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THE PERCEPTION OF HATE CRIMES BY THE DECISION
MAKERS AND ITS IMPACT UPON THE REGULATION AND
PROSECUTION OF THOSE CRIMES

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LIST OF ABBREVIATIONS

CERD Convention on the Elimination of all Forms of Racial Discrimination

CSO Civil society group and/or organization

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

ECRI European Commission against Racism and Intolerance

EU European Union

IAP International Association of Prosecutors

ICCPR International Covenant on Civil and Political Rights

LGBT Lesbian, gay, bisexual or transgender

OSCE Organization for Security and Co-operation in Europe

ODIHR Office for Democratic Institutions and Human Rights

UN United Nations

UDHR Universal declaration of Human Rights

INTRODUCTION

One of the greatest struggles that continue through all human history is the fight for human rights, their recognition, protection and enforcement. Nowadays, the level of protection of human rights within particular country is one of the main indicators of the reign of democracy in it.

Despite the diversity of human rights, the quantity of legal acts that aim to protect them and international and non-governmental organizations whose activity is directed towards implementation and realization of human rights, we are still facing a great deal of human rights violations around the globe. Therefore, protection of human rights remains a reference point for everyone.

One of the core documents for the protection of human rights is the Universal declaration of Human Rights (hereinafter UDHR), the first internationally recognized and legally adopted set of fundamental human rights¹. A milestone document that pushed further development of human rights protection instruments².

The very first article of UDHR states:

“All human beings are born free and equal in dignity and rights”³.

Taking into account the intrinsic to our world diversity and the need for additional protection and enforcement of this essential right for equal treatment, article 7 of the UDHR states:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”⁴

Adoption of mentioned norms outlined the importance of the struggle against discriminatory behaviour with special attention to its most aggressive manifestations. Even in recent years we could have witnessed policies of ethnic cleansing and genocide based on discriminatory ideologies⁵, that caused damages beyond repair. Therefore, to eliminate the separating effect of the discrimination UN, international governmental and non-governmental organisations are tending to fight the destructive policies and behaviours.

¹ UDHR, 1948, <http://www.un.org/en/universal-declaration-human-rights>

²Welch C. Universal Declaration of Human Rights: Why does it matter? http://www.buffalo.edu/ubnow/stories/2015/12/qa_welch_udhr.html.

See also The Foundation of International Human Rights Law <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>

³ UDHR 1948, art 1, <http://www.un.org/en/universal-declaration-human-rights>

⁴ UDHR 1948, art 7, <http://www.un.org/en/universal-declaration-human-rights>

⁵ A special focus on discrimination. <https://ohchr.org/EN/Issues/Discrimination/Pages/discrimination.aspx>

One of the ways to protect the equality among people is to confirm discriminative attitude, stop the violation of the right to equal treatment. It becomes even more important when discriminative attitude results in criminal offences.

The danger of criminal offences that include the discriminative attitude towards the victim is high not only to victim but for the society too. Because the commitment of such crime is often an attempt to threaten or damage certain social group.⁶ One of the examples of aggressive manifestation of such crimes formed a category known as hate crime.

Hate crimes is a result of an extreme form of prejudice, due to the fact that victim is affiliated with a certain group for the perpetrator. To the attacker, it is the reflection of his attitude towards the group rather than a certain person⁷. Therefore, hate crimes harm the society as a whole and a certain group against which members it is committed⁸.

For the purposes of elimination the discrimination against hate crimes victims and reduce of future infringements numerous policies against hate crimes were adopted worldwide.⁹ Additional policies were also adopted for the protection and support of victims of hate crimes. To outline the importance of combating hate crimes under the Council of Europe initiative action day in support of victims of hate crime was established on 22 of July since 2013¹⁰.

However, the solemn implementation of hate crime policy into the criminal legislation or its recognition on international level remains useless without the existence of effective and efficient enforcement procedure that will provide investigation of a hate crime, criminal prosecution for the offender and protection of the victim of hate crime.

Due to the complex impact of hate crimes towards victims and society this category not only demands additional attention of the decision makers during investigation and prosecution of this crimes to the criminal offence itself, but also to the offender and the victim of the crime. Their backgrounds and prior activity is crucial for the case investigation. To insure that, the role and the attitude of the decision maker to the hate crimes has to be taken into account.

⁶ Hate Crime Laws: A Practical Guide OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2009, p. 7,11,20.

⁷ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001), p.1

⁸ OSCE Practical Guide: Prosecuting Hate crimes, OSCE/ODIR, 2014 p.

⁹ See Hate crime https://en.wikipedia.org/wiki/Hate_crime#cite_note-114. Article contains short list of countries that adopted hate crime laws around the world. More detailed information on policies that aim to combat hate crimes will be analyzed further. See also Making hate crime visible in the European Union: acknowledging victims' rights and EU-MIDIS Data in Focus https://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf concerning legislation among EU Member states and further legislative needs for the better protection of victims of hate crimes

¹⁰ Action Day – In Support of Victims of Hate Crime – 22 July. https://www.coe.int/en/web/no-hate-campaign/compendium/-/asset_publisher/PyHuON7WYezs/content/-action-day-in-support-of-victims-of-hate-crime-22-july?inheritRedirect=false

Researched problems:

This Master thesis is concentrated on a problem of decision makers activity in hate crimes, their perception of hate crimes and its impact upon the regulation and prosecution on the cases. The problematic aspect of the role of the decision maker in hate crime cases analysed to define the main challenges they face during investigation and prosecution of hate crimes. The compliance of principles of non-discrimination of the ECHR during prosecution of hate crimes is researched using the practice of the ECtHR and practical recommendations for the decision makers. The analysis of perception of hate crimes by the decision makers, their attitude towards hate crime cases.

The aim and objectives of the thesis

The aim of the research is to establish the main peculiarities that influences decision maker in hate crimes and illustrate how the understanding of hate crime concept reflects prosecution of hate crime offenders or the application of hate crime policies at all.

In pursuance of the identified aim the following objectives are established:

- To analyse the hate crime concept, defining its' specific features
- To examine the main legal approaches towards the regulation of hate crime
- To make a research of the existing international legislation concerning hate crimes
- To provide a summarised analysis of hate crimes case law in ECtHR
- To analyse main challenges that decision makers are facing in hate crimes
- To define factors that influence decision makers and decision making process in the hate crimes.

Research methods:

For achievement of the aim of this research, following methods were used:

Method of systematic analysis. This method is used for discovering common features of hate crime concept in different legislations. With a method of systematic analysis main features that represented in different laws may be underlined and all peculiarities may be understood.

Comparative method used to estimate the similarities and differences among the opinions of scholars on the same subject matter that concerns the object of the research.

Sociological research method used for collecting information on specific matters of decision makers' activity in hate crimes and their perception of this concept, questioning them, collecting and systematizing data concerning their perception of hate crimes.

Method of logics. This method is used for providing the conclusions concerning the analysed facts.

Novelty of the final thesis.

Academic novelty of this thesis is determined by the analysis of the perception of hate crimes as a category by decision makers. Thesis focuses on the comprehensive analysis of the hate crime concept and practices with a special attention towards activity of the decision maker during investigation and prosecution of hate crime. This thesis brings additional attention to the figure of decision maker in a hate crime and their reaction to the application of the hate crime policies by the state.

Level of the analysis of a researched problem of the final thesis

Scholars like Perry B., Hall N., Gerstenfeld P., Jacobs J., Potter K. and many others devoted books to hate crime concept that focus on main features of origins of the concept, main features of hate crimes and its impact on the society. In spite of the huge amount of forensic literature devoted to hate crime concept, there are not that many publications devoted to the position of the decision maker in this category of crimes. Moreover, literature, devoted to describing the behaviour of decision maker in a hate crime usually represented as guidelines for investigators, sometimes for prosecutors. However, understanding of decision makers perception of hate crimes analysed briefly. Only some aspects of it were described in works of Plumm, Terrance, Henderson, Ellingson, Cramer, their discoveries concerned mostly attitude towards perception of victims of crimes and jury's attitude towards them with an analysis of the results of juries judgements . In this thesis described what influences the behaviour of decision maker in hate crime and what factors are core for effective decision making in hate crimes and the needs of decision maker.

Relevance of the final thesis

Despite active measures taken on the international level that aim to combat discrimination, hate crimes still take place nowadays, moreover opening new aspects of this category of crimes, especially in relations of new groups of victims of those crimes. Including this fact the decision makers shall take all reasonable measures to ensure investigation and prosecution of hate crimes alongside with the protection of the victim. Therefore, understanding of decision makers perception of hate crimes may allow to upgrade the approaches towards their activity in hate crimes and fill the gaps in decision makers understanding of hate crimes.

Significance of thesis

Theoretical significance of thesis is in the brief universal explanation of hate crime concepts both in legislation and forensic literature, set of the main characteristics of obstacles before decision makers in hate crimes and ways to overcome it, research on the perception of hate crimes as a specific category of crimes by decision makers.

Practical significance is that it could be useful for decision makers during investigation and prosecution of hate crimes. Following research might be used for preparing decision makers for their activity concerning hate crimes. Research in thesis might be also helpful for applying new policies for combating hate crimes. Thesis may be used during different seminars related to the topic.

Structure of thesis

This thesis is divided into the following parts: introduction, three substantial parts that divided into smaller sections, conclusion and recommendations, bibliography and summary.

Chapter I will provide a general characteristic of hate crimes, definition, analysis of bias motives in hate crimes towards the victims, such as race, ethnicity, religion, gender, sexual orientation or other categories, and will explain the importance of hate crime policies in general.

Chapter II will be concentrated on the hate crime laws and policies on international level and on regional level. Legal norms in international treaties and conventions on the European Union level. In addition, the practice of European court of human rights will be analysed.

Chapter III will underline peculiarities of activity of decision makers in hate crimes will be precisely analysed, general characteristics of the obstacles during regulation and prosecution of hate crimes for decision makers, main challenges for decision makers concerning their activity in hate crime investigation, and perception of hate crimes by the decision makers and its' impact upon the hate crime case.

Defence statement

Due to the complex character of hate crimes concept it is differently precepted by decision makers. That leads to the various approaches to the investigation and prosecution of hate crimes and results not only on certain victim of hate crime, but might have impact on whole society.

I. DEFINITION AND MAIN FEATURES OF HATE CRIMES

1.1 Definition of hate crimes and its key elements

For the further research, seems necessary to begin with a definition of hate crimes. It will allow to understand the importance of this group of crimes and the analysis of its elements will be necessary for discovering main problematic issues for decision makers during investigation and prosecution of this crimes.

Before proceeding to discussion of main features of hate crimes, it's worth mentioning that this topic is way more complex and complicated that it may seem from the first sight.

When a random person is asked to characterize what is a hate crimes, the most often answer is an assumption that this concept belongs to the crimes motivated by hatred. However, crimes not always need to be motivated by hatred as an attitude of the offender in order to be classified as a hate crimes¹¹.

When it goes to the hate crime concept is rather new in the legal science comparing to the concepts of murder or theft that were recognized since old times. It is widely believed that the first who presented the term "hate crime" was the American congressman, John Conyers, in the 1985 presented Hate Crime Statistics Act in the House of Representatives.¹² The bill set a requirement for the Department of Justice to collect and provide hate crime statistics to the public. It concerned the crimes that were motivated by racial, religious, and ethnic prejudice¹³. Later hate crimes concept was included in numerous national and international legal instruments that will be analyzed later.

In forensic literature, plenty of scholars analyzed hate crimes. However, researches of Perry B., Hall N., Gerstenfeld P., Jacobs J., Potter K. demand special attention for the depth of the research of the essence of hate, ways to diminish the number of all its possible manifestations within the society, key features of hate crimes, its importance for the society. However, it's worth mentioning the lack of common approach towards the unified definition of hate crimes.

In order to enrich the understanding of hate crimes it seems necessary to begin description of hate crimes and its features with scientific approaches to the definition, to see all aspects of determination of hate crimes.

Scholars arguing the possibility of adoption of the unified definition. As Jacobs and Potter stated, *hate crimes is a category that doesn't have an obviously clear definition*¹⁴. And it's hard to

¹¹ Gerstenfeld, P. *Hate Crimes: Causes, Controls and Controversies*, (London: Sage, 2004).

¹² Jacobs, J. B. and Potter, K. (1998) *Hate Crimes: Criminal Law and Identity Politics*. New York: Oxford University Press., p. 4

¹³ Jacobs, J. B. and Potter, K. (1998) *Hate Crimes: Criminal Law and Identity Politics*. New York: Oxford University Press., p. 3

¹⁴ Jacobs, J. and Potter, K. *Hate Crimes: Criminal Law and Identity Politics* (Oxford: Oxford University Press, 1998), p. 24

disagree with Chakraborti and Garland that formulation of accurate, universal definitions of any type of crime is a difficult task due to the fast developing social norms, permanent changes in the society or main streams in legal regulations and various influence of political, cultural and economic factors.¹⁵ Barbara Perry¹⁶ suggests and Nathan Hall¹⁷ completely agrees with a point that, as is the case with crime in general, it is very difficult to construct an exhaustive definition of 'hate crime' that is able to take account of all of its facets.

In forensic literature, definitions vary from simply one like Craigs' who suggests that:

*"an illegal act involving intentional selection of a victim based on a perpetrator's bias or prejudice against the actual or perceived status of the victim."*¹⁸ This definition includes two main parts: a criminal act and the motivation of that act that includes an affiliation of the victim with a certain group due to the prejudicial attitude of the perpetrator.

Some scientists analyze this phenomenon in a more complex way and from a point of direction of violence in the hate crimes. This approach is widely used in the practices of common law system legislation, where hate crime include a hate crime incident that may include minor crimes. Often in the works of American and United Kingdom hate crimes described through the existence of violence in the unlawful behavior of the perpetrator.

Like Wolfe and Copeland definition:

*"violence directed towards groups of people who generally are not valued by the majority society, who suffer discrimination in other areas, and who do not have full access to remedy social, political and economic injustice."*¹⁹

In this notion the political and social contexts are underlined, thus the impact upon the victim of hate crime was missed. As an answer for that Perry provides her definition of hate crimes:

*"Hate crime involves acts of violence and intimidation, usually directed toward already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to re-create simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group"*²⁰.

¹⁵ Chakraborti, N. and Garland, J. *Hate Crime: Impact, Causes, and Consequences*, (2009), London: Sage., p. 4

¹⁶ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001), p. 8

¹⁷ Hall, N. *Hate crime: second edition* (Routledge, 2013), p. 1

¹⁸ Craig, K. M. *Examining hate-motivated aggression: a review of the social psychological literature on hate crimes as a distinct form of aggression*. *Aggression and Violent Behaviour*, 7. (2002), p. 85.

¹⁹ Wolfe, L. and Copeland, L. *Violence against Women as Bias-Motivated Hate Crime: Defining the Issues in the USA*. In Davies, M. (ed) *Women and Violence*. London: Zed Books. (1994), p.32

²⁰ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001), p. 10

Making a short summary of scientific notions its worth mentioning that all of them recognize two important things within the hate crimes: 1) unlawful and violent behavior and 2) a prejudicial treatment of a victim because of its affiliation to a certain group of people.

However, for the prosecution of hate crimes the definition is necessary, furthermore, it has to be precise and clear for the decision makers. Because hate crime legislation vary in different countries, for the purposes of this research, seems necessary to choose the definition which is used in the different legislations more often²¹.

For this purposes applied by the OSCE in its practice definition can be used as a basic for research due to its' simplicity and international character of perception.

*Hate crimes are criminal acts committed with a bias motive.*²²

We can define same two separate elements of hate crimes that were mention above.

- an acts, that can be determined as a *criminal offense*, prescribed by a criminal code
- the *prejudiced attitude* by which the offender is guided during the commission of crimes. It is also called a bias motive.²³

To be qualified as a hate crime both elements should be present in offenders actions. First element can be called as basic one. It can be provided in any act that fall under a definition of a criminal offence under the criminal law. If no criminal offence is committed, there can be no hate crime. So, any other breach of law will not constitute a hate crime, even with a features of prejudicial treatment²⁴.

Some scholars, like Nathan Hall are arguing with this approach. Stating that hate crimes are not only crimes but also incidents. It makes a difference, because these are two different things. An incident should not be a criminal offense. In England and Wales, hate cases may arise and be recorded by the police in official statistics, but do not have the necessary elements to be classified as an offense to be reported at a later stage in the criminal justice process²⁵. However, it's unnecessary to focus on hate crime incidents, because the perception of hate crimes by the decision

²¹ OSCE *Hate Crime Laws: A Practical Guide*, (Warsaw: ODIHR, 2009), <http://www.osce.org/odihr/36426> , p. 8

²² Ibid , p. 16

See also OSCE Ministerial Council, Decision No. 9/09, "Combating Hate Crimes", Athens, 1-2 December 2009. As it established the policy on mutual combating of hate crimes and first ensurements for collection of all hate crime cases. Also see European Parliament resolution on strengthening the fight against racism, xenophobia and hate crime (2013/2543(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2013-0121&language=EN>. Hate crimes – i.e. violence and crimes motivated by racism, xenophobia, anti-Gypsyism, anti-Semitism or religious intolerance, or by a person's sexual orientation, gender identity or membership of a minority group, or on the basis of the non-exhaustive grounds listed in Article 21 of the Charter of Fundamental Rights

²³ OSCE *Prosecuting Hate Crimes: A Practical Guide*:<http://www.osce.org/odihr/prosecutorsguide>, p 20

²⁴ Ibid, p 19

²⁵ Hall. N. *Hate crime: second edition* (Routledge, 2013), 12

makers is about to be analyzed through the situations that fall especially under the criminal prosecution²⁶.

The second element of the hate crime is a prejudicial or bias attitude of the offender towards the victim and affiliation of the victim with a certain social group.

The laws of different countries against hate crimes vary on the characteristics of the groups they protect. In the OSCE region, legislation on hate crimes usually penationalizes crimes committed with a biased attitudes due to the victims' belonging to groups with certain racial, religious, ethnic or national traits, sexual orientation, gender and disability²⁷. Therefore, if a person commits a hate crime chooses the victim due to the victims' accessory or direct belonging to a certain group.

The prejudiced attitude in a broad sense can be defined as negative preconception, intolerance or hatred to a certain group of persons. Such group is united by some common features which are invariable or fundamental, for example, race or national identity, language, religion, nationality, sexual orientation or other feature.²⁸ For a perpetrator of a hate crime victim beforehand is a representative of a social group. Victim of the hate crimes for the perpetrator is only an intimidation by a certain group and not an individual target.²⁹

An act of hate crime does not necessarily involve feeling of "hatred" and not every crime caused by a biased attitude, is considered a hate crime.³⁰ Just the mere affiliation to the group is enough for the offender.

However, many scholars are stating that hate crimes are actually a group of crimes rather than a single united by the same features³¹. Due to the fact, that law may prescribe the criminal offence committed by the perpetrator of hate crime in different ways and generally, we can distinguish three approaches to it, Perrys' point of view is true.

Abovementioned approaches has to be analyzed for the further research. As an example, may be analyzed the Criminal Code of Ukraine, because all three approaches to the legislative formulation of hate crime policies are represented in it.

The first approach is the recognition of hate acts already classified as separate crimes, so called a substantive offence. *The "substantive offence" is a separate offence that includes the bias*

²⁶ Also see OSCE *Hate Crime Laws: A Practical Guide*, (Warsaw: ODIHR, 2009), <http://www.osce.org/odihr/36426> p. 16 . Within the OSCE region, this kind of hate crime law is relatively rare. The United States (both at the federal and state levels), the Czech Republic and the United Kingdom have created specific offences that incorporate a bias motive. Most other countries have not.

²⁷ OSCE *Hate Crime Laws: A Practical Guide* (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2009), 29

²⁸ Pezzella F. *Hate Crime Statutes. A Public Policy and Law Enforcement Dilemma*. SpringerBriefs in Criminology(2017), p.7

²⁹ OSCE *Hate Crime Laws: A Practical Guide* (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2009), p. 17

³⁰ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001),10

³¹Ibid, p.4

motive as an integral element of the legal definition of the offence. in cases where the victim was chosen because of her belonging to the protected group.³² It requires a separate article in legal criminal act of the country.

The first approach is characterized by the fact that the motive of racial, national or religious hatred or discord is a sign of the core of the crime. Article 161 of the Criminal Code

*“Violation of the Equality of Citizens Depending on their Race, National Membership or Religious Beliefs” implies responsibility for deliberate acts aimed at inciting national, racial or religious hostility and hatred, humiliation of national honor and dignity, or insult to feelings of citizens in connection with their religious beliefs, as well as direct or indirect restriction of rights or direct or indirect privileges on signs of race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other characteristics*³³.

For decision makers this creates a situation when only due to the special condition when hate crime offender will be punished when he committed one of the following actions prescribed in the article³⁴.

The other two approaches of hate crime legislative reflection are connected with an application of penalty enhancement.

The second approach is called a specific penalty enhancements. *“Specific enhancements apply increased penalties only to some criminal offences. It constitute crimes, in the formulation of which the motive of racial, national or religious hatred or discord is an aggravating circumstance of the following crime”*³⁵.

For example, Part 2 of Art. 115 of the Criminal Code of Ukraine “Homicide” provides for a qualified type of murder grounds of racial, national or religious intolerance.³⁶ So the. In this approach, the hate crime motive is precisely reflected in the description in the article of Criminal Code but as an additional characteristics of the major criminal offence that has motive the murder as a circumstance for a penalty enhancement.

The third approach General penalty enhancements. *“Enhancement provisions that apply to a wide range of criminal offences are described as general penalty enhancements”*. Within the OSCE region, 23 countries list some form of bias motive as a factor that can lead to a penalty enhancement for all crimes.³⁷ As an example, article 67 of Criminal code of Ukraine. Circumstances, which aggravating a punishment:

³² OSCE Hate Crime Laws: A Practical Guide (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2009),32

³³ Criminal Code of Ukraine, 05.04.2001, <https://zakon.rada.gov.ua/laws/show/2341-14>

³⁴ OSCE Prosecuting Hate Crimes: A Practical Guide: <http://www.osce.org/odihr/prosecutorsguide>, p 27

³⁵ OSCE Hate Crime Laws: A Practical Guide (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2009),32

³⁶ Criminal Code of Ukraine 05.04.2001 <https://zakon.rada.gov.ua/laws/show/2341-14>

³⁷ OSCE Hate Crime Laws: A Practical Guide (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2009),33

3) committing a crime on the basis of racial, national, religious hatred or discord, or on the basis of sexual attachment;

...6) committing a crime concerning an elderly person, a person with a disability or a person in a helpless condition or a person suffering from a mental disorder, in particular dementia, has intellectual disabilities, or a crime involving a minor child or in the presence of a child³⁸.

For the prosecutors and decision makers this approach is non-obligatory and though may be applied to any crime committed by offender. Decision makers consider the application of this approach independently from main offence.

1.2 Victims of hate crimes: general characteristics and analysis of main groups of risks

The essential feature of the crimes committed based on intolerance is their tripartite nature - the obligatory presence of the perpetrators, victims, as well as a group of people to whom the aggression is addressed (targeted group). This so called third party to the crime include any representatives of a group in respect of which the criminals show hostility or hatred³⁹. As it was stated above, lawmakers define in hate crime legislation specific, vulnerable from hate crimes, groups.

In the investigation of crimes committed on the basis of intolerance, the characteristics of the victim's personality are of particular importance. First, certain characteristics of the victim may indicate a motive for the crime, that is bias or intolerance. Secondly, the fact of the victim's belonging to a particular race, nationality, religion or other group is essential for the criminal qualification of the act. Third, in this category of cases, there is a clear difference in the formal procedural definition of the victim as a subject of criminal proceedings and of a person whose rights have been violated or who had moral suffering, such as degraded dignity or offended feelings for being a member of a certain group. Fourth, the behavior of the victim directly before and during the commission of the crime, as well as the fact of prior acquaintance of the victim and the suspect with the crime and their mutual relations, are especially important for the criminal qualification of the act. Fifth, in the aggregate of these features, specific approaches are required of the investigator during the organization of the pre-trial investigation and the conduct of individual investigative (investigative) actions⁴⁰.

³⁸ Criminal Code of Ukraine, 05.04.2001, <https://zakon.rada.gov.ua/laws/show/2341-14>

³⁹ Gerstenfeld, P. (2004) *Hate Crimes: Causes, Controls and Controversies*, London: Sage., p.44

⁴⁰ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.68

From the point of view of the author of this thesis, the choice of the victim maybe characterized by 2 criterias:

- Objective (victim has anthropometrical or similar features with the representatives of certain social group)
- Subjective (offender experiencing hostile attitude against a certain group).

Hate crimes are always directed towards a group with a specific characteristic. As it is applied in the OSCE understanding, “*protected characteristics must:*

- *create a general identity of the group; and*
- *reflect the deep and fundamental aspect of human personality.*⁴¹

The prejudicial attitude may be on the different grounds like: race, ethnicity, religion, sex, sexual orientation, age, disability, homelessness, belonging to alternative subcultures⁴².

For the purposes of this research, main categories of victims shall be analyzed. Because victim characteristic plays on of the most important roles in hate crime prosecution. In European Parliament resolution on strengthening the fight against racism, xenophobia and hate crime stated that “violence and crimes motivated by racism, xenophobia, anti-Gypsyism, anti-Semitism or religious intolerance, or by a person’s sexual orientation, gender identity or membership of a minority group, or on the basis of the non-exhaustive grounds listed in Article 21 of the Charter of Fundamental Rights shall be sanctioned by judicial system.”⁴³ That does not contain an exhaustive list of characteristics in hate crimes that shall be prosecuted.

Therefore, the number of protected groups differ in every country. However, some similarities can be found. As an example, the OSCE region, protected groups are similar for more than 40 countries of countries within it⁴⁴.

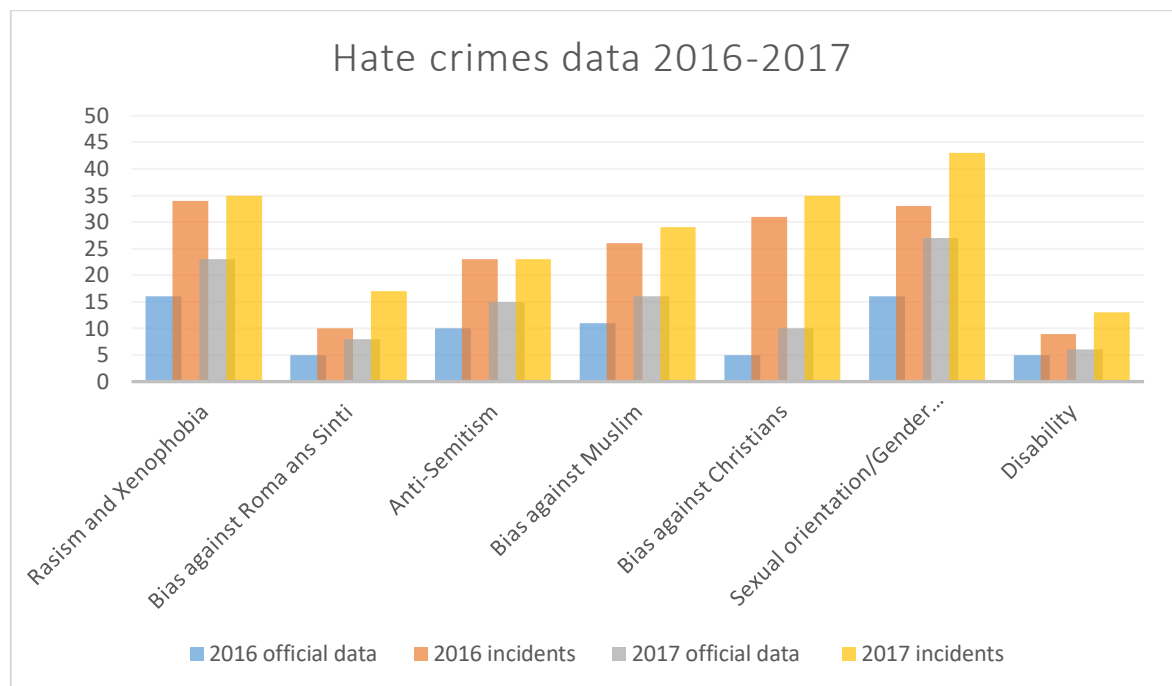
OSCE annually publishes reports on hate crimes statistics in its member states. Dividing hate crimes victims into 7 categories. Following graph shows the number of countries that reported hate crimes and the information about hate crime incidents from NGO. We can see the main groups under the attack within the OSCE region and the problem of official state reports on hate crimes and actual attacks on protected groups, provided by NGO. The difference between the numbers of states that reported hate crimes or hate incidents is different, which outlines the problem of the latency of hate crimes.

⁴¹ OSCE *Prosecuting Hate Crimes: Practical Guide* (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2014),21

⁴² Hall. N. *Hate crime: second edition* (Routledge, 2013), 63-76

⁴³ European Parliament resolution on strengthening the fight against racism, xenophobia and hate crime (2013/2543(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2013-0121&language=EN>

⁴⁴ OSCE Participating states <https://www.osce.org/participating-states>



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This graph is used to show the rising amount of countries reporting hate crimes alongside with even more rapidly rising amount of reported hate crime incidents. The difference in numbers between hate crimes and hate crime incidents is also influenced by the activity/lack of activity of decision makers.

In 2018 hate crime statistics, the approach towards defining groups under the attack was changed. Now it classifies victims of hate crimes into 5 categories: racism and xenophobia, religion, sexual orientation/gender identity, disability, gender.⁴⁶

Though, for the following research protected characteristics shall groups that represented in most of legislations that have hate crime concept. Those are characteristics like race, ethnicity religion, gender, sexual orientation. In addition, other protected groups that are mentioned in forensic literature or case law will be described further.

1.2.1 *Race, ethnicity, religion*

Segregation based on race, national origin, susceptibility was a certain social norm, backed by psychological the rejection of the different and unknown, religious conservatism the lack of scientific knowledge about the causes of the existence of different races, and, as a result, misunderstanding of the common human equality⁴⁷. The main thing for a criminal when choosing

⁴⁵ ODIHR 2017 Hate Crime Data <http://hatecrime.osce.org/2017-data>, ODIHR Publishes 2016 Hate Crime Data <http://hatecrime.osce.org/2016-data>

⁴⁶ ODIHR 2018 Hate Crime Data Now Available <http://hatecrime.osce.org/infocus/2018-hate-crime-data-now-available>

⁴⁷ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001), p. 56

a victim of this crime is his appearance, anthropological features of the body and its individual elements, as well as features of clothing that can testify to his belonging to a certain race, nationality or religion.⁴⁸ It may be defined as an objective factors of victims choice. At the same time, it is real national, ethnic or religious integrity of victim is not important. Though it is important that offender perceived the victim as representative of the race, nationality and ethnic group. Subjective factors include - the personal hostile attitude towards the persons of a certain race, ethnicity, religion.

As for this characteristics, race involves certain anthropological distinctive features of a person, ethnicity is the connection with a certain nationality or an ethnic group of people and religion concerns peoples' attachment to a certain religious community.

Case example: ECtHR *The Škorjanec v. Croatia*⁴⁹. This case about violent attack on a couple because of their Roma origin. Though during the investigation law enforcement bodies withdraw the racist motive of a crime because victims were not Roma in fact. The ECtHR outlined that despite the fact that victims actually weren't of a Roma origin, there is still victims a hate crime, because by the attackers they were perceived as such. It was stated by the court that the obligation to investigate presumably racially motivated act of violence is not based on the actual racial or perceived racial status, rather on actual or presumable affiliation of a particular person with a certain status. The ECtHR stated that prosecuting authorities failed to examine how an applicant was perceived by the offender that lead to the failure to establish the link between the racist motive of the attack⁵⁰. The ECtHR *found a violation of Article 3 under its procedural aspect in conjunction with Article 14 of the ECHR concerning the failure by the domestic authorities to effectively discharge their positive obligations in relation to a racially motivated act of violence against the applicant*.⁵¹ From this case, we can see that to be qualified as hate crime racist motives of a perpetrator matter more than actual belonging of the victim to a certain race or ethnicity.

Most of the victims of xenophobic attacks in European region are the natives of Asia, the Middle East and Africa. In general, students, migrants and refugees and are the largest groups for targeted assault and violence based on intolerance.⁵² Usually it is a violent attack against an individual or a small group of individuals. It shall be noted, that several reports from different human rights organizations stating the additional attention should be paid to the protection of Roma within the

⁴⁸ Gerstenfeld, P. *Hate Crimes: Causes, Controls and Controversies*, London: Sage. (2004), 32

⁴⁹ *Škorjanec v. Croatia*, ECtHR, 25536/14, 28 March 2017.

⁵⁰ *Ibid*, p. 6, 69-71

⁵¹ *Ibid*, p. 1-2

⁵² Annual report on ECRI'S activities covering the period from 1 January to 31 December 2018 (2019), p 8

EU⁵³. As an example, several severe attacks on Roma camps that happened in 2018 in Ukraine⁵⁴ committed with a severe violence and numerous victims, because mostly unprotected women and children were in camps.

In OSCE annual reports⁵⁵ bias crimes against Muslims, Christians and Anti-Semitism are separated groups of hate crimes that examined more attentively due to the largest numbers of attacks towards their victims that are reported to the law enforcement bodies. Thought there is a great number of other religions, members of which also suffer persecution.

Case example: *Milanovic v Serbia*. The applicant in this case is a leading member of the *Vaishnava Hindu religious community in Serbia, otherwise known as Hare Krishna, since 1984*. Applicant at first received threatening phone calls connected to religious activity, then survived several severe attacks in 2001, 2005 and 2007 that were reported around Vidovdan, a major orthodox religious holiday. The Court noted that the authorities had not taken all reasonable measures to conduct an adequate investigation and that they had failed to take effective steps in order to prevent Mr Milanović's repeated illtreatment. Also the police had serious doubts, related to the applicant's religion, as to whether he was a genuine victim. The Court outlined that applicant as a representative of a vulnerable religious minority was systematically attacked with a possibility of future follow of the attacks. *The ECtHR ruled that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention*.⁵⁶

Concerning religious motive in hate crimes, we need to underline, that a special attention has to be paid not only towards violent crimes against people but also to property damages. Such actions often include the following: damage or destruction of religious buildings or religious buildings, illegal possession, defamation or destruction of religious shrines, interference with the implementation of a religious rite and other actions.

1.2.2 Gender, gender identity/sexual orientation

Gender, within the scope of hate crimes is a characteristic that requires additional explanation and attention during application. Because a simple commitment of a crime against a random person

⁵³ See, Annual report on ECRI'S activities covering the period from 1 January to 31 December 2018 (2019), Human Rights watch report 2019, <https://www.hrw.org/world-report/2019>

⁵⁴ Attack on Romes' camp near Lviv (2018)

https://ua.censor.net.ua/news/3065469/pid_lvovom_spalyly_romskyyi_tabir_ofis_ombudsmena

⁵⁵ ODIHR 2017 Hate Crime Data <http://hatecrime.osce.org/2017-data>, ODIHR Publishes 2016 Hate Crime Data <http://hatecrime.osce.org/2016-data>

⁵⁶ *Milanovic v Serbia*, ECtHR, 44614/07, 20 June 2011 p. 6, 7, 86,96,98, 100
<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-110935%22%5D%7D>

of another gender doesn't mean that the hate crime was committed. For example, in supremacist societies where gender difference is constructed as gender inferiority and, ultimately, gender disadvantage⁵⁷, gender hate crimes may be a routine cases. In that cases women garner less power, prestige, and economic reward than men, who have consistently retained leadership and control in government, commerce, and family matters.⁵⁸

Case example: in cases *M.G. v. Turkey*⁵⁹, *Halime Kiliç v. Turkey*⁶⁰, *Eremia v. the Republic of Moldova*⁶¹, a lot of similarities in question of recognition of gender based hate crimes may be found. All victims are married women that suffered domestic violence from their husbands and complained about the lack of protection from authorities after getting restricting order (*Halime Kiliç v. Turkey*) or exhausting all national legal remedies for the protection against ex-husband (*M.G. v. Turkey*). In following cases the Court outlined that authorities' lack of consideration for the problem of violence against women in countries (Moldova and Turkey) amounted to discriminatory treatment based on sex in violation of *Article 14 in conjunction with Article 3 of the ECHR* in cases of *Eremia v. the Republic of Moldova* and *M.G.⁶² v. Turkey*, and *violation of Article 14 in conjunction with Article 2 of the ECHR* in case of *Halime Kiliç v. Turkey*. Therefore, from these cases we can see that the society and position of all women in it play important role in defining whether or not there is a gender based hate crime.

Closely aligned to the issue of gender-based hate crime is a recently emerging area of interest in the field, namely that of hate crimes against sex workers. In a particularly interesting development, Merseyside Police in England agreed a policy stating that crimes against sex workers might be treated as hate crimes.⁶³

As for the hate crimes based on sexual orientation of the victim, it worth mentioning that lesbian, gay, bisexual and transgender (LGBT) people are one of the most vulnerable groups historically experienced by the hostility of legislative institutions. The victim believes that the police will not investigate such crimes or will not classify them as hate crimes. In addition, victims often scared to report this kind of hate crimes because that concerns the official recognition of victims belonging to a social group based on sexual orientation, which is a personal matter. These and other factors significantly affect the reporting or non-reporting of such crimes.

⁵⁷ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001), p. 84

⁵⁸ *Ibid*, p. 85

⁵⁹ *M.G. v. Turkey*, ECtHR, 646/10, 22 March 2016. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-161521%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-161521%22]})

⁶⁰ *Halime Kiliç v. Turkey*, ECtHR, No. 63034/11, 28 June 2016.

<http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58524&filename=001-58524.pdf&TID=nyqovyosot>

⁶¹ *Eremia v. the Republic of Moldova*, ECtHR, 3564/11, 28 May 2013.

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-119968%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-119968%22]})

⁶² *Ibid*, p.

⁶³ Hall. N. *Hate crime: second edition* (Routledge, 2013), 74

Often hate crimes are based on sexual orientation have taken place in public places and have been committed by one or several males unknown to the victim. The minority is actually threatened by victimization where they will be identified like gays, lesbians or bisexuals.⁶⁴

Case examples: *Identoba and Others v. Georgia*⁶⁵, *M.C. and A.C. v. Romania*⁶⁶. I case of *Identoba and Others v. Georgia* ECtHR, a non-governmental organization advocating for LGBT rights, organized during a peaceful march, participants of which were later attacked from anti-demonstrators of two religious groups who assaulted them on the basis of discriminatory intent. ECtHR confirmed that hate crimes individuals based on sexual orientation amounted to a violation of Article 3 of the ECHR taken in conjunction with Article 14 due to the lack of protection from the law enforcement bodies during the demonstration⁶⁷. In case of *M.C. and A.C. v. Romania* applicants after participation in the gay march on their way home were subjected to homophobic abuse and violently attacked despite the absence of distinctive clothing or badges that would identify them as having participated in the march. *ECtHR found that the authorities had failed to take into account possible discriminatory motives in the investigation of a homophobic attack and concluded that there had been a violation of Article 3 together with Article 14 of the ECHR.*⁶⁸

1.2.3. Other categories

Hate crimes against people with disabilities also an often case. It may be connected both with physical and mental disability. Disability hate crime had not received a proper attention in legislation and law enforcement practice. This had resulted in a failure to recognise disability hate crime as such, as well as in under-reporting and misunderstanding of that phenomenon.⁶⁹

Case example: *Đorđević v. Croatia*⁷⁰. In this case the applicants are a mentally retarder person and his mother that suffered ongoing harassment which also included acts of physical violence biased on a physical and mental state of an applicant. The Court stated that “*harassment against disabled persons was usually motivated by a perception of such persons as inferior. Violence and hostility might have wide-ranging consequences, including emotional, physical and sexual implications, or even the death of the victim. People with disabilities might be forced to restructure their daily lives in order to avoid risk.*” Though court found that under Article 14 of the

⁶⁴ Ibid, 73

⁶⁵ *Identoba and Others v. Georgia*, ECtHR, 73235/12, 12 May 2015, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-140163%22%5D%7D>

⁶⁶ *M.C. and A.C. v. Romania*, ECtHR, 12060/12, 12 April 2016. <https://hudoc.echr.coe.int/eng?i=001-161982>

⁶⁷ *Identoba and Others v. Georgia*, ECtHR, 73235/12, 12 May 2015, 7,13,65,99 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-140163%22%5D%7D>

⁶⁸ *M.C. and A.C. v. Romania*, ECtHR, 12060/12, 12 April 2016., 7,8,88,92 <https://hudoc.echr.coe.int/eng?i=001-161982>

⁶⁹ *Đorđević v. Croatia*, ECtHR, 41526/10, 24 October 2012, p.136 <https://hudoc.echr.coe.int/eng?i=001-112322>

⁷⁰ Ibid, 1

Convention, the applicants had failed to use an effective remedy at their disposal, in its decision the lack of disability hate crime law enforcement and legislative recognition was pointed out⁷¹.

Other categories that recognized in some jurisdictions are age, homelessness, alternative subcultures are not that widely applied and researched, even though they have to be mention for understanding of the wide spread nature of victimization of hate crimes. For instance, hate crimes with age bias are usually described by scientists from the point of crimes committed towards elderly people.⁷² Though some scientist add crimes against children to this group, excluding sexual harassment or so called sex crimes, because it's usually committed by people with certain psychological deviations. And with a case of belonging to an alternative subculture, it worth mentioning that it usually connected with subcultures which members have expressive outlooks or behavior, like goths, for example.⁷³

One of the biases is victims professional activity. Case example: *Virabyan v. Armenia*⁷⁴ the applicant, *a member of an opposition party during an anti-governmental demonstration* was arrested and taken to the police station, where he sustained severe injuries. His complaint concerned ill-treatment in custody because of his political opinion. The ECtHR held that the state had to examine a possible link between the alleged political motives and the abuse suffered by the applicant. Therefore, it found a violation of *Article 14 of the ECHR taken in conjunction with Article 3 in its procedural limb*.⁷⁵

1.3. Perpetrators of hate crimes

For the proper investigation of the hate crime the perpetrator of the crime should be also precisely analyzed.

Importance of analysis of perpetrator of hate crime was outlined by ECtHR *Šečić v. Croatia*⁷⁶. In this case, during the investigation of the attack against two men in the *street that were beaten with wooden planks, that was followed with racial abusive shouts*, law enforcement haven't provided effective investigation. Knowing that the perpetrator belonged to local skinhead group

⁷¹ Ibid, p. 6,8,139-141, 154

⁷² Chakraborti, N. and Garland, J. (2009) *Hate Crime: Impact, Causes, and Consequences*, London: Sage.,98

⁷³ Chakraborti, N. and Garland, J. (2009) *Hate Crime: Impact, Causes, and Consequences*, London: Sage.,99

⁷⁴ *Virabyan v. Armenia*, ECtHR, 40094/05, 2 October 2012.

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-113302%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-113302%22]})

⁷⁵ Ibid, 7, 138, 139, 162, 176. Also Handbook on European non-discrimination law, European Union Agency for Fundamental Rights and Council of Europe, 2018, p. 83-84.

⁷⁶ *Šečić v. Croatia*, ECtHR, 40116/02, 31 May 2007 [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22003-2012842-2123404%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-2012842-2123404%22]})

though didn't take sufficient actions *to identifying or prosecuting the perpetrators*.⁷⁷ One more time outlining the importance of proper investigation of hate crimes with and bringing additional attention of the investigators to the perpetrators of the hate crimes.

In forensic science the characteristics of perpetrators of certain types of crimes plays special role for the law enforcement bodies, because knowing a prototype of the perpetrator may facilitate solving of the crime or at least bringing leads to perpetrator.

From the analysis of forensic studies, several similarities of hate crime offenders may be outlined. First of all it should be noted that hate crimes may be committed by persons of both sexes of different ages and social status. However, among the perpetrators of a violent crime based on intolerance crimes are committed by minors or young people. According to various data, such crimes are committed by persons aged 12 to 29 years. The vast majority of criminals are men, in this area there is a very low level of female criminality⁷⁸.

Given the young age of criminals, the level of education is generally not high. The overwhelming majority of criminals were at the stage of receiving education, they were studying in schools, universities. A fairly low percentage (under 30%) of hate crime perpetrators have higher education. Of those who already had education, two thirds were persons with secondary and secondary special education⁷⁹.

The inherent low material level - about 63% of criminals did not have a permanent source of profit. Characteristic is also the low cultural level - 75% of criminals, despite the presence of certain education. Also characteristic is the lack of family ties, at the time of the commission of the crime, 98% of the crimes were not married. In 62% of the accused were brought up in safe families.⁸⁰

Considering the psychological characteristics of the offender's personality, researches agree that, that it is aggressive, not restrained, fanatical, angry with the surrounding world, has strong volitional qualities, is prone to conflicts, ideologically savvy.⁸¹ Criminals distinguish bad social adaptability, general dissatisfaction with their position in society. They express impulsiveness, which is manifested in reduced self-control of their behavior, thoughtless actions, emotional immaturity, infantilism.⁸²

⁷⁷ Ibid, p.68-70.

⁷⁸ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.55

⁷⁹ Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010.340

⁸⁰ Analytical report of the National Police of Ukraine on the situation pre-trial investigation in criminal proceedings for crimes, committed on the basis of racial, national and religious intolerance throughout 2017 (ref. No. 1624/4 / 4-2018 , (2018).

⁸¹ For example, Craig, K. M. *Examining hate-motivated aggression: a review of the social psychological literature on hate crimes as a distinct form of aggression*. *Aggression and Violent Behaviour*, 7. (2002):90

⁸² Ibid, p. 341

Moral norms do not significantly affect their behavior. Such people, of course, do not understand what is required of society, or they understand, but do not want to fulfill these requirements. In the case of representatives of another race or nationality, they have a firm belief that they are evil, inhuman beings or animals.⁸³ Therefore, when committing crimes against protected group, they do not feel guilty, because they consider their actions to be justified and enjoy their supremacy.

Such people have deformed regulatory control, they assess the social situation, based on personal experiences, images, desires. They are characterized by a persistent violation of social adaptation.

In psychological researches, stated consideration of racial hostility as a manifestation of the peculiarities of an “authoritarian personality” - a psychological type that is extremely common in conditions of totalitarian regimes and places of deprivation of liberty.⁸⁴ People who fit this type of personality have many persistent attitudes and biases; they are closed for a new experience; aspire to dominate in any way; wishing to compare themselves with others, while emphasizing their shortcomings; blamed others for their failures, but not for themselves. Research conducted in the United States has shown that even in a prosperous society, who lives for centuries without wars and shocks, the number of authoritarian individuals is quite high. The results of survey showed that the vast majority of offenders who committed hate crime were young people who wanted to add drive to their daily lives: 60% of criminals committed a crime because they wanted to feel the excitement of bullying the victim⁸⁵. However, in a totalitarian and post-totalitarian society, and also where there is a strong criminal subculture, this type of person becomes particularly widespread.

The second most widespread group of hate motivated offenders are those who believe that they responded to attacks by their victims.⁸⁶ The researchers noted that the smallest group was composed by prominent fanatics guided by racial or religious ideology or ethnic intolerance. Such people are often members or potential members of an extremist organization.

Among those who committed hate crimes against individuals, there are several psychological types. The basis of such typological differences is the forensic model of personality, which is based on accented levels, in connection with which one can distinguish the following types:

⁸³ Craig, K. M. *Examining hate-motivated aggression: a review of the social psychological literature on hate crimes as a distinct form of aggression*. Aggression and Violent Behaviour, 7. (2002) p. 91

⁸⁴ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p. 17-18

⁸⁵ Craig, K. M. *Examining hate-motivated aggression: a review of the social psychological literature on hate crimes as a distinct form of aggression*. Aggression and Violent Behaviour, 7. (2002), p.91

⁸⁶ Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010.

1) Dedication. Characterized by increased hostility towards a certain group. The person is purposeful, ignorant, has a stable life position, is inclined to straightforwardness, determination in actions;

2) Demonstrative. Different from the desire to stand out, to achieve public recognition of their actions, has an overestimating self-esteem, his actions are not considered, and emotions - superficial, which explains the lack of compassion for the victim;

3) Jamming. Maximum orientation to external circumstances is interwoven with resistance in achieving the goal, is characterized by excessive ambition, cruelty, behavior is often demonstrative, he tries to attract the attention of others, can subordinate people and direct their behavior to achieve their goals.⁸⁷ It should be noted that the listed types of personality criminals are in any case conditional.

Such psychological peculiarities of the person also influence its behavior during case investigation. According to the analysis of materials of criminal cases, persons who commit crimes against a person for reasons of intolerance do not always conceal their belonging to one or another nationalist group from parents and educators of educational institutions. At the same time, during the investigation of interrogation protocols, it was found that only 2% of the abovementioned persons at the pre-trial stage openly stated the reasons for the commission of crimes⁸⁸.

Understanding the psychological characteristics of a person who commits hate crimes can assist in identifying a criminal, choosing the right tactic of communicating with him during pre-trial investigation, increasing the effectiveness of the investigation as a whole, as well as preventing crimes from this category.

The subjects of the crimes of this group can act as individuals and groups of persons. An analysis of the practice shows that the overwhelming majority of such crimes committed by a group of individuals.

According to researchers, the percentage of violent crimes committed on the grounds of intolerance by a group of individuals ranges from 76% to 113% to 96%. Typically, such groups are very numerous and can count up to hundreds of people. The group consisted of 2 to 5 people (45%), 5 to 10 (26%), 10 to 20 (18%), 20 to 50 (7.5%), 50 and more people (3%). Often such crimes committed by members of the youth extreme groups of skinheads, by football fans and by members of nationalistic patriotic clubs - 18% and by non-members of such groups - 5% ⁸⁹. As a

⁸⁷ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.57

⁸⁸ Analytical report of the National Police of Ukraine on the situation pre-trial investigation in criminal proceedings for crimes, committed on the basis of racial, national and religious intolerance throughout 2017 (ref. No. 1624/4 / 4-2018 , (2018).

⁸⁹ Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010.

rule, a group of two to four persons is brought to justice, although in individual cases there were up to ten witnesses of the victims and witnesses of the attackers. Significantly, the difference in this regard is violence against religious intolerance, which is usually carried out individually. The subject of such violence is a person older than 40 years of age, and usually a male with a secondary or higher education⁹⁰.

The group's nature of committing such crimes causes some difficulties in investigating and prosecuting. The study of the personality traits of a single offender does not present a great deal of difficulty. In the cases when an offense committed by a group of people, investigating the personal traits and the motives of the conduct of each of the perpetrators should be complemented by the study of those relationships that exist between them and not only determine the hierarchy of motives in the group, but may affect the change in the hierarchy of motives of each individual⁹¹. The great difficulty is the solution of the question of differentiating the specific role of each participant in criminal offenses, especially when it comes to crimes or criminal misconduct committed by members of a criminal group.

The group nature of violent crime on the grounds of intolerance is due to the motivation of criminal activity. A group committing crimes of intolerance can be formed on the basis of various motives, both long before the crime, and immediately before it. Such groups have a common motive or at least common motives. Considering the group as the subject of a crime traditionally means a united organisation.

In forensic literature, considerable attention is paid to the peculiarities of the structure of criminal groups that exist within it, and so on. The generally recognized today is the assertion that in any group, which even consists of two people, the leader always stands out. As for larger groups, the simplest structure includes two levels: leaders and performers. With a significant increase in the size of the criminal group to ensure the success of its leadership creates a more complex structure, which includes more levels, which involves a more detailed distribution of roles, both in the group and in the process of committing a particular criminal offense.⁹²

It should be noted that any group has different structure, namely a set of relatively stable relationships among its members. The high homogeneity of the group by gender, age, level of education and common interests is a stable base for the close relationship between its members, while the heterogeneous group of these features, as a rule, breaks up into several informal groups,

⁹⁰ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.7

⁹¹ Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010.

⁹² Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010., p.29

each of which is more homogeneous in its composition than the original group. The higher the homogeneity of the group, the higher the probability of the emergence of permanent and lasting contacts between its members, a sense of merger, a sense of “we”⁹³.

The structure of the group directly depends on its size. Relationships between individual members in a group of 5-10 people are significantly stronger than in more numerous groups. However, in a group of more than 6 members almost always there is at least one opposition⁹⁴. The larger the number of groups, the greater the number of oppositionists. To allocate oppositionists with or without a psychologist and use them in the criminal proceedings is one of the priority tasks of law enforcement officers.

Depending on the structure and specificity of interpersonal relationships, criminal groups are divided into three categories.

The first category includes an accidental criminal group. It is characterized by the instability of the composition, the lack of clear objectives and the subject of criminal activity. This greatly complicates the investigation process, and the psychological study of its members provides the necessary information about the motives and specifics of their behavior.⁹⁵

The company (as opposed to the casual group) is more organized, has a more stable composition, more pronounced anti-social installation. Criminal activity occupies a leading role in this group, but there are no clear plans for action, there is no psychological and functional structure, no management link. The socio-psychological structure of the company is different in that the formed emotional connections, the sense of affection of its members, are of great importance⁹⁶. The psychological analysis of the specifics of the emotional contacts of the members of this company will help the investigation to understand the motivational line of its members, to determine the role of each member of the group in a criminal act.

Organized criminal groups are characterized by stability of the personnel; they produce group behavioral norms and value orientations. The organized group has a clear target for committing a criminal offense. The motivation of its members is marked by a pronounced criminal orientation.

When hate crime is committed by a group of people, the social danger of the act increases significantly due to a number of reasons:

a) the members of the group provide psychological assistance and support to each other at the stage of preparation and at the time of the attack, which in turn helps to make decisions on

⁹³ Ibid, p.30

⁹⁴ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.64

⁹⁵ Ibid, 64-65

⁹⁶ Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010, p.30-31

committing more serious criminal offenses. At the same time support is not always expressed in a verbal form - the very realization that the activity carried out by several individuals gives additional confidence in its correctness and, most importantly, success. If the group consists of minors, then their desire to demonstrate their capabilities before the comrades' often leads to much more serious crimes, that is, if one person can confine himself to threats, then a group of people may most likely go to harm life and health

b) the group has access to such methods of committing a criminal offense or crime that can not be used by a single offender;

c) the group transfers the criminal experience much faster (even if only one member of the criminal group owns criminal skills, transferring them to other members of the group does not require much time);⁹⁷;

d) the damage caused by criminal activity increases;

e) The criminal activities of the group can be substantially expanded both in time and in space.⁹⁸

Knowledge of psychological patterns, including the regularities of the existence and organization of the group's activities, promotes not only the knowledge of the subjective component of ethnic crimes, but their entire structure, and can also assist in identifying all the perpetrators, establishing their true roles, as in the group, so and a specific crime. The specificity of the group committing ethnic crimes is due to the fact that the size of the group reaches several hundreds or even tens of hundreds of subjects. This obliges to consider it not as a kind of traditional group, but in the form of a crowd. The named factor is very important for understanding the essence of crimes in this category. The crowd already has completely different ties and relationships than in a simple group. The crowd, unlike the traditional criminal group, is organized from random persons who take part in one or another action. The main characteristic of the crowd is the psychology of passions. The crowd pours and discharges the nervous-psychic tension of people put in a hopeless state. If problems are not solved, the crowd begins to mess. The core of the crowd can be formed under the influence of rationalist considerations and set before itself quite certain goals⁹⁹.

As mentioned earlier, ethnic crimes can be committed by single people and groups. It should be kept in mind that single people can act independently, not to be in one or another party or group,

⁹⁷ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.7

⁹⁸ Perlin J., Martinenko O. and Belousov Y. *Hate Crimes: A New Criminal Phenomenon of Global Society*. Scientific and Practical Edition - Lviv: Astrolabe, 2010

⁹⁹ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.15-17

To call the most dangerous groups that have their followers in different countries: Ku Klux Klan, Nazis and neo-Nazis, Skinheads and the Christian Identity Movement World Extremist Network “Blood and Honor” and other.¹⁰⁰ Not taking into account a terrorist organizations, due to the fact that terrorism is a hate crime but it is a separate forensic concept and among different legislations gets a separate article in the criminal code.

It has to be mentioned that there are also popular other organizations, that target on different groups, like homosexuals. For example, in Ukraine there is The Social-Nationalist Assembly that is known for its homophobic actions. In 2012 the participants of the organization attacked participants of the entertaining student’s event in dresses. Although this event had nothing to do with homosexuality, in the propaganda video of the organization, the attackers were called “unknown patriots”, the homophobic motive of the attackers was clearly defined, the extremely offensive and aggressive homophobic calls were also used¹⁰¹.

Decision makers with legislative authority shall pay additional attention to hate crimes committed by groups of people and ban, if needed in advance, their activity. Otherwise, with an enrichment of their activity the amount of bias incidents will only rise, marginalizing the society. It will create additional danger for the victims of attacks of certain group and may encourage marginalized organization for further attacks.

Also, the characteristics of a person committing non-violent crime is significantly different from that of a person who is committing violent crime. Non-violent crimes are usually committed by older people (from 40 years of age), mainly with higher education, with good oratory abilities. Such individuals were either journalists or active public figures and belonged to certain civic organizations sharing patriotic ideas that are on the verge of nationalism¹⁰². They share the views of patriotism, national upsurge, advocate the development and health of the nation, and so on. However, publications and speeches allow expressions that are capable of causing national, racial or religious hatred to humiliate national or religious feelings.

For decision makers in hate crimes characteristic of a perpetrator of the hate crime is extremely important not only for current investigation but also for further understanding of tensions within the society or certain social groups. Characteristic of a perpetrator of a crime may also rise a reasonable doubt for a hate crime in case when the perpetrator or his activity directly falls under the provide above description.

¹⁰⁰ Chakraborti, N. and Garland, J. (2009) *Hate Crime: Impact, Causes, and Consequences*, London: Sage., 137

¹⁰¹ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.66

¹⁰² Craig, K. M. *Examining hate-motivated aggression: a review of the social psychological literature on hate crimes as a distinct form of aggression*. *Aggression and Violent Behaviour*, 7. (2002), p.91

1.4 Importance of a fight against hate crimes

The problem of crimes committed on the basis of racial hatred shows the existence of profound social and psychological causes associated with the rejection of “alien”, social disorganization, marginalization of certain strata of the population.

Hate crimes and incidents often leave victims’ fear in subsequent attacks and even more violence. This fear is caused by the refuse to perceive the victims’ identity, which is implicitly present in the crimes on the grounds of hate. In addition, hate crimes are sending signal, that the victim is not accepted as a part of the society in which he lives. This means that victims can feel extraordinary isolation and fear longer than victims of other crimes.

Studies show that victims of hate crimes feeling more negative emotions than victims of other crimes.¹⁰³ Inaction to the crime or reaction that degrades the dignity of the victim of a hate crime, can cause even more damage to an already injured person. Such type of a second victimization may occur, in particular, when public (law enforcement, social workers or judges) deny or diminish the seriousness of the crime. For many victims of hate crimes secondary victimization leads to even greater humiliation, degradation and isolation.

If hate crimes are not investigated with a great care and are not prosecuted, it can become a signal for offenders that they can freely continue their prejudicial behavior, which, in its turn, can encourage others to commit similar crimes.

Impunity of those who commit hate crimes increases the general level of crime. In the absence of protection from hate crimes, minorities lose their trust in law-enforcement bodies and authorities, which makes these groups more marginalized¹⁰⁴. In the worst cases, hate crimes can cause the attacks of the victims and generate a new wave of violence.

Concluding all abovementioned in this chapter, it worth mentioning that the hate crime concept is still developing. It one of the ways for combating the discrimination. Hate crime is forensic concept that has no universally recognized notion. Only the main two elements of it are recognized and implemented in different legislations. Hate crime is a criminal act committed with a bias motive. The motives can be different, though, they always show intolerance and non-perception of some group. The danger of the hate crime is that not a single victim is under the attack of offender, but a group that he/she represents.

¹⁰³ OSCE *Hate Crime Laws: A Practical Guide* (OSCE Office for Democratic Institutions and Human Rights(ODIHR) (2009),16)

¹⁰⁴ Perry B. *In the Name of Hate: Understanding Hate Crimes*. New York: Routledge. (2001), 1

II. ANALYSIS OF DIFFERENT HATE CRIME LAWS AND POLICIES

2.1 International sources of hate crime legislation

As it was stated above, hate crimes derived from the concept of prohibition of discrimination. First anti-discriminatory norms and rules created a background for recognition and protection human rights through the adoption and development of hate crime laws. That's why the examination of international sources of hate crime legislation shall contain relevant international norms on non-discrimination matters due to the primary character of hate crimes.

Since the establishment of the UN, numerous treaties and agreements have been adopted to ensure protection against discrimination.

The main international legal instruments that contain antidiscriminatory provisions are agreements signed under the auspices of the UN. The adoption of the UN Charter is the beginning of a period of modern international law in which the prohibition of inequality and discrimination has a universal international legal character and can not be exclusively a matter of national jurisdiction. The UN Charter has established general principles of respect for human rights on the basis of equality¹⁰⁵. Anti-discriminatory international legal instruments establish a general principle of non-discrimination and /or an obligation for states to prohibit certain forms of discrimination.

UN human rights standards oblige states to guarantee equality of rights and equal protection of the law and non-discrimination. The UDHR establishes the principles of equality rights and non-discrimination. This is the first document that, at the international level proclaimed that every person should have all the rights and all the freedoms set in Declaration, regardless of *race, color skin, sex, language, religion, political or other opinion, on national or social origin, property, or estate another situation*¹⁰⁶.

International Covenant on Civil and Political Rights (ICCPR) extends these principles by incorporating special provisions. Articles 6 and 7 guarantee the rights of people to life and freedom from inhuman or degrading treatment, and Article 2 requires the use of sufficient legislative, judicial and other measures for providing effective legal protection in case of violation of conditions the Covenant.¹⁰⁷

In particular, Article 2 of the ICCPR contains provisions on the principle of non-Discrimination, which is also included in the Universal Declaration, and Article 26 more precisely

¹⁰⁵ UDHR, 1948, <http://www.un.org/en/universal-declaration-human-rights>

¹⁰⁶ UDHR, 1948, <http://www.un.org/en/universal-declaration-human-rights>, art. 2

¹⁰⁷International Covenant on Civil and Political Rights, 1966
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

defines equality before the law, equal protection law and protection against discrimination. ICCPR obliges the state to investigate cases of violence against people without discrimination.

Under the Covenant was created a body of independent experts. It's a states' obligation to submit regular reports to Committee and the implication of the rights guaranteed by the Covenant. That's why the UN Human Rights Committee monitors the implementation of the ICCPR, notes that states are obliged to investigate violations committed public and private persons against people..¹⁰⁸

The Committee may consider individual communications alleging violations of the rights set forth in the International Covenant on Civil and Political Rights by States parties to the First Optional Protocol to the International Covenant on Civil and Political Rights.¹⁰⁹

One of the most important international legal instruments in combating discrimination is the Convention on the Elimination of All Forms of Racial Discrimination. That further specifies the States' obligation to investigate cases of racist violence, demanding from the states introduce legislation prohibiting acts of violence and rooting to violence on the basis of racism in addition to certain forms of racist statements.

In this Convention in article 1 stated the definition of racial discrimination:

“racial discrimination– is meant ‘any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life’”¹¹⁰

The International Convention on the Elimination of All Forms of Racial Discrimination plays a special role in the system of international anti-discrimination law. The preamble to the Convention states the need to accelerate the elimination of racial discrimination worldwide, in all its forms and manifestations, and to ensure understanding and respect for human dignity. The duty of the state to protect persons under its jurisdiction from racial discrimination is one of the main provisions of international anti-discrimination law.

The Committee on the Elimination of Racial Discrimination (CERD) is the body of responsible for monitoring of implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties. The Committee examines reports on implementation

¹⁰⁸ International Covenant on Civil and Political Rights, 1966
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁰⁹ Hate crimes European Judicial Training project report, in the frame of the project: “Fundamental Rights in Practice: European Judicial Training on the rights of persons in need of international protection” co-financed by the European Union - JUST/2014/JTRA/AG/EJTR/6856, 2018, p.20

¹¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination, 1965
<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

of the Convention, which states must report initially one year after acceding to the Convention and then every two years.¹¹¹

State party in the form of “concluding observations”. The Committee on the Elimination of Racial Discrimination, in its General Recommendation XIV, paragraph 1, of article 1 of the Convention (1993), emphasized that non-discrimination, along with equality before the law and the right to equal protection of the law without any discrimination, is one of the fundamental principles of protection human rights¹¹².

Article 4 of the Convention, obliges State parties to “(a) penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.”¹¹³

The Committee emphasized in its general recommendation XV that the provisions of Article 4 are binding¹¹⁴. In order to comply with the obligations arising from this article, States parties must not only adopt the relevant laws, but also ensure that they effective compliance. Given that threats and acts of racially motivated violence easily lead to new acts of violence and create an atmosphere of hostility, only immediate state intervention can be considered adequate in relation to the obligation to take effective measures in similar situations.

The Committee on the Elimination of Racial Discrimination the Criminal Justice (CERD), which monitors the implementation of the Convention, outlines “the importance of persecuting racist acts, including minor violations of racist motives, since any one motivated by racism breach destroys social cohesion and society as a whole”. The Committee may also consider individual petitions alleging violations of the Convention by States parties who have made the necessary declaration under article 14 of the Convention.

For example, in the Conclusion of the Committee on the Elimination of Racial Discrimination in accordance with Article 14 of the CERD in the case of “Mahali Dawas and Yousef Shava against Denmark”¹¹⁵. The Committee considered the obligation of the state to take effective measures against acts of discrimination in accordance with Article 2 and to ensure

¹¹¹ The Committee on the Elimination of Racial Discrimination
<https://www.ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx>

¹¹² General Recommendation XIV of the Committee on the Elimination of Racial Discrimination, 1993
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7486&Lang=en

¹¹³ International Convention on the Elimination of All Forms of Racial Discrimination, 1965
<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

¹¹⁴ General Recommendation XIV of the Committee on the Elimination of Racial Discrimination. 1993
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7487&Lang=en

¹¹⁵ Mahali Dawas and Yousef Shava v. Denmark, CERD/C/80/D/46/2009, UN Committee on the Elimination of Racial Discrimination (CERD), 2 April 2012, available at: <https://www.refworld.org/cases,CERD,519f82984.html> [accessed 1 December 2019]

effective remedies provided for in Article 6 in respect of proper investigation and prosecution of crimes committed on the grounds of hate.

Following case has entrusted the prosecutor with a great responsibility to ensure a full investigation of racist motives. Despite the presence of other possible motives in incident prosecutors are obliged not to exclude automatically racist motives without careful investigation.¹¹⁶ Failure to comply with this requirement in case of evidence of sufficient evidence of the presence of motives of bias a violation of Article 6 (on effective remedies and Article 2.1 (d) (on the suppression of racial discrimination by all possible means) CERD.

Other international legal instruments that concern hate crime aspects are worth mentioning.

The second group includes a number of conventions, declarations, resolutions and other international legal acts that prohibit discrimination in its particular forms, like racial discrimination, ethnic discrimination, religion and beliefs, gender discrimination, discrimination in employment, refugees, migrants, stateless persons, and other forms thereof.

This group includes, in particular, *Convention on the Prevention and Punishment of the Crime of Genocide*¹¹⁷, *International Convention on the Elimination of All Forms of Racial Discrimination*¹¹⁸, *International Convention on the Suppression and Punishment of the Crime of Apartheid*¹¹⁹, *Convention on the Elimination of All Forms of Discrimination against Women*¹²⁰, *The Convention on the Rights of the Child*¹²¹, *Convention on the Rights of Persons with Disabilities*¹²².

An important place in the mechanism of international legal counteraction to racial discrimination is the international legal acts of recommendation nature (documents of international organizations: resolutions, declarations, etc.). In particular: the UNESCO Declaration on Race and Racial Prejudice¹²³, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief¹²⁴, the UN Declaration on the Rights of Persons

¹¹⁶ Ibid

¹¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, 1948, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx>

¹¹⁸ International Convention on the Elimination of All Forms of Racial Discrimination, 1965 <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

¹¹⁹ International Convention on the Suppression and Punishment of the Crime of Apartheid, 1976 http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf

¹²⁰ Convention on the Elimination of All Forms of Discrimination against Women, 1979, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

¹²¹ Convention on the Rights of the Child <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹²² Convention on the Rights of Persons with Disabilities, 2006 <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

¹²³ UNESCO Declaration on Race and Racial Prejudice, 1982 http://www.unesco.org/education/pdf/RACE_E.PDF

¹²⁴ UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief <http://www.un.org/documents/ga/res/36/a36r055.htm>

Belonging to National or Ethnic, Religious and Linguistic Minorities¹²⁵. This conventions play important role in recognition of certain groups of risk and ring additional attention to certain problems on the international level.

2.2.General approach among the European Union

*“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”*¹²⁶

This value got its embodiment in other EU documents that prescribed special procedures of protection and implementation of this value.

European Union Council Directive 2000/43/EC of 29 June 2000 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, provide, in Article 8¹²⁷ and Article 10¹²⁸ respectively:

Decision on combating hate crimes, adopted by the Council of Ministers in 2009 remains one of the most complex obligations of the international community on the responsibilities of the Member Parties to resist hate crimes. According to this decision of the participating countries, inter alia:

- *Collect and disclose hate crimes data;*
- *Adopt, if appropriate, specific legislation aimed at specifically for the fight against hate crimes;*
- *Take appropriate measures to encourage victims to report hate crimes;*
- *Develop programs for vocational training and provide advancing trainings for law enforcement officers, prosecutors and court employees who deal with hate crimes; and*
- *Promptly investigate hate crimes and ensure to recognize that the perpetrators found guilty of were publicly condemned by the relevant authorities and political leadership.*

¹²⁵ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities <https://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf>

¹²⁶ Treaty of Lisbon, 2007 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016ME/TXT&from=EN>

¹²⁷ European Union Council Directive 2000/43/EC of 29 June 2000 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>

¹²⁸ European Union Council Directive 2000/78/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078>

Council Framework Decision 2008/913/JHA of November 28, 2008 “On combating certain forms and expressions of racism and xenophobia by means of criminal law”¹²⁹ is one of the official EU responses to crimes committed on the grounds of hate. This decision obliges all EU Member to impose its legislation and enforce this decision. The aforementioned Decision provides for common features of crimes committed on grounds of national, racial, religious hatred and discord and forms of following crimes.

It is aimed at harmonizing of criminal legislation in the EU and ensuring effective, proportionate and deterrent punishment as a reaction of the state to racist and xenophobic crimes. Although much of the decision relates to linguistic crime, Article 4 states that for All other types of crime, all Member States must take Measures to ensure racial and xenophobic activities motives or recognized as aggravating circumstances, or that courts to take into account these motives for the purpose of punishment. Article 8 requires that the investigation or prosecution of racist or xenophobic offenses *began regardless of the confession or accusation by the victim*. Although the decision imposes the obligation to put into effect special legislation, it requires that criminal justice recognized and duly punished for crimes committed either on the basis of hatred, liable to investigators and prosecutors for bringing such cases to court¹³⁰.

The system of anti-discrimination rules that legally guarantee the right of everyone to freedom from discrimination, unfortunately, cannot completely overcome the problem of discrimination in everyday life. In order to counter such threats the European Commission against Racism and Intolerance was established with a task to strengthen legal and political guarantees *against all forms of discrimination, xenophobia and racism, and enhanced* intergovernmental cooperation in all areas of the Council of Europe. Today, the European Commission against Racism and Intolerance is the main body that monitors compliance with the prohibition of discrimination and racism in member states of the Council of Europe and provides them with appropriate recommendations. ECRI addresses General Policy Recommendations to the governments of all member states. Recommendations are detailed guidelines which states are invited to use¹³¹.

With regard to victims of hate crimes, Directive 2012/29/EU of the European Parliament and the of the Council establishing minimum standards on the rights, support and protection of

¹²⁹ Council Framework Decision 2008/913/JHA of November 28, 2008 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008F0913&from=EN>

¹³⁰ Ibid

¹³¹ European Commission against Racism and Intolerance (ECRI) Standards. The list of recommendations <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-standards>

victims of crime¹³² defines that victims of hate crimes victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures¹³³. Law enforcement agencies have to assess this risk as much as possible the early stages of criminal proceedings as an integral part within the framework of an individual assessment of the victim. Special measures of protection, referred in the Directive should apply, if necessary, to the protection provided for the victim of any crime. From EU member states are required to bring their legislation and policies in accordance with this Directive, until the 16th of November 2015¹³⁴.

Among other European anti-discrimination European texts it is also worthwhile to pay attention to the Additional Protocol to the Convention on Cybercrime¹³⁵ that criminalizes acts of racist or xenophobic violence committed through a computer system. According to Art. 3 to 6 of above mentioned Protocol, the parties shall adopt such legislative and other measures as may be necessary to establish as criminal offenses under their national law, in case of intentional distribution or otherwise providing public access through computer systems to racist and xenophobic material. Aforementioned protocol prescribed the forms of hate crimes in the cyberspace. As an example, when a threat is made through a computer system to a person, belonging to a certain group, shall be recognized as a crime by national legislation.

Attention shall be paid to the activity of the OSCE in combating hate crimes. *Ministerial Council Decision No. 4/2003 on tolerance and non-discrimination*¹³⁶, *Permanent Council Decision No. 621/2004 on tolerance and the fight against racism, xenophobia and discrimination*¹³⁷ and *Ministerial Council Decision No. 9/2009 on combating hate crimes*¹³⁸. Those are the main documents that invoke member states to combat all the manifestations of racism and discrimination with and summon to submit the data about all incidents that occurred in country. And the Office for Democratic Institutions and Human Rights (ODIHR) is tasked with

¹³² Directive 2012/29/EU of the European Parliament and the of the Council establishing minimum standards on the rights, support and protection of victims of crime <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>

¹³³ Directive 2012/29/EU of the European Parliament and the of the Council establishing minimum standards on the rights, support and protection of victims of crime, par. 56

¹³⁴ Ibid, chart 6, article 27

¹³⁵ Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 2003, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008160f>

¹³⁶ Ministerial Council Decision No. 4/2003 on tolerance and non-discrimination www.osce.org/mc/19382

¹³⁷ Permanent Council Decision No. 621/2004 on tolerance and the fight against racism, xenophobia and discrimination www.osce.org/pc/35610

¹³⁸ Ministerial Council Decision No. 9/2009 on combating hate crimes www.osce.org/cio/40695

assisting in promotion of human rights, freedoms, tolerance and democracy within OSCE member states.

The above mentioned documents play important role in prohibition of discrimination and fight against hate crime, yet the main document in the European legal system of anti-discrimination rules is the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹³⁹, 1950 and its Protocols. And even more crucial role for the protection of human rights in Europe plays the ECtHR. That's why it is extremely important to cover the activity of the Court and outline its main practices concerning hate crimes. Therefore, provisions of the ECHR that concern hate crime will be analysed in next part of this thesis.

2.3 Practice of the European Court of Human Rights

Established on 21 January 1959 on the basis of Article 19 of the ECHR the European Court of Human Rights is a body of judicial control.¹⁴⁰ The jurisdiction of the Court is recognized 47 member states of the Council of Europe.¹⁴¹

ECtHR on individual or State applications alleging violations of the civil and political rights set out in the ECHR.¹⁴² The Convention charges the Court with ensuring the observance of the engagement undertaken by the contracting states in relation to the Convention and its protocols, that is ensuring *the enforcement and implementation of the European Convention in the member states of the Council of Europe*.¹⁴³

Concerning the hate crimes, main practice of the Court in this referred to Article 14, which proclaimed the principle of non-discrimination and can only be used in the event of a violation of another essential the right provided for by the Convention. Though the violation of article 14 may be recognised only in conjunction with other article of the Convention

These cases allowed us to define a number of key principles. Such principles complement each other and create a complex consistent judicial practice regarding the obligations of States to investigate. The crimes committed on the grounds of bias, promptly and effectively, regardless of whether such crimes were committed by public or private entities, as well as to ensure recognition of motives

¹³⁹ ECHR, 1950 https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁴⁰ Article 12 of the ECHR, 1950 https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁴¹ The Court in brief, https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf

¹⁴² Ibid

¹⁴³ European Court of Human Rights https://en.wikipedia.org/wiki/European_Court_of_Human_Rights#Protocol_14_reforms

The prohibition of discrimination is contained in Art. 14 of the Convention, which provides that

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*¹⁴⁴

The principle of non-discrimination, established by Art. 14 The Convention may be applied only in cases where the rights protected by the Convention and the Protocols, which in a way restricts its effect, are violated. Further consolidation of the general principle of non-discrimination is provided in the Protocol No. 12.

In making decisions, the European Court of Human Rights in accordance with Art. 32 of the Convention applies the provisions of the Convention itself: *“the jurisdiction of the Court extends to all questions of interpretation and application of the Convention and the protocols thereto submitted to it for consideration in accordance with Articles 33, 34 and 47”*¹⁴⁵. Therefore, due to the estimated nature of many provisions of the Convention, their interpretation by the Court in its decisions is significant. The practice of the Court has obligatory character towards member states.

In the section where victims of the hate crimes were characterized the practice of the court was briefly analyzed. In this chapter an aspect of procedural demands of the ECtHR towards the states and law enforcement bodies shall be taken into account.

A direct statement and interpretation of this obligation is contained in a number of decisions of the ECtHR, which in its practice decides on the violation of the provisions of the European Convention by States. In *Nachova and Others v. Bulgaria*¹⁴⁶. It is a key case in the matter of investigation of hate crimes. The ECtHR in its judgment of 26 February 2004 found a violation of Article 14, taken in conjunction with Article 2 of the Convention (the right to life). As is clear from the case file, two young men of Gypsy origin - K. Angelov and K. Petkov - were servicemen. They illegally left the guard hut, where they were disciplined. During the arrest of K. Angelov and K. Petkov, the major police officer G. used weapons. From the wounds received, both young men died while being transported to the hospital. One of the witness to the detention argued that the police were shooting, and at some point, G. aimed at him and insulted him, shouting, “You, damned Gypsies” The ECtHR found that, firstly, Bulgaria did not provide sufficient evidence of a

¹⁴⁴ European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁴⁵ ECHR , 1950 https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁴⁶ *Nachova and Others v. Bulgaria*, ECtHR, No. 43577/98, 43579/98, 06 July 2005, p. 6-10
<https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22001-69630%22%5D%7D>

lack of discriminatory motive from law enforcement agencies in the use of weapons; second, there was an inappropriate conduct of the investigation, in particular, racial motives that caused the Court to violate the material and procedural aspects of Article 14 were not investigated.¹⁴⁷

The Grand Chamber, reviewing the case, emphasized the importance of counteracting racism and discrimination by pointing out: “*Discrimination is different treatment without objective and sufficient justification for persons who are in a relatively similar situation. Racial violence is a particularly serious form of bullying against human dignity. Given its detrimental effects, it requires special vigilance and decisive action from the authorities. The authorities should take all possible measures to combat racism and racial violence, thus contributing to the adoption of a democratic view of a society in which cultural diversity is perceived not as a threat but as a source of wealth*”¹⁴⁸.

In considering the violation of Article 14 in combination with the procedural aspect of Article 2, the Grand Chamber reaffirmed the approach, that if there is a suspicion that racist motives have been the cause of violent actions, it is essential that the official investigation was carried out properly and impartially, with taking into account the need to constantly recall the dangers of racism and racial hatred for society and to maintain the confidence of minorities in the ability of the authorities to protect them from racial violence. Compliance with the State's positive obligations under Article 2 of the Convention requires that the national legal system demonstrate the effectiveness of the criminal law against the perpetrators of the illegal deprivation of life of another person, regardless of the racial or ethnic origin of the victim¹⁴⁹. The findings of the Grand Chamber concerning the procedural aspects of Article 14 have evolved, in particular, in the case of *Šečić v. Croatia*¹⁵⁰.

Thus, the practice of the European Court of Human Rights convincingly shows that an important aspect of the state's imperative obligation to ensure that every person subject to their jurisdiction is effectively protected against any acts of racial discrimination is a procedural obligation to conduct a proper investigation. Circumstances related to case that could testify to the racial basis of the offense shall not stay with impunity for perpetrators. The inappropriate attitude of the state in the person of law enforcement bodies to reveal a possible racial hatred as the motive in a committed crime. Because the avoidance of the recognition of such a motive is a direct

¹⁴⁷ Nachova and Others v. Bulgaria, ECtHR, No. 43577/98, 43579/98, 06 July 2005, p. 6-10 [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22001-69630%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22001-69630%22]})

¹⁴⁸ Ibid, p.145

¹⁴⁹ Ibid, p. 146

¹⁵⁰ Šečić v. Croatia, ECtHR, 40116/02, 31 May 2007 <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%222003-2012842-2123404%22%5D%7D>

violation of international legal obligations and necessitates the operative reform of the legal and institutional systems of deterrence and punishment of manifestations of racial discrimination.

One of the latest cases concerning fight towards hate crimes is *Lakatošová and Lakatoš v Slovakia* (2019)¹⁵¹. In this case ECtHR ruled that state authorities have an additional obligation to take all reasonable measures to expose any racist motives and to establish whether ethnic hatred or prejudice that could play a role in the events.

Considering racially motivated violence and cruelty on a par with cases that are not racist in nature would mean turning a blind eye to the special nature of actions that are especially damaging to fundamental rights. *Admittedly, proving racial motivation will often be extremely difficult in practice.* State's obligation to investigate possible racist motives for violence is an obligation to make better efforts, not absolute. However, the authorities must do what is reasonable, given the circumstances of the case. Provide evidence, explore all practical ways of discovering the truth, and make fully informed, impartial and objective decisions, not excluding suspicious facts that may indicate racially motivated violence.¹⁵²

In addition, the Court notes that the obligation of the authorities have to investigate the existence of a possible link between racist views and an act of violence is an aspect of their procedural obligations arising from Article 2 of the Convention, but can also be considered as implied in their duties. In accordance with article 14 of the Convention in conjunction with article 2 to ensure the realization of the right to life without discrimination it may be when the investigation reveals any signs of racist verbal abuse. Also in cases of allegedly motivated racially motivated violence, when another alleged non-racist motive was not supported by any information or when the complexity of the facts was noticed against the background of published reports of the existence of common prejudice and hostility towards a certain group.¹⁵³ Such factual circumstances, for example, may be verbal abuse on ethnic (national), religious or other grounds, that took place before, during, or after the crime was committed against the victim or to other persons belonging to the same ethnic, religious or other group and the victim.

ECtHR determined in abovementioned decisions main demands for the investigators and decision makers in hate crimes. It was made in order to insure the fulfillment of the right to fair trial for the victims of hate crime. According to ECtHR practice, the duty to investigate the motive for intolerance does not arise in all cases, violent crimes¹⁵⁴, only where it is clear evidence of a discrimination motivated violence.

¹⁵¹ *Lakatošová and Lakatoš v. Slovakia*, ECtHR, No. 655/16, 11 December 2018

¹⁵² *Ibid*, p. 74-80

¹⁵³ *Ibid*, para 74-80

¹⁵⁴ *Bekos and Koutropoulos v. Greece*, ECtHR, No 15250/02, 13 December 2005, [h, https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-1532780-1603912%22%5D%7D](https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-1532780-1603912%22%5D%7D)

3. THE PERCEPTION OF HATE CRIMES BY THE DECISION MAKERS AND ITS IMPACT UPON THE REGULATION AND PROSECUTION OF THOSE CRIMES

3.1 Peculiarities of activity of decision makers in hate crimes

The main element that distinguishes crimes committed on the basis of intolerance from other crimes is the reason a relevant motive. According to some authors, the purpose of criminal behavior and the motive for committing a crime of this type should be considered as a basic element of forensic characteristics.¹⁵⁵ That is, one of the main elements of a crime event is to consider the mental activity of the subject, which includes the choice of goals, means for achieving these goals, internal motivation of criminal behavior, attitude to actions and their consequences (possible and those that have already occurred). The motive allows us to understand the causes of criminal behavior in each specific situation, to determine, based on this, the directions of knowledge of the crime in the process of criminal prosecution in general and at the stage of pre-trial investigation in particular.

The motive of hate crime arises in the offender as a result of the deformation of consciousness and the emergence of false needs, the so-called “*quasi-needs*”. Such “*quasi-needs*” are:

- the apparent need for “protection” from representatives of other races, nationalities, religions;
- the desire to show the “superiority” of representatives of one race over the other (for example, the Caucasoid race over the representatives of the Negroid and Mongoloid);
- hatred of representatives of other races, nations or religions.¹⁵⁶

The investigation hate crimes has a number of features that distinguishes the organization of the investigation of this category of crimes from other crimes For the better understanding the role of decision makers in hate crimes it seems necessary to go through the investigation process and to outline the most difficult and controversial parts of it.

Thus, this section will first addresses the peculiarities of the investigation of violent and non-violent crimes committed on the basis of intolerance and other crimes, which are most often committed on the basis of such motives.

¹⁵⁵ For example, Akhmedov, U Доказывание мотива национальной или расовой ненависти или вражды по делам о преступлениях против жизни и здоровья : автореферат диссертации на соискание ученой степени кандидата юридических наук : специальность 12.00.09/ [Воронежский Государственный Университет]. - Воронеж, 2008. <https://www.prilib.ru/item/331442> p.5-6

¹⁵⁶ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.92

The general features of an investigation into intolerance crimes include the following¹⁵⁷:

- The need for thorough proof of the motive of the crime.
- The need for a thorough investigation of the suspect/accused person directly involved in proving the motive for the crime.
- The need for a thorough examination of the facts that preceded the commission of the crime, such as the lifestyle of the suspect / accused, his / her interests, place of residence, training, participation in informal groups, associations and organizations, and the causes and conditions of the formation of the motive. national, racial, or religious intolerance.
- The need for a thorough examination of the victim's identity, including his/her race, nationality, religion and other characteristics, which make him/her vulnerable in terms of discriminatory practices and the presence or absence of links between the victim and the suspect / accused, which directly affects criminal qualification deed.
- The need for careful organization of work with the victim, taking into account the particularities of his personality, the need to take measures to ensure the victim's appearance in court and testament.
- The need for the use of specialized knowledge, including the involvement of specialists in investigative (investigative) actions and the appointment of appropriate expertise, most of which are not traditional for investigative practice, such as the involvement of specialists in the fields of sociology, psychology, criminology in the youth subculture, political science in the activities of political parties and movements that support the activities of youth nationalist groups, religious studies in identifying causes of conflicts related to religious intolerance, etc¹⁵⁸.

The analysis of publications on the subject matter and the investigative-judicial practice shows that there are a number of shortcomings in the activities of the pre-trial investigation bodies in the investigation of criminal cases committed on the grounds of intolerance.

Firstly, it is the high latency of such crimes, which has been exacerbated by the neglect of law enforcement agencies to these offenses, their unwillingness to see their racist or discriminatory nature. For example, an inspection provided by the Ministry of Internal Affairs of Ukraine in June 2017 showed that the heads of regional administrations did not control the state of response to information about crimes against foreigners. As a result, two thirds of such allegations and reports were denied by the inquiry of the authorities, and criminal cases were instituted in Kyiv only for

¹⁵⁷ Akhmedov, U Доказывание мотива национальной или расовой ненависти или вражды по делам о преступлениях против жизни и здоровья : автореферат диссертации на соискание ученой степени кандидата юридических наук : специальность 12.00.09/ [Воронежский Государственный Университет]. - Воронеж, 2008. <https://www.prlib.ru/item/331442> p. 15-16

¹⁵⁸ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.94

every seven such reports. Especially, outlined that law enforcement bodies were not paying attention to such offenses, in particular cooperation with public organizations engaged in the protection of human rights. In addition, it was established that prosecutors try to avoid such a qualification of crimes during preparation of case files before proceeding it to court.¹⁵⁹

Secondly, it is the reluctance of the victims to seek help from the police, as they do not believe in the effective actions of law enforcement agencies to investigate such crimes. Lack of confidence in police protection is often based on discrimination the attitude of law enforcement officers to some ethnic groups and representatives of particular races and peoples. The reason for not appealing to law enforcement agencies with allegations of violence against foreign nationals or stateless persons is that some of them are in the country illegally, do not know their legal rights, and, moreover, do not speak a language that would allowed to present their complaints, and the police did not have adequate translation facilities¹⁶⁰.

Thirdly, when victims decide to contact the police, after the hate crime was committed, attacks more often qualified as hooliganism or a simple crime against human life and health, without taking into account motive as a ground for the crime. This is due to the fact that in the investigation of this category of crimes, the great number of errors may be made by law enforcement bodies in proving *mens rea* of the offender due to the complicated character of it.

Fourthly, these crimes have a complex mechanism of commission, which necessitates a complex mechanism of proof, especially the proof of the motive of the crime on the one hand, and the lack of necessary and sufficient forensic support to investigate such crimes on the other.

Fifth, the rather rare nature of the specialized knowledge required for investigation and proving, as well as the lack of expert support for the investigation of such crimes, the lack of well-established, formally tested and established judicial expertise of hate crimes research.¹⁶¹

When investigating this category of crimes, it is important to keep in mind these shortcomings and not allow them in the activities of investigators and prosecutors. It should also be borne in mind that the ECtHR has in several decisions found States' guilty of violations of human rights in cases where the motive for intolerance was not considered at all in the course of the investigation, although there were grounds for such motive and was not sufficiently thoroughly investigated.

¹⁵⁹ Analytical report of the National Police of Ukraine on the situation pre-trial investigation in criminal proceedings for crimes, committed on the basis of racial, national and religious intolerance throughout 2017 (ref. No. 1624/4 / 4-2018 , (2018).

¹⁶⁰ Akhmedov, Доказывание мотива национальной или расовой ненависти или вражды по делам о преступлениях против жизни и здоровья : автореферат диссертации на соискание ученой степени кандидата юридических наук : специальность 12.00.09/ [Воронежский Государственный Университет]. - Воронеж, 2008., p.14 <https://www.prilib.ru/item/331442>

¹⁶¹ *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.95

One of the most important tasks of law enforcement agencies in this area is the interaction of the investigator with state and non-state authorities during the investigation is to underline all the peculiarities related to the violation of citizens' equality based on a certain group affiliation.

Coordinated activity of criminal investigation units, investigations, state and non-governmental organizations is an important component in the process of combating crimes related to violations of equality of citizens depending on their race, nationality or attitude to religion, since such activity is aimed at solving crimes, bringing to justice guilty and the prevention of wrongdoing. Consequently, it influences the nature of changes taking place in society, as well as the dynamics of crimes against the personal rights and freedoms of citizens.

The most common and important type of interaction is the interaction of the investigator with the specialized units of criminal investigation. When the investigator interacts with the units of the criminal investigation department, the parties can solve more investigative tasks during investigation, which may simplify future prosecution and trial investigation of the crime. As an example, divisions of the criminal investigation department may assist in providing operative search for the perpetrator or apply additional measures for protection of members of a group that suffered from hate crime. However, in practice, the division of responsibilities between the investigative and operative units is usually strictly regulated by criminal procedural legislation. Therefore, interactions between this units is also prescribed by the law.¹⁶²

For the effective confrontation against hate crimes certain actions in the activity of decision makers have to take place. The lists of recommended actions for the decision makers were formulated in numerous guidelines for the law enforcement bodies. It seems necessary to underline main demands or recommendations on this matter, which were prescribed by various guidelines for decision makers¹⁶³:

- Joint analysis of criminal statistics within country, as well as analysis of crimes against foreigners and stateless persons committed against the life and health of foreigners in order to make adjustments to plans for the integrated use of forces and means, put out to ensure public order in the single deployment system;

- Coordinated activities within the law enforcement bodies;

- Joint planning of investigative (search) and operative-search activities;¹⁶⁴

¹⁶² Капица В.С. Расследование преступлений против жизни и здоровья, совершенных по мотиву национальной, расовой, религиозной ненависти или вражды. Дис. Канд. юрид. наук 12.00.09 Специальность: Уголовный процесс; криминалистика и судебная экспертиза; оперативно-розыскная деятельность. Краснодар 2009 - 211 с. <http://www.dissercat.com/content/rassledovanie-prestuplenii-protiv-zhizni-i-zdorovyasovershennykh-po-motivu-natsionalnoi-ras>

¹⁶³ See for example: ODIHR, (2014), Prosecuting Hate Crimes: A Practical Guide, available at:<http://www.osce.org/odihr/prosecutorsguide?download=true>, also *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012

¹⁶⁴ Ibid

- Joint hearings with the heads of the prosecutor's office and the police department of the reports of the members of the NGO and special legal reports about the results of investigation of crucial hate crime cases or repeated hate crime incidents;

- Additional analysis of primary material about a crime in the early stage of criminal proceedings;¹⁶⁵

- Further development of forms and mechanisms of interaction between investigators and criminal investigation units in the fight against hate crimes;

- Providing additional attention to each detail that will result if justified punishment for the offender;

- Fulfillment by operative units demands of relevant international law and requests of international law enforcement agencies, requests of authorized state bodies, institutions and organizations for conducting operative search activities, as well as bilateral cooperation with international organizations, law enforcement agencies of foreign countries to study management practices, exchange of experience and practice decisions and legislative initiatives in the field of combating xenophobia and any manifestations discrimination;

- Applying security measures to persons involved in criminal proceedings;

- Conducting investigative measures against persons detained for committing a crime and persons taken into custody;

- Implementing a set of preventative measures aimed at identifying and preventing conflict situations and persons inclined to commit racial and ethnic crimes against foreigners and stateless persons. Carrying out work to prevent, investigate and disclose unlawful acts related to vandalism, which contain signs of inciting national, racial or religious hatred and hatred, humiliation of national honor and dignity or insulting the feelings of citizens in connection with their religions; - preventive work with members of radical-minded youth organizations and groups, taking rapid response measures to counteract attempts to intensify their movement to prevent xenophobia, racial and ethnic discrimination.¹⁶⁶

It worth outlining that for the prevention of the hate crimes, law enforcement bodies shall track the member of far right organizations. Such measure is important both because of the danger of the activity of such groups and active participation of group members in committing hate crimes. In Ukraine almost in all hate crime cases, the attackers are right-wing nationalist, racist and neo-

¹⁶⁵ Капица В.С. Расследование преступлений против жизни и здоровья, совершенных по мотиву национальной, расовой, религиозной ненависти или вражды. Дис. Канд. юрид. наук 12.00.09 Специальность: Уголовный процесс; криминалистика и судебная экспертиза; оперативно-розыскная деятельность. Краснодар 2009 - 211 с. <http://www.dissercat.com/content/rassledovanie-prestuplenii-protiv-zhizni-i-zdorovya-sovershennykh-po-motivu-natsionalnoi-ras> 66

¹⁶⁶ Ibid

Nazi organizations and informal groups, like Svoboda, Azov, National Corps, OUN Volunteer Movement Mykola Kokhanovsky, Dmytro Korchansky, Right Sector, Tradition and Order, Falcon, Misanthropic Division, C14, Freikor, Catechon and others¹⁶⁷.

Therefore, activity of the decision maker in hate crimes requires additional knowledge and practical skills for the effective investigation and prosecution of such crimes.

¹⁶⁷ Hate crimes and incidents in Ukraine. / “Our World Center”. - To: Our World Center, 2018
<https://gay.org.ua/publications/hatecrime2018.pdf>

3.2 General obstacles for decision makers during regulation and prosecution of hate crimes.

Hate crimes has a lot of peculiarities of its investigation and prosecution. It seems necessary to outline specific obstacles that lay before the decision maker in hate crime.

Concerning the regulation of hate crimes, for decision maker, understanding the legislative approach of certain criminal concepts is crucial, especially if it goes to hate crimes. It directly impacts procedural activity of the decision maker and the choice implication of articles of criminal code towards a criminal offence. Furthermore, during regulation of hate crime in the part of protection of the victim and interacting with other law enforcement bodies to ensure the group protection, it is the obligation of the decision maker to imply all the reasonable measures for that and assist to avoid critical situation among the society groups in case of tensions. That requires full awareness of the decision makers on a problems among certain social groups.

Prosecution of hate crimes demand full involvement of all the participants of the investigation in further procedural actions. Which includes victim, witnesses, investigator. During prosecution numerous obstacles might occur.

One of the first reasons, victims – especially minority representatives, foreigners, LGBT and transgender - rarely report crimes committed against them as representatives of certain groups (racial, religious, national, etc.). The reasons are called different, however, the basic - is the fear of checking the legal status of the victim (in case of migrant) in the country by representatives police, discrimination or future deeper affiliation with a certain group (LGBT).¹⁶⁸ Even when the incidents was already registered by the police as a hate crime, victims fear that instead of responding properly to their statement about committed against them offence, they might themselves will receive the status of a suspect. Some victims fear future persecution, in cases if hate crime was committed by the members of a certain organisation (for example Skinheads). That is why they avoid situations of communication with law enforcement bodies and refuse to assist in further investigation or trial processes. Also, victims fear the refuse of registration of their statements because of the possible misqualification of the event and may evidence in favour of a “common” crime. A significant number of victims do not speak a language that is would be able to make a statement about the crime, explain it, read the investigator’s decision, and police officers are generally not adequately able to assist with translation and translation counselling such a person, that have to explain the simplified concept of the hate crime for the victim and the right it its’ implication.

¹⁶⁸ Problems of investigation of the crimes committed by racism and xenophobia, and their solutions, 2016
http://vjhr.sk/archive/2016_2_2/21.pdf

The next problem decision makers are facing is the investigation/prosecution itself and case file preparation. As it was stated above, this category of crimes there is difficulty in proving, because the core of the procedure is a detailed reflection in materials of criminal proceedings of the *mens rea* of the crime - a special motive the bias of a suspect towards particular social group; or a special purpose - to incite enmity and strife. This is challenging, because the nature of the formation of negative stereotypes shall be evidentially clarified (racism, homophobia, religious intolerance, ethnophobia, anti-Semitism, fascism, etc.), in a way that it has easily distinguished by court or jurors in the actions of the offender during the commission of the hate crime. This requires considerable intellectual and practical efforts by law enforcement.¹⁶⁹ Because the evidence about victim and the perpetrator has to be collected, their previous activity and behaviour taken into account and proved before the court as one that testifies in favour of the committed hate crime.

The other problematic aspect for the decision makers is that hate crimes prosecution is usually associated with the need for prior expert evaluation of campaign materials (prints, films), texts of public speeches (in the media, at meetings, concerts, etc.). The investigation requires an investigators' ability to quickly navigate which objects have to be removed (confiscated) and how to proceed with them. Investigators need to be clear about the expertise that needs to be drawn in order to draw conclusions about the expression of utterances, symbolisms such as incitement, strife, or humiliation of certain minorities. It also requires resolving the status of the findings of previous expert studies, which are actually conducted before criminal proceedings are opened and, accordingly, cannot be regarded as evidence in court.¹⁷⁰ Expert conclusions are also needed, in the practice of ECtHR, in multiple cases, court cooperated with NGO for establishing the facts on a particular position of certain group in the society to check the endangerment of its' members in certain country¹⁷¹

Due to the complex character of the hate crime category the involvement of all law enforcement community is extremely important. To overcome the obstacles proper legal regulation of hate crimes shall be combined with additional activities. For example:

- Holding international forums, parliamentary and public hearings, round tables, scientific conferences, other measures to combat xenophobia, racial and ethnic intolerance with the

¹⁶⁹ Ibid

¹⁷⁰ Problems of investigation of the crimes committed by racism and xenophobia, and their solutions, 2016 http://vjhr.sk/archive/2016_2_2/21.pdf

¹⁷¹ For example, Škorjanec v. Croatia, ECtHR, 25536/14, 28 March 2017 [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%C5%A0korjanec%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-172327%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%C5%A0korjanec%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-172327%22]})

involvement of leading national and foreign experts, politicians, government officials and members of the public;

- Consultations with heads of religious, youth and other non-governmental organizations on the need to work with their members to educate them in a spirit of tolerance for representatives of other races and nationalities;

- Conducting advocacy work and providing legal assistance to prevent the spread of xenophobic and racist manifestations. For example, helping victims of hate crimes and intolerance to protect them, prevent such crimes by providing free legal services and other appropriate legal services. To this end, a number of human rights, education and information activities are envisaged with the involvement of: minorities, refugees, migrants, law enforcement, NGOs and the general public.¹⁷²

Therefore, the activity of decision makers in hate crimes requires a certain amount of previous background knowledge about the situation with social tensions within the region of practice of the decision maker.

¹⁷² *Investigation of hate crimes: Practical guide* – American Bar Association, Rule of Law Initiative, Program against xenophobia and racism in Ukraine, Kyiv, 2012 p.113

3.3 Perception of hate crimes by the decision makers and its impact upon the regulation and prosecution of the case.

Abovementioned analysis of the hate crime concept, general practices and approaches in legislative interpretation and implementation of hate crime crimes, ECtHR practices and key obstacles and demands for investigation of hate crimes allow us to realize the difficult position of decision maker in hate crimes. Which brings us to the core problem of this thesis: how decision makers percept hate crimes and how it impacts the case.

As it was stated in previous paragraphs of this thesis, though hate crimes are not connected with the emotion of hate of the perpetrator towards victim, yet it is in certain way, “emotional crime”, because offender reflect his negative attitude towards certain social group on a victim of the crime. Therefore, it implies certain emotional perception and personal attitude of decision makers.

In this content, how decision makers evaluate the same act, depending on whether or not it is presented as a hate crime, Plumm and Terrance investigated this issue with a jury. They presented a jury an assault case when the alleged victim and perpetrator met in a bar. The victim bought a drink for the offender, and then asked him to dance, after which the criminal beat the victim unconscious. *The gender of the victim and the perpetrator were manipulated*, so either the female offender allegedly attacked the male victim or the male criminal allegedly attacked the female victim. The perpetrator made comments related to gender bias and the victim and witnesses that lead to the victims perception of an incident as a gander based hate crime. Throughout the trial, the record referred to the case as a first-degree assault or a biased assault (that is, a hate crime) based on the gender of the victim. Participants in a first-degree attack were more likely to convict the accused than those who were in a state of hate crime, indicating a reluctance to convict the accused for a hate crime - at least when the charge is related to gender bias. Although Plumm and Terrance found that the accused recognizes the crime as a hate crime, the label of a hate crime does not always distort the jury's decision in favour of the accused¹⁷³.

A study of other hate crime motives has shown that the hate crime label or evidence that the crime was motivated by bias does not apply when the prosecution is biased against sexual orientation and may even lead to stricter sentencing recommendations. These differences in labeling the incident as a hate crime mean that people perceive some crimes as more typical hate crimes than others. Some studies have explored this possibility by comparing jury trials on hate

¹⁷³ Plumm, K.M., & Terrance, C.A. (2013). Gender-bias hate crimes: What constitutes a hate crime from a potential juror's perspective? *Journal of Applied Social Psychology*, 43, 1468–1479.

crimes that vary in terms of victim identity. For example, Cramer¹⁷⁴ and his colleagues compared jury decisions for hate crimes for second-degree murders involving an African American, gay, or transgender victim. In a study, it was found that in a qualified as a hate crime when a victim was one of the representatives of this groups, offenders most likely to be recognized guilty. In other studies, the suggestions were about the same for different victims, regardless of how many participants blamed the victim and their support for hate crime laws. The only exceptions were gay victims among participants who did not support hate crime laws. In this situation, the victim's guilt was a strong predictor of sentencing when the victim was gay, but not otherwise. Other characteristics of the victim and the offender and circumstances of the case are also important. Regarding race, defendants are considered the most guilty and receive the most severe sentences when the victim is African American and the alleged offender is white, compared to crimes of the same race or crimes with a white victim and an African American criminal¹⁷⁵. In addition, Plumm found that jurors accused the victim more, and the defendant less, of a case of hate crimes based on sexual orientation, when the crime was committed in a bar where there are no gays, and the victim allegedly provoked the accused by hugging his arm and ask him to dance¹⁷⁶. These results show that not all hate crimes get equal treatment; rather, people lay have certain expectations about what constitutes a hate crime. Decision makers generally view a typical hate crime as violence rather than a nonviolent crime directed against a member of a minority and motivated by ignorance, fear, or anger. The expectation of a terrible or evil criminal show that people are sensitive to the emotional component of hate crimes.¹⁷⁷

The abovementioned researches concerned the attitude of the jurors towards the victim of hate crime. It is clearly stated that the recognition of hate crime may depend on the victim, making some hate crimes obvious for decision makers and some not. The way of commitment of hate crime is also playing important role, the more violent attack become clear hate crime in perception of a jurors. Additional attention of the researches is directed towards jurors, because they act without additional legal education and training that directed on the comprehensive understanding of hate crime. Therefore, due to the absence of complex analysis the perception of hate crimes by the decision makers like investigators, prosecutors or judges, however this is relevant for prosecution of such cases. It also seems necessary to underline that the perception of victim of

¹⁷⁴ Cramer, R.J., Clark, J.W., Kehn, A., Burks, A.C., & Wechsler, H.J. (2014). A mock juror investigation of blame attribution in the punishment of hate crime perpetrators. *International Journal of Law and Psychiatry*, 551–557.

¹⁷⁵ Berman, G.L., & Cutler, B.L. (1996). Effects of inconsistencies in eyewitness testimony on mock-juror decision making. *Journal of Applied Psychology*, p. 170–177.

¹⁷⁶ Plumm, K.M., & Terrance, C.A. (2013). *Gender-bias hate crimes: What constitutes a hate crime from a potential juror's perspective?* *Journal of Applied Social Psychology*, 1468–1479.

¹⁷⁷ Bornstein B., Greene E. *The Jury Under Fire Myth, Controversy, and Reform*, Oxford University Press, 2017 – p. 235

hate crime is connected to the final court decision on certain hate crime case. However, the perception of hate crimes is more complex than that.

Perception of hate crimes include all the above mentioned elements of hate crime and hate crime category itself. Because the perception of victims in hate crimes for example has more psychological than legal content. Therefore it is mostly analyzed by the criminal psychology.

From the author of this research point of view, perception of hate crimes by decision makers shall be connected to the concept itself.

In order to answer the main question of the research author communicated with different decision makers, whose activity is directly connected with hate crimes, investigator, prosecutor, judge (5 representatives of those professions agreed to answer several questions concerning hate crimes, all practicing in Ukraine).

To determine their perception of hate crimes following questions were asked: - Do you know what is hate crime? - Do you perceive hate crime as a single crime under article 161 of Criminal Code of Ukraine or as a group of crimes? – Is your possibility to choose protected characteristic of the victim limited or not by the law? – Do you have any additional needs in terms of investigation or prosecution of hate crimes? - Have you participated in any forum/conference/lecture that were devoted to hate crimes? – Name social groups, that from your point of view shall be protected in this category of crime? – From your point of view what influences hate crime case prosecution? – How do you think what else is needed for the proper investigation and prosecution of the hate crime?

Concerning the question “Do you know what is hate crime?” there were no hesitation among questioned decision makers all stated that they are aware of this concept and determined it as a crime against human or property committed on the basis of intolerance.

With the second question answers differed. For example 1 representative from an investigation department of local division of National Police of Ukraine and 1 representative of the local Prosecutors office of Ukraine stated that hate crime for them is prescribed by article 161 of Criminal Code of Ukraine that is *Violation of the Equality of Citizens Depending on their Race, National Membership or Religious Beliefs*¹⁷⁸. Others mentioned that it is rather a group of crimes, included an specific penalty enhancements and general penalty enhancements (described above in paragraph 1.1 of this thesis). It is worth mentioning that two representative that narrowed hate crimes legislative prescription didn't receive additional training in hate crime practices (they also haven't applied hate crime articles before).

¹⁷⁸ Criminal Code of Ukraine, 05.04.2001, <https://zakon.rada.gov.ua/laws/show/2341-14>

Third question “Is your possibility to choose protected characteristic of the victim limited or not by the law?”. All of the questioned agreed that it will depend on a specific offence that was committed against the victim. Though judge of the local court underlined, that with a reasonable evidences of the discriminatory/bias motive of the crime, using general penalty enhancements investigator alongside with a prosecutor may bring the hate crime characteristic towards more articles in the Criminal Code.

Fourth question “- Do you have any additional needs in terms of investigation or prosecution of hate crimes?”, all the decision makers agreed on the need of developing clear instructions for law enforcement bodies and prosecutors on registration, verification and compilation to report information on intolerance crimes, investigation and case file preparation and report of those crimes. Also the need of additional steps to establish cooperation with research agencies, profile government agencies for prevention and combating discrimination, minority rights, and non-governmental organizations and minority communities was outlined. Representatives of the Prosecutors office raise proposal on a possibility to elaborate on the introduction of specialization of internal affairs investigative bodies on the investigation of intolerance crimes, explaining it with a possible improvement of pretrial case files prepared by the specialized investigators. It was also underlined by the judge, that there is a need for judges to have clarifications for local and judges of the appeal court regarding admissibility of information about the character or particular traits of the suspect / accused as evidence in cases involving intolerance crimes.

Answering the fifth question “Have you participated in any forum/conference/lecture that were devoted to hate crimes?” 3 out of 5 participated in specialized training that were provider by higher institutional organ in each law enforcement bodies. Though it was stated clearly that not all decision makers were invited to such meetings. The specialization of departments in which they work was taken into account (for example, one of the questioned officers works in a financial crime department where only the head of it attended the conference).

Sixth question: “From your point of view what influences hate crime case prosecution?”. All questioned decision makers agreed that: preliminary investigation, activity of the investigator and prosecutor, public resonance of the case, investigators’ and prosecutors’ professionalism in the sphere of hate crimes. One of the questioned prosecutor underlined “personal” interest in the case. If there is a connection between salary of the investigator and the unsolved/unsatisfied accusation of the case in the court, there might be no interest of the investigator in effective investigation of hate crime due to its complex character.

Seventh question: “Name social groups, that from your point of view shall be protected in this category of crime?”. Decision makers agreed on certain groups: race, nationality, religion,

sexual orientation, gender identity, gender, disability. One of the interesting groups that came during the discussion with one of the investigators is the group that speaks certain language in specific region. As an example recent attacks on Russian speaking person in Lviv region¹⁷⁹ and a homicide of a Ukrainian speaking volunteer in Donetsk region¹⁸⁰. This one more time brings the need for a prescribed plan of actions for law enforcement bodies in case of additional characteristic of the victim that suffered hate crime, for a proper investigation. Another finding concerning protected groups is that with a clear understanding of the motive of the perpetrator, visible evidence then the investigator is ready for the filing of the hate crime case, otherwise it has doubts whether or not to qualify it as a hate crime, because of the problematic change of the following qualification of the crime. As it was described above in the research concerning jurors in hate crimes, that during case investigation both pre-trial and trial for the decision makers there are obvious victims of hate crimes.

Final question brought before the decision makers “How do you think what else is needed for the proper investigation and prosecution of the hate crime?” confirmed provided in part 3 paragraph 3.1 observations of needs during the investigation of the case. Additionally investigators outlined the need to take actions to establish contacts with minority communities, including explaining them rights and contact bodies in case of hate crimes towards their members, the cooperation of law enforcement agencies, counteraction and the need to notify law enforcement agencies of such crimes. Also the problem of improving qualification of decision makers on relevant position of xenophobic or other discriminatory tendencies within the society (including additional attention of the problems of certain regions).

Certain problems that occur during trial investigation also were brought up by the judge. If at the stage of pre-trial investigation by the investigating body, the motives of intolerance were not properly investigated and the aggravating circumstances were not reflected in the indictment approved by the prosecutor to determine and take them into account, it is impossible during the trial investigation and can't be made by the judge. It is possible for a judge to go beyond the accusation set out in the indictment only in the part of the change of legal qualification of a criminal offense only if it improves the situation of the person concerned which is being prosecuted.

¹⁷⁹ У Львові "невідомі патріоти" розбили гітару вуличному музикантові за російські пісні,
<https://www.032.ua/news/2562641/u-lvovi-nevidomi-patrioti-rozbili-gitaru-vulicnomu-muzikantovi-za-rosijski-pisni-foto>

¹⁸⁰ Підлітків, що вбили волонтера Мірошніченка за українську мову, заарештовано на 2 місяці
<https://www.unian.ua/society/10790294-pidlitkiv-shcho-vbili-volontera-miroshnichenka-za-ukrajinsku-movu-zaareshtovano-na-2-misyaci.html>

At the same time, one can speak of risks that impede the effective prosecution of perpetrators of hate crimes by the courts, the main risk, is that the judge is unaware of the peculiarities of the investigation and demonstration of the motive for intolerance, that may result in refusal to grant the investigator's or prosecutor's request to commit the procedural steps necessary for the purpose of the effective investigation of the hate crime.

Another risk identified during the analysis relates to additional rules, established by the Criminal Procedure Code of Ukraine on the admissibility of evidence. Thus, part one of Article 88 of the CPC of Ukraine states that information about the nature or particular character traits of the suspect or accused person is inadmissible in order to confirm a guilty plea to a criminal offense¹⁸¹. Though it states that it might be used in case of need of the demonstration of the motive for intolerance, which is one of the key features of the subjective side of the crime and, in fact, exclusively depends from the identity of the suspect / accused. This need has to be described in a court decision on admissibility of such evidence in order to avoid possible challenge of it.

Summarizing provided sociological research, it is worth mentioning that hate crime concept is not new to the decision makers, though it is challenging and requires additional activities and counteraction among law enforcement bodies and NGO. Without additional cooperation hate crime case won't reach aim of detection and punishment of the offender. The need of additional knowledge of the decision maker on the position of certain social groups of perpetrator/victim will result in investigation and prosecution of the case.

It shall be outlined, that one of the reasons in the hate crime statistics that connected to the perception of hate crimes by the decision makers is that in when a hate crime that was committed prescribed by the law in a form of a specific penalty enhancement it might not be reported as a hate crime.

Concerning the impact of decision makers' perception of hate crime towards case development, it worth mentioning that without a proper understanding of the hate crime concept and enforcement of the prescribed by the criminal law legal norms, legal prosecution in this case might be impossible because of the high latency of this category of crime and victims reluctance for implication hate crime laws against the offender. One of the main problems that still have a tendency to exist, is the level of non-registration of a hate crime.¹⁸² Which means that the real situation with hate crime is not reflected in the official statistics. Especially when it comes to the hate crimes against property (attacks on religious buildings, Jewish cemeteries, etc.).

¹⁸¹ Criminal Procedure Code of Ukraine 13.04.2012 <https://zakon.rada.gov.ua/laws/show/4651-17>

¹⁸² Shown in hate crime statistics of the OSCE comparison. For example, ODIHR 2018 Hate Crime Data Now Available <http://hatecrime.osce.org/infocus/2018-hate-crime-data-now-available>

The lack of measures for systematic and consistent enhancing of the competencies of the law enforcement agencies whose responsibilities include the prevention and counteraction of hate crimes.

As an example of cooperation with the ODIHR in the program on training of representatives of law enforcement agencies of Ukraine, including investigators, employees of public security units, employees of higher educational establishments Ministry of Internal Affairs and Criminal Police for Children, Counteracting hate crimes (TAHCLE)¹⁸³. Therefore in combating hate crimes not only national law enforcement bodies shall take active part, but the active cooperation with international institutions that devoted to combating discrimination is also needed.

¹⁸³ Bilous V. Прокурорський нагляд за додержанням законів щодо подолання проявів расової, національної нетерпимості, ксенофобії: навч. – практ. посіб.– К.: Алерта, 2013. – 144 с.

CONCLUSIONS

1. The results of the research are relevant for conclusion that the aim of the research was achieved and the objective fulfilled. Conclusions and recommendations stated below will summarize the research results of the final thesis.

2. Hate crime is a concept rather than a certain criminal offence, which includes a group of crimes that may be differently prescribed in various legislations. Protected characteristics by hate crime practices or protected groups vary depending on needs within a certain society. Hate crimes are used to protect group members from the discriminatory attitude and imperception within the society. Despite of the complicated structure of the hate crime, two main elements shall be proved in order to determine whether or not there is a hate crime, such as: criminal offence and bias motive.

3. Numerous international sources are aimed on combating discrimination and hate crime as one of its' manifestations. Therefore, a set of international guarantees that aim combating hate crimes shall be applied by the member states that accepted certain international treaties. In cases of hate crime incident that wasn't investigated and determined as a hate crime, to insure the safety of a group and restore the justice on this matters international judicial bodies such as ECtHR exist. Numerous ECtHR decision on the matter of hate crimes provided additional requirements for a proper investigation and prosecution of the hate crime cases. For the constructing and proving bias motive of perpetrator victim and perpetrator shall be carefully characterized. Everything in such cases matters: from clothes to previous behaviour of both should be taken into account during investigation of the hate crime.

4. Despite of the variety of the approaches towards definition of hate crimes, the description of hate crimes in legislative acts shall be clear for decision makers. And the practice of its implementation during investigation shall be explained through specific guidelines' or through direct consultations among law enforcement bodies.

5. Sociological research on the inclusion of the decision makers in the hate crimes concepts allowed to underline the need of additional knowledge, activities and counteraction among law enforcement bodies and NGO. It also showed that hate crime is a concept in development that corresponds to the challenges of a modern society in protection of certain groups.

6. Main factors that influence decision makers in hate crimes and result on the prosecution of the case are: hate crime practices and approaches towards investigation and prosecution education, relevant cooperation with NGO and social groups that obtain additional knowledge about group tensions and discriminative attitudes, promptly coordination of actions with other law enforcement bodies or specialists.

7. The absence of the systematic approach in the enhancement of competences of the law enforcement bodies negatively results on hate crime investigation.

RECOMMENDATIONS

In order to combat hate crimes and provide an impartial investigation of hate crimes it is recommended :

- Take actions to establish contacts with minority communities, the work of law enforcement agencies with them on the matter of counteraction and the need to notify law enforcement agencies of hate crimes .
- Take steps to increase trust in law enforcement agencies among the minorities and groups at risk such as women, transgender, LGBT.
- Improving qualification of decision makers on relevant position of xenophobic or other discriminatory tendencies within the society (including additional attention of the problems of certain regions).
- Provision of additional training for all the representative of the law enforcement bodies on the matters of hate crime investigation and prosecution.
- Creation of responsible department for hate crime combating with specially trained investigators and prosecutors.
- Implementation of international standards in combating hate crimes with a special attention to the ECtHR practice.
- Provide a clear statistics of hate crimes and hate crime incidents.

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6. ODIHR Publishes 2016 Hate Crime Data <http://hatecrime.osce.org/2016-data>

ABSTRACT

Hate crime is a special category of crimes that demands additional attention of law enforcement bodies because it brings marginalizing tendencies to the society by threatening certain group through the violence against its members. During the regulation and prosecution of hate crimes it is necessary for decision maker to determine and analyze the victim of hate crime, the main peculiarities of the possible offender and conduct a proper investigation to diminish the negative effect of hate crime.

In order to achieve the goals of full and comprehensive investigation and detection of hate crimes, decision makers have to understand the applied within the country policies in legal determination of hate crime, procedural aspects of enforcement of legal norms against hate crimes, apply necessary steps for complete and effective investigation of the hate crime and assistance in combating any possible manifestations of hate crimes through the provision of complete files on certain hate crime.

Key words: hate crimes, prosecution of hate crimes, decision makers in hate crimes, bias crimes, perception of hate crime.

SUMMARY

Hate crime is one of the most complicated concepts in forensic science that has a number of peculiarities and differences in legislative formulation and interpretation of it. Only the main two elements of it are recognized and implemented in different legislations. Hate crime is a criminal act committed with a bias motive. The motives can be different, though, they always show intolerance and non-perception of some group. The danger of the hate crime is that not a single victim is under the attack of offender, but a group that he/she represents.

Importance of the fight against hate crimes is recognized in international legal documents that aim for combat discrimination and hate crime as one of its manifestations. In order to provide the protection of recognition and enforcement of right to non-discrimination, judicial bodies, such as ECtHR, were created to ensure it. ECtHR in its determined in abovementioned decisions main demands for the investigators and decision makers in hate crimes. It was made in order to insure the fulfillment of the right to fair trial for the victims of hate crime. According to ECtHR practice, the duty to investigate the motive for intolerance does not arise in all cases, violent crimes, only where it is clear evidence of a discrimination motivated violence.

Though hate crimes are not connected with the emotion of hate of the perpetrator towards victim, yet it is in certain way, “emotional crime”, because offender reflect his negative attitude towards certain social group on a victim of the crime. Therefore, it implies certain emotional perception and personal attitude of decision makers.

Concept is not new to the decision makers, though it is challenging and requires additional activities and counteraction among law enforcement bodies and NGO. Without additional cooperation hate crime case won't reach aim of detection and punishment of the offender. The need of additional knowledge of the decision maker on the position of certain social groups of perpetrator/victim will result in investigation and prosecution of the case.

In order to main adequate investigation and prosecution of the hate crime cases and bring the offenders of hate crimes to the criminal responsibility, decision makers shall take reasonable measures to provide sufficient evidences of the guilt of a perpetrator and the motive of his actions. That requires a high level proficiency of the decision maker and his understanding of the hate crime. In case of misunderstanding or imperception of hate crime concept it will result on the case.

HONESTY DECLARATION

14/12/2019

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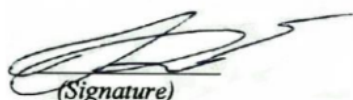
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1. Is carried out independently and honestly;
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