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Serbia and Montenegro: challenges of Rule of Law against disinformation and hate speech

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Abstract

The objective of this article is to analyze the state of the art of the EU enlargement process — scheduled for 2025 — to the most advanced candidates, Serbia and Montenegro, through an overview of the achieved objectives as regards the satisfaction of the political criteria for EU membership, the economic criteria and the alignment with the EU acquis. A particular attention will be given to one of the most critical profiles within the process: the lack of legislation against hate speech, and, in comparative perspective, the ways in which the two countries face the issue. The areas in which the two countries seem to have achieved encouraging results in terms of progress in the process of joining the EU will be analyzed, as well as those in which there are still critical aspects. Without claiming to be exhaustive and focusing on the content of the Reports on the subject, some possible hypotheses for solutions to the problem will be mentioned.

Keywords

Hate speech, Serbia, Montenegro, European Union, Comparative Methodology, Regulatory Framework

Introduction

The purpose of this contribution is to analyze the state of the art of the EU enlargement process to the advanced candidates, Serbia and Montenegro, through an overview of the objectives achieved regarding the fulfillment of political and economic criteria, and, more generally, the overall alignment with the *acquis communautaire*. Specific attention will be given to one of the profiles that, as emerging from studies in the field, appears particularly critical within the process: the enforcement difficulties of the legislation regulating the subject of preventing incitement to hatred and the spread of disinformation, with a particular emphasis on hate speech, which is recognized by Serbian and Montenegrin legislation as a form of discrimination.

The analysis is based on an exploratory inquiry still in progress, and does not offer an exhaustive answer as to what might represent feasible ways to speed up the accession process of the two mentioned states. The choice to investigate Serbia and Montenegro aims to provoke reflection on how, despite being the most advanced candidates in the EU accession process (demonstrating moderate advancements in sectors such as administration and economic policy, according to the reports to be analyzed), they still raise concerns in areas such as freedom of information and hate speech.

Within the broader framework of Serbia and Montenegro's achievements with regard to compliance with the Rule of Law, this survey aims to offer an overview of the various steps taken in the direction of combating distortion of information and the dissemination of content that incites intolerance towards minorities.

First of all, an attempt will be made to offer a definition to the notion of hate speech, reporting some studies that have investigated the specific terrains on which it develops, its potential consequences and the motivations that lead certain figures who enjoy a certain popularity to instrumentalize it for their own purposes. In the knowledge that talking about hate speech inevitably leads to the issue of freedom of expression, and that discerning the boundaries between these two dimensions is very complex, the European regulatory framework on hate speech will be summarily analyzed, up to focusing on how this phenomenon is regulated by the candidates Serbia and Montenegro. Subsequently, attention will be directed towards the European Commission's Annual Reports, which indicate that these states have achieved a moderate level of preparedness across numerous domains, positioning them as highly promising candidates in the European Union accession process. However, despite this progress, the realm of freedom of expression and information, which bears a hazardous link to the problem of hate speech, remains a cause for concern.

Hate speech between attempts at definition and gray areas: a survey of the international and European regulatory framework

The rise of the online dimension of communication has extended to private subjects, therefore different than professional and institutional ones such as televisions and newspapers or universities, the possibility of participating in discussions of public interest and sharing a great deal of content on a daily basis, and on a wide variety of topics. These are sometimes published in the form of discourses steeped in intolerance and prejudice, often included in comments to articles on social networks, or within blogs or television programs. Currently, hate speech is often defended under the guise of upholding freedom of expression on social media platforms, thereby exacerbating its impact (Noriega and Iribarren 2011). It is also exploited by the political sphere as a means to garner support, distorting the truthfulness of facts for propagandistic objectives (Cerquozzi 2018). In this regard, while the media can be victims of authoritarianism, some studies (Kosho 2019) confirm that just as often they can be useful tools for promoting populism and authoritarianism, even speaking of a "populism industry" (Kosho 2019: 103). In the Balkans, the media's lack of economic independence leads them to be inevitably *captured* by business and political elites in order to gain control of information. These authorities exploit the media's financial weakness to spread, through an unabashedly populist style and rhetoric, germs of intolerance and incitement to hatred; a "mediated populism" (Kosho 2019), aimed unilaterally at gaining power or simply maintaining and consolidating the status quo. All of this is done by exploiting what some (Felberg and Šarić 2020) have referred to as the "gray areas" between hate speech and impoliteness, simple linguistic unkindness, seemingly harmless.

Since there is a lack of a clear and unambiguous definition of "hate speech" (for an overview of definitions, Titley *et al.* 2015), which seems to be only sketched out on the international and European legal level, it is very challenging to measure against said gray areas. In these, incitement to hatred (usually aimed at groups of people and legally regulated) is often implicit, and it is also very complex to distinguish it from offensive language (aimed at a particular person and often without legal consequences), leading to uncertainties in the application of laws and regulations governing the matter. With the inevitable consequence that vagueness is also employed as a means of controlling free speech.

Extensive studies on the subject (Ivanović 2020) observe that hate speech finds fertile ground to proliferate through the medium of social networks, as the Internet medium easily manages to reproduce the dynamics of the individual's behavior in the

crowd. The individual, in the mass, manages to hide in it, loses his individuality because he tends to accept his ideas without question, but above all to adhere to the emotions of the majority, enjoys his protection and anonymity, losing the sense of responsibility for his actions, which can take on more extreme connotations. The Internet, and within it social networks, make it possible to mobilize with a greater speed a very large number of people who — at least in appearance — think alike, or among whom there is in any case a sense of closeness due, paradoxically, precisely to the physical distance, and thus to the *deresponsibilization* given by interactivity.

According to a number of studies on the subject (*ex multis*, Ivanović 2020), there are three main actors in online discourse on social media: the sender, i.e., the one who sends the information; the recipient of the information; and an intermediary, who acts as a conduit between the sender and the recipient and is usually the service provider., some common forms of hate speech on social networks can also be identified. The first consists of the creation of content on one's profile, in the form of text, audio or video, without hiding behind anonymity. This form of hate speech is often employed by public figures, such as politicians or journalists, who enjoy a certain respect in social communities and therefore want to impose their opinions in order to consolidate position or gain new support. This pattern can also be adopted by those who are unknown to the general public in order to draw attention to themselves. The second form of hate speech, on the other hand, involves the anonymous publication of intolerance and hate content, and the motive for anonymity lies in the desire to avoid the legal consequences of one's words. The third model, on the other hand, involves sharing content produced by others that contains hate speech, and thus is closely related to the promotion of incitement to intolerance, and this is a peculiarity of social networks, which guarantee this opportunity. Finally, the fourth form of hate speech is commenting, and that is making comments on content made public or shared.

Shifting the focus again to how the phenomenon declines in the political dimension, hate speech can be considered closely related to the phenomenon of populism. When it is not reduced to mere "valence populism," some studies on the language of politics (Vujić 2021) argue that populist rhetoric is characterized precisely by being pervaded by more or less explicit hate speech, by a distinct political *subdiscourse* which uses the semantics of racism, homophobia, patriarchy, drawing a lexical separation between the concept of "us," instrumentally narrated as "victims," threatened by "others," from "them," represented as evil, unwanted and different. And while it is true that the ultimate goal of political propaganda is to induce, directly or indirectly, consent and adherence, (Scekic 2015), the potential risks that arise from insinuating the germ of intolerance and hatred into the subconscious have to be seriously addressed.

In countries such as Serbia and Montenegro, which according to the annual reports of the European Commission are moderately advanced in terms of achieving the goals in economic policies and in the administrative field for alignment with the *acquis communautaire*, the field of freedom of expression and disinformation still raises concerns. The latter, as we will see below, turns out to be often linked to the phenomenon of hate speech in these countries, employed by the world of politics for the purpose of distorting the objectivity and truth of information, creating polarization and a climate of widespread intolerance, especially toward minorities, for purely political purposes of acquiring consensus.

In the 1970s, U.S. jurisprudence elaborated the concept of hate speech, as a category indicating a set of words unilaterally aimed at expressing intolerance and hatred towards a person or group of people, with the risk of triggering violent reactions against that group or on its part (Pino 2008). As mentioned, there is no unambiguous and generally agreed definition; nevertheless, European institutions have attempted to reconstruct at least a definitory framework. On the subject of "hate speech," European countries use the definition contained in Council of Europe Recommendation 97(20), according to which

> The term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.[1]

It is interesting to remind the call for member state governments to recognize that public authorities and public institutions at the national, regional and local levels as well as their officials, have a responsibility to refrain from statements — particularly in front of the media — that can reasonably be understood as hate speech, or that may legitimize, spread or promote racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. On the international level, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)requires member states to prohibit incitement to racial-ethnic hatred and discrimination, as well as the International Covenant on Civil and Political Rights. At the European level, on the other hand, Article 10 paragraph 2 of the European Convention for Human Rights and Fundamental Freedoms states that freedom of expression, precisely because it entails duties and responsibilities, may be subject to formalities, re-

[1] Council of Europe. Committee of Ministers. Recommendations 97(20) on "hate speech", October 30, 1997.

strictions and penalties prescribed by law; and such restrictions must be considered necessary measures in a democratic society (since they deal with curbing discrimination and hostility). Moreover, Council Framework decision No. 913/2008 which binds European states to recognize hate speech as a hate crime and to provide an aggravating circumstance for this type of crime. It is relevant to mention the Additional Protocol to the Convention on cybercrime, signed in 2011, which aims to harmonize criminal law among states in the fight against xenophobia and racism on the Internet. It is also important to mention the Victims' Rights Directive, which offers special attention to victims of hate crimes, who are considered vulnerable (for an in-depth reconstruction on international definitions and recommendations, Cerquozzi 2018); and the EU Code of conduct on countering illegal hate speech online, which, although having the nature of soft law, still represents an authoritative source that also focuses on the specific 'digital' dimension. At last, it is necessary to mention the recent Digital Services Act, which is the new regulation on digital services, approved by the European Parliament on July 5, 2022, along with the Digital Markets Act. These two measures make up the Digital Services Package, which aims to promote the proper functioning of the EU's internal market for digital services. The Digital Services Act has modified existing rules according to the principle: "what is illegal offline should also be illegal online." The DSA was published in the Official Gazette on October 27, 2022, and came into effect on November 16, 2022; it will be directly applicable throughout the EU and will apply fifteen months or starting from January 1, 2024, if later, after the entry into force[2].

Serbia: compliance with Rule of Law between progress and uncertainties

The Serbian government is consistent in stating that EU membership is a strategic objective and one of the priority goals. We will report here data on some of the areas that are analyzed annually by the European Commission Report.

According to the European Commission's 2022 Report,[3] Serbia's progress as to its ability to assume the obligations of EU membership continues at a moderate pace. The country is continuing to work on alignment with the EU *acquis* in many areas, such as company law, research, intellectual property rights, innovation and financial control. Regarding the fulfillment of the political criteria for EU membership, it appears that during the report's study period all political actors took an active part in the April

[2] For more informations, https://digital-strategy.ec.europa.eu/it/policies/digital-services-act-package.

[3] https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2022_en.

3, 2022 early parliamentary elections, leading to a more pluralistic parliament. The elections themselves were held in a calm and peaceful atmosphere with respect for fundamental freedoms. However, international observers noted some shortcomings; therefore, according to the report, it would be necessary for Serbia to fully implement the new recommendations of the Office for Democratic Institutions and Human Rights (ODIHR) and Council of Europe bodies in order to ensure maximum transparency in the process leading up to the elections. As mentioned, a new, more pluralist parliament has been elected on August 1, 2022; however, it is necessary, according to the Commission, to employ the code of conduct more effectively in order to prevent and sanction the use of offensive and inappropriate language during the sessions. Serbia appears to be moderately prepared as far as public administration reform is concerned, with progress being made in tax administration and privatization of state-owned enterprises; however, recommendations from past years have only been partially implemented. The state still maintains a strong footprint in the economy, and the private sector is struggling to develop due to shortcomings in the implementation of the rule of law, mainly involving corruption, judicial inefficiency, and failure to enforce fair competition. A certain level of preparedness is also found in relation to the judiciary; a decisive step toward its strengthening of independence and accountability was achieved through the approval of relevant amendments to the Constitution. Serbia also appears to be moderately prepared in the area of anti-corruption: the Council of Europe's Group of States against Corruption (GRECO) in March 2022 noted that the adoption of amendments to the Law on Prevention of Corruption had the merit of addressing previously identified shortcomings. However, the areas most vulnerable to corruption require specific risk assessments and targeted actions. Serbia is also reasonably well prepared in the fight against organized crime, although the Commission suggests moving from a case-by-case strategy — which has nevertheless made progress — to a high-profile strategy aimed at dismantling large, internationally widespread criminal organizations.

Regarding economic criteria, Serbia is between a good and moderate level of preparedness and has made progress in developing a functioning market economy; a slight increase in the unemployment rate in 2021 appears to be a consequence of increased market participation, reflecting a post-pandemic crisis recovery from COVID-19. The green agenda appears, then, to be closely linked to the reform and economic development agenda. In terms of good neighborly relations, Serbia is an active participant in regional cooperation, and is overall committed to improving bilateral relations with other candidate countries, potential candidates and EU member states. However, relations with Croatia and Montenegro remain strained, but particularly with the latter, the parties are showing an increasing willingness to resolve open issues and improve

relations. The EU-assisted Dialogue on Normalization of Relations with Kosovo continued throughout the reporting period, with regular monthly meetings and a High-level meeting in Brussels on August 18, 2022; both countries were urged to engage constructively to avoid further delays in negotiations. As far as external relations are concerned, Serbia has not aligned with the Union's restrictive measures against Russia and most of the High Representative's statements, so it is expected to engage in priority alignment with the EU's Common Foreign and Security Policy. It has, however, actively cooperated with its neighbors and member states in managing mixed migration flows to the Union, including granting Ukrainian citizens who fled the war temporary protection for one year. With regard to the legislative and institutional framework for the protection of fundamental rights, this is largely in place; although it is late in adopting an action plan against violence against women, Serbia has introduced new anti-discrimination and pro-Roma inclusion strategies, as well as action plans on gender equality.

Although the overall picture analyzed shows a fair amount of progress the area of freedom of expression does not seem to be making significant advancements; this affects the proliferation of hate speech and the transparency of information, inevitably departing from the values and principles enforced by the European Union.

Freedom of expression in Serbia and its relationship to disinformation and hate speech

"Freedom of expression is a complex right encompassing a wide range of social relations and containing multiple legal institutes and guarantees. Media freedom is an integral part of this right and a condition for its uninterrupted enjoyment" (Teofilović, Zahirović, Stojanović and Popović 2018).

According to the aforementioned 2022 Report of the European Commission, Serbia shows some level of preparedness in the area of freedom of expression, but no progress seems to have been made in the analyzed time frame. Threats and violence perpetrated against journalists continue to cause concern; recurrent statements by senior state officials about the work of journalists creates an environment in which freedom of expression cannot be exercised unhindered. Investigative journalists suffer constant refusals by government agencies in authorizing them to disclose information, or receive no response. The start of consultations on amendments to the Law on Public Information and Media and the Law on Electronic Media is delayed; for the latter, the amendments should also address the independence of the media regulator. The Law on Access to Information of Public Importance was amended in November 2021, aligning

with international standards, but still did not fully incorporate proposals made by the working group monitoring the media strategy.

One of the most critical profiles Serbia faces, and which inevitably has an impact on the speed of its accession to the Union, is that of the regulation and implementation of provisions on the prevention of disinformation and hate *speech*

The Commission Report notes that discriminatory terminology is often used and tolerated in the media, and it is rarely followed by intervention by regulators or prosecutors. Hate speech in Serbia is mainly directed at Roma, LGBT, women, and migrants (Jokic, Danka & Stanković, Ranka & Krstev, Cvetana & Šandrih Todorović 2021). The legal framework governing the issue of hate speech in Serbia starts with the Constitution, with its Article 18 stating that "provisions on human and minority rights shall be interpreted for the benefit of the promotion of the values of a democratic society, in accordance with valid international standards on human and minority rights."[4] Not only that, in Article 46, the Constitution guarantees freedom of opinion and expression, defining the legitimate objectives that may limit it. Finally, Article 50 states that there is no censorship in Serbia, but the competent court may prevent the dissemination of information and ideas through the media if it is necessary to prevent incitement to racial, ethnic or religious hatred, discrimination, hostility or violence.

The most important law on hate speech in Serbia is the Law Against Discrimination,[5] which recognizes hate speech as discriminatory practices. Article 11 imposes a ban on expressing ideas and opinions or disseminating information that incites discrimination, hatred and violence against an individual or a group of people because of personal characteristics, in any place accessible to the public. The Law on Public Information and Media[6] also contains provisions that directly or indirectly prohibit hate speech, specifying that there is no violation of the prohibition of hate speech if certain information is published as part of an objective news report. It is worth mentioning the Law on Electronic Media,[7] which imposes an obligation on the Electronic Media Regulatory Authority/REM to ensure that the content of programs does not violate human dignity and other personal rights, including providing for specific cases of restriction of freedom of reception and broadcasting in case of serious violations.

The Criminal Code provides penalties for acts that constitute hate speech, such as incitement to national, racial and religious hatred and intolerance (Article 317), racial

4 Ustav Republike Srbje [Ustav], 2006. Hereafter, all English translations of the reported provisions are by the author.

5 Zakon o zabrani diskriminacije, 2021.

6 Zakon o javnom informisanju i medijima, 2016.

7 Zakon o elektronskim medijima, 2016.

discrimination (Article 387), recognizing as specific crimes those against honor and reputation (Articles 170, 172 and 174)[8]. The 2012 reform provided for better regulation of *hate speech* by introducing, in Article 54a, hate crime as a special aggravating circumstance for the imposition of a criminal sanction (Blagojevic 2016).

In Serbia, media self-regulation is a means of ensuring greater professionalism and accountability in journalism. The supreme self-regulatory authority for print and online media is the Press Council, established in 2006, whose activities are based on the Code of Ethics for Serbian Journalists.[9] This code contains a number of provisions stating that a journalist must combat all forms of discrimination, incitement to hatred and violence, taking all necessary means to prevent them. The first chapter emphasizes the duty of journalists to report information accurately, timely and objectively, stressing that concealment of facts that could significantly affect public perception of an event is equal to their distortion. It is crucial to emphasize the importance of self-regulatory authority because, compared to judicial proceedings, self-regulation is free and faster.

The Press Council has already discussed several cases of code violations, such as the action brought by the Gay Lesbian Info Centers against a text published in Informer magazine. Indeed, the Council issued a warning to the magazine for violation of the journalists' code of ethics, as the author had not complied with the principle of the journalist's responsibility to counter *hate speech* and the principle of professional diligence in preventing any possible danger of discrimination spread by the media (Blagojević 2016).[10]

Also very important is the work of the Electronic Media Regulatory Authority, which is in charge of preventing the spread of hate speech through electronic media, providing directives to broadcasters and even going so far as to impose the temporary or permanent revocation of the broadcasting license. Consider the case of TV PINK, which received a warning in November 2013 when statements by some participants in a reality show broadcast on the station incited discrimination on the basis of nationality (Blagojević 2016).

It is worth mentioning that hate speech as a form of discrimination is not expressly treated as a crime in the Serbian Criminal Code; however, there are a few court cases on hate speech, two of which involved politicians. The first judgment deals with discriminatory statements against the LGBT+ population in the text "The 2nd October 2011"

[8] See https://www.mirovni-institut.si/en/overview-of-the-hate-speech-and-disinformation-regulation-in-the-eu-and-in-theeu-enlargement-countries/ (fact sheet on Serbia).

[9] Kodeks novinara Srbje, 2015.

[10] Savet za štampu, žalbeni postupci: Gej lezbejski info centar protiv dnevnog lista Informer, Odluka Komisije za žalbe Saveta za štampu od 24.9.2015.

written by Nebojša Bakarac; the second is based on derogatory statements against the LGBT+ population made by Dragan Marković Palma to the media. These are the first rulings in Serbia for which the courts found that politicians had violated the right to sexual orientation, and for which orders were issued prohibiting them from repeating that conduct, paving the way for other such rulings by the Belgrade Higher Court[11] (Blagojević 2016).

Thus, it is evident that Serbia has made significant strides in bringing its national legislation in line with European and international standards. However, the main critical issue noted in the implementation of hate speech regulation relates to the fine line between freedom of expression and speech inciting intolerance.

Citizens in Serbia can personally exercise their rights by initiating a civil action or through a criminal complaint. However, the lack of statistical data on the number of cases and their outcomes makes it very difficult to investigate the actual enforcement of hate speech legislation; this information can only be deduced from data published in state or civil society human rights organizations' reports. Here we have chosen to report on a case that may reflect the typical attitude of the courts towards hate speech (Krstić 2020), and the way in which the delicate boundary between prohibited speech and freedom of expression is treated. In 2020, the Equality Protection Commissioner took legal action against the author of the text "Domestic Violence and Violence Against the Family"[12] for violating Articles 12 and 20 of the Law on the Prohibition of Discrimination. The commissioner complained that, in his article, the author conveyed the message that protection from domestic violence would not be justified in all cases, but only against "weak women," stereotyping and generalizing the role of women. But that's not all: listing possible causes for the increase in domestic violence, it cites police protection to "homosexuals walks" through the city streets, during which violent, naked and vulgar primitive sexuality is openly celebrated, supporting — not too implicitly — the restriction of guaranteed rights of freedom of movement and assembly. The Novi Sad Court of Appeals[13] overturned the High Court's 2018 ruling, which had recognized the perpetrator's commission of an act of discrimination based on gender and sexual orientation, prohibiting him from expressing attitudes that demean women and the LGBT+ population, including in the media and in public places in general.[14] In fact, the

[11] Such as: Prva presuda za govor mržnje prema LGBT, 7. 6. 2011. [First judgment for hate speech against LGBT, November 2011]. Presuda zbog govora mržnje na internetu, 2. 3. 2012. [First judgment for hate speech on the Internet, March 2012].

[12] http://www.nspm.rs/kuda-ide-srbija/nasilje-u-porodici-i-nasilje-nad-porodicom.html?alphabet=l

[13] Apelacioni sud u Novovm Sadu, 2018.

[14] Poverenik za zaštitu ravnopravnosti, 2019a.

Court of Appeals held that the author's statements and the article itself could not be considered hate speech against women or members of the LGBT+ population because the author's statements had the value of mere judgments and were not published in a tense social environment. The ruling was also upheld by the Supreme Court.[15]

A further critical profile lies in the issue related to the autonomy and independence of journalists, who are often subjected to pressure and attacks. According to the aforementioned European Commission Report 2022, during environmental protests in November and December 2021, some journalists reported being charged with petty crimes and receiving fines for blocking roads, even though they were there for news reports. "Although the Transparency International's Corruption Perception Index (TICPI) shows more encouraging trends, Serbia, together with other Western Balkan states, still demonstrates significantly lower levels than those achieved in the post-communist states which joined the EU in 2004" (Petrovic 2018).

Far from outlining proposals for resolving the listed issues, some recommendations that have been put forward by scholars in the field are given below. As suggested by the 2021 report by Jelena Jovović and Dubravka Valic Nedeljković,[16] an acceleration to the resolution of the above critical profiles, which potentially contribute to slowing down the accession to the Union, could be provided by enabling the implementation of the Strategy for the Development of the Public Information System for 2020-2025 and its action plan, improving media self-regulation with the support of the Ministry of Culture and Information. A training plan could be provided to the judiciary on freedom of expression and hate speech, as well as educating members of the REM Council and the Press Complaints Commission on unlawful expression, with financial and professional support from the relevant ministries. Finally, an effective strategy could be to amend the Journalism Code so that useful interpretive tools can be provided to prevent disinformation, *fake news* and *hate speech*. With regard to criminal law challenges, on the one hand, Serbia should harmonize the provisions of substantive criminal law with ECRI's Recommendations on National Legislation to Combat Racism and Racial Discrimination; on the other hand, it should ensure police training on the methodology of detecting hate crimes, with a focus on the context in which they occur (Ivanović 2020) and offering counseling and legal assistance to victims, ensuring their effective access to justice (Jokanovic

2018).

[15] Vrhovni kastracioni south, 2020. See https://www.mirovni-institut.si/en/overview-of-the-hate-speech-and-disinformation-regulation-in-the-eu-and-in-theeu-enlargement-countries/ (fact sheet on Serbia).

[16] See https://seenpm.org/wp-content/uploads/2021/11/Resilience-Factsheet-Serbia.pdf (fact sheet on Serbia).

Montenegro and alignment with the *acquis communautaire:* the state of the art

As a comparison, it is useful to point out that also another advanced candidate for accession to the Union, Montenegro, despite steady progress in many areas in aligning with the *acquis communautaire*, still raises concerns regarding the full implementation of freedom of expression and the issue of curbing the proliferation of hate speech and fake news. With regards to the political criteria for accession to the Union, the European Commission's Report 2022[17] shows the proper functioning of Montenegrin institutions has often suffered from political instability, as well as tensions within the majority, paralyzing the implementation of reforms and decision-making processes in general. Although the Parliament has made progress in strengthening its transparency, the Commission notes that it would be necessary to implement the regulation of cooperation between the Government and Parliament in order to improve participatory and oversight mechanisms. Montenegro appears moderately prepared in the area of public administration, where limited progress has been made, including the adoption of the 2022-2026 strategy for public administration. It also appears moderately prepared in the area of the judiciary, although the Commission notes that legislative changes consistent with European standards would need to be adopted in order to strengthen the independence, integrity, and accountability of the judiciary. Montenegro has achieved some level of preparedness in the fight against corruption, in particular due to the positive performance of the work of the Anti-Corruption Agency, although, in the Commission's view, the legal and institutional framework for financial investigations, seizure and confiscation should be made more uniform with the EU *acquis*. Montenegro also appears to be moderately prepared in the fight against organized crime: although the Commission calls for addressing some systemic deficiencies in the criminal justice system, the country's achievements include the adoption of a new strategy for the prevention of terrorism and money laundering, as well as achieving another record number of drug seizures and increasing the number of final convictions in organized crime cases. Montenegro has also made good progress on meeting economic criteria, with a strong recovery in 2021 and steady growth in the first half of 2022, thanks to the removal of restrictions from COVID-19; external imbalances have decreased significantly thanks to the recovery of tourism, the banking system appears stable, and the labor market situation is on the upswing. As with Serbia, the green agenda appears to be closely linked to the economic reform agenda. Regarding good

[17] See https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf.

neighborly relations and regional cooperation, Montenegro maintains good relations with EU member states and is actively working on regional cooperation; relations with Serbia remain complex, but both states are cooperating to resolve open issues. The country also continues to align with the Union's Common Foreign and Security Policy, including restrictive measures resulting from Russia's aggression against Ukraine. In the area of migration, Montenegro is the Western Balkan country that has hosted the highest number of Ukrainian citizens fleeing war; it has also signed a roadmap for cooperation with the European Asylum Support Office (now the EU Agency for Asylum), joining the European Migration Network as an observer member. Montenegro appears moderately prepared in the area of fundamental rights, as its legislative and institutional framework is almost fully in place and the country continues to comply with international human rights obligations. With regard to freedom of expression some critical issues appear evident: although the legal framework on the protection of journalists and other media workers has been improved through the adoption of amendments to the Criminal Code that provide for harsher punishments against attacks and threats to journalists, as well as obstruction of their work, the absence of effective judicial follow-up on old important cases remains a matter of concern. Without unduly restricting freedom of expression, continued efforts to counter disinformation and curb online hate speech would be necessary, according to the European Commission, in light of the fact that both the review of the legal framework and the drafting of a new media strategy seem to remain on hold.

The consequences of the lack of a self-regulatory body in Montenegro

During the long crisis of the COVID-19 pandemic, the spread of disinformation and hate speech has intensified; the state's lack of a strategic approach to the problem inevitably produces inaccurate information and conspiracy theories that influence citizens' decisions (Bogdanović 2021). Disinformation is conveyed through the media, the favored means for spreading propaganda and hatred. The proliferation of content that does not meet the standards of the journalistic profession is mainly due to the fact that, unlike in Serbia, the issue of promoting disinformation is not explicitly mentioned in the Journalists' Code. The issue of hate speech has been explicitly mentioned only in the guidelines that journalists must adhere to: these state that the media should not publish material that could contribute to the spread of hostility. It is true that the new media law requires online media to remove problematic comments from readers and that the Journalists' Code obliges such media to inform users of the rules and moderate their comments. But practice shows that moderation is inadequate compared to

the scope of readers' comments, which abound with insults against ethnic, religious and sexual orientation minorities, as well as insults against political or ideological opponents. According to some studies (Bogdanović 2021), the Office of the Protector of Human Rights and Freedoms stated that there has been an increase in the number of complaints filed due to hate speech in recent years. In 2019, only one complaint was filed due to ethnicity-motivated hate speech, and then followed with seven in 2020 and thirteen in 2021, concerning hate speech against ethnicity, gender identity or gender reassignment, or against political affiliations and opinions. And in most cases, citizens do not file a formal complaint, but only inquire about the mechanisms available to have hate comments removed on social networks; however, the Ombudsman points out that social networks' response to such reports is often slow and nonexistent, and even in cases where the Police are involved, it is very difficult to identify the source IP addresses, which are often located outside Montenegro.

Freedom of expression is certainly enshrined in the Montenegrin Constitution, which provides that the competent court may prevent the dissemination of information and ideas through the media where this is deemed necessary to prevent the propagation of war, incitement to violence or the commission of crimes, and the spread of racial, national and religious hatred. Likewise, it prohibits inflicting or encouraging hatred, intolerance, while also imposing the prohibition of discrimination.[18]The Law on the Prohibition of Discrimination offers a definition of hate speech as any form of expression of ideas, statements, information, and opinions that spread, foment, or justify discrimination, hatred, and violence on the basis of intolerance, considering discrimination to include harassment carried out through mobile devices, social networks, and the Internet that has the goal or effect of violating personal dignity or causing intimidation. Thus, Montenegro has explicitly legislated hate speech as a special form of discrimination, providing that it is punished with a fine ranging from 500 to 20,000 euros. The Criminal Code also refers to hate speech, punishing anyone who incites violence and hatred on the basis of race, skin color, religion, national or ethnic origin and affiliation, and also punishing those who spread ideas of racial superiority. These issues are also addressed by the Law on Public Order and Peace, while the Media Law, among other provisions against incitement to hatred, obliges all media outlets to remove a comment with illegal content within 60 minutes of becoming aware of it or receiving notice of it. Well, despite the robust regulatory framework, certain enforcement difficulties survive. And these stem from the fact that there is no self-regulatory body in Montenegro to develop and maintain professional standards. Several years ago, the Media Self-Regulatory Council suspended its activities and complaint han-

[18] Article 50 Constitution of Montenegro.

dling due to lack of funds. As a result, many private media decided to appoint their own Ombudsman. In several cases, the ombudsman ordered the newsroom to disable the visibility of the comments section of some websites to protect readers from hate content. Before the legislative changes, it was the Committee on Petitions and Complaints that dealt with issues related to compliance with professional standards; in 2019, the body ruled on as many as 60 complaints, relating to lack of objectivity, biased and unverified information. However, opinion polls reveal that the majority of citizens have full confidence in the accuracy of information disseminated by the media. Civil society organizations have consistently condemned the dissemination of insults and hate speech over time; but there have been no initiatives by the media community to change self-regulatory documents and provisions on "inflammatory" rhetoric and misinformation. Moreover, there are no platforms in Montenegro where hate speech can be reported to the relevant authorities or self-regulation. The spreading of insults and incitement to violence against various ethnic and religious groups is also implemented by political actors who often enliven parliamentary sessions with mutual accusations and hate speech. A regulation that provided penalties for those who disrupt the order of parliamentary sessions was repealed in 2020, and the Code of Ethics for Members of Parliament does not appear to be an adequate tool to discourage disparaging and discrediting behavior (Bogdanović 2021).

Some studies[19] also note an additional factor of concern, and that is the political independence of the media. Although politicians are prohibited from having media ownership, indirect influences are very evident; mainstream media in Montenegro are mostly politically affiliated, often depending financially on political figures. These studies show that the link between politics and the media became even more evident in 2021, immediately after the August 2020 elections and the fall of the Democratic Party of Socialists; an example of this is the fact that immediately after the elections the new management of the national public broadcaster RTCG, which was previously close to the Đukanović regime, was appointed.

Montenegro's political, economic, and social situation is ultimately reflected in the conduct of the media, which is also influenced by outdated regulations, the absence of proper self-regulation and a regulated market, to the point of producing an increasing tendency for hate speech, dissemination of disinformation, and propaganda. Such content is also spread through right-wing online media and social pages whose sources of funding are not publicly accessible (Bogdanović 2020).

[19] Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia & Turkey in the Year 2021: Country Report: Montenegro. (2022). (n.p.): EUI.

To assist in the development of the legislation and its effective implementation, the Montenegro Media Institute has developed a list of recommendations for the media community and civil society. According to these, a self-regulatory body should be created to begin the process of amending the Montenegro Journalists' Code to include the prevention of the spread of disinformation and incitement to hatred. Online media should have comment moderation systems in place; relevant institutions should react to the spread of disinformation and hate speech by preparing intermediate measures between arrest and an overly passive approach. The Criminal Code should also be amended, as its lack of precision makes it easy to deviate from internationally expected standards on freedom of expression. Finally, the government should work on raising awareness through a comprehensive media literacy strategy.

Conclusion

According to the 2016 Eurobarometer survey on Media Pluralism and Democracy[20] , at least 75 percent of people who follow or have taken part in online discussions and conversations say they have heard, read or otherwise been involved in debates that have incited or justified intolerance, xenophobia and other forms of hatred. According to studies in the field (Cerquozzi 2018), it would be mandatory, on a general level, to introduce self-regulatory tools into the web, leading the community to become aware of the phenomenon and to trigger a preventive response of behaviors at risk of deprivation of rights. It is clear that this issue concerns the networked space as a whole, and is not only an issue to be addressed by candidates for accession to the Union. On closer inspection, the countries of the Union are well aware that they face similar issues every day, and that they are by no means a distant problem. Against the backdrop of the legal framework analyzed above, it must be acknowledged that there are some good practices in this regard; among the various, one thinks of the online youth campaign for human rights "No Hate Speech Movement"[21] , run by the youth sector of the Council of Europe, which aims to provide young people and associations with the necessary skills to raise awareness of the problem of hate speech and help them recognize possible violations of human rights. In Italy, with a view to enhancing digital literacy (Cerquozzi

[20] See: http://ec.europa.eu/justice/fundamental-rights/files/media-pluralism-factsheet_en.pdf ;http://data.europa.eu/euodp/en/data/dataset/ S2119_86_1_452_ENG.

[21] See http://www.coe.int/en/web/no- hate-campaign/objectives-and-priorities-2016-2017 and http://www.nohatespeech.it.

2018), the manifesto of Parole O_stili[22] , the first decalogue in Italy aimed at neutralizing hate speech by appealing to common sense and education, is very important.

Extending the discourse to the EU candidate countries the contribution presented a survey of the advances of selected candidates, Serbia and Montenegro, in aligning with the *acquis commaunitaire*, seeking to highlight how despite the fact that European Commission Reports and sector studies show steady progress in many areas, such as the economy, good neighborly relations and public administration, that of the implementation of freedom of expression remains an area of concern for both countries. Both countries are faced daily with the problem of the instrumentalization of information for political purposes and the spread of fake news, issues that are inevitably linked to the incendiary rhetoric of hate speech in the media, including electronic media. From the analysis conducted, Serbia, thanks to its self-regulatory mechanisms, seems potentially ready to deal with the growing phenomenon of hate speech, being supported also by a body of law that treats the phenomenon as a form of discrimination and punishes it as such. According to the aforementioned European Commission's 2022 Report, however, it would be necessary for Serbia to implement its media strategy and action plan without further delay and in a transparent manner, focusing on strengthening the safety and security of journalists and ensuring that high-level officials refrain from labeling or making verbal attacks against them, and that in any case any threats and forms of physical and verbal violence are swiftly prosecuted. According to the Commission, Serbia should also implement media pluralism by ensuring transparent and fair co-financing for public interest content.

Unlike the Serbian context, in Montenegro, the absence of self-regulatory mechanisms and a single body to which appropriate petitions can be submitted makes it more difficult to address the phenomenon of hate speech, contributing to slowing the advancement of an area, such as freedom of expression, whose implementation would be necessary to accelerate the process of accession to the European Union. According to the European Commission, Montenegro should optimize the review of the legal framework and the drafting of the media strategy through an inclusive dialogue with the media and civil society to align with the EU *acquis*, as well as support further efforts to establish effective self-regulatory mechanisms. It should strengthen the effective protection of journalists and other media practitioners by ensuring the prosecution of crimes against them; finally, it should refrain from any political, legislative or administrative action that threatens to undermine the editorial, institutional or financial independence of the public broadcaster.

[22] See: http://www.paroleostili.com/.

Then, in both countries, with appropriate differentiations, it appears necessary to take action on the training and education of legal practitioners and authorities involved in enforcing professional journalistic standards. In order to ensure, once and for all, more effective and tangible enforcement of hate speech legislation, and to prevent incitement to hatred, violence and discrimination of minorities, in order to implement sensitivity on the issue of spreading intolerance and promoting hatred, first and foremost within civil society.

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