

The National Council for Combating Discrimination

Romania

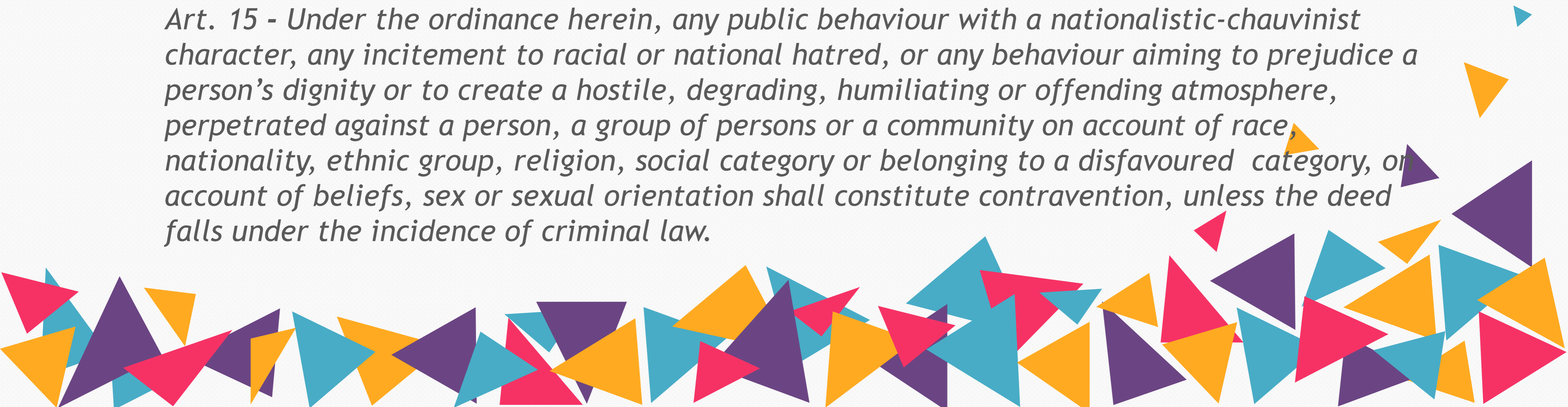


Mandate

The National Council for Combating Discrimination Romania has an **implicit mandate** to address hate speech.

Ordinance No 137/2000 on preventing and sanctioning all forms of discrimination, republished, includes the regulation of **hate speech** in Chapter II - Special provisions, Section V - The right to personal dignity

Art. 15 - Under the ordinance herein, any public behaviour with a nationalistic-chauvinist character, any incitement to racial or national hatred, or any behaviour aiming to prejudice a person's dignity or to create a hostile, degrading, humiliating or offending atmosphere, perpetrated against a person, a group of persons or a community on account of race, nationality, ethnic group, religion, social category or belonging to a disfavoured category, or account of beliefs, sex or sexual orientation shall constitute contravention, unless the deed falls under the incidence of criminal law.



The studies carried out in reference to hate-speech show that **hate speech targets** in particular the Roma ethnics, Hungarian, Jewish, LGBTIQ, Muslim, refugee and migrants communities.

"Report on hate speech in Romania", 2014 - 2015, Active Watch Romania

[http://activewatch.ro/Assets/Upload/files/Raport annual cu privire la discursul instigator la ura 2014 - 2015\(1\).pdf](http://activewatch.ro/Assets/Upload/files/Raport%20annual%20cu%20privire%20la%20discursul%20instigator%20la%20ura%202014%20-%202015(1).pdf)



Strategy

NCCD give a high importance to high speech problems, because it is a **form of discrimination with great visibility and major impact** (since this mainly refers to public declarations, made by public persons, both online and through audio-visual and mass-media).



The following specific objectives are included in the forthcoming Government Decision regarding the **National Strategy on Preventing and Combating Discrimination**, "Equality, Inclusion, Diversity" envisioned for 2018 - 2022.

Strategic area of intervention: *right to dignity*

Respect for diversity and respect for human dignity

- *S.O.1 Levelling cases regarding right to dignity*
- *S.O.2 Supporting public opinion that opposes violation of the right to dignity of vulnerable groups and supporting opinion-forming actors in taking responsibility so as to understand the consequences of the abuses in freedom of expression through promotion of discriminatory messages.*
- *S.O.3 Strengthening the capacity of the representatives of the Public Ministry and of the Ministry of the Interior that participate in criminal investigations regarding hate motivation.*

Strategic intervention area: *institutional development*

Partnership for equality

- *Specific Objective (S.O.) 1 Co-ordination of activities regarding combating discrimination*



Definitions of Hate Speech

The way in which NCCD can intervene to diminish hate-speech is through *administrative punishments* (fine and warning).

In a world dominated by virtual communication, the problems created by hate-speech will worsen, so it is possible that an explicit mention of the term “hate-speech” in law could be useful, particularly as the Romanian legislation is not poor in references to the topic.



- Constitution of Romania;
- New Penal Code;
- G.E.O (Government Emergency Ordinance) no.31/2002 regarding forbidding of organisations and symbols of fascist, racist or xenophobic character as well as the promotion of the cult of persons guilty of crimes against peace and humankind;
- Law no. 4/2008 regarding prevention and combating violence at times of sport games and competitions;
- Law no. 60 from 1991 regarding the organisation and conduct of forbidden public gatherings;
- Law no. 489 of December 28, 2006, on religious freedom and the general regime of denominations;
- Law no. 504/2002 regarding mass-media;
 - Art 40 "is forbidden to broadcast programs containing any form of incitement to hate on grounds of race, religion, nationality, sex or sexual orientation."*
- The regulating code for audio-visual materials, adopted through decision no. 220 / 2011 of the National Council for Audio-Visual, is complementary to the law no.504 / 2002. Article 47 of the Code is used to regulate hate speech. On 14th of February 2017 this article was modified so as to detail the various forms of hate-speech regulated and the expansion of the number of criteria on the basis of which this type of speech may be punished.

(1) The broadcasting within audio-visual programs of any material inciting to hate based on nationality, race or religion or to discrimination or the commitment of the crime of genocide against humanity as well as war-crimes is forbidden.



Action on Hate Speech

Casework - Solving petitions on all forms of and grounds of discrimination

2015 - 29 cases; 2016 - 42 cases; 2017 - 47 cases

Discrimination was found only in 10 cases. In electoral years the number of petitions usually rises.

Policy work - Project of a National Strategy for Preventing and Combating Discrimination "Equality, inclusion, diversity" covering the period 2018 - 2022, expected to be approved by the Government.

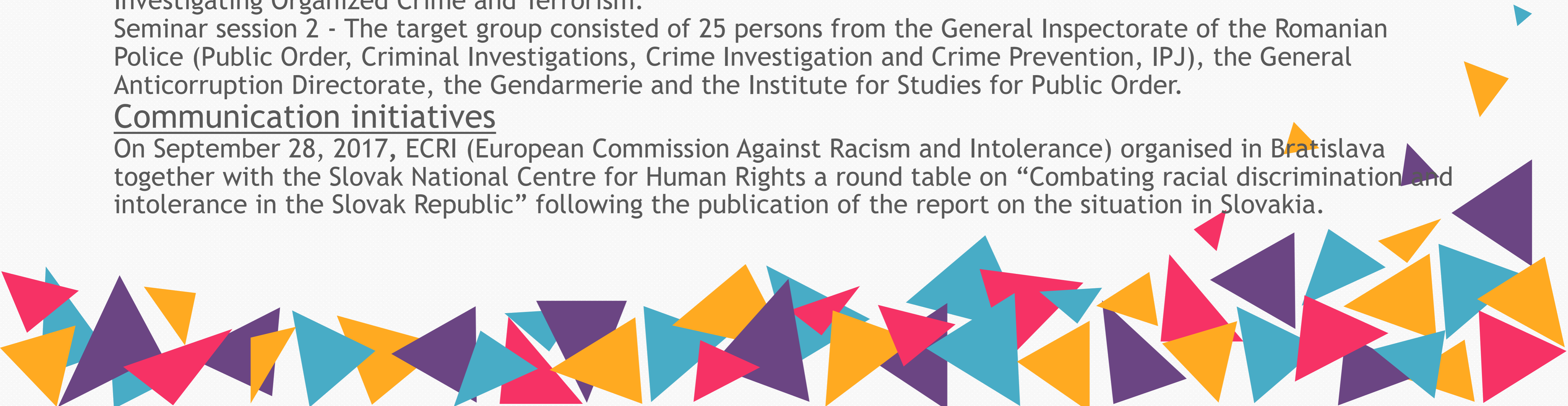
Promoting good practice - **"15 years of non-discrimination in Romania. Jurisprudence and developments"**

Seminar session 1 - The target group consisted of 25 magistrates from different Courts and prosecutors - High Court, National Institute of Magistrates, Superior Council of Magistrates, Ministry of Justice and Directorate for Investigating Organized Crime and Terrorism.

Seminar session 2 - The target group consisted of 25 persons from the General Inspectorate of the Romanian Police (Public Order, Criminal Investigations, Crime Investigation and Crime Prevention, IPJ), the General Anticorruption Directorate, the Gendarmerie and the Institute for Studies for Public Order.

Communication initiatives

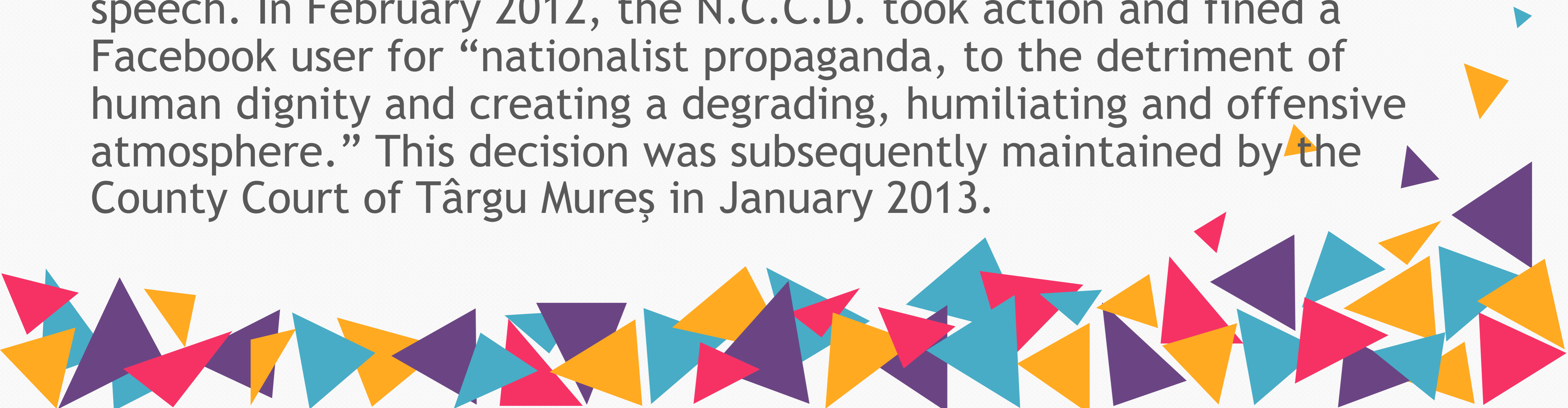
On September 28, 2017, ECRI (European Commission Against Racism and Intolerance) organised in Bratislava together with the Slovak National Centre for Human Rights a round table on "Combating racial discrimination and intolerance in the Slovak Republic" following the publication of the report on the situation in Slovakia.



Good Practice in Addressing Hate Speech

Opinion IV of the Advisory Committee of the CoE Framework Convention for the Protection of National Minorities

► The Advisory Committee welcomes the fact that both the N.C.C.D. and the courts have taken action to combat internet hate speech. In February 2012, the N.C.C.D. took action and fined a Facebook user for “nationalist propaganda, to the detriment of human dignity and creating a degrading, humiliating and offensive atmosphere.” This decision was subsequently maintained by the County Court of Târgu Mureș in January 2013.



Issues in Addressing Hate Speech

Presence of hate-speech online is a permanent danger

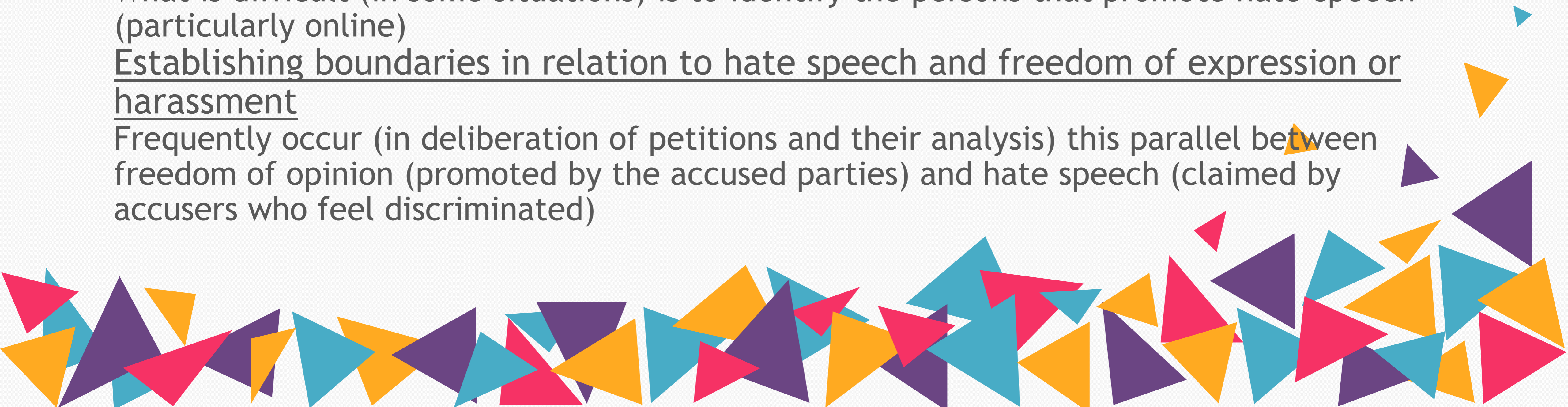
For example: The conclusions of the "Elie Wiesel" National Institute for the Study of the Holocaust in Romania (NISHR) regarding the monitoring of Facebook (with about 10M Romanian users) and of YouTube (with more than 7M unique visitors from Romania) between April and December 2016 shows that different standards are applied across countries.

Difficulties we face in trying to address hate speech

What is difficult (in some situations) is to identify the persons that promote hate-speech (particularly online)

Establishing boundaries in relation to hate speech and freedom of expression or harassment

Frequently occur (in deliberation of petitions and their analysis) this parallel between freedom of opinion (promoted by the accused parties) and hate speech (claimed by accusers who feel discriminated)



Issues in Looking Forward

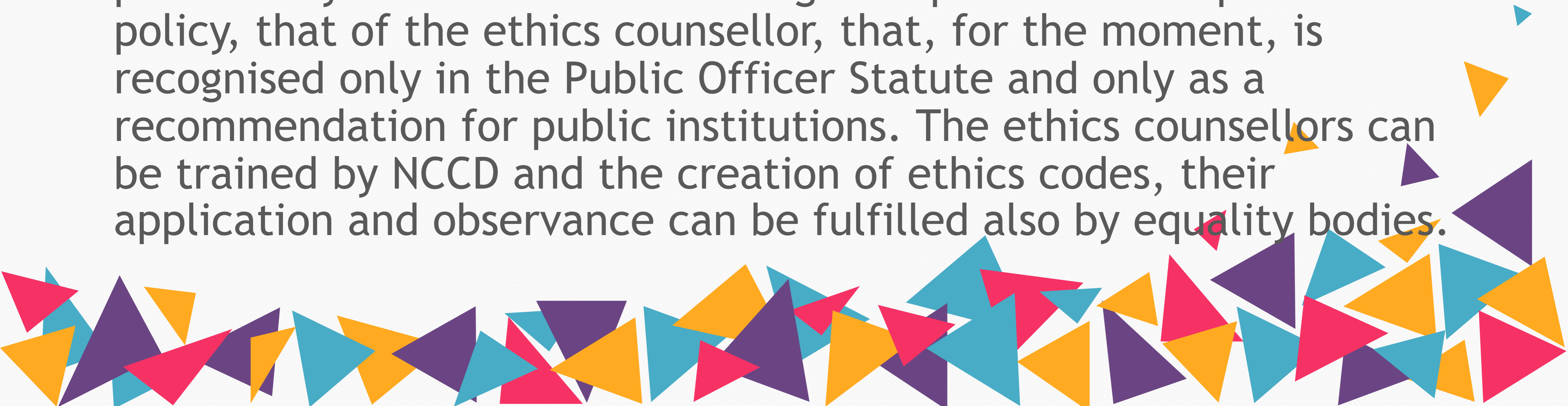
The NCCD doesn't have sufficient resources both in staff and budget. The small salaries do not attract specialised staff. As it can be seen above, the absence of a specialised research and online monitoring department is acute.



Final Comment

We suggest an ethic ‘control’, a construction similar to the management of diversity in the US.

The obligation to adopt **ethics codes** in universities, public institutions, media, political parties as well as private companies, particularly those online. This obligation provides for a public policy, that of the ethics counsellor, that, for the moment, is recognised only in the Public Officer Statute and only as a recommendation for public institutions. The ethics counsellors can be trained by NCCD and the creation of ethics codes, their application and observance can be fulfilled also by equality bodies.



Thank you



Diana URECHE



Workshop 2: hate speech in practice

Case study 1 – the complaint

A major national daily newspaper brings a story on the government launching a comprehensive review of the allowances provided by the state to persons with disabilities.

Your equality body receives a complaint from a disabled people's organisation (DPO) claiming that in the online edition's comment section to the above article some comments are highly derogatory and insulting to persons with disabilities. One of the harshest comments quoted in the complaint states: 'Let's stop this nonsense of giving money to useless people.'

Please discuss

- Do you have a mandate to investigate this case?
- DPO actio popularis / individual complainant needed / ex officio proceeding?
- Who would you investigate: the author of the comment? The newspaper? Both?
- Does the comment constitute prima facie hate speech?
- What steps would you take to investigate?

Further facts – please discuss

In the course of the equality body's investigation the following facts are revealed:

- According to additional evidence in the form of screenshots from the DPO, the author of the quoted comment continued engaging in the discussions where many others were outraged about the previous comment and wrote: 'I mean it, we really should just get rid of these people!'
- The number of people having read the implicated newspaper article online is around 3000.
- Every person wishing to comment on the newspaper's website has to be registered.

Further facts – please discuss

In the course of the equality body's investigation the following facts are revealed:

- The implicated comments were removed by the newspaper two days after their publication.

Further facts – please discuss

In the course of the equality body's investigation the following facts are revealed:

- The registration of the author of the implicated comments to the newspaper's online forum was withdrawn three days after the publication of the comments.

Case study 2 – the complaint

The municipality of a small city organizes a public debate about immigration to the country and the city in particular.

Among many other speakers the mayor of the city also gives a speech in which, referring to the alleged religious beliefs of the majority of immigrants, she calls Islam the religion of hate and war and describes Prophet Muhammad in highly offensive terms.

An NGO protecting refugees and asylum seekers submits a complaint to the equality body against the mayor and the municipality for hate speech.

Please discuss

- Do you have a mandate to investigate this case?
- Who would you investigate: the mayor? The municipality? Both?
- Do the mayor's comments constitute prima facie hate speech?
- What steps would you take to investigate?

Further facts – please discuss

In the course of the equality body's investigation the following facts are revealed:

- The country in question has experienced high levels of immigration from Muslim countries and the issue of migration is heavily debated in national politics.

Further facts – please discuss

In the course of the equality body's investigation the following facts are revealed:

- Both the mayor and the municipality defend her comments claiming that she was speaking as an individual citizen and was only sharing her views and opinions.

Concluding questions

- What are the specific challenges of investigating hate speech cases?
- How can equality bodies effectively overcome these challenges?
- What non-legal measures can equality bodies take?