

INTERNET AS THE COMMUNICATION MEDIUM OF THE 21ST CENTURY: DO WE NEED A SPECIAL LEGAL REGULATION OF FREEDOM OF EXPRESSION ON THE INTERNET?

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Abstract: *The authors of the paper deal with the issue of infringement of the protection of religion and belief by the application of the constitutional freedom of expression in the Internet environment which, compared to traditional media (radio, television, etc.), allows not only rapid and immediate access to information, but also gives every single person space for unlimited dissemination of their ideas and opinions. Freedom of expression is thus unlimited, absolute in the conditions of the Internet environment. From a legal point of view, however, such a situation is very problematic. Besides freedom of expression, the constitutionally guaranteed rights and freedoms also include such rights as the right to privacy, the right to freedom of religious expressions, the right to respect for human dignity, personal honour, good repute and the protection of the name. In the Internet environment, it is obvious that a conflict of rights has to take place. In addition, due to the unlimited freedom of expression, the Internet is also a breeding ground for the dissemination of various hate speech, in many cases only on the grounds of the individual's religious beliefs, which ultimately lead to committing the criminal offenses. For these reasons, the authors also analyze the individual negative, accompanying phenomena of unrestricted freedom of expression, having criminal implications, and examine specific verbal attacks that may also interfere with the right to protection of religion in the Internet.*

Keywords: *the Internet, legal regulation, freedom of expression, conflict of rights, codes of conduct, hate speech*

1. INTRODUCTION

The media play a no negligible role in the life of man. In the first place, the mass media are an important source of knowledge and experience concerning the world and society around us.¹ The Internet nowadays, in the 21st century, is undoubtedly the most powerful medium among all. A large part of media life is taking place in the Internet; the Internet is a means of providing not only immediate and easily accessible information but also a platform where many other activities are taking place. In particular, social networks, which are a notable and extremely important part of the Internet, are gradually replacing ordinary media and become a centre of media and social life. The Internet has become a platform in the 21st century that not only gradually replaces traditional media but also offers every individual the possibility that his ideas and opinions are freely accessible to the general public without any censorship or limitation. It can be said that freedom of expression is de facto absolute in the Internet environment. From a legal point of view, however, such a situation is very problematic. Besides freedom of expression, the constitutionally guaranteed rights and freedoms also include such rights as the right to privacy,

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¹ HORVÁTH, P., MACHYNIÁK, J. Electoral behaviour as affected by the media. *European Journal of Science and Theology*. 2014, Vol. 10, No. 1., pp. 219–228.

the right to freedom of religious expressions,² the right to respect for human dignity,³ personal honour, good repute and the protection of the name. In the Internet environment, it is obvious that a conflict of rights has to take place.⁴ In addition, due to the unlimited freedom of expression, the Internet is also a breeding ground for the dissemination of various hate speech, in many cases only on the grounds of the individual's religious beliefs, which ultimately lead to committing the criminal offenses. The aim of the paper is to examine the issue of freedom of expression in the Internet environment in the context of the protection of religious morals, the religious confession of individuals and the necessity of its regulation. The authors of the paper focus attention on the existing conflict of the two rights in the Internet environment, examine the legal conditions for a possible limitation of freedom of expression, and analyze the negative accompanying phenomena of unrestricted freedom of expression on the Internet, having criminal implications, and examine specific verbal attacks that may also interfere with the right to protection of religion in the Internet.

2. FREEDOM OF EXPRESSION IN THE INTERNET ENVIRONMENT: A THREAT TO SOCIETY AND TO FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL IN THE 21ST CENTURY?

The Internet is a global system of interconnected computer networks that serves as a platform for publication and disseminating information of various kinds and providing services to the end user. Such services include e-mail, chat, and a system of interconnected websites with the possibility to publish posts and commentaries of the users. The legal status of the Internet is determined by, and at the same time the legal problems connected with the Internet as a modern medium are caused by its typical, characteristic features, which distinguish it from other types of computer networks.⁵ The Internet is primarily a computer network that is open. Openness means that it is a network accessible to any computer; each computer can be connected to or disconnected at any time. Thus, the Internet does not have its particular owner. Another factor influencing the legal status of the Internet is its decentralization. In other words, the Internet does not have a single central server on which internet data are centralized, and therefore easily searched for and manipulated. Finally, a very significant attribute of the Internet is also its universality. Universality can be understood as a unified use of transmission application protocols that allow communication between computers of different manufacturers, different operating

² HERCZEG, J. Svoboda projevu a ochrana náboženské morálky [Freedom of expression and protection of religious morality]. *Trestněprávní revue [Journal of criminal law]*. 2010, Vol. 9, No. 12, pp. 394–400.

³ On the issue of human dignity see closer On the approach to human dignity in case law see closer HOFMANNOVÁ, H. Comments on the approach to human dignity in case law. *The Lawyer Quarterly*. 2018, Vol. 8, No. 3, pp. 284–294.

⁴ ZLOCHA, L. Konflikt slobody prejavu a ochrany osobnostných práv osôb verejného záujmu v rozhodovacej praxi súdov [Conflict of freedom of expression and protection of the personal rights of persons of public interest in the decision-making practice of courts]. *Právny obzor [Legal Horizon]*. 2016, Vol. 99, No. 1, pp. 12–28.

⁵ For instance, intranet, extranet, darknet.

systems, and many other devices.⁶ These attributes have made the Internet a platform the use of which has been gradually expanded throughout the world and is now available practically for everyone. In addition, it has recently made it possible to change the nature and face of many instruments traditionally used in the material world (for instance new forms of money).⁷ This can certainly be assessed positively. Compared to traditional media, the Internet brings a variety of benefits to ordinary people, in many cases even at very low monthly costs, sometimes even completely free of charge (e.g. public free Wi-Fi). Without having to spend money on access to information via traditional media (print, radio, television), the consumer has a quick access to a huge, almost unlimited, source of information, directly from the home environment. The benefit is also that, compared to traditional media, the Internet allows each individual to spread their thoughts and opinions, practically without any territorial limitation, without interference in the form of editorial control and without any time defining.⁸ So, the spread of information, opinions, and ideas can be done practically at the same time in any place in the world. At the same time, such wide-spread information, opinions, thoughts in the Internet environment have considerable durability, that is, they are also available in a very late period of time publication. On the theoretical level, if any personal expression is disclosed or any information in the Internet environment is published, it will be available in the Internet environment “forever”.

However, these facts may pose a threat/a risk to each of us. As a result of the above-mentioned benefits of the Internet, the society is flooded every second with an infinite amount of new and new information, of which a large amount may not be or even are not true or are harmful to religious expressions and belief.⁹ Likewise, a large number of personal expressions, a large number of published claims and thoughts can cause and damage personal rights of individuals, especially in the context of the dissemination and disclosure of very sensitive personal data, possibly false, deceptive, misleading information or other types of computer-related crime.¹⁰ Many of the manifestations also take the form of the spread of hateful ideas that incite violence against some of the vulnerable groups of the population, especially in relation to different categories of minorities (religious, ethnic, national, sexual, etc.). This includes many verbal attacks against religious beliefs, membership in the Church or religious society, or faith and religion-related activities.

It is the dissemination of various hate speech in the Internet, aimed in a large number of cases even against the religious confession of individuals or religious groups of people,

⁶ ČERNÝ, M. Internet a právo – základní úvahy [Internet and law – basic reflections]. *Acta Universitatis Olomouensis – Facultas Iuridica*. 2001, Vol. 5, No. 3, pp. 47–54.

⁷ ŠIMONOVÁ, J., ČENTĚŠ, J., BELEŠ, A. Financial analysis of innovative forms of money. *Entrepreneurship and Sustainability Issues*. 2019, Vol. 7, No. 1, pp. 69–80.

⁸ ŠIKUTA, J. Sloboda prejavu, internet a rozvíjajúca sa judikatúra ESLP [Freedom of expression, the Internet and the evolving case-law of the ECHR]. *Správni právo [Administrative law]*. 2017, Vol. 50, No. 7-8, pp. 393–400.

⁹ SZYMANIEC, P. *Koncepcje wolności religijnej. Rozwój historyczny i współczesny stan debaty w zachodniej myśli polityczno-prawnej [Concepts of Religious Freedom: Historical Development and the Present Status of Debate in Western Legal and Political Thought]*. Wrocław, 2017, pp. 23–24; SOSNOWSKA, M., SZYMANIEC, P., TUORASCHWIERSKOTT, E. *Religionsfreiheitsraum im Polen, Tschechien und im Deutschland. Rechtliche Analyse [Religious freedom in Poland, the Czech Republic and Germany. Legal analysis]*. Wałbrzych, 2017, pp. 45–46.

¹⁰ KLIMEK, L. *European arrest warrant*. Cham: Springer, 2015, pp. 140–141.

which we consider to be extremely dangerous, as it can gradually cause subversive moods towards some population or religious groups. For this reason, it is necessary to deal with the issue of hate speech further in the context of the Internet. It should be pointed out at this point that the legislation of the Slovak Republic does not define the concept of hate speech in any way. It is a concept that is used in the ordinary language and within the professional public, but the content of which is not completely unified. The literature has a different approach to defining this concept. Legal science uses the term “hate speech” as an abbreviation for an expression intended to insult, humiliate or induce discrimination, hatred or violence against an individual or group of persons on the basis of their personal characteristics – gender, race, colour, language, faith and religion, political or other mentality, national or social origin, belonging to a national or ethnic minority, etc.¹¹ Sometimes the hate speech is defined as an expression that contains elements of hatred towards the group to which the subject of speech or hatred belongs or which arises from such a hate. Hateful elements, in these cases, are based on negative prejudices against certain groups of society that offend, intimidate, humiliate, call for the limitation of their rights or for acts of violence against them, or otherwise violate their human dignity.¹² One of the most appropriate definitions is, in our view, a definition that we can find in the Recommendation No. R (97) 20 of the Committee of Ministers to member states on “hate speech” adopted on 30 October 1997, which marks as hateful “*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*”. Even though the professional public differs in the view of the precise terminological definition of the term “hate speech”, their common feature is always a certain hostile attitude because of identity to a group of people. The fact is that the Internet is a breeding-ground for spreading a variety of hate speech.

Although we are dealing with the issue of freedom of expression vs. freedom of religion and belief in the Internet, it should be noted that the Internet as a global computer network is, of course, quite a general term. Within the Internet, spreading of hate speech is done through specific Internet resources. In this context, the literature distinguishes several groups of Internet resources that serve to spread hate speech in the Internet environment. Výborný¹³ recognizes the following categories of sources for the dissemination of hate speech: (a) official web pages of political parties and affiliated associations, (b) mo-

¹¹ RAPČAN, J., RAPČANOVÁ, M. Hate crimes – trestné činy z nenávisťi a hate speech – nenávisťné prejavy. [Hate crimes and hate speech]. In: M. Marko – J. Rapčan (eds.). *Extrémizmus – hrozba pre demokratickú spoločnosť [Extremism – a threat to a democratic society]*. Bratislava, 2012, pp. 20–21; FRYŠTÁK, M. Možnosť prenositeľnosti konceptu hate crimes do českej trestněprávní úpravy [Possibility of transferring the concept of hate crimes to the Czech criminal law]. *Trestněprávní revue [Journal of criminal law]*. 2016, Vol. 15, No. 7-8, pp. 164–167. DANIČS, Š. Trestná činnosť s extrémistickým podtextem a “hate crimes” [Criminal activity with extremist overtones and “hate crimes”]. *Bezpečnostní teorie a praxe [Security theory and practice]*. 2014, Vol. 12, No. 3, pp. 61–79.

¹² SMIEŠKO, I. Nenávisťné prejavy na facebooku [Hate speech on facebook]. *Bulletin slovenskej advokácie [Bulletin of Slovak Advocacy]*. 2016, Vol. 22, No. 5, pp. 18–26.

¹³ VÝBORNÝ, Š. *Nenávisťný internet versus právo [Hateful Internet vs. Law]*. Praha: Wolters Kluwer, 2013, pp. 120–121.

bilization sites, (c) information propagandistic servers, (d) social networks, (e) portals for the reproduction and sharing of music and videos, (f) Internet discussions, (g) propaganda using mail communication, (h) sites allowing the sale and purchase of hate goods, and finally (i) Internet computer games. From these sources, as the most harmful to the freedom of religion and faith we now consider the social networks, portals for music and video reproduction, and Internet discussions.

Social networks have the primacy of spreading hate speech; they serve not only as a communication tool among members of different groups aimed at suppressing the rights of individuals, but they are also used as a means of acquiring new people for their thoughts, a propaganda tool. Social networks are the platform used especially by the young people who are very easily infected by various hateful opinions aimed at the members of religious or other groups. Interesting is the fact that young people are freely expressing their hateful opinions on social networks, but on many issues they have little information and paradoxically they are not trying to get this information on their own.¹⁴ The reason why social networks are most used is in the characteristics of social networks – they allow extraordinary rapid dissemination of ideas through various links and the sharing of these links by others and others. At the same time, it is possible to emphasize that hate speech on social networks is easily accessible not only to a person who is not a member of any group on the social network – suffice it to share the hate link with friends and their friends. In terms of music and video reproduction portals, YouTube has the most relevant position in relation to publishing videos that widely disseminate various anti-religious and hateful ideas, or promote various movements and violent actions towards members of religious groups and societies. Such channels have a large number of viewers, fans (subscribers) and become, for many citizens, an alternative to the traditional broadcasting media under the Broadcasting and Retransmission Act. The content of the videos is, of course, in many cases uncontrolled/uncontrollable. In this regard, serious is the fact that members of many radical and extremist groups use YouTube videos as platform for propagation of extremely dangerous methods, such as intimidation, violence and physical assaults on members of ethnic, racial or religious minorities, foreigners, proponents of other ideologies.¹⁵ Last but not least we can mention the internet debates or discussions, which are gaining increasing importance and increased power in recent years. Internet discussions take place either within specific forums accessible to registered members of a given forum (e.g. members of some extremist groups) or on websites that all citizens have access to (e.g. discussions on news sites, etc.). However, it should be added that internet forum discussions are gradually losing attractiveness, especially as a result of more frequent use of social networking space.

It can be added that the Internet is an important platform for the spread of hate speech threatening religious morals and freedom of religion, particularly because of the anonymity of its users. Internet space allows everyone, without disclosing their identity,

¹⁴ MIHÁLIK, J. When electoral Paradigm meets the research Implications: The Youth Perspective. *Slovak Journal of Political Sciences*. 2016, Vol. 16, No. 4, pp. 335–352.

¹⁵ STRÁŽNICKÁ, A. Extremism in Slovakia – throughout analysis. *European Journal of Transformation Studies*. 2017, Vol. 5, No. 2, pp. 60–69.

to express their opinion on everything and everyone. Anonymity just gives people a sense of freedom, a feeling of impunity and a feeling of unlimited, absolute freedom of speech. However, it has to be emphasized that any expression on the internet has and should have its legal consequences as well. This fact is not understood by many Internet users. Hate speech delivered through the Internet space may have criminal consequences also in the context of religious freedom, in the form of sanctions for the commission of some of the criminal offences defined in the Slovak Criminal Code.¹⁶ From criminal law point of view, the spread of hate speech on the Internet in relation to freedom of religion may take the form of criminal responsibility for some of the offenses listed in the ninth chapter or tenth chapter of a special part of the Criminal Code. These are in particular the following criminal offenses: § 359 Violence against a Group of Citizens; § 421 Foundation, supporting and promoting movements aimed at suppression of fundamental rights and freedoms; § 422 Manifestation of a sympathy to a movement aimed at suppression of fundamental rights and freedoms; § 422b Dissemination of extremist materials; § 422d Denial and approval of the Holocaust, crimes of political regimes and crimes against humanity; § 423 Defamation of nation, race and belief; § 424 Incitement of national, racial and ethnic hatred. It should be noted that the use of an agent is necessary to detect several of the above-mentioned most relevant crimes.¹⁷ However, besides mentioned criminal acts there are also other crimes possible. They include crimes belonging to the group of crimes against peace and humanity, crimes of terrorism and extremism. Also, we can mention crime having the form of criminal involvement. They include § 337 Incitement and § 338 Condoning a criminal offence.

3. IS IT PERMISSIBLE TO RESTRICT FREEDOM OF EXPRESSION IN THE INTERNET ENVIRONMENT IN ORDER TO PROTECT RELIGION AND BELIEF?

It follows from the foregoing that freedom of expression cannot be absolute even in the Internet environment. It is essential to adopt some form of public law regulation of the freedom of expression on the Internet while taking into account the specificities of this medium and the specific features of internet users abusing the constitutionally guaranteed freedom of expression. The current legislation on the regulation of electronic media seems to be obsolete, as is also confirmed by some legal experts.¹⁸ Of course, when restricting freedom of expression on the Internet, the general basic conditions for limiting the freedom of expression defined by the Constitution of the Slovak Republic no. 460/1992 Coll. must be respected. Their legal framework is specified more precisely by the decision-

¹⁶ ČENTĚŠ, J. *Sloboda prejavu a trestné právo [Freedom of expression and criminal law]*. Bratislava, 2015, pp. 131–132; PETRÍK, M. *Sloboda prejavu a fašistické, rasistické a iné extrémne prejavy [Freedom of expression and fascist, racist and other extreme expressions]*. *Justičná revue [Judicial Review]*. 2004, Vol. 56, No. 4, pp. 418–434.

¹⁷ ČENTĚŠ, J., BELEŠ, A. Regulation of agent as a tool for combating organized crime. *Journal of Security and Sustainability Issues*. 2018, Vol. 8, No. 2, pp. 151–160.

¹⁸ KUKLIŠ, L. *Regulácia elektronických médií [Regulation of electronic media]*. Bratislava: Wolters Kluwer, 2015, pp. 55–56.

making activities of the Constitutional Court of the Slovak Republic, Constitutional Court of the Czech Republic¹⁹ and of the European Court of Human Rights.²⁰ The Constitution of the Slovak Republic in Article 26 (4) *in concreto* says: “Freedom of expression and the right to seek and disseminate information may be restricted by a law only if it is regarding measures necessary in a democratic society to protect the rights and freedoms of others, national security, public order, protection of health and morals.” At the same time, in the context of conditions for restrictions on freedom of expression, relevant are the provisions of Article 13 (2-4) of the Slovak Constitution, according to which “(2) Limitations of fundamental rights and freedoms shall be regulated only by a law and under the conditions set in this Constitution. (3) Legal restrictions of fundamental rights and freedoms shall be applied equally in all cases fulfilling the specified conditions. (4) When imposing restrictions on fundamental rights and freedoms, respect must be given to the essence and meaning of these rights and freedoms and such restrictions shall be used only for the specified purpose.” As regards the case-law of the Constitutional Court in matters of freedom of expression, it must be stated that this is relatively rich.²¹ The Constitutional Court of the Slovak Republic in its decision-making activity classifies the conditions for the restriction of the legal status of natural and legal persons into two categories – formal conditions and material conditions.²² The Constitutional Court also stresses that formal and material conditions must be respected in relation to any limitation of the legal status of individuals (including restrictions on freedom of expression).

In the context of the case law of the Constitutional Court of the Slovak Republic, a formal condition for the restriction of the freedom of expression can be considered a restriction of the freedom of expression only by the law, which is a generally binding legal regulation adopted by the National Council of the Slovak Republic in accordance with the provisions of Art. 84 sect. 1 and 2 and Art. 87 of the Constitution. However, this condition cannot be interpreted in such a way that the restriction of freedom must be realized through a specific, single law. The Constitutional Court of the Slovak Republic specified this formal condition of the restriction of freedom of expression in its next decision,²³ stating that the formal condition means that the limitation will be adopted by the National Council of the Slovak Republic in the law with the force of law. The term “law” does not

¹⁹ HURDÍK, J., SELUCKÁ, M. The influence of the human rights on private law in the Czech Republic. *The Lawyer Quarterly*. 2014, Vol. 4, No. 2, pp. 11–118.

²⁰ JESENKOVÁ, A., JESENKO, M. *Ludské práva ako projekt vzájomnej dôvery – antifundacionalistický pohľad na ľudské práva. Ludské práva. Kam kráčaš demokracia [Human rights as a project of mutual trust -antifundamentalist view of human rights. Human rights. Where you go democracy]*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2015, pp. 122–123; POBIJAK, T. Aktuálna judikatúra ECHR v oblasti slobody prejavu [Recent ECHR case law on freedom of expression]. *Justičná revue [Judicial Review]*. 2015, Vol. 67, No. 10, pp. 1221–1229; ČAPEK, J. Trestné právne aspekty nenávisťných prejavů ve světle judikatury Evropského soudu pro lidská práva [Criminal aspects of hate speech in light of the case law of the European Court of Human Rights]. *Trestní právo [Criminal law]*. 2013, Vol. 17, No. 1, pp. 30–37; HAMERNÍK, P. Human rights horizontally and reasonably. *The Lawyer Quarterly*. 2014, Vol. 4, No. 4, pp. 294–303.

²¹ VOZÁR, J., ZLOCHA, L. *Judikatúra vo veciach slobody prejavu a ochrany osobnosti [Case law on matters of freedom of expression and protection of personality]*. Bratislava: Wolters Kluwer, 2014, pp. 55–56.

²² The Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 94/95.

²³ The Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 15/1998.

refer to one generally binding law with force of law, but an indeterminate number of generally binding laws with a defined degree of legal power. Under the formal condition for the possibility of limiting freedom of expression, it is not acceptable to limit the freedom of expression by any legal regulation, but only by the law of the National Council of the Slovak Republic. According to the Constitutional Court, regulation of the Government, ordinance or measure of ministry or other central body of the state administration of the Slovak Republic, generally binding regulation of the municipality and the higher territorial unit in no case constitute a legal basis for limiting freedom of expression. At the same time, it should be emphasized that the adoption of the law itself cannot yet be the only step in the process of limiting the freedom of expression. The law must also meet certain requirements. In other words, the law can only be adopted if there are certain legally relevant circumstances. These are referred to as material conditions for the restriction of freedom of expression.

Two basic material conditions can be deduced from the Constitution of the Slovak Republic, in case of which the freedom of expression may be restricted. These are cumulative conditions, i.e. in the case of efforts to restrict the freedom of expression, both must be fulfilled simultaneously. If only one of them is absent, it is not possible to restrict the freedom of expression by the law. We could therefore characterize material conditions as a certain set of circumstances (factors) that need to be met in order for the legislator to adopt a law restricting freedom of expression. The first material condition takes into account the aspect of the necessity of limiting freedom of expression, the second material condition is based on the legitimacy of purpose of restricting the freedom of expression.²⁴ In other words, a restriction on freedom of expression is permissible if I. it is a measure necessary in a democratic society where the undesirable consequence of the application of freedom of expression cannot be avoided otherwise; and II. the restriction of freedom of expression has its legitimate purpose of protecting the constitutionally stipulated values (interests).

As regards the first condition (condition of necessity), the Constitution of the Slovak Republic requires that the restriction of freedom of expression is necessary in a democratic society. However, the Constitution of the Slovak Republic does not specify / does not explain how the first condition for restricting the freedom of expression should be interpreted. For this reason, helpful can be the legal opinion of the Constitutional Court of the Slovak Republic, which, in one of its decisions, stated that “... *in line with international standards, the term ‘necessary in a democratic society’ can be explained as an urgent social need to adopt a restriction of fundamental rights or freedoms. Restrictions of rights and freedoms are necessary if it can be stated that the purpose of the restriction cannot be achieved otherwise. Thus, prerequisite is that the restriction is also necessary in a democratic society*”.²⁵ It follows from the foregoing that a law limiting freedom of expression for a different reason, as stipulated by the second material condition and exceeding the degree of ne-

²⁴ GREGOR, M. Legitímny cieľ limitácie slobody prejavu [Legitimate objective of limiting freedom of expression]. *Justičná revue [Judicial Review]*. 2016, Vol. 68, No. 2, pp. 215–226.

²⁵ The Finding of the Constitutional Court of the Slovak Republic no. PL. ÚS 15/1998.

cessity, must be regarded as unconstitutional. Drgonec considers that the requirement of necessity has two aspects. The first aspect is the criterion of the quality of the society in which the restriction of freedom of expression is exercised. In other words, the restrictive measure must correspond to the values and qualities of a democratic society, not a totalitarian society. Beside the society's quality criterion, the indispensable component of the requirement of necessity is also the determination of the scope of the restrictive measure. In this sense, the restrictive measure must not be greater than it is necessary to protect the constitutionally protected value (interest).²⁶ Thus, the requirement of necessity means that the restriction of the freedom of expression as a measure aimed at protecting a ruling entity (group, individual), enforcing his / her vision and ideas in order to silence the citizens (the people) is contrary to the Constitution of the Slovak Republic. Similarly, the inadequate scope of the restriction of freedom of expression, above the level required to safeguard a protected interest, may be considered unconstitutional.

The second material condition for restricting freedom of expression (condition of the legitimacy of the purpose) requires that the intended restriction on freedom of expression is expedient. Thus, the restriction of freedom of expression must be directed towards protection of the constitutionally stipulated values (interests). The Constitution (Constitution of the Slovak Republic no. 460/1992 Coll.) defines five specific interests (values), for the protection of which the legislator may impose a restriction on freedom of expression. *In concreto*, it is the protection of a) the rights and freedoms of others, b) the security of the state, c) public order, d) public health, and e) morality. The range of these protected values is strictly defined and given; it cannot be extended or narrowed in any way. If the legislator does not pursue one of these objectives (the reasons for limiting the freedom of expression), he is not allowed to restrict the freedom of expression. In this regard, however, it is desirable to add that, on the basis of a comparison of the constitutional grounds for limiting restricting the freedom of expression and the grounds for restricting the freedom of expression laid down in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'), it can be deduced that the Convention establishes a broader range of legitimate purposes (reasons) of the restriction of freedom of expression. Beside the constitutionally recognized reasons, the Convention also allows to restrict the freedom of expression for reasons of territorial integrity, the prevention of disorder or crime, the protection of the reputation, the prevention of the disclosure of information received in confidence, and for maintaining the authority and impartiality of the judiciary. This question was also raised by the Constitutional Court of the Slovak Republic itself, which, in the context of broader scope of reasons for restricting the freedom of expression stated that "*reasons which are recognized by the Convention (not by the Constitution), are not the source of the law of the Slovak Republic, since, under Article 11 of the Constitution, the Convention takes precedence over the laws of the Slovak Republic only if it guarantees a wider range of fundamental rights and freedoms. In this case, the Convention provides for a lesser scope of freedom of speech and the right to information*".²⁷ In this re-

²⁶ DRGONEC, J. *Sloboda prejavu a sloboda po prejave [Freedom of expression and freedom after expression]*. Šamorín: Heuréka. 2013, pp. 35–36.

²⁷ The Finding of the Constitutional Court of the Slovak Republic no. II. ÚS 28/96.

spect, however, it is desirable to add that the Constitutional Court of the Slovak Republic is very inconsistent with regard to the legitimate purposes (reasons) of the restriction of the freedom of expression. In one of its other decisions,²⁸ the Constitutional Court of the Slovak Republic itself extends the grounds for restricting the freedom of expression defined by the Constitution of the Slovak Republic by explicitly stating that among the elementary interests to protection of which the restriction of freedom may be aimed, belongs “... *the interest in protecting the person against the obvious disgrace of his / her personality, the interest in values that are connected with the integrity of the state territory, the protection of the state secret, state security, public order, public health and morality. Finally, there are the most general interests to protect the fundamental rights of the individual in connection with his personal data.*” Of course, this is the legal opinion of the Constitutional Court of the Slovak Republic as a body of protection of constitutionality which is not contained in the verdict part of the decision (it is not the result of the interpretation of the Constitution) and is therefore, in principle, non-binding. How can we interpret / approach the inconsistent definition of the reasons for restricting the freedom of expression in national law and international law? The only solution is either to amend the Constitution of the Slovak Republic and to extend the legitimate purposes of restricting the freedom of expression, or to make an extensive interpretation of the existing reasons given in the Constitution. We believe that, in order to maintain legal certainty, the amendment of the Constitution of the Slovak Republic is a better way.

Concerning the individual grounds for restricting the freedom of expression, the protection of rights and freedoms of others as the first reason provides protection of a relatively large set of values. This is a reason to restrict the freedom of expression in order to protect in particular personal rights, in so far as they are enshrined in particular in § 11 et seq. of Act no. 40/1964 Coll. Civil Code. However, the scope of the legal regulation of the personality rights in the above mentioned provision of the Civil Code is merely exemplifying, which means that the protection is also provided to other partial rights related to the personality of man stipulated in the Constitution of the Slovak Republic and in the Charter of Fundamental Human Rights and Freedoms.²⁹ The personal rights thus represent a group of rights of the individual, to which individual partial rights appertain, ensuring the protection of individual aspects of human personality. They include mainly such rights as the right to physical integrity, the right to a name, the right to civic honour and human dignity, the right to privacy, the right to the protection of personal expressions (personal documents, portraits, pictures, phonograms).³⁰ Of course, we cannot exclude also other rights linked to a person's personality, such as, for example, privacy of correspondence, or the right to uninterrupted exercise of parental rights. Similar protection is also enjoyed by legal persons who, in the context of rights similar to the personal rights of a natural person, enjoy the protection of their name and the protection of their reputation. The protection of all these rights of natural and legal persons can be considered to be the

²⁸ The Finding of the Constitutional Court of the Slovak Republic no. IV. ÚS 40/03.

²⁹ LAZAR, J. et al. *Občianske právo hmotné [Substantive Civil Law]*. Bratislava, 2014, pp. 145–146.

³⁰ MATEJKA, J. *Internet jako objekt práva: hledání rovnováhy autonomie a soukromí [Internet as an object of law: seeking a balance of autonomy and privacy]*. Praha: CZ.NIC, 2013, pp. 122–123.

legitimate purpose of restricting the freedom of expression. The first reason for restricting the freedom of expression includes, in addition to the protection of personal rights, the protection of copyrights. The copyright protection can exclude the free use of materials by the media, sometimes even if there is a legitimate possibility to use the author's works even without the author's consent. Classification criterion for determining the legitimacy of the use of an author's work is primarily the purpose and character of the use, the nature of the author's work, the amount and the nature of the used part of the work and ultimately the influence of the work on the potential market.³¹ In addition, it may be remembered that the restriction of freedom of expression on grounds of the protection of rights and freedoms also includes the protection of the right to vote, the right to a fair trial, religion and belief, or the right to protection from unfair competition.

The legal reason for restricting the freedom of expression is also the protection of state security and the protection of public order. In this respect, however, it is necessary to add that, while the laws use the concepts "state security" and "public order" relatively frequently, they do not define them in any way. Nor are these concepts defined at international level. It is therefore legally dubious, what is the content of the term "state security" or "public order". However, understanding these concepts, their internal definition, is particularly important, especially in the context of not abusing the possibility of restricting the freedom of citizens' expression. At present, these terms may be marked as legally vague terms that are specified in relation to the resolving of specific cases, and their content may evolve depending on the place and time. Restricting the freedom of expression in order to protect the security of the state and protect public order includes a wide range of problematic issues. The most important issues are the issues of propaganda campaigns aimed at suppressing fundamental rights and freedoms, extremist views and various hate speech. At the same time, they include the acts that are capable of jeopardizing the security and stability of the state that call for violence, armed uprising against the government, attacking the territorial integrity of the state, or otherwise harming its interests.³²

Finally, protection of public health and morals are the ultimate legal reasons for restricting the freedom of expression. Unlike the previous concepts, the concept of public health has its legal definition, in Act no. 355/2007 Coll. on the Protection, Promotion and Development of Public Health. § 2 sect. (1) letter b) of that law defines public health as "*the level of health of society that corresponds to the level of healthcare provided, the protection and promotion of health and the economic level of society*". The term "morality" is again somewhat more complicated since the law does not contain its definition. However, the law emphasizes that the interpretation of this term can not only take into account the issue of sexual relations. Morality is a moral, philosophical and sociological category; its rules are not codified. According to Drgonec,³³ they are determined by a social consensus

³¹ DRGONEC, J. *Sloboda prejavu a sloboda po prejave. [Freedom of expression and freedom after expression]*. pp. 35–36.

³² GREGOR, M. Teoretické princípy limitácie slobody prejavu [Theoretical principles of limiting freedom of expression]. *Justičná revue [Judicial Review]*. 2016, Vol. 68, No. 1, pp. 106–115.

³³ DRGONEC, J. *Sloboda prejavu a sloboda po prejave. [Freedom of expression and freedom after expression]*. pp. 35–36.

and only partially overlap or coincide with rules of conduct stipulated by law. Thus, besides endangering sexual morality, the endangering of morality includes also vulgar verbal expressions, expressions hurting and insulting religious feelings of members of churches or religious societies, verbal attacks on national symbols, or persons regarded as national heroes.

4. PRIVATE COMPANIES AS REPLACEMENT FOR LAW ENFORCEMENT AGENCIES?

As has already been pointed out above, legally unregulated freedom of expression in specific Internet environments is at present a relatively large threat to society, particularly in relation to public order, the protection of freedom of religion and the security of the State itself. Unrestricted propagation of hate speech or ideas undermining the foundations of democracy and the rule of law can have very negative consequences. For this reason, steps have also recently been taken at the level of major international institutions to detect the frequency of such dangerous occurrences while at the same time detecting the state of legal regulation of negative phenomena in the Internet environment. One of the relatively recent major initiatives is the European Commission's initiative in adopting a "Code of conduct on countering illegal hate speech online" in May 2016, under which the largest companies active in the field of information technology (Facebook, Microsoft, Twitter and YouTube, from 2018 also Google+ and Instagram) jointly committed to combating illegal online hate speech. The Code contains a number of companies' commitments, the most important of which is (a) to establish clear and effective processes to review notifications regarding illegal hate speech on their services so they can remove or disable access to such content, (b) upon receipt of a valid removal notification, to review such requests against their rules and community guidelines; (c) to review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary; (d) to educate and raise awareness with their users about the types of content not permitted under their rules and community guidelines. As a result of the companies' accession to the Code, they have de facto become a kind of "online police" duty of which is to review and monitor the way the users use their services, as well as the content that the users publish on those services. The result of the companies' procedures is a relatively high level of censorship that has started to occur in the environment of the services of the above mentioned Internet giants. This is also illustrated by the other (fourth) evaluation report of the European Commission (February 2019), which confirms continuous progress on the swift removal of illegal hate speech. The report points out that all IT companies fully meet the target of reviewing the majority of the notifications within 24 hours, reaching an average of 89%. At the same time, on average, IT companies are removing 72% of the illegal hate speech notified to them.

However, we do not consider the above-mentioned method of combating hate speech in the Internet environment to be entirely correct. Indeed, it is the responsibility of the State itself and its authorities to ensure law enforcement, legal regulation of undesirable phenomena, including inferring responsibility for them in the Internet environment. It is not right if the tasks to be carried out by the State authorities are de facto carried out by

private legal persons. Delegating this responsibility to private companies is relieving the State of its responsibility to protect society. However, this solution also has other, pragmatic aspects. In assessing hate speech, private companies adhere to their internal rules to be developed for these purposes under the Code. However, such a situation causes fragmentation of procedures, different practices for different companies, uncertainties in the assessment of abuses of freedom of expression, uncertainty as to whether or not the Internet user's published expression will be censored. Companies here have become certain "states in the state" whose own organizational units decide on the basis of their own established rules whether the speech is hateful or not. So the last word here does not have the legal order of the State, but the internal standards and rules of private companies. It may happen (and in practice it happens) that an individual's speech will be erased, even if it does not de facto meet the characteristics of the misdemeanour or criminal offense. The taking of evidence is the task of the state authorities (police, prosecutor's office, and courts) and it is the sole responsibility of the state authorities to determine whether or not the offense was committed.³⁴ Censoring an individual's speech on the Internet as a form of sanction is thus carried out without a proper process of criminal evidence, without proving that an offense has been committed. On the other hand, it should also be added that the opposite case may also occur. By using the freedom of expression, a user of an internet portal commits an offense, but companies do not (deliberately/negligently) evaluate it as an unwanted expression. The reason for such cases is the subjective judgment of the term "hate", and this may vary depending on the individual, location and culture. This problem arises from the lack of a universal definition of the term 'hatred'. Finally, the problem may also be that the speech will be judged to be unwanted, but will "only" be removed from the Internet without further action. We state "only" in particular because if a private company is to ensure the eradication of hate speech (i.e. censorship of the Internet user's speech), it is solely because of an offense (hate speech). In such a case, however, the deletion of the speech should be preceded by the provision of evidence of hate speech (making a backup copy, including user information, IP address, etc.) and then communicating the offense to the competent authorities to initiate the misdemeanour or criminal proceedings. In most cases, this is not the case, according to available statistics on average only one in five cases is reported to the police or the prosecutor's office.

It should also be noted that at about the same time as the Code was adopted, the European Commission also presented the first results of the MANDOLA project,³⁵ the aim of which is to monitor the spread of online hate speech within European countries, to provide policy makers with relevant information, to provide ordinary citizens with useful tools to tackle hate speech on the Internet, to ensure knowledge transfer between Member States and to set up a reporting system that links the citizens concerned with the police and ensures the reporting of hate speech. The first results pointed out by the study carried out under the MANDOLA project show that there are considerable disparities between

³⁴ POLÁK, P. *Využitie dôkazov, získaných výsluchom svedka v prípravnom konaní, v konaní na súde [Use of evidence by examination of witness in pre-trial proceedings, submitted to the law-court]*. Bratislava, 2015, pp. 125–127.

³⁵ Monitoring and Detecting Online Hate Speech. In: *Mandola* [online]. 2017 [2021-02-08]. Available at: <<http://mandola-project.eu/>>.

the legal systems of individual European countries, mainly because of the inconsistent transposition of international and European legal instruments into national legal systems and the differences existing between international, European and national standards. Indeed, the results of the study on the legal regulation existing at national level are true. On the one hand, it is true that both international law and European law have long sought to harmonize legislation in relation to hate speech. In this connection, the most relevant legal instruments are (at the international level) the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and (at European level) Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.³⁶ On the other hand, the fact remains that these legal instruments serve only to harmonize national legislation and are not directly effective (directly enforceable) in individual countries. The application of the provisions of these documents essentially depends on the form and manner of their transposition into the national legal systems of each country, and of course the countries always do so in their own way. This means that the specific form of the transposition of these legal instruments into the legal systems of individual countries is always different. Some countries implement legislation more freely, other countries more strictly. Some countries choose very broad regulation, others very narrow.

In addition to initiatives and single steps of private companies, it is important that the State itself also strengthens the protection of religion and belief against various extreme hate speech directed against members or groups belonging to a particular church or religious societies. However, as far as the legal regulation on the dissemination and publication of ideas and information on the Internet is concerned, it should be stressed that due to the fundamental features of the Internet that we have mentioned in the first part of this paper (openness, decentralization, universality), it is rather difficult to create such legislation, which, on the one hand, would regulate the manoeuvring space of the individual on the Internet and his/her responsibility for acts committed on the Internet, and on the other hand, it would not collide with basic human rights and freedoms, in particular the freedom of expression guaranteed by the Constitution of the Slovak Republic and international documents. However, as we have already mentioned in the second part of the paper, the restriction of freedom of expression is, in principle, possible, if the law stipulates such a restriction, and at the same time I. it is a measure necessary in a democratic society, and II. the restriction of the freedom of expression is directed towards protection of the values (interests) exhaustively defined in the Constitution. In terms of these conditions for restricting freedom of expression it can be stated that the legal regulation and limitation of users' behaviour in the Internet environment is permissible. Of course, the limitation must not be self-serving; in the case of a restriction on freedom of expression on the Internet the Constitution must pursue a protected interest, which in our case is domi-

³⁶ KLIMEK, L. *Mutual Recognition of Judicial Decisions in European Criminal Law*. Cham: Springer, 2017, pp. 135–136.

nantly the protection of the rights and freedoms of others (freedom of religion and belief), the protection of public order, and the protection of state security. In other words, the protection of the life and health of individuals due to their belonging to a religious group, the prevention of physical attacks against such persons, the securing of the territorial integrity of the state.

5. CONCLUSION: TO REGULATE OR NOT TO REGULATE THE FREEDOM OF EXPRESSION ON THE INTERNET?

There are currently two basic opinion tendencies relating to the issue of the legal regulation of the freedom of expression on the Internet. The first tendency is to maintain the status quo, i.e. rejection of legal regulation, and keeping some sort of blank space on the Internet, without any specific regulations of freedom of expression. The second approach is in favour of the legal regulation of the freedom of expression on the Internet. It is this approach that is, in our opinion, necessary and increasingly urgent. This is due to the fact that there is a continuous expansion of channels on the Internet through which different views can be presented. Subsequently public opinion can be influenced.³⁷ Thus, in the case of inaction by public authorities in relation to hate speech, there may be fatal consequences sooner or later, which may transform into violent action against specific individuals and groups. It should be added that, however, there is no new or specific law (new legal branch) in the Internet environment. The need for regulation stems from the specific circumstances that arise in the exercise of rights in the virtual space. They represent only a change in the perceptual characteristics of the entity concerned. The change of these external perceptual characteristics is the result of the technical aspect of the Internet, which is an integral part of it. The consequence of using this environment to realize our rights is that the rights exercised in this environment acquire new technical features that they would not acquire when implemented in another environment. These features are based on the Internet technology itself, which on the one hand allows the communication of subjects, but on the other hand, it also sets its limits. The individual features of the realization of rights in this environment are so fundamental that they create a new “look” of fundamental rights and freedoms in this environment. These technical features also affect the realization of rights as they negatively affect the legitimate expectations of entities. The legitimate expectations the object of which are our fundamental human rights and freedoms reflect, in principle, our attitude to the protection of our right in its realization and the related expected level of possible interference in them by others.³⁸

As regards the regulation of the freedom of expression on the Internet, two forms of regulation need to be distinguished. First, the most serious abuse of freedom of expression

³⁷ STEUER, M. Extrémny slobody prejavu a úloha právnej regulácie [The Extremes of Freedom of Speech and the Role of Legal Regulation]. *Časopis pro právní vědu a praxi [Journal for Legal Science and Practice]*. 2017, Vol. 25, No. 3, pp. 475–493.

³⁸ KOŽLEJ, M. Zásahy do súkromia cestou internetu – v judikatúre európskych súdov [Interventions on privacy via the Internet – in the case law of the European Courts]. *Justičná revue [Judicial Review]*. 2015, Vol. 67, No. 6-7, pp. 884–898.

on the Internet should be regulated by criminal law instruments (criminal regulation). In this context, the legislator should deal with questions relating to (a) the criminal liability of legal persons operating portals (sites, social networks) that are obvious platform for disseminating hate speech and (b) the criminal liability of natural persons who have committed a crime by abusing constitutionally guaranteed freedom of speech and thus committed hate speech. One possible solution is to introduce new types of sanctions (criminal penalties) based on the specific form of crime that has occurred in the Internet environment. In this context, some authors mention the imposition of a new kind of punishment, the punishment of prohibiting the use of the Internet,³⁹ which is also applied in some other countries of the world as a type of punishment. We believe that it is precisely this new punishment of restricting the use of the Internet (prohibiting Internet access) that could limit the number of hate speech cases and incitement of crime on the Internet. The threat of imposing this kind of punishment could contribute to making risky Internet users behave differently, mildly, in the Internet environment.

The second form of legal regulation of freedom of expression on the Internet is administrative regulation. In the case of administrative regulation of the Internet (the single aspects of freedom of expression on the Internet), it must be noted that there are also several actors in the Internet environment and their position is always different. Therefore, in the case of regulation of the Internet and the exercise of freedom of speech on the Internet it is necessary to differentiate and to approach independently a) the legal regulation of the status of Internet users, b) the legal regulation of the status of the operator of the server on which the users spread their ideas, opinions, information. Necessary differentiation at least of the two main actors within the Internet environment and, ultimately, their responsibility for the abuse of the freedom of expression is based, above all, on the fact that the two entities are directly linked and one depends on the other. The individuals exercise their freedom of expression in the Internet solely in connection with the activities of specific internet (news) server operators. This fact is also the reason why they should have the same form of (joint) responsibility for the published statements of users, respectively why they should have certain obligations related to the statements posted on their portals.

It is clear that, in fact, operators of internet portals (web-sites) do not have the possibility to influence the activities of users of their portal and thus completely prevent abuse of freedom of expression. This also serves to be an argument for exclusion of liability of operators of internet portals. However, the evolving case law of the European Court of Human Rights does not support this argument. On this place, we should point out to a breakthrough case-law of the ECHR known as *Delfi AS v. Estonia*. This case concerned the responsibility of the online news portal for offensive comments that were added by readers to one of its online news articles. The internet portal argued that the fact that, according to Estonian courts, it was responsible for readers' comments violated his right to freedom of expression. However, the ECHR ruled that the fact that the internet portal was

³⁹ LOBOTKA, A. Trest zákazu používání Internetu: bylo by vhodné zavést jej do právního řádu ČR? [Punishment of the ban on the use of the Internet: would it be appropriate to introduce it into the Czech legal order?]. *Trestní právo [Criminal law]*. 2013, Vol. 17, No. 11-12, pp. 4–10.

held responsible by the Estonian courts constituted a justified and proportionate restriction on its freedom of expression, in particular because the comments were highly offensive, the internet portal failed to prevent their publication, benefited from their existence and allowed their authors to remain anonymous. Moreover, the fine imposed by the Estonian courts has not been exaggerated. So, as can be seen, in this ground-breaking case-law, the ECHR made it clear that the legal responsibility of the author of comments on the Internet allows the legal responsibility of the news server operator.

However, not only the developing case law of the ECHR, but also the decision-making activity of the Court of Justice of the European Union, point to the possibility and the need to regulate the internet space. Particular mention may be made of the cases of *Google Spain*, *Scarlet* and *Sabam* in which the court admitted the possibility of installing a system to filter all electronic communications through the ISP's server in an effort to prevent illegal downloading and copyright infringement. According to the court, this was a preventive measure aimed at protecting against the illegal making of copies of musical and audiovisual works, which was proportionate to the protection of intellectual property rights. In this respect, the need of *Delfi* to ensure that no commentary is published in discussions in the form of a manual or automatic system is not a diversion from the set trends.⁴⁰

From the evolving case-law on the limits of freedom of expression on the Internet it is evident that administrative regulation of freedom of expression on the Internet will have to be accompanied by the need to extend mandatory registrations to enter online discussions. In addition, it will be necessary to establish the duty to introduce/extend the use of automatic keyword-based filters. The law will also have to establish clear common rules for the publication of Internet articles and for the procedure for reporting harmful content.

Last but not least, it is necessary to emphasize that legislation should also regulate new methods of the learning process in relation to behaviour and verbal expressions on the Internet. In particular, in many cases the younger generation is of the opinion that freedom of expression on the Internet is unrestricted and that it is possible to behave in an uncontrolled manner in the Internet environment. Since education is a part of society, its section, and everything that is going on within a society is reflected and presented in education,⁴¹ it is essential that general education will also involve the education aimed at acquiring the capabilities to respect other human beings, regardless of their belief, religion or other opinion differences.

⁴⁰ SOMMEROVÁ, K. Když internetový komentář překročí hranici [When Internet commentary crosses the boundary]. *Právní rozhledy [Legal outlooks]*. 2015, Vol. 23, No. 20, pp. 701–705.

⁴¹ HUBERSKY, L. V. The Fundamental Nature of Humanitarian Values in the Educational Process. *European Journal of Transformation Studies*. 2017, Vol. 5, No. 1, pp. 78–84.