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PROVING HATE CRIMES AND THE IMPACT OF THE DIGITAL ENVIRONMENT IN THE REPUBLIC OF SERBIA

Abstract: - This paper examines the process of proving hate-motivated criminal offences in criminal proceedings in the Republic of Serbia. Serbia. It analyses the difficulties encountered by all actors involved in the process of proving hate crimes, including the police, public prosecutor, judge and other participants in criminal proceedings. The paper further addresses various challenges that may arise throughout all stages of criminal proceedings, from the initiation of proceedings and collection of evidence, through the indictment and main hearing, to the adjudication of cases. Given the specific difficulties associated with proving the intent and emotion of hatred, the paper examines various evidentiary measures and means of proof that may contribute to the effective investigation and prosecution of these criminal offences. In this regard, particular attention is given to the importance of the digital environment in the process of collecting and assessing evidence in hate crime cases.

Keywords: *evidentiary process, Criminal Code, criminal proceedings, motive, digital environment, hate crimes.*

INTRODUCTION

Numerous countries worldwide began establishing legislative frameworks for hate crimes during the 1960s and 1970s. In fact, several approaches to the criminalisation of hate crimes may be identified. One approach involves regulating hate crimes as separate criminal offences, while another approach consists of treating the fact that a criminal offence was committed with a hate motive as a mandatory aggravating circumstance, either prescribed in the general part of the criminal code or applicable only to specific criminal offences. In line with contemporary developments in comparative criminal law, Serbia has incorporated hate motivation as a specific aggravating circumstance relevant to the determination of a sentence. Through the 2012 amendments to the Criminal Code of of Serbia, Article 54a was introduced, establishing a special circumstance for sentencing in cases where a criminal offence has been committed out of hatred. More specifically, Article 54a provides that, where a criminal offence has been committed out of hatred due to the other person's race, religion, national or ethnic origin, sex, sexual orientation or gender identity (the seven protected characteristics), the court shall consider such circumstance as an aggravating factor when determining the sentence, unless it already constitutes an element of the criminal offence. The criminal justice system must possess the capacity to adequately investigate, prosecute, prove and sanction hate crimes. One of the most demanding aspects of this process is establishing that a particular criminal offence was motivated by hatred. In evidentiary proceedings, the prosecution is required to prove that the offence was committed with a specific intent, since not every criminal offence committed against, for example, a member of an ethnic or sexual minority, may be classified as a hate crime. Proving a hate motive, particularly in the absence of an admission by the defendant, that the criminal offence was committed due to such motivation, may present a significant challenge for the prosecution (Dimovski, 2018, p. 1115).

PROVING HATE CRIMES UNDER THE CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

The question arises as to whether "hatred" is in fact necessary? The actual emotion of hatred is not required for a hate crime. Bias motivation refers to prejudice, intolerance or hatred directed towards a particular group sharing a common identity characteristic, rather than personal feelings

towards individual victims. The very term "hate crime" may, at first glance, suggest that hatred should be understood as a (subjective) element of the offence, in fact, as a necessary motivation on the part of the perpetrator. A similar position is expressed by Turković, who emphasises that the emotional state accompanying the commission of the offence is no longer relevant and does not constitute an element of the criminal offence. This significantly facilitates the evidentiary process, as it is not necessary to prove the existence of the emotion of hatred, but rather only the causal connection between the commission of the offence and the protected characteristic (Turković, 2019, 507). The interpretation that a protected characteristic must constitute the sole and exclusive motive for the perpetrator's conduct should nevertheless be considered incorrect. An offence should be qualified as a hate crime where prejudice based on a protected characteristic represents at least one of the reasons for committing the offence (Turković, 2019, 520). Comparative legal scholarship identifies two principal models of hate crime criminalisation: the *discriminatory selection model* and the *hostility model*. Under the discriminatory selection model, it is not necessary to prove that the perpetrator personally experienced hatred or animosity; it is sufficient to establish that the perpetrator selected the victim because of the victim's actual or perceived affiliation with a particular group. Conversely, the hostility model establishes a higher threshold, requiring evidence of personal animosity or hostility by the perpetrator towards the victim or the relevant group (Munivrana, 2019, p. 398). Therefore, for the purpose of proving hatred as a motive for committing a criminal offence, it is necessary to rely on the existence of specific circumstances indicating the presence of such motivation. The most comprehensive *list of circumstances* that may assist in determining the existence of hatred and bias towards persons belonging to a particular group was developed by the Federal Bureau of Investigation (FBI). The FBI has actually established a specialised investigative approach identifying factual indicators that may be used in the proving of hate crimes. According to the FBI methodology, the first circumstance capable of indicating hatred as the motive for committing a criminal offence is a difference between *the perpetrator's and the victim's affiliation* in terms of race, religious affiliation, sexual orientation, ethnic origin, gender or sex. Furthermore, the existence of a physical or mental disability of the victim may also constitute a relevant indicator of a hate motive. Another circumstance may be reflected in the perpetrator's *speech, written expressions or gestures*, where such conduct demonstrates hatred or prejudice towards another person. Similarly, the existence of hate may be

evidenced through symbols or graffiti placed at the crime scene that are associated with hatred. The wearing of particular clothing by the perpetrator may also indicate that hatred was the motive behind the commission of the offence. Another relevant circumstance is where the criminal offence was committed *in a neighbourhood* or area in which the victim belongs to a minority group within the local community. The fact that a criminal offence was committed during a holiday or on a date of particular significance to a certain group may further indicate that hatred towards persons belonging to that group constituted the motive for the criminal offence. Perpetrators of hate crimes are also frequently *repeat offenders*, and this circumstance may serve as an evidentiary indicator that a particular offence was committed due to hatred. In certain cases, a criminal offence may be committed by a *group of individuals* engaged in incitement of violence. Historical animosity may exist among certain groups (ethnic, religious and other groups), which may indicate that, in the event of a criminal offence being committed, a hate motive among persons belonging to these groups constitutes the primary driving force behind the violence. The final circumstance identified within the FBI typology concerns situations in which the victim, although not personally belonging to a particular group, is *involved* in activities aimed at advancing or protecting the rights and interests of that group. Such involvement may increase the likelihood of the person becoming a victim of a hate crime (Hate Crime Data Collection Guidelines and Training Manual, 2015, p. 6).

Bias indicators are defined as "objective facts, circumstances or patterns accompanying a criminal offence(s) which, either independently or in combination with other facts or circumstances, suggest that the offender's actions were motivated, wholly or partially, by any form of bias." The principal practical challenge lies in establishing the existence of bias motivation and identifying relevant bias indicators. *Bias indicators* serve as *circumstantial evidence*; however, they do not necessarily, on their own, prove a hate motive. The police are required to document and take into consideration bias indicators when interviewing victims and investigating cases involving violence. *The main categories of bias indicators* may include: the perception of the victim or witnesses; comments, gestures or graffiti; differences between the victim and the perpetrator; the presence of organised hate groups; the location and timing of the incident; patterns or frequency of attacks; the nature of the attack; and the absence of other identifiable motives. With regard to *the perception of the victim or witnesses*, it is essential to analyse the following questions: Do the victim or witnesses perceive that the criminal offence was motivated by bias? Was the

victim engaged in activities promoting or supporting their group at the time of the incident? The victim's perception is of particular importance in defining a racist incident. In this context, particular relevance is attached to the judgments in *Pakétová and Others v. Bulgaria* (2022)[1] and *Burlya and Others v. Ukraine* (2018)[2]. Therefore, the police must always take into account the victim's perception when assessing whether bias motivation was present. Even where direct evidence of prejudice cannot be established, the broader context of the crime must be examined. Regarding *comments, gestures or graffiti*, it is evident that perpetrators of hate crimes frequently express their prejudices before, during or after the commission of the offence. Individuals who commit hate crimes generally intend to *convey a message* to their victims and to the wider community. Such messages, ranging from verbal insults and threats to graffiti, may constitute significant evidence of motivation. The key issues requiring examination include whether the suspect made comments, written statements or gestures relating to the victim's belonging, or perceived belonging to a particular group; whether drawings, signs, symbols or graffiti were left at the scene of the incident; and, where property was targeted, whether the property constituted an object or location of religious or cultural significance, such as a cultural centre or historical monument. It should also be examined whether comments, written statements, gestures or graffiti indicating bias were present. Such evidence may include, for example, anti-Roma racial slurs, stereotypes and expressions of prejudice. In this regard, the judgments in *Stoica v. Romania* (2008)[3], *Petropoulou-Tsakiris v. Greece* (2007)[4] and *Lingurar v. Romania* (2019)[5] are of particular importance. *Racial insults* constitute a strong indicator of prejudice and should always be documented during hate crime investigations (Educational Tools for Addressing Racially Motivated Crimes against Roma and Travellers: Resources for Police Academies and Police Schools, 2025, 15). When assessing the indicator relating to *differences between the victim and the perpetrator*, it should be established whether the suspect and the victim differ in terms of race, religion, ethnic/national origin or sexual orientation, as well as examine the background of the suspect. Relevant questions include: Is there a history of hostility between the victim's group and the suspect's group? Does the victim belong to a group significantly outnumbered by another group in the

[1] Roma families were forced to leave their homes due to racist demonstrations.
[2] Roma reported that they had left their homes because of racist threats and mob violence.
[3] Police officers used racial slurs while attacking Roma.
[4] The authorities ignored anti-Roma racial slurs during cases of police brutality.
[5] Police officers used racial slurs during raids on Roma settlements.

area where the incident occurred? Does the suspect belong to a different ethnic or racial group from the victim? Does the suspect belong to a hate group or extremist movement? Where the suspect has links to extremist organisations, such links must be identified as a potential bias indicator. The importance of this approach is reflected in the cases *Šečić v. Croatia* (2007)[6], *Király and Dömötör v. Hungary* (2017)[7] and *Vona v. Hungary* (2013)[8]. Although not all hate crimes are committed by *organised groups*, members or associates of such groups are frequently involved in the commission of these crimes. Where a hate crime is committed by an organised group, it should be established whether objects or materials indicating the involvement of a hate group were left at the crime scene; whether there is evidence that such a group is active in the local community (for example, posters, graffiti or leaflets); whether the perpetrator displayed behaviour associated with membership in a hate organisation, such as the use of Nazi salutes; whether the perpetrator possessed clothing, tattoos or other symbols associated with a particular extremist or hate group; whether the incident occurred during or shortly after a gathering of such a group; and whether the hate group had recently issued public threats against a particular community. As we have previously indicated, the *location and timing* of an incident represent significant indicators in the process of proving hate crimes. It is necessary to establish whether the incident occurred on a date of particular significance (for example, a religious holiday or national day); whether it occurred at a particular time of day when persons belonging to the victim's group were likely to be present in the area (for example, during religious services or prayers); whether the victim was located in, or near, a place commonly associated with or visited by a particular group (such as a community centre, mosque, church or another place of worship); and whether the incident occurred shortly after a change in the demographic composition of the area (for example, the arrival of the first minority families or the opening of a refugee centre). Hate crimes are frequently directed against symbolic locations with the aim of intimidating an entire community (*R.B. v. Hungary*, 2016). An important indicator of bias/hate relates to hate symbols and the *political context*. In this regard, relevant questions during the evidentiary process include whether *hate symbols* (such

[6] The perpetrators who attacked a Roma person were members of a far-right group known for hate crimes.

[7] Large anti-Roma rallies organised by far-right groups resulted in coordinated intimidation of Roma communities

[8] The European Court ruled that paramilitary marches against Roma communities constituted large-scale acts of racially motivated intimidation.

as Nazi symbols or Ku Klux Klan insignia) were discovered at the crime scene and whether the incident occurred in the context of, for example, anti-Roma political rhetoric. Hate crimes frequently escalate in politically charged environments where marginalised groups become targets of scapegoating. In this context, particular relevance may be attached to the analysis of the cases *Alković v. Montenegro (2017* [9]*) and Vona v. Hungary (2013)*[10].

With regard to *patterns, models or the frequency of attacks*, the evidentiary process should establish whether similar incidents have occurred in the same area and against the same group. It should also be examined whether there has recently been an escalation of incidents targeting the same group, beginning with lower-level harassment and non-criminal acts and progressing towards more serious criminal behaviour, such as vandalism or physical attacks. Relevant questions include whether there was a previous incident that could have triggered retaliatory action against the targeted group and whether the victim or the wider community had recently received threats or experienced other forms of intimidation, such as threatening telephone calls or correspondence. Since hate crimes are often message-based offences, the level of violence, damage and brutality involved tend to be particularly significant. Therefore, when assessing the nature of the attack/ incident, it is necessary to determine whether the incident involved unprovoked and extreme violence or degrading treatment. It should also be examined whether the incident was committed publicly and in a manner intended to reach a wider audience, for example through recording and publishing the incident online. Furthermore, it should be established whether the violence involved the mutilation or destruction of objects containing racist symbols, or whether property damage included symbols or acts intended to desecrate or defile property, such as the use of faeces or animal remains (Prosecutors and Hate Crime Training (PAHCT) Trainer's Manual, 2025, p. 167).

Accordingly, where the perpetrator does not admit before the court that the offence was motivated by prejudice or bias, or that it was committed because of a protected characteristic of another person, the court will generally determine whether the offence constitutes a hate crime on the basis of *objective criteria*, *the so-called bias indicators*. Comparative legal

[9] Racist messages were written on the house of a Roma family, calling on them to leave the settlement.

[10] Hate speech and far-right rhetoric during election periods contributed to an increase in violence against Roma.

literature and practical manuals most frequently identify the following categories of indicators: circumstances relating to the victim (for example, the victim's belonging to a specific group); circumstances relating to the object of the offence (for example, the function of a particular object); circumstances relating to the perpetrator (for example, membership of a particular group, such as skinhead movements); the perpetrator's conduct (statements, symbols, clothing); circumstances relating to the place and time of the offence (for example, religious holidays or places of worship); the victim's perception that the offence was motivated by hatred; and the absence of alternative motives (OSCE, *Manual on Joint Hate Crime Training for Police and Prosecutors*, 2009, p.21). This list represents a comprehensive, although not exhaustive, collection of indicators suggesting that a particular criminal offence may have been motivated by prejudice. It is important to emphasise that the existence of such indicators does not automatically establish that an offence constitutes a hate crime. However, the presence of bias indicators should encourage investigators to undertake further inquiries in order to determine whether objective evidence exists demonstrating prejudice motivation and supporting the prosecution of a hate crime. Bias indicators, like all other forms of evidence, should be assessed in relation to one another.

In the Republic of Serbia, the scope of protected characteristics has been narrowed through the introduction of Article 54a of the Criminal Code of the Republic of Serbia. The provision excludes certain difficult-to-prove grounds, such as birth or education, as well as social origin, property and social status. In such situations, the conduct will more frequently concern property-related criminality motivated by personal gain, rather than hatred or prejudice.[11] *Direct evidence* relates to circumstances occurring before, during and after the commission of the criminal offence. Such evidence may include statements made prior to the incident indicating planning or preparation, originating from suspects, accomplices, victims or witnesses; offensive messages directed towards the victim during the commission of the criminal offence, as reported by the victim, accomplices or witnesses; messages, photographs or video recordings stored on the perpetrator's or accomplice's mobile phone or computer; as well as searches for specific content on the internet. The public prosecutors should also consider statements made by the perpetrator after the commission of the criminal offence, of which witnesses may have knowledge, as well as evidence

[11] It is more difficult to prove that the perpetrator selected a particular victim because of a specific characteristic if that characteristic is not readily apparent.

concerning the perpetrator's links with specific organised groups. Such evidence may include magazines, books, brochures etc., as well as the contents of mobile devices and computers and objects discovered during searches of the perpetrator's premises. When assessing the perpetrator's statements as direct evidence, public prosecutors should bear in mind that perpetrators often wish others to know their motives, believing that their actions are justified and socially acceptable. For this reason, they may direct insulting expressions towards victims or leave messages and symbols of hatred at the crime scene. Furthermore, witnesses constitute an important evidentiary source, as they may possess knowledge not only concerning the circumstances of the offence itself, but also regarding the perpetrator's previous activities, earlier statements, behaviour or affiliation with extremist organisations. Accordingly, during the evidence-gathering process, it is necessary to establish with whom the perpetrator was in contact immediately before and after the commission of the criminal offence, bearing in mind that such persons may possess information from which conclusions concerning the perpetrator's motives may be drawn. In the absence of direct evidence, public prosecutors may also draw certain conclusions from indirect evidence considered within the overall evidentiary framework. Typical examples of *indirect evidence* are *hate or bias indicators*. Their significance lies in the fact that, when combined with direct evidence, they may be of exceptional importance in proving hatred as the motive for committing a criminal offence. When assessing hate indicators, public prosecutors should bear in mind that perpetrators of hate crimes sometimes use signs and symbols to demonstrate their affiliation with, or support for, far-right or nationalist extremist groups. Such symbols may be unfamiliar to persons who do not belong to those groups. In such circumstances, internet searches and consultation with experts may assist in identifying a possible hate motive behind the commission of the criminal offence (OSCE Guidelines, 2018, p.30).

Hate (bias) indicators are one or more facts which, either independently or in combination with other facts and circumstances, indicate that the perpetrator's conduct may have been motivated, wholly or partially, by hatred or prejudice. The timely identification of such indicators is of crucial importance for the proper legal classification of a criminal offence as a hate crime. As previously noted, hatred as a motive for committing a criminal offence may be established on the basis of certain *objective and subjective indicators*, as well as in situations where other possible motives for the commission of the criminal offence are absent. Objective hate indicators are those based on objective criteria and reflected in specific circumstances or

actions of the perpetrator which, either independently or in conjunction with other facts and circumstances, indicate that the criminal offence was motivated by hatred. *Objective indicators* may be *the circumstances* related to the victim, the perpetrator and the criminal offence itself. *Subjective hate indicators* arise from the perception of the victim or witnesses regarding whether the criminal offence was motivated by prejudice or hatred. Although the victim's or witness's understanding that the offence was committed out of hatred cannot constitute the sole evidence proving that the perpetrator acted with such motivation, the public prosecutor should assess this perception with particular attention when investigating whether a specific criminal offence was committed due to hate motivation. *The absence of other motives* - criminal offences are generally committed for certain motives which, even where they do not constitute elements of the criminal offence, may be relevant in the collection of evidence concerning the offence and the perpetrator. In cases of hate crimes, precisely the absence of other motives may represent a strong indicator that the offence was committed out of hatred, bearing in mind that in such cases the perpetrator does not target the victim because of who the victim is as an individual, but because of what the victim represents. However, these indicators only demonstrate the possibility that a criminal offence may have been committed out of hatred, they must be approached with particular caution, avoiding premature conclusions and respecting fundamental principles of criminal investigation when detecting and clarifying criminal offences, thereby ensuring the proper recording and more effective prosecution of hate crimes. From the earliest stage at which information emerges indicating that an incident may constitute a hate crime, intensive cooperation between the police and the public prosecutor is required. The prosecutor should provide police officers with directions regarding further investigative actions. Where grounds for suspicion exist that a hate crime has been committed, the prosecutor shall initiate an investigation with the aim of raising the level of suspicion to a degree amounting to reasonable or substantiated suspicion, thereby creating the conditions for filing an indictment against one or more suspects (Nicević and Dečković, 2020, p.112).[12]

[12] Darko Dimovski provides a simple example illustrating the circumstances that may contribute to establishing hatred as the motive for committing a criminal offence. A person accused of causing public danger by setting fire to a mosque may be convicted of a hate crime if that person had previously made statements expressing prejudice against persons belonging to the Islamic faith. Another example concerns the burning of a mosque in Niš on 17 March 2004 by ten young men of Serbian nationality. During the trial, they stated

The application of Article 54a of the Criminal Code of the Republic of Serbia by the judicial authorities will inevitably raise the question of how to deal with cases involving multiple motives for the commission of a criminal offence where one of those motives is hatred. It is therefore necessary to amend the legislative framework governing hate crime in order to regulate the legal requirements for recognising a hate crime in situations involving multiple motives, one of which is hatred. Effective prosecution of perpetrators of criminal offences committed out of hatred, within the meaning of Article 54a of the Criminal Code, presupposes the identification of hatred as the motive for the commission of the criminal offence at the earliest possible stage of the proceedings. Given the inherent difficulties associated with establishing motive, together with the limited range of evidence typically available to the public prosecutor for that purpose, proving that a criminal offence was committed out of hatred is a particularly complex task requiring specialised expertise and careful attention on the part of public prosecutors. Public prosecutors should collect and present in the indictment all available evidence capable of establishing that the criminal offence was committed out of hatred, while courts, when determining the appropriate sentence in such cases, should, in addition to the circumstances referred to in Article 54 of the Criminal Code, invariably treat hatred as the motive for the commission of the criminal offence as an aggravating circumstance (OSCE Guidelines, 2018, p. 25). It is evident that the ultimate objective is not merely to establish that the suspect committed the criminal offence with which they are charged, but also to determine the underlying motive, which represents a significant evidential challenge for both the police and the prosecution. Depending on the evidence obtained and on the nature of the particular hate crime, the prosecutor will adopt different prosecutorial strategies. Where hatred constitutes an aggravating circumstance, as is the case in the Republic of Serbia, the prosecutor will first seek to establish the commission of the underlying criminal offence and subsequently prove prejudice as the motive for its commission, since the court adjudicates only on the charges and facts set out in the indictment, and this is the only way to ensure that the offender is held criminally liable. Accordingly, whether hate crimes are prosecuted as distinct criminal

that the motive for their actions was the violence against Serbs carried out in March 2004 by Albanians in Kosovo and Metohija. Similarly, the annual Pride Parade in Belgrade, traditionally held in September, has frequently been accompanied by violence directed against persons belonging to sexual minorities, which is an example of criminal offences committed with a hate motive.

offences or through the application of enhanced sentencing provisions, the outcome of the proceedings will largely depend on the quality of the investigation and the effective presentation of evidence establishing the offender's bias motivation. In legal systems where hate crimes are regulated in such a way that hatred constitutes a qualifying circumstance, the public prosecutor is, in accordance with the principle of legality, required to prosecute criminal offences committed out of hatred, since, in such cases, hatred constitutes an element of the statutory definition of the criminal offence. However, where hatred as the motive for the commission of a criminal offence constitutes a mandatory aggravating circumstance, as provided for in Article 54a of the Criminal Code of the Republic of Serbia, the question arises whether the public prosecutor is required to state in the operative part of the indictment that the criminal offence was committed out of hatred, even though hatred does not constitute an element of the statutory definition of the offence, so that evidence may be presented during the evidentiary proceedings to establish that circumstance. A further question is whether, when determining the sentence, the court may treat the fact that the criminal offence was committed out of hatred as an aggravating circumstance if that issue was not addressed during the presentation of evidence. In considering this issue, which has emerged in the practice of public prosecutor's offices and courts in the Republic of Serbia as one of the principal sources of misunderstanding, and consequently of the inadequate application of Article 54a of the Criminal Code, account should be taken of the standards established by the international instruments ratified by the Republic of Serbia, the case-law of the European Court of Human Rights and the provisions of Serbia's national criminal procedure legislation. Although Serbian legislation does not expressly require the public prosecutor to include in the indictment the facts indicating that a criminal offence was committed out of hatred where hatred does not constitute an element of the statutory definition of the offence, the case-law of the European Court of Human Rights establishes that the State is under an obligation to prosecute criminal offences committed out of hatred even where hatred, as the motive for the commission of the offence, is not an element of the statutory definition of the offence, provided that domestic legislation recognises hatred as a specific aggravating circumstance. Accordingly, the view that the public prosecutor is required to include in the factual description of the offence contained in the indictment the circumstances indicating that the particular criminal offence was committed out of hatred within the meaning of Article 54a of the Criminal Code and to refer to that provision in the legal classification of the offence, is also

supported by the provisions of the Criminal Procedure Code governing the burden and subject matter of proof, the content of the indictment, the relationship between the indictment and the judgment, the content of a judgment of conviction and the rights of the accused (OSCE Guidelines, 2018, p. 26). Given that, under Serbian law, the public prosecutor directs the pre-investigation procedure and conducts the investigation, their role in detecting hate crimes is of considerable importance. As soon as the public prosecutor becomes aware of the commission of a criminal offence that may be classified as a hate crime, they should instruct police officers to determine, through their investigative activities, whether the particular criminal offence may indeed be regarded as a hate crime. Furthermore, during the main hearing, the public prosecutor must prove that the particular criminal offence was committed out of hatred towards a specific person. Since hate crimes are so-called message crimes, perpetrators often leave indications that the criminal offence was motivated by hatred towards a particular person. Such indications should therefore be sought not only at the scene of the crime, but also at the perpetrator's place of residence or temporary residence, at places where they associate with persons holding similar views and beliefs and at other relevant locations. Practice has shown that public prosecutors frequently rely on the offender's previous statements or on their admission that the offence constituted a hate crime. In the absence of statements or a confession by the accused, it is necessary for the public prosecutor, in cooperation with the police, to identify indications that the criminal offence was committed out of hatred. This demonstrates the importance of individual indicia and of establishing a coherent chain of indicia for the purpose of proving hatred as the motive for the commission of the particular criminal offence (OSCE, Prosecuting Hate Crimes: A Practical Guide, 2014, p. 56). It is clear that the application of Article 54a of the Criminal Code depends on whether it has been established during the proceedings that the criminal offence was committed out of hatred. In this regard, bearing in mind that the *burden of proving the charges* rests with the public prosecutor and that the subject matter of proof comprises the facts constituting the elements of the criminal offence or on which the application of another provision of the Criminal Code depends (Article 83(1) of the Criminal Procedure Code), it may be assumed that, in cases involving hate crimes, where the public prosecutor does not state in the operative part of the indictment, both in the factual description and in the legal classification of the offence, that the criminal offence was committed out of hatred, the court will not determine the motive for the commission of the particular criminal offence, but will base its decision exclusively on the indictment

and on the evidence adduced by the prosecution. If the factual description contained in the indictment does not include the facts and circumstances indicating that the criminal offence was committed out of hatred, yet the court applies Article 54a of the Criminal Code as a mandatory aggravating circumstance, which depends on whether it has been established during the proceedings that the offence was committed out of hatred, the question may arise whether this would amount to exceeding the scope of the indictment, that is, whether the accused would in such circumstances be found guilty on a basis not set out in the indictment. Another responsibility of the public prosecutor in proving hate crimes is to present to the court evidence of the *extent of the injuries sustained by the injured party* (victim) as a result of the hate crime. It is therefore essential that the relevant medical records be submitted to the court in a timely manner. Victims of hate crimes are often reluctant to cooperate with clinical centres where examinations to assess the extent of their injuries are carried out, owing to fear of secondary victimisation. This places an increased responsibility on the public prosecutor to facilitate cooperation between clinical centres and civil society organisations, as victims of hate crimes frequently place greater trust in representatives of non-governmental organisations. Although, at first sight, this may not appear to be an important aspect of proving hate crimes, such a view should be approached with caution, as public prosecutors must present at trial not only the physical but also the psychological consequences of the criminal offence in order to facilitate proof that it was committed out of hatred. In certain cases, psychological consequences resulting from a hate crime may be absent. Nevertheless, it remains necessary for the public prosecutor to demonstrate the adverse impact of prejudice and hatred on the victim. This may be achieved by calling the victim to testify so that they may personally describe their experiences in relation to the hate crime (OSCE, Prosecuting Hate Crimes: A Practical Guide, 2014, p. 63).

THE ROLE, SIGNIFICANCE AND IMPACT OF THE DIGITAL ENVIRONMENT

Hate crimes may take a variety of forms, including online hate crimes, in fact: the use of the Internet and social media platforms to spread hatred and direct hatred towards individuals or communities because of who they are or what they believe (Bezbradica, 2019, p. 5). The Internet has become a means by which individuals promote prejudice against persons possessing different personal characteristics, disseminate hatred and incite violence. At the same time, the development of modern technology and the widespread

use of the Internet have contributed to an increase in hate crimes. Perpetrators of hate crimes frequently use the Internet to organise and disseminate their ideas, as it enables them to conceal their identity and act anonymously without fear of being identified (Cucereanu, 2008, p. 183). The Internet is most commonly used for organisational purposes by so-called hate groups, which use it to recruit new members more easily while simultaneously spreading hatred and inciting violence. A further advantage for members of hate groups and other perpetrators of hate crimes is that, even where their online profiles or websites are removed or blocked by internet platforms, they are able to create new accounts under different names and continue their activities. Since the law has yet to respond adequately to all the challenges posed by modern technology with regard to security and the commission of criminal offences online, this area remains insufficiently explored. As noted before, in order to prove the commission of a hate crime successfully, it is of vital importance to examine the digital environment of the accused and any accomplices, including mobile phones, social media accounts, email messages, computers and other digital devices. In this procedure evidence obtained through the examination of the suspect's mobile phone, camera phone, computer and internet activity are crucial. In today's world, where mobile phones are widely used, judicial authorities have encountered cases in which perpetrators recorded the commission of a hate crime in order to show the recording to friends or upload it to the Internet. In such cases, proving hatred as the motive for the offence is facilitated for the public prosecutor, since the recordings often capture perpetrators making hate-filled remarks during the commission of the criminal offence, thereby revealing the motive behind it.

It may be observed that hate speech, particularly online, frequently precedes the commission of hate crimes directed against a particular group and is most commonly manifested in the digital environment. Collecting evidence in cases involving online hate speech has proved particularly challenging for national authorities and public prosecutors. The anonymity available to perpetrators on online platforms, together with issues relating to jurisdiction, constitutes the principal obstacle to gathering evidence in cases of online hate speech. In order to overcome the difficulties associated with anonymous online postings, many specialised law enforcement units have developed practices based on the use of all available information capable of providing clues as to the identity of the person responsible for a particular post, followed by cross-checking that information against other online and offline sources. Taken together, these measures may assist in identifying the individual who published an anonymous post. The exchange of information

on such investigative practices between specialised units could contribute to improving knowledge and expertise in identifying perpetrators, even where hate speech offences have been committed anonymously or under a pseudonym (Guidance, 2018, p. 14).

In the Republic of Serbia, as well as in the Republic of Croatia, courts may impose a security measure prohibiting the use of the Internet and access to the Internet. However, such security measures are rarely imposed, since, as is also the case with confiscation, they require the fulfilment of additional conditions, namely the existence of a risk that the offender will reoffend through the misuse of the Internet (Cvitanović and Glavić, 2012, p. 891). When discussing criminal offences committed through social media platforms, these are situations that citizens may encounter in everyday life, often without a clear awareness of the nature of their conduct or that such conduct constitutes a criminal offence, although they may clearly intend to insult, provoke, retaliate against or threaten another person. In the context of hate crimes and the digital environment, one of the criminal offences frequently committed through social media and associated with hate crimes is the criminal offence of *Endangering Safety*. Posting inappropriate messages on social media may also constitute the criminal offence of *Racial and Other Discrimination* under Article 387 of the Criminal Code of the Republic of Serbia. This criminal offence is broadly defined and is committed by any person who, on the grounds of race, colour, religion, nationality, ethnic origin or another personal characteristic, violates fundamental human rights and freedoms guaranteed by generally accepted rules of international law and international treaties ratified by the Republic of Serbia. The offence may also be committed by making publicly available texts, images or any other representation of ideas or theories advocating or inciting hatred, discrimination or violence against any individual or group of individuals on the grounds of race, colour, religion, nationality, ethnic origin or any other personal characteristic (Pantelić, 2017, p. 120). Although the idea behind the creation of social media platforms was not inherently negative, their development has also given rise to certain harmful consequences. For example, individuals involved in criminal organisations have recognised that social media platforms may be effectively exploited for the commission of a wide range of unlawful activities (Antonović, 2023, p. 50). Social media platforms are generally used to express opinions and views. However, where such views contain elements of xenophobia or hatred based on religion or nationality, they may amount to the criminal offence of *Inciting National, Racial and Religious Hatred and Intolerance* under Article 317 of the Criminal Code. Social media platforms are

particularly marked by hostility towards persons of Croatian and Albanian nationality, with frequent insults, threats and offensive or vulgar remarks directed at persons belonging to these nationalities. It should also be noted that certain political organisations of a neo-fascist orientation have used social media platforms to disseminate religious, racial and national hatred (Džinić, 2016, p. 59).

CONCLUSION

Public confidence in the criminal justice system is strengthened by the legal recognition of society's condemnation of criminal offences committed out of hatred. When, in the course of criminal proceedings and in determining the sentence, the court takes into account bias as the motive for the offence, such public recognition may reassure other members of the community that such criminal offences will not go unpunished. Conversely, where the prosecution of hate crimes fails to address the motive underlying the selection of the victim, such as the victim's race, nationality or ethnic origin, the opportunity is lost for the sentence imposed on the offender to have a deterrent effect on others. Drawing on the experience of States with a longer tradition of combating criminal offences committed out of hatred, the Republic of Serbia could follow this approach and incorporate into practice the experience of those States that have achieved notable results in the prosecution of such offences. Consideration could therefore be given to establishing a specialised unit for the investigation of criminal offences committed out of hatred, as well as to providing specialised training for police officers who, upon completing such training, would be responsible for the assessment of these cases. Furthermore, when collecting information and conducting investigations, due regard should be given to the protection of the personal data of victims of hate crimes in order to prevent secondary victimisation. In addition to promoting social integration and providing opportunities for interpersonal connection, which are generally regarded as their positive aspects, social media platforms have also proved to be a fertile environment for various unlawful activities, criminal conduct and abuse. Keeping pace with these emerging trends, the Serbian legislature has, through amendments to the Criminal Code, introduced provisions addressing new forms of criminal offences committed through social media platforms. Although it is impossible to anticipate and regulate every conceivable situation by law, the intention to address potentially high-risk forms of conduct through the introduction of new criminal offences, while

providing a degree of security for those who use social media platforms lawfully, is nevertheless to be commended (Antonović, 2023, p. 56).

It may therefore be concluded that it is of crucial importance to establish a comprehensive legal framework governing hate crimes, to provide the consistent application of international standards and the case-law of the European Court of Human Rights and to develop an effective system of cooperation among judicial authorities, the police, non-governmental organisations, the media and internet service providers, accompanied by appropriate training for all relevant stakeholders. Such measures are essential for the effective identification and proof of criminal offences committed out of hatred, thereby ensuring their adequate punishment, the protection of injured parties and the achievement of general crime prevention aimed at reducing the incidence of such offences, which may otherwise have grave consequences for society as a whole.

REFERENCES

1. D. Cucereanu, Aspects of Regulating Freedom of Expression on the Internet, Antwerpen, 2008
2. Educational tools for addressing racially motivated crimes against roma and travellers, Resources for police academies and police schools 2025, Volume 1 cross-cutting fact sheet Council of Europe
3. FBI - Hate Crime Data Collection Guidelines And Training Manual 2015
4. OSCE - Hate Crime Laws A Practical Guide, 2009
5. OSCE - Prosecuting hate crimes – a Practical guide, 2014
6. OSCE, ODIHR, Manual on Joint Hate Crime Training for Police and Prosecutors, 2018
7. OSCE/ODIHR, Razumevanje krivičnih dela počinjenih iz mržnje: Priručnik za Bosnu i Hercegovinu (Understanding hate crimes: Handbook for Bosnia and Herzegovina,), 2015
8. Prosecutors and Hate Crime Training (PAHCT) Trainer's Manual, Warsaw, 2025, OSCE/ODIHR
9. Antonović R. (2023), Fenomen društvenih mreža – krivičnopravni aspekti (The phenomenon of social networks - criminal law aspects), Osma međunarodna naučna konferencija Pravo, ekonomija i menadžment u savremenim uslovima - Veštačka inteligencija (AI) - LEMiMA 2023 Zbornik radova Knjiga 1.

10. Bezbradica Jelavić S., (2019), Zločin iz mržnje – Priručnik za profesionalce (Hate Crime - A Handbook for Professionals), Kuća ljudskih prava Zagreb.
11. Dimovski D. I Kostić M. (2018), Dokazivanje zločina mržnje (Proving hate crimes), Zbornik radova Pravnog fakulteta u Novom Sadu, 3/2018.
12. Zakonik o krivičnom postupku Republike Srbije (Criminal Procedure Code of the Republic of Serbia) („Sl. glasnik RS“, br. 72/11, 101/11, 121/12, 32/13, 45/13 i 55/14)
13. Krivični zakonik Republike Srbije (Criminal Code of the Republic of Serbia)("Sl. glasnik RS", br. 85/05, 88/05 - ispr., 107/05 - ispr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19 i 94/24)
14. Munivrana M. i Šurina Marton A. (2019), Zločini iz mržnje u Republici Hrvatskoj – neki teorijski i praktični prijepori (Hate crimes in the Republic of Croatia - some theoretical and practical controversies), Hrvatski ljetopis za kaznene znanosti i praksu (Zagreb), vol. 26, broj 2/2019
15. Nicević M. i Dečković S. (2020), Procesuiranje zločina iz mržnje u Republici Srbiji i Bosni i Hercegovini (Prosecution of hate crimes in the Republic of Serbia and Bosnia and Herzegovina), Bezbednost, vol. 62, br. 2, str. 100-117, Beograd.
16. OEBS- Misija u Republici Srbiji i Republičko javno tužilaštvo, Smernice za krivično gonjenje zločina iz mržnje u Republici Srbiji (OSCE - Mission in the Republic of Serbia and the Public Prosecutor's Office of the Republic, Guidelines for Prosecuting Hate Crimes in the Republic of Serbia), 2018.
17. Pantelić, N. (2017), “Krivična dela izvršena na društvenim mrežama” (Criminal acts committed on social networks), Paragraf, Beograd.
18. Turković, K.; Munivrana Vajda, M.; Dragičević Prtenjača, M., (2019), Kazneno pravo: sinergija teorije i prakse (Criminal law: synergy of theory and practice). Liber Amicorum Petar Novoselec, Zagreb.
19. Cvitanović, L., Glavić, I., (2012), Uz problematiku sigurnosne mere zabrane pristupa Internetu (Along with the issue of security measures banning access to the Internet), Hrvatski ljetopis za kazneno pravo i praksu (Zagreb), vol. 19, broj 2/2012
20. Džinić, S. (2016), Uvreda: krivično zakonodavstvo, teorija i sudska praksa (Offense: criminal legislation, theory and case law), Čikoš holding, Subotica