

Kolaković-Bojović, M. & Đukanović, A. (2023) *Hate Crimes in the Republic of Serbia*. Belgrade: Institute for Criminological and Sociological Research

Maša Marković^a

In order to react as adequately as possible to the phenomenon of hate crime, it is first necessary to understand its concept, not forgetting that it is a special form of criminal behavior from which a high degree of social danger arises. When an overview of theoretical and normative postulates is also carried out, along with a qualitative and quantitative analysis of legal practice, the existence of a systemic approach to the fight against hate crimes can be expected. Therefore, the monograph “Hate Crimes in the Republic of Serbia” by Milica Kolaković-Bojović, PhD, and Anđela Đukanović, PhD, published at the end of 2023 by the Institute for Criminological and Sociological Research in Belgrade, can make a significant contribution to its construction, given that it is about scientific work, which in the first part provides readers with a comprehensive presentation of the concept of hate crimes, then international standards for handling the matter, as well as relevant international and national normative, strategic and institutional solutions in relation to hate crimes, while in the second part it offers a detailed analysis of public prosecutors and court practices in the aforementioned area in the Republic of Serbia.

At the very beginning of the monograph, in its first part, a register of abbreviations is given, and after the preface, in the first chapter, the authors thoroughly present and critically discuss the concept of hate crime, i.e. its emergence in the mid-80s of the last century in the United States, as well as further development. Like many other authors, they note the impossibility of having a generally accepted definition of hate crime, taking into account the diversity of social and legal norms, but emphasizing that it certainly contributes

^a Junior research assistant, Institute of Criminological and Sociological Research, Belgrade.
E-mail: mashamarkovickg@gmail.com

to the unhindered expression of ethnic, religious and other aspects of identity in every society. Therefore, in order to create all necessary conditions for the application of positive legislation that will provide effective protection to every individual, regardless of whether he/she possesses a property that is the basis of hatred and whether or not he/she belongs to a certain group and shares that property with it, the necessity of distinguishing this term from other related concepts such as hate speech, prejudice, bias, stereotypes and discrimination was pointed at.

Then, although there is no norm that directly refers to hate crimes, in the next chapter the authors provide an insight into the international framework, which is based on the principles of equality and non-discrimination, and forms the basis for affirming the importance of criminal law regulation of this phenomenon at the national level. They do this by presenting relevant universal and regional international standards, with the aim of emphasizing the contribution of various charters, declarations, pacts and conventions, as well as documents adopted within the framework of the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe. The central part of this chapter is part of the relevant practice of the European Court of Human Rights, which refers to racially motivated criminal acts, which are the most common, with the decisions that refer to other personal characteristics as motives for committing hate crimes, such as religion, gender, disability, sexual orientation and others. The above-mentioned practice is of particular importance, considering that over time principles have been developed in it which are of direct importance to the obligations of national authorities regarding the investigation and prosecution of perpetrators of hate crimes.

In the sequel of the monograph, the authors look at hate crime through the prism of the normative, strategic and institutional framework in the Republic of Serbia. They do this by analyzing relevant constitutional provisions, action plans for specific chapters, various preventive strategies, anti-discrimination laws, with a focus on studying the new approach to hate crimes provided by criminal legislation. The authors state that in 2013, a new regulation contained in Article 54a was introduced into the Criminal Code, the aim of which is to provide additional criminal protection to individuals, i.e. groups to which they belong in relation to those criminal acts where hatred is not an element of the criminal act, but which are in this particular case, it was carried out of hatred. Then, an analysis was made of those personal characteristics that can be the basis for the application of this regulation, with the conclusion that there is a limited number of personal characteristics that can be the basis for the application of mandatory aggravating circumstances, and that there is a need to introduce new personal

characteristics within the aforementioned incrimination, taking into account the results of monitoring the practice of the European Court for Human Rights, as well as the existence of new legislative tendencies within the law of the European Union. Also, in the monograph, in relation to the application of this article, the answers were given to numerous legal questions, such as the question of the need to recognize hatred as a motive for the commission of a criminal offense already in the indictment and specifying whether it is necessary only as part of the factual description of the criminal offense which the defendant is charged for or need to be covered by a legal basis, as well as the question of (non)existence of overcharge. In the rest of the chapter, while emphasizing the prohibition of double evaluation of hatred as a motive for a committed criminal offense, the authors pay equal attention to the analysis of criminal offenses in which hatred is included in the essence of the criminal offense, especially in relation to the criminal offense of inciting national, racial and religious hatred and intolerance from Article 317 of the Criminal Code, as well as its delimitation in relation to the criminal offense of racial and other discrimination from Article 387 of the Criminal Code. At the end of the chapter, the institutional framework for reacting to hate crimes is given, with an emphasis on the need to establish effective mechanisms for monitoring and recording public prosecution and court practice in action, and the necessity of strengthening the professional capacities of state authorities for exposing and sanctioning perpetrators, with the obligation to find new systemic solutions for improvement proceedings in this type of case, while constantly providing assistance and support to victims of hate crimes.

The second part of the monograph consists of a presentation of the views of the relevant universal and regional monitoring bodies and a quantitative and qualitative analysis of the practice of public prosecutions and courts in cases of hate crimes in the Republic of Serbia. This means that the authors, based on the separate opinions of international bodies and collected empirical data on committed hate crimes, performed a comprehensive assessment of the success of the application of the existing mechanisms of struggle in the matter in question, and presented adequate recommendations regarding the improvement of the systemic approach to hate crimes. In a smaller part of the analysis of the application of Article 54a of the Criminal Code, in the observed period from 2017 to 2021, quantitative methods were applied, whereby, among other things, it was determined that in the available sample there is a significant difference in terms of the representation of grounds of hatred in indictments in which the public prosecutor refers to the application of this article and legally binding court decisions. Also, what is significant is that in the majority of cases, a guilty verdict was passed with the application of Article 54a of the Criminal Code, but also that there is a significant

percentage of those decisions in which the existence of hatred as a motive for committing a criminal offense was not proven. Consequently, the authors decided to conduct a quantitative analysis based on case studies, with the aim of facilitating the mastery of key issues in the application of Article 54a of the Criminal Code, primarily in terms of the manifestation and recognition of hatred as a motive for the commission of a criminal offense, along with identifying the essential elements of hate crimes, as well as pointing out the unevenness of the public prosecutor's and court practice. On the other hand, in the case of the analysis of actions with regard to criminal acts where hatred is an element of the being of the criminal act, qualitative methods were predominantly used, due to the availability of several groups of data from several relevant sources, with the author's note that more detailed data on judicial practice are to the greatest extent based on the actions of the courts in cases for the criminal offense of inciting national, racial and religious hatred and intolerance from Article 317 of the Criminal Code. Therefore, based on the collected statistical data, the authors present to us the profile of the perpetrators of criminal acts in which hatred is an element of the being of the criminal act, and we learn that most often it is a male person between the ages of 25 and 40, who has not been convicted before, with a residence in an urban area without previous connection with the victim, and with the most frequent convictions for criminal offenses in which the national or ethnic affiliation of the injured party is the basis of hatred, for which in most cases a suspended sentence is imposed, and there are also short-term prison sentences, as well as the imposition measures prohibiting approach and communication with the injured party. Then, with regard to the analyzed data on the injured party, the authors come to the conclusion that the representation of men is not as drastically higher as in the case of the perpetrators of criminal acts that were the subject of the analysis, that their age is unknown due to the anonymization of the available data in that part, and that they also most often live in an urban environment.

Finally, based on everything presented in the monograph, the authors give recommendations for improvement and effective implementation of the mechanisms of the fight against hate crimes, proposing continuous monitoring and regular review of quantitative and qualitative data on committed hate crimes, with the aim of improving the legislative framework in the aforementioned area and standardization of legal practice, along with finding new adequate ways of providing protection and support to victims of hate crimes. In addition, as the authors themselves point out, there is no doubt that the most far-reaching consequences are achieved through the application of preventive mechanisms and actions based on the generally accepted principles of tolerance, non-discrimination and fostering a culture of diversity.

This monograph is an original and useful scientific work that presents the issue of hate crimes in a comprehensive way, considering critically viewed theoretical and normative solutions, numerous examples from international and national legal practice, as well as a detailed examination of the research subject from several different aspects. It was written in understandable and accessible language and is recommended for formal social control authorities whose daily task is to suppress, i.e. detect, prosecute and punish perpetrators of hate crimes, as well as to the professional and scientific public, but also to a wider readership that wants to get better acquainted with the current state of affairs in the subject matter, with the aim of constantly questioning science, society and the state.

© 2024 by authors



This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution 4.0 International