

HATE SPEECH AND THE LGBTQIAPN+ COMMUNITY'S FIGHT FOR THE HUMAN RIGHT TO BE

DISCURSO DE ÓDIO E A LUTA DA COMUNIDADE LGBTQIAPN+ PELO DIREITO HUMANO DE SER

EL DISCURSO DE ODIO Y LA LUCHA DE LA COMUNIDAD LGBTQIAPN+ POR EL DERECHO HUMANO A SER



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Gabriela Trentin Zandoná¹

ABSTRACT

This article aims to understand the concept and extension of hate speech and analyze the impacts in the LGBTQIAPN+ community. The changes in the communications methods, especially in the digital platforms, demonstrate the necessity of a constant improvement of the law in order to protect human dignity, with the prohibitions against harmful treatments and repression of the acts that violate it. The study was conducted through bibliographical research, in a descriptive and exploratory format, in order to demonstrate that violence motivated by discrimination makes it difficult the impediment of the exercise of human rights and fundamental freedoms, that is, the human right to be. Therefore, it is imperative the imposition of free speech limits, with forbidden discourses full of oppression, hate and discrimination.

Keywords: Hate Speech. LGBTQIAPN+ Community. Human Rights. Free Speech. Impacts.

RESUMO

O artigo visa a compreender o conceito e a amplitude do discurso de ódio, bem como analisar os seus impactos na comunidade LGBTQIAPN+. As mudanças das formas de comunicação, especialmente pelos meios digitais, demonstram a necessidade de um constante aperfeiçoamento das leis para proteção da dignidade humana, com a vedação e repressão dos atos que a violam. O estudo foi realizado através de pesquisa bibliográfica, na forma descritiva e exploratória, a fim de demonstrar que a violência motivada pela discriminação dificulta o exercício dos direitos humanos e liberdades fundamentais, ou seja, o direito humano de ser. Assim, imperativa a imposição de limites ao exercício da liberdade de expressão, com a vedação de discursos eivados de opressão, ódio e discriminação.

Keywords: Discurso de Ódio. Comunidade LGBTQIAPN+. Direitos Humanos. Liberdade de Expressão. Impactos.

¹ Master's degree in Human Rights. UNIFIEO. E-mail: gabrielatrentinzandona@gmail.com
Orcid: <https://orcid.org/0000-0001-8098-8423> Lattes: <http://lattes.cnpq.br/4202377401603449>

RESUMEN

Este artículo busca comprender el concepto y el alcance del discurso de odio, así como analizar su impacto en la comunidad LGBTQIAPN+. Los cambios en las formas de comunicación, especialmente a través de los medios digitales, demuestran la necesidad de mejorar constantemente las leyes para proteger la dignidad humana, prohibiendo y reprimiendo los actos que la vulneran. El estudio se realizó mediante una investigación bibliográfica, descriptiva y exploratoria, para demostrar que la violencia motivada por la discriminación obstaculiza el ejercicio de los derechos humanos y las libertades fundamentales, es decir, el derecho a la existencia. Por lo tanto, es imperativo imponer límites al ejercicio de la libertad de expresión, prohibiendo los discursos que se impregnan de opresión, odio y discriminación.

Palabras clave: Discurso de Odio. Comunidad LGBTQIAPN+. Derechos Humanos. Libertad de Expresión. Impactos.

1 INTRODUCTION

The main focus of this study is to understand the concept of *hate speech*, distinguishing it from the regular exercise of freedom of expression, as well as to analyze its impacts on the LGBTQIAPN+ community, considering that intolerant and hateful speeches are commonly used as if they resulted from the regular exercise of freedom of expression.

The study aims to demonstrate, based on research used as a theoretical basis, that hate speech uttered against members of the LGBTQIAPN+ community generates deep damage to victims, and impacts their emotional and psychological well-being, and can even lead to suicide, as pointed out by the *Observatory of LGBTI+ Deaths and Violence in Brazil*². Although we have seen some political, legislative or legislative advances or resulting from acts of the Judiciary, the environment is still hostile and challenging for the LGBTQIAPN+ community.

The methodology used comprised a basic research, with a qualitative approach and exploratory character, based on a bibliographic review and is structured in three topics. The first aims to understand hate speech, its concept, comparing it with the regular exercise of freedom of expression.

The second topic addresses the psychological and emotional impacts of hate speech, in various categories, for LGBTQIAPN+ victims.

The last topic covers the role of jurisdictional action in the promotion and protection of the fundamental rights of the LGBTQIAPN+ community, especially in Brazil where, for a long time, the Legislative Branch remained inert.

2 UNDERSTANDING HATE SPEECH

Before addressing the impacts of hate speech on the LGBTQIAPN+ community, it is necessary to understand the conceptual issue of this speech, and its main characteristics, compared to the regular exercise of freedom of expression.

Freedom of expression is provided for in numerous international legal standards, such as the Universal Declaration of Human Rights:

Article 19. Every human being has the right to freedom of opinion and expression; This right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas by any means and regardless of frontiers³.

² ANTRA; ABGLT. *Deaths and violence against LGBTI+ in Brazil: Dossier 2023 / Acontece Arte e Política LGBTI+*. – Florianópolis, SC: Acontece, ANTRA, ABGLT, 2024.

³ UN - United Nations Organization. *UN Universal Declaration of Human Rights*.

According to the above article, we all have the right to express our own opinions and share them freely and without intervention, in any social context, such as in the exercise of freedom of religion, peaceful assembly and political activity, for example.

The authors Frederik Stjernfelt and Anne Lauritzen adduce that freedom of expression can be explained by two aspects: the *formal* and the *material*. The first of them is concerned with the existence or not of a censorship system, while the second concerns the content of statements in the public sphere, which can be treated as crimes. Such authors also claim that absolutely no country can claim to have full freedom of expression⁴.

It happens that, many times, intolerant and hateful speeches are used as if they were protected by the right to freedom of expression. Therefore, it is necessary to establish clear, fair and proportional limits to the exercise of freedom of expression, especially when the speech reproduces a structural hatred, often sporting the mask of freedom of expression, hurting, in essence, the dignity of the human person.

In Alexander Brown's conception, hate speech should not be understood only in its legal concept, extracting the conceptualization only, explicitly or implicitly, from legal norms. According to the author:

If we focus too much on a legal concept of hate speech, we risk prejudging what might be the correct answer to the problem of hate speech: for we may have defined the nature and contours of the phenomena in question precisely with the legal answers in mind. For advocates of hate speech laws, the danger is that if all you have is a hammer, everything starts to look like a nail⁵.

For the author, the legal concept of hate speech should not be separated from the ordinary concept, since, according to him, the way hate speech is defined in legal norms and doctrinal analyses is only the "tip of the iceberg" ⁶

On the other hand, Samanta Ribeiro Meyer-Pflug defines hate speech as "manifestation of ideas that incite racial, social or religious discrimination in certain groups,

⁴ STJERNFELT, Frederik; LAURITZEN, Anne Mette. *What Is Freedom of Speech?*, p. 5. Even the United States of America, which adopts a very permissive model regarding freedom of expression, admits limits to its exercise. As Flávio Martins states: "Influenced by Liberalism, which marks the history of the United States, the doctrine and jurisprudence of the United States give a very broad protection to freedom of expression, as a result of the First Amendment to the Constitution: 'Congress shall not legislate in the sense of establishing a religion, or prohibiting the free exercise of cults; or curtailing freedom of speech, or of the press' (emphasis added). A consequence of this view that largely protects freedom of expression is the adoption of the 'theory of the free market of ideas'" (*Curso de Direito Constitucional*, p. 1050). The aforementioned author, in the sequence, states that, even adopting the theory of the "free market of ideas", North American jurisprudence points out limits to the exercise of freedom of expression, such as the use of "Fighting words", the speech that produces the risk of an *Imminent Lawless Action Test*, also known as *the Brandenburg Test*, etc.

⁵ Translation by the author. BROWN, Alexander. *What is hate speech?*, p. 422-423

⁶ *Op. Cit.*, p. 424

most of the time, minorities"⁷ (emphasis added). In the same sense, Flávio Martins states that:

Hate speech is a word that has the capacity to instigate violence, hatred, or discrimination against people on the basis of race, color, ethnicity, nationality, sex, religion, or other discriminatory factor. According to Meyer-Plufg, "incitement to discrimination" is the core element to identify hate speech. In this way, *prejudiced speech should not be confused with hate speech*. The latter has an external element, which consists of *incitement to discrimination or violence*⁸.

The Inter-American Court of Human Rights, in debating the matter, pointed out:

In this regard, the Court has indicated that violence perpetrated on discriminatory grounds has the effect or purpose of preventing or nullifying the recognition, enjoyment, or exercise of human rights and fundamental freedoms of the person subject to such discrimination, regardless of whether or not that person identifies with a particular category. This violence, fueled by hate speech, can lead to hate crimes.⁹

In the same notebook¹⁰, the Court alleges that the lack of recognition of the right to gender identity, in the case of transgender people, contributes to discriminatory behavior against these minorities, deepening their vulnerability to hate speech, leading to serious human rights violations.

Another author who dealt with this subject, and wrote a book called *Hate Speech*, was Judith Butler. This author highlights, in her research, studies that fall on acts, and not just words, such as the burning of a cross in front of the house of a black family in the United States, which, according to the author, would be perfectly framed as an act of warlike speech. For Butler, when the victim is hurt by speech, he can lose control:

To be hurt by speech is to suffer a loss of context, that is, it is not knowing where one is. In fact, it is possible that the injury of an injurious act of *fata* is constituted by the unpredictable nature of this type of act and the fact that it leaves its recipient out of control. The ability to circumscribe the situation of the speech act is compromised at the moment of the insulting call.¹¹

Butler believes that some types of speech not only communicate hatred, but also injurious acts. This occurs not only in the act of language, but also in the way language acts

⁷ MEYER-PFLUG, Samantha Ribeiro. *Freedom of Speech and Hate Speech*, p. 271

⁸ *Op. Cit.*, p. 1052.

⁹HDI CUT. *Cuadernillos de Jurisprudencia de la Corte Interamericana de Derechos Humanos*, p. 19. (Translation by the Author)

¹⁰ *Op Cit.*, p. 23-24.

¹¹ BUTLER, Judith. *Hate Speech*. São Paulo: Editora Unesp Digital, 2021. Pg. 13.

on the victim. For the author, "hate speech not only communicates an offensive idea or set of ideas, but also puts into action the very message it communicates."¹²

According to Schafer and others, hate speech tries to stigmatize and mark the victim, either to keep the situation as it is or to change it, always segregating. This type of discourse uses well-articulated language, creating and sustaining forms of oppression, falling especially on those who do not fit into certain models, such as male, European, Christian, heterosexual, among others¹³.

The author Paulo Roberto Iotti Vecchiatti, on this subject, stated that:

The constitution requires the criminalization of racism, domestic violence, for what? To protect racial minority groups and women. So, understanding that the Constitution requires the criminalization of homotransphobia, it does so to protect the LGBTI population in their fundamental rights. As far as I know, freedom, in its liberal sense, since the Declaration of the Rights of Man and of the Citizen, after the French Revolution, allows you to do whatever you want, comma, as long as you do not harm third parties. So, hate speech, offenses and discrimination against third parties, [because] they harm [these] third parties, are not within the scope of protection of the right to freedom or freedom of expression. The Supreme Court of the United States is the only one that says otherwise. This Supreme Court, the Inter-American Court of Human Rights, the European Court, all repudiate hate speech and that is what they want to criminalize¹⁴.

After experiencing the dangers of hate speech in Nazi Germany, several international treaties banned *hate speech*, despite the fact that freedom of expression is also valued: Universal Declaration of Human Rights (art. 19), Covenant on Civil and Political Rights (art. 19), European Convention on Human Rights (art. 10), Inter-American Convention on Human Rights (art. 13), etc. For example, the Pact of San José, Costa Rica, allows legal restrictions on speech that promotes "incitement to discrimination, hostility, crime or violence".

The recently approved Convention against Racism, Racial Discrimination and Related Forms of Intolerance" brings more objective parameters for the determination of "hate speech", which was previously only conceptualized by doctrine and jurisprudence. The aforementioned international document presents a series of informing elements that indicate the construction of a normative concept of hate speech based on manifestations of discrimination, as well as incitement to hatred. Therefore, from the point of view of the construction of a normative concept, in accordance with the concepts and criteria contained

¹² Op. Cit. Pg.112.

¹³ SCHÄFER, Gilberto et al. Hate speech. From conceptual approach to parliamentary discourse. Journal of Legislative Information, Brasília, v. 52, n. 207, 2015. Pg.147.

¹⁴ VECCHIATTI, Paulo Roberto Iotti. *The Federal Supreme Court, Homotransphobia and its Recognition as a Crime of Racism*, p. 59.

in the international norm itself, it can be said that hate speech consists of the manifestation of intolerant, prejudiced and discriminatory ideas against vulnerable individuals or groups, with the intention of offending their dignity and incite hatred on the basis of the following criteria: age, sex, sexual orientation, gender identity and expression, language, religion, cultural identity, political or other opinion, social origin, socioeconomic position, educational level, status of migrant, refugee, repatriate, stateless or internally displaced person, disability, genetic characteristic, physical or mental health status, including infectious disease and disabling mental condition, or any other condition.

In this way, hate speech is an internal limit (or immanent limit) of the right to free expression of thought. This means that the fundamental right does not protect any and all speech, since the law has a limited factual assumption. Thus, for obvious reasons, hate speech is not covered by constitutional protection.

3 IMPACTS OF HATE SPEECH ON LGBTQIAPN+ VICTIMS

Undoubtedly, hate speech has significant impacts on the lives of its victims, on their emotional and psychological state, generating profound consequences and depriving their human and fundamental right to simply be.

Before addressing the psychological and emotional impacts suffered by victims of hate speech, it is important to analyze some of the categories of hate speech against the LGBTQIAPN+ population. The authors Marcos Paulo da Silva and Lucas Souza da Silva¹⁵, through pro-analysis of empirical data, even if related to cybernetic means, arrived at the following categories:

The first of these is *victimization*. The authors cite, for example, that in this category, in any discussion about the criminalization of LGBTphobia, oppressors use arguments that all people suffer violence on a daily basis in Brazil.

Second, *pathologization*, whether behavioral or biological. Referring to homosexuality or any other sexual orientation as a disease violates a wide range of international and national norms. In Brazil, for example, the Federal Council of Psychology stopped treating sexual orientation as a disease in 1985.

And third, *the repulsion for the existence or repudiation of the attitudes* of LGBTQIAPN+ people, which, according to the aforementioned authors, cover most

¹⁵ SILVA, Marcos Paulo da; SILVA, Lucas Souza da. *Dissemination of hate speech in news comments: an analysis based on news about the LGBT universe in Mato Grosso do Sul cybermedia on Facebook*. Intercom: Revista Brasileira de Ciências da Comunicação, [S.L.], v. 44, n. 2, p. 137-155, ago. 2021. FapUNIFESP (SciELO). <http://dx.doi.org/10.1590/1809-5844202127>.

homophobic comments. The authors argue that, if in the other categories, the oppressors use different factors for devaluation, in this one, they use only pure hatred¹⁶.

Another categorization would be the *discrediting of journalistic information*, as it is a minority group. In addition to these, the authors also cite the *injury or offense to human dignity* in which manifestations of hatred are not only established against the ways and behaviors of the LGBTQIAPN+ community, but in the face of people, being an attack on their identity and integrity, in addition to the imposition of morality and personal religiosity, a biologizing approach, appeal to the supposed behavioral and thought influence of children and adolescents, an opinion mediated by citation of authority¹⁷.

According to Kees *et al*, there are more impacts on direct victims of hate crimes than on those crimes that are not motivated by hate or prejudice¹⁸. Joanna Jamel, says that the trans population is the one that suffers the most from hate crimes, with trans women being the most affected¹⁹.

In a study carried out in Portugal by the *Portuguese Association for Victim Support (APAV)*,²⁰ it was highlighted that hate crime can destabilize the victim's identity development. This same study points to the incidence of serious consequences for the victims, including psychiatric disorders, such as depression, anxiety disorders, post-traumatic stress disorder²¹.

According to *APAV*, as hate crimes are directed at the victim's identity characteristics, the psychological impact is different from other crimes, in the following sense: even if the victims manage to move on with their lives, they usually report fear from the incident. Out of protective instinct, they end up thinking about making changes in their lives (workplace, study, city); they suffer because crime is due to their identity characteristics, affecting the level of perception of themselves and the community in which they are inserted, immensely shaking their perception of security²².

Another important piece of data was released by the *Observatory of LGBTI+ Deaths and Violence in Brazil* in the 2023 dossier, which identified structural LGBTIphobia in the country:

¹⁶ *Op. Cit.* 145-146.

¹⁷ *Op. Cit.*, p. 146-150.

¹⁸ KEES, Stephan Jakob, IGANSKI, Paul, KUSCHE, Robert, SWIDER, Magdalena, CHAHAL, Kushminder. *Hate crime victim support in Europe: a practical guide*.

¹⁹ JAMEL, Joanna, *Transphobic Hate Crime*, Palgrave Hate Studies. 2018

²⁰ PORTUGUESE ASSOCIATION FOR VICTIM SUPPORT. *Manual Hate Never Again: Support for Victims of Hate Crimes*. - Lisbon: Portuguese Association for Victim Support, p. 165.

²¹ *Op. Cit.*, p. 118.

²² *Op. Cit.*, p. 119.

This directly affects the reception of LGBTQIA+ people in different environments, increasing the risks of human rights violations and violence against their bodily lives, gender identities and expressions, and sexual orientations. Although the political context has changed in the sense that we are under a government attentive to the claims that have been made by the LGBTQIA+ population, a troubled and hostile environment persists in relation to LGBTQIA+ people²³.

The same observatory pointed out high suicide rates among the LGBTI+ population, praising that "LGBTIphobia operates as a social risk factor for mental health for LGBTI+ people, given the degree and recurrence of serious, even lethal, violations against this community" ²⁴

Therefore, even with some political advances or the Judiciary itself, the environment is still hostile for the LGBTQIAPN+ community. As we exposed above, hate speech towards the LGBTQIAPN+ community generates profound harm to victims, severely impacting their emotional and psychological well-being.

4 THE ROLE OF THE JUDICIARY IN PROMOTING AND PROTECTING THE FUNDAMENTAL RIGHTS OF THE LGBTQIAPN+ COMMUNITY

Flávia Piovesan, in her book *Themes of Human Rights*, argues that throughout history, very serious violations of human rights have occurred on the basis of "me versus the other", when diversity was used as a way to extinguish rights, that is, it was as if difference defined the other as a person with fewer rights and dignity. ²⁵

The author also states that the history of combating discrimination related to sexual orientation is very recent, starting in the 90s, which is why it is verified that the greatest advances occurred through the jurisprudence of the global and regional systems²⁶.

There are many constitutional principles that protect, in Brazil, the identity of LGBTQIAPN+ people. André de Carvalho Ramos, for example, cites the *right to happiness (or the right to the pursuit of happiness)*, which is implicit in the principle of human dignity²⁷. Other principles can be mentioned, such as the right to privacy, the right to family, self-identity, the right not to be subjected to inhuman or degrading treatment, the right to intimacy and privacy, etc.

²³ ANTRA; ABGLT. *Deaths and violence against LGBTI+ in Brazil: Dossier 2023 / Acontece Arte e Política LGBTI+*. – Florianópolis, SC: Acontece, ANTRA, ABGLT, 2024. p. 4.

²⁴ *Op. Cit.*, p. 47.

²⁵ PIOVESAN, Flávia. *Human Rights Issues*, p. 441.

²⁶ *Op. Cit.*, p. 457.

²⁷ RAMOS, André de Carvalho. *Human Rights Course*, p. 1143.

In this regard, Advisory Opinion 24 of the IACHR²⁸, which deals with the recognition of the right to gender identity and, in particular, on the procedures for processing requests for name changes on the basis of gender identity, in the part of the Glossary, states that LGBTQIAPN+ persons suffer numerous discriminations, presenting the UN's concern on the subject, adducing that there is official discrimination, which occurs through state laws and policies that criminally typify homosexuality.

The Court also recognized that LGBTQIAPN+ people have historically suffered discrimination, stigmatization and countless other forms of violence, linked to hate speech, and even police abuse. In prisons, violence can include harassment, exploitation and sexual assault, even more so in the case of trans women, which leads to segregation and isolation as a protective measure, but which ends up depriving these people of opportunities and the use of essential services.

The Court also pointed out that discrimination is highly harmful to the right to mental integrity, and that it harms "not only individual health, but public health". Based on its own jurisprudence, the Court recognized the right to equality and non-discrimination of LGBTQIAPN+ people, the right to gender identity and name change procedures, as well as the international protection of the bonds of same-sex couples.

Roger Raupp Rios, conceptualizes *discrimination*, based on *the International Convention on the Elimination of All Forms of Racial Discrimination*, *the Convention on the Elimination of All Forms of Discrimination Against Women*, and *the Convention on the Rights of Persons with Disabilities*, as follows:

[...] Discrimination is defined as "any distinction, exclusion, restriction or preference that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on a gender equality footing"²⁹

Regarding the judgment of the Direct Action of Unconstitutionality by Omission (ADO) 26, and the Writ of Injunction (MI) 4733³⁰, it is important to make the following considerations:

The first consideration concerns the performance of the Federal Supreme Court (STF) in social and political issues. Both Direct Action of Unconstitutionality (ADO) 26 and Writ of Injunction 4733 had the scope of demonstrating the long delay of the National Congress in enacting a law that criminalized acts of discrimination/violence against LGBT people, curbing homophobia and transphobia in Brazil.

²⁸ INTER-AMERICAN COURT OF HUMAN RIGHTS. Advisory Opinion No. 24/17 (OC No. 24/17). 24 Nov. 2017.

²⁹ RIOS, Roger Raupp. *Homosexuality in Law*, p. 20.

³⁰ BRAZIL. Federal Supreme Court. ADO 26 and MI 7433.

The second consideration concerns the result of these actions: they recognized the omission of the Legislative Branch on the subject, and began to consider homophobia and transphobia as crimes of racism, by majority vote. It should be noted that the thesis presented by the rapporteur of ADO 26 can be divided into the following points:

- a) establishes that, until the National Congress creates a specific law, homophobic and transphobic acts, real or alleged, are framed in the crimes of Law 7,716/2018 and, in the case of intentional homicide, constitute a qualifying circumstance because they are considered vile motives.
- b) Criminal repression against homotransphobia does not interfere with religious freedom, as long as these manifestations do not turn into hate speech.
- c) The concept of racism is broadened, encompassing not only biological or phenotypic aspects, but also the denial of the dignity and humanity of vulnerable groups.

In this context, it is clear that, in Brazil, the performance of the Judiciary was essential to ensure the implementation and enforcement of the fundamental human rights of LGBTQIAPN+ people. Historic advances for the LGBTQIAPN+ community are occurring, albeit gradually, precisely because victims are seeking the intervention of the Judiciary. The National Congress has also been silent in the elaboration/edition of effective laws to protect this community.

Regarding the performance of the Brazilian Judiciary, Clarissa Tassinari clarifies:

Despite all this, one cannot disagree with the reading of the phenomenon of the judicialization of politics as a product of the transformations that occurred in Law with the advent of a new constitutional text. In other words, it is known that one of the marks of the transition from the conception of the Social State to that of the Democratic State of Law is precisely characterized by the displacement of the pole of tension from the Executive to the Judiciary³¹.

Therefore, the performance of the Judiciary, guided by constitutional principles, as well as the constitutional duty to criminalize acts that violate dignity has been paramount for the protection of the fundamental human rights of the LGBTQIAPN+ community, since in Brazil and in so many other places in the world, the Legislative Branch remains inert and silent in the protection of minorities. For this reason, issues of discrimination and violence against LGBTQIAPN+ people in Brazil are being taken to the Judiciary, ensuring, at a slow pace,

³¹ TASSINARI, Clarissa. *Judicial activism: an analysis of the performance of the Judiciary in the Brazilian and North American experiences*. 2012. Pg. 22.

advances in ensuring the application and preservation of the rights and dignity of the LGBTQIAPN+ community.

Nevertheless, the necessary change is not only up to the Judiciary or the Legislature, but to any and all interpreters of the Constitution and legal norms. It is urgent and necessary, as Isaac Porto states, a more amplified analysis of the discriminatory process, analyzing together the issues of racism and LGBTphobia:

discussions about racism and black people cannot be seen as an exclusive problem of the black movement, just as discussions about sexual orientation and gender identity cannot be attributed to an agenda exclusive to the LGBTI movement. Adopting these positions makes the black LGBTI population invisible and perpetuates a network of privileges for some and disadvantages for others.³²

5 CONCLUSION

Based on this study, it was possible to understand the clear distinction between *hate speech* and the regular exercise of freedom of expression, the first being, as Samanta Ribeiro Meyer-Pflug adduces, a kind of "manifestation of ideas that incite racial, social or religious discrimination in certain groups, most of the time, minorities"³³. The regular exercise of freedom of expression, on the other hand, consists of the right to express our own opinions and share them freely and without intervention.

It is important to emphasize that freedom of expression, enshrined in the Universal Declaration of Human Rights, is a fundamental right that allows the expression of opinions and ideas without interference. However, this right is not absolute, having express or implicit (or immanent) limits, as is the case with hate speech.

Hate speech, as aligned in the topics above, crosses all limits of freedom of expression, when it attacks and dehumanizes individuals or groups based on their identity characteristics, as in the case of sexual orientation and gender identity. This type of speech, which is far from being a simple expression of opinion, serves as a means of oppression, which can lead to serious psychological, emotional and even fatal consequences for the victims.

Hate speech is clearly one of the limits of the right to freedom of expression, being, in the opinion of Flávio Martins, an implicit limit of that right: "hate speech is an internal limit (or immanent limits) of the right to free expression of thought. This means that the fundamental right does not protect any and all speech, since the law has a limited factual assumption.

³² PORTO, Isaac. *What color is the invisible? The human rights situation of the black LGBTI population in Brazil*, p. 12.

³³ MEYER-PFLUG, Samantha Ribeiro. *Freedom of Speech and Hate Speech*, p. 271

Thus, hate speech is not covered by constitutional protection."³⁴

Despite some advances, the LGBTQIAPN+ community still suffers from oppressive discourses and hostile environments, which leads to the need to improve laws and greater state surveillance, with the necessary institution of effective public policies. In this sense, the performance of the Brazilian Judiciary is playing a fundamental role, since it has been making up for the repeated and continuous legislative omission.

Whenever we deal with issues related to the dignity of the human person, we must keep in mind that the achievements that are made through protection rules and regulations are improved as new demands arise, new voices are heard, new claims are presented and new human rights are recognized, depending on the reality in which we live. This process demands the intervention and mediation of the State and the active participation of all the protagonists of constitutional interpretation, in an "open society of interpreters of the Constitution".

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³⁴ *Op. Cit.*, p. 1053.

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