

Supporting Victims of Online Hate Speech: Resources

November 2019, Brussels

Dear Members,

The resources included in this file aim to compliment the workshop ‘*Supporting Victims of Online Hate Speech*’, taking place during Victim Support Europe’s Annual General Meeting, held on November 19th 2019, in Brussels. A copy of the PowerPoint presentation utilised during the workshop is attached for reference.

Following the presentation slides, the subsequent documents are:

1. **European Court of Human Rights, *Factsheet: Hate Crime, October 2019***
This factsheet sets hate speech in the context of the European Convention on Human Rights, and provides short case-law examples from various countries of its application under law.
2. **European Agency for Fundamental Rights (FRA), *Hate crime recording and data collection practice across the EU, 2018***
This report provides rich and detailed information on hate crime recording and data collection systems across the EU, including any systemic cooperation with civil society.
3. **European Commission, *Code of Conduct on Countering Illegal Hate Speech Online, 2016***
A brief explanation of the agreement between IT companies and the European Commission in the former’s committal to protect netizens from online hate speech, to remove content and to take any other appropriate action within a fixed delay.
4. **Stop Hate UK, Interactive PDF: *How to report Online Hate Speech?***
An essential tool for any frontline worker who needs quick access to reporting pages on major social media platforms and comment-based sites.
5. **European Commission, EU High Level Group on combating racism, xenophobia and other forms of intolerance, *Ensuring Justice, Protection And Support For Victims Of Hate Crime And Hate Speech: 10 Key Guiding Principles, 2017***
A specialised identification of the ten guiding principles for supporting victims of hate crime and speech.

Supporting Victims of Online **Hate Speech**

Ruth Shrimpling
- Policy Officer

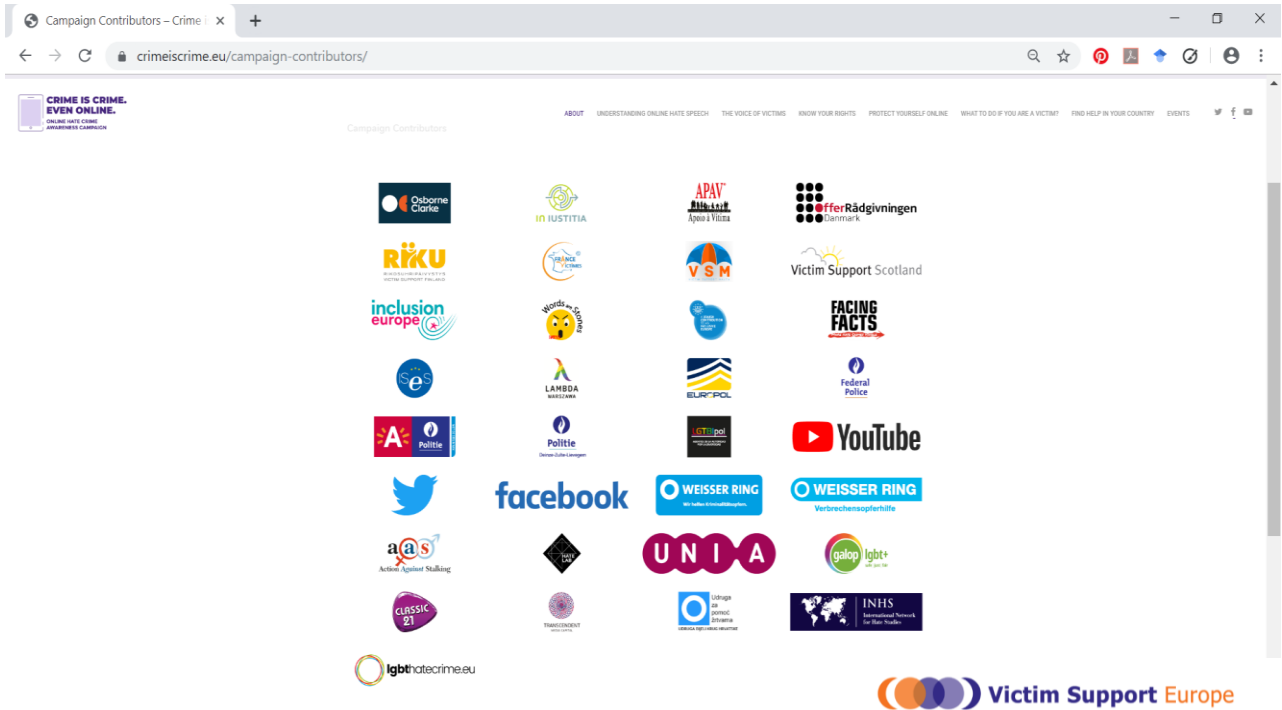


[www. crime is crime .eu](http://www.crimeiscrime.eu)



[#crimeiscrime](https://twitter.com/crimeiscrime)

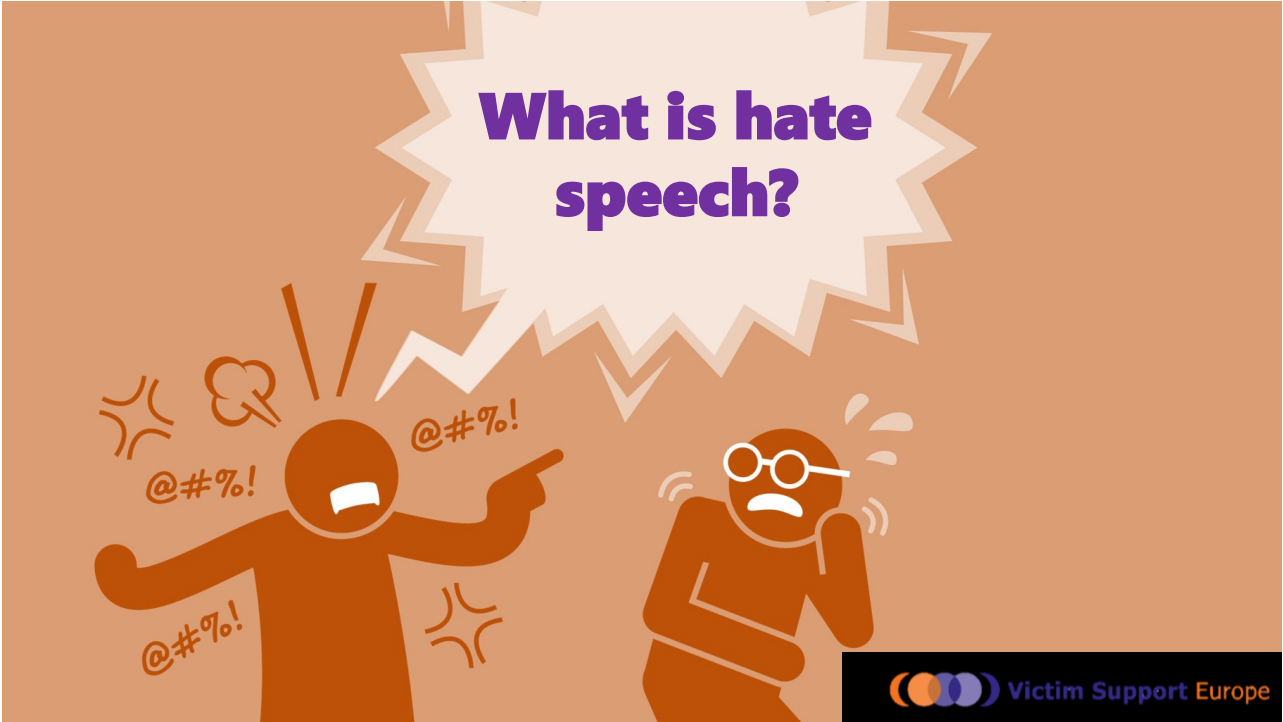




 Victim Support Europe

Workshop goals

1. Understand and identify cases of online hate speech
2. Needs of victims of online hate speech
3. Needs of support professionals
4. The role of victim support services



What is hate speech?



What is hate speech?

Hate speech covers many forms of expressions which spread, incite, promote or justify hatred, violence and discrimination against a person or group of persons for a variety of reasons.*



* ECRI – European Commission Against Racism and Intolerance

 **Victim Support** Europe

What is hate speech?

Nationality

Age

Ethnicity

Sexuality

Race

Belief

Gender

Religion

Economic status

Disability

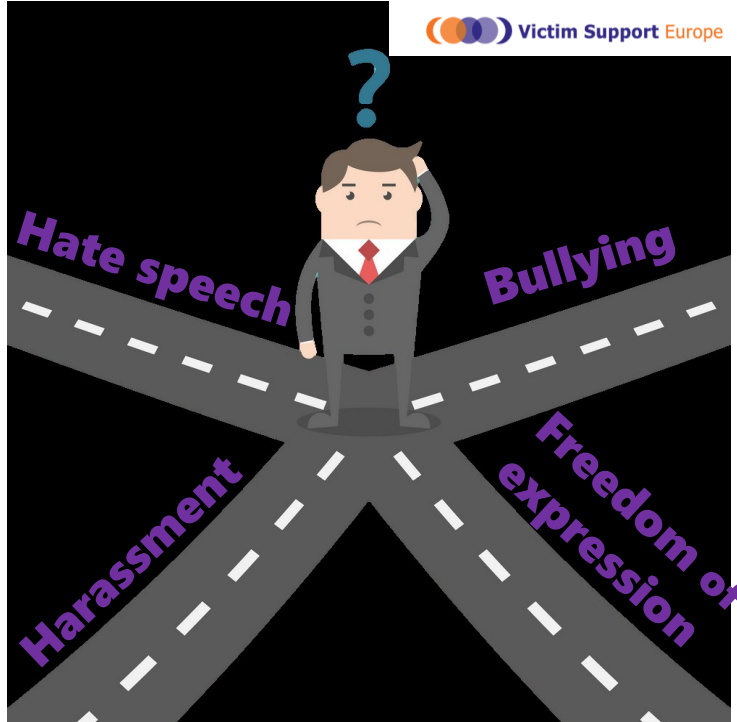


 **Victim Support** Europe

Anti-hate speech legislation

- European Convention of Human Rights
- Victims' Rights Directive
- Terrorist Content Regulation
- Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism
- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- Code of Conduct on Countering Illegal Hate Speech Online





Case study





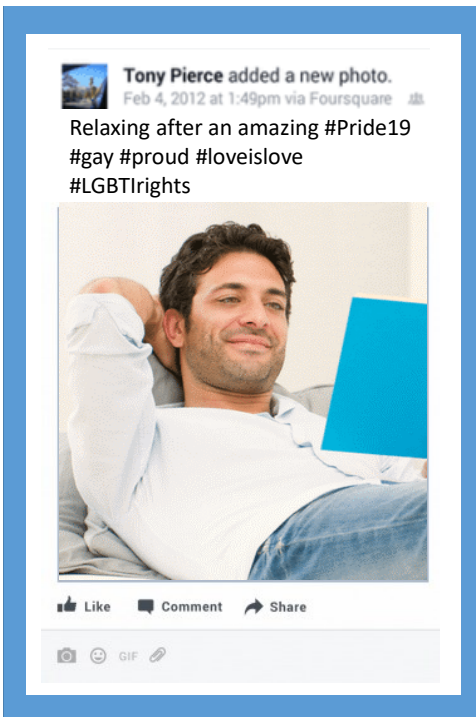
Fat

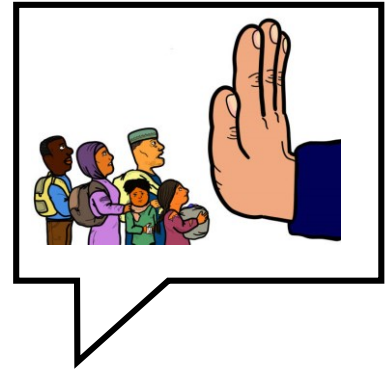
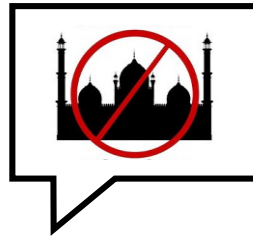
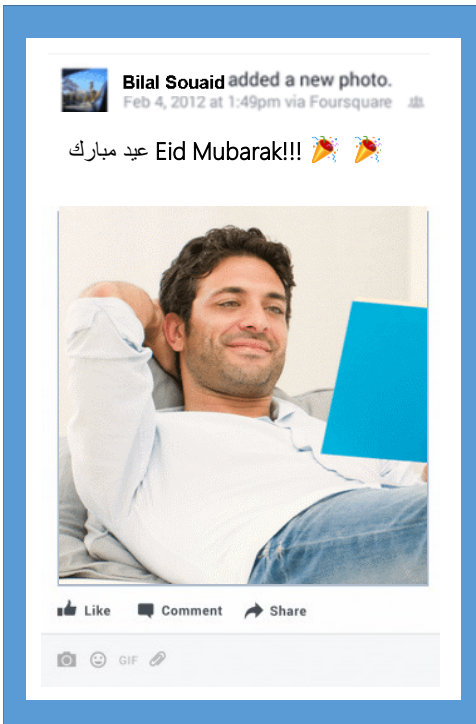
You stink

What an ugly face!

Your girlfriend is ugly.

Big nose haha





 Victim Support Europe

Why is online hate speech a priority?

There are two major catches. Only a fraction of victims **report** hate-motivated harassment and violence to the police. Moreover, even when they do, **police officers do not always flag them as hate crimes**. Some may not recognise certain incidents as stemming from prejudice. Others may simply **lack the necessary practical tools**, such as incident reporting forms, that allow racist motivation to be noted – or the inclination to provide information not always deemed obligatory. This means these **hate crimes remain unidentified or unrecorded** – and thus un-investigated, unprosecuted, uncounted and, ultimately, **invisible**.



 Victim Support Europe

bbc.com/news/technology-50166900

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Technology

Transgender people treated 'inhumanely' online

By Ben Hunte
LGBT correspondent

© 25 October 2019

f t e Share



"Tranny" and "shemale" are the slurs most commonly used against trans people online, according to a study.

GENDER

Men's rights & Mgtow. (Men only)
Public group

About
Discussion
Members
Events
Videos
Photos
Files

Search this group

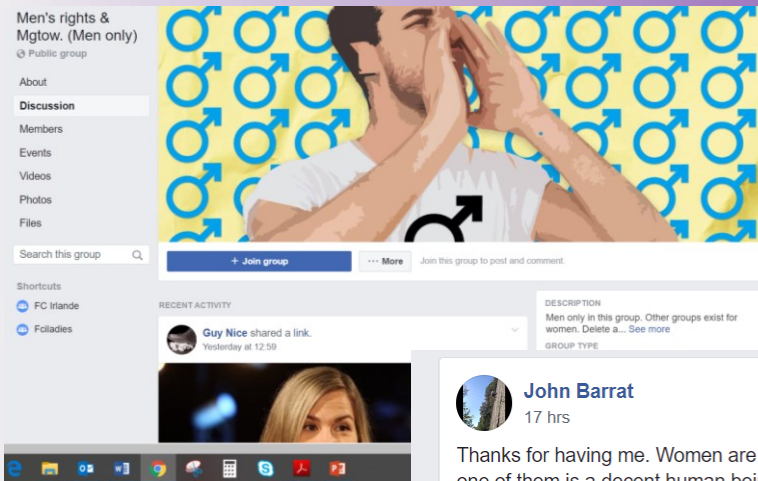
+ Join group More Join this group to post and comment.

RECENT ACTIVITY

Guy Nice shared a link. Yesterday at 12:59

DESCRIPTION
Men only in this group. Other groups exist for women. Delete a... See more

GROUP TYPE



John Barrat
17 hrs

Thanks for having me. Women are waging a war on men, Im sick of it, not one of them is a decent human being. Thinking of doing some real bad shit.

16 comments

Like Share

GENDER



SEXUALITY



SEXUALITY



SEXUALITY



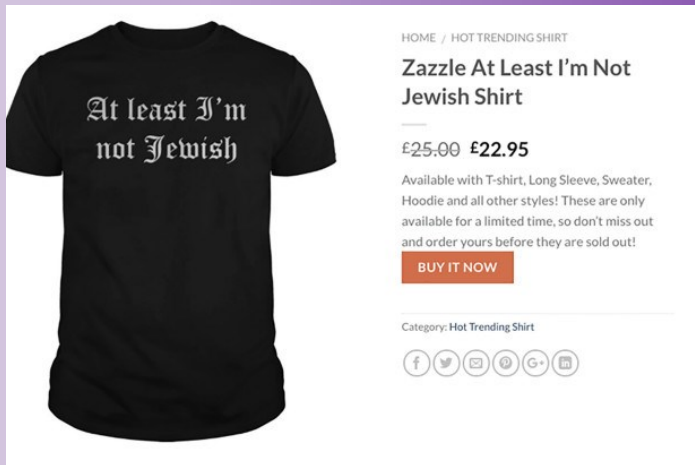
SEXUALITY, RELIGION, BELIEFS

RELIGION, RACE, ETHNICITY



RELIGION, RACE, ETHNICITY

RELIGION, RACE, ETHNICITY



RELIGION, RACE, ETHNICITY

RELIGION, RACE, ETHNICITY



RELIGION, RACE, ETHNICITY

A grid of newspaper front pages from the Daily Mail and The Sun, featuring headlines related to migration and social issues.

Daily Mail FREE INSIDE Weight Watchers MIGRANT'S CHUNNEL STROLL TO ASYLUM IN BRITAIN	Daily Mail EAT TO BEAT DIABETES BRITAIN'S BROKEN BORDERS	Daily Mail Can any wife fancy a man who becomes a house husband? PM: WHY WE MUST NOT TAKE 3,000 MIGRANT CHILDREN	Daily Mail FREE WOGAN MUG FREE Roasting chicken from M&S EXODUS	Daily Mail Cherie, the human rights hypocrite 3M UK WORKERS ARE NOW FOREIGN	Daily Mail FREE INSIDE MONEY EUROPE: THE REAL CRISIS	Daily Mail IM MORE MIGRANTS ARE ON THEIR WAY
Daily Mail WIN One of Maggie's iconic handbags HOW BLAIR CYNICALLY LET IN 2M MIGRANTS	Sun GEST BLEW AWAY A DAY ON SLOTS WAD A WASTE	Sun MIGRANT MR BIG	Sun THE GREAT MIGRANT CON	Sun WE'RE STUFFED	Sun ANARCHY NEAR THE UK	Daily Mail PULL THE OTHER ONE, DAVE
Daily Mail FREE INSIDE Glossy souvenir magazine to mark the Queen's 90th birthday SURRENDER ON ILLEGAL MIGRANTS	Sun 2 FREE TICKETS NATIONAL HANDOUT SERVICE	Sun QUEEN BREXIT ROW POLE CHANCERS	Sun FREE £5 JUNGLE WARFARE	Sun GREAT MIGRANT SWINDLE	Sun BRITS NOT FAIR!	Daily Mail CRUSHING VERDICT ON OPEN-DOOR MIGRATION
Daily Mail 8-PAGES OF FABULOUS FAMILY DEADLY COST OF OUR OPEN BORDERS	Daily Mail My man keeps texting a Page 3 girl, what can I do? 16 MILLION MIGRANTS FROM THE EU SETTLE IN BRITAIN	Daily Mail SAVE OVER £100 BETRAYAL OF WHITE PUPILS	Daily Mail Enough of this madness WARNING ON 'UK MUSLIM GHETTOS'	Daily Mail MIGRANTS SMUGGLED TO UK FOR JUST £100	Daily Mail OSBORNE'S 3M MIGRANT BOMBHELL	Daily Mail MIGRANT WORKERS BLOW TO CAMERON

RELIGION, RACE, ETHNICITY



Source: Social Data Lab

TRUMP AND RADICAL ISLAM

WHAT SHOULD THE NEW PRESIDENT DO TO TACKLE RADICAL ISLAM AT HOME AND OVERSEAS?

SEND US YOUR VIEWS FOR PUBLICATION

Like · Reply · 3y

Amos Costa Close down all mosques, Deport all muslims criminal, Forbid quran, HADITH and sira reading,... See more

Like · Reply · 3y

Gloria Cammarata Bertz I think he needs to join forces with the many Muslims born and raised here who are peaceful. He also needs to assure them they are as safe as any other law-abiding citizen and dispel the rumors and propaganda. They are just as concerned about the extr... See more

Like · Reply · 2y

Miles Bob Just drop bombs on every Mosque, etc ... until they are all gone !!!

Like · Reply · 2y

Andrea Kay Schadewitz Close all Mosques and IF selectively women and small kids come here they must attend classes in the US Constitution and Christian ethics. No men unless they are Coptic or other Christians

Write a comment... 🌐 🎬 🗨️

 **@mrbenny58 @MailOnline** We are not the only country affected by this vermin. Went to France last year and they have similar issues with Roma gypos

RELIGION, RACE, ETHNICITY



Football racism: Rashford and Pogba face abuse on social media

RACE

© 25 Aug 2019 Last updated at 14:05

Manchester United @ManUtd
*#MUNCRY. Wish we were playing Chelsea again, though...
1:21 PM · Aug 24, 2019 · Twitter for iPhone
8.8K Retweets 21.1K Likes

BoomBoomCiao69 @lunaticgenius10 · 14m
Replying to @ManUtd
@paulpogba is a HUGE d head. Some people just deserve the racism they get. F***** monkey 🐵

Miv @MivB_
Rashford you chimney sweeping n with a cotton picking family history
16:30 · 24/08/2019 · Twitter Web App

RACE

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Disability This article is more than 6 months old

Online hate crime against disabled people rises by a third

Social media firms urged to protect users as offences increase in England and Wales

Amy Walker
 Fri 10 May 2019 15:30 BST

f t e 307



DISABILITY



Changing Faces @FaceEquality 1d
 .@tayhils @Adam_Pearson You said you "wouldn't want him sat in the window of [your] restaurant". Why?

taylor @tayhils Follow

@FaceEquality @Adam_Pearson because I wouldn't want anyone to avoid coming into my restaurant because of his face.

6/01/2016 7:35 am

DISABILITY

Watch: 'I have a bullet ready for you' - women's rights activist's regular dose of hate speech

Right to free speech should not come with hateful messages

National Human rights Social media Gender

February 12, 2019 | Sarah Carabott | 225

BELIEFS



Hate crime victims left suicidal and afraid to leave home because of attacks 'unleashed after Brexit referendum'

MPs warn that hate crime can make people vulnerable to extremism by destroying cohesion in UK

Lizzie Dearden Home Affairs Correspondent | @lizziedearden |

Tuesday 5 February 2019 14:30 | 10 comments



People have been left suicidal and afraid to leave their homes because of a wave of hate crime "unleashed" after the EU referendum. MPs have found.

The first inquiry by the All-Party Parliamentary Group (APPG) on Hate Crime warned that rising offences were causing "psychological and emotional harm".

indy100 TRENDING



Fans defend NBA star spotted eating waffle on bench during game

Europe

Social Media Giants Blamed for British Teenage Suicides

By Jamie Dettmer
February 04, 2019 12:48 PM



Questions for the room:



1. Are there any communities in your country which are particularly vulnerable to hate speech?
2. Have there been any highly mediatised accounts of online hate speech in your country?

Workshop goals

1. Understand and identify cases of online hate speech
2. Needs of victims of online hate speech
3. Needs of support professionals
4. The role of victim support services



Victims' Needs

Specific needs of victims of online hate speech

- Timely and individual needs assessment
- Protection from repeated victimisation
- Access to effective complaint mechanisms
- Safe and/or anonymous reporting mechanisms
- General and specialist victim support services
- Technical support
- Community level response



'It is reasonable to expect that victims of hate crimes based on race, ethnicity, religion, or another comparable characteristic may also experience **heightened psychological distress** because the incident represents a serious attack on a fundamental aspect of the victim's personal identity.'

- Herek, G. M. (1992). The social context of hate crimes: Notes on cultural heterosexism.

Questions for the room:



1. Are there any victims' needs missing?
2. Do you know of a good practice in addressing the needs of victims of hate speech?

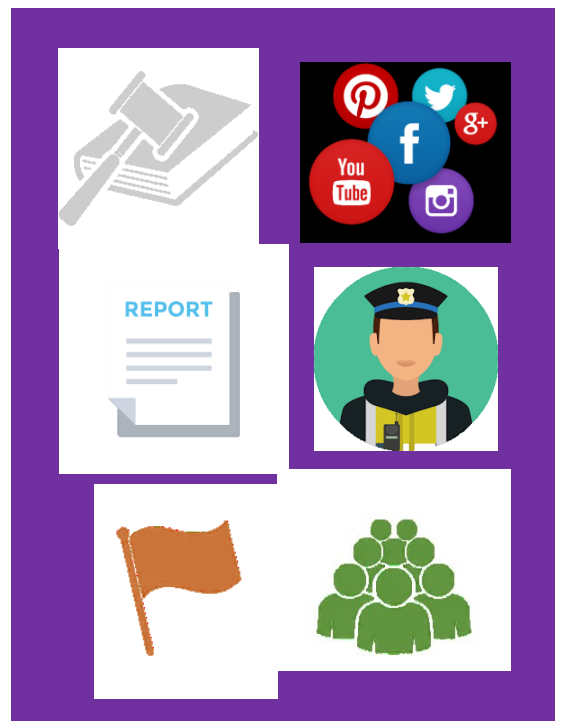


Workshop goals

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Needs of support professionals

- Understand national legislation
- Available reporting mechanisms (other than police)
- Trusted flagger
- Technical know-how
- Cooperation with local LEA
 - police report
- Prepare a community response



Case study: reporting mechanisms in Belgium

UNIA Reporting form
Help | NL • FR • DE • EN

Report it

Have you seen, heard or personally experienced discrimination or hate speech?

Submit an online report >

[Call the toll-free number 0800 12 800 >](#)

[Watch the video in Flemish or French Belgian Sign Language >](#)

[Report an issue concerning gender equality >](#)

UNI-FORM

Help stop the hate

[▶](#)

MAKE A REPORT

You don't need an account to report, but please consider the [advantages of signing up.](#)

[About the project](#)



COUNCIL OF EUROPE
No Hate Speech Youth Campaign

Home
Taking Action ▾
Publications/ Education ▾
Social Media Tools ▾
Library ▾
Work on Hate Speech ▾
Contact us ▾

You are here: Democracy > No Hate Speech Youth Campaign > Taking Action > Reporting Hate Speech

Reporting to National Bodies


The below accordion introduces the national reporting procedures and mechanisms for hate speech, hate crime and cyberbullying in different countries.

By clicking on the small arrow at the right of each line, you can discover the existing reporting procedure by country.

Austria	▼
Azerbaijan	▼
Belgium	▼
Bulgaria	▼
Estonia	▼
Finland	▼
France	▼
Greece	▼
Hungary	▼
Ireland	▼
Latvia	▼
Luxembourg	▼
Montenegro	▼
Norway	▼
Portugal	▼

Greece ▼

Hungary ▲

 **Reporting Hate Speech***

» National Media and Info-communications Authority: service for content that is illegal or harmful for minors through the website

- » internethotline.hu/
- » english.nmhh.hu/article/1872/Internet_Hotline_hotline_to_report_harmful_content

» Safer Internet Day / INHOPE network in Hungary: harmful content for minors and cyber bullying

- » biztonsagosinternet.hu/

» Tett és Védelem Alapítvány: insults or anti-Semitic abuse due to a supposed or real Jewish background

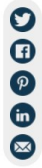
- » www.tev.hu
- » [00.36 1 51 00 000](tel:003615100000)

» Kek Vonal (Blue line): Children help line

- » kek-vonal.hu/index.php/hu/

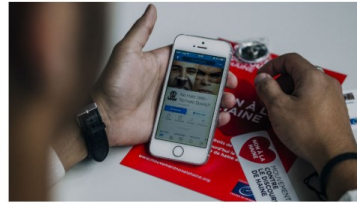
[Download the procedure and legal grounds to take action in Hungary](#)

* The above information comes from a mapping study on national reporting mechanisms in the countries involved in the No Hate Speech Movement. For questions or corrections, [contact us](#).



Reporting on Social Media Platforms

The social media below explain their procedures and mechanisms to report hate speech and cyberbullying within most of their user features.

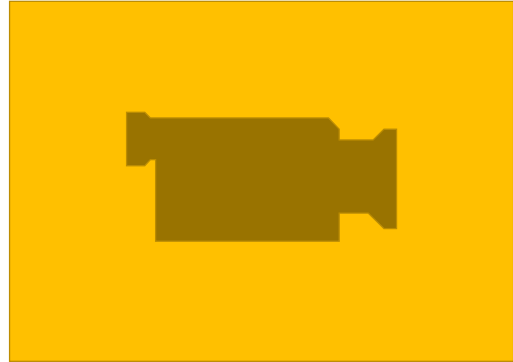


By clicking on the small arrow at the right of each line, you will discover the social media reporting procedures that interest you.

Facebook	▼
Twitter	▼
Instagram	▼
Snapchat	▼
Vkontakte (VK)	▼



Reporting app: eMORE



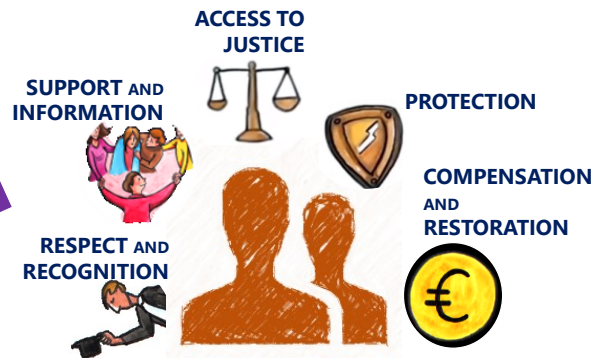
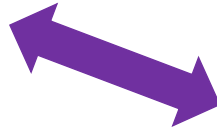
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Victim Support



services



The role of victim support services

Question for the room:



1. Does your organisation currently take any specific measures in supporting victims of hate speech?

(E.g. referral to specialist service, technical training to frontline staff, utilisation of online reporting mechanism.)



What can you do to fight hate speech?

1. Ensure your frontline staff understand your national legislation around hate speech.
2. Ensure your frontline staff can identify cases of hate speech and have the tools to flag and report harmful content.
3. Identify and promote national reporting procedures and mechanisms around hate speech.



Thank You

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www.victimsupport.eu



[@victimsupportEU](https://twitter.com/victimsupportEU)

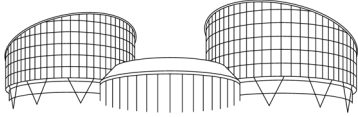


[@victimsupporteurope](https://www.facebook.com/victimsupporteurope)



www.crimeiscrime.eu





October 2019

This factsheet does not bind the Court and is not exhaustive

Hate speech

“Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], it **is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.** Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.” ([Handyside v. the United Kingdom](#) judgment of 7 December 1976, § 49).

“... [T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle **it may be considered necessary** in certain democratic societies **to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance** ..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.” ([Erbakan v. Turkey](#) judgment of 6 July 2006, § 56).

1. When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches which are provided for by the [European Convention on Human Rights](#):

- the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights)¹, where the comments in question amount to hate speech and negate the fundamental values of the Convention; and
- the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention² (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention).

2. Internet news portals which, for commercial and professional purposes, provide a platform for user-generated comments assume the “duties and responsibilities” associated with freedom of expression in accordance with Article 10 § 2 of the Convention where users disseminate hate speech or comments amounting to direct incitement to violence.

¹ This provision is aimed at preventing persons from inferring from the Convention any right to engage in activities or perform acts aimed at the destruction of any of the rights and freedoms set forth in the Convention.

² Restrictions deemed necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.

Exclusion from the protection of the Convention

“[T]here is no doubt that any remark directed against the Convention’s underlying values would be removed from the protection of Article 10 [freedom of expression] by Article 17 [prohibition of abuse of rights] (...)” (*Seurot v. France*, decision on the admissibility of 18 May 2004)

Ethnic hate

[Pavel Ivanov v. Russia](#)

20 February 2007 (decision on the admissibility)

The applicant, owner and editor of a newspaper, was convicted of public incitement to ethnic, racial and religious hatred through the use of mass-media. He authored and published a series of articles portraying the Jews as the source of evil in Russia, calling for their exclusion from social life. He accused an entire ethnic group of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. Both in his publications, and in his oral submissions at the trial, he consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The applicant complained, in particular, that his conviction for incitement to racial hatred had not been justified.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It had no doubt as to the markedly anti-Semitic tenor of the applicant’s views and agreed with the assessment made by the domestic courts that through his publications he had sought to incite hatred towards the Jewish people. Such a general, vehement attack on one ethnic group is directed against the Convention’s underlying values, notably tolerance, social peace and non-discrimination. Consequently, by reason of Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not benefit from the protection afforded by Article 10 (freedom of expression) of the Convention.

See also: [W.P. and Others v. Poland](#) (no. 42264/98), decision on the admissibility of 2 September 2004 (concerning the refusal by the Polish authorities to allow the creation of an association with statutes including anti-Semitic statements – the Court held that the applicants could not benefit from the protection afforded by Article 11 (freedom of assembly and association) of the Convention).

Incitement to violence and support for terrorist activity

[Roj TV A/S v. Denmark](#)

17 April 2018 (decision on the admissibility)

This case concerned the applicant company’s conviction for terrorism offences by Danish courts for promoting the Kurdistan Workers’ Party (PKK) through television programmes broadcast between 2006 and 2010. The domestic courts found it established that the PKK could be considered a terrorist organisation within the meaning of the Danish Penal Code and that Roj TV A/S had supported the PKK’s terror operation by broadcasting propaganda. It was fined and its licence was withdrawn. The applicant company complained that its conviction had interfered with its freedom of expression.

The Court declared the application **inadmissible** as being incompatible *ratione materiae* with the provisions of the Convention. It found in particular that the television station could not benefit from the protection afforded by Article 10 of the Convention as it had tried to employ that right for ends which were contrary to the values of the Convention. That had included incitement to violence and support for terrorist activity, which had been in violation of Article 17 (prohibition of abuse of rights) of the Convention. Thus the complaint by the applicant company did not attract the protection of the right to freedom of expression.

Negationism and revisionism

Garaudy v. France

24 June 2003 (decision on the admissibility)

The applicant, the author of a book entitled *The Founding Myths of Modern Israel*, was convicted of the offences of disputing the existence of crimes against humanity, defamation in public of a group of persons – in this case, the Jewish community – and incitement to racial hatred. He argued that his right to freedom of expression had been infringed.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It considered that the content of the applicant's remarks had amounted to Holocaust denial, and pointed out that denying crimes against humanity was one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. Disputing the existence of clearly established historical events did not constitute scientific or historical research; the real purpose was to rehabilitate the National Socialist regime and accuse the victims themselves of falsifying history. As such acts were manifestly incompatible with the fundamental values which the Convention sought to promote, the Court applied Article 17 (prohibition of abuse of rights) and held that the applicant was not entitled to rely on Article 10 (freedom of expression) of the Convention.

See also: [Honsik v. Austria](#), decision of the European Commission of Human Rights³ of 18 October 1995 (concerning a publication denying the committing of genocide in the gas chambers of the concentration camps under National Socialism); [Marais v. France](#), decision of the Commission of 24 June 1996 (concerning an article in a periodical aimed at demonstrating the scientific implausibility of the "alleged gassings").

M'Bala M'Bala v. France

20 October 2015 (decision on the admissibility)

This case concerned the conviction of Dieudonné M'Bala M'Bala, a comedian with political activities, for public insults directed at a person or group of persons on account of their origin or of belonging to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith. At the end of a show in December 2008 at the "Zénith" in Paris, the applicant invited Robert Faurisson, an academic who has received a number of convictions in France for his negationist and revisionist opinions, mainly his denial of the existence of gas chambers in concentration camps, to join him on stage to receive a "prize for infrequency and insolence". The prize, which took the form of a three-branched candlestick with an apple on each branch, was awarded to him by an actor wearing what was described as a "garment of light" – a pair of striped pyjamas with a stitched-on yellow star bearing the word "Jew" – who thus played the part of a Jewish deportee in a concentration camp.

The Court declared the application **inadmissible** (incompatible *ratione materiae*), in accordance with Article 35 (admissibility criteria) of the Convention, finding that under Article 17 (prohibition of abuse of rights), the applicant was not entitled to the protection of Article 10 (freedom of expression). The Court considered in particular that during the offending scene the performance could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism through the key position given to Robert Faurisson's appearance and the degrading portrayal of Jewish deportation victims faced with a man who denied their extermination. In the Court's view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter

³. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

to the values of the European Convention. The Court thus concluded that the applicant had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Williamson v. Germany

8 January 2019 (decision on the admissibility)

The applicant, a bishop and a former member of the Society of Saint Pius X, complained about his criminal conviction of incitement to hatred for denying the Holocaust on Swedish TV. In particular, he argued that German law was not applicable to his statements as the offence had not been committed in Germany, but in Sweden – where that statement was not subject to criminal liability. Moreover, he had never intended that his statement be broadcast in Germany and had done everything in his power to prevent its broadcast there.

The Court declared the application **inadmissible** as being manifestly ill-founded. It observed in particular that the applicant had agreed to provide the interview, in which he denied the Holocaust, in Germany despite residing elsewhere at the time while knowing that the statements he made were subject to criminal liability there. He did not insist during the interview that it not be broadcast in Germany and did not clarify with the interviewer or the television channel how the interview would be published. The Court thus found that the Regional court's assessment of the facts was acceptable with respect to its finding that the offence had been committed in Germany, in particular because the key feature of the offence (the interview) had been carried out there.

Pastörs v. Germany

3 October 2019⁴

This case concerned the conviction of a Land deputy for denying the Holocaust during a speech in the regional Parliament.

The Court declared **inadmissible** as being manifestly ill-founded the applicant's complaint under Article 10 (freedom of expression) of the Convention. It noted in particular that the applicant had intentionally stated untruths to defame Jews. Such statements could not attract the protection for freedom of speech offered by the Convention as they ran counter to the values of the Convention itself. In the applicant's case, the response by the German courts, the conviction, had therefore been proportionate to the aim pursued and had been "necessary in a democratic society".

Racial hate

Glimmerveen and Hagenbeek v. the Netherlands

11 October 1979 (decision of the European Commission of Human Rights⁵)

In this case, the applicants had been convicted for possessing leaflets addressed to "White Dutch people", which tended to make sure notably that everyone who was not white left the Netherlands.

The Commission declared the application **inadmissible**, finding that Article 17 (prohibition of abuse of rights) of the Convention did not permit the use of Article 10 (freedom of expression) to spread ideas which are racially discriminatory.

⁴ This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

⁵. See footnote 3 above.

Religious hate

Norwood v. the United Kingdom

16 November 2004 (decision on the admissibility)

The applicant had displayed in his window a poster supplied by the British National Party, of which he was a member, representing the Twin Towers in flame. The picture was accompanied by the words "Islam out of Britain – Protect the British People". As a result, he was convicted of aggravated hostility towards a religious group. The applicant argued, among other things, that his right to freedom of expression had been breached.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It found in particular that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The Court therefore held that the applicant's display of the poster in his window had constituted an act within the meaning of Article 17 (prohibition of abuse of rights) of the Convention, and that the applicant could thus not claim the protection of Article 10 (freedom of expression) of the Convention.

Belkacem v. Belgium

27 June 2017 (decision on the admissibility)

This case concerned the conviction of the applicant, the leader and spokesperson of the organisation "Sharia4Belgium", which was dissolved in 2012, for incitement to discrimination, hatred and violence on account of remarks he made in *YouTube* videos concerning non-Muslim groups and Sharia. The applicant argued that he had never intended to incite others to hatred, violence or discrimination but had simply sought to propagate his ideas and opinions. He maintained that his remarks had merely been a manifestation of his freedom of expression and religion and had not been apt to constitute a threat to public order.

The Court declared the application **inadmissible** (incompatible *ratione materiae*). It noted in particular that in his remarks the applicant had called on viewers to overpower non-Muslims, teach them a lesson and fight them. The Court considered that the remarks in question had a markedly hateful content and that the applicant, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimination underlying the European Convention on Human Rights. With reference to the applicant's remarks concerning Sharia, the Court further observed that it had previously ruled that defending Sharia while calling for violence to establish it could be regarded as hate speech, and that each Contracting State was entitled to oppose political movements based on religious fundamentalism. In the present case, the Court considered that the applicant had attempted to deflect Article 10 (freedom of expression) of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention. Accordingly, the Court held that, in accordance with Article 17 (prohibition of abuse of rights) of the Convention, the applicant could not claim the protection of Article 10.

Threat to the democratic order

As a rule, the Court will declare inadmissible, on grounds of incompatibility with the values of the Convention, applications which are inspired by totalitarian doctrine or which express ideas that represent a threat to the democratic order and are liable to lead to the restoration of a totalitarian regime.

See, among others: [Communist Party of Germany v. the Federal Republic of Germany](#), decision of the European Commission on Human Rights⁶ of 20 July 1957;

⁶. See footnote 3 above.

[B.H, M.W, H.P and G.K. v. Austria](#) (application no. 12774/87), decision of the Commission of 12 October 1989; [Nachtmann v. Austria](#), decision of the Commission of 9 September 1998; [Schimanek v. Austria](#), decision of the Court on the admissibility of 1 February 2000.

Restrictions on the protection afforded by Article 10 (freedom of expression) of the Convention

Under Article 10, paragraph 2, of the Convention, the Court will examine successively if an interference in the freedom of expression exists, if this interference is prescribed by law and pursues one or more legitimate aims, and, finally, if it is “necessary in a democratic society” to achieve these aims.

Apology of violence and incitement to hostility

[Sürek \(no.1\) v. Turkey](#)

8 July 1999 (Grand Chamber)

The applicant was the owner of a weekly review which published two readers’ letters vehemently condemning the military actions of the authorities in south-east Turkey and accusing them of brutal suppression of the Kurdish people in their struggle for independence and freedom. The applicant was convicted of “disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people”. He complained that his right to freedom of expression had been breached.

The Court held that there had been **no violation of Article 10** (freedom of expression). It noted that the impugned letters amounted to an appeal to bloody revenge and that one of them had identified persons by name, stirred up hatred for them and exposed them to the possible risk of physical violence. Although the applicant had not personally associated himself with the views contained in the letters, he had nevertheless provided their writers with an outlet for stirring up violence and hatred. The Court considered that, as the owner of the review, he had been vicariously subject to the duties and responsibilities which the review’s editorial and journalistic staff undertook in the collection and dissemination of information to the public, and which assumed even greater importance in situations of conflict and tension.

See also, among others: [Özgür Gündem v. Turkey](#), judgment of 16 mars 2000 (conviction of a daily newspaper for the publication of three articles containing passages which advocated intensifying the armed struggle, glorified war and espoused the intention to fight to the last drop of blood); [Medya FM Reha Radyo ve İletişim Hizmetleri A. Ş. v. Turkey](#), decision on the admissibility of 14 November 2006 (one-year suspension of right to broadcast, following repeated radio programmes deemed to be contrary to principles of national unity and territorial integrity and likely to incite violence, hatred and racial discrimination).

[Gündüz v. Turkey](#)

13 November 2003 (decision on the admissibility)

The applicant, the leader of an Islamic sect, had been convicted of incitement to commit an offence and incitement to religious hatred on account of statements reported in the press. He was sentenced to four years and two months’ imprisonment and to a fine. The applicant argued, among other things, that his right to freedom of expression had been breached.

The Court declared the application **inadmissible** (manifestly ill-founded), finding that the severity of the penalty imposed on the applicant could not be regarded as disproportionate to the legitimate aim pursued, namely the prevention of public incitement to commit offences. The Court stressed in particular that statements which may be held to amount to hate speech or to glorification of or incitement to violence,

such as those made in the instant case, cannot be regarded as compatible with the notion of tolerance and run counter to the fundamental values of justice and peace set forth in the Preamble to the Convention. Admittedly, the applicant's sentence, which was increased because the offence had been committed by means of mass communication, was severe. The Court considered, however, that provision for deterrent penalties in domestic law may be necessary where conduct reaches the level observed in the instant case and becomes intolerable in that it negates the founding principles of a pluralist democracy.

Gündüz v. Turkey

4 December 2003

The applicant was a self-proclaimed member of an Islamist sect. During a televised debate broadcast in the late evening, he spoke very critically of democracy, describing contemporary secular institutions as "impious", fiercely criticising secular and democratic principles and openly calling for the introduction of Sharia law. He was convicted of openly inciting the population to hatred and hostility on the basis of a distinction founded on membership of a religion or denomination. The applicant alleged a violation of his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the applicant, who had represented the extremist ideas of his sect, with which the public was already familiar, had been taking an active part in an animated public discussion. That pluralist debate had sought to present the sect and its unorthodox views, including the notion that democratic values were incompatible with its conception of Islam. The topic had been the subject of widespread debate in the Turkish media and concerned a problem of general interest. The Court considered that the applicant's remarks could not be regarded as a call to violence or as hate speech based on religious intolerance. The mere fact of defending sharia, without calling for violence to introduce it, could not be regarded as hate speech.

Faruk Temel v. Turkey

1 February 2011

The applicant, the chairman of a legal political party, read out a statement to the press at a meeting of the party, in which he criticised the United States' intervention in Iraq and the solitary confinement of the leader of a terrorist organisation. He also criticised the disappearance of persons taken into police custody. Following his speech the applicant was convicted of disseminating propaganda, on the ground that he had publicly defended the use of violence or other terrorist methods. The applicant contended that his right to freedom of expression had been breached.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the applicant had been speaking as a political actor and a member of an opposition political party, presenting his party's views on topical matters of general interest. It took the view that his speech, taken overall, had not incited others to the use of violence, armed resistance or uprising and had not amounted to hate speech.

See also, among others: **Dicle (no. 2) v. Turkey**, judgment of 11 April 2006 (conviction for inciting to hatred and hostility on the basis of a distinction between social classes, races and religions, following the publication of a seminar report); **Erdal Taş v. Turkey**, judgment of 19 December 2006 (conviction for disseminating propaganda against the indivisibility of the State on account of the publication of a statement by a terrorist organisation, following the publication in a newspaper of an article consisting of analysis of the Kurdish question).

Circulating homophobic leaflets

Vejdeland and Others v. Sweden

9 February 2012

This case concerned the applicants' conviction for distributing in an upper secondary

school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The applicants had distributed leaflets by an organisation called National Youth, by leaving them in or on the pupils' lockers. The statements in the leaflets were, in particular, allegations that homosexuality was a "deviant sexual proclivity", had "a morally destructive effect on the substance of society" and was responsible for the development of HIV and AIDS. The applicants claimed that they had not intended to express contempt for homosexuals as a group and stated that the purpose of their activity had been to start a debate about the lack of objectivity in the education in Swedish schools.

The Court found that these statements had constituted serious and prejudicial allegations, even if they had not been a direct call to hateful acts. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour. It concluded that there had been **no violation of Article 10** (freedom of expression) of the Convention, as the interference with the applicants' exercise of their right to freedom of expression had reasonably been regarded by the Swedish authorities as "necessary in a democratic society" for the protection of the reputation and rights of others.

Condoning terrorism

Leroy v. France

2 October 2008

The applicant, a cartoonist, complained of his conviction for publicly condoning terrorism following the publication in a Basque weekly newspaper on 13 September 2001 of a drawing representing the attack on the twin towers of the World Trade Center with a caption imitating the advertising slogan of a famous brand: "We all dreamt of it... Hamas did it". He argued that his freedom of expression had been infringed.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in respect of the applicant's conviction for complicity in condoning terrorism. It considered, in particular, that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. In this regard, the Court based its finding on the caption which accompanied the drawing, and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims. In addition, it had to be recognised that the drawing had assumed a special significance in the circumstances of the case, as the applicant must have realised. Moreover, the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked; the weekly newspaper's limited circulation notwithstanding, the Court noted that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region. Consequently, the Court considered that the grounds put forward by the domestic courts in convicting the applicant had been relevant and sufficient and, having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, it found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.

Stomakhin v. Russia

9 May 2018

This case concerned the applicant's conviction and sentence to five years in jail for newsletter articles he had written on the armed conflict in Chechnya, which the domestic courts said had justified terrorism and violence and incited hatred. He complained about his conviction for views expressed in the newsletters.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that some of the articles had gone beyond the

bounds of acceptable criticism and had amounted to calls for violence and the justification of terrorism. Other statements, however, had been within acceptable limits of criticism. Overall, there had not been a pressing social need to interfere with the applicant's rights by penalising him for some of his comments and the harshness of the penalty had violated his rights. The Court also added that it was vitally important for States to take a cautious approach when determining the scope of crimes of hate speech. It called on them to strictly construe legislation in order to avoid excessive interference under the guise of action against such speech, when what was in question was actually criticism of the authorities or their policies.

Condoning war crimes

Lehideux and Isorni v. France

23 September 1998

The applicants wrote a text which was published in the daily newspaper *Le Monde* and which portrayed Marshal Pétain in a favourable light, drawing a veil over his policy of collaboration with the Nazi regime. The text ended with an invitation to write to two associations dedicated to defending Marshal Pétain's memory, seeking to have his case reopened and to have the judgment of 1945 sentencing him to death and to forfeiture of his civic rights overturned, and to have him rehabilitated. Following a complaint by the National Association of Former Members of the Resistance, the two authors were convicted of publicly defending war crimes and crimes of collaboration with the enemy. They alleged a violation of their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It considered that the impugned text, although it could be regarded as polemical, could not be said to be negationist since the authors had not been writing in a personal capacity but on behalf of two legally constituted associations, and had praised not so much pro-Nazi policies as a particular individual. Lastly, the Court noted that the events referred to in the text had occurred more than forty years before its publication and that the lapse of time made it inappropriate to deal with such remarks, forty years on, with the same severity as ten or twenty years previously.

Denigrating national identity

Dink v. Turkey

14 September 2010

Firat (Hrank) Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of a bilingual Turkish-Armenian weekly newspaper published in Istanbul. Following the publication in this newspaper of eight articles in which he expressed his views on the identity of Turkish citizens of Armenian origin, he was found guilty in 2006 of "denigrating Turkish identity". In 2007 he was killed by three bullets to the head as he left the offices of the newspaper. The applicants, his relatives, complained in particular of the guilty verdict against him which, they claimed, had made him a target for extreme nationalist groups.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that there had been no pressing social need to find Firat Dink guilty of denigrating "Turkishness". It observed, in particular, that the series of articles taken overall did not incite others to violence, resistance or revolt. The author had been writing in his capacity as a journalist and editor-in-chief of a Turkish-Armenian newspaper, commenting on issues concerning the Armenian minority in the context of his role as a player on the political scene. He had merely been conveying his ideas and opinions on an issue of public concern in a democratic society. In such societies, the debate surrounding historical events of a particularly serious nature should be able to take place freely, and it was an integral part of freedom of expression to seek historical truth. Finally, the impugned articles had not been gratuitously offensive or insulting, and they had not incited others to disrespect or hatred.

Extremism

Ibragim Ibragimov and Others v. Russia

28 August 2018

This case concerned anti-extremism legislation in Russia and a ban on publishing and distributing Islamic books. The applicants complained that the Russian courts had ruled in 2007 and 2010 that books by Said Nursi, a well-known Turkish Muslim theologian and commentator of the Qur'an, were extremist and banned their publication and distribution. The applicants had either published some of Nursi's books or had commissioned them for publication.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. The Court found in particular that the Russian courts had not justified why the ban had been necessary. They had merely endorsed the overall findings of an expert report carried out by linguists and psychologists, without making their own analysis or, most notably, setting the books or certain of their expressions considered problematic in context. Furthermore, they had summarily rejected all the applicants' evidence explaining that Nursi's books belonged to moderate, mainstream Islam.

Overall, the courts' analysis in the applicants' cases had not shown how Nursi's books, already in publication for seven years before being banned, had ever caused, or risked causing, interreligious tensions, let alone violence, in Russia or, indeed, in any of the other countries where they were widely available.

Display of a flag with controversial historical connotations

Fáber v. Hungary

24 July 2012

The applicant complained that he had been fined for displaying the striped Árpád flag, which had controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred.

The Court held that there had been a **violation of Article 10** (freedom of expression) **read in the light of Article 11** (freedom of assembly and association) of the Convention. It accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining the applicant for refusing to take down the flag in question. The mere display of that flag did not disturb public order or hamper the demonstrators' right to assemble, as it had been neither intimidating, nor capable of inciting violence.

Incitement to ethnic hatred

Balsytė-Lideikienė v. Lithuania

4 November 2008

The applicant owned a publishing company. In March 2001 the Polish courts found that she had breached the Code on Administrative Offences on account of her publishing and distributing the "Lithuanian calendar 2000" which, according to the conclusions of political science experts, promoted ethnic hatred. She was issued with an administrative warning and the unsold copies of the calendar were confiscated. The applicant alleged in particular that the confiscation of the calendar and the ban on its further distribution had infringed her right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found, in particular, that the applicant had expressed aggressive

nationalism and ethnocentrism and statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian authorities cause for serious concern. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court found that in the present case the domestic authorities had not overstepped their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant. The Court also noted that even though the confiscation measure imposed on the applicant could be deemed relatively serious, she had not had a fine imposed on her, but only a warning, which was the mildest administrative punishment available. Therefore, the Court found that the interference with the applicant's right to freedom of expression could reasonably have been considered "necessary in a democratic society" for the protection of the reputation or rights of others.

Incitement to national hatred

Hösl-Daum and Others v. Poland

7 October 2014 (decision on the admissibility)

The applicants were charged with insulting the Polish nation and inciting national hatred. They alleged a breach of their right to freedom of expression on account of their conviction for putting up posters in the German language describing atrocities committed after the Second World War by the Polish and the Czechs against the Germans.

The Court declared the application **inadmissible** for non-exhaustion of domestic remedies. It found that, by failing to lodge a constitutional complaint against the impugned provisions of the Criminal Code, the applicants had failed to exhaust the remedy provided for by Polish law.

Incitement to racial discrimination or hatred

Jersild v. Denmark

23 September 1994

The applicant, a journalist, had made a documentary containing extracts from a television interview he had conducted with three members of a group of young people calling themselves the "Greenjackets", who had made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The applicant was convicted of aiding and abetting the dissemination of racist remarks. He alleged a breach of his right to freedom of expression.

The Court drew a distinction between the members of the "Greenjackets", who had made openly racist remarks, and the applicant, who had sought to expose, analyse and explain this particular group of youths and to deal with "specific aspects of a matter that already then was of great public concern". The documentary as a whole had not been aimed at propagating racist views and ideas, but at informing the public about a social issue. Accordingly, the Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention.

Soulas and Others v. France

10 July 2008

This case concerned criminal proceedings brought against the applicants, following the publication of a book entitled "The colonisation of Europe", with the subtitle "Truthful remarks about immigration and Islam". The proceedings resulted in their conviction for inciting hatred and violence against Muslim communities from northern and central Africa. The applicants complained in particular that their freedom of expression had been breached.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It noted, in particular, that, when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as

the main enemy, and to lead the book's readers to share the solution recommended by the author, namely a war of ethnic re-conquest. Holding that the grounds put forward in support of the applicants' conviction had been sufficient and relevant, it considered that the interference in the latter's right to freedom of expression had been "necessary in a democratic society". Finally, the Court observed that the disputed passages in the book were not sufficiently serious to justify the application of Article 17 (prohibition of abuse of rights) of the Convention in the applicants' case.

Féret v. Belgium

16 July 2009

The applicant was a Belgian member of Parliament and chairman of the political party *Front National/Nationaal Front* in Belgium. During the election campaign, several types of leaflets were distributed carrying slogans including "Stand up against the Islamification of Belgium", "Stop the sham integration policy" and "Send non-European job-seekers home". The applicant was convicted of incitement to racial discrimination. He was sentenced to community service and was disqualified from holding parliamentary office for 10 years. He alleged a violation of his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. In its view, the applicant's comments had clearly been liable to arouse feelings of distrust, rejection or even hatred towards foreigners, especially among less knowledgeable members of the public. His message, conveyed in an electoral context, had carried heightened resonance and clearly amounted to incitement to racial hatred. The applicant's conviction had been justified in the interests of preventing disorder and protecting the rights of others, namely members of the immigrant community.

Le Pen v. France

20 April 2010 (decision on the admissibility)

At the time of the facts, the applicant was president of the French "National Front" party. He alleged in particular that his conviction for incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with *Le Monde* daily newspaper – he had asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge" – had breached his right to freedom of expression.

The Court declared the application **inadmissible** (manifestly ill-founded). It observed that the applicant's statements had been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. Moreover, the varying scale of the problems concerned, which could sometimes generate misunderstanding and incomprehension, required considerable latitude to be left to the State in assessing the need for interference with a person's freedom of expression. In this case, however, the applicant's comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French on the one hand against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting the applicant had thus been relevant and sufficient. Nor had the penalty imposed been disproportionate. The Court therefore found that the interference with the applicant's enjoyment of his right to freedom of expression had been "necessary in a democratic society".

Perincek v. Switzerland

15 October 2015 (Grand Chamber)

This case concerned the criminal conviction of the applicant, a Turkish politician, for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire in 1915 and the following years had

not amounted to genocide. The Swiss courts held in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The applicant complained that his criminal conviction and punishment had been in breach of his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. Being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, it found that the dignity of the victims and the dignity and identity of modern-day Armenians were protected by Article 8 (right to respect for private life) of the Convention. The Court therefore had to strike a balance between two Convention rights – the right to freedom of expression and the right to respect for private life –, taking into account the specific circumstances of the case and the proportionality between the means used and the aim sought to be achieved. In this case, the Court concluded that it had not been necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the case. In particular, the Court took into account the following elements: the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; the context in which they were made had not been marked by heightened tensions or special historical overtones in Switzerland; the statements could not be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland; there was no international law obligation for Switzerland to criminalise such statements; the Swiss courts appeared to have censured the applicant simply for voicing an opinion that diverged from the established ones in Switzerland; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.

Šimunić v. Croatia

22 January 2019 (decision on the admissibility)

The applicant, a football player, was convicted of a minor offence of addressing messages to spectators of a football match, the content of which expressed or enticed hatred on the basis of race, nationality and faith. He submitted in particular that his right to freedom of expression had been violated.

The Court declared the applicant's complaint under Article 10 (freedom of expression) of the Convention **inadmissible** as being manifestly ill-founded, finding that the interference with his right to freedom of expression had been supported by relevant and sufficient reasons and that the Croatian authorities, having had regard to the relatively modest nature of the fine imposed on the applicant and the context in which he had shouted the impugned phrase, had struck a fair balance between his interest in free speech, on the one hand, and society's interests in promoting tolerance and mutual respect at sports events as well as combating discrimination through sport on the other hand, thus acting within their margin of appreciation. The Court noted in particular that the applicant, being a famous football player and a role-model for many football fans, should have been aware of the possible negative impact of provocative chanting on spectators' behaviour, and should have abstained from such conduct.

Incitement to religious intolerance

İ.A. v. Turkey (no. 42571/98)

13 September 2005

The applicant, the owner and managing director of a publishing company, published 2,000 copies of a book which addressed theological and philosophical issues in a novelistic style. The Istanbul public prosecutor charged the applicant with insulting "God, the Religion, the Prophet and the Holy Book" through the publication. The court of first instance sentenced the applicant to two years' imprisonment and payment of a fine, and immediately commuted the prison sentence to a small fine. The applicant appealed to

the Court of Cassation, which upheld the judgment. The applicant alleged that his conviction and sentence had infringed his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It reiterated, in particular, that those who chose to exercise the freedom to manifest their religion, irrespective of whether they did so as members of a religious majority or a minority, could not reasonably expect to be exempt from all criticism. They had to tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the present case concerned not only comments that were disturbing or shocking or a “provocative” opinion but an abusive attack on the Prophet of Islam. Notwithstanding the fact that there was a certain tolerance of criticism of religious doctrine within Turkish society, which was deeply attached to the principle of secularity, believers could legitimately feel that certain passages of the book in question constituted an unwarranted and offensive attack on them. In those circumstances, the Court considered that the measure in question had been intended to provide protection against offensive attacks on matters regarded as sacred by Muslims and had therefore met a “pressing social need”. It also took into account the fact that the Turkish courts had not decided to seize the book in question, and consequently held that the insignificant fine imposed had been proportionate to the aims pursued by the measure in question.

Erbakan v. Turkey

6 July 2006

The applicant, a politician, was notably Prime Minister of Turkey. At the material time he was chairman of *Refah Partisi* (the Welfare Party), which was dissolved in 1998 for engaging in activities contrary to the principles of secularism. He complained in particular that his conviction for comments made in a public speech, which had been held to have constituted incitement to hatred and religious intolerance, had infringed his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found that such comments – assuming they had in fact been made – by a well-known politician at a public gathering were more indicative of a vision of society structured exclusively around religious values and thus appeared hard to reconcile with the pluralism typifying contemporary societies, where a wide range of different groups were confronted with one another. Pointing out that combating all forms of intolerance was an integral part of human-rights protection, the Court held that it was crucially important that in their speeches politicians should avoid making comments liable to foster intolerance. However, having regard to the fundamental nature of free political debate in a democratic society, the Court concluded that the reasons given to justify the applicant’s prosecution were not sufficient to satisfy it that the interference with the exercise of his right to freedom of expression had been “necessary in a democratic society”.

Insult of State officials

Otegi Mondragon v. Spain

15 March 2011

The applicant, the spokesperson for a left-wing Basque separatist parliamentary group, referred at a press conference to the closure of a Basque daily newspaper (on account of its suspected links with ETA) and to the alleged ill-treatment of the persons arrested during the police operation. In his statement he referred to the King of Spain as “the supreme head of the Spanish armed forces, in other words, the person in command of the torturers, who defends torture and imposes his monarchic regime on our people through torture and violence”. The applicant was sentenced to a term of imprisonment for the offence of serious insult against the King. He alleged a breach of his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's conviction and sentence had been disproportionate to the legitimate aim pursued, namely the protection of the King of Spain's reputation, as guaranteed by the Spanish Constitution. The Court observed in particular that, while it was true that the language used by the applicant could have been considered provocative, it was essential to bear in mind that, even if some of the words used in the applicant's comments had been hostile in nature, there had been no incitement to violence and they had not amounted to hate speech. Furthermore, these had been oral statements made in the course of a press conference, which meant that the applicant had been unable to reformulate, rephrase or withdraw them before they were made public.

Stern Taulats and Roura Capellera v. Spain

13 March 2018

This case concerned the conviction of two Spanish nationals for setting fire to a photograph of the royal couple at a public demonstration held during the King's official visit to Girona in September 2007. The applicants complained in particular that the judgment finding them guilty of insult to the Crown amounted to unjustified interference with their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the act allegedly committed by the applicants had been part of a political, rather than personal, critique of the institution of monarchy in general, and in particular of the Kingdom of Spain as a nation. It also noted that it was one of those provocative "events" which were increasingly being "staged" to attract media attention and which went no further than the use of a certain permissible degree of provocation in order to transmit a critical message in the framework of freedom of expression. Moreover, the Court was not convinced that the impugned act could reasonably be construed as incitement to hatred or violence. In the present case, incitement to violence could not be deduced from the joint examination of the "props" used for staging the event or from the context in which it had taken place; nor could it be established on the basis of the consequences of the act, which had not led to violent behaviour or disorder. Furthermore, the facts could not be considered as constituting hate speech. Lastly, the Court held that the prison sentence served on the applicants had been neither proportionate to the legitimate aim pursued (protection of the reputation or rights of others) nor "necessary in a democratic society".

Hate speech and the Internet

Delfi AS v. Estonia

16 June 2015 (Grand Chamber)

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The applicant company, which runs a news portal run on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, the applicant company removed the offensive comments about six weeks after their publication.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It first noted the conflicting realities between the benefits of Internet, notably the unprecedented platform it provided for freedom of expression, and its dangers, namely the possibility of hate speech and speech inciting violence being disseminated worldwide in a matter of seconds and sometimes remaining persistently available online. The Court further observed that the unlawful nature of the comments in question was obviously based on the fact that the majority of the comments were, viewed on their face, tantamount to an incitement to hatred or to violence against the owner of the ferry company. Consequently, the case concerned the

duties and responsibilities of Internet news portals, under Article 10 § 2 of the Convention, which provided on a commercial basis a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engaged in clearly unlawful speech, which infringed the personality rights of others and amounted to hate speech and incitement to violence against them. In cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, the Court considered that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties. Based on the concrete assessment of these aspects and taking into account, in particular, the extreme nature of the comments in question, the fact that they had been posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction (320 euro) imposed on the applicant company, the Court found that the Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression.

Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary

2 February 2016

This case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites following the publication of an opinion criticising the misleading business practices of two real estate websites. The applicants complained about the Hungarian courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

It is to be noted that the applicants' case was different in some aspects from the *Delfi AS v. Estonia* case (see above) in which the Court had held that a commercially-run Internet news portal had been liable for the offensive online comments of its readers. The applicants' case was notably devoid of the pivotal elements in the *Delfi AS* case of hate speech and incitement to violence. Although offensive and vulgar, the comments in the present case had not constituted clearly unlawful speech. Furthermore, while *Index* is the owner of a large media outlet which must be regarded as having economic interests, *Magyar Tartalomszolgáltatók Egyesülete* is a non-profit self-regulatory association of Internet service providers, with no known such interests.

Pihl v. Sweden

7 February 2017 (decision on the admissibility)

The applicant had been the subject of a defamatory online comment, which had been published anonymously on a blog. He made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment. The claim was rejected by the Swedish courts and the Chancellor of Justice. The applicant complained to the Court that by failing to hold the association liable, the

authorities had failed to protect his reputation and had violated his right to respect for his private life.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that, in cases such as this, a balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal. In light of the circumstances of this case, the Court found that national authorities had struck a fair balance when refusing to hold the association liable for the anonymous comment. In particular, this was because: although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days.

Smajić v. Bosnia and Herzegovina

18 January 2018 (decision on the admissibility)

This case concerned the applicant's conviction for incitement to national, racial and religious hatred, discord or intolerance following a number of posts on an Internet forum describing military action which could be undertaken against Serb villages in the Brčko District in the event of another war. The applicant alleged in particular that he had been convicted for expressing his opinion on a matter of public concern.

The Court declared the applicant's complaint under Article 10 (freedom of expression) of the Convention **inadmissible** as being manifestly ill-founded. It found in particular that the domestic courts had examined the applicant's case with care, giving sufficient justification for his conviction, namely that he had used highly insulting expressions towards Serbs, thus touching upon the very sensitive matter of ethnic relations in post-conflict Bosnian society. Furthermore, the penalties imposed on him, namely a suspended sentence and a seized computer and laptop, had not been excessive. Therefore, the interference with the applicant's right to freedom of expression, which had been prescribed by law and had pursued the legitimate aim of protecting the reputation and rights of others, did not disclose any appearance of a violation of Article 10 of the Convention.

Nix v. Germany

13 mars 2018 (décision sur la recevabilité)

This case concerned the applicant's conviction for posting picture of a Nazi leader and swastika in a blog. The applicant argued that the domestic courts had failed to take into account that his blog post was intended as a protest against school and employment offices' discrimination against children from a migrant background.

The Court declared the application **inadmissible** as being manifestly ill-founded. While accepting that the applicant had not intended to spread totalitarian propaganda, to incite violence, or to utter hate speech, and might have thought he was contributing to a debate of public interest, it considered that the domestic courts could not be reproached for concluding that he had used the picture of the former SS chief Heinrich Himmler with the swastika as an "eye-catching" device, which was one of the things the law penalising the use of symbols of unconstitutional organisations had been intended to prevent (the so-called "communicative taboo"). Domestic case-law was clear that the critical use of such symbols was not enough to exempt someone from criminal liability and that what was required was clear and obvious opposition to Nazi ideology. In the applicant's case, the Court saw no reason to depart from the domestic courts' assessment that the applicant had not clearly and obviously rejected Nazi ideology in his blog post. The Court therefore concluded that the domestic authorities had provided relevant and sufficient reasons for interfering with the applicant's right to freedom of expression and had not gone beyond their room for manoeuvre ("margin of appreciation") in the case.

Savva Terentyev v. Russia

28 August 2018

This case concerned the applicant's conviction for inciting hatred after making insulting remarks about police officers in a comment under a blog post.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that while the applicant's language had been offensive and shocking that alone was not enough to justify interfering with his right to freedom of expression. The domestic courts should have looked at the overall context of his comments, which had been a provocative attempt to express his anger at what he perceived to be police interference, rather than an actual call to physical violence against the police.

Texts and documents

See, among others:

- **Recommendation No. R 97(20)** of the Committee of Ministers of the Council of Europe to Member States on "hate speech", 30 October 1997.
- **General Policy Recommendation No. 7** of the European Commission against Racism and Intolerance (ECRI) on national legislation to combat racism and racial discrimination, 13 December 2002.
- **Recommendation 1805 (2007)** of the Parliamentary Assembly of the Council of Europe on "blasphemy, religious insults and hate speech against persons on grounds of their religion", 29 June 2007.
- **Study no. 406/2006** of the Venice Commission, "Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred", doc. CDL-AD(2008)026, 23 October 2008.
- **Manual on hate speech**, Strasbourg, Council of Europe Publishing, 2009.
- **Issue discussion paper** by the Council of Europe Commissioner for Human Rights on "Ethical journalism and human rights", doc. CommDH (2011)40, 8 November 2011.
- Website of the **Conference on "Tackling hate speech: Living together online"** organized by the Council of Europe in Budapest in November 2012.
- Website of the **Conference "The hate factor in political speech – Where do responsibilities lie?"** organized by the Council of Europe in Warsaw in September 2013.
- Website of the **Conference "Freedom of expression: still a precondition for democracy"** organized by the Council of Europe in Strasbourg in October 2015.
- **General Policy Recommendation No. 15** of the European Commission against Racism and Intolerance (ECRI) on combating hate speech, adopted on 8 December 2015.

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JUSTICE



Hate crime recording and data collection practice across the EU



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Hate crime recording and data collection practice across the EU

Foreword

Across the European Union, people still face hatred because of their skin colour, ethnicity, religion, gender or sexuality – despite various efforts by the EU and its Member States to tackle this problem. Laws against hate crime are in place, imposing increased penalties for bias motivation, and diverse services are available for victims. Are these measures enough?

There are two major catches. Only a fraction of victims report hate-motivated harassment and violence to the police. Moreover, even when they do, police officers do not always flag them as hate crimes. Some may not recognise certain incidents as stemming from prejudice. Others may simply lack the necessary practical tools, such as incident reporting forms, that allow racist motivation to be noted – or the inclination to provide information not always deemed obligatory.

This means these hate crimes remain unidentified or unrecorded – and thus un-investigated, unprosecuted, uncounted and, ultimately, invisible.

The ramifications are multi-layered and mutually reinforcing. Law enforcement and policymakers may underestimate the scale and nature of the problem. As a result, measures to prevent and curtail it, and to support victims, may fall short. Individuals left without redress – as well as their loved ones and even communities as a whole – will feel little faith in a system that fails to adequately address their plight, further discouraging reporting. Social cohesion, too, can suffer.

Encouragingly, initiatives to counter this troubling cycle are gaining momentum. They include producing relevant guidance for police officers; requiring the collection of detailed and disaggregated data on crime, rendering visible that motivated by bias; and working with civil society organisations experienced in dealing with hate crime.

This report adds to the momentum by providing rich and detailed information on hate crime recording and data collection systems across the EU, including any systemic cooperation with civil society. It can support efforts to strengthen recording and data collection as well as capacity-building activities to counter hate crime – essential elements of effectively combating prejudice, supporting victims and fostering inclusive societies.

We would like to express our gratitude to the members of the Subgroup on methodologies for recording and collecting data on hate crime – this report would not have been possible without their contributions.

Michael O’Flaherty

Director

Country codes

Country code	EU Member State
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SK	Slovakia
SI	Slovenia
UK	United Kingdom



Acronyms and abbreviations

CC	Criminal Code
CEJI	Jewish Contribution to an Inclusive Europe
CSO	Civil society organisation
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
ENAR	European Network Against Racism
EU-MIDIS	European Union Minorities and Discrimination Survey
GPR	General Policy Recommendation
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Discrimination
IGO	Intergovernmental organisation
OSCE	Organization for Security and Co-operation
ODIHR	OSCE Office for Democratic Institutions and Human Rights
SDG	Sustainable Development Goal

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Why this report?

People in the European Union (EU) experience hatred on a daily basis, as evidence collected by the EU Agency for Fundamental Rights (FRA) consistently shows. Yet hate crime and hate-motivated harassment often remain invisible in official statistics, and thus outside of the public consciousness. While EU-wide surveys – such as those FRA conducts – provide essential evidence on the prevalence, nature and impact of experiences with hatred on victims, their families, communities and on broader society, such comparative data can only tell part of the story (see [Chapter 4](#) on crime victimisation surveys and FRA surveys).

Statistics and other information for each EU Member State are needed to provide a more complete and accurate picture of the situation on the ground. This can be aided by a growing awareness among legislators, policymakers and law enforcement agencies that improving the recording of hate crime, as well as collecting robust and reliable data on the phenomenon, is essential if they are to meet obligations and commitments they have made towards combating prejudice and fostering inclusive societies. This includes acknowledging that active cooperation between law enforcement agencies and civil society organisations in the field can lead to better support for victims of hate crime.

This growing awareness is evidenced, among others, in the participation of all 28 EU Member States in the [Subgroup on methodologies for recording and collecting data on hate crime](#) of the [EU High Level Group on combating racism, xenophobia and other forms of intolerance](#). The High Level Group mandated FRA to facilitate this subgroup, which brings together representatives of relevant national authorities from all 28 EU Member States, the European Commission, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Council of Europe's European Commission against Racism and Intolerance (ECRI), as well as civil society organisations.¹

It is important to keep in mind that any hate crime recording and data collection system is only as good as the information it receives. With FRA surveys consistently highlighting high levels of underreporting, it is no surprise that annual official figures at the national level do not reflect the actual prevalence of hate crime.

Therefore, addressing the issue of underreporting should be a twin priority along with improving recording systems. For examples of initiatives and measures taken by EU Member States to increase reporting of hate crime to the police, see FRA's online [Compendium of practices](#).

The proper recording of hate crime by law enforcement authorities can lead to a better understanding of the nature and prevalence of the phenomenon, and of its impact on victims and their communities. This, in turn, can assist the authorities in developing and monitoring policies and measures they put in place to combat prejudice and to offer support to victims of hate crime. The present report therefore provides:

- a description of how EU Member States apply [key guiding principles on improving the recording of hate crime by law enforcement authorities](#), identified by practitioners in the framework of the Subgroup on methodologies for recording and collecting data on hate crime;
- a source of information to assist law enforcement agencies in the EU in their efforts to improve how they record hate crime and related data collection systems;
- a resource providing contextual information to the EU and intergovernmental organisations, which they can use in preparing capacity-building activities to prevent and counter hate crime.

EU Member States take different approaches to recording and publishing data pertaining to hate crime. Rather than comparing published hate crime data in different countries, this report uses a comparative method based on key guiding principles on recording hate crime to assess accomplishments and gaps in hate crime recording and data collection across the 28 EU Member States. This approach allows for comparative information across the EU to be presented while respecting different national approaches to hate crime recording and data collection.

As a whole, this report reveals significant differences in how law enforcement agencies in EU Member States record, collect and publish data on hate crime, as well as in how they cooperate with civil society organisations in this regard. As such, the report can provide guidance to the EU and its Member States as to where they could focus their efforts to improve recording and collecting data on hate crime, with a view to ensuring better access to justice for victims of hate crime.

¹ CEJI – A Jewish Contribution to an Inclusive Europe; the European Network Against Racism (ENAR); the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe).

How to use this report

This report aims to assist police investigators, managers, hate crime officers and policymakers working on hate crime by providing rich and detailed information on hate crime recording and data collection practices in the EU. It can serve as a resource to law enforcement agencies in their efforts to improve hate crime recording and data collection systems by helping to identify gaps and inconsistencies, and by illustrating practices from other Member States. A detailed look at the practices, including step-by-step descriptions, provides insights to help identify which elements could be adapted for use in national contexts. FRA and ODIHR workshops in the EU Member States can also support national authorities when conducting these assessments.*

The report also provides contextual and EU-wide comparative information to the EU and intergovernmental organisations for use in policymaking and when developing capacity-building activities to prevent and counter hate crime.

* See *Technical assistance to national law enforcement authorities*.

This report provides an overview of practices regarding recording and collecting data on hate crime in all 28 EU Member States, as well as of how law enforcement agencies cooperate with civil society organisations in this regard. The information presented brings together and builds upon work in the field carried out by the EU, its Member States and FRA, as well as by intergovernmental organisations. This includes:

- outcomes of the Subgroup on methodologies for recording and collecting data on hate crime;
- outcomes of the **Working party on improving reporting and recording of hate crime in the EU**, established by FRA in response to Council Conclusions on combating hate crime in the EU;²
- findings of country monitoring work done by the United Nations and the Council of Europe;
- technical assistance programmes designed and implemented by ODIHR.³

The report is based on a human-rights approach – it rests on the understanding that the police is a force helping to protect and to realise human rights.⁴ It draws on information provided and verified by national authorities in the 28 EU Member States on how they record

and collect data on hate crime, as well as on how they cooperate with civil society organisations in this regard.⁵ The report further provides a summary overview of national legal frameworks pertaining to hate crime.⁶

FRA ACTIVITY

FRA's work on hate crime and on rights of hate crime victims

Racism, xenophobia and other forms of intolerance are core themes covered by FRA's work and, in line with its founding regulation, fall under the agency's permanent mandate. Over the years, FRA has gathered extensive evidence on the situation of hate crime victims from their perspective – through its EU-wide surveys* and other research** – as well as on some of the **barriers and challenges criminal justice professionals face**. The evidence has consistently shown that victims encounter difficulties in reporting and, in many cases, the police, public prosecutors and criminal judges are reluctant to record and acknowledge hate crime.

In 2013, the Council Conclusions on combating hate crime in the European Union invited FRA to work together with Member States to facilitate the exchange of promising practices and assist the Member States at their request in their efforts to develop effective methods to encourage reporting and ensure proper recording of hate crimes. In response, FRA established a **Working Party on Improving Reporting and Recording of Hate Crime**. This working party produced, in 2016, an online **Compendium** of illustrative practices for preventing and combating hate crime across the EU.

The **Subgroup on methodologies for recording and collecting data on hate crime** of the **EU High Level Group on combating racism, xenophobia and other forms of intolerance** thus builds on and complements previous and other ongoing FRA research activities.

* See *Chapter 4 on crime victimisation surveys for an overview of relevant FRA surveys*.

** See, for example, FRA's upcoming *Anti-Muslim and anti-migrant thematic database*; *Antisemitism: Overview of the situation of data collection in the European Union*; *Children with disabilities: targeted violence and hostility*; *annual Fundamental Rights Reports*; *Incitement in media content and political discourse in Member States of the European Union*; and *Violence, threats and pressures against journalists and other media actors in the European Union*.

2 Council of the European Union (2013), *Council conclusions 2013/JHA of 6 December 2013 on combating hate crime in the European Union*.

3 Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) (2014), *Hate Crime Data Collection and Monitoring: A Practical Guide*, 29 September 2014.

4 On human rights-based policing, see EU Agency for Fundamental Rights (FRA) (2013), *Fundamental rights-based police training: A manual for police trainers*, Luxembourg, Publications Office.

5 In some EU Member States (e.g. Greece or Spain), victims and witnesses can report incidents directly to public prosecutors and judges. This report only looks at how hate crime is recorded by the police. However, the key guiding principles on recording discussed in the report could be transposed to situations where victims and witnesses can report incidents directly to public prosecutors and judges.

6 On terminology related to hate crime, see FRA (2013), *Making hate crime visible*, Luxembourg, Publications Office; and OSCE, ODIHR (2014), *Hate Crime Data Collection and Monitoring: A Practical Guide*, 29 September 2014.

Key findings and FRA opinions

Improving hate crime recording

As the European Court of Human Rights (ECtHR) has consistently held, Article 14 of the European Convention on Human Rights (ECHR) imposes a positive duty on state authorities to render visible the bias motivation of a crime. Furthermore, Article 22 of the Victims' Rights Directive obliges EU Member States to provide a timely and individual assessment of victims' protection needs to identify whether a victim's vulnerability requires taking special measures to avoid secondary or repeat victimisation, intimidation or retaliation.⁷ In the context of this individual assessment, as reported in previous FRA reports, particular attention has to be paid to victims who have suffered a crime with a bias or discriminatory motive that could be related to their personal characteristics. Hence, both in investigating a crime and in assessing victims' vulnerability, the police must seek to uncover these motives.

If the police overlook evidence of bias motivation, it is unlikely that it will be identified later in the criminal justice process, and hate crime laws cannot be given effect in court. Identifying and recording bias motivation is also essential for prevention purposes, a core police function.

At present, guidance supporting police officers to systematically evidence bias motivation is lacking in many countries. Where this guidance does exist (15 Member States), it varies across the EU, both in terms of its comprehensiveness and its public availability. The evidence in this report shows that only 13 Member States have lists of bias indicators that police officers can use to identify and start to evidence potential bias motivation(s) underlying a reported offence. Eighteen Member States have made the choice to flag hate crime either in existing systems or using specific additional forms.

FRA opinion 1

EU Member States should ensure that any case of alleged hate crime is effectively recorded. It should be mandatory for the recording officer to make the choice whether the reported offence is a potential hate crime. Failure to capture possible bias motivation behind the crime could infringe relevant international human rights law, as well as EU and national legislation. National authorities should provide police officers with detailed guidance containing descriptions of bias indicators and a monitoring definition of hate crime.

Collecting and publishing disaggregated hate crime data

As FRA's reports repeatedly highlight, the collection of detailed and disaggregated data on hate crime – at minimum, by bias motivation and by type of crime – is necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously and sends a message to the public that hate crime is monitored, addressed and not tolerated.

Of the 19 EU Member States that publish data on recorded hate crime, only 15 disaggregate these data by different bias motivations. Some states publish specific reports on hate crime, providing information on the circumstances of the offenses, which population groups are most at risk of suffering violent offenses, and levels of satisfaction with the police's response. Publishing and disseminating specific reports on hate crime improves transparency and contributes to combating hate crime effectively, including by raising awareness of the phenomenon.

FRA opinion 2

EU Member States should make further efforts to systematically collect and regularly publish detailed anonymised data pertaining to hate crime. Such data should be disaggregated by different bias motivations as well as other incident characteristics. Member States should take steps to actively disseminate and communicate the data among the key stakeholders and general public – for example, through a special report on hate crime.

⁷ See FRA (2017), *Child-friendly justice - Checklist for professionals*, Publications Office of the EU (Publications Office) (providing a list of actions that need to be taken for judicial proceedings to be child friendly).

Designing and carrying out crime victimisation surveys that include hate crime-specific questions

It is well established by FRA surveys and other research that the majority of hate crimes are not reported to the police. Designing crime victimisation surveys that include hate crime-specific questions would allow authorities to shed light on the 'dark figure' of crime – that is, the number of crimes that are not reported to the police – and to understand victim experiences, trends and emerging issues. Nine Member States carry out regular victimisation surveys that include questions on experiences with hate-motivated crime and violence. Other Member States publish hate crime reports presenting the number of police reports with identified hate crime motives, and the number of hate crimes reported in national victimisation surveys, including the percentage of crimes reported to the police. This allows law enforcement and policymakers to understand the reporting gap and develop measures to address it.

FRA opinion 3

To gain a better insight into hate crime victimisation in their states, national authorities should design and carry out crime victimisation surveys that include hate crime-specific questions. The findings of these surveys should be included in Member States' hate crime reports that present the hate crime incidents recorded by the police.

Enhancing cooperation between law enforcement agencies and civil society organisations

The EU High Level Group on countering Racism, Xenophobia and other forms of intolerance acknowledged the importance of effective engagement with civil society organisations in the areas of training, victim support and hate crime recording. These positions are underpinned by a range of international norms and standards relating to the importance of civil society organisations' participation in the decision making of public authorities (Article 25 of the International Covenant on Civil and Political Rights, ICCPR), their contribution as an important source for 'evidence-based policymaking' (European Council Guidelines on Human Rights Defenders), and the specific need to build partnerships with civil society to address racism, xenophobia, discrimination or related intolerance (OSCE Annex to Decision No. 12/04, Permanent Council Decision No. 621).

Investing in cooperating on hate crime recording and data collection can help to improve the comparability and compatibility of recording methodologies and, ultimately, lead to tangible improvements for victims of hate crime and their communities. This report provides vari-

ous examples of systematic cooperation between law enforcement agencies and civil society organisations in 10 Member States, upon which Member States can draw.

FRA opinion 4

EU Member States should set up frameworks of systematic cooperation between law enforcement agencies and relevant civil society organisations (CSOs). This can be done in the area of data and information exchange; by early consultation of relevant CSOs, drawing on their experience; cooperating on the development of instructions, guidance or training on recording hate crime, including exchanging expertise to develop, refine and revise bias indicators; and by involving CSOs in working groups on how to improve the recording of hate crime.

Cultivating a human rights culture within law enforcement agencies

The prevailing organisational culture heavily influences law enforcement responses to victims and communities. In hierarchical systems, such as law enforcement agencies, the highest-ranking officers will generally set the tone, which lower-ranking officers are expected to follow. In addition to political will, the higher levels of the law enforcement hierarchy must first embrace and acknowledge their commitment to countering hate crime and the importance of properly recording such crime. They then need to communicate this commitment to 'the rank and file' and implement it. This could be achieved through cultivating a culture of human rights within law enforcement agencies. FRA's surveys, as well as research with crime victims and criminal justice professionals, suggest that creating a culture of policing based on cooperation, transparency and accountability could improve public confidence in the police and encourage victims to report crime.

FRA opinion 5

In line with their obligations – under Article 1 of the Victims' Rights Directive – to ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, EU Member States should ensure that victims of hate crime can report to the police without fearing that police officers share the discriminatory attitudes of offenders. They must adopt whatever measures are necessary to prevent and eradicate such attitudes among police officers, including by changing the prevailing police culture. This can be done by assessing existing safeguards against institutional forms of discrimination, including clear mission statements, robust systems of performance review with regard to preventing institutional discrimination and inclusive and effective independent complaint mechanisms.

1

International norms, standards and guidance on hate crime recording and data collection

National authorities can rely on a robust framework to guide them in ensuring they have the necessary information to draw an accurate picture of the nature and prevalence of hate crime; to assess the effectiveness of efforts to record and address it; and to use this information to provide support to affected persons and their communities.

Reports, country visits and recommendations by international organisations point concretely to where efforts are most needed at the national level to address hate crime. These also provide practical support and guidance to national authorities in their efforts to address hate crime recording and data collection.

The United Nations (UN), Council of Europe's European Commission against Racism and Intolerance (ECRI), and the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) all monitor human rights violations, including hate crime, and report regularly on gaps and improvements related to hate crime recording and data collection.⁸ Taken together, these intergovernmental organisations' (IGOs) recommendations reflect a growing focus on a broader concept of hate crime, moving beyond racist, xenophobic and religious bias motivation. These IGOs have different mandates, collect different information and seek and rely on different sources (see [Annex I](#) on 'Understanding IGOs' work on hate crime'). At the international level, there is a growing awareness and commitment to cooperating and sharing information for the benefit of Member States, including to lessen states' reporting burden to IGOs.

This chapter provides a summary overview of relevant international legal and normative instruments and outlines IGOs' guidance on hate crime and their relevant

guidance and policy tools. At the EU level, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law⁹ sets out to define a common EU-wide criminal law approach in the field of countering severe manifestations of racism and xenophobia. It requires that national law treats racist motivation as an aggravating factor of other already established offences. It also requires EU Member States to punish public incitement to violence or hatred directed against a person or persons belonging to a group defined by reference to race, colour, religion, descent or national or ethnic origin, and the commission of such acts by the public dissemination or distribution of tracts, pictures or other material.

"The existence of reliable, comparable and systematically collected data can contribute to more effective implementation of the Framework Decision. Reported incidents of hate speech and hate crime should always be registered, as well as their case history, in order to assess the level of prosecutions and sentences."

European Commission, Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, 27 January 2014

Both the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) define harassment as unwanted conduct with a bias motivation taking place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offen-

8 FRA, [What we do](#).

9 Council of the European Union (2008), Council Framework Decision 2008/913/JHA Decision of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ 2008 L 328.

sive environment.¹⁰ When Member States prohibit such conduct in their criminal legislation, it qualifies as hate crime.

The 2012 Victims' Rights Directive¹¹ sets out minimum standards regarding respect, support and protection of victims of crime. Article 22 of the directive recognises victims of hate crime, bias crime or crime committed with a discriminatory motive as being particularly vulnerable victims who require individual assessments to identify their specific protection and support needs. The directive requires special protection measures for victims of hate crime because they experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation.¹² The Victims' Rights Directive recognises that "systematic and adequate statistical data collection is [...] an essential component of effective policymaking in the field of rights set out in this Directive". Under the directive, Member States are required to communicate to the European Commission relevant statistical data from a variety of public bodies, including law enforcement agencies: "at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims".¹³

The 2013 Council Conclusions on combating hate crime in the European Union¹⁴ stress in particular the need for an efficient collection of reliable and comparable data on hate crimes, including, as far as possible, the number of such incidents reported by the public and recorded by the authorities and the bias motives behind these crimes.¹⁵

Building police capacity in countering hate crime against LGBTI persons

The Council of Europe's manual on **Policing Hate Crime against LGBTI persons: Training for a Professional Police Response** is designed for police trainers, investigators, managers, hate crime officers and frontline police officers working in countries across the Council of Europe.

Building on Council of Europe standards, it aims to provide assistance and tools for conducting training on hate crime against LGBTI persons, to help improve law enforcement officials' knowledge on hate crime against LGBTI people and strengthen their capacity and practical skills to investigate such hate crimes. The manual also highlights how civil society organisations can contribute to training on bias indicators.

The manual is available on the Council of Europe's webpage.

The European Court of Human Rights (ECtHR) has consistently held that hate crime is different from other crime, in that it entails additional duties for the state. Whereas the ECtHR imposes a positive duty for an effective investigation of all crimes, it also imposes an additional positive duty related to unmasking the bias motivation of a crime. In this particular context, Article 14 of the European Convention on Human Rights (ECHR) is read as obliging states to render visible bias motives underlying criminal offences. Over time, the ECtHR has expanded this line of jurisprudence to cover actions of private parties, other forms of harm, a variety of bias motives and, finally, bias motives by association.¹⁶

In its regular country reports, the Council of Europe's human rights monitoring body, ECRI, identifies gaps and recommendations for improvement in the area of hate crime, and more specifically in recording and collecting data on hate crime.¹⁷ Recommendations related to hate crime recording and data collection are included in the country fiches, where available.

ECRI General Policy Recommendations (GPRs) operationalise Article 14 of the ECHR by providing detailed guidelines that states can draw from when designing national strategies in various fields, including hate crime. **Table 1** provides an overview of ECRI's GPRs relevant to hate crime recording, data collection and publication, and victimisation surveys.

10 See Article 2/3 of Council Directive 2000/43/EC and Article 2/3 of Council Directive 2000/78/EC. For more, see FRA and ECtHR (2018), **Handbook on European non-discrimination law – 2018 edition**, Luxembourg, Publications Office.

11 **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime**, and replacing Council Framework Decision 2001/220/JHA (Victims' Rights Directive).

12 For the treatment of children in justice systems, see **FRA's checklist**, a resource for professionals that provides a list of actions that need to be taken for judicial proceedings to be child friendly.

13 **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime**, and replacing Council Framework Decision 2001/220/JHA.

14 Council of the European Union (2013), **Council conclusions 2013/JHA of 6 December 2013 on combating hate crime in the European Union**.

15 On data protection issues related to gathering and publishing demographic information in the context of hate crime, see OSCE, ODIHR (2014), **Hate Crime Data-Collection and Monitoring: A Practical Guide**, 29 September 2014, p. 18.

16 See European Court of Human Rights (ECtHR) case database HUDOC.

17 Council of Europe, European Commission against Racism and Intolerance (ECRI), **Country Monitoring Work**.

Table 1: Overview of ECRI's General Policy Recommendations relevant to hate crime recording, data collection and victimisation surveys

	Quotes from General Policy Recommendations
ECRI General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance (1996)	"Ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted."
ECRI General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims (1998)	"Recommends to the governments of member States to take steps to ensure that national surveys on the experience and perception of racism and discrimination from the point of view of potential victims are organised, drawing inspiration from the guidelines set out in the Appendix to this Recommendation."
ECRI General Policy Recommendation No. 9: The fight against antisemitism (2004)	"Recommends that the governments of the member States: [...] put in place an effective system of data collection to thoroughly monitor the follow-up given to such complaints."
ECRI General Policy Recommendation No. 11: Combating racism and racial discrimination in policing (2007)	<p>"68. In order to gain an overview of the situation as concerns the occurrence of manifestations of racism in society that is as accurate as possible and monitor the response of the criminal justice authorities to such manifestations, it is necessary to develop a reliable system for the recording and monitoring of racist incidents. The adoption of the broad definition of racist incident provided in this Recommendation (paragraph 14) is a key element of such a system. The definition aims to enable uniform monitoring of these incidents by ensuring that all police units and all agencies with a role in receiving reports of such incidents use the same concepts."</p> <p>"69. [T]he police (and all those receiving reports of racist incidents) should gather detailed information on each report. This could be done for instance by filling a racist incident report form, which should contain information on different elements, including as concerns the victim, the suspect or offender, the type of incident, its location and the grounds involved [...]."</p> <p>"71. The recording of racist incidents also helps the police to improve their investigations of racist offences (as recommended in paragraph 11), in that it provides them with useful background information that can clarify the context within which subsequent offences take place."</p> <p>"74. The Recommendation provides that a racist incident be defined as an incident which is perceived to be racist by the victim or any other person [...]."</p> <p>"75. [T]he purpose of adopting a definition of a racist incident is two-fold: firstly, to improve the recording and monitoring of racist incidents and, secondly, to ensure that the police investigate all racist offences thoroughly and do not overlook the racist motivation of ordinary offences."</p>

Source: ECRI *General Policy Recommendations*, 2018

Perception-based recording of hate crime: interpreting ECRI Recommendation No. 11

ECRI's Policy Recommendation No. 11 recommends that law enforcement records racist incidents, which are defined as "any incident which is perceived to be racist by the victim or any other person". The rationale for this approach is:

- "To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;
- To establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences;
- To encourage victims and witnesses of racist incidents to report such incidents."

This approach allows the police to implement their legal duty under ECtHR case law to 'unmask bias motivation'.^{*} If a case is flagged as a racist incident – in other words, a potential hate crime – early on in the investigation, it is more likely that evidence of bias motivation will be identified and secured and that measures to support victims to remain part of the criminal investigation will be put in place.

Two things need to be done to implement this recommendation:

- ensure that police recording systems are able to record the perception of the victim or any other person that an offence was racist and, ideally, capture all other relevant grounds;
- train police to: a) identify bias indicators so they can record potential hate crimes when they perceive that an incident is a hate crime, and b) explore the victim's perception about the incident so that they are in a position to record where an offence is perceived to be a hate crime by the victim.

^{*} See ECtHR, *Balazs v. Hungary*, No. 15529/12, 14 March 2016.

OSCE participating States have committed themselves to a number of OSCE Ministerial Council decisions in regards to recording and collecting data on hate crime. These include commitments to collect, maintain and make public reliable and detailed data and statistics, and build capacities in law enforcement.¹⁸

ODIHR's hate crime reporting website (hatecrime.osce.org) covers all 28 EU Member States (as well as other countries) and includes eight 'bias motivations'. The data presented on the website stem from governmental sources (national points of contact on hate crimes), civil society organisations and intergovernmental organisations. National points of contact on hate crimes are requested to fill out a questionnaire based on ODIHR's definition of a hate crime:

"[A] criminal act motivated by bias towards a certain group. For a criminal act to qualify as a hate crime, it must meet two criteria: The act must be a crime under the criminal code of the legal jurisdiction in which it is committed. The crime must have been committed with a bias motivation. 'Bias motivation' means that the perpetrator chose the target of the crime on the basis of protected characteristics. A 'protected characteristic' is a fundamental or core characteristic that is shared by a group, such as 'race', religion, ethnicity, language or sexual orientation. The target of a hate crime may be a person, people or property associated with a group that shares a protected characteristic."

¹⁹The data are reviewed and selected to ensure that they fall within the OSCE's definition of hate crime before being published. At the time of writing, ODIHR's latest available data covered the year 2016 and 12 EU Member States provided ODIHR with data on hate crimes.²⁰

The International Convention on the Elimination of All Forms of Discrimination (ICERD) obliges all State Parties to take measures to eliminate racial discrimination in all its forms. Article 4 states that it should be an offence to "disseminate ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin".²¹ The International Covenant on Civil and Political Rights (ICCPR) does "not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events".²² However, although Article 19 of the ICCPR states that everyone

¹⁸ See the overview of the most relevant [OSCE Ministerial Council Decisions](#).

¹⁹ OSCE, ODIHR, [Hate crime](#).

²⁰ OSCE, ODIHR, [Hate crime online reporting](#).

²¹ United Nations (UN), [International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#), 21 December 1965.

²² UN, Human Rights Committee (CCPR) (2011), [General Comment No. 34](#), UN Doc. CCPR/C/GC/34, para. 49.

shall have a right to hold opinions without interference and the right to freedom of expression,²³ these can also be subjected to certain necessary restrictions provided by the law. According to Article 19 (3) of the ICCPR, such restrictions may relate to the rights or reputations of others and to the protection of public order or morals. When invoking such restrictions, the precise nature of the threat to the enumerated grounds must be specifically demonstrated.²⁴ Furthermore, Article 20²⁵ declares that any propaganda for war as well as any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The issue of preventing and countering hate crime is present in much of the work of the UN. UN bodies, such as the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Human Rights Council, regularly scrutinise states' efforts to address hate crime and, specifically, to record, collect and publish hate crime data.

Human rights commitments are also reflected in the Sustainable Development Goals (SDGs). Regarding violence and discrimination, target No. 16 is to "significantly reduce all forms of violence [...] everywhere" by 2030, and goal 10 aims at "[...] eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard".²⁶ See the country fiches in [Chapter 3](#) for country-specific recommendations, where available.

23 UN, General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16 December 1966 (entry into force: 23 March 1976), Art. 19.

24 UN, CCPR (2011), [General Comment No. 34](#), UN Doc. CCPR/C/GC/34, paras. 35-36.

25 ICCPR, Art. 20.

26 UNDP, [Sustainable Development Goals](#).

2

Comparative overview of the situation at national level



This chapter provides a short EU-wide comparative overview of:

- states' implementation of key guiding principles on recording hate crime;
- the modalities for the collection and release of data;
- cooperation between law enforcement agencies and civil society organisations, where available.

2.1. Recording hate crime

The proper identification and recording of hate crime is a vital step in ensuring that offences are investigated and, where necessary, prosecuted and sanctioned, and that victims and their families are appropriately supported. Appropriate mechanisms thus need to be in place to enable law enforcement officials to identify the potential bias motivation of an offence, and to record that information on file. There is a great degree of variation in the depth and scope of hate crime recording mechanisms in EU Member States. Practitioners recognise that gaps in national recording mechanisms are a serious obstacle to comprehensively addressing hate crime. They therefore agree that there is almost always room for improvement in national hate crime recording systems.

The Subgroup on methodologies for recording and collecting data on hate crime (the Subgroup), started its work by focusing on ways to improve the recording of hate crime by law enforcement officers. It has identified five **key guiding principles on hate crime recording**.²⁷ They are based on the following premise, suggested by ODIHR: "[P]olice officers may not

recognise the signs that a crime is a hate crime and record it as such, or have the necessary recording mechanism or forms. It is, therefore, essential that measures are put in place to encourage victims to report and to improve their confidence in the system and to ensure that the police have the knowledge to identify and record hate crimes correctly."²⁸ The police usually record hate crime in a multiphase process that differs from country to country. Generally, however, it involves three steps:

- 1) identifying an incident as a 'hate crime' by applying bias indicators;
- 2) recording the information in an electronic database;
- 3) investigating and reviewing.

For hate crime recording mechanisms to be effective, they should meet at least the following criteria:

- Standard operating procedures of law enforcement agencies must provide police officers with tools to flag possible bias motivation and require that they are used.
- Law enforcement officers must be able to use bias *indicators* to identify bias *motivation*.
- Law enforcement officers must be able to flag incidents as potential hate crimes and record any bias-related information that might be useful to support further investigation.

²⁷ Methods and approaches to recording hate crime and hate speech are distinct. The Key guiding principles relate only to recording hate crime. Thus, this report only covers recording hate crime.

²⁸ OSCE, ODIHR (2014), *Hate Crime Data-Collection and Monitoring: A Practical Guide*, 29 September 2014, p. 11.

The Subgroup suggested five key guiding principles²⁹ that can lead to improving the recording of hate crime. Two guiding principles that concern the operational level and their application in national police recording systems are discussed in detail:

- defining and applying indicators to identify bias motivation; and
- reviewing law enforcement standard operating procedures to allow the flagging of incidents as potential hate crimes.

It is important to note that introducing technical changes that allow law enforcement to capture more information about hate incidents and crimes have several specific advantages. Police systems that allow for the recording of hate crimes on more than one ground have the twin benefit of helping to ensure that the full picture of a case is captured as the investigation progresses, and to reveal the complexity of hate crimes in data collection, analysis and publication. An additional or complementary approach could involve qualitatively reviewing cases during the investigation or as part of later data review processes using key words that are likely to capture intersectional elements of hate crime, such as “gender” or “disability”. Community-focused reports by civil society organisations also often capture this complexity through quantitative recording and qualitative case studies and can be an important source of information for the police.

Capturing multiple bias motivations and intersectionality in hate crime data

FRA’s LGBT survey (2014) found that lesbian women were more likely to be victims of incidents of hate-motivated attacks of a sexual nature as a percentage of total incidents of hate-motivate violence. Attacks that include a sexual element, either alone or in conjunction with a physical attack, are much more likely to affect women and transgender respondents. Half of bisexual women (53 %) and one third (30 %) of transgender respondents who in the previous 12 months were the victim of an attack which they think happened partly or entirely because they were perceived to be LGBT say that the last hate-motivated violence they experienced in the 12 months before the survey included a sexual element.

29 Three of the guiding principles concern organisational and structural aspects: cultivating a human rights culture within all law enforcement agencies in the EU; developing or adapting hate crime recording mechanisms to correspond to national needs and capacities; and cooperating actively with civil society organisations.

The European Network Against Racism’s (ENAR) report on *Forgotten women: The impact of Islamophobia on Muslim women* provides insight into the experiences of Muslim women victims of hate crime at the intersection of religion and gender in eight countries (Belgium, Denmark, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom). While there are differences in recording systems, data from most countries suggest that Muslim women are more likely to be victims of hate crime and hate speech than Muslim men, and that women who were identifiable as Muslim because of their clothing were most at risk. The research suggests that it is important for police systems to be equipped to: specifically register a crime as motivated by bias against Muslims; and to record the full circumstances of the case, including multiple bias motivations – for example, on the grounds of gender, religion and ethnicity.

Sources: FRA (2014), *EU LGBT survey – Main results*, Publications Office, Luxembourg; ENAR (2016), *Forgotten women: The impact of Islamophobia on Muslim women*.

Defining and applying indicators to identify bias motivation

To identify and correctly record hate crime, law enforcement officers must be given the means to use indicators to identify bias, that is, “objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender’s actions were motivated in whole or in part by bias, prejudice or hostility”.³⁰ The existence of bias indicators should lead investigators to ask the necessary follow-up questions to see if there is objective evidence of bias motivation to support a hate crime prosecution and to provide appropriate support to victims and their families. Crucially, bias indicators can be compelling evidence that a victim or their community faces a serious and possibly imminent risk of escalating harm or even death. As such, it is a core law enforcement responsibility to record and actively use bias indicators to assess levels of risk and to take appropriate safeguarding action to protect their right to life. It is therefore essential that the system police use to record crimes provides for capturing and applying bias indicators.

As outlined in [Table 2](#), 13 EU Member States have developed lists of bias indicators that police officers can use to identify bias motivation(s) underlying a reported offence. (For examples of these lists, see the country fiches in [Chapter 3](#)).

30 ODIHR (2014), *Hate Crime Data Collection and Monitoring: A Practical Guide*. See also for examples of bias indicators.



Table 2: Availability of list of bias indicators, by EU Member State

	Publicly available list of bias indicators	Police internal list of bias indicators	No list of bias indicators
AT			X
BE			X
BG			X
CY*		X	
CZ	n/a	n/a	n/a
DE		X	
DK*	X		
EE			X
EL		X	
ES*	X		
FI*	X		
FR		X	
HR	X		
HU*	X		
IE*		X	
IT			X
LT			X
LU			X
LV*	X		
MT			X
NL			X
PL			X
PT			X
RO			X
SE*		X	
SI			X
SK			X
UK*	X		

Notes: * Member States that explicitly include the perception of the victim or of witnesses that the offence was motivated by bias, prejudice or hostility in their list of bias indicators.

n/a = No data are available.

Source: FRA, 2018

Flagging potential hate crimes when they are recorded

Evidence of bias motivation might not be apparent at the time the crime log is created. Thus, the possibility to flag an offence as a potential hate crime when it is reported and throughout the investigation process would help law enforcement to meet its duty to fully 'unmask' evidence of bias motivation. The police need their systems to have the capability to record the full range of bias motivations, including emerging or existing types of hate crime that may not currently be covered by national laws pertaining to hate crime. Implementing inclusive monitoring definitions allows the police to respond to changes in offending, to flag hate crimes as

early as possible, and to produce data that more fully represent the range of community experiences.³¹

Hate crime flagging is also a key moment for the identification of a hate crime victim and could be utilised to trigger special support measures and referral to a specialist support provider, in accordance with the obligations of the Victims' Rights Directive.

Potential hate crime could be flagged either by including a dedicated check box in the general crime recording system or, when not incorporated in the general crime recording system, using a separate system – such as a specific form for hate crimes. Both options allow relevant information to be recorded about those

³¹ See OSCE, ODIHR (2014), *Hate Crime Data-Collection and Monitoring: A Practical Guide*, 29 September 2014, pp. 12-14, on how to establish 'a common, simple, and comprehensive definition of hate crimes for monitoring and data-recording purposes'.

offences that the officer involved considers potential hate crimes. In some Member States – for example,

in Finland and Sweden – recorded cases are regularly reviewed to check how/if the hate crime flag is used.

Table 3 provides an overview of how Member States flag potential hate crime in their general forms and whether this flagging is compulsory or optional. It also highlights the countries that opt for recording hate crimes on separate forms.

Table 3: Flagging of hate crime or bias motivation, by EU Member State

	Compulsory and incorporated in the general crime recording system	Not compulsory, but incorporated in the general crime recording system	Not incorporated in the general crime recording system	Specific form for hate crime
AT		X		
BE			X	
BG			X	
CY		X		X
CZ			X	
DE				X
DK		X		
EE		X		
EL	X			
ES		X		
FI		X		
FR				X
HR		X		
HU			X	
IE	X			
IT			X	
LT		X		
LU			X	
LV	n/a	n/a	n/a	
MT			X	
NL		X		
PL		X		X
PT			X	
RO			X	
SE	X			
SI			X	
SK		X		
UK	X			

Note: n/a = No data are available.

Source: FRA, 2018

Providing guidance to police officers

Police officers need detailed guidance and systematic training to identify and use bias indicators to effectively record the bias motivation(s) underlying a reported offence and thus identify and record hate crimes. The EU High Level Group on combating racism, xenophobia and other forms of intolerance has identified 10 key guiding principles for hate crime training for law enforcement and criminal justice authorities that

can be drawn from.³² Table 4 shows in which Member State guidance on hate crime recording is available. Currently, where it exists, guidance provided to police officers varies across the EU, both in terms of what it covers and its public availability. Making police guidance publicly available can play a key role in informing affected individuals, communities and the general pub-

32 European Commission (2010), EU High Level Group on combating racism, xenophobia and other forms of intolerance (2017), *Hate Crime Training for Law Enforcement and Criminal Justice Authorities: 10 Key Guiding Principles*, COM(2017), February 2017.



lic about the service and response they should expect from the police. In turn, this can improve their trust in the police, and increase the likelihood that they will report the incident.

Table 4: Availability of guidance on hate crime recording for police officers, by EU Member State

	Publicly available guidance	Police internal guidance	No guidance
AT		x	
BE			x
BG			x
CY		x	
CZ	n/a	n/a	n/a
DE		x	
DK	x		
EE		x	
EL		x	
ES	x		
FI		x	
FR		x	
HR	x		
HU			x
IE		x	
IT			x
LT			x
LU			x
LV	x		
MT			x
NL		x	
PL			x
PT			x
RO			x
SE		x	
SI			x
SK			x
UK	x		

Notes: n/a = No data are available.

Source: FRA, 2018

2.2. Collecting and publishing disaggregated hate crime data

Data collection involves the collation and analysis of recorded hate crime data for the purposes of publication and policy development. The collection of detailed and disaggregated data on hate crime – by bias motivation and by type of crime – is necessary to monitor the effectiveness of the criminal justice system’s response to the phenomenon, and helps to design appropriate courses of action. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously. It also sends

a message to the public that hate crime is an evidenced problem which requires specific action across society.

EU Member State approaches differ in terms of how they collect data, what data they collect and publish (Table 5), and in the extent to which they disaggregate the data by bias motivation (Table 6). The most effective approach to publishing hate crime data is to take steps to ensure that core stakeholders are aware of the fact that they are published and the means by which they can access them. Publishing hate crime data among general crime figures is not a very accessible approach, whereas publishing specific reports on hate crime is more likely to be accessed by target groups and the media.

Table 5: Collection and publication of hate crime data, by EU Member State

	Police hate crime data are collected and published	Police hate crime data are collected but not published	Disaggregated hate crime data are not collected
AT	X		
BE	X		
BG			X
CY	X		
CZ	X		
DE	X		
DK	X		
EE	X		
EL		X	
ES	X		
FI	X		
FR	X		
HR	X		
HU	X		
IE	X		
IT		X	
LT	X		
LU	X		
LV			X
MT			X
NL	X		
PL		X	
PT		X	
RO			X
SE	X		
SI			X
SK	X		
UK	X		

Source: FRA, 2018

Table 6: Official data pertaining to hate crime, disaggregated by bias motivation, published by EU Member State in 2016 and 2017

	Racism and xenophobia	Anti-Roma	Antisemitism	Islamophobia/ Anti-Muslim	Religion	Sexual orientation/ Gender identity	Disability	Other
AT	X		X	X				X
BE	X		X			X		X
BG								
CY	X							
CZ		X	X	X				X
DE	X		X		X	X	X	X
DK	X		X	X	X	X		
EE	X					X		X
EL								
ES	X		X		X	X	X	X
FI	X	X	X	X	X	X	X	
FR	X		X	X				
HR	X				X	X	X	X



	Racism and xenophobia	Anti-Roma	Antisemitism	Islamophobia/ Anti-Muslim	Religion	Sexual orientation/ Gender identity	Disability	Other
HU								X
IE	X							
IT								
LT								X
LU	X							
LV								
MT								
NL	X		X	X	X	X	X	X
PL								
PT								
RO								
SE	X	X	X	X	X	X		X
SI								
SK	X							X
UK – England, Wales & Northern Ireland	X		X		X	X	X	
UK – Scotland	X				X	X	X	

Note: Blank entries = No data are published.

Source: FRA, 2018

2.3. Cooperation between law enforcement agencies and civil society organisations

Across Europe, civil society organisations (CSOs) make unique contributions to efforts to understand the nature and prevalence of hate crime and what works to support victims. National authorities may not be fully aware of the range and diversity of activities that involve cooperation between law enforcement and civil society taking place at the local and regional levels. For example, the Federal Ministry of Interior of Germany has taken the initiative to improve their awareness of current and best practice in this area by commissioning research with a specific focus on examples of cooperation on recording prejudice-related crime and intervening against it. Those civil society organisations that have effective systems in place to record incidents of hate crime and to follow up on police responses are the most obvious and appropriate partners for law enforcement in this area. Identifying such CSOs and investing in constructive relationships nurtures networks that can be indispensable when trying to investigate and prevent hate crime, especially during times of high profile cases and low community confidence. At the same time, constructive cooperation

relies on clear rules of communication, mutual respect and, above all, protecting victims' rights to confidentiality and safety.

There are challenges to securing effective and constructive cooperation between CSOs and law enforcement on hate crime recording, as revealed by FRA research into these professional perspectives. For example, while most law enforcement officers, prosecutors and judges expressed their belief that the police consider investigating bias motives to be very or fairly important, a significantly lower number of staff members of victims' support services and human rights CSOs held the same view about the police.³³ Structural issues can also undermine effective cooperation. FRA research has highlighted that many human rights organisations struggle to carry out their work due to funding and practical restrictions.³⁴ Ultimately, investing in cooperating on hate crime recording and data collection can create a space to 'get on the same page' through critical yet constructive dialogue, improve the comparability and compatibility of recording methodologies and, ultimately, lead to tangible improvements for victims and communities.

³³ FRA (2016), *Ensuring Justice for Hate Crime Victims: Professional Perspectives*, Luxembourg, Publications Office.

³⁴ FRA (2018), *Challenges Facing Civil Society Organisations Working on Human Rights in the EU*, Luxembourg, Publications Office.

Facing all the Facts

CEJL's 'Facing all the Facts' project brings together partners from CSOs and law enforcement from six Member States (Greece, Hungary, Ireland, Italy, Spain, United Kingdom) to co-create online training on identifying and recording hate crimes. The project designs modules on bias indicators for crimes targeting different communities for learners from civil society and nongovernmental monitoring organisations and law enforcement.

Internal evaluation from similar previous training found that participants from both law enforcement and CSOs valued this 'interdisciplinary' learning methodology. The cooperation model is likewise applied in an action-research component of the project, which brings together stakeholders to identify gaps and opportunities for improving data collection at national level. This will form the basis for an online module to develop hate crime recording policy.

For more information, see the [Facing all the Facts project webpage](#) of CEJL – A Jewish Contribution to an Inclusive Europe.

CSOs working to monitor hate crimes and support victims can themselves also be targets of hate crime. In this context, FRA has expressed the opinion that "data on hate crime against human rights CSOs should be collected and published".³⁵

This section elaborates on the ways in which law enforcement and CSOs can actively cooperate in areas identified by the Subgroup, including: exchanging relevant data and information; working together to uncover the 'dark' figure of hate crime; setting up working groups; and co-developing guidelines on, for example, recognising key bias indicators. Information describing these types of structured and systemic cooperation was received from ten countries and links to examples in the country fiches are included below.

Exchanging data and information

CSOs that are skilled in and able to receive and record information about hate incidents make available the space and time for victims and witnesses to tell their story of what happened and to capture key information such as time, location, perpetrator background and victim impact. As specialists they are likely to identify bias indicators at an early stage. Drawing on data collected over time, they can identify new patterns and trends in victimisation and bias indicators. Where appropriate and safe, regularly sharing this information, in compliance with data protection laws, can provide a crucial supplement to police records,

further develop intelligence-based policing and build community confidence.

Examples: [Czech Republic](#), [France](#), [United Kingdom](#)

Working together to uncover the 'dark figure' of hate crime

Bringing together information from law enforcement and civil society presents a more complete picture of the prevalence and impact of hate crime at the national level. Furthermore, CSO experiences and knowledge from direct work with victims can be drawn upon when deciding questions of crime survey design, including how to reach 'hard to reach' groups, such as people with disabilities or irregular migrants.

Examples: [Sweden](#), [The Netherlands](#)

Cooperating on the development of instructions, guidance or training on recording hate crime, including exchanging expertise to develop, refine and revise bias indicators

CSOs that record and monitor hate crimes can feed their expert and current knowledge into the development of guidance specifying common bias indicators across the full range of hate crime, and contribute to the development of relevant and realistic case studies for training purposes. Furthermore, the sharing of personal stories can drive home the human rights arguments for effective hate crime recording.

Example: [Hungary](#)

Establishing working groups on how to improve the recording of hate crime

Important progress can be achieved through specific joint activities and ad hoc meetings. However, lasting change is best achieved through cooperation that takes place within a strategic framework that is appropriately resourced and supported by leadership, and that includes measurable immediate and longer term goals. Taking this strategic approach helps withstand the impact of inevitable changes in staffing or political focus, and increases the chance that the issues and problems that the data reveal, such as possible needs for legislative change or increased resources for victim support and safety, will be taken forward.

Examples: [Croatia](#), [Finland](#), [Germany](#), [Greece](#)

³⁵ *Ibid.*, p.8.



3

Recording and collecting data on hate crime in the EU-28



This chapter provides a detailed breakdown of states' laws and data in the area of hate crime recording and data collection as presented by states to FRA, including sources from: the Subgroup on methodologies for recording and collecting data on hate crime; the online Compendium of practices of the Working party on improving reporting and recording of hate crime in the EU; ODIHR's hate crime reporting website; and other open sources.

The variation in how law enforcement agencies in EU Member States record and collect data on hate crime is such that the information presented here should not be taken as an accurate portrayal of the prevalence or nature of hate crime in any given EU Member State, nor should these data be used to compare the extent of hate crime in different countries. It is important to note that EU Member States with relatively high or increasing numbers of recorded hate crimes are not necessarily those with the biggest problem of hate crime or where significantly more hate crimes are committed. High figures can also demonstrate considerable efforts by a state to make hate crime visible in their recording and reporting of crime data.

Variations and gaps between EU Member States could result from many factors, including:

- how these crimes are defined in criminal law;
- how (the characteristics of) incidents are recorded;
- the willingness and ability of victims and/or witnesses to report incidents;
- victims' awareness of organisations to which incidents can be reported;
- the degree of trust victims feel in the authorities to deal with such incidents appropriately;
- the actual occurrence of racist, xenophobic and related crime.

The gaps indicate that official data collection mechanisms often fail to capture the situation on the ground.

Crime victimisation surveys constantly indicate that even in countries with relatively high numbers of police recorded hate crime, there is significant underreporting by victims. The high numbers of recorded hate crime might simply mean that a relatively comprehensive data recording system is in place: more people are reporting victimisation to the police, and more cases are being processed through the criminal justice system. Member States with high numbers of recorded crimes tend to have a range of initiatives to both combat hate crime and assist victims. Higher figures of recorded hate crimes can also indicate the commitment of the Member State to combat hate crimes through an enhanced data collection system.

The chapter presents the following information, where available:

- the legal framework pertaining to hate crime, including specific criminal code provisions, indicating which bias motivations are most important to record – as a measure of the extent to which hate crime laws are being applied by criminal justice agencies;
- observations and recommendations on recording and collecting hate crime data from IGOs to the Member State between 2007-2017;
- the procedure whereby law enforcement records hate crime;
- ways in which data on hate crime are collected and published;
- tables reproducing data pertaining to hate crime published by national authorities between 2007-2017;³⁶
- structured and systemic cooperation between law enforcement agencies and civil society organisations in hate crime recording and data collection.

³⁶ The data in the tables differ from those published by ODIHR. The data in the tables reproduce what the Member States publish. ODIHR, on the other hand, reviews the data through the OSCE's definition of hate crime and publishes only the data that fit that definition.

Austria

Legal framework

Section 33 paragraph 1 subparagraph 5 of the Austrian Criminal Code (CC)³⁷ sets out an aggravating circumstance that applies when the perpetrator acts out of racist, xenophobic or other motives considered especially condemnable. This is particularly the case if acting against one of the groups or members thereof defined by race, colour, language, religion or belief, nationality, descent or national or ethnic origin, gender, physical or mental disability, age or sexual orientation, explicitly on account of the belonging to such a group.

Section 283 of the CC criminalises incitement to violence or hatred against a church or religious denomination or any other group of persons defined by criteria

of race, colour of skin, language, religion or ideology, nationality, descent or national or ethnic origin, sex, a disability, age or sexual orientation, explicitly on account of belonging to such a group.

The so-called Prohibition Act³⁸ bans any activity linked to the Nazi Party or reengagement in national-socialist activities and provides for aggravated penalties when murder, arson, robbery or bodily harm are instrumental within the context of these activities. It further makes it a criminal offence to deny, belittle, condone or try to justify the Nazi genocide or other Nazi crimes against humanity.

IGO observations and recommendations

<p>Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017</p>	<p>n/a</p>
<p>Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2015 Fifth report on Austria</p>	<p>31. ECRI considers that the authorities should take full advantage of the many possibilities offered by electronic data processing when setting up a new system for recording hate motivated offences. In particular, the police and prosecution services should adopt a broad definition of racist, homo- and transphobic incidents and establish a tool that automatically searches for keywords in their files, which can help to detect cases which might have been motivated by racism, homo- or transphobia. They should also ensure that data can be broken down according to various criteria such as the group to which the victim belongs and the criminal-law provision under which the offence is prosecuted. They should finally ensure that all cases with evidence of such bias motivation are correctly registered as hate crime; one way of achieving this would be specific training.</p>
<p>Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Austria</p>	<p>Austria has not reported on hate crimes separately from cases of hate speech.</p>

³⁷ Austria, Criminal Code (*Strafgesetzbuch*).

³⁸ Austria, Prohibition Act (*Verbotsgesetz*).



Recording hate crime

The crime recording system of Austria's Federal Police does not use the term hate crime but applies the category "politically motivated crime". When frontline police officers identify a crime as potentially pertaining to this category, on the basis of an internal police document stating the Criminal Code provisions and other legal provisions that fall under the responsibility of the Federal Office for the Protection of the Constitution and Counterterrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*, BVT), they tick the box in the police reporting database "politically motivated". The file is then automatically transferred for investigation and further processing to one of the nine Regional Offices for the Protection of the Constitution and Counterterrorism (*Landesamt für Verfassungsschutz und Terrorismusbekämpfung*, LVT). There is a specific, police internal guidance document on how to identify politically motivated crimes. The assessment of frontline police officers is based on the facts which constitute the offence as inferred from victim's testimony, interrogation of the perpetrator and possible further investigations.

Data collection and publication

The LVT further investigates and classifies the case under one of the four subcategories – right extremist, xenophobic/racist, antisemitic and islamophobic acts – and sends a standardised report on every case to the BVT.

There is no specific report on hate crimes, but the Annual Report of the BVT³⁹ includes a section on "right-wing extremism" featuring selected data and trends analysis. The analysis is based on the reports submitted by the LVTs. The report breaks down the general figures on incidences of right-wing extremism as well as the figures concerning some particularly relevant crimes (bodily harm, incitement, threat, damage to property) by the categories right extremist, xenophobic/racist, antisemitic and islamophobic acts.

In addition, the Ministry of the Interior and the Ministry of Justice collect general crime data, which are used for detailed statistics, analyses and information supporting measures to be taken by authorities. The information gathered from the police database and the database of the Ministry of Justice is integrated into a report of the Austrian Government on the situation of the internal security, which consists of an annual report tracking the evolution of criminality issued by the Ministry of the Interior⁴⁰ and of an annual report on the activities of criminal justice issued by the Ministry of Justice.⁴¹

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

Table 7: Politically motivated crimes: committed offences, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Racist crimes	48	56	49	64	37	59	61	111	323	356	n/a
Antisemitic crimes	15	23	12	27	16	27	37	58	41	41	n/a
Islamophobic crimes	2	12	0	8	4	4	12	17	31	28	n/a
Right-wing extremist crimes	280	333	356	335	282	293	371	357	523	718	n/a

Notes: n/a = No data are available.

Source: Ministry of the Interior (*Bundesministerium des Inneren*) (2017), *Report of the Protection of the Constitution 2016* (*Verfassungsschutzbericht 2016*)

³⁹ Austria, Federal Ministry of the Interior (*Bundesministerium des Inneren*) (2017), *Report of the Protection of the Constitution 2016* (*Verfassungsschutzbericht 2016*).

⁴⁰ Austria, Federal Ministry of Internal Affairs (*Bundesministerium für Inneres*) (2016), *Sicherheitsbericht (2016)*.

⁴¹ Austria, Federal Ministry of Justice (*Bundesministerium für Justiz*) (2016), *Bericht über die Tätigkeit der Strafjustiz*.

Belgium

Legal framework

The Belgian Criminal Code (CC)⁴² establishes enhanced penalties for a number of substantive criminal offences when motivated by hatred, contempt or hostility towards a person based on her or his presumed race; skin colour; ascendance; national or ethnic origin; nationality; sex; sexual orientation; civil status; birth; age; wealth; religious or philosophical convictions or beliefs; actual or future state of health; disability; language; political convictions; trade union convictions; physical or genetic characteristics; or social origin.

These substantive offences are: voyeurism, indecent assault and rape (Article 377 bis of the CC), reclusion (Article 438 bis of the CC), harassment (Article 442 ter of the CC), offences against the honour of a person (Article 453 bis of the CC), arson (Article 514 bis of the CC), destruction of constructions, machinery and telegraphic posts (Articles 521 to 525 of the CC) and destruction or deterioration of goods, merchandise and property (Articles 528 to 532 of the CC).

Article 405 quater of the CC sets out a second group of offences leading to enhanced penalties when motivated by the grounds listed in the first paragraph,

and adds a new protected ground to the list: a person's change of sex. The offences that fall under the enhanced penalties of Article 405 quater of the CC are homicide (Article 393 of the CC), assault (Articles 398 to 401 of the CC) and poisoning (Articles 402 to 405 of the CC).

Article 20 of the Law on combating certain acts motivated by racism and xenophobia⁴³ criminalises public incitement to hatred or violence on the grounds of nationality, presumed race, skin colour, ascendance, or national or ethnic origin.

Article 22 of the Law on combating certain types of discrimination⁴⁴ criminalises public incitement to hatred or violence on any of the protected grounds included in the anti-discrimination law: age, sexual orientation, civil status, birth, wealth, religious or philosophical beliefs, political conviction, trade union conviction, language, current or future state of health, disability, physical or genetic characteristics, or social origin.

Article 27 of the Law on combating discrimination between women and men⁴⁵ criminalises public incitement to hatred or violence on the ground of sex. In addition, Article 2 of the Law on combating sexism in the public sphere⁴⁶ criminalises the public expression of sexism.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013 Fifth report on Belgium	47. ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Belgium	Belgium has not periodically reported reliable information and statistics on hate crimes to ODIHR.

43 Belgium, *Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie*, 30 July 1981.

44 Belgium, *Loi tendant à lutter contre certaines formes de discrimination*, 10 May 2007.

45 Belgium, *Loi tendant à lutter contre la discrimination entre les femmes et les hommes*, 10 May 2007.

46 Belgium, *Loi tendant à lutter contre le sexisme dans l'espace public et modifiant la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes afin de pénaliser l'acte de discrimination*, 22 May 2014.

42 Belgium, *Penal Code (Code Penal)*, 8 June 1867.



Recording hate crime

In Belgium, there are no specific forms or guidelines for recording hate crime. Victims or witnesses can file complaints directly with the local police. When taking a statement, frontline police officers write up the experiences or observed facts of the complaint, after which they draft an official report (*procès-verbal*). The categorisation of the reported offence included in this official report is made on the basis of provisions of the criminal code pertaining to hate crime, as described in the following section on data collection.

Data collection and publication

Official reports produced by the police on the basis of statements by victims or witnesses are used to generate criminal statistics, which are regularly published by the Federal Police.⁴⁷ These statistics are collated by

four services: the Federal Public Service for Justice; the Directorate-General for the management of resources and information (*Direction générale de la gestion des ressources et de l'information*, DGR); the Directorate for police information and ICT means (*Direction de l'information policière et des moyens ICT*- DRI); and BPOL (Belgian politics - Belgian State culture; *Belgische politiek* - *Belgische staatsstructuur*).

The number of recorded offences pertaining to hate crime are collated under two broad categories in the criminal statistics, namely *discrimination* and *Holocaust denial and revisionism*.⁴⁸ These broad categories further include sub-categories of offences, as outlined in [Table 8](#).

Not all the sub-categories of offences pertaining to hate crime are included in the regularly published criminal statistics of the Federal Police, as [Table 9](#) shows.

Table 8: Offences with a bias motivation covered by criminal statistics of the Belgium Federal Police

General category of offences	Sub-categories of offences
Discrimination	Racism and xenophobia: - <i>Incitement to discrimination or hatred against a person</i> - <i>Incitement to discrimination or hatred against a group or a community</i> - <i>Public incitement to discrimination or hatred</i> - <i>Discrimination in access to services or goods</i> - <i>Discrimination in access to employment, vocational training or in the execution of a work contract</i> - <i>Discrimination by a civil servant or a representative of a public authority</i>
	Discrimination on the ground of sexual orientation
	Discrimination on the ground of sex (sexism)
	Discrimination on the ground of disability
	Discrimination on the ground of religion or beliefs
	Other forms of discrimination
	Holocaust denial and revisionism
Approbation or justification of the genocide committed by the Nazis	

Source: Belgium, Federal Police (2017), *Registre PV*

Table 9: Criminal statistics pertaining to hate crime published by the Belgium Federal Police, 2007–2017

	Bias motivation	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017*
Discrimination	Racism and xenophobia	1,317	1,190	1,085	930	1,000	1,016	821	1,057	1,036	988	481
	Homophobia		34	57	60	87	163	142	193	169	187	107
	Sexism	-	-	-	-	-	-	-	-	19	44	23
	Not specified	15	15	12	21	8	16	7	8	11	7	3
	Other forms of discrimination	1	56	94	75	83	81	81	97	104	88	35
Holocaust denial and revisionism	Denial	2	3	4	1		1		1	4	1	2
	Revisionism	2	5	7	1	2	6	7	4	4	3	4
	Not specified		1					1			1	

Notes: Data in the table are as presented in the report by the Belgian federal police. Empty cells are assumed to correspond to zero cases recorded in a given year. Data on sexism were not published prior to the year 2015.

* First six months of 2017.

Source: Belgium, Federal Police (2017), *Statistiques policières de criminalité*, 2000 - Semestre 1 2017

47 Belgium, Federal Police, *Statistiques de criminalité*.

48 Belgium, Federal Police, *Registre PV*.

Cooperation with civil society organisations

The Federal Police does not have any agreements with civil society organisations regarding either recording or data collection on hate crime.



Bulgaria

Legal framework

In the Bulgarian Criminal Code (CC),⁴⁹ racist or xenophobic motivation is considered a specific aggravating circumstance in connection with two criminal offences: homicide (Article 116.1.11 of the CC) and infliction of bodily harm (Art. 131.1.12 of the CC).

The CC further establishes a number of substantive offences that include bias motivation as a constitutive element, referred to as *crimes against the equality of all citizens* and *crimes against religious denominations*.

Crimes against the equality of all citizens are: incitement to hatred, violence and discrimination on grounds of race, ethnicity or nationality through speech, press or other means of mass information, electronic information systems or in any other way (Article 162.1. of the CC); use of violence against people or against property on grounds of race, ethnicity, nationality, religion or political convictions (Article 162.2 of the CC); leading or participation in a group, with the aim of committing any of these two offences (Article 162.3 of the CC); and taking part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national, ethnic or racial affiliation (Article 163 of the CC).

Crimes against religious denominations are: incitement to discrimination, violence or hatred on grounds of religion (Article 164.1 of the CC); desecration, destruction or damage to places of worship (Article 164.2 of the CC); and use of force or threats to hinder the right to freely practice one's faith or to compel another to take part in religious rituals and services (Article 165 of the CC).

Recording hate crime

The law enforcement agencies register hate crime as any other criminal offence. Recording of crimes is regulated by the *Internal Rules for organization of work at the Ministry of Interior on request for general crimes*. All crimes are entered into the Integrated Regional Police System (IRS), Automated Information System (AIS) "Central Police Register" and CPS "Central Police Statistics."

There is no special system for recording or flagging hate crimes. In the crime report, the police officer can describe any crime motive in a designated text field. The same field is also used to provide preliminary legal qualification by referring to the relevant provisions of the Criminal Code. As described above, these include aggravation by bias in the sub-sections of the main provision. There is no guidance on how to record hate crime in the system.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017 Fifth report on Bulgaria, 2014	27. (§112) ECRI recommends that the authorities collect data on hate speech and hate crime against LGBT persons, including on the number of cases reported, investigated and prosecuted.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Bulgaria	The law enforcement agencies of Bulgaria have not recorded the bias motivations of hate crimes.

⁴⁹ Bulgaria, *Criminal Code*.

Data collection and publication

The authorities responsible for collecting criminal data are the Interior Ministry's Co-ordination, Information and Analysis Directorate, the Supreme Judicial Council's Commission on Professional qualification, IT and statistics, the Supreme Court of Cassation's Criminal College, the Supreme Prosecutor of Cassation's Analysis Unit, and the National Statistical Institute. The official website of the Ministry of Interior publishes statistical information about all registered crimes, not disaggregated by bias motivation.⁵⁰

Cooperation with civil society organisations

There is no structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime. The Commission for Protection against Discrimination is developing an action plan for a coordination mechanism among stakeholders, including CSOs on hate crime recording and reporting, to be implemented later in 2018.

⁵⁰ Bulgaria, Ministry of Interior.



Croatia

Legal framework

Article 87 of Croatia's Criminal Code (CC) includes a statutory definition of hate crime and at the same time provides for bias motivation to be considered a general aggravating circumstance: "A hate crime shall mean a criminal offence committed on account of a person's race, colour, religion, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of another person. Unless a more severe penalty is explicitly prescribed by this Act, such conduct shall be taken as an aggravating circumstance."⁵¹

The CC sets out a number of offences with enhanced penalties if they are motivated by hatred: aggravated murder (Article 111 of the CC); female genital mutilation (Article 116 of the CC); bodily harm (Article 117 of the CC); serious bodily harm (Article 118 of the CC); particularly serious bodily harm (Article 119 of the CC); coercion (Article 138 of the CC); threat (Article 139 of the CC); serious offences against sexual freedom (Article 154 of the CC); and incitement to riots (Article 324 of the CC).

Article 325 of the CC criminalises public incitement to violence or hatred directed against a group of persons or a member of such a group on account of their race, religion, national or ethnic origin, descent, colour, gender, sexual orientation, gender identity, disability or any other characteristics.

Recording hate crime

Police officers use a generic form used for all types of crime to record hate crimes. If a suspected hate crime is identified, police officers put a mark in the corresponding electronic form of the information system of the Ministry of the Interior. After marking the case as a hate crime, an additional form appears to insert data on motive, victim, perpetrator's conduct, etc.

Police officers must identify a motive for every crime committed. The recording of hate crimes by the police and other authorities is governed by the 2011 **Protocol on procedure in cases of hate crime**. In the case of receipt of a report of a hate crime or a request for assistance to a person exposed to any form or mode of hate crime, the police are obliged to send officers immediately to the scene to intervene and verify the report or request for assistance. Police officers must collect information and statements needed to clarify and provide evidence of the bias motivation, as follows:

- the affiliation of the injured party with a group, membership of which is a motive for a hate crime;
- the motive for commission of the hate crime and the perpetrator's membership of a group;
- the consequences of the offence, including on the victim and as regards damage to property;
- how it was established that the incident was motivated by hatred;
- the qualification of the incident according to the criminal code (e.g. threat, property damage, bod-

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2017 ECRI REPORT ON CROATIA (FIFTH MONITORING CYCLE)	5. (§ 23) ECRI recommends that the authorities further refine their national data collection system for hate speech incidents, by revising the way data are collected on the criminal offence of incitement to violence and hatred as well as on the application of provisions related to misdemeanours. 11. (§ 61) ECRI recommends that a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations, particularly through providing clear guidelines between the police and State Attorney's Office, as well as judicial proceedings from their very beginning. ECRI also recommends that the authorities continue training to police, judges and prosecutors on the application of Article 87 (21) of the Criminal Code.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Croatia	Croatia has not reported hate crime data disaggregated by bias motivation to ODIHR.

⁵¹ Croatia, *Criminal Code*, 21 December 2012 (*Kazneni zakon, Narodne novine* 125/11, 144/12, 56/15, 61/15, 101/17).

ily injury, endangerment to life and property by a generally dangerous act or means).

Data collection and publication

Hate crime data are collected by the Ministry of Interior, the Prosecutor’s Office, the Ministry of Justice and the Office for Human Rights and Rights of National Minorities. Data on hate crime are regularly **published** by the Government’s Office for Human Rights and Rights of National Minorities. Police officers identify and log hate crimes through electronic forms in the Ministry of Interior’s information system, which is used to monitor all criminal cases. A tracking method has been adopted in the information system of the Ministry of the Interior, allowing for a review of the state of hate crimes starting from the total number of recorded cases, number of criminal offences and misdemeanours, searching by motive and other parameters.

Under a 2006 internal instruction, reflected by the 2011 protocol on hate crime, prosecutors are required to identify hate crime cases and record the file number, name of suspects and type of criminal offence. The Public Prosecution Service is obliged to keep records of all cases of hate crime.

The criminal departments in municipal courts and first instance misdemeanour courts are responsible for keeping separate records of hate crimes, collecting data on the numbers of cases, their outcomes, the number of defendants, and the duration of the trial and sanctions. Both judicial bodies record their cases in a case management system. When a case marked as a hate crime enters the system, it is flagged as such, so that the case can be extracted and summarised at the end of the reporting period.

Police data on hate crimes are compiled every six months by the Ministry of Interior and forwarded to

the Public Prosecution Service. After adding the information received from the Public Prosecution Service for the reporting period, the dataset is finalised by the Ministry of Justice, which includes judicial information, such as the outcome of the trial. The Ministry of Justice submits the six-month report to the Office for Human Rights and Rights of National Minorities, which consolidates and publishes the data on its website.

Immediately after recording in the system, the data are entered into criminal statistics. The data recorded by police officers is used by the Ministry of Interior and the Office for Human Rights and Rights of National Minorities to produce criminal statistics. The Ministry of Interior uses these data to produce annual surveys of basic safety indicators, which are publicly accessible on **the ministry’s website**.

Cooperation with civil society organisations

The Council for Development of Civil Society (*Savjet za razvoj civilnog društva*) is a member of the Hate Crimes Monitoring Working Group (*Radna skupina za praćenje zločina iz mržnje*) under the responsibility of the Office for Human Rights and Rights of National Minorities. The responsibilities of this working group include analysing and monitoring the implementation of antidiscrimination legislation in relation to hate crime; conducting needs analyses of legal frameworks in regards to hate crime; coordinating the hate crime data collection process; and coordinating inter-institutional cooperation in relation to hate crime prevention.

The working group further includes the Ministry of Interior, the Public Attorney’s Office, the Ministry of Justice, the Police Academy, the Ministry of Foreign and European Affairs; the Misdemeanour High Court of the Republic of Croatia; the Municipal Criminal Court in Zagreb; the Faculty of Law in Zagreb; and the Ombudsman Office.

Table 10: Criminal acts (hate crime) recorded by police, by bias motivation, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Disability	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0
Gender identity	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	1
National origin	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	17	23	16
Racial origin	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	3	1
Religion	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	1	3
Sexual orientation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6	1	7
Hate crime	n/a	n/a	n/a	n/a	n/a	n/a	35	14	n/a	n/a	n/a

Notes: No hate crime data were published for the years prior to 2013. Data disaggregated by bias motivation were first published for the year 2015. Sources: Croatia, Ministry of Interior, *Basic safety indicators* (Temeljnih sigurnosnih pokazatelja)

Cyprus

Legal framework

In Cyprus, there are two types of criminal offences pertaining to hate crime. Article 35A of the Criminal Code (CC)⁵² sets out an optional aggravating circumstance by stating that the court, when imposing the penalty, may take into account as an aggravating factor the motivation of prejudice against a group of persons or a member of such a group of persons on the basis of race, colour, national or ethnic origin, religion or other belief, descent, sexual orientation or gender identity.

In addition, the Law Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law of 2011⁵³ sets out the offence of public incitement to violence or hatred directed against a group of persons or a member of such a group on the grounds of race, colour, religion, descent or national or ethnic origin, as well as the offence of public acts aimed at promoting enmity between the communities or religious groups.

Recording hate crime

When dealing with a possible offence, frontline police officers register it in the Police Station logbook and also enter a report into the general Crime Report Registry, which generates a crime identification number (RCI). This report includes the description of the crime and the personal details of offender and victim. There is a specific box allowing to flag the category

“racial crime” or to flag the subcategory of motivation: “racism/discrimination”.

If they tick this box, police officers then have to fill in a specifically dedicated form for hate crimes, which is sent to the Police Office of Combating Discrimination. This form includes the following bias motivations: race, colour, community (Turkish-Cypriot, Armenian, etc.), language, religion, political opinion, nationality, ethnic origin, disability and sexual orientation. These bias motivations do not exactly match the list of protected grounds of the Criminal Code but are based on police criteria. Gender identity is included under sexual orientation. At the end of the year the dedicated forms received are cross-checked against the Crime Report Registry.

According to Police Order 3/38 issued by the Chief of the Police under the Police Law, revised in 2013, any offence shall be defined and recorded as racially motivated if it is reported or perceived as such by:

- 1) the victim;
- 2) a person acting on behalf of the victim, or a CSO;
- 3) a person who was present and witnessed the incident;
- 4) a member of the police; or
- 5) the Ombudsman.

This Police Order, together with the document ‘*Policy for Handling and Combating Racist Violence, Xenophobia and Discrimination*’, provide instructions on how to

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2016 Fifth report on Cyprus	43. ECRI strongly recommends that the police are clearly instructed to record any racist motivation behind all offences involving violence as well as in relation to any ordinary offence and to investigate these elements thoroughly. 94. ECRI encouraged the authorities to develop further the Crime Report System to ensure that accurate data and statistics are collected and published on the number of racist and xenophobic incidents and offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Cyprus	Cyprus has not reported reliable statistics on hate crimes to ODIHR.

⁵² Cyprus, *Criminal Code*.

⁵³ Cyprus, *Law combating certain forms of racism and xenophobia by means of Criminal Law*.

identify and record hate crimes. The policy document was developed in cooperation with the Office of the Ombudsman.

In 2017, the Police Office of Human Rights, in cooperation with the Office of Combating Discrimination, published a *Manual on Human Rights & Combating Racism*. It facilitates the identification of victims of hate crimes through specific questions (e.g. the relation victim-offender, the time/place/method of crime, the vulnerability of the victim based on his/ her special characteristics, etc). Police officers can access this manual through the internal police computer system.

The Circular of the Chief of Police of 2 December 2015 on *'Investigation of Criminal Cases concerning Racist Crime and Intolerance'* emphasises the importance of recognising and investigating hate crimes and stresses the importance of the criminal law provisions related to racism and xenophobia and to the aggravating circumstance of racist motivation.

The Circular of the Chief of Police of 29 January 2008 on *'Avoidance of Racist Conduct by Members of the Police'*, provides that complaints of racial offences or offences with a racial motivation must be investigated with special diligence and recorded as required. The Circular of the Chief of Police of 5 January 2009 on *'Investigating Racial Cases'* provides that these offences must be investigated by a Police Sergeant or higher ranking officer and that these investigations shall be monitored by the local Assistant Police Commander in charge of operations.

Data collection and publication

The hate crime recording system is managed by the Police Office of Combating Discrimination, which is in charge of case monitoring and statistical data management. Additionally to the data received through the Crime Report Registry and the dedicated forms, the office collects data and information from other official and non-official channels, such as police station logbooks, Ombudsman and other institutions, NGOs, media reports or direct disclosures by victims or persons involved in hate crimes. In the case of non-official sources, the information is cross-checked by the office with other police sources to determine whether it fits the criteria of racial or racially motivated crime or incident. Furthermore, the office reviews all offences registered in the Crime Report System as racially motivated to validate them before they are counted as such.

Cooperation with civil society organisations

In 2017 the Cyprus Police signed a Memorandum of Understanding for the Protection and Promotion of Human Rights with nine non-governmental organisations active in different areas (countering trafficking in human beings, domestic violence, discrimination etc.). The purpose of the memorandum is to develop closer cooperation between the parties for the protection and promotion of human rights. The memorandum includes issues such as "submission of complaints/exchange of information" and "training programmes".

Table 11: Incidents and/or cases of racial nature and/or with racial motive, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Incidents and/or cases of racial nature and/or with racial motive	3	6	8	34	16	14	8	11	11	17	n/a

Notes: n/a = No data are available.

Sources: Cyprus Police (2016), Office for Combating Discrimination, Crime Combating Department, Police Headquarters, *Criminality Statistic Data - Racial Incidents - Incidents and/or Cases of Racial Nature and/or with Racial Motive 2005-2016*



Czech Republic

Legal framework

Section 42 of the Criminal Code of the Czech Republic (CC)⁵⁴ sets out a general aggravating circumstance when the perpetrator committed the crime out of racial, ethnic, religious, class or other similar hatred, or another particularly condemnable motive.

Bias motivation functions as a specific aggravating circumstance of certain substantive offences, leading to an enhanced penalty. This is the case when the offences of homicide (Section 140 of the CC), bodily harm and grievous bodily harm (Sections 145 and 146 of the CC), torture and other inhuman or cruel treatment (Section 149 of the CC), abduction and deprivation and restriction of liberty (Sections 170 to 172 of the CC), extortion (Section 175 of the CC), breach of secrecy of private documents (Section 183 of the CC),

damages (Section 228 of the CC), abuse of power of public officials (Section 329 of the CC), insults between soldiers and violation of rights and protected interests of soldiers (Sections 378 to 380, 382 and 383 of the CC) are motivated by a person's real or perceived race, ethnic affiliation, nationality, political opinion, religion or belief or real or perceived lack thereof.

The CC also provides for a number of substantive hate crimes which include defamation of nation, race, ethnic or other group of people (Section 355 of the CC), incitement of hatred towards a group of people or towards disrespect of their rights and freedoms (Section 356 of the CC), establishment, support and propagation of a movement leading to repression of rights and freedoms of a person (Section 403 of the CC), expression of sympathy towards above-mentioned movements (Section 404 of the CC), and denial, questioning, approval and justification of genocide (Section 405 of the CC).

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2015 Fifth report on Czech Republic	28. ECRI recommends that the authorities ensure that a single mechanism for collecting disaggregated data on hate crime, including hate speech, is put in place, recording the specific bias motivation, as well as the follow-up given by the justice system, and that this data is made available to the public.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Czech Republic	The Czech Republic has not reported on cases of hate crimes separately from cases of hate speech and/or discrimination.

⁵⁴ Czech Republic, *Act on Criminal Proceedings (Criminal Procedure Code) (Zákon o trestním řízení soudním (trestní řád) (1961)*, č.141/1961 Sb.

Recording hate crime

In the Czech Republic, the concept of hate crimes is closely linked to that of extremism. Hate crimes are understood as crimes with extremist context. Police officers have at their disposal two internal methodological manuals related to hate crime – however, information as to whether these provide guidance on hate crime recording and bias indicators was not available at the time this report was published. The manuals were drafted by the NGO *In Iustitia* and are not publicly available.

The Czech police registers crimes with extremist backgrounds using two forms – an incident form and a form on known perpetrators. Police officers can note on the forms whether the crime has an extremist background and note the appropriate bias motivation. The data are entered into the Crime Statistics Recording System, which is part of the broader Electronic Criminal Proceedings (ECP) information system, operated by the Police Presidium.

Data collection and publication

The recorded data are checked, partially manually and partially automatically, and provided to police analysts at the Informatics and Analytical Centre of the Criminal Police, and to the Investigation Service of the Police Presidium, the Analytical and Legislative Department

of the Supreme Public Prosecutor’s Office and the Informatics Department of the Ministry of Justice.

Every year, the Ministry of the Interior publishes a report on extremism in the Czech Republic, as part of the government’s strategy on combating extremism.⁵⁵ These reports provide data on the number of recorded criminal offences with extremist background, disaggregated by bias motivation: antisemitic crimes, crimes against Roma, Muslims and Arabs. The data are collected within the Recording Statistical System of Criminality, which is part of the ECP system that enables links between data of the police and the data of the Supreme Public Prosecutor’s Office. The Police Presidium is responsible for both systems.

Cooperation with civil society organisations

In 2016, the Federation of the Jewish Communities in the Czech Republic, the Ministry of Interior, the Police Presidium, the Magistrate of the city of Prague, and two other Jewish organisations signed a memorandum of cooperation regarding protection of soft targets and exchange of data, including on hate crime. The Federation reports annually on antisemitic incidents in the Czech Republic.⁵⁶ This includes incidents reported to it by members of the public, as well as incidents the Federation identifies itself through its own data collection. The memorandum also entails regular meetings.

Table 12: Criminal offences motivated by hatred, by bias motivation, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Offences motivated by hatred against Roma	n/a	n/a	n/a	n/a	69	54	42	53	33	25	n/a
Antisemitic offences	18	27	48	28	18	9	15	45	47	28	n/a
Offences motivated by hatred against Muslims	n/a	n/a	n/a	n/a	n/a	1	n/a	2	5	7	n/a
Offences motivated by hatred against Arabs	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	5	8	n/a

Notes: n/a = No data are available.

Source: Czech Republic, Security Police Department (2017), *Annual report on the issue of extremism in the Czech Republic 2016*

55 Czech Republic, Ministry of the Interior (*Ministerstvo Vnitra*) (2017), *Výroční zpráva o extremismu a koncepcie boje proti extremismu*.

56 Czech Republic, Federation of the Jewish communities in the Czech Republic (*Federace židovských obcí v ČR*) (2016), *Výroční zpráva o projevech antisemitismu v České republice za rok 2015*.

Denmark

Legal framework

In Denmark, Section 81 No. 6 of the Criminal Code (CC)⁵⁷ sets out a general aggravating circumstance if a criminal offence is motivated by another's ethnic origin, religion, sexual orientation or the like.

Section 266b of the CC makes it a criminal offence to "publicly, or with the intention of wider dissemination, making a statement or imparting other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation". The Danish authorities consider that, by virtue of the drafting history of this article, "national origin" also covers a person's language and citizenship.⁵⁸

Recording hate crime

There are no police recording forms specifically on hate crime. Police officers use a generic crime reporting form. In cases of suspected hate crime, the police is instructed (see below on the instruction) to add a search key to the case file, which enables Danish police to retrieve relevant data from the general electronic Police Record System (POLSAS).⁵⁹ The case worker/police officer is encouraged to record as much information as possible, including a suspected bias motivation.

Police officers identify hate crimes through face-to-face interviews with the victim and/or witnesses

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2017 Fifth report on Denmark, 2017	50. ECRI recommends that the authorities ensure that the hate crime data collection system can trace the judicial follow-up of incidents involving racist and homo-/transphobic violence, including acts of vandalism. 53. ECRI recommends that, in cases of vandalism of religious sites, the police take hate motivations into consideration from the beginning of their investigation.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Denmark	Denmark has not reported to ODIHR the number of prosecuted and sentenced hate crime cases.

⁵⁷ Denmark, Danish Criminal Code (Bekendtgørelse af straffeloven).

⁵⁸ Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), *ECRI report on Denmark (fifth monitoring cycle)*, Strasbourg, Council of Europe, 16 May 2017.

⁵⁹ For further information, see [POLITI](#).

involved in the crime. During the interview, the police officers focus on the following bias indicators: the victim's and witness's perception; their own perception of the motive; physical characteristics of the victim and the offender, which might indicate a specific group affiliation; and the crime scene characteristics.

The Instruction No. 2/2011 on Hate Crime⁶⁰ instructs police officers to check for the bias indicators, including in cases of threats, and provides a list of bias indicators. The instruction specifies that it is a prerequisite for the effective action against hate crime that the police and prosecution services are aware of any circumstances in criminal cases that may indicate that the offence was committed in full or in part because of the real or perceived ethnic origin, religion and sexual orientation of the victim. The guidelines help to ensure that the prosecutor collects the evidence needed to prove aggravating circumstances.

Data collection and publication

Until 2014, the Danish Security and Intelligence Service (DSIS) collected hate crime data directly from all the police databases. In November 2015, the overall responsibility for hate crime data collection was transferred to the Danish National Police (DNP), which has initiated a national Hate Crime Monitoring Programme. When a criminal offence believed to be a hate crime is subject to police investigation, the local police must add a hate crime search key to the case file. Recorded data are then collated in a QlikView file.

⁶⁰ *Instruction No. 2/2011 of 14 September 2011* of the Director of Public Prosecutions on processing cases of violation of Section 266b of the Criminal Code and the Act on prohibition of differential treatment based on race and cases in which Section 81 (1) (vi) of the Criminal Code might apply.

The data collection system is part of the monitoring system. In line with the new national monitoring scheme, the DNP set up a new data collection system in which the police caseworkers enter the search-keywords directly into POLSAS. Search keys, which are divided into different categories in accordance with national criminal law, are created and attached to cases of suspected hate crime to form a network of information available for future searches. The search keys can be added and removed in the different stages of the case. For instance, the case worker can register a case of violence in POLSAS and then later add a hate crime search key due to new information from the victim, a witness, etc. Often the search key is added when the cases is registered in POLSAS.

The individual officers are responsible for adding the relevant search key to (suspected) hate crime cases. They must tick the search key in a drop-down menu that does not automatically open; only the relevant search keys that match the registered crime (e.g. “violence” or “vandalism”) appear and can be selected. Nonetheless, it is possible to register a case in POLSAS without adding any search keys. The available search keys which appear in POLSAS are:

- 1) motivated by racism (sub-categories: nationality/ethnicity, race/skin colour and other)

- 2) motivated by the victim’s religious beliefs (sub-categories: Christianity, Judaism, Islam, Buddhism, Hinduism and other)
- 3) motivated by the victim’s sexual orientation (sub-categories: homosexuality, transvestism, other).

The monitoring serves as the basis for annual reports on the number of recorded hate crimes in Denmark, which are drawn up by the police (see [Table 13](#)).

The numbers reported for 2015 and 2016 also include data on hate speech online. In 2016, of the 88 cases concerning religiously motivated cases, 32 occurred online; of the 140 racially motivated cases, 24 were online; and of the 45 cases involving sexual orientation, three occurred online. In 2015, a total of 40 online hate speech cases were recorded.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

Table 13: Racially, religiously and sexually motivated hate crimes and online hate speech, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Racially motivated	35	113	73	62	70	77	n/a	n/a	104*	140	n/a
Religiously motivated	n/a	9	21	10	24	33	30	n/a	60*	88	n/a
Motivated by sexual orientation	n/a	n/a	17	30	23	33	26	n/a	31*	45	n/a
Motivated by antisemitism	n/a	n/a	n/a	n/a	5	15	10	n/a	13*	21	n/a

Note: * Data are not comparable due to change in methodology. Data also cover hate speech online.

Sources: Danish Security and Intelligence Service (2013), *Kriminelle forhold i 2012 med mulig ekstremistisk baggrund*; National Police of Denmark (2017), *Hadforbrydelser i 2016. Rigspolitiets årsrapport vedrørende hadforbrydelser*



Estonia

Legal framework

The Estonian Criminal Code (CC)⁶¹ does not include any general or specific aggravating circumstance related to bias motivation of committed criminal offences.

Section 151 of the CC sets out the substantive offence of incitement to hatred. This provision criminalises activities which publicly incite to hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person. It provides for an aggravated penalty if the incitement causes the death of a person or results in damage to health or other serious consequences; or was committed by a person who has previously been punished for such act.

Recording hate crime

Police officers use a generic form to record hate crime.⁶² The Ministry of Justice has developed and issued on its website guiding instructions defining hate crime and explaining the types of bias motive/hate crime. The instruction provides a definition of hate crime:

“Firstly, the offense committed must correspond to some qualifications of the punishment clause (criminal offences in the Penal Code, misdemeanours in the Penal Code or elsewhere).

Secondly, the perpetrator has chosen a specific attribute of the victim or target. This is a sign (such as race, religion, ethnic origin, nationality, sexual orientation) shared by a group of people, or similar common denominator.”

The police registration system enables police officers to tick a box, marking a case as a hate crime. This “hate crime flag” is not restricted to hate crimes, but is also used to mark other cases, such as hate speech incidents. Flagging whether or not something is a hate crime is not mandatory. Three boxes are currently available to police officers for flagging hate crimes on the basis of the three hate crime types:

- 1) race, religion, origin;
- 2) sexual orientation and identity; and
- 3) other group identity (disability and other social groups).

The guiding instruction further explains these categories and provides example scenarios for their use. The

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2015 Fifth report on Estonia	51. ECRI recommends that the Estonian authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of the cases of racist and homo/transphobic hate speech brought to the attention of the police and/or being pursued through the courts. ECRI recommends that the authorities adopt the same approach with regard to racist and homo/transphobic violence.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Estonia	Estonia has not reported to ODIHR the numbers of prosecuted hate crime cases and information on sentenced hate crime cases.

61 Estonia, Criminal Code.

62 Estonia, Police and Border Guard (*Politsei- ja Piirivalveamet*).

three categories create an open-ended list, aggregating distinct strands of hate crime (e.g. religion-race-origin) and, at the same time, does not enable further disaggregation of bias motivations at the time of recording.

Only after the crime suspect is identified can the police record the crime motive, by selecting the type of motive in the database, including a *hate motive*. This suggests a duality in “recording motive”: hate crime flags and the motive box.

The system police uses to record crimes does not provide for capturing and applying bias indicators. The recording officers can include bias indicators in the case description field. The police registration system does not prompt officers to list bias indicators or identify in detail the motivation of the perpetrator.

Data collection and publication

All reported crime is filed in an electronic system, E-file.⁶³ The E-File is a central information system that provides an overview of the different phases of criminal, civil, administrative and misdemeanour proceedings, procedural acts and court adjudications to all the parties involved, including police, prosecutors, judges, policy analysts, statisticians in the field, policymakers, citizens and their representatives. It is an integrated system for proceedings enabling the simultaneous exchange of information between different parties.

The hate crime flags accompany the case file and are also visible to prosecutors in their case registration database. Cases can be filtered out from a database based on the flag.

Data entered in the Police Information System (MIS) is simultaneously accessible by a prosecutor in the prosecutors’ register (Criminal Case Management Register). The information can be further used and changed by the prosecutor in the prosecutors’ register and sent, if necessary, to the courts’ information system (KIS); later, the procedural information and the court decision entered into force can be delivered to the Information System of Prisons (VangIS).

When preparing the *Crime in Estonia*⁶⁴ yearbook (see Table 14), the Ministry of Justice conducts key word searches in the crime description field across the whole registration system to verify the number and type of crimes that have been recorded as hate crimes; and to identify cases that should have been recorded as hate crimes, but were not. This can constitute a strong tool to correct the recording of hate crime.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

Table 14: Incidents of hostility, by bias motivation, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Motivated by racism and xenophobia	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6	10	4
Motivated by bias against other groups – Sexual orientation or gender identity	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	4	0
Motivated by bias against other groups	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	0

Notes: n/a = No data are available.
Sources: Ministry of Justice, *Crime in Estonia*

63 Estonia, Centre of Registers and Information systems (RIK), E-File.

64 Estonia, Ministry of Justice, *Crime in Estonia*.



Finland

Legal framework

Section 5 of Chapter 6 of the Finnish Criminal Code (CC)⁶⁵ sets out a general aggravating circumstance for offences motivated by the victim's race, colour, descent, national or ethnic origin, religion or belief, sexual orientation or disability, or by similar grounds.

In addition, a number of substantive offences include bias motivation as an element of their definition:

Chapter 11 of the CC sets out the offence of ethnic agitation, which consists of spreading or making available to the public an expression of opinion or another message whereby a certain group is threatened, defamed or insulted on grounds of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable ground (Section 10); and of aggravated ethnic agitation, which applies when these actions include an element of incitement or enticement to serious violence, to murder, to manslaughter with terrorist intent or to crimes against humanity or war crimes (Section 10a).

Chapter 11 of the CC further includes the offence of discrimination, which is committed by any person who in his or her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason refuses someone service, or entry, or places someone in a clearly

unequal or otherwise essentially inferior position owing to his or her race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual preference, inheritance, disability or state of health, or religion, political opinion, political or industrial activity or another comparable circumstance (Section 11).

Chapter 47 of the CC sets out two specific discrimination offences in the context of employment and access to employment: work discrimination (Section 3) and extortionate work discrimination (Section 3a), which applies when the discrimination is produced by taking advantage of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance. The protected discrimination grounds are the same as in Chapter 11 of the CC.⁶⁶

Recording hate crime

The Finnish police records all crime reports, including suspected hate crimes, into a nationwide electronic information system (PATJA). The database is also used by the Border Guard and Customs Investigation Service when conducting crime investigation in their own field of responsibility. Different crime types, such as domestic violence, financial crime, damage to property, etc., are flagged for purely statistical reasons and the flagging system is not compulsory.

Hate crime is recorded on a general crime report form. According to the police guidelines, a police officer filing the report of a crime is required, in case of sus-

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017	n/a
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 <i>OSCE/ODIHR hate crime reporting Finland</i>	Finland has not reported information on the numbers of prosecuted and sentenced hate crimes to ODIHR.

⁶⁵ Finland, *Criminal Code (Rikoslaki)*, Chapter 6, Section 5. See [unofficial English translation](#).

⁶⁶ Finland, *Criminal Code (Rikoslaki)*, 511/2011, Chapter 11, Section 10a. See [unofficial English translation](#).

pected hate crime, to mark the report with a specific hate crime code. However, according to the report of the Police University College,⁶⁷ the hate crime-specific code was only used in 23 % of the cases later identified as hate crime in 2016. The code may not have been used even in cases where a bias motivation for the suspected crime had been indicated in the crime report.

Marking the specific hate crime code, as well as other statistical codes – such as for domestic violence or financial crime – is not compulsory. The code can be added at any stage from the initial report until the case is closed, but is often disregarded as there is no pop-up window and some may think it does not matter as it is for statistical purposes only. The code is not visible as the report is printed out and a lack of the code does not correlate with whether or not the hate motive has been taken into consideration in the investigation. However, the use of the code has increased over time, which could be a result of the enhanced training on hate crime. Using the code will hopefully become mandatory in the new police reporting system being developed.

The National Police Board has issued several internal instructions for police officers on how to properly identify and record hate crimes. The first instructions were already given in 1997, but at that time covered only racist crimes. They were followed by new guidelines in 2011, covering all types of hate crimes.⁶⁸ According to the guidelines, “a hate crime refers to an offence that is motivated by prejudice or hostility towards a population group represented by the victim [...]. The victim does not necessarily need to belong to the group in question; it is enough for the perpetrator to assume that he or she belongs to it”. A case is to be categorised as a hate crime when:

- the complainant (victim or some other injured party), a party involved, or the police feels that:
 - the act was partly or fully motivated by prejudice or hatred against a certain population group, or
 - the act was partly or fully motivated by reason based on race, colour, descent, national or ethnic origin, religion or belief, sexual orientation or disability, or other similar motive;
- or when the act constitutes offences in accordance with the CC.

The classification of a case as a hate crime is based on the incident descriptions which the police have recorded and which are included in the reports. The

classification of a case can also be based on other clues about the motivation for the crime that are mentioned in the police report, including insults used during the offence that refer to the victim’s real or perceived group affiliation.

Information on whether the prosecutor has called for aggravated circumstances or whether an aggravated sentence has been pronounced due to a biased motive is not publicly available. There is no joint electronic system to identify how the process links the police with the prosecutor’s office and the courts.⁶⁹ The Prosecutor’s Office and the courts only perform recording by crime type; this is why statistics on prosecuted and sentenced hate crimes are not available. However, the data system of the prosecutors and courts is currently being renewed. In the next few years, there will be better opportunities to get statistics on how hate crimes are dealt with at different levels and phases of the criminal justice system.

Data collection and publication

Hate crime data are collected by the Police University College of Finland’s Research Department, the Interior Ministry, the Prosecutor’s Office, the Ministry of Justice and Statistics Finland. All crime reports are recorded in PATJA, which can be used to search specific offences using such tools as key words, specific criminal titles, statistical codes, and the date the report was filed. Statistical reports based on nationwide data on hate crime reported to the police have been made since 1998 and, since 2003, this has been carried out by the Police University College. Since 2009 this includes other forms of hate crime (see [Table 15](#)).

Every year, researchers from the Police University College⁷⁰ in cooperation with the Ministry of the Interior, the National Police Board, the Ministry of Justice, the Border Guard, the Finnish Security Intelligence Service and the European institute for crime prevention and control, affiliated with the United Nations, investigate reports from Finland’s national police database with the sole purpose of identifying suspected hate crimes. Information from PATJA on suspected crimes – for example, crime location and timing, injured parties and suspected offenders – is collected and converted into numeric variables. A Hate Crime Monitoring System collects data in three phases: collection of raw data (the initial search generates ‘raw results’ of around 9,000-10,000 police reports per year); sifting and classification of offences as hate crimes (around 10 % of

67 Finland, Police University College, [Hate crimes reported to the Police in 2016 \(Poliisin tietoon tullut viharikollisuus Suomessa 2016 Jenita Rauta\)](#), Tampere, December 2017.

68 Finland, National Police Board, Instruction 2020/2011/2098, 13 December 2011.

69 Information collected for this report, though not comprehensive for this area, suggests that in a majority of EU countries, the police system is separate from the ones prosecutors and courts use. This increases the importance of possibilities to flag hate crime in the databases.

70 For further information, see Finland, Police University College, [Hate Crime](#).

the reports examined have a suspected bias motive); and creation of variables based on the incident descriptions. The raw data collected for the annual hate crime reports consist of all the reports of an offence recorded by the police on the basis of the following criteria:

- 1) all reports marked with the hate crime code;
- 2) all reports that include the words “racist” or “racism”;
- 3) all reports of an offence that include one of the specified criminal titles and one of the used key words (there are 271 key words in total);
- 4) all reports classified as discrimination, work discrimination, extortionate work discrimination, ethnic agitation, aggravated ethnic agitation, genocide, preparation for the commission of a genocide, crime against humanity, aggravated crime against humanity or torture;
- 5) all reports where a special code created or cases related to migrants, refugees and asylum seekers (TUPA) was used.

Suspected hate crimes are divided into the following subcategories:

- 1) racist crimes (ethnicity or nationality);
- 2) crimes against religion or belief;
- 3) sexual orientation and trans identity or appearance;
- 4) disability.

The analysis of this numerical data gives information on hate crime reported to the police in the target year, and the results are documented in an annual hate

crime report (see Table 15). In the published report, hate crime is defined as a crime against a person, group, somebody’s property, institution, or a representative of these, motivated by prejudice or hostility towards the victim’s real or perceived ethnic or national origin, religion or belief, sexual orientation, transgender identity or appearance, or disability. As one’s ethnic descent is not recorded in the system, nationality or place of birth is used to indicate whether there is a hate motive based on ethnicity. Because of this, data on crimes against Roma have previously not been included. However, as of this year and with the consent of the Roma community, hate crime against Roma people will be included as a new category. The information will be retrieved as the selected raw data are being analysed.

Cooperation with civil society organisations

The Finnish police have established close cooperation with the Finnish Human Rights League, the Finnish Red Cross and Finnish Victim Support, with the aim of developing a coordinated response to combating hate crimes and discrimination.

These CSOs, along with the national police and other key authorities, form a network tasked by Finland’s Ministry of Justice with monitoring hate crime in Finland and finding adequate measures to prevent such crimes. Comprised of different NGOs, public authorities and other stakeholders, the network aims to keep members up-to-date with available data on the incidence and impact of hate crime and other forms of dis-

Table 15: Suspected hate crimes reported to the police motivated by prejudice or hostility, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Racist and xenophobic crimes	697	1,130	1,385**	1,168	788	641	710	678	991	831	n/a
Antisemitic crimes*	n/a	1	10**	4	6	8	11	7	8	10	n/a
Islamophobic/ Anti-Muslim crimes*	14	17	14**	15	14	5	11	14	71	68	n/a
Religiously motivated crimes	n/a	53	83**	52	61	45	73	68	133	149	n/a
Gender identity and sexual orientation	n/a	23	28**	41	45	30	39	47	61	57	n/a
Disability	n/a	n/a	3*	5	3	3	6	5	82	42	n/a

Notes: * This category is already included in the ‘Religiously motivated crimes’ category.

** The data collecting methodology changed in 2009. Data after 2009 are not comparable with those before 2009.

n/a = No data are available.

Sources: Police University College of Finland (2017), *Hate Crimes Reported to the Police in 2016*

crimination. The network has also assisted in designing and implementing hate crime victim surveys that complement the official statistics elaborated by the Police University College.

The Monitoring Group of Discrimination within the Ministry of Justice is responsible for the implementation of the Monitoring System of Discrimination in Finland. The system comprises a secretary and a working group as well as an extended group of experts, including representatives from ministries, authorities and CSOs. The tasks of the Monitoring Group are to 1) produce different target groups with up-to-date, objective

and complementary information about the existence of discrimination as well as its types, reasons and consequences in Finnish society, 2) collate information produced by other actors, 3) promote the cooperation between different actors involved in research of discrimination, and 4) produce proposals for action. The monitoring system produces annual qualitative reports on different aspects of discrimination, including hate crime. The last report was a survey on hate speech and harassment and their influence on different minority groups. Published in 2016, it was entitled *"I often find myself thinking how I should be or where I shouldn't go"*.



France

Legal framework

Article 132-76 of the French Criminal Code (CC),⁷¹ modified by the law of 27 January 2017 on equality and citizenship,⁷² establishes an aggravating circumstance leading to enhanced penalties for criminal offences motivated by another person's or a group of persons' real or presumed race, ethnicity, nationality or religion. These enhanced penalties apply when the offence is preceded, accompanied or followed by written or spoken words, images, objects or actions of whatever nature which allow establishing that the crime has been committed on these grounds or when the offence is preceded, accompanied or followed by written or spoken words, images, objects or actions of whatever nature which damage the honour or the reputation of the victim, or a group of persons to which the victim belongs, on account of their actual or presumed membership or non-membership of these groups. Article 132-77 of the CC extends the same aggravating circumstance leading to enhanced penalties to the grounds of sex, or actual or supposed sexual orientation or gender identity.

Article 225-1 of the CC, in conjunction with Article 225-2, sets out the offence of discrimination in the areas of access to goods and services, economic activity and employment on grounds of origin, sex, family situation, pregnancy, physical appearance, particular vulnerability due to economic situation, patronym, place of residence, health status, loss of autonomy, disabil-

ity, genetic features, habits, sexual orientation, gender identity, age, political opinion, trade union activity, capability of speaking languages other than French, or on grounds of belonging or not belonging, actual or supposed, to an ethnic group, a nation, a pretended race or a certain religion. Article 225-1-1 and 225-1-2 of the CC further defines as discrimination any differential treatment between persons because they were victims or witnesses of harassment or sexual harassment.

Article 432-7 of the CC enhances the penalty set out in Article 225-1 when the discrimination is committed by a person invested with public authority or carrying out a public service and consists of denying the benefits of a right provided for by the law or of hindering the normal development of any economic activity.

Article R625-7 of the CC criminalises non-public incitement to discrimination, hatred or violence against a person or a group of persons because of their real or presumed ethnicity, nationality or supposed race. Article R625-7 of the CC further criminalises non-public incitement to hatred or violence against a person or a group of persons because of their sex, sexual orientation or gender identity, or disability.

Article 24 of the Law of 29 July 1881 on the Liberty of the Press, last modified in 2017,⁷³ sets out the criminal offence of direct public incitement to discrimination, hatred or violence against a person or group of persons on grounds of origin or belonging or not belonging to a certain ethnic group, nation, race, religion, sex, sexual

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2015 Fifth report on France	109. ECRI recommends that the French authorities [...] take step to implement the Ministry of Justice's instructions on recording racist offences in the form of a formal complaint and not as a record in the police daybook, and to extend this arrangement to homophobic/transphobic offences.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting France	France has not reported to ODIHR the numbers of prosecuted hate crime cases.

⁷¹ France, Penal Code.

⁷² France, Law number 2017-86 of 27 January 2017 on equality and citizenship (Loi n° 2017-86 du 27 janvier 2017 relative à l'égalité et à la citoyenneté), 27 January 2017.

⁷³ France, Law of 29 July 1881 on the Liberty of the Press (Loi du 29 juillet 1881 sur la liberté de la presse), Art. 24, 29 July 1881.

orientation, gender identity or disability. Article 24 bis further criminalises the denial or trivialisation of crimes against humanity. Article 32 criminalises public libel against persons because of their real or presumed ethnicity, nationality or supposed race, or because of their sex, sexual orientation or gender identity, or disability. Article 33 criminalises public slander against persons because of their real or presumed ethnicity, nationality or supposed race, or because of their sex, sexual orientation or gender identity, or disability.

Recording hate crime

Frontline law enforcement officers in France have to follow detailed guidance documents when writing up official reports (*procès-verbaux*) on offences pertaining to hate crime at the moment they are reported by victims. While not publicly accessible, the guidance documents include the procedure to follow when taking statements from victims of offences motivated by racism, antisemitism, xenophobia or homophobia. The bias motivation is determined on the basis of the provisions of the criminal code.

This guidance includes information as to what assistance frontline police officers should give to victims at the moment of reporting. The guidance further includes templates for the specific forms police officers should use to write up official reports for offences

motivated by another person’s sexual orientation or gender identity (homophobic offences), as well as for offences motivated by racism, antisemitism or xenophobia (racist offences). These templates include specific questions frontline police officers must ask victims to establish the bias motivation of the reported offence. Finally, the guidance outlines how to determine aggravating circumstances that lead to enhanced penalties for racist and homophobic offences.

In addition, the Ministry of the Interior is responsible for processing referrals of online incitement to hatred and discrimination it receives from the PHAROS platform managed by the Central Directorate of the Judicial Police.

Data collection and publication

The Ministry of the Interior, via the Ministerial statistical department for internal security (*Service statistique ministériel de la sécurité intérieure, SSMSI*), produces and disseminates official statistics and detailed analyses on crimes with discriminatory motive (to date: racism, xenophobia and religious intolerance, homophobia).⁷⁴ Statistics and analyses are regularly published on the Interstats website hosted by the Ministry of the Interior.⁷⁵ They are produced on the basis of two data sources:⁷⁶

Table 16: Actions and threats with a racist, antisemitic or anti-Muslim character recorded by French law enforcement authorities, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Actions and threats with a racist or xenophobic character	723	864	1,026	886	865	1,008	625	678	797	608	518
Actions and threats with an antisemitic character	402	459	815	466	389	614	423	851	808	335	311
Actions and threats with an anti-Muslim character	-	-	-	116	155	201	226	133	429	185	121

Note: Data on actions and threats of an anti-Muslim character were not published prior to the year 2010.

Source: FRA, 2018 [based on data from the Ministry of the Interior provided for the *Annual report on the fight against racism in all its forms* of the National Consultative Commission on Human Rights (*Commission nationale consultative des Droits de l’Homme*)]

74 France, Ministry of Interior, *Publications*.

75 France, Ministry of Interior, *Interstats: des statistiques publiques sur l’insécurité et la délinquance*, Actualités.

76 France, Ministry of Interior (2017), *Racisme, xénophobie et discrimination en France: que nous enseignent les procédures enregistrées par les forces de sécurité?* (2017), 30 March 2017.



- the central registry of procedures recorded by the police and the gendarmerie, which is based on the provisions of the criminal code;
- the annual victimisation survey conducted by the National institute of statistics and economic studies (*Institut national de la statistique et des études économiques*, Insee), since 2007.

The Ministerial statistical department for internal security also contributes the official statistics that are included in the annual report on racism, antisemitism and xenophobia of the National consultative commission on human rights (*Commission nationale consultative des droits de l'Homme*, CNCDH).

An inventory of racist, antisemitic and anti-Muslim acts is compiled by the Central service for territorial intelligence (*Service central du renseignement territorial*). This inventory cross-checks data on racist, antisemitic and anti-Muslim acts collected by the police and the gendarmerie with acts of that nature recorded by the Service for the protection of the Jewish community (*Service de Protection de la Communauté Juive*, SPCJ) and the French council for the Muslim cult (*Conseil Français du Culte Musulman*, CFCM). The Ministry of the Interior communicates this information on a yearly basis.

Cooperation with civil society organisations

The Ministry of the Interior signed cooperation agreements with the Service for the protection of Jewish Communities (*Service de Protection de la Communauté Juive*, SPCJ) and the French Council for the Muslim Cult (*Conseil français du Culte Musulman*, FCM). Under this agreement, the Central service for territorial intelligence (*Service central du renseignement territorial*, SCRT) cross-checks data on racist, antisemitic and anti-Muslim incidents collected by the police and the gendarmerie with acts of that nature recorded by the SPCJ and the CFCM. Incidents recorded by the SPCJ and the CFCM that lead to a complaint being filed or to police intervention are included in the inventory compiled by the SCRT.⁷⁷

The French authorities also cooperate with civil society organisations in the context of the PHAROS platform. The Central office for the fight against criminality related to information and communication technologies (*Office Central de Lutte contre la Criminalité liée aux Technologies de l'Information et de la Communication*, OCLCTIC) signed cooperation agreements on reporting of incidents with a number of civil society organisations, including the Representative Council of Jewish Institutions of France (Crif); the International League against Racism and Anti-Semitism (LICRA); the SPCJ; *SOS Racisme*; *SOS Homophobie*; and *Le Refuge* (an organisation that fights homophobia).

⁷⁷ France, Ministry of the Interior (*Ministère de l'Intérieur*) (2018), *Complementary contribution of the Ministry of the Interior – Statistical overview* (*Contribution complémentaire du Ministère de l'Intérieur – bilan statistique*), 26 January 2018.

Germany

Legal framework

Section 46 of the German Criminal Code (CC)⁷⁸ states explicitly that when weighing the seriousness of the offence, courts shall give particular consideration to the motives and aims of the offender, particularly where they are of a racist or xenophobic nature or where they otherwise show contempt for human dignity.

In addition, Section 130 of the CC sets out the offence of incitement to hatred, which is committed by whoever, in a manner capable of disturbing the public peace, incites hatred against a national, racial, religious group or a group defined by its ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population, or calls for violent or arbitrary measures against them; and also by whoever assaults the human dignity of others by insulting, maliciously maligning an aforementioned group, segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population, or by defaming segments of the population.⁷⁹

Recording hate crime

In Germany, hate crimes are recorded as a separate category within the framework of statistics for “politically motivated crime” (*politisch motivierte Kriminalität*).

ität). These crimes are assigned to five categories (*Phänomenbereiche*) relating to the presumed motivation of the perpetrator: right-wing politically motivated crimes, left-wing politically motivated crimes, crimes motivated by foreign ideology, religious motivated crimes, and politically motivated crimes that cannot clearly be assigned to any of these categories. Hate crime is considered a “thematic field” (*Themenbereich*) within politically motivated crimes. Hate crimes are defined as those targeting a person on the basis of his or her nationality, ethnic origin, skin colour, religion, social status, physical or intellectual disability or impairment, sexual orientation and/or sexual and gender identity or external appearance.⁸⁰

Recording and data collection is based on internal (not public) police code of practice, guidelines and instructions. These are discussed in working groups that are part of the standing conference of Ministers of the Interior and adopted by the Ministers of Interior of the Federal Government and the governments of the German *Länder*. Politically motivated crimes - including hate crimes - are recorded from the first moment by the frontline police officers, with a dedicated form. There is a specific “Criminal Police Reporting Service – Politically Motivated Crime” (*Kriminalpolizeilicher Meldedienst Politisch motivierte Kriminalität*) which applies uniformly throughout Germany. The dedicated form contains information on, for example, the victim’s sex, nationality, asylum status, status as a victim or injured party, and, where relevant to the offence,

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017 Fifth report on Germany, 2013	56. ECRI recommends that the German authorities reform their system for recording and following up “racist, xenophobic, homophobic and transphobic” incidents in order to ensure that all cases involving such a motive are recorded (§ 12 of General Policy Recommendation No. 11). In its 2016 Conclusion, ECRI regrets the recommendations were not implemented.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Germany	Germany has not reported the numbers of prosecuted and/or information on sentenced hate crime cases to ODIHR.

78 Germany, Criminal Code, § 46 *Strafgesetzbuch, Grundsätze der Strafzumessung*.

79 Germany, Criminal Code, § 130 *Strafgesetzbuch*.

80 See Germany, *System of Definitions of the Federal Criminal Office (Bundeskriminalamt: Definitionssystem Politisch motivierte Kriminalität (2016))*.

other victim-specific characteristics. It also includes information on the legal basis, a description of the incident, time and place of the crime and characteristics of the perpetrators or suspects, including membership of specific groups or organisations. In addition, the crime is assigned to the following subcategories of bias motivation: racism, xenophobia, antisemitism, religion, anti-Islamism, anti-Christianism, antiziganism, disability, sexual orientation and sexual and gender identity, social status and other ethnicity.

There are internal guidelines of the federal Criminal police office and the Criminal Police offices of the *Länder* explaining in detail which data have to be included in the 14 fields of the dedicated form.

Data collection and publication

Local police report politically motivated crimes to the *Land* Criminal Police Offices. The specialists of the Criminal Police Offices of the relevant *Land* check the information and clarify any possible open questions with the responsible local police stations. After this initial quality control process, the information is passed on to the Federal Criminal Police Office (BKA). The BKA collates, evaluates and analyses the nationwide data and return the results of the analysis to the different *Länder*. Within 31 days of the end of the year the reported figures can still be corrected and changes resulting from findings by the prosecution services or the courts factored in. This may be the case, for example, if it transpires that a bias motivation cannot be proven or if the police identifies a hate crime at a later stage of an investigation. The main purpose of this data-collection activity is to help public authorities to make strategic, evidence-based decisions on how to prevent hate crimes. The criteria used for defining politically motivated criminal offences and the catalogue of thematic areas for Politically Motivated Crimes are regularly reviewed and, where appropriate, adjusted.

A working group comprised of federal and *Länder* representatives and also involving experts from academia and civil society reviewed the system used for defining politically motivated crimes in order to establish whether changes are required. It concluded its work in November 2015. Agreement was reached that anti-Islamic, anti-Christian and antiziganistic offences should be recorded as separate subcategories of hate crimes in future. The Conference of German Interior Ministers adopted these changes, which entered into force on 1 January 2017.

Based on these data, the Federal Ministry of Interior publishes annual statistics on its website, synthesizing the main figures and trends of general criminal statis-

tics, of politically motivated crimes and also specifically of hate crimes.⁸¹ The report on politically motivated crimes⁸² analyses the evolution under the five categories of politically motivated crimes (right-wing politically motivated crimes, left-wing politically motivated crimes, crimes motivated by foreign ideology, religious motivated crimes, and politically motivated crimes that cannot be clearly assigned) and focus on areas of particular relevance, which include hate crimes, but also crimes against reception facilities for asylum seekers, crimes in the context of political confrontation, crimes with an extremist background or crimes with Islamic background. Data on hate crimes are broken down by bias motivation (xenophobic, antisemitic, racist, religion, social status, sexual orientation and gender and sexual identity, disability) and by violent or non-violent crimes.

In June 2017, the Ministers of Justice of the German *Länder* decided to collect judicial data on hate crime. Beginning in 2018, the first *Länder* will collect *judicial* statistics and send the data to the Federal Office of Justice, which then aggregates the data for the whole of Germany. The publication for the 2019 reporting period will be the first to contain complete nationwide statistics on hate crime.

For these statistical purposes, criminal offences are classified as hate crime if, upon assessing the circumstances of the offence and/or the attitude taken by the perpetrator, there are indications that they are directed against a person on the basis of that person's actual or ascribed/assumed nationality, ethnic origin, skin colour, religion, belief, physical or and/or psychological disability or impairment, sexual orientation and/or sexual and/or gender identity, political position, political views and/or political involvement, external appearance, or social status, and the offence is causally related to this or is committed in this context against an institution, object or premises.

Investigation proceedings will be broken down by criminal offence, based on the following sections of the CC: using symbols of unconstitutional organisations (Section 86a of the CC), incitement to hatred and dissemination of depictions of violence (Sections 130, 131 of the CC), insult, malicious gossip and defamation (Sections 185 to 187 of the CC), murder and manslaughter (Sections 211 and 212 of the CC), offences causing bodily harm (Sections 223 et seqq. of the CC), causing bodily harm while exercising a public office

81 Germany, Ministry of Interior, *Politically Motivated Crimes (Politisch motivierte Kriminalität) (2016)*, 8 December 2016; Ministry of Interior, *Straf- und Gewaltdaten im Bereich Hasskriminalität 2015 und 2016*.

82 Germany, Ministry of Interior, *Politisch Motivierter Kriminalität im Jahr 2016: Bundesweite Fallzahlen (2016)*.

Table 17: Hate crimes: committed offences by bias, 2007-2017

Presumed bias motivation	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Racism	513	423	428	433	484	584	608	807	1,214	1,335	1,300
Xenophobic	2,989	3,048	2,564	2,166	2,528	2,922	3,248	3,945	8,529	8,983	6,434
Against religion	238	253	256	248	319	414	422	696	1,112	1,516	1,267
Antisemitic	1,657	1,559	1,690	1,268	1,239	1,374	1,275	1,596	1,366	1,468	1,504
Against social status	263	180	239	138	188	112	100	106	320	124	60
Against sexual orientation, sexual and/or gender identity	63	110	164	187	148	186	240	184	222	316	313
Against disabilities	20	26	26	20	18	29	42	26	19	33	22
Against asylum accommodation*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	199	1,031	995	312

Notes: n/a = No data are available.

* Since 2014, Germany also collects and published data and specific information on attacks against asylum seekers and their accommodation, showing responsiveness to changes in situations and circumstances.

Sources: Germany, Federal Foreign Office (2014), *The German Government's Human Rights Report, Federal Foreign Office, October 2012*; Ministry of the Interior (2014), *Annual report on the protection of the Constitution, 2013*; Ministry of the Interior (2017), *Antisemitismus in Deutschland – aktuelle Entwicklungen. Report Politisch Motivierte Kriminalität im Jahr 2016, Bundesweite Fallzahlen. Straf- und Gewaltdaten im Bereich Hasskriminalität 2015 und 2016*

(Section 340 of the CC) and arson (Sections 306 et seqq. of the CC).

The statistics will also show, for each stage of the proceedings, whether the offence has been committed “by means of the internet” and will also include the final decisions by the public prosecution offices and courts (discontinuances, adjudications and convictions). This includes the number of investigations initiated and concluded, and, in the case of convictions, the sanction imposed.

Cooperation with civil society organisations

The Federal Ministry of the Interior commissioned research to better understand and evaluate the range of cooperation on hate crime between civil society

organisations and the police at the local, regional and federal levels in Germany (budget: € 750,000). Entitled “Best practice in LEA - NGO cooperation in the field of prejudice-related crime”, the research examines the situation in Germany and beyond and conducts surveys and expert interviews with public authorities and NGOs. Overall, the study aims to identify best practice approaches and to develop recommendations for further action. In particular, the study seeks to understand what strengthens cooperation between the police and civil society organisations in recording prejudice-related crime, and intervening against it. In autumn 2019, results will be presented at a number of regional conferences, and discussed with the main target groups: law enforcement agencies and non-government organisations.



Greece

Legal framework

In Greece, Article 81 A of the Criminal Code (CC) sets out a general aggravating circumstance for crimes or misdemeanours committed out of hatred on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, gender characteristics or disability.

Law No. 927/1979 on punishing acts or activities aiming at racial discrimination sets out in Article 1 the offence of Incitement to violence or hatred, which is committed by anyone who publicly incites, provokes, or stirs, either orally or through the press, the Internet, or any other means, acts of violence or hatred against a person or group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, sexual orientation, gender identity, gender characteristics or disability, in a manner that endangers the public order and puts the life, physical integrity or freedom of these persons at risk.⁸³

Recording hate crime

When an offence is reported to the police, the police officer examines the case according to the guidelines included in a Circular Order by the Chief of the Hellenic Police of 2014 (see below) and use a general case recording form of the internal network Police On-Line. This form includes the type of offence, place, time, the characteristics of the perpetrator, the victim's identity, the description of the inci-

dent and the administrative and procedural actions taken. The police officer also has to tick a specific box flagging or excluding hate crime (hate crime? Yes/No). In case the answer is "Yes", a second field is enabled for choosing the relevant bias motivation: race, skin colour, religion, national or ethnic origin, sexual orientation, gender identity, disability. It is possible to tick more than one bias motivation, when applicable. All crimes that are flagged as hate crimes are also recorded in a separate electronic database, which is the basis for the specific template on hate crimes used for data collection (see below).

The internal police Circular Order of 2014 sets out the definitions of racism and of discrimination along with a list of offences considered hate crimes. It also provides guidance regarding the investigation of possible bias motivations, including through bias indicators, and regarding hate crime prevention measures to be taken and the adequate treatment of citizens.

Pursuant to these police instructions, police officers have to ascertain whether a criminal offence has a bias motivation particularly in the following cases:

- when the alleged defender admits it;
- when the victims or the witnesses make such an allegation;
- when the evidence of the case includes indications to that effect;
- when perpetrators and victims identify themselves as or in fact belong to different racial, religious or social groups.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2014 Fifth report on Greece	76. ECRI recommends that a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations and judicial proceedings from their very beginning.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Greece	Greece has not reported on cases of hate crimes separately from cases of hate speech.

⁸³ Both the aggravating circumstance and the offence of incitement where introduced through [Law 4285/2014](#). The protected ground "gender characteristics" was added later on through [Law 4356/2015](#) (Article 81 of the CC) and [Law 4491/2017](#) (Article 1 of Law 927/1979).

Since 2013 there are two specific departments under the Police Security Sub-directorates of Attica and Thessalonica and sixty-eight offices in charge of investigating offences pertaining to hate crimes.⁸⁴

Data collection and publication

The Department of Social Issues and Racism of the State Security Division of the Hellenic Greek Police Headquarters in cooperation with the Ministry of Justice, Transparency and Human Rights and the Public Prosecution Offices have developed a template for collecting hate crime data. This template includes the number of hate crime cases and the eight bias motivations recorded by the police (skin colour, race, ethnicity, citizenship, religion, sexual orientation, gender identity and disability), together with information from the Public Prosecution Offices and courts about the cases prosecuted and the court decisions. The same template is used for collecting hate speech statistics.

The Department of Social Issues and Racism is responsible for keeping statistics on hate crimes and for collecting, studying and evaluating the annual reports submitted by the two departments and 68 offices. Every six months, the Department of Social Issues and Racism extracts the data of the network Police Online into the template and submits them to the Ministry of Justice, Transparency and Human Rights, which is responsible for further monitoring the cases, updating the information from public prosecution and court authorities and sending statistics to EU and international institutions. The Racist Violence Recording Network requests the data and publishes them in its Annual report (see more below, in the section on Cooperation with CSOs).

The data assist the competent authorities in analysing and evaluating trends in hate crime, and support evidence-based management of the phenomenon.

Public Prosecutors' Offices record hate crimes on an individual case by case basis. When prosecutors receive a case from the police, after a citizen's complaint, or when they act *ex officio*, prosecutors use a specific code to indicate that the case is a hate crime investigation. This code allows to track the case until it is sent to the relevant court for adjudication. The judiciary does not have a specific system for recording hate crime data. Hate crime cases are either identified by the name of the accused person or by the case number assigned by the public prosecutor.

Cooperation with civil society organisations

The Hellenic police cooperates with the Racist Violence Recording Network,⁸⁵ which publishes an Annual report on hate crimes.⁸⁶ This Network was established in 2011 at the initiative of the Greek National Commission for Human Rights (GNCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR) as a response to the absence of an official and effective data collection system and the need for coordination among organisations which recorded, on their own initiative, incidents of racist violence against people who seek recourse to their services. It includes civil society organisations which provide support services to victims of hate crimes. The Greek Ombudsperson is an observer of the network. The Hellenic police submits to the network data on recorded hate crimes which are included in the network's Annual Report. According to this report in 2016, the Hellenic Police reported 84 hate incidents, of which 48 were related to the victim's ethnic origin, skin colour or race, 24 to the victim's religion, 14 to the victim's sexual orientation, one to the victim's gender identity and five to the victim's disability.⁸⁷

⁸⁴ Greece, Hellenic Police.

⁸⁵ Greece, Racist Violence Recording Network (RVRN).

⁸⁶ Greece, Racist Violence Recording Network (RVRN) (2016), *Annual Report (2016)*.

⁸⁷ *Ibid.*, p. 17.



Hungary

Legal framework

Hungary's Criminal Code (CC)⁸⁸ does not include any general or specific aggravating circumstance related to bias motivations.

Section 216 of the CC sets out the substantive offence of violence towards a member of a community, which has two modalities: the first one is committed by anyone who, with the aim of causing alarm or fear in members of a community, engages in anti-social behaviour against someone for being part or being presumed to be part of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation; the second one consists in assaulting or compelling someone by force or by threat of force to do, not to do or to endure something for being part or being presumed to be part, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation.

Section 332 of the CC criminalises incitement to violence and hatred against the Hungarian nation, any national, ethnic, racial or religious group, or certain groups of the population, in particular on grounds of disability, gender identity and sexual orientation.⁸⁹

Recording hate crime

The Hungarian police does not use specific forms for recording hate crime. Hate crime is recorded on a general crime form in a text format. It is not possible to flag potential hate crimes at the moment of recording. When recording the crime, police might implement a list of indicators developed by the criminal justice bodies and civil society groups within the Working Group Against Hate Crime (more in the section on cooperation between law enforcement and CSOs below).⁹⁰ The indicators are published on the police intranet and the list was distributed through training programmes and official briefings for patrol officers. The indicators are:

- the perception of the victim or witnesses;
- the perpetrators' remarks or gestures;
- perceived or actual group differences;
- the appearance and behaviour of the victim;
- previous and later actions of the perpetrator;
- the appearance of organised hate groups;
- location;
- date;
- the degree of violence;
- level of publicity;
- lack of other motivation.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017	n/a
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Hungary	The law enforcement agencies of Hungary have not recorded the bias motivations of hate crimes.

88 Hungary, Act C of 2012 on the Criminal Code (2012. évi C törvény a büntető törvénykönyvről).

89 Article 332 of the CC was last amended in late 2016 by Article 55 (3) of Act CIII of 2016. The amendment added that not only incitement to hatred but also incitement to violence is punishable. It also added that the crime may be committed not only against an ethnic, national, religious or racial community or group, but also against a member/members of such communities or groups.

90 Hungary, Working Group Against Hate Crime (2016), 'We have been in contact with the Hungarian National Police Headquarter on indicators for identifying hate crime' (A gyűlölet-bűncselelményeket jelző indikátorokról egyeztetünk az ORFK-val), Press release.

Whenever a crime is reported directly by the victim, or the victim is heard as a witness for the first time, a procedure of individual assessment is mandatory, and the procedure can be replicated. In both circumstances, the victim’s personal characteristics should be taken into account, including age, sex and gender identity, ethnicity, race, religion, sexual identity, health status, residence rights, communication difficulties, disability, relation with the perpetrator, and previous experience related to crime. Victims with these characteristics fall under the category “victims with special needs”. Accordingly, the police is generally required to examine other indicators related to the crime, namely:

- type of crime and motivation (i.e. discrimination or prejudice against the victim because of his/her personal characteristics)
- circumstances of the crime
- seriousness of the offence (whether the victim has suffered a significant prejudice, such as human trafficking, terrorism, organised crime)
- engagement between the victim and the perpetrator which makes the victim particularly vulnerable.

Data collection and publication

The Unified Criminal Statistics of Investigation Authorities and Public Prosecution (ENYÜBS) is the main data collecting system of the Police and the Prosecution Service in Hungary. It also contains data on committed hate crimes. The Ministry of Interior, the Prosecutor’s Office and the Criminal Police Department of the National Police Headquarters are responsible for col-

lecting data on hate crime as part of general crime statistics. Data is collected every three months, and the quarterly statistics are summarised yearly. Data is collected according to the sections of the Criminal Code.

The data pertaining to hate crime are not disaggregated by bias motivation and those that are publicly available⁹¹ refer to the crime of “violence against a member of the community”.

In 2012, a special unit was established by the Crime Department of the Crime Directorate of the National Police Headquarters, which is responsible for coordination between different units within the police, for professional control over investigations related to hate crimes. It also organises training, which contributes to the more comprehensive data collection by patrol officers and desk officers.

Cooperation with civil society organisations

The Working Group against Hate Crimes (the Working Group)⁹² was established in 2012. Comprised of five NGOs, the Working Group regularly delivers opinions on draft laws, carries out research activities, provides training programmes for the police and other criminal justice professionals, and provides a forum for networking. Its activities include discussions with the police on actions to improve the collection of reliable and comparable data on hate crime.

In March 2015, the Working Group published a report that detailed the limitations in police and prosecution

Table 18: Recorded crimes pertaining to hate crime, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Violence against a member of the community	n/a	n/a	n/a	19	35	36	43	48	32	56	38
Incitement against a community (incites hatred against any national, ethnic, racial or religious group or certain societal groups)	n/a	n/a	n/a	8	35	36	43	48	32	24	38

Note: n/a = No data are available.
Source: Hungary, Ministry of Interior (2018)

91 Hungary, Criminal Statistics System (*Bűnügyi Statisztikai Rendszer*).
92 See The Working Group against Hate Crimes.

responses to 24 cases of hate crime. As a result, representatives from the police and prosecution service agreed that the Working Group would develop a concise list of bias indicators to help the identification of hate crimes to be used in police practice and training. After a wide consultation, a summary and a full list of bias indicators were produced, including examples of how bias indicators might manifest in hate crime cases. In November 2016, the documents were finalised, disseminated and published on the Working Group's website.⁹³ The police are in the process of uploading the materials onto their intranet. The documents are regularly used in training conducted by the police and by the Working Group.

The Working Group is working with the police and National Authority for Data Protection and Freedom of Information to finalise a manual on how to ethically and legally collect personal and sensitive data during police investigations. The manual will be published in due course.

⁹³ The Working Group against Hate Crimes: [List of indicators](#).

Ireland

Legal framework

In Ireland, there is no criminal law provision establishing bias motivation as a general or specific aggravating circumstance.

A specific Act sets out the substantive criminal offence of incitement to hatred⁹⁴ against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation.

This Act makes it an offence to publish or distribute written material, use words, behave or display written material, or distribute, show or play a recording of visual images or sounds if they are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred.

Recording hate crime

An Garda Síochána (National Police Force of Ireland) applies a working definition for Hate Motivated Incidents (HMI) based on the Macpherson definition in use by United Kingdom Policing services including the Police Service of Northern Ireland (PSNI). It applies such definition to any hate motivated incident identified through the substitution of “racist” for other forms of bias, hostility, hate or discriminatory motivations. The definition allows for subjectivity of the perception of a hate motivated incident by “any other person”. *An Garda Síochána* includes the investigating *Garda*

member, other *Garda* members, witnesses or those advocating on behalf of a victim of a hate motivated incident who perceive such an incident as motivated by hate, hostility, bias or discrimination.

An Garda Síochána official Headquarters Directives give guidance on how to record hate motivated incidents. It stipulates that it is the role of *Garda* members to investigate the criminal component of the alleged incident not to examine the veracity of the perception that led to it being identified as a hate motivated incident. *Garda* members are expected to ensure all such allegations are suitably reported and recorded correctly on the *Garda* PULSE 6.8 (Police Using Leading Systems Effectively) system.

The recording of a potential hate crime by the *Garda* follows different practical steps, including the identification of the criminal component, the decision over the presence of a bias motivation, discrimination, hostility or hate according to Macpherson definition, and the identification of the victim’s vulnerabilities. A decision to record an incident as hate crime or not is based primarily upon the perception of the victim. If the victim does not realise that the incident is hate motivated, while a witness or the investigating police officer believes the incident to be motivated by hate, the incident must then be recorded as a hate motivated incident.

In those cases in which police officers are not sure about how to record the hate crime and the motivation, they are required to consult with the local Diversity Liaison Officer (formally known as Ethnic

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017	n/a
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Ireland	Ireland has not reported on the numbers of prosecuted cases to ODIHR.

⁹⁴ Ireland, [Act to prohibit incitement to hatred on account of Race, Religion, Nationality or Sexual Orientation of 29 November 1989](#).



Table 19: Reported racially motivated crime (including antisemitism), 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Reported racist crime	211	166	127	123	135	97	95	97	105	98*	

Note: * By the end of the second quarter.

Source: Ireland, Central Statistical Office (2018), *Data on reported racist crime published on the website of the Office for the Promotion of Migrant Integration 2003-2016*

Liaison Officer) or with a staff member attached to the *Gardaí* Bureau of Community Diversity and Integration (GBCDI). When reporting a crime, if the victim suspects that the crime was motivated by hate, then the police is required to record it as a potential hate crime. Flagging potential hate crimes is compulsory and integrated in the general crime reporting form.

The PULSE computer system is generally used for all policing and state security functions. The system was launched in November 2015 to ensure policing compliance with the Victims' Rights Directive, irrespective of transposition into Irish domestic legislation. The PULSE computer system has integrated victim assessment and motivations, including bias motivation, into its incident creation functions and does not operate such recording as an isolated recording structure. In 2015, changes to the PULSE database introduced new categories for motivations being introduced in the system, namely sectarianism, antisemitism, racism, homophobia, transphobia, ageism, incidents targeting travellers, Roma, Muslims, people with disabilities and gender-related offences. Previously, *Gardaí* could only use four classifications that is racism, homophobia, xenophobia and antisemitism.

To identify hate crimes at the moment of recording, police officers use a specific flagging system that is integrated into *Garda* PULSE system and is composed

by a Victim Assessment screen, a Victim Engagement screen and a Management oversight screen. The following bias motivations can be flagged: racism, homophobia, anti-Traveller prejudice, ageism, bias against people with disabilities, sectarianism, anti-Roma hatred, Islamophobia, antisemitism, transphobia, and gender prejudice.

Data collection and publication

Hate crime data recorded by police officers through the PULSE computer system are collected by the Central Statistics Office⁹⁵ and the *An Garda Síochána*. The Central Statistics Office produces criminal statistics. Data are analysed, collated and published internally quarterly and yearly. The topics covered in the reports include criminal incidents, anti-social behaviour and incident characteristics including incident hate and other motivations, if applicable. Only aggregated data are publicly available (Table 19) – that is, published data are not broken down according to type of hate motivation.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

⁹⁵ For further information, see [Central Statistics Office](#).

Italy

Legal framework

Article 604 ter of the Italian Criminal Code (CC)⁹⁶ sets out a general aggravating circumstance for any offence punishable with a penalty other than life imprisonment if it is committed with discrimination purposes, with ethnic, national, racial or religious hatred purposes or with a view to facilitating the activities of organisations, associations, movements or groups pursuing these purposes.

Article 604 bis of the CC⁹⁷ criminalises the violence and incitement to violence on racial, ethnic, national or religious grounds, the acts of discrimination or incitement to discrimination on racial, ethnic, national or religious grounds and the promotion of ideas based on racial superiority or ethnic or racist hatred. Furthermore, it set out the criminal offence of setting up or running, participating in or supporting any organisation, association, movement or group whose purpose is the instigation of racial discrimination or hatred.

Recording hate crime

Police officers record hate crimes like any other generic crimes. Initial crime reports include victim information and information about police action, and the relevant article of the criminal law that is entered in a specific box. The crime reports are then uploaded into and

stored in the *Sistema di Indagine* (SDI) investigation crime database.⁹⁸ The SDI is the official inter-agency police crime recording system, set up within the Central Directorate of Criminal Police of the Department of public security. The SDI is organised according to different criminal law provisions, which are marked on every report entered into the system. For this reason, the SDI system only serves to register strands of hate crime mentioned in the law. This includes ethnicity, nationality, race, religion or crime against national linguistic minorities. There is no specific marker for each bias motivation in the SDI, therefore crimes cannot be distinguished from one another in the database according to the motive. Crimes committed on other discriminatory grounds than those explicitly outlined in the law are entered in the database as ordinary (non-hate crime) offences. There is no possibility of flagging potential hate crimes at the moment of recording, nor are there instructions or policy documents to guide police in identifying and recording hate crimes.

The Observatory for Security against Acts of Discrimination (OSCAD)⁹⁹ has a holistic approach to tackling hate crime. OSCAD was established in 2010 to assist victims and afford them protection against discrimination. It is a multi-agency body formed by the State Police and the Carabinieri, and it is housed within the Department of Public Security at the Ministry of the Interior. OSCAD runs its own monitoring system, also concerning discrimination not included in the legisla-

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2016 Fifth report on Italy	55. ECRI once again emphasises the need to improve the system for collecting data on criminal offences linked to racist and homophobic/transphobic violence in order to produce clearer, more detailed statistics.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Italy	Italy has not reported the numbers of prosecuted and information on sentenced hate crime cases to ODIHR.

⁹⁶ Italy, *Decreto Legislativo* 1 marzo 2018, n.21.

⁹⁷ *Ibid.*

⁹⁸ For further information, see Global Database on Violence against Women, *System of Enquiries* (Police “SDI - Sistema di Indagine”) (2009).

⁹⁹ For further information, see *Observatory for security against acts of discrimination* (OSCAD).



tion (i.e. sexual orientation and gender identity) and prepares reports for national and international authorities and agencies.

Data collection and publication

No institution is officially in charge of collecting data on hate crimes. Hate crime data are collected by law enforcement authorities and the Ministry of Interior. Data are not publicly available.

The main sources of data on offences related to hate speech and hate crime are the National Office against Racial Discrimination (UNAR, the equality body), OSCAD, SDI, the Ministry of Justice and the National Statistical Institute (ISTAT).

Data systems used by ISTAT and the Ministry of Justice do not use the same categories and do not always distinguish between hate speech and other offences linked to racism and racial discrimination. As the SDI does not allow distinction among hate crime strands,

only aggregated data on all monitored strands of hate crimes can be generated. This includes hate crimes committed on the grounds of race/colour of skin, ethnicity, origin, minority status, citizenship, language, anti-Roma and Sinti, and religion (including antisemitism, anti-Muslim, anti-Christian and other religions).

Cooperation with civil society organisations

OSCAD has also become an important source of data on hate crimes, based on incidents reported by individuals, institutions and NGOs. OSCAD, combining State police and "Carabinieri", comprises of police officers and cooperates with anti-racist NGOs and public institutions, including UNAR. OSCAD has a Memorandum of Understanding with UNAR that includes data exchange. OSCAD data are unofficial reports received with the oscad@dcpc.interno.it email. UNAR deals in particular with civil (not criminal) discrimination: when UNAR receives a report amounting to a hate crime, under a specific Memorandum of Understanding it sends it to OSCAD.

Latvia

Legal framework

Section 48 (1) of the Criminal Code of Latvia (CC)¹⁰⁰ sets out an optional aggravating circumstance that may be considered when sentencing if the criminal offence was committed due to racist, national, ethnic or religious motives.

In addition, there are three substantive hate crime provisions. Section 78 of the CC criminalises acts directed towards triggering national, ethnic, racial or religious hatred or enmity. The penalties set out are enhanced if the acts are committed by a group of persons, a public official, a responsible employee of a company or organisation, if it is committed utilising an automated data processing system or if it involves violence or threats or is committed by an organised group.

Article 149 of the CC criminalises violation of discrimination prohibitions regarding racial or ethnic origin and violation of discrimination prohibitions specified in other regulatory enactments under certain aggravating circumstances: if the violation is committed repeatedly within a one year period; if by such acts substantial harm is caused; if it is associated with violence, fraud or threats; if it is committed by a group of persons or a public official, or a responsible employee of a company or organisation, or if it is committed utilising automated data processing systems.

Section 150 of the CC sets out the offence of incitement to hatred or enmity on grounds of gender, age, disability of a person or any other characteristics, if substantial harm has been caused thereby. Penalties are enhanced when the incitement is committed by a group of persons, a public official, a responsible employee of a company or organisation, if it is committed utilising an automated data processing system or if it involves violence or threats or is committed by an organised group.

Recording hate crime

There is no specific form or system for police to record hate crimes. General crime recording is used. At the time this report was compiled, there is no information available on if the general crime form contains a box or a text window to mark or capture bias motivation.

The Criminal Procedure Law¹⁰¹ specifies recording information related to criminal offences in the information system. Any type of incident report (in writing, electronically or orally), shall immediately be recorded by the police in the database The Uniform Event Register (UER), which is an integral part of the State Information System “Integrated Information System for Home Affairs” and is managed by the Information Centre of the Ministry of the Interior. The Information Centre reviews the information entry form, the catalogue of criteria selection, the free text input field, etc. to check whether the information can be marked as a hate-

IGO observations and recommendations

<p>Observations & Recommendations by the Human Rights Committee, with regard to recording and collecting data on hate crime, 2014</p> <p>CCPR/C/LVA/CO/3 (CCPR, 2014)</p>	<p>19. [...] The Committee is furthermore concerned at allegations of insufficient hate crime recording, monitoring, investigation and prosecution (arts. 20 and 26).</p>
<p>Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017</p>	<p>n/a</p>
<p>Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016</p> <p>OSCE/ODIHR hate crime reporting Latvia</p>	<p>Latvia has not reported on hate crimes separately from cases of hate speech.</p>

¹⁰⁰ Criminal Code of Latvian Republic (1998).

¹⁰¹ Latvia, Criminal Procedure Law.



motivated incident, and if so, how. The scope of the data entry, use and deletion, the terms of the storage of updates, as well as the institutions which access the information included in the information system, is determined by Cabinet Regulation No. 850 of September 14, 2010 "Regulations Regarding the Criminal Procedure Information System".¹⁰²

The State Police, in cooperation with the State Police College and the Security Police, developed methodological material "Guidelines for State Police Officers on the Identification and Investigation of Hate Crimes".¹⁰³ These distinguish between several articles of the Criminal Law, those falling under the jurisdiction of the State Police (Section 150 - incitement to social hatred/hate crimes motivated on grounds of gender, disability, age and other features) and those under the jurisdiction of the Security Police (Section 78 - hate crimes/speech with religious, ethnic, national, racial motive). The guidelines support the investigation of hate crimes in public places and on the internet and provide examples of hate crime cases that have reached courts. The Guidelines include sections relevant to recording hate crimes.

Data collection and publication

In Latvia, two institutions – the Information Centre of the Ministry of the Interior and the Court Administration – are responsible for the creation of statistics on criminal offenses.

The Information Centre of the Ministry of the Interior summarises all criminal investigations initiated by the investigating authorities listed in Article 386 of the Criminal Procedure Law, including the State Police and Security Police in charge of investigating hate crime, and Prosecutors' Office data on criminal offenses established about criminal investigations and pre-trial investigations. The statistics contain information from the moment of the beginning of criminal proceedings until the transfer of criminal proceedings to a court or the final decision of the investigating authority or Prosecutor's Office. Information on recorded criminal offenses per year is publicly available,¹⁰⁴ but data on hate crime are not disaggregated and are not made publicly available.¹⁰⁵

The court administration collects data provided by courts on the handling of criminal proceedings at the trial stage. The statistics contain information on the trial of criminal proceedings from the moment the case is received in court until the final decision is taken. Information on criminal proceedings before the courts is not publicly available and data on hate crimes are not disaggregated.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

¹⁰² Latvia, Cabinet Regulation No. 850 of September 14, 2010 [Regulations Regarding the Criminal Procedure Information System](#).

¹⁰³ Latvia, State Police (*Valsts policija*) (2017), Order No. 3487 of 4 August 2017 of State Police Commissioner [Guidelines for State Police Officers on the Identification and Investigation of Hate Crimes](#).

¹⁰⁴ See the [criminal statistics website](#).

¹⁰⁵ For more information, see the [OSCE/ODIHR website](#).

Lithuania

Legal framework

Article 60 of the Criminal Code (CC)¹⁰⁶ of Lithuania sets out a general aggravating circumstance for any criminal offence committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, beliefs or opinions.

The same motivation functions as a specific aggravating circumstance in the case of the offences of homicide (Article 129 of the CC), of bodily harm or illness resulting in severe health impairment (Article 135 of the CC) or non-severe health impairment (Article 138 of the CC). The offence of desecration of a grave or another place of public respect (Article 312 of the CC) is aggravated when it is committed for racist, nationalist or religious reasons.

Article 170 of the CC sets out the offence of publicly inciting to violence or to physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, race, nationality, language, descent, social status, religion, beliefs or opinions and of financing or otherwise supporting such activities.

Recording hate crime

There is no dedicated form to record hate crime in Lithuania. Police officers use a generic crime form that contains a box "Possible motive of a crime: in order to express hatred on grounds of race (1), nationality (2), religion (3), language (4), sexual orientation (5), sex (07), descent (08), social status (09), beliefs or opinion (10), age (11), disability (12)". The police officer can fill in the number of one of the possible motives in this box. The crime reports are entered in the Departmental Register of Criminal Acts. There is no flagging system in place to mark hate crime and there is no special instruction related to hate crimes.

If evidence surfaced during the investigation of hate crime cases, officers updating information in the Register will mark a criminal act as likely motivated by race, nationality, religion, language, gender, descent, social status, convictions or views, sexual orientation, age and disability.

Data collection and publication

The Departmental Register of Criminal Acts is administered by the Ministry of the Interior. The Information Technology and Communications Department under the Ministry of Interior is responsible for managing the register. Police officers and prosecutors provide the data when a pre-trial investigation begins or when

IGO observations and recommendations

<p>Observations & Recommendations by the Committee on the Elimination of Racial Discrimination, with regard to recording and collecting data on hate crime, 2016</p> <p>CERD/C/LTU/CO/6-8 (CERD, 2016)</p>	<p>17. [...] the State party [...] should: [...] (c) Improve the systematic registration and recording of allegations of hate crime that are reported to the police and take measures to facilitate the lodging of complaints by victims of hate crime; (d) Provide the Committee with statistical data on complaints, investigations, convictions and sanctions for acts categorized as hate crimes; [...].</p>
<p>Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2016</p> <p>Fifth report on Lithuania</p>	<p>59. ECRI recommends further training for police officers, prosecutors and judges on how to deal with racist, and in particular homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations, as well as confidence-building measures between the police and minority representatives and LGBT groups. ECRI also recommends the creation of an independent police complaints service that will be tasked to investigate, inter alia, allegations of racist and/or homo-/transphobic violence committed by law enforcement officials.</p>
<p>Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016</p> <p>OSCE/ODIHR hate crime reporting Lithuania</p>	<p>Lithuania has not made public reliable data and statistics on hate crimes.</p>

¹⁰⁶ Lithuania, Criminal Code.



Table 20: Recorded data on incitement to hatred, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Incitement to hatred against any nation, racial, ethnic, religious or other group of people (CC Art. 170)	n/a	n/a	n/a	158	328	266	152	102	138	47	17

Sources: Lithuania (2018), Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania, *Crime Statistics: 2010, 2012, 2014, 2015, 2017*

other decisions on criminal procedures are made. The judges provide data to the Register only in cases of private accusation, in which a pre-trial investigation is not carried out and a victim files a complaint and upholds an accusation in court.

To obtain the data on recorded and prosecuted hate crimes the Public Security and Migration Department of the Ministry of the Interior,¹⁰⁷ an annual search of the Register, filtered by indicated motives and specific paragraphs of relevant articles of the criminal code (as above) is carried out. The data found are then reviewed to ensure accuracy by the Public Security and Migration Department of the Ministry of the Interior.

There is no special instruction or policy document that governs the hate crime data collection process. Only official statistics on crimes recorded as “Incitement against any National, Racial, Ethnic, Religious or Other Group of Persons”, which are mostly cases of hate speech, are published on the Ministry of the Interior’s website (Table 20). The criminal statistics based on the police data is public upon request.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

¹⁰⁷ Lithuania, Office of the Criminalistics (NNRR) services, *Official Statistics on Crime in the Municipalities of the Republic of Lithuania, 2017 / January - September, 9 October 2017*.

Luxembourg

Legal framework

The Criminal Code of Luxembourg (CC)¹⁰⁸ does not include a general aggravating circumstance for bias motivated offences. It establishes a number of substantive offences (Articles 454 to 457-3 of the CC, on racism, revisionism and other forms of discrimination), as well as a specific aggravating circumstance for offences against the integrity of a corpse and the profanation of tombs and monuments under Article 453 of the CC.

Article 454 of the CC defines discrimination against a physical person, a legal person, or groups or communities of persons as any distinction made on the grounds of origin, skin colour, sex, sexual orientation, change of sex, family status, age, health status, disability, mores, political or philosophical opinions, trade union activities, real or supposed belonging or not to an ethnic group, nation, race or religion.

Article 455 of the CC defines the following as criminal offences with regard to discrimination as defined in Article 454: denial of access to or supply of goods or services; conditioning access to or supply of goods or services on having a characteristic listed in Article 454; advertising an intention to discriminate; hampering economic activity; refusal to hire, sanction or dismiss someone; conditioning access to employment, any form of vocational training or work conditions, affiliation and participation in a workers' or employers' union on having a characteristic listed in Article 454.

Article 456 of the CC provides for an enhanced penalty in case the discrimination is committed by a public authority or someone in charge of a public service.

Article 457-1 of the CC criminalises any form of public incitement to discrimination, hatred or violence against a physical person, a legal person, or groups or communities of persons on the basis of any of the grounds listed in Article 454 of the CC.

Article 457-2 of the CC establishes a specific aggravating circumstance for the offences defined in Article 453 of the CC, which relate to the violation of the integrity of a corpse, and to the violation or desecration of tombs, graves or monuments erected to the memory of the dead, if these offences are committed because of the real or supposed belonging or not of the deceased person to a particular ethnic group, nation, race or religion.

Article 457-3 of the CC criminalises any public contestation, minimisation, justification or denial of crimes against humanity or war crimes.

Recording hate crime

The Grand Ducal Police does not use any specific guidance or form for recording hate crime. Frontline police officers categorise offences according to the provisions of the criminal code in their official reports (*procès-verbaux*) when taking statements from victims or witnesses. The judiciary police (*Police Judiciaire*) inserts these official reports into the central register (*fichier central*) of criminality. After that, the public prosecutor

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2016 Fifth report on Luxembourg	35. ECRI recommends that the police and judicial authorities establish and operate a system for recording and monitoring racist incidents and the extent to which these incidents are brought before the prosecutors and eventually qualified as racist or homophobic/transphobic offences. The authorities should publish these statistics.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Luxembourg	Luxembourg has not periodically reported reliable information and statistics on hate crimes to ODIHR.

¹⁰⁸ Luxembourg, *Criminal Code (Code pénal)*.



Table 21: Offences of racial discrimination recorded by the Luxembourg Grand Ducal Police, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Offences against persons – racial discrimination	17	21	28	24	40	30	29	43	29	21	28

Source: Annual activity report of the Luxembourg Grand Ducal Police

makes the decision as to whether an offender should be charged with an offence under the criminal code.

Data collection and publication

The Office for statistical and criminal analysis under the Judiciary documentation section of the Information directorate (*Bureau des statistiques et d'analyse criminelle – Section de la Documentation Judiciaire – Direction information*) compiles criminal statistics on the basis of the official reports included in the central

register of criminality. The Grand Ducal Police publishes these statistics on a yearly basis, in its annual activity report.¹⁰⁹ As concerns hate crime, this report includes information on criminal offences against persons motivated by racial discrimination, as illustrated in [Table 21](#).

Cooperation with civil society organisations

The Grand Ducal Police does not have any cooperation agreements with civil society organisations as regards recording or data collection on hate crime.

¹⁰⁹ Luxembourg, Office for statistical and criminal analysis, *Statistiques – Les chiffres de la délinquance en 2016 (2017)*.

Malta

Legal framework

Article 83B of the Maltese Criminal Code (CC)¹¹⁰ sets out a general aggravating circumstance for any crime motivated, wholly or in part, by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.

Article 222A (3) of the CC establishes that an offence is aggravated or motivated on these grounds if at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim’s membership (or presumed membership) of one of a group denoting these particular characteristics, or if the offence is motivated, wholly or partly, by hostility, aversion or contempt towards members of such a group.

Articles 222A (2), 251D and 325A of the CC provide for a specific enhancement of penalties for the offences of bodily harm, threats, private violence and harassment and for the crimes against public safety and of injury to property if the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.

Article 82A of the CC stipulates the substantive offence of incitement to violence or racial or religious hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion.

Article 82B of the CC criminalises the act of condoning, denying or grossly trivialising genocide, crimes against humanity, and war crimes directed against a group of persons or a member of such a group defined by reference to race, colour, religion, citizenship, descent or national or ethnic origin. Article 82C of the CC criminalises the act of condoning, denying or grossly trivialising crimes against peace directed against a person or a group of persons defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion. Both articles apply when the conduct is carried out in a manner likely to incite to violence or hatred against such a person or group; or likely to disturb public order or which is threatening, abusive or insulting.

Recording hate crime

Malta does not have a specific system for recording hate crimes. When confronted with a possible hate crime, frontline police officers use the generic crime report form and under the heading “action taken” provide a full description of the circumstances of the incident or crime, including the elements that on the first appearance point to a hate crime. There is no specific guidance document on how to identify hate crimes.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2017 Fifth report on Malta	ECRI strongly reiterates its recommendation to ensure that a mechanism for collecting disaggregated data on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, is put in place, recording the specific bias motivation as well as the criminal justice response, and that this data is made available to the public.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Malta	Malta has not periodically reported reliable information and statistics on hate crimes to ODIHR.

¹¹⁰ Malta, Criminal Code, Chapter 9, 10 June 1854.



Data collection and publication

There is no specific data collection or statistics regarding hate crimes.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

The Netherlands

Legal framework

The Netherlands Criminal Code (CC)¹¹¹ does not include any general or specific aggravating circumstance related to bias motivation. It does contain a number of substantive offences pertaining to hate crime:

Articles 137C and 137D of the CC criminalise insults targeting a group of persons and public incitement to hatred, discrimination or violence against a person on the grounds of their race; religion or beliefs; sex; hetero- or homosexual orientation; or because of their physical, mental or intellectual disability.

Recording hate crime

Police officers record all statements, reports and their own observations about offences brought to them in a central processing registry (*Basis Voorziening Handhaving* – BVH). The official report or the record of the report must explicitly state the circumstances of the incident that could indicate discrimination. Police officers can use a specific flag (“F50”) in the BVH for

offences with an antisemitic, anti-Muslim, homophobic or transphobic motive.

All incidents with a discriminatory motive recorded in the BHV are filtered at the national level, based on a keyword search. The discriminatory nature of offences is determined on the basis of (combinations of) words included in the description of the reported incidents that point to discrimination, or on the basis of the “F50” code. Positive hits of this search are examined by experts, who determine whether these are effective or potential cases of discrimination, which are then put on a separate list. This list is sent every two weeks to the police teams responsible for deal with cases of discrimination, to aid their investigations.

Police internal guidelines is available on how to record incidents with discriminatory motive.

Data collection and publication

The annual report on discriminatory incidents recorded in the Netherlands is produced in cooperation between the Netherlands Police, local anti-discrimination agencies (*antidiscriminatievoorzieningen*), the national

IGO observations and recommendations

<p>Observations & Recommendations by the Human Rights Committee, with regard to recording and collecting data on hate crime, 2015</p> <p><i>A/HRC/30/56/Add.1 (WG People of African Descents, 2015)</i></p>	<p>It is important to extend the scope of data collected on hate crimes, including through victim surveys, encouraging hate crime victims and witnesses to report incidents, [...].</p>
<p>Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017</p> <p><i>Fourth report on the Netherlands, 2013</i> <i>Conclusions on the Netherlands, 2016</i></p>	<p>30. In its third report, ECRI [...] recommended the following measures: the adoption of a definition of a racist incident; initiatives to encourage victims and witnesses of racist incidents to report such incidents; and the adoption of a racist incident report form to be used by the police and other agencies. In its conclusion, ECRI regrets that its recommendation has not been implemented.</p>
<p>Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016</p> <p><i>OSCE/ODIHR hate crime reporting Netherlands</i></p>	<p>The Netherlands have not reported on cases of hate crimes separately from cases of hate speech and/or discrimination.</p>

¹¹¹ The Netherlands, *Criminal Code*.



association against discrimination (*Landelijke Vereniging tegen Discriminatie*), the national hotline on online discrimination (*Meldpunt internet discriminatie*, MiND) and the College for Human Rights (*College voor de Rechten van de Mens*), which is the Netherlands national human rights institution. The Ministry of the Interior and the Netherlands police commissioned the Art. 1 civil society organisation to draft the annual report published in April 2018.¹¹²

The report collates incidents of discrimination recorded by the police; reports of discrimination made to local anti-discrimination agencies; cases of discrimination brought to the college for Human Rights; and, online discrimination reported to MiND. The report further collates data on discrimination collected by the Centre for information and documentation Israel (*Centrum Informatie en Documentatie Israël*, CIDI), the national hotline to report Islamophobia (*Meld Islamofobie*), and the Dutch transgender network (*Transgender Netwerk Nederland*, TNN).

As a whole, the latest available report provides data on the number of recorded incidents on the following

grounds of discrimination, with those recorded by the police underlined: age, *antisemitism*, *beliefs*, chronic illness, civil status, *disability*, employment contract, *Islamophobia*, length of employment, nationality, *origin*, *worldview (levensovertuiging)*, political convictions, *religion*, *sex*, *sexual orientation*,¹¹³ *unknown/other*, other/not covered by law.¹¹⁴

Cooperation with civil society organisations

The Dutch authorities do not have any cooperation agreements with civil society organisations as regards recording or data collection on hate crime. However, data on discrimination collected by civil society organisations (Centre for information and documentation Israel (CIDI), the national hotline to report Islamophobia (*Meld Islamofobie*) and the Netherlands' transgender network (TNN) are taken into consideration in the annual report on discriminatory incidents recorded in the Netherlands. The Ministry of the Interior usually commissions a civil society organisation to draft this report.

Table 22: Incidents of discrimination recorded by the Dutch police, by ground, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Origin		**	**	**	**	**	**	2,987*	2,215	1,723	n/a
Race		898	762	774	929	1,161	1,313	2,987*	**	**	n/a
Antisemitism		141	209	286	293	859*	717	358*	428	335	n/a
Religion		**	**	**	**	113	143	279*	462	371	n/a
of which, anti-Muslim		**	**	**	**	**	**	206	439	352	n/a
Anti-Muslim		**	**	**	**	**	150	**	**	**	n/a
Beliefs		**	**	**	**	53	1	4*	3	1	n/a
Religion and beliefs^c		270	231	247	440	166	143	**	**	**	n/a
Sex		9	10	17	15	110	55	68*	109	34	n/a
Sexual orientation		380	428	660	622	1,143	1,321	1,403*	1,574	1,295	n/a
Disability		0	5	7	13	23	33	54*	61	27	n/a
Unknown/other		**	**	**	**	**	**	946*	638	751	n/a
Unknown		723	649	668	74	0	252	**	**	**	n/a

Notes: * Not comparable with the previous year due to changes in recording or data collection practices.

** Not included in the annual report on incidents of discrimination recorded by the Netherlands police.

*** These categories are collapsed into one in the section on trends in *Discriminatiecijfers Politie 2013*.

Sources: Netherlands, Ministry of the Interior (2017), *Discriminatiecijfers in 2016 (for 2015-2016)*; National Police (2015), *Discriminatiecijfers Politie 2014 (for 2014)* and National Police (2014), *Discriminatiecijfers Politie 2013 (for 2008-2013)*

¹¹² The Netherlands, Ministry of the Interior and Kingdom Relations, *Discriminatiecijfers in 2017 (2018)*, Rotterdam / The Hague, April 2018.

¹¹³ *Ibid.*, p. 69.

¹¹⁴ *Ibid.*, p. 69.

Poland

Legal framework

The Polish Criminal Code (CC)¹¹⁵ does not include any general or specific aggravating circumstance related to bias motivation. Section 53 of the CC includes a general provision stating that when imposing the penalty the court shall take into account, among other elements, the motivation and the manner of conduct of the perpetrator, but it does not mention a bias motivation on specific grounds. Similarly, Section 148 of the CC sets out an aggravated penalty when a homicide is committed out of motives deserving particular reprobation, but does not explicitly mention bias motivation.

The CC contains a number substantive hate crime offences: Section 118 of the CC criminalises committing homicide or causing serious injury to any person belonging to a national, ethnical, racial, political or religious group or a group with a different perspective of life with the aim of destroying in whole or in part such group. It further criminalises the creation of living conditions which threaten the biological destruction of such a group, as well as applying means aimed at preventing births within this group or forcibly removing children from persons belonging to this group; Section 118a § 3 of the CC criminalises taking part in a mass attack or in one of repeated attacks against a group of people in order to implement or support the policy of a state or an organisation which either compels these people to change their lawful place of residence in violation of international law or severely persecutes a group of people for reasons recognised as inadmissible under international law, in particular for reasons

of political, racial, ethnic, cultural, religious belief or lack thereof, world view or gender, thereby depriving them of their fundamental rights; Section 119 of the CC criminalises violence or unlawful threats towards a person or group of persons on grounds of their national, ethnic, political or religious affiliation, or lack of religious beliefs; Section 126a stipulates the offence of publicly inciting others to the commission or publicly commending the commission of acts described in Sections 118, 118a and 119 of the CC; Section 256 criminalises promoting a fascist or other totalitarian system and the incitement to hatred on grounds of national, ethnic, race or religious affiliation, or lack of religious belief as well as producing, recording or importing, purchasing, storing or possessing, presenting, carrying or sending a print, recording or another object with such content for the purpose of dissemination; and Section 257 sets out the offence of publicly insulting a group of the population or a particular person on the same grounds or breaching the personal inviolability of a person on these grounds.

Recording hate crime

Hate crimes are recorded on a general crime form. There are no guidelines on hate crime recording or identification. During the interview with the victim, police officers establish whether the perpetrator was acting with bias motivation. Police officers should apply bias indicators such as behaviour and statements during the act, circumstances of the crime as time and place of the crime, and characteristics and circumstances connected with the victim to determine the motive.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2015 Fifth report on Poland	44. ECRI recommends that the Polish authorities [...] (2) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; [...].
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Poland	Poland has not reported on hate crimes separately from cases of hate speech.

¹¹⁵ Poland, *Criminal Code*.



If the police officer suspects that bias motivation is present, he/she flags the hate crime on the general incident form as well as in the police electronic database. On the general incident form, there is a text field where a police officer can check – under the type of crime – “hate crime”. In the electronic database, there is a special check-box by which a police officer can flag hate crimes.

Based on cases flagged as hate crimes in the electronic database, a separate dedicated electronic form is filled in. This form includes various categories to describe particular hate crime cases. Among others, it contains all types of criminal offences that are met most often in hate crime cases: slogans and symbols; interjections, gestures, flags or banners; posters or leaflets; arson or explosives; publications, articles, comments on the internet; violence; threats; disturbing religious act; disturbing the assembly or meeting; breaching the personal inviolability; insulting during direct contact; insulting by mass communication measures or on the internet; other forms of insulting; slander via mass communication tools; other forms of imputing; destroying property; trade with forbidden materials; right wing extremist concerts; other. Dedicated forms on hate crimes allow the user to generate information on the legal classification of the incident, the characteristics of the incident, the characteristics of the victim (nationality, citizenship, age and sex), the characteristics of the perpetrator (if identified) and information on the time and place of the incident.

The same structure is also used to monitor hate speech incidents, which are crimes under the Polish Penal Code.

Bias motivation is also recorded: race/skin colour, nationality/ethnicity (incl. subcategories such as anti-Roma and antisemitism), promoting totalitarian system, religion (incl. subcategories such as anti-Muslim), sexual orientation and gender identity, world view, disability, sex, other. The form contains the list with all available bias motivations from which the officer can select. Several bias motivations may be recorded in the form, but “potential hate crime” (when bias motivation is not obvious) cannot be recorded.

Data collection and publication

Every month, the Ministry of the Interior and Administration collects data on hate crime. Up until October 2016, the unit responsible for these tasks in the Ministry was the Human Rights Protection Team. From November 2016 onwards, the responsibility lies with the Unit for European Migration Network and Combating Human Trafficking of the Department for Migration Analyses and Policy.

In 2015, a new hate crime recording system was introduced, with the aim to ensure that the Ministry of the Interior and Administration has the complete picture of hate crime cases in Poland in order to elaborate diverse analysis.

Special coordinators at both the central (the National Hate Crime Coordinator in the Criminal Bureau of the General Police Headquarters) and the local levels (*voivodeship* – Polish administrative regional unit), from the police headquarters and in the Metropolitan Police Headquarters, are responsible for compiling the data from their district and reporting them monthly to the National Hate Crime Coordinator, using the dedicated electronic form described above, “Recording hate crimes”.

The National Hate Crime Coordinator prepares a monthly periodic report on hate crime investigations in Poland and sends it to the Ministry of the Interior and Administration. The task of the National Hate Crime Coordinator is to compile data on initiated and terminated investigations and to check if the fields in the forms are filled correctly. (In addition to this, the National Hate Crime Coordinator organises periodic meetings and training for hate crime coordinators and investigators, to improve the effectiveness and completeness of recording hate crime system.) The Ministry of the Interior and Administration, after having received the report, completes the data with information – obtained from courts – about how cases were resolved (for those that were prosecuted).

The data are used to prepare analyses on the phenomenon of hate crime, and its characteristics, in Poland. These analyses are used to plan actions to counteract hate crime.

The data are not public, but can be presented on request, disaggregated by the following motivations:

- Bias motivation race/skin colour and nationality/ethnicity
- Bias motivation anti-Roma
- Bias motivation antisemitism
- Bias motivation anti-Muslim
- Bias motivation religion
- Bias motivation sexual orientation
- Bias motivation gender identity
- Bias motivation disability

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

Portugal

Legal framework

The Portuguese Criminal Code (CC)¹¹⁶ does not contain a general aggravating circumstance provision relating to bias motivation. In Article 71, it includes a general sentencing provision allowing judges to take motivation into consideration when imposing a sentence.

It sets out two specific aggravating circumstances, aggravated murder (Article 132 of the CC) and aggravated assault (Article 145 of the CC), in case the death or the bodily harm are produced under circumstances that reveal a special reprehensibility. These provisions include among the circumstances which qualify for that special reprehensibility the fact that the perpetrator acted out of racial, religious or political hatred or

because of the colour, ethnic or national origin, sex or the sexual orientation or gender identity of the victim.

Furthermore, the CC sets out a number of substantive hate crimes. Article 240 of the CC stipulates the offence of promoting or inciting to violence or hatred against a person or group of persons on grounds of race, colour, ethnic or national origin, ascent, religion, sex, sexual orientation, gender identity or physical or mental disability; of threatening someone on these same grounds; and of defaming or insulting a person or group of persons on these grounds, in particular through the apology, denial or gross trivialisation of genocide, war crimes or crimes against peace and humanity. This provision also criminalises setting up an organisation or engaging in organised propaganda activities with the aim of promoting or inciting to discrimination, hate or violence on these grounds.

IGO observations and recommendations

<p>Observations & Recommendations by UN CERD, with regard to recording and collecting data on hate crime, 2016</p> <p>Concluding observations on the fifteenth to seventeenth periodic reports of Portugal</p>	<p>13. Considering that the absence of complaints does not signify a lack of racial discrimination [...]</p> <p>(a) Verify whether the small number of complaints is the result of victims' lack of awareness of their rights, fear of reprisals, limited access to the police including due to language barriers, lack of confidence in the police or judicial authorities or the authorities' lack of attention or sensitivity to cases of racial discrimination; [...]</p> <p>(e) Provide in its next report information on the number of complaints made to the police about acts of racial discrimination and their outcomes, including cases initiated by prosecutors, and on convictions and sentences against perpetrators and remedies provided to victims of such acts.</p>
<p>Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017</p>	<p>n/a</p>
<p>Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016</p> <p>OSCE/ODIHR hate crime reporting Portugal</p>	<p>Portugal has not reported reliable statistics on hate crimes this year.</p>

¹¹⁶ Portugal, Law 94/2017, amending the Penal Code, approved by Decree-Law 400/82, of 23 September, the Code of enforcement of prison sentences and imprisonment measures, approved by Law 115/2009, of 12 October, Law 33/2010, of 2 September, regulating the use of remote control technology (electronic surveillance), and the Law on the organisation of the judicial system, approved by Law 62/2013, of 26 August (*Lei n.º 94/2017 que altera o Código Penal, aprovado pelo Decreto-Lei n.º 400/82, de 23 de setembro, o Código da Execução das Penas e Medidas Privativas da Liberdade, aprovado pela Lei n.º 115/2009, de 12 de outubro, a Lei n.º 33/2010, de 2 de setembro, que regula a utilização de meios técnicos de controlo à distância (vigilância eletrónica), e a Lei da Organização do Sistema Judiciário, aprovada pela Lei n.º 62/2013, de 26 de Agosto*), 23 August 2017.



Article 252 of the CC sets out the offence of preventing or disrupting the legitimate exercise of religious worship and of publicly vilifying or mocking a religion or act of worship.

Recording hate crime

There is no specific crime form for recording hate crimes. Hate crimes are recorded on a general crime form that does not have a box to flag hate crimes. The recording follows the general procedure for any offence. The entries include the legal basis of recorded incidents, the characteristics of the incident, the victims and the perpetrators, as well as information about time and place of the incident. Hate crimes can be identified through the description of the circumstances of the crime, such as the language used, possible symbols or distinctive features of the perpetrator or relevant data or location, which are key to assessing the possible motivations behind the offence. No guiding instructions on how to record hate crimes is available for police officers.

Data collection and publication

All crime data are entered into the general database (Criminal Information System) and are accessed and managed by the Director of the Information and Criminal Investigation Unit and the heads of the Information Units of the various departments of the Criminal Police. Searches can be performed on the Integrated system of criminal information (SIIC) by introducing filters (keywords such as "aggression", "offences", "threats", etc.) into the search fields, and correlating with other data resulting from the detailed description of the incident.

The searches are usually performed by specialised personnel working at the Criminal Intelligence Central Brigade. Searches may be requested by authorities at any time, for statistical purposes or for the submission of interim or annual reports on a particular crime.

Searches in the Criminal Information System can be done in the description of the incident text box by different keywords (while no list of key words is established, these could be, for example: "racist", "xenophobic", "homophobic", "antisemitic", "Islamophobic", as well as words associated with far-right organisations (e.g. "Nazi", "skinheads", "white-power", among many others) or for example by bias motivations (if motivation is included in the incident description in the free text box). The data are not public, except in the case of a decision by National Directorate.

At a later stage, Criminal Police and other law enforcement authorities have the legal obligation to transmit to the Justice Statistical Information System the *Model 262* (Map for crime registration) that allows for the systematic collection of the number of complaints of all crimes recorded by the police. This is done on monthly basis and has national geographic scope. All the data are then included in the official Justice Statistics.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

Romania

Legal framework

Article 77 h) of the Romanian Criminal Code (CC) sets out a general aggravating circumstance for offences committed for reasons related to race, nationality, ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type considered by the offender to imply the inferiority of an individual to other people.

The CC further contains a number of substantive hate crime offences: torture for a reason based on any form of discrimination (Article 282.1d of the CC), abuse in office of a public servant who, while exercising professional responsibilities, limits the exercise of a right of a person or creates for the latter a situation of inferiority on grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, political membership, wealth, age, disability, chronic non-transmissible disease or HIV/AIDS infection (Article 297.2 of the CC), incitement to hatred or discrimination, using any means, against a category of individuals (Article 369 of the CC), preventing the freedom to practice religion or coercing a person to perform a religious act or an act forbidden by the religion to which he or she belongs (Article 381 of the CC), desecration of places or objects of worship (Article 382 of the CC).

Furthermore, Government Emergency Ordinance No. 31 of 13 March 2002 prohibits fascist, racist and xenophobic organisations and symbols, as well as organisations and symbols that promote the cult of personalities guilty of crimes against peace and humanity. This ordinance sets out the following criminal offences: setting up of a fascist, racist or xenophobic organisation (Article 3); dissemina-

tion, sale or manufacturing of fascist, racist or xenophobic symbols, as well as public exhibition and possession with the intent of dissemination (Article 4); promoting the cult of personalities guilty of crimes against peace and humanity, as well as publicly promoting fascist, racist or xenophobic ideology through propaganda, by any means (Article 5); publicly disavowing or denying Holocaust or the effects thereof (Article 6).

Recording hate crime

The Romanian Police records all criminal offenses in a dedicated database. The investigative police officers have a duty to highlight all aggravating circumstances when registering criminal files. However, there are no designated procedures for recording hate crimes. Consequently, criminal offenses committed with a bias motivation cannot be identified through the system.

Data collection and publication

The authority responsible for producing criminal offences statistics is the Romanian Police Directorate for Recording, Statistic and Operative Recording with a local unit in every county. The statistics do not segregate hate crimes. These statistics are prepared monthly, quarterly, semester and yearly and they are made public only upon request.

Cooperation with civil society organisations

No information about structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime was available at the time this report was published.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017	n/a
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Romania	Romania's law enforcement agencies have not recorded the bias motivations of hate crimes.



Slovakia

Legal framework

The Slovak Criminal Code (CC)¹¹⁷ provides for an aggravating circumstance leading to enhanced penalties of a large list of substantive offences when they are committed out of a “specific motivation”. One of the circumstances that qualify as specific motivation is if the crime has been committed out of hatred against a certain group of persons or an individual because of their real or perceived affiliation to any race, nation, nationality, ethnic group, or because of their actual or perceived origin, colour, sexual orientation, political beliefs or religion (Section 140e of the CC).

The list of substantive offences sanctioned with enhanced penalties when committed out of a specific motivation includes, among others, murder, bodily harm, trafficking in human beings, threat, violence against a group of citizens or against an individual, deprivation of personal freedom, kidnapping, robbery, extortion, restricting the freedom of worship, breach of mailing secrets, rape and sexual violence and abuse, theft, abuse of power by a public official, false accusation, and false testimony and perjury.

In addition, Section 421 of the CC criminalises establishing, supporting or making propaganda for a group of persons or movement or ideology which aim at suppressing fundamental rights and freedoms or advocate racial, ethnic, national or religious hatred or hatred against another group or person, or promoting a group, movement or ideology which in the past was directed

at suppressing fundamental rights and freedoms. This provision is complemented by Section 422 of the CC and Sections 422a-c of the CC, banning public manifestations of support of these groups or movements or ideology as well as the manufacturing, dissemination and possession of extremist materials.

Section 423 of the CC sets out the criminal offence of publicly defaming any nation, its language, any racial or ethnic group, or any person or group of persons on grounds of their real or perceived affiliation to any race, nation, nationality, skin colour, ethnic group, political conviction, religion or lack thereof.

Section 424 of the CC sets out the criminal offence of publicly inciting to violence or hatred against a group of persons or an individual because of their real or perceived affiliation to any race, nation, nationality, skin colour, ethnic group, sexual orientation, political conviction, family origin, religion or lack thereof.

Recording hate crime

When the police is called to the scene, the Police Operation Centre dispatches the police officers from the nearest District police department. The officers conduct the first investigation and, if there are indicators that the crime could be a crime of extremism or crime motivated by bias, the police respondents contact the National Counterterrorism Unit of the National Criminal Agency (NAKA).¹¹⁸ NAKA consists of about 90 police officers and was established in February 2017 by the Ministry of Interior of the Slovak Republic, with the aim of tackling extremism in Slovakia. NAKA is the

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017	n/a
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 <i>OSCE/ODIHR hate crime reporting Slovakia</i>	Slovakia could benefit from encouraging victims to report hate crimes and could consider increasing cooperation with civil society in that respect.

¹¹⁷ Slovakia, Act No. 300/2005 Coll. Criminal Code, Sections: 140 e), 421, 422, 422a, 422b, 422c, 422d, 423, 424, 424a.

¹¹⁸ Slovakia, Ministry of Interior of the Slovak Republic (*Ministerstvo vnútra Slovenskej republiky*), ‘Vznikla národná jednotka boja proti terorizmu a extrémizmu, je súčasťou NAKA’, Press release of the Ministry of Interior of the Slovak Republic from 1 February 2017.

Table 23: Extremist criminal offences and racially motivated crimes recorded by the police, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Extremist crimes and racially motivated crimes	n/a	n/a	n/a	n/a	243	104	78	66	30	45	145

Note: n/a = No data are available.

Source: Slovakia, Ministry of Interior (2017), *Štatistika kriminality v Slovenskej republike*

only police force in the Slovak Republic competent to investigate crimes of extremism, including hate crimes.

NAKA officers use a generic criminal complaint form when recording hate crime. This is a descriptive document that does not contain any fields pre-dedicated specifically to hate crime. This document is then sent to the special prosecutor.

Currently, there is no available guiding instruction containing information on bias indicators or on how the police should record hate crimes. Police officers are expected to recognise hate crimes by interviewing the victims and witnesses and must use their own judgment.

Data collection and publication

To collect hate crime data for the purpose of producing statistics, NAKA officers fill in a form about a crime (*Formular o trestnom cine*). The form contains a field to provide the specific section in accordance with the Slovak Criminal Code and a box for the code of the perpetrator's suspected motive (*osobity motiv*) – race, ethnicity, nation, ethnic group, skin colour, sexual orientation, political belief, religion (Article 140 of the CC). Every bias motivation has its own code, which the

police officer can mark in the form. The form is then sent to the statistical offices of the Police Presidium, where the information is manually added to the database on evidence of investigation files (ESSK). The data are published on a yearly basis (Table 23).

By the end of 2018, ESSK will be modified to enable data collection by disaggregated bias motivations. It is envisioned to also disaggregate the data by motivations that do not explicitly appear in the Slovak Criminal Code – bias against a person from the Roma community and bias based on antisemitism.

In 2017, the database of the Prosecutor of the Special Prosecution Office of the General Prosecution Office of the Slovak Republic was changed in relation to hate crimes to reconcile it with the police database, to allow data collection according to individual bias.

Cooperation with civil society organisations

The Ministry of the Interior of the Slovak Republic, which includes law enforcement agencies, does not have any cooperation agreements or memorandum with CSOs specifically aimed at hate crime recording or data collection on hate crime.



Slovenia

Legal framework

In Slovenia there is no general aggravating circumstance for committing criminal offences with a bias motivation. However, under Article 49, paragraph 2 of the Slovenian Criminal Code (CC),¹¹⁹ courts have to take into consideration aggravating and mitigating circumstances in the determination of penalties. The motivation for the offence is explicitly included in the list of circumstances to consider.

Article 116 of the CC sets out a specific aggravating circumstance for the offence of murder, if it is committed on grounds of a violation of the right to equal status.

Article 131 of the CC on the violation of the right to equal status criminalises the act of depriving another person or restraining the exercise of any human right or freedom recognised by the international community or laid down by the Constitution or statute, or granting another person a special privilege or advantage, on account of national origin, race, skin colour, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, financial situation,

birth, genetic heritage, education, social position or any other circumstance.

Article 297, paragraph 1 of the CC sets out the criminal offence of publicly inciting or stirring up hatred, violence or intolerance based on national origin, race, religion or ethnicity, gender, skin colour, origin, property situation, education, social position, political or other belief, disability, sexual orientation, or any other personal circumstance, when this is done in a manner that can jeopardise or disturb public order and peace, or by the use of threat, scolding or insult. In the same manner, Article 297, paragraph 2 criminalises the public dissemination of ideas on the supremacy of one race over another, providing any kind of aid for racist activity or denying, diminishing the significance of, approving, mocking, or advocating genocide, the holocaust, crimes against humanity, war crimes, aggression, or other criminal offences against humanity, as they are defined in the legal order of the Republic of Slovenia.

Recording hate crime

In Slovenia, police officers use a generic crime reporting form. The reporting form enables recording of legal prequalification of the crime, for example Article 297

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017 Fourth report on Slovenia, 2014	<p>16. In its third report, ECRI recommended that the authorities take steps to monitor the incidence of racially motivated offences and racist incidents in Slovenia and the response of the criminal justice system (the police, the prosecuting authorities and the courts) to any such acts. It also encouraged the authorities to collect readily available and accurate data on the application of the criminal, civil and administrative law provisions in force against racism and racial discrimination, covering the number and nature of the complaints filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.</p> <p>18. ECRI recommends that the specific motive is recorded in relation to the criminal offences involving violation of equality or public incitement to hatred, violence or intolerance.</p>
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Slovenia	Slovenia has not periodically reported reliable information and statistics on hate crimes to ODIHR.

¹¹⁹ Slovenia, *Criminal Code (Kazenski zakonik, KZ-1)*, 1 November 2008. The latest amendment: Slovenia, Act Amending the Criminal code (*Zakon o dopolnitvi Kazenskega zakonika, KZ-1E*), enforced from 2 July 2017.

or 131. The police does not have specific crime codes in the computer system for flagging hate crimes and there is no hate crime recording instruction available to officers.

Data collection and publication

There is no specific data collection or statistics regarding hate crimes. The Registry Division of the Supreme Court (*Evidenčni oddelek*) anonymises court judgments and publishes them daily on their website <http://www.sodnapraksa.si/>. Before publication, every judgment is processed so that it indicates the area to which it relates.

Cooperation with civil society organisations

There is no structured and systematic cooperation between law enforcement agencies and civil society organisations related specifically to recording and collecting data on hate crime at the time this report was published.



Spain

Legal framework

Article 22.4 of the Spanish Criminal Code (CC)¹²⁰ sets out a general aggravating circumstance applicable to any crime committed for racist or antisemitic motives or another kind of discrimination concerning ideology, religion or beliefs of the victim, ethnicity, race or nation of belonging, sex, sexual orientation or identity, gender, illness or disability.

With regard to the offence of the disclosure of personal data, Article 197.5 of the CC provides for a specific aggravating circumstance when the data disclosed concern the ideology, religion, beliefs, health, racial origin or sex life of a person.

The CC also includes a number of substantive offences pertaining to hate crime: threats liable to inflict fear on an ethnic, cultural or religious group (Article 170.1 of the CC); crime against moral integrity (Article 173 of the CC); torture for reasons related to any discrimination ground (Article 174.1 of the CC); severe discrimination in employment (Article 314 of the CC); discriminatory denial of public services or of professional or business services to which someone is entitled (Articles 511 and 512 of the CC); public direct or indirect incitement to hatred, hostility, discrimination or violence for racist, antisemitic or other reasons regarding ideology, religion or beliefs, family situation, belonging of its members to an ethnicity, race or nation, national origin, gender, sexual orientation, illness or disability (Article 510.1a); production, distribution or sale of materials to that effect (Article 510.1b);

public denial, gross trivialisation or apology of crimes of genocide, crimes against humanity and war crimes (Article 510.1c); humiliation, contempt or discredit of any of the groups mentioned, or part of it, or any person because of his/her belonging to a specific group, resulting in the violation of the dignity of persons (Article 510.2a of the CC); public apology or justification of crimes committed against any of the mentioned groups, a part of them or a person because of their belonging to this group (Article 510.2b of the CC); illegal association, which includes those promoting or directly or indirectly inciting to hate, hostility, discrimination or violence against persons, groups or associations due to the cited grounds (Article 515.4 of the CC); crimes against religious feelings (Articles 522-526 of the CC).

The Law 19/2007 against Violence, Racism, Xenophobia and Intolerance in Sports¹²¹ includes some hate related administrative offences, such as insulting or showing banners, symbols or other signs with insulting or intimidating messages against any person on grounds of his or her racial, ethnic, geographic or social origin, religion, belief, disability, sex or sexual orientation or harassing anyone on these grounds. The data about these administrative offences are included in the general hate crime data collection by the Ministry of Interior.

Recording hate crime

Recording hate crimes in Spain follows the general crime recording procedure. When a crime or incident is reported to the police, the frontline police officer writes a report containing the relevant facts of the case and sends it to the judicial authority and the public prosecu-

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017	n/a
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting Spain	Spain has not reported the numbers of prosecuted hate crime cases or information on sentenced hate crime cases to ODIHR.

¹²⁰ Spain, *Criminal Code*, 24 November 1995.

¹²¹ Spain, *Ley 19/2007, de 11 de julio, contra la violencia, el racismo, la xenofobia y la intolerancia en el deporte*, 12 July 2007.

tor. If the police officer identifies the case as a potential hate crime because the aggravating circumstance applies or because it is one of the offences listed above, the case is sent to a specific public prosecutor responsible for hate crimes. The police officer then fills in the police database, which is an internal police application connected to the general crime statistics database. One of the fields that he/she can select and tick is the area “hate crime” and within this area there is a list of eight bias motivations (racism/xenophobia, ideology, sexual orientation or identity, gender, religious beliefs, antisemitism, disability, aporophobia¹²²), of which one has to be selected. This police form also has a free text space. Here the police officer enters a short description of the facts concerning the crime or incident, the victim and the possible perpetrator, and the bias indicators pointing to the existence of a hate crime.

The Protocol for Police Forces on Hate Crimes,¹²³ adopted by Instruction 16/2014 of the State Secretary for Security and revised in 2015, provides guidance on how to handle hate crime. It includes:

- the OSCE definition of “hate crime” which is taken as a working definition, given that the CC does not use this term;
- a list of hate crimes and hate-related administrative infringements under Spanish legislation;
- a section on bias indicators police officers have to pay attention to and if need be investigate and lay down in their reports, including a list of 15 bias indicators (see below);
- instructions concerning investigation and the interrogation of suspects and witnesses;
- instructions concerning the communication to the judicial authority and the specialised public prosecutor; and
- guidance on the attention, protection and information to be provided to victims, as well as the attention to the special needs they and their relatives might have, while making specific reference to the Victims’ Rights Directive.¹²⁴

¹²² ‘Aporophobia’ is defined in the Police Protocol as hate of poor people. It is applied mainly to crimes committed against homeless people. Although this term is not included among the motivations triggering the application of the aggravated circumstance of Article 22.4 of the CC and hence not a legal term, it is used in police statistics because of its social relevance.

¹²³ Spain, Ministry of the Interior (2015), *Police Protocol on hate crimes and acts violating legal norms on discrimination*. Revised version December 2015 (*Protocolo de actuación de las Fuerzas y Cuerpos de Seguridad para los delitos de odio y conductas que vulneran las normas legales sobre discriminación. Versión revisada: diciembre 2015*).

¹²⁴ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

The 15 bias indicators contained in the Protocol are the following:

- The victim’s perception
- The membership of the victim to a community or minority group by reason of racial or ethnic origin, religion or sexual orientation or identity
- Racist, xenophobic or homophobic expressions and comments uttered or signalled by offenders when committing the crime
- Hate or discrimination by mistake or by association: there can be a mistake in the victim identification by the perpetrator, or the victim is not part of a specific group but they can be an activist or sympathise with this group (i.e. heterosexual person working for a LGBT association)
- Tattoos, dressing or use of symbols of racist or extremist ideology by the offender
- The relationship of the suspect with extremist groups of football team supporters
- The apparently unjustified and gratuitous violence should be regarded as a determinant indicator
- Radical propaganda, banners, flags, etc. that the perpetrator may carry or that may be found through search warrants
- Criminal record of offender in similar crimes
- The incident is committed close to facilities of NGOs, places of worship, graveyards etc.
- The relationship of the suspect with groups against immigration, antisemitism, anti – Muslim, etc.
- Long - lasting enmity between groups of offender and victim
- Specific date: Wednesday for Muslim, Saturday for Jews, Pride parade for LGBT, etc.
- Memorial Date: Hitler anniversary, Poland invasion, etc.
- Offender behaviour: prejudices expressed during detention or interrogation; telephone activity records (e.g. video boasting of aggression); social media (radical) activity

This protocol is accessible to all police officers through the police intranet. It is also used for police training programmes at all levels.

Data collection and publication

The data collection on hate crime follows the general procedure followed for producing crime statistics. The Secretary of State for Security within the Ministry of the Interior is in charge of managing the Criminality Statistics System (SEC) and to produce statistics at national level. On a monthly basis, the Secretary of State for Security collates the information coming from the police databases into the SEC.

Furthermore, since the categorisation of an incident or crime may change as a result of police investigation, at

Table 24: Recorded hate crimes, disaggregated by bias, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Antisemitism	n/a	n/a	n/a	n/a	n/a	n/a	3	24	9	7	n/a
Aporophobia	n/a	n/a	n/a	n/a	n/a	n/a	4	11	1	0	n/a
Religion	n/a	n/a	n/a	n/a	n/a	n/a	42	63	70	47	n/a
Disability	n/a	n/a	n/a	n/a	n/a	n/a	290	199	14	22	n/a
Sexual orientation or identity	n/a	n/a	n/a	n/a	n/a	n/a	452	513	169	230	n/a
Racism/xenophobia	n/a	n/a	93	92	224	261	381	475	505	416	n/a
Ideology	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	56	44	n/a
Gender /sex	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	4	8	n/a

Note: n/a = No data are available.

Source: Spain, Ministry of the Interior (2017), *Report on the development of hate crimes in Spain during the year 2016 (Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España 2016)*

the end of every year the Secretary of State for Security receives information from the police databases, regarding the data that have been modified.

Thus, statistical data about hate crimes stem directly from police databases in which frontline police officers have entered the statistical information. On the basis of these statistics, since 2013, the Secretary of State for Security has been releasing an annual report on hate crime.¹²⁵

This report provides an overview of the main figures regarding hate crimes broken down by the eight bias motivations on which the statistical system is based:

- 1) racism / xenophobia;
- 2) ideology;
- 3) sexual orientation or identity;
- 4) gender;
- 5) religious beliefs or motivations;
- 6) antisemitism;
- 7) disability;
- 8) aporophobia.

It compares these figures to the previous annual period, breaks them down by types of offences and by reported facts and clarified facts, shows the territorial distribution and the profiles of victims and perpetrators. It also includes a section on hate speech. The report is presented to the public and published on the website of the Ministry of Interior.¹²⁶

Selected statistical data about the number of reported and clarified incidents, victim profiles and the number of persons arrested and investigated in relation to hate crimes can also be downloaded at the statistical portal of the Ministry of the Interior.¹²⁷ The report covering the year 2017 will be published in June 2018.

Cooperation with civil society organisations

In 2015, the General Secretariat for Immigration and Emigration, the Ministry of Employment and Social Security, the General Council of the Judiciary, the Public Attorney's Office, the Ministry of the Interior, the Ministry of Justice, the Ministry of Health, Social Services and Equality and the Centre for Judicial Studies enhanced an inter-institutional agreement by signing the *"Collaboration and Cooperation Agreement against Racism, Xenophobia and other forms of Intolerance."* The Agreement establishes four working groups on: data and statistics on hate crime collection (led by the Ministry of Justice); analysis of judicial resolutions on hate crime (led by the General Council of the Judiciary); hate speech monitoring (led by the Ministry of Employment and Social Security, Oberaxe); and training on racism, xenophobia and other intolerance (led by the Ministry of Health. The objective of the working group on data and statistics on hate crime collection is to improve the hate crime data collection process and also the inter-institutional procedures and cooperation to register, exchange and monitor these data. The working group includes representatives from all signing institutions. An extended group of experts from relevant NGOs and civil society representatives participate as observers in the working groups.

¹²⁵ Spain, Ministry of Interior, *Report on the Evolution of incidents related to hate crimes in Spain (Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España)*, 2016.

¹²⁶ *Ibid.*

¹²⁷ Spain, Ministry of Interior, *Portal Estadístico de Criminalidad*.

Sweden

Legal framework

Chapter 29, Section 2(7) of the Swedish Criminal Code (CC)¹²⁸ establishes a general aggravating circumstance that has to be given special consideration in assessing penal value of committed offences. It applies if the motive for the crime was to aggrieve a person, ethnic group or some other similar group of people on the basis of race, colour, national or ethnic origin, creed, sexual orientation or other similar circumstance. In the preparatory work for the provision, the law-maker mentions transgender identity or expression as an example of ‘other similar circumstance’.

Chapter 16, Section 8 of the CC provides for the substantive offence of agitation against a population group, which is defined as threatening or expressing contempt for a national, ethnic or other such group of persons with reference to race, colour, national or ethnic origin, creed or sexual orientation in a statement or other message which is spread. The provision prohibits the spreading of racist statements or communications not only in public but also within organisations, since

court praxis has defined the spreading to encompass “more than just a few persons”.

Chapter 16, Section 9 of the CC sets out the criminal offence of unlawful discrimination, which is committed by business persons who in the conduct of their business discriminate against a person on grounds of race, colour, national or ethnic origin, creed or sexual orientation by not dealing with that person under the same terms and conditions that would normally be applied by the business person in the course of their business with other persons.

In November 2017, the Government presented a bill proposing legislative amendments aimed at affording transgender persons full protection under the hate crime legislation. The bill proposes transgender identity and transgender expression to be included specifically in the provision on aggravating circumstances when assessing the penal value (*straffskärpningsregeln*) and to be added to the provisions on agitation against a population group (*hets mot folkgrupp*), unlawful discrimination (*olaga diskriminering*) and in the provisions on public prosecution for insulting behaviour (*förolämpning*).

IGO observations and recommendations

<p>Observations & Recommendations by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, with regard to recording and collecting data on hate crime, 2013-2017</p> <p>CERD/C/SWE/CO/19-21 (CERD, 2013)</p> <p>A/HRC/30/56/Add.2 (WG People of African Descent, 2015)</p>	<p>119. Afrophobic hate crimes should be presented in the annual reports from the National Council on Crime Prevention (Brå) as independent categories of hate crimes and not just merely as subcategories to xenophobic/racist hate crimes.</p> <p>11. [...] The State party should extend to all parts of the country the training given to the police, prosecutors and judges to effectively investigate, prosecute and punish hate crimes, in order to close the gap between reported incidents and convictions. The Committee reiterates its request that the State party introduce a common and clear definition of hate crime so that it is possible to track all such reported crimes through the justice system.</p>
<p>Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2013-2017</p>	<p>n/a</p>
<p>Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016</p> <p>OSCE/ODIHR hate crime reporting Sweden</p>	<p>Sweden has not reported information on sentenced hate crime cases to ODIHR.</p>

¹²⁸ Sweden, Government Offices of Sweden, [Penal Code](#).



Recording hate crime

In Sweden, the police does not have specific crime codes in the computer system for registering hate crimes, since any crime could be a hate crime.¹²⁹ The electronic police recording system includes a tick box, which is used by police officers to indicate a potential hate crime. In the process of ticking the box, a pop-up window comes up with the definition of what a hate crime is. The box also includes the link to web-based hate crime training materials for police officers.

Text on hate crime provided in a pop-up window in the police reporting system [informal translation]

What is a hate crime?

Hate crime consists of:

- agitation against a population group: Criminal code Ch. 16 § 8
- unlawful discrimination: Criminal code Ch. 16 § 9

and all other crimes where a motive has been to aggrieve a person, a population group or another such group of persons because of race, colour, national or ethnic origin, creed, sexual orientation or another similar circumstance (as per the penalty enhancement rule in Criminal code Ch. 29 §2 point 7).

An example of another similar circumstance, as expressed in the penalty enhancement rule, could be transgender identity or expression. The victim does not need to belong to any of the protected groups listed in the penalty enhancement rule. It is sufficient that the perpetrator perceives that the victim belong to or represent such a group.

Flagging potential hate crimes is compulsory and integrated in the general crime reporting form. The reports are filed in the Rational Notification Routine (RAR) system. Flagging is not used to generate hate crimes statistics, however; for that purpose, a special data collection method is employed.

A guide on handling hate crime reports (including recording them) is available to all law enforcement officials (police officers, operators, investigators and all other categories within the police organisation) on the police intranet.

Data collection and publication

Hate crime data are collected by the Swedish national council for crime prevention (*Brå*), through digital keyword searches and manual examination of the narrative text included in police reports, regarding a number of specific crime categories. The search list contained 385 keywords in 2016, both derogatory words and phrases and describing words and phrases that could indicate a possible hate crime, for example "hate crime", "fag", "church", "mosque", "go back", "his religion", "her sexual orientation". Data on hate crimes include defamation, hate speech and discrimination crimes. Since 2012, the keyword search is applied to a 50 % sample of reports. Reports containing words and phrases that indicate a potential hate crime motive are examined manually by at least two different researchers. Reports considered to contain a hate crime motive contain details such as motive, location and relationship between offender and victim, coded in before producing population-level estimates, which compensates for the 50 % sample. These estimates subsequently make up the hate crime statistics. Up until 2016, the statistics were published annually (see [Table 25](#)),¹³⁰ but will from now on be produced biannually in favour of other hate crime studies in the years in between.

The statistical data are disaggregated by the following bias motivations (year when included in the statistics):

- Xenophobia/racism (from onset, 1992)
 - Afrophobia (presented separately from 2008, always been included in xenophobia/racism)
 - Anti-Roma (presented separately from 2008, always been included in xenophobia/racism)
- Islamophobia (2006)
- Anti-Semitism (from onset 1992)
- Christianophobia (2008)
- Otherwise anti-religious (2008)
- Sexual orientation
 - Homophobia (from onset, 1992)
 - Biphobia (2008)
 - Heterophobia (2008)
- Transphobia (2008)

¹²⁹ There are crime codes for agitation against a national or ethnic group and for unlawful discrimination. But most hate crimes fall under 'other crimes', with a bias motivation as defined in the aggravating circumstance provision. This provision is not a crime, hence it does not have a crime code.

¹³⁰ Sweden, National Council for Crime Prevention (*Brottsförebyggande rådet, Brå*) (2018), *Annual Reports*.

Table 25: Police report with identified hate crime motive, 2007-2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Xenophobia/ Racism	2,489	4,224	4,116	3,786	3,936	3,979	3,999	4,314	4,765	4,609	n/a
Afrophobia	n/a	761	780	818	803	940	980	1,075	1,074	908	n/a
Anti-Roma	n/a	178	163	145	184	215	233	287	239	158	n/a
Antisemitism	118	159	250	161	194	221	193	267	277	182	n/a
Islamophobia	206	272	194	272	278	306	327	492	558	439	n/a
Christian-phobia	n/a	161	134	97	162	200	191	334	388	289	n/a
Otherwise anti-religious	n/a	10	13	22	17	58	130	155	331	267	n/a
Sexual orientation (homophobia, biphobia and heterophobia)	723	1,055	1,060	770	854	713	625	635	602	553	n/a
Transphobia	n/a	14	30	31	52	41	45	72	62	76	n/a

Note: n/a = No data are available.

Source: Sweden, Brå (2017), *Hatbrott 2016: Statistik över självrapporterad utsatthet för hatbrott och polisanmälningar med identifierade hatbrottsmotiv*

Cooperation with civil society organisations

The Swedish police hold regular national and local consultative forums with civil society and key stakeholders to coordinate its action against hate crimes. Organisations working on hate crimes are consulted about their perspective on hate crime trends, incidents of particular concern, evidence of new types of modus/perpetrator and other issues. This approach has helped the police identify new potential bias indicators and

trends. At the local level, police hate crime units in particular may inform NGOs about the number of cases they deal with, or have recorded. In turn, NGOs may share available information about incidents with the police, even if not collected systematically.

Brå consults civil society when proposing substantial changes to the statistics. For example, when changing the frequency of their reporting, when adding new motives or when suggesting terminological changes.

United Kingdom

Legal framework

The national hate crime laws consist of substantive offences and general penalty-enhancement provisions. Section 145 of the Criminal Justice Act (131) imposes a duty upon courts to increase the sentence for any offence committed that either involves the demonstration of hostility based on the victim's membership (or presumed membership) of a group defined by reference to race, colour, nationality (including citizenship), ethnic or national origin, religious belief or lack thereof, or is wholly or partly motivated by hostility towards the victim on these grounds. Section 146 of this Act extends this aggravated treatment to the grounds of sexual orientation, gender identity and disability.

For cases where the hostility is directed towards a characteristic not covered by Section 145 or 146, the courts may consider the targeted nature of the crime when calculating the seriousness of the offence under Section 143 of the Criminal Justice Act 2003. The Sentencing Guidelines Council specifically includes the motivation by hostility towards a minority group, or a member or members of it among the 'factors indicating higher culpability' when calculating the seriousness of an offence.¹³²

Sections 29-32 of the Crime and Disorder Act 1998¹³³ identify a number of offences which, if motivated by hostility or where the offender demonstrates hostility, can be treated as racially or religiously aggravated and lead to enhanced penalties: assaults (Section 29), criminal damage (Section 30), public order offences (Section 31) and harassment (Section 32). In this sense, the term "racially aggravated" includes race, colour, nationality (including citizenship) and ethnic or national origin characteristics, while the term "religiously aggravated" refers to both religious belief and lack thereof.

Parts III and 3A of the Public Order Act¹³⁴ make it a criminal offence to stir up hatred on the grounds of colour, race, nationality (including citizenship), ethnic or national origins, religious beliefs or lack thereof or sexual orientation.

Section 3 of the Football (Offences) Act 1991¹³⁵ makes it an offence to engage or take part in chanting of an indecent or racist nature at a designated football match. According to this act, the term "of a racist nature" means consisting of, or including, matter which is threatening, abusive or insulting to a person by reason of their colour, race, nationality (including citizenship), ethnic or national origins.

IGO observations and recommendations

Observations & Recommendations by UN, with regard to recording and collecting data on hate crime, 2013-2017	n/a
Observations & Recommendations by ECRI, in relation to recording and collecting data on hate crime, 2015 Fifth report on the United Kingdom	69. ECRI recommends that data are gathered on the application of enhanced sentencing under Sections 145 and 146 of the Criminal Justice Act 2003 and, where imposed, that this should be duly recorded, including on the criminal records of offenders. Data should also be collected on where aggravated offences and enhanced sentencing have been invoked and then dropped through the process of accepting guilty pleas. ECRI also recommends that steps are taken to narrow the gap between hate crime recorded by the police and that referred for prosecution.
Observation by OSCE/ODIHR in relation to recording and collecting data on hate crime, 2016 OSCE/ODIHR hate crime reporting United Kingdom	The United Kingdom has met most OSCE commitments on hate crime data collection and reporting.

¹³¹ Parliament of the United Kingdom, *Criminal Justice Act (2003)*, c. 44, Part 12, Chapter 1, *Matters to be taken into account in sentencing*, Section 145.

¹³² United Kingdom, Sentencing Council of the United Kingdom (2004), *Overarching Principles – Seriousness: Definitive guideline*.

¹³³ United Kingdom, Parliament of the United Kingdom, *Crime and Disorder Act (1998)*.

¹³⁴ United Kingdom, Parliament of the United Kingdom, *Public Order Act (1986)*.

¹³⁵ United Kingdom, Parliament of the United Kingdom, *Football (Offences) Act (1991)*.

Recording hate crime

In the United Kingdom, hate crime is defined as “any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic.”¹³⁶ This common definition was agreed upon in 2007 by the police, the Crown Prosecution Service (CPS), the National Offender Management Service and other agencies that are part of the criminal justice system. A hate incident is defined as: “Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate”. Evidence of the hostility is not required for an incident or crime to be recorded as a hate crime or hate incident. All criminal justice system (CJS) agencies share the common definition of monitored hate crime, hate motivation, hate incidents and hate crime prosecution.¹³⁷

In Scotland, the police defines hate crime as “Crime motivated by malice or ill will towards a social group by: Race; sexual orientation; religion/faith; disability; and transgender/gender identity (Offences (Aggravated by Prejudice) Act 2010)” and “A hate incident is any incident that is not a criminal offence, but something which is perceived by the victim or any other person to be motivated by hate or prejudice.”¹³⁸

There is not a single crime recording system in use across England and Wales and separately across Scotland. However, the police forces are united in hate crime recording policy that established minimum requirements on flagging, recording and investigation.

In 2014, the College of Policing issued the Hate Crime Operational Guidance,¹³⁹ which defines the minimum standards for response, investigation and supervision of hate crime offences and contains guidance of recording hate crime and hate incidents. The National Standard for Incident Recording (NSIR),¹⁴⁰ prepared by the National Policing Improvement Agency in 2011, aims to ensure that the police record all crime or non-crime incidents, including hate incidents, in a consistent and accurate manner. NSIR states that “Where any person, including police personnel, reports a hate incident it must be recorded as such: Regardless of whether they are the victim or not; whether a crime has been committed or not; irrespective of whether there is any evidence to identify the hate element.”

Flagging potential hate crimes is compulsory and integrated in the general crime reporting form, though some forces have adopted a hate crime form. When recording hate crimes, the police officer flags an offence as being motivated by, at least, one or more of the five following bias motivations (strands):

- a) race or ethnicity;
- b) religion or beliefs;
- c) sexual orientation;
- d) disability;
- e) transgender identity.

The Hate Crime Operational Guidance contains detailed guidance on the five strands of monitored hate crime, including definitions, the nature of the specific strands and other contextual information, and concrete indicators related to the specific strands. A further 21 different groups were identified for consideration during a public consultation.

To ensure that crimes, including hate crimes are recorded consistently and accurately, the Home Office Counting Rules for Recorded Crime on Hate crime¹⁴¹ guides officers on the flagging process, and includes specific codes and information on the perceived religion of the victim.

The Home Office has issued all police forces with a Crime Data Review Manual, which sets out self-inspection techniques for checking the quality of the crime data recorded.

The mechanism for local recording of non-crime hate incidents varies. Many forces record them on their crime recording system and assign them a code to separate them from recordable crimes.¹⁴²

The revised Director’s Guidance on Charging,¹⁴³ issued by the Director of Public Prosecution and addressed to police officers and crown prosecutors, defines the arrangements for the cooperation between police officers and prosecutors during the investigation and prosecution of criminal cases, including hate crimes. Police refers all flagged hate crime cases to the Crown Prosecution Service which should flag these on CPS Case Management System (CMS) using the appropriate case monitoring codes. Similarly, if the receiving CPS lawyer perceives that the case involves an element of hostility, the appropriate monitoring code should be added on CMS. The decision to flag can be taken at

¹³⁶ United Kingdom, Police Service of Northern Ireland, *Hate Motivation Definitions*.

¹³⁷ United Kingdom, College of Policing (2014), *Hate Crime Operational Guidance (2014)*, Coventry, May 2014, p. 3 – 4.

¹³⁸ Scotland Police.

¹³⁹ United Kingdom, College of Policing (2014), *Hate Crime Operational Guidance (2014)*, Coventry, May 2014.

¹⁴⁰ United Kingdom, National Policing Improvement Agency (2011), *The National Standard for Incident Recording (2011)*, 1 April 2011.

¹⁴¹ United Kingdom, Home Office Counting Rules for Recorded Crime, *Crime Flags*, April 2017.

¹⁴² United Kingdom, College of Policing (2014), *Hate Crime Operational Guidance (2014)*, Coventry, May 2014.

¹⁴³ United Kingdom, 5th Edition Legal Guidance, *Guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecutions under S37A of the Police and Criminal Evidence Act 1984*, May 2013.

almost any stage of the process; if not already flagged by the investigating officer, it might be flagged by the reviewing prosecutor.

Data collection and publication

The 2007 agreement of the common definition of hate crime enabled the police to provide data for the first time in a consistent format. Data are collected from the CPS CMS and associated Management Information System (MIS). The official statistics relating to crime and policing are maintained by the Home Office. The official statistics relating to sentencing, criminal court proceedings, offenders brought to justice, the courts and the judiciary are maintained by the Ministry of Justice. Data are published regularly and always cover a fiscal year (1 April–31 March). The various reports also contain information on how the data were collected and by whom.

Hate crime recorded by police in England and Wales are included in Home Office annual statistical bulletin (Table 26).

Hate crime statistics in Northern Ireland are published by the Police Service of Northern Ireland.

In Scotland, data are collected by the Procurator Fiscal. Police and prosecution data usually cover the reporting period from April to March of the following year.

Cooperation with civil society organisations

Data-sharing schemes between the police and Tell MAMA,¹⁴⁴ the Community Security Trust¹⁴⁵ and GALOP,¹⁴⁶ have been established for sharing information about incidents involving anti-Muslim and anti-semitic hate and homophobic and transphobic hate crime respectively. The data-sharing agreements and other supporting material can be found at the True Vision website.¹⁴⁷ In accordance with clear rules that are compliant with data protection legislation, these agreements allow for regular, and where necessary, real time sharing of data and intelligence for effective responses and prevention, and help refine and improve the accuracy of information about the prevalence and impact of hate crime. Regular meetings improve the understanding and knowledge of both the police and NGO knowledge about their respective recording and data collection methods and procedures and, where appropriate, can lead to reviews and occasional revisions to better align recording practices.

Table 26: England and Wales: hate crime offences for the five centrally monitored strands, 1 April–31 March

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Race	n/a	n/a	n/a	n/a	35,944	35,845	37,575	42,862	49,419	62,685	n/a
Religion	n/a	n/a	n/a	n/a	1,618	1,572	2,264	3,293	4,400	5,949	n/a
Sexual orientation	n/a	n/a	n/a	n/a	4,345	4,241	4,588	5,591	7,194	9,157	n/a
Disability	n/a	n/a	n/a	n/a	1,748	1,911	2,020	2,515	3,629	5,558	n/a
Transgender	n/a	n/a	n/a	n/a	313	364	559	607	858	1,248	n/a

Note: n/a = No data are available.

Source: United Kingdom, Home Office (2016), *Hate Crime, England and Wales 2016/17*

¹⁴⁴ For further information, see [Tell Mama](#).

¹⁴⁵ For further information, see [CST – Protecting Our Jewish community](#).

¹⁴⁶ United Kingdom, [Galop](#).

¹⁴⁷ United Kingdom, True Vision, [Information Sharing Agreements](#).

Table 27: Northern Ireland: crimes with a hate motivation, 1 April-31 March

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Racist crimes	757	771	711	531	458	470	691	920	853	660	640*
Homophobic crimes	114	134	112	137	120	149	179	209	210	162	152*
Sectarian crimes	1,056	1,017	1,264	995	885	888	961	1,043	1,001	694	666*
Faith / religion crimes	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	17	28*
Disability crimes	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	68	54*
Transphobic	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	13	13*

Notes: n/a = No data are available.

* Up to December 2017.

Source: United Kingdom, Police Service in Northern Ireland (2017), *Trends in hate motivated incidents and crimes recorded by the Police in Northern Ireland: Quarterly Update to 30 June 2017*

Table 28: Scotland: hate crimes reported to the Procurators Fiscal by the police and other reporting agencies throughout Scotland, 1 April-31 March

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Racist crime	4,365	4,334	4,320	4,178	4,547	4,034	4,160	3,820	3,723	3,349	n/a
Sexual orientation crime	n/a	n/a	n/a	452	650	729	887	848	1,026	1,075	n/a
Religion crime	609	667	632	694	896	689	591	567	592	673	n/a
Disability crime	n/a	n/a	n/a	48	60	137	147	176	201	188	n/a
Transgender identity crime	n/a	n/a	n/a	14	16	14	25	21	30	40	n/a

Note: n/a = No data are available.

Source: United Kingdom, Crown office and Procurator Fiscal Service (2017), *Crime in Scotland 2016-2017*



4

Crime victimisation surveys in the EU



Victim surveys: valuable perspectives

“Victim surveys capture both criminal incidents reported to the police and those not reported to the police by randomly selecting a sample of the population and asking them directly about their experiences of criminal victimisation. These surveys can also measure more than criminal incidents and often include questions about fear and attitudes toward crime and the justice system, perceptions of the appropriateness and quality of the police response to their report, as well as various socio-demographic characteristics that help to assess at-risk populations.”

Source: United Nations Economic Commission for Europe (UNECE) and United Nations Office on Drugs and Crime (UNODC), *Manual on Victimisation Surveys*, 2010.

FRA¹⁴⁸ and other IGOs¹⁴⁹ have repeatedly highlighted the benefits of addressing hate crime in victimisation surveys, to allow practitioners and policymakers to:

- assess the size of the data gap between police-recorded hate crime and the true prevalence of hate crime;
- understand victim experiences of victimisation and police responses;
- gain insight into the reasons why victims decide not to report hate crimes, as well as why they seek police support;
- draw their own conclusions about trends and emerging issues;
- assess the effectiveness of policy responses related to training, raising awareness and recording systems.

FRA’s surveys include:

- The **European Union Minorities and Discrimination Survey (EU-MIDIS) I** (2009) and **EUMIDIS II** (2017) interviewed 49,000 people with ethnic minority or immigrant backgrounds across all EU Member States. It is the largest EU-wide survey of its kind on minorities’ experiences of discrimination, racist victimisation, and policing. The **EU-MIDIS II report on Muslims in the EU** (2017) reveals that perpetrators are more likely to target people with ethnic or immigrant backgrounds or women wearing headscarves, for example. The **Technical report** presents a detailed overview of the research methods used for collecting the survey data, and the full **questionnaire** is also available.
- The **Violence against women survey** (2014) is based on interviews with 42,000 women across the EU. They were asked about their experiences of physical, sexual and psychological violence and harassment, and their impact. The **Technical report** and the questionnaire are **available**.
- The online survey on **discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism** (2013) is being repeated in 2018. It is the first-ever survey to collect comparable data on Jewish people’s experiences and perceptions of antisemitism, hate-motivated crime and discrimination across a number of EU Member States. The **Technical report** gives an overview of the survey methodology, sample and the questionnaire.
- The second wave of the online **EU LGBT survey** (2013) will be conducted in 2019. The survey provides insights on LGBT people’s experiences of discrimination, violence and harassment. The **Technical report** contains information about the methodology, as well as the questionnaire.

¹⁴⁸ See FRA (2012), *Making Hate Visible in the European Union*, Luxembourg, Publications Office.

¹⁴⁹ See ODIHR 10 steps guide, p. 33-40. See also ECRI GPR No. 4, *National surveys on the experiences and perception of discrimination and racism from the point of view of potential victims*.

- The school-based survey among 3,000 youth between the ages of 12 and 18 from Muslim and non-Muslim backgrounds examined experiences of **racism, social marginalisation and violence** in three Member States.

FRA surveys provide an essential indication of the problem, while national crime victimisation surveys can include questions that are more closely related to the national criminal code or other definitions of hate crime, and address national measures taken in relation to hate crime (such as victim support). The UNECE-UNODC Task Force on Victim Surveys, in which FRA participated, developed a useful Manual on Victimisation Surveys that can be drawn upon by Member States seeking to improve in this area.¹⁵⁰

Highlighting the reporting gap: presenting police-recorded crime alongside victimisation data

Even in countries with relatively comprehensive data collection systems, victimisation surveys highlight gaps in numbers between people experiencing hate crime and those reporting it to the police. The Swedish National Council for Crime Prevention's (*Brå*) hate crime reports present the number of police reports with identified hate crime motives, and the number of hate crimes reported in national victimisation surveys, including the percentage of crimes reported to the police. This allows law enforcement and policymakers to understand the reporting gap and develop measures to address it.

For examples of the hate crime reports, see the National Council for Crime Prevention's website.

Victimisation surveys have been carried out in nearly all 28 EU Member States, at more or less regular intervals. However, only 10 include questions on experiences with hate motivated crime and violence, as illustrated in [Table 30](#).

Table 30: Victimisation and crime surveys in EU Member States that include questions on hate crime

EU Member State	Author / Commissioned by	Survey information (including year, name and link)
BE	Domestic Governance Agency, Flemish government	<p>A total of 1,402 respondents living in Belgium, between 13-84 years old, participated in the online survey on experiences of violence towards LGBTI (2014). Respondents were asked about incidents, frequency and impacts of incidents motivated by hatred against LGBTI persons in day-to-day life (focusing on the type of incident – physical, verbal, psychological, sexual); as well as about their experiences with police authorities.</p> <p>The research 'Experiences of violence towards transgender persons in Belgium' (2012, 2014) interviewed 260 respondents in Belgium about their experiences related to transgender violence and hate crimes, about reporting these to the authorities, and effects of the crimes.</p>
DE	Max Planck Institute for Foreign and International Criminal Law, with Federal Criminal Police Office, Criminalistics-Criminological Research and Advice; Fraunhofer Institute for Systems and Innovation Research; Institute of Sociology, University of Freiburg; International Centre for Ethics in the Sciences and Humanities, University of Tübingen; Disaster Research Unit (DRU), Freie Universität Berlin; Institute for Communication and Media Studies, University of Düsseldorf	<p>Victimisation survey 'Barometer Security in Germany': 31,192 households were interviewed, including whether reported victimisations by robbery and bodily harm offences are attributed to hate crime. The survey was launched between July 2017 and January 2018. People aged 16 and over were interviewed by telephone. It was emphasised that people with migration backgrounds should participate. In addition to victim experiences since 2012, attitudes towards the police, justice and immigration were addressed.</p> <p>Questions were also asked about the feeling of security, fear of crime, trust in state institutions, the reporting behavior of victims and crime-related characteristics of the residential area. The first publication of the victimisation survey is planned for August 2018 in the form of a work report. The victimisation survey is expected to be conducted every two years in the future.</p> <p>More information was not publicly available at the time this report was published.</p>

¹⁵⁰ United Nations Office on Drugs and Crime (2010), **UNODC-UNECE Manual on Victimization Surveys** (2010), Geneva, 2010.

EU Member State	Author / Commissioned by	Survey information (including year, name and link)
DK	The National Police, the Crime Preventive Council and the Ministry of Justice	<p>The Annual victimisation survey is conducted since 2005. The sample size is approximately 18,000 individuals for each survey, and the response rate is around 65 %. National registers are used to select a random and national representative sample. The University of Copenhagen and the Ministry of Justice provide expertise in conducting the analyses and writing the report.</p> <p>The survey includes the question: <i>'To which extent was the violence, in your victim's perception, motivated by either racism or the victim's (alleged) sexual orientation?'</i></p> <p>Possible outcomes: 1) Yes definitely 2) yes, maybe 3) No</p>
EE	Ministry of Justice, Criminal Policy Department	<p>2015, 2016 and 2017 victim survey (small)</p> <p>The Victim Survey (1,011 respondents participated in 2017) is carried out in Estonia annually. In 2015, 2016 and 2017, a question concerning experiences with bias-motivated crime was added to the questionnaire: <i>'During the last 12 months, have you or someone from your immediate family fallen victim to a crime because of your/their nationality, race, color, religion, disability, or sexual orientation? Please specify for what reason you or a close family member fell victim to the crime: "nationality", "race or color", "religion", "disability", "sexual orientation", "other", "do not want to answer", "cannot tell".'</i></p>
ES	Ministry of Interior, State Secretariat for Security; Hate Crimes National Office	<p>The first online Hate Crime Victim Survey was launched between March and December 2017. Approximately 200 people participated. The final report will be published later in 2018. The survey includes several questions on experiences with hate crimes.</p>
FI	Ministry of Justice, Ministry of Interior, Ministry of social affairs and wealth	<p>The Discrimination Monitoring Group, coordinated by the Ministry of Justice, occasionally carries out victim surveys on hate crime. The group consists of representatives of various official agencies, research institutes, NGOs and equality, gender-equality and self-governing bodies.</p> <p>A survey on hate speech and harassment and their influence on different minority groups – "I often find myself thinking how I should be or where I shouldn't go" – was commissioned by the Ministry of Justice and published in 2016.</p> <p>A Police Barometer survey, commissioned by the Ministry of the Interior, is carried out bi-annually to gauge public opinion on the Finnish Police and the country's internal security situation. The latest 2016 survey interviewed 1,007 persons. Questions about hate crime have been added to the one planned for 2018. These address people's views on how worrisome the phenomenon is, whether the police should engage more in combating the problem, and how well the police has managed it and how it is being measured.</p>
FR	The National Institute of Statistics and Economic Studies and National Observatory of Crime and Criminal Justice and the Ministerial Statistics Department for Internal Security (since 2015)	<p>Since 2007, an annual crime victimisation survey – the 'Living Environment And Security Crime Victimization Survey: Victimization and Perceptions With Regard to Security' – is carried out. Around 16,500 persons are interviewed about any crimes of which they could have been a victim in the two years leading up to the survey, and about their security perceptions and observations. Since 2012, respondents are also asked about the possibly discriminatory nature of physical assaults/threats and insults (racist, antisemitic, xenophobic, homophobic or sexist). In 2018, new questions were included to better identify victims of hate crime, hate incidents and discrimination, and to better qualify the bias motivations of perpetrators.</p>

EU Member State	Author / Commissioned by	Survey information (including year, name and link)
NL	Ministry of public health	<p>In the Netherlands, the Social Cultural Plan-bureau, which is part of the Ministry of public health, has published several surveys on various topics over the past 20 years, including topics relating to discrimination and immigrants in sports, the labour market and perceptions of discrimination.</p> <p>The survey on perceptions of discrimination among 12,500 members of the Dutch general population – including on age, ethnic origin, skin colour, gender, sexual orientation, disability and religion – was published in 2014. It is being repeated in 2018.</p>
SE	The Swedish National Council for Crime Prevention (<i>Brå</i>)	<p>2016 Swedish Crime Survey: approximately 11,900 persons responded to the questions, which is a 60 % response rate. The vast majority participated through telephone interviews, but a smaller percentage participated through posted questionnaires or internet questionnaires.</p> <p>The survey is conducted annually and includes the following questions:</p> <p><i>'Did you experience that there was a xenophobic element in the motive for the crime? By that we mean: do you feel that you became victim of the crime because you are (or were perceived by the perpetrator to be) of another ethnicity?'</i></p> <p><i>'Did you experience that religious intolerance was an element in the motive for the crime? By that we mean: do you feel that you became the victim of the crime because you are (or were perceived by the perpetrator to be) religious (or belong to another religion than the perpetrator)?'</i></p> <p><i>'Did you experience that there was a homophobic element in the motive for the crime? By that we mean: do you feel that you became victim of the crime because you are (or were perceived by the perpetrator to be) homosexual, bisexual, transsexual or transgendered?'</i></p> <p>2017 Politicians' Safety Survey: almost 8,100 politicians responded to the questions, which is a 60 % response rate. The majority (84 %) responded to the web survey, while 16 % responded to a paper questionnaire.</p> <p>The survey is conducted biannually. Question: <i>'Did you experience that any of the incidents you were exposed to in your role as a politician during the previous year could have to do with the perpetrator's negative or hostile view about...</i></p> <p><i>... skin colour, nationality or ethnic background</i> <i>... religion</i> <i>... sexual orientation</i> <i>... transgender identity or expression?'</i></p> <p>2015 School Survey on Crime: 231 of 319 schools (total of 4,659 year-nine students) responded to the web survey, which is approximately a 72 % response rate. The survey is conducted every three years. Question:</p> <p><i>'Did you experience that someone committed a crime against you in the last 12 months because of...</i></p> <p><i>... your Swedish or foreign background?</i> <i>... your religion?</i> <i>... your sexual orientation?'</i></p>



EU Member State	Author / Commissioned by	Survey information (including year, name and link)
UK	Office for National Statistics	<p>Since 1981, the Crime Survey for England and Wales is carried out annually, covering approximately 35,000 households. It is a face-to-face victimisation survey in which persons aged 16 and over are asked about their experiences of crime in the past 12 months. The survey includes several questions on experiences with hate crime and hate incidents. It is used alongside police recorded crime data as a valuable source of information for the government about the extent and nature of crime in England and Wales. Since 2009 the survey has included a separate survey to record the experiences of young people aged 10-15.</p> <p>The Northern Ireland Crime Survey is a representative, continuous, personal interview survey of experiences and perceptions of crime, including on bias-motivated harassment. In 2016/2017, 1,877 adults participated in the survey.</p> <p>The Scottish Crime & Justice Survey includes questions on harassment motivated by bias. In the latest 2016/2017 survey, 5,567 adults above 16 years participated. The survey collects information about experiences of, and attitudes to, a range of issues related to crime, policing and the justice system, including crime not reported to the police.</p>

Source: FRA, 2018

Conclusions

This report aims to help those with responsibilities on hate crime recording and data collection – whether they are law enforcement leaders, ministries of interior, first-line police responders or victim support workers – to navigate the framework of international commitments and web of informative national practices. To this end, it has:

- presented a snapshot of current EU Member State actions and data against the ‘Key principles on hate crime recording and data collection’ identified by the Subgroup on methodologies on recording and collecting data on hate crime;
- brought together key international standards and findings from intergovernmental organisations;
- set out information directly provided by Member States.

Central themes have emerged. These include the importance of capturing, extracting and publishing robust data that better reflect the true nature and prevalence of the problem; equipping law enforcement with the skills and information to recognise and respond to the telling signs of bias, prejudice and hate; having an eye on the complex nature and impact of intersectionality; and understanding the benefits of working with skilled civil society organisations. Innovative approaches by EU Member States to respond to the changing challenges of understanding and addressing the hostility that is a threat to cohesion and plurality have been highlighted.

Without reliable official data on the prevalence and nature of hate crimes, national policymakers can find themselves at a serious disadvantage on a number of fronts. Reliable and valid data on hate crime generated by police recording systems and national victimisation surveys can help ensure that: already limited resources are more efficiently targeted for prevention and support; affected communities can be more effectively informed about the government’s appreciation of the problem and the impact of their policies to address it; and false information that can incite hatred and violence, threatening social cohesion and stability, can be robustly countered.

As recording and data collection systems improve at the national level, increases – sometimes significant – in the number of recorded hate crime will follow. Without the support of effective leadership, this

effect can present political challenges. In this context, it is important to note that those EU Member States with relatively high or increasing numbers of recorded prosecuted and sentenced hate crimes are not necessarily those with the biggest problem of hate crime or where significantly more hate crimes are committed. For example, the police in England and Wales recorded 80,393 hate crimes in 2016-2017, an increase of 29 % compared with 2015-2016. The Office for National Statistics noted, however, that increases in recent years in police-recorded violence against the person and public order offences are thought to have largely been driven by improvements in police recording, following a renewed focus on the quality of recorded crime. Thus, higher figures of recorded hate crimes can be indicative of a commitment among Member States to combat hate crimes, including through enhanced data collection systems.

“The Police Service is committed to reducing the under-reporting of hate crime and would view increases in this data as a positive indicator, so long as it reflects an increase in reporting and not an increase in the actual incidence of crime, which we strive to reduce.”

United Kingdom, Association of Chief Police Officers, 2014

As this report demonstrates, focusing on increasing reporting and improving hate crime recording by law enforcement is essential. However, it is the responsibility of agencies across the criminal justice system and beyond to take a comprehensive approach to countering hate crime and safeguarding victims’ rights through legislation, training and education, victim support and raising awareness.

Collating, analysing, publishing and disseminating the data all contribute to making hate crime visible and ultimately to fulfilling victims’ rights. As data improve, new challenges are likely to present themselves. At the same time, without taking these specific actions, it is difficult for national authorities to assess the prevalence and nature of hate crime, to provide adequate support to victims or to devise courses of action to prevent and counter the phenomenon more effectively. It is hoped that this report, and the developing network of national policymakers and practitioners alongside international institutions and CSOs, provide the support and energy to make the full nature and impact of hate crime visible and actionable for the benefit of victims, their communities and society as a whole.

Annex I – Understanding IGOs’ work on recording and collecting data on hate crime

<p>UN</p>	<p>State Parties to the ICERD are obliged to submit regular reports on the implementation of the Convention to the Committee on the Elimination of Racial Discrimination (CERD). The committee examines each report and addresses its concerns and recommendations to the State Party in the form of ‘concluding observations’.</p> <p>The Human Rights Committee (CCPR) is a body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR) by its State Parties. The State Parties are obliged to submit to the CCPR regular reports on how the rights are being implemented. The CCPR examines the report and addresses its concerns and recommendations to the State Party as ‘concluding observations’.</p> <p>Hate crime is also addressed within the Universal Periodic Review (UPR), which complements the work of the treaty bodies in the area of the promotion and protection of human rights. The UPR is a state-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each state to provide information on what actions they have taken to fulfil their human rights obligations. Its reviews are based on a number of documents, such as reports by governments and treaty bodies, as well as reports from national human rights institutions and non-governmental organisations. States are responsible for implementing the recommendations included in the final outcome report.</p>
<p>ECRI</p>	<p>Among ECRI’s objectives is to review Member States’ legislation, policies and other measures to combat racism and related intolerance and their effectiveness, and to propose further action at local, national and European level. ECRI provides Council of Europe member states with concrete and practical advice on how to tackle problems of racism and intolerance, and this is done mainly through country monitoring. ECRI’s findings and recommendations are published in country reports. These reports are drawn up after a visit to the country and based on a confidential dialogue with the national authorities.</p>
<p>OSCE / ODIHR</p>	<p>In relation to recording and collecting data on hate crime, ODIHR has been tasked, by the relevant decisions of the OSCE Ministerial Council, to:</p> <ul style="list-style-type: none"> • “assist participating States upon their request in developing appropriate methodologies and capacities for collecting and maintaining reliable information and statistics about hate crimes [...] with a view to helping them to collect comparable data and statistics;” • serve as a “collecting point for information and statistics collected by participating States”; • “to continue serving as a collecting point [for] relevant legislation”; • “report its findings [...] and make its findings public”; • “make its findings publicly available through TANDIS and its Report on Challenges and Responses to Hate-motivated Incidents in the OSCE region”; • “report regularly on these issues as a basis for deciding on priorities for future work”. <p>For information on OSCE/ ODIHR assistance to its Participating States, see ODIHR’s capacity building efforts.</p>

Annex II – Legal framework relevant to hate crime in the EU-28

This annex provides a comparative analysis of national legal frameworks pertaining to hate crime.

According to Article 4 of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, “Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance or, alternatively that such motivation may be taken into consideration by the courts in the determination of penalties”.

This provision can be transposed into national law in different ways. An aggravating circumstance is a factor that increases the severity or culpability of a criminal act – such as, for example, the heinousness of a crime, the culprit’s lack of remorse, or his or her prior conviction of another crime. Typically, aggravating circumstances are applied when courts decide on the precise extension of the penalty to be imposed by choosing the more severe ones from the range of possible sanctions set out in the relevant criminal law provision.

Criminal legislators can choose to include bias motivation among these general aggravating circumstances. Alternatively, they can also choose to apply penalty enhancements to specific offences, such as manslaughter, bodily harm, arson, menace or others, when they are motivated by bias against a person or group based on the protected characteristics. In this case, bias motivation will only be an aggravating circumstance leading to a more severe penalty with regard to these specific provisions, but not in the case of other possible offences that were bias motivated.¹⁵¹

A third option is to combine both methods, a specific aggravating circumstance or enhancement of penalty for certain offences and a general aggravating circumstance for any other offence.

The comparative analysis of the legal framework shows that 13 Member States (Austria, Cyprus, Denmark, Finland, France, Germany, Italy, Lithuania, Malta, Romania, Spain and Sweden,) treat bias motivation as a general aggravating circumstance; 7 provide for specific aggravating circumstances regarding cer-

tain substantive offences (Belgium, Bulgaria, Greece, Luxembourg, Portugal, Slovakia, Slovenia); 3 have a combination of both general and specific (Croatia, the Czech Republic, United Kingdom); and 5 have no such provision (Estonia, Hungary, Ireland, the Netherlands, Poland).

A further nuance of the criminal law provisions regarding bias motivation as an aggravating circumstance is that they can make it mandatory for judges to enhance the penalty for the crime or leave it up to judicial discretion when considering all relevant facts of the case. In this sense, Article 4 of Council Framework Decision 2008/913/JHA allows Member States to stipulate that such motivation *may be taken into consideration* in the determination of penalties. In other words, Member States can choose to empower, but not oblige, courts to enhance the penalties for crimes with a racist or xenophobic motivation.

Another aspect in which Member States differ is in the grounds protected by their hate crime provisions. While the Framework Decision only refers to race, colour, religion, descent or national or ethnic origin as protected characteristics, the majority of Member States have gone beyond this set. Only Bulgaria, the Czech Republic, Germany, Italy and Poland do not explicitly include other protected grounds in their hate crime provisions.

The catalogues of protected characteristics enshrined in Article 21 of the EU Charter of Fundamental Rights (race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation) and Article 14 of the European Convention on Human Rights (sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status) often provide inspiration when expanding the set of bias motivations that are considered aggravating circumstances.

Twenty-two Member States have included “sexual orientation” as a protected characteristic: Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. Bulgaria, the Czech Republic, Germany, Italy, Latvia and Poland have not.

¹⁵¹ OSCE/ODHIR (2009), *Hate Crime Laws. A practical guide*, p. 33-34, uses the terms “general penalty enhancements” and “specific penalty enhancements” in an equivalent sense.

Sixteen Member States include “disability” as a protected characteristic: Austria, Belgium, Croatia, Finland, France, Greece, Hungary, Lithuania, Luxembourg, Latvia, the Netherlands, Portugal, Romania, Slovenia, Spain and the United Kingdom.

Thirteen Member States have included “gender identity” as a protected ground: Austria, Croatia, Cyprus, France, Greece, Hungary, Malta, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom. Sweden is currently in the parliamentary process of changing its criminal legislation to include it. Greece also includes gender characteristics as a protected characteristic.

In addition, five Member States include an open-ended clause as a complement to the protected grounds explicitly mentioned. This makes it possible to also consider as hate crimes offences with bias motivation that target other characteristics. This is the case in the Czech Republic (“or other similar hatred”); Denmark (“or the like”); Finland (“or by similar grounds”); Slovenia (“or any other circumstances”); and Sweden (“or other similar circumstances”).

In addition to these catalogues of bias motivations that lead to enhanced penalties, the criminal legislation of Member States also sets out a number of substantive hate crime offences, which already include a bias element in their definition.

The most common one is the offence of incitement to hatred or violence on the basis of the protected characteristics, commonly referred to as “hate speech”.¹⁵² With the exception of Sweden, all Member States include incitement offences in their criminal legislation.¹⁵³ Eleven Member States go beyond incitement to hatred or violence by also criminalising incitement to discrimination: Bulgaria, Estonia, France, Germany, Italy, Luxembourg, the Netherlands, Portugal, Romania, Slovenia and Spain.

Fewer Member States have provisions that make discrimination a substantive hate crime when they occur in particular areas, such as access to goods and services, economic activity or employment, or when

particular aggravating circumstances apply. This is the case of Finland, France, Latvia, Luxembourg, Slovenia, Spain and Sweden.

Examples of other substantive hate crime offences are the use of violence against people or property on grounds of race, ethnicity, nationality, religion or political convictions (Bulgaria); violence towards the member of a community (Hungary); violence or unlawful threats against a person or group of persons (Poland); setting up, financing or supporting organisations with the aim of discriminating or instigating hatred (Finland, Italy, Portugal, Romania, Spain); torture for reasons based on discrimination (Romania, Spain); and the desecration of or damage to places of worship or crimes against religious sentiments (Bulgaria, Portugal, Romania, Spain).

¹⁵² Under Article 1 of Council Framework Decision 2008/913/JHA, Member States are obliged to make a criminal offence publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

¹⁵³ The Swedish Criminal Code does not include a provision on incitement. However, it sets out the substantive hate crime of “agitation against a national or ethnic group”, which consists of publicly threatening or expressing contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin, or religious beliefs. The Criminal Code of Finland has a similar provision on “ethnic agitation”, but goes further by also setting out the offence of aggravated ethnic agitation, which applies when the agitation includes elements of incitement to serious violence.



Further information

See also other FRA publications in this field:

- FRA (2018), *Fundamental Rights Report 2018*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>
- FRA (2017), *Second European Union Minorities and Discrimination Survey - Main results*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2017/eumidis-ii-main-results>
- FRA (2017), *Antisemitism – Overview of data available in the European Union 2006-2016*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2017/antisemitism-overview-2006-2016>
- FRA (2016), *Ensuring justice for hate crime victims: professional perspectives*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

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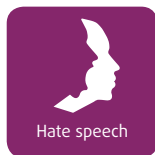
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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Across the European Union, people face hatred because of their skin colour, ethnicity, religion, gender or sexuality. In response, the EU and its Member States have introduced laws against hate crime and support services for victims. But these will only fulfil their potential if victims report hate-motivated harassment and violence to the police, and if police officers record such incidents as hate crimes. This report provides rich and detailed information on hate crime recording and data collection systems across the EU, including any systemic cooperation with civil society. In so doing, it can support efforts to strengthen recording and data collection as well as capacity-building activities to counter hate crime – essential elements of effectively combating prejudice, supporting victims and fostering inclusive societies.



SUSTAINABLE DEVELOPMENT GOALS

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CODE OF CONDUCT ON COUNTERING ILLEGAL HATE SPEECH ONLINE

Facebook, Microsoft*, Twitter and YouTube (hereinafter "the IT Companies") – also involved in the EU Internet Forum – share, together with other platforms and social media companies, a collective responsibility and pride in promoting and facilitating freedom of expression throughout the online world;

The IT Companies also share the European Commission's and EU Member States' commitment to tackle illegal hate speech online. Illegal hate speech, as defined by the Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and national laws transposing it, means all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. The IT Companies and the European Commission also stress the need to defend the right to freedom of expression, which, as the European Court of Human Rights has stated, "is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population".¹

Broader society and in particular civil society organisations (CSOs) also have a crucial role to play in the field of preventing the rise of hatred online, by developing counter-narratives promoting non-discrimination, tolerance and respect, including through awareness-raising activities.

The IT Companies support the European Commission and EU Member States in the effort to respond to the challenge of ensuring that online platforms do not offer opportunities for illegal online hate speech to spread virally. The spread of illegal hate speech online not only negatively affects the groups or individuals that it targets, it also negatively impacts those who speak out for freedom, tolerance and non-discrimination in our open societies and has a chilling effect on the democratic discourse on online platforms.

The Joint Statement issued by the extraordinary Justice and Home Affairs Council of 24 March 2016 on the terrorist attacks in Brussels underlines that "the Commission will intensify work with IT companies, notably in the EU Internet Forum, to counter terrorist propaganda and to develop by June 2016 a code of conduct against hate speech online".²

In order to prevent the spread of illegal hate speech, it is essential to ensure that relevant national laws transposing the Council Framework Decision 2008/913/JHA are fully enforced by Member States in the online as well as the in the offline environment. While the effective application of provisions criminalising hate speech is dependent on a robust system of enforcement of criminal law sanctions against the individual perpetrators of hate speech, this work must be complemented with actions geared at ensuring that illegal hate speech online is expeditiously acted upon by online intermediaries and social media platforms, upon receipt of

* Microsoft-hosted consumer services, as relevant

¹ Handyside v. the United Kingdom judgment of 7 December 1976, § 49

² <http://www.consilium.europa.eu/en/press/press-releases/2016/03/24-statement-on-terrorist-attacks-in-brussels-on-22-march/>

a valid notification, in an appropriate time-frame. To be considered valid in this respect, a notification should not be insufficiently precise or inadequately substantiated.

The IT Companies underline that the present code of conduct³ is aimed at guiding their own activities as well as sharing best practices with other internet companies, platforms and social media operators.

The IT Companies, taking the lead on countering the spread of illegal hate speech online, have agreed with the European Commission on a code of conduct setting the following public commitments:

- The IT Companies to have in place clear and effective processes to review notifications regarding illegal hate speech on their services so they can remove or disable access to such content. The IT companies to have in place Rules or Community Guidelines clarifying that they prohibit the promotion of incitement to violence and hateful conduct.
- Upon receipt of a valid removal notification, the IT Companies to review such requests against their rules and community guidelines and where necessary national laws transposing the Framework Decision 2008/913/JHA, with dedicated teams reviewing requests.
- The IT Companies to review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary.
- In addition to the above, the IT Companies to educate and raise awareness with their users about the types of content not permitted under their rules and community guidelines. The notification system could be used as a tool to do this.
- The IT companies to provide information on the procedures for submitting notices, with a view to improving the speed and effectiveness of communication between the Member State authorities and the IT Companies, in particular on notifications and on disabling access to or removal of illegal hate speech online. The information is to be channelled through the national contact points designated by the IT companies and the Member States respectively. This would also enable Member States, and in particular their law enforcement agencies, to further familiarise themselves with the methods to recognise and notify the companies of illegal hate speech online.
- The IT Companies to encourage the provision of notices and flagging of content that promotes incitement to violence and hateful conduct at scale by experts, particularly via partnerships with CSOs, by providing clear information on individual company Rules and Community Guidelines and rules on the reporting and notification processes. The IT Companies to endeavour to strengthen partnerships with CSOs by widening the geographical spread of such partnerships and, where appropriate, to provide support and

³ Article 16 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce', OJ L 178, 17.7.2000), indicates that Member States and the Commission shall encourage the drawing up of codes of conduct at Union level, by trade, professional and consumer associations or organisations designed to contribute to the implementation of its Articles 5 to 15.

training to enable CSO partners to fulfil the role of a "trusted reporter" or equivalent, with due respect to the need of maintaining their independence and credibility.

- The IT Companies rely on support from Member States and the European Commission to ensure access to a representative network of CSO partners and "trusted reporters" in all Member States to help provide high quality notices. IT Companies to make information about "trusted reporters" available on their websites.
- The IT Companies to provide regular training to their staff on current societal developments and to exchange views on the potential for further improvement.
- The IT Companies to intensify cooperation between themselves and other platforms and social media companies to enhance best practice sharing.
- The IT Companies and the European Commission, recognising the value of independent counter speech against hateful rhetoric and prejudice, aim to continue their work in identifying and promoting independent counter-narratives, new ideas and initiatives and supporting educational programs that encourage critical thinking.
- The IT Companies to intensify their work with CSOs to deliver best practice training on countering hateful rhetoric and prejudice and increase the scale of their proactive outreach to CSOs to help them deliver effective counter speech campaigns. The European Commission, in cooperation with Member States, to contribute to this endeavour by taking steps to map CSOs' specific needs and demands in this respect.
- The European Commission in coordination with Member States to promote the adherence to the commitments set out in this code of conduct also to other relevant platforms and social media companies.

The IT Companies and the European Commission agree to assess the public commitments in this code of conduct on a regular basis, including their impact. They also agree to further discuss how to promote transparency and encourage counter and alternative narratives. To this end, regular meetings will take place and a preliminary assessment will be reported to the High Level Group on Combating Racism, Xenophobia and all forms of intolerance by the end of 2016.





EU High Level Group on combating racism, xenophobia and other forms of intolerance

December 2017

ENSURING JUSTICE, PROTECTION AND SUPPORT FOR VICTIMS OF HATE CRIME AND HATE SPEECH: 10 KEY GUIDING PRINCIPLES

This document is not legally binding and is intended for guidance only. It can therefore neither provide legal advice on issues of national law nor an authoritative interpretation of EU law, which remains within the sole remit of the Court of Justice of the EU.

EUROPEAN COMMISSION

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1. PURPOSE OF THIS PAPER

Crime is a wrong against society as well as a violation of the individual rights of victims. Hate crimes, as criminal offences where perpetrators act based on a bias or ill against the victim's characteristics, not only give rise to the violation of the individual rights that the crime committed may have affected, but also constitute a manifestation of discrimination against the victim as well as against the group or community to which the victim belongs or is perceived to belong. Ensuring justice, protection and support for victims of hate crime and hate speech (hereinafter 'hate crime victims') therefore requires taking into account the specific nature of hate crime as well as the ability to appreciate the experience and harms of hate crime victimisation on victims as well as on the concerned group or community, hate crimes being "message crimes".

While an exhaustive mapping has not yet to date been carried out, information gathered by the European Commission's services indicates that the understanding of the specific needs of hate crime victims in terms of justice, protection and support, including in relation to the requirements of relevant EU legislation, and the level and quality of their implementation on the ground, varies greatly across the Member States.

Taking into account the existing EU legal framework and the information gathered, the European Commission fostered a thematic discussion on "Ensuring justice, protection and support for victims of hate crime and hate speech" at the third meeting of the EU High Level Group on combating racism, xenophobia and other forms of intolerance ('the High Level Group')¹ on 1 June 2017.

This paper, drafted by the European Commission's services (DG JUSTICE and CONSUMERS), constitutes the key conclusions of such a discussion. It is the result of a process of consultation gathering input from Member States and a range of stakeholders, including civil society organisations, the EU Agency for Fundamental Rights (FRA), OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's European Commission against Racism and Intolerance (ECRI).

The purpose of this paper is to provide Member States' authorities and other relevant stakeholders with a compilation of key guiding principles on ensuring justice, protection and support for hate crime victims. All Member States are encouraged to build on these guiding principles with a view to addressing the needs of hate crime victims, adapting as needed the implementation of such guiding principles to their specific national legal and policy framework. These principles could also inform targeted discussions and good practice exchange within the European Network on Victims' Rights.²

This paper is not legally binding and is intended for informal guidance only, with a view to contributing to competent national authorities' efforts in setting in place appropriate non-legislative and policy measures which can facilitate the achievement of the objectives of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter 'the Victims Rights' Directive')³ as well as of Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law⁴.

¹ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3425>

² The Network was set up with the support of the European Commission in 2016, with a view to improving the practical application of victims' rights legislation in EU Member States, upon initiative of the Netherlands, as well as France, Ireland and Slovakia.

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0913>

2. INTRODUCTION TO THE KEY GUIDING PRINCIPLES

In order to ensure a minimum level of victims' rights in all Member States, the EU has adopted several EU legal instruments setting up common rules aimed at protecting and assisting victims of crime.⁵ Among these, the **Victims Rights' Directive**, which Member States⁶ had to transpose into their national laws by 16 November 2015, provides for common rules dealing with victims' rights in general. Other EU legal instruments provide for common rules on protection measures and financial compensation to victims of crime.⁷

The Victims Rights Directive is particularly relevant for the purpose of this paper. The Directive is aimed at ensuring that persons who have fallen victim of crime are recognised, treated with respect and receive proper information, protection, support and access to justice including through participation in criminal proceedings. A **guidance document issued by DG JUSTICE and CONSUMERS** provides further clarifications on its provisions to facilitate practitioners' understanding of what is required to make the rights set out in the Directive a reality in practice (hereinafter, the 'Guidance on the Directive').⁸

The Directive acknowledges the specificities of hate crime victims' needs, pointing at particular aspects to be taken into account for these victims to be:

- (1) enabled and encouraged to access justice, starting from reporting their experiences to competent institutions;
- (2) be offered effective protection, and
- (3) have access to adequate victim support services.

The Directive also establishes a number of general principles aimed at ensuring quality and sustainability and coordination, some of which bear particular importance in terms of meeting the needs of hate crime victims.



Having in mind the standards set by the existing EU legal framework, the **10 key guiding principles** compiled in this paper are intended to inform national authorities and practitioners over the implementation of such standards as regards the specific category of hate crime victims.

Positive national practices as well as **case studies** are referred to by way of example, to inform and prompt reflections on how to address some of the challenges which may be encountered in practice in the implementation of the principles identified.

⁵ For more information: http://ec.europa.eu/justice/criminal/victims/rights/index_en.htm

⁶ All except Denmark, in accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaties.

⁷ In particular, Directive 2011/99/EU on the European Protection Order (EPO), Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters, Directive 2004/80/EC relating to compensation to crime victims.

⁸ DG JUSTICE Guidance Document related to the transposition and implementation of Directive 2012/29/EU, available at http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

3. 10 KEY GUIDING PRINCIPLES

GENERAL PRINCIPLES

✓ *Ensuring quality, sustainability, coordination*

The quality of the services provided to hate crime victims in the areas of access to justice, protection and support relies greatly on the awareness and ability of national authorities and practitioners in contact with such victims to **recognise and treat hate crime victims in a respectful, sensitive, tailored, professional and non-discriminatory manner** (Article 1). In this context, the importance of ensuring **full respect of the principle of non-discrimination** in the enjoyment of victims' rights, which is expressly recognised by the Victims' Rights Directive, assumes particular relevance as regards hate crime victims, in terms of: ensuring that authorities and practitioners have a respectful and non-discriminatory attitude towards victims; taking into account all victims' personal characteristics, including the existence of intersectional and multiple grounds, to facilitate the enjoyment of victims' rights and better target protection and support measures; fulfilling the authorities' responsibility to ensure that there are no barriers or obstacles to the effective enjoyment of victims' rights.

Case study: Undocumented migrants victims of hate crime

The Victims Rights Directive expressly states that the rights set out therein shall apply to victims in a non-discriminatory manner, including with respect to their residence status. Limitations depending on the victim's residence status can pose significant challenges, for example, for undocumented migrants which may likely fall victims of racist and xenophobic crime. Such limitations may hamper access to justice both due to a lack of awareness of their rights and the unwillingness to report the crime due to the fear of approaching authorities, in particular the police, also because of possible punitive measures related to their status, especially where information sharing practices between law enforcement and immigration authorities exist. This affects in turn the possibility for them to enjoy protection and support. In this respect, ECRI has recommended that States "*establish safeguards ensuring that irregularly present migrants who are victims of crime are aware of their rights and are able to report to law enforcement authorities, testify in court and effectively access justice and remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement*" (General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, Recommendation 33).

*In **Greece**, for example, a ministerial decision provides for residence permits to be issued - on humanitarian grounds - by the Minister of Interior to third country nationals who are victims or witnesses of racist offences; the permits are valid until the case is closed or a final court judgment is issued. Similar measures providing for residence permits on humanitarian grounds for hate crime victims exist at regional level in **Germany** (federal states of Berlin and of Brandenburg). In **the Netherlands**, a scheme was introduced allowing persons with no identification papers to report a crime to the police as a victim or witness without being arrested or prosecuted on the grounds of their irregular status.*

The obligation provided by the Victims' Rights Directive to ensure appropriate **general and specialist training of practitioners** (Article 25) should also be targeted, in particular as regards hate crime victims, to the need of **developing a professional, non-discriminatory and empathic approach**, to ensure that practitioners, and in particular police, prosecutors and judges, are able to recognise and acknowledge hate crime victims and to ensure that victims who come in contact with the authorities always

receive a fair and non-biased treatment.⁹ The effectiveness of such targeted training measures will normally depend on the existence of a broader strategy aimed at addressing structural issues of racism and intolerance, where they exist, within the authorities, including but not limited to frontline services, and at promoting diversity within authorities and institutions.

Increased coordination is also key. As reaffirmed in DG JUST Guidance on the Directive, **extensive national coordination among competent authorities and horizontal inter-agency cooperation** is generally important to facilitate the achievement of the Victims Rights Directive's objectives, which require a coherent and comprehensive approach combining legislative, administrative and practical measures. While the implementation of relevant standards is first and foremost the responsibility of law enforcement and criminal justice authorities, including police, public prosecution authorities and the courts, it also entails the active involvement of and cooperation with public bodies in charge of equality, non-discrimination, health and social welfare, as well as other relevant actors and in particular victims support organisations, including state and non-state actors, civil society and/or community based organisations. This can be facilitated through the creation of **multi-agency coordination entities**.

*In **Ireland**, for example, a Victims Services Group exists within the criminal justice system, including representatives of the judiciary and the Courts Service, the Criminal Injuries Compensation Tribunal, the Legal Aid Board, the Public Prosecution Service, the Probation Service, the Prison Service, the police, the Central Mental Hospital as well as relevant divisions and offices of the Department of Justice and Equality.*

Coordination and cooperation with non-state actors is particularly relevant as regards hate crime victims, considering the role of civil society and/or community based organisations not only in terms of delivering support services, but also in order to address underreporting and ensure effective access to justice. Initiatives such as the setting up of **frameworks of cooperation between civil society and/or community based organisations providing support hate crime victims and national authorities responsible for protection, investigation and other stages of the criminal justice process** should be further explored as they can allow for a more systematic and relationship-building approach to cooperation. These may include elements such as training, support in individual cases and data sharing on reported and recorded hate crimes.

*In **Luxembourg**, for example, the police established a stable working relationship with the Support Association for Migrant Workers (ASTI). In the **UK**, the civil society organisation Disability Equality North West created a partnership that includes the police, Crown Prosecution Service, local government officers and other civil society groups to increase the reporting and awareness of disability hate crime.*

Finally, in order to ensure sustainability, the impact of processes and tools should be regularly monitored through the **collection of data and statistics showing how victims have accessed their rights**, as required by the Victims Rights Directive (Article 28). In fulfilling their obligation to regularly communicate available data, Member States should, to the extent possible, provide specific data on different categories of vulnerable victims, including hate crime victims. Monitoring is key also to enable the authorities to uphold their **responsibility to proactively identify and remove any barriers** to hate crime victims' enjoyment of their rights and access to justice, protection and support. **Victimisation surveys** can also contribute to better assess victims' enjoyment of their rights, including by gathering information on underreporting, reasons for underreporting, as well as victims' experiences with the criminal justice system.

⁹ See also the High Level Group's paper "Hate crime training for law enforcement and criminal justice authorities: 10 key guiding principles", available at http://ec.europa.eu/newsroom/document.cfm?doc_id=43050

ENABLING AND ENCOURAGING ACCESS TO JUSTICE

✓ *Addressing actual or perceived barriers to reporting*

The widespread underreporting of hate crimes, demonstrated and documented by vast research¹⁰, has a significant impact not only on the level of awareness and prosecution of these crimes, but also on the number of victims accessing support services. Targeted measures should be in place to **encourage reporting of hate crimes**, taking into account the specific nature of this kind of victimisation.

An **effective and targeted implementation of the obligation to raise awareness about victims' rights**, provided for upon Member States in the Victims Rights' Directive (Article 26) would contribute to this objective.

As stated in the Directive, such an obligation may be fulfilled through information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, to raise awareness of the rights set out in the Directive, reduce the risk of victimisation, minimise the negative impact of crime and the risks of secondary and repeat victimisation, intimidation and retaliation. Research shows that professionals themselves believe that measures are needed to improve victims' awareness of their rights and of victim support services available to them as hate crime victims.¹¹ Targeted awareness raising campaigns should be carried out to that aim.

*In the **UK**, for example, the Police Service Northern Ireland, as part of a broader strategy to enabling and encouraging access to justice for hate crime victims, published and disseminated a booklet to raise awareness about local support services, which also includes information targeted to specific groups of victims and groups at risk. Similar information campaigns were recently developed in other Member States, such as **Denmark** and **Croatia**.*

In the design and rolling out of such campaigns, particular attention should be paid to the importance of **reaching out to vulnerable groups and marginalised or isolated communities** (for example, racial, ethnic and religious minorities, migrant communities, homeless people, persons with disabilities but also rural communities), which experience more barriers or simply have limited possibilities in terms of accessing justice and support. Campaigns should contribute to raising, at the same time, the awareness of the general public of the incidence and trends of criminal manifestations of hatred and intolerance.

Case study: Homeless people victims of hate crime

Hate crime targeting homeless people can often be ignored and thus remain invisible. The very low awareness of this phenomenon by the authorities, the general public and the victims and potential victims themselves leads to very high underreporting and underrecording of these crimes, and can hamper victims' access to justice and the enjoyment of their rights. The lack of research and data is a key challenge, which in turns hampers the elaboration of effective measures.

This is an example where the development of evidence-based and targeted awareness raising measures could contribute making the issue more visible for victims and potential victims, the general public and the authorities, therefore prompting reflections on the necessary legal and/or policy responses.

¹⁰ See for example the findings of FRA surveys EU-MIDIS I and II, EU LGBTI survey, Survey on discrimination and hate crime against Jews in selected Member States I and II, and Violence Against Women survey – all accessible at <http://fra.europa.eu/en>

¹¹ See FRA report "Ensuring justice for hate crime victims: professional perspectives", available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

Awareness raising measures should also aim at **introducing vulnerable groups and individuals to the criminal process**, which many may not be familiar with.

*In **Finland**, for example, the police, the national victim service (Victim Support Finland) and the Finnish Red Cross took part in a project aimed at training members of minority communities to introduce them to the criminal process and raise awareness on services available to victims.*

Improving public authorities' relations with communities is equally crucial with a view to encourage reporting, given that underreporting of hate crimes, as research shows, is very often motivated by a lack of victims' trust in the authorities, including the fear that they would not treat them in a sympathetic manner and may share the discriminatory attitudes of offenders, and that court proceedings may expose victims to further discriminatory attitudes.¹² Training of competent authorities at all levels is, in this context, crucial, as it is more broadly any measure which contributes to build a **respectful and non-discriminatory institutional culture**, in particular in terms of attitudes of the authorities towards minorities. Targeted measures such as the setting up of **liaison or contact officers** within police that proactively reach out to local communities and victims may also be considered, as this can both improve cooperation between police and support services and boost victims' confidence that they will be understood and acknowledged.

*In **Ireland**, for example, a nationwide network of 240 Ethnic Liaison Officers as well as special LGBT Liaison Officers are appointed within the national police force, whose role includes working at front-line level to build trust with minority communities and to encourage ethnic minority individuals to come forward and report any form of crime, including hate crimes.*

Making available **schemes and tools to ensure easy and trustful reporting to the authorities** can also contribute to address underreporting. This can consist in the setting up of specific contact points (specialised entities/trained officials), third party and anonymous reporting tools, informal reporting mechanisms as well as online reporting mechanisms administrated directly by the police or by the prosecution services.

*In **the Netherlands**, for example, a special police helpline/reporting point was established for LGBTI hate crime or LGBTI-related issues, and a specialised local police network was created to protect and liaise with the LGBTI community in Amsterdam ("Pink in Blue"); in **Lithuania**, hate crime victims may directly contact specialised prosecutors; in **Italy**, the Observatory for Security Against Discriminatory Acts (OSCAD) has in place since 2010 an online reporting system through which victims, organisations and institutions can report incidents; while in **Greece**, a 24-hour police hotline that can be reached anonymously was established in Athens and Thessaloniki. In the **UK**, the police developed "True Vision", a web tool to advocate and facilitate, among others, the reporting of hate crime. This system inspired the creation of online reporting systems in other Member States.*

Other bodies such as **equality bodies or national human rights institutions** can also be tasked of managing reporting tools and liaise on that basis with the authorities.

*In **Italy**, for example, the National Office against Racial Discrimination (UNAR) established a reporting mechanism, which includes a website and a helpline; when incidents reported constitute a criminal offence, UNAR immediately reports them to the police.*

¹² See FRA report "Ensuring justice for hate crime victims: professional perspectives", available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

✓ **Facilitating participation in criminal proceedings**

The general obligation to **ensure that victims are offered certain minimum information about rights and procedures from their first contact with a competent authority**, as provided for in the Victims Rights' Directive (Article 4) recognises the important role of such authorities, in particular frontline police, as point of contact throughout the investigative process, to enable victims to access their rights.

Particular attention shall be paid first and foremost to the victim's **right to understand and to be understood** (Article 3 of the Victims Rights' Directive). Communications with hate crime victims shall take into account the personal characteristics of the victims and any obstacle which may affect the ability to understand or to be understood (language barriers, disability, etc), as well as their specific vulnerability. Having regard to the potential impact of the crime, consideration should also be made of the need to **allow the victim to be accompanied by a person of their choice in their contacts with competent authorities**, including during the police questioning.

The extent or detail of information may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. The fact that a victim has suffered from a bias motivated crime should be taken into account in this context, as the criminal justice process can be particularly intimidating and emotionally draining for hate crime victims.

The implementation of the obligation relating to the **victims' right to information about one's case** (Article 6) should also be declined taking into account that hate crimes are "message crimes" whose impact and consequences also affect the group or community to which the victim belongs or is perceived to belong.

*In **Poland**, for example, the Unit for European Migration Network and Combating Human Trafficking, which is part of the Migration Analyses and Policy Department within the Ministry of Interior, can receive notifications from hate crime victims who report a crime to the police, to gather information on the case and relating it to the victim. In **Spain**, a Service of Hate Crimes and Discrimination was established within the Prosecutor's Office in Barcelona, also in order to ensure a more direct access by victims to authorities during the investigation and prosecution phase. In **Ireland**, the 'Garda Bureau of Community Diversity and Integration' takes care of, among others, providing hate crime victims with information throughout the investigative process.*

Similarly, the **victim's rights in the event of a decision not to prosecute** as provided for in the Victims Rights' Directive (Article 11) assume specific relevance in the case of hate crime victims, given the existence of potential obstacles and difficulties in ensuring that the crime is prosecuted as a hate crime, i.e. the bias motivation is duly identified and investigated. The relevance and effective implementation of this right should be further explored as regards specifically hate crime victims, considering the different ways the bias motivation is taken into account in national criminal law provisions (i.e. existence of specific hate crime offences or sentencing provisions such as general or specific aggravating circumstances).

Ensuring the effectiveness of the **victim's rights to be heard** (Article 10 of the Directive) is equally important, also to give the victims the opportunity to provide evidence in particular as regards their perception and the impact of the crime, which bears a specific relevance in the case of hate crimes. Fostering a **victim-centred approach** can contribute to better addressing hate crime victims' needs and can be very beneficial to investigations to unmask the bias motivation of crimes, too.

*In the **UK**, for example, when a victim reports an incident to the police, they may ask him or her to if they want to write a 'victim personal statement' (VPS), which gives victims a chance to talk about the impact of the crime on them, physically, emotionally, psychologically, financially or in any other way. The VPS helps authorities to understand how a crime has affected the victim and is taken into account by the court when deciding upon an appropriate sentence, if a defendant is found guilty.*

✓ **Ensuring adequate redress and exploring the role of restorative justice services**

Redress should be targeted as much as possible in light of the nature and impact of the crime and the characteristics of the victim. This targeted approach is particularly relevant as regards hate crime victims.

Research shows that the **potential benefits of restorative justice measures to tackle hate crime offending** may be explored further, in particular in cases of less serious or minor crimes and where it may help tackle root causes and social tensions.¹³

Mediation and any other type of restorative justice should, however, be resorted to only if offered in a **coherent, consistent and competent manner** by practitioners with an in-depth understanding of the nature of hate crime, its impact on victims and how to respond effectively to the needs of victims. Referral to restorative justice services should, in any case, be subject to the **victim's informed consent** and based on a **case by case assessment**, subject to all necessary considerations in terms of victim's safety and interests, as well as the risk for the victim but also for those affiliated or perceived to be affiliated to the victim to be exposed to further victimisation, intimidation or retaliation as a result of the process, in each specific case.

PROVIDING EFFECTIVE PROTECTION TO VICTIMS AND THEIR FAMILY MEMBERS

The fact that a crime is committed with a bias or discriminatory motive is an important element to be taken into account when **identifying the necessary measures to protect victims and their family members** from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying, as required by the Victims Rights' Directive (Article 18). This is in particular because these crimes directly target the victim's personal characteristics, can often point at a specific relationship between the victims and the offender and are generally symptomatic of the particular social reality in which the crime was committed.

Case study: Victims of transphobic crime

Providing effective protection to hate crime victims is extremely challenging where there is very low awareness among authorities and the general population of what the victim's personal characteristics are and mean. This is particularly the case for transgender people. Even in the very few cases where transphobic crimes are reported, the lack of awareness and capacity on the part of the authorities, both within the police and the judiciary, to assess the victim's needs can significantly prevent effective measures from being taken to protect victims and their family members from secondary and repeat victimisation, intimidation, retaliation, and to protect their dignity. Targeted training of police, prosecutors and judges is crucial, and should ideally be accompanied by the development of specific guidelines or standards of care. This in turn implies efforts to significantly improve cooperation between trans community groups and civil society organisations and the authorities.

¹³ See for example Mark Austin Walters, "Hate Crime and Restorative Justice - Exploring Causes, Repairing Harms", Clarendon Studies in Criminology, 2014.

✓ **Ensuring timely and individual assessment to identify specific protection needs**

The Victims Rights' Directive expressly states that in the context of the individual assessment, **particular attention shall be paid to victims who have suffered a crime committed with a bias or discriminatory motive which could be related to their personal characteristics** (Article 22).

The assessment of protection needs and of whether and to what extent special protection measures are needed should be regular and, unless the victim wishes otherwise, include a psychological examination to assess the risk of emotional and psychological harm, also taking into account specificities related to the nature and type of victimisation suffered (such as, for example, in the case of sexual or domestic violence).

✓ **Ensuring protection from secondary victimisation and protecting the victim's dignity**

The standards set in the Victims Rights' Directive as regards **protection of victims during criminal investigations and interviews** (Article 20), **protection of the victim's privacy during criminal proceedings** (Article 21) and **special measures** which a victim may benefit from as a result of an individual assessment of specific protection needs during criminal proceedings (Article 23), are particularly relevant to guide the behaviour of criminal justice authorities during investigations and court proceedings in the case of hate crimes.

Specific attention should be paid to ensuring in particular that **hate crime victims are treated in a sensitive and professional manner and are not subject to intrusive and/or unnecessary questioning** which can expose them to secondary victimisation and emotional and psychological harm, or are exposed to prejudice which make them feel treated as potential offenders rather than victims. Access to **effective complaint mechanisms** which victims can refer to when they feel that law enforcement or criminal justice authorities have not respected their rights should be ensured.

In addition, measures should be in place to ensure that **hate crime victims' privacy, personal integrity and personal data are protected**, including by means of allowing a hearing to take place without the presence of the public and/or of measures encouraging the ethical conduct of media.

Case study: Roma victims of hate crime

Secondary victimisation and further harm to the victim's dignity during criminal proceedings is more likely to occur when victims belong to disadvantaged and vulnerable groups or minorities. This can be the case for Roma, in relation to whom prejudice, discrimination and manifestations of hatred may often be normalised, including within institutions and in the public sphere. Authorities may as a result often deny or minimize the seriousness of reported hate crimes, leading to further humiliation and preventing the application of protection measures, including special measures where needed. A lack of awareness and understanding of the consequences of marginalisation and exclusion such as poverty and illiteracy can exacerbate these behaviours in the authorities' contacts with the victims. This in turn can expose victims to secondary victimisation by third parties and the public during criminal proceedings. Targeted measure to address similar situations should be developed, including the appointment of trained frontline officers and specialised prosecutors units and the development of guidelines for the conduct of criminal proceedings. Their impact will however depend on genuine efforts to also improve the authorities' attitudes with a view to building a respectful and non-discriminatory institutional culture towards Roma.

✓ **Ensuring protection from repeated victimisation, retaliation, intimidation**

In the case of hate crimes, **protection measures to prevent and avoid further victimisation, retaliation and intimidation**, as provided for in the Victims Rights' Directive (Article 19 and, for victims regarded as having specific protection needs, Article 23) should take into account not only the type and nature of the crime, but also the victim's personal characteristics targeted by the crime and the particular social reality in which the crime was committed (social tensions, lack of acceptance, hostile environment, social impact of the crime, etc).

These elements could point at the need of **specific safety and security needs** at court premises, at the victim's residence and in public.

*In **Croatia**, for example, a Protocol for Procedure in Hate Crime Cases was adopted by the government in 2011, which requires the police, among others, to take immediate measures and actions to protect the victim against repeated victimisation by the perpetrator.*

Incidents of violent hate crime can more generally be an important indicator of fissures in society, and might be an early warning of the **escalation of violence against the victim and the victim's group or community**, as well as **retaliatory attacks by the victim's group or community**, which should be addressed through preventative measures.

*In **Bulgaria**, exchanges between authorities and Roma leaders led to an agreement, among others, to ensure increased police protection and to create special "social police centres" to protect the Roma community from racist violence.*

ENSURING ADEQUATE SUPPORT SERVICES

✓ **Targeting support to hate crime victims' needs**

Victim support is crucial to the recovery of victims, their families and their communities. It can also influence the victims' decision to report the crime and their cooperation with police investigation and trial. The implementation of Member States' obligations under the Victims Rights' Directive as regards the **right to support from victim support services** (Article 9 of the Directive) shall, when it comes to hate crime victims, take into account the **particular nature of these crimes and the social reality in which they are committed** (social tensions, lack of acceptance, hostile environment, social impact of the crime, etc.).

These considerations should be reflected, first and foremost, in a **general needs' assessment**, looking at what actual and potential hate crime victims would expect and need from a support service before, during and for an appropriate time after criminal proceedings, in terms of, for example: attitude aspects; information and advice; emotional and psychological support, including long-term counselling to address post-victimisation impact; practical support: safety advice, personal safety equipment, shelters or safe and accessible alternative accommodation; flexibility and adaptation in accessibility (support at home, online, phone, face-to-face, etc.). Structural considerations may relate to the extent to which support should be delivered by **general or specialised support services**, and who would be best placed to deliver them (trained professionals, volunteers, peers, e.g. someone who also experienced hate

crime).¹⁴ **Evaluation** processes should be in place as regards the availability and provision of support services and the challenges met during delivery.

Ensuring adequate support services will, secondly, depend on the development of tools and processes allowing for an **individual approach aimed at tailoring support to the specific needs of the individual as hate crime victim**, which will vary greatly depending on a range of different situational factors and individual traits, including:

- the type of crime experienced or how often the victim has been targeted;
- the nature and severity of the crime;
- the relationship between victim and perpetrator(s);
- the victim's vulnerabilities, also taking into account intersectional and multiple grounds or characteristics which may render the victim particularly vulnerable (for example, the presence of health issues, or of mental and/or physical disabilities);
- the victim's social and economic position within society, and the wider social environment where the crime was committed, including the existence of support networks.

Case study: Persons with disabilities victims of hate crime

Fulfilling the responsibility to adequately meet support needs of persons with disabilities victims of hate crime requires genuine efforts by the authorities and by victim support services to balance the provision of targeted assistance – in terms of accessibility needs, tailored support and protection, including from the high risk of repeat victimisation – with the importance of promoting confidence and avoid imposing a sense of further control over people's lives. This implies a profound awareness of the complexity surrounding the notion of vulnerability and the understanding of key aspects of disability in those providing support services, which only trained professionals can offer. The direct involvement of organisations of persons with disabilities and their cooperation with the authorities plays a crucial role in this context. The adequacy of support also depends on the existence of broader and structured care policies supporting people with disabilities to overcome powerlessness, passivity and dependency, and awareness raising initiatives challenging disablist attitudes within society.

✓ **Facilitating effective access to support services**

While it is an obligation under the Victims Rights Directive to ensure that victims and their family members, in accordance with their needs, have **access to free of charge confidential general and specialist victim support services** (Article 8), FRA research shows that Member States are less advanced in the field of support for hate crime victims in comparison to other categories of crimes.

The fragmented and patchy nature of appropriate support services available to hate crime victims, often provided by small organisations covering limited topical and geographical areas, emerges as a factor significantly impeding victims' access to justice.¹⁵ Such fragmented approach can be prevented by supporting the creation of **coordinated support structures or networks**.

¹⁴ FRA research identified some promising practices in its report "Victims of crime in the EU: the extent and nature of support for victims", available at <http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims>

¹⁵ FRA report "Victims of crime in the EU: the extent and nature of support for victims", cited above.

*In **Germany**, for example, a support structure for hate crime victims was progressively developed since 2000, leading in 2015 to an agreement between the federal government and local governments to build up specialized hate crime victim support centers in every federal state, as part of a broader nationwide programme for the development of a regional advice network of "Federal State Democracy Centres".*

As hate crime victims may present specific needs making targeted and integrated support necessary, **coordination mechanisms between general and specialised support services** can help avoid duplications and ensure effectiveness, while allowing victims to be able to access different forms of support from different organisations without feeling bombarded by different agencies and services, as this can be confusing and overwhelming. Mapping existing services, as well as increased cooperation in the form of agreements, networks and/or cross-referral arrangements, including targeted at specific categories (e.g. for migrants/reception centres; for transgender/health services; for persons with disabilities/social or care services; etc.) can play a crucial role.

*In **France**, the Ministry of Interior and the International League against Racism and Antisemitism (LICRA) signed a convention which aims, among others, to increase the number of referrals to victim support services. In **Germany**, regional professional counselling services working with victims of right wing, racist and Antisemitic violence formed, with the support of the federal government, an umbrella coalition ("German Association of Support services for victims of right-wing, racist and antisemitic violence" (VBRG)) to coordinate their work, establish common standards, share good practices and represent their interests at national level.*

Research also shows that very low numbers of hate crime victims access support services. The **obligation to facilitate the referral of victims** by the competent authority that received the complaint and by other relevant entities to victim support services, is therefore particularly relevant in the case of hate crime victims. Referral mechanisms, but also protocols and other arrangements, within and between police and/or other relevant entities (hospitals, schools, embassies, consulates, welfare or employment services) can contribute, with the consent of the victim, facilitating access to support services, at the first contact with the victim, at the moment of the reporting and/or at a later date. These mechanisms shall take due account of the obligation to ensure that access to any victim support services is **not dependent on a victim making a formal complaint to a competent authority**, which is particularly relevant for hate crime victims given the high underreporting rates.

✓ **Ensuring sustainability of civil society and/or community based organisations providing support**

Current practices show that victims support for hate crime victims is provided mainly by civil society and/or community based organisations working on a voluntary basis.

While support services provided by these organisations can offer invaluable, tailored support, including emotional, advocacy and practical support, the **limited financial or other required resources** often represent a barrier to the provision of quality support services. Ways to ensure the allocation of adequate resources so as to guarantee the sustainability of these organisations should therefore be explored, including the **establishment of partnerships**, the **conclusion of formal service agreements**, or the **establishment of national funds**.

*In **Finland**, for example, the main national victims support organisation, Victim Support Finland (RIKU) is based on a cooperation agreement and is almost entirely funded by the Ministry of Justice.*