

**HATE CRIMES IN THE INTERNATIONAL LEGAL SYSTEM: A LONDON-ISTANBUL
COMPARISON**

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ISTANBUL COMPARISON**



by

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NOVEMBER, 2021

PLAGIARISM

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

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ABSTRACT

Hate crimes are a growing trend around the world. Certain characteristics such as hate crimes, perpetrator's victim race, religion are exhibited. These hate crimes are a major threat to public peace and security. In order to prevent this threat, many states have regulated hate crime in their criminal laws. The aim of this study is to make a legal comparison between developed and developing countries. By examining the laws, social lives and political lives of the countries, case analyzes and comparisons between countries were tried to reach a conclusion.

Keywords: Hate Crimes, International Law, Developed, Developing



ÖZET

Nefret suçları dünyada her geçen gün artan bir trenddir. Nefret suçları, failin mağduru ırk, din, cinsiyet gibi belirli özellikler nedeniyle seçtiği suçlardır. Bu nedenle nefret suçları, kamu barışı ve güvenliği için büyük bir tehdittir. Bu tehdidi önlemek için birçok devlet ceza kanunlarında nefret suçunu düzenlemiştir. Bu çalışmanın amacı gelişmiş ve gelişmekte olan ülkeler arasında hukuki açıdan bir karşılaştırmak yapmaktır. Ülkelerin kanunları, sosyal yaşamları ve siyasi hayatları incelenerek ülkeler arası vaka analizleri ve karşılaştırmaları yapılarak bir sonuca varılmaya çalışılmıştır.

Anahtar Kelimeler: Nefret Suçları, Uluslararası Hukuk, Gelişmiş, Gelişmekte olan

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1. Hate Crime

1.1. Introduction

Hate crimes are crimes where the perpetrator chooses the victim because of certain characteristics such as race, religion, gender. Therefore, hate crimes are a major threat to public peace and security. In order to prevent this threat, many states have regulated hate crime in their criminal laws. In this study, it has been tried to be explained with examples from countries within the conceptual framework created as a result of determining the elements and general characteristics of hate crime.

It is aimed to make an assessment on an international scale by making use of the appearances of today's phenomenon "hate crimes", which need legal, sociological and philosophical definition. It will be determined which legal regulations exist and should be in order to prevent these crimes in the international legal system, social groups that have the potential to experience victimization, the importance of such crimes in terms of public peace and why they differ from other crimes will be examined. In addition, concepts related to hate crimes such as hate speech, discrimination, crimes against humanity will also be examined; The points where they intersect and diverge will be highlighted. Finally, there will be a discussion on how a comprehensive protection mechanism can be developed, taking into account international standards.

1.2. Origin of Hate Crime

1.2.1. Theoretical Background and Existing Evidence

As a term and a legal crime category, hate crime is a product of the increasing awareness of race, gender, and sexual orientation in contemporary society (Gadd, 2010). Credit for deriving the term "hate crime" collectively belongs to the Representatives of John Conyers (D-Mich.), Barbara Kennelly (D-Conn.) And Mario Biaggi (D-N.Y.). In 1985, they sponsored a bill titled "Hate Crimes Statistics Law" at the House of Representatives. The bill required

the Ministry of Justice to collect and publish statistics on the nature and number of crimes stemming from racial, religious and ethnic prejudice (Levin B. , From Slavery to Hate Crime Laws: The Emergence of Race and Status-Based Protection, 2002).

However, it has been suggested that in the case of a hate crime, the loss of the victim was the intention of the crime. In addition to harming the victim, hate crime aims to convey a message to the wider group to which the victim usually belongs (or is thought to belong) (Scotting, 2000-2001).

It seems logical to think of hate crimes in a behavioral context, because while the gains from the acquisition crime are obvious, the potential "gains" of committing a pure act of violence against others is less clear (for such discrimination unless people have tastes, it is a theoretical one that is ultimately difficult to test in this practice. proposition) (Borum, 2012). An alternative perspective might consider hate crime as an act of passion or emotion dominated by an individual's rational decision-making process. This is Gordon and Arian's claim that "when a person feels very threatened, emotion rather than logic or rational considerations dominate the decision-making process" (Allport, 1954). Hate crimes tend to be committed by groups of people rather than individuals, and this suggests that there may be some elements of group interaction that can cause individuals to commit hate crimes when in groups, such as peer pressure or the removal of social barriers. The concept of "herd" is well known to economists, especially in relation to financial markets. In the context of a hate crime, we can imagine that the group mindset has the power to overcome social taboos or to persuade individuals to take actions that they would not otherwise consider to influence the group. The increase can occur when group members second-estimate the value other members put in committing hate crimes (Allen, 2010). There is a distinction between racial and religious discrimination, but often the two occur together. While it is clear that the terrorist attacks of September 11 and 7/7 triggered hostility towards Western Muslims, research from the United

States revealed that it was not just Muslims who were targeted - hate crimes were also committed on Middle Easterners and Arabs. Sikhs, who may have been confused with Muslims and Muslims, did not practice (Muneer, 2004). The vast majority of Britain's Muslim population is South Asian, mostly from Pakistan, Bangladesh and India. While Pakistani and Bangladeshi populations are almost entirely Muslim, the Indian population is subdivided into Hindus, Muslims, and Sikhs. Thus, the Muslim population in the UK is almost entirely in the "South Asian" ethnic category (Muneer, 2004). People in this category may be victims of racial or religious discrimination. In some cases, religious discrimination can be misplaced - individuals may be discriminated against because they are mistaken for being Muslim or because of some form of statistical profiling (i.e. they target South Asians because they are the ethnic group most likely to include Muslims).

Over the past three decades, a growing number of politicians, interest groups, and social movement organizations in the United States have identified "hate crimes" as a social problem of national concerns. Amid this growing concern and in response to growing pressure from civil rights activists, several states passed hate crimes laws (Stuart, 2001). The federal government responded to these voices by passing laws requiring law enforcement to collect data on hate crimes. Together, these events have made the United States a world leader in enforcing laws to monitor and combat bias-motivated crimes. The Hate Crimes Statistics Act 1990 states that "crimes against a person or property motivated by racial bias, religion, ethnicity / national origin, disability or sexual orientation" (Hall, 2013).

Despite these state and national efforts to combat hate crimes in the 1990s, available data show that hate crime incidents have not declined significantly over the past 20 years, and hate crimes against Arab and Muslim Americans have increased significantly in the following months and years (Walters, 2014). September 11, 2001. To illustrate the magnitude of the increase in anti-Muslim hate crime crimes, the FBI reported a 1,600 percent increase in such

hate crimes between 2000 and 2001 - from 28 hate incidents in 2000 to 481 in 2001 (Hate Crimes in the OSCE Region - Incidents and Responses: Annual Report, 2011). York City police reported 117 hate crimes against Muslims in this city alone between September 11, 2001 and March 2002. Moreover, although the FBI does not have comparable data on trends in anti-Arab crimes due to the absence of an "Arab" category, the states of California, Colorado, and Illinois, along with various Arab advocacy groups, were anti-Arab hate crimes during the same period (Sheridan & Gillett, 2005).

Although the number of such Muslim and anti-Arab hate crimes has declined since 2001, after a few years the number of anti-Muslim hate crimes remained five times the number in 2000. The mosque near "ground zero" and the threats of burning copies of the Koran on the anniversary of September 11 show that the stereotypes depicting Arabs and Muslims as perpetrators of terrorism did not disappear for almost a decade after 9/11 (Ibish & Steward, 2003). In some cases, such stereotypes continue to inspire hate-motivated violence, as evidenced by the recent violent attack on a Bangladeshi taxi driver who told a passenger that he was a Muslim (Perry, The more things change...post-9/11 trends in hate crime scholarship, 2010).

1.2.2.Racial and Ethnic Demographics

The literature on prejudice and discrimination defines minority group size as an important determinant of intergroup conflict and prejudice, but exactly how and why group size matters is debatable. Moreover, group size can affect behaviors (eg criminal offenses) and attitudes (eg racial bias) differently, as the former puts more emphasis on factors such as opportunity, risk of retaliation and law enforcement (Allport, 1954). We see three notable ways in which minority group size is likely to affect hate crimes against Arabs and Muslims. First, group size can only show opportunity. At the general level, where the minority ratio is higher, there may be more in-group crime as more targets are available. As David Jacobs and Katherine

Wood (1999) found in their study on interracial murder, black killing of whites increases with the proportion of the population being black, possibly due to the possibility of interracial interaction (David & John, 2013). That is, the minority percentage is important to the extent that it relates to the number of targets available. When the number of Arabs / Muslims (targets) is used as the denominator in the variable that measures hate crime crimes (effectively transforming the dependent variable into a hate crime rate per current target number), it is likely that the percentage of Arab / Muslim is of little meaning from a pure opportunity perspective.

A second argument highlights the real or perceived threats posed by a minority group. Blalock (1967), for example, argued that dominant groups in society would try to maintain their strong position and resort to discrimination and perhaps even violence to counter threats from minority groups. Blalock (1967) emphasized the importance of proportionate minority group size as a source of both political and economic threat. According to Blalock (1967), large or growing minority groups can become politically viable and compete for political power that elicits a backlash from the majority or "dominant" group. Similarly, minority groups represent a source of cheap and disposable labor that can compete with majority group members, at least under certain labor market conditions. While not all contemporary studies support this proposition, the general principles of the group threat perspective have received substantial support in the study of bias and racially motivated violence most relevant to our situation. From this perspective, the conclusion that the percentage of Arab / Muslim will be positively associated with Arab / anti-Muslim hate crimes is measured either as the number of such hate crimes or as a ratio per Arab / Muslim population. The main idea is that a larger proportion of Arabs / Muslims will be perceived as threatening by sections of the majority group and a reaction will emerge.

Finally, the power-difference perspective predicts the opposite of the traditional group threat theory. This line of theorizing shows that majority group members dare to act on their prejudices when they expect little or no reprisals from local law enforcement and a low probability of retaliation from the minority group. Robert Levine and Donald Campbell (1972), in their work on ethnocentrism, “fear of retaliation against hostility against powerful groups can make the level of inhibition against aggression greater than the level of association, thus enabling the exclusion of power (Allport, 1954). Retaliation will be least attacked. In other words, Levine and Campbell's idea is in line with the proverb "there is safety in numbers." Minority group members are at lower risk of victimization in areas where they make up a higher proportion of the population because dominant group members may fear the consequences of their actions. Violence can lead to retaliatory violence or perhaps reveal the power of the law. Turning to our case of anti-Arab / Muslim hate crimes, the power differential thesis suggests that hate crimes can indeed occur with a certain frequency in areas with large numbers of Arabs and Muslims. Nevertheless, the rate of hate crimes committed against this minority group is expected to be lower where the proportion of Arabs and Muslims in a district is higher.

1.3. Hate Speech, Hate Crime and Islamophobia

Before determining what hate speech means as a concept, the word "hate" should be defined. A state of hate; discourse expression; the offense means a legal violation. Literally, hate refers to the excessive dislike, disgust, and grudge against something.. (Oxford English Dictionary(OED), 2014). Hate speech has also entered dictionaries as an American-originated phrase. According to one definition, hate speech means "speaking against other social groups that includes grudge or intolerance because of their race or sexual identity; means "hostile verbal expression". However, this verbal expression should be understood to include other forms of written and non-verbal expression. (Boyle & Kevin, 2010). Defining this concept

primarily with the expression of hate based on racist reason is due to its direct relation with the racist violence events that have historically caused the emergence of this concept in America. (Heinze & Eric, 2013).

In the United States of America (USA), students and some other victims faced severe racial hatred attacks in the early 1990s, especially because of their colors. The phrase "Words That Wound", which has become a slogan, was able to draw attention to the urgent need for assistance of students and other victims who were silenced, frightened, and exposed to serious psychological and physical trauma, through an academic study. Those who carried out racist hate attacks used symbols and slogans as tools of oppression and humiliation, almost like pieces of an entire arsenal. (Matsuda M. J., 2018).

There is a connection between hate speech and extreme speech. Prohibition of hate speech depends on the precondition that intolerance and hatred have reached an "extreme" quality. (Weinstein & Hare, 2009).

Hate speech is that the words and behaviors that are accepted as hate speech in human rights protection systems are not considered within the scope of freedom of expression and are not protected. Just as the prohibition of discrimination is an established concept, hate speech constitutes an element of this prohibition in a way. In order to prevent such unprotected words and behaviors and to provide a stronger emphasis in terms of perception of the issue, it is seen that they are referred to as "hate speech prohibitions" in both national and international literature and practice. (Heinze E. , 2013).

Although it is widely used, there is no universally valid definition of "hate speech". Although some of the states prohibit some expressions that they consider as hate speech, there are some differences between the states regarding the nature and content of the words and actions considered within the scope of this prohibition. (Weber, 2009).

In the European Union (EU), hate speech is accepted as any expression that publicly spreads, provokes, supports or justifies violence, hatred, discrimination and hostility against minorities on the basis of racism and xenophobia, and some actions are considered in detail as punishable actions in this context. (Boyle K. , 2010).

The Council of Europe has adopted some principles, in particular with regard to hate speech spread through the media. The Council is to disseminate, incite, support or justify hate speech based on racial hatred, xenophobia, anti-Semitism or intolerance on the basis of intolerance, aggressive nationalism and ethnic origin, discrimination, and hatred, including hostility towards minorities, immigrants and people of immigrant origin. defined as any form of expression towards. (Komitesi, 1997). Looking at the definition, it is understood that hate speech must include comments targeting a particular person or segment of the society.

The jurisprudence of international human rights courts on hate speech constitutes one of the most important resources in determining the meaning and limits of the concept in practice. In this sense, it is of great benefit to look at the approach of the European Court of Human Rights (ECHR), where our country has accepted its jurisdiction, to the concept of hate speech. The Court acts in accordance with the doctrine of autonomous concepts and refrains from making a precise definition for hate speech. (Harris, O'Boyle, Bates, & Buckley, 2014).

With the impact of new developments in the international arena, hate speech is more commonly addressed in a way to cover issues such as race, nationality, ethnic origin, religion, gender and sexual orientation, age and disability. In hate speech against individuals, action is taken with the aim of defamation (group defamation or group libel) of the social segments and groups that these individuals belong to in the background of the discourse. There are many ways to harm the dignity of social segments and groups. (Waldron, Dignity and Defamation: The Visibility of Hate, 2010).

Attitudes and behaviors such as linking blacks with certain crimes, claiming that Arab-American and Muslims support terrorist organizations, likening a certain race to an animal, and announcing that those with certain characteristics will not benefit from a service are directly in the nature of an attack on human dignity. Undoubtedly, human dignity reflects a complex idea that has political and legal meaning as well as philosophical. However, here, protected human dignity as a status implies being a well-off member of society. (Waldron, *Dignity and Defamation: The Visibility of Hate*, 2010).

Expressing hatred towards individuals and groups because they belong to a certain race or provoking others to do so constitutes racist hate speech. In democracies that have a pluralistic nature in terms of race, belief, and ethnicity, it has become much more risky to explain racist thoughts or act on provocative discourses of this nature. Values and concepts such as social cohesion, public order, human dignity and psychological harm have been the reasons for the restrictions in combating racist discourses. (Bleich & Ramond, 2011). Western European states made regulations punishing racism between 1920-1990. In the 1920-1990 period, many states, by enacting special laws, prohibited racist discourses such as incitement to racist hostility and holocaust denial. Thus, individuals' expressing racist thoughts are excluded from the scope of freedom of expression. As regards incitement to racism, the United States has maintained its exceptional position, placing greater emphasis on freedom of expression. (Bleich & Ramond, 2011).

Today, laws that prohibit racist rhetoric in Europe are quite common, and a European consensus can be mentioned on this issue. However, in the main democratic countries of Europe, the regulations prohibiting incitement to racism were made in the 1960s and 1970s, not in earlier dates as it is thought. (Bleich & Ramond, 2011). Making these regulations is undoubtedly related to civil rights movements all over the world. The limited number of lawsuits and penalties given today show that anti-racist laws have symbolic and practical

values. Regulating the issue by law is a powerful form of announcement, and it means showing that some discourses are unacceptable throughout the country and that the identity and benefits of different social segments are deemed worthy of national value. (Bleich & Ramond, 2011).

Hate speech remained a problem not only because of racial difference, but also towards ethnicity and national identities. The provocation of hatred as a form of intolerance towards ethnicity and nationalities has made pluralist countries nervous in these respects (Boyle & Kevin, 2010). This intolerance often comes from "aggressive nationalist and ethnocentric" people and groups. Disturbances due to social and political developments are effective in the widespread use of this type of hate speech.

Hate speech stemming from the intolerance of individuals to believe in a certain religion, to have a belief or not to believe is hate speech motivated by religion and belief. Inciting differences on this issue continues to be the source of serious problems today (Boyle & Kevin, 2010).

Another source of intolerance in democratic societies is the use of derogatory and discriminatory discourses and attitudes towards individuals and groups due to hatred of gender and sexual orientation. Although the pursuit of rights in this area is relatively new, the issue has been subject to international court case law since the recent past (Heinze & Eric, 2013). The rights struggles of LGBT groups in this area have led to important legal and practical developments. However, verbal and physical assaults, especially against women and those with different sexual orientations, remain serious social problems (Duggan, 2010).

Protection areas against hate speech show a dynamic development with the discussion of new groups. Characteristics such as age, disability, and obesity have started to emerge new group

identities, and these features can also create hate speech in the expression of intolerance based on discrimination.

1.3.1.Hate Crime

Hate speech and hate crimes are sometimes perceived and confused as synonymous concepts. (Karan, 2010). Although there are attempts to define hate crime in the international arena, there is no common definition on which a consensus has been reached. (Perry, Policing hate crime in a Multicultural society observations from Canada, 2010). This situation stems from the difficulty in defining the concept as it includes many reasons. (Brudholm, 2014).

However, in the light of academic studies taking international developments into account, in its most general expression, hate crime is a punishment against another person or groups due to their existing or ``perceived " social group belonging and identity. It can be expressed as words and other actions that require punishment in terms of law. (Levin B. , 2009).

Although the concepts of hate speech and hate crime are related, there are also differences between them. First of all, it should be noted that not every action committed with the motive of hate constitutes a hate crime categorically. Although in some types of crimes regulated in national criminal laws, hate is stipulated in the spiritual element of the crime, nasty events may not reach the threshold of hate crimes. Crimes of insult, intentional injury or property damage, which are commonly included in criminal laws, for example, cannot always exceed the threshold for hate crimes. (Van Der Veur, 2010).

As one of the situations where hate speech is directly regulated as a crime, it is "the crime of inciting people to hatred and enmity" in the Turkish Penal Code. (TCK.m.216). This regulation makes hateful statements a crime under certain conditions. (Karan, 2010).

The EU accepts hate crimes as situations in which the racism and xenophobia motivation aggravates the circumstances of the events, apart from the acts that it deems as hate speech;

States parties are obliged by the measures they will take to accept these motives as an aggravating cause and for courts to take this situation into account when imposing punishments. (AB Konseyi Çerçeve Kararı, 2008).

One of the internationally accepted definitions was made by the Organization for Security and Cooperation in Europe (OSCE). According to the OSCE, a hate crime is an act that is committed with a prejudice and must be punished in terms of criminal law. (OSCE, Ministerial Council, Decision No.9/09, Combating Hate Crimes, 2009). In this definition, first of all, the existence of a crime in the sense of criminal law and the commitment of this crime with a biased motive are considered as two basic elements. The feature that distinguishes hate crimes from other types of crime is this bias motivation. (Boyle & Kevin, 2010). This motive is pre-accepted thoughts, cliché assumptions, intolerance, or hatred and hostility directed towards a particular group.

This crime may be against the bodily integrity or other rights and freedoms of individuals and groups, as well as attacks against their assets. As in hate speech, the targeted individual or communities in hate crimes have common characteristics such as ethnic origin, language, national identity, religion and sect, race, gender and sexual orientation, and disability. (Van Der Veur, 2010). Membership of an individual with a real or "perceived connection" with a certain social group is one of the factors that create the motive for committing this crime. The concept of "perceived connection" emerges as a special case in terms of this type of crime. Although they are not included in a target group or segment, it is observed that individuals are sometimes perceived as belonging to that group or social segment and exposed to attacks. (Van Der Veur, 2010) .

While the OSCE points to a distinction between the concepts of hate speech and hate crime, it also acknowledges the close relationship between them. When the hate element in a discourse

is removed, that statement will no longer contain an element of crime when it is published. Conversely, even in the absence of a hate motive based on discrimination and intolerance in an act of deliberate killing, the act in question remains a punishable offense. Hatred based on discrimination and intolerance in a society arises from deeply rooted reasons. Hate speech and hate crimes are not the cause of this hate and social problems, but an expression with hurtful and bad consequences. Sometimes hate speech, although it has not yet reached the criminal level, poses a risk of hate crime (Boyle K. , 2010).

The crimes included in the laws as hate crimes, even if there is no bias motive, while the action still continues to be a crime, in cases where hate speech is regulated as a specific crime, if the bias motive is not found, this act will not constitute an act that is punishable in the abstract from motive because it is an indispensable element (Aydın, 2004).

Hate speech can sometimes form evidence that a hate crime has been committed. A discourse based on hate and discrimination reveals the motivation of the perpetrator to commit the crime before, during or after an action, and requires the action to be investigated by evaluating it as a hate crime. Ethnic origin is derogatory before or during physical assault; Insults and caricatures constitute the evidence of the motive of the perpetrator, as in the examples of drawing a caricature with racist content and occurring before or during the destruction of a religious place.

1.3.1.1. Scope and Definition of Hate Crime

The first attempt to prevent hate crime acts was initiated in the USA in the 1960s with the aim of preventing attacks against Jews and Blacks in particular, and the concept of hate crime was widespread in 1986 with the inclusion of racist attacks on a black person in New York City in 1986. started to be used (Ataman & İnceoğlu, 2012).

Hate crimes that are an attack on human rights; It is a clear violation of the principle of equality, which is one of the main arguments of internationally accepted human rights conventions (Fiske, 2002).

In multicultural societies, it is not always possible for citizens to live together in an environment of trust based on tolerance. Sometimes, obstacles to citizens' coexistence also pose a social problem. It is important not only to ensure the fundamental rights and freedoms of individuals, but also to legally secure the different characteristics of individuals assumed by society. One of the most important obstacles to the coexistence of multicultural societies is hate crimes. Hate crimes are the violent manifestation of prejudice (Walters, Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms, 2014).

Against a person or a group; "Hate crimes" are crimes committed against the material or spiritual existence of individuals due to prejudice due to characteristics such as race, ethnic / national origin, religion, gender, sexual orientation, physical disability, and age (Gürler, 2010).

The OSCE defines hate crime as: "The victim, property, or the target of the crime is real or with a group of race, ethnicity, language, color, religion, gender, age, mental or physical disability, sexual orientation, or other similar characteristics. is any crime committed against persons or property, for which he was chosen because of his perceived bond, belonging, support or membership ". To summarize the definition of the OSCE, crimes committed due to certain basic and unalterable characteristics of the victim or victims, such as race, ethnicity, language, color, gender, age, physical or mental disability, constitute hate crimes (Hate Crime in the OSCE Region-Incidents and Responses: Annual Report, 2011).

Hate crimes are crimes that can be committed against property or persons. The reason for the perpetrator to choose the victim is that the victim has characteristics such as race, national or

ethnic origin, language, color, religion, gender, sexual orientation, age, physical or mental disability. In these crimes, the perpetrator is not required to hate the victim personally. The important thing is the group with which the victim has a common feature. The aim of the perpetrator is to intimidate the group he belongs to by committing crimes against the victim and to send a message that they are not wanted in the society.

“Hate Crime” is really about prejudice, rather than about what it is. The most important feature that distinguishes hate crimes from other crimes is that the crime was committed with a biased motivation (Jacobs & Potter, 1998). For example, a crime of defamation may be committed against someone out of prejudice or hatred. Insult is a crime regulated in criminal laws. If the crime is committed with biased motivation, which is the other element of the crime, the offense of defamation also becomes a hate crime.

What does prejudice mean? The concept of “prejudice” is defined as an unjustified and unreasonable negative attitude towards a group and a person belonging to that group. In a broader sense, it can be defined as negative attitudes, behaviors and feelings based on a misleading generalization that are felt and / or expressed towards a person and / or group due to their characteristics or the structures they belong to. Prejudice; It is formulated as an "attitude" consisting of a combination of feelings, behaviors and beliefs. Negative emotional state towards a certain group and a person belonging to this group is conceptualized as "prejudice", cognitive state as "stereotype" and behavioral state as "discrimination" (Fiske, 2002). Looking at the functioning of the process, this prejudice, which has started to become stereotyped over time, reveals the process of "othering" that occurs as a result of the weakening and even disappearance of the ability to accept someone who is not like it. It is seen that the tolerance thresholds of the people fall and their intolerance to those who are not like them appear.

The perpetrator targets the victim because of the perception that the victim belongs to a certain group or belongs to that group. Likewise, if the criminal act was committed against a property, the property in question was selected due to its connection with the group in question.

It is necessary to distinguish between hate motives and bias motives. Hate can be in any crime. For example, a man may commit the crime of deliberately wounding another man because he hates him. But this is not enough for the crime to be a hate crime. Because, the important thing is that the victim is targeted because of some distinctive features. If the victim is not selected because of these distinctive features, there will be no hate crime. Therefore, not every “hate” is an element sought in hate crimes. Here, in fact, hate must stem from prejudice. Prejudice has a broader meaning. It should be used in the sense of choosing the person because of the characteristic features he belongs to.

We can separate hate speech and hate crime with the following formula:

Hate Crime: A crime according to the penal code + Prejudice / Hate

Hate Speech: Prejudice / Hate = a crime in criminal codes may or may not be arranged as.

So how is hate crime different from discrimination? There is an incentive to behave biased in both discrimination and hate crime. But when you remove this motive from the crime, there will be no discrimination crime left. But in hate crime, when you pull the bias / hate motivation, there is still another crime under the criminal law. For example, discrimination, which does not deny the failure to serve someone just because it is ineffective, is considered within the scope of the crime. But refusing to serve a person normally, rather than because of disability, would not constitute an offense of discrimination.

1.3.2. The Effects of Hate Speech and Crimes

The effects of hate speech are expressed as words that hurt in the most concise form. The effects and damages caused by this discourse and related hate crimes should be examined separately from different perspectives of many relevant disciplines. (Perry, Levin, Iganski, Blazak, & Lawrence, 2009). Expressing hate is not just about rhetoric; If this hate has changed from discourse to behavior or an attitude in relationships, then other principles of the law also come into play. In terms of the use of all individual rights and freedoms, for example, if the attitudes are discriminated against in business life, having a house, exercising the right to education and training, the legal sanctions of this will also change and the prohibition of discrimination will come into effect. (Levin B. , 2009).

Hate crime is an act that jeopardizes a society's ability to achieve a multicultural lifestyle. This crime is a mechanism for the perpetrators to consciously shape and restrict the actions and capacities of others. These actions are exclusive and divisive. (Perry, 2010, s. 124). These crimes aim to marginalize what is different in the society and to separate it from the social fabric, and to open a wider area of influence to the opposite motive life style in social life.

There is no discussion about the harm caused by hate crime. However, the nature and extent of this damage have not been fully understood to date. Understanding this depends on considering the political and criminal justice system elements of this crime area together. These crimes can also be considered as an interdisciplinary field that requires the analysis of the concepts of prohibition of discrimination, bigotry and oppression from another perspective. (Perry, Levin, Iganski, Blazak, & Lawrence, 2009, s. 274).

Hate begins with the formation of prejudice; then it is reflected in the words and behaviors that express this prejudice; It manifests as discrimination, discourse humiliation, acts of violence and ultimately genocide. This process is also defined as "the pyramid of hate". (Levin B. , 2009). Considering this process, if a society is not struggled with hate, the

dimensions of hate reach such a point in time that it is believed that the right to life of someone who is seen as opposed should be terminated. The factors that led to the development of such hatred should undoubtedly be investigated deeply and analyzed in the light of factors affecting psychosocial and political changes.

"Being different" in the society you live in has the potential to be a victim due to the common social approach. The source of this "being different" varies. Sexual orientation, immigration, belonging to different ethnic or religious minority groups continue to be common occurrences as examples of victimization of harm. (Walters, Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms, 2014).

Hate speech and hate crimes cause many negative effects on both individuals and society's welfare by causing various violations of rights and material and moral damage. Direct victims of hate speech suffer physical, psychological, social and economic damage. Hate crime directly directed to the individual also has a strong symbolic message. This message is directed towards the social group or segment to which the individual belongs. The message means that the group or segment with which the person is related is of marginal value in the society. (Iganski & Perry, How hate crimes hurt more: evidence from the British Crime Survey, 2009). The negative effects of these actions spread rapidly among the target group or social segments and other segments in a short time. These messages with hate content damage the social fabric of communities and the unity of multicultural social life. (Walters, Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms, 2014).

Hate crimes, which are crimes based on prejudice, weaken social interaction between segments of society, including ethnic and inter-racial relations; it leads to incitement to violence even within groups. (Lim H. A.). Indeed, segments of society that have distances between them because of their differences in language, beliefs and values begin to distance

themselves from each other as a result of fear and mistrust spread by crimes committed due to prejudice. Therefore, it weakens not only the individual and the society, but also the national level tolerance and social participation. (Iganski & Perry, How hate crimes hurt more: evidence from the British Crime Survey, 2009, s. 350).

According to field studies, when comparing other crimes against individuals and hate crimes, victims of crimes that include hate speech and are committed with the motive of hate are more concerned and worried, and greater fear and insecurity come to the fore. (McDevitt, Balboni, Garcia, & Gu, 2001).

The message of hate speech and crime to the victim is that the victim person or social group does not deserve respect and is worthless. While struggling with this mood, victims begin to ask why this incident happened to them. Victims sometimes blame themselves (victim blaming). This situation leads to embarrassment. (Walters, Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms, 2014).

While there are physical or economic losses in terms of some crimes, almost all crimes also cause psychological damages. The existence of this damage is undoubtedly for hate crimes. The psychological and emotional damage caused by hate crimes is more than other crimes. For example, when a family and children who were subjected to racist attack by their neighbors are taken into consideration after the incident and their concerns about their future, a result occurs with the act of aggression; however, the result is not limited to this. The family makes great efforts to get rid of the effects of this incident. (Iganski & Perry, How hate crimes hurt more: evidence from the British Crime Survey, 2009, s. 282). Increasing the security of the homes of victims of racial hatred after crime, to relocation; to change his job; to avoid walking from certain places and parking their vehicles; It is observed that they engage in a series of behaviors, from making sure that their money and other belongings are safe before

going out. (Iganski & Perry, How hate crimes hurt more: evidence from the British Crime Survey, 2009, s. 283). In a field study, it was shown that victims who were exposed to bias crimes felt more fear and security anxiety (52% versus 44%) after the crime was committed compared to other ordinary crime victims. (McDevitt, Balboni, Garcia, & Gu, 2001, s. 710).

Victims of racist hate crimes experience more psychological problems than victims of other crimes. Depression, anxiety, panic attacks, loss of self-esteem, difficulty sleeping, screaming and vulnerability, in particular fear, are the main problems experienced by victims of this crime. (Iganski & Perry, How hate crimes hurt more: evidence from the British Crime Survey, 2009, s. 285), (Perry, Policing hate crime in a Multicultural society observations from Canada, 2010, s. 125).

The illusion of the hate crime victim that the individual is not vulnerable ends when this crime is committed against him. Sometimes the victim sees himself unfortunate; He thinks that this is because he is different from the others. This situation may lead to a decrease in his self-esteem before the event. We are exposed to the wrong reasons and prejudices of the society about the causes of the event. The message that the victim of hate crimes conveys to the social group and segment they are associated with is that other members are also the next possible victims. (Henderson, 2006).

Considering the effects and harms of exposure to hate on both the individual and the group as a whole, it is of great importance to develop goals and policies to help victims of hate crimes and reduce their negative effects on minority communities. (Walters, Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms, 2014). The contrary situation creates a new result such as the indifference of hate speech and crimes by the society; This entails the danger of further spreading of hate speech and crimes, causing social tension, unrest and deep social divisions. (İnceoğlu, 2012). The victim who is subjected to a hate crime also has the

risk of responding directly to the perpetrator or the social segment with which he or she is associated with another crime, either directly or by the group or environment with whom he is affiliated, which further expands the scope of hate crimes and poses a threat to social peace. (Perry, Levin, Iganski, Blazak, & Lawrence, 2009, s. 126).

One of the most important features that distinguish hate crimes from other types of crimes is that the damage caused by these crimes affects the victims and society more widely. There is a harm caused by all types of crime, but there is a harm with the addition that a hate crime accompanies and brings with another crime. This additional harm justifies the thought as to why the punishment to be given to perpetrators of hate crimes should be increased. (Iganski, Introduction: Hate Crime as a Scholarly Domain, 2009). A field study aiming to reveal the differences between the effects of bias crimes and other crimes on victims in the city of Boston in the USA shows that post-crime bias crimes are more common in many ways. According to the results of the research, the 'very difficult' answer given about job loss (50% vs 34%), major health problems (48% vs 32%), the extent of belief in coping with victimization after the crime (36% or 13%) rates were obtained. (McDevitt, Balboni, Garcia, & Gu, 2001, s. 710).

Understanding the damage caused by this crime plays an important role not only in terms of punishment policy, but also in legal regulations in terms of support and assistance to be followed for the victims of the crime. Here you can find clues as to the groups to which the perpetrators belong and where their vulnerabilities stem from. In addition, the effects of individually targeted victims on the communities they are associated with can also be understood. In addition to all this widespread effect, it should not be forgotten that hate crime is a violation of the principle of "respect for social pluralism". (Iganski, Introduction: Hate Crime as a Scholarly Domain, 2009, s. 300).

Hate crimes are more commonly committed under the influence of periodic international political developments. In the USA, after the 9/11 incidents and during the invasion of Iraq, there has been an increase in the number of hate crimes against Arabs, Muslims and Middle Easterners. (Henderson, 2006, s. 291).

In the spread of hate speech and crimes and the aggravation of victimhood, the opportunity to reach the masses easily provided by the print and visual media and the internet play a very important role, especially the internet has turned into a new front of hate. If the media, as a socio-political tool, makes it difficult to criticize and oppose those who use stereotyped hate speech, its responsibility increases. Hate speech mediated by the media creates an environment for discrimination, violence and other hate crimes. (Boyle & Kevin, 2010, s. 66-67). The world has not forgotten how radio was used in Rwanda in the 1990s by the Hututs as an incentive and provocative tool in subjecting the Tutsi to a genocide. More than 800,000 people died in this genocide. (Boyle K. , 2010, s. 67). Therefore, the media and the internet are a major factor in the growth of hate crimes victimization.

From the above explanations, it can be said that the effects of hate crimes on society occur in three interrelated stages. The first is the directly targeted victim, the second is the targeted social segment or group, and the third is intra-group relations. (Lim H. A., 2009).

Hate crimes have symbolic significance as they are message crimes. This message aims to frighten the social group or segment with which the crime victim is associated. (Lim H. A., s. 388) The idea that justifies the punishment of a hate crime is the damage caused by the psychological and emotional effects that go beyond the physical damage caused by this crime. (Perry, 2010, s. 125) .

As a result, in addition to causing individual and social group victimization, the continuity of hate speech and crimes is a revolt against liberal democratic values. Hate crimes reveal the

divisions that have started to occur in the social fabric and the fanaticism that is spreading. Bias-motivated crimes not only make the tension between social segments visible, but also reveal wider sociocultural polarization. (Perry, 2010, s. 350). In addition to the victim-oriented effects, prevention of violence and protection of human dignity in the last analysis constitute the basic legitimacy reasons for the idea that such expressions are not protected and suppressed within the scope of freedom of expression. (Yılmaz, 2014, s. 58-68).

1.3.3. Islamophobia

In 21st century, the word of Islamophobia has a wide impact on American society. The history and causes of Islamophobia are very controversial issues. Also, most of the scholars defines it as a cultural racism. However, there is a specific question about Islamophobia: whether it is a new word for old fears or it is a new phenomenon (Canatan, 2007).

In literature, Islamophobia examined in two specific ways. One of them is historical and other one is kinds of Islamophobia in the world. In historical examination, the roots of Islamophobia are generally associated as continuation of Anti-Semitism (Saleem, Alam, Ahmed, & Foreman, 2010).

Many scholars consider Islamophobia to have a similar historical background to Antisemitism. Some argued that Islamophobia and anti-Semitism are different forms of the same fear. Rabbi Reuven Firestone argued that both were expressions of racism and that their prejudices were deeply rooted in Western civilization. Firestone named it Islamophobia, a recently created concept that refers to the extensive history of hatred of Muslims in the West, such as anti-Semitism. According to him, the origins of Islamophobia were established centuries before the emergence of the religion of Islam. Therefore, he argued that Islamophobia is based on a wide historical process in history (Carr, 2016).

Islamophobia, which started to rise in America and Europe with the September 11 attack, was caused by the attacks of 15 and 20 November 2003 Istanbul, 11 March 2004 Madrid, 7 July 2005 London and 13 November 2015 Paris, which was undertaken by the terrorist organization El-Kaide, and the hostility of Muslims in Europe and against Islam. and increased the feeling of exclusion (Lathion, 2014). Terrorist attacks reinforced old prejudices and Islamophobia increased even more. Muslims were perceived as the new "beyond" of the West, as "threats and enemies inside" and faced with enormous difficulties. In the West, the image of the Muslim is adversely affected by these attacks and fears and paranoia against Islam are increasing, while attitudes towards Muslims are getting harder.

Muslims living in Europe and the USA have become scapegoats in the name of the fight against terrorism. The Islamophobia, which spread after September 11, increased the anti-Muslims, as a result of which there were many attacks (Allen, 2010). There have been numerous increases in Islamophobic discourse and agendas, such as September 11, July 7 and other terrorist attacks, such as calls for the prohibition of the Qur'an after the capture of terrorist suspects in America or Europe, filing, closing mosques, expelling Muslim citizens or preventing immigration from Muslim countries (Kronendorfer, 2015).

Leaders of right-wing national parties, anti-immigration political parties, political and media commentators, and strict Christian and Zionist religious leaders regularly expressed hate speech by targeting not only extreme Muslims, but Islam and Muslims in general, thereby attempting to associate Islam and Muslims with terrorism (Meer, 2014). As a result, the rise in Islamophobia, a widespread suspicion against Muslims, and the discrimination Muslims are subjected to on the basis of their race and religion, all this has led to hate crimes and other violence.

1.3.3.1. PREJUDICES ABOUT ARABS AND MUSLIMS

Many Americans and Europeans do not know the difference between Arabs and Muslims. Not all Arabs are Muslims, and not all Muslims are Arabs. Today, around 15 million Christians live in approximately Arabic speaking countries. Most of the Arabs living in the USA are Christians, not Muslims. According to Zagby's study in 2001, 42% of Arabs in the USA are Catholic, 23% Orthodox, 12% Protestant and only 23% Muslim. In other words, 77% of Arabs in the USA are not Muslim. Approximately 12% of the Muslims living in the world are Arabs. According to Sylvia Nassar-McMillan: "The biggest reason for the confusion between Arabs and Muslims is the Prophet of Muslims. Mohammed is of Arab origin and is because Arab culture and Muslim culture are very close to each other " (McMillan, 2003:4).(?)

The prejudice of identifying Arabs with Muslims and seeing them as terrorists is actually not a new phenomenon. Before September 11, there was prejudice against Arabs (Engle, 2004: 75) (?).According to Engle, this judgment is mostly due to the 1995 federal building in Oklahoma bombed by people thought to be Middle Easterners. However, in a later investigation, it was revealed that the person who made the bombing was an American named Timothy Mcveigh. After this incident in 1995, there were 200 hate crime incidents against Muslim Americans living in the USA the same year (Abel, 2005: 48). (?)

After September 11, it became more evident among Americans to view Muslims as terrorists. The shooting of American journalist Daniel Pearl in the head by terrorists, the video of this incident and the suicide bombings of some "Muslim" terrorists made this even more evident. Arab and Muslim communities living in America and Australia were attacked due to the anti-Arab and anti-Muslim hostility that rose two days after the September 11 attack. It has been reported that dozens of attacks have occurred in the USA, and that American citizens, Arabs and Muslims are under pressure. In the attacks that took place in many parts of the USA, there were attacks on places of worship such as mosques, masjids and workplaces belonging to

Arabs, women with headscarves, men with beards, and people who resemble Arabs of skin color were exposed to verbal and physical attacks (Stuart, 2001).

According to a public opinion survey conducted by CNN after 9/11, it was revealed that the vast majority of Americans supported racial profiling of Middle Eastern Americans, while 49% supported giving Arab Americans a different identity card. East Asians; People belonging to countries such as India, Pakistan, Bangladesh, Sri Lanka and Nepal are mistaken for Arab and Muslim due to their skin color and black hair and are subjected to many hate crimes.

After 9/11, President George W. Bush visited the Islamic Center in Washington and made the following speech: "Terrorism is not the true face of Islam. Islam means peace. These terrorists do not represent peace. They represent war and the devil. " Bush told the President of Indonesia, the largest Muslim country in the world, on September 19, 2001, "Mr. President, I would like to state that our war against terrorism is not against Muslims or Arabs. "This war is against demons targeting innocent people." Again President Bush in a speech in California: "America rejects bigotry. We reject hate crimes against Arabs and Muslims. America is for every belief; It respects Christians, Muslims, Jews, Sikhs, Hindus and others. Every belief is protected in the USA because we are a country. Since we are a country, every immigrant is equally American. Race and color cannot divide us " (Lee, 2008).

1.4. Hate Speech and Crimes as Violations of Human Rights

While hate speech and crimes committed with the motive of hate, which constitute a crime, have long been seen as a violence-oriented act of violence, it is a new approach to consider this as a human rights violation. However, given the nature of hate crime, it is understood that it should be condemned and met with deterrent sanctions as it is a continuous and systematic violation of human rights. Therefore, the thought that should dominate in the fight against

hate crimes should reflect a philosophy against the motives of these crimes, not just because of the harm done. (Perry & Olsson, *Hate Crime as a Human Rights Violation*, 2009, s. 452)

The general understanding of hate crimes has shifted towards human rights-oriented thinking, making the seriousness of the threat represented by this crime more visible. This is not only the violence caused by the individual perpetrator, but also the inevitable consequence of strictly structured hierarchical societies. (Perry & Olsson, *Hate Crime as a Human Rights Violation*, 2009, s. 464). There is also an approach that it is not correct to consider hate crimes as human rights violations. According to this opinion, human rights violations arise from the relations between the state and individuals, and such a qualification is not correct for the actions of individuals against each other. This view ignores the positive obligations of the state against discrimination and intolerance, which constitute the bias motivation of hate crimes, stemming from international human rights treaties, including adequate protection and effective combat measures, including criminal law.

Being systematic and continuous constitute the most important tools for accepting hate crime as a human rights violation. The fact that the hate crime is not random, it is committed consciously and with a purpose, the choice of the victims due to their identities confirms this idea. (Perry & Olsson, *Hate Crime as a Human Rights Violation*, 2009, s. 457).

Hate crime is a restriction on the freedom, dignity and free movement of the victim, as well as physical violence, a threat to human rights and violence itself. As well as the direct victims of hate, other members of the group also fall under this influence indirectly. The pressure is also an obstacle to establishing and interacting with other groups. (Perry & Olsson, *Hate Crime as a Human Rights Violation*, 2009, s. 461-464).

The purpose of hate crime is to discredit, marginalize and isolate the targeted group. To give an example, the phenomenon of ghettoization in many parts of the world is the result of racist

hatred. Different groups perceived as threats are socially isolated in this way, and the comfort of the dominant class in society is maintained. (Perry & Olsson, Hate Crime as a Human Rights Violation, 2009, s. 462).

The recognition that hate speech is an abuse of freedom of expression and therefore a violation of human rights is closely related to developments in the field of human rights at both the United Nations and regional level. In addition, whether hate speech has a counterpart in the field of international humanitarian law is another matter to be looked at. This is because, in terms of humanitarian law, regulations for hate speech are older.

Under international law, acts prepared for genocide are not directly punished. Some of the repetitive and widespread hate speech only increase the risk of genocide as preparatory and leading actions in terms of genocide crime. In this case, it is undoubted that hate speech is also a precursor of the crime of genocide and therefore should be addressed with a human rights approach. (Perry & Olsson, Hate Crime as a Human Rights Violation, 2009, s. 454).

2. HATE CRIMES IN TURKISH LAW AND BRITISH LAW

2.1. Introduction

Hate crimes are different from all other crimes as they are committed under the influence of a motive that pushes the perpetrator to commit a crime, and this motive consists only of the sense of belonging to the victim (Gemalmaz, 2006). In hate crimes, by targeting the victim as a member of a certain group, the perpetrator actually constitutes a violation of the right to live for peace and well-being for all individuals who identify themselves in that group (O'Boyle, 2014). For this reason, in order to protect social peace and public order, it is imperative that sanctions commensurate with the damage caused by these crimes are strictly enforced against crimes committed with the motive of hatred in general, and by the criminal justice system in particular. It is an indispensable necessity for the continuation of social life in peace and well-being (Bassiouni & Cherif, 1999).

In fact, although the commission of hate-motivated crimes is as old as human history, the public acceptance of the existence of hate motives and the inclusion of hate crimes in social events is a relatively new phenomenon (Matsuda, Lawrence, & Delgado, 2014). Criminal law as a concept. In this context, in order to be able to make sound determinations and evaluations regarding Turkish law, it would be useful to first examine the emergence of the concept of hate crime in comparative law and the process of its normative adoption, both at the national and supranational level (Bassiouni & Cherif, 1999).

2.2. Hate Crimes in International Law

Along with the identity and ethnic divisions, new types of crime and discourses have started to be mentioned in our country and in the world. Although it dates back to old times, especially recently, expressions and acts of hate content have been regulated as a type of crime in national law; In the field of international law, it is considered as the reason for restricting freedom of expression (Walters, 2014). While some countries regulate hate crimes

separately in their laws; some of them regulate the commitment of crimes with the motive of hate as an aggravating reason. Most of the countries prefer to regulate the hate motive as an aggravating factor in their criminal laws (Brudholm, 2014).

Hate crime sends the message that the victim and the group identified with the victim are not accepted into society. Compared to other crimes, hate crimes such as terrorist crimes have a greater impact on society due to their much wider target audience. It harms the principle of equality in society (Atakan, 2010).

Despite the frequent use of hate speech, it does not have a state-accepted definition like terrorism. Although many states have made laws prohibiting expressions similar to "hate speech", definitions of hate speech differ slightly (Asquith, 2009). Hate crime sends the message that the victim and the group identified with the victim are not accepted into society. Compared to other crimes, hate crimes such as terrorist crimes have a greater impact on society due to their much wider target audience. It harms the principle of equality in society. According to this decision, hate speech includes "racial hatred, xenophobia, anti-Semitism or other forms of hatred based on aggressive nationalism and xenophobia, discrimination and intolerance against minorities, immigrants and people of immigrant origin, the spread, encouragement, support, or any statement of thought that justifies it" (Carr, 2016).

It is seen in the references made to the decision of the ECHR the definition included in the recommendation is mostly centered on race or origin hatred or alienation or antisemitism. It seems that anti-Islamism is not included, even because of the date of recommendation (Gadd, 2010).

Considering the past periods, it is seen that hate speech was actually included, but a direct definition was not made on this issue. As a matter of fact, Beccaria said, "Attacks against the security freedoms of citizens are the most serious crimes. Along with the deliberate murder

and theft of people in society, such crimes committed by the elite and judges fall into the same class. Because such a situation shakes the nationals and citizens with the deep contradiction and effect it creates by destroying the thoughts of justice and responsibility and replacing them with the belief that the strongest is right. " (Beccaria, 2010). Although she did not name it by saying in a way, it has revealed the effect of hate speech and hate crimes.

The first category of regulations developed in national and international law against hate speech prohibits insulting a certain group and inciting hatred; the second category is insulting the honor of a person or nation; the third category prohibits denial of a particular historical event.

Countries such as England, Canada, France, Denmark, Germany, New Zealand are countries that have regulated hate speech as a crime in their laws (Waldron, 2009). While some thinkers defend the thesis that hate speech is the first step on the road to hate crime (Boyle K., 2010), those who stated that they are against any form of thought being subject to punishment; They argue that even if it is a hate crime, what will be punished here should not be thought / intention but an act, even if it is committed with the motive of hate, only the act itself and its result should be the subject of a crime (Çelik, 2013).

By making a distinction between hate crime and hate speech, the OSCE also stated that a crime subject to the criminal law is a crime in any way, whether it is committed or committed with a hate motive (Boyle K., 2010). As stated, although there are different concepts, it is obvious that there is a relationship between hate speech and hate crime.

Hate is based on an intense feeling of hostility. This feeling stems from the desire to destroy or limit the hated object.

Hate is a learned emotion. People with the capacity to hate they are not born. There may be racial, religious, economic and cultural reasons for this. When hate is an emotion, it is

uncontrollable and violent. This emotion, due to its different characteristics, leads to an uncontrollable desire to cause physical harm against the hated group.

This question may come to our mind?

How can they defend in their own conscience the acts of violence and terrorism committed against another group because they are different from themselves? According to German social psychologist Eric Fromm; There are two kinds of hatred in man. One is "rational hate." This hatred is the reaction of a person to the perceived threat to his own life, freedom and ideas. It is a kind of biologically self-preserving movement (Fromm, 1942). When the threat is destroyed, it disappears; It is not against life, it is for living.

The second hate is "unreasonable hate". This is a specific threat. It is a personal character that develops in some people rather than a reaction. It is being prepared to be hostile to others. Harming and cruelty to hated people becomes a passion (Fromm, 1942). Those with this kind of hatred look for targets to attack. They don't wait for an event to happen, they create it. These types of people are often seen in the leading ranks of racist gangs and terrorist organizations. Therefore, those who commit violent extremism often fall into the "unreasonable hate" group.

2.2.1.Hate Speech in the European Court of Human Rights (ECHR) Decisions

Although there is no clear definition of hate speech by the ECHR, this concept is included in many of its decisions. In some of its decisions, the ECHR merely refers to hate speech as "any form of expression that spreads, provokes or legitimizes hatred based on intolerance". The ECHR denies that the courts are accepted by the courts or, on the contrary, the national courts classify situations that it does not consider as "hate speech" as "hate speech" (Weber, 2009).

One of the prominent cases in the literature regarding the relationship between the ECHR and hate speech is the *Jersild v. Denmark* case, which the Court has submitted to date regarding racist speech in the context of hate speech (Tulkens, 2006). The case is about the journalist's application to the ECHR on the grounds that his freedom of expression was violated, regarding the conviction of both the group speakers and the journalist who made the interview as a result of an interview with a racist group called “Greenjackets” in a publication published in Denmark. The Danish Supreme Court has ruled on the penalty, taking into account the international human rights conventions to which it is a party. The journalist, on the other hand, was punished for helping this racist rhetoric. The ECHR firstly made a distinction between journalists and young people who made racist discourses, and decided that the punishment imposed on the journalist was a violation of freedom of expression on the grounds that the journalist's documentary was not intended to make racist propaganda, but to express a phenomenon that causes concern in the society and is widespread among the youth.

2.2.2.Hate Crime Laws in the United States

The first legal regulations regarding hate crimes in comparative law emerged in the United States of America (USA), and this situation can be explained by the socio-cultural structure of the USA (Perry, 2010). As a matter of fact, the historical journey of the USA, a country founded by immigrants, points to a constant tension between old and new immigrants arising from different motives such as race, religious belief and ethnicity (Levin B. , 2009). Again, during and after the abolition of slavery, there has always been an atmosphere of hatred and violence, which can even lead to lynchings against blacks. (Levin B. , 2002). In this respect, II. The liberalization environment experienced after the Second World War can be considered as the beginning of a new process in the opposite direction. The egalitarian black movement that emerged under the leadership of Martin Luther King in the 1960s, the rising women's movements in the 1960s and 70s, and the LGTB (Lesbian, Gay, Transgender and Bisexual)

movements that started to make their voices heard, started from the bottom up. includes the demand for equality/freedom (Jenness & Grattet, 2003). One of the main elements of this demand is the demand for the implementation of special legal arrangements for all these disadvantaged groups in order to prevent and punish acts of violence that arise only from group membership.

As a concrete reflection of this demand and pressure from the social base, the first known hate crimes law was enacted in the state of California in 1978. Accordingly, California 190/2. Separate motives for hatred as “race, religious belief, skin color and ethnicity” were regulated as an aggravating situation, in other words, an “aggravating situation” (Streissguth, 2012).

At this point, it should be noted by opening a parenthesis that this first practice of arranging "aggravating circumstances" in case a crime is committed with a hate motive will lead to hate crimes both in other countries of the world and in the future. in the USA and Europe. It is the most frequently used method in certain legal regulations on the subject. Another method in this regard regulates the commission of the crime with the motive of hatred as a separate and independent crime, not as an aggravating factor. However, this method has not been popular except in the USA and a few states in the Czech Republic (Czech Penal Code art. 196/4).

The first hate crimes law enacted in the state of California in 1978 was followed by the laws of the states of Washington and Oregon in 1981 with a similar content (Shevely, 2005). In addition to the previous ones, the hate crimes law enacted in Alaska in 1982 also included crimes committed with a “gender” motive within the scope of hate crimes. Following these pioneering laws at the state level, the tendency to make a special regulation regarding hate crimes was rapidly adopted in other states, and today in the USA, although the reasons differ quantitatively, legal regulations specifically regulating hate crimes have been implemented in 47 states in the USA.

The Hate Crimes Statistics Act was enacted in 1990, the first legislation in the United States to address hate crimes at the federal level (Nolan, 2002). The main feature of this Law is that it imposes a public obligation to monitor and record hate crimes at the federal level, to statistically process the data obtained and to report the statistical results obtained and to publish these reports regularly every year. Within this framework, a special unit established within the Federal Bureau of Investigation (FBI) works only in the field of hate crimes and carries out this detailed monitoring and statistical reporting activity in order to determine the strategies to be implemented in the fight against hate crimes (Nolan III-Akiyama-Berhanu,, 138).

Another piece of legislation that emerged at the federal level, the Aggression of Penalties for Hate Crimes Act of 1994, was enacted to institutionalize the trend to regulate hate motivation as an aggravating factor, and this is increasingly being adopted in state criminal codes (Shively, 2005). However, this law, which was put into practice at the federal level, could not provide the expected results in practice. The main reason for this situation is that criminal cases brought for hate-motivated crimes are mostly handled within the framework of state laws. As such, the Aggravated Hate Crimes Act, which deals only with crimes against federally protected rights, could not be applied in local cases under state law, so this law did not provide the expected benefit in practice (Scotting, 2000-2001). As a result of this situation, serious initiatives have been taken for a new hate crimes law that includes directly applicable provisions in terms of local hate crime laws on the axis of the states, especially by non-governmental organizations that defend the rights of disadvantaged groups. However, all these attempts were met with strong resistance by other lobbies, especially non-governmental organizations representing far-right and religious (Protestant Christian) tendencies, who see a comprehensive hate crimes law with these features as a threat to their freedom of expression. After more than a decade of struggle between these two trends in this regard, the

Strengthening Local Laws for the Prevention of Hate Crimes Act, known in practice as the "Matthew Shepard Act" (Loffreda, 2000), was passed in the US Senate in 2007. The Act, which had been waiting for a long time to be approved by the President after being passed in the Senate, was finally approved by President Barack Obama on October 28, 2009 and entered into force.

The Matthew Shepard Act, a federal law, is important in implementing two important rules to ensure compliance with state laws in the fight against hate crimes. Accordingly, with this Law, the requirement for the investigation and prosecution of hate crimes to be committed against the rights protected at the federal level was abolished, paving the way for a more effective and comprehensive approach to hate crimes at the state level (Lawrence,, 2008). Secondly, this Law aims to harmonize the laws of states regarding hate crimes going forward. In other words, although there are certain legal regulations regarding hate crimes in 47 different states across the USA as of today, there are serious differences within themselves in terms of the hate motives they cover, as we will discuss below. The Matthew Shepard Act, on the other hand, is based on setting a federal standard to minimize these differences between states in the future, and is applied for the first time at the federal level alongside elements of "racism, religious belief, skin color, and "racism." Ethnic motives previously identified as hate motives at the federal level origin". It also regulates the elements of "gender, sexual identity, sexual orientation and disability" within the scope of hate motives (Lawrence,, 2008).

Despite this development at the federal level, there are still differences at the state level regarding the extent of what is defined as hate motivation. In other words, because hate crimes laws have already been enacted in 47 different states, the common elements defined as hate motives in all of these states are only "racism, religious belief and ethnicity". When we consider other factors, state regulations on hate crimes include "disabled" in one in 32 states,

"gender" in 28 states, "age" in 13 states, "sexual orientation" in 11 states, and "political affiliation" in 5 states. They find a place for themselves¹⁶. It should be underlined, however, that the passage of the federal Matthew Sheppard Act in 2009 encouraged local legislators to expand the scope of hate motives in legislation in many states in the near future in accordance with federal regulation.

2.2.3. Hate Crimes Laws in the UK

Since the UK is the other main source country producing and exporting Anglo-Saxon legal culture - along with the USA - it is normal for the legal systems of these two countries to be in constant interaction. However, it is difficult to say that the UK legal order can keep up with the developments in the USA simultaneously in terms of defining/accepting the concept of hate crimes and making a certain legal regulation regarding hate crimes (Hall, 2013). As a matter of fact, the origins of the first developments in the field of hate crimes in the USA date back to the civil rights movements of the 1960s and 70s; The widespread use of the concept of hate crimes by both academic circles and civil society movements in the UK has only been possible since the 1990s (Garland, 2010).

At this point, the tragic similarity between UK law and US law on the enactment of hate crimes – at least in the Matthew Shepard Act that came into force in 2009 – is the tragic similarity between hate crime laws in both countries. reaction to symbolic cases in which members of disadvantaged groups were brutally murdered with a motive of hatred. as development.

The main motivation that led to the emergence of hate crimes on the public agenda and the enactment of the first hate law in the United Kingdom was the murder of Stephen Lawrence in 1993, which caused a great public reaction (Asquith, 2010). The main indignation of these children, played only by Motivate, used by a minor, is that they carry out an investigative action in order to solve the murder of their actions/investigation and prosecution bodies, to

protect their failed business with the children and to accuse the perpetrators. The emergence of this reluctant and biased attitude of public institutions received a great public reaction and a "public investigation" was opened by the Ministry of Justice in 1998 to investigate this issue and Sir William MacPherson was appointed as its chairman. The commission that conducted this investigation. The Commission published its conclusions as a result of its work in the form of a comprehensive report (MacPherson Report) in 1999. The Macpherson Report clearly defined the stances of the Metropolitan Police and other investigative bodies as "institutional racism" and produced a 70-point recommendation to combat racism across the UK and eradicate the racist mentality that permeates the US. Especially the investigative authorities.

While the UK government opened this public inquiry to suppress the public reaction; On the other hand, it has taken a more institutional step in the fight against racism and the "Crime and Disorder Act"²³, the first hate crimes law in the UK, came into force. 28-32 of this Law. As regulated in its paragraphs, the principle of aggravating the punishment to be given to the perpetrator in case of crimes such as injury, bodily harm, harassment and threat is based on the motive of hatred/prejudice against the race of the victim. determined in proportion to the nature of each crime (Duggan, 2010).

Following this first hate crimes law, a provision (Paragraph 30) added to the "Anti-Terrorism, Crime and Security Law" that came into force in 2001 expanded the scope of hate crimes and included the fact that violent crime was committed with these crimes. Besides the racist motive, the religious motive also reduces the punishment. regarded as an aggravating situation (Mason-Bish, 2010).

Another legislation expanding the scope of hate crimes in the UK was implemented under the Criminal Justice Act 2003, which introduced some important changes in the country's

criminal justice system, both in terms of substantive, procedural and enforcement law.

Accordingly, in Article 145 of the Law, the principle of aggravating the punishment of crimes committed with racism and religious beliefs was emphasized once again, and with Article 146, if the hate crime is sexual orientation and (physically or mentally) disabled, the punishment of the perpetrator should be aggravated. basis (Mason-Bish,, 2011). The Ministry of Justice envisaged a special regulation for murders committed with a hate motive in 2011, and it was stated in this regulation that the lower limit of the penalty to be applied to murders committed with a hate motive should be increased to 30 years. Despite these arrangements made in the axis of the criminal justice system in the fight against hate crimes in England, it is not possible to talk about the existence of an integrated institutional monitoring and control mechanism for the prevention of hate crimes and the protection of victims. In this country as well as in the USA. In other words, no concrete obligation has been imposed on a public institution in the UK to carry out multidimensional work in the fight against hate crimes, as seen in the FBI example in the USA; The struggle on this issue is carried out with civil initiatives in parallel with many countries of the world. However, it is seen that the British Crime Survey, a public institution operating in crime statistics, publishes comprehensive statistical studies that can generate data for non-governmental organizations and researchers regarding hate crimes, especially in the fight against these crimes. In this context, statistical records of hate crimes held by the police in England and Wales in the autumn of 2012 were made public for the first time by the Ministry of Justice. According to these records, 43,748 hate crime cases were recorded by the police between 2011/2012; of these cases, 35816 (82%) involve racism, 4242 (10%) sexual orientation, 1744 (4%) disability, and 1621 religious belief (4%). However, we think that these statistical data should be approached with caution. When we look at slightly older sources, for example, while the number of hate crime cases recorded in the USA was 9726 in 2001, the number of hate crime cases recorded in England and Wales

in the same year was 54351 (Hall, 2013). In other words, according to these records, in England and Wales, which is one-fifth of the US population, twelve times more hate crimes are committed than in the USA. Of course, this cannot be explained because England is a much more racist place than the USA. In our opinion, this difference stems from the difference in approach towards defining the concept of hate crime and shaping practice within the framework of this definition. In the US, investigative bodies are much more selective in defining a crime as a hate crime, especially when investigating the role of bias in the commission of that crime and the causality between bias and crime. If the link is not strong enough, the crime is not recorded as a hate crime. On the other hand, in the United Kingdom, the victim's perception of this crime is based on his perception of the crime rather than the event itself, and every case where victims see themselves as victims of hate crimes is recorded as a hate crime.

2.2.4. Studies of Especially Regional Supranational Organizations in Continental Europe
Although the concept of hate crimes is a relatively new concept in the legal literature, it has found immediate response especially in democratic societies that have adopted basic universal legal values such as human rights, equality/non-discrimination and the rule of law. Law and legal regulation reflex related to these crimes has been developed (Bouman, 2003). For example, although it has not been half a century since the first legal regulation in the field of hate crimes, for example, 48 of the 56 member countries of the European and Security Organization (OSCE) have implemented special legal regulations in this regard. Hate crimes in their national legislation. The majority of these regulations take place in the criminal laws as regulating the commission of a hate-motivated crime as a qualified case that aggravates the punishment. Undoubtedly, supranational organizations that connect all participating countries and bring them closer to each other in the fight against hate crimes have a special importance in the formation of such a rapid reflex, especially on the scale of the European continent

(Britt, 2010). As a matter of fact, if an increased awareness and sensitivity can be created in the fight against hate crimes in the European continent, this has been possible to a large extent through the work of supranational organizations such as the OSCE, the Council of Europe and the European Union (Heinze E. , 2013). In short, it is certain that the enactment of this law will direct the efforts to implement the hate crimes law in Turkey.

2.2.5. Work of the Organization for Security and Cooperation in Europe (OSCE)

OSCE is an organization that has been operating since 1975 with the aim of eliminating the division in Europe due to the cold war and maintaining security and stability in the European continent. In this sense, one of the main objectives of the OSCE is to establish and maintain a common unity of values, which is built on the principles of universal law and especially human rights and the rule of law (David & John, 2013). In this respect, preventing all forms of intolerance and discrimination is one of the main tasks of the OSCE in terms of realizing these values.

The concept of hate crimes first entered the OSCE's agenda at the Ministerial Council meeting held in Maastricht in December 2003, where all OSCE member states accepted the dangers posed by hate crimes and declared that they agreed to take necessary steps (Heinze E. , 2013). combating these crimes³⁴. As an expression of this situation, States parties have committed to introduce or strengthen provisions in accordance with their national legislation that penalize non-discrimination violations and hate crimes. In this context, the OSCE Office for Democratic Institutions and Human Rights provides guidance to states parties in the development, adaptation and implementation of national legislation on hate crimes (Law Commission Consultation Paper No 213, 2013). One of the guidance studies carried out by the OSCE on hate crimes is the preparation of a “Hate Crimes Implementation Guide” for the states parties in 2009. A simple, clear and understandable text is provided to States Parties wishing to review or supplement their national legislation. Thanks to the OSCE's efforts to

promote and coordinate hate crime legislation in States Parties, 48 of the 57 OSCE member states have specifically defined the concept of "hate crime" in their national legislation.

Again, in its guidance on the prevention of hate crimes, the OSCE demands that hate-motivated crimes be regulated as an "aggravating condition" in criminal legislation, and this recommendation of the OSCE is generally accepted in member states with specific regulations on hate crimes in their national legislation (Harris, O'Boyle, Bates, & Buckley, 2014).

However, the social function of the OSCE in preventing hate crimes is not limited to the implementation of national regulations in member states. Considering that the main problem in the fight against hate crimes is the elimination of the cultural, social and regional conditions in the background of this phenomenon, the OSCE is a versatile data/information flow from various sources in all member countries, especially Turkey (Nolan, 2002). NGOs and public institutions such as the Institute of Justice, Home Affairs and Statistics focus on providing. Because, thanks to this data/information flow, regular monitoring and reporting of hate crimes, which are of vital importance in terms of creating a permanent awareness in the fight against hate crimes, are carried out (Fruncillo, 2010). These reports, which are prepared regularly, serve both to increase the sensitivity of civil society in member countries to hate crimes and to monitor the reactions of governments to these crimes in the eyes of the international public. For this reason, the OSCE also assumes a proactive responsibility in ensuring the coordination of a joint struggle program to be carried out with the participation of both civil society and public institutions, especially the police and the judiciary, with regular monitoring and reporting activities in the member countries. countries (Mihajlova, Bacovska, & Shekerdidjiev, 1993).

2.2.6. Studies of the European Union

It is a fact that the European Union, which was originally established as an economic cooperation organization, is overshadowed by the efforts of the Council of Europe to promote human rights and a pluralist democratic regime; This also applies to efforts to combat hate crimes (Green, McFalls, & Smith, 2001).

However, it would not be correct to say that the European Union is not involved in any work to prevent hate crimes. In this context, the Fundamental Rights Agency, operating in various fields, was established within the European Union for the protection and promotion of human rights. One of the working areas of the Fundamental Rights Agency is the regular collection and sharing of data on crimes committed with the motives of racism and other intolerance within the borders of the European Union (Nolan III-Akiyama-Berhanu,, 138). The main reason why the agency gives special weight to the fight against racism and other intolerance among its work is that although many national regulations are included in the legislation of the member states of the Union, racist, discriminatory, verbal or physical violence and exclusion, especially against ethnic and religious minorities, still continue (, J.J.M., Manchin,, J.N., & Hideg, , 2007). In this context, policymakers need the support of a grassroots information effort in addition to international and EU legislation to combat such actions. The agency's research on this issue ensures that robust and reliable data can be collected for all states parties to uncover evidence of racism and other intolerance within the EU and to uncover unequal treatment of ethnic/religious minorities and other discriminatory behavior in social life (Avrupa Birliği Komisyonu Türkiye 2012 yılı İlerleme Raporu, 2012).

Another initiative of the European Union that can be defined as legal support in the fight against hate crimes is the "Framework Decision Against Racism and Xenophobia" published in 2007. In this framework decision, attention is drawn primarily to the difference (Stuart, 2001). In this context, the Framework decision primarily aims to create a common/single

criminal law perspective within the Union on these issues and to ensure that these acts are punished in the same way in all member states. In this context, with this Framework Decision, which obliges all member states of the union to make regulations in domestic law, it is obligatory for each member state to make an aggravating regulation in the penal legislation crimes with racist and xenophobic motives.

2.2.7. Work of the Council of Europe

The leading role of the Council of Europe in building a democratic social order based on the rule of law and promoting human rights in supranational institutions is an undeniable fact. In this case, it is impossible for the Council to remain unresponsive to this situation as the phenomenon of hate crimes has become the most current and burning reality of the European continent over time (Bertoni, 2009). As a matter of fact, the “European Commission Against Racism and Intolerance” (ECRI) (European Commission Against Racism and Intolerance) was established within the Council in order to combat racism and xenophobia, which are the main driving forces of hate crimes. Since 1999, ECRI has signed a series of “General Policy Recommendations” that set common policy standards against racism and discrimination. Among these, General Policy Recommendation No. 7, published in 2007, was based on the fact that in all 47 Council member countries, in order to fight against racism and racial discrimination, the case of committing a crime with racist motives should be committed to the national penal legislations as an aggravating situation (Fiske, 2002). Another work of the Council of Europe that emerged at the level of international conventions in the fight against hate crimes is the Additional Protocol to the Council of Europe Convention on Cybercrime, which was opened for signature in Budapest in 2011 and entered into force afterwards. It is the regulation that reached the signature and approval of a sufficient number of member states in 2004. In particular, States Parties (Article 3) of the “Additional Protocol on the Punishment of Racist and Xenophobic Acts Committed through Information Systems” titled “Measures to

be Taken at the National Level” impose an obligation to regulate it as a crime (Gordon & Arian, 2001). It is also stated in the Additional Protocol that threats (art. 4), insults (art. 5) and crimes against humanity that deny, approve or justify, committed with racist and xenophobic motives, should be regulated as crimes through information systems. Beyond these studies, which emerged in the context of supranational legislation within the Council of Europe, the most effective and transformative instrument in the fight against hate crimes is the relevant jurisprudence of the European Court of Human Rights (ECHR). The ECtHR underlines that, in its case-law that has emerged on the subject, first of all, the states parties have a positive obligation to effectively investigate whether a crime has been committed with possible racist motivations (Garland, 2010). In this framework, state authorities will undoubtedly carry out an effective investigation into a crime committed, regardless of the victim's race or ethnicity. However, they also have an additional obligation to take all necessary steps to uncover the racist motivation behind the crime, especially if it is a violent crime committed by public officials. The violation of the obligation by a public authority of a state party, on the other hand, means a violation of the “Prohibition of Discrimination” expressed in Article 14 of the ECHR carries (Law Commission Consultation Paper No 213, 2013).

Although it is not clearly stated in the case law of the ECtHR that a specific legal arrangement should be made in the national legislation to combat hate crimes; The Court underlines that states parties must meet hate crimes with sanctions commensurate with the harm they cause to the social order within their criminal justice systems 49 (Levin B. , 2009). In this context, the ECtHR also requests the states parties to take all necessary steps to reveal the alleged racist motive in acts of violence within the scope of hate crimes, and to clarify definitively whether ethnic hatred or prejudice plays a role. reveals a role in the commission of this crime. In the recent case-law of the Court, which evaluates the allegations that the victims have been subjected to physical and verbal violence due to mental disability or sexual orientation arising

from homosexual identity, beyond racist motives, it also envisages as a top priority the investigation of allegations that a crime was committed with a hate motive (Lim H. A., 2009). However, in our opinion, considering the transformative function of the ECtHR in the development and institutionalization of human rights from the past to the present, the ECtHR still displays an abstaining stance, which is not brave enough compared to its potential, regarding crimes committed with the motive of hate. As a matter of fact, this was also expressed in the dissenting vote of Judge Kudkivska, who voted against the Vejdelnd decision on sexual orientation and exposure to physical/verbal violence, one of the above-mentioned jurisprudence, and the Court adopted an "institutional view" on hate speech against homosexuals in the present case (Saleem, Alam, Ahmed, & Foreman, 2010). . She was criticized for missing the opportunity to "place the angle". Indeed, given the above-mentioned ECtHR case-law, he is expected to take into account the Court's transformative tradition. is to comment. It can also be reflected in a progressive interpretation regarding the elements (such as race, ethnicity, religious belief, sexual orientation, health, age, disability) that should be included in the concept of hate motivation. The case-laws of the ECtHR can set a precedent in this regard, especially in the European continent. It should not be ignored that it can undertake a function that makes the arrangements uniform.

2.3. The Concept of Hate Crime in Turkish Law

2.3.1. General view

Unlike the general majority of OSCE and Council of Europe member states, Turkey is one of the few countries that does not have a specific regulation on hate crimes in their national penal codes. This situation is criticized not only by the OSCE and the Council of Europe, but also by the European Union, where Turkey is in the negotiation process to become a full member. As a matter of fact, in the "Turkey 2012 Progress Report" published in October as the last of the progress reports published annually by the European Union Commission, this is

the case in 2.2 (Canatan, 2007). It was emphasized in this section as follows: “No mechanism or specific structure has been established in Turkey to combat racism, xenophobia, anti-Semitism and intolerance. There is no legal framework or legislation on discrimination issues; References in the Constitution to the principle of non-discrimination are often interpreted restrictively by the Courts. Incitement to hatred, including by the media, is not effectively prosecuted: ‘ Turkey has made no progress in regulating hate speech and hate crimes legislation, in line with the Council of Europe's recommendation.’” (Avrupa Birliği Komisyonu Türkiye 2012 yılı İlerleme Raporu, 2012). 4.23, entitled Judiciary and Fundamental Rights, of the same Progress Report. “The applicable legislation should be thoroughly reviewed and protective mechanisms or special institutions established to combat racism, xenophobia, anti-Semitism and intolerance. Specific legislation is needed to combat hate speech and hate crimes. (Avrupa Birliği Komisyonu Türkiye 2012 yılı İlerleme Raporu,, 2012).

2.3.2.Civil Society Initiatives and Hate Crimes Draft Law Studies

The Hate Crimes Law Campaign was organized under the leadership of the Social Change Association as the first concrete step to eliminate this normative deficiency in Turkish criminal law, which is also reflected in the EU Progress Reports. was formed and this working group started to prepare a study by taking into account the examples of legal regulations in comparative law (Chakraborti & Garland, 2012). In addition, the “Hate Crimes Law Campaign Platform”, a civil society initiative that has been preparing since 2010, was established in cooperation with many non-governmental organizations in parallel with the Law Working Group. It has been stated that there is a special regulation of hate crimes in the Turkish criminal law legislation. In addition to the Draft Law Studies, the Platform aimed to realize activities such as raising awareness and sensitivity in the eyes of the public regarding

hate crimes, making hate crimes visible, constantly monitoring and regularly reporting these crimes, especially on the basis of the media (Asquith, 2010).

The Legal Working Group, which prepared the first draft text on hate crimes on February 15, 2012, continued its work on the draft until the beginning of October 2012 and the final draft text was submitted to the Ministry's Legal Department by the Platform (Hate Crimes in the OSCE Region - Incidents and Responses: Annual Report, 2011). Court of Justice in Ankara on 3 October 2012. The Draft Law on Hate Crimes was also introduced to the press and the public at a press conference held in Istanbul on 5 November 2012 by the Platform.

Regarding this Draft text prepared by the Platform for Combating Hate Crimes, meetings were held with the political parties that have a group in the Grand National Assembly of Turkey and as a result of the positive impressions created by these meetings, the Platform was published as the "Turkish Grand National Assembly" on 3 December 2012. Bursa Deputy Assoc. Dr. It was presented to the Presidency of the Turkish Grand National Assembly with the signature of Aykan Erdemir (Atakan, 2010).

2.3.3. General Characteristics of the Hate Crimes Law

The draft hate crimes law, which was prepared with the initiative of the civil society and submitted to the Presidency of the Turkish Grand National Assembly, actually led to the emergence of different opinions in the Law Working Group, especially on the basis of method. As a matter of fact, at this point, it has been suggested that measures such as unintentional appointment of a lawyer to hate crime victims or aggravating the periods of probation and conditional release in hate crimes should be implemented in the rules of criminal procedure and execution with a total understanding. not contenting itself with making changes in substantive criminal law norms (Cram, 2012). In addition, as we mentioned while examining hate crimes laws in comparative law, in some countries such as the USA, it is not enough to create normative regulations in the fight against hate crimes and

the public authority (FBI) is compelled to do so. Monitoring hate crimes and executing statistical data; In the draft hate crimes law to be prepared, a proposal was also presented for the establishment of such a regulation that obliges the monitoring, processing, documentation and reporting of data related to public authority (Heinze E. , 2013).

However, after the first Draft text prepared, it was revealed that in addition to the desired changes in the Turkish Penal Code regarding the material penal law norms, changes should also be made in the Code of Criminal Procedure and the Law on the Execution of Penal and Security Measures (Buyse, 2010). In addition, it has been determined that a data monitoring mechanism on hate crimes requires a new legislative activity on this issue. In the light of all these findings, it is pointed out that if the hate crimes bill to be prepared has such a multidimensional/layered and wide-ranging content, it may be difficult to announce this bill to politicians and the public. especially in the parliamentary process, and this situation may negatively affect the enactment process of the bill. For this reason, the Law Working Group preferred to focus its work only on substantive criminal law norms in the first place, and it abolished the legal regulations on the data monitoring mechanism as well as the measures on criminal procedure and execution law (Heinze & Eric, 2013).

In this context, the basis of the work of the Law Working Group was only material criminal law norms, and in this context, the definition of the term "hate motive" in the general provisions of the Turkish Penal Code (TCK), and in the special provisions of the Law - especially some violent crimes - a situation that aggravates the punishment (Ataman H. , 2012). As a result, a method of committing the crime with a hate motive was followed. Due to the fact that the study foresees a change in the axis of the Turkish Penal Code, its name has been determined as "Draft Law on Amending the Turkish Penal Code" in line with the traditional jurisprudence in the Turkish law-making technique (Boyle & Kevin, 2010).

The final version of this draft law, which was prepared by the initiative of the civil society against hate crimes and turned into a "law proposal" in the Turkish Grand National Assembly, will be briefly examined in terms of both its general rationale and justification, and its content and reasons for the article.

2.3.3.1. *Examining the General Rationale of the Draft Law on Hate Crimes*

In the general rationale of the Draft Hate Crimes Law, first of all, hate crimes were defined and it was tried to explain why these crimes should be subject to a certain regulation in Turkish law with their constitutional and legal sources. Accordingly, the victim or victims of hate crime are the target of crimes committed because of their basic and unchangeable characteristics such as race, ethnic identity, nationality, color, gender, sexual orientation, gender identity, age, physical or mental disability (Gadd, 2010). Hate crime has consequences that deeply affect not only the victim, but also the group with which it is identified. The fact that hate crimes have a much wider target group besides individual victims deepens the impact of these crimes on society. These crimes undermine the ideal of equality among the members of society (Hate Crime in the OSCE Region-Incidents and Responses: Annual Report, 2011). Article 10 of the Constitution states that everyone is equal before the law regardless of language, race, color, gender, political opinion, philosophical belief, religion, sect and similar reasons. Similarly, Article 3 of the TPC protects the principle of justice and equality before the law (Türk Ceza Kanunu'nda Değişiklik Yapılmasına Dair Kanun Teklifi).

In the general justification, as another reason why hate crimes are regulated in the Constitution, the threat posed by these crimes in terms of preserving the social order caused by prejudice against the victim or the group to which the victim is a member is also pointed out. In this context, it is stated that the case of committing a crime with a subjective motive in

the form of grudge and anger felt against the victimized person or groups due to the characteristics of those people and groups (such as race, ethnicity, religion, sexual identity) is different from committing the same crime under simple conditions (Artuk, Gökçen, & Yenidünya, 2009). If the perpetrator commits a crime due to certain characteristics of a person, it indicates a more intense fault than the ordinary criminal intent. In hate crimes, the social group with the same characteristics as the victim is also intimidated and intimidated. Other members of the targeted group feel like victims of the attack, not only at risk of further attacks in the future (Fiske, 2002). These effects are exacerbated if the targeted group has historically been the victim of discrimination. This intensity and multiplier effect on the moral element of the crime should be handled in accordance with the criminal policy (Djik & Teun, 2010). Therefore, in our legal system, hate motive and hate crime had to be defined separately and met with more severe sanctions.

General justification, after this statement was addressed to hate in the world with regard to offenses referred to the regulatory regime and the work of the Council of Europe with the situation in the European Union mentioned in detail in the first part of the study and in this context associated with the ECHR's hate crime convictions (Türk Ceza Kanunu'nda Değişiklik Yapılmasına Dair Kanun Teklifi).

2.3.3.2. Content and Reasons of the Draft Hate Crimes Law

The main purpose of the Draft Law on Hate Crimes is that if a crime is committed with a hate motive, this situation is considered as aggravating the punishment and the perpetrator of the hate crime is faced with a heavier penalty than the simple crime. However, in order to achieve this goal, first of all, the concept of "hate motive", which is not included in the TPC, must be clearly defined in the general provisions of the law and then in the specific provisions of the law. , hate motivation should be regulated as a condition that aggravates the punishment, especially in some violent crimes.

For this purpose, first of all, the 1st article of the Draft and the 6/1 article of the TPC titled "Definitions" are included. It is envisaged that a provision (clause k) will be added to the article as follows.

TCK art. 6/1-k: From the expression "hate motive"; Being the target of one of the crimes specified in this Law due to race, nationality, ethnic origin, color, religious belief or belief, political opinion, language, gender, sexual orientation, sexual identity, physical and mental disability, health condition or age.

In criminal law, motive can be defined as the justification for committing the crime, it is a set of emotions/thoughts that precede and prepare the intention (Centel, Zafer, & Çakmut, 2008). As a rule, motive is not an element sought in the formation of the crime. However, within the framework of the crime and punishment policy adopted by the legislator, in some cases the perpetrator's knowing and wanting the material elements included in the legal definition of the crime is not sufficient for the occurrence of the crime, but also constitutes a crime for the crime to occur. it also seeks to act with a certain motive and motive outside of the will of the person in the type of crime (Artuk, Gökçen, & Yenidünya, 2009). While motive is sometimes an element sought for the realization of the basic form of the crime; In some cases, motive is regulated as an element sought for the realization of the qualified form of the crime (Centel, Zafer, & Çakmut, 2008). Here, the hate motive defined in the Draft Law is regulated as an element sought to increase the punishment of some crimes already regulated in the penal code.

As stated in the justification of the article, the most basic feature that distinguishes hate crime from other crimes is that the crime is committed with a biased motive. The perpetrator of the crime has targeted the victim because of the basic and indispensable feature that he represents or is thought to represent. The material subject of the crime may be one or more persons or

property identified with a group that shares certain characteristics. A person or group was chosen as the target because of some of the characteristics listed in the article. Although they do not have the features mentioned in the article, people or groups that are somehow related to the person or group with these features can also be targeted. The lawyer who undertakes the representation of these people or groups, the doctor who provides health services to that person or group, or other persons in any way related to that person or group may be victims of the crime even if they do not have the identities specified in the article (Türk Ceza Kanunu'nda Değişiklik Yapılmasına Dair Kanun Teklifi).

Particular attention should be paid to the issue of identities mentioned in the article. As we have stated within the framework of our explanations on comparative law, although the motive that creates prejudice in hate crimes is a feature represented by the victim, there is no uniform attitude in the legal regulations regarding hate crimes as to which features fall into this scope. In fact, it can be said that there is a consensus on the most basic concepts such as race, ethnicity, religious belief; In fact, these concepts are accepted as hate motives in all 47 states that specifically regulate hate crimes in the USA (Green, McFalls, & Smith, 2001).

Apart from this first ring, it can be said that the concepts of colour, religion, language, gender and age, which are defined by the decisions of supranational organizations such as the OSCE, the European Union and the Council of Europe, also constitute the society. the second ring, which is largely considered a motivation for hatred (Heinze E. , 2013).

However, the text of the article that defines the motivation for hate includes not only the features/elements of these two groups, but also concepts such as sexual orientation and sexual orientation, which are perhaps one of the most ambitious texts among legal regulations in comparative law (Mason-Bish, 2010). Gender identity, which is included in very few legal regulations in the world, defines it as a reason for hate. As a matter of fact, in the rationale of the article, it was stated that these two concepts were included in Turkish law for the first time

with this Draft, and the differences between the definitions of both concepts were explained. Accordingly, although the concept of sexual orientation is sometimes used synonymously with the concept of gender identity, the two concepts contain different elements. Gender identity can be used to mean one's perception of sexuality and its complex relationship to models offered by society, while sexual orientation can only be used to mean one's sexual desires, attachments, and dreams (Asquith, 2010). Gender identity is a concept that is more comprehensive than gender identity and is related to an individual's sexual and other related behavioral tendencies, body image and social reflections. The concept of sexual identity is limited only to the individual's perception of himself as a woman or a man, and in this respect it differs from sexual orientation. In this case, homosexuality or bisexuality refers to sexual orientation, and transvestite or transgender refers to the concept of gender identity. (Türk Ceza Kanunu'nda Değişiklik Yapılmasına Dair Kanun Teklifi). Explaining the differences between these two concepts in this way is defined as the motives of hatred, which, in our opinion, creates the most reservations about the Draft Law and is a situation that can seriously be enacted. that's why it's hard. In other words, even in the USA, where the first and most courageous steps have been taken regarding the legal regulation of hate crimes, only 11 of the 47 states that have introduced special legislation on hate have considered sexual orientation as a hate motive. Crimes; We could not find any other legal regulation that adopts gender identity as a hate motive. Therefore, a comprehensive legal regulation regime, which is not implemented even in the most liberal systems, reveals that the Draft Law has a libertarian and pioneering character. Comparative law in this area, despite our reservations about its entry into force (Gordon & Arian, 2001).

In addition, the determination of factors such as physical or mental disability, health status and age as hate motives in the Draft is a suitable and parallel arrangement with the examples in comparative law. Disability refers to individuals whose movements, senses or functions are

restricted due to a physical or mental illness (Atakan, 2010). Disabilities may be congenital or may occur as a result of subsequent diseases or accidents. Disabled; citing the sensory, functional, mental or spiritual differences of the body; As a result of social or managerial attitudes and preferences, they may encounter restrictions and obstacles in many areas of life. As a matter of fact, for these reasons, disability is accepted as a hate motive in comparative law - for example, in the legal regulations of 32 states in the USA. Similarly, the person's health status, especially some diseases he has had or is carrying, and the age of the person may appear as a bias in the crime committed against him, and for this reason, hate motives are put forward. edited (Muneer, 2004).

In the next articles of the draft, it is aimed to regulate the hate motivation, which is included in some violent crimes, as an aggravating feature in the second book of the TCK, titled "Special Provisions" (Ataman & İnceoğlu, 2012).

With the 2nd article of the draft, it is envisaged that the phrase "with a motive of hatred" will be added as the "k" article to the TPC's 82nd article titled "Qualified Situations" regarding the "Deliberate Killing" crime (Jacobs & Potter, 1998). In this way, killing a person with a motive of hatred has been adopted as a qualified case requiring aggravated life imprisonment, which aggravates the sentence due to the motive involved.

Article 3 of the Draft Law regulates the qualified cases of TPC 86/2 "Deliberate Injury". It is envisaged that the phrase "with the motive of hatred" will be added to the article as sub-paragraph "f". Intentionally committing the crime of injury with a hate motive causes a serious harm both to the public order and to the victim of the crime, which cannot be compared with the simple form of the crime (İnceoğlu, 2012). In the justification of the article, by giving the example of the victim being stabbed for being gay or Jewish, it is pointed out that in such acts, the victim is the representative of the hated group for the

perpetrator and that the perpetrator is actually the perpetrator. target of this entire group. In this case, considering the motive of the perpetrator and the effect of the act on the social world, this act should be punished more severely than the simple form of the crime.

Article 4 of the Draft Law regulates the qualified forms of the crime of "torture" in TPC 94/2. It is envisaged to add the phrase "or with the motive of hatred" as sub-paragraph "c" to the article. Accordingly, the crime of torture, which cannot be accepted under any circumstances and cannot be reduced under any circumstances, and the crime of torture committed with a hate motive are regulated as aggravating the punishment (Hall, 2013). In the justification of the article, torture for being a transvestite or targeting the victim simply because of belonging to a different religion or sect is given as an example of torture with the motive of hatred. It was stated that if found, the punishment would be severe.

96/2, which regulates the qualified cases of the "torment" crime of the TCK, with the 5th article of the draft. It is envisaged that the phrase "with the motive of hatred" will be added to the article as subparagraph "c". In this context, the act of "torture", which is essentially related to the commission of the crime of torture by persons who are not public officials, has been regulated as an aggravating situation (Perry & Olsson, 2009).

Article 6 of the Draft Law regulating the qualified cases of the crime of "Sexual Assault" and Article 102/3 of the TCK. item. It is envisaged that the phrase "with the motive of hatred" will be added to the article as subparagraph d, and the existing subparagraph "d" will be changed to subparagraph "e". Here, the perpetrator commits the act of sexual assault against himself because he chooses the victim against whom he is sexually assaulted, especially from a group or groups that he has prejudice against, and because of the victim's characteristic that causes the sexual assault. bias motivation (İnceoğlu, 2012). In other words, it should be noted that with the intense intention of the perpetrator, not only the victim of the attack, but also the

whole group that the victim is or is thought to be a member of is targeted. There is no doubt that this qualified situation is valid for both simple sexual assault (art. 102/1) and qualified sexual assault (art. 102/2) (İnceoğlu, 2012).

103/3, which regulates the qualified version of the "Sexual Abuse of Children" crime of the TPC with the 7th article of the draft. It is envisaged that the article will be changed as follows:

“Sexual abuse is committed by a parent, second or third degree blood relative, stepfather, adopter, guardian, educator, teacher, caregiver, health care provider or other person who has an obligation to protect and supervise, or by abuse of influence provided by the service relationship, or by hatred. the penalty to be imposed according to the above paragraphs shall be increased by half.”

Here again, it is aimed that the perpetrator will be punished more severely if he targets the child he abused with the motive of hatred. Because the reason why the child is targeted here is not only the satisfaction of sexual desires, but also the desire to reveal the feelings of hatred and grudge against the group to which the child belongs.

The following paragraph 3 is added to the 8th article of the draft and the 105th article of the TPC, which regulates the crime of "Sexual Harassment":

“(3) If the above acts are committed by specifically targeting the victim with the motive of hatred, the penalties specified in the first and second paragraphs are applied by increasing it by half”.

As in other types of crimes regulated under the title of crimes against sexual immunity, this situation has been regulated as a situation in order to punish the perpetrator in sexual harassment crimes committed with a hate motive. this aggravates the punishment. In the justification of the article, as an example, it was stated that the perpetrator harassed one of the

many women working in the workplace he owned, by targeting him because of his race, and this motive of the perpetrator would aggravate the punishment.

Article 9 of the draft and 106/2, which regulates the qualified cases of "threat" crime. It is envisaged that the phrase "with the motive of hatred" will be added to the article as subparagraph "e". In the justification of the article, it was pointed out that hate-motivated threats are quite common in Turkey and that religious minorities in particular are frequently targeted by such threats. In the reasoning of the article, which draws attention to the fact that the threat is the last sign before the attack when it comes to minorities; It was emphasized that actions that threaten such hatred should be punished more severely than ordinary threats in order to be able to fight all kinds of discrimination, especially racism, in a healthier way. ,

109/3, which regulates the qualified cases of "deprivation of liberty" with Article 10 of the Draft Law. It is foreseen that the phrase "with the motive of hatred" will be added to the article as subparagraph "g". Although deprivation of liberty is a type of crime that can be committed with general intent⁶⁸; It is possible that the perpetrator may have acted with different motives while performing this action. In this context, if the crime is committed with the motive of hate, it becomes necessary to increase the punishment given to the crime due to both the concentration of the will towards the crime and the extra trauma that the crime will create on the victim. (Tezcan, Erdem, & Önok, 2013).

With the 11th article of the draft, it is foreseen that the 3rd paragraph will be added as follows to the 115th article of the TPC titled "Prevention of the exercise of the freedom of belief, thought and opinion":

“(3) In case the group whose religious worship and rites are prevented is elected with the motive of hatred, the amount of the penalty specified in the first paragraph is applied by increasing it by half”.

According to the justification of the article, the perpetrator's blocking of a certain religious group with the motive of hatred has a meaning and importance that goes beyond and exceeds the crime of preventing ordinary worship. For example, an American soldier in Turkey blocking the mosque because of his grudge against Muslims or an anti-Semitic person entering the synagogue and preventing worship out of his grudge against the Jews cannot be punished by ignoring the motive. In such acts, the moral element of the crime manifests itself much more intensely. In this respect, if the worship is prevented by the motive of hatred, there is a very different situation than if the same crime is committed with general intent or any other motive, and therefore, if the crime is committed with a hate motive, the perpetrator should be punished more severely.

It is foreseen that the 12th article of the draft and the 4th paragraph of the 116th article of the TPC, titled "Violation of Housing Immunity", will be amended as follows:

“(4) If the act is committed against a person targeted with the use of force or threat or with a motive of hatred, or in the night time, a prison sentence from one year to three years is imposed”.

In case of violation of the immunity of residence, if the rape against the residence, workplace and its annexes is committed with a hate motive, the threat and danger posed by the crime for the victim is much more intense and stronger than any act of rape. violating the inviolability of the residence. To reiterate the example given in the justification for the article, there is no doubt that when perpetrators violated the inviolability of houses in a Roma neighborhood by targeting, the racist motivation there disproportionately increased the threat of crime and the danger posing a crime. in terms of social peace. Therefore, if the act of violating the immunity of residence is committed with a hate motive, increasing the penalty of the perpetrator is a necessity in terms of balance between crime and punishment and justice.

With the 13th article of the draft, it is foreseen to add a sentence as follows to the 120th article of the TPC titled "Unfair Search":

“If the person wanted unlawfully is targeted with a hate motive, the penalty for the crime is increased by half.”

Unlawful search of a person is not only a behavior that violates the privacy of private life, but also can be described as a dishonorable treatment. If the wrongful search is committed against a person who is chosen as a target with the motive of hatred, there is no doubt that this act, which is committed with a biased motivation, is an act aimed at harming his honor. However, the expression "penalty given to the crime" in the text of the Draft is technically incorrect. Because punishment is a sanction applied not to the crime but to the person who committed the crime defined as a crime in the law. For this reason, we think that the expression "criminal" should be corrected as "perpetrator".

Article 14 of the Draft Law and Article 149/1 of the TCK, which regulates the crime of "Qualified Looting". With the clause “f” added to the article, the phrase “with the motive of hatred” has been added and other clauses have been consolidated.

The commission of the crime of looting against individuals or groups targeted with a hate motive has been accepted as a situation that aggravates the punishment. As stated in the justification of the article, the actions committed against citizens of Greek, Armenian and Jewish origin in Turkey, especially on 6-7 September 1977, are remembered as a typical historical example of this situation. In this type of plunder, the perpetrators act not only with the intention of creating an unjust enrichment by using force or threat, but also with the intention of harming and punishing the person or group they are targeting for the characteristics they have acquired it takes them into account when targeting them (in the concrete example they are the minority). In this respect, it is imperative that the crime of

looting, committed with a motive of hatred, is met with a heavier penalty, due to its devastating effect on the social order and the extremely heavy damage it causes on the victims of the crime. However, we think that it would be useful to review this article of the Draft in terms of legislative technique. Namely, the regulation on hate motivation in the Draft Law is in Article 149/1 of the TCK. It is stated that it will be added to the article as “f” clause. However, in the current article 149/1 of the TCK, there is already a subparagraph "f", which reads: "Taking advantage of the frightening power created by existing or assumed criminal organizations". In this respect, introducing a new clause "f" starting with the same letter and mentioning that other clauses will be repeated is a situation that will cause serious confusion. If deemed necessary, in this case, the order of the subparagraphs in the article can be rearranged.

152/2, which regulates the qualified cases of "Destroying Property" with Article 15 of the Draft Law. It is foreseen to add an expression such as "committing a crime against the movable or immovable property of the person or persons targeted with hate motive" as subparagraph "d" to the article. In this way, the person who commits the crime of damaging the property with a hate motive, or in other words, destroys, destroys, loots, renders unusable or polluted the movable or immovable property of the person or group targeted with hatred, is punished more severely.

With the 16th article of the Draft Law, it is foreseen that the phrase "or with the motive of hatred" will be added to the article 153/3 of the TCK, which regulates the qualified version of the crime of "damaging the places of worship". and cemeteries" followed by "insult". The act of damaging places of worship or cemeteries is more often perpetrated against places of worship and graves of persons belonging to minority religions when it comes to hatred. In the case of minorities, the harm and impact of the crime on the minority communities in question, article As stated in the justification of this crime, it is an effect of terror and horror that goes

far beyond the ordinary/simple form of this crime. In this respect, it becomes a necessity to punish the acts of damaging places of worship and cemeteries with the motive of hatred, especially against minority communities but even against minorities.

With the 17th article of the Draft Law, crimes of deliberately endangering general security (art. 170), emitting radiation (art. 172), causing an explosion with atomic energy (art. 173) and adding toxic substances became common. (art. 185). By introducing a provision, it is foreseen that the penalty will be increased by half if these crimes are committed against individuals or groups targeted with hate motives. It should be noted that in this article, the casuistic regulation method in the previous articles of the Draft Law has been abandoned and it has been ensured that a common punishment is aggravating for all the crimes listed.

Although there is no clarity in the reasoning of the article regarding this method change, in our opinion it is not a correct method to use such a "pocket provision" for more than one crime. In such a case, since there is no direct change in the article regulating the legal definitions and qualifications of the relevant crime types in the TPC, it cannot be understood from the TPC that committing these crimes with the motive of hatred is a qualified crime situation. However, what needs to be done at this point is to make a direct addition to the text of the article in which the legal definition of the type of crime and its qualified forms are regulated for each type of crime in which the hate motive is regulated as follows. a qualified situation that aggravates the punishment. For this reason, we think that Article 17 should be rearranged according to the principles we have stated and written randomly.

It is foreseen that the third paragraph will be added to the article 18 of the Draft Law and article 213 of the TPC, titled "The threat of creating fear and panic among the people":

“If the crime is committed against a specific group targeted with a hate motive, the penalty is increased by half”.

Article 213 of the TCK regulates a qualified threat crime that poses a serious threat to the protection of social order. In this context, if the act of threatening to create fear and panic in the public is committed with the motive of hatred, this situation is considered as aggravating the punishment due to both the intensity of the perpetrator's intent and the effect of the crime. With such a motive, the crimes committed against the target group are much more regulated.

2.3.4.Evaluation and Suggestions on the Future in Combating Hate Crimes in Turkey
Considering the reservations we have made in the relevant articles of the Draft Law on Hate Crimes, which we have tried to analyze in outline above, it should be put on the agenda of the Parliament and the relevant process should be approved and put into effect. The lack of a special regulation on hate crimes in the Turkish criminal law system means that the deficiency is eliminated (İnceoğlu, 2012). will carry. It is of great importance for Turkey to take this step towards becoming a state of law committed to human rights and universal principles of law; It also has a special meaning in terms of ensuring that Turkey is among the OSCE and Council of Europe member states that fight hate crimes with certain regulations (Çelik, 2013).

However, without prejudice to the special meaning and importance of the Hate Crimes Draft Law, the entry into force of this Draft Law, which regulates only pecuniary criminal law, constitutes only the first link of the legal process aimed at combating hate crimes. In our opinion, these substantive criminal law norms, which came into force after the completion of this first circle, should this time be supported by norms on criminal procedure and execution specific to crimes committed with hatred (Artuk, Gökçen, & Yenidünya, 2009). Although the scope and content of the procedural and sanction norms that will form this second circle are outside of this study, in our opinion, procedural norms generally support people or groups who are victims of hate crimes. The criminal procedure process from the initial investigation to the final decision. Adopting an encouraging content and understanding to follow should be essential. In this context, for example, CMK m. With an amendment to be made in 239/2,

measures such as the appointment of a proxy for the victims of crimes committed with hate motive without being asked, and even making this appointment applicable from the investigation stage can be considered. In terms of execution, this time, perpetrators of hate crimes may be treated more severely because of the great danger their crime poses for the social order (Aydın, 2004). In this framework, for example, with the amendment made to Article 107 of the Law on the Execution of Penalties and Security Measures, the conditions sought for perpetrators of hate crimes to benefit from more probation may be aggravated. Similarly, it can be envisaged that perpetrators of hate crimes are subject to a special education and rehabilitation process during the execution process, and they will be purged of the motives of hatred, hatred and prejudice that push them to commit this crime (Türk Ceza Kanunu'nda Değişiklik Yapılmasına Dair Kanun Teklifi).

The last link of the legal fight against hate crimes is the monitoring, documentation and reporting of hate crimes. The prerequisite for effectively tackling the problem of hate crimes is to accurately reveal the true nature and extent of this problem and the threats it poses to society. In this respect, making hate crimes visible constitutes one of the basic elements in the protection of the victims. Although there are many dimensions of efforts to make hate crimes visible, the most important one is monitoring these crimes, collecting data, evaluating and reporting them (Nefret Suçları ve Nefret Söylemi İzleme Rehberi, 2012).

As we mentioned in the relevant sections, many countries include special legal regulations regarding hate crimes in their criminal law legislation, as well as legal regulations on data collection and reporting, which is an extremely important element in the fight against such crimes. In this context, as we mentioned in the relevant section, with the Hate Crimes Statistics Act enacted in the USA in 1990, the Federal Bureau of Investigation (FBI) will investigate whether crimes are committed in settlements with a population of more than ten thousand. It is within the scope of hate crimes and is obliged to monitor crimes within this

scope. The task was to determine the statistical data obtained and to publish the statistical results in regular reports (Atakan, 2010). Data compiled by the OSCE Office for Democratic Institutions and Human Rights in the OSCE member countries in Europe are regularly shared with the public in the "Hate Crimes Report" (Hate Crimes in the OSCE Region - Incidents and Responses: Annual Report, 2011). Member states' data collection practices differ in terms of providing data for the OSCE's regular reports. In this context, different public institutions such as law enforcement, Prosecutor's Office, Ministries of Interior, Ministries of Justice, national statistical offices and intelligence agencies in each member country have undertaken this responsibility (Nefret Suçları ve Nefret Söylemi İzleme Rehberi, 2012). The Ministry of Justice is the institution that provides data on behalf of Turkey to these regular reports of the OSCE (Atakan, 2010).

The recommendation of the OSCE to introduce a special regulation on hate crimes to the member states received a great reaction in the member states; On the other hand, the call for a legal regulation that assigns the public authority to collect statistical data on hate crimes and to monitor, evaluate and report this data on a regular basis remained largely unanswered. As a matter of fact, in only 14 of the 57 OSCE countries, statistics on hate crimes are compiled, evaluated and regularly reported within the framework of a legal regulation. Apart from this, in most of the OSCE member countries, including Turkey, monitoring of hate crimes is generally carried out as activities carried out by the initiative of civil society and this monitoring activity is carried out through the media. Monitoring studies carried out through the media, on the other hand, provide some conveniences, but also carry important weaknesses (Nefret Suçları ve Nefret Söylemi İzleme Rehberi, 2012). In this respect, in our opinion, as the last link in the legal fight against hate crimes, a public institution – as in the USA and recommended by the OSCE – should monitor hate crimes, collect statistical data, evaluate these data and ultimately share them. It is shared with the public in the form of

regular reports. to be authorized and assigned by a legal regulation to carry out the process that we can summarize. In this respect, given that the OSCE currently fulfills its function of providing data for its annual reports within the Ministry of Justice with limited means; We believe that the implementation of a legal regulation that systematizes and institutionalizes this function will be of great benefit.

2.4. The Concept of Hate Crime in English Law

The scope of academic hate crimes in British law and although many opinions and opinions have been put forward on its definition, it should be noted that there is no consensus on these crimes. Although it can be said that there has been a substantial unity of definition regarding crimes committed within the scope of racial discrimination; It is difficult to say that a common definition can be established regarding crimes committed due to religion, belief, age, sexual orientation (Allport, 1954). This is due to the fact that these crimes have historically been newly regulated in the laws, as well as the wide content of each of the concepts that cause crimes. In English law, it is seen that the efforts to ensure the unity of the concept of these crimes, to simplify and clarify the legal framework in this field are continuing.

We see that the first modern legal definition for hate crime was made in 1990 by the Hate Crimes Statistics in the United States. The law defines these crimes as 'crimes committed with prejudice and motive based on ethnic, sexual orientation, religion, race' (Lieberman & Freeman, 2009). The scope of this definition in the law was later expanded to include disability in 2004 and gender and sexual identity in 2009. The approach of English law to hate crimes is similar to American law, and it is understood that the official definition of hate crime in the United Kingdom was first used in police records in 1985 to express some crimes committed due to race . In English law, it is seen that after the murder of Stephen Lawrence (understood to have been committed due to the race of the victim), which was committed in

1993 and had a great impact in the public opinion, this crime was defined as a hate crime and a legal study started for these crimes.

It has been suggested that there are some differences between English law and American law regarding the concept, scope and legalization activity regarding hate crimes. First of all, it is stated that the hate laws in English law are at the federal and country level contrary to the American law, secondly, the approach regarding hate crimes in English law is quite extensive and according to the statement given by the victim due to the crime, a crime is defined and recorded as a hate crime. In American law, it is stated that priority is given to the definition of the incident by the officials who carry out more investigations on this issue. For this reason, although reports and statistics give the impression that more hate crimes are committed in the UK, it is claimed that this situation is due to the procedure of defining and recording these crimes. Finally, it is acknowledged that the British legal system adopts a wider approach in law-making and implementation, that cooperation between civil society and minority groups and the police is important in order to reduce the prejudices that cause this crime, and that cooperation with civil organizations in law-making is weak in the American system (Behrens, 2013).

2.4.1. Historical Development of Hate Crimes in English Law

The United Kingdom consists of England, Wales, Scotland and Northern Ireland as countries.

Great Britain geographically and politically includes England, Wales and Scotland. The English, Welsh, Scottish and Irish are ethnically the four major ethnic groups of the UK, apart from that, many European ethnic groups, as well as Chinese, Indian, Pakistani, and Bengali, live scattered across many parts of the country. As of 2013, 1.5 million of the UK population is Muslim, 1 million Hindus and Sikhs, and the vast majority are Christians (Fiske, 2002).

Some studies show that up to 15% of the country's population is not affiliated with any religion. Christians living in the UK are generally Catholic, Protestant (Anglican) Methodist

and Baptist sects. In addition, around 1% of the population is Jewish and Buddhist in different parts of the country (Behrens, 2013).

Historical sources show that England and especially the capital London have been under the influence of wars and migrations throughout history. It is seen that these migrations originate from different parts of the world, especially Europe. Before Christ, Europeans, Africans and Jewish communities lived in London, which was an economic center for Europe at that time, the Anglo, Briton, Belgian, French and German communities increased after the Romans lost their dominance over this city, and after the 14th century, more Dutch and Germans. It is understood that he started to live intensively in London, and towards the 17th century, black race members started to settle in London (Hammerberg, 2014). It is seen that the United Kingdom continues to be a country that receives intense immigration, especially after the 1940s. Statistics for the year 2012 for England and Wales show that the number of people living in this country without being born is 7.5 million, and that the white-race British living in London have become a minority (Djik & Teun, 2010).

It has been suggested that the United Kingdom, which has a complex demographic structure due to its geographical and historical location, is generally a tolerant environment towards different groups and communities, however, some prejudices have formed against minority groups over time and these prejudices are the source of hate crimes (Gordon G. S., 2013). It is seen that prejudice, hostility and some torture incidents against Jewish communities and Judaism date back to the 12th century in England, where many developments and events based on Christianity were experienced throughout the Middle Ages. After the 16th century, it is understood that black race members came to England with the colonism and these population movements caused problems among the social strata in the country. In some historical sources, it is stated that the Jews who came to England in the 18th century economically seized job opportunities in England caused some unrest, and the population

living in the Irish region with low income came to the city centers and begged (Iganski & Lagou, 2013).

It is alleged that the demographic structure and immigration explained briefly above are the causes of hate crimes based on racial basis in particular³¹ (Henderson, 2006). Although crimes committed with the motive of race in England have a long history; The recognition of these crimes as a problem in the official sense and their handling within the scope of hate crimes coincided with the early 1980s (McDevitt, Balboni, Garcia, & Gu, 2001). After the Second World War and towards the end of the 1970s, it is understood that the racist approach and prejudices against black race members and immigrants from the Asian continent reached a high level in England, and various problems were experienced in the integration of these groups into society (Bowling & Phillips, 2002). In fact, some studies reveal that between 1939 and 1964, the number of black people in the country exceeded 1 million. It is seen that the increase has continued after 2000 and the population of black race members in England alone is over 1.3 million (Matsuda, Lawrence, & Delgado, 2014).

The incident that brought hate crimes to the social and political agenda in England and legal regulations for these crimes was the murder of Stephen Lawrence, a young black girl who was committed in London in 1993 and caused great indignation in the society. The long duration of this criminal investigation and the long impunity of the perpetrators caused racism and racial hate crimes to remain on the agenda of the country for a long time. In particular, the insufficiency of the police investigation continues to be discussed. This incident paved the way for studies on hate crimes committed for other reasons or motives besides crimes based solely on race.

After the murder of Stephen Lawrence due to race in England, many crimes came to the fore as hate crimes. The murder of Johnny Delaney in Cheshire in 2003 and Sophie Lancaster in

Lancashire in 2007, the murder of homosexual Jody Dubrowski in London in 2005, and many more crimes against the disabled were motivated by hate and public reaction. can be given as an example.

2.4.2.Regulations on Hate Crimes in British Law

2.4.2.1. *Discrimination Prohibition*

In order to explain the legal framework of hate crimes in British law, it is useful to briefly touch on the developments regarding the prohibition of discrimination in general. It should be noted that; Although legal studies on crimes committed with the motive of "hate" in British law have recently been carried out, the regulations on discrimination are very old (Malcolm, 2004).

Many laws have been prepared and international agreements have been signed in order to prevent discrimination in the social field in the UK (Nicholas, Maleiha, & Colm, 2008). The 1945 United Nations Charter (especially Article 1), the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights (especially Article 14) and the 1948 Universal Declaration of Human Rights (especially Article 7) are important. As in many legal systems, international agreements do not have direct applicability in the United Kingdom and must be transposed into domestic law with a law.

The Human Rights Law of 1998, which ensures the transposition of the European Convention on Human Rights into domestic law in the country, is one of the most important texts that provide protection in the field of discrimination (David & John, 2013). In the UK, which is a member of the European Union, international agreements are always an important source of interpretation of laws in practice.

In order to prevent discrimination in British law, it is seen that many legal arrangements have been made apart from international conventions. Since there is no written constitution in the

United Kingdom, the legal regulations in the field of discrimination were mostly developed by laws and court jurisprudence, and the first regulations on the prohibition of discrimination emerged on racism (Nicholas, Maleiha, & Colm, 2008). Especially since the 1960s, regulations on racism and religious discrimination have begun to be included in the laws, incitement to racism and religious hatred has been regulated as a crime, and severe penalties have been stipulated for acts of violence arising from racial and religious discrimination. In addition to criminal law sanctions in English law, many regulations have been made in the field of private law to prevent discrimination (Malcolm, 2004). By the way, let us state that some regulations regarding the prohibition of discrimination due to political reasons did not cover Northern Ireland (Nicholas, Maleiha, & Colm, 2008).

To prevent discrimination, the Racism Laws of 1965, 1968 and 1976 prohibit direct and indirect discrimination in employment, access to goods and services, education, housing and the performance of public functions on the basis of ethnicity, color, race, origin and nationality (Malcolm, 2004). Another regulation in this area is included in section 95 of the Criminal Justice Act of 1991. In this section, some duties are assigned to institutions in order to prevent discrimination arising from race, gender and other reasons. Again, the Disability Discrimination Act of 1995 prohibits discrimination in employment, access to goods and services, education, housing and provision of public services on the basis of disability (Malcolm, 2004). Finally, with the Equality Act of 2006, it is observed that protection against discrimination is being tried to be provided in the provision of education, accommodation and public services due to religious belief.

2.4.2.2. Legal Regulations

Although there are provisions on discrimination and hate crimes in many laws and international conventions in English law, these texts do not have a special "hate crime" or "hate crimes" category. In English law, hate crimes are regulated in various criminal laws

according to time and needs, and a system has been preferred in which the motives specified as methods are predicted as aggravating causes (Heinze E. , 2013). In other words, these crimes are generally not regulated as an independent crime type, and it has been adopted to increase the penalties to be imposed in case normal crimes are committed with hate motives. Since the regulations regarding hate crimes in English law have been established over time, it has a very complex structure.

As stated above, it is understood that the first need for a special regulation regarding hate crime came to the agenda with the murder of Stephen Lawrence, which was committed in 1993 in England and caused public indignation (Nicholas, Maleiha, & Colm, 2008). As a result of the public indignation caused by this crime and the discussions that took place afterwards, the British government, on the one hand, carried out the investigation into this crime, and on the other hand started work to make legal regulations in the fight against racism. Following the completion of the studies, in 1998, the Crimes and Irregularity Law, which regulates crimes committed due to race and religious belief and the punishments related to them, is included in the 28-32. paragraphs have entered into force. The main purpose of these regulations; To prevent racial crimes, to maintain social peace and to create an effective legal mechanism against hate crimes in the criminal justice system (Nicholas, Maleiha, & Colm, 2008). Although the 1998 Act was the first legal text in which the expression 'hate motive crimes' was enacted, it should be noted that the Racism Act amended in 1965 and 1976, the Public Order Act of 1986 and the Football Act of 1991 as amended in 1999 also have provisions prohibiting acts of 'racial hate'. .

In paragraphs 28 to 32 of the Crime and Irregularity Act 1998, if crimes such as deliberate injury, harassment, threats and damage to property were committed due to the racial motive of hate or prejudice of the victim, the punishment to be imposed on the perpetrator in proportion to the nature of each offense. It has been stipulated that it will be aggravated in certain

amounts. The law includes some acts of intimidation and incitement to violence, disturbing peace and tranquility regulated in chapters 4, 4A and 5 of the Public Order Act of 1986, acts of severe and qualified injuries regulated in chapters 20 and 47 of the Crimes Against Persons Act of 1861, 1971. It covers acts of damaging property regulated in section 1 of the Property Damage Law, crimes of causing fear and violence in persons and harassment regulated in sections 2 and 4 of the 1997 Law on Protection from Harassment (Nicholas, Maleiha, & Colm, 2008).

The Crime and Irregularity Act of 1998 was amended by the Anti-terrorism, Crime and Security Law, which entered into force in 2001, and the scope of hate crimes was expanded to include crimes committed with the motive of religion and religious belief (Matsuda M. J., 2018). Thus, in addition to racism, the commission of the crime due to the religious belief to which the victim is subject is also accepted as a quality situation that aggravates the punishment for the mentioned crimes (Mason-Bish, 2010).

Here, section 82 of the Crime and Disorder Law 1998, which was later amended, should also be mentioned. According to this section; If any crime is committed due to the race of the victim, even if it is not written in the law, the court may aggravate the penalty while determining the basic penalty for this crime. Although this provision was repealed in 2000, it was put into effect again with the 2000 Criminal Courts Powers Act (Mason-Bish,, 2011).

Thus, courts were authorized to determine the basic punishment by aggravating the basic punishment for all crimes committed with the motive of race or religion in British law. Some researches conducted in the UK have shown that with the implementation of the Crime and Irregularity Act of 1998, there has been a serious decrease in the rate of crime committed with racial motive (Gadd, 2010).

Another legislation that expands the scope of hate crimes in English Law is the Criminal Justice Act 2003. This law was adopted in order to reduce crime and delinquency in English law, and brought important changes in the criminal justice system to the rules of procedure, execution, juvenile delinquency and punishment (Sheridan & Gillett, 2005).

Article 145 of the Criminal Justice Law of 2003, in section 12 titled 'Punishment', regulates the aggravation of sentences for crimes committed based on racial and religious beliefs. This provision authorizes courts to aggravate sentences generally for offenses based on racial or religious beliefs, but not limited to offenses of injury, damage to property, harassment and public order, set out in sections 29 to 32 of the Crime and Disorder Act 1998 (Law Commission Consultation Paper No 213, 2013). The law has made a significant progress in the fight against hate crimes, by phasing out specific crimes in terms of aggravating penalties. Article 146 of the same section of this law stipulates that the punishment will be aggravated if the crimes are committed with a hostile feeling stemming from sexual orientation and disability. The law does not differentiate between full or partial disability, and it also stipulates that the perpetrator who commits a crime under this intention, assuming that the victim's sexual orientation is different or disabled, should be punished with a heavier penalty.

Another law regarding hate crimes in British Law is the Racial and Religious Hate Act 2008. This law amended the Public Order Law of 1986 and introduced a new regulation for actions based on religious belief. With this law, a new regulation including the freedom of disbelief has been brought into account, especially in court decisions that include determinations that Muslims and Christians are religious groups and Jews and Sikhs are races. The Criminal Justice and Immigration Law of 2008 and the Public Order Law of 1986 were amended, and the words and behaviors used to threaten a certain group because of their sexual orientation and preferences were regulated as crimes. In addition, the Legal Aid, Punishment of Offenders Law of 2012 and the Criminal Justice Law of 2003 were amended, increasing the

lower limit of the basic sentence to 30 years for murders committed due to gender reassignment and disability.

Considering the regulations regarding hate crimes in Scottish law; It is seen that this situation is determined as an aggravating factor if the mentioned crimes are primarily committed with the motive of race, religion and sect. Hate crimes committed on the basis of race are regulated under sections 50A of the Scottish Penal Code 1995 and sections 18, 19 and 23a of the 1998 Public Order Act (, J.J.M., Manchin,, J.N., & Hideg, , 2007). It is understood that crimes committed with a religious motive are sanctioned in Article 74 of the Law. Criminal Justice Act 2003, crimes committed due to disability Article 1 of the 2009 Criminal Justice Law, and crimes committed with the motive of sexual orientation are sanctioned in article 2 of this law. Similarly, in Northern Ireland, instead of creating a new hate crime or crime category with the Northern Ireland Criminal Justice Act, passed in 2004; It was decided that reasons such as race, religious belief, sexual orientation or disability should be taken into account in determining and aggravating the sentence.

The legal provisions tried to be explained above are the basic regulations in British law regarding the fight against hate crimes. These provisions are criticized from time to time, and it is often stated in the British public that some reforms should be made in order to fight hate crimes more effectively. Finally, in December 2012, the British government sought to initiate a study in the Law Commission to expand racial and religious hate crimes to include crimes of disability, sexual orientation and gender identity. This study also includes the reform of the five main causes of hate crimes mentioned above, the conditions in the law and how they can be changed. The study continues as of 2014 and the reporting phase is expected (Hall, 2013).

2.4.2.3. Prosecution of Hate Crimes in British Law

As in all other legal systems, hate crimes in English law have emerged as a new legal and social problem in terms of enactment, but their roots go back a long way. It is understood that

the efforts to prevent these crimes, which are understood to be committed due to many reasons such as race, ethnicity, religion, religious belief, sexual orientation and preferences, disability, gender, age, and to protect the victims, continue in the country (Chakraborti, Hate Crime Concepts, Policy, Future Directions, 2010).

Statistics published for England, Wales and Northern Ireland by; It is understood that 43,748 hate crimes were committed in police records between 2011 and 2012 (Law Commission Consultation Paper No 213, 2013). This number constitutes 1% of the total crimes committed in the country. It was recorded that 82% of these crimes were committed due to race, 11% due to sexual orientation and gender identity (lesbian, gay, bisexual and transgender), 4% due to religion and religious belief, and about 4% disability taken (Law Commission Consultation Paper No 213, 2013). Similarly, it is seen that the total number of hate crimes committed in England between 2012 and 2013 was 41,204 and most of these crimes (83.1%) were committed because of race⁶⁸. In a report on this subject; The highest rate of hate crimes in Scotland in 2012 and 2013 was 12.4% (729) based on race (4,012), sexual orientation and gender identity (lesbian, gay, bisexual and transgender). It is understood that 11.7% (687 items) were committed due to religion and religious belief, and approximately 2.4% (138 items) were committed due to disability⁶⁹. In another report⁷⁰, 83.3% of the perpetrators convicted of these crimes in 2012 and 2013 were male, 71.6% Caucasian British, 57.7% 25-59 years old, 27% 18 years old. It indicates that he is 24 years old (Hate Crime and Crimes against Older People Report, 2012-2013).

There are usually two official primary sources for statistics on hate crimes in English law. The first of these is the police records, and the second is the reports published by some institutions. These reports are usually published annually and are available online. (Hate Crime and Crimes against Older People Report, 2012-2013). In reporting studies, data is collected and evaluated through face-to-face surveys with victims and police records.

Lawyers specialized in this field frequently state that reporting, statistical evaluation and drawing conclusions from hate crimes are very important tools in order to monitor hate crimes, conduct effective investigations, inform and support the public, and prevent the commission of these crimes (Chakraborti, Hate Crime Concepts, Policy, Future Directions, 2010).

It is seen that various commissions have been established on different dates in order to prevent discrimination and hate crimes in the United Kingdom. These are the Commission on Racial Equality, established in 1977, the Commission on the Rights of Persons with Disabilities, established in 1999, and the Equal Opportunities Commission, established in 1975, working on gender discrimination. Commissions are authorized to provide legal support to victims, to conduct educational activities and to conduct research on discrimination. These commissions were merged under the name of the Equality and Human Rights Commission in 2006 and this newly established commission started its activities in 2007 (Hanes & Machin, 2013). In Northern Ireland, it is seen that the Northern Ireland Equality Commission is working in a similar way.

Finally, in 2012 the British government prepared an action plan on hate crimes. This plan in the criminal justice system; It is built on three pillars, which can be summarized as the prevention of hate crimes, increasing the reporting of these crimes, supporting the victims and fighting these crimes effectively. In the field of crime prevention; There are various subjects such as conducting educational activities, communicating with religious belief groups, and conducting research on the Internet. In reporting and supporting victims, it is aimed to collect more data, identify risky groups, provide financial aid to certain organizations and develop strategies on similar issues. Finally, in the area titled effective fight against these crimes; It is planned to work on fourteen main topics such as preparing guidelines on hate crimes,

reviewing police training and roles, reconsidering legal changes, rehabilitation of criminals in prisons and conciliation offices (Hammerberg, 2014).

2.5. Conclusion

Hate crimes are defined as crimes committed against a person or group for various motives and reasons, such as race, ethnicity, religion, gender and sexual orientation, and are generally violent. Although it has a long history, it is seen that the concept of hate crime emerged about half a century ago and legalization efforts continue in many countries to combat these crimes. It is understood that the first regulations regarding these crimes were accepted on the basis of race, ethnicity and religion in the USA in the 1980s and spread to many countries, especially European countries. It is observed that the scope of hate crimes has expanded over time to include reasons such as sexual orientation, disability, gender and age.

Depending on the historical development in English law, it is understood that hate crimes come to the public agenda from time to time and various regulations are made regarding these crimes. The need for a special regulation in this area came to the fore with the 1993 murder of Stephen Lawrence in England that aroused public indignation. It is seen that with the Criminal Justice Law of 2003, the scope of crime was expanded to include crimes committed with the motive of religion and belief, and sexual orientation and disability are also included in this scope. Finally, it appears that the Racial and Religious Hate Act of 2008 reorganized crimes and penalties for racial and religious beliefs, including freedom of disbelief. Although research shows that hate crimes in the UK are mostly racially motivated; It is seen that sexual orientation, religious belief and disability are among the important reasons for committing these crimes. Despite these developments, it is understood that the regulations regarding hate crimes in English law are criticized from time to time, some reforms are needed to fight these crimes more effectively and some reform studies are needed to fight these crimes more effectively. 2012 is still ongoing.

It is seen that hate crimes come to the public agenda from time to time in our country and the problems experienced in the legislation and especially in practice regarding these crimes are the subject of discussion. These problems are also criticized in the reports prepared by the European Union, which we want to be a member of, and which are the subject of violation decisions given by the European Court of Human Rights. Criticisms are that the legislation is generally inadequate and the provision in the Constitution regarding the principle of non-discrimination is narrowly interpreted in practice. Finally, with the Law No. 6529 Amending Various Laws Regarding the Promotion of Fundamental Rights and Freedoms, which was adopted in our country on March 02, 2014 and published in the Official Gazette, the type of crime previously defined as "" is a crime. "discrimination" in our penal code is "hate and discrimination." Although the scope of hate crimes is partially expanded with this regulation, it is seen that the criticisms against the legislation and practice continue. It is considered that this study, in which we examine the regulation of hate crimes in English law, which is a current problem, and which is understood to be the subject of various reform studies around the world, will contribute to the subject in question. Discussions and ongoing reform studies in our country.

3. Case Examples

3.1. Istanbul

-October 20, 2008: In Istanbul, the police stopped the Ağrı bus for control purposes. During the check-in, the bus official, along with his crew and passengers, was beaten when he objected to being held for GBT. When the police said, "These are PKK members," the people gathered around started a lynching. (International Crises Group, 2016)

-August 20, 2007: Nigerian citizen Festus OKEY was shot in the neck with a gun while he was in custody at the Beyoğlu District Police Department. "Due to the difficult situation we

were in, one of us tried to kill himself by banging his head against the wall... The police attacked him and beat him until he passed out in front of all of us. Many gendarmes attacked and beat the man with sticks and kicks. Then they took him to the bathroom and cleaned his face.” A Mauritanian refugee held in a detention place near Izmir. (İstanbul - BIA News Desk, 2021)

- Mehmet Nuri Deniz claimed that he was battered by officials at the Şişli District Governor's Office, where he went in Istanbul to receive social assistance support, on 12 June 2020, and that he faced racist and discriminatory statements because he was Kurdish. Deniz told bianet about her experiences as follows: Since our village was burned down in the 1990s, we migrated from Bitlis to Istanbul. Since then, I have been working in various jobs. We live in Şişli Feriköy. Lastly, I was working in a textile factory, but due to the epidemic, they dismissed many workers, including me. During this time, I could not pay my rent. “Last week, the landlord came and said, 'Pay your rent or vacate my house'. I went to the village headman first. The headman said that I could receive social assistance from the Şişli District Governor's Office. I went to the governor's office. I told the situation to someone named Mehmet, who said he was a district governor's advisor. ‘My monthly rent is one thousand 200 TL. I have four months of accumulated rent. Can you pay?’ I said. He told me that he could only pay 2400 TL for two months, not all four months. They took my account numbers. On Friday, June 5th, a message came, saying, 'Your money has been paid'. I went to the bank and they only deposited 400 TL into my account to withdraw the money. “I went to the governor's office to inquire about the situation. Again, I talked to a consultant named Mehmet. 'Do we have to give you money? Go where you came from. The Kurds came from Bitlis and want to live in Nişantaşı. Go to your village, is it up to you to live in Nişantaşı? They said, 'Why should we give you money?' When I answered him, a verbal argument broke out. He pushed me, tried to beat me. “Then he called two security guards. They also beat me up to the

elevator. Another person came in the elevator, three people beat me. "Then they threw it outside the building. I immediately went to the Fulya Central Police Station and the police were not very interested. I don't remember his name, they took me to a hospital. He was dressed in the hospital. We received a report of assault, but I was in a very bad condition, I did not see the report (Kepenek, 2020).

-Muhammed Saeed According to the news on 1 August 2020, it was learned that a Syrian refugee named Muhammed Saeed (19) was attacked by a racist group in Istanbul's Küçükçekmece district on 26 July 2020. It has been reported that Mohammed Saeed, who was injured as a result of a stab wound to his leg, was taken to the hospital. Muhammed Saeed stated the following in his statement to the press: I was walking with a relative in the Thursday Market at around 20:00 on Sunday. As we turned the corner, we encountered a group. There were an estimated 20 people and they spoke Turkish. One of them shouted at us with a knife in his hand, he was 22-23 years old. My relative started running, but I couldn't. (...) Someone swung a knife at my stomach. When I pulled to the side, the knife came to my leg. At that time, they were shouting, "One day we will kill all Syrians". The man holding the knife said, "I will kill every Syrian that comes my way." Along with that man, the group quickly swept away (Tokyay, 2020).

-6 Syrian Refugees It was learned that on 17 August 2020, an unknown person first verbally attacked and then fired at 6 Syrian citizens in the Zeytinburnu district of Istanbul. It was learned that a Syrian citizen named Abdulkadir Davud (21) died as a result of the gunfire. Ahmet Uzun, one of the witnesses of the incident, stated the following in his statement to the press: We went to the bus stop to go home. (...) A man we do not know came out of the window of his house and started swearing at us. We asked, "Why are you cursing, what have we done to you?" He continued, 'Go away, Syrians', swearing heavily. We didn't curse. (...) Then he went in. This time his wife came out to the balcony. The woman said to us, 'Run, this

drunk has gone to buy a gun'. We also started to run away. Three gunshots came from behind. Two of them stuck to Abdulkadir, one of them wasted. When we returned, the boy was covered in blood (Syrian Association for Citizen's Dignity, 2019).

3.2. London

-Women who were attacked for wearing a headscarf in London have broken ribs and internal bleeding. Women, one in their 60s and the other in their 30s, were subjected to harassment over their clothing before being physically assaulted. As a result of the racist attack on two Muslim women in London, one victim suffered a possible rib fracture and the other suffered internal bleeding. The two women were attacked around 5:30 p.m. as they were passing through North Ealing tube station in west London on August 23. The British Transport Police (BTP) stated that women, one in their 60s and the other in their 30s, were verbally abused for wearing veils (England, 2016).

The women were also subjected to physical assault a short time later. The old woman's ribs were probably broken, while the younger woman suffered from dark circles, bruises and internal bleeding.

Authorities released a video of another woman they wanted to talk to in connection with the investigation, taken on security cameras. Hate crimes in London, the capital of England, have increased steadily over the last 10 years. In July 2018 - July 2019, 1,323 Islamophobic hate crime cases were reported, compared to 350 in 2010. A total of over 5,680 religious hate crimes were committed across the UK from 2017 to 2018, with 52 percent of them being crimes against Muslims because of the victim's religious beliefs.

The number of hate crimes targeting Muslims in London, the capital of England, increased by 40 percent compared to the previous year. The City of London Police and Crime Bureau has published a report on the number of Islamophobic hate crimes cases in the city in 2017. The

report reveals that the number of Islamophobic hate crimes in London last year increased significantly compared to the previous year. According to the report prepared by the Municipality's Police and Crime Bureau, there were a total of 1,678 cases targeting Muslims in London, the capital of England, in 2017. According to a statement by the London Police Service, this figure could be much higher with unreported crimes. In 2016, a total of 1,205 Islamophobic hate crime cases were reported to the authorities. Police officials and Muslim community leaders, who made statements about Islamophobic cases in the city, which increased by 40 percent compared to the previous year, said that terrorist acts in the country may cause this figure to increase. Iman Atta, the director of the campaign group "Tell Mama", which fights against Islamophobia, said that the terrorist attacks caused an increase in Islamophobic cases and this situation created tension in the Muslim community in the country. Last year, England was shaken by terrorist attacks on London Bridge and a concert venue in Manchester. Sadiq Khan, the Muslim Mayor of London, made a statement on the subject and praised the diversity in London. Calling for Londoners to come together against those who take actions to destroy the city's way of life, Khan stated that those who resort to such crimes will be subject to a "zero tolerance" approach to the judicial process. Dave Stringer, the detective's chief inspector for the London Police Service, said that while there has been a steady increase in reporting of racist and religious hate crimes, reports are still quite low.

4. Conclusion

Humans categorize objects and living things around them in order to easily recognize and make sense of them. In this way, he perceives those around him as a member of a broad category, rather than getting to know him individually and again and again. People and groups of people are also subjected to this process. Race, ethnicity and similar concepts are the categories created as a result of this process. After such distinctions are made between groups

of people, the process of social construction of categories begins. Groups are assigned behavioral patterns, social values, and status. Everyone belongs to one or more groups and should behave as expected of a member of that group. Social construction creates a society based on stereotypical power imbalances between groups, through historical events and cultural transmission. For example, women are not different from men just because of their physical characteristics. It is different in terms of the position that the social structure deems appropriate for women and the behaviors it expects. Women should behave like women(!) and men should behave like men(!). Similarly, LGBT individuals should hide behind stereotypes attributed to their biological gender and hide their sexual orientation behind them. From the moment it is visible, it becomes the enemy of the social structure even by its mere existence. To racist individuals who believe in white supremacy, blacks are subhuman and potential criminals from birth. These individuals, who are the “dangerous other”, should be kept under constant control by the state and society, and should be made obedient and harmonious. These and similar groups pose a threat to the existing power structure if they violate the social boundary and norm, sometimes simply by existence. This threat must be eliminated in various ways, and the power must be repaired and re-created. This is exactly where hate crimes come into play. Hate crimes are one of the methods of preserving and constantly recreating the existing hierarchical social structure. Hate crimes, in which the victim is targeted because of group identity, are a symbolic message to the group and society to which the victim belongs. As can be seen in the limited number of examples we can give, hate crime is a sign that the targeted group is not wanted in the society and every member is under the threat of crime. In this respect, it is a serious violation of both public safety and the principle of equality. Therefore, since the 1970s, states have started to make legal arrangements to combat hate crimes through criminal law. However, the fact that hate crimes are a result of the settled social structure and culture that has occurred through historical

events has made the criminal law regulations the focus of discussions and uncertainties. Although there are differences between the penal laws of the states, the hate crime has an agreed definition in international documents. Hate crimes are crimes in which the victim is chosen because of belonging to a particular group. Parallel to this definition, the regulation of a hate crime in the sense of criminal law is to increase the penalty if a crime that exists in the criminal law is committed with the motive of hatred or prejudice against certain groups. The main crimes whose punishment is increased in hate crimes are mostly crimes whose legal subjects are the right to life and bodily integrity. However, when the elements that make up these definitions are examined, it is seen that there are many disagreements in theory and different practical applications. In this context, it should be noted that the crime of hate and discrimination is not a hate crime regulation, even though the reasoning of Law No. 6529 states otherwise. There is no aggravation of the penalty for a crime in the Turkish Penal Code. There is no basic crime. In addition, although the right to life and bodily integrity are generally protected by hate crimes, the optional actions in hate and discrimination crimes are related to the freedom of work and employment and economic rights. However, hate and discrimination crime is not a classic discrimination crime. In none of the articles of the law regulating the crime of discrimination, hatred has not been chosen as a motive. Therefore, discussions about hate crimes are important for hate and discrimination crimes. For these reasons, Article 122 of the TPC is a mixed offense created by taking the motive of hate crimes and the selective actions of discrimination crimes.

The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) has published the “2019 Hate Crime Report”. The "2019 Hate Crime Report", which includes statistical and qualitative information on hate crime incidents in the OSCE region, includes official data from 39 OSCE participating states. The report also includes information on hate incidents in 45 participating countries,

transmitted by 148 non-governmental organisations. According to the “2019 Hate Crime Report”, the most comprehensive report on hate crimes worldwide, 6,964 prejudice-based hate crimes were recorded in the OSCE region in 2019. The OSCE definition of hate crime is as follows:

“The victim, property, or target of a crime has similar characteristics based on actual or perceived race, national or ethnic origin, language, color, religion, gender, age, mental or physical disability, sexual orientation or other similar factors. any crime, including crimes against persons or property, for which he was elected because of his actual or perceived affiliation, affiliation, affiliation, support or membership with a group.”

In the report, these crimes are grouped as racism, xenophobia, anti-Semitism, prejudices against people with disabilities, Roma, gender, sexual orientation or gender identity, Muslims and Christians. Accordingly, the number of recorded hate incidents in the OSCE region by prejudice type is as follows:

- racism and xenophobia: 3033
- antisemitism: 1704
- prejudice against sexual orientation or gender identity: 1278
- Prejudice against Christians: 577
- Prejudice against Muslims: 511
- Prejudice against Roma and Sinti: 101
- gender bias: 70
- prejudice against people with disabilities: 21

The report states that there are 79 hate crimes recorded by the police in Turkey, 72 of which are attacks on places of worship and 7 of them are threatening or threatening behavior.

However, ODIHR states that law enforcement agencies in Turkey do not record the bias

motives of hate crimes. 84 hate crime cases reported by the Freedom of Belief Initiative, Human Rights Association, KAOS GL, Kantor Centre, London Legal Group, Transgender Europe and the Pontifical Authority are also included. Accordingly, the number of hate incidents in Turkey by type of prejudice is as follows:

- prejudice against sexual orientation or gender identity: 57
- racism and xenophobia: 13
- Prejudice against Muslims[1]: 9
- Prejudice against Christians: 5
- antisemitism: 3
- gender bias: 1

According to ODIHR, Turkey continued to implement ODIHR's Training Against Hate Crimes (TAHCLE) program for Law Enforcement Officers following the consensus document signed in 2016. In this context, training has been held with many police officers so far, and in 2019, the General Directorate of Security collaborated with the Police Academy to deliver the training program to 603 police officers.

However, within the framework of the Judicial Reform Strategy launched on 30 May 2019, a working group examined good practices from other countries, with international reports and recommendations by the UN Human Rights Mechanisms and OSCE. The working group has prepared a document that aims to align hate crime provisions with international standards and to establish a hate crime statistics database. Various government officials and non-governmental organizations participated in the process. At the meeting held in December 2019, the working group underlined the need to raise awareness about hate crimes. It was also emphasized that a holistic approach should be adopted in the fight against hate crimes and

that there should be new reforms and regulations regarding hate crimes in the Human Rights Action Plan.

The ODIHR Report points out that many countries have mechanisms to comprehensively record and collect data on hate crimes. However, the vast majority of states do not provide police and prosecutors with the tools and information necessary to detect, record and effectively investigate such crimes. This often leaves survivors of hate crimes with the access to the expert support they need.

ODIHR emphasizes that because victims of hate crimes are targeted because of their identity and the characteristics they share with others, recording these crimes and providing support to those affected is critical to protecting individual victims, communities and society as a whole. In addition, it is stated that the support offered to those who are the target of hate crimes should be tailored to their individual needs. ODIHR, stating that it is necessary to act sensitively in order to prevent psychological harm and support the long-term recovery of victims, also emphasizes the importance of informing about police protection, psycho-social support, practical help and criminal proceedings. In this context, ODIHR provides many tools to help OSCE countries to support victims of hate crimes, improve their hate crime monitoring and recording practices, and strengthen cooperation with civil society.

Humans categorize objects and living things around them in order to easily recognize and make sense of them. In this way, he perceives those around him as a member of a broad category, rather than getting to know him individually and again and again. People and groups of people are also subjected to this process. Race, ethnicity and similar concepts are the categories created as a result of this process. After such distinctions are made between groups of people, the process of social construction of categories begins. Groups are assigned behavioral patterns, social values, and status. Everyone belongs to one or more groups and

should behave as expected of a member of that group. Social construction creates a society based on stereotypical power imbalances between groups, through historical events and cultural transmission. For example, women are not different from men just because of their physical characteristics. It is different in terms of the position that the social structure deems appropriate for women and the behaviors it expects. Women should behave like women(!) and men should behave like men(!). Similarly, LGBT individuals should hide behind stereotypes attributed to their biological gender and hide their sexual orientation behind them. From the moment it is visible, it becomes the enemy of the social structure even by its mere existence. To racist individuals who believe in white supremacy, blacks are subhuman and potential criminals from birth. These individuals, who are the “dangerous other”, should be kept under constant control by the state and society, and should be made obedient and harmonious. These and similar groups pose a threat to the existing power structure if they violate the social boundary and norm, sometimes simply by existence. This threat must be eliminated in various ways, and the power must be repaired and re-created. This is exactly where hate crimes come into play. Hate crimes are one of the methods of preserving and constantly recreating the existing hierarchical social structure. Hate crimes, in which the victim is targeted because of group identity, are a symbolic message to the group and society to which the victim belongs. As can be seen in the limited number of examples we can give, hate crime is a sign that the targeted group is not wanted in the society and every member is under the threat of crime. In this respect, it is a serious violation of both public security and the principle of equality. Therefore, since the 1970s, states have started to make legal arrangements to combat hate crimes through criminal law. However, the fact that hate crimes are a result of the settled social structure and culture that has occurred through historical events has made the criminal law regulations the focus of discussions and uncertainties. Although there are differences between the penal laws of the states, the hate crime has an

agreed definition in international documents. Hate crimes are crimes in which the victim is chosen because of belonging to a particular group. Parallel to this definition, the regulation of a hate crime in the sense of criminal law is to increase the penalty if a crime that exists in the criminal law is committed with the motive of hatred or prejudice against certain groups. The main crimes whose punishment is increased in hate crimes are mostly crimes whose legal subjects are the right to life and bodily integrity. However, when the elements that make up these definitions are examined, it is seen that there are many disagreements in theory and different practical applications. In this context, it should be noted that the crime of hate and discrimination is not a hate crime regulation, even though the reasoning of Law No. 6529 states otherwise. There is no aggravating the penalty of a crime in the Turkish Penal Code. There is no basic crime. In addition, the right to life and the body are generally associated with hate crimes.

Although its integrity is preserved, elective acts in hate and discrimination crimes are related to freedom of work and employment and economic rights. However, hate and discrimination crime is not a classic discrimination crime. In any of the articles of law regulating the crime of discrimination, hate has not been chosen as a motive. Therefore, discussions about hate crimes are important for hate and discrimination crimes. For these reasons, Article 122 of the TPC is a mixed offense created by taking the motive of hate crimes and the selective actions of discrimination crimes.

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