



An EU Funded Project

## Implementation of Anti-Discrimination Policies in Serbia

Palata Srbija | Bulevar Mihajla Pupina 2 | office No 579

Tel: 011 31 17 124 | Fax: 011 31 14 316



Implementation of  
Anti-Discrimination Policies

## Training material

# Hate crime – implementation and interpretation of the Article 54a of the Criminal Code of the Republic of Serbia

22-23 May 2013

Judicial Academy, Belgrade

## Hate crime – new institute in the Criminal Code of the Republic of Serbia



### 1. What is hate crime?

Although hate crime is a relatively recent expression, this crime is not new in practice. On the contrary, this crime is quite commonly committed due to motives having the elements of prejudice or hate against individuals or the whole group these individuals belong to. Such crimes result in general insecurity of citizens, specially affecting minorities (religious, ethnic, gender, sexual, political and other social groups). Most commonly, such crime is a consequence of prejudice, characterised by its influence not only to individual victims, but also to the communities they live in. The only definition of hate crime accepted in theory, most probably the most precise one, is that these are crimes motivated, in whole or partially, by prejudice related to race, national, and ethnic affiliation of the affected ones, or by their religious beliefs, sexual orientation or disabilities, and that such crimes endanger and hurt physical entities, but also damage and destroy material goods.

### 2. Why is it necessary to introduce hate crime in legislation?

#### 2.1. Reasons for introduction of this crime in criminal legislation

Introduction of this crime in legislation also has symbolic meaning because it shows that legislator recognises social danger of crimes motivated by prejudice and expresses their readiness to condemn such behaviour. Social severity of this crime is quite commonly measured not only with respect to specific consequences of such an act, but also with respect to a perpetrator's intention. This is why all legislations having such crimes defined stipulate more serious sanctions, which means that perpetrator's guilt is increased, because the motive makes such crime more serious than it would be if committed out of a motive without the element of hate. It is additionally important that crimes motivated by hate or hostility generate consequences which do not affect only the person, who is direct victim of such crime, but the effects thereof are wider – they include the community the victim belongs to.

The other reason is related to criminal proceedings conducted when crime motivated by hate has been committed. Actually, when hate crime is not stipulated as a specific crime, investigation usually does not develop in right direction because prosecutor does not even try to discover the motives based on prejudice or hate, and leaves it to the court to possibly increase the sanction and include perpetrator's motives as circumstances it takes into account when determining the sanction. However, this does not happen commonly in practice, because less serious qualification of crime in an indictment leads the court not to deal with discovery of circumstances and motives which were the grounds for the crime, but it stays with the evidence presented by the prosecutor.

On the other hand, if this crime is stipulated in the criminal code, investigation will be better directed, the indictment will contain all the elements important for final judgement, which will ultimately lead to the judgement which will take into account motives of the committed crime, clearly stating what the reasons to characterise the act as a hate crime were. This will result in public awareness that crimes committed for these reasons are punishable, and the victim will receive more rightful satisfaction, while the community to which the victim belongs will have more confidence in the state legal system.

There are other important reasons to corroborate the condition that hate crime should be stipulated in criminal legislation not directly related to the proceedings conducted in cases of crime committed due to



An EU Funded Project

## Implementation of Anti-Discrimination Policies in Serbia

Palata Srbija | Bulevar Mihajla Pupina 2 | office No 579

Tel: 011 31 17 124 | Fax: 011 31 14 316



Implementation of  
Anti-Discrimination Policies

hate or prejudice, but they positively affect the social climate and attitude of the whole society towards this phenomenon. This occurs during the legislative procedure because draft law, being developed by the working group, goes to the government which has the opportunity to read the draft and to discuss it, public consultations will be initiated as well, so wider public will also be informed that certain acts can be characterised as criminal ones committed due to hate or prejudice, and that such crimes are punishable. Finally, the draft law will be considered in parliamentary procedure as well, which is a public one, so all these steps enable that the society itself develops more positive attitude to unallowed behaviour, and will enable public awareness raising about the culpability of such acts.

In addition, states with hate crime stipulated in their legislation maintain detailed records and data about hate crimes, thus collecting useful information which can serve to get better insight into the nature of prejudice existing in a society, and to measure the efficiency of state authorities' response to such phenomena.

### 2.2. Specific crime or aggravating circumstance in imposing a sentence

Hate crime can be defined in many ways, but experience of countries that have done so is different. Firstly, there is a question whether to formulate it in one specific crime, or as an aggravating circumstance in imposing a sentence.

Countries have rarely defined this crime as a specific one – hate crime. For example, this has been done in the USA, Great Britain and Czech Republic.

Article 196 (2) of the Czech Criminal Code stipulates imprisonment sentence ranging between six months and three years for the “use of force against a group or an individual, threat with death, injury of health, or infliction of serious injuries due to their political affiliation, nationality, race, confession or lack of faith.”

The advantage of such solution is that law itself stipulates that motivation for the commitment of crime is an important element of the crime itself, which can have preventive effect to a potential perpetrator. However, when hate crime is defined as a specific crime, this requires that motive is also proved in order to punish the perpetrator. That is why it can be reasonably assumed that prosecutor will rarely reach to this crime, being afraid that it would be difficult to prove it, and will base the indictment only on the underlying crime in order to assure that the perpetrator will be sentenced. In that way, hate crime can remain unpunished, because it is upon the court in many legal solutions to stick to the indictment which was the basis for the court procedure. Therefore, it is possible that court does not declare someone guilty if the motive based on prejudice or hate was not proved.

This is probably the reason why majority of legal systems stipulate aggravating circumstances when certain crime was motivated by hate. Aggravating circumstances are differently formulated in different laws – either as aggravating crime or aggravating circumstances of a crime. Such legal solutions stipulate that sentence for the committed crime is more severe when crime was committed with a motive of hate or prejudice. This means that perpetrator has to be sentenced first for the crime he/she committed, and only then, provided that court estimates that it has enough evidence that the crime was committed due to the mentioned motives, they should take this into account when imposing the sentence, making it more severe. According to certain legal solutions, an aggravating circumstance in a number of countries can



appear for numerous crimes, whilst in the other countries such possibility is stipulated only for some specific crimes.

Article 30.6 of the Andorra Criminal Code stipulates the aggravating circumstance only if crime was committed out of “racist and xenophobic motives or reasons related to ideology, religion, nationality, ethnicity, sexual orientation, illness or mental disability of a victim”.

Some laws stipulate gradation of sentencing, whilst the others leave it to courts to decide taking into account evidence gathered during the proceedings. Yet, in majority of legal systems there is the obligation of a prosecutor to investigate circumstances which can prove that perpetrator was motivated by hate or prejudice, and to present such circumstances to the court. Some legal systems explicitly require that prosecutor should ask the court to take into consideration all circumstances to increase the sentence, or to present to the court evidence he/she gathered when someone was accused for crime with elements of hate.

The Belgium Code from 2007 in its articles 33 to 42 stipulates that “hate, scorn or hostility against a person based on his/her race, skin colour, origin, nationality or ethnicity, citizenship, gender, sexual orientation, marital status, birth, age, wealth, belief or life philosophy, current or future health status, disability, language, political affiliation, physical or genetic properties or social origin” are all aggravating circumstances which can double the sentence for the following crimes: indecent assaults and rape, manslaughter and intentional injury, avoidance to provide help to a person in distress, injury of personal freedom and inviolability of property, slander, arson and destruction of personal things or property.

Article 166 (2) of the Federal Criminal Code of Bosnia and Herzegovina stipulates that murder committed on “racial, national or religious basis” shall be punished by minimal imprisonment sentence of 10 years, whilst stipulating minimal imprisonment sentence of 5 years for “ordinary” murder.

Legal solutions defining the hate crime as an aggravating circumstance have their advantages and disadvantages. The advantage is primarily the one that it is far easier to introduce aggravating circumstances for crimes committed based on hate or prejudice into criminal code, because it is usual that criminal codes contain aggravating circumstances for some crimes. Another advantage is also that aggravating circumstances can be introduced for a number of crimes. Even if the basis for an aggravating circumstance is not proved during the investigation, there is no danger that perpetrator will not be sentenced for the underlying crime at least.

On the other hand, although it is far easier to apply the article stipulating aggravating circumstances, there is a danger that without clearly defined hate crime, the crime will miss somewhat of its severity, so aggravating circumstances, although easier to apply, will not serve to its main purpose to clearly reveal the forbidden motives. This lack can be overcome by including the reasons for increase of sentence into the verdict rationale, and also into the records maintained by court statistics. In such way they will become a part of public data, and persons who committed that crime will be duly recorded.

There are also combined solutions when law specifically stipulates the underlying crime with motives of hate or prejudice, but also stipulates the possibility that certain crimes will contain aggravating circumstances if committed out of such motives (e.g. the USA and Great Britain)

### 2.3. Criminal Code of the Republic of Serbia

Taking into account that crimes motivated by hate or prejudice and hostility against individuals belonging to certain communities are ever more common in our society, and that the Government and the National Assembly of Serbia have recognised the problems that occur due to these phenomena and have adopted the requirements to introduce hate crime in the criminal legislation of Serbia, amendments were adopted last year for the Criminal Code, introducing a new article which reads

#### **Special circumstance for imposing the sentence for hate crime**

##### **Article 54a**

If crime was committed out of hate for affiliation to a race and confession, nationality or ethnicity, gender, sexual orientation or gender identity of third parties, such circumstance shall be taken by the court as an aggravating circumstance, except prescribed otherwise as a characteristic of crime.

Introduction of this crime is very important due to many reasons, but it is particularly important that legislator has shown the awareness about these crimes which undermine basic values adopted through international treaties ratified by our country, thus committing itself to protect human rights and observe the principles of a range of international instruments on equality, tolerance and anti-discrimination.

### 3. Two important elements of hate crime

In order to characterise a crime as a hate crime, it has to contain two main elements.

The first one is clear and it implies that such act is stipulated as crime in the criminal code. However, the other important element of this crime is far more difficult to prove because it deals with the motive out of which such crime was committed. Therefore, it is necessary that crime was committed out of prejudice or hate expressed by the perpetrator against the victim. Actually, the victim was chosen because of certain characteristics or because he/she belongs to certain ethnic, race, national, sexual or other group.

Crime can be committed with regard to physical integrity of a person or a group, but the object of an assault can also be the property belonging to or used by a group with certain characteristics which are subject of perpetrator's prejudice or hate.

In the period between March and September 2012, citizens living in the vicinity of unhygienic settlement in the suburbs of Turin in Italy inhabited by Roma, organised four street protests requiring the dislocation of this settlement. In the night of 20 September 2012, the unknown persons set fire in a part of this settlement, causing material damage. There were no casualties, except for one person who was transported to hospital with light burnt. After a week, the police discovered the perpetrators. During the investigation it was proved that perpetrators of this crime belonged to a group which had been writing graffiti "Get Out Roma", "The Punishment Is Close" etc. months before.

On the other hand, many crimes are motivated by hate, but cannot be characterised as hate crime.



Mohammed Bouyeri, member of LGBT population and author of a book alluding and maliciously commenting Jesus Christ, stating that Jesus Christ never existed, and talking ironically about the believers who were tricked by “Biblical lies”, was attacked in the street and stabbed by Georg Enzweiler, member of Catholic Church. At the trial, he stated that the murder had not been motivated by the fact that Mohammed Bouyeri was Muslim or LGBT person, but solely because of his book, which insulted Enzweiler’s religious feelings.

#### 4. Some similar crimes – discrimination and hate speech

There are similar crimes which are closely related to hate crime, but cannot be classified as hate crime. Discrimination is the primary one. It differs from hate crime, because hate crime implies that there was a crime committed out of hate, whilst with discrimination, it is not obligatory that there was a crime, and that is why anti-discrimination laws are not laws dealing with crimes. Discrimination concept refers to less favourable treatment of a person based on some forbidden characteristics, such as racial, ethnic, or religious origin, sexual orientation, etc. In order to characterise certain treatment as discrimination, the forbidden bases must be innate characteristics of a person, or characteristics acquired by that person without his/her influence. In majority of legal systems discrimination is a matter of civil law, although certain systems stipulate its criminal sanctioning. Yet, discrimination lacks one important element of hate crime – that the crime is stipulated by criminal code. The anti-discrimination principle has an aim to provide equality for all, which implies obligation of countries to treat differently the persons who due to certain characteristics of theirs are in different situation from the majority of society, and to apply criteria that take into account specific position of vulnerable groups in provision of their rights.

The Committee on the rights of persons with disabilities in Sweden has concluded in the case *H.M. versus Sweden* that the country had violated several articles of the Convention because it did not allow a disabled person to build a hydro-therapy pool on his property, explaining that urban development plan does not allow for such construction. The Committee stated its opinion that the country’s obligation is to provide equal rights for persons with disabilities in terms of living and participating in their communities, and referred to Article 19 of the Convention, which reads that states shall apply all measures necessary that “...persons with disabilities have access to all supporting services in their homes, institutions and local community ... needed for .... the support to inclusion and life of persons with disabilities in their local communities, thus preventing isolation or exclusion from the community”.

Hate speech is also something similar to hate crime. Many legal systems incriminate speech with certain forbidden contents, such as inciting hate or insults for certain categories of people, disregard of honour and dignity of a nation, inciting wars and spreading of war propaganda, and so on. The basis for prohibition is different in certain countries depending on historic and other social circumstances (e.g. denial of holocaust or glorification of Nazi ideology in Germany and France). The difference between the hate crime and hate speech is that hate speech is punishable *per se*. However, hate speech can present a motive before, during or after the commitment of crime. This of course means that it should also be included in investigation.

#### 5. What makes hate crime different from and more dangerous than some other crimes?

Hate crime endangers the basic constitutional principle – the principle of equality. This principle is also the basis for all international instruments on human rights and most of modern constitutions. This means



An EU Funded Project

## Implementation of Anti-Discrimination Policies in Serbia

Palata Srbija | Bulevar Mihajla Pupina 2 | office No 579

Tel: 011 31 17 124 | Fax: 011 31 14 316



Implementation of  
Anti-Discrimination Policies

that this crime at the same time presents violation of basic human rights norms. It has already been said that hate crime differs from similar crimes after its specific consequences for the victim, but at the same time for the group to which the victim belongs, because members of the groups also feel as victims although not specifically affected. The rule is that when tolerance to discrimination against members of certain groups exists in a society, then the number of such acts increases, which is a specific problem for security and public order. Taking into account that crime committed out of hate, discrimination and intolerance affects far wider group of people, it also causes greater polarisation in the society and increases distance between majority and minority communities. Intensification of tensions and intolerance in a society negatively affects inter-ethnic and social relations, which can lead to escalation and serious conflicts. This happens particularly often when victims and members of the community the victim belongs to are not satisfied with the response from state authorities, or if the state does not react to this type of crime at all. In such case, vulnerable groups organise themselves and are ready to organise revenge actions.

On 15 March 2004, Imran Hashid, British citizen of Asian origin was attacked by a group of white young men. On the following day, Imran organised search party with his friends, looking for “white youngsters” who live in that part of the city. They came across Chris Donald, a 15-year-old boy, put him in the car, drove him for two hours and then stabbed him 13 times with a knife and left him for dead. After two years of investigation, five persons of Asian origin were convicted for the crime of abduction and murder motivated by racism.

### 6. Choosing a victim

Hate crime is different from ordinary crime not only by the motivation of perpetrator, which is hate or prejudice, but also because of the consequences for the victim and group he/she belongs to, because the victim was chosen for his/her affiliation to the group, i.e. because of *what* it presents, not *who* the specific victim is. The message that is transferred from the perpetrator does not refer only to the specific victim, but at the same time to the wider group to which the victim belongs. The aim of hate crime is actually to intimidate the victim, but also the group he/she belongs to. The message for the victim is that he/she is not wanted in the society, but at the same time, the message refers to members of the community with the same properties or characteristics as the victim, and indicates the potential danger that they can be next targets of similar crimes.

The victim does not always have to be someone who belongs to a specific group, but the victim can be somebody who is in favour of certain group (e.g. protectors of human rights or LGBT population, or members of organisations who advocate protection of Roma rights and so on), or is related to, in marital or friendship relations with persons with certain characteristics. It can also happen that perpetrator has wrong perception that a victim belongs to a certain group, or can assault persons who are in company of persons with characteristics which are the basis for hate. This means that while investigating motives of a crime, one should not stop at the victim's characteristics only as important elements of crime, but should also investigate the *assumed characteristics* as a motive to the crime.

There are numerous examples for such cases in practice. It happens quite commonly that victim is chosen because he/she is married to a member of a minority group, that members of skinhead groups assault people of Turkish origin thinking that they are Roma, that members of neo-Nazi groups assault people thinking that they are Jewish, etc. It has been noticed in the USA after 11 September 2001 that number of assaults against people the perpetrators thought were Muslims increased. That is why some



legal systems stipulate punishment of crimes committed because of the assumed characteristics of the victim.

Article 28 of the Law on Crimes and Riots of Great Britain from 1998 stipulates that crime is aggravated if perpetrator shows hostility to the victim based on the membership or assumed membership of the victim to a race or religious group. "Membership" also implies relations with members of the group.

Article 132-76 of the Criminal Code of France stipulates more severe sentencing if the crime was committed because the victim "...really belongs or is assumed to belong to .... a protected group"

Article 174/B of the Criminal Code of Hungary prescribes that every person who assaults the other person because he/she belongs to a protected group, "whether really or due to the assumption..." commits crime.

## 7. What could be the victim's identity as a basis for crime?

Taking into account that the main characteristic of this crime related to victim's identity, this differs this from other crimes, criteria listed in legal systems also differ. In order to determine the bases, it is necessary to take into account against which social communities in a specific society is unallowed degree of intolerance is exercised, or against whom is long-term discrimination exercised, and it is also necessary to look into the historic heritage which exists in the society when talking about the attitude towards certain social communities.

The most striking and most obvious difference characterising the identity of an individual or a group is colour of the skin. That is why the greatest number of criminal codes takes skin colour as the basis for qualification of crime as a crime motivated by hate or prejudice. Quite commonly religious affiliation is taken as the basis for qualification of crime. Ethnicity, citizenship and nationality are also bases mentioned in laws of many states, while other bases are more rarely mentioned (sexual orientation, social status, social origin, disability, language, etc.). By applying comparative analysis, it can be concluded that laws in place in many countries read ever more bases for prejudice or hate.

Article 63 of the Criminal Code of Russia defines as aggravating circumstances crimes motivated by "political, ideological, racist, ethnic or religious hate or animosity against a social group".

Article 89 of the Criminal Code of Croatia reads that "Hate crime shall be any crime listed in this Law committed out of hate against a person due to his/her race, colour of skin, gender, sexual orientation, language, confession, political or other beliefs, national or social origin, property, birth, education, social status, age, health status or other characteristics".

Prosecutor offices, even courts, find it easier to conduct the proceedings when legal text precisely defines what can serve as a basis for qualification of crime as a crime with elements of hate. Precise definition of the basis is useful for the court as well, because it provides for a framework within which it should make a decision. Solutions to great extent depend on the assessment of the legislator which solution to opt for as the most adequate for the national judicial system. Some theorists are of the opinion that by including large number of bases which, as a rule, are more difficult to establish and prove, create



difficulties in proving the crime. These are characteristics which are not visible, such as e.g. birth, marital status, etc.

In order to overcome this problem, some legal solutions are such that when defining crime or aggravating circumstances for certain crimes, they stipulate general provision, according to which hate crime as an aggravating circumstance exists even in the case of the existence of any other victim or certain group's characteristic, which does not limit the application thereof only to those bases listed in the legal text.

## 8. Classification of hate crime

There is a number of authors, but also those who face this type of crime in practice, who oppose formulation of this crime as hate crime, advocating their standpoint with the argumentation that each crime implies the existence of negative emotions, and they think that it is far better to talk about unallowed motives and motivations of perpetrators of these crimes, not about hate. It is true that some crimes, although motivated by hate, are not crimes which should be classified into the category of hate crime, because the victim was not chosen based on specific characteristics he/she has.

It is also true that hate usually arises from an irrational belief that an individual or a group of people are bad, and that they should be punished for that, but also when somebody believes that injustice was exercised against them, or if he/she thinks that members of some minority community pose threat to him/her. Perpetrators of crime motivated by hate or prejudice often believe that they are victims, and that is why they chose their victims from those communities which, in their belief, threaten their values.

### 8.1. Different motives, causes and forms

It is maybe better to talk about motivations and motives, not only about hate itself, since it does not always have to be the cause of the committed crime. Hate crime can be committed due to many various reasons, such as resentment, jealousy, or need of a perpetrator to prove himself/herself in their surroundings or group they belong to. The perpetrator also does not have to have negative feelings for the group the victim belongs to. Personalities with strong feelings of affiliation to a community develop hostility, animosity, even hate against those who are outside that particular group they belong to. A victim of hate crime can also be anybody who presents some ideology or some other social phenomenon which creates animosity for the perpetrator.

That is why hate crimes can be classified as per causes which led to that situation that perpetrators are motivated by hate or prejudice they have against a specific community.

The least severe form of this crime is the so-called "*fun crimes*" and perpetrators of this crime are most commonly young persons, usually motivated by prejudice which in their case is not so strong, but it is still important that it is subject to sentencing, because in that way relapse is prevented. They commit crime most commonly to prove themselves in their company.

G.M. born in Cameroon has been living in Austria for a long time, selling papers "Augustin" in Vienna streets. One night, on 12 February 2011, he went to buy some things at a petrol station nearby. He went into the toilet and came across two young men who were under a light influence of alcohol. They started teasing G.M., making jokes at his account. One of them started to flick the ash of his cigarette off to G.M.'s head. He objected this, and then the other young man started to insult him on racial basis, then they threw him to the ground,



An EU Funded Project

## Implementation of Anti-Discrimination Policies in Serbia

Palata Srbija | Bulevar Mihajla Pupina 2 | office No 579

Tel: 011 31 17 124 | Fax: 011 31 14 316



Implementation of  
Anti-Discrimination Policies

started kicking him, and they broke his leg and several ribs. G.M. managed to use his phone and called the police, who found the two guys in the petrol station café. They took the statement from G.M. and arrested the assaulters. In September 2011, the perpetrators were sentenced 13 months in prison. When imposing the sentence, the court took into account the racist motives of the assault as an aggravating circumstance, as prescribed by Austrian Criminal Code.

There is also a *“revenge” hate crime*, which as a rule is motivated by a crime earlier committed by a member of a group whose member or property were chosen as object of crime.

A range of incidents against Roma occurred after 24 September 2011 when a boy was killed in a car crash caused by a driver in whose car there were members of a wealthy Roma family from the city of Katunis in Russia. Immediately after this accident, home of this Roma family was attacked, and the protest had escalated in the following days, resulting in arson of houses of several Roma families from Katunis. During this assault, one seventeen-year-old Roma boy fainted and died on his way to hospital. Anti-Roma violence spread to other Roma communities, and the police missed to prevent it. Animosity against Roma spread on. One young man from Varna, supporting the protests, opened a special account on Facebook social network, and called it *“Slaughter of Roma (Gypsies)”*, putting up a photo of a hand with knife in it. He invited his Facebook friends to join the protest planned for 28 September, inviting them to bring weapons to the protest. A hundred friends visited the web page, some of them confirming their presence at the protest, whilst the others were sending racist comments. Before the beginning of the protest planned for 28 September, the police identified the address from which this Facebook account was opened, and they initiated criminal proceedings through which the young man from Varna was sentenced to 10 months in prison (with three months on probation). The verdict was publicised, and personal computer used for this crime was seized. The verdict came into force in October 2011.

Most common victims of *“defensive” hate crime* are individuals or communities for whom the perpetrator thinks they are the reason for their poor status, redundancy or social vulnerability. Culprits of these crimes are mainly persons who deem that commitment of crime actually presents protection of values of the major part of community being venerable due to actions of another community, so victims of these crimes are mainly members of minority communities, migrants and refugees who work for lower wages, asylum holders, etc.

In a small Polish town there have been tensions between the majority Polish and minority Jewish population for a while. The tensions turned into open assaults of national right-wing groups on Jewish people in the town. The right-wing members started to mobilise local population against Jewish citizens by putting up posters showing Jewish as usurpers of Polish wealth and privileged citizens who get jobs easily and become rich at the account of impoverished inhabitants of the town. On the following day, a group of juveniles from the town set fire in a shop of their fellow citizen, beat his son, inflicting serious bodily injuries.

Finally, the motive for crime motivated by hate or prejudice can be a perpetrator's belief that by committing crime he/she is exercising a salvation mission. Perpetrators of these crimes usually think that cohabitation of different social groups is not possible, so it is necessary to undertake certain steps to change such a situation. This type of crime is known in theory as *“missionary” hate crime*.



On 13 September 2011, Michael Cunningham drove 25 km from his home to the closest mosque, splashed two parked cars with petrol and tried to set fire, wishing to destroy the mosque. Then he drew a gun and started shooting people standing in front of the mosque. The police investigation established that Cunningham did it all because he was furious for the event that had happened on 11 September 2011, when several USA cities had suffered from terrorist attack.

It is often impossible to make distinct division and classify crimes committed out of hate, because motives are in many cases combined. If law stipulates exclusively the motives caused by prejudice and hate, some crimes having the elements of hate crime cannot be qualified like that, or it is not possible to apply provisions on aggravating circumstances, which is not good, because in these cases, elements common for all crimes motivated by prejudice or hate occur – the victim was targeted, the perpetrator, as a rule, does not know the victim personally, which means that individual characteristics are not critical for the perpetrator, and that there is no direct connection between the victim and the perpetrator. The other common characteristic is that crime has elements of “message” sent to the social community against which the perpetrator developed negative feelings or the perpetrator thinks that life in community with that group poses threat for him/her.

In July 2006, Mohammed Parveis, taxi driver from a city in Great Britain, originating from Pakistan, was drawn out of his car, stoned and beaten to death by six white teenagers, who were shouting racist insults at his account. The murder was planned as a revenge for the incident that had happened several weeks before, when the same taxi driver gave a lift to a group of Asian men to a clash between two rival gangs. During the fight, one of the members of the group that assaulted Parveis had been hurt. The prosecutor, noting that this was a case “...mainly motivated by revenge”, still pressed charges against perpetrators for racist-motivated murder. Four of them were convicted for racist-motivated murder, while the remaining two were convicted for violent behaviour.

### **9. How to discover the motive of a crime, which evidence is needed, and how to collect the evidence?**

In addition to the provision of evidence, discovery of motive is the most difficult part of investigation because the perpetrator of crime commits it out of hate or hostility against certain characteristics of the victim, he/she sometimes aims the property of people sharing those characteristics or places they gather at, but for such qualification of the crime, it is important that perpetrator shows that he/she was motivated by hate or prejudice, which is difficult to establish, because it is a subjective matter, very difficult to prove in practice. Of course it is far easier if before, during or after the commitment of crime the perpetrator had shown an open feeling of animosity, hostility or discrimination against the victim or members of his/her community, say by writing wall graffiti, which was followed by the said crime.

On 25 March 2006, a nine-year-old Lillian Cisco of Russian-African origin, was assaulted when entering the building she lived in. She was taken to hospital, but despite serious injuries which were inflicted to her, she survived. During the investigation, her mother said that assaulters had had enough time to draw swastika and write graffiti “Skinheads, we did it”. In May 2006, the group of neo-Nazi was arrested for this crime and some other hate crimes.

However, some other motives caused by prejudice are more difficult to discover and they require higher degree of investigation. The police and prosecutor's office therefore have to find a way and develop methods to track the statements and acts of perpetrators, prove their connection with neo-Nazi groups, skinheads and similar groups, even by tracking statements and communication uploaded on internet pages of associations that promote ideas based on prejudice, hate and animosity against certain social groups, exploring the literature they read, magazines they buy, music they listen to, etc. If perpetrator possesses certain books, posters, music or anything that is based on hate or prejudice against a community, this can be the motive when it is about hate crime. Some countries describe in their legal articles which evidence is needed and this is very useful.

For example, articles 132-76 and 77 of the French Criminal Code stipulate aggravating circumstances when "...crime is preceded or is followed by written or spoken words, pictures, objects or actions of any nature which disgrace a victim, or a group the victim belongs to"...

There are other indicators which can help in discovering the motivation of a perpetrator. One is perception of the victim or witness of crime, and important indicator can also be racial, ethnic, gender and cultural differences between the perpetrator and the victim, as well as commitment of similar crimes in the past.

In any case, no matter how difficult it is to collect evidence which confirm that crime was motivated by prejudice or hate, all state authorities must react adequately and show their readiness and persistence in sentencing of these crimes. In each specific case, when there is evidence, or there is doubt that a crime can be hate crime, it is necessary that prosecutor's office (especially in case of prosecutor investigation) collects and presents all evidence through an indictment form, and this must be done in each specific case regardless of the severity of danger of the committed crime.

Where there is no direct evidence that crime was committed out of motives based on prejudice or hate, such as e.g. direct confession in the police or a statement made to friends before, during or after the crime was committed, circumstantial evidence has to be found. That is why investigation has to include as many potential witnesses who have contacts with perpetrators (neighbours, friends, colleagues, internet providers, etc.) so as to establish whether the perpetrator belongs to a specific group which advocates hate crimes, and whether he/she is related to those groups.

In cases of proved crime motivated by hate, courts were obligated to take into account while imposing a sentence, whether it is hate crime indeed and to specifically list actions and proofs in the verdict rationale to corroborate the existence of aggravating circumstances.

In order to realise the introduction of this crime into criminal legislation, it is necessary to have joint action from all authorities of a country, especially the police, prosecutor and courts. Many states have introduced the practice that files containing crime with elements of hate or prejudice are specifically labelled. Specific labels of these crimes contribute to better tracking and obligatory statistical processing and recording of these crimes. It is also useful to follow the practice of some countries which have special protocols or internal agreements concluded between all the authorities who act in such cases, through which they determine special mechanisms and manner of cooperation.

### 10. How to prevent commitment of crimes motivated by hate or prejudice?



It has already been said that even when legal text fully meets all the requirements for sentencing the hate crime, the goal is not achieved if legal provisions are not applied in practice, and in order to realise that, it is necessary that all participants in the conducted proceedings, which contains circumstances indicating that the crime was committed out of hate, prove that fact unequivocally, and take it as an aggravating circumstance when imposing a sentence.

However, when this institute was introduced into criminal legislation, repression was not the only intention of that. Because of the consequences it generates and influence to wider social community, it is equally important that it has preventive character because suppression of hate crime requires far more than simple sentencing of this crime. Similar to anti-discrimination laws, where experience has shown that successful suppression of discrimination requires that tolerance and equality towards the different ones should become common values accepted by the society, suppression of crime motivated by prejudice and hate is critical for the establishment of the system of values which would include acceptance of differences, not only effective and efficient instruments of legal protection.

Actually, suppression of hate crime requires very complex forms of fight and actions in order to change the awareness in the society. This implies long-term actions of state authorities at different governmental levels in order to promote the atmosphere of tolerance and respect for others. The easiest way is of course to apply systematic provision of information to public about crimes motivated by hate and prejudice and consequences of these crimes. It is also important to use all possible tools to encourage the climate in which rights of all individuals are respected, but also collective rights of minority groups by openly promoting tolerance and values of the equality principles. This should be participated by all parts of the society, but particularly the decision-making institutions, or institutions which influence development of educational curricula at all levels.

Roles of the police and prosecutor's office, which are the front line of a victim's defence, are of excessive importance. To this end, it is particularly important that members of minority communities, who are potential victims of these crimes have full confidence in work of the police and prosecutor's office, and that they are convinced that they will find understanding when they report hate crime. This is particularly important because it was shown in practice that victim is quite often discouraged to report crime because he/she doubts the possibility to be taken seriously. That is why prosecutor's office and police have to respond efficiently in cases that indicate hate crime, and show that they are sincerely determined to prosecute these crimes in proper way. Of course that the courts make a part of the same process, and that verdicts they make can significantly contribute to development of trust amongst minority communities for court protection against hate crime.

In January 2011, Sean Rutherford, a 31-year-old person with developmental problems, was caught by a group of 15 young men, his neighbours, who tied him to a street light with a tape, splashed him with golden paint and nail polish. Then they continued pouring spaghetti cans onto him, chicken meat and other breakfast odds and ends, recorded the event with their mobile phones and left him there for four hours. A neighbour called the police and told them that somebody was shouting nearby, but police officer thought it was a call about disturbance of public order, so the police did not react.

Four hours later, one of the attackers released the victim. On the occasion, Sean Rutherford hit his head against the pavement and was taken to hospital. The police finally reacted when they were called from the medical institutions which had received Sean



An EU Funded Project

## Implementation of Anti-Discrimination Policies in Serbia

Palata Srbija | Bulevar Mihajla Pupina 2 | office No 579

Tel: 011 31 17 124 | Fax: 011 31 14 316



Implementation of  
Anti-Discrimination Policies

Rutherford for hospitalisation, and established that it was not a drunkard who was making noise, but a person with developmental problems.

The case was characterised by the police as hate crime against a person with disability, although the perpetrators stated that it was only a joke. At the trial, Judge Peter Lakeen said *“This might have started as a joke, but very soon the whole thing evolved into intentional humiliating and degrading behaviour against Sean Rutherford, and it does not surprise that this crime had significant influence on him, because now he can only trust his family members, and cannot trust his friends anymore.”* He also sentenced perpetrators to 10 to 12 months in prison, with 2 years on probation, wearing of bracelet in the next three months and compensation of damage in the amount of 300 pounds.

After this event, local police undertook certain measures and adopted new rules of procedure, a meeting was held with local community and it was promised that they would react more efficiently in the future when crimes with elements of hate against persons with disabilities are reported.

The UK National Point of Contact for hate crime also reacted immediately and issued a statement in which they said that this incident unfortunately had elements of hate crime and that guidelines were developed at the national level in order to enable efficient response to these crimes. It was stressed that application of these guidelines would be regularly monitored in order to prevent hate crime against persons with disabilities, and that Government of Great Britain committed itself to report and record regularly such cases, because it was convinced that many similar cases have not been reported so far to the police or other state authorities.

Great role in sensitivisation of society to phenomena of violence with elements of hate belongs to media, which have to report very carefully about these events, because sensationalism can lead to escalation of violence. This happens when journalists do not have enough data and have not gathered enough information, so news about an incident or crime is published without enough data important for timely and accurate provision of information to public.



## 11. Conclusion – key expressions and elements of hate crime

### 1. INTRODUCTION

Hate crime is based on perpetrators' prejudice. This crime, or crimes, occurs everywhere, because there is no society or country which can avoid the results of the existing prejudice or intolerance. Single crimes which can be characterised as hate crime, committed by individuals, contain therein a potential to develop a range of crimes with several perpetrators and greater social threat of the committed crime, i.e. they can result in the so-called "spiral of violence". Understanding of the above stated and undertaking of efficient measures can prevent situations where the committed crime causes several dangerous crimes, i.e. the already mentioned "spirals of crime".

### 2. WHAT IS HATE CRIME

Crimes motivated by intolerance, prejudice or general evil act against certain social group or individual of that group, are defined as hate crime.

Hate crime consists of two obligatory elements:

1. The crime committed has to be crime defined as such in the criminal code.
2. The crime must be motivated by intolerance, prejudice or general evil act against certain social group or individual belonging to this group.

Intolerance, prejudice or general evil act determines that perpetrators of hate crime chooses the victim solely based on his/her affiliation to certain social group, or to a protected social group. These social groups are determined based on their essential characteristics, such as race, confession, nationality, ethnicity, gender, sexual orientation, gender identity or any other characteristic or mark.

A victim can be any person, certain group or property clearly related to individual victims or groups determined by a specific mark or characteristic.

### 3. INTENTION I.E. PREMEDITATION OF PERPETRATORS COMMITTING HATE CRIME

Committing of hate crime does not require that perpetrator feels hate against the victim. It requires that perpetrator is motivated by intolerance, prejudice, or general evil act against certain social group, individual member of such group or against their property.

### 4. VICTIM OF HATE CRIME

Everybody can be a victim of hate crime, but in practice these are most commonly members of minority groups on any basis. It is important that hate crime can be committed against the related property, or property which is important for minority groups. Most common examples in our country include devastation of tomb stones or writing of insulting messages, the so-called graffiti, on walls or places of importance for certain social groups.

### 5. REASONS FOR INTRODUCTION OF HATE CRIME AS AGGRAVATING CIRCUMSTANCE (POSSIBLY AS A SEPARATE CRIME)

#### 1. Influence to other citizens, i.e. general prevention

It happens quite often that perpetrators of hate crime think that they do something which is in general interest of the group they belong to, and that they have moral justification to commit such crime (e.g. great number of physical assaults on participants and security guards of the Pride Parade). Therefore, if the society itself does not punish such behaviour through legal state mechanisms, the other citizens can get the impression that such behaviour is desirable, and not punishable.

#### 2. Perpetrators of these crimes tend to shift very fast from less serious to most serious crimes

Perpetrators of serious, i.e. most severe hate crimes (e.g. murder), almost always started with less serious forms of hate crime, such as destruction of property or offences, so it is therefore necessary to act fast and punish efficiently the perpetrators as soon as they make first steps related to hate crime.

#### 1. “Spiral of violence”

In case that victims are not satisfied with actions undertaken by the state, or if there is no response to hate crime already committed, vulnerable group will self-organise and engage into revenge actions, which will collectively lead to “spiral of violence”, especially in societies with long tradition of all kinds of conflicts.

### 6. HOW TO IDENTIFY HATE CRIME?

The most widespread way is to define indicators of the crime perpetrator's motivation. Some of useful indicators are:

#### 1. *Victim's perception*

In this case, we start from the perception of the victim whether he/she thinks that crime was caused by his/her affiliation to a certain group, i.e. if according to his/her opinion the perpetrator was motivated by intolerance, prejudice or general evil act against certain social group, individual member of that group or their property.

#### 2. *Witness' perception*

In this case, we start from the perception of a witness, whether he/she thinks that crime was caused by affiliation to certain group, i.e. whether the witness thinks that perpetrator was motivated by intolerance, prejudice or general evil act against certain social group, individual member of that group or their property.

#### 3. *Comments, written statements or documents, gesticulation or “graffiti”*



- Has the suspect made insulting comments, written statements or documents, i.e. concluding activity directed against social group to which the victim belongs?
- Are there graffiti, messages or symbols on crime scene? (e.g. swastika)
- In case of damage or destruction of property, are these buildings of historic or cultural importance for the victim?

4. *Racial, ethnic, gender and cultural differences between the suspect and the victim?*

5. *Affiliation to organised groups, e.g. skinheads, fan groups, etc.*

6. *Committing of similar crime in the past*

## 7. RESPONSE FROM THE STATE LEGAL SYSTEM TO HATE CRIMES

### 1. Prosecutor's office

In each specific case when there is evidence or doubt that it is hate crime that happened, it is necessary that prosecutor's office (especially in case of prosecutor investigation) gather and present in a form of indictment all the evidence that corroborate possible existence of hate crime. This should be done regardless of the severity of the committed crime.

### 2. Courts of law

In cases of proved hate crime, courts are obligated when imposing a sentence to take into account whether it was hate crime, and to provide actions and evidence in the verdict rationale, corroborating the existence of aggravating circumstances in the form of hate crime.

### 3. Joint action from all state authorities, especially from the police, prosecutor and courts

In order to make actions of the police, prosecutor and courts more efficient, it is necessary to introduce specific labels for cases of hate crime, both in the police and prosecutor's office. These specific labels would, *inter alia*, contribute to better tracking and obligatory statistical processing and recording of these crimes.

In some states, there are specific protocols or internal agreements between all the authorities involved in the response to these cases, which determine specific mechanism and manner of cooperation.

## 8. CURRENT SITUATION IN THE REPUBLIC OF SERBIA

Latest amendments of the Criminal Code introduced hate crime into our criminal legislation. It is true that this introduction includes determination of hate crime as an aggravating circumstance only for five listed reasons. This is regulated through Article 54a, which reads that if the crime was committed due to

1. affiliation to certain race and confession,
2. national or ethnic affiliation,
3. gender,
4. sexual orientation,



An EU Funded Project

## Implementation of Anti-Discrimination Policies in Serbia

Palata Srbija | Bulevar Mihajla Pupina 2 | office No 579

Tel: 011 31 17 124 | Fax: 011 31 14 316



Implementation of  
Anti-Discrimination Policies

5. or gender identity of third parties,

such circumstance shall be assessed by the court as an aggravating circumstance, except prescribed otherwise as a determination of crime.

It is usual that these definitions stipulate one more general provision, according to which hate crime as an aggravating circumstance would exist in the event of any other characteristic of a victim or certain group, which does not limit the application of this provision.

