

# Prevention and Fight Against Harvest and Revenge Motivated Crimes

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**ABSTRACT:** Hate crimes are a serious concern in the world and the objective of approaching and combating discriminatory motivated crimes is pursued at international level as well as at national level in many countries that have adopted specific and strategic actions and/or policies. “Hate crimes” is a generic term that refers to all those offences committed by the offender on the ground of discriminatory motivation. We want to draw the attention to the fact that hate crimes based on religious criteria (but not only) are a very sensitive matter and the evidence of this lies, for example, in the terrorist actions of certain Islamic groups that have detonated a bomb in the editorial of a magazine that had published a caricature of an Islamic prophet, in Paris on 7<sup>th</sup> of January 2015. We believe that the religious affiliations of every nation must be respected, but it is inconceivable that terrorist attacks should occur as a reaction to disapproval of certain inadequate attitudes of the press.

**KEYWORDS:** crimes, fighting offences, hatred, methods of combating, punishments, vile reasons

## Introduction

Although not explicitly mentioned in national law, the category of hate crimes helps practitioners and theoreticians in the field of criminal law to address a type of crime that the European Court of Human Rights and international organizations have highlighted as having a particular negative impact on democratic societies. In national criminal law, offences caused by hatred, envy or revenge could be classified as criminal offenses, which would lead to an aggravating circumstance in the individualization of punishment. In the Romanian Criminal Code are inserted at art. 77, the aggravating circumstances, and at subsection h are inserted the following grounds: “committing the offence for reasons of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or for other circumstances of the same kind considered by the perpetrator to be the causes of inferiority of a person in relation to the other”. Furthermore, if we analyze the structure of the offence, hatred is the immediate cause of the subjective side of these crimes.

The Organization for Security and Co-operation in Europe (OSCE), acknowledges that hate crimes contain two elements: (1) there are facts that criminal law provides as crimes and (2) to commit the crime, the perpetrator acts on the basis of prejudices. The injured person becomes the target of the offense on the basis of membership or presumed membership of a particular group that shares a certain characteristic (e.g. gender, race, ethnicity, sexual orientation, etc.). Another narrow definition offered by the OSCE (OSCE 2009, 34) for hate crimes is “offenses motivated by intolerance towards certain groups in society”.

State criminal law treats hate crimes differently, depending on the characteristics of the criminal law systems to which we refer. The differences relate, among other things, to their being treated as an offense or as a ground for increasing punishment, as well as to the number of protected features explicitly recognized by law as part of the discriminatory motivation. The way in which hate crimes are effectively defined in state criminal law also influences how authorities collect data on these offenses. For example, data on offenses that contain discriminatory (stand-alone) motivation in their definition is easier to collect than data on the number of offenses to which the penalty for discriminatory motivation has been applied.

## Ways of combating hate and revenge offenses

We want to reveal what we are referring to when we talk about preventing and combating hate crime and revenge. A first aspect would be to ratify the legislation on hate crimes and to oversee its

implementation. From this point of view, a first step in addressing hateful facts is the adoption of legislation sanctioning such behaviors. The existence of special stipulations on these crimes is important from several points of view involving other aspects. This is an explicit message on the importance that the phenomenon is treated with and is an opportunity to increase public awareness on this type of crime. Likewise, an essential fact is that it allows data to be collected on the phenomenon with the purpose of prevention.

The second aspect is about collecting additional data on the hate crime phenomenon. In addition to the data collected from the authorities, it is necessary to carry out surveys on the victims of hate crimes in the population, containing questions about this category of crimes. The results of these questionnaires provide useful information about the black crime rate (unreported offenses), the experiences of injured persons and the relationship between injured parties and authorities.

Thirdly, it is about increasing the exposure of hate crimes and punishing their perpetrators, as well as increasing the trust of the injured in the authorities. The OSCE believes that the reason why the victims get discouraged from addressing the police is because of the obstacles that occur when hate crimes get reported and overseen. Injured people (crimes victims) and witnesses should be encouraged to report hate crimes through criminal complaint or denouncement. But the authorities must also inspire confidence, address these offenses in an appropriate manner, and protect the injured. One of the reasons that discourage injured people from reporting the misconduct of these categories of offenses is the fear that their identity or affiliation to a particular group will be revealed in the course of research conducted by the authorities. In this regard, the proper handling and management of these files and the protection of personal data is important.

Romania, like all the other signatories to the European Convention on Human Rights, is bound to have positive obligations stemming from the Convention, which means that the state must not only refrain from human rights violations, but also take measures to prevent the violation of human rights guaranteed by the Convention (Leach 2011, 5-18). Positive State Obligations also apply to hate crimes in connection with respect for the Convention's rights. For example, state authorities are required to investigate the possible link between racial attitudes or different religious confessions, and the violence that has been committed; if investigations show evidence of a racist motivation (such as racist language used by perpetrators) or some another nature, the authorities have an obligation to verify these evidence and to thoroughly investigate all the facts in order to disclose any racist or other motivation the nature. In cases of violence, authorized institutions must take all reasonable steps to disclose any racist motivation and any possible link between violence and hatred or prejudice based on the ethnic origin of the victims. This is an obligation for the authorities to gather evidence, to explore any practical measures through which they can find the truth and make reasoned, impartial and objective decisions without omitting suspicious elements that could lead to racist motivation. The duty is a means of diligence because the authorities must follow all reasonable steps and make every effort, depending on the circumstances of the case, without being forced to reach a certain result.

Differences between religious affiliations must be handled with utmost responsibility by the authorities. The suicide and terrorist attacks that have taken place over the last 20 years around the world have been motivated by religious provisions (as motivated by the groups that have claimed these actions that have disturbed and terrified mankind by their abominable character), saying they have started a “holy war”. The terrorist attacks in the USA (September 11, 2001) and those in the European area (France, England, Spain) have inevitably had the same hatred and revenge from Islamic terrorists. It is, therefore, that certain religious precepts misunderstood by some adherents of Islamic religion have led to real social and human catastrophes. What we want to emphasize is that the recourse to these religious policies in the public space is an extremely sensitive situation, and the factors of responsibility should take a much more careful attitude than they have done so far in order to avoid unbalanced communication of certain points of view in this area. We remind you that the prevention function is superior to punishment!

### **Parallel between hate speech and hate and revenge offenses**

In the Recommendation (97) 20a of the Committee of Ministers from the Council of Europe, the hate speech is defined as: *“all forms of expression that increase, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance which expresses itself in the form of aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, immigrants and people from immigration”* - (Annex to Recommendation No. R (97)20, Application Domain). The hate speech is treated differently in the member countries of the Council of Europe and there is no generally accepted and binding definition for this concept. If we use the meaning of Recommendation (97) 20 to compare hate speech with hate crimes, we note that hate speech is by no means an offense, but may become, in certain contexts. For example, the Romanian Penal Code punishes incitement to hatred or discrimination (art. 369 Penal Code), which can be accomplished, by definition, *“by any means”*, including through hate speech, most of it being the manner in which and manifest itself.

Relative to the ways in which the hate speech is transmitted, they can be verbal, in the online environment, in paper publications, or even through comic symbols. The hate speech in the online environment deserves special attention from the authorities, regarding the multiplier effect the internet has on the dissemination of the message (Weber 2009, 67). For example, hate speech in the form of racist and xenophobic propaganda propagated through the Internet are facts that the Council of Europe considers to be sufficiently serious to propose their sanction by criminal penalties when they are the following: distribution of racist and xenophobic materials through computer systems; the threat based on a racist and xenophobic motivation; denial of grossly minimizing, approving or justifying genocide or crimes against humanity (Council of Europe 2003, ratified by Romania by Law no. 105/2009).

Hate speech becomes relevant to hate crimes discussion when evidential material is analyzed. More specifically, the evidence of the hate speech expressed by the perpetrator in connection with the commission of a particular offense can help the court to withhold the application of the aggravating circumstance under art. 77 let. H) of the Criminal Code or to define the facts as justified crimes of self-hate (by completing as a new category) in the Criminal Code.

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by criminal law (referred to below as the Framework Decision) qualifies racism and xenophobia as direct violations of the very principles that European Union is based on. They are considered as serious threats that all states need to have an adequate response. Therefore, the Framework Decision provides for the need to unify the criminal law provisions of the EU Member States with regard to the definition of racist and xenophobic offenses and the establishment of effective, proportionate and dissuasive penalties. The criteria that are protected by this decision are race, color, religion, descent or national or ethnic origin, but it is foreseen that Member States may adopt criminal legislation that also protects other criteria than those mentioned (Council Framework Decision 2008/913/JHA, Preamble, paragraph 10).

The Framework Decision obliges Member States to ensure that criminal law legislative provisions contain effective, proportionate sanctions for a series of acts such as public incitement to violence or hatred against protected groups (Framework Decision 2008/913/JHA of the Council, Article 1, paragraph (1), letters a and b). The protected groups to which these provisions refer are those referred to in the preamble to the Decision, paragraph 10, the apology, denial or publicly minimizing the gravity of genocide, crimes against humanity and war crimes where such conduct is likely to hatred or violence against protected groups (Council Framework Decision 2008/913/JHA, art. 1 (1), c) and d). In the understanding of the Framework Decision, a criminal penalty that is effective and proportionate to the facts set forth in its content is that punishment whose particular maximum is at least one to three years' imprisonment.

### **Conclusions**

We recommend that in Romanian criminal law, offenses motivated by hatred, revenge, jealousy should have a separate character, therefore, be categorized.

We also make recommendations to the institutional decision-makers in this field to trigger or to continue (where appropriate) the activity of preventing and combating these criminal resolution factors, namely, hatred and revenge, because prevention can avoid the committing of crimes and there will no longer be human victims, thus protecting the most important human value, namely life and freedom, if we take into account that, unfortunately, personal abductions take place for the purpose of paying them sums of redemption, as happened also in Romania in the case of Romanian journalists kidnapped in Iraq by a terrorist group.

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