

## Hate Crimes in Globalization Era Good Practices in Analysing them in European Union Countries

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### Abstract

*Hate crimes are all those crimes based on a discriminatory motivation. The aim of this paper is to analyze the jurisprudence of the ECtHR and of other decisions adopted within international bodies classified as facts that seriously affect the democracy of the states. The OSCE named them as those crimes committed because of intolerance towards certain social groups, based on certain prejudices related to ethnicity, race, gender or sexual orientation. The main objectives are a systematic analyse of hate crimes typology, identifying good practices in fighting them, and revealing the social inequities and the differences based on ethnicity or religion that are often a cause for the creation of xenophobia, as evidenced by the events that took place in Transylvania between Protestants and Northern Irish Catholics, in Algeria during French rule, between African Americans in America, whites and Hispanics, during the apartheid period in South Africa, and last but not least, in Europe between Christians and Jews or between Roma and the rest of the population.*

**Key words:** criminal offence, globalization, hate, decisions, governance

**J.E.L. classification:** K40

### 1. Introduction

Hate crimes are addressed in international criminal laws either as stand-alone crimes or as aggravating circumstances that are taken into account when increasing penalties. However, it is difficult to collect statistical data on this type of crime for which the penalties have been increased on the basis of discriminatory motivation.

Hate speech - is approached differently in the countries of the European Union, not being defined in a unitary way, but through Recommendation (97)20, the Council of Europe defined it as summing up forms of expression that propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance that expresses itself in the form of aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, immigrants and people of immigration origin ([https://norwegian.politiaromana.ro/images/docs/Guide\\_Good\\_practice\\_antidiscrimination\\_RO\\_v2.pdf](https://norwegian.politiaromana.ro/images/docs/Guide_Good_practice_antidiscrimination_RO_v2.pdf)).

Thus, compared to hate crimes, hate speech is not a crime, but it can serve as evidence and as a means of committing a crime. For example, the offense of incitement to hatred or discrimination, provided for by the Criminal Code of Romania, is most often committed through hate speech, transmitted either verbally, online, through printed publications or through drawn symbols, all multiplying worryingly, especially those transmitted on the Internet.

## 2. Literature review

This research proposes a review of the specialized literature on racism and xenophobia, which are qualified in different sources of the specialized literature (especially strategies, guidelines and reports) as serious threats to the principles of the European Union, as it is also shown in EU law.

The specialized literature and specialists in the field of hate crimes, use the terminology related to this notion to describe the norms and principles related to how the most frequent types of crimes motivated by hate and discrimination recorded, were those against the exercise of fundamental rights and civil liberties, aggression, threats and degrading treatment (Cree, 2014). This concept provides a framework for comparing the efforts made at the European level in the fight against xenophobia, homophobia, racism, sexism and other forms of discrimination (Weber, 2009). In 1998, the Charter of European political parties for a society free of racism was adopted, and 10 years later, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia was adopted through criminal law. In June 2016, a high-level group on fighting against racism, xenophobia and other forms of intolerance was created at the level of the European Commission, with a particular focus on the responsibility of governments and governing bodies to meet the needs of the population. Anthropologists such as the French Paul Pierre Broca, (1871, *Mémoires d'anthropologie*) George Vacher de Lapouge (1909-*Race et Milieu Social: Essais d'Anthroposociologie*) and the German Otto Ammon (*Zur Anthropologie der Badener*, 2020) tried to substantiate with the help of anthropometry, that the social differentiation of classes was based on racial differences, and therefore rooted in the nature of things. The economic and social roots of race prejudice appear very clearly if we take into account the fact that the first great doctrinaire of racism, Comte de Gobineau, (*The inequality of human races*, 1915) himself declares that he wrote his famous *Essay to fight against liberalism*. We can observe that the development of racism ran parallel to that of the democratic ideal, and racial prejudice is not innate, as Ashley Montagu (*Man's most Dangerous Myth, the Fallacy of Race*, 1942) shows.

### 2.1. Hate Crime approach in Europe

Political factors have a decisive role in causing xenophobia, in certain situations, a significant example being the African students in Romania during the communist regime, who had a privileged situation, a fact that led to abuses and tensions on the part of Romanian students (Vacher, 2014). The attitude of Arabs towards Jews and Western travelers has changed after centuries of tolerance, against the background of colonialism and the Israeli-Palestinian conflict, which has led in the Arab-Muslim world to deep intolerance and xenophobia towards the American, European and Israeli population ([www.liberties.eu](http://www.liberties.eu)).

Among the concrete actions undertaken by the authorities in the United Kingdom to fulfill the objectives of the strategy we have workshops organized by civil society to prevent discriminatory practices, efficient and accessible reporting systems for victims of these crimes, professional training programs for police officers to make them aware of the particularities, prevention and intervention in hate crimes (Gergely and Małgorzata, 2016).

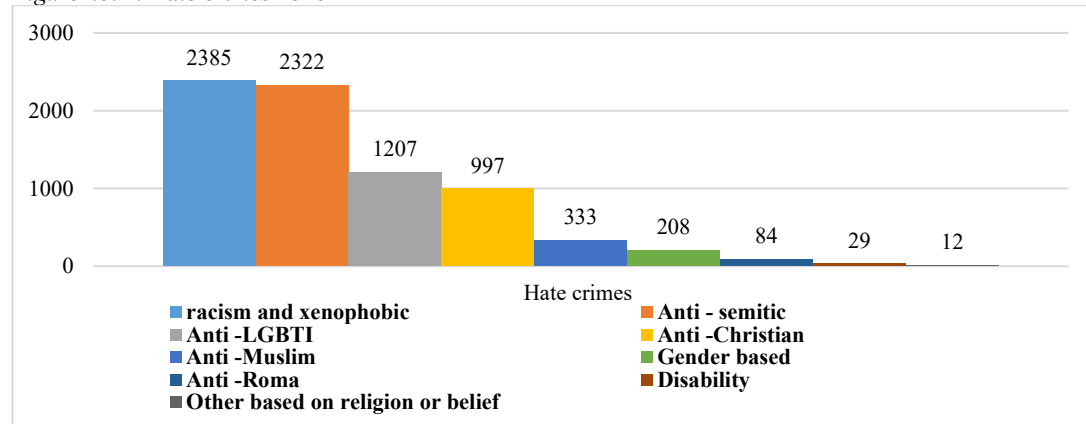
In the first two years after the implementation of the strategy, the evaluation report drawn up at the Government level mentioned as positive initiatives the adoption of a Code of Practice for Victims of Crime (Code of Practice for Victims of Crime), the awareness raising program regarding motivated hate crimes, designed for primary school pupils in Lancashire and embedding the strategy in Manchester's local strategy.

The United Kingdom National Hate Crime Police Strategy and Hate Crime Operational Guidance examines the phenomenon of hate crime, defines the different forms of hate crime, sets out the applicable legislation, and how to report and investigate it, through community involvement. Specifically, the police collaborate with various advisory groups in affected/vulnerable communities, documenting the particular challenges faced by ethnic groups, the LGBTI community and people with disabilities, providing them with guidance on the services they should receive at the time of notification of these crimes (<https://www.gov.uk/government/uploads/system/uploads>).

In England, Northern Ireland and Wales, the police have operationalized an online hate crime reporting mechanism called 'True Vision', available in English and Welsh. Both injured persons and witnesses or third parties have the opportunity to notify the police of the locality where they come from, through this platform, cases that contain elements of hate crimes, the notification being recorded and investigated even if it is done anonymously. The service is easily accessible, being created even mobile phone applications.

Moreover, for 2020, it was noticed that the most crimes were linked with racism and xenophobia, being followed by anti – semitism and anti-LGBTI (Figure no. 1).

Figure no. 1. Hate crimes 2020



Source: OSCE, ODIHR, HATE CRIME REPORTING, 2021

According to ODIHR’s Key Observations, 14 states reported hate crimes to ODIHR, 16 states have started to improve their legislation, and 7 states provided complete police, prosecutorial and judicial data.

7203 – total number of incidents report to ODIHR

3173 – statistical incidents caused by state, bias motivation and type of crime.

4030 – descriptive incidents.

137 – civil society contributors.

On the other hand, another report, to which APADOR CH and 32 other international organizations contributed, evaluates and includes information regarding the respect for civil rights, the state of the justice systems, the media, the functioning of anti-corruption systems and the supervision of powers in 17 countries within Europe, including Romania, Spain, Germany, Holland, Sweden, Poland.

According to the report, published in Berlin, during the two years of the COVID-19 pandemic, the authorities in Europe have not succeeded and did not want to reduce the restrictive measures instituted, these aspects leading in the long term to the reduction of civil society's control over the parliaments and the executive.

Based on the monitoring carried out by the European Commission, through its own mechanisms, it was found that during the pandemic there were pressures regarding freedom of expression, freedom of the press, citizens facing phenomena of incitement to hatred, harassment, abuse or violence (Montagu, 1942).

The same monitoring emphasized the fact that in many European countries the evolution of the rule of law was a slow one, the phenomenon of corruption being on the rise compared to the period before the pandemic, there being suspicions and signals of corruption cases in many countries related to the use of funds that the European Union allocated for the recovery and for the management of the COVID-19 pandemic.

The commission also showed that freedom of expression is still limited in many states, racism and discrimination still persist, and non-governmental organizations and those defending fundamental human rights, especially defenders of the rights of religious and ethnic minorities and LGBTIQ+ people, are the victims of harassment, verbal and physical aggression or defamation campaigns.

Figure no. 2 - 2022 Report – The evolution of the rule of law



Source: Civil Society in 2022 Under Pressure (Eleonor Brooks)

At the level of the Spanish police, there is a platform made up of representatives of local police departments and minority groups, called the Platform for the Management of Police Diversity (Platforma por la Gestión Policial de la Diversidad), which meets periodically and discusses issues related to the interaction of the authorities with minority groups, trying to find solutions to build trust between the police and vulnerable groups (Decizia-cadru 2008/913/JAI a Consiliului <https://legislatie.just.ro/Public/>).

The platform is designed for police training, awareness and sensitization campaigns, implementation of diversity management strategies, police accountability programs to act impartially in relation to minorities ([http://www.report-it.org.uk/your\\_police\\_force](http://www.report-it.org.uk/your_police_force)).

At the beginning of March 2022, the Spanish police in the Region of Catalonia published a report on police activity to combat crimes motivated by hate and discrimination and the regional evolution of this phenomenon.

The main conclusion drawn from this balance sheet is that in 2021 the phenomenon increased compared to the previous year, by 26 percent, only in Catalonia being registered almost 500 complaints for crimes motivated by hate and discrimination, 30% of the cases being committed on the ground of phobia by people from the LGTBI area, followed by areas related to "national/racial origin (22.4%) and political orientation (9%).

330 people were accused of such crimes, 17% were minors, out of whom 104 were also arrested. Among the victims, 11.5% are minors.

As an example, in 2021, the Mossos d'Esquadra processed 3 cases for hatred of the homeless, 9 for discrimination based on religious beliefs, 7 for anti-Semitism, and 5 for discrimination against people with physical and/or mental disabilities. All were recorded in the province of Barcelona, except for two cases against religious beliefs that were reported in Tarragona (Saez, 2012).

Among the measures identified by the authorities to manage, signal and reduce the phenomenon are campaigns to inform the public about their rights, about the identification and prevention of situations and at the same time aimed at encouraging citizens to report these cases in order to punish the perpetrators and cultivate respect for plurality and diversity (Gobineau, 2015).

## 2.2. Vulnerable prisoners belonging to ethnic, religious and racial, sexual minorities in the penitentiaries of Romania and other European states

Inside the penitentiaries, all those in a state of deprivation of liberty can become more or less vulnerable, due to the social, psychological, administrative, mental problems that most of them face. There are certain groups of prisoners who can become the target of exclusion and physical aggression from others on the basis of belonging to a minority group, the fact that they have a different sexual

orientation, because they suffer from mental insufficiency, belong to a different religion or have a different color of skin (Gombert 2007).

All these factors favor the appearance of prejudice, discrimination and often lead to direct violence, abuse, ill-treatment and even more serious crimes.

These prisoners who come from ethnic, religious, racial, sexual minorities, prisoners with disabilities, those who are ill, those who suffer from mental retardation, foreign national prisoners, women prisoners and minors are vulnerable and may be victims both of abuse from other prisoners, but also from abuses committed by prison employees.

National human rights standards require the treatment of vulnerable prisoners, regarded as prisoners with special needs, in the same manner and with the provision of the same rights as all prisoners, with those belonging to vulnerable groups requiring additional protection by including them in special social reintegration programmes.

The percentage of vulnerable groups in national penitentiaries is constantly increasing, in the European Union states foreign prisoners representing over 20 percent of the total population in penitentiaries, those with certain mental disabilities being almost 4 times more numerous, and those belonging to ethnic groups and racial groups exceeding half of the number of people incarcerated in certain countries (<http://discursfaradiscriminare.ro/wp-content/uploads/2014/10/Studiu-comparativ-hate-speech.pdf>).

In many situations inmates may have multiple special needs. Considering their special status and the fact that the state of deprivation of liberty potentiates and aggravates the risks they are exposed to and the needs they face, these vulnerable prisoners are no less dangerous, the degree of vulnerability not being associated with the degree of dangerousness and the risk of recidivism (Cree, 2014).

Within the strategies and policies for managing the activity in the penitentiary system, plans must be identified and applied to assess and reduce risks, to integrate prisoners with special needs and to create a fair and safe space for the entire prison population, where the protection of human rights should be the main priority of the system.

### **3. Research methodology**

This article based on a detailed interpretative and jurisprudential analysis underlines the main strategies, reports, domestic and European provisions used in different appeals regarding hate crimes. The aims of this research is to underline the good practices used to fight against hate crimes in all European Union countries.

Since 2011, the British Government has included the objectives for preventing and combating hate crimes in the government program, creating a strategy to reduce the phenomenon, based on the Crime and Disorder Act 1998 (Crime and Disorder Act 1998) and Criminal Justice Act (Criminal Justice Act 2003), which criminalized motivations based on hatred as aggravating circumstances.

The strategy called "Challenge it, Report it, Stop it - The Government's Plan to Tackle Hate Crime" was designed in three main directions: that of preventing hate crimes, through early intervention and by addressing the behaviors that precede this type of crimes, access to support services for injured persons, as well as the identification and prompt resolution of hate crimes (Weber, 2009).

### **4. Findings**

Based on the analyze of the Decisions of the European Court of Human Rights we may say that in the penitentiary system the overrepresented groups are the ones that are most often subject to disciplinary punishments, those against whom additional security measures are taken being subject to additional shake down, without necessarily having evidence or justifiable reasons for such measures. Moreover during disciplinary hearings and rehabilitation programs these groups do not always have translation and interpretation services available.

The most frequent way of reflecting prejudices and social exclusion is represented by their concretization in the form of physical (assaults, rapes) and verbal (harassment, humiliation, hate speech) abuse, which is carried out systematically, becomes generalized and becomes a practice in some penitentiaries.

#### **4.1. Prisoners belonging to ethnic, racial and religious minorities**

The prisoners belonging to these groups are different from the general prison population on the basis of race, ethnicity, religion, language, cultural, social or educational differences. However, from a numerical point of view, these prisoners, called a minority group, may be the majority in relation to the general population, in some penitentiaries being overrepresented. Thus, it is absolutely necessary to have fair treatment and concrete and effective measures to meet the special needs of these people (<http://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf>.)

Members of minority groups may be discriminated by prison staff in terms of the rights and services they should benefit from in a non-discriminatory manner, namely adequate accommodation, access to healthcare and treatment, education and work programmes, activities additions, parole decisions and home visits.

#### **4.2. Foreign detainees**

There are those prisoners who do not have the citizenship of the country in which they are incarcerated, those who do not hold a passport of the country in which they are incarcerated and those who have not been naturalized even though they have lived in the country of incarceration for a long time. Asylum seekers and illegal immigrants, who are accommodated in asylum centers and other state institutions, and not in penitentiaries, are not part of the category of foreign detainees.

The number of prisoners in European prisons has increased in recent years, and the number of foreign prisoners incarcerated in countries other than their countries of origin is significant and varies from country to country. According to the statistics of the Council of Europe, in 2015 there were 115,000 foreign prisoners incarcerated in European countries, with an average rate of over 20 percent, most in Switzerland and Luxembourg, where their percentage was over 70 percent of the number of incarcerated people. The states with the fewest foreign prisoners were, at the level of 2015, Romania and Poland - under 1 percent. In other countries such as Greece, Austria and Liechtenstein, more than half of the inmates were foreigners. The phenomenon of migration and the recent events related to the refugee crisis are elements likely to change such statistics in the coming years, when increases will most likely be recorded in this segment.

In the legislation report of each country, after incarceration in a penitentiary, foreign detainees without a legal residence permit in the country of detention follow certain transfer procedures to the country of origin, which are relatively arduous, causing this person to remain in detention in the country in which he is illegally for a long time, waiting for the decisions of the authorities.

The prisoner becomes all the more vulnerable the more factors favoring discrimination exist, namely belonging to a racial or ethnic group associated with the existence of post-traumatic stress disorders generated by intense experiences that these people go through, some immigrants from war zones, of conflicts or natural disasters, people who have been victims of torture, rape or who have lost family members.

Considering the social and psychological dimension of the events that these detainees go through, some belonging to minority groups, the harmful effects of detention in another country must be reduced by addressing their special needs and establishing practical and effective strategies.

The discrimination to which prisoners from minority groups are subjected to are not based on physical or verbal abuse, it often manifests itself in a slightly hidden, and subtle form, in terms of living conditions, security, access to certain services and information, for example they are allocated an accommodation space inferior to other detainees, they are disciplined and searched more often, they do not have access to information regarding the right to legal assistance, or the right to get in contact with the consular representatives of his/her country according to the rules of European penitentiaries.

Recommendation CM/Rec(2012)12 of the Committee of Ministers to the member states regarding foreign prisoners promoted several measures for social reintegration and reduction of marginalization, such as the fact that the rules in the penitentiary must be clearly established and transmitted, foreign prisoners must have access to language acquisition courses, to translators and interpreters, to be able to communicate with other people of the same nationality, with consular services, to be provided with support and assistance through probation services, after release from prison, access to work and to vocational training programs, as well as the right to visit and maintain contact with the world outside the prison.

#### 4.3. Sexual minorities

The term sexual minority mainly defines people who have different sexual orientation from the majority, homosexuals, lesbians, transsexuals, and gender minorities.

This category of people is particularly vulnerable within the penitentiary system to the danger of abuse, sexual violence, physical violence, humiliation, being more prone to become victims of sexual assaults and rapes than those who commit such crimes.

In the Manual on prisoners with special needs of the United Nations Organization, this criminal phenomenon, of rapes committed between prisoners in penitentiaries, is analyzed, establishing as a repeated "practice" rape between persons of the same sex and, although those who commit such rapes are considered homosexual, in reality most declare themselves heterosexual, and the male victim is seen and used as a temporary substitute for the female. A typical practice is for the perpetrators to be protected, in exchange for sexual services, by another inmate known in the hierarchy for his power and influence within, an inmate who keeps other inmates at bay. Another common practice is that the victim is "placed" with other inmates, which intensifies the drama and the suffering.

#### 5. Conclusions

The European Union authorities tasked with combating discrimination and hate speech, established in all member countries, differ from each other in some aspects related to the area of the fields they cover and by the level of specialization of these authorities or public institutions.

Considering the size of the phenomenon, measures such as the development of strategies and practices to increase the protection of prisoners from the category of sexual minorities are absolutely necessary, provided they are implemented effectively and with immediate results in reducing cases of ill-treatment and discrimination based on sexual and transsexualism orientation.

The Council of Europe recommends that prison staff be trained in such a way that they are made aware of the special protection needs of these prisoners, who should be allocated to separate cell accommodation, not together with those who pose a risk to their safety. They must be subjected to a complete medical examination to determine their accommodation, taking into account the fact that they are transsexual persons, some of whom are in the process of changing their sex.

Discrimination based on sexual orientation is fought in Romania and in 12 other European countries, such as: France, Spain, Germany, Belgium, Portugal, Denmark, Sweden, Estonia, Lithuania, Holland, Ireland and Malta. Discrimination on the basis of disability is provided for in Romanian legislation and in that of Hungary, Italy, Cyprus, Greece, Slovenia, Finland, Bulgaria, France, the Netherlands, Estonia and Luxembourg.

Romania relies on well-updated legislation regarding the fight against discrimination and hate speech, being one of the European states with one of the best legislations in this regard.

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