



Research article

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Legal Protection of Victims of Hate Crimes with Special Reference to Victims' Rights According to the European Convention and the Practice of the European Court of Human Rights

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Abstract. Contemporary law has the intention of shaping a humane, democratic society that acts in accordance with the highest international standards in respect of human rights. Help, support and legal protection of victims must be systematically organized and come from all segments of society. The responsibility of states to help victims in the European legal area stems primarily from the ECHR, considering the positive obligation of member states to ensure the effective implementation of the rights and freedoms regulated by it. There are no specific provisions in the ECHR dealing with the rights of victims, however, the European Court of Human Rights has created significant practice that has strengthened the position of the victim guaranteed by the acts of the Council of Europe. In the paper, the authors will give a special review of the legal protection of victims of hate crimes as criminal acts motivated by prejudices based on the subjective characteristics of individuals, racist motives, xenophobia, religious intolerance or some other discriminatory basis, whose victims are the target of attacks only because of their real or assumed association with a group that has certain characteristics. These are crimes that not only have a devastating effect on the basic rights and freedoms of citizens, but also threaten the safety of individuals and groups who are their victims. Given that such acts represent a serious threat to democratic values, social stability and peace, an attack on the basic principles of equality and human dignity protected by all relevant universal and regional documents, the aim of this paper is to point out that preventing and fighting hate crimes requires a comprehensive approach, i. e. a coherent strategy and a wide set of legal and political measures that take into account specific situations and wider contexts.

Keywords: legal protection, victims' rights, hate crimes, human rights, European Convention on the Protection of Human Rights and Freedoms

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Научная статья

Правовая защита жертв преступлений на почве ненависти с особым учетом прав жертв в соответствии с Европейской конвенцией и практикой Европейского суда по правам человека

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Аннотация. Современное право призвано формировать гуманное, демократическое общество, действующее в соответствии с самыми высокими международными стандартами в области прав человека. Помощь, поддержка и правовая защита жертв должны быть организованы систематически и исходить от всех слоёв общества. Обязанность государств оказывать помочь жертвам в европейском правовом пространстве вытекает, прежде всего, из ЕКПЧ, учитывая позитивное обязательство государств-членов обеспечивать эффективную реализацию прав и свобод, регулируемых ею. В ЕКПЧ нет специальных положений, посвященных правам жертв, однако Европейский суд по правам человека создал значительную практику, укрепившую положение жертвы, гарантированное актами Совета Европы. В данной статье авторы дадут специальный обзор правовой защиты жертв преступлений на почве ненависти как преступных деяний, мотивированных предрассудками, основанными на субъективных характеристиках личности, расистских мотивах, ксенофобии, религиозной нетерпимости или ином дискриминационном признаке, жертвы которых подвергаются нападениям исключительно в силу своей реальной или предполагаемой принадлежности к группе, обладающей определёнными характеристиками. Эти преступления не только оказывают разрушительное воздействие на основные права и свободы граждан, но и угрожают безопасности отдельных лиц и групп, являющихся их жертвами. Учитывая, что подобные деяния представляют собой серьёзную угрозу демократическим ценностям, социальной стабильности и миру, а также посягательство на основные принципы равенства и человеческого достоинства, защищённые всеми соответствующими универсальными и региональными документами, цель данной статьи — подчеркнуть, что предотвращение преступлений на почве

ненависти и борьба с ними требуют комплексного подхода, то есть последовательной стратегии и широкого спектра правовых и политических мер, учитыvающих конкретные ситуации и более широкий контекст.

Ключевые слова: правовая защита, права жертв, преступления на почве ненависти, права человека, Европейская конвенция о защите прав человека и свобод

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1. Introduction

No species is as destructive as humans, not because of biological traits derived from history, but because of social conditions brought about by history. Human aggression and violence are present in all stages of the development of human civilization [15, c. 469]. Human dignity is inviolable, the task of each state is to respect and protect this fundamental right. The cornerstone of the human community, peace, and dignified work and life are the democratic, nonviolent and inalienable rights of man who are realized directly in accordance with international, regional and national legislation [3, c. 2018–38]. Victims of hate crimes are those citizens who are chosen as the target of an attack only because of their real or assumed identity, because of who they really are, but also because of what the perpetrator thinks they are. Hate crimes send a message of rejection, not only to the immediate victim but also to the community to which they belong. Although the victims may belong to different groups, the attacks differ in type and scope, and no country is immune to this type of crime, because they represent a direct attack on democratic societies and the principles on which human rights are based [13, c. 131]. If such acts remain unsolved, they can lead to conflict and violence between communities on a wider scale. Basic human rights and freedoms proclaimed in numerous international documents are directly implemented and operationalized through the catalog of rights and universal guarantees of suspects or accused persons in criminal proceedings [8].

Although penal policy is one segment of crime suppression, the causes of crime must

be addressed — economic, social, political, population migration, unemployment, etc. The reduction of the crime rate will not be achieved by tightening the prescribed punishments or by raising a special minimum and maximum, and especially not by banning the mitigation of punishment for certain serious crimes [9, c. 187]. The concept of hate crime is based on the principles of equal rights and non-discrimination, proclaimed not only in universal agreements and instruments, but also in regional documents. It is precisely on the international standards contained in those acts that legal solutions in national legislations are based when it comes to the area of hate crimes. In order to establish the rule of law, it is necessary for the laws to be clear and unambiguous, so that they can be successfully applied in practice, regardless of the conditions that exist in a particular society. However, problems and difficulties in their recognition, insufficient training of officials in the police and judiciary, the lack of judicial practice in certain countries when it comes to these criminal acts, led to the fact that, despite the fact that they have a long history, their incrimination was only discussed in the second half of the twentieth century. Given that each of us, as the bearer of characteristics that make him different from others, can be a victim, an energetic reaction is very necessary not only to preserve the safety of the individual but also of the community, because intolerance towards certain groups in society as a motive for these crimes can lead to the division of society, creating cycles of violence and retaliation. That society does not tolerate such behavior and that it provides legal protection to victims of injustice will be demon-

strated first of all by sentencing the perpetrator of such a crime. In all violent behavior, the consequence is damage to the victim who is inflicted with physical force and/or mental pain, of lesser or greater intensity, which can lead to the destruction of the victim, causing fear, panic, destabilization of society, etc[15].

Since its establishment, the European Union has aimed, among other things, at fighting discrimination based on gender, racial or ethnic origin, religion, disability, age or sexual orientation, which is provided for in Article 10 of the Treaty on the Functioning of the European Union (TFEU). Thus, during the accession process, within the framework of Chapter 23 – Judiciary and fundamental rights, the issue of hate crimes is considered, and the main instruments for harmonizing national regulations with the goals prescribed by EU acts are the Directive, the Framework Decision and two political documents: the resolution and the conclusions [6]. In addition, certain provisions of the Charter of the European Union refer to rights that may be relevant when it comes to hate crime. Namely, Articles 20 and 21 provide for the enjoyment of the following rights and freedoms by all EU citizens under equal conditions and without discrimination, namely: inviolability of human dignity (Article 1), prohibition of torture, inhuman and degrading treatment or punishment (Article 2), protection of personal data (Article 8), freedom of thought, conscience and religion (Article 10) and freedom of expression (Article 11), and Articles 53 and 54 provide degree of protection and prohibition of abuse of those rights.

2. International standards

The international legal framework of hate crimes is based on the principles of equality and non-discrimination, which are provided for by universal agreements and instruments as well as regional documents. In this way, the provisions of international acts that indicate the importance of the legal regulation of hatred represent a standard that forms the basis for legislative solutions of hate crime institutes at the national level. When it comes to

the international level, issues of racism, xenophobia, discrimination and anti-Semitism are dealt with by the United Nations Committee on the Elimination of Racial Discrimination (UNCERD), the Council of Europe – the European Commission against Racism and Intolerance (ECRI), the European Union Agency for Fundamental Rights (FRA), the Organization for Security and Cooperation in Europe (OSCE).

For example, the enjoyment of human rights regardless of race, color, language, religion, political or other orientation, national or social origin, property or other status is provided for in Article 2 of the Universal Declaration of Human Rights. (UN, 1948), a26. article of the International Covenant on Civil and Political Rights (1966) prescribes equal legal protection against any form of discrimination, especially on the basis of race, language, religion, sex, national and social origin, political or other opinion. When it comes to the international acts of the United Nations aimed at preventing racism and intolerance, the International Convention on the Elimination of All Forms of Racial Discrimination (United Nations, 1965) is of particular importance, the implementation of which in the countries that have signed and ratified it is supervised by the Committee for the Elimination of Racial Discrimination, which after examining the reports on the legislative, administrative and judicial measures taken to implement the Convention, gives general recommendations to the signatory states in the form of “concluding observations”. Considering that at the time of the adoption of the Convention there was a fear that there would be a revival of authoritarian ideologies, Article 4 stipulates the obligation for states to recognize organizations whose members promote or encourage racial discrimination at the earliest possible stage and to declare their activities illegal and prohibited. In order to point out the importance of the fight against organized hatred, the Committee issued General Recommendation no. 15 on organized violence based on ethical origins (1993) and General Recommendation no. 31 on the prevention

of racial discrimination and the management and functioning of the criminal justice system (2005), which indicates the necessity for states in their legislation to foresee a racial motive in the commission of criminal acts as an aggravating circumstance because such criminal acts undermine social cohesion and society as a whole. [4, c. 56]. When we talk about the European system of human rights protection, we mean the system of the Council of Europe, the OSCE system and the European Union system.

From the aspect of human rights, the responsibility for combating racism, xenophobia, anti-Semitism and intolerance within the Council of Europe belongs to the European Commission against Racism and Intolerance (ECRI), which since 2002 has been an independent human rights monitoring body [12, c. 84]. Within its competence, it analyzes international legal instruments in order to improve them, gives general recommendations to member countries, proposes measures at the local, national and international level, but also analyzes the legislation and practice of Council of Europe member countries in this matter. In its general policy recommendations, ECRI calls for the criminalization of prejudice-motivated crimes. Specifically, in General Recommendation 2 (1997) on specialized bodies to combat racism, xenophobia, anti-Semitism and intolerance at the national level, it is suggested that members establish specialized bodies to combat racism and discrimination at the national level. Then, to member states that have deficient anti-racism laws or none at all, it provides guidelines that include proposals for legislative changes, defining racism, direct and indirect discrimination. When it comes to the provisions of the criminal law, the recommendations refer to: the prohibition of public incitement to hatred, violence and discrimination, and threats; publicly supporting ideologies of superiority or inferiority based on race, language, skin color, religion, nationality or ethnic origin; public denial, disparagement, justification of genocide, crimes against humanity, and war crimes; public distribution of all kinds of racist material; racist groups, and

racial discrimination when performing public duties or at work.

As an independent body responsible for monitoring and promoting basic human rights in the member states of the European Union, the European Union Agency for Fundamental Rights is responsible for preventing racism, xenophobia and other related forms of intolerance. To this end, it cooperates with institutions of civil society, national and international organizations, especially with the Council of Europe, conducts scientific research, collects and analyzes data on fundamental rights in the European Union, and then formulates and publishes conclusions and opinions on the implementation of legal regulations.

The Organization for European Security and Cooperation in Europe (OSCE) plays a very important role in the fight against hate crimes, which, due to their more frequent occurrence, pointed out the necessity of taking certain measures. Thus, in the Decision of the Council of Ministers No. 9/09 on the fight against hate crimes, there are thirteen provisions that require the participating states to:

(1) Collect, establish and publish reliable data and statistics with sufficient detail on hate crimes and violent manifestations of intolerance, including the number of reported cases to criminal justice authorities, the number of processed cases and imposed sanctions. If the collection of data on victims is limited by data protection law, it is necessary for states to find an adequate way to do so in accordance with the legal possibilities.

(2) If necessary, adapt legislation to combat hate crimes, ensuring effective penalties that take into account the gravity of such crimes;

(3) Given that the problem of under-reporting of hate crimes prevents states from designing effective policies, it is necessary to motivate victims to report hate crimes. To that end, it is necessary to investigate the possible contribution of civil society in the fight against hate crimes;

(4) Conduct training for law enforcement officials, prosecutor's office and judicial authorities dealing with hate crimes;

(5) In cooperation with relevant actors, explore ways to provide victims of hate crimes with access to counselling, legal and consular assistance, as well as effective access to justice;

(6) Be quick and efficient when it comes to prosecuting hate crimes, but also ensure that the relevant authorities and political leadership publicly condemn the motives of those convicted of hate crimes;

(7) In the fight against violent organized hate crime, ensure cooperation, where appropriate, at the national and international level, including relevant international bodies and between police forces;

(8) Work with law enforcement authorities to raise awareness and educate, especially those who help victims of hate crimes;

(9) For the sake of information, the Office for Democratic Institutions and Human Rights (ODIHR) appoints a national contact person for hate crimes;

(10) In order to ensure a comprehensive approach in the fight against hate crimes, take into account the use of resources developed by ODIHR in the field of education, training and awareness raising;

(11) Through mutual cooperation, reduce the damage caused by the spread of various contents through the use of the Internet, the main goal of which is to incite bias-motivated violence, including hate crimes, while taking into account that all measures taken are in accordance with the obligations of the OSCE, especially with regard to freedom of expression;

(12) In collaboration not only with participating countries, but also with relevant international organizations and civil society partners, explore the potential link between Internet use and bias-motivated violence and the harm it causes, as well as possible practical steps to be taken;

(13) Invites the Director of the ODIHR to inform the participating states about the work of the ODIHR in providing assistance to the participating states in the fight against hate crimes during his regular reporting to the Permanent Council [11, c. 130].

The responsibility of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) is not only to provide assistance to governments to fulfill their obligations as OSCE participating states in the areas of human rights, democracy, rule of law, tolerance and non-discrimination, but also to collect information and statistical data from them on hate crimes, violent forms of racism, xenophobia, discrimination and anti-Semitism. In addition, ODIHR publishes data on hate crimes obtained from state authorities and civil society organizations on its website (<https://hate-crime.osce.org/>).

When we talk about hate crimes in the law of the European Union, we can say that the legal protection of their victims is provided not only by the provisions of primary legislation, international agreements and General Legal Principles of the EU, but also by binding acts of secondary legislation (regulations, decisions, directives). The Charter of the European Union on Fundamental Rights, which was proclaimed in 2000 in Nice (France), and which found its source in the European Convention for the Protection of Human Rights and Fundamental Freedoms, is of particular importance.

In terms of combating hate crimes, the European Union began its normative function in 2008 by adopting the Framework decision on racism and xenophobia¹. Article 1 of the Framework Decision foresees four forms of violations related to racism and xenophobia. The first form will exist in the case of public incitement to violence and hatred of persons of a certain race, nationality or religion, and the production or distribution of materials that incite violence and hatred from the first form, the second form. Denying, downplaying, or publicly condoning crimes against humanity or war crimes that are provided for in the Statute of the International Criminal Court, and the victims are members of certain ethnic, national, religious, or racial groups, constitute a third form of violation. In the case of the fourth form, the crimes to which the action relates are prescribed by Article 6 of the

¹ Framework decision 2008/913/JHA on racism and xenophobia

Charter of the International Military Tribunal. The provisions of the Framework Decision foresee punishment for inciting, assisting and committing hate-motivated acts, not only by natural persons but also by legal entities. In addition, due to the discriminatory nature of such motives and their impact not only on the immediate victims but also on society as a whole, the European Commission emphasized in the report on the implementation of the Framework Decision that member states have an obligation to ensure the detection and punishment of racist and xenophobic motivations¹. It is recommended. and the formation of special offices and units to combat hate crimes, additional education and training of police officers, prosecutors and judges in processing hate crimes, systematic collection and recording of such acts. When it comes to the protection of victims, the Commission points out that it is of particular importance to quickly implement the Directive on victims, especially if one takes into account the fact that hate crimes are not reported to the police. of the criminal act, the circumstances under which the crime was committed, but also what personal characteristics may be associated with discriminatory motives. To that end, it is important to determine whether the victim needs special protection due to the characteristics of his personality, the type of crime, the relationship between the perpetrator and the victim, that is, the victim and the circumstances under which the crime was committed, and if it is necessary to react with protective measures, which can be taken in the specific case².

In the Directive, in paragraph 3 of Article 8, states are required to establish specialized services to provide support to victims, which they could contact free of charge, regardless of

¹ European Commission against Racism and Intolerance (2015). ECRI report on Albania (fifth monitoring cycle).

² Directive establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/22/JHA -Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime 2001/220/JHA.

whether they reported the crime or not³. Also, the importance of cooperation between state authorities and civil society organizations working with victims, systematic collection of data on the number and type of crimes, age, gender and other characteristics of victims is indicated. In processing these data, EU member states are assisted by Eurostat⁴.

Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA from October 2012 is another significant document in the fight against hate crimes at the European Union level. This act guarantees victims of criminal and other similar crimes the right to free legal aid, but also confirms the importance of the right to a fair trial.

Legal protection against hate-motivated acts is provided for in Article 9 of the Directive, which defines hate crime as follows: "... a criminal offense represents an impermissible act against society, as well as a violation of the individual rights of victims, and therefore victims of criminal acts must be identified and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any basis, such as skin color, ethnic or social origin, genetic features, language, religion, political or any other beliefs, belonging to a national minority, property, birth, disability, age, gender, sexual expression, gender identity, sexual orientation, residence status or health." In order to provide adequate assistance, support and protection to victims of criminal acts, Article 62 of the Directive foresees the development of a policy that will focus on raising awareness, education, training and education.

In addition, two political documents refer to the field of hate crimes, namely: the Resolution on strengthening the fight against racism, xenophobia and hate crimes of the European Parliament and the Conclusions on the fight against hate crimes in the European Union adopted by the Council of Ministers of the European Union. authorities in terms of law

³ Ibid.

⁴ Ibid.

enforcement, conducting a campaign to raise awareness of hate crimes not only among victims, but also among state authorities. In addition, states were asked to collect data on the number of reported hate-motivated incidents, the number of convictions, sentences imposed, but also to investigate the nature and scope of unreported crimes, the experiences of victims with the authorities, as well as the reasons for non-reporting.

3. The role of the European Union Agency for Fundamental Rights (FRA) in the legal protection of victims of hate crimes

The most active EU institution in the fight against hate crimes is the EU Agency for Fundamental Rights (FRA). For the sake of a better understanding of hate crimes, she recommends that member states not only collect data on the number of incidents that were reported, the number of convictions, the motive of hate crimes and the sentences imposed, but also that the collected data be viewed in relation to the perpetrator of hate crimes, primarily taking into account their gender, age and other characteristics. In this way, the aim is to achieve greater visibility of hate crimes in the EU, to ensure the right of victims of hate crimes to compensation for damages from the perpetrator, but also an adequate reaction of the EU member states when these crimes are concerned¹. In addition, it is recommended that:

- whenever there are indicators that a certain prejudice was the motive for the commission of a criminal act, it should be investigated during the investigation by police officers;
- form specialized units that will focus on hate crimes;
- police officers specialize in cooperation with minorities;
- in order to recognize and understand

¹ EU Agency for Fundamental Rights (2012). Two new FRA reports show that hate crime is a reality in the EU. Retrieved from European Union Agency for Fundamental Rights: https://fra.europa.eu/sites/default/files/hate_crime_is_a_reality_in_the_eu_two_new_fra_reports_show_hr.pdf.

hate crimes in a timely manner, he organizes special training for police officers,

- in order to build trust between the police and citizens as potential victims, intensify the work of police authorities in local communities².

It is also suggested to the states to enable victims to report hate crimes in any way, via a mobile application, through a non-governmental organization or online, to familiarize themselves with their rights, but also to provide them with adequate support from professionals, i. e. to protect victims of secondary victimization by, for example, making it impossible to meet the perpetrator of the crime in the courtroom³.

4. European human rights convention on hate crimes

The European Convention for the Protection of Human Rights and Fundamental Freedoms, as a basic document of the Council of Europe, does not clearly prescribe or define a hate crime, however, the legal basis from which the rich jurisprudence of the European Court of Human Rights in cases of hate crimes arose is precisely the article that prohibits discrimination, Article 14, which provides that "...the enjoyment of the rights and freedoms provided for in the Convention is ensured without discrimination on any basis, such as gender, race, skin color, language, religion, political and other opinion, national or social origin, connection with a national minority, property status or other status". In addition to Article 14, hate crimes can also be analyzed through the right to life (Article 2 of the European Convention), the prohibition of torture, inhuman and inhumane treatment (Article 3 of the European Convention) and the right to private and family life (Article 8 of the Convention).

² Ibid.

³ Directive on establishing minimum standards on the rights, support and protection of victims of crime and on replacing Framework Decision of the Council of Ministers 2001/22/PU -Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

Although the European Court of Human Rights acted in several cases based on hate crimes, it also did not formulate a comprehensive definition of "hate crime", but left it open, but points out that motivation by prejudice is actually in the background of hate crimes, because perpetrators who abuse people because of who they are, or what they consider themselves to be, convey a very humiliating message: first of all, that the victim is not an individual with his own personality, abilities and experiences, but an impersonal member of a characteristic group [14, c. 8].

5. Practice of the European court of human rights

As already noted, the European Court of Human Rights does not define the term "hate crime" in its practice, but it has developed a rich practice in cases related to complaints of discriminatory violence in which it clarified the existence and scope of positive obligations of the signatory states to the Convention, including the need to take positive measures to protect victims of violence motivated by racism, xenophobia, religious intolerance, prejudice based on disability or special needs of an individual, or any other discriminatory basis [1, c. 319]. ECtHR rulings play a key role in respecting individual rights when member states fail to fulfill their obligations under the Convention, because they basically represent a relevant representation of what constitutes human rights violations in order to prevent the same or similar violations in the future. Given that member states have a legal obligation to implement ECtHR judgments, that process is very complex because it requires the respondent state to identify the cause of the violation and to discover the measures necessary to eliminate the violation of the specific applicant [5, c. 1]. The effectiveness of the judicial system depends on several factors, regardless of the specifics that characterize them, namely: skilfully and precisely defined legal regulations, efficiently organized work of judicial authorities, a specific budget at disposal, the behavior of the parties and the court in the proceedings, but also the political

situation in the country [2, c. 99]. Understanding the motive as a reason for committing this type of act is confirmed by the judgment of the ECtHR in the Škorjanec v. Croatia case, stating that Article 14 of the Convention includes cases in which a person is treated less favorably on the basis of the status or protected characteristics of another person...¹. Precisely Article 14 of the Convention guarantees protection against discrimination, and on that basis, in addition to the obligation to investigate every criminal act committed against an individual, states have an additional duty to investigate the existence of any discriminatory motives behind a violent act, in this regard the ECtHR in the judgments Šečić v. Croatia (Judgment no. 40116/02, 31. 2007) as well as in the judgment M.C. and A.C. v. Romania (Judgment no. 12060/12, 12. 2016, § 113) repeatedly emphasized that "to treat discriminatory motivated violence and brutality in the same way as in cases that do not have such connotations, would mean not seeing the specific nature of those acts, which are particularly destructive in relation to fundamental rights". In its judgments, the ECtHR decides on the responsibility according to the Convention of the contracting states in cases where individuals complain about the violation of Article 2 (right to life) as well as Article 3 (prohibition of torture) from the point of view of Article 14 (prohibition of discrimination), unlike domestic courts whose goal is to decide on the guilt of individuals [1, c. 322]. Precisely in the judgment Sabalić v. Croatia, the Court established a violation of the right to the prohibition of torture and inhuman treatment from Article 3 of the Convention together with the prohibition of discrimination from Article 14, and that the domestic authority that prosecuted this event did not deal with the elements of a criminal offense committed out of hatred, which led to the non-application of the relevant provisions of the domestic legislation on hate crime, which is contrary to the positive obligations of the state based on Article 3 and in connection with Article 14. of the Conven-

¹ Judgment in the Škorjanec v. Croatia case dated March 28, 2017, request number 25536/14, § 55.

tion, and in the same allegation found violations of the aforementioned Convention rights [14, c. 11].

If we deal with the analysis of the development of ECtHR practice in terms of the described principles, they first developed in the context of racially motivated violence. In the judgment of Nachova and others against Bulgaria, the Court found that racially motivated violence represents a special violation of human dignity, so such cases must be investigated with all available means, especially energetically and decisively, in order to strengthen a democratic society in which differences are not a danger but a source of wealth. Koutropoulos against Greece, Turan Cakir against Belgium, Abdu against Bulgaria, Angelova and Iliev against Bulgaria) [1, c. 324]. In the judgment of V. C. v. Slovakia (petition number 18968/07 of 08.11.2011), where it was about the forced sterilization of Romani women, it was stated that the Court found that there had been a violation of Article 3 and Article 8 of the Convention, so it is especially emphasized that cases with racial connotations must be handled with special care considering the nature of those acts, which are particularly destructive in relation to basic human rights and freedoms. In addition to racial discrimination, the Court also mentions ethnic discrimination, in the judgment Sejdić and Finci v. BiH, it is stated that ethnicity is based on the ideas of the same nationality, religious beliefs, common language or cultural and traditional origin and history, and that discrimination based on ethnic origin is one of the forms of racial discrimination¹. There are a number of judgments of the ECtHR in which discrimination on the basis of religious beliefs has been established, such as in the judgments Milanović v. Serbia (Judgment of 14 December 2010, request number 44614/07), as well as Virabyan v. Armenia, the Court clearly points to the failures of the competent authorities in preventing discrimination on this basis,

even stating that the victim's religion was the key reason for the untimely response of the competent authorities, in addition to that in the judgments special emphasis is placed on the obligation of states during the investigation of violence to take all necessary steps in order to determine the possible motivation of religious intolerance or prejudice, so in the end it was concluded that in these cases there was a violation of Article 14. Connection with Article 3 of the Convention [1, c. 328].

In contrast to racial, national and religious reasons, prescribing disability as a protected characteristic and basis of discrimination is more recent [7, c. 24], in the judgment Đorđević v. Croatia (Judgment of 07/24/2012, request number 41526/10) it is stated that the rate of abuse and violence against persons with disabilities is high and widespread.

In addition to the already mentioned types of discriminatory motivated violence, the practice of the ECtHR in a whole series of cases also considered violence based on gender, as a form of discrimination against women, both in the judgments Opuz v. Turkey, Balsan v. Romania and Talpis v. Italy² (2017, § 3. 32 Talpis v. Italy). The Court clearly indicates that by applying Articles 2 and 3 of the Convention there is a noticeable failure of the domestic competent authorities to effectively protect the victim, in these cases the women who were also the petitioners, also in the aforementioned judgments the Court clearly classifies the petitioners as victims of gender discrimination.

From all the mentioned and analyzed judgments, it can be concluded that although the ECHR and the ECtHR do not regulate hate crimes, judicial practice represents a very significant factor in the legal protection of victims of hate crimes, because in the judgments passed, the Court clearly recognizes the elements of discrimination that was the main trigger for the use of violence against victims. In its rich jurisprudence, which represents the basis of the legal protection of victims, in addition to recognizing these phenomena, the

¹ Sejdić and Finci v. Bosnia and Herzegovina of December 22, 2009, requests no. 27996/06 and 34836/06, § 43.

² Opuz v. Turkey, no. 33401/02, 9. 2009, § 198. 31 Bălan v. Romania, no. 49645/09, 23.

Court imposed a positive obligation on the states to examine, in addition to all the essential elements and facts when applying violence in certain cases, the possible discriminatory nature of violence and take all actions aimed at preventing it.

6. Conclusion

Due to the fact that crimes motivated by racism, xenophobia, anti-Semitism, religious intolerance, gender identity, belonging to a minority group, sexual orientation, or other grounds are on the rise, several acts on strengthening the fight against racism, xenophobia and hate crimes have been adopted at the European Union level. The main goal to be achieved is the establishment of mechanisms that will make hate crimes more visible, first of all by recording and effectively investigating them, prosecuting and punishing the perpetrators, offering the victims appropriate help and protection, and in order to encourage them to report the crime and secure compensation for damages [10, c. 20].

In order to provide adequate help, protection and support to the victims of this type of crime, specialization and additional education of those who come into contact with the victims in the first line is necessary. Then, it is necessary to collect and publish comprehensive and comparable data on hate crimes to the greatest extent possible, primarily on the number of such acts reported by citizens and recorded by state authorities, the number of indictments, convictions and sentences imposed on the perpetrators. Analyzing the legal framework of the European Union with regard to hate crimes, it can be concluded that it is an obligation to prescribe hatred as a motive for the commission of a criminal offense or as an aggravating circumstance, which would give a certain criminal offense its qualified form, or that the courts take such motives into account when determining the punishment. Then, that the investigation be initiated ex officio in case of suspicion that a hate crime has been committed, that it be quick and efficient, that is, that the police investigate the

motive when there is an indicator of a hate crime. In addition, states are recommended to establish special, specialized offices and units to combat hate crimes in the police and prosecutor's offices. In order for persons who come into contact with a victim of a criminal offense to be able to recognize a hate crime in a timely manner, then respond and help the victim and provide her with support, their additional education is necessary. In order to understand hate crimes, it is necessary to collect and analyze data related to the perpetrator of the crime, such as gender, age and other known circumstances, then the experiences of the victim in contact with state authorities, the reasons for not reporting, but also that the victim's awareness of her rights should be the focus of the analysis of the collected data. To that end, it is also important that states react, in terms of establishing a special service that will be specialized in providing support to victims of hate crimes.

Also, in order to provide adequate protection to the victims, it is necessary for the states to carry out an assessment of the repeated victimization of the victim of a hate crime, which means that it is necessary to carry out an analysis of the victim's personality, the type or nature of the criminal act, the circumstances under which it was committed. It also points out the importance of encouraging victims and everyone else to report hate crimes, by giving them the opportunity to do so in different ways, online or through a mobile application. In case of interruption of the investigation, it is necessary for states to ensure victims the right to request a review of such a decision, i. e. that the victim has the right to appeal if he claims that the court did not take into account the motive for committing the crime, as well as the right to request compensation from the perpetrator of the hate crime. The rich practice of the European Court of Human Rights represents a very significant factor in the legal protection of victims of hate crimes, because in its judgments the Court clearly recognizes the elements of discrimination that was the main trigger for the application of violence against victims and gives

concrete instructions to states that have made certain omissions in the legal protection of victims in which aspects they must act and improve their legal regulations, especially in the segment of recognizing discriminatory elements in a certain type of violence. Finally, the

fight against hate crimes requires the adoption and implementation of national action plans and policies by the states, while respecting the recommendations given by certain European bodies.

References

1. Bošnjak M., Grgić Boulais, A. Hate crimes in the practice of the European Court of Human Rights. *Croatian Journal of Criminal Law and Practice* (Zagreb). 2019;26(2): 319–334.
2. Bećirović – Alić M. Reasonable time trial in comparative law, *Stranipravniživot*. 2019(3): 83–105. (in Serbian)
3. Bećirović – Alić M. The right to a fair trial as part of the basic human rights and freedoms. *Journal of European and Balkan Perspectives, Center for International and Development Studies – Skopje*. 2018.
4. Čorović E, Ivanović A, Dečković S. et al. Hate crime trial simulation manual. MONITOR. Republic of Serbia. 2020:56. (in Serbian)
5. Dabić T. *Analysis of hate crime cases before the European Court of Human Rights*. House of Human Rights, Zagreb, 2019.
6. Đurić I, Mraljević Nišavić S. Negotiating Chapters 23 and 24: What are we negotiating about. *Retrieved from the Ministry for European Integration of the Republic of Serbia*; 2013. URL: <http://www.seio.gov.rs/upload/documents/publikacije/vodic-za-novinare.pdf>.
7. Filipović Lj. *Criminal Offences of Hate and Criminal Offences of Inciting Hate, Commentary on Relevant Legal Provisions*. Sarajevo; 2023.
8. Igrački J, Karović S, Živadinović T. The Criminal Offence of Murder: Historical, Criminal and Criminology Aspects. In: *International Scientific Conference: The Strategic and Security Concept for the Countries of South East Europe*. 27–29 September. Struga. University “St. Kliment Ohridski”. Bitola. Faculty of Security Skopje. Skopje; 2023:173–187.
9. Toys. The policy of harsh punishment: challenges of criminal law in the prevention of crime”. *Security*. 2022;(1):179–190 (in Serbian).
10. Iščerić H, Hebib M. Hate crimes in the countries of the Western Balkans and the process of harmonization with EU law. In Proceedings of the Conference: *Hate crimes committed in Southeast Europe*. Sarajevo: Faculty of Criminal Justice, Criminology and Security Studies, 2016.
11. Ivanović A, Soltvedt PL. The fundamental rights and hate crime in the context of the reform of the legal system. *A comparative analysis between Montenegro and Norway*: Proceedings of the Faculty of Law in Podgorica, 2018. 35/44.
12. Lalić V. *Hate crimes in Bosnia and Herzegovina*. Doctoral dissertation, University of Belgrade; 2013. 84 p.
13. Nicević M, Dečković S. Hate Crimes in the Criminal Legislation of North Macedonia. *“Bezbednost” Magazine*; 2024:115–131. (in Serbian).
14. Slijepčević Lj. Hate Crimes through Criminal Law and International Regulations, and Domestic and Judicial Practice of the European Court of Human Rights. *“Advokatskakancelarija” Magazine*, 2021 March; (Issue 79).
15. Stevanović Z, Igrački J. Psychosocial Characteristics of Perpetrators of Violent Crimes. *Criminal Law Instruments for Countering Terrorism and Other Violent Crimes*, Ministry of Justice of the Republic of Srpska, Serbian Association for Criminal Law Theory and Practice, Banja Luka; 2016:468–480.

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