

Hate Speech IN LITHUANIA

Frequently Asked Questions (FAQ)

INFORMATIONAL GUIDE



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About the Human Rights Monitoring Institute

Human Rights Monitoring Institute (HRMI) is an independent non-governmental organization founded in 2003. Its mission is to promote an open democratic society through the consolidation of human rights and freedoms.

The Institute carries out daily monitoring of public authorities' and the courts' activity, publicly responds to actual or potential human rights violations, conducts research, provides conclusions and recommendations, initiates strategic litigation, organizes campaigns and events aimed at increasing the public awareness and understanding of human rights.

Priority areas of action: the fight against racism, anti-Semitism, xenophobia, homophobia and other manifestations of intolerance and discrimination, the right to respect for private life, including the protection of personal data and privacy protection in cyberspace, the right to a fair trial, including judicial authority organization and functioning, the rights of the persons living in the closed institutions including, primarily, the patients of mental health institutions and orphanages or other specialized educational institutions.

About the Publication

*"Liberty means responsibility.
That is why most men dread it"*

(George Bernard Shaw, "Man and Superman")

In recent years, public discussion about the hate speech has intensified. Successful legislative initiatives to ban public denial of genocide and the Soviet aggression perpetrated against Lithuania and the first lawsuits have caused ambiguous response. Each month, the media reports on cases opened against Internet commenters. Such articles are accompanied by the new wave of hatred and discontent regarding the restriction of the freedom of expression.

This informational guide is aimed at answering the questions that a number of journalists and other people who encounter the phenomenon of intolerance and hatred face.

What hate speech is, and how is it expressed in Lithuania? Is Lithuania the only state to restrict its citizens' right to freedom of expression? Can the right of expression be limited in the first place? Who are targeted by demeaning words, and who those commenters behind anonymous nicknames usually are? How should one respond to the incident of hate speech? "Hate Speech in Lithuania: FAQ" seeks to provide answers to those and many other questions.

We express our acknowledgements to Dr. Indrė Isokaitė and the Prosecutor of the Lithuanian General Prosecutor's Office Rimvydas Valentukevičius for the contribution to this informational guide.

We will appreciate any comments and feedback from our readers.

What **Hate Speech** is?

Hate speech is the public dissemination (oral, written) of information (ideas, opinions, knowingly misrepresented facts) expressing contempt, inciting to hatred, discrimination, abuse, physical violence against a group of people or a member of that group because of his/her gender, sexual orientation, race, ethnicity, language, descent, social status, religion, beliefs or opinions. Such kind of information usually creates pressure in society and promotes intolerance towards the attributes other than those of the majority, thus jeopardising the peaceful co-existence of people and creating the conflict-prone environment.

Hate speech emphasises national, religious and racial exclusiveness or superiority alleging that one group of people is superior over another according to certain attributes, due to the imperfection of the latter, such as its natural, biological, and social imperfection or moral decline and depravity [see 10. Where Can I find More Information? 34, p. 13]. The goal of the hate speech is to insult and humiliate not just one person, but the entire group of people.



Hate speech:

- Builds a negative ethnic, racial, national, religious or other stereotype and negates the image of a certain nation, ethnic group, race or religion;
- Attributes negative qualities and vices of certain individuals to the whole nation, ethnic, religious or other group of people, or a race;
- Exalts one nation, race, religion, social, linguistic or other group of people or gender over the other;
- Imposes the guilt and responsibility for unlawful or immoral acts of certain individuals on the whole ethnic, racial, religious or other group;
- Asserts that one national, ethnic, religious or other group or race has covert plans or plots towards other groups or races;
- Calamities and maladies of the past, present and future are assigned to the existence and targeted activity of certain ethnic, racial, religious or other groups;
- Advocates actions against a certain nation, race, religion, gender, social or non-traditional sexual orientation or other group of people mentioned in the criminal law;
- Promotes or condones genocide towards the representatives of a certain national, racial, religious, social or other group of people mentioned in the criminal law, as well as other crimes against humanity and war crimes including deportations and other repressions;
- Requires to displace the representatives of a certain national, racial, religious or other group of people mentioned in the criminal law of various spheres of activities (political, social, cultural, employment, economic or others);
- Requires to restrict the rights and freedoms of citizens or other individuals or to create privileges for one or several groups of people based on their national, racial, social or other group according to the group attributes as defined in the criminal law;
- Threatens or incites violence against a group of persons or its individual members defined by certain racial, national, ethnic, language, gender, religious, sexual orientation or other traits mentioned in the criminal law [34, p. 14].

Denial or gross trivialisation of genocide, war crimes, and crimes against humanity is regarded as one of the hate speech types. The denial of Holocaust is a specific category of racial expression composed of the two main aspects: (i) the denial and rejection of the crime against humanity, and (ii) hate speech against the Jewish community [18].

The statement of facts **IS NOT HATE SPEECH**. The statement of correct and verified facts has no negative emotional impact and is not aimed at building a negative attitude. Therefore, for example, the report that, based on the specific sociological research, Roma are the least educated social group in Lithuania, should not be considered as hate speech. The objective of presenting such information is to draw attention to the problem rather than to consolidate the stereotype of the national feature inherent to a certain group of people in the public mind [34, p. 13].

How **Hate Speech Manifests** Itself in Lithuania?

In Lithuania, hatred is usually incited in cyberspace: online comments, social networks (for example, by creating Facebook groups that incite to hatred), and forums. Over 90% of hate speech cases are accounted to this environment. In some cases, people are discerned by insulting, contemptuous, offensive comments

about their ethnic, descent or other reference in public places such as streets or city parks. Derogatory and disparaging slogans and songs have been documented also during the rallies on March 11.



Below are the examples of incidents that the national courts considered to be hate speech:

In 2006, within Anykščiai town, V.V., who was driving in a car past the citizen M. M., publicly mocked the latter through the open car window calling him "čiorka" (degrading name for people of Asian origin) in front of witnesses, later repeating such actions in Bikuva store in Anykščiai and later in the parking lot near this store, by adding that "people such as him should be deported from Lithuania" and using obscene epithets to name the victim. Later, on the steps near Norfa store, in front of the surrounding people, the citizen A.V. (the son of V.V.) mocked M.M. by calling him "čiorka", pointing out that "foreigners are not welcome here" and using harsh epithets on him.

(From the decision of Panevėžys district court in criminal case No 1A-407-337/2009)

On March 11, 2008, at around 16:00, young skinheads marched from Katėdros Square along Gedimino prospektas and Vasario 16 street towards Taurus Hill, chanting and inciting hatred. They sang the songs "Ant kalno mūrai..." ("Castle on the hill...", a national song), "Lipo žydas kopėčiom..." ("The Jew climbed the ladder...", anti-Semitic song), "Viens du trys su pusė, graži Lietuva be rusų..." ("One two three and a half, Lithuania is nice without Russians...",) and chanted the slogans "Lithuania for Lithuanians," "Juden-raus" and others. After receiving a report about a group of young men (about 200 people) some of whom were skinheads (about 70 people), getting together and starting a march, the police arrived to the scene and escorted the march, whilst observing

the participants. The crowd was carrying not only the Lithuanian, but also the Latvian flag and a black flag with a swastika. The majority of the participants were dressed in black jackets and camouflage pants.

(From the decision of Vilnius city district court in criminal cases No 1-510-648/08; No 1-403-784/08; No 1-181-648/09; No 1-40-784/09; No 14-1-00927-09; No 1-608-497/09)



(Nuotraukoje – po 2011 m. kovo 11 d. ant sinagogos Vilniaus mieste atsirado užrašas „Juden raus“ (liet. Žydai – lauk).)

On April 2, 2007, on the Internet news portal www.delfi.lt in the comments following the publication of the A. Vinokuras' article "A. Vinokuras: apie Lietuvos žydų restitucijos problemą" ("About the restitution problem of the Lithuanian Jews") the individuals nicknamed 'lietuvis' 'antisemitas', 'neantisemitas' and others incited to hatred against the Jewish people, mocking and scorning them and provoking hatred towards them particularly with the comment "The Lithuanians who massacred Jews are the real heroes. We should build them a monument in Paneriai."

(From the decision of Vilnius city 1st district court in the criminal case No 1-250-88/2008)



Usually in Lithuania, the victims of hate speech are people of another race or nationality (black, Jews, Roma, Poles, Russians), religion (Muslims, Jews, Jehovah's Witnesses), homosexuals and transsexuals. Statistics shows that in 2012 out of 263 recorded crimes of hate speech, 181 were related to the incitement of anti-Semitism and hate speech against various nationalities or ethnic groups

(Jews, Roma, Russians, Poles) (48 such crimes in 2011), 13 recorded crimes were related to hate speech against the black race or its representatives (12 such crimes in 2011), and 47 recorded crimes – to hate speech against LGBT persons (208 such crimes in 2011) [48].

It is important to remember that incidents of hate speech affect not only the members of the specific groups. The greatest harm is made to the society at large because hate speech creates the atmosphere of insecurity undermining mutual trust and peaceful coexistence.

What **Liability for Hate Speech** is Provided for in the Lithuanian Legislation?

The liability for hate speech is provided for in the Chapter XXV of the Criminal Code of the Republic of Lithuania entitled “Crimes and misdemeanours against a person’s equal rights and freedom of conscience” [3]. The title of the Chapter makes it clear that the chapter contains the list of acts attempting to undermine one or both of the values, i.e. equality and freedom of conscience.

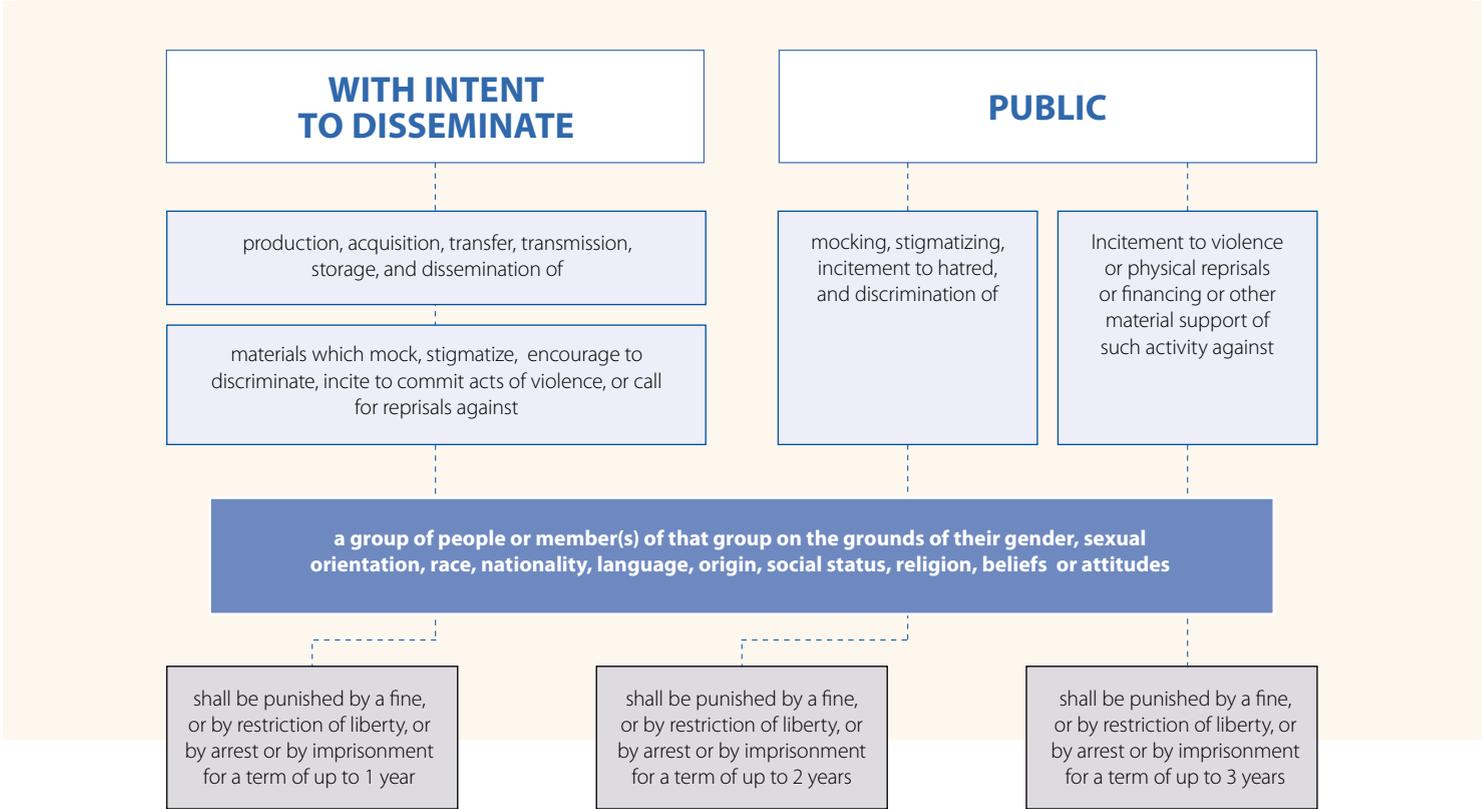
EQUAL RIGHTS, also known as the principle of equality or non-discrimination of individuals, is one of the fundamental principles of human rights. The Lithuanian Constitutional Court has held that the constitutional principle of equality of all citizens under the law should be considered as violated if a certain group of people to which the legislative norm is applied is treated in a different way compared with other groups of people subject to the same norm, although the groups do not have differences in size and nature to objectively justify such difference in treatment. Additional information about the forms of discrimination and liabilities is explained in the Law on Equal Opportunities for Women and Men of the Republic of Lithuania [9] and the Law on Equal Opportunities of the Republic of Lithuania [8].

FREEDOM OF CONSCIOUSNESS is derived from the principles of humanism, tolerance, and the worldview pluralism, and is understood as the person’s freedom to practice the chosen religion, follow and spread his/her religious views as well as the freedom to refuse any religious and to spread the atheism views. The freedom of conscience is broader than the freedom of religion, since it incorporates not only the right to be religious and belong to any religious community, but also the right to hold to one’s opinions, which are not based on any religious doctrine, and not to be in the position worse than the representatives of a religious movement.

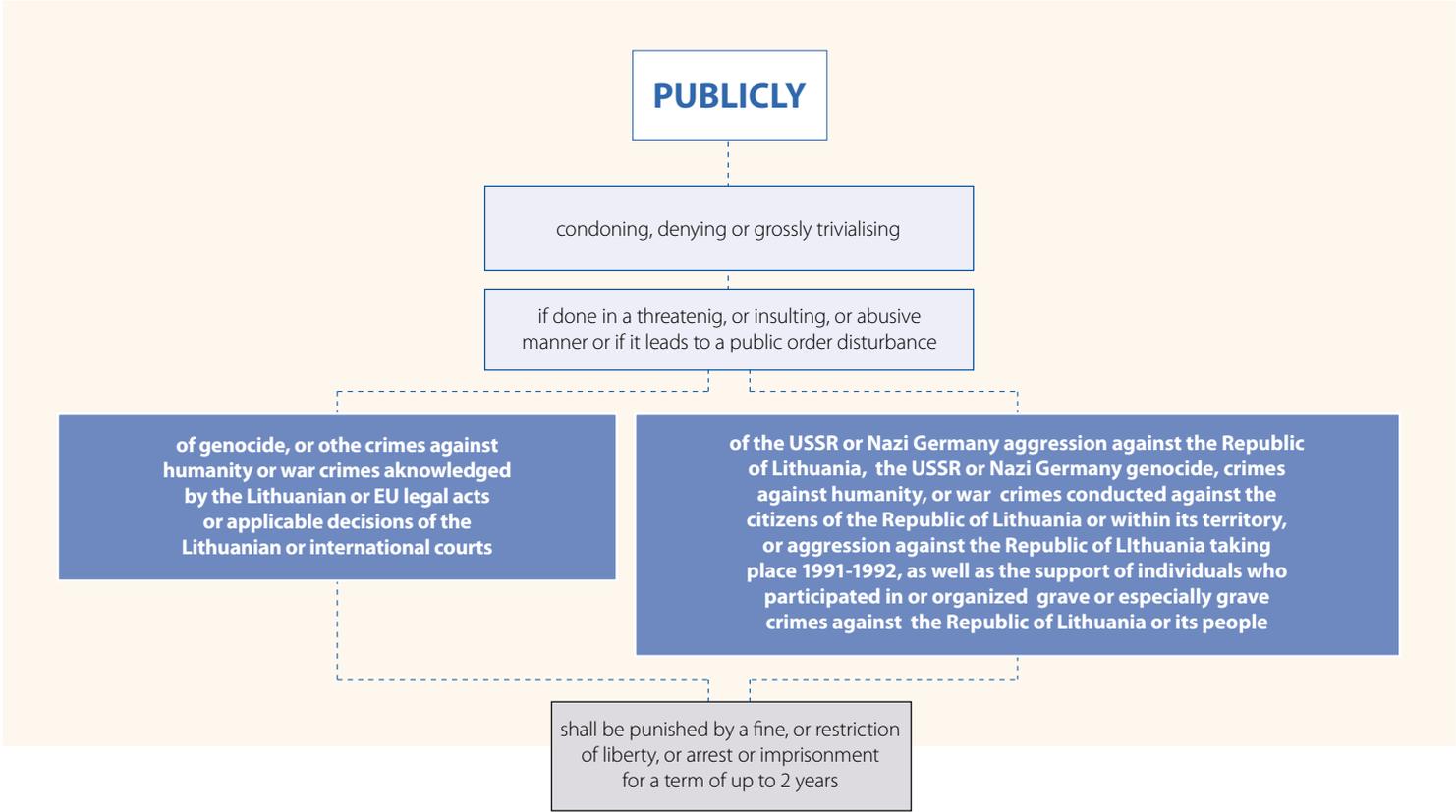


The liability for hate speech is provided for in Articles 170 and 170(2) of the Chapter “Crimes and misdemeanours against a person’s equal rights and freedom of conscience” of the Criminal Code.

Article 170, parts 1, 2 and 3 of the Criminal Code:



Article 170(2) of the Criminal Code:



The legal person such as a company, institution or an organization can also be held responsible for these acts.

The same Chapter of the *Criminal Code* encompasses crimes of discrimination on the basis of gender, sexual orientation, racial, national, language, descent, social status, religion, opinions or convictions (Article 169 of the *Criminal Code*) as well as for hindering of religious worship or ceremonies. These actions also violate values protected in this Chapter such as the equality and (or) the freedom of conscience. However, they are not considered to be a form of hate speech and therefore will not be discussed in this publication more extensively (More information can be found in the section 8. *Are Hate Crimes and Hate Speech the same thing?*).

The liability for hate speech was already provided in the new *Criminal Code* adopted in 2000 (entered into force in 2003). However, since 2009, the Chapter “Crimes and misdemeanours against a person’s equal rights and freedom of conscience” has been amended and supplemented several times. For example, prior to the adoption of the amendments on July 9, 2009 [5], the liability for the production, storage, distribution, or public demonstration of information promoting ethnic, racial or religious strife as well as for the establishment of organizations promoting ethnic, racial or religious strife and the membership in

them was prescribed by the *Code of Administrative Violations of the Republic of Lithuania*. Later, those provisions were transposed to the *Criminal Code* by amending Article 170 and adding a new Article 170(1). Finally, in 2010, the Chapter was supplemented with Article 170(2) “Public approval of international crimes, the crimes of the USSR or Nazi Germany against the Republic of Lithuania and its people, and denial or gross denigration of those crimes” [6].

The majority of pre-trial investigations regarding the crimes against the equal rights of persons and freedom of conscience are opened and carried out under the Article 170 concerning incitement against any national, racial, ethnic, religious or other group of persons. Statistics shows that in 2012, pre-trial investigations concerning criminal offenses against equal rights of persons and freedom of conscience were conducted in at least 172 criminal cases including the cases initiated in the previous years, of which: 5 pre-trial investigations concerning discrimination were conducted under Article 169, while the rest - 167 pre-trial investigations concerning hate speech - were conducted under Article 170 of the *Criminal Code*. To compare: in 2010 a total of 213 pre-trial investigations were carried out, including 2 under Article 169, 210 – under Article 170, and 1 concerning denial or gross trivialisation of crimes of genocide, crimes against humanity and war under Article 170(2) [45, p. 8].

What Hate Speech Laws in Other Countries are?



The European model v the U.S. system

The evaluation depends on the starting point. The Lithuanian legal tradition stems from the European system based on the “progressive” approach. It justifies the broad limits of the expression (self-expression) since this serves the common good, helps to inform the civil society and ensures the state’s accountability to its citizens. According to the “progressive” approach, hate speech does not hold any added value for the well-being of the states but, instead, causes damage to the victims, therefore, this kind of speech should be forbidden and individuals disseminating it should be held liable. Basically all countries with the European legal tradition prohibit hate speech and impose criminal penalties for such offenses.

In the U.S., the situation is slightly different. The American society is guided by the “liberal” position for which free speech is an essential part of a free and just society. The speech is considered to be a value not because it holds an added value but *per se*. Because of this tradition, states cultivate far more critical approach to the limitations of the free of speech while efforts to consolidate those restrictions are blocked.

Below you will find the comparison of the liabilities for hate speech applied in different European countries and the information about the understanding of the boundaries of the free speech in the USA.



Member States of the European Union

The European Union Member States are bound by the legislative acts adopted by the EU. The states should transpose the norms of the EU legislative acts to their national legal systems. The European Union expressed its position concerning hate speech by adopting the *Council Framework Decision 2008/913/JHA of November 28, 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law* [14]. Under this Framework decision, the Member States committed to establishing criminal liability in their legal systems for such actions as public incitement to violence or hatred directed against a group of individuals defined by the reference to a certain race, colour, religion, descent or national or ethnic origin or a member of such group; for the incitement dissemination through the public distribution of written, video or other materials as well as for the public acceptance of genocide crimes, crimes against humanity and war crimes; for the refuse to recognize these crimes and for their gross denigration in case (or when) the offenses may incite violence or hatred against such a group or a member of that group.

These provisions explain why hate speech is a crime in the European Union Member States. It also becomes clear that the Republic of Lithuania was obliged to change the provisions of the Chapter “Crimes and misdemeanours against equal rights of persons and freedom of expression” of the Lithuanian *Criminal Code* because the framework decision regulations had to be implemented by November 28, 2010 (see more in section 3. *What Liability for Hate Speech is Provided for in the Lithuanian Legislation?*)

All Member States of the European Union have criminalized racism and xenophobia incitement that is hate speech against an individual or a group of indi-

viduals due to their race, ethnic origin, religion or nationality [30, p. 42]. Other features of the individual or a group of individuals characterizing the victim(s) of crimes differ across EU. Twelve European Union Member States including Belgium, Denmark, Germany, Estonia, Spain, France, Ireland, Lithuania, Netherlands, Portugal, Romania and Sweden have also included sexual orientation in their criminal laws or other special legal acts dealing with criminal liability (for example, anti-discrimination legal acts adopted in Belgium and Romania) [28, p. 122; 29, p. 41-43].

Some countries have distinguished other grounds, for example “membership in a nomadic community” (Prohibition of Incitement to Hatred Act, Ireland [13]), “gender, language, political views, financial or social status” (The Criminal Code, Estonia [12]), “heterosexual or homosexual predispositions, physical, appearance or psychical deficiencies” (The Criminal Code, Netherlands). The list of protected grounds is still open in ten countries [28, p.124].

The majority of the aforementioned EU Member States indicate that in order to qualify as a criminal offence, hate speech should be expressed publicly, openly

(Estonia), among the members of the society (Finland), should be aimed at a wide-spread occurrence (Denmark) or should draw public attention (France). Italy, Malta, Spain and Latvia do not indicate publicity as the prerequisite for the case initiation [30, p. 42-44].

The form of punishment, the maximum imprisonment term and the fines also vary in different countries. For example, Austria and Denmark may punish the criminal acts discussed above by imprisonment of up to two years, while in Estonia, Latvia and Poland, it may result in imprisonment of up to three years. The imprisonment time may be extended if the performance is accompanied by such aggravating factors as bodily injury, property damage, fraudulence, the role of the perpetrator (organizer, accomplice). All Member States alternatively provide the lighter penalty - a fine. In some countries, for example, in Ireland, both individuals and legal entities can be held responsible for hate speech.

Therefore, the Lithuanian legal regulation of hate speech is almost identical to other EU Member States' legal regulation of hate speech. The biggest difference is seen by comparing these countries with the legal tradition of the U.S.



The United States of America and the First Amendment

The First Amendment to the Constitution of the United States of America states that:

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

This short formulation has been extensively developed in the U.S. courts’ case law. Experts claim that over more than 200 years of constitutionalism tradition in the United States, the Supreme Court invented a formula for protection of nearly an absolute freedom of expression. Any attempt of the state to restrict freedom of expression draws special attention and is rigorously scrutinised. However, this does not mean that under the U.S. law one can avoid punishment for threats, insults

or public disturbance. In 1919, the U.S. Supreme Court provided the following explanation in the case *Schenck v United States*:

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. <...>”. [26]

Restriction of free speech in the U.S., is subject to showing that advocacy of the use of force or of law violation is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

The case law of the U.S. Supreme Court is the best illustration of the essence of these requirements. In 1960, in Ohio, Ku Klux Klan held a public meeting during which armed participants burned a wooden cross and shared degrading and stigmatizing statements about Jews and blacks. In the case *Brandenburg v Ohio* the Supreme Court acquitted the active participant of that meeting because, according to the Court, the circumstances of the case did not allow concluding of a real danger but were rather a “pure advocacy” protected by the First Amendment [27, p. 809-810]. In 1992, the Supreme Court rendered the ordinance of

the Saint Paul city authorities to be unconstitutional (illegal). The ordinance provided for a penalty for actions such as cross burning, demonstration of the Nazi Germany swastika, and for speeches against groups of individuals regarding their race, colour, religion, faith or gender. The court stated that the speech cannot be prohibited solely on the basis of the subjects the speech addressed [27, p. 811-812].

It is important to note that the difference in the approach of the EU and the U.S. as to the limits of freedom of expression creates problems when prosecuting for the offenses the consequences whereof originated in Europe or specifically in Lithuania. This is especially pertinent to criminal acts that take place in cyberspace (Internet) - where the act is committed in one country and the effects appear in another. The offenders take advantage of this situation in the following way: they create web-pages on the U.S. web-servers and post hatred inciting information. The U.S. does not punish for such kind of activities rendering it impossible to shut these web-pages down. As a result, the information remains accessible for the citizens of the European countries as well.

Can the Words Be Dangerous?

The answer is yes. In this case, it is important to look back to the science of psychology and remember the Scale of Prejudice and Discrimination by the famous psychologist Professor Gordon Willard Allport, from Harvard University, United States of America [40], which was created after the World War II. The theory attempted to explain how the manifestations of intolerance could evolve into their extreme forms such as extermination and genocide.

The first stage is antilocution, when the majority of society allows themselves to freely make jokes about the minority using negative stereotypes in the speech. Such behaviour is known as degrading speech or intolerance and hate speech. Though people often think that words are not harmful, such words not only degrade the suppressed group's self-confidence and identity, but also set the stage for more severe outlets for prejudice.

The second stage is avoidance, when the majority actively avoids the minority and creates the hostile environment for the latter. Sometimes such behaviour is described by a term *xenophobia* meaning excessive malevolence or hostility to foreigners and everything that is foreign. At this stage the majority tries to isolate the minority so that it could not feel part of a society and expect help and support.

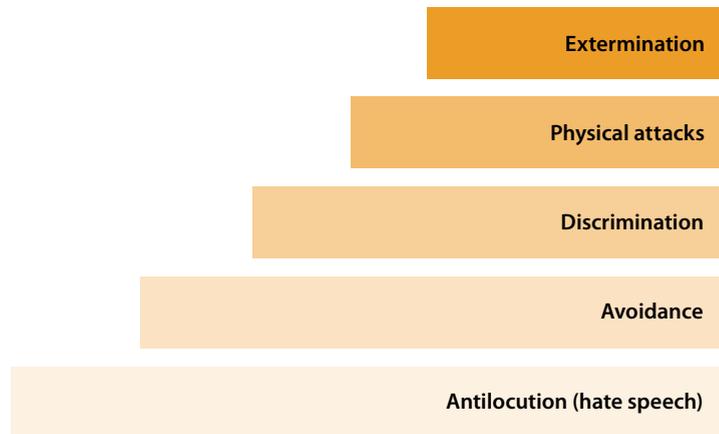
The third stage is discrimination, which already shows the active steps of the majority by denying the minority from exercising their opportunities and rights in different spheres. Artificial barriers are created for the oppressed group in accessing education, employment and ensuring their independent existence.

The fourth stage consists of physical attacks accompanied by the destruction of the minority's property and causing injury to health or life (for example, *pogroms* against Jews). Physical attacks, which are perpetrated by hatred towards

the groups of people just because of their race or other traits or features, are called hate crimes.

The fifth stage is extermination and is aimed at the destruction of the whole minority group.

Thus, according to the Allport scale, hate speech is not an individual phenomenon but the first stage of the intolerance pattern creating an environment where crueler and even extreme forms of intolerance flourish.



Interesting Facts

The historical facts also witness how words can lead to actions.

In 1945-1946 the Nuremberg International Military Tribunal tried twenty four Nazi Germany's political and military figures accused of war crimes, among whom was Julius Streicher.



Julius Streicher was one of the oldest members of the Nazi Party as well as the owner and the editor of the weekly anti-Semitic newspaper *Der Stürmer*. He was the only Nuremberg Tribunal criminal defendant accused not of making the specific decisions regarding the war or

genocide, but of persecution on political and racial grounds expressed by incitement to kill and destroy the Jews on the Nazi-occupied territories. In its judgment the Tribunal stated that Julius Streicher “in his speeches and articles, week after week, month after month infected the German mind with the virus of anti-Semitism and incited the German people to active persecution of [Jews]. (...) As the war in the early stages proved successful in acquiring increasingly more territory for the Reich, Streicher intensified his efforts to incite the Germans against the Jews. In 26 articles, which Julius Streicher published between August, 1941 and September, 1944 he demanded extermination in unequivocal terms.” Julius Streicher’s activity has been recognized as a crime against humanity and as a result he was sentenced to death [25, p. 129-131].

International Criminal Tribunal For Rwanda relied on the reasoning in Julius Streicher case when making a decision in the criminal cases concerning the Rwandan Genocide. Rwandan Genocide took place in 1994 and during which over half a million people were killed in Rwanda (Tutsis and moderate Hutus). In the “Media case” the founders and the directors of the extremist Hutu radio station Ferdinand Nahimana and Jean-Bosco Barayagwiza and the chief editor of the similar *Kangur* newspaper Hassan Ngeze were charged with persecution on the political and racial grounds for disseminating inciting information through their controlled media [24].

Does the Criminal Liability for the Expression of Opinion Infringes on the Freedom of Expression?

The freedom of expression is not absolute and can be limited. If the form or the content of expression transgresses the limits of protected speech, such expression can be legitimately restricted. The European Court of Human Rights (ECtHR) has developed a rich body of jurisprudence on Article 10 of The *European Convention on Human Rights* (ECHR) [1] where the question of free speech limits is addressed in detail.

As a party to the ECHR, Lithuania is obliged to interpret and apply its own laws taking into account the provisions of the Convention and the interpretations provided for by the European Court of Human Rights (ECtHR).

Article 10 of the European Convention on Human Rights:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 17 of the European Convention on Human Rights:

Nothing in this Convention may be interpreted as implying for any State, group or person

any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Freedom of expression is the fundamental human right

Freedom of expression is one of the fundamental human rights in the democratic society. Freedom of expression has a special status in comparison with other human rights because it is considered to be not only the outcome of democratic governance but also its basis. Without free debates and the pluralism of expression democracy cannot progress or survive

Freedom of expression includes the right to have and express one's beliefs (opinion), the right not to disclose one's beliefs (opinions) and the right to receive and impart information [33, p. 7].

So far, the ECtHR had the opportunity to handle only hate speech cases against an individual or a group of individuals due to their race, nationality, ethnic origin or religion, and sexual orientation while other grounds found in both criminal laws of Lithuania and other countries were not yet assessed. These cases can be conditionally divided into several groups: (i) incitement to racial hatred, (ii) incitement to religious hatred, (iii) incitement to hatred based on the ideas of ethnocentrism and nationalism, (iv) incitement to hatred against LGBT persons. Moreover, a specific category includes racist speeches which deny crimes against humanity (Holocaust) and incite to hatred against the Jewish community [31, p. 98].

Restricting freedom of expression: legal assessment

In determining whether the restriction of freedom of expression in a particular case complied with Article 10 of the ECHR, the ECtHR takes into account three main criteria. The Court assesses whether the restriction (i) was provided for in the law, (ii) pursued a legitimate aim, and (iii) was necessary in a democratic society [35, p. 29]. The Court interprets the restrictions narrowly while the freedom itself - broadly.

It is important to remember that the burden of proof of the legitimacy, accuracy and necessity of the restriction lies on a state.

In the hate speech cases the ECtHR specifically looks into (i) the objective of the expression, (ii) the context and the contents of the expression, (iii) the status (profession) of a person, who exercised his freedom of expression, and (iv) the extent of the information dissemination.

Taking all of the aforesaid into consideration, the ECtHR considers hate speech to be any form of expression which disseminates, incites, promotes or justifies hatred based on intolerance. In examining hate speech cases, the Court came to following conclusions:

- Freedom of expression constitutes one of the essential foundations of any democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. The exercise of the freedom of speech is conditional upon the obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights [16, § 37].
- Like any other remark directed against the Convention's underlying values, expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 of the Convention. [16, § 51].

- Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued [16, § 40].
- A political party whose leaders incite to violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds [17, § 49; 19, § 97; 20, §§ 46-47].
- The negation or revision of clearly established historical facts, such as the Holocaust, are removed from the protection of Article 10 by Article 17 [21, § 47].
- Disputing the existence of clearly established historical events, such as the Holocaust, did not constitute historical research akin to a quest for the truth. The real purpose of such a work was to rehabilitate the National-Socialist regime and, as a consequence, to accuse the victims of the Holocaust of falsifying history. Disputing the existence of crimes against humanity was, therefore, one of the most severe forms of racial defamation and of hate speech against Jews [18].
- Freedom of expression is important for all people but it is of particular importance for the representatives elected by the public: he or she represents his or her electors and defends their interests. However, the Court emphasizes that precisely because of this, it is especially important for the political leaders to avoid intolerance promoting statements when publicly expressing their opinions. The impact of racist and xenophobic discourse was magnified by the electoral context, in which arguments naturally become more forceful [22].

Who Can Incur Liability for Hate Speech in Lithuania?

The principle of personal responsibility

A person disseminating the statements of inciting nature is directly and individually responsible for his or her actions. This provision also applies in cases where inciting statements are disseminated in the online comments. According to *the Law on the Provision of Information to the Public*, media outlets (for example, *Delfi.lt* or *Lrytas.lt*) disclaim responsibility for damage made by comments posted on their portals. They could incur liability only in case they edit or otherwise contribute to the content of comments. Web-page managers are obliged to indicate the source of information, i.e. they are obliged to provide information to the law enforcement authorities (for example, IP address) when the investigations in hate speech cases are carried out.

Article 54 part 1 p. 4 of the Law on the Provision of Information to the Public:

Editorial responsibility shall not apply to a producer and/or disseminator of public information and they shall not be held liable for publication of false information where they have indicated the source of information and it has been published by participants of live programmes and internet conferences, viewers of interactive television or users of information society media who are not related to the producer of public information.

So far, no cases alleging responsibility of a legal entity for hate speech have been brought before Lithuanian courts.

Age criteria

According to the Lithuanian criminal laws, individuals who were of age 16 at the moment of criminal act are responsible for their acts. If during the pre-trial

Interesting Facts

On April 10, 2009, Estonian Supreme Court examining the case of *Vjatšeslav Leedo vs AS Delfi* held that *Delfi Estonia* Internet portal is also responsible for the comments posted on it. The Court indicated that in cases where readers' comments are of reviling, vulgar, demeaning or threatening nature, the portal administrator should not allow to post such comments. If, however, they are posted, the administrator should remove them as soon as possible. Estonian Supreme Court obliged the defendant to pay to the claimant, who was a target of the defaming comments, a total of 5.000 EEK (around 1103 LTL) to undo the damage [15]. On October 10, 2013 ECtHR considered that the domestic courts' finding that the applicant company was liable for the defamatory comments posted by readers on its Internet news portal was a justified and proportionate restriction on the *Delfi Estonia* right to freedom of expression. The Court took into account in particular "the insulting and threatening nature of the comments, the fact that the comments were posted in reaction to an article published by the applicant company in its professionally-managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to avoid damage being caused to other parties' reputations and to ensure a realistic possibility that the authors of the comments will be held liable, and the moderate sanction imposed on the applicant company" [15].

investigation the law enforcement institutions determine that a person allegedly inciting hatred was or is younger than 16 years old, the criminal proceedings concerning him are terminated. While children who committed offences cannot be prosecuted, their parents may be reminded of their failure to exercise their parental authority, Article 181 of the Code on Administrative Offenses envisages that a failure to exercise parental authority shall be punished by a warning or a fine of up to 400 LTL (for reoccurring offenses) [2].

In summer 2010, the tombstones, painted with the inscriptions disparaging and degrading the Jewish nation, were discovered in the Jewish cemetery in Bajorų village, Rokiškis district. The police found out that the offense was committed by two minors, 15 and 13 year old pupils. The young offenders repent for their criminal acts and said that they did not have national or religious reasons or hatred nor prejudices against that particular nation. The parents of the offenders incurred the administrative penalty [46].

Who incites hatred?

There is a number of “hater” types. The majority of them are just “thrill seekers”: these people tend to harass or attack random people. The most dangerous type are the so called “missioners” envisioning that they are to save the world from evil. Hatred offenses committed by groups of individuals with extremist beliefs and opinions, especially if these offenses are performed publicly (for example, graveyard desecration or building damage with offensive signs or inscriptions) tend to reoccur [42].

In Lithuania, some racist incidents such as a swastika and the corresponding inscriptions in public places, Nazi slogan chanting during football matches or heavy music concerts, Hitler’s birthday celebrations and Holocaust monument desecration are associated with the youth subculture known as *skinheads*, which are most active in Vilnius and Klaipėda cities. Due to their actions they often come to the focus of police and many of them incur criminal or administrative punishments [11].

A public opinion poll conducted in 2008 showed that news portal reading remains the most popular online activity. 71% of the portal visitors read comments once a month or more frequently and 18% write comments themselves. The majority of the comment authors are unemployed (32%), the elderly (24%), housewives (24%), students (22%) and specialists (15%). The majority of them are males living in big cities [32, p. 55-56].

Though the stereotype that hatred-inciting comments are written only by fooling teenagers is still prevalent, pre-trial investigation results suggest otherwise. A doctor working in the Prienai district hospital [37] and a music teacher working in one of Klaipėda schools [38] were sanctioned for hate speech. One doctor from Kelmė town received as many as two convictions for her online comments [39].



Are Hate Crimes and Hate Speech the Same Thing?

All offensive actions against individuals, society, property, if they are committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views, are known as ***hate crimes*** [34, p. 4].

The hate crime category includes not only hate speech (incitement to hatred, contempt, marginalization and psychological abuse) against the groups of people characterised by certain features, but also physical violence against them (killing, bodily harm), property crimes (property damage, vandalism, church and cemetery desecration) as well as other criminal acts [34, p. 4].

Hate crimes infringe on personal qualities that make up the core of one's personality and identity. Often, hate attacks are exceptionally offensive, violent, impudent, public, and visible, and that is why they have a negative impact not only on the social order and security, but also build unfoundedly negative social prejudices as well as negative opinion about certain groups of people or their members.

Regionally and internationally operating organizations, the member of which Lithuania is, consider tolerance and non-discrimination as their fundamental priorities and oblige their member states to criminalize hate crimes. For example, in 2005 the European Commission against Racism and Intolerance of the Council of Europe in its third report on Lithuania encouraged Lithuania to adopt a legal provision recognizing the racial motive as the aggravating circumstance. The United Nations Committee on the Elimination of Racial Discrimination also encouraged Lithuania to adopt such provision. On the seventh United

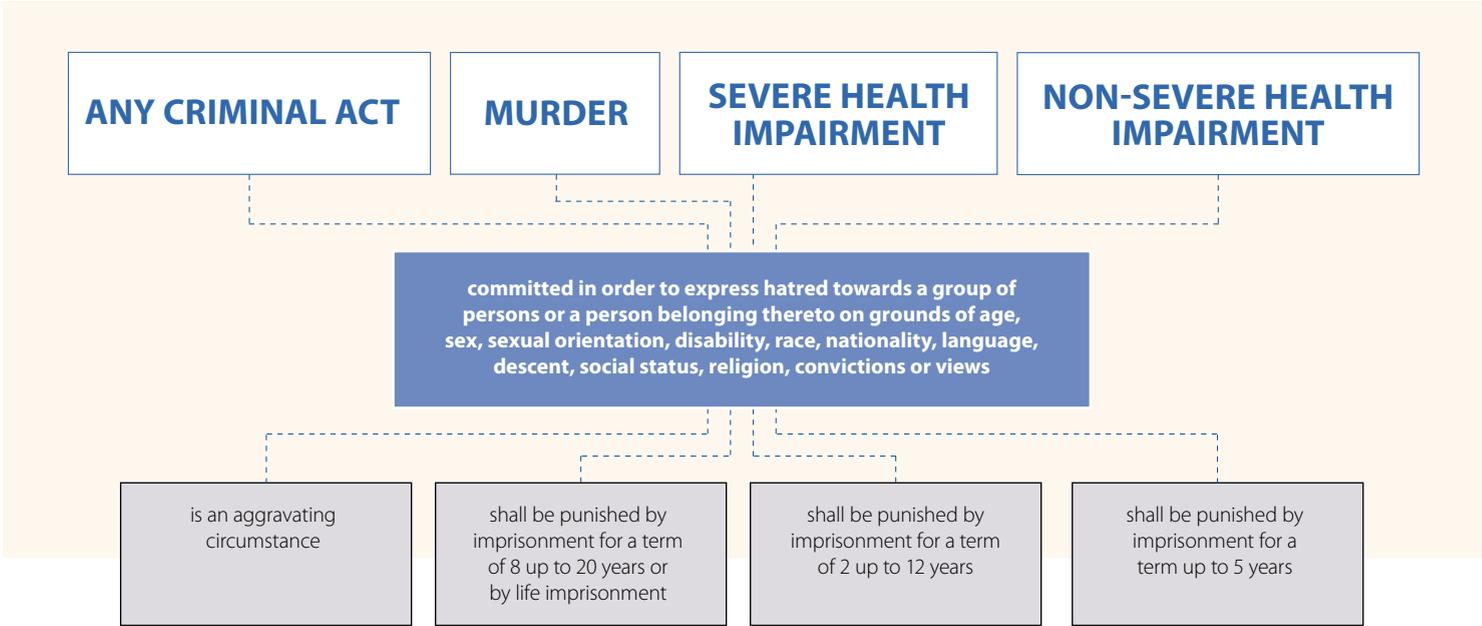
Nations Human Rights Council's session, the UN special rapporteur on racism Mr Doudou Diene presented the assessment of his visit to Lithuania in 2007 and made a specific proposal to supplement the Criminal Code by including racial motive as an aggravating factor [41].

Interesting fact

Not all experts agree on the theoretical classification of hate crimes, namely, on the classification of hate crimes by their types and forms. For example, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE ODIHR) believes that hate speech is outside of the hate crime scope. The organization states that hate crime is composed of two elements: (i) criminal offence, and (ii) hatred bias motive. Hate speech lacks the first essential element – criminal offence – because if the bias motive or the content is removed, there will be no crime. Therefore, hate speech is not considered to be a type of hate crime. On the same note, OSCE ODIHR states that incitement to physical violence or reprisal against people due to their racial, national or other affiliation, nevertheless is a hate crime because it has a base offence - “incitement to criminal acts” [36, p. 24-25].

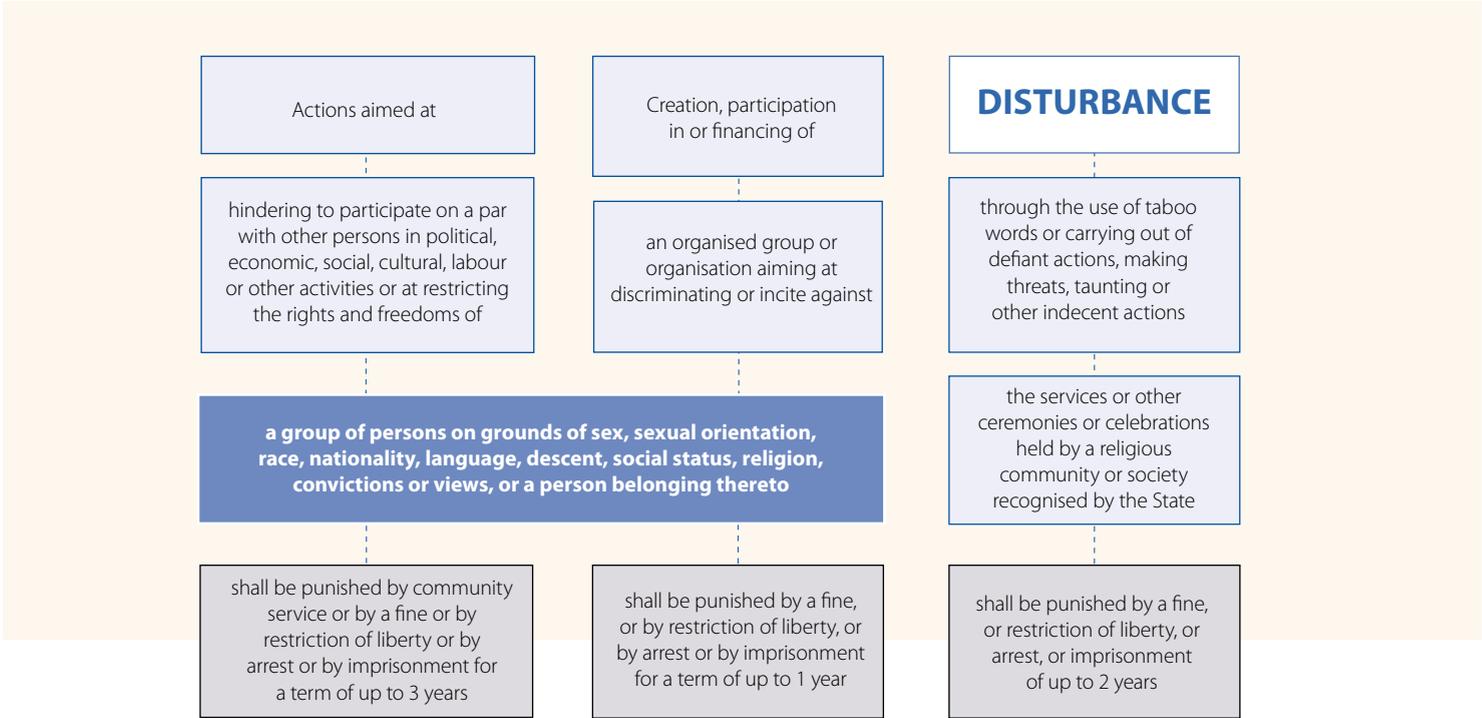
Lithuania established the liability for hate crimes in the *Criminal Code*. Crimes referred to as “hate speech” were discussed in section 3. *What Liability for Hate Speech is Provided for in Lithuanian Legislation?* while the remaining ones are graphically presented in the following way:

Article 60 part 1 p. 12, Article 129 part 2 p. 13, Article 135 part 2 p. 13, Article 138 part 2 p. 13 of the Criminal Code:



Offensive actions, which also may incite hatred include other actions listed in the Chapter “Crimes and misdemeanours against person’s equal rights and freedom of conscience” of the *Lithuanian Criminal Code*:

Article 169, 170(1) and 171 of the Criminal Code:



The Code of Administrative Offences of the Republic of Lithuania does not provide for punishments for crimes but rather regulates the liability for administrative offenses. However, one of its provisions is important if one seeks to understand the system of liability for hate speech in Lithuania.

Article 188(18) of the Code of Administrative Offences:

Dissemination or use at the public gathering or at any other mass event or other demonstration

of a flag, or an emblem, or flags, or signs or uniforms containing Nazi Germany, USSR, Lithuanian SSR flag or emblem, Nazi or communist organization symbols or uniforms, Nazi Germany, USSR or Lithuanian SSR flag or emblem, Nazi swastika, Nazi SS sign, Soviet hammer and sickle sign, signs and flags made of the Soviet red five-pointed star, images of the German nationalist and USSR communist party leaders responsible for the repressions of the Lithuanian citizens, and signing of Nazi Germany, USSR or Lithuanian SSR anthem

shall be punished by a fine of 500-1000 litas and the confiscations of the administrative offense instrument.

HOWEVER, a person is not responsible if all these actions are a part of museum activity, public education concerning the historical and current events, totalitarian regime, education, science, culture, collecting, antiques trading and swap meets as well as if such person uses the symbols of the currently existing state. World War II soldier wearing his uniform is also not responsible.

I Have Encountered Hate Speech. What Should I Do?

Who investigates hate speech cases?

Law enforcement officers are the first to respond to hate crimes and hate speech. In Lithuania, the pre-trial investigation is conducted by pre-trial investigation officers while the prosecutor opens the investigation and coordinates it. The prosecutor can decide to conduct part or the whole of pre-trial investigation himself or herself. Police is the main pre-trial investigation institution, though other institutions (State Border Guard Service, Special Investigation Service, Military Police, Financial Crime Investigation Service, Customs of the Republic of Lithuania, and Fire and Rescue Department) can also play the role in the pre-trial investigation if they come across criminal acts while undertaking their direct statutory functions.

The pre-trial investigation of hate crimes and hate speech is initiated and conducted in accordance with the *Code of Criminal Procedure of the Republic of Lithuania* [7]. The prosecutor or the pre-trial investigation institution decides to open the pre-trial investigation after receiving a complaint, a claim or a report of the offense. Also, the investigation is opened in case the attorney or the pre-trial institution officer identifies the elements of the crime and drafts the official report.

The report and a request to open a pre-trial investigation into a hate speech incident can be filed not only by the victim or a group of victims but by any person or organization which confronted that incident, such as a casual passer-by, a web-site visitor or a reader of the news.

Where and how should I report?

- *If the incident took place in the public place, for example: while being in the city centre you witnessed a black person being approached with degrading and stigmatizing*

expressions emphasizing and diminishing his race. In that case, your request should contain the date, time, and place of the incident, the words that were used, the number of offenders and their features, description of the direct victim and indication of other witnesses who could provide additional information. Video and audio materials made using different devices (cell phones, video cameras, cameras) are particularly appreciated by the investigation authorities.

The request can be submitted to the local police office¹ or the prosecution office.²

- *If hate speech appears in the printed media or online, for example: you have witnessed the online comment encouraging to exterminate the homosexuals.* In that case, your request should contain the source (the specific publication or the online portal, including the name of the specific article), date and time of the comment, information about the author (for example, his/her pseudonym or name) and the text of the comment. The printed web-page containing the comment would be a particularly helpful supplement to your report.

What are the next steps?

First of all, the institution will decide whether to open a pre-trial investigation or not. In the first case, a pre-trial investigation institution will have to identify an individual (or individuals) who allegedly incited hatred. After a person is identified, the following pre-trial investigation actions can be conducted: interrogation of

¹ The contacts of local police offices can be found at <http://www.policija.lt/index.php?id=3607>

² The contacts of the prosecution offices of the Republic of Lithuania can be found at <http://www.prokuraturos.lt/Strukturairkontaktai/Kontaktai/Kontaktopaie%ka/tabid/371/Default.aspx>

the offender, witness' and victim's interview, examination of evidence (for example, the computer). Often, not only prosecutors and police officers participate in the pre-trial investigation of hate speech incidents, but also experts of certain areas such as scientists, linguists, historians and semiotics specialists. These experts are requested to provide the findings. Usually, the officers conducting the pre-trial investigation seek help in organizations such as the Lithuanian Ethics Commission of Journalists and Publishers, Equal Opportunities Ombudsperson's Office, Institute for Ethnic Studies, Lithuanian Social Research Centre as well as the Lithuanian Institute of History. The findings provide a conclusion whether a certain expression is hate speech on the grounds of gender, sexual orientation, race, national, language, descent, social status, religion, and beliefs or attitudes.

The pre-trial investigation is completed by drafting the indictment, terminating the investigation, or, as is usually the case with hate speech cases, by issuing a criminal decree. The criminal decree issued by the court is a sentence handed down by the court without holding the case hearing, while in case of indictment the trial is held.

According to the data provided by the General Prosecutor's Office, in 2012 a total of 74 hate speech cases were handed over to the courts after the pre-trial investigation was completed. Twelve of them were handed over with the indictments, while others were accompanied by the prosecutor's statement to end the process with a criminal decree. In 2012, the courts of the first instance examined 62 hate speech and discrimination cases, out of those 60 were examined in less than 6 months [47].

The request regarding online hate speech should be submitted to:

The Lithuanian Criminal Police Bureau
Cyber Crime Investigation Board
Saltoniškių str. 19
LT-08105 Vilnius
informacija@policija.lt; cyberpolice@policija.lt
Telephone number for inquiries: (8 5) 271 9793

The request regarding hate speech in the national printed media or books should be submitted to:

The Prosecutor General's Office Of The Republic Of Lithuania
Rinktinės str. 5A
LT-01515 Vilnius
generaline.prokuratūra@prokuraturos.lt
Telephone number for inquiries: (8 5) 266 2305

It's important

The hate speech incident should be reported in writing: by mail or email. In the letter you should indicate your personal and contact details as law enforcement authorities may need to confirm the information and notify you about the progress of investigation.

Requests to open a pre-trial investigation on the hate speech incidents can be found on the website of the Human Rights Monitoring Institute under the *Public Statements (Viešas reagavimas)* section.¹

¹ Requests submitted to the HRMI to open a pre-trial investigation into the incident of hate speech can be found at <http://www.hrmi.lt/advokacija/viesas-reagavimas/kreipimaisi-i-generaline-prokuratūra/>

Where Can I Find **More Information?**

Information for the Informational Guide “Hate Speech in Lithuania: FAQ” was collected from Lithuanian, foreign and international laws, their *travaux préparatoires*, academic and hands-on literature, media monitoring data and expert consultations.

For more information please see:

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