CRIMINAL OFFENSE "*COMPUTER DISTRIBUTION OF PRO-GENOCIDE MATERIALS OR CRIMES AGAINST HUMANITY* " IN ALBANIA, THE PROBLEMS OF ITS IMPLEMENTATION IN PRACTICE

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ABSTRACT

On the criminal offenses in the field of cybernetics also includes those of a racist and xenophobic nature that are committed through computer systems. The provision of these offenses has come as a result of the implementation of the Additional Protocol to the Convention on Cybercrime on the penalization of acts of a racist and xenophobic nature committed through computer systems, ratified by the Albanian state through law no. 9262, dated 29.7. 2004 "For the ratification of the "Additional Protocol to the convention on cybercrime, for the criminalization of acts of a racist and xenophobic nature committed through computer systems".

The criminal offenses transposed by this protocol into the criminal law are: "Computer distribution of pro-genocide materials or crimes against humanity" [1], "Threats with motives of racism and xenophobia through the computer system" [2], "Distribution of racist or xenophobic materials through the computer system" [3]and "Insult with motives of racism or xenophobia through the computer system" [4]. The common element between them is the racist and xenophobic motive, as well as the fact that their realization is always accomplished through a computer system. The criminalization of the actions of the objective side of these criminal offenses is consistent with the goal of fighting cybercrime, which is increasingly being updated and bringing a variety of methods of execution and consequences.

Referring to the data published by the General Prosecutor's Office of the Republic of Albania, the applicability of these provisions in practice has been very low, not to mention zero in some years.

[1]Article 74/a, Criminal Code of the Republic of Albania.
[2] Article 84/a, Criminal Code of the Republic of Albania.
[3]Article 119/a, Criminal Code of the Republic of Albania.
[4]Article 119/b, Criminal Code of the Republic of Albania.

Based on these figures, in order to apply these provisions in practice, it is necessary to study and analyze in detail the four provisions above.

Under this study need, in this paper we will deal in detail only with the criminal offense " Computer distribution of pro-genocide materials or crimes against humanity", provided by article 74/a, of the Criminal Code of the Republic of Albania. Specifically, in its content you will find the criminal legal analysis of this criminal offense, current discussions on the efficiency of the norm and the need for its change, as well as practical cases of the ECHR on the consummation of this criminal offense. At the end of the paper, taking into consideration everything that we have dealt with in the entirety of the paper, we have prepared conclusions and recommendations, the applicability of which in practice brings improvement both within a good and efficient legal provision, and in function of applicability of this provision in practice.

Field: *Material criminal law*

Keywords: *Computer distribution of pro-genocide or crimes against humanity materials*

1. Analysis of the criminal offense "*Computer distribution of pro-genocide materials or crimes against humanity*" according to the current Albanian legislation

Computer distribution of material pro-genocide or crimes against humanity is the criminal offense provided for in Article 74/a of the Criminal Code of the Republic of Albania. Specifically, its content stipulates that: *" Offering in public or deliberately disseminating to the public through computer systems materials that deny, minimize significantly, approve of or justify acts that are genocide or crimes against humanity are punishable to three to six years imprisonment."*[5]

In the historical context, this criminal offense was provided for the first time in our domestic legislation through law no. 10 023, dated 27.11.2008 and until now has not been subjected to any process of legislative amendments. Its provision comes in accordance with Article 6, of the Additional Protocol to the Convention on Cybercrime, for the criminalization of acts of a racist and xenophobic nature committed through computer systems, in the content of which it is provided that: *"1. Each State Party shall take legislative measures, as well as other measures, necessary to define as a criminal offense under domestic law the following conduct, when committed with intent and without right: - distributing or making available to the public through a computer system material that denies, significantly minimizes, approves or justifies acts that constitute genocide or crimes against humanity, under international law and recognized as such by final and binding decisions of the International Military Tribunal, established by the Agreement of of London on April 8, 1945 or of any other international court, established by relevant international instruments, the jurisdiction of which has been recognized by this state party. 2.Each State Party may: i) require that the denial or significant minimization referred to in paragraph 1 of this article has been carried out to incite hatred, discrimination or violence against an individual or group of individuals, based on race, color, origin, national or ethnic origin as well as religion, if used as a pretext for one of these factors or ii) reserve the right not to apply, in whole or in part, paragraph 1."*[6]

Referring to the context in which the Additional Protocol of the Budapest Convention itself was adopted, the purpose of this provision is to criminalize actions that constitute disclaimer of genocide and crimes against humanity, committed during the Second World War, in the years 1940-1945. The ECtHR in many of its decision-making has determined that the object of legal-criminal protection is the memory of a persecution of almost two thousand years against the Jewish community.

Meanwhile, due to the very dangerous nature of this criminal offense, the legislator has categorized it as a crime and not as a criminal misdemeanor.

[5]Article 74/a, Criminal Code.
[6]Article 6, Additional Protocol to the Convention on Cybercrime, for the criminalization of acts of a racist and xenophobic nature committed through computer systems.

Furthermore, it is necessary that before the detailed analysis of the constituent elements of this criminal offense, the meaning of the term *"Racist and xenophobic material "*, which is defined by Article 2 of the Additional Protocol to the Convention on Cybercrime, is of particular importance. criminalizing racist and xenophobic acts committed through computer systems. Specifically, *"racist and xenophobic material " is any written material, any image or other representation of thoughts or theories, which favors, spreads or incites hatred, discrimination or violence against any individual or group of individuals, based on race, color, origin, national or ethnic origin, as well as religion, if used as a pretext for any of these factors."* [7].

Returning to the criminal legal analysis of the offense and specifically the element that constitutes the objective side of this criminal offense, we say that the crime is carried out through two ways, which in their essence have only action and not inaction. First, through the public offering of materials that deny, minimize, in a sensitive way, approve or justify acts that constitute genocide or crimes against humanity and secondly, through the intentional distribution to the public of the same materials as referred to above. So, offering to the public means access to the public, accessibility by the public and making it available.

There have been many discussions about whether communications between individuals or a group of individuals, which reflect expressions or aspects related to the denial of genocide or crimes against humanity, will be considered public communications. In these cases, we estimate that as long as these communications are private communications, i.e. they do not have a public character, they should not fall under this provision.

Another key aspect of the objective side of this criminal offense is the public offering of materials or their distribution through computer systems. Thus, the crime is consummated only if the content of these materials is transmitted to the public through a computer system, which can be a computer, cell phone, tablet or any other computer device.

But what will happen if the distribution of these materials is carried out through magazines, physical newspapers? This is an issue that needs legal provisions, in terms of creating a new article that criminalizes the distribution of these materials by means other than technological ones. This, despite the fact that currently the greatest power of information distribution is found in social networks, social media, etc. The distribution of these materials through classical, physical means of information, such as printed newspapers, various books, magazines, must be sanctioned by the substantive criminal law.

To carry out a clearer analysis in this aspect, we bring to your attention a very interesting case handled by the Court of Cassation of Italy [8]. The case was related to a member of the National Socialist Movement of Workers, who on the memorial-day of the Holocaust of the Second World War, dated 27.01.2017, in the streets of Milan distributed slogans and materials of nationalism praising the supremacy of the white race against the presence of Judaism in Europe, as well as making offensive statements. After his arrest, his apartment was searched and it turned out that he still had leaflets with the same content. This citizen stated that the materials found in the apartment are within the scope of the protection of freedom of expression, and are also unpublished.

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[7]Law no. 9262, dated 29.7. 2004 "*For the ratification of the "Additional Protocol to the convention on cybercrime, for the criminalization of acts of a racist and xenophobic nature committed through computer systems* ".

[8]In Decision no. 3808/22, section I, date 0302.2022 of the Court of Cassation of Italy it is provided that: *"Denial is a form of hate speech and if it has to do with the Holocaust it should not be considered as a free expression of opinion, but as a form of discrimination. The fact that acts of denial are carried out on Remembrance Day indicates the existence of a psychological and malevolent element. Consequently, the aggravating circumstance of Holocaust denial is applicable in a situation that fully corresponds to the jurisprudence of the European Court of Human Rights, which has, on several occasions, clarified that Holocaust denial does not fall within the protection afforded by the Convention on freedom of expression."*

The question that is raised for discussion is that if this case will be tried by the Albanian courts, how would it be treated as a result of the legal definition of the criminal offense? Doctrine and experts are divided into two positions.

The first position argues for an expanded interpretation of Article 74/a of the Criminal Code, which means that even if the public offering or the intentional distribution to the public of these materials that deny, minimize, in a significant way, approve or justify acts, that constitute genocide or a crime against humanity whether it is done by leaflets or books, it is essentially distribution, whether it is done through the computer system or not through the computer system. The leaflets were typed and printed through the computer system and if we analyze in this expanded way, we will face the criminal offense provided by Article 74/ai of the Criminal Code.

Whereas, the second position argues that in this case we are facing a classic criminal offense and not within the framework of cybercrime. Thus, the author in question will bear criminal responsibility under Article 265 of the Criminal Code for inciting hatred and strife. [9]This position is argued by the fact that cybercrime is committed only through computer systems and article 74/a of the Criminal Code cannot be given an extended interpretation. Thus, in the absence of computer systems, we must go to the general picture of the criminal offense, which we have as part of the legislation since 1995 and which we have transposed from the Code of 1952 and that of 1977, Incitement of hatred or disputes.

However, even at this point, the discussion arises as to whether the content of this provision, specifically " *...preparation, dissemination or storage with the purpose of dissemination of writings with such content is carried out by any means or form* ", includes cyber systems as a means or form.

In response, it is worth bringing to attention that where we have a special work, we cannot go to the general one, since the special provision responds better and more accurately to the dangerousness of the work and the author. Article 265 of the Criminal Code sanctions a general criminal offense and the term *by any means and form* cannot include the computer system, which is foreseen and is the essence of the special criminal offense.

On this discussion, the Court of Cassation of Italy took the position that the leaflets found in the apartment do not have a public character and closed the case, while the act of distributing the leaflets on the streets of Milan was considered a denial of genocide and crimes against humanity. The fact that the leaflets were distributed on Holocaust Remembrance Day shows the malicious intent of the author. However, this conclusion was reached by being treated as hate speech by the Court of Cassation in Italy, and in Albania, we have transposed hate speech to Article 265 of the Criminal Code, which was discussed above. Under these conditions, the above recommendation for legal changes remains in effect.

Following the analysis, from the content of the provision of our criminal law, but more from the content of Article 6, of the additional protocol cited above, we understand that the materials that constitute genocide or crimes against humanity must be recognized as such by decisions of final form of the International Military Court, or of any other international court created with the relevant international instruments, the jurisdiction of which has been recognized by the Albanian state. So, this is the prerequisite for completing the objective side of this criminal offense. In the interpretation of its completion, it turns out that our legislator has not chosen to categorize the published materials, thus leaving us the discretion to understand that by the term material we will understand photos, videos, writings, and any other form of materials. Following this interpretation, the criminal offense of computer distribution of materials pro-genocide or crimes against humanity is consumed both when you have these materials at your disposal and offer them to the general public, as well as when these materials are published by someone else and you distribute them through computer systems.

[9]Article 265 of the Criminal Code provides that: "Incitement of hatred or quarrels - *Incitement of hatred and quarrels due to race, ethnicity, religion or sexual orientation, as well as the preparation, dissemination or storage for the purpose of dissemination of writings with such content is carried out with any means or form is punishable…"*

The most concrete example is the case when an individual creates and publishes on his page or on other pages a post with content in favor of crimes against humanity and genocide, as well as the case when the content of the post is not defined by this individual, but is distributed by him, thus bringing the same consequence in terms of criminal liability as if you had created it yourself.

Further, the subject is another constituent element of the body of criminal offenses in general and of this criminal offense in particular. Specifically, the provision of Article 74/a does not provide that the subject of this criminal offense enjoys special qualities, which make him a special subject.

Therefore, the criminal offense can be consumed by any individual who is mentally competent and has reached the age of criminal responsibility, as well as who has the ability to use computer systems.

In the analysis of the subjective side of this criminal offense, we say that the offense is committed intentionally. For the effect of the legal definition, it is not required that the consequences of the act or that the denial or minimization be carried out with the purpose of inciting hatred, discrimination or violence against any individual or group of individuals. It is enough for the person to be aware of the importance of the action he is performing, of the content of the material he is distributing and to want the work to be done.

In general, the crime provided for by Article 74/ai of the Criminal Code can be prosecuted with a report, as well as it can be pursued mainly by the prosecution body.

At the end of the analysis of the above elements, it is more important to present the discussions related to the cases of consumption of the crime of computer distribution of materials but genocide or crimes against humanity. This is with the aim of issuing recommendations and further implementing them in practice, bringing a more efficient norm in forecasting and implementation.

First, based on the current Albanian provision of the criminal offense of computer distribution of pro-genocide materials and crimes against humanity, which has not been fully harmonized with the Additional Protocol, we say that the provision is unclear, as it does not expressly provide that who will be the authority that will determine the materials that constitute genocide and crimes against humanity. It is true that the Commission of the European Parliament emphasized that the states do not need to make such a transposition to foresee in the legislation this verification of judicial procedures because they should be implied as such. However, in order to avoid any room for subjectivism during the criminal process, it is important that the provision is fully harmonized with the Additional Protocol.

Second, it is also important to determine whether the judicial decision that has concluded that the acts constitute genocide and crimes against humanity should be final or not. Of course, in the unified implementation of all the principles and rules of the criminal process, but also the additional protocol itself, this decision-making must be final.

In these conditions, taking into account the fact that the framework decision as well as the basic act to which we have referred for the transposition and provision of this figure requires that the decision be final and conclusive, it would be valuable and would avoid any interpretation of contrary, that in the content of the provision it is expressly provided that the materials that constitute the criminal offense of computer distribution of pro-genocide materials and crimes against humanity must be recognized as such according to international law and recognized as such by final decisions and mandatory of the International Military Court, established by the London Agreement of April 8, 1945 or of any other international court, established by the relevant international instruments, the jurisdiction of which is recognized by this state party.

Third, what will happen to those crimes that have not been declared by the court as genocide and crimes against humanity? Of course, this is an international issue rather than a national issue, but again it is important to get the attention of the legislator and even in this case not the national one, but the international one. We bring to attention here the Armenian genocide, which has not been verified and determined as such by an international tribunal, to later qualify its denial as an act of a

pro-genocide nature, which has led to a consolidated practice of dismissing cases, but it was recognized as such in 2013 by the Parliamentary Assembly of the Council of Europe.

We bring to attention here the Dogu Perinçek v. Switzerland [10]in 2005, which has been finally reviewed by the European Court of Human Rights. Great Dane Perinçek is a Turkish politician active in the Workers' Party of Turkey in Switzerland. During public events, public demonstrations, he declared that the mass deportations and massacres committed against the Armenian community by the Ottoman Empire did not constitute genocide and was an international lie. In relation to these statements, the Swiss prosecutor's office started criminal proceedings for the denial of the Armenian Genocide and the case went to the ECtHR.

" *The court observed that the complainant's statements were given in the context of a fierce debate and did not experience them as a form of inciting hatred or intolerance. The court did not consider that the same presumption can be applied here as in relation to the statements given regarding the Holocaust, since it refers to the statements given in Switzerland, regarding the events in the territory of the Ottoman Empire. The court noted that the statement's contradiction does not affect political life in Switzerland, nor is there evidence of a particularly sensitive context referring to this issue in the relevant time period. The court observed that the concept of proportionality which is characteristic of the phrase "necessary for a democratic society" required a reasonable connection between the measures undertaken and the desired goal. The Court observed that the statements of the complainant, read as a whole and understood in their direct and broad context, cannot be considered calls for hatred, violence or intolerance towards Armenians.*

The court noted that the appellant was criminally convicted, which represents the most serious form of interference with the right to freedom of expression. Taking into account these various elements, the Court observed that the complainant's statement referred to a matter of public interest and was not a call for hatred, intolerance to violence. There is no evidence for the context of particular historical highlights or heightened tension in Switzerland due to the need for a criminal response from Switzerland. According to this, the Court has assessed that mixing was not necessary in a democratic society, in which case with 10 votes "for" and 7 "against" it has concluded that there is a violation of Article 10."[11]

So, the ECHR considered that in this case there is no violation of the dignity of the Armenian community. It is strange how the Strasbourg Court did not analyze how the judicial verifiability of this case should be determined, but stopped at the analysis of some elements and criteria related to the nature of the statements, according to which these statements are not capable of inducing violence or hatred towards Armenians. It also considered the context in which the historical and geographical factors were realized, the fact that there was no direct connection with the place where the genocide had taken place or with the place where the declaration had taken place.

The last discussion is related to the fact whether this criminal offense should also include war crimes and not only genocide and crimes against humanity. Seen in the perspective of a not-so-distant future, of course it is. The war between Russia and Ukraine , as well as Israel and Palestine, are 2 arguments, but not the only ones, that drive the need for this forecast.

2. Aspects of attempted and complicity in the crime of computer distribution of pro-genocide materials or crimes against humanity

An important aspect to be addressed is the case when this criminal offense remains pending and the case when this criminal offense is considered to have been committed in collaboration. And to make a clearer analysis of them, we first bring to your attention that:

[10] Perincek v. Switzerland, appeal no. 27510/08, on October 15, 2015 (Grand Council).
[11]OSCE, Analysis of the case law of the European Court of Human Rights on hate speech and hate crime, page 53, accessed at the link: https://www.osce.org/files/f/documents/f/8 /524607.pdf .

" *The criminal offense is said to be pending when, although the person takes direct actions to commit it, the offense is interrupted and not completed due to circumstances independent of his will."*[12]

moments *are characteristic of the attempt: First, that the direct actions for the commission of the criminal offense are done intentionally. Secondly, the criminal offense has not been completed for reasons independent of the will of the culprit."*[13]

" *Cooperation is the commission of a criminal offense by two or more persons with an agreement between them."*[14]

"From the definition given to cooperation in Article 25 of the Criminal Code, it appears that objectively, cooperation is characterized by active participation in the commission of a criminal offense by two or more persons. These persons can be called collaborators only in that case, when the actions of each of them are recognized as illegal, that is, that cooperation is the result of the joint activity of collaborators in achieving a harmful consequence."[15]

Specifically related to the relevant criminal offense, based on the above, law enforcement bodies may encounter more difficulties in determining the criminal offense as remaining in the attempt, than in cases where this criminal offense is committed in collaboration, although even the cases of cooperation have some specifics that make the process of defining the criminal offense as committed in cooperation difficult.

Regarding the attempt, in our estimation this criminal offense, even though it seems like it does not accept the attempt, can remain in the attempt. To be more concrete, we take as an example the case when the individual has prepared the material that he will publish himself or distribute by other individuals, he gives the command to publish it, but for reasons independent of his will, this material does not go to the general public. An obstacle in this case may be the lack of internet, the wrong setting of the posting parameters, etc. Although it must be said that the cases remaining in the trial are very difficult to prosecute, since for one of the above reasons the material does not go to the general public, the consequence, the publication, the distribution does not come and therefore the competent bodies of the investigation do not take notice for this action, which constitutes the criminal offense of computer distribution of pro-genocide materials or crimes against humanity, remains pending.

Regarding cooperation, I appreciate that the difficulty in defining this criminal offense as committed in cooperation is encountered when the creation of these materials was done by one individual and their publication by another individual, as well as the case when the same material is distributed by many individuals at the same time or in different time sequences.

3. Albanian practice on the consumption of the crime of computer distribution of pro-genocide materials or crimes against humanity

Returning to the figures, in reference to the data of the General Prosecutor's Office for the year 2021 and 2022, which are reflected in Chapter II of this paper, it turns out that for this criminal offense, for the year 2021 and 2022, there was no record of proceedings criminal and therefore no one convicted. Of course, reading this figure gives life to the interpretation that the provision is effective in terms of preventing the commission of this criminal offense.

If we go earlier in years, we recall the criminal proceedings registered in the Prosecutor's Office at the Court of First Instance in Tirana in 2016, based on a complaint. The fact was that the citizen with the initials KM, on his Facebook page, considered himself to be Harry S. Truman , president

[12]Article 22 of the Criminal Code of the Republic of Albania.
[13]I. Elezi, S. Kaçupi, M. Haxhia , Commentary on the Criminal Code of the Republic of Albania, General Part, Kumi Publications, Tirana 2013, page 171.
[14]Article 25 of the Criminal Code of the Republic of Albania.
[15]I. Elezi, S. Kaçupi, M. Haxhia, Commentary on the Criminal Code of the Republic of Albania, General Part, Kumi Publications, Tirana 2013, page 195-196.

of the United States of America and had published the article: " *Je etais (I was) Charlie Hebdo , now I'm Harry S. Truman !" This applies as an answer to those who are outraged by my idea to wipe out Islam by hitting Mecca and Medina with atomic bombs. Mecca and Medina together have three million inhabitants. If 300,000 Japanese were once killed in Hiroshima and Nagasaki to eradicate the origins of Japanese militarism, it is no great tragedy to kill 3 million Arabs to eradicate the origins of Islamic terrorism. NATO needs a Truman to think like this, that is, strategically . For this reason: I'm Harry S. Truman . /KM".* Citizen KM admitted that he wrote that article himself, but under the excuse that the post had a study purpose and was a quote from President Truman, to see the reaction of the Albanian community. The prosecution dismissed this case under the argument that there must first be an act that constitutes genocide, or crimes against humanity and recognized as such by court decisions. The posts made on social networks are considered to constitute the expression of opinions, in application of the individual's freedom of expression.

This case, but also the lack of criminal proceedings for this criminal offense, should constitute an alarm bell for the legislator, to change the content of the provision according to the recommendations analyzed above.

4. The practice of the ECtHR on the consumption of the crime of computer distribution of pro-genocide materials or crimes against humanity

Contrary to our national practice, the international one is richer in cases of consumption of the criminal offense of distributing pro-genocide materials and crimes against humanity. We highlight some of them below.

In Australia it is the Jones case Toben, a German-Australian citizen, the administrator of *the* Adelaide Institute *website* in Australia, which featured material denying the genocide, insulting and humiliating material against Jewish groups, activity which served as the basis for his arrest and conviction for denial of genocide in the Australian state.[16]

Meanwhile, in the case of Garaudy v. France[17], the appellant is the author of a book on the founding myths of modern Israel and was convicted of the criminal offense of opposing crimes against humanity. He argues that his actions were within the framework of freedom of expression, but the ECtHR considered the request inadmissible, as the content of the book was a denial of the Holocaust and, furthermore, constituted one of the most serious forms of racial defamation against Jews and incitement of hatred towards them.

A similar case is the case of Williamson v. Germany [18], the appellant of which is a bishop who appealed against the criminal conviction for inciting hatred and for denying the holocaust on Swedish television, arguing that German law was not applicable to the statements of him, since the crime was not committed in Germany but in Sweden. In this case, the Court declared the request inadmissible under the argument that the applicant had agreed to give an interview and that he had not taken the necessary measures to prevent his interview from being broadcast in Germany, despite the fact that he resided elsewhere.

Another case is that of Ernest Zundel, a German citizen living in Canada who was one of the most notorious distributors of Nazi propaganda in the world. For this purpose, he used mail, telephones, e- mail, media and the Internet. The judicial authorities of Canada found that it was precisely the denial of the genocide and decided to punish it, arguing and assessing that we are not facing a case within the framework of freedom of expression.[19]

[16]The case of Jones v. Toben (2002) FCA 1150, accessed at the link: https://jade.io/article/106091 .
[17]The case of Garaudy v. France.
[18]The case of Williamson v. Germany.
[19]Zundel case , (1992) 2 SCR 731, 1992 CanLII 75 (SÇ), accessed at the link : https://www.canlii.org/en/ca/sç/doc/1992/1992canlii75/1992canlii75.html .

CONCLUSIONS AND RECOMMENDATION

At the end of the above analysis of the criminal offense *"Computer distribution of pro-genocide materials or crimes against humanity* ", they come to the conclusion that, referring to the data of the General Prosecutor's Office, the applicability of the provision of Article 74/a of the Criminal Code is almost "0" in Albania, both during the investigation phase and during the trial phase.

The two possible interpretations on the figures of the applicability of this provision in practice are related either to the fact that Albanian society has not developed this form of criminality, or to the need to change the provision in order to adapt it better to the criminal fact that occurred in practice.

We have no doubt that the stability of the first interpretation is good news for the legislator, for the whole society, as well as the institutions that materialize in practice the entire criminal process, but with the aim of avoiding the second possible interpretation, which is also dangerous because let dangerous actions of the society go unpunished, taking into account the deficiencies presented above on the content of Article 74/a of the Criminal Code, it is necessary to change the content of the provision.

The following changes are recommended during this process.

First, based on the current Albanian provision of the criminal offense of computer distribution of pro-genocide materials and crimes against humanity, which has not been fully harmonized with the Additional Protocol, there is a need to change the provision, expressly adding the authority that should declare these materials as genocide or crimes against humanity. This provision in the context of good sanctioning, as well as avoiding any room for subjectivism during the criminal process.

Secondly, it is recommended that in the content of Article 74/a of the Criminal Code it is expressly determined that the judicial decision-making that has concluded that the acts constitute genocide and crimes against humanity be final.

Meanwhile, in order to criminalize the distribution of pro-genocide materials and crimes against humanity not through computer systems, but through other means, different from technological ones, the creation of a new article is necessary.

Also, the discussion on whether this criminal offense should also include war crimes and not only genocide and crimes against humanity should be a national and international priority.

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