Ēriks Treļs
Dr. iur.; State Police College; Rīga Stradiņš University
Dr. iur.; Valsts policijas koledža; Rīgas Stradiņa universitāte
E-mail / e-pasts: eriks.trels@gmail.com
ORCID: 0000-0002-5039-6686

Ivans Jānis Mihailovs
Dr. iur.; Riga Stradiņš University; Latvian Academy of Culture
Dr. iur.; Rīgas Stradiņa universitāte; Latvijas Kultūras akadēmija
E-mail / e-pasts: ivans.mihailovs@inbox.lv
ORCID: 0000-0002-6399-9144

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Hate Speech vs. Freedom of Expression: The Situation in Latvia

Naida runa vs. vārda brīvība: situācija Latvijā

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Summary The Constitution (*Satversme*) of the Republic of Latvia protects fundamental human rights and freedoms, including freedom of expression, minority rights, and the prohibition of discrimination. The invasion of Ukraine by the Russian Federation and the hostilities in its territory contributed to the activities of persons disloyal to the Republic of Latvia, including the dissemination of hostile content both in the internet environment and in public places during unauthorized events.

The authors of this article seek to determine the boundary between the right to freedom of expression on one hand and the prevention of the dissemination of hateful content on the other.

Kopsavilkums Latvijas Republikas Satversme aizsargā cilvēktiesības un pamatbrīvības, tostarp vārda brīvību, mazākumtautību tiesības un aizliedz diskrimināciju. Krievijas Federācijas iebrukums Ukrainā un bruņotā agresija tās teritorijā veicināja Latvijas Republikai nelojālu personu aktivitātes, tostarp naidīga satura izplatīšanu interneta vidē un publiskās vietās nesankcionētu pasākumu laikā.

Šī raksta autori pēta nosacījumus, kas nosaka robežu starp vārda brīvību, no vienas puses, un naidīga satura izplatīšanas novēršanu, no otras.

Introduction

Freedom of expression is a fundamental value of a democratic and rule-of-law-based state. It enables every individual to freely express their thoughts and opinions. Moreover, it encompasses all forms of communicative activity, including literary and artistic creativity, protest, and criticism. However, freedom of expression also entails responsibility for what is *communicated*. While it plays a crucial role in fostering societal diversity and critical thinking, it may also contribute to the spread of hatred, discrimination, violence, disinformation, and social division, as well as pose a threat to various cultural development processes.

This underscores the need to balance freedom of expression with the rights of others and broader societal interests – such as dignity, privacy, security, and equality. Consequently, the question of the boundaries between freedom of expression and hate speech becomes particularly pressing.

The Constitution (*Satversme*) of the Republic of Latvia states: "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views [..]" (Amendments to the Constitution of the Republic of Latvia 1998a: Section 100). Section 89 of the *Satversme* states that "the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia". The aforementioned allows for the use of interpretation to determine the limits of freedom of expression by referring to international agreements such as the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and others.

Section 116 of the *Satversme* states that a person's rights may be restricted in certain cases indicated by law, in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Restrictions on freedom of expression are also outlined in Article 10(2) of the Convention (Council of Europe 1950) and in Articles 19(3) and 20 of the International Covenant on Civil and Political Rights (United Nations 1966).

The Constitutional Court of the Republic of Latvia rightly states that freedom of expression is not absolute and does not mean permissiveness (The Constitutional Court of the Republic of Latvia 2003b). The *Satversme* and the international instruments on human rights allow restrictions on the right. The State may determine restrictions on freedom of expression in cases when the right of persons to freedom of expression may affect the rights of other persons, as well as in cases when freedom of expression creates a clear and direct threat to society (The Constitutional

Court of the Republic of Latvia 2003a). The prevention of incitement to national, ethnic, religious, and other forms of hatred is one of the objectives achieved by restricting freedom of expression.

In general, the diverse forms of freedom of expression – including, in particular, the expression of personal beliefs or opinions – are not subject to sanction, even when such expression is unpopular, sharply critical, or shocking. However, when such expression infringes upon the rights of others or contains a direct incitement to discrimination, violence, hatred, or other unlawful actions, it becomes subject to legal sanctions.

The terms "hate crimes" and "hate speech" are not legally established in the Republic of Latvia. In order to recognize the criminal offense as a hate crime in the sense of the Latvian regulatory framework, it is necessary to establish two criteria: (a) the composition of the criminal offense is included in the Criminal Law; (b) a motive of hatred against a particular protected group of society can be stated in the criminal offense (The Ombudsman of the Republic of Latvia 2016). The terms "hate crime" and "hate speech" are most commonly mentioned in the context of offenses outlined in Section 74.[1] "Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime" of the Criminal Law, Section 78 "Triggering of National, Ethnic and Racial Hatred" of the Criminal Law and Section 150 "Incitement of Social Hatred and Enmity" of the Criminal Law.

Statistical data indicate that the issue of hate crimes became particularly relevant after the invasion of Ukrainian territory by the armed forces of the Russian Federation in 2022. Analyzing the statistical data on the criminal offenses that were recorded until 1 January 2026 it should be stated that within ten years (from 1 January 2016 to 31 December 2025) 135 criminal proceedings were initiated according to Section 74.[1] "Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime" of the Criminal Law (in 2016 – 0, in 2017 – 0, in 2018 – 2, in 2019 – 2, in 2020 – 1, in 2021 – 1, in 2022 – 28, in 2023 – 14, in 2024 – 56, in 2025 – 31) and 125 criminal proceedings according to Section 78 "Triggering of National, Ethnic and Racial Hatred" of the Criminal Law (in 2016 – 6, in 2017 – 1, in 2018 – 7, in 2019 – 5, in 2020 – 5, in 2021 – 4, in 2022 – 32, in 2023 – 10, in 2024 – 29, in 2025 – 26). The issue of inciting social hostility and hatred, primarily against members of the LGBTI community, remains relevant. During the period under review, 43 criminal proceedings were initiated according to Section 150 "Incitement of Social Hatred and Enmity" of the Criminal Law (in 2016 – 5, in 2017 – 2, in 2018 – 0, in 2019 – 2, in 2020 – 11, in 2021 – 6, in 2022 – 6, in 2023 – 1, in 2024 – 4, in 2025 – 6).

The article aims to offer an interdisciplinary analysis of the legal regulation of freedom of expression, including its limitations and liability for hate speech and

offensive content, with attention to national cultural specificities and a case study of its application in Latvia.

The article employs general research methods recognized both in general scientific methodology and in legal scholarship, such as comparison and generalization, identification of causal relationships, as well as analysis and synthesis.

Interaction Between National and International Regulations in Combating Hate Speech

The regulation of human rights ensures freedom of expression for all individuals within the territory of the Republic of Latvia. Moreover, national and international regulations explicitly stipulate that freedom of expression may be restricted and outline several principles for such restrictions.

First, there is a requirement that such a restriction must be established by law. Second, the restriction must be objectively necessary. Third, it must be proportionate. Fourth, the restriction must be aimed at achieving one of the following objectives: (1) Protection of human rights; (2) Protection of national (state) security; (3) Protection of the territorial integrity of the state; (4) Protection of the democratic state system; (5) Protection of public security; (6) Maintenance of public order; (7) Prevention of incitement to national, ethnic, religious, or other hatred; (8) Prevention of violations of the prohibition of discrimination; (9) Prevention of violence; (10) Protection of public welfare; (11) Protection of public health; (12) Protection of morality and ethics; (13) Protection of individuals' reputations and rights; (14) Prevention of disclosure of confidential information; (15) Prevention of war propaganda; (16) Prevention of other legal violations.

It is important to recognize that these restrictions, while necessary in specific contexts, must be balanced against the broader cultural and creative system in which expression takes place. The regulation of hate speech cannot be divorced from the interpretive and symbolic nature of artistic and journalistic expression. Legislators and law enforcement authorities must distinguish between incitement to hatred and the critical function of authors, artists, and public intellectuals who challenge societal norms and address sensitive historical or social issues through creative means (Isaacs et al. 2026, this issue; Skulte et al. 2026, this issue).

Due to the current geopolitical situation, special importance is placed on preventing war propaganda, which includes calls for aggressive war, as well as the public glorification, denial, justification, and gross trivialization of war crimes. Additionally, it encompasses the prevention of incitement to national, ethnic, racial, religious, or other forms of hatred.

Section 74.[1] of the Criminal Law provides for liability for the public glorification, denial, acquittal, or gross trivialization of genocide, crimes against humanity, crimes against peace, or war crimes (The Parliament of the Republic of Latvia 14 December 2023 [1998b]). The next section most frequently mentioned in connection with hate crimes, Section 78 provides for liability for a person who commits acts aimed at inciting national, ethnic, or religious hatred or enmity (The Parliament of the Republic of Latvia 17 December 2020 [1998b]).

The next section analyzed in the context of this article, Section 150 provides for liability for a person who commits an act oriented towards inciting hatred or enmity depending on the gender, age, disability of a person or any other characteristics, if substantial harm has been caused thereby (The Parliament of the Republic of Latvia 17 December 2020 [1998b]). It is indicated in the study of the Ombudsman of the Republic of Latvia that the groups of persons protected by Section 150 of the Criminal Law, against whom it is most often possible to state actions aimed at incitement of social hatred and enmity, are LGBTI people, asylum seekers, refugees, homeless people, and other vulnerable groups (The Ombudsman of the Republic of Latvia 2016). In addition to the social groups mentioned, other social groups are also protected by the current regulatory framework, with the reservation that they are endangered and the need for their protection is stipulated in the regulatory acts.

Section 48(1) "Aggravating Circumstances" paragraph 14 of the Criminal Law gives the possibility to apply the term "hate crimes" also to other sections of the Criminal Law: The following may be considered to be aggravating circumstances [..] the criminal offense was committed due to racist, national, ethnic, or religious motives or due to social hatred.

Latvian scientists note that, when qualifying a criminal offense, only those forms of a person's mental attitude that are provided for in the Criminal Law must be taken into account (Krastiņš, Liholaja 2024). In accordance with the provisions of the Criminal Law, the theory of criminal law distinguishes the following elements of the subjective side of a criminal offense: guilt in the form of intent or negligence, motive, and purpose (intent).

Motive and purpose influence the formation of intent, its direction toward a goal, and the realization of that intent. Every expression of will, including a criminal one, is influenced by motives that facilitate the achievement of a specific criminal goal. Therefore, there is a connection between motive and purpose. A motive is the active force that directs a person's actions toward a particular goal. It is a person's internal stimulus, drive, or inclination that directs the offender's will toward committing a criminal offense (Krastiņš, Liholaja 2024).

The authors have previously concluded that, in the territory of the Republic of Latvia, hate crimes are primarily manifested in the form of hate speech, including the posting of offensive comments and publications on the Internet, using automated data processing systems to carry out actions aimed at inciting hatred or enmity (Treļs 2022). They further stated that "in order to strengthen the clear identification of hate crimes and responsibility for them, it would be useful to amend the Criminal Law by combining Article 78 with Article 150, so that all actions aimed at inciting hatred in the territory of Latvia would be punishable equally, within the framework of one single sanction" (Treļs, Mihailovs 2024). The authors have repeatedly proposed improvements to the regulatory framework, both by combining the two articles into one and by suggesting the creation of a new article, along with a specific draft version of it. It should be noted that, unfortunately, the situation regarding this article has not changed, and the problems identified in previous articles have not been resolved.

The problems in the work of Latvian law enforcement agencies are also highlighted by the European Court of Human Rights, whose rulings will be analyzed in the next chapter.

The Case Law of the European Court of Human Rights: Balancing Protection and Freedom of Expression

The case law of the ECHR (European Court of Human Rights) affirms the positive obligations of States to safeguard fundamental rights. In *Opuz v. Turkey*, the Court emphasized the necessity of preventive state measures to protect individuals from potential violations of their rights (ECHR 2009: para. 153).

In *Nachova and Others v. Bulgaria*, the Court held that racial violence poses a serious threat to human dignity and requires heightened vigilance by state authorities to foster a pluralistic society in which diversity is regarded as a source of enrichment (ECHR 2005: para. 145). Similarly, in *Yotova v. Bulgaria*, the Court ruled that a failure to investigate potential discriminatory motives behind a crime constitutes a procedural violation of the Convention (ECHR 2012b: para. 104).

Despite the established case law of the ECHR and its calls to strengthen the capacity of law enforcement agencies in combating hate crimes, similar offenses continue to occur both in European countries and worldwide. Moreover, the actions of law enforcement officials do not always comply with the requirements of the legal framework. Unfortunately, Latvia is no exception, as similar conclusions can be found in the ECHR case *Hanovs v. Latvia*. The Court concludes that the respondent State failed in its obligation "to provide adequate protection for the applicant's

dignity and private life by ensuring the effective prosecution of the attack against him, while taking into account the hate motive behind the attack. [..] Failure to address such incidents can normalize hostility towards LGBTI individuals, perpetuate a culture of intolerance and discrimination and encourage further acts of a similar nature" (ECHR 2024: para. 53). The Court also noted that "where an applicant has an arguable claim of being a victim of verbal assaults and physical threats motivated by discriminatory attitudes, only effective criminal-law mechanisms can ensure adequate protection and serve as a deterrent" (ECHR 2024: para. 32).

With respect to sexual orientation, the Court in *Vejdeland and Others v. Sweden* clarified that freedom of expression does not protect statements inciting hatred against sexual minorities, equating such discrimination to that based on race or ethnicity (ECHR 2012a: para. 55).

In cases involving a tension between freedom of expression and other protected interests, the ECHR consistently holds that protection applies not only to neutral or popular views. In *Handyside v. The United Kingdom*, the Court affirmed that freedom of expression extends to ideas that may offend, shock, or disturb, provided that any restrictions are proportionate and justified (ECHR 2015a: para. 49). In *Lehideux and Isorni v. France*, the Court emphasized that even controversial historical topics fall within the scope of public debate protected by Article 10 (ECHR 1998).

Similar conclusions have been reached by the Ombudsman of the Republic of Latvia when assessing the situation regarding the exhibition of a controversial artwork at the Mark Rothko Art Centre in Daugavpils: People react differently to works of art, and this is normal and consistent with the purpose of art – to challenge individuals to think independently, to analyze, and to evaluate. The role of art is not only to produce material that is pleasing to the senses, but also to promote independent thought and to teach people to think beyond conventional frameworks (The Ombudsman of the Republic of Latvia 2023).

On the other hand, the Court requires clear limits when it comes to expressions of hatred. In *Erbakan v. Turkey*, it emphasized that a democratic society must sanction speech that incites or justifies hatred (ECHR 2006: para. 56). The Court applies two approaches in such cases: under Article 10(2), which allows justified restrictions, and under Article 17, which excludes expressions aimed at undermining the Convention's core values. In *Seurot v. France*, the Court held that speech incompatible with the principles of the Convention does not enjoy protection under Article 10 (ECHR 2004).

In *M'Bala M'Bala v. France*, the Court found that a performance denying the Holocaust and promoting antisemitic views could not be considered satire and fell outside the scope of protected expression (ECHR 2015b: para. 39). Likewise, in *Schimanek v.*

Austria, the ECHR upheld a domestic ban on the dissemination of National Socialist ideology, taking into account the country's historical context (ECHR 2000).

The Court has also emphasized that public officials, particularly politicians, must tolerate a higher degree of public criticism. In *Castells v. Spain*, the Court held that the limits of permissible criticism are wider in relation to the government than to private individuals (ECHR 1992: para. 46).

Particular attention has been given to the status of law enforcement bodies. In *Savva Terentyev v. Russia*, the Court stated that the police, as a public institution, cannot be regarded as a vulnerable social group subjected to systemic discrimination and therefore does not require heightened protection against criticism (ECHR 2018: para. 76). The Court found that the applicant's criminal conviction for a hyperbolic and satirical online comment targeting the police violated Article 10 of the Convention. In Latvia, every person, including public officials, has the right to file a civil lawsuit in cases where they have been personally offended.

At the same time, the ECHR may restrict the speech of politicians when it threatens the rights of others. In *Zemmour v. France*, the Court held that interference with the applicant's freedom of expression was justified due to statements inciting religious hatred toward Muslims (ECHR 2022: para. 66).

The Court also protects the right to controversial or radical views, provided there is no incitement to violence. In *Gündüz v. Turkey*, the ECHR found a violation of Article 10 in the criminal conviction of an individual who criticized democracy and advocated for Sharia law, since the statements did not constitute incitement to hatred (ECHR 2003: para. 53). A similar conclusion was reached in *Tagiyev and Huseynov v. Azerbaijan*, where the Court stressed the need for domestic courts to conduct a careful assessment of the content of the statements before restricting them in the name of protecting religious beliefs (ECHR 2019: para. 46).

Thus, the ECHR's jurisprudence demonstrates a consistent effort to strike a fair balance between freedom of expression and the prevention of its misuse for purposes incompatible with the values of democracy, human dignity, and equality enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Role of the National Courts

Several years ago, the European Commission against Racism and Intolerance concluded that Latvia sanctions ordered for breaches of hate crimes "remain too lenient" (The European Commission against Racism and Intolerance 2012: 12). It must be noted that the situation has changed in recent years.

The practice of national courts indicates that the issues under analysis are directly influenced by the geopolitical situation in the world, developments at the local level, and the historical evolution of events. For example, on September 26, 2024, the Riga City Court found /person A/ and /person B/ guilty of committing a criminal offense as stipulated in Section 78(2) of the Criminal Law (The Riga City Court, 2024b). /Person A/ and /person B/, acting as a group and harboring hostile attitudes toward Ukraine and its nationals, sought to provoke hostile comments from users of the social networking site /name/ against Ukrainian nationals and, in doing so, incite national hatred against them. To achieve this, they repeatedly engaged in actions involving the desecration of the Ukrainian national flag. All actions were recorded on video. The court found /person A/ and /person B/ guilty of committing the criminal offense stipulated in Section 78(2) of the Criminal Law and sentenced /person A/ to 170 hours of community service and /person B/ to 160 hours of community service.

In another case, on August 29, 2024, the Vidzeme District Court found /person C/ guilty of committing criminal offenses as stipulated in Section 74.[1](2) and Section 78(2) of the Criminal Law (The Vidzeme District Court, 2024). The court found that person C/, aware that the specific online social network /name/ could be accessed by an unlimited number of users, deliberately posted five video recordings in the Russian language. In these videos, /person C/ spread hostile, aggressive, and derogatory statements directed against Ukrainians and Latvians. For these actions, the court sentenced /person C/ to 3 years of imprisonment, with the sentence being conditional, subject to a probation period of 3 years.

In two cases, individuals expressed public praise and justification for crimes against humanity, crimes against peace, and war crimes while in a public place. In the first case, on March 28, 2024, at approximately 5:40 a.m., /person D/, under the influence of alcohol and aware that they were in a public place and that their words would be heard by both municipal police officers and any passersby or individuals present, loudly shouted several phrases in Russian, supporting the war carried out by the Russian Federation and publicly praising and justifying it (The Riga City Court 2024c). The court found /person D/ guilty and sentenced them to temporary imprisonment for 2 months.

In the second case, /person E/ went even further: on February 17, 2024, at approximately 11:11 p.m., while at /address/, in a fit of aggression and under the influence of alcohol, with the intention of attacking an inspector of the Riga City Municipality Police Central Division, they struck him once on the left side of his face with their hand and then kicked him once between the legs (The Riga City Court 2024a). Before the attack, /person E/, aware that they were in a public place and

that their words would be heard by both police officers and any passerby, shouted in an aggressive tone in Russian, expressing support for the war carried out by the Russian Federation. The content expressed by /person E/ justified and praised the actions of the Russian Federation in Ukraine, deeming them correct and necessary even in the Republic of Latvia. The court found /person E/ guilty of committing a serious crime, as stipulated in Section 269(1) "Assault upon a Representative of Public Authority or Other Public Official" and in Section 74.[1](1) "Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime" of the Criminal Law, and imposed a final sentence for both offenses – a fine in the amount of 10,500 euros.

Analyzing the current case law, it must be noted that the imposed penalties correspond to the nature of the offense. However, it is essential to emphasize that in cases related to freedom of expression, especially in matters touching on cultural identity, historical interpretation, and political critique, national courts must exercise nuanced judgment. The challenge lies in distinguishing between speech that incites violence or hatred, and speech that may be provocative or uncomfortable but remains within the bounds of legitimate artistic, academic, or journalistic expression. In all the described cases, the court took into account the current international situation, the historical context of the offense, and determined that the actions carried out went beyond the limits of freedom of expression.

Assessing the situation in the Republic of Latvia, it can be concluded that persons who have committed hate crimes as defined by the Criminal Law are being held criminally liable. Analyzing the case law of the national courts as a whole, the courts' practice demonstrates its ability to strike a balance between an individual's right to freedom of expression and the prohibition of abuse of rights, which prevents individuals from invoking freedom of expression to spread ideas that contradict the values of the *Satversme*.

Conclusions and Recommendations

The authors put forward the following theses in the form of conclusions and proposals:

1. The national regulatory framework defines the boundaries of freedom of expression in each country. When establishing these boundaries, states should also take into account the international regulatory framework. In this context, the boundaries of expression are not solely legal constructs, but also cultural signifiers that reflect the historical and creative identity of a society. The ways in which a society chooses to regulate expression reveal its underlying values concerning art, dissent, and the collective voice of authors and creators.

2. Latvia's regulatory framework and the country's international obligations allow for the determination of the objectives for restricting freedom of expression. Specific restrictions may be aimed at achieving one or multiple objectives (see Chapter 1).

Importantly, the application of these objectives must not stifle the creative voices that challenge dominant narratives. Art and literature have historically served as vehicles for societal critique and cultural introspection. Therefore, while restrictions may be justified, they must not be so expansive as to suppress cultural expression, minority perspectives, or innovative forms of authorship.

3. Analyzing Latvia's criminal law framework, the authors observe that disinformation (including the dissemination of fake news), propaganda, and agitation directed against the Latvian state and people have become a serious national security threat in the current international context. However, these aspects are not specifically highlighted in the Criminal Law.

4. The ECHR has identified shortcomings in the work of Latvian law enforcement agencies regarding the initiation and investigation of cases related to actions aimed at inciting hatred and discord. In the case of *Hanovs v. Latvia*, the ECHR stated that a state's failure to address hate crimes can normalize hostile attitudes toward LGBTI persons, reinforce a culture of intolerance and discrimination, and encourage further similar actions. In the authors' view, this reasoning should also apply to other social groups that may require protection, and Latvian law enforcement officials should be guided accordingly.

5. In addition to legal and institutional measures, it is essential to recognize the role of culture and creative expression as a form of soft power in combating intolerance and protecting democratic values. Literature, visual arts, cinema, theater, and digital media shape public consciousness and can either reinforce stereotypes or challenge them. Therefore, the state should actively support cultural and educational initiatives that promote critical thinking, historical awareness, and diversity of perspectives. Protecting freedom of expression must include safeguarding the rights of authors and creators whose work stimulates public debate and reflects the plurality of social experience.

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