

CRIMINALISATION OF HATE CRIMES UNDER THE CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

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1. INTRODUCTION

1.1. Hate Crimes - the Concept and Characteristics

Crimes motivated by intolerance, bias or hatred towards a certain person or groups in society due to some of their **actual or perceived characteristics** (national, ethnic, religious or racial affiliation, sexual orientation, gender identity, social and health status or any other characteristic) **or their association with a certain social group** are described as hate crimes.

For a criminal act to qualify as a hate crime, **two criteria must be met:**

- The act must be a crime under the Criminal Code, and
- The act must have been committed with an intolerance, bias or hatred motivation of the perpetrator towards a victim or social group to which he or she belongs or with which he or she is associated.

Hate crimes send a powerful message of intolerance towards a social group to which the victim belongs and are motivated by intolerance, bias or stereotypical preconceptions of the perpetrator against a person or a group. The perpetrator commits such a crime because of what the victim or victims and property represent, hence he or she may have no feelings at all about an individual victim. Hate crimes are often accompanied by insulting or offensive graffiti left on the scene of the incident, which may be an indication of bias motivation of the offender. When **demonstrating the motivation** one should take into account the literature that the offender reads, the music he or she listens to, web pages or messages and comments he or she has left on the Internet, clothing, jewellery or tattoos, which may indicate the membership in extremist groups or support to such groups, as well as past behaviour of the offender towards the victim or persons from a social group to which the victim belongs.

Hate crimes undermine mutual relations and equality of citizens, thus **harming the society as a whole**. These crimes are a result of one, usually majority social group being convinced of the justification of violence aimed at intimidating members of another social group. Inadequate response of state authorities only deepens these convictions. A frequent reaction to these crimes – and also the cause of commission of such crimes – is incitement to hatred, discrimination and violence that is present in the media, on the Internet portals and social networks. Hate crimes, as well as incitement to hatred, discrimination and violence that accompany them, create an illusion that a certain social group is privileged, and thus further deepen inequality and intolerance in the society, thereby jeopardising the safety of all the citizens.

Hate crimes in Bosnia and Herzegovina often **target the following groups**¹:

- **Returnee communities**, who are often isolated and vulnerable. Hate crimes against these communities send a strong message of intolerance and cause great fear, uncertainty and tensions;
- **Religious and sacred objects**, such as churches, mosques and graveyards,

¹ Understanding Hate Crimes: A Handbook for Bosnia and Herzegovina http://www.oscebih.org/documents/osce_bih_doc_2010122712342149cro.pdf

as well as private property belonging to returnees or members of minority communities;

- **Members of sexual minorities.** Members of these groups are extremely vulnerable to hate crimes; attacks frequently occur in public places.
- **Roma.**

Hate crimes rarely stay a sole act because offenders feel they are acting on behalf of their community, they feel **morally justified** in their acts. These crimes often tend to increase and escalate because the perpetrators of less serious forms of crimes who remain undetected and unstopped usually continue their activities and eventually commit more serious crimes. Also, hate crimes tend *to spiral*. This means that members of a community who feel unsafe and unprotected by state authorities are likely to retaliate against members of the community that is blamed for attacking them. This can lead to further attacks, creating a spiral of violence that leads to serious social breakdown.

For an incitement to hatred and intolerance to be adequately condemned and bias motivated acts to be appropriately handled, **hate crimes must be defined as such and criminalised in the criminal legislation**, while bias or hatred motivation must be defined as an aggravating circumstance. Penalties imposed on prosecuted and convicted hate crimes should be more severe due to the motivation and potential impact of such crime on not only the victim but also on the community. Consequently, it should be specified in the judgment that the motivation led to the imposition of a stricter penalty.

In Bosnia and Herzegovina, the authorities **do not collect data on hate crimes**. Hate crimes statistics is collected by some non-governmental organisations and international organisations such as Organisation for Security and Co-operation in Europe (OSCE). Information from these organisations shows that there is a problem that is not being detected and addressed by the authorities.

1.2. International Standards for Criminalising Hate Crimes

International and regional instruments clearly stipulate **obligations of Bosnia and Herzegovina to regulate and adequately sanction hate crimes**, as well as measures it should undertake in this regard. The membership of Bosnia and Herzegovina in the United Nations (UN) and Council of Europe additionally compels it to approximate its legislation, in particular criminal, to the conventions such as: the International Convention on Elimination of All Forms of Racial Discrimination (CERD)², European Convention on Human Rights and Fundamental Freedoms³, International Covenant on Civil and Political Rights⁴ and Recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation and gender identity, aimed at

² By 1993 succession Bosnia and Herzegovina ratified CERD, Official Gazette of RBiH, no. 25/93.

³ Official Gazette of BiH. no. 5/99, 5/99. International treaties.

⁴ Official Gazette of RBiH, no. 25/93.

reducing hate speech and ensuring the right to freedom of expression - and to fight hate crimes through its legislation and practice.

Also, OSCE participating States, including Bosnia and Herzegovina, have **committed to ensuring their hate crime legislation is adequate**⁵, collecting statistics, ensuring that hate crimes are thoroughly investigated and prosecuted, and implementing training related to this issue.

As a member of the Council of Europe Bosnia and Herzegovina is bound to **comply with the opinion of the European Court of Human Rights in Strasbourg**, which found hate crimes not to have been properly regulated and prosecuted and imposed an obligation on the Member States to adequately investigate bias motivated crimes.

As Bosnia and Herzegovina aspires to EU membership, the Union's Framework Decision on Combating All Forms of Racism and Xenophobia by means of criminal law⁶ is also of relevance. This Decision aims to establish a common criminal law approach to hate crimes, including aggravated penalties for bias motivation.

By signing and ratifying majority of foregoing documents Bosnia and Herzegovina and its entities committed to adequately regulate, efficiently implement and prosecute hate crimes through its legislation and practice in accordance with the highest international standards of protection of human rights.

1.3. Hate Crimes in the Legislations of Croatia, Serbia, Montenegro and Bosnia and Herzegovina

1.3.1. Criminal Code of the Republic of Croatia

Under the Criminal Code of the Republic of Croatia, the initial definition of a hate crime included *any criminal offence committed out of hatred against a person due to the latter's race, colour, sex, sexual orientation, language, religion, political or other conviction, national or social origin, property, birth, education, social status, age, health status or other characteristics*.

Although a hate motive has always been considered an aggravating factor, this new definition of hate crime imposed an additional obligation on the courts to establish whether the criminal offence was motivated by hatred. Having learned that this definition of hate crime in practice led to no stricter penalties, a new definition was developed and adjusted in the new Criminal Code of the Republic of Croatia, which was adopted on 21 October 2011 and came into force on 01 January 2013. Article 87 of this new Code, titled *Definitions*, in paragraph 21 reads: *any criminal offence committed on the grounds of race, colour, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity of another person shall be*

5 OSCE Ministerial Council, Decision No. 9/09, "Combating Hate Crimes", Athens, 1-2 December 2009. <http://www.osce.org/cio/40695?download=true>

6 COUNCIL FRAMEWORK DECISION 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0913&from=EN>

*considered a hate crime, and any such action shall be considered an aggravating circumstance unless this Code provided for more severe punishment.*⁷

This Code also stipulates that some offences, if committed out of hatred, shall be initiated ex officio.

In addition to hate crimes, the Criminal Code of the Republic of Croatia in Article 325 – *Public incitement to violence and hatred* - stipulates measures to fight against all forms of hatred and intolerance on any grounds, and to this end it stipulates the following:

- (1) *Whoever publicly incites through the press, radio, television, computer system or network, at a public meeting or otherwise publicly incites or make publicly available pamphlets, images or other material that calls for violence or hatred directed against a group of people or a member thereof because of their race, religion, national or ethnic origin, colour, gender, sexual orientation, gender identity, disability or any other property shall be punished by imprisonment of up to three years.*
- (2) *Whoever organises or leads a group of three or more persons to commit offences referred to in paragraph 1 of this Article shall be punished by imprisonment of six months to five years.*
- (3) *Whoever participates in the association referred to in paragraph 2 of this Article shall be punished by imprisonment of up to one year.*
- (4) *Punishment referred to in paragraph 1 of this Article shall be imposed on anyone who publicly approves, denies or significantly diminishes genocide, aggression, crimes against humanity or war crime directed against a group of people or a member thereof on the grounds of their race, religion, national or ethnic affiliation, origin or colour, in the manner that incites violence or hatred against such a group or a member thereof.*
- (5) *Anyone who attempts a criminal offence referred to in paragraphs 1 and 4 of this Article shall be punished.*

1.3.2. Criminal Code of the Republic of Serbia

Article 54a of the Criminal Code of the Republic of Serbia, titled *Special circumstances for sentencing hate crime*, stipulates that *if a criminal offence is committed out of hatred on the grounds of race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating, unless this is already stipulated as an element of base crime.*⁸

Criminal Code of the Republic of Serbia not only stipulates sanctions for incitement to hatred, discrimination or violence but it also goes a step further by anticipating sanctions for violation of human rights guaranteed by universally

⁷ Text of the Criminal Code of the Republic of Croatia is available at: <http://www.zakon.hr/z/98/Kazneni-zakon> (Official gazette 125/11, 144/12)

⁸ Text of the Criminal Code of the Republic of Serbia is available at: http://www.paragraf.rs/propisi/krivicni_zakonik.html (Official Gazette of RS, no. 85/2005, 88/2005 - corrected., 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014)

accepted rules of international law and international treaties ratified by Serbia and for persecution of organisations or individuals due to their commitment to equality of people. Article 387 titled *Racial and other discrimination* reads:

- (1) *Whoever on grounds of race, colour, religion, nationality, ethnic origin or any other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by Serbia shall be punished by imprisonment of six months to five years.*
- (2) *The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organisations or individuals due to their commitment to equality of people.*
- (3) *Whoever propagates ideas of superiority of one race over another or propagates racial hatred or instigates racial discrimination shall be punished by imprisonment of three months to three years.*
- (4) *Whoever disseminates or otherwise makes publicly available texts, images, or any other representation of ideas or theories that support or incite hatred, discrimination, or violence against any person or a group based on their race, skin colour, religious affiliation, nationality, ethnic origin, or some other personal characteristic shall be punished by imprisonment of three months to three years.*
- (5) *Whoever publicly threatens to commit a criminal offence punishable with imprisonment of more than four years against a person or a group because of their race, skin colour, religion, nationality, ethnic origin, or some other personal characteristic shall be punished by imprisonment of three months to three years.*

1.3.3. Criminal Code of the Republic of Montenegro

Hate crimes and incitement to hatred are criminalised under the Criminal Code of Montenegro, which follows the same logic and solutions provided in the Criminal Code of the Republic of Serbia.

So, Article 42a of the Criminal Code titled *Special circumstances for sentencing hate crime* stipulates that *if a criminal offence is committed out of hatred on the grounds of race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating, unless these are already incorporated as an element of a base crime or an aggravated criminal offence.*⁹

Criminal Code of Montenegro also anticipates sanctions for incitement to hatred, discrimination and violence, as well as for violation of human rights guaranteed by universally accepted rules of international law and ratified international treaties and persecution of organisations or individuals due to their commitment to equality of people. Accordingly, Article 443 of this Law titled *Racial and other discrimination*

⁹ Text of the Criminal Code of the Republic of Montenegro is available at: <http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rid=163049&rType=2&file=Krivi%C4%8Dni%20zakonik%20Crne%20Gore.pdf> (Official gazette of RMNG no. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro no. 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013).

reads as follows:

(1) *Whoever on grounds of race, colour, nationality, ethnic origin or any other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by Montenegro shall be punished by imprisonment of six months to five years.*

(2) *The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organisations or individuals due to their commitment to equality of people.*

(3) *Whoever disseminates ideas of superiority of one race over another or propagates hatred or intolerance on the grounds of race, gender, disability, sexual orientation, gender identity or other personal characteristic or incites to racial or other discrimination shall be punished by imprisonment of three months to three years.*

(4) *Whoever commits acts referred to in paragraphs 1 to 3 of this Article by abusing his or her position or if those acts resulted in riots and violence, shall be punished for the acts referred to in paragraphs 1 and 2 of this Article by imprisonment of one to eight years, and for act referred to in paragraph 3 of this Article by imprisonment of six months to five years.*

1.4. Criminal Legislation of Bosnia and Herzegovina

Criminal Codes of the Entities and Brčko District of Bosnia and Herzegovina until 2010 **contained limited provisions that allowed more severe punishment to be imposed for crimes committed with a bias motivation**, but the use of these provisions was inconsistent and relatively rare. Regulations of this kind referred solely to a bias against other national, ethnic and religious affiliation of the victim.

In 2010, amendments to the Criminal Codes of Republika Srpska and Brčko District of Bosnia and Herzegovina were adopted. Amendments to these two laws defined hatred as *an exclusive and partial incitement to commission of crime* and expanded the list of personal traits and characteristics protected under these laws. The 2013 amendments to the Criminal Code of Republika Srpska modified these definitions by explicitly defining the concept of hate crimes.

Article 2, paragraph 37 – *Definitions* – of the Criminal Code of Brčko District defines hatred as *an incitement to the commission of a crime stipulated by this law, which is entirely or partially based on differences on the grounds of actual or perceived ethnic or national origin, language or script, religious beliefs, race, colour, gender, sexual orientation, political or other conviction, social status, age, health condition or other characteristics or because of connections with persons who have some of these different traits*.¹⁰ Article 49 – *General rules of sentencing* – of this Code also stipulates that *in cases where a crime was committed out of hatred, as stipulated in Article 2,*

¹⁰ Text of the Criminal Code of BD is available at:
<http://www.skupstinabd.ba/zakoni/163/Zakon%20o%20izmjenama%20i%20dopunama%20Krivicnog%20zakona%20B.pdf> (Official Gazette of BD BiH nos. 10/03,6/05,2/10)

paragraph 37 of this Code, the court shall consider this circumstance as aggravating and thus impose a stricter sentence, unless the Code provides more severe punishment for the qualified form of that criminal offence.

Hatred motivation has been **incorporated as an element of a base crime of certain criminal offences** under the Criminal Code of Brčko District, which stipulates special punishments for perpetrators of criminal offences such as: murder (Article 163), causing grievous bodily injury (Article 169), rape (Article 200), theft (Article 281), aggravated theft (Article 282), robbery (Article 283), malicious mischief (Article 287) and serious crimes against safety of people and security of property (Article 322), if such acts are motivated by hatred.

Criminal Code of Republika Srpska, in article 147 – *Definitions* - paragraph 25 stipulates that *an act committed, entirely or partially due to race, national or ethnic origin, language, religious belief, colour, gender or sexual orientation, health condition or gender identity of another person is considered a hate crime.*¹¹ In Article 37 – *General rules on sentencing* – in paragraph 3 stipulates that *if an act is committed out of hatred, as specified in Article 147, paragraph 25 of this Law, the court shall consider this circumstance as aggravating, unless bias motivation is already provided as an element of that specific criminal offence.*¹²

This explicit regulation of hate crimes was introduced into Criminal Code of Republika Srpska in 2013. In the period from 2010 until 2013, the Criminal Code of Republika Srpska defined a hate crime in the same fashion as the Criminal Code of Brčko District as an incitement to commission of crime.

Hatred motivation has been **incorporated as an element of a base crime of certain criminal offences** under the Criminal Code of Republika Srpska, which stipulates special punishments for perpetrators of criminal offences such as: aggravated murder (Article 149), causing grievous bodily injury (Article 156), aggravated theft (Article 232), robbery (Article 233), aggravated robbery (Article 234), malicious mischief (Article 249) and causing general danger (Article 402) if such acts are motivated by hatred.

The amendments to the Criminal Codes adopted in RS and Brčko District were also proposed in relation to the Criminal Code of the Federation of Bosnia and Herzegovina in 2010 but they were not adopted. During 2013 and 2014 two initiatives were launched to amend the Criminal Code of the Federation of Bosnia and Herzegovina, i.e. to explicitly define the concept of a hate crime and stipulate stricter punishment of such acts. Both these initiatives were passed in the House of Representatives of the Federation Parliament, however, the 2013 initiative to amend

¹¹ Unofficial consolidated version of the Criminal Code of Republika Srpska https://www.google.ba/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCYQFjAB&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F18384&ei=vjxMVYChBMiAyyO4n1CYCw&usq=AFQjCNHnemB3OhWO1mmXP_QZQ8RSE_3NXw&sig2=DrSR0hFqMrVZN1EVLq7Evg (Official Gazette of RS nos. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13)

¹² Text of the Criminal Code of the Republika Srpska is available at: <http://advokatibijeljina.com/krivicni-zakon-republike-srpske/> (Official gazette of RS no. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13)

the Criminal Code of the Federation was rejected by the House of Peoples and in the case of amendments proposed in 2014, the House of Peoples have never convened a session to debate the proposed amendments. These amendments provided for aggravated forms of certain criminal acts, such as murder, rape and causing grievous bodily injury, when committed with a bias motivation. When it is not explicitly provided as an element of the crime under the Criminal Code of the Federation of BIH, bias motivation should also be taken into account as an aggravating circumstance.

2. PROPOSED AMENDMENTS TO THE CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

2.1. Reasons for Proposing Amendments

The need for adoption of amendments to the Criminal Code of the Federation of Bosnia and Herzegovina stems from **the need for harmonisation of the entity legislation i.e. Criminal Code of the Federation of Bosnia and Herzegovina with the BiH Gender Equality Law and the BiH Law on Prohibition of Discrimination i.e. mutual harmonisation of the criminal codes of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District**. The proposed amendments aim to remove shortcomings in application of the Criminal Code of the Federation of Bosnia and Herzegovina and thus increase the efficiency in prosecuting and punishing perpetrators of crimes motivated by hatred and incitement to violence and hatred.

Republika Srpska and Brčko District criminalised hate crimes in **their respective criminal codes already in 2010**. The 2013 amendments to the Criminal Code of Republika Srpska explicitly defined hate crime as any criminal act with a bias motivation, in the same fashion as the neighbouring countries. Incitement to violence, hatred and intolerance in the media and public space has been only partially regulated in the criminal legislations of RS and Brčko District. Namely, these laws provide for responsibility of media for broadcasting hate speech, while not holding accountable the individuals who resort to such speech. Therefore, the provisions of these laws, including the provisions of the new Law on Public Order and Peace of Republika Srpska, unlike the relevant provisions of the neighbouring countries are inadequate.

Freedom of expression is guaranteed by a number of instruments of the international law, inter alia: the European Convention on Human Rights and Fundamental Freedoms, Article 10 of which guarantees freedom of expression to everyone, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The exercise of the freedom of expression is, however, conditioned by restrictions which are required to protect reputation and rights of others, and necessity to criminally sanction hate speech. Pursuant to these conventions the High Contracting Parties shall criminalise any act of spreading ideas based on superiority or racial hatred, and define as incitement to discrimination, hostility or violence any call for national, racial, religious or other hatred, which should be banned by law.

The BiH Law on Prohibition of Discrimination in its Article 4 prohibits every incitement to discrimination, while in Article 2 it prohibits discrimination on the grounds of: *race, colour, language, religion, ethnic affiliation, national or social*

origin, connection with a national minority, political or other conviction, property, membership in a trade union or another association, education, social status and gender, sexual orientation and gender identity or any other circumstance aimed at or resulting in denying or preventing another person from exercising, on an equal footing, the rights and freedoms in all spheres of public life.

In addition, the Recommendation of the Ministerial Committee of the Council of Europe on Measures to Combat Discrimination based on Sexual Orientation and Gender Identity, which was adopted also in 2010, prescribes in detail the measures that each country should implement in order to adequately regulate and combat incitement to violence and hatred, as well as hate crimes.

2.2. Proposed Amendments

In order to provide adequate and detailed regulation of hate crimes in the *Criminal Code of the Federation of Bosnia and Herzegovina*, the Coalition for Combat Against Hate Speech and Hate Crimes proposed the following amendments to the Criminal Code of the Federation of Bosnia and Herzegovina:

Amendment I

Article 2 – *Definitions* if the Criminal Code of the Federation of Bosnia and Herzegovina, paragraph 33 should be amended so as to define the following:

(33) *Any criminal act committed, partially or exclusively, with a hatred motivation i.e. out of intolerance or bias towards an injured party or property, which was based on the actual or perceived personal characteristic, i.e. personal characteristic of a person with whom the injured party is associated such as national or ethnic affiliation, colour, religion, gender, sexual orientation, disability, health condition, gender identity, language or any other personal characteristic shall be regarded a hate crime.*

Current paragraph 33 of Article 2 of the Criminal Code of the Federation of Bosnia and Herzegovina will become paragraph 34.

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, subsequent amendments will regulate the qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina. It also expands the list of protected personal characteristics guaranteed

under the Criminal Code of the Federation of Bosnia and Herzegovina in accordance with the BIH Law on Prohibition of Discrimination. Progress report on Bosnia and Herzegovina's integrations into EU (2013 and 2014 Progress Reports) made a clear recommendation that the Federation of Bosnia and Herzegovina should incorporate hate crime provisions in its Criminal Code.

Amendment II

Article 49 of the Criminal Code of the Federation of Bosnia and Herzegovina titled – *General rules of sentencing* should be amended by adding to it an additional paragraph 4, which should read:

- (4) *When a criminal offence was committed out of hatred, as stipulated in Article 2, paragraph 33 of this Code, the court shall take this circumstance as an aggravating factor and thus impose a stricter punishment, unless the Code prescribes a harsher punishment for the qualified form of the criminal offence.*

Article 49 in paragraph 4 imposes an obligation on the court, in the case when a criminal offence is committed out of hatred, as specified in the proposed amendment to Article 2 (paragraph 33), to take into account a hate motivation as an aggravating circumstance of the offence. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina. Experience from the Republic of Croatia shows that regulation and definition of hate crime alone does not contribute nor does it necessary lead to more stringent punishment of hate crimes if it is not coupled with the strong commitment of the courts to take into account the hate motivation as an aggravating factor in sentencing of such crimes. Consequently, the Criminal Code of the Federation of Bosnia and Herzegovina should prescribe such an obligation of the courts in order to prevent arbitrariness in the application of their regulations.

Amendment III

Heading of Article 163 – *Causing racial, national and religious hatred, discord and intolerance* should be changed into *Incitement to hatred, discord and intolerance* and the text of this Article should be amended to read as follows:

- (1) *Whoever causes or propagates hatred, discord or intolerance on the grounds of national or ethnic affiliation, colour, religion, gender, sexual orientation, disability, health condition, gender identity, language or any other personal characteristic or propagates ideas of superiority of one race, nation or a group of citizens over another ones living in the Federation of Bosnia and Herzegovina shall be fined or sentenced to imprisonment of one to five years.*
- (2) *Whoever commits a criminal offence referred to in paragraph 1 of this Article by means of coercion, maltreatment, compromising security, derision of national, ethnic or religious symbols, malicious mischief, desecration of*

monuments, memorials or graves shall be punished by imprisonment of one to eight years.

- (3) *Punishment from paragraph 2 of this Article shall be imposed on anyone who commits the criminal act referred to in paragraph 1 of this Article by abusing the position or authority or if such an act escalates in a riot, violence or other aggravated consequence to life of constituent peoples and others who live in Brčko District, the perpetrators shall be punished by imprisonment of one to ten years.*
- (4) *Materials and objects containing messages referred to in paragraph 1 of this Article, as well as any means used for their production, reproduction and distribution shall be forfeited.*

Bosnia and Herzegovina ratified a number of conventions and treaties, thus committing itself to meet its legal obligations - reduce the hate speech, support the right to freedom of expression, fight against the hate crime and ensure appropriate criminalisation thereof. In order to send a clear message on prohibiting discord, intolerance, hatred and incitement to discrimination on any grounds and ensure protection to all its citizens, Bosnia and Herzegovina as a member state of the Council of Europe should, as soon as possible, harmonise its criminal legislation with the conventions that are an integral part of the Annex I to the BIH Constitution, in particular the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, and act upon the positions of the European Court of Human Rights concerning inadequate regulation and prosecution of hate speech and hate crimes and the Recommendation of the Council of Europe on measures to combat discrimination on grounds of sexual orientation and gender identity. The exercise of the right to freedom of expression, which is guaranteed to everyone under Article 10 of the European Convention on Human Rights and Fundamental Freedoms, is conditioned by restrictions that are required *to protect reputation and rights of others*. Under Article 4(a) of the International Convention on Elimination of All Forms of Racial Discrimination the signatories of the convention are required to criminalise *any act of propagating ideas based on superiority or racial hatred*, while Article 20 of the International Covenant on Civil and Political Rights stipulates that *any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*. The Recommendation of the Ministerial Committee of the Council of Europe on Measures to Combat Discrimination based on Sexual Orientation and Gender Identity, which was adopted in 2010, provides detailed set of measures that each state should undertake in order to adequately regulate and prevent incitement to hatred, discrimination and violence motivated by sexual orientation and gender identity.

Introduction of this amendment to the Criminal Code of the Federation harmonises the latter with the BIH Law on Prohibition of Discrimination, Article 4 of which prohibits incitement to discrimination, while Article 2 thereof prohibits discrimination on grounds of *race, colour, language, religion, ethnic affiliation, national or social origin, connection with a national minority, political or other conviction, property, membership in a trade union or another association, education, social status*

and gender, sexual orientation and gender identity or any other circumstance aimed at or resulting in denying or preventing another person from exercising, on an equal footing, the rights and freedoms in all spheres of public life.

Amendment IV

In the Criminal Code of the Federation of Bosnia and Herzegovina, paragraph 2 (c) of Article 166 – *Murder* should be amended so as to read:

c) whoever deprives another person of life out of hatred.

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment V

Article 172 of the Criminal Code of the Federation of Bosnia and Herzegovina – *Serious bodily injury* – should be amended so that its paragraph 4 reads as follows:

(4) Whoever commits an act referred to in paragraph 1 of this Article out of hatred shall be punished by imprisonment of one to ten years.

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment VI

Article 203 of the Criminal Code of the Federation of Bosnia and Herzegovina, titled *Rape* shall be amended so that paragraph 4 should read as follows:

- (4) *Whoever commits the criminal offence referred to in paragraph 1 of this Article with a hate motivation shall be punished by imprisonment of three to fifteen years.*

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment VII

Article 287 of the Criminal Code of the Federation of Bosnia and Herzegovina, titled *Aggravated theft*, should be amended by adding an additional item e) to paragraph 1, which should read:

- (e) *out of hatred.*

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment VIII

Article 288 of the Criminal Code of the Federation of Bosnia and Herzegovina, titled *Robbery* should be amended so as to read:

- (2) *If, by the criminal offence referred to in paragraph 1 of this Article, a serious bodily injury is inflicted on a person with intent, or if the criminal offence was perpetrated within a group of people, or a weapon or dangerous instrument was used, or if the offence was committed out of hatred, the perpetrator shall be punished by imprisonment for a term not less than five years.*

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment IX

Paragraph 2 of Article 289 of the Criminal Code of the Federation of Bosnia and Herzegovina – *Aggravated robbery* – should be amended so as to read:

- (2) *If, by the criminal offence referred to in paragraph 1 of this Article, a serious bodily injury is inflicted on a person with intent, or if the criminal offence was perpetrated within a group of people, or a weapon or dangerous instrument was used, or if the offence was committed out of hatred, the perpetrator shall be punished by imprisonment for a term not less than five years.*

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations that Bosnia and Herzegovina assumed as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment X

Article 293 of the Criminal Code of the Federation of Bosnia and Herzegovina – *Malicious Mischief* – in paragraph 3 should be amended so to read:

- (3) *Whoever commits criminal act referred to in paragraphs 1 and 2 of this Article with a hate motivation shall be punished by imprisonment of six months to five years.*

Paragraph 33 of Article 2 regulates the protected characteristics that are most

commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations assumed by Bosnia and Herzegovina as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment XI

Article 323 of the Criminal Code of the Federation of Bosnia and Herzegovina – *Causing general danger* – should be amended by adding a new paragraph 5 which should read:

- (5) *Whoever commits criminal acts referred to in paragraphs 1, 2 and 3 of this Article with a hate motivation shall be punished by imprisonment of one to ten years.*

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations assumed by Bosnia and Herzegovina as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

Amendment XII

Paragraph 1 of Article 328 of the FBiH Criminal Code – *Aggravated criminal offence against general security of people and property* – should be amended so as to read:

- (1) *Whoever commits criminal offences referred to in Article 323 (Causing general danger), paragraphs 1 to 3; Article 324 (Damaging or destroying important economic and public facilities or installations), paragraphs 1 and 2; Article 325 (Damaging Work Safety Equipment), paragraphs 1 and 2 and Article 326. (Violation of building rules and irregular constructions), paragraph 1 of this Law and thus inflicts grievous bodily injury to another person or causes large scale property damage or commits aforementioned acts out of hatred shall be*

punished by imprisonment of one to ten years.

Paragraph 33 of Article 2 regulates the protected characteristics that are most commonly used as a motivation for hate crimes and provides general definition of a hate crime as any criminal offence under the Criminal Code of the Federation of Bosnia and Herzegovina motivated by hatred or bias against a person or a group having some of these protected characteristics. Based on this definition, qualified forms of certain criminal offences in the case when their commission was motivated by hatred or a bias shall be regulated. This way, Criminal Code of the Federation of Bosnia and Herzegovina will be amended in line with the recommendations and obligations assumed by Bosnia and Herzegovina as a member of the Council of Europe and recommendations of the OSCE, which have already been incorporated in the criminal codes of Republika Srpska and Brčko District, thus contributing to the progress in harmonisation of criminal legislation in Bosnia and Herzegovina.

2.3. Financial and Other Resources Required for Implementation of Amendments to the Criminal Code and the Manner of Their Raising

Application of this Code does not require any additional financial resources to be reserved in the Budget of the Federation of Bosnia and Herzegovina.

2.4. Bodies and Organisations Consulted in the Amendment Drafting Process

Proposed amendments concerning hate crime and hate speech were drafted as a result of cooperation of the Coalition for combat against hate speech and hate crime with OSCE Mission to Bosnia and Herzegovina and in consultation with legal experts from Croatia and Serbia. The amendment drafting process included legal professionals from all organisations that make up the Coalition: Democratic Initiative Association, Youth centre KVART, Civil Rights Defenders, Foundation CURE, Mediacentar Foundation Sarajevo, Truth, Justice and Reconciliation Foundation, Youth initiative for human rights of Bosnia and Herzegovina, Otaharin, Youth News Association in BIH (ONA), Sarajevo Open Centre, Association of BIH journalists/reporters and Press Council of Bosnia and Herzegovina.

3. ADDITIONAL MEASURES REQUIRED FOR PREVENTING AND SANCTIONING HATE CRIMES

To be able to adequately prosecute perpetrators of hate crimes, i.e. sanction and prevent these criminal offences as well as incitement to hatred, intolerance, discrimination and violence, in addition to ensuring an adequate legal regulation one needs to take appropriate measures that contribute to this goal.

In order to ensure proper implementation of legislation and thus reach the goal of the special provisions related to hate crimes, one should:

- **Deliver a detailed training of officials of relevant institutions;** train and inform judges, prosecutors, police officers and civil servants about hate motivated crimes and incitement to hatred, as well as about proper application of the criminal legislations of the Entities and Brčko District;
- **Ensure an efficient, prompt and unbiased investigation of hate crimes,** especially in cases when such crimes were committed by law enforcement officers or other persons acting in an official capacity;
- **Raise awareness among the officials in public authorities and institutions at all levels,** as well as among members of political parties on their responsibility and the need to refrain from statements, especially public ones, which may be seen to legitimise hatred or discrimination, and on the necessity to promote tolerance and respect for human rights of all citizens;
- **Make sure that government and Parliament officials from all levels in Bosnia and Herzegovina publicly condemn incidents** motivated by hatred in order to send a clear message to citizens that hate crimes will not be tolerated;
- **Develop a Protocol on Hate Crimes Prosecution,** the signing of which will bind the relevant institutions and authorities to cooperate with one another in detecting and prosecuting hate crimes; monitor the results of these proceedings; cooperate with civil society; and clearly define their roles in this process. The Protocol should also specify a unique sub-label for hate crimes and a form to collect statistics on these crimes, which should be used by judicial institutions and ministries of interior;
- **Inform and raise awareness of citizens through media, relevant institutions and education system** on the concept and consequences of incitement to hatred and hate crimes as well as on the sanctions stipulated for such crimes through public campaigns in the media, art and public space;
- **Introduce courses on hate crimes in the curricula** of law schools, criminal science studies, security studies and similar study groups, as well as in the curricula of police academies and mandatory training programmes of police administrations (e.g. permanent training within ministries of interior) and civil service professional exams;
- **Appoint contact persons for hate motivated incidents in all police**

departments and take all necessary steps to ensure that officers of law enforcement agencies, including judiciary acquire knowledge and skills needed to sensitise them to work with and adequately support victims and witnesses of such criminal offences and incidents;

- **Collect and analyse statistics on reported and prosecuted hate crimes.** Police departments, prosecutors and courts should have separate registers of reported and prosecuted hate crimes, which they should report on annually not only to the national and international institutions but also to the general public.

ABOUT THE COALITION FOR COMBAT AGAINST HATE SPEECH AND HATE CRIME

Coalition for combat against hate speech and hate crime was founded in the beginning of 2013 in order to enhance the advocacy of its members for the advancement of legal framework regulating hate crimes and hate speech.

In 2013, Coalition was involved in the process of amending the Criminal Code of Republika Srpska. The amendments adopted explicitly regulate hate crimes as bias motivated criminal acts regulated by this Criminal Code.

During 2013 and 2014 Coalition advocated for proper regulation of hate crimes within the Criminal Code of Federation of BiH. Both times the amendments of the Coalition were adopted by the House of Representatives of the Parliament of BiH, however in 2013 House of Peoples refused these amendments, and in 2014 the session in which these amendments would be discussed in the House of Peoples was never scheduled.

Coalition also focuses on advocacy for adequate implementation of the existing laws prohibiting hate crimes and hate speech (criminal codes of Republika Srpska, Brčko District and Federation of BiH, as well as Anti-discrimination Law of BiH), as well as on active awareness raising on the issues of hate crime and hate speech and their harmful effects on the BH society.

Coalition is formed by ten non-governmental organisations active in the field of promotion and protection of human rights:

Association for Democratic Initiatives
Centre for youth KVART
Civil Rights Defenders
Foundation CURE
Foundation Mediacentre Sarajevo
Foundation Truth, Justice, Reconciliation
Youth Initiative for Human Rights of Bosnia and Herzegovina
Otaharin
Youth Journalist Association in BiH
Sarajevo Open Centre
Association of BH journalists
Press Council of BiH.



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