

# Application of the National Legislation in the Area of Countering Hate Speech



Organization for Security and  
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## **APPLICATION OF THE NATIONAL LEGISLATION IN THE AREA OF COUNTERING HATE SPEECH**

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## Criminal cases.

At the time of this study, a request was made to the official on-line register of court judgments (<http://reyestr.court.gov.ua>) to check the availability of sentences in criminal cases related to the application of **Article 161 of the Criminal Code of Ukraine** "Violation of citizen equality on grounds of race, nationality, religious beliefs, disability and other."

In total, the Register, which recorded cases since 2007, appeared to contain **139 court judgments** matching the query. Of these, **90** cases are procedural, and **49** are material; of those **18 judgments** are related to hate speech by the content. Among them, 7 were the judgments of the appellate courts that reviewed the verdicts of the first instance courts. In general, we can talk **about 11 criminal cases in 10 years**, in which the courts evaluated one or another manifestation of hate speech.

From these cases, **1** concerned dissemination of hate speech in the media, but the case resume did not mention the responsibility of creative staff, or media officials (anti-Semitic).

The persecution of the Jehovah's Witnesses religious group - **4 cases**.

The persecution of the ethnic group of the Crimean Tatars - **3 cases**.

**The real persecution was applied in the form of fines in 3 cases** (2 times with UAH 8 500, and UAH 1-3 400). In 5 cases, exemption from serving a sentence with probation term was applied. In other 3 situations, cases were closed due to the expiration of the statute of limitations (1 case), due to the effective repentance (1 case) and because the victims dropped the charges (1 case).

### Brief description of the cases (in chronological order).

No	Details	Resume	Judgment
1	Case No. 1-0117-220 / 11, ruling of May 5, 2011, Saky City-District Court of the ARC	On April 12, 2010, defendant acted as chairman of the public organization "Russian Community"; while staying in an administrative building of the said organization located in the city of Saki, held a general assembly of the public organization "Russian Community", where he read out loud the text in the leaflet "No one	Close criminal case for committing a crime envisaged in Art. 161, Part 1 of the Criminal Code of Ukraine in connection with the effective repentance.

		<p>has been forgotten! Nothing has been forgotten!", which he received from the chairman of the Russian partisan organization "The Russian Block".</p> <p>In the text of the leaflet, the language expressed humiliating characteristics, negative emotional assessments and negative attitudes regarding the leadership of the Crimean Tatars and government authorities expressed by means of certain linguistic approaches. It included appeal to the addressee of the leaflet with a subtext to resist the actions of "Mejlis-produced lawlessness".</p>	
2	Case No. 1-103/11, verdict of June 20, 2011 Simferopol Central District Court	<p>The defendant organized an unauthorized "Mourning picket" devoted to the April massacre of 1944 in Simferopol on the grounds of national and religious hatred. On April 16, 2010 in the period from 11:00 to 12:00 on Lenin square in Simferopol, he held the picket and a poster containing the text that sparked hostility on a national basis, and in the presence of a significant number of citizens he delivered a speech containing humiliating characteristics, negative emotional assessments and negative attitudes towards the Crimean Tatars.</p> <p>On June 21, 2010, at about 12:00 on the territory of Zhovten village of Dzhankoy district in Crimea, in the building No. 50 on Gagarin street, the same person introduced himself as the elder of the Cossack community "Sobol" in</p>	Find guilty in committing a crime provided for in Art. 161, Part 1 of the Criminal Code of Ukraine, and sentence to a fine of UAH 8 500.

		<p>the process of giving interview to the staff of LLC "Television and Radio Company "Ekran". Later, on the same day, in the cemetery of Zhovten village, Dzhankoi district he re-committed his actions at the funeral, aimed at incitement to national and religious hatred, as well as humiliation of the image of the Crimean Tatars, Ukrainians, Jews and Muslims, in particular, expressing phrases that stirred up hostility on the national ground, including using of statements with foul language expressing humiliating characteristics of the Ukrainians in general, negative emotional assessments and negative attitudes towards the Crimean Tatars as a separate ethnic group; compared the Ukrainian ethnos to the Russian and, negatively, in an offensive form, characterized all those who are not Russian.</p>	
3	<p>Case No. 122/2140/12 verdict of 30.07.2012 Simferopol Central District Court</p>	<p>During the picket, while being in a public place, with a significant crowd of people, the head of several public organizations, during his speech, and while addressing the audience present at the rally, directly expressed ideas, views and calls that undermine the trust and respect for people from a certain nationality, religion; form a feeling of angriness towards them, a negative attitude, and also expressed phrases that incite hostility on the national and religious grounds.</p>	<p>Find guilty in committing a crime, stipulated by Part 2 of Article 161 of the Criminal Code of Ukraine. Sentence to 2 (two) years and 6 (six) months of imprisonment with the deprivation of the right to hold positions related to the implementation of organizational and regulatory duties for a term</p>

			<p>of 3 years in pursuance of Part 2 of Article 165 of the Criminal Code of Ukraine.</p> <p>Excuse from serving the main sentence on the basis of Article 75 of the Criminal Code of Ukraine with establishment of the probation period of 1 year.</p>
4	Case No. 1-242/11, ruling of 10/18/2012, Suvorovsky District Court of Kherson	<p>While being a member of the Television and Radio Broadcasting Company "VIK" LLC (hereinafter referred to as VIC TVRC), knowing that the media influences the opinion, behavior, spiritual culture of the society, and contrary to the principles enshrined in the Constitution of Ukraine, pursuing a direct intent based on the motive of hatred to another nationality, with the aim of humiliating the honor and dignity of Jewish citizens and incitement of national and religious hatred, the subject made presentations during radio broadcasts on VIK TRC followed by relevant publications for the readers' community during 2008-2009. According to the content, the words were aimed at incitement of national enmity and hatred to the Jewish nation, humiliation of national honor and dignity and the feelings of Jewish citizens in connection with their religious beliefs, which violated the equality of Jewish citizens on the grounds of their race,</p>	<p>Excuse from criminal liability for the commission of a crime stipulated in Part 1 of Article 165 of the Criminal Code of Ukraine, close all proceedings in the criminal case, in connection with the expiration of the statute of limitations.</p>

		nationality and attitude towards religion.	
5	Case No. 212/12892/2012, verdict of December 30, 2013, Vinnytsia City Court of Vinnytsia region	<p>The defendant organized a march and a raid in the city of Vinnitsa, during which the participants, under his guidance, stopped near the dorms of Vinnytsia National Medical University, and later, in the presence of a significant number of citizens, the subject made speeches and proclaimed slogans that, in their content, violated Articles 24, 26 and 35 of the Constitution of Ukraine, personal rights and freedoms of persons who profess Islam, Jewish persons, representatives of indigenous peoples of the Caucasus and the African race. Namely, he delivered a speech about the superiority of the European race over Caucasian or African; allowed derogatory remarks against people who practice Islam, proclaimed slogans aimed at inciting national, racial and religious enmity and hatred, and humiliation of national honor and dignity and offending the feelings of citizens in connection with their religious beliefs.</p> <p>Also, the defendant organized a demonstration of home-made visual propaganda, namely posters, banners saying "Stop Immigration" "Ukraine is for the White", "White Power", "14/88" and incited the crowd to negative actions directed against people of another race, nationality, people who practice another religion, namely foreigners - students studying in Vinnytsia higher educational institutions.</p>	<p>Find guilty in committing a crime provided for in Part 1 of Art. 161 of the Criminal Code of Ukraine, and to impose a sentence in the form of three years of deprivation of liberty.</p> <p>According to Art. 75 of the Criminal Code of Ukraine excuse from serving the sentence with a probation period of two years.</p> <p>The said sentence was revoked by the appellate court and the case was returned for a new hearing.</p> <p>During reconsideration the criminal proceedings were closed because the victims dropped charges (December 30, 2014).</p>

6	Case No. 703/2685/14 -k, verdict of July 8, 2014, Smiliansky City -District Court of Cherkasy region.	On May 21, 2012, at about 15:00, the defendant knew for certain that persons who carried out religious activities of spreading information about their beliefs and distributing literature of religious content were members of the religious organization "Jehovah's Witnesses". In order to offend the feelings of these citizens in connection with their religious beliefs and for impediment of their religious activity, he argued with them, during the argument, he spoke to the victims in an abusive form, he demanded to stop the exercise of religious activity. He applied physical violence to the person who turned around and went away in an attempt to avoid a conflict situation. As a result, two people suffered minor bodily injuries.	Recognize guilty in committing a criminal offense stipulated in Part 2 of Art. 161 of the Criminal Code of Ukraine and impose a fine in the form of 500 tax-free minimum incomes of citizens totaling in UAH 8 500 (eight thousand five hundred). On the basis of paragraphs "g, e" Art. 1 of the Law of Ukraine "On Amnesty in 2014", excuse from serving the sentence. Subject the sentenced individual to compulsory measures of a medical nature in the form of outpatient compulsory psychiatric care in at the place of residence.  The sentence was upheld by the Court of Appeal (September 23, 2014).
7	Case No. 703/2915/14 -kr, verdict of	On June 13, 2013, at about 09:50, during the promotion of the teachings of the Bible and the free distribution of religious literature	Find guilty of committing crimes provided for in Part 1 of

	<p>April 27, 2015, Smiliansky city court of Cherkasy region.</p>	<p>by "Jehovah's Witnesses", which was located on a specially adapted wooden stand near a bus station in the city of Smila, the defendant knowing that the abovementioned persons belong to the religious community "Jehovah's Witnesses" acted intentionally, approached them with a demand to stop religious activities and, used offensive words to address the latter; he tried to overturn the wooden stand with the religious literature, he began to pull and tear the religious magazines, thus making them unusable and tried to overturn the stand with the religious literature, thus forcing to stop the promotion.</p> <p>Similar cases were repeated three times.</p>	<p>Art. 161, Part 2 of Art.161 of the Criminal Code of Ukraine and impose a sentence in pursuance of Part 1 of Art. 161 of the Criminal Code of Ukraine: 2 years of restriction of liberty, which shall mean 1 year of imprisonment, without deprivation of the right to occupy certain positions and engage in certain activities; under Part 2 of Art. 161 of the Criminal Code of Ukraine: 2 years of imprisonment without deprivation of the right to occupy certain positions and engage in certain activities.</p> <p>On the grounds of Part 1 of Art. 70 of the Criminal Code of Ukraine, due to the aggregated number of crimes and by way of adding the sentences, sentence to three years of</p>
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			<p>imprisonment.</p> <p>On the basis of Art. 75 of the Criminal Code of Ukraine excuse from serving the sentence if no new crime is committed within the one-year probationary period and if the sentenced person completes the duties assigned by the court.</p> <p>The sentence was upheld by the Court of Appeal (September 2, 2015).</p>
8	Case No. 465/4967/14 -k, verdict of 04.06.2015, Frankivsk District Court of Lviv	Defendant was in the elevator cabin in a building in Lviv. Other persons entered the cabin, he knew that they were engaged in religious activities of promoting their beliefs and distributing literature of religious content, and were the members of the religious organization "Jehovah's Witnesses". In order to offend the feelings of these citizens in connection with their religious beliefs and to obstruct their religious activity he made an argument with them, during which he made offensive comments in relation of the victims in and used physical violence to one person, making four blows with a fist on the head in the area of the forehead and twice in the nose (light bodily	<p>Find guilty of committing a criminal offense, stipulated in Part 2 of Art.161 of the Criminal Code of Ukraine and sentence to 2 (two) years of imprisonment.</p> <p>On the basis of Article 75 of the Criminal Code of Ukraine excuse the sentenced PERSON_1 from serving the sentence by setting a probation period of two years.</p>

		harm).	The sentence was upheld by the Court of Appeal (September 29, 2015).
9	Case No. 584/457/15-k, ruling of 07/27/2015, Putivlsky District Court of Sumy region.	At about 09:30 am, on November 13, 2014, while in the city of Putivl the defendant was aware that the persons were engaged in religious activities and promoted beliefs, disseminated literature of religious content, and were the representatives of the religious organization "Religious community of Jehovah's Witnesses of Putivl, Sumy region". He intended to offend the feelings of the said citizens and stop their religious activities, he made an argument with them, during which he spoke disgracefully to them, threatened with physical punishment and demanded that they cease their activities.  Similar actions were repeated several times with beating.	Apply compulsory medical measures in the form of hospitalization to a psychiatric institution with regular supervision.
10	Case No. 700/4208/15-k, verdict of April 7, 2016, Lisyansky District Court of Cherkasy region.	The defendant was in a state of intoxication, and knowing that the persons who carried out religious activities promoting beliefs and the disseminating literature of religious content were the members of the religious organization "Jehovah's Witnesses" and in order to offend the feelings of these citizens in connection with their religious beliefs and to disrupt their religious activities, started an argument with them, during which he insulted the victims by calling them American spies,	Find guilty in committing a criminal offense provided for in Part 2 of Art. 161 of the Criminal Code of Ukraine and sentence to two years of imprisonment.  On the basis of Art. 75 of the Criminal Code of Ukraine, the sentenced person

		<p>prostitutes, and used other obscene words.</p> <p>He deliberately inflicted light bodily harm on two persons.</p>	<p>shall be excused from serving the sentence if no new crime is committed within the specified probationary period and if the sentenced person completes the duties assigned by the court under paragraph 2 of Art. 76 of the Criminal Code of Ukraine, namely:</p> <ul style="list-style-type: none"> <li>- to not leave Ukraine for permanent residence in a foreign country without permission of the criminal executive inspection.</li> </ul> <p>The sentence was upheld by the Court of Appeal (25.05.2016)</p>
11	<p>Case No. 165/1977/16 -k, verdict of November 29, 2016, Novovolynsky City Court of Volyn region.</p>	<p>The defendant had a criminal intention to spread materials aimed at incitement to national hostility and hatred, humiliation of national honor and dignity. He used his own personal computer, his own webpage in order to inform all users of the "Odnoklassniki" social network on the Internet, he deliberately, while being aware of the wrongfulness of his actions, posted a graphic file called "1image.jpg" with the .jpg extension, on 12.03.2016. It</p>	<p>Find guilty in committing a crime set forth in Part 1 of Art. 161 of the Criminal Code of Ukraine, sentence to a penalty in the form of a fine of 200 (two hundred) tax-free minimum incomes of citizens totaling</p>

	<p>showed seven flags of seven states, including Ukraine, and a Russian inscription with statements, which, according to expert opinion No. 4/205 dated May 24, 2016, aimed at fueling national enmity and hatred, humiliation of national honor and dignity. It was accessible to the general public and all users of the specified social network who visited his page and automatically it was sent as a notification to all users of the socially-oriented Internet resource "Odnoklassniki", who were added to the "Friends" section of the specified account.</p>	<p>in UAH 3 400 (three thousand four hundred).</p>
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At the time of this study, a request was made to the official on-line register of court decisions (<http://reyestr.court.gov.ua>) to check the availability of sentences in criminal cases related to the application of **Article 300 of the Criminal Code of Ukraine** "Importation, manufacture or distribution of products promoting a cult of violence and cruelty, racial, national or religious intolerance and discrimination."

In total, the Register, which recorded cases since 2007, appeared to contain **481 judgments**. Of these, **330** were procedural and **151** - material. Of those **6** are related to hate speech by the content. The absolute majority of sentences deal with the production of counterfeit video products - horror movies that were banned from broadcasting in Ukraine, as propagandizing cruelty and violence.

**5 case resumes out of 6** mention the distribution of books that contain statements of a racist nature. One case concerns the dissemination of similar information in the social network.

**In 3 cases**, the subjects were fined (UAH 1 700– UAH 2 510 - 1), **in 3 more** - sanctions provided for restriction of liberty (2) and imprisonment (1) followed by excuse from prosecution in all cases with the provision of a probation period of 1-2 years.

3 cases out of 6 ended with plea bargains with prosecutors, which were upheld by the courts (a possible procedure for non-serious crimes, confession and repentance of the defendant; the use of soft sanctions, simplified procedure of court proceedings).

**Brief description of the cases (in chronological order).**

No	Details	Resume	Judgment
1.	Case No. 279/3302/13-k, verdict of June 17, 2013, Korostensky City Court of Zhytomyr Region	<p>The defendant, having the intention to purchase books for their further re-sale, bought books from the unidentified persons, namely: "Mine Kampf" and "The Blow of the Russian Gods", which were transported to Korosten from Kyiv on to "Kyiv-Korosten" commuter train. After that he transferred these books to the bookstall and stored them on bookshelves and tried to sell them.</p> <p>The book "Mine Kampf" contains information that promotes the ideology of fascism (Nazism, racism), inciting national and religious hatred; it is humiliating and offensive for the Jewish nation and other nations on national grounds.</p> <p>The book "The Blow of the Russian Gods" contained statements aimed at inciting hatred and hostility towards Jews as a nation, Jews and Christians as representatives of world religions, as well as information that humiliates and offends the Jewish nation on national grounds, promotes</p>	Find guilty in committing a crime under Art. 300 Part 1 of the Criminal Code of Ukraine and sentence to a penalty agreed by the parties in the form of a fine of UAH 510 with confiscation of books "Mine Kampf" and "The Blow of the Russian Gods".

		contempt for national and religious shrines	
2.	Case No. 256/7428/13 k, verdict of October 22, 2013, Kalininsky District Court of Donetsk	<p>On different occasions, in the period from June 2008 to June 18, 2013 (more precise date and time of investigation are not established), the defendant posted numerous photos and video files in the social network "http://vk.com" containing signs of propagation of the cult of violence and cruelty, in particular:</p> <ul style="list-style-type: none"> <li>- photos which propagate the murder and destruction of Jews, African-Americans and persons belonging to the peoples that predominantly inhabit the Caucasus;</li> <li>- photos with icons and shameful inscriptions;</li> <li>- other numerous photos depicting various events that propagate the ideology of racism and Nazism, promote the use of coarse physical force and distort the spiritual and moral values of the individual and society as a whole, create a hierarchy of personal values, impose lack of spirituality, lead to the degradation of the individual, and fuel hostility on national, racial, religious and political grounds.</li> </ul>	Find guilty under Art. 300, Part 2 of the Criminal Code of Ukraine and sentence to a fine in the amount of 100 tax-free minimum incomes of citizens in the amount of UAH 1 700, and credit this amount as government revenue with the confiscation of products propagating the cult of violence and cruelty, racial, national, religious intolerance and discrimination, and the means of their production and distribution.
3.	Case No. 521/6891/14-k, verdict of May 21, 2014, Malinovsky District Court of Odessa	<p>The defendant bought a book by Istrakhov V.A. "The Blow of the Russian Gods" in a specialized store.</p> <p>According to experts' findings, the book is considered to contain information that is</p>	Find guilty in committing a crime stipulated in Part 1 of Art. 300 of the Criminal Code of Ukraine and sentence to a penalty agreed by

		contrary to the requirements of the Ukrainian legislation in the field of public morality, namely public statements aimed at incitement to hatred and hostility towards Jews as a nation, Jews and Christians as representatives of world religions, as well as information that degrades and offends the Jewish nation on a national basis, promotes national and religious hatred.	the parties in the form of a fine of 100 (one hundred) tax-free minimum incomes of citizens in the amount of UAH 1 700 with the confiscation of products propagating the cult of violence and cruelty, racial, national or religious intolerance and discrimination.
4.	Case No. 208/3870/14-k, verdict of November 4, 2014, Zavodskiy District Court of Dneprodzerzhinsk, Dnipropetrovsk region	The defendant posted an advertisement about the sale of prohibited products in the "Vkontakte" social network. After receiving orders, sold books through post offices, which by the opinion of experts: "... are negative in relation to the so-called "non-Aryan peoples", first of all: Jews and Slavs, thus inciting enmity on the national and racial grounds, and contains propaganda of ideas of nationalism and racism. The degrading characteristics, negative emotional assessments and negative attitudes toward the so-called "non-Aryan peoples", primarily the Jews and Slavs, were used in the analyzed book.	Find guilty in committing a crime and finally sentence to 3 years of imprisonment with confiscation of products propagating the cult of violence and cruelty.  Excuse from the imposed sentence followed by a probationary period of 1 year on the basis of Art. 75 of the Criminal Code of Ukraine.
5	Case No. 185/3082/16-k, judgment of April 26, 2016,	Defendant registered on the prom.ua website for the purpose of selling products promoting the cult of violence and cruelty. He posted an	Find guilty in committing crimes stipulated by Part 1 of Art. 300, Part 3 of Article 300 of

	Pavlograd City Court of Dnipropetrovsk Region	advertisement on the webpage about the sale of the above-mentioned works. After finding the buyers, he sold "Mine Kampf" and sent it by mail.	the Criminal Code of Ukraine. Finally, sentence to three years imprisonment with the deprivation of the right to engage in activities related to dissemination of goods for one year.  Excuse from serving the main sentence with a probation period of two years on the basis of Article 75 of the Criminal Code of Ukraine.
6	Case No. 185/7361/15-k, verdict of April 25, 2016, Pavlograd City Court of Dnipropetrovsk Region	In about mid-March 2015, the defendant found books at his place of residence, which by their nature had different origins, among which there were 4 "Mine Kampf" books. Knowing exactly that these books promoted violence and cruelty, and their circulation and distribution are prohibited, he decided to realize (sell) these books on the market.  The overall semantic orientation of the "Mine Kampf" book is negative towards the so-called "non-Aryan peoples", primarily Jews and Slavs, which incites hostility on the national and racial grounds, and propagates ideas of nationalism and racism. The degrading characteristics, negative emotional assessments and	Find guilty in committing a criminal offense stipulated in Part 1 of Art. 300 of the Criminal Code of Ukraine and sentence to three years of restraint of liberty.  Excuse from serving the sentence followed by probation for a term of 2 years on the basis of Art. 75 of the Criminal Code of Ukraine.

		negative attitudes toward the so-called "non-Aryan peoples", primarily Jews and Slavs, have been used in the analyzed book.	
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## Other trials.

The official website of the Ukrainian Parliament Commissioner for Human Rights<sup>1</sup> contains several court rulings, which refer to the use of various sanctions against hate speech propagators by courts.

### Criminal cases:

- *Incitement of national enmity and hatred, humiliation of national honor and dignity during a political election campaign.*

The verdict of Khotyn District Court of Chernivtsi region dated January 10, 2013, case No. 1/724/10/13<sup>2</sup>.

According to the verdict, the defendant, who acted in the interests of one candidate, offered to distribute leaflets concerning another candidate Member of Parliament, which contained information aimed at incitement to hostility and hatred, humiliating national honor and dignity, in particular, showing that the other candidate is a Jew and the Jews are the supreme race that should rule Ukraine, while the Ukrainians and the Russians are third-class citizens.

According to the verdict, the person was found guilty of committing two crimes (Part 3 of Article 157 of the Criminal Code - *Impeding the right to be elected, committed by a group of persons*, and Part 2 of Article 161 of the Criminal Code). Final sentence was three years of imprisonment without deprivation of the right to engage in business activities. On the basis of Art .75,76 CC he was excused from serving a sentence with a probation period and the condition of not committing a new crime during the two-year probation period and fulfill the imposed duty to inform the criminal-enforcement inspection about the change of place of residence, employment or study.

<sup>1</sup> <http://www.ombudsman.gov.ua/ru/page/discrimination/judicial-practice/sudi-zagalnoii-yurisdikcziii.html>

<sup>2</sup> <http://www.reyestr.court.gov.ua/Review/28613387>

- *Incitement of religious enmity.*

The verdict of Rubezhansky City Court of Lugansk region, dated October 5, 2010<sup>3</sup>, case No. 1- 281.

The case it is similar to the one described above in terms of manifestation of aggression against members of the religious community Jehovah's Witnesses. The defendant, arguing that there should be one single Orthodox faith, insulted the representatives of the religious group, then destroyed their showcase stand and inflicted light bodily injuries. The aforementioned actions by the aggressor were repeated several times. The court imposed a 3-year sentence, without deprivation of the right to occupy certain positions or engage in certain activities and excused the person from serving the sentence and sat a probation period of 1 year and 6 months, having ordered to also regularly register in the bodies of the criminal-executive inspection in accordance with Art.76 of the Criminal Code of Ukraine.

- *Administrative jurisdiction cases posted on the website of the Commissioner regarding discrimination are not related to manifestations of hate speech.*
- *The civil cases regarding discrimination posted on the Commissioner's website are not related to manifestations of hate speech.*

## **The work of the Ukrainian Parliament Commissioner for Human Rights**

Hate speech is not highlighted as a separate chapter or a page in the anti-discrimination activities section on the official website<sup>4</sup>. First of all, this is due to the specifics of the national legislation, which does not include definitions and regulation in this area. Accordingly, the mechanism of parliamentary oversight over observance of human rights does not focus and does not distinguish the issue of HS, while focusing on the problems of discrimination in general.

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<sup>3</sup> <http://reyestr.court.gov.ua/Review/11716546>

<sup>4</sup> <http://www.ombudsman.gov.ua/ua/page/discrimination/>

## Self-regulatory organizations in the media

As of the time of the research, there were two expert organizations in Ukraine that deal with controversial media issues, including compliance with ethical and professional standards in the work of journalists and the media.

1. **Journalist Ethics Commission**<sup>5</sup>. The search engine found one case in the database of Commission decisions from November 13, 2017, which deals with hate speech<sup>6</sup>. The subject of the review was the content of the publication "Non-free Realities. How much does your Homeland Cost? "The article was a "journalist investigation" of the work of the Radio Liberty on the territory of the Crimean peninsula and propagandized hate speech, according to the members of the Commission. The Journalist Ethics Commission has addressed the Media Self-Government Network, which also includes the Journalist Ethics Commission, with regard to the publication in question, and requested to conduct an expert evaluation of hate speech propaganda in the media. According to the findings of the Network, the material was categorized as propagandistic with hate speech. The Commission, in particular, noted in its decision: "It is very dangerous to use" anonymous "experts, who speak from unilateral subjective positions. It is also not acceptable to categorize the journalists as "friend" or "foe", and this is the very first sign of hate speech. We note that it is also unacceptable to combine the journalistic profession and work with others, especially with propaganda.

2. **Independent Media Council (IMC)**<sup>7</sup> is a permanent public monitoring and advisory body created to establish high professional standards for journalism and for the objective consideration of disputed issues and situations that arise in the information space of Ukraine.

In the database of decisions of this body of self-regulation, at least three decisions concern the manifestations of hate speech.

**The first case**<sup>8</sup> (07.06.2016) is about the content of broadcasts by the "Gamma" channel with the participation of Petro Symonenko (Chairman of the Communist Party of Ukraine). In particular, the following expressions were evaluated:

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<sup>5</sup> <http://www.cje.org.ua/ua>

<sup>6</sup> <http://www.cje.org.ua/ua/complaint/shchodo-publikaciyi-ia-krym-inform-nesvobodnye-realyy-skolko-stoyt-rodynu-prodat>

<sup>7</sup> <http://mediarada.org.ua/>

<sup>8</sup> <http://mediarada.org.ua/case/220/>

- "We warned that a pro-fascist, nationalist regime was established in Ukraine as a result of the February armed coup of 2014" (19: 00: 37-19: 00: 48); "The country today is ruled by the regime of murderers, and I have not made a mistake, respected viewers" (19: 01: 42-19: 01: 47);
- "The vandals with the brains washed and dislodged at Maidan insult our grandfathers and fathers, great-grandfathers, who shed blood and lost lives in the struggle against the fascist evil" (19: 02: 06-19: 02: 18);
- "Modern Ukrainian neo-fascists today revenge the winners by performing devilish dances on their graves" (19: 02: 30-19: 02: 37).

By the decision of the IMC, the content of the mentioned broadcasts violated the requirements of the Law of Ukraine "On Television and Radio Broadcasting", and contained signs of crime and was an example of violations of professional and ethical standards of journalism and became evidence of the sloppy attitude of "Gamma" TV channel employees to their professional duties.

**The second case<sup>9</sup> (09.26.2016)** was about spreading of hate speech in the "Open microphone" broadcast on the "AKS" radio station. According to the IMC decision: "... the "Open Microphone" show on "AKS" radio dated April 25, 2016, violated the requirements of paragraph 14 of Part 2, Article 6 of the Law of Ukraine "On Television and Radio Broadcasting" in the light of Article 161 of the Criminal Code of Ukraine, as well as Article 28 of the Law of Ukraine "On Information" concerning the prohibition of broadcasting of hate speech by broadcasting organizations (in this case, regarding the involvement of the Crimean Tatars in the explosions in Novooleksiyivka), as well as failure to comply with the standard of reliability of information". The widespread information, in particular, included the following statements: "I knew the Old Crimea and lived there, I knew the Tatars, when they returned, and I know their whole story ... They simply bring evil always, they probably have this in their DNA" (14: 56: 24)."

**The third decision of IMC<sup>10</sup> (May 23, 2017)** gave evaluation for the content of the documentary "Oles Buzina: Life Beyond the Time". In particular, they highlighted the following expressions:

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<sup>9</sup> <http://mediarada.org.ua/case/vypusk-peredachi-vidkrytyj-mikrofon-na-radio-aks-vid-25-kvitnya-2016-roku/>

<sup>10</sup> <http://mediarada.org.ua/case/translyatsiya-dokumentalnoho-filmu-oles-buzyna-zhyzn-vne-vremeny/>

- "A these idiots, these young men from the national battalions, they are merely instruments of a crime" (41: 08-16).";
- "Raiding and seizure" of the Ukrainian churches of the Russian Patriarchy and the "murders" of priests (18: 36-19: 05).

According to the decision of IMC, the content of the broadcast documentary featured signs of a violation of the ban on the use of TV and radio organizations to stir up national and religious hatred, as well as the failure of the broadcasting organization to disseminate objective information.

The decisions of the self-regulatory bodies are important, both in terms of **accentuating the use of HS in the media (in the absence of a direct definition)**, and in terms of prosecution of the media that disseminate HS. After all, some conclusions are used by the National Council on Television and Radio Broadcasting as part of their own justification (reference) for alerting television channels and / or broadcasting organizations.

In particular, on September 15, 2016, the National Council issued "warning announcement"<sup>11</sup> to the Television and Radio Company "AKS" Ltd., in Kherson for the broadcast of statements that can be used to fuel ethnic hatred in the context of the information warfare. Before, these statements were the subject of consideration by IMC following the initiative of the licensing body.

### **Conclusions:**

1. This overview of the national practices for the application of HS legislation **reflects general trends**, since it focuses on the most accentuated signs of HS. More accurate analysis takes a lot of time because of the dispersion of certain manifestations of HS in different element of crimes and offenses.

2. Before 2010, there was no practice of any response from the controlling and regulatory authorities to the manifestation of HS. The number of decisions increased after 2013 and the escalation of the "hybrid war" against Ukraine.

3. Due to the lack of a comprehensive approach to the definition of "hate speech" in national legislation and the response to this socially dangerous

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<sup>11</sup> <https://www.nrada.gov.ua/hersonskij-radiokompaniyi-aks-ogolosheno-poperedzhennya-cherez-translyatsiyu-informatsiyi-yaka-mozhe-rozpalyuvaty-natsionalnu-vorozhnechu/>

phenomenon, a large number of manifestations may not receive appropriate evaluation from regulatory and law enforcement agencies.

4. Addressing the problem of spreading hate speech, both in the media and in other forms, requires a variety of expertise and effective action. In order to ensure prompt and adequate response, first of all, it is necessary to create the following model at the level of legislation: **rules - regulator - responsibility**:

- **The rules** and regulations for preventing hate speech are fragmentary, at most due to anti-discrimination norms, the norms that restrict **propaganda of** cruelty, violence, national and religious hostility. The term "hate speech" is absent in the national law.
- **The regulator** exists for TV and radio organizations, and does not exist for the press and the Internet; it is partly available for other published products (books, other publications).
- **Responsibility**, as evidenced by the number and the content of sentences and other forms of "response", is illusory. Even the cases of manifestation of harsh forms of HS (outright racism in Vinnitsa, anti-Semitism on radio in Kherson) can conclude with a lack of punishment for offenders. In the worst case, broadcasters of a hate speech will receive a fine or a warning (in the case of the media).

5. HS, both from the point of view of the national legislation (sanctions in the Criminal Code), and from the point of view of the practice of its application, presents a public danger at a minimum level that does not correspond to the data from various studies of intensity and manifestations of this phenomenon, in particular, in the mass media of Ukraine<sup>12</sup>.

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<sup>12</sup><http://detector.media/infospace/article/128539/2017-07-05-mova-vorozhnechi-yak-ukrainski-zmi-nekhtuyut-zhurnalistskimi-standartami/>  
<https://www.radiosvoboda.org/a/24740474.html>