

## THE DARK SIDE OF SOCIAL MEDIA: HOW DOES CRIMINAL LAW BEHAVE? / Maria Antonella Pasculli

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**Abstract:** *The paper focuses on the mechanisms, offences and practices connected to unchartered (underdeveloped) crimes in the information society. The virtual world represents a central part of modern (modern) life, especially during the COVID-19 pandemic. Omnipresent social media, media sharing platforms, chat sites, web forums, and blogs radically change the way current societies operate. These instruments attract more and more attention from public security planners. This type of research is a normative legal study. The approach used is the law approach and conceptual approach. The legal material consists of primary and secondary legal materials. Basically, the Criminal law system has to adapt to social media to emphasise the legality principle (structure of cases in point) and guarantee measures (prohibition of broadening liability) in the post-modern world. This topic shall look at the role and the problems of criminal law related to multiple profiles, analysing the criminological aspects proposed below.*

**Key words:** *European Policies; Hate Speech; Social media; Criminal Law*

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### 1. STARTING FROM THE END AS A NEW BEGINNING OF "CRIMES": THE EUROPEAN POLICIES ON HATE CRIMES

According to the last communication from the Commission to the European Parliament and the Council on 9 December 2021,<sup>1</sup> the European Commission published a praenormative initiative to extend the list of EU crimes to hate speech and hate crime. The final purpose is to create "a more inclusive and protective Europe".

This *ambitious* initiative fits into the contest of EU actions already in place to counter illegal hate speech and violent extremist ideologies and terrorism online, such as Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain

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<sup>1</sup> European Commission (2021). *Communication from the Commission to the European Parliament and the Council: A More Inclusive and Protective Europe: Extending the List of EU Crimes to Hate Speech and Hate Crime*, Brussels, 9.12.2021 COM(2021) 777 final. The Commission reiterated that combating hate speech and hate crime is part of its actions to promote the EU's core values and ensure that the EU Charter of Fundamental Rights is upheld. Any form of discrimination, as laid down in Art. 19 TFEU, is prohibited. Hate crime and hate speech go against the fundamental European values set out in Art. 2 TEU.

forms and expressions of racism and xenophobia using criminal law,<sup>2</sup> the EU Code of Conduct on countering illegal hate speech online,<sup>3</sup> the proposed Digital Services Act,<sup>4</sup> the 2021 Regulation on addressing terrorist content online,<sup>5</sup> finally the EU Internet Forum.<sup>6</sup>

In this document, the working group by European Commission clearly explains the role of criminal law through well-structured steps: a) considering hate speech and hate crime as an area of crime (at the international level);<sup>7</sup> b) considering hate speech and hate crime as an area of particularly serious crimes;<sup>8</sup> c) considering criminal law response in the Member States.<sup>9</sup> As we can see, there are strong, effective indications for building and strengthening criminal liability for hate crimes.

The prevailing focus is on controlling freedom of expression, as one of the pillars of a democratic and pluralist society, due to the sharp increase in hate speech and hate crime in Europe during the past decade, especially through the use of the Internet and social media in pandemic experience. In this way, the balance between freedom of speech and hate speech is blown.

<sup>2</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. *OJ L 328*, 6.12.2008, pp. 55–58. Available at: [http://data.europa.eu/eli/dec\\_framw/2008/913/oj](http://data.europa.eu/eli/dec_framw/2008/913/oj) (accessed on 15.11.2022).

<sup>3</sup> The EU Code of conduct on countering illegal hate speech online. The robust response provided by the European Union. In *European Commission*. Available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online\\_en#theeucoodeofconduct](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en#theeucoodeofconduct) (accessed on 15.11.2022). The Code of conduct on countering illegal hate speech online was signed on 31 May 2016 by the Commission and Google (YouTube), Facebook, Twitter and Microsoft hosted consumer services (e.g. Xbox gaming services or LinkedIn). In 2018 and 2019, Instagram, Google+, Dailymotion, Snap and Jeuxvideo.com have joined. This means the Code now covers 96% of the EU market share of online platforms that may be affected by hateful content. See European Commission (2019). *Assessment of the Code of Conduct on Hate Speech on line. State of Play*. Available at: <https://www.statewatch.org/media/documents/news/2019/oct/eu-com-assessing-code-of-conduct-online-hate-speech-12522-19.pdf> (accessed on 15.11.2022).

<sup>4</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in the Member States concerning the provision of audiovisual media services. *OJ L 303*, 28.11.2018, p. 69–92. Available at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj> (accessed on 15.11.2022).

<sup>5</sup> Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online. *OJ L 172*, 17.5.2021, p. 79–109. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021R0784> (accessed on 15.11.2022).

<sup>6</sup> The EU Internet Forum is a Commission-led and voluntary-based initiative to work jointly with the tech industry and other relevant stakeholders to counter violent extremist content online.

<sup>7</sup> For example, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe issued a General Policy Recommendation No.15 on Combating Hate Speech in December 2015, available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.15> (accessed on 15.11.2022); Council of Europe Recommendation No. R (97) 20 of the Committee of Ministers to the Member States on "hate speech", available at: <https://rm.coe.int/1680505d5b> (accessed on 15.11.2022).

<sup>8</sup> European Commission (2021). *Communication from the Commission to the European Parliament and the Council: A More Inclusive and Protective Europe: Extending the List of EU Crimes to Hate Speech and Hate Crime*, Brussels, 9.12.2021 COM(2021) 777 final, pp. 9-12.

<sup>9</sup> "As a result of transposing the Framework Decision into national law, hate speech is criminalised in all the Member States on grounds of race, colour, religion, descent, national or ethnic origin. Furthermore, Member States have explicitly criminalised hate speech also for other protected characteristics: 20 Member States criminalise hate speech on grounds of sexual orientation and 17 Member States on grounds of sex/gender. In addition, 14 Member States criminalise hate speech on the ground of disability and 6 Member States on grounds of age. Moreover, 8 Member States have (either alternatively or in addition) criminalised hate speech without defining the protected characteristics of the groups, and leaving the criminalisation of hate speech open, aiming at protecting any minority group or part of the population." European Commission (2021). *Communication from the Commission to the European Parliament and the Council: A More Inclusive and Protective Europe: Extending the List of EU Crimes to Hate Speech and Hate Crime*, Brussels, 9.12.2021 COM(2021) 777 final, p. 13.

Ensuring the protection of speech through a criminal law response is a contradictory expression (Coe, 2015). We know that the law is a political and ethical *equilibrium* in multiple areas of common values.

The proposed extension of the list of areas of EU crimes to hate speech and hate crime is based on Art. 83(1) TFEU, which lays down an exhaustive list of areas of crime for which the European Parliament and the Council may establish minimum rules involving the definition of criminal offences and sanctions applicable in all EU Member States. The normative text justifies the extension by pointing out that hate speech and hate crime are so serious crimes because of their harmful impacts on the individuals and on society at large, undermining the foundations of the EU or international community as well. The EU strategies provided for the identification of hate speech and hate crime as a new, distinct area of crime. The practical challenges can involve an effective and comprehensive criminal law approach to these phenomena at the EU level and domestic level.

## 2. GENERAL BACKGROUND ON CRIMINAL LAW APPROACH

The context of the present research is aimed at focusing on criminal law enforcement. According to the pillars of the EU enlargement strategy, at the core of the research challenge is the elaboration of the concept: who protects who in a virtual world? What is the role of criminal legislation? Could the criminal law system be a real answer to the research questions related to hate speech et al. in social media?<sup>10</sup>

The thesis statement is to examine social media from the criminal perspective from multiple points of view (Salter, 2017). First of all, criminal law strongly opposes the use of social media by criminal offenders to organize or facilitate criminal events.

The primary purpose is the protection of victims, primarily the children. Consequently, criminal law facilitates the use of social media by law enforcement agencies to manage large gatherings of people, investigate crimes, or handle other events.

The criminal perspective seeks to figure out the development and consequences of the most important alternative to real crimes in the Society of Risk in a time of the collapse of the public security and the transformation of social control forms (Prieto Curiel, Cresci, Muntean and Bishop, 2020; Surette and Gardiner-Bess, 2014). There is an extensive body of literature examining legacy media and crime. According to Surette and Gardiner Bess (2014), the complex link between media and crime supposes multiple research lines, but there are plenty of hypothesis. So in few pages we'll draw from "cutting-edge criminological and discussing theories.

Information Technology and "social" telecommunication technologies have caused relevant changes in criminal law and criminal procedure, showing - first of all - how a crime could have its effects at many more locations than the place where the perpetrator acted. Google earth and social companies increase the *locus commissi delicti* in a virtual world, where a lot of people are online in different – technological - ways. Orwellian memories here we are! Big Brother is watching all of us because of the traces we leave. In a space of freedom to express and communicate, the Internet is a new big planet of possible, real offences.

The objectives of this contribution are divided into tasks:

a) criminal legal analysis: the paper will go beyond a traditional legal dogmatic analysis, as it aims to lay the foundations for a new conceptualisation of offences,

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<sup>10</sup> For more details, see Heinze (2022); Surette (2014); or Higson-Bliss (2020).

jurisdiction and *locus delicti*, conflicting jurisdiction, transnational dimension of cybercrime, criminal liability of legal entities; the searching of evidence in cyberspace; the age “below which it is prohibited to engage in sexual activities with a child”;

b) specific focus on children’s protection, especially for what concerns the potential threats such as (1) child exploitation; (2) production, distribution, and possession of child pornography; (3) exposure to harmful content; (4) grooming, harassment, and sexual abuse; and (5) cyberbullying.<sup>11</sup> The latest technologies make it easier for criminals to contact children in ways that were not previously possible. Children are particularly vulnerable to the exploitation of online predators because they rely heavily on networking websites for social interaction. Offenders use false identities (who is the perpetrator)? In chat rooms to lure victims into physical meetings, thus connecting the worlds of cyber and physical crime (Dombrowski, LeMasney, Dickson, Ahia, 2002, pp. 66-67). When this happens, virtual crime often leads to traditional forms of child abuse and exploitation such as trafficking and sex. The victims of online exploitation must live with their abuse for the rest of their lives (see Schurgin O’Keeffe, Clarke-Pearson, Council on Communications and Media, 2011);

c) dogmatic and sociological analysis of emerging trends in human behaviours, known as hate expressions, hate speech, and hate crimes;

d) the social perception of crime online; how media can change in expansion of crimes (terrorism).

### 3. SOCIAL MEDIA AND CRIMINAL LIMITATIONS OF SPACE

In the “jungle” of social media, criminal law helps to identify the offences beside national and international criminal systems regarding the principle of respect of legality (the rule of law and due process to guarantee compliance). What conduct is a crime in social media?

In respect of the legality principle, which conduct is a crime? Can we criminalize virtual sexual acts? And with which sanctions? Is the attempt, aiding, or abetting of these criminal conducts criminal offences? Virtual crimes have real-world victims.

According to legality, the criminal approach suggests we certainly acknowledge the offences beside national and international criminal systems, applying the principles of jurisdictions (territoriality, active and passive nationality, personality, universality).

Why is the criminal jurisdiction in social media such a big problem? Social media does not recognise the *locus commissi delicti*. Before a law enforcement agency can investigate a cybercrime case, it has to have jurisdiction. The first thing that must be determined is whether a crime has taken place at all (Klip, 2014).

Following national criteria to legally find *locus commissi delicti*, any principle - universality/territoriality et al. - could be simply applied without considering in this case conflicting jurisdictions.

Starting from the legal concepts to connect conduct to a certain place of commission, where is the *locus delicti* in cyberspace? For instance, Italian and French doctrines discussed on a-territoriality principle, as a form of “loss of location” (Klip, 2014, p. 387).<sup>12</sup> Which issues support a basic theory when an offence has been committed on its own territory and its effects are above around the globe? Which norms should be

<sup>11</sup> Cyber grooming, the use of the Internet by an adult to form a trusting relationship with a child with the intent of having sexual contact, is a criminal offence in several countries. This is in line with the provision of the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation (CETS 201) which criminalises sexual solicitation. See Quayle, Allegro, Hutton, Sheath and Löf (2014).

<sup>12</sup> For a complete report by 17 states see Klip (2014, p. 387 et seq.).

applied (the conduct or the effects of the crime respecting the territoriality; the atrocity of the crime, respecting the universal jurisdiction; the transnational dimension of crimes)? This is a crucial point that plays a significant role in practice and in legal theories. Recently, many authors have wondered how to solve the conflict between new computer cybercrime and traditional criminal jurisdiction has become a hot topic in the field of criminal law (Xiaobing and Yongfeng, 2018).

Traditional criteria are bound to make radical changes, which is unacceptable to all countries (Xiaobing and Yongfeng, 2018, pp. 795–796; Khalifa, 2020, pp. 26–42). Innovative hypotheses have been proposed: a) theory of new sovereignty, called the theory of 'network autonomy', or called 'radical independent jurisdiction theory', based on an independent virtual world with its own values and rules, as opposed to the real-world; b) theory of jurisdictional relativity by which computer cyberspace has new jurisdiction, as in the high seas, Antarctica and outer space, establishing new rules; c) theory of website jurisdiction, under two conditions, as spatially and temporally stability and the certain relationship between the website and jurisdiction. There is an interesting comparison of multiple criteria that merges tradition and evolution in virtual/real jurisdiction.

By the way, the location of the emerging crime such as the place of transmission, or website, the place of visit, and the location of the network terminal proposed are basically in accordance with the principle of territorial jurisdiction and personal jurisdiction, approaching the problem of space effectiveness to the traditional criminal jurisdiction system (Xiaobing and Yongfeng, 2018, p. 797).

#### 4. SOCIAL MEDIA AND CHILDREN PROTECTION

Children represent the most vulnerable part of society. As a result, it is necessary to take special care in protection of their rights (Staksrud, 2013; Gillespie, 2002, p. 411; OECD, 2011). It is not an overstatement to consider the need to bring this care to a higher level, especially in cyberspace. It is much easier to bring up and control the behaviour of children if one can see them and know-how and where they are spending their free time.<sup>13</sup>

However, it is much more demanding if children are online, since they can connect to the Internet nearly everywhere; still, even if they are home, without a constant oversight by a responsible person (parents or tutors), no one really knows whom they are talking to or what they are doing. As a result, children with possibilities of an adult but with maturity adequate to their age are exposed to threats of cyberbullying, paedophilia or organized crime.<sup>14</sup> Where is Criminal law to prevent and fight online threats? The

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<sup>13</sup> A high percentage of older children have Internet access: 93% of American children had access to the Internet in 2007 (Lenhart and Madden, 2007, p. 48). In 2006 in Japan, this was the case for 65% of children aged 10-14 and 90% of teenagers aged 15-19. In the European Union, 75% of 6-17 year-olds were reported by their parents in 2008 to use the Internet; the percentage ranged from 93-94% in Finland, Iceland and the Netherlands to 50% in Greece and 45% in Italy (Livingstone and Haddon, 2009, p. 111). Ofcom's research shows that 99% of UK children aged 12-15 use the Internet, 93% of 8-11 and 75% of 5-7 (2010).

<sup>14</sup> Some studies suggest that rates of unwanted exposure also increase with age and that the number of children exposed to pornography online has increased over time. According to a national study, the percentage of young American Internet users seeing unwanted sexual material online increased from 25% in 2000 to 34% in 2005, even though parents used more filtering, blocking and monitoring software (55% in 2005 compared to 33% in 2000). However, a survey that measured the impact of exposure to pornography on 10-17 year-olds found that relatively few children were distressed: of the 34% who reported having seen pornographic content online, only 9% reported being "very or extremely upset". The same study stresses that younger children are more likely to be distressed. Between 2000 and 2006, both exposure and impact seem to have increased. See Wolak, Mitchell and Finkelhor (2006); Livingstone, Kirwil, Ponte, and Staksrud (2014).

*Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (2007) contains provisions criminalising the use of new technologies to sexually harm or abuse children.<sup>15</sup>

Furthermore, children are not only a target or "object" of possible wrongdoing, but without proportional regulations, they are also a source of harmful activities. A video or a funny picture uploaded by their peers can turn a child overnight from being a completely private figure to being publicly humiliated.

Criminal investigations could help identify the victims. The growth of the Internet gives criminals greater opportunities to entrap new victims, including children, specifically in times of emergencies for the security of underage citizens.<sup>16</sup> Criminal law approach in online protection children passes through the Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography;<sup>17</sup> the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 201/2007; the Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.<sup>18</sup> The Lanzarote Convention is the real and complete answer to the criminal perspective at the European (and international) level. The text contains criminal law provisions, creating substantive law notions before missing them.

## 5. SOCIAL MEDIA AND HATE CRIMES

The Organisation for Security and Cooperation in Europe ("OSCE") refers to hate crimes as "criminal offences committed with a bias motive towards a certain group within society".<sup>19</sup>

To be considered a hate crime, the offence must comply with two criteria: first, the conduct (as act or acts) has to be an offence according to criminal law (the so-called base crime); second, the conduct (as act or acts) has to be led by bias against the person

<sup>15</sup> Council of Europe. *Global Project on Cybercrime, Protecting Children against Sexual Violence: the Criminal Law Benchmarks of the Budapest and Lanzarote Conventions* (Discussion paper), December 2012. Available at: <https://rm.coe.int/16802fa3e2> (accessed on 15.11.2022).

<sup>16</sup> The Internet is increasingly influential in the lives of adolescents. Although there are many positives, there are also risks related to excessive use and addiction. It is important to recognize clinical signs and symptoms of Internet addiction (compulsive use, withdrawal, tolerance, and adverse consequences), treat comorbid conditions (other substance use disorders, attention deficit hyperactivity disorder, anxiety, depression, and hostility), and initiate psychosocial interventions. More research on this topic will help to provide consensus on diagnostic criteria and further clarify optimal management. See OECD (2020); and Simpson (2018).

<sup>17</sup> Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography. *OJ L 13/44*, 20.01.2004, pp. 44-48. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2004%3A013%3ATOC> (accessed on 15.11.2022). The constituent elements of criminal law are made common to all Member States. For critical issues see Henry and Powell (2016).

<sup>18</sup> The many improvements introduced by the Directive include the more refined definition of child pornography, increased criminal penalties, the criminalisation of the possession and acquisition of online child sexual abuse materials, the introduction of the new offence of 'grooming' and a provision related to the removing and/or blocking of websites containing child pornography. For critical issues on criminal-law approach, see Jurasz and Barker (2021).

<sup>19</sup> This is the operational definition used by OSCE in their reports on Racist and Xenophobic Hate crime (2021), Gender-based Hate crime (2021), Antisemitic Hate Crime (2019), and Anti-Muslim Hate Crime (2018), based on the OSCE Ministerial Council Decision No. 9/09 on combating hate crimes of 2 December 2009, agreed by consensus by all OSCE States, including all EU Member States. The concept behind such definition and its practical implication is further explained by OSCE Office for Democratic Institutions and Human Rights (2009, p. 16). See also Policy Department for Citizens' Rights and Constitutional Affairs (2020, pp. 22-23); or Wilson and Land (2021).

chosen as a "target". Both elements are present in the real and in the virtual world with all the consequences.<sup>20</sup>

The first element of hate crime represents the *actus reus* under domestic criminal law. The base offences may in theory include any criminal offence against persons or property, or the public peace, including manslaughter, assault, harassment, damage to property, hooliganism, etc. The gravity of the criminal offence is irrelevant: hate crimes can take the form of *petty* crimes, misdemeanours, or serious offences equally. The spectrum of base crimes varies from jurisdiction to jurisdiction, as national substantive criminal law provisions show great differences in this regard.

The second element of hate crime represents the *men's area*, such as peculiar reason we can easily trace as bias. The *hate* reason is the perpetrator's injury towards any target: perpetrators send a detailed hate message against people not accepted for their "race"/ethnicity, religion, nationality, sexual orientation, gender identity, or disability, inciting their followers to commit violence.

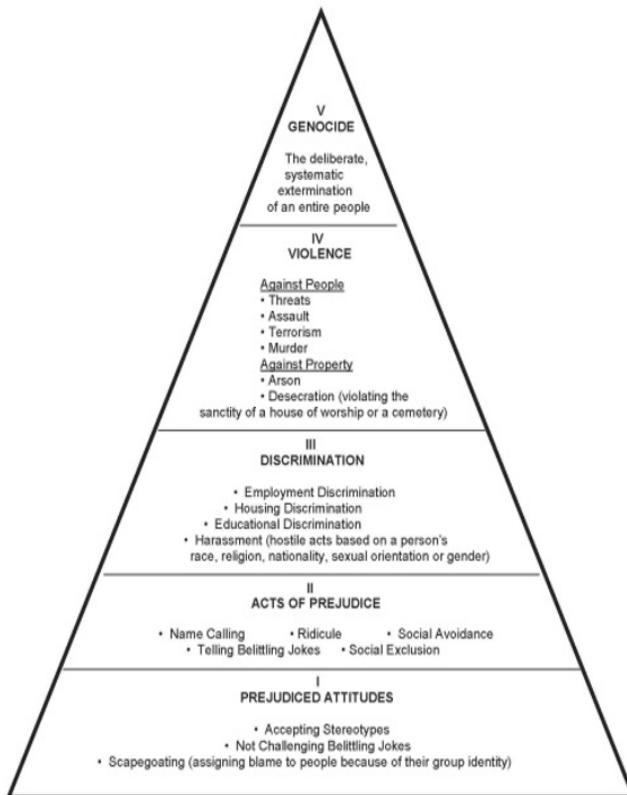
Online Hate can be expressed through many types of media, including text, images, videos and audio, such as cyberbullying, cyberstalking, harassment, and stirring up hatred through peculiar content (text, image, video, audio). Unlike offline crimes, online crimes once posted, sent or photographed, remain hosted on the Internet indefinitely. Online hate is a permanent offence that spreads and crosses the web to a large audience quickly, committed anonymously. Criminal law or criminology needs to know who commits a hate crime, who is the hate victim, and why the author commits a hate crime. The real nature of the Internet does not allow us to give correct answers.

According to a relevant report by the Italian Police (see Chirico, Gori and Esposito, 2020; and Amnesty International Sezione Italiana, 2020), this path grafts a spiral of hatred we define "the Pyramid of Hate" developed by the Anti-Defamation League.<sup>21</sup>

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<sup>20</sup> See Harawa (2014); in the article, the case law about the expressions of bias on social media is listed. See also Deflem and Silva (2021); and Furedi (2020). Furedi argued how the practice of safe space has blended uncomfortably well with the social distancing that was called for because of the COVID-19 pandemic. As such, the quarantining practices that were enacted because of a dangerous virus mirrored the quarantining that was already advocated as a kind of self-isolation from the harm that might result from dangerous opinions. In this social climate that also promotes diversity and tolerance, the mere utterance of an unpopular opinion can lead someone to be reprimanded, suspended, fired from employment, and indeed cancelled from social life itself.

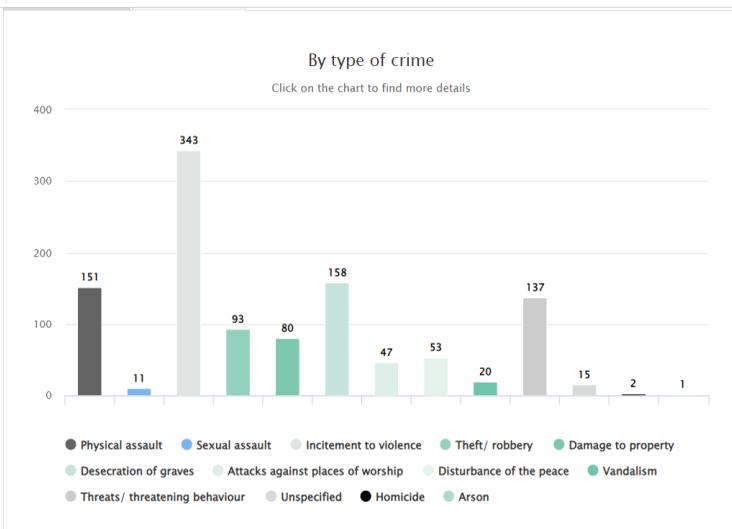
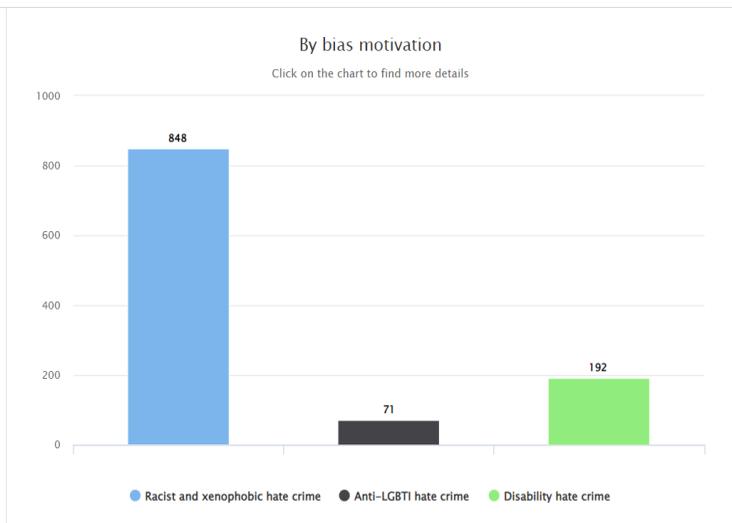
<sup>21</sup> ADL. Pyramid of Hate. Available at: <https://www.adl.org/sites/default/files/documents/pyramid-of-hate.pdf> (accessed on 15.11.2022). Adaptation of the so-called "Allport's Scale of Prejudice".



### 5.1 Statistical Data on Hate Crimes in Italy in 2020

The data presented here include information from the police database (SDI) and information gathered by the Observatory for Security against Acts of Discrimination (OSCAD). The selected charts below consist of SDI data covering the following bias motivations: "race/colour"; ethnicity; nationality; language; anti-Semitism; bias against Roma and Sinti; bias against Muslims; and bias against members of other religions; and OSCAD data on hate crimes motivated by bias against "sexual orientation and transgender identity" and bias against people with "disability".<sup>22</sup>

<sup>22</sup> See OSCE ODIHR. Hate Crime Reporting. Italy. Available at: <https://hatecrime.osce.org/italy> (accessed on 15.11.2022).



## 6. SOCIAL MEDIA AND EXPANSION OF CRIMINAL RESPONSIBILITY

There are threats from or associated with social media that we have discussed above, and then there are threats on social media with dangerous effects on the expansion of crimes (terrorism and media).

The main aim of this criminal perspective is to find an appropriate way to fight with negative results of intolerance, which is performed on the Internet and important social networks. Today, when social networks are becoming the most important medium, with its significance exceeding all other means, it is important to watch their impact. Because the content publicised on these media is not objectively effectively controllable, it is difficult to combat with content that may be subject to criminal law. The vast majority of negative comments and other content on social networks are not criminal, and cannot be considered as "hate speech".<sup>23</sup> We must be able to distinguish those that can lead to a crime. Our goal is to find appropriate tools that would help with identifying content that is dangerous and can lead to committing a crime. These activities are often supported by radical movements and propaganda. In a technological determinism Criminal law can afford viewer and synoptic societies, finalized to social construction of crime.

Terrorism and radicalization have become a growing trend in recent years. Open borders in Europe and the resulting free movement of persons within the Schengen area pose potential threats in the form of uncontrolled flow of illegal migrants, which may include persons with criminal background and experience of fighting in crisis areas. Ongoing fights in conflict zones have an impact on more distant areas, and military intervention of Western countries in crisis regions results in an increased probability of carrying out terrorist attacks on the territory of the foreign powers involved in these conflicts or against their citizens and interests beyond their borders.

Terrorist and violent extremist activities have developed, they are on the rise and represent a serious threat in the European Union. These activities are not only committed by organized groups. While after 2001 the most likely threat was that of mass attacks with high numbers of casualties perpetrated by large foreign terrorist organizations, currently Europe's fears are mainly associated with the return of radicalized citizens of European countries with experience of fighting alongside foreign radical Islamists.

The most immediate threat in the territory of Europe are exactly attacks carried out by individuals or small groups of attackers who agree with the mistaken ideology of global violent jihad and objectives of some of the larger terrorist networks, but they neither belong directly to them, nor are they supported by them. While such an attack is not as sophisticated as coordinated actions of major terrorist networks, the risk of its success is much higher, since this type of attack is almost unpredictable.

In addition, a growing number of Europeans travel abroad where they undergo training and fighting in a combat zone, becoming even more radical, and after their return they may pose a threat to the security of Europe. For fighters active mainly in Syria, Europe is becoming a logistical base, ground for recruitment of new members of radical groups, as well as a provider of finance for fighters during their stay outside of the conflict zone. In addition to the danger inherent in the virtually free movement of such persons within Europe, fears are also caused by the fact that during their stay such fighters came into contact with other radical Islamists and either completed their combat training or became directly involved in the fighting, which gave them the experience and knowledge needed to plan and carry out a terrorist attack. The EU estimates that up to 20% of foreign fighters in Syria could be citizens of Western Europe.

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<sup>23</sup> Especially nowadays, it is important to respect free speech as a part of "social discussion".

The use of online tools for the recruitment and dissemination of propaganda is increasing, making it difficult to anticipate or detect acts of violence. In fact, self-radicalization through the Internet presents additional risks not only to European countries, but also to many Muslim countries. Terrorist propaganda is easily accessible on the Internet, and materials are already available also in European languages, increasing their understanding and attractiveness to potential converts and foreign fighters. While in the past, jihadist forums were the main source of information and focal point of dissemination of propaganda, today their importance is declining and social networks are taking a lead, on which one can freely access information about the daily activities of terrorists in a combat zone and which also offer an opportunity to interact with recruiters, as well as the fighters themselves.

However, it is not only the threat connected to terrorism that needs to be studied under the headline of violent radicalization. At the same time, misusing the current migration crisis in Europe, extremism is on the rise in Europe also with regard to internal radicalization of European citizens including those in Eastern and East-Central Europe, that have no experience whatsoever with terrorism or Islamist radicals. In this part of Europe, violent radicalization mostly takes the form of right-wing extremism aimed both against Muslims and foreigners considered as a potential threat, but also against any other minorities (Roma, LGBTI) in the relevant Member States of their operation (hate crime, violent attacks, riots), being thus in their nature anti-democratic, albeit presenting themselves as an alternative to the mainstream opinions and mainstream political movements.

Still, there are possibilities to fight against this development by deeper understanding of the problem, enlightening the true nature and characters of these movements together with their historical parallels, or even through official intervention by law enforcement agencies – e.g. dissolving the radical political parties and prosecuting crimes perpetrated by members or supporters of such political parties or other related official or unofficial formations. Thereby, from a wider social, sociological, psychological, criminological, and legal point of view, many questions seem open and worth studying – mainly as to the sources of these extremist radicalizations (unemployment, economic problems, failure of education systems), methods and ways of acquiring support by citizens (alternative media platforms, social network recruitment, hoaxes, conspirations), as well as means of prevention and re-education of the perpetrators (de-radicalization).

Based on the above, it is clear that in the current situation it is highly necessary to focus on the prevention and prosecution of extremism and radicalization in European societies.

## 7. NO CONCLUSIONS (AS USUAL) BUT...

Social media is a relatively new phenomenon, which quite naturally shows interconnection with various aspects of everyday life, unfortunately including also negative features such as criminal activity and terrorism. Social media is a venue for numerous cybercrime activities ranging from phishing and identity theft to extremist hate speech and propaganda, cyber trolling, stalking, grooming, and child pornography, up to the organization of riots and violent acts including acts of terrorism and cyber warfare (information war).

Criminal law is one rational approach to online (off-line) offences and their punishment. As we can see, this is not just a matter of doctrine. It is not just a set of rules. It is underpinned by ethical and political principles designed to ensure both justice

for the individual and protection of the community in which the individual inhabits (Edwards, 2018).

Even if art. 83(1) TFEU represents minimum rules on the definition of criminal offences and sanctions “new” crimes, in particular, the adoption of minimum criminal law rules can cover all forms of online offences, regardless of the means used. Domestic legislation could support a wide range of methods in analysing criminal law, including statistical studies, gender-based vision, critical race theory, and criminology. Only through legal instruments, we will discuss the collapse of modern criminal justice and the transition to postmodernity.

Online criminal studies could ‘rewrite’ the general principles of criminal liability regarding justice system as a global discipline in a virtual world.

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