strasbourg Court has on many occasions adjudicated cases concerning children rights.<sup>82</sup> The Court considers the CRC as constituting the standards to which all governments must aspire in realising rights for all children.<sup>83</sup> Also the European Social Charter<sup>84</sup> plays a role in this manner, since it includes special protection of vulnerable groups, including children, people with disabilities and migrants.

Contrary to the ECHR, the EU Charter includes an explicit reference to children’s fundamental rights and well-being.<sup>85</sup> When we are comparing Charter with the ECHR, Charter goes well beyond the rights for children set out in the Convention, which only refers directly to education. Art. 24 of the Charter includes references to „the best interests of the child”, and to the child’s right to participate and to express its opinion. For Court of Justice of European Union the CRC can be considered as source of inspiration and determination factor to interpret EU law.<sup>86</sup>

In Slovakia legal system there is no specific law focused only on children rights. But first of all, reference have to be made on Constitution, as primary source of fundamental rights, since they are guaranteed to all (including children).<sup>87</sup> Still, regulations on children’s rights can be found in particular in Family Act No. 36/2005 as amended. It is based on principles such as „best interest of child”. Other rights of a child are enshrined in criminal law<sup>88</sup> and procedural legislation.<sup>89</sup>

## 2.2 Anti-hate speech legal standards

As already noted, there is no international treaty dedicated specifically to the problem of hate speech. In European system of human rights protection several soft-law instruments have been adopted.

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<sup>82</sup>ECtHR, *D.H. and Others v. the Czech Republic*, 13 November 2007, Application no. 57325/00; ECtHR, *Maslov v. Austria*, 23 June 2008, Application no. 1638/03; ECtHR, *Schwizgebel v. Switzerland*, 10 June 2010, Application no. 25762/07; ECtHR, *Marckx v. Belgium*, 13 June 1979, Application no. 6833/74; ECtHR, *C v. Croatia*, 8 October 2020, Application no. 80117/17; ECtHR, *Güveç v. Turkey*, 20 January 2009, Application no. 70337/01.

<sup>83</sup>Fenton – Glynn C., *Children and the European Court of Human rights*, 2021, p.9.

<sup>84</sup> Council of Europe, *European Social Charter*, Turin, 18.X.1961, part I (7), art. 7, art.19.

<sup>85</sup>European Union, *Charter of Fundamental Rights of the European Union*, Brussels, 2010, art. 24.

<sup>86</sup>CJEU, *Dynamic Medien Vertriebs GmbH v. Avides Media AG*, C-244/06, 14 February 2008; CJEU, *M. A. v État belge*, C-112/20, 11 March 2021.

<sup>87</sup>Act No. 460/1992 Coll. Constitution of the Slovak Republic.

<sup>88</sup> Act No. 301/2005 Coll. Criminal Procedure, Act No. 300/2005 Coll. Criminal Code.

<sup>89</sup> Act No. 160/2015 Coll. Civil Dispute Procedure; Act No. 161/2015 Coll. Civil Non-dispute Procedure.

The Committee of Ministers of the Council of Europe can issue recommendations to states in order to achieve greater unity in national legislations. Event though they are legally non-binding, they are a source of inspiration for future legally binding acts and they create political and „moral“ obligations for „each responsible serious partner of this organization“<sup>90</sup>. Recommendation (97) 20 on „hate speech“ is aiming to „establish or maintain a sound legal framework... on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others“<sup>91</sup>.

Another instrument was adopted by the Committee of Ministers on 30 October 1997 Recommendation (97) 21 on the Media and the Promotion of a Culture of Tolerance, which is built on the idea „that the principle of tolerance is the guarantee of the maintenance in Europe of an open society respecting cultural diversity“ and it highlights the importance of media's contribution to combat intolerance.<sup>92</sup>

Another important document is the ECRI's General Policy Recommendation No. 15 on combating hate speech. It enshrines guidelines (10 specific recommendations) to the member states of the Council of Europe on combating hate speech.<sup>93</sup>

Also the European Union has been active in combating hate speech. As for the powers of the EU, activities directed against hate speech are subsumed in the scope of judicial cooperation<sup>94</sup> in scope of shared competences<sup>95</sup>. Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law represents approximation of criminal law of member states, which „should lead to combating racist and xenophobic offences more effectively, by promoting a full and effective judicial cooperation“.<sup>96</sup> It is important to underline that not only states, but also private entities (business companies in particular) should bear responsibility for hate speech. Code of Conduct (not legally binding instrument) is an agreement between IT Companies (Facebook, Microsoft, Twitter, YouTube, Instagram, Snapchat, Dailymotion, Tiktok, LinkedIn) and the European Commission,

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<sup>90</sup>Gronowska B., *Standardy zalecane (soft law) organów statutowych Rady Europy*, [w:] B. Gronowska, P. Sadowski, 25-lecie wejścia w życie Europejskiej Konwencji Praw Człowieka w Polsce, Toruń, 2022, p. 39-40.

<sup>91</sup>Committee of Ministers of the Council of Europe, *Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech"*, 1997, principle 2.

<sup>92</sup>Committee of Ministers of the Council of Europe, *Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance*, 1997, recital.

<sup>93</sup> ECRI: *General policy recommendation no. 15 on combating hate speech*, 2015.

<sup>94</sup>European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 2007, art. 83.

<sup>95</sup>European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 2007, art.4 (2) (j).

<sup>96</sup>European Union: Council of the European Union, *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*, 2008, point 12 of recital.



which aim is to prevent the spread of hate speech and guide companies activities as well as sharing best practices with other internet companies, platforms and social media operators.<sup>97</sup> IT companies posed on themselves obligations to review notifications regarding hate speech on their services, to educate and raise awareness with their users about the types of content not permitted under their rules and community guidelines or to provide regular training to their staff on current societal developments and to exchange views on the potential for further improvement.

Slovak legal order does not contain an explicit definition of hate speech, however, interpretation of Slovak regulations reflects ECHR case-law.<sup>98</sup> Statements which are penalized in criminal law. The Criminal Code<sup>99</sup> defines 3 criminal acts: denial and approval of the Holocaust, crimes of political regimes and crimes against humanity (§422d), defamation of a nation, race or belief (§423), incitement to national, racial or ethnic hatred (§424).

### **3. Slovakian perspective - problems and measures to be taken**

In order to assess the effectiveness of protecting children from the negative impact of hate speech on children, it was necessary to identify relevant documents and standards, as provided in the second part of the paper.

This part will focus on an application of these laws in practice. The question remains whether the current legal setting is effective enough to protect the children well-being whether Slovakia fulfills its positive obligations.

To this end, useful information are provided in country reports of ECRI. ECRI periodically carries out country monitoring, e.i. analysis of the situation in the area of racism and intolerance in pertinent states.<sup>100</sup> The added value of these analysis are proposals for solving identified problems. ECRI cooperates with national bodies in order to improve the situation and offers detailed recommendations. Last monitoring cycle (6th), carried out in 2020<sup>101</sup> includes hate speech as well.

An increase in homophobic hate speech has been identified in Slovakia. In addition, members of Slovak parliament tend to openly discriminate LGBTQ minorities. In October 12, 2022,

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<sup>97</sup>European Union, *The EU Code of conduct on countering illegal hate speech online*, available: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination-0/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en) (25/12/2022).

<sup>98</sup> Ústavný súd Slovenskej republiky, *Nález*, 9 of January 2019, *PL. ÚS 5/2017*.

<sup>99</sup> Criminal Law No. 300/2005 Coll. as amended.

<sup>100</sup>Council of Europe, *Country Monitoring*, available: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/country-monitoring> (26/12/2022).

<sup>101</sup>Council of Europe, *ECRI REPORT ON THE SLOVAK REPUBLIC (sixth monitoring cycle)*, 2020, available: <https://rm.coe.int/ecri-6th-report-on-the-slovak-republic/1680a0a088> (24/12/2022).

two men of LGBTQ community were murdered in centre of Bratislava.<sup>102</sup> The perpetrator was a 19-year-old student - an anti-Semite, a supporter of conspiracy theories and an admirer of „white terrorists“. Before the attack, he published on Twitter a 65-page manifesto.<sup>103</sup> He described his motives, the reasons for his ideological views - i.e. reasons for intolerance towards certain groups (Muslims, Jews, LGBTQ).He stated that the online community contributed to his radicalization. He was found dead next morning.The school he attended stated that the student did not express radical or hateful views in the class. Society began to express support.

The EU has also reacted to the attack.<sup>104</sup> European Parliament reaffirm that „*whereas crime motivated by prejudice, known as hate crime or bias-motivated crime, affects not only the individuals targeted but also communities and societies as a whole; whereas Member States have a positive obligation to ensure that the rights to human dignity, to integrity...*“.<sup>105</sup>

State authorities and non-parliamentary political parties also condemned hatred against minorities. These events have a significant societal impact, strong statements of state representatives should strictly condemn these manifestations of intolerance and express support for these threatened groups who feel in danger. In the Resolution references are made to ECRI monitoring<sup>106</sup> and also the expression of the expansion of the list of EU crimes.<sup>107</sup>

In connection with these shocking events in Slovakia some reflections can be made.Children observe the statements of politicians and residents opinions, and therefore it would be appropriate to clarify these attitudes, by parents or in schools. Of course, these are issues that are distant for children at first glance. Still, children learn by observation. Therefore, tolerance should be taught at a young age and children should appreciate values of pluralism and diversity. It may be a cliché, but acceptance plays a big role in polarized society. Manifestations of intolerance presented by state officials in Slovakia are also directed against Islamic communities, migrants, Jews and Roma, as the ECRI's report shows.<sup>108</sup>ECRI report also indicated that often hate speech is spread by social and alternative networks (including

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<sup>102</sup>European union - European Parliament, *MEPs call on EU governments to combat LGBTQ+ hatred and crimes*, 2022, available: <https://www.europarl.europa.eu/news/en/press-room/20221017IPR43903/meps-call-on-eu-governments-to-combat-lgbtq-hatred-and-crimes> (24/12/2022).

<sup>103</sup> Manifesto was deleted from Twitter.

<sup>104</sup>European union - European Parliament, *European Parliament resolution of 20 October 2022 on growing hate crimes against LGBTQ+ people across Europe in light of the recent homophobic murder in Slovakia (2022/2894(RSP))*, Strasbourg, 2022, available: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0372\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0372_EN.html) (20/12/2022).

<sup>105</sup>*Ibid*, section F.

<sup>106</sup>*Ibid*, section I.

<sup>107</sup>*Ibid*, section 20.

<sup>108</sup>Council of Europe, *ECRI REPORT ON THE SLOVAK REPUBLIC (sixth monitoring cycle)*, 2020, para. 35 - 38.

hoaxes and disinformation content), which is shared by politicians without verifying the accuracy of content. ECRI reaffirmed the teenagers and young adults are most exposed to this content.<sup>109</sup>

Enhanced regulation of social network providers appears to be an effective tool, Individual states are not capable of adopting effective measures, as the Internet has a far-reaching influence that crosses national borders. The European Union is aware of it and it already took the action. The first such means was the Code of Conduct. Code was created as not binding (i.e. not enforceable) and self-regulating mechanism. In accordance with its provisions IT companies combat online hate speech by implementing effective mechanisms to review notifications regarding hate speech to remove or disable access to such content. They also adopt guidelines which clarify that they prohibit the manifestation of hatred.

According to the ECRI's report, the web providers do not have enough Slovak-speaking employees to be able to ensure the enforcement of the Code (e.g. content on Slovak Facebook is verified by one person<sup>110</sup>). Additionally, Police advises victims and operators not to delete hate speech in order not to destroy evidence (e.i. save it).

In order to be able to intervene effectively against the spread of hate speech, the willingness of States to adopt unified approaches to solving this problem is necessary to avoid differences. It is also necessary to introduce mechanisms that will appeal to the responsible entities to be responsible for regulating web networks. Therefore, it is necessary to introduce harmonized procedures so that individual expressions of hate are evaluated in the same way by different subjects. These are the reasons of adopting the Digital Services Act („DSA“), which „sets out an unprecedented new standard for the accountability of online platforms regarding illegal and harmful content“.<sup>111</sup> It is first act, that introduces legal rules in the field of content moderation on social networks. The DSA will have an impact on reducing the occurrence of hateful content, however pitfalls had been already identified.<sup>112</sup>

The legislation that would protect exclusively children from the impact of hate speech does not exist in Slovakia. Other laws do not clearly define how to handle and prosecute cases of

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<sup>109</sup> In another the survey found that with inappropriate content, in which speeches prevailed hatred, followed by incitement to violence, discrimination and bullying, 68% of young people in the 18-24 age group met on social networks. However, only 9% of users go on to report such content.

<sup>110</sup> Aktuality.sk: *Obsah na slovenskom Facebooku overuje jediný človek. Podľa experta by to mali robiť desiatky ľudí (+mapa informačného priestoru)*, 2022, available: <https://www.aktuality.sk/clanok/m2S9j3j/obsah-na-slovenskom-facebooku-overuje-jediny-clovek-podla-experta-by-to-mali-robit-desiatky-ludi-mapa-informacneho-priestoru/> (24/12/2022).

<sup>111</sup> European Union, *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)*, 2022.

<sup>112</sup> Iris Malone, *Will the EU's Digital Services Act Reduce Online Extremism?*, 2022, available: <https://www.justsecurity.org/81534/will-the-eus-digital-service-act-reduce-online-extremism/> (25/12/2022).

child abuse in the digital space. The prosecutor's office in connection with cybercrime, primarily deals with solving children's pornography, dangerous stalking, sexual abuse and similar crimes acts, given that domestic legislation does not recognize other forms of an abuse and an exploitation of children on the Internet, such as sexting, trolling, hatespeech or cyberbullying.<sup>113</sup>

Coming back to the question, how to deal with issue of hate speech effectively, in my opinion, the first step that can be taken is to teach cultural tolerance, how to build healthy relationships based on respect and human rights. It is State's positive obligation to take appropriate steps to achieve it. This steps include a national coordination that should engage with schools, technology sector and cooperate with civil society etc. in order „to realize children's rights in relation to the digital environment at the cross-sectoral, national, regional and local levels“<sup>114</sup> while evaluating „its effectiveness in meeting its obligation“<sup>115</sup>. National Strategy of child protection in Digital Space is an important document in that matter. This conception is drawn up for the period until 2025.<sup>116</sup> Recent resolution of Slovak Government<sup>117</sup> pose an obligations on responsible subject to fulfill National Strategy of child protection in Digital space (description of such obligations are defined in Action plan for the National Concept of Child Protection in Digital space for the years 2022-2023<sup>118</sup>).

As part of this concept, the Ministry of Justice of the Slovak Republic proposed solutions aimed at enforcing, supporting and protecting human rights and freedoms and preventing all forms of discrimination, racism, xenophobia, anti-semitism and other manifestations of intolerance. Its main aim is: „In the interests of the healthy psychological, physical and moral development of children and their protection in the digital space, support effective measures in the field of prevention, raising awareness, combating cybercrime, education, research, law, measures in the political and institutional field, cooperation and coordination on national

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<sup>113</sup>National Coordination Center for Solving the Problem of Violence Against Children, *National Strategy for the Protection of Children in the Digital Space*, 2020, available: [https://detstvobeznasilia.gov.sk/web\\_data/content/upload/subsubsub/2/narodna-koncepcia-ochrany-deti-v-digitalnom-priestore-1.pdf](https://detstvobeznasilia.gov.sk/web_data/content/upload/subsubsub/2/narodna-koncepcia-ochrany-deti-v-digitalnom-priestore-1.pdf) (24/10/2022), p.4

<sup>114</sup>Committee on the Rights of the Child, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, (CRC/C/GC/25), 2021, para 27.

<sup>115</sup>*Ibid*, para 27.

<sup>116</sup>National Coordination Center for Solving the Problem of Violence Against Children, *National Strategy for the Protection of Children in the Digital Space*, 2020, available: [https://detstvobeznasilia.gov.sk/web\\_data/content/upload/subsubsub/2/narodna-koncepcia-ochrany-deti-v-digitalnom-priestore-1.pdf](https://detstvobeznasilia.gov.sk/web_data/content/upload/subsubsub/2/narodna-koncepcia-ochrany-deti-v-digitalnom-priestore-1.pdf) (24/10/2022).

<sup>117</sup>Resolution of the Government of the Slovak Republic No. 382 of June 8, 2022 on the draft Action Plan for the National Concept for the Protection of Children in the Digital Space for the years 2022-2023, 2022, available: [https://detstvobeznasilia.gov.sk/web\\_data/content/upload/subsubsub/2/382\\_2022-1.pdf](https://detstvobeznasilia.gov.sk/web_data/content/upload/subsubsub/2/382_2022-1.pdf) (15/1/2023).

<sup>118</sup>Action plan for the National Concept of Child Protection in the Digital Space for 2022-2023, 2022, available: [https://detstvobeznasilia.gov.sk/web\\_data/content/upload/subsubsub/2/akn-pln-k-nrodnej-koncepcii-ochrany-deti-v-digitlnom-priestore-na-roky-2022-2023-1.pdf](https://detstvobeznasilia.gov.sk/web_data/content/upload/subsubsub/2/akn-pln-k-nrodnej-koncepcii-ochrany-deti-v-digitlnom-priestore-na-roky-2022-2023-1.pdf) (15/1/2023).

*and international level.*“The following years will show if the Strategy will improve the situation.

On the other hand, we can see some progress since the October „events“. The Council for Media Services („CMS“) started working on the prevention of the spread of terrorist content, hate speech and misinformation in the online space. A recent report<sup>119</sup> describes in detail the steps taken by CMS since the attack to date and the reactions they provoked. The CMS reported 109 posts (on Facebook) that contained false information, hate speech or other problematic content but only four of them were deleted.<sup>120</sup>The CMS also issued a report on reactions of digital platforms and about their share in the radicalization of the perpetrator, which represents the state's efforts to prevent the spread of illegal and harmful content.<sup>121</sup>

From January 1, 2024, DSA will apply in the EU, which allows fines of up to 6 percent of a company's annual global turnover to be imposed in case of systematic and repeated failures. The CMS recommends: *„In the near future, digital platforms should deal with the low efficiency and speed of content moderation, as well as the systemic barriers that prevent the restriction and removal of illegal and harmful content in minority languages.“*

Although these efforts are positive, weak prevention by the state appears as a shortcoming. In my opinion raising awareness about hate speech and not using discriminatory rhetoric by state officials would contribute to its suppression.

To sum up, the high incidence of hate speech and its impact on children's mental health is a serious problem. In this regard, steps to eliminate hate speech can be considered the National Strategy of Children in the Digital Space, the efforts and initiatives of the CMS to act and analyze the available data, and finally the effectiveness of the DSA. Of course, these are not foolproof steps that will eliminate hate speech overnight. Problem of hate speech is complex and it affects several scientific disciplines, therefore communication between them is also necessary (sociology, psychology, ethics).

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<sup>119</sup>Rada pre mediálne služby, *Rada pre mediálne služby zabezpečuje odstraňovanie manifestu strelca zo Zámockej ul., realizuje aj iné následné a preventívne aktivity*, 2022, available: <https://www.rpms.sk/node/161> (23/12/2022).

<sup>120</sup>Struhárik F., *Po útoku na Zámockej nahlásil štát vyše sto príspevkov, Facebook zmazal len štyri. Chyby robili aj médiá*, 2022, available: [https://dennikn.sk/3160179/po-utoku-na-zamockej-nahlasil-stat-vyse-sto-prispevkov-facebook-zmazal-len-styri-chyby-robili-aj-media/?fbclid=IwAR20xch8JDFAZ8cicwweculnDS7zsLaOz20eRrB\\_jEz2h2-D88v4ySqrfaq](https://dennikn.sk/3160179/po-utoku-na-zamockej-nahlasil-stat-vyse-sto-prispevkov-facebook-zmazal-len-styri-chyby-robili-aj-media/?fbclid=IwAR20xch8JDFAZ8cicwweculnDS7zsLaOz20eRrB_jEz2h2-D88v4ySqrfaq) (22/12/2022).

<sup>121</sup>CMS, *Správa o reakciách digitálnych platforiem na útok a o ich podiele na radikalizácii páchatel'a*, 2022, available: [https://rpms.sk/sites/default/files/2022-12/Terroristicky\\_utok\\_na\\_Zamockej\\_ul\\_Bezprostredna\\_a\\_preventivne\\_aktivity\\_RpMS\\_na\\_zamedzenie\\_sirenia\\_nelegalneho\\_a\\_skodliveho\\_obsahu.pdf](https://rpms.sk/sites/default/files/2022-12/Terroristicky_utok_na_Zamockej_ul_Bezprostredna_a_preventivne_aktivity_RpMS_na_zamedzenie_sirenia_nelegalneho_a_skodliveho_obsahu.pdf) (22/12/2022).

## CONCLUSIONS

This paper provided analysis of the issue of hate speech and its impact on children's rights. The topic of hate speech has recently become more and more discussed and it is necessary to be aware of its adverse consequences. Consequences of hate speech have an impact not only on individuals but also on society as whole.

In relation to Slovakia's positive obligations, I believe that Slovakia failed to fulfill its positive obligation to protect children wellbeing and development against hate speech influence.

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