The article provides an analysis of approaches to the definition of hate speech. The author notes that in Ukrainian academic circles and law, there are two translations of the English term hate speech – "мова ненависті" and "мова ворожнечі". The first version is a direct equivalent of the English term that describes the specifics of negative attitudes and destructive emotions that can be caused by such statements (hatred, disgust, dislike). Whereas the second option emphasizes the consequences that such statements can lead to, namely, relations and actions based on ill will and hatred, which can lead to direct conflicts.

Notably, the European Convention on Human Rights is one of the fundamental international treaties, however, the term hate speech is not used in the its text of the Convention; rather, it is defined by the European Court of Human Rights in its judgments and introduced into use in the countries party to the Convention.

It is highlighted that those same judgments of the European Court of Human Rights establish the views on the prohibition of hate speech, the conditions for applying the relevant provisions of the Convention, and the ways to distinguish between freedom of expression and hate speech. An analysis of the relevant ECHR rulings shows that cases on prosecution for hate speech are mostly considered under Article 10 of the Convention in conjunction with Article 17. The author analyzes the ECHR case law with the above article and establishes its close connection with Article 17 of the ECHR, which prohibits the abuse of rights. In the aspect under study, this refers to the abuse of freedom of expression. When searching for relevant precedents in the ECHR practice, it is actually necessary to start with the opposite: examples of hate speech and convictions for it can be found in cases where the Court finds no violation of the Convention’s Article 10 Freedom of Expression and considers the application of Article 17 Prohibition of Abuse of Rights.

Research on hate speech reveals that the Council of Europe has adopted human rights standards, while the European Court of Human Rights has considered several cases on hate speech establishing case law in this area that is valid for all member states; various bodies of the Council of Europe have adopted recommendations and guidelines to help countries combat hate speech and support its victims, it defined the concept of hate speech as early as 1997, it continuously monitors the problems of racism, xenophobia, anti-Semitism, intolerance and discrimination in the member states through the work of monitors like the European Commission against Racism and Intolerance (ECRI). European Commission’s General Policy Recommendation No. 15 on Combating Hate Speech (adopted on December 8, 2015), which defines hate speech, is analyzed.

The introduction of the Code of conduct on countering illegal hate speech online in May 2016, together with four major IT companies (Facebook, Microsoft, Twitter and YouTube) is outlined.

The author suggests that it is not only international means of combating and counteracting hate speech that matter. Of key importance at the national level remains the development of effective strategies to counter hate speech, taking into account national expressions of hate speech, the mentality of the respective nation and the specific legal regulation on the procedure for bringing individuals to justice for statements, defamation, insult, discrimination and other acts.

Notably, the most important thing, in our opinion, is to stipulate in the criminal law the elements of crimes related to hate speech. In conclusion, the article suggests ways of addressing the issue of harmonization of national legislation on criminalization of hate speech in Ukraine with international standards.

Key words: hate speech, European Commission against Racism and Intolerance, European Court of Human Rights, Council of Europe.
Problem Statement. In Ukrainian academic circles and law, there are two translations of the English term *hate speech* – "мова ненависті" and "мова ворожнечі". The first version is a direct equivalent of the English term that describes the specific of negative attitudes and destructive emotions that can be caused by such statements (hatred, disgust, dislike). Whereas the second option emphasizes the consequences that such statements can lead to, namely, relations and actions based on ill will and hatred, which can lead to direct conflicts. Thus, we can conclude that both terms used in the Ukrainian legal doctrine, despite minor stylistic and semantic differences, are equivalent and unequivocal.

According to the dictionary, "ворожнеча (enmity) is a relationship and actions between persons motivated by hatred, ill will, or hostility". "Ненависть (Hatred) is a feeling of great aversion, animosity toward someone or something, dislike, hostility, enmity". The philological definition of these words indicates that they are synonymous concepts and can be used in place of each other. Internationally, the term *hate speech* is generally accepted [2]. Hate speech poses a huge danger to the unity of a democratic society, to the protection of human rights and to the rule of law. Hate speech should be countered to protect individuals and groups of people, not certain beliefs, ideologies or religions. It is unacceptable to use hate speech restrictions to disenfranchise minorities and suppress criticism of official policies, political opposition or religious beliefs [3].

The aim of this article is to study the issue of combating hate speech based on the experience of the Council of Europe.

Research results. At the outset, it is important to note that the European Convention on Human Rights (hereinafter referred to as the Convention) is one of the fundamental international treaties. Although the term *hate speech* is not used in the text of the Convention, it is defined by the European Court of Human Rights in its judgments and introduced into use in the countries parties to the Convention. Those same judgments of the European Court of Human Rights (hereinafter – the ECHR) establish the views on the prohibition of hate speech, the conditions for applying the relevant provisions of the Convention, and the ways to distinguish between freedom of expression and hate speech.

An analysis of the relevant ECHR rulings shows that cases on prosecution for hate speech are mostly considered under Article 10 of the Convention in conjunction with Article 17.

In particular, Article 10 of the Convention defines the concept of freedom of expression, the components of this freedom and the conditions for restrictions on the exercise of this freedom. At the same time, paragraph two stipulates that this freedom is not absolute and may be limited as the exercise of such freedom is associated with duties and responsibilities. Freedom of expression may be subject to conditions, restrictions or penalties prescribed by law and necessary in a democratic society "in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the prevention of the disclosure of confidential information, or for upholding the authority and impartiality of the judiciary" [4].

The quoted provisions actually enshrine the conditions of restriction and accountability for the expression of views that are the basis for crimes or offenses, violate the rights of others or concern the court and its authority.

Researchers suggest structurally dividing Article 10 of the Convention into two parts. The first part defines the freedoms protected by the Convention, and the second part establishes an exhaustive list of restrictions (including threats to national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals) that allow the state to legitimately interfere with and restrict the exercise of this right [5].

As the ECHR practice shows, Article 17 of the Convention is closely related to the above article, which prohibits the abuse of rights. In this study, we are referring to the abuse of freedom of expression. Thus, Art. 17 states that "nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention" [6].

When searching for relevant precedents in the ECHR practice, it is actually necessary to start with the opposite examples of hate speech and convictions for it can be found in cases where the Court finds no violation of the Convention's Article 10 Freedom of Expression and considers the application of Article 17 Prohibition of Abuse of Rights.

In addition to the ECHR, the judicial body of the Council of Europe, the latter is worth mentioning in and of itself, as its activities are also aimed at combating hate speech to a certain extent. It promotes common and democratic principles based on the Convention and other human rights conventions and instruments. Regarding hate speech, while the European Court of Human Rights has considered several cases on hate speech establishing case law in this area that is valid for all member states, the Council of Europe has adopted human rights standards, its various committees have adopted recommendations and guidelines to help countries combat hate speech and support its victims, it defined the concept of hate speech as early as 1997, it continuously monitors the problems of racism, xenophobia, anti-Semitism, intolerance and discrimination in the member states through the work of monitors like the European Commission against Racism and Intolerance (ECRI), etc. [7].

The Council’s No Hate Speech Movement, organized to combat statements that incite hostility and hatred towards individuals or groups, is also worth mentioning.

The Council of Europe has also approved the Additional Protocol to the Convention on Cybercrime, which criminalizes acts of a racist and xenophobic nature committed through computer systems. The Protocol was adopted on January 28, 2003, and ratified by Ukraine on July 21, 2006 [8].

In addition to the efforts of the Council of Europe, we would like to mention the European Commission’s General
Policy Recommendation No. 15 on Combating Hate Speech (adopted on December 8, 2015) (abbreviated as the European Commission against Racism and Intolerance – ECRI). It defines hate speech as “the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of “race”, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status” [9].

In addition to the adoption of this Recommendation and the Additional Protocol, the European Commission initiated the Code of Conduct on countering illegal hate speech online in May 2016, together with four major IT companies (Facebook, Microsoft, Twitter and YouTube), in an effort to respond to the spread of racist and xenophobic hate speech on the Internet. The goal of the Code is to make sure that requests for content removal are dealt with quickly. When companies receive a request to remove content from their online platform that is deemed to convey hate speech, they review the request for compliance with their community rules and policies and, where appropriate, national laws transposing EU anti-racism and anti-xenophobia legislation. The companies are committed to reviewing most of these requests in less than 24 hours and, in some cases, removing the content, if necessary, while respecting the need for criminalization, hostility or discrimination against those targeted by the use, in a public context, of hate speech which is intended, among other things, “to incite to discrimination on the grounds of membership of a group of persons; publicly denying, minimizing, justifying or condoning crimes of genocide, crimes against humanity or war crimes; creating or leading a group that promotes racism, supporting such a group or participating in its activities; and accountability of legal entities” [14].

Conclusions and results. Despite the fact that a little more than 5 years have passed since the publication of the referenced Recommendations, all of them remain relevant and need to be implemented by Ukraine as a country that has been granted the status of an EU candidate. In our opinion, these provisions are also important in terms of harmonizing Ukrainian and EU legislation. It is difficult to deny the claim that Ukraine’s European aspirations imply harmonization of national legislation with European law, therefore, steps should be taken to eliminate the legal regulatory shortcomings identified by the ECRI as soon as possible.

It is believed that there will be no difficulties in harmonizing Ukrainian and EU legislation due to the amendments to the Criminal Code of Ukraine and other regulations, as they will be adopted as soon as possible. Under martial law, the Verkhovna Rada of Ukraine has already demonstrated its ability to work in “turbo mode”, when the beginning of the full-scale invasion spurred the lawmaking process, including adoption of amendments to the Criminal Code of Ukraine.

To summarize, the state’s goal in preventing hate speech should be to find a balance between enforceable limitations on freedom of expression and freedom of speech (so that such expression does not take the form of hate speech) on one side and respect for the rights of everyone to be free from discrimination, defamation, and racism on the other, as well as to significantly reduce the spread of this phenomenon. In our opinion, these points can be summarized as follows: the state must find and establish a balance between freedom of expression and the rights of individuals, criminalize acts that constitute hate speech, and ensure the implementation of effective mechanisms for bringing perpetrators to justice.
REFERENCES

4. Загальнополітичні рекомендації ЄКНР № 15: головні тези. URL: 1680a06c74 (coe.int)
6. Білоусов Є., Кахнова М. Застосування статті 10 Конвенції про захист прав людини і Основоположних свобод у практиці Європейського суду з прав людини. Підприємництво, господарство і право. 2021. № 4. С. 276–82, С. 278. DOI https://doi.org/10.32849/2663-5313/2021.4.43
9. Додатковий протокол до Конвенції про кіберзлочинність, який стосується криміналізації дій расистського та ксенофобного характеру, вчинених через комп’ютерні системи: Рада Європи. 28.01.2003. Офіційний вісник України. 2010. № 56.
13. Note that as of today, a new regulatory act in this area has been adopted – the Decree of the President of Ukraine on the National Human Rights Strategy of March 24, 2021, which repeals the Decree of the President of Ukraine of August 25, 2015, No. 501 On Approval of the National Human Rights Strategy.