До:

Правен факултет – Штип,

Универзитет „Гоце Делчев" во Штип

Од:

М-р Мартина Глигорова

кандидатка пријавена на објавениот конкурс

на Правниот факултет во Штип

од 05.03.2021 година,

за избор на асистент од научната област

граѓанско право

Врз основа на член 34 од Правилникот за посебните услови и постапката за избор во наставнонаучни, наставно-стручни, научни, наставни и соработнички звања на Универзитетот „Гоце Делчев" – Штип", усвоен од Универзитетски сенат (број на седница: 152, датум: 28.9.2018 година, број на седница: 160, датум: 13.5.2019 година, број на седница: 166, датум: 30.10.2019 година и број на седница: 169, датум: 7.2.2020 година), поднесувам

П Р И Г О В О Р

на Рефератот за избор на соработник во звање асистент за научната област граѓанско право на правен факултет при Универзитет „Гоце Делчев" во Штип, објавен во Билтенот на Универзитетот „Гоце Делчев" во Штип, бр. 274, од 15.04.2021 година.

Почитувани членови на Рецензентската комисија за избор на соработник во звање асистент за научната област граѓанско право на Правниот факултет при Универзитетот „Гоце Делчев" во Штип, чиј конкурс за овој избор беше објавен во весниците „Слободен печат" и „Коха" на ден 5.3.2021 година, Почитувани членови на Наставно-научниот совет на Правниот факултет во Штип, **Приговарам на Извештајот на Рецензентската комисија за избор соработник во звање асистент за научната област граѓанско право (50803)**, а конкретно на заклучокот и предлогот за давање предност на кандидатката м-р Ана Здравева за избор на соработник во звање асистент за научната област граѓанско право.

Со овој Приговор го оспорувам предлогот за избор на соработник во звање асистент за научната област граѓанско право на погоре споменатата кандидатка, сметајќи го за ништовен поради причината за преферирање на кандидатката м-р Здравева, а воедно

причина за моето одбивање. Согласно меѓународната Фраскатиева класификација, насоката на кадидатката воопшто не е соодветна, поткрепено со темата на магистерската теза, како и необјективноста во степенот на исполнетост на посебните услови за избор предвидени во член 16 од Правилникот за посебните услови и постапката за избор во наставнонаучни, наставно-стручни, научни, наставни и соработнички звања на Универзитетот „Гоце Делчев“ – Штип”.

Воедно, нагласувам и за пропустите и грешките кои се направени во самиот Реферат, а се однесуваат на моите фактички податоци за образованието, каде подолу ќе ги образложам.

Истовремено, барам преиначување на предлогот за избор, од причина што сметам дека релевантните критериуми и услови за избор во наставно-научни, наставно-стручни, наставни и соработнички звања уредени со Законот за високото образование и Правилникот за посебните услови и постапката за избор во наставнонаучни, наставно-стручни, научни, наставни и соработнички звања на Универзитетот „Гоце Делчев“ – Штип”, во споредба со моите достигнувања, се на минимално ниво, а воочлив е фактот што на очигледно послабата кандидатка и е дадена предност.

Согласно со **член 164 од Законот за високото образование**, критериуми за избор во наставно-научни, наставно-стручни, наставни и соработнички звања, врз основа на кои потоа се пропишуваат општите и посебните услови за избор, се: **1. стекнато образование, 2. резултати од научноистражувачка работа, 3. резултати и искуство во наставната дејност и подготвување на наставен и научноистражувачки подмладок и 4. стручно-применувачка или стручно-уметничка дејност.** Овие критериуми понатаму се операционализирани и во член 16 од Правилникот за посебните услови и постапката за избор во наставнонаучни, наставно-стручни, научни, наставни и соработнички звања на Универзитетот „Гоце Делчев“ – Штип”, кои ги уредуваат посебните услови за избор во звање.

Во продолжение, се осврнувам кон претходно наведените критериуми поединечно, споредувајќи ги моите професионални постигнувања и резултати со професионалните постигнувања и резултати на предложената кандидатка за избор.

Образованието кое го стекнувам на прв циклус – додипломски студии е Дипломиран правник на Правниот факултет „Јустинија Први“ при УКИМ, во 2014 година. Вториот циклус на студии го завршувам 2017 година, а во јануари 2018 година се заокружува процесот, со одбрана на магистерскиот труд со наслов „Политиката на Европската Унија за медиумска писменост версус Република Македонија“ на Правниот факултет „Јустинија Први“ при УКИМ. Тука наведувам дека се сторени пропусти во Рефератот, каде се дадени неточни податоци за времето и местото на реализација на магистерските студии. Воедно, во заклучокот и предлогот наведувате дека јас не го исполнувам условот предвиден со член 170, став 1, точка 2 од Законот за високото образование и Конкурсот за избор на наставници, соработници и стручен соработник на единиците во состав на Универзитетот „Гоце Делчев“-Штип, односно цитирам „...има стекнато назив магистер од друга, несоодветна област (магистер по право од областа на меѓународното право и

односи и право на ЕУ)". **Тука, го поставувам прашањето дали областа на преферираната кандидатка м-р Здравева е соодветна?** Согласно меѓународната Фраскатиева класификација, насоката на кадидатката воопшто не е класифицирана во делот на Правни науки. Тука е симптоматично и акцентирањето во повеќе наврати во Рефератот дека насоката Правосудна насока во себе ја опфаќа граѓанската научна област, согласно содржината на самата студиска програма. Факт е дека дополнителното објаснување за насоката и наведената причина дека токму поради тоа таа е избрана за асистент во научната област, **воопшто не ја става во поповолна состојба предложената кандидатка, бидејќи називот на насоката е Правосудна насока, а не Граѓанско право (50803)** како што гласи конкурсот. Оттука, сосема е јасно и недвосмислено дека кандидатката м-р Здравева е во иста положба како мене. Очигледно, правосудната насока може да се толкува во секоја смисла, па така кандидатката парадоксално можеби би била и погодна за апликација на друга научна област. Но, иронијата да биде поголема, темата на која предложената кандидатка магистртира е „Корупцијата во високото образование". Како што наведувате во Реферат, „...Целта на трудот е да се даде краток осврт на корупцијата во општеството и корупцијата во високото образование, како и да се елаборира нејзината феноменолигија и етиологија во високото образование. Во трудот се анализираат законските и подзаконските акти кои ја регулираат оваа тематика. Во магистерскиот труд е елаборирана содржината на антикорупциските одредби во сферата на високото образование и е направена анализа на потенцијалот на домашното законодавство за борба против корупцијата". **Темата на мигистерскиот труд е сосема различна од она што опфаќа граѓанското право и комотно може да се подреди под материјата – казнено и антикорупциско право.** Повторно, овој факт од комисијата е занемарен. **Ова се одлучувачки елементи кои се наведени во заклучокот и предлогот, а не ја опфаќаат предметната материја.** Парадоксално е како е возможно да се преферира лице со образложение да научната област е соодветна, а доколку се прегледа насловот на магистерската теза и називот на насоката – тоа е нерелевантно.

Воедно, за споредба, по моето магистрирање, во учебната 2020 година ги запишав студиите на трет циклус на Правниот факултет „Јустинијан Први" при УКИМ, што уште повеќе говори за мојата континуирана, сериозна определеност и целна ориентација кон научноистражувачката работа, додека пак за кандидатката м-р Здравева, нема таков податок во Рефератот. Исто така, во 2018 година, сум целосен стипендист ("GEOFFREY NICE FOUNDATION" од Хаг) на престижниот мастер курс "POLITICAL EXPEDIENCY BEHIND INTERNATIONAL CRIMINAL COURTS", во чиј корпиус на предавачи се опфатени истакнати судии, претставници на светската академска заедница, јавни обвинителни и личности од меѓународното право.

Тука повторно, рецензентската комисија не дава предност и не го акцентира воопшто мојот континуиран научен ангажман и учество на престижната школа.

Во рамки на критериумот **„Резултати од научноистражувачка работа"**, ги изнесувам фактите од кои недвосмислено може да се заклучи дека предложената кандидатка има објавено **еден** труд со наслов „Пристап до бесплатна правна помош во Република

Македонија“ (2018), објавен во Зборник на трудови од Петтата меѓународна научна конференција „Општествените промени во глобалниот свет“ - област млади истражувачи, одржана во септември 2018 година на Правниот факултет при Универзитетот „Гоце Делчев“ во Штип; **додека пак втората публикација** „Анализа: права и обврски на студентите и студентските претставници при Универзитетот „Гоце Делчев“-Штип“ (2018), **е објавена како публикација-брошура** во рамки на проект на Здружението на правници „Легал Тинк “ во Штип **и не претставува научен труд објавен во стручно списание.**

По однос на мојата досегашна научна реализација, авторка и коавторка сум на објавени: **3 труда, 1 прирачник и 1 онлајн статија,** и тоа: “Online Media Regulation-European Media Policy vs Republic of North Macedonia” (2021), објавен во Зборник на трудови од Првата виртуелна конференција на Центарот за научна размена и едукација, во коавторство со проф. д-р Јасна Бачовска-Недиќ, “European Union Institutional Approach to Medialiteracy” (2021), објавен во Зборник на трудови од Првата виртуелна конференција на Центарот за научна размена и едукација, “Why Hate Crime should be punished more rigorously” (2018), труд во коавторство со проф. д-р Татјана Петрушевска, презентиран на 5-та Меѓународна конференција на Правниот факултет при Универзитетот во Тетово, објавен во Justicia-International Journal of Legal Sciences, Прирачник - Медиумска писменост на млади во коавторство со проф. д-р Јасна Бачовска Недиќ, Издавач Универзитет „Св. Кирил и Методиј“ Скопје, 2021 година, онлајн статија (блог) со наслов Придонесот на УНЕСКО за медиумската писменост, објавена 2020 година. *Воедно, сакам да дополнам дека е сторен превид од моја страна и не е доставен труд со наслов* European Legal Mechanisms of Freedom of Expression and why Hate of Speech Crimes Should Be Punished More Rigorously, во коавторство со проф. д-р Татјана Петрушевска и проф. д-р Јасна Бачовска Недиќ, кој е објавен во JUSTICIA International Journal of Legal Sciences, 7 (11). pp. 115-126. ISSN 2545-4927[1].

Следствено на споредбените резултати од досегашната научноистражувачка работа, **бројот на објавени научни и стручни трудови на предложената кандидатка е многу помал во споредба со моите горенаведени публикации од различен вид.**

Валоризацијата, односно бројот на објавените трудови во објавено списание и/или зборник со соодветна каталогизација – факт, во секој случај е елемент кој води кон поголема подобност за исполнување на неопходниот услов за учество на конкурсот. *Сепак, и покрај тоа што предложената кандидатка е на работ на минималната граница на подобност за исполнување на посебните услови (со еден објавен труд), а јас имам приложено повеќе трудови од неа, тоа не е доволно да ги „убеди” членовите на Рецензентската комисија да ја донесат правилната одлука.* Истражувачкиот опус, учеството на меѓународни и домашни научни конференции очигледно во овој случај не влијаело врз донесувањето на одлуката и преферирањето на кандидатката м-р Здравева, која повторно ќе нагласам има многу помали достигнувања во овој дел, споредбено на моите научноистражувачки достигнувања до сега. *Во овој случај наместо да се истакне*

[1] Доказ во прилог.

поголемата вклученост во научното истражување, се преферира сосема спротивното – минималните стандарди за исполнување на овој критериум. Оттука, се запрашувам зошто е потребата од залагање и учество, натпревар и „трка“ во сопственото научно надоградување, кога тоа не се зема воопшто како критериум кој се оценува? Од непознати причини, членовите на Рецензентската комисија, одлучуваат да го занемарат овој факт и директно да одлучат во полза на кандидатката со минимална подобност за исполнување на неопходниот услов за учество на конкурсот по предметната одбласт.

Да биде уште позачудувачки заклучокот и предлогот на Рецензетската комисија, во Рефератот на кандидатката м-р Здравева не се наведува воопшто учество на меѓународни и домашни конференции, симпозиуми, семинари, обуки и работилници. Додека пак, согласно моите референци, ова се активности во кои имам земено активно учество на околу 10тина конференции, симпозиуми, семинари, обуки и работилници од областа на правото, медиумите, спортот и администрацијата. Навистина е нејасна причината зошто Рецезентската комисија не ги зема во предвид овие атрибути кои дефинитивно играат голема улога во дефинирањето на интересот и понатамошниот научен развој.

Исто така, во прилогот на пријавата се доставени и учества во проекти. **Во Извештајот, Рецензентската комисија наведува и дека предложената кандидатка за избор учествувала како проектен асистент на неколку проекти во Здружението на правници „Легал Тинк“ во Штип. Останува нејасно и спорно кои се тие и колку се тие неколку проекти. Од друга страна, Комисијата во Извештајот, согласно моите доставени документи ги подробно ги набројува проектите на кои активно сум учествувала во различни улоги и тоа како: предавач, координатор, експерт, стручен соработник, консултант и сл.** Не би сакала да верувам и овој фактот на моето активно учество на проекти и научен акгажман се занемарува. Но, сепак Комисијата од непознати причини, решава да не обрне внимание на амбицијата и ангажманот во различни активности. Од приложените податоци во Рефератот **јасна и воочлива е дискрепанцата** која постои помеѓу преферираната кандидатка и малиот број на спроведени активности во споредба со моите активности. Исто така позадинската анжагираности на кандидатката м-р Здравева од типот на волонтирање, работно искуство и други атрубути кои дефинитвно се важни во придонесот на развојот на науката **исто така се воочливо помали**, во споредба со моите активности. Не сакам да верувам, дека позитивните атрибути и побогатото CV е помалку ценето и воопшто не земено во предвид при дефинирање на заклучокот и предлогот за асистент во научната област.

Јазичната рамка е исто така воочливо поизразена во моите квалификации, наспроти кандидатката м-р Здравева. Повторно се поставува прашањето на нееднаков треман на моите квалификации, каде се преферира кандидат кои воочливо има помал ангажман во придонесот на развојот на науката и научниот опус. *Поединечно доколку Комисијата ги анализирала сите квалификации кои ние две кандидатки ги нудиме, каде притоа пристрасно од непозната причина се наклонува кон кандидатката м-р Здравева, дискрепанцата е сосема јасна и воочлива.*

Сметам дека развојот на науката и ангажирање на млади научници на вакви позиции е сериозна работа, каде целиокупниот развој, енергија, учество од најразличен вид и квалификации кои кадидатот ги поседува е неопходно да се земат во предвид.

Ваквиот Реферат дава сомнеж во изборот на кадар кој понатаму треба да ги создава и дефинира промените во општеството, давајќи му поголема и повисока димензија на издржаност.

Сумарно, ценам дека по сите претходно споменати групи на критериуми имам поконкурентно, покомпетентно и подобро досие, кое ме прави посоодветен кандидат за избор во соработничкото звање асистент во научната област граѓанско право. Доколку кон овие критериуми се додаде и оценувањето на исполнувањето на посебните услови за избор (како најважни услови кои треба да влијаат врз носењето на одлуката за предлог за избор), врз основа на кои јас конкурирам со објавени 3 (три) трудови, една онлајн статија и еден прирачник, а предложената кандидатка за избор има 1 (еден) објавен труд и коавторка е на една објавена брошура во рамки на проект, тогаш одлуката „би" требала да биде уште полесна. Согласно погоренаведните причини, очигледно е дека оправдувањето за избор каде се преферира кандидатката м-р Здравева, на кое се повикува Рецензентската комисија, е несоответно. Насоката – Правосудна насока (различно од Граѓанско право) како и особено магистерската теза („Корупцијата во високот образование"), не се всушност научната област граѓанско право, а со тоа учтиво повикувам повторно Комисијата и Наставно-научниот совет на Правниот факултет да го разгледаат ова прашање, со должно внимание, одговорност, транспарентност и непристраност да пристапат кон разгледувањето и оценувањето на наводите во овој Приговор, а пред сè, да не дозволат верификација на избор во звање на кандидат кој во однос на научната област се наоѓа во иста состојба како мене, но по однос на моите други достигнувања кои се воочливи, ќе ја исправи одлуката за предлог на кандидат.

Универзитетите заслужуваат кадар во кој понтенцијалот за научен развој и продонес е воочлив и за таа цел го поднесувам овој Приговор, со надеж за почит на принципите на правичност, еднаквост и рамноправност, но и со длабоко убедување дека Правниот факултет ќе опстои на основните начела и цели на високото образование во земјата, предвидени во Законот за високото образование.

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European Legal Mechanisms of Freedom of Expression and why Hate of Speech Crimes Should Be Punished More Rigorously

Research Article
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Abstract

The freedom of expression, regarded as a civilization gain and constitutional category, is very often widely interpreted and misused. Can the expression of various attitudes be interpreted as freedom of expression or those expressions can often mean libel and defamation, humiliation and marginalizing of certain groups (ethnic, religious, cultural, gender groups)?! Not always can this type of attitude and opinion expression be accepted as elements of freedom of speech.
After the political changes in the late 80's, the freedom of expression as a right was radicalized in all its aspects, especially in the countries of South-Eastern Europe. At that same historical moment, a technological progress took place which especially came forward in the sphere of the communications and media: appearance of new media - internet, globalization of the media space etc.
Following of the fall of the Berlin Wall, the major expectations were supplying freedom of informing, speech, competition, pluralism, market economy, human rights, individuality etc. The direct political speeches, the demonstrations, pamphlets, free interviews and analytical columns have occupied the media, while the free communication between the government and the citizens was set up as a basic principle of the democratic equality. Considering these reasons, the freedom of speech was most often understood as freedom to inform, media pluralism, absence of censure etc. Twenty years later, even in the countries of South-Eastern Europe, the factors which bring the western democracy in crisis are present. Namely, the media are misused and the following is present: aggressive political marketing, propaganda, defamation, libel, hate speech. The media became synonyms of these states. These tendencies brought into light the topic about the freedom of speech, its restrictions and the misuse of this type of freedom.
This document aims to formulate the research question and to emphasize the importance of proper regulation and punishment of crimes in order to raise the level of concussions in the process of building a real democracy and respect for human rights and freedoms. It is a crime committed with a motive of prejudice, two elements that make the act of hatred. In general sense we are talking about a negative concept and negative action that causes negative consequences. There must be a basic criminal act in order to have a hate crime, thus logically any crime can become a hate crime, from murder and rape, to harassment and vandalism. We are not talking only in the context of physical violence, but also words, threats and incitement to hatred.
The acts of hatred convey the history of racism, discrimination and oppression that reflects inadequate evaluation of the victim. It is essentially a violation of fundamental ideals and principles, fundamental to modern democratic and multicultural societies. Hate crimes carry greater injuries that carry a strong message to the target person, the individuals or the group as a whole, inflict greater injuries and carry a greater offense than the basic crimes. More strictly and rigorously penalties as a solution to try to solve the problem of hate crimes in this modern society of globalization and at the same time a missing tool for active citizenship referring to an individual's resocialization and a deterrent effect from the thought of doing.

Keywords: international, mechanisams, universal, legal standards.

1. Introduction

1.The affirmation and the dramatic importance of the freedom of expression are especially highlighted after major social traumas (the period between the two world wars, the Holocaust, the Cold War, the fall of the Berlin Wall etc.). In the majority of the texts dedicated to this right the thought of *John Steward Mill* is quoted. It says:
"the freedom of expression protects us from the governments' corruption and tyranny. This freedom is one of the basic guarantees of open and pluralistic society".

2.The freedom of expression contains several elements such as: the freedom of informing, the freedom of printing and media in general. The right is mainly based on the freedom of opinion and mutual exchange of opinions. It moves from individual expression of the ideas up to the institutional freedom of the media. That is why this right is mostly qualified as "framework right".

3.There is a certain duality in this right which is as follows:

a) to send opinions and ideas of any kind and
b) freedom to search for and receive information of any kind, whether in an oral or written form, different types of art, through other media, including the new technologies which all compose the integral part of the right of communication.

4.The freedom of thinking is not an absolute human right, which may be "a subject of certain restrictions". Nevertheless, it is very important to point out that this right is not superior or primary in terms of other rights.

2. Legitimacy of restrictions of the freedom of expression

1.It can be concluded that no other right has so many reasons for exceptions. Even when article 10 embodied in the European Convention on Human Rights Protection and the basic freedoms contained in the Council of Europe is visually seen, which is the most referred article in the analyses, it is noticed that the second paragraph which states the restrictions is greater in scope. It reads:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

2.Obviously, it guarantees the right to free expression, but foresees its restriction (by law), which is necessary in a democratic society for protecting the order and prevention of riots and crimes, protection of the reputation and rights of others. The Article 14 of the Convention provides discrimination protection – based on race, religion, national origin, affiliation to a national minority etc. in having the rights and freedoms which are recognized, as well as every right imposed further on in the domestic legislations of the states (Protocol No. 12, Article 1). The Article 17 foresees that no provision from the Convention shall be interpreted in a way that implicates the right of a state, group or person, to be included in a certain activity or to perform a certain act with the aim to destroy one of the rights and freedoms determined by the Convention or their limitation in greater scope from the one foreseen in the Convention.

3.During the years, especially after 1990, the European Court for Human Rights in Strasbourg established significant legal corpus regarding the previously noted provisions. The Court's verdicts interpret the conformity of the national administrative measures, laws and decisions referring Article 10. The Court's case law is analyzed by the laws and regulations for media and communication in the national states in case when they violate the human rights of the submitter

of the application. The Court operates according to the well known tests for the legitimacy of the aims, the validity and the principles of the democratic society.
4.The Additional Protocol from 2003 as part of the Convention for Prosecuting Acts of Racist and Xenophobic Nature done through computer systems (actually, Convention on Cyber Crime) from 2001 foresees an obligation for punishing the spread of racist and xenophobic insults done through a computer system (Article 5). In addition, the Article 6 foresees punishing the denial, serious minimization, approval or justification of genocide or crimes against humanity.
5. European Union's Framework Decision for Racist and Xenophobic Criminal Acts from 2008 aims to establish a mutual criminal and legal approach in all member-states of the Union and demands from the states to examine whether their existing legislation is in accordance with the Framework Decision. More specifically, racist and xenophobic behavior must constitute a criminal act in all member-states. The forms of behavior which are covered include public incitement for violence and hatred; public spread or distribution of pamphlets, photos or other material that contain racist and xenophobic expressions; public denial or trivialization of the genocide crimes, crimes against humanity and crimes of war when that behavior is most likely to arouse violence or hatred against group of people or a member of that kind of group defined on the basis of the race, color, ancestors, religion or believe or the national or ethnic origin.

6.According to Article 19 from the United Nations' International Covenant on Civil and Political Rights, there are three possible restrictions, which are secured by law and are seen as necessary, namely for obeying the rights and reputation of other people, for protecting the national security and public order and for protecting the public health and ethics. There is a variety of instruments and procedures which have to implement the freedom of expression as a human right, along with all its accompanying rights.
7.According to Article 29 of the United Nations' Universal Declaration on Human Rights, the process of implementation of the rights and freedoms is a subject of the national laws. To be foreseen in the law means the restriction to be an act of the legislature (parliament), and not an act of the government i.e. the execution power. The qualification "necessity in the democratic society" is of essential importance. This links the freedom of expression and the media for the concept of open and pluralistic society, governed by the democratic principles. The European Court of Human Rights is very strict regarding the issue which can be seen in the so-called Lingens case. The practice or use of this right should not jeopardize the principles of equality and non-discrimination.
8.According to the legal interpretation, the restrictions of the right should be interpreted restrictively, which means the major right should not be underestimated and the restriction must not be greater than the use for the protection of the rights and the basic public goods. The attitude of the United Nations is that a freedom cannot exist without a responsibility and that a freedom without restrictions can cause violation of other human rights, such as the right to privacy. The restrictions should be elaborated from the states with legally sustained reasons, which can be a subject of a public debate and approved by the court institutions with an aim to be processed further on.

3. Legal mechanisms for preventing hate speech

1.It is said that the legal institution "hate crimes" means "crimes in which the perpetrator is motivated by the characteristics of the victim who identifies him/her as a member of a group to which the perpetrator feels some animosity". The acts of hatred denote the illegal - violent, destructive or threatening behavior in which the perpetrator is motivated by prejudice against the

presumed social group of the victim. They are crimes involving words or actions with the intent to injure or intimidate a person because of his or her presumed membership in a particular group.
2.It follows that legal theory does not offer a single definition that generally would define the hate crime, but analyzing all these variations, they basically have the crime committed with a motive of prejudice. Two elements that are essential for certain behavior to be brought under hate crime that is punishable in national legal systems. Hate crimes always require that there be a fundamental crime, which can result in hate crime, from murder and rape, to harassment or vandalism. It can include words, threats and incitement to hatred.
3.When we talk about the motive of prejudice according to Allport, it is "a dissuading or hostile attitude towards a person belonging to a group, simply because it belongs to that group, and therefore it is assumed to have the undesirable qualities prescribed for that group." The motivation of prejudice can also cover a number of other reasons, such as gluttony, jealousy, or animosity toward the group. In fact, it is about depicting the mental state of the perpetrator of the act.

4. National provisions regarding hate speech

1. The position of the freedom of expression and the hate of speech outcomes from the international legal acts. First of all, it is states' obligation to incorporate the freedoms and rights in the domestic legislation and in case of their violation to enable legal remedies. According to that, the right can be found in the majority of constitutions as a part of the basic rights and freedoms. The minimal standards outcome from the international obligatory acts on general international level and, if existing, on regional level.
2. Modern societies, high level of culture, multiethnic societies, multilingualism ... can a modern democratic society allow hate crimes to be a normal category or need to take measures and restrictions to make them a category that the community member does not have to think of achieving this feeling of anger, hatred and intolerance by turning it into action, an act of hatred. The process of globalization, the tendency towards the approximation of European countries to the concept of the European Union, the process of changing the state order, the changes in a society, and even the process of transition (specifically for Republic of Macedonia) have brought a series of transformations of space and time and the most important, social relations within their framework. This process in which the priorities are changed, where for a moment thought that society has progressed so much and modernized, where hatred on any ground, whether religious, whether ethnic or cultural is overcome, where recurring history, the greatest historical "warfare" in essence have the hatred, the struggle for supremacy and domination, is simply paradox of this postmodern world.
3. In comparative legal practice, different states have a different approach and regulate this matter to a different extent, insofar as there is a clear division between the United States and the other Western democracies. If they were to analyze the United States' Constitution, hate speech was given broad constitutional protection, while in other Western democracies (Canada, Germany, Great Britain) and the International Covenants on Human Rights, it is largely banned and subject to criminal sanctions. However, the basis of such regulation lies in the different historical and social context. Regulation of hate crimes in national legal systems enjoys different legal treatment.
4. Firstly, defining and extending elements, whether hate crimes laws create special crimes called "essential deeds" such as harassment, assault, or vandalism that gain a whole new weight when they are motivated by prejudice, or increase the penalty for the fundamental criminal that when you are motivated by a kind of "clauses for aggravating circumstances" is a matter of

regulation of the legal system. It basically speaks of the redefinition of behavior that was previously criminal as a new crime or as a harsh form of an existing act.

5. A person who spreads or encourages hate speech, whether in a direct way, or indirectly, it does so with a motive, with a predetermined goal. The motive of the perpetrator, whether as a result of different racial, ethnic or national affiliation increases the punishment for ordinary crimes. It is precisely the motive of prejudice that is a key element of the hate crime. The perpetrator acts from hatred, hostility or intolerance, attacking the marker of the group's identity of the person or persons who are targeted.

6. The mental state, the state of conscious use of all forms of hate speech, is an aggravating circumstance, due to the fact that the person consciously and for some purpose spreads that hate speech, as a result of some characteristics of whether in the past were today the starting point for large "hostile wars". The segment to which great attention should be paid in terms of determining the punishment of hate crimes, in any case a higher degree of punishment, unlike ordinary crimes. Although facial intentions are often the product of certain features of his character, they are not permanent traits but are the current state of mind. A person can kill or rob somebody without being a man who is prone to violence or a greedy person. But a person cannot hate or prejudice other ethnic, national or class groups, without being a person with prejudice, hatred or intolerance. Without feeling an antipathy or believing that underestimating things about them and acting in ways that subordinate them when faced with members of any ethnic, national or other group. The perpetrator has in any case chosen by him to act in accordance with the prejudices he has for the particular group.

7. Article 137 from the Criminal Code of the Republic of Macedonia (violation of the citizens' equality) foresees criminal act of restricting the human rights based on the race, ethnicity etc. Article 417 (racial and other discrimination), paragraph 3 foresees punishing the spread of ideas for superiority of one race over another; propaganda of racial hatred or inciting racial discrimination. Article 173, paragraph 2 foresees the public exposure of one person to mocking through a computer system as a criminal act because of his affiliation to a group that differs according to the race, color, national or ethnic origin or exposure to mocking of a certain group which has one of these characteristics. The Article 394 (g) prohibits the spread of racist and xenophobic material through a computer system. The Article 319 foresees the incitement of national, racial or religious hatred, discord and intolerance as a criminal act, while the Article 179 the act of mocking the Macedonian people and the members of different communities that live in the Republic of Macedonia as a criminal act.

8. The Law on Prevention and Protection of Discrimination from 2010 prohibits harassment and humiliating action which presents violation of the dignity of a person or of a group of people which outcomes from a discriminatory basis and which has violation of the dignity of a certain person as a goal or result or creation of threatening environment, approach or practice (Article 7), finally, call for and incitement for discrimination (Article 9).

9. The Law on Broadcasting Activity from 2005 prohibits programmed contents aimed at the violent overthrow of the constitutional order of the Republic of Macedonia, obviously something relevant because encourages or invites to military aggression or incite national, racial or religious hatred and intolerance shall be prohibited from the programmed of broadcasters and in programmed retransmitted via public commercial networks (Article 69).

10. Observed on a social level, the hate speech and the media become synonyms in a certain way. We cannot qualify the media as creators of hate speech, but they are an instrument, channel and means for spreading it. They can also create context, situations, favorable climate for spreading the hatred or its aesthetics. The autonomous and powerful position of the media, as a

unique and absolute institutional channel for social communication, leaves the media as a priority subject when it comes to hate speech. The media system becomes one of the criteria for democracy of one society, the use and the protection of human rights. The professional standards and conditions for acting of the media depend on the position how the medium system is set up in one state. The important media culture depends on it as well and it is in a direct dependence on the political culture. The socio-political analyses approve the double role of the media on one hand, as instruments or users of freedom of expression, while on the other hand as violators of this same freedom.

11. The theoreticians of the democracy are particularly interested in the concentration of the media which takes place on a global and local level. The Regulation of the European Union is with a continuous tendency against concentration in the media systems. The analyses and the debates around the democracy of the media systems are directed in two ways:

a) the structure of the media systems and

b) the misuse of the communications through means and techniques which shape and create the public opinion and understanding of the citizens with the aim to gain and sustain the government authority.

In addition, the strategic goals of the European type of media systems are:

- the medium systems based on a quality public broadcasting centre;
- media pluralism;
- guarantees for media independence;
- introductory standards in the journalistic profession i.e. professionalization and intellectualization of the journalist.

12. The hate speech and the expressions that contain its elements have more destructive influence if being spread through the media and this additionally increases the journalists' responsibility. The journalists constantly write about the diversities, the differences which are based on religion, race, gender, sexual orientation, social origin, culture. This is especially sensitive issue in our state because we are part of a post conflict region, which in the last twenty years have experienced many political, valuable, ideological changes. The dominant patriarchal and conservative values influence the journalistic job. As a general perception, it can be pointed out that the journalists are careful about the division on religious and ethnic basis, where expressional discriminatory tendencies are noticed on the bases of gender or sexual orientation.

13. In this direction, there are international attempts for eliminating the non-professionalism of the journalists. The International Journalists Federation obliges the journalists to humanity and protection of human rights in ethic codex. The journalist is expected to be aware for the responsibility of his/her job. The analysis of the ethic codices in the Republic of Macedonia shows as well that the ban on hate speech is stressed out on a declarative level, as well as the decency and the respect of human rights and freedoms. Through the media, the journalism gives the huge number of information to the public and in that way it directly influences the public and the realistic decision which every individual as a consumer or political subject has to make. Certain situations are exposed and the problems are made actual. The high intellectual level of the public, the educated and active journalists and the development of the public journalism put under pressure the created and subjective informing and they are major factors which determine the need for quality and interpretative information, which contain the facts and arguments in its basis. This information quality can only be a result of a new journalism which occurs in the end of the 20th century which contains the educated and research oriented journalist. These states reflect over the status and the evaluation of this profession within social frames. During the last decades, in conditions of rising competition, the professionalism of the journalism has also risen,

although when it comes to this profession we cannot talk about strict rules of professionalization. The journalist must have ethical standards, but he/she also has to be able to accept "ethics in certain circumstances. He/she must be motivated to serve the readers, listeners, viewers and the democracy, to be patient enough in following the story until the end and to be persistent with the information sources. He/she must possess good information and contact sources which can help in the analyses and to possess research abilities on Internet. He/she may show respect towards the politicians, but he/she must not favor any of them and he/she must understand the personality of the politician.

5. The severity of hate crimes

1.What about the consequences, the damage that causes the hate crime? Indicator of prejudice, which causes violence. Violation of balance and harmonized society, motivated by violence, racial hatred, anger, as well as all forms of intolerance and hate speech, inflict injuries that may seem to be something theoretical, but in practice they impinge on the society as a whole. The fact that a target is a person who is a member of a minority discriminatory group makes this circumstance more difficult. The application of emotional pain, fear and feeling of agony, the violation of human dignity is the greatest psychic pain and fall of man as a person. Violation of the principle of equality and non-discrimination, as well as disruption of social cohesion, is harmful consequences that inflict great evil on the society. This fact also leads to a greater punishment of hate crimes. The distinctions of elements that may at first glance are totally irrelevant or roughly the same with the consequences (elements) of the ordinary work is necessary to do. The legislator must clearly set the framework, but also the limit that this fact is very important for the determination of the sentence. The short-term consequences for me are not so important, the bigger picture is important. These acts violate the "social peace" of "long-standing trails". The fact is that the perpetrator should be punished and the punishment of the perpetrator should be proportionate to the criminal offense committed. But the question arises what is the difference between hate crimes and ordinary crimes?! Are the constituent components that are actually defining and the basis for distinguishing the offense from hatred with other crimes is that leading to different treatment of the culprit? Viewed through comparative legal practice, the regulation of the legal systems of the punishment of hate crimes enjoys a different treatment. We need to ask ourselves what kind of society we live in, which ideals we strive to achieve, what are we actually promoting? Democracy, the rule of law, the rule of law - the ideals of each state. Should the same treatment of something that represents hatred, anger, violence, and contempt should be brought under the same group and thus the same way of punishing with ordinary crimes?

2.Legal theorists define and put forward the theses, arguments that are in favor of justifying the legislation on acts of hatred. They are talking about arguments that point to precisely why acts of hatred should be punished more rigorously; the thesis of greater guilt, the thesis of a greater offense, the expressive thesis, and the thesis of just protection were greatly influenced in this direction.

6. Elements leading to a greater degree of punishment

1.According to my views and attitudes, the punishment of these acts of hatred, as well as all forms of intolerance under this theoretical definition, should be in a more stringent form. What actually makes these acts more diverse than ordinary crimes? The starting point of the analysis that actually describes the seriousness of the acts of hatred is the blame of the perpetrator, or otherwise the moral guilty of the perpetrator. The mental state (the condition of the perpetrator's

mind), the feelings of belief, desire and the intention to commit a crime makes the person obey. So, for example, the premeditated murder is punishable with greater rigor than the murder of negligence, although the two crimes involve inflicting the same damage, the same degree of wrongdoing. In fact, what constitutes legal guilt is the legal act of the offense in the perpetrator's mind. The perpetrator does not have to intend his action to be legally wrong, he does not have to believe that this is so; he must only present his actions to himself under a description that he considers criminal law unlawful. According to the thesis of greater guilt, what constitutes the mental state of the perpetrator is precisely the hatred and prejudice, and hence the acts of hatred are punished more than differently motivated acts. Consequently, the perpetrator is motivated to harm his victim as a result of hatred or prejudice towards the particular race, religion, ethnicity or archetype (the mark of the group identity) that the victim has. These mental states of mind that the perpetrator has of hate crimes are much worse compared to greed or envy that are state of mind leading to the commission of parallel crimes.

2.What about the other segments that characterize the hate crime with a greater degree of punishment than the parallel crimes? When we talk about a legal offense, the constitutional elements, the voluntary act, the challenge and some legally prohibited state of affairs are clearly stated in the legal context. But theorists in close correlation also represent moral transgression. Consequences and moral obligations are two different concepts that help in determining moral behavior. Consecutive practitioners who are studying the consequences point out that they are carriers of the essential good or bad. The larger offense would mean that acts of hatred would cause greater harm or injury in relation to parallel crimes. While deontologists, as a proper procedure, define a procedure that refers to moral norms, living under the rule "should not be killed". In fact, acts of hatred break violent moral norms. In everyday practice as well as in scientific research, it has been proven that these two concepts can by no means be applied to a department, as Heidi Hard and Michael Moore point out: no one can live only according to deontology and consequent morality.

3.The time delineation of ex ante and ex post is a segment of the theory of damage measurement developed by Frederick Lawrence who makes visualization of the calculations of damages, injuries. Ex ante analysis is actually assumed by a person who is faced with an unfortunate choice between risking two different pieces. What would be least harmful would be the crimes that a prudent person would risk if he was given a choice between the risk of that crime and any other offense. Ex post the measurement of the injury; the damage is an analysis of what the person's target lost as a result of the crime (serious bodily injury means that the victim loses the ability to make life choices). However, the emphasis is placed on proving the overall psychological injury inflicted by hate crimes, in particular the violation of the dignity of the victim, causing depression, withdrawal or anxiety of the victim of the offense from hatred, unlike the victim of an identical offense incapacitated by prejudice. The offense motivated by prejudice is neither accidental nor directed to the victim personally, but the perpetrator chooses the victim for some immutable character, contrary to the parallel attack where the perpetrator may choose his victim accidentally or for other reasons, such as the fact that the victim wore a wallet. Hate crimes cause more damage precisely because of the violation of the collective living standard of society than the parallel acts. They themselves are worse because the perpetrator chooses the victim because of the immutable characteristics that in the past were the basis for major enemy wars. They violate the ideal of equality among members of society, a fundamental value that gives equal opportunities for people in society to realize their potential.

4.The punishment of any crime, including hate crimes, from the perspective of law and its elements, should be a logical circle, where it is necessary to establish a link between criminal

law and distributive justice. If we look at the other side, the perpetrator's side, the righteousness towards it, is actually the ability to find a level of proportionality between the severity of the offense and the severity of the punishment. The seriousness of the act is in turn determined by two factors - the offense committed by the act and the guilt or responsibility of the perpetrator.

5.The model of legal protection - theory developed by theorists (Harel @ Parchomovsky) emphasizes the basic goal of criminal law - the basic means by which society protects potential crime victims. Consequently, to achieve justice in society, it has to go much deeper, to look at the differences between individuals in terms of their vulnerability to crime. With what it is logical, the more vulnerable - the more protected. The legislation on hate crimes aims to protect precisely those individuals who are particularly vulnerable to crime because of prejudice against them. But what is vulnerability? According to some general definition, the individual's vulnerability to crime is actually the expected injury or damage to the work of that individual, i.e. the probability of damage / injury multiplied by its size. However, the magnitude of the damage or the violation may also signify an "abstract" violation, a violation of dignity or the autonomy of the victim. An injury that may have no physical consequences and has much greater implications for the victim's life. Implications that in the primary plan inflict hate crimes. By imposing harsh sanctions on hate crimes, such laws not only reduce the frequency of hate crimes but also reduce the exposure of members of different groups of acts of hatred in a differential way.

6.The increase in penalties is necessary precisely because of the equalization of the greater crime vulnerability of that group, which will constitute a form of compensation for the same. The legislator needs to make a good risk analysis that would raise the distribution of the social good. The risk can increase the sentence in two ways. If the perpetrator does a hateful act that causes the person to see and fear from future victimization, then the act is a greater offense than at all. And if the perpetrator chooses the victim as a result of what he has assumed to be particularly vulnerable, then he is guiltier of his crime than otherwise. The fact is that the larger penalties for perpetrators of criminal acts basically have the function of intimidation. In fact, it is necessary in order to deter potential perpetrators of acts of hatred. Due to the fact that the acts of hatred in this world of development, democracy and the promotion of human rights in the winter a great moment, in my opinion it is necessary that in the past it was the basis for major hostile conflicts, the basis for hatred and developing negative feelings towards the members of the other group (whether racial, ethnic, religious ...), be punished more strictly, with one and only goal - dissuading people from committing such offenses, whose damages are immeasurable.

7. Conclusion

1.21 century - time in which every area of social life is raised to a higher level, when there is no possibility of criticism of civilizations. A time when social values and norms are respected, when people see each other with great respect. At first it seems okay. When we go back through history we notice that there are big changes, so many other very important phenomena. New buildings, new policies ... new states. And when we analyze it, everything goes for the better. Everything except human beings. Yes, our civilization is going back to the time when there were no technologies and people helped one another, no matter at what social levels they were. Today we are living in a world where we speak a lot, but very often we do not realize what kind of words come out of our lips. We talk to someone; we talk about each other and so in a circle to the asylum. We can freely say that today we live in a time of hate speech. We talk bad about

those who are below us, even worse for those who are above us. There was a time when we were careful of whom we were talking to, when we were careful not to hurt someone in person. Today, this has been lost. We look in the eye and attack, mostly without facts and evidence. And all this because we know that no punishment is to be followed. Perhaps a warning, only if the person we are talking to is strong enough not to report and oppose. At a time when the system of punishment is being promoted and when resocialization is the main segment of the punishment, the question is where are the penalties for hate speech? An old proverb says: "the wound heals, but not the bad word". I wonder if those who write the law have ever been victims. Did they sense on their own skin what means being hurt by a word? Humiliated and humiliated before all. Did they sense the sharpness of the pain? Punishment and re-socialization for this work should be posthumous because impunity gives strength and force for stronger attack. Strength for another work and greater power. Power that will not stop until it receives the deserved effect. We learn from the consequences to be better and a little less powerful. The same consequences will not confront the beautiful word and repentance.

2.In today's world hatred is a feeling, something abstractly presented in the most general sense of the word. When we mention hatred, the first thing that comes to mind is anger, violence or contempt for someone. But in reality, what is actually hatred? What is a hate crime, are we already talking about something more serious, should the state system sanction it? Is it only a feeling of negative emotions towards someone or "beyond the horizons" signifying something more, translated into action, a work that has implications, not only to the individual, but also to the wider society? Hate crimes are something different from a sense of hatred (anger or contempt), a legal category, regardless of the implications of the society, whether positive or negative, defined and constitutionally regulated in some national systems. It is largely a phenomenon that emerges after World War II, from the apparently racist propaganda of the time and the Holocaust, putting the emphasis on the entire Nazi experience as a center of attention.

3.The influence of the existence of laws regulating this matter - acts of hatred is in any case of positive significance. The existence of legislation that will regulate this particularly sensitive legal category drives society upward because of the fact that the affected community is increasing the trust. The omitted option for proper handling of these crimes, insufficiently vigorously prosecuted or punished, arguments that in any case go in favor of the adoption of special laws for the regulation of this matter. Hate crimes require not only punishment, but also greater penalties against parallel criminal offenses. But the question arises as to whether the adoption of special laws for regulating acts of hatred will contribute to the improvement of the criminal justice system to these crimes? In comparative practice, the law of the countries is usually envisaged in the case of racial, ethnic or religious motivated violence, the authorized persons to consider the motivation of the perpetrator in determining the appropriate sentence. Which means that the increased penalties for hate crimes exist without the existence of special laws? This is a matter for regulating the individual legal systems of the states, in accordance with their manner of regulation and functioning. However, looking through the prism of the various theories, we can conclude that violence motivated by ethnic hatred or prejudice is different from other forms of violence. Acts of hatred are worse than the parallel criminals that they deserve to be treated differently - stricter penalties for perpetrators of hate crimes. Someone will say this is not fair.

4.We live in a world where everyone is equal, a world where punishment is a rough tool of law. Everyone is equal, but everyone is equal in the opportunities for equal life, equal utilization of positive influences in society, equal opportunities for development and use of community resources. Not in terms of prolonging the commission of punishable offenses, hate crimes, acts

that in the past, someone would say time of underdeveloped communities, a time of separation, where development was not based on the promotion of "these present values" was the starting point for major historical "wars." Unfortunately, today's society is a reflection of what happened in the past, the great "craving" between cultures, the stagnation of the human mind, and even the inability to deal with this problem. A problem that has long been solved.

5.Hate crimes themselves are worse, due to the fact that the characteristics for which the victim is selected are immutable characteristics. The fact that history involves many similar acts motivated by racism, xenophobia ... The choice of the victim is particularly cowardly because of the fact that they are persons who are part of a group with characteristics that are invariable. The acts of hatred convey the history of racism, discrimination and oppression that reflects inadequate evaluation of the victim. In the essence is a violation of fundamental ideals and principles, fundamental to modern democratic and multicultural societies. Hate crimes carry greater injuries that carry a strong message to the target person, the individuals or the group as a whole, inflict greater injuries and carry a greater offense than the basic crimes. However, with the determination of the sentence, the model of just protection is satisfied, making the legal system the basic means by which society protects potential crime victims. The distribution of that justice that needs to be achieved and accomplished is a matter for the state. By imposing tougher sanctions on hate crimes, it may also have the effect of intimidating potential perpetrators of such offenses, whereby the person, when he knows what penalty he is waiting for, may cause deterrence from doing the same. However, this is of minor importance. However, what leads to an extreme punishment for hate crimes is the damage that is caused to the target person, i.e. society as a whole, as well as the elements of the hateful work elaborated above. The special penal and legal treatment of hate crimes definitely signifies more severe punishment of the perpetrators, separation of such acts as forms of basic acts and of course prescribing more severe penalties for them. Separating the very motive as an aggravating circumstance aimed at endangering the fundamental human rights and freedoms in the foreground. The subjective component, the danger of the perpetrator not only for the target group, but also for the whole society, emphasizing his personality, subjective danger, intention and motive. In determining the weight of the work it is necessary to perceive these components of the perpetrator.

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