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HATE CRIME IN CROATIA

EMPIRICAL RESEARCH OF CASES FROM THE PERIOD 2013 - 2018

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Contents

KEY FINDINGS

OFFENCES

- The offences were mostly committed at weekends (34.4%) and at night (21:00 o'clock – 05:00 o'clock) (39.0%), and they were mostly not connected (78.8%) with any special events of significance for the group to which the victim or the perpetrator belonged.
- More than a half of offences (56.5%) were committed in a closed space, most often in coffee bars/clubs (37.5%), private homes (27.1%; of which in 77% cases it was the victim's home), or in some other closed space mostly connected with someone's home (25%).
- Damage to at least one thing belonging to another person was registered in approximately one fourth of cases, whereby it was mostly graffiti (39.0%), or damaging things wantonly, or while committing some other criminal offence (23.5%).
- In one third of cases (35.3%) where damage was caused to things of some symbolic value, national symbolism prevailed, and it was mostly damage to cars with foreign licence plates and to national flags or monuments.
- In the sample of criminal cases, the most frequent offence classification was threat, except in the group of cases with unknown perpetrator(s) where damages to the property of another person prevailed.
- In the sample of misdemeanours, the most frequent offence classification, designated by the police, was misdemeanour referred to in Art. 25, para. 1 of ADA (44.8%), and then follow misdemeanours under AMPOP, in particular Art. 6 AMPOP (13.1 %) and Art.13 AMPOP (15.5%).

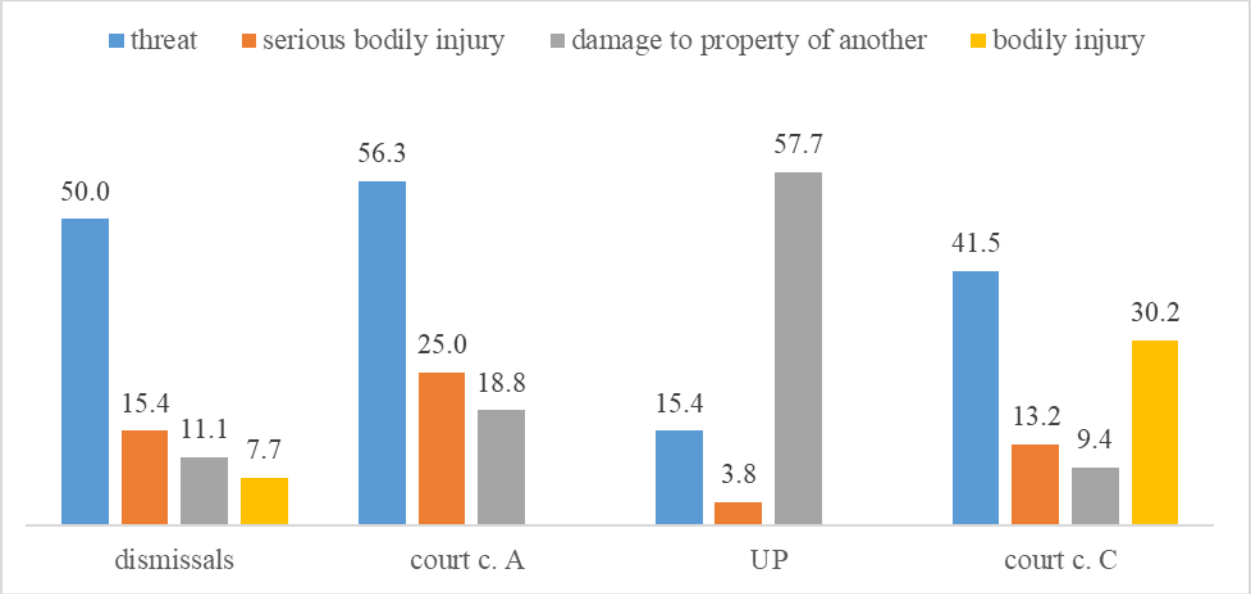

Image 1: Most frequent criminal offence classifications by the police (%)

BIAS INDICATORS AND PROTECTED CHARACTERISTICS

- There are three most frequent bias indicators recorded by the police in all groups of cases: the accompanying statements made by the perpetrators (69.5% cases), e.g. threats and insults because of the victim's affiliation to a group; the victim's perception that HC was involved (63.4%); and the fact that it was a violent offence without any clear motive (53.4%).
- In 90.1% of the cases the police registered at least one protected characteristic. Of that percentage, by far the most frequent characteristic in all groups of cases was nationality and ethnic origin (71.2%), then religion (18.6%), which in almost half of the cases appeared together with nationality and ethnic origin, sexual orientation (8.5%) and race and skin colour (8.5%). In the cases where the protected characteristics of nationality and ethnic origin were registered, the most frequent victims were the Serbs (in two thirds of cases, 66.7%) and the Roma (12.3%).

VICTIMS

- In total, 192 victims were registered, aged between 9 and 89 years of age;
- Almost two thirds were men (72.4%), mostly young (a fourth of the victims were between 25 and 30, and the average age was 38).
- In nearly half of the cases, the perpetrators of HC and the victims knew each other and they were mostly either acquaintances or neighbours.
- According to the information from the case files, the victims did not receive the instructions on their rights in a consistent way.
- Out of the small number of cases where the obligation of conducting an individual assessment of the victim's needs applied, only in a small number of files was there a note that it had been carried out by the police, the SA or the court. There was not a single case where a specific need to protect the victim was established based on an individual assessment.

PERPETRATORS OF HATE CRIMES

- In total, 62 perpetrators of HC were recorded, aged 15 to 70, dominantly men (90.3%) of younger age (44% of them were up to 21 years old, and on average they were 23), with completed secondary school education (57.4%), whereby there was a high percentage of the unemployed (27.9 %).
- 45.9% were under the influence of alcohol at the time of the perpetration of the offence, and it was not established that any of them had been under the influence of illegal drugs.
- In 52.5% of cases, previous risky/asocial/anti-social conduct was recorded, for 30% of the perpetrators it was recorded that they had previously committed a misdemeanour with elements of violence or discrimination, for 18% of them, that they had previously been convicted of criminal offences, and for 6.7% of them that they had served prison sentences.

CRIMINAL CASES INITIALLY DESIGNATED AS POTENTIAL HC BY THE POLICE WHERE THERE WAS NO PROSECUTION FOR HC (CASE GROUP A)

- Aamong dismissals, 25 cases with 35 defendants were analysed, among court cases A, 16 cases with 16 defendants were analysed, and with the analysed 25 UP cases, it was not possible to determine a total number of perpetrators.
- Among dismissals and court cases, with more than 40% of defendants the police had abandoned their own initial designation of the case as a HC, and in UP cases, the police abandoned the offence classification of HC for about 60% of defendants.
- In the category of dismissals, among the reasons for not instituting criminal prosecution, the dominant reasons were that there was no reasonable suspicion and the application of principle of discretionary prosecution (34.3% of each).
- The most frequent differences in offence classifications between the police and the SA were related to the conjunction with Art. 87, para. 21 CC stipulating HC.

CASES WITH FINAL DECISIONS WHERE CRIMINAL PROCEEDINGS FOR HATE CRIME WERE INSTITUTED (GROUP OF CASES C)

- 35 cases with final judgments were analysed, with 46 defendants accused of the perpetration of a total of 50 criminal offences out of hatred.
- In relation to the initial offence classifications by the police, the SA added the conjunctionwith Art. 87, para. 21 CC in the cases of 28.3% defendants.
- Precautionary measures were ordered to a third of defendants (32.6%), and the most frequent ones were bans from approaching a particular person and bans from establishing or maintaining contacts with a particular person (30.4%).
- In regard to pleas, more than a half of defendants denied all counts of indictment (56.5%), while a third of them (34.8%) pleaded guilty on all counts of indictment, 6.5% defendants pleaded guilty but denied the motive out of hatred, and 1 defendant (2.2%) denied some counts of indictment and the motive 'out of hatred'.
- A total of 82.7% defendants were convicted and final judgments were rendered; 81.6% of them were convicted of HC.
- Among 31 defendants with final judgments for a criminal offence out of hatred:
    - A total of 35 criminal offences were committed out of hatred, mostly threats (54.3%), whereby in those cases there were again inconsistent conjunctions with Art. 87, para. 21 CC;

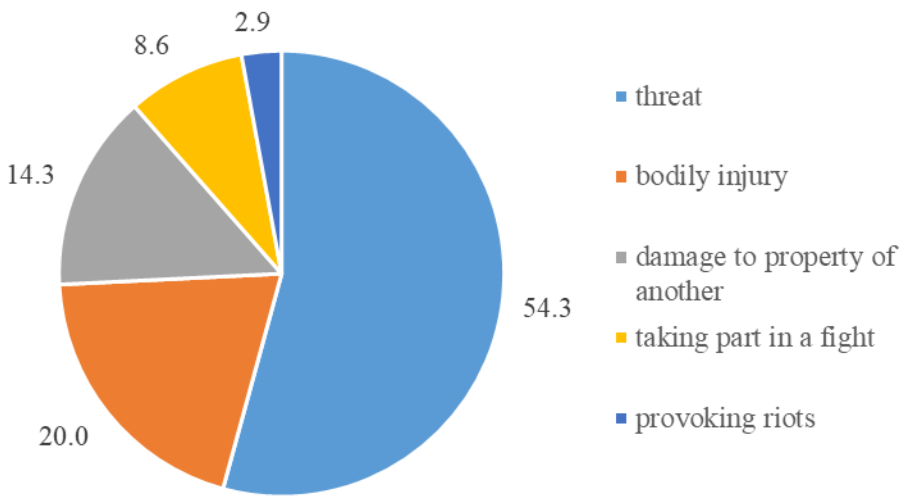

Image 2: Offence classifications of criminal offences committed out of hatred in the judgments of conviction (%)

- Most defendants (83.9%) were convicted of HC committed because of nationality and ethnic origin, whereby, again, the victims were dominantly Serbs (50 %);
- Most defendants (67.7%) were punished by suspended sentences, 19.4% by community work, 9.7% by imposition of educational measures, and only one defendant by an unconditional imprisonment (2 years) for several offences committed in concurrence;
- In 19.4% of cases safety measures were pronounced, most frequently obligatory treatments against addiction (50.0%);
- With 74.2% of defendants, some mitigating circumstances were registered, most frequently no criminal records (69.6%), confession (56.5%), remorse (43.5%) and young age (34.8%);
- With 29.0% of defendants, some aggravating circumstances affecting the sentencing were registered (together with mitigating circumstances);
- With almost a half of defendants (45.2%), the court did not consider 'hatred' as an aggravating circumstance at sentencing, although it was mandatory to do so;
- Average length of cases from the accusation to the final judgment was about 15 months; appeals against the first instance judgment were lodged in less than a third of defendants.

MISDEMEANOURS

- 30 finally adjudicated cases with 38 defendants convicted of the perpetration of a total of 58 misdemeanours were analysed.
- Out of 11 pronounced cautionary measures, the most frequent one was a ban from approaching a particular person and a ban from establishing and maintaining contact with a particular person (72.7%), while a ban from visiting a particular place or area was pronounced in the cases of 27.3% defendants. A total of 31.6% defendants were arrested, all of them for only one day. Detention was not ordered in any of the cases.

- About two thirds of defendants were convicted (65.8%), of which percentage 72.0% of hate misdemeanours;
- In relation to 18 persons convicted of hate misdemeanour:
  - Prevalent misdemeanours were those referred to in Arts. 6 and 13 AMPOP (83.3%), of which 26.7% of defendants committed the offences in concurrence with Art. 25 ADA. In addition, Art. 25 ADA appeared independently as a hate misdemeanour in the cases of 16.7% of defendants,
  - Under Art. 25 ADA, as hate misdemeanour, mostly threats were subsumed, whereby it was difficult to draw a clear line between misdemeanour and a criminal offence of threat referred to in Art. 139 CC,
  - More than a half of defendants (55.6%) committed the offence under the influence of alcohol;
  - As for sanctions, the most dominant were fines (83.3%), and beside the fines, suspended prison sentences (11.1%) and court reprimands as an educational measure against 1 minor, were pronounced;
  - An average fine amounted to HRK 1,873.13, and in the cases of as many as 5 out of 7 defendants convicted under Art. 25 ADA, the fines were mitigated (below the prescribed minimum of HRK 5,000);
  - Not in a single case did the misdemeanour courts explicitly qualify hatred as an aggravating circumstance in terms of the motive for which the offence had been committed;
  - The fact that the perpetrator had committed an offence in connection with one of the protected characteristics was mentioned in the statement of reasons only in relation to 38.9% defendants, mostly convicted under Art. 25 ADA, and in all cases it was national or ethnic affiliation;
  - Average length from the accusation to a final decision was 7 months.

SELECTED QUESTIONS

Discriminatory selection vs. previous disrupted relations

- The research shows inconsistency of case law when assessing whether the defendant committed an offence "on account of" the victim's affiliation to a particular group. This is indisputable when the offence is committed only because of someone's affiliation to a group (discriminatory selection), but the case law is inconsistent when it comes to the treatment of situations where there are more parallel and intertwined motives or other conflicts have existed between the victim and the perpetrator.
- It is evident that in some cases a standpoint was taken that previously disrupted relations – particularly long-lasting conflicts between the victim and the perpetrator – exclude the classification of HC (without analysing the background of the conflict and the question whether the main reason of disrupted relations was the victim's affiliation to a protected group).

- Other cases indicate a standpoint that previous (long-lasting) disrupted relations between the victim and the perpetrator were irrelevant in deciding whether the offence was a HC or not and other bias indicators were considered as crucial (primarily the victim's perception that HC was involved, and the fact that the offence was accompanied by verbalised biases).
- The attitude towards the relevance of proofs of (previous) good relations with (other) members of the concrete protected group has also been inconsistent.

The relation between misdemeanours and criminal offences with a particular emphasis on *ne bis in idem*

- In three cases involving 5 defendants, the misdemeanour proceedings made the subsequent prosecution for a criminal offence impossible – because of the application of the principle *ne bis in idem.* This situation resulted from the initial non-recognition of the elements of HC by the police who classified the incident only as misdemeanour.
- In some other cases, the police also failed to recognise the elements of HC but filed an indictment motion for misdemeanour, and the SA found out about the perpetration of the criminal offence from other sources (the victim's report, the court of misdemeanours, the media) and by a timely intervention, the SA terminated the misdemeanour proceedings and instituted criminal proceedings.
- In some cases, it was obvious that there was a separation of the description of facts of the same incident in such a way that the police filed the indictment motion and instituted misdemeanour proceedings for discriminatory statements (as a rule under Art. 25 ADA), while in the criminal report, only the objective characteristics of the criminal offence were included, without any discriminatory motive. When a criminal offence is involved, which in the basic form is prosecuted upon a private charge or a motion, and *ex officio* only if it is committed out of hatred, such practice may easily result in a dismissal of the criminal report by the SA.

Distinction of different forms of co-perpetration in a broader sense

- The research shows how HC in the Republic of Croatia are mostly committed by individual perpetrators.
- No one was convicted in any of the analysed cases of aiding and abetting, instigation or co-perpetration. If various forms of co-perpetration, in situations where in the perpetration of a criminal offence several persons take part, are not distinguished, one tends to overlook the fact that various contributions to the offence also result in a different legal position of co-perpetrators. Whether the defendant's activities are analysed separately or together with the contribution of other participants/co-perpetrators may have an impact on the classification of the offence (as a HC).

Some problematic aspects of offence classifications: the police, the SA, the courts

- Disputable and unstandardised is the case law of the misdemeanour courts in relation to the question whether the concurrence of misdemeanours against public order and peace, referred to in Art. 25 ADA, is real or deceptive. In several cases, the courts held that Art. 25 ADA was consumed by Art. 6 AMPOP. However, in several cases, the perpetrators were convicted under Art. 6 and Art. 13 of AMPOP and Art. 25 ADA in concurrence, what we consider as justified.
- The practice of the police, the SA and the courts is also not harmonised regarding the question whether criminal offences, where hatred is an aggravating circumstance changing the offence, should be designated in conjunction with Art. 87, para. 21 CC, or not. Of 7 convicted bodily injuries out of hatred, the offence was even 6 times classified under Art. 117, paras. 1 and 2, in conjunction with Art. 87, para. 21 CC, and only once solely under Art. 117, para. 2 CC. On the other hand, provoking riots out of hatred was classified (only) as Art. 324, paras. 1 and 2 CC.
- In connection with Art. 87, para. 21 CC, wrong offence classifications were also detected in connection with the criminal offence of threat which was very often not classified in conjunction with Art. 87, para. 21 CC, although in the analysed period, hatred was not an aggravating circumstance changing the offence but only a procedural precondition for an *ex officio* prosecution.
- Disputable and unstandardised is also the case law of classifying damage of another person's property out of hatred – under Art. 235, paras. 1 and 2 CC, in conjunction with Art. 87, para. 21 CC, or under Art. 235, para. 3 CC pursuant to which a more serious form of the offence is damage to the property of another person out of base motives. In the first case, the offence is punishable by imprisonment for two years, whereby hatred is only an aggravating circumstance to be considered in sentencing, while in the second case, the prescribed sentence is imprisonment from 6 months to 5 years. Different are also the preconditions for prosecution. When Art. 235, paras 1 and 2 CC are involved, the offence is prosecuted upon a motion and when para. 3 is invoked, *ex officio.*
- Inconsistent offence classifications were also observed in regard to graffiti whose content invited to violence and hatred. Sometimes they were classified only under Art. 235, para. 2 CC, sometimes under Art. 235, para. 2, in conjunction with para. 3 of the same Article, and sometimes under Art. 235, para. 2 in conjunction with Art. 87, para. 21 CC in concurrence with the criminal offence of public incitement to violation and hatred referred to in Art. 325 CC.

1. PREFACE

The process of development of the idea of hate crimes (hereinafter: HC)[1] as a special category of criminal offence is a process that has lasted for several decades – starting with the formalization of the idea that crimes motivated by race are an extremely dangerous social phenomenon calling for a criminal law response of States in accordance with the UN Convention on the Elimination of All Forms of Racial Discrimination of 1966.[2] In Europe, the 1990's were a period of the creation of an institutional framework for combating HC – both within the Council of Europe and at the level of the European Union.[3] In the European context, extremely important is also the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR) where HC has been treated as potential violation of Art. 2, Art. 3, Art. 8 and Art. 14 of the European Convention for the Protection of Human Rights.[4]

However, not until the Framework Decision No 2008/913/JHA of 28 November 2008 on combatting certain forms and expressions of rascism and xenophobia by means of criminal law was HC addressed at the level of the European Union.[5] The Framework Decision calls for recognition and harsher sanctioning of racist and xenophobic motives.[6] At the same time, the concept of racist and xenophobic motives must be interpreted broadly to also include hatred based on race, skin colour, religion and national or ethnic origin.[7]

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[1] The legal framework when dealing with HC, and the dilemmas emerging in its implementation are presented in detail in the initial report drawn up within the project entitled "Hate Crime in Croatia – An Overview of the Legal and Conceptual Framework". Visit: http://www.hpc.hr/2019/04/30/pregled-pravnog-i-konceptualnog-okvira-zlocina-iz-mrznje/

[2] Art. 4 of the Convention. The text of the Convention is available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx Croatia is a signatory by a notification on succession, *NN MU* 12/93 (Official Gazette of the RoC, International Treaties 12/93).

[3] The very concept of "hate crime" in the European territory was terminologically accepted by a decision of the Ministerial Council of the Organisation for Security and Co-operation in Europe (hereinafter: OSCE) in Maastricht in 2003 by 55 participating countries.
OSCE Ministerial Council Decision No. 4/03, Maastricht, 2 December 2003, https://www.osce.org/mc/19382?download=true V. i OSCE, ODIHR, Hate crimes in the OSCE region - incidents and responses, Annual report for 2008, 2009, p. 6 and OSCE, ODIHR, Hate Crime Laws – A Practical Guide, 2009, p. 7.

[4] According to FRA, Unmasking bias motives in crimes: selected cases of the European Court of Human Rights, 2018, https://fra.europa.eu/en/publication/2018/unmasking-bias-motives

[5] OJ L 328, 6.12.2008, pp. 55–58.Special edition in Croatian: Chapter 19 Volume 016 pp. 141 – 144.

[6] Art. 4 of the Framework Decision lays down that the States must take the necessary measures to ensure that racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively, that the courts can take such motivation into consideration in the determination of the sanctions.

[7] Para. 9 of the Preamble. The Framework Decision *per se* does not expressly preclude Member States from also extending the field of application to other groups of persons, defined by other criteria, such as social status or political conviction (para. 10 of the Preamble).

The concept of HC was introduced in the Croatian criminal legislation in 2006 by an amendment to the Criminal Code of 1997. In the valid law, the concept of HC is regulated by the new Criminal Code of 2011 (Official Gazette NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18 and 126/19, hereinafter: CC).[8]

Except in the valid law, the concept of HC is also mentioned in non-normative acts. Very important is the Protocol for Procedure in Cases of Hate Crimes of 2011 (hereinafter: Protocol) which conceptually broadens the concept of HC also to minor offences (misdemeanours). To improve the system of combating HC, the Working Group for the development of the Protocol for Procedure in Cases of Hate Crimes has prepared a new, revised Protocol whose adoption is expected by the end of 2020. Various preventive measures to combat HC are envisaged in the National Plan for Combating Discrimination for the period from 2017 to 2020 and the associated Action Plan for the period of 2017-2019.[9] Institutionally, apart from the police and the judiciary, monitoring HC is within the competence of the Government's Office for Human Rights and Rights of National Minorities and the Ministry of Justice.

Criminal legislation in Croatia does provide an adequate framework for the prosecution of HC, but misdemeanor legislation does not recognize the concept of HC, i.e. a minor offence committed out of hatred. However, it is clear that the perpetrators of misdemeanours can also be motivated by hatred, bias or prejudice.[10] Such an approach has been taken by the Government's Office for Human Rights and Rights of National Minorities and it is expressly laid down in the Protocol. However, when speaking of misdemeanours as HC, there is no provision in the misdemeanor legislation analogous to Article 87, para. 21 of the CC and there is also no classification for hate misdemeanours that would be more aggravating, and no express statutory obligation to consider such motivation of the perpetrator of a misdemeanour as aggravating.

HC, together with hate speech (the latter not being the subject of this research), at the phenomenological level, attracts public attention based on the media reports on victimisation of members of national minorities. Both ombudsman institutions and non-governmental

[8] The Criminal Code was adopted in 2011 and it entered into force on 1 January 2013.

[9] https://ljudskaprava.gov.hr/UserDocsImages//dokumenti//Nacionalni%20plan%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202022..pdf and https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Akcijski%20plan%20za%20provedbu%20Nacionalnog%20plana%20za%20borbu%20protiv%20diskriminacije%20za%20razdoblje%20od%202017.%20do%202019.%20godine.pdf

[10] The OESS also confirms that the concept of hate crime must, in broader terms, also include misdemeanours as, tentatively, more lenient forms of punishable conduct (English terms: 'minor offences', 'administrative offences', 'misdemeanours'). See: OSCE, ODIHR, Prosecuting Hate Crimes, A Practical Guide, 2014, p. 20.

organisations aimed at protecting and advocating human rights of one or all minority groups, in their reports, repeatedly point to negative social consequences of HC, sometimes also to potentially inadequate responses of the competent bodies. The publicly available official data[11] relate only to the number of cases where individual bodies have taken action and they give only a very limited insight into the occurrence of HC and the response by the police and various judicial bodies to these punishable acts.

In this research, we have tried to find an answer to the following question: what happens when the police initially designate an incident as possible HC? In the report at hand, we deal with a description and an assessment of the response by the police and the judicial bodies to HC as a manifestation of intolerance. Our intention has been to contribute to a better understanding of this phenomenon and to offer some recommendations for the enhancement of the existing practice.

The research is conducted within the project entitled "IRIS – Improved response to intolerance through research, strategic advocacy, and training" financed by the European Union through the "Rights, Equality and Citizenship" Programme. The Project is carried out by the Croatian Law Centre in partnership with the State Attorney's Office (hereinafter: SAO) of the Republic of Croatia, the Police Academy and the Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia, in cooperation with the Supreme Court and the High Misdemeanour Court of the Republic of Croatia.

The basic prerequisite for the implementation of this Project has been the willingness of project and partner organisations – the Police Academy of the Ministry of the Interior, the State Attorney's Office, the Supreme Court and the High Misdemeanour Court of the Republic of Croatia, and the Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia, to accept the initiative of the coordinator, the Croatian Law Centre, a non-governmental organization, to cooperate on this Project with an aim to improve their response to the most serious forms of intolerance.

Beside the representatives of these organisations in the Project Board and in the Project team – the employees of partner organisations and experts engaged in the Project, an unmeasurable contribution to the quality of the collected data was made by a number of employees of the SAO

[11] Every six months, the Office for Human Rights and Rights of National Minorities statistically combines and publishes the data on the number of cases registered by the Ministry of the Interior where the competent state prosecution offices have acted, and on the number of the final convictions for hate crimes (together with the criminal offences of hate speech), as well as the number of misdemeanours and final convictions in misdemeanour proceedings. Visit: https://ljudskaprava.gov.hr/suzbijanje-zlocina-iz-mrznje/602

of the Republic of Croatia ("*DORH"*), its regional offices, police stations and the courts providing assistance in the collection of research materials, collaborators who analysed and coded the content of the files, as well as the focus groups participants. We thank them all for their hard work and enthusiasm with which they took part in the research activities.

2. CONCEPTUALISATION AND OPERATIONALISATION

2.1. Criminal offences

When dealing with criminal offences, the legal framework is relatively clear. The concept of HC is provided for in Article 87, para. 21 of the CC and defined as "a criminal offence committed on account of a person's race, skin colour, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity." Therefore, any so-called base offence, if motivated by the perpetrator's bias regarding any of the listed protected characteristics ('bias motivation'), *ex lege* leads to harsher punishments – either by a more serious offence classification for which harsher sanctions are prescribed, or by a request submitted to the courts that such conduct must be considered as an aggravating circumstance in sentencing.

> According to Article 87, para. 21 of the CC, a hate crime is a "criminal offence committed on account of another person's race, skin colour, religion, national or ethnic origin, language, disability, gender, sexual orientation or gender identity."

In accordance with the applicable legal framework, three groups of criminal offences are distinguished:

- Criminal offences where the legislator has envisaged hatred as an aggravating circumstance changing the offence (a criminal offence of aggravated murder – Art. 111. point 4, CC, female genital mutilation - Art. 116, para. 3 CC, bodily injury – Art. 117, para. 2, CC, serious bodily injury - Art. 118, para. 2 CC, particularly serious bodily injury – Art. 119, para. 2 CC, criminal offences against sexual freedom – Art. 154, para. 1, point 4 and Art. 155 para. 3 CC), provoking riots – Art. 324, para. 2 CC);
- Criminal offences where hatred constitutes a circumstance for instituting prosecution *ex officio*, instead of the victim's private charge (coercion – Art. 138, para. 2 CC) and threat (Art. 139, para. 4 CC)[12]

[12] In the meantime, the most recent amendments to the Criminal Code (Official Gazette NN 126/19) altered the regulation of the criminal offence of threat whereby hatred is introduced as a qualifying circumstance with this criminal offence, as well. However, this amendment does not relate to the period covered by the research.

- All other criminal offences that can be designated in conjunction with Art. 87, para. 21 CC and where the commission of an offence "out of hatred" must constitute an aggravating circumstance in sentencing.

Hate speech has not been analysed in this research because it is structurally different from HC (in the case of hate speech without a discriminatory motivation, there is also no independent predicate offence). In addition, in conformity with the Framework Decision on Racism and Xenophobia, it can be concluded that hate speech, incriminated in Croatia by Art. 325 of the CC, must not be considered as HC pursuant to Art. 87, para. 21 CC and the fact that it is committed because of one of the protected characteristics, should not be taken as an aggravating circumstance in sentencing.[13]

2.2. Misdemeanours

Defining and identifying misdemeanours as potential hate crimes has turned out to be more problematic. In the Misdemeanour Act (Official Gazette Nos 107/07, 39/13, 157/13, 110/15, 70/17, 118/18, hereinafter: MA), there is no "hate misdemeanour". The concept of "a minor offence out of hatred" is contained in the Protocol but its applicability is questionable because of the following:

a) the circle of the protected characteristics in the Protocol is wider than those in the CC[14] and acccording to the Protocol, a wider circle of misdemeanours than criminal offences would be designated as hate crimes;
b) the Protocol includes so-called hate speech into hate crimes ("spread of hatred" on one of the characteristics protected by the Protocol) but hate speech was not included in this research;
c) the Protocol is not drawn up in the prescribed form and it is not a normative act, so that its mandatory character is disputable.

Because of the fact that the legislative framework does not contain a generally applicable definition of hate misdemeanour, the conceptualisation could not be based on a normative framework, or on the selection of individual articles which would thoroughly and exclusively

[13] See Art. 4 of the Framework Decision under which racist and xenophobic motivation should not be considered as an aggravating circumstance with criminal offences covered by Articles 1 and 2 of the Framework Decision (publicly inciting to violence or hatred, denying international crimes and criminal aiding and abetting).
[14] In such a way, that it also includes "political or other conviction, national or social origin, property, birth, education, social status, age, health status or other characteristics."

cover this phenomenon. Instead, in our research activities, we relied on a phemenological correspondence of factual descriptions of misdemeanours with the structural characteristics of HC, the starting point being the police files of misdemeanours initially labelled as HC.[15] In the misdemeanour legislation, some relevant minor offences are broadly and imprecisely defined, encompassing a whole series of different types of conduct within the same offence classification. For example, Art. 6 of the Act on Misdemeanours against Public Order and Peace (hereinafter: AMPOP) (Official Gazette NN Nos 5/90, 30/90, 47/90, 29/94) covers various possible forms of "particularly brazen and impolite conduct"in a public place that "offends citizens or disrupts their peace". Similarly, Art. 13 AMPOP lays down the liability for misdemeanours against anyone "[w]ho fights, quarrels or shouts in a public place or otherwise violates public order and peace". Such broad, imprecise and extendible paragraphs may cover both pure hate speech and HC in a narrower sense. We have opted for a more restrictive definion and in this research, the concept of hate misdemeanours does not include the offences fully exhausted as hate speech in a broader sense – in both public provocations to violence and hatred and in various forms of insults and curses. As for Art. 25 of the Anti-Discrimination Act (hereinafter: ADA, NN 85/08, 112/12), although it contains some similarities to Art. 87, para. 21 CC incriminating conduct as a result of some particular discriminatory motives, there is no full equivalence between these two articles. The circle of discriminatory bases is much broader in Art. 25 ADA, and the required perpetrator's subjective condition is also different. When dealing with hate crime referred to in Art. 87, para. 21 CC, it is sufficient that a criminal offence is committed "on account of" someone's protected characteristic. For the conviction under Art. 25 ADA, it is necessary to prove conduct "aimed at causing another person's fear or creating hostile, degrading, or insulting environment based on a difference" derived from one of the protected characteristics and the fact that such acting has violated the victim's dignity.

Hence, the included hate misdemeanours follow the structure of HC as a phenomenon consisting of the so-called predicate offence and the motivation based on a bias against one of the protected groups. These are the same discriminatory bases, i.e. protected characteristics classifying an offence as HC referred to in Art. 87, para. 21 CC. The same approach is laid down in the Protocol, although the circle of the protected characteristics listed in the 2011 Protocol is broader, in line with the then valid definition of HC as stipulated in the old CC of 1997.

[15] A dominant classification was the one referred to in Art. 25 of the ADA and misdemeanours referred to in AMPOP)

3. METHODOLOGY

3.1. Population, the sampling frame and the selection of samples

The process of identification of the committed HC in the Republic of Croatia began on the basis of data on criminal and misdemeanour cases committed in the period from 2013 to 2018 which had initially been designated as potential HC by the police, or a State Attorney (hereinafter: SA) and were brought to an end by final decision.

In conformity with the project proposal, criminal offences have been divided into groups in accordance with the outcome of the proceedings:

GROUP A: cases not prosecuted as HC:

a) dismissals – cases where SA decided to dismiss criminal charges or the prosecution was abandoned;

b) UP cases – cases where there was no criminal prosecution because the perpertrator was unknown;

c) court cases A – cases that were prosecuted and final decisions were rendered, not for HC but for an "ordinary" criminal offence.

GROUP C: court cases C – cases where final decisions were reached, prosecuted as HC.

The starting point for defining the relevant population of misdemeanours was a list of all the cases initially designated as hate misdemeanours by the police in their internal system in the period from 2013 to 2018. According to these data, 298 cases were designated as hate misdemeanours. Hate misdemeanour cases make up GROUP B – cases with final decisions where, on the basis of police charges, prosecution was instituted for hate misdemeanours.

An insight into the available files received from our project partners, and the initial case analysis, led to a conclusion that not all the cases corresponded to the criteria for inclusion in the population of HC cases covered by our research, so that some cases were excluded. The main reasons for their exclusion were the following:

- Of a total of 202 criminal cases initially designated as HC in the internal files kept by the police, 42[16] (20.8%) dealt with hate speech and not with HC and they were excluded from the population of this research, together with 13 cases excluded on the basis of some other criteria (e.g. the time of the commission did not fit in the time frame defined in the research, they were misdemeanours, etc.).

[16] As many as 40 cases were immediately excluded and two were excluded based on an additional analysis.

- In parallel, the HC files kept by the police did not include the cases where criminal charges were brought directly to the SA, without contacting the police, and the cases where the SA changed the offence classification by adding the HC designation. Those 65 cases were added to the population on the basis of the SAO of the Republic of Croatia's records.
- Additional 20 cases (9.9%) were excluded because the bias motivation did not relate to any of the groups included in the statutory definition of HC.
- All other criminal offences were excluded because of the existing errors in the files or because of some procedural grounds for exclusion. The largest number of exclusions (38 cases) were based on the fact that they were not final at the time when the process of the sample selection was completed.
- Regarding misdemeanours, it was not possible to fully rely on police files because it was the source covering the first phases of the research and because of an inadequate legal framework due to which it was difficult to determine the offence classification of hate misdemeanours. Of 298 cases, as many as 222 (74.5%) dealt with hate speech, and not 'HC' as referred to in this research, while additional 10 were excluded because the bias motivation was not connected with any of the groups covered by the statutory definition of HC.

  Additional 6 cases were excluded because it was established that they had already been processed and included in the analysis as criminal offences. Therefore, only 60 cases were included in the population of hate misdemeanours.

RELATION BETWEEN MISDEMEANOURS CONNECTED WITH DISCRIMINATION AND MISDEMEANOURS – HC

Since on the list of misdemeanours – HC – the most common offence classification was the one referred to in Art. 25 ADA, often on its own and sometimes in conjunction with other articles or misdemeanour regulations, we wanted to have a mechanism of control and asked for a list of misdemeanours, initially designated by the police as misdemeanours connected with discrimination. Our aim was to compare whether, and to what extent, those lists matched, and whether there was a clear line of distinction between them. An analysis of both lists for the first half of 2017 showed that the two categories of misdmeanours were overlapping and that to an extent more or less identical misdemeanours appeared in both of them (it was estimated that there were almost 10 cases a year). At the same time, some misdemeanours – although they satisfied all the parameters to be considered as HC, were not designated as such and were not on the list of misdemeanours – HC, but were only designated as misdemeanours out of discrimination (approx. 15-20 misdemeanours a year). This was, for example, the case with the misdemanour of 23 May 2017, where according to a brief description of facts, the defendant approached the victim and verbally assaulted him by saying the following abusive words: "Why are you laughing, f* your Gypsy mother", then he knocked the victim off the bike to the ground and punched him somewhere on his face, and left. The police classified the incident under Art. 6 AMPOP, and after their further misdemeanour investigation, also under Art. 25, para. 1 ADA, so that the incident was designated as a misdemeanour of a discriminatory nature, but not as a misdemeanour – HC.

3.2. Selection of samples

Based on the assessment of the number of cases according to the publicly available data, in the project proposal, the number of cases to be analysed within each category was established *ad hoc* (A = 50, B =30, C=50).

When selecting the sample of cases to be analysed, a stratified sample was used, and an effort was made to include as many available strata as possible. In general, the strata[17] consisted of the following: the year of the commission of the offence, the age category of the perpetrator (a major, a young adult, a minor), the location of the perpetration of the offence and the state attorney's office (hereinafter: SAO) to whose territorial jurisdiction the case belonged. In the

[17] In some subcategories, it was possible to use only some of the mentioned strata when selecting the sample (e.g. with UP cases, it was not possible to use the perpetrator's characteristics as a stratum, so the motive was used instead.

situations where within the same regional SAO, and in the same year, there were several perpetrators of the same age group, the selection of cases becoming a sample was random.

It must be noted here that despite the intention to apply a rigorous procedure of sample selection, after the analysis had already begun, it was necessary to correct the sample because of some problems with the population data (e.g. errors in the files, inability to identify a case based on the data obtained from the police, the inclusion of hate speech cases and those where the motive did not correspond to the statutory definition of HC, some of older archived misdemeanour cases being destroyed, etc.). Sometimes, some cases included in the sample had to be replaced by other cases. In addition, because of the fact that all court cases A and C were included in the analysis, there were no interventions in their selection.

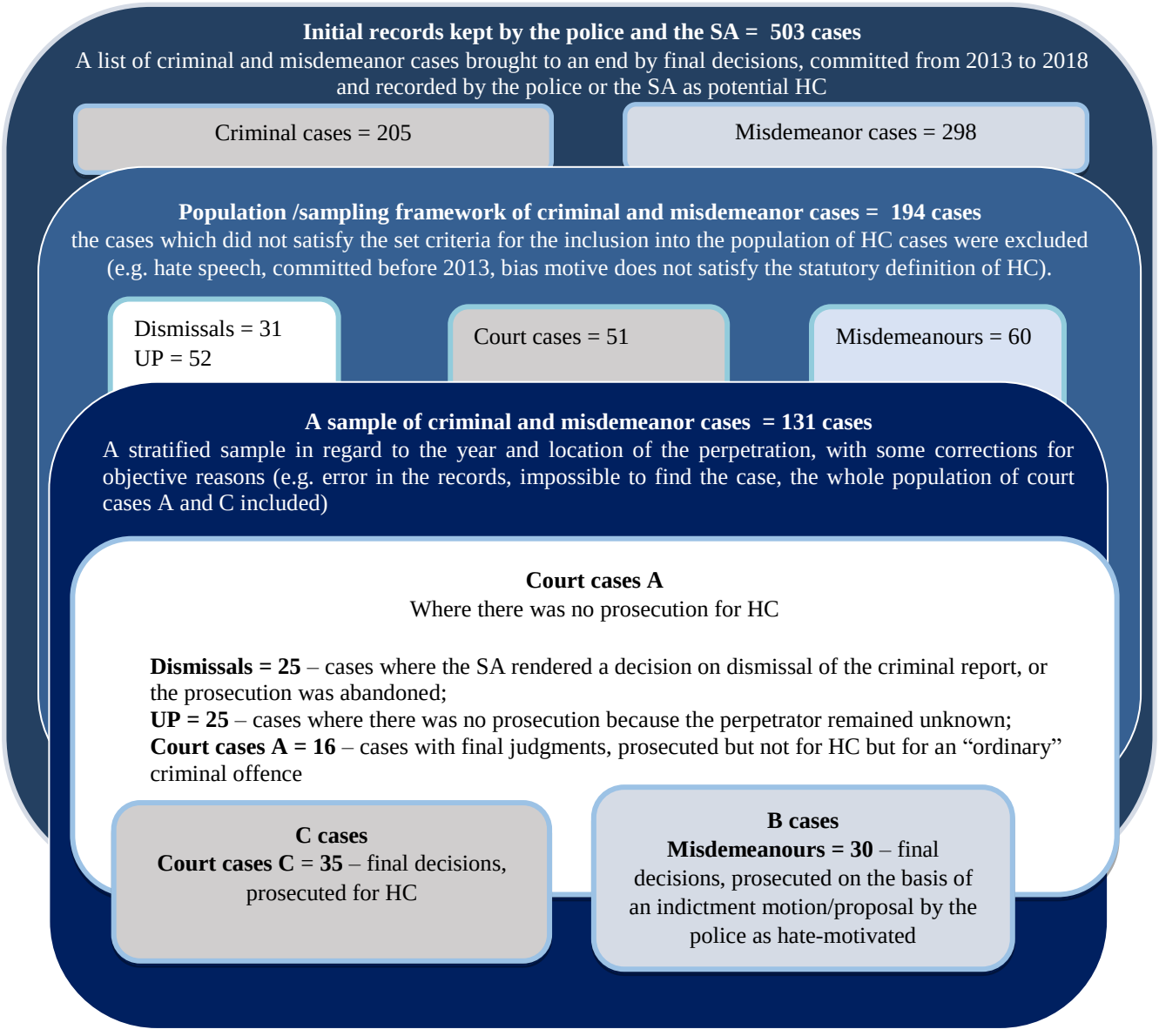

Image 3.2.1. Selection of the sample

In the end, within category A, 25 dismissals and 25 UP cases were chosen into the sample, as well as all court cases A (16). Within category B, 30 misdemeanours were chosen and analysed as the sample and within category C, 35 court cases[18] were chosen and analysed.

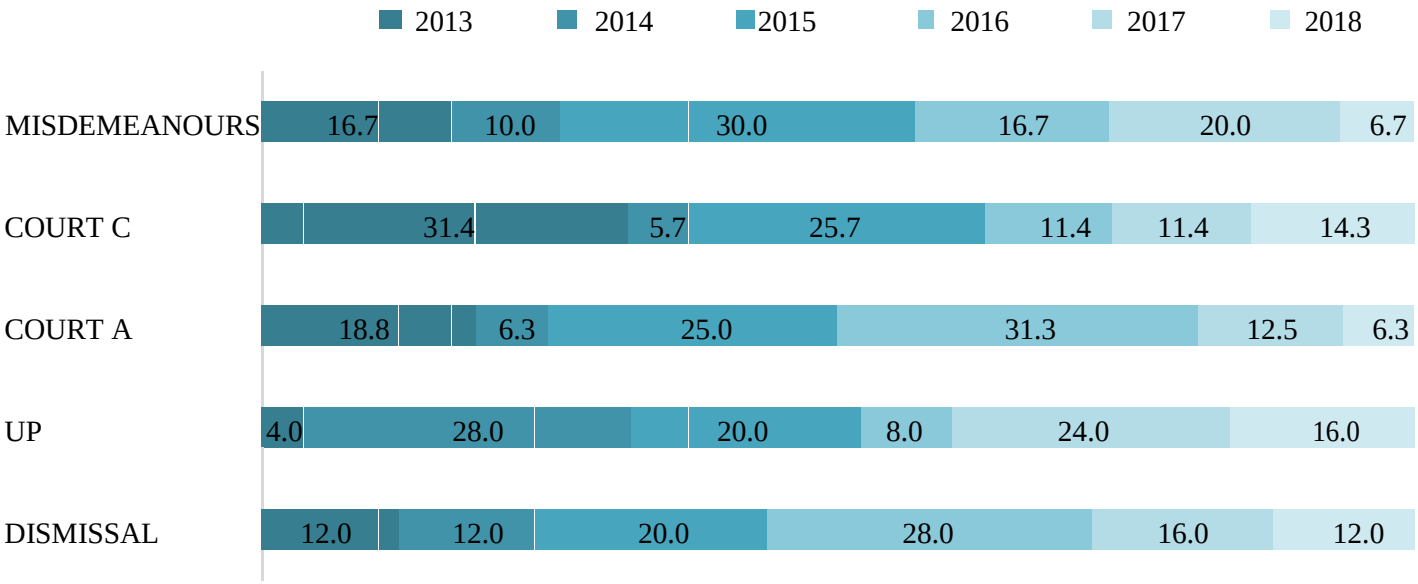

Image 3.2.2. Distribution of the analysed cases with regard to the year of perpetration (%)

Regarding the years of the commission in the sample, the percentage of the analysed cases ranged from 11.5% (in 2018) to 24.4% (in 2015). The smallest number of cases were in 2018 because only the finally adjudicated cases were included in the sample. In some of the 2018 cases, court proceedings were still pending at the time of the fieldwork.

Table 3.2.1. Distribution of the analysed cases by the counties of their perpetration (%)

County	Dismissals	UP	Courts A	Courts C	Misdemeanours
Brodsko – Posavska	4.0	12.0	6.3	0.0	3.3
Dubrovačko – Neretvanska	0.0	4.0	0.0	11.4	6.7
Grad Zagreb	40.0	20.0	25.0	51.4	10.0
Istarska	4.0	24.0	12.5	0.0	30.0
Karlovačka	12.0	0.0	0.0	0.0	0.0
Koprivničko – Križevačka	4.0	0.0	0.0	0.0	3.3
Ličko – Senjska	0.0	0.0	0.0	2.9	3.3
Međimurska	4.0	4.0	0.0	2.9	3.3

[18] Although the size of the sample of court cases where prosecution for HC was instituted deviated from the size envisaged at the beginning of the project, it must be pointed out that the 'sample' actually represented the entire population of cases in the relevant period of time.

Požeško – Slavonska	4.0	0.0	6.3	0.0	0.0
Primorsko – Goranska	0.0	0.0	6.3	0.0	16.7
Sisačko – Moslavačka	4.0	8.0	6.3	5.7	6.7
Splitsko – Dalmatinska	8.0	8.0	6.3	5.7	3.3
Šibensko – Kninska	4.0	4.0	0.0	2.9	3.3
Virovitičko – Podravska	0.0	0.0	6.3	2.9	0.0
Vukovarsko – Srijemska	8.0	8.0	0.0	11.4	3.3
Zadarska	4.0	8.0	12.5	0.0	0.0
Zagrebačka	0.0	0.0	12.5	2.9	6.7

All the offences were committed in Croatia. However, the sample of the analysed cases did not include any offences from Krapinsko-Zagorska, Osječko-Baranjska, Bjelovarsko-Bilogorska and Varaždinska County. The largest portion of offences analysed in the research were committed in the City of Zagreb (30.5%) and in the Istarska County (13.7%). Taking into account the portion of Croatia's population in individual counties, the counties were the percentage of the analysed offences was significantly larger than the portion of the population were: the City of Zagreb, the Istarska, Vukovarsko-Srijemska and Sisačko-Moslavačka counties. The counties where the percentage of the analysed offences was significantly lower than the portion of the population living in them were: the Splitsko-Dalmatinska, Primorsko-Goranska and the Zagrebačka counties (Table 3.2.1.). Regarding the size of the place/town, most offences were committed in the City of Zagreb (30.5%) and in the places/towns with 10,000 – 50,000 inhabitants (24%).

These data must be dealt with cautiously for several reasons. First, the sample includes the offences which had initially been designated as potential HC or hate misdemeanours, so that the number in individual regional units did not only reflect the frequency of the problem but may partly also be the result of more frequent reporting of victimisation by the victims, or better recognition of bias motives by the police. In addition, while the sample was stratified by regions and years of perpetration, it was not probabilistic and the whole population of court cases C was included

3.3. Instruments – the forms used in content analysis of case files

Several types of forms were used to analyse the cases used in the research. Some of the forms were used in all cases regardless of the subcategory, or the outcome of the proceedings. Some of them were specific and connected with the procedural outcomes of cases. The choice of variables included in the forms was based on the existing scientific knowledge, the legal aspects of

misdemeanours/criminal proceedings and on the researchers' analysis of a small convenience sample of actual case files (N=5). The forms contained various questions on socio-demographic and significant criminological and victimological characteristics of victims, perpetrators/defendants, witnesses and offences, as well as procedural and other information about the treatment by the police, the SA and the court.

Special forms describing the treatment by the police, as well as the corresponding forms to describe the SA and the judicial activities were used for every individual perpetrator/defendant, witness or victim, depending on the category of the case. Some pieces of information entered in the forms were factual in nature, while some were based on subjective assessments (the impressions of the actions taken by the police and the judicial bodies, identification of possible positive or negative aspects of the proceedings, and alternative approaches that may have been applied). When making such assessments, there was a possibility of not giving any answers when no information or data were given, when the sought assessment was not applicable to the case at hand, or when, on the basis of the available information, it was not possible to make any assessment.

3.4. The procedure of conducting case analysis

The associates – content analysts: There were twelve associates who worked on the files. They were chosen from among 32 candidates who participated in two public calls, in May and in June 2019. The main criteria for the selection of content analysts was relevant education and work experience in dealing with criminal and/or misdemeanour cases, in judicial bodies, and/or in the SAO, and/or in the law enforcement agency. Beside the qualitative criteria, a decision was also made on the basis of the financial offer.

Training: training sessions for content analysts, organised by the project researchers, took place in June and July 2019. There were two smaller groups of content analsysts and they each attended a one-time training session. Within the training programme, the content analysts received information about the project, its purpose and goals. They became acquainted with the relevant legal framework, the methodology of the research and the case analysis procedure. A part of the training session was dedicated to practical work – analysing a case file. After the content analysts had independently filled in the forms used to analyse the content of a case, the researchers and the content analysts together analysed all the forms to accomplish the following tasks: highlighting the right answers, the ways in which decisions should be rendered in

individual cases, discussing any disputable issues, eliminating any dilemmas and, on the basis of the content analysts' feedback, improve the questionnaire. Based on discussions in training sessions, the feedback information and the proposals for improvement, the forms for the content analysis of cases were modified.

Deployment and pairing of content analysts: it was decided that each case would be analysed by two content analysts to achieve greater assessment reliability. To avoid possible systemic bias in the assessments, the content analysts worked in pairs on individual cases, whereby one of them was an expert in a particular type of the analysed cases (e.g. when UP cases were involved, one content analyst was always a police officer/expert, and in the case of misdemeanours, one content analyst was always a misdemeanour judge, etc.). During fieldwork, possible deviations from the described criterion for the pairing of content analysts whose task was to analyse the cases resulted from some objective factors such as availability of sites for the process of analysing case files and the available number of experts – content analysts for each individual category of cases.

Confidentiality of data: All participants in the research, including the members of the project team who had access to all personal data and to other sensitive information, signed a statement committing themselves to secrecy and confidentiality with respect to all the available data. In addition, during the process of analysing case files, all forms were kept in envelopes, in well protected places, to which only the researchers had access. The filled in data were subsequently entered into electronic data sets and stored under protected passwords and all other documentation was properly archived. For their additional qualitative analyses, the researchers used the anonymised SA and court decisions.

Analysing the cases: The procedure of a content analysis was carried out in the premises of several project partners and associate organisations and at the Municipal Criminal Court in Zagreb where the confidentiality of the procedure was guaranteed. The whole procedure lasted for about 3 to 5 hours per case depending on the content analyst and on the complexity of the case. The procedure of analysing a particular case was carried out by two content analysts. The answers were entered either into paper forms, or the previously adapted Excel electronic forms, depending on coders' preferences and resources.

At the beginning of his or her work, every content analyst first analysed two cases within each category of cases (A, B and C) alone. Subsequently, the filled in forms used for content analyses were checked by the researchers. Finally, a researcher and the pair of content analysts (first individually, then as a group) discussed the content analysts' answers and the differences

between them in rendering decisions and answers, and following yet another look into the case file, the final answer was established. The whole procedure was repeated with all content analysts every time they, in the process of encoding, came across a new case category (A, B and C). This feedback procedure was an additional training for them, as well as a process of ensuring good quality results. In later phases of the process, the researchers' supervision of the content analysts' assessments continued but the researcher would then return the analysed forms to content analysts whose task was to conduct a joint discussion and after a repeated case analysis, render independent decisions on their final assessments.

When the process of analysing the case files had been completed, the data contained in the paper form were entered into the Excel computer programme. Every content analyst's individual assessments were registered together with their final assessments for every individual variable. A qualitative analysis of the correspondence of the content analysts' assessments showed a relatively high correspondence of individual objective/factual data (e.g. the date and the location of the perpetration of the offence, some socio-demographic characteristics of perpetrators, victims). The most frequent disparity occurred when assessing whether a piece of data to be registered was available in the file, did the question apply to a concrete case or not, or was the information unknown. All these answers were uniformly treated as missing, to eliminate any lack of correspondence and possible inconsistencies. Some lack of correspondence among content analysts was also observed with the textual descriptions and interpretations. However, if there was agreement as to the core of the answers, the assessments were considered to be corresponding. Despite the instructions that every assessment in the form had to be derived from facts contained in the files, the content analysts sometimes based their answers on their own assumptions that were probably accurate, but were not expressly stated in the case file. For example, the content analysts sometimes assumed that the perpetrator, or the victim, were Croatian; or they concluded, on the basis of their names and surnames, or on the basis of the generally known statistical data on the population structure in Croatia, that they were white persons, without having found any data on their nationality or race. Such mistakes were corrected in the phase of comparing the assessments of two content analysts and by a repeated and a thorough insight into the files. In the subsequent, logical check of the data, the content analysts corrected all the inconsistencies in various forms filled in for the same case. After the final control, the content analysts transferred all the data into the SPSS programme package (version 23) where data processing was carried out.

Upon the completion of field work, the final assessment was made together with the content analysts in the form of a group discussion about certain patterns observed in the preliminary data processing activity, and their final subjective estimates in terms of the length of the procedures, positive and negative aspects of the treatment by the police, the judicial bodies, as well as about possible improvements of the existing practice. The content analsysts' subjective assessments and the results of the described final evaluation were integrated in the presentation of results of the case analyses.

3.5. Focus groups

To have an in-depth discussion on some aspects of HC processing, identified on the basis of the research results, three focus groups were organised with experts with many years of experience in dealing with HC cases. One focus group was composed of state attorneys, the other one was composed of police officers, while the third group included both professions. There were six participants in each group facilitated by two researchers – members of the project team.

After the postponement of all our activities because of the epidemiological situation caused by the COVID-19 pandemic, the focus group composed of state attorneys was organised on 14 May 2020 via the Google Meet application. For several organisational and technical reasons, it was impossible to ensure the participation of policemen in the focus group via the Internet, so that the two remaining focus groups were organised *in vivo* on 8 June 2020.

A separate protocol was drawn up for each focus group and it was adapted according to the field of competence of the participants. All the general questions were combined (e.g. the legal framework of HC, the model of keeping records of HC, the experience and the need for training regarding HC, with a discussion on some particular questions identified in the content analysis of cases, where, among other things, some problem issues arising in practice were also discussed). The participants had beforehand given their informed consent for taking part in the focus groups. They received information about the purpose of their discussions, the confidentiality of data, their voluntary participation, the option not to answer, or withdraw from the participation without any negative consequences, as well as the fact that their work was going to be video-recorded to ensure their words would be accurately recorded.

The content of the discussions was transcribed, encoded and analysed by the researchers who participated in focus groups. All the data that could potentially reveal a person's identity were

removed, or replaced by special codes to protect the participants' anonimity. The main findings are included in this report.

3.6. A qualitative legal analysis of the files and decisions rendered by state attorneys and courts

In parallel with a quantitative analysis of the data collected in the forms, a qualitative legal analysis of the files and decisions rendered by SA and the courts was also carried out. Its findings were used to supplement, explain and interpret the quantitative results.

4. THE RESULTS OF CASE ANALYSIS

In the first part of the results of the case analysis, the characteristics of the offences, the victims, the defendants and the witnesses are presented.

4.1. Offences

The analysed offences were mostly committed at weekends (N45, 34.4%) (Image 4.1.1.) and at night (9:00 pm to 5:00 am) (39%) (Image 4.1.2.).

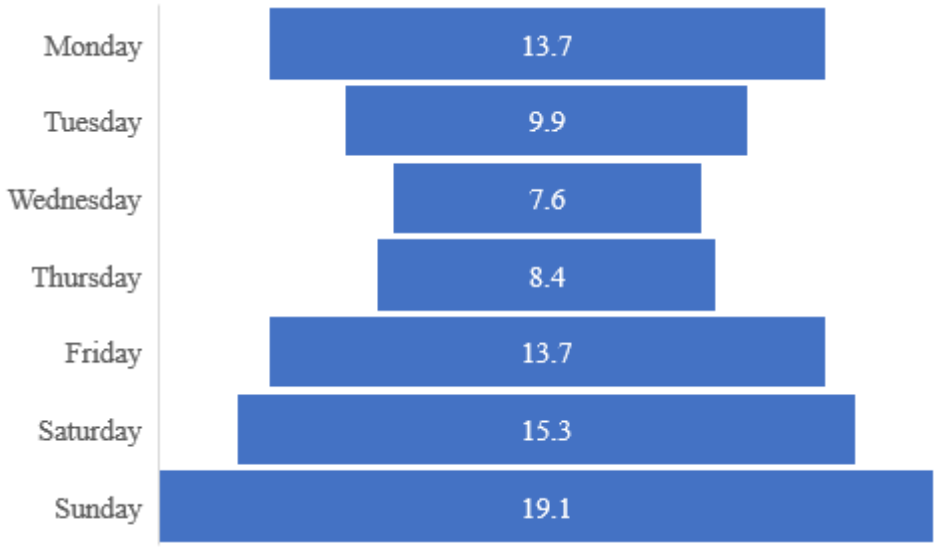

Image 4.1.1. The percentage of offences according to the day of perpetration

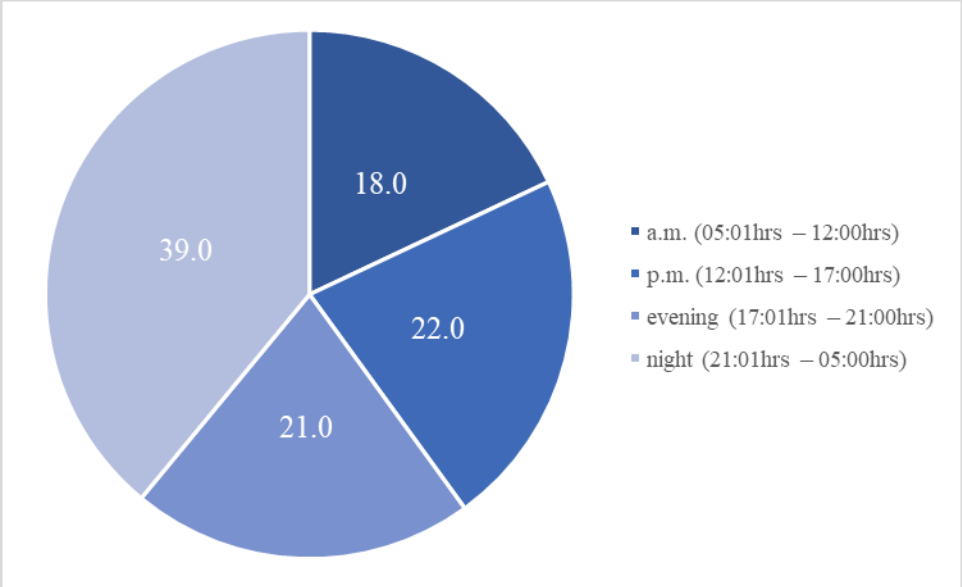

Image 4.1.2. The percentage of offences according to the time of the perpetration

In 12.2% cases, it was shown that the dates of the perpetration of the offences were connected with some special events, including those of particular significance for the group to which the victim belonged, or for the perpetrator's group. Of that percentage, 50% of those special events were connected with national/church holidays (N=8), including: Orthodox Christmas Eve and the Christmas day, as well as two other Orthodox holidays; a Catholic holiday; three national holidays – the Independence Day (e.g. the weekend following this holiday), the Day of Victory and National Gratitude, the Croatian Veterans' Day and the International Labour Day. In 25% cases (N=4), sports events were involved: in two cases, those were basketball matches "Cibona" against "Partizan", and in one case, it was a football match "*Ustaše Središće*" against "*Crna legija*" (Black Legion). In one case, it was a football competition called "*Za sve one kojih nema*" ("For all those who are no longer here"). Two offences were committed just before LGBT Pride in a city of Split, one took place on the day of a concert by a singer from Serbia and one on the day of the protest held under the title "For the Croatian Vukovar".

Regarding the location of the perpetration of offences, more than a half of them (56.5%) were committed in the open, a third of them happened indoors (26.7%), and 9.2% via the Internet/social networks. In the remaining 7.2% cases, the offences were committed on several locations.[19] If the offence was committed in a closed space, it was mostly in coffee bars, clubs

[19] If the place where the consequences of a criminal offence occurred, was not the place where the offence had been committed, the location of the perpetration/the perpetrator was registered.

(37.5%), private homes (27.1% - in 77% of the cases, those were the homes of the victims), or in other types of closed spaces mostly connected with someone's home (25%, - in 58.3% of the cases they were parts of buildings/houses).

When speaking of the offences committed in the open, they mostly occured in public urban areas (43.6%), in yards or areas in front of the victim's or the perpetrator's homes (20.2%), the façades were damaged (mostly by graffiti) (13.8%), or the offence was committed in the vicinity of a coffee bar (9.6%). Only in two cases, the place of the perpetration of the offence was an object of some religious significance, and in additional two cases the place had a national symbolism.

At the level of all the analysed cases, property damage caused to at least one thing was registered in 30 cases (23.9%). In those 30 cases, a total of 51 things or objects were damaged.

The value of a property damage as the consequence of a criminal offence suffered by the victim/the injured party was registered in 19 cases. The estimate of the damage ranged between HRK 100 and HRK 25,000. Its median amount was HRK 2,500 and its average amount HRK 5,211.

In most cases, the type of damage caused to property was in the form of drawn or written graffiti (39%) and vandalism – causing damage wantonly, or while committing some other criminal offence (23.5%). It was established that in most cases the objects or things that had been damaged did not have any symbolic significance (64.7%). For example, the graffiti drawn or written on façades were not drawn or written on the objects intentionally chosen to be damaged because of some personal characteristics of their owners or users. A symbolic significance of the damaged/destroyed things or objects was established with more than one third of objects (35.3%), and it was mostly connected with various national symbols. The most prevalent was damage to cars, mostly (in 6 out of 7 cases) with licence plates of the Republic of Serbia.

Most of the damaged property was privately owned (62.7%) and in 72.9% of such cases the owner was a natural person who was also the victim. A total of 26 victims suffered some kind of property damage; in 23 cases the victim was a natural person whose property was damaged and in the remaining number of cases, money was taken.

Regarding the group of cases where the outcome of the proceedings was analysed, as many as 60% of the cases, where the perpetrator was unknown, a person's property was damaged. It is a much higher percentage than in other groups of cases (7% in misdemeanours, to 20% in dismissals). This indicates a possible low percentage of cases where the perpetrators of those criminal offences are identified (e.g. drawing or writing graffiti on façades).

In court cases, the victim's property law claim was not made in 82.6% of cases, it was referred to a civil procedure/court in 13.0% of cases and resolved within criminal proceedings in 4.3% of cases. Of the property law claims filed with the court, in 4 cases the victims' property was damaged and in two cases, the violation of the right was involved, without any property damage. When misdemeanours were analysed, it was not established that any property law claim had been made.

4.2. Victims of criminal offences

4.2.1. Demographic characteristics of victims

In 131 cases of the sample, including all groups of cases, a total of 192 victims were registered. When speaking of gender, there were significantly more men (72.4%). In the sample of victims, all age groups were involved, and their age ranged from 9 to 89 years. One fourth of victims were between 25 and 30 years of age, the average age being 38 years (Image 4.2.1.1.).

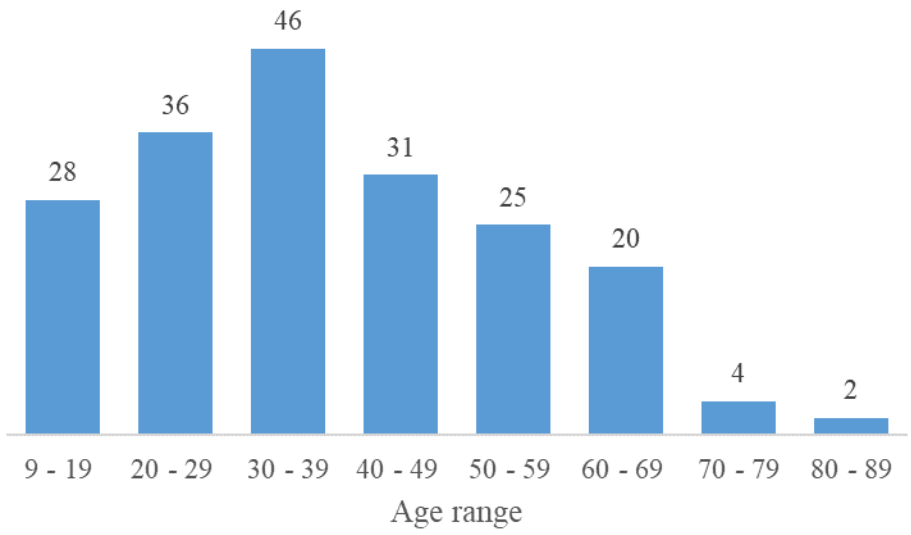

Image 4.2.1.1. Age distribution of victims

Most victims' permanent residence/temporary residence were in the place where the offence was committed (65.6%). The victims, whose permanent residence/temporary residence were outside the place of the perpetration of the offence, were, in a more or less equal portions, the nationals of the Republic of Croatia (36.5%) and of the Republic of Serbia (34.9%). As for the victims whose permanent residence was outside the place of the perpetration of the offence, for 67 of

them, their temporary residence status was not specified. They were mostly persons in transit (64.2%), pupils or students (17.9%).

The victims' marital status was specified in the case file for only 95 victims and for 56.8% of them, it was established that they had lived in a marriage union, or in a common-law marriage, and 40% of them were not married. Of 88 victims in whose cases it was possible to establish whether they had any children, for 59.1% of them it was established that they had at least one child. Apart from the marital status and the number of children, the data on most other demographic characteristics of victims were not contained in all the analysed files but we still present them here to provide at least a fragmentary insight into the characteristics of the population, particularly in respect to the possible group membership in one of the groups contained in the definition of HC.

The data on citizenship for most of the victims (172) show that they were mostly the nationals of the Republic of Croatia (67.4%). When speaking of the nationals of other countries, the largest number of them were the nationals of the Republic of Serbia (13.4%) and of Bosnia and Herzegovina (9.9%). The ethnic affiliation of victims was specified in only 56.8% (109 victims). Of that percentage, 51.4% of them were Serbs, 22.9% Croats, 9.2% Roma and 6.4% members of various ethnic groups from Africa (Gambia, Morocco, Nigeria, Uganda, and Sierra Leone). Of 180 victims whose race and skin colour was specified in the file, 94.4% of them were white and 5% black. For only 25 victims it was possible to establish the religion; most of them were Orthodox (68%), 20% of them were Catholic, and 8% Muslim. However, these data existed in the files only if there was any indication that the bias connected with religion were relevant in the analysed cases. In the cases of 184 victims, for whom it was possible to establish their native language, it was found that most of them spoke Croatian (70.1%) and the second most common language was Serbian (20.7%). Only 1.6% of the victims, according to the files, were persons with disability (N=3).

For 100 victims it was possible to establish their level of education and according to the information in the files, 56% of them had completed their secondary education, 24% primary education, 16% college education or university, and 4% of them had not finished their primary school education. Taking account of the educational structure, the group was not considerably different from the general population.[20] It was possible to establish the labour status of 130

[20] Statistical report 1582 – The Census of Population, Households and Dwellings 2011. The population according to educationl characteristics. Croatian Bureau of Statistics, Zagreb, 2016.

victims and 47.7% of them were employed, 23.1% of them were pupils/students, 13.1% of them were pensioners, and 11.5% of them were unemployed.

4.2.2. Selected victimological characteristics of victims

There were 174 victims in whose cases it was possible to precisely quantify the number of offenders and it turned out that the largest number of victims were attacked by one perpetrator (65.5%) or by a smaller group of 2 to 6 perpetrators (24.7%).

There were 71.9% of victims who suffered some consequences as the result of the offence. Of that percentage, 30.4% of victims suffered some bodily injuries, 16.4% of them had some psychological problems and additional 26% experienced fear, 13.6% property damage and 2.6% of victims felt endangered, hurt or humiliated. With 73.8% of victims, there was no need for any medical assistance, 24.6% of victims received medical assistance, and 1.6% of them did not receive any medical assistance, although it such assistance was necessary.

It was established that in the commission of a criminal offence against 13.5% of victims, weapons were used, mostly cold steel (92.3%), and in many cases it was rocks.

Only 2.1% of the victims were under the influence of alcohol and none of them were under the influence of illegal drugs.

An analysis of the mutual relations between every individual perpetrator and the victim, it was established that in 62.7% of the cases, the victim and the perpetrator did not know each other. In the group of offences where the perpetrators were known to the victims, in 14.9% of the cases the perpetrator was a neighbour, in 14.3% of the cases it was some other kind of acquaintance, and 5.6% of the perpetrators were members of a narrower or a wider family circle.

Of all the victims, 73 of them (38.0%) stated that the offence had been provoked by a specific motive and the rest of them did not mention any motive at all. In the opinion of 38.4% of victims, the offences where they recognised a specific motive, were caused by bias against a group to which they belonged. In this connection, it is important to mention that in some cases, the victim's statement about the absence of any motive could be a possible indicator that the incident was HC. In 42.6% of the cases, the victims thought a motive was the conflict with the perpetrator/perpetrators, whereby 27.4% of the victims thought that it was the result of a temporally immediate conflict or a quarrel. For 15.1% of victims, it resulted from a long-lasting conflict with the perpetrator. Multiple motives, including intolerance because of a particular characteristic of the victim, or his or her affiliation to a group, were mentioned in 11.0% cases. All other incidents, in the opinion of the victims, were triggered by multiple causes not including

intolerance or bias, and by various other motives (e.g. alcohol abuse by the defendent) (Table 4.2.2.1.).

Table 4.2.2.1. Motive for the offence according to the victim's statement

Motive for the offence	**f**	**%**
bias	28	38.4
immediate conflict or quarrel	20	27.4
a long-lasting conflict	11	15.1
multiple motives, including bias	8	11.0
multiple motives, no bias	2	2.7
other motives	4	5.5
Total	**73**	

4.3. Witnesses of punishable offences – basic behavioural characteristics

For this analysis, the necessary information was collected about all witnesses[21] who had eye-witnessed a criminal offence whereby they were neither the victims nor the perpetrators. The data for other groups of witnesses (e.g. alibi witnesses, medical doctors, expert witnesses, law enforcement officers who were on the scene, and the like) were not collected. Such collection was conditioned by the decision on the type of the information to be collected, including the conduct of the witness towards the victim during the perpetration of the punishable offence, their previous relationship, as well as the relationship between the witness and the perpetrator, and the description of the offence according to the witness's statement.

The content analysts' statements suggest that in the analysed cases, there were altogether 226 witnesses and the police conducted interviews with 137 witnesses and they formally interviewed 108 of them. Detailed data on the characteristics of 212 witnesses were available. The number of witnesses per case varied from 0 to 17, and in two thirds of the cases, there were from one to three witnesses (75.9%).

The case analysis showed that in 41 cases there was not a single person – a witness – who had actively helped the victim. In 49 cases, there was at least one person who actively helped the victim (e.g. by standing up against the offender, deterring the offender from commiting the

[21] The term 'witness' is used here in a broader sense of the word and it also includes presumptivne witnesses who were not necessarily formally interviewed in that capacity.

offence, etc.). It was also established that in 52 cases, there was not a single person to help the victim at least passively, and only 17 persons did help the victim if only passively (e.g. by obstructing the perpetration of the offence by their mere presence). A dominant reason for helping the victim was the eye-witnesses' own decision (92.2% of all witnesses who helped the victim). Of 187 witnesses, where it was possible to establish whether they had known any of the victims, 71.7% of the witnesses knew at least one of the victims of the offence they eye-witnessed (N=134). In 16.4% of the cases, the eye-witnesses were members of the victim's family, in 26.5% cases they were neighbours and the largest number were just acquaintances (35.1%). Of a total of 207 witnesses for whom it was possible to establish whether they had known any of the perpetrators, 66.2% of them answered positively (N= 137). In 130 cases it was possible to establish the type of relationship, and they mostly: were acquintences (39.2%), were neighbours (22.3%), friends (13.8%) or family members (13.1%).

Table 4.3.1. Motive for the offence according to the witness's statement

Motive for the offence	**f**	**%**
bias	8	16.0
immediate conflict or quarrel	21	42.0
a long-lasting conflict	17	34.0
multiple motives, including bias	2	4.0
other motives	2	4.0
Total	**50**	

Of all eye-witnesses, 50 of them or about 1/4 (23.6%) stated they perceived the offence as having had a concrete motive. The largest number of eye-witnesses experienced the situation as something caused by a direct and an instantaneous conflict or a quarrel (42.0%), and 34.0% of them stated that the motive had been a long-lasting conflict between the victim/victims and the perpetrator (Table 4.3.1.). A little more than 1/4 of all actors (26.2%), who made statements about the motive for the offence, including the defendants, victims, witnesses and police officers recognised bias as the motive. In the group of eye-witnesses, the percentage was lower (16.0%).
Of 96 witnesses who were interviewed on several occasions, in 62 cases (64.6%) there were no changes in their testimonies during the proceedings, and in 34 cases (35.4%), some changes did occur. In five cases, later testimony was additionally incriminatory and ten witnesses, in their later testimonies, minimised either the gravity, or the defendant's guilt. For example, two

witnesses, in their later testimonies stated, they did not recognise/were not sure about the identity of the perpetrator, and one witness, when subsequently interviewed, said that the person he had recognised, was not the perpetrator but was only in the perpetrator's company. In ten cases, it was only an addition to the testimony, without any expressed mitigating or aggravating facts. Three witnesses changed their testimonies by denying HC/bias as the motive, and four witnesses mitigated the facts of the incidents and denied the existence of any bias. Two witnesses, in their later testimonies, described the offence as having been motivated by bias.

4.4. Defendants – perpetrators of HC

The data of a total of 135 perpetrators' were contained in the forms. We are presenting here only the data on those who had been operationally defined as perpetrators of HC (N=62) (hereinafter: defendants), and those were:

1. persons who were convicted of HC by a final decision in criminal proceedings (N=31),
2. persons in whose cases the accusation was dismissed because of (a) the principle of discretionary prosecution – persons under legal age, and the offence was committed in conjunction with Art. 87, para. 21 of the CC (N=9), or Art. 235, para. 3 of the CC (N=1, base motives) or (b) the application of the principle *ne bis in idem*, and the offence was classified in conjunction with Art. 87, para. 21 of the CC– (N=3), and
3. persons who, in misdemeanour proceedings, were convicted of "hate misdemeanour" (N=18).

Among the HC perpetrators, a large majority were men (90.3%). As to their age, it ranged from 15 to 70 and the average age was 23 years of age. As many as 50% of HC perpetrators were up to 23 years of age. Statistically, this group was significantly younger than the group of other offenders included in the research – who were not perpetrators of HC ($t(132)=2.57$, $p=.011$), where medium age was 10 years higher, and it was 33 years (Image 4.4.1.).

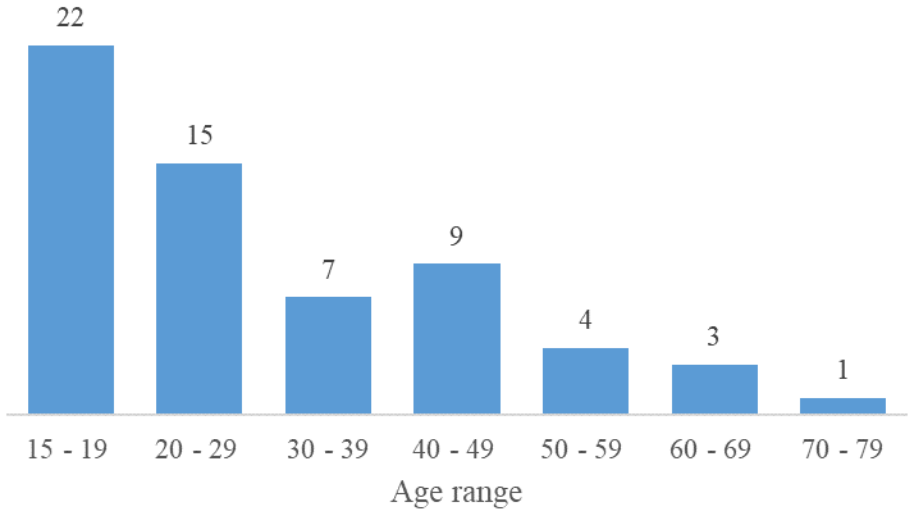

Image 4.4.1. Age distribution of HC perpetrators[22]

Most HC perpetrators (83.6%) had permanent/temporary residence in the place where the offence was committed and those whose permanent/temporary residence was outside the place where the offence was committed were mostly the nationals of the Republic of Croatia (77.8%). Of 16.4% of HC perpetrators, whose permanent residence was outside the place of the perpetration, the largest group were those in transit (33.3%), or those just visiting (50.0%).

In line with the younger age of HC perpetrators, of those whose marital status could be established, only 17.5% were married or lived in a common-law partnership, while most of them were unmarried (71.9%). The HC perpetrators for whom it was possible to establish whether they had any children, 32.8% of them did have a child/children. Among those HC perpetrators whose data could be established from the file, most of them were the nationals of the Republic of Croatia (96.8%) and according to their ethnicity, most were Croats (85.7%), while 10.2% of them were Serbs. For some HC perpetrators, it was possible to determine their race/skin colour and they were all white. There were also some persons with disability (8.2%) and most of their disability diagnosis was connected with PTSD. With a very small number of HC perpetrators, it was found that they belonged to some group, community or organisation (N=3; 4.8%); those were mostly sport club supporters or fans.

When it was possible to establish the level of education, it turned out that more than a half of HC perpetrators (57.4%) had completed secondary school education and more than a third (37.7%)

[22] One perpetrator's age information is missing.

completed only their primary education. The percentage of persons with higher education/university diploma was very low (4.9%) which was probably partly connected with the young age of the group members. The percentage of the unemployed (27.9%) and the employed (27.9%) was the same, and pupils were the third largest group (19.7%) regarding their labour status (Table 4.4.1.).

Table 4.4.1. Labour status of HC offenders

Labour status	**f**	**%**
unemployed	17	27.9
employed	17	27.9
pensioner	9	14.8
student	3	4.9
pupil	12	19.7
part-time/seasonal worker/temporary job	3	4.9
housewife	-	
Total	**61**	

About a half of HC perpetrators (52.8%) had some income and the largest number were those whose income was lower than the minimum wage in the period covered by the research (45.8%) (Table 4.4.2.).

Table 4.4.2. Level of income of HC perpetrators

Level of income	**f**	**%**
0 – 3,144[23] HRK	11	45.8
3,145 – 5,810[24] HRK	7	29.2
5,811 – 11,620 HRK	6	25.0
Total	**24**	

For as many as 45.9% HC perpetrators, it was registered in the file that at the time of the perpetration of the offence, they were under the influence of alcohol but no perpetrators were under the influence of illegal drugs.

[23] HRK 3,144 was the average minimum wage in the period from 2013-2018
[24] HRK 5,810 HRK was the average wage in the period from 2013-2018

About a fifth of HC perpetrators had previous criminal records (18%). Of that percentage, about a tenth (9.8%) had previously been convicted of crimes involving property crimes, criminal offences with some elements of violence or other criminal offences. The percentage of those who had been imprisoned was 6.7%. Not a single HC perpetrator was found to have been convicted of HC, or hate speech as a criminal offence, or misdemeanour, but as many as 30% of them had previously committed misdemanours with elements of violence or discrimination. In the past, a little more than a half of HC perpetrators (52.5%) demonstrated high-risk/asocial/anti-social behaviour. The types of previous manifestations of risk behaviour of HC perpetrators are shown in Table 4.4.3.

Table 4.4.3. Previous risk conduct of HC perpetrators

Types of risk conduct	**f**	**%**
abuse of drugs (including criminal reports)	4	12.9
abuse of alcohol	1	3.2
criminal reports	3	9.7
misdemeanour reports	7	22.6
behavioural problems	6	19.4
multiple high-risk conduct in the past	10	32.3
Total	**31**	

A smaller number of HC perpetrators had suffered some consequences of their offences (8.1%), including bodily injuries, psychological consequences and property damage. In most cases, there was no need for medical assistance (87.1%).

It was established that a relatively larger number of HC perpetrators denied the accusations in their entirety (43.3%). There were many of those who pleaded guilty in relation to all charges but denied the motive of bias (18.3%), as well as those who pleaded guilty to all charges (20%).

In 50% of the cases, HC perpetrators stated that the motive for the perpetration of a criminal offence existed but in only 23.5% of the cases bias was said to be the only motive, or one of the motives for the perpetration of the crime (Table 4.4.4.).

Table 4.4.4. Motive for the offence according to the perpetrator's statement

Motive for the offence	**f**	**%**
conflict – instantaneous	15	44.1
conflict – long-lasting	4	11.8
bias	7	20.6
a mixed motive including bias	1	2.9
a mixed motive without bias	1	2.9
other	6	17.6
Total	**34**	

In the cases of 65% of HC perpetrators (N=48), where it was possible to asses whether any change occurred during the testimony, with half of them some changes were detected (N=26; 54.2%) and in most cases it was a total guilty plea (Table 4.4.5.).

Table 4.4.5. Changes in the statement of HC perpetrators during the proceedings

Changes during the proceedings		**f**	**%**
YES, changes of:		26/48	54.2
	the factual aspects /objective characteristics of the offence	5	19.2
	guilty plea as to the perpetration but not the bias motive	2	7.7
	total guilty plea	17	65.4
	denial of the perpetration of the offence	2	7.7

A significant number of HC perpetrators did not make their statements at all, they were not interviewed more than once, or their statement given to the police was excluded from the file and thus also not accessible for any analysis.

The percentage of HC perpetrators, who in their subsequent testimonies fully confessed the commission of the offence was as high as 5.4%.[25] Additional two defendants confessed the

[25] The confession of guilt is particularly valued when meting out the punishment but in this research, it was impossible to determine the motive of confession.

perpetration of the offence but not any bias motives, and additional 2 HC perpetrators denied their guilt in their changed statements.

By analysing the type of the relationship between every individual HC perpetrator, and every individual victim, it was established that 47.4% HC perpetrators had known the victims. They were mostly acquaintances (43.2%), neighbours (about 31.8%), and members of narrower or extended family (18.2%).

Of 62 persons convicted of a criminal offence out of hatred, 25 (40.3%) of them, during the proceedings, presented their general attitude towards members of the relevant protected group. Of all the HC perpetrators who testified to their attitude towards individuals similar to the victim (members of the same protected group), only one HC perpetrator confessed a negative attitude by stating that "he did not like people with homosexual inclinations". All other HC perpetrators denied having any negative attitudes or feelings towards a group whose member they allegedly victimised and were suspected of victimising.

Seven of those persons, attempt to make their statements of the absence of the bias motive more credible by asserting social, friendly or family relations with a member of that particular group. Some examples of such exculpatory statements are: "I do not have anything against homosexuals"; "it never crossed my mind to attack anyone because of his or her homosexual inclination 'cause I also have friends who are gay"; "I do not have anything against Muslims, some of them are my friends and some work in the same company with my father"; "I grew up in Switzerland, a multicultural and a multinational country and I wouldn't have been allowed to live there, had I hated any other religion or race"; "I often eat at Asian restaurants and I see people of different races, so I don't have anything against them"; "my husband is a Roma person after his mother and I don't have anything against the Roma people."

5. DATA ANALYSIS ACCORDING TO THE CATEGORIES OF CASES

5.1. Case group A – criminal cases where there was no prosecution for HC

Group A consists of the cases initially designated by the police, or the SA, as HC, but where there was no prosecution for HC. This category is composed of three subgroups: dismissals (N=25), court cases A (N=16) and the UP cases (N=25).

If we take into account only the first two categories, there were in total 41 cases with 51 perpetrators.[26] The last category, the UP cases, was very specific because it was not possible to determine accurately the number of perpetrators. Generally speaking, in the group of cases initially designated as HC, but not processed as such, the prevalent ones were those with only one perpetrator/defendant. However, it must be mentioned here that in a certain number of cases, beside the defendant, there were more persons involved in the perpetration of the offence but not all of them were prosecuted.

> For example, in one case, there was only one defendant (the criminal report against him was dismissed) although it was clear from the factual aspects that the minor, together with 13 other UP's, had entered the coffee bar where they, because of hatred towards persons of different nationality, approached the table where the injured were sitting. A UP hit one of them on the head with an unknown blunt and hard object. At the same time, the other UP's violently disturbed public order by throwing pieces of concrete they brought with them, by taking bottles and glasses off the tables and throwing them at the injured parties, breaking the glass walls in the coffee bar. Then they left running out of the coffee bar while the minor was prevented from escaping by a guest“.

5.1.1. The reasons for not instituting criminal proceedings for HC

Among the cases in the category of dismissals, the police, having conducted inquiries into criminal offences filed a criminal report against three fourths of all defendants (N=26). In connection with the remaining 9 (25.7%), in the case of four defendants (11.4%), the police

[26] The term 'defendant' in this report is used broadly, also including the suspect, a person against whom investigation is launched, the accused and the convicted person, or a person against whom criminal proceedings are conducted based on a civil action. Pursuant to Art. 202, para. 4 of the Criminal Code, the term 'defendant' is used to include both the defendant, the accused and the convicted person, while pursuant to para. 3 of the same Article, unless otherwise provided for, the provisions dealing with the defendant, also apply to the accused, the convicted person and the suspect.

assessed that no criminal offence was committed, but a misdemeanour. Against six defendants (14.3%), no criminal report was submitted by the police to the SA, but it was done by the victim.[27] In all court cases A, it was the police lodging a criminal report.

With a little more than a half of the defendants from the category of dismissals (54.3%) and the category of court cases A (56.3%), where the police lodged criminal reports, it classified the offence as HC. Indeed, for more than 40% of the defendants, the police gave up its own initial designation of the case as HC.

It is very interesting to note that in regard to 25 UP cases, only 40% of them were reported to the SA by the police as HC,[28] either by explicitly connecting its classification with Art. 87, para. 21 CC, or by an offence classification which in itself contained an element of hatred (e.g. Art. 117, para. 2 or Art. 139, para. 1. in conjunction with para. 4 CC, whereby it was clear from the factual description of the offence that it was a bodily injury or threat out of hatred, not involving a close person, a child, or a person with severe disability, or any other category of persons covered by the same paragraph. In 22 UP cases (88.0%), the police filed a criminal report with the SA, and in 3 UP cases, the police did not file a criminal report or a special report to the SA because they decided it had been an offence prosecuted on a private charge, or that no criminal offence had been committed. Since the perpetrators remained unknown, the SA did not institute criminal proceedings in any of the analysed cases.

In the category of dismissals, the SA did not institute criminal prosecution for a number of reasons (Table 5.1.1.1.).

[27] In at least one case, the police found that a misdemeanour had been committed and the victim had filed a criminal charge. In other cases, where the police submitted charges for misdemeanour, there were no available data as to who brought the charges (whether it was done by the victim, or the SA had heard from some other sources about the perpetration of a criminal offence).

[28] In the focus group, some state attorneys said they noticed that the police, in some cases, did not classify the offence as HC although it was described as such. Other state attorneys described quite opposite situations, where the SA abandoned the HC classification assigned by the police. Indeed, in the focus groups, both the police and the SA proposed different approaches in terms of criminal offences classified as committed out of hatred and in conjunction with Art. 87, para. 21 of the CC – some of them held that such conjunction was necessary and some that it was not.

Table 5.1.1.1. The reasons for not instituting criminal proceedings by the SA in the cases from the category of dismissals

The reasons for which the SA did not institute criminal proceedings	**Number of defendants**	**Portion in the overall number of defendants (%)**
no grounds for suspicion	12	34.3
application of the principle of discretionary prosecution	12	34.3
not a criminal offence prosecuted *ex officio*	4	11.5
ne bis in idem	4	11.4
SA considers it as a misdemeanour	2	5.7
victim withdrew the motion for prosecution	1	2.9
Total	**35**	**100.0**

Among the reasons for which there was no prosecution, two of them were dominant with 12 defendants – in equal percentages (34.3% each): there was insufficient evidence for the perpetration of a criminal offence or the application of the principle of discretionary prosecution. A conclusion can be made from the presented data that the SA, with more than a half of the defendants (51.4%), did not institute the prosecution not because they did not believe that a HC had been committed, but because they came to a conclusion that instituting prosecution would not be purposeful, that there was a procedural barrier for criminal prosecution (*ne bis in idem*), or that only a misdemeanour was involved.

It is interesting to analyse the abandonment of prosecution by applying the principle of discretionary prosecution. This principle was applied only on the basis of the Juvenile Courts Act (hereinafter: JCA), i.e. in relation to a specific group of defendants – minors and young adults, a total of 12 defendants. In relation to 10 out of 12 minors or young adults, the SA, in their decision on dismissal, classified the offences as HC. In the cases of 2 defendants, the SA abandoned the prosecution under Art. 73 JCA, although there were grounds for suspicion that the defendant had committed a criminal offence.[29] In the case of 10 defendants, dismissals were conditioned by the fulfilment of some other obligation on the part of the minor or young adult. In several analysed cases, the minors or young adults were ordered to apologise and in some situations, some other obligations were involved such as indemnification, inclusion in individual

[29] Those were the cases where the proceedings, or the execution of sanctions for other criminal offences, were ongoing.

or group psychosocial treatments in youth guidance centres, inclusion in the work of humanitarian organisations, or community or environmental protection services, or donations for humanitarian purposes.

> A good example of a special obligation ordered to a young adult, who had written some graffiti on the walls of a primary school with some Ustashe and Nazi features, was that within two months "in agreement with the injured, he should paint the variegated walls or do some other work they would accept as indemnification." The defendant did the work with the help of the school janitor. It is worth mentioning that the young adult confessed the commission of the offence and apologised for what he had done.

Taking account of the fact that one of the two most frequent reasons for not instituting criminal proceedings was the non-existence of reasonable grounds for suspicion, a question popped up whether additional proofs, or activities, should have been done to confirm or eliminate any suspicion whether HC was involved.

For example, in several cases, the content analysts/coders assessed that it was necessary to "question the defendant in detail about his nationality, why there was a conflict between him and the injured party, what was his attitude towards persons of Serbian nationality, and to better interview witnesses about whether the defendant was a high-conflict person who quarrelled with his neighbours and did everything because of their nationality", as well as "that it was necessary to interview the injured – about the nationality and about the relationship with the defendant and whether such incidents had happened before". However, in the focus groups with policemen, some of them pointed out how the suspects should not be asked about their ethnicity or nationality because those were very sensitive and protected data, whereas some of them suggested that when HC was involved, collection of such data was exceptionally allowed.[30] We

[30] This question is regulated by the Act on the protection of natural persons with regard to the processing and exchange of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties (Official Gazette NN 68/18) and it lays down that the collection of personal data regarding racial or ethnic origin, sexual orientation of any other categories of personal data is in principle prohibited. However, some exceptions are allowed if: the processing of personal data is necessary to enforce the rights and obligations of the head processor under this Act or any separate laws, and if the processing of personal data is necessary to protect the lives or bodily integrity of the interviewed individual or any other person. We believe that this obligation arises from the Criminal Procedure Act and the Police Affairs and Powers Act and in particular Art. 64 pursuant to which, in case of the grounds for suspicion that a criminal offence prosecuted *ex officio*, or a misdemeanor, is committed, the police collects the data on the criminal offence or misdemeanour, on the perpetrator, on any accomplicies, leads, proofs and other circumstances that are useful for the discovery and clarification of that criminal offence or misdemeanour.

believe these are relevant data for the detection and clarification of criminal offences and misdemeanours and police officers are authorised to collect them in the context of HC and any possible dilemmas emerging in practice in that regard must be resolved.

The content analysts also pointed out the fact that SA, under CPA, had a procedural role of managing inquiries into criminal offences within which it could order to the police the collection of evidence and supervise individual inquiries. In some cases, at least according to the data available in the files, in the content analysts' opinion, this did not take place. In addition, in several cases, the content analysts noticed how according to the data available in the files, DO did not interview all the participants/eye-witnesses in the capacity of a witness ("witnesses say more when interviewed by SA because they understand the seriousness of the situation"), did not organise the identification of the perpetrators by eye-witnesses and issue orders to search for unknown perpetrators. Insufficient evidence led to frequent dismissals of criminal reports in the cases of threat when such possible threat was not heard by anyone except the injured party.

The same decision on the non-existence of a well-founded suspicion that a criminal offence of threat, referred to in Art. 139, paras 2 and 4 in conjunction with Art. 87, para. 21 of the CC, was made by the SA in the case where written testimonies by eye-witnesses, prisoners from the same cell did not confirm that the suspect had threatened the victim. However, from their testimonies, it essentially and uniformly ensued that the suspect had prevented the victim from performing the religious Moslem obeisances. However, according to the available data, the SA did not consider the possibility that such actions could qualify for some other offence, e.g. the criminal offence of the violation of the freedom of religion referred to in Art. 130 CC. Because there was no well-founded suspicion that the suspect had committed the criminal offence of threat, the SA dismissed the criminal report. It is interesting to note that the incident allegedly took place on 1 March 2016, a criminal report was filed on 8 March 2016 and the SA, having received the criminal report only on 22 September 2017, referred the report for further action to another SA having both the subject-matter and territorial jurisdiction to deal with the case. Indeed, only a year and a half after the perpetration of the offence, the competent SA ordered the police to carry out an integral criminal investigation, but it was no longer possible because in the meantime, both the suspect and the person submitting the complaint had been released from prison and the police officers did not have the information about the victim's whereabouts.

The data and the results of the work in focus groups also revealed insufficient coordination regarding the institution of prosecution for misdemeanours and criminal offences having led to the application of the principle *ne bis in idem.* This issue is dealt with later in the report.

5.1.2. Offence classification

Dismissals

According to the offence classification made by the police, the most frequent criminal offences among dismissals were threats (13), serious bodily injuries (4) and damage to the property of another person (3). However, in the category of dismissals, some other criminal offences also occurred: public incitement to violence and hatred (3), bodily injuries (2) and provoking riots (1). In the category of dismissals, the police registered 26 criminal offences. In addition, the police initially instituted the proceedings against 4 perpetrators of misdemeanours against public order and peace. Criminal reports were subsequently filed by the police, or it was done by the victims. With 7 offenders, the police failed to classify the committed criminal offences but it was done by the SA either based on the victim's report, or on a description of facts made and submitted by the police.

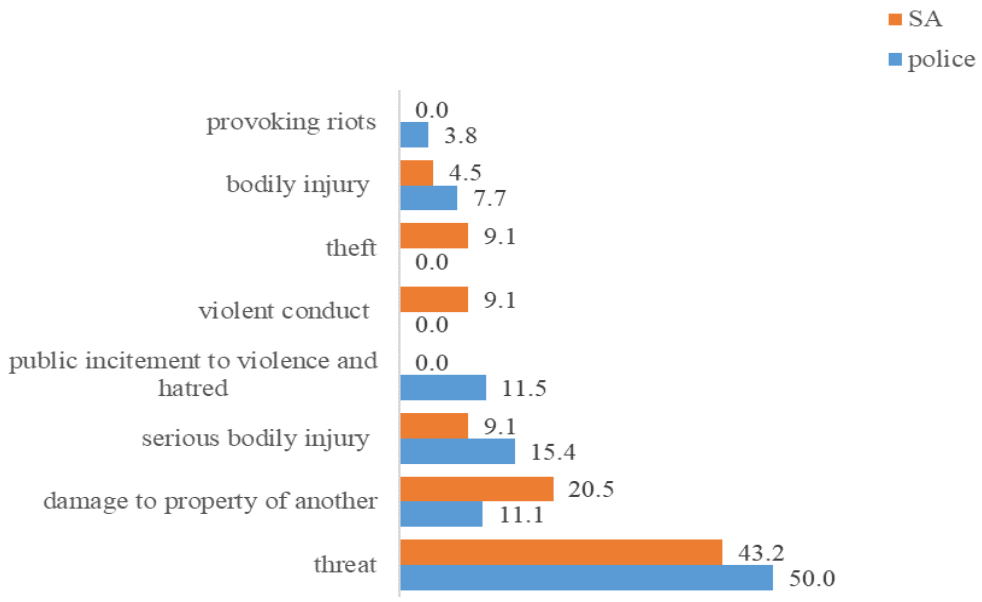

Image 5.1.2.1. Individual offence classifications in the cases categorised as dismissals by the police or the SA (%).

Only in the cases of 16 out of 35 defendants (45.7 %), the SA, when dismissing the cases, accepted the offence classifications made by the police. Where a change was made, mostly an explicit addition of the conjunction with Art. 87, para. 21 CC was made. This shows that the SA classifies offences as HC more consistently than the police, even when it decides not to institute criminal prosecution. However, it must be said that by a series of evidential activities, the SA, as a rule, disposes of more data on the basis of which it can classify an offence. The number of criminal offences classified by the SA (44) is somewhat higher because in some of the cases the police neither reported nor classified the offences, and in some cases they were classified as misdemeanours. According to the offence classification by the SA, in the cases of dismissal, in relation to the police, there were, in absolute numbers, more defendants accused of threat (19) and damage caused to property of another person (9), while the number of those accused of serious bodily injuries (4) and bodily injuries (2) was the same as with the police. Among other criminal offences, there were also violent conduct (4), theft (4), public incitement to violence and hatred (1) and provoking riots (1), either as an independent offence or in concurrence with a criminal offence of HC.

In the only case where the offence classification by the SA was public incitement to violence and hatred referred to in Art. 325 CC, it was in concurence with the criminal offence of violent conduct referred to in Art. 323a. However, the SA did not connect Art. 323a CC with Art. 87, para. 21 of CC, although the offence was obviously motivated by racial affiliation of another person (a minor, obviously motivated by racial affiliation of another person, in front of other people who laughed and humiliated the victim by saying that "a sack of sh*t is worth more than black people", "black people are a minority and he belongs to white majority; and black people should not be employed"). Interestingly enough, in this concrete case, the offence classification of public incitement to violence and hatred was connected with another event – a photograph on the Facebook profile depicting a minor in a classroom where the desks are arranged in the form of a *swastika* and there was also another *swastika* drawn on the blackboard. In other cases, where the police instituted the proceedings for the criminal offence of incitement to violence and hatred referred to in Art. 325 CC for graffiti "with Ustashe and Nazi features", the SA re-classified the offence as damage to property of another person referred to in Art. 235, para. 2, in conjunction with para. 3 and Art. 87, para. 21 CC, which was recognised by some content analysts as a question where the criteria of the police and the SA had to be aligned, taking into account the perpetrator's intent.

Court cases A

When speaking of court cases A, the most frequent offence classification is the criminal offence of threat (with 56.3% of cases/defendants), then serious bodily injury (25%) and damage to property of another person (18.8%). In relation to 56.3% of defendants/cases, the police previously established the grounds for suspicion that a HC had been committed. In the procedure of accusation, the SA accepted all the offence classifications made by the police, except in those 9 cases, where the police reported HC and the SA abandoned the classification.[31] The content analysts recognised various grounds in the background of the SA's decision not to institute the proceedings for HC, such as: a conclusion that there was no discriminatory basis for hatred (referred to in Art. 87, para. 21 CC, the fact that between the defendant and the injured party another type of conflict existed (in relation to property, family, or the like), that there was no bias motivation on the part of the defendant, although he, in his threats made against the victim, emphasised her national affiliation, the fact that the victim and the witness did not perceive the offence as HC, or had changed their testimonies. The offence classifications in final judgments were fully in line with the classifications given by the SA, since the indictment did not contain charges of HC and the court did not establish motivation out of hatred in any of the mentioned cases.

[31] It was subsequently observed that in one of these cases, the police wrote the offence was committed "out of base motives" – a classification implying hatred. Namely, it was a criminal offence of damaging another person's property and in Art. 235, para. 3 CC, no base motives are listed as examples, as is the case with aggravated murder (Art. 111, p. 4 CC). Since the offence was not connected with Art. 87, para. 21 CC, it was not obvious from the classification that the offence could be considered as (adjudicated) HC and it was thus included in the analysis of the cases of category A.

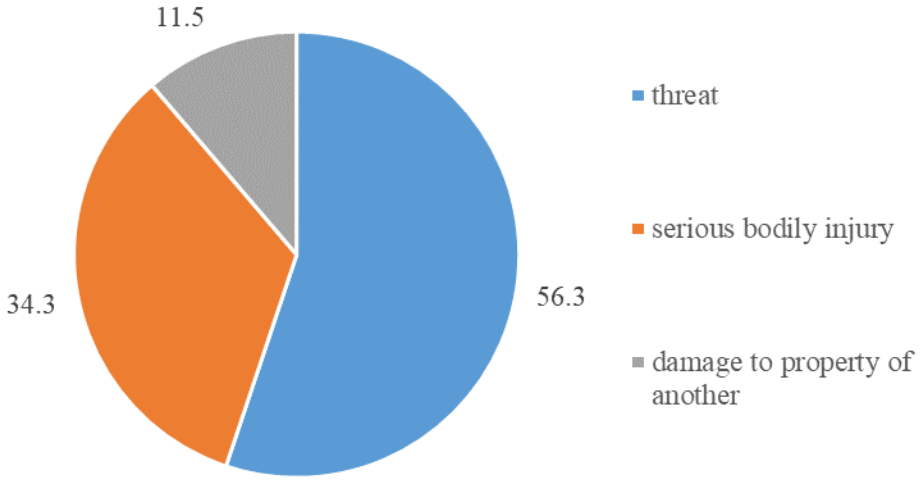

Image 5.1.2.2. The portion of individual criminal offences in court cases A according to the police and the SA (%)

In this category of cases, the content analysts praised the speed and the efficiency of the police and of the SA, and in one of the cases also the fact that the SA correctly recognised that no HC was involved. At the same time, on the basis of the available data in the files, they held that in some cases, there was enough space for improvement in terms of possible further examination of the existing indications that it could be HC.

Unknown perpetrator cases

When speaking of the UP cases, we can say that these are similar criminal offences to those of other categories within group A, but their relative incidence was different. While in all other categories, threat is a dominant offence, here we mostly deal with *damage to property* which is logical because in the criminal offences dealing with property, the injured party is often not present, i.e. the perpetrator and the injured party do not know each other, while in the cases of threat, the perpetrator is usually known to the victim. When speaking of the criminal offence of threat, this group included anonimous threats via SMS messages, sprayed messages on cars, or messages written on a piece of paper thrown inside the fence of the Serbian Orthodox Church. Although the police initially designated all those cases as potential HC, in offence classification, it was only reflected in 6 cases classified in conjunction with Art. 87, para. 21 CC, while in additional 4 cases, it was obvious from the offence classification and in the description of facts that HC was involved, although the police did not make any conjunction with Art. 87, para. 21

CC. In one case, the police did not classify the offence at all, but it clearly arises from the description of facts that it was a damage caused to another person's property.

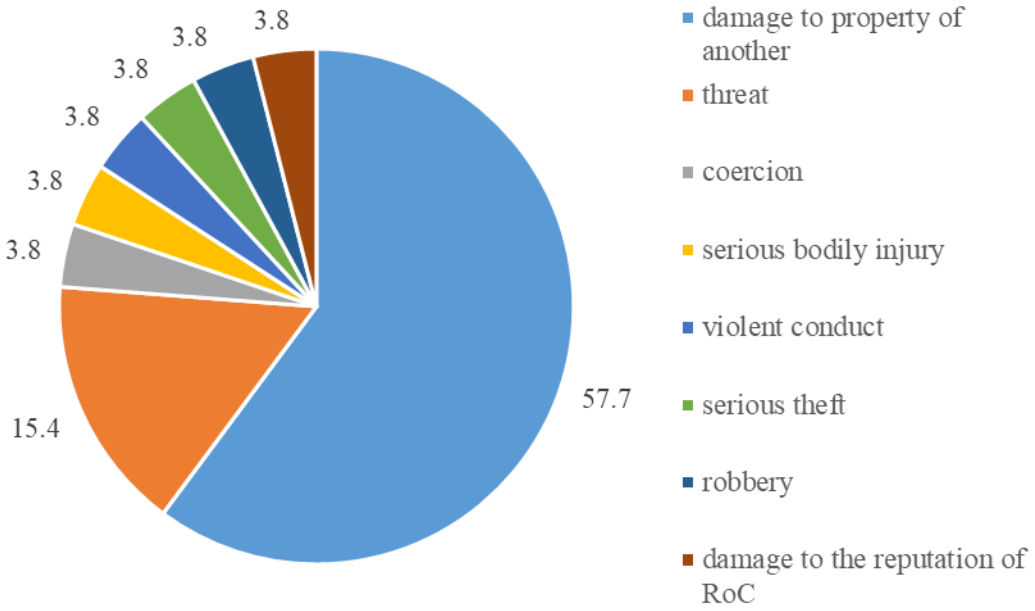

Image 5.1.2.3. The percentages of individual offence classifications by the police in the UP cases (%).

Of 26 criminal offences from the police files, committed by UP's, 14 were classified by the SA exactly in the same way as by the police, in 4 cases they added the classification of an offence committed out of hatred and in 1 case, they abandoned the charges in relation to the offence taking place in concurrence. In 7 cases, the data on the offence classifications by the SA were missing.[32] As for the work of the police on these cases, the content analysts were appreciative of very quick arrivals on the scene and detailed on-site investigations in some cases. However, on the basis of the available data and their professional experience, they thought that it was possible to interview a wider circle of persons – potential witnesses, as well as the injured parties, in order to identify the offender. In some cases, the content analysts held that there were reasonable grounds for suspicion to classify the offence as HC because, for instance, the perpetrator clearly manifested intolerance of the script and those who used Cyrillics“. A special problem discussed

[32] In these cases, the police files were analysed and the information regarding the offence classifications by the SA were received upon request and on the basis of their records but not on the basis of case analysis. In some of these cases, the SA stated, they had never received any criminal report, or that the received police data were not accurate or sufficient enough for them to be able to identify the case.

by the content analysts, in their common evaluation of all the cases, was the fact that "an incident was designated neither as a criminal offences nor as misdemeanours but only as 'inappropriate inscription on a vehicle'. The SA was not informed about the incident and there was no criminal report". The police failed to designate the case as HC and did not interrogate the car owner, although it was clear from the licence plate that the car belonged to a Serbian national and that the damage was caused out of hatred against members of Serbian nationality because a message "Kill the Serb" was written on it.

5.1.3. Bias indicators

In the A category of cases, the police identified a number of bias indicators. It is difficult to conclude whether those were real indicators of hatred recognised by the police, or whether those were only implicit conclusions made by the content analysts on the basis of the available data. In all the categories, the most common indicator was the perception of the victim that a HC was involved (59.1%), the accompanying insulting words and the perpetrator's threatening the victim (57.6%),[33] as well as the fact that it was a violent act without any clear motive (50%). In the categories of dismissals and UP cases, very frequent indicators were the victim's affiliation to a particular group and the use of some particular graffiti or symbols which were never, or almost never found among the court cases A. In general, in the category of court cases A, the police recorded, in relative terms, the smallest number of bias indicators which may have been crucial for the SA to abandon the HC classification.

[33] In their focus group, some police officers working on cases involving HC stated they could classify an offence as HC only if the hate motive was clearly verbalised, ignoring at the same time all other indicators.

Table 5.1.3.1. Bias indicators recognised by the police according to the categories of cases

Bias indicators	Dismissals (N=25)	Court cases (N=16)	UP (N=25)	Total number of indicators (N_{cases}=66)	Percentage of cases where the police recognised individual indicators (%)
victim's perception that it is a hate crime	19	9	11	**39**	**59.1**
perpetrator's accompanying statements, e.g. threats and insults because of affiliation to a group	19	10	9	**38**	**57.6**
the fact that a violent act is involved without any clear motive	14	5	14	**33**	**50.0**
victim's affiliation to a particular group	15	0	9	**24**	**36.4**
use of particulr symbols or other features (e.g. graffiti, the perpetrator's clothes)	7	1	13	**21**	**31.8**
witness testimonies	6	5	2	**13**	**19.7**
the purpose of an object (e.g. religion)	1	2	4	**7**	**10.6**
indicators connected with the place of perpetration (e. g. church, gay club)	2	1	2	**5**	**7.6**
indicators connected with the time of the perpetration (e.g. gay pride, Orthodox Christmas)	1	0	2	**3**	**4.5**
perpetrator's affiliation to a group (e.g. Skinheads)	2	0	1	**3**	**4.5**
establishment of previous incidents against the same group	1	0	1	**2**	**3.0**
other bias indicators	3	1	3	**7**	**10.6**
Total	**90**	**34**	**71**	**195**	

Among several emphasised *other bias indicators*, the most frequent ones were those where the offence and some damage was done to a car with foreign licence plates (of the Republic of Serbia). In one case, the perpetrator ordered the victim to kneel and kiss the Croatian flag.

5.1.4. Protected characteristics

The police registered a series of protected characteristics in this group of cases and their number for each category (dismissals, court cases A, the UP cases) almost matched the number of cases within them. However, one must be very careful when interpreting these data. Namely, the fact that the police had recognised the victim's affiliation to a particular group did not mean that in the end, when submitting a criminal report, the police recognised the offence as HC, or considered the victim's affiliation to a particular group as a protected characteristic relevant for the establishment of a motive. As already said, the police reported only a little more than 50% of cases initially designated in such a way in the category of dismissals and court cases A, and fewer than 50% of UP cases. In some cases, there was a cummulation of characteristics.

Table 5.1.4.1. Protected characteristics recognised by the police according to the categories of cases

Protected characteristic	**Dismissals (N=25)**	**Court cases (N=16)**	**NN (N=25)**	**Total number of characteristics (N_{cases}=66)**	**Percentage of cases where the police recognised individual protected characteristics (%)**
national or ethnic origin[34]	16	10	15	**41**	**62.1**
sexual orientation	4	1	2	**7**	**10.6**
religion	1	2	3	**6**	**9.1**
race and skin colour	3	0	1	**4**	**6.1**
other characteristics	0	1	5	**6**	**9.1**
Total	**24**	**14**	**26**	**64**	

[34] Although these concepts differ, the police and the judicial bodies often register both categories in parallel and subsume ethnicity under nationality, i.e. they do not consistently make any differentiation between them.

It is obvious that in by far the largest number of cases it was precisely the "nationality and ethnic origin" that was listed as a protected characteristic – in a total of 62.1% cases. Of 26 cases, where it was specified what nationality or ethnicity was involved, in 19 cases the Serbs were listed (73.1 %), the Roma in 3 cases (11. 5%), and only one Albanian, Kosovar, Macedonian and Croat. Regarding sexual orientation, it was registered as a protected characteristic in 7 cases (10.6%) and persons of homosexual orientation were involved. Although in 6 cases the police registered religion as a protected characteristic, not in a single case was it specified which religion was involved. In addition, the police did not register any cases where the protected characteristic would be disability, gender identity, sex or language.

Under "other" protected characteristics, the police recognised "extolment of fascism and nazism" in court cases A,[35] and in the UP cases, anti-fascism, the reputation of the Republic of Croatia, and in three cases, the extolment of fascism and nazism. In five cases, it was damage caused to property of another person (graffiti, inscriptions), and in one case, it was the violation of the reputation of the Republic of Croatia (by destroying the Croatian flag). It is clear that these are not explicitly protected characteristics under the CC and a question may arise whether these are, after all, protected characteristics in line with Art. 87, para. 21 CC and, if the answer is positive, under which characteristic they can be placed. For example, the extolment of fascism and nazism is generally considered as a form of anti-Semitism but it also includes the component of racism, attack on sexual and other minorities. In the Croatian context, the extolment of fascism and nazism is primarily directed against other groups – Serbs, Roma and some other minorities. In every case, depending on the context and all other circumstances, we should analyse whether it is HC in a narrower sense, or whether it is dominantly hate speech (more about it *infra*).

5.1.5. The rights of victims

In the focus group, the SA emphasised the importance of a good contact with the victim from the very beginning, because it was of essential importance for discovering and prosecuting the perpetrator, as well as exercising the victim's rights. They pointed out that the law enforcement people were the first to contact the victim.

[35] This also coincides with one reason of abandoning the offence classification of HC in court cases A category- because it was not a discriminatory ground referred to in Art. 87, para. 21 CC.

In regard to individual assessment of victims, the police made such assessment in 2 cases (8%) in the category of dismissals,[36] and according to the available data from the files, only in 5 cases the victims received the instructions on their rights (20%). In the category of court cases, the police did not make any individual assessment, but with the exclusion of only one case where a judgment on the penal order was issued, the offences had been committed and the investigation activities carried out before 1 November 2017 when individual assessment was introduced. According to the data in the files, out of 16 cases, only some victims (12.5%) received the instructions regarding their rights and in 7 cases (43.8%), all the victims received such instructions. As for the UP cases, no individual assessment was made, and it was registered in the files that only in 6 out of 25 cases (24%), the victims received the instructions on their rights. Indeed, while in regard to individual assessment, possible omission by the police was out of question (because most police activities had been carried out before 1 November 2017), the available data showed that the instructions on the victims' rights, as an obligation on the part of the police existing in all those cases, was given only in a small number of cases – in only 15 cases (22.7%), at least one victim did receive the instructions on his or her rights.

5.2. Group of cases C – where the proceedings for HC started and final judgments were rendered

5.2.1. Offence classifications of criminal offences according to the police and the SA

As many as 35 finally adjudicated cases were analysed with 46 defendants accused of the perpetration of a total of 50 criminal offences out of hatred. In three cases, the SA subsequently added the classification of HC, and in one case they abandoned the classification of HC in relation to some injured parties. In some cases, criminal offences of incitement to violence and hatred were committed in concurrence, as well as some other criminal offences (e.g. violation of the rights of children) but those criminal offences were not included in this research (only HC in narrower sense).

It is clear from the initial offence classifications given by the SA that in 50 criminal offences committed out of hatred, depicted in Image 1, the most common offences were threats (50.0%) and bodily injuries (40.0%, , both minor and serious bodily injuries).

[36] It must be kept in mind that in only 4 cases criminal offences were committed after 1 November 2017 when individual assessment was introduced.

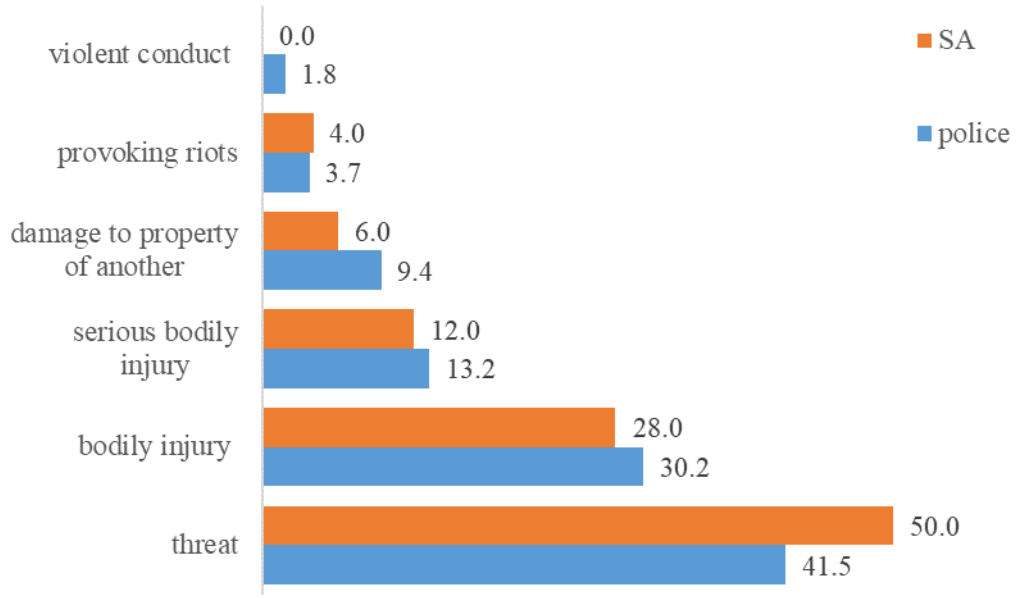

Image 5.2.1.1. Initial offence classifications of criminal offences out of hatred by SA and the police (%)

Regarding the initial offence classifications by the police, the SA, in the classification of offences committed by 13 defendants, added the conjunction with Art. 87, para. 21 CC which was missing in the police files. However, this does not mean that the police failed to recognise that the offence was committed out of hatred, but rather that it was inconsistent when classifying HC. The results of the work in the focus group confirm that there have been different approaches in relation to the necessity to indicate Art. 87, para 21 CC both within the police and within the SA. Even with the forms of HC where hatred is only an aggravating circumstance affecting sentencing and not an aggravating circumstance changing the offence, the offence is sometimes not classified in conjunction with Art. 87, para. 21 CC. It was often the case particularly with the criminal offence of threat, often classified only as Art. 139, para. 4 CC (most frequently in conjunction with paras 1 or 2), without making any conjunction with Art. 87, para. 21 CC.

Image 5.2.1.1. depicts only the offences which according to the classification can be assumed to have been recognised by the police as potential HC, although not all of them were connected with Art. 87 para. 21. CC.[37] In total, the police suspected the offenders from this category for 53 HC criminal offences committed, 3 more than the SA. In addition to these 53 criminal offences, the police reported to the SA a number of offences committed in concurrence or as separate

[37] It is only an assumption because later, those offences were processed as HC and the police had initially categorised them as such by registering them, in their internal data base, as HC.

offences, but not as HC, so we did not include them in this graph. At the same time, the police did not recognise the connection with any discriminatory motive in the cases of 5 defendants. In relation to two defendants, the police failed to recognise that it was a criminal offence – they reported one of them for misdemeanour against public order and peace (Art. 13 of AMPOP) and as a result, despite the efforts made by the SA to institute criminal proceedings against the defendant for bodily injury and threat out of hatred, at the end of the day a judgement of rejection was rendered because of the application of the principle *ne bis in idem*. With regard to the second defendant, the SA found out about the offence (domestic violence) from the Misdemeanour Court and the defendant was convicted, by a final judgment, of the criminal offence of threat against a close person, i.e. family member. Finally, in a case against three defendants, the police classified the offence as a bodily injury referred to in Art. 117, para. 1 CC, but the SA immediately re-classified it to a serious bodily injury out of hatred (Art. 118, para. 2, in conjunction with Art. 87, para. 21, CC), and then to taking part in a fight out of hatred of which all three defendants were finally also convicted. Except in these three cases, a change of the offence classification made by the SA in relation to the offence classification made by the police, was made in 5 other cases involving 11 defendants. In these cases, the SA abandoned some classifications of offences in concurrence, or re-classified the offences but the discriminatory motives remained.

5.2.2. Bias indicators registered by the police and the SA

When making a conclusion that potentially HC was involved, both the police and the SA relied on various bias indicators, whereby in relation to the same case (and the same defendant), very often cumulatively several indicators were involved. An analysis of 35 cases in this group, the most frequent indicators both with the police and the SA were the so-called threatening statements made by the perpetrator – e.g. threats and insults against the victim because of the victim's affiliation to a particular group, registered by the police in 26 cases (74.3%), and by the SA in 28 cases (80.0%). In the focus group, some police officers working on HC said they could only classify an offence as HC if the motive out of hatred was verbalised, by neglecting at the same time all other indicators. According to some police officers, it is essential that a verbalised bias is directed at the whole group and not only at an individual (because of group affiliation). Nevertheless, the second most common indicator with both the police and the SA was the perception of the victim that it was HC (by the police in 65.7% of cases and by the SA in 77.1%

of cases). A group of indicators on which they both relied less frequently were those of violent offences without any clear motives (54.3% the police and 37.1% the SA), the victim's affiliation to a particular group (45.7% and 34.3%), and the testimonies of witnesses who recognised the offences as HC (37.1% and 40.0%). Other indicators appeared either sporadically (in 1 to 3 cases), or not at all. In two cases, the licence plate of the Republic of Serbia on the damaged vehicle was "recognised" by the police as such other indicator.

The police and the SA are very similar when it comes to the number of all bias indicators registered in files (106:104). When speaking of individual indicators, the biggest difference lay in the fact that the police registered 6 more cases of violent offences without any clear motive than SA did, and in 4 more cases than the SA the police registered as an indicator the victim's affiliation to a particular group. In 4 more cases than the police, the SA registered the perception of the victim that the offence was a HC.

Table 5.2.2.1. Bias indicators recognised by the police and the SA

Bias indicators	**Number of recognised indicators and the percentage of cases where an indicator was recognised**	
	Police	**SA**
the accompanying statements of the perpetrator	26 (74.3%)	28 (80.0%)
victim's perception that it was a HC	23 (65.7%)	27 (77.1%)
victim's affiliation to a particular group	16 (45.7%)	12 (34.3%)
the fact that it was a violent offence without a clear motive	19 (54.3%)	13 (37.1%)
witness testimonies	13 (37.1%)	14 (40.0%)
indicators linked with the place of the perpetration	1 (2.9%)	0 (0.0%)
use of some symbols and features	2 (5.7%)	1 (2.9%)
offender's affiliation to a group	2 (5.7%)	2 (5.7%)
establishment of previous incidents against the same group	1 (2.9%)	1 (2.9%)
indicators linked with the time of the perpetration	1 (2.9%)	3 (8.6%)

purpose of a particular object (e.g. religion)	0 (0.0%)	0 (0.0%)
other bias indicators	2 (5.7%)	3 (9.1%)
Total	**106**	**104**

5.2.3. Protected characteristics in the cases prosecuted as HC

It is difficult to compare the data on the characteristics recognised by the police and the SA at the level of absolute numbers because the police registers the data in relation to the incidents (cases), while the SA registers them in relation to the defendants. Sometimes one or several defendants were involved in a case (to be concrete, in this group of cases, the number of defendants exceeded the number of cases by 11), and it was expected that the SA would recognise more protected characteristics than the police. However, the SA designated 64 protected characteristics in relation to 46 defendants, while the police recognised 39 protected characteristics in relation to 35 committed offences. With regard to the ratio of the protected characteristics to the possible number of defendants (1.4), or cases (1.1), this would mean that the SA more consistently recognised the protected characteristics than the police and that the SA, to a larger extent than the police, recognised how some defendants, when committing offences, acted at the same time on several discriminatory grounds.

The registration of the number of recognised protected characteristics by both the police and the SA was connected with the problem of the method of registering some of them. For example, in the files, we very often came across the phrase “national and ethnic affiliation” without any distinction made between the two concepts. They were treated as synonyms, cumulatively, or the ethnicity was subsumed under the concept of nationality. The concept of religion was often linked with them and it did not, as a rule, appear as an independent protected characteristic but it was cumulatively taken together with the national and ethnic affiliation. The same problem of the lack of distinction, i.e. the use of concepts as synonyms, was detected with the protected characteristics of racial affiliation and skin colour.

The following table brings a list of protected characteristics – registered by the police or recognised by the SA.

Table 5.2.3.1. Protected characteristics recognised by the police and the SA

Protected characteristic	Number of recognised characteristics and the percentage of cases/defendants where individual characteristics were recognised	
	Police	**SA**
nationality and ethnic origin	21 (60.0%)	37 (80.4%)
religion	10 (28.6%)	20 (43.5%)
race and skin colour	5 (14.3%)	5 (10.9%)
sexual orientation	2 (5.7%)	2 (4.3%)
Total	**38**	**64**

Among individual protected characteristics, the most represented was the nationality and ethnic origin (recognised in 60% of cases by the police, as opposed to 80.4% of defendants by the SA). In the cases where the police, or the SA, emphasised the nationality and ethnic origin, a little less than two thirds was hatred against the Serbs (57.1% of cases, 62.2% of defendants from the same group), then followed hatred against Croats (2 (9.5%) cases, 5 (25.0%) defendants). All other groups were equally represented: hatred against Bosnians (1 case, 1 defendant), Iraqis (1 case, 1 defendant), Roma (1 case, 1 defendant) and the Jews (1 case, 1 defendant). The second most frequent characteristic was religion (10 (28.6%) cases, 20 (43.5%) defendants), where there was a discrepancy between the data kept by the police and those kept by SA. Namely, according to the data obtained from the SA, in a half of all defendants (10 out of 20) where religion was recognised as a protected characteristic, the Orthodox religion was mentioned. With the police, it appeared in only one out of ten cases. A possible reason for the disbalance was probably the fact that in one case committed against the victims of the Orthodox religion, 7 co-defendants were also involved. Among other identified religions, there was the Catholic religion (2 cases, 4 defendants), the Muslim religion (3 cases, 3 defendants), the Jewish religion (1 case, 1 defendant) and in relation to 2 defendants, no specific religion was mentioned. It is also interesting to mention how a person, against whom a HC was committed because of his racial affiliation and skin colour, was an Iraqi, yet another victim was black, and there were also other

three persons whose racial affiliation, or skin colour, were not mentioned. The least represented protected characteristic in this category of cases was sexual orientation – homosexuality (2 cases, 5.7%, 2 defendants, 4.3%). It was not established that any of the analysed criminal offences had been committed out of hatred against another person because of their language, disability or gender identity.

The rights of victims

In this research, we also wanted to examine the extent to which the provision of Art. 43a of the Criminal Procedure Act (CPA), introducing the procedure of individual assessment was applied. Namely, victims of HC are a very vulnerable category of victims expressly mentioned in this context in the CPA. In the cases conducted prior to 1 November 2017, the police had assessed that there was a need for special protective measures in 4 cases. After 1 November 2017, according to the available data in the files, the police carried out individual assessments pursuant to Art. 43a CPA in 2 cases, although the offences were committed after 1 November 2017 in 5 cases and the police was obliged to carry out the procedure of individual assessment. In 2 cases where individual assessments were made, no special victim's protection need was established. In as many as 17 cases, the file did not contain any information about the victims having received the instructions on their rights in their own language.

> In one judgment by the Municipal Court in Dubrovnik, branch in Metković, of 14 June 2018 (it was not included in the sample because it was established very early on that it referred to 'another characteristic' despite the fact that CC expressly lists the protected characteristics and does not leave any room for the inclusion of any other characteristics), two defendants were convicted of a robbery committed in concurrence with a serious bodily injury and out of hatred (Art. 118, para. 2 CC). Having seen the victim running in a football club's jersey, “because of intolerance for that football club and its supporters (...) the victim received a heavy punch on the head and after he had fallen down, they started kicking him all over his body telling him not to wear that....jersey and they cursed his "Zagreb *purger* mother...“

The situation with the application of individual assessments was not much better from the SA's perspective. Not in a single of the analysed cases did the SA apply the procedure of individual assessment. However, it must be emphasised that only in 5 cases of the sample the perpetrators

were charged after 1 November 2017, when Art. 43a of the CPA entered into force,.[38] Thirteen defendants were informed by the SA about their right of access to the victim and witness support department providing support to victims and witnessess[39] but only in 2 cases the criminal court engaged its department to offer support to victims and witnesses. Not in a single case was a specific need for the protection established by the application of individual assessment, and, consequently, the victims did not exercise any additional rights.

5.2.4. Procedural measures and pleas of defendants

Precautionary measures were imposed against a third of defendants (15) and the most frequently imposed measure was the prohibition of approaching a particular person (against 14 defendants) and the prohibition of establishing or maintaining any contact with a particular person (also 14 defendants). Eight defendants were banned from visiting a particular place or area, and one defendant was obliged to regularly appear before a designated person or a state body. Pre-trial detention was pronounced for 10 defendants, in average duration of a little less than 2 months – mostly because of a danger that the accused would repeat the criminal offence or complete the attempted criminal offence, or commit a more serious criminal offence with which he or she had threatened (8 defendants). For this particular reason, the pre-trial detention was extended for 6 defendants.

A total of 33 defendants were represented by an attorney and 2 defendants used their right to remain silent. In their pleas, more than half of them denied all the counts (26 defendants – 56.5%), while 16 defendants (34.8%) pleaded guilty to all counts of the indictment, 3 defendants (6.5%) pleaded guilty but denied the motive of hatred and 1 defendant (2.2%) denied some counts, as well as the HC motive.

[38] As a matter of fact, all the offences were committed in 2018.
[39] In 2 cases not all but only some of the victims.

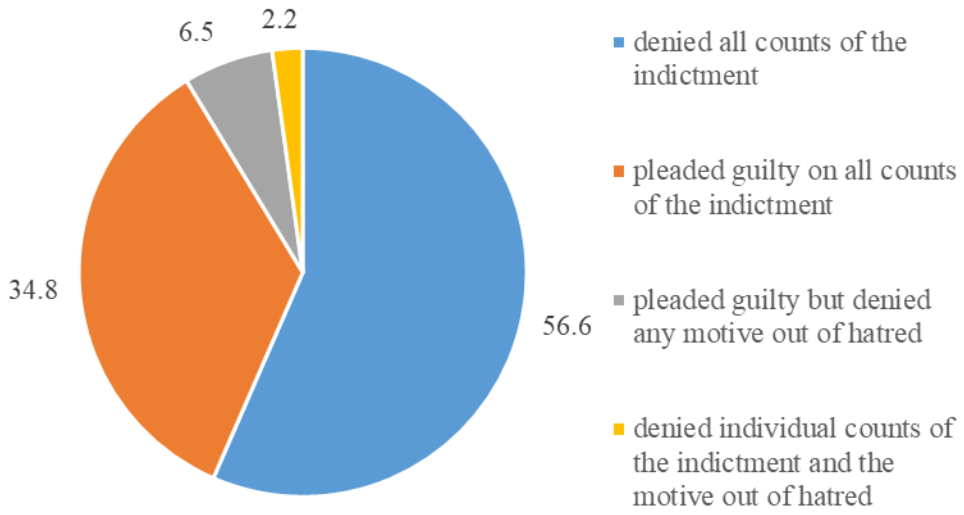

Image 5.2.5.1. The percentage of defendants (%) according to their pleas on the counts of indictment and the out-of-hatred motive

5.2.5. Final outcomes of criminal proceedings

As depicted in Table 5.2.6.1., a total of 38 defendants (82.65 %) were convicted by final judgments. Of that number, 31 defendants were convicted of HC (81.6%). There were two defendents (4.3%) in each of the following categories: acquittals (it was not proven that the defendant had committed the offence), decisions on the dismissal of the proceedings (the SA withdrew the charges before the hearing), judgments of rejection (because the SA withdrew the charges at the hearing or due to the application of the principle *ne bis in idem*), and mental incapacity determination.

Table 5.2.6.1. Final outcome of the proceedings

Final outcome of the proceedings	Number of defendants	Percentage (%)
judgment of conviction after the hearing	32	69.6
judgment of conviction – penal order	4	8.7
judgment of conviction – the parties' agreement	2	4.3
acquittal	2	4.3
decision on the dismissal of the proceedings	2	4.3
judgment of rejection	2	4.3
mental incapacity established, referral to a psychiatric institution	1	2.2
mental incapacity established, no referral to a psychiatric institution	1	2.2

No appeal was lodged in relation to 27 defendants either by the SA, or by the defendant, while it was lodged in the cases of 19 defendants. In the cases of 16 defendants the second instance court rejected the appeals in their entirety and confirmed the first instance judgments, and in the cases of 3 defendants various outcomes occured. One defendant was mentally incompetent, in one case the first instance convicting judgment was replaced by a judgment of rejection because of the principle *ne bis in idem* (because misdemeanour proceedings had already been conducted for the same offence), and an eductional measure was pronounced by the first instance decision (rescinded) against one defendant, following which the SA withdrew the charges. This means that the final outcome of the proceedings did not change in relation to 43 defendants (93.5%).

At the time of the perpetration of a criminal offence, a total of 37 defendants (80.4%) were mentally fully competent. Seven defendants were mentally incompetent at the time of the perpetration of the criminal offence.

5.2.6. The convicted of HC by final judgments

Regarding offence classifications in final judgments, 31 defendants were convicted of as many as 35 HC by final judgments, i.e. some defendants were convicted of more HC committed in concurrence. Some defendants were also convicted of other criminal offences that were not HC. To be precise, 10 defendants were convicted of criminal offences committed in concurrence, 4 of

them for concurrent HC and 6 were convicted in concurrence with other criminal offences (not HC): threat (2 defendants), damage to property belonging to another (2 defendants), violent conduct (1 defendant) and bodily injury and violation of children's rights (1 defendant). In relation to two defendants in one final judgment for criminal offences committed in concurrence, there was also public incitement to violence and hatred in concurrence with a criminal offence of damaging another person's property out of hatred (writing graffiti). Most defendants were convicted of threat (19), 7 of them were convicted of bodily injury, 5 for damage of property of another, 3 of taking part in a fight and 1 defendant for provoking riots.

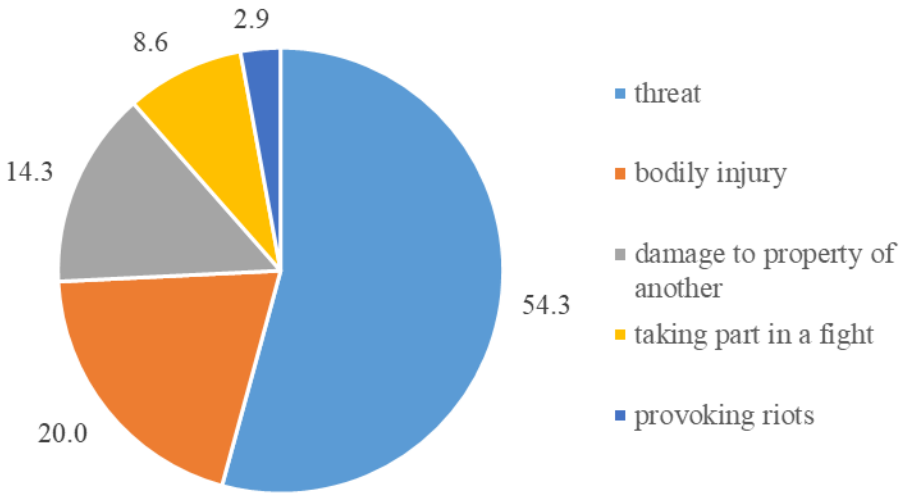

Image 5.2.7.1. Distribution of offence classifications of HC in final judgments

In the context of offence classifications in final judgments, it is necessary to briefly raise concern about inconsistent conjunctions with Art. 87, para. 21 CC. In relation to two defendants, in two different cases, four criminal offences of threat out of hatred were legally designated only as Art. 139, paras. 2 and 4 CC, without making any conjunction with Art. 87, para. 21 CC. When dealing with criminal offences where hatred was an aggravating circumstance changing the offence, there was also no uniformity of actions – for example, the criminal offence of provoking riots was legally designated only as Art. 324, paras. 1 and 2 CC, without making any conjunction with Art. 87, para. 21 CC, while with a criminal offence of bodily injury committed out of hatred, the conjunction with Art. 87, para. 21 CC prevailed (with 6 defendants) and in only one case, Art. 117, para. 2 CC was invoked.

Regarding the protected characteristics in judgments of conviction, of all defendants convicted of HC (31), 26 of them were convicted of HC committed because of the victim's nationality or ethnic affiliation whereby the Serbian nationality was again dominant (with 13 defendants, or 50% of all HC committed because of nationality or ethic affiliation), then Croatian (5), Iraqi (1), Roma (1) and Jewish (1), while the case of 5 defendants, the nationality or ethnic affiliation were not specified. In connection with 9 defendants, religion was specified as a protected characteristic (29%) and in the case of 3 defendants, it was racial affiliation (9.7%). However, there was not a single case where it was specified what kind of racial affiliation was involved (at the same time, with the same 3 defendants, the "skin colour"was stated, and in the case of one defendant, it was specifically said that it was a black person). With 2 defendants, their sexual orientation was the protected characteristic (homosexual) (6.5%). As for religion, in cases of 4 defendants vicrimised persons were Catholic, in 2 cases Muslims, in 2 Orthodox and in 1 Jewish. At the same time, religion did not appear in any of the cases independently but always in combination with other protected characteristics, most frequently with nationality and ethnic affiliation (8 defendants) and in the case of one defendant together with racial affiliation.

5.2.7. Sanctions for HC

In regard to the pronounced criminal law sanctions for HC, no fines or partial suspended sentences or special obligations were pronounced. A suspended sentence was the most frequent criminal law sanction pronounced against 21 defendant (67.7%), whereby an average length of a suspended prison sentence was approximately 9 months, and the probation period mostly lasted for 2 years (if we take the arithmetic mean, an average duration of probation was in most cases 2 years and 3 months, but the probation time is counted in full years). This piece of data shows that the number of those with a suspended sentence for HC approximately equals the average number of perpetrators of legal age in the general population who are placed on probation. Namely, according to the data of the Croatian Bureau of Statistics[40] (hereinafter: CBS), for the period from 2013-2018, a suspended sentence was represented in all pronounced sentences and other measures in the percentage of 76.2%. Six defendants were punished by community service. Only 1 defendant was punished by an unconditional prison sentence for several concurrent criminal offences of threat out of hatred, in concurrence with a criminal offence of threatening a close person, a bodily injury inflicted on a close person, and there were three criminal offences of the

[40] Statistical reports. Major perpetrators of criminal offences, reports, charges and convictions in 2018. Zagreb: SBS and earlier publications for the period of 2013-2017.

violation of children's rights. An aggregate prison sentence of 2 years was pronounced, whereby for every committed offence, including threat out of hatred, individual prison sentences amounted to 7 months.

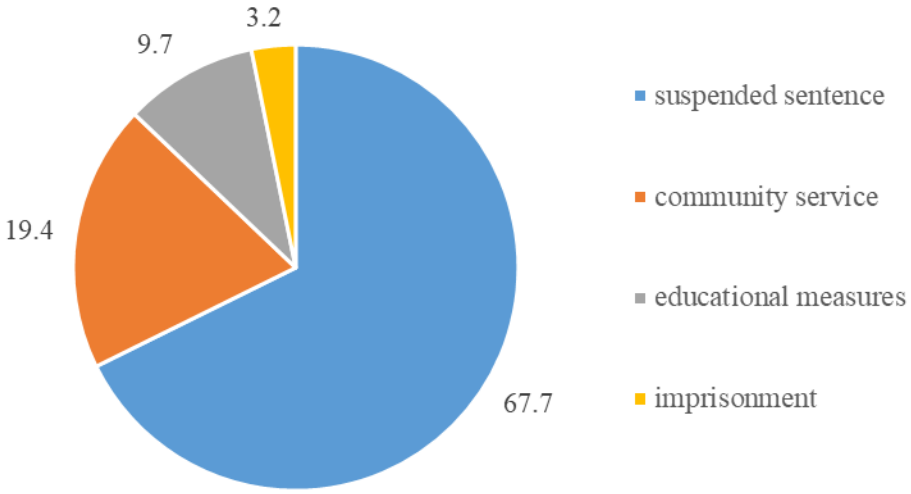

Image 5.2.8.1. Distribution of criminal law sanctions pronounced to perpetrators of HC (%).

In total, 6 security measures were pronounced and among them, the most frequent one was mandatory addiction treatment (against 3 defendants). Two defendants were punished by mandatory psychosocial treatments, and against 1 defendant, a mandatory psychiatric treatment was ordered. Protective supervision was pronounced in 3 cases: one defendant was ordered protective supervision together with community service, while 2 defendants were ordered protective supervision together with suspended sentences. Educational measures were pronounced only against three defendants (minors or young adults) and in two of those cases, it was intensive care and supervision, and in one case a referral to an educational institution.

Since minors and young adults were a third of all defendants in the case category C (16 out of 46), the fact that only three juvenile sanctions were pronounced was confusing at the first sight. After an insight into the files, the following conclusion was made: in 1 case with as many as 8 accused minors, educational measures were ordered against 7 minors but they were not convicted of HC but of inflicting ‘ordinary’ or ‘serious' bodily injury (Art. 117, para. 1 CC, Art. 118, para. 1 CC). In relation to the eighth accused minors in the same case, criminal charges were dismissed because the court held that in the concrete case, since two years had elapsed during which period of time the minor did not commit any new criminal offences, his conduct was decent and he started working, it was inappropriate to pronounce an educational measure against him. Of the remaining 8 minors/young adults, to three of them, as already mentioned, educational measures were ordered for HC. In relation to 4 young adults, the court, pursuant to Art. 105 of the JCA, did not hold it was appropriate to apply juvenile law and the sanctions. One minor was convicted of provoking riots out of hatred, the court explicitly held that the offence was not the reflection of his young age, so the educational measures would not achieve the envisaged purpose. In relation to the remaining three minors, a suspended conviction based on penal order, or the parties' agreement, was pronounced and the judgment did not contain an elaborated statement of reasons, or an assessment whether the application of the JCA would be appropriate. In the opinion of content analysts, more attention should have been paid to it. In one case, the charges were dismissed because the court held, there was no proof that the minor had committed HC he was charged with.

With 23 out of 31 defendants (74.2%), one or several mitigating circumstances were recorded. They are shown in the Table 5.2.8.1.below. Among the mitigating circumstances, the largest percentage was ascribed to the following: no previous criminal record (69.6%), confession of guilt (56.5%), remorse (43.5%) and young age (34.8%), and relatively rarely: apology, participation in the Homeland War, a positive change of conduct or health condition/undergoing a treatment (the percentage of every mitigating circumstance: 8.7%).

Table 5.2.8.1. Mitigating circumstances in cases of 23 defendants with the final judgments for HC

Mitigating circumstance	**Number of defendants**	**Percentage (%)**
no previous criminal record	16	69.6
confession	13	56.5
remorse	10	43.5
young age	8	34.8
diminished mental capacity	5	21.7
personal or family situation	4	17.4
father (of a minor)	4	17.4
job (employed and supporting his family, or unemployed)	4	17.4
decent life, this was only an incident	3	13.0
apology	2	8.7
participation in the Homeland War	2	8.7
improved conduct	2	8.7
health condition or medical treatment	2	8.7

Only with 9 out of 31 defendants (29%), one or several aggravating circumstances were registered (Table 5.2.8.2.).

Table 5.2.8.2. Aggravating circumstances in cases of 9 defendants with final judgments for HC

Aggravating circumstance	Number of defendants
previous criminal record	7
circumstance that a HC is involved	2
uncritical about the offence	2
inappropriate conduct	2

With all 9 defendants, where some aggravating circumstances were listed, the mitigating circumstances were also given. It was surprising that with only 2 defendants an aggravating circumstance was the perpetration out of hatred because these are all HC cases. Namely, 24 defendants were also convicted of criminal offences where hatred was not an aggravating circumstance changing the offence[41] and pursuant to Art. 87, para. 21 CC, the court, when meting out the punishment, should have explicitly taken the motive of hatred as an aggravating circumstance in sentencing. At the same time, we took account of the fact that that in relation to 4 defendants, penal orders had been issued, and in the case of 2 defendants, judgments were rendered based on the agreement of the parties, and 2 defendants waived their right to appeal, so that those judgments did not contain, or did not contain an integral statement of reasons. Indeed, with as many as 14 defendants, the courts had not characterised hatred as an aggravating circumstance when meting out the sentence, although they were bound to do so by the letter of law. In fact, in many of those cases the courts explicitly stated, they did not find any aggravating circumstances at all. It ensues from the conversation with SA in the focus group that, if that is the only reason for appeal, SA do not appeal against judgments. In their experience, they communicated, the sentence, in the cases of HC, was nevertheless somewhat harsher than when dealing with the perpetrators of analogous criminal offences not motivated by hatred or bias. When asked if he would appeal against the judgment in which the court did not mention hatred as an aggravating circumstance, although it should have done it *ex lege*, a SA in the focus group said he would appeal, and he also added: “If that aggravating circumstance did not exist, the

[41] Actually 25, but in one case damage to the property of another person was classified under Art. 235, para. 3 CC, i.e. out of base motives, so that hatred also did not need to be reassessed (first as a characteristic of an offence – base motive, and then as an aggravating circumstance affecting the sentencing).

perpetrator would get a suspended sentence of 6 months with a probation period of 2 years, and with the aggravating circumstance, he actually gets a suspended sentence of 8 months with a probation period of 2 years. In principle, based on my experience before the […] court, this is what it boils down to. The sentence is increased but not to the extent where he would normally get probation, and now he gets imprisonment. That's not the limit that gets crossed."

> In one case, the defendants were convicted of bodily injury out of hatred referred to in Art. 117, para. 2 CC. According to the appeal lodged by SA, in that case, the first instance court "had to take into account, as an aggravating circumstance, that the defendants had attacked an unknown person, solely because of the victim's national affiliation, as well as that it was hooliganism out of hatred because of the person's national and ethnic origin, a phenomenom that was spreading and constituted a socially unacceptable conduct resulting in violence and intolerance and personal insecurity in people of different national and ethnic backgrounds. In this concrete case, as held by the County Court, the request was not justified because "the motive for the perpetration of the offence constitutes a qualifying, aggravating factor for a criminal offence of bodily injury referred to in Art. 117, para. 2 CC/11, as an offence committed out of hatred which has an impact on the sentencing range and therefore, the same circumstance cannot be reassessed as an aggravating one."

The victim's property law claim made against 8 defendants, was resolved in 2 cases, and in the remaining 6, the injured party was advised to file a lawsuit.

5.2.8. Length of the proceedings

Table 5.2.9.1. Length of preliminary and criminal proceedings according to the outcome (in days)

Final outcome		Average length	Number of defendants
Duration from perpetration to accusation	acquittal/judgment of rejection/dismissal of the proceedings	114	6
	judgment of conviction for HC	**142.5**	**31**
	judgment of conviction for another criminal offence	108	7
	judgment declaring mental incapacity	204.5	2
	Total	**136.2**	**46**
Duration from accusation to a final decision	acquittal / judgment of rejection /dismissal of the proceedings	777.7	6
	judgment of conviction for HC	**364.3**	**31**
	judgment of conviction for another criminal offence	543.4	7
	judgment declaring mental incapacity	708.5	2
	Total	**460.4**	**46**
Duration from perpetration to a final decision	acquittal / judgment of rejection / dismissal of the proceedings	891.7	6
	judgment of conviction for HC	**506.8**	**31**
	judgment of conviction for another criminal offence	651.4	7
	judgment declaring mental incapacity	913	2
	Total	**596.7**	**46**

It is clear from this Table that an average length of all cases from the perpetration to accusation was about 4.5 months, from the accusation to the final judgment about 15 months, and from the perpetration to a final judgment almost 20 months. An average duration of criminal proceedings ending with a final judgment of conviction for HC, from the accusation to the final judgment is

precisely a year – two times shorter than the length of the proceedings brought to an end by acquittals.[42] This can be explained by the fact that among those cases, there were also those where judgments of conviction were rendered on the basis of penal orders or the parties' agreements, or the defendants' confessions in regard to all the counts of the indictment, which significantly shortened the average length of the proceedings in that particular category of cases. It must also be pointed out that the content analysts, in their final case evaluations, mostly emphasized that good court practice in those cases were very speedy proceedings which was proof that judicial bodies generally observed the requirement referred to in Art. 8 of the Protocol on how to proceed in HC cases.[43] However, too slow proceedings was also the most frequent remark made by the content analysts when the courts' acting in those cases was discussed.

Table 5.2.9.2. Legal remedy proceedings (according to the number of defendants convicted of HC

Cases ending with final judgments	**Judgment of conviction for HC**
no appeal	22
second instance proceedings	9
retrial	0
Total	31

This Table clearly shows that when dealing with HC, an appeal against the first instance judgment was lodged in relation to a little less than a third of defendants, 9 of them, and in relation to 22 defendants, there were no appeals to the first instance judgments. On appeals against the judgments of conviction for HC, not in a single case was the first instance judgment rescinded and remitted for retrial, but the second instance court rejected the appeal as unfounded and confirmed the first instance judgment in its entirety. In one case, the court immediately amended the first instance judgment and rendered a judgment of rejection because of the principle *ne bis in idem*. Therefore, the fact that there were second instance proceedings in those

[42] To be precise, 364 days.
[43] Article 8 reads as follows:“Judicial bodies (criminal and first instance minor offence courts and/or the public prosecution service) shall in cases related to hate crimes, proceed urgently and with special care.“

cases did not significantly or largely impact the entire length of the proceedings (in those cases, on average, 453 days elapsed from the accusation to the final judgment).[44]

5.3. Case group B – hate misdemeanours

In this group, 30 cases, brought to an end by final judgments, were analysed, in accordance with the selection criteria described in the introductory description of the population and the selection of the sample. Similar to the analysed categories of criminal offences, in misdemeanours we also **most frequently deal with only one defendant**. Only in three cases, two defendants were accused jointly, in another case three defendants, and in yet another case four defendants. In the sample of 30 cases, 38 defendants were accused.

5.3.1. Classification of misdemeanours according to the police

Although in misdemeanour proceedings for 'a minor offence out of hatred', the SA and the injured party also may appear as authorised prosecutors, in this research, the methodology of the selection of cases was applied, according to which the starting point was a list of offences initially designated by the police as 'hate misdemeanours'. The results of the focus group composed of state attorneys show that SA very rarely initiate misdemeanour proceedings because they are not familiar with the fact of the perpetration of a misdemeanour. Mostly, they appear as prosecutors in misdemeanours only when they act on the basis of a criminal report and make an assessment that there are no elements of a criminal offence but only of a misdemeanour.

[44] Where there were no appeals, an average duration was 327 days.

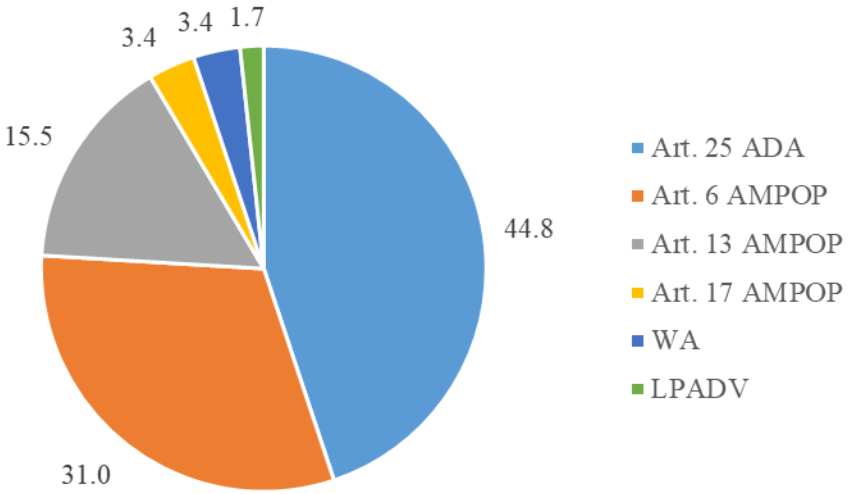

Image 5.3.1.1. The initial classification of misdemeanour according to indictment (%)

A total of 38 defendants were accused of 58 misdemeanours. The most frequent misdemeanor charge, preliminary designated by the police as hate misdemeanour, was a misdemeanour referred to in Art. 25, para. 1 ADA (26 defendants, i.e. 44.8% of all analysed misdmeanours).[45] Then follow the misdemanours according to AMPOP, which, when taken together, make up as many as a half of all indictments. Almost a third of the overall number of the analysed misdemenours were misdemeanours referred to in Art. 6 AMPOP (18 defendants, 31 %), and 15.5% misdemeanours referred to in Art. 13 AMPOP (9 defendants). There were also two misdemeanours (3.4%) referred to in Art. 17 AMPOP dealing with belittling or insulting State bodies or official persons which did not appear as HC but only in concurrence with it. The remaining two categories of misdemeanours deal with improper carrying and use of weapons (2 misdemeanours, 3.4%) violent conduct in the family (1 misdemeanour, 1.7%). In one case, the police – apparently wrongly – added the conjunction with Art. 87, para. 21. CC to the misdemeanor of Art. 6 AMPOP. Namely, they did not have an adequate legal framework for misdemeanours, so they tried to classify it as hate-motivated.

[45] The content analysts held that in several additional cases, the police should have, but did not indict according to Art. 25, ADA.

5.3.2. Bias indicators registered by the police

In misdemeanour cases, the police also registered a series of facts mentioned in literature as bias indicators, although they may not have been given adequate importance when the classification was decided upon and specified in the indictment, i.e. although at the time of their identification, there was no awareness of them as indicators potentially suggesting that a crime, i.e. hate misdemeanour was involved. The most common bias indicators in the context of misdemeanours, were also the accompanying perpetrator's statements recorded in 90% of cases, the victim's perception of the offence being a HC (70.0%) and the fact that it was a violent offence without any clear motive (60.0%). Other prevalent indicators were witness testimonies (53.3%) and the victim's affiliation to a particular group (36.7 %.). Among other bias indicators, one is the victim's use of the Cyrillic script.

Table 5.3.2.1 Bias indicators recognised by the police

Bias indicators	Number of indicators	Percentage of cases where the police recognised individual indicators (%)
the accompanying perpetrator's statements, e.g. threats and insults against the victim because of his or her affiliation to a group	27	90.0
victim's perception that it was a HC	21	70.0
the fact that it is a violent offence without any clear motive	18	60.0
witness testimonies	16	53.3
victim's affiliation to a particular group	11	36.7
purpose of an object (e.g. religious object)	1	3.3
perpetrator's affiliation to a group (e.g. Skinheads)	1	3.3
indicators connected with the time of the perpetration (e.g. gay pride, Orthodox Christmas)	1	3.3
use of some symbols and features (e.g. graffiti, perpetrator's clothes)	0	0.0
indicators connected with the place of the perpetration (e.g. church, gay club)	0	0.0
establishment of previous incidents against the same group	0	0.0
some other bias indicators	2	6.7
Total	**98**	

5.3.3. Protected characteristics in hate misdemeanours

The most common protected characteristic recognised by the police in the context of misdemanours are the nationality and ethnic origin (73.3%), which together make almost three quarters of all protected characteristics. In only 14 cases out of 22, it was specified which concrete nationality or ethnic origin was involved: mostly Serbian (7), then Roma (3), Bosnian

(2), Croatian and Slovenian (1 each). More frequently than with criminal offences, religion was mentioned (20%) - Muslim (5) and Orthodox (1). Only once, did we come across sexual orientation, race and skin colour. There were no cases where language, disability, sex or gender identity would be indicated.

Table 5.3.3.1. Protected characteristics recognised by the police

Protected characteristic	Number of characteristics	Percentage of cases where the police recognised individual protected characteristic (%)
national and ethnic origin	22	73.3
religion	6	20.0
sexual orientation	1	3.3
race and skin colour	1	3.3
Total	**30**	

5.3.4. The rights of victims

The police did not carry out individual assessment in accordance with Art. 43a CPA in any of the cases (at least not in the four cases where the perpetration took place after 1 November 2017). In only one case did the victims receive the instructions on their rights (3.3%). Whether the SA made individual assessments in the cases of misdemeanours could not be concluded on the basis of the sample, because the SA was not an authorised prosecutor in any of the analysed cases.

5.3.5. Procedural measures and guilty pleas

In the cases of 11 defendants, precautionary measures were pronounced. Of that number, a ban from getting close to a particular person and a ban from establishing and maintaining a contact with a particuar person were pronounced in relation to 8 defendants, and a ban from visiting a particular place or area in relation to 3 defendants. A total of 12 defendants were arrested, all of them for only 1 day. There were no cases of detention.

Table 5.3.5.1. Pleas of defendants

Pleas of defendants	The number and percentage of defendants
denies all counts of indictment	18 (47.4%)
denies individual counts of indictment and the 'out of hatred' motive	10 (26.3%)
pleads guilty on all counts of indictment	5 (13.2%)
pleads guilty on all counts of indictment but denies the 'out of hatred' motive	3 (7.9%)
denies individual counts of indictment but not the 'out of hatred' motive	1 (2.6%)
does not want to offer a plea	1 (2.6%)
Total	**38**

It is obvious from Table 5.3.5.1. how almost half of all defendants denied all counts of the indictment, and a little more than one fourth of defendants denied only some particular counts of indictment and the 'out of hatred' motive. Despite the fact that one defendant did not offer any plea, none of them used the opportunity of remaining silent.

5.3.6. All misdemenour proceedings ending with final judgments

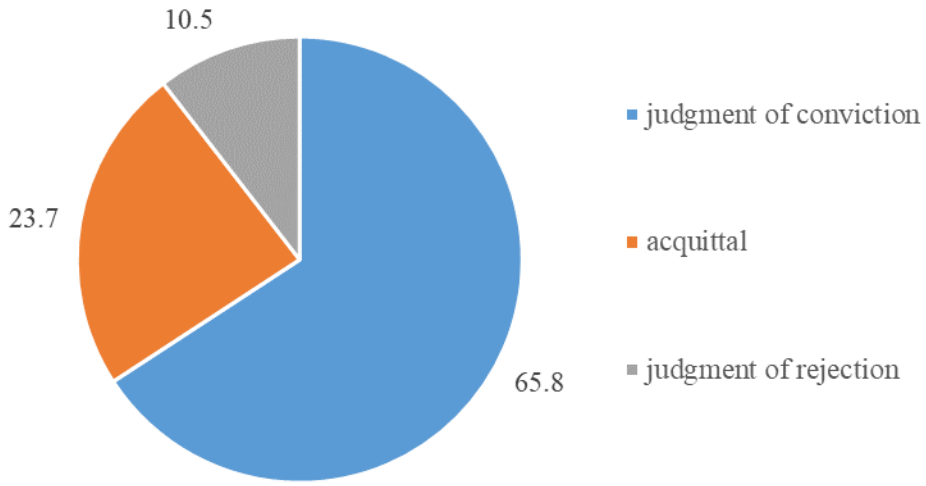

Image 5.3.6.1. Misdemeanour proceedings ending with final judgments

As opposed to criminal cases, with misdemeanour cases, the principle of discretionary prosecution was not applied in any of 30 analysed cases.[46] Indeed, there was not a single case where the authorised prosecutor and the defendant made an agreement on the sanction and the imposed measures. On average, about two thirds of defendants (25) in the analysed cases were convicted, and 9 defendants (23.7%) were acquitted. In relation to 4 of them (10.5%), judgments of rejection were rendered. The grounds for all judgments of rejection was the application of the statutes of limitation to the prosecution for misdemeanour and the grounds for all 9 acquittals was the fact that there was not enough evidence. Apart from those 9 total acquittals, there were 4 partial acquittals, of which 2 defendants were acquitted of the second offence and convicted of hate misdemeanour. Two of them were acquitted of hate misdemeanour and convicted of the second offence. In all partial acquittals, the defendants were acquitted on the grounds that the existence of the offence had not been proven, except in one case where "another ground" was given, i.e. that the charged offence was not a misdemeanour pursuant to Art. 182, p. 1 of the Misdemeanour Act.

> In that case, the Court held that there was no misdemeanour referred to in Art. 25 ADA because the curses were said in a general way and "were not said against any particular person and with the aim of causing fear based on different national origin because the person to whom the curse was said was not Serbian, so it was obvious that already in the facts describing the offence, some elements were missing that would qualify the defendant's conduct as misdemeanour referred to in the aforementioned provision". The Court neglected dominant understanding in the context of HC, namely that HC could also be committed against a person who does not have the characteristics assigned to him or her by the perpetrator who, in fact, is not connected with such another person (ECtHR, *Škorjanec v. Croatia*).

In the context of partial acquittals, or judgments by which the defendants were convicted of only some misdemeanours specified in the indictment, it is necessary to point to the inconsistent practice in relation to misdemeanours referred to in Art. 25 ADA. In situations where the indictiment also contained Art. 25 ADA in concurrence with other misdemeanours, and it was a judgment of conviction, but not for Art. 25 ADA, the courts acted differently. Namely, in some

[46] Since the principle of discretionary prosecution with the perpetrators of criminal offences out of hatred applies only to minors and young adults, a possible explanation could be the fact that in the sample, there was only one perpetrator who was a minor.

judgments of conviction, the courts convicted the defendant only of other misdemeanours specified in the indictment, and did not, at the same time, render partial acquittals for Art. 25 ADA (they only explained in the statement of reasons of the convicting judgment why there was no conviction under Art. 25 ADA). In some other cases, the misdemeanour courts rendered acquittals in regard to a count of the indictment where there was no conviction of the perpetrator under Art. 25 ADA.

A relatively low percentage of convicted persons (65.8%) significantly deviates from the percentage of convicted adult misdemeanor offenders. In the period from 2013 to 2018, according to the data obtained from the CBS,[47] on average, 78.8% of defendants were accused of misdemeanour, while the percentage of the convicted perpetrators of legal age was even higher. (81.9%). On the other hand, in the same period, a very small percentage (2.8%) of minors accused of misdemeanours were convicted. Therefore, a low percentage of the convicted could result from the fact that the sample included both minor and adult hate misdemeanour offenders. However, an insight into the age structure of the accused for hate misdemeanour shows that among the defendants, there was only one minor (17 years of age) convicted of hate misdemeanour and was sanctioned by a court reprimand as an educational measure. Therefore, it is justified to conclude that a low percentage of the convicted, in comparison with the accused, was a specificity of this category of misdemeanours (hate misdemeanours').[48]

5.3.7. Convicted of hate misdemeanour by final judgments

In relation to 25 offenders convicted of misdemeanour, 18 of them were convicted of hate misdemeanour (according to the definition used in this research), while 7 defendants were convicted, but the convictions in those cases did not encompass the essence of hate misdemeanour. For example, the convicting part in those cases included only hate speech, so the conviction did not cover other aspects of the indictment, or the Court found that it was a misdemeanour against public order but did not hold that hatred was proven, i.e. bias as the

[47] The Croatian Bureau of Statistics (2019). Statistical reports. Misdemeanour offenders in 2018. Zagreb: and earlier reports for the period from 2013-2017.

[48] We must take into account the out-of dateness of the AMPOP. On 29 January 2019, the Constitutional Court ordered the Croatian Parliament to pass a new act to modernize the regulation of this subject matter. However, so far, there is no new act.

motive of the offence. An analysis that follows refers only to 18 defendants convicted of hate misdemeanour.

A large number of defendants in all misdemeanour cases (44.7%) committed the offence under the influence of alcohol. The percentage was even higher with the offenders convicted of hate misdemeanour (55.6%). However, only in relation to one defendant convicted of hate misdemeanour, the Court held that he was mentally incompetent when committing the offence.

In relation to 5 defendants, the judgment did not contain the statement of reasons because in those cases, the parties waived their right to appeal pursuant to Art. 179, paras. 7 and 9 of the Misdemeanour Act.

Table 5.3.7.1. Misdemeanour offence classification of misdemeanours according to the final judgment of conviction

Misdemeanour offence classification	**Number of misdemeanours**	**Number of hate misdemeanours**	**Percentage in the total number of hate misdemeanours (%)**
Art. 25 ADA	10	7	28.0
Art. 6 AMPOP	13	11	44.0
Art. 13 AMPOP	5	4	16.0
Art. 17 AMPOP	2	1	4.0
Arts 29 and 92 of the Weapons Act	2	2	8.0
Total	**32**	**25**	

By reading Table 5.3.7.1., a conclusion can be made that a total of 18 defendants were convicted of 25 hate misdemeanours. As opposed to the offence classifications from the indictment, in the final judgments of conviction, misdemeanours referred to in Arts 6 and 13 AMPOP prevail (15 misdemeanours), occuring either independently or in concurrence with Art. 25 ADA (in the case of 4 defendants, two times Art. 6 AMPOP, in concurence with Art. 25 ADA, and two times AMPOP in concurrence with Art. 25 ADA). The perpetrators of misdemeanours were convicted only under Art. 25 ADA, whereby one of them was convicted of an additional offence in

concurrence, what in the example at hand did not constitute a hate misdemeanour (carrying a knife in his hand during a manifestation and being under the influence of alcohol, punishable under Art. 29, para. 2 in conjunction with Art. 92, para. 1, point 14 of the Weapons Act). In one case, yet another defendant was convicted of hate misdemeanour, in concurence with Art. 6 AMPOP. In one case, the defendant was convicted under Art. 17 AMPOP (belittling and insulting State bodies and official persons while carrying out their duties) which, as such, did not constitute a HC but an accompanying offence together with misdemeanours referred to in Art. 6 AMPOP and Art. 25 ADA of which the defendant in that case was also convicted (at the same event, the defendant belittled and insulted the police officer who intervened). When we analysed the accusations and convictions, we came to a conclusion that the percentage of convictions in relation to indictments was the smallest when dealing with Art. 25 ADA (only 38.4 % of accusations for misdemeanours referred to in Art. 25, para. ADA resulted in final convictions, while, when dealing with Art. 6 AMPOP, the percentage was much higher – up to 72.2%; it was also higher than 50.0 % when dealing with Art. 13 AMPOP (55.6%).

In some cases, the court held, it was not proven that the defendant had said the words for which he was charged or had not even taken any action constituting a HC (in which case, the judgment would really be acquittal for hate misdemeanour). However, in some other cases, the same factual aspects of the act had been proven and consumed by misdemeanour against public order and peace but the court did not hold that a specific aim to intimidate another or to create a hostile, degrading or offensive environment was proven. In some cases, the court held that such aim was proven but consumed by a misdemeanour against public order and peace and, therefore, the court did not find it was necessary to convict the defendant also under Art. 25 ADA. Although the prescribed punishment is many times harsher according to Art. 25 ADA (ranging from HRK 5,000.00 to 30,000.00) than for any misdemeanours under the AMPOP (not higher than the counter-value of DEM 350), we must not neglect the fact that the AMPOP, for these misdemeanours, beside the fine, also provides for a harsher punishment of imprisonment of up to 30 days. However, bearing in mind that in the misdemeanour system of sanctions, the main punishment is a fine, but considering also various protected objects of misdemeanours referred to in Art. 25 ADA and those referred to in AMPOP, it is difficult to accept a fictitious concurrence of Art. 25 ADA and misdemeanours referred to in AMPOP (in particular in favour of misdemeanours referred to in Arts 6 and 13 of AMPOP).

Based on the fact that the defendant was acquitted of misdemeanour referred to in Art. 25 ADA but convicted of misdemeanour under AMPOP, no conclusion could be made that there was no conviction of hate misdemeanour.

Indeed, it was surprising that in a number of cases Art. 25 ADA was applied independently (or in concurrence with another misdemeanour not committed out of hatred or bias),[49] which was contrary to our expectations because Art. 25 incriminates the so-called pure discrimination – which is generally, on its own, conceptually and structurally considered as being different from HC. According to Article 25 ADA, under hate misdemeanour, various factual situations are subsumed including threats, whereby it is difficult to draw a line between misdemeanour and the criminal offence of threat referred to in Art. 139 of the CC. For example, the defendant, who during an event held a 6 cm long knife in his hand, approached the injured party and asked him: „Are you a Roma?“, and after the injured party confirmed, the offender threatened him by saying: „If you are a Roma, I will stab you“.[50] Another defendant was accused and convicted only of misdemeanour (Art. 25, para. 1 ADA). After a quarrel, she said to the injured party that she would forbid her to walk down the street and added: “F*ing and dirty Gipsy, I’ll take a rock and hit you on the head every time I see you; Gipsy woman, you must be killed.” The content analysts, in their final evaluation of misdemeanours, recognised several times how, in the factual description of misdemeanours, the criminal offence of threat (out of hatred) was wholly subsumed.[51] In addition, in the SA focus group, it was suggested that in the Misdemeanours Act, the hatred motive should be the prescribed circumstance in the same way as in Art. 87, para. 21 CC. This would help and contribute to easier identification and analysis of hate misdemeanours.

5.3.8. Sanctions for hate misdemeanours

Regarding sanctions, there was not a single case where an unsuspended prison sentence was pronounced. Speaking of sanctions, the most common one was a fine, pronounced against 15 defendants (83.3%), a suspended prison sentence pronounced against 2 defendants (11.1%), while a court reprimand, as an educational measure, was ordered against one (minor) defendant (5.6%). The courts did not order any admonitions, community work or any of special obligations. Suspended prison sentences within the statutory framework of misdemeanours against public

[49] For example, under the Weapons Act.
[50] He was accused and convicted in concurrence with Art. 29, para. 2 of the Weapons Act.
[51] In one case, the characteristics of (a minor) bodily injury were recognised, committed because of the victim's nationality for which, in the opinion of the content analysts, the police should have filed a criminal report for a criminal offence referred to in Art. 117, para. 2 CC in conjunction with Art. 87, para. 21 CC.

order and peace ranged within maximum 30 days, i.e. prison sentences in the duration of 12 to 15 days, with the period of probation of 1 year or 6 months. The only pronounced security measure was a ban of visiting a particular place or area. An object was taken from a defendant in accordance with Art. 92, para. 2 of the Weapons Act – seizing knives and their destruction. Property law claims were not filed in any of those cases.

When analysing the pronounced fines, it must generally be said that they are extremely lenient – the minimum fine is HRK 546.00 and the maximum HRK 7,303.00[52] while the average fine amounts to HRK 1,873.13. We must keep in mind that the average salary in the Republic of Croatia, in the period from 2013 to 2018, was HRK 5,810.00 which means that the average fine in those cases was less than a third of the average monthly salary in the same period of time. More than a half of these fines amounted to HRK 1,000.00. However, what must be taken into account is the disproportion of the prescribed sanctions in the two misdemeanour acts which apply to these cases: for misdemenours referred to in Arts 6 and 13 of the AMPOP, the fines between HRK 195.00 and HRK 1,360.00 are prescribed (conversion from DEM), whereas for the measdemeanour referred to in Art. 25 ADA, many-times higher fines are prescribed: between HRK 5,000.00 and HRK 30,000.00. Therefore, in very similar cases in terms of the facts, there is a huge difference in the pronounced fines depending on the offence classification and whether or not Art. 25 ADA has also been taken account of. This is where a paradox arose, that in relation to 5 defendants, whose fines were mitigated, the misdemeanours referred to in Art. 25 ADA were involved, where the pronounced fines, even if mitigated, were harsher than those under AMPOP, where there was no mitigation. A total of 7 defendants were convicted of hate misdemenour to in Art. 25 ADA, and in those cases, the courts mostly pronounced fines under the statutory minimum of HRK 5,000.00. There was no mitigation only in the cases of two defendants convicted under Art. 25 ADA. In their cases, the fines were pronounced either in the minimum statutory amounts for misdemeanours referred to in Art. 25 ADA, or close to it (HRK 5,000.00 and HRK 7,303.00).[53] However, when comparing the pronounced sanctions, we must bear in mind that when meting out the fine pursuant to Art. 36 of the Misdemeanour Act, the court must,

[52] In the category of dismissals, we came across a case where a fine had been pronounced for a misdemeanour against public order and peace in concurrence with Art. 25 ADA and Arts 29 and 92 of the Weapons Act amounting to HRK 15,000.00. However, the case was not analysed within the project together with other misdemeanour cases since the same defendant and the factual description were included and analysed within the category of dismissals.

[53] One of the content analysts' remark was insufficient argumentation for the mitigation of the fine because in their opinion, those were the usual mitigating circumstances and not any particular mitigated circumstances justifying the mitigation of the sanction.

based on para. 2 of the same Article, take account not only of all other stipulated circumstances but also of the financial situation of the offender.

Table 5.3.8.1. Fines imposed to defendants convicted of hate misdemeanour

Imposed fines	Number of defendants	Percentage within the number of defendants liable to fines for hate misdemeanours (%)
0 – 1,000 HRK	8	53.3
1,001 – 2,000 HRK	3	20.0
2,001 – 3,000 HRK	2	13.33
3,001 – 4,000 HRK	0	0.0
4,001 – 5,000 HRK	1	6.7
> 5,000 HRK	1	6.7
Total	**15**	**100.0**

Statistical analysis shows no significant difference in the amount of a fine imposed on defendants who had committed a hate misdemeanour and those who had committed an "ordinary" misdemeanour ($t(19)=0.053$, $p>.05$). In their judgments, misdemenour courts did not explicitly deal with the motives of hatred or biases outside the establishment of the offence classification referred to in Art. 25, para. 1 ADA according to which the court is required to establish the defendant's conduct aimed at creating a hostile, humiliating or insulting environment on the basis of a protected characteristic. Despite the fact that the Misdemanour Act (MA) does not explicitly require it from judges, because it does not contain any provision analogous to Art. 87, para. 21 CC, it still opens space for harsher punishment of discriminatory conduct in accordance with the general provision on meting out punishments. However, the courts have not adequately used that space. Namely, according to Art. 36 of the MA laying down a general rule on the selection of the way and the level of punishments, the court, when meting out the fine should, among other things, take into account the level of the perpetrator's guilt and the motive for the perpetration of the offence. However, not in any judgments where a hate misdemeanour was classified only as misdemeanour against public order and peace (referred to in Art. 6 or Art. 13 AMPOP) did the court, apart from the establishment of facts, pay any attention to the discriminatory conduct of the defendant and it did not specify hatred, i.e. biases as aggravating circumstances for which the punishment should have been more stringent. In our opinion, the courts should have done that.

However, it is clear that hatred or biases should not be taken into account twice, and if such motives had already been expressed through the offence classification (such as in Art. 25 ADA), they did not need to be taken into account when meting out the punishment.

5.3.9. Protected characteristics in hate misdemeneour cases

Indeed, although these cases have been chosen to constitute the sample because the police designated them as hate misdemeanours, and the descriptions of facts contained a discriminatory motive and verbalised biases, the courts, in their statements of reason, did not specifically, or did not at all, take into account the fact that the perpetrators committed the offences in connection with one of the protected characteristics. This was expressly stated only in relation to 7 out of 18 convicted defendants and in all those cases, "national" affiliation was involved, or more precisely, Bosnian (1), Roma (1), Serbian (1) and Slovenian (2). However, it was obverved that the courts did not make any differentiation between nationality and ethnicity. Our analysis reveals that 6 defendants acted out of hatred or bias against Serbs, 3 against Croats, 3 against Muslims, 2 against Roma, 2 against Slovenians, 1 against Bosnians and 1 against Albanians. In the judgments of conviction for hate misdemeanours, there was no other protected characteristic but the one of the "national affiliation."

5.3.10. Length of the proceedings

Table 5.3.10.1. Length of the proceedings according to their outcome (in days) – from accusation to final judgment

Outcome of the proceedings	**Number of defendants**	**Average length of the proceedings**	**Min**	**Max**
conviction	25	266.96	0	1376
○ conviction of hate misdemeanour	18	210.33	0	898
○ conviction but not of hate misdemeanour	7	412.57	82	1376
acquittal	9	719	357	1366
judgment of rejection	4	979.75	187	1542
Total	**38**	**449.05**	**0**	**1542**

The average length of all the analysed cases from the accusation to a final judgment was 15 months. The longest were the proceedings ending in a judgment of rejection. This is logical when taking into account that in all of them, the grounds for the judgment of rejection was an absolute limitation period. Interestingly enough, the cases, in which the defendant was convicted of hate misdemeanour, were on average the shortest – they lasted only for 7 months, two times shorter than other misdemeanour proceedings ending in convictions, and 3 times and a half shorter than the proceedings ending in acquittals. The length of the proceedings was shortened in the cases where the misdemeanour court rendered its judgment on the same day of the indictment and the judgment, because the parties, after a publicised and reasoned judgment, waived their right to appeal, so it became final on the very same day. Only in two cases, with two convicted offenders of hate misdemeanour, upon appeal, there were also second instance proceedings before High Misdemeanour Court (hereinafter: HMC) and that was why those cases naturally lasted much longer compared to the cases where the first instance judgment was already final. Speedy acting both by the police and the (first instance) court was the most frequent good practice in the opinion of the content analysts.

6. SELECTED QUESTIONS

6.1. Discriminatory selection v. previously disturbed relations – treatment and outcomes

One of the most interesting questions in both the theory and practice has been whether only punishable offences where the victim is selected discriminatorily because of his or her "race, skin colour, religion, national or ethnic origin, language, health status, gender, sexual orientation or gender identity" should be classified as HC (whereby the perpetrator and the victim, as a rule, do not know each other), and not those preceded by long-lasting disturbed relations between the victim and the perpetrator, or where different quarrels took place immediately before the offence and were accompanied by insults, curses and verbalised biases.

The conducted research shows how the practice of SA and the courts in that respect has not been consistent. For example, in the category of dismissals, the SA, in several cases of criminal offences of threat, because of previous conflicts, has excluded the hate element and thus sometimes also the prosecution *ex officio*. Indeed, in one case the SA established that the actions did not constitute HC because the offender's "conduct had obviously been motivated by previous actions of the family ... because of which the police was called to intervene". Along these lines was also the SA's decision on dismissing the criminal report for the crime of threat referred to in Art. 139, para. 2 of CC. In that case, the SA held that it was a criminal offence referred to in para. 1 ("I'll get you!") prosecuted by a private charge, and that despite the fact that the threat was accompanied by the words "f* your Serbian mother", it was not HC. Namely, according to SA, the defendant used those words because he did not like the fact that the injured party's carpet was hanging and drying on her balcony. The injured party said that she had already had problems with the suspect and that their conflicts had already lasted for three years and, according to SA, "that could not be interpreted, in the concrete case, as a criminal offence of threat committed out of hatred."

In a whole series of court cases A, we came across similar approaches and the SA's decision not to charge the offence as HC because of the previous conflict, despite the fact that it was accompanied by verbal discriminatory attacks, almost always based on the victim's nationality.

In one of the cases, the defendant, threatened the injured and cursed his "Serbian and Chetnik mother" and during the first interview, he admitted he had said those words "because the injured party declared himself as Serbian and extolled that fact." The SA classified the offence as 'ordinary' threat referred to in Art. 139, para 2 CC but stated, in the factual description of the offence, that the defendant "had cursed the injured party's Serbian and Chetnik mother on the national basis by saying that he knew where he lived and invited him to come and get square with him." Naturally, there is no explanation in the judgment why the SA, and then also the court, did not decide to charge the offence as HC. In all the analysed cases from this category, the perpetration of the crime was preceded by some conflicts and unresolved relations (long-lasting and bad neighbourhood relations, disrupted 15-years of acquaintance and quarrels because of the suspicion of the injured party that the defendant had reported him to the police, the termination of a common-law relationship, a conflict over the termination of a labour contract, etc). Without considering the possibility that the case wasa HC - because there had not even been any accusation of the offence as HC - the court held "that the defendant had a motive for threatening the injured party because the latter, by calling the police, prevented him from illegally selling cigarettes in the outdoor market-place." The SA accused and the court also convicted, by a final judgment, a defendant who had sent the following message via his mobile phone to the injured party: "I'm on my way, I know where you live, f* you in your Chetnik mouth, f* your wife and child, I'll slaughter your child and set you all on fire". In his testimony, the victim stated that the motive for the offence had been the fact that he had an unusual name and surname and the defendant wrongly assumed he was not a Croat. On the other hand, the defendant said that their unresolved property relations were a motive for the offence.

We agree with the position that any discriminatory curse, or a verbalised bias, do not automatically imply that HC is involved and that every case must be analysed on the basis of all the facts. However, according to the available data from the case file, it seems that both the SA and the courts failed to examine whether previous disrupted neighbourhood relations, and other bad relations, had resulted from hatred and prejudice. When analysing dismissals and the court cases A, the content analysts warned of the situation and thought that more attention should be paid to solving the problem of whether neighbourhood problems and quarrels were caused by national or other types of intolerance. There is also a position according to which the nature of the previous relationship between the victim and the perpetrator is irrelevant. For example, in one case, the court rejected "the proposal made by the defence to examine a witness on the circumstance of previous quarrels between the defendant and the injured party by stating its position that such quarrels were not motivated by inter-ethnic relations. The court held that by

examining that witness, it would not have been possible to establish any circumstance of importance for the case at hand. It also ensued from the motion submitted by the defence that the witness did not have any knowledge of the incriminated event."

On the other hand, we can mention here a final judgment for several criminal cases against more persons, including a threat followed by insults based on national intolerance. In that case, the court found that a HC had been committed and that the defendant's threat had been against his wife's former husband whom he called Chetnik, and that it had undoubtedly been motivated "by hatred because of his nationality". A direct motive for the offence in this case was another (family) conflict,[54] but the court held that the accused had several times repeated the word "Chetnik" because he thought, as he himself stated, that the injured, by his name, was a member of the Serbian national minority, therefore his children were also Serbs and that he had blamed his wife for having f*with Chetniks and gave birth to Chetnik children while he was fighting in the war. He told the children not to come home any more, and if they came, he would kill them because they were also Chetniks, etc. The court had correctly recognised the fact (as early as in 2013, prior to the ECtHR judgment in the Škorjanec case), that the injured declared himself a Croat and had taken part in the Homeland war, did not have any impact on their decision "*because the person against whom a criminal offence was committed could be of the actual, or just assumed national origin*". In the context of the motive for the commission of an offence, it is interesting to point out how the court, without any influence held that the defendant had used the word "Chetnik" against other persons in different conflict situations, because it was also obvious that "the accused, in that incident, and even in various past situations, used the insulting word "Chetnik" when addressing the injured party and his children, precisely because of his assumption of their national origin."

A conclusion can be drawn from this case and from the summary of the focus group that the SA and the courts treat differently the situations where someone, on a single occasion, in the heat of the moment, because of a conflict, curses and insults another person on a discriminatory basis, from the situations where the defendant always, in every single contact, emphasises the victim's protected characteristic and on that basis (continuously) insults the victim, particularly if, at the same time, portraying the entire group in a negative light. In the latter situation, even when the relationship between the defendant and the victim had continuously been disrupted, permanently insulting discriminatorily the entire group would speak in favour of classifying the offence as

[54] The son of the injured party and of the defendant's wife, from their first marriage, had hit the defendant's child.

HC. A participant in the mixed focus group gave an example of a case where he acted as a SA and where both the perpetrator and the victim lived in the same building with only two flats, where a problem with the roof emerged. “Until then, they had functioned normally and there were no problems between them, but suddenly, a property-law issue involving the payment of a compensation arose, one of them refused to pay and the other sued him and wanted to be indemnified. This was when the insults started on a weekly basis. The victim was a member of the Jewish religious community and the typical insults began. I was given the case and I first approached it as if it was a case involving property relations. What then prevailed was to prosecute it as HC because he was addressing the victim by saying “why didn’t Hitler kill you all”. He addressed the victim in both singular and plural, and the 'plural' was decisive for me to finally prosecute it as HC and in the end, this was how it was also adjudicated.”

However, such a conclusion cannot be derived from the cases we have analysed. For example, in one case from the category of court cases A, the injured party claimed how “the defendant, his neighbour, had been making problems since 1990’s, insulted him and upset him [N.B. by curses and insults on the national basis] only because he thought his wife was Serbian because she was born in Bosnia and her father was Bosnian”, and they did not have any other conflicting issues. Although in this case, by the application of the principle *in dubio pro reo*, the defendant was acquitted of death threats, it was interesting to note how the SA had classified the offence only as a mere threat and not a threat out of hatred, not having given any importance to the cited aspect in the injured party's testimony.

In the context of establishing the motives for the commision of offences, a question arises whether proof of previous good relations between the defendant and a concrete protected group would exculpate the defendant or would it be accepted at all as relevant evidence. In a judgment by which a defendant was convited of HC, his statement was given where he said how “generally, he did not have anything against the Roma people... his parents also had close friends who are of Romany nationality, he worked with a Muslim and the incident he could describe as mere thoughtlessness“. However, the court did not ascribe any significance to this statement. In another case, the court decided how it was illogical, in a situation where “parents of a minor socialise with people of Serbian nationality, visit some of them and some of the injured parties even played football with minors, to charge the minors for the commission of criminal offences against Serbs out of hatred.“

The above case only illustrates the inconsistency of case law when assessing whether the defendant has committed an offence "on account of" the victim's affiliation to a particular group. A very closely connected question is how to assess mixed motives, i.e. whether an offence must be motivated only by hatred/bias. There was also a case where the court held that "in the conflict, insulting words had been used by the minors against the injured parties but that circumstance could certainly not be the basis for the assertion that the attack had exclusively been motivated by the injured party's affiliation." The above cited judgment may be juxtaposed here: the court held it was enough that the offence was motivated, among other things, "by hatred because of a person's national origin." The same with many other cases where the offence classification of HC coexisted with other recognised motives. For instance, there was a final judgment for HC (Art. 139, para. 4. in conjunction with Art. 87, para. 21 CC) in the case in which the defendant had sent (an anonimous) SMS message to the injured party reading: "F* your Chetnik mother, you will not eat any bread in this country, we shall slaughter you like a lamb, very soon." In the first interview, the defendant confessed the commission of the offence. He also said that he had heard how the injured person, whom he often visited and socialised with, defamed him and lied about him. He sent him a threatening message simply out of revenge. He knew that the injured was of Serbian nationality. It was emphasised in the focus groups that in such cases, where there were some indications of acting out of mixed motives, it was necessary to establish the previous conduct between the defendant and the victim, as well as whether hatred, on the discriminatory basis, was the prevalent motive in the case at hand.

Finally, it must be pointed out that in a significant number of convictions of HC, the court did not elaborate on the establishment of hatred as a characteristic of the offence, or the aggravating circumstance (both in the context of penal orders and in situations where the defendant pleaded guilty, so that the court only explained the sanction) which made the analysis of the subject matter, based on the final judgments for HC, even more difficult.

6.2. The relation between misdemeanours and HC, with a special emphasis on the application of the principle *ne bis in idem*

One of the problems detected in all categories of cases was a failure to recognise the characteristics of criminal offences (HC), primarily by the police, but also by the SA and the misdemeanour courts, which resulted in a situation where, in a number of the analysed cases, the prosecution was instituted for misdemeanours instead for criminal offences. It was particularly obvious in the cases where the application of the principle *ne bis in idem* led to dismissals of

criminal reports (in the sample of 25 dismissals, two cases were identified in relation to four defendants) or to judgments of rejection (one judgment involving one defendant**)**.[55]

To illustrate, we want to mention a case where a criminal report against three defendants for a criminal offence of violent conduct referred to in Art. 323a CC in conjunction with Art. 87, para. 21 CC was dismissed. Having realised that the victims were hugging each other and were exchanging tender emotions, and were obviously a couple of the same sex, the defendants followed them by making various remarks and threats ("Fags!", "You are disgusting!", "We'll slaughter you, fags!", "We'll kill you!", etc.). Then they rushed at the injured and the third defendant started punching one of them on the head and face. The first and the second defendant joined the third defendant in the assault and the injured fell to the ground and the defendants continued hitting and kicking him, including on the head (third defendant). The second defendant then rushed at the other victim and kicked him with his right leg in the chest and continued hitting him all over his body. In this attack, the injured sustained (minor) bodily injuries specified in medical documents. The offence was committed in 2016, late at night (at 23:15), and the perpetrators were brought in by police officers on the same day "for misdemeanour referred to in Art. 6 of AMPOP." They were convicted already the following day and a suspended prison sentence was pronounced in the duration of 30 days, with a probation period of one year. The judgment became final on the same day.[56] In the statement of reasons of the ruling on dismissal, in February 2017, the SA invoked the judgment of the ECtHR in the *Maresti case,* with special emphasis on para. 63 of the judgment which "as a criterion for the establishment of the identity of offences points to the sameness of events, acts and the conduct" and para. 84 of the judgment where the ECtHR held that the court, when examining the identity of the offence, should "focus on those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space." Since in its judgment, the Misdemeanour Court, included both the homophobic threats and insults and the physical assault on the injured, as well as punches on their heads, the SA concluded that it was a finally adjudicated matter as a circumstance which excludes criminal prosecution the injured had tried to initiate by their criminal report. Although the characteristics of a criminal offence prosecuted

[55] In the first instance, it was a judgment of conviction for HC (threat and bodily injury), but the misdemeanour court, because of the acquittal for misdemeanour against public order and peace in relation to both the defendant and the injured party of the same incident, rendered a judgment of rejection.

[56] Namely, all the convicts confessed the misdemeanour and expressed their repentance and waived their right to appeal referred to in Art. 151, para. 3 of the MA.

ex officio had been met,[57] the offence was classified only under Art. 6 AMPOP and the judgment for misdemeanour covered only extremely impertinent and impolite conduct in a public place, but not the infliction of bodily injuries and homophobic motives, which was not mentioned in the judgment of the Misdemeanour Court except in its description of facts.

In a discussion with the participants of focus groups, we tried to discern who was responsible for the problem and what could be done – apart from changing the case law of the ECtHR, which happened recently –to prevent the inability of conducting criminal proceedings because of the completion of misdemeanour proceedings. It is crucial for the police to recognise an offence as a potential HC, but whenever in doubt, the SA should be consulted.

Because of such practice, at least two proceedings are ongoing before the ECtHR. Indeed, in the case mentioned above, the injured filed an application with the ECtHR on 22 August 2017 to establish whether the state authorities had fulfilled their procedural obligations in accordance with Arts 3 and/or 8 of the Convention on its own and/or in conjunction with Art. 14 of the Convention in relation to a violent discriminatory assault on the injured applicants and whether the applicants had had at their disposal an efficient domestic remedy as stipulated in Art. 13 of the Convention (*Zahtila and Koletić vs. Croatia*). Similar questions had also been posed in an earlier case, *Sabalić vs. Croatia*, in which the perpetrator of homophobic violence, inflicted bodily injuries to the applicant and was charged with misdemeanour against public order and peace and punished with a fine of HRK 300. The SA dismissed the criminal report holding that the prosecution would violate the principle *ne bis in idem*. In this case, the injured party tried to bring a private prosecution in the capacity of the injured party as the plaintiff, but the Municipal Criminal Court in Zagreb showed inclination for the argumentation given by the SA and did not confirm the indictment. It remains to be seen how the ECtHR will adjudicate in these cases, but it is our position that the prosecution for misdemeanour against public order and peace, without clarifying the homophobic motive for the offence (if only in misdemeanour proceedings by applying Art. 25 ADA) does not meet the requirements of the Convention and the to date case law of the ECtHR.

[57] Since bodily injuries were established and the homophobic motive of the offence was obvious, the characteristics of a bodily injury referred to in Art. 117, para. 2 CC were certainly met.

When the police holds that misdemeanour is involved, it must consult the misdemeanour court and the court should also recognise that the event has the elements of HC. Specialised police officers must work on these cases. However, the police officers who participated in the focus groups said that misdemeanours, as well as hate misdemeanours, were within the competence of the ordinary police, not trained for dealing with HC.

Except in the context of the principle *ne bis in idem*, partial overlapping of misdemeanour and criminal proceedings in relation to the same defendants (and victims), i.e. the same incident, occured in some other cases.[58] In one case, because of an intervention by the SA (who received information about the case came from the media), the police withdrew the charges for misdemeanour under Art. 25 ADA (in relation to one perpetrator) and filed a criminal report for a criminal offence of inflicting bodily injury out of hatred referred to in Art. 117, para. 2 in conjunction with Art. 87, para. 21 CC. In the end, the perpetrator was convicted by a final judgment because one evening, in a restaurant near a rest area on a motorway, "with no reason and because of aversion to members of a different race, he first verbally attacked a national of Cameroon (…) by saying to him 'F* you, black one!' and then, by wanting to inflict a bodily injury, he punched him on the chin and then, in front of the restaurant, he hit him [the injured] with a wooden stick under the left eye and near the left ear causing a bodily injury in the form of an open wound under his left eye, 3 cm long; his ear was scraped and there was a cut in the length of 1 cm on the mucous membrane of his lips, in the right corner of his mouth." The offender was convicted and was punished by a suspended prison sentence of 10 months, with a probation period of three years. It is interesting that in this case, the misdemeanour court had already rendered a judgment of conviction for a misdemeanour referred to in Art. 25, para. 1. ADA and ordered, for both defendants, fines amounting to HRK 15,000.00 – several days after the police had sent a letter to the Misdemeanour Court on the abandoning charges for misdemeanour (since the letter was not received in time). This judgment, delivered in the presence of the defendants, did not become ineffective and no appeal was lodged, but the Misdemeanour Court, several months later, rendered a new judgment by which the charges against the first defendant were rejected and the proceedings against the second defendant were dismissed because of death. In the attack against the injured, at least two more persons took part and their identities were not established by the police. It is also worth mentioning that the defendants, who together took part in the incident, were treated differently: only against one of

[58] More details in the description of the methodology.

them criminal proceedings were instituted while in the case of the other defendant, the police stood by the indictment pursuant to Art. 25 ADA. Regarding the consistent testimony by the victim that he had been attacked by both persons at the same time, one with a stick and the other with a knife[59] (although according to the expert opinion, no knife injuries were detected), it is incredible that both defendants were not convicted as co-perpetrators in the criminal offence.[60]

In several cases, we also detected a separation of the factual substratum where for one part of the incident – as a rule, the discriminatory content – the police files a motion to indict for misdemeanour, mostly the one referred to in Art. 25, para. 1 ADA, and in relation to the other part, bearing the characteristics of a criminal offence, mostly threat or bodily injury, the police files a criminal report, not for HC but for an ordinary criminal offence. In cases when, if offences are not committed "out of hatred" the prosecution is left to a private charge, as is the case with bodily injury referred to Art. 117, para. 1 CC, charges get dismissed in the hate motive is not recognised. For example, in a case we found on the police list of misdemeanours committed out of discrimination and not hatred, the defendant said the following to the victim: "Here you are, you *Turk*, who do you think you are to sue me, I'll beat you black and blue, I'll kill you, you will pick up your teeth from the floor", and: "You, *Turk* (N.B. derogatory for Muslims), you Muslim bastard, you '*balija*' (N.B. derogatory for Muslims), you green *Turk*, I was born here, you cannot walk around here, you Muslim s*." The police informed the injured party that in the incident, a criminal offence of threat referred to in Art. 139, para. 2 CC had been committed, for which prosecution based on the motion was to be instituted. Since the injured refused to file it, the police filed a motion to indict for misdemeanour against public order and peace referred to in Art. 25 ADA.

[59] After he had managed to run away from the entrance-hall (with glass walls and doors), other bus riders prevented the attack from continuing, the incident could have been examined in detail and checked again. Since the offence was committed in the restaurant owned by the second defedant's brother, and the offenders were sitting and drinking together, every effort should have been made to establish the identity of the unknown perpetrators.

[60] For more on co-perpetration see *infra*.

There was also a separation of the misdemeanour and the criminal substrata within the same incident in the following example. Around 21:15, the injured party was in his flat and heard some noice coming from the street. He went to the balcony and saw the defendant shouting loudly the following words: F* your Ustashe mother!", and after that repeating the same words at the injured party, without any reason: "F* your Ustashe mother!" Then the defendant went to a nearby catering place and the injured followed him. As soon as the injured entered the place, the defendant hit him with the open hand on the head and he slipped out of consciousness, regaining it only at the hospital. The police filed an indictment motion for misdemeanour against public order and peace and the victim, because of severe bodily injury, filed a criminal report. Because of the fact that medical documents did not contain any data on a severe bodily injury, the SA rejected the criminal report because a simple bodily injury referred to in Art. 117, para. 1 CC was to be prosecuted by a private charge. According to the SA, a verbal conflict had preceded the assault and battery and for the defendant's insults directed at the victim, adequate misdemeanour proceedings were instituted. Despite the fact that those incidents immediately followed each other, according to the SA, "[s]aying … these words during the previous incident cannot be connected with the injured party's bodily injury because there was a certain time interval between the verbal assault and the bodily injury suffered by the victim. Namely, at the moment of injuring the victim, according to his allegations, the suspect did not say anything to him, so it cannot be concluded that the suspect inflicted any injury (…) out of hatred because of any capacity of the injured".

6.3. Differentiation between various forms of co-participation in a broader sense

The research shows how HC in the Republic of Croatia are generally committed by individual perpetrators – in other words, the prevailing cases are those committed by only one person. Even in the cases where more persons participated, no analysis existed of their relationship and their contribution to the perpetration of the offence. Not in a single of the analysed cases, was there anyone accused or convicted of aiding and abetting as a form of co-perpetration and there was no explicit reliance on the concept of co-perpetration (Art. 36 CC).

In the case against a minor, the SA dismissed the criminal report for the criminal offence of threat referred to in Art. 139, paras. 2 and 4 CC, in conjunction with Art. 87, para. 21 CC, because it held that "there was no sufficient ground for suspicion leading to a conclusion that the suspect had seriously threatened the injured parties by saying that he would kill them out of hatred" but that he had only asked for money and cigarettes and only raised his voice while addressing one of the victims. Although the SA held that it ensued from the production of evidence that the concrete threat had been made by another minor, and a UP who was also with them, it clearly resulted from the witnesses' testimonies that all the four men had been running after the injured individuals and were braking everything on the terrace of the theatre where the victim had escaped to avoid the attack. The perpetrators also broke a shop window. However, the SA did not consider all four minors as the co-perpetrators of either the criminal offence of threat, or any other criminal offences prosecuted *ex officio*, whose characteristics had potentially been met (violent conduct referred to in Art. 323a, misdemeanour against public order and peace), but classified the suspect's acts only as "unpermitted, inappropriate and deserving moral condemnation".

In some cases, where the victim was attacked by several perpetrators, it is our position that a proper reliance on the concepts of co-perpetration and aiding and abetting would lead to a different outcome of the case.

6.4. Some disputable aspects of offence classifications: the police, SA, the courts

When speaking of misdemeanours, we observed inconsistent offence classification of hate misdemeanours because sometimes, misdemeanours against public order and peace were convicted in concurrence under Art. 25 ADA, and sometimes not, and therefore, the equality of citizens before the law was endangered. Such inconsistent case law may partly result from the previous legal understanding according to which the police was not considered to be an authorised prosecutor when misdemeanours under ADA were involved.[61] At some point in time, this probably resulted in a situation where the police, as the most common prosecutor in misdemeanour proceedings, in the indictment proposal, did not refer or only rarely referred to Art. 25 ADA. A change occurred in this context as the result of the legal understanding of the

[61] See, for example, the judgments of the Misdemeanour Court in Rijeka of 27/01/2014 where, in relation to that part of the indictment proposal, a judgment of rejection was rendered and it became final.

High Misdemeanour Court (HMC) of 17 November 2014, where the the court clearly took a stand that the police was an authorised prosecutor when the misdemeanours from ADA were involved, although it was not explicitly stipulated in Art. 29 ADA.[62]

> Due to the fact that because of the choice of methodology, our research was focused on misdemeanour cases where the police filed indictment motions, it is not possible to assess systematically to what extent the SA, in the cases where they participated as authorised prosecutor, classified hate misdemeanours according to Art. 25 ADA, either independently or in concurrence with some other relevant misdemeanour. However, in one available case from the category of dismissals, where the SA abandoned the prosecution by assessing, at the same time, that the characteristics of misdemeanour had been met, it was obvious that the SA classified the offence only as misdemeanour against public order and peace referred to in Arts 6 and 13 AMPOP. The discriminatory motive of the offence was thus not clearly obvious because the assault, the pushing and a "verbal conflict" were directed toward Roma children and their parents, with the clear existence of several indicators of bias (the words: "Go away from Zagreb, you Gypsies, why did you come here, you stink, we shall slaughter you and burn you all", and showing the victims a tattoo on the neck of a suspect, resembling a swastika).

However, it seems that this is not the only reason because the practice has been (and still is) inconsistent. In 3 out of 8 cases, where the time of the perpetration was before the HMC legal standpoint on whether the police was an authorized prosecutor, the police accused of misdemeanour under Art. 25 ADA – and there were no judgments of rejection for unauthorised prosecution. Throughout the analysed period, the police filed indictment proposals pursuant to Art. 25, para. 1 ADA (alone or in concurrence) in relation to as many as 26 defendants but that classification was kept in the final judgment only in relation to 10 finally convicted defendants. In some cases, the court held that Art. 25 ADA was consumed under the misdemanour against

[62] Namely, regardless of the fact that from these provisions, it cannot be concluded with certainty that the Ministry of the Interior (MoI) was authorised to submit the indictment motion for a misdemeanour referred to in ADA, the HMC held that Art. 12 ADA did not exclude the competence of MoI, as a State administration body, for filing an indictment motion pursuant to Art. 111 of the MA, taking account of Art. 3 of the Police Affairs and Powers Act, laying down the tasks of the police and among others, also the protection of life, the rights, freedoms and safety and inviolability of a person. Therefore, it is clear that MoI would be authorised to file indictment motions also for misdemeanours under ADA because ADA provides for the protection of one of the highest values of the constitutional order of the RoC – the right to equality through prohibition of discrimination based on race or ethnic origin, skin colour, gender, language, religion, political or other conviction, national or social origin, property status, membership in trade unions, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity, expression or sexual orientation, as laid down in Art. 1 ADA.

public order and peace. Although discrimination and HC are not the same phenomena, we are of the opinion that in the cases where the committed misdemeanours against public order and peace (Arts 6 and 13 of the AMPOP) constitute 'hate misdmeanours', a punishable offence should be classified in concurrence with Art. 25 ADA – to point out the discriminatory motives of the offence, before the future potential amendments to the legislative framework are made.

The most important question in relation to the offence classifications (where the practice of the police, the SA and the courts is very non-homogenous) is whether criminal offences, where hatred is an aggravating circumstance changing the offence, must be designated in conjunction with Art. 87, para. 21 CC, or not. For example, the SA and the courts designate a bodily injury as Art. 117, para. 2 CC and sometimes as Art. 117, para. 2 in conjunction with Art. 87, para. 21 CC. This is a nomotechnic question and does not have any impact on the outcome of the proceedings but we believe that the existing practice must be aligned. Although legally, when hatred is an aggravating circumstance changing the offence, it is not necessary to indicate Art. 87 para. 21 CC, it is our opinion, that such acting - dominant even now[63] – would facilitate monitoring HC at all levels (the police, the SAO of the RoC, the Ministry of the Interior, the Office for Human Rights and Rights of National Minorities).[64]

The omission of Art. 87 para. 21. CC from the legal designation of offences has been very frequent with criminal offence of threat, where 'hatred' prior to the most recent amendments to the CC, had not been a classifying circumstance, but a procedural prerequisite for an *ex officio* prosecution (instead of on a private charge or proposal). Indeed, in the context of this offence, such offence classificationit has been obviously wrong. Since 'hatred' now constitutes an aggravating circumstance changing the offence, for which a criminal offence of threat is punished with imprisonment from 6 months to 5 years (Art. 13, para. 3 CC), we shall no longer deal with this issue.

One of the most frequent classifications of criminal offences has been 'damage to the property of another person' referred to in Art. 235 CC, whereby among dismissals, graffiti and damage to cars prevail, but the offence classifications are different. Particularly controversial and

[63] Of 7 convicted bodily injuries out of hatred, the offence was 6 times classified as Art. 117, para. 1 and 2 in conjuction with Art. 87, para. 21 CC and only once as Art. 117, para. 2 CC. As Art. 117, para. 2, in conjuction with Art. 87, para. 21 CC, it was classified in two judgments of rejection and in one acquittal. On the other hand, provoking riots out of hatred was classified (only) as Art. 324, paras 1 and 2 CC.

[64] It is clear that hatred must not be taken as an aggravating circumstance in sentencing because that would be dual validation what Art. 87, para. 21 CC explicitly lays down. Its designation would only serve as an interpretative framework for the concept of hatred and it would clearly show which qualitative circumstance, among several of them, is involved.

ununiform is the practice involving the question, when damage to property belonging to another person is committed out of hatred, whether the offence must be classified as Art. 235, para. 2 CC in conjunction with Art. 87, para. 21 CC, or as Art. 235, para. 3 CC (in conjunction with Art. 87, para. 21) according to which a more serious form of the offence is damage to property belonging to another person commited out of base motives. Apart from the criminal law framework that is changing considerably – in the first case, the offence is punishable by imprisonment of up to two years and 'hatred' is only an aggravating circumstance affecting the sentencing, while in the other, the framework is from 6 months to 5 years. The prerequisites for prosecution are also different. Pursuant to Art. 245, para. 3 CC providing for the prerequisites for prosecution for criminal offences against property, the offence referred to in Art. 235, para. 1 CC is prosecuted against a motion, although this is not explicitly stipulated in Art. 235, para. 2 CC, it is the position in case law that the same applies to this type of offence. On the other hand, Art. 235, para. 3 CC is prosecuted *ex officio*.

A defendant, who had several times damaged vehicles with the licence plates of the Republic of Serbia, was convicted of a continuing criminal offence of damaging another person's property referred to in Art. 235, para. 3 CC in conjunction with Art. 52, para. 1 CC (piercing tyres, removing licence plates, braking wind-screen wipers, scratching doors and the like) – damaged another person's movable and commited a crime out of base motives and hatred because of the victim's national origin." On the other hand, a defendant who saw a parked car with the licence plates of the Republic of Serbia, and "with the intention of damaging the property of a national of the Republic of Serbia, said: 'Look, a Serbian car, f* their Serbian mother, now they will see'. He picked a rock, broke the right front door window of the car", was convicted of "damaging the property of another person out of hatred" according to Art. 235, para. 1 CC in conjunction with Art. 87, para. 21 CC.

If we look at 'hatred' as a form of base motives, which is how the legislator treats it in the case of murder,[65] it would be correct to classify the offence as Art. 235, para. 3 CC. However, if the offence is not connected with Art. 87, para. 21 CC, it will not be clear that a HC is involved because Art. 235, para. 3 CC covers all types of base motives and it does not expressly provide

[65] Namely, one form of aggravated murder is murder for gain, murder out of ruthless revenge, hatred or other base motives (Art. 111, point 4 CC). In the context of that offence, Prof. Derenčinović also analyses hatred as a base motivest, see in Cvitanović et al., Criminal Law, Separate Part, Zagreb, 2018, pp. 82-86.

for 'hatred' in accordance with Art. 87, para. 21 CC. In any case, if an offence is classified as Art. 235, para. 3 in conjunction with Art. 87, para. 21 CC, 'hatred' should by no means be taken as an aggravating circumstance when meting out the punishment because the fact that a base motive is involved (in the concrete case - 'hatred') has already been taken as qualifying element.

Inconsistent classifications existed in several other cases connected to graffiti with which, in an unauthorised way, the walls and other surfaces were covered. In a case from the category of dismissals, the SA classified the writing of two letters "U" (N.B. standing for Ustashe), with a cross and a swastika, on a sports hall, as violation of Art. 235, para. 2 CC, without making any conjunction with Art. 87, para. 21, or concurrence with Art. 325 CC. In another case, where along with other supporters' slogans, graffiti were written, reading the following: "killed Arkan, were after Ceca, to kill Serbian children", "kill a Serb, Vukovar - never BYKOBAP (N.B. "VUKOVAR" in Cyrillic)" and a drawing of swastika with the year 1986 written in the four squares of the cross", the offence was not classified as hate speech but Art. 235, para. 2 was brought in conjunction with para. 3 of the same article of CC. Finally, in a final judgment, two defendants were convicted of damage caused to the property of another person, referred to in Art. 235, para. 2 in conjunction with Art. 87, para. 21, in concurrence with the criminal offence of inciting to violence and hatred referred to in Art. 325 CC for drawing graffiti in the form of a cross with four Cyrillic letters S and the slogan "Vukovar is Serbian" in Cyrillic script.

An additional question may be posed whether in the aforementioned cases hate crime (HC) or hate speech was involved. Since a façade is only a medium to spread hate messages ("...in some other way incites or makes leaflets, images or materials), when the content of the graffiti is such that it incites to violence or hatred, and this was undoubtedly the perpetrator's intention, hate speech dominates the content and the offence must be classified as Art. 325 CC in concurrence with Art. 235, para. 2 CC without making any conjunction with Art. 87, para. 21 CC – except if a person's property is damaged because of his or her affiliation to a protected group.

7. RECOMMENDATIONS

HATE CRIMES – CRIMINAL OFFENCES

- This research shows that in a large number of cases involving HC where hatred is not an aggravating circumstance changing the offence but an aggravating circumstance affecting the sentencing, the courts, despite an express statutory obligation referred to in Art. 87, para. 21 CC, do not consider hatred as an aggravating circumstance.
  In such situations, the courts should always explicitly specify hatred as an aggravating circumstance leading to a harsher sanction.
  When the courts fail to do it, the SA should appeal against the decision on the sanction.

- **In the indictment, the SA must elaborate on the circumstances from which a founded suspicion is derived, or determination of the existence of hatred as a subjective characteristic of the offence, or an aggravating circumstance.**
  In their statement of reasons of the judgment, whenever, by the law, the judgment must contain such statement, the courts should give the reasons why, if hatred is a disputable fact, they have considered it proven or unproven.

- In the research, we have observed that with the offences, where hatred was not an aggravating circumstance changing the offence but an aggravating circumstance to be considered in sentencing, in the legal designation of the offence, it is not always stated that the offence has been committed in conjunction with Art. 87, para. 21 CC, **which should be done when HC is involved.** Such practice is nomotechnically wrong and it makes the tracking of HC more difficult.

- In part of the analysed judgments it is not specified which protected characteristic is involved.
  It can mainly be concluded from the statement of facts which protected characteristic is involved, **but we still hold that this should always be clearly specified both in the statement of facts and in the statement of reasons.** Regarding legal descriptions of cases, we have seen that the practice has been inconsistent – as a rule, it is only said that the offence is committed "out of hatred", but sometimes the legal descriptions of offences already contain the determination of a protected group (e.g. "inflicted bodily injury to another person and the offence was committed out of hatred because of racial affiliation and the skin colour of another person"), which would constitute an integral and a correct legal description of the case. **Specifying the protected characteristics would also facilitate the tracking of this phenomenon in conformity with international standards. In this connection, and within individual protected characteristics, it must be specified in the statement or reasons of the indictment/judgment which concrete group or groups are involved.**

- **We have also detected frequent cumulations and inconsistent indications of individual protected characteristics – mostly national and ethnic origin – and in this connection, we recommend continuous training sessions to be organised in the future.**

- The research highlights inconsistent practice regarding the interpretation of the provision of Art. 87, para. 21 CC which means that the offence is HC, or that it is committed "out of" one of the listed characteristics of another person. While some courts require the existence of an exclusive motive, some that the motive is dominant, some that it is only one of the motives and at the same time, some courts do not even expressly deal with these issues but it arises from the facts of the case that in the background of a criminal offence there is a long-lasting conflict or some direct quarrels in combination with verbalised biases. **Bearing in mind the consequences of a determination that a HC is involved, such inconsistent practice endangers the equality of citizens before the law. When aligning the case law, it is desirable to take into consideration the standards resulting from the case law of the ECHR, according to which hatred or bias do not need to be the only motive but just one of a whole variety of motives.**

HATE MISDEMEANOURS

- Misdemeanour legislation does not expressly contain the concept of HC, i.e. hate misdemeanour, but at the level of public policy and in international documents, there is a recognition that misdemeanours, when all the prerequisites are fulfilled, may be characterised as HC. **To be able to consistently implement it in case law, it is essential to include in misdemeanour legislation, a definition of hate misdemeanour analogous to Art. 87, para. 21 CC, at the same time taking into account the differences between misdemeanour and criminal legislation.**

- **Despite the fact that there is no provision expressly providing for hatred as an aggravating circumstance in the context of misdemeanours, the courts should use the opportunity, provided by Art. 36, para. 2 of the Misdemeanour Act, and when meting out the punishment, they should treat hatred as an aggravating circumstance and as a motive out of which a misdemeanour (against public order and peace) has been committed, which has not been detected in any of the analysed cases.**

- **In the context of the current legislation *de lege lata*, the only possibility, when dealing with hate misdemeanours, that a discriminatory character of an offence is expressed through its classification, under the condition that all the prerequisites have been fulfilled, such as those referred to in Art. 25 ADA. If a misdemeanour against public order and peace is involved (Arts 6 and 13 AMPOP), the offence should be classified in concurrence with Art. 25 ADA.** However, the current practice

of the police, as an authorised prosecutor, and the case law of the courts are not aligned in that respect and the equality of citizens before the law is thus endangered. We believe it is not a deceptive concurrence and consumption, in favour of misdemeanours against public order and peace, as some misdemeanour courts wrongly explain, but it is real concurrence with Art. 25 ADA.

- Although this is a recommendation related to both misdemeanours and criminal offences, this research, in the context of misdemeanours, shows that a discriminatory motive is sometimes eliminated because the victim is objectively not a member of any particular group but no account is taken of the fact that it is sufficient that the perpetrator only supposes such affiliation. This is why **it is advisable to abandon such practice**.

Police operation

- The research shows that the police records dealing with HC do not comply with the legislative framework because they contain some categories not laid down in Art. 87, para. 21 CC (e.g. police, regional affiliation) which may lead to incompatibility in tracking the HC phenomenon. **We recommend the allignement of HC police records with the legislative framework.**

- **When classifying incidents involving any indicators of hatred, a mechanism of consultations with SA at the level of all police stations and the regional SAO ought to be established, at least in the cases where the police is in doubt whether an incident constitutes a HC.**

The rights of victims

- The analysis of case files shows that a large number of victims were not given the instructions on their rights, or it was not registered in the case file. **Because of the importance of this instructions, it is essential to give it to all victims and to register it in writing.**

- Taking into consideration the period covered by our analysis, only in a small number of cases, the acting of the police and the judiciary started after the introduction of the obligation for an individual assessment of a victim. Therefore, the sample of cases where the implementation of this obligation was assessed, was too small and insufficient for any generalisation. However, it seems that there is significant room for progress in this regard. Even in the cases where an individual assessment was implemented, no need for the protection of the victim was established and thus also not the exercise of additional rights based on individual assessments. **Because of the fact that HC victims are separated in the Directive on the Rights of Victims and in the Criminal Procedure**

Act (CPA) as a particularly vulnerable group of victims, we recommend that all the bodies seriously consider their possible need for protection and support.

Terminological recommendation

- **In regard to and on the basis of the statutory definion of HC referred to in Art. 87, para. 21 CC, and on the basis of international recommendations, it is not necessary to prove the existence of the perpetrator's personal hatred or animosity but it is sufficient that the perpetrator has chosen his or her victim because of real or presumed affiliation with a particular protected group. Therefore, we recommend that *de lege ferenda*, the concept of HC be replaced by the concept 'crime out of bias or prejudice'.**

HC Monitoring

- **In our opinion, a technical solution should be found to make consistent designation and tracking of all HC possible, regardless of whether or not Art. 87, para. 21 has been registered in the offence classification.**

- **We argue strongly in favour of a situation where the tracking of cases from the moment of the commission of the offence until the final conclusion would be regulated by the new Protocol, to make the tracking and the outcome of all cases possible (in relation to all defendants) that has, so far, not been the case.**

- **The protected characteristic must be registered in the statistical data published by the Office for Human Rights and Rights of National Minorities to be able to monitor which protected groups are particularly endangered in the Republic of Croatia.**

Education

- **We recommend continuous education and training of police officers, state attorneys and judges as one of the efficient models for the integration of these recommendations in the work of all relevant staskeholders. With regard to the nature of some problems identified in the course of our research activities, it is preferable that education be organised across sectors and in the form of workshops.**