

CRIMINOLOGICAL EVALUATION OF VERBAL AGGRESSION

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1. INTRODUCTION

The English term 'hate speech' refers to a phenomenon that consists in the use of language for the purpose of awaking, spreading or justifying hatred and discrimination as well as violence against particular individuals, groups of people, representatives of minorities or whatever other entities targeted by a given statement. Approval of hate speech in society leads to the establishment of stereotypes and prejudices and, resulting in lower acceptance of representatives of 'hated' groups, can cause the so-called hate crimes. Hate speech occurs in different forms and, that is why, it is difficult to unambiguously determine what it is. Although none of the many existing definitions of the phenomenon is commonly accepted and used, hate speech is unanimously understood in the way defined by the Council of Europe. This definition of hate speech covers expressions that spread, promote and justify racial hatred, xenophobia, anti-Semitism and other forms of intolerance undermining democratic security, cultural cohesion and pluralism.¹

The term 'hate speech' is often used in Poland, however, the concept of hate speech does not exist in the Polish law. Persons who believe that they are victims of the so-called hate speech can take legal steps based on civil law. On the other hand, persons who are aggrieved as a result of any offences motivated by hatred can protect their rights in criminal proceedings. It is indicated that hate speech is an imprecise term that is difficult to define in the Polish law.² The basic provision concerning the phenomenon of hate speech in Poland is Article 256 of the Criminal Code (henceforth CC), which bans promoting a totalitarian political system and

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¹ M. Kacprzak, *Pałapki poprawności politycznej*, Von Borowiecky, Radzymin 2012.

² OSCE-ODIHR, Hate Crime Reporting, <http://hatecrime.osce.org/> (accessed 20.12.2019).

inciting to hatred for national, ethnic, racial or religious reasons. However, such conduct can be also prosecuted based on other laws. The Criminal Code lists the following types of such conduct:

- praising an offensive war (Article 117 para. 3),
- insulting the Nation of the Republic of Poland (Article 133),
- insulting the President of the Republic of Poland (Article 135, para. 2),
- insulting the Polish or foreign flag (Article 137),
- offending religious feelings (Article 196),
- praising paedophilia (Article 200b),
- dissemination of pornographic material (Article 202),
- slander/libel (Article 212).

Activities that are connected with hate speech are also referred to in other statutes. They include, e.g. denying the commission of communist or Nazi crimes (Article 55 Act on the Institute of National Remembrance) and infringement of personality rights (Articles 23 and 24 Civil Code). In many cases, it is difficult to determine a borderline between serious and deserved criticism and an assault and spreading hatred. What is fundamental is to distinguish between a fact and an opinion. In Poland, courts rarely hear slander or libel cases, although the legal provisions clearly indicate that the commission of those offences is only possible by means of announcing untrue facts. For example, an Internet user called his former workplace ‘a Polish labour camp’. The employer filed claims to a common court, which judged that the employee could use such an unpleasant description because it is not a statement about a fact but an expression of his opinion. The situation would have been different if he had stated that his employer was a thief or a bribe-taker. Such a statement, unless supported by evidence, is classified as slander or libel.

As it was signalled above, hate speech can lead to the commission of the ‘hate crimes’. They are described as any criminal offences targeting people and their property in consequence of which a victim or another target of crime are selected with regard to their actual or alleged link or relationship with, affiliation to, membership of or support for a group distinguished based on its members’ common characteristic features such as their actual or supposed race, nationality, ethnic origin, language, colour of skin, religion, gender, age, physical or mental impairment, sexual orientation or other similar features.³ Attention is drawn to the fact that the number of hate crimes, including hate speech, is rising all over the world.⁴ 1,449 proceedings concerning offences committed for racist, anti-Semitic or xenophobic reasons were registered in the common organisational units of the Public Prosecution in Poland

³ J. Perry, *Evidencing the Case for Hate Crime*, [in:] J.N. Chakraborti, J. Garland (eds), *Responding to Hate Crime*, Policy Press, University of Bristol, Bristol 2015, pp. 71–84.

⁴ National Public Prosecution Office, *Sprawozdanie dotyczące spraw o przestępstwa popełnione z pobudek rasistowskich w 2017 r.*, <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/wyciagze-sprawozdania-dot-spraw-o-przestepstwa-popelnione-z-pobudek-rasistowskich-antysemickich-lub-ksenofobicznych-prowadzonych-w-2017-roku-w-jednostkach-organizacyjnych-prokuratury/> (accessed 20.12.2019).

in 2017, which accounts for 0.1% of all reported cases.⁵ Public prosecutors conducted 1,415 proceedings in the above-mentioned offences, of which 1,156 (with no refusal to instigate) proceedings were registered in this statistical period and 259 cases had been instigated in former periods and continued.

Public prosecutors supervised 278 cases, which accounts for 16.3% of the proceedings carried out in 2017. The largest number of supervised cases occurred in the Lublin region: 85 cases accounting for 72.6%, the Krakow region: 80 cases (57.6%) and the Szczecin region: 31 cases (39.2%). The smallest number of supervised cases occurred in the Katowice and Warsaw regions: three cases in each one. The proceedings registered in 2017 concerned acts legally classified in various ways, however, some of them occurred on their own, others were in cumulative concurrence. It should be indicated that in the case of cumulative concurrence, legal classification of acts with regard to the most severe punishment was registered and other classifications were not reported in the above-mentioned statistics.

Preventive measures were applied to 342 persons in 185 proceedings out of 1,708 cases registered in 2017. Courts remanded 77 offenders in temporary custody. Moreover, prosecutors applied various non-custodial preventive measures towards suspects, including:

- 281 probation orders,
- bail in 87 cases,
- ban on leaving the country in 84 cases,
- 43 other preventive measures.

In 121 cases 430 charges were brought against a total of 353 suspects. Preventive measures were applied to 253 perpetrators, including 66 cases of temporary custody, 77 cases of bail, 203 probation orders, 70 bans on leaving the country and 31 other measures. In 45 cases preventive measures were applied to 63 perpetrators, including five cases of temporary custody, nine cases of bail, 55 probation orders, 11 bans on leaving the country, and 12 other measures.

Among 1,415 proceedings conducted:

- 489 cases concerned offences committed with the use of the Internet,
- 220 cases concerned events connected with the use of violence against a person,
- 197 cases concerned threats issued against a person,
- 145 cases concerned racist inscriptions, the so-called graffiti on walls, buildings and fences,
- 33 cases concerned events connected with demonstrations, mass meetings and rallies,
- 10 cases concerned books and the press,
- 5 cases concerned offences connected with the conduct of sports fans and athletes during or in relation to sports competitions,
- 316 cases concerned other acts.

⁵ S. Spurek, *Mowa nienawiści: potrzebne są zmiany w prawie*, Gazeta Prawna.pl, <https://prawo.gazetaprawna.pl/artykuly/1393498,mowa-nienawisci-i-hejt-a-przepisy-prawa.html> (accessed 20.12.2019).

According to the information on proceedings collected in 2017, the motive behind the perpetrators' activities in those cases was a person's or a group's membership of the following national, racial, ethnic, political, religious or atheistic groups: Muslims in 328 cases, Ukrainians in 190 cases, Jews in 112 cases, Negroid in 98 cases, Romani in 96 cases, Poles in 95 cases, Catholics in 66 cases, and Syrians in 24 cases. 'Promotion of a fascist state system' was a motive for acts in 230 cases. In 469 cases the motive for acting was classified as 'other' than the above-mentioned. The motive was quite often specified as 'national hatred' or 'hatred for national-ethnic reasons'. In 2017, 258 indictments were placed in courts, in 30 cases there were motions to sentence without trial, in accordance with Article 335 § 1 of the Criminal Procedure Code (CPC), 27 motions to conditionally discontinue proceedings and five motions based on Article 324 CPC (a total of 320 decisions of this type), i.e. 21.7% of cases concluded in the period. In addition, prosecutors discontinued 421 cases in the period due to failure to detect perpetrators, which accounts for 28.6% of all the concluded cases. On the other hand, prosecutors suspended proceedings in 73 cases. In the period analysed, courts sentenced 420 persons, including 47 under Article 335 § 2 CPC, 59 persons under Article 335 § 1 CPC, 31 persons under Article 387 CPC, and conditionally suspended proceedings against 65 persons. 24 persons were acquitted; eight of these judgments were final.

It is important that ca. 40% of acts are committed with the use of the Internet, which often serves as a means to spread prejudice, stereotypes and hatred. The events described are mainly offences of public incitement to hatred of national, ethnic or religious origin (i.e. offences under Article 256 para. 1 CC) or public insulting of a person or a group of people due to their membership (an offence under Article 257 CC). It is also worth mentioning Article 119 CC, i.e. the use of violence or illegal threat because of a victim's national, ethnic, racial, political, religious or atheistic orientation.

The Criminal Code protects people or groups facing such conduct because of their real or alleged national, ethnic or racial origin, and religious or atheistic beliefs. Impaired people, the elderly, and LGBT (non-heteronormative) persons, who are also vulnerable to hate speech, especially on the Internet, are deprived of such special protection. They can pursue justice following general regulations using the provisions of the Criminal Code that concern other offences, e.g. an offence of slander or libel that is subject to private indictment, but not an offence of hatred. Requests for an amendment to the Criminal Code have been made for a long time, inter alia, by the Ombudsman.

Attention is drawn to the fact that the reasons for poor efficiency of the fight against hate speech lie in the inappropriate application of the existing provisions of law as well as the lack of the relevant regulations. The Criminal Code does not protect all groups especially vulnerable to attacks on the Internet. As it has been emphasised above, there is a ban on insulting and inciting to hatred because of membership in a particular ethnic, national, racial or religious group, but not because of the sexual orientation, impairment or gender identity. Homosexuals who face incitement to hatred on the Internet cannot make use of the provisions of crimi-

nal law, and thus have fewer possibilities of protection. That is why, circles involved in the fight against discrimination have demanded for many years that the catalogue of the characteristic features of hate speech be extended.⁶

2. PSYCHOLOGICAL SOURCES OF HATE SPEECH

A deeper understanding of the occurrence of hate speech in social life requires that adequate psychological analyses should be conducted. Hatred is an emotion, and emotions constitute a considerable part of human existence and to a great extent are responsible for human behaviour.⁷ It can be assumed that emotions are a constant and inseparable element of human experience and can be treated as human fundamental motivational system. Inherent in emotions are changes taking place in internal body organs that are manifested in stomach cramps, muscle tension, and accelerated heart beat; that is why, it should be emphasised that emotions are both psychological and somatic processes.⁸ Research into emotions reports frequent somatic changes, although the coherence and specificity of the processes are not fully explained. Basic emotions include happiness and satisfaction, fear and scare, sadness, shame and the sense of guilt, disgust and anger.⁹ Such emotions as happiness and satisfaction are perceived as pleasant; on the other hand, fear, scare and disgust are associated with displeasure.

2.1. EMOTIONS

The basic category in the description of emotions is their identity, i.e. valence. Emotions are defined as evaluative reactions to events, persons or objects.¹⁰ The evaluation can be in the form of assessment with the use of categories of satisfaction-dissatisfaction in the case of events, approval-disapproval in the case of persons, and like-dislike in the case of objects. The distinguished types of evaluation include a general positive-negative dimension. It can be assumed that the valence of emotions also has clear motivational consequences in the sense that positive emotions are connected with a tendency 'towards', pursuing and approaching an object that is the source of emotions; on the other hand, negative emotions are connected with a tendency 'backwards', avoiding and departing from the object that raises emotions. Satisfaction and happiness are basic positive emotions with a positive identity that only differ with regard to intensity.¹¹

⁶ S. Spurek, *Mowa nienawiści: potrzebne są zmiany w prawie*, Gazeta Prawna.pl, <https://prawo.gazetaprawna.pl/artykuly/1393498,mowa-nienawisci-i-hejt-a-przepisy-prawa.html> (accessed 20.12.2019).

⁷ R.J. Davidson, S. Begley, *Życie emocjonalne mózgu*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2013.

⁸ J. LeDoux, *Mózg emocjonalny*, Wydawnictwo Media Rodzina, Poznań 2000.

⁹ N.H. Frijda, *Punkt widzenia psychologów*, [in:] M. Lewis, J.M. Haviland-Jones (eds), *Psychologia emocji*, Gdańskie Wydawnictwo Psychologiczne, Gdańsk 2005, pp. 88–107.

¹⁰ R.J. Davidson, S. Begley, *supra* n. 7.

¹¹ N.H. Frijda, *supra* n. 9, pp. 88–107.

2.2. ANGER

Anger is one of fundamental emotions. Everyone can become angry if they are provoked. It is indicated that anger results from negative assessment of someone's blameworthy conduct and dissatisfaction caused by its undesired consequences.¹² Research shows that hot-tempered people are more vulnerable to increased blood pressure and heart attacks. Although men show anger more often than women, both verbally and physically, it is proved that the feeling is equally common among people regardless of gender. Women more often suppress their anger, which results in a bigger number of depression cases among them than in men. Anger is a basic component of envy and jealousy. When one eats something awful, one feels disgust. A simple form of disgust can be observed when, e.g. a child is fed with something bitter. The emotion is inherent and develops with age as a result of the influence exerted by social and cultural surroundings. Common factors evoking disgust include, e.g. skin damage, unpleasant taste, poor personal hygiene, some secretions, excretions, death and some sexual practices.

At present, it is believed that there is no single separate system in the human brain that might be responsible for emotions. On the other hand, it is possible to separate some systems corresponding to particular fundamental emotions. Older, phylogenetic parts of the brain are involved in emotions to a different extent. This concerns the prefrontal and association cortex, hippocampus, hypothalamus, mid-brain, amygdala, frontal thalamic nuclei and cingulate cortex.¹³ The cerebral cortex also has some type of regulatory significance as thanks to it an individual becomes aware of the emotional states perceived. Due to activity of particular parts of the brain connected with emotions, a type of asymmetry can be noticed. Thus, positive emotions are perceived thanks to the activity of the left hemisphere, while negative emotions thanks to the right one. Neurotransmitters, chemical substances and hormones, also play a significant role in the work of the brain, modulating and generating emotional states. They include cortisol and testosterone, adrenaline, noradrenaline, dopamine, and serotonin.¹⁴ As far as factors evoking emotions are concerned, there is a great variety. Some of them are universal in nature because they result from the establishment of some methods of responding to events important from the perspective of survival during the human evolution, e.g. the feeling of fear occurring at the sight of a dangerous animal. The second big group of factors result from individual experience. Four ways of generating emotional states are indicated. The first one is nerve-related and fundamental as it is present in the other ones. The emotion can be evoked, e.g. after the application of a certain chemical substance. The second one is sensomotoric in nature and occurs when the expression of an emotion is at the same time strengthened. The third way consists in a biological action of important stimuli such as smell, pain and taste. The fourth

¹² E.A. Lemaire, K.A. Dodge, *Rozwój złości i wrogich interakcji*, [in:] M. Lewis, J.M. Haviland-Jones (eds), *Psychologia emocji*, Gdańskie Wydawnictwo Psychologiczne, Gdańsk 2005, pp. 745–760.

¹³ J. LeDoux, *supra* n. 8.

¹⁴ R.M. Sapolsky, *Dlaczego zebry nie mają wrzodów? Psychofizjologia stresu*, Wydawnictwo Naukowe PWN, Warszawa 2012.

one is based on cognitive identification and the development of factors that evoke emotions. Assessment, attribution and interpretation are cognitive processes that generate emotions.

2.3. HATRED

Negative feelings such as anger, hatred and desire of revenge are part of everyday life to the same extent as all the other positive feelings. Hatred is a dangerous feeling. Addressed externally, it has an effect different from the intended one: it does not harm a targeted person but damages the person who is filled with it. It is an addictive feeling, something like cancer or an infectious disease. Great humanity mentors of different eras warn of the power of hatred, which is capable of intensifying pain to the same extent as love is capable of alleviating it.¹⁵ One should realise that human psyche also conceals dark sides. They must be accepted because they are part of an individual. It is not possible to push them to the subconscious, hide them, which results in, e.g. depression. Therefore, it is important to develop a possibility of controlling those dark sides of one's own psyche. A man can hate in a destructive way. When destructive hatred reaches a high level, such desire can change into wrongful conduct.

According to some psychoanalysts, hatred and bestiality, as a result, are immanent part of the human condition.¹⁶ In order to understand the issue discussed, it is important what the course of development in the childhood was. For babies, love and hatred are separated. They perceive the world in two categories: either/or. A baby does not understand that a beloved person can be an enemy. On the other hand, an adult can treat love and hatred as things connected and occurring at the same time in the relations with another person. In the case of an adult, it is very important to address hatred properly. Inter alia, obsessive hatred is a form of improperly addressed hatred.¹⁷ The characteristic features of such conduct include virulence, obstinacy, perversity or extreme pedantry. Virulent rituals are subtle ways of gaining dominance over a given person. Passive-aggressive hatred is the most sophisticated form of all. People who are overwhelmed by it cannot admit that they experience whatever negative, hostile feelings. Masochist hatred is another form. People who are overwhelmed by it often remain in inappropriate emotional relationships and prove that they are only innocent victims. They express their hatred in a perverted way taking the position of a person hated by another one. Psychosomatic hatred is the most serious form because it is addressed to one's self and one's own body. Some people do not want to admit that they feel hatred towards another person; that is why, they express it towards themselves. Such a person is inclined to express hatred by means of, e.g. a heart condition, asthma attacks and gastric disorders.¹⁸ Schizophrenic hatred is also addressed to one's self, however, it

¹⁵ E. Fromm, *O sztuce miłości*, Wydawnictwo Rebis, Poznań 2009.

¹⁶ H. Kohut, *The Kohut Seminars on Self Psychology and Psychotherapy with Adolescents and Young Adults*, W.W. Norton & Company, New York 1987.

¹⁷ J. Goldberg, *Ciemna strona miłości*, Wydawnictwo WAB, Warszawa 1994.

¹⁸ R.M. Sapolsky, *supra* n. 14.

is not targeted at the body but the brain. Such persons do not want to admit that they feel hatred and, that is why, they prefer to escape to the world of phantasy and destroy the integrity of their brain. They destroy themselves in order to protect others against their hatred. Depressive hatred is the last type; similarly to the two latest types, it is also addressed to one's self. Such people accuse themselves, have a constant sense of guilt and do not have self-respect.

Hatred becomes destructive to a person when one conceals it; thus, it is very important to find a non-destructive way of expressing it. Long-term concealed hatred causes most problems. The problem of narcissism as specific psychical disposition is sometimes connected with the issue of hatred.¹⁹ In psychoanalytical literature, narcissism is described as a standard stage of one's development in the infancy and childhood. The term is also used to describe a certain mental disorder. Narcissism as a standard stage of human development is reflected in the fact that a baby notices the existence of other people when they satisfy his/her needs. A baby's narcissism gradually reduces with the growth of interest in the surrounding world. A baby realises that he/she is not the centre of the world. Attention is drawn to the fact that the course of mental processes is influenced by opposite powers: progressive and regressive ones. The former are conducive to maturing and the latter, on the other hand, act in the opposite direction. Progressive powers can stimulate an individual to responsible conduct, and regressive powers induce people to return to developmentally immature conduct. Narcissistic relationships are ones in which the source of the occurring conflicts can be found in the first years of life when the psychological birth of a human being takes place. Unlike the biological birth, which is a dramatic event, carefully observed and described, the mental birth is a slowly developing internal psychological process, which can be divided into three stages. In the first one, an infant experiences a fusion, a symbiotic union with the mother and the surrounding world. In the next stage, the baby acquires the feeling of separateness and the period is called a separation or individualisation phase. In the later period, having gained the skill of moving around, the baby starts to be interested in the experience of moving away from the mother and developing his/her own stable sense of identity of a separate person, however, with the possibility of returning to the mother if he/she wishes; the period is described as a phase of becoming closer again. In order to become psychologically mature, it is necessary to go through the three stages.

In the case of narcissism as a personality disorder, the characteristic feature of the people concerned is either a strong feeling of superiority or just the opposite – inferiority. In both cases, destructive hatred is its basis. Narcissistic superiority mania concerns a person who is egocentric, has a fixation with oneself like mythical Narcissus. Destructive hatred is hidden under the surface of love to oneself. Narcissistic inferiority mania concerns people who consciously hate themselves; who believe they are losers. They have often experienced traumatic events that deprived them of self-confidence. Hatred is neither a disease nor a disorder. It is a basic biological adaptation mechanism. It is necessary for us to be able to face threats, irritation and frustration. Hatred used in self-defence is a constructive feeling,

¹⁹ A. Lowen, *Narcissism. Denial of the True Self*, Touchstone, New York 2004.

a fundamental reaction available to people that becomes pathological only when it blends with unsatisfied child needs. When it is translated into the language of acts, it becomes destructive.

Destructive desires often occur in dreams and fantasies. One can sense rage, hatred, and desire for revenge in them with no dangerous consequences whatsoever. An animal fighting against another animal, having realised that it will not win, applies a defensive manoeuvre of retreat. In the case of people, when it is recognised that open rebellion has no chance to succeed, the only way to express hatred is to escape into the world of fantasy. When it comes to emotional harm, betrayal, apart from hatred the desire of revenge occurs. Vindictiveness also serves as defence against the feeling of hopelessness and helplessness. Hope for successful revenge makes life more bearable and causes that people feel less helpless victims. Imagining the world they desire in their revenge fantasies, they escape from the real world. In fantasies one can control the surroundings, is able to give the invented story any ending, can kill all the villains. Nothing ensures such a positive image of oneself as a revenge fantasy. Having fantasies about revenge comes as a relief because it helps to contain destructive impulses. When one does not admit the feeling of hatred in real life, the dreams are violent nightmares. Such a person attributes hatred, destruction to other people and treats them as if they were something external and not what is in them.

A human body has its own way of experiencing hatred. Every healthy organism has its own immunity system. When an enemy appears, e.g. in the form of bacteria, the system feels hatred to it. It strives to detect and destroy it and this hatred restores health. Everyone is also equipped with a mental immunity system, which has the same task, i.e. to detect and destroy the enemy. The human psyche has its enemy in the form of destructive hatred, which originates from narcissism. Aggression covers a wide range of feelings: from light irritation to anger. A properly functioning mental immunity system is able to distinguish these subtle nuances, properly determines the source of aggression (in them or other people), mobilises protective measures, and does not let an individual become an easy target for destructive narcissist hatred. Constructive hatred, stimulating the mental immunity system, neutralises the destructive power of narcissism. The main problem that blocks the proper cognition of hatred is the low level of an individual's competence in the sphere of self-awareness. If people were ready to extend their competence in the sphere, there would be fewer hate crimes committed.

If a given state's legal system or inactivity of the state bodies let discriminatory mechanisms be established, it will result in violence and hate crimes. It is in particular dangerous if potential perpetrators of hate crimes strive to find people responsible for their personal and life failures (e.g. unemployment, low salary, etc.) at any price. Many European countries' experience shows that prosecution of hate crime is very difficult because judges as well as prosecutors find it difficult to assess perpetrators' conduct in criminal law terms.²⁰ We often deal with the conflict of

²⁰ K. Karsznicki, *Przestępstwa popełniane z pobudek rasistowskich lub ksenofobicznych*, Prokuratura i Prawo 2, 2012, pp. 16–42.

interests. On the one hand, there is an infringement of personality rights, e.g. as a result of slander or libel, and on the other hand, one deals with the limitation of the freedom of expression. Finding the borderline between lawful and unlawful conduct is often very difficult. The assessment of behaviour does not pose any problems for judges and prosecutors if an act is connected with the violation of a person's bodily integrity and injury. It is much more difficult to identify an offence if it is just a statement. Then, the whole context of the statement is important as well as the accompanying circumstances. Polish criminal law system does not use a definition of hate crime. However, it was formulated by the Organisation for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights (OSCE – ODIHR) as presented above.²¹

3. SOCIOLOGICAL SOURCES OF HATE CRIME

In hate crimes, their common denominator is that they are motivated by prejudice and concern victims perceived as representatives of a particular group, and they are an announcement addressed to the group the victim belongs to. It should be emphasised that perpetrators of hate crimes harm representatives of the group against which they are prejudiced and not particular persons to whom they raise claims. Thus, the object of a perpetrator's conduct is not an individually defined person but this feature that specifies a victim as a different, alien member of a group hostile towards the perpetrator. It is worth emphasising that only the conduct resulting from hatred that is a prohibited act carrying a statutory penalty, i.e. is a classified offence, remains in the sphere of a prosecutor's or a judge's interest. In the field of criminal law, the conduct that does not match the features of any offences classified in the Criminal Code and other statutes stipulating penal provisions is legally irrelevant. However, such conduct will not be irrelevant in the field of other branches of law protecting particular groups against discrimination. There is a close relation between hate crimes and discrimination.²² Discrimination, unlike hate crimes, is passive in nature and is reflected in refusing a representative of the group discriminated against access to particular rights, interests and social positions. A perpetrator of a hate crime, on the other hand, behaves in an active way attacking a victim by publicly insulting or depriving them of property, health or life. Therefore, in the case of victims of crime, there will be a response of criminal law, and in the case of people discriminated against, the provisions of other branches of law will play the protective role, e.g. labour law, business law, administrative law, civil law, family law and inheritance law. The problem of discrimination, racism and xenophobia is addressed in international law as well as the Polish legal system.

²¹ *Preventing and Responding to Hate Crimes*, OSCE-ODIHR, Warsaw 2009, p. 15.

²² J. Levin, S. McDevitt, S. Bennet, *Hate and Bias Crime*, Routledge, London 2003.

3.1. STEREOTYPES

Stereotypes are a phenomenon that has been fascinating to psychologists, sociologists and other researchers into social issues for years. This interest is not accidental; stereotypes express significant features of a human way of thinking about social life. Common knowledge of society is to a great extent composed of stereotypes, i.e. simplified opinions about social groups, categories and institutions. Stereotypes say which social information that reaches one from the surroundings should be noticed and which should be ignored. A stereotype can be positive, however, most often it consists in the attribution of features perceived as undesired.²³ The concept of a stereotype in sociology as well as social psychology is most often used in a narrowed meaning, i.e. in relation to people belonging to a particular social group (e.g. an ethnic, religious or sexual minority). Sometimes, minorities can also develop stereotypes concerning the majority, and feel unjustified antipathy towards its representatives. Usually, when people speak about stereotypes, they have in mind typical, simplified beliefs of one group in relation to the members of another 'alien group'. Stereotypes are specific types of schemata concerning persons or social groups, include poor content that is inconsistent with reality, and they are resistant to change. A schema is a certain separate component of human knowledge that is a simplified picture of a particular area of reality. If it is activated, i.e. one has access to the information contained in it, a schema starts to influence the processing of incoming information. A schema makes it possible to understand the sense of incoming information and organise it.²⁴

Different definitions of prejudice can be found in literature. It is sometimes defined as unjustified negative attitude (aversion, antipathy) towards a group and its members.²⁵ The meaning of sexism, which refers to stereotypes, prejudice and discrimination against people based on gender, is similar. Prejudice is believed to be a hostile or negative attitude towards a certain group that can be distinguished based on generalisations resulting from false or incomplete information. A deeply prejudiced person is insensitive to information inconsistent with stereotypes. Prejudice is a strong negative feeling towards a person resulting from generalisation about a group to which this person belongs. It is described as an emotional attitude, an approach, a predisposition or a system of emotional beliefs that prescribes 'being against', 'anticipating something negative'. It can be said that social (ethnic, religious, age-related, etc.) prejudice is an aversion towards others assumed in advance only because they belong to a separate social group. This antipathy is a basis and a generalised premise of a reaction to that group or its representatives. It can be demonstrated in three ways.²⁶ The first one is aggressive prejudice: developed on the basis of strong negative emotions (fear, disgust, hatred). A similar mechanism

²³ M. Kofta, *Wprowadzenie do psychologii stereotypów i uprzedzeń*, [in:] M. Marody, E. Gucwa-Leśny (eds), *Podstawy życia społecznego w Polsce*, Warszawa 1996.

²⁴ B. Weigl, *Stereotypy i uprzedzenia*, [in:] J. Strelau (ed.), *Psychologia*, Vol. 3, Gdańsk 2000, p. 223.

²⁵ C. Macrae, Ch. Stangor, M. Hewston, *Stereotypy i uprzedzenia*, Gdańsk 1999.

²⁶ B. Weigl, *supra* n. 24, pp. 214–215.

can be applied to, e.g. animals (dogs, spiders), and is similar to phobias. This type of emotions leads to avoiding direct contact with the representatives of a given group. Contact with people treated this way is perceived as a potential and unavoidable threat. This type of prejudice rarely changes into an attack. Due to the fact that the persons or groups towards which this prejudice occurs evoke fear and are perceived as strong, different actions are taken against them; demonic features, hidden intentions, conspiracy, etc. are attributed to them. The second form is dominative prejudice that is based on contempt, the belief of one's own superiority or the superiority of one's group over others, or a belief that the dissimilarity of others offends human dignity. Representatives of this group subject to prejudice do not pose threat because they are perceived as weaker, so they constitute a source of discomfort or distress. This type of prejudice is most often a premise of attack or search for a scapegoat, etc. An attack is a source of pleasure or an award for those who stigmatise. The third form consists in internally contradictory prejudices connected with the conflict of emotions or ambivalence. It is prejudice resulting from vagueness. On the one hand, recognition or even admiration can occur and, on the other hand, antipathy, aversion, envy, jealousy and rivalry are observed. Such a conflict eventually results in a reaction consisting in the increase in distance because with the process of getting closer, the gradient of avoidance is stronger than the gradient of pursuit.

Stereotypes and prejudice are united in an indissoluble relationship. The feelings connected with prejudice invariably accompany stereotypical beliefs concerning alien groups, and acceptance of stereotypes usually results in a negative effect and unfavourable evaluation of a given group. The relation between developing stereotypes and prejudices exists almost always, because there are situations in which a given person is not prejudiced against a given group, although knows stereotypes concerning it. Due to the fact that most authors treat a stereotype as a method of describing reality, its relation to action is poorly accentuated, i.e. it is believed that stereotypical perception of a given object does not necessarily have to result in specific conduct with regard to it. However, it can be predicted that the more emotionally saturated a stereotype is, the stronger the readiness to particular conduct (the so-called behavioural intention).

Stereotypes let an observer promptly assess another person; thus, they serve to achieve one of the most important cognitive objectives: to judge as quickly as possible with the involvement of the smallest cognitive effort possible. Stereotypes are useful as tools that make it possible to quickly assess a person noticed and, that is why, it is so difficult to abandon them. Providing a simplified picture of the social world, they make it possible to realise what is going on, to make subjective judgments on others and to take unambiguous decisions and perform social activities. The above-mentioned features of stereotypes occur especially clearly in situations when there is little information and there is poor knowledge about someone. The information in a stereotype allows a person to easily fill gaps in their knowledge of themselves, although the content supplied can sometimes be far from the truth. The features of stereotypes also manifest themselves in situations when one is overloaded with information. Then, by simplifying the reality and suggesting certain interpretation, stereotypes let one ignore some data as insignificant and focus on others.

Once a stereotype is established, it shows a tendency to persist. Stereotypes have a tendency to live in one's memory even when one receives information evidently inconsistent with their content. There are many controversies over the origin of stereotypes and prejudices; however, there is no doubt that they are created at an early age. Abundant research shows that even a few years old children develop clear stereotypes of women's roles, stereotypes about age, stereotypes of national minorities, etc. Various factors can be conducive to the creation and maintenance of stereotypes such as 'culture of remembrance' of the relations between groups (e.g. memories of wars and other conflicts, intolerance and discrimination), ideologies dominating in a given period, migration making certain nationalities or people with a different skin colour a minority in their new country, and eventually various economic, political (e.g. electoral struggle) or civilizational (e.g. spread of television) processes. Stereotypical perception of people constitutes a basis of intolerance in social relations. Intolerance or lack of respect for the rights of others and diversity generated the biggest crimes in history. Putting it more precisely, intolerance is the conduct that is addressed against people, phenomena or values, regardless of the fact that their existence is justified by the laws of nature, customs and morality. There is an insolvable issue concerning the limits of intolerance and mutual relations between tolerance and indifference, between tolerance and moral, individual and social rigour. Traditional racism or the so-called ideological racism leads a man to great and real tragedies.

3.2. IGNORANCE

As far as the origin of intolerance is concerned, ignorance is put first. It is not only due to the fact that intolerant attitude and readiness to intolerant behaviour is a characteristic feature of most people whose education level is low but mainly because the objects of intolerant behaviour and activities are people and phenomena perceived as 'different', 'alien and unknown'.²⁷ This regularity is confirmed by the fact that members of two religious groups living in the same village are more tolerant towards each other than inhabitants of surrounding villages who have not had direct contacts with people of another denomination. Another source of intolerance is the sense of diversity, which is accompanied by evident ethical, aesthetic or other assessment, always positively evaluating one's own position and features. A condition of intolerance is also the feeling of anxiety and fear. These are common and natural feelings in a situation in which there is a threat of loss of exclusiveness or a privilege. It is a type of social and individual egoism, which causes aggressive behaviour against those who are really or potentially the source of threat. Superstition, as a special form of ignorance, which differs from ignorance in persistence and irremovability with the use of explanation, is indicated among the sources of intolerance. The most dangerous form of superstition is a tendency to perform aggressive acts against representatives of other races, nations or deno-

²⁷ T. Pilch, *Agresja i nietolerancja jako mechanizmy zagrożenia ładu społecznego*, [in:] T. Pilch, I. Lepalczyk (eds), *Pedagogika społeczna*, Wyd. Zak, Warszawa 1995.

minations. Superstition is very often based on a stereotype, i.e. a set of features a priori attributed to some groups. Stereotypes are resistant to persuasion and even the influence of personal experience that is contrary to them. They are permanent and persistent states of conscience constituting a breeding-ground for aggressive or at least ill-disposed conduct.

The source of intolerance can also be found in some mental dispositions resulting from personal features, such as e.g. authoritarian personality characterised by moral rigorism and a tendency to apply penalties as well as inclination towards intolerant beliefs and conduct in relation to everything that is in conflict with a person's vision of the social order and factual world. Rigidity, the routinised vision of the world and vague sense of security are all features conducive to intolerance. It is also necessary to indicate mental dispositions depending on external circumstances, such as e.g. propaganda, educational system, and convention. All these factors can shape a personality susceptible to intolerant beliefs and conduct towards people, values and groups. It rarely happens that the source of an intolerant act is clearly determined. In general, looking for the source of intolerant behaviour, we find the syndrome of circumstances and conditions in which it is difficult to separate the size and intensity of particular fragmentary causes.

3.3. SOCIAL CATEGORISATION AND DEINDIVIDUATION

There are two processes concerning the perception of social objects in a group and beyond it distinguished in the interpretation of conduct motivated by hatred and occurring among youth belonging to subcultures.²⁸ One of them is social categorisation, i.e. the division of social surroundings into certain classes based on a criterion, e.g. classifying people who belong and do not belong to a group into 'us' and 'them'. The other process is deindividuation, i.e. simplification of the representation of social objects consisting in depriving them of individual features. It refers to the loss of one's own identity as well as to the loss of individual identity of other people for the person perceiving. What is considered important is the potential influence of categorisation of social surroundings ('us' and 'them') on signals that initiate aggression. It is indicated that the fundamental function of social categorisation is played by the simplification of social world, including determination of one's own membership of a group, although not necessarily the increase in the sense of one's own value or achieving positive group identity. Social differentiation is usually accompanied by favouring one's own group, and cognitive manipulations serving the protection of the sense of one's own value can consist in the change of criteria for social comparison.²⁹

If a group has no chances for social recognition within the existing criteria, it looks for such criteria for the assessment of its own product that allow for its positive evaluation. The consequence of categorisation that consists in the decrease in

²⁸ E. Orlik-Marciniak, *Agresywność grup subkulturowych*, [in:] J. Mikulska (ed.), *Psychologia rozwiązywania problemów społecznych. Wybrane zagadnienia*, Poznań 1998, pp. 190–212.

²⁹ M. Cielecki, *Niektóre poznawcze konsekwencje przynależności grupowej*, [in:] M. Cielecki (ed.), *Wybrane zagadnienia z psychologii społecznej*, Warszawa 1989.

the level of differentiation between objects belonging to the same category probably in reality refers mainly to the members of alien groups with which one does not have direct contact. In general, one does not know those persons well, one is not able to provide subtle characteristics, one is less sensitive to their needs. Thus, from the social point of view, the consequences of categorisation that consist in the classification of individuals in the category of 'them' seem to be most important. A series of irregularities are connected with the phenomenon of deindividuation. It has been proved that the membership of a group results in the decrease in normative control over conduct and, in consequence, a release of conduct that is socially unacceptable. Deindividuation understood as the loss of one's own separateness is treated as an intermediate stage mechanism. The factors occurring in a group situation that evoke the increase in socially unacceptable conduct include: dispersion of liability, the size and activity of a group, increase in emotional anxiety and information overload. The factors lead to the limited individual's self-centredness, and decrease the regulatory function of individual norms as well as potential social evaluation of the conduct. This, as a result, increases the intensity of impulsive conduct, including asocial and antisocial one. It is emphasised that the decisive role in triggering uncontrolled conduct, including socially unacceptable one, is played by drawing less attention to oneself and direct presence of others. Concentration on others plays a special role in reducing the regulatory function of an individual's 'Self' and evoking copying behaviour. There is evidence that the sense of being anonymous is not the only regulator of conduct in a group situation, even in the case of strong individualisation. It has been found that groups in which deindividuation takes place are assessed in a more positive way by their members than groups in which members have a stronger sense of separateness. It is indicated that just this unification of conduct lets the examined free themselves from binding social norms.

3.4. INTER-GROUP CONFLICTS

What also plays an important role in the initiation of aggressive conduct, such as hate speech, against members of other groups is the system of principal and instrumental values of a group. An authoritarian aggressive leader modelling the conduct of other group members can strengthen group aggression. The way in which a leader functions and the style of managing a group to a great extent determine what a group is like. The research conducted in Germany found that the increase in crime connected with aggressive conduct of subcultures that are intolerant of others is observed mainly in small towns.³⁰

Problems connected with the occurrence and persistence of inter-group conflicts often have a psychological basis. The phenomenon of natural inclination to favour members of one's own group is one of such mechanisms. It appears not only within the scope of direct indicators such as better assessment of 'some of us', attributing positive features to them, favourable distribution of awards, but also indirect ones such as inclination to treat 'our' positive features and 'their' negative features as

³⁰ K. Karsznicki, *supra* n. 20, pp. 16–42.

general, permanent characteristics of a group. It is also typical to look for the reasons of 'our' positive conduct and 'their' negative behaviour in different circumstances.³¹ The phenomenon of favouring 'some of us' does not explain many disadvantageous aspects of inter-group relations. In particular, it does not explain why there is so often a weaker inclination to feel the same as people belonging to an alien group (e.g. people of a different nationality, religion or culture) and help them, and especially why emotional sensitivity to suffering of persons belonging to other groups is clearly limited.³² In the case of highly intensive inter-group conflicts, there is a tendency to delegitimise 'aliens' and to exclude stigmatised groups morally, i.e. to treat their representatives in the way as if the moral code binding in relation to one's own group was not applicable to them. Acts of massive cruelty such as pogroms and systematic extermination in general take place only in relation to 'aliens' and not 'some of us', and perpetrators of such acts as a rule do not feel guilty.

All the above-described cases concern something more than just the feeling of aversion or negative attitude towards members of alien groups. One can suppose that behind the indicated phenomena, there is a hidden inclination to dehumanise 'aliens', i.e. deny full humanity to them. It can be assumed that humanity is an essential component of the picture of 'some of us' and not of 'aliens', an important aspect of differences between one's own group and alien groups. Natural categories (e.g. plants and animals) and artefacts (products made by people) are distinguished in cognitive psychology. Natural categories are created based on certain key features, common to all elements of a given class, and a collection of those features constitutes the so-called category essence. The essential feature is a fundamental, in general, non-adjustable feature. Its existence decides on the perception of similarity of the items of the same category. Attention is drawn to the fact that some social categories (such as ethnic and racial groups) are treated by people like natural categories; they are attributed some types of essence perceived as common to all members of a category.³³ According to the proposed hypothesis, humanity, i.e. being a human within the full meaning of the word, would be an essential feature of one's own group but not of alien groups. Thus, each time a distinction between 'some of us' and 'aliens' is made (e.g. because of nationality), apart from apparent content connected with it, e.g. different physical features, place of residence, climate, lifestyle, religiosity, wealth, personality etc., some hidden features concerning humanity are activated. 'Some of us' are people in all aspects; 'aliens' are not. The adoption of this hypothesis allows understanding such phenomena as the decrease in empathy and sensitivity to suffering as well as a tendency to exclude aliens morally and delegitimise them.

³¹ A. Maas, D. Salvi, L. Arcuri, G.R. Swim, *Language Use in Intergroup Context: The Linguistic Intergroup Bias*, *Journal of Personality and Social Psychology* 57, 1989, pp. 981–993.

³² M. Mirosławska, M. Kofta, *Zjawisko infraciżowania „obcych”: wstępny test hipotezy generalizacji Ja*, *Psychologia Społeczna* 2(1), 2007, pp. 52–65.

³³ M. Rothbart, M. Taylor, *Category Labels and Social Reality: Do we View Social Categories as Natural Kinds?*, [in:] K. Fiedler, G.R. Semin (eds), *Language, Interaction and Social Cognition*, Sage, Newbury Park 1992, pp. 11–36.

The phenomenon of attributing certain typically human features to members of alien groups (out-groups) to a lesser extent than to the members of one's own group (in-group) is called *infrahumanisation*.³⁴ Thus, the term refers to the perception of members of an out-group as not fully human, which differs from the term 'dehumanisation' by the force of effect that it describes. In the case of dehumanisation, there is a phenomenon often accompanying strong social conflicts, i.e. open exclusion of 'aliens' from the area where human rights are in force. In the case of *infrahumanisation*, there is a phenomenon of decreased inclination to attribute typically human characteristic features to 'aliens' because they are completely reserved for the members of one's in-group. A series of research focused on one indicator of this variable, namely the inclination to attribute human emotions to 'some of us' and 'aliens'. The research in which students took part showed that the participants were more inclined to attribute secondary emotions (typically human ones) to 'some of us' than to 'aliens', and it occurred in the case of positive as well as negative emotions.³⁵ At the same time, there were no differences found in attributing primary emotions, common to people and animals. In the successive study in the series, it was found that during the accumulation of sequentially provided fragmentary information on the ability to experience emotions in a group average, the participants showed a tendency to relatively underestimate the frequency of occurrence of secondary emotions among the members of an out-group. It was also proved that the effect of *infrahumanisation* in the form of a decreased inclination to attribute secondary emotions to an alien group occurs in the conditions of a minimal group, which means that it can be evoked by the fact of social categorisation and not the history of inter-group relationships strengthened by negative stereotypes, etc.³⁶ The research with the use of the Implicit Association Test found that reaction time when the names of the members of one's in-group co-occurred with the names of secondary emotions, and names of the out-group with the names of primary emotions was shorter than in a reverse combination. The result suggests that also at the level of concealed attitudes, the category of secondary emotions is in conformity with the category of 'us', i.e. closely connected with it by association. An experiment conducted among students of one of Belgian universities, with Belgians as an in-group and Arabs as an out-group, proved that the force of concealed associations is much stronger for relations between names of secondary emotions with one's in-group than with an out-group.³⁷

Showing secondary emotions by the representatives of an alien group in reverse weakens pro-social reactions to them, decreases hidden conformism and accelerates the reaction of avoidance. Thus, previous findings suggest that people really have a tendency to dehumanise 'aliens'. It is emphasised that the tendency is so

³⁴ J.P. Leyens et al., *Emotional Prejudice, Essentialism, and Nationalism*, *European Journal of Social Psychology* Vol. 33(6), 2003, pp. 703–717.

³⁵ M. Mirosławska, M. Kofta, *supra* n. 32, pp. 52–65.

³⁶ M. Mirosławska, *Zjawisko infrahumanizacji „obcych” – demonstracja w warunkach grup minimalnych*, *Studia Psychologiczne* Vol. 44(4), 2006, pp. 45–55.

³⁷ R. Gaunt, J.P. Leyens, S. Demoulin, *Intergroup Relations and the Attribution of Emotions*, *Journal of Experimental Social Psychology* 38, 2002, pp. 508–514.

strong that it is reflected not only at the level of apparent but also those concealed measures. It is revealed in mutual perception of groups that are not in conflict and even those that have had minimum contact or no contact at all with each other, and also when the status of one's in-group is relatively high as well as relatively low in comparison with an out-group. It is not clear to what extent the tendency observed is primary in nature, i.e. whether this means that being a human is the essence of the category of 'us' or results from an activity other than a psychological mechanism. If we assume that humanity is an essential feature of one's in-group, we can expect that the effect of dehumanisation of 'aliens' will be very stable and common, thus occurring in various types of inter-group relationships. Previous research does not provide unambiguous support for the above. Explaining the phenomenon of infrahumanisation, researchers refer inter alia to the concept of generalisation of 'Self'. In the classical theory of social identity, the existence of particular relationships between an image of one's in-group and one's own image was emphasised, and it was indicated that the sense of membership of a group valued by a person was one of important conditions of positive self-assessment. This is the origin of the tendency to ethnocentrism, i.e. to glorify one's in-group and depreciate out-groups. More current research indicates that not only one's attitude to oneself depends on the image of one's in-group, but there is also a reverse dependence; paving the way for representation of 'Self' (most often evaluated positively) is a factor conducive to favouring 'some of us'. In the research conducted in the field of social cognition, it was observed that the representation of one's own person and the representation of one's in-group partly 'overlap'.³⁸ The phenomenon is reflected in the fact that attributing a feature not only to oneself but also to one's own group considerably accelerates taking a decision that a given feature belongs or does not belong to one's 'Self'. However, if a feature is attributed not only to oneself but also to an alien group, it has no influence on the time of taking such a decision. The existence of such a regularity indicates not only partial overlapping of the representation of Self and one's in-group but also that activation of Self leads to automatic activation of the image of one's in-group but not an out-group. It was found that people are inclined to design features attributed to them for others provided that they perceive those others as similar to 'Self'. Otherwise, they stop using the knowledge about themselves as a premise for a conclusion concerning the psychological features of those others, and take into account social knowledge about the features of the category to which those others belong. Thus, if someone is perceived as a member of an alien group, the process of activating the category to which the person belongs and drawing conclusion on their stereotypical features will be more probable. At the same time, the perception of others as members of an alien group slows down the process of generalisation of 'Self', hampering the attribution of typically human emotions to them.

³⁸ E.R. Smith, S. Coats, D. Walling, *Overlapping Mental Representations of Self, In-Group, and Partner*, *Personality and Social Psychology Bulletin* 25(7), 1999, pp. 873–882.

3.5. PREJUDICE

Depreciation of other groups is often connected with prejudice that is not only a phenomenon common in almost all societies worldwide but also a dangerous one. Even people who are convinced that they are objective often demonstrate a hidden negative attitude towards other races. Aversion to a given group often gives birth to hatred and in extreme situations it can lead to the use of violence against its members. Emotions play the most important role in generating prejudices because they influence the way in which information concerning social groups and their members is processed.³⁹ In accordance with the conception of integrated threats, prejudices occur in inter-group contacts when the feeling of security of the group to which an individual belongs is endangered. Therefore, fear and anger are dominant emotions that take part in the creation of prejudices, on the other hand, escape or attack are typical reactions. Anger usually occurs when someone encounters obstacles to achieve a set objective. It can be released when a group perceived as alien tries to obtain access to economic resources, take over or destroy property, limit freedom and the rights of the group members, infringe group principles and interfere in social cooperation or breach trust of one's own group.⁴⁰ Emotions connected with prejudices differ depending on the position of an alien group in two dimensions: friendliness and competence. A high position in both dimensions generates admiration and pride. On the other hand, groups that have a high competence-related position but low friendliness position evoke jealousy. In a situation in which a group is placed high in the friendliness dimension and low in the field of competence, the feeling of sorrow occurs, while low position in the two dimensions results in the dominating feeling of disgust with the alien group.⁴¹

Disgust is an emotion addressed to people and objects that seem repulsive. The emotion was developed as a biological mechanism of rejection in order to protect a human organism against an unpleasant taste, contaminated food, illness, and also immorality and violation of social norms.⁴² The emotion can be perceived as the defence of 'Self' against mental connection with the source of contamination and a reaction connected with undesired intimacy with a repulsive object. In accordance with the hypothesis of social contamination, groups that are treated as alien can be perceived not only as a threat to life and economic resources but also as disease carriers, and danger to integrity and purity of one's own group. Ethnic groups against which prejudices are generated are often accused of infringing a social order, opposing universal values, and transmitting contagious diseases. The word 'repulsion' often occurs in the language used to describe the members of those groups,

³⁹ P. Pelzer, *The Hostility Triad: The Contribution of Negative Emotions to Organizational (Un)wellness*, Culture and Organization 11(2), 2005, pp. 111–123.

⁴⁰ C.A. Cottrell, S.L. Neuberg, *Different Emotional Reactions to Different Groups: A Sociofunctional Threat-Based Approach to Prejudice*, Journal of Personality and Social Psychology 88(5), 2005, pp. 770–789.

⁴¹ E. Sinacka-Kubik, *Wpływ wstępu na uprzedzenia etniczne kobiet i mężczyzn*, Psychologia Społeczna 6(1), 2011, pp. 24–33.

⁴² P. Rozin, J. Haidt, C. McCauley, *Disgust*, [in:] M. Lewis, J.M. Haviland-Jones (eds), *Handbook of Emotions*, Guilford Press, New York 2000.

which is confirmed by research including analyses of texts calling for extreme inter-group hatred. Repulsion in a situation of threat of contamination causes a reaction of removal of the source of threat or, if it is not possible, distancing from the object evoking repulsion. Therefore, when the level of repulsion is high, the removal of an alien group that constitutes the source of threat can become a priority for the endangered group.⁴³

Prejudice is characterised by the presence of physical or psychological distance to a given person or group. It is suggested that social distance should be described as the feeling of aversion to accepting intimacy in contact with members of an alien group. In the research into prejudice against various ethnic groups, social distance described as the level of intimacy in physical contacts is a measure of prejudice.⁴⁴ The people examined are to show to what extent they accept the neighbourhood of people of other nationalities or to what extent they accept a marriage of their next of kin with a person of a different nationality. The issue of distance also concerns the feeling of repulsion because people have a tendency to escape from or avoid contact with an object that is its source and not to attack that object. The intensity of repulsion is connected with the level of this contact intimacy: the shorter the distance from the source of potential contamination, the stronger the reaction of repulsion. The approach to the surroundings as a source of potential contamination is conducive to maintaining social hierarchy, dividing groups within the categories: us versus them, and maintaining separateness. Evoking repulsion can be conducive to this social categorisation and keeping distance from a group perceived as alien. In the context of the issue of hate speech, cases concerning the conduct of football fans during matches are a serious problem for law enforcement. First of all, it is extremely difficult to individualise liability of particular fans shouting insulting slogans addressed to other people in a stadium filled with crowds (even in the case it is filmed). Secondly, even if perpetrators are identified, a person judging the situation must refer to the content of words pronounced and take into account a group of people to whom they are addressed. Addressees are usually fans of another club and not another ethnic or religious group. Such problems do not occur if we deal with a group unfurling banners insulting a particular ethnic, national or religious group.

4. SELECTED ASPECTS OF PROSECUTING HATE CRIME

Analyses of research into criminal case files show that in general identification of a perpetrator of an offence does not pose a problem for law enforcement bodies if it concerns acts the basic element of which is battery, injury or violation of the bodily integrity. In such a situation, identification is possible thanks to the fact that a victim knows a perpetrator or a victim and witnesses describe an event and a perpetrator in detail. On the other hand, identification of perpetrators of hate crimes

⁴³ E. Sinacka-Kubik, *supra* n. 41, pp. 24–33.

⁴⁴ Ch.N. Weaver, *Social Distance as a Measure of Prejudice Among Ethnic Groups in the United States*, *Journal of Applied Social Psychology* 38(3), 2008, pp. 779–795.

committed via the Internet presents serious difficulties. The first thing to be done should be the establishment a computer's IP identification number used to log into a given web forum. Having this information, it is necessary to obtain information about a computer user's personal data and address. In most cases analysed, law enforcement bodies have managed to determine those data. However, difficulties concerning identification occurred later when it was necessary to interrogate all the household members in connection with the posting of a text offending persons belonging to other groups that can be distinguished based on their race, ethnicity, nationality or religion. Analyses show inaccuracy and superficiality of interrogation, which in most cases was limited to the receipt of declarations from the persons involved.⁴⁵ The declarations indicated that the persons questioned had not posted any texts, which means that other people who often visited the household members must have developed the material. Officers conducting proceedings usually did not verify those statements and did not ask further questions about personal data of visitors on dates and hours when a text was posted, and the time when they were in and out on particular days. Apart from the above-mentioned activities, officers conducting preparatory proceedings should also protect the history of electronic correspondence and the history of surfing the net as well as carry out a search of the home for documents, magazines or films on issues strictly connected with the committed offence. Such evidence would surely make a perpetrator's identification possible. In some cases interviewing witnesses, neighbours or friends, can be justified in order to obtain information about the household members' interests, apparel worn, and contacts with subcultures or football fans.

It is highlighted that it would be useless to introduce a definition of hate speech used in everyday language to the Polish Criminal Code.⁴⁶ Article 256 § 1 CC penalises inciting to hatred and not to the hate speech, and the two types of conduct cannot be treated as the same. Victims of any hate crimes can pursue their rights in the course of criminal proceedings. A court must assess the motivation of a perpetrator of any prohibited acts because it is important for the determination of the level of social harmfulness of a given act, and the level of fault and guilt. Persons who believe they are victims of the hate speech can file claims in civil proceedings and sue perpetrators for the violation of personality rights. A plaintiff should indicate the infringed interests. The content of Article 24 § 1 Civil Code stipulates the presumption of unlawfulness of the violation of personality rights, which means that a complainant must present facts confirming the violation of his/her personality rights, and a defendant denying liability can try to prove that his/her activity did not have the features of unlawfulness. Such division of the burden of proof makes it easier to pursue claims concerning the violation of personality rights and the reference courts make to the concept of hate speech is not significant for the

⁴⁵ K. Karsznicki, *supra* n. 20, pp. 16–42.

⁴⁶ P. Sobański, *Zagadnienie celowości i możliwości zdefiniowania tzw. mowy nienawiści w prawie polskim*, https://www.researchgate.net/profile/Piotr_Sobanski4/publication/335313156_Zagadnienie_mozliwosci_i_celowosci_zdefiniowania_tzw_mowy_nienawisci/links/5d5d917f92851c3763713a19/Zagadnienie-mozliwosci-i-celowosci-zdefiniowania-tzw-mowy-nienawisci.pdf (accessed 20.12.2019).

establishment of the violation of personality rights and the recognition of claims under Article 24 Civil Code as justified. The author quoted above highlights that this type of approach could lead to a state of uncertainty concerning the law in force. Sufficient protection of the victims of particular conduct based on civil and criminal law is in conflict with the concept of introducing the definition of hate speech by the legislator.

The development of a broad legal definition of the concept of hate speech could be also in conflict with the freedom of speech guaranteed in the Constitution, and narrowing the application of the Constitution to particular persons or groups would deprive entities who do not match the adopted criteria of protection. Formulation of an unambiguous definition of a complex concept of hate speech seems impossible and the common use of this term in everyday language should not be directly translated into the legal sphere. The hate speech should be treated as an imprecise expression of everyday language and can be used in different ways like any other fuzzy concepts. Every type of conduct of a given entity should be assessed individually, which will make it possible to distinguish statements that are legally indifferent, e.g. only violate cultural standards, from conduct that violates personality rights or matches the features of a crime. Very often, hate crime, hate speech and discrimination are treated as the same and are attributed the same weight.⁴⁷ However, they are not identical acts because what characterises hate speech as a separate category of social conduct is not hatred but the fact that it is addressed to a group and not individuals; even if it is addressed to a particular person, it aims to reduce him/her to a typical representative of a group hated. Thus, we deal with a situation when conduct is recognised as inappropriate not because of behaviour that is negative but due to the fact that it is addressed to a particular social group.

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CRIMINOLOGICAL EVALUATION OF VERBAL AGGRESSION

Summary

The article analyses the phenomenon of verbal aggression (in other words, hate speech) and the so-called hate crimes from the criminological point of view. Psychological sources of hate speech include emotions such as anger and hatred. Characterising sociological sources of hate crime, the author draws attention to the issue of stereotypes, ignorance and social categorisation, and deindividuation. Inter-group conflicts and prejudice addressed to particular social groups and people are also recognised to be important factors in initiating aggressive conduct like hate speech. The main problem connected with the prosecution of hate crime is identification of perpetrators of those offences committed via the Internet. The issue is less significant in relation to acts of battery, injury or violation of bodily integrity because in such cases a victim usually knows a perpetrator or he/she can be identified based on a victim's or witnesses' description. It is assessed that the basic reasons of poorer results in the fight against hate speech in the web include inadequate enforcement of the existing provisions of law and the lack of appropriate regulations.

Keywords: criminology, hate speech, verbal aggression, hate crime, criminal law

KRYMINOLOGICZNA OCENA AGRESJI WERBALNEJ

Streszczenie

W artykule dokonano analizy zjawiska agresji werbalnej (inaczej, mowy nienawiści) oraz tzw. „przestępstw z nienawiści” w ujęciu kryminologicznym. Do psychologicznych źródeł mowy nienawiści zaliczono emocje, takie jak gniew i nienawiść. Charakteryzując socjologiczne źródła przestępstw popełnianych z nienawiści, zwrócono uwagę na problematykę stereotypów, ignorancji oraz kategoryzacji społecznej oraz deindywidualizacji. Za istotne czynniki w inicjowaniu zachowań agresywnych, takich jak mowa nienawiści, uznano również konflikty międzygrupowe oraz uprzedzenia kierowane wobec określonych grup społecznych oraz osób. Zasadniczym problemem związanym ze ściganiem przestępstw popełnianych z nienawiści jest identyfikacja sprawców tych przestępstw popełnianych za pośrednictwem Internetu. Kwestia ta ma mniejsze znaczenie w odniesieniu do czynów polegających na pobiciu, uszkodzeniu ciała czy naruszeniu nietykalności cielesnej, albowiem w takich wypadkach sprawca jest z reguły znany pokrzywdzonemu lub też możliwe jest jego ustalenie na podstawie zeznań

pokrzywdzonego czy świadków. Oceniono, iż podstawą słabych efektów walki z mową nienawiści w sieci jest zarówno nieodpowiednie egzekwowanie istniejących przepisów prawa, jak również brak właściwych regulacji.

Słowa kluczowe: kryminologia, mowa nienawiści, agresja werbalna, przestępstwa z nienawiści, prawo karne

VALORACIÓN CRIMINOLÓGICA DE AGRESIÓN VERBAL

Resumen

El artículo analiza el fenómeno de agresión verbal (el discurso de odio) y los llamados “delitos de odio” desde la perspectiva criminológica. Los fuentes psicológicos del discurso de odio comprenden tales emociones como rabia y odio. Caracterizando los fuentes sociológicos de delitos cometidos por motivo de odio se presta la atención a la problemática de estereotipos, ignorancia y categorización social. Los factores importantes que producen comportamientos agresivos, tales como discurso de odio, incluyen también conflictos entre grupos y prejuicios dirigidos hacia determinados grupos sociales y personas. El problema básico relativo a la persecución de delitos cometidos por motivos de odio es la identificación de autores de estos delitos cometidos a través de internet. Esta cuestión es menos importante en cuanto a los hechos que consisten en lesiones o violación de integridad física, ya que en tales casos el perjudicado por lo general conoce al autor o es posible identificarlo en virtud de las declaraciones del perjudicado o de testigos. Los efectos insatisfactorios de la lucha contra el discurso de odio en la red se debe tanto a la ejecución indebida de normativa vigente, como a la falta de regulación pertinente.

Palabras claves: criminología, discurso de odio, agresión verbal, delitos de odio, derecho penal

КРИМИНОЛОГИЧЕСКАЯ ОЦЕНКА СЛОВЕСНОЙ АГРЕССИИ

Аннотация

В статье анализируется криминологический аспект явления словесной агрессии («языка вражды»), а также преступлений на почве ненависти. К психологическим источникам языка вражды относятся такие эмоции, как гнев и ненависть. Характеризуя социологические источники преступлений на почве ненависти, автор уделяет особое внимание проблеме стереотипов, невежества, социальной категоризации и деиндивидуализации. Среди существенных факторов, побуждающих преступников к агрессивному поведению, включая язык вражды, выделяются межгрупповые конфликты, а также предрассудки в отношении конкретных социальных групп и отдельных лиц. Основная проблема, связанная с преследованием за преступления на почве ненависти, заключается в выявлении лиц, совершающих такие преступления в сети Интернет. Данная проблема имеет меньшее значение в случае таких преступлений, как нанесение побоев и телесных повреждений либо иных видов нарушения физической неприкосновенности, поскольку в таких случаях преступник обычно известен потерпевшему либо может быть установлен на основании показаний жертвы или свидетелей. По мнению автора, недостаточная эффективность борьбы с языком вражды в сети Интернет является следствием как ненадлежащего соблюдения существующего законодательства, так и отсутствием соответствующих нормативно-правовых актов.

Ключевые слова: криминология, язык вражды, словесная агрессия, преступления на почве ненависти, уголовное право

DIE KRIMINOLOGISCHE BEWERTUNG VON VERBALER AGGRESSION

Zusammenfassung

In dem Beitrag wird das Phänomen der verbalen Aggression (anders ausgedrückt: von Hassreden) und der sogenannten „Hassverbrechen“ aus kriminologischer Sicht analysiert. Die psychologischen Ursachen für Hassreden sind in Emotionen wie Wut und Hass zu suchen. Bei der Charakterisierung der soziologischen Gründe für hassmotivierte Straftaten wird auf die Themenbereiche Stereotypisierung, Ignoranz und soziale Kategorisierung sowie Entindividualisierung hingewiesen. Gruppeninterne Konflikte und Vorurteile, die sich gegen bestimmte soziale Gruppen und Personen richten, werden ebenfalls als wichtige Faktoren für das Auslösen von aggressivem Verhalten wie Hassrede ausgemacht. Das grundlegende Problem, das sich bei der Verfolgung von Hassverbrechen ergibt, besteht darin, die Täter dieser über das Internet begangenen Straftaten zu identifizieren. In Bezug auf Straftatbestände wie Schläge, Körperverletzungen oder die Verletzung der körperlichen Unversehrtheit kommt dieser Frage geringere Relevanz zu, da der Täter dem Opfer in solchen Fällen normalerweise bekannt ist oder auf Grundlage der Aussagen von Opfer oder Zeugen ermittelt werden kann. Der Autor gelangt zu dem Schluss, dass der Grund für die unbefriedigenden Ergebnisse im Kampf gegen Hassreden im Netz sowohl in der unzulänglichen Durchsetzung der bestehenden Gesetze, als auch im Fehlen geeigneter Regelungen zu suchen ist.

Schlüsselwörter: Kriminologie, Hassreden, verbale Aggression, Hassverbrechen, Strafrecht

ÉVALUATION CRIMINOLOGIQUE DE L'AGRESSION VERBALE

Résumé

L'article analyse le phénomène d'agression verbale (ou de discours de haine) et le soi-disant «crimes de haine» en termes criminologiques. Les sources psychologiques du discours de haine comprennent des émotions telles que la colère et la haine. Lors de la caractérisation des sources sociologiques des crimes de haine, une attention a été accordée aux problèmes de stéréotypes, d'ignorance et de catégorisation sociale, ainsi qu'à la désindividualisation. Les conflits intergroupes et les préjugés dirigés contre des groupes sociaux et des individus spécifiques ont également été reconnus comme des facteurs importants dans l'initiation d'un comportement agressif, comme le discours de haine. Le principal problème lié à la poursuite des crimes de haine est d'identifier les auteurs de ces crimes commis via Internet. Cette question est moins importante en ce qui concerne les actes de coups, de blessures ou de violation de l'intégrité corporelle, car dans de tels cas, l'auteur est généralement connu à la victime ou il est possible de le déterminer sur la base du témoignage de la victime ou des témoins. Il a été estimé que la base des mauvais effets de la lutte contre le discours de haine sur le Web est à la fois une application inadéquate des lois existantes et l'absence de réglementations appropriées.

Mots-clés: criminologie, discours de haine, agression verbale, crimes de haine, droit pénal

VALUTAZIONE CRIMINOLOGICA DELL'AGGRESSIONE VERBALE

Sintesi

Nell'articolo è stato analizzato il fenomeno dell'aggressione verbale (in altre parole: discorsi di odio) e dei cosiddetti "reati di odio" sotto il punto di vista criminologico. Tra le fonti psicologiche dei discorsi di odio vi sono le emozioni, come la rabbia e l'odio. Caratterizzando le fonti sociologiche dei reati commessi per odio si è fatta notare la problematica degli stereotipi, dell'ignoranza e della categorizzazione sociale e della depersonalizzazione. Tra fattori essenziali nello scatenare i comportamenti aggressivi, come i discorsi di odio, sono stati considerati anche i conflitti tra gruppi e i pregiudizi rivolti a determinati gruppi sociali e persone. Un problema fondamentale legato al perseguimento dei reati di odio è l'identificazione degli autori di tali reati compiuti attraverso Internet. Tale questione ha minore importanza in riferimento agli atti consistenti in percosse, lesioni, violazione dell'integrità fisica, infatti in tali caso l'autore è solitamente noto alla parte lesa o può essere determinato sulla base delle testimonianze della parte lesa o dei testimoni. Si è valutato che alla base dei scarsi risultati della lotta ai discorsi di odio in rete vi sono sia la scorretta applicazione delle norme di legge esistenti, così come l'assenza di opportune regolamentazioni.

Parole chiave: criminologia, discorsi di odio, aggressione verbale, reati di odio, diritto penale

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