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## LEGAL CHALLENGES OF THE CROATIAN LEGISLATURE WITH REGARD TO THE HATE SPEECH AND COMMITTING CERTAIN CRIMINAL OFFENSES

**Abstract:** *A man's perennial desire and the struggle for freedom of speech, and freedom of expression, will experience the paradigm and reality in today's time, despite the evolutionary development of such desire and struggle about power and the legislator who will eventually articulate these desires. Freedom of expression is the highest human, social and humanistic evolutionary value in a liberal democracy in which an individual or group of people can convey their views, thoughts, and criticisms to other people, groups, and the governing structure. Unfortunately, freedom of expression in the 1920s began to demonstrate the dysfunction and anomalies of such values in public, media space, especially through electronic media, electronic publications, and modern electronic platforms, which are accessible by many people. In concrete terms, and considering the Croatian reality(ies) and experience with the above-mentioned phenomenon, it is indisputable that we are witnessing the abuse or misunderstanding of the limits of freedom of expression due to extensive interpretation or misunderstanding of democracy, radicalizes and abuses freedom of expression. The emergence of abuse of freedom of expression results in hate speech and the commission of certain crimes (public incitement to terrorism, terrorism, public incitement to violence, and hatred). Thus, we can say that there is a(n) (in)direct link between the freedom of expression provided for in Articles 9 and 10(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and other constitutional and legal provisions of the Republic of Croatia. The abuse of the exercise of these rights results in the commission of certain criminal offenses. Although hate speech and the radicalization of the media space through new electronic platforms have disavowed freedom of speech and opinion, it has also*

*raised the question of the sufficiency of the existing legislative framework and the need for a new legislative response (example of Austrian counter-terrorism measures) with which, as a new form of legal struggle, these phenomena would be prevented and sanctioned. All of the above poses a legal challenge to existing constitutional provisions and the legislative framework in Croatia. Having this in mind, should Croatian legislators follow the example of the Austrian legislator and respond to abuses and violations of freedom of expression? Recognizing the above phenomena and connections between the abuse of freedom of expression with the commission of certain criminal offenses, the author uses scientific analysis and comparative method to examine the legal challenges and/or the strength of the Croatian legislative framework and asks whether there are perhaps new legal mechanisms that should be a response to these phenomena to further strengthen and protect the of freedom of expression.*

**Keywords:** *hate speech, freedom of expression, public incitement to terrorism, terrorism, incitement to violence and hatred.*

## 1. INTRODUCTORY REMARKS

Unfortunate events in modern European and Croatian history in the form of terrorist attacks and/or criminal acts, which are the product and ultimate goal of public radical statements and hate speech, represent and place upon the legislators of each country the demand for sustainability and effectiveness of the operation of the legislative framework and legal-security system, which should and could recognize such facts, sanction them, and at the same time provide security and freedom of expression to all citizens. Freedom of expression as one of the fundamental human rights and the value of a democratic society, as well as the state and liberal democracy, is beginning to be re-examined, i.e., it is determined where the aforementioned rights end, and where hate speech and the commission of certain criminal acts begin. The awareness of the fact that freedom of expression is not absolute, but that it can also be limited, poses the legal and judicial challenge of interpreting such limitations for the constitutional and legislative order of each country.<sup>1</sup> The emergence of modern electronic media, electronic platforms as new forms of the media landscape and media activity through which both personal and public political views of governments, groups, and individuals are broadcast, represents an unlimited “battlefield” in which, through the so-called freedom of

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<sup>1</sup> It can also be seen in earlier European legal sources that the freedom of expression is not absolute. Thus, the French Declaration on Human and Civil Rights from 1789 stipulates in Article 11 that every citizen can speak, write and print freely, but is responsible for abuses of this freedom as determined by law. See more in: European Union Agency for Fundamental Rights, <https://fra.europa.eu/en/law-reference/declaration-human-and-civic-rights-26-august-1789-0>

expression, the anomaly or abuse of such freedom is transmitted in the form of hate speech.

Through media (public) radicalization or abuse of freedom of expression in public gatherings, public places, religious buildings, or via electronic media, dissenters, people of different views, positions, different religions, public policies, the government, the opposition, and everything that is set as the very “target” of the attack, and ultimately the State, are attacked. Therefore, we can rightly ask, in the elaboration of this paper and research, whether the freedom of expression prescribed by Articles 9 and 10, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2</sup> (ECHR) is abused by radical statements, the radicalization of public statements by individuals, groups of people, the radicalization of the media space from which hate speech will emerge as a form of public communication aimed at a larger number of people and, consequently, the commission of certain criminal acts (public incitement to violence and hatred, incitement to terrorism, committing a terrorist act and causing disorder).

In light of the aforementioned, as well as unpleasant events in the modern Croatian history, in recent public statements by individuals and groups a possible connection between the abuse of freedom of expression, i.e. hate speech, and the commission of certain criminal acts appears. Therefore, there are authors who notice certain links or causalities between the aforementioned phenomena (freedom of speech, hate speech, and committing criminal acts). Thus, in his paper and research, Piazza poses a question or states a rhetorical thought; “Does hate speech – rhetoric that targets, vilifies, or is intended to intimidate minorities and other groups in society – fuel domestic terrorism?”<sup>3</sup> Also, in their paper, Scharwachter and Muller specify the causality between hate speech and the commission of certain criminal acts, specifically terrorist acts, in such a way that through a statistical methodology for measurement, testing, and visualization, i.e. scientific methods, they conclude about the systematic connection of the above.<sup>4</sup>

Although hate speech and the radicalization of the media space through new electronic platforms have disavowed freedom of speech and opinion, they have also imposed on the legislator the question of the sufficiency of the existing legislative framework or the creation of a new one (example of the Austrian anti-terrorism law) with which, as a new form of legal struggle, the aforementioned would

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<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Rome 1950.

<sup>3</sup> James A. Piazza, “Politician hate speech and domestic terrorism”, *International Interactions Empirical and Theoretical Research in International Relations*, Routledge, Taylor&Francis Group, Volume 46, 2020 – Issue 3, pp. 431-455.

<sup>4</sup> Erik Scharwachter, Emanuel Muller, “Does terrorism trigger online hate speech? On the association of events and time series”, *Annals of applied statistics* 14 (3) 2020, pp. 1285.-1303.

be prevented and sanctioned. Due to the everyday examples of abuse of social networks and appearances in public and media spaces with hate speech, the connection of the mentioned phenomenon with the final product of such action can be noticed, which is the commission of certain criminal acts. All of the above poses a legal challenge to the strength of the existing legal provisions for the Croatian legislative framework, or should the Croatian legislator follow the example of the Austrian anti-terrorism law and respond to abuses of freedom of expression? In this particular case, the question is how to find the right balance between the fight against hate speech, as a result of which certain criminal acts are committed, and the protection of freedom of expression.<sup>5</sup>

## 2. CROATIAN CASE STUDY – EXCEPTION OR INDICATION OF FREQUENCY?

The thesis of this paper and research is based primarily on the author's review of two *case studies* that had and have resonance in the Croatian media space, and which we take as examples of abuse of freedom of expression and lack of prevention in procedures of abuse of freedom of expression and, as a result, of the criminal acts committed. To better understand where freedom of expression ends, and where the commission of certain criminal acts begins, perhaps we should start from the subjective justification of such behavior, even though criminal acts resulting from the abuse of freedom of expression should not be justified. We can look for subjective justification in the relatively young Croatian democracy and the lack of democratic experience of all stakeholders in the media space, as well as in the everyday life of every citizen of the Republic of Croatia.<sup>6</sup> The aforementioned could be seen as mitigating circumstances, but only in a subjective sense, while an objective understanding and reconsideration of such occurrences require a decisive response from the rule of law in sanctioning occurrences of excesses and/or abuse of freedom of expression with the ultimate consequence of hate speech and, consequently, the commission of criminal acts, public incitement to terrorism, terrorism, public incitement to violence and hatred.<sup>7</sup>

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<sup>5</sup> For more on finding a balance between freedom and security and the fight against terrorism, see Christina Binder, "Liberty versus security? A human rights perspective in times of terrorism", *Anuario Español de derecho internacional*/ vol. 34/ 2018., pp. 575.-595.

<sup>6</sup> With regard to thirty years of Croatian statehood, Marko Poljak, Jelena Hadžić and Maša Martinić explained in their paper in more detail the abuse of the expression of thoughts through hate speech and its increase in the Croatian media: "Govor mržnje u hrvatskom medijskom prostoru", *In Medias Res*, Časopis filozofije medija, Vol. 9, No. 17, 2020, pp. 2709-2744.

<sup>7</sup> The abuse of the freedom of expression most often turns into hate speech, which analogously results in the commission of criminal acts. For more on hate speech, see the paper and research conducted by Vesna Alaburić, "Ograničavanje govora mržnje u demokratskom društvu:

The first case refers to the event from 12 October 2020 in Zagreb, when a shooting from a firearm took place on St. Mark's Square in front of the building of the Government of the Republic of Croatia (Ban's Court), in which a police officer was wounded.<sup>8</sup> The use of firearms against security personnel of the Government of the Republic of Croatia building is characterized as the commission of the criminal offense of terrorism under Article 97, paragraph 1, item 1 of the Criminal Code of the Republic of Croatia.<sup>9</sup> The significance of the committed criminal act for the context of this paper lies in that it happened as a result of the perpetrator's earlier actions via social networks (Facebook) where he expressed his views, and inappropriate attitudes, and spread hate speech such as "If I were on of them, if I were to take down the Serbs."<sup>10</sup> From such an example, we can clearly and

teorijski, zakonodavni i praktički aspekti", *Hrvatska pravna revija*, – part I and II, *Hrvatska pravna revija*, 2003.

<sup>8</sup> The media headlined the unpleasant event in front of the Government building of the Republic of Croatia in the following way; "A 22-year-old man from Kutina on St. Mark's Square! Before the shooting, he posted on Facebook", daily press *Novi list*, 12 October 2020. <https://www.novolist.hr/novosti/hrvatska/na-markovu-trgu-pucao-22-godisnja-iz-kutine-prije-pucnjave-se-oglasio-na-facebooku-evo-sto-je-napisao/>, as well as "Details on the shocking morning: a burst of shots fired at the Government building, then they turned towards the Parliament...", daily press *Jutarnji list*, 12 October 2020, <https://www.jutarnji.hr/vijesti/crna-kronika/detalji-sokantnog-jutrafalno-pucao-po-zgradi-vlade-pa-se-okrenuo-prema-saboru-15024629>.

<sup>9</sup> The aforementioned unfortunate event was characterized as the commission of a criminal act of terrorism, which is evident from the Decision of the County State Attorney's Office in Zagreb on the dismissal of the criminal complaint against a Croatian citizen (1998) for the criminal act of terrorism from Article 97, paragraph 1, point 1 of the Penal Code (the criminal charge was rejected because the perpetrator of the said crime committed suicide after committing it, author's comment). See more about the Decision in the Press Release of the County State Attorney's Office in Zagreb from 22 July 2020, <https://dorh.hr/hr/priopcenja/zupanijsko-drzavno-odvjetnistvo-u-zagrebu-doneseno-rjesenje-o-odbacaju-kaznene-prijave>

<sup>10</sup> Due to the sensitivity of the case and the fact that it has activated the entire security apparatus in the Republic of Croatia, which is confirmed by the fact that the said matter is exclusively discussed at closed sessions of the Parliamentary Committee for Internal Affairs and National Security, the same parliamentary body issued two reports on the aforementioned case on 2 February 2022; 1. Report of the Committee for Internal Affairs and National Security from the discussion on the reports of the Ministry of the Interior, the Security Intelligence Agency and the State Attorney's Office of the Republic of Croatia on the attack on Ban's Court (classified information/closed to the public), 2. Report of the Committee for Internal Affairs and National Security from the discussion on the Report of the Ministry of Internal Affairs on arrests due to posts on social networks (classified information/closed to the public). From the aforementioned two reports, even though they are closed and classified, it is evident that the security services connect the posts on social networks of the perpetrator of the criminal offense and the act of the criminal offense. For more on the aforementioned reports, see the website of the Parliament of the Republic of Croatia, <https://www.sabor.hr/hr/radna-tijela/odbor-za-unutarnju-politiku-i-nacionalnuznignost-10-saziv-hrvatskoga-sabora>.

The author of this paper took the quote from the portal of the daily newspaper *Jutarnji list*, published on 12 October 2020 under the title "What did the attacker post on his Facebook: "If I were on of them, if I were to take down the Serbs..."", <https://www.jutarnji.hr/vijesti/hrvatska/sto-je->

unequivocally find causality, i.e. first we notice the abuse of freedom of expression through the use of social networks characterized as hate speech, and consequently, we have the act of committing the crime of terrorism. In light of the above, the Prime Minister of the Republic of Croatia Andrej Plenković connects hate speech and the commission of a terrorist act in such a way that after the session of the Parliamentary Committee for Internal Affairs and National Security he declared; “The attack on Ban’s Court was unprecedented, we need to create an atmosphere in society that will reduce hate speech.”<sup>11</sup>

Due to the complexity of the mentioned case (security issue), the author of this research does not assume possible further actions that would result from it, he raises the question of the responsibility of all those who encouraged the perpetrator of the criminal act by “liking” his posts on the mentioned social network and thereby encouraging hate speech, terrorism and (un)consciously a terrorist act committed by the perpetrator. We can consider the above as a(n) (in)direct abuse of freedom of expression.

Another example that confirms the thesis of this research and the paper (causality of abuse of freedom of expression and the commission of criminal acts, incitement to terrorism, a commission of a terrorist act, incitement to violence and hatred) also received considerable attention in the Croatian media because the defendants committed the crime of incitement to terrorism through public speech and publicly accessible Internet platforms.<sup>12</sup> In this specific case, citing the announcement of the County State Attorney’s Office in Zagreb from 1 April 2022, the defendants committed the following; “The first defendant is accused of taking part in unannounced public protests held to oppose the decisions of the

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napadac-objavljivao-na-svom-facebooku-da-sam-jedan-od-njih-da-skidam-srbe-15024691. Since this is a security issue, the Facebook page of the perpetrator is no longer visible on the aforementioned social network, and the author of this paper, as previously stated, downloaded the hate speech that the perpetrator sent via the same network from one of the most visited portals in the Republic of Croatia.

<sup>11</sup> Prime Minister Andrej Plenković stated in detail after the session of the Parliamentary Committee for Internal Affairs and National Security on 2 February 2022 that there is a direct connection or causality between the abuse of freedom of expression and the commission of a criminal act of terrorism. For more on the statement, see the website of the Government of the Republic of Croatia from 2 February 2022, <https://vlada.gov.hr/vijesti/napad-na-banske-dvore-slucaj-bez-presedana-treba-stvoriti-ozracje-u-drustvu-koje-ce-smanjiti-govor-mrznje/33836>

<sup>12</sup> The aforementioned case caused a great media response due to the fact that the words spoken publicly during the protest against the measures to suppress the COVID-19 virus pandemic were characterized precisely as an abuse of freedom of expression, which led to the commission of the criminal offense of incitement to terrorism. For more on the media response, see the website of the daily newspaper Jutarnji list; <https://www.jutarnji.hr/vijesti/hrvatska/policija-se-oglasila-oprivedenju-franciskovica-i-kovacevica-evo-za-sto-ih-tocno-terete-15128709>, kao i dnevnog tiska Večernji list; <https://www.vecernji.hr/vijesti/policija-u-pet-zupanija-istrazuje-ljude-koje-se-sumnjici-na-poticanje-na-terorizam-1544471>

National Civil Protection Headquarters, introduced to suppress the pandemic of the infectious disease Covid 19, to realize his illegal activity, from November 13, 2021, to 1 December 2021, in several cities in the Republic of Croatia.

He is accused of making videos of these protests which were publicly displayed on social networks, in which he called on the citizens of the Republic of Croatia, as well as those outside the country, to mobilize and attack the physical integrity of the members of the governing state structures, to occupy public buildings and use other violent methods to remove the democratically elected government in the Republic of Croatia and to ignore the means of public communication. These videos were published on the Internet. The second defendant is accused of having, together with the first defendant, participated in an unannounced public gathering on 28 November 2021 where dissatisfied with the work of the state authorities, they called on citizens to mobilize and attack the physical integrity of the members of the governing structures, to occupy public buildings and use other violent methods to remove the democratically elected government in the Republic of Croatia, and to ignore the means of public communication. The first and the third defendant are accused of acting according to a prior agreement from 16 December 2021 to 22 December 2021 in Zagreb and Zadar with the aim to seriously disrupt the basic constitutional, political, economic, and social structures, and to realize their illegal actions. The first defendant is accused of having, during his pre-trial detention and exercising his right to phone conversation with his wife, namely the third defendant, publicly called on citizens to violently demolish constitutional, political, economic, and social structures in the Republic of Croatia. The third defendant is accused of recording the aforementioned speeches, editing them, and publishing them on an Internet platform<sup>13</sup>. Due to their abuse of freedom of expression, the defendants are accused of having committed criminal acts of public incitement to terrorism from Article 99, together with Article 97, paragraph 1, points 2 and 4 of the Penal Code, as well as Article 52 and Article 51 of the Penal Code.<sup>14</sup>

Considering the two cases in the Croatian media and legal environment, we can see the operation of the rule of law in terms of preventing and possibly sanctioning (for the second case we cannot talk about sanctioning because it has not yet been legally concluded, author's comment) the abuse of freedom of expression, which ends in the commission of certain criminal acts.

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<sup>13</sup> The County State Attorney's Office in Zagreb – Supplement to the announcements of 4 December 2021 and 31 January 2022 – An indictment was filed against three defendants for public incitement to terrorism. For more on the announcement, see the official website of the State Attorney's Office of the Republic of Croatia, <https://dorh.hr/hr/priopcenja/zupanijsko-drzavno-od-vjetnistvo-u-zagrebu-dopuna-priopcenja-od-4-prosinca-2021-i-31>

<sup>14</sup> Ibid

### 3. THEORETICAL DEFINITION OF LEGAL MECHANISMS FOR PREVENTING AND SANCTIONING ABUSE OF FREEDOM OF EXPRESSION

In terms of the legal theoretical study of legal mechanisms that will protect freedom of expression, and at the same time sanction instances of abuse of freedom, we must primarily start from the assumption that nowadays it is a well-known fact that freedom of thought and expression represent the most important principle of democratic values, the rule of law and all other values on which Western European associations and modern democratic societies rest.<sup>15</sup> According to the above, the Republic of Croatia will demonstrate its aspiration to belong to Western European political and legal values and protect freedom of expression at the beginning of the path towards acquiring its statehood through the provisions of the Christmas Constitution of 22 December 1990. Specifically, the provisions of Article 38 of the Constitution will clearly and unequivocally guarantee freedom of thought and expression, and will also include freedom of the press and other means of communication, freedom of speech and public performance, and the free establishment of all public communication institutions. The aforementioned freedoms will not be absolute and therefore the Constitution will state a provision or mechanism that would limit the said freedom in its absolute sense and its abuse by prohibiting and punishing any incitement to war or the use of violence, to national, racial or religious hatred or any form of intolerance.<sup>16</sup>

Furthermore, by implementing the foreign policy goals of belonging to Western European democratic values, the Republic of Croatia, through the Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, will additionally strengthen the aforementioned constitutional provisions in the field of freedom of opinion and expression, and the provisions of Articles 9 and 10 will confirm that “Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change one’s religion or belief and freedom to, either alone or in community with others, manifest one’s religion or belief in public or private, in worship, teaching, practice, and rites. The freedom to profess one’s religion or belief is subject only to those

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<sup>15</sup> The importance and connection of freedom of expression with democratic societies and democratic values can be seen in the paper of prof. Ashutosh Bhagwata (Professor of Law, UC Davis School of Law. B.A. 1986 Yale University. J.D. 1990 The University of Chicago) who, taking the example of the United States of America, states: “Why do we protect freedom of speech? While many alternative theories of free speech have advanced over the years, in the United States the leading response was that we value freedom of speech because it is an essential element of democratic self-governance.” For more on the paper, see Ashutosh Bhagwata, “Free Speech Without Democracy”, *University of California, Davis, Law Review* [Vol. 49:59], 1 November 2015, pp. 62.

<sup>16</sup> Article 38 and 39 of the Constitution of the Republic of Croatia, “Official Gazette”, No. 56/1990, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14



restrictions prescribed by law and which are necessary in a democratic society for public safety, to protect public order, health or morals or to protect the rights and freedom of others”, as well as “Everyone has the right to freedom of expression. This right includes freedom of opinion and freedom to receive and impart information and ideas without interference from public authorities and regardless of frontiers. This article does not prevent states from requiring the licensing of radio broadcasting, television, or cinematographic companies. The exercise of these freedoms, which entails duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties which are prescribed by law and are necessary for a democratic society, in the interest of national security, territorial integrity, or public safety, to prevent disorder or crime, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of information received in confidence or to maintain the authority and impartiality of the judiciary”.<sup>17</sup> The aforementioned constitutional and European legal provisions which have been transposed into national legislation clearly state that freedom of expression is not absolute, but that there are certain circumstances that “justifiably” limit that freedom, protecting both general (national) interests, and the interests of other people, i.e. the individual. In further legal theoretical elaboration, we also list the primary laws that regulate freedom of expression, but through media as a means of addressing a large number of people. In this sense, the Media Act, which embodies Western European and democratic ideas, represents, along with the Electronic Media Act, a *condicio sine qua non* of a democratic reflection of a democratic and legally regulated state in which freedom of expression truly exists. Namely, according to the Media Act, Article 3, paragraph 2, in addition to the media freedoms listed, especially freedom of the media which includes freedom of expression and opinion as well as the respect for human personality, privacy and dignity, the abuse of such freedoms is clearly described in paragraph 3 of the same article, which reads as follows: “Freedom of the media may be limited only to the extent necessary in a democratic society in the interest of national security, territorial integrity or public order and peace, prevention of disorder or criminal acts, protection of health and morals, protection of the reputation or rights of others, prevention of disclosure of confidential information to preserve the authority and impartiality of the judiciary only in the manner prescribed by law.”<sup>18</sup>

Similarity to the aforementioned provisions can also be seen in the Article 14, paragraph 1 of the Electronic Media Act which stipulates that audio and/or audiovisual media services that threaten the constitutional order and national security and publicly incite the commission of the crime of terrorism from Article

<sup>17</sup> Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 1, 4, 6, 7 and 11 with the Convention for the Protection of Human Rights and Fundamental Freedoms of the Republic of Croatia, “Official Gazette”, No. 18/1997.

<sup>18</sup> The Media Act of the Republic of Croatia, “Official Gazette”, No. 59/04., 84/11., 81/13.

99 of the Penal Code are prohibited (»Official Gazette«, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18 and 126/19), as well as paragraph 2 which stipulates that in audio and/or audiovisual media services it is forbidden to encourage and spread hatred or discrimination on the basis of race, ethnicity, skin color, gender, language, religion, political or other belief, national or social origin, property status, union membership, education, social position, marital or family status, age, state of health, disability, genetic heritage, gender identity, expression or sexual orientation and antisemitism and xenophobia, ideas of fascist, Nazi, communist and other totalitarian regimes.<sup>19</sup> From the aforementioned provisions, and if we take into account the previously mentioned criminal acts, we see that all the mentioned perpetrators of criminal acts used electronic media to incite and spread hatred or discrimination based on racial or ethnic affiliation, as well as to incite disorder and overthrow the legitimately elected government. The criminal acts committed by the perpetrators, which we mentioned earlier in this paper, are subject to the provisions of Article 94, paragraph 2 of the same act, which stipulates that providers of electronic publications are obliged, by Article 14 of this act, to take all measures to prevent the publication of content that incites violence or hatred, and criminal acts of terrorism from Article 99 of the Penal Code and criminal offenses related to racism and xenophobia from Article 125 of the Penal Code.<sup>20</sup> Following the presented legal provisions, the umbrella law that sanctions deviations in freedom of expression, i.e. abuse of freedom of expression in the Croatian legal context is the already mentioned Penal Code. Article 99 of the aforementioned law (Public incitement to terrorism) stipulates that anyone who publicly presents ideas that directly or indirectly encourage the commission of a criminal offense from Article 97, Article 98, Article 137, Article 216, paragraphs 1 to 3, Article 219, Article 223, Article 224, Article 352 to Article 355 of this act shall be imprisoned from one to ten years. The aforementioned provision of the Act, if we study it in the context of the case<sup>21</sup> from this paper, fully covers the mentioned abuse of freedom of expression and the prevention of the actions of both the police and the State Attorney's Office, to prevent the commission of a criminal offense from Article 97 of the same act.<sup>22</sup>

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<sup>19</sup> The Electronic Media Act of the Republic of Croatia, "Official Gazette", No. 111/21.

<sup>20</sup> Penal Code of the Republic of Croatia, "Official Gazette", No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 and 84/21, consolidated text

<sup>21</sup> See note 13

<sup>22</sup> Terrorism – "Whoever, with intent to seriously intimidate a population, compel a government or an international organization to perform or abstain from doing an act, seriously destabilize or destroy the fundamental constitutional, political, economic or social structures of a state or an international organization, commits one of the following acts that can seriously harm the state or an international organization. 1. attacks upon a person's life which may cause death, 2. attacks upon the physical integrity of a person, 3. kidnapping or hostage taking, 4. causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including

In addition to public incitement to terrorism and the very criminal offense of terrorism, abuse of freedom of expression can also be seen through the provisions of Article 325, paragraphs 1, 2 and 3, where the previously mentioned criminal offenses are brought under the aforementioned provisions, “Whoever, through the press, radio, television, computer system or network, at a public meeting or otherwise publicly incites or makes available leaflets, images or other materials that call for violence or hatred directed towards a group of people or a member of a group because of their racial, religious, national or ethnic affiliation, origin, skin color, sex, sexual orientation, gender identity, disability or any other characteristics, shall be punished by imprisonment of up to three years. The penalty from paragraph 1 of this article shall be imposed on anyone who publicly approves, denies, or significantly minimizes the criminal act of genocide, the crime of aggression, crime against humanity or war crime, directed towards a group of people or a member of a group because of their racial, religious, national or ethnic affiliation, origin or skin color, in a manner suitable to incite violence or hatred against such a group or members of such a group. The perpetrator shall be punished for the attempted criminal offense referred to in paragraphs 1 and 2 of this article.” Hence, we see that the Penal Code has tools with which it can prevent and sanction hate speech, especially when hate speech transforms into extreme form which becomes dangerous for the state, the government, society, and all citizens.<sup>23</sup>

Furthermore, following the cited provisions of the Penal Code, it can be seen that there is a legislator’s response to the occurrence of hate speech, which in its intensity can lead to the commission of the aforementioned criminal offenses (let’s take the examples that we cited earlier in this paper, author’s comment). The question arises whether these provisions are sufficient considering the amount of hatred (religiously and nationally motivated hatred, xenophobic and other acts towards national minorities and other religious groups) in the media and everyday life, from which we see that the criminal acts of terrorism, incitement to terrorism and incitement to violence and hatred nevertheless arise.<sup>24</sup>

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an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss, 5. seizure of aircraft, ships, or other means of public or goods transport, 6. manufacture, possession, acquisition, transport, supply, or use of weapons, explosives, or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons, shall be punishable by imprisonment from three to fifteen years

Penal Code of the Republic of Croatia, “Official Gazette”, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, consolidated text

<sup>23</sup> Ibid, Penal Code of the Republic of Croatia, “Official Gazette”, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, consolidated text

<sup>24</sup> In their paper and research on where the freedom of expression ends and hate speech begins, Maja Munivrana Vajda and Andrea Šurina Marton state that “although Croatian criminal legislation, with minor deviations, is compatible with modern European sources, in theory and

#### 4. AUSTRIAN ANTI-TERRORISM LEGISLATIVE PACKAGE – ESTABLISHING BALANCE BETWEEN LEGISLATION AND FREEDOM OF EXPRESSION

The event that took place in Vienna on 2 November 2020, in which four people were killed and fifteen were wounded by an armed male person, will pose numerous political, security, and ultimately legal challenges to the Republic of Austria to prevent the repetition of the above events in the future.<sup>25</sup> The aforementioned terrorist act will be a *case study* or a legal/political milestone in the Austrian fight against terrorism and the suppression of hate speech, since the legislative initiative of the Ministry of Justice aimed at fighting terrorism will be launched only one month after the terrorist act was committed.<sup>26</sup> The set of amendments to the existing laws will essentially relate to, *nota bene*, as the media and associations for the protection of human rights have called it, the fight against “political Islam”. Namely, the new measures would be aimed at “potential threats” to the Austrian social order and people, as well as political Islam, and their goal is to make a significant contribution to the prevention of extremist and Isla-

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practice a number of problems and controversial issues can be observed”, and thus we clearly and unequivocally see a possible legal, i.e. statutory *maxim* that can be implemented in cases of hate speech and its sanctioning. For more on the paper, see Maja Munivrana Vajda and Andrea Šurina Marton, “Gdje prestaju granice slobode izražavanja, a počinje govor mržnje? Analiza hrvatskog zakonodavstva i prakse u svjetlu europskih pravnih standarda”, *Hrvatski ljetopis za kaznene znanosti i praksu* (Zagreb), Vol. 23, No. 2/2016, pp. 444.

In the theoretical elaborations of the definition of the concept of incitement to commit a criminal offense and the frequency of the commission of criminal offenses resulting from hate speech, specifically the criminal offense from Article 325 of the Penal Code, at a public forum held under the auspices of the Faculty of Law of the University of Zagreb and the Lawyers’ Club of the City of Zagreb, full professor Davor Derenčinović raised the question of the elaboration of the characteristics of the mentioned criminal offense and stated the following thesis; “If it is understandable to criminalize incitement to violence, to me it is extremely questionable what it means to incite another to hatred. It has nothing to do with inciting a criminal act, but with inciting negative feelings towards other people and groups”. For more on the Forum, see [https://www.pravo.unizg.hr/images/50018419/212%20Surina%20Marton%20Munivrana%20Vajda%20travanj%20L\(1\).pdf](https://www.pravo.unizg.hr/images/50018419/212%20Surina%20Marton%20Munivrana%20Vajda%20travanj%20L(1).pdf)

<sup>25</sup> The media around the world reported on the unpleasant terrorist act, and it was clearly stated in all of them that it was a terrorist act committed by sympathizers of the Islamic State. For more on the details of the terrorist attack on Vienna, see: Vienna attack: arrests made after four killed in ‘Islamist terror’ shooting, *The Guardian*, 3 November 2020, <https://www.theguardian.com/world/2020/nov/03/vienna-terror-attack-isis-sympathiser-blamed-for-shooting-that-left-dead>

<sup>26</sup> On 22 December 2020, the Ministry of Justice sent a set of amendments to the existing laws to the Austrian parliament in response to the committed terrorist act. For more on the proposal, see the website of Bundesministerium für Digitalisierung und Wirtschaftsstandort; [https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=b06c8e5a-9b35-4150-b75f-912b498bd-83b&Position=1&SkipToDocumentPage=True&Abfrage=Begut&Titel=&Einbringer=&DatumBegutachtungsfrist=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=terror&Dokumentnummer=BEGUT\\_COO\\_2026\\_100\\_2\\_1817793](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=b06c8e5a-9b35-4150-b75f-912b498bd-83b&Position=1&SkipToDocumentPage=True&Abfrage=Begut&Titel=&Einbringer=&DatumBegutachtungsfrist=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=terror&Dokumentnummer=BEGUT_COO_2026_100_2_1817793)

mist-motivated attacks in Austria”.<sup>27</sup> Such announcement, as well as the official initiative to amend the law, will cause a reaction from the public and certain legal circles who will state that it is not in accordance with international and European human rights standards on freedom of religion, expression and association, although it is completely understandable that the protection of national security, public safety, public order, and the protection of the rights and freedom of others, are considered legitimate goals that can justify restrictions on non-absolute rights such as freedom of religion and freedom of expression.<sup>28</sup>

In formal legal terms, the merits of the legislative fight against terrorism referred to amendments to the Penal Code of the Republic of Austria, by introducing new “religiously motivated” criminal offences, i.e. criminal offenses described in Chapter 247b of the Penal Code under the heading *Religiously Motivated Extremist Association* (*Religiös motivierte extremistische Verbindung*) which read: “(1) A person who founds or is a leader in a religiously motivated extremist association shall be punished by imprisonment if he or another participant has committed or contributed to a serious illegal act in which a religiously motivated extremist orientation is clearly manifested, for which a sentence of up to two years is prescribed; (2) Whoever participates in such an association with the intention of promoting the commission of religiously motivated extremist acts, or supports them with significant means or in another significant way, is subject to the condition from paragraph 1 of imprisonment for up to one year or a fine of up to 720 daily wages; (3) A religiously motivated extremist association is one that continuously and illegally tries to replace the essential elements of the democratic, constitutional fundamental order of the republic with an exclusively religiously based social and state order by enforcing laws, regulations or preventing other sovereign decisions or usurp religiously based sovereign rights or try to enforce such rights.”<sup>29</sup> In addition to media and scientific criticism of the adopted amendments to the Penal Code<sup>30</sup>, the article of the Penal Code undoubtedly, namely

<sup>27</sup> The introduction of the terminology and the so-called criminal offense of “political Islam” will cause a deep and general reaction from the media, non-governmental organizations for human rights and other groups that deal with the issue of human rights. For more on this topic, see website of the daily newspaper *Večernji list* from 11 November 2020, under the heading: “Austria adopted measures against terrorism: Registers, closures, mosques, bracelets...”, [vecernji.hr/vijesti/austrija-donijela-mjere-protiv-politickog-islama-registri-zatvaranje-dzamija-narukvice-1445307](https://www.vecernji.hr/vijesti/austrija-donijela-mjere-protiv-politickog-islama-registri-zatvaranje-dzamija-narukvice-1445307).

<sup>28</sup> For more on the reaction and comments on the legislative initiative regarding the draft anti-terrorism law, see the comments of the European Center for Not-for-Profit-Law – <https://ecnl.org/news/austria-anti-terrorism-draft-law-not-line-human-rights-standards-fundamental-rights>

<sup>29</sup> Federal Law Gazette for the Republic of Austria, No. 159/2021 from 27 July 2021 (*BUNDESGESETZBLATT FÜR DIE REPUBLIK ÖSTERREICH*, Ausgegeben am 27. Juli 2021), <https://www.ris.bka.gv.at/eli/bgbl/I/2021/159>

<sup>30</sup> Amnesty International Österreich, Dokumentations- und Beratungsstelle Islamfeindlichkeit und Antimuslimischer Rassismus Epicenter.Works European Center For Not-For-Profit Law Stichting European Network Against Racism Koalition gegen Antimuslimischen Rassismus ZARA

*de facto* and *de iure*, shows that, when it comes to freedom of expression and the application of the provisions of Article 10, paragraph 2 of the ECHR, the Austrian legislator considers that such measures are necessary and proportionate to the legitimate goal pursued, which is *de facto* national security, public security, security of public order and the protection of the rights and freedoms of other legitimate goals that are limited by hate speech which would result from the commission of the aforementioned criminal acts.<sup>31</sup> Therefore, and in order to take the Austrian case as an example of the action of the Croatian legislator, it should be emphasized that, judging by the reasons for passing the aforementioned amendments to the law, in the Austrian example one can also talk about the establishment of the necessary balance between the citizens' and society's need for security and the freedom of speech or expression, that is limited in its extreme form, i.e. characterized as illegal, that is, the full application of Article 18, paragraph 3 and Article 20, paragraph 2 of the International Covenant on Civil and Political Rights comes into force.<sup>32</sup>

## 5. CONCLUDING REMARKS

Establishing social balance by choosing the lesser of two evils, as in the era of the Roman Republic, with the interpretation and implementation of Cicero's *maxim Salus populi suprema lex* (the safety of people is the supreme law), and by recognizing the fact that security restrictions on freedom of expression are established for the sake of people's safety, should represent the starting point from which to search for the best *modus operandi* between freedom of expression and limiting it. In this sense, the author of this paper believes that the Croatian legislator should start from the following as a guideline for future actions on how to respond to hate speech and the commission of certain criminal acts, and how to establish a balance between legislative action and freedom of expression;

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Zivilcourage und Anti-Rassismus-Arbeit signed a joint statement in which they state that the draft law on the fight against terrorism in the Republic of Austria does not comply with basic human rights standards. For more on the statement, see <https://www.enar-eu.org/joint-statement-anti-terrorism-bill-not-in-line-with-basic-human-rights/>

<sup>31</sup> The importance of the adoption of a set of laws against terrorism by the Republic of Austria is also stated by the U.S. Department of State United States of America in its Annual Report on Terrorism in 2020, December 2021/ [https://www.state.gov/wp-content/uploads/2021/07/Country\\_Reports\\_on\\_Terrorism\\_2020.pdf](https://www.state.gov/wp-content/uploads/2021/07/Country_Reports_on_Terrorism_2020.pdf)

<sup>32</sup> Article 18, paragraph 2 of the International Covenant on Civil and Political Rights, which was adopted by the General Assembly of the United Nations on 16 December 1966, and which entered into force on 3 January 1976, stipulates that the "Freedom of religion or belief can be subject only to those restrictions prescribed by law and which are necessary for the protection of public safety, order, health, morals or the fundamental rights and freedoms of others." Article 20, paragraph 2, stipulates that; The law prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

- a) theoretical interpretations of Michael Ignatieff, who in his book “The Lesser Evil: Political Ethics in an Age of Terror” claims that in case of real danger, if political authorities intend to enact laws restricting certain rights, they must be verified by the court and the free media.<sup>33</sup> Therefore, taking into consideration Cicero’s *maxim* as well as Ignatieff’s theoretical concepts, the final reflection on the fact that the Croatian legislation should act in accordance with the Austrian and the very concept of the anti-terrorist fight is that the legislator should still pass certain laws and measures in emergency situations in the way that Jeremy Waldron states in his political theories and thoughts. He states that in emergencies, reducing freedom usually means strengthening the power of the state, so that such power can be used in the fight against terrorism. However, Waldron points out that this enhanced power can be used for other things, therefore, “reducing freedom could also reduce security against the same state,” even as it increases security against terrorism.<sup>34</sup> and from
- b) the formal legal framework prescribed by the Regulation of the European Parliament and the Council of the European Union of 29 April 2021 on the fight against the spread of terrorist content on the Internet, which states in its introductory part: “Regulatory measures to combat the spread of terrorist content on the Internet should be complemented by Member States’ strategies to combat terrorism, including strengthening media literacy and critical thinking, developing alternative arguments and counter-arguments, and other initiatives to reduce the impact of and exposure to terrorist content online, as well as investment in social work, initiatives for de-radicalization and cooperation with affected communities to achieve permanent prevention of radicalization in society. The fight against terrorist content on the Internet, which is part of the broader problem of illegal content on the Internet, requires a combination of legislative, non-legislative, and voluntary measures based on cooperation between competent authorities and hosting service providers, in a way that fully respects fundamental rights”. Precisely, the aforementioned Regulation of the European Parliament and the Council of the European Union should be a guidance or a starting point for questioning in which direction should freedom of speech go, and how to combat against abuse of such freedom.<sup>35</sup>

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<sup>33</sup> Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, Princeton University Press, 2005, pp. 2.

<sup>34</sup> Jeremy Waldron, “Security and Liberty: The Image of Balance”, *Journal of Political Philosophy*, Vol. 11, No. 2, 2003, pp. 193.

<sup>35</sup> Regulation of the European Parliament and the Council of the European Union of 29 April 2021 on the fight against the spread of terrorist content on the Internet, Official Journal of the European Union L 172/79, 17 May 2021.

Hence, freedom of expression as one of the principles of a democratic society in its evolutionary development has to be re-examined. Also, the boundaries where freedom of expression ends and hate speech begins, moreover, where the commission of certain criminal acts begins, are being determined. The author of the paper re-examines this boundary in the sense that he sees the abuse of hate speech in the conviction of certain criminal offenses. The reason for the author's standpoint is primarily the abuse of such freedom by individuals, certain groups (political, religious) who used such freedom as an (in)direct means, tool or weapon to achieve a specific goal, i.e. causing a certain amount of damage by harmful action towards an individual, a specific group, as well as the state, which manifests itself as the commission of certain criminal acts. Preventing the abuse of freedom of expression, and ultimately, as a result, the commission of certain criminal acts (e.g. terrorism) is an eternal struggle of finding a balance between freedom of expression and limiting it. Limiting freedom, according to Cicero's *maxim Salus populi suprema lex* can only be a starting point for determining the limits of freedom of expression or a partial prevention from reaching the ultimate goal resulting from the abuse of freedom of expression. By comparing the Croatian legal fight against the abuse of freedom of expression and the Austrian model in the form of anti-terrorist measures, which includes amendments to the Penal Code, the author of this paper applied, as stated in the previous article of this paper, parts of the Austrian modality, as well as the full implementation of the Regulation of the European Parliament and the Council of the European Union on the fight against the spread of terrorist content on the Internet. The Regulation provides the states with the tools, mechanisms and guidelines to find a balance between freedom of expression and limiting it, such as strengthening media literacy and critical thinking, developing alternative argumentation and counter-argumentation, strengthening media literacy and critical thinking, developing alternative argumentation and counter-argumentation.

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## Правни изазови хрватског законодавца на појаву говора мржње и чињења појединих кривичних дела

**Сажетак:** Вишевековна човекова жеља и борба за слободом говора, слободом изражавања, ујркос чињеници еволуцијској развоја њакве жеље и борбе у односу на власи и самој законодавца који ће временом законодавно артикулисати наведене жеље, доживеће парадиуму и сиварности њакве жеље и борбе у данашњем времену. Ујраво је слобода изражавања највиша људска, друштвена и хуманитичка еволуцијска вредности и инстинктивна либералне демократије у којима човек, појединац или група људи може самостална сиварности, размишљања и критике иреније другим људима, групама, као и самој владајућој структури. Нажалости, инстинктивна слобода изражавања двадесетих година 21. века почео је приказивати дисфункцију и аномалије њаквих вредности у јавном, медијском простору, нарочито кроз електронске медије, електронске публикације, ујтем савремених електронских платформи, а које су као њакве видљиве или ујћене већем броју људи. У конкретном смислу, а сагледавајући хрватску(е) сиварности(и) и искуство са наведеним, неоспорно је да постоји злоупотреба или погрешно схватање граница слобода изражавања којим се због екстензивног тумачења или погрешног схватања демократије радикализује и злоупотреба слобода изражавања. Злоупотреба слобода изражавања резултираће говором мржње и чињењем појединих кривичних дела (јавно подстицање на тероризам, тероризам, јавно подстицање на насиље и мржњу). Тиме можемо рећи да постоји (ин)директна веза између слобода изражавања ирочисане члановима 9 и 10 став 1 Европске конвенције за заштити људских ирива и основних слобода и осталих уставних и законских одредаба Републике Хрватске. Злоупотребе наведених ирива и инстинктивна доводи до чињења појединих кривичних дела. Иако су говор мржње и сама радикализација медијског простора ујтем нових електронских платформи дезавуисали слободу говора и мишљења, по је и наметнуло законодавцу ишћање да ли је постојећи законодавни оквир довољан или је погрешно сиварање новој (ириер аустиријских иривитерористичких мера) у смислу иривенције, али и кажњавања ових појава. Ујраво све наведено сиваља иред хрватски уставноиравни и законодавни

оквир правни изазов снаге јосиојећих усјавних одредби и законодавној оквира. Имајући то на уму, да ли хрвајски законодавац треба да следи пример аустријској законодавца и одговори на злоупотребе и прекорачења слободе изражавања? Увиђајући наведене повезаности између злоупотребе слободе изражавања и чињења јојединих кривичних дела, аутор научном анализом и компаративним методом преиспитује правне изазове и/или снагу хрвајској законодавној оквира те јосјавља јијање јосиоје ли можда нови правни механизми који би требали да буду одговор на наведене јојаве како би се инспитуј слободе изражавања догајно ојачао и зашјијио.

**Кључне речи:** говор мржње, слобода изражавања, јавно јодсјицање на јероризам, јероризам, јодсјицање на насиље и мржњу.

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