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**Annotation.** The United Nations Universal Declaration of Human Rights was declared by the UN General Assembly with its resolution No. 217 (A) dated 10 December 1948. The importance of the declaration in terms of hate crimes is that all states have the obligation to protect together in order to prevent the violation of rights such as "life, personal security, freedom of thought and conscience" stipulated in the declaration through hate crimes. In this respect, states have to take some measures to protect these rights, one of the most effective of which is to prescribe a certain method of punishment. It should be noted that the Declaration is not binding. This article comprehensively organizes the list of human rights and plays a criterion role in terms of other binding international and regional agreements in the example of UN discourse.

**Key words:** hate speech, freedom of expression, UN discourse, human rights, declaration.

Before including the concept of hate speech, it should be noted that freedom of expression regulated in Article 10 of the ECHR is not an absolute right. It is possible that some restrictions may be imposed on this right.

The most important of the restrictions imposed on expressions is hate speech. We can say that there are two reasons behind the restrictions placed on hate speech within the scope of freedom of expression. The first of these is the interests of human rights. The other is the protection of minority groups. First, people's rights must be protected and conflicts must be eliminated. Since minorities cannot protect their rights and are at a disadvantage in society, states must take the necessary measures in this regard. In an environment where different identities exist, the state is obliged to ensure that everyone's identity is respected and some of the freedoms can be limited.<sup>1</sup>

In a democratic society it is necessary to sanction or prevent any expression that encourages, spreads, defends or excuses intolerance, insofar as it is proportionate to that legitimate aim.<sup>2</sup>

At the basis of hate speech, there are other issues such as prejudices, racism, fear or hostility towards foreigners, attitudes towards any party, discriminatory behavior towards people in society, creating fearful thoughts about a religion or denigrating it.<sup>3</sup> For example, the feeling of homophobia against homosexuals will help us understand the issue.

Homophobia began to be used in the early 1970s to show hatred, unrealistic fear and intolerance against homosexuals and homosexuality. This is intended to create certain prejudices

<sup>1</sup> Ulaş Karan, "Nefret İçerikli İfadeler, İfade Özgürlüğü ve Uluslararası Hukuk", Nefret Söylemi ve Nefret Suçları, Ed. Yasemin İnceoğlu, İstanbul, Ayrıntı Yayınları, 2012, s. 82-83

<sup>2</sup> Sürek v. Turkey, App. No: 26682/95, No 1, Grand Chamber, Judgment of 08 July 1998, par. 62

<sup>3</sup> Cengiz Alğan, Levent Şansever, Ulusal Basında Nefret Suçları: 10 yıl 10 örnek, İstanbul, Sosyal Değişim Derneği, 2010, s. 15

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in society about bisexuals, homosexuals, gays and lesbians and to keep them away from social issues.<sup>4</sup> As we will consider here, we see that there is a certain prejudice underlying hate speech.

By the expression of hate, we can generally understand hurtful, aggressive and hurtful expressions in society. These expressions can be expressed with words as well as symbols. Many states limit hate speech in their regulations.

Hate speech or expressions can generally be directed at any race, gender, religious affiliation or sexual orientation. When we look at the ECHR jurisprudence, we see that fighting against all forms of race-based discrimination is a vital issue.<sup>5</sup>

There is no generally accepted definition of hate speech. This is because freedom of expression covers a wide range of areas, including scientific, artistic, political, critical, and personal and many others.<sup>6</sup>

So far, only national and regional regulations on hate speech and hate crime have been adopted. Among these, we can mention the Recommendation 97(20) of the European Committee of Ministers. In this resolution, hate speech is defined as follows:

*"It covers any form of expression that spreads, incites, encourages or legitimizes racial hatred, xenophobia, anti-Semitism or any form of hatred based on intolerance, including religious intolerance, which manifests itself in the form of aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of migrant origin".<sup>7</sup>*

As the recommendation suggests, all forms of offensive expression should be prevented by states. The aim is to protect people from a particular group, migrants or minorities and to prevent them from being discriminated against in society.

The Recommendation recommends that the governments of member states:

1. Take appropriate measures to combat hate speech based on the principles contained in this recommendation
2. Ensure that such measures form part of a comprehensive approach to the phenomenon that also targets social, economic, political, cultural and other root causes
3. Where they have not already done so, to sign, ratify and effectively implement in domestic law the United Nations Convention on the Elimination of All Forms of Racial Discrimination, in accordance with Resolution (68) 30 of the Committee of Ministers on measures to be taken against incitement to racial, national and religious hatred
4. Review domestic legislation and practice to ensure that it complies with the principles set out in the annex to this recommendation<sup>8</sup>

<sup>4</sup> Pınar Öztürk, Yeliz Kındap, "Lezbiyenlerde İçselleştirilmiş Homofobi Ölçeğinin ve Psikometri Özelliklerinin İncelenmesi", Türk Psikoloji Yazıları, Aralık 2011, 14(28), s. 25, (Çevrimiçi), <http://www.turkpsikolojiyazilari.com/PDF/TPY/28/03.pdf> , 05.10.2014

<sup>5</sup> Jersild v. Denmark, App. No. 15890/89, Grand Chamber, Judgment of 23 April 1994, par. 30

<sup>6</sup> Elif Çelik, "İfade Özgürlüğü Nefret Söyleminin Neresinde?", İnönü Üniversitesi Hukuk Fakültesi Dergisi, C. IV, S. 2, Malatya, İnönü Üniversitesi, 2013, s. 206

<sup>7</sup> Of the Committee of Ministers to Member States on "Hate Speech", Recommendation R(97) 20, (Çevrimiçi), [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1997\)020&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1997)020&expmem_EN.asp) , 15.07.2015

<sup>8</sup> Cinsel Yönelim veya Cinsiyet Kimliği Temelli Ayrımcılıkla Mücadele, Avrupa Konseyi standartları, (Çevrimiçi),

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When we try to give a short definition, hate speech means the use of abusive, insulting and offensive expressions against people of a certain race, religion or ethnic origin.

As a result of today's developments and the new case law of the ECtHR, hate speech is being addressed in a way that goes beyond this definition, and concepts such as sexual orientation, asylum-seeking, refugeeism, disability, and expressions on the internet are beginning to be included in the concept of hate speech.<sup>9</sup>

Some expressions developed in the ECHR jurisprudence and accepted as expressions of hate may not be accepted as expressions of hate in the laws of the states themselves. In this respect, the Court's classification of hate speech is not binding on the national classification.<sup>10</sup>

The framework of the concept of hate speech is related to which expressions are within this scope or against whom these expressions can be directed.

We can demonstrate the necessity of determining the concept of hate speech as follows:

- a. In terms of the area, person or specific groups that hate speech targets and needs to be protected
- b. In order to protect freedom of expression from restrictions based on the argument of hate speech.<sup>11</sup>

We can show the framework of the concept of hate speech as follows:

- a. Hate speech is directed against a specific group, for example minorities or immigrant groups. In such cases, people of this group are not treated like other people and always face discrimination. This causes unpleasant feelings towards them.

- b. Directing hate speech towards a specific religious group, for example, any hatred towards Muslims in a Christian society, any provocative situation, or discrimination between believers and non-believers. Such situations are generally common in European countries. Muslims, especially those living in European countries, are psychologically shaken and harmed because of their religious beliefs.

- c. Hate speech is asserted in terms of "ethnic nationalism and centrism" and leads to discrimination among people.<sup>12</sup>

With the use of hate speech, the issue of alienation of people in a certain society arises. When we say the other, it should be understood that one social unity oppresses the other and takes control of it. In this case, the others are either a certain group of minorities or a certain group of marginals.<sup>13</sup>

In the annex to the decision numbered R (97) 20 of the European Committee of Ministers, the responsibilities of the states in terms of hate speech are determined as follows:

[http://www.kaosgildernegei.org/resim/yayin/dl/avrupa\\_konseyi\\_ayrimcilikla\\_mucadele\\_standartlari.pdf](http://www.kaosgildernegei.org/resim/yayin/dl/avrupa_konseyi_ayrimcilikla_mucadele_standartlari.pdf) , s. 66, 10.07.2015

<sup>9</sup> Henry Steiner, Philip Alston, *International Human Rights in Context*, Oxford University Press, 2. Edition, 2000, s. 749

<sup>10</sup> Çelik, Elif İ f a d e Özgürlüğü Nefret Söyleminin Neresinde? İnönü Üniversitesi Hukuk Fakültesi Dergisi, C. IV, S. 2, Malatya, İnönü Üniversitesi Matbaası, 2013, s. 205-240

<sup>11</sup> Çelik, Elif İ f a d e Özgürlüğü Nefret Söyleminin Neresinde? İnönü Üniversitesi Hukuk Fakültesi Dergisi, C. IV, S. 2, Malatya, İnönü Üniversitesi Matbaası, 2013, s. 205-240

<sup>12</sup> Waldron, Jeremy *The Harm In Hate Speech*, Harvard University Press, 2012.

<sup>13</sup> Tezcan Durna, "Azınlıklar, Ötekiler ve Medya Üzerine", İLEF Dergisi, 1(1), Bahar, 2014, s. 151, (Çevrimiçi), <http://ilef.ankara.edu.tr/wp-content/uploads/Tezcan-Durna.pdf> , 24.10.2014



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*“Governments of the member states, official authorities and public institutions at national, regional and local levels, as well as officials, shall not be responsible for the use of racist hatred, xenophobia, anti-Semitism, as hate speech, They have a special responsibility to refrain from statements, particularly to the media, that could reasonably be understood as speech likely to have the effect of legitimizing, propagating or encouraging hatred based on intolerance or other forms of discrimination. Such statements should be prohibited and publicly repudiated whenever they occur.”<sup>14</sup>”*

In our opinion, it is not right to place such an obligation solely on states. Citizens of the state, as well as states, should have a role in preventing hate speech. However, if the state prohibits hate speech and citizens are not tolerant in return, the regulation will remain dysfunctional.

We said that prejudice lies at the basis of hate speech. Prejudice can be expressed as thinking negatively about others. These negative thoughts can occur without any justification. As a result of prejudices, targeted people suffer losses. The most important of these harms is psychological pressure. Although this pressure does not directly cause violence, it activates people's feelings of fear and makes them feel anxious and insecure.<sup>15</sup>

We can consider the prejudiced actions that cause hate crimes in five different categories:

a. Anti-foreignerism – In this case, a person can only think positively about the people of his own country and be prejudiced against the people of other countries. For example, the people of today's Russian Federation always have anti-foreign sentiment towards people from other nations, especially Azerbaijani people.

b. To avoid, to stay away from - To stay away from a certain group of people or individuals due to the group or society to which they belong. Although the bias here is very strong, it does not have a directly damaging effect.

c. Discrimination – The inability to enjoy one's political, housing, and educational rights due to strong existing prejudice.

d. Physical attack - Person's color, religion, national origin, etc. It may be attacked for various reasons. Today, white people feel hatred towards black people because their color is black. We encounter this situation especially on football fields.

e. Destruction – People commit lynchings and genocide. What Nazi Germany did against the Jews is an example of this.<sup>16</sup>

This Convention of the United Nations rejects all forms of racism and shows that all states have a responsibility to prevent hate speech. There are some decisions made by the committee within the scope of freedom of expression.

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<sup>14</sup> Avrupa Konseyi Standartları.

<sup>15</sup> Andrew Altman, “Liberalism and Campus Hate Speech, A Philopischal Examination”, Ethics. Vol. 103, No. 2, 1993, p. 306, (Çevrimiçi), <http://www.jstor.org/stable/2381524?seq=5> , 27.11.2014

<sup>16</sup> Hakan Ataman, “Nefret Suçlarını Farklı Yaklaşımlar Çerçevesinden Ele Almak: Etik, Sosyo-Politik ve Bir İnsan Hakları Problemi Olarak Nefret Suçları”, Nefret Söylemi ve Nefret Suçları, Ed. Yasemin İnceoğlu, İstanbul, Ayrıntı Yayınları, 2012, s. 63.