

Peculiarities of Investigation of Criminal Offences in the Field of Discrimination

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Abstract. *The proper investigation of criminal offences in this area is intended to protect the constitutional rights of citizens and contribute to building a just society. At the same time, despite the existence of criminal law provisions on combating discrimination, their insufficient specification and lack of specialised provisions complicate the qualification and investigation of criminal offences in this area. Methodology. The author used an appropriate set of methods to achieve the purpose of the research. The hermeneutic method helped to clarify the essence and structure of a person who commits criminal offences in the field of discrimination, as well as the interpretation of criminal law provisions in the field of combating discrimination. The author uses the method of systemic and structural analysis to identify the links between the elements to be proved in the course of investigation of criminal offences in the field of discrimination. The dogmatic method made it possible to analyse the personality of the victim in criminal offences in the field of discrimination. Results. The analysis of the process of investigating criminal offences in the field of discrimination has shown that there are a number of features which should be taken into account when qualifying criminal acts. It is established that it is law enforcement agencies that have an additional obligation to take all reasonable measures to expose any discriminatory motives and to establish whether hatred or prejudice was the basis of discriminatory events. The research of a person who commits criminal offences in the field of discrimination plays an important role not only in the formation of a mechanism for combating discrimination, but also for its prevention. It is noted that the structure of the perpetrator's personality includes: social characteristics of the perpetrator's personality and biosocial characteristics. It is revealed that in criminal proceedings in the field of discrimination it is important to correctly identify hate crimes, to identify the motives of intolerance, and to have special skills of effective interaction with victims of this category of crimes. Attention is drawn to the need for a thorough investigation of the victim's identity, in particular, the features that make him or her a vulnerable category in terms of discriminatory practices and the presence or absence of a relationship between the victim and the suspect.*

Key words: *criminal offences in the field of discrimination, investigation of crimes, identity of the perpetrator, identity of the victim, violation of equality of citizens.*

1. Introduction

Discrimination is a serious social problem that violates human rights, contributes to social inequality and can lead to conflicts. The proper investigation of criminal offences in this area is intended to protect the constitutional rights of citizens and contribute to building a just society. At the same time, despite the existence of criminal law provisions on combating discrimination, their insufficient specification and lack of specialised provisions make it difficult to qualify and investigate criminal offences in this area. Discriminatory crimes are often hidden and their motives are difficult to prove. Gathering evidence of discriminatory motives requires specialised techniques and a deep understanding of the psychological and social aspects of discrimination. However, many law enforcement officers lack the knowledge and skills to effectively investigate discrimination-related crimes. This leads to ineffective evidence collection, misclassification of crimes and prejudice against victims. Another problematic aspect is that victims of discrimination are afraid to report to law enforcement agencies for fear of further persecution, social stigma or lack of trust in the justice system, which creates additional obstacles to the detection and investigation of such crimes. In view of the above, the specifics of investigating criminal offences in the field of discrimination require a detailed research.

The problems of investigating criminal offences in the field of discrimination are addressed in scientific works by such researchers as: S. Balaban, A. Borovyk, S. Denysov, N. Driomina-Volok, S. Kovaliov, R. Martynovskiy, E. Pryakhina, I. Smirnova, I. Fedorovych and others.

The purpose of the article is to identify the peculiarities of investigation of criminal offences in the field of discrimination in Ukraine.

2. Research methodology

The author used an appropriate set of methods to achieve the research objective. The hermeneutic method helped to clarify the essence and structure of a person who commits criminal offences in the field of discrimination, as well as the interpretation of criminal law provisions in the field of combating discrimination. The author used the method of systemic and structural analysis to identify the links between the elements to be proved in the course of investigation of criminal offences in the field of discrimination. The dogmatic method made it possible to analyse the personality of the victim in criminal offences in the field of discrimination.

3. Results

The provision directly aimed at criminal law protection of equality of citizens in their constitutional rights and their equality before the law as a principle of the constitutional and legal status of man and citizen is Article

161 'Violation of equality of citizens depending on their race, nationality, region, religious beliefs, disability and other grounds' of the Criminal Code of Ukraine [1].

An analysis of the article suggests that it contains elements of three offences related to discrimination: establishment of direct or indirect privileges of citizens ('direct or indirect restriction of rights or establishment of direct or indirect privileges of citizens on the grounds of race, skin colour, political, religious and other beliefs, gender, disability, ethnic and social origin, property status, place of residence, language or other grounds'), issues of spreading 'hate speech' ('intentional actions aimed at inciting national, regional, racial or religious enmity and hatred, humiliation of national honour and dignity, or insulting the feelings of citizens in connection with their religious beliefs'), and hate crimes ('the same actions combined with violence, deceit or threats, as well as committed by an official' and 'actions provided for in parts one or two of this article that were committed by an organized group of persons or caused serious consequences') [2].

It should be noted that criminal offences that encroach on the principle of equality and tolerant attitude towards different social groups can be classified in different ways. In her research, N. V. Dremina-Volok conditionally divides hate crimes into two groups: the first group includes international hate crimes (genocide, apartheid, racial discrimination, slavery). The legal characteristics and obligations of states to combat these crimes are enshrined in international law. The second group includes any crimes under national criminal law, the subjective side of which is characterized by the presence of a hate motive and a specific intent to harm a person with one of the above characteristics (race, religion, nationality, etc.) [3].

For the proper qualification of discriminatory actions, the process of investigating criminal offences in the field of discrimination plays an important role. The general features of investigating crimes based on intolerance include the following:

- the need to thoroughly prove the motive for the crime;
- the need for a thorough and in-depth investigation of the suspect's identity, which is directly related to proving the motive for the crime;
- the need to thoroughly investigate the facts that preceded the commission of the offences, such as the suspect's lifestyle, interests, connections at the place of residence, study, participation in informal groups, associations and organisations, as well as the causes and conditions for the emergence of a motive of national, racial or religious intolerance;
- the need for a thorough investigation of the victim's identity, including his or her race, nationality, religion and other characteristics that make him or her a vulnerable category in terms of discriminatory practices and the presence or absence of links between the victim and the suspect, which directly affects the criminal law qualification of the act;
- the need for careful organisation of work with the victim,

taking into account the peculiarities of his or her personality;

- the need to apply specialized knowledge [4].

Taking into account the leading role of law enforcement agencies in the process of proof, it is worth mentioning the decision of the European Court of Human Rights in the case of *Šečić v. Croatia* (2007), which states the following: '... The authorities have an additional obligation to take all reasonable steps to uncover any racist motivation and to establish whether hatred or prejudice based on ethnic origin did or did not play a role in the events. Failure to do so, and treating race-motivated violence and atrocities no differently from crimes that do not have racial elements, would mean deliberately ignoring the special nature of acts that are most destructive of fundamental human rights' [5].

The peculiarity of the process of investigating criminal offences in the field of discrimination is the need to thoroughly investigate the identity of the suspect, as this affects the proof of the motive for the crime. As V. V. Moiseenko rightly notes, the problem of a person who commits criminal offences is one of the main ones in criminology. Its importance can be explained by the fact that a criminal offence is a conscious, volitional act of human behaviour. Without studying the personality of the offender, it is impossible to investigate the entire essence of a particular criminal offence. The study of the criminal's personality is the main task of criminological science, and the information obtained as a result of studying this problem should be used not only in the development of a mechanism for the prevention of a criminal offence, but also in the development of a mechanism for the prevention of criminal offences not yet committed [6].

The researcher A. Dobrovskok emphasises that the anti-social qualities which characterise the personality of a criminal are present before the crime and determine its commission, but the recognition of a particular person as a criminal is possible only after and in connection with the commission of a crime. Based on the dialectical unity, the personality of the offender should be studied at three main levels: general, special and individual. The first level deals with the general concept of the offender's personality, its main features and characteristics. The second level deals with different categories and types of offenders according to different types of crimes. The third level is the study of the individual, i.e. the personality of a particular offender, his or her personal characteristics, which are of primary importance for individual prevention [7].

It is worth paying attention to the position of S. M. Balaban that consideration of the offender's personality plays a significant practical role in preventive activities. Taking into account the personal factor is almost essential and is manifested in the following areas:

- 1) in the statistical analysis of crime by individuals;

2) when studying the causes and conditions of specific crimes;

3) when law enforcement units carry out preventive measures with persons who have a tendency to commit criminal acts;

4) when sentencing by courts;

5) in the course of operational and investigative activities [8].

There are different scientific views on the structure of the offender's personality. In particular, A. P. Zakaliuk divides the structure of the offender's personality into two groups:

1) the first group reflects the social characteristics of the offender's personality and includes the following blocks: signs of formation, socialisation of the person, signs of social status and social roles; direct signs of personality orientation;

2) biosocial characteristics: demographic characteristics that have social and psychological significance; psychophysiological characteristics, including genetic origin; indicators of physical health; indicators of mental health; individual psychological traits. The last block contains signs related to the commission of a crime by a person [9].

As for the criminal law characteristics of the perpetrator, it should be noted that according to the criminal legislation of Ukraine, when imposing a sentence, the court has to take into account the nature and degree of social danger of the crime, the identity of the perpetrator, his/her attitude to the crime and the circumstances of the case that mitigate or aggravate responsibility, in particular, such characteristics include the characteristics of the crime committed, whether it was committed by a single person or a group of persons, whether the crime was committed for the first time or repeatedly, information about the previous anti-social behaviour of the perpetrator.

Analyzing the content of Article 161 of the Criminal Code of Ukraine 'Violation of Equality of Citizens Based on Their Race, Nationality, Region, Religious Beliefs, Disability and Other Grounds', a perpetrator is a person who intentionally incites national, regional, racial or religious hatred and enmity, humiliates national honour and dignity or offends the feelings of citizens in connection with their religious beliefs, as well as directly or indirectly restricts the rights or establishes direct or indirect privileges for citizens on the basis of race, skin colour, political, religious and other beliefs, gender, disability, ethnic and social origin, property status, place of residence, language or other characteristics [1].

Any crime committed on the grounds of intolerance towards a particular group of people is very dangerous, as it can lead to violence and revenge in society. In this category of cases, it is important to correctly identify hate crimes, identify the motives of intolerance, and have special skills to effectively interact with victims of this category of crimes. A situation should not be allowed where it is easier to qualify a person's unlawful actions under other *corpus delicti* that do not require proof of a motive of hatred or intolerance and are easier to prove. In this case, a potential criminal, realising

the inevitability of punishment, is likely to think about whether to commit such unlawful acts [11].

As for the psychological characteristics of a person who commits criminal offences in the field of discrimination, it is worth emphasising such traits as aggressiveness, intemperance, fanaticism, and anger at the world around him or her. At the same time, such individuals have strong-willed qualities, are prone to conflict, and have peculiar ideological views. These individuals are characterized by poor social adaptability and dissatisfaction with their position in society. They are impulsive, have low self-control, are prone to unpredictable actions, are emotionally immature, and infantile. People who commit crimes motivated by intolerance most often do not understand the requirements of society to them or are unwilling to fulfil them. They have a strong belief that members of a different race or nationality, the LGBT community or other social groups that are 'different' are evil. Such people are closed to new experiences, seek to dominate in any way possible, want to compare themselves with others while emphasising the shortcomings of the latter, and blame others for their failures, but not themselves [12].

Another feature of the process of investigating criminal offences in the field of discrimination is the need for a thorough investigation of the victim's identity, in particular, the features that make him or her a vulnerable category in terms of discriminatory practices and the presence or absence of links between the victim and the suspect. When choosing a victim, the perpetrator is primarily concerned with their appearance, i.e. their anthropological features of the body and its individual elements, as well as clothing features that may indicate their belonging to a particular race, nationality or religion. In general, the victims of crimes motivated by intolerance and discrimination in Ukraine are most often foreigners; citizens of Ukraine with non-Slavic appearance; Roma, Crimean Tatars; religious Jews; representatives of the LGBT community; people leading an antisocial lifestyle (most often drug addicts). A significant distinctive feature of crimes committed on the grounds of intolerance from the victim's point of view is their tripartite nature is the mandatory presence of perpetrators, victims, and those to whom information about hostility or hatred towards a particular nationality, race or religion is addressed. The third party includes any representatives of the nationality, race or religion against whom the perpetrators manifest their hostility or hatred, whose feelings or national dignity are humiliated [13]. In other words, the study of the victim's identity is an important and necessary element of the evidence process, as it directly affects the criminal law qualification of a discriminatory act.

4. Conclusions

The analysis of the process of investigation of criminal offences in the field of discrimination has shown that there are a number of features which should be taken into account when qualifying criminal acts. Modern challenges in the field of discrimination create numerous discussions on how to identify the motive for committing

discriminatory acts, which is a key element in the criminal law assessment of acts. Particularly important for the proper investigation of criminal offences in the field of discrimination is the study of the perpetrator of criminal offences in the field of discrimination, the identity of the

victim and the presence or absence of links between them. The issues of collecting evidence of discriminatory motives, as well as the specifics of the process of proving various forms of discriminatory crimes, are relevant for further research.

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