Analysis of the implementation of legislation on hate crimes and criminalised hate speech in the Republic of North Macedonia for the period from January 2019 to June 2024

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OSCE Organization for Security and Co-operation in Europe
Mission to Skopje

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1. Introduction

The main objective of this analysis was to assess the effectiveness of the legislation on hate crimes and criminalised hate speech, to evaluate its implementation by investigative authorities and courts, as well as to identify gaps in implementation and propose recommendations for improvement. The analysis covers the period from January 2019 to June 2024, focusing on the prosecution and judicial outcomes of hate crimes and criminalised hate speech for this period. The geographical scope of the study is national, with a focus on the Republic of North Macedonia. Data were obtained from the Ministry of Internal Affairs, basic public prosecutors' offices, and basic and appellate courts in the country.

In 2019, the amendments to the Criminal Code entered into force, defining the term hate crime and supplementing and amending numerous legal provisions to include hate crimes as an aggravating circumstance in sentencing. These changes mark the beginning of the time scope of this analysis. The five-year timeframe provides a solid basis for assessing trends, challenges, and the overall effectiveness in the implementation and enforcement of legislation.

This analysis uses a mixed method, integrating quantitative data on reported cases and court outcomes. By analysing international and national law, case law, statistical data, and case outcomes, the analysis aims to provide a comprehensive assessment of how well legislation is being implemented to address hate crimes and criminalised hate speech in practice.

This evidence-based approach is intended to provide insights for policymakers, legal professionals, and advocacy groups. By highlighting areas of success and identifying gaps in implementation, the analysis is designed to improve the effectiveness of the prevention and prosecution of hate crimes and criminalised hate speech. The aim is to contribute to a stronger legal framework and more effective enforcement mechanisms, while improving the protection of individuals against hate-motivated acts.

2. Methodology of the research and data sources

This analysis follows a mixed methods approach, integrating qualitative and quantitative data to provide a comprehensive assessment of the prosecution and judicial treatment of hate crimes and criminalised hate speech in North Macedonia. This methodology allows for a detailed assessment of the legal framework and its practical application by relevant institutions.

The quantitative data were provided by official sources, including the Ministry of Internal Affairs, basic public prosecutors' offices, and basic and appellate courts. These institutions provided case data from January 2019 to June 2024, focusing on incidents related to hate crimes and hate speech, outcomes of investigations, and judicial proceedings. The data were analysed to identify trends in reporting, prosecution, and sentencing.

Qualitative data were collected through the analysis of statistics, public prosecutorial decisions, court decisions, and relevant legislative amendments, including through the prism of international law and standards. In addition, interviews were conducted with legal practitioners from the Ministry of Justice, the State Commission for Compensation for Victims of Violent Crimes, public prosecutors, and judges with the aim of better understanding the practical challenges and successes in the application of hate crime legislation.

The data collected from over 30 judicial institutions were subjected to descriptive statistical analysis to quantify them in terms of the number of reported cases, the imposition of criminal sanctions and the types of crimes committed. In addition, content analysis of over 70 indictments and court judgments and legal texts was conducted to assess how the courts interpret and apply the laws on hate crimes and hate speech. The analysis focused on identifying gaps in implementation and areas where the legal provisions have been successfully implemented.

In this analysis, the terms "hate crime" and "criminal offence of hate" are used interchangeably and refer to the same concept of hate-motivated crimes. Although there may be nuances in the legal terminology, for the purposes of this study, both terms denote crimes committed with a motive of prejudice or hatred towards individuals, groups, or property. In addition, the term "hate acts" is used to encompass all forms of hate-motivated criminal activities, including hate speech and hate crimes. This general term is used where biased motivations are considered in relation to their sanctioning in national criminal legislation.

The research faced certain limitations, primarily due to the lack of a central mechanism for collecting data on hate crimes, which resulted in obtaining different data. Some prosecutors' offices (13) and courts (6) submitted data according to the requested criminal offenses, while others (8 prosecutors' offices and 8 courts) reported only the total number of registered cases. 9 prosecutors' offices and 14 courts reported that they had no cases related to hate crimes. Only a small number of institutions sent copies of indictments and judgments. For the most part, the responses contained only the registration number of the cases, and the additional verification showed that most often they were not hate crimes. In order to overcome this limitation, an extensive research was conducted through the database of decisions available through the court portal www.sud.mk. In this way, more than 100 decisions were reviewed, and for the purposes of this analysis, 64 judgments in the areas of hate crime and hate speech were identified and processed.

3. Background and context of hate crimes

Effectively addressing hate crime and hate speech does not only require good legislation, but also a full understanding of the historical, cultural, and legal context in which these phenomena arise and are treated. To achieve this, it is necessary to consider how these phenomena have developed throughout history, as well as the role of international law and national legislation in defining and regulating them. This chapter reviews the historical roots of hate crime and hate speech, tracing key moments in the legal

development of these concepts. In addition, it examines the role of international organisations and their documents that set standards and recommendations for addressing these forms of criminal behaviour. This review provides a basis for a deeper understanding of the national legal context in which measures for protection against hate crime and hate speech are implemented, as well as the need for their continuous improvement in line with modern international standards.

3.1 A brief historical overview of the legal framework for hate crimes

Hate-motivated crimes have been part of human history for centuries and are most often targeting individuals based on their race, religion, or other identity features. Persecutions, pogroms, and ethnic cleansing throughout history are striking examples of hate crimes, and after the horrors of the Holocaust and the legal response through the Nuremberg Trials, European legal systems laid the foundation for their further legal regulation. Hate speech was first criminalised in the national legislation in 1951, through the Criminal Code of the Federal People's Republic of Yugoslavia.[1] Article 119 provided that "Anyone who, by propaganda or in any other way, shall cause or incite national, racial, and religious hatred or discord between the peoples and nationalities living in the Federal People's Republic of Yugoslavia, shall be punished by strict imprisonment for a term of up to fifteen years."

The legal framework for addressing hate-motivated crimes in the United States began in the 1960s during the Civil Rights Movement. The Congress passed the Civil Rights Act of 1968, with provisions to protect civil rights based on race, religion, and national origin.[2] In 1990, the Hate Crime Statistics Act mandated the collection of data on bias-motivated crimes.[3] The Matthew Shepard and James Byrd Jr. Hate Crime Prevention Act of 2009 expanded the definition of hate crimes to include gender, sexual orientation, gender identity, and disability.[4]

As part of its efforts to combat hate crimes, Germany introduced the offence of Volksverhetzung ("incitement to hatred") under Article 130 of the German Criminal Code in 1960.[5] This law has been amended several times since then, most notably in the 1990s, to expand its scope, including criminalising incitement to hatred against parts of the population on grounds of race, religion, ethnicity, or national origin. The United Kingdom was among the first European countries to adopt a law on hate-motivated crimes. The 1986 Public Order Act introduced provisions against incitement to racial hatred, which were later expanded to cover religious hatred and sexual orientation

1 "Official Gazette of FPRY" No. 13/1951, available at: https://www.slvesnik.com.mk/Issues/D197D76C64C443FB9C5F1CD1C0DAE760.pdf

2 Available at: https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg73.pdf (English).

3 Available at: https://ucr.fbi.gov/hate-crime/2017/resource-pages/hate-crime-statistics-act.pdf (English).

4 Available at: https://www.congress.gov/bill/111th-congress/senate-bill/909/text

5 Available at: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (English).

through amendments in 2006.[6] This law is one of the earliest examples of national legislation directly addressing the link between hate speech and hate crime.

3.2 International law and standards

When analysing the legislation on hate crime and criminalised hate speech, it is crucial to consider the broader international context that shapes national solutions. Various international conventions and international soft-law instruments provide guidance on how states should address these issues.

3.2.1 United Nations

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the UN in 1965,[7] is one of the earliest international instruments calling on member states to sanction hate speech and violence motivated by racial reasons. Through Article 4 of this Convention, member states shall be obliged to criminalise all forms of propaganda and organisations that promote racial hatred, as well as acts of incitement to racial discrimination and violence. Furthermore, the Convention also calls for the prohibition of any statement that incites racial hatred. In addition, Article 6 requires states to provide legal remedies for victims of such acts.

The International Covenant on Civil and Political Rights (ICCPR) of 1966,[8] through Article 20, obliges the states to prohibit by law any act of national, racial, or religious hatred that constitutes an incitement to discrimination, hostility or violence. This provision is designed to protect individuals against hate speech, while balancing it with the freedom of expression enshrined in Article 19. The states are obliged to take legal measures to prevent speech that promotes hatred and threatens public order or individual rights. It is important that this article highlights that hate speech goes beyond common expression and refers to speech that incites harmful actions or attitudes towards particular groups.

The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[9] focuses on eliminating discrimination against women in all spheres of life. It obliges states to take measures against discrimination, including the adoption of laws to ensure equality between men and women. Although it does not specifically focus on hate speech or hate crime, Article 5 addresses cultural patterns and stereotypes, emphasising the need to eliminate prejudices and practices based on the idea of the inferiority of women or stereotypical gender roles, which may contribute to hate speech or discriminatory acts.

6 Available at: https://www.legislation.gov.uk/ukpga/1986/64 (English).

7 Available at: https://www.ohchr.org/sites/default/files/cerd.pdf (English)

8 Available at: https://www.ohchr.org/sites/default/files/ccpr.pdf (English)

9 Available at: https://www.ohchr.org/sites/default/files/cedaw.pdf (English)

The 2012 Rabat Plan of Action[10], developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), provides a framework for balancing freedom of expression with the need to combat hate speech and hate crime. It sets out criteria for determining when hate speech should be prohibited by law, with a focus on incitement to violence, hostility, or discrimination. The Plan emphasises the need for clear legal standards, enforcement mechanisms, and public education to address hate speech, while at the same time protecting the freedom of expression.

3.2.2 Organization for Security and Co-operation in Europe (OSCE)

The OSCE Ministerial Council Decision No. 9/09 of 2009[11] is the key document of this organisation that focuses on the fight against hate crime by encouraging the adoption of comprehensive legislation that recognises the bias motivation as an aggravating circumstance. It emphasises the importance of systematic data collection, requiring governments to collect and report data on hate crime. In addition, it calls for the provision of support for victims, including legal aid and tailored services. The decision also emphasises the need for capacity-building activities, through training of law enforcement and judicial authorities, and effectively identify, investigate, and prosecute hate crime.

OSCE Ministerial Council Decisions No. 12/04[12] and 4/13[13] of 2004 and 2013, respectively, highlight the OSCE's commitment to addressing hate crimes targeting Jewish, Roma, and Sinti communities. They emphasise the need for better data collection, calling on States to fully document incidents of violence and discrimination. In addition, the decision calls for training of law enforcement officials to recognise and respond effectively to bias-motivated crimes against Jews, Roma, and Sinti, fostering greater trust between these communities and the authorities. It also promotes cooperation with the civil society, ensuring that victim support services are available and that the unique challenges faced by these communities are taken into account when addressing hate crimes.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) plays a key role in monitoring, reporting on, and supporting the development of effective hate crime laws in OSCE participating States. ODIHR provides training for law enforcement agencies, helps improve hate crime data collection, and publishes annual reports on hate crime incidents.[14] It also offers practical resources to assist governments and the civil society in addressing hate crime.[15]

[10] Available at: https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf (English)

[11] Available at: https://www.osce.org/files/f/documents/d/9/40695.pdf (English)

[12] Available at: https://www.osce.org/files/f/documents/3/7/23133.pdf (English)

[13] Available at: https://www.osce.org/files/f/documents/5/1/109340.pdf(English)

[14] https://hatecrime.osce.org/participating-states(English)

[15] Available at: https://www.osce.org/resources/publications(English)

3.2.3 Council of Europe

The 1950 European Convention on Human Rights (ECHR)[16] protects fundamental rights, including the freedom of expression. Article 10 establishes the right to freedom of expression, but allows for limitations on this freedom in order to prevent hate speech and protect the rights of others. Article 14 prohibits discrimination in the enjoyment of the rights and freedoms set out in the Convention. Although not explicitly focusing on hate speech or hate crime, these articles allow for legal measures against hate speech and discriminatory conduct, while maintaining a balance with freedom of expression.

The 1995 Framework Convention for the Protection of National Minorities[17] is a key instrument aimed at protecting the rights of national minorities. While it does not explicitly criminalise hate crimes, it obliges the states to ensure that persons belonging to national minorities are free from discrimination and are able to preserve their culture, language, and religion. The Convention highlights the importance of promoting mutual respect and understanding, which indirectly supports efforts to combat hate speech and hate crime by fostering inclusiveness and tolerance.

The 2001 Convention on Cybercrime[18] is the first international treaty to address hate crimes committed via the Internet and other computer networks. It focuses on criminalising activities such as illegal access to systems and interference with data. The 2003 Additional Protocol expands these provisions to criminalise racist and xenophobic acts committed via computer systems, including the dissemination of racist or xenophobic material, threats, and insults based on race, ethnicity, or religion. The Protocol obliges the states to adopt national legislation to address hate speech and hate crimes committed via digital platforms.

The General Policy Recommendation No. 7 of 2002 issued by the European Commission against Racism and Intolerance (ECRI)[19] provides guidance on improving national legislation to combat racism and racial discrimination. It specifically recommends criminalising hate speech and hate crimes, in particular when they involve incitement to violence, hatred, or discrimination. The recommendation calls for strong legal frameworks, victim protection measures, and public awareness campaigns to prevent the spread of racist ideologies and to ensure the effective prosecution of hate crimes.

The Recommendation CM/Rec(2022)16[20] addresses the growing concern about hate speech, particularly in the digital era, and provides comprehensive guidance to member states on how to address this issue. The Recommendation highlights the need for a balanced approach, ensuring that hate speech is effectively prevented, while ensuring the protection of freedom of expression. The recommendation calls on member states to adopt legal frameworks that criminalise hate speech when it incites violence, hostili-

[16] Available at: https://www.echr.coe.int/documents/d/echr/convention_eng(English)

[17] Available at: https://rm.coe.int/168007cdac(English)

[18] Available at: https://rm.coe.int/1680081561(English)

[19] Available at: https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae(English)

[20] Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955 (English)

ty, or discrimination, and to enforce those laws with clear and dissuasive penalties. The Recommendation also emphasises the importance of preventive measures, including public education campaigns, training for law enforcement authorities and cooperation with the civil society and online platforms to counter hate speech. Particular attention is paid to online hate speech, calling on internet platforms to act swiftly in removing illegal content, while at the same time fostering an inclusive digital environment.

The Recommendation CM/Rec(2024)4[21] aims to combat hate crime and strengthen victim support systems. This Recommendation calls on member states to strengthen their legal frameworks by recognising the element of hate as an aggravating circumstance or as an essential part of specific criminal offences. It also highlights the importance of specialised support for victims, ensuring their access to legal aid and services, in particular for vulnerable groups such as children and young people. Training of law enforcement agencies, with a focus on recognising indicators of bias and establishing specialised investigators and prosecutors for hate crime, is a priority. In addition, the Recommendation highlights the need for improved data collection and reporting mechanisms, calling on states to cooperate with the civil society and ensure inclusiveness in online and offline spaces.

3.2.4 European Union (EU)

The EU Framework Decision 2008/913/JHA[22] is a key legislative instrument that obliges EU Member States to combat certain forms of hate speech and hate crime. It criminalises public incitement to violence or hatred based on race, colour, religion, or national origin. This Decision requires Member States to provide for effective sanctions and to take the necessary measures to promote the prevention and awareness-raising of hate crimes. In addition, the 2000 Charter of Fundamental Rights of the European Union[23] reinforces the importance of equality and non-discrimination in all Member States.

The Victims' Rights Directive (2012/29/EU)[24] aims to ensure that all victims, including those of hate crime, are treated with respect and receive appropriate support, protection, and access to justice. According to the Directive, victims of hate crime, due to the nature of the bias-motivated offence, may need specialised support services. The Directive requires individual assessments of victims in order to identify specific needs, including psychological support, security measures, and participation in judicial proceedings.

The 2016 EU Code of Conduct on Countering Illegal Hate Speech Online[25] is a voluntary agreement between the European Commission and major technology companies such as Facebook, Twitter (X) and YouTube. It obliges these platforms to review and remove illegal hate speech within 24 hours of receiving the notification. The Code aims to coun-

[21] Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680af9736 (English)

[22] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0913 (English)

[23] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT (English)

[24] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029 (English)

[25] Available at: https://commission.europa.eu/document/download/551c44da-baae-4692-9e7d-52d20c04e0e2_en (English)

ter the spread of racist, xenophobic, and discriminatory content online by encouraging the cooperation between the governments, the civil society, and the private sector, promoting transparency, and educating users on how to tackle hate speech, while at the same time enforcing respect for freedom of expression.

The 2022 Digital Services Act (DSA)[26] is a key regulatory framework in the EU that addresses illegal content online, including hate speech. It imposes strict obligations on major online platforms to promptly remove illegal hate speech, introduces transparency in content moderation practices, and requires the implementation of risk assessments in order to minimise harm. The Act also introduces sanctions for non-compliance and requires regular reporting on the removal of harmful content. This regulation strengthens accountability and creates a safer digital space.

4. Concept of criminalised hate speech and hate crime

In the context of legal frameworks for addressing discrimination and violence, the concepts of hate crime and hate speech are of significant importance. Hate speech includes expressions that incite hatred, discrimination, or violence against certain groups, often in the public discourse or the media. Hate crime, on the other hand, refers to crimes motivated by prejudice against an individual's identity, including characteristics such as race, religion, sexual orientation, ethnicity, etc. These crimes not only harm individuals, but also threaten social cohesion and public safety, leading to wider societal implications. Although the two terms are related and share a common ground in addressing prejudice and intolerance, they differ in their legal definitions, implications, and the contexts in which they are applied. Understanding these differences is key to developing effective legal measures and policies to promote social cohesion.

4.1 Criminalised hate speech

There is no universally accepted definition of the concept of hate speech. Differences in the cultural and legal systems of different countries lead to variations in what is considered hate speech. In some jurisdictions, it may be defined as public expression that incites violence or discrimination based on race, religion, sexual orientation or other personal characteristics, while in others, hate speech may include broader forms of verbal aggression. Societal attitudes towards hate speech also vary, with some seeing it as a threat to fundamental human rights and social harmony, while others place it in the context of freedom of expression and believe that restrictions should be minimal.

Hate speech is distinguished from other forms of speech by its purpose of inciting hatred, discrimination, or violence against certain groups because of their identity features. A number of legal systems have adopted specific laws criminalising hate speech, and its sanctioning is often based on whether the expression is intended to cause actual

[26] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065 (English)

harm or violence. Identifying hate speech may involve analysing the context of the expression, the speaker's intent, and the effects on the intended audience.

The Council of Europe Recommendation CM/Rec(2022)16[27] defines hate speech as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against an individual or a group of people, or that degrade them because 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.

4.2 Hate crime

Similar to hate speech, there is no universally accepted definition of the concept of hate crime. Differences in cultural, social, and legal contexts lead to different perceptions of what constitutes hate crime, often influenced by local histories, values, and experiences of discrimination and violence. Some countries may prioritise race and ethnicity as primary motivators of hate crimes, while others may emphasise religion, sexual orientation, or disability. This diversity complicates the effort to establish consistent legal frameworks, as definitions can vary not only between nations but also within communities. In addition, societal attitudes towards hate crimes can vary considerably, with some viewing them as serious offences that threaten social cohesion, while others may perceive them as isolated incidents or minimise their importance.

Hate crimes are often distinguished from other crimes by their motivation and broader societal implications. These crimes not only harm individual victims, but also threaten community cohesion and contribute to a climate of fear among affected groups. The identification of hate crimes is often based on the recognition of specific "bias indicators". These indicators can include the nature of the crime, the identity of the victim, and the circumstances surrounding the incident. For example, graffiti, verbal harassment, or the targeting of religious sites can signal bias motivation. Many legal systems provide for harsher penalties for hate crimes compared to similar acts without bias motivation. This reflects the recognition that hate crimes are more harmful because of their intent and impact on society.

The OSCE defines hate crimes as crimes that are motivated by prejudice against certain characteristics of individuals or groups. Specifically, hate crimes include two main elements: they must constitute a crime under criminal law and they must be committed due to a biased motivation,[28] meaning that the perpetrator's actions are influenced by prejudice against some of the victim's identity characteristics (race, ethnicity, religion, sexual orientation, etc.). This definition emphasises that hate crimes are not only related to the feelings of the perpetrator but also stem from broader societal prejudices and can target individuals or property associated with marginalised communities.

[27] *Supranote 20.*

[28] See, for example, in "Understanding hate crime", page 7, 2015, available at: https://www.osce.org/files/f/documents/a/3/104168.pdf and "Treatment of hate crime: Practical Guide", page 21, 2015, available at: https://www.osce.org/files/f/documents/3/0/337141.pdf.

The Council of Europe Recommendation CM/Rec(2024)4[29] defines hate crime as a crime committed with an element of hatred based on one or more real or perceived (ascribed) personal characteristics or status, where: a. "hatred" includes prejudice or contempt and b. "personal characteristics or status" includes, but is not limited to, race, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender, sexual orientation, gender identity and expression, and sex characteristics.

4.3 Differences between hate speech and hate crime

Although hate speech and hate crime are often seen as interrelated concepts, they differ in their nature, legal definitions, and their broader social implications. The main difference concerns the very nature of the act: hate speech is a verbal, written, or other form of expression aimed at inciting hatred, discrimination, or violence against individuals or groups, based on their identity features, such as race, religion, ethnicity, sexual orientation, etc. Hate crime, on the other hand, is a physical crime (bodily injury, violence, damage to property, etc.) that is motivated by prejudice against the personal characteristics of the victim. Hate speech can create a social atmosphere that normalises violence against vulnerable groups.

Hate speech typically involves emotional or psychological harm through words or symbols that spread hatred, incite violence, or degrade groups. The harm is often indirect, affecting people's sense of safety and dignity, even when no immediate physical harm occurs. Hate crimes, on the other hand, involve concrete harm, such as physical violence, property damage, or other crimes that directly harm individuals or communities. The emotional impact is often amplified by the physical threat or actual harm that is inflicted.

The legislation provisions on hate speech typically apply a higher threshold for criminal liability because modern legal systems aim to protect freedom of speech. Expression is usually criminalised only if it crosses a certain line — such as directly inciting violence or posing a real threat. Criminalising hate speech is often seen as a preventive measure to avoid the escalation of violence or hate crime. Hate speech can be an early indicator of tensions which, if not addressed, could lead to actual hate crimes. Hate crime laws, on the other hand, are reactive, meaning they address violence or harm that has already occurred.

In addition, hate speech in some legal systems can only be sanctioned when the expression directly calls for violence or serious discrimination, while hate crime involves active action that already causes physical or material harm. It is important to emphasise that hate speech can be an initial step leading to hate crime.

There is also a difference in the way these acts are identified. Hate crime is often identified through "bias indicators", such as verbal insults during a physical attack or targeting symbolic objects associated with minority groups. On the other hand, hate speech is usually recognised by analysing the content of the expression, the intentions of the speaker, and the effects on the audience.

[29] *Supranote 21.*

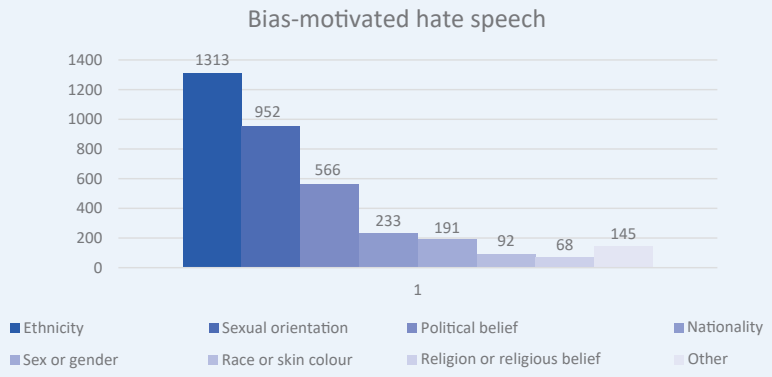
5. Hate speech and hate crime in the Republic of North Macedonia

In the contemporary multicultural and multi-religious society of the Republic of North Macedonia, diversity can be a significant asset in building democracy. However, these differences can also create potential conflicts by awakening radical nationalism that can lead to intensification of tensions. Hate speech is not only a form of communication but is also a powerful instrument that can generate violence and incite hate crimes. This part of the analysis focuses on hate speech and hate crimes in the Republic of North Macedonia, examining hate trends, the legal framework, social implications, and the need for proactive measures to prevent such phenomena.

5.1 The trend of hate speech

Hate speech poses a significant challenge in North Macedonia, given the country's large number of ethnic minorities. Incidents of hate speech, particularly those related to political and ethnic tensions, intensify during election periods, in the media, and on social media. The local Helsinki Committee for Human Rights and other NGOs frequently register and report cases of hate speech,[30] noting that while legal mechanisms exist, prosecution is often unsatisfactory, and public awareness of the consequences is low. Efforts to combat hate speech are supported by international organisations present in the country, which encourage North Macedonia to strengthen its legal framework and improve law enforcement. In addition, civil society plays a key role in monitoring hate speech, raising awareness, and promoting tolerance in society.

On the portal www.govornaomraza.mk of the local Helsinki Committee for Human Rights, a total of 2,685 incidents related to hate speech were registered between 2014 and September 2024.



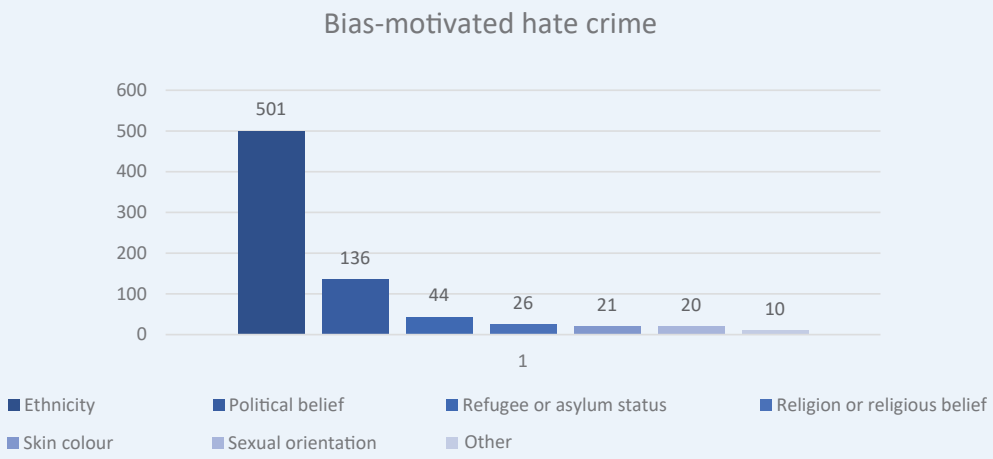
* Incidents related to hate speech often contain two or more biased motivations, hence the greater number of biased motivations than incidents.

[30] See http://govornaomraza.mk - General database of the Helsinki Committee for Human Rights for registered incidents of hate speech and https://complaints.semm.mk - database of the Council for Media Ethics for complaints against hate speech in the media.

The data registered by the Helsinki Committee provide important insight into the motives behind the reported incidents of hate speech. The largest number of incidents, a total of 1,313, are related to ethnicity, which indicates the existence of ethnic tensions in the society. The high number of 952 incidents due to sexual orientation highlights the seriousness of the discrimination and hostility faced by the LGBTI+ community. Political beliefs, with 566 reported cases, are an indicator of the impact of political polarisation and political divisions on social interactions that can lead to social conflicts. Additional categories such as nationality (233), sex or gender (191), and race or skin colour (92), also witness the prevalence of prejudice in society. Religious beliefs and other factors with 68 and 145 reported cases, respectively, further complicate the picture of the nature of these incidents. These data show that hate speech is not an isolated phenomenon but a deep-rooted problem and requires coordinated legal and institutional measures to prevent and sanction it.

5.2 The trend of hate crime

In addition to registering incidents related to hate speech as described above, the local Helsinki Committee for Human Rights also registers incidents related to hate crimes. On their portal www.zlostorstvaodomraza.com, between 2013 and 2023 (but without data for 2021), a total of 933 incidents were registered in which there were indicators of bias that could mean that these crimes were hate crimes.[31] The graph below shows the cumulatively processed and published data for 758 incidents registered by the Helsinki Committee from February 2013 to October 2020.[32]



[31] According to the annual hate crime reports, available at: https://zlostorstvaodomraza.com

[32] See infographic on: https://mhc.org.mk/reports/podatoczi-za-kriminalot-od-omraza-fevruari-2013-oktomvri-2020/

Ethnicity, as well as hate speech, is the most prevalent motivation behind hate crime, accounting for 66.1% of cases, confirming that ethnic tensions continue to be the most significant factor in biases for possible violence in North Macedonia. Political affiliation, accounting for 17.9% of cases, as well as the refugee or migrant status (5.8%), are also important factors. Additional motivations, such as religion or belief (3.4%), skin colour, sexual orientation, and gender identity, although less prevalent, still show that prejudices are targeting different groups in society.

The published data from the Helsinki Committee[33] further show that the most frequently registered types of incidents include violence (225 cases), bodily harm (181 cases) and damage to property (136 cases), which highlights the physical and material damage suffered by the victims of these acts. The geographical distribution of these incidents indicates that Skopje is the most affected area, with 549 incidents registered, which in turn indicates that the capital is a centre of ethnic and political tensions. Other areas, such as Kumanovo (44), Tetovo (28) and Bitola (23) also show a high level of incidents. The main findings from the long-term monitoring of hate incidents by the Helsinki Committee show that the victims and perpetrators are most often young people from different ethnic communities, with a large proportion of perpetrators remaining undetected, and the biased motive is often "lost" during the process from the police to the courts. There is also a lack of adequate statistics on these incidents, and minimal preventive measures have been taken, such as human rights education and raising public awareness.[34]

5.2 Victimisation due to hate crime

During June-July 2018 and again in June-July 2023, the OSCE Mission to Skopje conducted two surveys on hate crime victimisation in North Macedonia, involving a total of 3,124 respondents.[35] The survey results provide important insights into the prevalence and impact of hate crimes.

Both surveys highlight the serious emotional and psychological impact on victims of hate crime, who consistently report more severe psychosomatic effects than victims of other crimes. The findings from both surveys indicate that hate crime continues to be an entrenched problem in North Macedonia, requiring coordinated efforts from national and local authorities, as well as the civil society, to address underreporting, improve victim support, and strengthen the police response.

The 2018 survey, conducted on a sample of 1,510 respondents, identified 165 victims of hate crime in the 12 months prior to the survey. This data showed that hate crime is significantly widespread, with victims reporting a total of 222 incidents, far more than the figures available through official statistics and NGO data. One of the most important findings of the survey is the low reporting rate: six out of ten incidents were not reported to the police. The results further indicated that victimisation due to hate crime has

[33] *Ibid.*

[34] *Supranote 30.*

[35] Hate Crime Victimization Survey: Report, 2019, Paul Iganski. Available at: https://www.osce.org/files/f/documents/6/5/424199.pdf and Hate Crime Victimization Research: Report, 2023, Paul Iganski. Available at: https://www.osce.org/files/f/documents/9/b/560274.pdf

a stronger socio-emotional and psychological impact than other types of crime, leading to increased anxiety and the occurrence of post-traumatic symptoms.

The 2023 survey confirms a close agreement with the 2018 findings, showing that victimisation due to hate crime remains widespread, far above officially reported cases. While victimisation rates remain similar, the survey notes a small decline in the overall victimisation due to hate crime, which corresponds to the trend of decreasing of the overall crime in recent years. In terms of reporting, it was observed that rates remain stable, and victims of hate crime are still less likely to report hate crimes to the police, compared to other types of crime. The 2023 survey also indicates a decrease in crime related to political beliefs.

5.3 National legislation and institutional measures

5.3.1 Criminalised hate speech

It should be noted that not all hate speech in North Macedonia is considered a crime. For example, there are provisions in the national legislation that treat hate speech as a misdemeanour. Such examples can be found in the laws on the prevention of violence and inappropriate behaviour at sports competitions, audio and audio-visual media services, media, etc. These laws contain provisions that sanction the incitement or spread of discrimination, intolerance or hatred through misdemeanour penalties (fines) of a financial nature. This analysis refers only to criminalised hate speech, as defined in the Criminal Code.

The Council of Europe Recommendation CM/Rec(2022)16[36] states that "Member States should specify and clearly define in their national criminal law which expressions of hate speech are subject to criminal liability, such as:

1) public incitement to commit genocide, crimes against humanity or war crimes;
2) public incitement to hatred, violence or discrimination;
3) racist, xenophobic, sexist and LGBTI-phobic threats;
4) racist, xenophobic, sexist and LGBTI-phobic public insults under conditions such as those set out specifically for online insults in the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;
5) public denial, trivialisation and condoning of genocide, crimes against humanity or war crimes; and
6) intentional dissemination of material that contains such expressions of hate speech (listed in 1-5 above) including ideas based on racial superiority or hatred."

The Criminal Code contains a total of six criminal offenses relating to hate speech:

- Threatening the Safety, Article 144, paragraph 5
- Exposure of the Macedonian people and nationalities to ridicule, Article 179.

[36] *Supra note 18, item 11.*

- Causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground, Article 319 paragraph 1
- Dissemination of racist and xenophobic material via information system, Article 394-d paragraph 1
- Approving or justifying genocide, crimes against humanity or war crimes, Article 407-a paragraph 1
- Racial or other discrimination, Article 417 paragraph 1

The criminal legislation of North Macedonia is largely aligned with the Council of Europe Recommendation CM/Rec(2022)16, in particular with regards to public incitement to genocide, hatred and violence (Articles 144, 319, 394-d and 407-a). The Law effectively covers the dissemination of racist and xenophobic material, public threats, and insults. However, to fully align with the Recommendation, the Law needs to provide clearer protection against sexist and LGBTI-phobic speech, especially in offline contexts, expand the scope of the spreading of hate speech beyond computer systems, and provide a clear protection for freedom of expression.

5.3.2 Hate crime

Hate crime is a relatively new concept in domestic law. In 2009, North Macedonia introduced a new provision in the Criminal Code – Article 39, paragraph 5 – on aggravating circumstances in the Criminal Code, which applies in cases where the crimes are committed against a person, a group of persons, or property and are motivated by the "national or social origin, political or religious affiliation, property or social status, gender, race or skin colour" of the victims.[37] In 2014, amendments were adopted to several provisions of the Criminal Code,[38] including Article 39, paragraph 5, which included an expanded and open list of protected characteristics, namely: "sex, race, skin colour, gender, member of a marginalised group, ethnicity, language, citizenship, social origin, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status, or on any other basis provided for by law or a ratified international agreement." This amendment did not contribute to a significant increase in the prevention or prosecution of hate crimes, as there was no visible increase in the number of cases processed, tools for measuring the effectiveness of the provisions were lacking, and there was no mechanism for collecting data on hate crimes.

In order to improve the legislative framework for addressing hate crimes, in 2015, the Ministry of Justice, at the initiative of the OSCE Mission in Skopje and the Academy of Sciences and Arts, established a Working Group for the revision of the provisions of the Criminal Code related to hate crimes. The same year, the Working Group prepared draft amendments to the country's Criminal Code, proposing novelties such as the definition of a hate crime, as well as stricter sanctions for certain crimes committed with

[37] "Official Gazette of RNM" No. 111/2009 available at: https://www.slvesnik.com.mk/Issues/2A2D5314C418A34EA5D597CC923695D2.pdf

[38] "Official Gazette of RNM" No. 27/2014 available at: https://www.slvesnik.com.mk/Issues/6ed04b3db86643b297d84aa94513d055.pdf

a bias motivation. In 2016, the text was submitted to the ODIHR, which supported the amendments and submitted its comments,[39] most of which were implemented by the Working Group in 2017. In 2018, the Government proposed 17 new provisions to amend the Criminal Code to the Parliament, including a legal definition of hate crimes. Furthermore, if during the course of the court proceedings, hate crime charges were brought within the meaning of the aggravating circumstances of Article 39, paragraph 5, the new paragraph 6 of the same article provides for an obligation for the court to explain the reasons if it decides not to apply paragraph 5. The amendments were adopted by the Parliament in late 2018, and entered into force in 2019.[40]

Article 22, paragraph 42 of the Criminal Code includes the definition for a crime of hate - Crime of hate explicitly foreseen by the provisions of this Code, shall be considered the crime against a natural person or a legal entity and associated persons thereto or a property which is committed wholly or partially due to a real or speculative (imaginary, assumptive) characteristic or association of the person and relates to the race, skin colour, nationality, ethnic origin, religion or conviction, mental or bodily disability, sex, gender identity, sexual orientation and political conviction.

One of the key characteristics of this definition is that it recognises hate crime not only when motivated by actual characteristics, but also by presumed characteristics, which broadens the scope for identifying and processing hate crime. The provision also provides protection for both individuals and related property, reflecting the awareness that hate crimes can target symbols, institutions, or objects associated with a particular group or an individual. Furthermore, the law recognises a wide range of protected characteristics, providing a broad coverage for various marginalised and vulnerable groups. This inclusiveness is in line with international standards on hate crime, but also requires precise application in practice to ensure an effective legal protection.

The mentioned 17 new provisions with the 2018 amendments to the Criminal Code refer to the following crimes:

- Murder, Article 123, paragraph 2, item 4
- Bodily injury, Article 130, paragraph 2
- Severe bodily injury, Article 131, paragraph 2
- Coercion, Article 139, paragraph 2
- Unlawful deprivation of liberty (kidnapping), Article 140, paragraph 2
- Torture and other cruel, inhuman or degrading treatment and punishment, Article 142, paragraph 2
- Threatening the safety, Article 144, paragraph 3
- Prevention or disturbance of public gathering, Article 155, paragraph 2
- Rape, Article 186, paragraph 3
- Not providing medical help, Article 208, paragraph 1
- Burglary, Article 237, paragraph 1, item 7

[39] Available at: https://www.osce.org/files/f/documents/2/e/313271.pdf

[40] "Official Gazette of RNM" No. 248/2018, available at: https://www.slvesnik.com.mk/Issues/b089570baccc436a9b39c585dca78b3f.pdf

- Robbery, Article 237, paragraph 2
- Armed robbery, Article 238, paragraph 2
- Damage to objects of others, Article 243, paragraph 2
- Extortion, Article 258, paragraph 2
- Act of violence, Article 386, paragraph 5
- Desecration of a grave, Article 400, paragraph 2

All of these core crimes include a provision requiring courts to impose more severe penalties when it is proven that the crime was committed out of hate. Accordingly, hate crimes in the national legislation are crimes for which aggravating circumstances are prescribed due to specific factors or conditions present during the commission of the crime that increase its gravity or the culpability of the perpetrator. These circumstances lead to more severe sanctions compared to the standard sanction for the same crime without such factors. The idea is that the presence of aggravating circumstances makes the crime more serious, either because of the nature of the act itself or because of the impact on the victim or society. According to the definition of a hate crime, it is sufficient for the crime to be even partially committed out of hate for the perpetrator to be sentenced to a more severe penalty.

Having in mind that the national legislation prescribes a definition of hate crime (Article 22, paragraph 42 of the Criminal Code); contains a general provision stipulating that the element of hatred constitutes an aggravating circumstance for all criminal offences committed with intent when imposing the sentence (Article 39, paragraph 5 of the Criminal Code); and specific criminal offences that include the element of hatred as an integral part of the offence, it can be concluded that the national legislation uses a combined, i.e. a hybrid system for sanctioning hate crime. This approach allows for a more flexible and comprehensive application of the law in the processing and sanctioning of hate-motivated offences, which is in line with the contemporary international standards for combating hate crime.

5.3.3 Institutional measures

In 2015, the Ministry of Internal Affairs introduced a "Red Button" application on its website http://redbutton.mvr.gov.mk/, which is intended for reporting hate crimes, incitement to violence, child abuse, and human trafficking. The effectiveness of this application remains unknown, and the guide for using the "button" is more focused on online hate speech than on hate crimes themselves. Criminal charges for online hate crimes can also be filed electronically to the Cybercrime Sector of the Ministry of Internal Affairs via the email cybercrime@moi.gov.mk. In April 2017, the Ministry of Internal Affairs amended the Rulebook on the Manner of Performing Police Work[41], introducing a new form for receiving reports that contains a box for "indications that the crime was committed out of hate".

In 2014, the Case Management System of the Public Prosecutor's Office introduced a functionality to mark whether a particular crime falls under the "hate crime" category,

[41] "Official Gazette of RNM" No. 49/2017, available at: https://www.slvesnik.com.mk/Issues/b53767c9b9bd4fc28156ca5da7b2ae55.pdf

similar to the added functionality in the ACMIS court system (see below). Data entry is the task of a data officer until a public prosecutor is appointed, who then takes control. The data officer, the appointed prosecutor, his/her superior and the State Public Prosecutor's Office have access to the cases. According to the latest information received in 2018, the system is not fully operational and is not used in all prosecutor's offices across the country, which indicates that the practical application of this mechanism for recording hate crimes in the Prosecutor's Office is not yet effective.

In 2014, the Working Body for Standardisation of Judicial Procedures at the Supreme Court adopted a Conclusion on labelling of cases in the judicial case management system ACMIS where the commission of a hate/bias-motivated crime is qualified as an aggravating circumstance and is reflected in the imposition of a criminal sanction, in accordance with Article 39, paragraph 5 of the Criminal Code. Registration is carried out by filling in a box for labelling cases related to hate crimes.

In the period from 2014 to 2023, the Ministry of Justice adopted the Programme for compensation of a child who is a victim or is harmed by an action prescribed by law as a crime of violence and other acts of individual or group violence. In 2023, the funds for this purpose amounted to approximately EUR 50,000[42]. There is no publicly available data on the actual use of this programme.

At the end of 2022, the Law on Payment of Monetary Compensation to Victims of Violent Crimes[43] was adopted, which began to be implemented in 2023. The State Commission for Compensation for Victims of Violent Crimes was established in 2024. The aim of the Law is to provide monetary compensation to victims of violent crimes as assistance from the state and to prevent potential victimisation and secondary victimisation as additional suffering that victims may endure due to the attitude of the competent authorities.

6. Prosecution of hate speech and hate crime

The prosecution authorities in the Republic of North Macedonia are represented by the Public Prosecutor's Office and the Judicial Police. The Judicial Police consists of: the Ministry of Internal Affairs, the Financial Police Directorate, the Customs Administration, and the Military Police. Statistical data and decisions on the prosecution of hate crimes for the period from 1 January 2019 to 30 June 2024 were requested from the Ministry of Internal Affairs and the basic public prosecution offices (through the Public Prosecutor's Office of the Republic of North Macedonia) regarding:

1. Statistical data in each PPO on the total number of completed and ongoing cases for each crime separately, as well as on cases reported by the police, respectively, and those that were handed over to the PPO on the basis of specific crimes committed;

[42] See, for example, 2023 Programme, "Official Gazette of RNM" No. 122/2023, available at: https://www.slvesnik.com.mk/Issues/daa31801855a4e3fbb91c2f60222762d.pdf

[43] "Official Gazette of RNM" No. 247/2022, available at: https://www.slvesnik.com.mk/Issues/d0f88bf42e134b978d599eadcfafac20.pdf

2. Statistical data on the total number of cases where the "hate crime" box is marked in the "Case Management System" and respectively for the Ministry of Internal Affairs - the "hate crime" box that was manually marked in the Police Crime Report Minutes; and

3. Delivery via email or post of anonymised prosecutorial decisions (indictments), as well as information from the police, respectively, whether they have received feedback from the Public Prosecutor's Office on the outcome of police proceedings for the prosecution of hate crime cases[44].

Regarding the system of public prosecutor's offices in North Macedonia, there are 22 basic public prosecutor's offices (PPO) and a Basic Public Prosecutor's Office for Prosecution of Organised Crime and Corruption (BPPO POCC). There are also 4 higher public prosecutor's offices (HPO) that address and control the work of the aforementioned 22 PPOs, on a territorial basis. The responses that were returned for the requested data were from the PPO, not the HPO. By the end of August 2024, responses were received from 21 PPOs, while 1 did not respond (PPO Resen). In this regard, a relevant fact is that the PPOs in the cities of Resen and Kriva Palanka do not have a residual public prosecutor as the head of those offices, but despite this, the PPO Kriva Palanka responded to the request. The BPPO POCC, located in Skopje, did not respond either, which is expected considering the nature of its work and the scope of different criminal offenses.

Regarding the Ministry of Internal Affairs, the data was submitted by the Bureau of Public Security (BPS) through the Criminal Intelligence and Analytics Sector (SKRA) of the Department for Suppression of Organised and Serious Crime and the Criminal Intelligence and Analysis Department (OKRA) with the Criminal Intelligence and Analysis Units (EKRA). The response from the Ministry of Internal Affairs-BPS did not contain any information on how many of the individual cases and crimes for which criminal charges were filed, the MoIA received a letter from the Public Prosecutor's Office or the BPPO POCC that resulted in charges being filed or, alternatively, with decisions to dismiss the criminal charges.

6.1 Ministry of Internal Affairs

The total number of cases registered by the Ministry of Internal Affairs as "hate crimes" in the requested period is 221, and the number of registered perpetrators is 219. The figures are absolutely dominated by hate speech acts. Registration itself does not automatically mean indictment and trial. According to Iganski, in 2023, only slightly less than four out of ten (37%) of the most serious crimes that are considered to have been motivated by bias and that were experienced by respondents in 2023 were reported to the police, and this statistics gives a high dark figure for hate crime. In addition, there were different offences in different stages of police reporting, so verbal attacks, whether insults or threats, were the least likely to be reported by the citizens.[45]

[44] The Public Prosecutor's Office's notification to the Ministry of Internal Affairs of the outcome of the criminal charges filed has been a decades-old practice, and the obligation is contained in the Law on Criminal Procedure (See Art. 275 of the Criminal Procedure Law).

[45] Iganski, P., "Hate Crime Victimization Survey Report", OSCE, Skopje, 2023, pg.34, 35. Link: https://www.osce.org/files/f/documents/9/b/560274.pdf.

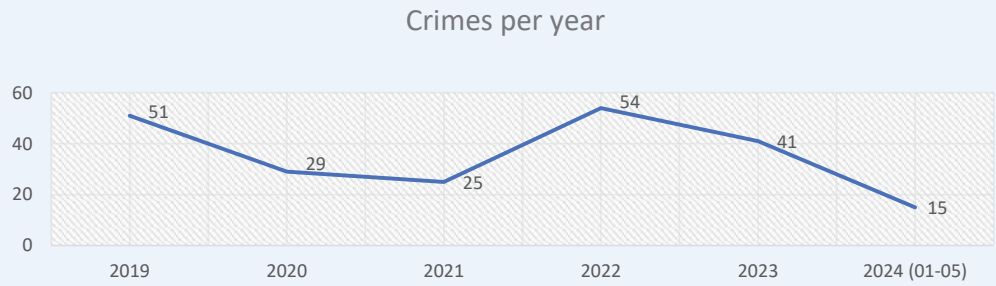
REGISTERED CRIMES WITH HATE ELEMENTS	2019		2020		2021		2022		2023		January – May 2024		Total for the period 2019 to May, 2024	
	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators
TOTAL	51	51	29	30	25	31	54	51	41	39	15	10	215	212
Bodily injury Article 130, par. 3							1	1					1	1
Threatening the safety, Art. 144 par. 2			1	1	1	1							2	2
Threatening the safety, Art. 144 par. 3			2	2									2	2
Threatening the safety, Art. 144 par. 4 (par. 5 with 2023 amendments)	21	18	8	6	4	4	6	7	6	5			45	40
Abuse of personal data, Article 149, par. 2							1	1					1	1

Tabular view of registered crimes with hate elements for the period 2019 to May 2024

REGISTERED CRIMES WITH HATE ELEMENTS	2019		2020		2021		2022		2023		January – May 2024		Total for the period 2019 to May, 2024	
	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators	crimes	perpetrators
TOTAL	51	51	29	30	25	31	54	51	41	39	15	10	215	212
Damage to property Article 243, par. 2 with hate			1	1			2	0			1	0	4	1
Inciting hatred, discord or intolerance on national, racial, religious, and other discriminatory grounds– Art. 319	3	4	1	0	2	6	2	0	2	2	4	2	14	14
Dissemination of racist and xenophobic material through a computer system – Art. 394			2	2									2	2
Racial and other discrimination – Article 417					1	4			1	1	1	1	3	6
Violence – Article 386	2	4	1	5			1	1	1	2			5	12

Tabular view of registered crimes with hate elements for the period 2019 to May 2024

Taking into account the above and the statistics provided by the MoIA, it can be concluded that the number of hate crimes is in a slight decline in the period 2019-2024. Namely, if in 2019, 51 crimes were registered with 51 perpetrators, in 2023, 41 crimes and 39 perpetrators were registered. In both mentioned years, hate speech crimes were the most numerous, so in 2019, they accounted for 49 crimes or 96% of the total number of hate crimes for that year, and in 2023, they accounted for 39 crimes (95%).



6.1.1. Geographic distribution of hate crimes

The table by SIA provides an answer to the issue regarding the geographical distribution of hate crimes. The largest number of hate crimes was registered in SIA Ohrid (86), and significantly fewer in SIA Skopje (14), SIA Bitola (23), SIA Shtip (29), and SIA Tetovo (21). This fact is surprising considering that Ohrid is a smaller city than all the mentioned ones. It is also relevant that although each SIA operates in its own region, this does not automatically mean that the crime was committed in that region. Sometimes it happens that the injured party - the victim reports the incident in his place of residence, and the crime was committed in another region. In that case, the appropriate SIA where the crime was reported, files the criminal charges with the local competent Public Prosecutor's Office where the crime was committed. This is also important if the crime was committed online, as most often the criminal charges are filed with the local competent Public Prosecutor's Office where the perpetrator lived because it was believed that they acted online from there. Therefore, these crimes cannot be taken as a reliable benchmark or a valid "statistical sample" for the purpose of determining the geographical distribution of hate crime. When mentioning online hate crimes, the data sent by the Ministry of Internal Affairs on the number of reported crimes to the Cybercrime Sector is noteworthy. A total of 23 crimes were registered there, which can be considered reliable data, with the note that probably all of those cases are hate speech crimes.[46]

[46] Since 2017 (after being separated as a body from the Department for Suppression of Organised and Serious Crime), the SCC has been keeping statistics on each individual crime and submitting an annual report to the MoIA, which is then implemented in the general Annual Report of the MoIA. See: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%202023.pdf

Crimes with hate elements according to type for the period from 2019 to June 2024, by organisational units	SIA Skopje	SIA Bitola	SIA Veles	SIA Kumanovo	SIA Ohrid	SIA Strumica	SIA Tetovo	SIA Shtip	Sector for computer crime	Total for the requested period
Total	14	23	8	11	86	4	21	29	23	219
Bodily injury Article 130 par. 3						1				1
Threatening the safety – Article 144 par. 2			1					1		2
Threatening the safety – Article 144 par. 3					2					2
Threatening the safety – Article 144 par. 4 par. 5	8	7	3	2	8	1	3	1	12	45
Abuse of personal data Article 149 par. 2							1			1
Damage of property – Article 243 par. 2 in reference with hate	1				1			2		4
Inciting hatred, discord or intolerance on national, racial, religious, and other discriminatory grounds– Art. 319	1	5				1	8			15
Dissemination of racist and xenophobic material through a computer system – Art. 394 d		10	4	9	74	1	8	24	11	141
Racial and other discrimination Article 417		1			1			1		3
Violence – Article 386	4						1			5

Tabular view of registered crimes with hate elements according to type for the period from 2019 to June 2024, by organisational units

6.1.2. The MoIA's response to hate crimes and hate speech

In the state's systemic response to hate crime, the role of the police is of particular importance. As for the statistics submitted by the MoIA on reported hate crimes, they should be taken with a certain amount of reserve. This is because, indeed from today's perspective, the state (police[47] and courts) have made pioneering steps in collecting data on hate crimes, but in the official state practice of detecting and prosecuting hate speech crimes as related to hate crimes, the basic approach of differentiating them as a separate form of crime is absent. Despite the organisational reforms in the Public Prosecutor's Office and the Police, there is still no observation and reporting at a satisfactory level. For example, there is also a noticeable tendency to avoid, or to give a milder qualification to, obvious cases of inciting national, racial, and religious hatred, discord

[47] The police are the first law enforcement agency to respond to hate crimes, and the data they collect should form the backbone of official hate crime data. However, despite the efforts of the police and other government agencies, the recorded incidence of hate crimes in official statistics is generally lower than the real incidence. This is because official recording depends on victims reporting cases and police officers accurately recording them. However, from the perspective of the competence of this executive agency to collect hate crime statistics and its potential superiority in this task compared to other state agencies, especially the Public Prosecutor's Office, it is definite due to the very fact that the PPORNM does not have a sufficient budget or sufficient staff to fulfill this task, unlike the MoIA (to simplify the last part).

and intolerance, for example by substituting an event of hate speech as an ordinary offense against public order and peace. In addition, the collected data is not publicly available and it is not clear whether the authorities understand the difference between hate speech and hate crime per se. Namely, neither the State Statistical Office receives such specified data from the MoIA, nor does the Ministry of Internal Affairs state it (hate speech as a statistical parameter) in its annual reports, nor is the MoIA to provide the Ministry of Foreign Affairs with such data upon request from international organisations to which the Republic of North Macedonia is a member.

Otherwise, from the aspect of acts of hate speech online, it is significant that for their proof, the crown evidence (regina probationem) is often the expert reports prepared by the Forensic Investigations Department (OFI) at the MoIA, which are done with specialised tools and software. The OFI Digital Forensics Laboratory examines computer equipment and mobile devices that contain electronic evidence. Data is downloaded from digital devices using forensic tools that allow the integrity of the data to be preserved. Various methods are used to analyse existing data and to restore deleted data.

6.2 Public Prosecutor's Office

The Public Prosecutor's Office is a constitutional category and is a prosecution body that channels the entire extensive work of the MoIA in the fight against crime. Regarding hate crime, public prosecutors' offices have long been familiar with it through the trainings conducted by the AJPP. At a systemic level, PPORNM has also introduced novelties respecting the principle of hierarchy and subordination. Thus, in order to work more efficiently, the PPORNM has instructed all public prosecutors in the country, starting from 01.01.2023, to regularly and without exception make additions to the cases in the case management information system by uploading the decisions of the PPO. The prosecutor's offices have had this system since 2016, but it is only now being implemented in practice.

6.2.1. The Public Prosecutor's Office's response to hate crime, including acts of hate speech - investigative practices

The premise for the functioning of the national systemic framework against hate crimes and for it to receive criminal legal treatment is Article 81 of Chapter VII of the Criminal Procedure Code, entitled "Obligation to Provide Legal Aid". It stipulates: *"(paragraph 1) The judicial police, the public prosecutor, and the court may, for the purposes of conducting criminal proceedings, request assistance from the courts, the public prosecutor's office, state administration bodies and other state bodies, institutions exercising public powers and from the bodies of local self-government units. These shall be obliged to respond to the request as soon as possible and to forthwith remove potential obstacles. If necessary, they may be provided with a copy of the criminal case file. (Paragraph 2) The state administration bodies and other state bodies may refuse the request referred to in paragraph (1) of this Article, with a reasoned decision in accordance with their legal competences, if this violates the obligation to keep classified information, until the competent body revokes such obligation"*. Of course,

if there is even the slightest doubt that a legal entity would not be cooperative, then the instrument at hand is a Request, in accordance with Article 287 of the CPC, which provides for a fine if action is not taken within the legal deadline of 15 days.[48]

Regarding hate crimes with an international element and the collection of evidence from abroad, the Law on International Legal Cooperation in Criminal Matters is also relevant.[49] International legal assistance from Chapter II of the Law is particularly important, such as: the performance of procedural actions; the submission of spontaneous information; the exchange of particular information and notifications; controlled delivery; the interception of communications; the search of premises and persons and the temporary seizure of objects, property, or funds related to a criminal offense. The instrument that the prosecution authority should use is a "rogatory letter". The relevant provisions are: Art. 16 - 37.

From the perspective of the CPC and investigative practices, the chapter where special investigative measures (SIM) are prescribed is also relevant. The most important SIM - Interception of communications is implemented through a state body.[50]

In terms of obtaining evidence, the surge in hate speech acts online, specifically on social networks on the Internet, represents an organisational and technological challenge for the Ministry of Internal Affairs. In practice, the issues and methods for such collaborative operations between law enforcement agencies and these companies need to be approached with a prior plan, first to define the computer data that may be needed by the judicial authorities during the criminal proceedings; to review and obtain information on the type of computer data that can be obtained, where they are located and how they can be secured during the preliminary proceedings, in accordance with the domestic international legal framework, and finally, to emanate the manner and procedure that should be followed when securing computer data that could be potential evidence in the procedure, and to prepare forms for submitting requests for data from domestic or foreign internet providers.[51]

When submitting a request for the delivery of computer data, the Public Prosecutor's Office may, with a request based on Article 287 of the CPC, directly address the domestic Internet service provider or do so with an order through the Cybercrime Sector at the Ministry of Internal Affairs. The process, however, of providing data from foreign Internet service providers is generally defined by the protocols and procedures of foreign Internet service providers for cooperation with law enforcement agencies. If the movement of data is within one country, then this is easy because the domicile legal entities are obliged to provide the data to the authority conducting the procedure and due

[48] The deadline is often missed due to the inertia of the administration, but it is important that the executive authorities generally inform the Public Prosecutor in a timely manner when can the response be expected.

[49] If there is no other bilateral or multilateral agreement ratified by the state that regulates this matter

[50] In reality, despite the legislator's desire for the independence of the OTA as a separate body from the Ministry of Internal Affairs responsible for implementing the SIM, the specialised National Security Agency of the Ministry of Internal Affairs is still a filter for information that is of interest to the OTA.

[51] Source: Стоилковски, М./Цветановски, Ј., „Обезбедување докази во електронска форма од меѓународни и домашни интернет сервис провајдери - Краток водич за обвинители", Association of public prosecutors of Republic of Macedonia and the OSCE Mission in Skopje/2017, page 5.

to the short period of detection of communication between IP addresses, the chances of obtaining the data are high. In addition, if it is a matter of the need to discover the ownership of domestic online media from which the communication took place, then it is sufficient for the authority to obtain the information from Marnet[52]. However, unfortunately, these are rare cases because this is the rarest way of communication between IP addresses.

Internet service providers registered in the United States, in accordance with current legislation, for more serious crimes, have the authority to directly cooperate with representatives of law enforcement agencies from other countries and, at the same time, provide data on the users of their Internet services about user activities, as well as on the content created by the users of a particular service. The cooperation between these providers and law enforcement agencies is on a voluntary basis, but it should be taken into consideration that each provider individually has its own protocol specifics that are published in the form of "procedures" for providing data for the needs of law enforcement agencies. Finally, it should be taken into consideration that the institutional gap in terms of dealing with hate crimes, and in particular with hate speech crimes, is greatest when it comes to international interaction between entities-institutions and when mediation between judicial institutions takes place in a traditional manner, through the relevant ministries of foreign affairs and exclusively in writing.

The practice of the Public Prosecutor's Office for the past three years in the Republic of North Macedonia has been that the PPO of the BPPO, in the event that there is a need for international cooperation in criminal matters, should address the specialised department for international legal assistance of the PPORNM, and not directly the companies - providers and hosts in foreign countries. The department was established in January 2021 with the aim of improving, unifying, and accelerating the procedure for requests for international legal assistance. This department now forwards the rogatory letters or requests to the Ministry of Justice, which are forwarded electronically to the ministries of justice of the relevant countries (especially the USA, where the largest number of providers and hosts are located), and from there, the response from the companies regarding the requested data is received relatively quickly. There is also an alternative in the case of countries with which the Ministry of Internal Affairs of the Republic of North Macedonia has established inter-police cooperation, so the International Cooperation Department of the PPORNM submits the request to the MoIA and receives the response from there, but the practice has shown that this method takes longer, probably also because the correspondence is not exclusively electronic, but by written means. In fact, the need to have a written response must be emphasised in the initial contact in any case and regardless of the method of approach chosen by the Public Prosecutor. A more efficient way of international cooperation and obtaining information (but still insufficiently affirmed among Public Prosecutors) is undoubtedly the use of the Public Prosecutor for liaison of the North Macedonia in Eurojust based in the PPORNM in cooperation with the Sector for International Police Cooperation of the MoIA - Interpol.

The fact that after 10 years of the transition of the criminal procedure from a "mixed" to an "accusatory" type, the Investigation Centre in the largest Public Prosecutor's Office (BPPO Skopje), as well as in the BPPO Tetovo and BPPO Kumanovo, was equipped and

[52] https://marnet.mk/

put into full operation is also interpreted as progress in the PPO sphere.[53] Such a centre has existed since before in the BPPO POCC, and since the very beginning, members of the MoIA (inspectors) have been working there, whose specialties are both violent crime and computer crime. Regarding the investigation centres in the PPO Skopje, PPO Kumanovo and PPO Tetovo, the equipment is more modest compared to the BPPO POCC, and especially in terms of the last two public prosecutor's offices, where only two inspectors work in the investigation centres. By the end of the calendar year 2024, investigation centres in the BPPO Bitola and BPPO Shtip are planned to be opened.

6.2.2. Rates of processed cases and indictments

Regarding the processed cases in the PPO, in the archives of the Basic Public Prosecutor's Office - Skopje, several negative meritorious public prosecutor's decisions could be found, which either dismissed the criminal charge for such an offense or decided that there should be no public prosecutor's intervention. Namely, there is official data from 2023 for the BPPO Skopje that in 2021 alone, a total of 19 criminal charges were received for 4 criminal offenses in the area of hate speech[54], and in the same year, a decision was made for 17 of them (90%) - a decision to dismiss the criminal charge.[55]

In response to the increased rate of hate speech offenses (Covid-19), the state must take into account and establish a mechanism for the prevention of hate speech. Judicial authorities are the pivot in such a future strategy for addressing the issue. According to principle 5 of the Council of Europe Recommendation No. R (97) 20 on "hate speech", national laws and practices require that competent prosecution bodies pay special attention, as far as their discretion allows, to cases involving hate speech.

In terms of the data collected for the purposes of this specific analysis, the BPPO (excluding the BPPO Resen and the BPPO POCC) for the period 2019- June 2024 reported that they received 18 cases of hate crimes and 265 cases of hate speech. Of all these cases, there were 106 cases that had an epilogue - a guilty judgment. And of all those cases, only 15 were marked as "hate crimes" in the Case Management System. 103 cases were still being processed, and the remaining cases had either had their criminal charges dismissed or have been transferred to another BPPO for local jurisdiction.

As can be seen from the responses of some of the PPOs (Kichevo, Strumica, Gostivar, Tetovo...), they generally did not differentiate between the paragraphs of the articles of the Criminal Code, whether the crime was committed with a biased motive. This is despite the fact that the case management system provides an option to click on the "hate crime" button if this was the case, and thus represents an electronic tool that

[53] See the PPORNM Rulebook on the organisation and operation of investigative centers dated 07.02.2020.

[54] criminal acts referred to in: Article 394-d of the Criminal Code, Article 144, paragraph 4 of the Criminal Code, Article 319 of the Criminal Code and Article 417 of the Criminal Code.

[55] Source: Маркоски, А., „Анализа за утврдување на институционалниот јаз во однос на регистрирањето и обработката на говорот на омраза во Република Северна Македонија", Helsinki Committee for Human Rights, Skopje, 2023, Link: https://mhc.org.mk/wp-content/uploads/2023/10/analiza_institucionalenjaz_web_disklejmer.pdf

significantly simplifies the process of keeping records of this type of crime. Apparently, due to the negligible use of this tool which, if used, could potentially contribute to precise and concise data, a large number of BPPOs provided general and extensive data covering all crimes under a certain article and paragraph, regardless of whether they included hate crimes or general crimes.

Only two BPPOs provided copies of indictments (Veles and Ohrid), while BPPO Kichevo stated that they did not have a practice in their administration to check the "hate crime" field in the case management system, which posed a significant challenge for the analysis. However, the authors received productive information that since June 2024, there has been a public prosecutor in BPPO Skopje appointed as a contact person and responsible for monitoring hate crime proceedings (and crimes involving discrimination).[56] For the purposes of this analysis, an interview was conducted with the appointed prosecutor on 04.09.2024. During the interview, she provided information that the BPPO Skopje, for the current year 2024, namely: the existence and ongoing work in the BPPO Skopje on 1 case with the code "CL" (criminal liability) and one case with the code "MS" (miscellaneous)[57], where for the first case, a decision was made by the competent PP during 2024 - Decision to dismiss a criminal charge, and in the second case, the procedure for collecting previous information and evidence by another competent PP was still ongoing. She also added that in the past almost 5 years, no one has ticked and marked the option - hate crime in the system where data on current cases is entered – the Case Management System.

6.2.3. Analysis of indictments

A total of 14 anonymised indictments were submitted to the authors of this analysis. Of these, 7 indictments were submitted by the BPPO Ohrid, and 7 indictments were submitted by the BPPO Veles. Of the total number of indictments submitted, the largest number (10) are Proposals for issuing a penalty order, and 4 (four) are Indictment Proposals. No bills of indictments were submitted.[58]

The Ohrid indictments

As it can be seen from the Ohrid penalty order issuing proposals and the two indictment proposals, the indictment proposals with the same designation CL No. 18/2023 stand out, which are against a total of - two, separate defendants, but who as co-perpetrators

[56] Link: https://jorm.gov.mk/wp-content/uploads/2024/05/obvinitelski-pechat-br.2.pdf.

[57] Common classification of cases, where the designation "CL" represents more serious cases (where the basis for suspicion that a crime has been committed has been established) than cases marked "MS" where there are usually only indications of a crime committed or, alternatively, there are no indications at all, and where cases that were formed after frivolous or unclear criminal charges were filed are also registered. See types of registers from Art. 69 of the Rulebook on Internal Operations of Public Prosecutor's Offices (Official Gazette No. 190/2021). Available at: http://ldbis.pravda.gov.mk/PregledNaZakon.aspx?id=57258

[58] According to the CPC, bills of indictments are filed after an investigation has been conducted, and if it refers to minor crimes (with a maximum prison sentence of up to 5 years) where no formal investigation is conducted (although investigative actions are conducted), the positive act of the BPPO for criminal prosecution is called an "Indictment Proposal".

have committed a criminal offense - Serious bodily injury under Art. 131, paragraph 1 in reference with paragraph 2, Article 22 of the Criminal Code; hence the interconnection due to which both indictments have the same PP number. As expected, a single, joined criminal proceeding was conducted in the Ohrid Basic Court on the two indictment proposals. In the case, a male person from the Bulgarian ethnic community was injured. The case was exposed in the media, and even the criminal proceedings included international implications because the injured party was first treated for the injuries he sustained in the Republic of Bulgaria, and then the main hearings were covered both by representatives of the Bulgarian diplomatic mission in the North Macedonia (since in the meantime the injured party had also become a Bulgarian citizen), and by representatives of the Bulgarian media.[59]

It can be concluded that during the previous pre-investigation procedure, the competent Public Prosecutor acted conscientiously and professionally, with caution towards all indications that a hate crime had been committed in the criminal event. During the previous procedure, the competent Public Prosecutor ensured that numerous material evidence is collected, such as: video surveillance recordings, lists of telephone conversations; medical documentation in the name of the injured party; medical expertise; facial recognition was performed (and this was recorded in the minutes, as well as with a video recording); and ensured that all protagonists were examined with additional examination of two witnesses.

Regarding the other decisions submitted by the BPPO Ohrid, which are five Proposals for issuing a penalty order, the Proposal CL No. 232/2021 of 21.02.2024, filed against one person for a criminal offense - Dissemination of racist and xenophobic material through a computer system under Art. 394-d, paragraph 1 of the Criminal Code, stands out. The description of the offense in the operative part fully corresponds to an offense of hate speech because a protected characteristic - social status - is verbally attacked. The injured party, as an individual, is not identified, but the police as a public service are attacked. Something similar applies to the Proposal CL No. 127/20 of 26.06.2022, which was also filed against one person and for the same criminal offense. However, in this case, the judges and enforcement officers are verbally attacked as a group, and again, no individual victim is identified. It is indisputable that this protected characteristic - social status is listed in the legal description and essence of the crime in Article 394-d, paragraph 1 of the Criminal Code, but it must be taken into consideration that it is not part of the range of protected characteristics listed in Article 122, item 42 of the Criminal Code and therefore (and with modus operandi), these cases cannot represent hate crimes, but rather acts of hate speech as a criminological subcategory of verbal offenses and their most extreme expression. On the other hand, with regards to the remaining three Ohrid Proposals CL No. 97/22 of 08.04.2022, CL No. 98/19 of 30.12.2020 and CL No. 678/21 of 04.01.2024, all of them involve criminal prosecution against individuals who have separately committed one criminal offense - Dissemination of racist and xenophobic material through a computer system under Art. 394-d, paragraph 1 of the Criminal Code, but where the object of protection is political officials, such as: the then current President of

[59] https://www.dw.com/mk/kamerite-pristignaa-dali-i-pendikov/a-64838559

the Government of North Macedonia or the then current Members of Parliament of the North Macedonia. It is undeniable that the defendants in their verbal offenses, i.e. writings on the social network "Facebook", expressed a desire for the deaths of those in power, but the competent public prosecutors had to ensure the seriousness of the perpetrators' intentions and motives, because taking into account the case law of the Court in Strasbourg, these cases could easily be interpreted as demonstrating the democratic right to freedom of speech and legitimate political competition with the use of propagandistic bombastic slogans. So, everything depends on the circumstances and the material and verbal evidence obtained, and in reference with that - the existence of solid evidence, the BPPO Ohrid has failed to submit written documentation as evidence, nor can it be concluded that they were obtained during the pre-investigation procedures by simply reading the Proposals themselves (Due to the nature of the Proposal for issuing a penalty order itself, which according to the law is submitted to the Court without an act - List of Evidence).

The Veles indictments

The BPPO Veles gave one of the most comprehensive responses regarding the requested information, and in addition to the response, it submitted 5 (five) Proposals for issuing penalty orders and 2 (two) Indictment Proposals. However, if the five proposals are analysed, it is concluded that none of them refers to a hate crime. Namely, the Proposal CL No. 534/22 of 20.06.2023 was filed against one person for a criminal offense - Bodily injury under Art. 130, paragraph 3 in reference with paragraph 1 of the Criminal Code, but the criminal legal event refers to a physical attack of one villager against another due to revenge because the attacked villager had previously reported the attacker to the MoIA for illegal logging. In the case, both the attacker and the attacked belong to the same ethnic community. In fact, the act could be incriminated, but only the essence of Art. 130, paragraph 1 of the Criminal Code is fulfilled, and he is prosecuted under a private lawsuit in accordance with paragraph 5 of the same Article. The same thing is noted in relation to the Proposal CL No. 360/23 of 17.10.2023, but it refers to a perpetrator - one person, and a criminal act committed – Threatening the safety under Art. 144, paragraph 3, paragraph 2, paragraph 1 of the Criminal Code, and in fact, in the criminal event, one person, due to unresolved property-legal relations, threatened two of his fellow citizens who were from the same ethnic community as the person who made the threat. In this case, too, the act could be incriminated, but only the essence of Art. 144, paragraph 1 is fulfilled, and he is prosecuted under Art. 144, paragraph 6, in accordance with a private lawsuit.

Regarding the remaining 3 (three) Proposals for issuing a penalty order: CL No. 366/21 of 30.12.2021, CL No. 74/19 of 03.04.2019 and CL No. 298/19 of 25.09.2019, they all refer to the commission of one criminal offense - Threatening the safety under Art. 144, paragraph 4 of the Criminal Code, but in all of them there is no evidence that the essence of the offense was fulfilled, because there is no evidence that the threat was sufficiently strong and serious. This quantum of wrongdoing is necessary to exist in the specific criminal offense, which in most other legislations is simply

called - Threat[60]. Otherwise, in two of the cases, the social status of the injured parties as superior to the defendants, in the sense of their employers or businessmen, is threatened (CL No. 366/21 and CL No. 298/19). For all the mentioned and analysed Proposals, first-instance conviction proposals were adopted, which issued penalty orders and imposed alternative measures - suspended sentences. In the last case, Proposal CL No. 74/19, the threatened protected characteristic is - political belief, but no judgment was rendered to issue a penalty order, but a judgment was rendered based on an admission of guilt, which determined the perpetrator's suspended sentence.

In reference with the Prosecution Proposals of the BPPO Veles with CL No. 554/2020 and CL No. 342/21, they both refer to the criminal offense – Threatening the safety under Article 144 of the Criminal Code. In the first case (CL No. 554/2020) the indictment was filed against one perpetrator for the criminal offense - Threatening the safety under Article 144, paragraph 4 of the Criminal Code, and from the operative part thereof it is evident that the subject of protection are two persons who were attacked due to their personal and social status as a protected characteristic. It is evident from the proposed evidence that the competent PP made sure that psychological expert reports on the condition of the injured parties are obtained, as well as material evidence - an excerpt from the electronic communication. The conclusion is that this are absolutely substantiated charges for which there is information that a Judgment was issued based on a guilty plea by the Basic Court Veles K No. 71/21 of 05.04.2021, by which the defendant was sentenced to an alternative measure - suspended sentence. However, this case is not a hate crime because the protected characteristic "personal and social status" is not part of the definition of a hate crime under Article 122 of the Criminal Code, but in this case, it is an act of hate speech.

A similar and positive example is the Indictment Proposal CL No. 342/21 of 18.10.2021 filed against one person for the criminal offense – Threatening the safety under Art. 144, paragraph 2, paragraph 1 of the Criminal Code. The operative part of the indictment shows that this is a case of verbal and physical attack of one person (by grabbing the neck) against his fellow citizen of another-minority ethnicity only because the injured party displayed the flag of the home country of his ethnic community on his balcony. As it can be seen from the explanation of the indictment, the competent PP ensured the obtaining of material evidence such as: medical documentation in the name of the injured party and an extract from the criminal and penal records in the name of the defendant, as well as to examine the injured party, with minutes, in the pre-investigation procedure. Regarding this indictment, the Veles Basic Court issued a judgment acquitting the defendant of the charges, but in an appeal procedure, the Skopje Appellate Court issued a judgment CA no. 903/23 of 05.04.2024, by which the defendant was sentenced to a suspended sentence. In the explanation of the judgment, the higher court precisely locates the moment that this is a hate crime, and argues in favour of the mild sanction with the fact that there were prevailing mitigating circumstances - primarily that this is a person with no prior convictions.

[60] See Art.139 of the Criminal Code of R. Croatia.

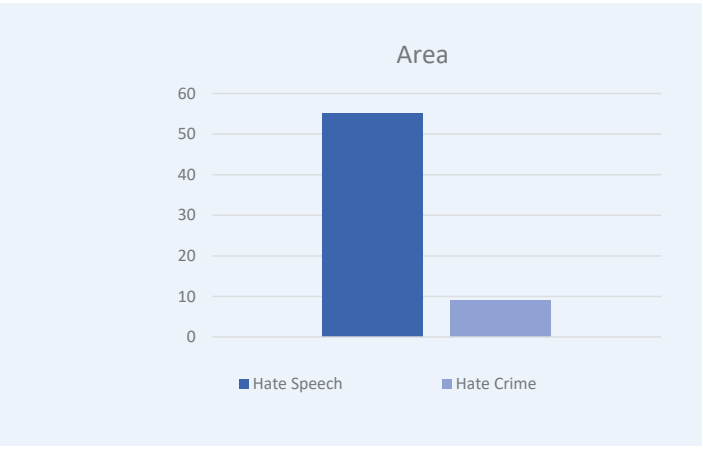
7. Judicial outcomes and sentencing practice

For the purposes of the analysis, data were requested and received from 31 courts (all basic and appellate courts in the country), and from the Judicial Council. The requested data related to:

- The total number of completed and ongoing cases, for each crime separately[61] and the number under which they are registered;
- Statistical data on the total number of cases in which the "hate crime" box is marked in the court case management system (ACMIS); and
- Delivery of all final and non-final court decisions, if they are not available on the portal www.sud.mk.

Some courts sent data according to the crime for which they were requested, while others reported only the total number of registered cases. Some of these institutions sent data on the number of cases according to the article of the crime from the Criminal Code (basic criminal offense), and some also on the specific paragraphs of those criminal offenses that refer to hate crimes. Only a small number of courts sent copies of judgments, i.e. the responses contained only the registration number of the cases. Some of the courts sent a large number of registration numbers of the cases, but after additional review, it was established that they were not hate crimes. Only a small number of courts reported that the "hate crime" box in ACMIS was checked. In order to overcome this limitation, an extensive search was conducted through the database of decisions available through the court portal www.sud.mk, during which **64 judgments in the areas of hate crime and hate speech were identified and processed. These judgments refer to 56 court cases, eight of which were reviewed by a second-instance court.**

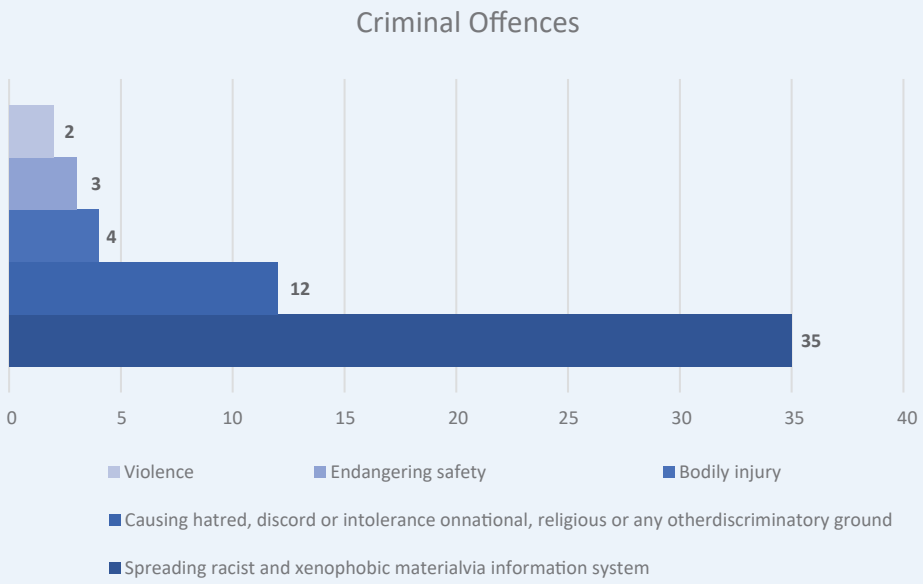
7.1 Judgments according to area and criminal offense



The data shows the distribution of cases related to hate speech and hate crime, with a marked dominance of cases related to hate speech. **More specifically, 55 cases are categorised as hate speech, representing the majority of reported cases, while 9 cases are related to hate crime**. This significant difference suggests that hate speech is a more frequently addressed phenomenon compared to hate crime, which can be attributed to the public nature and visibility of hate speech, especially in the online space.

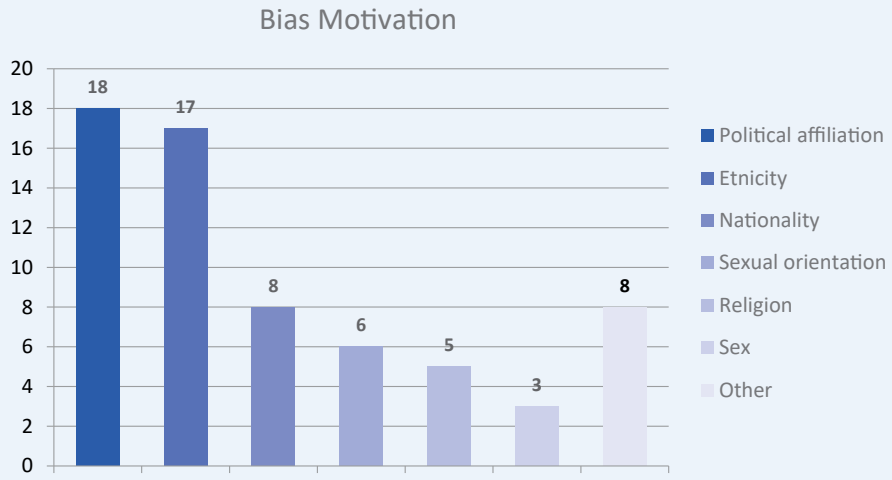
[61] Pursuant to the listed criminal offenses in subheadings 5.4.1 and 5.4.2 above.

The lower number of reported hate crimes is a possible indicator of underreporting, challenges in terms of recognising bias motivation, or barriers to prosecution. This finding highlights the need for increased efforts in the prevention of hate speech, as well as in the identification and prosecution of hate crime in order to address the full spectrum of bias-motivated acts.



Courts were requested to provide data on a total of 23 criminal offences related to hate speech or hate crime (see subheadings 5.4.1 and 5.4.2 above). According to the feedback, courts have decided on five of these criminal offences, and no cases related to the other 18 criminal offences were identified. Two of the criminal offences relate to hate crime, while three relate to hate speech. **The most common offence with 35 cases is the dissemination of racist and xenophobic material through computer systems, which highlights the prevalence of hate speech online**. This is followed by 12 cases involving incitement to national, racial, or religious hatred, discord, and intolerance, which indicates a significant occurrence of inflammatory activities targeting communities in society. Other more significant offences include bodily harm (four cases), threatening the safety (three cases) and violence (two cases). This distribution highlights the critical contribution of the internet as a suitable platform for the commission of hate crimes, while also highlighting the diversity of these criminal offenses, including physical harm and threats to public safety. These findings point to the need for targeted strategies to address online hate speech, as well as the broader spectrum of hate crimes.

7.2 Judgments according to bias motivation



* Some of the cases related to hate speech and hate crimes contain two or more bias motivations; hence the greater number of bias motivations than cases.

The data shows the distribution of hate incidents by bias motivations, highlighting several key factors. Political belief is the leading bias motivations with 18 cases, followed closely by ethnicity with 16 cases. This suggests that political tensions and ethnic divisions are the main drivers of hate-related incidents. Other significant categories include nationality with eight cases and religious belief with five cases, further reflecting societal divisions. Although sexual orientation and sex are less common motives, they are still present with six and three cases, respectively. These data highlight the complex nature of hate incidents, with political and ethnic motives dominating, but other forms of bias are not excluded. This diverse distribution points to the need for comprehensive policies that address the different forms of hatred as no single motivation can be seen in isolation. In particular, the importance of addressing political and ethnic tensions stands out as a priority for reducing hate-related incidents.

When comparing the Helsinki Committee for Human Rights data on hate speech and hate crime (see subheadings 5.4.1 and 5.4.2 above) with official court data, it is important to highlight the time difference – the Helsinki Committee data cover a period of 10 years, while the court data cover a period of five years. To overcome this difference, the comparison can be based on percentages rather than absolute numbers.

According to the Helsinki Committee, ethnicity is the most common motive for bias, accounting for around 50% of cases. Conversely, court data show that around 20% of cases are motivated by ethnicity. This significant difference indicates an underestimation

of cases motivated by ethnic bias in prosecutorial and consequently court proceedings, although they dominate the Helsinki Committee reports. Sexual orientation appears as the second most common motive in the Helsinki Committee reports, accounting for around 27%. However, in court data, sexual orientation is a motive in only 8.5% of cases, indicating that many incidents related to sexual orientation fail to reach the courts. Some of the possible reasons for this situation include victims' fear of reporting these acts due to secondary victimisation, distrust in institutions, insufficient awareness of rights, lack of adequate legal protection and victim support services, family or community pressure, and failure of the institutions to recognise the motive of bias. In the category of political beliefs, Helsinki Committee data show that around 20% of cases are motivated by this bias, while court data show around 25%. Although the percentages are more consistent in this category, the significantly lower total number of cases in courts suggests that politically motivated incidents may also be poorly reported or processed. Regarding nationality and religion, Helsinki Committee data show around 8% and 3%, respectively, compared to around 11% and 7% in court data. Although these categories are proportionally more present in court cases, the absolute numbers remain low, indicating challenges in addressing these motives of bias in the legal system.

By focusing on percentages and taking into account differences in time periods, it becomes clear that the Helsinki Committee reports offer a broader reflection of bias-motivated incidents, especially in areas such as sexual orientation and ethnicity, which indicates that these incidents are significantly underestimated in court proceedings. This points to the need to improve the mechanisms so as to ensure better reporting, recognition, and processing of hate crimes in all categories.

7.3 Judicial outcomes

The graph above provides an insight into the judicial outcomes of hate crime- and hate speech-related cases. One of the main findings is the significant use of penalty orders as a method used by PPOs and courts. With 30 cases resolved through this expedited process, it is clear that this approach is preferred in most cases. Penalty orders are usually used for less complex cases, most often when there is clear evidence and when the defendant, having received the order in the mail, accepts responsibility without appealing, and thus the trial does not commence and the judgment becomes final.[62] **While this allows for expedited resolution of cases, two important questions arise: was the seriousness of the hate-motivated acts adequately addressed, and did the defendants have a real opportunity to defend themselves?** Possible answers to these questions shall be provided later in this analysis. Hate speech and hate crime often have far-reaching social implications, and their resolution through expedited procedures may not reflect the full need for deeper judicial analysis and proportionate sentencing.

Trials are the second most common court outcome, with 20 cases resolved through a full court proceeding. This reflects the commitment of the court system to consider cases where the evidence or circumstances are more complex or where defendants contest the allegations. The relatively high number of trials suggests that many hate crime and hate speech cases require a thorough legal assessment, which may be an indication of the seriousness of the acts or the challenges in proving bias motivation in court.

Nine cases were resolved by guilty pleas during the main court hearing[63]. A guilty plea can speed up the legal process and reduce the burden on the courts, but it also raises important questions about whether the sentences are appropriate, which is the subject of the analysis below. Hate-motivated crimes have a profound impact on both individual victims and society, so it is crucial that the outcomes of such cases send a clear message that these acts will be severely sanctioned.

The graph also shows that two cases resulted in retrials, which may indicate procedural errors or the emergence of new evidence that requires a reassessment of the initial judgment. Retrials can significantly prolong the court process, causing delays in the delivery of justice. This phenomenon also suggests potential weaknesses in the initial handling of these cases, which indicates the need to strengthen legal procedures and capacities in dealing with hate crimes. Interestingly, only one case ended in dismissal of charges, which may mean that when hate crime charges do reach the court, they are usually supported by sufficient evidence. In addition, one case was resolved through a plea agreement, which is a rare occurrence in hate crime cases due to their seriousness. Pleas generally involve an agreement between the defendant or defendants and the public prosecutor's office confirmed by the court.

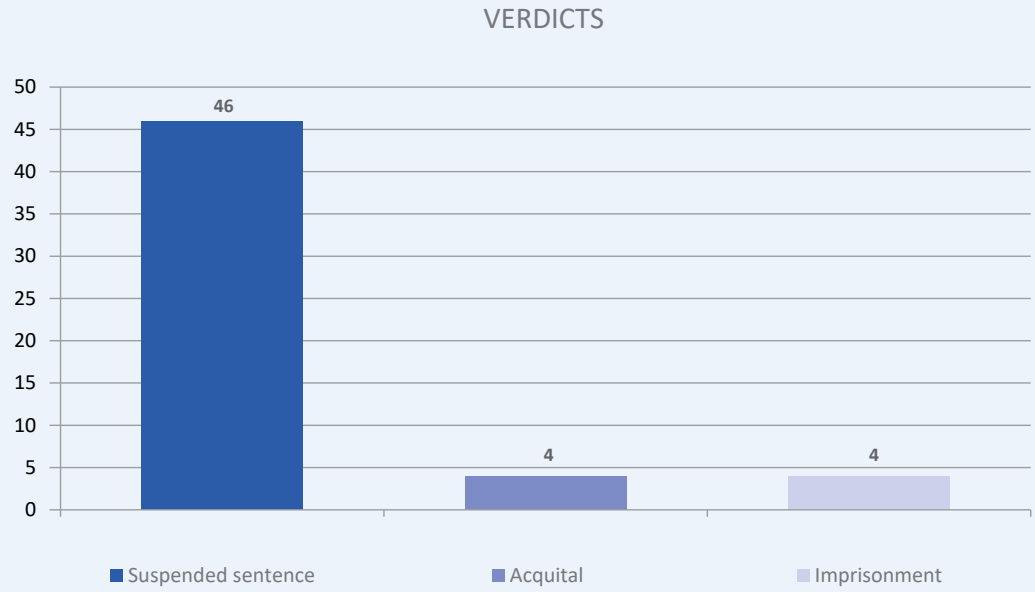
The graph shows that the judicial system relies heavily on penalty orders and trials to resolve hate crime cases. While these outcomes reflect the practical need for efficiency in resolving cases, they also raise important questions about whether the legal process adequately reflects the seriousness of hate crimes. The data suggest that while trials

[62] For more information regarding the penalty order, see Chapter XXXI of the Criminal Procedure Code, "Official Gazette of the Republic of North Macedonia" No. 150/2010, available at: https://www.slvesnik.com.mk/Issues/BDBF29F810D5E9468FC65FA542B857B3.pdf

[63] *Ibid.* Article 381.

remain an important method of resolving these cases, the frequent use of penalty orders may dilute the overall impact of judicial responses to hate-motivated crimes. It is necessary to examine whether the current approach sufficiently addresses the broader societal harm caused by these crimes and whether more stringent legal consequences could serve as a stronger deterrent against future potential perpetrators.

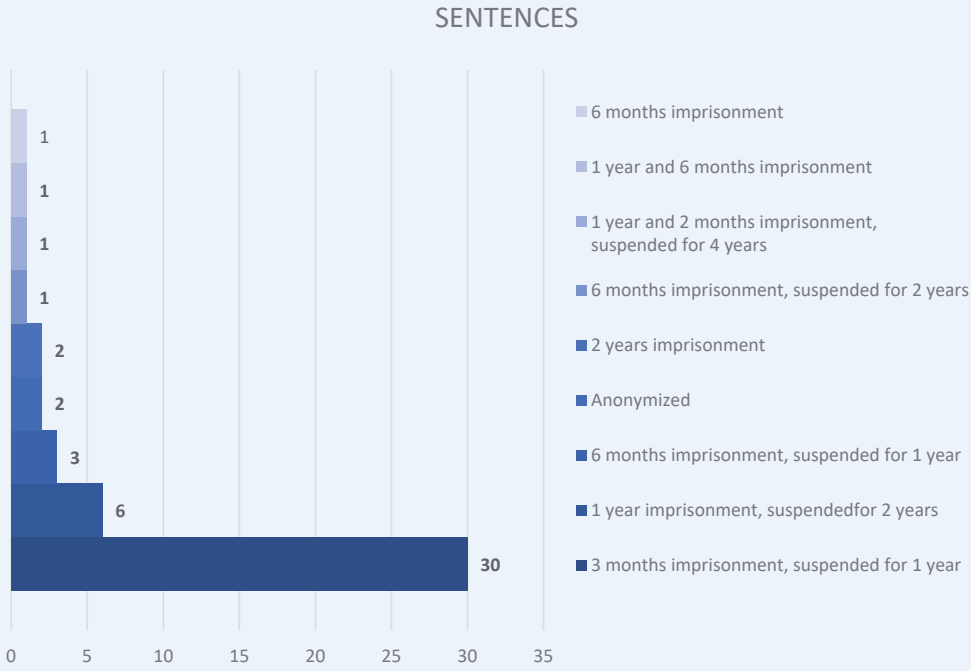
7.4 Judgments and sentences imposed



The graph clearly shows that suspended sentences dominate, with 46 cases ending in this outcome. This figure significantly exceeds the number of prison sentences and acquittals, with only 4 cases each. All prison sentences relate to hate crimes, i.e. no prison sentences were imposed in hate speech cases. Suspended sentences represent a much more general method of sanctioning and are used when the court considers that the perpetrator should not immediately be subjected to prison, but should still be subject to some supervision. This approach can be controversial in the context of hate crimes, as such crimes often have a greater social impact and create an atmosphere of fear and insecurity among the groups affected. The continued use of suspended sentences can reduce the deterrent effect of criminal law measures, especially if more serious sanctions are not imposed on the perpetrators of these crimes.

The acquittal, present in four cases, indicates that the court has failed to find sufficient evidence to convict the defendant. This outcome shows that in a small number of cases either the evidence was not strong enough, or the indictment was not adequately prepared to secure a conviction. However, the low percentage of acquittals suggests

that when cases reach trial, most of them are successfully prosecuted and end with some form of conviction. The imposition of prison sentences, also present in four cases, suggests that the courts consider only a limited number of cases as serious enough to require deprivation of liberty. This may open the debate as to whether the penal policy for hate crimes is sufficiently strict to deter future potential perpetrators, especially in the context of crimes that threaten social cohesion and security.



The chart provides a detailed picture of the different types of sentences imposed in cases related to hate crime and hate speech. It is clear that suspended sentences are the most commonly applied type of sentence, with 30 cases receiving three months in prison, suspended for a period of one year. This shows that suspended sentences are the primary approach to resolving such offences, allowing convicted persons to avoid imprisonment if they do not commit a new crime during the probationary period provided for in the suspended sentence. While this approach offers some flexibility and the possibility of rehabilitation, questions arise as to whether such sentences are sufficiently severe to deter future offences. In six cases, the defendants received a sentence of one year in prison, suspended for a period of two years. This suggests that, while recognising the seriousness of the offences, the suspended nature of the sentences still reflects the judicial system's bias towards more lenient measures. A suspended sentence allows the court to impose a suspended prison sentence without immediately being able to serve the prison sentence, suggesting that the court seeks to balance the sanction with the possibility of rehabilitation.

There are several cases with different duration of sentences; in three cases, the defendants were sentenced to six months in prison, suspended for a period of one year. In two cases, for unknown reasons, the sentence was anonymised, i.e. the exact data on the sentence imposed was not provided. In two cases, the defendants were sentenced to prison (between 6 months and 3 years), which is the highest sentence imposed of all the cases analysed.

These data suggest that courts have the ability to determine different sentencing options, but the predominant reliance on suspended sentences suggests that the legal system prefers solutions that do not involve direct deprivation of liberty. However, the low number of prison sentences raises the question of whether this approach is strong enough to deter future offenders and adequately reflect the social harmful effect of these crimes. The fact that only a few offenders received prison sentences may indicate the need for a stricter sentencing policy, especially for more serious or repeated crimes.

7.5 Analysis of court decisions related to hate speech

When analysing court decisions on hate speech, it is important to assess whether the court decisions are in line with international human rights standards, in particular the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR). National courts, while applying domestic law, are also obliged to follow the international law that is part of the domestic legal order. The ECtHR examines freedom of expression through Article 10 of the ECHR, but also establishes that this right may be limited to prevent expressions that incite hatred, violence, or discrimination. Hate speech does not enjoy protection when it poses a threat to public safety, morals, or the rights of others. The ECtHR applies several criteria in assessing cases, such as the intention of the speaker, the context of the expression, the content of the speech, and its potential consequences. These factors are crucial in establishing whether the speech is protected or it constitutes hate speech subject to sanctions.

Intention of the speaker

The ECtHR examines the intentions behind the expression. If it is clear that the statement was made with the aim of inciting hatred or violence against a particular group, then that statement may be classified as hate speech. In the case of *Sürek v. Turkey (No. 1)*[64], the ECtHR found that incitement to violence against certain groups was inappropriate and not protected under Article 10.

Context of expression

The ECtHR considers whether the expression is made in a politically or socially sensitive context. For example, in the case of *Erbakan v. Turkey*,[65] the ECtHR noted that speeches made in political contexts and which promote religious or ethnic intolerance should be

[64] Sürek v. Turkey (No. 1), Application No. 26682/95, Judgment of 8 July 1999.

[65] Erbakan v. Turkey, Application No. 59405/00, Judgment of 6 July 2006.

carefully analysed. Statements made in environments where there is a high risk of violence and intolerance have a greater potential to be classified as hate speech.

Nature and content of expression

The ECtHR examines whether a statement contains an explicit or implicit incitement to violence, hatred, or discrimination. In the case of *LePen v. France*,[66] the ECtHR concluded that racist statements against the Muslim community were not protected by Article 10 of the ECHR because they incited public hatred and discrimination on grounds of ethnic or religious affiliation.

Consequences from the speech

The ECtHR also considers whether the speech can cause real and harmful consequences. If the speech has the potential to incite violence or serious social tension, the ECtHR considers that it should not be protected. In the case of *Norwood v. The United Kingdom*,[67] the ECtHR noted that public expressions that incite discrimination and hatred against religious groups, such as the Islam, are considered unacceptable and may provoke social unrest.

Balance between freedom of expression and public interest

The ECtHR always balances the right to freedom of expression against the public interest in terms of maintaining social harmony and protecting the rights of others. In the case of *Gündüz v. Turkey*,[68] the Court assessed the expressions of a religious leader and concluded that although his statements were provocative, they were not extreme enough to be considered hate speech.

Proportionality of the restriction

The ECtHR also examines whether restrictions on the expression are proportionate to the aim pursued. In the case of *Handyside v. The United Kingdom*,[69] the ECtHR established the principle that freedom of expression applies not only to information and ideas that are positively received, but also to those that offend, shock, or disturb. However, when it comes to hate speech, restrictions need to be clearly defined and proportionate to the aim pursued, such as preventing discrimination or violence.

Measures taken by the state

The ECtHR examines whether national authorities have taken adequate measures to protect against hate speech. In the case of *Perinçek v. Switzerland*,[70] the ECtHR examined whether the criminalisation of genocide denial constituted a violation of Article 10

[66] Le Pen v. France, Application No. 18788/09, Decision of 20 April 2010.

[67] Norwood v. The United Kingdom, Application No. 23131/03, Decision of 16 November 2004.

[68] Gündüz v. Turkey, Application No. 35071/97, Judgment of 4 December 2003.

[69] Handyside v. The United Kingdom, Application No. 5493/72, Judgment of 7 December 1976.

[70] Perinçek v. Switzerland, Application No. 27510/08, Judgment of 15 October 2015.

of the ECHR. The Court found that sanctioning certain forms of speech may be justified if it protects the public interest, but this must be proportionate.

In this analysis of judicial outcomes related to hate speech, these criteria are of particular importance. By considering the nature of the statements, their context, and potential consequences, it will be assessed whether they have been adequately addressed, in accordance with the standards set by the ECtHR.

7.5.1 Political belief

The majority of court decisions on hate speech concern political beliefs or affiliation as a recognised protected characteristic in the national legislation (18). All court cases concerning this characteristic have been initiated under the criminal offence of "Dissemination of racist and xenophobic material by means of a computer system" under Article 394-d, paragraph 1 of the Criminal Code. 13 of the judgments were issued by way of a penalty order, while the remaining five judgments were reached following a guilty plea during the main hearing. This means that none of these cases reached a second instance court, as no appeal was allowed. No perpetrator was sentenced to imprisonment. All perpetrators were given suspended sentences, ranging from a three-month prison sentence, which will not be served if the perpetrator does not commit a new crime within one year, to a one-year prison sentence, which will not be served if the perpetrator does not commit a new crime within two years.

The majority of cases concern hate speech on social media, especially Facebook. The perpetrators most often posted statuses, comments, or images that, according to the Basic Courts (BC), constitute hate speech. Examples include threats, calls for violence, swearing, insults, and defamation against appointed and elected officials and members of political parties. A large number of these cases relate to the 2021 amendments to the Constitution to change the name of the country, while some are related to the COVID pandemic and the vaccination process. In the judgment K-12/21 of the Berovo Basic Court, the convicted person posted an image of a noose and called for the public hanging of MPs on the square. In the judgments K.no.5/24 and K.no.54/23 of the Gevgelija BC, K.no.183/20 of the Kichevo BC, K.no.253/2019 of the Shtip BC, K.no.150/22 of the Radovish BC, K-50/21 and K-102/22 of the Vinica BC, the convicted persons called for the hanging, beheading, murder, and burial of the Prime Minister through comments. In the judgments K-57/24 of the Kochani BC, K.no.427/22 of the Shtip BC, K.no.42/23 of the Strumica BC and K.319/22 of the Veles BC, the convicted persons called for the hanging of the Minister of Interior and other public officials. In the judgment K-95/21 of the Prilep BC, the convicted person wanted to have a law for the public hanging of members of an opposition party. In the judgment K.no.119/2024 of the Kichevo BC, the convicted person called for the murder of the president of a political party. In the judgment K.no.87/2023 of the Strumica BC, the convicted person called for the liquidation of the Minister of Health. In the judgment K.no.60/2023 of the Strumica BC, the convicted person cursed and insulted the Minister of Interior.

7.5.2 Ethnic affiliation

The second place in terms of the number of court decisions on hate speech refers to those that refer to ethnicity as a protected characteristic (13). Two of these cases contain an intersectional bias motivation, i.e. one refers to both ethnicity and religious belief, and the other to sex, ethnicity, and religious belief. 11 of these court cases were initiated under the criminal offense of "inciting hatred, discord or intolerance on national, racial, religious, and other discriminatory grounds" under Article 319, paragraph 1, while two were initiated under the criminal offense of "Dissemination of racist and xenophobic material through a computer system" under Article 394-d, paragraph 1 of the Criminal Code. The judgments were reached through regular trials (7), repeated trials (2), guilty pleas (1), plea agreements (1), penalty orders (1) and dismissal of the indictment (1), and there were a total of three appeals to a second-instance court. None of the perpetrators were sentenced to prison. All of those convicted were given suspended sentences, ranging from a three-month prison sentence that will not be served if the perpetrator does not commit a new crime within a year, to a one-year and two-month prison sentence that will not be served if the perpetrator does not commit a new crime within four years.

In the case K-84/19 of the Bitola BC, the defendant was found guilty because he wrote on the wall of a private village shop "UCHK, Kosovo, Adem Jashari is calling us – Kosovo" in Albanian language, thereby causing hatred and anxiety on the basis of ethnicity among the Macedonians in the village. In the case K.no.496/22 of the Gostivar BC, the convicted person insulted a police officer from the Albanian ethnic community on ethnic grounds and physically attacked him while the officer was on duty. The court found that the convicted person caused ethnic discord and committed the criminal offenses of Assault on an official and Inciting hatred and intolerance on discriminatory grounds.

In the case K.no.14/19 of the Krushevo BC, five persons of Macedonian ethnicity, during the national holiday of August 2, 2018, during a public celebration, as part of a supporters' group, shouted hateful slogans directed targeting the members of the Albanian community. In doing so, they incited hatred and discord on ethnic grounds at a public gathering. The defendants pleaded guilty and were found guilty of inciting hatred, discord, and intolerance on ethnic grounds. In the case KPP no.72/20 of the Skopje BC, the convicted person published a text on social networks with expressions that incite hatred towards the Albanian ethnic community. The statement was made in the context of two related events: the damage to the Macedonian National Theatre by the supporters' group "Smugglers" and the strong earthquake in the Republic of Albania in 2019, which resulted in human casualties. The text was the subject of comments and shares on the social network, thus inciting hatred towards the Albanian community. The convicted person reached a plea agreement with the PPO and was found guilty of Disseminating racist and xenophobic material through a computer system.

In the case K.no.203/2021 of the Kichevo BC, the convicted person entered a café and, without being provoked, directed serious insults, threats, and violence at a police officer on duty, using expressions targeting his ethnicity, religion, and gender. The insults used terms referring to religious and ethnic stereotypes about circumcision, which further

emphasises the incitement of hatred based on gender, associated with religious traditions. The accused was convicted of inciting hatred, discord, and intolerance based on gender, ethnicity, and religion.

In the case K.no.38/23 of the Kochani BC, the convicted person published images and videos on his social media profiles that promote hatred and violence on the basis of ethnicity and religion. He shared a video with members of the Chechen army calling for aggression. Later, he published an image with the text "ISRAEL TERRORIST" and a symbol of the Star of David, which is a symbol of the Jewish people, inciting hatred towards this group. The defendant was found guilty of the criminal offense of "Dissemination of racist and xenophobic material through a computer system" under Article 394-d of the Criminal Code on the basis of ethnicity and religion.

In the case K-775/18 of the Kumanovo BC, the convicted person, who was 18 years old, together with several other persons, caused ethnic intolerance and discord by taking down and damaging the state flag in the city centre, in front of a large number of citizens. When a police officer tried to detain him, the defendant attacked him, hitting him, and causing him bodily harm, after which he tried to escape. This incident further inflamed ethnic intolerance among those present and in the public. During the trial, the public prosecutor stated that "Hate crimes are always punished more severely than other crimes, because they pose a particular danger to the peace and stability of a country." The convicted person confessed to the crime and was found guilty of the crimes of Attacking an official while performing public security duties and Inciting national, racial, and religious hatred, discord and intolerance. The public prosecutor in the case considered the suspended sentence to be too lenient and appealed to the Appellate Court (AC) in Skopje, requesting a harsher sentence, for which he received support from the Higher Public Prosecutor's Office. However, the AC in its decision CA (criminal appeal).519/19 considered that a sentence of one year and two months in prison, which will not be served if the perpetrator does not commit a new crime within four years, was appropriate.

In case K-398/21 of the Bitola BC, a person from the Macedonian community was accused of inciting ethnic intolerance in an argument at a market with persons from the Albanian community. During the argument, the defendant used offensive expressions that could incite intolerance. The court dismissed the indictment because it found that the act did not meet the criteria for a criminal offense, i.e. there was a lack of intent. After the dismissal, the public prosecutor filed an appeal with the Bitola AC, which in its decision CA.59/22 considered that it was not explained how the Bitola BC came to the conclusion that there was a lack of intent and that such a crime could not be committed through negligence.

In the case K-67/2019 of the Delchevo BC, two defendants made threats against members of the Roma community, shouting in a violent voice expressions that provoked feelings of hostility and hatred on ethnic grounds. Their expressions included threats to burn down the houses of the Roma community and insulting claims that the Roma community was an obstacle to the progress of the state. Threats were also made directly against individuals from the Roma community, who were told that they would be found and killed. The court found the defendants guilty of Inciting hatred, discord or intolerance on national and other discriminatory grounds. Following the appeal filed by

the defendants, the Shtip BC in its decision CA.56/21 expressed serious doubt in the decision of the first-instance court and established that although it is indisputable that threats were made against the Roma community on the critical day, there is not enough clear and verified evidence that the defendants were the perpetrators. Witnesses stated that they heard threats, but could not confirm with certainty which persons made the threats due to the darkness and distance. The only witness who recognised the defendants' voices based his claim on an assumption, as he had no previous contact with the defendants. After the retrial, the court of first instance, through its decision K19/21, acquitted the defendants due to lack of proof of the crime by the public prosecutor.

7.5.3 National affiliation

The third place regarding the number of court decisions on hate speech refers to those of national affiliation as a protected characteristic (6). Four of these court cases were initiated under the criminal offense "Dissemination of racist and xenophobic material through a computer system" under Article 394-d, paragraph 1 of the Criminal Code, while two were initiated under the criminal offense "Inciting hatred, discord or intolerance on national, racial, religious and other discriminatory grounds" under Article 319, paragraph 1 of the Criminal Code. The judgments were issued through regular trials (4) and penalty orders (2). In four cases, the defendants were convicted, while in two cases the defendants were acquitted. None of the convicted persons were sentenced to prison. The same suspended sentence was imposed on all convicted persons - a three-month prison sentence that will not be served if the perpetrator does not commit a new crime within one year.

In case K-33/22 of the Basic Court Berovo, the defendant, a member of the Macedonian community, published xenophobic written material that he disseminated to the public through the social network Facebook, posting it on his profile. The same material was later scattered in the form of leaflets through the streets of the city of Berovo. The material contained expressions that promote and incite hatred based on ethnicity and citizenship, targeting citizens who accept the new constitutional change with the name Republic of North Macedonia. The material used terms such as "Severdzhan" and "Severdzhanistanec," (Northghanistans) which describe these citizens in a derogatory and disparaging manner, stating that they are "enemies of Macedonia and Macedonians".

In case K.no. 40/22 of the Basic Court Berovo, a person was charged with dissemination of xenophobic material through his Facebook profile where he commented using expressions that, according to the indictment, promote and incite hatred towards a former Member of Parliament, due to her role in voting on constitutional amendments related to changing the name of the country. In the comment, the defendant used offensive terms (damned be the traitors to the tenth generation) and made a value judgment directed at her later political engagement as head of the National Security Agency. The Basic Court Berovo assessed that the defendant's comments, although offensive, did not meet the criteria for the criminal offense of "Dissemination of racist and xenophobic material". According to the Court, it was not proven that the defendant's comments had a real potential to incite hatred or violence towards the injured party,

nor that they caused a significant impact on the public. The court also indicated that, as a public figure, they should show a higher degree of tolerance towards critical and offensive comments, unless they create a real risk of hatred or violence. For these reasons, the court acquitted the defendant of criminal liability, stating that the expressed opinion represents a value judgment that does not incite hatred and is protected by the right to freedom of expression. Dissatisfied with this outcome, the public prosecutor filed an appeal with the Shtip AC, which, through its Judgment CA-186/23, rejected the appeal and fully agreed with the first-instance judgment. In its judgment, the Shtip AC also stated that in order to establish the facts whether the elements of the criminal offense "Dissemination of racist and xenophobic material" have been met, knowledge from experts is required, by establishing the place where the offense was committed and identifying the IP address from which it was committed.

In case K.no. 390/2021 of the Basic Court Gostivar, the defendant allegedly burned the state flag in the city of Gostivar that was placed on a flagpole on the occasion of the national holiday of October 11th. The prosecution claimed that the defendant arrived at the scene by vehicle, lowered the state flag, and burned it, thereby inciting hatred and intolerance based on national affiliation. From the evidence presented, including DNA analyses of the burned flag and the metal cable from the flagpole, the identity of the perpetrator could not be determined. Dissatisfied with this outcome, the public prosecutor filed an appeal with the Gostivar AC, but was not supported for it from the Higher Public Prosecutor's Office. Through its judgment CA.no. 108/23, the Gostivar AC established that the public prosecutor has failed to prove beyond reasonable doubt that the defendant committed the crime the one is accused of.

In the case K.no. 86/2023 of the Basic Court Strumica, the defendant published a comment on his Facebook profile that incites hatred and violence based on national affiliation. The comment was published in response to another article from the internet portal "Kolev for BGNES: If Macedonia does not accept Bulgaria's extended hand, it will be completely erased." In his comment, the defendant made a threat calling for liquidation. The defendant was convicted of Disseminating xenophobic material that promotes hatred and violence based on national affiliation.

7.5.4 Religion or religious belief

The fourth place in terms of the number of court decisions on hate speech refers to those pertaining to religion or religious belief as a protected characteristic (5). Two of these cases have been analysed above (7.5.1 Ethnic affiliation) because they contain an intersectional bias motivation. All three court cases analysed in this section were initiated under the criminal offence of "Dissemination of racist and xenophobic material by means of a computer system" under Article 394-d, paragraph 1 of the Criminal Code. Two of the judgments were delivered with a guilty plea, and one with a penalty order. In all cases, the defendants were convicted. This means that none of these cases reached a second-instance court, because an appeal was not allowed. No perpetrator was sentenced to prison. All perpetrators were given suspended sentences, ranging from a three-month prison sentence that will not be served if the perpetrator does not

commit a new crime within one year, to a six-month prison sentence that will not be served if the perpetrator does not commit a new crime within two years.

In case K.no. 196/21 of the Shtip BC, the convicted person posted pictures and texts with offensive and threatening content on his Instagram profile. The posts contained anti-Semitic and anti-Christian messages directed against groups based on religion and religious beliefs, including threats of physical and sexual violence and calls for terrorist acts against people of Christian and Jewish faith. In case K.no. 270/19 of the Shtip BC, the convicted person, a member of the Roma community, shared an article on the social network Facebook that referred to a terrorist attack on a mosque in New Zealand. Under the article, he added a comment with content calling for violence against members of another religious group, in which he suggested a similar attack on a religious building, a church. The convicted person pleaded guilty. The court in this case stated that it was a "hate crime". In case K.no. 2031/19 of the Skopje BC, the convicted person, through his Facebook profile, posted racist and xenophobic comments that promote hatred, discrimination, and violence based on religion and religious belief. In his posts, the defendant used offensive expressions directed at the Muslim community and members of the Islamic Religious Community (IRC), calling for violence and discrimination.

7.5.5 Sexual orientation

The fifth place in terms of the number of court decisions on hate speech are those pertaining to sexual orientation as a protected characteristic (4). All court cases were initiated under the criminal offence of "Dissemination of racist and xenophobic material by means of a computer system" under Article 394-d, paragraph 1 of the Criminal Code. Three of the judgments were issued with a penalty order and one through a plea of guilty. In four cases, the defendants were convicted, while in two cases, the defendants were acquitted. This means that none of these cases reached a second-instance court, because an appeal was not allowed in relation to the established factual situation. No perpetrator was sentenced to imprisonment. All perpetrators were given suspended sentences, ranging from a three-month prison sentence that will not be served if the perpetrator does not commit a new crime within one year, to a one-year prison sentence that will not be served if the perpetrator does not commit a new crime within two years.

In case K.no. 40/23 of the Gevgelija BC, the convicted person commented on his Facebook profile on an article from an internet portal regarding a statement by the Serbian President banning the gay pride parade that was to be held in Belgrade. In his comment, the defendant called for violence, using expressions that promote hatred and discrimination against the LGBTI+ community. The defendant suggested that a "cleansing" with firearms should be initiated, using a threatening and discriminatory language. At the main hearing, the defendant pleaded guilty. In case K.no. 160/22 of the Radovish BC, the convicted person posted a comment on his Facebook profile regarding an article on the portal reporting on the wedding of "Miss Argentina and Miss Puerto Rico." In his post, the defendant incited hatred and called for violence against the marginalized LGBTI+ community. For unknown reasons, the defendant's comment is anonymised in this judgment. In case K.no. 305/22 of the Shtip BC, the convicted person commented

on his Facebook profile on the video titled "The pride Month highlights the victories and obstacles of the LGBTI+ community." In his comment, the defendant used offensive and threatening expressions that promote hatred and call for sexual violence against the LGBTI+ community. In case K.no. 379/22 of the Shtip BC, the convicted person commented on a post on a page promoting LGBTI+ support and counselling through his Facebook profile. The defendant left a comment (dead dogs, you, too, will see the end) targeting the LGBTI+ community.

7.5.6 Gender

The sixth place in terms of the number of court decisions on hate speech refers to those pertaining to gender (2). Both court cases were initiated on the basis of the criminal offense "Dissemination of racist and xenophobic material through a computer system" under Article 394-d, paragraph 1 of the Criminal Code and were made with a penalty order. In both cases, the defendants were convicted. This means that none of these cases reached the second-instance court, because no complaint was filed, and consequently no appeal was allowed. None of the perpetrators was sentenced to prison, i.e. a suspended sentence of three months' imprisonment was pronounced against them, which will not be served if the perpetrator does not commit a new criminal offense within one year.

In case K.no. 115/2024 of the Kichevo BC, the convicted person wrote comments on his Facebook profile that promote hatred and call for violence against women. In his posts, the defendant expressed hatred towards women, accusing the woman of interfering in his marriage and calling on others to find and harm her. In one of the comments, the defendant wrote "If she is like that, kill her," and in the next post, he commented with text that refers to threats and hatred "kill her, if she is like that, she should not live." In case K.no. 290/22 of the Gostivar BC, the convicted person posted comments on his Facebook profile with offensive and threatening content that incites hatred and sexual violence against women who are victims of rape.

7.5.7 Other protected characteristics

In addition to the generally accepted protected characteristics in international law,[71] in the area of hate speech, the national criminal law establishes an additional list of protected characteristics that includes membership to a marginalised group, language, citizenship, social origin, other beliefs, education, political affiliation, personal or social status, family or marital status, property status, health status, or any other basis provided for by law or a ratified international agreement. Such a solution may dilute the effectiveness of the criminal prosecution of hate speech and lead to misunderstandings between law enforcement agencies and courts, creating difficulties in the consistent application of laws and the effective sanctioning of hate speech. A broad and open list of protected characteristics may create legal ambiguities that may result in inconsistent judgments and difficulties in interpreting the law. This can overload the judicial system

[71] Sex, race, color, gender, ethnicity, national affiliation, religion or belief, mental or physical disability, age, sexual orientation, and gender identity.

with cases that do not meet the original intended criteria for hate speech, thereby delaying the processing of more serious incidents. In addition, it can allow for discretionary enforcement of the law, leading to selective prosecution and uneven application. Expanding of the list of protected characteristics could also have the effect of stifling freedom of expression, making people afraid to express legitimate opinions for fear of prosecution. Finally, this solution increases the complexity of proving intent, and there is also a risk that the law could be abused by certain political or social groups to silence opposing views. In the five cases below, all defendants were sentenced to suspended sentences, either through a guilty plea or a penalty order.

In case K-41/22 of the Berovo BC, the convicted person posted a comment on his Facebook profile that, according to the court, promoted hatred based on the former social status of a Member of Parliament by calling her a "traitor". This judgment with a penalty order is diametrically opposed to the judgment in case K.no. 40/22 of the same court (see subheading 7.5.3 above) with the same factual situation, but another defendant, who was acquitted of charges. In case K.no. 65/2023 of the Berovo BC, the convicted person posted a comment on his Facebook profile that, according to the court, promoted hatred towards members of the police. The comment was a reaction to a post about an accident in which a police officer's house was burned down by lightning. The convicted person's comment read: "You should all burn, you criminals, God is great." According to the court, the convicted person committed the crime based on the social status of the police officer. In the case K.no.184/2023 of the Kichevo BC, the convicted person, as the administrator of the group "Anti-murija K." on the Viber internet platform, repeatedly published texts inciting hatred against members of the police. In his posts, the defendant used offensive terms such as "cops", "coyotes", and accusations of alcohol and drug consumption. According to the court, the convicted person committed the crime against a group of people with a certain status. In the case K-131/23 of the Ohrid BC, the convicted person commented on a post from the electronic media outlet titled "Judge V.K. of O. dismissed due to the murder of M." In his comment, the defendant used offensive and threatening expressions and swear words towards the judges, calling for violence and lynching, which according to the court incited hatred based on social status. In the case K.no.185/21 of the Radovish BC, the convicted person published a comment on his Facebook profile calling for violence against journalists. In his comment, the defendant used offensive expressions, swear words and called for the imprisonment and physical punishment of journalists who, according to him, were spreading panic. These statements incited hatred and violence against a group of journalists based on their personal and social status.

7.5.8 Concluding observations

The analysis of court decisions related to hate speech in the national context reveals several key aspects when compared with the international legal framework, in particular the European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR).

First, although national courts process hate speech cases in accordance with domestic law, the application of suspended sentences, without imposing prison sentences on

perpetrators, is prevalent. This practice raises questions about the proportionality and dissuasive effect of sentences, especially given the seriousness of hate crimes as recognised in international standards. The ECtHR emphasises that effective sanctions are necessary for acts that have the potential to incite violence or discrimination.

Second, court decisions are usually too brief and there is often ambiguity as to which protected characteristic (from the relevant provision of the Criminal Code) the court has taken into account. Insufficient reasoning in judgments can create legal uncertainty and make it difficult to consistently apply hate speech provisions. This not only limits the transparency of the process, but also leaves room for doubt about the basis of decisions, especially in cases where multiple protected characteristics may be relevant.

Third, in judgments with penalty orders, the defendant is not an active participant in the legal process, i.e. the police and the prosecution only submit copies of images, posts, and comments from social networks as evidence, without supporting them with expert opinions. This raises concerns about the thoroughness and reliability of the evidence. Such procedural shortening can lead to insufficient verification, which undermines the efficiency of the legal process and potentially affects the fairness of the outcome. Without a detailed expert validation, especially in cases involving digital evidence, there is a risk of misinterpretation or improper treatment, which can undermine the credibility of the judgments and hinder the proper administration of justice.

Fourth, although only a small number of court decisions explicitly mention the term "hate crime" even in cases of hate speech, this raises the question of whether judges understand the distinction between the two different concepts. Insufficient consideration of the difference between hate speech and hate crime can lead to inappropriate application of the law, which could affect the accuracy of the qualification of the offense and the imposition of sanctions.

Fifth, the analysis shows that the largest number of processed cases concern hate speech based on political beliefs and ethnic and national origin; a smaller number concern religion, sexual orientation, and gender; and there are no judgments at all concerning race, skin colour, mental or physical disability, and gender identity. This distribution indicates potential gaps in the protection of certain vulnerable groups, which is contrary to the recommendations of international instruments calling for comprehensive protection of all recognised characteristics.

Sixth, national criminal law contains a broad and open-ended list of protected characteristics, which, while intended to provide extensive protection, may dilute the effectiveness of the prosecution of hate speech. This expansiveness may create legal ambiguities and difficulties in interpreting the law, resulting in inconsistent judgments. Such a set-up may overburden the judicial system and make the evidentiary procedure more difficult, in particular in terms of establishing bias motivation, which is a key element under the ECtHR criteria.

Seventh, there have been cases where courts have dismissed charges for lack of intent or insufficient evidence linking the defendant to the crime. This points to the need for more thorough investigations and clear guidelines for the collection and assessment of evidence, as recommended by international instruments. The ECtHR's criteria, such as examining the speaker's intention, context and potential consequences, are essential

for conducting judicial proceedings that comply with international human rights standards.

Eighth, the courts' approach to cases involving public figures and political speech shows very little effort to strike a balance between protecting against hate speech and preserving freedom of expression. The ECtHR has held that public officials are subject to a higher degree of criticism and that restrictions on speech must be proportionate and necessary in a democratic society. Decisions by national courts to acquit defendants in certain cases reflect this principle, but the vast majority of these cases end in convictions even for speech that constitutes insult, defamation, or indecency.

Finally, although the national judiciary is addressing hate speech, there are areas where improvement is needed to more fully align with international standards. Improving the clarity of legal provisions, ensuring proportionate and effective sanctions, and promoting consistency in judicial decisions are key steps in this direction. Strengthening of the training for law enforcement and judicial personnel on hate speech and relevant human rights principles can contribute to more effective prosecution and prevention, thereby promoting a more tolerant and inclusive society.

7.6 Analysis of court decisions related to hate crimes

When analysing court decisions on hate crimes, it is crucial that the legal system not only identifies these acts, but also sanctions them appropriately, taking into account their gravity and social impact. In this regard, the analysis applies the standards established by the European Court of Human Rights (ECtHR), which provide guidance on how states should deal with crimes motivated by bias and discrimination. The application of these standards is necessary to assess whether domestic courts recognise the motive of hatred as an aggravating circumstance and whether the sentences imposed and the investigations are sufficiently rigorous to ensure justice for victims and prevent further incidents.

The ECtHR has established significant standards for dealing with hate crimes through its extensive case law. Although the concept of "hate crime" itself is not explicitly defined in the ECHR, the ECtHR has developed a set of principles that apply when considering cases related to crimes motivated by bias and discrimination. These standards are key to understanding the legal and judicial approach to such acts, which are usually prosecuted under Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), and Article 14 (prohibition of discrimination) of the ECHR.

Article 14 and discrimination

The ECtHR has consistently held that hate crime is a form of discrimination that violates fundamental human rights and the principle of equality. In the case of *Nachova and Others v. Bulgaria*,[72] the ECtHR found that states have an obligation not only to prevent and investigate hate crimes, but also to ensure that those responsible for such acts are punished.

[72] Nachova and Others v. Bulgaria, Application Nos. 43577/98 and 43579/98, Judgment of 6 July 2005.

Positive obligations of states

The ECtHR has stressed that states have a positive obligation not only to investigate hate crimes, but also to ensure that they are prosecuted with appropriate seriousness. In the case of *Šečić v. Croatia*,[73] the ECtHR emphasised that inadequate investigation of hate crimes may in itself constitute a violation of Articles 3 and 14 of the ECHR.

Identifying bias

The ECtHR has ruled that states must take additional steps to determine whether a crime was motivated by bias. In the case of *Angelova and Iliev v. Bulgaria*,[74] the ECtHR criticised the lack of an investigation into the racial motivation behind the murder of a Roma teenager, deeming it a failure by the state to identify and prosecute hate crimes.

Proportionality of sentences

The ECtHR also considers whether sentences imposed for hate crimes are proportionate to the seriousness of the offence. In the case of *Balázs v. Hungary*,[75] the ECtHR found that lenient punishment of police officers who participated in violence motivated by racial hatred was inappropriate and constituted a violation of the rights of the victim.

Prevention and ensuring effective sanctions

The ECtHR also emphasises that states have an obligation to take preventive measures to prevent hate crimes and to ensure that perpetrators of these acts are adequately sanctioned. In the case of *R.B. v. Hungary*,[76] the ECtHR found that the authorities' failure to provide effective legal protection against a bias-motivated attack constitutes a violation of Article 14 in conjunction with Article 3 of the Convention.

Shared responsibility and stereotypes

The ECtHR has consistently stated that states have a responsibility to deal with hate crime with the seriousness it deserves, especially when it is based on negative stereotypes and bias. In the case of *E.S. v. Slovakia*,[77] the ECtHR found that inadequate legal protection for victims of attacks motivated by ethnic bias contributed to the creation of a climate of impunity.

By examining these cases, it can be concluded that the ECtHR sets clear standards on how states should deal with hate crime – from proper investigation to proportionate sanctioning, with a particular focus on protecting vulnerable groups and preventing further bias and discrimination.

[73] Šečić v. Croatia, Application No. 40116/02, Judgment of 31 May 2007.

[74] Angelova and Iliev v. Bulgaria, Application No. 55523/00, Judgment of 26 July 2007.

[75] Balázs v. Hungary, Application No. 15529/12, Judgment of 20 October 2015.

[76] R.B. v. Hungary, Application No. 64602/12, Judgment of 12 April 2016.

[77] E.S. v. Slovakia, Application No. 8227/04, Judgment of 15 September 2009.

7.6.1 Ethnic affiliation

Two hate crime cases were analysed that refer to ethnicity as a protected characteristic. These cases were initiated under the criminal offense "Violence" under Article 386 of the Criminal Code. The perpetrators in both cases were sentenced to imprisonment. One of the cases was decided by a first-instance court only, while the other case was decided by a second-instance court as well.

In case K-896/19 of the Skopje BC, in a grocery store owned by the injured party, the defendant, together with ten unknown persons, committed gross violence, endangering the safety of those present, including four injured parties. The defendant entered the store and insulted and threatened the injured parties on ethnic grounds, telling them that they did not belong there and that he would set them on fire. When one of the injured parties tried to remove the defendant from the store, he began throwing products, pushing the second injured party, who fell and fainted. Soon, ten unknown persons arrived at the scene and began throwing stones, wood and other objects at the store, causing fear and uncertainty among those present. The defendants and witnesses hid behind the shelves until security prevented the attackers from entering the building. The court held the main hearing in the absence of the defendant, who was unavailable to law enforcement agencies. The court sentenced the defendant to 1 year and 6 months in prison. In determining the sentence, the court took into account aggravating circumstances, including ethnic hatred towards Albanians.

In the case K.no. 176/20 of the Kumanovo BC, in 2018, in the courtyard of the Primary School, the four defendants, members of the Macedonian community, committed gross violence against two injured persons from the Albanian community, causing serious bodily injury to one, and bodily injury to the other. The actions of the defendants caused a feeling of insecurity and fear among the witnesses present and the general public. The injured persons, together with their friends, came to the school courtyard on two motorcycles - scooters to rest. After a short time, the defendants arrived, entered the school courtyard and approached the injured persons. One of the defendants asked one of the injured persons "where are you from", to which the injured person replied that they were from a village where the majority of the inhabitants were Albanians. Then, one of the defendants ordered them to leave the school yard. As the injured parties began to walk away, one of the defendants began to punch one of the injured parties. At that moment, the other defendants also attacked the injured party, punching him in the head. The injured party managed to escape and tried to walk away in the direction of the school entrance doors. The defendants then attacked the other injured party, punching him in the head and body. After the first injured party noticed that the second injured party was being attacked, he returned to help him, managed to pull him out of the defendants' hands, and started running away with him. While they were running, the defendants hit the first injured party with a hard object in the right lower leg, after which he fell to the ground, suffering serious bodily injury - a fracture of the right lower leg, bruises on the head and body and scratches on the body. The second injured party was inflicted with bodily injury – a chest contusion. The court imposed a 3-year prison sentence on all defendants. As an aggravating circumstance, the court considered the fact that the crime was committed in a public place, in the schoolyard and near a church,

causing a feeling of insecurity and fear not only among the witnesses present, but also among the general public. The court additionally took into account ethnic hatred as a motive for the attack, since the injured parties were attacked because of their Albanian ethnicity. During the attack, the injured parties were insulted with expressions of hatred towards the Albanian community, which, according to the court, indicated the motive of the defendants. Dissatisfied with the outcome of the procedure, all defendants filed appeals, but the Skopje AC, in its case CA-378/22, rejected the appeals as unfounded, agreed with the decision of the Kumanovo BC and confirmed the first-instance judgment.

7.6.2 Gender

Two hate crime cases were analysed that refer to gender as a protected characteristic. These cases were initiated under the criminal offense "Bodily Injury" under Article 130, paragraph 2 of the Criminal Code. The perpetrators in both cases were sentenced to suspended sentences and prison sentences. Both cases were decided only by a first-instance court, and some of the defendants were not available to the law enforcement authorities.

In case K.no. 1555/19 of the Skopje BC, the defendant, who was tried in absentia, committed domestic violence against his former partner. After seeing her returning from work, he intercepted her in the car, pulled her out of it and began to physically attack her by hitting her in the head with punches and pulling her by the hair. The injured party fell to the ground, after which the defendant continued to kick her in the body, causing her bodily injuries. The defendant's defence attorney indicated that although the event was clear, the reasons and motives that led to the crime had not been established. The court assessed this crime in the context of international case law, citing the case *Opuz v. Turkey*[78] of the ECtHR, stating that according to the ECHR, states have an obligation to protect women against violence and to take appropriate measures against perpetrators. Inadequate processing of cases of domestic violence and the failure to sanction perpetrators is a form of gender-based discrimination. The Court further stated that domestic violence, according to the ECHR, can be qualified as a gender-based hate crime, as it constitutes violence directed exclusively at women, making it appropriate for further application of international standards on hate crimes.

In case K.no. 462/22 of the Skopje BC, five people from one family were the defendants. In the family home, the defendants lived together in a household. After a verbal argument, all the defendants physically injured the unmarried wife of one of the defendants. The incident began with a slap from the father-in-law, after which the injured party fell to the floor. While she was trying to leave the home, she was stopped and additionally attacked by family members who dragged her, punched and kicked her, causing her bodily injuries such as bruises, scratches, and hematomas. The court found that the crime was committed in the context of domestic violence. Three of the defendants were imposed with suspended sentences of six months, while the other two, who were inaccessible to law enforcement agencies, were sentenced to two years in prison. The public prosecutor emphasised that this was a series of repeated attacks in the family commu-

[78] Opuz v. Turkey, No. 33401/02, European Court of Human Rights, Judgment of 9 June 2009.

nity. The Court linked the case to international practice and the Istanbul Convention, pointing out the state's obligation to provide protection for violence against women and to intervene before physical violence occurs. The Court also referred to the ECtHR, stating that the authorities should intervene even before the violence materialises, in order to prevent greater harm. In the specific case, the Court assessed that domestic violence could be qualified as a hate crime based on the victim's gender, which was in line with the contemporary understanding of the international community and the case law of the ECtHR.

7.6.3 Sexual orientation

In case K.no. 482/22 of the Strumica BC, the defendant, during an event organised by an association for the support of the LGBTI+ community, motivated by hatred towards different sexual orientations, physically attacked a representative of the association. The defendant approached the injured party while he was sitting on a bench and punched and kicked him in the head and body, causing him bodily injuries in the form of bruises on the neck, chest, left upper arm, and abdomen. During the trial, the defendant admitted the crime and expressed remorse, and his defence attorney stated that the attack occurred in a "state of affect", after the defendant received information from a close person that the injured party was offering a leaflet with LGBTI+ content to a child. After the child confirmed that the one had been offered a leaflet with content such as "I am a lesbian", "I am gay", "I am a human", the defendant headed to the square and attacked the injured party. The court concluded that the defendant's actions were committed out of hatred due to the different sexual orientation of the injured party, which was clear from the defendant's motives and his reaction to the content of the leaflet. The court refused to accept the thesis of affect, because the defendant was 2km from the event when he heard about the leaflet and then headed to the place where the event was taking place. The defendant was found guilty of the crime of "Bodily injury" out of hatred (Article 130 of the Criminal Code) and sentenced to six months in prison. Dissatisfied with the sentence, the defendant filed an appeal with the Shtip AC, which in its case CA-30/23 rejected the appeal as unfounded and confirmed the first-instance judgment.

7.6.4 National affiliation

In case K.no.154/21 of the Struga BC, the defendant – the father-in-law, in the yard of the family house, out of hatred, endangered the safety of the injured party by seriously threatening her life and her husband. The defendant asked the injured party to remove her two minor children from the yard, because they were bothering him in his rest. He then addressed her with insulting words, insulting her on ethnic grounds because she was a citizen of Albania, and made serious threats, including that he would kill them if they did not move out within three days. The prosecution claimed that with these actions, the defendant committed the crime of "Threatening the safety" out of hatred (under Article 144, paragraph 2 in conjunction with paragraph 1 of the Criminal Code). The court established that the prosecutor had not proven beyond reasonable doubt that the defendant had committed the crime for which he was charged, after which

the defendant was acquitted. Dissatisfied with the outcome of the proceedings, the public prosecutor filed an appeal with the Bitola BC, for which he received support from the Higher Public Prosecutor's Office. The Bitola AC, in its case CA-384/22, agreed that the criminal offence had not been proven by the prosecution and stated that the prosecutor had failed to state the necessary legal elements to qualify the offence as committed out of hatred. According to the Bitola AC, although the indictment stated that the offence was committed out of hatred, the deficiency was that it did not contain the qualifying elements explaining whether the hatred was related to race, nationality, ethnic origin, religion, gender, sexual orientation or other protected characteristic. This resulted in the first-instance court not conducting a thorough analysis of the indictment and therefore, an acquittal was rendered, on the basis that the public prosecutor had failed to prove beyond reasonable doubt that the defendant had committed the criminal offence.

7.6.5 Other characteristics

In case K.447/21 of the Veles BC, the defendant, in the hallway of the Veles Sector for Internal Affairs (VSIA), out of hatred endangered the safety of the injured colleague, a junior chief of the VSIA. According to the indictment, the crime was committed out of hatred of the defendant towards the injured party which dated back to when the injured party was a commander and the defendant addressed him with inappropriate words, due to the opposing views that existed between them within the VSIA. In this context, the defendant made a serious threat to the injured party, using words such as: "who do you think you are, you will remember me, you will see who I am, you will see what I will do to you." The court conducted the case under the criminal offense of "Threatening the safety" out of hatred (according to Article 144 paragraph 2 of the Criminal Code), but the judgment did not state a single bias motivation. The defendant was sentenced to three months in prison, which will not be served if the defendant does not commit a new crime within one year.

In the case K.185/23 of the Veles BC, the defendant physically injured the injured party out of hatred in such a way that while the injured party was walking through the village and talking on a mobile phone, the defendant, who was coming from the opposite side of the street, out of hatred towards the injured party because he had reported him for illegal logging, punched him in the right side of the face while passing by. With this blow, he caused bodily injury, i.e. a fracture of the nasal bones without dislocation. The court conducted the case under the crime of "Threatening the safety" out of hatred (according to Article 144, paragraph 2 of the Criminal Code), but the judgment did not state any bias motivation. The defendant was sentenced to three months in prison, which will not be served if the defendant does not commit a new crime within a year.

In the case K.300/23 of the Veles BC, the defendant in the city of Veles, out of hatred, due to unresolved property relations, seriously threatened the lives of the injured party and his uncle. While the injured party was standing there and talking to someone, the defendant came and started threatening the injured party, swearing at him and telling him that he would evict him from the city, kill him, cut off his and his uncle's heads, and destroy them. According to the court, this caused a feeling of insecurity, threat, and

fear for the injured party. The court established that these actions of the defendant contained the essential elements of the crime of "Threatening the safety" out of hatred (according to Article 144, paragraph 2 of the Criminal Code), but the judgment did not state a single bias motivation.

7.6.6 Concluding observations

The analysis of court decisions related to hate crimes reveals several significant aspects that deserve critical evaluation in the context of domestic legislation, international standards, and the case law of the ECtHR.

First, although there is a legal framework that allows for the sanctioning of hate crimes, it is observed that in some cases, the courts do not apply the provisions on bias motivation appropriately. In several analysed cases, although the acts were prosecuted as hate crimes, the judgments lack an explanation of how the bias motivation and the connection with the protected characteristics were established. This indicates a lack of consistency and clarity in the case law.

Second, it is observed that in some cases, the courts refer to international standards and the case law of the ECtHR, such as the case of Opuz v. Turkey, but not always accurately and precisely. In the specific case, the court qualifies domestic violence as a gender-based hate crime, which is not directly supported by the text of the Istanbul Convention (which addresses gender-based discrimination and violence against women) and the case law of the ECtHR. Although the ECtHR recognises that domestic violence is a form of discrimination based on sex or gender, it does not classify it as a hate crime. This points to the need for greater accuracy and understanding of international legal standards in their application in the national context.

Third, in some cases, the prosecution fails to establish and prove the qualifying features of hate crimes, especially in relation to protected characteristics. The lack of clear evidence and argumentation for bias motivation leads to acquittals, as in the case where hatred due to national origin was not adequately proven. This indicates the need to improve investigative procedures and increase the capacities of the prosecution to effectively prosecute such crimes.

Fourth, in certain judgments, the courts fail to indicate which specific protected characteristic is the basis for hatred, especially in cases where general terms such as "hatred due to unresolved property relations" are used. This undermines legal certainty and may lead to incorrect qualification of the crime. The precise identification of the protected characteristic is crucial for the correct application of the hate crime provisions.

Fifth, the sentences imposed vary and are not always proportionate to the seriousness of the offences. While in some cases prison sentences are imposed, in others, suspended sentences or prison sentences are applied that will not be served unless the perpetrator commits a new crime. This raises questions about the deterrent effect of the sentences and whether they adequately reflect the gravity of the hate crime, in line with the ECtHR recommendations on proportionate and effective sanctions.

Sixth, the lack of systematic and consistent acceptance of bias motivation as an aggravating circumstance in judgments may signal a lack of awareness or understanding

of the importance of this element. This highlights the need for additional training and education of judges and prosecutors on the concept of hate crime and its appropriate prosecution.

In conclusion, while efforts are being made to address hate crime, the analysis points to several areas where improvement is needed. The harmonisation of the case law with international standards, improving investigative procedures, accurately identifying and proving bias motivation, and ensuring proportionate sentences are key to effectively combating hate crime. In addition, increasing the awareness and expertise among legal professionals is necessary to ensure that victims receive adequate protection and justice, and perpetrators face consequences that adequately reflect the seriousness of their actions.

8. Challenges and inconsistencies in the implementation of legislation

It seems that the confusion of the terms "hate crime" with "gender-based violence" and "domestic violence"[79] represents the greatest challenge for law enforcement agencies in their practical work, and in particular for the police. The police often act confused when there is an element of misogyny in the case. Ignorance of this legal issue can cause far-reaching consequences. This is because from the aspect of minor hate crimes where public order and peace were violated, but also hate speech acts, as a subtype of hate crimes, the court epilogues can be of a different nature. The very concept of hate speech sometimes has a borderline-amorphous character, so depending on the factual situation, sometimes it can be treated by the judicial authorities as a criminal offense, sometimes as a misdemeanour, and sometimes even as a civil law tort of insult or defamation. Analogously, minor hate crimes are sometimes qualified by the police as misdemeanours against public order and peace or misdemeanours related to sports competitions.

[79] As a positive example in relation to victims of crimes committed against persons of a different sexual orientation, the Law on Protection and Prevention against Domestic Violence should be mentioned. Namely, Article 3 of the Law defines domestic violence and states: "*Domestic violence means harassment, insults, threatening safety, bodily harm, sexual or other psychological, physical or economic violence that causes a feeling of insecurity, endangerment or fear, including threats of such actions, towards a spouse, parents or children or other persons living in a marital or extramarital union or common household, as well as towards a current or former spouse, extramarital partner or persons who have a common child or are in a close personal relationship, regardless of whether the perpetrator shares or has shared the same residence with the victim or not.*" Given that partners are not defined by their gender in the above-mentioned Article, the wording "or other persons living in an extramarital union or common household" also protects same-sex couples against domestic violence. Moreover, the broad definition of "persons in close personal relationships" fully includes communities between two men or two women and thus guarantees the protection, prevention and deterrence of domestic violence for these groups as well. Source: Дрпљанин, В/Менкиоски, И, „Анализа на законската рамка во однос на правата на ЛГБТ-заедницата" (Drpljanin, V/Menkioski, I, "Analysis of the legal framework regarding the rights of the LGBT community"), Helsinki Committee for Human Rights of the Republic of Macedonia, Skopje, 2017, pp. 19-20.

There is also a gap in the MoIA in terms of registering and processing data on hate crimes. In structural terms, there is indeed a specialised department in the MoIA for keeping statistics that receives data from both the Skopje Crime Intelligence Analysis Unit (EKRA) and the crime intelligence analysis departments in the other cities of the country. The problem is that these bodies register all separate offenses against public order and peace and criminal offenses in terms of: time, place and manner, but most importantly - also in terms of legal qualification. However, they first of all have no idea about which criminal offenses are of a special type of hate crimes, so that they would only focus on them and deliver annual reports, and then, they do not register the different paragraphs of the Articles under which criminal offenses are regulated in the Criminal Code. This is a real problem that could be **simply solved by technically inserting the paragraphs as separate columns in the electronic spreadsheets in which records of committed acts are kept by these bodies**. The specific and precise legal qualifications should certainly be confirmed by the public prosecutor's offices during the criminal procedure, which is why it is necessary in the future to have active communication between the Public Prosecutor's Office, on the one hand, and EKRA (which records 80% of crime in the country) and OKRA, on the other hand. This is partly fulfilled because, as mentioned, the Public Prosecutor's Office has a legal obligation to always notify the MoIA if it is the one filing the criminal complaint, and regarding the epilogue of the criminal procedure - the meritorious public prosecutor's decision, which letter also contains information about the exact legal qualification.

Regarding the public prosecutor's offices, they reflect the challenges and problems faced by the MoIA because such is the cascading course of the criminal procedure; the work of the MoIA is channelled through the PPO in the form of filed criminal charges and notifications. Relating to the obligations that the PPO fulfils in terms of registering and processing data on hate speech offenses, it was mentioned above that the basis was the introduction of the electronic "Case Management" system in accordance with the Law on the Public Prosecutor's Office[80] and the Rulebook on Internal Operations of Public Prosecutor's Offices[81]. Namely, in the system itself, analogous to the judicial AKMIS, there is a special column that must be checked by the competent PP, if it involves a hate crime. In terms of the challenges and as far as the Public Prosecutor's Offices are concerned, it is important that according to the Rulebook on Internal Operations of the Public Prosecutor's Office of 29.07.2021, the registers must be kept electronically[82]; The cases and all documents are registered in the electronic database, and for these purposes, in accordance with Article 79, an IT Centre was organised to ensure the operability of the (Case Managment System).

Similar to the judicial system, but also with the "report receipt record" of the MoIA, an intervention will be needed here and a **section for hate speech offenses will need to be introduced, given that there is a clear legal distinction with hate crimes**. Additionally, the Protocol for Cooperation between the MoIA, the PPO and the Financial Police from 2014 will need to be amended by prescribing an obligation for immediate oral reporting by the executive authorities to the PPO in the event of a committed

[80] Official Gazette of the Republic of Macedonia No.62 of 20.04.2015.

[81] Official Gazette of the Republic of North Macedonia No.190/2021 of 29,07,2021.

[82] See Art.62 par.5.

and detected hate crime[83], regardless of whether that crime is qualified as "serious".[84] In 2023, another Protocol for cooperation between the MoIA and the PPORNM[85] was indeed signed, but it was related to the deepening and clarification of the initial Protocol from 2014; it is significant that it included a categorisation of criminal offenses, thus establishing the category of "complex criminal offenses" for which the organisational unit of the MoIA is obliged to immediately notify the PPO of the received report. It is not stated here whether the most serious special forms of hate crimes would be treated under such criminal offenses, so there is room for further development of the Protocol in that respect, especially since the last Protocol established an 8-member Commission that will specifically deal with "amendments and supplementing" to the Protocol. It is in the scope of this Commission, and with the same goal and task, to also include the harmonisation of methods for registering and processing hate speech offenses. In addition, it is also desirable that the PPORNM, in accordance with previous practices, adopt a "Mandatory Guidance" for the conduct of all PPOs in cases of hate crimes. Such documents are often classified with the designation "Dov" and are for internal use of the PPOs.

From the perspective of hate crimes, not only the regulations on the criminal prosecution of perpetrators may be relevant, but also other regulations that regulate the prevention of these crimes, as well as those that deal with post-festum processes of "healing" the consequences and the re-socialisation of the perpetrator, such as the Law on the Execution of Sanctions and the Law on Probation.

8.1. Strengthening the legal framework and definitions

It is obvious that a step forward was made in the legislation at the continental level with the definition of "hate speech" by the Council of Europe in 2022. This will also be reflected in our country. For example, those, several, hate speech crimes in the essence of which there is a mention of an excessive number of groups with protected characteristics, should be shortened in accordance with the position of the CoE and be in greater cohesion with the definition of a hate crime in Art. 122 of the Criminal Code.

There is also room for further improvement in the Criminal Code regarding hate crimes.[86] There is also confusion regarding the different hate speech offenses, so the logic in the separate entities is not seen if the offense "Dissemination of racist and xenophobic material through a computer system" under Article 394-d, paragraph 1 of the Criminal Code is compared with the offense – Threatening saety, Article 144, paragraph 5 of the Criminal Code, because some of the actions of the former simply constitute incitement in accordance with Article 23 of the Criminal Code for the latter offense. And the same sanction is provided for both criminal offenses. Additionally, with respect to Article 144

[83] See Art.8 of the Protocol.

[84] According to the Criminal Procedure Code, the authorities have this obligation only if a crime is detected that entails a prison sentence of more than 4 years.

[85] https://jorm.gov.mk/wp-content/uploads/2023/04/protokol-za-sorabotka-%D1%98orsm-mvr_1.pdf

[86] Thus, in Article 130 [Bodily Injury], paragraph 2 and paragraph 3 represent double incrimination with unequal sanctions and this needs to be corrected by the legislator.

[Threatening the safety], it is intriguing that the form of hate crime under paragraph 3 is sanctioned more lightly (from three months to three years of imprisonment) than the form of hate speech under paragraph 5 (from one to five years of imprisonment).

With regards to the aforementioned norm of Art. 39, paragraph 6 of the Criminal Code[87], time has shown that it has not only not been applied at all by judges and represents a "dead letter on paper", but is also a flexible norm, because it would be unthinkable for a judgment to be "overturned" in an appeal procedure due to the basis - violation of the substantive law (Criminal Code) if the appeal is based only on the court's violation of the aforementioned norm. Ultimately, this provision is also somewhat controversial because it erodes the constitutionally and legally founded judicial independence and autonomy in decision-making. For these reasons, a derogation from it is necessary.

Other laws are also relevant and should not be overlooked, but rather applied more often in the treatment of perpetrators of hate crimes. When analysing the judgments, it was established that the defendants did not receive appropriate sanctions that are also subject to probationary measures regulated by the Probation Law.[88] This law was a novelty in the spectrum of criminal law legislation. Despite the fact that "probation" in practice in North Macedonia has acquired a narrow meaning[89] (), this Law regulates probationary measures and the procedure for carrying out alternative measures that are of interest to the issue of hate crimes, namely: suspended sentence with protective supervision and community service[90] (). They are of interest because these alternative measures are very suitable and offer a promising re-socialisation for perpetrators of hate crimes who have committed a minor offense and have no previous convictions. Simply put, a good "feedback" impression for society would be for the same perpetrator to do community service in a humanitarian organisation that deals with promoting the rights of the group with protected characteristics that the perpetrator previously attacked and for which he was convicted. Or, for example, to work in a public institution in the very neighbourhood where citizens belonging to that group live, even if it were an educational institution or the PE "Streets and Roads".

And if this was the case with regards to the alternative measure – "Community Service", then with regards to the alternative measure "Suspended Sentence with Protective Supervision", a sufficient argument is that it could also be imposed for more serious hate crimes, but the Court, in accordance with Article 56, paragraph 1, item 8 of the Criminal Code, would order "*use of free time as assessed by the competent authority in accordance with the law*", and that would be more socialising and mutual cooperation with persons from the protected group towards whom the perpetrator had animosity, while simultaneously imposing an Obligation with protective supervision: "*avoiding and not associating with persons who negatively influence the convicted person*", in accordance with Article 56, paragraph 1, item 9 of the Criminal Code, and which would be of benefit if it were a

[87] On the obligation of judges to explain in each of their judgments why they did not apply Article 39, paragraph 5 of the Criminal Code.

[88] Official Gazette of the Republic of Macedonia, No. 226 of 25.12.2015.

[89] Because it does not include an initiative to revoke suspended sentences that are without protective supervision.

[90] See Art.1.

young perpetrator involved in some radical group of youth or hooligans and what would constitute a result of the plan of special prevention and re-socialisation.

And it is curious that none of the analysed judgments mentioned above had any of the above-mentioned measures imposed.

Probationary work is carried out by probation officers from the Administration for the Execution of Sanctions (hereinafter: the Administration), based on a request or decision of a court during the court procedure and based on a final and enforceable court decision, and upon prior consent of the person against whom the probationary work is being carried out.

Within the Administration, a Probation Sector is organised as an organisational unit of the Administration at the central level and offices in the area of the basic courts with extended jurisdiction at the local level. This Sector submits its statistical reports directly to the Administration.[91] Otherwise, the procedure for imposing and implementing the above-mentioned alternative measures is regulated not only by the Probation Law, but also by Chapter XXXII of the Criminal Procedure Code, as well as by Chapter XXX of the Law on the Execution of Sanctions (but only in relation to child offenders, and not adult offenders, which is a reasonable solution considering that the Probation Law is a lex specialis in relation to that matter).

In the past decade, the Administration has signed numerous agreements with: public enterprises, local self-government units, private companies, and other entities where the alternative measure - community service is implemented.[92] With the emergence of criminal proceedings for crimes under Article 206 of the Criminal Code during the COVID-19 pandemic, these parapenal and admonition measures have become more frequent, for the implementation of which the Rulebook on the manner of performing community service is also important, which requires the Administration to conclude community service agreements with convicts. During the work, the Administration is obliged to insure this person against injury at work. Experience has shown that probation officers are dedicated to their work and for each convict for whom they have formed a work file, they develop an "Individual Treatment Programme", based on the assessment of the personality and personal circumstances of the convict. This service has continuous cooperation with the MoIA, both in terms of receiving data from the MoIA on the residences or places of stay of convicts, and in terms of the service's obligation to inform the MoIA of final and enforceable judgments that have imposed community service. In the case of such an alternative measure, the probation service also informs the Employment Agency.[93]

[91] According to Article 9 of the Law, the Administration for the Execution of Sanctions keeps a single register for persons subject to probation. Within the framework of the single register, records and files are kept for persons subject to probation. Records on the execution of probation are kept by probation offices at the local level. The register is kept electronically. Probation officers also prepare Reports on the execution of alternative measures and submit them to the court that made the decision in the first instance.

[92] It is recorded that the first case of community service performed by a convict was in 2019 in Tetovo. Source: Brochure "Probation Sector", Ministry of Justice, Skopje, 2019, p.16.

[93] Source: Ристова, О. и Балтовска, Е., „Прирачник за соработка на државните институции, јавни претпријатија и невладини организации со пробациска служба", Зелена лупа, Скопје, 2021, стр.19 и стр.27. (Ristova, O. and Baltovska, E., "Manual for Cooperation of State Institutions, Public Enterprises and Non-Governmental Organisations with the Probation Service", Green Magnifier, Skopje, 2021, pp. 19 and p. 27)

8.2. Increasing public awareness and education

North Macedonia implemented the ODIHR Training against Hate Crimes for Law Enforcement (TAHCLE) Programme in 2014, training more than 2,000 police officers under the programme by 2018. A "refresher" training was conducted by ODIHR in December 2021.[94] North Macedonia also implemented the ODIHR Prosecutors and Hate Crimes Training (PAHCT) programme in 2019, and in 2022, the training on hate crimes for the judiciary together with the OSCE Mission in Skopje was realised.

In addition to the OSCE, the Helsinki Committee for Human Rights - Skopje has also been active in this area. In addition, this NGO, unlike the OSCE, has expanded its activities to include hate speech. The premiere lectures on hate speech for judges and public prosecutors were delivered back in 2019 with the mediation of the Helsinki Committee for Human Rights - Skopje and the AJPP.

Regarding hate speech, more extensive training for police officers is planned to be conducted in cooperation with the non-governmental sector and the Police Training Centre in Skopje. Regarding hate crime, as part of its project to build a comprehensive law enforcement response to hate crimes, ODIHR has long developed a set of practical toolkits, guides, and methodologies aimed at strengthening the efforts of governments, criminal justice institutions, agencies, and civil society organisations.[95] The toolkit draws on the experience of ODIHR projects in Bulgaria[96], Greece, Italy, and Poland to highlight good practices and lessons learned.

The ODIHR Office has also developed a robust hate crime data collection programme, called "Information Against Hate Crimes Toolkit (INFAHCT)", to assist participating States in their efforts to effectively monitor and record hate crimes.[97]

The pioneering publications on the topic of hate crime were written by Macedonian theorists back in 2012, published by the AJPP, in the form of legal analysis.[98] This was

[94] In December 2021, as part of the ODIHR **Training against Hate Crimes for Law Enforcement** (TAHCLE) programme, a repeat training of trainers (ToT) session on hate crimes for the police was held in Ohrid. A total of 22 participants (7 women and 15 men) from across the country participated in the training. The cascade phase of the TAHCLE training programme continues. Source: **https://www.hatecrime.osce.org/reporting/north-macedonia/2021.**

[95] The OSCE ODIHR proposes that: "Tools that measure unreported hate crimes and their impact on victims can provide a better indication of the true volume of hate crimes, as well as valuable information about the impact of hate crimes on victims. They can identify specific communities at risk and provide information about changing patterns of violence. They can help assess the level of community confidence in the police and other criminal justice agencies. All of this knowledge can help improve planning, preventive action and response." Hate Crime Data-Collection and Monitoring Mechanisms. A Practical Guide, (2014: Warsaw: OSCE/ODIHR, page 33).

[96] The pilot training, which was held at various locations in Bulgaria, formed the basis of the training manual for police and public prosecutors. https://www.osce.org/files/ODIHR_Toolkit_Brochure_for_WEB_use_only.pdf

[97] On October 20, 2014, in Skopje, an important conference entitled "Hate Crime Data-Collection and Monitoring Mechanisms" was organized by the AJPP and the OSCE, and the representative of the ODIHR, Joanna Perry, also participated.

[98] (http://nemrazi.mk/pravna-analiza-na-kontseptot-na-kaznenoto-delo-na-omraza-i-govorot-na-omraza/), as well as a collection of "Judgments and decisions regarding hate speech from the case law of the European Court of Human Rights" (https://www.osce.org/mk/skopje/97690).

followed by trainings for existing judges and public prosecutors in the format of "continuous training" at the AJPP, so the first trainings were back in 2013.[99]

In addition to OSCE, there is another international organisation in the country that pays attention to training on combating hate crimes, namely the Council of Europe. The CoE Human Rights Education for Legal Professionals Programme (HELP) is the main educational platform of the CoE on European human rights standards for legal professionals (mainly judges, public prosecutors, and lawyers) and, where relevant, other professional groups.[100] The Council of Europe HELP course consists of two separate modules: on hate speech and hate crime. The module on hate speech was developed as a joint initiative of the HELP programme and ODIHR, with input from the FRA. In addition to the online HELP course "Combating hate crime, effectively investigating, prosecuting and dealing with hate crime", a course on hate crime and hate speech was developed within the framework of the same project of the Council of Europe project. [101]

The analysis of the judgments and indictments has indisputably proven that there is still a partial lack of awareness and expertise among judges and public prosecutors. As for the police, training on recognising and responding to hate crimes has been implemented for a decade at the MoIA Training Centre in Idrizovo-Skopje and this has yielded results, as it can be seen from the statistics above regarding the MoIA, but it would not be right to expect them to be "more skilled" lawyers than the judges or the public prosecutors. The fact is that training in the AJPP on hate crimes has been part of the reality in recent years, but it has proven necessary for them to continue, and of course training for the police should also continue.

Given the uncertainty of official data collection mechanisms, civil society (NGOs) are often a more relevant source of data on the nature of hate crimes, their impact and obstacles to justice and the safety of victims. Their analyses continuously monitor trends and collect data on hate crimes; on relevant legislative changes; and on providing specific information to citizens about this area, as well as to political actors who would be able to help improve the situation if this crime rate increases.[102] The techniques of data collection by civil society organisations uses not only official statistics, which are most often either unavailable or insufficient, but also victims of crimes are surveyed

[99] In 2013 and 2014, the Academy of Judges and Public Prosecutors organised several events on the topic of combating hate crime. First, the trainings for trainers were organised, followed by 4 cascade two-day trainings for each court appellate area, which were attended by more than 80 participants annually, and in 2015, additional training for trainers was organised. Source: Arnaudova, A., "Effective laws and qualified professionals as a response to hate speech", Compendium "November 16, International Day of Tolerance: Selected Texts", MASA-OSCE, Skopje, 2015, p.81 (Арнаудова, А., „Ефективни закони и квалификувани професионалци како одговор на говорот од омраза", Зборник „16 Ноември, Меѓународен ден на толеранцијата: избрани текстови", MASA-OSCE, Skopje, 2015, pg.81.)

[100] See: https://www.coe.int/en/web/help/home.

[101] See: https://www.coe.int/en/web/inclusion-and-antidiscrimination/georgia-fighting-discrimination-hate-crime-and-hate-speech

[102] The instruments used by the NGO sector when collecting data on hate crimes are: 1) measurement, 2) evaluation, 3) monitoring of the situation and transparency, and 4) reporting to government bodies, politicians, and international organisations.

and qualitative research is conducted on case studies[103]. Data documentation includes the source of information, as well as the variables and categories on the basis of which the data were collected. In order to increase the credibility of the data, a larger number of proxy variables are used, such as: ethnicity. The most important thing is to keep in mind that crime is a living matter; therefore, neither the data nor the methods of their collection can be static.[104]

It is important to remember that other bodies may also collect different data and information. For example, health and social services may collect information on victims and the services provided to them, education authorities may have data on hate crimes or incidents in schools, and housing authorities may have data on hate crimes in certain areas or housing estates. In addition, it is also necessary for academic circles to use these statistics so as to establish the correlation between economic and cultural factors and hate crimes.[105] Close coordination between ministries and bodies can lead to the development of a broad strategic approach by the authorities, bringing together many government bodies in their efforts to effectively respond to hate crimes.

State bodies should comply with the provision of the Law on Free Access to Information and ensure transparency and openness in the work of information holders and enable natural and legal entities to exercise the right to free access to public information, even in cases where criminal prosecution for a hate crime is involved (but limited by respecting the principle of the CPC on the confidentiality of investigative proceedings).

Specifically, with regards to hate speech, an Interdepartmental Commission under the Government of the Republic of North Macedonia for Combating Disinformation and Hate Speech is already functioning, which could in the future coordinate between relevant institutions regarding the treatment of hate speech, and which will also serve as a frontman before the public for the purpose of prevention and preemptive action. In 2023, 11 NGOs prepared a document "State Principles for a Strategy to Combat Disinformation", but to date, a national strategy for the same has not been adopted, although it was planned to do so in 2024.

In terms of hate speech acts, a significant success is the fact that in 2019 the Council of Media Ethics (CEME), supported by the OSCE, promoted the established network for combating hate speech in the media, expecting that it would play an important role in the protection of human rights. From the very beginning, the Network included several specialised NGOs in the field of human rights protection and several relevant state institutions from the executive government (MoIA, MFA, AAVMS, CPAD, Ombudsperson), as well as the PPORNM. In the following years, this Network met several times,

[103] This includes the number of final court decisions, the number of victims, the number of perpetrators, the number of sports clubs that have been fined for misdemeanors or crimes, the number of reports filed with the MoIA, the number of beneficiaries of free legal aid, and the number of complaints against police officers by citizens.

[104] See more: Praktični vodič za tijela javne vlasti i institucije: "Kako prikupljati podatke o jednakosti?" Ludwig Boltzmann Institut za ljudska prava i Ured za ljudska prava i prava nacionalnih manjina Vlade R. Hrvatske, Zagreb, 2013, str.30-39.

[105] Such a study was conducted in Italy. Source: Poljak, Ibid, str.2715. Available at: http://www.centar-fm.org/inmediasres/index.php/marko-poljak-jelena-hadzic-i-masa-martinic-govor-mrznje-u-hrvatskom-medijskom-prostoru (22,05,2023).

and the following acts were adopted: Declaration on Combating Hate Speech in the Media and the Memorandum of Cooperation.

There are no official data on cyber-bullying in the Republic of North Macedonia, which is often manifested by hate speech, but it is a fact that such phenomena exist. The initiative in the NGO sector to educate citizens through the media about the existence of "cyber-violence" (a term that has become commonplace in our country) was to be welcomed, although such manifestations are modest in the form of "leaflets" for quick introduction to the phenomenon.[106] In the private, business sector, the company "Makpetrol" stands out with its campaign in 2024 to suppress "peer violence"[107], which, in turn, is often committed out of hatred.[108]

8.3. Expanding the victim protection and legal aid system

According to the Criminal Code, the term "victim" refers to: "*any person who has suffered damage, including physical or mental injury, emotional suffering, material loss or other injury or threat to his fundamental freedoms and rights as a consequence of a committed crime*".[109] According to the Criminal Procedure Code, the victim can hope for compensation for damage. Damage, however, according to the Criminal Procedure Code, can be pecuniary and non-pecuniary, and is interpreted as a reduction in someone's property (ordinary damage), prevention of an increase in property (lost benefit) and causing physical or mental pain or fear (non-pecuniary damage).[110]

Otherwise, victimology is a science that finds its legislative conclusion more in the criminal procedural law than in the substantive law. Until recently, there was almost no developed victim support system in North Macedonia to respond to the needs of victims of hate crimes. According to the Law on Criminal Procedure, the victim of any crime has the right to effective psychological and other professional support from the authorities, institutions, and organisations that offer assistance to the victim of crime. Certain specialised support for victims of hate crimes is provided by civil society organisations.

Victims of crimes punishable by imprisonment of at least four years have the right to free legal advice before giving a statement and to receive compensation for non-pecuniary damage from the perpetrator or the state. Some victims – including minors, en-

[106] See: Brochure "Cyberviolence...it is also violence!", Metamorphosis, Skopje („Сајбернасилство...и тоа е насилство!", Метаморфозис) 2011.

[107] https://telma.com.mk/2024/04/16/opshtestveno-odgovornata-kampana-na-makpetrol-se-proshiruva-vo-sveti-nikole-i-vo-novo-selo/

[108] https://libertas.mk/fbi-sekoe-desetto-zlostorstvo-od-omraza-se-sluchuva-na-uchilishte/

[109] See Art.122 par.22.

[110] The injured party who suffered physical pain may be awarded compensation, the amount of which depends on the intensity and duration of that pain, which is determined by an expert opinion. When deciding on the amount of this compensation, the court must also take into account the costs incurred for the hospitalisation and treatment of the victim. The injured party is also entitled to compensation for mental pain due to a decrease in life activity (of a permanent or temporary nature) as well as for disfigurement, which manifests itself as the loss or damage of some part of the body, due to which the victim has mental pain. Source: Ignjatović, Đ./Simeunović P., B., "Viktimologija", Pravni fakultet u Beogradu, ed. Crimen, Beograd, 2011, str.135.

dangered victims, and particularly vulnerable victims – are entitled to special protection measures when giving statements or being interviewed at all stages of the proceedings. Victims of certain crimes ("against gender freedom and gender morality, humanity and international law") have additional rights, including: the right to speak with a counsellor or attorney free of charge before the interview (in case the victim participates as an injured party in the proceedings); the right to an interview with a person of the same sex; the right to refuse to answer questions about the victim's personal life, if it is not related to the crime; the right to an interview using audio-visual equipment; and the right to request the exclusion of the public from the main hearing. The court determines special measures of procedural protection upon the proposal of the public prosecutor or the victim or at its own discretion when it is necessary to protect vulnerable victims.

The Criminal Procedure Code also regulates issues related to the interviewing of particularly vulnerable victims and witnesses with special attention, and if necessary: in the presence of a trusted person; with the assistance of a psychologist, social worker or other professional; using technical means/tools for transmitting images and sound; without the presence of the parties, etc. During the interviewing of the victim or witness, the court may exclude the public.

Victims of all crimes have the right to participate in the criminal proceedings as injured parties by joining the criminal prosecution or for the purpose of claiming compensation. In the event that the perpetrator is unable to pay compensation, it shall be covered by the state.

A significant breakthrough was made in this matter with the adoption of the Law on Payment of Financial Compensation to Victims of Violent Crimes.[111] The purpose of this Law is to provide financial compensation to victims of violent crimes[112] as assistance from the state, in accordance with the principle of social solidarity, and to prevent possible victimisation and secondary victimisation as additional suffering that victims may endure because of the attitude of the competent authorities.[113]

The victim (and indirect victim[114]) is entitled to financial compensation regardless of whether the perpetrator of the crime is known and regardless of whether criminal proceedings have been initiated against the perpetrator of the crime, or whether there are factual or legal obstacles to conducting criminal proceedings (See Art. 14). Article 13 stipulates: "A prerequisite for exercising the right to financial compensation in accord-

[111] This Law shall regulate the right to financial compensation for victims of violent crimes, the conditions for exercising the right to financial compensation, the types of financial compensation, the establishment, status, composition and competences of the Commission for Compensation for Victims of Violent Crimes, the election, mandate, termination of the mandate, as well as the dismissal of the president and members of the Commission, the means for paying financial compensation to victims, informing and educating victims, the procedure for exercising the right to financial compensation, the right to recourse, the procedure in cross-border cases, as well as the records and storage of data.

[112] Article 10: "A victim of a crime involving violence, within the meaning of this law, is considered to be a direct and indirect victim of a crime involving violence..."

[113] See Art.4.

[114] Article 12: "An indirect victim is a family member (marital or extramarital partner, child, parent) of a direct victim who died due to the crime of violence under Article 9 of this law."

ance with the provisions of this law is that the crime has been recorded or reported to the police or the public prosecutor's office.[115]

The reasons for adopting this Law are that so far, the percentage of collection from perpetrators has been very low, and confiscation procedures have been negligible, but also the long duration of criminal proceedings. A Commission was to be established to implement the Law.

Thus, a 5-member Commission was established in February, 2024.[116] The Commission held its first session the same month. The President of the Commission is a judge. A total of 8 sessions were held until 10.09.2024. The Secretary of the Commission is an employee of the Ministry of Justice of North Macedonia. A Regulation on the Press and a Regulation on the Form and Content of Forms have been adopted.[117] The premises of the Commission are in the Ministry of Justice of North Macedonia.

It is known that hate crimes are particularly vehement towards the property of the victims. Therefore, it is important to inform[118] that a Draft Law on Supplementing and Amending[119] the Law on International Cooperation in Criminal Matters (Official Gazette of the Republic of North Macedonia No. 77/2021)[120] is currently being developed. This is due to the need to harmonise the provisions of this Law with international standards in the area of confiscation of property and proceeds of crime and the transfer of confiscated objects and proceeds of crime (the 2005[121] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, amending and supplementing the 1990 Strasbourg Convention), as well as to eliminate the identified shortcomings provided for in the current law.

Priority is given to the return of confiscated property to the requesting state for the purposes of compensation to the victims of the crime, i.e. the return of property to its legitimate owners, which is provided on the basis of an act establishing compensation to the victims, i.e. the return of property to its legitimate owners.

If these legislative amendments are made, then the Law on International Cooperation in Criminal Matters becomes complementary to the Law on Confiscation of Property in

[115] "At the request of the victim, the police or the public prosecutor's office shall be obliged to issue the victim, his or her parent or guardian or authorised representative with an appropriate notification, a report of receipt of the report, an official note or confirmation that the act has been reported or recorded as a criminal act." (This is not in conflict with the CPC, which regulates that transcripts can be given to the injured party after his examination).

[116] Public Prosecutor Stevcho Donev from the Public Prosecutor's Office of Shtip is a representative in the Commission. From the interview conducted with him on September 11, 2024, it was established that the Commission had already received 3 cases, none of which involved victims of hate crimes; however, one of them involved domestic violence, and the other two cases were formed on untimely submitted requests.

[117] Obtained from the interview with Andrijana Gjorgjevska, Head of the Department for Pardon and Compensation at the Ministry of Justice of North Macedonia, conducted on 10.09.2024.

[118] Information obtained from the Head of the Department for International Legal Assistance in Criminal Matters at the Ministry of Justice - Gordana Milevska.

[119] https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=83230

[120] https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=83230

[121] https://rm.coe.int/168008371f

Civil Proceedings (Official Gazette of RNM No. 53/2024 of 04.03.2024) in which Article 21, paragraph 1 states that the central authority for international cooperation is the PPORNM, and the Property Recovery Office Law (Official Gazette of RM No. 66/2024 of 20.03.2024). This Law regulates the establishment, competences, and financing of the Property Recovery Office (PRO Office), cooperation with domestic authorities and institutions, cooperation with foreign countries and with the Electronic Integrated Database. The PRO Office is established within the framework of PPORNM and will have the authority to undertake activities to obtain information and data for finding and identifying proceeds and other property or property benefits in the country or abroad in relation to a domestic citizen or resident of the Republic of North Macedonia, a stateless person or a foreigner, as well as for the needs of the confiscation procedure without establishing criminal liability regulated in accordance with law, which arose from or are related to the criminal offenses covered by Article 8 of the Law.[122]

It has already been stated that from a penological perspective, probation and preventive supervision are good tools for controlling prior offenders, but, unfortunately, they are still not practiced to a significant extent in the Republic of North Macedonia.[123] From a victimological perspective, despite the changes made to the criminal procedure[124] that introduced the concept of "victim", in practice, the state has not yet optimally set up all the institutional networks for timely protection and satisfaction of these persons, but of course, progress was achieved.

9. Conclusion

The analysis of the implementation of legislation on hate crimes and criminalised hate speech in the Republic of North Macedonia for the period from January 2019 to June 2024 indicates significant achievements and challenges. Hate crimes and hate speech not only disrupt the lives of victims, but also undermine social cohesion, creating an atmosphere of fear and insecurity. The data clearly shows that bias based on ethnicity, political polarisation, and other discriminatory factors remain significant drivers of these acts, which requires increased efforts to raise public awareness, strengthen the legal framework, and increase the efficiency of institutions in implementing the laws.

The 2019 amendments to the Criminal Code represented an important step towards defining and sanctioning hate crimes, including their recognition as aggravating circumstances in sentencing. However, the analysis reveals significant gaps and challenges in the implementation of the legislation:

- **Lack of systematic recording and processing of data:** There are gaps in the recording of hate crimes and hate speech by law enforcement agencies and the judiciary, which makes it difficult to monitor and analyse trends.

[122] This refers to about 40 criminal acts typical of the criminological discipline of "Organized Crime", but most of which could theoretically also be hate crimes.

[123] Their use is also referred to in the EU legislation, specifically the Recommendation of the Committee of Ministers (2014) 3 of 19.02.2014 of the Council of Europe on the treatment of dangerous offenders *"who present a high likelihood of re-offending a serious crime".*

[124] Official Gazette of RM No.120/2010.

- **Confusion of terms:** There is confusion regarding the meaning and relationship of the terms "hate", "hate speech", "hate crime", "gender-based violence" and "domestic violence", which leads to incorrect classification and treatment by law enforcement agencies.
- **Insufficient knowledge of bias motivation indicators:** Law enforcement agencies and courts rarely focus on the perception of victims, the ethnic, religious, and other affiliations of perpetrators vis-à-vis the victims, the place and time of the hate crimes, the absence of other motivation, etc.
- **Lack of solid evidence:** In some cases, proposals for issuing a penalty warrant are based only on copies of images or comments from social networks, without appropriate expert opinions, which undermines the reliability of the evidence and the fairness of the process.
- **Processing swear words, insults, defamation, and value judgments as criminalised hate speech:** In some cases, law enforcement agencies and courts process inappropriate verbal conflicts that do not incite violence and discrimination, which can lead to civil legal issues or even limit freedom of expression.
- **Providing selective protection for certain professions:** Through the criminal-legal response to hate speech, certain professions are given the status of protected groups (e.g. police officers, judges, journalists, and former MPs) due to their "personal" or "social" status, which can lead to restrictions on freedom of speech.
- **Insufficiently reasoned indictments and judgments:** Public prosecutorial and judicial acts and decisions are often too brief and unclear as to which protected characteristic is taken into account, creating legal uncertainty and making it difficult to consistently apply the legal provisions.
- **Unequal protection of different groups:** The majority of processed cases concern hate speech based on political belief and ethnicity, while other protected characteristics are neglected, indicating potential gaps in the protection of certain vulnerable groups. In 17 out of 18 cases related to political belief, the victims are current and former officials of the ruling parties.
- **Insufficient and disproportionate sentences:** The use of suspended sentences, without imposing prison sentences, is prevalent, which raises questions about the deterrent effect of sentences and their adequacy to the seriousness of the crimes.
- **Insufficient application of alternative measures:** In practice, alternative measures such as community service or probation with protective supervision are rarely applied, which could contribute to the re-socialisation of offenders.
- **Insufficient training and awareness:** Although there are only a few trainings for practitioners in the judicial system, it is necessary to continue and upgrade them, especially in terms of understanding the differences between different types of speech, violence, and crime.
- **Insufficient protection and support for victims:** The victim protection system is still insufficiently developed and additional measures are needed to provide legal, psychological, social, and financial support.

In addition, there is room for improvement of the criminal legislation. The Criminal Code contains a broad and open-ended list of protected characteristics in the case of hate speech offences which, although intended to provide extensive protection, may dilute the effectiveness of the prosecution of hate speech. This expansiveness may create legal ambiguities and difficulties in interpreting the law, resulting in inconsistent judgments. Such a set-up may overburden the judicial system and make the evidentiary procedure more difficult, especially in terms of establishing bias motivation, which is a key element under the ECtHR criteria. In relation to hate crimes, in Article 130 [Bodily injury] paragraphs 2 and 3, there is double criminality with unequal sanctions. Furthermore, in Article 144 [Threatening the safety], the form of hate crime under paragraph 3 is sanctioned more lightly (from three months to three years of imprisonment) than the form of hate speech under paragraph 5 (from one to five years of imprisonment).

International standards and obligations, as well as recommendations from the United Nations, OSCE, Council of Europe, and the European Union, highlight the need for a comprehensive approach to addressing hate crimes and hate speech, including prevention, prosecution, and support for victims. The Republic of North Macedonia has made significant steps in aligning its legislation with these standards, but implementation remains a challenge that requires continued efforts and improvements.

10. Recommendations

10.1. Recommendations regarding hate crime

- **Distinguishing hate crime from other forms of violence:**
  - Law enforcement agencies and courts should clearly distinguish between hate crimes and other similar forms of crime, such as domestic violence, despite the potential links between them.
- **Consistent application of the provisions on bias motivation:**
  - PPOs and courts should appropriately apply the provisions on bias motivation and provide detailed explanations in indictments and judgments, indicating how the connection with the protected characteristics was established.
  - The PPO should provide sufficient evidence and arguments for the qualifying features of hate crimes.
- **Statistics and a centralised database on hate crime:**
  - Develop and implement a national system for collecting and monitoring data on reported, investigated, prosecuted, and court cases related to hate crime.
  - Ensure regular and standardised reporting by all relevant institutions.
  - Include specific statistics on hate crimes in the electronic database "Makstat" of the State Statistical Office.
  - The MoIA, public prosecutors' offices and courts should keep detailed records and share their statistics.

- **Strengthening the capacities of law enforcement agencies and courts:**
  - Organising specialised and continuous training for judges, public prosecutors, and police officers on the recognition, investigation, and prosecution of hate crimes.
  - The training should be multidisciplinary with legal, psychological, and sociological aspects.
  - Development of guidelines and protocols for the consistent application of legal provisions.
- **Increasing the transparency and accessibility of judicial decisions:**
  - Ensuring public access to indictments and court judgments, adequately protecting the privacy of the parties involved.
  - Promoting and publishing significant decisions on the development of the case law in the field of hate crimes.
- **Proportionate and effective sanctions:**
  - Sentences imposed should adequately reflect the seriousness of the offences in order to have a deterrent effect.
  - Consideration of the application of alternative measures when they provide effective protection of society and victims and the re-socialisation of offenders.
- **Victim support:**
  - Specialised victim support services, including legal, social, psychological, and financial assistance.
- **Preventive measures:**
  - Developing early warning systems to monitor heightened tensions in specific regions, communities or online platforms, enabling authorities to intervene before hate crimes escalate.
  - Implementing community engagement initiatives, where law enforcement agencies and community leaders work together to foster dialogue, address grievances, and reduce bias that can lead to hate crimes.
  - Formalising the role of civil society organisations in monitoring and reporting hate crimes, as they often have better outreach in communities and can provide important data and insights for authorities.
  - Encouraging public-private partnerships to engage the wider community in hate crime prevention, including collaboration with educational institutions, faith-based organisations, and businesses.
- **Technology and the internet as allies:**
  - Leveraging social media and open sources to monitor and investigate potential hate crimes.
  - Providing training and resources for using digital tools in investigations.

10.2. Recommendations regarding criminalised hate speech

- **Adoption of a centralised database for hate speech:**
  - Specific registration and monitoring of hate speech cases, adapted in CMS, AKMIS, and other databases.
- **Improving the quality of court decisions:**
  - Courts should issue detailed and reasoned judgments, clearly stating the protected characteristics and the legal basis for the decision.
  - Ensuring transparency and legal certainty through detailed reasoning.
- **Securing solid evidence:**
  - The prosecution should support indictments with appropriate expert evidence, especially in cases involving digital evidence.
  - Introducing standards for the collection and preservation of digital evidence.
- **Clarification of concepts:**
  - Training for judges and prosecutors on the difference between hate speech and hate crime and balancing it with freedom of expression.
  - Development of practical guides and guidelines.
- **Legislation review:**
  - Reduce the excessive listing of protected characteristics in criminal provisions.
  - Harmonise hate speech crimes for greater coherence and effectiveness.
- **Proportional and dissuasive sanctions:**
  - Securing sanctions that adequately reflect the seriousness of the offenses and have a deterrent effect.
  - Consider increasing sanctions for repeat offenders or particularly serious forms of hate speech.
- **Strengthening the online monitoring capacities:**
  - Using sophisticated tools and artificial intelligence to monitor the digital space.
  - Providing training that will include technological aspects for monitoring and analysing online content.
  - Incorporating digital literacy programmes for the police and the general public to help identify, report, and reduce hate speech online.
- **Victim support:**
  - Providing mechanisms for facilitating the reporting of hate speech.
  - Specialised victim support services, including free legal and psychological assistance.
- **Cooperation with internet providers and platforms:**
  - Cooperation for the rapid removal of illegal content.
  - Development of protocols in accordance with legal provisions and international standards.

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Abbreviations

ACMIS	Court Case Management System
PRO	Property Recovery Office
AC	Appellate Court
AJPP	Academy for Judges and Public Prosecutors "Pavel Shatev"
PSB	Public Security Bureau
HPPO	Higher Public Prosecutor's Office
ECHR	European Convention on Human Rights
EKRA	Criminal Intelligence and Analysis Units
ECRI	European Commission against Racism and Intolerance (ECRI)
ECtHR	European Court of Human Rights
EU	European Union
AN	Authors' Note
OC	Our comment
CPC	Criminal Procedure Code
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
PP	Public Prosecutor
PPORNM	Public Prosecutor's Office of the Republic of North Macedonia
CC	Criminal Code
CL	Criminal Liability
LGBTI+	Lesbian, gay, bisexual, transgender, intersex and other individuals whose sexual orientation is heterosexual and whose gender identity was determined at birth
MoIA	Ministry of Internal Affairs
MJ	Ministry of Justice
NGO	Non-governmental organisation, citizens' association
OSCE	Organization for Security and Co-operation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
BPPO	Basic Public Prosecutor's Office
BPPO POCC	Basic Public Prosecutor's Office for Prosecution of Organised Crime and Corruption
OKRA	Criminal Intelligence and Analysis Department
OTA	Operational Technical Agency
PAHCT	ODIHR Prosecutors and Hate Crimes Training Programme
SIM	Special Investigative Measures
RNM	Republic of North Macedonia
USA	United States of America
SIA	Sector for Internal Affairs
CoE	Council of Europe
SEMM	Council for Media Ethics
SKRA	Criminal Intelligence and Analytics Sector
TAHCLE	ODIHR Training against Hate Crimes for Law Enforcement Programme
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CR of RNM	Central Registry of the Republic of North Macedon

Executive Summary

This analysis shall assess the effectiveness of the legislation on hate crimes and criminalised hate speech in the Republic of North Macedonia for the period 2019-2024. The focus shall be on the implementation of the laws by investigative authorities and courts, identifying gaps, and providing recommendations for improvement. The analysis shall integrate quantitative data on cases and court outcomes, as well as a qualitative analysis of national and international law, in order to assess the practical application of the legislation. The quantitative data were provided by the Ministry of Internal Affairs, public prosecutors' offices, courts, and the Judicial Council, and relate to reported cases, investigations, and court outcomes. The qualitative data derive from an analysis of statistics, court decisions, relevant laws and international standards, as well as interviews with legal practitioners. **Data from over 50 institutions were analysed, including 78 indictments and court judgments, of which 64 were identified as hate crimes**. This evidence-based approach aims to inform policymakers and improve the prevention and sanctioning of hate crimes, by strengthening the legal framework and protecting victims.

In the multicultural society of North Macedonia, hate speech and hate crime pose serious challenges, especially in contexts of political and ethnic tensions. In the period 2014–2024, local NGOs have registered 2,685 incidents of hate speech in which the most common motives are ethnicity, sexual orientation, political belief, national background, sex or gender, race or skin colour and religion or religious belief. Hate speech dominates social networks and the media, with often unsatisfactory prosecution and low public awareness. In terms of hate crime, local NGOs have registered a total of 933 incidents in the period 2013–2023, in which the most common motives are ethnicity, political belief, and refugee or migrant status. The most common crimes include violence, bodily harm, and damage to property. The capital Skopje is an epicentre of incidents, which reflects the concentration of ethnic and political tensions. OSCE research from 2018 and 2023 shows a significant emotional and psychological impact on victims, with a low reporting rate – six out of ten incidents remain unreported. Victims of hate crimes are often young people, and the bias motivation is often lost in criminal processing from the police to the courts.

The national legislation of North Macedonia addresses the issue of hate speech and hate crime through several provisions in the Criminal Code. Hate speech is treated as a criminal offense in cases of incitement to hatred, discrimination, genocide, or dissemination of racist and xenophobic materials. While the laws are generally in line with international standards, there is room for improvement, especially in terms of the protection against sexist and LGBTI-phobic speech in offline contexts. Crime of hate shall be considered the crime against a natural or legal entity and associated persons thereto or a property which is committed wholly or partially due to a real or speculative characteristic or association of the person relating to race, skin colour, nationality, ethnic origin, religion or conviction, mental or bodily disability, sex, gender identity, sexual orientation, and political conviction. The 2018 amendments to the Criminal Code introduced 17 new

provisions for stricter penalties for hate-motivated acts, thereby aligning the legislation with modern international standards.

Institutional measures include the introduction of tools for recording and reporting hate crimes with the Ministry of Internal Affairs and the updating of case management systems in prosecutors' offices and courts. Despite these efforts, the effectiveness of these measures remains limited, mainly due to the lack of effective implementation and insufficient public awareness. Victim support programmes are in their infancy, and additional resources and transparency are needed for their effective implementation. These measures highlight the state's commitment to improving victim protection and hate crime prevention, but their implementation in practice remains a challenge.

The analysis of data from 31 courts, including basic and appellate courts, as well as the Judicial Council, provided significant insight into the case law on hate speech and hate crime. **Hate speech dominates as a category with 55 cases, compared to 9 hate crime cases**. The most common offences are related to the dissemination of racist and xenophobic material online, indicating the growing influence of online platforms. Political beliefs and ethnicity are the main motives, while sexual orientation and gender are less common but significant. Courts rely mainly on penalty orders (30 cases), while trials (20 cases) are used for more complex cases. Suspended sentences dominate as a sanction (46 cases), and only 4 cases resulted in prison sentences, all for hate crime, but the analysis has established that 2 of them did not meet the legal criteria to be included in this context. Practice shows a tendency towards more lenient sanctions, which may reduce the deterrent effect of sanctions. This highlights the need for a stronger focus on prevention and increased severity in the penal policy for hate-motivated crimes.

The analysis of court decisions related to hate speech showed that courts most often apply suspended sentences, without prison sentences. In addition, the lack of prison sentences raises questions about the proportionality of sentences and their deterrent effect, especially for acts with potentially serious consequences. Courts, in most cases, provide short and unclear explanations, which creates uncertainty about how protected characteristics are treated. Penalty orders are often used, where the defendant is not an active participant, and the evidence, most often digital, is rarely supported by expert opinions. This raises questions about the thoroughness of the evidence and the fairness of court proceedings. In some court decisions, the terms "hate crime" and "hate speech" are not clearly distinguished, which creates legal confusion. Furthermore, the distribution of judgments shows that most often sanctions are imposed on acts motivated by political beliefs, ethnic and national origin, while there are few or no judgments related to race, skin colour, and disability.

The analysis of court decisions on hate crimes showed that cases related to ethnicity, gender, sexual orientation, and national background dominate. The examples show that ethnic hatred often leads to violence. In gender-based hate crimes, the acts are assessed as hate crimes, but in fact, they are domestic and gender-based violence, and it has been established that the courts do not always correctly apply domestic law and international standards. Attacks on the LGBTI+ community are also sanctioned, but the sentences rarely have a strong deterrent effect. The greatest challenges arise from the insufficient determination of protected characteristics and weaknesses in investigative procedures. In some cases, acquittals are the result of a lack of evidence of

biased motivation, which indicates the need to improve investigations and clarity in the qualification of the acts. Courts do not always provide clear explanations, proportionate sentences and consistent application of hate crime laws, which does not achieve fair protection of victims and prevention of future incidents.

The analysis points to significant progress, but also to a number of systemic challenges. The adoption of the amendments to the Criminal Code in 2018 was a key step towards improving the legal framework, in particular through the definition of hate crime and the recognition of bias motivation as an aggravating circumstance. However, the implementation of these legal changes does not always succeed to reflect their essential objective – effective protection of victims and prevention of hate crime. One of the most significant weaknesses concerns the lack of systematic recording and processing of data on such acts. This makes it difficult to analyse trends and prevents the formulation of effective policies. In addition, there is a lack of clear distinction between different forms of crime, such as hate speech and hate crime, which often leads to incorrect classification and treatment.

In practice, the prosecution of these crimes faces serious challenges. In some cases, evidence is limited to copies of images or comments on social networks, without additional expert opinions, which undermines the fairness of the process. Court decisions often do not contain sufficient explanations for the protected characteristics or biased motivation, which creates legal uncertainty and makes it difficult to consistently apply the legislation. Suspended sentences prevail, while prison sentences are rarely imposed, which reduces the deterrent effect and raises questions about their appropriateness. At the same time, there is insufficient application of alternative measures such as community service, which could contribute to the re-socialisation of perpetrators. In addition, victims are often left without adequate legal, psychological, or social support. The victim protection system is underdeveloped, which further increases the challenges faced by vulnerable groups.

The situation in the courts is reflected in the situation in the public prosecutor's offices, where there is also a weakness related to: the lack of systematic recording and processing of data on such acts. Namely, only some of the basic public prosecutor's offices (13) submitted data according to the requested criminal acts, while others, a significant number, (8) reported only on the total number of registered cases, with one public prosecutor's office reporting that the "Case Management System" has not yet been implemented in their practical work, which obviously prevented them from keeping accurate statistics on hate crimes. Samples of anonymised indictments (14) were also submitted, but only from two basic public prosecutor's offices, so when analysing them, similarly to the courts, it was noted here that there is a lack of clear distinction between different forms of crime, such as hate speech and hate crime, which often leads to incorrect classification and treatment.

The Ministry of Internal Affairs plays an important role in terms of dealing with hate crime. The analysis shows that it is the main body that registers and combats this crime. Although the analysis of the work of the judicial authorities also reveals problems in the work of the police, such as the incorrect qualification of minor hate crimes, the statistics of the Ministry of Internal Affairs are clearer and more precise than those of the courts and public prosecutors' offices. Although there are shortcomings in terms of recognis-

ing indicators related to hate crime, this still indicates that the police are more aware of the phenomenon of hate crime. **Thus, concise data was released that in 2019, 51 crimes were registered with 51 perpetrators, and in 2023, 41 crimes and 39 perpetrators were registered**. In both mentioned years, hate speech acts were the most numerous, so **in 2019 they accounted for 49 crimes or 96% of the total number of hate crimes for that year, and in 2023, they accounted for 39 crimes (95%).**

However, the Ministry of Internal Affairs also has technical imperfections regarding its manner of recording hate crimes, which is general and requires further refinement and sophistication, especially in terms of making a distinction between hate crimes and hate speech. Namely, the Ministry of Internal Affairs, first of all, has no idea which crimes are of a special type of hate crimes, so that they would only focus on them and submit annual reports, and secondly, they do not register the different paragraphs of the articles under which the criminal offenses are regulated in the Criminal Code. This is a real problem that could be simply solved by technically inserting the paragraphs as separate columns in the electronic tables in which the records of committed crimes are kept. The specific and precise legal qualifications should certainly be confirmed by the public prosecutor's offices during the criminal procedure, so it appears necessary in the future to have active communication between the Public Prosecutor's Office, on the one hand, and the Ministry of Internal Affairs, on the other. Additionally, the **Protocol for Cooperation between the Ministry of Internal Affairs, the Public Prosecutor's Office and the Financial Police from 2014 will need to be amended, which will prescribe an obligation for immediate verbal notification by the executive authorities to the Public Prosecutor's Office in the event of a committed and discovered hate crime, regardless of whether that crime is qualified as "serious".**

Otherwise, data collection in the Ministry of Internal Affairs is the responsibility of the long-established unit in the Ministry of Internal Affair's organisational chart, OKRA, so this is a mitigating factor in any undertaking for delicate changes in their software and data collection practice, because the most important thing is to keep in mind that crime is a living matter, so neither the data nor the methods of their collection can be static. Then the collected data will need to be available to the public. Namely, today neither the State Statistical Office receives such specified data from the MoI, nor does the MoI state it (acts of hate speech as a statistical parameter) in its annual reports, nor is the MoI able to provide the Ministry of Foreign Affairs with such data upon request from international organisations in which the Republic of North Macedonia is a member.

Tackling hate crime and hate speech requires an integrated approach that combines clearly defined legal frameworks, appropriate law enforcement, strengthening institutional capacities and developing effective preventive measures. It is necessary to distinguish between hate crimes and other forms of violence, as well as to consistently apply biased motivation in judgments, with detailed and transparent explanations. The need for continuous training of judges, prosecutors, and police officers in identifying and processing these crimes, with an emphasis on legal and sociological aspects, is crucial. At the same time, recording should be improved through a centralised database, which will allow for monitoring trends and analysing the success of judicial measures.

From the perspective of laws, there is room for further improvement in the Criminal Code with regards to hate crimes. There are ambiguities regarding the different hate

speech offenses, so the logic in the separate entities is not seen if the offense "Dissemination of racist and xenophobic material through a computer system" from Article 394-d, paragraph 1 of the Criminal Code is compared with the offense – Threatening safety, Article 144, paragraph 5 of the Criminal Code, because some of the actions of the former simply constitute incitement in accordance with Article 23 of the Criminal Code for the latter offense. In addition, the same sanction is provided for both criminal offenses. Furthermore, with regards to Article 144 [Threatening safety], it is intriguing that the form of hate crime from paragraph 3 is sanctioned more lightly (from three months to three years of imprisonment) than the form of hate speech - paragraph 5 (from one to five years of imprisonment).

The Criminal Code contains a broad and open-ended list of protected characteristics in the case of hate speech offences which, although intended to provide extensive protection, may dilute the effectiveness of the prosecution of hate speech. This expansiveness may create legal ambiguities and difficulties in interpreting the law, resulting in inconsistent judgments. Such a set-up may overburden the judicial system and make the evidentiary procedure more difficult, particularly in terms of establishing biased motivation, which is a key element under the ECHR criteria.

Sanctions must reflect the seriousness of the crimes. Support for victims should include legal, psychological, and social assistance, as well as mechanisms for facilitating reporting. A significant breakthrough was made in this area with the adoption and entry into force of the Law on Payment of Financial Compensation to Victims of Violent Crimes.

Preventively, authorities should implement early warning systems, cooperate with communities, and use digital tools for monitoring online content. The revision of legislation, especially in the area of hate speech, should increase clarity and efficiency, with a focus on harmonisation with international standards, striving for a society free of hatred and discrimination.