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# HATE CRIMES, THE HATE SPEECH PHENOMENON, PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE RUSSIAN APPROACH TO DETERMINING EXTREMIST ACTIVITY

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The subject of the research is criminal law rules that provide for criminal liability for hate crimes and the judicial decisions of the European Court of Human Rights on hate crimes.
The purpose of the article is to confirm or refute the hypothesis that a unified approach to the definition of the legal concept of hate speech and the limits of its application is necessary. This approach must be based on the legal positions of the European Court of Human Rights
The research methodology includes analysis and interpretation of court decisions of the European Court of Human Rights, as well as a dialectical approach to the analysis of various points of view to the definition of extremist activity.
The main results and scope of their application. The relevance of the research proposed for publication is due to the lack of uniform practice of applying the articles of the Russian Criminal Code on so-called "hate crimes" by Russian courts and the presence of significant contradictions in the positions of the European Court of Human Rights and the state position of the Russian Federation in defining key concepts in this area that are extremely important for criminal procedure and administrative activities. The paper considers scientific and practical attempts to define "hate crimes" in the global and regional human rights systems, basic recommendations of the UN on countering such crimes, and offers an interpretation of the term hate speech in relation to the related criminological concept of hate crime. The text provides statistical data describing the level of such crime and the practice of the ECHR in this area, mentions a list of criteria according to which "hate crimes" can be motivated by language differences, gender, sexual orientation and other characteristics, as well as criteria that distinguish hate speech from freedom of expression, and suggests decriminalization of part 1 of article 282 of the Russian Criminal Code.

Conclusions. It is necessary to unify the concepts of "hate crimes" (and the practice of their application) in the direction of, in particular, reducing the number of decisions of the European Court of Human Rights against the Russian Federation and increasing the level of legal protection of both the individual citizen of the Russian Federation and freedom of speech and expression.

**1. Introduction.**

In the context of globalization, legal systems are converging, economic relations are being integrated, and cross-border contacts between people and communities are being simplified. In addition to the undoubtedly positive effect achieved through these processes, there is also a negative trend, which consists in the formation of both transnational criminal manifestations and related ways of causing harm to public relations. In the context of rapid "digitalization" of society and simplification of migration processes, one of these methods has become the strengthening of xenophobia, which is expressed in the Commission of various socially dangerous, mainly violent or involving calls for the use of violence, attacks motivated by hostility on ethnic, racial, religious or other social grounds. In addition to specific incidents related to attacks on citizens, verbal aggression is quite common, manifested both in the course of interpersonal communications and using the resources of the information and telecommunications network "Internet".

In connection with the above, counteraction to crimes of extremist and other orientation acquires additional relevance and needs comparative legal research. Accordingly, the subject of research in this article will be the European and Russian approach to the criminalization of manifestations of extremism (hate crimes) and their qualification, expressed in generally recognized norms of international law and national legislation, as well as meaningful in the legal positions of the European court of human rights and judicial acts issued by Russian courts.

**2. Hate crimes and hate speech in the global and regional human rights systems.**

The approach developed in the legislation of European States and the practice of the European court of human rights to the definition of hate crimes basically contains such a category as "prejudice". In the interpretation of European human rights structures, it implies hostility motivated by a "protected characteristic", which can be nationality, race, religion, gender, or sexual orientation [1]. Let's add that the victim of a hate crime obviously belongs to a minority, i.e. to a social or other group that is represented in a given society in a small number. Accordingly, the bias is fueled by the subject's belief in superiority over persons who may be covered by the protected attribute, which facilitates the formation of intent to commit attacks (for example, in Russia, Ukraine and other post-Soviet States, representatives of national minorities, LGBT activists, and persons without a specific place of residence are quite often victims of such attacks; in European countries, there is a tendency to increase manifestations of anti-Semitism, including the desecration of burial sites and places of worship of religious Judaism).

The global and regional human rights systems have developed basic recommendations for countering hate crimes. For example, the UN Convention on the elimination of all forms of racial discrimination (1965) requires States to establish responsibility for crimes motivated by racism and xenophobia.(article 6). Article 20 of the International Covenant on civil and political rights requires that incitement to discrimination, hostility or violence motivated by racial, national or religious hatred be criminalized . In 2012 the Rabat plan of action for the prohibition of propaganda of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence has been adopted, and this document establishes the international legal basis for recognizing speech as a language of hostility . In total, it sets six criteria, and their range is quite wide: from the context and oratorical intent to the probability of implementation of the appeal contained in the statement. At the same time, it is recommended to assess the potential risk of harm in court.

In 2008, the European Union adopted a special Framework decision on combating racism and xenophobia, aimed at establishing a unified approach to the definition of hate crimes in the national legal systems of European States, as well as a Directive on victims of crime, which contains

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recommendations on compensation for harm and state protection. As a follow-up to these provisions, the European court of human rights has issued a number of decisions reflecting the basic concept of countering hate crimes.

Thus, in the ruling in the case of Angelova and Iliev V. Bulgaria (2007), the ECtHR found it" completely unacceptable "to classify attacks motivated by hatred or enmity as hooliganism or other violent attacks committed without motive . After noting the inability of the Bulgarian authorities to ensure criminal prosecution of a group of citizens who had attacked a victim of Roma nationality and subsequently confessed to having hostile feelings towards the Roma, the court stressed that in these circumstances the application of a General rule that does not reflect the motive of hatred is unacceptable. It should be noted that the modern Russian normative approach to the structure of hooligan motives, which was formed at the turn of 2006-2007, i.e. in the same period, in fact, contributed to the partial identification of signs of hooliganism and manifestations of extremist orientation, i.e. hatred or enmity. In other words, in the disposition of part 1 of article 213 of the criminal code of the Russian Federation, the inherent signs of hooliganism ( gross violation of public order, expressing clear disrespect for society) are artificially associated with extremist motivation.

In the decision in the case" Šecic V. Croatia " (2007), the ECtHR formulated the thesis that there is a positive duty of the state to investigate not only the circumstances of the crime, but also its extremist orientation, i.e. the motive. At the same time, the court explicitly distinguished this category of cases from cases of violent crimes committed in other circumstances (for example, on domestic grounds). At the same time, actions committed "with racist overtones" are recognized by the court as "particularly serious damage to fundamental rights" . Note that in Russian law enforcement practice, this approach is based on the law (and this is natural, because such motivation is attributed to the qualifying characteristics of a number of violent crimes: art. 105, 111, 112, 115, 116, 119 criminal code of the Russian Federation). Moreover, in a number of precedents, the presumed existence of such a motive becomes dominant in the investigation of a crime, replacing other possible versions that are subject to verification. This aspect has not been widely covered in the legal doctrine, although the importance of distinguishing the extremist motive from other circumstances that generated the intent of the perpetrators has been discussed in legal studies [2].

For example, in the notorious and highly publicized case of the murder of a Tajik girl in Saint Petersburg and beyond, the preliminary investigation authorities focused on establishing the motive of ethnic hostility and verifying the involvement of young people who declare their affiliation to a skinhead group in the murder of a child. At the same time, the version about the Commission of this crime by persons involved in illegal drug trafficking on the basis of competition for the place of sale with the victim's father remained outside the scope of investigative knowledge. At the same time, although about 10 people were brought to criminal responsibility in this case, the persons who inflicted fatal injuries on the victim were not identified, and in the end the verdict was issued on other episodes of criminal activity that are not directly related to extremist manifestations . Only a few years later, the involvement of members of another youth group in the murder was established.

### 3. Hate speech and features of its establishment by interstate bodies for the protection of human rights.

Initially, in foreign literature, a related concept of "hate crime" was formed ("hate crime", which contains in the structure of the composition the Commission of an attack on the victim, against whom the subject has a negative bias [3]). In turn, the term "hate speech" (hate speech) was interpreted in the Recommendation of the Committee of Ministers of the Council of Europe no .R 97 (20), according to which it is defined as all forms of self-expression that include provoking, encouraging, spreading or justifying xenophobia, racial intolerance, anti-Semitism and other manifestations of hostility towards minorities, migrants or persons with emigrant roots. This

recommendation was adopted before the 2015-2017 migration crisis. and in many ways (although not in all) contributed to the adoption of modern programs for the adaptation of internally displaced persons and refugees to life in the conditions of European civilization. At the same time, the developed standards largely determined the insufficient ability of the authorities of European States to minimize social conflicts between migrants and the population, since they were based on the vulnerability of minorities, and not on the need for their socialization in conditions perceived by the ethnic and other majority. In our opinion, it is a mistake to consider public statements by neo-Nazi politicians and their supporters calling for a forceful solution to the migration crisis as a "defensive reaction", although such assessments can be found on the pages of the legal press [4]. From this, it can be concluded that in isolation from the specific conditions of law enforcement activities, any human rights standard may not take into account the situational features that arise in its implementation.

Already during the migration crisis, the European Commission against racism and intolerance developed an open list of criteria according to which hate crimes can be motivated by language differences, gender identity, sexual orientation and other characteristics. In essence, this means that any pronounced difference between a" majority "and a" minority " can be recognized as a catalyst for an extremist motive.

In general, this approach is reflected in modern Russian legislation: for example, a sign of extremist motivation is hatred or hostility towards a social group, which opens up a wide scope for investigative and judicial knowledge. At the same time, the recognition of the presence of the social group "police officers" and the social group "journalists" has already taken place in the practice of Russian courts. Moreover, in connection with the recognition in the content of a comment published on a social network of signs of public calls to carry out extremist activities, in the first case, a sentence of imprisonment was imposed. In itself, this decision is quite controversial: the content of the comment suggests that the author believes that the active use of physical force by police officers can lead to a negative response in the form of violence against police officers or their family members (the comment was published and is available for review). Equally doubtful is the special victim status of a police officer in the force of law, they are authorities, but because of the special nature of the duties of the police to maintain public order, carry out their risk to life and health, taking advantage of the special criminal-legal protection (articles 317-320 of the Criminal Code) and – if necessary – security measures applicable to their family members. In fact, "police officers" are not a social group, but a group of government representatives whose status is already equivalently protected (on this issue, the ECHR was rather evasive, pointing out in one of the rulings issued on the complaint against the Russian Federation that the opposite approach is equally acceptable ). Similarly, journalists are not a social group, but a professional community whose activities are protected by international and national law.

It should be noted that the European court of human rights recommended that the legal assessment of offensive attacks against police officers should be treated with due caution, paying attention to the fact that their activities are carried out in a conflict situation, which is expressed, inter alia, in emotionally incorrect manifestations that do not have a truly criminal basis . According to the court, as part of the security forces of the state, the police must show "a particularly high tolerance for offensive statements", if the latter do not expose police officers to a real risk of physical violence. Turning to the provisions of Russian legislation, it can be pointed out that the norm of part 1 of article 119 of the criminal code of the Russian Federation, which establishes responsibility for the threat of murder, is constructed in this way: the key and mandatory signs of the threat are its validity, i.e., the presence, and reality, i.e. enforceability in the conditions of the place and time of the utterance or in a period not far from it.

In the practice of the ECtHR, there have been precedents for making decisions establishing elements of hate speech on the basis of religion (ruling in the case "Mark Anthony Norwood vs

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United Kingdom", 2004), race (ruling in the case "Aksu vs Turkey", 2012), sexual orientation (ruling in the case "Vejdeland vs Sweden", 2012). With regard to the latter, it is particularly noteworthy, in our view, that according to the court's position, discrimination on this basis is "as serious" as discrimination based on racial or national grounds. It is also interesting that the elements of hate speech are established by the ECHR in cases with such a plot as the denial of historical facts (ruling in the case "Garaudy vs France", 2003), political speeches (ruling in the case "Otegi Mondragon vs Spain", 2011), discussions on the pages of the Internet media (ruling in the case "Delfi AS vs Estonia", 2015). Regarding this block of cases, it can be noted that the court's legal positions are also relevant for Russia, since similar cases arise in the practice of national courts. Interestingly enough, the ECtHR in such cases proceeds from the presumption of responsibility not of the author of the comment on the Internet page, but from the presumption of responsibility of the site owner. In other words, the site owner is responsible for preventing the publication of aggressive comments or their immediate removal. In both cases, the desired result is achieved as a result of moderation or rapid online verification, which is technically available in modern conditions. Since one of the unshakeable principles of Internet communication is the anonymity of users, it is not possible to reduce or exclude in principle the publication of comments with offensive or obscene content.

The practice of the ECHR is dominated by an approach that draws a line between free expression of one's opinion and "serious provocation" of extremism. However, this line, the existence of which is consistently defended by the court, is interpreted using evaluative concepts, which, in our opinion, very much negates the potential use of legal positions in law enforcement practice. Evaluative concepts are often used in criminal legislation, and the Russian legal doctrine regarding this rule-making technique has already formulated principled positions [5]. At the same time, their wide application does not contribute to the understanding of the meaning of criminal law norms by law enforcement officers and creates conditions for an expanded interpretation. It, in turn, cannot be acceptable given the sufficiently strict punishability of public calls for extremist activities.

**4. Features of justification of hate speech signs in the practice of the European court of human rights and Russian courts.**

Although the legal position of the ECtHR is not recognized as an independent source of Russian law, the activities of Russian courts have a serious overlap with it in this context. Although Russian legislation does not use the term hate speech, it uses its equivalent (inciting hatred or enmity), and in the list of crimes of extremist orientation establishes responsibility for public calls to extremist activities. In the relevant legal positions of the Plenum of the Supreme Court of the Russian Federation these concepts are disclosed as follows:

- public appeals-expressed in any form of appeal to other persons in order to encourage them to commit extremist crimes;

- actions aimed at inciting hatred or enmity – statements justifying the need for genocide, mass repression, deportations, violence against representatives of a nation, race, or adherents of a particular religion .

It is quite interesting that the Plenum of the Supreme Court of the Russian Federation in this decision directly recommends that the courts take into account the practice of the ECHR (paragraph 7). This confirms both the General (global) nature of counter-extremist issues in the modern period, and the convergence of legal systems.

At the same time, from the case-law of the ECHR it follows that the key components of hate speech are generalized statements that can apply to all minority it's and also "undermining the fundamental values", placed under the protection of the norms of the European Convention for the protection of human rights and fundamental freedoms. In addition, as in a number of other areas of activity of the ECHR, serious attention is paid to the "quality of the law", namely, the legal certainty and ambiguity of its norms . This approach has been approved in the scientific literature [6]; in addition, it has been tested in the decisions of the constitutional

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Court of the Russian Federation .

Further, in some cases, the court uses such characteristics as the absence of signs of "clear illegality" or "certain incitement", while assessing the actions of the provider or site owner that took place during the proceedings in the national court (for example, in one of the rulings issued against Hungary, the court indicated that the problem under discussion affected the public interest, comments in an incorrect form were promptly deleted by the moderator of the discussion, and the company that owns the site applied to law enforcement agencies with a request to identify their authors based on the saved data).

In most decisions, the ECtHR emphasizes that the national authorities failed to justify the necessity and proportionality of the intervention, which was the reason for the violation of the relevant Convention norm. Some scientists have already paid attention to this, describing this lack as a systemic problem [7]. While agreeing with this in General, it is necessary to make some clarifications.

First, the terminology "explicit", "definite", "which does not require linguistic or legal analysis" is close in meaning to the formulation "internal belief", which is widely used in domestic law-making and legal doctrine. The content of this wording implies that the judge makes a decision based on personal professional confidence based on an analysis of the evidence presented by the parties. Inherent properties of evidence, in turn, are their relevance, admissibility, reliability and sufficiency [8]. The totality of evidence that meets these properties and is not subject to ambiguous interpretation can be used as the basis for the qualification of criminally punishable manifestations of extremism.

Secondly, although none of the evidence has a pre-established force, significant attention is paid by law enforcement agencies to the expert's conclusion, according to which a particular material is recognized as containing signs of inciting hatred or hostility. For example, let's take the conclusion of a Commission examination on a high-profile criminal case considered in 2012 in Moscow, initiated in connection with a public action-a "punk prayer" in the Cathedral of Christ the Saviour by a feminist punk group of three women who were subsequently convicted under art. 213 of the criminal code of the Russian Federation for committing hooliganism based on religious hatred or enmity. In the conclusion of the examination, concepts that do not have an unambiguous legal and linguistic content are widely presented, namely: "provocative", "inappropriately overtly sexualized", "blasphemous" . It is very interesting that the head of the Commission of experts published comments to the judgment of the European court of human rights issued by the complaints of the applicants (sentenced to real terms of imprisonment) in the present case (the ECHR's decision was expected once again against Russia with the recovery of our state significant sums of money) , rebuked the court to use in deciding in favour of the applicants in the "manipulation of language" [9]. Meanwhile, the terminological series given above abounds in the absence of legal content (for example, it is hardly possible to find it in the content of the word "blasphemous" or "provocative"), and sometimes formal-logical (in this case, the question arises as to its antonym, which can only be "appropriately moderately sexualized" actions, movements, etc.). A little later (in 2013), the Russian legislator, understanding the apparent controversy and artificiality of the conviction of these persons under article 213 part 1 of the article "b" of the criminal code is forced to accept the new wording of article 148 of the criminal code of the Russian Federation, part one (the most appropriate, according to scientists believe that the actions of M. Alekhina, N. Tolokonnikova and E. Samutsevich have the offense to qualify actions of participants of group Pussy riot) which contains the purpose of insulting religious feelings of believers (although, according to the authors of this article, in this situation, 2012. speech can go only about administrative violations).

The two above-mentioned circumstances appear to be the very root cause of why the motivational part of the decisions of Russian courts in cases of extremist crimes committed in situations such as those described is not considered by international human rights bodies as characterizing

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the necessity, sufficiency and proportionality of intervention.

**5. Supporting tools developed by the European court of human rights to distinguish hate speech from freedom of expression.**

As you know, in 2012, the ECHR published thematic recommendations on the classification of hate crimes in relation to the Convention norms . Having rightly drawn attention to the fact that there is no generally accepted concept of "incitement to hatred", the court cited the parameters it developed to determine its characteristics in specific cases (based on previously reviewed cases). We believe it is possible to consider them below and show that they are not perfect. As a basis for this, we will take the precedents of recognition/non-recognition of violated provisions of art. 10 of the European Convention for the protection of human rights and fundamental freedoms.

Thus, having found the provisions of article 10 of the Convention violated in the case of a Danish journalist who was prosecuted for creating an author's documentary on extremist issues, the ECtHR indicated that the applicant did not pursue the goal of inciting hatred, since he interviewed participants of radical movements in the information aspect.

The court did the same when considering the complaint of a Turkish citizen (the Chairman of a political party) who publicly criticized the US military operation in Iraq and expressed approval of the resistance provided during it by members of terrorist organizations. According to the ECHR, the statement, although it represented the official position of the party, did not contain calls for violence, armed resistance or insurrection, as a result of which the prosecution of the politician violated the Convention norm.

From these examples, it can be concluded that the ECHR refers to the parameters that distinguish the expression of private or even group opinion from hate speech elements of propaganda, distinguishing it from information, and the absence of a clearly expressed call to violence.

In ruling on the complaint of a Belgian public figure convicted of calling for deportation, the court stated that the election leaflets distributed by the applicant "inevitably threatened" to arouse feelings of distrust and even hatred towards foreigners (the text of one of the leaflets contained the slogan "we will Purge Belgium of foreign workers") and as such provoked hatred and xenophobia.

In another case, on the complaint of a French citizen-cartoonist who disputed the validity of prosecution for publishing a drawing that expressed implicit approval of the terrorist act of September 11, 2001 (the caption read "We dreamed – Hamas did"), the court indicated that these actions could cause a negative public reaction, including a wave of violence.

Accordingly, it can be concluded that provocation of hatred and the potential assessment of the distributed content as socially negative is recognized by the ECHR as elements of hate speech, an adequate response to the manifestations of which is to bring the author of the statement to justice.

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As you can see, these parameters cannot be considered completely cleared of legal uncertainty. Thus, in isolation from specific events (mass riots, attacks, disobedience to the legitimate demands of government representatives), it is hardly possible to identify the negative potential of public speech. While rightly drawing attention to the fact that prejudice and xenophobia remain in demand among poorly educated people, the ECtHR did not pay attention to everyday manifestations of intolerance on ethnic, religious or other grounds. Meanwhile, the effect of public speeches (with rare exceptions) is mostly to spread domestic stereotypes, and not to increase the number of extremist crimes.

At the end of this section, we can conclude that the approach developed by the European court of human rights is undoubtedly suitable for its own

case law, which allows us to compare the intensity of manifestations of hatred in a number of cases. However, in order to be widely used by national courts, including Russian courts, the parameters developed by them are not sufficient due to their uncertainty and eclecticism.

**6. Hate speech in Russian criminal law and criminal procedure realities.**

The Federal law "on countering extremist activity" was adopted in 2002 and has been repeatedly amended. At the same time, as is known, there has been a significant increase in the number of criminal law prohibitions that characterize extremist crimes, as well as an ambiguous practice of their application. An integral part of it was the Russian version of hate speech, namely, a fairly broad application of the provisions of the article. 280, 282 of the criminal code of the Russian Federation in order to qualify manifestations of "virtual" extremism, expressed in the distribution, mailing, publication of drawings and other content recognized as inciting hatred or hostility according to one of the parameters that characterize the concept of extremism in Russian legislation. Noting the "avalanche-like increase" in the number of criminal cases with such a plot, analysts proceed from the imperfection of legislation [10]. However, as the analysis of international legal norms and legal positions of the European court of human rights shows, Russian legislation in this area generally corresponds to General trends.

In the presence of insufficiently clearly defined legal regulations, law enforcement activity acquires the property of overstated, as it seems, activity. In the criminal legal sphere, this is reflected in an increase in the intensity of criminal prosecution. In other words, if a legal norm is formulated in the absence of an unambiguously perceived sphere in which it can be used, the law enforcement officer will create an artificially expanded interpretation of it.

According to the Judicial Department of the Supreme Court of the Russian Federation, 149 people were convicted in 2011 for crimes of extremist orientation, conditionally related to hate speech. In 2012, this number was already 187, in 2013 – 280, in 2014 – 357, in 2015 – 483, in 2016 – 540, in 2017 – 604. 2018 was marked by the establishment of administrative prejudice in the structure of the corpus delicti provided for in article 282 of the criminal code of the Russian Federation, which created the ground for optimistic forecasts regarding a significant reduction in the number of persons brought to criminal responsibility for committing such crimes. However, in 2018, 553 people were convicted for these compositions, i.e. the reduction was quite modest (about 10% ). Unfortunately, accurate information about the number of persons to whom, in connection with the partial decriminalization of acts prohibited by article 282 of the criminal code of the Russian Federation, an exemption from punishment was applied. But even in the absence of such data, it can be concluded that the expected significant changes in law enforcement have not occurred.

The fourfold increase in the number of people convicted of extremist crimes in seven years does not give grounds for sweeping criticism of the judicial system. However, given the very one-sided bias in the handling of such cases and the excessive, in our view, trust in expert judgments that do not have an unambiguous and unambiguous content, the following criticisms can be made.

First, the Russian version of hate speech receives a criminal legal qualification in isolation from a specific study of the nature and degree of public danger of the crime. It is logical to assume that it is quite difficult (or almost impossible) to assess the potential danger of Internet content posted by a user who is not a popular blogger and who communicates with people personally known to him.

Secondly, when imposing a sentence in such cases, the court never applies part 6 of article 15 of the Criminal Code, which may change the category of the imputed crime. Due to the extremely low public danger of the Russian version of hate speech, this seemed highly desirable. In addition, one of the parameters that is evaluated in the legal positions of the ECHR is the proportionality of the sentence imposed, i.e. its compliance with the nature and degree of public danger of the act.

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Naturally, this position is taken into account in accordance with the criminal procedure code of the Russian Federation. When sentencing, the court takes into account the nature and degree of public danger of the committed crime, and this applies to the General principles of sentencing (article 60 of the criminal code). However, it does not follow from the sentences in cases of crimes of extremist orientation (and, in all conscience, in any other cases as well) exactly how the court took into account the nature and degree of public danger of what was done, and how this affected the sentencing of the defendant. The mere mention in the sentence that these circumstances are taken into account, and their actual, and not formal, accounting, are very different from each other.

Thirdly, partly welcoming the establishment in article 282 of the criminal code of symptom of administrative prejudice, it should be noted that the actual criminalization re-perfect "mindless repost" (in the terminology of Plenum of the Supreme Court – not representing a great social danger, and therefore recommended for recognition of the minor) is as hard-to-explain from the point of view of public danger, as primary, occurring prior to the adoption of the Federal law from December 27, 2018, under which article 282 of the Criminal Code was amended. At the same time, the very fact of persecution (at least in an administrative order) sometimes allows you to comprehend the unthinkable depths of the absurd .

The criminalization of hate speech in its Russian Hyper-version does not meet the main criteria developed in the legal doctrine for assessing the need to recognize an act as criminal and establish criminal responsibility for it. Thus, the main criteria for criminalization are a stable prevalence [11], a negative impact on the state of protection of public relations [12], the appearance of a significant number of subjects who commit such actions with impunity [13]. For the Russian version of hate speech, grouped around the Internet activity of citizens, these criteria can be disclosed as follows. First, the number of Internet users in our country has long exceeded the total number of its population (people use stationary and mobile devices, spending two or more hours a day in virtual reality) [14]. Secondly, anonymity on the Internet, despite controversial political initiatives to eliminate it, continues to be the dominant feature of virtual communication. This should create certain risks (including legal ones) not for users, but for citizens and organizations that administer (moderate) the corresponding network resources. Third, if there is a steady prevalence of offensive, aggressive, and violent language in the structure of discussions and comments left by Internet users, the prospect of implementing their content is not subject to evaluation. It is equally impossible to assess the negative impact on the state of protection of public relations: in the context of decriminalization of the offense and the emergence of new criminal attacks based on the use of evaluation concepts (for example, the new version of the above-mentioned article 148 of the criminal code with a normative assessment of the protection of religious feelings of believers).

**7. Journalists and hate speech: a European and Russian approach.**

In this section of the article, we would like to draw attention to two interesting precedents. The first of them has not yet received a public response outside of Russia, since the final procedural decision has not yet been made; the second has already been reflected in a recent ruling of the European court of human rights.

Briefly about the first case, the plot of which is built around not even extremism in the form of public appeals or incitement of hatred or enmity, but around the public justification of terrorism (article 205.2 of the Criminal Code of the Russian Federation). As you know, all terrorist crimes are classified as the most dangerous by the current criminal code of the Russian Federation. Article 205.2 of the Criminal Code of the Russian Federation falls somewhat out of the General series (for example, it does not establish a sentence of life imprisonment), but its content has significant specifics. In particular, it can be used when investigating the circumstances of a journalist's publication of information and journalistic material, which is the case in this example.

it is absolutely necessary to strengthen the

legal protection of both professional journalists and other persons who participate in public discussions of public interest. Taking into account the mass involvement of the Russian audience in Internet communications, it is necessary to include any citizens who comment on text or other materials distributed in free, and even more so - in restricted free access, requiring registration and leaving information about personal data (as you know, the expression of their attitude to the commented event on pages on the Internet is possible with the help of various graphic images: memes, demotivators, etc.). It appears that the most appropriate would be the addition of the resolution of Plenum of the Supreme Court, paragraph prohibiting constitute crimes under articles 280, 282 of the criminal code, the expression of a private opinion, even in a rough, incorrect form, not containing explicit call to use violence, molest or commit other illegal actions against individuals that can be attributed to minorities, followers of some condemn the society customs and practices, representatives of social, occupational, or other group. Taking into account the revealed rather blank characteristics of hate speech parameters in the practice of the European court of human rights, this approach seems logical and requires fixing in the Russian law enforcement activity.

At the same time, unfortunately, in the rating of press freedom, the Russian Federation occupies a rather low position [19], and the independence of Russian print and other publications raises some doubts (judging by critical publications [20], this problem also occurs in other countries, but in this article we will limit ourselves to the Russian socio-political discourse). In this context, I would like to draw attention to another decision of the European court of human rights.

In September 2019, the court issued a decision on the complaint of ex-media magnate Sergei Pryanishnikov, who challenged a number of actions of Russian courts and administrative bodies related to the refusal to issue licenses and rental certificates for video products produced by the applicant, including a film containing an election program (in 2003, the applicant tried to run for the post of Governor of St. Petersburg and filmed the campaign material "City of the future") . In the future, he was denied permission to rent, broadcast and provide other means of access to the mass audience to video products. The administrative authorities, and later the courts, used unsubstantiated information that the applicant was a producer of pornographic products as a ground for refusal. The only basis for this assumption was the involvement of the applicant in the proceedings in the framework of verification of information about the shooting of a pornographic film; at the same time, the applicant was not brought to criminal responsibility, although he did not dispute that with his support, about 1,500 samples of erotic content were removed, which were allowed to be replicated and reproduced in accordance with existing age restrictions in the territory of the Russian Federation. According to the applicant, the subsequent refusal to issue a license to reproduce the film with elements of the election program did not pursue any legitimate purpose and was not justified, and his involvement in the distribution of pornography was not properly proved (note that in the context of a radically different subject of campaign material, it did not matter, even if it had: in 2003, the restrictions imposed on candidates for elected office were more loyal, and the composition of the turnover of pornographic products was less substantial and less severe than in the modern period). During the trial in the ECHR, the Russian side submitted the fact that the refusal to issue a license violated the applicant's right to freedom of expression, but argued that such a refusal was based on clear and predictable legal provisions. This logic has a certain flaw, because until now there is no transparent line between the concepts of "erotic" and "pornographic" products in many cases. Moreover, the involvement of a particular person in the Commission of a crime requires certification by an appropriate procedural document (ideally, a court conviction that has entered into force). Assessing the arguments of the parties, the ECtHR stated that freedom of expression includes freedom of artistic creation, which gives any person the opportunity to participate in the public exchange of information and ideas. This, according to the court, corresponds to the duty of the state not to

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unreasonably interfere with freedom of expression.

In the present case, the court also drew attention to the fact that in the modern period there is no generally accepted and generally applicable definition of morality, which makes restrictions only "for moral reasons" seem excessive. The ECtHR pointed out that none of the courts that heard the applicant's case found proven evidence of his involvement in the trafficking of pornographic products. On this basis, a violation of article 10 of the European Convention for the protection of human rights and fundamental freedoms was found against the applicant.

Summarizing what is stated in this section, we note that these conflicts are not directly related to extremist activities or hate speech, but their occurrence was possible due to the lack of well-established indisputable concepts applicable to the qualification of various actions related to the expression of one's opinion in a mass audience. To date, this problem has not been effectively addressed either in the national legal system or in the European human rights system.

**8. Conclusions.**

The analysis made it possible to conclude that in the context of convergence of national legal systems, this property is also acquired by law enforcement activities. Moreover, identical mistakes may be repeated in the national and international spheres, resulting from a lack of legal certainty, a high degree of gaps and elements of ambiguity in legal regulation.

The circumstances mentioned above lead to an extensive interpretation of criminal law by law enforcement officers and create blind trust in expert research, which is also not characterized by transparency and the use of simple formal and logical constructions.

To solve problems that were the subject of copyright arguments in the framework of this article, it is possible to take a series of legislative efforts to change the legal machinery through which the criminal legislation (or the legislation to which you want to apply when using the rules with a blanket disposition) will be reduced by the use of evaluation concepts, or all of them will receive an exhaustive legal definition, just as is done in article 5 of the Code of Criminal Procedure.

A unified approach to the definition of the legal concept of hate speech and the limits of its application, based on the legal positions of the European court of human rights, can be created in the Russian legal reality, but this requires serious criminological and other research. Meanwhile, in the conditions of further development of simplified elements of interpersonal communication, the formation of such an approach would be extremely important.

Modern criminal policy does not have balanced answers to many important questions. With a relatively small number of people convicted of inciting hatred or enmity, a radical and systematic decision on the criminal content (and most importantly, the scope) of this concept and related definitions will strengthen the guarantees of freedom of expression and other Convention rights based on it. Moreover, the authors believe that the subject of an appeal to the European Court of human rights (by persons convicted under art. 282 or their representatives) must be to the very existence and meaning of article 282 of the criminal code of the Russian Federation is apparently violating article 10 of the ECHR on freedom of expression and freedom of receiving and dissemination of information. Note that the criminal law of most leading States does not contain direct analogues of article 282 of the Criminal Code of the Russian Federation. For example, the criminal code of Germany (section 130) provides for criminal liability for incitement against people inciting hatred against part of the population or against national, racial, religious groups, the criminal code of Austria (section 283) – bleed for population groups on racial, religious, national differences, the Swedish criminal code (Chapter 5) – for abusive behavior against a person on grounds of race, colour, national or ethnic origin, religious beliefs or homosexuality, the criminal code of France (article 225-1 and article R. 625-7) - for discrimination of individuals and legal entities for these reasons and for non-public incitement to discrimination, hatred and violence for racist reasons.

Note also that in the original version of

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article 282 of the criminal code maximum penalties of imprisonment as h 1 and h 2 were lower than at present, and article 74 of the RSFSR Criminal Code of 1960 (the same article 282 of the criminal code) in part 1 was a crime (in modern terminology) small weight.

Anticipating the next decision of the ECHR obviously not in favor of the Russian Federation, we will Express our opinion on the need to decriminalize part 1 of article 282 of the criminal code (transfer of such an administrative offense), without disputing the expediency of the presence in the Criminal Code of Article 136 (violation of equal rights and freedoms of man and citizen), 280 (public calls to carry out extremist activities), 282 part 2 and 354.1 (rehabilitation of Nazism).

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