

Abstract

Europe must define the concept and legal (criminal and constitutional) definition of »hate speech«. It must do it precisely enough. The definition must be uniform, consistent, valid in all EU Member States and in the Council of Europe Member States. The definition must be written down in the legal (constitutional and criminal) literature and in criminal legislation. Finally, the definition must be formulated by the European Constitutional Courts, and last but not least by the ECHR. Or, in other words, if European jurisprudence and the jurisprudence of the Constitutional Courts in Europe have not yet done so, the ECHR must do so. The descriptive definition provided by the judgments of the ECtHR, for example in the case of *Vejdeland v. Sweden* (2012), can only be a guideline. But that is not enough. A recent judgment of the ECtHR in *Carl Jóhann Lilliendahl v. Iceland* (11th of June 2020) directly addressed »homophobic statements« as »hate speech«. But this is still not enough. Europe needs a doctrinal definition that is clear, that can be implemented without major conceptual and semantic problems in criminal law and that is directly applicable to concrete cases, due to its clarity and specificity. By bringing together the ECtHR case-law on freedom of expression of the last five years and with the understanding of this concept, which is descriptively derived from the existing and valid Criminal Code of the Republic of Slovenia, but also and subordinately from the understanding of this concept by the European Commission, the author offers an alternative proposal for a comprehensive and common European definition of »hate speech.«

Keywords: freedom of expression; hate speech; ECtHR; Criminal Code of the Republic of Slovenia, Article 297; an alternative proposal for a common and comprehensive European definition of »hate speech«.