



Social Media – Hate Speech – Hate Crime

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Abstract: This article examines the issue of hate speech on social media from the perspective of the security system of the Czech Republic and its tools designed to provide internal security and the necessary legislative amendments to allow law enforcement agencies to address this issue effectively. In the current approach to cyberspace, social networks are becoming a vehicle for the persistent spreading of hate-based ideologies, and this needs to be prevented.

Keywords: social network, security system, hate speech, criminal activity, extremism, terrorism, prevention.

Introduction

Nowadays, it is not uncommon for social media to include manifestations of hatred, misleading information, and elements of extremism or terrorism. We already observe that political and religious extremist groups use social media and networks to promote their ideology, recruit new members, demonstrate their power, and shock society with videos of wars as something commonplace and unavoidable. Society is already able to act against such use of social networks and its negative consequences. There are many ways to do so. First of all, social media or network users can react and point out inappropriate behavior in their circle of friends and state that they do not wish to be part of similar posts. They can condemn such behavior or remove such profiles from their circle of friends. We may call this approach naive, but we will assume that we are in a democratic society built on a collective agreement between the citizens, which implies a certain moral responsibility to those around us. Another way is to report the problematic profile to the social media or network administrator, who will assess whether the level of violence or hatred in the post is so significant that intervention in the form of blocking and deleting the account is needed. In extreme cases,

it is possible to decide on legal steps, namely to report inappropriate comments, profiles, or groups to law enforcement agencies (*orgány činné v trestním řízení – OČTŘ*), whose duty is to assess whether the conditions that classify an act as a crime have been fulfilled and whether it is necessary to follow the appropriate steps according to the Criminal Procedure Code.

Before paying attention to repressive steps, it is necessary to focus on the tools available in a democracy and its security system within the Czech Republic to successfully combat this phenomenon in the real world and the cyberworld.

Tools of the Security System of the Czech Republic Designed to Deal with Hate Speech on the Internet

A democratic state is governed by its constitution and the Charter of Fundamental Rights and Freedoms that guarantee freedom of expression. It must have adequate tools in place to guarantee such rights and, at the same time, prevent undesirable displays and trespasses against the law in their exercise. The issue of hate speech or the deliberate publication of misleading news can be explored from several angles: from the point of view of the internal security of the state, the ethical education of society, the professionalism of the media, or the security forces of the state.

The top of the security system is formed by the government, executive departments, and the Chamber of Deputies of the Czech Republic. The permanent working body of the Government of the Czech Republic for resolving issues in the field of security is the State Security Council (*Bezpečnostní rada státu – BRS*), the existence of which is enshrined in the Constitutional Act No. 110/1998 Coll., *On the Security of the Czech Republic*. It can be one of the strategic tools for addressing new threats present in cyberspace in the form of objectionable content. According to the statute,¹ the BRS has six permanent working bodies tasked to submit strategic documents and materials addressing the security of the state (i.e., new security threats). The security of cyberspace is examined at three basic levels: cyber defense, cyber security, and cybercrime. Institutionally, cybersecurity is based on effective and coordinated activities of the armed forces, the relevant office for cyber security (National Cyber and Information Security Agency; *Národní úřad pro kybernetickou a informační bezpečnost – NÚKIB*), security forces (especially the Police of the Czech Republic), and intelligence services, but also the private sector. Due to this possible division of the issue, in solving the problem of hate speech in cyberspace, three BRS committees come into consideration: The Committee on Internal Security (falling under the responsibility of the Ministry of the Interior), the Committee on Cyber Security (under the responsibility of the National Cyber and the Information Security Agency), and the Committee on Intelligence under the Prime Minister. So far, all efforts to address

¹ Government of the Czech Republic, <https://www.vlada.cz/assets/ppov/brs/Statut-BRS-rijen-2018.pdf>.

hateful content or misleading messages in cyberspace have been primarily submitted to the Committee on Internal Security, which is the correct procedure according to the Competence Law.²

The existence and danger of hate speech on the internet were reported as early as 1997 by the “Report on the Progress of State Authorities in Prosecuting Crimes Motivated by Racism and Xenophobia” (“Zpráva o postupu státních orgánů při postihu trestných činů motivovaných rasismem a xenofobií”) and subsequently with greater intensity by each new annual report on extremism and terrorism issued by the Ministry of the Interior. From the content of the individual reports, it is possible to conclude that the internet environment and subsequently the environment of social media and networks become not only a venue for spreading hateful ideas or extremist ideologies but also an environment of hate speech and direct attacks on people because of their color, religion, or merely differing opinions. For this reason, more emphasis is placed on monitoring events on the internet related to extremism and terrorism, which can be read in the respective annual reports by the police authorities, intelligence services, and academics.

The issue of hate crime and hate speech is addressed in a document prepared by Prof. Miroslav Mareš in 2011 in an analysis entitled “*Problematika Hate Crime*” (“The Issue of Hate Crime”). This analysis mentioned the commitment

to take action against all forms of expression, including in the media and on the internet, which may reasonably be construed as bringing the result of inciting, spreading, or supporting discrimination against lesbian, gay, bisexual, and transgender people, and other forms of discrimination. Such displays should be prohibited and publicly condemned whenever they occur. All measures should respect the fundamental rights to freedom of expression in accordance with Article 10 of the Convention and the judicature of the Court of Justice (Committee of Ministers, Council of Europe 2010).³

This is precisely the effort to address the issue of hate speech on the internet, including on social networks, at the international level.

The so-called “National Security Audit” (“Audit národní bezpečnosti”), which addresses the phenomenon of hateful content on the internet in several chapters, can undoubtedly be considered an important material of the Ministry of the Interior in relation to dealing with the issue. The issue of combating the spread of hateful and radical content on the internet and social media is addressed in

² Act No. 2/1969 Coll., “On the Establishment of Ministries and Other Central Bodies of the State Administration of the Czech Republic, Which Designates Individual Central Bodies and Regulates Their Competence,” Public administration portal, Ministry of Interior, <https://portal.gov.cz/app/zakony/zakonPar.jsppage=0&idBiblio=31338&fulltext=&nr=2~2F1969&part=&name=&rpp=15#local-content>.

³ “Problematika Hate Crimes,” Home page of the Ministry of the Interior of the Czech Republic Ministerstvo vnitra České republiky, accessed July 20, 2020, www.mvcr.cz/clanek/problematika-hate-crimes.aspx.

the chapter on terrorist threats, on extremist threats, both right-wing (e.g., hatred of certain minority groups) and left-wing (class hatred, hatred of ideological opponents, and hatred of state power and the whole democratic system), threats consisting of disinformation campaigns that use the spread of hatred against certain groups of the population, as well as state authorities, or the direction of the foreign policy of the Czech Republic to achieve military, political, or economic objectives. The audit also describes cyber terrorism as a real security threat when the state has an obligation, *inter alia*, to defend itself against activities in cyberspace in the form of incitement to hatred or the creation and spread of propaganda. The cyber environment concerning terrorism must be understood as a means or an instrument for achieving the attacker's political, religious, or other ambitions.⁴ The National Security Audit, as important security and strategic document, was approved by Government Resolution No. 1125 of December 14, 2016, and passed the commenting procedure of the Committee for Internal Security and subsequently the State Security Council. The government resolution instructed the Minister of the Interior to draw up an Action Plan for the National Security Audit and submit it to the government by April 30, 2017. The action plan was approved by the Government's Resolution No. 407 of May 22, 2017. At the same time, the managers of the individual measures of the Action Plan were instructed to ensure their implementation. For example, the Minister of the Interior was instructed to submit an evaluation of the implementation of the Action Plan to the State Security Council by April 30 of each year.⁵ The State Security Council took note of the evaluation of the implementation of the National Security Audit Action Plan for 2019 by a resolution of June 8, 2020. The material contained a clear summary of the status of tasks assigned to individual managers, which also applies to the issue of hate speech.⁶

As mentioned above, the State Security Council or some of its committees must directly pay attention to the issue of hate speech. In addition to the Committee on Internal Security (*Výbor pro vnitřní bezpečnost – VVB*), which is a key and main platform for this issue, other committees may address this phenomenon as well if it is relevant to them and fulfills the purpose for which they were established.

⁴ "Audit národní bezpečnosti – Bezpečnostní aspekty migrace – Aktuální informace o migraci," Ministry of the Interior of the Czech Republic, accessed July 21, 2020, <https://www.mvcr.cz/migrace/clanek/audit-narodni-bezpecnosti-bezpecnostni-aspekty-migrace.aspx>.

⁵ Resolution of the Government of the Czech Republic of December 14, 2016, No. 1125.

⁶ "Bezpečnostní rada státu se zabývala otázkami spojenými s řešením situace v souvislosti s výskytem onemocnění covid-19," Government of the Czech Republic, June 8, 2020, <https://www.vlada.cz/cz/media-centrum/aktualne/bezpecnostni-rada-statu-se-zabyvala-otazkami-spojenymi-s-resenim-situace-v-souvislosti-s-vyskytem-onemocneni-covid-19-181915/>.

Hate speech can also be part of media disinformation campaigns, currently referred to as *fake news*⁷ – false news in social media and networks, often abused by extremists to promote their ideas. Society has long demanded that this phenomenon is also addressed at the political level. It also potentially requires that the relevant authorities comment on individual false campaigns. In addressing this security threat, it is essential to realize that the state and public central administration bodies do not have a monopoly on the truth and cannot comment on media reports in the “this is true, and this is false” way. Before a news item is marked as false, it must be analyzed, and it must be determined which information that makes up the specific “fake news” is to be marked as false. In this respect, democratic society has its own independent media, which verify the reports, criticize them, and then comment on them. Public authorities can only comment on a piece of news if they have enough verified information and if it is within the framework of the issues they manage. Then the citizens will form a particular picture and decide whether they will believe the news or consider it untrue.

Displays of hatred, which is a part of false news or commentaries on social media or networks, can also be part of political campaigns of states, the intention of which is to influence the citizens of the country, state policy, or to divert attention from real problems. The combination of multiple threats to the integrity and unity of the state is a current trend, referred to as a hybrid threat. This term is often used, but defining its content is not that simple:

The definitions of hybrid threats vary, responding to the changing nature of these threats. In general, [a hybrid threat] is a set of different coercive and subversive activities and conventional and unconventional methods (e.g., diplomatic, military, economic and technological) that various state and non-state actors can use in a coordinated way to achieve specific goals without formally declaring war. The aim is usually to exploit the vulnerabilities of the target and to create confusing situations in order to disrupt decision-making processes. *Massive disinformation campaigns and the use of social media for propaganda or for radicalization, recruitment and direct control of supporters* can be tools of these hybrid threats.⁸

To counter hybrid threats, the Ministry of the Interior has set up a so-called Center for Terrorism and Hybrid Threats (*Centrum pro terorismus a hybridní hrozby – CTHH*), whose task is to “address hybrid threats affecting the security of the Czech Republic and at the same time falling within the sphere of the Ministry of the Interior, such as terrorism, attacks on soft targets, security aspects of

⁷ Fake news is *false news*. The term refers to alarming *hoaxes*, false information and misinformation that spreads on the internet, in the print media and on television. People often encounter it for example on social media and networks or in emails. Source: *nav-čec*, July 23, 2020, <https://www.vodafone.cz/uzitecne-odkazy/slovník-pojmu/fake-news/>.

⁸ “Hybridní hrozby,” Ministry of Health, last updated July 20, 2020, www.mzcr.cz/hybridni-hrozby.

migration, *extremism*, mass events, disturbance of public order and various criminal activity, or security aspects of *disinformation campaigns related to the internal security of the state*. The center was established on the basis of the recommendations of the National Security Audit approved by the government.”⁹ CTHH was established by the decision of the Minister of the Interior Milan Chovanec, as of January 1, 2017, based on the National Security Audit and following the 2015 Security Strategy of the Czech Republic.¹⁰

The State Security Council also responded by establishing *an expert working group for hybrid threats*. The group includes representatives of the State Security Council, the intelligence services of the Czech Republic, the National Security Office, the Police of the Czech Republic, the Czech National Bank, the State Office for Nuclear Safety, and the Government Commissioner for Cyber Security. This expert working group was established by the Resolution of the State Security Council No. 9 of March 8, 2017, obligating all its members to cooperate in exchanging information on hybrid threats.¹¹

As described above, the state has many tools at its disposal to address hate speech, even at the highest governmental level. It is up to members of the government or the State Security Council to decide whether they find hate speech of such concern as to address it by adopting adequate countermeasures or leave the response to lower-level institutions such as law enforcement agencies dealing with cybercrime. On the other hand, it is necessary to realize that lower levels have an obligation to submit suggestions and proposals to address new security threats. The task of the manager for internal security is, therefore, to monitor and evaluate information from their units and develop counter-strategies. It is also important to realize that addressing the issue of hate speech by organized extremist groups, for example, is the responsibility of the Ministry of the Interior, along with other security forces that may also submit conceptual and strategic materials to committees of the State Security Council.

Current Legislation Addressing Hate Speech on Social Media

We do not find a definition of hate speech in the Czech legal system:

It is usually understood as a type of offensive speech that incites, encourages or spreads hatred towards a certain group of persons or an individual and is often provoked by prejudices and stereotypes. The reason for hatred can be,

⁹ “Úvodní strana – Terorismus a měkké cíle,” Ministry of the Interior of the Czech Republic, accessed July 24, 2020, <https://www.mvcr.cz/cthh/>.

¹⁰ “Bezpečnostní strategie České republiky,” Government of the Czech Republic, 2015, accessed October 9, 2020, <https://www.vlada.cz/assets/ppov/brs/dokumenty/bezpecnostni-strategie-2015.pdf>.

¹¹ “Bezpečnostní rada státu schválila ustavení odborné pracovní skupiny pro hybridní hrozby,” Government of the Czech Republic, March 8, 2017 www.vlada.cz/cz/media-centrum/aktualne/bezpecnostni-rada-statu-schvalila-ustaveni-odborne-pracovni-skupiny-pro-hybridni-hrozby-154226/.

for example, a person's skin color, nationality, ethnicity, gender, sexual orientation or identity, religion, faith, worldview, age, disability, etc. Hate speech can be included in a broader category of hate violence, which includes not only verbal but also physical attacks motivated by hatred against certain vulnerable groups of the population.¹²

Hate speech on the internet can primarily be dealt with as a misdemeanor within the scope of one of the laws dealing with misdemeanors:

In this regard, it may be a misdemeanor against civil cohabitation which a person commits by causing harm to another for their affiliation with a national minority, for their ethnic origin, race, color, sex, sexual orientation, language, faith, religion, age, disability, for their political or other beliefs, membership or activity in political parties or political movements, trade unions or other associations, for their social origin, property, gender, health or marital status.¹³

A fine of up to CZK 20,000 can be imposed for this offense.¹⁴

If hateful behavior on social media and networks exceeds a certain threshold, it needs to be assessed by law enforcement authorities. They then assess whether the features of the substance of the crime have been met. Which criminal offenses are concerned can largely be derived from the Ombudsman's 2020 research entitled "Hate Speech on the internet" ("Nenávistné projevy na internetu"). In this material, hate crime is professionally described as a so-called tri-clinic system,

where the prejudicial motive is part of the basic factual nature of some criminal offenses, the perpetrator of these offenses is liable to imprisonment for up to three years. Furthermore, for selected crimes, prejudicial motivation appears as a circumstance that is a condition of the use of a higher mandatory sentencing, the so-called qualified factual basis. Hateful motive is then also included in the Criminal Code as a so-called general aggravating circumstance, which applies if the factual nature of a specific crime does not contain a special aggravating circumstance (qualified factual substance). A general aggravating circumstance is taken into account when deciding on the amount of the sentence, which is then imposed within the basic mandatory sentencing.¹⁵

In relation to hate speech and displays of hatred and crime, the main focus is on the most frequently committed crimes; in this respect, it is based on the analysis of the Ombudsman, prepared since 2016 and, due to its expertise, has a high

¹² A. Šabatová, "Nenávistné projevy na internetu a rozhodování českých soudů," No. 47/2019/DIS/PŽ, No.: KVOP-2720/2020 (Výzkum veřejného ochránce práv, 2020).

¹³ The provisions of § 7 para. 3 let. b) of the Act on Certain Misdemeanors.

¹⁴ According to § 7 para. 4 let. b) of the Act on Certain Misdemeanors.

¹⁵ Ombudsman, "Nenávistné projevy na internetu a rozhodování českých soudů: Výzkum veřejného ochránce práv 2020," July 25, 2020, https://www.ochrance.cz/fileadmin/user_upload/ESO/47-2019-DIS-PZ-Vyzkumna_zprava.pdf.

informative character usable for bodies active in criminal proceedings, working with final court decisions. Attention will be paid to the selected sphere of the most frequent crimes. This is not an absolutely exhaustive list of all crimes that might be committed in connection with hate speech on the internet.

The final part of the analysis focused on the facts of the crimes and the penalties imposed. The most common factual basis (see Figure 1) was incitement to hatred against a group of persons or restriction of their rights and freedoms (Section 356 of the Criminal Code) – this occurred in almost half of the court decisions analyzed. Roughly one-fifth contained the fact of defamation of a nation, race, ethnic or other groups (§ 355); the following items included violence against a group of inhabitants and against an individual (§ 352) or expression of sympathy for a movement aiming to suppress human rights and freedoms (§ 404). According to the Ombudsman’s analysis, other facts occurred less frequently.

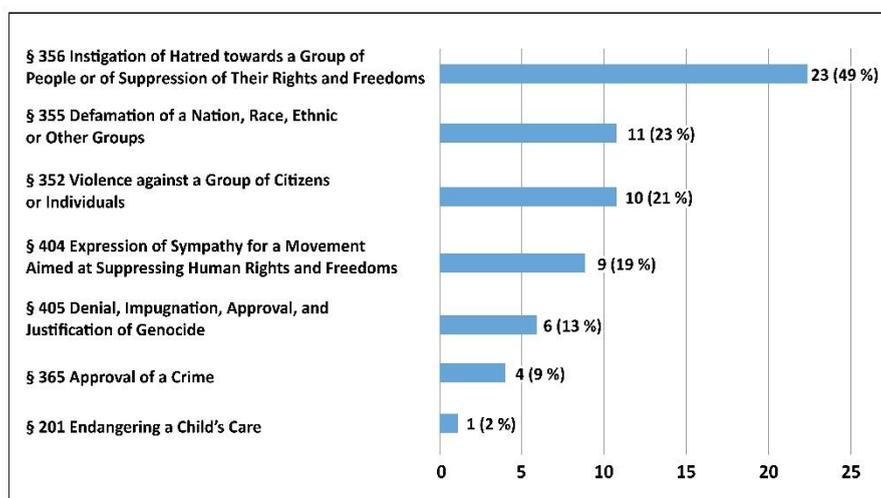


Figure 1: Criminal Code’s Articles Invoked in Hate Crime.¹⁶

The following are crimes related to hate speech on the internet according to Act No. 40/2009 Coll., Criminal Code (current legislation) and the most frequently committed crimes according to the Ombudsman’s analysis, based on court decisions issued in the period from 2016 to June 2019. There were a total of 47 cases involving hate speech on the internet. The following offenses have been committed through an accessible computer network against a group of people (citizens) or individuals due to their actual or perceived race, ethnic

¹⁶ Šabatová, A. Nenávistné projevy na internetu a rozhodování českých soudů, Výzkum veřejného ochránce práv 2020, No.: 47/2019/DIS/PŽ, No.: KVOP-2720/2020, p. 23.

group, nationality, political beliefs, religion, or because they are actually or allegedly non-religious.

§ 352 Violence Against a Group of Citizens and Against an Individual

- Threatening a group of citizens with death, injury, or large-scale damage.

§ 355 Defamation of a Nation, Race, Ethnic Group, or Other Group of Persons

- Public defamation of a nation, its language, a race or ethnic group, or a group of persons.

§ 356 Incitement to Hatred Against a Group of Persons or Restriction of Their Rights and Freedoms

- *Public incitement to hatred* against a nation, race, ethnic group, religion, class, or another group of persons or restrictions against the rights and freedoms of their members

§ 365 Approval of a Crime

- *Public approval* of a crime or public praise of the perpetrator;
- Rewarding or compensating the offender or a person close to them for the punishment;
- Organizing a collection for such reward or compensation.

§ 403 Foundation, Support, and Promotion of a Movement Aimed at Suppressing Human Rights and Freedoms

- The nature of this crime is establishing, supporting, or promoting a movement that evidently aims to suppress human rights and freedoms or which proclaims racial, ethnic, national, religious, or class resentment or resentment against another group of persons.

Although the above-mentioned factual nature of the crime is not often mentioned in the individual statistics, it is one of the most important, as it is linked to the spread of extremist ideologies, which are closely related to hate speech in both the physical and the virtual world.

§ 404 Expression of Sympathy for a Movement Aiming at Suppression of Human Rights and Freedoms

- *Public expression of sympathy* for the movement referred to in Section 403.

§ 405 Denying, Questioning, Approving, and Justifying Genocide

- *Publicly denying, questioning, approving, or justifying* Nazi, Communist, or other genocide or Nazi, Communist, or other crimes against humanity or war crimes or crimes against peace.

The above-mentioned criminal legislation covers a large part of criminal activity in cyberspace related to hate crimes and displays of hatred committed by individuals or entire groups. Demonstrating the offender's intention to support

or promote a movement that no longer exists can be problematic. This relates to movements that have historically supported or promoted radical ideas aimed at suppressing human rights and freedoms.

The essence of the problem is that according to § 403 and § 404, it is not possible to prosecute actions that would support or promote a movement that no longer exists:

Suppose the characteristics of criminal offenses under § 403 and § 404 are to be fulfilled. In that case, the existence of such a specific movement must be proven by assessing the presented evidence, and the actions of the accused must be in some form of the objective aspect of the offenses directed towards it.¹⁷

This also applies to the sale of calendars and cups depicting Nazi symbols that are symbols of a currently non-existent movement. According to amendments to the criminal law and experience, a significant percentage of acts in which the perpetrator promotes Nazi, Communist, or other crimes against humanity, war crimes, or crimes against peace could be prosecuted under Section 405, where the law includes consideration not currently valid.

In the case of hate speech on the internet, there is a need for law enforcement agencies to gather quality evidence and its subsequent analysis because the evidence might be accompanied by symbols of extremist movements aiming to suppress human rights and freedoms.

The current arrangements are set through the resolution of the Supreme Court of the Czech Republic of June 12, 2019, No. 8 Tdo 314 / 2019-43. In the case of a symbol used by a movement aiming to suppress human rights and freedoms, the Supreme Court's resolution primarily refers to the already cited conclusions of the Criminal Division of the Supreme Court of the Czech Republic Tpjn 302/2005. It further states: "If the public prosecutor does not meet their obligation to prove the existence of such a movement already in the preparatory proceedings, then not all legal features of the crime are fulfilled."¹⁸ This applies not only to the duty of the public prosecutor but also to the police authority that initiated the criminal proceedings. The criminal proceedings should commence when the police authority is convinced that it has sufficient evidence at its disposal to indicate that all the elements of the criminal offense exist.

In the opinion of the Supreme Court, it is clear that if the characteristics of criminal offenses under § 403 and § 404 of the Criminal Code are to be fulfilled, *the existence of such a specific movement must be proven on the basis of presented evidence* and the conduct of the accused in some of the forms of the objective aspect of the above-mentioned criminal offenses. Law enforcement

¹⁷ "Povinnost prokázat existenci hnutí směřujícího k potlačení práv a svobod člověka – část I," *Právní prostor*, February 4, 2020, www.pravniprostor.cz/clanky/trestni-pravo/povinnost-prokazat-existenci-hnuti-smerujiciho-k-potlaceni-prav-a-svobod-cloveka.

¹⁸ Resolution of the Supreme Court of June 12, 2019, No. 8 Tdo 314/2019-43.

agencies involved in the criminal proceedings should follow the opinion of the Supreme Court, i.e., the fact that the file refers to another decision of the Supreme Court in another case in which the existence of the movement was found is not sufficient to prove its current existence. The existence of a particular extremist movement, whether left-wing or right-wing, must be proven by direct evidence and must also come from the perpetrator, who in turn must be shown to know the essence of the propagated movement, at least in general outline. That includes knowledge that the movement was demonstrably aimed at suppressing human rights and freedoms or spreading and promoting racial, ethnic, national, religious, or class hatred or hate against a specific group of people; willingness to support or encourage this movement by their behavior; or understanding that their actions supported or promoted such a movement.

Conversely, it cannot be ruled out that a commonly used symbol will be misused for extremist purposes and, consequently, its normal use will be difficult. An example is the regular *OK* symbol (which is a hand sign used, for example, by divers to confirm that everything is fine); in the past, this happened through hoax¹⁹ campaigns, as the result of which certain media outlets started seeing this gesture as a racist one. This symbol was even added to the list of racist symbols by the American non-profit organization Anti-Defamation League (ADL). This happened in 2017 because of a hoax report on the 4chan website.²⁰ This simple hand gesture, in which the thumb and forefinger touch while the other fingers are outstretched, has been used in Great Britain since the early seventeenth century and most often signifies understanding, consent, approval, or well-being. It gained its supposedly racist symbolism through a false message that first spread on the 4chan portal and other social networks. The new and different meaning thus began to be associated with Neo-Nazi culture. All this is due to a fraud perpetrated by members of the 4chan website who falsely promoted the gesture as a symbol of hatred and claimed that the gesture represented the letters “wp” standing for “white power” (see Figure 2). Unfortunately, in the case of the “okay” gesture, the scam was so successful that the symbol became a popular trolling tactic for right-wing extremists, who often published photos on social media with this symbol. In 2019, the Australian Neo-Nazi Brenton Tarrant used the symbol in a courtroom as a sincere expression of white supremacy after being arrested for the murder of 50 people in a shooting in Christchurch, New Zealand.

¹⁹ The English word ‘hoax’ means: False news, Mystification, Journalistic canard, Fraud, Startle, Fiction, Prank. “Co je to hoax?” *HO@X*, <https://www.hoax.cz/hoax/co-je-to-hoax>.

²⁰ 4chan is an American imageboard, launched on October 1, 2003, which was originally focused on discussions about manga and anime.



Figure 2: Okay Hand Gesture, © 2020 ADL.²¹

Important in assessing these newly created symbols is the context of their use. That is, the person who used them, on what occasion, and in short, if there is a possible subjective aspect. Criminal proceedings should hardly be initiated if a diver uses the above symbol. We might exaggerate and speculate what the procedure would be if the symbol is used by a diver who is demonstrably a right-wing extremist or by a right-wing extremist who has a diver's license. In cases where repressive action against these symbols is being considered, it is necessary to refrain from any speculation and artificial analysis; there is a need to act reasonably and not try to create criminal liability where there is none. In the case of excessive use of extremist symbols on social media and networks, it is necessary to require their participants to maintain a certain Internet culture and ethical behavior. The requirement may come either from groups on social networks or directly from the provider, who has the right to block and subsequently delete accounts showing an extremist and radical background.

The Attitude of Czech Courts to Hate Speech on the Internet

It is clear from the cases already resolved and decided that the courts in the Czech Republic are paying attention to hate speech. Of course, everything also follows from law enforcement agencies' work in this regard. Dealing with hate speech and displays of extremism on the internet is a current priority.

An example is the case of Václav Klestil, to whom the Prague High Court upheld a three-year suspended sentence for approving on the terrorist attack on mosques in Christchurch, New Zealand, on Facebook. The court found him guilty

²¹ Anti-Defamation League (ADL), "Okay Hand Gesture," n.d., accessed March 21, 2021, <https://www.adl.org/education/references/hate-symbols/okay-hand-gesture>.

of supporting and promoting terrorism (Section 312e of the Criminal Code). Thus, the appeal court dismissed Klestil's appeal, according to which the sentence was too severe. The prosecutor in this case even called for a five-year prison term, which means that the law enforcement authorities themselves see these crimes as a high risk to society and, hence, it is in the general interest to punish this type of crime harshly. Klestil was prosecuted and convicted for his statements on the Facebook social network, where he wrote in mid-March 2019 in a commentary under an article in *Hospodářské noviny* about the attack in which 51 people were killed in New Zealand: "Someone finally had the balls to show the way to deal with the Mohammedans. Good job." The article was posted and publicly available on the newspaper's Facebook profile. He thus committed a crime that made him liable for up to fifteen years in prison. However, the first instance courts have so far punished similar conduct with suspended sentences. The court of appeal agreed with such an approach. According to the court of appeal, similar crimes are increasing. "There can be no doubt about the danger of this behavior," said the senate president Zdeněk Sovák. However, in his opinion, the man has lived a proper and decent life so far and regrets his comment. The sentence was thus sufficient as a warning for him. At the same time, the judge drew attention to the growing opinion that the defined punishment of five to 15 years for approving terrorism in print, film, radio, television, or public computer networks did not consider similar verbal comments.²²

It is clear from the above case that the public prosecutor sees a public interest in prosecuting this type of hate speech on the internet. Anyone who engages in the virtual domain, open to the public, must realize they are not communicating their views to their friends at a restaurant table but to the whole world; the supposed anonymity is a mere delusion that breaks down barriers to unethical behavior.

The case of Václav Klestil is by no means exceptional. Criminal courts imposed suspended sentences in other similar cases as well. Leoš Machálek was sentenced on June 11, 2020, by the Prague Municipal Court; Machálek commented under the video depicting the slaughter of Muslims in mosques, stating, among other things, that the shooter was a "champion." Machálek defended himself in court by saying that he thought the video captured Allied forces' attack on radical Islamists. Machálek shared his post on the *drsnysvet.cz* server on the morning of March 17, two days after the New Zealand attack. He responded to an article entitled "This Is How the Attacker Wiped Out the New Zealand Mosque." Specifically, he wrote: "Does it sound bad that I would join that? What did that Muslim scum do to Europe? And they are being treated like lambs. They do not keep the laws of the country that welcomed them. In my opinion, he is a champion."²³

²² "Odvolací soud potvrdil další podmínku za schvalování vraždy 51 lidí na Facebooku. Václav Klestil dostal tři roky," *Romea.cz*, August 19, 2020, accessed August 30, 2020, <http://www.romea.cz/cz/zpravodajstvi/domaci/odvolaci-soud-potvrdil-dalsi-podminku-za-schvalovani-vrazdy-51-lidi-na-facebooku.vaclav-klestil-dostal-tri-roky>.

²³ "Odvolací soud potvrdil další podmínku za schvalování vraždy 51 lidí na Facebooku."

On July 8, 2020, Jiří Kantor also received the strictest possible suspended sentence. Kantor shared an article about the shooting on his Facebook profile and commented on it: “As far as I can say, a job well done.” The person of the perpetrator himself is also significant in this case. As the investigation revealed, he was highly likely to be inclined to right-wing extremism, as he had, among other things, “ACAB” and “All cops are bastards” gothic-type tattoos on his body. We only mention this to illustrate the case because Kantor defended himself by stating, among other things, that after reading the article, he thought it was good that the New Zealand police arrested the shooter so quickly and therefore wrote a comment about a well-done job. He meant the work of the police, and he never thought of possibly praising the shooter. However, this claim is refuted by the tattoos on his body.²⁴

Renata Pelikánová also received two-year probation for her hate speech on Facebook. She wrote the following about the shooter in mosques: “Now that is a whizz. I wish that more of us were like him when the governments do nothing about the Muslim swine and even give in to them.” As a part of her post, she reportedly added that she thanked the man for his courage. Pelikánová responded to a post from the Hoj.cz server, which, according to the plaintiff, was followed on Facebook by over 160,000 people. In his opinion, she thus committed the crime of supporting and promoting terrorism, for which she was liable up to fifteen years in prison. Prosecutor Bílý acknowledged that the woman had not been sentenced before and had lived a proper and orderly life; however, due to the mandatory sentencing, he suggested that she be given an unconditional sentence.²⁵

The cases mentioned above eloquently present the current status of social media and networks, where people act thoughtlessly and often inappropriately comment on news articles. Some do so without any ideology. The extremist background of others can be inferred. Indications that a person behaving inappropriately belongs to an extremist group may be an aggravating circumstance, but criminal proceedings as such cannot be based on these indications. In these cases, the subjective aspect of the crime must be clearly stated. This relates not only to its obligatory sign but also, optionally, the motive (reason) and the goal (intention) of the offender. For those extremist crimes where an optional feature is not required, the feature should be considered an aggravating circumstance. However, from the point of view of criminal law, we must also realize that crim-

²⁴ “Za schvalování útoku v Christchurchi dostal Kantor pětiletou podmínku. Hrozilo mu až 15 let,” *iROZHLAS – spolehlivé a rychlé zprávy*, July 8, 2020, accessed August 30, 2020, https://www.irozhlas.cz/zpravy-domov/christchurch-mesita-schvalovani-face-book-kantor_2007081017_pj.

²⁵ “Za schvalování útoku na mešity dostala žena podmínku. Žalobce pro ni žádá vězení,” *Aktuálně.cz*, June 1, 2020, accessed August 30, 2020, <https://zpravy.aktualne.cz/domaci/za-schvalovani-terorismu-dostala-zena-podminku/r~012fa30aa3e211eaa7deac1f6b220ee8/>.

inal liability cannot be built on mere presumptions and artificially created analyses or constructions. Demonstrating the offender’s motive and purpose must be based on proven and substantiated evidence.

In the context of the current COVID 19 pandemic, we can expect a more significant increase in cybercrime. Statistics from 2020 are not yet available, but a look at statistics from previous years demonstrates a rapid growth of cybercrime on the internet (see Figure 3).²⁶

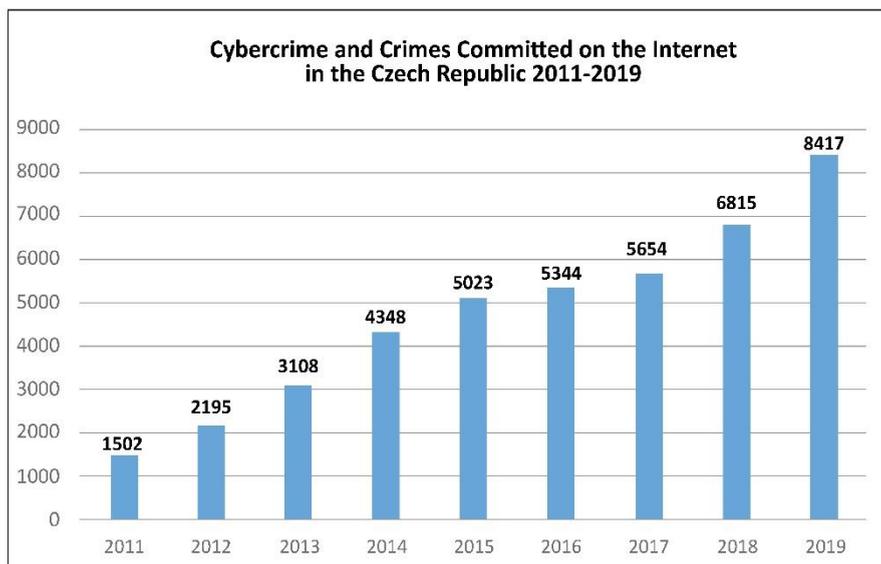


Figure 3: Cybercrime Cases in the Czech Republic, 2011-2019. © 2020 Policie ČR ²⁷

In the coming years, we can expect a further increase in the spread of disinformation campaigns and hate speech from other political directions, and it may not always be just a clash between the ultra-left and the far-right. Social networks and media provide a platform for the clash of political campaigns and hybrid activities initiated by foreign powers, which are supposed to influence society’s opinion on a particular political topic. An example is the political dispute over removing the monument to Marshal Konev in Prague 6 in 2020. The dispute over the removal turned into a political disagreement over the relations with Putin’s Russia, which can be considered negative in the Czech society. However, the gates of history were opened again, and the society began to realize that it

²⁶ “Kyberkriminalita.”

²⁷ “Kyberkriminalita,” Policie České republiky, accessed September 17, 2020, <https://www.policie.cz/clanek/kyberkriminalita.aspx>.

still had not come to terms with the past and demanded the removal of the monument due to the criticism of the former Soviet Union and its policies. However, this situation was abused by Russia during the debate on the abolition of the monument. The case was used to revive Russian propaganda in the Czech lands. Russia is able to seize every opportunity in its disinformation campaigns, and just an insignificant event as the removal of the monument provided the ideal opportunity. The case provoked such a response in the international arena that even Russian Foreign Minister Sergei Lavrov called on representatives of Czech diplomacy to engage in dialogue on the subject, as Russia saw this as a gross violation of the 1993 agreement on friendly relations. The Czech Ministry of Foreign Affairs stated that removing the statue of Konev from the square in Prague 6 does not violate any of the Czech-Russian treaties. The statue was finally removed on April 3, 2020. This is a perfect example of how Russia can use insignificant events to its advantage and provoke international tension.

Conclusion

If we take a critical look at the statistics published by the Police of the Czech Republic (Figure 3), we will find that crime in cyberspace is growing very quickly and that this trend will be maintained in the future. This may be due to the fact that the “virtual space” has become an integral part of our lives in which we spend our free time, educate ourselves, and even try to relax; it represents another space that allows for our self-expression. Therefore, it is important to realize that many socially unhelpful activities can occur in the cyberworld. It is already clear to society that many of the crimes can be fulfilled in cyberspace. The current legislation in the Czech Republic is sufficient to deal with hate speech on the internet. There is a need to use available legislation and quality analysis to combat this phenomenon. It will always depend on the quality of the work of law enforcement agencies. Emphasis must be placed on both operational work and investigations, presenting the police work in front of the court. Well-secured and well-established evidence is fundamental to success in court proceedings.

Through the lenses of law enforcement, cyberspace can be seen as a new domain where various types of crime are committed – from less serious ones such as fraud and theft of bank information to the most serious ones such as terrorism or attacks on critical information infrastructure of the state. The current legislation may be sufficient to prosecute hate speech and other serious crimes on the internet. Yet, it is imperative to continue developing new strategies and work on new international agreements that will make it possible to protect the principles of democracy in the virtual world. The cornerstone in this respect can be the Convention on Cybercrime,²⁸ also known as the Budapest Convention on Cybercrime, which is the first international treaty striving to harmo-

²⁸ 104/2013 Sb. m. s Sdělení Ministerstva zahraničních věcí o sjednání Úmluvy o počítačové kriminalitě.

nize national legislation in the fight against cybercrime. The Czech Republic ratified this convention in 2013. Its strength is that 68 states have already signed to date, of which 65 have ratified it; these include, for example, the USA, Canada, and most member states of the European Union, including the Czech Republic. It is necessary to continue this effort and build a strong society that will continue to carry the idea of democracy, the legacy of which was left to us by the first president of the Czechoslovak Republic, Tomáš Garigue Masaryk.

The future can be in educating the young generation, which needs to be acquainted with the pros and cons of the virtual world. Like in traffic, where it is forbidden to cross the road at a red light, the basics of ethics and decency must also apply in cyberspace, and because some people do not follow social conventions and rules, the basics must also be enforceable by the justice and law enforcement system.

Disclaimer

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