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**CRIMINALIZATION OF ONLINE HATE CRIME IN
EUROPEAN UNION**

Bachelor's thesis

European Union and International law

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I declare that I have compiled the paper independently
and all works, important standpoints and data by other authors
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has not been previously presented for grading.
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ABSTRACT

The aim of this thesis is to examine criminal liability on online platforms. Many criminal acts are done on online, but this thesis focuses only on hate crimes, including bullying, hate speech, defamation and harassment. Hate crime and bullying have increased and changed after the internet have become more popular. The author introduces the idea of rewrite the definition of hate crime. There are no clear laws about hate crime in European Union, it is regulated in each Member State by their own way. The thesis will introduce a short overview on Finland's regulation concerning the topic. Finland is part of European Union; its role of this thesis acts as an example of regulations and legal actions executed by one of the Member States. On online, people can share opinions, but it also plays as a platform for violation of the right to private life. In European Union, freedom of speech is a human right and fundamental freedom. Freedom of speech has been used as argument in cases of hate crimes. This thesis examines what hate crime is today and how European Union could prevent hate crimes executed on online.

Key words: criminalization, criminal liability, hate crime

INTRODUCTION

The balance between private life and freedom of speech have been on table since the European Convention of Human Rights have been established. The internet has changed our lives a great deal and borders of home and privacy have blurred. When the news, ideas and opinions can reach people all day, can we say that we have private life anymore? When drafting the legislation, it is important to find balance between the cultural and the business parties.¹ Both rights are a part of the life of individuals as well as business. The European Union (EU) does not only concern the “Europeans” but also people whose heritage is outside Europe. European Union is one big community including different cultures, religions and people. Word ‘hate crime’ was first used after the second world war. The hate crime is normally defined as a criminal act committed because of victim’s membership in a social group.² The author’s opinion is that the same definition of the word does not apply in today’s world.

Internet is a way to provide and share the information. It is also an easy way to share content which is harmful or dishonest. Not all people possess criticism against media, which leads to the fact that what is legible from web or media, will became true; as an example, this happened with traditional media in The United States of America, during the Halloween night in 1938 when radio listeners were panicking after the fiction broadcast of Aliens attack.³

25 years ago, internet was not the main media source and only few had access to it.⁴ Now, the online platforms are used by the people of all ages, but young people are the main group who are using these platforms. Young people communicate and interact online with each other a lot.⁵ It is seen that the media must be free, which includes one of the basic freedom for Europeans; freedom of speech. Without freedom of speech democracy cannot work properly. Hate speech that is performed online, is regarded as hate crime and is typically directed against a specific group. Media, particularly the tabloid press easily blames the whole group for the crime of one person; for example, asylum seekers can be portrayed as potential terrorists, mental illness patients as

¹ Hoikka, M. (2009). Sananvapaus Euroopan Unionin oikeudessa. Suomalainen lakimiesyhdistys. Helsinki. p 2

² Levin, B. (1999). Hate Crimes: Worse by Definition. Journal of Contemporary Criminal Justice. p 8. Accessible: <https://doi.org/10.1177/1043986299015001002>, 1 February 1999

³ Jewkes, Y. (2015). Media & Crime. 3rd ed. SAGE Publications ltd. London. p 16 referenced Cantril (Cantril H. The invasion from Mars, London: Arnold 1997).

⁴ *Ibid.*, p 253

⁵ *Ibid.*, p 252

potential murderers, and so on.⁶ As a result, heavily online bullied person can try to perform a suicide⁷ or terroristic groups can plan terroristic attacks or recruit people into their groups.⁸ These are just examples of cybercrimes, which are done online. The author would include these on the definition of hate crime. Even that European countries have criminalized hate propaganda, the police cannot do anything if act is not regarded criminal.⁹

OSCE/ODIHR has defined hate crime as criminal offence against persons or property. It defines victims based on their common characteristics, such as race, nationality, religion, sex, color etc.¹⁰ In this thesis, the author sees hate crime in a broader definition, where victim can be individual person and the reason of crime is not only based on race or nationality or other reasons which people were born with. Social media gives us an opportunity to share our daily life to our followers. Followers can be anonyms or use their own name and face. On online, people do not always act in similar way as they would act in person. Anonym platforms can help shy and introvert people to have more conversation and open about themselves.¹¹ Cybercrime can be explained as computer assisted and computer orientated crimes. Bullying and hateful or defamatory speech online are falling under the category of cybercrime.¹² Bullying online can be very similar as face to face bullying; it can be upsetting to the victim, but it is not usually have seen as criminal offence.¹³ The bullying or hate speech are not happening only among young people, cybercrime harm human not only mentally but also it can lead losing job or friends. Teachers and professors have been vulnerably to such attacks.¹⁴ Survey shows that 25 per cent of young people have reported that they have been harassed or bullied online in 2002.¹⁵

European Union's New Data Protection Regulation 2016/679 (GDPR)¹⁶ came into force on 2018. As the old regulation of data protection was from 1995, the process to legislative making is slow

⁶ *Ibid.*, p 52

⁷ *Ibid.*, p 269

⁸ *Ibid.*, p 260

⁹ *Ibid.*, p 261

¹⁰ Goodey, J. Aromaa. K. (2008) Hate Crime: Papers from the 2006 and 2007 Stockholm Criminology Symposiums. Heuni. Helsinki. p 5. referenced: OSCE (OSCE/ODIHR (2005) Combating Hate Crimes in the OSCE Region: An overview of statistics, legislation and anational initiatives. OSCE. Vienna. p 12)

¹¹ Godwin, M. (2003) *Cyber Rights: Defending Free Speech in the Digital Age*. The MIT Press. London p 45

¹² Jewkes, Y. (2015) *supra nota 3*. p 256

¹³ *Ibid.*, p 262

¹⁴ *Ibid.*, p 263

¹⁵ *Ibid.*, p. 270

¹⁶ OJ L 119, 4.5.2016

and time consuming. Hate crimes are hard to procedure as there is no clear definition. The European Union has hard time to make any changes to the case concerned, because of the situation of European Union with the asylum seekers with lack of political will and cooperation.¹⁷ European Convention on Human Rights (ECHR) gives rights and freedoms to everyone within the jurisdiction of a Member State, it gives different approach than EC Treaty, which is designate to secure four fundamental freedoms among the Member States.¹⁸

The topic of the thesis is to find the rights of hate crime victims, when the crime itself has done on online. When the hate crime is done on online anonym, the obligations and rights of persons private life and freedom of speech have blurred. The authors opinion is that hate crime definition is not applicable to world today and introduces a new hate crime definition. The thesis is done using qualitative methods, primary sources used are European Union regulations, case law and Finland's criminal law. Secondary sources are also used, these are articles written by legal scholars concerning the topics of this thesis. Research focuses European Union law and regulations and norms used in Europe. Hypothesis of this thesis is that European Union should criminalize hate crime with the new definition and make clear statement that online platform owners have full liability of the content as the old definition is not applicable. Also, crimes which applies to the new definition of hate crime, which is introduced on this thesis, should be criminalized as a crime not as a minor offence.

Chapter one introduces definition of hate crime in European Union. This chapter introduces the authors idea to rewrite the definition to be more applicable to today's world.

To understand how the online hate crime should be criminalized, it is important to understand who has criminal liability of the content. This question is solved on chapter two and chapter three.

¹⁷ Goodey, J. Aromaa, K. (2008) *supra nota 10*. p 26 from paper of Gooday (Jo Goodey 2007. Racist Crime in the European Union: Historical Legacies, Knowledge Gaps, and Policy Development. Stockholm)

¹⁸ Castendyk, O. Dommering, E. Scheuer, A. (2003) European Media Law. Lkuwer Law International. The Netherlands. p 40

Chapter two concerns European Human Right aspects relating to research question, comparing two rights. On this chapter the author introduces case law, which judgement is the main argument of hate crime protection done via online.

Chapter three is focused on data protection. As the topic of the thesis is based on cybercrimes, data protection has essential part in it. During this chapter the author brings out the rules used on data protection concerning the online hate crimes. Chapter give brief overview of the new General Data Protection Regulation.

Chapter four introduces overview of the criminal liability online in European Union. As the research is about EU law, chapter three brings out the criminal legislation of one Member State as an example. It also includes a short overview of Finland's strategies to secure the online platforms from hate crimes.

1 HATE CRIME

The world today is not same as it was after Second World War. Globalization, materialism and welfare states are the reason why the author would like to change the definition of hate crime. The old definition should not be forgotten, but author thinks it is not applicable for today as it was in 1950. This chapter includes the discussion about the changing and rewriting the definition of hate crime.

The most used definition of hate crime is that crime can be classified to hate crime when it is based on race, nationality, ethnicity, religion, sexuality orientation, disability, language or other similar factors.¹⁹ Definition includes that victim is associated with social group; which is some of these factors.²⁰ Definition is not written down or ratified in EU level. As the definition is not ratified in EU level, most of the countries have ratified it or similar norm to their civil laws. As the thesis brings out in chapter four, European Fundamental Rights include principle of non-discrimination.

In 2001 EU introduced Racial Equality Directive (2000/43/EC) and Framework decision on Racism and Xenophobia was adopted in 2004. According to report based on this directive, people with ethnic or immigrant backgrounds in the EU have faced harassment and violence online.²¹ The Racial Equality Directive represents legal measure for combating ethnic and racial discrimination.²² In reality besides the directive, people still feel that they are discriminated and harassed.

1.1 Updated definition of hate crime

The author's idea is to introduce a new definition of hate crime, which would be more applicable to today's world. Discrimination and crimes based on human's inherent character is still applicable to today, but it should be extended to social and materialistic characteristics. Similar discrimination

¹⁹ Goodey, J. Aromaa, K. (2008). *supra nota 10*. p. 17 from paper of Goodey (Jo Goodey 2007. Racist Crime in the European Union: Historical Legacies, Knowledge Gaps, and Policy Development. Stockholm)

²⁰ Gentile, M. (2007) Hate Crime Regulation and Challenges. *Georgetown Journal of Gender and the Law* vol. 8, no. 2. p 186 Accessible: *HeinOnline* <https://heinonline.org/HOL/P?h=hein.journals/grggen18&i=192>.

²¹ European Union Agency for Fundamental Rights FRA. Fundamental Rights Report 2018. p. 78

²² OJ L 180, 19.7.2000

and crimes are done to the people regardless of their heritage. These crimes are not recorded as hate crimes. The pain does not look for the color of the skin. Welfare states have given their citizens good education and legal system, the system of non-discrimination based on their inherent character. The problem comes up, when the idea of born to the same social class does not apply any longer. It is ideologically wrongly assumed that parents' social status or salary would not make any difference. The use of hate crime definition is increased in EU among policy makers actions and speech, but still the definition is based on 'idea' of hate crime.

The authors definition of hate crime would include the inherent character as well materialistic and social status. The association to the group would not be needed, the hate crime can happen to the group or to the individual. Today, the crime is not classified as a hate crime; even when the crime itself would be the same or similar as hate crimes, but if the reason behind the act is not against a specific group, the classification of crime is bullying, harassment or defamation. The act of hate crime should include harassment, violence, defamation as well as bullying. Online bullying has been growing problem within 21th century.

2 EUROPEAN CONVENTION ON HUMAN RIGHTS

2.1 Conflict of Article 8 and Article 10 of ECHR

In this chapter the author introduces the aspects of European Convention on Human Rights. All European countries have ratified the United Nations' The Universal Declaration of Human Rights, but because the author wants to concern actions of European Union, it will not be discussed on this thesis. European Convention on Human Rights (ECHR), which came into a force in 1950, includes two rights which can easily have a conflict with each other; right to private life and freedom of speech.

Council of Europe is an international organization, which was founded after the Second World War in 1949. The aim of Council of Europe was firstly to secure the peace and harmony in Europe. It is only European organization which protects individual human rights binding under international law.²³ Council of Europe includes 47 Member States. European Court of Human Rights (ECtHR) was founded in 1959, it is international court to which an individual can apply directly. Since 1998 the main aim has been enforcement of the Convention. The European Court Human Rights decisions and judgements are legally binding according to article 6 of TEU.

Article 8 of ECHR is right to respect for private and family life. It imposes both negative and positive obligations to the state. Negative obligation is not to interfere with privacy rights, the positive obligation is that state has obligation to prevent private parties from interfering with these rights. It can be limited based on national security, public safety, economic well-being of the country, prevention of disorder or crime, protection of health or morals or protection of the rights and freedoms of others, for example during the house search done by police. It is not absolute right. Absolute right is a right which cannot be overridden or limited in any circumstances, and it has to be fulfilled without any exceptions.²⁴

²³ Gras, J. (2000) *The European Union and Human Rights Monitoring*. Forum iuris University of Helsinki. Helsinki. p.53

²⁴ Mavronicola, N. (2012) What is an 'absolute right'? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights. *Human Rights Law Review*, volume 12, Issue 4. p 729 Accessible: <https://doi.org/10.1093/hrlr/ngs020>, 1 December 2012

Article 10 of the ECHR secures freedom of expression. It includes the freedom to hold opinions and to receive and impart information and ideas without state interference. It can be limited based on law, if it is necessary and proportionate and it pursues a legitimate aim; interests of national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of reputation or rights of others, preventing the disclosure of confidential information or maintaining the authority and impartiality of the judiciary. It is not absolute right either. There is no clear statement which right is *lex specialis*. *Lex specialis derogate lege generali* principle means that specific law will prevail over the general law.²⁵

When these the rights have conflict to each other, the Court, where the case is concerned on that time, needs to examine which right is more important than other. Usually the freedom of expression is examined first.²⁶ During this examination, it needs to find, does the shared information include facts or not, and was it done with the good faith.²⁷ The Court has stated that the freedom of expression can include ideas and opinions which can be offend, shock or disturb.²⁸

2.2 Case: Delfi as v. Estonia

Judgement of the case has been given on June 2015. Application number on ECtHR is 64569/09.²⁹ Delfi is Internet a news portal, which publishes articles daily in two languages.³⁰ Readers can leave comments below the articles. Comments could be left with the name or anonymously. These comments were not read through before publishing on behalf of Delfi.³¹ The company has clarified the rules of the commenting, rules state that the writer is liable of the content. On the website, it was possible to report the comment, if content was not according to good standards. After

²⁵ Chevalier-Watts, J. (2010) Has human rights law become *lex specialis* for the European Court of Human Rights in right to life cases arising from internal armed conflicts? *The International Journal of Human Rights*, 14(4). p 586
Accessible: <https://doi.org/10.1080/13642980903205383>

²⁶ Macovei, M (2004) *Human rights handbooks*, no.2: Freedom of expression. Council of Europe

²⁷ Nicol, A. Millar, G. Sharland, A. (2001) *Media Law & Human Rights*. Blackstone Press Limited. London. p 74

²⁸ Court decision, 1976. *Handyside v. The United Kingdom*, no. 5493/72. point 49

²⁹ *Delfi As v. Estonia*, no. 64569/09, ECHR 2015

³⁰ *Ibid.*, point 11

³¹ *Ibid.*, point 12

reporting, Delfi would check the reported comments and decide if the comment should be removed or not.³²

On 24 January 2006 the company published an article “SLK Destroyed Planned Ice Road”.³³ In two days the article attracted 185 comments. Twenty of these, contained personal threats and offensive language about the L, the main shareholder of the company SLK.³⁴ On 9 March 2006 L’s lawyers requested Delfi to remove offensive comments and claimed 500 000 Kronas for compensation.³⁵ At the same day, Delfi removed requested comments from the webpage, and 23 of March answered to L that they are not going to pay any compensation.³⁶ On 13 April 2006 L sued Delfi on civil Harju County Court.³⁷ On June 2007 the case was dismissed; judgement stated that applicant could not be considered as a publisher of the comments and therefore not liability of the content under the Estonia’s Information Society Services Act.³⁸ On October 2007 Tallinn Court of Appeal allowed L’s appeal. Case went back to the County Court for new consideration. On June 2008 Harju County Court gave their new decision against Delfi.³⁹ They relook the case and found that Information Society Service Act, which they first relay on their judgement, was not applicable. The court saw that the Delfi should have removed the comments immediately, because it was clear that those were unlawful.⁴⁰ Delfi tried to appeal decision as far as Supreme High Court, but they dismissed the appeal. Delfi saw that its right to free expression and freedom of press were violated during the decision making, and they took case to the European Court of Human Rights.

European Court of Human Rights tested the case with the four-part test to find if the Article 10 of European Convention on Human Rights was violated.⁴¹ First, the ECtHR found that Estonian courts have violated the rights of Delfi for free expression and press during the civil suits. Secondly the outcome of the case was, in opinion of ECtHR, clear and foreseeable.⁴² Delfi was clearly violating Estonia’s Civil Code Act and Obligations Act. Third, the civil penalties on Delfi were

³² *Ibid.*, point 13

³³ *Ibid.*, point 16

³⁴ *Ibid.*, point 17

³⁵ *Ibid.*, point 18

³⁶ *Ibid.*, point 20

³⁷ *Ibid.*, point 21

³⁸ *Ibid.*, point 23

³⁹ *Ibid.*, point 25

⁴⁰ *Ibid.*, point 26

⁴¹ *Ibid.*, point 27

⁴² *Ibid.*, point 118

legitimate for the purpose of protection of reputation and rights of others.⁴³ Fourth point was find out how important this judgement would be for the society.⁴⁴ Against L's right to private life to the freedom of expression, which are both human rights. ECtHR found that Estonia's courts were correct about the fact that Delfi is seen as a publisher and this way of liability of the comments. The article was well-wrote and showed good journalism, but at the same time it was written of the topic which could be bring out angry and disrespectful conversation.⁴⁵ As conclusion, the Court found that even if the Delfi had ways to prevent the defamation, they failed to do so.⁴⁶ On judgement the ECtHR found that the penalties to Delfi were proportionate and necessary for the democratic society. On June 2015 ECtHR released the judgement, with the statement no violation of Article 10 of ECHR.⁴⁷

2.3 Importance for democratic society

This judgement is important to our society, as the ECtHR stated, the freedom of press and freedom of expression are both important, but it should not rule out the other rights. These rights are base of democratic society, it is essential to have right to say own opinions aloud and bring out the faults of the society.⁴⁸ Without conversation and reasoning of the actions the society would not develop.⁴⁹ Without conversation and reasoning of the actions the society would not become better. The ECtHR has repeatedly stated that freedom of expression is one of the essential foundations for development for everyone.⁵⁰ These rights can be used wrong, and it became clear on this case. Before the internet, these conversations were done face to face without hiding behind anonym nickname. One person cannot supervise the whole internet to prevent the defamation, but commercial webpage can prevent their content. When Delfi published the article, people had already their opinion of the case, and Delfi knew that article will make conversation; which brings more readers to them. The anonym page gave an opportunity to say things aloud, without using face or voice, which some people used with this defamation. This case was about the news portal,

⁴³ *Ibid.*, point 130

⁴⁴ *Ibid.*, point 131

⁴⁵ *Ibid.*, point 114

⁴⁶ *Ibid.*, point 115

⁴⁷ *Ibid.*, point 162

⁴⁸ Godwin, M. (2003) *supra nota 11*. p 17

⁴⁹ *Ibid.*, p 12

⁵⁰ Fenwick, H. Phillipson, G. (2006) *Media Freedom under the Human Rights Act*. Oxford University Press. Oxford. p 686 referenced Preminger (Otto Preminger)

but it could be any commercial webpage or social media app. As it was earlier stated the hate crime can be targeted against to a company or to a legal person.

People get power of the group, and this happened on the Delfi page when hundreds of people where commenting to the article. Online pages are common way for their customers to report the harmful texts and publications. The author agrees with Mike Godwin opinion about freedom of press on the world of internet.⁵¹ On online everyone can publish, which makes them writers or content producers and as the result the old definition of freedom of press does not apply.⁵² The author does not say that the media is always the guilty, lot of criminal cases have been prevented to happen and solved with the help of media. YouTube helped the police investigation of gang recruitments, sharing the video where suspects could be identified and located.⁵³ Hate crimes are not done accidentally. Online pages try to prevent hate crimes with the word tool, which recognizes the prohibited words. The author's opinion is that it is not enough, because when these words are prohibited people will just use other word or 'nickname' to prohibited word.

According to this judgement the owner of the commercial online page is liability of its content, even when the owner is not the actual writer. As a commercial online page can be any profitable online page, this judgement will be one the leader judgements on 21th century. According to the case, legal persons can sue the commercial online platform owners, if the crime has happened on their pages. This judgement gives secure to legal persons against big corporations.

⁵¹ Godwin, M. (2003) *supra nota 11*. p 10

⁵² *Ibid.*, p 13

⁵³ Jewkes, Y. (2015) *supra nota 3*. p 175

3 DATA PROTECTION IN EUROPEAN UNION

3.1 Commercial online platforms

Main aim of data protection is secure individuals' personal data and their right to private life. Data protection is used to secure companies trade secrets and protect economic well-being. As the thesis is concerned to online hate crime, the data protection must be included. This chapter will introduce the arguments of data protection concerning the research question. Chapter includes new Data General Data Protection directive, which has come into force in Spring 2018.

Young people are the target group for new apps and online platforms. The computer-literacy has increased highly among young people, who mostly have positive picture of internet.⁵⁴ The internet is not just platform for crimes, it is a platform for conversation, community and friendship-forming.⁵⁵ Since the idea of internet was to make communication easier and quicker, is it a surprise that criminals would use it too?⁵⁶

Anonymity is defined in two sections; apparent anonymity and true anonymity. Apparent anonymity on online platforms looks lot as true anonymity, but before writing or entering the platform person will need to confirm himself with personal data; self-identification. True anonymity means that person cannot be identified on platform.⁵⁷ Commercial forums usually use apparent anonymity for their users. Most of the online platforms are based on apparent anonymity, and the users can be identified tracking the IP address.⁵⁸ Apparent anonymity is better for corporation, if some user commit crime on the platform, the platform owner can more easily give suspects information to legal authority or sue them. Some platforms give opportunity to use chat or instant messaging, which can give opportunity to use platform with true anonymity.⁵⁹ Using true anonymity can be also way of promoting the platform. Platform owners get incomes of the advertisements on their page, more viewers mean more income. True anonymity can be a way for

⁵⁴ Waslik, M. (1991) *Crime and the Computer*. Clarendon Press. Oxford. p 14

⁵⁵ Godwin, M. (2003) *supra nota 11*. p 33

⁵⁶ Godwin, M. (2003) *supra nota 11*. p 17

⁵⁷ Godwin, M. (2003) *supra nota 11*. p 144

⁵⁸ Vamialis, A. (2013) Online defamation: confronting anonymity. *International Journal of Law and Information Technology*. p 43 Accessible: <https://doi.org/10.1093/ijlit/eas020>

⁵⁹ Godwin, M. (2003) *supra nota 11*. p 144

introvert person to open or victim to tell their story. Online platforms where individuals can publish are divided into two concepts. The first is when platform administrator accepts the content before publishing. The second concept is when administrator must go through the content after it has published.⁶⁰

3.2 European Union's data protection regulation

European Union's General Data Protection Regulation entered into force on May 4th 2016. According to article 99 of the regulation all Member States must apply the regulation from 25th of May 2018. The new regulation replaced the previous regulation of data protection, EU Directive on Data Protection (95/46/EC)⁶¹, which was from year 1995. The major changes that the GDPR introduces are a right to be forgotten on article 17 of GDPR, and individuals' right to easier access to their data and understand why the data is collected and stored. GDPR protects citizens of European Union from companies and online platforms located outside of Union.⁶²

Personal data must be removed immediately when data subject withdraws his consent and there are no other legal grounds for processing. The regulation does not describe how it must be erased in individual cases. Because the regulation came into action only half year ago, there is no case-law to be as an example. If the data subject finds that his data is online, he can ask data controller to remove it. The controller, who is natural or legal person, public authority, agency or other, determines the purposes and means of the processing of personal data.⁶³ According to Article 34 of the GDPR data breach victim must be informed if the breach can violate data subject's rights and freedoms. If the natural person must be informed of data breach, this should be applicable to the hate crime cases where the victim can be recognized from the content of online platform. This article can be restricted, in cases where it would violate the freedom of speech or freedom of press.⁶⁴

⁶⁰ Pihlajarinne, T. (2012) *Internetvälittäjä ja tekijänoikeuden loukkaus*. Lakimiesliiton kustannus. Vantaa. p 26

⁶¹ OJ L 281, 23.11.1995

⁶² Revolidis, I. (2017) *Juridical jurisdiction over internet privacy violations and the GDPR: A case of "Privacy tourism"?*. Masaryk University Journal of Law and Technology. p 9 Accessible: *HeinOnline* <https://heinonline.org/HOL/P?h=hein.journals/mujlt11&i=7>

⁶³ OJ L, 4.5.2016, article 4 (7) Definitions.

⁶⁴ Bitar, H. Jakobsson, B. (2017) *GDPR: Securing Personal Data in Compliance with new EU-Regulations*. p 13 Accessible: <http://ltu.diva-portal.org/smash/get/diva2:1113478/FULLTEXT01.pdf>

As in this thesis, finding the rights of online hate crime victims, is to resolve the criminal liability of the content published on online. According to these arguments brought out above, GDPR support the idea of that the owner of the online platform has the liability of the content. The owner is or must hire someone to be as a controller, as it is stated in the Regulation, which means that the controller has right and obligation to remove and erase the content if data subjects' rights have been violated. The data subject does not have to contact to police or legal authority, he can contact the controller about his worries of personal data breach. According to GDPR, the owner of the online platform has the liability of the content and has better ways to erase the content and access the data of their own pages than what the data subject has.

4 CRIMINAL LIABILITY

4.1 Fundamental rights

Fundamental rights are made to ensure individuals rights are protected. Charter of Fundamental Rights of the European Union (2007/C 303/01) came into force on Lisbon Treaty in 2009. Many ECHR principles have been inserted to the Charter. This can be seen, for example in Article 7 and article 8 of the Charter which are directly linked to article 8 ECHR.⁶⁵ Charter brings together all personal, civil, political and social rights enjoyed by people within the EU in one document. In this chapter the author introduces aspects of European Union Charter of Fundamental rights and European criminal law. This chapter introduces short overview of Finland's legislation.

Article 7 of the Charter give individuals right to private and family life. This obligated States to protect this right, but it also gives obligation to individuals to respect other private life. Article 8 of the Charter give protection to personal data. The right includes personal data online and on paper. All personal data should be processed fairly and with specific purpose and data subject has to be informed about it.⁶⁶

Globalization and internet has raised the problem about how to secure the fundamental rights online.⁶⁷ European Court of Justice (ECJ) stated on the judgement of joint cases C-92/09 and C-93/09, that publications including personal data on webpage, which can harm private life, is seen as violation of Article 7 of the Charter.⁶⁸ Article 21 of the Charter states the non-discrimination rule, which is also regulated in most of Member State's civil codes. Articles 7 and 8 can face the conflict with Article 11. Article 11 gives everyone right to freedom of expression, which includes freedom to hold opinion and to receive information and ideas without fear of authority. This article

⁶⁵ González Pascual, M. Torres Pérez, A. (2017). *The Right to Family Life in the European Union*. Routledge. New York. section 3

⁶⁶ OJ C 303, 14.12.2007

⁶⁷ Padovani, C. Santaniello, M. (2018) Digital constitutionalism: Fundamental rights and power limitation in the Internet eco-system. Accessible: <https://journals.sagepub.com/doi/pdf/10.1177/1748048518757114>

⁶⁸ Leanerts, K. (2012) Exploring the Limits of the EU Charter of Fundamental Rights. Accessible: https://www.cambridge.org/core/services/aop-cambridge-core/content/view/44E09CF275FAB8530096667DB525E2E6/S1574019612000260a.pdf/exploring_the_limits_of_the_eu_charter_of_fundamental_rights.pdf, 10 December 2012

includes respect of freedom of media.⁶⁹ Article 8 of the Charter includes processing of personal data, purpose must be specified, and data subject needs to give their consent for the use and collection of it. In general, the Article 8 of the Charter includes most of the GDPR statues.⁷⁰

4.2 Overview of the current legislation

The author agrees with Maurice Bloch observation⁷¹ about when the criminal law and its implementation are compared between the Member States, there are differences. Because hate crime is not defined in any EU regulation properly, and data of crimes is collected differently in each Member States, there are differences in classifying hate crime under criminal codes.⁷² In European Union criminal law is not written into one regulation or act, there is no European Criminal code. For example, United Kingdom updated their laws and published Defamation Act 2013, and because of that it is most favorable country for claimant in the case of defamation in European Union.⁷³ The European Union's criminal law includes the mutual recognition and aims of the Union.⁷⁴ Every Member State has included the fundamental rights of European Union and Human Rights to their criminal codes. All Member States have signed United Nation's International Covenant on Civil and Political Rights (ICCPR), which gives standards in relation of criminal prohibitions on hate speech.⁷⁵ Equal Treatment Directive (2006/54/EC), which was proposed in 2008 has not been ratified. This directive implements the principle of equal treatment between men and woman in EU labor law.⁷⁶ This directive, which has been on discussion since 2006, is great example of slow decision making in the EU.

⁶⁹ The Charter of Fundamental Rights of European Union. 2000/C 364/01

⁷⁰ European Union Agency for Fundamental Rights and Council of Europe. (2018). Handbook on European data protection law, 2018 ed, p 19

⁷¹ Katsh, M. Ethan. (1989) *The Electronic Media and the Transformation of Law*. Oxford University Press. Oxford. p 125 referenced Bloch (Maurice Bloch. (1975). *Political Language and Oratory in Traditional Society*. New York: Academic Press. p 3)

⁷² Goodey, J. Aromaa, K. (2008). *supra nota 10*. p. 20 from paper of Goodey (Jo Goodey. 2007. *Racist Crime in the European Union: Historical Legacies, Knowledge Gaps, and Policy Development*. Stockholm)

⁷³ Meier F. M. (2016) Unification of choice of law rules for defamation claims. *Journal of private International Law*. p. 493. referenced: Hartley (TC Hartley. (2010) *Libel Tourism and Conflicts of Laws*. *International & Comparative Law Quarterly*) Accessible:

<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=123368549&site=ehost-live&scope=site>

⁷⁴ Barnard, C. Peers, S. (2014). *European Union Law*. Oxford University Press. Oxford. p 752

⁷⁵ Herz, M. Molnar, P. (2012) *The Content and Context of Hate Speech: Rethinking Regulation and Responses*. Cambridge University Press. New York. p 417

⁷⁶ OJ L 204, 26.7.2006.

There is no law done by European Union, which prohibits person to believe or think advocating ideas and have opinions about them. It is prohibited to commit crime to support these ideas.⁷⁷ One party demands harder sanctions for hate crimes and others demand less rules to society.⁷⁸ The author's opinion is that no matter how hard sanctions will be ruled, there is always someone who will break the law. More important would be preventing intolerance and confrontation among people. The European Commission under the motto that the act which is illegal offline is also illegal online.⁷⁹ EU has introduced non-legislative measure, Code of Conduct on Countering Illegal Hate Speech Online.⁸⁰

During the ruling the court must decide which country's law is used for the conclusion, as the internet is open almost everywhere in the world, and this decision can be important for solution of the case.⁸¹ Process suing someone for defamation is long and rarely satisfying.⁸² It takes time and usually with high costs.

4.3 Overview of Finnish criminal law

Finnish criminal law does not include specific prohibition of hate crime. Criminal law prohibited crimes against humanity and provocation against a group.⁸³ The provocation against group is seen as hate crime, but which is not stated on law, but because provocation against group definition includes hate propaganda; for conclusion, it can be seen as hate crime prohibition in Finnish criminal law. On criminal law, affront have role of the prohibition of hate speech. It must be noted that if it happens in a closed racism group, is not a crime. If the group is open and sharing racist

⁷⁷ Jacobs, J. Potter, K. (1998) *Hate Crimes; Criminal Law & Identity Politics*. Oxford University Press. Oxford. p 121

⁷⁸ *Ibid.*, p 90

⁷⁹ European Commission. (2017) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions: Tackling Illegal Content Online: Towards an enhanced responsibility of online platforms. Brussels. p 2 Accessible:

<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF>, 28 September 2017

⁸⁰ European Union Agency for Fundamental Rights FRA. *Fundamental Rights Report 2018*. p. 79

⁸¹ Mills, A. (2015) The law applicable to cross-border defamation on social media: Whose law governs free speech in "Facebookistan"? *Journal of Media Law*. p 17. Accessible:

<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=114834421&site=ehost-live&scope=site>

⁸² Godwin, M. (2003) *supra nota 11*. p 89

⁸³ Rikoslaki 39/1889, 11:10

information, it is seen as crime according to criminal law. Facts can become crime if these are showed as propaganda and could give public wrong expression.⁸⁴

Finnish criminal law criminalizes defamation, including sharing the private information of others and affront.⁸⁵ Defamation is crime only when it is done with intention.⁸⁶ Online bullying can be seen as defamation in some cases. This can happen only when the victim has proofs and the bullying is harming the life of victim. If the sayings can be proofed to be correct and facts, it cannot be stated as defamation. Victim does not need to suffer damage or contempt to get compensation of the crime.⁸⁷ Defendant has obligation to give clear and convincing proof to support his innocence. Supreme Court of Finland has stated that also insinuation of misleading marketing applies to the defamation definition.⁸⁸ If the information is already published on other platform before sharing it to other places it does not automatically make sanctions higher.

4.4 Liabilities on online

The author believes that if EU would give directive of criminal liabilities on online, and state that the owner of the page is liability of the content, it would be one major change to the European criminal law. This would not count out the right of the owner to sue the writer. This would help victims to get justice easier and without long and expensive investigations. It is understandable that someone would still write and publish something offended, as it is impossible to cover the whole internet with the protection.

As the Member State example showed, in Finland, most of the hate crime offences are classified to minor offences. The EU should introduce a prohibition of hate crime regulation, so it would be applicable immediately in every Member State. As the directive would not be immediately applicable, and every Member State would make their own version of it, author thinks it would

⁸⁴ Lappi-Seppälä, T. Hakamies, K. Koskinen, P. Majanen, M. Melander, S. Nuotio, K. Nuutila, A. Ojala, T. Rautio, I. (2008). Rikosoikeus. WSOYpro. Helsinki. p. 674

⁸⁵ Rikoslaki 39/1889. 24:8-10

⁸⁶ Lappi-Seppälä, T. Hakamies, K. Koskinen, P. Majanen, M. Melander, S. Nuotio, K. Nuutila, A. Ojala, T. Rautio, I. (2008). *supra nota* 82. p.674

⁸⁷ Lappi-Seppälä, T. Hakamies, K. Koskinen, P. Majanen, M. Melander, S. Nuotio, K. Nuutila, A. Ojala, T. Rautio, I. (2008). *supra nota* 82 p.674

⁸⁸ Lappi-Seppälä, T. Hakamies, K. Koskinen, P. Majanen, M. Melander, S. Nuotio, K. Nuutila, A. Ojala, T. Rautio, I. (2008). *supra nota* 82 p. 672

not make any difference than directives and rules that EU has already given. The author's opinion is that the most important action that EU should do, is regulate the definition of hate crime. With new definition of hate crime, the EU would bundle Member States legislation. Action as this, would make all Europeans to understand their fundamental rights.

CONCLUSION

The world has globalized during past years and internet has been big part of globalization. Online, the opportunities are endless; new forms for business and healthcare are opened daily, but the cyberworld is not limiting anyone out, there can be platforms for criminal use as well.⁸⁹

The author agrees with the philosophy of Abraham Kaplan, that no child is born racist or bad, it is how they are raised.⁹⁰ Obscene, racist action or hate speech in general, can be an obstacle to get a job.⁹¹ Mike Godwin writes about ideology where people, who could do anything without fear of consequences, would behave badly, because they could get away with it.⁹² Social psychologists call this condition *deindividuation*.⁹³ The author's opinion is that believing good about others is important, but it has to be remembered, that people have different opinions and ideas which can be abstract to others. Without rules and agreements society would not work properly. Therefore, the author agrees with Mike Godwin that there should not be true anonymity online.⁹⁴

The topic of the thesis was to find the rights of hate crime victims, when the crime itself has done online. Who actually has the criminal liability of online hate crimes? Could the protection be better and more suitable in today's world? The author's opinion is that hate crime definition is not applicable to today's world and introduces a new hate crime definition on chapter one. This chapter goes through the old definition of hate crime as well as gives a new updated version of it.

Two human rights were introduced on Chapter two. The freedom of expression is the base of democratic society, citizens have the right to express opinions and ideas. As it has become clear on this thesis, the right can have a conflict with other rights and freedoms. One right which is constantly having a conflict with freedom of expression is the right to private life. There is no clear statement how to determine *lex specialis* from freedom of expression or right to private life, the judges will

⁸⁹ Klang, M. Murray, A. (2005). *Human Rights in the Digital Age*. The GlassHouse Press. London. p 3

⁹⁰ Jacobs, J. Potter, K. (1998) *supra nota* 75. p 13 referenced Kaplan (Abraham Kaplan. Equality. Baird & Rosenbaum. Bigotry. Prejudice & Hatred. p 12)

⁹¹ Jewkes, Y. (2015) *supra nota* 3. p 179

⁹² Godwin, M. (2003) *supra nota* 11. p 152

⁹³ Keats Citron, D. (2014). Hate Crimes in Cyberspace. Harvard University Press. Massachusetts. p 58 referenced: Brian Mullen (Mullen, B. "operationalizing the Effect of the Group on the Individual: A Self-Attention Perspective" *Experimental Social Psychology Journal* (1983) 295-322)

⁹⁴ Godwin, M. (2003) *supra nota* 11. p 172

determine it in each case separately. The concept of expression includes literary language as well as swearing. Chapter concluded that both rights are important for democracy, and there cannot be a clear statement which of them is to abolish the other. This chapter gave an example of case law, *Delfi as v. Estonia*. This case law clarifies the legal problem of the thesis. The owner of the online platform has criminal liability for the content. Which means that the owner is liable for the content even when the owner is not the writer.

Chapter three gave the solution to the same problem as the previous chapter, but on the aspect of GDPR. The aim of data protection is to secure individuals' personal data and their right to private life. The older regulation of data protection was from 1995, the new regulation was needed. In the new regulation, the rights of individuals are emphasized. A data subject has the right to ask the data controller to remove data concerning the data subject. The controller has an obligation to inform the data subject in case of a data breach. This means that the controller has an obligation to go through their own online platform and inform if the data subject's rights are violated.

The last chapter, chapter four, introduces the criminal liability of online crimes in the European Union. The Charter of Fundamental Rights of the European Union brings together all personal, civil, political and social rights enjoyed by people within the EU. These rights ensure the right to privacy and freedom of expression. The European Union has introduced the Equal Treatment Directive, which was proposed in 2008 but it has not been ratified. Finnish criminal law does not include a specific prohibition of hate crime. Criminal law prohibits crimes against humanity and provocation against a group. This is a good example of a lack of criminalization of hate crime in the European Union.

Non-discrimination rules, the data protection directive and other ways of protecting citizens of the EU are introduced in this thesis. These all showed that any legal action on the EU level takes time, and to get an answer has the directive worked takes even longer time. It can be stated that the EU has tried to protect its citizens from hate crimes, but as the world and crimes have changed the protection cannot correspond to the demand. Therefore, the hypothesis is proven to be correct; there should be regulation of hate crime and a clear statement of criminal liability online.

As a conclusion for the thesis topic the author introduces idea of new regulation. For better secure for cybercrimes, the European Union should introduce regulation about the criminal liability online. With the clear statement, the Union could provide more secure to its citizens, and in that case, author believes that more online bullying cases would bring out to the court or other legal author. When the regulation is done by EU authority, the implementation would be automatic to every European Union's Member State. EU should also introduce new definition of hate crime. The author brings up this idea on chapter one. With clear definition, the legal praxis would be more coherent in the EU. Online crimes will not end if the sanctions and verdicts are not brought out to the majority citizens. With the knowledge of human rights and ways to get justice, people could have braver to take cases to the legal authorities.

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