

IX. TO HATE OR NOT TO HATE – REGULATION OF HATE SPEECH AND CYBERBULLYING IN ROMANIA

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1. Introduction

According to the Constitution of Romania (hereinafter referred to as: Constitution) the authorities respect and protect family and private life.¹ On the basis of constitutional regulations, freedom of thought, opinion or religious belief may not be restricted in any form, and no one may be forced to accept an opinion or adopt a religious belief contrary to his or her conviction, and according to the Constitution defamation of country and nation, incitement to war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as obscene manifestations contrary to public decency are prohibited by law.² Freedom of conscience is guaranteed and must be exercised in a spirit of tolerance and mutual respect. Religious denominations are free and organized according to their own statutes and in compliance with legal conditions. In relations between religious denominations, it is forbidden to carry out any form, means, or acts of incitement to religious hatred.³

1 Constitution Art. 26.

2 Constitution Art. 1., 6., 16. and 30.

3 Constitution Art. 29.

2. Regulatory issues of hate speech

Romania is considered a young democracy, which also means that its legal framework for the protection of human rights is still rather weak and that the need to combat discrimination and hate-based phenomena is not taken up either at the level of state decision-making or within the public law system of the state in general, this situation of being a young democracy inevitably entails, at least in certain respects, the absence or inadequacy of data.⁴

2.1. Definition of hate speech in Romania, related case law

In respect to the constitutional regulations – dogmatically – Act No. 286. of 2009. on the Romanian Criminal Code (hereinafter referred to as: Criminal Code) establishes a number of specific criminal offences relating to such as incitement to hatred or discrimination, according to which incitement to hatred or discrimination is defined as any incitement to hatred or discrimination by the public against a group, which act is punishable by imprisonment lasting between six months and three years or is punishable by a fine,⁵ and the Romanian legislator regulates in the Criminal Code the case of committing a crime on the grounds of hatred among aggravating circumstances and factors.⁶ Based on the Criminal Code the incitement to commit the crime of genocide, committed directly in public, shall be punishable by imprisonment for a term of two to seven years and by disqualification from exercising certain rights.⁷ And another important regulation is Emergency Decree No. 31. of 2002., which prohibits fascist, racist and xenophobic organisations and symbols.⁸

In connection with the above another relevant Romanian legislation includes:

- Law No. 157. of 2018. on measures to prevent and combat anti-semitism,⁹
- Law No. 2. of 2021. on measures to prevent and combat anti-gypsyism,¹⁰

4 An overview on hate crime and hate speech Country profile: Romania, 2017. p. 6.

5 Criminal Code Art. 369.

6 Criminal Code Art. 77.

7 Criminal Code, Art. 438. Section (4).

8 Hate crime recording and data collection practice across the EU, FRA, 2018. p. 78.

Government Emergency Ordinance No. 31/2002. on the prohibition of fascist, legionary, racist or xenophobic organisations, symbols and acts and the promotion of the cult of persons guilty of crimes of genocide against humanity and war crimes Art. 3-4.

9 Law No. 157 of 2018 on some measures to prevent and combat anti-Semitism.

10 Law No. 2. of 2021. on measures to prevent and combat anti-gypsyism.

- Law No. 202. of 2002. on equal opportunities for women and men,¹¹
- Law No. 504. of 2002. on broadcasting.¹²
- Government Ordinance No. 137/2000. concerning the prevention and sanctioning of all forms of discrimination (hereinafter referred to as: Government Ordinance No. 137/2000.).¹³

In Romanian law it is an important factor, that the following terms and expressions are very well defined:

- anti-gypsyism means both the perception of Roma expressed as hatred against them and verbal or physical manifestations, motivated by hatred against Roma, directed against Roma people or their property, institutions, NGOs, leaders of Roma communities or their places of worship, traditions and the Romani language;
- anti-gypsyist organisation means any group consisting of three or more persons, operating temporarily or permanently, with the aim of promoting anti-gypsyist ideas, concepts or doctrines. This category may include organisations with or without legal personality, political parties and movements, associations and foundations, companies regulated by the Companies Act No. 31. of 1990.;
- symbols of anti-gypsyism shall mean: flags, emblems, badges, uniforms, slogans, greetings, and any other such symbols, which convey ideas, concepts or doctrines promoting anti-gypsyism;
- anti-gypsy material means: images, text messages, audio-visual content, and any other such representations, which convey ideas, concepts or doctrines promoting anti-gypsyism.¹⁴

In relation to Law No. 2. of 2021. on measures to prevent and combat anti-gypsyism and according to a 2009 study, deliberate and organised hate speech and incitement to violence against Roma and Sinti have been observed in several countries, including Romania. It is easy to identify those behind the acts in question, as anti-Roma hate speech has been openly used as a tool by far-right political parties, extremist organisations or movements.¹⁵

11 Law No. 202. of 2002 on equal opportunities for women and men.

12 Law No. 504. of 2002 on broadcasting.

13 Ordinance No 137 of 2000 on the prevention and punishment of all forms of discrimination.

14 Law No. 2. of 2021. on measures to prevent and combat anti-gypsyism Art. 2.

15 The Extreme Right and Roma and Sinti in Europe: A New Phase in the Use of Hate Speech and Violence? 2009, p. 6.

There were measures taken in Romania to promote equality of opportunity and treatment between women and men and to eliminate all forms of discrimination based on sex, and these laws shall apply in the public and private sectors, in the fields of employment, education, health, culture and information, politics, participation in decision-making, the provision of access to goods and services, the establishment, equipping or extension of a business or the commencement or extension of any other form of self-employed activity, and in other areas regulated by special laws. All these institutions listed in the law with powers in the field of equal opportunities and equal treatment of women and men, each for its field of activity, shall be obliged to bring by all appropriate means to the attention of the persons concerned the provisions adopted under the law, together with the relevant Romanian provisions already in force.¹⁶

According to the Law No. 504. of 2002. on broadcasting it is forbidden to broadcast programs that contain any form of incitement to hatred on the grounds of race, religion, nationality, sex or sexual orientation.¹⁷

The Government Ordinance No. 137/2000. provides that the principle of equality among citizens and the elimination of all privileges and discrimination shall be guaranteed in Romania, in particular with regard to the exercise of the following rights:

- the right to equal treatment before courts and any other jurisdictional bodies;
 - the right to personal security and to be granted state protection against violence;
 - mistreatment perpetrated by any individual, group or institution;
 - political rights, namely electoral rights, the right to take part in public life; and
- the right to access to public positions;
- other civil rights, in particular:
 - (a) the right to freedom of movement and of choosing one's residence;
 - (b) the right to leave and return to one's country;
 - (c) the right to obtain the Romanian citizenship;
 - (d) the right to marry and to choose one's partner;
 - (e) the right to property;
 - (f) the right to inheritance;
 - (g) the right to freedom of thought, conscience and religion;
 - (h) the right to freedom of expression and opinion;

¹⁶ Law No. 202. of 2002. on equal opportunities for women and men Art. 2. Sections (1)-(2).

¹⁷ Law No. 504. of 2002. on broadcasting Art. 40.

- (i) the right to freedom of peaceful meeting and association;
- (j) the right to file a petition;
- economic, social and cultural rights;
 - (a) the right to work,
 - (b) the right to freely choose an occupation,
 - (c) the right to fair and satisfactory working;
- the right to protection against unemployment, to equal pay for equal work, to fair and satisfactory wages as far as:
 - (a) the right to establish and to join trade unions;
 - (b) the right to housing;
 - (c) the right to health, medical assistance, social security and social services;
 - (d) the right to education and to professional training;
 - (e) the right to take part in cultural activities in conditions of equality;
- the right of access to all public places and services.¹⁸

In parallel with the Romanian constitutional regulation, according to Act No. 51. of 1991. on National Security (hereinafter: National Security Act), no one may be prosecuted in Romania for freely expressing his or her political opinion, nor may he or she interfere in private and family life, or private correspondence or communication if no act has been committed which, according to the National Security Act, which endangers national security and cyberspace.¹⁹

It is clear from the above that the Romanian legislation is implemented at two legislative levels and is quite specific.

The European Council's Committee of Ministers' definition that hate speech should be understood as any form of expression that spreads, incites, supports or justifies racism, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, towards minorities, migrants and persons with an immigrant background discrimination and hostility.²⁰ Another scientific research on the operation of the RMDSZ (UDMR)²¹ in Romania has shown that the Hungarian (and Szekler) minorities in Transylvania are also the subject of incitement to hatred in Romania.²² Romanian Criminal law provisions corresponding to ECRI's General Policy Recommendation No. 7. on national legislation to combat

18 Government Ordinance No. 137/2000. Art. 1. Section (2).

19 Act No. 51. of 1991 on the national security of Romania Art. 3.

20 Meza, 2016, p. 58.

21 In English: Democratic Alliance of Hungarians in Romania.

22 Meza-Vincze-Mogoş, 2018, p. 41.

racism and racial discrimination can be found in the Criminal Code and the Emergency Government Ordinance No. 31/2002. on prohibiting organizations of a fascist, racist and xenophobic character and the glorification of those found guilty of crimes against peace and humanity. ECRI takes positive note of the amendments to the Emergency Government Ordinance No. 31/2002. in 2015, which enlarged its scope of application by prohibiting legionary symbols and acts related to the Holocaust, including on the territory of Romania. ECRI also welcomed the adoption of specific criminal legislation²³ in July 2018 regarding measures to prevent and combat antisemitism.²⁴

With regard to freedom of speech as a counterpoint to hate speech, the Constitution stipulates that the law prohibits defamation of country and nation, incitement to war of aggression, national, racial and religious hatred, discrimination,²⁵ territorial separatism or public violence, and obscene expressions contrary to good morals.²⁶ With this in mind, the legislature guarantees everyone complete and inviolable freedom of expression without fear of government retaliation or censorship of such information. The regulation explicitly states in relation to censorship: ‘all censorship is prohibited’. In this connection it is necessary to indicate that the constitution prohibits not only government censorship, but also any other kind of censorship. According to an expanded interpretation of this, social media gatekeepers can also violate freedom of expression: censoring users.²⁷ Freedom of expression is therefore restricted by morality under the provisions of the Constitution. The new Civil Code, adopted in 2009, also contains relevant provisions: it establishes the right to freedom of expression,²⁸ according to which everyone has the right to freedom of expression. The law also sets limits on the right to freedom of expression, including:²⁹

- violations permitted by law or international conventions do not constitute a violation of the rights granted,
- the exercise of constitutional rights and freedoms in good faith and in compliance with human rights and international conventions does not constitute a violation of the rights guaranteed.³⁰

23 See: Law No. 157. of 2018. on measures to prevent and combat anti-semitism

24 <https://rm.coe.int/fifth-report-on-romania/168094c9e5>, p. 11.

25 Cf.: Varga, 2019, p. 303.

26 Constitution Art. 30.

27 Cf.: Voinea, 2015, p. 173., p. 177.

28 Civil Code Art. 70.

29 Cf.: Dr. Casarosa, 2020, pp. 70–71.

30 Voinea, 2015, p. 177.

The right to privacy is defined in the new Civil Code,³¹ according to which everyone has the right to respect for his private life, and the right to privacy is also protected by the Constitution. The explanation and extension of this right is regulated by the same law, no one should interfere with private life, personal or family life, place of residence, or private correspondence without their consent or compliance with the restrictions contained in the new Civil Code, since this provides extra protection for privacy, be it personal or family life, but also extends to the household of individuals and correspondence of individuals,³² thus, their home and postal correspondence are inviolable. The law, providing additional protection, states that it is forbidden to use correspondence, manuscripts or other personal documents, as well as private information of a person in any way, without the consent of that person or without respecting the limits set out in the new Civil Code.³³

Based on a Romanian-language report hate crimes are offences punishable under criminal law that are determined by the offender's feelings towards a particular community, as determined by a common characteristic, and not personally towards the victim. Criminal law uses the term crime for reasons related to a criterion of discrimination (on grounds of race, nationality, ethnicity/ethnic origin, language, religion, gender/sex, sexual orientation, opinion, political affiliation, beliefs, wealth, social origin, age, disability, chronic non-communicable disease or HIV/AIDS infection).³⁴

According to a report published by the European Union (hereinafter referred to as: EU), decisions on audiovisual content regulated by the National Audiovisual Council and issued in legislative form generally cover the protection of interests, which includes the protection of children's rights and the psychological integrity of adults. One significant case concerning the limits of freedom of expression in Romania is worth mentioning, when OT SRL, the owner of a television channel (OTV), was fined administratively and obliged to publish the sanction by the Romanian regulatory authority, the National Audiovisual Council (hereinafter referred to as: NAT). The company was fined for showing footage of a former Romanian prime minister being photographed nude in the locker room of a fitness room during a television show. The footage was made by another television channel, which also showed the footage. The presenter and his guest made various ironic and offensive comments about the former prime

³¹ Civil Code Art. 71.

³² Civil Code Art. 74.

³³ Civil Code Art. 74.

³⁴ <https://www.crj.ro/wp-content/uploads/2023/02/Raport-Infractiuni-motivate-de-ura-2021-2022.pdf>

minister's appearance. NAT concluded that television violated the protection of fundamental rights, such as dignity, privacy, honour, reputation, personality rights and image. The television ignored the fact that the footage shown was not in the public interest, but concerned only Mr E.B.'s private life. In its judgment on a separate appeal by OTV, the Supreme Court of Cassation and Justice dismissed the appeal and upheld the decision of the Bucharest Court of Appeal at first instance, ruling that the sanctions imposed by NAT had been lawfully applied. The Court assessed the right to dignity, private and family life and the right to good repute in balance with journalists' freedom of expression. With reference to freedom of expression, the applicant based its reasoning on the provisions of both Article 10 of the European Convention on Human Rights (hereinafter referred to as: Convention) and Article 11 TFEU. The Court held that the applicant's argument that the images had already been broadcast by other television channels and that OTV had only rebroadcast them could not justify OTV's action, since each television channel could be held liable for the recordings it showed, and that the Court rejected the applicant's argument that the public interest justified the broadcasting of the recordings, since „the nude pictures of E.B. and the offensive remarks are not his physical features of any public interest...”³⁵

2.2. Statistics on hate speech in Romania

The OSCE noted that Romania has not reported statistics on hate crimes to the OSCE since 2018, but reports a high number of cases in the period 2021-2023. In addition, the OSCE indicated that Romania would benefit from increasing the awareness and capacity of criminal and judicial officials in relation to hate crimes. The Romanian statistics are as following in the last years:³⁶

Year:	Hate crimes recorded by police:	Prosecuted:	Sentenced:
2023	95	252	239
2022	59	129	16
2021	7	54	128

Table 4. Hate crimes in Romania³⁷

35 Casarosa, 2020, pp. 70–71. Decision 359/2014 of the Supreme Court of Cassation and Justice of 28 January 2014.

36 <https://hatecrime.osce.org/romania?year=2020>

37 <https://hatecrime.osce.org/romania?year=2020>

According to the Council of Europe's 2019 report on Romania,³⁸ racist and intolerant hate speech is a widespread problem in public and online discourse, in relation with Roma, the Hungarian (or Szekler) minority, LGBTQ-linked people and the Israelite community being the main targets. There are also sporadic violent attacks against these groups or their property. In relation to the above mentioned problems an opinion on the operation of the RMDSZ in Romania has shown that the Hungarian (or Szekler) minorities in Transylvania are also the subject of incitement to hatred in Romania.³⁹

3. About Romanian cyberbullying

As an EU study shows, cyberbullying is not a separate crime in Romania. Depending on the nature and effects of aggression, the offense is punishable under the Criminal Code or other legislation.⁴⁰

Romania had the highest rate of cyberbullying, similarly to other Eastern European countries. The percentage of Romanian adolescents abused online was much higher than indicated by the EU Kids Online study. In Romania, the use of the internet and social media platforms has risen sharply in recent years. The underestimation of risks by parents and the lack of digital skills of parents may have contributed to the high rate of victims of cyberbullying. In Romania, compared to the steadier and much earlier growth in internet usage in the other European countries studied, the sudden increase in internet usage has resulted in a large technological gap between the parents' generation and the younger generations. In addition, the lack of a legislative framework to protect children online in Romania and the current lack of integration of ICT elements⁴¹ into education limit the promotion of online safety and awareness of online risks.⁴² The previous opinion is confirmed by a study according to which young Romanians and Estonians reported the highest prevalence rates of cyberbullying.⁴³ Roma were the most frequently referred to on internet social media platforms⁴⁴ (such

³⁸ Meza-Vincze-Mogoş, 2018, p. 41.

³⁹ Council of Europe: ECRI report on Romania, 2019, p. 9.

⁴⁰ Chateau, 2016, p. 143.

⁴¹ ICT refers to information and communication technologies. http://tanarblog.hu/attachments/2787_PILAkademia_bevezeto.pdf

⁴² Athanasiou-Melegkovits-Magoulas-Tzavara-Richardson-Greydanus-Tsolia-Tsitsika, 2018. <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-018-5682-4>

⁴³ Baldry-Blaya-Farrington, 2018, p. 6.

⁴⁴ Baldry-Blaya-Farrington, 2018, p. 6.

as Facebook) due to the use of the term ‘țigan/i’,⁴⁵ and the most frequent occurrence of the term was related to degrading language use, followed by semantic word combinations related to debility.⁴⁶

Romanian criminal law deals in detail with fraud and computer crimes committed through computer systems and electronic means of payment, bullying and cyberbullying conduct in Romania are not regulated in the Criminal Code, but in Decree No. 4343/2020. it is regulated.⁴⁷ However, criminal law contains a number of offences that correspond to an act or form of intimidation, such as harassment or threats.⁴⁸ Romanian legislation applies the definition of harassment and its conceptual elements are:

- intent,
- continuous or repetitive nature,
- making contact, intimidating, surveillance or otherwise causing disturbance.

Decree No. 4343/2020. on national education discusses psychological violence and bullying is the action or series of physical, verbal, relational and/or cyber actions, in a social context difficult to avoid, committed with intent, involving an imbalance of power, resulting in the violation of dignity or the creation of an intimidating, hostile, degrading, humiliating or offensive atmosphere, directed against a person or a group of persons and targeting aspects of discrimination and social exclusion, which may relate to membership of a particular race, nationality, ethnic group, religion, social or disadvantaged group or to beliefs, sex or sexual orientation, personal characteristics, action or series of actions, behaviour which takes place in educational establishments and in all places of education and training.⁴⁹

Aggravated harassment occurs when committed by a former spouse or partner or against the victim’s child. A relationship of subordination is not a condition for establishing the facts. The Criminal Code defines the offence of harassment as follows:

- an act committed repeatedly by an individual unlawfully or without a legitimate reason, which takes place at home, at work or in a place frequently visited by him, thereby inciting fear in others, is punishable by imprisonment of three to six months or by a fine,

45 In English: gypsies.

46 Meza, 2016, p. 69.

47 Criminal Code Art. 360–366.

48 Parti, 2016, p. 117.

49 Decree No. 4343/2020. Art. 1.

- fearful telephone calls or communications of an individual. According to above mentioned Romanian laws, committing harassment is punishable by imprisonment of one month to three months or by a fine if the act does not constitute a more serious crime.⁵⁰

The two main objectives of the National Strategy for the Protection and Promotion of Children's Rights 2014-2020 are relevant to cyberbullying:

- reducing children's exposure to the media and cyberviolence, and
- reducing violence between children by strengthening the legal status of public service providers.⁵¹

In relation to the above UNICEF defines cyberbullying as harassment using digital technologies that can occur on social media, messaging platforms, gaming platforms and mobile phones, a repetitive behaviour designed to scare or anger or shame individuals. Examples include the followings:

- spreading lies or posting embarrassing photos on social media,
- sending offensive messages or threats through messaging platforms, and
- sending vile messages to others on behalf of other people.

In connection with the above UNICEF definition, a new body, the Children's Board, was (in December 2019 initiated and)⁵² established in Romania at the beginning of 2020, thanks to which the Romanian Ombudsman and the Ombudsman for Children discussed priorities related to children in a consultation, as well as the role of the Ombudsman for Children in the coming years in order to promote and respect children's rights in Romania. In the margins of the consultation, UNICEF in Romania and the Romanian Ombudsman for the Rights of the Child issued a Memorandum of Understanding for the period 2020-2022. According to the statement of the Ombudsman, Renate Weber, the consultation of the Children's Board at the meeting and the memorandum signed with UNICEF are important steps towards achieving maximum capacity of the Ombudsman for the Child, which operates as an independent body within the Romanian Ombudsman's Office. In the Ombudsman's view, this organisation should become an organisation for the protection and promotion of children's rights, including through the continuous involvement of children. The institutional system of the Ombudsman for Children was established in 2018 and is coordinated by a deputy Romanian ombudsman and acts to promote and protect

⁵⁰ Criminal Code Art. 208.

⁵¹ Chateau, 2016, p. 145.

⁵² <https://www.unicef.org/romania/childrens-board-2020>

children's rights. The Ombudsman for Children is responsible for cooperating with child protection agencies and bodies and proposing measures to encourage children's participation in decisions affecting their lives. Gabriel Vockel, UNICEF Deputy Representative for Romania, believes that continuous monitoring of children's rights is necessary to ensure that the rights of all children are guaranteed and that public law policy is based on sound foundations. The Ombudsman for Children is a guarantor of respect for children's rights and a key partner in promoting children's participation, including through online and offline consultations. UNICEF provides technical support to the Ombudsman for Children to become a member of the European Network of Ombudsmen for Children (ENOC) and increase the capacity of specialist staff. Through the innovative U-Report platform supported by UNICEF, more than 1800 children and adolescents expressed their views on the role of the Ombudsman for Children. The Romanian Children's Board, established in 2019, is an organization composed of children of different ages, from all parts of the country, from different family backgrounds, included in the child protection system, of different ethnic origins and with diverse experiences, with thirty-two members. For most of them, this is the first time that their opinion has reached decision-makers. At EU level it is mentioned by the 8th European Forum on the Rights of the Child of 2013., so bullying has been defined as harassment or harassment of one child or more children when another child or young person or group of children or young people says unpleasant things to them, harassment when a child or young person is threatened, receives threatening messages, and similar situations may constitute harassment:⁵³ Chateau states that „The defining elements of cyberbullying are the same as for traditional bullying. However, cyberbullying requires additional specific features such as: the perpetrators' anonymity, the broad dissemination (messages are disseminated instantly and with an exponential reach), the repetition (the fact that events, photos and incidents posted online can be viewed and replayed over and over again). These characteristics make cyberbullying more dangerous than traditional bullying. Cyberbullying tends to be more common in countries where bullying rates are higher, which might suggest that cyberbullying is derived from regular bullying. Moreover, research shows that it is more widespread in countries with high rates of internet use. In contrary with this, Romania is one of the European countries mostly affected by cyberbullying although it has the lowest percentage of internet users according to 2015 statistics”⁵⁴ and „Perpetrators are generally known by the victims, being

53 Chateau, 2016, p. 22.

54 Chateau, 2016, p.141.

part of the victims' extended social group or attending the same schools as the victims. 19% of the 522 children aged 9-16 years old participating in the study by Net Children Go Mobile said that they aggressed someone online. Noticeably, the number of perpetrators was higher (25%) in children aged 15-16, but the proportion was also high (21%) among children aged 9-10 years. Similarly, the EU Kids Online II study showed the highest prevalence of perpetrators among children aged 15-16. A higher percentage of girls as online perpetrators than boys was recorded (5.2% versus 3.8%)."⁵⁵

Given the importance of the topic of improving the overall situation of women in everyday discourse and the issue of cyberbullying, it is also worth briefly presenting the case law in Romania. In connection with case-law, it is worth mentioning that case-law in which the applicant – Mrs Buturuga – lodged a complaint with the European Court of Human Rights (hereinafter: ECtHR) against her ex-husband, alleging that she had been a victim of domestic violence and that her ex-husband had threatened to kill her. The following month, she made a second complaint of threats and violence, the reason being that her husband tried to get her to withdraw the first complaint. Buturuga also requested an electronic search of the family computer, claiming that her ex-husband had unlawfully accessed her electronic folders and Facebook profile, copying her private conversations, documents and photographs, and then filed a third complaint for breach of confidentiality of correspondence. In February 2015, the prosecutor dismissed the complaint of domestic violence on the grounds that it was not serious enough to constitute a crime, and also dismissed the complaint of violation of privacy on the grounds that it was filed out of time. Before the ECtHR, Buturuga argued that his rights under the Convention, in particular the prohibition of torture and inhuman or degrading treatment under Article 3 thereof, and his right to respect for private and family life and correspondence under Article 8 of the Convention, had been violated. With regard to the investigation of the act of abuse, the Court found that the Romanian authorities did not examine the facts from the perspective of domestic violence. Their decisions were based on provisions of the Romanian Criminal Code that punish violence between individuals, rather than on provisions providing for harsher penalties for domestic violence. The ECtHR considered that the findings of the Romanian authorities were questionable as they had not identified the person responsible for the acts. As regards the investigation into the breach of the obligation to maintain privacy in relation to Buturuga's correspondence, the ECtHR pointed out that cyberbullying is currently a recognised aspect of violence

⁵⁵ Chateau, 2016, p. 142.

against women and girls and that cyberbullying can take many forms, including invasion of privacy, intrusion into the victim's computer, and recording, sharing and manipulation of data and images, including private data. The ECtHR also accepted Buturuga's argument that acts such as the illegal monitoring, illegal access to or saving of correspondence of a spouse could have been taken into account by the Romanian authorities when investigating cases of domestic violence, but in the present case the Romanian authorities ignored those grounds and rejected the woman's request for an electronic search of the family computer. The ECtHR considered that the Romanian authorities had taken a too formal position and failed to take into account many aspects of domestic violence. The ECtHR therefore considered that Romania had failed to fulfil its obligations under Articles 3 and 8 of the Convention and ordered the Romanian State to pay EUR 10000 to Buturuga.⁵⁶

4. Practice related to prevention

In Romania, the authorities (e.g. education inspectorates, Ministry of Education) collect data on violence in schools, but these data does not specifically relate to cyberbullying. Data on cyberbullying was collected at national level under the 2009–2011 Sigur.info programme and the 2012-2014 Net Children Go Mobile project in 2012–2014. Data on school violence, including bullying, is collected locally by school counselors and transmitted to the School Assistance Center at the regional level. The data was aggregated annually by the Ministry of Education. The National Council for Preventing and Combating School Violence is concerned with monitoring and coordinating the data collection process on school violence, including bullying, which takes place periodically at county and local level. Data on violence against children are managed by schools, the police and Directorate-General Social Support and Child Protection.⁵⁷

In Romania there are special initiatives, particularly in the non-governmental sector, which are primarily aimed at preventing cyberbullying. The non-governmental sector also provides a hotline where both children and adults can report illegal content in the online environment. In this respect school counselors and staff from School Assistance Centers are also involved in preventing and ending situations of violence in schools. Counsellors provide

⁵⁶ See: [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22003-6635916-8811383%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-6635916-8811383%22]})

⁵⁷ Chateau, 2016, p.147.

professional services in schools and monitor violent situations in schools by writing reports on their activities, thereby also taking into account the phenomenon of cyberbullying, which is a very good practice according to the author's opinion.⁵⁸

Romania's minister of education in 2022 announced that 1,200 new school counselor positions will be made available, which means a 50% increase from the number of the year 2022.⁵⁹ The above mentioned study,⁶⁰ indicates that the Ministry of Education, Research and Youth introduced a national strategy against violence in schools in 2007 as a beginning of the Romanian state's codification. The aforementioned strategy contains practical guides on preventing and dealing not only with violence in schools, but also with traditional – not cyber related – bullying, and according to Government Resolution 271/2013. on bullying and blackmailing, which may also cover cyberbullying.⁶¹

As mentioned in the previous chapter, UNICEF also helps improve the complaint-handling system. UNICEF and the Romanian Ombudsman are also working together to promote a culture of institutional accountability and transparency regarding in respect for children's rights in Romania, and within the scope of her or his duties, the Ombudsman for Children receives individual complaints lodged by children or their representatives concerning actions of public bodies in the fields of health, education, special protection of children, the application of measures not involving deprivation of liberty and any institution whose activities relate to the protection and promotion of children's rights. It also handles complaints about violations of children's rights and in this respect promotes children's rights.⁶² In relation to practice among the hotlines, the Children's Helpline Association is worth mentioning, a non-profit NGO that provides the only well-known free national helpline (*Telefonul Copilului*) for children and adolescents in Romania. The success story of the free helpline is entirely due to the pediatric and underage clients who turned to the hotline 116-111 in large numbers. More than 100,000 children and teenagers call the helpline every year, and tens of thousands of cases where children's lives put at risk have been resolved. Children and teens call the hotline 116-111 to express their fears, to talk about issues that directly affect them, and most importantly, to get help in an emergency. Social workers and psychologists at the Children's Helpline

⁵⁸ Chateau, 2016, p.145.

⁵⁹ See: <https://www.romania-insider.com/romaniyas-education-ministry-increase-number-school-counselors>

⁶⁰ Chateau, 2016, p.145.

⁶¹ Chateau, 2016, p.145.

⁶² <https://tinyurl.hu/z4ZD>

Association answer calls on 116-111 seven days a week. During its more than a decade of existence, the helpline has been called more than two million times.⁶³

Romani Criss, an NGO focused on Roma students, in cooperation with the Intercultural Institute, initiated measures to establish the status of school mediator in the Romanian education system. In 1998 and 1999, school mediators were trained and employed in a pilot project to tackle early school leaving called the Second Chance Programme.⁶⁴ The project was started by the Open Society Foundation and continued by the Education Center 2000+. In cooperation with Roma families and pupils, mediators⁶⁵ were tasked with providing support to Roma children and their families to improve their access to education, to ensure connectivity between schools and Roma communities and to provide consultation and counselling to members of the Roma community in order to prevent conflicts between families and schools, to raise awareness of the problems of Roma minority ethnicities and to promote the survival of multicultural values in an inclusive educational environment. According to the Strategy 2015–2020 for the integration of Romanian citizens belonging to the Roma minority, one of the priorities for combating school segregation of Roma and obstacles to access to education is to continue training programmes and employ school mediators in institutions where Roma children account for more than 15% of all enrolled children. In terms of results, there were 600 school mediators employed by the Romanian government in 2016, while 1680 school mediators were planned for 2020. School mediation is one of the important measures developed to support Roma students. Unfortunately, there is little information available about the impact of this measure, and the legal framework for the work of school mediators is quite vague, and the latter implies some uncertainty.⁶⁶ The researches have identified several forms of social exclusion that lead to an increase in the difficulties encountered in raising the educational level of the minority Roma, for example the pigeonholing of the Roma, according to which they participate in various actions leading to addiction (e.g. gambling, alcohol consumption). These stereotypes

63 <https://www.116111.ro/ce-este-116111>

64 Cf.: Country Report on Adult Education in Romania, 2011, p. 6.

65 Three essential points which we come across again in most of the work done on the concept of mediation:

- the presence of a latent or open conflict between two parties,
- a request or an agreement by these two parties to appoint a neutral mediator,
- decisions taken which lead to changes in both camps.

<http://opeyroux.blogspot.com/p/question-of-roma-mediators-and-positive.html>

66 Pop-Balea, 2016, pp.152–153.

can be more easily translated into intervention proposals than actually pointing out that child labor or the lack of the necessary minimum resources are the state's influence and that these areas and deficiencies should be treated as measures of the social protection net and institutions. The recommendations are first formulated in the area of legislation and the implementation of the legislation regulating the work of school mediators. It is important to emphasize that the creation of the professional environment necessary for the work of school mediators is one of the first aspects to be clarified before any other expectations are formulated in relation to this work. Moreover, at the macro level, the approach to Roma social inclusion has long since reached its limits, and the focus needs to be shifted to uncovering the structural roots and causes of ethnic inequalities, which calls for further policy measures and individual and family-based interventions. Second, with regard to scientific research in Romania, experts believe that qualitative research is needed to understand the situation of school mediators in schools and settlements and their work with Roma families and students. From a qualitative point of view, their interest would be to describe the process through which the school mediator fits into the context supporting the Roma students and families. Where do they place themselves and where do they place themselves in the binary division of supposed 'us' and 'them'? How do all these aspects affect their work? Finally, as Moi sets it out, the distribution and structure of power within society may explain how inequalities can be reproduced through strategies that fit already existing social structures and barriers.⁶⁷

As regards recent practice, it is worth noting that the Ministry of Education and Research in 2020 issued methodological rules, the purpose of which were:

- to help create a safe and positive climate in the educational establishment, based on respect for the person, non-discrimination, motivation for learning and ensuring the well-being of the pre-schoolers as well as the pupil in the educational establishment;
- to provide a working tool for professionals working with pre-school children and pupils in the education system, children's families, authorities responsible for the protection of children against violence, including psychological violence – bullying and with specialised service providers for the rehabilitation of child victims, witnesses and/or children with aggressive behaviour;
- to promote activities to prevent and combat all forms of bullying and cyberbullying in the pre-university education system;

⁶⁷ Pop-Balea, 2016, pp. 171–173.

- to prevent, identify, report and intervene in multidisciplinary teams in situations of psychological violence – bullying and cyberbullying.⁶⁸

Overall, in the opinion of the author, Romania's cyberbullying practice is progressive and evolving, although the regulation of cyberbullying against children still seems to be incomplete.

5. Liability of service providers and institutions

The issue of liability may also arise⁶⁹ if the information promoted through the use of meta-links infringes the rights of third parties or violates the provisions of Law No. 365. of 2002 on e-commerce (hereinafter referred to as: Law No. 365. of 2002). Law No. 365. of 2002 generally stipulates that service providers are subject to civil, criminal and misdemeanor liability laws and states that service providers are liable for information provided by them or on their behalf. This responsibility cannot be regarded as absolute, because it can only be exercised within certain limits.⁷⁰ The Authority shall order investigations to be carried out in accordance with this Law, ex officio or upon receipt of a complaint or referral by any person. The authorized inspection staff of the Authority or of any other public authority or public institution exercising powers with respect to the supervision of a particular sector or field of activity may require statements or any documents necessary for the performance of their duties, seal, take any registers, financial and commercial accounting and other records, and issue copies of the originals to the person subject to the investigation, or obtain copies, leaving the originals and shall also be authorized to carry out unannounced inspections, the results of which shall be recorded in a statement of findings, and to receive, when summoned or on the spot, information and supporting documents.⁷¹ Under certain conditions, the legislation makes it possible to declare contracts for information society services to be relatively null and void.⁷² However, the Law under discussion is considered an offence if it is not committed under conditions that constitute a criminal offence under criminal law, and the

68 Methodological Standards from 27 May 2020 Art. 2.

69 Cf.: Sorbán, 2019, pp. 85–91.

70 Law No. 365. of 2002 on electronic commerce Art. 11.

71 Law No. 365 of 2002 on electronic commerce Art. 17. Section (6)–(7).

72 Law No. 365 of 2002 on electronic commerce Art. 21.

service provider is punishable by a fine ranging from 1,000 to 100,000 RON if the legal conditions are met.⁷³

It is generally permissible to link to a third-party website that is unconditionally accessible to the public, provided that the third party's intellectual property rights and privacy rights are not infringed. If the third-party website is accessible to a specific category of the public (such as subscribers) and the link provided by the website facilitates direct access to the content of the third-party website, permission from the site owner is required.⁷⁴

Summary

In Romania, according to constitutional regulations, freedom of thought, opinion or religious belief may not be restricted in any form, no one may be forced to accept an opinion or adhere to a religious belief contrary to his or her convictions, and the law prohibits the desecration of the country and the nation. Any form of incitement to religious hatred is prohibited between religious denominations. The Romanian Criminal Code establishes a number of specific criminal offences, such as incitement to hatred or discrimination, according to which incitement to hatred or discrimination is defined as any incitement to hatred or discrimination by the public against a group, which act is punishable, as appropriate, by imprisonment or by a fine. In connection with the foregoing, in the author's opinion, another important regulation is Emergency Government Ordinance No. 31/2002., which prohibits fascist, racist and xenophobic organisations and symbols. Among the aggravating circumstances and factors, the Romanian legislator regulates in the Criminal Code the case when the crime is committed on the basis of race, membership of a national minority, religion, gender, sexual orientation, political opinion or party affiliation, economic status, social origin, age, disability etc. Other very important Romanian legislation includes:

- Law No. 157. of 2018. on measures to prevent and combat anti-semitism,
- Law No. 2. of 2021. on measures to prevent and combat anti-gypsyism,
- Law No. 202. of 2002. on equal opportunities for women and men,
- Law No. 504. of 2002. on broadcasting.
- Government Ordinance No. 137/2000. concerning the prevention and sanctioning of all forms of discrimination.

⁷³ Law No. 365 of 2002 on electronic commerce Art. 22.

⁷⁴ Lefter-Alexandru-Sima-Cosmina-Pachiu, 2018.

Outline of hate speech	
Specific criminal offences/factual situations	(a) incitement to hatred, (b) discrimination, (c) fascist, racist and xenophobic organisations, (d) fascist, racist and xenophobic symbols, (e) legionary symbols
Aggravating circumstances	(a) race, origin, (b) membership of a national minority, (c) language, (d) religion, (e) sexual orientation, (f) political opinion or party affiliation, (g) economic situation, (h) age, (i) disability, chronic disease, HIV/AIDS
Main targets	(a) Roma, (b) the Hungarian minority, (c) LGBTQ-linked people, (d) the Israelite community

Table 5. Outline of hate speech legislation in Romania⁷⁵

The research results show that the Romanian legislation is implemented at two legislative levels and is quite specific in relation to hate speech.

In the Romanian criminal law, crimes committed in the online space are not regulated, but computer crimes are regulated, and the regulation also establishes a number of specific criminal offences related to incitement to hatred, such as torture based on discrimination etc. According to the author's opinion, the latter raises the question of whether the Romanian legislation cannot be classified as casuistic.

In Romania, a new body, the Children's Board, was established at the beginning of 2020, thanks to which the Romanian Ombudsman and the Ombudsman for Children discussed child-related priorities in a consultation, as well as the role of the Ombudsman for Children in the coming years in order to promote and respect children's rights in Romania. This followed the establishment of the Ombudsman for Children in Romania in 2018, coordinated by a deputy Romanian ombudsman that acts to promote and protect children's rights. The Ombudsman for Children is responsible for cooperating with child protection agencies and bodies, and proposing measures to encourage children's participation in decisions affecting their lives. In order to ensure that all rights are guaranteed to all children and that public law policy is based on sound foundations, continuous

⁷⁵ Source: author's own editing.

monitoring of children's rights is necessary. The Ombudsman for Children is a guarantor of respect for children's rights and a key partner in promoting children's participation, including through online and offline consultations, and it is a positive development that the Council for the Rights of the Child will work closely with the Ombudsman for Children to monitor and promote children's rights. In recent years, the use of the internet and social media platforms has risen sharply. The risks were underestimated by parents, compounded by a lack of digital skills of parents, which may have contributed to the high rate of victims of cyberbullying in Romania. The lack of a legislative framework to protect children online and the current lack of integration of ICT components into education limit the promotion of online safety and awareness of online risks.

According to the author, among the prevention tools in Romania, the hotline operated by the Children's Helpline Association, a non-profit NGO, provides the only well-known free national helpline (*Telefonul Copilului*) for children and adolescents in Romania. *Romani Criss*, an NGO focused on Roma students, which, in cooperation with the Intercultural Institute, initiated measures to create a school mediator position in the Romanian public education system. In 1998 and 1999, school mediators were trained and employed in a pilot project to tackle early school leaving called the Second Chance Programme.

School mediation is one of the important measures designed to support Roma pupils, and it should be pointed out that, unfortunately, little information is available on the impact of this measure and the legal framework for the work of school mediators is rather vague, suggesting some uncertainty in Romanian legislation. School mediation can serve as an example for the codification and legislative activities of other countries, including Hungary, according to the author's point of view, who has been codifying for years.

There may also be liability if information promoted through the use of meta-links infringes the rights of third parties.

Outline of liability of service providers	
Monitoring body	(a) audit authority
Complaint handling	(a) measure of the audit authority
Sanctions	(a) fine ranging from 1,000 to 100,000 RON (b) other sanctions (criminal law)

Table 6. Outline of liability of service providers in Romania⁷⁶

⁷⁶ Source: author's own editing.

Law No. 365. of 2002 provides in general terms that service providers are subject to civil, criminal and administrative liability laws, and states that service providers are liable for information provided by them or on their behalf, but this liability cannot be regarded as absolute because it can only be enforced within certain limits.

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