HATE SPEECH EXPRESSED BY MEMBERS OF PARLIAMENT: THE DILEMMA AND KEY FOR ITS RESOLUTION

DISCOURS DE HAINE EXPRIMÉ PAR LES DÉPUTÉS: LA DILEMME ET LA CLÉ DE SA RÉSOLUTION

Natia Gvelesiani*

ABSTRACT

Hate speech is a highly topical and a controversial legal phenomenon. The paper outlines the definition of hate speech and its constituent elements, propounds the threshold test in order to gauge the magnitude and latitude of relevant forms of expression, identifies root causes and effects of hate speech uttered by members of parliament and conditions conducive to the creation of intolerance in the light of Georgia's context. It finds the key how to strike a fair balance between the wide freedom of expression of members of parliament and freedom from hate speech and shows in which direction should or should not be oriented vectors of the freedom of expression of members of parliament. As a result, the concrete recommendations are designed to give impetus, *inter alia*, to the Parliament of Georgia to elaborate an effective regulatory legal mechanism dealing with the elimination of all scourges of hate speech from the "public dictionary" of members of parliament.

Keywords: Hate Speech, Parliamentary Immunity, Freedom of Expression, Intolerance, Discrimination

EXTRAIT

Le discours de haine est un phénomène juridique hautement d'actualité et controversé. Le document expose la définition du discours de haine et de ses éléments constitutifs, propose le test de seuil afin de mesurer l'ampleur et la latitude des formes d'expression pertinentes, identifie les causes profondes et les effets du discours de haine prononcé par les membres du parlement et les conditions favorables à la création de l'intolérance à la lumière du contexte géorgien. Il trouve la clé pour trouver un juste équilibre entre la large liberté d'expression des députés et la protection contre les discours de haine et indique dans quelle direction les vecteurs de la liberté d'expression des députés devraient ou ne devraient pas être orientés. En conséquence, les recommandations concrètes visent à inciter notamment le Parlement géorgien à élaborer un mécanisme juridique réglementaire efficace traitant de l'élimination de tous les fléaux du discours de haine figurant dans le «dictionnaire public» des députés.

Mots-clés: Discours de haine, Immunité parlementaire, Liberté d'expression, Intolérance, Discrimination

* The Chief Specialist of the Analytical Department of the Office of Public Defender of Georgia

I. INTRODUCTION

Hate speech is the plague of the twenty-first century, which has penetrated into the deepest layers of an international community and has infected it with hatred and related intolerance. Its contagious effects have significantly jeopardized the protection of the rule of law, democracy, respect for human rights and fundamental freedoms, *inter alia*, equality, non-discrimination, tolerance and human dignity, which constitute a foundational axiom and nuclea of the international organizations, such as the Council of Europe, the European Union (hereinafter referred to as "EU") and the United Nations. The tackling of this acute problem is aggravated and dramatized by the interplay of two main factors. On the one hand, hate speech is an eclectic concept lacking international consensus on its legal semantics and forms, and on the other hand, the main producers and distributors of hate speech are elected representatives of people, in particular, members of parliament. Regrettably, Georgia is not an exception in this regard, on the contrary, a plethora of hate speech cases were identified during the 8th and the 9th terms of the Parliament of Georgia.[1] Moreover, international organizations (to which Georgia is a member state) express deep concern and alarm in relation to a high indicator of hate speech exploited by the members of the Parliament (hereinafter referred to as "MPs") of Georgia and call on Georgia to undertake relevant legal and policy initiatives.

As hate speech is rather antagonistic and vague notion, for identifying its real matrix, it is viewed through different lenses of comparative analysis, among other things, through the prism of international instruments, the scholarly literature, various reports, the concluding observations of treaty bodies of relevant international organizations, jurisprudence of European Court of Human Rights (hereinafter referred to as "ECtHR") and the approach of the EU.

II. Taxonomy of hate speech and roadmap for guidance

1. Problem identification

The hate speech voiced by MPs of Georgia is a recurrent and systematic problem, thereby necessitating urgent and immediate solution.[2] According to the

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[1] Monitoring Hate Speech and Discrimination in Georgian Media, issued by Media Development Foundation (MDF), 2013, Hate Speech and Xenophobia, Media Monitoring Report, issued by Media Development Foundation (MDF), 2014-2015, Hate Speech, issued by Media Development Foundation (MDF), 2016. Information is available at: http://mdfgeorgia.ge/eng/library/Hate+Speech [16.11.2018]

[2] Report by Nils Muiznieks, Commissioner for human Rights of the Council of Europe following his visit to Georgia from 20 to 25 January 2014, §60, Georgia in Transition,

statistical data[3], from 16 October 2016 to 30 August 2017, in sum, 56 cases of hate speech employed by the MPs of Georgia were identified, out of these, 14 consisting of homophobic tenor and 24 of xenophobic content, coupled with overtones of incitement to violence. The employment of a rude tone in many parliaments and by state officials has been found to contribute to a public discourse that is increasingly offensive and intolerant, exacerbated by the fact that some high-level politicians are not being inhibited from using hate speech in their pronouncements[4]. The MPs turn a blind eye to the fact that hate speech is a poisonous weapon having a considerable power to influence and destroy lives of those targeted, i.e. to destruct their emotional and psychological balance, to provide long-term and irrecoverable mental and physical trauma, to raise mixed feelings of opprobrium, inferiority, insecurity, loss of self-confidence, bullying, etc.

In the light of the foregoing, the created situation provides a rational and a reasonable ground to raise alarm bells as progressing wave of hate speech developed by MPs move from political discourse into social mainstream and amplify its amplitude. One of the determinant factors of such a dramatic social-political scenario may be lack of a concrete legal provisions at national level proscribing hate speech employed by MPs. The explicit and narrow formulation of the conduct of hate speech is of paramount importance for satisfying requirements of a legal forseeability, predictability and legal certainty to avoid opening the door for its arbitrary application and misinterpretation. Thus, the introduction of legal architecture of hate speech and its respective regulatory machinery is a "slippery slope" and challenge, which this paper intends to tackle.

2. Concept of hate speech

By its very essence, hate speech is a recalcitrant concept and exists in multifarious forms and guises, which on its part, lays the foundation to the establishment of nonhomogeneous definitions of hate speech and to the creation of an incoherent normative environment. In this connection, it is relevant to present an international mosaic of hate speech definitions so as to determine its exact scope and forms.

Report on the human rights dimension: background, steps taken and remaining challenges, Assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, 2013, 23

[3] The public information was submitted by the representative of the MDF – Tinatin Gogoladze via e-mail

[4] ECRI General Policy Recommendation no.15 on Combating Hate Speech, Strasbourg, 2016, 20

Within the United Nations system two international treaties containing anti-hate speech provisions are International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as "CERD") and International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR"). According to the CERD, the state party is under obligation to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin*"* and shall not permit public authorities or public institutions to promote or incite racial discrimination[5]. Pursuant to the ICCPR any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be subject to the prohibition by law and nothing in the Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized or at their limitation to a greater extent than is provided for in the Covenant[6].

The term "hate speech" is understood as covering all forms of expression, which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin[7].

Another configuration of hate speech is given by the European Commission against Racism and Intolerance (hereinafter referred to as "ECRI")[8] according to which it entails the use of one (or more) particular form of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or a group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justifi-

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5 International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, 4 (a), (c)

6 International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, art.5.1, art.20.2

7 Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech", adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies

8 ECRI General Policy Recommendation no.15 on Combating Hate Speech, Strasbourg, 2016,16

cation of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, descent, age, disability, sex, gender, gender identity and sexual orientation.

According to the EU's stance[9], hate speech is considered as a public and intentional inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin susceptible to punishment.

It is also noteworthy that hate speech embraces written or spoken words, pictures, signs, symbols, paintings, music, plays, videos and gestures[10]. In general, hate speech is directed against vulnerable groups,[11] which entail their marginalization, dehumanization, alienation, stigmatization and erection of stereotypes surrounding their daily reality. In effect, they are isolated from a mainstream society and rendered invisible.

3. Key components of hate speech

3.1 Incitement to hatred

Incitement to hatred breeds and fosters its attendant results of incitement to discrimination and incitement to violence. In this tandem of words, the term "incitement" can be construed as instigation, promotion, advocacy, stirring up, encouragement, advancement, provocation, stimulation and abetment of hatred, discrimination and violence. The terms "hatred" and "hostility" refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group[12]. For this reason, incitement to hostility may be subsumed under the cloak of incitement to hatred and there is no need to single it out separately as it is enshrined in ICCPR.

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9 The Council of the European Union, framework decision 2008/913/JHA of 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

10 ECRI General Policy Recommendation no.15 on Combating Hate Speech, Strasbourg, 2016,17

11 "Vulnerable groups" imply those groups who are particularly the object of hate speech, which will vary according to national circumstances but are likely to include asylum seekers and refugees, other immigrants and migrants, Black and Jewish communities, Muslims, Roma/Gypsies, as well as other religious, historical, ethnic and linguistic minorities and LGBT persons; in particular it shall include children and young persons belonging to such groups. See ECRI General Policy Recommendation no.15 on Combating Hate Speech, Strasbourg, 2016, 16

12 The Camden Principles on Freedom of Expression and Equality, 12.1.(i)

The salient question, which arises in this context is whether all types of vexatious, humiliating, inflammatory, belittling, virulent, pejorative, disparaging, hateful, defamatory and offensive expressions fall within the realm of hate speech or not. In other words, is it possible to draw a demarcation line between the hate speech and an offensive language? The answer to this question is that the enumerated words will gain the weight of hate speech only if they escalate to the requisite benchmark of intensity, sensitivity, severity and extremity in a give context. In all other cases, they will maintain the rank of different variations of an offensive language. The discourse which in one context is innocuous or neutral may take on a dangerous significance in another[13].

The boundary between incitement to hatred and incitement to discrimination is extremely thin. By having perlocutionary force, hate-motivated expressions easily undergo metamorphosis and convert into an action in the form of discrimination and violence. Therefore, incitement to hatred is by definition prerequisite and harbinger of discrimination and violence and carries characteristic of embryonic discrimination and crime.

3.2 Incitement to discrimination

Hate speech "represents a sort of ideological and psychological basis of discrimination, motivating, through the artificial building of such false images and representations, the behavior of institutions and ordinary people that can translate into discriminatory acts"[14]. The differential treatment can be deemed to be discriminatory if it has no objective and reasonable justification, i.e. if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized[15]. Discrimination implies equal opportunities and that "all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination."[16]

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13 General recommendation No. 35 of the Committee on the Elimination of Racial Discrimination, 2013,§15

14 Hate Crime and Hate Speech in Europe: Comprehensive Analysis of International Law Principles, EU-wide Study and National Assessments produced within the framework of the project "PRISM", 15

15 European Court of Human Rights (ECHR) Eweida and others v. United Kingdom, application no: 48420/10, 59842/10, 51671/10, 36516/10, (2013), § 87-88

16 International Convention on the Elimination of All Forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965

3.3 Incitement to violence

The notion "violence" shall mean the use of a physical force or power against another person, or against a group or community, which either results in, or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.[17] In comparison with incitement to hatred and to discrimination, incitement to violence may contribute to the commission of the most egregious and heinous offences, such as crimes of genocide, crimes against humanity, war crimes, hate crime, etc.

3.4 Negationism and revisionism

It is worth noting, that hate speech may take the form of the public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes and glorification of persons convicted for having committed such crimes[18]. "Public denials or attempts to justify crimes of genocide and crimes against humanity, as defined by international law, should be declared as offences punishable by law, provided that they clearly constitute incitement to racial violence or hatred"[19]. In this context it should be taken into account that laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on state parties, as well as prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events[20].

The member states of the EU are obliged to punish the intentional public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court or the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group. These acts may be subject to

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17 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/67/357, 2012, § 44

18 ECRI General Policy Recommendation no.15 on Combating Hate Speech, Strasbourg, 2016, 3

19 UN General Recommendation No. 35 on combating racist hate speech, 2013, §14

20 UN General Comment no. 34 concerning Article 19: Freedoms of opinion and expression, 2011, §49

punishment only if they are carried out in a manner likely to disturb public order or which is threatening, abusive or insulting and if they are established by a final decision of a national court of this member state and/or an international court, or by a final decision of an international court. Despite this sacrosanct obligation the member states of the EU failed to ensure their full and correct transposition into national legislation[21].

As regards the approach of ECtHR, it has made clear that the denial or revision of clearly established historical facts, such as the Holocaust and any attempts of the rehabilitation of Neo-Nazi regime constitutes ignominious form of racial defamation and should be qualified as hate speech. In the absence of *ad hoc* provision declaring negationism and revisionism as a punishable act, the provision prohibiting discriminatory acts/statements or hateful statements may serve as premise for enacting sanction[22].

In sum, negationism and revisionism of crimes of genocide, crimes against humanity or war crimes may be placed in the category of incitement to hatred, if it gives rise to a climate of incitement to discrimination or violence.

5. Threshold test

In assessing whether an expression has a potential to incite or to pose an imminent and real risk of inciting hatred, discrimination and violence the guiding criteria of evaluation is necessary. In the aftermath of in-depth analysis of pertinent international documents[23] the following components of the threshold test

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[21] A first group- such as Denmark, Finland, Spain (since the 2007), Sweden and the United Kingdom – do not criminalise the denial of historical events. A second group– such as Austria, Belgium, France, Germany, the Netherlands and Romania – only criminalise, by using different methods, the denial of the Holocaust and Nazi crimes. A third group – such as the Czech Republic and Poland criminalise the denial of Nazi and communist crimes. A fourth group – such as Andorra, Cyprus, Hungary, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Slovakia, Slovenia and Switzerland – criminalise the denial of any genocide. At the European Union level, the applicable provisions have a wide scope but at the same time link the requirement to criminalise genocide denial to the need for it to be capable of producing tangible negative consequences. See European Court of Human Rights (ECHR), Perinçek v. Switzerland, application no. 27510/08, (2015), §256

[22] European Court of Human Rights (ECHR), Perinçek v. Switzerland, application no. 27510/08, (2015), §91

[23] Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, 2013; General recommendation No. 35 of the Committee on the Elimination of Racial Discrimination, 2013, European Court of Human Rights (ECHR), Perinçek v. Switzerland, application no. 27510/08, (2015)

can be outlined: 1. Context (prevalent social, economic and political context); 2. Speaker (speaker's position and status in the society); 3. Intent; 4. Content and form; 5. Extent of speech (accessibility to the general public); 6. Likelihood, including imminence (imminent and real risk); 7. Intensity (frequency, repetition); 8. Possible consequences and 9. Passage of time. This nine-part threshold test is a useful vehicle to diagnose whether or not an expression used by the MP constitutes a form of hate speech and in case of its detection, to choose the most adequate, dissuasive and proportionate sanctions.

6. Definition of hate speech

All the aforementioned understandings serve as a reference point for coining the integrated gist of hate speech and for formulating its definition. In particular, hate speech is any public expression, which has an intention to incite or has the effect of creating an imminent and real risk of inciting hatred, discrimination and violence against the targeted person or group of persons on the grounds of race, skin, colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity, political or other opinions, or other characteristics.

III. Parliamentary immunity and best European standards

1. Purpose of parliamentary immunity

The parliamentary immunity is a ubiquitous constitutional phenomenon, which varies from country to country and exists in different forms and dimensions. Two main forms of immunity must be distinguished: non-liability[24] and inviolability. According to the general approach, non-liability means immunity against any judicial proceedings for votes, opinions and remarks related to the exercise of parliamentary office, or in other words, a wider freedom of speech than for ordinary citizens[25] and inviolability is limited immunity from arrest,

[24] The terminology differs. In English-speaking countries it is also sometimes referred to as "non-accountability", "parliamentary privilege", or simply "freedom of speech". In France and Belgium it is referred to as "irresponsabilité", in Italy as "insindacabilità", in Germany as "Indemnität" or "Verantwortungsfreiheit", in Austria as "berufliche Immunität", in Spain as "inviolabilidad", and in Switzerland as "absolute Immunität" and "immunité absolue". Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Strasbourg, 2014, 4.

[25] Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Strasbourg, 2014, 4.

detention, prosecution, and other matters[26]. The non-liability is usually an absolute immunity that shields members of parliament from all legal action relating to utterances in parliament and to the parliamentary vote or in the exercise of the parliamentary mandate, and in most systems applies perpetually and cannot be lifted or renounced.[27]

In most countries, non-liability is absolute and cannot be lifted (for example, Norway, Belgium, Portugal, Romania, Spain, Austria, Bulgaria, Cyprus, Italy, Slovenia, Slovakia, Sweden, Luxembourg, Estonia)[28]. Non-liability extends to political opinions expressed also outside parliament in countries such as, Italy, the Netherlands and Portugal, Argentina, Belarus, Bulgaria, Israel, Latvia and Moldova, Algeria, Andorra, Armenia, Bosnia and Herzegovina, Estonia, Finland, Greece, Hungary, Portugal and Peru[29]. In other countries, non-liability is only a special freedom of speech within the confines of the parliamentary buildings, including the plenary as well as committee rooms and other places of work, namely, in Ireland and Norway, as well as in the United Kingdom, the acts covered by non-liability are "proceedings in Parliament."[30] As regards the MP of Georgia, he/she is not liable to prosecution for the ideas and opinions expressed inside or outside Parliament while performing its duties.[31] It has an absolute and perpetual character, i.e. does not extinguish when the parliamentary mandate ends.

The quintessential defining factor of the existence of non-liability is that the elected representatives of the people need certain guarantees in order to effectively fulfill their democratic mandate, without fear of harassment or undue charges from the executive, the courts or political opponents.[32] By preventing the enforcement of the law, the legal institution of parliamentary immunity is at odds with the principle of equality and to the access to court. However, the main rationale behind it is that it is not a member's personal privilege but a guarantee

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26 Directorate-General for Internal Policies, Policy Department, Citizens' Rights and Constitutional Affairs, Parliamentary Immunity in a European Context, 2015, 6

27 Ibid, 7

28 Handbook on the Incompatibilities and Immunity of the Members of the European Parliament, 37, 42, 47, 49, 45, 39, See also Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Strasbourg, 2014, 14.

29 Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Strasbourg, 2014, 13

30 Ibid

31 Constitution of Georgia, art.52 (4)

32 Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Strasbourg, 2014, 3-4.

of the independence of parliament as a whole, and of its members[33]. Besides, the parliamentary immunity is an important element of the separation of powers, part of a system of checks and balances[34] and thus, indispensable to the operation of democracy.[35]

It is in the nature of political speech to be controversial and often virulent, provided that it does not turn into a call for violence, hatred or intolerance[36]. When assessing the legitimacy of non-liability an evaluative approach should be used in order to identify whether or not utterance made by parliamentarians falls within the scope of functional dimension. Hate speech may also be labeled as "non-professional immunity,"[37] which should not be covered by non-liability as it is extra-parliamentary utterance.

2. The Rules of Procedure of the European Union[38]

Internal disciplinary measures within parliaments vary greatly, from a call to order or curtailment of speaking time to reduction of remuneration, temporary exclusion, or in a few cases even stricter sanctions.[39]

According to the Rules of Procedure of the European Parliament, in order to respect the dignity of parliament in parliamentary debates, MPs are enjoined from resorting to defamatory, racist or xenophobic language or behaviour. In case if the member fails to comply with the standards of conduct the President of the European Parliament apart from using immediate measures such as calling to order, denying the right to speak and excluding the member from the remainder of sitting is also empowered to impose sanctions. In particular, the penalty may consist of one or more of the following measures: (a) a reprimand; (b) forfeiture of entitlement to the daily subsistence allowance for a period of between two and

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33 Rule 5 of the Rules of Procedure of the European Parliament, 8th parliamentary term, January, 2017

34 Directorate-General for Internal Policies, Policy Department, Citizens' Rights and Constitutional Affairs, Parliamentary Immunity in a European Context, 2015, 7

35 European Court of Human Rights (ECHR), Case of A. v. The United Kingdom, application no. 35373/97, (2002), C.43 §

36 European Court of Human Rights (ECHR), Perinçek v. Switzerland, application no. 27510/08, (2015), §231

37 European Court of Human Rights (ECHR), Case of A.v. The United Kingdom, application no. 35373/97, (2002), A. §38

38 Rules 11, 165 and 166 of the Rules of Procedure of the European Parliament, 8th parliamentary term, July, 2018

39 Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Stasbourg, 2014, 12

thirty days (may be doubled in case of repetition); (c) without prejudice to the right to vote in plenary, and subject, in this instance, to strict compliance with the members' standards of conduct, temporary suspension from participation in all or some of the activities of Parliament for a period of between two and thirty days on which Parliament or any of its bodies, committees or delegations meet; (d) prohibition of the member from representing the Parliament on an inter-parliamentary delegation, inter-parliamentary conference or any inter-institutional forum, for up to one year; (e) in the case of a breach of confidentiality, a limitation in the rights to access confidential or classified information for up to one year (may be doubled in case of repetition).

Besides, the President of European Parliament may decide to interrupt the live broadcasting of the sitting in the case of defamatory, racist or xenophobic language or behaviour by a member or even order the deletion from the audio-visual record of the proceedings of those parts of the speech by a member that contain defamatory, racist or xenophobic language. That order shall take immediate effect. It shall, however, be subject to confirmation by the Bureau not later than four weeks thereafter, or, if the Bureau does not meet during that period, at its next meeting.

With this progressive step forward, the EU has sent a strong signal to the whole European society that hate speech presents an anomaly of political discourse and MPs who will resort to it will be held accountable and sanctioned.

3. Unraveling the Jurisprudence of the ECtHR on Parliamentary immunity and Freedom of Expression of MPs[40]

Hate speech laws were enshrined in international law in the aftermath of the Second World War and at the time of the dissolution of colonial empires[41]. The term, hate speech, is not enshrined in the European Convention on Human Rights (hereinafter referred to as "ECHR"), and the ECtHR used the actual term, "hate speech", for the first time in 1999[42]. In the well-established case-law of the ECtHR, hate speech is construed as abuse of rights (article 17 of the ECHR).

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40 All cases were analysed on the basis of information available at: https://hudoc.echr.coe.int [16.11.2018]

41 Wojcik Anna, Polish Exceptionalism: Hate Speech Laws between Supra-national Standards and National Politics, submitted to Central European University, in partial fulfilment of the requirement for the degree of Master of Arts, Hungary, 2016, 7

42 McGonagle Tarlach., The Council of Europe against online hate speech: Conundrums and challenges, expert paper, p. 10

3.1 Féret v. Belgium

Daniel Féret, the applicant, was the chairman of the "Front National-Nationaal Front" political party, the editor-in-chief of the party's publications and owner of its website. He was the member of the Belgian House of Representatives at the relevant time. Leaflets and posters distributed by his party in an election campaign presented non-European immigrant communities as criminally-minded and keen to exploit the benefits they derived from living in Belgium, and also sought to make fun of them, with the inevitable risk of arousing feelings of distrust, rejection or even hatred towards foreigners. His parliamentary immunity was lifted and the criminal proceedings were brought against him as the author and editor-in-chief of the offending leaflets and owner of the website. He was sentenced to 250 hours' community service related to the integration of immigrants, together with a 10-month suspended prison sentence. He was also declared ineligible for ten years. The Belgian courts found that the applicant's offending conduct had not fallen within his parliamentary activity and that the leaflets contained passages that represented a clear and deliberate incitation to discrimination, segregation or hatred, and even violence, for reasons of race, colour, national or ethnic origin, which could not be disguised by the election campaign. The reasons given by the domestic courts to justify the interference with the applicant's freedom of expression had been pertinent and sufficient, considering the pressing social need to protect public order and the rights of the immigrant community.

The ECtHR observed that the leaflets presented the communities in question as criminally-minded and keen to exploit the benefits they derived from living in Belgium, and that they also sought to make fun of the immigrants concerned, with the inevitable risk of arousing, particularly among less knowledgeable members of the public, feelings of distrust, rejection or even hatred towards foreigners. It reiterated that while the freedom of expression was important for everybody, it was especially so for an elected representative of the people - he or she represented the electorate and defended their interests. However, the ECtHR noted that it was crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance. The ECtHR emphasized that solving immigration-related problems by advocating racial discrimination was likely to cause social tension and undermine trust in democratic institutions and held that there was a compelling social need to protect the rights of the immigrant community, as the Belgian courts had done. No violation of the freedom of expression was found.

3.2 Castells v. Spain

Otegi Mondragon was spokesperson for *Sozialista Abertzaleak*, a left-wing Basque separatist parliamentary group in the Parliament of the Autonomous Community of the Basque Country. Against the background of closing of the daily newspaper *Euskaldunon Egunkariaand* and arresting 10 persons, he spoke the following terms at a press conference: "How is it possible for them to have their picture taken today in Bilbao with the King of Spain, when the King is the Commander-in-Chief of the Spanish army, in other words the person who is in charge of the torturers, who defends torture and imposes his monarchical regime on our people through torture and violence?" The public prosecutor lodged a criminal complaint against him for "serious insult against the King."

The ECtHR observed that Mr. Castells denounced the impunity enjoyed by the members of various extremist groups, the perpetrators of numerous attacks in the Basque Country since 1977, which was of great interest to the public opinion of the region. It stressed that the freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders, namely, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion. The ECtHR noted that it thus enabled everyone to participate in the free political debate, which is at the very core of the concept of a democratic society. It further stressed that in a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities, but also of the press and public opinion. Lastly, the ECtHR concluded that such an interference in the exercise of his freedom of expression was not necessary in a democratic society and violated the right to the freedom of expression.

3.3 A. v. the United Kingdom

During a parliamentary debate on municipal housing policy, the member of parliament for the constituency in which the applicant lived referred to her as an example of "neighbours from hell" and indicated that she and her children were involved in various types of anti-social behaviour. The following day, two newspapers published articles based on a press release issued by the MP, the contents of which were substantially the same as those of his speech. The applicant, who denied the allegations, had been re-housed after receiving hate mail consisting of racial harassment and had been subject to abuse. The applicant was stopped in the street, spat at and abused by strangers as "the neighbour from hell". Her

solicitors wrote to the MP outlining her complaints but were informed that MP's remarks were protected by absolute parliamentary privilege.

The ECtHR noted that the parliamentary immunity enjoyed by the MP pursued the legitimate aims of protecting free speech in parliament and maintaining the separation of powers between the legislature and the judiciary. In the context of the proportionality of the immunity enjoyed by the MP, the ECtHR observed that victims of defamatory misstatement in parliament are not entirely without means of redress. In particular, such persons can, where it is their own MP who has made the offending remarks, petition the House through any other MP with a view to securing a retraction. In extreme cases, deliberately misleading statements may be punishable by parliament as a contempt. The ECtHR concluded that absolute Parliamentary immunity cannot be said to exceed the margin of appreciation allowed to States in limiting an individual's right of access to a court and accordingly, no violation of the right of access to a court was found.

3.4 Le Pen v. France

The president of the French "National Front" party - Mr. Jean-Marie Le Pen was fined 10,000 euros for "incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion", on account of statements he had made about Muslims in France in an interview with *Le Monde* daily newspaper. He asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge". The Paris Court of Appeal sentenced him to another fine, of the same amount, in 2008 after he commented on the initial fine, in the following terms, in the weekly *Rivarol*: "When I tell people that when we have 25 million Muslims in France we French will have to watch our step, they often reply: ''But Mr. Le Pen, that is already the case now!' – and they are right." The Court of Appeal considered that Mr. Le Pen's comments to the newspaper suggested that the security of the French people, whose reactions allegedly went further than his own offending statements, depended on them rejecting the Muslim community. It held that the applicant's freedom of expression was no justification for statements that were an incitement to discrimination, hatred or violence towards a group of people. In 2009 the Court of Cassation dismissed an appeal lodged by Mr. Le Pen in which he argued that his statements were not an explicit call for hatred or discrimination and did not single out Muslims because of their religion, and that the reference to Islam was aimed at a political doctrine and not a religious faith.

In the ECtHR's view, Mr. Le Pen's comments had certainly presented the "Muslim community" as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. It stressed that he had set the French against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people.The ECtHR found that the interference with the applicant's enjoyment of his right to freedom of expression had been "necessary in a democratic society". His complaint was accordingly rejected.

3.5 Cordova v. Italy

Mr. Cossiga (senator) sent the little wooden horse and the tricycle to Mr. Cordova (prosecutor) together with a detective game called "Super Cluedo". With the parcel came the following message: "Have fun, dear Prosecutor! Best wishes, F. Cossiga." Mr. Cordova filed the complaint against Mr. Cossiga, alleging that the communications and gifts described above had damaged his honour and reputation. The President of the Senate had informed the District Court that the Parliamentary Immunities Commission proposed that the Senate should declare that the acts of which Mr. Cossiga was accused were covered by the immunity provided for in article 68 § 1 of the Constitution. Pursuant to this article, "Members of Parliament shall not be required to account for the opinions they express or the votes they cast in the exercise of their functions." The legislative chambers had adopted a broad interpretation of Article 68 § 1, holding it to apply to opinions expressed outside Parliament, even where they are divorced from parliamentary activity as such. This broad interpretation stemmed from the notion that political opinions expressed outside Parliament represented an outward projection of parliamentary activity and came within the mandate given by the voters to their elected representatives. According to the approach of the Constitutional Court of Italy, the expression "parliamentary function" could not be held to cover all the political activities of a member of the Chamber of Deputies or the Senate, because "such an interpretation ... would risk converting an immunity into a personal privilege". It added that "it would not be right to establish any connection between a number of statements made during meetings, press conferences, television programmes ... and a parliamentary question subsequently addressed to the Minister of Justice ... To hold otherwise [would amount to acknowledging] that no parliamentarian may be held accountable for his or her statements, even if they are grossly defamatory and ... entirely divorced from parliamentary functions or activities". It further held that in the case of opinions

expressed outside Parliament, it had to verify whether there was any connection with parliamentary activities. In particular, there must be a substantial connection between the opinions in question and a prior parliamentary activity.

The ECtHR noted that it is a long-standing practice for States generally to confer varying degrees of immunity to parliamentarians, with the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions. It noted that the Article 68 § 1 of the Constitution, pursued legitimate aims, namely to protect free parliamentary debate and to maintain the separation of powers between the legislature and the judiciary. The ECtHR emphasized that the immunity attaching to statements made in the course of parliamentary debates in the legislative chambers were designed to protect the interests of parliament as a whole. It stressed that Mr. Cossiga's behaviour was not connected with the exercise of parliamentary functions in their strict sense as ironic or derisive letters accompanied by toys personally addressed to the prosecutor could not, by their very nature, be construed as falling within the scope of parliamentary functions (such behaviour was more consistent with a personal quarrel). The ECtHR therefore held that the decisions made by the state authorities according to which Mr. Cossiga had no case to answer and that no further proceedings could be brought to secure the protection of the applicant's reputation did not strike a fair balance between the requirements of the general interest of the community and the need to safeguard the fundamental rights of individuals. The Court found that there had been a violation of the applicant's right of access to a court.

IV. Paradigm of hate speech in Georgia's context

1. Anti-discriminatory mechanism

In the context of EU-Georgia Visa dialogue, significant set of benchmarks for effective implementation of Action Plan on Visa Liberalisation, among other things, was adoption of a comprehensive anti-discrimination law, as well as of National Human Rights Strategy and Action Plan and combating racism, xenophobia and other forms of discrimination in line with the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/ECRI and international human rights organizations[43]. Respectively, the driving force of the national strategy of Georgia is to establish high standards of tolerance in society, through the prevention and condemnation of all forms of discrimination[44].

[43] EU-Georgia Visa Dialogue, Action Plan on Visa Liberalisation, 2.4.3

[44] National Strategy for the Protection of Human Rights in Georgia 2014-2020, §12

Pursuant to the Association Agreement concluded with the EU in 2014, Georgia has undertaken the responsibility to gradually harmonize its legislation with the European law. Consequently, on May 2, 2014 the Parliament of Georgia has adopted Anti-discrimination law, according to which, the Public Defender of Georgia, as a "public watchdog" of human rights and freedoms, among other things, is empowered to monitor the implementation of anti-discriminatory policy pursued by the public authorities.

Under the anti-discrimination law, the separate ingredients of hate speech are couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. Specifically, it covers "any action carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person"[45]. At the same time, the Public Defender of Georgia prepares and forwards general proposals to relevant institutions or persons on the issue of preventing and combating discrimination[46] and/or publishes statements. The Public Defender of Georgia resorts to the wide margin of appreciation and via broad interpretation inserts hate speech with its inalienable and indispensable components (in particular, incitement to hatred, discrimination and violence) into the area of anti-discrimination law.

The timely and immediate reaction plays a pivotal role in the prevention of discrimination and its resultant adverse and perilous consequences. In order to ensure equality and eradicate perpetuation of deeply-rooted negative stereotypes, stigmas and clichés gleaning from the public orbit of parliamentary activities, the Public Defender of Georgia addressed the Parliament of Georgia with the general proposal concerning the use of hate speech by MPs and of other offensive words towards vulnerable groups and published public statements. In spite of the Public Defender's anti-hate speech efforts, this grave problem still remains unresolved on the parliamentary agenda.

2. International accountability

The international treaties and agreements are integral parts of the Georgian legislation[47]. Georgia is a state party to some international treaties and agreements, which inhibit use of hate speech. The ECRI expresses a deep concern on the resurgence of hate speech instances instilled by the MPs of Georgia

[45] Law of Georgia on the Elimination of all forms of discrimination, art. 2.5
[46] Ibid, art.6.2 c)
[47] Law of Georgia on International Treaties of Georgia, art. 6

and recommends it to introduce in the Parliament's Rules of Procedure provision prohibiting racist and homo-/transphobic insults and providing for measures and/or sanctions in case of its breach.[48] The committee on the Elimination of Racial Discrimination is concerned about instances of physical attacks against ethnic and religious minorities, xenophobic and discriminatory statements by state officials and representatives of political parties and requests that Georgia include in its next periodic report, which should be submitted by 2 July 2020 specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level[49]. This latter underscores the key role that politicians and political parties can play in combating racism, racial discrimination, xenophobia and related intolerance and encourages political parties to take concrete steps to promote equality, solidarity and non-discrimination in society, *inter alia*, by developing voluntary codes of conduct, which include internal disciplinary measures for violations, so that their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance.[50]

The incorporation of the anti-hate speech in the human rights mainstreaming is the requirement, which Georgia as the member of the United Nations and the Council of Europe should meet. In countries where parliamentary non-liability protects particularly offensive remarks (such as for example hate speech) against external legal action, there should however be a particular responsibility for parliament itself to censure and sanction this through internal house rules and disciplinary sanctions, in order to protect public and individual interests as well as international obligations[51].

3. General background and causation

3.2 Vulnerability of vulnerable groups

The homophobic and transphobic hatred has a great tendency to degenerate

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48 ECRI Report on Georgia (fifth monitoring cycle), published on 1 March 2016, § 46

49 Georgia should give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009**.** See Concluding observations on the sixth to eighth periodic reports of Georgia adopted by the Committee on the Elimination of Racial Discrimination, 2016, §8, §25

50 The Durban Declaration and Programme of Action, 2001, §115

51 Report CDL-AD (2014)011 on the Scope and Lifting of Parliamentary Immunity, Adopted by the Venice Commission at its 98th Plenary Session, Strasbourg, 2014, 17

into an actual outburst of violence and discrimination. One of the most vivid illustrations mirroring the hostility and irresistible homophobic and transphobic hate speech accumulated in the Georgian society, is given in the landmark case *Identoba and Others v. Georgia*[52]**.**

The recognition of the Lesbian, Gay, Bisexual and Transgender (hereinafter referred to as "LGBT") persons as an equal members of the Georgian society is still alien to the dominant majority. In particular, the majority of the Georgian population perceives them as sexual perverts causing degeneration as well as posing a risk to the Georgian traditions, religion, moral values and the Georgian identity as a whole. It is of a particular importance to mention that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on the grounds of sexual orientation or gender identity.[53] In such a context, the Georgian authorities have a "positive obligation to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons even if their views are unpopular or not shared by the majority of the population"[54]. Nevertheless, steps taken by the state in response to homophobic and transphobic attitudes with the aim of improving the situation and rights of LGBT individuals are minimal and only of a formal nature[55]. For example**,** despite the fact that the World Health Organization has made it clear that homosexuality is not to be considered as a disease, by removing that concept from its International Statistical Classification of Diseases and Related Health Problems in 1990[56], the MPs of Georgia stubbornly and vigorously continue to attach to homosexuality the status of disease.

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52 European Court of Human Rights (ECHR), Identoba and Others v. Georgia**,** application no. 73235/12, (2015)

53 Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

54 Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, §8, §15

55 The report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia, short version, 2016, 93

56 Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

Along with the reckless trampling upon the rights and freedoms of LGBT persons, hate speech against ethnic/national, religious and political minorities as well as against persons with disabilities is a widespread and a worrying phenomenon. In the Georgian society, Islamophobic hate speech is mainly related to the real or perceived security threats flowing from countries like Iraq, Syria, Iran, Turkey and concatenation of the Turks with "occupying force"[57]. In general, xenophobic cacophony deals with the portrayal of foreigners as the main beneficiaries of Georgian economic welfare (owners of the Georgian lands, business) and as the source of the threat to national and Georgian Orthodox identity. On 14 July 2017, the aggressive nationalistic rhetoric similar to "Georgia must be for Georgians" and "immigrant cleansing" was voiced by the participants of the "Georgian March" in which an acting MP of Georgia was engaged[58]. The situation is also unfavorable in relation to the ethnic-religious tolerance. Suffice to mention three resonant incidents taking place in 2013-2014. Namely, in 2013 minaret was removed in Chela for the violation of customs rules, which resulted in violence between the police and local Muslims[59]. In 2014, local residents protested against the opening of the Muslim children's boarding school in Kobuleti and expressed their protest by slaughtering a pig at the entrance of the boarding school and nailing the pig's head to the school door[60]. Another incident is related to village Mokhe[61] where the Muslim community was prevented from praying in the mosque whose ownership is not established yet. In case of Mokhe, hindrance to the realization of freedom of religion was protested by the members of the Muslim community, which ended up with their detention. Besides, they became addressees of the physical and verbal abuse (by referring to them as "Tatars") on the part of the law enforcement officers.

Frequently, reasons of discrimination are negative stereotypes, stigmas and prejudices entrenched in the Georgian society towards persons with disabilities. For example, a natural person, having learned that one of the children of the family renting her house was diagnosed with autism, demanded the cancellation of the rent agreement and used a clearly stigmatizing language when speaking about the child with autism spectrum: "Go to villages and see that such diseased

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57 ECRI Report on Georgia (fifth monitoring cycle), published on 1 March 2016, §25. §30

58 Available at: http://oc-media.org/who-was-in-and-who-was-out-in-tbilisis-far-right-march-of-georgians-analysis/ [16.11.2018]

59 ECRI Report on Georgia (fifth monitoring cycle), published on 1 March 2016, § 50

60 The annual report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, 2014, 269-270

61 Ibid, 270-272

children are in abundance there; families even have three such children but they never arrive here;" "This creates a problem to me; why on earth I need such a diseased child; this child may set something on fire or do something wrong."[62]

Georgia is a multi-cultural, multi-ethnic and secular state and such an intolerant atmosphere will endanger social cohesion and integration. Along with the circumstances cited above, political intolerance manifested in the odious verbal battlefield against the members of political parties with different political affiliation is an "accompanying escort" of a daily news portal. The MPs have a strong leverage to shape the public mind-set in the negative and harmful direction. There is a direct causal link between the hate speech supported by the MPs of Georgia and the overall intolerant atmosphere reigning in the Georgian society. The negative stereotypes, stigmatization, prejudice, homo-/trans-/xenophobic and related attitudes more easily take the form of discrimination and violence when backed up by the elected representatives of people.

3.3 Tolerate the intolerable?

Is the parliament a platform for the flourish of hate speech? Are the MPs elected by the people to hear from them poisonous language saturated with hatred or, on the contrary, to be eye-witnesses of their effective and efficient exercise of legislative branch reinforced by far-reaching human rights-based domestic and foreign policy?

However, it is a self-evident truth and a normative reality that MPs while exercising legislative power are bound by human rights and freedoms as directly acting law as well as by fundamental principles of the Constitution of Georgia such as the rule of law and democratic state. The dangerous tentacles of hate speech should be cut off from the healthy governance of democratic state. The hate speech uttered by the MPs of Georgia is in no case tolerable and needs to be legally constrained as soon as possible. According to ICCPR, the state party is not required to criminalize hatred, which leads to the incitement to discrimination and violence leaving the leeway to Georgia so as to match an adequate legal pattern to its national context.

V. Conclusion and Recommendations

By its very nature, hate speech is a dangerous phenomenon as it conserves in a collective consciousness and a historical memory of people and transmits from

[62] Special Report on Combating and Preventing Discrimination and the Situation of Equality issued by the Public Defender of Georgia, 2016, 27-28

generation to generation. Hate speech does not contribute to pluralistic political debate capable of ensuring a democratic diversity. By being exposed to the political and public arena, MPs are expected to set an example and display an intransigent attitude towards intolerance, violence and discrimination.

Hate speech can neither take refuge in the shadow of the freedom of expression nor under the cover of the parliamentary immunity as it constitutes abuse and misinterpretation of these concepts. By the same token, hate speech expressed by MPs does not enjoy the protection in the human rights law developed by the Council of Europe, the European Union and the United Nations. Consequently, parliamentary immunity cannot serve as *carte blanche* or a mitigating and an attenuating circumstance.

When the incitement to hatred, discrimination and violence becomes an integral part of the human rights policy carried out by the MPs only legally binding sanctions may curb their further dissemination and perpetuation. In present-day Georgia, there is a high indicator or redundancy of hate speech in the Georgian society, which is intrinsically linked to the xeno-/homo-/transphobic and related intolerant attitudes towards different groups of minorities. Against this background, the MPs of Georgia instead of developing counter-hate speech narratives and alleviating escalation of tension among public, they add more fuel to the further multiplication and replication of hate speech. The MPs of Georgia are entitled to absolute non-liability, which means that they are exempt from civil, criminal and administrative sanctions. Stamping out of hate speech may be achieved by the introduction of the self-regulatory legal mechanism based on adequate sanctions for its non-compliance, which, in turn, will inevitably have a "chilling and deterrent effect" for MPs. The incorporation of precautionary, preventive and punitive measures into the internal regime of parliamentary activities is not deemed to be panacea, but at least, it will reduce an intolerant general climate and set a legitimate standard of a social behaviour.

One of the virtues of the 8th term of Parliament of Georgia with the ruling party "Georgian Dream – Democratic Georgia" was the adoption of the anti-discrimination law. To continue this progressive legislative line in the similar vein, it is expedient that the 9th term of Parliament of Georgia with the same ruling party, takes into consideration the following options of the recommendations, which may also be an exemplary pattern for other countries experiencing the same problems:

1. Making amendments to the Rules of Procedure of the Parliament of Georgia in order to introduce specific provision prohibiting hate speech and imposition of sanctions for its violation with the following wording:

Any public expression, which has an intention to incite or has the effect of creating an imminent risk of inciting hatred, discrimination and violence against the targeted person or group of persons on the grounds of race, skin, colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity, political or other opinions, or other characteristics shall be subject to imposition of sanctions, namely, the penalty may consist of one or more of the following measures: (a) a reprimand; (b) forfeiture of entitlement to the daily subsistence allowance for a period of between two and thirty days (may be doubled in case of repetition); (c) without prejudice to the right to vote in plenary, and subject, in this instance, to strict compliance with the members' standards of conduct, temporary suspension from participation in all or some of the activities of Parliament for a period of between two and thirty days on which Parliament or any of its bodies, committees or delegations meet; (d) prohibition of the member from representing the Parliament on an inter-parliamentary delegation, inter-parliamentary conference or any inter-institutional forum, for up to one year; (e) in the case of a breach of confidentiality, a limitation in the rights to access confidential or classified information for up to one year (may be doubled in case of repetition).

2. Introducing the clause in the Rules of Procedure of the Parliament of Georgia stipulating that:

The Chairperson of the Parliament of Georgia may decide to interrupt the live broadcasting of the sitting in case of defamatory, racist or xenophobic language or behaviour by a member and order the deletion from the audiovisual record of the proceedings of those parts of a speech by a Member that contain defamatory, racist or xenophobic language. That order shall take immediate effect. It shall, however, be subject to confirmation by the Bureau not later than four weeks thereafter, or, if the Bureau does not meet during that period, at its next meeting;

3. Adopting the Code of Ethics and introducing specific provision prohibiting hate speech and imposition of sanctions for its violation with the wording which is given in the above-mentioned recommendation 1.

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