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# **Hate Crimes and Hate Speech.**

## **International Standards and Latvian Legal Regulation and Its Application in Practice**

Research done within the framework of the project "Capacity building and awareness rising to prevent and counter intolerance in Latvia — CALDER"

INTRODUCTION .....	8
Section 1.....	11
1. International legal framework combating hate crimes and hate speech .....	11
1.2. The United Nations .....	11
1.2.Council of Europe .....	14
1.3. European Union .....	17
1.3.1. Primary legal acts – general regulation.....	17
1.3.2. Secondary legal acts and soft-law.....	19
Section 2.....	22
2.1. The principle of non-discrimination .....	22
2.1.1. Legal regulation of the principle of non-discrimination .....	22
2.1.2. The provision of protection against discrimination under public and private law .	24
2.1.3. The content of the principle of non-discrimination .....	25
2.1.3.1. Prohibited situations.....	25
2.1.3.2. Non-discrimination traits .....	26
2.1.4.The scope and the content of non-discrimination traits .....	27
2.1.4.1. Race and color.....	27
2.1.4.2. Ethnic origin.....	27
2.1.4.3. Origin .....	28
2.1.4.4. Nationality.....	29
2.1.4.5. Religious and other belief .....	29
2.1.4.6. Sex and gender.....	30
2.1.4.7. Gender identity.....	30

2.1.4.8. Disability.....	30
2.1.4.9. Sexual orientation .....	31
2.1.4.10. Age.....	31
2.1.4.11. Status.....	31
2.1.5. Hate crimes and hate speech as violation of the principles of non-discrimination.	32
2.1.6. Specific types of discrimination.....	33
2.1.6.1. Multiple discrimination.....	33
2.1.6.2. Discrimination by association.....	34
2.1.6.3. Discrimination on a presumed ground.....	36
2.2. The concept of “hate crime” .....	36
2.3. The concept of “hate speech” .....	37
2.3.1. Definition .....	37
2.3.1.1. The United Nations .....	38
2.3.1.2. Council of Europe .....	39
2.3.1.3. European Union .....	41
2.3.2. Elements.....	42
2.3.2.1. Content of expression and the related actions.....	42
2.3.2.2. Form of expression .....	45
2.3.2.3. Hate speech perpetrators .....	46
2.3.2.4. Hate speech targets .....	46
2.3.2.5. The environment of expressing hate speech .....	48
2.3.2.6. Intent .....	49
2.3.2.7. Consequences.....	50
2.3.3. The particular aspects of hate speech depending on the protected characteristic ...	51
2.3.3.1. Race, ethnic origin and nationality .....	51

2.3.3.2. Religious or other beliefs .....	52
2.3.3.3. Sexual orientation .....	54
2.3.4. Freedom of expression and hate speech. Distinction.....	54
2.3.4.1. Freedom of expression and its boundaries.....	55
2.3.4.2. Criteria for identifying hate speech.....	63
2.3.4.2.1. United Nations .....	64
2.3.4.2.2. Council of Europe .....	65
Section 3.....	70
3. The Sociological and Psychological Aspects of Hate Crimes .....	70
3.1. Hatred and hate crimes.....	70
3.1.1. The scope of hate crimes.....	71
3.1.2. Hate crime as expression .....	77
3.1.2.1. Types of hate crime.....	78
3.1.2.2. Hate speech and language .....	80
3.2. The characteristics and groups subjected to hate crime.....	82
3.2.1. National, ethnic affiliation, origin, race .....	83
3.2.1.1. The ethnic origin of Roma .....	83
3.2.1.2. The ethnic origins of the Jewish .....	84
3.2.1.3. Race.....	85
3.2.2. Religious affiliation .....	86
3.2.3. Gender and sexual orientation .....	87
3.2.3.1. Sexual orientation .....	87
3.2.3.2. Gender identity.....	89
3.2.4. Disability.....	90
3.2.5. The intersectionality of characteristics and groups.....	90

3.3. Motivation of hate crime.....	91
3.3.1. The perpetrators’ profile in the eye-to-eye offences.....	93
3.3.2. The perpetrator’s profile in online offences.....	94
3.4. Identifying hate crimes and the obstacles thereto .....	95
3.4.1. Institutional structure .....	95
3.4.2. The obstacles of detecting hate crime .....	96
Section 4.....	100
4. The international standards in determining liability for hate crime and hate speech .....	100
4.1. Liability for hate crime .....	100
4.2. Liability for hate speech.....	100
4.2.1. Criminal liability.....	100
4.2.2. Administrative or civil liability.....	104
4.3. The specific aspects of liability for hate speech and hate crime.....	104
4.3.1. Protected characteristics.....	104
4.3.2. Rights to Compensation.....	105
Section 5.....	107
5. National legislation. Problems and compliance with the requirements of international law	
.....	107
5.1. National legislation .....	107
5.1.1. Constitutional law .....	107
5.1.2. Criminal law.....	107
5.1.3. Administrative Law .....	108
5.1.4. Civil law.....	109
5.2. The problems of national legislation.....	111
5.2.1. The criminal offences related to hate crime and hate speech defined in the Criminal Law .....	111

5.2.2. Problems .....	115
5.2.2.1. Distinguishing between hate crime and hate speech in the legislation.....	115
5.2.2.2. Different legal protections against hate speech depending on the protected characteristic, or Articles 78 and 150 of the Criminal Law .....	118
5.2.2.3. Section 149. <sup>1</sup> of the Criminal Law.....	119
5.3. Compliance of the national legal framework with the requirements of international law .....	120
5.3.1. Protected characteristics.....	120
5.3.2. A requirement for substantial harm .....	121
5.3.3. Criminal liability and administrative liability for hate speech.....	122
Section 6.....	124
6. Detecting hate crimes and hate speech in practice.....	124
6.1. Detecting and investigating hate crimes and hate speech in practice in Latvia.....	124
6.1.1. Insitutional competence in case of hate crimes and hate speech .....	124
6.1.2. Statistics regarding hate crimes and hate speech .....	124
6.1.2.1. Written applications regarding hate crimes .....	124
6.1.2.1.1. Applicants .....	125
6.1.2.1.2. The ways of receiving the application .....	125
6.1.2.1.3. The type and place of expressing offence.....	125
6.1.2.1.4. The further progress of the applications .....	126
6.1.2.1.5. The motives for refusing to initiate a criminal procedure.....	126
6.1.2.2. Offences recorded in the country in the field of hate speech and hate crime.....	128
6.1.2.3. Offences recorded in the country concerning hate speech .....	129
6.1.3. The problems of detecting and investigating hate crimes and hate speech in practice in Latvia .....	129

6.1.3.1. Institutional jurisdiction .....	129
6.1.3.2. Detection and investigation.....	130
6.2. Hate crimes and hate speech in the case-law of Latvian Courts.....	132
6.2.1 Case-law on hate crimes .....	132
6.2.2. Case-law on hate speech .....	133
6.2.2.1. The problems of detecting hate speech.....	133
6.2.2.2. Imposition of a penalty and its proportionality.....	136
7. CONCLUSIONS AND SUGGESTIONS .....	138
REFERENCES .....	143

# INTRODUCTION

## INTRODUCTION

This research has been carried out within the framework of the project “Capacity building and awareness rising to prevent and counter intolerance in Latvia — CALDER”. This research paper is elaborated by the scientific supervisor from the University of Latvia based on contributions by a group of experts from all partner institutions of the present project. It contains materials prepared by police officers, prosecutors, judges and scholars in the field of sociology, and therefore might reflect the conclusions different from those made by individual experts of the group.

The aim of the research was to provide analysis on compliance of Latvian legal regulation and its application in practice with existing international legal standards in relation to combating hate crimes and hate speech. The scope of this research is limited to the liability for hate crimes and hate speech committed by individuals and groups of individuals and responses required by legal enforcement institutions. Therefore, this research does not in substance include the obligations of private service providers, such as social media platforms.

The cut-off date for the materials used is 1 August 2021 with exception to some important international sources (1 June 2022).

The term ‘international law’ within the meaning of this research has to be used in a broad sense and it includes legally binding international agreements, including secondary legal acts of the EU, as well as legally binding interpretation provided by relevant international judicial bodies and soft-law documents adopted by various bodies of international organizations. It also includes various publications by international organizations and experts.

Latvian legal regulation and practice includes provisions of normative acts, national case law, as well as police data on possible hate crime and hate speech cases, and criminal procedures initiated. The research also includes writings and opinions of national experts in the field.

Taking into account the specific nature of hate crimes and hate speech, the important part of this research is sociological and psychological reasons beyond the hate crimes and hate speech both in general and specifically at the national level.

Section 1 provides an overview on legally binding international standards and most important soft-law documents.

Section 2 is fully dedicated to the theoretical aspects of the concepts ‘hate crime’ and ‘hate speech’. This section explains the substance of the concept of discrimination and its relation to hate crimes and hate speech, or, in other words, it explains why hate crimes and hate speech are a specific expression or form of discrimination. This section refers not only to particular provisions of international agreements, but also to the case law of the European Court of Human

Rights and Court of Justice of the EU and various soft-law documents of the bodies of international organizations.

Section 3 explores and explains the sociological and psychological reasons behind hate crimes and hate speech. Apart from explanations of generally known reasons, it specifically addresses national situation - the reasons why hate crimes and hate speech is still not seen and perceived sufficiently seriously.

Section 4 provides the international standards in determining liability for hate crime and hate speech followed by Section 5, which describes national legal regulation in the field and provides analysis on compliance with international standards.

Section 6 is dedicated to statistics on application of national legal regulation in practice by legal enforcement institutions, description, and analysis of the national case law, in particular, if and to what extent the practice of Latvian courts complies with requirements of international law.

Finally, the last section contains the main findings on the compliance of Latvian legal regulation and practice with the international standards and obligations, as well as proposals for required amendments to the legal regulation, elaboration of legal doctrine in qualification of hate crimes and hate speech and the necessary improvements in the application of legal regulation in practice.

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# Section 1

## 1. International legal framework combating hate crimes and hate speech

Latvia as democratic state has a series of obligations under international law. It follows from Article 89 of the Constitution of Latvia stipulating that the state protect fundamental human rights in accordance with the binding international agreements.<sup>1</sup> In the context of hate crimes and hate speech, the international agreements of the UN and Council of Europe, the EU legal acts, as well as the case law and soft-law documents providing the interpretation of the respective legal sources. The list of legal sources on the hate speech and hate crimes is quite extensive; therefore, this section provides an overview on the most relevant of them.

### 1.2. The United Nations

First, in the context of the UN, the Universal Declaration of Human Rights must be mentioned. Although this document is not legally binding, it is considered an authoritative source of the human rights.<sup>2</sup> According to Article 1 of the Declaration, all human beings are free and equal in dignity and rights. Article 2 of the Declaration provides that everyone is entitled to the rights and freedoms without the discrimination on the grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status while Article 7 provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. In the context of hate crimes, also the following provisions must be mentioned - Article 3 providing the right to life, Article 5 prohibiting torture or cruel, inhuman or degrading treatment or punishment, Article 12 providing the right to protection of privacy. Article 19 stipulates freedom of opinion and expression.

The International Covenant on Civil and Political Rights provides a similar legal regulation. Article 2 stipulates the obligation of the states to ensure the rights provided by the Covenant without any kind of discrimination. Article 3 puts a particular emphasis on the equality between men and women. It should be stressed that Article 2(3) imposes an obligation to the states to ensure effective remedies in case the rights provided by the Covenant have been breached.

Likewise, the Covenant protects such rights as right to life (Article 6), right to private life (Article 17), right to freedom of thought, conscience and religion (Article 18), right to freedom of

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<sup>1</sup> Latvijas Republikas Satversme, Latvijas Vēstnesis Nr.43, 1993.gada 1.jūlijs, pieejams <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>

<sup>2</sup> Latvijas Republikas Satversmes tiesas 2010. gada 13. maija spriedums Lietā Nr. 2009-94-01, 16.1.punkts. Pieejams: [https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-94-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-94-01_Spriedums.pdf)

expression (Article 19) and prohibits torture or cruel, inhuman or degrading treatment or punishment (Article 7), protection of privacy (Article 17), freedom of thought, conscience and religion (Article 18), and freedom of expression (Article 19).

Article 5 of International Covenant on Civil and Political Rights provides that no state, group or person has the right to perform any act aimed at the destruction of any of the rights and freedoms recognized by the Covenant or limit them to a greater extent than is provided by the Covenant. Article 20 especially stresses that any propaganda for war or *'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'*

In the context of International Covenant on Civil and Political Rights, it is crucial to mention the Rabat Plan of Action<sup>3</sup> on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. This document provides the guidelines on how to strike a balance between Article 19 of the Covenant, which provides for freedom of expression and Article 20 that prohibits incitement of discrimination, hostility or violence. The Rabat Plan of Action among other things lists the criteria for the identification of the hate speech.

International Covenant provides protection from discrimination in the field of economic, social and cultural rights on Economic, Social and Cultural rights. Similarly, to Covenant on Civil and Political Rights, Article 2 of the Covenant provides the obligation of the states to ensure the rights provided by the Covenant without any kind of discrimination; Article 3 specifically stresses the equality between men and women.

In addition to the UN international law documents that provide human rights as such, there are international treaties focused on combating discrimination against specific groups.

The International Convention on the Elimination of All Forms of Racial Discrimination is aimed at combating discrimination on the grounds of race, color, descent, or national or ethnic origin. Therefore, all rights contained in this convention aim at the elimination of discrimination or less favorable treatment of the persons because of their race, color, descent, or national or ethnic origin, including such expression of discrimination as hate crimes and hate speech.

In that regard Article 4 of the Convention explicitly provides the obligation of the states to adopt legal regulation on punishment of hate crimes and hate speech and declare illegal and prohibit organisations promoting and inciting racial discrimination. Article 5 of the Convention imposes the positive obligation on the state to ensure that all acts of discrimination are punished, especially those committed by state authorities and officials. In relation to this, as provided by Article 6, the states must assure effective remedies and their application by authorities and

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<sup>3</sup> Rabatas Rīcības Plāns, ANO Cilvēktiesību Komitejas 22 sesija, 2013.gada 11.janvāris, pieejams angļu val. [https://digitallibrary.un.org/record/746343/files/A\\_HRC\\_22\\_17\\_Add.4-EN.pdf](https://digitallibrary.un.org/record/746343/files/A_HRC_22_17_Add.4-EN.pdf)

courts, including the right to adequate reparation for any damage suffered because of discrimination.

The Committee on the Elimination of Racial Discrimination, which also provides the interpretation of the Convention, monitors the compliance with obligation deriving under International Convention on the Elimination of All Forms of Racial Discrimination. In the context of hate speech, the Committee has adopted General recommendation No.35 on combating racist hate speech,<sup>4</sup> which gives the interpretation of Article 4 of the Convention by providing definition of the hate speech and by defining the criteria for identification of the hate speech.

UN Convention on the Elimination of All Forms of Discrimination against Women<sup>5</sup> aims at combating discrimination against women and ensuring gender equality. Article 2 of the Convention provides particular obligations the states must undertake. Firstly, the states must provide principle of gender equality in the constitutions and in legal regulation. Secondly, the legal regulation must provide remedies for cases of discrimination against women. Thirdly, the public institutions and national courts must ensure effective legal protection against discrimination. In addition, the public institutions themselves must refrain from engaging in any act or practice of discrimination against women. The states also must take all appropriate measures to eliminate discrimination against women by any person or private organization.

UN Convention on the Rights of the Persons with Disabilities provides prohibition of discrimination of persons with specific needs.<sup>6</sup> Also in this document, Article 5 stipulates principle of equality and non-discrimination providing that all persons, including persons with disabilities, are equal. Article 4, similarly to other documents, provides an obligation of the state's parties to provide and promote full realization of human rights and fundamental rights for persons with disabilities without any kind of discrimination. In order to provide such rights, the states have to adopt legal regulation providing to the persons with disabilities with their rights and ensure that persons with disabilities are not discriminated by private or state entities. Article 8 of the Convention specifically stresses the obligation of the states to raise awareness in the society about the rights and dignity of the persons with disabilities and combating stereotypes related to this group. Thereby the Convention on the Rights of the Persons with Disabilities aims not only against discrimination, which includes hate crimes and hate speech itself, but it aims at measures eliminating discrimination as such. The Convention also provides such specific rights as right to privacy (Article 22) and obligation to protect against harassment at workplace (Article 27).

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<sup>4</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>5</sup> LR Augstākās Padomes Deklarācija "Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos", Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

<sup>6</sup> Konvencija par personu ar invaliditāti tiesībām, Latvijas Vēstnesis Nr.27, 2010.gada 17.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1630>

## 1.2. Council of Europe

In the context of the Council of Europe first of all Convention for the Protection of Human Rights and Fundamental Freedoms or European Convention on Human Rights should be mentioned,<sup>7</sup> because it is frequently referred as most efficient international human rights document in the world, and it contains the rights crucial to combating hate crimes and hate speech.

Article 14 of the Convention provides that enjoyment of the rights and freedoms set forth in this Convention shall be secured without any discrimination. As it will be analyzed further in this research paper, the European Court of Human rights in applying this provision in conjunction with other substantive rights provided by the Convention, has stressed the obligations of the state parties to investigate crimes if they are motivated by the protected characteristics stipulated by Article 14, for example, they are committed because of race or ethnic origin of a victim.

Taking into account that Article 14 is applicable only in conjunction with one of the substantive rights provided by the Convention and hate crimes and hate speech which is directly connected with physical and emotional violence, it is important to mention Article 2 providing the right to life, Article 3 prohibiting torture, inhuman or degrading treatment and also Article 8 providing the right to respect for private life.

Also in the context of hate speech, it is important to refer to Article 10, which provides for the freedom of expression. This norm in the context of hate speech has a dual role. On the one hand, this right imposes on the states positive obligation to protect expressions on issues of public importance and their authors. On the other hand, it provides for restrictions on expressions if they endanger rights of other individuals or public interest or, in other words, in case of hate speech.

Finally, Article 17 should be mentioned. This provision stipulates that the rights provided by the Convention, as, for example, freedom of expression, may not be interpreted as permitting any act aiming at the destruction of any other right or freedom provided by the Convention. In the light of this, no person may rely on the protection provided by the Convention in case of hate crime or severe form of hate speech.

An important source for understanding the substance of the rights provided by the European Convention on Human Rights is the case law of the European Court of Human Rights, which provides legally binding interpretation of the Convention. The European Court of Human Rights has extensive case-law on hate crimes and hate speech. It contains definitions of the concepts,

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<sup>7</sup> Cilvēka tiesību un pamatbrīvību aizsardzības konvencija, Latvijas Vēstnesis Nr.143/144, 1997.gada 13.jūnijs, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/649>

criteria for identification of the hate speech, as well as explains the positive obligations of the state in combating hate crimes and hate speech.

Another important legal source in the context of hate speech is Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.<sup>8</sup> The Protocol requires the criminalization of the following discriminatory acts: intentional dissemination of racist and xenophobic material through computer systems (Article 3), racist and xenophobic motivated threat (Article 4), public insult of a person or a group of persons distinguished by race, color, descent or national or ethnic origin, as well as religion (Article 5), denial, gross minimization, approval or justification of genocide or crimes against humanity (Article 6). Article 7 envisages criminal liability for aiding and abetting of any of offences listed above.

European Social Charter also should be mentioned in the context of hate crimes and hate speech<sup>9</sup>. Although this document aims at protection of social rights, especially in employment, the Charter serves as an illustration to the fact that hate crimes and hate speech concern a very wide circle of the rights. Article 26 of European Social Charter stipulates the right to dignity at work. In order to provide this right, the states parties have to undertake actions to protect persons from sexual harassment and other attacks at workplace. Such obligation, according to the interpretation given by European Committee of Social Rights, also derives from Article 3 of the Charter providing for the right to safe and healthy working conditions.<sup>10</sup>

In addition to the legally binding documents, the institutions of the Council of Europe have adopted number of soft-law documents. First, the Recommendation No. R (97) 20 of the Committee of Ministers to member states on hate speech must be mentioned. It was among the first international documents trying to define the concept of hate speech.<sup>11</sup> Currently the most recent document is the Recommendation CM/Rec(2022)16 on hate speech adopted by the Committee of Ministers,<sup>12</sup> which provides the most complete definition of hate speech and also define in more particular way the obligations of the states in relation to punishment of and combating of the hate speech.

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<sup>8</sup> Likums "Par Konvenciju par kibernoziēgumiem un Konvencijas par kibernoziēgumiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās", Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernoziēgumiem-un-konvencijas-par-kibernoziēgumiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

<sup>9</sup> Pārskatītā Eiropas Sociālā Harta, Latvijas Vēstnesis Nr.40, 2013.gada 26.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/339>

<sup>10</sup> Digest of the case-law of the European Committee of Social Rights, 72.lpp., pieejams angļu valodā <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>

<sup>11</sup> 1997.gada 30.oktobra Rekomendācijas Nr.(97)20 par naida runu, pieejams angļu valodā [http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/dh-lgbt\\_docs/CM\\_Rec\(97\)20\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)

<sup>12</sup> Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācija CM/Rec (2022)16 par naida runas izskaušanu, pieejams angļu valodā [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955)

The Committee of Ministers, the Parliamentary Assembly along with other institutions of the Council of Europe have adopted many recommendations, resolutions and other documents aimed at the protection of the particular non-discrimination grounds, for example, race and ethnic origin<sup>13</sup>, religion<sup>14</sup>, sexual orientation<sup>15</sup> and gender<sup>16</sup>. Similarly, several legal sources elaborate on the role of particular persons, institutions, organisations, internet intermediaries<sup>17</sup>, political leaders<sup>18</sup> and media<sup>19</sup> in relation to combating hate crimes and hate speech. In the last decade, specific attention has been paid at combating hate speech on the internet.<sup>20</sup> These documents put the stress on the obligation of the member states to ensure that national legal regulation provide effective mechanisms protecting against hate crimes and hate speech at the same time ensuring other rights provided by the European Convention on Human Rights, especially freedom of expression.

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<sup>13</sup> Recommendation No. R (92) 19 of the Committee of Ministers to member states on video games with a racist content; Recommendation 1543 (2001) Racism and xenophobia in cyberspace; Resolution 1345 (2003) Racist, xenophobic and intolerant discourse in politics, Resolution 1760 (2010) Recent rise in national security discourse in Europe: the case of Roma u.c.

<sup>14</sup> Recommendation 1805 (2007) Blasphemy, religious insults and hate speech against persons on grounds of their religion; Resolution 1563 (2007) Combating anti-Semitism in Europe; Resolution 1605 (2008) European Muslim communities confronted with extremism; Resolution 1743 (2010) Islam, Islamism and Islamophobia in Europe; Resolution 1846 (2011) Combating all forms of discrimination based on religion; Resolution 1928 (2013) Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence; Eiropas Komisija par demokrātiju caur tiesībām (Venēcijas komisija) pētījums Nr.406/2006 ziņojums par vārda brīvības un reliģiskās brīvības attiecībām: zaimošana, reliģisku apvainojumu un reliģiska naida kurināšanas regulēšana un sodīšana (European Commission for Democracy through law (Venice Commission), Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, Vēnēcija 2008.gada 17.-18.oktobris, pieejams angļu val. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)026-e)

<sup>15</sup> Resolution 1948 (2013) Tackling discrimination on the grounds of sexual orientation and gender identity, Resolution 1728 (2010) Discrimination on the basis of sexual orientation and gender identity u.c.

<sup>16</sup> Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000168093b26a>, Eiropas Padomes Ministru Komitejas Rekomendācija CM/Rec(2019)1, Seksisma novēršana un apkarošana, Papildinājums ieteikumam, pieejams <https://rm.coe.int/lv-recomendation-on-sexism-prevention/168097f2b2>

<sup>17</sup> Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680790e14](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14)

<sup>18</sup> Resolution 2275 (2019) The role and responsibilities of political leaders in combating hate speech and intolerance <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=27636&lang=en>

<sup>19</sup> Recommendation No. R (97) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance

<sup>20</sup> Resolution 2144 (2017) Ending cyberdiscrimination and online hate <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23456>, Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804d5b31>; Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680790e14](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14); Resolution 2144 (2017) Ending cyberdiscrimination and online hate <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23456>

An important role in the context of hate crimes and hate speech is played by documents adopted by European Commission against Racism and Intolerance (ECRI). ECRI is an institution of the Council of Europe which specializes in questions relating to the fight against racism, discrimination, xenophobia, antisemitism, and intolerance in Europe.<sup>21</sup> Therefore, almost each publication of this institution may play important role in analyzing hate crimes and hate speech. In the context of the present research, the ECRI General Policy Recommendation No.15 on Combating Hate Speech is especially noteworthy.<sup>22</sup> The Recommendation No.15 points at a wide range of obligations of the states in order to promote tolerance, such as obligation to awareness rising in society, analyzing the causes of the hate speech, providing support to the victims of hate speech and others. It provides the definitions to various concepts. In substance, this document provides a synthesis of existing international standards in relation to hate speech established by the UN, Council of Europe, European Union and other international organisations. This recommendation also contains the instruction on the need to define in national legal regulation clearly and explicitly the responsibility of various actors in relation to hate speech, including precise definitions of the hate speech crimes.

## 1.3. European Union

### 1.3.1. Primary legal acts – general regulation

Speaking about hate crimes and hate speech in the context of EU law the starting point is primary legal sources. Article 2 of the Treaty on European Union provides that the Union is founded, among other values, respect for human dignity, democracy, equality, the rule of law and respect for human rights. According to this provision: *'These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'*

Taking into account that tolerance is the founding value of the European Union, neither hate crimes nor hate speech is compatible with values governing the society. The basic values of the European Union are not compatible with any expressions of racism and xenophobia.<sup>23</sup>

Article 6 of the Treaty on European Union defines the sources that provides the fundamental rights protected in the European Union. Such sources are the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and

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<sup>21</sup> ECRI European Commission against Racism and Intolerance. Eiropas Padome, 2019. Pieejams (angļu valodā): <https://rm.coe.int/leaflet-ecri-2019/168094b101>

<sup>22</sup> Eiropas Komitejas pret rasismu un neiecietību Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 3.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>23</sup> Komisijas ziņojums Eiropas Parlamentam un Padomei par Padomes Pamatlēmuma 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm īstenošanu, 2014, 1. lpp. Pieejams: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A52014DC0027>

Fundamental Freedoms and common constitutional traditions of the EU Member States. All of them are applicable in relation to combatting hate crimes and hate speech.

Article 1 of the Charter of Fundamental Rights of the European Union provides for the respect to human dignity and Article 21 - the principle of non-discrimination. The Charter prohibits discrimination on the grounds of sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.<sup>24</sup> However, the list of non-discrimination grounds provided by Article 21 is not exhaustive,<sup>25</sup> therefore this legal document protects against discrimination on various grounds. In the context of hate crimes right to life provided by Article 2 of the Charter should be mentioned, as well as Article 4 prohibiting of torture and inhuman or degrading treatment or punishment and Article 7 providing the respect for private and family life.

In restricting hate speech, Article 11 of the Charter should be taken into account as it provides for the freedom of expression. Balancing between freedom of expression and other human rights principle of proportionality must be observed.<sup>26</sup> As far as this Charter contains rights that correspond to the rights guaranteed by European Convention on Human Rights, the meaning and scope of those rights are the same.<sup>27</sup> It, inter alia, implies that in application of the principle of proportionality also case law of the European Court of Human Rights should be taken into account.

However, in application of the Charter it has to be taken into account that it does not extend the competences of the European Union as such<sup>28</sup>, and it is applicable only in cases concerning the EU law.<sup>29</sup>

The European Union itself has undertaken the aim to combat discrimination. Article 10 of the Treaty on the Functioning of the European Union (TFEU) provides that the EU itself '*in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*' Article 19 of TFEU provides the competence to the EU institution to adopt secondary legal acts for combating discrimination. In addition, Article 67 of the TFEU provides that the EU have endeavor and support combating racism and xenophobia.

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<sup>24</sup> Eiropas Savienības Pamattiesību harta, 21. panta pirmā daļa. Parakstīta Strasbūrā 12.12.2007. [01.11.2021. red.].

<sup>25</sup> Hate speech and hate crime in the EU and the evaluation of online content regulation approaches. 2020, p.50.

Lpp. Pieejams:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL\\_STU\(2020\)655135\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU(2020)655135_EN.pdf) .

<sup>26</sup> Eiropas Savienības Pamattiesību harta, 52. panta pirmā daļa. Parakstīta Strasbūrā 12.12.2007. [01.11.2021. red.].

<sup>27</sup> Eiropas Savienības Pamattiesību harta, 52. panta trešā daļa. Parakstīta Strasbūrā 12.12.2007. [01.11.2021. red.].

<sup>28</sup> Eiropas Savienības Pamattiesību harta, 51. panta otrā daļa. Parakstīta Strasbūrā 12.12.2007. [01.11.2021. red.].

<sup>29</sup> Vairāk par Hartas piemērojamību skatīt, piemēram, Kučs A., Markus K., Bērziņa L. Eiropas Savienība un pamattiesības. Grām.: Eiropas savienības tiesības. II daļa. Materiālās tiesības. Sagatavojis autoru kolektīvs. Kristofa Ševes, Kaspara Gailīša, Ģirta Strazdiņa zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2016.

### 1.3.2. Secondary legal acts and soft-law

The first EU document targeted as combating of hate speech is Joint Action concerning action to combat racism and xenophobia adopted by the EU Council in 1996.<sup>30</sup> Later this document was included in Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.<sup>31</sup> It provides an obligation to the EU Member States to envisage criminal liability for certain racist and xenophobic acts. At the same time, it acknowledges that *'Since the Member States' cultural and legal traditions are, to some extent, different, particularly in this field, full harmonization of criminal laws is currently not possible.'*<sup>32</sup>

The Framework Decision does not provide exhaustive definitions of 'hate speech' and 'hate crime'. At the same time, it provides the obligation to the EU Member States to envisage criminal liability for intentional public inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin, inter alia, by distributing public dissemination or distribution of tracts, pictures or other material.<sup>33</sup> The Member States are also obliged to punish "publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group".<sup>34</sup> According to Article 1 (2) the Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.<sup>35</sup> Article 2 obliges to punish instigation, aiding and abetting of abovementioned actions.

With regard to the hate crimes, Article 4 of the Framework Decision provides that: 'For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or,

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<sup>30</sup> Vienotā Rīcība, ko Padome pieņēmusi, pamatojoties uz Līguma par Eiropas Savienību K3. pantu, par rasisma un ksenofobijas darbību apkarošanu (96/443/TI). Parakstīts Briselē, 15.07.1996. [01.11.2021. red.], pieejams angļu valodā <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31996F0443>; Hate speech and hate crime in the EU and the evaluation of online content regulation approaches. 2020, p. 51. Lpp. Pieejams:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL\\_STU\(2020\)655135\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU(2020)655135_EN.pdf)

<sup>31</sup> Padomes Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm. Parakstīts Briselē 28.11.2008. [01.11.2021. red.].

<sup>32</sup> Padomes Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, 5. un 6. apsvērums. Parakstīts Briselē 28.11.2008. [01.11.2021. red.].

<sup>33</sup> Padomes Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, 1. panta pirmās daļas a) un b) punkts. Parakstīts Briselē 28.11.2008. [01.11.2021. red.].

<sup>34</sup> Padomes Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, 1. panta pirmās daļas c) un d) punkts. Parakstīts Briselē 28.11.2008. [01.11.2021. red.].

<sup>35</sup> Komisijas ziņojums Eiropas Parlamentam un Padomei par Padomes Pamatlēmuma 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm īstenošanu, 2014, 3. lpp. Pieejams: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A52014DC0027>

alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.<sup>36</sup>

The Framework Decision does not oblige to sanction with criminal liability for all racial or xenophobic offences. The obligation to envisage criminal sanctions applies only to most serious cases. At the same time, Framework Decision provides for an obligation to establish comprehensive system with different types of sanctions for such offences.<sup>37</sup> In any case, the criminal penalties for offences provided by Article 1 and 2 must be effective, proportionate and dissuasive.<sup>38</sup> In any case, implementation of obligations under Framework Decision must respect fundamental rights and fundamental legal principles, including freedom of expression and association.<sup>39</sup> At the same time, the Framework Decision provides that criminal sanction must be of a maximum of at least between 1 and 3 years of imprisonment.<sup>40</sup>

Taking into account the role of mass media and internet in distribution of information documents regulating this field has long ago contained disclaimer stressing the need for combating hate speech. Already on 1989, EU Council Directive on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities provided an obligation to ensure that TV advertisements do not contain any discrimination on the grounds of race, sex and nationality.<sup>41</sup> Currently respective issues are regulated by Audiovisual Media Directive that provides for regulation that is more detailed.<sup>42</sup> Article 6 of the Directive provides Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.

Also in the context of hate crimes and hate speech Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime should be mentioned.<sup>43</sup> Hate crimes and hate speech affect victims significantly, because such crimes are targeted at the identity of the victims. This make feel them particularly vulnerable regarding possible repeated

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<sup>36</sup> Padomes Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, 4. pants. Parakstīts Briselē 28.11.2008. [01.11.2021. red.].

<sup>37</sup> Turpat, 6. apsvērums

<sup>38</sup> Turpat, 3. panta pirmā daļa

<sup>39</sup> Turpat 7. pants

<sup>40</sup> Turpat 3. panta otrā daļa

<sup>41</sup> ES Padomes direktīva (1989. gada 3. oktobris) par dažu tādu televīzijas raidījumu veidošanas un apraides noteikumu koordinēšanu, kas ietverti dalībvalstu normatīvajos un administratīvajos aktos (89/552/EEK), pieejama latviešu valodā <https://eur-lex.europa.eu/legal-content/LV/TXT/HTML/?uri=CELEX:31989L0552&from=EN>

<sup>42</sup> Eiropas Parlamenta un Padomes direktīva 2010/13/ES par to, lai koordinētu dažus dalībvalstu normatīvajos un administratīvajos aktos paredzētus noteikumus par audiovizuālo mediju pakalpojumu sniegšanu (Audiovizuālo mediju pakalpojumu direktīva), . pants. Parakstīta Briselē 10.03.2010. . [01.11.2021. red.].

<sup>43</sup> Eiropas Parlamenta un Padomes Direktīva 2012/29/ES ( 2012. gada 25. oktobris ), ar ko nosaka noziegumos cietušo tiesību, atbalsta un aizsardzības minimālos standartus un aizstāj Padomes Pamatlēmumu 2001/220/TI, pieejams latviešu valodā <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:32012L0029>

attacks.<sup>44</sup> Article 22 of Directive 2012/29/EU requires individual assessment in order to identify specific needs of a victim. This procedure is specifically applicable in case of hate crime.

Prohibition of hate speech in the form of harassment in certain fields of life is provided by EU gender equality and non-discrimination directives, in particular, in the field of employment - on the grounds of gender by Directive 2006/54/EU,<sup>45</sup> on the grounds of race and ethnic origin by Directive 2000/43/EC<sup>46</sup> and on the grounds of disability, age, religion or belief and sexual orientation by Directive 2000/78/EC;<sup>47</sup> in the field of education, social security and with regard to access to and supply of goods and services on the grounds of race and ethnic origin by Directive 2000/43/EC; with regard to access to and supply of goods and services on the grounds of sex/gender by Directive 2004/113/EC.<sup>48</sup> As regards gender discrimination, two directives require protection against sexual harassment - Directive 2006/54/EU in employment and Directive 2004/113/EC with regard to access to and supply of goods and services.

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<sup>44</sup> European Union Agency for Fundamental Rights. Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime. Vienna, 15.10.2013, p.5. Pieejams: [https://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia\\_en.pdf](https://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia_en.pdf)

<sup>45</sup> Eiropas Parlamenta un Padomes 2006.gada 5.jūlija Direktīvu [2006/54/EK](https://eur-lex.europa.eu/eli/dir/2006/54/oj/?locale=LV) par tāda principa īstenošanu, kas paredz vienlīdzīgas iespējas un attieksmi pret vīriešiem un sievietēm nodarbinātības un profesijas jautājumos (pārstrādātā versija), pieejams latviešu valodā <https://eur-lex.europa.eu/eli/dir/2006/54/oj/?locale=LV>

<sup>46</sup> Padomes 2000.gada 29.jūnija Direktīvu [2000/43/EK](https://eur-lex.europa.eu/eli/dir/2000/43/oj/?locale=LV), ar ko ievieš vienādas attieksmes principu pret personām neatkarīgi no rasu vai etniskās piederības, pieejams latviešu valodā <https://eur-lex.europa.eu/eli/dir/2000/43/oj/?locale=LV>

<sup>47</sup> Padomes 2000.gada 27.novembra Direktīvu [2000/78/EK](https://eur-lex.europa.eu/eli/dir/2000/78/oj/?locale=LV), kas nosaka kopēju sistēmu vienādei attieksmei pret nodarbinātību un profesiju, pieejams latviešu valodā <https://eur-lex.europa.eu/eli/dir/2000/78/oj/?locale=LV>

<sup>48</sup> Padomes Direktīvu 2004/113/EK (2004. gada 13. decembris), ar kuru īsteno principu, kas paredz vienlīdzīgu attieksmi pret vīriešiem un sievietēm, attiecībā uz pieeju precēm un pakalpojumiem, preču piegādi un pakalpojumu sniegšanu, pieejams latviešu valodā <https://eur-lex.europa.eu/eli/dir/2004/113/oj/?locale=LV>

## Section 2

### 2. The concepts of hate crime and hate speech and their place in the legal system

Hate crimes and hate speech in their substance are violations of the law that are rooted in bias, therefore respective offences are essentially the breach of the principle of non-discrimination. It follows that before speaking about hate crimes and hate speech the principle of non-discrimination and its substance must be discussed.

The concept of 'hate crime' is relatively simple while concept of 'hate speech' is far more complicated as it has to be distinguished from another basic human right – the freedom of expression.

#### 2.1. The principle of non-discrimination

##### 2.1.1. Legal regulation of the principle of non-discrimination

The principle of non-discrimination is a general principle of law recognized in all most important international human rights documents as well as in the Constitution of the Republic of Latvia. The principle of non-discrimination is a general principle of law recognized in all most important international human rights documents as well as in the Constitution of the Republic of Latvia<sup>49</sup> and other national legal acts.

Article 26 of the International Covenant on Civil and Political Rights<sup>50</sup> provides that all persons must be granted equal rights without any kind of discrimination and all persons must be protected against discrimination based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In addition, Article 2 stipulates the obligation of the states to ensure the rights provided by the Covenant without any kind of discrimination.

Likewise, Article 2(2) of the International Covenant on Economic, Social and Cultural rights<sup>51</sup> provides the obligation of the states to ensure the rights provided by the Covenant without any

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<sup>49</sup> Latvijas Republikas Satversme, Latvijas Vēstnesis Nr.43, 1993.gada 1.jūlijs, pieejams

<https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>

<sup>50</sup> Starptautiskais pakts par pilsoņu un politiskajām tiesībām, Latvijas Vēstnesis Nr.61, 2003.gada 23.aprīlis, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/705>

<sup>51</sup> LR Augstākās Padomes Deklarācija "Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos", Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams

kind of discrimination on the grounds such as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The principle of non-discrimination is also provided in all most important human rights documents of Europe. In relation to implementation of civil and political rights Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>52</sup> stipulates that: *'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'*

Similarly, the principle of non-discrimination must be observed in the field of social and economic rights, because Article E of the European Social Charter<sup>53</sup> provides: *'The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status'*.

It follows that discrimination is prohibited with regard to enjoyment of civil and political rights as well as economic, social and cultural rights.

In addition to international legal acts requiring provision of human rights provided therein without any kind of discrimination there is the number of international legal acts specifically aimed at combating discrimination against historically discriminated groups and provision of equal rights and opportunities to such groups. Respective legal documents are International Convention on the Elimination of All Forms of Racial Discrimination,<sup>54</sup> UN Convention on the Elimination of All Forms of Discrimination against Women,<sup>55</sup> UN Convention on the Rights of the Persons with Disabilities.<sup>56</sup> Those international agreements in substance provides an obligation to ensure human rights in all field of life without discrimination on the grounds of given non-discrimination traits.

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<https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

<sup>52</sup> Cilvēka tiesību un pamatbrīvību aizsardzības konvencija, Latvijas Vēstnesis Nr.143/144, 1997.gada 13.jūnijs, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/649>

<sup>53</sup> Pārskatītā Eiropas Sociālā Harta, Latvijas Vēstnesis Nr.40, 2013.gada 26.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/339>

<sup>54</sup> LR Augstākās Padomes Deklarācija "Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos", Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

<sup>55</sup> LR Augstākās Padomes Deklarācija "Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos", Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

<sup>56</sup> Konvencija par personu ar invaliditāti tiesībām, Latvijas Vēstnesis Nr.27, 2010.gada 17.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1630>

In Latvian legal regulation, the principle of non-discrimination is provided by second sentence of Article 91<sup>57</sup> of the Constitution of the Republic of Latvia.<sup>58</sup> Principle of non-discrimination is also provided by several legal documents of lower rank, thus providing the protection against discrimination in particular field of life, for example, it is provided in the Labour Law,<sup>59</sup> in Law on Protection of Consumers' Rights.<sup>60</sup>

## 2.1.2. The provision of protection against discrimination under public and private law

According to the legal doctrine, the protection against discrimination must be ensured in all fields of life in relationships between a private persons and the state, while in relations between private persons the protection against discrimination is provided only in those fields of life where it is stipulated by the law.<sup>61</sup> Currently prohibition of discrimination in relations between private persons is protected in several fields, for example, as already mentioned in the field of employment by the Labour Law, also with regard to access to and supply of goods and services as provided by Law on Protection of Consumers' Rights and Law on Prohibition of Discrimination against Natural Persons – Parties to the Legal Transactions.<sup>62</sup>

Taking into account the fact that administrative and criminal law fall within the scope of public law, in respective fields of law the state has an obligation to ensure observance of the principle of non-discrimination in application of those rights themselves as well as obligation to regulate the norms of behaviour between and among member of the society by envisaging criminal and administrative liability for the breach of the principle of non-discrimination. Therefore, national legal regulation aimed at sanctioning hate crimes and hate speech are provided by respective fields of law.

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<sup>57</sup> Latvijas Republikas Satversme, Latvijas Vēstnesis Nr.43, 1997.gada 1.jūlijs, pieejams <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>

<sup>58</sup> Autoru kolektīvs. Latvijas Republikas Satversmes komentāri. VIII nodaļa Cilvēka pamattiesības, Latvijas Vēstnesis, Rīga, 2011, Levits E., 91.pants, 98.lpp.

<sup>59</sup> Darba likums, Latvijas Vēstnesis Nr.105, 2001.gada 6.jūlijs, pieejams <https://likumi.lv/ta/id/26019-darba-likums>

<sup>60</sup> Patērētāju tiesību aizsardzības likums, Latvijas Vēstnesis Nr.104/105, 1999.gada 1.aprīlis, pieejams <https://likumi.lv/ta/id/23309-pateretaju-tiesibu-aizsardzibas-likums>

<sup>61</sup> Autoru kolektīvs. Latvijas Republikas Satversmes komentāri. VIII nodaļa Cilvēka pamattiesības, Latvijas Vēstnesis, Rīga, 2011, Levits E., 91.pants, 92.-93.lpp.

<sup>62</sup> Fizisko personu - tiesiska darījuma subjektu – diskriminācijas aizlieguma likums, Latvijas Vēstnesis Nr.199, 2012.gada 19.decembris, pieejams <https://likumi.lv/ta/id/253547-fizisko-personu--saimnieciskas-darbibas-veiceju--diskriminācijas-aizlieguma-likums>

## 2.1.3. The content of the principle of non-discrimination

### 2.1.3.1. Prohibited situations

European Court of Human rights has defined that discrimination occurs where there is difference in treatment of a person without objective and reasonable justification,<sup>63</sup> or a person in different situation is treated equally.<sup>64</sup>

In addition, the CJEU has held that principle of equality under the EU law prohibits differential treatment of persons in similar situations and similar treatment of the persons in different situations.<sup>65</sup>

Article 91 of the Constitution of Latvia has the same content. The Constitutional Court of Latvia has stated that *'Principle of equality allows and requires differential treatment of persons in different situations as well as it allows different treatment of the persons which are in comparable situations if such treatment has objective and reasonable justification'*.<sup>66</sup> It follows that principle of non-discrimination prohibits two types of situations:

- Different treatment of the persons in similar and comparable situations;
- Equal treatment of persons in different situations.

Joining both prohibited situation in the single sentence, it could be said that discrimination occurs in situation where a person is treated less favorably. For example, the discrimination is defined as less favorable treatment in definition of 'racial discrimination' provided by International Convention on the Elimination of All Forms of Racial Discrimination. It reads:

*'the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'*

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<sup>63</sup> Piemēram, skatīt ECT spriedumu lietā *Adulaziz, Cabales un Balkandali pret Apvienoto Karalisti*, pieteikumu Nr.9214/80, 9473/81, 9474/81 (28.05.1985.).

<sup>64</sup> Piemēram, skatīt ECT spriedumu lietā *Thlimmenos pret Grieķiju*, pieteikuma Nr. 34396/97 (06.04.2000.), 46.paragrāfs.

<sup>65</sup> Piemēram, skatīt EST spriedumu lietā *C-149/10 Zoi Chatzi v Ipourgos Ikonomikon*, ECLI:EU:C:2010:534, 64.paragrāfs.

<sup>66</sup> Piemēram, skatīt Satversmes tiesas 2019.gada 7.novembra spriedumu lietā Nr.2018-25-01, 16.punkts

The same approach in defining the principle of non-discrimination could be found in UN Convention on the Elimination of All Forms of Discrimination against Women (Article 1),<sup>67</sup> UN Convention on the Rights of the Persons with Disabilities.<sup>68</sup>

As provided ‘the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’

Similarly, “discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation’.

However, as it follows from the definitions cited above, in order to speak about the discrimination, it has to be established that less favorable treatment of a person was based on discrimination trait.

### **2.1.3.2. Non-discrimination traits**

As stressed by the Constitutional Court of Latvia ‘the aim of the principle of non-discrimination as defined by the second sentence of Article 91 of the Constitution is to prevent the possibility that in democratic state and state of the rule of law someone’s rights are restricted based on prohibited criterion like race, ethnic origin or sex.’<sup>69</sup>

Such prohibited criteria are unchangeable traits of a person or unchangeable statuses. As it follows from above cited definitions are race, color, origin, nationality of ethnic origin, sex and disability. Article 26 of the International Covenant on Civil and Political Rights also lists such non-discrimination traits as language, religion, political or other opinion, social origin, property, birth or other status, while Article 14 European Convention on Human Rights also provides non-discrimination trait association with a national minority.

The list of non-discrimination traits provided by international treaties is not exhaustive, because due to development of the society new traits are being acknowledged as non-discrimination traits. For example, European Court of Human Rights in its case-law has stated

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<sup>67</sup> LR Augstākās Padomes Deklarācija “Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos”, Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

<sup>68</sup> Konvencija par personu ar invaliditāti tiesībām, Latvijas Vēstnesis Nr.27, 2010.gada 17.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1630>

<sup>69</sup> Piemēram, skatīt Satversmes tiesas 2008.gada 29.decembra spriedumu lietā Nr.2008-37-03, 6.punkts

that list of non-discrimination traits as provided by Article 14 is open-ended, therefore the words 'other status' may include characteristics or statuses which are not explicitly provided.<sup>70</sup> In particular, European Court of Human Rights has recognized that the Convention protects against discrimination on the grounds of sexual orientation,<sup>71</sup> as well the reason of discrimination might be not only characteristic of an individual but also his/her status,<sup>72</sup> for example, place of residence<sup>73</sup> or the fact that a person has been born out of the wedlock.<sup>74</sup>

## 2.1.4. The scope and the content of non-discrimination traits

In order to identify discrimination, including hate crimes and hate speech, it is essential to understand what each of non-discrimination traits means and what their content is.

### 2.1.4.1. Race and color

Nowadays the legal regulation does not distinguish anymore-such non-discrimination grounds as race and color from ethnic origin. They are considered as a single trait. Such approach has developed, firstly, because it is impossible to speak about existence of particular races (particular color or appearance), because there is huge genetic diversity in the World. Secondly, it is frequently very complicated if less favorable treatment has been directed at a person because of his/her different appearance or because of his/her ethnic origin. Thirdly, often it is complicated to distinguish if discrimination occurred because of person's nationality (national origin) or because of religious belief, due to the fact frequently discrimination occurs on account of religious belief practiced by the members of a particular ethnic group.<sup>75</sup> For example, in case a person has been attacked because of Arabic origin appearance it is very likely that the real cause was perpetrator's presumption that this person practices Islam.

### 2.1.4.2. Ethnic origin

In order to indicate on 'ethnic origin' (*etniskā piederība*) in Latvian language usually the synonym is used 'ethnicity' (*tautība*). This trait (concept) is also broad and frequently linked to other non-

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<sup>70</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 1984.gada 28.novembra spriedumu lietā *Rasmussen pret Dāniju* (pieteikuma Nr.9118/80), 34.paragrāfs; Eiropas Cilvēktiesību tiesas 2017. gada 25. jūlija spriedumu lietā *Carvalho Pinto de Sousa Morais pret Portugāli* (pieteikums Nr. 17484/15), 45. paragrāfs

<sup>71</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2003.gada 8.janvāra spriedumu lietā *L un V pret Austriju* (pieteikuma Nr.39392/98 un Nr.39829/98, 35.paragrāfs

<sup>72</sup> Eiropas Cilvēktiesību tiesas 2017. gada 25. jūlija spriedums lietā *Carvalho Pinto de Sousa Morais pret Portugāli* (pieteikums Nr. 17484/15), 46. paragrāfs

<sup>73</sup> Eiropas Cilvēktiesību tiesas 2010.gada 13.jūlija spriedums lietā *Clift pret Apvienoto Karalisti* (iesnieguma Nr.7205/07), 59.paragrāfs

<sup>74</sup> Eiropas Cilvēktiesību tiesas 1987.gada 28.oktobra spriedums lietā *Inze pret Austriju* (iesnieguma Nr.8695/79), 41.paragrāfs

<sup>75</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 40.-42.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

discrimination traits. For example, ‘ethnic group’ may be described as a group of persons with common origin (ancestry) and common historic memories, as well as their focusing on one or more symbolic elements which define the identity of this group.<sup>76</sup> Also the CJEU has stressed that ‘*the concept of ethnicity, which has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds*’.<sup>77</sup>

It follows that the concept of ‘ethnic origin’ or ‘ethnicity’ include several aspects according to which the ethnicity of a person is to be defined. In addition, as can be seen, the non-discrimination trait ‘ethnicity’ may overlap with other non-discrimination ground – religious belief.

In Latvia frequently concept ‘nationality’ is used instead of ‘ethnic origin’ or ‘ethnicity’, but it is mistaken, because term ‘nationality’ describes a person’s affiliation to a particular state or, in other words, citizenship, not ethnic origin of a person.<sup>78</sup>

### 2.1.4.3. Origin

Several legal acts mention such non-discrimination ground as ‘origin’. As explained in the Point 7 of Preamble of **Framework Decision 2008/913/JHA**: “descent’ should be understood as referring mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred or violence.’<sup>79</sup> It follows that non-discrimination trait ‘origin’ refers to not to origin of a person in general, but origin of a person connected with his/her race, skin color, ethnic or national origin and mentioned non-discrimination traits are not anymore directly attributable to a person.

**EXAMPLE:** In the context of Latvia, descendants of several ethnic minority groups have assimilated to the ethnicity and cultural space of the majority ethnic group both formally and substantially, notwithstanding this it is possible that they will be discriminated against because their ancestors belonged to minority ethnic group.

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<sup>76</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 42.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>77</sup> Eiropas Savienības tiesas 2015. gada 16. jūlija spriedums lietā *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, 46. punkts

<sup>78</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 42.-43.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>; skatīt arī tiesu prakses apkopojumu “NAIDA RUNA UN VĀRDA BRĪVĪBA (TIESU PRAKSE KRIMINĀLLIETĀS PAR KRIMINĀLLIKUMA 74.<sup>1</sup>, 78., 150. PANTU)” (tiesu prakse 2012.gada oktobris – 2018.gada maijs), Latvijas Republikas Augstākā tiesa, 21.lpp., pieejams <https://www.at.gov.lv/lv/tiesu-prakse/tiesu-prakses-apkopojuumi/kriminaltiesibas>

<sup>79</sup> ES Padomes 2008.gada 28.novembra Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, OV 328/55

#### 2.1.4.4. Nationality

The concept 'citizenship' or 'nationality' refers to legal bond between a person and a state. As explained before the concept 'nationality' does not refer to person's ethnic origin or ethnicity.<sup>80</sup>

**EXAMPLE:** In the context of hate crimes against Ukrainian war refugees and their property (for example, demolition of their vehicles), it is important to stress that they or their property are targeted due to the fact that they have Ukrainian citizenship or are connected with Ukraine in other ways, not because of their ethnic origin, because there are persons of many ethnicities among Ukrainian war refugees, not only Ukrainians, but also many Russians and persons of other ethnicities.

#### 2.1.4.5. Religious and other belief

Prohibition of discrimination applies not only to religious belief but also to other belief. As indicated by the CJEU respective non-discrimination ground '*covers both religious beliefs and philosophical or spiritual beliefs*'.<sup>81</sup> It is also clear that this as a non-discrimination trait protects also theists and non-believers, because 'religion' refers to religious or philosophical convictions related to the existence or non-existence of a god'.<sup>82</sup> At the same time, as pointed out by the European Court of Human Rights, in order to enjoy protection against discrimination on the grounds of religion or other belief, it has to be established that person's conscience is genuine and deep, and this right does not ensure that a person is allowed to act or behave in the public sphere according to any belief.<sup>83</sup>

It also has to be stressed that according to the EU law non-discrimination trait 'religion or belief' does not include on 'political or any other opinion'.<sup>84</sup>

Important to indicate that right to religious freedom cover 'both the *forum internum* that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public'.<sup>85</sup> It follows that a person may face hate crime or hate speech when implementing his/her *forum externum*, i.e., when expressing religious belief publicly.

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<sup>80</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009*, 43.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>; skatīt arī tiesu prakses apkopojumu "NAIDA RUNA UN VĀRDA BRĪVĪBA (TIESU PRAKSE KRIMINĀLLIETĀS PAR KRIMINĀLLIKUMA 74.<sup>1</sup>, 78., 150. PANTU)" (tiesu prakse 2012.gada oktobris – 2018.gada maijs), Latvijas Republikas Augstākā tiesa, 21.lpp., pieejams <https://www.at.gov.lv/lv/tiesu-prakse/tiesu-prakses-apkopojumi/kriminaltiesibas>

<sup>81</sup> Eiropas Savienības tiesas 2021.gada 15.jūlija spriedums lietā apvienotajās lietās C-804/18 IX pret *WABE eV un C-341/19 MH Müller Handels GmbH* pret MJ, ECLI:EU:C:2021:594, 47.paragrāfs

<sup>82</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009*, 43.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>83</sup> Eiropas Cilvēktiesību tiesas 2021.gada 8.aprīļa Lielās Palātas spriedums lietā *Vavrička un citi pret Čehiju* (pieteikuma Nr.47621/130, 331. un 332.paragrāfs

<sup>84</sup> Eiropas Savienības tiesas 2021.gada 15.jūlija spriedums lietā apvienotajās lietās C-804/18 IX pret *WABE eV un C-341/19 MH Müller Handels GmbH* pret MJ, ECLI:EU:C:2021:594, 47.paragrāfs

<sup>85</sup> Eiropas Savienības tiesas 2021.gada 15.jūlija spriedums lietā apvienotajās lietās C-804/18 IX pret *WABE eV un C-341/19 MH Müller Handels GmbH* pret MJ, ECLI:EU:C:2021:594, 45.paragrāfs

#### 2.1.4.6. Sex and gender

The non-discrimination trait 'sex' (*dzimums* in Latvian) in narrower sense means person's biologic status, however, it is closely related to trait 'gender' (*dzimte* in Latvian), which describes socially "gender" shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.<sup>86</sup> The legal acts most frequently do not distinguish between 'sex' and 'gender', but includes in substance both under one term – either 'sex' or 'gender'. It follows that concept 'discrimination on the grounds of sex (or gender) has to be understood as less favorable treatment on the grounds of both - biological status (for example, discrimination by reason of pregnancy) and social role or gender (for example, ridicule over a male person in case he is not main breadwinner in a family).

#### 2.1.4.7. Gender identity

The term 'gender identity' means person has deeply felt internal and individual feeling of his/her/this affiliation to sex and/or gender. For example, a person may have one sex assigned at birth, however, she/he associate her/himself with opposite sex. As the result this person may wish and undergo modifications related to his/her biologic status (sex) and to his/her social expression (gender) by wearing clothes characteristic to the opposite sex, including speech and mannerism attributed to the opposite sex.<sup>87</sup> It follows that the concept 'discrimination on the grounds of gender identity' should be understood as less favorable treatment of a person because his/her appearance or behaviour does not correspond to his/her biological status (sex) and/or gender.

#### 2.1.4.8. Disability

The definition of disability is provided by Article 1 of UN Convention on the Rights of the Persons with Disabilities.<sup>88</sup> It provides:

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<sup>86</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 43.punkts, pieejams angļu val. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

<sup>87</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006.gada marts, pieejams angļu val. [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

<sup>88</sup> Konvencija par personu ar invaliditāti tiesībām, Latvijas Vēstnesis Nr.27, 2010.gada 17.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1630>

*'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'*

This definition is much broader than that provided by Latvian legal acts.<sup>89</sup>

It follows that discrimination on the grounds of disability occurs not only in the situations where less favorable treatment is directed at a person who is awarded disability status under national law, but also in situation where person is treated less favorably because she/he has long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers, may hinder full participation in societal life on the equal basis with others.

#### **2.1.4.9. Sexual orientation**

Non-discrimination trait "sexual orientation" refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.<sup>90</sup>

#### **2.1.4.10. Age**

Non-discrimination ground 'age' refer to a person of whatever age in case the reason for less favorable treatment was particular age of that person. Article 21 of the Charter of Fundamental Rights of the European Union explicitly states non-discrimination trait 'age', while Directive 2000/78 prohibits explicitly discrimination on the grounds of age in employment.<sup>91</sup> In addition, European Court of Human Rights has held that Article 14 of the European Convention on Human Rights protects against age discrimination.<sup>92</sup>

#### **2.1.4.11. Status**

As indicated before the European Court of Human Rights in its case-law has stated that list of non-discrimination traits as provided by Article 14 if open-ended, therefore the words 'other

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<sup>89</sup> Invaliditātes likums, LV Nr.91, 09.06.2010.

<sup>90</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 15.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006.gada marts, pieejams angļu val. [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

<sup>91</sup> Padomes Direktīva 2000/78/EK (2000. gada 27. novembris), ar ko nosaka kopēju sistēmu vienlīdzīgai attieksmei pret nodarbinātību un profesiju, OV L 303, 2.12.2000., 16./22.lpp

<sup>92</sup> Eiropas Cilvēktiesību tiesas 2017. gada 25. jūlija spriedums *Carvalho Pinto de Sousa Morais pret Portugāli* (pieteikums Nr. 17484/15), 46.pārgrāfs

status' may include characteristics or statuses which are not explicitly provided.<sup>93</sup> Traditionally as non-discrimination traits have been recognized personal characteristics such as sex, ethnic origin, age, however, discrimination is also occur due to the 'status' of a person.<sup>94</sup>

In this context European Commission against Racism and Intolerance has defined this non-discrimination trait as 'person's legal or factual situation, covering not only having a particular marital, migrant or professional status but also factors such as birth outside marriage, disability, financial position, health, imprisonment, membership of a trade union or other body and place of residence'.<sup>95</sup>

### **2.1.5. Hate crimes and hate speech as violation of the principles of non-discrimination**

As explained above, principle of non-discrimination prohibits different treatment of the persons in similar and comparable situations and equal treatment of persons in different situations.

The reason of discrimination most frequently is bias or stereotypes towards particular group of the persons, which results in ungrounded less favorable treatment against such group.

European Commission against Racism and Intolerance has defined that "negative stereotyping" shall mean the application to a member or members of a group of persons of an generalized belief about the characteristics of those belonging to that group that involves viewing all of them in a poor light regardless of the particular characteristics of the member or members specifically concerned'.<sup>96</sup> In addition, the European Court of Human Rights has indicated that the main problem with bias or stereotyping is the fact that such attitude does not allow individualized assessment of a person's capacities and needs.<sup>97</sup>

For example, even nowadays there are widespread stereotypes about acceptable behaviour depending on a person's sex, as well as attributing some characteristics to women and different characteristics to the men, what frequently puts a person in less favorable situation because of his/her sex and does not allow to evaluate objectively if particular person indeed possesses

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<sup>93</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 1984.gada 28.novembra spriedums lietā *Rasmussen pret Dāniju* (pieteikuma Nr.9118/80), 34.paragrāfs

<sup>94</sup> Pleter van Dijk, Fried van Hoof, Arjen van Rijn, Zeo Zwaak (eds), *Theory and practice of the European Convention on human rights*, 5.izdevums, Intersentia, 2018, 1004.lpp.

<sup>95</sup> Eiropas Pretrasīma un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>96</sup> Eiropas Pretrasīma un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 15.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>97</sup> Eiropas Cilvēktiesību tiesas 2017. gada 25. jūlija spriedums lietā *Carvalho Pinto de Sousa Morais pret Portugāli*, pieteikums Nr. 17484/15, 46. paragrāfs

particular characteristic. As stressed by the European Court of Human Rights today's the major goal is advancement of gender equality, thus difference of treatment of a person because of his/her sex cannot be justified by references to traditions, general assumptions or prevailing social attitudes which most frequently attach to women secondary role.<sup>98</sup>

Some groups of persons are subjected to especially serious form of discrimination deriving from bias and stereotypes. This form is called 'stigmatization' and its expression is only negative stereotyping about a group of persons. In European region, stigmatization is especially frequent against persons of Roma origin.

Hate crimes and hate speech is violation of the law which are committed because of negative bias or stereotypes. Therefore, hate crimes are committed because of the stereotypes against a group of society and stereotypes are inseparable element of hate crimes, therefore the hate crimes are also called 'bias crime'.<sup>99</sup> In turn, hate speech is distribution, advocating or justification of negative stereotypes against a group with a view to offend, insult, and incite to hatred or violence it.

It follows that hate crimes and hate speech is a form of expression of discrimination, which has occurred because of bias or stereotypes.

Respective violations of the law are contrary to the principle of equality embodied in the human rights and stipulating that all persons are equal in their human dignity and all persons must be provided an opportunity to realize their full potential. Hate crimes and hate speech are violations of law that are contrary to the principle of equality.<sup>100</sup>

## 2.1.6. Specific types of discrimination

### 2.1.6.1. Multiple discrimination

Multiple discrimination occurs where a person or groups of the persons are discriminated against on the two or more non-discrimination grounds at the same time.

International law neither defines, nor provides explicit prohibition of the multiple discrimination; however, several international law documents indirectly indicate the fact that persons could be discriminated on the several grounds at the same time.

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<sup>98</sup> Eiropas Cilvēktiesību tiesas 2017. gada 25. jūlija spriedums lietā *Carvalho Pinto de Sousa Morais pret Portugāli*, pieteikums Nr. 17484/15, 46. paragrāfs

<sup>99</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 16.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>;

<sup>100</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 19.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>; skatīt arī ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas nauda runas izskaušanu, 2013.gada 26.spetembris, 8.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

For example, Article 2(1) of the International Covenant on Civil and Political Rights. Article prohibits discrimination with regard to the rights provided therein in the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 expressly provides for an additional obligation of the states ‘to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.’ The International Covenant on Economic provides analogous regulation, Social and Cultural rights (Article 2(2) and 3 respectively).<sup>101</sup>

It means that multiple discrimination most frequently expresses in combination of non-discrimination trait ‘gender’ with other non-discrimination trait. Such conclusion may be drawn also from European Commission against Racism and Intolerance, which has stressed that there is particularly grave form of hate speech which is targeted at women on account of their sex, gender and/or gender identity ‘when this is coupled with one or more of their other characteristics’.<sup>102</sup>

### **2.1.6.2. Discrimination by association**

There is a discrimination in a situation where a person him/herself does not possess particular non-discrimination trait, however, this person is treated less favourably, because he/she is associated with another person who possess respective non-discrimination trait.<sup>103</sup>

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<sup>101</sup> LR Augstākās Padomes Deklarācija “Par Latvijas Republikas pievienošanas starptautisko tiesību dokumentiem cilvēktiesību jautājumos”, Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

<sup>102</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 4.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>103</sup> Sīkāk skatīt Constanța MĂTUȘESCU, “Discrimination by association” – between jurisprudential consecration at European level and legislative desire in Romania. Some considerations, Supplement of Law Review - Year 2019, pp. 114-135, pieejams angļu val. [http://internationallawreview.eu/fisiere/pdf/10\\_Matusescu\\_Supliment\\_Law\\_Review\\_SRDE\\_1.pdf](http://internationallawreview.eu/fisiere/pdf/10_Matusescu_Supliment_Law_Review_SRDE_1.pdf)

Discrimination by association is recognized as a type of discrimination by the European Court of Human Rights,<sup>104</sup> the CJEU<sup>105</sup> and European Commission against Racism and Intolerance indicates it.<sup>106</sup>

In the context of hate crimes, the European Court of Human Rights has recognized that *'not only acts based solely on a victim's characteristics can be classified as hate crimes'*. The European Court of Human Rights considers that the *'perpetrators may have mixed motives, being influenced as much or more by situational factors as by their biased attitude towards the group to which the victim belongs'*. In addition, *'Article 14 of the Convention, in the light of its objective and the nature of the rights which it seeks to safeguard, also covers instances in which an individual is treated less favourably on the basis of another person's status or protected characteristics'*.<sup>107</sup>

#### **EXAMPLES:**

\*Cohabiting partners suffer from verbal and physical attack, because one of the partners is of Roma origin. After investigation, the Croatian police recognize as a victim only a partner who is of Roma origin, not other partner. The European Court of Human Rights by its decision of 28 March 2017 in case *Škorjanec v. Croatia* recognized that a partner who is not of Roma origin has also been recognized as a victim of the hate crime.

\*An employer refuses employing a woman, because she is married with a person of a particular ethnic origin. In this situation, a woman is discriminated against on the grounds of ethnic origin.

\*An employer starts harassing his employee after learning that she is a single parent and the only caregiver for her heavily disabled child. As the CJEU has recognized: *'Where it is established that the unwanted conduct amounting to harassment which is suffered by an*

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<sup>104</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2017.gada 28.marta spriedumu lietā *Škorjanec pret Horvātiju* (pieteikuma Nr.25536/14), 55.paragrāfs

<sup>105</sup> Piemēram, skatīt Eiropas Savienības tiesas spriedumus lietā Coleman C-303/06 (2008.gada 17.jūlijs), pieejams latviešu val.

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=C1DF0CBEA63870236BE8441EE1E96193?text=&docid=67793&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=5521460>; un lietā CHEZ C-83/14 (2015.gada 16.jūlijs), pieejams latviešu val.

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=5522231>

<sup>106</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.7 (General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination of the European Commission against Racism and Intolerance) 2002.gada 13.decembris ar 2017.gada 7.decembra grozījumiem, 15.lpp. 16.paragrāfs, pieejams latviešu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5ab4>

<sup>107</sup> Eiropas Cilvēktiesību tiesas 2017.gada 28.marta spriedumu lietā *Škorjanec pret Horvātiju*, pieteikuma Nr.25536/14, 55.paragrāfs

*employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the principle of equal treatment’.*<sup>108</sup>

### **2.1.6.3. Discrimination on a presumed ground**

Discrimination against the person or group can be caused by a mistake, i.e., in a situation where a person experiences adverse treatment due to faulty attribution of protected characteristics that he or she does not possess.<sup>109</sup>

**EXAMPLE:** A shop security guard is prejudiced against persons of Roma origin. Due to this reason, he does not admit a person of Hindu origin into the shop. In this case, discrimination has taken place, though it was due to the security guard’s misattribution of the person’s ethnic origin.

## **2.2. The concept of “hate crime”**

“Hate crime” is a criminal act committed with a bias motive.<sup>110</sup>

It is this element of bias motive that differentiates hate crimes from ordinary crimes, as it is always committed intentionally and based on bias against a person or group. Therefore, hate crimes always comprise two elements: a criminal offence committed with a bias motive. For example, a hate crime is committed, if a person suffers from threats, property damage, assault, and it is committed with a motive (intention) of hatred which is based on bias against a person or a group of persons because of a protected characteristic (for example, race, ethnic origin, sexual orientation).<sup>111</sup>

This means that hate crimes comprise two elements:

- An act constituting an offence under ordinary criminal law committed against a person or a group of persons (“base offence”)
- An act motivated by bias against a protected characteristic (“bias motive”).

If the criminal offence is committed without the bias motive, there is no hate crime. Thus, if a criminal justice system does not use the concept of “hate crime” noziegums”, then, accordingly, when investigating criminal acts, the motive is not recognized as an essential element of the

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<sup>108</sup> Eiropas Savienības tiesas spriedums lietā Coleman C-303/06 (2008.gada 17.jūlijs), 59.pārgrāfs

<sup>109</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.7 (General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination of the European Commission against Racism and Intolerance) 2002.gada 13.decembris ar 2017.gada 7.decembra grozījumiem, 14.lpp. 12.pārgrāfs, pieejams latviešu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5ab4>

<sup>110</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009, 16.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>111</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009, 16.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

offence. As a result, the existence of hate crimes remains invisible.<sup>112</sup> Hate crimes are designed to intimidate the victim and the victim's community based on their personal characteristics, sending a message that the person or the group of persons are not welcome to the victim that they are not welcome. Therefore, a hate crime against a person or group is committed based on a bias against a person or group rather than what the person or group is really like.

The concepts "hate crimes" or "hate motive" have to be differentiated. For example, corporal damage can be motivated by hatred; however, it is a hate crime only if the hate is caused by a protected characteristic possessed by the individual (or an associated person, see – Types of discrimination. Discrimination by association). Moreover, "hate crime" can be committed without hostility towards the person or group, but be based on the protected characteristic possessed by the target.<sup>113</sup>

"Hate crime" can be committed for different reasons:

- the perpetrator may act for reasons such as resentment, jealousy or a desire for peer approval;
- the perpetrator may have no feelings about the individual target of the crime but have hostile thoughts or feelings about the group to which the target belongs;
- the perpetrator may feel hostility to all persons who are outside the group in which the perpetrator identifies himself or herself; or
- at an even more abstract level, the target may simply represent an idea, such as immigration, to which the perpetrator is hostile.

Even if there is no direct hate towards the target, this kind of criminal offence is motivated by bias and can therefore be classified as "hate crime".<sup>114</sup>

Based on the discussion above, it would be more precise to use the term "criminal offense based on bias" rather than "hate crime".<sup>115</sup>

## 2.3. The concept of "hate speech"

### 2.3.1. Definition

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<sup>112</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 200*, 11.lpp., 889 pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>113</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009*, 17.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>114</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009*, 18.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>115</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009*, 18.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

The concepts “hate speech”, “hate crime” and “crime based on bias” should be differentiated. As mentioned above, a crime based on bias comprise two elements – *criminal offense* committed with *bias motive*, while “hate speech” is characterised only by the second element – bias.<sup>116</sup> No international agreement provides an exhaustive definition of “hate speech”. The actions prohibited and punishable by law are provided in Article 20(2) of the International Covenant on Civil and Political Rights. Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>117</sup> and Council Framework Decision 2008/913/JHA. At the same time, the definitions of “hate speech” are provided in several political, explanatory and interpretational documents issued by international organisations.

Currently the concept of “hate speech” is defined in the following way.

### 2.3.1.1. The United Nations

**United Nations Strategy and Plan of Action on Hate Speech**<sup>118</sup> provides that hate speech is any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are. In other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.

The Rabat Plan of Action initiated by the UN High Commissioner for Human Rights<sup>119</sup> in the Article 20(2) of the International Covenant on Civil and Political Rights in the context of prohibition of hate speech refers to the definition provided in the Camden Principles.<sup>120</sup> According to the Camden Principles, hate speech is “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

The Committee on the Elimination of Racial Discrimination defines hate speech in the sense provided in Article 4 of the **International Convention on the Elimination of All Forms of Racial**

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<sup>116</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 25.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>117</sup> Likums “Par Konvenciju par kibernetiskajiem un Konvencijas par kibernetiskajiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās”, Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernetiskajiem-un-konvencijas-par-kibernetiskajiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

<sup>118</sup> United Nations Strategy and Action Plan on Hate Speech, 2019.gads, pieejams angļu val. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

<sup>119</sup> Rabatas Darbības Plāns, ANO Cilvēktiesību Komitejas 22 sesija, 2013.gada 11.janvāris, pieejams angļu val. [https://digitallibrary.un.org/record/746343/files/A\\_HRC\\_22\\_17\\_Add.4-EN.pdf](https://digitallibrary.un.org/record/746343/files/A_HRC_22_17_Add.4-EN.pdf)

<sup>120</sup> The Camden Principles on Freedom of Expression and Equality, pieejami angļu val. <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

**Discrimination**, listing the following actions committed against persons or groups of persons based on the race, colour, origin, nationality or ethnic origin of the victims:<sup>121</sup>

- All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;
- Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;
- Threats or incitement to violence against persons or groups mentioned above;
- Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination, when it clearly amounts to incitement to hatred or discrimination;
- Public denials or attempts to justify crimes of genocide and crimes against humanity provided that they clearly constitute incitement to racial violence or hatred.

### 2.3.1.2. Council of Europe

The most recent definition of hate speech can be found in **Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech**.<sup>122</sup> It provides that hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.

Earlier, the **Committee of Ministers of the Council of Europe** has indicted in the **Recommendation No. R (97) 20**<sup>123</sup> that the term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

In **Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems**<sup>124</sup> the concept of hate speech is defined by the following intentional actions committed against a person or a group of persons:

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<sup>121</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 13.-14.punkts, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

<sup>122</sup> Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācija CM/Rec (2022)16 par naida runas izskaušanu, pieejams angļu valodā

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955)

<sup>123</sup> Eiropas Padomes Ministru Komitejas Rekomendācija Nr.R (97) 20, pieejama angļu val.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680505d5b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680505d5b)

<sup>124</sup> Likums “Par Konvenciju par kibernetiskajiem un Konvencijas par kibernetiskajiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās”, Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernetiskajiem-un-konvencijas-par-kibernetiskajiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

- Dissemination of racist and xenophobic material through computer systems;
- Expressing racist and xenophobic motivated threat (defined as such in the national legislation) through computer systems;
- Expressing racist and xenophobic motivated public insult through a computer system;
- Denial, gross minimisation, approval or justification of genocide or crimes against humanity through computer system;
- Aiding and abetting the actions mentioned above through computer system.

Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>125</sup> provides that "racist and xenophobic material means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors."

**European Commission against Racism and Intolerance** defines "hate speech" in the following way: "Hate speech is the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status".<sup>126</sup>

European Commission against Racism and Intolerance also recognises that hate speech may take the form of the public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes that have been found by courts to have occurred, and of the glorification of persons convicted for having committed such crimes.<sup>127</sup>

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<sup>125</sup> Likums "Par Konvenciju par kibernoziēgumiem un Konvencijas par kibernoziēgumiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās", Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernoziēgumiem-un-konvencijas-par-kibernoziēgumiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

<sup>126</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 3. Un 16.lpp., 9.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>127</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 17.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

European Commission against Racism and Intolerance provides that the dissemination and storage of all the expressions mentioned above is also a form of hate speech.<sup>128</sup>

### **2.3.1.3. European Union**

In the EU, the prohibition of hate speech is provided in the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.<sup>129</sup> The Framework Decision itself does not provide an exhaustive definition of hate speech; however, it defines what types of hate speech expressions are punishable.

Article 1 of the Council Framework Decision 2008/913/JHA provides that the following intentional actions are punishable:

Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

- publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
- the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
- publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;
- publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

Article 2 of the Council Framework Decision provides that each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred to in Article 1 is punishable.

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<sup>128</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 17.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>129</sup> ES Padomes 2008.gada 28.novembra Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, OV 328/55

## 2.3.2. Elements

As it can be seen, all the definitions comprise the following elements:

- 1) define the content of the expression and actions related to it;
- 2) define the form of expression;
- 3) define that the actions must be targeted at a person or a group of persons on the basis of protected characteristics that they possess;
- 4) define the protected characteristics, based on which the expression is identified as hate speech.

Similarly, the definitions contain the issue of intentionality and its role, as well as the issue of the consequences caused by the hate speech and the existence of such consequences.

### 2.3.2.1. Content of expression and the related actions

There is a difference between the definitions examined. The European Commission against Racism and Intolerance has emphasised that hate speech is present in case where in any form of expression there is advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression.<sup>130</sup>

The UN has emphasized that international law prohibits the incitement to discrimination, hostility and violence, while other types of hate speech are not prohibited. In other words, if hate speech that does not reach the threshold of incitement, it is not prohibited by the international law.<sup>131</sup>

At the same time, from everything that has been said, it follows that in the European region the scope of “hate speech” is wider. For instance, the definition provided by European Commission against Racism and Intolerance is different in a sense that hate speech comprises not only inciting hatred against persons and group of persons, but also expressions of discrimination.<sup>132</sup> Similarly, Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, prohibits disseminating racist and xenophobic content as such.

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<sup>130</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 16.lpp., 9.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>131</sup> United Nations Strategy and Action Plan non Hate Speech, 2019.gads, pieejams angļu val. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

<sup>132</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 17.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

From everything mentioned before it follows that the main characteristic distinguishing hate speech is the fact that its content is discriminatory against a person or a group of persons. In other words, the speech content expresses the lesser value of a person or group of persons while not being based on facts.

Discriminatory content can be expressed by negative bias, for example, by

- denigration
- vilification
- stigmatisation
- offence
- insult
- alienation
- marginalisation
- trivialisation

Several sources of law provide the following definitions of these concepts:<sup>133</sup>

**“Discrimination”** – shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, as well as descent, belief, sex, gender, gender identity, sexual orientation or other personal characteristics or status, which has no objective and reasonable justification.

**“Denigration”** (“nomelnošana” in Latvian) – shall mean the attack on the capacity, character or reputation of one or more persons in connection with their membership of a particular group of persons.

**“Vilification”** (“zaimošana” in Latvian) – shall mean the abusive criticism of one or more persons in connection with their membership of a particular group of persons

**“Stigmatization”** (“stigmatizācija” in Latvian) – shall mean the labelling of a group of persons in a negative way

**“Alienation”** (“atsvešināšana” in Latvian) - shall mean the withdrawal of a person from the society in which he or she lives and of his or her commitment to its values

**“Marginalization”** (“marginalizācija” in Latvian) shall mean the making of a group of persons feel or be isolated or unimportant and thereby limiting their participation in society

**“Trivialisation”** (“trivializācija” in Latvian) – shall mean the making of something seem unimportant or insignificant

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<sup>133</sup> Jēdzienu definīcijas noteiktas: Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/67/357, 44.paragrāfs; 2012.gada 7.spetembris, pieejams angļu val. [https://digitallibrary.un.org/record/735838/files/A\\_67\\_357-EN.pdf](https://digitallibrary.un.org/record/735838/files/A_67_357-EN.pdf); Rabatas Darbības Plāns, ANO Cilvēktiesību Komitejas 22 sesija, 2013.gada 11.janvāris, pieejams angļu val. [https://digitallibrary.un.org/record/746343/files/A\\_HRC\\_22\\_17\\_Add.4-EN.pdf](https://digitallibrary.un.org/record/746343/files/A_HRC_22_17_Add.4-EN.pdf); The Camden Principles on Freedom of Expression and Equality, pieejami angļu val. <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

**Discrimination in a more serious form can be manifested through calling for a particular action or expressing a particular attitude, specifically:**

- **advocacy, incitement of hatred**
- **advocacy, incitement of violence uz vardarbību**
- **threatening.**

**“Advocacy”** (“mudināšana” in Latvian) – in connection with denigration, hatred or vilification shall mean the explicit, intentional and active support for such conduct and attitudes with respect to a particular group of persons

**“Incitement”** (“kūdišana” in Latvian) shall mean statements about groups of persons that create an imminent risk of discrimination, hostility or violence against persons belonging to them

**“Hatred”** (“naids” in Latvian) shall mean a state of mind<sup>134</sup> characterised as intense and irrational emotions of opprobrium, enmity and detestation towards the target group

**“Hostility”** (“naidīgums” in Latvian<sup>135</sup>) shall mean a manifestation of hatred beyond a mere state of mind

**“Violence”** (“vardarbība” in Latvian) shall mean the use of physical force or power against another person, or against a group or community, which either results in, or has a high likelihood of resulting in, injury, death, psychological harm, maldevelopment or deprivation

Similarly, hate speech constitutes the public denial, trivialisation, acquittal or consent of genocide, crimes against humanity or war crimes recognised as such by judicial decisions, as well as the glorification of persons who committed such crimes.

**“Glorification”** (“glorificēšana” in Latvian) – shall mean the celebrating or praising of someone for having done something.

The condition that the crimes involved must actually have been found by courts to have occurred is intended to ensure that loose accusations about particular conduct do not then form the basis for claims that certain statements amount to hate speech. In the hate speech definition concerning public denial, trivialisation, justification or condonation of genocide and crimes against humanity it is specifically emphasised that these crimes must actually have been found by courts. As explained by the European Commission against Racism and Intolerance, the condition is included to ensure that loose accusations about particular conduct do not then form the basis for claims that certain statements amount to hate speech. Moreover, the glorification of persons who have committed such crimes only amounts to hate speech where this is specifically concerned with them having done this and does not extend to positive assessments of any other, unrelated activity by the persons concerned.<sup>136</sup> The EU has adopted the same approach. Article

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<sup>134</sup> Angliski “state of mind” - garastāvoklis un tā ietekme uz personas domām un uzvedību, Cambridge Dictionary, pieejams angļu val. <https://dictionary.cambridge.org/dictionary/english/state-of-mind>

<sup>135</sup> Angļu valodā - “hostility” shall mean a manifestation of hatred beyond a mere state of mind; ANO Speciālais Ziņotājs norāda, ka šī jēdziena saturs vēl ir jādiskutē, skatīt Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/67/357, 2012.gada 7.spetembris, available [https://digitallibrary.un.org/record/735838/files/A\\_67\\_357-EN.pdf](https://digitallibrary.un.org/record/735838/files/A_67_357-EN.pdf);

<sup>136</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada

1(4) of the Council Framework Decision clearly defines that the fact of genocide, crime against humanity or a war crime should be established as such by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.

**“Holocaust denial”** shall mean the act of denying, questioning or admitting doubts, in completely or in part, with the respect to the historical fact of the genocide of Jews during the Second World War.

**Hate speech is also identified in the following actions with all the expressions indicated above and their support, justification, dissemination or storage.**

**“Condonation”** (“piekrišana” in Latvian) – shall mean the excusing, forgiving or overlooking (“uzmanības nepievēršana” in Latvian) of particular conduct.

### 2.3.2.2. Form of expression

Hate speech can manifest itself in different ways.

As indicated by the UN Committee on the Elimination of Racial Discrimination, incitement characteristically seeks to influence others to engage in certain forms of conduct, for example, commit criminal offence. Incitement may be express or implied, through actions such as displays of racist symbols or distribution of materials as well as words (in written or spoken form).<sup>137</sup>

The forms in which hate speech can be expressed is definitely not limited to overt expressions. For example, racist hate speech may employ indirect language in order to disguise its targets and objectives. The Committee on the Elimination of Racial Discrimination indicates that racist hate speech can take spoken, written, verbal, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events.<sup>138</sup>

Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>139</sup> also provides that "racist

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21.marts, 17.lpp., 12.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>137</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 16.punkts, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

<sup>138</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 7.punkts, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

<sup>139</sup> Likums “Par Konvenciju par kibernetizētiem un Konvencijas par kibernetizētiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās”, Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernetizētiem-un-konvencijas-par-kibernetizētiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzīgajiem>

and xenophobic material" means any written material, any image or any other representation of ideas or theories.

**European Commission against Racism and Intolerance** defines hate speech "expression" as such, and it covers speech and publications in any form. Hate speech can take the form of written or spoken words, or other forms such as pictures, signs, symbols, paintings, music, plays or videos. It also embraces the use of particular conduct, such as gestures, to communicate an idea, message or opinion.<sup>140</sup>

**European Commission against Racism and Intolerance** also specifies that not all instances of hate speech are "direct" – it can also be expressed in "coded" forms. For example, a reference to persons who are unemployed and live on state social security system allowances can be an indirect reference to ethnic minority.

### 2.3.2.3. Hate speech perpetrators

Hate speech can be expressed both by individuals and by groups.<sup>141</sup>

Persons can form groups or even organisations to express hatred towards a group of persons. **The UN Committee on the Elimination of Racial Discrimination** provides that the participation in organizations and activities that promote and incite racial discrimination is punishable.<sup>142</sup> This kind of social behaviour is often related to radicalisation.

**"Radicalisation"** ("radikalizācija" in Latvian) shall mean the process whereby someone adopts extreme political, religious or social values that are inconsistent with those of a democratic society.<sup>143</sup>

### 2.3.2.4. Hate speech targets

The majority of definitions provided by the international sources of law are limited to specific protected characteristics. However, General Policy Recommendation No. 15 of the European

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<sup>140</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 17.lpp., 20.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>141</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 13(c).punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>142</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 13.-14.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>143</sup> Jēdzienu definīcijas noteiktas: Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

Commission against Racism and Intolerance clearly states that the list of the protected characteristics is not exhaustive. Thus, a case where hate speech is targeted at a person or group of persons due to a characteristic or status that is not explicitly mentioned in the sources of law.<sup>144</sup> European Commission against Racism and Intolerance emphasises that legislation providing responsibility for hate speech is protecting the vulnerable groups.

**“Vulnerable groups”** (“neaizsargātās grupas” in Latvian) shall mean those groups who are particularly the object of hate speech. These groups will vary according to national circumstances but are likely to include asylum seekers and refugees, other immigrants and migrants, Black and Jewish communities, Muslims, Roma/Gypsies, as well as other religious, historical, ethnic and linguistic minorities and LGBT persons; in particular it shall include children and young persons belonging to such groups.<sup>145</sup>

The European Court of Human Rights has noted the States’ positive obligation to protect from attacks and hate speech persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization.<sup>146</sup>

As it has been emphasised, it is important that the most vulnerable groups are protected, rather than every group, because if a group that is not in a vulnerable position (such as politicians or police officers) is protected, then protection from hate speech can discredit itself and a hate crime in its own right will no longer be seen as hate speech. In order to avoid this, it is necessary to ensure that persons are protected against hate speech only because of characteristics or status which are unchangeable or which are somehow essential to the person's own self and which are present in other persons who, as a group, are subject to discrimination.

The European Court of Human Rights also emphasizes this. It also admits that, for example, “the police, a law-enforcement public agency, can hardly be described as an unprotected minority or group that has a history of oppression or inequality, or that faces deep-rooted prejudices, hostility and discrimination, or that is vulnerable for some other reason, and thus may, in principle, need a heightened protection from attacks committed by insult, holding up to ridicule or slander”.<sup>147</sup>

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<sup>144</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 5.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>145</sup> Jēdzienu definīcijas noteiktas: Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>146</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 108.paragrāfs

<sup>147</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savya Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 76.paragrāfs

As the European Court of Human Rights indicates, “civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens [...], even more so when such criticism concerns a whole public institution.”<sup>148</sup> At the same time, freedom of speech regarding, for example, the police can be limited, if there is a real risk to provoke imminent unlawful actions in respect of their personnel and to expose them to a risk of physical violence of physical violence.<sup>149</sup>

Similarly, hate crime can be committed against a person who does not possess the corresponding protected characteristic, but the victim belongs to or is associated with a group which possesses the corresponding characteristic (for more details, see – Types of discrimination. Discrimination by association).<sup>150</sup>

### 2.3.2.5. The environment of expressing hate speech

All the sources of international law indicate that hate speech can be expressed in person’s presence, as well as by disseminating the materials containing hate speech. The sources particularly note the dissemination of hate speech in the electronic environment (through electronic media, social networking sites), which can easily reach a large audience.<sup>151</sup>

As noted by the European Court of Human Rights, online publications on the Internet provide an unprecedented platform for the exercise of freedom of expression. In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. It is furthermore true that the risk of harm posed by content disseminated on the Internet is higher, as it is available worldwide, and sometimes remains persistently available online.<sup>152</sup>

It is for this reason that in the European region the dissemination of hate speech on the Internet is prohibited by a particular international agreement - Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

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<sup>148</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savya Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 75.paragrāfs

<sup>149</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savya Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 77.paragrāfs

<sup>150</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2017.gada 28.marta spriedumu lietā *Škorjance pret Horvātiju*, pieteikuma Nr.25536/14, 55.paragrāfs

<sup>151</sup> Piemēram, skatīt ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 7.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>; Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 17.lpp. 11. un 19.lpp., 20. paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>152</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savya Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 79.paragrāfs

The definition of hate speech is not restricted to expressions used in public. However, the existence of a public context is an essential requirement when it is recommended that criminal sanctions be imposed. An expression should be considered to have been used in public where this occurred in any physical place or through any electronic form of communication to which the public have access.<sup>153</sup> The Committee also mentions the factor of public access on the Elimination of Racial Discrimination, listing public gatherings, including sporting events, as examples.<sup>154</sup>

At the same time in the context of EU rights, according to Article 1 of the Council Framework Decision 2008/913/JHA, only public expressions of hate speech are punishable.

### 2.3.2.6. Intent

An essential element of hate speech is intent. The definitions examined do not determine whether an essential prerequisite for recognising speech of certain content as a hate crime must be expressed with intent to display.<sup>155</sup>

According to Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, hate speech must be expressed intentionally in order to be punishable.

At the same time, Article 1 of the Council Framework Decision 2008/913/JHA provides that hate speech must be expressed intentionally, however, according to Article 4, racist and xenophobic motive should be regarded as an aggravating circumstance when adopting legislative and other measures or determining the sanctions in court.

The European Commission against Racism and Intolerance reckons that hate speech is intended to incite, or can reasonably be expected to have the effect of inciting, others to commit acts of violence, intimidation, hostility or discrimination against those targeted by it, it is particularly serious. As the definition above makes clear, the element of incitement entails there being either a clear intention to bring about the commission of acts of violence, intimidation, hostility or discrimination or an imminent risk of such acts occurring as a consequence of the particular hate speech used.<sup>156</sup> It can be concluded that intent is not an obligatory prerequisite for hate speech to be identified and punished.

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<sup>153</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 19.lpp., 20.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>154</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 7.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>155</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 16.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>156</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada

However, the existence of intent may not always be easy to demonstrate; particularly where remarks are ostensibly concerned with supposed facts or coded language is being used.<sup>157</sup>

### 2.3.2.7. Consequences

The Committee on the Elimination of Racial Discrimination indicates that in order to identify the hate speech, it is not necessary for the other person to act under its influence. It is enough to identify that the expression of hate speech has been intentional and that, because of hate speech, there is an imminent risk or possibility that the behaviour conceived or intended by the speaker could be realised.<sup>158</sup>

At the same time, the **European Commission against Racism and Intolerance** indicates that hate speech is related not only to the intent to incite to commit acts of violence, intimidation, hostility or discrimination, but also an expression which, as a consequence, could lead to the acts mentioned above.<sup>159</sup>

Consequently, the Committee on the Elimination of Racial Discrimination reckons that both intent and possibility to realise the actions must be present, while the European Commission against Racism and Intolerance indicates that only one of the elements must be present – either the intent or the possibility to realize the actions.

As the **European Commission against Racism and Intolerance** indicates that, the capability to realize the criminal actions can be identified by evaluating the expression according to the criteria of identifying the hate speech that are explored further.<sup>160</sup>

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21.marts, 18.lpp., 14.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>157</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 18.lpp., 15.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>158</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 16.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>159</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 17.lpp., 10.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>160</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 18.lpp., 16.paragrāfs, 10.paragrāfs, 18.lpp, 17.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

## 2.3.3. The particular aspects of hate speech depending on the protected characteristic

### 2.3.3.1. Race, ethnic origin and nationality

All sources of law banning hate speech clearly identify such protected characteristics as race, ethnicity and nationality, as well as closely related or subordinate characteristics, such as skin colour, language, religion, nationality, ethnic or national origin. As noted above, nowadays, these features are no longer clearly separated from each other, as they most often overlap. For example, if a person is treated less favourably because of his or her language, it can be directly related to both their ethnic origin and race. Race, on the other hand, can also include an ethnic aspect, as well as genetic differences such as skin colour. Consequently, when it comes to hate speech directed against a person or group of persons on the grounds of race, ethnicity, nationality or origin, there may most often be interdependence and a number of signs of non-discrimination inherent in a person or group of persons. Considering all, the sources of law also use the term “xenophobia”. For example, it is clearly stated in **Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems**,<sup>161</sup> **Recommendation No. R (97) 20 of the Committee of Ministers to Member States**,<sup>162</sup> as well as in the **Council Framework Decision 2008/913/JHA**.

For example, according to the definition of antisemitism mentioned below, the hatred against representatives of an ethnic group can be related not only to the ethnic origin itself, but also the respective religion.

**“Antisemitism”** (“antisemitisms” in Latvian) shall mean prejudice against, hatred of, or discrimination against Jews as an ethnic or religious group.<sup>163</sup>

The fact that these characteristics can be mutually inseparable can also be deduced from the definitions provided:<sup>164</sup>

**“Racism”** (“rasisms” in Latvian) shall mean the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

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<sup>161</sup> Likums “Par Konvenciju par kibernetiskajiem un Konvencijas par kibernetiskajiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās”, Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernetiskajiem-un-konvencijas-par-kibernetiskajiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

<sup>162</sup> Eiropas Padomes Ministru Komitejas Rekomendācija Nr.R (97) 20, pieejama angļu val.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680505d5b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b)

<sup>163</sup> Jēdzienu definīcijas noteiktas: Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>164</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

“Xenophobia” (“ksenofobija” in English) shall mean prejudice against, hatred towards, or fear of people from other countries or cultures.

The **UN Committee on the Elimination of Racial Discrimination**<sup>165</sup> and the **European Commission against Racism and Intolerance**<sup>166</sup> emphasise the following groups are particularly vulnerable to hate speech on the grounds of race, nationality, ethnic origin, religion – asylum seekers and refugees, other immigrants and migrants, Black and Jewish communities, Muslims, Roma/Gypsies, as well as indigenous peoples.

As the **UN Committee on the Elimination of Racial Discrimination** indicates that it should be taken into account that the speech expressing ideas or theories of racial or ethnic superiority must be perceived as speech against another race or ethnic group, and must therefore be classified as racist hate speech.<sup>167</sup>

### 2.3.3.2. Religious or other beliefs

As noted before, the freedom of religion includes two aspect – *forum internum*, which denotes the existence of certain beliefs, and *forum externum*, which denotes the freedom to manifest one’s religion.<sup>168</sup> The hate speech against a person or a group of persons is usually expressed in the context of *forum externum*.

According to the Parliamentary Assembly of the Council of Europe Recommendation 1805 (2007), blasphemy, religious insults and hate speech against persons on grounds of their religion is present in situations where the expressions call on hatred, discrimination or violence against a person or a specific group of persons on grounds of their religion.<sup>169</sup>

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<sup>165</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 6.punkts, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

<sup>166</sup> Jēdzienu definīcijas noteiktas: Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 14.-16.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>167</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 11.punkts, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

<sup>168</sup> Piemēram, skatīt Eiropas Savienības tiesas 2021.gada 15.jūlija spriedums lietā apvienotajās lietās C-804/18 IX pret *WABE eV un C-341/19 MH Müller Handels GmbH* pret MJ, ECLI:EU:C:2021:594, 45.paragrāfs; skatīt arī Eiropas Padomes Parlamentārās asamblejas Rekomendācija Nr.1805 (2007) par zaimošanu, reliģisku apvainojumu un naida runu pret personām, pamatojoties uz viņu reliģisko pārliecību (Recommendation 1805 (2007) Blasphemy, religious insults and hate speech against persons on grounds of their religion), 14.paragrāfs, pieejams angļu val. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17569&lang=en>

<sup>169</sup> Eiropas Padomes Parlamentārās asamblejas Rekomendācija Nr.1805 (2007) par zaimošanu, reliģisku apvainojumu un naida runu pret personām, pamatojoties uz viņu reliģisko pārliecību (Recommendation 1805 (2007) Blasphemy, religious insults and hate speech against persons on grounds of their religion), 12.paragrāfs, pieejams angļu val. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17569&lang=en>

It is stressed that, in the light of the interpretation of the European Court of Human Rights in relation to freedom of expression, where states have little discretion to restrict, for example, political freedom of expression, statements which may infringe intimate personal beliefs concerning morality, which, particularly in relation to religion, leaves a wider margin of discretion to the states. However, the states should provide for liability for statements concerning religion that intentionally and severely disrupt public order and publicly call for violence.<sup>170</sup>

Article 1(3) of the Council Framework Decision 2008/913/JHA provides that the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.

Committee on the Elimination of Racial Discrimination provides that criticizing religious leaders or doctrines, or principles of faith is not punishable.<sup>171</sup>

It is also emphasised that in the context of hate speech, the European Court of the Human Rights as a special category has treated religious beliefs. The Court has repeatedly reiterated “those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”.<sup>172</sup>

However, the States may adopt measures restricting the freedom of expression in attacks that are judged offensive and concern matters that are sacred to the holders of a belief.<sup>173</sup> As the European Court of the Human Rights provides, the form in which the religious doctrines are criticized or denied is important, as the State is obliged to ensure the freedom of religion and the right to enjoy it.

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<sup>170</sup> Eiropas Padomes Parlamentārās asamblejas Rekomendācija Nr.1805 (2007) par zaimošanu, reliģisku apvainojumu un naida runu pret personām, pamatojoties uz viņu reliģisko pārliecību (Recommendation 1805 (2007) Blasphemy, religious insults and hate speech against persons on grounds of their religion), 8. un 15.pagrāfs, pieejams angļu val. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17569&lang=en>

<sup>171</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.septembris, 8.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>172</sup> Eiropas Cilvēktiesību tiesas 1994.gada 20.septembra spriedums lietā *Otto-Preminger-Institut pret Austriju* (pieteikuma Nr.13470/87, 47.pagrāfs; skatīt arī Guidance Note on the practical application of Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law, EU High Level Group on combating racism, xenophobia and other forms of intolerance, 2018.gada novembris, pieejams angļu val. [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=55607](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55607)

<sup>173</sup> Guidance Note on the practical application of Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law, EU High Level Group on combating racism, xenophobia and other forms of intolerance, 2018.gada novembris, pieejams angļu val. [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=55607](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55607)

The respect for the religious feelings of believers as guaranteed in Article 9 (art. 9) can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration; and such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society. Therefore, in order to find a reasonable balance between freedom of religion (Article 9) and freedom of expression (Article 10), these rights must be interpreted and applied in harmony with the logic of the Convention.<sup>174</sup>

### 2.3.3.3. Sexual orientation

**“Sexual orientation”** – each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**“Homophobia”** – prejudice against, hatred towards, or fear of homosexuality or of people who are identified or perceived as being bisexual, gay, lesbian or transgender.

As regards freedom of expression and sexual orientation, it is often argued that dissemination of information and discussions on homosexual or bisexual persons and their rights are unacceptable to the majority of the public and should therefore not be disseminated.

Regarding this, as mentioned before, the European Court of the Human Rights has also noted the States’ positive obligation to secure the effective enjoyment of the rights and freedoms under the Convention. This obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation.<sup>175</sup>

The Court has also held that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group’s rights would become merely theoretical rather than practical and effective, as required by the Convention.<sup>176</sup>

### 2.3.4. Freedom of expression and hate speech. Distinction

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<sup>174</sup> Eiropas Cilvēktiesību tiesas 1994.gada 20.septembra spriedums lietā *Otto-Preminger-Institut pret Austriju* (pieteikuma Nr.13470/87, 47.paragrāfs

<sup>175</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 108.paragrāfs

<sup>176</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 123.paragrāfs

### 2.3.4.1. Freedom of expression and its boundaries

The two most significant sources of law defining the freedom of expression (belief) are International Covenant on Civil and Political Rights (Articles 18 and 19) and European Convention on Human Rights (Articles 9 and 10).

Article 19(1) and 19(2) of the International Covenant on Civil and Political Rights provide that:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*

At the same time, Article 18(1) of the the International Covenant on Civil and Political Rights, which defines the freedom of expression and is related to Article 19 (1)<sup>177</sup> provides that:

*"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."*

The UN Human Rights Committee regarding the scope of freedom of expression and conscience defined in the International Covenant on Civil and Political Rights provides the following.

Paragraph 1 of article 19 of the the International Covenant on Civil and Political Rights requires protection of the right to hold opinions without interference. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. Freedom to express one's opinion necessarily includes freedom not to express one's opinion.<sup>178</sup>

Paragraph 2 of article 19 of the the International Covenant on Civil and Political Rights protects all forms of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Such forms include political discussions, private comments, as well as comments on social issues, human rights, journalism, arts and other expressions.<sup>179</sup>

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<sup>177</sup> ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 5.paragrāfs, pieejams angļu val. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>178</sup> ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 9. un 10.paragrāfs, pieejams angļu val. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>179</sup> ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 12.paragrāfs, pieejams angļu val. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

Article 10(1) of the European Convention on Human Rights provides that:

*“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”*

Article 9 of the European Convention on Human Rights provides that:

*“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”*

As regards the relationship between Articles 9 and 10 of the European Convention on Human Rights, the European Court of Human Rights has held that, as far as the question concerns the expression of religion or belief laid down in Article 9, the specific provision (*lex specialis*) will be Article 10.

According to the case law of the European Court of Human Rights, the freedom of expression laid down in Article 10 of the Convention is very broad.<sup>180</sup> As the European Court of Human Rights points out, freedom of expression is one of the foundations of a democratic society and one of the fundamental preconditions for the development of society and the self-fulfilment of the individual. Freedom of expression applies not only to “information” and “ideas” which are perceived favourably or which are untouchable or indifferent, but also to those who are offended, shocked or disturbed. Such freedom of expression requirements mean that a democratic society cannot be conceived without pluralism, tolerance and broad thinking.<sup>181</sup> Under the Court’s case law, expression on matters of public interest is in principle entitled to strong protection,<sup>182</sup> whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection provided by Article 10.<sup>183</sup> Such a finding applies even if a politician, a Member of Parliament, who as a whole must ensure broad freedom of expression, has made a hate speech.<sup>184</sup> The European Court of Human Rights also holds that, though individual

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<sup>180</sup> Sīkāk skatīt, Guide on Article 10 of the European Convention on Human Rights, Eiropas Cilvēktiesību tiesa, 2021.gada 30.aprīļa redakcijā, pieejams angļu val. [https://www.echr.coe.int/documents/guide\\_art\\_10\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_10_eng.pdf)

<sup>181</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedumu lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 65.paragrāfs

<sup>182</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 230.paragrāfs

<sup>183</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Behar un Gutman pret Bulgāriju* (pieteikuma Nr.29335/13), 101.paragrāfs

<sup>184</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 106.paragrāfs

interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved that ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.<sup>185</sup> The Court has also often emphasised that pluralism and democracy are built on genuine recognition of, and respect for, diversity. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.<sup>186</sup>

Although the freedom of expression is broad, it is not unlimited.

The right of belief and expression laid down in the first and second paragraphs of Article 19 of the International Covenant on Civil and Political Rights shall be limited in the cases laid down in the Paragraph 3 of Article 19 and in Article 20.<sup>187</sup>

Article 19(3) of the International Covenant on Civil and Political Rights provides that:

*“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.”*

Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be

(1) “provided by law”

(2) imposed for the protection of national security, public order, public health or morals

(3) conform to the strict tests of necessity and proportionality.<sup>188</sup>

At the same time, Article 20 of the International Covenant on Civil and Political Rights provides that:

*“1. Any propaganda for war shall be prohibited by law.*

*2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”*

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<sup>185</sup> Eiropas Cilvēktiesību tiesas 2020.gada 14.janvāra spriedums lietā <sup>185</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā Behar un Gutman pret Bulgāriju (pieteikuma Nr.29335/13), 101.pārgrāfs

<sup>186</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 107.pārgrāfs

<sup>187</sup> ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 12.pārgrāfs, pieejams angļu val. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>188</sup> ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 22.pārgrāfs, pieejams angļu val. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

As the Committee of Human Rights indicates, the acts addressed in article 20 of the International Covenant on Civil and Political Rights may be subject to restriction under article 19, paragraph 3. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law.<sup>189</sup> Thus, the acts addressed in article 20 of the Covenant must be prohibited.

Article 4 of the **International Convention on the Elimination of All Forms of Racial Discrimination** also applies, together with the prohibition of acts of expression laid down in Article 20 of the International Covenant on Civil and Political Rights,<sup>190</sup> which also provides for the prohibited acts of expression:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- b) Shall declare illegal and prohibit organizations, and organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

In Article 10(2), the European Convention on Human Rights provides that:

*“2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or*

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<sup>189</sup> ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 50.-52.pārgrāfs, pieejams angļu val. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>190</sup> Rabatas Darbības Plāns, ANO Cilvēktiesību Komitejas 22 sesija, 2013.gada 11.janvāris, 17.pārgrāfs, pieejams angļu val. [https://digitallibrary.un.org/record/746343/files/A\\_HRC\\_22\\_17\\_Add.4-EN.pdf](https://digitallibrary.un.org/record/746343/files/A_HRC_22_17_Add.4-EN.pdf)

*rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

As noted earlier, Article 10 of the European Convention on Human Rights constitutes a *lex specialis* in relation to Article 9 concerning the expression of religion, beliefs and opinions, therefore Article 10(2) should correspond to the restriction of such expression.<sup>191</sup>

According to Article 10(2) of the European Convention on Human Rights, the freedom of expression can be restricted in accordance with the following conditions:

- **the restriction should be prescribed by law;**
- **the restriction should be set to achieve a legitimate aim;**
- **the restriction should be necessary in a democratic society.**

A norm could not be **regarded as a “law”** unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail.<sup>192</sup>

**The legitimate aims** for which restrictions on freedom of expression may be imposed are set out in Article 10(2) of the Convention.

The restriction **“necessary in a democratic society”** implies the existence of a pressing social need.<sup>193</sup>

Apart from this, it is necessary to ensure that the restriction in general is proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient.<sup>194</sup>

Moreover, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest. It is the Court's consistent approach to require very strong reasons for justifying restrictions on such debate, for broad restrictions, imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned

In this context, it is the consistent approach of the Court of Human Rights to require very strong reasons for justifying restrictions on political speech or on debate on questions of public interest, as there is little scope under Article 10 § 2 of the Convention, i.e., there should be very serious

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<sup>191</sup> Guide on Article 9 of the European Convention on Human Rights, Eiropas Cilvēktiesību tiesa, 2021.gada 31.augusta redakcijā, 21.lpp., pieejams angļu val. [https://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf)

<sup>192</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 131.paragrāfs

<sup>193</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 196(ii).paragrāfs

<sup>194</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 196(iii).paragrāfs

grounds for such restrictions.<sup>195</sup> The Court of Human Rights has also noted the importance of freedom of expression for members of parliament and journalists, however, for them, the exercise of freedom of expression, even in parliament, carries with it the “duties and responsibilities”.<sup>196</sup>

### **Legitimate aim: the protection of other persons’ rights**

One of the legitimate aims of restricting freedom of expression is the protection of the rights of others, provided, inter alia, in Article 8 of the European Convention on Human Rights, which protects the privacy of individuals.

In general, the following aspects, analysed by the European Court of Human Rights in its case law, can be highlighted:

- **regarding the group identity:** the negative stereotyping of an ethnic group is capable, when reaching a certain level, of having an impact on the group’s sense of identity and on its members’ feelings of self-worth and self-confidence. It can thus affect their “private life”. For example, a person of Roma origin can feel offended by passages in a book and dictionary entries about Roma in Turkey.

- **regarding the ancestors’ reputation:** the expressions about the ancestors can in some circumstances affect a person’s “private life” and identity. For example, a newspaper article which suggested that the deceased grandfather of the applicant had collaborated with the Gestapo.<sup>197</sup>

- **regarding violence and “hate speech”:** concerning statements, verbal or non-verbal, alleged to stir up or justify violence, hatred or intolerance. In assessing whether such statements are “necessary in a democratic society” in the light of the general principles formulated by the Court of Human Rights.<sup>198</sup>

Such expressions can be justified, considering the following factual circumstances:

- 1) whether the statements relate or are expressed in the context of a tense political and social situation. For example, statements during military clashes between Kurdish rebels and Turkish security forces; statements on the problems related to the integration of non-European immigrants, in particular Muslims, in France; statements on ethnic minority relations in Lithuania shortly after the restoration of independence in 1990.<sup>199</sup>
- 2) or statements viewed objectively and in a direct and general context may be regarded as a direct or indirect call for violence or as a justification for violence, hatred and intolerance.

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<sup>195</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedumu lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 62.paragrāfs

<sup>196</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Behar un Gutman pret Bulgāriju* (pieteikuma Nr.29335/13), 101.paragrāfs

<sup>197</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 200.- 203.paragrāfs

<sup>198</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 204.paragrāfs

<sup>199</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 143.paragrāfs

For example, radical expressions that portray the whole ethnic, religious or other group negatively may be regarded as such. Generalised negative statements about non-European and in particular Muslim immigrants in France. Statements linking all Muslims in the United Kingdom with the terrorist acts in the United States of America on 11 September 2001. Statements portraying non-European immigrant communities in Belgium as criminally minded. Direct calls for violence against Jews, the State of Israel. Allegations that homosexuals were attempting to play down paedophilia and were responsible for the spread of HIV and Aids.<sup>200</sup>

3) The Court has also paid attention to the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences

For example, the statements had been made on electoral leaflets, which had enhanced the effect of the discriminatory and hateful message that they were conveying; the statements had been made in the course of a deliberately pluralistic televised debate, which had reduced their negative effect; the statement consisting in military-style marches in villages with large Roma populations, which, given the historical context in Hungary, had carried sinister connotations.<sup>201</sup>

Concerning the content of the statements, the Court reiterates that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration; but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the substance of the ideas and information expressed.<sup>202</sup>

At the same time, expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection.<sup>203</sup>

As emphasised by the Court of Human Rights, it is the interplay between the various factors rather than any one of them taken in isolation that determines the outcome of cases of violence and hate speech. The Court's approach to that type of case can thus be described as highly context-specific.<sup>204</sup>

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<sup>200</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 206.paragrāfs

<sup>201</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 207.paragrāfs

<sup>202</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savya Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 68.paragrāfs

<sup>203</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 230.paragrāfs

<sup>204</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 208.paragrāfs

- **regarding Holocaust denial and other Nazi crimes:** Almost all submissions by the European Court of Human Rights, in which applicants complain of a restriction on freedom of expression in respect of statements denying the Holocaust and other crimes of Nazism, have been declared inadmissible for substantive examination and rejected on the basis of Article 17 of the Convention.

For example: expressions that deny or question the killing of millions of Jews, the existence of Nazi concentration and gas chambers, the number of victims killed.

- **regarding historical debates:** The Court of Human Rights has expressly stated that it was not its role to arbitrate such debates, but it has had regard to several factors in determining whether the interference with the exercise of the right to freedom of expression of the authors, or sometimes publishers, of statements touching upon historical issues. Firstly, the manner in which the impugned statements were phrased and the way in which they could be construed must be taken into account. Secondly, it is the specific interest or right affected by the statements. Thirdly, it is the statements' impact on the person or group of persons who has expressed them. Fourthly, the Court has taken account of the lapse of time since the historical events to which the statements related.<sup>205</sup> Under the Court's case law, statements on historical issues, whether made at public rallies or in media such as books, newspapers, or radio or television programmes are granted freedom of expression.<sup>206</sup>

#### **Legitimate aim: prevention of disorder**

The freedom of expression can also be restricted, if it can cause serious risks for public order,<sup>207</sup> implying the situation provided in Article 10(2) of the Convention – the incitement of protests, disorders and other impediments to public order.<sup>208</sup>

For example, the expressions of genocide denial are restricted to protect the respect for victims and their relatives (issue).<sup>209</sup>

#### **Freedom of expression and the enjoyment of rights contrary to its essence**

The conditions laid down in Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms for the restriction of freedom of expression and the right to freedom of expression are not applicable where freedom of expression is exercised in a manner that is contrary to the fundamental values of the Convention. In

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<sup>205</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 213.-220.paragrāfs

<sup>206</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 230.paragrāfs

<sup>207</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 205.paragrāfs

<sup>208</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 146.paragrāfs

<sup>209</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 141.paragrāfs

this case, the statements must be classified in accordance with Article 17 of the European Convention of Human Rights, which provides that:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

The Court reiterates that Article 17 is only applicable on an exceptional basis and in extreme cases. The decisive point when assessing whether statements, verbal or non-verbal, are removed from the protection of Article 10 by Article 17, is whether those statements are directed against the Convention’s underlying values, for example by stirring up hatred or violence, or whether by making the statement, the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it.<sup>210</sup>

Statements which do not enjoy the rights laid down in Article 10 of the European Convention for the Human Rights must be classified under Article 17, for example statements which deny the Holocaust, justify Neo-Nazi ideas.<sup>211</sup> As the Court of Human Rights emphasises, for example, expressions seeking to rehabilitate the Nazi regime are incompatible with democracy and human rights, and amounted to the use of the right to freedom of expression for ends contrary to the text and spirit of the Convention.<sup>212</sup> At the same time, in order to find that the right to freedom of expression does not protect statements, a decision is taken on a case-by-case basis and will depend on all the circumstances of each individual case.<sup>213</sup>

#### **2.3.4.2. Criteria for identifying hate speech**

Both the UN and the European Council institutions have defined the criteria to distinguish the expressions made according to the freedom of expression and the ones that are to be recognised as hate speech.

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<sup>210</sup> Eiropas Cilvēktiesību tiesas 2019.gada 3.oktobra spriedums lietā *Pastors pret Vāciju* (pieteikuma Nr.55225/14), 37.paragrāfs

<sup>211</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2003.gada 24.jūnija lēmumu lietā *Garaudy pret Franciju* (pieteikuma Nr.65831/01); arī Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 209.-212paragrāfs.

<sup>212</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 212.paragrāfs

<sup>213</sup> Eiropas Cilvēktiesību tiesas 2019.gada 3.oktobra spriedums lietā *Pastors pret Vāciju* (pieteikuma Nr.55225/14), 37.paragrāfs

### 2.3.4.2.1. United Nations

The UN Committee on the Elimination of Racial Discrimination considers that the following contextual factors should be taken into account **when declaring the expression to be hate speech:**<sup>214</sup>

- **The content and form of speech:** whether the speech is provocative and direct, in what form it is constructed and disseminated, and the style in which it is delivered
- **The economic, social and political climate,** prevalent at the time the speech was made and disseminated, including discrimination against ethnic and other groups. Discourses that in one context are innocuous or neutral may take on a dangerous significance in another; therefore, the context of the local situation is extremely important.
- **The position or status of the speaker in society** and the audience to which the speech is directed. The Committee consistently draws attention to the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention. At the same time, the Committee is aware of the special importance of freedom of speech in political matters and that its exercise carries with it special duties and responsibilities.
- **The reach of the speech, including the nature of the audience** and the means of transmission: whether the speech was disseminated through mainstream media or the Internet, and the frequency and extent of the communication, in particular when repetition suggests the existence of a deliberate strategy to engender hostility towards ethnic and racial groups.
- **The objectives of the speech:** speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions.

**The Rabat Plan of Action**<sup>215</sup> indicates the following criteria to be taken into account:

It was suggested that a high threshold be sought for defining restrictions on freedom of expression, incitement to hatred, and for the application of article 20 of the International Covenant on Civil and Political Rights. In order to establish severity as the underlying consideration of the thresholds, incitement to hatred must refer to the most severe and deeply felt form of opprobrium. To assess the severity of the hatred, possible elements may include the cruelty or intent of the statement or harm advocated the frequency, quantity and extent of the communication. In this regard, a six-part threshold test was proposed for expressions considered as criminal offences:

- **Context:** Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group and it may

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<sup>214</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 15.-16.punkts, pieejams angļu val.  
<https://www.refworld.org/docid/53f457db4.html>

<sup>215</sup> UN General Assembly 11 January 2013 Human Rights Council Twenty-second session Agenda item 2 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General (Rabat Action Plan),  
[https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)

have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated.

- **Speaker:** The speaker's position or status in the society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed.
- **Intent:** Article 20 of the International Covenant on Civil and Political Rights anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the Covenant, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience..
- **Content and form:** The content of the speech constitutes one of the key foci of the court's deliberations and is a critical element of incitement. Content analysis may include the degree, to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed.
- **Extent of the speech act:** Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public and what means of dissemination are used. For example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public.
- **Likelihood, including imminence:** Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

#### 2.3.4.2.2. Council of Europe

**European Court of Human Rights** has defined the following aspects for assessment:<sup>216</sup>

##### **The characteristics of the expressions**

Expression on matters of public interest is in principle entitled to strong protection.<sup>217</sup> At the same time, expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection.<sup>218</sup>

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<sup>216</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08)

<sup>217</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08), 230.paragrāfs

<sup>218</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08), 230.paragrāfs

## The context of the expressions

### - Geographical and historical factors

The historical experience of the respective state is an important aspect to be taken into consideration. It should also be noted that a *pressing social need* exists. For example, in the context of the historical experience of such countries as Germany, Belgium and Austria, the Holocaust denial can be dangerous. Moreover, Holocaust has been proved by historically undeniable facts. At the same time, the crimes committed by the Ottoman Empire against the Armenians do not have a direct connection to Switzerland, and it can hardly be said that any hostility that exists towards the Armenian minority in Turkey is the product of the applicant's statements in Switzerland. In this context, it is important to apply the proportionality test, which is an important component in assessing whether there is a pressing social need and requires an analysis of whether there is a rational connection between the measures taken by the authorities and the aim that they sought to realise through these measures, in the sense that the measures were reasonably capable of producing the desired result.<sup>219</sup>

### - The time factor

As the Court of Human Rights states, while controversial remarks concerning traumatic historical events were always likely to reopen the controversy and bring back memories of past sufferings, a lapse of time of some forty years made it inappropriate to deal with them with the same severity as ten or twenty years previously.<sup>220</sup>

## The impact of the expressions on other persons' rights

The Court of Human Rights has already held, albeit in different circumstances, that statements that contest, even in virulent terms, the significance of historical events that carry a special sensitivity for a country and touch on its national identity cannot in themselves be regarded as seriously affecting their addressees. It has come to the same conclusion with respect to statements contesting the very identity of a national group. At the same time, the Court would not exclude that there might exist circumstances in which some statements could be found inappropriate. For example, statements relating to traumatic historical events could result in significant damage for the dignity of groups affected by such events: for instance, if they are particularly virulent and disseminated in a form that is impossible to ignore.<sup>221</sup>

Expressions can affect a specific person, as well as a group of persons.

Statements that may infringe a person's right to privacy, as defined by the European Convention for the Protection of Human Rights and Fundamental Freedoms are statements that are intrusive to a person and are sufficiently serious and made in such a way that they affect the person's

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<sup>219</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08), 246.paragrāfs

<sup>220</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08), 249.paragrāfs

<sup>221</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08), 253.paragrāfs

ability to enjoy his or her right to privacy.<sup>222</sup> It may specifically encompass the right of a person to establish interaction with others, even in a public context, while the rights to private life are also protected.<sup>223</sup>

At the same time, in order to state the infringement of a person's right to private life as an individual belonging to a group in case the expressions of hate speech are addressed to the group, the European Court of Human Rights has defined the following criteria. Firstly, expressions liable to infringe the right of others to privacy within the meaning of the European Convention on Human Rights are expressions that affect the identity of an ethnic or social group and affect the self-esteem and confidence of that group. Secondly, such expressions must reach a certain level of negative stereotyping.<sup>224</sup> In order to determine whether a "certain level" has been reached, the following aspects need to be assessed:

- (a) The characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position vis-à-vis society as a whole);
- (b) The precise content of the negative statements regarding the group (in particular, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype);
- (c) The form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group's identity and dignity.

Turning to the question of Internet and a potential impact of the impugned text, the European Court of Human Rights is mindful that the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages. It is therefore essential for the assessment of a potential influence of an online publication to determine the scope of its reach to the public.<sup>225</sup> If a publication on the Internet (a post on the social network) or a comment is available only to a limited group of people, the consequences may be different than if the publication is available to everyone.<sup>226</sup> It is also important to note whether the author of the expression is a well-known blogger or a popular user of social media.<sup>227</sup> Also, regarding the hostile

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<sup>222</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā Behar un Gutman pret Bulgāriju (pieteikuma Nr.29335/13), 66.paragrāfs

<sup>223</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā Behar un Gutman pret Bulgāriju (pieteikuma Nr.29335/13), 54.paragrāfs

<sup>224</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā Behar un Gutman pret Bulgāriju (pieteikuma Nr.29335/13), 60.paragrāfs

<sup>225</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 79.paragrāfs

<sup>226</sup> Wolfgang Benedek, Matthian C.Kettermann, Freedom of expression and the Internet, Eiropas Padome, 2.izdevums, 2020.gads, 101.lpp

<sup>227</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 81.paragrāfs

comments on the Internet (in social media), it should be noted that they must not necessarily be systematic.<sup>228</sup>

When it comes to whether or not statements are to be regarded as hate speech, it is essential to analyse the statements as a whole, not abstractedly, because if a statement may seem amusing in one context, it may be regarded as hate speech in another.<sup>229</sup>

None of the aspects mentioned above is more important than the other. In addition, when assessing the case, an essential factor is the social and political situation at the time when the expressions have been made.<sup>230</sup>

### **Consensus between the Member States of the Council of Europe**

The European Court of Human Rights, defining the threshold provided in the European Convention on Human Rights, is guided by the consensus existing in the Member States of the Convention concerning the level of protection of human rights. Thus, in order to assess whether the respective expressions are punishable and qualified as criminal offense, the approach of the majority of the Convention's Member States needs to be taken into account.<sup>231</sup>

#### **- International law obligations of the State**

The European Court of Human Rights provides that it must be analysed that it must be analysed whether the obligation to punish statements and the nature of the penalty is imposed on the State by any international obligation.<sup>232</sup>

In order to determine whether hate speech has taken place, it is necessary to assess whether statements in general and in a given context may be regarded as inciting violence, hatred and intolerance.<sup>233</sup>

Incitement to hatred does not necessarily involve calling for violence or committing criminal acts. Attacks against a person committed by offending, mocking or defaming a

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<sup>228</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 126.paragrāfs

<sup>229</sup> Wolfgang Benedek, Matthias C.Kettermann, Freedom of expression and the Internet, Eiropas Padome, 2.izdevums, 2020.gads, 100.lpp

<sup>230</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Behar un Gutman pret Bulgāriju* (pieteikuma Nr.29335/13), 67.paragrāfs

<sup>231</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 255.-257.paragrāfs

<sup>232</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 258.-268.paragrāfs

<sup>233</sup> Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 240.paragrāfs; Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 69.paragrāfs

specific social group are sufficient to establish that freedom of expression has been used irresponsibly and hate speech has taken place.<sup>234</sup>

The European Commission against Racism and Intolerance provides the following elements to assess:<sup>235</sup>

- the context in which the hate speech concerned is being used (notably whether or not there are already serious tensions within society to which this hate speech is linked)
- the status and capacity of the person using the hate speech to exercise influence over others (such as by virtue of being a political, religious or community leaders)
- the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination)
- the context of the specific remarks (whether or not they are an isolated occurrence or are reaffirmed several times and whether or not they can be regarded as being counter-balanced either through others made by the same speaker or by someone else, especially in the course of a debate)
- the medium used for dissemination (whether or not it is capable of immediately bringing about a response from the audience such as at a “live” event)
- the nature of the target audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination).

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<sup>234</sup> Eiropas Cilvēktiesību tiesas 2012.gada 9.februāra spriedums lietā *Vejdeland un citi pret Zviedriju* (pieteikuma Nr.1813/07), 55.paragrāfs; Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 125.paragrāfs

<sup>235</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 18.lpp., 16.paragrāfs, pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

## Section 3

### 3. The Sociological and Psychological Aspects of Hate Crimes

#### 3.1. Hatred and hate crimes

Defining hatred as a crime is a relatively new and controversially perceived phenomenon on the international stage.<sup>236</sup> Currently, the ODIHR/OSCE definition of hate crime, which is a result of international agreement, comprises two criteria: (1) it is a criminal offence according to the state criminal law and (2) it is motivated by bias. The selection of bias in the definition is not random, as it allows shifting the focus from hatred as individual and spontaneous emotion to bias, which is a broader social phenomenon (see Image 1).<sup>237</sup>

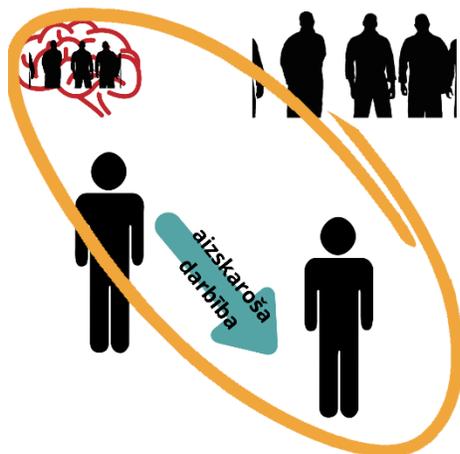


Image 1. *The internationally accepted understanding of hate crimes.*

Because of its social nature, the concept of hate crime does not cover the behaviour of private individuals or relationships between separate individuals, so it could not be directly treated as a violation of human rights.<sup>238</sup> The link with human rights is mediated due to the belief that hate crimes have a negative impact on human dignity, which in turn is protected by human rights.

<sup>236</sup> Brudholm, T. 2016. Conceptualizing hatred globally: is hate crime a human rights violation? In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Scheppe, Mark Austin Walters, eds. Oxford University Press; ODIHR/OSCE (Organization for Security and Co-operation in Europe) 2013 gada ziņojums norāda uz sistemātisku pieeju naida noziegumam ar 2003. gadu.

<sup>237</sup> Garland, J., Funnell, C. 2016. Defining hate crime internationally: issues and conundrums. In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Scheppe, Mark Austin Walters, eds. Oxford University Press

<sup>238</sup> Brudholm, T. 2016. Conceptualizing hatred globally: is hate crime a human rights violation? In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Scheppe, Mark Austin Walters, eds. Oxford University Press

### 3.1.1. The scope of hate crimes

Another problem, which is also observed in Latvia, is related to the definition of “hate crime”: a combination of expression of hatred and a criminal offence. If it is common to identify a case prohibited by the Criminal Law, combining it with a “hate crime” requires additional knowledge and skills. The study conducted by Ombudsman Office study in 2016 also indicates a controversial interpretation of hate crime in Latvia. As analysed further, the view of hate crime is most often quite limited – expecting that only if a prohibited activity affects an entire group, this activity should be considered a hate crime (see Image 2).

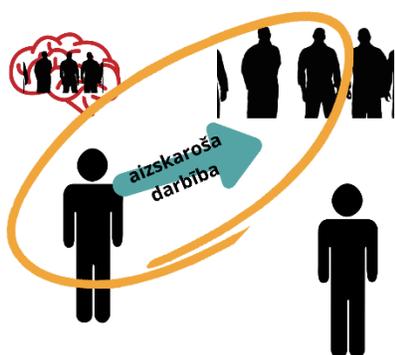


Image 2. *The problem of hate crime interpretation in Latvia: interpreting hate crime only in relation to a group or characteristic.*

If an act motivated by hatred towards a characteristic or group targets only an individual rather than the entire group, no signs of a hate crime are detected (see Image 3).

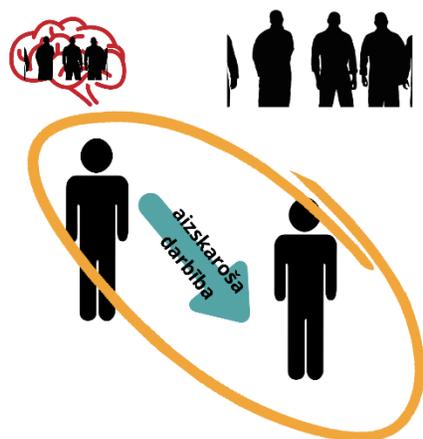


Image 3. *The problem of hate crime interpretation in Latvia: failure to identify hate crimes.*

The survey carried out by the Latvian Centre for Human Rights also points to a higher number of suspected incidents related to hate crime in Latvia compared to ODHIR statistics for all registered hate crimes, despite the fact that Kamenska and Treļš report statistics only for the offences investigated under Article 78 (see Tables 1 and 2).<sup>239</sup> The study also confirms the note published on the ODIHR website that hate crimes in Latvia mainly concern hate speech. It has been relatively easy to identify that the offence affects the group or characteristic targeted by hate speech. Both types of data indicate that the vast majority of the offences reported do not come to criminal proceedings, suggesting that problems are related not only the identification but also the process of gathering evidence and interpreting criminal law.

Both cases of limited interpretations (see images 2 and 3) ignore the fundamental nature of hate crimes: they are caused, on the one hand, by the hostility of a part of the society towards a group or characteristic existing in the society and, on the other hand, demonstrates by the offence the society's attitude and hatred towards that group. Unlike other crimes, both the motive and the act itself are social and long lasting. Therefore, the offence is committed not only against the person who is the target of the crime at a given point in time, but it also sustains long-term disorder in society and affects the victim not only through the criminal activity itself, but also through the threat that similar acts may recur. In Latvia, there was once a similar problem with the interpretation of domestic violence: the Criminal Law still treats it as an offence similar to other offences, but both the understanding of domestic violence and the criminal procedural framework have changed, seeing a difference, for example, between street violence between strangers and in the family between family members. Just as hate crimes, domestic violence is systematic and affects the person targeted in the long run, not just during the episodes of violence. As research shows, childhood experience of violence affects a person's life in the long term, causing not only emotional discomfort but also health problems and trouble in relationship building.<sup>240</sup>

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<sup>239</sup> Kamenska, A, Treļš, E. 2017. NAIDA NOZIEGUMI: PRAKSE UN PROBLĒMAS. Latvijas Cilvēktiesību centrs, 2017.gads, pieejams <https://cilvektiesibas.org.lv/lv/publications/petijums-naida-noziegumi-prakse-un-problemas-445/>

<sup>240</sup> SPKC. 2011. Pētījums par Latvijas jauniešu bērnībā gūto nelabvēlīgo pieredzi. Rīga 2011. <https://www.spkc.gov.lv/lv/media/4366/download>

Table 1. *The statistics of hate crimes in Latvia (2010-2016).*

Gads	2010	2011	2012	2013	2014	2015	2016
Hate crimes registered by the police	7	12	18	22	13	11	11
Criminal proceedings initiated	4	1	2	0	7	1	7
Conviction	5	2	2	-	9	5	0

Source: Latvian profile of the ODIHR, the statistics of the hate crimes in Latvia have not been available on the ODIHR home page since 2016.

Table 2. *The statistics of the criminal processes according to Article 78 of the Criminal Law, 2011-2016.*

Gads	2010	2011	2012	2013	2014	2015	2016
Total number of cases reported	26	34	34	36	27	24	
Total number of criminal proceedings initiated	6	12	18	22	13	11	6
Total number of refusals to initiate criminal proceedings	20	22	16	14	14	13	
Hate speech							
Internet	6	10	14	20	11	9	6
Print media, TV, Video, public statements		1	4	1	1		
Hate crimes							
Graffiti		1			1	2	
Damage of property				1			
Violence			1				

Source: Kamenska, A, Trejs, E. (2017). *Naida noziegumi: prakse un problēmas*. Latvijas Cilvēktiesību centrs

In the Latvian Criminal Law, the following sections are related to hate crime, marking the definition of hate crime scope and the prohibited expressions of hatred:

<https://likumi.lv/ta/en/en/id/88966>

- Genocide, invitation to genocide (Section 71);
- Triggering of National, Ethnic and Racial Hatred (Section 78), which is within the competence of Latvian Security Police;
- Violation of the Prohibition of Discrimination (Section 149.<sup>1</sup>),
- Incitement of Social Hatred and Enmity (Section 150);
- Any other criminal offense committed due to racist, national, ethnic, or religious motives (Section 48(1), Point 14).

Internationally, no prejudice against sexual orientation can be found in the list of prohibited motives, which has also served as the basis for criticism of Latvia in the European Commission against racism and tolerance (ECRI) reports, for example, in 2019. In May 2021 the Saeima rejected A. Judins's proposal to include sexual orientation as a motive in the Criminal Law<sup>241</sup>, but during the second reading on 9 June voted that crime out of hatred of a social group (without defining the group itself) be determined in the Criminal Law as an aggravating circumstance. From a social perspective, such a solution will reduce the effectiveness of the application of the law by shifting responsibility from legislators to law enforcement authorities, who will have to define these social groups in practice.

The previous guidelines for law enforcement (*Guidelines for the Identification and Investigation of Hate Crimes, 2017*) recognise the lack of criteria to distinguish hatred from other negative sentiments ("frustration, depression, despair, bitterness, fear, horror, disappointment, sadness, hurt, anger, rage, contempt, indignation, dislike, aversion, disgust, envy or even jealousy"). The Guidelines expect hatred to serve as a motive for the offence rather than inherently translate into criminal activity, even though hatred is not defined in the Criminal Law as a sign of the criminal offence.

The Guidelines themselves, citing international practice and applying it to the situation of Latvia, the inconsistencies in the interpretation of hate crime at the local and international level can be seen. As already mentioned, on the one hand, hate crime within the framework of the guidelines is viewed as an individual criminal activity, which is caused by an individual's internal and individual motivation and to which different shades of "feeling" can be attributed. This interpretation is based on *individualising* the criminal episode, setting aside the social situation or context in which it was committed. For example, the Guidelines emphasise a formal enough interpretation of Section 78 of the Criminal Law, expecting that the crime will be completed by a declaratory act as provided for in the Section (see Window 1).

Window 1. *The interpretation of hatred in the Guidelines for the Identification and Investigation of Hate Crimes, 2017, Latvia*

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<sup>241</sup> Latvijas Republikas 13. Saeimas pavasara sesijas divdesmit sestā (attālinātā ārkārtas) sēde 2021. gada 27. maijā. <https://www.saeima.lv/lv/transcripts/view/2259>.

The Guidelines view hatred as criminal offence that is directly detected at the time and place of the crime, thus **narrowing hatred from motive down to outward expression**: *If, in similar circumstances, the perpetrator leaves a public call – “beat Muslims” – such conduct can be considered as provoking religious hatred, and the offence qualifies under Section 78 of the Criminal Law. (p. 10)*

The following interpretation is possible **because a criminal offence is interpreted in isolation as an expression of the emotions or an internal motive the potential offender**:

*Incitement to hatred may have been committed on the grounds of race, nationality, ethnic origin or religion, but these are not hate-provoking crimes. For example, a person is inflicted with intentional mid-severity injuries because they are Muslim. But the perpetrator does not provoke religious hatred, while the motive for criminal activity has been the victim's religious affiliation. In such case the criminal offence shall be qualified according to Section 126 of the Criminal Law, while the religious motive - in accordance with Section 48, Paragraph 1, Clause 14 of the Criminal Law – shall be charged to the perpetrator as an aggravating circumstance. (p. 10)*

This is not a uniquely Latvian situation – the definition of hate crime is likewise problematic in international sources (see Window 2).

Window 2. *Internationally used approaches to hate crime.*

1. **Any crime can potentially be a hate crime**, but crimes that can become hate crimes in different countries are defined differently. Gender and sexual orientation are not mentioned as a sign of hate/discrimination in Latvia;
2. **An internal motive - bias/hatred or discrimination.** The emphasis on discrimination and human rights makes it easier to identify a crime because it is easier to prove that a victim has been chosen due of their identity than to determine that hatred has been the motive. The problem here is the relationship between criminal activity and hatred. Hate as a socially important element changes the crime situation, giving it civic and political significance and forcing a crime from an isolated event between individuals to become a means of communicating hatred. Britain is using the victim-centered approach, i.e., if the victim or anyone else believes the offence was motivated by hatred or bias towards one of the five protected characteristics, the police must register and investigate the offence as hate crime.<sup>242</sup>
3. **The focus on hatred as a motivator requires evidence of causality** - an expression of hatred before, after, or at the time of committing a crime. Hatred can also become a partial motivator.<sup>243</sup>
4. Hate crimes will **target certain characteristics, such as race or ethnic origin.**

*Source:* Brudholm, T. 2016. Conceptualizing hatred globally: is hate crime a human rights violation? In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Schweppe, Mark Austin Walters, eds. Oxford University Press.

It can be seen that international experience treats motivation and the impact of offences more broadly, noting a link between individual activities and their social nature - targeting certain characteristics. However, as the researchers point out, the link between a crime against an individual or identity and a hate crime is ambiguous. If a hate crime was committed because of a specific characteristic of the victim, it was actually discovered that often the offender had known the victim, or at least knew about the victim's affiliation to a group.<sup>244</sup> It is pointed out that hate crimes are often part of a longer-running victimization process. In particular, the crime consists not of a single case, but rather a series of offensive acts carried out on a regular basis. In a significant proportion of cases, the perpetrators of hate crimes are familiar to the victim. In addition, as mentioned, unlike understanding a crime as an isolated incident, a hate crime has long-term consequences and impact on the victim's confidence.

One of the experts interviewed for this report also points out that in the case of Latvia, police officers lack understanding of the consequences of hate crimes and that they affect the whole society, not only the persons involved in the incident:

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<sup>242</sup> Macpherson, Sir W. 1999. The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny. London: Stationery Office.

<sup>243</sup> Garland, J., Funnell, C. 2016. Defining hate crime internationally: issues and conundrums. In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Schweppe, Mark Austin Walters, eds. Oxford University Press

<sup>244</sup> Garland, J., Funnell, C. 2016. Defining hate crime internationally: issues and conundrums. In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Schweppe, Mark Austin Walters, eds. Oxford University Press

*If a person suffers from ordinary violence, it takes about two years to get over it psychologically. Hate crimes are five and more [years] and only if you are working on this issue.*

For this reason, it is recommended to view **hate crimes as a dynamic social process, which also includes the values and structure of the community and society**. The perpetrators of the crime in these cases come from a “stronger” social group and show the other group's “lower status” through the crime. Garland and Funnell<sup>245</sup> indicate that the offender can choose victims because they seem frightening or simply weak. Often the offence is not classified as criminal in the Criminal Law, but it has significant additional implications for the victim, their family and the wider community. The clash between the different local values in Latvia and internationally recognised values is vividly revealed, for example, in the Saeima debate of 27 May 2021 on the inclusion of sexual orientation among the signs of social hatred in the Criminal Law, amid confrontations with arguments about ensuring the dignity of each person and the need for the protection of privileged social groups. Consequently, the interpretation of hate crimes in Latvia is made more difficult by the political context and high tolerance for the use of hate speech elements in politics.

### **3.1.2. Hate crime as expression**

The second peculiarity in Latvia is **the understanding of the “materiality” of a criminal offence**, which is another characteristic of the interpretation of a local crime. Thus, for example, a hate crime in the form of threats against a feature found in society is justified not as a violation of the law in itself, but as a step towards another, this time already material or a physically detectable crime:

*The instigator of hatred must be aware that someone who has heard such sinister calls can implement them. Such inducements may cause anxiety for members of a particular social group. This can lead to confusion, hatred and tension between the society and the social group in question.*<sup>246</sup>

Understanding the composition of a crime of such material is inherent in post-socialist countries and is slowly changing, for example by combating cases of domestic violence and understanding the impact of psychological and emotional violence on a person. There is also a logical contradiction in the passage cited above: the harms of hate speech are proven not by the very fact of the existence of hate speech, but by the triggering of further “insatiation” or “hatred,” thus creating a series of tautological evidence. The harm or threat to interests suffered not only by the victim but also by other persons are identified

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<sup>245</sup> Garland, J., Funnell, C. 2016. Defining hate crime internationally: issues and conundrums. In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Schweppe, Mark Austin Walters, eds. Oxford University Press

<sup>246</sup> Valsts policija. 2017. Vadlīnijas naida noziegumu identifikācijai un izmeklēšanai. <https://www.vp.gov.lv/lv/vadlinijas-naida-noziegumu-identifikacijai-un-noversanai>

or identify with the characteristic used in the hate speech is not, in turn, considered as a circumstance of the offence and the phrase “cause concern” undermines the assessment of that harm from the outset in the definition. Much like harm, jeopardizing interests in the context of hate crimes may not be material but will endanger the quality of life and opportunities of those harmed by hate speech anyway. The Guidelines cite Baumanis<sup>247</sup> who indicates that the very fact of causing hatred is the materialisation of the purpose of the offence, undermining tolerance and integrity in society, showing that a more contextualised interpretation of the hate crime is also used in Latvia.

### **3.1.2.1. Types of hate crime**

By analysing the actual manifestations of hate crimes, it is possible to distinguish the most common types of hate crimes that can help identify hate crimes:

1. Incidents that occur during an ongoing local conflict (for example, between neighbours) that has escalated over time;
2. Incidents that form part of a targeted campaign of abuse directed against certain individuals within a neighbourhood; or
3. Incidents that occur in public spaces and are perpetrated by individuals who feel somehow aggrieved by the victim – sometimes occurring during commercial transactions or on public transport. (see Image 4).<sup>248</sup>

As it can be seen, the role of prejudices is the most important in single-community or neighborhood-level criminal offences; however, prejudices can play out against unknown people or be used to offend well-known people in longer conflicts.

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<sup>247</sup> Baumanis, J. 2016. Naida interpretācija krimināltiesībās jeb kvantu kriminoloģija. *Administratīvā un kriminālā justīcija*, 4/2016 13, pp. 12-17.

<sup>248</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

## Naida nozieguma tipi



### Kaimiņu konflikti

Daļa no plašāka konflikta, kas eskalējas. Piemēram, lietojot rasistisku, homofobisku, transfobisku, antirelīģisku vai cilvēka fiziskās spējas aizskarošu valodu.

**Kur?** Sociālās mājas, vietas, kur lietotas apreibinošas vielas

**Kurš?** Kaimiņi, pazīstami cilvēki, parasti iesaistītas vairākas personas

**Aizspriedumu nozīme:**  
**vidēja-zema**



### Mērķtiecīgs uzbrukums

Neatļaidīgi un nepārtraukti uzbrukumi, kas notiek ilgākā laika periodā

**Kur?** Vietējā apkaime, sociālā māja

**Kurš?** Kaimiņi, pazīstami cilvēki, kopienas locekļi

**Aizspriedumu nozīme: vidēji  
augsta-augsta**



### Vienreizēji incidenti Vienreizēji incidenti

Vienreizēji uzbrukumi

**Kur?** Sabiedriskās vietās: transportā, bārā, var veicināt apreibinošu vielu lietošana

**Kurš?** Iepriekš nav pazīstami (svešinieki); bieži konfliktu izraisa komerciālas attiecības, piemēram, pircējs/pārdevējs

**Aizspriedumu nozīme:**  
**vidēji-zema, vidēja**

Image 4. *Types of hate crime, typical situations and connection to the prejudices in society* Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

### 3.1.2.2. Hate speech and language

The spokesperson for the Ombudsman's Office acknowledged in an interview that the Office is guided in its opinions by the case law and criteria and practice of the European Court of Human Rights; however, the detection of hate speech is controversial because it is influenced by the subjective understanding of the offence by each person involved. The Ombudsman's Office uses the following criteria to assess whether a hate crime has occurred in the event of hate speech, recognizing that the understanding of a hate crime goes beyond the offence interpreted by the Criminal Law:

- 1) the content of statements, taking into account how this kind of expressions would be perceived by a neutral reader;
- 2) the assessment of the text as a whole;
- 3) the context in which the statements were expressed;
- 4) the degree of the statements' publicity;
- 5) degree of offence;
- 6) the purpose of the author of the statements;
- 7) the effect of statements on the peaceful co-existence of different social groups.

Looking at a wider range of criminal activity makes identification even more complex. As it has been mentioned, hate speech is most often recognised as hate crime in Latvia. Scientists point out that hate speech and hate crime usually mean different things.<sup>249</sup> Hate speech is about expression, but in the case of crimes, hate is viewed as motivation. It is stressed that **hate speech is based on social tensions** that are **reproduced and amplified** through hate speech. Hate speech unites and separates people simultaneously, creating the juxtaposition of "us" and "them". However defined, the notion of hate speech is not about abstract ideas and ideologies, as **it directs hatred against persons or groups of persons.**<sup>250</sup>

While researching hate speech in the U. S., it is revealed that the speaker becomes responsible for his or her own expressions in circumstances, where language is given more weight than the speaker does. From this perspective, words not only convey individual subjective feelings and thoughts, but also are also capable of triggering various unpredictable consequences and actions. A slur is recognised as such only if the speaker uses it in certain acts of speech, that is to say, expressions are found to be derogatory in a particular social context.<sup>251</sup> Dzenovska, researching the context of hate speech in Latvia, points out that such a division between acts of speech which are offensive and those which express a certain opinion is also relevant in the case of Latvia, especially in legal contexts. However, in Latvia, the cultural and historical situation, as well as the factor of Latvian as an endangered language, also plays an important role in discussions about

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<sup>249</sup> Brudholm, T. 2016. Conceptualizing hatred globally: is hate crime a human rights violation? In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Schweppe, Mark Austin Walters, eds. Oxford University Press

<sup>250</sup> Gagliardone, I., Gal, D., Alves T., Martinez G. 2015. Countering Online Hate Speech. Unesco.

<sup>251</sup> Dzenovska, D. 2018. School of Europeanness: Tolerance and Other Lessons in Political Liberalism in Latvia. Cornell University Press

tolerance. Dzenovska (2018) refers to the desire of self-determination of language and culture users in choosing expressions (for example, historical names of ethnic groups in Latvian), “absence” of racial history (there is no racism in Latvia because Latvia is not involved in colonization of other countries, therefore is not responsible for them), which affects tolerance and attitude towards different groups of society, creating a discrepancy between the local and international context.<sup>252</sup>

According to Dzenovska, in the context of Latvia, there are also differences between expressions that incite hatred and the use of words that may cause offence. The offence is related to a violation of a person's integrity by using certain words, while incitement to hatred is related to acts of speech that could cause enmity and conflict between groups.<sup>253</sup>

Another peculiarity in Latvia is **a high tolerance towards violence, including the manifestations of hatred**. This peculiarity makes you see hate crimes as an “artificial” and irrelevant issue, or even accept them as the norm. One of the characteristic examples is an online article on nra.lv<sup>254</sup> concerning the appointment of Marija Golubeva as the Minister of the Interior. While the article itself is on the verge of gender bias and expression of an opinion, the comment section displays overtly hostile statements targeting both the Minister (indirectly) and homosexual persons in general. The example provided in Image 5 corresponds the third type according to the classification provided by Watlers et. al (2016) – the author of the statement positions himself as a victim, and this perception is based on bias towards homosexual persons.

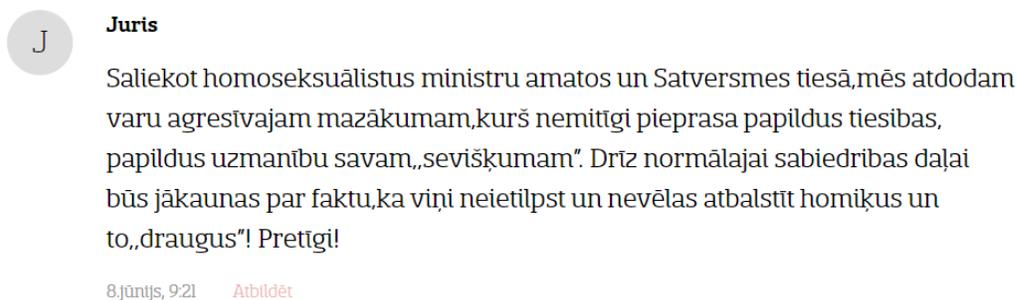


Image 5. Screenshot of a comment related to the article “Iekšlietu ministrei Golubevai ovācijas nesūta” (I. Vīksna, 08.06.2021), <https://neatkariga.nra.lv/izpete/349231-iekšlietu-ministrei-golubevai-ovācijas-nesuta/komentari>

In other cultural contexts, such speech would have a low tolerance threshold, while in Latvia it may be considered even the norm. It should be remembered that the context of intercultural communication is important in the assessment of hate crimes, so the identification of the degree of offence and the application of international regulation in Latvia should be culturally sensitive

<sup>252</sup> Dzenovska, D. 2018. School of Europeanness: Tolerance and Other Lessons in Political Liberalism in Latvia. Cornell University Press

<sup>253</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>254</sup> Skat. <https://neatkariga.nra.lv/izpete/349231-iekšlietu-ministrei-golubevai-ovācijas-nesuta>

## 3.2. The characteristics and groups subjected to hate crime

When assessing the situation in Latvia in relation to the implementation of the tolerance policy, it is important to take into account cultural and historical peculiarities that influence public and political life comprehension. The tolerance initiatives based on various international treaties and human rights conventions are often met with scepticism, incomprehension or resentment, seeing them as political and legal orders that do not take into account the public and political life in Latvia, especially with regard to the influence and historical subjugation of the Soviet period.

Dzenovska explains that the Soviet past is collectively experienced as an injury, and this sense of “historical injury” affects public and political life, including discussions about tolerance. Narratives about the historic injury can be found, for example, in discussions about the use of certain words offensive to different groups or the need for a change in public attitudes. The historical injury is not only a tactical argument in discussions about tolerance in Latvia, but is deeply related to Latvian identity, so education concerning recognition and prevention of hate crimes is related to issues sensitive to society. Discussions about tolerance are the encounters of both individuals and the society with otherness, in which the characteristics and the nature of society must be defended.<sup>255</sup>

Meanwhile, the tolerance advocates and organisations were unable to distance themselves: the emphasis on historical specificity in Latvian public and political life, as well as the reference to historical injury is linked to nationalism, which hinders the initiatives related to tolerance and, consequently, is an obstacle to a full political and cultural participation in Europe.<sup>256</sup>

Dzenovska also points to other specific arguments in discussions about intolerance in Latvia, offering explanations to them:

- Mediocrity - intolerance in Latvia is no greater than elsewhere. Such a position is more often taken in situations where it is called upon to reflect on past and present negative situations and builds against certain types of morality that structure the political life.
- Naivety - two lines of argument: 1) Latvia had a halted development, especially during the Soviet period; therefore, it takes time to adapt to “Western standards”; 2) childish innocence, a tradition that justifies the use of certain actions and words. Such arguments should be viewed in the light of historical positions and attitudes towards the liberal discourse.<sup>257</sup>

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<sup>255</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>255</sup> Skat. <https://neatkariga.nra.lv/izpete/349231-ieklietu-ministrei-golubevai-ovacijas-nesuta>

<sup>256</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>256</sup> Skat. <https://neatkariga.nra.lv/izpete/349231-ieklietu-ministrei-golubevai-ovacijas-nesuta>

<sup>257</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>257</sup> Skat. <https://neatkariga.nra.lv/izpete/349231-ieklietu-ministrei-golubevai-ovacijas-nesuta>

As scientists note, EU countries use different features and classifications for the typology of hate crime and are defined by the cultural context and social structure. Typical features of the cultural context of Latvia are listed below, which are found in literary sources and mentioned in interviews with specialists.<sup>258</sup> A recent study indicates that Muslims and Roma are the most frequently rejected groups for Latvian residents in different interaction contexts, whereas such ethnic groups as Chinese and Indians are more often rejected in private contexts (39.6% and 36.5%, respectively, would not want a representative of this ethnic group to become their child's spouse).<sup>259</sup>

Knowledge of the social context is an essential prerequisite for the detection of hate crime. The rejection of any characteristics of a group or person by the majority of the society does not justify hostile and intolerant treatment of individuals identified by those characteristics. In addition, hate crimes can target individuals who do not self-identify with the group the attacker associates them with.

The ban on discrimination includes six basic features - a person's sex, race or ethnicity, age, disability, religious affiliation and sexual orientation. As the LCHR spokesperson acknowledges, hate crimes are an extreme expression of intolerance, therefore, countries are gradually adding the specific features to the Criminal Law as well. In Latvia, despite the call of the ECRI, sexual orientation has not been distinguished as a cause of hate crime.

### **3.2.1. National, ethnic affiliation, origin, race**

In Latvia, a third (34%) of the population believe that some cultures are far superior to others, while 29% admit that representatives of some racial or ethnic groups are simply born less intelligent than others. The authors of the study point out that these two opinions partly overlap, thus more than one third of population of Latvia has either chauvinistic or racist views, which overlap in only 56% of cases.

Latvia has a relatively high level of intolerance against the following ethnic groups.

#### **3.2.1.1. The ethnic origin of Roma**

Reports by international organisations and non-governmental organisations that summarise and update the situation of human rights and minorities unequivocally

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<sup>258</sup> Garland, J., Funnell, C. 2016. Defining hate crime internationally: issues and conundrums. In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Schweppe, Mark Austin Walters, eds. Oxford University Press

<sup>259</sup> Kaprāns, M, Mieriņa, I, Saulītis, A. 2020. Starpkultūru stereotipi un aizspriedumi Latvijā. [http://fsi.lu.lv/userfiles/Ethnic%20stereotypes\\_SAPC.pdf](http://fsi.lu.lv/userfiles/Ethnic%20stereotypes_SAPC.pdf)

emphasise **the ethnic origin of Roma as a major factor** in the social exclusion and discrimination of members of this minority.<sup>260</sup>

A study by Kaprāns et al. (2020) also proves this: 27.2% would not like to work with a person of Roma origin as a colleague; 49.4% would not wish him/her to become the spouse of the child; 30.0% cannot imagine them as their close friend; 29.0% would not want such a person to live next door; 10.3% would not want them to live in our country at all, while 49.5% could not accept a Roma as President of their country. According to the survey, Roma are more negatively treated in Kurzeme - there 87 per cent of respondents would not want Roma as colleagues and 65 per cent as family members.<sup>261</sup>

In an interview related to this report, the Ombudsman's Office representative also confirms this, noting that there is distrust towards the police among the Roma, and, at the same time, bias against the Roma among the police officers:

*The police officers have a huge dislike of Roma. The attitude is the following - you have to arrest a Gypsy kid the moment it is born, because something will happen anyway.*

### **3.2.1.2. The ethnic origins of the Jewish**

The data from the 2020 survey show a relatively low level of prejudice towards Jews as an ethnic group. 6.8% of Latvian residents would not like to work with a person of Jewish origin as a colleague. 21.2% would not wish him/her to become the spouse of the child. 7.8% cannot be imagined as a close friend. 4.3% would not like such a person to live next door. 2.7% would not want them to live in our country at all, while 30.3% would not be able to accept them as President of their country. In the private domain, a fifth of respondents have bias against Jews.<sup>262</sup>

Hate speech against Jews is often associated with the use of the Latvian language. Claims against the use of intolerant language in Latvia are based on arguments that language forms in the reality and the hierarchies within its scope, thus giving voice to certain individuals while silencing and excluding others. Tolerance claims against language are seen as yet another attempt by public authority to dominate language and people.<sup>263</sup> The research indicates that language policy is aimed at the use of correct terminology and

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<sup>260</sup> Latvijas Cilvēktiesību centrs, Latvijas Ebreju draudžu un kopienu padome, Latvijas Anti-semītisma izpausmes: vēsture un mūsdienas, Rīga, 2015, [http://cilvektiesibas.org.lv/media/attachments/21/01/2016/antisemitisma\\_brosura.pdf](http://cilvektiesibas.org.lv/media/attachments/21/01/2016/antisemitisma_brosura.pdf).

<sup>261</sup> Latvijas Cilvēktiesību centrs, Latvijas Ebreju draudžu un kopienu padome, Latvijas Anti-semītisma izpausmes: vēsture un mūsdienas, Rīga, 2015, [http://cilvektiesibas.org.lv/media/attachments/21/01/2016/antisemitisma\\_brosura.pdf](http://cilvektiesibas.org.lv/media/attachments/21/01/2016/antisemitisma_brosura.pdf)

<sup>262</sup> Latvijas Cilvēktiesību centrs, Latvijas Ebreju draudžu un kopienu padome, Latvijas Anti-semītisma izpausmes: vēsture un mūsdienas, Rīga, 2015, [http://cilvektiesibas.org.lv/media/attachments/21/01/2016/antisemitisma\\_brosura.pdf](http://cilvektiesibas.org.lv/media/attachments/21/01/2016/antisemitisma_brosura.pdf)

<sup>263</sup> Dzenovska, D. 2018. School of Europeanness: Tolerance and Other Lessons in Political Liberalism in Latvia. Cornell University Press

language, as well as the use of language in public institutions in order to ensure the dominance of language in the public space and the cultivation of language in the context of globalisation. However, the issues of language use tend to be controversial, especially regarding words that describe individuals and groups. For example, the discussion about the correct and ethical use of the words *žīds* or *ebrejs* includes both the arguments about (1) the correct use of language, (2) the authority to choose a term, as well as (3) the ethical commitment to others. If the meaning of the word *žīds* is based in local cultural history, then in discussions dealing with the use of the word *nēģeris* (*negro*) although the word is also used locally, the Latvians do not feel directly connected to the global history of slavery and colonialism.<sup>264</sup>

### 3.2.1.3. Race

The data from the 2020 survey show that 19.9% of Latvian residents would not like to work with a person of African origin as a colleague. 47.4% would not wish him/her to become the spouse of the child. 27.6% cannot be imagine him/her as their close friend; 19.2% would not wish such a person to live next door. 14.8% would not want them to live in our country at all, while 50.1% could accepted him or her as President of their country.<sup>265</sup>

As pointed out by ECRI report, the Latvian authorities do not report incidents of racist and homo-/transphobic violence separately from hate speech. The authorities pointed out to ECRI that the number of registered incidents of racist violence in Latvia is very low, and that according to their knowledge only one case of racially motivated violence was officially recorded in the period 2013-2016. The data and the tendencies on the registration of hate crimes in Latvia indicate that such incidents are rarely reported to the police.<sup>266</sup> According to the results of a survey of migrants and foreign students compiled by the Latvian Centre for Human Rights (LCHR) in 2016, 13% of the respondents have experienced an assault/attempt of an assault or are aware of other assault victims (in addition, the respondents with darker skin colour provided such a response), while 50% of victims of violence have not reported incidents to the police. According to those surveyed, the motivations of hatred were most often related to the victim's race (36%), ethnicity (25%) and language (22%).

People with different skin colors still face racist insults or assaults in Latvia. NGOs have reported several incidents of racist violence in 2016, for example, a group with a firearm

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<sup>264</sup> Dzenovska, D. 2018. School of Europeanness: Tolerance and Other Lessons in Political Liberalism in Latvia. Cornell University Press

<sup>265</sup> Kaprāns, M, Mieriņa, I, Saulītis, A. 2020. Starpkultūru stereotipi un aizspriedumi Latvijā. [http://fsi.lu.lv/userfiles/Ethnic%20stereotypes\\_SAPC.pdf](http://fsi.lu.lv/userfiles/Ethnic%20stereotypes_SAPC.pdf)

<sup>266</sup> Eiropas Komisijas pret rasismu un neiecietību (ECRI) 5. ziņojums par Latviju. 2019. <https://rm.coe.int/fifth-report-on-latvia/1680934a9f>

threatened a refugee, refugee children were assaulted on public transport, and an African woman travelling with her son on public transport was spat at.<sup>267</sup>

It should be noted that there are various historical/social contexts of racial discourse associated with racism. One of the researchers cites an example in which US people of colour also label acts such as staring with racism, while in Britain 'discrimination' or 'racism' means direct 'physical or verbal assault'.<sup>268</sup> In Latvia, racism is generally seen as a foreign phenomenon related to Europe and the West, taking into account that there are few people with different skin colours in Latvia. Such a position is common in post-Soviet space. The issue of racism is viewed as new and limited to “newcomers,” and emphasises their lack of understanding of local culture.<sup>269</sup>

Race and racism are also not defined as terms in the documents of the Latvian government and are not discussed publicly in the political environment. They can be found in NGO publications, but specifically in EU-funded studies on discrimination, immigrant integration, visually different ethnic minorities and third-country nationals where the commissioning party dictates content.<sup>270</sup> Although “hate crimes in Latvia most often affect immigrants who are visually different”,<sup>271</sup> criminalizing “racist speech” in Latvia is difficult because there is no racial discourse. The LCHR spokesperson also notes in the interview that racist incidents in Latvia are mainly related to skin color, but an artificial division – national motive or ethnic motive – has been applied to them. According to the UN definition, a racist incident covers the colour, origin, ethnic motive (nationality – in the context of Latvia), national motive, language. To compare, there have been racially motivated attacks on Latvians in Northern Ireland when hearing the language and protecting the local community from immigrants taking their jobs, while in Latvia, such expressions would be linked to ethnicity.

### 3.2.2. Religious affiliation

Various opinion polls have consistently pointed at high levels of social distance towards Muslims, representatives of other non-Christian religions, as well as negative attitudes

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<sup>267</sup> Eiropas Komisijas pret rasismu un neiecietību (ECRI) 5. ziņojums par Latviju. 2019. <https://rm.coe.int/fifth-report-on-latvia/1680934a9f>

<sup>268</sup> Rhodes, Lauren Monsein. Being Latvian Discourse and Identity among Individuals of Black African Descent. Diss. University of Washington, 2012, <https://anthropology.washington.edu/research/graduate/being-latvian-discourse-and-identity-among-individuals-black-african-descent>

<sup>269</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>270</sup> Rhodes, Lauren Monsein. Being Latvian Discourse and Identity among Individuals of Black African Descent. Diss. University of Washington, 2012, <https://anthropology.washington.edu/research/graduate/being-latvian-discourse-and-identity-among-individuals-black-african-descent>

<sup>271</sup> BISS. 2020. Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām ieviešanas izvērtējums. LM, [http://petijumi.mk.gov.lv/sites/default/files/title\\_file/BISS\\_Gala\\_zinojums\\_LM\\_ANO\\_konv\\_30062020red\\_13072020%20%281%29.pdf](http://petijumi.mk.gov.lv/sites/default/files/title_file/BISS_Gala_zinojums_LM_ANO_konv_30062020red_13072020%20%281%29.pdf)

towards asylum seekers.<sup>272</sup> According to the data of the study, 28.2% of Latvian residents would not like to work with a Muslim as a colleague. 56.3% would not wish him/her to become the spouse of the child. 34.5% cannot imagine him/her as their close friend. 28.4% would not want such person to live next door. 26.4% would not want him/her to live in our country at all, while 56.1% would not be able to accept him/her as President of their country.<sup>273</sup>

According to the survey conveyed by the LCHR in 2016, 6 % of foreign students have experienced negative attitudes because of their real or assumed religious belief, which most often has been manifested through offensive comments in public places. Several respondents also mentioned harassment against women wearing traditional Muslim headscarves.<sup>274</sup> The intersectional dimension is important in the case of Muslim communities, especially women, because such women may face inequality and intolerance due to their gender, ethnicity, social and economic status, as well as religious beliefs which are noticeable because of their clothing.<sup>275</sup>

In the ECRI report, it is indicated that following the terrorist attacks in Europe, an increase in Islamophobic rhetoric and hate speech was also noted in Latvia. In 2015, an Islamic cultural centre was targeted with graffiti. In the context of discussions about Latvia accepting EU quota refugees, further Islamophobic comments were observed, also equating refugees to terrorist threats and targeting migrants in general.<sup>276</sup>

### 3.2.3. Gender and sexual orientation

#### 3.2.3.1. Sexual orientation

Civil society organisations met by ECRI consider LGBT persons to be one of the most vulnerable groups with regard to hate speech in Latvia. The Council of Europe's Human Rights Commissioner had previously reached the same conclusion. Monitoring of online hate speech conducted from in 2014 by the LCHR showed that sexual minorities were among the main target groups. However,

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<sup>272</sup> Kaprāns, M, Mieriņa, I, Saulītis, A. 2020. Starpkultūru stereotipi un aizspriedumi Latvijā.

[http://fsi.lu.lv/userfiles/Ethnic%20stereotypes\\_SAPC.pdf](http://fsi.lu.lv/userfiles/Ethnic%20stereotypes_SAPC.pdf)

<sup>273</sup> Kaprāns, M, Mieriņa, I, Saulītis, A. 2020. Starpkultūru stereotipi un aizspriedumi Latvijā.

[http://fsi.lu.lv/userfiles/Ethnic%20stereotypes\\_SAPC.pdf](http://fsi.lu.lv/userfiles/Ethnic%20stereotypes_SAPC.pdf)

<sup>274</sup> Latvijas Cilvēktiesību centrs. 2016. Results of foreign student and migrant survey on manifestations of intolerance in Latvia. Pieejams:

[http://cilvektiesibas.org.lv/media/attachments/10/05/2017/Student\\_survey\\_ENG2016\\_rVmHvwR.pdf](http://cilvektiesibas.org.lv/media/attachments/10/05/2017/Student_survey_ENG2016_rVmHvwR.pdf)

<sup>275</sup> EU FRA. 2020b. EU contribution to the report of the Special Rapporteur on freedom of religion or belief.

<https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Regional%20Institutions/EuropeanUnion.pdf>

<sup>276</sup> Eiropas Komisijas pret rasismu un neiecietību (ECRI) 5. ziņojums par Latviju. 2019. <https://rm.coe.int/fifth-report-on-latvia/1680934a9f>

in the legislation in Latvia, the hate crimes targeting persons due to their sexual orientation are not defined comprehensively.<sup>277</sup>

According to the study on attitudes towards the LGBTQ+I persons in Latvia conducted by the research centre SKDS in 2020, 31% of the respondents stated that homosexual persons and homosexual relationships are condemnable, 27% had no objections against homosexual persons, while another 27% condemned neither the persons, nor the relationships.<sup>278</sup>

The results of a 2020 European Union Agency for Fundamental Rights survey show that 44% of the LGBTQ+I community respondents in Latvia have experienced harassment (the concept includes offensive use of words, threats, tracking, online attacks, etc.), the highest rate among European Union countries (38% of LGBTQ+I community members on average in the EU) (FRA 2020a: 44). Meanwhile, 13% of respondents have experienced physical or sexual assault in the last 5 years (11% on average in the EU). Moreover, only 10% of respondents reported the attack to the police in the last five years (14% on average in the EU; *ibid.*, p. 40). Ilga Europe also pointed out a similar trend in the report - 29 hate crimes against LGBTQ+ individuals were reported in 2019 in “Mozaika”, most of them (17) - against homosexual men. The victims did not report the cases to police. The crimes included sexual and physical assault, blackmail and arson. In addition, the number of incidents had increased - 22 cases were reported in 2018.<sup>279</sup>

Within the framework of the European Union Agency for Fundamental Rights survey, explaining the reasons why the attacks were not reported, respondents in the EU most often indicated that they believed police involvement would not change anything, as well as showed distrust of the police, while in Latvia almost half of all respondents (47%) mentioned fear of homophobic or transphobic reaction by the police (on average in the EU – 25%) as the reason. These results should be taken into account in the development of measures to ensure that the identification and investigation processes of hate crimes are improved, especially in contact with the LGBTQ+I individuals.<sup>280</sup>

In the psychology of the collective' in Latvia of the socialist period, 'alternative' sexualities were considered unacceptable, while homosexuality was further seen as contrary to the public good in that it could not produce children and was a 'dangerous sign of individualism' and a vestige of imperial decadence.<sup>281</sup> Not only the Soviet past, but also the European future was perceived in

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<sup>277</sup> Eiropas Komisijas pret rasismu un neiecietību (ECRI) 5. ziņojums par Latviju. 2019. <https://rm.coe.int/fifth-report-on-latvia/1680934a9f>

<sup>278</sup> SKDS. 2020. Pētījums par attieksmi pret LGBTQ+ personām Latvijā. Mozaika. <https://www.dropbox.com/s/9vh64s1hnzcp9dl/2020.07.atskaiteSKDS.publ.pdf?dl=0>

<sup>279</sup> Ilga Europe. 2020. Annual Review. [https://www.ilga-europe.org/sites/default/files/2020/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf)

<sup>280</sup> EU FRA. 2020a. A long way to go for LGBTQ+I equality. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-LGBTQ+i-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-LGBTQ+i-equality-1_en.pdf)

<sup>281</sup> Mole, R. 2011. Nationality and sexuality: homophobic discourse and the 'national threat' in contemporary Latvia. *Nations and Nationalism*, 17 (3), 540–560

Latvia as a threat to the Latvian values and traditions due to the pressure and support concerning the LGBTQ+I rights. In post-Soviet Latvia, anything seen as ‘nontraditional’ and thereby ‘abnormal’ was considered to be not just alien but a threat to the continued existence of the Latvian nation, and this makes the prevention and detection of hate crimes more difficult. In case of Latvia, the essence of *Latvianness* and indisputable moral values (heterosexuality) go hand in hand, because the national perspective focuses on biological reproduction of the nation.<sup>282</sup>

The representatives of the community themselves argue in the interview that there are two reasons for not reporting a crime: when reporting a crime, their homosexual identity must be disclosed publicly and a wide range of people can learn about it, and the attack has been motivated by homophobia, but the victim does not associate himself or herself with the group. There has also been a hate crime in the second case, as its perpetrator has targeted some subjectively unfavourable characteristic against which there is prejudice in the society.

### 3.2.3.2. Gender identity

The gender of a person is one of the characteristics included in Latvian legislation in relation to the cause of social hatred or incompatibility (Article 150 of the Criminal Law), but gender identity, like sexual orientation, is not included as an aggravating circumstance or distinguished as a protected characteristic (Article 48 and Article 149.<sup>1</sup>).<sup>283</sup> The situation regarding the gender identity is partly characterised by the results of the 2020 European Union Agency for Fundamental Rights survey on LGBTQ + equality of persons outlined above. However, the survey also shows that, in the EU on average, transgender and intersex persons are more likely to indicate that they have experienced violent behaviour (trans – 48%; intersex – 42%; on average, LGBTQ+ – 38%) in the last year and violent (including sexual) attacks (trans – 17%; intersex – 22%; on average, LGBTQ+ – 11%) in the last five years.<sup>284</sup>

The 2019 Eurobarometer data on discrimination shows that Latvia has one of the highest social distance rates in Europe – 45% of the population say they would feel discomfort working with transgender people (on average EU – 26%) and 42% with intersex people (on average EU – 25%). At the same time, residents in Latvia rate discrimination against transgender and intersex persons is less frequent than in other European countries (trans: LV – 20%, average EU – 48%; intersex: LV – 17%, average EU – 38%) (European Commission 2019: 11-17). As the LCHR representative states in the interview, sexism and hate speech against women have also been observed in Latvia, in the case of journalists engaged in

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<sup>282</sup> Mole, R. 2011. Nationality and sexuality: homophobic discourse and the ‘national threat’ in contemporary Latvia. *Nations and Nationalism*, 17 (3), 540–560.

<sup>283</sup> Eiropas Komisijas pret rasismu un neiecietību (ECRI) 5. ziņojums par Latviju. 2019. <https://rm.coe.int/fifth-report-on-latvia/1680934a9f>

<sup>284</sup> EU FRA. 2020a. A long way to go for LGBTQ+I equality. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-LGBTQ+i-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-LGBTQ+i-equality-1_en.pdf)

investigative journalism. Elsewhere, hate speech is also more pronounced against women, with the threat of rape being cited more often.<sup>285</sup>

### 3.2.4. Disability

Discrimination of persons on the grounds of disability, according to statistics, is the second most common behind discrimination on the grounds of age (55 years and over) - 43% of Latvian respondents mentioned disability as a reason for discrimination in the 2015 EU Eurobarometer survey. This trend has remained stable since the 2009 measurements. Compared to other features of discrimination, it is well known on the one hand, but on the other, also affects the quality of life of persons with disabilities on the other. Disability is related not only to discrimination, but also to the risk of social exclusion – a survey commissioned by the Ombudsman in 2014 shows a high social distance indicator – attitudes towards people with disabilities in neighbours, as well as at work or in the learning environment (disruption or discomfort, whether felt or not). A survey conducted by BISS in 2020 has similar results: according to the survey, 63% of respondents would experience disorder or discomfort when working or learning with people with mental illnesses; 55% - with intellectual development disabilities. In other forms of disability, 17-23% of respondents would feel discomfort. 50% (46% in 2014) of respondents say they would feel disturbance or discomfort if people with mental illnesses lived in their neighbourhood, and 33% felt similar to people with intellectual disabilities. For other types of disability, some 8-12% of respondents would experience discomfort.

### 3.2.5. The intersectionality of characteristics and groups

The researchers in the field of discrimination have concluded that discrimination is usually displayed by combining several adverse features. In hate crime research, intersectionality contradicts the current segregated characteristic/group approach to treating hate crime. However, the new EU Anti-Racism Action Plan emphasises the need for an intersectional approach.<sup>286</sup> Hate crime laws are designed to give positive news to certain groups of victims and it was once seen as a good way for police to connect with the marginalised communities.<sup>287</sup> But the current approach does not protect all groups equally, creates “rivalry” between victim groups, and does not take into account how certain people can be representatives of several marginalised communities at the same time (such as ethnic minorities with disabilities). The current approach to hate crimes depletes victim’s experiences and potentially diverse identities.

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<sup>285</sup> Gardiner, B., Mansfield, M., Anderson, I., Holder, J., Louter, D. and Ulmanu, M. 2016. The dark side of Guardian comments. <https://www.theguardian.com/technology/2016/apr/12/the-dark-side-of-guardian-comments>

<sup>286</sup> EC. 2020. A Union of equality: EU anti-racism action plan 2020-2025. [https://ec.europa.eu/info/sites/default/files/a\\_union\\_of\\_equality\\_eu\\_action\\_plan\\_against\\_racism\\_2020\\_-\\_2025\\_en.pdf](https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-_2025_en.pdf)

<sup>287</sup> Healy J. 2019. Thinking outside the box: intersectionality as a hate crime research framework. *Papers from the British Criminology Conference: Volume 19*

The complexities of detecting hate crime are further complicated by intersecting prejudices, i.e., hate crime victims are often targeted because of more than one of their identity characteristics. For example, a perpetrator may be motivated by a dislike of Asian and Muslim people, or he or she may demonstrate hostility towards someone because that individual is both disabled and gay. In some cases, perpetrators may verbalise their demonstrations of multiple identity-based hostilities (such as where someone uses both anti-gay and transphobic expletives), However, hostility may also be expressed using terms and phrases which may or may not be related to the victim's identity. For example, the term 'paedophile' is frequently used against LGBT and disabled people, but the word is not in and of itself considered homophobic or disablist.<sup>288</sup>

It is also important to take into account the diversity in minority groups and vulnerable groups. It is not a monolithic category; people within the same group have different views. Members of the LGBTQ+ Community, for example, may be hostile to Muslim arrivals because they fear Islam will threaten them, as the anti-discrimination expert admits in an interview.

The knowledge of the most common characteristics of discrimination and bias in Latvia makes it easier to detect a hate crime. However, a discussion is needed concerning the borders where a response based on hatred and bias is perceived as freedom of expression and where - an offence to the other person and augmentation of hatred in society. Latvia has a higher tolerance level for intolerance of the groups listed above and violence in general compared to the EU average. Thus, the prevention of hate crime should be combined with raising awareness of the damaging impact of bias on society and the contribution of each member of the society to preventing hate crime, not just educating law enforcement officers.

### **3.3. Motivation of hate crime**

The motivation of hate crime is complex and links mixed prejudices to multiple causal factors, including feeling provoked, wanting to steal something, peer pressure, feeling threatened etc.<sup>289</sup>

Hate crime perpetrators can be motivated by a variety of factors - finding adrenaline (motivated by adrenaline and frenzy); protection (motivated by a desire to protect their territory); revenge (act as revenge for an alleged assault on their group); and mission (the mission of life is to eradicate "difference"). Research shows that in the virtual environment, hate crime perpetrators also have a similar motivation.<sup>290</sup>

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<sup>288</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

<sup>289</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

<sup>290</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

These factors may be influenced by **the perpetrators' perception** that certain groups create realistic and symbolic threats for them.<sup>291</sup> Threats can be related to economic stability, access to social/national resources, a sense of human security in the society and/or values and social norms. Personal insecurity concerning sexuality and identity are also important drivers of hate crime.<sup>292</sup>

Hate crimes are more likely to occur where society is structured in such a way as to advantage certain groups of persons over others (for example, white over black, male over female, heterosexual over homosexual). Systemic discrimination, typically codified into operating procedures, policies or laws, may give rise to an environment where perpetrators feel a sense of impunity.<sup>293</sup> As it was mentioned, this tolerance level is high in Latvia and can both motivate and protect a potential perpetrator.

The researchers write that perceptions of certain threats trigger certain emotional reactions, which in turn leads to certain actions. One of such emotional reactions is the feeling of disgust regarding the people who are seemingly violating basic society values.<sup>294</sup> The analysis of Latvian Internet comments regarding sexual minorities suggest that their authors experience bodily repulsion towards shameful expressions of sexuality. Shame is linked both to the "dishonourable" kind of sexual activity and to its public demonstration.<sup>295</sup> Moreover, research suggests that both homophobic and transphobic hate crime can involve a greater propensity towards physical violence, not only public expressions.<sup>296</sup>

Hate speech and hostile expressions (in the form of text, image or sounds) are based on two functions (Gagliardone et.al 2015):

- 1) to dehumanise persons belonging to a particular group;
- 2) to signal to like-minded people that they are not alone - to strengthen a sense of belonging to a group that is (seemingly) at risk. For example, according to Dzelme (2008): "fundamentally, the purpose of hate crimes is to intimidate and expose both the particular victim and the entire community of people to which the victim belongs, making it clear that they (the victims) are "different" and that they "do not belong here."".<sup>297</sup>

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<sup>291</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

<sup>292</sup> Roberts Colin, Innes M., Williams M., Tregidga J., Gadd D. 2013. Understanding who commits hate crime and why they do it. *Social Research*, Issue 38/2013

<sup>293</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

<sup>294</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

<sup>295</sup> Putniņa, A. 2007. Sexuality, masculinity and homophobia in Latvia, pieejams <http://www.mirovni-institut.si/data/tinymce/Publikacije/beyond%20the%20pink%20curtain/19%20-%20Putnina.pdf>

<sup>296</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

<sup>297</sup> Gagliardone, I., Gal, D., Alves T., Martinez G. 2015. Countering Online Hate Speech. Unesco.

### 3.3.1. The perpetrators' profile in the eye-to-eye offences

If the most common signs of hostile bias and the related groups of people can be brought out, the researchers have compiled the profiles of perpetrators. They have summarized four main characteristics of the eye-to-eye hate crimes (see Table 3).<sup>298</sup>

Table 3. *Types of hate crime perpetrators.*

Type of perpetrator	Motivations	Other causal factors can include:	Example of hate crime
<b>Thrill seeker</b>	Excitement; boredom; dislike of outgroup	Peer pressure; alcohol; machismo; male/peer bonding	A homophobic attack in a city centre by a group of young men encouraging each other to escalate violence
<b>Defensive</b>	Protecting territory or geographical 'turf' of ingroup by 'othering' newer communities	Perception of threat to ingroup's socio-economic security; socioeconomic deprivation; anger; internalised shame	Anti-immigrant or anti-Gypsy/Roma/traveller abuse directed towards individuals who are new to an area
<b>Retaliator</b>	Seeking revenge for a (perceived) attack against ingroup	Perception of threat/change to social and cultural norms	Anti-Muslim or anti-Semitic attacks and criminal damage to Mosques or Synagogues following trigger events (for example, murder of Lee Rigby; Paris Attacks)
<b>Mission</b>	Ideological/world view; desire for power	Extremist/hate group links; influenced by masculinity; socioeconomic deprivation; anger; internalised shame	Neo-Nazi organised racist violent attacks; organised marches involving physical or verbal attacks on Muslims

<sup>298</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

Source: Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

### 3.3.2. The perpetrator’s profile in online offences

There is a similar profile for perpetrators who commit offences online.<sup>299</sup> The environment of the committed offence is different, and there are more roles and degrees of involvement (see Table 4).

Table 4. *Typology of offender characteristics.*

Type	Characteristics
<b>The trawler</b>	Someone who has gone through other people’s Twitter accounts to specifically target people with a Muslim connection
<b>The apprentice</b>	A person who is fairly new to Twitter but nonetheless has begun to target people with the help of more experienced online abusers
<b>The disseminator</b>	Someone who has tweeted about and retweeted messages, pictures and documents of online hate that are specifically targeting Muslims
<b>The impersonator</b>	A person who is using a fake profile, account and images to target individuals
<b>The accessory</b>	A person who is joining in with other people’s conversations via Twitter to target vulnerable people
<b>The reactive</b>	A person who following a major incident, such as Woolwich, or issues on immigration, will begin an online campaign targeting that specific group or individual
<b>The mover</b>	Someone who regularly changes their Twitter account in order to continue targeting someone from a different profile
<b>The professional</b>	A person who has a huge following on Twitter and regardless of consequences has and will launch a major campaign of hate against an individual or group of people because they are Muslim. This person will also have multiple Twitter accounts all aimed at targeting Muslim communities

<sup>299</sup> Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

Source: Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

## **3.4. Identifying hate crimes and the obstacles thereto**

### **3.4.1. Institutional structure**

The necessity to classify and prevent hate crimes in Latvia has come from the outside, due to the international obligations. EU discrimination based on racial or ethnic origin is prohibited by the Charter of Fundamental Rights of the European Union, the Race Equality Directive and the Council Framework Decision on combating certain forms and expressions of racism and xenophobia and included in the 2020 EU Action Plan on Anti-racism 2020-2025. The policies implemented by the Member States are monitored institutionally by the ECRI, which specialises in the fight against racism and discrimination (by race, ethnic/national origin, colour, citizenship, religion, language, sexual orientation, and gender identity and gender characteristics), xenophobia, anti-Semitism and intolerance in Europe; evaluating national reports and making recommendations to Member States. At the political level, hate crimes have not been locally topical, except for the appointment of the Minister of the Interior Marija Golubeva in June 2021, who has declared preventing these crimes a political priority for the Ministry.

In Latvia, there is a lack of uniformity in the prevention of hate crimes according to jurisdiction: the State Security Service (VDD) is responsible for crimes related to Article 78, while the State Police is responsible for Article 150. However, each of these articles shows different characteristics that may cause difficulties in cases where a hate crime or hate speech is directed at the victim on the grounds of different characteristics such as ethnicity and disability. As experts admit, while the specific nature of the activity of the VDD allows the service to be well oriented and follow up on the manifestations of radicalism in society, the crimes investigated have their own specificity and have little feedback with the victims whose case is being investigated by the VDD. On the other hand, the police investigating offences related to Articles 78 and 150 of the Criminal Law have a poor understanding of the recognition of hate crimes and have no contact with the stigmatised groups in the community. Therefore, according to experts, some of the offences that would qualify as Article 78 offences do not reach the VDD. Crimes are mostly seen as isolated, individual offences.

Two NGOs, the LCHR and Mozaika, specialise in the detection of hate crimes and support of victims. The Ombudsman has also repeatedly focused on identifying hate crimes and educating law enforcement officers. According to the interview of the representative of the Ombudsman, the Ombudsman reviews individual reports and provides opinions, monitors and responds to the claims of the VDD, informs victims of the available instruments, but often proactively sends a comment to the Security Service on individual

submissions, or points to some high-risk cases, where it is necessary to follow up on comments, for example, a black partner of some female athlete.

### 3.4.2. The obstacles of detecting hate crime

Apart from the lack of the political interest, the deficiencies of a purposeful institutional structure and precise regulations mentioned above, the following reasons already addressed hinder the detection and prevention of hate crimes:

- (1) **The limited understanding of what hate crimes are, violence and discrimination on the grounds of bias.** This reason has been discussed above. It should be noted that victims themselves, such as persons belonging to the LGBTQ + community, often perceive them as the norm and do not report such cases either.
- (2) **The police in Latvia have difficulties in practically identifying and classifying certain individual attacks as hate crimes.** This is due to the distinction between offences that are harmful to society and harmful to certain groups. The police do not necessarily see such individual attacks as related to inciting hatred against specific groups (which in turn applies specifically to relationships between groups). In this sense, disseminating a hostile public discourse is easier to identify, as public statements are more likely to address the public than specific individuals, thus, they can be interpreted as a relationship between groups.<sup>300</sup>

There are different approaches to explaining hate speech in law, namely whether expressions are viewed in a social context and in its formal sense, based on a deep exploration of historical and linguistic meanings, but not in today's social context, which has actually caused the incident.<sup>301</sup> Historic meaning is most often unable to provide evidence and is not directly factually linked to today's social situation. For example, if the use of the word "žīds" ("Jew", most often used with a negative connotation) is justified by the fact that it is an acceptable word in Latvian, the defendant is protected in the legal context because it would not be possible to judge him or her for a casual reflection of the tradition. However, if the use of the word is interpreted as part of an intentional act to create tension between social or ethnic groups, the speaker could be charged.<sup>302</sup>

- (3) **Distrust regarding the third parties,** including the police, Ombudsman's Office, also "Mozaīka", is based on the lack of prior information support, as well as negative past experience.<sup>303</sup> As experts note, hate crimes are not seen as a priority, as experts note, and police leadership has no understanding of why hate crimes are dangerous, and what the impact and risks they cause not only for the individuals who have been targeted, but also in destabilizing communities and the situation in society.

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<sup>300</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>301</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>302</sup> Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.

<sup>303</sup> Zālītis, K. un Elijašs, A. 2014. Report on Homophobic and Transphobic Hate Crimes and Incidents in Latvia 2013.

(4) **Regulatory inaccuracy.** ECRI Report on Latvia (fifth monitoring cycle, 2019) refers to this. Some of the reasons for ECRI's recommendations are cultural and political. The Ombudsman has repeatedly recommended that Section 150 of the Criminal Law be amended, examining the need for “material harm” to be included. Since, in practice, hatred is not regarded as substantial harm in the context of Latvia, the application of the Section in the case of hate crimes is difficult. A similar approach to the wording of Section 78 of the Criminal Law would allow hate crimes to be better qualified. At the same time, it should be noted that this debate is not just a legal one – it also touches on the perception of hate crimes in the public as less important.

(5) Another reason for the complexity of the situation is **the line between freedom of expression and hate speech**. The most common issue is the virtual environment. In a virtual environment, hate speech is censored and the Ombudsman has received complaints of excessive censorship. Here, too, this borderline in the case of Latvia is different from the international situation, as mentioned above.

(6) **The lack of precise and easy-to-apply guidelines for police and other law enforcement agencies.** Although the guidelines for hate crime detection are written in Latvian, they are theoretical and contradictory. Experts and theoretical sources mention the following conditions:

1. In the case of a hate crime, it is crucial to collect the evidence within the first hours, identifying and registering the motive for hatred. For example, witnesses need to be polled, footage showing a motive for hatred - graffiti, flyers, utterances, tattoos of attackers confirming their affiliation with the movement should be gathered on the spot, a history of hate-motivated incidents in the area concerned should be explored. Symbols must be understood in a particular context. One also needs to know the specific days when some hate crimes can happen.
2. Availability of an easy-to-read algorithm. As an LCHR representative points out in an interview, police officers in Sweden have a pocket-sized laminated leaflet where it is listed what to pay attention to when speaking to victims, law-breakers, witnesses.

Window 3. *The algorithm of detecting a hate crime and collecting evidence.*

<div data-bbox="267 1495 760 1604" data-label="Section-Header"> <h3 style="background-color: #f4a460; padding: 5px; margin: 0;">Obtaining evidence</h3> </div> <div data-bbox="284 1627 747 1768" data-label="Image"> </div>	<p>It is crucial to collect the evidence within the first hours, identifying and registering the motive for hatred. For example, witnesses need to be polled, footage showing a motive for hatred - graffiti, flyers, utterances, symbols, the testimonies of the witnesses, a history of hate-motivated incidents in the area concerned, specific days when some hate crimes can happen. When recording evidence in contact with victims and witnesses, it is also important to assess the future threat they can potentially be exposed to:</p>
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	<p>Have you or your family faced anything similar before?</p> <p>Are you aware of similar occurrences in your surroundings?</p> <p>Are you afraid the offender will repeat the action?</p> <p>Do you know the offender?</p> <p>What effect does the offence have on you and your family? (College of Policing 2014; ACPOS 2010).</p>
<div data-bbox="245 590 743 821" style="background-color: #f4a460; padding: 10px; text-align: center;"> <p><b>Respectful, encouraging communication</b></p> </div> <div data-bbox="245 821 743 968" style="text-align: center;">  </div>	<p>In the British guidelines it is emphasised (2014, 2010), that <b>respectful treatment and successful communication play an important role in hate crime cases</b>, especially given the additional fear and emotional toll experienced by victims. It is important to be considerate when dealing with victims, taking into account their diverse needs – physical and mental abilities, language, religion, cultural and social conditions. The first communication should be peaceful, encouraging, ensuring confidentiality and privacy if necessary. It is important that the investigation process also takes into account the understanding of what happened by the victim, witnesses or others involved.</p> <p><i>Why, in your opinion, did it happen? (one should be careful not to make an impression that the victim is being blamed)</i></p> <p>or</p> <p><i>What, in your opinion, is the motive behind the incident?</i></p> <p>Source<sup>304</sup></p>

<sup>304</sup> College of Policing. 2014. Hate Crime Operational Guidance. <https://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf>

<p><b>Not blaming the victim</b></p> 	<p>If the hate crime targets the individuals on the grounds of their sexual orientation, or transgender, intersex individuals, <b>the victims should not be questioned about their sexual orientation or gender identity</b> (especially doubting it) if it is not a significant part of the evidence. If they choose to share this information, it must be handled with high confidentiality. Without the victim's permission, such information should also not be disclosed to their relatives and friends, as they may not know, and exposing it could have a significant impact on victims' and the the community's trust in the police.</p>
<p><b>Feedback</b></p> 	<p>It is <b>also important to tell the victim how the further investigation process will proceed</b>, as well as to inform them of the progress of the investigation later. The poor quality of investigation, unsuccessful communication with victims, difficulties in determining jurisdiction can increase distrust and frustration with the future work of the police, etc.</p> <p>Source<sup>305</sup></p>

<sup>305</sup> College of Policing. 2014. Hate Crime Operational Guidance. <https://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf>; HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). 2018. Understanding the difference. The initial police response to hate crime. <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/understanding-the-difference-the-initial-police-response-to-hate-crime.pdf>

## Section 4

### 4. The international standards in determining liability for hate crime and hate speech

#### 4.1. Liability for hate crime

Since, according to the internationally accepted definition of hate crime, a hate crime is a criminal offence defined by national law committed because of bias, the liability for a hate crime can only be criminal.

#### 4.2. Liability for hate speech

According to the international legal documents, the liability for hate speech can be criminal, administrative or civil.

In the United Nations Strategy and Plan of Action on Hate Speech, it is emphasised that international law does not prohibit hate speech as such, but rather incitement to discrimination, hostility and violence.<sup>306</sup>

##### 4.2.1. Criminal liability

In cases where hate speech is criminalised, international law sets the following standards. Firstly, the criminalization of hate speech should be reserved for serious cases, and proven beyond reasonable doubt.<sup>307</sup> European Commission against Racism and Intolerance also indicates that hate speech should be in certain circumstances criminalized. At the same time, one should ensure that other sanctions exist, which are less limiting, but still effective, and freedom of expression and opinion is ensured,<sup>308</sup> otherwise the sanction could entail an undue interference with freedom of expression.<sup>309</sup>

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<sup>306</sup> United Nations Strategy and Action Plan on Hate Speech, 2019.gads, pieejams angļu val.

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

<sup>307</sup> ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.septembris, 12.punkts, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

<sup>308</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 4. Un 9.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>309</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts,

As the European Court of Human Rights has pointed out, Positive obligations on the State to adopt effective measures even in the sphere of the relations of individuals between themselves. While States have a wide discretion as regards the protection of private life under Article 8 of the ECHR as regards the imposition of sanctions for infringing those rights, in cases where serious and grave acts are taken where essential aspects of private life are at stake, States are obliged to impose criminal sanctions.<sup>310</sup> In this context, the Court has acknowledged that criminal sanctions, including against the individuals responsible for the most serious expressions of hatred, inciting others to violence, could be invoked only as an ultima ratio measure. That being so, it has also held that where acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor. In that regard, the Court has likewise accepted that criminal-law measures were required with respect to direct verbal assaults and physical threats motivated by discriminatory attitudes.<sup>311</sup>

Secondly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression underscores, that in the UN Strategy and action plan it is stressed that only serious and extreme instances of incitement to hatred, which would cross the internationally defined criteria of hate speech, should be criminalized.<sup>312</sup>

That is, one should assess the context, speaker, intent, content and form, extent of the speech act, and likelihood, including imminence.<sup>313</sup> This position is in line not only with the UN but also with the views of regional human rights institutions of Europe.<sup>314</sup>

Thirdly, most international legal documents, as a precondition for criminal sanctions, require a person's intent to incite hatred, as well as a confirmation that there is a certain risk that the instigation might have resulted in the action.

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58.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>310</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 110.paragrāfs

<sup>311</sup> Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15), 111.paragrāfs

<sup>312</sup> the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (submitted in accordance with Human Rights Council resolution 16/4, A/67/357), 2012.gada 7.septembris, 47.punkts, pieejams angļu valodā <https://digitallibrary.un.org/record/735838>; United Nations Strategy and Action Plan on Hate Speech, 2019.gads, pieejams angļu val. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

<sup>313</sup> Skatīt 2.nodaļu (Rabatas Rīcības plānā, Eiropas Cilvēktiesību tiesas un Eiropas Pretrasima un neiecietības Komitejas noteiktie kritēriji)

<sup>314</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 83.paragrāfs

The European Commission against Racism and Intolerance emphasizes that the intent to cause hatred is not enough; one has to prove the possibility of consequences.<sup>315</sup> Hate speech, which contains only one element, must also be sanctioned, but not criminalized. At the same time, hate speech must be punished, as it emphasises the inadmissibility of hate speech in a democratic society.<sup>316</sup>

In addition, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>317</sup> states that the dissemination of racist and xenophobic material in computer systems shall be subject to criminal liability only if committed intentionally. At the same time, the second paragraph of Article 3 of the Additional Protocol states that the states may not impose a criminal sanction for the publication of racist and xenophobic material that does not incite discrimination to a level involving hatred or violence. At the same time, other sanctions must be imposed in this case.

At the same time, the European Commission against Racism and Intolerance considers that criminal liability is applicable in some of the most serious cases, where hate speech is expressed without the intention of inciting hatred, but which can reasonably be expected to have the consequences, namely violence, intimidation, hostility or discrimination. As the European Commission against Racism and Intolerance points out, this approach is consistent with Article 10 of the European Convention on Human Rights, since the European Court of Human Rights has found it appropriate to impose criminal sanctions for hate speech that can exacerbate a situation that is already dangerous.<sup>318</sup> This means that, in some cases, only the fact that hate speech can result in consequences or hostile behaviour is sufficient to criminalise hate speech.

In order to assess whether a hate speech is likely to have consequences, it must be held that a hate speech may lead to incitement to violence, intimidation, hostility or

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<sup>315</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 58.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>316</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 58.-59.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>317</sup> Likums "Par Konvenciju par kibernetiskajiem un Konvencijas par kibernetiskajiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti dator sistēmās", Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernetiskajiem-un-konvencijas-par-kibernetiskajiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

<sup>318</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 18-19.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

discrimination against the target group and that hate speech is expressed in a public context.<sup>319</sup>

Fourthly, in the context of the European Convention on Human Rights, although the states have discretion in the determination of penalties, they must nevertheless take into account whether there is a consensus between Member States of the Council of Europe regarding the criminal punishment of an infringement of rights.<sup>320</sup>

Fifthly, it should be borne in mind that the obligation to criminalise certain offences may be imposed by international law, as is the case in the EU. Thus, Article 3 of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law<sup>321</sup> requires EU Member States to impose a maximum criminal penalty of one to three years' imprisonment for the offences set out in the Framework Decision.

Sixthly, the criminal liability for hate speech should be clearly defined by law. The UN Committee on the Elimination of Racial Discrimination stresses that States parties should formulate restrictions on speech with sufficient precision, so that measures to monitor and combat hate speech would not be used as a pretext to infringe freedom of expression.<sup>322</sup>

The European Committee on the Elimination of Racial Discrimination emphasizes that it is necessary to ensure that offences are clearly defined and are effectively applied in practice in the light of technological developments.<sup>323</sup>

The European Court of Human Rights has also indicated that criminal liability should be formulated with sufficient precision to enable the person concerned to foresee the consequences that a given action could entail and regulate his or her conduct accordingly.<sup>324</sup>

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<sup>319</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 58.-59.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>320</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 255.-257.paragrāfs

<sup>321</sup> ES Padomes 2008.gada 28.novembra Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm, OV 328/55

<sup>322</sup> ANO Rasu diskriminācijas izsūkšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, 20.punkts, pieejams angļu val. <https://www.refworld.org/docid/53f457db4.html>

<sup>323</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 9.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>324</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08), 131.paragrāfs

## 4.2.2. Administrative or civil liability

As is apparent from international legislation, the criminalisation of hate speech can only be defined as hate speech, which reaches a serious level of danger and meets certain criteria. In this context, the European Commission against Racism and Intolerance has pointed out that criminal liability by itself is not sufficient to eliminate hate speech.<sup>325</sup>

Consequently, the states are obliged to establish administrative and/or civil liability for hate speech, both in order to effectively address hatred that is unacceptable in a democratic society and in order to ensure that restrictions on freedom of expression are proportionate.<sup>326</sup>

Accordingly, it is clear from international law that the states would be obliged to impose other types of legal liability than criminal law in cases where hate speech is expressed without the intention of causing hatred (except in situations where there are dangerous situations in society) or there is no likelihood of consequences.

It also follows from the statement provided by the European Commission against Racism and Intolerance, which stresses that the states are obliged to clarify the scope and applicability of responsibility under civil and administrative law.<sup>327</sup>

Consequently, international law requires not only criminal, but also administrative and/or civil liability for hate speech.

## 4.3. The specific aspects of liability for hate speech and hate crime

### 4.3.1. Protected characteristics

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<sup>325</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 4.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>326</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 9. un 19.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>327</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 8.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

Since the most important element of hate speech and hate crimes is bias, (hatred) directed against a particular social group, as international institutions point out, it is important to determine by legal framework which groups these are. As indicated above (Section 2), these are unchangeable characteristics of a person (group of persons) as well as unalterable statuses. However, which specific groups are particularly protected is determined by the social and historical context of each country.<sup>328</sup>

In this context, it is important to emphasise that the situation in society is constantly changing, so it is positive, on the one hand, that the list of protected characteristics (groups) is not finite in the legal framework - for example, by listing specific features and stating that protection is also provided for "other features". On the other hand, however, it is important to clearly state in the legislation the characteristics (groups) already identified as vulnerable. For example, it is clear from the international legal framework that persons should also be protected against hate speech and hate crimes on grounds of sexual orientation and gender identity.<sup>329</sup>

### 4.3.2. Rights to Compensation

There is also an obligation under international law to provide for the right to compensation in national law.

As the European Commission against Racism and Intolerance points out, the damage caused by hate speech is often moral, so the victims must be given the right to claim compensation for non-material damage. In this context, the states must ensure an appropriate legal framework in the field of civil and administrative law. Similarly, in certain cases, the right to compensation for non-material damage or restoration of reputation should also be ensured for the entire target group.<sup>330</sup> At the same time, not to restrict freedom of expression unduly, the right to compensation for non-material damage must be reserved only in the most severe cases of hate speech, i.e., where hatred is intentionally instigated or there is a reasonable risk that hostile acts may inevitably occur.<sup>331</sup>

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<sup>328</sup> Eiropas Drošības un sadarbības organizācija, *A Practical Guide on Hate Crime Laws, 2009, 38.-39.lpp.*, pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>

<sup>329</sup> Piemēram, skatīt Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendāciju CM/Rec(2022)16 par naida runas izskaušanu, pieejams angļu valodā [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955)

<sup>330</sup> Eiropas Pretrasīma un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 51.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>331</sup> Eiropas Pretrasīma un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada

Meanwhile, it is clear from EU legislation how the right to compensation for hate speech, as an expression of discrimination (for harassment in workplace and concerning the access to goods and services), must also exist in less severe cases of hate speech, i.e. also in cases where hate speech takes place in the context of administrative or civil law.<sup>332</sup>

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21.marts, 51.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>332</sup> Skatīt Padomes 2000.gada 29.jūnija Direktīvu [2000/43/EK](#), ar ko ievieš vienādas attieksmes principu pret personām neatkarīgi no rasu vai etniskās piederības; Padomes 2000.gada 27.novembra Direktīvu [2000/78/EK](#), kas nosaka kopēju sistēmu vienādei attieksmei pret nodarbinātību un profesiju; Eiropas Parlamenta un Padomes 2006.gada 5.jūlija Direktīvu [2006/54/EK](#) par tāda principa īstenošanu, kas paredz vienlīdzīgas iespējas un attieksmi pret vīriešiem un sievietēm nodarbinātības un profesijas jautājumos (pārstrādātā versija); Padomes Direktīvu [2004/113/EK](#) (2004. gada 13. decembris), ar kuru īsteno principu, kas paredz vienlīdzīgu attieksmi pret vīriešiem un sievietēm, attiecībā uz pieeju precēm un pakalpojumiem, preču piegādi un pakalpojumu sniegšanu; Eiropas Parlamenta un Padomes Direktīvu [200/41/ES](#) ( 2010. gada 7. jūlijs ) par to, kā piemērot vienlīdzīgas attieksmes principu vīriešiem un sievietēm, kas darbojas pašnodarbinātas personas statusā, un ar kuru atceļ Padomes Direktīvu [86/613/EEK](#)

## Section 5

### 5. National legislation. Problems and compliance with the requirements of international law

#### 5.1. National legislation

##### 5.1.1. Constitutional law

Taking into account that hate crime and hate speech are an expression of discrimination, the protection against it is provided by Article 91 of the Constitution of the Republic of Latvia.<sup>333</sup> It states:

*“All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”*

##### 5.1.2. Criminal law

In the field of criminal law, a regulatory enactment that determines which offences are to be considered as criminal and therefore are to be punished is the Criminal Law.<sup>334</sup> Based on the definitions of hate speech and hate crimes in international law documents, the Criminal Law contains a number of criminal offences that criminalise hate crimes and hate speech.

The criminal offences defined in Sections 71.<sup>1</sup> “Invitation to Genocide”, 74.<sup>1</sup> “Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime”, 78. “Triggering of National, Ethnic and Racial Hatred” and 150. “Incitement of Social Hatred and Enmity” correspond the definition of hate speech. On the other hand, liability for hate crimes is determined by Section 48, Paragraph 1, Clause 14 of the Criminal Law, which considers that an aggravating circumstance is present in a case when “the criminal offence was committed due to racist, national, ethnic, or religious motives or due to social hatred”.

According to the legal experts, Section 77 “Invitation to War of Aggression”, Section 79.<sup>6</sup> “Justification of Terrorism, Invitation to Terrorism and Terrorism Threats”, Section 81 “Invitation Directed against the Republic of Latvia” and Section 149.<sup>1</sup> “Violation of the Prohibition

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<sup>333</sup> Latvijas Republikas Satversme, Latvijas Vēstnesis Nr.43, 1993.gada 1.jūlijs, pieejams <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>

<sup>334</sup> Krimināllikums, Latvijas Vēstnesis Nr.199/200, 1998.gada 8.jūlijs, pieejams <https://likumi.lv/ta/id/88966-kriminallikums>

of Discrimination” should also be cited among the norms defining the responsibility for hate crime and hate speech in a wider context.<sup>335</sup>

### 5.1.3. Administrative Law

In the field of administrative law, liability for administrative violations is specified in the laws regulating the corresponding field and in the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language.<sup>336</sup>

Since, according to the definition provided in international law, only a crime based on bias is to be regarded as a hate crime, only provisions prohibiting hate speech which does not reach the corresponding level or is not punishable under the Criminal Law can be found in the area of administrative law.

Accordingly, since Section 29(7) of the Labour Law<sup>337</sup> provides for protection against discriminatory harassment, that is to say harassment against a person on the grounds of a protected characteristic, the administrative liability for violation of prohibition of differential treatment is laid down in Section 161 of the Labour Law.

Similarly, the prohibition on the use of totalitarian regimes in a public place, laid down in Section 13 of the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language, could be regarded as an expression of hate speech, a provision which is directed against the use of symbols of regimes in the context of which genocide and crimes against humanity were committed. Section 13 of the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language provides that:

*“For the use of the flags, clothing (uniforms) identifying affinity to the armed forces and the bodies (repressive authorities) for the maintenance of law and order, and also the elements of such clothing of the former U.S.S.R., former republics of the U.S.S.R. and fascist Germany the aggregate of which (pieces of clothing, accessories, reference marks, cockades, epaulettes, gear) by their appearance explicitly allows to identify the abovementioned armed forces or repressive authorities, for the use of the coat of arms and national anthem, fascist swastika, SS signs, and soviet symbols - a sickle and a hammer along with a five-pointed star - in a public place, except for cases where the purpose of the use thereof is not related to glorification of totalitarian regimes*

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<sup>335</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022.; attiecībā uz Krimināllikuma 149.<sup>1</sup> pantu skatīt Uldis Krastiņš, Valentija Liholaja, Krimināllikuma komentāri, otrā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018, 405.-408.lpp.

<sup>336</sup> Administratīvo sodu likums par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā, Latvijas Vēstnesis Nr.96, 2020.gada 20.maijs, pieejams <https://likumi.lv/ta/id/314808-administrativo-sodu-likums-par-parkapumiem-parvaldes-sabiedriskas-kartibas-un-valsts-valodas-lietosanas-joma>

<sup>337</sup> Darba likums, Latvijas Vēstnesis Nr.105, 06.07.2001, pieejams <https://likumi.lv/ta/id/26019-darba-likums>

*or acquittal of committed criminal offences, or they are used for educational, scientific, or artistic purposes, a warning or a fine of up to seventy units of fine shall be imposed on a natural person, but on a legal person - up to five hundred and eighty units of fine.”*

In addition, taking into account the military aggression of the Russian Federation in Ukraine and the associated use of the flagship symbols of military aggression in public places, on 31 March 2022 the Saeima adopted amendments to the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language,<sup>338</sup> including the general use of symbols praising military aggression and war crimes in public places. Section 13.<sup>1</sup> provides that:

*“For the use of symbols glorifying military aggression and war crimes in a public place, except for cases where the purpose of the use thereof is not related to glorification or acquittal of these crimes, a warning or a fine of up to seventy units of fine shall be imposed on a natural person, but on a legal person - up to five hundred and eighty units of fine.”*

It follows that administrative law does not provide for administrative liability for hate speech in the broadest sense, i.e., according to the definition of hate speech laid down in international law.

#### **5.1.4. Civil law**

According to the definition of hate speech in international law, the civil law sets a number of norms regarding the protection against hate speech.

Protection against offence linked to a protected characteristic is laid down in labour law, as regards access to goods and services both as a natural person and as a self-employed person.

According to Paragraphs 4 and 7 of Section 29 of the Labour Law,<sup>339</sup> every employee is protected from offence, which should be perceived as discrimination. The norms mentioned above provide that:

*“(4) Harassment of a person and instructions to discriminate against him or her shall also be deemed to be discrimination within the meaning of this Law.*

*[...]*

*(7) The harassment of a person is the subjection of a person to such action which is unwanted from the point of view of the person, which is associated with his or her belonging to a specific gender, including action of a sexual nature if the purpose or result of such action is the violation*

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<sup>338</sup> Grozījumi Administratīvo sodu likumā par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā, Latvijas Vēstnesis Nr.75A, 2022.gada 19.aprīlis, pieejams <https://likumi.lv/ta/id/331720-grozijumi-administrativo-sodu-likuma-par-parkapumiem-parvaldes-sabiedriskas-kartibas-un-valsts-valodas-lietosanas-joma>

<sup>339</sup> Darba likums, Latvijas Vēstnesis Nr.105, 06.07.2001, pieejams <https://likumi.lv/ta/id/26019-darba-likums>

*of the person's dignity and the creation of an intimidating, hostile, humiliating, degrading or offensive environment."*

The Consumer Rights Protection Law protects against harassment on the part of the seller of the goods or the service provider in relation to the protected characteristic of the consumer.<sup>340</sup> This applies only to the seller of the product and the provider of the service who is active in trade, i.e., sells the goods and provides the services within the framework of their economic activity.

Paragraphs 7 and 8 of Section 3.<sup>1</sup> of Consumer Rights Protection Law provide that:

*"(7) Offence to a person or an instruction to discriminate him or her shall be considered as discrimination as well.*

*(8) Offence shall be the exposure of a person on the basis of his sex, disability, race, or ethnic belonging to such action that is unfavourable from the point of view of this person (including action of sexual nature) the purpose or the result of which is the violation of the person's honour and the creation of an intimidating, hostile, derogatory or degrading environment."*

Meanwhile, Law on the Prohibition of Discrimination of Natural Persons - Performers of Economic Activity<sup>341</sup> provides for protection against offences related to a protected characteristic of a natural person in transactions where the parties operate outside their economic activity (for example, the sale of personal goods), as well as protects self-employed persons regarding the access of these persons to goods and services necessary for performing economic activity.

Paragraphs 3 and 4 of Section 4 of the Law on the Prohibition of Discrimination of Natural Persons - Performers of Economic Activity provides that:

*"(3) Discrimination shall also be considered to be the harassment against or intention to discriminate a person.*

*(4) Harassment is the subjection of a person due to the gender, age, religious, political or other conviction, sexual orientation, disability, race, or ethnic origin thereof to a conduct which is unwanted in the opinion of this person (including a conduct of a sexual nature), with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or degrading environment."*

The legislative regulation mentioned above was implemented in Labour Law, Consumer Rights Protection Law and the Law on the Prohibition of Discrimination of Natural Persons - Performers of Economic Activity in accordance with the EU directives.<sup>342</sup>

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<sup>340</sup> Patērētāju tiesību aizsardzības likums, Latvijas Vēstnesis Nr.104/105, 1999.gada 1.aprīlis, pieejams

<https://likumi.lv/ta/id/23309-pateretaju-tiesibu-aizsardzibas-likums>

<sup>341</sup> Fizisko personu — tiesiska darījuma dalībnieku — diskriminācijas aizlieguma likums, Latvijas Vēstnesis Nr.199, 2012.gada 19.oktobrī, pieejams <https://likumi.lv/ta/id/253547-fizisko-personu--saimnieciskas-darbibas-veiceju--diskriminācijas-aizlieguma-likums>

<sup>342</sup> Skatīt Padomes 2000.gada 29.jūnija Direktīvu [2000/43/EK](#), ar ko ievieš vienādas attieksmes principu pret personām neatkarīgi no rasu vai etniskās piederības; Padomes 2000.gada 27.novembra Direktīvu [2000/78/EK](#), kas

Latvian legal framework establishes civil liability for defamation and undermining one's dignity. According to the Ombudsman's Office, defamation is verbal harassment related to a person's actions or beliefs, while hate speech is related to the unalterable characteristics or status of a person.<sup>343</sup> Injuring one's reputations and dignity, according to Section 2352.<sup>1</sup> of Civil Law,<sup>344</sup> should be identified only in case when information, and not the opinion, is disseminated publicly.<sup>345</sup> Theoretically, hate speech can take place not only via expressing opinions, but also via disseminating untrue information; however, since Section 2352.<sup>1</sup> of the Civil Law is not aimed at protecting a person against hate speech, the application of this regulation in practice is not analysed in more detail in the current research.

Since, according to the definitions of hate crimes and hate speech laid down in international law, hate crimes are only criminal offences committed because of bias, whereas, in the wider sense, hate speech is subject to criminal law liability only, the scope of this study will examine in detail only the liability imposed in this area.

## 5.2. The problems of national legislation

### 5.2.1. The criminal offences related to hate crime and hate speech defined in the Criminal Law

In order to analyse the current legal framework, the constituent elements of offences relating to hate speech will be discussed below.

Section 71.<sup>1</sup> of the Criminal Law - "Invitation to Genocide" provides that:

*"For a person who commits public invitation to genocide, the applicable punishment is the deprivation of liberty for a period of up to eight years."*

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nosaka kopēju sistēmu vienādei attieksmei pret nodarbinātību un profesiju; Eiropas Parlamenta un Padomes 2006.gada 5.jūlija Direktīvu [2006/54/EK](#) par tāda principa īstenošanu, kas paredz vienlīdzīgas iespējas un attieksmi pret vīriešiem un sievietēm nodarbinātības un profesijas jautājumos (pārstrādātā versija); Padomes Direktīvu 2004/113/EK (2004. gada 13. decembris), ar kuru īsteno principu, kas paredz vienlīdzīgu attieksmi pret vīriešiem un sievietēm, attiecībā uz pieeju precēm un pakalpojumiem, preču piegādi un pakalpojumu sniegšanu; Eiropas Parlamenta un Padomes Direktīvu 2010/41/ES ( 2010. gada 7. jūlijs ) par to, kā piemērot vienlīdzīgas attieksmes principu vīriešiem un sievietēm, kas darbojas pašnodarbinātas personas statusā, un ar kuru atceļ Padomes Direktīvu 86/613/EEK

<sup>343</sup> Kritiņe Pakārkle (Tiesībsarga biroja Pilsonisko un politisko tiesību nodaļas juridiskā padomniece), Naida runa publiskajā telpā un ar to saistītie juridiskie izaicinājumi, Jurista Vārds Nr.25/26, 2022.gada 21.jūnijs

<sup>344</sup> Civillikums, Valdības Vēstnesis Nr.41, 1937.gada 20.februārī, pieejams <https://likumi.lv/ta/id/225418-civillikums>

<sup>345</sup> Augstākās tiesas Senāts, Goda un cieņas Civiltiesiskā aizsardzība. Tiesu prakses apkopojums (2000.-2021.gads), pieejams

[https://www.at.gov.lv/files/uploads/files/6\\_Judikatura/Tiesu\\_prakses\\_apkopojumi/2021/goda\\_un\\_cienas\\_aizsardziba-2021.docx](https://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2021/goda_un_cienas_aizsardziba-2021.docx)

The constituent elements of the criminal offence provided for in Section 71.<sup>1</sup> of the Criminal Law are the following:

**Object** – the object of the group threat is the interests of existence of separate groups of persons;

**Objective side** – actions that are directed at the invitation of other persons to genocide

**Subject** – a natural capable person who has reached 14 years of age;

**Subjective side** – intentional act with direct intent as the person is aware of the harmfulness of his or her actions;

The constituent elements of the offence are formal. It means that it is committed as the invitation to genocid is performed.<sup>346</sup>

Section 74.<sup>1</sup> “**Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime**” provides that:

*“For a person who commits public glorification of genocide, crime against humanity, crime against peace or war crime or who commits public glorification, denial, acquittal or gross trivialisation of committed genocide, crime against humanity, crime against peace or war crime, including genocide, crime against humanity, crime against peace or war crime against the Republic of Latvia and its inhabitants committed by the U.S.S.R. or Nazi Germany, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.”*

The constituent elements of the criminal offence provided for in Section 74.<sup>1</sup> of the Criminal Law are the following:

**Object** - the object of the group threat are the crimes against humanity, peace, war crimes, genocide;

**Objective side:**

1) public glorification of genocide, crimes against humanity, crimes against peace, or war crimes,

or

2) public glorification, denial, acquittal or gross trivialisation of committed genocide, crime against humanity, crime against peace or war crime, including genocide, crime against humanity, crime against peace or war crime against the Republic of Latvia and its inhabitants committed by the U.S.S.R. or Nazi Germany;

**Subject** – natural and capable person who has reached 14 years of age;

**Subjective side** – intentional act with direct intent as the person is aware of the harmfulness of his or her action.

The constituent elements of the offence are formal.<sup>347</sup>

Section 78 “**Triggering of National, Ethnic and Racial Hatred**” provides that:

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<sup>346</sup> Uldis Krastiņš, Valentija Liholaja, Krimināllikuma komentāri, otrā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018, 18.-19.lpp.

<sup>347</sup> Uldis Krastiņš, Valentija Liholaja, Krimināllikuma komentāri, otrā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018, 33.-36.lpp.

*“(1) For a person who commits acts directed towards triggering national, ethnic, racial or religious hatred or enmity, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.*

*(2) For a person who commits the same acts, if they have been committed by a group of persons or a public official, or a responsible employee of an undertaking (company) or Organisation, or if they have been committed using an automated data processing system, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.*

*(3) For committing the act provided for in Paragraph one of this Section, if it is related to violence or threats or if it is committed by an organised group, the applicable punishment is the deprivation of liberty for a period of up to ten years, with or without probationary supervision for a period of up to three years.”*

The constituent elements of the criminal offence provided for in Section 78. of the Criminal Law are the following :

**Object** – threatens the principle of equal treatment in the realisation of fundamental rights and freedoms, the human right to respect, security, physical and psychological immunity;

**Objective side** – activities in oral or written invitations or by any other means of disseminating ideas, beliefs, theories to a wide range of persons in order to incite hatred towards a person, a group of persons on the grounds of national, ethnic, racial or religious affiliation;

**Subject** – natural and capable person who has reached 14 years of age. In addition, a public official or a responsible employee in a company or organisation when the qualified constituent elements specified in Paragraph 2 are formed.

**Subjective side** – direct intent, the person is aware of the harmfulness of his or her action.

**The constituent elements of the offence are formal;** the consequences should not be assessed.<sup>348</sup>

Section 149.<sup>1</sup> “**Violation of the Prohibition of Discrimination**” provides that:

*“(1) For a person who commits discrimination due to racial, national, ethnic or religious belonging or for the violation of the prohibition of any other type of discrimination, if substantial harm has been caused thereby, the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or probationary supervision, or community service, or fine.*

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<sup>348</sup> Uldis Krastiņš, Valentija Liholaja, Krimināllikuma komentāri, otrā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018, 43.-49.lpp.

*(2) For the criminal offence provided for in Paragraph one of this Section if it has been committed by a public official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if it is committed by using an automated data processing system, or for the activities provided for in Paragraph one of this Section if they are related to torture, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.”*

The constituent elements of the criminal offence provided for in Section 149.<sup>1</sup> of the Criminal Law are the following:

**Object** – threatens the equality rights in different fields on the grounds of race, nationality, ethnicity or religious affiliation;

**Objective side** – acts of a discriminatory nature to discriminate against a person, group of persons on the grounds of national, ethnic, racial or religious affiliation;

**Subject** – natural and capable person who has reached 14 years of age. Also, a public official or a responsible employee in a company or organisation when the qualified constituent elements specified in Paragraph 2 are formed;

**Subjective side** – direct intent, the person is aware of the harmfulness of his or her action. The constituent elements of the offence are material, because the consequences need to be assessed – substantial harm.<sup>349</sup>

Section 150 “**Incitement of Social Hatred and Enmity**” provides that:

*“(1) For a person who commits an act oriented towards inciting hatred or enmity depending on the gender, age, disability of a person or any other characteristics, if substantial harm has been caused thereby, the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or probationary supervision, or community service, or fine.*

*(2) For the criminal offence provided for in Paragraph one of this Section, if it has been committed by a public official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if it is committed using an automated data processing system, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.*

*(3) For the act provided for in Paragraph one of this Section, if it is related to violence or threats, or the criminal offence provided for in Paragraph one of this Section, if it has been committed by an organised group, the applicable punishment is the deprivation of liberty for a period of up to four years or temporary deprivation of liberty, or probationary supervision, or community service, or fine.”*

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<sup>349</sup> Uldis Krastiņš, Valentija Liholaja, Krimināllikumā komentāri, otrā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018, 405.-408.lpp.

The constituent elements of the criminal offence provided for in Section 150 of the Criminal Law are the following:

**Object** – threatens the equality rights in different fields on the grounds of gender, age disability or other characteristics;

**Objective side** – activities in oral or written invitations or by any other means of disseminating ideas, beliefs, theories to a wide range of persons in order to incite hatred or enmity towards a person, a group of persons on the grounds of gender, age disability or other characteristics;

**Subject** – natural and capable person who has reached 14 years of age. Also, a public official or a responsible employee in a company or organisation when the qualified constituent elements specified in Paragraph 2 are formed

**Subjective side** – direct intent, the person is aware of the harmfulness of his or her action. The constituent elements of the offence are material, because the consequences need to be assessed – substantial harm.<sup>350</sup>

### **Aggravating circumstances**

#### **Section 48 provides that:**

(1) The following may be considered aggravating circumstances:

[...]

14) the criminal offence was committed due to racist, national, ethnic, or religious motives or due to social hatred;

According to the legal theory, finding of an aggravating circumstance in the case entails the imposition of a more severe penalty. At the same time, if the aggravating circumstance is already intended to be a characteristic of the composition of the offence, the aggravating circumstance in question is not applicable. Accordingly, the aggravating circumstances specified in Section 48, Paragraph 1, Clause 14 of the Criminal Law shall not be applicable in the case of committing the criminal offences specified in Section 78, Section 149.<sup>1 1351</sup> and also Section 150 of the Criminal Law.

## **5.2.2. Problems**

### **5.2.2.1. Distinguishing between hate crime and hate speech in the legislation**

As stated above, according to the definition of hate crimes in international law, it is a criminal offence consisting of two elements: a criminal offence established by national

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<sup>350</sup> Uldis Krastiņš, Valentija Liholaja, *Krimināllikuma komentāri, otrā daļa, otrs papildinātais izdevums*, Tiesu Nama Aģentūra, Rīga, 2018, 408.-411.lpp.

<sup>351</sup> Uldis Krastiņš, Valentija Liholaja, *Krimināllikuma komentāri, pirmā daļa, otrs papildinātais izdevums*, Tiesu Nama Aģentūra, Rīga, 2018, 212.lpp.

criminal law and a motive based on bias against a person or group of persons. Hate speech, on the other hand, contains only the second element – bias.<sup>352</sup>

In accordance with these definitions, the criminal offences defined in Sections 71.<sup>1</sup>, 74.<sup>1</sup>, 78 and 150 of the Criminal Law shall conform to a hate speech offence, while hate crimes shall be qualified in accordance with other criminal offences defined in the Criminal Law, which have been committed with a bias (hatred) motive, which is an aggravating circumstance in accordance with Section 48, Paragraph 1, Clause 14 of the Criminal Law.<sup>353</sup> However, the application of criminal offences laid down in the Criminal Law in legal practice and the views of criminal law experts regarding this issue are not uniform.

For example, the expert in criminal law Ēriks Treļš points out that in the context of the Criminal Law, one should be guided by the definition of hate crimes in the broader sense, i.e. without distinguishing between which composition of the criminal offence is targeting hate speech and which is considered a hate crime.<sup>354</sup> On the other hand, criminal law expert Professor Uldis Krastiņš cites an example in his comment on Section 78 of the Criminal Law, which essentially defines hate speech: a court judgment in which Section 78 of the Criminal Law on the infliction of light bodily harm on Roma persons was applied, because the convicted persons based their hatred on bias that Roma representatives were selling drugs.<sup>355</sup> According to the definition of hate crimes in international law, that offence should have been classified under Section 125 of the Criminal Law as intentional minor bodily harm committed under aggravating circumstances, that is to say on racist/ethnic grounds. At the same time, in the same case, two other persons were beaten by the perpetrators, as they were mistakenly considered to belong to Roma community and suffered minor injuries. Therefore, it must be concluded that, since the injuries suffered by those two persons were not sufficiently serious to be criminalised, the third paragraph of Section 78 of the Criminal Code, which provides for liability for the incitement of ethnic hatred linked to violence, would justly apply to those persons.

Criminal law expert Professor Valentija Liholaja points out the following: 'If there is a racist, national, ethnic or religious motive underlying the offence, but the purpose has not been to induce national, ethnic, racial or religious hatred or enmity, the offence shall be classified in accordance with the provision of the Criminal Law, the elements of which consists of the unlawful acts of the person, for example as a criminal offence against the

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<sup>352</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 25.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>*

<sup>353</sup> Aldis Lasmanis, Rīgas tiesas apgabala prokuratūras prokurors, Soda noteikšana krimināllietās par naida runu un naida noziegumiem, *Jurista Vārds*, Nr.25/26, 2022.gada 21.jūnijs

<sup>354</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaucējumi lietās par naida izraisīšanu, *Jurista Vārds* Nr.25/26, 21.06.2022

<sup>355</sup> Uldis Krastiņš, Valentija Liholaja, *Krimināllikuma komentāri, pirmā daļa, otrs papildinātais izdevums*, Tiesu Nama Aģentūra, Rīga, 2018, 48.lpp., atsaucoties uz Rīgas apgabaltiesas Krimināllietu tiesas kolēģijas 2009.gada 17.februāra spriedumu lietā Nr.11088236107

life, health, property interests of the person, while the offence referred to in Section 48, Paragraph 1, Clause 14 of the Criminal Law - that the offence was committed on racist, national, ethnic or religious grounds or on grounds of social hatred may be found by the court to be an aggravating circumstance and taken into account in determining the sentence.”

The professor's point of view can be accepted only partly, that is to say, it cannot be accepted that a crime based on bias (hate crime) was not committed with the aim of causing hatred or enmity against a social group.

Consequently, the views and legal practice of criminal law experts are not unambiguous as regards the distinction between hate crimes and hate speech; namely, it is considered that, for example, Section 78 of the Criminal Law may also apply to hate crimes, i.e., where the offence corresponds to another criminal offence set out in the Criminal Law and it will be committed with a motive based on bias (an aggravating circumstance specified in Section 48, Paragraph 1, Clause 14).

Perhaps the lack of consistency in the classification of hate crime and hate speech can be explained by the fact that only one judgment has been identified which applies point 14 of Paragraph 1 of Section 48 and only two criminal proceedings have been initiated between 1 January 2011 and 30 April 2021.<sup>356</sup>

At the same time, it is possible that hate crime and hate speech are committed, thus creating a common set of offences (Section 26 of the Criminal Law).<sup>357</sup> For example, in the case of desecration (overturning and damaging) of Jewish gravestones, as well as marking them with swastika, the court of first instance classified the criminal offence in accordance with Section 78 of the Criminal Law,<sup>358</sup> although in the present case, a separate criminal offence can also be detected – desecration of graves in accordance with Section 228 of the Criminal Law in aggravating circumstances because of bias (due to hatred) committed against a particular ethnic group (Section 48, Paragraph 1, Clause 14).

A clear theoretical approach to the categorisation of hate crimes and hate speech under the criminal offences elements set out in the Criminal Law is essential for the identification and punishment of hate crimes and hate speech, and therefore further discussion by law scientists is necessary in order to develop a unified theoretical approach.

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<sup>356</sup> Aldis Lasmanis, Rīgas tiesas apgabala prokuratūras prokurors, Soda noteikšana krimināllietās par naida runu un naida noziegumiem, *Jurista Vārds*, Nr.25/26, 2022.gada 21.jūnijs

<sup>357</sup> Uldis Krastiņš, Valentija Liholaja, *Krimināllikuma komentāri, pirmā daļa, otrs papildinātais izdevums*, Tiesu Nama Aģentūra, Rīga, 2018, 122.-136.lpp

<sup>358</sup> Skatīt Augstākās tiesas Senāta 2013.gada 17.oktobra spriedumu lietā Nr.11094119210

### 5.2.2.2. Different legal protections against hate speech depending on the protected characteristic, or Articles 78 and 150 of the Criminal Law

Although Sections 78 and 150 of the Criminal Law are placed in different chapters of the Criminal Law - Section 78 of the Criminal Law in Chapter IX, which regulates crimes against humanity, peace, war crimes and genocide, but Section 150 of the Criminal Law in Chapter XIV, which regulates criminal offences against fundamental rights and freedoms of a person, both Section 78 and Section 150 of the Criminal Law have the same objective side - actions in oral or written appeals or ideas spread in any other way to a wide audience the beliefs and theories, in order to induce hatred towards a person, a group of persons, depending on an unchangeable characteristic or status of the person, or, in other words, protected characteristics. Eriks Treļš also points out that “the object of the offence is also debatable in determining the elements of the sections mentioned, as it should not fall out of the overall group object”.<sup>359</sup>

Given that hate speech causes equally significant harm, regardless of whether hate speech is directed against a person or group of persons based on ethnicity or sexual orientation, there is no apparent justification why protection against hate speech is established in two separate elements of the offence.

Moreover, the imposition of protection against hate speech in two different sections, depending on the nature of the non-discrimination involved, provides for sanctions of varying severity, indicating the inconsistency of the legislature.<sup>360</sup>

An important obstacle to effective protection of all vulnerable groups against hate speech is the fact that the elements of Section 78 of the Criminal Code are formal: the consequences are not necessary for liability to be incurred as long as the elements of Section 150 are material, i.e., there is a proof of consequences or “substantial harm”. The obstacles to the application of Section 150 of the Criminal Law in practice are caused exactly by the lack of understanding by the law enforcement authorities of what constitutes “substantial harm”.<sup>361</sup>

Hate speech can also be expressed against a person or group of persons on the basis of several protected characteristics at the same time, such as for Muslim women in

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<sup>359</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022

<sup>360</sup> <sup>360</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022

<sup>361</sup> Piemēram, skatīt Augstākā tiesa, Naida runa un vārda brīvība (Tiesu prakse krimināllietās par Krimināllikuma 74.<sup>1</sup>, 78., 150.pantu), tiesu prakse 2012.gada oktobris – 2018.gada maijs), 2018, pieejams [https://www.at.gov.lv/files/uploads/files/6\\_Judikatura/Tiesu\\_prakses\\_apkopojumi/2018/Naida%20runa%20un%20Ovarda%20briviba\\_Apkopojums\\_2018\\_22\\_10\\_2018.doc](https://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2018/Naida%20runa%20un%20Ovarda%20briviba_Apkopojums_2018_22_10_2018.doc); Anhelita Kmenska, Ēriks Treļš, Naida noziegumi: Prakse un problēmas, Latvijas Cilvēktiesību Centrs, 2017, pieejams [https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV\\_brosura\\_internetam.pdf](https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV_brosura_internetam.pdf)

connection with wearing a headscarf or a face covering, where one characteristic is protected by Section 78 of the Criminal Law (religion) and the other by Section 150 (gender).<sup>362</sup> In this situation, the separate elements of the offence may create problems in practice, not only in the courts but also during the investigation of the case, given the different institutional jurisdiction of Sections 78 and 150 of the Criminal Law. As Eriks Treļš points out, “for example, if there is a comment on the Internet that “all refugees need to be destroyed!”, the matter will fall within the jurisdiction of the State Police, but the comment “all Muslim refugees need to be destroyed!” will fall within the jurisdiction of the State Security Service. Meanwhile, the comment “all black refugees need to be destroyed!” requires additional interpretation and may lead to a situation where one institution transfers the case to another without justification”.<sup>363</sup>

### 5.2.2.3. Section 149.<sup>1</sup> of the Criminal Law

The objective side of Article 149.<sup>1</sup> of the Criminal Law is very broad. It includes acts of a discriminatory nature against a person, a group of persons on the grounds of national, ethnic, racial or religious affiliation. As stated in Section 2 of the current study, discrimination is less favourable to a person or group of persons because of an unchangeable characteristic or status, therefore, discrimination can take many different forms. In this respect, it is important to point out that, in order for protection against discrimination to be effective, it is necessary to define precisely which form of expression of discrimination is punishable. Secondly, in accordance with the standards laid down in the European Convention on Human Rights, the elements of a criminal offence must be clearly defined to enable a person to predict the consequences of their activity.<sup>364</sup>

The criminal law already determines which activities are criminal offences. In the context of the prohibition of discrimination, two types of offences are to be regarded as discriminatory offences:

- 1) **hate crimes**, which are criminal offences established generally in criminal law against a person or group of persons on the ground of a protected characteristic;  
or
- 2) **hate speech**, which comprises statements made against a person or group of persons who, when reaching a certain (discriminatory) level, constitute a criminal offence.

Since the abovementioned discriminatory offences are already accordingly identified accordingly by Section 48, Paragraph 1, Clause 14 of the Criminal Law

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<sup>362</sup> Skaidrojošais memorands pie Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācijas CM/Rec(2022)16 par naida runu, pieejams angļu valodā <https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a710c9>

<sup>363</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022

<sup>364</sup> Piemēram, skatīt Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā Perincek pret Šveici (pieteikuma Nr.27510/08), 131.paragrāfs

(hate crimes) and, for example, Sections 78 and 150 of the Criminal Law (hate speech), it cannot be clearly identified in which situations and in relation to which offences Section 149.<sup>1</sup> of the Criminal Law would apply. The lack of clarity as to the content of Article 149.<sup>1</sup> of the Criminal Code is also confirmed by the fact that, according to the elements of that offence, no criminal proceedings have been initiated since 2007, when it entered into force, and there is no court judgment.

## 5.3. Compliance of the national legal framework with the requirements of international law

### 5.3.1. Protected characteristics

International law documents identify both the characteristics (groups) that should be clearly protected against hate crimes and hate speech and recognise that when deciding which features should be included in the national legal framework, the social and historical context, as well as statistics regarding which features hate crimes and hate speech occur most frequently, should be taken into account.<sup>365</sup>

The latest international law document, Recommendation CM/Rec (2022) 16 of the Committee of Ministers to member States on combating hate speech, states that the characteristics (groups) to be protected are race, colour, language, religion, citizenship (nationality), citizenship and ethnic origin, religious or other beliefs, age, disability, gender, gender identity and sexual orientation.

Given that signs of non-discrimination such as race, colour, language, religion, citizenship (nationality) and ethnic origin, religious or other beliefs overlap with each other,<sup>366</sup> Section 78 and Section 48, Paragraph 1, Clause 14 of the Criminal Law ensure protection against hate speech and hate crimes performed on the grounds of characteristics mentioned above. Similarly, Section 150 and Section 48, Paragraph 1, Clause 14 of the Criminal Law ensure protection against hate speech and hate crimes on grounds of gender, age, and disability.

The characteristics not mentioned explicitly by the Criminal Law are sexual orientation and gender identity, although the European Court of Human Rights has already stated in 2012: “The Court stresses that discrimination based on sexual orientation is as serious as discrimination based on race, ethnic origin or skin colour”.<sup>367</sup>

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<sup>365</sup> *Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 45.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>*

<sup>366</sup> Sīkāk skatīt šī pētījuma 2.nodaļu

<sup>367</sup> Eiropas Cilvēktiesību tiesa 2012.gada 9.februāra sprieduma lietā *Vejdeland un citi pret Zviedriju* (iesnieguma Nr. [1813/07](#)), 55.punkts

The need to provide clear protection against hate speech and hate crimes motivated by bias against persons on the grounds of their sexual orientation and gender identity has been pointed out by Latvian specialists,<sup>368</sup> as well as international institutions.<sup>369</sup> This is because in society the highest level of bias exists against persons with differing sexual orientations and gender identities.<sup>370</sup>

It also does not follow from the international legal framework that individuals should be more protected from hate speech and hate crimes, for example on grounds of race, ethnicity or religion, than on grounds of disability, gender or sexual orientation. As mentioned above, the states have a primary responsibility to protect those groups subjected to the highest risk of hate speech and hate crimes. It can be concluded that the Latvian legislation laid down in Articles 78 and 150 of the Criminal Law, by dividing the protected characteristics, does not comply with the standards laid down in international law.

It is also important to point out that hate crimes and hate speech often take place simultaneously because of several protected characteristics;<sup>371</sup> therefore, the formulation of different criminal offences and the imposition of sanctions for different protected characteristics can hinder the appropriate application of law and effective protection.<sup>372</sup>

### 5.3.2. A requirement for substantial harm

It follows from international law that any discrimination causes a person or group of persons non-material harm, such as even discrimination in civil relations.<sup>373</sup>

According to the legislation provided in Section 23 of the document “On the Procedures for the Coming into Force and Application of the Criminal Law”, “substantial harm” is a situation in which

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<sup>368</sup> Piemēram, skatīt Anhelita Kmenska, Ēriks Treļš, Naida noziegumi: Prakse un problēmas, Latvijas Cilvēktiesību Centrs, 2017, pieejams [https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV\\_brosura\\_internetam.pdf](https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV_brosura_internetam.pdf)

<sup>369</sup> ANO Cilvēktiesību komitejas Noslēguma piezīmes par Latvijas trešo ziņojumu, 2014.gada 11.aprīlis, pieejams <https://www.mfa.gov.lv/lv/media/3943/download>; Ekonomisko, sociālo un kultūras tiesību komitejas Noslēguma secinājumi par Latvijas Republikas otro kārtējo ziņojumu, 2021.gada 30.marts, pieejams <https://www.mfa.gov.lv/lv/media/3994/download>

<sup>370</sup> Piemēram, skatīt Anhelita Kamenska, Jekaterina Tumule, Cīņa ar naida runu internetā: Eiropas Komisijas un uzticamo ziņotāju loma, Jurista Vārds Nr.25/26, 21.06.2022

<sup>371</sup> Piemēram, skatīt Skaidrojošais memorands pie Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācijas CM/Rec(2022)16 par naida runu, pieejams angļu valodā <https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a710c9>; Eiropas Cilvēktiesību tiesas 2017.gada 28.marta spriedumu lietā *Škorjance pret Horvātiju*, pieteikuma Nr.25536/14, 55.parágrāfs

<sup>372</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022

<sup>373</sup> Piemēram, skatīt Padomes 2000.gada 29.jūnija Direktīvu [2000/43/EK](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0043), ar ko ievieš vienādas attieksmes principu pret personām neatkarīgi no rasu vai etniskās piederības

the interests protected by law have been threatened.”<sup>374</sup> In its decision of 29 September 2016 in Case No. 11816003310 determining substantial harm inflicted by the criminal offence provided for in Section 145 of the Criminal Law, the Department of Criminal Cases of the Supreme Court Senate determined that *“not every violation of the rights guaranteed by the Constitution of the Republic of Latvia shall, without assessment of the offence, be regarded as substantial harm within the meaning of Section 23 of the law “On the Procedures for the Coming into Force and Application of the Criminal Law”. Substantial harm shall be determined on the basis of evidence examined by the court, assessing the type, content of the threat to the interests, the characteristics of the person against whom the threat is directed and their attitude towards the threat to the interests in question”*.<sup>375</sup>

An examination of this court statement in the context of the protection against hate speech provided for in Section 150, and based on the fact established by international law that any form of discrimination causes non-material harm, leads to the conclusion that detecting hate speech is sufficient to constitute substantial harm. It follows that the requirement of “substantial harm” laid down in Section 150 is not logical.

### 5.3.3. Criminal liability and administrative liability for hate speech

According to international law, hate speech can only be punished under criminal law in the most severe cases, that is to say, where hate speech is deliberately expressed, and it also must be established that hate speech can lead to incitement to violence, intimidation, hostility or discrimination against the target group and that hate speech is expressed in a public context.<sup>376</sup> It must also be confirmed that the speech meets all the criteria for hate speech laid down by international law.<sup>377</sup>

At the same time, hate speech is also an expression that does not meet all these criteria, therefore, in order to ensure effective protection against hate speech, the states must

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<sup>374</sup> Par Krimināllikuma spēkā stāšanās un piemērošanas kārtību, Latvijas Vēstnesis Nr.331/332, 1998.gada 4.novembris, pieejams <https://likumi.lv/ta/id/50539-par-kriminallikuma-speka-stasanas-un-piemerosanas-kartibu>

<sup>375</sup> Augstākā tiesa, Naida runa un vārda brīvība (Tiesu prakse krimināllietās par Krimināllikuma 74.<sup>1</sup>, 78., 150.pantu), tiesu prakse 2012.gada oktobris – 2018.gada maijs), 2018, pieejams [https://www.at.gov.lv/files/uploads/files/6\\_Judikatura/Tiesu\\_prakses\\_apkopojumi/2018/Naida%20runa%20un%20varda%20briviba\\_Apkopojums\\_2018\\_22\\_10\\_2018.doc](https://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2018/Naida%20runa%20un%20varda%20briviba_Apkopojums_2018_22_10_2018.doc)

<sup>376</sup> Piemēram, Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 58.-59.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>377</sup> the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (submitted in accordance with Human Rights Council resolution 16/4, A/67/357), 2012.gada 7.septembris, 47.punkts, pieejams angļu valodā <https://digitallibrary.un.org/record/735838>; United Nations Strategy and Action Plan on Hate Speech, 2019.gads, pieejams angļu val. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

also establish administrative and civil liability for hate speech.<sup>378</sup> Civil liability could be more attributable to the right to claim compensation for non-material damage already ensured in Latvia in accordance with Section 1635 of the Civil Law<sup>379</sup>

As it is currently most difficult to prove a person's intent in practice, as well as there are problems arising from the concept of "substantial harm", which is not explicitly defined in the case law of the courts, it is not always possible to impose penalties under the Criminal Law. Meanwhile, there is no doubt that there is a very large number of hate speech cases in Latvia, especially in the Internet environment. Therefore, in order to effectively address this problem and ensure compliance with the requirements of international law, it would be necessary to establish urgent administrative responsibility for hate speech in Latvia, because the Law in Administrative Liability<sup>380</sup> does not provide for the assessment of a person's mental attitude to an administrative violation.<sup>381</sup>

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<sup>378</sup> Piemēram, skatīt Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācijas CM/Rec(2022)16 par naida runu; Piemēram, Eiropas Pretrāsima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 8.-9.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>379</sup> Augstākās tiesas Senāts, Goda un cieņas Civiltiesiskā aizsardzība. Tiesu prakses apkopojums (2000.-2021.gads), pieejams [https://www.at.gov.lv/files/uploads/files/6\\_Judikatura/Tiesu\\_prakses\\_apkopojumi/2021/goda\\_un\\_cienas\\_aizsardziba-2021.docx](https://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2021/goda_un_cienas_aizsardziba-2021.docx)

<sup>380</sup> Administratīvās atbildības likums, Latvijas Vēstnesis Nr.225, 2018.gada 14.novembris, pieejams <https://likumi.lv/ta/id/303007-administrativas-atbildibas-likums>

<sup>381</sup> Uldis Zemzars, Jolanta Laura, Valentija Liholaja, Andrejs Judins, Edvīns Danovskis, Jānis Rozenbergs, Ērika GribonikaHuligānisms internetā: vai vārda brīvībai ir robežas, Jurista Vārds Nr.45, 202.gada 10.nomvebris, pieejams <https://juristavards.lv/doc/277529-huliganisms-interneta-vai-varda-brivibai-ir-robezas/>

## Section 6

### 6. Detecting hate crimes and hate speech in practice

#### 6.1. Detecting and investigating hate crimes and hate speech in practice in Latvia

##### 6.1.1. Institutional competence in case of hate crimes and hate speech

According to Section 387 (1) of the Criminal Procedure Law<sup>382</sup>, State Police investigate any criminal offence except those within the competence of the Internal Security Bureau of the Ministry of the Interior. Similarly, according to Section 387, Paragraph 2 of the Criminal Procedure Law, the State Police does not have competence to investigate such criminal offences that have been committed in the field of state security. The State Security Service is investigating them.

Respectively, State Security Service has competence to investigate the criminal offences specified in Section 71.<sup>1</sup> “Invitation to Genocide”, Section 74.<sup>1</sup> “Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime”, Section 78 “Triggering of National, Ethnic and Racial Hatred”, while the State Police has competence to investigate the criminal offences specified in Section 150 of the Criminal Law “Incitement of Social Hatred and Enmity”. Similarly, the State Police is primarily competent to investigate hate crimes, as this institution has competence to investigate the most typical hate crimes such as homicide (Chapter XII of the Criminal Law), criminal offences against health of a person (Chapter XIII of the Criminal Law), criminal offences against property (Chapter XVIII of the Criminal Law).

##### 6.1.2. Statistics regarding hate crimes and hate speech

###### 6.1.2.1. Written applications regarding hate crimes

According to the information provided between 2016 and 2020 there, the State Police as for June 2021 registered 121 written applications registered by the State Police<sup>383</sup>, including 16 in 2016, 14 in 2017, 22 in 2018, 15 in 2019 and 54 in 2020.

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<sup>382</sup> Kriminālprocesa likums, Latvijas Vēstnesis Nr.74, 2005.gada 11.maijs, pieejams <https://likumi.lv/ta/id/107820-kriminalprocesa-likums>

<sup>383</sup> Valsts policijā netiek apkopota statistikā informācija par saņemtiem iesniegumiem saistībā ar diskriminācijas aizlieguma pārkāpšanu un sociālā naida un nesaticības izraisīšanu, kā arī par noziedzīgiem nodarījumiem pēc naida (rasistiska, homofobiska u.tml.) motīva, līdz ar to statistiskā informācija iespējams ir nepilnīga.

**53 or 43,80%** out of **121** applications submitted are related to the incitement of hatred and enmity on the grounds of sexual orientation. **47 or 38, 84%** – to the incitement of hatred and enmity on the grounds of national or ethnic origin. **1 or 0, 83%** - to the violation of non-discrimination on the grounds of disability. **1 or 0, 83%** - to the incitement of hatred and enmity on the grounds of gender. **1 or 0, 83%** - to the incitement of hatred and enmity on the grounds of religious affiliation. **18 or 14,88%** - to the violation of non-discrimination or the incitement of hatred and enmity on the grounds of the affiliation to some social group or other characteristics (illegal immigrants, refugees, the representatives of certain professions, political parties etc.).

#### **6.1.2.1.1. Applicants**

In **110** cases the applicants are natural persons, including **51** men aged between 21 and 85 years (**46** applications are related to the incitement of hatred and enmity on the grounds of sexual orientation were received from one person, a man born in 1991) and **17** women aged between 20 and 67 years, in **4** cases – legal persons. In **7** cases the incidents were registered on the basis of reports from State Police and Riga Municipal Police officials upon conducting online monitoring on websites in Latvian, as well as on online social network sites (Facebook.com, Draugiem.lv, Twitter.com etc.).

#### **6.1.2.1.2. The ways of receiving the application**

From the applications registered by the State Police (121), **45** applications were received electronically, including **36** which were submitted by using the Portal of State Administration Services latvija.lv, **9** – by signing the them electronically with the secure electronic signature, **4** applications were received as the applicant contacted the State Police telephonically, while in **72** cases the way of receiving the application is unknown (i.e., whether it was submitted in person or sent by post).

According to Section 4(1) of the Law on Submissions and Section 387(1) of the Criminal Procedure Law, **8** applications were received from State Security Service, **one** – from the Ombudsman of the Republic of Latvia, **one** – from the Defence, Internal Affairs and Corruption Prevention Committee of the Saeima of the Republic of Latvia.

#### **6.1.2.1.3. The type and place of expressing offence**

Upon examining the applications registered by the State Police which, possibly, are related to the incitement of social hatred and enmity or violation of non-discrimination, it can be concluded that in most of the cases the way of expressing the offence is a verbal offence expressed in written form in the social media (Facebook.com, Twitter.com, Draugiem.lv) and Internet sites (news portals – tvnet.lv, delfi.lv, diena.lv, the portal skaties.lv, kasjauns.lv etc.) - **97 or 80,17%**, less often – offences expressed in written form placed on a wall of a building, a switchboard or via placing an advertisement - **3 or 2,48%**, an orally expressed offence - **17 or 14,05%**, including **one** case of offence at school, **2** – at home, **2** – at a cafeteria, **one** – at work, **7** – in the street, **one** – during a telephone call, **one** – on *Latvijas Radio 1*, **2** – on *Latvijas Televīzija*, the violation

of non-discrimination– in **4 or 3,31%** of cases, including **one** – at a preschool institution, **one** – on public transport, **one** – at work, **one** – in court.

#### **Persons who, possibly, performed the violation of non-discrimination and incitement of social hatred and enmity**

In most of the cases, the possible perpetrators are natural persons, including **52** men aged between 19 and 79 years and **10** women aged between 28 and 78 gadiem, in **7** gadījumos – legal persons. In **52** cases, the perpetrator was not identified.

##### **6.1.2.1.4. The further progress of the applications**

In **86** cases (**71, 07%**) decision has been taken to refuse to commence criminal proceedings, including **57** cases where Section 377, Point 2 of the Criminal Procedure Law was applied - the committed offence does not constitute a criminal offence, and in **29** cases, Section 377, Point 1 was applied– a criminal offence has not taken place, in **22 or 18,18%** of the cases the criminal procedure was initiated. In **2** cases (**1, 65%**) gadījumos, a procedure concerning administrative violation was initiated.

**6 or 4,96%** of the applications were sent for viewing to the State Security Service according to Section 4, Paragraph 1 of the Law on Submissions (approved on 27 September 2007) and Section 387, Paragraph 2 of the Criminal Procedure Law, **one** – to Riga City Council according to Section 4, Paragraph 1 of the Law on Submissions.

There is no information regarding the further progress of one application.

##### **6.1.2.1.5. The motives for refusing to initiate a criminal procedure**

86 decisions refusing to initiate criminal proceedings were considered. In **26** cases, the grounds for decisions refusing to initiate criminal proceedings cannot be clarified because they were made in the form of a resolution.

In several decisions, explanatory statements were received from individuals who allegedly violated the prohibition of discrimination or initiated social hatred and enmity. These persons explain that they will not make such sharp expressions in the future and that there was no intention of making hate speech other than to express their views, wishing to speak out against deformity and never called for violence and never turned against any particular person or social group; wrote the comment on their own initiative, not acting in an organised group; the comment was written in rage, without considering the consequences of such actions; there was a wish to express the view that it was unacceptable for gay people to discuss the issue of children in public, after which the perpetrator deleted the comment, realizing that the action was reckless; the perpetrator expressed disgust with a certain group of individuals as a Christian in the comment, reflecting what the Bible said about the representatives of the group; there was no

personal hatred and intention to invite the nation to deal with individuals of unconventional sexual orientation, the comments were written in an outpouring of emotion, which is deeply regretted; according to the Biblical opinion of the person, such people should not stand out too much and bring out their immoral behaviour in society, but by this comment the person did not wish to offend the feelings of any person or to incite enmity and hatred on the grounds of the orientation of the person, there was no such direct intention; the person unwittingly expressed opinion and posted a comment, thinking there was freedom of speech in Latvia; the comment was published due to negligence, without reading the text fully and without noticing a sentence calling for the abuse of police officers, and it was deleted as soon as it was found that the publication contained such a call; the writing was thought to be a joke, while pointing out that the writing was regretted, etc.

Several decisions to refuse to initiate criminal proceedings have also been accompanied by expert opinion, including the opinion of Latvian Language Agency on the comment *Man ļoti nepatīk cilvēki, kuri mēģina kopoties ar savu dzimumu. (...) Jūs, piderasi, nevajag dirst par gēniem. Ja tev, vecīt, patīk mazi puikas, tad ej ārstēties. Ja tas nepalīdz, tad nošaujies. Ja tiksī manos nagos, es Tevi pazemošu un izmetīšu no Latvijas)* - (...) The semantic analysis of lexemes and word combinations shows that the text mainly expresses dislike, contempt and hatred towards homosexuals, shows signs of hate speech. (...) the text is characterised by verbal aggression. (...) the post on the social network site Twitter.com is undoubtedly a person's point of view on the subject. Its content is disapproving, hostile, it also makes threats. The text expresses intolerance, even hatred towards the minority, the homosexual community of the society, but the public is not deliberately incited to violence and hostile behaviour (the addressee of the text is a specific person). Meanwhile, another decision refusing to initiate criminal proceedings made in the form of a resolution is accompanied by a report stating that a survey was carried out in the place of the incident (a discriminatory German inscription was found on the wall of a building in Riga) and that there were no cameras directed at the scene and no information useful for the investigation was found.

In most cases, the evaluation of the material concluded that no evidence was obtained which would make it possible to discern the elements of the criminal offence provided for in Section 150 of the Criminal Law, there is no indication that the comment posted by the person caused substantial harm or was done by a public official or a responsible employee of a company or organisation, or a group of persons, or if it was done using an automated data processing system; (the person) has not written such a comment as to cause significant harm, thus it must be concluded that in this particular case all the elements of criminal offence provided for in Section 150, Paragraph 2 of the Criminal Law are not visible; the characteristics of Section 150, Paragraph 3 of the Criminal Law are not visible in the activities of (the person), because the subjective attitude and motivation of a person in performing such activities is important for determining the elements of a criminal offence in cases regarding "hate crimes"; formally, in the present case, the (person's) activities show signs of the offence for which liability is provided for

in Section 150 of the Criminal Law; however, given that the person has died, a decision has been taken to refuse to initiate criminal proceedings, etc.

In several cases, it has been established during the inspection that the residence address of persons who made entries on social networking sites or websites is outside the Republic of Latvia (United Kingdom, Ireland, United States of America, Russian Federation, etc.), which has led to the conclusion that the facts showing that the alleged criminal offence took place in the territory of Latvia were not obtained and that there are no grounds for initiating criminal proceedings, or therefore it is not possible to ascertain the opinion of the person and the reasons for committing hate speech, so that the elements of the criminal offence provided for in Section 150 of the Criminal Law cannot be objectively established.

It has been repeatedly indicated that Section 99 of the Constitution of the Republic of Latvia stipulates that everyone has the right to freedom of thought, conscience and religion, thus the person cannot be criminally prosecuted for a personal conviction; Section 100 of the Constitution of the Republic of Latvia provides that Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. In order to apply a provision of the Criminal Law, it is always necessary to prove the guilt of the person and to translate any doubt to the benefit of the person accused. Paragraph 3 of Section 19 of the Criminal Procedure Law states that all reasonable doubts regarding guilt which cannot be eliminated shall be evaluated as beneficial for the person who has the right to defence.

### **6.1.2.2. Offences recorded in the country in the field of hate speech and hate crime**

According to the information provided by the State Police, in the time period between 2016 and 2020, the following number of criminal offences was registered in Latvia:

**Within the jurisdiction of State Security Service:**

Section 71.<sup>1</sup> "Invitation to Genocide" – 1 (in 2020).

Section 74.<sup>1</sup> "Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime" – 2 (in 2018), 2 (in 2019), 1 (in 2020).

Section 78 "Triggering of National, Ethnic and Racial Hatred" – 7 (in 2016), 1 (in 2017), 2 (in 2018), 2 (in 2019), 1 (in 2020).

**Within the jurisdiction of State Police:**

Section 149.<sup>1</sup> "Violation of the Prohibition of Discrimination" - 1 (in 2016).<sup>384</sup>

Section 150 "Incitement of Social Hatred and Enmity" – 3 (in 2016), 3 (in 2017), 0 (in 2018), 1 (in 2019), 10 (in 2020).

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<sup>384</sup> Lieta kvalificēta saskaņā ar diviem Krimināllikuma pantiem, t.sk., 78.panta otro daļu.

No criminal offence committed in aggravating circumstances specified in Section 48, Paragraph 1, and Clause 14 of the Criminal Law was registered in the database of the Ministry of the Interior throughout the period under consideration.

### **6.1.2.3. Offences recorded in the country concerning hate speech**

Section 74.<sup>1</sup> “Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime” – 2 (in 2018), 2 (in 2019), 1 (in 2020).

Section 78 “Triggering of National, Ethnic and Racial Hatred” – 7 (in 2016), 2 (in 2017), 6 (in 2018), 5 (in 2019), 3 (in 2020), 3 (within the first 4 months of 2021).

Section 149.<sup>1</sup> “Violation of the Prohibition of Discrimination” - 1 (in 2016).<sup>385</sup>

Section 150 “Incitement of Social Hatred and Enmity” – 3 (in 2016), 3 (in 2017), 0 (in 2018), 3 (in 2019), 9 (in 2020), 1 (within the first 4 months of 2021).

## **6.1.3. The problems of detecting and investigating hate crimes and hate speech in practice in Latvia**

### **6.1.3.1. Institutional jurisdiction**

As the State Police indicates in the material prepared in the context of the current study, it would be appropriate, to merge Sections 78 and 150 of the Criminal Law, including the newly created Section in Chapter X of the Criminal Law “Crimes against the State”, or in some other chapter according to the legislature. Inciting hatred and enmity against one of the groups living in the country is a threat to national security. As a result, investigating these types of offences would fall within the competence of the VDD, which would be the most effective solution given the experience of the VDD in this area and the resources available. In addition, the VDD monitors websites concerning hate speech. In order to identify hate crimes that are within the jurisdiction of the State Police, to distinguish between those that are competent to the VDD, and to investigate them effectively, administrating requires considerable time and financial resources for personnel training, development of guidelines and methodological materials.

This solution is recognized as optimal by a number of experts, as they agree that the institutional division depending on which protected groups are targeted by hate speech is problematic in practice,<sup>386</sup> because, among other things, there is also the possibility of “bureaucratic football” between institutions in such a situation.<sup>387</sup>

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<sup>385</sup> Lieta kvalificēta saskaņā ar diviem Krimināllikuma pantiem, t.sk., 78.panta otro daļu.

<sup>386</sup> Piemēram, skatīt Ēriks Treļs (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022; Armands Onzuls, Sociālais naidis digitālajā laikmetā – vai protam ar to cīnīties, , Jurista Vārds Nr.25/26, 21.06.2022

<sup>387</sup> Armands Onzuls, Sociālais naidis digitālajā laikmetā – vai protam ar to cīnīties, , Jurista Vārds Nr.25/26, 21.06.2022

At the same time, concerns are raised about the potential overload of the State Security Service in the event that all hate speech cases and hate crimes are handed over to the institution. It is stated: *“Taking the threat into account, the offences under Section 74.<sup>1</sup> and Section 78 of the Criminal Law shall be investigated by the State Security Service. The author reckons that such a jurisdiction is justified because in most cases the persons committing these crimes are under the surveyance of the State Security Service, since the responsibility of this investigating authority is to ensure national security. It should be noted that there is a view that the State Security Service should also investigate crimes classified under Section 149.<sup>1</sup> and Section 150 of the Criminal Law, which is also hate speech. However, this would unnecessarily waste the resources of the State Security Service, which primarily investigates offences whose nature is specifically related to the investigating authority concerned. The investigation would therefore be slower and would increase the risk of application of Section 49.<sup>1</sup> of the Criminal Law, i.e., in the event of an overload of the investigating authority, the penalty could be imposed as the court finds that the right to have the criminal proceedings concluded within a reasonable time has not been respected. In addition, Sections 149.<sup>1</sup> and 150 of the Criminal Law are contained in Chapter 14 of the Criminal Law, where the object of threat to a group is the freedom, honour and dignity of a person, which is not directly related to the specific nature of the activities of the State Security Service.”*<sup>388</sup>

Nevertheless, in view of the fact that Sections 78 and 150 of the Criminal Law should be merged, if only for the purpose of ensuring effective judicial protection against hate speech in accordance with the requirements of international law.<sup>389</sup>

### 6.1.3.2. Detection and investigation

Both international institutions and the human rights organisations <sup>390</sup> and institutions in Latvia<sup>391</sup> are concerned about the effectiveness of detection and investigation of hate crimes and hate speech. The UN Human Rights Committee states in its final remarks on Latvia's third report that “allegations of insufficient documentation, surveillance, investigation and trial of hate crimes are making the Committee concerned”.<sup>392</sup> Similarly, the UN Committee on the Elimination of Racial Discrimination claimed in 2018 that “the Committee is concerned that unofficial data shows a higher number of hate crimes and

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<sup>388</sup> Aldis Lasmanis, Rīgas tiesas apgabala prokuratūras prokurors, Soda noteikšana krimināllietās par naida runu un naida noziegumiem, Jurista Vārds, Nr.25/26, 2022.gada 21.jūnijs

<sup>389</sup> Sīkāk skatīt pētījuma 5.nodaļu

<sup>390</sup> Piemēram, skatīt ; Anhelita Kmenska, Ēriks Treļs, Naida noziegumi: Prakse un problēmas, Latvijas Cilvēktiesību Centrs, 2017, pieejams [https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV\\_brosura\\_internetam.pdf](https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV_brosura_internetam.pdf)

<sup>391</sup> Piemēram, skatīt Tiesībsargs: Naida noziegumiem jāpievērš pastiprināta uzmanība, pieejams <https://www.tiesibsargs.lv/news/tiesibsargs-naida-noziegumiem-japievers-pastiprinata-uzmaniba/>

<sup>392</sup> ANO Cilvēktiesību komitejas Noslēguma piezīmes par Latvijas trešo ziņojumu, 2014.gada 11.aprīlis, pieejams <https://www.mfa.gov.lv/lv/media/3943/download>

hate speech than is officially reported, and that victims of hate crimes are reluctant to report the crime to the authorities.”<sup>393</sup>

As is apparent from the statistics provided by the State Police, there are essentially no recorded hate crimes, that is to say, offences in which aggravating circumstances would be identified under Section 48, Paragraph 1, Clause 14 of the Criminal Law, although, according to the prosecution, such an aggravating circumstance was found in 2 criminal proceedings between 1 January 2011 and the 30 April 2021.<sup>394</sup> At the same time, one judgment has been identified addressing the issue of the application of Section 48, Paragraph 1, and Clause 14 of the Criminal Law.<sup>395</sup>

According to statistics provided by the State Police, 121 applications concerning hate speech have been registered between 2016 and 2020, while decisions have been made in 86 cases to refuse to initiate criminal proceedings. Most of those decisions cite the absence of “substantial harm” referred to in Section 150 of the Criminal Law as grounds for refusing to initiate criminal proceedings. Proving the intent is also often problematic.<sup>396</sup> According to Armands Onzuls, a lawyer and representative of the interests of the group defended by the non-governmental organisation “Mozaīka”, it is often apparent from the decisions of the State Police that the requirement of “substantial harm” and determination of intent laid down in Section 150 of the Criminal Law is often a pretext for refusing to initiate criminal proceedings.<sup>397</sup> Actually, it corresponds to the overall picture, which can be deduced from the statistics.

According to international institutions, successful fight against hate speech also often depends on the effective application of the legal framework, which is only possible if there is a good cooperation between the law enforcement authorities and the employees are trained accordingly.<sup>398</sup> Consequently, the primary focus in Latvia should be on the training of specialists, including when examining the issue of the transfer of hate crimes and hate speech cases to a specialized department of the State Police.

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<sup>393</sup> ANO Rasu diskriminācijas izskaušanas komiteja Noslēguma secinājumi par apvienoto sesto līdz divpadsmito Latvijas kārtējo ziņojumu, 2018.gada 25.septembris, pieejams <https://www.mfa.gov.lv/lv/media/3957/download>

<sup>394</sup> Aldis Lasmanis, Rīgas tiesas apgabala prokuratūras prokurors, Soda noteikšana krimināllietās par naida runu un naida noziegumiem, Jurista Vārds, Nr.25/26, 2022.gada 21.jūnijs

<sup>395</sup> Rīgas rajona tiesas 2015.gada 12.marta spriedums lietā Lieta Nr.11353037112, pieejams <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/218433.pdf>

<sup>396</sup> Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022

<sup>397</sup> Armands Onzuls, Sociālais naidis digitālajā laikmetā – vai protam ar to cīnīties, Jurista Vārds Nr.25/26, 21.06.2022

<sup>398</sup> Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts, 58.lpp., pieejams angļu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

## 6.2. Hate crimes and hate speech in the case-law of Latvian Courts

### 6.2.1 Case-law on hate crimes

Only one judgment was identified in the anonymous database of court decisions in which the court has considered the issue regarding the application of the aggravating circumstance laid down in Section 48, Paragraph 1, and Clause 14 of the Criminal Law. In this context, the court judgement was based on the following:

Unlike the prosecutor, the court does not recognise as an aggravating circumstance the fact that the offence was committed on racist grounds. Section 48, Paragraph 1, Clause 14 of the Criminal Law provides that an aggravating circumstance is to be regarded as such if the offence was committed on racist, national, ethnic or religious grounds (in the current version of the Law), whereas, at the time when the offence was committed, on 14 September 2012, Section 48, Paragraph 1, Clause 14 of the Criminal Law provided that an aggravating circumstance is to be regarded as such if the offence was committed on racist grounds. *Racism, racist* means an ideology and politics based on the notion that human race is already physically and mentally unequal by nature, one race is superior to others, and therefore people of “higher” race are called upon to rule the people of “lower” race (<http://www.tezaurs.lv/sv/?w=racism>). Meanwhile, *race* denotes a group of historical range people who share their origins and share, within certain territorial boundaries, the innate morphological and physical characteristics (such as skin, eye and hair colour, head shape) “(<http://www.tezaurs.lv/sv/?w=race>). In the case examined, the court concludes from the evidence that the accused had shown disgust concerning the accused as the Muslim. The Court notes that the concept of Muslim does not refer to division according to race, but rather to religious affiliation, i.e. a religious difference. In view of the fact that, at the time when the offence was committed, religious grounds were not intended to constitute an aggravating circumstance and in accordance with the principle of goodwill laid down in Section 5 of the Criminal Law, the court finds that there is only one aggravating circumstance – the accused having been under alcohol intoxication.”<sup>399</sup>

In this judgment, the Court was strictly guided by the literal interpretation of the legislation, without taking into account the fact that such characteristics as race, ethnicity, nationality and religion most often overlap.<sup>400</sup> Additionally, in order to clarify the meaning of the term “race”, one should primarily use the sources of law and not the general dictionaries.

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<sup>399</sup> Rīgas rajona tiesas 2015.gada 12.marta spriedums lietā Lieta Nr.11353037112, pieejams <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/218433.pdf>

<sup>400</sup> Sīkāk skatīt pētījuma 2.nodaļu.

## 6.2.2. Case-law on hate speech

According to the information identified in the study, between 2011 and 2021, 3 convictions have been made for the criminal offence specified in Section 74.<sup>1</sup> of the Criminal Law, 41 convictions for Section 78 and 5 convictions for Section 150. Most of these cases were settled by agreement in court.

No judgment was given in concerning the criminal offence laid down in Section 149.<sup>1</sup> of the Criminal Law.

### 6.2.2.1. The problems of detecting hate speech

On reading the available hate speech judgments, it can be concluded that in no judgment did the Court analyse the circumstances of the case in the light of all the criteria for classifying hate speech, namely the content of the speech, the political, social context at the time of the speech, the intention, the role and status of the speaker in society, the manner in which the speech was distributed, its dissemination, the likelihood of consequences.<sup>401</sup>

Actually, the obligation to rely on the criteria for classifying hate speech laid down in international law was pointed out by the Supreme Court in its judgment of 28 March 2018 in Case 11840001413

*'[14] Meanwhile, the subjective side of the offence provided for in Section 78 of the Criminal Law consists of a direct intention. In its recommendations, the UN Committee on the Elimination of Racial Discrimination has stressed that the determination of the subjective side of the criminal offence provided for in Section 78 of the Criminal Law must not be limited to a hearing of the suspect's opinion. In cases in which the objective side of the criminal offence provided for in Section 78 of the Criminal Law is connected only in the form of hate speech, several factors may be relevant for the assessment of a person's intent. For example, a neutral reader would assess an assessment of the content of expressions taken as a whole, and not only viewed in isolation, the context in which expressions are expressed as the contested expressions. The Court may base its findings on an overall assessment of the wording of the comment, the expert opinion attached to the file.*

*[15] Although the status of the recommendations of the institution mentioned above is not legally binding, the regulation contained therein should be recognised as a source of*

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<sup>401</sup> Piemēram, skatīt Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācijas CM/Rec(2022)16 par naida runu; the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (submitted in accordance with Human Rights Council resolution 16/4, A/67/357), 2012.gada 7.septembris, 47.punkts, pieejams angļu valodā <https://digitallibrary.un.org/record/735838>; United Nations Strategy and Action Plan on Hate Speech, 2019.gads, pieejams angļu val. <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

*a highly recommendatory but at the same time sufficiently authoritative character, suggesting that the optimal model of action be chosen to address the particular problem. (Paragraph 16 of the judgment of the Constitutional Court of 14 September 2005 in Case No. 2005-02-0106, Paragraph 22 of the judgment of 6 June 2006 in Case No. 2005-25-01). Again, in this particular case, the recommendations of the Committee should be used in a more complete assessment of one of the constituent elements of the offence, i.e. the subjective side. The Supreme Court finds that the Court of Appeal failed to take account of what was stated in the recommendations of the Committee. The Supreme Court claims that the content of the utterances is one of the focal points in the legal motives and is an essential element in provoking hatred or enmity. The analysis of the content may include the determination of the provocativeness and directness of the expression, as well as an assessment of the form of the expression, the style of the arguments.”*

Overall, the following issues have been identified in the judgments of Latvian courts in hate speech cases.

Regarding the relationship between hate speech and freedom of expression, for a long period, and claim emerged in court judgments that hate speech always goes beyond the boundaries of the freedom of expression.

Riga District Court concluded in its judgment of 20 February 2018 in Case No. 11840002515: *“[...] is generally seen as deliberately aimed at inciting racial hatred and enmity; go outside the scope and form of the Constitution of the Republic of Latvia in Section 100, Article 10 of the European Convention on Human Rights of 4 November 1950 and Article 19(1) and (2) of the United Nations International Covenant on Civil and Political Rights of 16 December 1966 provides for the right of citizens and political persons to freedom of opinion and expression, freedom to seek, receive and disseminate all types of information and ideas, regardless of the boundaries, verbally, in writing, in print, or in forms of artistic expression, or by any other means of information of their choice, since they spread views aimed at inciting racial, national and social hatred and enmity [...]”.*

This statement, which applies not to all hate speech cases but only to the most severe ones, was clarified by the Supreme Court judgment of 28 March 2018 in Case No. 11840001413:

*“[16] The Court of Appeal has rightly indicated in the ruling that the freedom of expression guaranteed in Section 100 of the Constitution of the Republic of Latvia is not absolute. At the same time, the Court of Appeal has not substantiated its assessment of the circumstances established in the case, it agrees with the opinion expressed by /pers. F/ that the defendant's comment goes beyond the scope and form of Section 100 of the Constitution of the Republic of Latvia, the Convention on Human Rights as defined in Article 10 and Article 19 of the UN International Covenant on Civil and Political Rights. Article 17 of the Convention on Human Rights provides that nothing in this Convention may be interpreted as the right of any state, group or person to engage in any activity or to take any action aimed at eliminating or restricting any of the rights and freedoms*

*referred to herein to a greater extent than that provided for in this Convention. On the other hand, the European Court of Human Rights has held that the purpose of Article 17 of the Convention on Human Rights and Fundamental Freedoms is to make it impossible for individuals to use rights to disseminate ideas contrary to the text and spirit of the Convention. (Judgment of the European Court of Human Rights of 13 December 2005 in "Witzsch v. Germany", application No. 7485/03). On the basis of Article 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has determined in a number of cases which acts are not protected by Article 10 of the Convention, such as the denial of the Holocaust. An examination of the case-law of the European Court of Human Rights leads to the conclusion that severe, intense and widely disseminated expressions are excluded from the protection of the Convention on Human Rights, rather than expressions characterised by routine defamation, for example, by stating that people of some ethnicity are fools, etc. However, as stated above in that decision, the Court of Appeal did not examine all aspects of the statements at issue. Consequently, the Supreme Court finds that the appellate court could not therefore decide whether the statements expressed by the accused/pers. B/ in a comment may or may not be protected by the right to freedom of expression."*

Almost all court judgements analysing the breadth of hate speech assume that if hate speech is published online (on an Internet news portal, as a comment or on social media), its dissemination is considered to be widespread.

For example, Riga District Court concluded in the Case No. 11840002515 on 20 February 2018: "In view of the above, the Panel of Justice considers that the evidence obtained in the case and verified during the judicial investigation leads to the conclusion that/pers. E/has acted deliberately and his or her actions were aimed at inciting racial hatred, as evidenced by the fact that /pers. E/ placed the comment in a public space, that is to say, on the website [www.facebook.com](http://www.facebook.com), thus conscious that it would be accessible to an unlimited number of other users of the website, including black people, and knowingly made a comment offending, humiliating and slighting black people, and expressed the view that it was necessary to restrict their human rights."

As stated in Section 2 of the current study, as regards the internet and the dissemination of speech, the European Court of Human Rights observed that the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages. It is therefore essential for the assessment of a potential influence of an online publication to determine the scope of its reach to the public.<sup>402</sup> If a publication on the Internet (a post on the social network) or a

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<sup>402</sup> Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedums lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09), 79.paragrāfs

comment is available only to a limited group of people, the consequences may be different than if the publication is available to everyone.<sup>403</sup>

Similarly, in court judgements, one can find references to a methodology which makes it possible to establish that the intent is present. Thus, in judgment of 5 July 2018 in case 11840002515, the Supreme Court has indicated:

*"[7.4] the objective side of the composition of the criminal offence provided for in Article 78 of the Criminal Law shall consist of acts aimed at inciting national, ethnic, racial or religious hatred and enmity. These actions can take the form of not only of physical harm, but also verbal harm (oral and written). The Supreme Court, in the research "Criminal Case-Law Regarding the Incitement of National, Ethnic and Racial Hatred", has provided several statements that could play a role in the trial of a case related to an indictment of a person accused of the criminal offence provided for in Section 78 of the Criminal Law. The Supreme Court has stated that the subjective attitude and motivation of a person in carrying out such activities are important for determining the elements of a criminal offence in such cases. In particular, the actions performed by the accused aimed at disseminating the comment, making it available to all visitors to the website, show that the actions are deliberate. In addition, apart from the testimony by the defendant, other circumstances, such as the person's behaviour at the time of the offence and the context in which the offence was committed, the victim's testimony, the witnesses' testimonies, the defendant's association with hate-inducing organisations and the alteration of the statements made by the defendant during the pre-trial and judicial investigations, are important. A key factor that distinguishes "hate speech" from other verbal forms of offence, such as defamation of a person, is the fact that the motive for the offence is not a person's actions or beliefs, but is most often - characteristics which are peculiar to a person from birth, such as a different skin colour (the Supreme Court's 2012 collection of case-laws, "Case-law in Criminal Cases for Causing National, Ethnic and Racial Hatred," <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas>). The Court of Cassation shall find that in its judgment the Court of Appeal has referred to the research and correctly applied the findings indicated there. [7.5] the subjective side of the criminal offence provided for in Section 78 of the Criminal Law consists of a direct intent. The Supreme Court states that the content of the utterances is one of the focal points in the court motives and is an essential element in inciting hatred or enmity. Analysis of the content of expressions may include determination of the provocativeness and directness of the expression, as well as an assessment of the form of the expression, the style of the arguments."*

### **6.2.2.2. Imposition of a penalty and its proportionality**

In the absolute majority of cases of hate speech, a person is convicted with deprivation of liberty, but the punishment is determined by applying Section 55 of the Criminal Law,

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<sup>403</sup> Wolfgang Benedek, Matthian C.Kettermann, Freedom of expression and the Internet, Eiropas Padome, 2020.gads, 101.lpp

thus replacing actual deprivation of liberty with a suspended sentence. According to the criminal law expert:

*“When deciding whether to impose a suspended sentence or to impose a lighter sentence than that provided for by law, courts must respect not only the personal data of the perpetrator, but also the facts related to the criminal offence. Where a court finds it possible to impose a suspended sentence on a person who has committed a serious or very serious crime, the decision must be based on specific reasons, additionally paying attention to the objective of general prevention. It follows that the court that, according to the example cited, convicted the person and applied Section 55 of the Criminal Law should provide specific reasons for doing so. In addition, according to the author, this also means that, when examining, for example, a protest against the application of Section 55 of the Criminal Law, the court of the next instance should not only examine carefully whether the court of the previous instance specifically motivated the application of Section 55 of the Criminal Law, but also whether that motivation could provide assurance that the perpetrator would not commit further offences, since, according to the author, such a specific motivation cannot be the perpetrator’s education, life experience or any other criteria which were the same the person already had at the time when the offence was committed.”<sup>404</sup>*

In this context, it is worth revisiting the discussion on the need for administrative responsibility for detecting hate speech, as the imposition of a suspended sentence in most judgments raises the question of the necessity and validity of criminal liability in all cases of hate speech, taking into account the sentence imposed on the perpetrator. It follows that the case law lacks the assessment of the criteria for hate speech and that the criteria are not always applied in accordance with international law.

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<sup>404</sup> Aldis Lasmanis, Rīgas tiesas apgabala prokuratūras prokurors, Soda noteikšana krimināllietās par naida runu un naida noziegumiem, Jurista Vārds, Nr.25/26, 2022.gada 21.jūnijs

## 7. CONCLUSIONS AND SUGGESTIONS

1. From the point of view of social and political analysis, hate crimes in Latvia are poorly recognised and are not considered a socially and politically important priority. Firstly, it relates both to a high tolerance of violence in general and to the local social and cultural context, which makes it necessary to view many issues that are self-evident at European level – race, sexual orientation, etc. – from a perspective that is specific to Latvia. Often, offences that would have been interpreted as hate crimes in the European context are perceived as the society norm in Latvia. This is confirmed by a high level of intolerance regarding various characteristics existing in the society.

2. There is a lack of understanding concerning the structural causality of hate crime, both at the level of formulation and implementation of national policies. Hate crimes are viewed as isolated incidents based on an offence “with significant harm,” with the aspect of hate becoming a secondary or inapplicable factor. This problem can be seen both in the wording and in the application of the Criminal Law.

3. Hate crime victims, like other victims of violence, often need additional support because the offence affects not only the individual but also their social identity and causes greater harm. Both the support mechanism and feedback needed for potential victims in order to seek help are currently weak.

4. High tolerance and the possibility of avoiding penalty support and motivate the potential perpetrator by strengthening confidence about the impunity of a hate crime and the resulting public good. As foreign researchers point out, the sensation of subjective endangerment in their community is one of the most frequent motivators of hate crime.

5. Protection against hate crimes and hate speech is essentially provided for in the Latvian legal framework, and not only in criminal law. There is a lack of unity in the protection against hate speech under civil and administrative law. In the civil law, the protection against hate speech as offence is laid down in the field of labour law and concerning the access to goods and services (Consumer Rights Protection Law, Law on the Prohibition of Discrimination of Natural Persons - Performers of Economic Activity). Administrative liability (Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language) is provided only for the use of symbols of totalitarian regimes in public and the use of symbols praising military aggression and war crimes in public.

6. In the field of criminal law, the norm protecting against hate crimes is Section 48, Paragraph one, Clause 14 of the Criminal Law, which considers a case as an aggravating

circumstance when “ *the criminal offence was committed due to racist, national, ethnic, or religious motives or due to social hatred*”.

7. Protection against hate speech in a more specific meaning is defined in Section 71.<sup>1</sup> of the Criminal Law “Invitation to Genocide”, Section 74.<sup>1</sup> “Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime”, Section 78 “Triggering of National, Ethnic and Racial Hatred” and Section 150 “Incitement of Social Hatred and Enmity”.

8. According to the legal experts, Section 77 “Invitation to War of Aggression”, Section 79.<sup>6</sup> “Justification of Terrorism, Invitation to Terrorism and Terrorism Threats”, Section 81 “Invitation Directed against the Republic of Latvia” and Section 149.<sup>1</sup> “Violation of the Prohibition of Discrimination” should also be cited among the norms defining the responsibility for hate crime and hate speech in a wider context.

9. Latvian law theory, unlike international law, does not develop a doctrine that would distinguish hate crimes from hate speech. A clear theoretical approach to the classification of hate crimes and hate speech under the criminal formations defined in the Criminal Law is essential for the identification and punishment of hate crimes and hate speech, and therefore further discussion by law experts is necessary in order to develop a common theoretical approach.

10. Looking at the criminal law against hate speech, there are a number of problems. The root of the problem is the fact that protection against hate speech is laid down in two provisions - Section 78, “Triggering of National, Ethnic and Racial Hatred,” and Section 150, “Incitement of Social Hatred and Enmity,” even though the object of the crime and the objective side of the crime are the same.

The provisions are different in the following ways:

- 1) the protected characteristics or groups of persons who protected (Section 78 - nationality, ethnic origin, race or religious beliefs; while Article 150 - sex, age, disability or any other characteristic);
- 2) Sections 78 and 150 of the Criminal Law have been placed in different chapters of the Criminal Law - Section 78 - in Chapter IX, which regulates crimes against humanity, peace, war crimes and genocide, and Section 150 - in Chapter XIV, which regulates criminal offences against fundamental rights and freedoms of a person;
- 3) since the two provisions are placed in different chapters, the severity and seriousness of these offences formally differ, therefore:
  - a. The hate crimes defined in Section 78 are investigated by State Security Service, while the ones defined in Section 150 - State Police;
  - b. The severity of sanctions defined in Sections 78 and 150 is different
- 4) the corpus delicti defined in Section 78 is formal, while, the one defined in Section 150 is material and demands to prove “substantial harm”.

In practice, such distinction can cause the following problems:

- 1) application of an appropriate provision in the event of hate speech on the basis of several protected characteristics at the same time;
- 2) determination of institutional jurisdiction between the State Security Service and State Police.

It also does not follow from the international legal framework that individuals should be more protected from hate speech and hate crimes, for example on grounds of race, ethnicity or religion, than on grounds of disability, gender or sexual orientation. As mentioned above, the states have a primary responsibility to protect those groups at the highest risk of hate speech and hate crimes. It follows from the above that the Latvian legislation laid down in Sections 78 and 150 of the Criminal Law, by dividing the protected characteristics, does not comply with the standards laid down in international law. In view of the above, it is necessary to combine Sections 78 and 150 of the Criminal Law into one.

11. The objective side of Section 149.<sup>1</sup> of the Criminal Law is very broad. It includes acts of a discriminatory nature performed to discriminate against a person, a group of persons on the grounds of national, ethnic, racial or religious affiliation. As stated in Section 2 of that study, discrimination is less favourable to a person or group of persons because of an unalterable characteristic or status, so thus, discrimination can take many different forms. In that regard, it is important to point out that, in order for protection against discrimination to be effective, it is necessary to define precisely which form of expression of discrimination is punishable. The fact that Section 149.<sup>1</sup> of the Criminal Law has never been applied in the case law of the investigating authorities or courts indicates that the provision is not worded in such a way that it can be applied effectively.

12. International law documents identify both the characteristics (groups) that should be clearly protected against hate crimes and hate speech, and recognise that when deciding which characteristics should be included in the national legal framework, one should take into account the social and historical context, as well as the statistics regarding which characteristics are most frequently targeted by hate crimes and hate speech. The need to provide clear protection against hate speech and hate crimes based on bias against persons based on their sexual orientation and Latvian specialists and international institutions have pointed out gender identity. This is because the highest level of prejudice in the society exists directly for persons with different sexual orientations and gender identities. The legal framework therefore clearly defines protection against hate crime and hate speech based on a person's gender identity and sexual orientation.

13. According to international law, hate speech is punishable by criminal sanctions only in the most serious cases, i. e., when hate speech is expressed deliberately, and it must be stated that hate speech may, sensibly, lead to incitement to violence, intimidation, hostility or discrimination against the target group and that hate speech is expressed in a public context. It must also be confirmed that the speech meets all the criteria for hate speech laid down by international law. At the same time, hate speech is also an expression that does not meet all these criteria, therefore, in order to ensure effective protection

against hate speech, states must also establish administrative and civil responsibility for hate speech. It follows that Latvia must establish administrative responsibility for hate speech.

14. The State Security Service shall have a competence to investigate the criminal offences specified in Section 71.<sup>1</sup> “Invitation to Genocide”, Section 74.<sup>1</sup> “Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime”, Section 78 “Triggering of National, Ethnic and Racial Hatred”, and the State Police shall have competence to investigate the criminal offences specified in Section 150 of the Criminal Law “Incitement of Social Hatred and Enmity”. Similarly, the State Police is primarily competent to investigate hate crimes, as this institution has competence to investigate the most typical hate crimes such as homicide (Chapter XII of the Criminal Law), criminal offences against the health of a person (Chapter XIII of the Criminal Law), criminal offences against property (Chapter XVIII of the Criminal Law).

The difference in institutional jurisdiction is problematic precisely in hate speech, which is set out in Sections 78 and 150 of the Criminal Law, with the result that both the State Police and law experts point to the need to merge Sections 78 and 150 of the Criminal Law into one and to limit the investigation of hate speech to one institution only. State Police believe it should be the State Security Service, because the experts of the latter institution are specialized in hate crimes and hate speech, while other experts believe that the State Security Service should handle national security issues, and by obliging it to investigate all cases of hate crimes and hate speech, the institution might not have enough capacity.

15. According to statistics provided by the State Police, 121 hate speech submissions have been registered between 2016 and 2020, while decisions to refuse to initiate criminal proceedings have been made in 86 cases. Most of those decisions cite the absence of “substantial harm” referred to in Section 150 of the Criminal Code as grounds for refusing to initiate criminal proceedings. Proving intent is also often problematic. According to non-governmental organisations', the decisions of the State Police indicate that the requirement laid down in Section 150 of the Criminal Law regarding “substantial harm” and detection of intent is often a pretext for refusing to initiate criminal proceedings. This essentially coincides with the overall picture deduced from the statistics.

16. The detection and investigation of hate crimes in practice is particularly problematic. As is apparent from State Police statistics, there are actually no recorded hate crimes, i.e., offences in which aggravating circumstances are detected in accordance with Section 48, Paragraph 1, Clause 14 of the Criminal Law, although, according to the public Prosecutor's Office, such aggravating circumstance was found in 2 criminal proceedings between 1 January 2011 and the 30 April 2021. Only one judgment has been identified, which addresses the issue of the application of Section 48, Paragraph 1, and Clause 14 of the Criminal Law. This indicates that hate crimes are not detected and investigated, and perpetrators are not punished appropriately.

17. As the international institutions point out, the success of combating hate speech often depends on the effective application of the legal framework, which is only possible if there is good cooperation between law enforcement authorities and the employees are adequately trained. Consequently, the primary focus in Latvia should be on the training of specialists, additionally considering the issue of the transfer of hate crimes and hate speech cases to the competence of a specialised State Police Division.

18. According to the data detected within the framework of the study, between 2011 and 2021, 3 convictions have been made for the criminal offence specified in Section 74.<sup>1</sup> of the Criminal Law, 41 convictions for the criminal offence specified in Section 78 and 5 convictions for the criminal offence specified in Section 150. Most of these cases have been settled by agreement in court. This indicates that, in general, the State Security Service more effectively identifies and investigates hate speech cases (competence: Section 74.<sup>1</sup> and Section 78 of the Criminal Law), while what State Police has accomplished (competence Section 150 of the Criminal Law) could not be considered satisfactory given the extent of hate speech, particularly in the digital environment. It is also supported by the fact that in the database, only one judgment was identified in which the court considered the question of applying the aggravating circumstance laid down in Section 48, Paragraph 1, Clause 14 of the Criminal Law.

19. From the available hate speech judgments, it can be concluded that in no judgment did the Court analyse the circumstances of the case in the light of all the criteria for classifying hate speech, namely the content of the speech, the political, social context at the time of the speech, the intention, the role and status of the speaker in society, the manner in which the speech was distributed, its dissemination, the likelihood of consequences. By failing to adhere to all the criteria for assessing hate speech, a court can breach the limits of a person's freedom of expression.

20. In the absolute majority of cases of hate speech, a person is convicted with deprivation of liberty, but the punishment is determined by applying Section 55 of the Criminal Law, thus replacing actual deprivation of liberty with a suspended sentence. This raises the question, on the one hand, of the proportionality of the sentences, whether the person performing the hate speech always receives an appropriately severe punishment and, on the other hand, if the practice is basically subject to a suspended sentence, whether a criminal sanction would in most cases be necessary at all.

# REFERENCES

## International law

Starptautiskais pakts par pilsoņu un politiskajām tiesībām, Latvijas Vēstnesis Nr.61, 2003.gada 23.aprīlis, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/705>

Konvencija par personu ar invaliditāti tiesībām, Latvijas Vēstnesis Nr.27, 2010.gada 17.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1630>

Cilvēka tiesību un pamatbrīvību aizsardzības konvencija, Latvijas Vēstnesis Nr.143/144, 1997.gada 13.jūnijs, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/649>

Pārskatītā Eiropas Sociālā Harta, Latvijas Vēstnesis Nr.40, 2013.gada 26.februāris, pieejams <https://likumi.lv/ta/lv/starptautiskie-ligumi/id/339>

Eiropas Savienības Pamattiesību harta, 21. panta pirmā daļa. Parakstīta Strasbūrā 12.12.2007.

Padomes Pamatlēmums 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm. Parakstīts Briselē 28.11.2008.

Eiropas Parlamenta un Padomes direktīva 2010/13/ES par to, lai koordinētu dažus dalībvalstu normatīvajos un administratīvajos aktos paredzētus noteikumus par audiovizuālo mediju pakalpojumu sniegšanu (Audiovizuālo mediju pakalpojumu direktīva), 22. pants. Parakstīta Briselē 10.03.2010. . [01.11.2021. red.].

Padomes 2000.gada 29.jūnija Direktīvu [2000/43/EK](#), ar ko ievieš vienādas attieksmes principu pret personām neatkarīgi no rasu vai etniskās piederības

Padomes Direktīva 2000/78/EK (2000. gada 27. novembris), ar ko nosaka kopēju sistēmu vienlīdzīgai attieksmei pret nodarbinātību un profesiju, *OV L 303, 2.12.2000., 16./22.lpp*

Eiropas Parlamenta un Padomes 2006.gada 5.jūlija Direktīvu [2006/54/EK](#) par tāda principa īstenošanu, kas paredz vienlīdzīgas iespējas un attieksmi pret vīriešiem un sievietēm nodarbinātības un profesijas jautājumos (pārstrādātā versija)

Padomes Direktīvu 2004/113/EK (2004. gada 13. decembris), ar kuru īsteno principu, kas paredz vienlīdzīgu attieksmi pret vīriešiem un sievietēm, attiecībā uz pieeju precēm un pakalpojumiem, preču piegādi un pakalpojumu sniegšanu; Eiropas Parlamenta un Padomes Direktīvu 200/41/ES ( 2010. gada 7. jūlijs ) par to, kā piemērot vienlīdzīgas attieksmes principu vīriešiem un sievietēm, kas darbojas pašnodarbinātas personas statusā, un ar kuru atceļ Padomes Direktīvu 86/613/EEK

## Judgments of international courts

### European Court of Human Rights

Eiropas Cilvēktiesību tiesas 2021.gada 8.aprīļa Lielās Palātas spriedums lietā *Vavrička un citi pret Čehiju* (pieteikuma Nr.47621/130)

Eiropas Cilvēktiesību tiesas 2021.gada 16.februāra spriedums lietā *Beizaras un Levickas pret Lietuvu* (pieteikuma Nr.41288/15)

Eiropas Cilvēktiesību tiesas 2018.gada 28.augusta spriedumu lietā *Savva Terentyev pret Krieviju* (pieteikuma Nr.10692/09)

Eiropas Cilvēktiesību tiesas 2017. gada 25. jūlija spriedums lietā *Carvalho Pinto de Sousa Morais pret Portugāli*, pieteikums Nr. 17484/15

Eiropas Cilvēktiesību tiesas 2017.gada 28.marta spriedumu lietā *Škorjance pret Horvātiju*, pieteikuma Nr.25536/14

Eiropas Cilvēktiesību tiesas 2015.gada 15.oktobra spriedums lietā *Perincek pret Šveici* (pieteikuma Nr.27510/08)

Eiropas Cilvēktiesību tiesa 2012.gada 9.februāra sprieduma lietā *Vejdeland un citi pret Zviedriju* (iesnieguma Nr. [1813/07](#)), 55.punkts

Eiropas Cilvēktiesību tiesas 2010.gada 13.jūlija spriedums lietā *Clift pret Apvienoto Karalisti*, iesnieguma Nr.7205/07

Eiropas Cilvēktiesību tiesas 2003.gada 24.jūnija lēmumu lietā *Garaudy pret Franciju* (pieteikuma Nr.65831/01)

ECT 2003.gada 8.janvāra spriedumu lietā *L un V pret Austriju* (pieteikuma Nr.39392/98 un Nr.39829/98)

ECT spriedumu lietā *Thlimmenos pret Grieķiju*, pieteikuma Nr. 34396/97 (06.04.2000.)

Eiropas Cilvēktiesību tiesas 1994.gada 20.septembra spriedums lietā *Otto-Preminger-Institut pret Austriju* (pieteikuma Nr.13470/87)

ECT spriedumu lietā *Adulaziz, Cabales un Balkandali pret Apvienoto Karalisti*, pieteikumu Nr.9214/80, 9473/81, 9474/81 (28.05.1985.)

ECT 1984.gada 28.novembra spriedums lietā *Rasmussen pret Dāniju* (pieteikuma Nr.9118/80)

Eiropas Cilvēktiesību tiesas 1987.gada 28.oktobra spriedums lietā *Inze pret Austriju*, iesnieguma Nr.8695/79

### **Court of Justice of the EU**

Eiropas Savienības tiesas 2021.gada 15.jūlija spriedums lietā apvienotajās lietās C-804/18 IX pret *WABE eV un C-341/19 MH Müller Handels GmbH* pret MJ, ECLI:EU:C:2021:594

Eiropas Savienības tiesas 2015. gada 16. jūlija spriedums lietā *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480

Eiropas Savienības tiesas spriedumus lietā *Coleman* C-303/06 (2008.gada 17.jūlijs)

EST spriedumu lietā C-17/05 *B.F. Cadman v Health & Safety Executive*, [2006] ICR 1623

### **International referral rights**

#### **United Nations**

ANO Rasu diskriminācijas izsaukšanas komitejas Vispārējais komentārs Nr.35 par rasistiskas naida runas izskaušanu, 2013.gada 26.spetembris, pieejams angļu val.

<https://www.refworld.org/docid/53f457db4.html>

ANO Cilvēktiesību Komitejas Vispārējais komentārs Nr.34, 5.paragrāfs, pieejams angļu val.

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

United Nations Strategy and Action Plan non Hate Speech, 2019.gads, pieejams angļu val.

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

Rabatas Darbības Plāns, ANO Cilvēktiesību Komitejas 22 sesija, 2013.gada 11.janvāris, pieejams angļu val. [https://digitallibrary.un.org/record/746343/files/A\\_HRC\\_22\\_17\\_Add.4-EN.pdf](https://digitallibrary.un.org/record/746343/files/A_HRC_22_17_Add.4-EN.pdf)

UN General Assembly 11 January 2013 Human Rights Council Twenty-second session Agenda item 2 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General (Rabat Action Plan),

[https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)

#### **Council of Europe**

Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendāciju CM/Rec(2022)16 par naida runas izskaušanu, pieejams angļu valodā

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a67955](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955)

Eiropas Padomes Ministru Komitejas Rekomendācija Nr.R (97) 20, pieejama angļu val.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680505d5b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b)

Recommendation No. R (92) 19 of the Committee of Ministers to member states on video games with a racist content;

Recommendation 1543 (2001) Racism and xenophobia in cyberspace;

Resolution 1345 (2003) Racist, xenophobic and intolerant discourse in politics,

Resolution 1760 (2010) Recent rise in national security discourse in Europe: the case of Roma

Recommendation 1805 (2007) Blasphemy, religious insults and hate speech against persons on grounds of their religion; Resolution 1563 (2007) Combating anti-Semitism in Europe

Resolution 1605 (2008) European Muslim communities confronted with extremism

Resolution 1743 (2010) Islam, Islamism and Islamophobia in Europe

Resolution 1846 (2011) Combating all forms of discrimination based on religion

Resolution 1928 (2013) Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence

Resolution 1948 (2013) Tackling discrimination on the grounds of sexual orientation and gender identity

Resolution 1728 (2010) Discrimination on the basis of sexual orientation and gender identity

Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism

Eiropas Padomes Ministru Komitejas Rekomendācija CM/Rec(2019)1, Seksisma novēršana un apkarošana, Papildinājums ieteikumam, pieejams <https://rm.coe.int/lv-recomendation-on-sexism-prevention/168097f2b2>

Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680790e14](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14)

Resolution 2275 (2019) The role and responsibilities of political leaders in combating hate speech and intolerance <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=27636&lang=en>

Recommendation No. R (97) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance

Resolution 2144 (2017) Ending cyberdiscrimination and online hate  
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23456>

Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet

Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on a the roles and responsibilities of internet intermediaries  
[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680790e14;](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14;)

Resolution 2144 (2017) Ending cyberdiscrimination and online hate  
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23456>

Eiropas Komitejas pret rasismu un neiecietību Vispārējā politikas Rekomendācija Nr.15 (General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance) 2016.gada 21.marts

Eiropas Pretrasima un neiecietības Komitejas Vispārējā politikas Rekomendācija Nr.7 (General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination of the European Commission against Racism and Intolerance) 2002.gada 13.decembris ar 2017.gada 7.decembra grozījumiem, 14.lpp. 12.pārgrāfs, pieejams latviešu val. <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5ab4>

Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 43.punkts, pieejams angļu val.  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

Skaidrojošais memorands pie Eiropas Padomes Ministru Komitejas 2022.gada 20.maija Rekomendācijas CM/Rec(2022)16 par naida runu, pieejams angļu valodā  
<https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a710c9>

The Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (submitted in accordance with Human Rights Council

resolution 16/4, A/67/357), 2012.gada 7.septembris, 47.punkts, pieejams angļu valodā <https://digitallibrary.un.org/record/735838>;

ANO Cilvēktiesību komitejas Noslēguma piezīmes par Latvijas trešo ziņojumu, 2014.gada 11.aprīlis, pieejams <https://www.mfa.gov.lv/lv/media/3943/download>

Ekonomisko, sociālo un kultūras tiesību komitejas Noslēguma secinājumi par Latvijas Republikas otro kārtējo ziņojumu, 2021.gada 30.marts, pieejams <https://www.mfa.gov.lv/lv/media/3994/download>

ANO Rasu diskriminācijas izskaušanas komiteja Noslēguma secinājumi par apvienoto sesto līdz divpadsmito Latvijas kārtējo ziņojumu, 2018.gada 25.septembris, pieejams <https://www.mfa.gov.lv/lv/media/3957/download>

## National legislation

Latvijas Republikas Satversme, Latvijas Vēstnesis Nr.43, 1997.gada 1.jūlijs, pieejams <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>

Fizisko personu - tiesiska darījuma subjektu – diskriminācijas aizlieguma likums, Latvijas Vēstnesis Nr.199, 2012.gada 19.decembris, pieejams <https://likumi.lv/ta/id/253547-fizisko-personu--saimnieciskas-darbibas-veiceju--diskriminacijas-aizlieguma-likums>

Invaliditātes likums, LV Nr.91, 09.06.2010.

Darba likums, Latvijas Vēstnesis Nr.105, 2001.gada 6.jūlijs, pieejams <https://likumi.lv/ta/id/26019-darba-likums>

Patērētāju tiesību aizsardzības likums, Latvijas Vēstnesis Nr.104/105, 1999.gada 1.aprīlis, pieejams <https://likumi.lv/ta/id/23309-pateretaju-tiesibu-aizsardzibas-likums>

Likums “Par Konvenciju par kibernoziēgumiem un Konvencijas par kibernoziēgumiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti datorsistēmās”, Latvijas Vēstnesis Nr.171, 2006.gada 26.oktobris, pieejams <https://likumi.lv/ta/id/146481-par-konvenciju-par-kibernoziēgumiem-un-konvencijas-par-kibernoziēgumiem-papildu-protokolu-par-rasisma-un-ksenofobijas-noziedzigajiem>

LR Augstākās Padomes Deklarācija “Par Latvijas Republikas pievienošanās starptautisko tiesību dokumentiem cilvēktiesību jautājumos”, Ziņotājs Nr.21, 1990.gada 24.maijā, pieejams <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starptautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumos>

Krimināllikums, Latvijas Vēstnesis Nr.199/200, 1998.gada 8.jūlijs, pieejams  
<https://likumi.lv/ta/id/88966-kriminallikums>

Administratīvo sodu likums par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā, Latvijas Vēstnesis Nr.96, 2020.gada 20.maijs, pieejams  
<https://likumi.lv/ta/id/314808-administrativo-sodu-likums-par-parkapumiem-parvaldes-sabiedriskas-kartibas-un-valsts-valodas-lietosanas-joma>

Civillikums, Valdības Vēstnesis Nr.41, 1937.gada 20.februārī, pieejams  
<https://likumi.lv/ta/id/225418-civillikums>

Administratīvās atbildības likums, Latvijas Vēstnesis Nr.225, 2018.gada 14.novembris, pieejams  
<https://likumi.lv/ta/id/303007-administrativas-atbildibas-likums>

Par [Krimināllikuma](#) spēkā stāšanās un piemērošanas kārtību, Latvijas Vēstnesis Nr.331/332, 1998.gada 4.novembris, pieejams <https://likumi.lv/ta/id/50539-par-kriminallikuma-spekastanas-un-piemerosanas-kartibu>

Kriminālprocesa likums, Latvijas Vēstnesis Nr.74, 2005.gada 11.maijs, pieejams  
<https://likumi.lv/ta/id/107820-kriminalprocesa-likums>

## **Constitutional court**

Latvijas Republikas Satversmes tiesas 2010. gada 13. maija spriedums Lietā Nr. 2009-94-01.  
Pieejams: [https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-94-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2009-94-01_Spriedums.pdf)

Satversmes tiesas 2019.gada 7.novembra spriedumu lietā Nr.2018-25-01

Satversmes tiesas 2008.gada 29.decembra spriedumu lietā Nr.2008-37-03

## **Court of general jurisdiction**

Augstākās tiesas Senāts 2018.gada 5.jūlija spriedums lietā Nr.11840002515

Augstākās tiesa 2018.gada 28.marta spriedums lietā Nr.11840001413

Rīgas Apgabaltiesas 2018.gada 20.februāra spriedumā lietā Nr.11840002515

Rīgas rajona tiesas 2015.gada 12.marta spriedums lietā Lieta Nr.11353037112

Augstākās tiesas Senāta 2013.gada 17.oktobra spriedums lietā Nr.11094119210

Rīgas apgabaltiesas Kriminālietu tiesas kolēģijas 2009.gada 17.februāra spriedums lietā Nr.11088236107

## Literature

Anhelita Kamenska, Jekaterina Tumule, Cīņa ar naida runu internetā: Eiropas Komisijas un uzticamo ziņotāju loma, Jurista Vārds Nr.25/26, 21.06.2022

Aldis Lasmanis, Rīgas tiesas apgabala prokuratūras prokurors, Soda noteikšana krimināllietās par naida runu un naida noziegumiem, Jurista Vārds, Nr.25/26, 2022.gada 21.jūnijs

Kritīne Pakārkle (Tiesībsarga biroja Pilsonisko un politisko tiesību nodaļas juridiskā padomniece), Naida runa publiskajā telpā un ar to saistītie juridiskie izaicinājumi, Jurista Vārds Nr.25/26, 2022.gada 21.jūnijs

Armands Onzuls, Sociālais naidis digitālajā laikmetā – vai protam ar to cīnīties, , Jurista Vārds Nr.25/26, 21.06.2022

Ēriks Treļš (Valsts policijas koledžas docents), Normatīvā regulējuma problēmjaucējumi lietās par naida izraisīšanu, Jurista Vārds Nr.25/26, 21.06.2022

Uldis Zemzars, Jolanta Laura, Valentija Liholaja, Andrejs Judins, Edvīns Danovskis, Jānis Rozenbergs, Ērika Gribonika, Huligānisms internetā: vai vārda brīvībai ir robežas, Jurista Vārds Nr.45, 2021.gada 10.novembris, pieejams <https://juristavards.lv/doc/277529-huliganisms-interneta-vai-varda-brivibai-ir-robezas/>

Wolfgang Benedek, Matthias C.Kettermann, Freedom of expression and the Internet, Eiropas Padome, 2.izdevums, 2020.gads, 101.lpp

Uldis Krastiņš, Valentija Liholaja, Krimināllikuma komentāri, pirmā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018

Uldis Krastiņš, Valentija Liholaja, Krimināllikuma komentāri, otrā daļa, otrs papildinātais izdevums, Tiesu Nama Aģentūra, Rīga, 2018

Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Zeo Zwaak (eds), Theory and practice of the European Convention on human rights, 5.izdevums, Intersentia, 2018

*Eiropas Drošības un sadarbības organizācija, A Practical Guide on Hate Crime Laws, 2009, 42.lpp., pieejams angļu val. <https://www.osce.org/files/f/documents/3/e/36426.pdf>*

Guide on Article 9 of the European Convention on Human Rights, Eiropas Cilvēktiesību tiesa, 2021.gada 31.augusta redakcijā, pieejams angļu val.

[https://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf)

Guide on Article 10 of the European Convention on Human Rights, Eiropas Cilvēktiesību tiesa, 2021.gada 30.aprīļa redakcijā, pieejams angļu val.

[https://www.echr.coe.int/documents/guide\\_art\\_10\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_10_eng.pdf)

Autoru kolektīvs. Latvijas Republikas Satversmes komentāri. VIII nodaļa Cilvēka pamattiesības, Latvijas Vēstnesis, Rīga, 2011

Kučs A., Markus K., Bērziņa L. Eiropas Savienība un pamattiesības. Grām.: Eiropas savienības tiesības. II daļa. Materiālās tiesības. Sagatavojis autoru kolektīvs. Kristofa Ševes, Kaspara Gailīša, Ģirta Strazdiņa zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2016.

European Union Agency for Fundamental Rights. Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime. Vienna, 15.10.2013, p.5. Pieejams:

[https://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia\\_en.pdf](https://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia_en.pdf)

Constanța MĂTUȘESCU, “Discrimination by association” – between jurisprudential consecration at European level and legislative desire in Romania. Some considerations, Supplement of Law Review - Year 2019, pp. 114-135, pieejams angļu val.

[http://internationallawreview.eu/fisiere/pdf/10\\_Matusescu\\_Supliment\\_Law\\_Review\\_SRDE\\_1.pdf](http://internationallawreview.eu/fisiere/pdf/10_Matusescu_Supliment_Law_Review_SRDE_1.pdf)

Tiesu prakses apkopojums “Naida runa un vārda brīvība (Tiesu prakse krimināllietās par Krimināllikuma\_74.<sup>1</sup>, 78., 150.pantu”) (tiesu prakse 2012.gada oktobris – 2018.gada maijs), Latvijas Republikas Augstākā tiesa, 21.lpp., pieejams <https://www.at.gov.lv/lv/tiesu-prakse/tiesu-prakses-apkopojumi/kriminaltiesibas>

Augstākās tiesas Senāts, Goda un cieņas Civiltiesiskā aizsardzība. Tiesu prakses apkopojums (2000.-2021.gads), pieejams

[https://www.at.gov.lv/files/uploads/files/6\\_Judikatura/Tiesu\\_prakses\\_apkopojumi/2021/goda\\_un\\_cienas\\_aizsardziba-2021.docx](https://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/2021/goda_un_cienas_aizsardziba-2021.docx)

Association of Chief Police Officers in Scotland (ACPOS). 2010. Hate Crime Guidance Manual.

<http://www.hatecrimescotland.org/wp/wp-content/uploads/2014/08/Association-of-Chief-Police-Officers-in-Scotland-Hate-Crime-Manual-2010.pdf>

Baumanis, J. 2016. Naida interpretācija krimināltiesībās jeb kvantu kriminoloģija. *Administratīvā un kriminālā justīcija*, 4/2016 13, pp. 12-17.

- Benesch, S. 2012. Words as Weapons. *World Policy Journal*, Vol. 29, no. 1, pp. 7–12.
- Brudholm, T. 2016. Conceptualizing hatred globally: is hate crime a human rights violation? In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Scheppe, Mark Austin Walters, eds. Oxford University Press.
- College of Policing. 2014. Hate Crime Operational Guidance. <https://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf>
- Dzelme, I. 2008. Latvijas Cilvēktiesību Centrs “Naida noziegumu psiholoģiskās sekas — cietušā pieredze un ietekme uz plašāku sabiedrību”
- Dzenovska, D. 2011. Public Reason and the Limits of Liberal Anti-Racism in Latvia. *Ethnos*, 75(4): 496–525.
- Dzenovska, D. 2018. School of Europeanness: Tolerance and Other Lessons in Political Liberalism in Latvia. Cornell University Press.
- Erjavec, K. & Poler, M. 2012. You Don't Understand, This is a New War! Analysis of Hate Speech in News Web Sites' Comments. *Mass Communication and Society*. 15. 899-920. 10.1080/15205436.2011.619679.
- EU FRA. 2020a. A long way to go for LGBTQ+I equality. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-LGBTQ+i-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-LGBTQ+i-equality-1_en.pdf)
- Gagliardone, I., Gal, D., Alves T., Martinez G. 2015. Countering Online Hate Speech. Unesco.
- Gardiner, B., Mansfield, M., Anderson, I., Holder, J., Louter, D. and Ulmanu, M. 2016. The dark side of Guardian comments. <https://www.theguardian.com/technology/2016/apr/12/the-dark-side-of-guardian-comments>
- Garland, J., Funnell, C. 2016. Defining hate crime internationally: issues and conundrums. In *The Globalization of Hate. Internationalizing Hate Crime?* Jennifer Scheppe, Mark Austin Walters, eds. Oxford University Press.
- Healy J. 2019. Thinking outside the box: intersectionality as a hate crime research framework. *Papers from the British Criminology Conference: Volume 19*
- HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). 2018. Understanding the difference. The initial police response to hate crime. <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/understanding-the-difference-the-initial-police-response-to-hate-crime.pdf>
- Jubany, O.; Roiha, M. 2016. Prism: Backgrounds, Experiences and Responses to Online Hate Speech: A Comparative Cross-Country Analysis
- Kamenska, A, Treļs, E. 2017. NAIDA NOZIEGUMI: PRAKSE UN PROBLĒMAS. Latvijas Cilvēktiesību centrs

Kaprāns, M, Mieriņa, I, Saulītis, A. 2020. Starpkultūru stereotipi un aizspriedumi Latvijā. [http://fsi.lu.lv/userfiles/Ethnic%20stereotypes\\_SAPC.pdf](http://fsi.lu.lv/userfiles/Ethnic%20stereotypes_SAPC.pdf)

Landes, X. 2008. 'Is there any good argument against homosexuality?' Politika.lv. [http://www.politika.lv/topics/human\\_rights/15875i](http://www.politika.lv/topics/human_rights/15875i).

Latvijas Cilvēktiesību centrs. 2016. Results of foreign student and migrant survey on manifestations of intolerance in Latvia. Pieejams: [http://cilvektiesibas.org.lv/media/attachments/10/05/2017/Student\\_survey\\_ENG2016\\_rVmHvwR.pdf](http://cilvektiesibas.org.lv/media/attachments/10/05/2017/Student_survey_ENG2016_rVmHvwR.pdf)

Macpherson, Sir W. 1999. The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny. London: Stationery Office.

Mole, R. 2011. Nationality and sexuality: homophobic discourse and the 'national threat' in contemporary Latvia. *Nations and Nationalism*, 17 (3), 540–560.

Putniņa, A. 2007. Sexuality, masculinity and homophobia in Latvia

Rhodes, L.M. 2012. Being Latvian: Discourse and Identity Among Individuals of Black African Descent

Roberts Colin, Innes M., Williams M., Tregidga J., Gadd D. 2013. Understanding who commits hate crime and why they do it. *Social Research*, Issue 38/2013

Zalitis, K. un Elijase, A. 2014. Report on Homophobic and Transphobic Hate Crimes and Incidents in Latvia 2013.

Walters, M.A., Brown, R., Wiedlitzka. 2016. Causes and Motivations of hate crime. Equality and Human Rights Commission. Research report 102.

## Other sources

Eiropas Komisija par demokrātiju caur tiesībām (Venēcijas komisija) pētījums Nr.406/2006 ziņojums par vārda brīvības un reliģiskās brīvības attiecībām: zaimošanas, reliģisku apvainojumu un reliģiska naida kurināšanas regulēšana un sodīšana (European Commission for Democracy through law (Venice Commission), Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, Vēnēcija 2008.gada 17.-18.oktobris, pieejams angļu val. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)026-e)

Komisijas ziņojums Eiropas Parlamentam un Padomei par Padomes Pamatlēmuma 2008/913/TI par krimināltiesību izmantošanu cīņā pret noteiktiem rasisma un ksenofobijas veidiem un izpausmēm īstenošanu, 2014, 1. lpp. Pieejams: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A52014DC0027>

Guidance Note on the practical application of Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law, EU High Level Group on combating racism, xenophobia and other forms of intolerance, 2018.gada novembris, pieejams angļu val.

[https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=55607](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55607)

Hate speech and hate crime in the EU and the evaluation of online content regulation approaches. 2020, p.50. Lpp. Pieejams:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL\\_STU\(2020\)655135\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU(2020)655135_EN.pdf) .

The Camden Principles on Freedom of Expression and Equality, pieejami angļu val.

<https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/67/357, 2012.gada 7.septembris, pieejams angļu val.

[https://digitallibrary.un.org/record/735838/files/A\\_67\\_357-EN.pdf](https://digitallibrary.un.org/record/735838/files/A_67_357-EN.pdf);

BISS. 2020. Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām ieviešanas izvērtējums. LM,

[http://petijumi.mk.gov.lv/sites/default/files/title\\_file/BISS\\_Gala\\_zinojums\\_LM\\_ANO\\_konv\\_30062020red\\_13072020%20%281%29.pdf](http://petijumi.mk.gov.lv/sites/default/files/title_file/BISS_Gala_zinojums_LM_ANO_konv_30062020red_13072020%20%281%29.pdf)

Eiropas Komisijas pret rasismu un neiecietību (ECRI) 5. ziņojums par Latviju. 2019.

<https://rm.coe.int/fifth-report-on-latvia/1680934a9f>

European Commission. 2019. Eurobarometer on Discrimination 2019: The social acceptance of LGBTQ+I people in the EU.

[https://ec.europa.eu/info/sites/default/files/ebs\\_493\\_data\\_fact\\_LGBTQ+i\\_eu\\_en-1.pdf](https://ec.europa.eu/info/sites/default/files/ebs_493_data_fact_LGBTQ+i_eu_en-1.pdf)

EU FRA. 2020b. EU contribution to the report of the Special Rapporteur on freedom of religion or belief. [https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-](https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Regional%20Institutions/EuropeanUnion.pdf)

[AntiMuslim/Regional%20Institutions/EuropeanUnion.pdf](https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Regional%20Institutions/EuropeanUnion.pdf)

EC. 2020. A Union of equality: EU anti-racism action plan 2020-2025.

[https://ec.europa.eu/info/sites/default/files/a\\_union\\_of\\_equality\\_eu\\_action\\_plan\\_against\\_racism\\_2020\\_-2025\\_en.pdf](https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf)

Ilga Europe. 2020. Annual Review. [https://www.ilga-](https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf)

[europe.org/sites/default/files/2020/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf)

SKDS. 2019. Latvijas iedzīvotāju viedoklis par etniskajām attiecībām Latvijā.

[https://www.sif.gov.lv/images/files/ESF/ESF-integracija/petijumi/Atvertiba\\_ir\\_vertiba\\_SKDS\\_petijums.pdf](https://www.sif.gov.lv/images/files/ESF/ESF-integracija/petijumi/Atvertiba_ir_vertiba_SKDS_petijums.pdf)

SKDS. 2020. Pētījums par attieksmi pret LGBTQ+ personām Latvijā. Mozaīka.

<https://www.dropbox.com/s/9vh64s1hncp9dl/2020.07.atskaiteSKDS.publ.pdf?dl=0>

SPKC. 2011. Pētījums par Latvijas jauniešu bērnībā gūto nelabvēlīgo pieredzi. Rīga 2011.

<https://www.spkc.gov.lv/lv/media/4366/download>

Valsts policija. 2017. Vadlīnijas naida noziegumu identifikācijai un izmeklēšanai.

<https://www.vp.gov.lv/lv/vadlinijas-naida-noziegumu-identifikacijai-un-noversanai>

Anhelita Kmenska, Ēriks Treļš, Naida noziegumi: Prakse un problēmas, Latvijas Cilvēktiesību Centrs, 2017, pieejams

[https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV\\_brosura\\_internetam.pdf](https://cilvektiesibas.org.lv/media/attachments/01/03/2018/LV_brosura_internetam.pdf)

Tiesībsargs: Naida noziegumiem jāpievērš pastiprināta uzmanība,

pieejams <https://www.tiesibsargs.lv/news/tiesibsargs-naida-noziegumiem-japievers-pastiprinata-uzmaniba/>