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PROCEEDINGS OF CRIME ON THE SOURCE OF THE RACIAL, NATIONAL OR RELIGIOUS VOLUNTEER, OR DISAPPEARING, AS A MATTER WHICH CONSTITUTES PENALTIES

Given the large number of approaches to the theoretical foundations and peculiarities of the legal classification of crimes committed on the basis of intolerance against certain social groups, depending on such characteristics as race, color, ethnic origin, religious beliefs, etc., it is difficult, if at all possible, to give a single unified definition of the term "A crime on the basis of intolerance".

In the most general form, the crimes of intolerance characterize and distinguish from other types of crime a combination of two features: the guilty of an unlawful act that constitutes the crime, defined by the criminal law; Prejudice (hostility, intolerance)

regarding a certain sign of a person, which becomes the motive for committing an unlawful act in relation to it.

Crimes committed on the basis of hatred may be recognized as any crime, in particular against life, health or property, the object of which has been harmed by the actual or imaginary connection of the victim with a group characterized by common identities such as race , national or ethnic origin, language, color, religion, gender, age, mental or physical characteristics, sexual orientation or any other similar factor.

Analysis of the provisions of the criminal law allows to distinguish, depending on the design of the objective and subjective part of the crime, two groups of crimes related to racial, national or religious hostility or discord.

The first group forms crimes, where the legislator in the formulation of the disposition of the article of the Special Part directly points to such a motive crime. This group is in turn divided into two subgroups. The first subgroup is characterized by the fact that the motive of racial, national or religious hatred or discord is a sign of the core of the crime (Articles 161, 300, 442 of the Criminal Code). The second subgroup is formed by crimes, in the formulation of which the motive of racial, national or religious intolerance is a sign not of the basic, but of a qualified or especially qualified structure of the crime (Part 2 of Article 110, Clause 14, Part 2, Article 115, Part 2 of Art. 121, Part 2 Article 122, Part 2 Article 126, Part 2, Article 127, Part 2, Article 129 of the Criminal Code).

The second group forms crimes, where the presence of such a motive is not a mandatory feature of the crime (Articles 170, 178, 179, 180, 258, 294, 295, 296, 297, 298 of the Criminal Code of Ukraine). When formulating the disposition of such crimes, the legislator either does not specify the motive, or indicates its generic general features. Objective or subjective features of such a crime indicate the homogeneity of the motives of such a crime with the motive for racial, national or religious hatred or discord, or the presence of such a motive in the commission of a crime is not excluded, is a common occurrence. In such cases, damage to relationships that ensure the normal, even development of inter

racial, inter-ethnic or inter-religious relations, serves as an additional (mostly optional) direct object of criminal-legal protection.

The special approach of legislators to distinguishing crimes of the category under consideration is also enshrined in Article 3, part 1 of Art. 67 of the Criminal Code of Ukraine, in which the commission of a crime on the basis of racial, national or religious hatred or discord is fixed as a circumstance, aggravates the punishment. The general nature of the aforementioned norm stipulates that any crime, the composition of which is defined in the Special Part of the Criminal Code, may be considered as committed on the basis of intolerance and, therefore, deserve a more severe punishment within the maximum period prescribed by law.

At the same time, it is impossible not to mention that the application of paragraph 3 of Part 1 of Art. 67 lies in the exclusive jurisdiction of the court and may not be necessary for the latter. Part 2 of the Art. 67 of the Criminal Code provides that "the court has the right, depending on the nature of the crime, not to recognize any of the circumstances specified in paragraph one of this article, except in the circumstances specified in paragraphs 2, 6, 7, 9, 10, 12, which aggravates the punishment, giving reasons for its decision in the sentence. " Taking into account the public danger posed by the crimes of intolerance, the non-applicability of clause 3, 1 st. 67 of the Criminal Code of Ukraine is incomprehensible.

The second problem is the provision of the above paragraph of Art. 67 of the Criminal Code of Ukraine is its wording. It is too general and does not make it possible to understand, in particular, the judge, what exactly is meant by racial, national or religious hostility or discord, in particular, given that the term "discord" in the Criminal Code is used only in this paragraph, the term "hostility" - in two articles (Article 110 - Attacks on the territorial integrity and immunity of Ukraine and Article 161 - Violation of the equality of citizens depending on their race, nationality, religious beliefs, disability and other characteristics), and the rest of the articles of the Code, which establish liability for crimes of intolerance, contain the term "intolerance". The uncertainty of the terms "hostility", "discord" and "intolerance", as well as the inconsistency of their application in

various provisions of the Criminal Code, may cause the fact that today the provisions of paragraph 3 of Part 1 of Art. 67 have never been used in practice.

Also, a list of features specified in Art. 67 of the Criminal Code of Ukraine (as currently, and other provisions of the Code, which contain such a qualifying attribute as the motive of intolerance) as a aggravating circumstance of punishment for the commission of a crime on the basis of hostility, is considerably limited. Such attributes include only race, nationality (ethnic origin), and religious beliefs that do not fully reflect the prevalence of certain types of crimes committed on the grounds of intolerance on other grounds. In particular, such characteristics include sexual orientation, gender identity (transgender), political beliefs and disability. The failure to include these features in the relevant provisions of the Criminal Code of Ukraine actually means that in the investigation of crimes, the motive of intolerance on these grounds is ignored, and the punishment for a crime is imposed on general grounds.

Thus, in the absence of signs of Art. 161 of the Criminal Code, the actions of the perpetrator in such cases shall be qualified in other articles of the Criminal Code, using paragraph 3 of Article 67 of the Criminal Code, that is, with the mandatory establishment of circumstances that aggravate the punishment of committing a crime on the basis of racial, national or religious hatred or discord. However, in practice there are a number of problems associated with various reasons, including the reluctance of victims to contact law enforcement agencies, rarely correct, objective qualifications of the crime, and difficulty in proving. Most often, such reasons are, firstly, that victim representatives of minorities, foreigners rarely report crimes committed against them as representatives of certain groups (racial, religious, national, etc.). Secondly, after registering applications for committing crimes of the investigated category, there is a complexity of proof, as the core of the procedure is the detailed reflection in the materials of the criminal proceedings of the element of the subjective part of the crime - a special motive for the intolerance of the suspect to representatives of a particular race, nationality or religious group; or a special purpose - to fuel enmity

and discord. Thirdly, the opening of criminal proceedings on the facts of committing crimes aimed at incitement to racial, national or religious hatred and discord is usually due to the necessity of preliminary expert evaluation of campaign materials (printed matter, films), texts of public speeches (in mass media, meetings, concerts, etc.).