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HATE SPEECH IN CROATIA
Empirical research of the cases in the period from 2016 to 2021

An abridged research report

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1. PREFACE

Hate speech (hereinafter: HS), is a colloquial term frequently used in public discourse to denote a whole spectrum of different content. The term often covers widely conceived discriminatory expressions, various forms of criticism, insults, defamation and even threats.[1] There is no general universally accepted legal definition of HS but the initial point in any analysis of the term is the Council of Europe (hereinafter: CoE) Recommendation of 1997 and the most recent definition adopted by the CoE Committee of Ministers in 2022.[2]

HS is often viewed as a part of a wider phenomenon of hate crime (hereinafter: HC). Development of the idea of HC as a separate category of criminal offences is a process which has lasted for several decades – starting from the formalised idea, first expressed in the UN Convention of 1966 on Elimination of All Forms of Racial Discrimination, that racially motivated crimes are extremely dangerous social phenomena calling for a criminal law response of the state.[3] In Europe, the 1990s were a period of the creation of the institutional framework for combating HS and HC both within the CoE and at the level of the European Union.[4] In the European context, particularly significant has been the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR) according to which the sanctioning of HS is considered as the statutory limitation of the right to freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights (hereinafter: ECHR) according to which the most obvious forms of HS are subsumed under the prohibition of abuse of rights referred to in Article 17 of the Convention.[5]

However, at the European level, criminal law penalties for HS were introduced only under the Framework Decision No. 2008/913/JHA of 28 November 2008 on combating certain forms and

[1] A round table entitled "Hate Speech in Croatia: How to Proceed", organised on 3 December 2018, https://rdd.gov.hr/vijesti/odrzan-o krugli-stol-govor-mrznje-u-hrvatskoj-kako-naprijed/310, visited on: 23/3/2023.

[2] The legal framework concerning HS as well as practical dilemmas related to HS processing are presented in detail in the initial report of this project, entitled "Hate Speech in the Croatian Legal System – Initial Report", available in Croatian at: https://www.hpc.hr/wp-content/uploads/2024/06/Govor-mrznje-u-hrvatskom-pravnom-sustavu-inicijalno-izvjesce-1.pdf

[3] Art. 4 of the Convention. Text available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.asp x Croatia is a member upon the notification on succession, Official Gazette, OG MU 12/93.

[4] The concept "hate crime" was terminologically adopted on the European territory by the Ministerial Council of the Organisation for Security and Co-operation in Europe (hereinafter: OESS), by 55 present Member States in 2003 in Maastricht.
OSCE Ministerial Council Decision No. 4/03, Maastricht, 2 December 2003, https://www.osce.org/mc/19382?download=true%20V and 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.

[5] ECHR, KEY THEME1, Article 10, Hate speech, (Last updated: 29/02/2024, available at: https://ks.echr.coe.int/documents/d/echr-ks/hate-speech

expressions of racism and xenophobia by means of criminal law,[6] calling on States to incriminate all forms of HS, i.e. any public incitement to violence and hatred, such as:

1) publicly inciting to violence or hatred directed at group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin (Art. 1, para.1 (a)) – even when committed by public dissemination or distribution of tracts, pictures or other material; (Art. 1, para. 1 (b)), and

2) publicly condoning, denying or grossly trivialising genocide, crimes against humanity, war crimes and aggression directed against any of such groups or their member when the act is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group (Art. 1, para. 1 (c) and (d)).[7]

While criminal legislation in Croatia provides an adequate framework for the prosecution of HS by the implementation of the Framework Decision and under Article 325 of the Criminal Code (hereinafter: CC), Official Gazette NN, (hereinafter: OG), Nos 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24, misdemeanour legislation does not recognise either the concept of HS or hate misdemeanours. However, it is clear, that perpetrators of misdemeanours may also act motivated by hatred, prejudice or biases. Therefore, to monitor and to conceptualise serious HS misdemeanours, it is extremely important to observe the 2021 Protocol on Procedure in Cases of HC (OG 43/21) which, to make statistical monitoring and effective processing possible, clearly identifies misdemeanour forms of both HS and HC.

In the report at hand, we present a description and assessment of the responses to HS by the police and judicial bodies with an intention to contribute to better understanding of this phenomenon and to offer recommendations to improve the procedures and everyday wok of competent bodies. In addition, we have also tried to identify the gaps and/or the inconsistencies of the existing regulation and to offer some guidelines for possible amendments *de lege ferenda*.

The empirical research on which this report is based was carried out within the project **REASON – Improved Response to Hate Speech through Legal Research, Advocacy and Training,** financed by the European Union within the programme "Citizens, Equality, Rights and Values." The project is implemented by the Croatian Law Centre in the partnership with the State Attorney's Office of the Republic of Croatia, the Ministry of the Interior of the Republic of Croatia and the Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia, and in cooperation with the Supreme Court of the Republic of Croatia. This project is the continuation of the partnership and cooperation aimed at improving the response to the most serious forms of

[6] OJ L 328, 6/12/2008, pp. 55–58, Special edition in Croatian: Chapter 19, Volume 016 P. 141 – 144.

[7] These criminal offences must be punished by effective, proportionate and dissuasive criminal penalties whereby maximum must be between one and three years of imprisonment (Framework Decision 2008/913/JHA, Art. 3).

intolerance having started with the project "Improved Response to Intolerance through Research, Strategic Advocacy and Training – IRIS".[8]

The research was carried out thanks to the contribution of all the mentioned organisations, their representatives in the Project Board and the members of the project team – staff members of partner organisations and experts engaged in the project. A very significant contribution was made by the experts working as the content analysts of the files and members of focus groups – law enforcement officials, state attorneys, criminal and misdemeanour judges - who were willing to share their experience and reflections on the relevant issues. We sincerely thank them for their contribution, their effort and enthusiasm without which this report would not be possible.

2. CONCEPTUALISATION AND OPERATIONALISATION

2.1. Criminal offences

When speaking of criminal offences, the legal framework is clear. In Croatia, HS is primarily incriminated under Article 325 of the CC, in accordance with the Framework Decision on combating racism and xenophobia. The basic form of the offence is defined in Paragraph 1 as follows: "**Whoever in print, through radio, television, computer system or network, at a public gathering or in some other way publicly incites to or makes available to the public tracts, pictures or other material instigating violence or hatred directed against a group of persons or a member of such a group on account of their race, religion, national or ethnic origin, descent, language, colour, gender, sexual orientation, gender identity, disability or any other characteristics, shall be punished by imprisonment not exceeding three years**."

The so-called denial of international crimes is set forth in paragraph 4: "**The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever publicly condones, denies or grossly trivialises crimes of genocide, aggression, crimes against humanity or war crimes, directed against a group of persons or a member of such a group on account of their race, religion, national or ethnic origin, descent or colour in a manner likely to incite to violence or hatred against such a group or a member of such a group**."

Apart from these two basic forms of offences, an aggravated form regards "**[w]hoever organises or leads a group of three or more persons with the purpose of committing an offence referred to in para. 1 of this Article**" (punishable by imprisonment of 6 months to 5 years, Art. 325, para. 2 CC), while **participation in such a group** is punishable more leniently by imprisonment of up to one

[8] See: https://www.hpc.hr/2021/03/10/provedba-projekta-iris-unapredenje-borbe-protiv-nesnosljivosti-kroz-istrazivanje-izradu-preporuka-i-obuku/

year (Art. 325, para. 3, CC). Indeed, the perpetrators referred to in paras. 1 and 4 are also punished for **attempted** crime.

HS is structurally different from HC (with HS, without any discriminatory motivation there is also no independent predicate offence), and it need not be considered as HC pursuant to Article 87, para. 21 of the CC laying down harsher punishment for HC. In other words, considering Article 325 of the CC, the fact that the offence is committed because of a protected characteristic need not be considered as an aggravating circumstance.[9]

2.2. Misdemeanours

In the Misdemeanour Act (OG Nos 107/07, 39/13, 157/13, 110/15, 70/17, 118/18, 114/22, hereinafter: MA), there is no concept of a "misdemeanour out of hate" or HS misdemeanour but rather, HS is incriminated in different misdemeanour laws. In the context of this research, a starting point for identification which misdemeanours are involved was the **Protocol for Procedure in Cases of Hate Crime.** According to the Protocol, the term HC includes, apart from the offences referred to in Article 87, para. 21 of the CC, and HS under Article 325 of the CC, also a series of misdemeanours committed on account of racial affiliation, skin colour, religion, national or ethnic affiliation, language, disability, gender, sexual orientation, gender identity or any other characteristics of another person. We deal here with misdemeanours referred to in Article 4, para. 1, subparas. 5 and 7 of the Act on Preventing Disorders at Sporting Events (OG Nos 117/03, 71/06, 43/09, 34/11, 114/22, hereinafter: APDSE), Article 25, paras 1 and 2 of the Anti-discrimination Act (OG Nos 85/08, 112/12, hereinafter: ADA), Article 18, para. 2 of the Public Assembly Act (OG Nos 128/99, 90/05, 139/05, 150/05, 82/11, 78/12, 114/22, hereinafter: PAA) and Article 5 of the Act on Misdemeanours Against Public Order and Peace (OG Nos 41/77, 52/87, 47/89, 55/89, 05/90, 30/90, 47/90, 29/94, 114/22, 47/23, hereinafter: AMAPOP). It must be emphasised here that the Protocol identifies these misdemeanours as HC only for the sake of statistical monitoring of these punishable offences and it does not specify whether they are HS misdemeanours or HC *stricto sensu*. However, the close reading of the provisions reveals, with the exception of Article 25 of the ADA, which also appears in the context of HC in the strict sense, that these misdemeanours incriminate HS.

The most explicit HS incrimination is set forth in the APDSE. According to Article 4, para. 1, line 5 of the APDSE, an attempt to bring, or bringing a banner, a flag or any other object containing a text, a picture, a sign or any other insignia to express or to incite hatred or violence on account of racial, national, regional or religious affiliation represents illegal conduct. According to Article 4, para. 1,

[9] See Art. 4 of the Framework Decision according to which racist and xenophobic motives need not be considered as aggravating when dealing with criminal offences under Arts 1 and 2 of the Framework Decision (public incitement to violence and hatred, trivialisation of international crimes and taking part in them).

line 7, it is also illegal to sing songs or to communicate messages whose content expresses or incites to hatred or violence based on racial, national, regional or religious affiliation.

Under Article 25, para. 1 of the ADA, a fine for misdemeanour will be imposed on "**[w]hoever, with the aim to intimidate another person or to create a hostile, degrading or offensive environment on the grounds of a difference in race, ethnic affiliation, colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, social status, marital or family status, age, health condition, disability, genetic origin, native identity or expression, and sexual orientation hurts another person's dignity."**

According to Article 3 of the Public Assembly Act (hereinafter: PAA), freedom of speech at public assemblies is limited, among other things, by bans to any calls or incitement to national, racial or religious hatred or any form of intolerance; such protests are prohibited under Article 14, point 4 of the PAA and the assembled people are not allowed to wear any uniforms with any such insignia (Art. 18, para. 2).

HS may also be subject to Article 5 of the Act on Misdemeanours against Public Order and Peace (AMAPOP) which incriminates those who, **in a public place, disturb public order and peace by singing or reproducing songs, compositions or texts or by wearing or posting symbols, texts, pictures or drawings.** This article, as opposed to those analysed *supra*, does not explicitly state the perpetrator's discriminatory motive, so that it potentially affects a larger circle of perpetrators. A question may be asked to what extent such a provision can express the essence of HS, i.e. the racist, xenophobic or any other discriminatory motive of the offence, since motive is not a characteristic of an offence. This question has popped up in the light of recent judgments of the ECtHR in the cases *Sabalić v. Croatia*[10] and *Beus v. Croatia*[11] and in the Constitutional Court's case *Zahtila, Viktor et al*,[12] which actually involved the related phenomenon of HC. However, the argumentation may potentially also apply to HS.

Although the Protocol does not mention the misdemeanour referred to in Article 31 of the Gender Equality Act (OG Nos 82/08, 69/17, hereinafter: GEA), we are of the opinion that, because of the analogous structure to that of Article 25, para. 1 and para. 2 of the ADA - the only difference being a

[10] ECtHR, *Sabalić v. Croatia*, Application No. 50231/13, judgment of 14 January 2021.
[11] ECtHR, *Beus v. Croatia*, Application No. 16943/17, judgment of 21 March, 2023.
[12] USUD 14/2023 (8/2/2023.), Decision of the Constitutional Court of the Republic of Croatia No.: U-IIIBi-2933/2018 of 19 January 2023.

narrower circle of discriminatory bases in line with the narrower mandate of this Act – Article 31, para. 1 of the GEA ought to be added to the list of hate misdemeanours.[13]

Finally, we must also refer to the so-called media legislation - the Croatian Radio-Television Act,[14] the Media Act[15] and the Electronic Media Act[16]. These acts do not prescribe any individual liability for HS misdemeanours of those who publicly incite to violence and hatred through the media but they primarily list prohibited media content, including HS. In the world of increased digitalisation and the phenomenon of online HS, the regulatory activities of the media are extremely important, laid down in the Electronic Media Act and in the new Digital Services Act[17] adopted in the European Union and aimed at ensuring a more effective fight against unlawful content on the Internet, including HS. However, since the aim of our research has been an analysis of criminal justice responses to HS, we have not dealt with the media aspects of combating HS.

3. METHODOLOGY

Population and the groups of cases: The research population consisted of all HS cases committed in the period from 2016 to 2021 in which final judgments were rendered by the competent body (the State Attorney's Office (hereinafter: SA) or the court). In line with the project proposal, the cases were divided into groups according to the outcome of the proceedings, as follows:

a) **Criminal cases–** cases with a final judgment following criminal prosecution for HS;
b) **Dismissals** – cases where the SA dismissed the criminal charges or (conditionally) waived the criminal prosecution;
c) M**isdemeanours** – finally adjudicated cases where, on the basis of the indictment proposal by the police, there was misdemeanour prosecution for HS.

Selection of the sample: Based on the assessment of the number of cases and the publicly available data, the number of cases to be analysed within each category was determined on an *ad-hoc* basis in the project proposal (criminal cases = all finally adjudicated cases 2016 - 2021, dismissals = 40, misdemeanours = 20).

[13] *"Whoever, with the aim to intimidate another person or to create a hostile, degrading or offensive environment on the grounds of a difference in gender, marital or family status, or sexual orientation hurts another person's dignity, shall be charged a fine for misdemeanour amounting from 5,000.00 to HRK 30,000.00.*"
[14] Croatian Radio-Television Act, OG Nos 137/10, 76/12, 78/16, 46/17, 73/17, 94/18, 114/22, 20/23.
[15] Media Act, OG Nos 59/04, 84/11, 81/13, 114/22.
[16] Electronic Media Act, OG Nos 111/21, 114/22.
[17] Regulation (EU) 2022/2065 on Unified Digital Services Market and Amending Directive 2000/31/EZ (Digital Services Act).

The sample of criminal cases was in fact their population in the period from 2016 to 2021 (59 cases), and the sample of dismissals and misdemeanours was selected on the basis of the available strata – the year when the offence was committed and the location of the competent body (SA/police administration/court) to whose territorial jurisdiction the case belonged. In situations where, within the same competent body, and in the same year, there were several cases, the case to be included in the sample was randomly selected. It must be mentioned here that despite the intended rigorous procedure of selecting the sample, a correction of the sample had been made after the beginning of the analysis because of the problems with the population data (e.g. errors in records, impossibility of finding the case on the basis of the received data, registered HS cases which did not correspond to the statutory definition of HS, and the like). Indeed, some cases initially included in the sample had to be replaced by other cases.

According to the records of the State's Attorney Office of the Republic of Croatia, a total of 237 HS cases had been dismissed in the period from 2016 to 2021. The cases involved 215 suspects of legal age and 22 minors (9.3 %). The initial sample - which included an oversample of minors initially registered as perpetrators - comprised 45 cases, while the final sample consisted of 41 cases (four HS offences in the sampling frame were found not having been committed between 2016 and 2021).

A total of 285 misdemeanour cases tagged with the key term "hatred" were registered in the law enforcement records for the period from 2016 to 2021. After reviewing a more detailed description of the elements of the committed offences, legal experts selected 90 potential HS misdemeanour cases. Out of that group, the initial sample consisting of 24 HS misdemeanours was selected, taking into account representativeness in terms of years of perpetration and territorial jurisdiction (of the police administration and the courts). Legal experts expanded the initial sample of cases by those considered as being of particular interest. In the end, the sample consisted of 20 cases (for different technical reasons, four cases were not eligible or available for the analysis).

In summary, the sample of criminal cases consisted of 59[18] analysed cases, the sample of dismissals 41 cases and of misdemeanours 20 cases.

Instruments – the forms for content analysis of cases: Three types of forms were developed for the purposes of field research, each used to analyse a specific group of cases. The selection of variables included in the forms was based on a literature review, that is, on the current scientific knowledge and the main research questions defined in the project proposal.

The procedure of conducting con tent analysis: There were 10 content analysts/coders chosen on the basis of their previous experience gained in the project "IRIS", their relevant educational credentials

[18] In the period from 2016 to 2021, 57 HS criminal offences were committed which, because of a large number of defendants in individual offences resulted in 59 criminal cases.

and work experience with criminal and/or misdemeanour cases in the judiciary and/or in the police. Two content analysts independently analysed each case to ensure the reliability of their assessment. The correspondence of the answers of two content analysts was then checked by the researchers who marked all the differences which were subsequently discussed by the content analysts to decide on their final response.

All the participants in the research, including the members of the project team who had access to personal and other sensitive data, signed a statement obliging themselves to secrecy and confidentiality. Also, during the coding of the cases, in addition to the anonymization of case files before sending them to the coders (i.e. personal data was redacted), the data was entered and stored in computers protected by passwords, and all accompanying documentation was properly archived.

Focus groups: In order to discuss main trends and patterns observed during content analysis, five focus groups were conducted, their members being of various professions directly responsible for HS processing: one was composed of law enforcement officers, one of state attorneys, one of criminal court judges and one of misdemeanour court judges. The fifth focus group was mixed and it was composed of two representatives from each of the four groups.

Qualitative legal analyses of case files, decisions rendered by the SA or by the courts: In parallel with a quantitative analysis of the data filled in the forms, there was also a qualitative legal analysis of particular parts of the SA's and court decisions. The results and findings of qualitative analyses were later used to complement, explain and interpret the quantitative results.

4. DATA ANALYSIS ACCORDING TO THE CATEGORIES OF CASES

4.1. Group 1 – Finally adjudicated criminal cases where the proceedings under Article 325 of the Criminal Code have started

4.1.1. Legal classification

The vast majority of the analysed cases, as many as **94.9 %** of them, concern **the offence referred to in Article 325, para. 1 of the CC**, and **in only three cases (5.1%) the offence was classified as public denial of international crimes referred to in Article 325, para. 4 of the CC** – i.e. denial or approval of war crimes against the Republic of Croatia (hereinafter: RoC), or against Croatians in two single cases, and in only one case the classification was both denial and significant trivialisation of the criminal offence of genocide in Jasenovac ("*a communist lie*") and of the Holocaust in general

("*the biggest global deceit*").[19] Taking into account the defendants, 62 defendants or 93.9% of them had been prosecuted for an offence referred to in Article 325, para. 1 of the CC, while for the offence referred to in para. 4 of the same Article, four defendants were prosecuted (6.1 %).

Most defendants committed a single criminal offence, while seven of them (**10.6 %) committed a crime referred to in Article 325 of the CC in concurrence with one or several other offences.** In relation to three defendants, it was damage caused to property of another referred to in Article 235, para. 2 of the CC in the form of written graffiti with HS content. In two cases, threats referred to in Article 139 of the CC were involved,[20] and in other two cases unlawful use of personal data referred to in Article 146 of the CC and disturbing the peace of the dead referred to in Article 332 of the CC (by drawing/writing graffiti on graves/tombs) and an unlinked offence of making, procuring possessing, or selling weapons and explosive devices referred to in Article 331 of the CC. In one case, because of a statement made on a social media platform, the defendant was convicted for HS referred to in Article 325 in concurrence with damage caused to the reputation of the RoC referred to in Article 349 of the CC.

4.1.2. Protected characteristics

An important segment of a phenomenological analysis of HS is a study of the groups against which HS is mostly directed at in a society. When identifying protected characteristics (e.g. ethnic origin), the starting point was the indictment and the legal description of the criminal offence contained therein while concrete groups (e.g. the Jews or the Roma) were identified on the basis of the factual description and the HS content. Apart from the phenomenological observations, the analyses of the protected characteristics also revealed some normative dilemmas and potentially also omissions in the work of the SA and the courts. Indeed, we also realised that the SA, as well as the courts, very often mentioned national and ethnic origin cumulatively, without analysing or specifying whether it was either national or ethnic origin, or without making a consistent distinction between them (for example, whether in the RoC, the Serbs are a national or an ethnic group or both, or whether it depends on the circumstances of each particular case). We have also seen that in very similar circumstances regarding statements made against LGBTIQ+ persons, it is sometimes said that only sexual

[19] The Court held that those statements could incite hatred towards the Jews (because of their racial and religious affiliation), whereby it is important to emphasise that the perpetrator also said that the Jews, by means of bribe and corruption, incorporated themselves into the most important parts of society to be able to promote the lie about the Holocaust and to bring the world at the brink of abyss. This is in line with the working definition of denying and twisting the truth about the Holocaust by the International Holocaust Remembrance Alliance (IHRA) adopted by the decision of the Government of the RoC of 22 January 2023. At the same session of the Croatian Government, three working definitions on antisemitism and anti-Roma racism were adopted.

[20] In one of those cases the perpetrator threatened journalists of the news portal Index, while HS was, according to its classification, directed against the Serbian national minority. In the other case, it was targeting a distinguished member of the group which the HS referred to.

orientation is involved, while sometimes gender identity is also mentioned. This is why, for the sake of consistency, we have decided to present these protected characteristics together.

HS is often directed at several groups at the same time. If we take national and ethnic origin together, as well as sexual orientation and gender identity, we can say that **73 protected characteristics were involved in 59 cases**. At the same time, the incriminated expression mostly referred to only one protected characteristic in as many as 49 cases (83.1 %). In the remaining 10 cases (16.9 %), there were two, three or four recognised protected characteristics per case.

Table 1: Recognised protected characteristics in the indictments of 59 cases

Protected characteristics	Number of protected characteristics	Percentage of cases where individual protected characteristic was recognised in the indictment (%)
Nationality and ethnic origin	31	52.5
Sexual orientation and gender identity	20	33.9
Other characteristic	9	15.3
Religion	8	13.6
Race and skin colour	3	5.1
Origin	2	3.4
Total	**73**	

Some protected characteristics referred to in Article 325 of the CC do not appear at all, or are not adequately recognised in case law. Not a single case was recognised where a protected characteristic would be **language, gender or disability**. The case law shows an accumulation of protected characteristics when the perpetrator's statement refers to several groups but not the recognition of the so-called **intersectional discrimination,** i.e. the fact that the same person may be discriminated against on several grounds (the same statement may incite to violence and hatred towards a subgroup or only a part of the protected group).

The "other characteristic" came up in nine cases (15.3 %) whereby it was mostly a group composed on the basis of ideological or political conviction (five cases), and in two cases sport fans were involved (in one of those cases also players of the same club) and the law enforcement officers (and their children). What was common to all those cases was a lack of any explanation why, in a concrete

case, some other group deserved protection on account of the 'other characteristic' (analogous to groups specifically listed in Art. 325),[21] and which concrete group was involved.

Finally, we must say that in all 59 cases the court had fully accepted the SA's classifications and no changes had taken place regarding the protected characteristics.

4.1.3. Duration of the proceedings

As a rule, the proceedings were relatively simple and when it came to facts, they were most commonly conducted without any hearing, and upon penal orders. On average, the period between the perpetration and the indictment lasted for 303 days, and from the indictment to the final judgment 246 days elapsed. In some individual cases, the proceedings were surprisingly long, which had impact on the total average duration – in four cases the period from the perpetration to the indictment lasted for over three years and in other four cases, the period from the indictment to the final judgment was also more than three years.

4.1.4. Final outcomes and sanctions

Not in a single case did the prosecutor abandon the prosecution and the judgments of conviction were rendered against 65 defendants. There was only one defendant who had committed an offence in a state of mental incapacity and was ordered **psychiatric treatment outside the prison system**.

For 45 out of 66 defendants (68.2 %), the SA requested **penal orders** in indictments. In all those cases, the court had accepted the request and issued penal orders in their judgments. Six defendants submitted complaints against penal orders and then, there were hearings. Therefore, the proceedings were brought to an end by penal orders for a little more than half of all defendants, i.e. for 39 of them (59.0 %).

[21] The term „other characteristic" must be interpreted restrictively in the way that the categories covered by it be of the same importance as those explicitly specified. See M. Munivrana Vajda, A. Šurina Marton: *Gdje prestaju granice slobode izražavanja, a počinje GM*? (Where do the boundaries of freedom of expression stop and where does HS begin?), *Hrvatski ljetopis za kaznene znanosti i praksu* (Croatian Yearbook of Criminal Sciences and Practice, Zagreb), Vol. 23, No. 2/2016, pp. 435-467, p. 456.

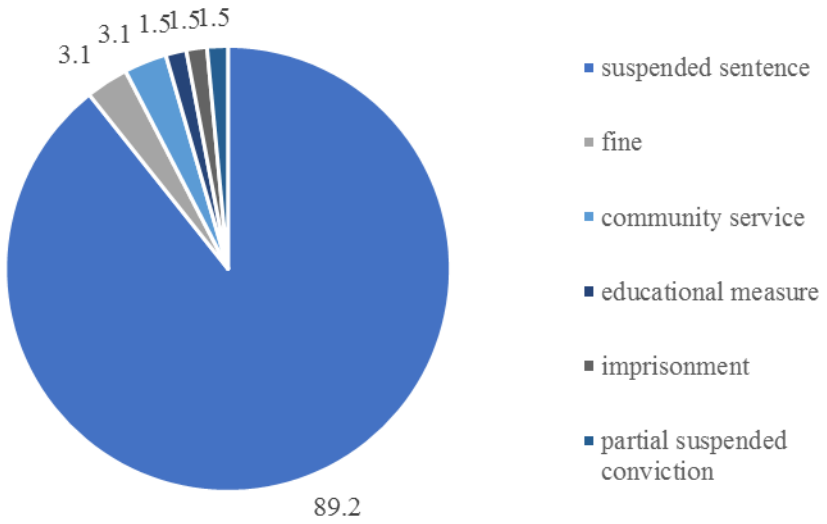

Figure 1. Distribution of criminal law sanctions pronounced for 65 perpetrators of criminal offences referred to in Article 325 of the CC (%).

Only one defendant was sanctioned with **unconditional imprisonment** in the duration of six months. It is also the only case where the sanction became harsher upon the SA's appeal against the first instance judgment,[22] and the unconditional imprisonment was pronounced instead of community service, while being at large, as a substitute for imprisonment of ten months. The defendant had been accused of drawing numerous graffiti and in such a way unlawfully changing many walls. He also otherwise caused public incitement to hatred against groups of people because of their religious or national affiliation. He was convicted for continuous criminal offence of damage caused to the property of another set forth in Article 235, para. 2 of the CC in connection with Article 87, para. 21 in concurrence with Article 325, para. 1 of the CC. In addition, he was also convicted for a continuous offence of disturbing the peace of the dead referred to in Article 332, para. 1 of the CC, also in connection with Article 87, para. 21, of the CC, as well as for illegal possession, procurement and selling weapons and explosives referred to in Article 331, para. 1 of the CC.

Fines were pronounced against two defendants (3.1 %) amounting to 30 and 50 daily units respectively, i.e. at or close to minimum fine amounting to 30 daily units. Given that daily amounts were set at 50.00 and 235.00 HRK respectively, the fines amounted to 1,500.00 HRK and 11,755.00 HRK.

It is not surprising that in this category of criminal offences **suspended sentence** prevailed in relation to 58 defendants (89.2 %) and it is even more prevalent than in the general population of all criminal

[22] The defendant's appeal was rejected in its entirety.

offences.[23] On average, the length of a suspended prison sentence was between six and seven months and the period of monitoring a little less than two years (1 year and 8 months). One partial suspended sentence was pronounced whereby the suspended and the non-suspended parts of the sentence were six months each and the monitoring period was three years. Partial suspended sentence was pronounced for a defendant who had already been convicted twice and one of those convictions was for the same type of criminal offence.

Community service was ordered in the cases of two defendants (3.1 %), and in both cases it lasted for 300 hours, as the replacement for imprisonment of five months.

One of those cases involved a minor and an **educational measure** was imposed under the Juveniles Court Act, OG 84/11, 143/12, 148/13, 56/15, 126/19, (hereinafter: JCA) as well as an obligatory psychiatric treatment.

Special obligations referred to in Article 62 of the CC **were not imposed in any of the cases**, although in some of them there were clear indications for imposing special obligations, like for example in the case of a defendant who had taken part in the Homeland War and was treated as a PTSD-patient. He confessed having committed the offence at the time when he had not been taking any therapy.[24] **Protective supervision referred to in Article 64 of the CC** was pronounced against two defendants. **Security measures** were pronounced against five defendants (7.6 %). One of those cases involved obligatory psychiatric treatment, two of them involved treatment against addiction and in two of them security measures banning access to the Internet were ordered (3.0 %).

Confiscation of an object was pronounced against four defendants (6.1 %), and in three of those cases computers/mobile phones, and in one case self-adhesive stickers with different HS messages and a USB stick with inappropriate contents were seized. Our analysis revealed inconsistent application, punitive character and disproportionality, as well as impersonal character of the measures of prohibiting the Internet access and confiscation of objects. Namely, despite the fact that most offences had been committed online, these measures were imposed in only a few cases without any special explanation.

[23] According to the data of the State Bureau of Statistics, in 2022, the percentage of suspended sentences (without partial suspended sentence and suspended fines) was 80.8 %. In the last few years, the percentage has been relatively stable – 1n 2016, the first year of the research, it was 78.7%. Data available at: https://podaci.dzs.hr/2023/hr/58025 i https://web.dzs.hr/Hrv_Eng/publication/2017/10-01-01_01_2017.htm

[24] See, for example, special obligation referred to in Article 62, para.2, point 4 of the CC: "*Medical treatment or continuation of medical treatment necessary for treating medical complaints that might be conducive to the commission of a new criminal offence."* In this case, no medical treatment was carried out and neither was diminished mental capacity established, so there was no basis for pronouncing a security measure of obligatory psychiatric treatment.

4.2. Group 2 – A group of cases where there was no prosecution under Article 325 of the Criminal Code (dismissals)

In the category of dismissals, **41 cases with a total of 75 suspects were analysed**. We must point out that because there has been no prosecution under Article 325 of the CC, we cannot *stricto sensu* speak of the phenomenology of HS. That is possible only in a small number of cases, six of them, involving 15 defendants, where there were no prosecutions due to the application of the principle of discretionary prosecution in accordance with the JCA. In those cases, even though the SA held that reported statements constituted HS, the SA applied the discretion not to prosecute as the criminal proceedings against a minor would not serve the legitimate purpose.

4.2.1. Protected characteristics according to criminal complaints

Neither criminal complaints, nor decisions on dismissal explicitly state which protected characteristic had been involved, so that our conclusions were drawn from the facts of every concrete reported case. **National/ethnic and religious origin** were involved in eight (19.5 %) and seven cases (17.0 %) respectively. In the case of national/ethnic origin, according to the criminal complaints, the statements were most commonly aimed at persons of Serbian national/ethnic origin (six complaints), while – when speaking of religious affiliation, it was mostly Catholic religion (five complaints), then Muslim and Jewish, while in one case atheism was (wrongly) subsumed under religious affiliation.[25]

Sexual orientation/gender identity appeared in three cases, while **racial affiliation** did not explicitly appear *per se* but the conclusion that it was involved could be drawn in three cases where some Nazi and Ustashe elements were emphasised. Namely, according to the case law of the Constitutional and High Misdemeanour Courts, such insignia and greetings are considered to be manifestation of racists ideology and thus also incitement to national, racial and religious hatred.[26] However, since neither the criminal complaints, nor the decisions on dismissal contained any statements of reason in that respect, in that group of cases, we did not single out any particular protected characteristic.[27]

Language, origin, skin colour and disability did not appear in any of the cases while **gender** – to be precise – female gender - was a protected characteristic in one case. According to the criminal complaints, the most prevalent category was the so-called **other characteristic** – appearing in 13 cases (31.7%). In some cases protected characteristics were explicitly labelled as "other

[25] It is our opinion that in the case of atheism another characteristic could be involved, and not religious affiliation since atheism is actually a conscious rejection of religion.
[26] Decision on the constitutional complaint in the Šimunić case, USUD, U-III-2588/2016 Zagreb, 8 November 2016.
[27] Decision on the constitutional complaint in the Šimunić case, USUD, U-III-2588/2016 Zagreb, 8 November 2016.

characteristics", while in other cases such conclusion could only be derived from the fact that the reported speech was not related to any characteristic listed in Art. 325, para. 1, of the CC. This was mostly the case with political affiliation or **political/ideological orientation.** In some cases, some specific social groups were targeted, such as members of certain professions like social workers and influencers. Finally, in some cases the reported statement was **not clearly directed against any particular group or any of its members**, so that in such cases we were not able to identify a protected characteristic. In several cases, the reported speech aimed at discrediting a public person, and in some cases such speech even incited to violence or hatred against that person, without connecting him or her with any protected group.

4.2.2. Legal classifications in criminal complaints and the reasons for not initiating prosecution

Of 41 cases, in most of them **(38) the criminal complaint referred to Article 325, para. 1 of the CC** and in one of those cases also to para. 2 of the same Article. **In three cases, denial of international crimes referred to in Article 325, para. 4 of the CC was involved**. **In ten cases**, the criminal complaints contained allegations on the commission of **other offences in concurrence,** those mostly being complaints on threats (in four criminal complaints), as well as a whole series of other offences (insults, coercion, damage to the reputation of the RoC, violation of equality, damage to the property of another, and the like).

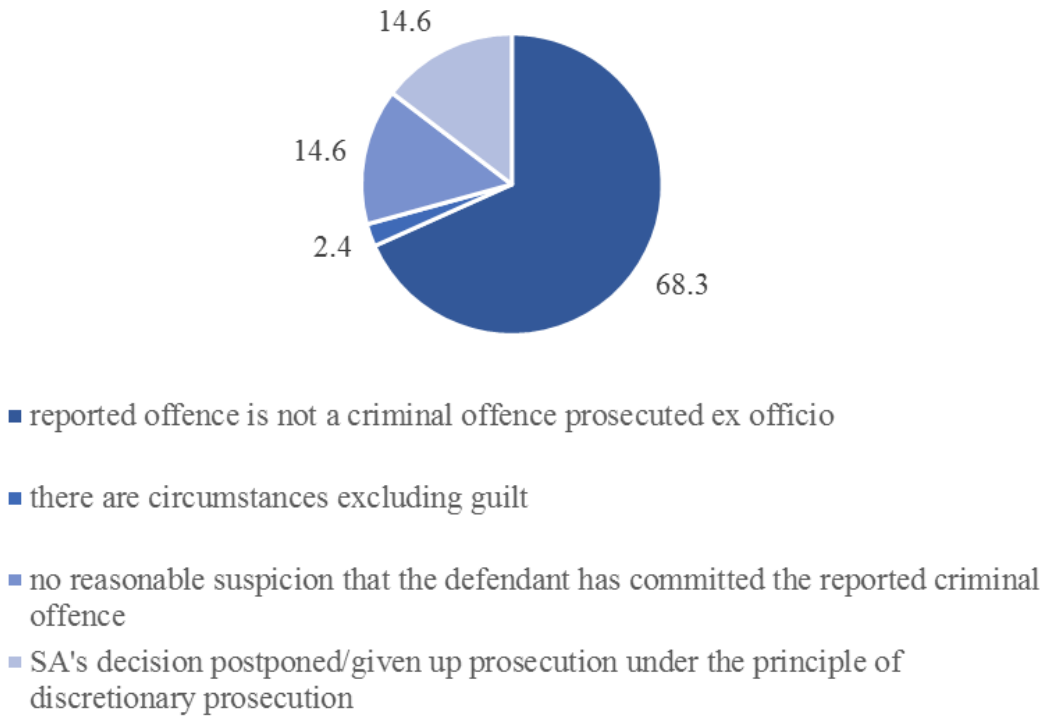

Figure 2: Reasons for not instituting criminal proceedings by the SA in the category of dismissals

In six cases, (14.6 %) the reason for dismissal was the application of the principle of discretionary prosecution. In the remaining 35 cases (85.4 %), dismissal was based on the application of Article 206, para. 1 of the Criminal Procedure Act (OG Nos 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 130/20, 80/22, 36/24, hereinafter: CPA); in 28 cases (68.3 %) under point 1, the reported offence was not a criminal offence prosecuted *ex officio*, in one case (2.4 %) under point 3, there were circumstances which excluded guilt, while in six cases (14.6 %), point 4 was pointed out as the reason for dismissal (there was no reasonable suspicion that the suspect had committed a criminal offence) (Figure 2.).

4.2.3 Application of the principle of discretionary prosecution

Of 41 cases, in **six of them (14.6%)**, the SA withdrew from the prosecution by the application of the principle of discretionary prosecution under the JCA. Of those 15 suspects in six cases, 14 were minors (in five of six cases) while in one case the suspect was a young adult but the SA applied Article 72 of the JCA to him, as well.

In all those cases, conditional waiver of prosecution was involved and the final decision not to initiate the proceedings was brought in the cooperation and under the supervision of the Social Welfare Centre (i.e. regional branches of the Croatian Social Work Institute, according to the new designation) upon the fulfilment of the obligation by the minor or a young adult (Art. 72, para. 2 of the JCA).

Although the application of the principle of discretionary prosecution and conditional waiver of the prosecution can, in principle, be welcomed when young perpetrators of the criminal offence are involved, in most of these cases **the SA failed to explain the fulfilment of all the statutory elements of the offence referred to in Article 325 of the CC.**

What must be emphasised in connection with those cases are **special obligations in accordance with Article 72 of the JCA**. Some of the mentioned obligations are explicitly laid down in Article 72, para. 1 of the JCA (an apology to the aggrieved party, inclusion in the work of humanitarian organisations, or in the work of communal and ecological importance, individual or joint psycho-social treatment). In some cases different obligations were involved where the SA held that they were appropriate taking into consideration the committed offence and the family situation (Art. 72, para. 1, point h of the JCA). When dealing with the last category, we consider the obligation of writing essays to be a good practice. Thus the minors who had glorified the Independent Croatian State

("*NDH")* had been ordered to read a book on Croatian history of the period of their choice[28] and write an essay on what they have read. The perpetrators of the offence against LGBTIQ+ community, apart from the cleaning job and maintaining the surroundings of the Centre for Upbringing and Education or the Retirement Home, were asked to write an essay on how to develop tolerance and respect for diversity.

4.2.4. Dismissal according to Article 206, para.1 of the CPA

In the remaining 35 cases, the SA dismissed criminal complaints according to **Article 206, para. 1 of the CPA**. The reason for dismissals in 28 cases (80.0% if we look at only the category of the so-called "proper dismissals"), was that the SA held **the reported offence was not a criminal offence** prosecuted *ex officio* (Art. 206, para.1, point 1 of the CPA).

For purposes of clarity, we have decided to divide this group of cases into four subgroups:
1) Cases where there is no content constituting HS referred to in Article 325 of the CC (public incitement to violence or hatred);
2) Cases involving public incitement to violence or hatred but no protected group according to Article 325 of the CC;
3) Cases not involving HS referred to in Article 325 of the CC but in which all elements of misdemeanour exist;
4) Cases where we believe there was sufficient ground for prosecution on account of HS referred to in Article 325 of the CC.

However, we want to emphasise how these groups may overlap and how in the cases where the statements are not apt to incite to violence and hatred (no content), they can, at the same time, be the cases not involving a protected group, or the cases where misdemeanour characteristics existed. Therefore, the following description is only an illustration of some observed trends, the prevalent features of criminal complaints, as well as problems in the interpretation of Article 325 of the CC and of the relevant misdemeanours.

[28] Taking into consideration the nature of the offence, we believe that it should not have been left to minors to choose the historical period on which to write an essay, but the essay should have been connected with the period of the Independent Croatian State (NDH) – which was the case with only two minors, while all other minors were reading books about the Peasants' Revolt, the Homeland War and generally about any important events in the history of Croatia.

4.2.4.1. Cases where there is no HS content referred to in Article 325 of the CC (public incitement to violence or hatred)

In the analysed sample of barely 14 cases (34.1%), criminal complaints had been filed by the police and in the remaining 27 cases (63.9%), the criminal complaints had been submitted by individuals who believed they were harmed by the statements, or by CSOs or other persons (including a manager of a social media platform and an anonymous complaint). Taking into consideration the structure of the submitters, it is not surprising that **the reported content in a series of complaints did not meet the characteristics of the criminal offence referred to in Article 325 of the CC.**

In 12 cases (29.3 %), the SA stated that the statutory elements of the criminal offence, as referred to in Article 325 of the CC, had not been fulfilled but that the suspects' statements might have possibly insulted some people or might have potentially made false factual allegations, **so they might have constituted offences against honour and reputation (defamation and/or insults).** However, they are not prosecuted *ex officio* but upon civil actions.

In as many as 31 cases (75.6 %), the SA explained, or only briefly stated, how by the suspect's act, the characteristic of **public incitement was not achieved,** which sometimes independently or together with other grounds led to dismissals of criminal complaints. In a number of cases, the SA repeated the formulation how the suspect's act "*was deprived of any imperative to act*", so that no act of incitement to violence or hatred could be involved but only the expression of a person's own opinion.

In 15 decisions on dismissals (36.6 %), the SA stated that it was the language protected by freedom of expression and not HS. In five of those cases (12.2%), the SA explicitly referred to some **international sources**, **i.e. primarily the European standards** and the criteria for demarcation between HS and the statements which may be shocking, insulting and disturbing but still protected by the fundamental right to freedom of expression.

4.2.4.2. Cases dealing with public incitement to violence or hatred but no protected group pursuant to Article 325 of the CC

While reading criminal complaints, we often became aware of the submitters' lack of understanding what HS referred to in Article 325 of the CC actually was, particularly regarding the protected object of the incrimination. Thus, some cases resulted in dismissal due to the SA's position that the targeted characteristic was not a protected characteristic under Article 325 of the CC.

The SA clearly stated that the **other protected characteristic** was not board membership in a company, nor the status of so-called influencers, or persons who had certain ideological positions. A number of criminal complaints were rightfully dismissed because it was not clear from their content at which group or its members the HS was directed. Those were statements directed at particular persons because of personal animosity and not because of their possible group affiliation.

Indeed, there is no uniform practice in this respect, either in terms of concrete groups subsumed under the notion of "other characteristics" or in terms of the requirements that some endangered and vulnerable group must be involved. Regarding vulnerability, the prevailing position exists that it is not an (unwritten) characteristic of an offence and that HS may also be committed against (a member) of a group not particularly vulnerable in a society.

Regarding political affiliation, in several of their dismissals, the SA correctly assessed how political affiliation was not the "other characteristic."[29] However, if we compare dismissals with the group of final judgments for HS referred to in Article 325 of the CC, we witness unequal treatment because, among them, there were also four finally convicted perpetrators who had incited to violence and hatred towards their political opponents. A similar phenomenon of unequal treatment we also observed with social workers.

4.2.4.3. Cases not dealing with HS referred to in Article 325 of the CC, but the statutory elements of misdemeanour exist

In only two cases, and in their decision on dismissal, the SA held that it was not a criminal offence referred to in Article 325 of the CC but a misdemeanour referred to in Article 25, para. 1 of the ADA. We are of the opinion that there was a ground to process the suspect for a HS misdemeanour in several other cases (at least eight of them, out of which in six of them for misdemeanour referred to in Article 25, para. 1 of the ADA (even if it is interpreted restrictively in such a way that it requires establishment of the violation of dignity of an individualised aggrieved party), and in two cases for misdemeanour referred to in Article 5 of the AMAPOP. Indeed, in some cases other misdemeanours could be considered, such as those under Article 17 of the AMAPOP (trivialising and insulting state bodies or officials in connection with their civil service).

[29] For example, in one case, the SA points out that the defendants' statements discredit the aggrieved party's political activities and that it was not clear from the expression that the suspect had referred to any personal characteristics of the aggrieved. The explanation in another case was how "*a person's political orientation or affiliation to a particular political party, by itself, was not that other characteristic in the sense of the above cited characteristics of the criminal offence referred to in Article 325, para. 1*".

4.2.4.4. Cases where there was sufficient ground for the initiation of prosecution for HS referred to in Article 325 of the CC

We believe that in at least two dismissals, the statutory elements of Article 325 were fulfilled and the criminal complaints ought not to have been dismissed.

As an example, we can mention a case, similar to many other cases resulting in final convictions under Article 325 of the CC, where the SA dismissed the criminal complaint. It concerned a Facebook comment on major news portal "Jutarnji list", as follows: "*Is it violence against those who are normal while sick idiots are kissing and licking in a bus? The whole club should have been burnt and all those who were in it,"* or "*I do not know any such people, "30 years ago, I would have pushed them into the sea".*

4.2.5. Specificities of the explanations for dismissals Article 325, para. 4 of the CC

In two of only three cases where there was a criminal complaint in accordance with Article 325, para. 4 of the CC,[30] the SA explained that **it was not the manner likely to incite to violence or hatred against a group or members of a protected group** and therefore, this element of the offence did not exist. In one of those two dismissals, a question was asked whether we distinguished between glorifying the crime and glorifying a criminal, or was it possible to separate the perpetrator of a war crime from the war crime itself for which the person was convicted." According to the SA, the fact that in the statements about the convicted war criminal, there was no mention of genocide, war crimes, aggression or crimes against humanity, it meant that the significance of such committed criminal offences was not diminished and that there was no incitement to violence or hatred. A high threshold for criminal liability, when dealing with trivialisation of international crimes, can be accepted but it should consistently be implemented in other cases, as well including those involving glorification of Chetnik leaders and the finally convicted Serbian war criminals.[31] In such cases, where the appropriateness of the incitement to violence and hatred is not established, and the glorification of the convicted perpetrator of war crimes has caused disturbance, such offences should be processed as misdemeanours referred to in Article 5 of the AMAPOP.

[30] In the third, discretionary prosecution was applied.

[31] See, for example, final judgment where she was found guilty because she "filmed and then published the celebration of the family patron-saint's day "S.S." where other persons sang songs glorifying the sentenced war criminal R.K. She put it on her Facebook profile under the initials 'M.P', deliberately approving of war crimes against Croats committed by that person during the Homeland War in the territory of the RoC." Neither in the indictment, nor in the judgment was there any concrete content of those songs and it is only said that they had been recorded and reproduced.

4.2.6. Duration of the proceedings

In dismissed cases, an average period between perpetration and criminal complaint was 30 days, and from the perpetration to a decision on dismissal, on average 307 days elapsed. It means that from the criminal complaint to a dismissal, the average duration was 277 days.

When dealing with the cases where the SA dismissed prosecution by the application of the principle of discretionary prosecution, although the offence was usually reported faster (15 days), a little more than a year was necessary from the perpetration to the final dismissal, i.e. 377 days. It is not at all surprising, because in those cases dismissals had been conditioned by the preliminary fulfilment of the minor's or young adult's obligation.

4.3. Group 3 – Misdemeanours

In this group, the sample was composed of 20 finally adjudicated cases for whose perpetration 29 persons were convicted. Of 20 cases, there were 17 convictions, two acquittals and one judgment rejecting the accusation. When analysing the perpetrators, we took into analysis 17 convicted perpetrators and 10 defendants against whom the charges were rejected due to the expiry of the statute of limitation.[32]

4.3.1. Legal classification

Among the cases of HS misdemeanours, the most frequent legal classification were misdemeanours referred to in Article 5 of the AMAPOP (ten cases, 50.0%) and Article 25 of the ADA (seven cases, 35.0%) (Figure 3). Of the remaining classifications in indictments, first instance judgments and final judgments, two cases involved misdemeanours referred to in Article 6 of the AMPOP[33]. Apart from HS, in two misdemeanour cases insults against law enforcement officers referred to in Article 17 of the AMPOP were involved, and one defendant was processed for not having his ID.

Similar to the previous research of hate misdemeanours in the IRIS project, we observed inconsistent classifications of hate misdemeanours in terms of the relationship between misdemeanours under AMAPOP and misdemeanours referred to in Article 25 of the ADA.

[32] Ten defendants were included, not formally convicted for HS misdemeanour because the first instance proceedings against them had been conducted twice and all the10 of them both times convicted.
34 It involved a misdemeanour under Art. 39, para. 1, point 5 of the APDSE for one defendant, and under Art. 39. a, para. 1, point 2 of the APDSE for the other defendant.

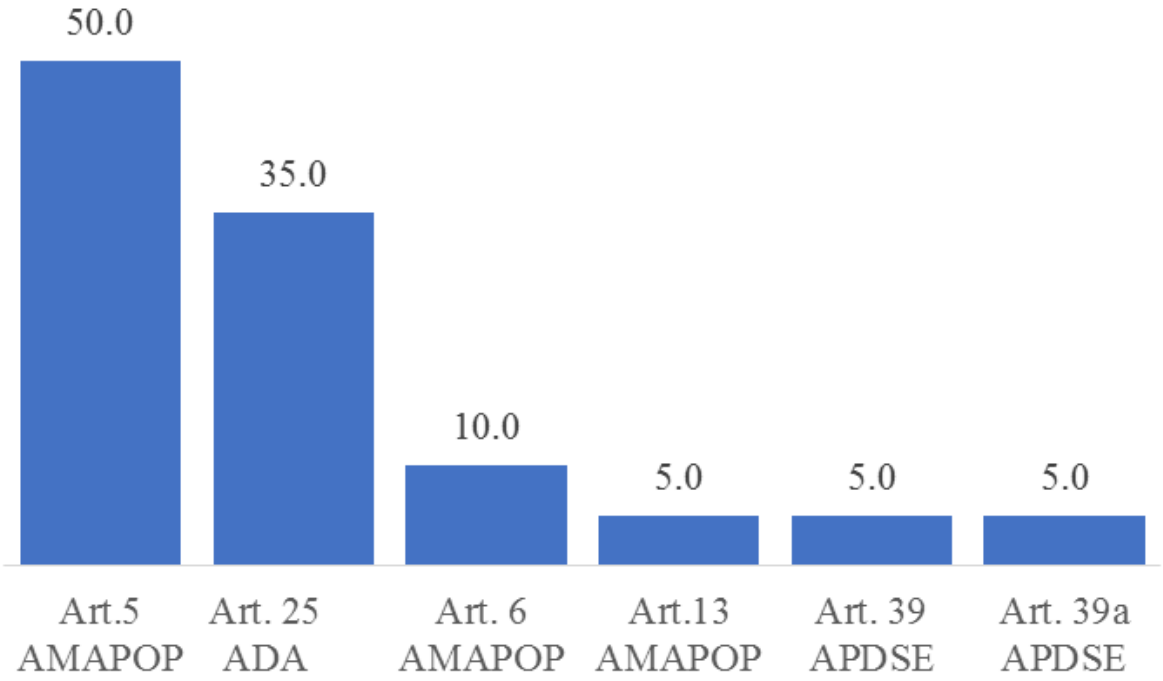

Figure 3: Legal classifications by cases according to indictment proposal by the police (%)

Article 5 of the Act on Misdemeanours against Public Order and Peace: for misdemeanours under Article 5, para. 1 of the AMAPOP, proceedings in 10 cases had been initiated (50.0%), i.e. against two thirds of defendants (19 or 65.5%). Final convictions were pronounced in eight cases (80.0%), i.e. against eight (42.1%) defendants. Most cases (60%) concerned the use of the Ustasha content ("*For Home(land) ready*" ["*Za dom spremni*"] and the letter "*U*"), and also the Nazi content in two cases (swastika and the Nazi uniform), as well as the Chetnik or Great-Serbian content in two cases (extolling the Chetnik voivode, Krajina, and the ambiguous "three fingers").

In five cases of the HS misdemeanour, there were 14 defendants who had used the Ustashe greeting **"For Home(land) ready"** ["***Za dom spremni,***"] a social phenomenon most commonly sanctioned under Article 5, para. 1 of the AMAPOP.[34] Of them only three defendants were convicted since in one case in relation to 10 defendants the statute of limitation expired. There was only one acquittal, in which the use of that greeting was part of Croatian Defence Forces (HOS) insignia on the Day of the City of Glina and the Homeland Thanksgiving Day.

[34] One of the recommendations of the IRIS project was to define hate misdemeanour in the Misdemeanour Act.

Article 25 of the Anti-discrimination Act: the second most common classification in indictments for misdemeanour was the one referred to in Article 25, para. 1 of the ADA, which appeared in seven cases (35.0%), i.e. against seven defendants (24.1%). Of that number, final convictions were pronounced for that misdemeanour in four cases, i.e. against four defendants (57.1%).

In several cases, the issue of concurrence of misdemeanours referred to in Article 25 of the ADA with misdemeanours referred to in the AMAPOP came up. In only one case the police classified the conduct as concurrence of offences under Article 6 of the AMAPOP and Article 25 of the ADA (so-called ideal concurrence). However, the court removed the count of misdemeanour referred to in Article 25 of the ADA, and convicted the perpetrator only for misdemeanour referred to in Article 6 of the AMAPOP, explaining their decision by quoting the provision of Article 8 of the ADA stating that the grounds had not been met. As a matter of fact, in the relevant provision, it is clearly laid down that the ADA applies to the acts of "*all natural persons*" especially in the area of "*work and work conditions*" which does not exclude wider application.[35]

A participant in the judges' focus group pointed out that in some cases it was very difficult to prove the intent for the commission of misdemeanour referred to in Article 25 of the ADA, as well as that it was necessary to prove the violation of dignity and it was why the person targeted by HS had to be examined. This actually arises from *ratio legis* of Article 25 of the ADA, initially designed as a misdemeanour provision of the violation of Article 3, para. 1 of the ADA, i.e. as a form of discriminatory harassment of an individual.[36] There is a recommendation to apply a criminal investigation to identify individuals whose dignity had been damaged – even if more than one person was involved (e.g. persons in a gay club, members of a LGBTIQ+ association, members of a sports team from Serbia, and the like). However, we believe that it is not necessary that the violation of dignity must be established by examining the person. Namely, in the cases of discriminatory speech, the violation of dignity can, as a rule, be established objectively.

[35] One was processed as misdemeanour referred to in Art. 39 of the APDSE (see *infra*).
[36] According to the legal reasoning of the High Misdemeanour Court of the RoC of 17 November 2014, the police is authorised prosecutor of misdemeanours referred to in the ADA, although not explicitly specified in that Act.
[38] Ministry of Family, Veterans and Intergenerational Solidarity, Draft Bill on Anti-discrimination Act with the final Bill, May, p. 31.
(https://vlada.gov.hr/UserDocsImages//2016/Sjednice/Arhiva//22_02.pdf).

Misdemeanours under the Act on the Prevention of Disorders at Sporting Events: the third most frequently mentioned Act in the classifications of HS misdemeanour is the Act on the Prevention of Disorders at Sporting Events (APDSE). The first case involved chanting with elements of HS based on regional, racial and religious affiliation, and the second case involved the public use of the Ustasha symbols.

4.3.2. Protected characteristics

Most defendants were processed for the misdemeanour referred to in AMAPOP where the statutory descriptions do not include protected characteristics and, therefore most misdemeanour cases did not contain any data on them. In the cases dealing with the use of the Ustasha, Nazi or Chetnik content, no concrete protected characteristics could be established because an ideological HS was involved, directed at several groups not clearly identified in the indictment or in the judgment. Even when the factual descriptions did include a discriminatory motive and verbalised prejudice, the courts, in their statements of reasons, did not specifically refer, or did not refer at all to the fact that the perpetrator had committed the offence in connection with any of the protected characteristics. Therefore, the data on protected characteristics are fragmentary.

Table 2: Recognised protected characteristics in indictment proposals in 20 cases

Protected characteristics	Number	Percentage of cases where individual characteristic was recognised in the indictment %
Nationality and ethnic origin	11	55.0
Religion	6	30.0
Race and skin colour	6	30.0
Other characteristics	3	15.0
Sexual orientation and gender identity	1	5.0
Total	**27**	

In most cases, there was no information which concrete group was involved. Only twice the Roma and Croatian descents were identified as national or ethnic origin, as well as one Serbian and one Bosnian. As for religion, only the Muslim affiliation was stated in one case. In the category of race and skin colour, dark, black and white "colours" were specified. There was one identified case with sexual orientation (homosexuality) specified as protected characteristic. In one case, the perpetrator referred to the victims as "*feminist whores*" and threatened that he would disfigure them or kill them

and the statement was wrongly described as discriminatory speech because of gender identity and sexual orientation, although it was primarily discrimination based on political or other conviction.[37]

4.3.3. Outcomes of the proceedings

Somewhat more than a half of defendants were convicted (16 or 55.5%), for more than a third (10 or 34.7%) the charges were rejected,[38] and there were acquitted (10.3%).

Different from criminal cases, in misdemeanour cases, the principle of discretionary prosecution was not applied in any of the analysed 20 cases.[39] The reason can be found in the age structure of those convicted for HS misdemeanours, namely, there was only one minor (17 years) who got a court reprimand as an educational measure. Among the acquittals, one defendant was not found guilty of misdemeanour referred to in Article 5, para. 1 of the AMAPOP for wearing a black T-shirt with the message "*HOS ZA DOM SPREMNI*", with an explanation that the HOS insignia were legal. Another defendant was not found guilty of the same misdemeanour for selling necklaces with a big letter "U" and it was not possible to determine whether those necklaces symbolised the Independent Croatian State ("NDH") and the Ustashe, so that the court accepted the defence saying that the defendant thereby "*did not incite to hatred, religious and national intolerance*." The third defendant was not found guilty for misdemeanour referred to in Article 25 of the ADA because the aggrieved party could not be reached and the court was not in the position to establish whether or not the person who reported misdemeanour was the person under whose photo the defendant had written, on the Facebook profile, that he was a "Gipsy" and a Muslim, also using the words such as "dirty" and "stinking scum" – which, according to the indictment "caused fear and hostile, humiliating and insulting content on account of religion and national origin".

A relatively low percentage of those convicted significantly deviates from the overall percentage of the convicted perpetrators of misdemeanours who were of legal age which, according to the State Bureau of Statistics, in the analysed period, was approximately 80%. However, that was partly the consequence of only one case where, in relation to 10 defendants, the statutory limitation period expired.[40]

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[37] Indeed, it was not discriminatory speech on account of gender because the perpetrator stated that normally "he would not hit women and he would rather cut his arm instead".

[38] Here, it was one case with 10 defendants.

[39] Since the principle of discretionary prosecution, when dealing with the perpetrators of criminal offences out of hatred, is applied exclusively to minors and young adults, a possible explanation could be the fact that in this sample only one minor perpetrator is involved.

[40] If we take into consideration only defendants with convicting judgments and acquittals, the percentage is similar to that for the general population of misdemeanours - it is 84.2 %.

4.3.4. Sanctions

In regard to sanctions, not in a single case there were either suspended or unconditional prison sentences. In relation to all the convicted defendants (93.2%), fines were pronounced, except for one minor who was sanctioned by a court reprimand as an educational measure (6.3%). The courts did not issue reprimands, community service, or any of special obligations. Only two protective measures were issued: prohibition to attend at particular sporting competitions, i.e. any basketball matches of the basketball club "Zadar" in the territory of the RoC, with an obligation to regularly report at the police station for a period of one year in accordance with the APDSE, as well as the protective measure of prohibition to visit the catering establishment where the misdemeanour had been committed. One defendant received a reprimand, but not for a HS but for some other misdemeanour. When analysing the imposed fines, we must generally say that they were extremely mild – the lowest was 50 Euro and the highest 793.71 Euro. When looking at the structure of the imposed fines, it was obvious that the differences were up to tenfold for similar misdemeanours, it being the result of lack of coordination of fines in the applied misdemeanour laws. For misdemeanours referred to in Articles 5, 6 and 13 of the AMAPOP, the prescribed fines are between 20 and 170 Euros (50 to 350 DEM) as an alternative to imprisonment of 30 days. For misdemeanours referred to in Article 25 of the ADA, only fines are prescribed which are many times higher – between 663.61 and 3,981.68 EUR. Fines are much higher under Articles 39 and 39 a. of the APDSE – between 260 and 3,310 Euro but as an alternative to imprisonment of 30 days. This is why, in very similar cases when it comes to facts, there is a big difference between the imposed fines depending on legal classifications.

On average, the imposed fine in the analysed cases was 202.59 Euro. Indeed, we must bear in mind that according to the data of the State Bureau of Statistics, the average net salary in the RoC in the period 2016 to 2021 was Euro 849.09 (HRK 6,397.50) meaning that the average fine in those cases was about one fourth of the average monthly salary of the same period.

4.3.5. Duration of the proceedings

The average time from the perpetration to indictment was 45 days which was much shorter than in criminal cases because only law enforcement activities were involved. However, court proceedings lasted, on average, much longer than in criminal cases – **from the indictment to the final misdemeanour proceedings there was a period of almost 3 years** (1,130 days).

Contrary to the expectation that misdemeanour proceedings were much shorter than criminal proceedings, it turned out that in HS cases they lasted longer, because criminal cases were quickly completed mostly due to criminal orders. As many as 80.0% (16 to 20) of all HS misdemeanour cases were brought to an end after the hearing, and only 20.0% (4 of 20) by misdemeanour orders.

5. RECOMMENDATIONS

5.1. Normative framework

5.1.1. Criminal offence referred to in Article 325 of the CC

- **Organising or leading a group, or participating in it** (Art. 325, paras. 2 and 3 of the CC) is punishable only in connection with para. 1, i.e. for the commission of the offence referred to in para. 1 and not the commission of the offence referred to in para. 4 (denying international crimes). Because of the fact that both paras. 1 and 4 are offences of the same gravity and that in the research, it was discovered that in practice and in some cases it was difficult to differentiate criminal offences referred to in paras. 1 and 4, **it would be justified to connect the liability of organising, leading or participating in a group also to the criminal offence referred to in para. 4.**

- **It is proposed to expand the protected characteristics listed in para. 4 in order to include those expressly listed in Art. 325, para. 1 of the CC.** Such an extension would reflect the development of international criminal law, and provide protection to the same groups through both forms of the criminal offence from Art. 325 of the CC.

- The research shows that the provision of Art. 5 introducing the liability for attempt has not yet taken hold in practice. In the observed six-year period, no one was either accused or convicted of attempting this offence, which may be attributable to the fact that in the context of this act, the construction of the attempt is impracticable. Since not even the Framework Decision on Racism and Xenophobia calls on the States to incriminate attempts, and because it is possible to process HS as a misdemeanour (when the characteristics of a criminal offence referred to Article 325 of the CC do not exist), **it is recommended to consider a decriminalisation of attempt, particularly in the context of future comprehensive regulation of HS misdemeanour.**

5.1.2. Anti-discrimination Act

- The research shows that judicial practice is inconsistent with respect to the interpretation of Art. 25. ADA and that the predominant position is that the offence in question cannot be committed against the entire group, but only against identified individuals. **In order to ensure**

the liability for certain forms of discriminatory speech that refers to the entire group, and cannot be subsumed under Art. 325 of the CC, it is proposed to consider the introduction of a misdemeanour provision that would prescribe a fine for incitement to discrimination (even when it is directed against the entire group). This proposal is consistent with the view of the ECtHR in Zemmour v. France (2022) that incitement to discrimination is a form of incitement to intolerance that is not covered by freedom of expression.

- In addition, a technical amendment is recommended to Article 25, paras 1, 3 and 4 of the ADA, **so that fines are expressed in Euros and not in HRK** as to date.

5.1.3. Misdemeanour Act

- Misdemeanour legislation does not expressly contain the HC concept (i.e. misdemeanour out of hate) nor HS misdemeanour but at the level of public policy and international documents, it is recognised that even misdemeanours can, when all the preconditions are met, be characterised as HC or HS. To consistently carry it out in practice, particularly before any amendments to the AMAPOP, we recommend to enter a definition of **hate misdemeanour** into the MA that would be analogous to Article 87, para. 21 of the CC, taking into account all the differences between misdemeanour and criminal legislation.

- Given that the research determined that the procedures for prosecuting the HS misdemeanours lasted twice as long on average as the procedures for the criminal offence from Art. 325 of the CC, **we recommend the legal framework for the issuance of (obligatory) misdemeanour order to be amended** in order to enable its wider application in HS misdemeanour cases, and for the sake of better and more efficient processing of these misdemeanours.

- Due to the fact that in one case, after retrial, the first instance judgment had been rendered a month before the expiry of the period of limitation, and the case upon the appeal was thus subject to limitation, we recommend an extension of the limitation period (despite the fact this is not a recommendation in connection with the legal framework of HS) on the model of Article 81, para. 3 of the CC by adding a new para. 4 in Article 13 of the MA. This addition should read as follows: "*If the first instance judgment is rendered before the expiry of the time limit referred to in para. 1 of this Article, the period of limitation is extended for one year*".

5.1.4. Act on Misdemeanours against Public Order and Peace

- To avoid all the existing problems in connection with the processing of HS misdemeanours, it is **necessary to redefine the misdemeanour referred to in Article 5, para. 1 of the AMAPOP** in such a way that it expressly sanctions the commission of this misdemeanour in connection with the same protected characteristics prescribed in Art. 325, paragraph 1 of the CC, as well as certain contents of totalitarian and extremist ideologies constituting HS, namely Nazism, fascism, Ustasha, and Chetnik ideology, ideology of Greater Serbia, as well as other ideologies promoting intolerance. At the same time, a general clause should be provided that would allow other ideologies and *"messages that can cause intolerance"* to be sanctioned (wording from Article 25, para. 1, APDSE). In this sense, one possible solution is to add a new para. 2 to Art. 5, to read as follows:

  "*(2) If songs, compositions, texts, symbols, pictures or drawings referred to in para. 1 of this Article contain Nazi, fascist, Ustasha, Chetnik, Greater Serbian or any other messages that can cause intolerance on account of race, religion, national or ethnic affiliation, language, origin, skin colour, gender, sexual orientation, gender identity, disability or any other characteristics, the perpetrator shall be punished by fine amounting from 700.00 to 4,000.00 EUR (or by imprisonment for up to 30 days)."*

  At the same time, the prescribed fine referred to in para. 1 should be lowered to the range from 400. 00 EUR and up to 2,000.00 EUR. According to this recommendation, para. 2 would become an aggravated form with the envisaged fine analogous to the one for misdemeanour referred to in Article 25 of the ADA. Therefore, in our view for other types of violations of Article 5, where no HS is involved, more lenient fines should be imposed. In addition, since we deal here with the processing of speech, and with a very fine line between HS and freedom of expression, in our opinion, the imposition of a prison sentence in such cases is potentially controversial, and it should be applied only in exceptional situations of a more serious misdemeanour HS offences.

  In addition, there is **a recommendation to publicly prescribe (e.g. in a corresponding Regulation or a Protocol) which symbols of the mentioned ideologies are prohibited,** not in the form of a definite list but as means to establish facts and to inform the public about what is prohibited.

5.1.5. Act on Preventing Disorder at Sporting Events

- A normative analysis and the researched cases show an overlap between Article 325, para. 1 of the CC and the misdemeanours referred to in the APDSE. **Therefore, it is recommended to consider a delineation of criminal and misdemeanour HS at sporting competitions, so that in misdemeanours referred to in Article 39 a, para.1, point 2, in connection with Article 7, para. 4, subpara. 7 of the APDSE and Article 39, para. 1, point 5 in connection with Article 4, para. 1, subpara. 4 of the APDSE, the words "*or incites*" are deleted.** The purpose of this amendment is to demarcate this offence from a criminal offence on a normative level, although the demarcation is primarily to be carried out through an assessment of the proportionality of the encroachment on freedom of expression with regard to the content, context and other characteristics of HS.

- It is proposed to expand the protected characteristics in the above-mentioned misdemeanour offences to include those expressly stated in Art. 325, para.1 of the CC.

- In addition, if the criminal gravity between two HS misdemeanours referred to in APDSE is the same, the prescribed sanctions must be equalised between misdemeanours referred to in Article 39 a., para. 1, point 2 in connection with Article 7, para. 4, subpara. 7 of the APDSE and Article 39, para. 1, point 5 in connection with Article 4, para.1, subpara. 4 of the APDSE.

5.1.6. Protocol for Procedure in Cases of Hate Crime

- In the Protocol for Procedure in Cases of Hate Crime, the expression "hate crime" is also used to include HS, which, however, should be separated as a distinct category.

  We recommend that in Article 1, HS is defined more comprehensively. It arises from the present formulation that HS is only a criminal offence referred to in Article 325 of the CC and not the misdemeanours listed in the Protocol. However, these misdemeanours, if they are committed on account of racial affiliation, skin colour, religion, national or ethnic origin, language, disability, gender, sexual orientation, gender identity or some other characteristics of another person, constitute HS misdemeanours. The absence of a comprehensive definition of the misdemeanour HS makes a comprehensive statistic monitoring of HS impossible as it is presented separately only when it constitutes a criminal offence referred to in Article 325 of the CC. We also added misdemeanour referred to in Article 31 of the GEA to the recommended provision which had probably been left out by mistake from the valid definition

(because GEA is *lex specialis* in relation to Article 25 of the ADA. Regarding all relevant Acts, we have cited all misdemeanour provisions which has previously not been the case:

"The expression "hate crime" in this Protocol refers to criminal offences committed because of the characteristics laid down in Article 87, para. 21 of the Criminal Act (Official Gazette NN Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18 and 126/19, 84/21, 114/22, 114/23, 36/24) and hate speech for the sake of statistical monitoring of these criminal offences."

"The expression "hate speech" in this Protocol is used to refer to a criminal offence of public incitement to violence and hatred (Article 325 of the Criminal Code) and misdemeanours referred to in Article 39, para. 1, subpara. 5 and Article 39a, para. 1, subpara. 7 of the Act on the Prevention of Riots at Sporting Events (Official Gazette NN Nos. 117/03, 71/06, 43/09 and 34/11, 114/22), Article 25 of the Anti-discrimination Act (Official Gazette NN, Nos 85/08 and 112/12) of Article 37, subpara. 2 of the Act on Public Assembling (Official Gazette NN Nos. 128/99, 90/05, 139/05, 150/05, 82/11, 78/12 and 114/22), Article 5, para. 1 of the AMAPOP (Official Gazette NN No. 5/90 – consolidated text, 30/90. - correction, 47/90 and 29/94, 114/22, 47/23) and Article 31 of the Gender Equality Act (Official Gazette NN, Nos 82/08, 69/17) committed on account of racial affiliation, skin colour, religion, national and ethnic origin, language, disability, gender, sexual orientation, gender identity or any other characteristics of another person."

5.2. Recommendations for processing criminal offences

- When deciding whether to initiate criminal proceedings for a criminal offence from Art. 325 of the CC or to dismiss the criminal complaint (with a possible submission of an indictment for misdemeanor HS), **the SA should always consider the context in which the statements were made and whether the encroachment on freedom of expression is justified or not**. According to the practice of the ECtHR, important elements that should be taken into account, especially when it comes to incitement to hatred, include the nature and content of the statements, the manner in which the statements were made, i.e. the way they were transmitted, the suitability of the statements to directly or indirectly lead to harmful consequences, the social, economic and political climate, the role and status of the speaker in society and the audience to whom the statement is addressed. Based on these criteria, the SA should consider whether the statement, although offensive and provocative, is protected by the fundamental right to freedom of expression or whether it is rather HS subject to sanctions.

- It was observed that in criminal cases, **criminal orders were dominant** where the courts, in their statements of reasons and in line with Article 541, para. 2 of the CPA, only presented the proofs to justify criminal orders (by relying on the proofs proposed in indictments). The advantage of criminal orders in such cases, where the characteristics of offences are often indisputable, is that they undoubtedly contribute to the speed of the proceedings that are, on average, shorter than those of HS misdemeanours. However, although the facts were often indisputable because the statements were published, what was insufficiently elaborated in some indictments was the realisation of the characteristics of the offence (for example, whether another characteristic was involved pursuant to Article 325 of the CC), or whether the statement, although offensive and provocative, was protected by the fundamental right to freedom of expression. **The recommendation is that SAO should more thoroughly elaborate all the characteristics of the offence, the intent to incite to violence or hatred and the relevant context in which HS occurred.** When deciding whether to request the issuance of a criminal order, the SA should consider whether the institution of a criminal order allows him/her to impose an appropriate criminal sanction for the criminal offence committed.

- In some of the analysed criminal cases, it **was not specified which protected characteristic was involved** but rather, they were all listed in a statutory description of the offence in accordance with the statutory definition of the offence. Only on the basis of the description of facts was it possible to guess which characteristic was involved. **In our opinion, the protected characteristic should always be clearly stated in the indictment and in the judgment** (when it is not a question of a criminal order). When "**other characteristics**" are involved, they should always be explained because this term should not be used to cover just any characteristics but only those that are equivalent to those explicitly listed in the same provision. For example, in some cases, regional affiliation is mentioned which in certain contexts may be equivalent to national or ethnic affiliation or origin, while atheism could be seen as equivalent to religious affiliation. However, political affiliation, high-ranking or law enforcement positions, affiliation to some professions or football fan groups should not be subsumed under the term 'other characteristics'. According to the research, this has sometimes been done.

- Our research also shows that a portion of case law indicates a position that Article 325 of the CC protects only vulnerable or threatened social groups. It is our position that the vulnerability of a group is not an unwritten characteristic of an offence but rather a contextual element

which must be taken into account when assessing whether some speech is HS and must be sanctioned. This arises from the case law of the ECtHR which is rarely explicitly referred to by either Croatian state attorneys or the courts. Our recommendation is that **in the statement of reasons** of indictments and judgments, in such cases, the appropriate **standards of the ECtHR jurisprudence** must be taken into account and clearly stated, as well as other relevant **European and international standards**.

- Specifying the protected characteristic would facilitate **the monitoring of this aspect of the phenomenon** which is laid down in the guidelines of the relevant bodies. Indeed, within the framework of individual protected characteristics in the statement of reasons of indictments/judgments, it should be specified which concrete group or groups are involved.

- Often unjustified accumulation and inconsistent listing of certain protected characteristics - most often those of national and ethnic origin - was observed. Accumulation of characteristics is correct when dealing with cases of multiple discrimination, however, research has shown that protected characteristics are sometimes determined in a summary manner and incorrectly (e.g. in one case, HS directed at feminists was characterized as HS committed because of their gender identity or sexual orientation). In that regard, we recommend conducting **further continuous education.**

- In practice, we often see non-recognition of multiple and the so-called **intersectional discrimination**, i.e. the fact that the same person can be discriminated on several grounds. In addition, one can incite to violence and hatred against a subgroup, or a part of the protected group by the same utterance. Most frequently, gender, sexual orientation or gender identity are intertwined with other characteristics such as national or ethnic affiliation. Although there were cases where, apart from the recognised protected characteristic, there were some indications that HS was also directed at women because of their gender, in neither of those cases gender was recognised as a protected characteristic. **In this regard, it is also necessary to organise continuous training.**

- This research shows that sometimes incitement to hatred, as a characteristic of a criminal offence referred to in Article 325 of the CC, is often neglected as the sufficient modality of public **incitement**. Namely, incitement to hatred, depending on the severity (intensity of the views expressed) and the context, is also possible through the public expression of personal views if the content of hatred of high intensity is involved, and it is not necessarily incitement

as an imperative to act. Therefore, **our recommendation is to bear in mind that public incitement to hatred on discriminatory grounds referred to in Article 325 of the CC is sufficient for the prosecution and conviction for this criminal offence even if only personal positions are expressed.**

- In the vast majority of cases, the state attorney's offices and courts did not precisely state the fulfilment of the element of public nature of the speech**, which would be necessary in some cases.** Namely, although based on the publication on social networks and Internet portals it can be assumed that the criterion of public has been met, in some situations this can be doubtful - **especially when it comes to content addressed to a closed and smaller circle of people via the Internet, for example in closed groups on social networks, forums or messaging applications, and when accessing the content requires the approval of the group administrator or profile owner.**

- When speaking of **young perpetrators** of criminal offences (minors and young adults), a suspended postponement of criminal prosecution is often applied and it is given up by applying the principle of discretionary prosecution. In principle, and in combination with well-tailored obligations (such as writing esseys on tolerance or historical events if the criminal offence is in any way connected with such events), we consider it to be a good practice, but **in such cases, the SAO should nevertheless explain the existence of the characteristics of the criminal offence, which did not happen in some cases.** Similar approach could also be taken with persons of legal age **by pronouncing special obligations along with suspended convictions,** which has also not been observed**.**

- There is a considerable lack of uniformity when it comes to **the application of the safety measure of banning access to the Internet and the measure of seizing things,** and such measures are not explained. Their proportionality is also questionable. Given that in practice, it is very difficult to enforce the measure of banning access to the Internet, but also in order to meet the principle of proportionality, it is recommended *de lege ferenda* (in that part this recommendation has a normative character) narrowing down this measure to banning access to certain content (e.g. social networks), or banning certain activities on the Internet (e.g posting of public announcements) connected with the commission of the offence. **In the case of the contrary, such a measure is of a punitive character. The same is the case with seizing things which should, in principle, be pronounced only when dealing with things**

meant for, or adapted, to commit HS, and not with objects of general use, such as IT equipment or mobile phones.

- When a criminal offence from Art. 325 paragraph 4 of the CC is concerned, it is necessary to describe the fulfilment of the element of "appropriateness" - the appropriateness of a statement that publicly approves, denies or significantly diminishes the international crime to incite violence or hatred against a group or members of a group due to racial, religious, national or ethnic affiliation, origin or skin colour. When it comes to denying international crimes that have not been adjudicated, if it is not a notorious fact, it is necessary - based on the available credible sources (e.g. criminal reports, decisions on initiation of investigations, indictments) - to first consider whether the criminal offence in question can be classified as an international crime (genocide, crime of aggression, crime against humanity or war crime).

5.3. Recommendations for processing misdemeanours

- When drafting indictments and judgments for Art. 25, paragraph 1 of the ADA, the **recommendation is to state the special intent in the factual description**, i.e., to state with which goal the perpetrator acted in terms of fulfilling the elements of this misdemeanour, because some cases, although they substantively represented a misdemeanour from Art. 25. ADA, resulted in acquittals due to insufficient factual description of the perpetrator's intent, in the court's opinion.

- When determining whether a violation has been committed under Art. 25 ADA, **the recommendation to the police is to establish the identity of the persons whose dignity was violated** - even if it was more than one person to whom the discriminatory speech was directed (e.g. persons in a gay club, persons who are members of a gay civic association, members of a sports team from Serbia, etc.). This is important in view of the controversial point of view expressed in the part of case law according to which, in order to determine the realization of the offence from Art. 25 ADA there is a need to invite to a hearing and interview the person to whom the discriminatory speech refers. This is a pragmatic recommendation based on the observed point of view, given despite our position that the violation of dignity can, as a rule, be objectively established.

- Given that Art. 5. AMAPOP does not contain a characteristic of hatred/bias, it is necessary to **always state the protected characteristic(s)** to which the content of hate speech refers **in the indictment** - in order to fulfil the requirement of establishing discriminatory motives in the light of ECtHR case law. In doing so, the courts should use the opportunity provided by Art. 36, paragraph 2 of the MA, and **when determining the punishment, consider the motive of hatred or prejudice as the motive from which the offence (against public order and peace) was committed as an aggravating circumstance**, which was not observed in any of the analysed cases.

- The presence of violation of public order and peace must be explained when it comes to a violation from Art. 5. AMAPOP committed online, while in the context of the application of Art. 5. AMAPOP on **online HS content committed abroad** that can be accessed in Croatia, it is necessary to explain the territorial criteria for misdemeanor prosecution in terms of fulfilling the element of disturbing public order and peace in the territory of the Republic of Croatia.

- It is our recommendation that the position must consequently be adopted by the courts that the so-called ideal concurrence of misdemeanour referred to in Article 25 of the ADA with other misdemeanours is possible. In that context, the characteristics of all misdemeanours committed on the same occasion must be clearly stated in a factual and statutory description within the indictment. Thus, where one misdemeanour is not proven, the possibility of sanctioning the other one would be preserved.

5.4. Exercise of the rights of victims

- Due to a very small number of individual victims of HS in criminal and misdemeanour cases covered by this research, and an even smaller number of the victims having reported the offence, those interviewed as witnesses and/or who participated in the proceedings in any other way, in the context of this project, it was not possible to conduct a relevant empirical analysis of the exercise of the rights of victims. It is well-known, and also laid down in the Victims' Directive (Directive 2012/29/EU) that this group of victims is one of those deserving special attention because of the nature of criminal offences to which they were exposed, particularly in the context of carrying out their individual assessments to establish special forms of protection. The Ministry of Justice, Public Administration and Digital Transformation (hereinafter: MJPADT) are recommended to analyse whether the existing

forms of support given to victims satisfy their needs, no matter whether they take part in the proceedings or not.

5.5. Training

- We recommend continuous training of police officers, state attorneys and judges, as one of possible efficient models of integration of all the recommendations into the practice of all relevant shareholders. Taking into consideration the nature of some problems identified in the research, **it is desirable that such training be organized jointly for the law enforcement and the judiciary and carried out in the form of workshops.**

- In the focus groups, the need for training organised for law enforcement, i.e. the police officers of the regular police, in terms of learning how **to draw up indictments**, was highlighted. Because of the deficiencies of the legislative framework when speaking of HS and HC misdemeanours, it is extremely important that the element of hatred be clearly described in the factual description of offences and where it is possible, expressed in legal classifications.

- It is recommended, when processing HS, to pay special attention to the **context of perpetration** which determines whether the act is a criminal offence, a misdemeanour or some non-punishable behaviour. This aspect of HS processing should also be included in training curricula.

List of abbreviations

ADA - Anti-discrimination Act (Official Gazette Nos 85/08, 112/12)

AMAPOP - Act on Misdemeanours against Public Order and Peace (Official Gazette Nos 41/77, 52/87, 47/89, 55/89, 05/90, 30/90, 47/90, 29/94, 114/22, 47/23)

APDSE - Act on the Prevention of Riots at Sporting Events (Official Gazette Nos 117/03, 71/06, 43/09, 34/11, 114/22)

Art. - Article

CC - Criminal Code (Official Gazette Nos 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24)

CoE – Council of Europe

CPA - Criminal Procedure Act (Official Gazette Nos152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 130/20, 80/22, 36/24)

DEM - Deutsche Mark

ECtHR - European Court of Human Rights

ECHR - European Convention for the Protection of Human Rights

EUR - Euro

GEA - Gender Equality Act (Official Gazette Nos 82/08, 69/17)

HC - hate crime

HRK - Croatian Kuna

HS - hate speech

JCA - Juveniles Court Act (Official Gazette 84/11, 143/12, 148/13, 56/15, 126/19)

MA - Misdemeanour Act - (Official Gazette Nos 107/07, 39/13, 157/13, 110/15, 70/17, 118/18, 114/22)

MJPADT - Ministry of Justice, Public Administration and Digital Transformation

NDH - Independent Croatian State

OESS - Organisation for Security and Co-operation in Europe

PAA - Public Assembly Act (Official Gazette Nos 128/99, 90/05, 139/05, 150/05, 82/11, 78/12, 114/22)

Para. - Paragraph

RoC - Republic of Croatia

SA - State Attorney/State Attorney's Office