

HATE CRIMES: THEORETICAL PARADIGM

Review article

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Abstract:

Hate crimes are criminal offences, often violent and destructive, where the perpetrator is motivated by prejudice against the social group to which the victim belongs. Hate crimes not only do great harm to the victims, but to society as a whole. Considering the specific motive of commission and consequences of hate crimes, they have been distinguished as a distinct type of crime, which is generally agreed upon in literature, and arguments that corroborate it are more convincing than those disputing it. The solution of basic conceptual issues paves the way to critically examine other dilemmas, which is not agreed upon by all either in theory or practice. The paper concludes that despite the fact that hate crimes have been the subject of research for more than two decades, it is still necessary to critically examine the theoretical soundness and practical usability of this concept.

Keywords: *hate crimes, prejudices, hatred, protected characteristics, victims.*

INTRODUCTION

Hate crime is a relatively new concept in contemporary criminological research, which was first used in the United States² in the 1980s. The term “hate crime” can be traced back to United States Representatives John Conyers, Barbara Kennelly, and Mario Biaggi, who in 1985 cosponsored the bill in the House of Representatives that became the federal “Hate Crime Statistics Act”, which requires the U.S. Department of Justice to

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² There are a number of dilemmas surrounding the concept of hate crime, including the adequacy of the literal translation of this phrase from English into the South Slavic languages. In domestic legal and criminological literature, most authors who have addressed this issue use the term “hate crimes” (Ignjatović, 2005, 2011; Pavlović, 2008; Milašinović & Simeunović-Patić, 2010; Ćirić, 2011; Tripković, 2011).

collect and publish information concerning crimes motivated by racial, religious, or ethnic bias. Ever since, the use of the term “hate crime” by the news media has increased dramatically. Legal scholars began using the term at the beginning of the 1990s (Jacobs & Potter, 1998). The concept of hate crime has a number of characteristics shared with what in the hate-crime literature is referred to as ethnic violence, religion-motivated crimes, homophobic violence, or heterosexual violence (Green, McFalls & Smith, 2001). The popularization of this generic term, which encompasses racist, anti-Semitic, sexist and homophobic attacks, has led many scholars to observe and study different manifestations of bias-motivated aggression as a unique analytic and conceptual category (Byford, 2003). Criminologist Djordje Ignjatovic notes that some forms of crime such as organized crime, white-collar crime, violent crime, or domestic violence were first theoretically defined in criminology, and then normatively operationalized in criminal law, unlike hate crimes in which case the process was reversed. As Ignjatovic states, in response to what most viewed as an escalation of hate crimes leading to distrust and intergroup tension, lawmakers in the U.S. and the U.K first introduced the category of hate crimes into criminal law and judicial practice, and then criminologists began defining this term. Such practice resulted in an array of dilemmas, vague and imprecise definitions of the concept of hate crime (Ignjatović, 2005). The existing research on this issue is mainly exploratory and descriptive, whereas the research studying the social determinants of hate crime, on the other hand, has not studied them sufficiently. Criminologists did not make any serious attempts to explain hate crimes theoretically. Barbara Perry, a leading expert on hate crimes, argues that it is difficult to develop theories to explain this concept without sufficient empirical evidence (Perry, 2001). Green et al. argue that hate crimes are difficult to define, measure and explain (Green et al., 2001). In social psychology, there is a body of work on bias attitudes. However, the analysis of the current body of literature reveals a small number of studies which directly and systematically explore how prejudice and bias escalate into acts of violence (Green et al., 2001). Due to insufficient exploration of this phenomenon, there have appeared different definitions and interpretations, which make it difficult to gain a deeper understanding of the phenomenon. Some commentators believe that the term “hate crime” is loaded with dilemmas and difficulties. In fact, it is oftentimes used very broadly, encompassing any hate-crime act against the victim (Perry, 2003). Others, in extreme cases, interpret this term as genocide, ethnic cleansing and serial homicide. Other aspects of this phenomenon encompass attacks and homicide. Incidents of abuse, vandalism, and threats that jeopardize the victims’ quality of life are considered less serious offences (Green et al., 2001: Croall & Wall, 2002). In the modern criminological literature, hate-crime offences have been defined as unlawful, violent, destructive behavior, or intimidation motivated by the perpetrator’s bias against the social group to which the victim belongs (Ignjatović, 2005). As previously stated, hate crimes are a new area of criminological research. Most of the research into hate crimes was carried out in the United States, where this issue has been studied much longer than in Britain, for instance, or other countries.³ Generally, there are not enough empirical generalizations that would provide a more complete understanding and explanation of the hate crimes prob-

³ The concept of hate crimes gained significance and a growing interest in the UK in 1999 after the publication of the Macpherson report (Macpherson, 1999) on the racist murder of a young black man Stephen Lawrence in London in 1993 (McLaughlin, 2002).

lem (Ardley, 2005). With that in mind, we notice the myriad of unresolved conceptual issues such as the specificity of hate crime in relation to other (non-hate) crimes, and, on the other hand, justifications for categorizing these criminal offenses as a distinct type of crime. Fierce scholarly debates have erupted over this issue and a number of scholars made arguments refuting the concept of hate crime as a distinct, conceptual, legal and practical category. However, if we accept the concept of hate crime, the following question immediately imposes itself – which social groups should or should not count as a special group covered by the law and why? The next question concerns similarities and differences between hate crimes and terrorism, genocide, ethnic cleansing, discrimination, or hate speech (Green et al., 2001). According to Ignjatovic, all those involving in the systematic processing of hate crimes should first resolve the issue as to whether hate-crime offences should be classified as a distinct type of crime; if so, only then would it be reasonable to engage in solving the multitude of problems, bearing in mind that even the most basic conceptual issues related to hate crimes have not been resolved yet (Ignjatović, 2005).⁴ The paper provides an overview of arguments made by critics and proponents of the concept of hate crime; considers explanations concerning the content of the hate crime concept, respectively the issue of protected characteristics, and explores similarities and differences between hate crimes and related concepts.

ARGUMENTS IN FAVOR OF AND AGAINST THE CONCEPT OF HATE CRIME

Aside from defenders of the concept of hate crime as a criminological concept, there are those who oppose it. The arguments against the concept of hate crime in the literature are classified as sociological, legal and political. Sociological arguments indicate that the criminalization of bias-motivated acts creates greater social divisions than it contributes to social integration. The dilemma of diversity is a philosophical and legal issue that has implications for an array of social issues (Gratt & Janness, 2001). Should members of minority groups be treated the same as members of the majority or should they be given a special recognition that is the dilemma between social integration and division, and equal and special treatment (Gratt & Janness, 2001). This dilemma has been a subject of controversy in the literature. The legal arguments against this concept assert that the entire concept is contrary to human rights and freedoms, and that hate crimes are difficult to prove. Political arguments against this concept show that hate crimes arise as a result of the influence of interest groups on public policy. As per sociological arguments, Jacobs and Potter, leading critiques of this concept, argue that the criminalization of hate crimes creates even greater social divisions (Jacobs and Potter, 1997; Jacobs & Potter,

⁴ As it may be noted, the ascertainment that basic conceptual issues have not yet been resolved in the literature is true; however, it is also unquestionable that this is a highly topical issue in contemporary criminological research in the developed world. The facts which support the separation of hate crimes show that many countries have criminalized offenses motivated by prejudice or bias in national criminal legislations. Even if we challenged the specificity of hate crimes as a distinct type of crime, as a subject of criminological research, various forms of violence motivated by prejudice or bias toward other social groups would still remain a significant social and security problem worthy of attention.

1998).⁵ They argue it is difficult to view hate crimes as a special category because of their ambiguous, subjective and conflicting nature. They point out the problem of impossibility to determine the motive of an individual or a group concerning hate crimes – the perpetrator or perpetrators of these crimes. Furthermore, they criticize the reliability of the data collected by the Federal Bureau of Investigation (FBI) in the United States. Data collection and analysis of these offenses in the US did not contribute to better understandings of hate crimes or to more efficient work of law enforcement agencies. These authors believe that the U.S. Government, by insisting on hate crimes as a separate category of crime, creates a false or misleading impression that there has been a significant escalation of bias-motivated crimes in the U.S. Furthermore, the critics of this concept emphasize the essential role of the media in creating public opinion about the extent of hate crime. Many newspaper articles emphasize the alarming situation of bias-motivated violence without providing adequate evidence or explanations. Sometimes the media can contribute to bias-motivated violence (Jacobs & Henry, 1996). Furthermore, Henry and Jacobs (Jacobs & Henry, 1996) indicate that scholars also play a contributing role in shaping opinions that America faces hate crimes at a higher rate than in the past, and particularly criticize the book “The Rising Tide of Bigotry and Bloodshed: Hate crimes” by Jack Levin and Jack McDevitt (Levin & McDevitt, 1993), who claim that there is a tide of hate crimes the United States, and that the situation will continue to worsen. Their predictions are based on reports from non-governmental organizations such as the Anti-Defamation League, Klan Watch and the National Institute against Prejudice and Violence. Levin and McDevitt argue that economic problems create frustration and resentment and, coupled with stereotypes and prejudices, cause a tide of violence. Jacobs and Henry sharply criticize such views, stating that they are not based on research findings, but rather on speculations made by other commentators (Jacobs & Henry, 1996). As has already been stated, the legal arguments against hate crimes hold that the entire concept of hate crime is contrary to human rights and freedoms, and point out the difficulty in proving a hate crime. Ivan Hare discusses two types of arguments against the criminalization of hate crimes (Hare, 1997). The first group of arguments refers to contradictions between statutes trying to criminalize hate crimes and the rights guaranteed by the European Convention on Human Rights. In particular, Hare emphasizes freedom of expression, freedom of speech and freedom of association. The second group of arguments is pragmatic and relates to difficulties in proving hate crimes. Furthermore, Jacobs and Potter believe that the enhanced punishment of hate-crime perpetrators for their offensive beliefs and values is contrary to the First Amendment to the U.S. Constitution which guarantees the freedom of speech (Jacobs & Potter, 1997; Jacobs & Potter, 1998). Joe Morgan also criticizes the criminalization of bias-motivated crimes as a distinct category of criminal offense, and enhanced punishment. He discusses the inherent problem of proving a hate crime, as well as the issue of enhanced punishment of hate-crime perpetrators, arguing that the democratic

⁵ This is contrary to the opinion of sociologist Emile Durkheim that crime causes social reaction that integrates society (Durkheim, 1972), whereas hate crimes create divisions. This view is unjustified, taking into consideration that hate crimes are the so-called message crimes (American Psychological Association [APA], 1998), that the apprehension and punishment of the perpetrators of these criminal violent acts disconnects violent communication between antagonistic groups, and separates individual accountability from group accountability, prevents a spiral of violence and revenge, and creates new conditions for repairing the harm caused by these crimes in the community are created, as well as possibilities for dialogue and social integration.

right of equality before the law is undermined in this way (Morgan, 2002). Political arguments refuting the concept of hate crime point to the influence of political interest groups. For example, Jacobs and Henry argue that various interest groups in the United States use the issue of hate crimes to achieve their political aims (Jacobs & Henry, 1996). They also emphasize that a widely-held view that hate crimes have reached epidemic levels in America is unjustified. They allege that the etymology of the word epidemic does not portray the actual hate crime rate in the United States. In their view, the actual situation has been exaggerated by various interest groups and the media which primary aim is to sell more papers, for hate crime cases always attract public attention. However, this is not the actual situation in the United States. They further state that LGBT associations, Jewish people, black people, Asian-Americans, and the disabled are leading proponents of the thesis that hate crimes have reached epidemic proportions in America. These groups successfully obtain political support (Jacobs & Henry, 1996). Associations for the protection of women's rights argue that violence against women is the most common form of hate crime. By painting a false picture, women's rights activists have created a favorable political climate to criminalize these acts in criminal legislation. For instance, Morgan addresses the question of which social groups should enjoy special protection and highlights the problem of identity, and the role of interest groups in determining social groups which should be included in the concept of hate crime (Morgan, 2002). He criticizes the existing legal solutions to this problem and rises a question as to whether special treatment enjoyed by some social groups should be given to other vulnerable categories or social groups, such as workers in certain hazardous occupations (police officers, prostitutes, or health workers at abortion clinics), who are frequent targets and are attacked with the intent to intimidate the entire group. Additionally, Morgan quotes the category of pedophiles as an example, which satisfies basic criteria for qualifying as hate-crime victims (Morgan, 2002). Aside from opponents of the concept of hate crime as a distinct type of crime, there are many scholars who support this concept in recent scholarly criminological literature. A major arguments put forward in support of this fact are the devastating consequences hate crimes can have, not only for the individual and the targeted community, but also for society as a whole. For instance, Paul Iganski argues that those who think that the criminalization of hate crimes create a greater social division than it integrates the society do not provide sufficient arguments to support such claims (Iganski, 1999: 393). Iganski thinks it is important to create a social climate which does not tolerate such behavior. Rob White also challenges the arguments made by Jacobs and Potter. White argues that their arguments, in a long-term perspective, are neither convincing nor constructive (White, 2002). White believes that accepting a wide, or narrower, definition of hate crime is not so symptomatic in terms of analytical ambiguity as is the political and social implications and emotions surrounding debates regarding social evil (White, 2002). It is a fact that interest groups use certain social problems to achieve broader goals, usually through selective data use and the mobilization of public opinion in a certain direction, and it is something that ought to be borne in mind. However, there is a danger that the criticism of these interest groups may develop into an ideology describing these lobby groups as manipulative, using the current situation as a means to achieve political aims. This is one of the favorite rightist's arguments, who discredit the voices of those who point to the concerns of the vulnerable and the powerless in society (White, 2002). White emphasizes the importance of understanding social conditions in which hate crimes oc-

cur, and indicates that, despite all the problems in society, it is necessary to set clear low boundaries in order to protect human rights, personal security and the well-being of society. Eugene McLaughlin, one of the critics of Jacobs and Potter, holds that hate crimes should not be ignored, because even minor incidents can create intolerance, prejudice and hostility. Racist groups can use of such a situation to instill fear in an entire minority community (McLaughlin, 2002). Jeanine Cogan puts forward certain arguments to support her view that bias-motivated acts should be criminalized as a distinct type of criminal offense, i.e. to be viewed as a separate conceptual category. She also refutes the arguments of critics who hold that the criminalization of hate crimes distinguishes these crimes from other types of crime in the sense that hate crimes are deemed more socially dangerous acts. Cogan does not refute this claim because different offences have already been distinguished by their danger to society (Cogan, 2002). Hate crimes are offences of greater societal dangerousness because they have a more harmful psychological impact on the victims than other types of crime which are not motivated by bias. She also explains that great societal dangerousness mirrors in the fact that hate crimes have far-reaching negative consequences on the community (Cogan, 2002). Further arguments that criticize the existence of hate crimes as a distinct legal and criminological category are the claims that the situation in the US is very alarming. This poses a question of how alarming the situation should be for the government to decide to respond to the existing problems (Cogan, 2002). Cogan makes yet another convincing argument in favor of the concept of hate crime pertaining to the responsibility of state authorities. Hate crimes are a threat to fundamental social values of a democratic society. The constitutional obligation of the state is to protect citizens' rights and to prevent various forms of discrimination. She also refutes the argument of critics that hate crimes can not be proven (Cogan, 2002). U.S. Department of Justice has established criteria for determining whether a crime is bias-motivated (Cogan, 2002). Hate crimes are acts of intimidation and control mechanism intended for those who do not act in socially acceptable ways (Perry, 2001). Perry explains that the causes of hate crimes may lie in general attitudes and beliefs that individuals or groups who cross political, social or cultural boundaries are legitimate targets of attack (Perry, 2001). Psychological and social repercussions, which are extremely destructive to the victim and the costs of damage to homes the victim have to absorb, are not the only hate crime consequences. Hate crimes also create intense fear, suspicion, and hostility in the community, which have far-reaching negative consequences on society-at-large (Perry, 2001). Brian Levin also believes that these crimes pose a great threat to society. Hate crimes cause great harm to the individual, the targeted community, provoke retaliatory crimes, inflict emotional harms on their victims, and incite community unrest. (Levin, 1999). Hate crimes cause psychological trauma to the victims, disturb social peace, and increase the risk of violence in the community. In addition to this, it is important to point out financial and other resources expended to repair the harm caused by these crimes (Levin, 1999). Sam Torres discusses trigger incidents, i.e. incidents that can be interpreted as a fuse that can provoke retaliatory incidents, civil disturbances and riots, if an atmosphere of hate has already been created in society (Torres, 1999). The nature of hate crimes, primarily because of their impacts, makes this type of crime unique (Saucier, Brown, Mitchell, & Cawman, 2006). McDevitt, Levin, and Bennett believe that hate crimes are brutal acts and that victims are usually chosen at random. The social control of hate crimes is necessary because an individual behavior can cause retaliatory at-

tacks by the victim groups (McDevitt, Levin, & Bennett, 2002). Incidents and hate crimes can easily escalate into a large-scale intergroup conflict, and if the perpetrators are not punished, they will be encouraged to perpetrate such criminal offenses in the future (Levin & Rabrenovic, 2001). Thus, even if we accept the view that it is justified to classify hate crimes a distinct type of crime, certain dilemmas that need to be addressed will still continue to arise, such as the issue of protected characteristics, which is discussed in the following section.

THE CONTENT OF THE HATE CRIME CONCEPT: THE ISSUE OF PROTECTED CHARACTERISTICS

One of the most contentious issues relates to community groups which should be given special protection under the law.⁶ The issue of protected characteristic is not resolved in the same manner in legislations, which, in a sense, gives a broader social and political character to the entire concept of hate crime. It is a matter of social structure, social power and influence of various social groups, which have the potential to influence decisions of the Legislator. Ignjatovic justifiably raises the question of boundaries. (Ignjatović, 2005). This boundary is set by the legislator, which determines which groups qualify as victims. Most often this membership is based on racial, national and religious identity. The inclusion of gender and the category of disabled persons in the concept of hate crime has been a subject of debates and have not been widely accepted in the literature. Additionally, violence against homosexuals is included in the concept of hate crime. Homosexuals are frequent victims of attacks because of their sexual orientation (Herek, 2009). Barbara Perry believes that every society changes, therefore hate crimes and the concept of social identity are variable categories because they are socially constructed (Perry, 2001). Additionally, each individual may simultaneously belong to different social groups. The question whether to include disability in the concept of hate crime, as well as violence against women has been a controversial subject in the existing literature. Arguments in favor of the inclusion of disability in the concept of hate crime are based on the fact that bias attitudes and stereotypes against the disabled are the result of their social marginalization. Persons with disabilities represent a significant part of the world population, 54 million in the US alone (McMahon, West, Lewis, Armstrong, & Conway, 2004: 69).⁷ The research results indicate that people with disabilities have a sense of group identity (Gratt & Janness, 2001). The associations of disabled people in the US have achieved significant political influence as a civil rights movement. An argument for including this category in the concept of hate crime is the fact that persons with disabilities in the United States have traditionally been exposed to various forms of discrimination and physical and sexual abuse, including subjection to medical experiments in the past,

⁶ In the literature on hate crimes, the term protected characteristics is often used in regard to social groups included in the hate crime concept, such as race, national or ethnic origin, religion, sexual orientation and the like.

⁷ It is generally believed that people with disabilities make up about 10 percent of the world population (Mont, 2007).

eugenic⁸ sterilization and the like. (Gratt & Janness, 2001, McMahon et al., 2004). Considering disability, it is necessary to examine whether persons with disabilities are attacked because they are easy targets unable to resist, or they are attacked because of the hatred toward the disabled as a group. This is a crucial issue that should be borne in mind when analyzing this problem. The controversial issue of gender would not be addressed in the context of hate crimes until many years later. The gender, in a sense, fits into the paradigm of hate crime if the victim is chosen solely based on gender, and if the attack has not been provoked in any other way, i.e. attacks based on different motives other than gender. In practice, there have been many gender-motivated, murders of women (a.k.a. femicide) – women were killed just because they were women. Results of a study (survey) on attitudes toward hate crimes show that violence against women does not fit into the concept of hate crime. Respondents in this survey believe that women belong to the group with the least risk of becoming hate-crime victims (Saucier et al., 2006). Common arguments against the inclusion of gender in the concept of hate crime point out that the criminalization of hate crime based on gender is a result of feminist lobbying organizations. Radical feminists strongly advocate the inclusion of gender in the concept of hate crime (McPhail, 2002); however, the gender does not fit into the paradigm of hate crime because the victim usually knows and has a prior relationship with the perpetrator, and violence against women is a common occurrence in society (McPhail, 2002). Although it is a fact that many women who are victims of violence know their attackers, the connection, however, is not sine qua non of the existence of a criminal offense committed out of a bias motivation (Lawrence, 1999). It is not possible to classify rape and domestic violence as hate crimes. Another argument against the inclusion of gender in the concept of hate crime refers to the existence of specific laws relating to the prevention of violence against women which is a common occurrence in most societies. If we would include gender, it would significantly burden data collection mechanisms, as well as the judicial system. The last argument addresses the motivation. When a person assaults a female, the person does not necessary have to hate her (McPhail, 2002). The issue of gender as part of the concept of hate crime is still in its infancy. Regardless of whether to include gender in the concept of hate crimes or not, violence against women remains a serious social problem (Nikolic-Ristanovic & Dokmanovic, 2006).

SIMILARITIES AND DIFFERENCES BETWEEN HATE CRIMES AND RELATED CONCEPTS

One of the important questions that must be answered relates to similarities and differences between hate crimes, on the one hand, and terrorism, genocide, ethnic cleansing, discrimination, and hate speech on the other hand. Establishing similarities and differences between these concepts is a complex task, which goes beyond the scope of this study. An analysis of the similarities and differences should include criminology, security and legal aspects of these phenomena. It may be noted that prejudice and bias toward other social groups are the focal point of the concepts mentioned above, which manifests

⁸ Eugenics is a racist doctrine based on racial hygiene and creating conditions that lead to the procreation of healthy posterity, and preventing the birth of unhealthy and incapable progeny (Moss, 2005).

itself in many different forms and poses dangers to society in different ways.⁹ Consequently, the legal definitions of these phenomena vary considerably. A number of commentators have given a brief overview of the problem; however, more detailed analyses have not been carried out. Mark Hamm in his study of American Skinheads (Hamm, 1993) makes a distinction between terrorism and hate crimes and holds that hate crimes are motivated by bias without having social or political aims in the background, unlike terrorist acts which always have a political purpose. Hamm argues that some acts of terrorism can be classified as hate crimes; however, hate crimes are not always acts of terrorism, unless they are committed for political purposes (Hamm, 1993). Levin and McDevitt (Levin & McDevitt, 1993) argue that the difference between hate crimes and homegrown terrorism is disappearing due to the increased political sophistication of organized extremist groups. Some hate crimes in the United States have evolved into homegrown or domestic terrorism. Frank E. Hagan argues that violent criminal behavior is meant to inflict fear and terror on the community for political purposes. If a person draws a swastika, they send their victims a political message, even if it was not their intention (Hagan, 1997). Michael Ronczkowski states that organized extremist groups in the United States have traditionally been regarded as criminal organizations. However, as Ronczkowski notes, times have changed and these groups can be classified as homegrown or domestic terrorism. Many groups in the United States fit the definition of homegrown terrorism.¹⁰ From the early 1960s to date, groups have carried out different attacks: from attacks on abortion clinics to the attack on Alfred P. Murrah Federal Building in Oklahoma City in April 1995 (Ronczkowski, 2003). This raises questions about the connection between hate crimes and terrorism as one of the major security challenges of the contemporary era (U.S. Department of State, 2009). From a sociological perspective, we can see that both phenomena are the result of deep structural inequality in the contemporary world, at the societal (Perry, 2001) and global level (Pečujlić 2002; Stiglitz, 2004 Basic, 2003). In criminological-phenomenological sense, both the perpetrators of hate crimes and the perpetrator of terrorist acts can have a similar modus operandi, which involves using various forms of violence against people and property. In security terms, the importance of this connection is reflected in their capacity to endanger security, create public fear and insecurity, and mistrust among antagonistic groups in society, which can lead to tensions and new conflicts.¹¹ Legally, there is no connection between the two phenomena because it is a matter of the criminal law's definitions. It is not easy at first blush to distinguish hate crimes from related phenomena, such as genocide, ethnic cleansing, discrimination, or hate speech. Determining similarities and differences between hate crimes and other related concepts would, in this case, require a detailed sociological, criminological and legal analysis. The term "genocide" encompasses the gravest crime against humanity and values protected by international law. The International Convention on the Prevention

⁹ Allport (Allport, 1954) distinguishes five degrees of prejudice manifestation in society: 1) antilocution, 2) avoidance, 3) discrimination, 4) physical attack, 5) extermination.

¹⁰ Domestic terrorism is defined as actions perpetrated by individuals intended to persuade or deter governments or civilian population by using violence intended to intimidate or coerce. These activities can range from threats to violent acts, such as abduction, physical abuse, or homicide (Ronczkowski, 2003).

¹¹ In addition to these similarities and differences, it can be noted that modern terrorism is a global phenomenon, unlike hate crimes which generally have local significance. Thus, contemporary international terrorism takes place in a global arena, whereas hate crimes occur at the national level.

and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on December 9, 1948, which came into effect on January 1, 1951, contains the international legal definition of the crime of genocide as an act committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Killing only one member of the group suffices to constitute the crime of genocide, as long as it is committed with the intent to destroy the entire group (Avramov & Kreča, 1999). In 1944, Rafael Lemkin coined the word “genocide” to describe the mass extermination committed by the Nazis during World War II, because, as he argued, the expression “mass murder” did not fit the nature of the crime (Svensen, 2006). The concept of ethnic cleansing has been used in the last two decades. It is difficult to determine similarities and differences between genocide and ethnic cleansing, considering the fact that the term “ethnic cleansing” has no generally agreed definition. Conditionally, we can say that ethnic cleansing is focused on forced removal of the members of a particular social group from a given territory, whereas the aim of genocide is extermination. However, what is common to these crimes is the motive of destruction - a national, ethnic, religious or racial hatred. The difference lies in the degree of societal dangerousness posed by hate crimes and crimes against humanity, as well as values protected by international law. Considering the degree of societal dangerousness, hate crimes are classified as minor offenses. The term “discrimination” encompasses an act by which members of a particular group are denied merits available to other groups (Giddens, 2001). Discrimination is a result of the complexity of the social structure, social inequality and division. Discrimination may encompass different forms on various grounds, such as racial, national, ethnic or religious origin, sex, sexual orientation, disability, age, language, social origin and other grounds. Laws prohibiting discrimination have been enacted in many countries to provide and promote human rights and freedoms as well as to create conditions for exercising the equal rights, freedoms and opportunities of all citizens (Bell, 2002). What hate crimes and discrimination have in common is the fact that they arise from social inequalities and antagonisms between different groups. What distinguishes them is the way these antagonisms manifest in society. Discrimination is less dangerous to society than hate crimes. The violation of legal provisions prohibiting discrimination leads to civil rights violations; therefore hate crimes represent a criminal violation. Hate speech is usually considered spoken or written language, encompassing the public incitement of hatred against a particular group or an individual based on race, religion or ethnicity (Walker, 1996; Cortese, 2006). The criminalization of hate speech is a very sensitive issue, which brings into question a balance between full exercise of one’s rights to freedom of speech and hate speech which violates the rights of others. It is a dilemma between a free and open society which guarantees freedom of speech, and a society which protects the democratic rights of others by restricting the freedom of speech through a certain form of censorship. This is a very sensitive and controversial issue that some countries have differently resolved in their criminal legislation (OSCE Office for Democratic Institution and Human Rights [ODIHR], 2005). Enjoying human rights and freedoms is not an absolute right and there are certain restrictions provided by the European Convention on Human Rights. Offensive content, for example, is not protected by the Convention (Weber, 2009). Unlike most European countries, the United States does not criminalize hate speech, even truly offensive expressions (Walker, 1996). However, there is a close link between hate crimes and hate speech. In proving hate-crime offences, the use of language and symbols of hatred is

one of the key indicators suggesting that a particular crime is bias-motivated. By using hate speech, the racist ideologies that inspire perpetrators of hate crimes are promoted (Strobl, Klemm, & Wurtz, 2005). Finally, when looking at the relationship between hate crimes and related phenomena, regardless of the similarities and differences, it can be noted that prejudice is their shared characteristic. Namely, prejudice is a shared social basis which is the basis of discriminator and its ensuing actions, and it corresponds with the various stages discussed. The essence remains the same, and the difference lies only in the manifestation of prejudice and its intensity in concrete social circumstances.

CONCLUSION

As a relatively new research paradigm in criminology, hate crimes have enabled an entirely different way of looking at the old problem which is inherent, to a lesser or greater extent, in all societies, regardless of geographic, political, economic or cultural differences. The concept of hate crime was first introduced into criminal law and judicial practice, and then criminology faced the challenge to define it, scientifically formulate it and offer solutions to many unresolved conceptual issues. Although there are theoretical and practical justifications for the concept, the very phrase “hate crimes” should be critically reviewed. The words we use are not just a matter of semantics, but also a way to define a concept. Deeper theoretical and practical implications stem from the term “hate crimes”. The issue as to which term accurately defines the crimes in question – hate crime or bias crime – or whether a different term should be employed instead requires further exploration. Hatred is difficult to define and prove. From a theoretical standpoint, the argumentation and sustainability of the concept of hate crime exist to the extent to which the concept is applicable in practice. The next question relates to the content of the concept. Namely, the issue of protected characteristics is not resolved in legislation in the same way, and different opinions are present in theory. It all creates new dilemmas and the need for further empirical and theoretical research. Boundaries with related but different phenomena, such as genocide, ethnic cleansing, hate speech and discrimination, are clear. However, the link between hate crimes and domestic terrorism needs further investigation – bearing in mind the similarities between certain hate crimes and acts of domestic terrorism.

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