

HATE CRIMES: INTERNATIONAL, REGIONAL, ECONOMIC, AND NATIONAL ASPECTS

Liliia Matvieieva¹, Sergii Smokov², Maksym Korniienko³

Abstract. *The subject* of this study is the scientific and practical problems of defining the definition of "hate crime" in international, regional and domestic legal systems. General scientific, interdisciplinary and special scientific methods were used in the process of research. Thus, logical and systematic methods allowed us to select and analyze the information on the topic of research. Specific sociological method allowed to determine the social determinants of the existence of this type of crime. The formal-legal method allowed us to trace the level of institutionalization of hate crimes and formulate definitions of legal concepts and categories. The comparative legal method allowed for a comparison of international, regional and national legislation on combating intolerance and combating hate crimes. *The purpose* of this article is to identify the key areas for the formation of an active legal policy aimed at increasing the capacity to combat hate crimes. Analysis of experience in combating intolerance and discrimination and the development of proposals for improving domestic legislation. The main stages of the formation, development and legalization of hate crimes are highlighted. Such crimes in the modern world are considered to be the most dangerous type of criminal acts. Factors associated with the acquisition of the character of hate crime as an acute social problem since the second half of the 20th century are named. The main recommendations of modern human rights institutions regarding the fight against these crimes are considered. The most important guarantees of prevention of any human discrimination in the future, which are reflected in the international agreements on human rights and enshrined in the constitutions of modern states, are analyzed. The practice of the European Court of Human Rights in this direction is considered. The legal regulation of hate crimes in the national legislation of Ukraine is analyzed. It is emphasized that the main directions of implementation of domestic legal policy in the field of combating discrimination are carried out in accordance with the provisions of the Constitution of Ukraine, sectoral legislation and international obligations of Ukraine. Statistical data characterizing the level of hate crimes in the national legal system is presented. The characteristics of hate crimes are studied. It is emphasized that the motive itself is of key importance in establishing the corpus delicti and the correct qualification of hate crimes. It was concluded that the list of aggravating circumstances for hate crimes should be clearly defined at the national legislative level, which would avoid ambiguous interpretations of the wording contained in the articles of the Criminal Code of Ukraine providing for punishment for crimes committed on the grounds of intolerance. It was stressed that an effective response to hate crimes is necessary in order to prevent such crimes from becoming a serious public threat. In the opinion of the authors, such a problem can be solved through legal education of Ukrainian society and the formation of a culture of tolerant and respectful attitudes toward all people. It is the duty of a modern state to ensure the adoption of appropriate national legislation, the collection of statistical data, and the thorough investigation and prosecution of hate crimes.

Key words: human rights, vulnerable population groups, discrimination, socio-economic factors, hate crimes, practice of the European Court of Human Rights.

JEL Classification: K38, J16

¹ Odessa State University of Internal Affairs, Ukraine

E-mail: liliya.matveeva@i.ua

ORCID: <https://orcid.org/0000-0002-8402-5584>

² Odessa State University of Internal Affairs, Ukraine

E-mail: smsm0k0v@gmail.com

ORCID: <https://orcid.org/0000-0002-7471-4650>

³ Odessa State University of Internal Affairs, Ukraine (*corresponding author*)

E-mail: oduvs2015@ukr.net

ORCID: <https://orcid.org/0000-0002-6420-6169>



This is an Open Access article, distributed under the terms of the Creative Commons Attribution CC BY 4.0

1. Introduction

Modern international, regional and national institutions insist that hate crimes are a very dangerous phenomenon. Such offenses have always existed. In the history of mankind, it has led to terrible consequences. One can cite numerous historical facts of religious wars, crusades, inter-ethnic and inter-ethnic conflicts, pogroms and persecution based on anti-Semitism.

Hate crimes are considered to be the most dangerous type of criminal act in the modern world, because hatred can destroy civil society. Since the second half of the 20th century, hate crimes have become an acute social problem. This is due to the following factors:

- firstly, with the development of civilization, liberalization and humanization of interpersonal relations, the population of modern states has become particularly sensitive to any manifestations of xenophobia and persecution based on national, racial, religious hatred, as well as homophobia, hostility towards any category of population, etc;
- second, modern globalization processes have accelerated migration, the mixing of races, ethnicities and cultures, religions and customs, which, in turn, leads to mutual misunderstanding and increased xenophobia.

It can be said that almost all processes in public life are integrated and mutually influenced. The level of crime is also influenced by economic, social and political factors that are mostly general and not related to a specific type of crime, but at the same time they affect all the processes taking place in society and the level of crime in general.

Criminal hate crimes remain a painful problem for modern Ukrainian society. The inaction of state authorities, law enforcement and law enforcement agencies in combating hate crimes leads to violence, numerous and gross violations of human rights.

Analysis of recent research and publications. Hate crimes are the subject of attention of such scholars as A. Hrynychak (2018), O. Druchek (2021), N. Dryomina-Volok (2009), L. Matvieieva (2020), O. Pankevich (2014), S. Rabinovych (2017) and others. The legal basis for the scientific research was the provisions of international and European legal acts in the field of protection of human rights and freedoms, norms of domestic legislation, the practice of the European Court of Human Rights, data of sociological and statistical studies, materials of mass media and Internet resources.

The concept of "hate crimes" has been widespread since the second half of the 1980s in the United States. It is believed that the term "hate crime" was first publicly introduced in a U.S. congressional hearing

in 1985 by Congressman and judge John Konies. Also, this term was used by American journalists to define xenophobic criminal acts. J. Jacob and K. Potter in the book "Hate Crimes. Criminal Law and Identity Politics" emphasize that hate crimes are primarily "crimes caused by prejudices and stereotypes against persons of a different race, nation, skin color, religion, sexual orientation" (Hrynychak, pp. 49–51). In 1990, Congress passed the Hate Crimes Statistics Act, which gave one of the first definitions of the term as: "any violence directed against members of groups united by a particular identity." (Hate Crime Statistics) Since the 1990s, the term "hate crime" has been legalized in a number of European countries.

At the end of the 20th century, the definition of "hate crime" became legal and was enshrined in legislation. Violence motivated by racism, anti-Semitism, and homophobia – hostility toward homosexuals – was criminalized. Over time, the number of scientific studies devoted to the problems of crimes committed on the grounds of national, racial, and religious hatred or enmity, as well as homophobia, has also grown.

N. Dromina-Volok, analyzing the problems of the criminal legal prohibition of racial discrimination as an international duty of the state, concludes that the term "hate crime" is introduced into the legislation of many modern states, it can be considered as a legal qualification of a special type of crime committed under the influence of feelings of extreme hostility, hatred towards persons of another race, nationality, religion, ethnic origin, political beliefs, gender, age, sexual orientation or people with special needs. Such a definition has been introduced in the criminal legislation of some states in the United States and a number of states in Western and Central Europe. Hatred can act as a qualifying attribute of a special discriminatory crime and/or as an aggravating circumstance (Ukraine, the Russian Federation, the United States, Great Britain, etc.). In those states that have not adopted a formal legal classification of discriminatory crimes as "hate crimes," judicial practice takes into account the presence of a hate motive, which entails a more severe punishment even in the absence of a formal legal classification of the crime as a "hate crime" (Greece, Germany, Switzerland, etc.) (Dryomina-Volok, 2009, p. 458).

Note that the term "hate speech" has been interpreted in Recommendation № R 97 (20) of the Committee of Ministers of the Council of Europe to member states on "incitement to hatred," according to which it is defined as all forms of expression that include provoking, encouraging, spreading or justifying xenophobia, racial intolerance, anti-Semitism and other expressions of hostility towards

minorities, migrants or people with immigrant background (Recommendation NR (97) 20).

At the same time, note that discrimination can affect anyone, regardless of gender, age, or health status. The term "discrimination" (from the Latin *discriminatio* – difference) means when anyone is disadvantaged because of any of their unprotected characteristics.

2. International and regional standards on hate crime prevention

Hate crimes are among the most inhumane crimes and serious violations of human rights accepted internationally. Global and regional legal systems have developed basic guidelines for dealing with hate crimes. For example, international treaties contain a system of detailed general and regional standards that impose clear obligations on states to respond to hate crimes.

The term "discrimination" was first used in the Universal Declaration of Human Rights, which was adopted by the UN General Assembly on December 10, 1948, and which is referred to in virtually all human rights instruments. The provisions of the Declaration are fully enshrined in the Constitution of Ukraine. States that have signed the Universal Declaration of Human Rights have pledged to provide protection against discrimination or incitement to discrimination (Universal Declaration of Human Rights, 1948).

The UN Convention on the Elimination of All Forms of Racial Discrimination emphasizes that the existence of racial barriers is contrary to the ideals of any human society. The definition of "racial discrimination" means any distinction, exclusion, restriction or preference based on race, color, 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 (International Convention on the Elimination of All Forms of Racial Discrimination). The Convention requires accession states to establish liability for racist and xenophobic crimes. The Convention was signed by Ukraine on March 6, 1966 and ratified on January 21, 1969. After the proclamation of Ukraine's independence, international treaties ratified during the Soviet bloc came into force on the territory of Ukraine in accordance with the Law of December 10, 1991 "On the Operation of International Treaties on the Territory of Ukraine," which established that international treaties concluded and duly ratified by Ukraine are an integral part of the national legislation of Ukraine (Practice of Crime Investigation in Ukraine, 2021).

The International Covenant on Civil and Political Rights requires the criminalization of incitement to discrimination, hostility or violence based on racial, national or religious hatred (Part 2, Article 20) (International Covenant on Civil and Political Rights, 1966).

Ensuring the protection of human rights is one of the most important activities of the Council of Europe, which includes legal institutions aimed at combating discrimination and hate crimes. All member states of the Council of Europe have signed the Convention for the Protection of Human Rights and Fundamental Freedoms, which aims to protect human rights, democracy and the rule of law.

The European Convention on Human Rights does not contain provisions directly related to hate crimes, but Article 14 of the Convention prohibits discrimination, guarantees equality in the use of other convention rights, establishes the provision that the use of the rights and freedoms recognized in the Convention must be provided without discrimination on any basis – gender, race, color, language, religion, political or other beliefs, national or social origin, belonging to national minorities, property status, birth, or on any other basis (Convention on the Protection of Human Rights and fundamental freedoms, 1950). The content of the article suggests that the list of such characteristics is not exhaustive. It is to this article that victims of hate crimes may appeal if the state has not fulfilled its obligations under other norms of the Convention.

Over time, Article 14 was supplemented by Protocol № 12 to the Convention, which expands the prohibition of discrimination and creates guarantees of equality in the enjoyment of all rights, including those provided by the national laws of member states (Protocol № 12 to the Convention, 2000). Thus, Protocol No. 12 to the Convention has a broader scope than Article 14, which applies only to the rights specified in the European Convention on Human Rights. Therefore, O. Pankevich emphasizes certain features of Art. 14 Conventions that make it unique in the system of the convention mechanism for the protection of individual rights and freedoms:

- first, this article does not contain a general prohibition on discrimination, limiting itself to the purpose of ensuring without discrimination "the enjoyment of the rights and freedoms recognized in the Convention";
- second, Article 14 of the Convention has no independent meaning, it complements the other normative articles of the Convention and Protocols by supplementing the guaranteed rights;
- third, the application of this article can only be done in conjunction with other articles of the Convention (Pankevich, 2014, p. 23–24).

Thus, in the case of "Nachova and others vs Bulgaria", the European Court of Human Rights issued a historic decision and ruled that state authorities are obliged to investigate possible racist motives behind violent acts, and Bulgaria's failure to do so constitutes a violation of the non-discrimination clause, contained in Art. 14 of the European Convention on Human Rights. Failure to distinguish between ways of solving situations that are significantly different from each other may constitute illegal treatment, which is incompatible with the requirements of Art. 14 of the Convention (Nachova and others vs Bulgaria, 2005).

Hate crimes fall under the jurisdiction of the Organization for Security and Co-operation in Europe. The OSCE Ministerial Council has repeatedly stated that hate crimes not only violate the rights of individuals, but can escalate into conflict and violence on a larger scale.

It is extremely important to respect both international humanitarian law and human rights in vulnerable security situations, where the most vulnerable populations are the first to suffer. Therefore, the OSCE Office for Democratic Institutions for Human Rights monitors hate crimes and develops general recommendations and policies in this area. According to the OSCE Office for Democratic Institutions and Human Rights, the most frequent victims of hate crimes in Ukraine are: foreigners and representatives of various ethnic communities; members of religious minorities and their property (churches, synagogues, mosques, cemeteries) and private property; Roma; and gay, lesbian, bisexual and transgender people (184 offenses and 4 convictions, 2020). Members of these communities are particularly vulnerable to hate crimes, especially in the absence of legal protections.

An important document related to the prevention of hate crimes is the European Union Framework Decision on Combating Racism and Xenophobia, adopted on November 28, 2008, which aims to establish a unified approach to the definition of hate crimes in the national legal systems of European states and is another step toward harmonizing the criminal legislation of European Union member states. This decision applies to all countries that are members of the European Union or aspire to such membership.

The constitutions of modern states of the world contain references to international and regional legal instruments and include a number of their provisions, which are referred to in the interpretation of national human rights legislation and in jurisprudence.

3. Legal regulation of hate crimes in the national legislation of Ukraine

Ukraine has assumed international legal obligations to combat hate crimes as a member of the United Nations, the Council of Europe and the OSCE. The experience in combating these phenomena, reflected in the EU legislation, is also taken into account. Association Agreements between Ukraine and the EU provide for overcoming discrimination in all its forms and manifestations. The second phase of the EU Action Plan on visa liberalization for Ukraine requires effective implementation of legislation and anti-discrimination policies, implementation of relevant UN and Council of Europe documents. The creation of an effective system for preventing and countering discrimination is also provided for in the National Human Rights Strategy, and item 3, Article 105 of the Action Plan for its implementation directly requires the provision of punishment for crimes committed for reasons of intolerance based on such grounds as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language.

The implementation of domestic legal policy in the sphere of combating discrimination is carried out in accordance with the provisions of the Constitution of Ukraine, sectoral legislation and Ukraine's international obligations. The basic law of Ukraine guarantees equality of rights and freedoms of citizens. Unlawful restriction of people's rights and freedoms on the grounds of gender, age, disability, race, color, political, religious or other beliefs, ethnic and social origin, citizenship, family and property status, place of residence, language, etc. is discrimination (Constitution of Ukraine, 1996).

One of the strategic goals of the National Strategy in the field of human rights, approved by the Presidential Decree № 119/2021 dated March 24th 2021, is the creation of an effective system for preventing and countering discrimination.

The strategy seeks to unite society on issues related to an understanding of the values of human rights and freedoms, which are secured and protected on the basis of the principles of equality and non-discrimination.

As a result of the implementation of the Strategy in Ukraine should ensure the comprehensiveness and consistency of Ukrainian legislation in the sphere of prevention and counteraction to discrimination, taking into account the best international, including European, experience, the real challenges in the field of human rights and freedoms in Ukraine. One of the tasks of preventing and counteracting discrimination is to create and ensure the effective functioning of a system of prevention, counteraction, documentation, investigation, and prosecution of criminal offenses

committed for reasons of intolerance (On the National Human Rights Strategy, 2021).

Modern state sectoral legislation reflects the values of society. Hate crime legislation shows how much society values equality and promotes such social values. This is possible if the laws are effectively implemented. If hate crime laws are not enforced, respect for the law is undermined and the rule of law is weakened.

Modern scholars have traditionally understood hate crimes as criminal acts motivated by prejudice against certain groups of people. Such crimes consist of the following elements: first, it is an act that constitutes an offense under the current criminal law; second, it is a prejudicial attitude that guides the offender in committing the crime (Matveeva, 2020, p. 52–53). The victims of such crimes tend to belong to social groups that are represented in small numbers in society, and, accordingly, the prejudice is fueled by the subject's belief in superiority over persons to whom the protected characteristic may be extended (for example, in post-Soviet states the victims of such attacks often include members of national minorities, LGBT activists, persons of no fixed abode and others). Thus, hate crimes are rooted in prejudice, can occur in different societies, and carry the seeds of potential conflict.

O. Druchek believes that hate crimes as a criminological phenomenon are characterized by increased public danger and a significant level of latency; they are implemented according to the principles of escalation and spiral development (Druchek, 2021, p. 451). Such crimes are singled out as a separate category because of these features.

A shortcoming that the European Court of Human Rights constantly points out to Ukraine is the lack of a qualifying corpus delicti for hate crimes and a list of circumstances that aggravate responsibility, such as sexual orientation and gender identity, in the Ukrainian Criminal Code. To bridge this gap, in April 2020 draft law № 3316 "On Amendments to the Criminal Code of Ukraine (on Combating Hate Crimes Based on Sexual Orientation and Gender Identity)" was registered with the parliament. It provided for the expansion of criminal legislation with the concepts of "sexual orientation" and "gender identity." The Committee on Law Enforcement recommended that the Verkhovna Rada of Ukraine reject draft law №3316 (and alternative № 3316-2 and 3316-3) on the criminalization of hate crimes based on sexual orientation and gender identity due to the need for revision and appeals by the All-Ukrainian Council of Churches (Conclusion of the Verkhovna Rada Committee, 2020; Matveeva, 2020, p. 52). And on September 1, 2020, the so-called gender bill was withdrawn.

In June 2020, the European Commission against Racism and Intolerance published its conclusions on the implementation of the priority recommendations given to Ukraine in 2017. The European Commission against Racism and Intolerance specializes in human rights monitoring related to the fight against racism, discrimination on any grounds, xenophobia, anti-Semitism and intolerance in Europe. First, Ukrainian state authorities have not criminalized hate crimes based on sexual orientation and gender identity, and second, they have not cancelled court hearings for Roma who seek to prove their identity in order to obtain identity documents (Conclusions of the Council of Europe Commission against Racism on Ukraine's failure to implement its priority recommendations). In order to improve national legislation and implement the Association Agreement between Ukraine and the European Union, the Cabinet of Ministers has initiated amendments to a number of codes and laws of our country, relating to combating discrimination and increasing responsibility for the spread of especially dangerous diseases.

Such possible changes are generally consistent with the aspirations and expectations of civil society (Draft Law Amendment № 5488, 2021). The Draft Law of Ukraine "On Amendments to the Code of Administrative Offences and the Criminal Code of Ukraine on Combating Discrimination", submitted on May 13, 2021 by the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine, stands out among various legislative initiatives of recent years by its comprehensive approach and focus on the systematic elimination of a number of legislative gaps. The Verkhovna Rada Committee on the integration of Ukraine into the European Union considered the bill at its meeting on June 9, 2021 and adopted a conclusion, which states that bill № 5488 does not contradict international legal obligations of Ukraine in the sphere of European integration (Conclusion of the Verkhovna Rada Committee of Ukraine, 2021). The Draft Law 5488 aims to implement a number of fundamental national and international documents, in particular, such as the National Human Rights Strategy, the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states, the Strategy for a Comprehensive Response to Human Rights Barriers in Access to HIV and Tuberculosis Prevention and Treatment Services until 2030, the Action Plan for the National Human Rights Strategy for 2021–2023. In addition, Draft Law № 5488 meets the goals of the Global Partnership to eliminate all forms of HIV-related stigma and discrimination, Ukraine has officially expressed its intention to join in 2020 (the public advocated for the adoption of Draft Law № 5488, 2021).

On June 20, 2022, the Verkhovna Rada ratified the "Council of Europe Convention on preventing and combating violence against women and domestic violence," known as the "Istanbul Convention". The purpose of the document is to break gender stereotypes that allow violence against women. The Convention promotes and protects the right of people to live free of violence and prohibits all forms of discrimination against women. The Convention proposes to criminalize violence against women and provide punishment for it. A number of articles of the Criminal Code are currently in force in Ukraine, but they are not as broadly and in detail as in the Istanbul Convention. The document provides for protection mechanisms for both men and women subjected to domestic violence. Ratification of the Istanbul Convention gives experts of the Council of Europe an opportunity to monitor how Ukraine fulfills its obligations. Ukraine can demand increased accountability for rapists of our citizens abroad, as well as demand prosecution of Ukrainian criminals who are hiding abroad. Countries that have ratified the Convention must criminalize: psychological violence; stalking; physical violence; sexual violence (including rape, which includes various types of sexual acts with a person without consent); forced marriage; female circumcision; forced abortion; and forced sterilization (Law of Ukraine № 2319-IX, 2022). As of July 31, 2022, the Unified State Register of Court Decisions returns 432,548 documents, of which 27,316 are from 2021 (from January 1 to December 31, 2021) when searching for the word "discrimination" (Unified State Register of Court Decisions, 2022).

The provisions of national legislation concerning hate crimes refer to "racial, national and religious intolerance". The commission of a criminal offence on the grounds of racial, national, religious hatred or discord or on the grounds of gender is one of the aggravating circumstances in the commission of a criminal offence under Article 67 of the Criminal Code of Ukraine. In addition, a number of articles of the Criminal Code (Articles 115, 121, 122, 126, 127 and 129) contain language based on motives of racial, national or religious intolerance as a qualifying attribute (Criminal Code of Ukraine, 2001).

In accordance with the provisions enshrined in international and regional legal acts, the domestic legislator provides for a separate corpus delicti. "Violation of equality of citizens on the basis of their race, national or regional origin, religious beliefs, disability and other characteristics" (Art. 161 of the Criminal Code of Ukraine), which contains an open list of characteristics protected by the ECHR, against which crimes based on intolerance can be committed. At the same time, experts have expressed the expediency of supplementing the above list of

characteristics with those that have become established in human rights practice, such as sexual orientation and gender identity, occupation, as one of the most significant characteristics that may contribute to the establishment of the corpus delicti under this article (Practice of Crime Investigation in Ukraine, 2021, p. 19–20).

Different countries have different methods of counting hate crimes, depending on the sources of data: victim surveys; police reports; and final court decisions. Court decisions indicate a minimum level of crime. National experts emphasize that there is a tendency of annual increase in the number of cases involving Article 161 of the Criminal Code of Ukraine by pre-trial investigation bodies. Thus, in the period from 01.01.2015 to 06.30.2020, 616 criminal proceedings with signs of crimes committed on the grounds of intolerance were registered in the EDPR. Of these 616 criminal proceedings, 374 (61%) were closed due to lack of corpus delicti (Crime Investigation Practice in Ukraine, 2021, p. 31). This ratio indicates a low efficiency of application of this article.

The practice of investigating hate crimes motivated by homophobia or transphobia remains unsatisfactory. Investigators ignore such motives when committing crimes, qualifying them mainly as ordinary hooliganism or other crimes without aggravating circumstances, without taking such motives into account when sentencing the offender. The difficulty in determining the corpus delicti is the reason for the low effectiveness of investigations into criminal offenses motivated by intolerance.

In the practice of the ECHR, there are cases in which the theme of crimes based on hatred against Ukraine was voiced these are Fedorchenko and Lozenko v. Ukraine (December 20, 2012), Pichkur v. Ukraine (2014), Burlya and others v. Ukraine (February 6, 2019), Belyaev and others v. Ukraine (June 9, 2019), Kornilov v. Ukraine (November 12, 2020), Zagubnia and Tabachkova v. Ukraine (November 12, 2020).

In the case "Fedorchenko and Lozenko v. Ukraine", the applicants stated that they provided evidence of the existence of a racist motive for the crime and that, despite the information available to the state authorities, that several Roma houses were set on fire on the same day, and to the direct racist statements of one of the accused, there is no evidence that the state authorities carried out any verification of the claims that the crime was committed on the basis of ethnic enmity. The European Court of Human Rights considers it unacceptable that, in such circumstances, the investigation, which lasted more than eleven years, failed to take any serious steps to identify and punish the perpetrators, and accordingly the Court considers that there has been a violation of Article 14, in

conjunction with the procedural aspect of Article 2 of the Convention (Fedorchenko and Lozenko v. Ukraine, 2012).

In the case "Zagubnia and Tabachkov v. Ukraine", the European Court noted that the national authorities did not provide any clear and understandable grounds for rejecting the arguments of the applicants that the attack on them should be qualified as a crime of violation of equality, provided for by Article 161 of the Criminal Code of Ukraine, or recognition of this provision as inapplicable. Ukraine failed to fulfill its obligation to disclose motives for religious bias and was found guilty of violating Articles 9 and 14 of the European Convention (right to freedom of religion, prohibition of discrimination, taken together with Article 3) (Zagubnia and Tabachkova v. Ukraine, 2020).

Based on this analysis, the following main directions for lawmaking in the area of hate crimes can be identified: first, indicating hate motive as an aggravating circumstance; second, improving existing legal provisions by expanding the texts of laws to include hate motive; and third, applying special articles of criminal law that define hatred as an independent crime.

4. Conclusions

The formation in modern society of an understanding of equality as a value and an awareness of everyone's role in its affirmation is the most important vector in the strategic fight against discrimination. The duty of any modern state is to protect and ensure the safety of people on its territory regardless of race, nationality, ethnic origin, language, color, religion, age, disability, sexual orientation, gender identity and

other characteristics. The fight against hate crimes is becoming systemic in nature and requires the efforts of both government agencies and civil society.

Trends in the global development of the world point to the prospect of an increase in the number of hate crimes based on such characteristics as sexual orientation, gender identity, nationality/ethnicity or race. Following the recommendations of international institutions to combat hate crimes, today's progressive states criminalize such crimes by indicating the broadest possible list of characteristics that can constitute grounds for discrimination. According to the authors, the list of circumstances that aggravate punishment for committing a crime against a person or group of persons based on intolerance should be clearly established at the national legislative level. This approach will avoid ambiguous interpretations of the wording contained in the articles of the Criminal Code of Ukraine providing for punishment for crimes committed on the grounds of intolerance. It is the motive that is of key importance for establishing the corpus delicti of a crime and the correct qualification of hate crimes.

An effective response to hate crimes is necessary to ensure that such crimes do not become a serious public threat. This problem can be solved through systematic action aimed at educating society legally and fostering a culture of tolerance and respect for all people. Modern States therefore commit themselves to ensuring that appropriate national legislation, statistics, thorough investigations and prosecutions of hate crimes, and training and awareness-raising activities are carried out in accordance with the basic principles of international and regional law.

References:

- 184 pravoporushennia i 4 zasudzhenykh: shcho stoit za statystykoiu zlochyniv nenavysti v Ukraini? Ukrainka Helsinska spilka z prav liudyny, 2020 [184 offences and 4 convicted: what is behind the hate crime statistics in Ukraine? Ukrainian Helsinki Human Rights Union, 2020]. Available at: <https://helsinki.org.ua/articles/184-pravoporushennia-i-4-zasudzhenykh-shcho-stoit-za-statystykoiu-zlochyniv-nenavysti-v-ukraini/>
- Vysnovky Komisii proty rasyzmu Rady Yevropy shchodo nevykonannia Ukrainoiu yii priorityetnykh rekomendatsii. Ofis Rady Yevropy v Ukraini. Strasburh, 02 chervnia 2020 [Conclusions of the Council of Europe Commission against Racism on Ukraine's failure to implement its priority recommendations. Office of the Council of Europe in Ukraine. Strasbourg, 02 June 2020]. Available at: <https://www.coe.int/uk/web/kyiv/-/council-of-europe-s-anti-racism-commission-says-ukraine-has-not-implemented-its-priority-recommendations>
- Vysnovok Komitetu Verkhovnoi Rady Ukrainy z pytan intehtatsii Ukrainy do Yevropeiskoho Soiuzu shchodo proektu Zakonu Ukrainy № 5488 vid 09 chervnia 2021 roku [Conclusion of the Verkhovna Rada Committee on Ukraine's Integration into the European Union on Draft Law of Ukraine № 5488 of June 09, 2021]. Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71891
- Vysnovok komitetu Verkhovnoi Rady Ukrainy z pytan pravookhoronnoi diialnosti shchodo proektu Zakonu Ukrainy № 3316 vid 09.04.2020 r. [Conclusion of the Verkhovna Rada Committee on Law Enforcement on the Draft Law of Ukraine № 3316 of 09.04.2020].
- Hrynychak, A. A. (2018) Protydiia rasyzmu, ksenofobii ta ekstremizmu: navchalnyi posibnyk [Countering racism, xenophobia and extremism: a training manual]. Kharkiv.
- Hromadskist vystupyla za ukhvalennia zakonoproektu № 5488, yakyi poklykanyi protydiaty dyskryminatsii [The public called for the adoption of the draft law № 5488, which aims to counteract discrimination].

- Tsentr prav liudyny ZMINA, 2021. Available at: <https://zmina.ua/statements/gromadskist-vystupylaza-uhvalennya-zakonoprojektu-%E2%84%965488-yakyj-poklykanyj-protydiyaty-dyskryminacziyi/>
- Druchek, O. V. (2021) Protydiia zlochynam, zdiisnenym na gruntii nenavysti: poniattia, zmist, oznaky [Combating hate crimes: concept, content, signs]. *Yurydychnyi naukovyi elektronnyi zhurnal*, vol. 4, pp. 450–453.
- Dromina-Volok, N. V. (2009) Kryminalno-pravova zaborona rasovoi dyskryminatsii yak mizhnarodnyi oboviazok derzhavy [Criminal prohibition of racial discrimination as an international obligation of the state]. *Aktualni problemy derzhavy i prava*, vol. 46, pp. 457–460.
- Iedynyi derzhavnyi reiestr sudovykh rishen [Unified state register of court decisions]. Available at: <https://reyestr.court.gov.ua/>
- Zahalna deklaratsiia prav liudyny vid 10 hrudnia 1948 r. [Universal Declaration of Human Rights of December 10, 1948]. Available at: http://zakon4.rada.gov.ua/laws/show/995_015
- Zahubnia ta Tabachkova proty Ukrainy: rishennia YeSPL № 974_f74, vid 12.11.2020 r. [Zagubnya and Tabachkova v. Ukraine: ECHR judgment № 974_f74, dated 12.11.2020]. Available at: https://zakon.rada.gov.ua/laws/show/974_f74#Text
- Katehoryzatsiia ta rozsliduvannia zlochyniv na gruntii nenavysti v Ukraini. Praktychnyi posibnyk. Biuro z demokratychnykh instytutiv i prav liudyny OBSIe [Categorization and investigation of hate crimes in Ukraine. A practical guide. OSCE Office for Democratic Institutions and Human Rights. Warsaw, ODIHR/OSCE 2019]. Varshava, BDIPL/OBSIe 2019. 74 s.
- Konventsiiia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 11 lystopada 1950 r [Convention for the Protection of Human Rights and Fundamental Freedoms of 11 November 1950]. Available at: http://zakon2.rada.gov.ua/laws/show/995_004
- Konventsiiia Rady Yevropy pro zapobihannia nasyilstvu stosovno zhinok i domashnomu nasyilstvu ta borotbu iz tsymy yavyschamy (Stambulska konventsiiia): Zakon Ukrainy № 2319-IX vid 20.06.2022 [Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention): Law of Ukraine № 2319-IX of 20.06.2022]. Available at: https://zakon.rada.gov.ua/laws/show/994_001-11#Text
- Konstytutsiia Ukrainy: Pryiniata na V sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 r. Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 30. St. 141 [Constitution of Ukraine: Adopted at the V session of the Verkhovna Rada of Ukraine on 28 June 1996]. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
- Kryminalnyi kodeks Ukrainy vid 5. 04. 2001 roku № 2341-III [Criminal Code of Ukraine of 05.04.2001 № 2341-III]. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>
- Matvieieva, L. (2020) Mizhnarodni ta yevropeiski standarty zakhystu prav vrazlyvykh hrup naseleння [International and European standards for the protection of the rights of vulnerable groups]. *Visnyk Penitentsiarnoi asotsiatsii Ukrainy*, vol. 3(13), pp. 48–59.
- Mizhnarodna konventsiiia pro likvidatsiiu vsikh form rasovoi dyskryminatsii: redaktsiia vid 04.02.1994, № 995_105 [International Convention on the Elimination of All Forms of Racial Discrimination: version of 04.02.1994, No. 995_105]. Available at: https://zakon.rada.gov.ua/laws/show/995_105#Text
- Mizhnarodnyi pakt pro hromadianski i politychni prava vid 16 hrudnia 1966 roku [International Covenant on Civil and Political Rights of 16 December 1966]. Available at: https://zakon.rada.gov.ua/laws/show/995_043#Text
- Nachova ta inshi proty Bolharii (Nachova and Others v. Bulgaria): rishennia YeSPL №№ 43577/98, 43579/98 vid 06.07.2005 r. [Nachova and Others v. Bulgaria: ECHR judgments №№ 43577/98, 43579/98 of 06.07.2005]. Available at: <https://www.srji.org/resources/search/21/>
- Pankevych, O. (2014). Zaborona dyskryminatsii: deiaki zahalnoteoretychni y filosofsko-pravovi aspekty interpretatsii (za materialamy praktyky Yevropeiskoho sudu z prav liudyny) [Prohibition of discrimination: some general theoretical and philosophical and legal aspects of interpretation (based on the case law of the European Court of Human Rights)]. *Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy*, vol. 3(78), pp. 20–31.
- Praktyka rozsliduvannia v Ukraini zlochyniv, vchynenykh z motyviv neterpymosti. Zvit za rezultaty Doslidzhennia [Practice of Investigation of Crimes Committed with Intolerance Motives in Ukraine]. Kyiv, 2021. Available at: <https://drive.google.com/file/d/1gZZu2FtBzt2LAHR19NNnnc7k91qGtfU2/view>
- Pro diu mizhnarodnykh dohovoriv na terytorii Ukrainy: Zakon Ukrainy vid 10 hrudnia 1991 roku № 1953-XII vtratyv chynnist na pidstavi Zakonu № 1906-IV (1906-15) vid 29.06.2004 [On the effect of international treaties on the territory of Ukraine: The Law of Ukraine № 1953-XII of December 10, 1991 expired on the basis of the Law № 1906-IV (1906-15) of 29.06.2004]. Available at: <https://zakon.rada.gov.ua/laws/show/1953-12#Text>
- Pro mizhnarodni dohovory Ukrainy: Zakon Ukrainy vid 29 chervnia 2004 roku № 1906-IV [On International Treaties of Ukraine: Law of Ukraine of 29 June 2004 № 1906-IV]. Available at: <https://zakon.rada.gov.ua/laws/show/1906-15#Text>
- Pro Natsionalnu stratehiu u sferi prav liudyny: Ukaz Prezydenta Ukrainy vid 24 bereznia 2021 roku № 119/2021 [On the National Human Rights Strategy: Decree of the President of Ukraine of 24 March 2021 No. 119/2021]. Available at: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>
- Proekt Zakonu pro vnesennia zmin do Kodeksu Ukrainy pro administratyvni pravoporushennia ta Kryminalnoho kodeksu Ukrainy shchodo borotby z proiavamy dyskryminatsii vid 13.05.2021, № 5488

[Draft Law on Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine on Combating Discrimination of 13.05.2021, № 5488]. Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71891

Proekt Zakonu pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy (shchodo protydii zlochynam na grunti nenavysti za oznakamy seksualnoi oriientsatsii ta hendernoii identychnosti) vid 09.04.2020, № 3316 [Draft Law on Amendments to the Criminal Code of Ukraine (on combating hate crimes based on sexual orientation and gender identity) of 09.04.2020, № 3316]. Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68552

Protokol № 12 do Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod (ETS N 177) № 994_537 Ratyfikatsiia vid 09.02.2006 [Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS N 177) № 994_537 Ratification of 09.02.2006]. Available at: https://zakon.rada.gov.ua/laws/show/994_537#Text

Rabinovych, S., & Pankevych, O. (2017). Test na nedyskryminatsiiu v praktytsi Yevropeiskoho Sudu z prav liudyny: otsiniuvalni aspekty [Non-discrimination test in the case law of the European Court of Human Rights: evaluative aspects]. *Pravo Ukrainy*, vol. 4, pp. 97–107.

Rekomendatsiia NR (97) 20 Komitetu ministriv Rady Yevropy derzhavam-uchasnytsiam z pytan "rozpaliuvannia nenavysti" vid 30.10.1997 № 994_093 [Recommendation NR (97) 20 of the Committee of Ministers of the Council of Europe to member states on "incitement to hatred" of 30.10.1997 No. 994_093]. Available at: https://zakon.rada.gov.ua/laws/show/994_093#Text

Fedorchenko ta Lozenko proty Ukrainy: rishennia YeSPL № 387/03 vid 20.09.2012 r. [Fedorchenko and Lozenko v. Ukraine: ECHR judgment № 387/03 of 20.09.2012]. Available at: https://zakon.rada.gov.ua/laws/show/974_933#Text

Hate Crime Statistics. Available at: <https://ucr.fbi.gov/hate-crime/2010/resources/hate-crime-2010-about-hate-crime>

Received on: 2th of August, 2022

Accepted on: 19th of September, 2022

Published on: 30th of September, 2022