

STUDY

Requested by the LIBE committee



Hate speech and hate crime in the EU and the evaluation of online content regulation approaches



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Abstract

This study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee. The study argues that hate speech and hate crimes poison societies by threatening individual rights, human dignity and equality, reinforcing tensions between social groups, disturbing public peace and public order, and jeopardising peaceful coexistence. The lack of adequate means of prevention and response violates values enshrined in Article 2 of the TEU. Member States have diverging rules, and national public administrations are torn by disagreement in values. Therefore, EU regulation is needed to reinforce the existing standards and take measures to counter hate speech and counter-act against hate speech and hate crime. The study – on the basis of a cross-country comparison conducted – proposes concrete, enforceable and systematic soft and hard law measures to counter hate speech and hate crimes EU-wide efficiently.

1. INTRODUCTION

Proving the interconnectedness of values enshrined in Article 2 of the Treaty on the European Union (TEU),¹ such as the rule of law, democracy, fundamental rights including the protection of minorities, hate speech and hate crimes threaten individual rights, social groups, and public peace and public order equally. They effect individuals' human dignity, private lives, or in cases of violent bias crimes, their life and limb. They prevent sensible democratic dialogue through accelerating social tensions and polarisation, and therefore they are detrimental to societies, and to democracy as a whole. Discrimination and hatred erode solidarity which is a cornerstone of European integration. The incited negative emotions fuel arbitrariness, and abuse of rights, which endanger the rule of law. No society is intact from the signs of hatred, but it depends primarily on the social measures that are applied to deal with this basic human instinct, whether it gets tamed or dispersed and strengthened.

Parallel with the worldwide decline concerning the trinity of the rule of law, democracy and fundamental rights during the past couple of years,² states not only seem to fail in addressing societal hatred, but some of them are instigating it. As the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has put it, political rhetoric, especially nationalist populist ideologies pose a threat to equality by fuelling discrimination and intolerance.³ Already last year, before the election to the European Parliament (EP) in May 2019, Members of the European Parliament (MEPs) felt the need to adopt a resolution on neo-fascist violence in Europe. It condemned "hate crime, hate speech and scapegoating by politicians and public officials as they directly normalise and reinforce hatred and violence in society."⁴ This is a problem that has already been there in pre-pandemic times, but has been aggravated by and became more visible during the Covid-19 pandemic.⁵

1.1. Covid-19 and the spread of hatred

This study was written partially during the outbreak of Covid-19 in the spring 2020. States derogated from constitutional checks, and limited rights and freedoms of their citizens, residents and foreigners. In this climate hostile towards democracy, dangerous with respect to the rule of law, human rights are also more prone to be infringed. A pandemic does not turn state agents and societies into human rights violators, but it shows more clearly their true colours, i.e. pre-existing problems and social tensions.

¹ Carrera, S., Guild, E., Hernanz, N., *The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU: Towards an EU Copenhagen Mechanism*, CEPS, Brussels, 2013.

² "More countries declined than improved in overall rule of law performance for a third year in a row, continuing a negative slide toward weakening and stagnating rule of law around the world," available at <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>. For the entire World Justice Project Rule of Law Index 2020, available at https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

³ United Nations (UN), General Assembly (2018), Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/73/305, 6 August 2018.

⁴ European Parliament, European Parliament Resolution of 25 October 2018 on the rise of neo-fascist violence in Europe (2018/2869(RSP)), P8_TA(2018)0428, Strasbourg, 2018. Interestingly the Hungarian translation mentions "scapegoating of" and not "scapegoating by" politicians. The present study relies on the English versions of EU texts.

⁵ Bárd, P., Carrera, S., 'Showing true illiberal colours – Rule of law vs Orbán's pandemic politics', *CEPS Policy Insights* 2020-10, April 2020, CEPS, Brussels, pp. 1-17.

Covid-19 is no exception. Not only did it take human lives, but it reinforced existing problems, and hit harder on otherwise vulnerable minorities.

Scapegoating during epidemics is nothing new. Historically medical doctors and nurses were blamed for being incapable of stopping the plague. Xenophobia and racial prejudice have been associated with infectious disease outbreaks in Europe and in Asia in the 1500s, when each affected country blamed their neighbouring countries or enemies for their outbreak.⁶ It is hard to accept, and fundamentally questions people's belief in a just world⁷ that there are a fair number of diseases the origins of which are untraceable, and against which scientists cannot find the cure. Conflicting pieces of scientific evidence are a characteristic of the post-modern world, but the insecurity arising from them coupled with information classified or withheld by states invites the virulence of rumours and, fake news, which cumulatively offer a fertile ground for scapegoating. Covid-19 exacerbated hatred, which spread globally It gave rise to fantastic conspiracy theories about the responsibility of Jewish, Chinese, or American elites, and created new scapegoats such as the elderly or the sick.

From among the traditionally protected groups, the Jewish community should be mentioned first. During the medieval plague, pogroms were organized, based on the conspiracy theory that the disease was deliberately spread by Jews through well poisoning. Mirroring the absurd allegations of the middle ages, in 2020 conspiracy theories mushroomed about how Jews invented or spread the virus for financial interests. Demonstrations the main objective of which was supposedly protesting against government measures to take control of the pandemic, were abused by German radicals to display anti-Semitism, or their support for neo-Nazi ideology.⁸

People who were taken for having an Asian background were blamed for the breaking out of the pandemic and for spreading the virus.

Box 1: Racial hatred spreading during the Covid-19 pandemic

Several teenagers in Lukow, Poland attacked, threw garbage, and spit at a Vietnamese woman, while shouting racist slurs connecting the victim's origin to the virus. A famous Chinese chef living in Wrocław, Poland was also attacked.⁹ A person of Malaysian origin in Tallinn, Estonia was shouted at and blamed for bringing the virus into the country. She was scapegoated despite the fact that she did not endanger anyone, quite to the contrary, she was wearing a mask for her and the community's protection.¹⁰

⁶ Ng, E., 'The Pandemic of Hate is Giving COVID-19 a Helping Hand. Editorial', *Am. J. Trop. Med. Hyg.*, 102(6), 2020, pp. 1158–1159

⁷ Lerner, M. J., & Miller, D. T., 'Just world research and the attribution process: Looking back and ahead', *Psychological Bulletin*, 85(5), 1978, pp. 1030–1051.

⁸ Williamson, H., *In Germany, Anti-Semitism Creeps into Covid-19 Protests. Attacks Against Jews, Jewish Institutions Rose 13 Percent Last Year*, Human Rights Watch, 19 May 2020. Available at <https://www.hrw.org/news/2020/05/19/germany-anti-semitism-creeps-covid-19-protests>.

⁹ The European Network Against Racism (ENAR) collects data on the impact of COVID-19 on racialised group, along the following categories: healthcare, protective measures during work, access to basic services police brutality, racist speech and racist violence. Interactive map, available at <https://www.enar-eu.org/COVID-19-impact-on-racialised-communities-interactive-EU-wide-map>. This case was reported to ENAR by the NEVER AGAIN Association.

¹⁰ European Network Against Racism (ENAR), *Impact of COVID-19 on racialised communities: Key findings*, 2020. Available at https://www.enar-eu.org/IMG/pdf/key_findings_of_the_map.pdf.

Ethnic hatred also rose high in the face of Covid-19. . The Anti-Discrimination Office of Styria in Austria for example reported that according to their anti-hate speech app "Ban Hate", there was an increase in posts blaming refugees for the spread of the virus.¹¹

The LGBTI+ community was also disproportionately affected by the pandemic. Beyond many other non-hate speech or hate crime related problems, there is an increased likelihood for them to be harassed and assaulted. "Social distancing may be particularly difficult for those who have been rejected by their families, are not out with their families and now forced to be with them the whole time [...] This results in increased mental health difficulties among young LGBTI+ people who are closeted, or who are out and forced to quarantine with often unaccepting or abusive family members."¹²

As reported by the Finnish Association of People with Physical Disabilities, persons with disabilities were blamed in the context of the outbreak, for taking health care resources that are needed to tackle the pandemic.¹³

Minorities anyway suffering more from the pandemics than the average person, due to poverty, overcrowded accommodation, the lack of hygienic conditions, lack of equipment for distance learning, or domestic violence – such as ethnic minorities, prisoners, migrants, refugees, and also women – were further victimised by hate speech and crimes. It is often claimed that the Roma community presents a health threat, given their life style and lack of discipline.¹⁴

¹¹ 'Coronavirus pandemic in the EU -Fundamental rights implications', *European Union Agency for Fundamental Rights*, Bulletin 1, Publications Office of the European Union, Luxembourg,2020, pp.33. Available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf, 2020, 33.

¹² ILGA Europe, COVID-19 and specific impact on LGBTI people and what authorities should be doing to mitigate impact, 2020. Available at https://www.ilga-europe.org/sites/default/files/COVID19%20_Impact%20LGBTI%20people.pdf, 1.

¹³ 'Coronavirus pandemic in the EU -Fundamental rights implications', *European Union Agency for Fundamental Rights*, Bulletin 1, Publications Office of the European Union, Luxembourg,2020, pp.33. Available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf

¹⁴ Holt E., 'COVID-19 lockdown of Roma settlements in Slovakia', *The Lancet Infectious Diseases* (2020) 20 (6), 2020, pp. 659.

Box 2: Selective confinement on the basis of ethnicity

Beyond hate speech targeting the Roma, the Council of Europe Commissioner for Human Rights was informed about politicians and some media referring to the Roma community as a threat to public health. These allegations were reinforced by some state measures: in order to overcome alleged health risks authorities have set up police checkpoints – and at one place even a fence – around Roma settlements with the objective to enforce quarantine measures. As the Commissioner underlined, confinement rules “cannot be selectively applied to people, neither fully nor partially, on the basis of ethnicity.”¹⁵ Such discriminatory measures may well fuel prejudices against vulnerable communities.

The ripple effect of speech is clearly visible at the times of the pandemic, where Romas are reporting to be assaulted, spat on, punched in the face or have been thrown garbage at them, while the perpetrators are shouting racist insults.¹⁶ The UN Special Rapporteur on minority issues, Fernand de Varennes, found the rise in hate speech against the Roma, and the blame put on them for allegedly not respecting protection measures, alarming.¹⁷ Only a combination of health, security, humanitarian, social, educational, and economic measures, coupled with an efficient fight against disinformation,¹⁸ but also a dissuasive countering of hate speech and a consequent enforcement of penal measures in relation to hate crimes can bring the necessary changes.

Journalists reporting on Covid-19 did not only have to face arrest or charges, restrictions on access to information and censorship, but they were also subjected to verbal and physical attacks while reporting about the pandemic.¹⁹

Other groups typically less subjected to bias crimes, also got blamed and victimised due to the health crisis.

The Latvian Centre for Human Rights reported a rise in hate speech against Latvians repatriating from abroad.²⁰ Another tension concerned the residents in the capital and the rest of Hungary. Whereas hostility had been present before the pandemic, the political narrative suggesting that the virus is spreading more in the capital, and people living in Budapest are undisciplined and are contaminating

¹⁵ Commissioner for Human Rights, Governments must ensure equal protection and care for Roma and Travellers during the COVID-19 crisis, 7 April 2020. Available at <https://www.coe.int/en/web/commissioner/-/governments-must-ensure-equal-protection-and-care-for-roma-and-travellers-during-the-covid-19-crisis>.

¹⁶ European Network Against Racism (ENAR), Impact of COVID-19 on racialised communities: Key findings, 2020. Available at https://www.enar-eu.org/IMG/pdf/key_findings_of_the_map.pdf.

¹⁷ International Roma Day, UN expert urges political action to promote equality and non-discrimination during the COVID-19 crisis, 8 April 2020. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25782&LangID=E>. See also the UN’s Covid-19 guidance, <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

¹⁸ Open Society Foundations, Roma in the COVID-19 Crisis. An early warning from six EU member states. Available at <https://www.opensocietyfoundations.org/publications/roma-in-the-covid-19-crisis>. For a good practice see https://www.report-it.org.uk/covid_19_and_racis_hate_crime.

¹⁹ The International Press Institute reported 25 cases of attacks against journalists until the end of July 2020. International Press Institute, Resources to support quality journalism and defend the free flow of news during the coronavirus pandemic. Available at <https://ipi.media/covid19-media-freedom-monitoring/>.

²⁰ ‘Coronavirus pandemic in the EU –Fundamental rights implications’, *European Union Agency for Fundamental Rights*, Bulletin 1, Publications Office of the European Union, Luxembourg, 2020, pp.35. Available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf.

others when escaping to their weekend houses – mainly at the lake Balaton – contributed to the deepening of these tensions,

Box 3: Novel groups victimised during the Covid-19 pandemic

In Hungary persons under curfew have to stick a large red sign on their door in a rather stigmatising manner saying that entry is prohibited, except for official persons.²¹ A young man fell victim to hate crime by his neighbours, who wanted to beat him, and chased him away from his residence. Police intervention was needed to secure the house or the duration of the mandatory quarantine.²²

The hashtag movement #JeNeSuisPasUnVirus (I am not a virus)²³ reportedly starting in France and spreading across Europe and beyond, reflects the increasing frustration of minority citizens, who are the victims of the proliferation of prejudice, hate speech and bias crimes. Law should counteract these phenomena. A humanistic and rational state policy is capable of curbing revenge, cruelty, brutal instincts, and aggression resulting from a lack of knowledge. On a side note, it is also the right approach towards fighting the pandemic itself: "Clear, accessible, consistent, correct, and constant guidance, with officials leading by example, is essential [...]. This not only has the effect of tackling the spread of misinformation on the virus, but is also critical to ensure legal certainty and guarantee the transparency of government action. [...] transparent government action, paired with a strong sense of personal social responsibility based on clear and consistent expert advice, can lead to the most positive outcomes on average."²⁴ But at the minimum the state must not supply ammunition to intolerance.

1.2. Conceptual clarity and terminology

1.2.1. Hate speech

In this study, specific meanings are attached to both hate speech and hate crimes, and the two are clearly distinguished. The term "hate speech" is used inclusively according to its everyday meaning, covering all expressions and manifestations of racism, xenophobia, homophobia, etc., and for distinction of the legal category "criminal hate speech" or specifically "incitement to hatred" is used.

Hate speech has been a steadily growing social problem since the new millennium. The past five years have brought yet new challenges in Europe: a migration crisis, political upheaval due to populism, disinformation and the pandemic – processes which increase feelings of insecurity, and make the future unforeseeable. Populism is not only part of the problem but also a symptom.

²¹ The whole text reads: "A person under epidemiological surveillance lives here. ENTRY IS PROHIBITED. Only official persons are allowed to enter. The person under observation must not leave the apartment without official permission before the lockdown ends. This warning sheet may only be removed with the permission of the authority. Should the above rules be violated, criminal proceedings will be started."

²² Szekszárdon elszabadultak az indulatok egy házi karantén miatt [Emotions were running high in Szekszárd due to a home curfew], Infostart, 35 March 2020, available at <https://infostart.hu/belfold/2020/03/25/szekszardon-elszabadultak-az-indulatok-egy-hazi-karanten-miatt>.

²³ Coste, V., Amiel, S., Coronavirus: France faces 'epidemic' of anti-Asian racism, 3 February 2020. available at <https://www.euronews.com/2020/02/03/coronavirus-france-faces-epidemic-of-anti-asian-racism>.

²⁴ Grogan, J., States of Emergency, Verfassungsblog, 26 May 2020, available at <https://verfassungsblog.de/states-of-emergency/>