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COMPARISON OF INTERNATIONAL AND DOMESTIC LEGAL MECHANISMS PROTECTING FREEDOM OF POLITICAL EXPRESSION AND ADDRESSING HATE SPEECH ON SOCIAL MEDIA IN ARMENIA

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ANALYSIS

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This study explores how Armenia's legal framework addresses hate speech directed at political opinions on social media. By comparing domestic legislation with international standards like the ICCPR, ECHR, and the Rabat Plan of Action, it highlights key legal shortcomings and offers practical recommendations to strengthen the protection of political expression and democratic discourse.

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Notes on using this publication

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List of Abbreviations

ACFC – Advisory Committee on the Framework Convention for the Protection of National Minorities

CERD – Committee on the Elimination of Racial Discrimination

CoE – Council of Europe

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

HRD – Human Rights Defender (of the Republic of Armenia)

HRC – Human Rights Committee (United Nations)

ICCPR – International Covenant on Civil and Political Rights

ICTR – International Criminal Tribunal for Rwanda

NGO – Non-Governmental Organization

OHCHR – Office of the United Nations High Commissioner for Human Rights

RA – Republic of Armenia

UN – United Nations

UNGA – United Nations General Assembly

1. Executive Summary

This research investigates how the Republic of Armenia regulates hate speech targeting political opinions through social media platforms. The Republic of Armenia has signed essential international human rights agreements including ICCPR and ECHR but its domestic laws remain insufficient for complete implementation of these obligations. Under Article 10 of the ECHR public officials must receive exceptional protection for their speech including the right to face harsh or offensive criticism. The Armenian courts lack proper methods to determine whether speech is political in nature and who the speaker is and how the expression affects society.

The research identifies fundamental structural problems that include unclear legal definitions together with insufficient contextual analysis and excessive dependence on expert opinions and irregular use of international standards including the Rabat Plan of Action. Court decisions base their judgments on Facebook follower numbers instead of performing thorough evaluations of speech distribution and audience participation. The application of ECtHR standards in some acquittals remains proper yet most judicial decisions fail to establish clear legal protections for political dissent.

The research suggests that Armenian law should establish clear definitions for political hate speech and judges and prosecutors need international standards training while social media platforms should receive enhanced cooperation. The Rabat Plan and ECtHR principles need to be incorporated into domestic adjudication processes to distinguish between legitimate political speech and incitement.

The Armenian legal system needs to develop new mechanisms which protect democratic dialogue while preventing truly harmful hate speech. The transformation is essential for Armenia to meet its international commitments and advance its democratic progress.

2. Preface

Social media platforms have transformed free expression dimensions within the digital era. The Velvet Revolution of 2018 and the 2020 Nagorno-Karabakh conflict made political discourse online more intense and enabled grassroots movements in Armenia. These developments led to political hate speech and harassment and disinformation that targeted people based on their beliefs (Benesch, 2012).

The Constitution of Armenia protects freedom of expression through Articles 42 and 48 while being a member of ICCPR and ECHR yet it lacks specific laws against hate speech based on political opinions (Constitution of the Republic of Armenia, 2015; United Nations, 1966, Council of

Europe, 1950). The absence of specific laws regarding political hate speech leaves victims unprotected while creating conditions for both censorship and impunity.

International law requires a balance between protecting freedom of expression and stopping the promotion of hateful content. The digital environment presents unique challenges because platform moderation rules differ from established domestic legal frameworks (OHCHR, 2012; United Nations, 2011).

The 2021 Armenian Criminal Code established Articles 329 and 330 to prohibit incitement to hatred and violence but these provisions do not specifically address online politically motivated hate speech (Criminal Code of Armenia, 2021, art. 329-330). Harmful content continues to lack regulation while critical speech faces the risk of suppression.

This research examines how Armenian la-w addresses political hate speech which occurs on social media platforms. The research applies doctrinal legal analysis to evaluate Armenian domestic law alongside international human rights obligations to determine weaknesses and suggest reforms that match international standards.

3. Methodology

This study seeks to explore the extent to which Armenia's legal system, in light of its international obligations, protects political expression on social media and addresses hate speech directed at individuals for their political views. It employs a doctrinal legal methodology that draws on constitutional and criminal law analysis, international legal instruments, and jurisprudence from the European Court of Human Rights (ECtHR). Key interpretative tools include the Rabat Plan of Action and other guidance from international human rights bodies. The research does not include media monitoring or sociological data collection; it focuses exclusively on legal norms and enforcement mechanisms.

4. Definition of Political Expression and Hate Speech

Political expression includes opinions on public matters and is strongly protected under international law. However, speech targeting individuals based on political beliefs may cross into hate speech if it incites hostility or violence. The Rabat Plan and "Dangerous Speech" framework help identify incitement.

Under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) people retain their right to think freely while accessing all types of information to share and receive ideas. States have an obligation under Article 20(2) of the ICCPR to prohibit any form of national racial or religious hatred that incites discrimination or hostility or violence (International Covenant on Civil and Political Rights, 1966). Article 20 of the ICCPR does not specifically mention political opinions but the Human Rights Committee and various scholars agree that political belief-based incitement falls under its protection as long as it demonstrates the required incitement threshold.[1]

The Rabat Plan of Action developed by the Office of the High Commissioner for Human Rights (OHCHR) establishes six criteria to determine incitement through context analysis and evaluation of speaker intent and content and form and extent of dissemination and likelihood of harm (OHCHR, 2012). These factors work similarly for political hate speech to enable courts to identify between lawful criticism and unlawful incitement.

The sociological approach of "Dangerous Speech" by Susan Benesch serves as an additional framework which supports the Rabat Plan. A speech becomes dangerous when it boosts the probability of audience members using violence against a group and can be evaluated through five indicators including the speaker's power and audience exposure along with social dynamics and message content and tools for inflicting harm (Benesch, 2012). The classification criteria of both frameworks would apply to political speech that dehumanizes or stigmatizes individuals based on their beliefs when it occurs within polarized or conflict-ridden settings such as post-war Armenia.

International law upholds the strong protection of political expression yet allows countries to restrict speech that directly causes actual harm. The current legal framework in Armenia does not contain specific criteria for this distinction which produces both excessive application of the law and inadequate protection.

5. International Standards and Armenia's Obligations

The International Covenant on Civil and Political Rights (ICCPR) and European Convention on Human Rights (ECHR) function as the fundamental legal framework for Armenia to fulfill its international commitments regarding

[1]United Nations Human Rights Committee. (2011). General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34). United Nations. https://undocs.org/CCPR/C/GC/34.

freedom of expression and hate speech. Article 19 of the ICCPR states freedom of expression exists but states governments can limit it through laws that are both necessary and proportionate (International Covenant on Civil and Political Rights, 1966). The ICCPR Article 20(2) requires nations to prohibit speech which promotes national or racial or religious hatred when it leads to discrimination or violence (International Covenant on Civil and Political Rights, 1966)..The European Convention on Human Rights (ECHR) Article 10 protects political speech alongside free expression but includes restrictions that function in democratic states (European Convention on Human Rights, 1950).

The ECtHR has established a process to analyze hate speech cases through evaluating the speaker's position and message substance and the potential for violent consequences (Erbakan v. Turkey, 2006). The Committee on the Elimination of Racial Discrimination (CERD) through General Recommendation No. 35 declares that criminal sanctions should be reserved for extreme cases and require thorough evaluation of context and intent and impact (Committee on the Elimination of Racial Discrimination, 2013). According to the Rabat Plan of Action states must use six criteria to determine incitement which include context and speaker status and intent and content/form and dissemination and potential harm. States should limit criminal law to their last resort and should train judicial personnel (OHCHR, 2012).

Legal international frameworks establish how protected speech interacts with hate speech limitations. The Additional Protocol to the Convention on Cybercrime requires member states to implement laws that punish racist and xenophobic computer system activities when performed with purpose (Council of Europe, 2003). The criminal offenses under these provisions include both hate material distribution and making threats to perform violence and delivering racial or ethnic public insults. The ECtHR maintains that these laws need to fulfill the essential requirements of necessity and proportionality which protect privacy under Articles 8 and prevent discrimination under Article 14 of the ECHR (European Convention on Human Rights, 1950).

Law experts Ara Ghazaryan together with Alexander Brown agree that hate speech regulation needs well-defined laws. The European Court of Human Rights uses contextual assessment to evaluate cases according to Ghazaryan (Ghazaryan & Asatryan, 2021) but Brown (2015) cautions against using ambiguous laws that might silence dissident voices. Susan Benesch recommends using the “dangerous speech” model to identify statements that will produce concrete violent reactions (Benesch, 2012). General Comment No. 34 issued by the UN Human Rights Committee warns that ambiguous laws about hate speech may infringe Article 19 of the ICCPR (United Nations Human Rights Committee, 2011). The Council of Europe emphasizes that legal frameworks need digital-age compatibility through precise definitions together with established procedures (Council of Europe, 2018).

The application of international standards in Armenia demonstrates existing

weaknesses in its legal framework and enforcement system. Armenia holds the essential treaties and has incorporated them into its Constitution but its laws do not establish precise definitions for political hate speech or operational enforcement methods. Criminal Code Article 330 establishes penalties for hatred incitement toward social group members yet fails to detail political belief or online platform applications. Tarlach McGonagle (2013) along with other scholars recommend establishing precise legal definitions to identify political criticism from hateful speech.

Armenia demonstrates commitment to international standards but its lack of judicial precedent and institutional frameworks and interpretive authority creates barriers for proper implementation. The implementation gap demands legislative changes alongside judicial training programs and jurisprudential growth to achieve proper protection of political expression and safety from harm.

6. Interpretive Principles from International Law

International jurisprudence emphasizes interpretive principles crucial for regulating political expression and hate speech. The ECtHR adopts a contextual approach, weighing the social climate, speaker status, and content (Erbakan v. Turkey, 2006). Political speech receives high protection, even if provocative, unless it incites hatred or violence (Tagiyev and Huseynov v. Azerbaijan, 2019).

The principle of necessity and proportionality governs restrictions: measures must be strictly necessary and proportionate to a legitimate aim (United Nations Human Rights Committee, 2011). The ECtHR also focuses on intent and likelihood of harm, assessing whether speech was meant to incite, or foreseeably led to, harm (Benesch, 2012).

Cases like *Belkacem v. Belgium* and *Sürek v. Turkey* (No. 1) show how the ECtHR excludes incitement from protection under Article 10. In Belkacem, speech that promoted Sharia law and undermined democracy was deemed hate speech under Article 17 (Belkacem v. Belgium, 2017). In *Sürek,* inflammatory media content supporting the PKK was similarly restricted for being violent and divisive (Sürek v. Turkey, 1999).

The Rabat Plan of Action remains a central interpretive framework, introducing a six-part test to evaluate incitement. It evaluates context, speaker influence, intent, language, dissemination extent, and risk of harm (OHCHR, 2012). The plan advises against criminal sanctions unless all six conditions are met and promotes contextual analysis and training for authorities.

Further, the ECtHR uses a cumulative method to assess whether national restrictions on speech are justified. It considers the potential for real-world violence, speaker influence, timing, and

intent (Tagiyev and Huseynov v. Azerbaijan, 2019). The case *Tagiyev and Huseynov v. Azerbaijan (2019)* stressed the need for courts to evaluate not just the content but the broader context and intent behind speech.

For Armenia, where political speech often intersects with hate speech on social media, these interpretive standards are crucial. Applying the ECtHR and Rabat Plan principles can guide courts and policymakers in drawing a clear line between protected dissent and harmful incitement, preserving democratic discourse while addressing threats to public order and vulnerable communities.

7. Armenian Legal Framework

7.1. Constitutional Provisions

The Armenian Constitution establishes Article 42 which defends freedom of expression by guaranteeing people the right to express opinions freely and obtain information through any means and across all borders (European Convention on Human Rights, 1950). The language in this provision aligns with Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) since Armenia has ratified these conventions. The provisions safeguard political speech as the essential component of democratic dialogue.

The third section of Article 42 establishes grounds for legal restrictions on expression which must serve specific legitimate purposes including national security and public order and public health and morals and the protection of others' "honour and reputation" while following the European Court of Human Rights (ECtHR) proportionality test (European Convention on Human Rights, 1950).

The Constitution of Armenia contains Article 77 which establishes an abuse-of-rights prohibition that prohibits using rights and freedoms to achieve violent constitutional order overthrows or to promote national or racial or religious hatred. The absence of explicit political hatred in the list does not prevent its interpretation through international obligations (International Covenant on Civil and Political Rights, 1966).

The constitutional Article 29 contains a non-discrimination principle which specifically mentions political and other viewpoints. This provision does not directly protect freedom of speech but it reinforces the idea that political beliefs should not lead to discriminatory treatment or harassment. The Constitution provides robust protection for political expression yet allows reasonable restrictions on hate speech promotion which aligns with Armenia's international treaty obligations (Constitution of the Republic of Armenia, 2015).

7.2. Criminal Legislation

Armenia's new Criminal Code, in effect since 2022, significantly revises prior hate speech laws. Article 329 criminalizes "any action aimed at the incitement of national, ethnic, racial, political, ideological or religious hostility, hatred or intolerance," including against "another social group." This expanded formulation goes beyond the previous code, which focused more narrowly on national, racial, or religious grounds. Article 330 separately prohibits public calls for violence and the dissemination of violent propaganda (Criminal Code of the Republic of Armenia, 2022, Art. 329-330).

These updates incorporate recommendations from the European Commission against Racism and Intolerance (ECRI), and critically, they include political affiliation or ideology as a protected category. The reforms enable prosecution of those who incite hatred or severe enmity toward individuals or groups based on political views. Article 330 is particularly relevant in cases involving public calls for violence on social media, such as threats against political parties or government overthrow attempts. The 2020 amendments to Article 330 marked a legislative response to rising violent rhetoric, introducing penalties of up to three years of imprisonment in aggravated cases (European Commission against Racism and Intolerance, 2023).

Despite these reforms, challenges persist. The Criminal Code does not define what constitutes "public" speech, though prevailing interpretations suggest that online content—such as public posts or videos—is considered public when visible to unspecified audiences. Private messages or direct communications, no matter how extreme, typically fall outside the law's scope. Furthermore, enforcement often fails to meet international standards, particularly in regard to assessing speaker intent and context (Freedom House, 2024; Bakalis &Ghazaryan, 2020; Council of Europe, 2020).

A central legal element is intent. Armenian law requires that the perpetrator either intends to incite hatred or is aware that their expression is likely to be understood as such. There is no requirement that violence or disorder actually occurs; rather, the offense lies in the act of incitement. Courts must therefore distinguish between passionate but lawful political speech and unlawful incitement (Ghazaryan & Asatryan, 2021).

Legal experts criticize the Armenian system's vagueness, particularly the undefined terms in Articles 329 and 330. Without clear interpretive standards, enforcement risks overreach or inconsistent application. International best practices, such as the UN's Rabat Plan of Action and the U.S. Supreme Court's Brandenburg test, provide guidance for identifying when speech crosses the line into criminal incitement (OHCHR, 2012).

The Rabat Plan recommends a six-part threshold test considering (1) context, (2) speaker status, (3) intent, (4) content and form, (5) dissemination, and (6) likelihood of harm. This test ensures that only the most dangerous forms of expression with a realistic chance of causing real-world

violence are criminalized (OHCHR, 2012). The Brandenburg test, likewise, protects speech unless it is both intended and likely to incite imminent lawless action (Ghazaryan & Asatryan, 2021).

However, Armenian courts have yet to adopt these high thresholds in judicial practice. Scholars such as Ara Ghazaryan argue for the integration of Rabat and Brandenburg principles into domestic case law. Currently, courts rely heavily on linguistic and psychological assessments without applying human rights standards such as proportionality and speaker intent (Council of Europe, 2020; ECRI, 2023).

A 2020 expert study on Armenian hate speech legislation underlined that existing provisions — including criminal "incitement" norms — do not sufficiently ensure respect for international freedom-of-expression standards, and recommended judicial training and a re-assessment of how incitement is defined (Council of Europe, 2020). Also, recent legal-policy reviews and civil-society reports have documented persistent deficiencies in the national hate-speech and discrimination framework, warning that over-broad incitement charges may chill democratic expression and disproportionately affect minority and vulnerable groups (Transparency International Anticorruption Center, 2022).The incorporation of international benchmarks into judicial training and case evaluation would allow Armenian courts to better protect political speech while prosecuting hate speech in a proportionate and rights-respecting manner.

7.3. Media Law and Online Platforms

Since its early media regulation efforts, Armenia has primarily focused on traditional media like print and broadcast. The 2003 Law on Mass Media was intended to cover "all forms of media content, including online content," but in practice it is oriented around institutional actors (e.g., newsrooms, editors), rather than individual users on platforms like Facebook (Freedom House, 2023). As a result, the law does not explicitly address bloggers or social media speech, leaving political and hate speech online largely unregulated.

Freedom House and the All Rights Foundation note that the law does not clarify the status of online writers or extend journalistic protections to them. Online users, particularly those expressing political opinions, fall outside both media protections and speech-specific liability systems (Freedom House, 2023). Moreover, while Armenia relies on voluntary mechanisms like the Media Ethics Observatory (MEO)[2], its ethical code lacks binding enforcement, limiting its ability to moderate harmful content, especially hate speech targeting women politicians and opposition members.

To address these deficiencies, in 2024, Armenia's Parliament proposed amendments to the Mass Media Law and

[2] The MEO is a self-regulatory initiative established by the Yerevan Press Club to oversee adherence to professional journalism standards in Armenia; however, its recommendations are advisory only and carry no legal obligation for media outlets to comply Media Ethics Observatory (Yerevan Press Club, 2011).

Civil Code, seeking to create a Media Council with oversight of both traditional and digital media content. This council, unlike the MEO, would have legal authority over platform moderation, aiming to fill the legal vacuum around user-generated political content (Barseghyan, 2020).

Still, major deficiencies persist. The 2005 Law on Electronic Communications does not regulate newer digital phenomena such as algorithmic amplification or cross-border content sharing. In the absence of platform-specific rules, Armenia must continue applying Articles 329 and 330 of the Criminal Code, which prohibit hate and violent incitement. However, these laws are often enforced without applying international standards like the Rabat Plan of Action (OHCHR, 2012) or ECtHR jurisprudence (Barseghyan, 2020), risking disproportionate interference with free political speech.

The Rabat Plan and ECtHR guidelines are essential for assessing digital speech. The Rabat test evaluates context, speaker authority, intent, language, dissemination, and likelihood of harm (OHCHR, 2012). The ECtHR requires a full analysis of the speech's content, audience, and social impact especially relevant in political contexts (Council of Europe, 2020). Applying these standards would help Armenian courts distinguish between legitimate dissent and dangerous incitement in online environments.

7.4. Social Media Platforms and Oversight Mechanisms

In Armenia, most political discourse and associated hate speech occur not in traditional media but on global platforms, primarily Meta's Facebook. With over 1.6 million Armenian users, Facebook reaches 54% of the population and is the dominant forum for political expression (DataReportal, 2025).

Despite its centrality, Facebook does not list political opinion as a protected category under its Community Standards. It removes hate speech based on race or religion but not on political belief allowing posts like "opposition members are traitors" to remain (Meta, n.d.). In contrast, Armenia's Article 329 criminalizes incitement against political groups, but enforcement is slow and ineffective. This regulatory mismatch creates loopholes where harmful political speech escapes both domestic punishment and platform moderation.

Facebook's enforcement process is independent. It acts only upon court orders from Armenia and rarely cooperates proactively with local authorities. This allows politically motivated hate speech to remain visible despite violating national laws (Meta, n.d.). Armenian requests for content removal remain low, and current procedures lag behind the platform's real-time response.

The Facebook Oversight Board, while not legally binding under Armenian law, uses ICCPR and ECHR principles in its moderation appeals process, referencing necessity and proportionality standards akin to Article 19 of the ICCPR and Article 10 of the ECHR (Meta Oversight Board, 2019). This framework could guide Armenia toward hybrid governance combining local enforcement with international digital

norms.

A key issue remains the legal definition of political speech. The global human rights community is divided some advocate for explicit protections against political harassment, while others fear overregulation would suppress satire or harsh criticism (Benesch, 2012).

Armenia abolished criminal penalties for insults in 2022, shifting such cases to civil defamation proceedings, which are often ineffective against anonymous or viral political hate speech. As a result, even though Armenian law prohibits such abuse, victims face limited remedies due to the slow legal system and Facebook's inaction.

Despite this, convergence is possible. Facebook's policy language aligns with ICCPR Article 20(2), and its Oversight Board mirrors ECtHR jurisprudence. With legislative reforms and improved institutional coordination, Armenia can develop a model where platform rules and domestic law mutually reinforce protections for political expression while deterring harmful incitement (International covenant on civil and political rights, 1966).

7.5. Application in Practice: Courts and Case Law

A 2023 study by the Human Rights Defender of Armenia reviewed 19 criminal cases involving hate speech or incitement to violence. In the vast majority of these cases, political opinion was the basis for the alleged speech (Human Rights Defender of the Republic of Armenia, 2023, pp. 29-43).

The analysis reveals the following principal findings:

- Failure to recognize political speech: Courts did not assess whether the expression involved political matters deserving heightened protection.
- Lack of contextual analysis: Courts ignored the socio-political background in which speech occurred, such as during or after armed conflict.
- Overreliance on expert opinion: Decisions often relied on psychological or linguistic reports instead of legal evaluation.
- Misapplication of Criminal Code: Courts sometimes applied hate speech laws without establishing that political opinion was a protected category under the relevant provisions.
- Improper assessment of dissemination: Courts equated follower counts on Facebook with public reach, without analyzing actual engagement or message visibility.
- Notably, four acquittals correctly applied ECtHR standards. In these cases, courts recognized political roles, protected harsh language as part of democratic debate, and applied the Rabat threshold appropriately (Human Rights Defender of the Republic of Armenia, 2023, pp. 29-43).

The HRD Study found that political opinion or public activity served as the basis for incitement to violence or its justification in 17 out of the 19 examined cases. This evaluation uses the Rabat Plan of Action and European Court of Human Rights (ECtHR) framework to assess five factors: context, content and form, speaker, intent, and likelihood of harm (OHCHR, 2012).

A. Failure to Recognize Political Speech and Public Interest

In 14 out of 17 conviction judgments, courts failed to determine whether the challenged expression qualified as political speech or dealt with matters of public interest (Human Rights Defender of the Republic of Armenia, 2023, pp. 29-43). The ECtHR has consistently held that political speech enjoys the highest protection under Article 10 ECHR (*Erbakan v. Turkey, 2006; Lingens v. Austria, 1986)*. In case ԵԴ/1603/01/21, the court issued a guilty verdict without assessing whether the post contributed to political discussion, neglecting standards set by Lingens. The European Court of Human Rights established in this landmark case that political expression receives the strongest protection under Article 10 of the European Convention especially when it involves public official criticism or matters of public interest and that such speech restrictions need to be narrowly justified and proportionate to a pressing social need (Lingens v. Austria, 1986).

This omission risks criminalizing protected dissent, as seen in Castells v. Spain (1992), which emphasized the need to assess if speech serves democratic oversight.

B. Lack of Contextual Assessment

Nine decisions (e.g., ԵԴ/1485/01/21, ԵԴ/0323/01/21) failed to evaluate whether the speech occurred in a volatile environment, such as post-conflict periods. This violates standards established in *Savva Terentyev v. Russia (2018*) and the Rabat Plan, which emphasize context as a core component of incitement analysis (OHCHR, 2012).

Without such analysis, courts risk mistaking impassioned speech triggered by political events for unlawful hate speech.

C. Overreliance on Expert Testimony Without Legal Analysis

Courts often leaned on expert reports (e.g., ԵԴ/0348/01/21, ԵԴ/0612/01/21) without explaining how the legal elements of incitement were satisfied. This contradicts Jersild v. Denmark (1994), which mandates independent legal reasoning by judges and not deferring entirely to non-legal experts. The HRD Study (2023, pp. 29-43) stressed that Armenian courts rarely applied Rabat criteria independently, thereby undermining transparency and accountability.

D. Improper Interpretation of Criminal Code Provisions

In cases like ԱՎԴ4/0002/01/23 and ԵԴ/1959/01/22, courts used outdated provisions or vague references (e.g., “other beliefs”) without proving that political opinion was a protected category. This creates foreseeability problems under Article 10(2) ECHR (*Sürek v. Turkey (No. 1), 1999)*. Moreover, lack of intent analysis contradicts Article 20(2) ICCPR and ECtHR precedent, which require proof of discriminatory purpose (UN HRC, 2011).

E. Inadequate Evaluation of Dissemination and Public Impact

In cases like ԵԴ/0383/01/21 and ԵԴ/0640/01/22, courts judged public reach based only on Facebook follower numbers without evaluating post visibility or engagement. This contrasts with *Sürek v. Turkey (1999)*, where courts must assess speech impact through platform behavior and context.

The HRD Study (2023, pp. 29-43) noted that Armenian courts consistently ignored engagement metrics such as shares or comments, weakening assessments of actual harm.

F. Positive Examples: Cases of Acquittal

In four acquittal decisions (e.g., ԼԴ/0021/01/23, ԵԴ/1285/01/21), courts properly recognized political actors, protected harsh expression as part of democratic discourse, and applied the Rabat and ECtHR standards. In case ԵԴ/1285/01/21, the court cited a 2021 Armenian Constitutional Court decision affirming that political discourse often includes strong language but should not trigger prosecution. These judgments aligned with standards from *Incal v. Turkey (1998) and Oberschlick v. Austria (1991),* reaffirming that politicians must tolerate criticism in a democratic society.

The HRD report (2023, pp. 29-43) calls for structural changes in Armenian judicial practice, including contextual application of the Rabat Plan, reduced reliance on expert testimony, and improved legal reasoning. It urges courts to follow Perinçek v. Switzerland *(2015)*, which highlighted the importance of thorough context-sensitive evaluation.

Judicial training and legal standardization are essential to avoid chilling effects on dissent, especially given Armenia's fragile democratic environment. Cases like Lingens v. Austria (1986) and Castells v. Spain (1992) remain fundamental to preserving space for political debate under Armenian and international law.

8. Analysis and Recommendations

Despite adopting international treaties, Armenia's domestic implementation remains partial and inconsistent. The legal framework acknowledges the importance of protecting political opinion, but judicial and institutional practices fall short of international standards.

The analysis reveals the following principal findings:

- No specific legal definition of political hate speech.
- Absence of contextual or proportionality analysis in court decisions.
- Lack of coordinated enforcement between courts, regulators, and social media platforms.
- Insufficient training for judges and prosecutors on applying international legal tests.

The legal framework of Armenia regarding hate speech against political speech continues to shift as an institution. Since Armenia joined international human rights standards through the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), its judicial process failed to establish effective domestic standards, which led to inconsistent implementation of these standards (International Covenant on Civil and Political Rights, 1966). The Human Rights Defender of Armenia (2023, pp. 29-43) analyzed 19 criminal cases in their 2023 report to demonstrate that political speech faces illegal prosecutions because of weak judicial methods and missing contextual assessment.

Under Article 10 ECHR, the European Court of Human Rights (ECtHR) requires absolute protection for political expressions which critique public officials or address public matters. The court established in Lingens v. Austria (1986) that political discourse contains offensive language that receives automatic protection unless it crosses the threshold for unlawful incitement. The ECtHR requires courts to analyze speech content through its complete social and political framework by examining speaker identity along with audience reception and both time and method of message distribution.

The courts of Armenia have demonstrated a continuous pattern of failing to apply these necessary interpretive tests. The review of judgments revealed that speech content received insufficient context, and defendants' motivations were not properly investigated, and the courts heavily relied on expert psychological and linguistic assessments above legal court analysis (Human Rights Defender of the Republic of Armenia, 2023, pp. 29-43).

The problem exists because domestic laws fail to provide specific guidelines for distinguishing between political free speech and incitement. The Rabat Plan of Action introduces a specific procedure to make this distinction which includes five evaluation elements: context, speaker, intent, content or form, and likelihood of harm (OHCHR, 2012). Although Armenia

has accepted the framework, they have not established proper procedures to implement it through their judicial system.

The judicial system based their findings on Facebook follower numbers alone to determine "widespread dissemination" without evaluating audience involvement or privacy restrictions or actual public participation which determines proper likelihood-of-harm assessments. The judicial application of Armenia's criminal incitement laws, specifically Article 330 of the Criminal Code, fails to provide sufficient clarity when used to prosecute speech that targets political figures or activists. Courts have occasionally expanded the definition of “social or personal characteristics” by adding “public activity,” yet they failed to support this expansion with either doctrinal or legislative basis. The unclear nature of these provisions creates an opportunity for judges to misuse criminal law to suppress dissenting opinions which aligns with ECtHR judgments warning against excessive use of hate speech prosecutions (ECtHR, 1998).

Several acquittals found in the 2023 report demonstrate that Armenia can achieve progress in this area. The courts showed proper application of ECtHR standards by recognizing defendants' political roles while emphasizing political satire as well as emotional provocation and pre-election criticism in four cases. These cases serve as models which future Armenian courts should adopt (HRDA, 2023).

The Armenian legal system needs immediate structural changes to fulfill its international obligations. The necessary changes require judicial guidelines for political incitement to hatred assessment, as well as national Rabat Plan of Action integration and specialized ECtHR and ICCPR training for judges. Online speech evaluation requires standardized assessment procedures from courts, which should use methods more advanced than basic follower count metrics.

Recommendations:

Multiple essential reforms need to be implemented to fulfill Armenia's international commitments while enhancing political expression protection.

- The domestic legislation needs to establish precise definitions for political hate speech to prevent judicial interpretation confusion and ensure consistent legal interpretation.
- The judicial and prosecutorial and investigative bodies need specific training about the European Court of Human Rights (ECtHR) standards under Article 10 of the European Convention and the Rabat Plan of Action threshold test.
- The Rabat six-part test should become a mandatory evaluation method for courts to determine the legality of expressions accused of incitement.
- The Armenian government needs to enhance its partnership with Facebook and other social media platforms to achieve proper alignment between their online enforcement practices and constitutional free speech protections.

- The Armenian government should create legal frameworks which mandate platforms to defend freedom of expression while stopping arbitrary censorship according to human rights standards (Human Rights Defender of the Republic of Armenia, 2023, pp. 29-43).

Conclusion:

Armenia's legal system has made progress in addressing hate speech and protecting freedom of expression, particularly through recent criminal code reforms. However, gaps remain in both the legal text and its practical application. Political speech continues to face risks of criminalization, especially in the absence of clear standards distinguishing protected discourse from incitement.

A democratic system in Armenia must create a legal framework which respects dissent in politics while maintaining hate speech regulations. A transformation of this nature stands essential for both international human rights compliance and democratic institution development in Armenia.

International frameworks such as the ICCPR, ECHR, and Rabat Plan of Action provide robust guidance. For Armenia to fulfill its obligations, it must reform its legal structures, institutional practices, and digital governance strategies. Protecting political speech while combating hate requires a precise, rights-based approach that ensures freedom of expression remains a cornerstone of Armenian democracy.

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