



Hate Speech

methodological recommendations
by human rights organizations
in Belarus

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Today we often hear the term “hate speech”¹. Also, this term refers to very different things: individual discriminatory statements, drawings in social networks, or entire journalistic materials. There is an increasing difference of opinions about what is considered “hate speech” and how to deal with this phenomenon.

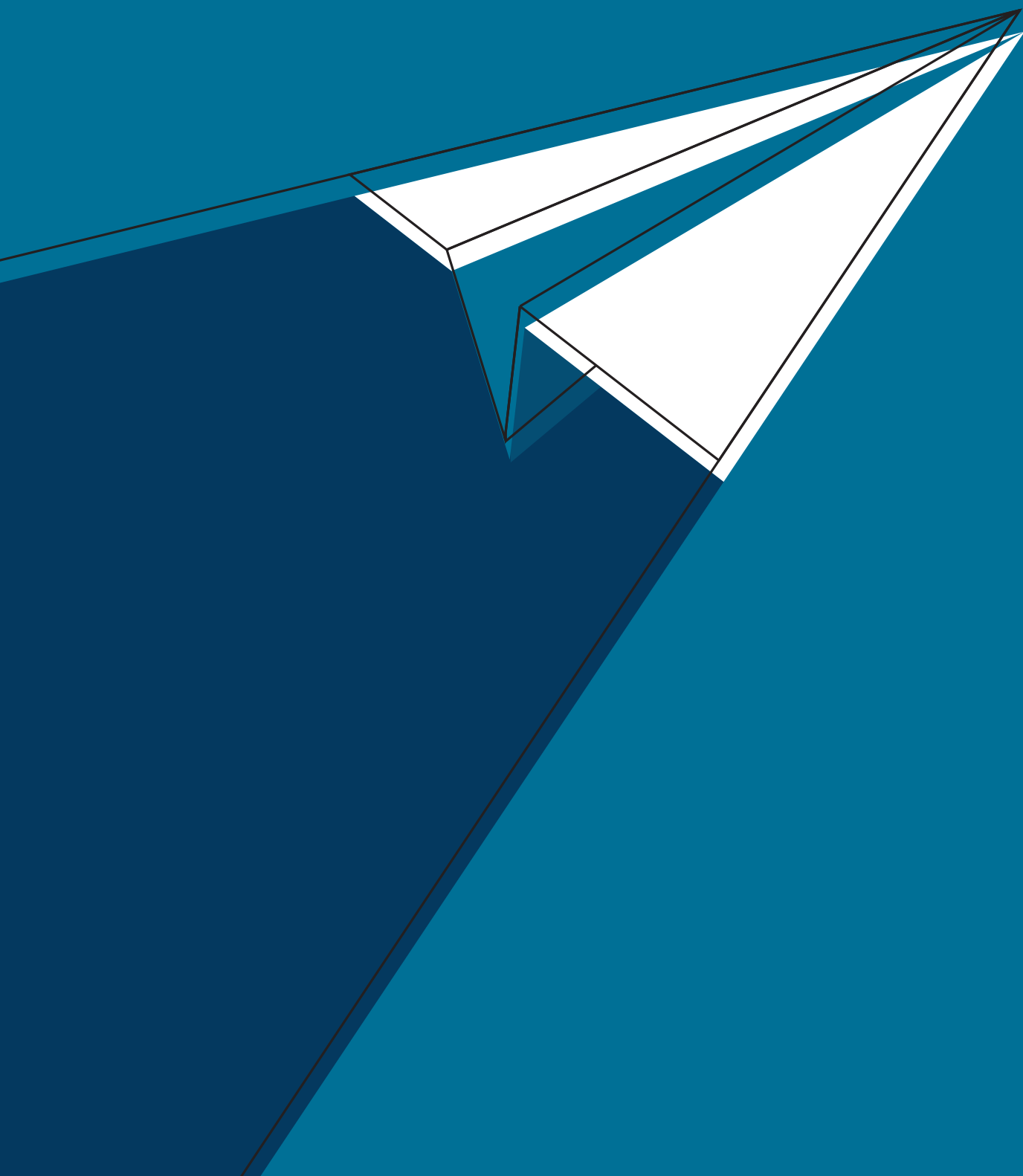
These methodological notes of Belarusian human rights organizations are aimed at familiarizing a wide range of interested people with approaches to “hate speech” from the standpoint of international law, describing the Belarusian legal context, and sharing important recommendations and references.

This document provides a human rights-based approach to “hate speech”, taking into account international standards in this field. The proposed approach may differ from the sociological, cultural, linguistic, psychological, and other approaches. It is important for us to focus on maintaining the balance of individual rights in order to enhance the protection of the rights of individuals and vulnerable groups.

These recommendations were prepared in cooperation with the human rights organizations: Human Constanta, the Belarusian Association of journalists, the Belarusian documentation center, the Legal Initiative, the Belarusian Helsinki Committee, the Human Rights center “Viasna”, and the human rights initiative “Journalists for tolerance”.



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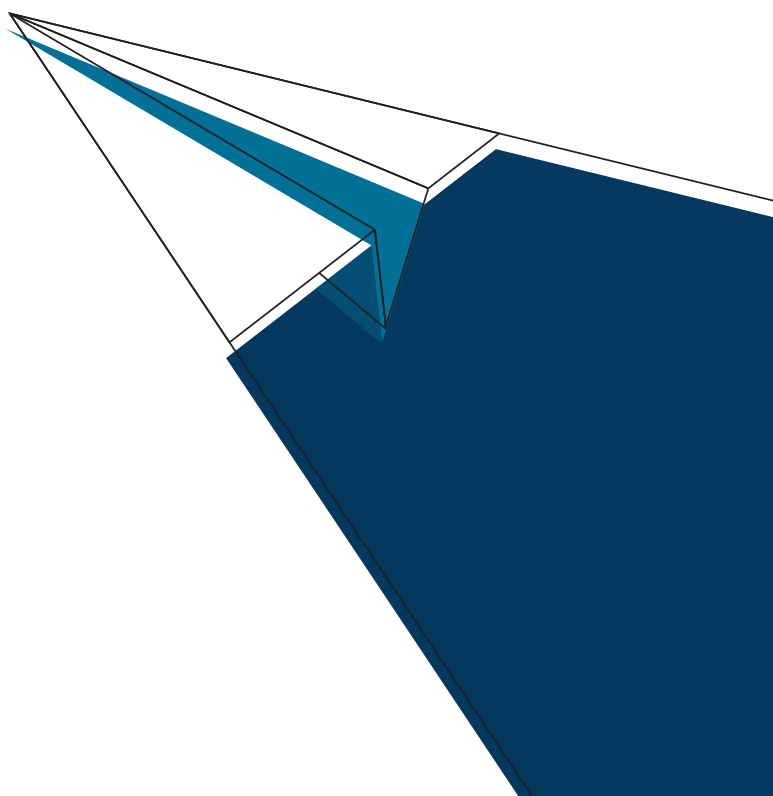
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What do you need to know about “hate speech”? Key facts



01

International and national law provide no clear definition of “hate speech”. There are no special conventions or resolutions, treaties, or laws that define this term. We use the following interpretations:

- The European Court of Human Rights (the ECHR) uses the definition of the Committee of Ministers of the Council of Europe, that considers the “hate speech” as *“all forms of self-expression including proliferation, provocation, fostering or justification of racial hatred, xenophobia, anti-Semitism or other manifestations of hatred based on intolerance, including intolerance in the form of aggressive nationalism or ethnocentrism, discrimination and hostility against minorities, migrants and persons of immigrant origin”*.
- The UN Committee on the elimination of racial discrimination, in its General Recommendation No. 35² in paragraph 10 stipulates that *“racist hate speech, understood as a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society”*.

Based on these definitions, we can conclude the following descriptive features of “hate speech”:

- *speech* – public expression of opinion in any form: oral, written, non-verbal, visual, artistic;
- *hate* – manifestation of an emotional feeling that can be expressed through condemnation, abhorrence or hatred to a person or a group of persons based on ethnicity, religion, sexual preference, etc.

When analyzing “hate speech”, it is important to remember that there are no lists with “right” or “wrong” statements. The difficulty of identifying “hate speech” is due to the importance of finding balance between *the right to freedom of expression* (article 19 of International Covenant on Civil and Political Rights³, hereinafter referred to as the Covenant) and *the guarantee of the protection against discrimination* (articles 2 and 26 of the Covenant). *The prohibition of any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* under article 20 of the Covenant constitutes as a separate restriction on the right to freedom of expression. These norms do not contradict each other, and as a whole, are aimed at establishing justice and equal rights. For example, everyone has the right to speak freely, does not have the right to advocate war or incite to violence against a particular group, thus it is necessary to find a balance between freedom of expression and freedom from discrimination.

The right to freedom of speech is not absolute, i.e. it may be restricted in certain cases. In this regard it should be taken a three-step

test: restrictions must (a) be provided for by law, (b) pursue a legitimate goal⁴, and (c) be necessary in a democratic society⁵.

We also want to pay attention to the following:

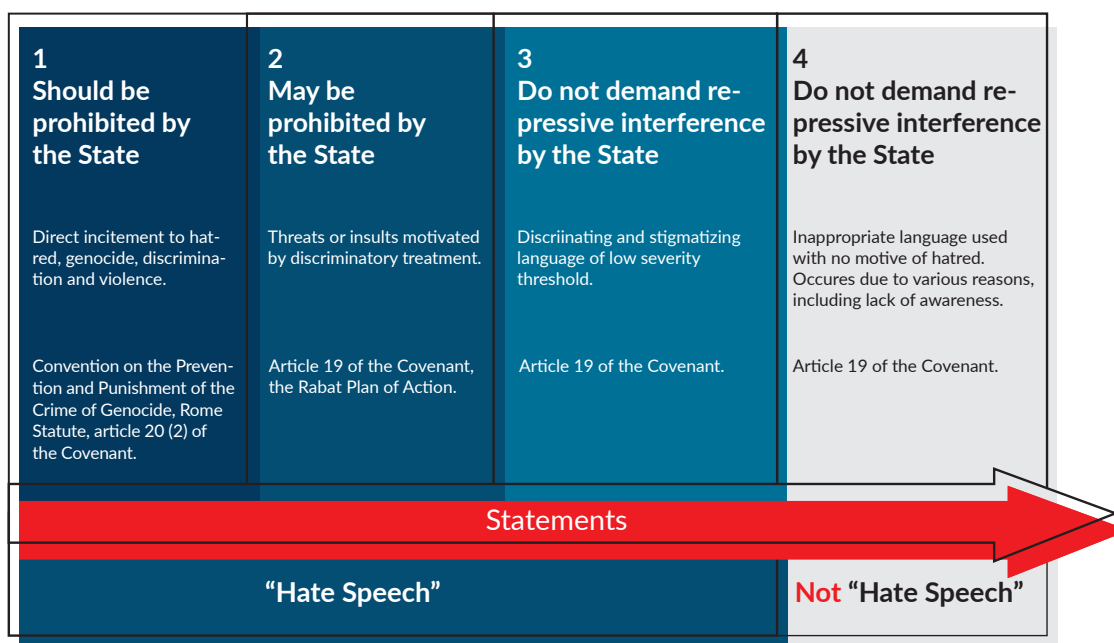
- not all statements that we do not like or differ from our mindset will be “hate speech”;
- even if statements match the definition of “hate speech” (expression of an opinion that arouses certain emotional attitude), they may not be prohibited by law and may not demand repressive interference by the State.

What should we do if we notice signs of “hate speech” in certain statements? In which cases should the State prosecute such statements, and in which cases should they waive?

We suggest considering statements from the perspective of four segments (see diagram) in order to find a balance between restrictions and freedom of expression. *The purpose of this diagram* is to illustrate the edge between “hate speech” and “inappropriate language”, and when “hate speech” should be prohibited by the State when it may be prohibited and when such restriction should not be imposed (instead, other public responsive institutions should be encouraged).

Our approach offers to distinguish between “hate speech” and “inappropriate language”. Inappropriate language can be expressed through offensive and discriminatory formulations against vulnerable groups. Such statements do not pose a threat to security, do not contain incitements to violence or dehumanizing generalizations, but form and support stereotypes about vulnerable groups. Stereotypes, in turn, can generate dangerous forms of “hate speech”. Sometimes such statements arise from lack of awareness in appropriate wording for naming people of different groups. Therefore, it is important for society to take measures to educate, combat stereotypes, and include vulnerable groups in the full life of society, and for the State to promote this. At the same time, there should be no legal liability for such statements (see segment 4 on the diagram of the threshold of severity of statements).

Diagram of the threshold of severity of statements



If statements pose a threat to public safety, incite hostility and dehumanize certain groups of people, we can already say about "hate speech", which we divide into three groups:

1. Forms of "hate speech" that should be prohibited under the criminal and/or administrative law in accordance with the Genocide Convention, the Rome Statute and article 20, paragraph 2 of the Covenant: direct statements and appeals aimed at incitement to hatred, genocide, violence and discrimination against certain groups in vulnerable standing⁶.

Documents: Convention on the Prevention and Punishment of the Crime of Genocide, Rome Statute, article 20 (2) of the Covenant.

2. Forms of "hate speech" that may be prohibited: threats or insults motivated by discriminatory treatment or prejudice about a vulnerable group. Such "hate speech" may be restricted in order to protect the rights and reputation of others, ensure the State security or public order, public health or public morals.

Documents: article 19 of the Covenant, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

At this level, it is particularly crucial to pay attention to the threshold of severity of intentions and statements, as well as to apply international standards (p. 10), primarily the Rabat plan. Only those actions or statements that have reached a high threshold of severity, i.e. threaten safety of individuals or groups of people, violate public safety,

should be restricted.

3. “Hate speech”, that does not demand repressive interference by the State. Such statements make and proliferate stereotypes that deny the principles of equality and human dignity. This is discriminatory and stigmatizing language, but it has a low threshold of severity, so such statements should be advocated. At this level, the State should not interfere (restrict or prohibit) freedom of expression, but should promote tolerant perception of vulnerable groups, including through education and relevant anti-discrimination legislation, and should also assist civil society in work on minimizing discriminatory trends in society. Also, public authorities should themselves demonstrate a positive example of non-discriminatory speech and care, and strive to protect vulnerable groups.

Documents: Article 19 of the Covenant.

Thus, we would like to draw attention to the fact that there are forms of intolerant statements that are protected by the right to freedom of expression. Their distinguishing feature is that they perpetuate stigmatizing and discriminatory patterns in society. Therefore, they demand a due response, but in a way different from repressive practices by the State.

The solution to the problem of discriminating statements will in our view be found through creation of corporate standards for the media sphere, “discriminatory statements” and “hate speech”. We appeal for the use of **“inclusive language”** to refer to people from any group (by “inclusive language”⁷ we mean the language that does not use forms of words, phrases, or tones that reflect biased, stereotypical, or discriminatory treatment towards individuals or groups).



International standards in the field of “hate speech”



02

To understand the main approaches of international human rights law on the topic of “hate speech”, you'd better first read the following documents:

1) *International universal and separate regional human rights treaties that deal with the topic of “hate speech” and practice of their application by Treaty parties:*

- Universal Declaration of human Rights⁸ (art. 1, 19),
- International Covenant on civil and political rights (art. 2 (1), 19, 20, 26),
- General comment No. 34 of the Human Rights Committee of 12.09.2011⁹,
- General comment No. 34 of the Human Rights Committee of 1989¹⁰,
- International Convention on the elimination of all forms of racial discrimination¹¹,
- General comment No. 35 of the Committee on the elimination of racial discrimination¹²,
- European Convention on human rights¹³,
- Law enforcement practice of the European court of human rights (hereinafter – the ECHR)¹⁴ and the human rights Committee (HRC)¹⁵.

It is important to note that the ECHR¹⁶ and CHR¹⁷ consider complaints of individuals against States for violations of the rights enshrined in the European Convention and the Covenant, respectively, so individual examples of cases involving restrictions on freedom of expression and the opinions of international experts can be found in specific cases (see examples of cases in the footnotes on page 17).

2) *Synthesis documents of recommendatory character*

Today, these are the most detailed documents summarizing international standards in the field of human rights, including the issue of “hate speech”. They can guide the State at the level of legislation and law enforcement practice in respecting human rights. The documents also contain recommendations for the media and civil society.

This group includes such documents as:

- The Johannesburg principles on national security¹⁸ (hereinafter referred to as the Johannesburg principles);
- The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012)¹⁹ (hereinafter – the Rabat plan of action);
- The Camden Principles on freedom of expression and equality (2009)²⁰ (hereinafter – the Camden Principles).

The Johannesburg principles prescribe that expression of opinion can only be restricted as a threat to national security if the State can showcase that:

- expression of opinion is intended to incite to violent actions;

- may cause such violent actions;
- there is a direct and immediate connection between the statement and likelihood or occurrence of such violent acts.

The Rabat Plan of Action proposed setting a high threshold for restrictions on freedom of expression when determining incitement to hatred. The severity criterion implies that only the most serious and emotionally charged insults are classified as incitement to hatred. In this regard, a six-part test aims to determine statements that can be prosecuted and restricted:

1) *Context*: whether the statements actually incite discrimination, hostility or violence; what is the social and political situation around at the time of the statement.

2) *Speaker*: What is the status of the person, whom the authorship of the statements belongs to, what the statement and the person's activity has to do with the audience and what position the person has among this target audience.

3) *Intent*: whether the statement is propaganda and direct incitement to hatred. Just dissemination due to recklessness or negligence is not a sufficient reason for application of the article 20.

4) *Content or form*: To what extent direct and provocative the statement was. You should also take into account the form, style and nature of the arguments advanced, and their balance.

5) *Degree of publicity*: whether the audience is considerably large; whether the statement was being disseminated by a single leaflet through broadcast media or through the Internet; what the frequency, quantity and breadth of coverage were, whether the audience had the opportunity to act in accordance with the incitements, whether the statement (or work of art) was being disseminated in private or was public.

6) *Probability of implementation of the incitement, including inevitability*: what the potential risk of harm is, whether there is a real probability of execution of the incitement. A rather direct cause-and-effect relationship must be specified.

It also prescribes an approach to protecting society through the prism of controlling the hate speech: a test for permissibility of restrictions. Its meaning is that restrictions are established by law, defined narrowly enough and are necessary to protect interests. They should be the least intrusive on public and private life, should not involve broad or indefinite restrictions on freedom of speech, and should be proportionate.

The Camden principles describe some other areas, such as the role of the media in inciting hatred, and suggest ways to create a legal framework on this issue. The document includes 12 principles with recommendations, beginning with those related to legislation. Principles

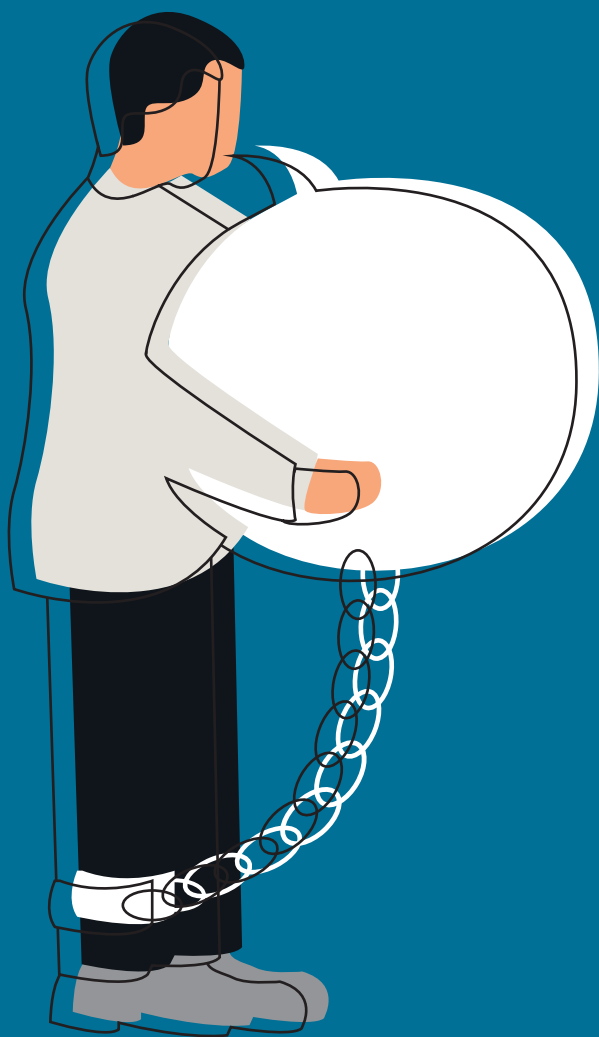
2 and 3 prescribe that the State must ensure the right to freedom of expression and freedom from discrimination, and the right to legal protection. It is advisable to ensure these rights in the national Constitution or other equivalent documents, clearly stating the permissible restrictions, if it makes sense to introduce such ones. Restrictions should be clearly and narrowly defined, be the least aggressive means of action, and be proportionate, meaning that the benefits of protecting interests should outweigh the outcomes from compromising freedom of expression.

Special attention is given to achieving mutual understanding. Since the term “hate speech” is new and does not have one precise definition, the Camden principles provide that if hate speech is prohibited, the legislative systems should clarify the terms “hostility”, “hatred”, “propaganda” and “incitement”.

It is important to note that the promotion of a positive image of group identity by different communities can't be defined as hate speech (example: “we are the best” with a sign of group identity). If certain statements are restricted due to being classified as “hate speech”, then, accordingly, criticism or discussion of various things that do not constitute hate speech should not be prohibited.

The Camden principles assign a separate role to the media in the fight for equality and freedom from discrimination. It is suggested that the staff should be diverse in order to represent the whole society. The role of the media is important in achieving cross-cultural understanding, so principle 9 recommends covering the facts and context of events in a tactful manner, informing the public about cases of discrimination, and avoiding unnecessary references to race, gender, religion, or other group characteristics. It is also appropriate to make reports about various groups and communities. In case of dissemination of erroneous information, the right to demand that the media publish or broadcast corrections should be guaranteed. This is necessary to protect equality and the existence of a free flow of information.

National legislation in Belarus and liability for “hate speech”



03

Not in all States there is liability for the statements containing incitement to violence. The Criminal Code of Belarus²¹ stipulates prosecution for “incitement to racial, ethnic, religious or other social hostility or discord” (article 130) Yet the normative acts do not provide a definition to “incitement to hostility or discord”.

Article 130 of the Criminal Code consists of 3 parts: the 1st establishes liability for intentional action to incitement to hostility or discord on certain grounds (with penalty of a fine to 5 years' imprisonment); the 2nd — for the same intentional action, but committed by an official in abuse of his/her official powers, or in case when also violence is used (3–10 years' imprisonment); the 3rd — for the action, committed by a group of people, or in case when that caused death of a person or other serious consequences by negligence (5–12 years' imprisonment).

Also, the Belarusian legislation has a classifying (aggravating) factor for murder, grievous bodily harm, etc — motive of racial, national, religious hostility or discord, political or ideological hostility, and also motive of hostility or discord against a social group, so advisability of parts 2 and 3 in the article is not evident and we don't know any cases of application of that classification.

In 2017 and 2018 years 10 people accordingly were convicted under article 130, part 1. In 2019 there were more criminal proceedings. Including the case when a young man was sentenced to 3 years' imprisonment for the publication of a video and 11 photos on a social network “Vkontakte”²². Another person was imprisoned for 3 years for a publication on the social network Instagram²³.

It is worth noting that the Criminal Code provides for separate liability for slander (art. 188) and humiliation (art. 189), and also there are a number of articles providing liability for the statements against individual officials and national symbols²⁴. In international practice, such articles are called “defamatory” and challenged by the human rights community²⁵ and international Treaty bodies (paragraphs 49–50 of the Concluding observations of the UN human rights Committee on Belarus's 5th periodic report from November 22, 2018). At the same time, application of these articles cannot be attributed to prosecution for “hate speech”, since the groups protected under them are not considered vulnerable from the standpoint of international law²⁶.

The Code of the Republic of Belarus on administrative offences²⁷ includes offences that can be regarded as examples of prosecution for “hate speech”²⁸. However, taking into account our monitoring of trials in such cases, we conclude that the practice of prosecution under these articles has illustrated disregard for international human rights standards and the right to freedom of expression, in particular.

It is worth noting that the existing legislation does not provide criteria for determining the line between freedom of expression, an administrative offense and a criminal offense.

While there are ethics commissions under two journalistic public associations. This is described in detail in the report “Responding to the ‘hate speech’ through media self-regulation: the Belarusian practice in the European context” (2019)²⁹.

Another perspective to the issue of “hate speech” in Belarus can be the experience of the human rights initiative “Journalists for tolerance”, who regularly monitor “hate speech” against vulnerable groups in the Belarusian media³⁰.



Recommendations



04

To the State authorities and courts:

- to refrain from undue restrictions on freedom of expression;
- when considering the possibility of prosecution for the speech, to implement international standards in this sphere, especially a 6-step test from the Rabat plan of action;
- to improve legislation in the sphere of accountability for the speech, in particular:
 - to clarify terms “incitement to hostility or discord” taking into account international standards, especially part 2 of article 20 of the International Covenant on Civil and Political rights;
 - to delineate administrative and criminal proceedings;
 - to exclude defamatory articles from the Criminal Code.

To the media:

- to use “inclusive language” towards vulnerable groups;
- to avert undue references to race, gender, religion and other group characteristics, when it's unimportant for understanding the context of the information;
- to foster the practice of correction or deletion of discriminatory wording;
- to develop the institutions of self-regulation on the issue of journalistic ethics.

To the civil society:

- to use “inclusive language” towards vulnerable groups;
- to promote values of equality, diversity and non-discrimination;
- to define the difference between “hate speech” and humiliating statements, building on a human rights-based approach;
- to assist the media in using inclusive wording: point out flaws, propose correct definitions, demand correction of information when discriminatory definitions are posted.

Useful links and references



05

- “Mediarshebik” <https://aboutpeople.info/>
- How to prevent hate speech in the media? Guide to the colleagues by the Ethics Committee of the Belarusian Association of Journalists
<https://baj.by/be/analytics/yak-pazbegnuc-movy-varozhasci-u-medyya-parady-kalegam-ad-kamisii-pa-etycy-bazh>
- “Why not ‘illegal immigrants’?” <https://allegal.tilda.ws/>
- Report “Countering extremism and human rights: National anti-extremist legislation and law enforcement” (2019)
https://spring96.org/files/book/ru/2019_extremism_ru.pdf
- “Disability etiquette”
<http://www.disright.org/ru/source/etiket-invalidnosti>
- Leaflet “Hate speech on hippos”
<https://j4t.by/2018/07/13/a-vyi-dopuskaete-yazyik-vrazhdyi-v-obshhenii-i-pri-napisanii-tekstov/>

1 https://j4t.by/wp-content/uploads/2019/02/A19_Hate-Speech-Report-2018_Russian-copy.pdf

2 <https://www.refworld.org.ru/type,GENERAL,,,53f459644,0.html>

3 https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

4 a) To respect the rights and reputation of the others; b) to protect the State security, public order, health or morality of the population (article 19 of the Covenant).

5 Since the States undertake obligations to guarantee the realization of human rights, only the States can be violators of these rights (relations of “verticality” as an indication of human rights).

6 Hereinafter, we mean any social groups, including those that may not be historically vulnerable, but in the modern context acquire such characteristics and should be protected by additional measures.

8 https://www.un.org/ru/documents/decl_conv/declarations/decl_hr.shtml

7 https://www.slideshare.net/JorgeAguadoSnchez/journalist-book-peace-storytellers?fbclid=IwAR1qmYBazc-UB_30pDQ2ycOrZ6_0roAxLx_H47srA19Oc3UO2HKcX4AA9Z8

9 <http://hrlibrary.umn.edu/russian/gencomm/Rhrcom34.html>

10 <http://hrlibrary.umn.edu/russian/gencomm/Rhrcom18.html>

11 https://www.un.org/ru/documents/decl_conv/conventions/raceconv.shtml

12 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/GC/35&Lang=ru

13 https://www.echr.coe.int/Documents/Convention_RUS.pdf

14 Belarus has not acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms, so falls outside the jurisdiction of the ECHR. However, the practice of the ECHR shapes human rights standards in the European region, and the Constitutional Court of Belarus sometimes refers to the decisions of the ECHR as the best foreign practices.

15 The Human Rights Committee's standpoint directly concerns Belarus in connection with the ratification of the Optional Protocol No. 1 to the Covenant. According to it, the State that has ratified this protocol “recognizes the competence of the Committee to receive and consider appeals from the persons, subjected to its jurisdiction, who claim to be victims of a violation by a given State Party of any of the rights, set out in the Covenant”.

https://www.un.org/ru/documents/decl_conv/conventions/pactpro1.shtml

16 On the website of the European Court of Human Rights you can familiarize yourself with all the court decisions in connection with violations of article 14 (“Prohibition of discrimination”) and article 10 (“Freedom of opinion”). The most famous cases: “Savva Terentyev v. Russia”, “Maria Alyokhina and others v. Russia”, “Beleg and Velioglu v.

Turkey”, “Gert Wilders v. the Netherlands” and others.

17 “Ballantyne, Davidson & McIntyre v. Canada”, “Forisson v. France”, “Albert Womach Mukong v. Cameroon” and others.

18 <http://hrlibrary.umn.edu/instree/Rjohannesburg.html>

19 <https://www.sova-center.ru/racism-xenophobia/publications/2014/11/d30593/>

20 <https://www.article19.org/wp-content/uploads/2009/04/\Camden-Principles-RUSSIAN-web.pdf>

21 <http://etalonline.by/document/?regnum=HK9900275>

22 <https://humanconstantaby.by/sud-za-ubijstvo-na-pochve-nenavisti-monitoringovyj-otchyot/>

23 <https://belsat.eu/ru/news/minchanin-poluchil-3-goda-himii-tak-kak-pozhelal-plohim-rossiyanam-smerti-sejchas-sobiraet-dengi-na-advokata/>

24 “Insulting the President of the Republic of Belarus” (Art. 368 of the Criminal Code), “Insulting a representative of the authorities” (Art. 369), “Discrediting the Republic of Belarus” (Art. 369–1), “Desecration of the State symbols” (Art. 370), “Insulting a judge or a people's assessor” (Art. 391), “Insulting a superior by a subordinate or a subordinate by a superior” (Article 444).

25 <http://spring96.org/ru/news/90324>

26 An example is the decision of the ECHR in a legal action “Savva Terentyev v. Russia” <http://european-court-help.ru/de-lo-10692-09-savva-terentev-protiv-rossii/>

27 <https://etalonline.by/document/?regnum=Hk0300194>

28 Insult (Article 9.3), Propaganda and (or) public display, production and (or) distribution of Nazi symbols or attributes (Article 17.10), Distribution, production, storage, transportation of information products containing incitement for extremist activity or promoting such activity (Article 17.11).

29 <https://j4t.by/wp-content/uploads/2019/06/Belarus-Self-regulation-report-Final-Belarusian.pdf>

30 <https://j4t.by/category/issledovaniya/>