



YOUTH INITIATIVE FOR HUMAN RIGHTS  
NISMA E TË RINJVE PËR TË DREJTAT E NJERIUT  
INICIJATIVA MLADIH ZA LJUDSKA PRAVA



Në emër të lirisë së shprehjes  
U ime slobode izražavanja  
In the name of freedom of expression



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## Disclaimer

Any words that could be considered discriminatory, derogatory, promoting hatred or that may be contrary to codes of ethics and legislation, which appears in this research, is quoted from the research and is only used to indicate the level of hate speech used. This language in no way can be considered as opinions of YIHR KS.

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## 1. Executive summary

Hate speech in Kosovo is prohibited and criminalized by the Criminal Code but also with codes of ethics and conduct of the Press Council of Kosovo and the Independent Media Commission. With regard to criminalization, hate speech for the first time was criminalized in the Criminal Code of the former Yugoslavia. Currently, it is also prohibited by the Criminal Code of Kosovo. However, hate crimes committed before 20 June 2013 will not be prosecuted or punished, as the controversial amnesty law has pardoned the perpetrators or suspects of hate speech crimes.

Although the amnesty law did not come into force until 20 June 2013, institutions such as the police and courts, including the European Union Rule of Law Mission in Kosovo (EULEX), have dealt with an extremely small number of hate crimes. For three years the courts have accepted 13 cases, while the Kosovo Prosecution has not provided any information about the prosecution of these crimes. On the other hand, the Independent Media Commission has not received any complaint regarding use of hate speech in electronic media. Whereas, the Press Council of Kosovo, which has treated 11 cases including finding violations by the online media, it does not have the legal power in order to influence the reduction of such cases.

Monitoring of nine web news pages over the years 2012 and 2013 shows that most of the portals do not filter comments at all allowing hate speech through insulting expressions, denigrating, humiliating and often also calls for violence against certain persons or groups. The instruction that " comments that contain hate speech are not allowed..." which some internet portals display in the users' comments corner, is proved to be an instruction which is not respected by the internet portals themselves, as they allow content that promotes hatred.

Targeted groups by the readers, according to the findings of the monitoring by YIHR KS are ethnic minorities and the LGBT community, especially Serbs. Meanwhile, denigrating expressions are also used in threads dealing with northern Kosovo or the Serbia-Kosovo dialogue. Expressions like "Shkijet" (an offensive term used to describe Serbs), "maxhup" (an offensive term used to describe Roma), "pedera" (an offensive term used to describe LGBT community, equivalent of faggot), are common in most of the portals, with some exceptions.

The research also has identified positive examples among online media that filter the comments with precision and care, not allowing expressions that do not comply with the code of ethics or domestic legislation.

Given that cases where hate speech is used should be treated by the justice system, the report provides a brief elaboration of the five main cases of the European Court of Human Rights. These cases which deal with hate speech have been included, in the hope that will be taken into consideration by domestic judges, prosecutors and lawyers. Finally the report provides concrete recommendations for online media newsrooms, the Press Council of Kosovo, for the prosecution, courts and lawyers.

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## 2. Methodology

This report is based primarily on the monitoring of online media. Also, qualitative and quantitative methods of research have been taken into account. Special focus during the monitoring of online media was given to readers' comments as it is considered a content, which is less editorially controlled or not control at all. In addition to data found through the monitoring, existing reports, media archives, laws, codes of ethics and other materials are used to enrich the report and to bring a more realistic picture about hate speech in online media. In addition, during the research, in the absence of online information, a number of institutions were contacted. Finally, as this report will mention most online media owners, editors or other responsible persons were contacted to obtain their position about the monitoring findings of YIHR KS.<sup>1</sup>

## 3. Legal basis and its implementation

Lack of tolerance towards certain groups of society often leads to actions that promote hatred, which could result in criminal offenses being committed. Hatred can be promoted in various forms, but this report focuses on hate speech used primarily in online media and its relationship with freedom of expression.

In the public discourse in Kosovo hate speech is justified with freedom of expression, but the international and local legal framework stipulates that freedom of expression is not absolute. In fact, one of the crucial elements in limiting freedom of expression is the risk that may arise due to the use of hate speech, which could result in persons being endangered or harmed.

Two main Articles of Kosovo Constitution regulating freedom of expression and media, provide clear reference to cases where freedom of expression and the media can be lawfully restricted. According to Article 40 of the Constitution of Kosovo, "The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion"<sup>2</sup>. Additionally, Article 42 of the Constitution, which deals with prohibition of censorship, makes it clear that in fact "censorship" can be applied when necessary to prevent incitement and provocation of violence and hostility based on racial, national, ethnic or religious.<sup>3</sup>

However, what is the meaning of hate speech and how is it defined? Thus far there is no unified definition for hate speech, although the definition given by the Council of Europe is mostly used, according to which hate speech is considered "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or

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<sup>1</sup> Newsrooms are contacted through the contacts listed on their web-sites.

<sup>2</sup> Constitution of Kosovo, Article 40, freedom of expression, available at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

<sup>3</sup> Constitution of Kosovo, Article 42, freedom of expression, available at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

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other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin".<sup>4</sup> In addition to the Recommendation of the Council of Europe that provides a definition of hate speech, there are a large number of international instruments that condemn and prohibit all forms of incitement of hate speech.

Despite the fact that Kosovo is not a signatory to the European Convention on Human Rights, the International Covenant on Civil and Political Rights, or a member of the Council of Europe, the Constitution provides that international instruments apply and in cases of conflict with the legislation of Kosovo institutions, they take precedence.<sup>5</sup>

Protection from incitement of hatred is included in the European Convention on Human Rights, even though it does not give a clear reference to the terminology "incitement of hatred". Article 10 which deals with freedom of expression limits this right in the second paragraph, among others, even when it is necessary to "prevent crimes, for the protection of health or morals, for the protection of the reputation or rights of the others".<sup>6</sup>

Meanwhile in the context of criminal law, using language that incites racial, national and other types of hatred was criminalized for the first time with the criminal code of the former Yugoslavia of 1952, and this has since been used as an example by many other jurisdictions.<sup>7</sup>

In Kosovo, as of 1<sup>st</sup> of January 2013 when the new Criminal Code entered into force, incitement of hatred is a criminal offence punishable with a fine or imprisonment up to ten years.<sup>8</sup> This criminal offence was also sanctioned with the previous criminal code.<sup>9</sup> However, all those who have committed this criminal offence before 20<sup>th</sup> of June 2013, as sanctioned by either of the Criminal Code in force, were given full exemption from prosecution or serving a sentence by the controversial amnesty law, which was passed by the Assembly on 11th July 2013.<sup>10</sup>

Nevertheless, the implementation or enforcement of the criminal law for crimes relating to the promotion of hatred, prior to the amnesty law, did not seem to be a priority for

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<sup>4</sup> Recommendation Nr. R (97) 20 of Council of Europe, available at:

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/dh-lgbt\\_docs/CM\\_Rec\(97\)20\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)

<sup>5</sup> Constitution of Kosovo, Article 22 , Direct Applicability of International Agreements and Instruments, available at:

<http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

<sup>6</sup> European Convention on Human Rights, Article 10, Freedom of Expression, available at:

[http://www.echr.coe.int/Do\\_cuments/Convention\\_ENG.pdf](http://www.echr.coe.int/Do_cuments/Convention_ENG.pdf)

<sup>7</sup> *Vejdeland and Others v. Sweden*, European Court of Human Rights, 9 February 2012, page 19, available at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109046>

<sup>8</sup> Criminal Code, Article 147, Inciting national, racial, religious or ethnic hatred discord or intolerance, available at:

[http://gazetazrtare.rks-gov.net/Documents/Kodi%20Penal%20i%20R.Kosoves%20\(anglisht\).pdf](http://gazetazrtare.rks-gov.net/Documents/Kodi%20Penal%20i%20R.Kosoves%20(anglisht).pdf)

<sup>9</sup> Provisional Criminal Code, Article 115, Inciting National Racial, Religious or Ethnic Hatred, Discord or Intolerance, available at:

[http://www.unmikonline.org/regulations/2003/RE2003\\_25\\_criminal\\_code.pdf](http://www.unmikonline.org/regulations/2003/RE2003_25_criminal_code.pdf)

<sup>10</sup> Law on Amnesty, 11 July 2013, available at:

<http://www.kuvendikosoves.org/comm on/docs/ligjet/Law%20on%20amnesty.pdf>

public institutions, especially for the judicial system, based on official records of the Kosovo Judicial Council (KJC).

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According to the KJC records related to the period between January 2008 and September 2013, there are in total, 13 cases related to the criminal offence of incitement of hatred, 5 of which are solved, while the other 8 remain unsolved.<sup>11</sup> This information do not appear online officially, because the KJC, in its annual reports only divides cases in criminal or civil, but does not offer statistical data related to the criminal offence.<sup>12</sup>

The figure of 13 cases is extremely low compared with the trend/instances of hate speech being used, which is part of hate crimes, when compared with the number of cases reviewed by the regular courts in Kosovo. According to the KJC, Kosovo courts annually try about 100 thousand cases, excluding cases inherited from previous periods that reach the figure of 216, 860 cases.<sup>13</sup>

The Kosovo Police also identified a small number of cases dealing with the criminal offence of incitement of hatred. For the period from 1<sup>st</sup> January to 31<sup>st</sup> December 2013, Kosovo Police indicate that a total of 8 cases are registered in the police database.<sup>14</sup>

The Kosovo Prosecution did not provide any information on the number of cases investigated by prosecutors for incitement of hatred, punishable offence according to the Criminal Code.<sup>15</sup> While Kosovo Prosecution offers no data regarding hate crimes, in England and Wales, the prosecution of persons who have committed hate crimes peaked in 2010 and 2011, where 13, 276 people were brought before the courts.<sup>16</sup> This data includes cases where the victims were targeted based on their sexual orientation, while the highest number of cases were motivated by race.<sup>17</sup>

On the other hand, prosecutors and judges through trainings prepared by the Kosovo Judicial Institute as part of their continuous professional development, do not receive any specific training related to the criminal offence of incitement of hatred or other criminal offences motivated by hate.<sup>18</sup> Training of police officers, prosecutors and judges on how to address hate crimes is already a priority in European countries. This was reinforced at the conference "Combating hate crimes in the EU", held in November last year in Latvia, where it was recommended that "hate crimes training should be part of initial training for police officers, and such training should be provided to judges and

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<sup>11</sup> These statistics were manually extracted by the YIHR KS team based on the statistical data provided by the KJC regarding all cases.

<sup>12</sup> Classification of the cases is done by the courts. For example in the Courts of minor offences the cases are classified as those related to traffic, economy, public order, public security etc.

<sup>13</sup> Annual Report of KJC, 2012, available at: [http://www.kgjk-ks.org/repository/docs/raporti\\_final\\_ALB\\_2012\\_725938.pdf](http://www.kgjk-ks.org/repository/docs/raporti_final_ALB_2012_725938.pdf)

<sup>14</sup> Reply from the Police Information Office, 10 January 2014

<sup>15</sup> YIHR KS submitted a written request to the spokesperson of the prosecution Liridona Kozmaqi, but no reply was received.

<sup>16</sup> Hate crimes prosecutions reach record high, 14 February 2012, BBC, available at: <http://www.bbc.co.uk/news/uk-17029139>

<sup>17</sup> Ibid

<sup>18</sup> Reply by Gentiana Elshani, Liaison Officer in the Kosovo Judicial Institute, 10 January 2014

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prosecutors ...".<sup>19</sup> Meanwhile, the Kosovo Chamber of Advocates in 2012 has provided training for hate crimes to its lawyers in six municipalities.<sup>20</sup>

It should also be mentioned that five other cases are being investigated by the prosecutors of the European Union Rule of Law Mission (EULEX). Two of these cases are with the Kosovo Special Prosecution Office, two with Mobile Team Prosecutors and one with Task Force of Mitrovica.<sup>21</sup>

### 4. Rabat Plan

The Office of the United Nations High Commissioner for Human Rights, organized four regional workshops with experts coming from all corners of the globe. These workshop resulted with the Rabat Action Plan (Plan Rabat), whose purpose is to serve as a guide for creating a balance between Article 19 (which deals with freedom of expression) and Article 20 (which deals with incitement of discrimination, hostility or violence) of the International Covenant on Civil and Political Rights.<sup>22</sup>

The Rabat plan gives recommendations to the States for positive measures they should take in improving legislation, jurisprudence and their state policies in order to combat hate speech.

With regard to legislation, the Rabat Plan encourages states to define in their legislation, as specifically as possible, incitement of discrimination, hostility and violence. Moreover, for every restriction that States create to freedom of expression, they should consider three criteria: legality, proportionality and necessity.

Whereas, in the development of jurisprudence, the Rabat plan provides a 6 points test which courts should consider when they assess whether particular language should be prohibited or punished as inciting hatred.

The six elements of the test include:

- 1) The context in which something is said;
- 2) The speaker;
- 3) Intent of the speaker;
- 4) The content or form of speech;
- 5) The extent or spread of the speech and
- 6) The risk or likelihood of the speech used resulting in incitement of hatred.

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<sup>19</sup> Recommendation of the working group during the conference, available at:

[http://fra.europa.eu/sites/default/files/frc\\_2013\\_day\\_2\\_wg\\_iii\\_working\\_group\\_harvest\\_capacity\\_building\\_and\\_training.pdf](http://fra.europa.eu/sites/default/files/frc_2013_day_2_wg_iii_working_group_harvest_capacity_building_and_training.pdf)

<sup>20</sup> Reply by Albulena Ukimeraj, Coordinator of Training Center of Kosovo Chamber of Advocates, 10 January 2014

<sup>21</sup> Reply by Blerim Krasniqi, EULEX spokesperson, 13 January 2014

<sup>22</sup> Workshops were held in different places. The first workshop was held in Vienna on 9-10 February 2011, the second in Africa, Nairobi on 6-7 April 2011, the third in Asia, Bangkok, on 6-7 July 2011, the fourth in Americas, Santiago de Chile on 12-13 October 2011, while the final meeting was held in Morocco, Rabat on 4-5 October 2012.

In relation to sanctions applied by the State, the Rabat Plan recommends that criminal sanctions should be imposed only in the most severe cases and for the less serious cases administrative or other measures should be taken.

Additionally, the Rabat Plan recommends to States to apply policies that promote peace, tolerance, cooperation and understanding between individuals, ethnic and religious groups, religious leaders, state actors, media and to raise social awareness in order to stop acts which incite hatred. Therefore, this plan can serve as a practical example for local institutions in addressing hate speech.

## 5. The role of the IMC and PCK in addressing hate speech

In Kosovo there are different mechanisms that can be used to address hate speech in the media. Judicial mechanisms include the police, prosecution and courts, while other state mechanisms or self-regulatory bodies (non-state) include the Independent Media Commission (IMC) and the Press Council of Kosovo (PCK). Even though this report focuses on online media, it is considered necessary to explain the role of IMC, in light of its role of monitoring the conduct of electronic media.

In order for the existing mechanisms to function, cases relating to use of hate speech should be reported to the police, who are obliged to investigate the case and in cooperation with the prosecutor to decide whether criminal charged should be brought. Crimes relating to incitement of hatred, including the use of hate speech in the media, may be prosecuted by the prosecution *ex officio*, i.e. without the case being reported. However, the prosecution did not provide data on how many cases they investigated. With regard to cases in the judicial system, these were discussed above. However, other mechanisms existing outside of the judicial system, which can have an impact on dealing with hate speech in the media including prevention.

One of these mechanisms is the Independent Media Commission. This institution as established by the Assembly of Kosovo monitors electronic media (television and radio), whether they comply with the code of conduct of audiovisual media and citizens have the right to complain against media outlets which broadcast language that incites hatred.

The IMC Code of Conduct prohibits the broadcasting of program content that incites hatred on the grounds of ethnicity, religion, gender, race, marital status, age or physical or mental disability.<sup>23</sup> Additionally, the media outlet may not broadcast content that encourages criminal acts.<sup>24</sup> According to the data provided by the IMC, this institution has not dealt with any cases related to the use of hate speech on television or radio.<sup>25</sup>

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<sup>23</sup> Code of Conduct for the Audio Visual Media Services in the Republic of Kosovo, Article 10, available at: <http://kpm-ks.org/materiale/dokument/1292592101.0176.pdf>

<sup>24</sup> *ibid*

<sup>25</sup> Reply by Fikrete Çoçaj, Independent Media Commission spokesperson, 20 January 2014

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In comparison with the years after the war in Kosovo, there is a considerable decrease of the use of hate speech in newspapers, although this is not the case with online media. The highest level of hate speech appears in the online news portals, which as print media are regulated by the Press Council of Kosovo. The PCK is self regulatory body consisting of representatives of print and online media operating on a voluntary basis. As such the PCK has no legal force and cannot impose fines. Therefore, its work is dependent upon the willingness of the media industry to implement its code and its decisions.

Complaints to the PCK can be filed by anyone, although anonymous complaints are not taken into consideration by the Council at all.<sup>26</sup> Additionally, according to the rules of procedure of the Council complaints must be submitted against the media outlet and not against individual journalists.<sup>27</sup>

Currently, PCK does not have any official statistics on the number of decisions related to hate speech.<sup>28</sup> However, the official website lists 11 decisions and opinions dealing with hate speech that this Council has dealt with since 2009. Six of them are decisions, while four of them are opinions. Two of the 11 complaints were rejected, 5 were approved, three of them have been partially approved and one of them was rejected.<sup>29</sup>

With regard to the responsibility of the media outlets, especially those online, there is a general impression that online media are not responsible for the readers' comments, whether they are provided under the articles or in the form of opinions or columns. This is also evident due to the fact that most of the portals, under the published article, place a disclaimer to renounce responsibility by stating that the "portal does not take responsibility" or even that "comments that incite hatred are prohibited".

This disclaimer currently is used by [Indeksonline.net](http://Indeksonline.net), [telegrafi.com](http://telegrafi.com), [koha.net](http://koha.net), [tribunashqiptare.com](http://tribunashqiptare.com) and [gazetajetnekosove.com](http://gazetajetnekosove.com). Meanwhile, only [telegrafi.com](http://telegrafi.com), [gazetajetnekosove.com](http://gazetajetnekosove.com) and [tribunashqiptare.com](http://tribunashqiptare.com) expressly prohibit hate speech. [Botasot.info](http://Botasot.info), [zeri.info](http://zeri.info) and [lajmi.net](http://lajmi.net), do not contain any such disclaimer.

Nevertheless, below we will elaborate cases, where most of the portals do not adhere to this disclaimer at all and it seems to be only "copy-pasted" and done so by news portals to give the impression that they act in accordance with the code of ethics and relevant legislation. Whilst such a disclaimer should exist and be respected, it is necessary that those news portals that do not contain such a disclaimer, to find a way to explain the main criteria that the readers should respect when they comment. This will give the media the right to edit/remove comments based on non-compliance with set standards, which the readers must be informed about.

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<sup>26</sup> Rules of Procedure, Article 2, available at: <http://presscouncil-ks.org/?cid=1,11>

<sup>27</sup> Ibid

<sup>28</sup> Reply by Qerim Ondozi, Public Relations Officer, PCK, 15 January 2014

<sup>29</sup> This data has been obtained from the official web site of PCK, <http://presscouncil-ks.org/>

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On the other hand, not publishing a comment or its removal without providing justification to the readers may be rightfully considered by the reader as censorship. A positive example in this regard is gazetajn.com, which during the monitoring it became apparent that there are a large number of deleted comments; and in those cases instead of the comment the reason is displayed why the comment is removed or not published.<sup>30</sup> This solution can be considered as a good balance between the reader's right to free speech and media's right to protect others.

The responsibility of the media outlets is also confirmed by a case of the European Court of Human Rights, which decided that the courts in Estonia did not violate article 10 of the European Convention on Human Rights, when they imposed a fine of 320 Euros upon the news portal Delfi for the publication of insulting and offensive comments. It should be noted that this decision is not final as it was appealed.

In 2006 the news portal Delfi, which is one of the biggest news portals in Estonia, published an article analyzing the decision of a company that had changed the route that ships had to make in order to reach certain islands. Due to difficulties encountered in the implementation of this decision led to postponing the usage of a shipping line, which offered cheaper prices for Estonian citizens. Many readers posted insulting comments and threats to the shipping company and its owner, as a sign of revolt against raising prices. For this reason, in the same year 2006, the owner of the shipping company had sued the news portal Delfi in Estonia, whose state court had ruled in his favour. According to the Estonian court, the comments were offensive and Delphi was held responsible for their publication. The owner of the shipping company was compensated with 320 Euros for damages. Delphi's complaint in the Estonian Supreme Court was also unsuccessful. Thereafter, the news portal Delphi filed an appeal to the European Court of Human Rights, arguing that the Estonian state has violated its right to freedom of expression, as regulated by Article 10 of the European Convention on Human Rights, when it held it responsible for the readers' comments.<sup>31</sup>

This decision was largely criticized by media organizations which have encouraged Delphi AS to submit the case to the second instance of the European Court of Human Rights.<sup>32</sup> Thus, on 8<sup>th</sup> of January 2014 Delphi submitted a request for referring the case to the Grand Chamber (second instance), a request supported by a coalition of 69 organizations, among which include Google, Guardian News and Media, The New York Times, Article 19 etc.<sup>33</sup>

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<sup>30</sup> Terms of Use, Gazeta Jeta në Kosovë, available at: <http://gazetajn.com/?cid=1,1061>

<sup>31</sup> News portal Legally Responsible for Comments, 11 October 2013, Gazeta Jeta në Kosovë, available at: <http://gazetajn.com/?cid=1,1018,6644> (summary of the case is taken from Gazeta Jeta në Kosovë, which published an article about the decision of the Court)

<sup>32</sup> International organizations Article 19 which deals with issues relating to freedom of expression recommended to AS Delfi to submit the case to the second instance.

<sup>33</sup> Delphi v Estonia, request to refer the case to the Grand Chamber, 15 January 2014, available at: <http://inform.wordpress.com/2014/01/15/news-delfi-v-estonia-liability-for-user-comments-applicant-seeks-referral-to-grand-chamber/>

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## 6. LGBT and "vulnerable" minorities endangered by hate speech

YIHR KS during 2012 and 2013<sup>34</sup> has monitored how hate speech is treated on 9 news web-sites including; Botasot.info, Indeksonline.com, Gazetaexpress.com, Gazetajnk.com, Gazetatribuna.com, Koha.net, Lajmi.net, Telegrafi.com and Zeri.info. The selection of majority of them was made based on the membership of the Press Council of Kosovo.<sup>35</sup>

The monitoring data shows that hate speech can mainly be encountered in topics related to the LGBT community and ethnic minorities, especially those related to the Serb minority. For example, the monitoring shows that hate speech has been used and published, especially during the events related to Kosovo 2.0.<sup>36</sup> Additionally, it was noted that in most of the articles which address the issue of talks between Kosovo and Serbia, the status of northern Kosovo, elections in the north, etc. there was a higher level of publishing hate speech.

### “Pederat” and the call for violence

The issue of realization of human rights for the LGBT community in Kosovo is still considered taboo and despite its sensitivity, it seems that the media has not shown sufficient care in the treatment of this topic. According to the Progress Report prepared by the European Commission in 2013, the LGBT community in Kosovo faces many challenges and continues to face discrimination, intimidation and violence.<sup>37</sup> This data is supported by the findings collected during the monitoring of media outlets.

During its monitoring of hate speech in the media, YIHR KS has identified thousands of readers' comments in different news portals promoting hatred against the LGBT community, calling for violence and insulting and humiliating this community, because of their sexual orientation. The media reaction to the influx of comments in these cases, with the exception of two portals<sup>38</sup> has been weak and irresponsible.<sup>39</sup>

**Botasot.info** – during the monitoring of articles in this portal, it is noted that the comments predominately contain insults with the aim of offending the LGBT community, rather than calling for criminal acts. Compared with other news portals monitored, the number of articles that relate to LGBT issues seems to be lower and as such the number of comments is lower. Additionally, the monitoring shows that there were articles on this topic that did not include any comment at all.<sup>40</sup>

<sup>34</sup> During the monitoring of media archives articles are also identified dating before 2012.

<sup>35</sup> Ranking of portals is done in alphabetical order.

<sup>36</sup> This event will be elaborated below.

<sup>37</sup> 2013 Progress Report, the European Commission, 16 October 2013, available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/kosovo\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf)

<sup>38</sup> Gazetajnk.com and Lajmi.net

<sup>40</sup> These are the LGBT community attackers in Red Hall, June 7, 2013, available at: <http://www.botasot.info/kronike-e-zeze/226627/keta-jane-sulmuesit-e-komunitetit-lgbt-te-salla-e-kuqe/>

**Indeksonline.com** – in monitoring of articles related to the LGBT community, YIHR KS has noticed an unusually large number of comments that incite hatred, call for criminal acts, condemn the appearance of the LGBT community publicly, call for opposing their rights in any form, and humiliate this community with through the harshest language.<sup>41</sup> Some of the comments published include but are not limited to: "May Allah protect our youth from these filthy people", "O you sick minded people, you are an infection to this society, o you degenerates, o filthy people", "Plisat did nothing last night. They had to execute them right there...", " For these people we should build as gas chambers as Hitler did for the jews!", "Get away you filthy, Bravo to Russia that never tolerates these filthy people" etc.<sup>42</sup>

**Gazetaexpress.com** – Gazeta Express, was also considered as one of the media outlets that did not filter online comments and has allowed numerous comments, which among other things, incite hatred and call for criminal acts. However, Gazeta Express has decided to close the option of commenting on articles. The Editorial Board of Gazeta Express, in its public statement published online said that the decision is temporary until another solution is found, in order to avoid that "readers' comments offending and humiliating anyone, due to their belonging to a particular ethnicity, religion, a political group or sexual orientation."<sup>43</sup>

**Gazetatribuna.com** - is a relatively new portal and contains very few comments against the LGBT community.<sup>44</sup> However, it should be noted that at least three articles, where the subject matter is not connected with the community in question, the word "peder" has been permitted in the comments.<sup>45</sup>

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International Day against Homophobia, 17 May, 2013, available at: <http://www.botasot.info/kosova/223920/dita-nderkombetare-kunder-homofobise/>

Pristina, action in support of LGBT, December 15, 2012, available at: <http://www.botasot.info/kosova/201770/prishtine-aksion-per-perkrahen-e-komunitetit-lgbt/>

<sup>41</sup> Below you can find links to some of the articles analyzed. YIHR KS has all these articles and comments in hard copy

Action in support of LGBT community, 15December 2012, available at:

<http://www.indeksonline.net/?FaqeID=2&LajmID=40474>

Conference on Freedoms and Protection of LGBT community in Kosovo, 12 December 2013, available at::

<http://www.indeksonline.net/?FaqeID=2&LajmID=78713>

Elton John speaks about LGBT rights, 06 December 2013, available at: <http://www.indeksonline.net/?FaqeID=4&LajmID=78181>

US Embassy condemns the violence against the LGBT community, 17 December 2012, available at:

<http://www.indeksonline.net/?FaqeID=2&LajmID=40662>

Jacobson lifts the LGBT flag in the Embassy, 17 May 2013, available at: <http://indeksonline.net/?FaqeID=2&LajmID=58602>

LGBT community, OIK: School textbooks should be revised, 12 June 2012, available at:

<http://indeksonline.net/?FaqeID=2&LajmID=21282>

American ambasador received members and supporters of LGBT community, 29 March 2013, available at:

<http://www.indeksonline.net/?FaqeID=2&LajmID=52808>

LGBT activists attacked with tear gas, 17 May 2013, available at: <http://www.indeksonline.net/?FaqeID=2&LajmID=58678>

Action in support of LGBT community, 15December 2012, available at:

<http://www.indeksonline.net/?FaqeID=2&LajmID=40474>

Homosexuals, to protest on Thursday in front of Ministry of Justice , 11 April 2013, available at:

<http://www.indeksonline.net/?FaqeID=2&LajmID=54318>

A Gay parade also in Tirana, 21 March 2012, available at: <http://indeksonline.net/?FaqeID=4&LajmID=17157>

<sup>42</sup> The comments are not edited intentionally

<sup>43</sup> Gazeta Express suspends the comments from readers, available at: <http://www.gazetaexpress.com/?cid=1,15,130740>

<sup>44</sup> <http://www.gazetatribuna.com/?FaqeID=7&LajmID=13793&thekso=LGBT>

<sup>45</sup> Below you can find links to some of the analyzed articles. YIHR KS has all these articles and comments in hard copy

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**Koha.net** – is a media outlet that has been careful in filtering the comments to a certain extent, but in some cases has allowed comments that incite hatred. One of these articles is the case of Kosovo 2.0, which will be elaborated below, where the portal has allowed 101 comments. These comments not only incited hatred, but called for criminal acts, for example "Death to Faggots, Death to Lesbians, Death to degeneration."<sup>46</sup> Some of the comments permitted also use the term "shka" to incite hatred against Serbs, as well as calling the organizers of the event for the publication of Kosovo 2.0, animals, congratulating the attackers of Kosovo 2.0 team and calling for the LGBT community to be opposed.

**Telegrafi.com** – this portal, as well as [indeksonline.com](http://www.indeksonline.com), contains a high level of comments that incite violence against the LGBT community. In the analyzed articles, it was noted that the comments against LGBT community come not only when this question is treated with a focus in Kosovo, but it is enough that the word LGBT appears in the headline, in order to encourage such comments. Readers' comments, among other things, call for physical violence against gays and lesbians, and their public condemnation.<sup>47</sup> It should be emphasized that the article titled "Updated: 'Kosovo 2.0' evacuated with the help of the police", contains a total of 325 comments. Most of the comments violate the code of ethics and may constitute a basis for prosecution. Some of these comments are: "the organizers of this faggots and lesbian night should be beheaded", "Alhamdulillah that this disgrace is destroyed. May Allah reward all those who contributed to destroy such filth. Allahu Akbar", " O fucking lice, you can't tell to

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Brothers Grabovci to the police: Do you know who are we!?, August 20, 2013, available at:

[at:http://www.gazetatribuna.com/?FaqeID=2&LajmiID=20113](http://www.gazetatribuna.com/?FaqeID=2&LajmiID=20113)

Dhurata in arms of Labi, 17 June 2013, available at: <http://www.gazetatribuna.com/?FaqeID=5&LajmiID=12059>

Scandal! Bulgarian minister, tears Kosovo flag (Video), 11 July 2013, available at:

<http://www.gazetatribuna.com/?FaqeID=2&LajmiID=15124>

<sup>46</sup> Extremists damage the offices of "Kosovo 2.0", 14 December 2012, available at: <http://koha.net/?page=1,13,127487>

<sup>47</sup> Below you can find links to some of the analyzed articles. YIHR KS has all these articles and comments in hard copy

LGBT Parade in Serbia: Support to Albanian activists, 07 October 2012, available at: <http://www.telegrafi.com/lajme/parada-lgbt-ne-serbi-mbeshitetje-nga-aktiviste-shqiptare-video-2-25505.html>

Updated: "Kosovo 2.0", evacuated with the help of the police, 14 December 2012, available at:

<http://www.telegrafi.com/lajme/e-plotesuar-kosovo-2-0-largohen-me-ndihmen-e-policise-80-4386.html>

GSGI: Attacks against LGBT must stop!, 19 December 2012, available: <http://www.telegrafi.com/lajme/gscgj-te-ndalen-sulmet-ndaj-lgbt-2-27413.html>

LGBT activists attacked with tear gas, 17 May 2013, available at: <http://www.telegrafi.com/lajme/sulmohen-me-gaz-lotsjell-s-aktivist-t-e-lgbt-s-78-9692.html>

Lady Gaga is returned, supports LGBT community, 29 June 2013, available at: <http://www.telegrafi.com/magazina/lady-gaga-rikthehet-perkrah-komunitetin-lgbt-6-19325.html>

Albania, gays awarded their supporters, 27 January 2013, available at: <http://www.telegrafi.com/magazina/shqiperi-homoseksualet-me-cmime-per-perkrahesit-e-tyre-6-17636.html>

Serious concerns for human rights in Kosovo, 24 May 2012, available at: <http://www.telegrafi.com/lajme/shqetesime-serioze-per-te-drejtat-e-njeriut-ne-kosove-2-22622.html>

Gay parade in Tirana too, 15 May 2012, available at: <http://www.telegrafi.com/fun/marsh-homoseksualesh-edhe-ne-tirane-10-5977.html>

Prime Minister and OIK condemn attacks against "Kosovo 2.0", 18 December 2012, available at:

<http://www.telegrafi.com/lajme/kryeministri-dhe-iap-denojne-sulmet-ndaj-kosova-2-0-2-27365.html>

Paris, the first mosque for gays, 30 November 2012, available: <http://www.telegrafi.com/fun/paris-xhamia-e-pare-per-homoseksuale-10-6518.html>

Spahia does not back off, against gay parade, 15 May 2012, available at: <http://www.telegrafi.com/lajme/spahia-nuk-t-rhiqet-kund-r-gay-parad-s-78-7564.html>

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Albanians how to have sex, get stuffed, we know how to do it very well” , “ May Allah punish those who are destroying our youth” etc.<sup>48</sup>

**Zeri.info** – YIHR KS has analyzed tens of articles published in this media outlet related to the topic of the LGBT community. It should be noted that based on the findings of monitoring this media outlet has published more articles addressing the challenges of the LGBT community. However, often the published comments have devalued the content of the article. The permitted comments by the portal insult and offend the journalist/author of the article and the community in general, by calling for criminal acts against them, calling them sick and smearing them with denigrating language.<sup>49</sup>

Taking into account the hate speech used against the LGBT community in many countries, Article 19, a renowned international organization based in London, has published an analysis which provides recommendations on how to address this issue.<sup>50</sup> Among others, Article 19 recommends the adoption of a legal framework that prohibits advocating for hatred against the LGBT community, organizing educational and informational campaigns, trainings for public officials and politicians about the right of the LGBT community, and care from the media regarding in the manner of reporting about the LGBT community.<sup>51</sup>

### “Shkije” and “magjup” – usual expressions in comments

**Botasot.info** – has also permitted comments that contain hate speech in news articles dealing with ethnic minorities, especially when they relate directly or indirectly to the Serb community.<sup>52</sup> Such comments were also in an article that is related to Jews, which

<sup>48</sup> The comments are not edited intentionally.

<sup>49</sup> Below you can find links to some of the analyzed articles. YIHRKS has all these articles and comments in hard copy Kosovo accepts gay parade, 06 November 2013, available at: <http://www.zeri.info/artikulli/19839/kosova-pranon-parade-homoseksualesh>

The big screen of same sex, 28 September 2013, available at: <http://www.zeri.info/artikulli/16065/ekrani-i-madh-i-seksit-te-njejte>

About sex, with a quieter voice!, 11 September 2013, available at: <http://www.zeri.info/artikulli/14686/per-seksin-me-ze-te-ulet>

Expansion of homosexuality in Kosovo and Balkans, 28 August 2013, available at: <http://www.zeri.info/artikulli/13399/shtrirja-homoseksuale-ne-kosove-dhe-ballkan>

Serbian transvestite in the streets of Prizren, 25 gusht 2013, available at: <http://www.zeri.info/artikulli/13117/transvestitja-serbe-e-rrugeve-te-prizrenit>

Turkish mentality hardly accepts homosexuality, 21 August 2013, available at:

<http://www.zeri.info/artikulli/12749/mentaliteti-turk-veshtire-e-pranon-homoseksualitetin>

Incident in “Kosovo 2.0”, 12 persons wanted by the police (Photos), 07 June 2013, available at:

<http://www.zeri.info/artikulli/7390/incidenti-ne-kosovo-20-12-persona-ne-kerkim-nga-policia-foto>

Hoxhaj: We don't need imported islam 03 January 2014, available at: <http://www.zeri.info/artikulli/24055/hoxhaj-sna-duhet-islami-i-importuar>

<sup>50</sup> A response to the hate speech against LGBT community, Article 19, October 2013, available at:

<http://www.article19.org/data/files/medialibrary/37343/LGBT-Incitement-Paper-30-Sept-AS-FINAL.pdf>

<sup>51</sup> ibid

<sup>52</sup> Below you can find links to some of the analyzed articles. YIHR has all these articles and comments in hard copy

Ivanovic: The oath in northern municipalities without state symbols, 08 January 2014, available at:

<http://www.botasot.info/kosova/263158/ivanovic-betimi-ne-komunat-e-veriut-pa-simbole-shteterore/#faqe1>

Profecy of Zafir Berisha, 08 January 2014, available at: <http://www.botasot.info/kosova/263152/profecia-e-zafir-berishes/>

in the comments are called "çifutë", a word that can incite hatred.<sup>53</sup> YIHR KS addressed a written request to this media outlet requesting the removal of comments that are discriminatory in more than five articles, although it did not find mutual understanding.

**Indeksonline.com** – this portal also did not prohibit comments in order to show intolerance towards ethnic minorities and in particular the Serbian community, as such denigrating comments include calling for their murder and different “punishments”.<sup>54</sup> In one article titled "The suspect is Ashkali", the portal should not have specified the ethnicity, as it is not relevant whether the suspect is Albanian or Ashkali, thus he should only be identified as a suspect. Identifying ethnicity in cases involving criminal offences is discriminatory and may lead to the creation of prejudice, stereotypes and incitement to hatred.<sup>55</sup> Additionally, in many articles, as in telegrafi.com and other sites, the denigrating expressions such as “maxhup”, “shkije” etc. are tolerated.

**Gazetatribuna.com** – in this portal in some article, the words "shki" or "shkijet" are also tolerated, in articles in which Serbs are mentioned in any form, or not mentioned at all, although it is apparent that such as word is used as an expression to show hatred towards a certain person.<sup>56</sup>

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In Jarinjë and Bërnjak payment for cross-border insurance has not started, 08 January 2014, available at:

<http://www.botasot.info/kosova/263102/ne-jarinje-e-bernjak-nuk-ka-filluar-pagesa-e-sigurimit-kufitar/>

Mrkic: Between Kosovo and the EU, Serbia will choose Kosovo, 05 Janar 2013, available at:

<http://www.botasot.info/lajme/262344/mrkiq-mes-kosoves-e-be-se-serbia-zgjedh-kosoven/>

Vucic: The protest in Gjakova was a demonstration of hatred, 07 January 2014, available at:

<http://www.botasot.info/lajme/262890/vuciq-protesta-ne-gjakove-ishte-demonstrim-i-urrejtjes/>

Serbia proposes Balkan embassies across the world, 05 January 2014, available at:

<http://www.botasot.info/lajme/262294/serbia-propozon-ambasada-ballkanike-neper-bote/>

Kandic: EULEX was mistaken to free Lushtaku for the oatt, 05 January 2014, available at:

<http://www.botasot.info/lajme/262242/kandiq-eulex-gaboi-qe-e-liroi-lushtakun-per-betim/>

The state of Kosovo does not owe a single cent to the political prisoners, 04 January 2014, available at:

<http://www.botasot.info/kosova/262210/shteti-i-kosoves-nuk-u-ka-borxh-asnje-cent-te-burgosurve-politike/>

<sup>53</sup> Jews from Prishtina: We were deported, we will sue Kosovo, 26 May 2013, available at:

<http://www.botasot.info/kosova/224992/hebrejete-nga-prishtina-jemi-debruar-do-ta-padisim-kosoven/>

<sup>54</sup> This is not Gjuriq, 22 October 2013, available at: <http://www.indeksonline.net/?FaqelD=2&LajmID=73937>

Serbia is rewarded, 19 December 2013, available at: <http://www.indeksonline.net/?FaqelD=2&LajmID=79310>

Serbia does not participate in Eurovision 2014, 22 November 2013, available:

<http://www.indeksonline.net/?FaqelD=4&LajmID=76957>

Serbia in 2050 will have only 4.5 million inhabitants, 05 January 2014, available at:

<http://www.indeksonline.net/?FaqelD=2&LajmID=80782>

Serbia returns to red lines about Kosovo, 24 December 2014, available at:

<http://www.indeksonline.net/?FaqelD=2&LajmID=79808>

Lekaj distributes flour, AKR reacts, 24 November 2013, available at: <http://www.indeksonline.net/?FaqelD=2&LajmID=77063>

Deputi of the Justice Party, Kelmendi, calls Scanderbeg a hero of catholics, 10 June 2013, available at:

<http://www.indeksonline.net/?FaqelD=2&LajmID=61394>

<sup>55</sup> The suspect is Ashkali, 15 January 2013, available at: <http://www.indeksonline.net/?FaqelD=2&LajmID=44212>

<sup>56</sup> YIHR KS has identified several articles related to LGBT and minorities when hate speech was permitted. Also, in an article published the title contains the word “çifut”. This expression is considered to be discriminatory and could incite hatred, while the appropriate word is Jewish. See analyzed links:

Details revealed about Likovc prison, 27 May 2013, available at: <http://gazetatribuna.com/?FaqelD=2&LajmID=9524>

Buzhala: Pal Lekaj's catholics are 'threatening' me!, 05 October 2013, available at:

<http://www.gazetatribuna.com/?FaqelD=2&LajmID=26137>

I dream about removing the barricade on the bridge, 30 April 2013, available at:

<http://www.gazetatribuna.com/?FaqelD=2&LajmID=6450>

Hashim Thaçi: Isa lost Prishtina, won the villages, 21 November 2013, available at:

<http://www.gazetatribuna.com/?FaqelD=2&LajmID=32536>

**Koha.net** – in this portal it is observed in a greater number of articles relate specifically to the Serbs, where various comments that incite hatred were permitted. One of the frequent expressions that was permitted is the word "Shkijet" and other offensive expressions against Serbs.<sup>57</sup>

**Telegrafi.com** – the level of comments against Serbs and other ethnic minorities, in general is high and it can be compared to that of [indeksonline.com](http://www.indeksonline.com). Offensive, insulting and degrading expressions, in violation of the code of ethics and laws, are usual practice in the articles of this portal, when addressing issues concerning Serbs, ethnic minorities, the north of the country etc.<sup>58</sup> This is alarming, especially given the fact that this portal besides keeping the note prohibiting hate speech, it has also created a detailed guide for its readers. However, unfortunately these rules are not respected at all by the portal.

**Zeri.info**<sup>59</sup> – This media outlet has published comments, where people discussed in articles, are called "Shkijet" and are insulted using vulgar expressions in Serbian. Such

<sup>57</sup> Below you can find links to some of the analyzed articles. YIHR has all these articles and comments in hard copy

Hoxhaj: LDK to keep its promise about reserved seats, 26 December 2013, available at:

[http://www.koha.net/arkiva/?page=1,13,170470&s&ch=0&f\\_d=26.12.2013&t\\_d=26.12.2013](http://www.koha.net/arkiva/?page=1,13,170470&s&ch=0&f_d=26.12.2013&t_d=26.12.2013)

PTK used to pay ransom to Zvonko Veselinovic, 29 April 2013, available at: <http://www.koha.net/arkiva/?page=1,13,97446>

"Civil Protection" can be a partner to KFOR, 14 May 2013, available at:

[http://www.koha.net/arkiva/?page=1,13,145743&s&ch=0&f\\_d=14.05.2013&t\\_d=14.05.2013](http://www.koha.net/arkiva/?page=1,13,145743&s&ch=0&f_d=14.05.2013&t_d=14.05.2013)

The Serbs burn the construction material of an Albanian house in north, 17 November 2012, available at:

<http://www.koha.net/arkiva/?page=1,13,123628>

Protes of the Serbs in Gracanica, 23 October 2012, available at: <http://www.koha.net/arkiva/?page=1,13,120177>

Serbian fans warn for confrontations with Albanians tomorrow!, 15 October 2012, available at:

<http://www.koha.net/arkiva/?page=1,20,119094>

Two Serbian soldiers get killed in the border with Kosovo due to a bomb explosion, 01 August 2012, available at:

<http://www.koha.net/arkiva/?page=1,15,109740>

UNMIK does not know what to do with its administration, 31 May 2012, available at:

<http://www.koha.net/arkiva/?page=1,13,101565>

USA encourage Kosovo-Serbia dialogue about the north, 07 March 2012, available at:

<http://www.koha.net/arkiva/?page=1,13,90575>

<sup>58</sup> Below you can find links to some of the analyzed articles. YIHR KS has all these articles and comments in hard copy

Married a Serb, refuses the state of Kosovo!, 27 April 2012, available at: <http://www.telegrafi.com/lajme/martohet-me-serb-refuzon-shtetin-e-kosov-s-2-22036.html>

27 cemetery memorials of Serbs destroyed in Kllokot, 20 January 2013, available at:

<http://www.telegrafi.com/lajme/rrenohen-27-permendore-te-varrezave-serbe-ne-kllokot-2-28323.html#comment-773443122>

Serbian RTS accuses Kurti for raising tensions, 27 January 2013, available at: <http://www.telegrafi.com/lajme/rtis-i-serb-akuzon-kurtin-se-po-ngrit-tensionet-2-28552.html>

Hoxhaj drinks coffee with his Serbian counterpart, Mrkic, 29 September 2013, available at:

<http://www.telegrafi.com/lajme/hoxhaj-pi-kafe-me-homologun-serb-mrkic-2-36648.html>

Police commander of the north participant of killings of Jashari family?!, 22 October 2013, available at:

<http://www.telegrafi.com/lajme/komandanti-i-policine-ne-veri-pjesemarres-ne-vrasjen-e-familjes-jasharija-2-37243.html>

A Roma family from Kosovo sentences for slavery, 04 December 2013, available at: <http://www.telegrafi.com/lajme/denohet-familja-rome-nga-kosova-e-akuzuar-per-sklaveri-80-6324.html>

Ivanovic: Only Serbian aviation was missing in Mitrovic, 18 November 2013, available at:

<http://www.telegrafi.com/lajme/ivanovic-ne-mitrovic-mungoi-vetem-aviacioni-serb-2-38171.html>

Serbian state in Kosovo through Association of Serbian Municipalities, 16 November 2013, available at:

<http://www.telegrafi.com/lajme/shteti-serb-ne-kosove-permes-asociacionit-te-komunave-serbe-2-38109.html>

Goranis want a municipality within Serbian Association, 09 November 2013, available at:

<http://www.telegrafi.com/lajme/goranet-duan-komune-ne-kuader-te-asociacionit-serb-2-37825.html>

<sup>59</sup> Below you can find links to some of the analyzed articles. YIHR has all these articles and comments in hard copy

North municipalities constituted, Krstimir Pantic does not sign, 12 January 2014, available at:

<http://www.zeri.info/artikulli/24657/konstituohen-komunat-vereiore-nuk-nenshkruan-kerstimir-pantiq#comments>

Selimi: Religious radicalism is the biggest risk to national interests, 09 January 2014, available at:

<http://www.zeri.info/artikulli/24478/selimi-radikalizmi-fetar-rreziku-me-i-madh-i-interesave-nacional>

expressions are not only displayed in the articles related to the Serbs, but also for any other person mentioned in an article. Such comments are also found in articles related to the domestic and international intelligence services. For example in one of the articles, this following comment was permitted: "All 'shkijet' from Kosovo and Serbia will turn up to be soldiers and policemen and others will turn up to be employees of other intelligence services and will be employed and Kosovo will pay for them from its own budget".

With regard to the reasons why online media tolerates such comments, YIHR KS supports the finding of the European Court of Human Rights given in the case *Delphi AS v. Estonia*, according to which "the number of comments had an impact on the number of visits to the portal and advertising revenues ... Therefore, the company [the accused media] has had an economic interest in the comments."<sup>60</sup>

### Positions of editorial boards regarding hate speech

As part of this report interviews have been conducted with representatives of the media, which have been monitored from YIHR KS.<sup>61</sup> They have stated that the main factor resulting in permitting use of hate speech is the lack of staff, respectively experts of legislation related to hate speech.

According to the chief editor of *Koha.net* Zenun Çelaj, this media outlet could not be immune to hate speech because of the speed of work and the lack of sufficient staff.<sup>62</sup>

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Kosovars are requested to pay customs in Serbia! , 09 January 2014, available at:

[http://www.zeri.info/artikulli/24425/kosovareve-ne-serbi-u-kerkojne-dogane-Vucic:We'llnevergiveupKosovo\(Photos\),07January2014,availableat:http://www.zeri.info/artikulli/24298/vuciq-sdo-te-heqim-dore-kurre-nga-serbet-e-kosoves-foto](http://www.zeri.info/artikulli/24425/kosovareve-ne-serbi-u-kerkojne-dogane-Vucic:We'llnevergiveupKosovo(Photos),07January2014,availableat:http://www.zeri.info/artikulli/24298/vuciq-sdo-te-heqim-dore-kurre-nga-serbet-e-kosoves-foto)

Hoxhaj "stings" Serbia about the idea of joint embassies, 06 January 2014, available at:

<http://www.zeri.info/artikulli/24266/hoxhaj-thumbon-serbine-per-idene-e-ambasadave-te-perbasketa-MassacreinRezallewasdonebySerbianarmy,06January2014,availableat:http://www.zeri.info/artikulli/24229/masakren-e-rezalles-e-beri-ushtria-serbe>

Medvegja in last throes, 05 January 2014, available at: <http://www.zeri.info/artikulli/24171/medvegja-ne-grahmat-e-fundit>

Thaçi, alone against Serbia, 04 January 2014, available at: <http://www.zeri.info/artikulli/24116/thaci-i-vetem-kunder-serbise>

"What is it with Vetëvendosje! , they only complain?", 17 February 2013, available at: <http://www.zeri.info/artikulli/265/ka-ka-vetevendosja-qe-vec-po-ankohet>

Agreement for "Ahtisaari Plus"!, 22 February 2013, available at: <http://www.zeri.info/artikulli/524/marreveshje-per-ahtisaari-plus>

Elections in north Kosovo – in September, 26 February 2013, available at: <http://www.zeri.info/artikulli/798/thaci-e-informoi-jahajen-per-dialogun-ne-bruksel>

Thaçi breached the resolution of Assembly, 25 February 2013, available at: <http://www.zeri.info/artikulli/701/thaci-shkeli-rezoluten-e-kuvendit>

MUP and BIA active in north, 05 March 2013, available at: <http://www.zeri.info/artikulli/1224/mup-dhe-bia-aktive-ne-veri>

Contaminated flour and wheat from Serbia, 05 March 2013, available at: <http://www.zeri.info/artikulli/1227/miell-e-grure-i-kontaminuar-nga-serbia>

Dacic: who was told that Kosovo is Serbia, was lied, 07 March 2013, available at: <http://www.zeri.info/artikulli/1404/daciq-shte-genjyer-kur-eshte-thene-se-kosova-eshte-serbi>

North "coming to its end", 10 March 2013, available at: <http://www.zeri.info/artikulli/1559/veriu-po-i-vjen-fundi>

<sup>60</sup> *Delphi AS v. Estonia*, 10 October 2013, ECtHR, available at: [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-126635#{"itemid":\["001-126635"\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-126635#{)

<sup>61</sup> Interviews are conducted via e-mail

<sup>62</sup> Zenun Çelaj, chief editor at *Koha.net*, 22 January 2014

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The portal has created automatic filters to limit offensive and vulgar expressions in the comments.<sup>63</sup>

The expression “shkije” which was found in many articles of Koha.net, is not considered an offensive expression as this word has a long history when referring to Slavs, according to chief editor Çelaj.

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The editor Artan Haraqija from Zeri.info also mentioned as a reason the lack of qualified staff and experts who know the laws related to hate speech to control all comments.<sup>64</sup> According to him, it has been proved to be wrong permitting unfiltered comments, and that they are working to control the comments with a better care.

With regard to telegrafi.com, the access for approval of the comments is granted to all their journalist according to their sections, while the comments are filtered automatically and manually.<sup>65</sup> In some cases, the option for comments is closed in some articles of this portal, whilst recently the moderation is more accurate and there are cases of exclusion of the readers from the discussion.<sup>66</sup>

## 7. Positive examples

However, the situation is not completely negative, as not all online media “misuse” freedom of expression by allowing all sorts of content on their platforms. Two portals, relatively new, so far have shown rigorous and fully in compliance with legislation governing the media in terms of the content provided by readers through comments.

**Gazetajetane Kosove.com** – did not allow the publication of comments that do not comply with their rules for online discussion. This online platform, has drafted guidelines to guide readers how to discuss online and it seems that it is the only outlet that respects its own guidelines. According to the guidelines, “the reader is encouraged to focus on constructive discussion of the topic for which it was written and refrain from attacking journalists, people that are mentioned in the article or others and the use of racist language, discriminatory, derogatory, hatred or encouraging criminal acts is not permitted.”<sup>67</sup>

**Lajmi.net** – another news website, which focuses on politics and national news, also does not allow denigrating content in comments and so far has been very careful in the editing of such comments. Pleurat Halili, one of the members of the editorial board of this web site in one of his columns said: “I would like to proudly announce the editorial

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<sup>63</sup> Ibid

<sup>64</sup> Artan Haraqija, deputy chief editor, zëri.info, 22 January 2014

<sup>65</sup> A reply from telegrafi.com, 22 January 2014

<sup>66</sup> Ibid

<sup>67</sup> Gazeta Jeta në Kosovë, Online discussion, available at: <http://gazetajnk.com/?cid=1,1061>

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policy of lajmi.net about readers' comments. The editorial board edits, and if necessary even stops, offensive comments and those that incite hatred".<sup>68</sup>

## 8. Illustrative cases

### Kosovo 2.0

The events that followed the organizing of the publication of Kosovo 2.0 magazine titled "Sex", are clear evidence of the risk posed directly by allowing the use of offensive and denigrating language and incitement of hatred in the online media, social platforms, or news websites.

Kosovo 2.0 on 14<sup>th</sup> of December 2012 organized the publication of the latest issue of the magazine, in which they dealt with sexuality and other topics related to sex, including the lives of the LGBT community. The invitation to participate in this event was made public in various forms, including the creation of an "event" on Facebook, through which a large number of people were invited in promoting the magazine.

It is believed that the "event" which was created on Facebook, stirred up a reaction from extremist groups who opposed the publication of this magazine, in which case a group of youngsters, including representatives of the football fans "Plisat" and other teenagers who chanted "Allahu-Akbar", attacked the premises where the event was being held. As a result, the stage was demolished and a person was physically assaulted.<sup>69</sup>

The indictment filed nine months later, on 4<sup>th</sup> of September 2013, charged Latif Gashi, Driton Dili and leader of "Plisat" Albert Kastrati with the offences of jointly violating the equal status of residents of Kosovo, jointly preventing or hindering a public meeting, jointly inciting national, racial, religious or ethnic hatred, discord or intolerance, damage to movable property, inflicting light bodily harm.<sup>70</sup>

In this instance, what is of concern is the fact that the indictment does not refer at all to online media and the role that they have played in this event. According to Gazeta Jeta në Kosovë, some invitations to oppose this event were made through Facebook.<sup>71</sup> Kosovo is obliged to prosecute hate crimes, even when they come from online media, since it seeks to join the European family. The European Council once again recently recommended that member states should ensure prompt and effective investigation and prosecution of hate crimes.<sup>72</sup>

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<sup>68</sup> Pleurat Halili, Misunderstanding the freedom of expression, 2 October 2013, available at: <http://lajmi.net/keqkuptimi-i-lirise-se-shprehjes/>

<sup>69</sup> The night of shame, Gazeta Jeta në Kosovë, 20 December 2012, available at: <http://gazetajnk.com/?cid=1,979,4180>

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Conclusions of the European Council on combatting hate crimes in the European Union, 5 & 6 December 2013, Brussels, available at: [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/jha/139949.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf)

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One year after the events related to the Kosovo 2.0 and four months after the publication of the indictment, the trial of the case has not begun and no hearings have been held.

## Alma Lama

Based on the research of YIHR KS, Alma Lama is regarded as one of the persons most attacked through the comments section, and who has been subjected to hate speech. Deputy Lama says that it all started after a speech made in the Assembly, where she said that Islamist fundamentalism is growing.<sup>73</sup> As a result, a forum called "Forum of Young Muslims" reacted through a press release about her speech in the Assembly, through which they made calls to "lynching" her and revoking her citizenship etc. This press release had been published by many printed and online media.

Deputed Lama blames some of the media for publishing a press release that calls for "lynching" her, without verifying who this forum is and that overall the media did not treat the case in a professional manner. As a result of publishing the press release, various portals had not been careful in filtering users' comments that contain hate speech. She says that the public opinion is created from these comments that she is "anti-Muslim", and she has received many threats, which she reported to the police.

Additionally, last year she accused the Vetëvendosje Movement for paying people to comment on portals, which were denied by this movement. Deputy Lama left the Vetëvendosje Movement and joined the Democratic League of Kosovo, although she had mentioned the fact that Vetëvendosje Movement supported the use of the head-scarf in school after the age of 16.

## "Roma girl"

Leonarda Dibrani, a 15-year-old girl, was deported from France to Kosovo in November last year. Her departure for Kosovo was spectacular, after police pulled her from the school bus handcuffed her and deported her to Kosovo. The Interior Ministry of France found that the deportation was in accordance with French law, since the girl's father not in accordance with the law.<sup>74</sup>

The girl and her family belong to the Roma community. This fact should be mentioned in the media in the context that France is already known in Europe for a rigorous and possibly discriminatory policy against ethnic minorities, as tens of Roma have been deported from Paris and other places.

However, referring to her as 'Roma girl' in headlines and in subsequent articles, while writing about events in her life after being returned to Kosovo, leaves much to be

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<sup>73</sup> Interview with Alma Lama, 20th of January 2014

<sup>74</sup> Leonarda Dibrani still does not go to school, 4 November 2013, available at: <http://www.gazetajnk.com/?cid=1,979,6940>

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desired. As a result of online media, Leonarda Dibrani together with her family were immensely stigmatized, discriminated and denigrated.

Zëri.info begins an article titled "Leonarda Dibrani can return to France" with the words "Roma Leonarda". In this article it could be mentioned as a fact that she is of this ethnic background and that may be the reason why she was expelled from France, but in no way should she be referred to as Roma girl in the headline.<sup>75</sup> If compared with how Albanians are treated by the media, the chances are minimal, that articles in the media would refer to a person as "Albanian NN". In the same article there were comments permitted, such as: "Maxhup of Italy. Why do we dedicate so much importance to such a problem? During the last war in Kosovo, Maxhups killed Albanians with chainsaw in the church yard."<sup>76</sup>

She received similar descriptions by telegrafi.com, especially by permitting offensive comments. In one of the comments she was called "filth"<sup>77</sup> – "Whole filth of the world is discharged here, and no government official moves from their places".<sup>78</sup> In another comment, her family is called "gabele"<sup>79</sup> – "all this noise for a gabele family, such a shame..!!! they have no relation to Albanians, why do you talk about them"<sup>80</sup>. Similarly, she and her family were named in the comments permitted by the portal Indeksonline.net. Some of the comments are "o come here gabels, because you are disturbing the whole world, because you are not the kind for schooling"<sup>81</sup> and "a pity for a little maxhup. In Kosovo she is endangered by poverty and not by Albanians. Because in Maxhup neighbourhood nobody will touch them, they even build new houses for them with heating."<sup>82</sup>

### "Modern genocide"

On 23<sup>rd</sup> of April 2013 botasot.info has published an article titled "Marriages with Slavs, a modern genocide"<sup>83</sup>. The article cannot be qualified whether it is a commentary of the online newspaper, an interview, research, report or to what genre of journalism it belongs to.

<sup>75</sup> Leonarda Dibrani may return to France, 19 October 2013, available at: <http://zeri.info/artikulli/18130/leonarda-dibrani-mund-te-kthehet-ne-france>

<sup>76</sup> The comment was not edited intentionally

<sup>77</sup> Dibrani family: We lied that we are from Kosovo, 18 October 2013, available at: <http://www.telegrafi.com/lajme/familja-dibrani-genjyem-se-jemi-nga-kosova-2-37162.html>

<sup>78</sup> The comment was not edited intentionally

<sup>79</sup> Leonarda's family is in police station, 20 October 2010, available at: <http://www.telegrafi.com/lajme/familja-e-leonardes-ndodhet-ne-stacionin-policor-80-6089.html>

<sup>80</sup> The comment was not edited intentionally

<sup>81</sup> Leonarda Dibrani: I will not return to France without my family, 19 October 2013

<http://www.indeksonline.net/?FaqeID=2&LajmID=73621>

<http://www.indeksonline.net/?FaqeID=2&LajmID=73438>

<sup>82</sup> L. Dibrani: My home is not in Kosovom, but in France, 17 tetor 2013,

<http://www.indeksonline.net/?FaqeID=2&LajmID=73438>

<sup>83</sup> Marriages with Slavs, a modern genocide, 23 April 2013, available at <http://www.botasot.info/lajme/221210/martesat-me-sllave-gjenocid-modern/#faqe2>

However, what this article insinuates is that it addresses the issue of Albanian women who marry in Serbia and that they "are forced to change their name, nationality and language." In fact it is evident that it promotes intolerance against Serbs and the comments which were permitted in this article, lead to this conclusion. One of the comments calls for "beheading" for all who "take advantage of this misery" and calls "whores" girls that marry Serbs.

At a time when Kosovo and Serbia seek to normalize relations between them, a public debate based on hatred and intolerance does not help the country move forward, in fact it does the opposite. Therefore, the role of the media is to produce and support constructive discussion, based on real facts and protecting the reputation and rights of others.

## 9. Strategic complaints of YIHR KS

Through efforts made by YIHR KS in order to raise awareness of the media with regards to hate speech, YIHR KS filed complaints with the Press Council of Kosovo, which is a self-regulatory body that deals with the ethical side of the media. Even though, [Indeksonline.net](http://Indeksonline.net) and [Telegrafi.com](http://Telegrafi.com) and are not members of the PCK, this body has the right to publish opinions about media outlets that are not members of the PCK. Below is a brief elaboration of cases taken and decisions made.

### Telegrafi.com

The first complaint was filed against [telegrafi.com](http://telegrafi.com),<sup>84</sup> which in their official Facebook page used hate speech when they launched a poll with the question: *Was it right to damage the Serbian cemetery as "revenge" for the removal of the monument in Preshevo?* Published on 22<sup>nd</sup> of January 2012.

In this complaint YIHR KS complained regarding readers comments which contained denigrating expressions with the purpose to harm and threaten a group on the basis of their ethnicity, and for calling to commit similar acts. The comments permitted in the article " 27 gravestones in Serb cemetery destroyed in Klllokot" included offensive words such as "shkije," as well as calling for violence, such as to "collapse Gazimestan ".

The Press Council partly approved the complaint, on the basis that in this case the portal has the right to ask questions [as it has done with poll]. However, the Council did not provide suffice reasons related to the "right" of the media to ask questions through a survey created on Facebook. In fact, as the findings and statements of the parties, questions should also be subject to the ethics code and ethical and laws in force, and consequently a medium cannot submit whatever questions. For example, one can ask, whether a portal can conduct a poll with the following question "does person nn deserve

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<sup>84</sup> YIHR KS v. [telegrafi.com](http://telegrafi.com), opinion, PCK, published on 9 April 2013, available at: <http://presscouncil-ks.org/?cid=1,15,425>

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to die?” or “was the killing of the officer in Mitrovica rightful?” Therefore, the fact that the portal through a question, in a way justifies retaliation, was not considered as a form of incitement by PCK. Further, the PCK approved the complaint of YIHR KS about the content of the comments.

### **Indeksonline.net**

On 11<sup>th</sup> of January 2013 the portal Inedksonline.net published an article titled “Mini-Serbia at the heart of Kosovo”<sup>85</sup>, where readers comments were published containing denigrating expressions with a purpose of harming and offending a group in the basis of ethnicity.

In this case the PCK found that published comments contained hate speech and approved the complaint of YIHR KS, urging portals to "refrain from using hate speech and to take extra care when publishing the comments of readers ,which often have content that does not comply with fundamental rights and freedoms."<sup>86</sup>

Although the PCK approved the complaint, unfortunately this has not affected the portal in question to take measures to remove the comments. This shows that the effectiveness of the PCK is limited and that its work depends solely on the will of the leaders of the media industry.

## **10. Decisions of European Court of Human Rights**

Although the report argued that judicial institutions have treated an exceptionally small number of cases related to the criminal offence of incitement of hatred, it is necessary to describe the main cases of European Court of Human Rights related to hate speech. These cases can be implemented in Kosovo by the Constitutional Court, although the regular courts according to the Constitution are also obliged to consider and apply such cases.

### **Vejdeland and Others v Sweden<sup>87</sup>:**

The applicants entered a high school, where they were not students to give out leaflets, which referred to homosexuality as a “deviant sexual proclivity” that has a “morally destructive effect on the substance of society”. Additionally, they blamed the homosexuals “lifestyle” for the development of HIV and AIDS and they claimed that organisations which lobby for the rights of homosexuals try to “play down paedophilia”. The applicants were convicted by the Swedish Supreme Court for agitation against a national or ethnic group. However, they contended that the Swedish State in this

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<sup>85</sup> Mini Serbia in heart of Kosovo, 01 November 2013, available at: <http://www.indeksonline.net/?FaqeID=2&LajmID=75046>

<sup>86</sup> Opinion, PCK, 24 December 2013, <http://presscouncil-ks.org/?cid=1,15,459>

<sup>87</sup> Application No. 1813/07, 09 February 2012

instance violated their right to freedom of expression. The ECtHR in these cases decided that the declarations were serious and prejudiced, even if they were not directly calling for acts of hatred. At the same time the Court stressed that discrimination based on sexual orientation is just as serious as discrimination based on race, origin or colour.

**Jerslid v Denmark<sup>88</sup>:**

Mr. Jerslid, a journalist, conducted a radio interview with a group of young people called the ‘green jackets’ in relation to their racist views. During the interview, the interviewees expressed a number of humiliating comments about black people. As a result, Mr. Jerslid was convicted of aiding and abetting the dissemination of racist remarks, who then argued that this was a violation of his freedom of expression. In this case the ECtHR drew a distinction between those persons who used hate speech and the journalist, and decided that in this case the right to freedom of expression of Mr. Jerslid had been violated. Additionally, the ECtHR explained that ‘News reporting based on interviews edited or not, is one of the most important means whereby the press is able to play its role as a public watchdog. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest, and should not be envisaged unless there are particularly strong reasons for doing so’.<sup>89</sup>

**Féret v Belgium<sup>90</sup>:**

Mr. Féret was a member of the Belgian Parliament and Chairman of the political party Front National/Nationaal Front in Belgium. During the election campaign, several leaflets were distributed with slogans such as ‘stand up against the islamification of Belgium’, ‘stop the sham integration policy’ and ‘send the foreign job-seekers home’. In relation to this Mr. Féret was convicted of incitement to racial discrimination and the court sentenced him to community service and disqualification from holding Parliamentary office for 10 years. Even though Mr. Féret alleged that his freedom of expression has been violated, according to the ECtHR Mr. Féret comments had been liable to arouse feelings of distrust, rejection or hatred towards foreigners. Additionally, his message during the electoral process amounted to incitement to racial hatred. Therefore, the ECtHR decided that in this case there was no violation of freedom of expression, since Mr. Féret punishment was justified in the interest of preventing disorder and protecting the rights of others.

**Vona v Hungary<sup>91</sup>:**

Mr. Vona was the Chairman of the organisation ‘*Magyar Gárda Egyesület*’, which established the movement ‘*Magyar Gárda Mozgalom*’. Members of the movement wore

<sup>88</sup> Application Number 15890/89, 01 September 1994

<sup>89</sup> Para. 35 Ibid

<sup>90</sup> Application Number 15615/07, 16 July 2009

<sup>91</sup> Application Number 35943/10, 09 December 2013

military style uniforms during meetings/demonstrations in villages largely populated by Roma and their rhetoric was to protect the ethnically Hungarian population from the so called 'Roma criminality'. In this case the ECtHR held that the dissolution of the movement was a limitation of Mr. Vona's right to association (Article 11 ). However, the limitation in this case was foreseen by law and could be seen to be pursuing the legitimate aim of public safety, the prevention of disorder and the protection of the rights of others. Furthermore, the ECtHR reiterated that the 'the State is also entitled to take preventive measures to protect democracy *vis-à-vis* such non-party entities, if a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values on the basis of which a democratic society exists and functions. One such value is the co-existence of members of society free from racial segregation, without which a democratic society is inconceivable.'<sup>92</sup>

## 11. Conclusion

During the research a large number of articles were monitored and as presented above, a large number of online media editorial boards permit offensive denigrating and humiliating language, which may potentially incite hatred. Permitting users' comments in current form, without proper filtering does not contribute to freedom of expression in Kosovo, nor does it help the development of public debate. Actually it produces the opposite effect, that of discrimination, vilification and endangering persons who belong to certain groups.

The role of media is to monitor the performance of public institutions and to report when they violate the law and work contrary to morality, ethical and cultural norms. However, when during their work they do not adhere to codes of ethics and media law, they cannot be credible before the public when they report about violations by public institutions.

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<sup>92</sup> Para. 57 Ibid

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## 12. Recommendations

- 1) Online media should not permit readers' comments that incite hatred;
- 2) Online media should provide explanations for the readers when their comments are edited or removed;
- 3) The media should consult experts of media legislation in cases when they face instances of hate speech;
- 4) Online media should be informed about the legal basis which regulates incitement of hatred, implement it and ensure training for persons responsible who edit the comments;
- 5) Online media should show a greater care when they publish articles related to the LGBT community and ethnic minorities;
- 6) Online media should provide a button to report cases or an e-mail where citizens can report such comments. After receiving the information related to hate speech in the portals, online media should promptly act to remove comments which incite hatred;
- 7) The media should not mention religious background, gender or any other characteristics if not necessary and which could promote intolerance. For example, if the police arrests a Serb who stole in a shop, it is not necessary to mention the ethnic background;
- 8) The Press Council of Kosovo should work through public campaigns in educating the citizens about the risks of using hate speech;
- 9) The Press Council of Kosovo should work closely with its members not to permit in the future the use of hate speech in portals;
- 10) The Press Council of Kosovo should find ways to convince non-member portals to join the Council;
- 11) The prosecution should initiate ex officio investigations for hate crimes, which can be committed in any form;
- 12) The prosecution should provide statistics regarding the cases being dealt with, including the cases of hate crimes;
- 13) Judges should be trained on how to try cases of hate crimes in compliance with the decisions of European Court of Human Rights;
- 14) Lawyers should continue their training on how to deal with the cases related to hate speech.

