

# Discussion Paper

**Discussion  
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**FRANCESCO  
DE SANCTIS**

**The Importance of  
Prosecuting Hate Speech  
in a Post-Conflict Country:  
Lessons for, and from,  
Bosnia and Herzegovina**



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# The Importance of Prosecuting Hate Speech in a Post-Conflict Country

Lessons for, and from,  
Bosnia and Herzegovina

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Francesco de Sanctis



*Bosna i Hercegovina*  
*Federacija Bosne i Hercegovine*  
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NORWEGIAN EMBASSY



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# 1.

## The Troubled Waters Between Hate Speech and Freedom of Expression

The use of criminal law to oppose hate speech and its compatibility with freedom of expression is one of the most contentious issues in the contemporary legal debate. This is not hard to believe if one considers the role of that freedom as a building block of democracy.

In the words of the European Court of Human Rights,

“Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment ... it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.”<sup>1</sup>

Harsh, provocative and antagonizing expressions are thus presumed to be legitimate in democratic systems and are protected against prosecution by international human rights instruments. While freedom of expression and its limits are well defined under international law, hate speech lacks an agreed definition. The International Covenant on Civil and Political Rights (ICCPR) obliges States to prohibit by law “every kind of propaganda for national, racial or religious hatred, which constitutes incitement to discrimination, hostility, or violence”;<sup>2</sup> while the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) asks States to punish the dissemination of a wider category of ideas covering those “based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement

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<sup>1</sup> European Court of Human Rights (ECtHR), *Arslan vs. Turkey*, July 8, 1999, para. 44.

<sup>2</sup> General Assembly of UN, International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 (General Assembly of UN, 1996), Article 20(2).



to such acts”.<sup>3</sup> These provisions do not shed much light on the features of hate speech. Perhaps the best attempt in that direction is reflected in the Council of Europe Recommendation on Hate Speech, which defines it

“as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism 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.”<sup>4</sup>

At the domestic level, almost all Council of Europe member States criminalise incitement to hatred, discrimination or violence on racial, national, religious or other grounds with provisions echoing the language used in the ICCPR article quoted above.<sup>5</sup> In a similar fashion, the Criminal Code of Bosnia and Herzegovina (BiH) in article 145a punishes by imprisonment for a term between three months and three years “whoever publicly incites or inflames national, racial or religious hatred, discord or hostility among the constituent peoples and others who live in Bosnia and Herzegovina”.<sup>6</sup> On the other hand, the application of “incitement to hatred”<sup>7</sup> provisions in Europe shows a diversity of approaches regarding both their scope and the level of protection contextually granted to freedom of expression.<sup>8</sup>

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<sup>3</sup> General Assembly of UN, International Convention on the Elimination of All Forms of Racial Discrimination: Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969 (General Assembly of UN, 1965), Article 4.

<sup>4</sup> Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate Speech,” Adopted by the Committee of Ministers on 30 October 1997, at the 607th meeting of the Minister’s Deputies, Appendix-Scope (Strasbourg: Council of Europe, 1997).

<sup>5</sup> European Commission for Democracy through Law (Venice Commission), *Report on the Relationship between Freedom of Expression and Freedom of Religion: The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*, Adopted by the Venice Commission at its 76th plenary session (Venice: European Commission for Democracy through Law, October 17-18, 2008), para. 33.

<sup>6</sup> “Krivični zakon Bosne i Hercegovine” [Criminal Code of Bosnia and Herzegovina], *Official Gazette of Bosnia and Herzegovina* 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10. Similar provisions can be found in the Criminal Codes of Republika Srpska, Federation of BiH and Brcko District.

<sup>7</sup> In this article the expression “incitement to hatred” is used to refer to the criminal offence foreseen in the BiH Criminal Code, as well as, with similar language, in the other Council of Europe member States. On the other hand the expression “hate speech” is used to refer to the broader concept described in the above-mentioned Council of Europe Recommendation.

<sup>8</sup> Andras Sajó, “Background paper IV: The legislative framework and judicial review concerning racist and discriminatory expression in a selected number of European countries,” in *Expert Seminar: Combating Racism While Respecting Freedom of Expression* (Strasbourg: European Commission against Racism and Intolerance, Council of Europe, 2007), p. 135.

Indeed, the absence of an agreed definition of hate speech at the international level may be seen as the result of the lack of a common standard among European jurisdictions. The difficulty of drawing a line between disquieting, but legal, expression and forbidden expression capable of inciting hatred is self-evident. Hatred in this context can be defined as “a state of mind characterised by “intense and irrational emotions of opprobrium, enmity and detestation towards the target group”<sup>9</sup>, while discord and hostility would appear to refer to very similar notions. As such, the related crime of incitement requires an assessment of whether a certain action resulted in the creation of certain feelings in other people. In other words, the “proscribed result is simply a state of mind in which hostility towards a target group is harboured, even though this is not accompanied by any urge to take action to manifest itself”.<sup>10</sup> Admittedly the act of stirring up hatred is “a much stronger thing than simply bringing into ridicule or contempt, or causing ill-will or bringing into distaste”.<sup>11</sup> However, what is capable of generating that feeling may be considered a matter of speculation; this is particularly problematic in the field of criminal law, where, in observance of the principle of legality, there is more need of clarity and foreseeability than in any other branch of law. There are, indeed, authoritative precedents striking down the prosecution of speech advocating “hatred” or “hostility” due to the vagueness and indefiniteness of those terms.<sup>12</sup> This objection, however, cannot be considered as insurmountable considering that the challenge at issue is arguably not harder than that faced by criminal law practitioners when dealing with other seemingly vague concepts like crimes against public morality or public order.

This paper argues that it is possible to apply the “incitement to hatred” provisions in BiH to punish hate speech without impinging on the principle of certainty of law and on the respect of freedom of expression. To this end, it is important that legal practitioners read those provisions in light of the relevant case-law of human rights bodies as well as standards developed by international organizations such

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<sup>9</sup> ARTICLE 19, *Prohibiting Incitement to Discrimination, Hostility or Violence - Policy Brief* (London: ARTICLE 19, 2012), p. 19.

<sup>10</sup> Toby Mendel, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, For the UN Special Advisor on the Prevention of Genocide, 2006, p. 15.

<sup>11</sup> Richard Card, *Public Order Law* (Bristol: Jordans, 2000), p. 186.

<sup>12</sup> See for example the US Supreme Court case of *State vs. Klapprott* as referred in James B. Jacobs and Kimberly Potter, *Hate Crimes: Criminal Law and Identity Politics* (New York: Oxford University Press), p. 114.

as Article 19.<sup>13</sup> The main thesis of this paper is that those interpretative tools can be meaningfully applied only by taking into account the specificities of the post-conflict situation in BiH and the role played by hate speech in the preparation and fuelling of the past conflict. Arguments in favour of this approach are illustrated in the following section, while the third and last section attempts to apply this approach to two types of “suspicious” discourses which, in the BiH context, give a good illustration of the problems inherent to the prosecution of “incitement to hatred”.

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<sup>13</sup> ARTICLE 19, *Prohibiting Incitement to Discrimination, Hostility or Violence*, pp. 29-40. The test proposes a review of the following elements in order to identify “incitement” as provided by Article 20(2) of the ICCPR: “1. Context of the expression; 2. Speaker/proponent of the expression; 3. Intent of the speaker/proponent of the expression to incite to discrimination, hostility or violence; 4. Content of the expression; 5. Extent and Magnitude of the expression (including its public nature, its audience and means of dissemination); 6. Likelihood of the advocated action occurring, including its imminence” (p. 27).

## 2.

# Incitement to Hatred in BiH Between Conflict and Post- Conflict Rhetoric

The above-mentioned reference by the Council of Europe to aggressive nationalism and ethnocentrism as sources of hate and intolerance is particularly meaningful if placed in the context of the specific problems posed by hate speech in BiH. As recognized in a recent security study, the use of inflammatory and ethnically divisive language by political actors and mass media has substantially increased since 2009 and has resulted in a radicalization of the public discourse and in increasing insecurity about the future among the people in BiH.<sup>14</sup> This and at least another study assess as real the risks of the current tense political climate turning into ethnically motivated violence sparked by hate-speech provocations.<sup>15</sup> Conversely, the international community has repeatedly sent messages of warning about mounting tension in BiH as a result of extreme nationalist political rhetoric.<sup>16</sup> The seriousness of the threat to security and peaceful coexistence currently posed by aggressive nationalism and ethnocentric rhetoric cannot be underestimated in light of the role played by hate speech in creating the conditions for the conflicts in the former-Yugoslavia during the nineties. As well argued in an expert report on this topic, “with the media acting as a go-between, nationalist political propaganda prepared and conditioned public opinion for the war – so fostering the worst atrocities perpetrated in furtherance of ethnic principles”<sup>17</sup>

The links between hate speech, ethnic conflict and human rights violations have been the object of increasing attention particularly in the wake of the Media

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<sup>14</sup> Vlado Azinović, Kurt Bassuener and Bodo Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina: A security risk analysis* (Sarajevo: Atlantic Initiative, Democratization Policy Council, 2011).

<sup>15</sup> Timo Kivimäki, Marina Kramer and Paul Pasch, *The Dynamics of Conflict in the Multi-ethnic State of Bosnia and Herzegovina - Country Conflict-Analysis Study* (Sarajevo: Friedrich-Ebert-Stiftung, 2012).

<sup>16</sup> See: “NATO, EU concerned about mounting tensions in BiH,” SETimes.com, October 28, 2008.

<sup>17</sup> Renaud de la Brosse, *Political Propaganda and the Plan to Create a ‘State for all Serbs’ - Consequences of using the media for Ultra-Nationalist ends*, Report compiled at the request of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, 2003, para. 4.

Case before the International Criminal Tribunal for Rwanda.<sup>18</sup> In that case, editors and board members of a radio and a newspaper were found guilty of incitement to genocide and prosecution as a crime against humanity due to the content of the items propagated by those media. In assessing the incriminated speeches and writings, the ICTR first and second instance verdicts were at some pains to distinguish not only hate speech (which is not punishable under the ICTR Statute) from direct and public incitement to commit genocide, but also legitimate, albeit heated, discussion of ethnic consciousness and grievances from the promotion of ethnic hatred.<sup>19</sup> It is perhaps true that from a sociological point of view and with the benefit of insight it may be easy to demonstrate that ethnically polarizing discourses, hate speech and direct incitement to commit a crime are all “located on different stages of a continuum leading to the crimes sought to be brought about”;<sup>20</sup> on the other hand, it is indeed difficult to distinguish these concepts for the purpose of criminal prosecution, especially when the alleged hate speech occurs in a context, such as in BiH, where not many incidents of ethnically motivated violence have occurred after the conflict. Notwithstanding these conceptual problems, the link between hate speech and ethnic conflict has been recognized by the ICERD Committee in its 2005 *Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination*. The Decision identifies the following as indicators of situations leading to conflict and genocide:

“8. Systematic and widespread use and acceptance of speech or propaganda promoting hatred and/or inciting violence against minority groups, particularly in the media. 9. Grave statements by political leaders/prominent people that express support for affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority.”<sup>21</sup>

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<sup>18</sup> See International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Judgement and Sentence No. ICTR- 99-52-T, December 3, 2003; International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Judgement in the Appeals Chamber No. ICTR-99-52-A, November 28, 2007.

<sup>19</sup> ICTR, *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Judgement and Sentence, para. 1020; ICTR, *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Judgement in the Appeals Chamber, para. 696.

<sup>20</sup> Wibke Kristin Timmermann, “Incitement, Instigation, Hate Speech and War Propaganda in International Law” (Thesis, LL.M. in International Humanitarian Law, CUDIH – Centre Universitaire de Droit International Humanitaire), pp. 2-3.

<sup>21</sup> Committee on the Elimination of Racial Discrimination (CERD), *Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination*, CERD/C/67/1 (CERD, October 14, 2005), point 8 and 9.

The Committee's focus on speeches by the mass media and by political leaders/prominent people as the ones with the highest potential to spark conflict is consistent with the approach embraced by the Council of Europe<sup>22</sup> and the European Court of Human Rights<sup>23</sup>. On the other hand, political speech and, in particular, public information are categories of expression which enjoy strong protection under article 10 of the European Convention of Human Rights.<sup>24</sup> These opposing interests make the prosecution of incitement to hatred by mass media and influent public figures at the same time a priority and a very sensitive exercise of balance between punishment and respect of freedom of expression. It is for these reasons that the next section focusses exactly on those categories of speech.

As mentioned above, this paper argues that in order to identify the features of incitement to hatred on national, racial or religious grounds in the specific BiH post-conflict environment, it is necessary to analyse the suspicious statements in the light of the hate speech which dominated the public discourse before and during the conflict. As the present and past nationalist rhetoric often share common patterns and structures, the dangerousness of the former can be fully appreciated only by juxtaposing it to the latter.<sup>25</sup> In the same fashion, current anti-Semitic speech can be fully understood only in connection with the Holocaust. The importance of identifying patterns of incitement has been recognized by the ICCPR Committee in *Faurisson vs. France*, where a law criminalising Holocaust

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<sup>22</sup> Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech", Principle 1: "The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, antisemitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur."

<sup>23</sup> European Court of Human Rights (ECtHR), *Erbakan vs. Turkey*, July 6, 2006, para. 64: "it is of crucial importance that politicians in their public speeches refrain from making any statement which can provoke intolerance."

<sup>24</sup> Council of Europe, European Convention on Human Rights (Rome: Council of Europe, September 4, 1950), Article 10: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

<sup>25</sup> See Michal Sládeček and Amer Džihana, "Spinning Out of Control: Media Coverage in the Bosnian Conflict," in *Media discourse and the Yugoslav Conflicts representations of self and other*, ed. Pål Kolstø (Farnham: Ashgate, 2009), pp. 153-172.

denial was held to be compatible with the Covenant. A concurring opinion signed by three members underlined that:

“there may be circumstances in which the right of a person to be free from incitement to discrimination on grounds of race, religion or national origins cannot be fully protected by a narrow, explicit law on incitement ... This is the case where, in a particular social and historical context, statements that do not meet the strict legal criteria of incitement can be shown to constitute part of a pattern of incitement against a given racial, religious or national group, or where those interested in spreading hostility and hatred adopt sophisticated forms of speech that are not punishable under the law against racial incitement, even though their effect may be as pernicious as explicit incitement, if not more so.”<sup>26</sup>

As we will see in the next section, the suggested analytic approach is key to evaluate the context of the expression, the intention of the author as well as the likelihood of the requisite state of mind being created. As stated by a number of authorities and scholars, these elements play a central role in determining when a certain speech amounts to “incitement to hatred”.<sup>27</sup> Consequently the author, after consulting a number of studies on ethno-nationalist rhetoric and propaganda in BiH, has selected two types of confrontational and ethnically divisive discourses which are frequently recurring in the current public debate and will attempt to identify which factors should be assessed with a view to establish whether they amount to incitement to hatred or are a legitimate exercise of freedom of expression. The selected discourses do not aim to represent an exhaustive picture of all types of potential hate speech in BiH; they have been selected due to their capability of re-evoking in the audience the kind of “war of words” which preceded and fuelled the conflict and thus potentially re-creating the feelings of hatred which were at work in that period.

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<sup>26</sup> Human Rights Committee, *Robert Faurisson vs. France*, Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (Human Rights Committee, November 8, 1996), para. 4.

<sup>27</sup> See ARTICLE 19, *Prohibiting Incitement to Discrimination, Hostility or Violence*, pp. 29-40; Mendel, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, pp. 44-62; Susan Benesch, “Vile Crime or Inalienable Right: Defining Incitement to Genocide,” *Virginia Journal Of International Law*, 48, no. 3 (2008), pp. 519-527; European Court of Human Rights (ECtHR), *Zana vs. Turkey*, November 25, 1997, para. 59 and 60.

### 3.

## Identifying Incitement to Hatred in Two Types of Post-Conflict Discourses in BiH

### 3.1 Discourse no. 1

Speeches by prominent politicians or other public figures discussing or advocating the dissolution or division of BiH on ethnic lines, or the abolition of entities have been shaping the public political discourse for a long time. Indeed, threats of unilateral changes to the Dayton State structure have been used as a tool to mobilize the respective ethnic constituencies and have been a main factor in the radicalization of the public debate on constitutional changes in BiH during the last six-seven years.<sup>28</sup> Due to the strong link between territory and ethnicity in BiH, basically any proposed change to the constitutional structure is presented in the ethno-nationalist rhetoric as a threat to existence of one of the three constituent peoples. As well explained by a former Judge of the Constitutional Court of BiH, “the institutionalisation of ethnic power-sharing on state level on the basis of territorial strongholds of nationalist forces in the Entities prevailed over the civic principle so that almost every aspect of state and society became seen through the ethnic lens.”<sup>29</sup> While “incitement to hatred” provisions should not be used to curb discussion on an important issue like constitutional reform, drawing the line between legitimate political discussion on the future of BiH and “hate speech” is bound to be a difficult exercise comparable to separating criticism towards the State of Israel from anti-Semitism.<sup>30</sup>

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<sup>28</sup> See Azinović, Bassuener and Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina*, pp. 14-16; Kivimäki, Kramer and Pasch, *The Dynamics of Conflict in the Multi-ethnic State of Bosnia and Herzegovina*, pp. 18-49; Office of the High Representative, *Thirty-Second Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations, 1 April – 30 September 2007* (Sarajevo: Office of the High Representative, 2007), para. 2.

<sup>29</sup> Joseph Marko, *Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina*, EDAP 4/2005 (Bolzano: European Diversity and Autonomy Papers, 2005), p. 9.

<sup>30</sup> On this issue see Judith Butler, “No, it’s not anti-semitic: the right to criticise Israel,” *London Review of Books* 25, no. 16 (2003), pp. 19-21; the author argues that harsh criticism of the policy of Israel should not be viewed as an expression of antisemitism.



Before addressing the question of whether and how this kind of discourse may qualify as “incitement to hatred”, it is necessary to assess the limits under which changes to constitutional structures of a State may be legitimately promoted within the scope of freedom of expression. This is because the advocacy of legitimate political goals by legitimate means cannot be held, as such, to amount to hate speech, no matter how radical are the proposed changes. This matter has been addressed by the ECtHR in a number of decisions, which have underlined the importance of allowing the discussion of political ideas and matters of public interest.<sup>31</sup> In this field, restrictions on freedom of expression are therefore to be strictly construed.<sup>32</sup> The test for the application of restrictions to the pursuit of certain political ends has been developed by the Court in *Refah Partisi (the Welfare Party) and Others v. Turkey*, as follows: “firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles.”<sup>33</sup> In the case at instance, the ECtHR held that the decision of the Turkish authorities to dissolve the Welfare Party was not in violation of the Convention on grounds that acts and speeches of the Party revealed its goal to establish *sharia* in Turkey and did not exclude the use of force in order to realise this policy.<sup>34</sup> For these reasons, the Party’s actions were held to be incompatible with democracy and therefore not protected under the Convention. As revealed by some criticism expressed against this decision<sup>35</sup>, the application of the test is far from straight-forward. With regard to BiH, it may be difficult to establish whether secession or abolition of territorial autonomies is compatible with democracy. In this regard it may be useful to note that the Supreme Court of Canada in *Reference re Secession of Quebec* held that, while the unilateral secession of Quebec would be unlawful, the goal of secession would not be illegal as such if pursued through negotiation.<sup>36</sup> The same test could be arguably applied to unilateral action aimed at abolishing the autonomous status of an entity.

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<sup>31</sup> European Court of Human Rights (ECtHR), *Socialist Party and Others vs. Turkey*, May 25, 1998, para. 47: “it is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself.”

<sup>32</sup> European Court of Human Rights (ECtHR), *Gunduz vs. Turkey*, December 4, 2006, para. 43.

<sup>33</sup> European Court of Human Rights (ECtHR), *Refah Partisi (the Welfare Party) and Others vs. Turkey*, February 13, 2003, para. 98.

<sup>34</sup> *Ibid*, para. 132.

<sup>35</sup> See Robin C. A. White and Clare Overy, *Jakobs, White & Ovey: The European Convention on Human Rights* (New York: Oxford University Press, 2010), pp. 466-477.

<sup>36</sup> Supreme Court of Canada, *Reference re Secession of Quebec*, Report No. [1998] 2 S.C.R. 217.

In light of the mentioned judicial precedents, it could be argued that speeches threatening unilateral actions to radically change the BiH structure could be considered, by their content, as “incitement to hatred”, at least when the author of the speech is ambiguous regarding the peaceful or violent nature of the means foreseen to pursue the change. Such speeches would indeed be similar to the nationalist political discourses on the status of BiH which preceded and prepared the conflict and could thus be capable of re-evoking in the audience the “war of words” which preceded the conflict and of creating feelings of animosity, fear and resentment of sufficient intensity to qualify as “hatred”. The identification of a common pattern between pre-war and current rhetoric is useful to assess not only the likelihood that ethnically motivated “hatred” will spread as a result of the expression, but also the presence in the speaker of the intent to incite hatred.<sup>37</sup> The speaker’s knowledge of the pre-war rhetoric and her decision to follow that pattern in her speech can be used to prove that she was aware of the likelihood that her speech, in light of the previous war rhetoric, would incite hatred. This is because advocacy of unilateral changes to the BiH territorial structure automatically evoke in the mind of many people the possibility of new inter-ethnic confrontation.

As pointed out in the above-mentioned *Article 19’s* test, content and intent are not the only elements that need to be weighted. In *Refah Partisi (the Welfare Party) and Others v. Turkey*, the real opportunities the party had, due to its electoral strength, to put its undemocratic goals into practice was a key factor in justifying its dissolution.<sup>38</sup> When it comes to the issue of “incitement to hatred” the official position and effective power of the author of the speech should be considered. In this sense, the potential of the speech hereby described to generate ethnic hatred is directly proportional to the actual possibility that the author has to put into practice the advocated actions. Arguably a call to secession or entity abolition by a low level political actor should not be considered serious enough to create the required hatred, especially if not accompanied by explicit reference to illegal/violent means. On the other hand a speech of such nature by an influential political leader should be subjected to a more severe scrutiny.

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<sup>37</sup> See “Criminal Code of Bosnia and Herzegovina” at Article 35(1): “A criminal offence may be perpetrated with direct or indirect intent. (2) The perpetrator acts with direct intent when a perpetrator was aware of his deed but still desired its perpetration. (3) The perpetrator acts with indirect intent when a perpetrator was aware that a prohibited consequence might have resulted from his action or omission to act but nevertheless consented to its occurrence.”

<sup>38</sup> See in contrast ECtHR, *Gündüz vs. Turkey*, where the punishment of a leader of a small Islamic sect advocating for the establishment of sharia was held to be in violation of freedom of expression as it would not qualify as hate speech in the absence of an explicit call to violence to that end.

## 3.2 Discourse no. 2

Another recurrent discourse in the “arsenal” of extreme nationalists is that aimed at installing and enhancing fear of the different national, racial or religious group, by, for example, playing on old historical grievances, presenting the other group as inherently evil and wicked and their own as the victim of long-term persecutions and conspiracies. As underlined in an interesting study on the role of mass media in the break-up of former-Yugoslavia, “inventing enemies and victims” is a key step in the process towards national homogenization.<sup>39</sup> Indeed fear mongering propaganda was very intense in proximity of the start of the conflict in BiH and certainly played a strong role in creating a climate in which the putative threats posed by the targeted ethnic group would justify in advance the use of force and violence against civilians members of that ethnic group as acts of self-defence.<sup>40</sup> This kind of discourse was also key in the preparation of the genocide in Rwanda; in this regard, the ICTR noted the presence of “a litany of ethnic denigration presenting the Tutsi population as inherently evil and calling for the extermination of the Tutsi as a preventive measure”.<sup>41</sup> As well explained in a *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, prepared for the UN Special Advisor on the Prevention of Genocide,

“Such messages seek to convince the reader or listener not only that the target group is inherently inferior but also that its very existence is a threat to the reader or listener’s own group. Thus the messages promote the idea, either explicitly or implicitly, that the only solution is to get rid of the target group.”<sup>42</sup>

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<sup>39</sup> “Identifying the enemy in political struggle is essential, since it precisely determines the target and direction of political action. Selecting the enemies and the way they are to be treated are processes with multiple functions, which form the substance of political activity. The designation of enemies inspires action. An enemy is an obstacle, the opposite, an existential threat and, thus, the political target towards which the force of the attack is turned. Clear determination of the target (the enemy) gives a political movement the force to act.” From Z. M. Marković, *Benefits from Enemy* (Belgrade: Agency Argument, 1997), cited in Tarik Jusic, “Media Discourse and the Politics of Ethnic Conflict: The Case of Yugoslavia,” in *Media discourse and the Yugoslav Conflicts: Representations of Self and Other*, ed. Pal Kolsto (Farnham: Ashgate Publishing, 2009), pp. 34-35.

<sup>40</sup> See De la Brosse, *Political Propaganda and the Plan to Create a ‘State for all Serbs’*, p. 40; Mark Thompson, *Report on media, expert-witness report in the ICTY-case against Momilo Krajišnik*, cited in Jieskje Hollander, “Hate Speech-A Historical Inquiry into the Development of its Legal Status” (Master Thesis, University of Groningen, 2007), pp. 68-69.

<sup>41</sup> ICTR, *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Judgement and Sentence, para. 1036.

<sup>42</sup> Mendel, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, p. 68.

Unfortunately, speeches following this pattern are still rather frequent in BiH, although they may be less radical and explicit in the actual content (especially when it comes to advocacy of action) than the ones which characterized the conflict period.<sup>43</sup> Against this background, which parameters may be used to determine whether this type of discourse may be considered as incitement to hatred? The fact that in this case, unlike the previous one, the ethnic issue is explicitly mentioned, makes its prosecution as incitement to hatred more straightforward with regard to certain elements of the offence. For example, it could make the determination of the intent of the author to target a group on ethnic grounds easier to determine. On the other hand the analysis may be more complex with regard to the assessment of the content of the message. In this regard it may be held that, for instance, a speech may easily qualify as incitement to hatred when the propagation of fear of the targeted ethnic group is accompanied with the use of denigratory terms to refer to that group and with calls of use of force or illegal actions to respond to the putative threats. On the other hand, prosecution could be more controversial in the absence of these last two elements.

The case law of the ECtHR on the compatibility of the prohibition of comparable expressions with the Convention does not offer clear guidance. In the author's view, the Court used apparent different standards in the assessment of speeches by members of a minority group against the majority (or the State authorities as an expression of the majority population) as opposed to speeches by members of a majority group against a minority. In the first category, represented mainly by cases concerning the prosecution of representatives of the Kurdish minority in Turkey, the ECtHR was readier to find a violation of freedom of expression than in the second category, mainly represented by cases of xenophobic or anti-Semitic speeches. In the cases against Turkey, the Court found violations of Article 10 in connection with the prosecution of authors of articles or books which described the Turks as "invaders and persecutors who formed Turkey by conquering the lands of other peoples";<sup>44</sup> alleged that "the State was oppressing the population of Kurdish origin and trying to destroy its identity through genocide, evacuation and organised massacres and that as a result it was compelling the Kurds to fight back";<sup>45</sup> or described "the authorities' actions as "terror" and as part of a "special war" being conducted "in the country" against "the Kurdish people" while calling on citizens to "oppose" this situation, in particular by means of "neighbourhood committees".<sup>46</sup> The ECtHR held that these expressions were a legitimate exercise of freedom of expression because, considering their tone and the overall political

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<sup>43</sup> Azinović, Bassuener and Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina*, p. 16-20.

<sup>44</sup> ECtHR, *Arslan vs. Turkey*, para. 45.

<sup>45</sup> *Ibid*, para. 43.

<sup>46</sup> European Court of Human Rights (ECtHR), *Incal vs. Turkey*, June 9, 1998, para. 50.

context, they did not constitute an incitement to violence;<sup>47</sup> this notwithstanding that the authors were actually calling to take action against the State policy in dealing with the Kurdish question. It must be noted that in another case where the author called the Kurds to engage in a “total liberation struggle” and war against the forces of Turkey, the ECtHR found his prosecution to be consistent with the Convention.<sup>48</sup> The standard employed in these cases is that prosecution would be justified only in cases of explicit incitement and advocacy of violence, while negative portraying of the Turkish people as historical oppressors of the Kurds would be within the scope of freedom of expression and could not be prohibited as incitement to hatred against the majority population. As the ECtHR underlined in the *Arslan* case, “although certain particularly acerbic passages in the book paint an extremely negative picture of the population of Turkish origin and give the narrative a hostile tone, they do not constitute an incitement to violence, armed resistance or an uprising; in the Court’s view this is a factor which it is essential to take into consideration.”<sup>49</sup>

With regard to cases concerning xenophobic or anti-Semitic expressions, the ECtHR found no violations of the Convention with regard to punishment as incitement to hatred in relation to: the publication of articles “portraying the Jews as the source of evil in Russia”, accusing them “of plotting a conspiracy against the Russian people” and denying “the Jews the right to national dignity, claiming that they did not form a nation”;<sup>50</sup> statements given by political leaders saying that “the day there are no longer 5 million but 25 million Muslims in France, they will be in charge”<sup>51</sup> or calling people to “Stand up against the Islamification of Belgium”, “Stop the sham integration policy” and “Send non-European job-seekers home”<sup>52</sup>. It is clear that in these cases the negative portraying of the minority group, aimed at presenting it as a collective threat, was deemed sufficient to justify prosecution on grounds that it was likely to give rise to feelings of rejection and hostility towards Jews and immigrants. Compared with the previous category of cases, the standard employed here is lower since it does not require advocacy of violence in order to justify prosecution. Furthermore, in the cited cases of *Le Pen* and *Féret*, the fact that the issues of immigration and the presence of Muslims in Europe were of serious public interest and a central matter in the political debate, was not a sufficient reason to sanction the language quoted above.

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<sup>47</sup> See also European Court of Human Rights (ECtHR), *Sürek vs. Turkey (No. 4)*, July 8, 1999, para. 58.

<sup>48</sup> European Court of Human Rights (ECtHR), *Sürek vs. Turkey (No. 3)*, July 8, 1999, para. 40.

<sup>49</sup> ECtHR, *Arslan vs. Turkey*, para. 48.

<sup>50</sup> European Court of Human Rights (ECtHR), *Pavel Ivanov vs. Russia*, February 20, 2007, para 2.

<sup>51</sup> European Court of Human Rights (ECtHR), *Le Pen vs. la France*, April 20, 2010.

<sup>52</sup> European Court of Human Rights (ECtHR), *Féret vs. Belgique*, July 16, 2009, para. 9.

The adoption of different standards in these two categories of cases may find its justification in the fact that minorities are in stronger need of protection from derogatory, abusive and antagonizing language by representatives (particularly influential one) of the majority population, then the reverse.<sup>53</sup> This discrepancy, however, does not help in the assessment of the content of comparable language in a situation, like the one in BiH, where the majority/minority scheme seen above is not easily applicable to inter-ethnic relations. In particular, the examined case-law does not offer a clear stance on whether direct reference to the use of force to respond to the putative threats posed by the targeted ethnic groups is a necessary condition for prosecution. In order to answer this question the assessment of other factors is therefore necessary. The status of the author and her level of influence will again play an important role as already outlined in the analysis of the first discourse above. The assessment of the likelihood that ethnically motivated “hatred” will spread as a result of the suspicious speech will also be key.<sup>54</sup>

In this regard, it can be argued that propagation of fear of the targeted ethnic group has a stronger impact if expressed in conjunction with sensationalist media reporting on episodes of violence having an inter-ethnic background. This feature is particularly relevant since the manipulation by the mass media of episodes of violence with a view to create an atmosphere of fear and insecurity which could be exploited by nationalist political leaders, has been a recurring theme in the preparation of the Yugoslavian conflicts<sup>55</sup> and is, unfortunately, still present in the current BiH public information system.<sup>56</sup> The dangerousness of this propaganda technique in a post-conflict situation is well demonstrated by the role played by

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<sup>53</sup> See also ICTR, *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Judgement and Sentence, para. 1008, arguing for the application of different standards with similar arguments.

<sup>54</sup> See Mendel, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, pp. 53-54, arguing for the application of the “likelihood approach”, “here by assessing the likelihood of the requisite state of mind being created.” The author of this paper considers this interpretation of the likelihood test to be consistent with the plain meaning of the “incitement to hatred” criminal provision in BiH. It is interesting to note that Article 19’s understanding of the likelihood test differs inasmuch as it requires likelihood of harm occurring as a result of action advocated during the incitement speech (see ARTICLE 19, *Prohibiting Incitement to Discrimination, Hostility or Violence*, p. 39). The author of this paper believes that this interpretation would require the establishment of an element which is not required under “incitement to hatred” provisions like the Bosnian one. Moreover this approach seems to conflate the different notions of incitement to hatred and incitement to violence by requiring in both cases the advocacy of hostile acts.

<sup>55</sup> See De la Brosse, *Political Propaganda and the Plan to Create a ‘State for all Serbs’*, pp. 49-56; Sládeček and Džihana, “Spinning Out of Control: Media Coverage in the Bosnian Conflict,” pp. 157-158, discussing the media coverage of the murder of a Serb in Sarajevo during a wedding in March 1992.

<sup>56</sup> See Azinović, Bassuener and Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina*, p. 18, arguing that many media report on the clashes in Široki Brijeg between local soccer team supporters and FK Sarajevo in October 2009 ethnicized the events, “portraying them as a conflict between two ethnic groups Croats and Bosniaks.”

the media during the March 2004 Kosovo riots. As argued in an OSCE report, the biased, sensationalist and unsubstantiated reporting by Kosovar media on the drowning of three Albanians children as perpetrated by “barbaric” and “vicious” local Serbs, was the “casus belli” leading to massive ethnically-motivated violence against the Kosovo Serb community throughout Kosovo.<sup>57</sup> Interestingly, the OSCE Report affirms that the media, albeit acting recklessly, were not intentionally instigating violence. If this is true, it would be fair to argue that the ethnically biased coverage of the incident, together with the broadcasting of antagonizing statements by politicians and other public figures commenting on the incident could, as a whole, qualify as incitement to hatred, provided that the intent to create the required state of mind is proved.

The conjunction between inflammatory speeches and actual incidents of inter-ethnic violence was considered a key factor in the ECtHR case *Zana vs Turkey*. In this case the Court did not find a violation of freedom of expression in relation to the punishment of the applicant, a prominent Kurd politician, for giving public statements in which he expressed support for the Kurdistan Workers’ Party (PKK) as a national liberation movement, while affirming that this organization was killing women and children by mistake. The Court considered as decisive the fact that the statement coincided with armed attacks carried out by the PKK against civilians in South-East Turkey in an environment of extreme tension. As stated in the Court’s reasoning, “in those circumstances the support given to the PKK ... by the former mayor of Diyarbakır, the most important city in south-east Turkey, in an interview published in a major national daily newspaper, had to be regarded as likely to exacerbate an already explosive situation in that region”.<sup>58</sup> Differently from the cases against Turkey seen above, here the absence of a direct incitement to violence in the speech was not considered a sufficient reason to justify a finding of violation of freedom of expression.

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<sup>57</sup> See OSCE Office of the Representative on Freedom of the Media, *The Role of the Media in the March 2004 Events in Kosovo - Report* (Vienna: OSCE Representative on Freedom of the Media, 2004), p. 4.

<sup>58</sup> ECtHR, *Zana vs. Turkey*, para. 60.

## 4.

# Conclusions

The application of the “incitement to hatred” provisions in BiH requires much more than the evaluation of the content of a suspicious statement. It asks the legal practitioners to engage in a complex assessment of a number of contextual factors. Among them, a key one in BiH is the identification of a common pattern between current and pre-conflict hate speech. As this paper tried to demonstrate, this feature is particularly revealing of the discourse’s potential to enhance and maintain the climate of hate, fear and resentment which characterized the conflict period. Without this element, it would not be possible to understand why, for example, advocacy of secession of the North of Italy from its South part by a major Italian political party does not amount to incitement to hatred, why similar rhetoric in BiH may well result in that. In this regard, the fact that the last armed conflict in Italy was not about territorial secession but, at least in part, about the political struggle between fascists and anti-fascists is clearly essential to understand the difference between the two scenarios. In sum, a meaningful application of incitement to hatred provisions requires the acknowledgement that in certain situations the context of the expression may be more important than the content itself.



# Bibliography

## Books, Articles and Reports

1. ARTICLE 19. *Prohibiting Incitement to Discrimination, Hostility or Violence – Policy Brief*. London: ARTICLE 19, 2012.
2. Azinović, Vlado, Kurt Bassuener and Bodo Weber. *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina: A security risk analysis*. Sarajevo: Atlantic Initiative, Democratization Policy Council, 2011.
3. Benesch, Susan. "Vile Crime or Inalienable Right: Defining Incitement to Genocide." *Virginia Journal Of International Law* 48, no. 3 (2008), pp. 519-527.
4. Butler, Judith. "No, it's not anti-semitic: the right to criticise Israel." *London Review of Books* 25, no. 16 (2003), pp. 19-21.
5. Card, Richard. *Public Order Law*. Bristol: Jordans, 2000.
6. De la Brosse, Renaud. *Political Propaganda and the Plan to Create a 'State for all Serbs' - Consequences of Using the Media for Ultra-Nationalist Ends*. Report compiled at the request of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, 2003.
7. European Commission for Democracy through Law (Venice Commission). *Report on the Relationship Between Freedom of Expression and Freedom of Religion: The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*. Adopted by the Venice Commission at its 76th plenary session. Venice: European Commission for Democracy through Law, October 17-18, 2008.
8. Hollander, Jieskje. "Hate Speech-A Historical Inquiry into the Development of its Legal Status." Master Thesis, University of Groningen, 2007.
9. Jacobs, James B. and Kimberly Potter. *Hate crimes: Criminal Law & Identity Politics*. New York: Oxford University Press, 1998.
10. Jusić, Tarik. "Media Discourse and the Politics of Ethnic Conflict: The Case of Yugoslavia." In *Media Discourse and the Yugoslav Conflicts Representations of Self and Other*, edited by Kolsto, Pal, pp. 21-39. Farnham: Ashgata Publishing, 1998.
11. Kivimäki, Timo, Marina Kramer and Paul Pasch. *The Dynamics of Conflict in the Multi-ethnic State of Bosnia and Herzegovina: Country Conflict-Analysis Study*. Sarajevo: Friedrich-Ebert-Stiftung, 2012.
12. Marko, Joseph. *Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina, EDAP 4/2005*. Bolzano: European Diversity and Autonomy Papers, 2005.
13. Mendel, Toby. *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*. For the UN Special Advisor on the Prevention of Genocide, 2006.
14. Office of the High Representative. *Thirty-Second Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations: 1 April – 30 September 2007*. Sarajevo: Office of the High Representative, 2007.

15. OSCE Representative on Freedom of the Media. *The Role of the Media in the March 2004 Events in Kosovo - Report*. Vienna: OSCE Representative on Freedom of the Media, 2004.
16. Sajo, Andras. "Background paper IV: The legislative framework and judicial review concerning racist and discriminatory expression in a selected number of European countries." In *Expert Seminar: Combating Racism While Respecting Freedom of Expression*, pp. 135-146. Strasbourg: European Commission against Racism and Intolerance, 2007.
17. SETimes.com. "NATO, EU concerned about mounting tensions in BiH." SETimes.com, October 28, 2008. [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2008/10/28/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/10/28/feature-01) (Accessed on January 24, 2014)
18. Sládeček, Michal and Amer Džihana. "Spinning Out of Control: Media Coverage in the Bosnian Conflict." In *Media discourse and the Yugoslav Conflicts representations of self and other*, edited by Kolsto, Pal, pp. 153-172. Farnham: Ashgata Publishing, 2009.
19. Timmermann, Wibke Kristin. "Incitement, Instigation, Hate Speech and War Propaganda in International Law." Thesis, LL.M. in International Humanitarian Law, CUDIH – Centre Universitaire de Droit International Humanitaire.
20. White, Robin C. A. and Clare Overy. *Jakobs, White & Ovey: The European Convention on Human Rights - Fifth Edition*. New York: Oxford University Press, 2010.

## Rules and Jurisprudence

1. Committee on the Elimination of Racial Discrimination (CERD). Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination, CERD/C/67/1. CERD, October 14, 2005.
2. Council of Europe. European Convention on Human Rights. Rome: Council of Europe, September 4, 1950.
3. Council of Europe. Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech". Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies. Strasbourg: Council of Europe, 1997.
4. European Court of Human Rights (ECtHR). *Arslan vs. Turkey*. App. Nos. 23462/94, July 8, 1999.
5. European Court of Human Rights (ECtHR). *Erbakan vs. Turkey*. App. Nos. 59405/00, July 6, 2006.
6. European Court of Human Rights (ECtHR). *Féret vs. Belgium*. App. Nos. 36109/02, July 16, 2009.
7. European Court of Human Rights (ECtHR). *Gündüz vs. Turkey*. App. Nos. 35071/97, December 4, 2003.
8. European Court of Human Rights (ECtHR). *Incal vs. Turkey*. App. Nos. 22678/93, June 9, 1998.
9. European Court of Human Rights (ECtHR). *Le Pen vs. la France*. App. Nos. 18788/09, April 20, 2010.
10. European Court of Human Rights (ECtHR). *Pavel Ivanov vs. Russia*. App. Nos. 35222/04 February 20, 2007.

11. European Court of Human Rights (ECtHR). *Refah Partisi (the Welfare Party) and Others vs. Turkey*. App. Nos. 41340/98, 41342/98, 41343/98 i 41344/98, February 13, 2003.
12. European Court of Human Rights (ECtHR). *Socialist Party and Others vs. Turkey*. App. Nos. 21237/93, May 25, 1998.
13. European Court of Human Rights (ECtHR). *Sürek vs. Turkey (No. 3)*. App. Nos. 24735/94, July 8, 1999.
14. European Court of Human Rights (ECtHR). *Sürek vs. Turkey (No. 4)*. App. Nos. 24762/94, July 8, 1999.
15. European Court of Human Rights (ECtHR). *Zana vs. Turkey*. Judgement No. 69/1996/688/880, November 25, 1997.
16. General Assembly of UN. International Convention on the Elimination of All Forms of Racial Discrimination: Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969. General Assembly of UN, 1965.
17. General Assembly of UN. International Covenant on Civil and Political Rights: Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976. General Assembly of UN, 1996.
18. Human Rights Committee. Robert Faurisson vs. France, Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993. Human Rights Committee, November 8, 1996.
19. International Criminal Tribunal for Rwanda (ICTR). *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*. Judgement and Sentence No. ICTR-99-52-T, December 3, 2003.
20. International Criminal Tribunal for Rwanda (ICTR). *The Prosecutor vs. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*. Judgement in the Appeals Chamber No. ICTR-99-52-A, November 28, 2007.
21. "Krivični zakon Bosne i Hercegovine." [Criminal Code of Bosnia and Herzegovina]. *Official Gazette of the Bosnia and Herzegovina* 37/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10.
22. Supreme Court of Canada. *Reference re Secession of Quebec*. Report No. [1998] 2 S.C.R. 217, August 20, 1998.

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