

ISSN 2785-5228



**EUWEB**

**EU-WESTERN BALKANS**

Cooperation on Justice and Home Affairs



**EUWEB Legal Essays**  
Global & International Perspectives  
Issue 1/2024

EDITORIALE  
SCIENTIFICA

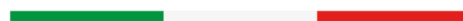
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Editoriale Scientifica, Via San Biagio dei Librai, 39 – Napoli

Registrazione presso il Tribunale di Nocera Inferiore n° 5 del 23 marzo 2022

ISSN 2785-5228

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# THE HUMAN RIGHTS OF MIGRANTS AND ASYLUM SEEKERS

by Olga Koshevaliska\* and Ernis Isamatov\*\*

SUMMARY: 1. Introduction. – 1.1 Defining Xenophobia and Ethnic Profiling. – 1.2 Defining Hate Crimes. – 2. The Intersection of Xenophobia and Hate Crime with Human Rights. – 3. Conclusions.

*“Human rights are not reserved for citizens: they benefit everyone who is on a state’s territory or within its jurisdiction, without discrimination, whatever their administrative status and circumstances”<sup>1</sup>*

## 1. Introduction

### 1.1 Defining Xenophobia and Ethnic Profiling

Many articles delve into the topic of xenophobia and hate crimes<sup>2</sup>, phenomena that have been extensively studied, and even more extensively defined depending on different contexts and different situations in which they have been analyzed, but the intersection between these phenomena and their impact on human rights, will be the key of this article. Xenophobia and hate crime are interconnected issues that involve prejudice, discrimination, and bias against individuals or groups based on their protected characteristics<sup>3</sup>. These phenomena can have severe consequences for the victims and undermine basic human rights<sup>4</sup>.

Firstly, we have to define these concepts to give a correlation between them on one side, and human rights on the other. One of the most common and simple definitions used

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#### DOUBLE BLIND PEER REVIEWED ARTICLE

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<sup>1</sup> F. CREPEAU, United Nations Special Rapporteur on the human rights of migrants, *Mainstreaming a human rights-based approach to migration within the High Level Dialogue*, statement to the PGA Plenary Session — Criminalization of Migrants, New York, 2 October 2013.

<sup>2</sup> See *ex multis* C. MELLGREN, M. ANDERSSON, A.K. IVERT, *For Whom Does Hate Crime Hurt More? A Comparison of Consequences of Victimization Across Motives and Crime Types*, in *Journal of Interpersonal Violence*, Vol. 36, Issues. 3-4, 2021, pp. 1512-1536; E.T. ACHIUME, *Beyond Prejudice: Structural Xenophobic Discrimination Against Refugees*, in *Georgetown Journal of International Law*, Vol. 45, 2013, pp. 323-381; V.M. ESSES, S. MEDIANU, A.S. LAWSON, *Uncertainty, Threat, and the Role of the Media in Promoting the Dehumanization of Immigrants and Refugees*, in *Journal of Social Issues*, Vol. 69, 2013, pp. 518-536; B. MCKINLEY, M. ROBINSON, J. SOMAVIA, *International Migration, Racism, Discrimination and Xenophobia*, publication ILO, IOM and OHCHR in consultation with office UNHCR, 2001.

<sup>3</sup> D.H. KIM, R.R. SUNDSTROM, *Xenophobia and Racism*, in *Critical Philosophy of Race*, Vol. 2, No. 1, 2014, pp. 20-44.

<sup>4</sup> N. BELULI LUMA, A. XHELILI, *Anti-Immigrant Attitudes and Social Media Use: An Empirical Study on Xenophobia in North Macedonia*, in S. SELVARAJAH, N. KENAR, I. SEAGA SHAW, P. DHAKAL (eds.). *Xenophobia in the Media: Critical Global Perspectives*, London, 2024.

for xenophobia is a “*fear of the stranger*”<sup>5</sup>. But not every phenomenon can be simplified, and especially not xenophobia. One of the broader definitions is that xenophobia presents “*attitudes, prejudices, and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity*”. Xenophobia is presented as irrational hatred towards foreigners and all their values, customs, and habits. As such it develops revolt and hatred of everything foreign and unknown<sup>6</sup>. It can be aimed at someone's faith, habits, anthropological or facial features. It is followed by hostile behavior, with a series of gestures, usually expressed through hate speech, hate crime, refusing foreigners to integrate into the new society socially, and sharing xenophobic content in the media<sup>7</sup>. Xenophobia can be a motivator for hate crimes and ethnic profiling. Prejudice against individuals based on their perceived foreignness may lead to discriminatory actions and biased treatment such as perceiving someone as criminal solely based on his/her ethnic (racial) origin<sup>8</sup>.

Racist and xenophobic material means any written material, any image, or any other representation of ideas or theories, that advocates, promotes, or incites hatred, discrimination, or violence, against any individual or group of individuals, based on race, color, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors<sup>9</sup>.

In this context is the provision of the incrimination – Speeding Racist and Xenophobic Material using a Computer System, in the Criminal Code of North Macedonia: “*The person who through a computer system spreads racist and xenophobic written material, images, or other representation of an idea or theory that assists, promotes or encourages hatred, discrimination, or violence against any person or group based on their sex, race, skin color, gender, membership in a marginalized group, ethnicity, language, citizenship, social origins, religion or religious persuasion, other types of persuasion, education, political affiliation, personal or social status, mental or physical disability, age, family or marital condition, property status, health condition or any other base envisaged with the law or ratifies international agreement, shall be punished with imprisonment of one to five years*”<sup>10</sup>.

<sup>5</sup> M. PETERIE, D. NEIL: *Xenophobia Towards Asylum Seekers: A Survey of Social Theories*, Special Issue – *Asylum Seekers in the Global Context of Xenophobia*, in *Journal of Sociology*, Vol. 56, No. 1, 2020, pp. 23-35, also see O. KOSHEVALISKA, A. NIKODINOVSKA KRSTEVSKA, E. MAKSIMOVA, *Antimigration Rhetoric and Xenophobia Towards Migrants in North Macedonia*, in G. CATALDI, P. HILPOLD (eds.), *Migration and Asylum Policies Systems' National and Supranational Regimes*, Naples, 2023, pp. 109-128, <https://eprints.ugd.edu.mk/31699/>.

<sup>6</sup> A. AKANDE, *Introduction*, in A. AKANDE (ed.), *Handbook of Racism, Xenophobia, and Populism*, 2022; cfr. R. BERNASCONI, *Where Is Xenophobia in the Fight against Racism?*, in *Critical Philosophy of Race*, Vol. 2, No. 1, 2014, pp. 5-19; D. HAERWON KIM, R. SUNDSTROM, *Xenophobia and Racism*, in *Critical Philosophy of Race*, Vol. 2, No. 1, 2014, pp.20-45.

<sup>7</sup> O. KOSHEVALISKA, *Ксенофобија камуфлирана во новинарство – случај на студија Балкан*. [*Xenophobia Camouflaged as Journalism – Case Study the Balkans*], in *Essays for Migration and Asylum*, 2022, pp. 41-49, <https://eprints.ugd.edu.mk/31191/>.

<sup>8</sup> O. YAKUSHKO, *Xenophobia: Understanding the Roots and Consequences of Negative Attitudes toward Immigrants*, Lincoln, 2009. <http://digitalcommons.unl.edu/edpsychpapers/90/>. Cfr. S. ATREY, *Xenophobic Discrimination*, in *Modern Law Review*, 2024, Vol. 87, pp. 80-110.

<sup>9</sup> Art. 2, para. 1 from Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, <http://conventions.coe.int/Treaty/en/Treaties/Htm/189.htm>.

<sup>10</sup> See art. 394-a from the Criminal Code of North Macedonia, in Official Gazette No.248/2018. Cfr. S. MURRAY, *How Artificial Intelligence Can Help Combat Systemic Racism*, in *MIT News*, 16 March 2022; S. WAIKAR, *Designing Anti-Racist Technologies for a Just Future*, in *HAI Stanford University*, 28 June 2021; Council of Europe, *Legal Instruments for Combating Racism on the Internet*, 2009.



According to Bashkurti, all definitions of xenophobia rotate around the consideration of xenophobia as a set of “*emotional, psychological and ideological conditions that include hatred, fear, and enmity between different ethnocultural, national, political, religious, racial groups that together contribute to the deterioration of relations between people, religious communities, ethnic and cultural minorities, different social categories, interest groups, families, neighbors, and even ordinary individuals of different origins*”<sup>11</sup>.

We also have to emphasize that ‘institutional xenophobia’ is a big problem that should be dealt with. This “institutional xenophobia” is typical for cases of ethnic (racial) profiling or simply said – when law enforcement representatives are acting xenophobically in profiling criminal cases.

Ethnic profiling involves law enforcement or other authorities targeting individuals for investigation, detention, or other interventions based on their perceived ethnicity or race. Racial (ethnic) profiling represents a specific form of racial discrimination that has been defined as “*the use by the police, with no objective and reasonable justification, of grounds such as race, color, languages, religion, nationality or national or ethnic origin in control, surveillance or investigation activities*”<sup>12</sup>.

In the case of *Lingurar v. Romania*<sup>13</sup> the European Court of Human Rights, for the first time explicitly used the term “*ethnic profiling*” when referring to profiling based on stereotyping in criminal cases<sup>14</sup>. There is no doubt that ethnic profiling is stereotyping. We often see practices where individuals are targeted or treated differently by law enforcement – police, public prosecution, and even the national courts, solely based on their perceived race, ethnicity, national origin, or religious background, rather than on reasonable suspicion or evidence of criminal activity. For example, suspecting criminal activity of property crime as “*behavior specific to Roma*”, or violent crime, terrorism, extremism, and radicalism as a tailor-made crime for Muslims, etc. All of these perceptions represent a clear violation of one of the basic human rights – the prohibition of discrimination under the European Convention on Human Rights<sup>15</sup>.

Law enforcement authorities, such as Police Officers, border guards, or immigration officers, have the power to perform surveillance, investigations, controls, and identity checks. However, this wide discretion may lead to ethnic profiling where they target individuals or groups based on their skin color, language, appearance, dress, or similar characteristics. Such practices contradict international human rights standards. Ethnic or racial profiling occurs when people are stopped, checked, or investigated without any

<sup>11</sup> D. BASHKURTI, *The Balkans: Old Xenophobia, New Threats*, in *Eurasia Review*, in *Eurasiareview*, 2020, <https://www.eurasiareview.com/07112020-the-balkans-old-xenophobia-new-threats-oped/>.

<sup>12</sup> General Policy Recommendation No 11 of the European Commission against Racism and Intolerance (ECRI), *on Combating Racism and Racial Discrimination in Policing*, of 29 June 2007, CRI(2007)39, p. 4, <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>; D. MIJATOVIĆ, *Ethnic Profiling: A Persisting Practice in Europe*, 2019, [https://www.coe.int/en/web/commissioner/-/ethnic-profiling-a-persisting-practice-in-europe#\\_ftn1](https://www.coe.int/en/web/commissioner/-/ethnic-profiling-a-persisting-practice-in-europe#_ftn1).

<sup>13</sup> European Court of Human Rights, Judgement of 16 April 2019, Application no. 48474/14, *Lingurar v. Romania*. See also, on the obligation to carry out effective investigations into the racist motive of aggression and violent behaviour by the police, European Court of Human Rights, Judgement of 1 September 2020, Application no. 20649/18, *R.R. and R.D. v. Slovakia*; European Court of Human Rights, Judgement of 10 March 2009 Application No. 44256/06, *Turan Cakir v. Belgium*.

<sup>14</sup> O. KOSHEVALISKA, *Ethnic and Racial Profiling in Criminal Cases (As Part of Non-Discrimination)*, unpublished proceeding on the “*Sustainability and Law*” optional course at the University of Miskolc (Hungary), 2023. <https://eprints.ugd.edu.mk/32997/>. Cfr. J. CHAN, *Racial Profiling and Police Subculture*, in *Canadian Journal of Criminology and Criminal Justice*. Vol. 53, No. 1, 2011, pp. 75-78; P.Y. WARREN, A. FARRELL, *The Environmental Context of Racial Profiling*, in *The Annals of the American Academy of Political and Social Science*, No. 623, 2009, pp. 52-63; M. RISSE, *Racial Profiling: A Reply to Two Critics*, in *Criminal Justice Ethics*, Vol. 26, No. 1, 2007, pp. 4-19.

<sup>15</sup> Art. 14 ECHR.

reasonable and objective grounds due to their perceived ethnicity, nationality, origin, religion, or appearance. This practice is unfair and discriminatory, and it goes against basic human rights<sup>16</sup>.

Ethnic profiling can be fueled by xenophobic beliefs and may lead to an increased likelihood of hate crimes. When individuals are singled out based on their ethnicity, they may become more vulnerable to discriminatory treatment and violence<sup>17</sup>.

## 1.2 Defining Hate Crimes

Hate crimes are defined as criminal acts committed against individuals, groups, or their property because of their race, ethnicity, religion, sexual orientation, gender identity, or other protected characteristics. As such, hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people, and they comprise two elements: a criminal offense and a biased motivation<sup>18</sup>. Bias motivation requires the crime to be committed because of the victim's actual or perceived membership in a particular social group or category, such as race, ethnicity, religion, sexual orientation, gender identity, or disability. Many jurisdictions have laws that specify certain protected characteristics, and crimes committed against individuals based on these characteristics may be categorized as hate crimes. These characteristics vary but often include race, religion, national origin, sexual orientation, gender identity, and disability<sup>19</sup>.

These crimes involve acts of violence and intimidation, usually directed towards (already) stigmatized and marginalized groups. In art. 122, para. 42 of the Macedonian Criminal code, hate crime was defined for the first time in 2018 as follows:

*“A hate crime expressly provided by the provisions of the Criminal Code is considered a criminal offense against a natural or legal person and related persons or property committed in whole or in part due to a real or presumed (imagined, conceived) characteristic or connection of the person on grounds of race, skin color, nationality, ethnicity, religion or belief, mental or physical disability, gender, gender identity, sexual orientation, and political belief”.*

In addition, the phrases “*out of hatred*” or “*if the crime was committed out of hatred*” were added within more than 20 incriminations, which more clearly sanctioned crimes

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<sup>16</sup> D. MIJATOVIĆ, *op. cit.*

<sup>17</sup> O. KOSHEVALISKA, Z. POPOSKA, E. MAKSIMOVA, *Hate Crime in North Macedonia: Geographic Distribution of Hate Crimes and Hate Incidents*, speech at the International biennial conference on “*Criminal Justice in Central and Eastern Europe: The United Nations Sustainable Development Goals – Rural and Urban Safety and Security Perspectives*”, Ljubljana, Slovenia, 12-14 September 2023.

<sup>18</sup> B. PERRY, *In the Name of Hate: Understanding Hate Crimes*, London 2001. Cfr. J. LEVIN, J. McDEVITT, *Hate Crimes in Transition*, in R.J. STERNBERG (ed.), *Perspectives on Hate: How it Originates, Develops, Manifests, and Spreads*, 2020, pp. 179-201; D. MEYER, *Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws*, in *Critical Criminology*, Vol. 22, 2014, pp. 113-125; R.J. BOECKMANN, C. TURPIN-PETROSINO, *Understanding the Harm of Hate Crime*, in *Journal of Social Issues*, Vol. 58, No. 2, 2002, pp. 207-225.

<sup>19</sup> The definition of a hate crime outlined in art. 122 of the Criminal Code of North Macedonia (2018) requires that the motive be rooted in prejudice towards a protected characteristic (such as race, skin color, nationality, ethnicity, religion or belief, mental or physical disability, gender, gender identity, sexual orientation, or political belief) without explicitly stating “hate” as a prerequisite. This approach facilitates a practical application of these provisions in identifying, prosecuting, and handling such offenses; B. NETKOVA, J. PERRY, *Data Collection Analysis on Hate Speech and Hate Crime*, 2022 <https://rm.coe.int/data-collection-analysis-on-hate-speech-nm-eng/1680a9485a>; Organization for Security and Co-operation in Europe (OSCE), Decision No. 9/09, *on combating hate crimes*, of 4 December 2009.

that occur as a result of hatred or biases<sup>20</sup>. The criminalization of certain acts of violence, committed with such a biased motive, allows a better perception of what hate crimes are and should result in greater efficiency in detecting offenses and collecting statistics and other data on hate crimes. Hate crimes often stem from xenophobic attitudes.

## 2. The Intersection of Xenophobia and Hate Crime with Human Rights

There is no doubt that xenophobia and hate crimes can impede individuals' access to their human rights. In the following chapter, we'll demonstrate how xenophobia and hate crimes can intersect with the basic human rights that are guaranteed in the most important instruments for the protection of human rights such as the Universal Declaration of Human Rights (UDHR)<sup>21</sup>, International Covenant on Civil and Political Rights (ICCPR)<sup>22</sup> and the European Convention on Human Rights (ECHR)<sup>23</sup>.

Addressing xenophobia and hate crimes is essential to upholding the right to the prohibition of discrimination. Both xenophobia and hate crimes directly undermine the right to non-discrimination, as they involve treating individuals unfairly based on characteristics that should not be a basis for differential treatment. Xenophobia and hate crimes have a direct and significant impact on the right to the prohibition of discrimination, which is a fundamental human right enshrined in various international instruments. The right to be free from discrimination is a cornerstone of human rights law and is articulated in the international instruments that are mentioned in the previous paragraph.

The “xenophobic discrimination” presents one of the most significant contemporary challenges to the protection of refugees and asylum seekers worldwide.<sup>24</sup> Some authors state that xenophobic discrimination can be classified as a *sui generis* form of discrimination that is not necessarily based on a specific reason, but it causes the particular harm of exclusion or alienation from society. This exclusion prevents people from participating in the social, political, economic, and cultural life of the communities they live in<sup>25</sup>. Xenophobia violates the prohibition of discrimination by targeting individuals based on nationality, ethnicity, or perceived foreignness, thereby undermining the principles of equality and human rights<sup>26</sup>.

The right to equality is closely related to the prohibition of discrimination. Xenophobia and hate crimes create an environment where certain individuals or groups are considered inferior or are subjected to unequal treatment. This violates the right to equality, which requires that all individuals be treated with the same dignity and respect,

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<sup>20</sup> The adoption of amendments to the Criminal Code in February 2023, regulating criminal acts of gender-based violence, including stalking and hate crimes based on gender identity represented important legislative progress (Amendments of the Criminal Code, 2023).

<sup>21</sup> United Nations General Assembly. *The Universal Declaration of Human Rights*, signed in New York, 1948.

<sup>22</sup> *International Covenant on Civil and Political Rights* (signed on 19 December 1966, entered into force 23 March 1976), art. 31, para. 1.

<sup>23</sup> Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS 5, Council of Europe, 1950.

<sup>24</sup> E.T. ACHIUME, *op. cit.*

<sup>25</sup> S. ATREY, *Xenophobic Discrimination*, in *Modern Law Review.*, Vol. 87, No. 1, 2023, pp. 80-110 ; O.KOSHEVALISKA, Z. POPOSKA, E. MASKIMOVA, *op. cit.*, p. 4.

<sup>26</sup> E. BREMS, *State Regulation of Xenophobia Versus Individual Freedoms: The European View*, in *Journal of Human Rights*, Vol. 1, No. 4, 2002, pp. 481-500.

regardless of their background<sup>27</sup>. When people are targeted based on their nationality, ethnicity, or other protected characteristics, they may face barriers to education, employment, housing, and other essential services. This impediment directly contradicts the principles of non-discrimination and equal access to human rights<sup>28</sup>. Diversity should be respected, and everyone can enjoy their human rights free from discrimination and fear.

Acts of violence driven by xenophobia and hate crime can lead to severe human rights violations, including the right to life and security<sup>29</sup>. Migrants and refugees, in particular, may face increased risks of physical harm, threats, or intimidation, compromising their basic human rights to life and security due to xenophobic attitudes<sup>30</sup>. Police, prosecutors, judges, and other state actors are not immune from xenophobic ideas that may exist in society, or may simply lack the tools and skills to accommodate the needs of migrants in a way that protects them from violence in the criminal justice system. Ethnic (or racial) profiling is one of those ways. In addition, racial profiling may represent a violation of the right to privacy. Individuals may face unwarranted surveillance or harassment based on stereotypes and xenophobic beliefs. In short, migrants in both regular and irregular situations are acutely vulnerable to violence at the hands of private and state actors within societies<sup>31</sup>.

Xenophobia and hate crimes can directly impact the right to freedom of movement, which is a fundamental human right recognized within the above-mentioned international instruments. Xenophobia can result in restrictions on the freedom of movement as a guaranteed human right, for individuals perceived as foreign. This can affect migrants, refugees, and even people within their own country who may be targeted based on their ethnic or cultural background<sup>32</sup>. This can manifest through discriminatory policies, practices, or attitudes that limit the mobility of certain individuals within a country or across borders. Xenophobic attitudes may influence border control measures and immigration policies, leading to discriminatory treatment of individuals based on their nationality, ethnicity, or perceived foreignness. This discrimination can result in difficulties obtaining visas, facing increased scrutiny at border crossings, or being subject to unjust deportations. Xenophobia and hate crimes may contribute to internal displacement, where individuals are forced to flee their homes within their own country due to threats or violence. This displacement infringes upon the right to freedom of movement within one's country.

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<sup>27</sup> W. VAN BALLEGOIJ, J. MOXOM, *Equality and the Fight against Racism and Xenophobia, Cost of Non-Europe*, Report for the European Parliament, 2018.

<sup>28</sup> E.T. ACHIUME, *op. cit.*, p. 323.

<sup>29</sup> W. ARROCHA, *Combating Xenophobia and Hate Through Compassionate Migration: The Present Struggle of Irregular Migrants Escaping Fear and Extreme Poverty*, in *Crime, Law and Social Change*, Vol. 71, 2019, pp. 245-260. Cfr. H. ENTORF, M. LANGE, *Refugees Welcome? Understanding the Regional Heterogeneity of Anti-Refugee Hate Crime*, in *Regional Science and Urban Economics*, Vol. 101, 2023, pp. 1-17; V. CHEUNG-BLUNDEN, G.J. RICH, *Securitization of Migration and Hate Crimes Toward Immigrants and Refugees*, in G.J. RICH, U.P. GIELEN, J. KURIANSKY, D. KAPLIN (eds.), *Psychosocial Experiences and Adjustment of Migrants*, 2023, pp. 75-87; M.X. STEINHARDT, *The Impact of Xenophobic Violence on the Integration of Immigrants*, in *IZA Discussion Paper*, No. 11781, 2018, pp. 1-42.

<sup>30</sup> United Nations Office on Drugs and Crime, *Combating violence against migrants, Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims*, 2015, p.3.

<sup>31</sup> *Ibidem*.

<sup>32</sup> International Migration, Racism, Discrimination and Xenophobia, 2001 : International Labour Office (ILO); International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), [https://publications.iom.int/system/files/pdf/international\\_migration\\_racism.pdf](https://publications.iom.int/system/files/pdf/international_migration_racism.pdf).

Closely connected to the right of freedom of movement, xenophobia and hate crimes can negatively impact the ability of refugees to seek asylum<sup>33</sup>. Hostility towards migrants and refugees can also affect their ability to move freely within the country where they have sought refuge. Hostility towards people fleeing persecution or violence may result in barriers to accessing protection and refuge<sup>34</sup>. Discrimination may limit their ability to seek asylum in certain countries or result in obstacles during the asylum process.

Xenophobia can lead to discrimination in the workplace, limiting the right to work for individuals from certain national or ethnic backgrounds. This not only affects the economic well-being of individuals but also contributes to social exclusion<sup>35</sup>. Discrimination based on xenophobia may extend to various aspects of life, including access to social services such as healthcare, employment and housing, and contribute to socio-economic disparities. Restrictions on access to these essential services can indirectly limit an individual's ability to exercise their right to freedom of movement, as economic and housing factors play a crucial role in mobility<sup>36</sup>.

Xenophobia may hinder access to education for individuals perceived as foreign, impacting their right to education. This is particularly relevant for children of migrants or refugees who may face barriers to enrollment and participation in schools<sup>37</sup>.

Xenophobia can hinder the full and equal participation of individuals in society, limiting their ability to engage in political, social, and cultural activities. Xenophobia and hate crimes create a climate of fear and intimidation within affected communities. This fear can deter individuals from fully participating in society, limiting their ability to exercise their rights without fear of reprisal<sup>38</sup>.

Xenophobia and hate crimes may lead to the silencing of minority voices or individuals who are perceived as outsiders. Freedom of expression and opinion can be curtailed when individuals fear retaliation or discrimination for expressing views that go against prevailing xenophobic sentiments<sup>39</sup>. They can threaten the right to cultural identity by marginalizing and suppressing the cultural practices and identities of minority groups. This may manifest in exclusionary policies, practices, or violence aimed at erasing the cultural heritage of specific communities.

### 3. Conclusions

In conclusion, xenophobia and hate crimes intersect with human rights in a deeply troubling manner, creating a discord between the principles of equality, dignity, and

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<sup>33</sup> M. PETERIE, D. NEIL, *op. cit.*

<sup>34</sup> O. KOSHEVALISKA, A. NIKODINOVSKA KRSTEVSKA, E. MAKSIMOVA, *op. cit.*

<sup>35</sup> M. RUTEERE, *Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related intolerance*, Report of the Special Rapporteur at UNHRC on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 2013.

<sup>36</sup> V.M. ESSES, *Prejudice and Discrimination Toward Immigrants*, in *Annual Review of Psychology*, Vol. 72, 2021, pp. 503-531. See also A. WIMMER, *Explaining Xenophobia and Racism: A Critical Review of Current Research Approaches*, in *Ethnic and Racial Studies*, Vol. 20, No. 1, 1997, pp. 17-41.

<sup>37</sup> Y. GUO, S. GUO, S. MAITRA, *I Belong to Nowhere: Syrian Refugee Children's Perspectives on School Integration*, in *Journal of Contemporary Issues in Education*, Vol. 14, No. 1, 2019, pp. 89-105. Also see, A.E. CURETON, *Strangers in the School: Facilitators and Barriers Regarding Refugee Parental Involvement*, in *The Urban Review*, Vol. 52, No. 5, 2020, pp. 924-949; L. BARTLETT, *Access and quality of education for international migrant children*, Paper commissioned for the EFA Global Monitoring Report, 2015.

<sup>38</sup> E. BREMS, *op. cit.*

<sup>39</sup> R.J. RYCHLAK, *Compassion, Hatred, and Free Expression*, in *Mississippi College Law Review*, Vol. 27, No. 2, 2008, p. 407.

fundamental human rights. The discriminatory nature of xenophobia, fueled by irrational fears and prejudices against individuals based on their nationality, ethnicity, or perceived foreignness, directly contradicts the foundational principles of non-discrimination and equal treatment. Hate crimes, often borne out of xenophobic sentiments, also pose a significant threat to the enjoyment of human rights. These crimes not only infringe upon the right to life and security but also undermine the fabric of societies by perpetuating division, fear, and exclusion. Victims of such crimes, particularly migrants and asylum seekers, bear the brunt of this hostility, facing barriers to employment, education, and access to essential services. The effects of xenophobia on human rights go beyond individual acts of discrimination and violence. It pervades legal and institutional structures, affecting the rights of entire communities. Xenophobic practices compromise the right to seek asylum, freedom of movement, and cultural identity, which hinders people's ability to lead dignified and fulfilling lives.

Efforts to combat xenophobia and hate crimes must be rooted in a commitment to upholding human rights for all. By addressing the root causes of xenophobia and holding perpetrators accountable, societies can work towards creating environments that respect diversity, promote inclusivity, and safeguard the inherent rights and dignity of every individual, regardless of their nationality or background. In addition, efforts to combat xenophobia and promote human rights require a multi-faceted approach that includes legal measures, education, awareness campaigns, and fostering a culture of inclusivity and respect for diversity. International organizations and governments play crucial roles in developing and implementing policies that address xenophobia and uphold human rights for all individuals, regardless of their background. Xenophobia, hate crime, and racial profiling have become a worrying trend in recent practice in a contemporary democratic society built on the principles of pluralism and respect for different cultures<sup>40</sup>. Courts should not allow xenophobia and hate crimes to achieve public acceptance and should especially condemn the xenophobic behavior of law enforcement and protect the victims of xenophobia<sup>41</sup>.

## ABSTRACT

*Xenophobia and hate crimes are topics that have been thoroughly examined in numerous articles. These phenomena have been defined differently based on the context and situation in which they were analyzed. However, this article will focus on the connection between these phenomena and their impact on human rights. Xenophobia and hate crime are closely related issues that involve prejudiced attitudes, discrimination, and bias against individuals or groups based on their protected characteristics. When xenophobia manifests, it can lead to hate crimes, ethnic profiling, various human rights challenges and violations, discrimination, and exclusionary practices. Xenophobia and hate crimes trigger many human rights, such as the right to freedom of movement, the right to life and security, the right to non-discrimination, the right to work and education, the right to freedom of expression and opinion, the right to cultural identity, the right to privacy, the right to social services, etc. They could potentially develop revolt and hatred for everything foreign and unknown. They can be aimed at someone's faith, habits, anthropological or facial features, and can be followed by hostile behaviour with a series*

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<sup>40</sup> See B. STREICHER, *Tackling Racial Profiling: Reflection on Recent Case Law of the European Court of Human Rights*, in *StrasbourgObservers*, 2022, <https://strasbourgoobservers.com/2022/12/16/tackling-racial-profiling-reflections-on-recent-case-law-of-the-european-court-of-human-rights/>.

<sup>41</sup> W. ARROCHA, *op. cit.*

*of gestures, usually expressed through hate speech, hate crime, refusing foreigners to socially integrate into the new society, sharing xenophobic content in the media, etc.*

**KEYWORDS**

*Asylum Seekers, Ethnic Profiling, Hate Crime, Human Rights, Migrants, Xenophobia.*

**CHIARIMENTI SULL'IMPATTO DELLA XENOFOBIA E DEI CRIMINI D'ODIO  
SUI DIRITTI UMANI DEI MIGRANTI E DEI RICHIEDENTI ASILO**

**ABSTRACT**

*La xenofobia e i crimini d'odio sono argomenti esaminati a fondo in numerose pubblicazioni. Questi fenomeni sono stati definiti in modo diverso in base al contesto e alla situazione in cui sono stati analizzati. Tuttavia, il presente articolo si concentrerà sulla connessione tra detti fenomeni e il loro impatto sui diritti umani. Infatti, la xenofobia e i crimini d'odio sono elementi strettamente correlati che generano atteggiamenti nocivi, discriminazioni e pregiudizi nei confronti di individui o gruppi sulla base delle loro caratteristiche. Quando la xenofobia si manifesta, può portare a crimini d'odio, profilazione etnica, nonché varie problematiche e violazioni dei diritti umani, oltre che discriminazione e pratiche di esclusione. Questi fenomeni criminosi si ricongiungono al godimento di una pluralità di diritti umani, quale il diritto alla libera circolazione, il diritto alla vita e alla sicurezza, il diritto alla non discriminazione, il diritto al lavoro e all'istruzione, il diritto alla libertà di espressione e di opinione, il diritto all'identità culturale, il diritto alla privacy, il diritto ai servizi sociali, ecc. I medesimi fenomeni potrebbero potenzialmente sviluppare risentimento e odio per tutto ciò che è estraneo e sconosciuto. Similmente, potrebbero essere rivolti alla fede, alle abitudini, ai tratti antropologici o somatici di qualcuno, e possono essere seguiti da comportamenti ostili per mezzo di una serie di azioni, di solito attraverso l'incitamento all'odio, i crimini d'odio, il rifiuto dell'integrazione sociale degli stranieri nella nuova società, la condivisione di contenuti xenofobi nei media e via discorrendo.*

**KEYWORDS**

*Crimini d'odio, Diritti umani, Migranti, Profilazione etnica, Richiedenti asilo, Xenofobia.*