

Why Hate Crimes should be punished more rigorously

Research Article

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Abstract

This document aims to formulate the research question and to emphasize the importance of proper regulation and punishment of crimes in order to raise the level of consciousness in the process of building a real democracy and respect for human rights and freedoms.

It is a crime committed with a motive of prejudice, two elements that make the act of hatred. In general sense we are talking about a negative concept and negative action that causes negative consequences. There must be a basic criminal act in order to have a hate crime, thus logically any crime can become a hate crime, from murder and rape, to harassment and vandalism. We are not talking only in the context of physical violence, but also words, threats and incitement to hatred.

The acts of hatred convey the history of racism, discrimination and oppression that reflects inadequate evaluation of the victim. It is essentially a violation of fundamental ideals and principles, fundamental to modern democratic and multicultural societies. Hate crimes carry greater injuries that carry a strong message to the target person, the individuals or the group as a whole, inflict greater injuries and carry a greater offense than the basic crimes.

More strictly and rigorously penalties as a solution to try to solve the problem of hate crimes in this modern society of globalization and at the same time a missing tool for active citizenship referring to an individual's resocialization and a deterrent effect from the thought of doing.

Keywords: hate crimes, motive of prejudice, mental state, discrimination and deterring potential perpetrators.

1. Introduction

21 century - time in which every area of social life is raised to a higher level, when there is no possibility of criticism of civilizations. A time when social values and norms are respected, when people see each other with great respect. At first it seems okay. When we go back through history we will notice that there are big changes. New policies, new states, new buildings. And when you analyze it, everything goes for the better. Everything except humans. Yes, we are going back to the time when there were no technologies and people helped one another, no matter what social level they were.

Today we are living in a world where we speak a lot, but we do not watch out what kind of words come out of our lips. We talk to one, we talk about each other and so in a circle to the asylum. We can freely say that today we live in a time of hate speech. We talk bad about those who are below us, even worse for those who are above us. There was a time when we were careful of who we were talking to, when we were careful not to hurt someone in person. Today, this has been lost. We look in the eye and attack, mostly without facts and evidence. And all this

because we know that no punishment is to be followed. Perhaps a warning, only if the person we are talking to is strong enough not to report and oppose. At a time when the system of punishment is being promoted and when resocialization is the main segment of the punishment, the question is where are the penalties for hate speech?

An old proverb says: the wound heals, but not the bad word. I wonder if those who write the law have ever been victims. Did they sense on their own skin what means being hurt by a word? Humiliated and humiliated before all. Did they sense the sharpness of the pain? Punishment and re-socialization for this work should be posthumous because impunity gives strength and force for stronger attack. Strength for another work and greater power. Power that will not stop until it receives the deserved effect. We learn from the consequences to be better and a little less powerful. The same consequences will not confront the beautiful word and repentance.

In today's world hatred is a feeling, something abstractly presented in the most general sense of the word. When we mention hatred, the first thing that comes to mind is anger, violence or contempt for someone. But in reality, what is actually hatred? What is a hate crime, are we already talking about something more serious, should the state system sanction it? Is it only a feeling of negative emotions towards someone or "beyond the horizons" signifying something more, translated into action, a work that has implications, not only to the individual, but also to the wider society?

Hate crimes are something different from a sense of hatred (anger or contempt), a legal category, regardless of the implications of the society, whether positive or negative, defined and constitutionally regulated in some national systems. It is largely a phenomenon that emerges after World War II, from the apparently racist propaganda of the time and the Holocaust, putting the emphasis on the entire Nazi experience as a center of attention.

2. Defining the hate crimes

It is said that Hate crimes are crimes in which the perpetrator is motivated by the characteristics of the victim who identifies her as a member of a group to which the perpetrator feels some animosity.¹ The acts of hatred denote the illegal - violent, destructive or threatening behavior in which the perpetrator is motivated by prejudice against the presumed social group of the victim.² They are crimes involving words or actions with the intent to injure or intimidate a person because of his or her presumed membership in a particular group.³

It follows that legal theory does not offer a single definition that generally would define the hate crime, but analyzing all these variations, they basically have the crime committed with a motive of prejudice. Two elements that are essential for certain behavior to be brought under hate crime that is punishable in national legal systems. Hate crimes always require that there be a fundamental crime, which can result in hate crime, from murder and rape, to harassment or vandalism. It can include words, threats and incitement to hatred.

¹ Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives, OSCE/ODIHR, published by ODIHR, Poland, 2005, p. 10.

² Hate Crime: An Emergent Research Agenda, Donald P. Green, Laurence H. McFalls and Jennifer K. Smith, *Annual Review of Sociology* Vol. 27 (2001)

³ https://en.wikipedia.org/wiki/Hate_crime

When we talk about the motive of prejudice according to Allport, it is "a dissuading or hostile attitude towards a person belonging to a group, simply because it belongs to that group, and therefore it is assumed to have the undesirable qualities prescribed for that group."⁴ The motivation of prejudice can also cover a number of other reasons, such as gluttony, jealousy, or animosity toward the group. In fact, it is about depicting the mental state of the perpetrator of the act.

3. Regulation of hate crimes

Modern societies, high level of culture, multiethnic societies, multilingualism ... can a modern democratic society allow hate crimes to be a normal category or need to take measures and restrictions to make them a category that the community member does not have to think of achieving this feeling of anger, hatred and intolerance by turning it into action, an act of hatred. The process of globalization, the tendency towards the approximation of European countries to the concept of the European Union, the process of changing the state order, the changes in a society, and even the process of transition (specifically for R.M.) have brought a series of transformations of space and time and the most important, social relations within their framework. This process in which the priorities are changed, where for a moment thought that society has progressed so much and modernized, where hatred on any ground, whether religious, whether ethnic or cultural is overcome, where recurring history, the greatest historical "warfare" in essence have the hatred, the struggle for supremacy and domination, is simply paradox of this postmodern world.

In comparative legal practice, different states have a different approach and regulate this matter to a different extent, insofar as there is a clear division between the United States and other Western democracies.

If they were to analyze the US Constitution,⁵ hate speech was given broad constitutional protection, while in other Western democracies (Canada, Germany, Great Britain) and the International Covenants on Human Rights, it is largely banned and subject to criminal sanctions. However, the basis of such regulation lies in the different historical and social context. Regulation of hate crimes in national legal systems enjoys different legal treatment.

Firstly, defining and extending elements, whether hate crimes laws create special crimes called "essential deeds" such as harassment, assault, or vandalism that gain a whole new weight when they are motivated by prejudice, or increase the penalty for the fundamental criminal that when you are motivated by a kind of "clauses for aggravating circumstances" is a matter of regulation of the legal system. It basically speaks of the redefinition of behavior that was previously criminal as a new crime or as a harsh form of an existing act.

A person who spreads or encourages hate speech, whether in a direct way, or indirectly, it does so with a motive, with a predetermined goal. The motive of the perpetrator, whether as a result of different racial, ethnic or national affiliation increases the punishment for ordinary crimes. It is

⁴ The nature of prejudice, G. Allport

⁵ <https://www.law.cornell.edu/constitution>

precisely the motive of prejudice that is a key element of the hate crime.⁶ The perpetrator acts from hatred, hostility or intolerance, attacking the marker of the group's identity of the person or persons who are targeted.

The mental state, the state of conscious use of all forms of hate speech, is an aggravating circumstance, due to the fact that the person consciously and for some purpose spreads that hate speech, as a result of some characteristics of whether in the past were today the starting point for large "Hostile wars". The segment to which great attention should be paid in terms of determining the punishment of hate crimes, in any case a higher degree of punishment, unlike ordinary crimes. Although facial intentions are often the product of certain features of his character, they are not permanent traits but are the current state of mind. A person can kill or rob somebody without being a man who is prone to violence or a greedy person. But a person cannot hate or prejudice other ethnic, national or class groups, without being a person with prejudice, hatred or intolerance. Without feeling an antipathy or believing that underestimating things about them and acting in ways that subordinate them when faced with members of any ethnic, national or other group. The perpetrator has in any case chosen himself to act in accordance with the prejudices he has for the particular group.

4. The severity of hate crimes

What about the consequence, the damage that causes the hate crime? Indicator of prejudice, which causes violence. Violation of balance and harmonized society, motivated by violence, racial hatred, anger, as well as all forms of intolerance and hate speech, inflict injuries that may seem to be something theoretical, but in practice they impinge on the society as a whole.

The fact that a target is a person who is a member of a minority discriminatory group makes this circumstance more difficult. The application of emotional pain, fear and feeling of agony, the violation of human dignity is the greatest psychic pain and fall of man as a person. Violation of the principle of equality and non-discrimination, as well as disruption of social cohesion, are harmful consequences that inflict great evil on the society. This fact also leads to a greater punishment of hate crimes. The distinction of elements that may at first glance are totally irrelevant or roughly the same with the consequences (elements) of the ordinary work is necessary to do. The legislator must clearly set the framework, but also the limit that this fact is very important for the determination of the sentence. The short-term consequences for me are not so important, the bigger picture is important. These acts violate the "social peace" of "long-standing trails".

The fact is that the perpetrator should be punished and the punishment of the perpetrator should be proportionate to the criminal offense committed. But the question arises what is the difference between hate crimes and ordinary crimes?!? Are the constituent components that are actually defining and the basis for distinguishing the offense from hatred with other crimes is that leading

⁶ Causes and motivations of hate crime, Mark A. Walters and Rupert Brown (University of Sussex) & Susann Wiedlitzka (research assistant) (University of Sussex), July 2016

to different treatment of the culprit? Viewed through comparative legal practice, the regulation of the legal systems of the punishment of hate crimes enjoys a different treatment. We need to ask ourselves what kind of society we live in, which ideals we strive to achieve, what are we actually promoting? Democracy, the rule of law, the rule of law - the ideals of each state. Should the same treatment of something that represents hatred, anger, violence, and contempt should be brought under the same group and thus the same way of punishing with ordinary crimes?

Legal theorists define and put forward the theses, arguments that are in favor of justifying the legislation on acts of hatred. They are talking about arguments that point to precisely why acts of hatred should be punished more rigorously; the thesis of greater guilt, the thesis of a greater offense, the expressive thesis, and the thesis of just protection were greatly influenced in this direction.

5. Elements leading to a greater degree of punishment

According to my views and attitudes, the punishment of these acts of hatred, as well as all forms of intolerance under this theoretical definition, should be in a more stringent form. What actually makes these acts more diverse than ordinary crimes? The starting point of the analysis that actually describes the seriousness of the acts of hatred is the blame of the perpetrator, or otherwise the moral guilty of the perpetrator. The mental state (the condition of the perpetrator's mind), the feelings of belief, desire and the intention to commit a crime makes the person obey. So, for example, the premeditated murder is punishable with greater rigor than the murder of negligence, although the two crimes involve inflicting the same damage, the same degree of wrongdoing. In fact, what constitutes legal guilt is the legal act of the offense in the perpetrator's mind. The perpetrator does not have to intend his action to be legally wrong, he does not have to believe that this is so, he must only present his actions to himself under a description that he considers criminal law unlawful. According to the thesis of greater guilt, what constitutes the mental state of the perpetrator is precisely the hatred and prejudice, and hence the acts of hatred are punished more than differently motivated acts.⁷ Consequently the perpetrator is motivated to harm his victim as a result of hatred or prejudice towards the particular race, religion, ethnicity or archetype (the mark of the group identity) that the victim has. These mental states of mind that the perpetrator has of hate crimes are much worse compared to greed or envy that are state of mind leading to the commission of parallel crimes.

What about the other segments that characterize the hate crime with a greater degree of punishment than the parallel crimes? When we talk about a legal offense, the constitutional elements, the voluntary act, the challenge and some legally prohibited state of affairs are clearly stated in the legal context. But theorists in close correlation also represent moral transgression. Consequences and moral obligations - two different concepts that help in determining moral behavior. Consecutive practitioners who are studying the consequences point out that they are carriers of the essential good or bad. The larger offense would mean that acts of hatred would cause greater harm or injury in relation to parallel crimes. While deontologists, as a proper

⁷ Punishing Hatred and Prejudice, Heidi M. Hurd & Michael S. Moore, *Stanford Law Review*, Vol. 56, No. 5, 2004

procedure, define a procedure that refers to moral norms, living under the rule "should not be killed". In fact, acts of hatred break violent moral norms. In everyday practice as well as in scientific research, it has been proven that these two concepts can by no means be applied to a department, as Heidi Hard and Michael Moore point out: no one can live only according to deontology and consequential morality.⁸

The time delineation of *ex ante* and *ex post* is a segment of the theory of damage measurement developed by Frederick Lawrence who makes visualization of the calculations of damages, injuries. *Ex ante* analysis is actually assumed by a person who is faced with an unfortunate choice between risking two different pieces.⁹ What would be least harmful would be the crimes that a prudent person would risk if he was given a choice between the risk of that crime and any other offense. *Ex post* the measurement of the injury; the damage is an analysis of what the person's target lost as a result of the crime (serious bodily injury means that the victim loses the ability to make life choices). However, the emphasis is placed on proving the overall psychological injury inflicted by hate crimes, in particular the violation of the dignity of the victim, causing depression, withdrawal or anxiety of the victim of the offense from hatred, unlike the victim of an identical offense incapacitated by prejudice. The offense motivated by prejudice is neither accidental nor directed to the victim personally, but the perpetrator chooses the victim for some immutable character, contrary to the parallel attack where the perpetrator may choose his victim accidentally or for other reasons, such as the fact that the victim wore a wallet. Hate crimes cause more damage precisely because of the violation of the collective living standard of society than the parallel acts.

Hate crimes themselves are worse because the perpetrator chooses the victim because of the immutable characteristics that in the past were the basis for major enemy wars. They violate the ideal of equality among members of society, a fundamental value that gives equal opportunities for people in society to realize their potential.

The punishment of any crime, including hate crimes, from the perspective of law and its elements, should be a logical circle, where it is necessary to establish a link between criminal law and distributive justice. If we look at the other side, the perpetrator's side, the righteousness towards it, is actually the ability to find a proportionality between the severity of the offense and the severity of the punishment. The seriousness of the act is in turn determined by two factors - the offense committed by the act and the guilt or responsibility of the perpetrator.

The model of legal protection - theory developed by theorists Harel and Parchomovsky emphasizes the basic goal of criminal law - the basic means by which society protects potential crime victims. Consequently, to achieve justice in society, it has to go much deeper, to look at the differences between individuals in terms of their vulnerability to crime.¹⁰ With what it is logical, the more vulnerable - the more protected. The legislation on hate crimes aims to protect precisely those individuals who are particularly vulnerable to crime because of prejudice against them. But what is vulnerability? According to some general definition, the individual's vulnerability to crime is actually the expected injury or damage to the work of that individual,

⁸ Punishing Hatred and Prejudice, Heidi M. Hurd & Michael S. Moore

⁹ Punishing Hate: Bias Crimes under American Law, Frederick M. Lawrence

¹⁰ <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7933&context=ylj>

i.e. the probability of damage / injury multiplied by its size. However, the magnitude of the damage or the violation may also signify an "abstract" violation, a violation of dignity or the autonomy of the victim. An injury that may have no physical consequences, and has much greater implications for the victim's life. Implications that in the primary plan inflict hate crimes. By imposing harsh sanctions on hate crimes, such laws not only reduce the frequency of hate crimes but also reduce the exposure of members of different groups of acts of hatred in a differential way.

The increase in penalties is necessary precisely because of the equalization of the greater crime vulnerability of that group, which will constitute a form of compensation for the same. The legislator needs to make a good risk analysis that would raise the distribution of the social good. The risk can increase the sentence in two ways. If the perpetrator does a hateful act that causes the person to see and fear from future victimization, then the act is a greater offense than at all. And if the perpetrator chooses the victim as a result of what he has assumed to be particularly vulnerable, then he is guiltier of his crime than otherwise. The fact is that the larger penalties for perpetrators of criminal acts basically have the function of intimidation. In fact, it is necessary in order to deter potential perpetrators of acts of hatred. Due to the fact that the acts of hatred in this world of development, democracy and the promotion of human rights in the winter a great moment, in my opinion it is necessary that in the past it was the basis for major hostile conflicts, the basis for hatred and developing negative feelings towards the members of the other group (whether racial, ethnic, religious ...), be punished more strictly, with one and only goal - dissuading people from committing such offenses, whose damages are immeasurable.

6. Conclusion

The influence of the existence of laws regulating this matter - acts of hatred is in any case of positive significance. The existence of legislation that will regulate this particularly sensitive legal category drives society upward because of the fact that the affected community is increasing the trust. The omitted option for proper handling of these crimes, insufficiently vigorously prosecuted or punished, arguments that in any case go in favor of the adoption of special laws for the regulation of this matter. Hate crimes require not only punishment, but also greater penalties against parallel criminal offenses. But the question arises as to whether the adoption of special laws for regulating acts of hatred will contribute to the improvement of the criminal justice system to these crimes? In comparative practice, the law of the countries is usually envisaged in the case of racial, ethnic or religious motivated violence, the authorized persons to consider the motivation of the perpetrator in determining the appropriate sentence. Which means that the increased penalties for hate crimes exist without the existence of special laws. This is a matter for regulating the individual legal systems of the states, in accordance with their manner of regulation and functioning.

However, looking through the prism of the various theories, we can conclude that violence motivated by ethnic hatred or prejudice is different from other forms of violence. Acts of hatred

are worse than the parallel criminals that they deserve to be treated differently - stricter penalties for perpetrators of hate crimes. Someone will say this is not fair.

We live in a world where everyone is equal, a world where punishment is a rough tool of law. Everyone is equal, but everyone is equal in the opportunities for equal life, equal utilization of positive influences in society, equal opportunities for development and use of community resources. Not in terms of prolonging the commission of punishable offenses, hate crimes, acts that in the past, someone would say time of underdeveloped communities, a time of separation, where development was not based on the promotion of "these present values" was the starting point for major historical "wars." Unfortunately, today's society is a reflection of what happened in the past, the great "craving" between cultures, the stagnation of the human mind, and even the inability to deal with this problem. A problem that has long been solved.

Hate crimes themselves are worse, due to the fact that the characteristics for which the victim is selected are immutable characteristics. The fact that history involves many similar acts motivated by racism, xenophobia ... The choice of the victim is particularly cowardly because of the fact that they are persons who are part of a group with characteristics that are invariable. The acts of hatred convey the history of racism, discrimination and oppression that reflects inadequate evaluation of the victim.

In the essence is a violation of fundamental ideals and principles, fundamental to modern democratic and multicultural societies. Hate crimes carry greater injuries that carry a strong message to the target person, the individuals or the group as a whole, inflict greater injuries and carry a greater offense than the basic crimes.

However, with the determination of the sentence, the model of just protection is satisfied, making the legal system the basic means by which society protects potential crime victims. The distribution of that justice that needs to be achieved and accomplished is a matter for the state. By imposing tougher sanctions on hate crimes, it may also have the effect of intimidating potential perpetrators of such offenses, whereby the person, when he knows what penalty he is waiting for, may cause deterrence from doing the same. However, this is of minor importance. However, what leads to an extreme punishment for hate crimes is the damage that is caused to the target person, i.e. society as a whole, as well as the elements of the hateful work elaborated above. The special penal and legal treatment of hate crimes definitely signifies more severe punishment of the perpetrators, separation of such acts as forms of basic acts and of course prescribing more severe penalties for them. Separating the very motive as an aggravating circumstance aimed at endangering the fundamental human rights and freedoms in the foreground. The subjective component, the danger of the perpetrator not only for the target group, but also for the whole society, emphasizing his personality, subjective danger, intention and motive. In determining the weight of the work it is necessary to perceive these components of the perpetrator.

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