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HATE CRIMES AS MANIFESTATIONS OF POLITICAL EXTREMISM IN THE CZECH REPUBLIC

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ABSTRACT

The article deals with so-called hate crimes as specific manifestations of political extremism. The article mentions not only potential criminal sanctions, but also the legislative situation in Slovakia, international law implications of criminal sanctions for these specific crimes, and available options permitting this phenomenon to be criminally investigated. Last but not least, it touches upon judicature as a source of specific criminal investigation methods developed to examine manifestations of political extremism.

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INTRODUCTION

Political extremism is a topical phenomenon of today, which is closely watched by the public. However, extremism is a general and global problem and is not confined to the Czech Republic only. It is manifested both domestically and internationally. Consequences of extremist acts are often fatal, which fact makes the phenomenon highly socially dangerous.

Specific characteristics of the phenomenon include latency and also the fact that the perpetrators are often very young. Last but not least, specific features with respect to the collection and accumulation of information or, more specifically, its forensic documenting must be emphasized as well. The range of related issues is extremely broad. They pertain to the sharing and acceptance of fundamental democratic values, including equality of people in dignity and rights, right to life and health, freedom of belief and religion, or protection of minority rights. These issues are also about the perception of and respect to rights of ethnic and other minorities and about the right of nations to self-determination.

However, extremism is generally perceived as any ideology or activity aimed against the existing political system as such, and striving for its destruction and subsequent replacement by its own alternative. The latter is usually assumed to be non-democratic, dictatorial, and violating human rights[1]. According to Mareš, extremism is an antithesis of a legal state[2].

1 Charvát, J. *Současný politický extremismus a radikalismus. (Political extremism and radicalism of today.)* Praha: Portál, 2007, pp. 9-10.

2 Mareš, M. Úvod do problematiky pravicově extremistických hudebních produkcí na území ČR. *(Introduction into the topic of extreme right-wing musical productions in the terri-*

CONSTITUTIONAL AND INTERNATIONAL LAW PROVISIONS CONCERNING SANCTIONS AGAINST MANIFESTATIONS OF POLITICAL EXTREMISM

As a rule, the term "extremism" denotes pronounced ideological attitudes which deviate from legal and constitutional standards, involve elements of intolerance, and strike at fundamental democratic constitutional principles defined in the Czech constitutional order (this definition is used, for example, in the "Information on the Issue of Extremism in the Czech Republic", a document which has been prepared since 2006 and constitutes an annex to the "Report on Public Order and Internal Security in the Czech Republic"; before 2006, the "Information on the Issue of Extremism" was published as a separate document). It is interesting to note that the term was coined and used for the first time by the German government in 1972 to denote some terrorist activities of the RAF group[3].

If we were to look for international law standards offering protection against the phenomenon of extremism, we would have to mention in the first place the general and well-known institutes designed to protect human rights, in particular keynote UN documents including:Charter of the United Nations (Act No. 30/1947 Coll.),

- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights (Act No. 120/1976 Coll.),
- International Covenant on Economic, Social and Cultural Rights (Act No. 169/1991 Coll.),
- Convention on the Prevention and Punishment of the Crime of Genocide (Act No. 32/1955 Coll.),
- International Convention on the Elimination of All Forms of Racial Discrimination (Act No. 95/1974 Coll.),
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Act No. 143/1988 Coll.),

as well as:

- United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In addition, activities of the Commission for Human Rights and the Human Rights Committee may be mentioned as well. It is impossible not to mention major initiatives of the Council of Europe, which emphasizes the necessity of human rights protection. Apart from the Convention for the Protection of Human Rights and Fundamental Freedoms (Act No. 209/1992 Coll.), there is also the Framework Convention for the Protection of National Minorities (Act No. 96/1998 Coll.) and the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (Act No. 53/1974 Coll.). Insofar as the Czech Republic, being an EU member state, is concerned, another essential document is the Council Directive 2000/43/EC of June 29, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. When dealing with international law implications in the field of protection against manifestations of extremism, it is also possible to refer to activities of the Organization for Security and Cooperation in Europe, which established the office of the High Commissioner on National Minorities to act as a mediation and supervisory body within the organization.

As to the Czech Republic's legislation, the position of international documents is defined in Article 10 (and Article 10a) of the Constitution of the Czech Republic, according to which promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding upon the Czech Republic, constitute a part of the legal order; should an international agreement contain a provision contrary to the Czech law, the

tory of the Czech Republic.) Brno: FSS (an opening study of scientific and practical information), p. 4.

3 A methodological document of the Supreme Public Prosecutor's Office on the issue of extremism, from October 2009. Please refer to further chapters of the article for the definition proper of extremism.

former prevails. Other documents that can be referred to from the viewpoint of domestic law and constitutional foundations of the legal system include the Constitution of the Czech Republic (Act No. 1/1993 Coll.) and the Charter of Fundamental Rights and Basic Freedoms (Act No. 2/1993 Coll.), which constitutes a part of the constitutional order of the Czech Republic. The first article of the Charter stipulates that all people are free, have equal dignity, and enjoy equality of rights. The Charter prohibits any discrimination based on the colour of skin, language, faith, religion, gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, gender or other status. It is thus based on a natural law concept of rights and equality of rights for all people. The Charter also contains provisions on rights of national and ethnic minorities. Constitutional sources or principles providing the basis for sanctions against manifestations of extremism in our legal system include, but are not limited to:

The **principle of majority and protection of minority rights**[4] consists in the adoption of decisions on the basis of a consent expressed by a majority of decision-makers, who may do so through their elected representatives. The protection of minorities guarantees their right to existence and a realistic possibility to become a majority through democratic fight. The term is not limited to language, national, ethnic, religious and social minorities, but applies to just about any minority defined by a single common characteristic feature or a common opinion about a certain issue. Even an individual with a different opinion may be viewed as a minority. At the same time, the protection of minority rights also means that no one, including the people themselves, can dispose of such rights. A majority cannot impose, even using a legal process, any restriction of rights (e.g. freedom of speech or association etc.) upon a minority, thus rendering the latter unable to persuade other people to join its side and thus become a majority. Moreover, any minority-aimed restriction of fundamental rights may be in contravention of the principle of equality of citizens.

The **principle of inherence and inalienability of fundamental rights and freedoms**[5] is based on a notion that an individual is endowed with them on the merits of his or her very existence. The state can thus guarantee, provide for and develop these rights and freedoms, but cannot repeal them. The inherence of human rights means that one cannot give them up. In addition, they cannot be assigned or transferred to someone else (inalienability). The second sentence of Article 1 of the Charter of Fundamental Rights and Basic Freedoms expressly stipulates that these rights and freedoms are inherent, inalienable, non-prescriptible, and not subject to repeal.

According to the first paragraph of Article 1 of its Constitution, the Czech Republic is a state based on respect for the rights and freedoms of man and citizen.

The background outlined above is expressed in separate legal acts and ordinances and also reflected in criminal law which is of the “ultima ratio” (last resort) nature, i.e. fulfils an auxiliary role in the society. Section 12 of the Criminal Code[6], namely its part concerning the **principle of legality and subsidiarity in criminal repression**, stipulates that:

1. Only the Criminal Code shall determine criminal acts and criminal sanctions that can be imposed for the perpetration thereof.
2. The perpetrator’s criminal liability and any consequences connected therewith under the criminal law may only be applied to socially harmful acts in respect whereof the liability under other legal acts is not sufficient.

4 Article 6 of the Constitution of the Czech Republic, Act No. 1/1993 Coll.

5 Article 1 of the Constitution of the Czech Republic, Act No. 1/1993 Coll

6 Act No. 40/2009 Coll., Criminal Code, in effect from January 1st, 2010

Insofar as the sociological and criminological aspects are concerned, extremism can be defined as a sum of certain sociopathological phenomena produced by more or less organized groups of people and their sympathizers, the dominant feature of which is a rejection of essential values, standards and ways of behaviour prevailing in today's society[7]. From the viewpoint of police work, the term "extremism" usually denotes verbal, symbolical, graphic, violent and other acts of individuals and groups, which significantly deviate from generally accepted and recognized standards, with significant elements of intolerance and a negative attitude to compromises, attacking the very foundations of the state, lives, health or someone else's property. Herczeg points out that it is often very difficult to determine who is an extremist and who is a radical, i.e. a person still operating within limits of the constitutional system[8].

It is therefore possible to say that the subject of extremism-prompted or –related criminal acts is of a multidisciplinary nature and needs an interdisciplinary approach; it requires know-how and capabilities from many scientific disciplines, as only these will guarantee an objective and fair criminological evaluation of the problem. Specific evidence-gathering methods must be used in criminal investigation, and specific methodologies have to be employed to analyze the collected evidence. Needs of bodies involved in criminal proceedings and facts of the case have to be taken into account as well. Similarly, the bodies involved in criminal proceedings must formulate questions they may potentially need answered by an expert witness.

2 POSSIBLE CRIMINAL SANCTIONS AGAINST AND CRIMINOLOGICAL INVESTIGATION OF MANIFESTATIONS OF EXTREMISM IN SLOVAKIA

The absence of a legal definition of extremism was perceived as a deficiency both among the general public and among the professional community. The Constitutional and Legal Affairs Committee of the National Council of the Slovak Republic thus proposed, during the process of presenting comments on the draft of the Criminal Code (Act No. 300/2005 Coll.), to introduce legal definitions of the terms "extremism", "extremist" and "extremist group" into the Criminal Code. At the end of the day, its efforts (unfortunately) produced just a list of extremist crimes in Section 140a of the Slovak Criminal Code (the amendment was enacted by Act No. 257/2009 Coll. and took effect as of September 1, 2009.

Provisions of Section 140a, **Extremism-Related Crimes**, stipulate that: "Extremism-related crimes shall include the criminal acts of sponsoring and promotion of movements aiming at suppressing the rights and freedoms of citizens (Sections 421 and 422), production of extremist materials (Section 422a), distribution and dissemination of extremist materials (Section 422b), safekeeping of extremist materials (Section 422c), defamation of race, nation or belief (Section 423), incitement to national, ethnic or racial hatred (Section 424), incitement, defamation or threatening of people on the grounds of their race, nation, nationality, colour of skin, ethnicity or lineage (Section 424a), and special-bias crimes as defined in Section 140, Paragraphs d) and f).

Section 140 of the Slovak Criminal Code, **Special Biases**, stipulates that the term applies to criminal acts perpetrated

a) upon an order,
b) as an act of vengeance,
c) with an intention to camouflage or facilitate another crime,

7 Kuchta, J., Válková, H. a kol. *Základy kriminologie a trestní politiky (Principles of criminology and penal policy)*. Praha: C. H. Beck, 2005, p. 490.

8 Herczeg, J. Trestné činy z nenávisti (Hate crimes). Praha: ASPI, 2008, p. 14.

d) **with an intention to publicly incite violence against or hatred aimed at a group of people or an individual on the grounds of their race, nation, nationality, colour of skin, ethnicity, lineage or religious belief, if the intention is manifested by threats for the reasons set forth above,**
e) with an intention to perpetrate the criminal act of terrorism or of some forms of participating in terrorism according to Section 419,
f) **because of national, ethnic or racial hatred or hatred based on skin colour,** or
g) with a sexual motive.

The special part of the Slovak Criminal Code (Act No. 300/2005 Coll.), namely Part 1 of Chapter 12, contains (apart from other crimes and their definitions) a list of extremist criminal acts; however, there is no legal and professionally formulated definition of extremism, not to speak of one that would be generally accepted by the professional community and explicitly determine, for the purpose of criminal proceedings, what extremism amounts to. The absence of such a definition causes great difficulties in proving extremist crimes, as illustrated by the fact that, by October 2010, no person indicted for an extremist criminal act in Slovakia has actually been sentenced[9]. This holds particularly true for crimes falling under Section 422a (Production of extremist materials), Section 422b (Distribution and dissemination of extremist materials) and Section 422c (Safekeeping of extremist materials).

The non-existence of the definition referred to above, or, as a minimum, a specification of the term "extremism" in the Criminal Code of the Slovak Republic, combined with the absence of a definition of extremism generally acknowledged and accepted by the society and the non-existence or non-appointment of a forensic expert or forensic institution that would evaluate and analyze extremism-related issues, results in a relatively low level of knowledge and erudition in this field; this situation means a *de facto* non-prosecutability of such criminal acts in Slovakia and renders any criminal investigation of suspected extremism-related crimes paralyzed or impossible. The situation is also reflected in a rather general and vague declaration in the current "Draft Concept of Combating Extremism" in Slovakia[10].

3 POSSIBLE CRIMINAL SANCTIONS AGAINST AND CRIMINOLOGICAL INVESTIGATION OF MANIFESTATIONS OF POLITICAL EXTREMISM IN THE CZECH REPUBLIC

Insofar as potential criminal sanctions against and criminological investigation of manifestations of extremism in the Czech Republic are concerned, it is appropriate to mention that there is a fundamental classification system of political extremism, which comprises a criterion of primary political affiliation (right-wing as opposed to right-wing)[11] and a criterion of secondary political affiliation (religious, nationalistic, ecological). As for the former criterion, it should be noted that the description of the political spectrum is based on the traditional division of parties in the French National Assembly after the French Bourgeois Revolution (some sources even claim that it was a division of the estates during the period prior to the Revolution), the so-called right-left axis[12].

Although the division outlined above has been used in many publications and sources, there exists an objection claiming that there has

9 In mid-June 2010, the author of this habilitation thesis lectured at a training course on extremism, which was organized by the Police Presidium of the Slovak Republic; he received this information from the director of the Extremism Department of the Police Presidium of the Slovak Republic, in the presence of the Vice President of the Regional Court in Košice.

10 See Annex 2 – although the concept was put together as early as in 2006, the above statements pertain to the situation in January 2011.

11 For details on the terms "right" and "left", please refer to Charvát, J. *Současný politický extremismus a radikalismus. (Political extremism and radicalism of today.)* Praha: Portál, 2007, pp. 13-16.

12 Ibidem pp. 17, 18.

been an extensive exchange of ideas among socialists, liberals and liberal conservatives, which renders the significance of the division rather dubious. **Černý also deals with right-wing extremism (freedom, right of an individual to development, unacceptability of interventions in the economy, inviolability of ownership etc.)** and the left-wing (equality, social justice, solidarity and collective interests) perception of the world (in addition, there is a centrist political orientation)[13]. So much for the horizontal axis. The vertical axis characterizes the level of orthodoxy of entities advocating, representing and promoting a given view or opinion. The term "extremism" denotes an extreme-right or extreme-left position of an entity on a notional cross-shaped axis system, with "conservatism" at the top, "liberalism" at the bottom, "left" on the left-hand side and "right" on the right-hand side. Charvát[14] characterizes the right-wing and left-wing varieties of extremism as follows:

Right-wing extremism:

1. rejects equality,
2. unilaterally high (biased) opinion of one's own nation, ethnic group etc.,
3. targets groups that differ in some way,
4. worships violence,
5. emphasizes the role of the state – "etatism",
6. focuses itself against the democratic constitutional state,
7. uncompromisingly stands against the extreme left.

Left-wing extremism:

1. purports some degree of agreement and compliance with the democratic constitutional state, but makes radical to extremist conclusions – absolute equality,
2. declares a close connection with ideologies such as Maoism, Trockism, Stalinism, Marxism-Leninism, anarchism,
3. emphasizes errors and shortfalls of the democratic state and takes actions against it – efforts to replace the existing establishment by the dictatorship of the proletariat, or by an anarchistic concept of a loose society without any authorities or control,
4. agrees with violence,
5. emphasizes "Anti-Fascism".

The Supreme Public Prosecutor's Office issued a document known as **General Instruction No. 1/2008, on criminal proceedings**, which remained in effect till the end of 2009 and which contained, by way of reference in Article 72, a list of crimes perpetrated for malevolent reasons, including racial, ethnic, religious or other hatred [in accordance with the provisions in effect till the end of 2009 which, however, due to the provisions of Section 2, Paragraph 1, of the Criminal Code, will be applicable even after the new Criminal Code, Act No. 40/2009 Coll., takes effect]. The crimes referred to above are as follows:

- violence against a group of people or an individual (Section 196 of the Criminal Code),
- defamation of a nation, ethnic group, race or belief (Section 198 of the Criminal Code),
- incitement to hatred against a group of people or to a curtailment of their rights and freedoms (Section 198a of the Criminal Code),
- murder (Section 219, Paragraphs 1 and 2 g), of the Criminal Code),
- bodily harm (Section 221, Paragraphs 1 and 2 b), of the Criminal Code),
- bodily harm (Section 222, Paragraphs 1 and 2 b), of the Criminal Code),
- extortion (Section 235, Paragraphs 1 and 2 f), of the Criminal Code),
- damage to someone else's property (Section 257, Paragraphs 1 and 2 b), of the Criminal Code),
- sponsoring and promotion of movements aiming at suppressing rights and freedoms of

13 Černý, P. Politický extremismus a právo (Political extremism and law), Eurolex Bohemia, Praha 2005, pp. 23 et seq.

14 Charvát, J. *Současný politický extremismus a radikalismus. (Political extremism and radicalism of today.)* Praha: Portál, 2007, pp. 17-20, 63-122 [the "extreme right" and "extreme left" terms].

citizens (Section 260 of the Criminal Code),
- sponsoring and promotion of movements aiming at suppressing the rights and freedoms of citizens (Section 261 of the Criminal Code),
- sponsoring and promotion of movements aiming at suppressing the rights and freedoms of citizens (Section 261a of the Criminal Code).

Article 72 of the General Instruction referred to above also lists other criminal acts that may be committed for malevolent or hateful reasons, although the malevolent reason does not constitute a part of the crime's definition.

When the new Criminal Code[15] became effective, the Supreme Public Prosecutor's Office issued **General Instruction No. 8/2009, on criminal proceedings**; Footnote 297 to Article 73 of the document contains the following list of crimes perpetrated for malevolent reasons, including racial, ethnic, religious or other hatred:

- murder (Section 140, Paragraphs 1 or 2, and Paragraph 3 g), of the Criminal Code),
- grievous bodily harm (Section 145, Paragraphs 1 and 2 f), of the Criminal Code),
- bodily harm (Section 146, Paragraphs 1 and 2 e), of the Criminal Code),
- torture and cruel and inhuman treatment (Section 149, Paragraphs 1 and 2 b), of the Criminal Code),
- deprivation of personal freedom (Section 170, Paragraphs 1 and 2 b), of the Criminal Code),
- restraint of personal freedom (Section 171, Paragraphs 1 and 3 b) of the Criminal Code),
- abduction to a foreign country (Section 172, Paragraphs 1 or 2, and Paragraph 3 b), of the Criminal Code),
- extortion (Section 175, Paragraphs 1 and 2 f), of the Criminal Code),
- violation of secrecy of deeds and other privately kept documents (Section 183, Paragraphs 1 and 3 b), of the Criminal Code),
- damage to someone else's property (Section 228, Paragraphs 1 or 2, and Paragraph 3 b), of the Criminal Code),
- abuse of official authority (Section 329, Paragraphs 1 and 2 b), of the Criminal Code),
- violence against a group of people or an individual (Section 352, Paragraphs 2 and 3, of the Criminal Code),
- defamation of a nation, race, ethnic or other group (Section 355 of the Criminal Code),
- incitement to hatred against a group of people or to a curtailment of their rights and freedoms (Section 356 of the Criminal Code),
- insult between soldiers (Section 356, Paragraphs 1 and 2, of the Criminal Code),
- insult between soldiers by violence or a threat of violence (Section 379, Paragraphs 1 and 2 d), of the Criminal Code),
- insult of a soldier of the same rank by violence or a threat of violence (Section 380, Paragraphs 1 and 2 c), of the Criminal Code),
- violation of rights and protected interests of soldiers holding the same rank (Section 382, Paragraphs 1 and 2 c), of the Criminal Code),
- violation of rights and protected interests of subordinate soldiers or soldiers holding a lower rank (Section 383, Paragraphs 1 and 2 c) of the Criminal Code),
- genocide (Section 400 of the Criminal Code),
- attack on humanity (Section 401, Paragraph 1 e) of the Criminal Code),
- apartheid and discrimination against a group of people (Section 402 of the Criminal Code),
- establishment, sponsoring and promotion of a movement aiming at suppressing the rights and freedoms of man (Section 403 of the Criminal Code),
- manifestation of sympathies for a movement aiming at suppressing the rights and freedoms of man (Section 404 of the Criminal Code), and
- denial, questioning, approval and justification of genocide (Section 405 of the Criminal Code).

15 Act No. 40/2009 Coll., the Criminal Code

The document referred to above also stipulates that extremism-related crimes may also include crimes motivated by racial, ethnic or other social hatred.

JUDICATURE AS A SOURCE CREATING SPECIFIC CRIMINOLOGICAL METHODS EMPLOYED TO INVESTIGATE MANIFESTATIONS OF EXTREMISM

A new Criminal Code[16] has been in effect in the Czech Republic since 2010; as mentioned above, it construes factual substances of hate crimes a bit differently, both formally and with respect to their contents; due to a relatively short period of time between the effective date of the new Criminal Code and the date of completion of the present work, it was not possible to collect enough judicature reflecting the new Criminal Code. However, the judicature dating back to the time the old Criminal Code[17] was in effect, i.e. until December 31, 2009, provides enough material for orientation when crimes suspected to have an extremist undertone are investigated. It provides enough information both for bodies involved in criminal proceedings (courts, public prosecutors and police, in particular SKPV[18], and for expert witnesses and forensic institutes. The judicature can also be used to deduce the scope and focus of activities of the Czech Police in the area of gathering evidence and supporting information for criminological analyses and criminal investigation. The documents and evidence can subsequently be employed by expert witnesses and forensic institutes for the purpose of elaborating an expert opinion or expert analysis. The existing judicature can also be used as a guideline in the selection of criminological methods and methodologies employed to investigate a given phenomenon or fact.

Last but not least, it should be emphasized that the present judicature in the Czech Republic is supported by collections of findings of the Constitutional Court and by rulings and resolutions of the Supreme Court, regional courts and the Supreme Administrative Court[19].

For example, a collection of findings of the Constitutional Court of the Czech and Slovak Federative Republic on the matter of prevention of the sponsoring and promotion of movements and organizations based on ideas of racism, xenophobia or anti-Semitism states that: *"The security of the state and its citizens (public security) requires that the sponsoring and promotion of movements threatening it be prevented. A ban under the criminal law on the sponsoring and promotion of certain ideologies, whose doctrines and practices have rendered the promotion of other ideologies and political or other movements impossible, protects not only human rights and freedoms, but also democratic foundations of the state. Movements and ideologies provably aimed against the foundations of a democratic state, such as guaranteed fundamental rights and liberties for all, have to be curtailed and their legal ban is a measure necessary to guarantee fundamental rights and freedoms"*[20]. Based on a ruling of the Supreme Court and in accordance with provisions of the first paragraph of Section 260 of the Criminal Code then in effect (Act No. 140/1961 Coll.), the term "movement" is deemed to denote: *"…a group of people, which is at least partly organized, although it may not be officially registered, aiming to suppress human rights and liberties or proclaiming ethnic, racial, religious or class hatred or hatred toward another group of people. For the crime to be deemed committed, the movement must exist at the time when the perpetrator is supporting or promot-*

16 Act No. 40/2009 Coll., the Criminal Code

17 Act No. 140/1961 Coll., the Criminal Code, as amended

18 Služba kriminální policie a vyšetřování (Service of Criminal Police and Investigation)

19 … such as in the case of the order to dissolve the Workers´ Party in 2010.

20 Constitutional Court of the Czech and Slovak Federative Republic. Pl. ÚS 5/92, Sb.n.u.ÚS ČSFR, 1992

ing it; however, it may exist in a modified form (e.g. Neo-Nazi or Neo-Fascist movements)"[21].

In this respect, bodies involved in criminal proceedings may find inspiration in another segment of the ruling already quoted above, which reads as follows: *"…every form of organization contains certain structural elements of a movement, which is why it does not have to be overly emphasized, in particular with a view to the fact that a movement needs to be only partly organized to be viewed as such…."*[22].

The ruling referred to above also deals with the definition of the term "existing movement", stipulating that: *"…In this respect, the term "existing movement" is also deemed to denote a movement which succeeds, although in a modified form, a movement which no longer exists (e.g. Neo-Nazi or Neo-Fascist etc.), if it makes use of the ideology, symbols, salutations and other attributes of the extinct movement …"*[23].

The part of the above ruling, which is particularly important and inspiring for bodies involved in criminal proceedings, especially those collecting and processing evidence and supporting information for the proceedings, reads as follows: *"…The existence of such a movement, which can be identified at least roughly, at the time when the perpetrator was supporting or promoting it, must be proven in the proceedings by submitting evidence attesting to the existence or specific activities of the movement. Apart from testimonies of witnesses, such evidence may include, for example, leaflets or other documents and web pages of the movement, video- or audio-recordings of events organized by or speeches of representatives of the movement, but also reports of bodies monitoring its activities, expert opinions etc."* Here the court clearly aims to guide the criminal investigation in a way which would help the police (and also forensic experts and forensic institutions) produce outputs capable of proving the crime according to the legislation in effect.

When referring to the matter of "defamation" (Section 198 of the Criminal Code then in effect) and "incitement" (Section 198a of the Criminal Code then in effect), the same ruling stipulates that: *"A criminal act according to Section 198a, Paragraph 3 b), of the Criminal Code provides for three forms of the association of perpetrators, with an ascending level of organization – a group, an organization, and an association. The term "group" shall be deemed to denote at least three people joined by a common objective of proclaiming and promoting the ideas stipulated in Section 198a, Paragraph 3 b) of the Criminal Code. The group need not have any organizational structure or a longer duration, which is why it shall not be regarded as a movement, as defined in Section 260, Paragraph 1, of the Criminal Code."*

A ruling of the Supreme Court dating back to 2008, which deals with ways of proving anti-Semitic intentions of the perpetrator, is also very inspiring and important for the work of forensic experts and the Service of Criminal Police and Investigation of the Czech Police. It stipulates that: *„A manifestation of an anti-Semitic attitude in itself does not meet the definition of a criminal act according to Section 260, Paragraph 1, of the Criminal Code, unless the perpetrator's act is not related or linked to a group of people proclaiming or practicing anti-Semitism and representing a movement. Insofar as defamatory statements or behaviour lacking such a relation or link are concerned, it is possible to consider whether they meet the specifications of a criminal act defined in Section 198 of the Criminal Code, i.e. defamation of a nation, ethnic group, race or belief, or depending on the facts of the case at hand, specifications of another crime according to Chapter V of the Special Part of the Criminal Code"*[24]. The court thus clearly expressed that an attitude *per se* is not punisha-

21 Supreme Court, Tpjn 302/2005, R 11 / 2007

22 Ibidem.

23 Ibidem.

24 Supreme Court 7 Tdo 1472/2008

ble under the Criminal Code; the attitude has to be linked or related to a specific and current group of people proclaiming or practicing anti-Semitism. This is again a distinct appeal to bodies collecting and subsequently processing supporting information and evidence to choose an appropriate criminal investigation method in order to achieve the desired purpose – i.e. to confirm or disprove whether a criminal act has occurred or not.

Similarly, the Constitutional Court issued a ruling in the matter of proving the perpetration of the crime of "defamation of a nation, ethnic group, race or belief and incitement to national, ethnic or racial hatred", which reads as follows: *"The District Court of Prague 7 found the Complainant guilty of a criminal act of defamation of a nation, ethnic group, race or belief and incitement to national, ethnic or racial hatred, for which he was sentenced to twelve months of imprisonment suspended for a period of 2 years. At the same time, the Complainant was prohibited to be involved in activities of a publisher and editor-in-chief of nationwide, regional and district coverage dailies for a period of 5 years. The Complainant committed the criminal act referred to above by having decided, in his capacity of the publisher and editor-in-chief of the "Š." daily, to include and publish an article written by P.S., an independent journalist, and named "The Murderous Alliance" in the daily's issue of May 15th, 1999, in which the author accused Jews, Albanian Kosovars, immigrants, aliens and ethnic minorities in the territory of the Czech Republic of causing negative effects in the political and economic sphere, thus creating antipathies, intolerance, hostility and hatred aimed at the subjects listed above; the Complainant agreed with the contents of the article. In this respect, the Constitutional Court agreed with the legal conclusions drawn by the European Court of Human Rights; the latter authority emphasizes the irreplaceable "watchdog" role of media in the democratic society, but also reminds of the journalist's responsibility for maintaining and upholding ethical and moral standards of his or her profession and for any transgressions in this respect. In cases like this, there has to be a legal sanction reflecting the urgent social need to protect fundamental interests and commensurate to the legal objective being sought. The definitions of criminal acts stipulated in Sections 198 and 198a of the Criminal Code are in full compliance with international standards and international obligations of the Czech Republic in the field of protection of fundamental rights and freedoms. By way of conclusion, the Constitutional Court feels it is necessary to emphasize once again that both Article 10, Paragraph 2, of the Covenant and Article 17, Paragraph 4, of the Charter stipulate that legal limitations imposed upon such rights and freedoms are needed to protect interests of the democratic society*[25].

Another aspect which is not irrelevant with respect to the choice and application of a suitable or specific criminal investigation method to be employed to prove an extremist motive of a criminal act stems from the fact that definitions of "hate crimes" contained and still contain a large number of specific terms which, however, cover specific activities requiring specific investigation methods. From the viewpoint of a forensic expert's practice, the terms "support", "sponsoring", "promotion" and "manifestation of sympathies" seem to be particularly risky. As the "manifestation of sympathies" has been a part of crime definitions only since the new Criminal Code took effect, it is not found, contrary to the "support", and "promotion", in any judicature, although these terms are often crucial and constitute a cornerstone of evidence use to prove or disprove a potential criminal act with an extremist undertone. *"The support of a movement aiming at suppressing the rights and freedoms of citizens may be material (e.g. financial donations, donations of technical equipment etc.) or moral (e.g. recruitment of*

25 Constitutional Court of the Czech Republic. 435/01

sympathizers, arrangement of an opportunity to publish the movement's intentions or ideology etc.), and consists in acts the purpose of which is to strengthen and/or recruit additional sympathizers for the movement"[26]. *"The term "promotion" refers to making the movement or its ideology and intentions public or recommending the ideas and opinions the movement is promoting or advocating. The promotion may be overt or covert, the former consisting in publication of opinions, books, paintings or other works of art."*

Although the "manifestation of sympathies" has been a part of crime definitions only since the new Criminal Code took effect, i.e. since January 1st, 2010, earlier judicature is indicative of the opinion of courts regarding manifestations of sympathies to movements (both existing and extinct) based on ideas of racism, anti-Semitism, xenophobia etc. This is, for example, obvious from the text of a ruling of the Supreme Court in the matter of a criminal act falling under Section 261a)[27] of the Criminal Code then in effect, which stipulates that: *"…The object of the crime in question is the protection of fundamental and civil rights and freedoms, equality of all people regardless of their race, nationality, religion, social appurtenance or origin, in particular the rights and freedoms stipulated in the Charter of Fundamental Rights and Basic Freedoms. Subjectively, the crime in question requires an intention…" "If the accused is to be regarded as criminally responsible according to the definition of the criminal act in question, his or her manifestations of sympathies must be toward an extinct, non-existent movement; in this respect, only the most serious infringements of human rights (genocide, crimes against humanity) are taken into account. It is true the court did not come to a conclusion that the accused juvenile expressly supported existing right-wing extremist organizations; however, through his use of historical symbols of Nazi Germany, repetition and reproduction of ideas of racial exclusivity, intolerance and hatred, the accused had unequivocally expressed his sympathies to extinct movements and their most serious manifestations of violence. The Court of Appeal did not err in qualifying the juvenile's acts as constituting a crime of supporting and promoting a movement aiming at suppressing the rights and freedoms of people, as defined in Section 261a of the Criminal Code"*[28]. Thus, the above ruling even admits that, under certain circumstances, even the promotion of and manifestations of sympathies to an extinct movement or organization may constitute a criminal act of supporting and promoting a movement aiming at suppressing the rights and freedoms of people, providing that the accused promotes (violent) acts of such historical and no longer existing movements a significant feature of which was a strong denial of natural rights of people acknowledged and shared by our civilization. In the case outlined above, the accused was an activist of today's Neo-Nazi scene, who promoted and publicly sympathized with historical organizations and movements of Nazi Germany, which had actively participated in the holocaust of Jews, Romas, Slavs and political or ideological opponents.

It needs to be mentioned that all civilizations and ideological streams, including Nazi and Communist ideologies, contain some positive elements. However, these partial (and often temporary) successes and achievements were outweighed by immense suffering of millions of people. There is even a ruling of the Supreme Court, which presents detailed comments on this phenomenon, often misused especially by today's Neo-Nazi community, namely that partial successes should not be used as a pretext for the glorification of criminal regimes, ideolo-

26 Supreme Court 5 Tdo 337/2002

27 Any person who publicly denies, questions, approves of, or attempts to justify the Nazi or Communist genocide or Nazi and Communist crimes against humanity …

28 Supreme Court, 8 Tdo 980/2008"

gies or movements. Thus, for example, the Supreme Court stated the following: *"If some positive features of the movement (e.g. the temporary economic growth) were emphasized and combined with a statement to the effect they had outweighed negative aspects of the movement (e.g. the establishment of concentration camps), such facts would constitute a justification of the movement's crimes, as defined in Section 261a of the Criminal Code. On the other hand, it is obvious that stating some positive characteristics of the movement and placing them objectively in the context of dominant negative aspects (e.g. the economic development and improved standard of living of German citizens before and in the beginning of WW2, but at the expense of property Aryanization and subsequent economic exploitation of occupied countries) will not meet the definition of any criminal act"*[29].

It is unquestionably appropriate to mention another group of terms constituting a part of definitions of almost all "hate crimes" in the Criminal Code presently in effect in this subchapter dealing with criminal aspects of manifestations of right-wing extremism and specific criminological methods used to investigate them, namely the "ethnic group", "movement" and "anti-Semitism". The present judicature only concludes that: *"An ethnic group … is a historically evolved group of people joined by their common origin, specific cultural features (language), mentality and traditions. Members of an ethnic group feel they belong to the group and, at the same time, are aware of their differences from other communities; they share a common name they have coined themselves or been assigned by others. As a rule, an ethnic group forms a minority within another community (e.g. the Roma ethnic group in the Czech Republic).* (…) *The fact that the legislator did not have in mind, insofar as the characteristics stipulated in Section 221, Paragraph 2 b), of the Criminal Code*[30] *are concerned, a case in which another person has suffered bodily harm because he or she stood out in defense of a person belonging to another race, ethnic group, nationality etc. is obvious from a comparison of the definition of the criminal act in question with other provisions of the Criminal Code"*[31].

The Supreme Court's ruling also contains an exhaustive and explicit list of movements that can be deemed to belong to today's Neo-Nazi scene, including reasons why these movements have been included. The movements adjudicated by the Supreme Court as movements aiming at suppressing rights and freedoms of citizens according to Section 260 of the Criminal Code[32] thus include *"Bohemia Hammer Skins", "Blood & Honour", "Národní odpor (National Resistance)", and "Národní alliance (National Alliance)"*[33]. On the other hand, the Supreme Court has not included *"Fascism, Nazism*[34]*, historical, "dead movements", which, however, may be related to today's Neo-Nazism or Neo-Fascism",* or *"Skinheads"*[35], as *"…. the Skinheads as a whole cannot be deemed to constitute a movement …. meeting the definition stipulated in Section 260, Paragraph 1, of the Criminal Code, because only some factions and groups existing within the Skinhead community can be viewed as movements,"* or anti-Semitism. In the opinion of the Supreme Court, anti-Semitism is an attitude rather than a movement[36].

Other pieces of judicature that may be of interest include the Supreme Court's rulings No. 5 Tdo 337/2002 ("Mein Kampf I") and No. 3 Tdo 1174/2004 ("Mein Kampf II"), as well as the Supreme Administrative Court's ruling in

29 Supreme Court, Tpjn 302/2005

30 Act No. 140/1961 Coll., the Criminal Code, in the amended version in effect at that time

31 Supreme Court, 6 Tdo 1252/2007

32 Act No. 140/1961 Coll., the Criminal Code, in the amended version in effect at that time

33 Supreme Court Tpjn 302/2005, NS 5 Tdo 79/2006

34 Supreme Court Tpjn 302/2005

35 Supreme Court 5 Tdo 563/2004

36 Supreme Court 5 Tdo 337/2002

the matter of the dissolution of the Workers' Party (first motion to dissolve the party – rejected) of March 4th, 2009, No. Pst 1/2008 – 66, and another in the same matter, dated February 17th, 2010 (second motion to dissolve the party – the Workers' Party has been dissolved, but the ruling has not yet become effective and enforceable), No. Pst 1/2009 – 348; both of them offer ample information for bodies involved in criminal proceedings and can be used as guidelines for the selection of appropriate specific methods of criminal investigation and documentation of criminal acts.

CONCLUSIONS

It is possible to conclude that criminal sanctions imposed upon perpetrators of hate crimes in the Czech Republic are consistent with the opinion of that part of the Czech democratic society which rejects manifestations of extremism, such as racism, xenophobia and anti-Semitism, i.e. of right-wing political extremism, generally known as the Neo-Nazi concept. The criminal sanctions have their support in the Constitution and are in line with international principles and rules applying to criminal sanctions.

It must also be concluded that the Czech Republic's legal framework allowing manifestations of right-wing political extremism to be prosecuted and punished is at a high level and reflects experience of bodies involved in criminal proceedings and courts; its efficiency seems to be adequate for the purpose of dealing with growing manifestations of extremism. The same applies to the quality and nature of definitions of "hate crimes", as well as to the quantity and character of available rulings and other sources, including published ones, the subject of which are criminal sanctions aimed at manifestations of right-wing political extremism.

As mentioned in the above comparison, the situation in Slovakia is considerably less clear, both in legislation and in judicature. The Czech Republic has clearer and more comprehensible legislation, rich publication and scientific activities, adequate judicature and top-quality forensic experts; on the contrary, forensic experts in the field are absent, judicature is practically non-existent and publication and scientific activities are sporadic in Slovakia. The logical consequence is that Slovakia is experiencing a massive increase of crimes with extremist, xenophobic and racial motives, while the Czech Republic is witnessing a decline of activities of right-wing extremist groups (concerts, rallies, marches etc.).

Tools for a correct selection of criminological methods used to prove criminal acts with an extremist undertone, i.e. "hate crimes", include the knowledge of standard criminal investigation methods (documentation and records of crimes) and their optimized combinations, choice of specific criminological methods allowing an analysis or examination of submitted evidence by a forensic expert or forensic institution, as well as regular updates of and new additions to these methods on the basis of judicature representing a feedback from effective and enforceable court verdicts and rulings, in particular of the Constitutional Court, Supreme Court and Supreme Administrative Court. Also interesting are some rulings of lower-level courts, which are not a part of judicature, but have become effective and enforceable; they represent court opinions which are valuable for law enforcement officers investigating less serious extremism-related or –motivated crimes. An example of the rulings referred to above is the verdict of the Municipal Court in Brno, File No. 3 T 179/2008, dated November 5th, 2008, in the matter of a demonstration/rally organized by the Neo-Nazi organization "National Resistance" in Brno on May 1st, 2007.

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