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Motivation of the hate speech perpetrator from the Polish and Greek perspective

Introduction

In today's world, hate speech is widely considered as an important violation of human rights while freedom of speech constitutes one of the essential elements of today's standards of a democratic state, in the area of fundamental rights and civil liberties. It could be guaranteed in national Constitutions, ratified acts of international law, and in ordinary legislation. Freedom of speech is a substantive right which does not have, however, absolute nature, which means that in certain situations it may be restricted to protect another's rights. We can chance upon such situations in cases of acts of hate speech aimed at spreading hate, resentment against a person or a specified group of people. With regard to hate speech, there are no doubts that it is an abuse of the guaranteed freedom of speech. The motivation of the perpetrator in the commission of such an offense are certain characteristics of the victim of the crime or the victim's membership in a particular group, in relation to which the perpetrator feels disinclination¹.

The aim of the study is to compare the penalization of hate speech under Polish and Greek law and whether the analysis of current legal regulations

¹ A. Bodnar, M. Szuleka, *Koncepcja „nadużycia prawa” w Konwencji o ochronie praw człowieka i podstawowych wolności a mowa nienawiści* [The concept of „abuse of the law” in the Convention for the Protection of Human Rights and Fundamental Freedoms and hate speech], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), *Mowa nienawiści a wolność słowa. Aspekty prawne i społeczne* [Hate speech and freedom of speech. Legal and social aspects], Warszawa 2010, pp. 150–172.

offer sufficient protection to the recipients of such statements. In addition, the motivation of the perpetrator was studied, because only a comprehensive aspect of this problem provides grounds for an effective elimination of hate speech from the public space. With regard to the hate speech, legal regulations must take into account the psychological factors of the perpetrator, because the boundary between freedom of speech and hate speech is not always clear, leaving the field open for abuse.

In this context, the motivation of the perpetrator is an important issue for penalization in view of justice and preventive reasons. Defining the motive is very important and refers to its cause. The issue of determining the recital is also relevant in assessing the aggravating circumstances that should affect the penalty².

The concept of hate speech

Difficulties emerge while defining the concept of 'hate speech'. This is mainly due to the fact that this term is used in various contexts, understood mostly commonly, and often abused. Polish legislation does not provide a definition of hate speech, although some regulations prohibit specific activities, the element of which can be considered hate speech. We can mention among them, for example, insults which incite hatred on the grounds of nationality, race and/or religion. There is a definition for hate speech in the Greek Criminal Code where hate speech goes by the phrase "public incitement to violence or hatred".

From a global point of view there is no single, universally accepted legal definition of hate speech. However, it is worth to point out a few attempts already taken in its creation. In the Recommendation No. R (97) 20³, adopted by the Committee of Ministers of the Council of Europe on 20 October 1997 the included definition was, according to which "hate speech" shall be deemed, any form of expression that distributes, instigates, promotes or justifies racial hatred, xenophobia, anti-Semitism and other forms of hatred based on intolerance, including intolerance expressed in aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, immigrants and people of the immigration origins⁴. To this definition European institutions – includ-

² W. Petherick, G. Sinnamon, *Motivations: offender and victim perspectives*, [in:] W. Petherick (ed.), *Profiling and Serial Crime*, Third edition, Waltham 2014, pp. 393–430; W. Petherick, *Motivations*, [in:] W. Petherick (ed.), *Applied Crime Analysis*, Oxford 2015, pp. 148–171.

³ Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech", <https://rm.coe.int/1680505d5b> (accessed: 9.01.2022).

⁴ A. Pesinis, *The Regulation of "Hate Speech"; the Meaning of "Incitement" under the Case-Law of the European Court of Human Rights and the Jurisdictions of the European Union, the United Kingdom and Greece*, Budapest 2015.

ing the European Court of Human Rights – and non-governmental organizations, experts and human rights defenders mostly relate in their documents⁵.

Speeches which incite hatred, and speeches that express hatred are considered to be hate speech. The feature of hate speech, as a discrediting element, in practice may be attributed to – race, ethnicity, nationality, religion, political opinions, gender, and so on. The discrediting entity can be a person or group of persons belonging to or being, not only, a specific minority but also belonging to or representing a specific majority. What makes a speech hate speech is the nature of its content, which is judged objectively in the process of its confronting with the principles of social coexistence⁶.

It is worth to add here, that in practice, often interchangeably, to determine hate crime expressions such as *hate crime*, *hate speech* and *bias/prejudice crime* are used. The relation of the terms *hate crime* and *hate speech* is easy to grasp. There is no doubt that the terms “hate crime” and “hate speech” have a different conceptual scope. Hate crime can be the only human behavior prohibited by law under the threat of punishment as a crime or misdemeanor, unlawful, culpable and socially harmful to a degree higher than negligible, due to the specific characteristic of the victims indicating membership to a group. Of course, not every speech act is criminal. On the other hand, not every hate crime is carried out in verbal form. Therefore a common area between the conceptual reference “hate crime” and “hate speech” exists⁷.

As it has been already noted, the term “hate speech” is not in the Polish legal language, but now it is a permanent part of the language of legal-case law and the doctrine of law. It is stressed out in the literature that the present state of law creates “protection hierarchy of hate speech victims”⁸. In public debate, there are many attempts to build such a definition, which would take into consideration all the reasons for which hate speech can take place. Non-gov-

⁵ N. Chetty, A. Sreejith, *Hate Speech Review in the Context of Online Social Networks*, “Aggression and Violent Behavior” 2018, Vol. 40, No. 5, p. 110.

⁶ L.K. Jaskuła, *Wolność działalności dziennikarskiej w perspektywie zjawiska mowy nienawiści (wybrane aspekty prawne)* [Freedom of journalistic activity in the perspective of the phenomenon of hate speech (selected legal aspects)], [in:] W. Lis (ed.), *Status prawny dziennikarza* [Legal status of a journalist], Warszawa 2014, pp. 315–343.

⁷ M. Woiński, *Prawnokarne aspekty zwalczania mowy nienawiści* [Criminal law aspects of combating hate speech], Warszawa 2014; M. Woiński, *O pojęciu przestępstwa nienawiści (hate crime)* [On the concept of hate crime], [in:] P. Szczepłocki (ed.), *Przestępstwa z nienawiści w Polsce. Publikacja pokonferencyjna* [Hate crimes in Poland. Post-conference publication], Toruń 2011, pp. 6–15; E. Rogalska, M. Urbańczyk, *Złożoność zjawiska mowy nienawiści w pozaprawnym aspekcie definicyjnym* [The complexity of the hate speech phenomenon in terms of its non-legal definitional aspect], “Studia Nad Autorytaryzmem i Totalitaryzmem” 2017, Vol. 39, No. 2, pp. 119–120.

⁸ A. Słodzińska-Simon, *Decyzja ramowa w sprawie zwalczania pewnych form i przejawów rasizmu i ksenofobii jako trudny kompromis wobec mowy nienawiści w Unii Europejskiej* [Framework Decision on combating certain forms and expressions of racism and xenophobia as a difficult compromise to hate speech in the European Union], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), op. cit., pp. 93–114.

ernmental organizations in Poland dealing with monitoring and combating manifestations of racism, anti-Semitism, xenophobia and other forms of discrimination and intolerance most frequently cite the definition formulated by S. Kowalski and M. Tulli⁹, according to which hate speech includes speech (oral and written) and iconic performances reviling, denouncing, deriding and degrading groups and individuals for reasons which are, in part at least independent from them – racial, ethnic and religious membership, gender, sexual preference, disability or membership to the “natural” social group, such as the inhabitants of a territory, representatives of a particular profession, speaking specific language etc.

According to The European Commission against Racism and Intolerance General Policy Recommendation No. 15, hate speech based on the presumption that a person or a group of persons are superior to others. Therefore, they are inciting acts of violence or discrimination, thus undermining respect for minority groups and damaging social cohesion¹⁰.

The motivation of the perpetrator of hate speech

In criminal cases conducted for crimes motivated by prejudice and hatred, the biggest problem for law enforcement authorities is the evaluation of the behaviour of the person in criminal-justice terms, and in particular, to determine whether we had to deal with a crime committed of racist, ethnic or anti-Semitic motives, possibly due to the prejudice of ethnic or religious differences. Therefore, the first procedural actions should aim to establish the perpetrator’s motivation. For this purpose, it is essential to determine whether the perpetrator, before, during or after committing the criminal act externalized their negative attitude toward a particular group of people, which was represented by the victim.

Motivation is a general term covering the states of the individual, under influence of which it deals with certain aspects of its environment. As a result, the behavior of the person is stimulated and focused on¹¹. Generally speaking, by the perpetrator’s motivation we must understand the complex mental processes stimulating, regulating, and directing their behavior, awareness in different degrees, which lead the perpetrator to take criminal action or omissions of their legal obligation¹².

⁹ S. Kowalski, M. Tulli, *Mowa nienawiści. Raport 2001, I. Próba definicji* [Hate speech. Report 2001, An Attempted Definition], 2001, <http://or.icm.edu.pl/monitoring3.htm> (accessed: 10.02.2022).

¹⁰ ECRI General Policy Recommendation No. 15, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.15> (accessed: 10.01.2022).

¹¹ Ch.E. Skinner, *Psychologia wychowawcza* [Educational psychology], Warszawa 1971.

¹² P. Marcinkiewicz, *Motywacja sprawcy czynu zabronionego jako przesłanka odpowiedzialności karnej* [Offender’s motivation as a premise for criminal liability], “Prokuratura i Prawo” 2011, No. 5, pp. 24–38.

In psychological literature, there is a general consensus that motivation constitutes an internal state or condition (sometimes described as a need, desire or want) that serves to activate or energize behavior and give it direction¹³. It involves the biological, emotional, social, and cognitive forces that activate human behavior. Franken¹⁴ provides an additional component in his definition: the arousal, direction, and persistence of behavior.

Moreover, many researchers are now beginning to acknowledge that the factors which energize behavior are likely different from those that provide for its persistence¹⁵. Thus, motivation doesn't only refer to the factors that activate behaviors; it also involves those factors which direct and maintain these goal-directed actions. Such motives are rarely directly observable. Instead, people have to infer the reasons for why people act in certain ways based on observable behaviors¹⁶.

In contemporary psychology, motivation issues belong to the basic concepts but also the most controversial ones. In psychology, we can distinguish at least a couple of its definitions emphasizing – depending on the theoretical trend which they derive from, instincts, learning processes and the experience of the individual or on the person's cognitive processes¹⁷.

Most motivation theorists assume that motivation is involved in the performance of all learned responses; that is, a learned behavior will not occur unless it is energized.

Psychologists have proposed different theories to explain motivation:

– Instincts: The instinct theory of motivation suggests that behaviors are motivated by instincts, which are fixed and inborn patterns of behavior¹⁸. Such instincts might include biological instincts that are important for an organism's survival.

– Drives and Needs: Drive theory suggests that people have basic biological drives and that behaviors are motivated by the need to fulfil these drives¹⁹.

¹³ P.R. Kleinginna, A.M. Kleinginna, *A categorized list of motivation definitions, with a suggestion for a consensual definition*, "Motivation and Emotion" 1981, Vol. 5, No. 3, pp. 263–291, <https://link.springer.com/article/10.1007/BF00993889> (accessed: 15.01.2022).

¹⁴ R.E. Franken, *Human Motivation*, Wadsworth 2007.

¹⁵ W. Huitt, *Motivation to Learn: An Overview*, Valdosta 2011, <http://www.edpsycinteractive.org/topics/motivation/motivate.html> (accessed: 20.01.2022).

¹⁶ J.S. Nevid, *Psychology: Concepts and Applications*, Fourth edition, Belmont 2013.

¹⁷ J. Kucharewicz, *Psychologiczna analiza procesów motywacyjnych przestępstw popełnianych przez nieletnich (na przykładzie przestępstw agresywnych i nieagresywnych)* [Psychological analysis of the motivational processes of crimes committed by minors (on the example of aggressive and non-aggressive crimes)], Katowice 2008, <https://sbc.org.pl/publication/13384> (accessed: 13.01.2022).

¹⁸ D.G. Myers, *Exploring Social Psychology*, New York 2015.

¹⁹ A.B. Siegling, K.V. Petrides, *Drive: theory and construct validation*, "PLoS ONE" 2016, Vol. 11, No. 7, p. e0157295.

– Arousal Levels: The arousal theory of motivation suggests that people are motivated to engage in behaviors that help them maintain their optimal level of arousal²⁰.

– Extrinsic vs. Intrinsic Motivation.

Different types of motivation are frequently described as being either extrinsic or intrinsic:

Extrinsic motivation occurs when we are motivated to perform a behavior or to engage in an activity to earn a reward or avoid punishment²¹.

Intrinsic motivation involves engaging in a behavior because it is personally rewarding; essentially, performing an activity for its own sake rather than the desire for some external reward. Essentially, the behavior itself is its own reward²².

Based on interviews with police officials, victims, and several hate crime offenders, Levin and McDevitt²³ developed a typology that identified three primary motivators: offenders who commit their crimes for the excitement or the thrill, offenders who view themselves as defending their turf, and a small group of offenders whose life's mission is to rid the world of groups they consider evil or inferior. However, in 2002 the authors conducted a new study in the belief that the typology used to assist law enforcement officers in investigating and identifying hate crimes is incomplete.

The analysis of the cases focused on the offender's motivation. The findings indicated that the most common type of hate crime was an attack committed for the thrill or excitement experienced by the offender. Unlike thrill-motivated offenses, defensive bias attacks were committed in order to protect the offender's neighborhood from those he considered to be outsiders or intruders from the offender's perspective.

Another category of motivation identified in the study was "retaliatory" hate crimes, in which offenders acted in response to a hate crime against themselves or an individual in the group to which the offender belongs. Some of the hate crimes examined were committed after rumors circulated about a hate crime against the offender's group, whether or not the rumor was accurate. Retaliatory motivation is thus added to the typology developed by Levin and McDevitt²⁴.

²⁰ D.H. Hockenbury, S.E. Hockenbury, *Discovering Psychology*, Fifth edition, New York 2011.

²¹ J. Tranquillo, M. Stecker, *Using Intrinsic and Extrinsic Motivation in Continuing Professional Education*, "Surgical Neurology International" 2016, Vol. 7, No. 8, pp. 197–199.

²² W. Lee, J. Reeve, Y. Xue, J. Xiong, *Neural Differences between Intrinsic Reasons for Doing versus Extrinsic Reasons for Doing: An FMRI Study*, "Neuroscience Research" 2012, Vol. 73, No. 1, pp. 68–72.

²³ J. Levin, J. McDevitt, *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*, Boston 1993.

²⁴ J. McDevitt, J. Levin, S. Bennett, *Hate Crime Offenders: An Expanded Typology*, "Journal of Social Issues" 2002, Vol. 58, No. 2, pp. 303–317.

It is indicated in criminal literature²⁵, that motivation is a concept in which are located the perpetrator's experiences of intellectual (motive) and emotional (reveille) nature, which shape their behavior, as well as allow to determine the reasons that underlie their will's decision to commit a crime. Motive explains, why the perpetrator has committed a crime, reveille is a feeling on the grounds of which this desire arose. In practice recreating the perpetrator's motivation is extremely difficult. The court is obliged to take into account the perpetrator's motivation in the assessment of the degree of social harmfulness' and when administering punishment. When it comes to establishing the social harmfulness' degree, we should take into account and evaluate the perpetrator's motivation from two points of view. First as a fixed attribute evidencing a kind of degree of danger of the perpetrator, reflecting his personality traits, attitudes, and attitudes towards different goods. Secondly, we must take into account the motivation within the meaning of the main motive, which eventually led to the crime being committed. The evaluation made in the aforementioned way is one of the conditions determining whether the social harmfulness' degree is greater than negligible. It also indirectly affects the level of the sentence, by the administration of which the Court has to take into account the social harmfulness' degree of the act²⁶.

The Court has to take into account the motivation directly when administering the punishment. If the Court states that due to the reasons that shaped the behaviors of the perpetrator, they should be treated more leniently, the Court shall treat motivation as a mitigating circumstance or for the same reasons judge it more harshly and consider it as an aggravating circumstance²⁷.

Discussion on protection against hate speech under Polish and Greek criminal law

Relevant in the Polish criminal law, from the point of view of hate speech, there are primarily two provisions – the Article 256 and 257 of the Polish Penal Code (PPC). In accordance with Article 256 of the PPC, criminal liability is subject to the person who publicly promotes fascist or other totalitarian systems of state or incites hatred based on national, ethnic, racial or religious differences or for the reason of a lack of any religious denomination. In turn, Article 257 of the PPC penalized the offence of public insult of the group with-

²⁵ I. Zgoliński, *Art. 53*, [in:] V. Konarska-Wrzošek (ed.), *Kodeks karny. Komentarz*, wyd. III [The Penal Code. Commentary, ed. III], 2020, Lex; M. Budyn-Kulik, [in:] M. Mozgawa (ed.), *Kodeks karny. Komentarz aktualizowany* [The Penal Code. Comment updated], 2022, Lex.

²⁶ M. Budyn-Kulik, *Umyślność w prawie karnym i psychologii: teoria i praktyka sądowa* [Intent in criminal law and psychology: judicial theory and practice], Warszawa 2015.

²⁷ M. Derlatka, *Motywacja w sądowym wymiarze kary* [Motivation in court sentencing], "Prokuratura i Prawo" 2012, No. 6, pp. 28–37.

in the population or public insult or breach of personal inviolability of another individual because of its national, ethnic, racial, religious affiliation or because of their lack of any religious denomination²⁸.

The essence of hatred incitement boils down to the advancement of content which is objectively, in all possibility, to arouse strong resentment, hostility, anger, negative rating, with respect to a specific group of people, characterized by differences set out in the provision²⁹. Hatred incitement of Article 256 § 1 of the PPC is a criminal offence which is strongly motivationally sated. This hatred comes from specified, indicated in the Act, reasons. The subjective side of the act from Article 256 § 1 of the PPC, according to the representatives of the doctrine, consists of intentionality in the form of direct intent³⁰. In Article 256 § 1 of the PPC, motivation indicated in the provision is in some way defined by the use of a verb mark “incites hatred”. Hatred is a feeling which expresses strongly negative emotional relationship toward someone or something. It is not, however, hate harbored by the perpetrator. The perpetrator himself can also harbor this feeling, but it is not necessary for the implementation of constituent elements of this offence. Even if the perpetrator feels hatred toward a certain group of people or individuals, they may not realize the real reason of such emotions or realize it, but for some reason do not want to admit it aloud, and “mask” it, raising national issues, ethnic issues, etc. From the point of view of Article 256 § 1 of the PPC, it has no meaning whatsoever. The motivation is like a crucible in which coalesce different reasons, attitudes, emotions, knowledge, expectations, etc. In criminal matters, relevant is the final shape, which is reflected in the perpetrator’s awareness in the form of these nationality reasons, etc. Hatred incitement contains certain directionality, although the goal does not belong to the constituent elements of a criminal act of Article 256 § 1 of the PPC. The actual cause, for which the perpetrator wants to channel negative social feelings against some nationality or ethnicity does not matter. Motivation can be complex. The essential motive does not have to be a certain ideology e.g. fascist or totalitarian, it also does not need to be religious issues. The perpetrator may hide the real reason of their actions, because its disclosure might prevent them from achieving the objective pursued³¹.

²⁸ M. Woński, J. Zagrodnik, *Przestępstwo mowy nienawiści* [Hate speech crime], 2019, Lex.

²⁹ W. Dadak, *Przestępstwa motywowane uprzedzeniami (o problemach z analizą przestępczości z nienawiści)* [Crimes motivated by prejudice (on the problems with the analysis of hate crime)], “Czasopismo Prawa Karnego i Nauk Penalnych” 2018, No. 4, pp. 21–34; Z. Cwiakalski, *Przestępstwa przeciwko porządkowi publicznemu* [Offenses against public order], [in:] W. Wróbel, A. Zoll (eds.), *Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. art. 212–277d* [The Penal Code. The special part. Vol. II. Part II. Commentary on Art. art. 212–277d], Warszawa 2017, pp. 519–528.

³⁰ K. Karsznicki, *Przestępstwa popełniane z pobudek rasistowskich lub ksenofobicznych* [Offences committed for racist and xenophobic reasons], “Prokuratura i Prawo” 2012, No. 2, pp. 16–42.

³¹ M. Budyn-Kulik, *Umysłność w prawie...*, p. 298.

In the Polish criminal law science by the phrase “incites hatred” we understand behavior consisting of pushing, encouraging, moving, inciting, abetting and whipping up strong resentment and/or hostility. For the implementation of the mark “incites” it is enough that the perpetrator, by their conduct, leads to the emergence of hostile feelings against a specified, in the provision, people. For the existence of a crime it is, however, irrelevant whether incitement was effective. The Polish Supreme Court has interpreted twice the phrase “incites hatred”, used in Article 256 § 1 of the PPC. In the Resolution, the Polish Supreme Court³² explained that “incitement to hatred of the reasons listed in Article 256 of the PPC – including on the background of ethnic differences – boils down to the type of statements which arouse strong feelings of resentment, anger, lack of acceptance, even hostility towards individuals or entire social or religious groups or, due to the form of statements, support and intensify such negative attitudes and emphasize the same preference, superiority of a particular nation, ethnic group, race or religion”. In turn, in Resolution of 1 September 2011, the Polish Supreme Court³³ held that the causative act of compelling “incitement hatred” involves the desire to raise against the third party strong negative emotions (similar to “hostility”) against a particular nationality, ethnic group or race. It is not, in any way, shape or form, about invoking feelings of disapproval, antipathy, prejudice and/or aversion³⁴.

The aim of hate speech is always collectivity. Even if apparently its target is a unit, in fact, the subject of an attack is highlighted on the basis of social or biological characteristic groups. Hate speech attacks not only the actual population, but also the imaginary ones³⁵.

Assuming that hate speech is a particular type of speech, it is worth to consider, what its status is in the context of the guaranteed right of freedom of expression. First of all, the question must be asked whether a statement considered to be hate speech should benefit from legal protection or whether such protection should be made unavailable as it constitutes a breach of freedom of expression³⁶. The basic criterion to justify this “early” reaction of the legislature is therefore the background of penalized, under this provision, hateful statements, which does not allow to consider them as speeches worth of obtaining any legal protection. Incites hatred on the grounds of indicated

³² Decision of the Supreme Court of 5.02.2007 r., IV KK 406/06, OSNwSK 2007, No. 1, item 367.

³³ Decision of the Supreme Court of 1.09.2011 r., V KK 98/11, Lex nr 950444.

³⁴ D. Gruszecka, *Przestępstwa przeciwko porządkowi publicznemu* [Offenses against public order], [in:] J. Giezek (ed.), *Kodeks karny. Część szczególna. Komentarz* [The Penal Code. Part of the special. Comment], Warszawa 2021, p. 1065.

³⁵ K. Pałka, M. Kućka, *Ochrona przed mową nienawiści – powództwo cywilne czy akt oskarżenia?* [Protection against hate speech – civil action or indictment?], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), op. cit., pp. 42–54.

³⁶ L.K. Jaskuła, *Wolność działania*..., pp. 315–343.

differences is not only the expression of controversial views, what should be guaranteed, but an obvious abuse of freedom of expression, going directly to creating or inciting national, ethnic or religious conflicts³⁷.

At this point it is worth to mention the position of the Polish Constitutional Tribunal expressed in its judgment of 25 February 2014³⁸, which stressed out that the criminalization of hatred incitement on the grounds of national, ethnic, racial, religious differences, or due to religious denomination constitutes a restriction of freedom of speech. Freedom of speech is one of the fundamental human rights, essential for its development and self-realization, and having the essential importance for a democracy. Freedom of expression protects not only statements that are received favorably or seen as harmless or inert, but also statements expressing disapproval, dislike or antipathy. At the same time, freedom of speech is not absolute³⁹.

In recent decades, Greek law has introduced various restrictions on expression to protect citizens against national, racial, ethnic or religious discrimination, hatred or violence. One of the last changes in this area was the so-called “Anti-racist law” adopted in 2014, which extended the basis for the definition of racist hate speech, xenophobia and discrimination based on skin color, gender, sexual orientation, gender identity and disability. This right was established by Law No. 4285 by introducing a new provision in the Greek Penal Code (GPC). Article 81A GPC provides for stricter liability by raising the lowest penalty that can be imposed for hate crimes. It was stated that the choice of the victim, because of its special features, is enough to increase the penalty. An internal psychological hate state is no longer required because it resulted in significant difficulty in proving and contributed to the rare application of criminal liability for hate speech⁴⁰.

In Greece, racist and xenophobic motives are considered an aggravating circumstance for all crimes. In Poland, these types of motives, called motivations deserving special condemnation, are considered a circumstance resulting in a higher level of punishment in relation to certain crimes.

³⁷ W. Mojski, *Prawnokarne ograniczenia wolności wypowiedzi w polskim porządku prawnym: analiza wybranych przepisów* [Polish Criminal Law Regulations Related to Limitations of Freedom of Expression: an Analysis of Selected Regulations], “*Studia Iuridica Lublinensia*” 2009, No. 12, pp. 177–196.

³⁸ Judgment of the Constitutional Tribunal of 25.02.2014 r., SK 65/12, OTK 2014, No. 2, item. 14.

³⁹ A. Demenko, *Prawnokarna ochrona wolności wypowiedzi. Zarys problemu*, [in:] A. Biłgorajski (ed.), *Wolność wypowiedzi i jej granice. Analiza wybranych zagadnień* [Criminal law protection of the freedom of expression. Problem outline], Katowice 2014, p. 39; A. Biłgorajski, *Granice wolności wypowiedzi czy wolność wypowiedzi ponad granicami?* [Limits of freedom of expression or freedom of expression across borders?], [in:] A. Biłgorajski (ed.), op. cit., p. 12.

⁴⁰ A. Pitsela, Th. Chatzispayrou, *Criminal policy developments against racism in Greece*, [in:] C. Spinellis, N. Theodorakis, E. Billis, G. Papadimitrakopoulos (eds.), *Europe in crisis: crime, criminal justice and the way forward*, Athens 2017, <http://crime-in-crisis.com/en/wp-content/uploads/2017/06/essays-nestor-courakis.pdf> (accessed: 9.02.2022).

The Law No. 4285/2014 also amended Law No. 927/1979 on combating certain forms and expressions of racism and xenophobia under criminal law. Law No. 927/1979 on punishing acts or activities aiming at racial discrimination sets out in Article 1 the offence of Incitement to violence or hatred, which is committed by anyone who publicly incites, provokes, or stirs, either orally or through the press, the Internet, or any other means, acts of violence or hatred against a person or group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin, sexual orientation, gender identity, gender characteristics or disability, in a manner that endangers the public order and puts the life, physical integrity or freedom of those persons at risk. It should also be emphasized that recently the protection against the background of “gender identity” was added to Greek law by Law No. 4356/2015 amending Article 81A GPC and Law No. 4491/2017 amending Article 1 of Law No. 927/1979.

Greece has experienced the arrival of a large number of immigrants in recent years. The problems associated with the coexistence of various national and cultural identities have increased significantly, which often leads to an escalation of hate speech. Greek experts point to several aspects of the country’s migration situation related to xenophobic attitudes and hate speech. One of them is the process of transforming Greece into a destination country for immigrants, which began in the early 1990s. This resulted in the emergence of xenophobic and racist public views, which require limitation through rational criminal policy, as seen, in particular, in the changes in criminal liability for hate speech.

Attention should be paid to the increasingly frequent proposals to amend the criminal law in the field of hate speech offenses. They are primarily related to changes in attitudes taking place in the world in relation to specific properties of some social groups and their members. Over the years, attempts have been made to amend the provisions of the Polish Penal Codes by expanding the catalog of features protected against hate speech. In this context, it is surprising that the legislature has not decided to expand the group of people under special protection, such as persons with disabilities.

Discussion on the scale of hate crimes

Pursuing hate crimes is very difficult because both judges and prosecutors have problems with assessment of the perpetrators’ behavior in criminal-justice terms. Very often we have to deal with the collision of interests. On the one hand, we have a violation of personal rights (as a result of e.g. insult), and, on the other, limitation of freedom of speech. Finding a demarcation line between legally permitted behavior and illegal behavior is in many cases very difficult. Evaluation of the behavior does not cause problems for prosecutors

and judges, if such act is connected with breaches of personal inviolability or body damage. Much more difficult is to identify the offence, if it is just a statement. Then the whole context of the statement and the accompanying circumstances are important.

The provisions of the Articles 256 and 257 of the Criminal Code are rarely used in practice, as reflected in relatively modest case-law of the Supreme Court. Statistical data (Figure 1) from the National Police Headquarters⁴¹ shows that from 2013 onwards, there has been a sharp increase in hate crimes. Hate crimes show significant growth dynamics and it is expected that this tendency will be sustained, among others due to the growing immigration.

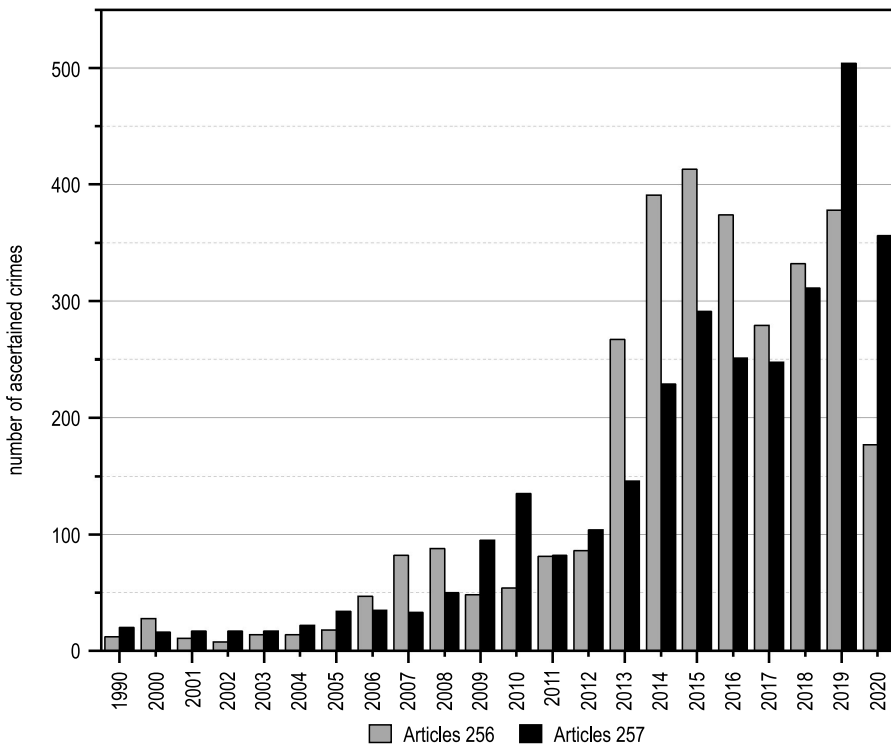


Figure 1. Number of ascertained crimes under articles 256 and 257 of the Polish Penal Code (based on statistical data⁴²)

⁴¹ Komenda Główna Policji, *Publiczne propagowanie faszyzmu, nawoływanie do nienawiści (art. 256) – przestępstwa przeciwko porządkowi publicznemu (252–264a)*. *Statystyka*, 2016 [Police Headquarters, public promotion of fascism, incitement to hatred (article 256) – crimes against public order Statistics, 2016], <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko13/63613,Publiczne-propagowanie-faszyzmu-nawolywanie-do-nienawisci-art-256.html> (accessed: 10.03.2022).

⁴² Ibidem.

In the last decade, a dynamic increase in the number of hate crimes can be observed. It is a breach in the general trend of a decrease in the number of criminal offenses. In the context of the migration phenomena, in particular of intercultural nature, a more significant increase in the risk of hate crimes can be forecasted. Since 2015, the police and the Ministry of the Internal Affairs and Administration have jointly developed and shared a hate crime data collection system.

Counteracting hate crimes, including monitoring cases connected with hate crimes is one of the tasks of the Ministry of Internal Affairs and Administration. The department responsible for the implementation of these tasks in the Ministry of Internal Affairs and Administration is the Team for Human Rights protection of the Department of Inspection, Complaints and Requests. The team also acts as a National Contact Point for crimes committed on the grounds of hatred of the Office of Democratic Institutions and Human Rights OSCE and therefore it annually coordinates preparation and passing of Polish contribution to the report on hate crimes in the OSCE region. Unfortunately, there is no direct data on hate speech offenses. There is only an annotation that ‘Unspecified’ category of crime in the statistics includes hate speech incidents, which fall outside of the OSCE’s hate crime definition (Figure 2).

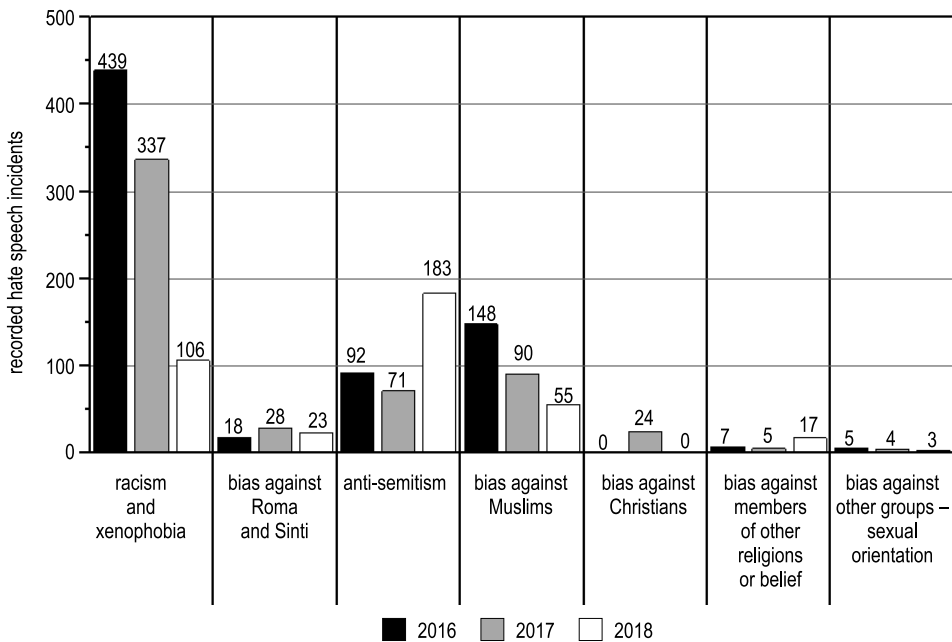


Figure 2. Recorded hate speech incidents in Poland according to bias motivation in 2016–2018 (based on OSCE ODIHR hate crime reporting⁴³).

⁴³ <https://hatecrime.osce.org/poland> (accessed: 15.03.2022).

In Poland in 2019 and 2020 incidents of hate speech, which fall outside the OSCE's definition of hate crime, were not included in the numbers of hate crimes recorded by police.

In Greece, a new template for recording hate crimes developed by the Hellenic Police, with the co-operation of the Ministry of Justice, Transparency and Human Rights and the Public Prosecutor Office of the Court of First Instance of Athens has been operating since 2017. The aim of the changes was to harmonize the way the data is collected from the police and the Public Prosecutor Office and to facilitate the tracking of each case from its first recording through the prosecution until the court's decision. The statistical data provided directly to the OSCE does not include, in this case, hate speech incidents, as it is not included in the definition of hate crimes. However, relevant annotations can be found that provide information on further hate speech offenses according to bias motivation. Based on the information from these annotations, Figure 3 was developed.

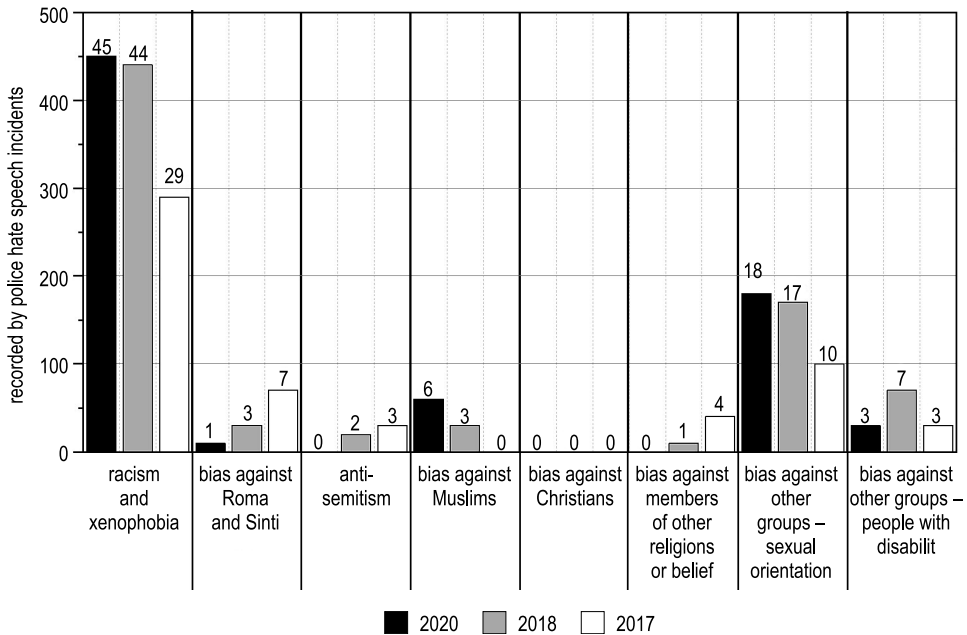


Figure 3. Recorded hate speech incidents in Greece according to bias motivation in 2017–2020 (based on OSCE ODIHR hate crime reporting⁴⁴).

A comparison of the statistics presented in Figures 2 and 3 shows that the motivations of the perpetrators of hate speech offenses are closely linked to sociological and political determinants. It is characteristic that the increase

⁴⁴ <https://hatecrime.osce.org/greece> (accessed: 15.03.2022).

in anti-Semitic moods in Poland related to a common difficult history is reflected in these statistics. Similarly, the immigration problem in Greece is expressed in the increase in racism and xenophobia. In this context, the significant decrease in hate speech incidents due to racism and xenophobia in Poland is surprising. This may be due not so much to a reduction in the number of such crimes but to a failure to report them due to the more nationalist sentiment prevailing in Poland today. The Ombudsman in Poland indicates that only about 5% of incidents are currently reported. It can be assumed that in connection with the epidemic of the coronavirus 2019-nCoV, whose outbreak was formed in China, we will observe in subsequent statistics an increase in racist behavior towards the citizens of the People's Republic of China.

Hate speech on the Web is extremely complex. The Internet enables free and rapid flow of information and ideas. The Internet simplifies the ability to monitor the observance of human rights by organizations and groups working for the benefit of those rights. Unfortunately, these same technologies also allow for borderless intervention on an unprecedented scale for both racist and fascist environments. At the same time, global communication, under local legal regulations, ensures impunity for extremist groups as they utilize servers located in countries where the promotion of racial hatred is not prohibited⁴⁵.

The Internet often becomes a tool for spreading racist and anti-Semitic content, incitement to hatred on the grounds of race, ethnic origin, religion, disability, sexual orientation and/or nationality. Based on the assumption that freedom of speech and information on the Internet should not infringe social interests or threaten human dignity and other rights and freedoms of man (especially when it comes to minors), international organizations, such as the Council of Europe and the European Union, allow the limitation on freedom of communication on the Internet when it comes to threats to human dignity and other human rights and freedoms. What is illegal off-line is also illegal on-line⁴⁶.

The internet as a public medium, widely available, ensures to some extent anonymity, although apparent, but allowing a perpetrator free operation due to the international aspect of the network, and considering the required time interval, which must pass, so the law enforcement authorities may take steps and measures to determine the perpetrator. The Internet is a perfect tool for public promotion of totalitarianism or inciting quarrels on the grounds of nationality, religion and/or culture. The form and the manner of committing

⁴⁵ K. Podemski, *Globalizacja mowy nienawiści* [Globalization of the hate speech], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), op. cit., pp. 207–219.

⁴⁶ A. Lipowska-Teutsch, *Mowa nienawiści. Szerzenie nienawiści przez Internet* [Hate speech. Hate speech over the Internet], [in:] A. Lipowska-Teutsch, E. Ryłko (eds.), *Przemoc motywowana uprzedzeniami. Przestępstwa z nienawiści* [Prejudice Violence. Hate crimes], Kraków 2007, pp. 22–26.

this crime takes various shapes on the Internet. Most often the creators of websites post on them texts, symbols, logos, puzzles, computer games, that directly promote totalitarian systems⁴⁷. The global network provides perpetrators more opportunities for such actions. From here they can use electronic mail and send to selected or accidental viewers any content in any form.

Conclusions

An analysis of hate crimes, from the perspective of Poland and Greece, has led to the conclusion that the criminal law in force in Poland shows a different level of protection for individuals and social groups against discrimination, depending on their motives. Hate speech and public encouragement of crimes for racist, xenophobic or religious reasons are treated as separate qualified types of crimes. However, when such acts are committed in relation to sex, gender identity, sexual orientation, age, disability or health condition or the social situation of a given person or social group, only the types of basic crimes aimed at protecting life apply to health and dignity. Therefore, they do not reflect the essence of the problem. In this respect, Greek criminal law is more restrictive and adapted to socio-political realities, and the changes introduced in recent years seem to be heading in the right direction.

Polish law fully protects against hate speech only of national and ethnic minorities, people of other races, followers of a religion or non-denominational people. In Greece, racist and xenophobic motives on all crimes are considered an aggravating circumstance.

In Poland, the Penal Code requires that the perpetrator's motivation be taken into account as the basic premise for the judge's sentence, but does not mention hatred as a direct offense, whereas in Greece it was considered that the choice of the victim because of their special characteristics was sufficient to increase the punishment. The need to prove the internal psychological state of hate was abandoned because it caused significant difficulties in applying criminal liability for hate speech.

It has been shown that the motive of the perpetrator's activity is a key issue in the field of hate speech offense analysis. This motive is implemented in the form of an intention to cause harm to the victim or cause traumatic experiences because of its features or the situation in which it finds itself. What is important in this case is the motive, which may be the result of emotions caused by the perpetrator's disapproval of such features. This creates the

⁴⁷ A. Hareża, *Wolność słowa w Internecie a publiczne nawoływanie do nienawiści* [Freedom of speech on the Internet and public incitement to hatred], "Nowa Kodyfikacja Prawa Karnego" 2006, No. 20, pp. 344–345.

multidimensionality of hate speech crime. The subjective dimension, which determines the motivational situation of the perpetrator, is particularly important in this context.

In order to ensure proper protection of human rights and freedoms, it is necessary to take actions to raise public awareness and sensitivity to cases of crimes motivated by hatred of persons or vulnerable groups. These are groups created under the influence of national conditions, e.g. asylum seekers, refugees.

Human dignity, which until recently marked the obvious limit of freedom of expression, seems to be losing importance, as does the strength of the argument used in public discussion. Observing the functioning of the Internet and social media, it can be seen that more and more often the purpose of the speech is not to exchange arguments, but to evoke emotions, humiliation, showing a person or the entire community in a negative light, causing the recipients to feel aversion or hostility towards a person, group of people or a view defined as other or foreign. Human rights collision with hate speech is one of the most serious threats to the sustainability of a civil society and to democracy.

References

- Biłgorajski A., *Granice wolności wypowiedzi czy wolność wypowiedzi ponad granicami?* [Limits of freedom of expression or freedom of expression across borders?], [in:] A. Biłgorajski (ed.), *Wolność wypowiedzi. Analiza wybranych zagadnień* [Freedom of expression. Analysis of selected issues], Wyd. UŚ, Katowice 2014.
- Bodnar A., Szuleka M., *Koncepcja "nadużycia prawa" w Konwencji o ochronie praw człowieka i podstawowych wolności a mowa nienawiści* [The concept of "abuse of the law" in the Convention for the Protection of Human Rights and Fundamental Freedoms and hate speech], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), *Mowa nienawiści a wolność słowa. Aspekty prawne i społeczne* [Hate speech and freedom of speech. Legal and social aspects], Wolter Kluwer, Warszawa 2010.
- Budyn-Kulik M., *Art. 53*, [in:] M. Mozgawa (ed.), *Kodeks karny. Komentarz aktualizowany* [The Penal Code. Comment updated], 2022, Lex.
- Budyn-Kulik M., *Umyślność w prawie karnym i psychologii: teoria i praktyka sądowa* [Intent in criminal law and psychology: judicial theory and practice], Wolters Kluwer, Warszawa 2015.
- Ćwiakalski Z., *Przestępstwa przeciwko porządkowi publicznemu* [Offenses against public order], [in:] W. Wróbel, A. Zoll (eds.), *Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. art. 212–277d* [The Penal Code. The special part. Vol. II. Part II. Commentary on Art. art. 212–277d], Wolters Kluwer, Warszawa 2017.
- Chetty N., Sreejith A., *Hate Speech Review in the Context of Online Social Networks*, "Aggression and Violent Behavior" 2018, Vol. 40, No. 5.

- Dadak W., *Przestępstwa motywowane uprzedzeniami (o problemach z analizą przestępczości z nienawiści)* [Crimes motivated by prejudice (on the problems with the analysis of hate crime)], "Czasopismo Prawa Karnego i Nauk Penalnych" 2018, No. 4.
- Demenko A., *Prawnokarna ochrona wolności wypowiedzi. Zarys problemu* [Criminal law protection of freedom of expression. Outline of the problem], [in:] A. Biłgorajski (ed.), *Wolność wypowiedzi i jej granice. Analiza wybranych zagadnień* [Criminal law protection of the freedom of expression. Problem outline], Wyd. UŚ, Katowice 2014.
- Derlatka M., *Motywacja w sądowym wymiarze kary* [Motivation in court sentencing], "Prokuratura i Prawo" 2012, No. 6.
- Franken R.E., *Human Motivation*, Thomson, Wadsworth 2007.
- Gruszecka D., *Przestępstwa przeciwko porządkowi publicznemu* [Offenses against public order], [in:] J. Giezek (ed.), *Kodeks karny. Część szczególna. Komentarz* [The Penal Code. Part of the special. Comment], Wolters Kluwer, Warszawa 2021.
- Haręza A., *Wolność słowa w Internecie a publiczne nawoływanie do nienawiści* [Freedom of speech on the Internet and public incitement to hatred], "Nowa Kodyfikacja Prawa Karnego" 2006, No. 20.
- Hockenbury D.H., Hockenbury S.E., *Discovering Psychology*, Fifth edition, Worth Publishers, New York 2011.
- Huitt W., *Motivation to Learn: An Overview*, Educational Psychology Interactive, Valdosta State University, Valdosta 2011.
- Jaskuła L.K., *Wolność działalności dziennikarskiej w perspektywie zjawiska mowy nienawiści (wybrane aspekty prawne)* [Freedom of journalistic activity in the perspective of the phenomenon of hate speech (selected legal aspects)], [in:] W. Lis (ed.), *Status prawny dziennikarza* [Legal status of a journalist], Wolters Kluwer, Warszawa 2014.
- Karsznicki K., *Przestępstwa popełniane z pobudek rasistowskich lub ksenofobicznych* [Offences committed for racist and xenophobic reasons], "Prokuratura i Prawo" 2012, No. 2.
- Kleinginna P.R., Kleinginna A.M., *A categorized list of motivation definitions, with a suggestion for a consensual definition*, "Motivation and Emotion" 1981, Vol. 5, No. 3.
- Kowalski S., Tulli M., *Mowa nienawiści. Raport 2001, I. Próba definicji* [Hate speech. Report 2001, An Attempted Definition], 2001, <http://or.icm.edu.pl/monitoring3.htm>.
- Kucharewicz J., *Psychologiczna analiza procesów motywacyjnych przestępstw popełnianych przez nieletnich (na przykładzie przestępstw agresywnych i nieagresywnych)* [Psychological analysis of the motivational processes of crimes committed by minors (on the example of aggressive and non-aggressive crimes)], UŚ, Katowice 2008.
- Lee W., Reeve J., Xiong J., *Neural Differences between Intrinsic Reasons for Doing versus Extrinsic Reasons for Doing: An FMRI Study*, "Neuroscience Research" 2012, Vol. 73, No. 1.
- Levin J., McDevitt J., *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*, Plenum Press, Boston 1993.
- Lipowska-Teutsch A., *Mowa nienawiści. Szerzenie nienawiści przez Internet* [Hate speech. Hate speech over the Internet], [in:] A. Lipowska-Teutsch, E. Ryłko (eds.), *Przemoc motywowana uprzedzeniami. Przestępstwa z nienawiści* [Prejudice violence. Hate crimes], Tow. Interwencji Kryzysowej, Kraków 2007.

- Marcinkiewicz P, *Motywacja sprawcy czynu zabronionego jako przesłanka odpowiedzialności karnej* [Offender's motivation as a premise for criminal liability], "Prokuratura i Prawo" 2011, No. 5.
- McDevitt J., Levin J., Bennett S., *Hate Crime Offenders: An Expanded Typology*, "Journal of Social Issues" 2002, Vol. 58, No. 2.
- Mojski W., *Prawnokarne ograniczenia wolności wypowiedzi w polskim porządku prawnym: analiza wybranych przepisów* [Polish Criminal Law Regulations Related to Limitations of Freedom of Expression: an Analysis of Selected Regulations], "Studia Iuridica Lublinensia" 2009, No. 12.
- Myers D.G., *Exploring Social Psychology*, McGraw-Hill Education, New York 2015.
- Nevid J.S., *Psychology: Concepts and Applications*, Fourth edition, Wadsworth Cengage Learning, Belmont 2013.
- Pałka K., Kućka M., *Ochrona przed mową nienawiści – powództwo cywilne czy akt oskarżenia?* [Protection against hate speech – civil action or indictment?], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), *Mowa nienawiści a wolność słowa. Aspekty prawne i społeczne* [Hate speech and freedom of speech. Legal and social aspects], Wolter Kluwer, Warszawa 2010.
- Pesinis A., *The Regulation of "Hate Speech"; the Meaning of "Incitement" under the Case-Law of the European Court of Human Rights and the Jurisdictions of the European Union, the United Kingdom and Greece*, Central European University, Budapest 2015.
- Petherick W., *Motivations*, [in:] W. Petherick (ed.), *Applied Crime Analysis*, Elsevier, Oxford 2015.
- Petherick W., Sinnamon G., *Motivations: offender and victim perspectives*, [in:] W. Petherick (ed.), *Profiling and Serial Crime*, Third edition, Academic Press, Waltham 2014.
- Pitsela A., Chatzisyrou Th., *Criminal policy developments against racism in Greece*, [in:] C. Spinellis, N. Theodorakis, E. Billis, G. Papadimitrakopoulos (eds.), *Europe in crisis: crime, criminal justice and the way forward*, Ant. N. Sakkoulas Publishers L.P., Athens 2017.
- Podemski K., *Globalizacja mowy nienawiści* [Globalization of the hate speech], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), *Mowa nienawiści a wolność słowa. Aspekty prawne i społeczne* [Hate speech and freedom of speech. Legal and social aspects], Wolter Kluwer, Warszawa 2010.
- Rogalska E., Urbańczyk M., *Złożoność zjawiska mowy nienawiści w pozaprawnym aspekcie definicyjnym* [The complexity of the hate speech phenomenon in terms of its non-legal definitional aspect], "Studia Nad Autorytaryzmem i Totalitaryzmem" 2017, Vol. 39, No. 2.
- Siegling A.B., Petrides K.V., *Drive: theory and construct validation*, "PLoS ONE" 2016, Vol. 11, No. 7.
- Skinner Ch.E., *Psychologia wychowawcza* [Educational psychology], PWN, Warszawa 1971.
- Śledzińska-Simon A., *Decyzja ramowa w sprawie zwalczania pewnych form i przejawów rasizmu i ksenofobii jako trudny kompromis wobec mowy nienawiści w Unii Europejskiej* [Framework Decision on combating certain forms and expressions of racism and xenophobia as a difficult compromise to hate speech in the European Union], [in:] R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias (eds.), *Mowa nienawiści a wolność słowa. Aspekty prawne i społeczne* [Hate speech and freedom of speech. Legal and social aspects], Wolter Kluwer, Warszawa 2010.

- Tranquillo J., Stecker M., *Using Intrinsic and Extrinsic Motivation in Continuing Professional Education*, "Surgical Neurology International" 2016, Vol. 7, No. 8.
- Woiński M., *O pojęciu przestępstwa nienawiści (hate crime)* [On the concept of hate crime], [in:] P. Szczepłocki (ed.), *Przestępstwa z nienawiści w Polsce. Publikacja pokonferencyjna* [Hate crimes in Poland. Post-conference publication], Toruń 2011.
- Woiński M., *Prawnokarne aspekty zwalczania mowy nienawiści* [Criminal law aspects of combating hate speech], LexisNexis, Warszawa 2014.
- Woiński M., Zagrodnik J., *Przestępstwo mowy nienawiści* [Hate speech crime], 2019, Lex.
- Zgoliński I., *Art. 53*, [in:] V. Konarska-Wrzosek (ed.), *Kodeks karny. Komentarz*, wyd. III [The Penal Code. Commentary, ed. III], Wolters Kluwer, Warszawa 2020.

Summary

Motivation of the hate speech perpetrator from the Polish and Greek perspective

Keywords: criminal law, hate speech, freedom of speech, motivation, perpetrator.

Hate speech is a crime that is a serious violation of human rights. The motivation of the perpetrator in the commission of such an offense are certain characteristics of the victim of the crime or the victim's membership in a particular group, in relation to which the perpetrator feels disinclination. Problems with the laws protecting human rights corresponding with hate speech in Poland and Greece towards various social groups differ when considering the motivation of the perpetrator. The complexity of hate speech and problems with the definition of it were studied. Moreover, the attention was focused on the psychological motivation of the perpetrator. The aim of the study was the comparison of the penalization of hate speech under Polish and Greek law in the context of the motivation of perpetrator. It was concluded that the act of hate speech is always dependent on the context under which it was made, and each such act should be judged on an individual basis. It has been shown that the motivations of the perpetrators of hate speech offenses are closely linked to sociological and political determinants.

Streszczenie

Motywacja sprawcy przestępstwa mowy nienawiści z perspektywy polskiej i greckiej

Słowa kluczowe: prawo karne, mowa nienawiści, wolność słowa, motywacja, sprawca.

Mowa nienawiści jest przestępstwem stanowiącym poważne naruszenie praw człowieka. Motywacją sprawcy popełnienia takiego przestępstwa są określone cechy ofiary przestępstwa lub przynależność pokrzywdzonego do określonej grupy, w stosunku do której sprawca odczuwa niechęć. Przepisy chroniące prawa człowieka, odnoszące się do mowy nienawiści w Polsce i Grecji wobec różnych grup społecznych, różnią się pod względem motywacji sprawcy. Zbadano złożoność pojęcia mowy nienawiści i problemy z jej definicją. Ponadto zwrócono uwagę na motywację psychologiczną sprawcy. Celem artykułu było porównanie penalizacji mowy nienawiści w prawie polskim i greckim w kontekście motywacji sprawcy. Stwierdzono, że czyn mowy nienawiści zawsze uzależniony jest od kontekstu, w jakim został popełniony, a każdy taki czyn powinien być oceniany indywidualnie. Wykazano, że motywacje sprawców przestępstw związanych z mową nienawiści są ściśle powiązane z uwarunkowaniami socjologicznymi i politycznymi.

