

Legal Mechanisms for Protecting Freedom of Expression on the Internet – The Case of Serbia

Jelena Simić

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Jelena Simic

FACULTY OF LAW, UNION UNIVERSITY IN BELGRADE

Introduction

We can say that the Internet is a public space, accessible to almost every individual, which allows us to participate directly in the public exchange of opinions, even in a global context, from the depths of our privacy, even conditional anonymity.¹ Participation in the exchange of information on the Internet is no longer conditioned by any intermediaries in the form of traditional, one-way media, and a high degree of interaction is achieved almost momentarily.² It was the U.S. Supreme Court in the 1997 case of *Reno v. ACLU* that singled out interactivity as one of the peculiarities of the Internet and based on it characterized the Internet as a unique and completely revolutionary medium that allows simultaneous communication, thus giving it the highest degree of protection in terms of freedom of expression.³ That is why freedom of expression is a key element when we talk about rights and freedoms on the Internet. Compared to traditional media, it is clear that Internet users receive and communicate information without hindrance, thus blurring the line between speakers and audience. Social networks, platforms for information exchange and the Internet in general, act as a real arena of freedom almost without any restrictions such as laws, rules, regulations, which often hinder us in real life. However, just like in real life, setting boundaries is important and healing in building interpersonal relationships and respecting others. When it comes to the Internet, the question that has been in the focus of debate for a long time is, who should set those boundaries, who should regulate social networks, who should control the Internet? The "big tech" companies that own most of the social media, or the states and legislators that have set the framework for all other media so far?

Internationally, one of the triggers for this debate was certainly the events surrounding the US presidential election - from marking Trump's tweets as fake news due to non-recognition of election results, to the incursion of Trump supporters into the Capitol, as a result of which Trump's social network accounts were suspended in order to prevent him from calling for riots.⁴ These events have sharpened the debate about

The author is an associate professor at the Faculty of Law, Union University in Belgrade, Serbia (e-mail: jelena.simic@pravnofakultet.rs)

¹ Martinoli, A., (ur.), *Priručnik: Regulatorni okvir i poslovni modeli onlajn medija*, Fondacija za otvoreno društvo, Beograd, 2019.

² Ibid.

³ For more information about the Supreme Court verdict in *Reno v. ACLU*, 521 U.S. 844 (1997) see: (<https://www.aclu.org/legal-document/reno-v-aclu-supreme-court-decision-02/01/2022>).

⁴ In the United States, the issue of regulation and accountability of social platforms is dealt with by the 1996 Communications Decency Act, or a part of it better known as "Section 230", which regulates the field of Internet communication. It directly releases ISPs and tech companies from liability for content posted by third parties using their communications network. For more see: Section 230: An Overview, Congressional Research Service, 7.04.2021., Available at: <https://crsreports.congress.gov/product/pdf/R/R46751> 12.12.2021.

the role of social networks in political life. When it comes to the local prism, more precisely the Republic of Serbia, which this paper will deal with, we can say that the whole series of events that took place in a relatively short period opened a debate on these same issues. I will list only a few of the most important events.

In March 2020, the news that the social network Twitter shut down 8,558 Twitter accounts in Serbia caused great attention of the domestic and world public. Twitter announced on its official Twitter Safety profile that their authentication teams had deleted more than 8,500 accounts used to promote the ruling party in Serbia and its leader.⁵ It was a network of "bot" accounts that were engaged exclusively in promoting the ruling party and its leader during the 2017 presidential election campaign. Most of the "bots" actually retweeted and responded to the same tweet at the same time, which are clear features of an organized network of "bots" with a political plan. According to the report, these accounts tweeted more than 43 million times in four years and published more than 8 and a half million links that led to the websites of the ruling party and various pro-government media.⁶

Then, in mid-March 2021, Serbia found itself in the company of 32 countries in which, from mid-March 2021, Facebook began to apply a new advertising policy. As part of a campaign to reduce the spread of misinformation, the US company has introduced a rule that anyone who wants to advertise elections or politics in these countries must verify their identity through an identification mark issued by the country in which they want to publish ads and state "who bears liability for the ad".⁷ On that occasion, the head of corporate communications at Facebook said that greater authenticity makes it harder for users to abuse the Facebook platform and increases accountability.⁸

Another controversial event regarding social networks and political parties took place in August 2021. In August 2020, the social network Twitter announced that it would start marking the accounts of media houses that are politically connected with the governments of certain countries. A year later, 11 media houses from Serbia, which have accounts on this social network, were marked as "cooperating with the Government of Serbia".⁹ Among them are several of the largest media outlets in Serbia (both public and private). In a text related to the rules of use of that social network, Twitter defined state-related media as the ones "in which the state controls editorial content through financial means, direct or indirect political pressures and / or controls the production and distribution of content."¹⁰ Labeling government-related accounts provides additional context for accounts controlled by certain government officials, government-related media outlets, and individuals who work closely with those entities. In practice, the consequence of this is that Twitter, as it is stated, will not recommend their accounts to people, nor will it "boost" the reach

⁵ Radojević, V., 2020, Kako je radila srpska „bot“ armija: 43 miliona tvitova podrške Vučiću, 4.04.2020., Raskrinkavanje, Text available here: (<https://www.raskrinkavanje.rs/page.php?id=Kako-je-radila-srpska-bot-armija-43-miliona-tvitova-podrske-Vucicu-642> 12.12.2021.)

⁶ Ibid.

⁷ Komarčević D., Posebne izborne mere 'Fejsbuka', na listi i Srbija, Crna Gora i Severna Makedonija, Radio Slobodna Evropa online, 17.03.2020. Text available here: (<https://www.slobodnaevropa.org/a/fejsbuk-izbori-mere-srbija-crna-gora-severna-makedonija/30492720.html> 12/12/2021.)

⁸ Ibid.

⁹ Komarčević, D., Pet "Šta" o Twiteru u Srbiji, Radio Slobodna Evropa online, 18/08/2021. Text available here: (<https://www.slobodnaevropa.org/a/srbija-twitter-laz-vesti-genocid/31416738.html> 12/12/2021.)

¹⁰ Ibid.

of their tweets. Twitter announced that these behaviors observed in Serbia violate the company's policy and represent a targeted attempt to undermine freedom of expression.¹¹

The last in a series of so-called controversial events took place on August 11, 2021, when Twitter confirmed that it intends to remove content denying the Srebrenica genocide from its social platforms.¹² The same intention was announced by another major Internet company - Google.¹³ These decisions of Twitter to mark the media that cooperate with the state and to remove the announcements in which the Srebrenica genocide is denied, provoked violent reactions in the part of the right-wing Serbian public.

So, we can conclude that in all these events that took place in Serbia, social networks were used to help the ruling political parties or certain political structures increase their influence in creating the political will of their citizens and placing certain political ideas. At the same time, they opened the issue of the regulation and restrictions on freedom of expression on social networks, as well as the question of whether online sources of information are controlled or manipulated by the government or some other power player to emphasize certain political interests. Therefore, it seems important to become acquainted with how they work and see if it can be said that the legal mechanisms for the protection of freedom of expression on the Internet in the Republic of Serbia work. This is especially bearing in mind that the governments of the Western Balkan countries have been continuously breaching the right to freedom of expression for some time by shutting down media outlets and social movement sites, as well as intimidating certain activists on the Internet.¹⁴ Such measures undermine the foundations of democracy and hamper civic activism, which is often on shaky ground in this part of the world. The following section will therefore review the regulations of the Republic of Serbia dealing with freedom of expression on the Internet, with special reference to the review of mechanisms for legal protection against hate speech on the Internet, as a particularly important topic in political and social education.

Challenges of determining legal framework

Numerous authors have written about the challenges of protecting human rights and freedom of expression in the new information environment. (Gregg, 2012; Hick, Halpin & Hoskins, 2016; Khor, 2011).¹⁵ This topic is extremely important because the threat to the right to free expression on the Internet occurs in different forms and can be violated by different agents. Sometimes this violation is clear and unambiguous, such as when we talk about authoritarian governments, which can even block access to the Internet or certain content infrastructurally, or when, at the request of the government, private companies block or filter

¹¹ Ibid.

¹² In fact, the initiative to remove the content denying the murder of a large number (8000) of Bosniaks in Srebrenica in 1995 originated from the Genocide Research Institute of Canada (IGK). According to their data, most of the reports insulting Srebrenica victims come from Serbia, but there are also reports from Russia, France and other countries. On August 11, a Twitter spokesman said in a written response to a media outlet in Serbia that hate speech and messages "have absolutely no place" on the social network. Komčarević, D., Five "Whats" about Twitter in Serbia, Radio Free Europe online, 18/08/2021., Text available here: (<https://www.slobodnaevropa.org/a/srbija-twitter-laz-vesti-genocid/31416738.html> 12/12/2021).

¹³ Ibid.

¹⁴ For more information, see: Internet freedoms in the Western Balkans, Share Foundation, Civil Rights Defenders, (https://crd.org/wp-content/uploads/2020/04/SRB_Saz%CC%8Cetak_Slobode-na-internetu.pdf 01/02/2022) as well as the Share Foundation Report: The State of Digital Rights and Freedoms in Serbia: (<https://resursi.sharefoundation.info/sr/resource/monitoring-digitalnih-prava-i-sloboda-na-kraju-godine-tehnicki-napadi-ponovo-u-fokusu/01/02/2022>).

¹⁵ Mitrović, M., Sloboda izražavanja i zaštita podataka o ličnosti na internetu: Perspektiva internet korisnika u Srbiji, CM Komunikacija i mediji 15 (47), 5-34, Beograd, 2020. (<https://scindeks-clanci.ceon.rs/data/pdf/2466-541X/2020/2466-541X2047005M.pdf>, 20/12/2021.)

content.¹⁶ However, violating this right can be even more sophisticated. For example, governments (often even democratic ones) monitor the activities of citizens on the Internet, while learning about it leads citizens to self-censorship, i.e. the fear of Internet users to publish critical content about the work of their governments, for fear of retaliation and sanctions.¹⁷ Or, the ability of private companies on the Internet, such as social networks, to manage information, or to favor certain content for commercial or other interests.¹⁸

In response to such growing, negative trends, and in order to combat terrorism and extremism of all kinds, including those promoted on social media, the EU is preparing a new set of laws called the "Digital Services Act"¹⁹ – that is, an act on digital services, which envisages a number of legal acts that will regulate, among other things, speech on social networks. If this package of laws is adopted, all member states will have to apply the new rules. Among their provisions are penalties for social networks if they do not remove any content containing elements of extremism from their platforms within 60 minutes of its publication.²⁰ This could be implemented at the level of the whole EU in the same way as the GDPR brought about changes in the legislation for all member states in the field of data privacy protection. A model for such regulation specifically in the area of hate speech is the law passed by Germany - the Network Enforcement Act (NetzDG).²¹ This law stipulates that social networks must establish a mechanism for quick and easy reporting of inappropriate or harassing posts, and that they must be removed as soon as possible, under the threat of high fines.²² A similar law was passed by France in 2019, using growing hate speech and

¹⁶ For example, one of the most controversial sets of laws - Yarovaya law came into force in 2018 in Russia. This set of legal changes is actually a set of amendments that change a dozen laws that significantly apply to freedom on the Internet. While the government sees the law as an anti-terrorism measure aimed at increasing user security, Internet activists have sharply criticized the law and called it Russia's Big Brother Law. See more: (Freedom House Report: Russia, 2018, Available at: <https://freedomhouse.org/country/russia/freedom-net/2018> 12.12.2021.). Also, in 2017, Germany introduced the NetzDG (Network Enforcement Act), the so-called "Law on Facebook", which is based on the fight against hate speech and false news, but critics consider it a law that seriously violates freedom of expression. Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG) /Act to Improve Enforcement of the Law in Social Networks. Available at: (<https://perma.cc/RW47-95SR> 10/12/2021)

¹⁷ Mitrović, M., (2020), pp.6-8.

¹⁸ In addition to the well-known techniques of favoring sponsored content on Internet platforms, sometimes content can be favored for political and even experimental reasons. Let's remember the affair that in 2012 brought into question the trust in Facebook, when a random sample of more than 600 thousand people was divided into two groups. For one group, NewsFeed was set to show only positive posts, while the other group was only exposed to negative posts (statuses, photos, news, etc.). At the same time, the activities of users who did not know or agree to be respondents in this psychological experiment were monitored to determine whether positive / negative posts will have an impact on their activities and behavior on this social network. Such easy-going approach to experimenting on humans has raised many questions, from the ethics of such a procedure to the need for explicit user consent, to the limitless ability of Facebook to manipulate the results presented in NewsFeed, which directly affects freedom of expression. For more info, see: Chambers, C. (2014). Facebook fiasco: Was Cornell's study of 'emotional contagion' an ethics breach? The Guardian, 30/06/2014 (<https://www.theguardian.com/technology/2014/jun/30/facebook-emotion-study-breached-ethical-guidelines-researchers-say> 12/12/2021) in: Mitrović, M., (2020), p.8.

¹⁹ Digital Service Act - The Digital Services Act significantly improves the mechanisms for the removal of illegal content and for the effective protection of users' fundamental rights online, including the freedom of speech. It also creates a stronger public oversight of online platforms, in particular for platforms that reach more than 10% of the EU's population. For more info visit European Parliament website: (<https://www.europarl.europa.eu/news/en/press-room/20220114IPR21017/digital-services-act-regulating-platforms-for-a-safer-online-space-for-users> 12/12/2021).

²⁰ Popović Aleksandra, Ko uređuje društvene mreže – zakonodavstvo SAD, EU i Srbije, Talas.rs, 22/01/2021, (<https://talas.rs/2021/01/22/ko-ureduje-drustvene-mreze-zakonodavstvo-sad-eu-i-srbije/> 12/12/2021).

²¹ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG) /Act to Improve Enforcement of the Law in Social Networks. Available at: (<https://perma.cc/RW47-95SR> 10/12/2021)

²² Ibid.

misinformation as an argument for tighter regulation of networks.²³ However, the law has been deemed unconstitutional in 2020.

Legal framework in the Republic of Serbia

The European Convention on Human Rights and Fundamental Freedoms, as well as the recommendations of the Council of Europe, emphasize that member states are responsible for implementing human rights standards and fundamental freedoms on the Internet.²⁴ In addition, the member states of the Council of Europe, including the Republic of Serbia (here and below: RS), have an obligation to their citizens to respect, protect and promote human rights and fundamental freedoms on the Internet. The main parameters of Internet freedom according to the Recommendations of the Council of Europe CM / Rec (2016) 5, refer to: (1) creating an environment in which freedom on the Internet is possible, (2) the right to freedom of expression, (3) the right to freedom of peaceful assembly and association, (4) the right to private and family life.²⁵ The legal framework of the Republic of Serbia when it comes to "freedom on the Internet" will be analyzed in the context of the first two mentioned parameters.

Creating an environment where freedom on the Internet is possible

Free access to the Internet or internet neutrality is one of the extremely important principles of the functioning of the Internet. We can say that internet neutrality in the narrow sense is the principle of Internet functioning, according to which internet service providers should treat all data on the network in the same way, without discrimination based on content, type of platform - website and application, communication methods, etc.²⁶ Specifically, they should not in any way favor a particular type of data in their content or source over other websites.²⁷

If we take the countries of the Western Balkans as an example, we can see that although some countries guarantee the impartiality of the network by law, others do not deal with this topic so explicitly.²⁸ In Serbia, the Internet is relatively free and open, and the access rate to the Internet is high.²⁹ According to the Serbian Statistical Office data for 2020, 74.3% of households own a computer, while 94.1 own a mobile phone.³⁰ In 2020, 81% of Serbian households had an Internet connection, and Internet services are relatively affordable. According to the annual data of the Statistical Office of Serbia for 2020, there are significant differences

²³ France online hate speech law to force social media sites to act quickly, The Guardian, Agence France-Presse in Paris, 9/07/2019. Available at: (<https://www.theguardian.com/world/2019/jul/09/france-online-hate-speech-law-social-media> 10/02/2022).

²⁴ Internet freedoms report 2020, Civil Rights Defenders and Share Foundation, Mirkovic, N., and Merrell, F., (ed.), p. 4, Available here: (https://crd.org/wp-content/uploads/2020/04/200402_GRA_InternetFreedoms_Narativa_A4_Spreads.pdf 1/02/2022).

²⁵ Recommendation CM/Rec (2016)5[1] of the Committee of Ministers to member States on Internet freedom, Available here: <https://mediainitiatives.am/wp-content/uploads/2017/03/Recommendation-of-the-Committee-of-Ministers-on-Internet-Freedom-in-English.pdf> 1/02/2022).

²⁶ Milić, D., Neutralnost interneta u pravu Republike Srbije, MilicLawOffice, 8/05/2019, Full text available here: (<https://www.milic.rs/blog/internet-pravo/neutralnost-interneta-u-pravu-republike-srbije/> 10/12/2021).

²⁷ Ibid.

²⁸ Internet freedoms report 2020, Civil Rights Defenders and Share Foundation, Mirkovic, N., and Merrell, F., (ed.), p. 7, Available at: (https://crd.org/wp-content/uploads/2020/04/200402_GRA_InternetFreedoms_Narativa_A4_Spreads.pdf 1/02/2022).

²⁹ Freedom of the Net, Serbia - 2021, Freedom House Report, Available online at: <https://freedomhouse.org/sr/country/serbia/freedom-net/2021> 01/2/2022).

³⁰ Ibid.

in terms of Internet connectivity between urban centers, where 87.1% of the population has Internet access, and smaller settlements and villages, where 70.4% of the population has Internet access.³¹ Although the Law on Electronic Communications prescribes that "a set of basic electronic communications services features a certain scope and quality, available to all in the territory of the Republic of Serbia at affordable prices", the State Regulatory Agency for Electronic Communications and Postal Services (RATEL) in its Digital Inclusion Report for 2019 states that providers have not built the necessary infrastructure, because it would have limited economic sustainability in areas with less affluent populations".³² Therefore, availability is something that needs to be improved.

The Constitution of the Republic of Serbia

The Constitution of the Republic of Serbia as the highest legal act does not contain direct guarantees of the neutrality of the Internet, but rather draws them from the freedom of the media and the right to information.³³ As in everyday life, proclaimed human rights apply in the Internet environment, so the Constitution guarantees freedom of thought, conscience, belief and religion, the right to persuasion, freedom of thought and expression, as well as the freedom to speak, write, paint or in any other way seek, receive and spread information and ideas.³⁴ It also guarantees that there is no censorship in the Republic of Serbia and that everyone is free to establish newspapers and other means of public information in accordance with the law without approval, in the manner prescribed by law.³⁵ Perhaps the most concrete contact of the Serbian constitutive act with the neutrality of the Internet can be related to the right of everyone to be truthfully, completely and timely informed about issues of public importance and the media are obliged to respect that right, as well as the right to access data in possession of state bodies and organizations entrusted with public authority, in accordance with the law.³⁶

Law on Electronic Communications

The basic, general, regulation that indirectly prescribes the neutrality of the Internet in the Republic of Serbia is the Law on Electronic Communications³⁷ which also defines the Internet by determining it as a global electronic communication system composed of a large number of mutually connected computer networks and devices which exchange data using a common set of communication protocols.³⁸ The law does not precisely define the concept of neutrality of the Internet, but its concept and protection of access primarily through the principles and objectives of this act which are based, inter alia, on numerous principles, among which the issue of neutrality of the Internet can be recognized, particularly in the principle defined as follows - providing opportunities for end users to freely access and distribute

³¹ Ibid.

³² Ibid.

³³ Ustava Republike Srbije ("Sl. glasnik RS", br. 98/2006), Articles 50 and 51 of the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", no. 98/2006).

³⁴ Article 46 of the Constitution

³⁵ Article 50, par. 3, of the Constitution.

³⁶ Article 51, par. 1, of the Constitution.

³⁷ Zakon o elektronskim komunikacijama RS (The Law on Electronic Communications ("Official Gazette of the Republic of Serbia", no. 44/2010, 60/2013 – Constitutional Court decision, 62/2014 and 95/2018 – state law).

³⁸ Article 4 par. 1 subpar.15, of the Law on Electronic Communications of the Republic of Serbia.

information when using public communications networks and services, as well as to use applications and services of their choice.³⁹ Furthermore, the Law defines the service of providing Internet service as an electronic communication service which is generally provided for a fee, and consists entirely or mainly of signal transmission in electronic communication networks, including telecommunications services and services of distribution and broadcasting of media content, but does not include services providing media content or performing editorial control over media content transmitted via electronic communications networks and services, nor does it include information society services that do not consist entirely or predominantly of the transmission of signals via electronic communications networks.⁴⁰

By analyzing the aforementioned norms, we can conclude that service providers do not have the authority to engage in the evaluation of content that is transmitted or to affect the speed of its flow. The same act regulates, among other things, the position and work of the Regulatory Agency for Electronic Communications and Postal Services (RATEL)⁴¹ which exercises public authority in order to effectively implement the established policy in the field of electronic communications, and among other things, decides on the rights and obligations of operators, i.e. postal operators and users, cooperates with bodies and organizations responsible for broadcasting, competition protection, consumer protection, protection of personal data and other bodies and organizations concerning issues important for the field of electronic communications and postal services.⁴² The Ministry of Trade, Tourism and Telecommunications is in charge of supervising RATEL⁴³, as an executive authority which controls the application of the provisions guaranteeing the freedom of the Internet, and apart from it there is no other body in charge of supervising or regulating Internet content in Serbia. Therefore, although the Republic of Serbia, at the legal level, has a certain level of guarantees for the neutrality of the Internet, the problem is that the regulatory bodies that enforce the law cannot be said to be independent.

Another problem is the non-transparency of the work of both operators and operators, again due to the impossibility of separation from the executive branch. Nevertheless, according to the data stated in the report of the Share Foundation for 2020⁴⁴ there have been no serious cases of digital content restrictions in the country, nor do laws define restrictions on electronic or online communication, given that Serbia does not have a special law regulating online content issues, and general media laws, such as the Law on Public Information and Media and the Law on Electronic media, are not used to prohibit or restrict online speech.⁴⁵ Internet content is widely available and political, cultural or social content is not blocked.⁴⁶

³⁹ Article 3 of the Law on Electronic Communications of the Republic of Serbia.

⁴⁰ Article 4, par. 1, subpar 10, of the Law on Electronic Communications of the Republic of Serbia

⁴¹ RATEL has two main bodies - the Board of Directors and the Director of the Agency. The members of the Board of Directors are elected by the National Assembly, on the basis of a public competition conducted by the competent Ministry. RATEL is financially independent of the executive authority, as it is financed by various fees (for example, those for charging for the use of frequencies) paid by service providers. However, all surplus funds must be transferred to the state budget. See more about RATEL on the official website: (<https://www.ratel.rs/cyr/02.01.2022>).

⁴² Article 2 of the Law on Electronic Communications of the Republic of Serbia.

⁴³ Articles 119 - 123 of the Law on Electronic Communications of the Republic of Serbia.

⁴⁴ Articles 126 and 127 of the Law on Electronic Communications of the Republic of Serbia.

⁴⁵ Freedom of the Net, Serbia – 2021, Freedom House Report, Available online at: <https://freedomhouse.org/sr/country/serbia/freedom-net/202101.2.2022>).

⁴⁶ A report by the Share Foundation said the government had blocked a number of betting sites. In October 2020, users of certain Internet providers could not access a number of betting websites that had previously operated freely. As a justification for these bans, Internet service providers stated that they adhered to the new Law on Games of Chance passed in April 2020, which prohibits "participation in games of chance,

Right to freedom of expression

Thanks to the ever-improving technical-technological infrastructure and the availability of the Internet, today, as users and consumers, we are constantly online, on the network. The Internet and digital space are increasingly becoming a place where freedom of expression and media freedom face many challenges and problems - algorithmic and platform-oriented informing leads to spread of information in closed circles of like-minded people or acquaintances (so-called news bubbles), the quantity and the speed of spreading misinformation is so great that it sometimes seriously endangers social dialogue, and the possibilities for spreading intolerant, discriminatory and hateful content have become even greater.⁴⁷

There are numerous legal guarantees of freedom of expression and freedom of the media in Serbia. They are therefore primarily guaranteed by the Constitution⁴⁸, and then specified by the Law on Public Information⁴⁹ and the Law on Electronic Media.⁵⁰ Serbia has also ratified the most important international acts guaranteeing freedom of thought and freedom of the press, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Serbian Constitution requires that the provisions on rights related to freedom of expression and media information be interpreted in favor of promoting the values of a democratic society, in accordance with applicable international standards and the practice of international institutions, including the European Court of Human Rights. All these guarantees apply to all citizens equally.

However, when it comes to freedom of expression on the Internet, the legal consequences of freedom of expression can be treated differently depending on whether the content published on the Internet is published on a registered or unregistered medium. The Law on Public Information and Media of the Republic of Serbia defines what is considered media and under what conditions. For the purposes of this law, the media are Internet portals of traditional media (press, agencies, radio and TV stations) and independent publications, i.e. editorially designed websites or Internet portals, and entry in the Media Register is specified as a mandatory condition for them.⁵¹ The Law explicitly excludes internet forums, social networks and similar platforms from its definition, while other forms of production and distribution of informative content on the Internet (blogs, web presentations, aggregators) are not considered media if they are not registered in the Media Register. The legislator thus left the choice to the civil and online media to register as media, if they wish, and thus gain the appropriate status with all rights and obligations, while unregistered citizen and online media remain outside the scope of the law.

So, as the Law states, the media, in the sense of this law, are not: platforms, such as internet forums, social networks and other platforms that allow free exchange of information, ideas and opinions of its members, or any other independent electronic publication, such as blogs, web presentations and similar electronic

which are organized abroad, for which bets are placed and paid on the territory Republic of Serbia". Ibid. Freedom House Report 2021. Ibid. Freedom House Report 2021.

⁴⁷ Maksić, T., Mediji i nove politike upravljanja internetom - Sloboda izražavanja i medijske slobode u digitalnom okruženju, Fondacija za otvoreno društvo, BIRN, Beograd, 2020, p.5.

⁴⁸ Article 46 of the Constitution.

⁴⁹ Zakon o javnom informisanju i medijima RS (The Law on Public Information and Media, "Official Gazette of the Republic of Serbia ", no. 83/2014, 58/2015 and 12/2016 – authentic interpretation.

⁵⁰ Zakon o elektronski medijima RS (The Law on Electronic Media, " Official Gazette of the Republic of Serbia ", no. 83/2014 and 6/2016 – state law.

⁵¹ Article 29-31. of the Law on Public Information of the Republic of Serbia

presentations, unless registered in the Media Register, in accordance with this law.⁵² Whether someone decides to publish the content through the media or in some other form, directly affects the scope of rights and obligations, i.e. their liability for the published content. Thus, for example, when it comes to compensation for material and non-material damage, the general regime of liability in accordance with the Law on Contracts and Torts of the Republic of Serbia is applied for unregistered media and the Law on Public Information and Media for registered media. Or, for example, unregistered media, including unregistered online media, cannot count on financial support from the public budget. Such a principle is expressed through the Law on Public Information and Media. Or, when it comes to criminal-legal relations, criminal law still provides the broadest protection of the individual through the crime of insult, where priority is given to freedom of speech and opinion by establishing a special degree of guilt, necessary to establish liability.⁵³ An aggravating circumstance and more severe punishment is prescribed if the insult is pronounced "through the press, radio, television or similar means", which gives the possibility of creative interpretation regarding liability for the content of online media, because the court may opt for an interpretation according to which online media platforms are means "similar" to traditional media.

When it comes to hate speech, which is unfortunately very present on the Internet and social networks, a wide range of legal protection mechanisms is available, which we will present in the following section.

Hate speech on the Internet

Although there is no legally regulated control of content on social networks, in the Republic of Serbia there are various mechanisms that can be used in case of hate speech or violation of personal rights on social networks. According to the Constitution of the Republic of Serbia, at the national level, hate speech can be sanctioned through criminal, media or anti-discrimination laws. Laws dealing with the regulation of public communication and the media system are also relevant. Individuals, organizations, editors, but also internet service providers, hosting providers and content providers can be held responsible for hate speech.⁵⁴

The Criminal Code of the Republic of Serbia⁵⁵ prohibits inciting or provoking national, racial or religious hatred, or intolerance among peoples or ethnic communities living in Serbia, and this crime is punishable by 6 months to five years in prison. The penalty of three months to three years is envisaged for anyone who disseminates or otherwise makes public texts, images or any other representation of ideas or theories that advocate or incite hatred, discrimination or violence against any person or group based on race, skin color, religion, nationality, ethnic origin or any other personal characteristic.⁵⁶

According to the Law on Organization and Competences of State Bodies for Combating High-Tech Crime, hate speech and internet threats are placed under the jurisdiction of the Special Department of the Higher

⁵² Krivokapić, N., Colić, O., Maksimović, M., *Pravni položaj onlajn medija u Srbiji: vodič namenjen onlajn i građanskim medijima kao korisnicima*, SHARE Fondacija, Novi Sad, 2015, p. 13. Available here: (https://resursi.sharefoundation.info/wp-content/uploads/2018/10/vodic-pravnipolozej_onlajn_medija_u_srbiji_-_preview_.pdf 12/01/2022).

⁵³ According to the Criminal Code of the Republic of Serbia ("Official Gazette of the RS", no. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012, 104/2013, 108 / 2014, 94/2016 and 35/2019), Article 170 of the Law, insult is a criminal offense. It is important to note that the prosecution for insult is undertaken upon a private lawsuit of a person who believes that their right has been violated.

⁵⁴ Predrag M. Nikolić, *Govor mržnje u internet komunikaciji u Srbiji*, doktorska disertacija, Beograd, 2018., p.107. (https://www.fpn.bg.ac.rs/wp-content/uploads/2018/07/Nikolic_Predrag_Disertacija_FPN.pdf 01/02/2022)

⁵⁵ Krivičnog zakonika RS, Article 317 of the Criminal Code of the Republic of Serbia

⁵⁶ Article 38. par. 4 of the Criminal Code of the Republic of Serbia.

Prosecutor's Office in Belgrade, the Special Department of the Higher Court in Belgrade and the Ministry of the Interior Department for High-Tech Crime.⁵⁷ As stated in this law, high-tech crime are criminal offenses in which computers, computer systems, computer networks, computer data, as well as their products in material or electronic form appear as an object or means of committing criminal offenses. The aim of this law and these institutions is to detect, prosecute and bring before court, inter alia, crimes against freedoms and rights of man and citizen, sexual freedom, public order and peace and constitutional order and security of the Republic of Serbia, which due to the manner of execution or used means can be considered high-tech criminal offenses.⁵⁸

The Law on Prohibition of Discrimination is another law that bans hate speech by prohibiting the expression of ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their personal characteristics, in public media and other publications, at gatherings and places available to the public, by printing and displaying messages or symbols, and otherwise.⁵⁹ This law treats hate speech as a severe form of discrimination and in this regard it should not be relevant at all whether that hate speech occurs in the online world or in the offline world. The application of the Law on Prohibition of Discrimination enables the conduct of court proceedings, either directly by persons affected by discrimination, or indirectly, through the Commissioner for Equality of Citizens who receives and considers complaints concerning violations of this Law, and gives opinions and recommendations in specific cases, as well as warnings.⁶⁰ The proceeding can be ended with a single determining, declaratory verdict whether certain conduct constitutes an act of discrimination or not.⁶¹

In the Law on Prohibition of Manifestation of Neo-Nazi and Fascist Organizations and Prohibition of the Use of Neo-Nazi and Fascist Symbols and Marks, Article 6 in paragraph 1 directly links "incitement, provoking and spread of hatred and intolerance" prohibited by Article 3 of the Law with "making symbols, marks or propaganda material containing neo-Nazi or fascist marks available to the public through computer systems".⁶²

An array of media laws also regulates hate speech, but the most important one for the Internet is the Law on Public Information and Media, which defines online publications of newspapers, radio and TV programs as well as news agency services as media, i.e. public information agents.⁶³ The law stipulates that upon the proposal of the competent public prosecutor, the competent court may prohibit the distribution of information or other media content if the information refers to an act of direct violent destruction of the

⁵⁷ Zakon o organizaciji i nadležnosti državnih organa za borbu protiv visokotehnološkog kriminala, Article 4 and 5 of the Law on Organization and Competences of State Bodies for Combating High-Tech Crime ("Official Gazette of the Republic of Serbia", no. 61/2005 and 104/2009).

⁵⁸ Article 3, par. 3 of the Law on Organization and Competences of State Bodies for Combating High-Tech Crime.

⁵⁹ Article 11 of the Law on Prohibition of Discrimination ("Official Gazette of the Republic of Serbia", no.22/2009 and 52/2021)

⁶⁰ In case it notices "frequent, typical and severe cases of discrimination" this institution can issue a warning to the public. Due to the increasing hate speech in the media content, as well as in the comments on media portals, the Commissioner for the Protection of Equality, in 2018, sent a recommendation to internet portals in Serbia in order to prevent the publication of content and comments that may incite hatred or violence against persons or groups of persons. See the text of Recommendation No. 021-01-00327 / 2018-02 of 27 September 2018: (<http://ravnopravnost.gov.rs/rs/preporuka-mera-za-ostvarivanje-ravnopravnosti-za-internet-portale/> 12/11/2021).

⁶¹ For more information about the proceedings, see the Commissioner's website: (<http://ravnopravnost.gov.rs/ko-smo-i-sta-radimo/> 12/11/2021).

⁶² Zakon o zabrani manifestacija neonacističkih ili fašističkih organizacija i udruženja i zabrani upotrebe neonacističkih ili fašističkih simbola i obeležja RS, The Law on Prohibition of Manifestation of Neo-Nazi and Fascist Organizations and Prohibition of the Use of Neo-Nazi and Fascist Symbols and Marks ("Official Gazette of the Republic of Serbia", no. 41/2009).

⁶³ The Law on Public Information and Media ("Official Gazette of the Republic of Serbia", no. 83/2014, 58/2015 and 12/2016 – authentic interpretation).

constitutional order and an act of direct violence against a person or group based on race, nationality, political affiliation, religion, sexual orientation, disability or other personal characteristics, and the publication of information is directly threatened by a serious and irreparable consequence whose occurrence cannot be prevented in any other way.⁶⁴ In addition, this law explicitly prohibits hate speech by stipulating that ideas, opinions or information published in the media must not incite discrimination, hatred or violence against a person or group of persons because of their belonging or non-belonging to a race, religion, nation, sex, due to their sexual orientation or other personal characteristics, regardless of whether the crime was committed by publishing.⁶⁵ The law further stipulates that there is no violation of the prohibition of hate speech in cases where it is part of the text without the intention to discriminate and if in fact it is intended to critically point out discrimination, hatred or violence.⁶⁶ Also, caricature and satirical portrayal of a person is not considered a violation of the dignity of the person, i.e. of the right to authenticity. The content of sites registered with the Serbian Business Register Agency as online media falls under the jurisdiction of the Ministry of Culture and Information, which oversees the implementation of the Law on Public Information and Media.⁶⁷

The law on electronic media is another law that explicitly prohibits hate speech. The regulatory body for electronic media ensures that the program content of the media service provider does not contain information that incites, openly or covertly, discrimination, hatred or violence due to race, skin color, ancestry, citizenship, nationality, language, religious or political beliefs, gender, gender identity, sexual orientation, property status, birth, genetic characteristics, health status, disability, marital and family status, conviction, age, appearance, membership in political, trade union and other organizations and other actual or presumed personal characteristics.⁶⁸ Violations of these prohibitions are subject to fines, and the Regulatory Body for Electronic Media is responsible for regulating the content.⁶⁹

In addition to this series of legal solutions, there are also provisions through which the media self-regulate or co-regulate. The Code of Journalists of Serbia also deals with hate speech, instructing journalists to do everything in their power to avoid "discrimination based on race, gender, age, sexual orientation, language, religion, political and other opinion, national or social origin."⁷⁰ In case of violation of the provisions of the Code of Journalists, the Press Council, as a body that monitors ethical standards in the print media and responds to citizens' reports, makes a public decision, which informs the reported media to delete problematic content and publish apologies if necessary.⁷¹

⁶⁴ Article 59 of the Law on Public Information and Media of the Republic of Serbia

⁶⁵ Article 75 of the Law on Public Information and Media of the Republic of Serbia.

⁶⁶ Articles 76 and 77 of the Law on Public Information and Media of the Republic of Serbia

⁶⁷ Article 132 of the Law on Public Information and Media of the Republic of Serbia. In addition, numerous other institutions that deal with regulation of information and communication content must abide by the laws that regulate this field and issue warnings or sanction inappropriate content (such as Serbian Internet Domain Registry).

⁶⁸ Article 51, of the Law on Electronic Media ("Official Gazette of the Republic of Serbia," no. 83/2014, 6/2016 – state law and 129/2021).

⁶⁹ Article 5 of the Law on Electronic Media.

⁷⁰ Part V, par. 4 of the Code of Journalists of Serbia; the entire document is available here: (<https://savetzastampu.rs/dokumenta/kodeks-novinara-srbije/> 12/11/2021).

⁷¹ For more information on the competence of the Press Council and the procedures for appeals before the Press Council, see: (<https://savetzastampu.rs/o-nama/sta-mozemo-da-uradimo-za-vas/> 11/12/2021).

When it comes to hate speech on social networks, since they are not registered as a "medium" in the Republic of Serbia, they are guided by their own rules, which differ from company to company, so for example, Twitter has stricter rules concerning hate speech than Facebook.⁷²

Conclusions

The Internet has changed our attitude towards life because it has connected us on a global level and turned the former audience into new media.⁷³ The Internet has enabled us to follow the lives of millions in real time and convinced us to know everything about places we have never visited. That is why and because of that, it is necessary to constantly work on improving the mechanisms of legal regulation of the Internet.

As far as the legal regulation of social networks is concerned, the Republic of Serbia is very far from more concrete legal solutions on this topic, due to the low level of technological literacy of our population, as well as the economic underdevelopment related to it, but also the lack of interest of major platforms to deal with the Serbian market. The other side that could lead this debate is the state of Serbia itself, more precisely the legislator, but even on that side, it seems that regulating social networks is not a priority. Therefore, one of the recommendations would certainly be for the competent state bodies to encourage a broad public debate with several stakeholders on regulations concerning primarily respect for human rights on the Internet, as well as a debate on the legal regulation of content on social networks. In that sense, it would be good to adopt a new law on the media, which would recognize and thus regulate platforms for social networks, although they are not media in the traditional sense of the word.

It is also necessary to ensure that media and information literacy programs are implemented at the national level and that additional efforts are made to protect Internet neutrality, in line with EU Internet neutrality rules. The digital media sphere should provide free access to information and knowledge, equal opportunities for everyone to contribute to public debate and decentralization of power in the field of information and education. At the same time, public policies in the media sphere must make sure to respect the rules and protect basic human rights, such as privacy and security.

When it comes to hate speech on the Internet, although there is no doubt that there is room for improvement of the legal framework, it can be stated that the existing constitutional and provisions of certain laws we analyzed provide sufficient guarantees for protection against hate speech but unfortunately, insufficient application of existing legal frameworks and the lack of regulation for social networks still allow the digital space to be full of aggressive communication, threats and insults.⁷⁴ Therefore, it is important to encourage self-regulation of Internet portals that would make clear internal rules regarding the prohibition of hate speech in user-generated content and, more importantly, systematically improve preventive measures against hate speech, primarily in terms of educating citizens about the harmfulness of hate speech and its consequences.

⁷² For Twitter's rules, see: <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> 12/11/2021); For Facebook's rules, see: <https://transparency.fb.com/policies/community-standards/hate-speech/> 01/02/2022)

⁷³ Martinoli, A., (ed.), (2019.), p.20.

⁷⁴ Krstić, I., Izveštaj o upotrebi govora mržnje u medijima u Srbiji, Savet Evrope i Poverenik za zaštitu ravnopravnosti, Beograd, 2020., pp.44-45; See also: Petrovski, A., Krivokapić, D., (ed.), GREŠKA 404: Digitalna prava u Srbiji 2014-2019, SHARE Foundation, Pres doo, Novi Sad, 2019., pp.56-57; 73-74.; Stojković, M., Pokuševski, D., Anonimna mržnja - Mehanizmi zaštite od govora mržnje na internetu, Beogradski centar za ljudska prava, Beograd, 2018, pp.38-41.

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