



## Hate speech

Hate speech is a term which refers to a whole spectrum of negative discourse, stretching from hate or prejudice and inciting to hatred. Hate speech is designed to degrade, intimidate, or incite violence or prejudicial action against a person or group of people based on their race, gender, age, ethnicity, nationality, religion, sexual orientation, gender identity, disability, language ability, moral or political views, socioeconomic class, occupation or appearance (such as height, weight, and hair color), mental capacity and any other distinction-liability. Although “speech”, it covers not only oral or written communication but also any other form of expression such as for example movies, arts, gestures (symbolic speech). There should be no doubt that these are not “only words”, but – as Richard Delgado said – “words that wound” which lead to harm and violence. We could face it in Nazi Germany or in Rwanda, where hate propaganda and media brought unbelievable suffering and genocide, but even now hate speech occurs very frequently in modern democratic societies hurting ethnic, racial or sexual minorities.

### Hate speech in Poland

According to our experience, hate speech in Poland is unfortunately a quite frequent phenomenon in the public space. It is directed mainly against racial and ethnic minorities – dark-skinned people, Jews, refugees but also homosexuals.

#### **1. Extremist groups**

Obviously, the main perpetrators of hate speech acts are members of extremist nationalistic groups such as: *Narodowe Odrodzenie Polski* (National Rebirth of Poland),

*Obóz Narodowo – Radykalny* (National-Radical Camp), *Stowarzyszenie Narodowe Zadruga* (National Association Zadruga). From the formal point of view these are purely legal organizations, which “contribute to development of national Polish union” and fight for their mission using “every mean without any democratic restrictions”. In fact we face such “contribution” quite often when members of those groups organize gatherings, where they promote fascist symbols and hate speech. In 2007 Otwarta Rzeczpospolita intervened several times in such cases. In Wrocław, members of Narodowe Odrodzenie Polski celebrated March 21<sup>st</sup> - International Day for the Elimination of Racial Discrimination with a manifestation on the main city square, where they chanted: “Our sacred *res* – Jews from Poland go away”, “Whole Poland – only white”, “Free Poland – no niggers”. Additionally, there was a proclamation, according to which: “Poland is a country of Christian and Latin civilization; country of a White Man. We won’t let our heritage to be replaced by the culture of bush and bamboo (...)”. Then in April, Kraków- one of the most famous Polish cities, faced a march celebrating the 73<sup>rd</sup> anniversary of creating Obóz Narodowo Radykalny. During this march participants shouted “Jews – get lost” and used Nazi salute. Then in May, during the official celebration of the 86<sup>th</sup> anniversary of the Silesian Uprising on the Saint Anna’s Mountain, members of the ONR – Brzeg (the local ONR unit) and Association Zadruga took part in this event chanting “Silesia always Polish”, “Germans get lost from here”. In addition the ONR delegates “greeted” the memorial of Silesian insurgent with Nazi gesture. Finally, in June ONR organized a manifestation for commemorating the anniversary of “invasion on Myślenice” – the anti-Semitic riots in thirties, when Jewish shops were pillaged and synagogue burned. Participants of 2007 manifestation chanted “Poland for Poles”, “It’s Poland not Israel”, “We won’t let Jews spit on our faces”.

## **2. Politicians**

What concerns us the most is the fact that hate speech is also expressed by the politicians and other public figures which undoubtedly must have influence on the quality of a public debate. Last year we faced an embarrassing event when Polish eurodeputy Maciej Giertych published a brochure “War of civilizations in Europe”. This publication referred to works of conservative historian Feliks Koneczny and presented Jews in a way that could lead to aggression and dislike as a “worse” nation. It is to underline that Hans-Gert

Pöttering called this brochure the substantial violation of the fundamental individual rights, especially dignity of a human being”.

We also face hate speech in politicians’ blogs where they often give vent to their most secret thoughts. Our association had to intervene when one of the Polish deputies Zbigniew Nowak put some negative characteristic of Jewish people on his blog underlining that current Polish politics is determined by the Jewish origin. Few months ago we had to take some legal steps against one of the right-wing politicians who used in his blog words “Jewish barbarian” and “German boorishness”.

### **3. Racism on stadiums**

Racist epithets and insults directed to dark-skinned football players happen not only in Poland. There are many such incidents but what may seem specific about Polish situation is that stadium hools use hate speech based on race or ethnic origin to degrade rival team. For example, in Łódź, where Jews used to be one third of all inhabitants, it is the worst insult to suggest any Jewish roots of the rival team.

### **4. Racism and antisemitism in media**

Hate speech is widely seen in magazines and books which can be bought almost everywhere – even in church libraries. You can easily judge such magazines by its titles - such as “I’m Polish”, “Only Poland”, “Recognize Jew” or “Szczerbiec” (national Polish symbol). Some of the hate speech examples used in those publications are terrifying. In one of the “historical” books of Tadeusz Bednarczyk the author recommends that the Polish people should organize civil self-defense against “the most fanatical enemies of Poland – modern Jews”. He also reminds that during occupation the punishment of flogging was used and it had 95 percent effectiveness, so he finds it worth considering to use it nowadays.

### **4. Anonymous and apparently neutral activities – graffiti and jokes.**

“Jokes” on Jews relating to Holocaust experience.

### **5. Face to face attacks**

Hate speech acts may be even more serious. In 2006 in Warsaw, antifascism activist Maciej D. was attacked with a knife as the “race betrayer” after his picture was added on the Redwatch website. Luckily, in 2007 in a similar case the tragedy was prevented. Anna Kloza was a teacher in one of the high schools in Białystok, cooperating with Centre of Civil Education and promoting tolerance classes. Her picture was put on the Redwatch website and just after this she started receiving SMS with threats such as “You Jewish litter you’ll finish with a knife in your back”. Fortunately, the Police found perpetrators, who were convicted by a District Court in Zabrze.

### **Legal framework in Poland**

In addition to international obligations regarding combating hate speech (Art. 20 of International Covenant on Civil and Political Rights 1966, International Convention on the Elimination of All Forms of Racial Discrimination of 1965, Durban Declaration and Programme of Action of 2001), Polish penal code criminalizes both incitement to hatred on the basis of race, ethnic, national origin or belief and insulting people on this basis. Nevertheless, our experience shows that such legal framework is not – in practice - a sufficient and effective tool for preventing and combating hate speech.

First of all, we cannot trust legal statistics – according to them the problem of hate speech does not exist. Statistics provided by Polish Ministry of Justice show only few cases from hate speech laws per year (art. 256 and 257 of the penal code). The real problem is however, that many of hate speech cases are not taken to courts. There are several reasons for that. First of all, victims of hate speech are terrified and humiliated. Secondly, it is the justice that fails. Offences of hate speech should be taken to courts by the Police or public prosecutor acting *ex officio*, every time they face such case. In fact, they usually wait for a motion to act. Then, the problem is that the proceedings are not initiated because according to the prosecutor there is no characteristic mark of an offence, so there’s no reason to initiate a criminal proceeding. In such situation cases cannot be even analyzed by an independent court because they would never get there. So there should be no doubt why the problem of hate speech is almost invisible for the Ministry’s statistics. According to statistics of circuit prosecutor’s offices in 2003-2007 there were for example 54 hate speech cases in Warsaw circuit, 25 in Kraków and 18 in Gdańsk.

The greatest problem with combating hate speech is not the law, which we find pretty sufficient but its observance and application by the organs of justice. It is caused mainly by the lack of awareness and underestimating the dangers of hate speech for the society as a whole but also the long lasting tradition of stereotypes and prejudice. That is why our association endeavors to first of all monitor hate speech cases in courts and prosecutors' offices to find out what decisions are being made and on what basis. Moreover, we do our best to draw attention of the justice organs to the problem of hate speech and harms to which it leads.

**Here are several examples from our monitoring on how law is applied and interpreted by prosecutors and judges in hate speech cases:**

### **1. Insults and incitement to hatred – what does it mean?**

These were the cases of hate speech in articles and books, authors of which never faced a criminal proceedings because according to prosecutors there was no hate speech at all. Prosecutors did not consider offensive expressions such as: “Jews lie, steal all, promote their perversions”, “Jewish thieves, hyenas” or “Jews are the hotbed of all evil in the world”, “Jews are the most disgusting vermin”. According to prosecutors dealing with cases of those publications, authors did not intend to insult Jewish people (the intent is the necessary element of the hate speech offence) but only presented their point of view which is guaranteed by the freedom of expression. Secondly, prosecutors had doubts whether these are insulting words, as to offend somebody words must be considered “commonly offensive”. What amazes us the most is what prosecutors find incitement to hatred. In one of the publication cases prosecutor underlined that it is only violence that is to be punished and not “only words”. But even the abovementioned suggestion used in one of the books to flogger Jewish people was not qualified as the incitement to hatred. In 2005 district court in Kielce discharged a person that took part in a manifestation with a sign “We will release Poland from euro-betrayers, masons and Jewish mafia”. According to courts that analyzed this case there was no incitement to hatred against Jews as the sign stated “We **will** release” instead “**Let's** release”, so the author of this expression had no direct intent to do this.

### **2. Obligation for justice to act?**

According to Polish penal code offences of hate speech are prosecuted ex officio which means no motion of victim is needed. Nevertheless there are many cases in which organs stay inactive. In one such case the building of Jewish all-Polish Youth Organization was scribbled with insulting anti-Semitic graffiti. Activists of the organization were informed that any actions will be taken only if they fill the motion.

### **3. Problems with qualification**

In November last year Chief Rabbi of Wrocław was insulted by a young drunk man while travelling on the train to Warsaw. The prosecutor qualified this act as the common insult (as Rabbi filled the motion) but did not consider it “special” hate speech insult based on nationality and belief which is punished more strictly. Similarly, in case of Bednarczyk insulting book, the “forgot” about the offence of hate speech insult stating that in this case victim’s motion is needed as we deal with the insult case.