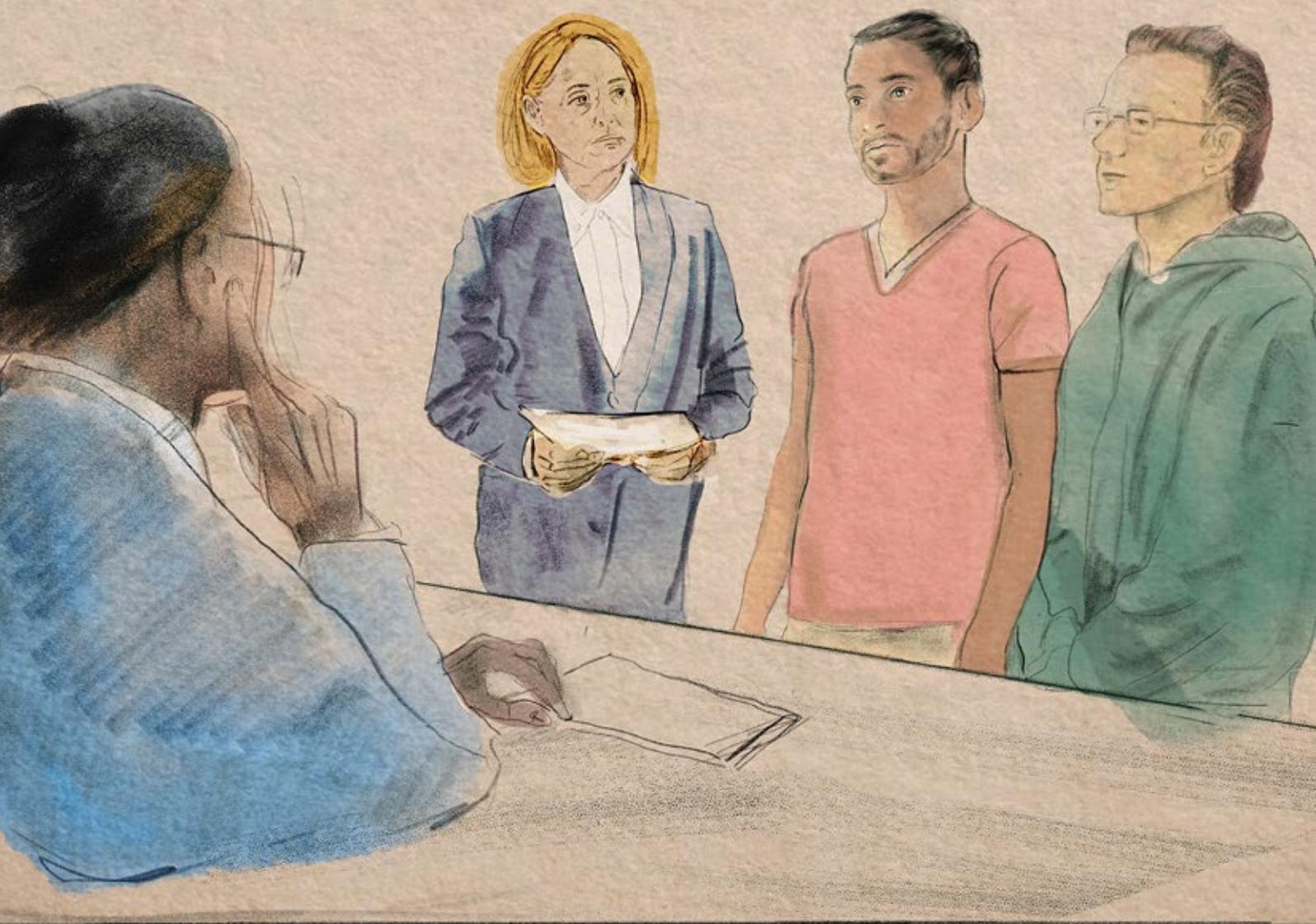


# Prosecutors and Hate Crime Training (PAHCT)

## Trainer's Manual



# Prosecutors and Hate Crime Training (PAHCT) Trainer's Manual



## **Acknowledgements**

ODIHR would like to express its appreciation and gratitude to all those who contributed to the development of this training manual from 2012 to 2024, as well as to all those involved in its most recent updates in 2025.

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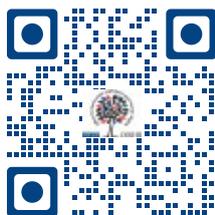
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All hyperlinks last accessed on 26 December 2025.

# ACRONYMS

|              |  |
|--------------|--|
| <b>ECtHR</b> | European Court of Human Rights                       |
| <b>OSCE</b>  | Organization for Security and Co-operation in Europe |
| <b>ODIHR</b> | Office for Democratic Institutions and Human Rights  |
| <b>pS(s)</b> | Participating States of the OSCE                     |
| <b>CSO</b>   | Civil Society Organization                           |

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# INTRODUCTION

- 1 This manual refers to people affected by a crime as 'victims' in line with the terminology of the main international documents and legal discourse. The term is used to capture and avoid trivialization of the serious consequences of hate crimes.
- 2 More information about the PAHCT Programme can be found [here](#).
- 3 Since its launch in 2014, PAHCT has been implemented in full or in part in 15 countries.
- 4 In particular, this includes [Prosecuting Hate Crimes: A Practical Guide](#), OSCE/ODIHR, 29 September 2014; [Hate Crime Laws: A Practical Guide](#), OSCE/ODIHR, 23 September 2022; [Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System](#), OSCE/ODIHR, 4 October 2021; [Hate Crime Victims in the Criminal Justice System](#), OSCE/ODIHR, 9 April 2020; and [Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized 'Hate Speech': A Practical Guide](#), OSCE/ODIHR, 15 November 2024.
- 5 [Prosecutors and Hate Crimes Training \(PAHCT\) Programme Description](#), OSCE/ODIHR, 29 September 2025.
- 6 Please refer to [Training Against Hate Crimes for Law Enforcement \(TAHCLE\) Programme Description](#), OSCE/ODIHR, 29 September 2025.

Prosecutors are **central to an effective response** to hate crime. They are key in coordinating with the police to ensure effective investigation of hate crimes and in supporting the courts to consider the nature of the offence and the factors, such as bias motive, that can aggravate the sentence. For victims,<sup>1</sup> prosecutors play an essential role in identifying the needs that arise from being a target of hate and the specific accommodations required when accessing their participation rights.

This training course is designed to improve the responses of prosecutors to hate crimes by giving them the **knowledge and skills to apply national law** and to ensure consistency in the appropriate qualification of hate-based offending. The curriculum builds on the experience of implementing ODIHR's Prosecutors and Hate Crime Training (PAHCT) Programme<sup>2</sup> across the OSCE region since its launch in 2014,<sup>3</sup> and it incorporates the practical guidance for prosecutors developed by ODIHR to 2025.<sup>4</sup>

As part of the PAHCT Programme, ODIHR delivers this training course to national beneficiaries, primarily prosecutors and judges, with the assistance of external trainers, current or former specialized hate crime prosecutors who have completed ODIHR's international Training-of-Trainers. National actors can request ODIHR to deliver either a full, two-day programme or selected modules tailored to the specific needs of a requesting agency.<sup>5</sup>

To ensure sustainability and quality, this training should ideally be **accompanied by the development of prosecutorial guidance** on hate crime. Hate crime training should be embedded, at the institutional level, in policy and strategic documents with the necessary resources guaranteed. The development, customization and delivery of this training should be built on the **work and resources of CSOs and community-based organizations** who, by virtue of their closeness to their communities, play an essential role in understanding and responding to hate crime victimization. Finally, to ensure an effective national response to hate crime, training for prosecutors **should also be complemented by training the police**.<sup>6</sup> They are essential for identifying hate crimes, recording all aspects of a crime to capture and investigate a bias motive effectively and ensuring that hate crime victims receive appropriate support and protection.

## ABOUT THIS MANUAL

The curriculum is designed as a **two-day course** for any group of prosecutors from one place or national context to acquire the core knowledge and skills for hate crime prosecution. Participants could also be a mixture of prosecutors and judges. The recommended group size is **10-12 people**; larger groups make the training more difficult and limit the amount of time for activities during the course.

The course is designed to be delivered by a **team of two trainers/facilitators**. However, adjustments can be made to meet the needs of each group and the availability of trainers.

The training methodology is based on the principles of **human rights education**, ensuring that the content places equal emphasis on:

- Acquiring and understanding new concepts (knowledge);
- Methods of application (skills); and
- Ways of thinking (attitudes).

This approach seeks to build on participants' existing knowledge and experience and integrate it via participatory learning (learning from peers). The training is very interactive, combining exercises of self-reflection with discussions in small groups and presentations, all of which is then applied to resolving case studies.

The training applies a **victim-centred approach**, acknowledging that, although people might share a particular social identity and personal characteristics, each person is unique. The curriculum aims to reflect the needs and experiences of different members of society through **intersectional perspectives**. This approach captures the multidimensionality of people's experiences and identities, and is at the heart of a victim-centred approach in responding to hate crime.

## Structure

The curriculum is modular and each module is a standalone topic, allowing trainers to select a combination of modules to fit the specificities of each group and the time available. However, trainers are recommended to read the whole manual before selecting individual modules, as some do follow on from earlier modules and should therefore be delivered in sequence.

Each module includes:

- Summary
- Learning objectives
- Outline (overview of activities with timings)
- Materials checklist
- Training instructions, with detailed learning and discussion points and notes for trainers
- Additional resources
- Answering difficult questions (where appropriate)
- Training materials (where relevant) at the end of the module
- Slides to accompany training instructions (in the Annexes and as a separate PDF file)
- Handouts to distribute (at the end of the manual)

**Important note:** Some activities use case studies and statements that are, to a large extent, based on real-life examples. Other examples are based on the facts of several real cases, combined to provide a more comprehensive learning experience. These materials often contain discriminating and offensive language that might cause discomfort for both the trainers and the trainees. To avoid publishing offensive material, in the published version of the curriculum, slurs that target members of different groups have been replaced by generic descriptions (e.g., 'racist slur', 'misogynist slur', etc.). Where a term is used pejoratively by the speaker, but is not negative in its character (e.g., 'woman', 'Jew', etc.), they have been spelled out in full. Trainers are encouraged to replace these generic terms with the real words when delivering training. In addition, trainers should also provide similar examples from their national context, as real examples are a much more powerful training tools than generic language. Given that the actual offensive terms will be used by trainers, they should warn participants each time that such language is being used solely for training purposes and they must be responsive to participants' sensitivities.

## PREPARATION FOR DELIVERING A PAHCT TRAINING COURSE

### *Customization*

While this manual provides sample materials (such as community statements and case studies), the key to the success of the training will be adequate customization to the national or local context. The following parts of the curriculum should be customized.

### *Collecting Stories and Statements*

In preparing for delivering the training, it is vitally important to collect factual and anecdotal information on the nature and extent of hate crimes and non-criminal incidents of bias in the national or local context. This information comes from civil society organizations (CSOs) and community representatives.

Collecting **accounts of hate crimes and incidents** allows the trainers to:

- Gather information on the nature/extent of hate crimes and bias incidents that occur in the country or region where the training will be delivered;
- Reduce the defensiveness of any participants who may not believe that hate crimes exist in their community; and
- Enhance the credibility of the trainer by presenting information that is directly relevant to the local context.

**Community statements** include accounts of harassment, jokes, degrading statements and expressions of prejudice towards a variety of communities. Community statements are used in Module 2 and are referred to throughout the curriculum..

### *Understanding local law and its application*

The training is normally delivered to address gaps or shortcomings in the way hate crimes are prosecuted. This can be due to imperfect laws, the way they are applied, or both. It is vital that the trainers understand what the law is, how hate crime provisions are being used and the problems and possible solutions. This will significantly increase the participants' acceptance of the trainers.

Ahead of the course, trainers should raise questions about the law and its application with prosecutors. Trainers should use the information gathered during the preparation phase and from meetings with practitioners, to identify the shortcomings in law and practice and formulate a set of messages/solutions they wish to convey through the training. Only once the trainers are clear about the key messages should the handouts and case studies be customized to best convey them.

References to local law and its application appear in the following modules:

- Module 6 — Hate Crime Legislation — Applying Local Laws
- Module 7 — Prosecuting Hate crime at the Intersection of Hate Crime and Criminalized ‘Hate Speech’ — Conceptual Considerations
- Module 8 — Prosecuting Hate Crime at the Intersection of Hate Crime and Criminalized ‘Hate Speech’ — the Prosecutor Decision Tree
- Module 11 — Case Studies I — Bias Indicators and Initiating a Hate Crime Case
- Module 12 — Case Studies II — Motive Evidence

### ***Preparing Case Studies***

Case studies are a crucial element of the training resources. Before the training begins, trainers should prepare case studies that are relevant to the country or region where the training is taking place. Case studies should illustrate specific issues that are highlighted in the modules. Ideally, the trainers should base their case studies on actual hate crimes and hate incidents that have occurred in the country or region. Case studies will enable participants to:

- Apply the knowledge gained during previous modules in the course to analyse specific cases; and
- Practice the skills acquired during the training to master responses to specific cases.

Trainers must be properly prepared to use the case study method and act as facilitators rather than an authority. The heart of the case study is discussion. Trainers should question, restate problems and issues, and voice opinions. Questions should encourage participants to exchange ideas and think through the issues rather than requiring simple yes/no responses or repetition of the facts. Trainers need to keep the discussion focused, with everyone considering the same idea or point, and they should resist the urge to offer their own solution to the problem. At the same time, they should not hold back with necessary information or opinions. To stimulate the group’s thinking, trainers can make alternative proposals. It is important not to let one or two participants dominate the discussion and ensure questions are directed to each participant.

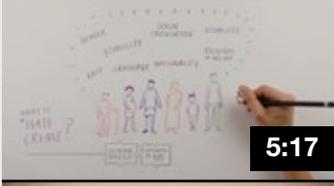
The following modules use case studies:

- Module 8 — Prosecuting Hate Crime at the Intersection of Hate Crime and Criminalized ‘Hate Speech’— the Prosecutor Decision Tree
- Module 11 — Case Studies I — Bias Indicators and Initiating a Hate Crime Case
- Module 12 — Case Studies II — Motive Evidence

Handouts 10, 12 and 14 contain examples of case studies with notes outlining the specific points for highlighting during discussions. These examples also highlight some of the key issues of hate crime and common discussion points about hate crime prosecution. While preparing local case studies, these themes should be kept in mind, while emphasizing any points that may have been raised as particular issues during the preparatory phase.

**Videos**

The table below contains links to the videos used in this training course. Some videos should be shown in full (see instructions in specific modules), while others only in part, to fit the allotted time for each exercise. If there is no time restraint, the full videos could be shown. However, please note that the learning messages and follow up discussion points may need to be adjusted accordingly.

| VIDEO   | MODULE    | TITLE / LINK  | DESCRIPTION   |
|---|-----------|---|---|
|   | Module 2  | <a href="#"><u>Experiences of the community</u></a>                                       | This video covers the extent and impact of bias, prejudice, harassment or hostility in societies from the community and victim perspectives and also discusses the response of the authorities.                                   |
|  | Module 3  | <a href="#"><u>Statements of victims of hate crimes</u></a>                               | This video contains short extracts from interviews with victims of hate crimes in which they describe the impact on them and the long-term consequences.  |
|  |           | <a href="#"><u>Placing victims at the heart of the hate crime response</u></a>            | This video describes the different types of needs a hate crime victim might have as a result of hate crime victimization.   |
|  | Module 10 | <a href="#"><u>Sensitive and respectful treatment of hate crime victims</u></a>           | This video outlines some of the points to take into consideration around the sensitive and respectful treatment of hate crime victims, and interviewees share their experiences of what went wrong and what could be done better. |
|  |           | <a href="#"><u>Experiences of hate crime victims with the criminal justice system</u></a> | In this video hate crime victims discuss their experiences of reporting a hate crime to the police and describe some of the issues that they faced when dealing with various parts of the criminal justice process.               |

(Click 'CC' for subtitles in different languages)

***List of materials  
for customization***

Training materials that require prior substantive customization, are highlighted in orange in the 'Materials checklist' for each module and, where helpful, within the instructions. The customization process should include translation into the local language(s).

The following activities in this manual would benefit from customization:

- Module 1: Activity 1.1 — A hate crime case study, emphasizing the role of prosecutors
- Module 2: Activity 2.2 — Community statements (examples at end of module)
- Module 5: Activity 5.1 — A case that demonstrates the use of bias indicators
- Module 6: Activity 6.2 — National hate crime provisions (Handout 6) and National Guidelines on prosecuting hate crimes issued by the Prosecutor General's office, if in place
- Module 8: Activity 8.2 — Case studies: exploring the intersection (examples in Handout 10)
- Module 9: Activity 9.2 — Identity cards
- Module 11: Activity 11.1 — Case studies I: Bias Indicators and Initiating a Hate Crime Case (examples in Handout 12)
- Module 12: Activity 12.2 — Case studies II: Motive Evidence (examples in Handout 14)

## PRACTICAL ARRANGEMENTS

### **Materials**

Prepare all the following materials for the training, in sufficient quantities, well ahead of the training:

- Customized materials:
  - o Community statements
  - o Case studies
  - o Current national hate crime and criminalized ‘hate speech’ law
  - o Any other country-specific materials, such as the guidelines for prosecutors on hate crimes, definition of a hate crime used by another local agency etc.
- Slides
- Videos
- If possible, copies of ODIHR’s *Prosecuting Hate Crimes: A Practical Guide* and *Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized ‘Hate Speech’: A Practical Guide*
- Sufficient copies of all Handouts
- *Prosecutor Decision Tree* (two copies per participant, ideally A3 format)
- Certificates for participants

### **Equipment and supplies**

The training should preferably be held in a large, comfortable room. Participants should sit in chairs (ideally without tables) arranged in a U shape (with the trainers presenting from the open end of the U). There should be a table at the front of the room for a PowerPoint projector and workshop materials (at trainers’ disposal). Ideally there should be space for participants to stand up and take part in smaller group activities, or a second room available for smaller breakout group activities.

The following supplies and equipment should be available:

- Computer connected to the Internet and screen for presentations, with speakers to hear the videos
- Three flipcharts and flipchart sheets
- Name tags
- 3-4 sets of markers (usually a set is four markers — black, blue, green, red)
- Blank cards or A4 paper (three for each participant, plus 20 more for the activities)
- Pencil or pen (one for each participant)
- Sticky tape

## Preparations on the day

On the day of the training, trainers should:

- Arrive at least 60 minutes early;
- Set up the equipment and ensure that the presentation can be displayed on the big screen;
- Check that videos can be projected on to the screen and that sound and subtitles are working;
- Rearrange chairs and tables as necessary; and
- Prepare flipcharts and distribute the materials for Module 1: Introduction and Overview

## SAMPLE AGENDA

Please note that the order of the modules in this manual differs slightly from the order in the sample agenda. While the agenda is for the delivery of the whole manual; the order of the modules in the manual takes into account the delivery of, for example, 2-3 modules at a time, pairing the modules thematically.

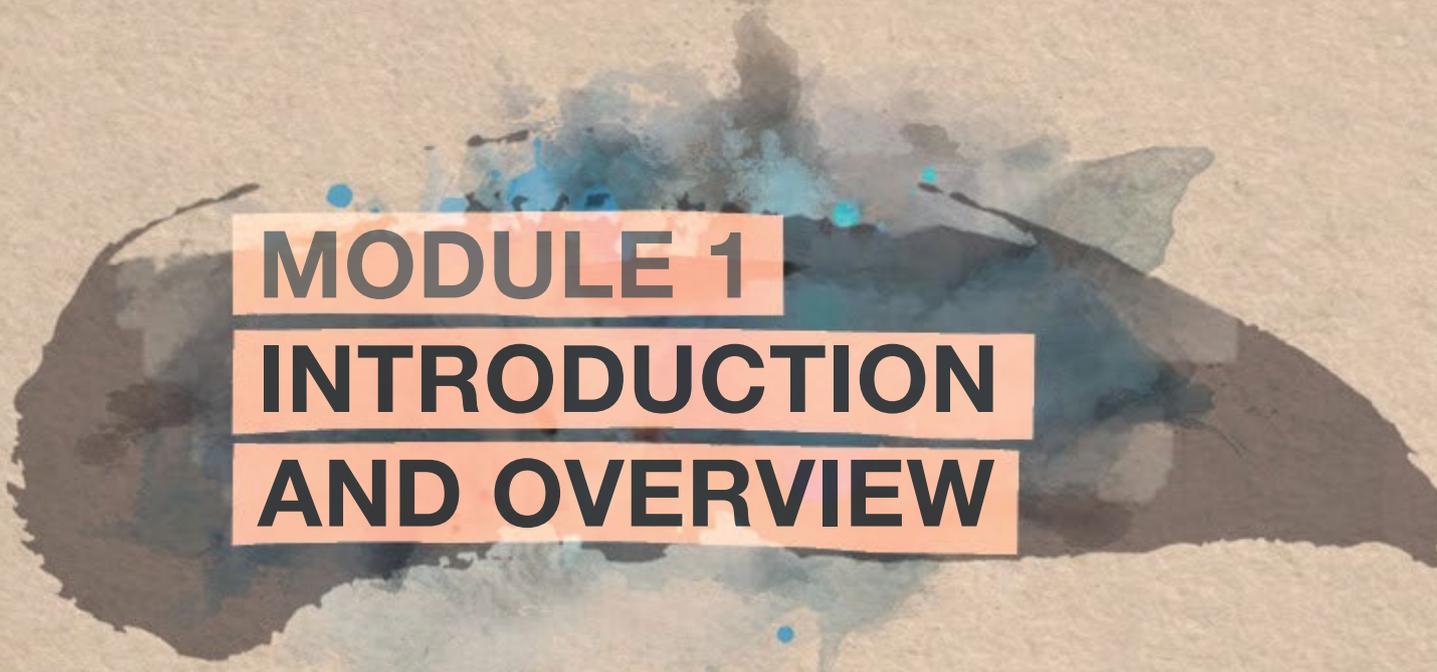
### DAY 1

|               |   |
|---------------|---|
| 09:00 – 09:45 | <b>Module 1 – Introduction and Overview</b> (45 mins)   |
| 09:45 – 10:35 | <b>Module 2 – Experiences from the Community</b> (50 mins)  |
| 10:35 – 10:50 | <i>Coffee Break</i>   |
| 10:50 – 11:50 | <b>Module 3 – The Hate Crime Concept</b> (60 mins)  |
| 11:50 – 12:35 | <b>Module 4 – International and Regional Standards</b>  |
| 12:35 – 13:35 | <i>Lunch</i>  |
| 13:35 – 14:35 | <b>Module 5 – Identifying a Hate Crime Case – Bias Indicators</b> (60 mins)   |
| 14:35 – 15:20 | <b>Module 6 – Hate Crime Legislation – Applying Local Laws</b> (45 mins)  |
| 15:20 – 15:35 | <i>Coffee Break</i>   |
| 15:35 – 16:20 | <b>Module 7 – Prosecuting Hate Crime at the Intersection of Hate Crime and Criminalized ‘Hate Speech’ – Conceptual Considerations</b> (45 mins) |
| 16:20 – 17:00 | <b>Module 9 – Barriers to Prosecuting Hate Crimes and Strategies to Overcome Them</b> (40 mins)   |

**DAY 2**

|               |   |
|---------------|---|
| 09:00 – 09:15 | <b>Recap Day 1</b>  |
| 09:15 – 11:00 | <b>Module 8 – Prosecuting Hate Crime at the Intersection of Hate Crime and Criminalized ‘Hate Speech’ – the Prosecutor Decision Tree</b> (105 mins) |
| 11:00 – 11:15 | <i>Coffee break</i>   |
| 11:15 – 12:35 | <b>Module 10 – Introduction to Sensitive and Respectful Treatment of Hate Crime Victims</b> (80 mins)   |
| 12:35 – 13:35 | <i>Lunch</i>  |
| 13:35 – 14:45 | <b>Module 11 – Case Studies I – Bias Indicators and Initiating a Hate Crime Case</b> (70 mins)  |
| 14:45 – 15:00 | <i>Coffee break</i>   |
| 15:00 – 16:15 | <b>Module 12 – Case Studies II – Motive evidence</b> (75 mins)  |
| 16:15 – 16:40 | <b>Conclusion and Evaluation</b>  |



A watercolor splash in shades of blue and grey is centered on a textured, light brown background. The splash has irregular, feathered edges and contains several small, bright blue dots.

**MODULE 1**

**INTRODUCTION**

**AND OVERVIEW**

# MODULE 1

## INTRODUCTION AND OVERVIEW

### SUMMARY

During this first module, participants will get to know each other and meet the trainers. Introductions will help establish group dynamics and set a friendly atmosphere. Everyone will also have a chance to state their training expectations and possible concerns. Participants, together with trainers, will set some ground rules for the training.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Describe the objectives of the training; and
- Identify the ground rules for the training.

### OUTLINE

| Time                     | Activity   | Key Points   |
|--------------------------|--|--|
| 40 minutes               | Activity 1.1<br><i>Introduction and overview</i> | Participants introduce themselves and outline their training expectations. Trainers set the objectives of the training and give an overview of the agenda. |
| 5 minutes                | Activity 1.2<br><i>ground rules</i>              | Participants agree on ground rules for the training.   |
| <b>Total: 45 minutes</b> |  |  |

### MATERIALS CHECKLIST

- A4 paper and pens for each participant (one each)
- Flipchart sheets: 1. 'Give', 'Take' and 'Share'; 2. 'Parking Lot'; 3. 'Ground Rules'
- A hate crime case that emphasizes the role of prosecutors
- 3-4 markers
- Tape for pinning the 'Ground Rules' to the wall

## ACTIVITY 1.1 — *Introduction and overview*

**PURPOSE:** To introduce participants to each other, establish group dynamics and learn about the different levels of prior experience in dealing with hate crimes. To share expectations and possible concerns. To agree on the ground rules for the duration of the training.

**TIME:** 40 minutes

### INSTRUCTIONS:

#### *Introductions*

1. As participants arrive, try to greet everyone, introduce yourselves informally, and ask everyone (including trainers) to write their name with a marker in large clear letters on a blank piece of A4 paper. When they choose a place to sit, ask them to stand it on the table in front of them. You can also have all name tags printed in advance and just hand them out.
2. Trainers introduce themselves, giving their names, briefly describing their backgrounds, and explaining why they are interested in the issue of hate crime. Introductions allow trainers to establish their credibility as workshop facilitators.
3. Ask participants to introduce themselves very briefly, providing the following information:
  - Name/surname
  - Their function/role within the justice system
  - What they bring to the training course, i.e., what they can **'give'** (e.g., their experience, willingness to participate, being a leader, raise the difficult questions, etc.)
  - Their expectations of the training, or what they hope to **'take'** from it
  - Lastly, an interesting thing from outside the training that they would like to **'share'** (e.g., favourite activities, a recent accomplishment — personal or professional, etc.)

The other trainer records participants' answers on the flip chart, under the 'Give', 'Take' and 'Share' columns.
4. Ask participants if they have anything else they would like to say or share (concerns, etc.)
5. Summarize the statements about expectations ('Take') and highlight what will definitely be covered, what will only be touched upon, and what will need to be dealt with in another setting. Things that might be dealt with during the course could be noted on the 'Parking Lot' sheet. Participants can use this sheet during the training to 'park' issues to come back to, ideas for follow up, etc.

**Note:** *It is important that everyone gets time to speak. If participants don't know each other, the start of a training course, particularly on a difficult subject, generally makes people tense. Allowing them time to speak will make them feel their participation is important and will build confidence and trust within the group. This is a vital element of the training in this and later modules and must not be skipped. It is also important to not make any judgement about any of the answers, just record them accurately. If helpful, ask for clarification if something is not clear. Thank each participant for their introduction.*

### Training purpose

6. Explain that the purpose of the training is to provide prosecutors (and judges, where applicable) with the skills and strategies to investigate, prosecute and sentence hate crimes. Also explain that this training is NOT about participants' personal views about any group. Rather, the training is about providing practical support to prosecutors in upholding their professional obligations and the rule of law, which can, in turn, benefit communities and society.
7. Describe a real hate crime case from your own experience. Use this to illustrate the following two main issues, and emphasize the role of the prosecutor in a successful outcome.
  - Point out that **crimes violate the principle of equal rights** enshrined in domestic law and international human rights law. States have a duty to protect their citizens from crimes; this means not only prevention but also effective investigation and the punishment of offenders, which is key for prosecutors.
  - By investigating and prosecuting hate crime, prosecutors can **play a role in de-escalating tensions** and sending a message to would-be perpetrators that bias-motivated crimes are not accepted in society. This, in turn, can contribute to strengthening the prevention of further crimes.

### Agenda

8. **Go through the agenda** explaining the modules to be covered and the logic behind it.
9. Emphasize that the training is designed to build on their existing knowledge and experience. Therefore, the training is participatory and requires their active interaction.

## ACTIVITY 1.2 — *Establishing ground rules*

**TIME:** 5 minutes

**INSTRUCTIONS:**

1. Explain that participants should agree on the ground rules so the training runs smoothly and productively. Give a couple of examples.
2. Ask participants to propose rules for the training. As they speak, the other facilitator records the answers on the 'Ground Rules' flip chart sheet. The following should be included: (mention them if participants don't catch them).
  - Listen, and 'hear' what is being said.
  - Be respectful. No insults.
  - Try not to speak too often or for too long. Allow others to speak.
  - Mobile phones on silent during the sessions. Leave the room if you urgently need to talk.
  - Raise your hand if you want to speak.
  - Respect the agreed timings.
  - Look after each other.
  - Contribute to making it a peaceful and safe environment.
  - What is shared in the room stays in the room (sensitive things, not key learning points).
3. Ask participants for any comments or reservations about the ground rules. Note the importance of all participants feeling comfortable with the rules and committing to respect them. Tell them that the ground rules will hang in the room throughout the workshop. Hang the list in a visible place.
4. Be ready to move straight to the next module, unless participants require an informal break.



# MODULE 2

# EXPERIENCES FROM

# THE COMMUNITY



# MODULE 2

## EXPERIENCES FROM THE COMMUNITY

### SUMMARY

During this module, participants will start to reflect on the level of bias and discrimination in their own environment and consider the impact this has on individuals and society overall.

### LEARNING OBJECTIVES

During this module, participants will start to reflect on the level of bias and discrimination in their own environment and consider the impact this has on individuals and society overall.

By the end of the module participants will be able to:

- Describe the extent and impact of bias, prejudice and harassment in societies;
- Understand the extent and impact of degrading language, slurs and jokes;
- Explain that the level of bias and discrimination experienced by some communities may be higher than perceived; and
- Appreciate the context of bias and prejudice in which hate crimes occur.

### OUTLINE

| Time                     | Activity   | Key Points   |
|--------------------------|--|--|
| 10 minutes               | Activity 2.1<br><i>Assessment</i>                          | Participants assess the perception of bias and prejudice in their own environment.   |
| 40 minutes               | Activity 2.2<br><i>Community statements and discussion</i> | Participants hear examples of the kind of discrimination, bias and hate-motivated incidents and crimes faced by different individuals and communities. Participants reflect on the community statements and their assessment of their local context. |
| <b>Total: 50 minutes</b> |  |  |

**MATERIALS CHECKLIST**

- Flipchart sheet: 'Assessment'
- 3-4 markers
- Community statements customized, printed and cut out (See examples in Training materials – Examples of community statements, at the end of this module)
- If time allows, Video: Experiences of the Community. Excerpt for this module: 00:00-04:40
- (If showing the video) Laptop connected to the Internet, projector/screen/speakers

**ACTIVITY 2.1 – Assessment**

**PURPOSE:** To increase awareness of the level of discrimination, harassment, prejudice and bias present in our societies and to understand that individuals may experience this in different ways depending on several reasons, including their personal identity characteristics.

**TIME:** 10 minutes

**INSTRUCTIONS:**

1. Tell the participants they are going to make an assessment of the extent of bias, prejudice, and harassment in their community on a scale of one to seven (one being low and seven being high). Emphasize that there is no correct answer to this question, but that you are looking for their collective impressions.
2. On the 'Assessment' flipchart sheet, write the numbers 1-7 from top to bottom down the left side of the paper. Explain that these numbers represent a scale, where 1 is the lowest rating and 7 is the highest.
3. Ask participants to raise their hands if they think that bias, prejudice and harassment is a '1' in their community. Record how many people raise their hands for each number on the sheet. Ask those participants to explain briefly why they think that. Repeat the process for ratings 2-7 in turn. Mention that you will be referring back to this assessment later on in the course.
4. Participants usually assess the seriousness of prejudice and harassment in different ways. Emphasize that there is no correct way to assess this issue.
5. Conclude by explaining that the next activity offers a different approach to examining the seriousness of prejudice and harassment in a community.

**Note:** If you have the impression that some participants feel intimidated (due to the size or composition of the group), you could ask all the participants to close their eyes when the group is rating the situation.

## ACTIVITY 2.2 – *Community statements and discussion*

**PURPOSE:** To understand the experiences of hate and discrimination faced by individuals and (minority) communities and how this affects their lives. To understand the extent and impact of degrading language, slurs and jokes; and that words are often the first step in a cycle of violence; and that it is important to distinguish the impact of statements from their intent.

**TIME:** 40 minutes

### INSTRUCTIONS:

1. Warn participants that this activity requires them to listen and respond to some very offensive statements. Explain how the community statements were compiled. In particular, if you are using customized materials, explain that, as part of preparation for the training, you have reached out to the CSOs or community-based organizations in your area to collect **real statements about the genuine experiences of members of minority communities**. If you are not using your own examples, you can explain you are using the genuine statements of real-life examples collected by trusted organizations (e.g., ODIHR). Explain that these statements will be used in this activity and that they contain hurtful and degrading comments and examples of hate crime cases.
2. Explain that each participant will be handed a community statement and asked to read it aloud. Emphasize that any participant who is not comfortable with this should give the statement to another participant or the trainer to read. Explain that there will be a group discussion after all the statements have been read.
3. Hand out the statements and ask them to read them out, in turn.

**Note:** *This is an emotionally charged activity, and it often has a significant impact on participants as they are given real examples of hate incidents that have taken place in their country. It is possible that participants may laugh or express approval at some of the statements. You can explain that some participants may be nervous or uncomfortable listening to the statements. It might make some participants want to laugh. You can say that it is understandable, as sometimes people mask discomfort by laughing. But it also needs to be stressed that there may be participants in the room who have heard similar words being said to them or to family members or friends in their communities. Ask the participants how it would make someone feel, who has been harassed, to hear others laugh during this activity. Thus, it is important not to laugh at any of these examples.*

*It is also important to take time over this activity and not comment on every remark from participants. Give them time to react. It is normal for there to be moments of silence before some participants speak as they reflect on what they have heard.*

4. Allow a brief moment of silence after the last statement has been read/video shown. Ask the participants to describe their emotional or gut reactions. Ask if these statements were surprising or whether they have heard some of these comments before.
5. If time allows, show the ODIHR **Video: Experiences of the Community**. Excerpt for this module: 00:00-04:40. Before you start, give the following background:
  - The group will hear testimonies of members of minority communities about their everyday experiences of biases, prejudices, stereotypes and how these experiences impact them.
  - The speakers include:
    - o **Paya Ndiaye**, Social Justice Trainer, Paris, France. While not a victim of hate crime herself, Paya talks about her own daily experiences and links this to the experiences of other members of her community and others from a minority background.
    - o **Sarian Jarosz**, Researcher on LGBTI rights and migration, Warsaw, Poland. Sarian was the victim of an anti-LGBTI hate crime in 2019, and during the video interviews he talks about his experience of reporting the incident to police as well as his wider experiences of discrimination and harassment and the effect this has had on his life.
    - o **Dr. Mark Brookes MBE**, Advocacy Lead, Dimensions UK, London, United Kingdom. In the videos, Mark talks about the daily experiences of people with autism and learning disabilities from his perspective and provides recommendations to the authorities on how to work with hate crime victims from this group.
6. Refer back to the assessment activity and ask how they think the targets of these community statements, or the people featured in the video, would have rated the seriousness of the problem of bias, prejudice and harassment? Generally, participants will answer this question with '7'. Suggest that the number of people in any community who are experiencing life as a '7' may be greater than any of us would like to think.
7. Emphasize that not all the examples from the community statements are hate crimes, and explain that we will talk about the specific differences in the following modules. Some statements contain examples of 'hate speech', discrimination or unfair treatment. But all of these behaviours have an impact on individuals and communities.
8. Ask participants where, or from whom, people learn that it is acceptable to make these types of comments. Responses usually include: the media and popular culture, family, friends and leaders (political and religious).
9. If an offensive joke has been presented during the activity, discuss the difference between the speaker's **intent and the impact that words have on the individuals who are targeted**. Ask participants why people would tell offensive jokes. Mention, for example, that people often do not intend to make people feel hurt or degraded. Rather, they use degrading language and jokes to gain approval from others. Suggest that there may be language that people don't realize is inappropriate, and that it is important to note that the 'appropriateness' of specific phrases and words can change over time. Add that using such language often trivializes victims' experiences. The victims may let things seen as trivial go, but they are affected, nonetheless.

10. Underline that **minority groups often experience stereotypes and biases every day**. Hate crime victims have most likely experienced a number of bias-motivated hate incidents over an extended period, and it is important to keep in mind the cumulative effect of such incidents. **It is critical that our own perception does not downplay the perception and experiences of others**. This is why believing the victims of hate crime and their experiences is key to ensuring sensitive and respectful treatment.
11. Ask participants to identify groups that are **most vulnerable to being targeted with hate crimes in their country or region**. Explain that a lack of data does not mean that hate crimes are not happening. Mention some of the barriers to reporting hate crimes; e.g., lack of trust in the police or the criminal justice system, or a belief that nothing will happen even if the incident is reported.
12. Thank the group for their work and summarize the key takeaways from the discussions.

## ADDITIONAL RESOURCES

- Consult the country pages of ODIHR's hate crime reporting website to see the official data and statistics reported by states and to see individual hate incidents reported to ODIHR by civil society: <https://hatecrime.osce.org/>.
- For further information consult the **hate crime** webpage of the EU Fundamental Rights Agency, whose surveys are conducted on a regular basis and provide data on the experiences of different groups related to discrimination, harassment, hate incidents and hate crimes.

## TRAINING MATERIALS — *Examples of community statements*

**NOTE ON CUSTOMIZATION:** *The following are examples of genuine statements collected by ODIHR during its multiple needs assessment visits for hate crime training courses held across the OSCE region. Ideally these statements should reflect the reality in the country of the training and should be researched and customized to the local context through cooperation with civil society organizations working with affected communities. Examples from other countries can also be included to demonstrate that hate incidents happen everywhere.*

### *Racist and xenophobic bias*

“Coming back from work, I found a sign near my home. It said, ‘No Blacks allowed’.”  
(Portugal)

“A group has been harassing a family. Every time they pass something happens. Three days ago, they came and were kicking the door ... today they broke the window and the door. At first, they threw bottles, and then they broke the glass with stones and threw the stones inside, and then they started kicking the door ... They wear black clothes and ... hoods and they do these things ... ” [A migrant’s woman home was attacked numerous times.] (Greece)

A woman experienced a man making faces at her on the underground train. She tried to move away from him, but he wouldn’t stop. After a while, she said he confronted her directly, saying, “Get out of here. Go back to China. I don’t want none of your swine flu here.” (United States)

A man of African origin was wearing traditional dress and was approached by a group of youths, who called him, “[Racist slur]” and told him to go back to his country. (Malta)

“[Anti-Arab slur], you take bread from our children’s mouths — we will exterminate all of you. [Anti-Arab slur], get out of this country or the night will swallow you up.” Each message included an image; the first of a gallows and the second, a bloodied knife, with the word ‘choose’. (Croatia)

## ***Bias against Roma and Sinti***

“When I was little, I was told that [anti-Roma slur] would come and take me away if I misbehaved.” (North Macedonia)

A man ran after four women of Roma origin, in a visibly aggressive manner, yelling, “I will \*\*\*\* you [anti-Roma slur]. Go back to where you came from, [misogynist slur]!” They hid in the store to avoid further verbal and physical attack (Romania)

A ‘joke’: Three men arrive at a hotel, but there is only one double room available. They are told that one of them has to stay in the stable. So, one man goes to the stable and comes back after a minute, saying that there is a cow in the stable and he cannot sleep there. Another man goes there and also comes back a minute later, saying that he cannot sleep there because there is a pig. So, the third man goes to the stable. A minute later the cow and the pig come to the room, saying that they cannot sleep in the stable with that [anti-Roma slur].

From a police press release about an incident: “The men verbally insulted the baby’s parents and attempted to remove the child from the pram. When the father opposed this, both men threatened him with physical harm. At the same time, the men were repeatedly giving the Nazi salute. The assailants insulted the father in racist terms, shouting at him, “[anti-Roma slur], do you want a punch in the face?” (Czech Republic)

## ***Anti-Semitic bias***

“While we spent our time trying to understand the crime, it was shameful to observe the criminal investigators, who passed the buck to their colleagues, claimed they weren’t responsible for such things, and refused to investigate anything beyond their narrowly prescribed remit. Obvious and clear associations with other attacks like Christchurch were diminished.” From a victim of the Halle synagogue attack. (Germany)

A young man was posting unlawful threats in respect of members of the Jewish community via instant messenger: “Your ancestors used to be burnt in ovens and processed into soap bars”, “You’ll be burned one day too, you Jewish [misogynist slur], just like your granny was”, “Hitler will \*\*\*\* you all”, etc. (Poland)

An 11-year-old boy was verbally abused by fellow pupils from his school and then physically assaulted. The children made statements such as “Burn all Jews” and “Hitler was the \*\*\*\*ing greatest”. The abuse continued over a number of months and culminated in a physical assault on the boy on the school’s playing field. (United Kingdom)

“My family left Morocco because of anti-Semitism, and it is worrying to see what is happening now in Montréal. This is horrible”, said a Jewish student, aged 21. She also said that there has been “an enormous number of threats” online against the community. To reduce the tension within the Jewish community, the local authorities deployed law enforcement officers in front of Jewish schools. “Levelling up the security is not what worries me; it is the rise in anti-Semitic threats that does”, said one of the mothers. “We are a community that wants to live in peace.” (Canada)

“I’m terrified to admit that I’m Jewish. I’ve stopped going to the Temple and celebrating Jewish holidays. When people ask me if I’m Jewish I go to any length to deny it. Every day is a constant struggle to hide my religion from the world ... I’ve lost my religion and my identity. All because one person said I deserve to burn like the rest of my kind. I’m burning on the inside. I hope they’re happy.” (United States)

A man received a call on his cell phone from an anonymous number. A stranger started shouting things at him, such as, “You’re a Jew, aren’t you? Cancer Jew!”, “Should I come and shoot you?”, “You’re a crook!” and “I hate Jews!”. (The Netherlands)

## *Bias against Muslims*

Two girls, both under the age of 16, were walking along a pathway. Both were wearing headscarves. A young woman confronted them with a verbal attack. They tried to walk away as racist slurs were hurled at them, but the woman persisted, and the attack escalated to physical violence. One girl was pushed, punched in the face, kicked in the stomach and had her hijab torn off. The second girl wasn't physically assaulted. (Romania)

A woman had her picture tweeted, with the accompanying text: "You burqa-wearing [misogynist slur]." (France)

A mosque was sent violent messages: "\*\*\*\* ISLAM! We will murder every [anti-Muslim slur!] We have a right to defend ourselves from the terrorists! \*\*\*\*ing Islam! The police will take our side. Islam will not defeat us. We have the guns to do a Christchurch all over again in our office. We have ... soldiers who have experience as snipers. \*\*\*\* ISLAM!" (United Kingdom)

A man talked about how his children had also been targeted by anti-Muslim abuse in schools. He noted, "Other pupils call them names like '[racist slur] get lost', swearing, 'go back home', 'you don't belong here', '[anti-Muslim slur]'. Other pupils have pulled their headscarves." (Austria)

In a shopping mall in Louhólar a woman shouted racist slurs at three Muslim women, chased them to a parking lot and shouted at them that they should take off their burqas and that they did not belong in Iceland. (Iceland)

In Banja Luka, in Bosnia and Herzegovina, unknown perpetrators broke windows, destroyed the wall and desecrated the Sefer-beg Mosque. The incident took place during Ramadan and distressed many Muslims living in the area. The mosque had been renovated in 2004 following destruction during the war. (Bosnia and Herzegovina)

When a Muslim woman got on a bus in Warsaw, a Polish woman left the bus, saying that the Muslim lady definitely had a bomb in her bag and that she did not want to get the same bus as a terrorist. Nobody in the bus intervened. (Poland)

A Muslim girl was bullied at school. A boy told her to take off her headscarf and started touching her. (Malta)

### ***Bias against Christians***

Two Jehovah's Witnesses were peacefully carrying out their Christian ministry in a town. After a friendly conversation with an interested lady, her son went after them and physically attacked them in front of an apartment building. One of the two, a woman, was beaten unconscious. (Bulgaria)

Six teenagers were throwing stones at the facade and windows of the building of a Lutheran church in Berlin. The group fled the scene crying "Allahu Akbar!" According to the police the building was damaged. It was not the first time this church had been subjected to such acts. The church was known to support refugees and ran multiple projects to assist them. (Germany)

Unknown perpetrators entered a church, opened a holy water container and removed several crosses from the wall onto the floor. In addition, dog waste was deposited on the altar carpet. (Germany)

## ***Bias against members of other religions or beliefs***

In February 2019, a member of the Sikh community was targeted by a man because of his long beard and turban. “A man came up to me as I was about to cross the road, took a lighter, flicked the lighter and said various expletives, and said I burn people like you”, he said. “He then pointed to my beard and came about a metre closer, flicked the lighter again. I couldn’t believe it.” (United Kingdom)

A woman climbed onto a stupa (dome-shaped Buddhist monument) and destroyed it with a sledgehammer. A witness tried to convince her to get down and stop the act of vandalism, but she continued to destroy the Buddhist monument, saying that she “did not respect Satan”. After that, she tried to break the stupa fence and spat on the torn ribbons. (Russian Federation)

According to a 2009 Sikh Coalition report, 41 per cent of Sikhs surveyed in New York City had been called derogatory names, such as ‘Osama bin Laden’ or ‘terrorist’. According to the same report, nine per cent of Sikh adults have been physically assaulted since 9/11 because of their religious identity. (United States)

A Hindu priest, wearing religious clothes, was walking down the street near his temple when a man came up behind him and started beating him. The priest suffered injuries all over his face and body and was taken to the hospital. People who attend the temple heard the attacker screaming, “This is my neighbourhood” during the incident.” (United States)

## ***Bias based on sex or gender***

The Editor-in-Chief and TV-programme producer where I was an editor often used sexist character expressions, such as ‘Be quiet woman’ or ‘All women are fools’ and refused to invite women onto the programme. (Poland)

A young Ukrainian woman carrying flowers was stopped by the driver of a passing car and asked where she had bought them. When the woman replied that she could not explain exactly because she was not from that country and the driver made sure that the woman was from Ukraine, he told her, “Get in the car.” When she didn’t know what to answer, he made an offensive gesture to explain what he meant. He told her, “You’re gonna have sex with me!” His friends, who were also in the car, burst out laughing. The woman reported the case to the police. The man initially pleaded guilty and apologized, although reluctantly. Two days later he denied everything and claimed that the woman had made everything up. (Czech Republic)

A woman was walking home when one of three men she passed exclaimed, “Look at that [misogynist slur] in a skirt.” Then, two of them held her while the third hit her in the face, leaving her with a black eye. The men then fled. (France)

“When it comes to women of foreign origin, Icelandic men see themselves as above these women. Prejudice against women of foreign origin is based on them not being Icelandic; they don’t have as much respect for those women. These are women who don’t have as many connections in Icelandic society, don’t know as many people, that no one will believe them because they’re not Icelandic. All this. Add to this being young. There’s this outlook among young women that no one will believe you, you won’t dare to talk about what happened to you, and if you do, no one will believe you. It’s as if you don’t matter as much.” Foreign-born woman. (Iceland)

A young woman was attacked on the street. When the police arrived, they commented, “It’s the woman’s fault that she was attacked. She was wearing a short skirt.”. (Montenegro)

“I worked for a company and the salary was too low to be able to cover basic living needs, so I decided to resign. I informed the manager of the company who told me, ‘Instead of spending time looking for a better paid job you should try to find a rich man who marries you and all your troubles will finish!’” (Albania)

## *Bias against people with disabilities*

While crossing at a pedestrian crossing, some young people shouted at him, “Here comes the [disablist slur].” (Ireland)

“My neighbour was abusive and called me and my family benefit scroungers because of our child with disabilities. The insults got worse and worse in front of our children.” (United Kingdom)

“... at about 12 noon he was there with his friend, who is in the seventh grade, and an older boy from the seventh grade of the same school arrived together with two men, unknown to him, who were playing with a ball. A person who is disabled and has had problems from birth and who lives in a block of flats in the street was playing between the buildings. At one point, the older boy lit a cigarette, approached the disabled person and burned his right hand several times, after which they all ran away because he started to shout.” (Croatia)

“A few years ago, whilst out shopping with a friend, a complete stranger approached me in my wheelchair, invaded my personal space and told me I’m ‘like this’ because I don’t believe in God.” (United Kingdom)

# MODULE 3

# THE HATE CRIME

# CONCEPT



# MODULE 3

## THE HATE CRIME CONCEPT

### SUMMARY

This module introduces a common framework and definition for hate crime and how this will be applied throughout the training. The trainers will also explain how hate crimes are different from criminalized 'hate speech', discrimination and non-criminal hate incidents, as well as why effective hate crime prosecutions are important.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Define and explain the concept of hate crimes;
- Explain the key differences between hate crime and related concepts such as hate incidents, criminalized 'hate speech' and discrimination; and
- Describe what makes hate crime different to other crimes, what this means for the role of the prosecutor and why it is important for the criminal justice system to respond appropriately.

### OUTLINE

| Time                     | Activity  | Key Points   |
|--------------------------|---|--|
| 40 minutes               | Activity 3.1<br><i>Defining hate crime</i>              | Trainers introduce a common framework and definition for hate crime.   |
| 20 minutes               | Activity 3.2<br><i>What makes hate crime different?</i> | Participants discuss what makes hate crime different to other crimes, what this means for the role of the prosecutor and why it is important for the criminal justice system to respond appropriately. |
| <b>Total: 60 minutes</b> |   |  |

## MATERIALS CHECKLIST

- Flipchart sheet: 'Hate Crime Definition'
- Flipchart sheet: 'Hate Speech' with three circles that mirror Slide 5 from Annexe I.
- 3-4 markers
- Video: Statements of victims of hate crimes. Full running time: 03:45 minutes.
- Annexe I: Hate Crime Concept — slides
- Handout 1: Hate Crime Definition and Related Concepts
- Handout 2: Conceptual Issues at the Intersection of Hate Crime and 'Incitement Speech'
- Laptop connected to the Internet, projector/ screen/speakers for displaying the slides/video

## ACTIVITY 3.1 — *Defining hate crime*

**PURPOSE:** To become familiar with the concept of hate crime and to understand the difference between hate crimes and similar concepts, such as discrimination, hate-motivated incident and 'hate speech'.

**TIME:** 40 minutes

### INSTRUCTIONS:

1. Ask participants to pair up (with someone they sit close to) and discuss, for 2-3 minutes, how they would define hate crime and what the central elements of this concept are.
2. Invite them to share their definitions of hate crime. Keep track of the key components of the definition by recording them on the 'Hate Crime Definition' flipchart sheet. For the sake of time, ask the groups not to repeat elements, just add new elements not yet mentioned. The feedback will likely fall into three categories (see below), and it may be useful to organize the elements into these three categories (see the diagram below).
  - I. **Core definition of hate crime:** Participants will likely mention concepts that fall under the core definition: criminal acts committed with a bias motive based on the targets' protected characteristic(s).

II. **Identifying bias motives:** These are usually questions, concerns and more specific issues that are raised by the participants that should be reserved for exploring more specific aspects of hate crime through national legislation. Participants may mention what types of groups should be covered; whether the person has to be an actual member of the group, or whether the perpetrator only needs to perceive the target as belonging to a particular group; whether 'hatred' is required; and whether other motives, such as economic motives or greed, can play a part in hate crime.

III. **Related concepts outside the hate crime definition:** participants may mention concepts and ideas that fall outside the hate crime definition. While many states may have laws that criminalize discrimination and/or speech that incites hatred, violence or discrimination, or speech that defames or insults a group (also commonly referred to as 'hate speech'), those are separate concepts from hate crime.

**Note:** It is important to record participant's statements on Category III issues, to ensure that these are covered when it is discussed, later, why they fall outside the scope of the training materials. Keep in mind that they will be discussed in detail in Module 7, which deals with the conceptual issues of prosecuting hate crime at the intersection of hate crime and criminalized 'hate speech'.



### I. Core Definition

- Motives based on bias and prejudice
- Criminal acts targeting people or property
- Based on the protected characteristics of the target (e.g., 'race', religion, sexual orientation, etc.)

### II. Identifying Bias Motivation

- Types of groups affected
- Targets associated with a group
- Targets perceived to be part of a group
- Does it require hate or bias?
- Can there be more than one motive?

### III. Related Concepts Outside the Hate Crime Definition

- Acts of discrimination
- 'Hate speech'
- Incidents that are not crimes

3. Show Slide 1 (Annexe I) and explain that according to the OSCE definition hate crimes are criminal offences committed with a bias motivation. A hate crime has taken place when a perpetrator has intentionally targeted an individual or property because of one or more identity traits, such as 'race'<sup>7</sup>, language, religion or belief, ethnicity, nationality, sex, gender, sexual orientation, gender identity, disability or other common feature that is fundamental to identity.
4. Explain that hate crimes are always comprised of **two elements**: a criminal offence and a bias motive. The **first element** is the criminal offence: the act must be an offence under ordinary criminal law. Due to variations in legal provisions from country to country, there is some divergence in the kind of conduct that amounts to a crime. However, in general, most countries criminalize the same type of violent acts. Almost any crime contained in a criminal code can be a hate crime. Go on to explain that **the second element is the bias motive**: the criminal act must be committed with a particular motive, a 'bias'. The motive manifests itself either in the **selection of the target** or in **hostility expressed** during the crime.
5. Show Slide 2 and explain that, in order to qualify as such, hate crimes need to **target** one or more members of, or the people or property associated with, a group that shares a common characteristic. These are referred to as **protected characteristics**. Explain that a protected characteristic is a fundamental or core characteristic shared by a group, such as 'race', ethnicity, language, religion, nationality, sexual orientation, gender identity, disability or another characteristic.
6. Underline that the target of a hate crime can be a **person, people or property associated** with a group that shares a protected characteristic. Usually, minority or more vulnerable groups are targeted by hate crimes, but anybody can be the victim of a hate crime. When qualifying hate crime, the key concern is the possible **bias motive of the perpetrator** to commit such a crime, and not the identity of the victim. Therefore, if a perpetrator **wrongly perceives** the target as belonging to a group with a protected characteristic, the crime still qualifies as a hate crime. The identity of the victim also does not matter in cases of hate crime **by association**. Property associated with different groups, e.g., a place of worship, community centres, schools, can also be the targets of a hate crime.
7. Further note that some hate crimes might be driven by prejudice against intersecting aspects of a person's identity, i.e., **intersectional hate crimes**, recognizing that personal characteristics do not exist in isolation, and that individuals are often targeted because of how these traits combine and interact in their social context. At times, victims of intersectional hate

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<sup>7</sup> The use of the term 'race' in this guide shall not imply endorsement by OSCE/ODIHR of any theory based on the existence of different races. It is a term widely used in international human rights standards, as well as in national legislation. This guide uses the term to ensure that people who are misperceived as belonging to another 'race' are protected against hate crimes.

crimes feel misunderstood, because institutions often fail to recognize the full scope of the intersecting biases.

8. Explain the last point on this slide: that hate crimes, as other types of crimes, may have **mixed motives**. This often happens where there is an economic element to the crime in addition to the bias motivation. Prosecutors need to be vigilant, and look for a possible bias motivation even where it is not immediately evident and other motives are present.
9. Show **Slide 3** and explain that, taken literally, the phrases 'hate crimes' or 'hate motive' can be misleading. 'Hate' is a very specific and intense emotional state, which may not properly describe most hate crimes. In many hate crime cases, the perpetrator neither feels 'hate' towards their target nor is driven by their experience with the victim. Rather, the perpetrator **is motivated by their stereotypes, preconceived ideas or intolerance towards a particular group of people** and the protected characteristic(s) they share. Hate crimes can be committed for a number of reasons:
  - The perpetrator may act out of resentment, jealousy, peer pressure or to seek a thrill;
  - The perpetrator may have no feelings about the individual target of the crime, but may have hostile thoughts or feelings about the group to which the target belongs;
  - The perpetrator may feel hostility to all people who are outside the group with which they themselves identify;
  - At an even more abstract level, the target may simply represent an idea or principle — such as immigration, multiculturalism or diversity, or gender equality — to which the perpetrator is hostile; or
  - A combination of the above.
10. Highlight that this point (the perpetrator is motivated by their stereotypes, preconceived ideas or intolerance towards a particular group of people) is important for a prosecutor to bear in mind when gathering evidence of a bias motive. Independently of the approach taken by the national provisions or law to the matter of bias motive, (i.e., either the hostility model<sup>8</sup> or the discriminatory selection model<sup>9</sup>) in practice, these legislative approaches mostly require similar types of evidence. This is because **bias and prejudice, and not the feeling of 'hate', are the drivers of hate crimes regardless of the model of legislation used**. Note that this point will be discussed further in Module 6.
11. Move on to **Slide 4** to discuss the **difference between hate crimes and other forms of intolerance**, such as discrimination and hate-motivated incidents. Note that, while connected, these are different manifestations of prejudice and require different responses.

8 The hostility model requires proof of 'hate' or hostility by the offender.

9 The discriminatory selection model requires only that the offender targets and individual because of their actual or presumed connection with a particular group.

**Note:** For more information on a spectrum of behaviours motivated by bias, check out the *Pyramid of Hate*.<sup>10</sup>

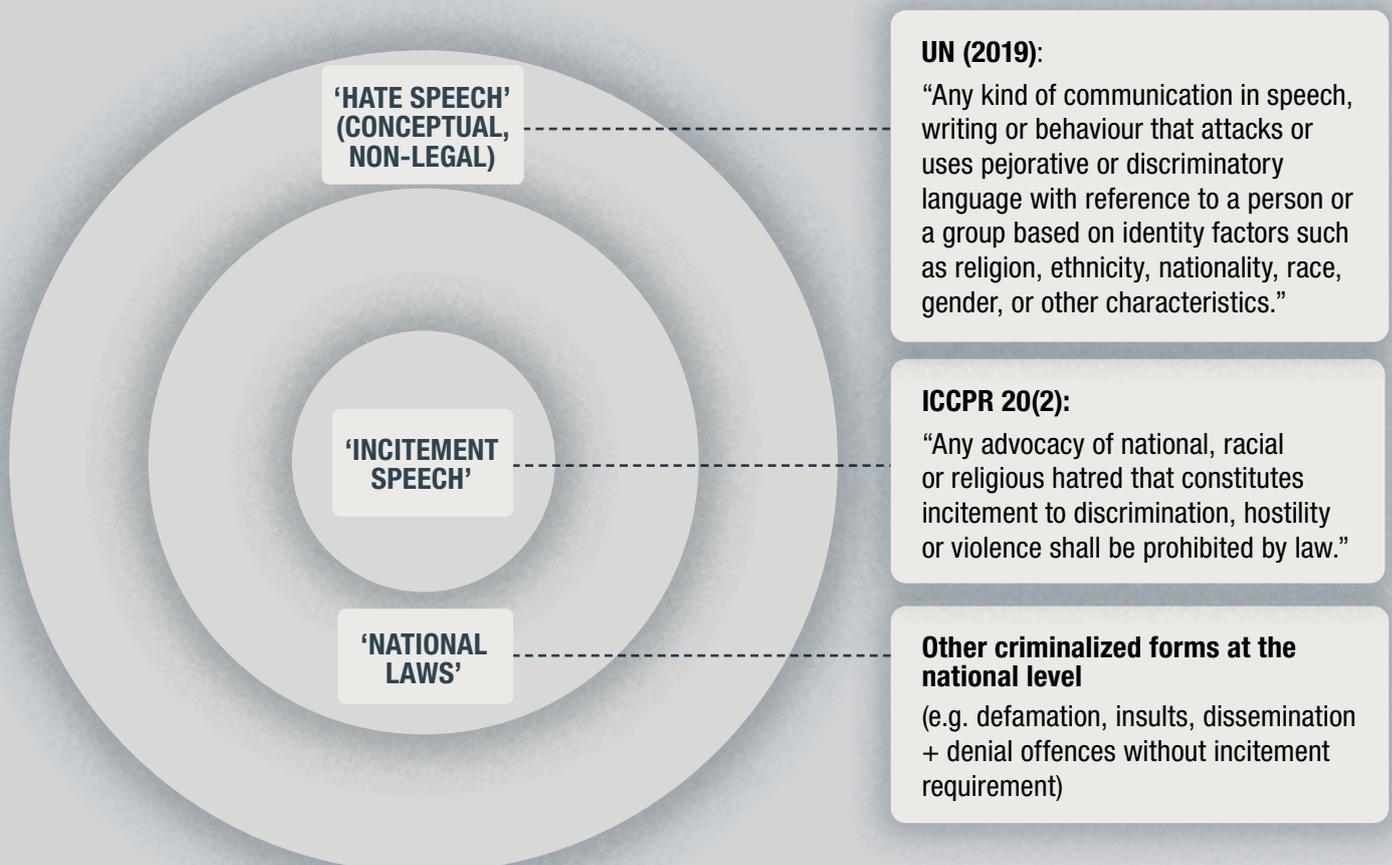
12. Explain that **discrimination** refers to the less favourable treatment of individuals, in areas such as education, employment and access to goods and services, on the basis of group characteristics such as ‘race’, religion or ethnicity. Discrimination is most frequently regulated under civil law, and, even if criminal penalties are envisioned, these acts (such as exclusion from businesses, termination of employment, etc.) are typically NOT criminal offences unless they have a discriminatory element. Additionally, discrimination law is subject to different, and very detailed, legal principles and jurisprudence. Acts of discrimination are part of a spectrum of behaviours that can lead to hate crimes.
13. Go on to explain that **hate-motivated incidents** are acts that involve prejudice and bias, but do not amount to a crime. The term describes acts motivated by bias or prejudice that does not rise to the level of a criminal offence but can still hurt individuals and communities. Thus, they share the second element of a hate crime, but not the first. Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany or provide the context for hate crimes. These incidents can be precursors to more serious crimes.
14. Go on to note that, in contrast to hate crimes, acts of **terrorism** are characterized by the strategic or politically motivated use of violence or threats against civilians or broader groups to instil fear and influence public policy or political outcomes.
15. Then discuss how acts of **genocide** differ from hate crime. While both are rooted in prejudice and bias, genocide, in contrast to hate crime, is committed *with the specific intent* to destroy, in whole or in part, a protected group (racial, ethnic, religious, or national) — in other words, to eradicate the group. While hate crimes are prosecuted under domestic criminal law, genocide is recognized as a crime under international law, carrying obligations for prevention and punishment under treaties such as the 1948 Genocide Convention.<sup>11</sup>
16. Conclude the slide by noting that hate crimes and **domestic violence** can intersect when acts of violence within intimate or family relationships are motivated by bias against a person’s identity, such as their gender, sexual orientation, ethnicity, religion or disability. In such intersections, victims face compounded harm — as domestic abuse and identity-based violence reinforce each other inside the private sphere, where institutional visibility is often low and support systems may not recognize a hate motivation.

<sup>10</sup> [Pyramid of Hate, Facing Facts](#), 9 January 2024.

<sup>11</sup> [Convention on the Prevention and Punishment of the Crime of Genocide](#), UN GA resolution 260 A (III) of 9 December 1948.

17. Show **Slide 5** and explain that another related concept that needs to be differentiated from hate crime is 'hate speech'. While both hate crime and 'hate speech' violate the dignity of their targets and create a hostile and degrading environment for marginalized groups, the distinction between them is important from the prosecution point of view in order to select the correct qualification for the correct offence. Note that this distinction will be addressed in detail in Modules 7 and 8, which cover prosecuting hate crime at the intersection of hate crime and criminalized 'hate speech'. For now, we will focus only on the key conceptual differences.

## NO UNIVERSALLY AGREED LEGAL DEFINITION



18. Note that when explaining the differences between hate crime and ‘hate speech’, there are several points to consider. First, there is **no universally agreed** legal definition of ‘hate speech’. Focus on the outer circle of the image and explain that the **UN Strategy and Plan of Action on Hate Speech**<sup>12</sup>(2019) defines it as “Any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group based on identity factors such as religion, ethnicity, nationality, race, gender, or other characteristics.” The **Council of Europe Recommendation on Hate Speech**<sup>13</sup> (2022) provides further guidance on addressing its impact. *Reiterate* that this is more a conceptual description of ‘hate speech’, not a legal definition.
19. Mention that the key **difference** between hate crime and ‘hate speech’ is that **hate crime involves a criminal act**, while ‘hate speech’ **can include lawful, offensive or inciteful expressions**. Note that both **harm marginalized communities**, fueling discrimination and division.
20. Now move to the inner circle and explain that the **International Covenant on Civil and Political Rights (ICCPR)**<sup>14</sup> (Article 20.2, “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”) is the form of ‘hate speech’ that is universally criminalized. It is also known as ‘incitement speech’.
21. Now move to the middle circle, ‘national laws’, and explain that a broad range of ‘hate speech’ may be criminalized at the national level, such as defamation, insults and offences of disseminating hate materials, which do not include the threshold of ‘incitement’ as part of the offence. Explain that these points will be returned to as needed throughout the training.
22. It is likely that participants will want to discuss these points, and possibly national law in particular. Go to the flipchart named ‘Hate speech’ you prepared in advance and capture questions and comments in the relevant section of the graph (inner, middle and/or outer circles). Explain that you will return to these points during [Module 6 — Hate Crime Legislation — Applying Local Laws](#), and [Module 7 — Prosecuting Hate Crime at the Intersection of Hate Crime and Criminalized ‘Hate Speech’— Conceptual Considerations](#).
23. Present [Slide 6](#) and note that the graphic shows the important **differences between hate crime offences and incitement to violence or hatred offences, or ‘incitement speech’**, from the practitioner’s perspective.
24. Mention that, usually, the starting point for a hate crime is that it has been established, subject to a full investigation and evidence gathering, that **a basic criminal offence has been committed**, such as a threat, assault, murder or damage to property. The key

12 [The UN Strategy and Plan of Action on Hate Speech](#), United Nations, 18 June 2019.

13 [Council of Europe: Recommendation CM/Rec\(2022\)16 of the Committee of Ministers to member States on combating hate speech](#),

14 [International Covenant on Civil and Political Rights](#), United Nations, 16 December 1966.

**technical question** — and challenge — is proving that the offence was motivated by bias. The usual starting point for ‘incitement speech’ offences is that the **presence of bias or hate towards a protected characteristic is clear from the content of the expression**. The technical question for prosecutors is whether there has been a crime; in other words, whether the hateful expression goes beyond freedom of expression protections — a cornerstone of democratic societies — and passes the criminal threshold.

25. Note the difference in target between a hate crime and ‘incitement speech’:
  - **Hate crime has a specific target:** It targets specific people or the property of/associated with a particular community/individual belonging to a particular community (the harm caused can be wider).
  - **‘Incitement speech’ is public in nature:** Its aim is to mobilize/incite others to hatred or violence against a specific group / person based on a protected characteristic.
26. Highlight the difference in prosecutorial approaches:
  - In hate crime cases, prosecutors need to **prove the elements of the base offence** (e.g., assault, theft, threat, etc.).
  - In ‘incitement speech’ cases, prosecutors need to **prove the reasonable probability that the speech or expression would succeed in inciting violence or hatred even if the act(s) itself is/are never committed**.
27. Lastly note that one reason why there can be **confusion for prosecutors** about whether to treat an incident as a criminalized ‘hate speech’ offence or a hate crime offence is **where the speech or expression itself is in fact evidence of a bias or discriminatory motive**. For example, where a perpetrator utters racial slurs before, during or after physically attacking a victim. Note that this point is explored later in case studies.
28. Give participants Handout 1 and Handout 2 for further reading (ask them not to start reading now) and ask them for any questions about the different concepts. From Handout 2, flag **Figure 1: Conceptual differences between hate crime and criminalized ‘hate speech’**. Remind them again that you will be looking at this topic in greater detail in Modules 7 and 9, which deal with prosecuting hate crime at the intersection of hate crime and criminalized ‘hate speech’.

## ACTIVITY 3.2 — *What makes hate crime different?*

**PURPOSE:** This activity summarizes why hate crimes are different from other crimes and what this means for the prosecution.

**TIME:** 20 minutes

### INSTRUCTIONS:

1. Explain that some aspects of hate crimes may not differ dramatically from other crimes. However, hate crimes differ in several important ways from most other crimes, and their cumulative impact can be far greater.
2. Ask participants to suggest some ways in which hate crimes differ from other crimes. Write the answers on the flip chart and then organize a discussion around the answers. Ensure you note down all answers, as they will all be based on experiences, and may even go beyond what you have in the summary points below.
3. Show the ODIHR **Video: Statements of Victims of Hate Crimes**. Running time: 3:45 minutes. Before you start, give the following background.
  - The group will hear testimonies of members of communities who were victims of hate crime.
  - The speakers include:
    - o **Kateřina Gamal Richterová**, Social Media Content Manager, HateFree Culture Project, Prague, Czech Republic. Kateřina was the victim of a hate crime and high levels of online hate directed against her personally. In the video interviews she talks about her experiences and what went wrong in the criminal justice process and how it could be improved.
    - o **Sarian Jarosz**, Researcher on LGBTI rights and migration, Warsaw, Poland. Sarian was the victim of an anti-LGBTI hate crime in 2019 and, during the video interviews, he talks about his experience of reporting the incident to police and well as his wider experiences of discrimination and harassment and the effect this has had on his life.
    - o **Fatmir Memedov**, Security Project Manager, Trier, Germany (former non-commissioned officer in North Macedonian army). In videos, Fatmir discusses his experiences as the victim of a hate crime committed by law enforcement in North Macedonia in 2013, and the longer-term effect of the hate crime on himself and his family.
    - o **Dr. Klára Kalibová**, Founder, Director and Attorney at In IUSTITIA, Prague, Czech Republic. Klára founded In IUSTITIA, a dedicated counselling centre for people affected by hate crime in the Czech Republic, in 2009. Klára has also personally been the victim of a gender-based hate crime and in the videos, as well as talking about responses to hate crime in general, she also shares her personal experience of dealing with a hate crime and her experiences of the criminal justice process.

4. At the end of the video, ask participants how the different people in the video feel, with the aim of eliciting the following points:
- Individual hate crimes can have a deeply destructive impact on individual victims. Hate crimes undermine the sense of security and safety for victims and their family and friends.
  - Hate crimes can threaten community stability. Hate crimes are often directed at particular ethnic, national or religious groups. When the frequency of these crimes increases, communities can split apart and retaliatory violence may result.
  - Hate crimes continue and escalate if not stopped. Hate crimes are usually part of a pattern of escalating behaviour, beginning with non-criminal acts of bias that, if not confronted, end with hate crimes.
  - Hate crimes are one of the few crimes in which the perpetrator's motivation is a critical part of the offence. In an ordinary assault, the police and prosecutors do not need to establish in court the attacker's motivation. With hate crimes, however, the perpetrator's bias motivation is a critical part of the investigation. Determining whether the evidence establishes that the perpetrator acted because of bias is the most significant difference between investigating hate crimes and most other crimes.

Now show **Slide 7** which summarizes the points above.

5. Ask participants how they would define a 'hate crime prosecution' and what they think are the key elements of a 'hate crime prosecution'. You are aiming to illicit the following points:
- a. The prosecutor needs to seek an appropriate sentence for the increased impact of the crime;
  - b. The prosecutor needs to supervise (or lead) the investigation to collect evidence of bias;
  - c. The prosecutor needs to present evidence of the defendant's bias motive and argue it in the court;
  - d. The prosecutor needs to give the victim(s) the opportunity to have their experiences as victims of bias recognized by the criminal court; and
  - e. The prosecutor needs to seek to accommodate the hate crime victim's specific needs.

Now show **Slide 8**.

Note that local applicable legislation will be discussed in more detail later on, but, no matter what legal framework a country has, there can always be a hate crime prosecution.

6. Ask why it is important to have appropriate responses to hate crimes from the criminal justice system. You are aiming to illicit the following points:
  - a. Contributes to the deterrent effect that criminal punishment has on the offender and potential offenders;
  - b. Sends a message to victims, communities and societies that violent manifestations of intolerance will be actively pursued by the criminal justice system;
  - c. Helps prevent retaliatory crimes; and
  - d. Meets the state's international obligations and commitments to effectively investigate and prosecute hate crimes.

Now show Slide 9 with the points above.

7. Thank the group for their work and summarize the key takeaways from the discussions.

### **ADDITIONAL RESOURCES**

- *Hate Crime Factsheets*
- *Pyramid of Hate, Facing Facts, 9 January 2024.*

## ***Answering difficult questions related to this module***

**Question 1:**      **Hate crimes are not a problem in our community. Why do we need this training?**

**Response:**      Hate crimes can occur in any community, suburban or rural, large or small. The lack of reported hate crimes or hate incidents often means that people are not reporting incidents, not that those incidents never occur. Moreover, even if your community has not experienced a reported hate crime, it is highly likely that some individuals engage in the use of degrading language and slurs based on 'race', religion, gender or sexual orientation. A community culture in which the use of slurs becomes commonplace and accepted can soon become an environment in which slurs can escalate to harassment, harassment to threats and threats to physical violence.

**Question 2:**      **Is political affiliation a protected characteristic?**

**Response:**      While some participating States have expanded their national legislation to include political opinion or affiliation as a basis for enhanced penalties, ODIHR notes that including political views as a protected ground carries some risks. Main among these is the potential misuse of hate crime legislation to suppress legitimate political dissent or protest, especially in contexts where governments may use criminal law to stifle opposition. There is also concern that politicizing hate crime protections could undermine the core purpose of such laws, which is to protect individuals and groups who face structural discrimination or violence based on inherent identity traits. It is therefore important to use caution and emphasize the need for clear legal definitions, safeguards against misuse, and alignment with human rights standards when considering political affiliation as a possible protected characteristic.

**Question 3:**

**How are hate crimes and terrorism connected?**

**Response:**

Both hate crimes and acts of terrorism are often motivated by bias, prejudice, or extremist ideologies. Hate crimes are typically committed against individuals or groups based on protected characteristics (e.g., 'race', religion, ethnicity, sexual orientation), while terrorism is often driven by broader political or ideological goals. However, both involve targeting individuals as symbolic representatives of a group. Both hate crimes and terrorism have a disproportionate psychological and social impact on targeted communities. While not all hate crimes are terrorist acts, some acts of terrorism also qualify as hate crimes when they are committed with bias motivation. Effective criminal law responses — tailored to the specific nature of each phenomenon — are essential.

**Question 4:**

**Are rape and other forms of sexual assault against girls and women considered a hate crime?**

**Response:**

Rape, domestic violence, and other forms of sexual assault can be prosecuted as a hate crime if gender is included in the hate crime laws and if evidence can be obtained demonstrating that the assault was motivated by bias against a victim because of their gender. If a victim is raped because of their ethnicity, religion or other characteristic, this would also constitute a hate crime.



# MODULE 4

# INTERNATIONAL

# AND REGIONAL

# STANDARDS



# MODULE 4

## INTERNATIONAL AND REGIONAL STANDARDS

### SUMMARY

This module introduces international and regional sources on the concept of hate crime and discusses the international and regional obligations to investigate and sanction hate crime.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Describe the international and regional sources of the concept of hate crime;
- Specify the obligations and commitments to investigate and punish hate crime; and
- Understand what these obligations mean for them in practice.

### OUTLINE

| Time                     | Activity  | Key Points   |
|--------------------------|---|--|
| 15 minutes               | Activity 4.1<br><i>International and regional framework</i>                             | Trainers introduce the international and regional framework for addressing hate crime as well as the obligations and commitments to investigate and punish hate crime. |
| 30 minutes               | Activity 4.2<br><i>Discussing the ECtHR cases and duties deriving from the case law</i> | Trainers and participants discuss the case law of the ECtHR, the duties derived from that case law, and what this means for prosecutors in practice.                   |
| <b>Total: 45 minutes</b> |   |  |

## MATERIALS CHECKLIST

- Annexe II: International and Regional Standards — slides
- Handout 3: International and Regional Framework and Tools
- Handout 4: European Court of Human Rights Case Law on Hate Crime
- Laptop connected to the Internet, projector/screen/speakers for displaying the slides

## ACTIVITY 4.1 — *International and regional framework*

**TIME:** 15 minutes

### INSTRUCTIONS:

**Note:** Before delivering this module, check the relevance of regional treaties and standards to the country of implementation. In particular, bear in mind the applicability of the Council of Europe's and European Union's instruments and tools. This part is a mini lecture with a slide show. Ensure time is allowed for questions to help clarify any points.

1. Ask participants which international and regional bodies are relevant in their jurisdiction.
2. Ask whether cases and instruments of the United Nations human rights mechanisms and/or the instruments of the European Court of Human Rights are binding domestically, directly or indirectly. Use this discussion to frame an overview of international framework and ECtHR cases.
3. Establish that the concept of hate crimes is rooted in internationally recognized principles of equality and non-discrimination.
4. Present Slide 1 (Annexe II) and outline the source of the equality and non-discrimination principles:
  - a. Universal Declaration of Human Rights, Article 2 (UDHR)<sup>15</sup>
  - b. International Covenant on Civil and Political Rights (ICCPR)<sup>16</sup>
  - c. European Convention of Human Rights (ECHR)<sup>17</sup>

<sup>15</sup> Universal Declaration of Human Rights, United Nations, 10 December 1948.

<sup>16</sup> ICCPR.

<sup>17</sup> European Convention on Human Rights, Council of Europe, 3 September 1953.

5. Emphasize that the **hate crime concept is grounded in discrimination law** and is not about ‘special rights’ for ‘special groups’, but about ensuring access to justice. Note that hate crime victims often come from marginalized groups in society, who are more often policed by the authorities as criminal rather than as victims. Therefore, they may have less equality before the law, lack equal protection under the law and are victims of discrimination. This is because they are not recognized as possible victims of crimes simply because of their group membership. Even if the police are not directly biased in a particular case, the victims may fear even to report a crime to the police because of prior bad experiences and discrimination.
6. **International and regional standards on discrimination outline the positive obligation on the state to take proactive measures at eliminating discrimination.** Using the hate crime concept to help proactively identify victims of, for example, racist, anti-religious, homophobic and other bias-motivated violence can be an important tool for both eliminating discrimination by authorities and reduction of violent acts motivated by bias and prejudice committed by private individuals.
7. Move to Slide 2 and outline the more **specific obligations and standards in relation to hate crimes**. In particular, mention Article 4 (a) of the **UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**,<sup>18</sup> which requires states to make an offence of “all acts of violence or incitement to such acts against any race or group of persons of any colour or ethnic origin”.
8. Highlight other sources of standards and commitments in the field of hate crime. These are **OSCE commitments on hate crime**, i.e., the political commitments made by all OSCE participating States. The most important is **Ministerial Council Decision No. 9/09**<sup>19</sup> on combating hate crimes, in which states have committed to a wide range of measures that ensure a comprehensive institutional response to hate crime. This includes commitments to:
  - Collect and make public data on hate crimes;
  - Enact specific, tailored legislation to combat hate crimes;
  - Take appropriate measures to encourage victims to report hate crimes;
  - Develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes;
  - Promptly investigate hate crimes; and
  - Ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the authorities.

18 [International Convention on the Elimination of All Forms of Racial Discrimination](#), (ICERD), UNGA resolution 2106 (XX) 21 December 1965.

19 [MC Decision No. 9/09 on combating hate crimes](#), OSCE Ministerial Council, Athens, 1-2 December 2009.

9. Note also the **Council of Europe Committee of Ministers' Recommendation on combating hate crime (2024)**,<sup>20</sup> the *most recent* international document, which outlines necessary measures Member States should take to prevent and combat hate crime and support victims, in cooperation with civil society and other stakeholders.
10. Show **Slide 3** and explain the relevant tools at the **European Union** level. In particular, mention the **EU's 2008 Council Framework Decision**,<sup>21</sup> which requires Member States to "... take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, .... may be taken into consideration by the courts in the determination of the penalties."
11. Continue to highlight the EU's **Victims' Rights Directive**<sup>22</sup> (Directive 2012/29/EU), which recognizes hate crime victims as a **particularly vulnerable category of victims with specific protection needs**. To accommodate these needs, the Victims' Rights Directive envisages individual assessment of a hate crime victim's support and protection needs due to their vulnerability to secondary and repeat victimization, to intimidation and to retaliation. Further, in addition to the rights available to all victims of crime (such as rights in relation to provision of information and support, right to protection during criminal investigations, participation rights, etc.) hate crime victims should have access to additional protection measures during criminal proceedings.
12. Give them **Handout 3**.

20 Council of Europe, Committee of Ministers' Recommendation on combating hate crime, CM/Rec(2024)4, 7 May 2024.

21 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, European Union, 28 November 2008.

22 Directive 2012/29/EU, European Parliament and Council of Europe, 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime.

## ACTIVITY 4.2 – ECtHR cases and duties deriving from case law

TIME: 30 minutes

### INSTRUCTIONS:

1. Explain that this activity will review the jurisprudence of the European Court of Human Rights (ECtHR) because, by interpreting substantive and procedural aspects of the European Convention on Human Rights (ECHR), the ECtHR highlighted a number of hate crime-specific duties and operational points that national authorities, police and criminal justice professionals have to follow to fulfil their obligations under the ECHR.
2. First is the duty to conduct prompt and effective investigation into bias-motivated crimes, including a duty to investigate and uncover a possible bias motivation.
3. Present Slide 4 (and continuation slide) and outline the *Nachova v. Bulgaria*<sup>23</sup> case and the ECtHR's reasoning in this case:
  - In 2005, the ECtHR considered the *Nachova v. Bulgaria* case, in which the Bulgarian military police, during an arrest attempt, shot dead two Bulgarian nationals of Roma origin; conscripts who had recently absconded from a military construction force and were known to be unarmed.
  - The ECtHR noted that **Article 2 (right to life) implies a positive duty of authorities to conduct an effective official investigation into crimes which interfere with the right to life**. This requires the authorities to act on their own initiative, once the matter has come to their attention, to ensure the people responsible for and conducting the investigation are independent and impartial, and to base the investigation's conclusions on thorough, objective and impartial analysis of all relevant elements. The investigation must also be effective, in the sense that it is capable of leading to a determination of whether the force used was justified or not in the circumstances and to the identification and punishment of those responsible. **Failure to conduct an effective investigation amounts to violation of Article 2, which was found in this case due to the numerous flaws in the investigation.**
  - Then, in this case, the ECtHR took a new approach linking a **possible violation of Article 14 to a procedural aspect of Article 2** for the first time.
  - Hence, from a procedural aspect, the ECtHR stated that Article 14 also implies a **procedural duty to adequately in-**

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<sup>23</sup> *Nachova and others v. Bulgaria*, European Court of Human Rights, Application nos. 43577/98 and 43579/98, 6 July 2005.

**investigate possible racist motives.** In particular, “the state authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so, and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones, would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.” The ECtHR specified that whenever there are facts of the case pointing to a possible role of racial overtones in the events, it must be verified and, if confirmed, a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives. In this case, the authorities disposed of plausible information sufficient to alert them to the need to carry out an initial verification into possible racist overtones in the events leading to the death of the two men, i.e., **the statement of a neighbour of the victims, who said that, immediately after the shooting, the police officer had shouted “[anti-Roma slur]”** while pointing a gun at him. That statement, observed **against the background of the numerous published accounts of the existence of prejudice and hostility against Roma in Bulgaria,** called for verification. However, the Bulgarian authorities had done nothing to verify the neighbour’s statement nor the reasons it had been considered necessary to use such a degree of force. This was sufficient for the ECtHR to conclude that the **authorities failed in their procedural duty under Article 14 taken in conjunction with Article 2.**

4. Move on to Slide 5 and outline other key duties deriving from the case law of the ECtHR. Note that the development of the ECtHR’s jurisprudence demonstrated that the scope of this **procedural duty applies to crimes with various types of discriminatory biases**, such as racial and ethnic origin, political, religious, sexual orientation, gender identity, disability and potentially other protected grounds. Further, the Court has specifically highlighted that **this duty applies to both offences committed by state actors and offences committed by private individuals.**
5. Then note that state’s duty to unmask possible discriminatory motivations requires the authorities to look at all the facts of the case pointing to the possible role of discriminatory overtones in the events. In other words, **the authorities are required to consider bias indicators.** Hate crime bias indicators are objective facts, circumstances or patterns connected to a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that a crime committed may have been motivated in whole or in part by any form of bias. Note that this topic will be addressed further in the next module: Module 5 —

Identifying a Hate Crime Case — Bias Indicators. Point out a few examples of bias indicators specifically mentioned by the ECtHR in their jurisprudence:

- *Nachova v. Bulgaria* — one of the perpetrators shouted racist slurs “You damn [anti-Roma slur]!”.
  - *Identoba and Others v. Georgia*<sup>24</sup> — the Court specifically highlighted the “clearly homophobic hate speech uttered by the assailants during the incident” as a fact that required the authorities to conduct a meaningful inquiry into the discrimination behind the attack.
  - *Secic v. Croatia*<sup>25</sup> — the Court noted that “the attackers belonged to a skinhead group which is, by its nature, governed by extremist and racist ideology” and that the authorities were aware of this, and this could have indicated that the attack was most probably induced by ethnic hatred and thus required appropriate investigation by the authorities.
  - *Balazs v. Hungary* — the Court specifically referred to the use of bias indicators, in particular, racist slurs, social media posts.
6. Note further that an **investigation cannot exclude bias motivation because other motives are present**. In the case *Balazs v. Hungary*, along with other aspects, the authorities refused to indict the perpetrator of a racist attack on a man of Roma origin based on the argument that his racist motives could not be established “unequivocally and beyond doubt”. In particular, they argued that the reason for the attack might have had motives other than racial hatred. In this regard, the Court noted that “not only acts based solely on a victim’s characteristic can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude towards the group the victim belongs to.”
7. Note further that **investigating and prosecuting authorities must be neutral and impartial in their assessment of the evidence before them**. In the case *Cobzaru v. Romania*,<sup>27</sup> the Court, analysing the state’s duty to investigate possible racial motives, considered that the tendentious remarks made by the prosecutors in relation to the applicant’s Roma origin throughout the investigation revealed/showed the general discriminatory attitude of the authorities and brought into question the neutrality and effectiveness of the investigation. The Court noted the failure on the part of the prosecutors to verify whether the police officers involved in the violence had been involved in previous, similar incidents, or whether they had been accused in the past of displaying anti-Roma sentiments. In the eyes of the Court, this, together with the state’s failure to provide any justification for these omissions, was an important factor to which the Court

24 *Identoba and Others v. Georgia*, Application no. 73235/12, ECtHR, 12 May 2015.

25 *Secic v. Croatia*, Application no. 40116/02, ECtHR, 31 May 2007.

26 *Balazs v. Hungary*, Application no. 15529/12, ECtHR, 14 March 2016.

27 *Cobzaru v. Romania*, Application no. 48254/99, ECtHR, 26 July 2007.

had regard in finding a violation of Article 14 taken in conjunction with Articles 3 in its procedural limb.

8. Note that the **procedural duty to investigate and uncover a possible bias motivation extends to hate crime by association**. Importantly, the Court has also specifically addressed the need for a state's criminal justice system to be able to adequately investigate, prosecute and punish hate crimes.
9. Ask participants to summarize the main duties in relation to the investigation and prosecution of hate crime and what this means for their everyday work. Give them Handout 4.
10. Thank the group for their work and summarize the key takeaways from the discussions.

## ADDITIONAL RESOURCES

- Mirjana Lazarova and Marharyta Zhesko, *Analysis of the Jurisprudence of the European Court on Human Rights related to Hate Speech and Hate Crime*, OSCE, 29 August 2022. This publication includes an in-depth review of the case law of the European Court on Human Rights (ECtHR) relating to 'hate speech' and hate crimes. Considering the ever-growing jurisprudence of the ECtHR in this area, it looks into the most significant and impactful decisions and the recent landmark judgements on the topics.
- *Unmasking bias motives in crimes: selected cases of the European Court of Human Rights*, European Union Agency for Fundamental Rights, 12 December 2018.



# MODULE 5

## IDENTIFYING A

## HATE CRIME CASE —

## BIAS INDICATORS



# MODULE 5

## IDENTIFYING A HATE CRIME CASE – BIAS INDICATORS

### SUMMARY

Bias indicators are a tool for recognizing hate crimes and recording evidence of bias motivation. The indicators are explained and discussed in detail.

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### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Explain what a bias indicator is and how they help in identifying and evidencing hate crimes; and
  - Identify and provide examples of bias indicators.
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### OUTLINE

| Time                     | Activity  | Key Points   |
|--------------------------|---|--|
| 20 minutes               | Activity 5.1<br><i>What are bias indicators?</i>  | Trainers introduce a definition of bias indicators and how they help in identifying and evidencing hate crimes.                        |
| 40 minutes               | Activity 5.2<br><i>Discussing bias indicators</i> | Trainers and participants review the list of different types of bias indicators and demonstrate them with cases from their experience. |
| <b>Total: 60 minutes</b> |   |  |

## MATERIALS CHECKLIST

- Annexe III: Bias Indicators — slides
- A hate crime case that demonstrates the use of bias indicators
- Examples of bias indicators customized, printed and cut out (See examples in Training materials - Examples of Bias Indicators, at the end of this module)
- Handout 5: Bias Indicators
- Laptop connected to the Internet, projector/screen for displaying the slides

## ACTIVITY 5.1 — What are bias indicators?

**TIME:** 20 minutes

### INSTRUCTIONS:

1. Ask participants to give a definition of what a 'bias indicator' is. Emphasize you are looking for a definition, not examples at this stage.
2. Show Slide 1 (Annexe III) with the definition of Bias Indicator:

**Note:** When introducing the definition, stress the use of the word 'objective'

“**Objective** facts, circumstances, or patterns attending a criminal act(s), which, **standing alone or in conjunction** with other facts or circumstances, **suggest** that the offender’s actions were motivated, **in whole or in part**, by any form of bias”.<sup>28</sup>

3. Explain that, sometimes, when a prosecutor first reviews a case file, the bias motivation is immediately evident, e.g., when the facts of the offence involve the use of words or symbols that show bias, or when the defendant admits that the crime was bias-motivated. However, where the bias motivation is not obvious, bias indicators are an excellent tool to help identify whether a crime constitutes a hate crime. Bias indicators help to guide investigators and prosecutors through the facts that typically point towards a bias motive.

<sup>28</sup> Using Bias Indicators: A Practical Tool for Police, OSCE/ODIHR, 28 May 2019.

The presence of one or more of these indicators suggests the existence of a bias crime and should result in further investigation into motive. Bias indicators provide objective criteria by which probable motives can be discerned, but do not necessarily prove that an offender's actions were motivated by bias. Many of them can be used to build circumstantial evidence of the motive behind the offence.

4. Share **an actual hate crime case from your experience** that demonstrates the importance of bias indicators. If you do not have your own, you can use this one:

A hate crime story shared by María Teresa Verdugo, a former Hate Crime Prosecutor, Malaga, Spain, in August 2022.<sup>29</sup>

“Some months ago, we had a case that happened in a special flat, which is managed by an organization that helps refugees that come to Spain, because they have to escape their countries of origin. And we had a Ukrainian boy who said that another resident in his flat (who was also a refugee) had insulted him, threatened to kill him, and then took a table, a small table, and tried to beat him with it. As a result, the Ukrainian boy had a head injury. The victim also mentioned that ‘When it happened, he talked to me with very bad words regarding that I’m gay.’

“In the beginning, we really were not sure if it was a hate crime or not. They were together in the flat, and the perpetrator said, ‘Okay, I have nothing against gay people; it is just that we don’t get along well in the flat.’ Then, we tried to do a deeper interview with the victim and also with one of the other people living in the flat. And so, when we started talking to them and asking about how it had happened, we discovered that, in fact, everything started some weeks before that serious incident. In particular, it was when the Ukrainian boy was returning from the gay pride demonstration carrying an umbrella with a rainbow design. It was in this moment that the perpetrator learned that the victim was gay, and he became enraged by the fact that the Ukrainian boy was openly, and proudly, displaying a sign that clearly identified him as gay (the rainbow umbrella). And it was from this moment, that the perpetrator started not letting the victim use the bathroom, insulted him, would not let him sit beside him in the coach and, in the end, it escalated to a physical attack (beating with a table), which seriously harmed his integrity.

“So, when not only the victim, but the witness said that it was an umbrella that had changed the attitude and triggered the attack, we knew that, really, we were talking about a hate crime.”

5. Ask participants to identify bias indicators in the story you shared.

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29 María Teresa Verdugo was Head of the Economic Crimes Section at the Prosecutor's Office in Málaga, Spain, from 2015 to May 2025. She was also a member of the National Network of Hate Crime Prosecutors of Spain from 2014 to May 2025 and Special Prosecutor for Hate Crimes and against Discrimination at the Prosecutor's Office in Málaga, Spain, from 2011 to 2025. As one of the first Hate Crimes Prosecutors in Spain, María Teresa's work has included training and awareness-raising about Discrimination Law and Hate Crimes among judges, lawyers and prosecutors as well as among law enforcement and NGOs working with victims of hate crimes. María Teresa has also worked as a hate crime expert trainer for ODIHR at numerous international hate crime training workshops for prosecutors across the OSCE region.

## ACTIVITY 5.2 — *Discussing bias indicators*

**TIME:** 40 minutes

**PREPARATION:** Before the training, prepare, print and cut out individual examples of bias indicators from [Training materials - Examples of Bias Indicators](#) (at the end of this module). In this exercise, trainers might also want to use actual photos of bias indicators (graffiti, stickers, etc.) found in hate crime cases in the country of the training.

### INSTRUCTIONS:

1. Ask participants to share examples of bias indicators from their own practice or from the cases reviewed in the training so far.
2. Show [Slide 2](#) with the eight main categories of bias indicators and summarize each category.

#### **Note on victim or witness**

**perception:** *Participants may question whether victim or witness perception is an 'objective fact' as per the bias indicator definition. The important thing to note is that, as part of a victim-centred approach, we are not questioning the victim's belief about what has happened to them. Their perception is still an objective fact. It is important to distinguish between proof of bias and indicators of possible bias. Victim or witness perception should be assessed alongside other contextual indicators (such as language used, symbolism, timing or patterns of targeting). This approach reflects the operational reality that bias motivation is often not immediately provable and must be inferred from multiple sources.*

- **Victim or witness perception.** How victims or witnesses perceive the crime they experience or witness is of vital importance, even in the absence of other bias indicators. While they may not initially be able to pinpoint the factors that make them see the actions of offenders as bias-motivated, their impression of the attack cannot be disregarded. In fact, investigators and prosecutors will often find other bias indicators to confirm their perception.
- **Comments, written statements, gestures or graffiti.** The perpetrators of hate crimes frequently make their prejudices clear before, during or after the act. Those who commit hate crimes generally want to send a message to their victims and to others, and these messages — from shouted insults to gestures to graffiti, publications on the Internet, and posts/comments on social media — are powerful indications of bias motivation.
- **Ethnic, religious, cultural or other differences between the offender and victim.** Differences between perpetrators and victims can be a bias indicator. This is particularly true when victims can be visibly identified as members of a certain group. These identifiers can include skin colour, religious dress (e.g., a Muslim woman wearing a headscarf), or other identifying accessories (e.g., wearing a rainbow flag in support of the LGBTI equality movement).

**Note on hate symbols:** It is important to note that not all symbols or graffiti left at a crime scene will be obvious hate symbols. Therefore, it is important to document everything and research the significance or meaning as part of the investigation. An **open database of hate symbols** can be found on the Anti-Defamation League's website [here](#). As noted on the site, it is important to bear in mind that "All the symbols must be evaluated in the context in which they appear. Few symbols represent just one idea or are used exclusively by one group". Other databases of extremist symbols may be available for different countries.

- **Organized hate groups.** While not all hate crimes are perpetrated by organized groups, members or associates of such groups are often involved in committing these crimes.
- **Location and timing.** Where and when an incident happened can be a significant bias indicator. This may include specific locations and timing relevant for, or connected with, a particular targeted community. As hate crime offenders can perceive their actions to be justified by nationalist ideologies, significant dates and locations connected with the dominant culture, religion or even national celebrations can also provide the context for hate crimes.
- **Patterns or frequent previous crimes or incidents.** If an individual victim was previously targeted in a bias-motivated crime, potential bias motivation should be seriously considered. If a similar modus operandi was observed before in a given area, if there is a spike in bias-motivated incidents or a particular group has received threats, these too should trigger suspicion of a bias motive. Likewise, if the suspects have a history of involvement in crimes motivated by bias, this should be considered a bias indicator.
- **Nature of the attack.** Because hate crimes are message crimes, i.e., aimed at spreading fear in others that share the protected characteristic of the victim(s), the degree of violence, damage and brutality tend to be serious. As an expression of superiority over and rejection of the targeted group, hate crimes can also involve degrading treatment aimed at diminishing the dignity of victims.
- **Lack of other motives.** Hate crimes often target victims as 'representatives' of their group. The selection of the target can, therefore, appear random and, given the lack of connection between the offender and the victim, no motive may be apparent. In these cases, the possibility of a bias motivation should not be dismissed.

3. Hand out the pre-prepared, individual examples of bias indicators (one per participant) and ask participants, one by one, to read their examples out loud and assign them to one of the bias indicator categories displayed on Slide 2. For example, one participant reads out: “There have been similar incidents in the same area targeting the same minority group”. They should assign this example to the **pattern or frequency of attacks** category.
4. Ask how they feel about their case (in terms of evidence). Would this indicator (once converted into evidence) be sufficient to prove a bias motive? Then, ask whether they have come across cases with these bias indicators in their practice, or whether cases like this have come up in the training so far.
5. After the exercise, distribute Handout 5 and explain that it provides a more detailed list of indicators within each category. Point out that this is a comprehensive, but not exhaustive list of indicators. Lists of **bias indicators should be developed for each national and local context**, depending on the victimization experiences and specifics of the context. When compiling these lists, it is recommended to **consult with civil society organizations and community-based organizations**. Because they are close to the victimized communities, these organizations can provide valuable insights on the nature of hate crime victimization a particular community faces.
6. Tell them that in Module 11 — Case Studies I: Bias Indicators and Initiating a Hate Crime Case, they will have the opportunity to use the bias indicators in practice.
7. Thank the group for their work and summarize the key take-aways from the discussions.

## ADDITIONAL RESOURCES

- *Using Bias Indicators: A Practical Tool for Police*, OSCE/ODIHR, 28 May 2019. This presents a comprehensive, but not exhaustive, list of indicators that suggest a crime may have been bias-motivated. The eight sections correspond to the main types of bias indicators developed by ODIHR. Each section includes a set of questions to help investigators decide whether a particular bias indicator type is present. While this publication is focused on Ukraine, the indicators can be used in any jurisdiction.
- ODIHR's *Hate Crime Factsheets* collection.
- A detailed list of the anti-Semitic bias indicators can be found in *Annexe I 'Overview of bias indicators' in Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide*, OSCE/ODIHR, 15 Mays 2017, p. 48.
- A detailed list of the anti-Muslim bias indicators can be found in *Understanding Anti-Muslim Hate Crimes - Addressing the Security Needs of Muslim Communities: A Practical Guide*, OSCE/ODIHR, 15 May 2020, pp. 13-17.
- A detailed list of anti-Roma bias indicators can be found in *Understanding Anti-Roma Hate Crimes and Addressing the Security Needs of Roma and Sinti Communities: A Practical Guide*, OSCE/ODIHR, 18 May 2023, pp. 27-32.
- *Disability Hate Crime and other crimes against disabled people - prosecution guidance*, the Crown Prosecution Service (United Kingdom), updated 3 March 2022.
- A list of anti-LGBTI bias indicators, developed by the European LGBT Police Association (EGPA) in collaboration with the Council of Europe can be found in *Policing Hate Crime against LGBTI persons: Training for a Professional Police Response*, Council of Europe, May 2017, pp. 86-87.

## TRAINING MATERIALS — *Examples of bias indicators*

### ***Victim or witness perception***

The victim perceives that the criminal act was motivated by bias/was an attack related to their identity characteristics.

### ***Comments, gestures or graffiti***

The perpetrator mentioned the need to “cure” or “correct” the victim. Used the word ‘deviant’ and anti-LGBTI slurs.

The perpetrator made monkey chants. Made racist written statements about ‘Africans’, ‘Blacks’, ‘Arabs’, etc.

Drawings or graffiti of symbols, such as, the Star of David or Nazi-era symbols, such as the Swastika, were left at the scene of the incident.

The suspect made a statement that “Roma have big families” and “Roma steal”.

### ***Differences between victim and perpetrator***

The victim is a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred.

The victim is visibly identifiable as a member of a minority group, e.g., a Muslim woman wearing a hijab, a Jewish man wearing a kippah, or a man carrying promotional leaflets for a religious group.

### ***Organized hate groups***

There is evidence that an organized hate group is active in the neighbourhood, e.g., posters, graffiti or leaflets have been found.

The offender used behaviour associated with membership of a hate organization, such as using Nazi salutes.

The offender had clothing, tattoos or other insignia associating them with a particular extremist or hate group.

### ***Location and timing***

The target of attack was a place of professional, legal or cultural significance of a particular group, such as, for example a Roma or Sinti neighbourhood, a cultural club and/or other place that may be frequented by individuals from Roma and Sinti communities.

The victim was attacked close to a place associated with Jews, such as a Jewish Museum, a Jewish restaurant or the site of a Jewish culture festival.

The incident took place during an Islamic religious holiday or on the anniversary of some terrorist attacks, in particular 9/11.

The incident occurred on a date of particular significance, e.g., a religious holiday.

The incident occurred during a specific part of the day, when other members associated with the victim group frequent the area, e.g., during prayers.

The incident occurred at the time of a demonstration or protest related to a particular group, e.g., an LGBTI Pride March, a demonstration in support of refugee rights or a demonstration in support of women's rights.

The incident happened shortly after a public or political speech or, for example, a debate in parliament related to a particular group, e.g., a debate on refugee rights.

### ***Patterns/frequency of previous crimes or incidents***

There has been a recent escalation in incidents against the same group, beginning with low-level harassment and non-criminal activity to more serious criminal conduct such as vandalism or assault.

There was an earlier/recent incident that may have sparked a retaliatory response against the targeted group.

The victim or community recently received threats or other forms of intimidation in the form of phone calls, emails or online.

### ***Nature of the violence***

The incident involved unprovoked and unusual levels of violence/brutality that would appear excessive given the facts of the case.

The incident was carried out publicly or in a way to make it public, such as recording and posting on the Internet.

The violence focused on genitals or sexual organs, or related to specific parts of the body relevant to a protected characteristic, e.g., a women's breasts or face in a misogynistic attack.

The violence focused on the gender expression of the victim (for instance, by purposefully tearing their clothing or jewellery, grabbing the victim by the hair/wig or violently removing their make-up).

The violence included cruelty, humiliation or degrading treatment, often related to the nature of the disability; for example, blindfolding someone who is profoundly deaf, destroying mobility aids, etc.

### ***Lack of other motive***

There was no other reason for the incident to have happened.

The perpetrator and victim did not know each other and had had no previous contact.

**MODULE 6**  
**HATE CRIME**  
**LEGISLATION —**  
**APPLYING**  
**LOCAL LAWS**



# MODULE 6

## HATE CRIME LEGISLATION – APPLYING LOCAL LAWS

### SUMMARY

This module discusses hate crime law and its different models. The trainers will facilitate a discussion about different aspects of the local hate crime provisions and what it means to prosecute hate crime.

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### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Differentiate between types of hate crime legislation;
  - Identify relevant legislation for the prosecution of hate crime in the local jurisdiction; and
  - Explain the strengths and weaknesses of local legislation and possible strategies for handling: protected categories of groups, the type of motive evidence required, and cases of mixed motive, association and mistakes in perception.
- 

### OUTLINE

| Time                     | Activity  | Key Points  |
|--------------------------|---|---|
| 15 minutes               | Activity 6.1<br><i>What is a hate crime law?</i>  | The trainers describe what elements a hate crime law is comprised of.   |
| 30 minutes               | Activity 6.2<br><i>Applying local legislation</i> | Together with the trainers, participants discuss different aspects of hate crime through local, applicable legislation. |
| <b>Total: 45 minutes</b> |   |   |

## MATERIALS CHECKLIST

- [Annexe IV: Hate Crime Legislation](#) — slides
- [Handout 6: Applying Local Legislation](#) (customized to include applicable local legislation)
- National hate crime provisions (identified during preparation for the training)
- National Guidelines on prosecuting hate crimes issued by the Prosecutor General's office, if available
- Laptop connected to the Internet, projector/screen for displaying the slides

## ACTIVITY 6.1 — *What is a hate crime law?*

**TIME:** 15 minutes

**NOTE ON CUSTOMIZATION:** *Ahead of the training, map existing national hate crime provisions and assign them across the three types of hate crime law. Also check other applicable tools — mandatory or not — that are available to prosecute and/or punish hate crimes, e.g., prosecution and/or sentencing policies and guidelines, motives of perpetrators. Have these ready before the training.*

### INSTRUCTIONS:

1. Ask participants what they think of when they hear the phrase 'hate crime law'. Emphasize that a 'hate crime law' does not need a special title or a special section in the legislation.
2. Show [Slide 1 \(Annexe IV\)](#) and specify that hate crime law is any criminal provision that specifically addresses bias motivation in proving or sentencing a crime. Refer to ODIHR's practical guide *Hate Crime Laws: A Practical Guide*<sup>30</sup> for a more in-depth overview of legislation.
3. Show [Slides 2-4](#) and review the basic types of hate crime laws, using examples from the jurisdiction of the training, if in place. Spend more time on types of hate crime laws that exist in the jurisdiction of the training, asking participants about the advantages and disadvantages of the types of hate crime law that exist in their jurisdiction.

30 [Hate Crime Laws: A Practical Guide. Revised Edition, OSCE/ODIHR, 23 September 2022.](#)

4. If participants refer to local hate speech laws, (e.g., on incitement, defamation, insults, dissemination and denial offences) remind them that these are not hate crime laws. In this case, refer them back to the 'Hate Speech' flipchart (Module 3). Mapping these local laws against the image can help participants see the differences between hate crime and criminalized 'hate speech' laws.

- **Substantive offence**

Substantive offences are separate offences that include the bias motive as an integral element of the legal definition of the offence. They are the least common form of legislative hate crime provision in the OSCE region.

In these types of legislative provisions, the first element for a hate crime prosecution — the basic offence ('violence' or 'unlawful threats') — and the second element — the bias motive ('because of their national, ethnic, racial, political or religious affiliation, or because of their lack of religious beliefs') — are contained within the same provision. Use an example from the jurisdiction of the training. If none exists, use the example below, from Poland, to illustrate the point.

*Criminal Code of Poland, Article 119 (1)*<sup>31</sup>

*Whoever uses violence or makes unlawful threats towards a group of people or a particular person because of their national, ethnic, racial, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years.*

From the prosecution perspective, **substantive offences present several advantages**. The police are more likely to be aware of the offences and therefore to seek evidence of bias; the offender is clear on exactly what they are being charged with; and, if proven, the offender is found guilty of both elements of the offence, allowing for transparency for victims and affected communities. Substantive offences are also much more easily identifiable in crime and prosecution data, allowing for easier tracking across the criminal justice process.

- **Specific penalty enhancement**

Specific penalty enhancements are provisions attached to particular base offences. These would typically be serious offences against the person, such as murder or bodily harm. In criminal codes, specific penalty enhancements are often construed as subsections to provisions relating to the basic offence and require the imposition of a more severe punishment; for example, by directly increasing the range of sentence for committing the base offence with a bias motivation. Use an example from the ju-

<sup>31</sup> Criminal Code of Poland, (in Polish, unofficial translation).

jurisdiction of the training. If none exists, use the example below, from Ukraine, to illustrate the point.

*Criminal Code of Ukraine, Article 115<sup>32</sup>*

1. Murder, that is the wilful, unlawful causing death of another person, shall be punishable by imprisonment for a term of seven to fifteen years.

2. Murder: (14) based on racial, national or religious intolerance, shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment with forfeiture of property in the case provided for by subparagraph 6 of paragraph 2 of this Article.

Explain that the first element for a hate crime prosecution, the basic offence of ‘murder’ is contained in Article 115(1), and the second element, the bias motive, is contained in the qualifying Article 115(2).

From the prosecution perspective these types of legislative provisions **have the advantage that the provision is easy to find and resembles the substantive offence provisions in that the bias motivation is a constitutive element of the offence**. The prosecutor should also try to ensure that the police are aware of the need to gather evidence of bias to support a successful hate crime prosecution.

- **General penalty enhancement**

In principle, general penalty enhancements apply to any crimes in the criminal code that do not already include bias as one of their constitutive elements. In these types of legislative provisions, depending on the type of offence (e.g., assault, theft, homicide, sexual assault, etc.) the first element for a hate crime prosecution, the basic offence, can be found in the relevant part of the code. For example, if the offence is a racist assault, the first element for a hate crime prosecution will be the provision that defines physical assaults in the national criminal code. The second element, the bias motive, is contained in the general penalty enhancement provision. Use an example from the jurisdiction of the training. If none exists, use the example below, from Spain, to illustrate the point.

*Criminal Code of Spain, Article 22 [Aggravating circumstances]<sup>33</sup>*

*“The following are aggravating circumstances: (...) (4) Committing the offence for racist, anti-Semitic, anti-Roma or any other kind of discrimination related to the ideology, religion or beliefs of the victim, the ethnic group, race or nation to which he/she belongs, his/her sex, age, sexual or gender orientation or identity, reasons of gender, aporophobia or social exclusion, the disease he/she suffers or his/her disability, regardless of whether such conditions or circumstances are actually present in the person on whom the conduct is committed (...).”*

32 *Criminal Code of Ukraine*, (in Ukrainian, unofficial translation).

33 *Criminal Code of Spain*, (in Spanish, unofficial translation).

There are **several limitations to general penalty enhancements that reduce their effectiveness to make hate crime prosecutions visible and to punish offenders appropriately.**

First, prosecutors must know about them in order to draw the court's attention to them. Second, in contrast to specific penalty enhancements which re-qualify and increase the seriousness of the original offence, general penalty enhancements aggravate the punishment of the perpetrator at sentencing. Third, the final court judgement may not contain the full reasoning for the penalty imposed, because evidence of bias motive is considered alongside other aggravating and mitigating factors in the case. Fourth, court data tends to record decisions according to the criminal code provision for which the perpetrator was found guilty, omitting specific data on the application of general penalty enhancements.

5. If there are no hate crime provisions in the jurisdiction of the training or they have limited range (of offences or protected groups), note that there are several ways to prosecute hate crimes. Outline the tools that are available in the jurisdiction of the training. The list below only presents examples.

- **Motives of the perpetrator.** Some sentencing provisions, such as those of the German Criminal Code,<sup>34</sup> specifically allow the 'motives of the perpetrator' to be taken into account when imposing a sentence.
- **Prosecution policies.** In some states, prosecution services have policies that allow them to seek a specific sentence increase for hate crimes. For example, in the Netherlands, until the 2025 codification of the policy of the Dutch Public Prosecution on hate crimes, the Guidelines of Criminal Procedure<sup>35</sup> required prosecutors to seek up to a 50 per cent increase in the sentence for certain crimes, including physical assault, threats, vandalism and damage to property, if they were motivated by bias against the protected grounds listed in its anti-discrimination provision.
- **Other sentencing factors.** Some states allow the court to take into account other factors when sentencing hate crimes, such as the grave consequences of the crime, the exceptional cruelty of the act or the particular vulnerability of the victim. This can ensure that the increased harm caused by bias-motivated crimes is recognized within the criminal sanction. To pass an increased sentence on the basis of one of the conditions above, the court must be presented with evidence of the bias motivation during the fact-finding phase of the case.

6. Ask participants to identify the type of law applicable in their jurisdiction. Show Slide 5, which presents an overview of the local legislation on the types of law.

34 See the Criminal Code of the Federal Republic of Germany, Article 46(2), available at [German Criminal Code \(Strafgesetzbuch – StGB\)](#).

35 See the Discrimination Instruction from the Public Prosecution Service, [Aanwijzing Discriminatie](#). (in Dutch)

## ACTIVITY 6.2 — *Applying local legislation*

**TIME:** 30 minutes

### INSTRUCTIONS:

1. Explain that, having identified the general scope of local legislation, it will be explored in more depth to see how it might be applied to different situations involving a bias-motivated crime.

**Note:** Each of the following aspects of hate crime laws should be discussed and examined through the local hate crime provisions. The goal is to highlight possible interpretations of the legislation, looking at strengths and weaknesses and helping to identify strategies for dealing with any potential shortcomings.

The trainers should also check if other instruments are available, whether mandatory or not, such as 'Guidelines on prosecuting hate crimes issued by the Prosecutor General'. If possible, have these ready in advance and discuss with participants after reviewing the law.

2. Show Slide 6 and lead an examination of the local legislation by discussing the following topics (discuss relevant slide(s)/handouts with local laws):

#### a. Types of provisions

- Substantive offence vs. penalty enhancement provision
- What crimes/conduct are covered by the local hate crime provisions?

#### b. Types of bias motivations

- Is it an open-ended or closed list?
- Are there major gaps of protected groups?
- How are terms such as (refer to the wording of the national Criminal Code) 'ethnic or national origin', 'colour' and 'race' interpreted in the national Criminal Code? If relevant, cite the ICERD's all-encompassing term under their definition of 'racial discrimination': "(...) 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin (...)." <sup>36</sup>
- For open-ended or broadly worded protected characteristics, ask how often these are applied and how they are used. For example, if in the national code, ask about the interpretation of the terms 'gender characteristics', 'sexual orientation' and 'gender identity'.

<sup>36</sup> See Council of Europe [Compass](#) website

- Remind participants that the source of hate crimes is the principle of equality and non-discrimination, which, under international norms, focuses on ‘immutable and fundamental’ characteristics. In criminal proceedings, burdens of proof are elevated from, say, civil discrimination proceedings, and this can make it more difficult to prove cases of bias concerning characteristics that are not immutable or immediately apparent (education, wealth, social status, marriage, etc.)
- If gender is included in the protected list or discussions are raised about gender, discuss how hate crime based on gender is different from other gender-based crimes such as domestic violence, honour killings or even rape. Emphasize that the criminal justice system is not just about ‘naming’ something, but about responding effectively. Domestic violence programmes and rape-assistance programmes are likely to respond much better to the victim’s needs than simply labelling it a ‘hate crime’. Domestic and gender-based violence also typically carry increased sanctions and enhanced victim support and protection, as is often the case for hate crimes.

### c. Type of motive

- What type of motive is required under the legislation: hostility or bias?

Before gathering evidence of bias, the prosecutor determines whether the relevant provisions or law require proof of ‘hate’ or hostility by the offender, or whether the law requires only that the offender targets an individual because of their actual or presumed connection with a particular group. These two different approaches are known as **the hostility model** and **the discriminatory selection model** of legislation, respectively.

The **hostility model** takes a **subjective approach**, whereas the **discriminatory selection model** takes an **objective approach**.

In other words, under the **discriminatory selection model**, the question to ask is: *Was this victim selected because of their group identity (‘race’/ethnicity/religion/sexual orientation etc.)?* The discriminatory selection model would apply, for example, if a perpetrator admitted to targeting a migrant based on the belief that the migrant would not report the crime to the police because of their immigration status.

Under the **hostility model**, however, additional evidence of some animosity towards the group might be required. This could comprise the offender’s admission that “gay people deserve to get robbed” or the offender’s use of homophobic slurs directed at the victim, or that the defendant harbours feelings of revulsion towards disabled persons.

In practice, these legislative approaches mostly require **similar types of evidence, since bias and prejudice are the drivers of hate crimes regardless of the model of legislation used**. When building a hate crime case, whichever legislative approach the prosecutor has to satisfy, the key questions are the same, although the approach to the question of sufficiency or type of evidence may be different.

### d. More than one motive?

- Hate crimes, like other types of crime, may be committed for more than one motive. This often arises in crimes with some economic element in addition to bias

motivation. Most jurisdictions have laws that do not require bias to be the only motive. For example, many jurisdictions have hate crime laws that specifically allow for the consideration of mixed motives, where an offence is committed wholly or partly due to bias, while others specifically require the bias motivation to be a substantial motive in the crime. It is most common, however, for legislation to be drafted broadly, in a way that does not exclude the possibility of more than one motive, so long as bias is part of the motive for the crime.

**e. Does the law include hate crimes by association or a mistaken perception?**

- Legislation can be explicit and take into account the association or ‘presumed’ membership in a group;

or

Legislation can be broadly written, either focusing on victim membership or offender motivation.

Emphasize that, when the focus is on offender motivation and NOT on victim identity or victim group membership, concepts like association and mistakes in perception should easily fall within the ambit of the legal framework:

- o Offenders who target by association cast a wider net of potential victims, creating more danger in wider society and sending out an even stronger message against cohesive societies.
3. Having reviewed the law, also discuss other available instruments, mandatory or not, such as [Guidelines on prosecuting hate crimes issued by the Prosecutor General’s Office](#), if in place.
  4. Summarize the shortcomings in law preventing prosecution of hate crimes, e.g., types of crime which are not covered, victim groups which are not covered, whether membership in a group required by the law etc.
  5. Discuss with participants whether and how these gaps could be filled using the available legal provisions and practice. Often, the use of general sentencing provisions may enable, for example, the protection of groups not explicitly covered. Make a case for ‘testing the limits of the law in court’, for using the law creatively, with the purpose of the provisions in mind and not only the letter of law.
  6. Thank the group for their work and summarize the key takeaways from the discussions.

## ADDITIONAL RESOURCES

- [\*Hate Crime Laws: A Practical Guide. Revised Edition\*](#), OSCE/ODIHR, 23 September 2022.



## MODULE 7

# PROSECUTING HATE CRIME AT THE INTERSECTION OF HATE CRIME AND CRIMINALIZED 'HATE SPEECH'

PART 1 — CONCEPTUAL CONSIDERATIONS



# MODULE 7

## PROSECUTING HATE CRIME AT THE INTERSECTION OF HATE CRIME AND CRIMINALIZED ‘HATE SPEECH’

### PART 1 – Conceptual Considerations

#### SUMMARY

This module presents examples of the misqualification of hate crime and criminalized ‘hate speech’, and discusses the consequences of misqualification and the main contributing factors. The group will also discuss the difference between hate crime and criminalized ‘hate speech’.

#### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Explain the consequences of the misapplication of criminalized ‘hate speech’ provisions to the prosecution of hate crimes;
- Identify and explain the key conceptual differences between hate crime and criminalized ‘hate speech’ (building on [Module 3, Activity 3.1](#)); and
- Identify key sources of international standards on criminalized ‘hate speech’ and the key elements of criminalized ‘hate speech’ according to these standards.

#### OUTLINE

| Time                     | Activity   | Key Points   |
|--------------------------|--|--|
| 20 minutes               | Activity 7.1<br><i>The misqualification of hate crime and criminalized ‘hate speech’</i>                         | Trainers present examples of misqualification of hate crime and criminalized ‘hate speech’ and discuss the consequences of misqualification and the main contributing factors. |
| 15 minutes               | Activity 7.2<br><i>Hate crime and criminalized ‘hate speech’, what’s the difference and why is it important?</i> | Trainers discuss the difference between hate crime and criminalized ‘hate speech’.   |
| 10 minutes               | Activity 7.3<br><i>International Standards on ‘Hate Speech’</i>  | Trainers present international standards on ‘hate speech’.   |
| <b>Total: 45 minutes</b> |  |  |

## MATERIALS CHECKLIST

- [Annexe V](#): Prosecuting hate crime at the intersection of hate crime and criminalized ‘hate speech’ — slides
- [Handout 2](#): Conceptual issues at the intersection of hate crime and ‘incitement speech’ (this Handout was also distributed in Module 3)
- [Handout 7](#): The consequences of misqualifying hate crimes
- [Handout 8](#): International standards on hate speech
- Laptop connected to the Internet, projector/screen for displaying the slides
- Flipchart sheet: ‘Examples of misqualification’, for Activity 7.1
- Flipchart sheet: ‘Hate Speech’, from Module 3
- Flipchart sheet: ‘Questions’, for Activity 7.2

## ACTIVITY 7.1 — *The misqualification of hate crime and criminalized ‘hate speech’*

**PURPOSE:** To identify common examples of misapplication by showing one example, and to outline the consequences of misqualifying hate crimes.

**TIME:** 20 minutes

### INSTRUCTIONS:

1. Start by explaining that this module does not advise on how to prosecute criminalized ‘hate speech’. It aims to help participants identify hate crime cases and understand the consequences of the misqualification of hate crimes, as well as ensuring the correct qualification of the crime. This is a fundamental principle in upholding both the right to an effective remedy for victims and the right to legal certainty for defendants.
2. Start the discussion by asking the group what they think is the difference between hate crimes and criminalized hate speech? You can use the [key points from Activity 3.2](#) to guide the discussion. You can also return to the ‘Hate Speech’ flipchart setting out the three circles of ‘hate speech’ (broader concept, incitement speech and national laws).
3. Explain that, during its years of capacity-building work, ODIHR has noted a common trend of hate crimes being misqualified as criminalized ‘hate speech’ or as less serious offences.
4. Display [Slide 1 \(Annexe V\)](#) and discuss the two **examples of misqualification of hate crime and criminalized ‘hate speech’ offences** given below.

- **Example 1:** Physical assaults involving racial slurs are prosecuted as simple assault, and the racial slurs are additionally charged as incitement to hatred offences.

*Person A physically assaults Person B while shouting offensive (racist, homophobic, etc.) slurs. The incident takes place in front of other people on a Saturday night in an area with busy bars and restaurants.*

Refer back to Module 5 on bias indicators, and guide participants to the conclusion that, where there is a basic offence such as an assault that is accompanied by racial or other biased slurs, the first consideration should be a hate crime charge. There are no freedom of expression considerations, because the direct target is the individual victim.

Write the following on the 'Examples of misqualification' flipchart sheet:

Crime = physical assault. 'Hate' = offensive (racist, homophobic, etc.) slurs.

- **Example 2:** Biased threats are prosecuted as criminalized 'hate speech'.

*Neighbours A are a gay couple. They occasionally park their car in front of their neighbour's garage (Neighbour B). One evening, when they were returning home, Neighbour B confronted them in the shared hallway. He shouted homophobic slurs and, in a fit of rage, pointed aggressively at them, saying: "I swear I'll kill you both if I see you here again. People like you don't belong in this building." Witnesses in the corridor heard the threat, and CCTV footage captured the incident.*

Refer back to Module 5 on Bias Indicators, and guide participants to the conclusion that, where there is a basic offence such as a threat that is accompanied by racial or other biased slurs, the first consideration should be a hate crime charge.

Write the following on the 'Examples of misqualification' flipchart sheet:

Crime = threat. 'Hate' = offensive (racist, homophobic, etc.) slurs.

5. Explain that these examples will be explored further in the next module when ODIHR's practical tool — the Prosecutor Decision Tree — will be introduced.
6. Next, ask participants what they think the consequences of misqualifying hate crimes might be? Then, display Slide 2, and summarize the points mentioned by the participants, adding those in the table not already mentioned.
7. Ask why they think hate crimes are misqualified as criminalized 'hate speech'.
8. Highlight that one key problem is that hate crime as a phenomenon is less visible, and hate crime laws are less visible, compared to 'hate speech' and 'hate speech' law. Explain that **hate crimes are a less visible phenomenon** because they tend to target individuals who are often reluctant to report incidents to the police. In contrast, **'hate speech' is generally public and more likely to be reported and identified**. Further, in many 'hate speech' cases, **the 'hate' is immediately visible from the content of the speech**; while **the bias motive in hate crimes might not be immediately visible**.
9. Then talk about the limited visibility of hate crime laws. Refer them back to Module 6 on Hate Crime Legislation when participants discussed the different types of hate crime law and take them through Slide 3.

### Slide 3: Hate Crime Laws: Limited Visibility

#### *General Observations*

- Hate crime laws, including **penalty enhancements**, are **less visible** to practitioners.

#### *Reasons for Reduced Visibility*

- Penalty enhancements:
  - Are not **substantive offence provisions**.
  - Are typically part of the **sentencing provisions** and not included in the **charge or indictment**.
  - Invoked only at the **sentencing stage**, reducing the likelihood of application by the courts.

10. Next, move on to talk about the greater visibility of ‘hate speech’ law, and mention that offences criminalizing ‘**hate speech**’ (e.g., incitement to violence and hatred) are **longer established in law** than hate crime provisions, and are highly visible in criminal codes. Go through the points on Slide 4.

### Slide 4. Hate Speech Laws: Greater Visibility

#### *Characteristics of Hate Speech Laws*

- Take the form of **specific, substantive offences** in criminal codes.
- Examples include:
  - Incitement to hatred or violence.
  - Public dissemination of hate materials.
- Police and prosecutors are generally **more familiar with hate speech laws** due to:
  - Their **visibility in legal frameworks**.
  - Their frequent application in criminal cases.

11. Now ask participants if everything is clear and ask one of them to summarize the key points on visibility covered so far. This should include:

#### **Hate Speech Laws:**

- High visibility in criminal codes
- Often addressed as **specific offences**
- Better understood by police and prosecutors

#### **Hate Crime Laws:**

- Limited visibility due to their reliance on **general penalty enhancements**
- Often overlooked in legal proceedings

12. Point out the following **practical implications** of the (in)visibility of hate crime law **for prosecutors**:

- Consider the relative invisibility of hate crime laws during case preparation; and
- Advocate for better understanding and consistent application of hate crime provisions.

Distribute Handout 7: The consequences of misqualifying hate crimes.

## ACTIVITY 7.2 — *Hate crime and criminalized ‘hate speech’, what’s the difference and why is it important?*

**PURPOSE:** To recap on the key conceptual differences between hate crime and criminalized ‘hate speech’, and incitement speech in particular.

**TIME:** 15 minutes

### INSTRUCTIONS:

1. Refer back to *Figure 1* from Handout 2 that was introduced in Module 3 when the hate crime concept was discussed. Ask participants to pair up and recap the key points from Module 3 about the conceptual differences between hate crime and ‘incitement speech’. Explain that this is a refresher and that other points will be covered during the presentation and practical work.
2. Next, ask one participant to summarize the key points for the whole group. Ensure the following is covered:
  - **Hate crime offences:** established, subject to a full investigation, that a basic criminal offence has been committed (e.g., a threat, assault, murder or damage to property).
    - o Key technical question: proving that the offence was motivated by bias. (This is what we have been learning throughout this training).
    - o Specific target: people or property of / associated with a particular community / individual belonging to a particular community (the harm caused can be wider).
  - **Incitement to hatred or violence (‘incitement speech’) offences:** the presence of bias or hate towards a protected characteristic is clear from the content of the expression.
    - o Key technical question: whether there has been a crime; whether the hateful expression goes beyond freedom of expression protections — a cornerstone of democratic societies — and passes the criminal threshold.
    - o Public in nature: the aim is to mobilize / incite others to hatred or violence against a specific group / person based on a protected characteristic.

3. Demonstrate these points with the following examples:

- **Scenario 1:** *Person A physically assaults Person B while shouting offensive (racist, homophobic, etc.) slurs.*
  - o There **may or may not be a public element**. No freedom of expression considerations because the direct target is the individual victim.
  - o Crime = physical assault. 'Hate'/ bias motive = offensive (racist, homophobic, etc.) slurs.
- **Scenario 2:** *Person A **publicly** incites others to hatred, violence.*
  - o Must be 'publicly'; prosecutors must prove that violence or hatred was likely or foreseeable (inchoate offences), must not be protected speech.
  - o Crime = Incitement to hatred, violence

4. Explain that you will come back to the point about incitement speech offences being 'inchoate' offences later in the session. Note down on the 'Questions' flipchart sheet any questions or comments that arise and explain these will be addressed as the module progresses.

Participants may raise the following questions:

- *Threats are also verbal — why are they not hate speech?*
  - o Explain that threats to kill or commit physical damage or seriously harm are criminal offences in most criminal codes. This means that, where it is committed with a bias motive, it will also be a hate crime (i.e., there is a base offence and a bias motive).
- *Where does graffiti fit?*
  - o Explain that graffiti can span a number of types of offences including property damage and, depending on the circumstances, incitement to hatred or violence. Graffiti can also be a bias indicator.
- *Article 20 ICCPR — incitement to hostility or violence, also known as 'incitement speech'. Is there a difference between incitement to violence and incitement to hatred?*
  - o Explain that this will be dealt with later in this module and in Module 8.

**Note:** *The wording of national provisions uses a wide range of formulations. At this point you can also go back to the 'Hate Speech' flipchart with the three circles (broader concept, incitement speech and national laws). This can also be referred to for the points below:*

- *Insults, public order, online or 'cyber hate' (other)*
  - o Explain that this will be dealt with later in this module and in Module 8.
- *Criminalized hate speech other than 'incitement speech' — defamation, denial, etc.*
  - o Explain that this will be dealt with later in this module and in Module 8.

5. Point out that **different definitions of hate** are used to define hate crime offences compared to ‘incitement speech’ offences. Show Slide 5 and explain the following:
- **Incitement Speech:** OHCHR guidance on Article 20 of the ICCPR defines ‘hatred’ and ‘hostility’ as “intense and irrational emotions of opprobrium, enmity and detestation towards the target group.”
  - **Hate Crime:** According to OSCE guidance, in many hate crime cases, the perpetrator neither feels ‘hate’ towards their target nor is driven by their experience with the victim. Motivations often stem from stereotypes or intolerance, not personal hatred. A hate crime may target someone based on their perceived group membership, regardless of the perpetrator’s personal feelings towards an individual.
6. Next, to highlight one more conceptual difference between hate crime and ‘incitement speech’ present Slide 6.

#### Slide 6. Different Objects of Protection

- **Hate Crime**
  - **Intent:** Harm individual(s) (e.g., threats, property damage) with discriminatory motive.
  - **Object of protection:**
    - o **Physical/psychological integrity** of the individual(s).
- **Incitement Speech**
  - **Intent: Publicly incite violence or hatred against groups or individuals with a protected characteristic.**
  - **Object of protection:**
    - o **Public order and security.**
    - o **Security of targeted communities.**

7. Now move on to talk about an **inchoate offence**, explaining that ‘incitement speech’ is an inchoate offence, requiring a particular prosecution strategy.

“The action advocated through ‘incitement speech’ does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.”<sup>37</sup>

Go through the points in Slide 7 and conclude by pointing out that prosecutors must carefully assess the likelihood of harm while addressing the complexity of inchoate offences in line with international standards.

<sup>37</sup> OHCHR, [One-pager on “incitement to hatred”](#).

## Slide 7. 'Incitement Speech' is an Inchoate Offence

### **Key Characteristics**

- Crime exists even if the action advocated does not occur.
- **Some risk of harm must be identified** for prosecution.

### **Prosecutorial Strategy**

- Courts must determine:
  - **Reasonable probability** of the speech inciting actual action.
  - Recognition that causation must be relatively direct.

### **Guidance**

- **OHCHR**: Courts focus on whether the speech directly and reasonably risks causing harm to the target group.

8. Finally, note that the prosecution of **'incitement speech' requires freedom of expression considerations**. This needs specific guidance and training due to its complexity.

***Note:** The basic elements of freedom of expression considerations will be looked at in the next exercise, but more in-depth discussions on the topic are outside the scope of this training. Participants are recommended to undergo specific training on this topic.*

## **ACTIVITY 7.3 — International standards on 'hate speech'**

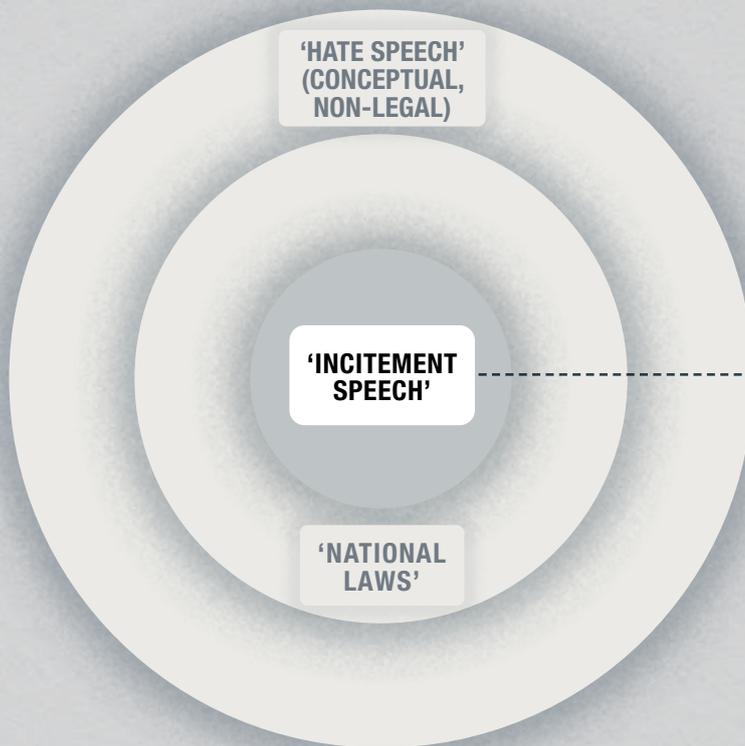
**PURPOSE:** To further distinguish the differences between hate crime and criminalized 'hate speech' (incitement speech in particular) by reviewing key international standards on 'hate speech'.

**TIME:** 10 minutes

### **INSTRUCTIONS:**

1. Show **Slide 8** and test participants' knowledge by asking them if there is an internationally agreed, general or legal definition of hate speech.

## NO UNIVERSALLY AGREED LEGAL DEFINITION



### Legal and policy references

- ▶ **ICCPR 20(2)**: prohibits 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. Defined by OHCHR as 'incitement speech'.
- ▶ **Article 4(a) ICERD**: mandates States to criminalize: incitement to racial discrimination, hostility, or violence.
- ▶ **Article 1 of the 2008 EU Framework Decision** requires Member States to criminalize public incitement to violence or hatred directed at individuals or groups based on race, color, religion, descent, or national or ethnic origin; as well as denial, condoning, or trivialization of genocide, crimes against humanity, or war crimes, when likely to incite violence or hatred.
- ▶ Council of Europe (CoE) **Recommendation on Combating 'hate speech'**.

2. Explain that **there is no internationally agreed definition of the general concept of 'hate speech'**, but that intergovernmental organizations have provided guidance on the fundamental elements of the phenomenon, which can encompass a wide range of criminal and non-criminal acts.
3. Mention that international human rights law (IHRL) **does not provide a universal, legal definition of 'hate speech'**. Ask the group if they can identify any existing IHRL standards that call on states to criminalize certain forms of 'hate speech'. What forms of 'hate speech' are criminalized by these standards?
4. Focus on the inner circle (incitement speech) and explain that, in existing IHRL standards: *Incitement to discrimination, hostility or violence on national, racial or religious grounds* is proscribed under:
  - Article 20(2) of the ICCPR
  - Article 4(a) of the International Convention on the Elimination of Racial Discrimination (ICERD)
  - Article 1 of the EU Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law (EU Framework Decision)
  - Council of Europe (CoE) Recommendation on Combating 'hate speech'

5. Now present Slide 9.

### Slide 9: Balancing Protections: Hate Speech vs. Freedom of Expression

#### Freedom of Expression vs. Equality and Non-Discrimination

- Article 19 ICCPR and Article 10 ECHR guarantee freedom of expression.
- Criminalization of hate speech must:
  - Protect equality and non-discrimination.
  - Avoid undue restrictions on free speech.

6. Move on to explain the Rabat Plan's Six-Part Test<sup>38</sup> and present Slide 10.

### Slide 10: The Rabat Plan's Six-Part Test

#### Framework for Assessing Incitement to Hatred

##### 1. Context:

- Consider the social, economic, and political background in which the speech occurs.

##### 2. Speaker:

- Assess the speaker's influence, authority, and intent.

##### 3. Intent:

- Determine if the speaker intended to incite discrimination, hostility, or violence.

##### 4. Content and Form:

- Analyze the nature and presentation of the speech.

##### 5. Extent of the Speech:

- Evaluate the scope, audience reach, and magnitude of the speech's impact.

##### 6. Likelihood and Imminence:

- Assess the probability of the speech leading to real harm, including incitement to violence.

Summarize by noting that the **Six-Part Test provides a critical framework for prosecutors** to assess potential incitement cases and distinguish between legitimate expression and harmful speech.

7. Present Slide 11 and explain that the first 2 points (Lack of Enforcement and Misuse of Laws) are highlighted in the Rabat Plan. When you present the second point of Slide 11 ('Broader Criminalization of 'Hate Speech)'), remind participants of the 'hate speech' circles and the middle circle ('national laws') in particular. Remind participants that these types of national laws are different than incitement offences and criminalize speech that is beyond international standards.

<sup>38</sup> [The Rabat Plan of Action](#), United Nations Office of the High Commissioner on Human Rights, 5 October 2012.

## Slide 11. Challenges

### Lack of Enforcement and Misuse of Laws:

- Perpetrators of incidents meeting the threshold of **Article 20 ICCPR** are often **not prosecuted or punished**.
- Overly vague domestic incitement laws may lead to **persecution of minorities**.

### Broader Criminalization of 'Hate Speech'

- Domestic provisions often criminalize conduct **beyond international standards**.
- **Expanded interpretation** of hate speech laws may include:
  - o Public expression of ideas that are **deeply offensive** or **hurtful**.
  - o Conduct perceived as threatening **social peace and security** or contributing to **hatred and violence**.

8. Distribute Handout 8: International standards on 'hate speech'.
9. Pause the presentation and ask what the role of prosecutors is when it comes to selecting criminalized 'hate speech' vs. hate crime charges? What is the role of the prosecutor in general? Why is it so important in hate crime cases?
10. Next show Slide 12.

## Slide 12. Prosecutorial Responsibilities

### *Key Considerations for Prosecutors*

- **Carefully Evaluate the Conduct Involved:**
  - o Identify the most appropriate criminal provision.
  - o Understand the object of protection intended by the legislature.
- **Align with International Standards:**
  - o Ensure actions uphold principles of equality, non-discrimination, and freedom of expression.

11. Thank the group for their work and summarize the key takeaways from the discussions.

## ADDITIONAL RESOURCES

- *Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized 'Hate Speech': a Practical Guide*, OSCE/ODIHR, 15 November 2024.
- *Hate Crime Laws: A Practical Guide. Revised Edition*, OSCE/ODIHR, 23 September 2022.
- The Camden Principles on Freedom of Expression and Equality, 'The Camden Principles', ARTICLE 19, 30 April 2009. These set out the relationship between Freedom of Expression and Equality and “represent a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgements of national courts), and the general principles of law recognized by the community of nations.”
- Council of Europe online course on Combating 'hate speech'.
- Council of Europe Toolkit for Human Rights Speech.
- OHCHR Faith for Rights Toolkit.



**MODULE 8**  
**PROSECUTING**  
**HATE CRIME AT THE**  
**INTERSECTION OF HATE**  
**CRIME AND CRIMINALIZED**  
**'HATE SPEECH' – THE**  
**PROSECUTOR**  
**DECISION TREE**



## MODULE 8

# PROSECUTING HATE CRIME AT THE INTERSECTION OF HATE CRIME AND CRIMINALIZED ‘HATE SPEECH’ – THE PROSECUTOR DECISION TREE

### SUMMARY

This module presents the Prosecutor Decision Tree, a tool developed by ODIHR, which helps prosecutors to map their national provisions and shows how hate crime provisions are applied and are distinguished from criminalized ‘hate speech’. Following the overview, the Decision Tree is then applied to several case studies.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Understand and navigate the Prosecutor Decision Tree;
- Map and assess local laws according to hate crime and criminalized ‘hate speech’ categories (building on Module 6, Hate Crime Legislation, Activity 6.1);
- Describe common legal provisions relating to offences at the intersection of hate crime and criminalized ‘hate speech’; and
- Apply the Prosecutor Decision Tree to specific cases.

### OUTLINE

| Time                      | Activity  | Key Points  |
|---------------------------|---|---|
| 30 minutes                | Activity 8.1<br><i>Overview of the Prosecutor Decision Tree</i> | Trainers present the Prosecutor Decision Tree and map the local legislation against hate crime offences and laws, and the criminalized ‘hate speech’ offences and laws.   |
| 75 minutes                | Activity 7.2<br><i>Case studies: Exploring the Intersection</i> | The group discusses case studies that correspond to the prosecutorial challenges identified in preparing for the training.<br><br><i>Note: This activity builds on Module 6, Hate Crime Legislation, Activity 6.1</i> |
| <b>Total: 105 minutes</b> |   |   |

## MATERIALS CHECKLIST

- Handout 9: The Prosecutor Decision Tree: Overview
- Laptop connected to the Internet, projector and screen for displaying the Decision Tree (ideally, 'zoom in' function)
- Two copies per participant of the ODIHR Prosecutor Decision Tree (A3 format) (access online separately)
- Handout 10: Prosecution at the Intersection — case studies — Parts I and II (select or prepare customized case studies in advance)

**NOTE ON PREPARATION AND CUSTOMIZATION:** *This activity can seem complex at first. The trainer should take time to familiarize themselves with the Prosecutor Decision Tree by reading Chapter 3 of [Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized 'Hate Speech': a Practical Guide](#) and by practicing the activities below ahead of the training.*

*In preparation, the trainer should map all existing national provisions on both hate crime and criminalized 'hate speech' and be prepared to discuss them as the group goes through the Decision Tree. The trainer might also find it useful to have the 'Hate Speech' three circles slide and 'Hate Speech' flipchart at hand in order to map national provisions against the 'incitement speech' and 'national laws' circles, and to answer any outstanding questions from participants.*

*Take time to select appropriate case studies based on national challenges and practice. Case studies can be adapted from national examples or selected from those given in this module ([Handout 10: Prosecution at the Intersection — case studies](#)). When preparing national examples, the trainer is recommended to map them against identified issues to ensure that these are addressed during the exercise. The table below should help in the selection process:*

| CHALLENGE / PRACTICE   | RECOMMENDED CASE STUDY (NATIONAL EXAMPLE OR FROM GUIDE)                       |
|--|---|
| Using criminalized 'hate speech' provisions to prosecute hate crimes instead of existing hate crime provisions | National case study or case study 1 or 2 from <a href="#">Handout 10</a>      |
| Using criminalized 'hate speech' provisions in the absence of relevant hate crime provisions                   | National case study or case study 3 from <a href="#">Handout 10</a>           |
| Mixed case that includes hate crime and criminalized 'hate speech' offences                                    | National case study or case study 4 from <a href="#">Handout 10</a>           |
| VERBAL ABUSE AND SPEECH ACTS AT THE BORDER OF HATE CRIME AND CRIMINALIZED 'HATE SPEECH'                        |   |
| Hooliganism  | National case study or case study 5 from <a href="#">Handout 10</a>           |
| Public order/disturbance of the peace  | National case study or case study 6 from <a href="#">Handout 10</a>           |
| Understanding graffiti   | National case study or case study: Graffiti from <a href="#">Activity 9.2</a> |

**Note:** If technology allows, the Decision Tree should be projected onto a screen so that the trainer can 'zoom in' to particular sections, and use a pointer or cursor to highlight each section as it is being explained and to show the progression of each case study. Each participant should have a spare copy of the Decision Tree for taking notes during the exercises

## ACTIVITY 8.1 — Overview of the Prosecutor Decision Tree

**PURPOSE:** To walk participants through the Decision Tree so they become familiar with its concepts and begin to understand how their national law maps against hate crime offences and laws on the left-hand side, and how criminalized 'hate speech' offences and laws map down the right-hand side.

**TIME:** 30 minutes

### INSTRUCTIONS:

1. Give each participant a copy of the Prosecutor Decision Tree. Tell them they can make notes on it during the exercises. They will get a clean copy after the module.
2. If possible, display the Decision Tree on the projector. Ensure you can zoom in and out. Use the cursor to follow the tree as you work through a case.
3. Explain that you will first walk participants through the Decision Tree before they will work together to apply it to specific case studies.
4. Introduce the Decision Tree with the following points:
  - The Decision Tree aims to highlight key differences in prosecution practice between hate crimes and criminalized 'hate speech' offences and to provide guiding questions to support prosecutors in applying their national provisions.
  - It cannot apply to all situations, and prosecutors will need to use their own judgement and apply national law as appropriate.
  - It starts from the point where a case is referred to the prosecutor. Depending on the legal system and the powers and the role of the prosecutor, a case may be referred to the prosecutor at some point during or towards the completion of the investigation, or at the point of charge. By this stage, the investigation process has most likely identified a potential criminal offence that indicates a potential charge.
  - As already covered in this training, the criminal offence could involve any crime in the criminal code.

5. Distribute Handout 9: The Prosecutor Decision Tree: Overview. Ask participants to imagine that a case has been referred to them. Move the cursor to Question 1 on the Tree and ask participants to go to Question 1 in the handout.

### **Question 1: Does the incident involve hate, bias or prejudice?**

Explain the following points, pausing for clarification questions.

- The purpose of this question is to cast the net as wide as possible; especially important for identifying, recording and responding to hate crime offences.
  - Remind participants that, as explained in Module 7, the presence of hate, bias or prejudice will be more obvious in cases of criminalized 'hate speech'. For hate crime cases, investigators and prosecutors may have to coordinate closely to identify and capture evidence of a bias motive. At the earliest stage, bias indicators should be used to identify possible evidence of bias. These tests should be re-visited and re-applied by prosecutors, as appropriate. Remind participants that bias indicators were extensively covered in Module 5.
  - Explain and indicate on the screen that, if the answer to Question 1 is 'yes', prosecutors should check if the victim(s) have been referred to a specialist support service and, where appropriate, a lawyer. If the prosecutor anticipates that the victim is likely to be required to give evidence, it isn't too early to consider the need for procedural and other accommodations. Prosecutors should also refer to further guidance on victims' needs. Note that Module 9 will discuss the topic of interaction with hate crime victims.
  - Explain that, if the answer to Question 1 is 'no', or where a prosecutor is unsure, they are encouraged to look again, especially if the victim or witness perceives the offence to be a hate crime or motivated by bias. Briefly pause the presentation to ask, what is meant by 'look again' and why this is so important? Remind participants that this is because hate crimes can be hard to identify and bias indicators must be carefully considered.
  - Suggest they could consider seeking the advice of a more experienced colleague or, if available, a hate crime specialist. If, after careful consideration, the answer is still 'no', the case is not a hate crime or criminalized 'hate speech' and should be handled according to national law and procedures.
6. **Civil and administrative law response.** Move to the part of the Decision Tree that considers civil and administrative law responses. If time allows, ask participants to share their thoughts on why it is important to consider these potential remedies.
  7. Explain that, if hate or bias is present and the criminal threshold is not met, it is important to remember that sub-criminal offences can indicate a risk of escalation into more serious criminal offending and also cause significant harm to victims. Prosecutors should coordinate with victims and their lawyers and other stakeholders (e.g., equality bodies, media regulators or other authorities) that can take forward a response under civil or administrative law.

8. Move the cursor to Question 2 and direct participants to Question 2 in the handout.

**Question 2: Does the incident include biased speech or expression?**

Explain the following points, pausing for any questions:

- 'Biased expression' can be verbal, gestures or written (including online or graffiti).
- Prosecutors should consider whether there is any hate or bias expression present. At this point, it is not necessary to consider if the content of the expression itself reaches the criminal threshold (this is considered from Question 3 onwards).
- If there is no obvious bias or hate expression, prosecutors might consider once more if there are any other indicators of bias or prejudice present in the offence, as outlined in Question 1. If the answer is 'yes', explain that you will proceed to Question 3 (Is the incident a crime if the biased expression is removed?). If the answer is 'no', but other bias indicators have been identified in Question 1, then explain you will proceed to Question 4 (What crime is involved? What is the base offence?).

9. Move the cursor to Question 3 and direct participants Question 3 in the handout.

**Question 3: Is the incident a crime if the biased expression is removed?**

Explain the following points, pausing for any questions:

- As learned throughout this training, hate crimes are criminal offences committed with a bias motive. The 'bias' manifests itself where a perpetrator has intentionally targeted an individual or property because of one or more identity traits or expressed hostility towards these identity traits during the crime.
- Even if the bias is removed, an identifiable crime, contained in the criminal code, such as an assault, has still taken place.
- Alternatively, in the case of criminalized 'hate speech', it is the content of the expression that constitutes the offence. In other words, if the biased expression is removed, there is no offence. These points were explored at the beginning of this module.
- If the answer is 'yes', the incident is likely to be a hate crime. If the answer is 'no', the incident is likely to include some form of criminalized 'hate speech'.

10. Move the cursor to Question 4 and direct participants Question 4 in the handout.

**Question 4: What crime is involved? What is the base offence?**

Explain the following points, pausing for any questions:

- Explain that now the 'hate crime' part of the Decision Tree is going to be explored.
- First, we will consider point 4a: where the base offence does not include speech or expression. These offences tend to be crimes commonly found in national criminal codes, such as forms of physical and sexual assault, homicide and damage to property.
- Then we consider cases covered by point 4b: where the base offence includes speech or expression. Criminal offences such as threats are committed through speech or expression, for example, a threat to kill or cause serious harm or harassment. In other words, these offences are still crimes if the biased expression is removed; the base offence itself is also committed through expression.

11. Move the cursor to Point 5 and direct participants to Point 5 in the handout

**Point 5: Identify, collect and capture indicator evidence of bias motivation.**

Explain the following points, pausing for any questions:

- At this stage, prosecutors can return to the evidence of bias indicators identified in Questions 1 and 2.
- Prosecutors can work with the police, where appropriate, to build evidence of bias motive that can be presented to court.

12. Move the cursor to Point 6 and direct participants to Point 6 in the handout.

**Point 6: Select the bias motivation provision.**

Explain the following points, pausing for any questions:

- Remind participants that hate crime laws were covered in Module 6.
- Spend a few minutes reviewing what was covered in Activity 6.2 when local laws were mapped. Explain that prosecutors should carefully review their criminal code to identify the most appropriate provision to recognize the bias motive:
  - o (6a, 6b, 6c): substantive offence, specific penalty enhancement or general penalty enhancement.
- Depending on the national framework, and what was covered in Module 6, cover the following points:
  - o (6d) If there is no national legal provision that covers a particular bias motive (e.g., sexual orientation as a protected characteristic), prosecutors can acknowledge the bias motive to the victim, ensure they have support and explain how the case will proceed where the criminal code does not contain an appropriate legal tool to address the specific bias motive.
  - o The court can consider general sentencing policies on aggravating and mitigating factors, such as the motivation of the perpetrator, which do not specifically mention bias motive but which could be applicable to the case.
  - o In the absence of an appropriate hate crime provision, prosecutors may be tempted to use a criminalized 'hate speech' provision to recognize the bias element of the offence. As reviewed earlier in the module, this is unlikely to be an appropriate prosecution strategy and risks undermining the principles of legality and proportionality.
  - o Prosecutors are encouraged to identify other appropriate charges (this will be covered further in the case study exercise).
  - o At the appropriate time in the policymaking process, prosecutors can play an important role in highlighting to decision-makers and legislators the missing legal tools to address hate crimes.
- If time, ask participants whether they have tools/ opportunity to raise the issue of gaps/ lack of legal tools? Has this been done in other practice areas (e.g., DV, trafficking, etc.)?

13. Now move back up the tree to the **criminalized 'hate speech' section.**

Recap Question 3 and remind participants that where the incident is no longer a crime if the bias element is removed, it is likely to be a case of 'hate speech'. Cover the following points, pausing for clarification questions:

- Start by reminding the group that the training does not provide guidance on prosecuting criminalized 'hate speech' offences. Its purpose is to show that these forms of offences are distinct from hate crimes and require different technical approaches and victim considerations. Therefore, this part of the Decision Tree identifies commonly criminalized 'hate speech' provisions to support prosecutors in mapping their national legal tools.
- Explain that **Points 7 and 8** of the Decision Tree address the target (individual, group, the general public) and the effect of the speech or expression. Point out that criminalized 'hate speech' offences are public in nature; however, the legal meaning of the terms 'public' or 'publicly' and the target of the speech or expression can vary greatly.

***Note:** During preparation, trainers may identify specific provisions on defamation, dissemination of hate materials and/or offences of genocide denial that do not include the condition of incitement violence or hatred. It may also be the case that these provisions have been discussed in previous modules (e.g., Modules 3 and 6). These can be referred back to during this session. However, discussions on how these cases should be prosecuted should be limited, as this is outside the scope of this training and no guidance on these offences is provided.*

14. Move the cursor to the section on **'Incitement speech'** offences and explain the following points:

- In these cases, the speech or expression aims to incite others to hatred or violence against a particular group (7c + 8d). As explained earlier in the module, prosecutors should draw on the Rabat Plan six-part test, national case law and, where appropriate, judgements from the ECtHR to guide their assessment.
- It is important to note that, in the case of 'incitement speech' offences, the Decision Tree highlights the technical requirement involved when proving an inchoate offence, also discussed earlier in the module. In other words, to show that the speech would succeed in inciting others to hatred or violence against the targeted group: the speech addresses those who would be incited to hatred or violence against a protected group, or members of that group, as opposed to directly addressing the individual target.

15. If relevant, consider the section on **Bias-motivated insults**. Explain the following points, pausing for any questions:

#### **Bias-motivated insults**

- Speech or expression is targeted towards an individual victim (7a) and can be harassing, insulting, threatening and offensive or expose the victim to hatred and/or ridicule (8a).
- Prosecutors should be mindful that this sort of conduct could escalate to direct threats of violence, in which case a qualification of ‘threat’ or something similar might be more appropriate.

*Note: Only cover this section if national law includes a bias-motivated insult provision.*

16. Lastly, move to consider **offences at the intersection of hate crime and hate speech**. Depending on the time available and choice of case studies, pick the most relevant points to cover in this segment. Move the cursor to the boxes on the ‘dotted line’ of the Decision Tree: **Bias-motivated disturbance of the peace and nuisance offences** and **Bias-motivated hooliganism**. Explain that while these offences can first appear to be examples of criminalized ‘hate speech’, close consideration shows that they are usually best addressed as hate crime offences:

#### **Bias-motivated disturbance of the peace and nuisance offences**

- In these cases, the speech or expression usually takes place offline and in public (point to 7c).
- It aims to, or has the effect of being abusive, alarming or distressing (point to 8b).
- It is important to note that inciting others to hate or act is not a constituent element of these offences.

*Note: Be prepared to refer to national law provisions, if available. Show them on the screen and go through these points.*

#### **Bias-motivated hooliganism**

- In these cases, the conduct involves violence carried out by groups.
- The focus is on the violation of public order, but the conduct can also involve the targeting of individual victims.
- The conduct aims to, or has the effect of being abusive, alarming or distressing (see 8b) to the surrounding public (see 7c).
- Inciting others to hate or act is not a constituent element of these offences.

17. Conclude the overview by asking participants if everything is clear and whether further explanation is needed. Next, the group will practice applying the Prosecutor Decision Tree.

## ACTIVITY 8.2 – Case studies – exploring the intersection

**PURPOSE:** To practice applying the Prosecutor Decision Tree to support prosecutors in their decision-making on specific cases, by applying selected case studies to the Decision Tree process.

**TIME:** 75 minutes

### INSTRUCTIONS:

**NOTE ON CUSTOMIZATION:** Trainers should use the table at the beginning of this module to choose one or two case studies, depending on the needs and time available, or to prepare a national case study that addresses the specific prosecutors' challenges identified.

1. Introduce the case study exercise as an opportunity to apply the Decision Tree together in groups and to identify practical questions. Mention that the participants will first work in small groups, followed by discussion in the plenary. The exercise goes as follows:
2. Divide participants into 3 small groups and give each group the same case study. Give them **Part I – Background to the case** of the chosen case study from [Handout 10](#). This includes the background and questions to help follow the Decision Tree. Give participants 15 minutes to discuss the case in their small groups.
3. Bring them back into one group and ask one of the small groups to give their feedback.
4. Give them **Part II - Learning points** of the chosen case study and go through the learning points, engaging participants from across the small groups as the session progresses.
5. As needed, and if time allows, repeat with a second case study.

**Note:** If cases dealing with graffiti has been identified as a specific challenge for prosecutors, consider discussing this case about graffiti, in addition to the case studies discussed above. This one is a little different and should be discussed in the large group with all participants. The purpose is to use the Decision Tree to show that cases of graffiti can span a number of types of offences and that it can also be a bias indicator.

## Case Study : Graffiti

6. Explain that, depending on the context and on their particular features, incidents involving graffiti can be comprised of hate crimes, bias-motivated insults, threats or criminalized 'hate speech' offences. In some circumstances, graffiti can also be a bias indicator for a hate crime offence.
7. Go back to the Decision Tree. Explain that you will use the example of racist graffiti and show how it spans a number of criminal offences including property damage, threat and, depending on the circumstances, incitement to hatred or violence. Graffiti can also be a bias indicator. Go through the following examples, moving the pointer or cursor to the correct place in the Decision Tree.
8. **Move the pointer down the left-hand side of the Decision Tree**, explaining that graffiti can be damage to property and the racist expression indicates a bias motive. In this case, graffiti is an example of bias-motivated property damage.
9. **Move the pointer back up the Decision Tree** and this time explain that, on the other hand, the content of the graffiti, its context and location, including how this affects its potential dissemination and the likelihood of harm, might suggest a qualification of incitement to hatred or violence. Here is an example, which can be used.

*In Šibenik, Croatia, anti-Serb graffiti, including swastikas and calls to kill Serbian children, was daubed on the wall of a school. The language included, "killed Arkan, then Ceca... kill Serbian children", "kill a Serb, Vukovar — never BYKOBAP."<sup>39</sup> The graffiti also included a drawing of a swastika with the year 1986 written in the four squares of the cross.*

10. Comments to the case study:
  - The prosecutor qualified the incident under Article 235 of the Croatian Criminal Code as "damage to the property of another person", committed with a base motive.
  - Article 325 of the Croatian Criminal Code sets out the offence: "Public incitement to violence and hatred". In these cases, it is open to the prosecutor to consider whether the graffiti or vandalism is directed at the targeted group that owns the facility, in which case it is more likely to be a hate crime, or whether the expression is aimed at the public in order to incite others to hatred, discrimination or violence. If so, prosecutors should consider domestic provisions, available case law and the Rabat Plan threshold tests to determine if an incitement to hatred charge is appropriate in this case.

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<sup>39</sup> Arkan was a Serbian military commander during the Balkans conflict. Ceca was the wife of Arkan. BYKOBAP is the name for the town of Vukovar in Cyrillic, which is the Serbian script. Vukovar borders Serbia and was the site of an atrocity committed by the Serbian military in 1991 during the Balkan conflict.

40 This database provides an overview of many of the symbols most frequently used by a variety of white supremacist groups and movements, as well as some other types of hate groups.

11. Move the pointer back up to the top of the Decision Tree and show how racist threats expressed by graffiti on the wall of an individual victim's property could be qualified as a bias-motivated threat.
12. Finally, move the pointer back to the top of the Decision Tree, remind participants that, in some circumstances, graffiti can also be a bias indicator for a hate crime offence.
13. Before you conclude the exercise, point out that in many cases, graffiti can include various symbols, which may be associated with hate or extremist groups or organizations. It is useful to have updated resources on the signs and symbols that are used internationally and locally. If time allows, show the tool produced by the US-based Anti-Defamation League, "Hate on Display Hate Symbols Database".<sup>40</sup>

### ADDITIONAL RESOURCES

- *Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized 'Hate Speech': a Practical Guide*, OSCE/ODIHR, 15 November 2024.

**MODULE 9**  
**INTRODUCTION**  
**TO SENSITIVE AND**  
**RESPECTFUL**  
**TREATMENT OF**  
**HATE CRIME VICTIMS**



## MODULE 9

# INTRODUCTION TO SENSITIVE AND RESPECTFUL TREATMENT OF HATE CRIME VICTIMS

### SUMMARY

This module introduces the basics of the sensitive and respectful treatment of hate crime victims and how to ensure this during the criminal justice process.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Describe the needs of hate crime victims; and
- Explain how prosecutors can ensure the sensitive and respectful treatment of hate crime victims in advance of and during the trial, as well as in post-trial procedures.

### OUTLINE

| Time                     | Activity   | Key Points  |
|--------------------------|--|---|
| 25 minutes               | Activity 9.1<br><i>What are Hate Crime Victims' Needs?</i>                                     | Participants discuss the needs of hate crime victims, based on video statements from the hate crime victims.  |
| 25 minutes               | Activity 9.2<br><i>Building Empathy: Walk a Mile in My Shoes</i>                               | Participants consider the perspective of people from minority and marginalized communities and discuss strategies for building empathy.   |
| 30 minutes               | Activity 9.3<br><i>Sensitive and Respectful Essentials During the Criminal Justice Process</i> | In group work, participants explore what the sensitive and respectful treatment of hate crime victims means and how to ensure the sensitive and respectful treatment of hate crime victims during the criminal justice process. |
| <b>Total: 80 minutes</b> |  |   |

## MATERIALS CHECKLIST

- 3-4 markers
- Video: Placing victims at the heart of the hate crime response. Full running time: 5:17 minutes. Excerpt for this module: 02:11-04:37.
- Video: Sensitive and respectful treatment of hate crime victims. Full running time 09:42 minutes. Excerpt for this module: 00:00 to 03:44.
- Video: Experiences of hate crime victims with the criminal justice system. Full running time 08:17 minutes. Excerpt for this module: 00:00 to 03:42.
- Laptop connected to the Internet, projector/ screen/speakers for displaying the slides/video
- Identity cards (customized to the local context, prepared and printed in advance)
- Handout 11: Sensitive and Respectful Essentials During the Criminal Justice Process
- ODIHR leaflet *The Sensitive and Respectful Treatment of Hate Crime Victims* (accessed online separately)

## ACTIVITY 9.1 — *What are hate crime victims' needs?*

**PURPOSE:** To introduce the needs of hate crime victims and how these are different from the needs of the victims of other types of crimes.

**TIME:** 25 minutes

### INSTRUCTIONS:

1. Start by asking participants what they think are the needs of hate crime victims; ask each participant in turn. Note down their answers on the 'Hate Crime Victims' Needs' flipchart sheet.
2. Then ask participants, to volunteer to explain how the needs of hate crime victims differ from the needs of victims of other types of crimes, based on the answers to the previous question.

3. Show: **Video: Placing victims at the heart of the hate crime response**. Excerpt for this module: 02:11 to 04:37. After the video, ask participants to reflect on the video and whether they would like to add to the list of needs on the flipchart.
4. Next, ask them what they understand by **secondary victimization**. Summarize their responses with the following definition: “Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.”
5. Mention that, for many targets of hate crime, secondary victimization can lead to even greater humiliation, degradation and isolation, which will have an even greater impact on their emotional and psychological health and their social and economic well-being. The response and behaviour of the representatives of criminal justice agencies and professionals in institutions supporting the victims of crime (including medical and psychological services, lawyers and legal services, social workers and civil society victim support services) can therefore have a critical impact on hate crime victims.
6. Show **Video: Sensitive and respectful treatment of hate crime victims**. Excerpt for this module: 00:00 to 03:44. Before you start, give the following background:
  - The group will hear from the same people whose testimonies were screen in Modules 2 and 3. In this video, the interviewees will speak about the sensitive and respectful treatment of hate crime victims and will share their experiences of what went wrong and what could be done better.
  - The speakers include:
    - o **Dr. Klára Kalibová**, Founder, Director and Attorney at In IUSTITIA, Prague, Czech Republic. Klára founded In IUSTITIA, a dedicated counselling centre for people affected by hate crime in the Czech Republic, in 2009. Klára has also personally been the victim of a gender-based hate crime and in the videos as well as talking about responses to hate crime in general she also shares her personal experience of dealing with a hate crime and her experiences of the criminal justice process.
    - o **Sarian Jarosz**, Researcher on LGBTI rights and migration, Warsaw, Poland. Sarian was the victim of an anti-LGBTI hate crime in 2019 and, during the video interviews, he talks about his experience of reporting the incident to police and well as his wider experiences of discrimination and harassment and the effect this has had on his life.
    - o **Kateřina Gamal Richterová**, Social Media Content Manager, HateFree Culture Project, Prague, Czech Republic. Kateřina was the victim of a hate crime and high levels of online hate directed against her personally. In the video interviews she talks about her experiences and what went wrong in the criminal justice process and how it could be improved.
    - o **Fatmir Memedov**, Security Project Manager, Trier, Germany (former non-commissioned officer in North Macedonian army). In videos, Fatmir discusses his experiences as the victim of a hate crime committed by law enforcement in North Macedonia in 2013, and the longer-term effect of the hate crime on himself and his family.

7. Ask participants to reflect on the video and identify practices by the representatives of criminal justice agencies, mentioned in the video, that can contribute to secondary victimization.
8. Ask participants to give more **examples** (not referred to in the video) **of how the representatives of criminal justice agencies can contribute to the secondary victimization** of hate crime victims. If not mentioned by the participants, give the following examples:

- ✓ Failing to respond or giving an unhelpful and denigrating response;
- ✓ Attributing responsibility for the crime to victims, or claiming the culpability of the victim (victim-blaming);
- ✓ Minimizing the seriousness of a reported hate crime and trivializing the individual's experience and consequences;
- ✓ Denying the victim's perspective in the assessment and evaluation of the crime; not taking a bias motivation into consideration or dismissing it as irrelevant;
- ✓ Displaying negative attitudes or reinforcing the prejudices of the perpetrator, and treating the victim accordingly;
- ✓ Expressing sympathy and understanding for the perpetrator;
- ✓ Lacking the appropriate knowledge, experience and skills to acknowledge the significance of the victim's identity for the crime they suffered;
- ✓ Failing to consider individual needs, especially the need for information and justice; and
- ✓ Denying victims' rights or victim status.

9. To conclude the exercise, show **Video: Experiences of hate crime victims with the criminal justice system**. Excerpt for this module: 00:00 to 03:42.

Explain that this will be testimony from **Dr. Klára Kalibová** about her experience with the criminal justice system as a victim of hate crime.

10. Ask participants what they learned from this video. The key point from this video is that approaching and navigating the criminal justice system can present additional challenges for victims, and the reactions of criminal justice agencies have a particularly important role in determining the consequences of the victims' experience of victimization.

## ACTIVITY 9.2 – *Walk a mile in my shoes*

**NOTE ON PREPARATION AND CUSTOMIZATION:** *Before this exercise, prepare identity cards, each with a different identity. The identities need to be written on cards (one identity per card). Ensure there are 2 sets of 6 identity cards for up to 12 participants, so that everyone has a different identity within a group of 6 participants. For example, identity cards can include: 1) transwoman, librarian, 2) woman, unemployed, asylum seeker, 3) man of a migrant background, construction worker, 4) Roma man, doctor, 5) Muslim woman (minority religious group), lawyer, 6) man, homeless, belongs to majority ethnic and religious group.*

**PURPOSE:** To consider the perspective of people from minority and marginalized communities, in particular, when interacting with the criminal justice system.

**TIME:** 25 minutes

### INSTRUCTIONS:

1. Explain that participants will work in pairs and each participant will be given a new identity for the purposes of the exercise. After they have been given their new identity, participants will be asked to think about some questions and share their answers with their pair.
2. Divide participants into pairs and give each participant a card with their new identity for the exercise.
3. Explain that, for the purpose of the exercise, each person in the pair will re-introduce themselves by saying, “Hi, my name is \_\_\_\_\_, and I am (a) \_\_\_\_\_” using the information they have received on the card, regardless of how they identify in real life.
4. Explain that each of them will need to share their responses to a list of questions to be shared with the group. Explain that, while the questions are quite direct and ‘black and white’, answers can be more nuanced or complex. For example, they might want to think about the factors that might make a certain outcome more or less likely. Put the following questions on a slide, flipchart sheet or handout.

- ✓ If you were in danger or crisis, would you feel confident calling the police for help?
- ✓ If a police officer saw you walking on the street (without speaking to you), would you be perceived as a threat?
- ✓ If you reported a crime against yourself, would you expect to be believed by the police or prosecutor?
- ✓ If you were a victim in a criminal offence, would you feel confident to attend a court?

5. Within their pairs, the participants should answer each question as honestly as they can from the perspective of their new identity. The pairs will work in parallel and trainers should just observe.
6. When everyone has had a chance to speak in their role, invite participants to step out of their roles and take a few moments to reflect in silence. Then ask the whole group how the experience has affected them. What, if anything, do they have a better appreciation or understanding of? What behaviours of their own do they take for granted, if any?

### **ACTIVITY 9.3 — *Sensitive and respectful essentials during the criminal justice process***

**PURPOSE:** To discuss what sensitive and respectful treatment means in practice at all stages of the trial process.

**TIME:** 30 minutes

**INSTRUCTIONS:**

1. Remind participants that sensitive and respectful treatment of hate crime victims needs to be reinforced throughout the criminal proceedings if the case goes to trial. Remind them of the importance of active listening, respectful dialogue and informed communication.
2. Divide participants into three smaller groups and ask them what they should bear in mind when ensuring the sensitive and respectful treatment of victims in the three following phases of the trial process:
  - Preparation for the trial (Group 1)
  - During the trial (Group 2)
  - In the post-trial period (Group 3)
3. They should spend 10 minutes discussing the task after which each group should report to the whole group. Ensure they cover the following key points:
  - It is crucial to put protection measures in place to avoid intimidation and secondary victimization before the proceedings start. Consider granting a victim the necessary status to facilitate their active participation in the proceedings at the earliest possible stage.
  - Offer interpretation and translation support, if needed.
  - Check whether legal advice and representation is required.
  - Emphasize the importance of explaining to victims their participation rights, hence guiding them through trial.
  - Educating the victim is critical: tell them whether they have the option to withdraw from participation or the right to not be informed; let them know if there are any court or other fees which might be incurred as a result of the criminal proceedings.

- Provide information on the right to compensation from the state and/or the offender, and how to exercise this right, if available in your jurisdiction.
  - Highlight that legal representation for victims and other support at trial should be provided.
  - Stress that the possibility of being accompanied by a support person (including a CSO representative) throughout the trial may be powerful instrument.
  - Underline that it is important to ensure the victim's right to be heard (e.g., by presenting an impact statement) and facilitate their active participation rights, including through the use of communication technology.
  - Stress that bias motivation needs to be addressed at all stages of criminal proceedings, including in the court's findings.
  - Underline that, once the court has handed down its decision, victims should be provided with a comprehensive briefing on the judgement and the grounds for the decision, as well as on the protection and support measures available in the post-trial stage.
  - Underline that the victim should be provided with information on, or renew the offer to refer the victim to specialist victim support providers.
6. After the group presentation, distribute Handout 11: Sensitive and Respectful Essentials During the Criminal Justice Process and ask participants to briefly review the phase of the trial process that their group was working on. Allow 1-2 minutes. Then ask whether there are any new points that were not already mentioned. Ask participants what they think about these considerations and whether they are available (realistic) in their jurisdiction?
5. Lastly, hand out the ODIHR leaflet on *Sensitive and Respectful Treatment of Hate Crime Victims* for future reference, which summarizes the points discussed in this module, in particular why the sensitive and respectful treatment of hate crime victims is important, and what it means in practice.

### ADDITIONAL RESOURCES

- *Hate Crime Victims in the Criminal Justice System*, OSCE/ODIHR, 9 April 2020.
- *Understanding the Needs of Hate Crime Victims*, OSCE/ODIHR, 7 September 2020.
- *Sensitive and Respectful Treatment of Hate Crime Victims: Training Course for Criminal Justice Professionals*, OSCE/ODIHR, 17 February 2022.
- *Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System*, OSCE/ODIHR, 4 October 2021.
- *Model Guidance on Individual Needs Assessments of Hate Crime Victims*, OSCE/ODIHR, 15 June 2021.

# MODULE 10

## BARRIERS TO

## PROSECUTING HATE

## CRIMES AND

## STRATEGIES TO

## OVERCOME THEM



## MODULE 10

# BARRIERS TO PROSECUTING HATE CRIMES AND STRATEGIES TO OVERCOME THEM

### SUMMARY

This module discusses the barriers, both direct and indirect, to prosecuting hate crimes and possible strategies for overcoming them.

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### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Recognize and understand the common barriers to effective hate crime prosecutions; and
  - Discuss possible strategies that individual prosecutors can adopt to address them.
- 

### OUTLINE

| Time                     | Activity   | Key Points  |
|--------------------------|--|---|
| 40 minutes               | Activity 10.1<br><i>Addressing barriers to prosecuting hate crimes</i> | Discussion of commonly experienced barriers in prosecuting hate crime and strategies for dealing with them. |
| <b>Total: 40 minutes</b> |  |   |

---

### MATERIALS CHECKLIST

- Flipchart sheet: 'Barriers to prosecuting hate crimes' with categories 1-5 down the page
- Marker

## ACTIVITY 10.1 — *Addressing barriers to prosecuting hate crime*

**PURPOSE:** To give participants the opportunity to discuss the barriers they face when prosecuting hate crimes and the strategies they use to overcome them.

**TIME:** 40 minutes

### **INSTRUCTIONS:**

1. Prosecutors can face multiple barriers to prosecuting hate crimes effectively. Because responding to hate crimes at the national level is a task that typically involves multiple actors, challenges can exist in relation to these specific actors, as well as to existing national legal and policy frameworks.
2. Explain that participants will be discussing barriers to prosecuting hate crimes and identifying strategies to address these barriers in relation to the following:
  - 1) Hate crime victims
  - 2) The legal and policy framework
  - 3) Responses by law enforcement
  - 4) Responses by prosecutors and courts
  - 5) Responses by civil society organizations (CSOs)
3. Divide participants into three groups who will discuss the issues as follows.
  - Group 1: Category 1 — hate crime victims
  - Group 2: Categories 2 and 3 — legal and policy frameworks, and responses by law enforcement
  - Group 3: Categories 4 and 5 — responses by prosecutors and courts, and responses by civil society organizations (CSOs).
4. Give them 15 minutes for discussions and then ask each group to present their key points and proposed strategies.
5. Ensure all the barriers and strategies below have been covered and bring them up for discussion if not mentioned by the participants.

## Category 1 – hate crime victims

### Barriers:

- Suffer more and need specialized support
- Otherwise, they will not report and/or cooperate
- Reasons for under-reporting:
  - Victims may be in denial that the attack was bias-motivated
  - Victims may be scared of reporting any crimes to the police
  - Victims may not trust police and prosecutors to investigate hate crimes
  - Victims may be afraid of retaliation from the perpetrators if they report the crime
  - Victims may blame themselves for the attack

### What is needed:

- Support to any victims of crime
- Awareness and recognition of hate crime victims (legal and practical)
- Better cooperation between different state authorities and CSOs

**Note:** For example, according to the surveys conducted by the FRA, the reporting rate of cases of bias-motivated violence and bias-motivated harassment to the police is notably low. For all the surveyed groups, only 28 per cent of instances of bias-motivated violence and 10 per cent of instances of bias-motivated harassment were reported to the police, as an average for all EU countries. Please consult FRA's latest surveys on hate victimization and under-reporting experiences among members of minority communities here

## Category 2 – legislative framework and policy

### Barriers:

- Ineffective and inconsistent legislation
- Legislation not used in practice
- Legislation misunderstood and misinterpreted
- No guidance (on recording, investigating, prosecuting, protecting victims)
- No technical infrastructure

### What is needed:

- Stronger legislation
- Training for police, prosecutors and judges on hate crime, existing hate crime provisions and their application
- Policy implementation (to record, to investigate, prosecute, protect victims) with sustainable training so that application is uniform
- Effective technical infrastructure to enable the recording of hate crime
- Coordination mechanisms between different state agencies and CSOs

**Note:** For example, based on findings of the ODIHR Hate Crime Report for 2024, across the OSCE region, incomplete or inadequate legislation remains a major obstacle for prosecutors, which means that some hate crimes are not investigated as such or are incorrectly prosecuted as 'hate speech' or other related offences. This can render hate crimes invisible, leaving victims without support or access to their rights and leading to misinformed policy and legal responses.

### Category 3 – lack of response by law enforcement

#### Barriers:

- Lack of recording and reporting by police officers
- No police guidance in place
- Biases held by some members of law enforcement
- Hate crime victims are not treated sensitively

#### What is needed:

- Technical support at ground level to introduce effective recording mechanisms
- Widespread, sustainable training, including on the treatment of victims of hate crime, accompanied by protocols for hate crime recording.
- Highlighting the important role of the prosecutor in leading the work of the police

### Category 4 – lack of response by prosecutors and courts

#### Barriers:

- Lack of relevant information from law enforcement about bias
- Poor appreciation of the importance of addressing hate crimes through the criminal justice system
- Unwillingness of prosecutors to seek additional evidence of bias motivation when there is already sufficient evidence for conviction
- A lack of clear legislation can lead wary judges not to consider bias motivation at sentencing
- Judges may require a very high standard of evidence for recognizing bias-motivated crime

#### What is needed:

- Awareness-raising about the problem, the law and international standards
- Prosecutorial guidance/sentencing guidelines for courts
- Technical support at ground level to introduce effective recording mechanisms
- Widespread, sustainable training for improved argumentation of hate crime cases

**Note:** For example, based on findings of the ODIHR Hate Crime Report for 2024, while many participating States are offering national training programmes, prosecutors and judges, in particular, remain under-reached by these national capacity-building efforts.

Another challenge identified by the Hate Crime Report is scaling the training up and making it systemic and sustainable. Training initiatives too often remain ad hoc.

## Category 5 – lack of response by CSOs

### Barriers:

- Limited capacity, reach
- Specific mission (e.g., on domestic violence) which can be difficult to reconcile with working on hate crime, often due to targeted funding
- Tend to focus on ‘hate speech’ rather than on hate crimes

### What is needed:

- Law enforcement, criminal justice agencies and other relevant authorities (MoJ, MoI) need to recognize the role CSOs can play in reporting hate crime, given they are often the only people with whom the victim communities have contact and to whom they may have the confidence to report.
  - A platform that includes civil society, financial support for CSOs working with victims of hate crime, collaboration on training, and a long-term institutionalized coordination mechanism.
6. Thank the group for their work and summarize the key takeaways from the discussions.

### ADDITIONAL RESOURCES

- *Compendium: Practices of Civil Society and Government Collaboration for Effective Hate Crime Victim Support*, OSCE/ODIHR, 18 March 2022.
- *Manual on Joint Hate Crime Training for Police and Prosecutors*, OSCE/ODIHR, 7 November 2018.
- *Developing Interagency Co-operation Plans to Address Hate Crime: A Methodology*, OSCE/ODIHR, 7 November 2018.
- *Prosecuting Hate Crimes: A Practical Guide*, OSCE/ODIHR, 29 September 2014.
- *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, OSCE/ODIHR, 15 October 2009.
- *Encouraging hate crime reporting – The role of law enforcement and other authorities*, FRA, 2021.

**MODULE 11**

**CASE STUDIES I**

**— BIAS INDICATORS**

**AND INITIATING**

**A HATE CRIME CASE**



# MODULE 11

## CASE STUDIES I – BIAS INDICATORS AND INITIATING A HATE CRIME CASE

### SUMMARY

In this module participants put into practice and apply their knowledge to some of the key points that have been covered, but with a specific focus on bias indicators and the application of national hate crime law. This is also an opportunity to discuss possible investigative steps and what is realistic in terms of evidence collection.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Identify bias indicators in case example; and
- Acknowledge the importance of addressing bias motivation in investigation stage.

### OUTLINE

| Time                     | Activity   | Key Points  |
|--------------------------|--|---|
| 70 minutes               | Activity 11.1<br><i>Is it a potential hate crime case?</i> | In small groups, participants discuss the case studies to identify bias indicators and investigation steps. Then, groups report to the plenary on their findings, opening each case for group discussion.<br><br><i>This activity is connected with <a href="#">Module 12, Activity 12.2</a>.</i> |
| <b>Total: 70 minutes</b> |  |   |

### MATERIALS CHECKLIST

- [Handout 12 \(customized\)](#)

## ACTIVITY 11.1 — *Is it a potential hate crime case?*

**PURPOSE:** To acquaint participants with the method of establishing and investigating a real hate crime case. Working together and sharing ideas is beneficial, as patterns of case identification (as well as bias in doing so!) will inevitably come up during group work.

**TIME:** 70 minutes

**NOTE ON CUSTOMIZATION:** *For this activity, trainers should prepare as many cases as they wish the groups to work on (either cases adapted from Handout 12 or their own cases). They should only include enough information for participants to discover the clues indicating bias (see how this is done in the case study examples in Handout 12). Try to keep it short, relatively obvious and simple (on one page), and present it in a way that provokes further curiosity about how an investigation would proceed. Please note that Module 12 builds on these case studies — the case studies in Handout 12 are developed further in Handout 14. Please take this into consideration if developing your own cases.*

### INSTRUCTIONS:

1. Explain that the goal of this exercise is to answer the specific questions on their case studies and report back to plenary. Each case study has their own questions.
2. Divide participants into three groups and give each group a different case study. Each group appoints a speaker to report back. Allow exactly 25 minutes for the group work and note the time groups will return to the plenary. Explain that trainers will come to each group and clear up any questions.
3. Start inviting participants back to the plenary, five minutes before the agreed end time. If needed, allow for a mini-break (open windows, music, washroom break) before starting presentations.
4. Invite the groups to present their findings in turn. Each group speaker starts with a thorough explanation of the case facts and then presents their answers to the questions, asking other members of their group to add any points.
5. After each presentation, ask the rest of the participants for their reactions.

**Note:** *The trainer can also help if a speaker misses any important facts. They could also give the handout to the other groups. If the cases should be presented in a particular order, the trainer should ask the groups in order.*



**MODULE 12**

**CASE STUDIES II**

**— MOTIVE EVIDENCE**

**motive**



# MODULE 12

## CASE STUDIES II – MOTIVE EVIDENCE

### SUMMARY

In this module participants put into practice and apply their knowledge to some of the key points that have been covered, but with a specific focus on motive evidence and the application of national hate crime law. This is also an opportunity to discuss possible investigative steps and what is realistic in terms of evidence collection.

### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Identify the different types and sources of evidence of bias motivation;
- Recognize and uncover bias evidence; and
- Apply ideas and concepts related to hate crime discussed over the training to case studies.

### OUTLINE

| Time                     | Activity   | Key Points   |
|--------------------------|--|--|
| 20 minutes               | Activity 12.1<br><i>Introduction into Motive Evidence</i>                | Trainers present common types and sources of evidence of bias motivation.  |
| 55 minutes               | Activity 12.2<br><i>Is there sufficient evidence of bias motivation?</i> | In small groups, participants discuss case studies to identify bias motivation evidence and other issues. Then, groups report to the plenary on their findings, opening each case for group discussions.<br><br><i>This activity is a continuation of Module 11, Activity 11.1</i> |
| <b>Total: 75 minutes</b> |  |  |

### MATERIALS CHECKLIST

- [Handout 13](#)
- [Handout 14](#) (completed during customization)

## ACTIVITY 12.1 – Introduction to motive evidence

**PURPOSE:** To present common types and sources of evidence of bias motivation.

**TIME:** 20 minutes

### INSTRUCTIONS:

1. Start by asking how prosecutors use motive in their cases (not just in hate crime cases). How is motive relevant to their cases? How often do they highlight aspects of motive?
2. What do they think is different about proving bias motivation?
3. Ask what they consider are common types and sources of bias evidence.
4. Distribute [Handout 13](#) (excerpt below) and discuss each type of evidence with the participants. Ask them to share examples from their practice.

***Note:** If participants are reluctant to share examples from their own experience, it may be helpful to describe a few examples from your own practice.*

| Type of evidence   | Sources  |
|--|--|
| Offensive statements towards the victim during the incident. | Victim, witnesses to the incident.   |
| Statements before the event that indicate planning           | <ul style="list-style-type: none"> <li>• Suspect's associates, friends, family or other witnesses present at location of statement</li> <li>• Search of suspect's mobile phone, camera phone, computer and internet usage</li> </ul>   |
| Statements of admission after the event                      | <ul style="list-style-type: none"> <li>• Suspect's associates, friends, family, or other witnesses present at location of statement</li> <li>• Search of suspect's mobile phone, camera phone, computer and internet usage</li> <li>• Statements made in public or overheard in public settings</li> </ul> |
| Statements of direct admission                               | <ul style="list-style-type: none"> <li>• First responders to scene, witnesses, police/prosecution investigators</li> </ul>   |
| Connections to organized hate group                          | <ul style="list-style-type: none"> <li>• Search of suspect's house for magazines, posters, books, leaflets, etc.</li> <li>• Search of suspect's mobile phone, camera phone, computer and internet usage</li> </ul>   |
| Circumstances of the crime                                   | <ul style="list-style-type: none"> <li>• Time, place with significant relevance for the offender or for the victim</li> <li>• Brutality of attack and manner of commission</li> <li>• Patterns of similar incidents that have same manner of commission</li> </ul>   |

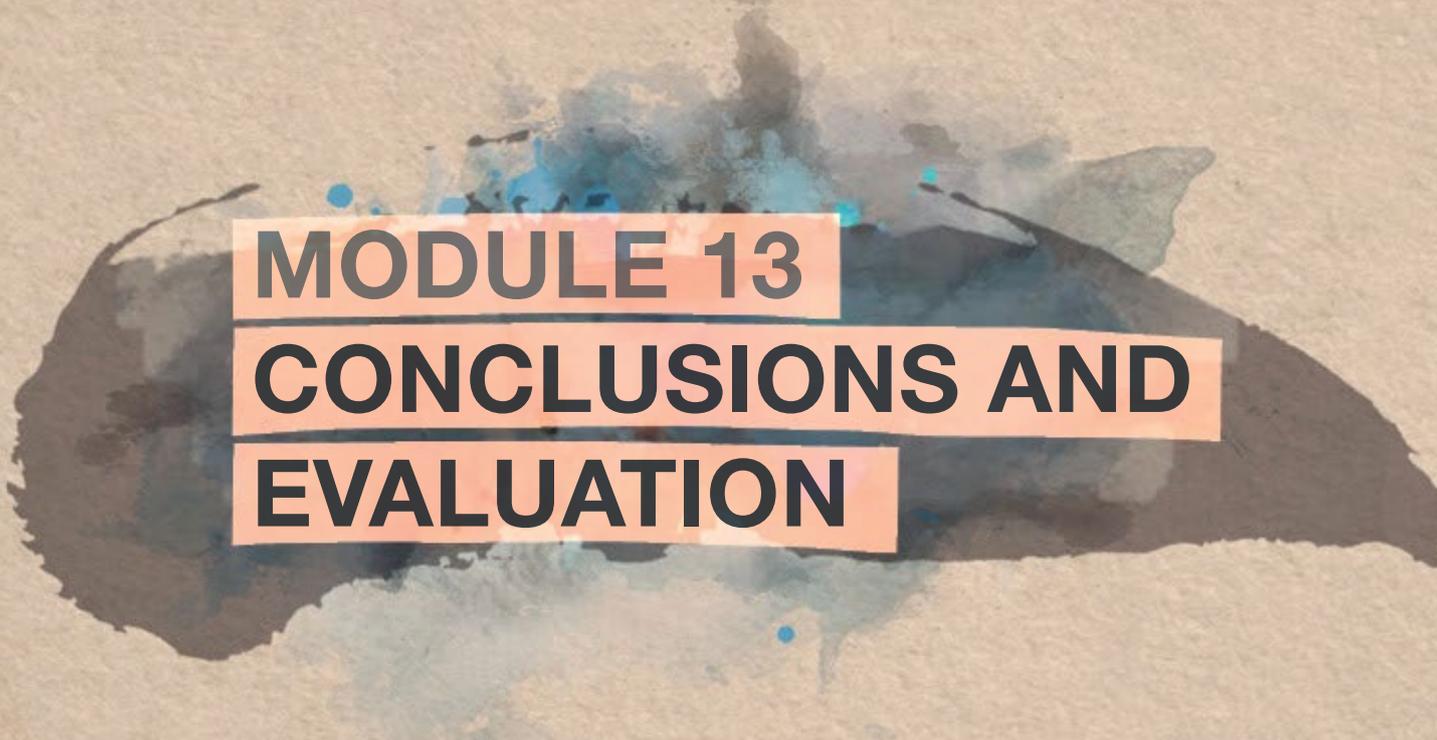
## ACTIVITY 12.2 – *Is there sufficient evidence of bias motivation?*

**PURPOSE:** To work with participants on hate crime cases, in particular on methods of investigating motive evidence in the cases they started working on during Module 11.

**TIME:** 55 minutes

### INSTRUCTIONS:

1. Invite participants to form the same three working groups as in Module 11 to continue working on the same case studies. Distribute Handout 14 and ask the groups to appoint a new speaker for each group. Allow exactly 20 minutes for the group work and note the time groups will return to the plenary. Explain that trainers will come to each group and clear up any questions.
2. Start inviting participants back to the plenary, five minutes before the agreed end time. If needed, allow for a mini- break (open windows, music, washroom break) before starting presentations.
3. Invite the groups to present their findings in turn. Each group speaker starts with a thorough explanation of the case facts and then presents their answers to the questions, asking other members of their group to add any points.
4. After each presentation, invite the full group to share their reactions, parallels to their cases, etc. After each presentation, ask questions related to key learning points from the training. One possible question, is to ask them if this is how they would do it in real life and, if not, why not.



**MODULE 13**

**CONCLUSIONS AND**

**EVALUATION**

# MODULE 13

## CONCLUSION AND EVALUATION

### SUMMARY

This is an opportunity for participants to reflect on what they have learnt during the course.

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### LEARNING OBJECTIVES

By the end of the module participants will be able to:

- Reflect on what they have learnt and how they could use it in their work.
- 

### OUTLINE

| Time                     | Activity   | Key Points   |
|--------------------------|--|--|
| 25 minutes               | Activity 13.1<br><i>Conclusions, feedback and evaluation</i> | Participants reflect on the training, their key takeaways, complete the evaluation sheet and share feedback. |
| <b>Total: 25 minutes</b> |  |  |

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### MATERIALS CHECKLIST

- Handout 15: Evaluation Form

## **ACTIVITY 13.1 – *Conclusions, feedback and evaluation***

**PURPOSE:** To give participants the opportunity to reflect on everything they have learnt during the training course and how they could use it in their work.

**TIME:** 25 minutes

### **INSTRUCTIONS:**

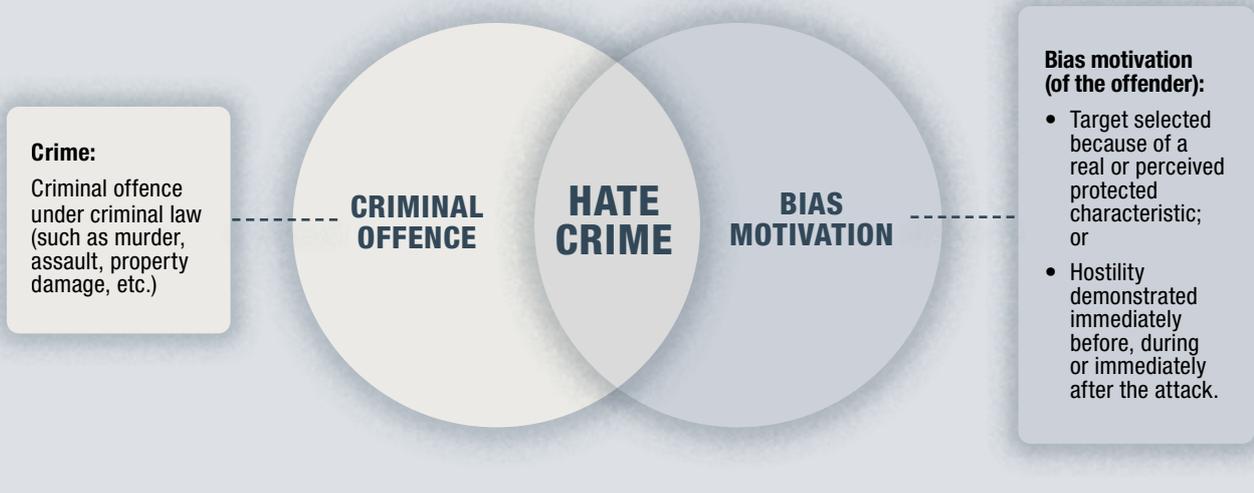
1. Start by reminding the group about the journey they made during the training, on Days 1 and 2; what they did and what they have learned.
2. Ask them what they will take away from the course in terms of values and attitudes, ideas and concrete skills. Allow 10 – 15 minutes for discussion.
3. Distribute Handout 15 and ask participants to fill out the evaluation form, noting that evaluations should be anonymous. Allow 5 minutes for this.
4. Make brief closing comments to thank participants and to express confidence in their ability to respond to and prosecute hate crimes.
5. Award certificates to participants, if this is envisaged by the organizers

# ANNEXE 1

## HATE CRIME CONCEPT — SLIDES

### Slide 1. Hate crime definition

## HATE CRIME = CRIME + BIAS MOTIVE



### Slide 2. Key characteristics of a hate crime

- The *target* may be a **person, people or property** associated with a group that shares a protected characteristic

The *target* can be due to **real, perceived** membership or **by association** with a group that shares a protected characteristic

- A *protected characteristic* is a fundamental or core characteristic shared by a group, such as 'race', religion, ethnicity, language or sexual orientation
- Intersectional biases
- Hate crimes may have mixed motives

### Slide 3. Is 'hate' required?

- The emotion of **hate** is not required for a hate crime
- Bias motivation is about the **prejudice, intolerance or hatred directed at a particular group** sharing a common identity trait and does not relate to feelings about individuals

### Slide 4. Hate crime is NOT...

#### **DISCRIMINATION**

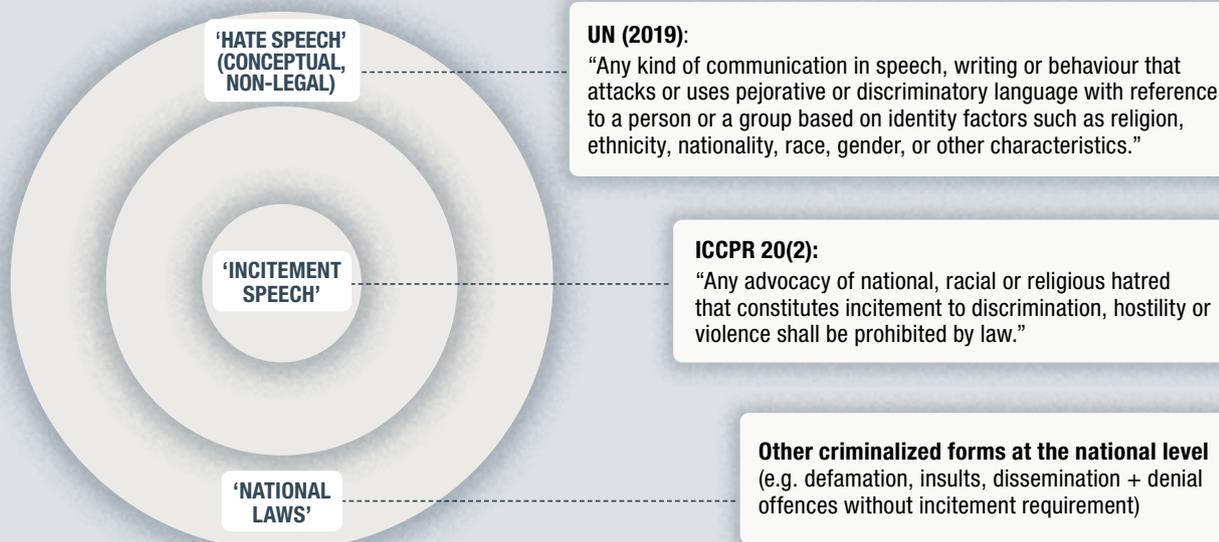
- Lack of stand-alone criminal offence
- Acts typically associated with discrimination (exclusion from businesses, termination of employment, etc.) are NOT criminal offences without the bias motivation

#### **BIAS-MOTIVATED OR HATE INCIDENT**

- May lack the stand-alone criminal offence
- Incidents, acts or manifestations of intolerance committed with a bias motive that may or may not reach the threshold of a crime in the Criminal Code.
- **Terrorism, Genocide, Domestic Violence**

## Slide 5. Hate Crime is NOT: 'Hate Speech'

NO UNIVERSALLY AGREED LEGAL DEFINITION



## Slide 6. Conceptual issues are at the intersection of hate crime and criminalized 'hate speech'

### CONCEPTUAL ISSUES AT THE INTERSECTION OF HATE CRIME AND "INCITEMENT SPEECH"

#### HATE CRIME

**?**  
EVIDENCE OF BIAS

**x**  
CRIMINAL OFFENCE

**Core practice challenge:** Proving bias motive

**Specific target:** Targets specific people or property of / associated with a particular community / individual belonging to a particular community (harm caused can be wider)

**Base offence:** Prosecutors need to prove the elements of the base offence (e.g., assault, theft, threat, etc.)

#### 'INCITEMENT SPEECH'

**x**  
EVIDENCE OF BIAS

**?**  
CRIMINAL OFFENCE

**Core practice challenge:** Determining whether speech / expression is covered by freedom of expression protections and is lawful, or whether it is unprotected and therefore criminal

**Public in nature:** Aim is to mobilize / incite others to hatred or violence against a specific group / person based on a protected characteristic

**Inchoate offence:** Prosecutors need to prove reasonable probability that speech or expression would succeed in inciting violence or hatred even if the act(s) itself is / are never committed.

## Slide 7. What makes hate crime different from other crimes?

- Individual hate crimes can have a deeply destructive impact on individual victims
- Individual hate crimes can impact other people who share the same identity characteristic as a victim, and thus can threaten community
- Hate crimes continue and escalate if not stopped
- Hate crimes are one of the few crimes in which the perpetrator's motivation is a critical part of the offence

**KEY POINT:** Hate crimes are message crimes.

## Slide 8. What is a hate crime prosecution?

Prosecutor needs to:

- Seek an appropriate sentence for the increased impact of the crime;
- Supervise (or lead) investigation to collect the evidences of bias;
- Present the evidence of the defendant's bias motive and argue it in court;
- Provide the victim(s) the opportunity to have their experiences with a bias recognized by the criminal court; and
- Seek to accommodate the hate crime victim's specific needs.

## Slide 9. Why do hate crime prosecutions matter?

- Contribute to the deterrent effect that criminal punishment has on the offender and potential offenders
- Send a message to victims, communities and societies that violent manifestations of intolerance will be actively pursued by the criminal justice system
- Help prevent retaliatory crimes
- Meet the state's international obligations and commitments to effectively investigate and prosecute hate crimes

# ANNEXE 2

## INTERNATIONAL AND REGIONAL STANDARDS – SLIDES

### Slide 1. Where does the concept of hate crime come from?

Equality and Non-Discrimination are Fundamental Human Rights Principles

- **UDHR:** “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ‘race’, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- **ICCPR:** Reading the provisions as a whole — obligates states to investigate violence committed against individuals and to discharge these duties without discrimination.
- **ECHR,** Article 14: Similar prohibitions on discrimination as in UNDHR.

### Slide 2. International obligations and standards on hate crime

Article 4 (a) **ICERD:**

- Requires states to make an offence of “all acts of violence or incitement to such acts against any race or group of persons of any colour or ethnic origin”.

**OSCE Commitments** on Hate Crime:

- Specific legislation
- Data collection
- Investigation and prosecution
- Training courses for criminal justice officials

**Council of Europe** Committee of Ministers’ Recommendation on combating hate crime

### Slide 3. European Union standards

- **Framework Decision 2008/913/JHA** on combating certain forms and expressions of racism and xenophobia by means of a criminal law.

Article 4: states "...shall take the necessary measures to ensure that **racist and xenophobic motivation is considered an aggravating circumstance**, or, .... **may be taken into consideration by the courts in the determination of the penalties.**"

- **Victims' Rights 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.
  - o Recognizes hate crime victims as a **particularly vulnerable category of victims with specific protection needs**.
  - o Requires individual assessment of the hate crime victim's support and protection needs.
  - o Provides for additional protection during criminal proceedings.

### Slide 4. ECtHR case law: *Nachova and others v. Bulgaria*

Facts: In 1996, the Bulgarian military police, during an arrest attempt, shot dead two Bulgarian nationals of Roma origin, conscripts who had recently escaped from a military construction force and who were known to be unarmed. As one of the military police officers was pointing a gun at one of the victims, he said "You damn [anti-Roma slur]!". The military police officers were not prosecuted as the investigation concluded that they had followed national military police regulations.

- Article 2 (right to life) - Whether two victims were deprived of their lives in violation of Article 2
- Article 2 (right to life) - Whether the investigation into the deaths two victims was effective, as required by Article 2

#### Slide 4. ECtHR case law: *Nachova and others v. Bulgaria* (continuation)

! NEW APPROACH BY THE ECtHR LINKING A POSSIBLE VIOLATION OF ARTICLE 14 TO THE PROCEDURAL ASPECT OF ARTICLE 2.

Article 14 (prohibition of discrimination) in conjunction with Article 2

**Procedural aspect** — Whether Bulgaria complied with its obligation to investigate possible racist motives

**Meaning of a procedural aspect of Article 14 (prohibition of discrimination) taken in conjunction with Article 2**

“[W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.

[...]

[The] State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.”

#### Slide 5. ECtHR case law: duties specific to hate crimes

Prosecutor needs to:

- Procedural duty to uncover racist, anti-religious, anti-LGBTI (and other discriminatory) motives behind a crime — *Šečić v. Croatia; Identoba and Others v. Georgia*
- Procedural duty to investigate and unmask discriminatory motives covers the offences committed by state actors and the offences committed by private individuals — *Nachova v. Bulgaria; Šečić v. Croatia*
- Procedural duty to assess bias indicators — *Nachova v. Bulgaria, Identoba and Others v. Georgia, Secic v. Croatia, Balazs v. Hungary*
- Investigation cannot exclude bias motivation because other motives are present — *Balazs v. Hungary*
- Evaluation of evidence must be done without prejudice — *Stoica v. Romania, Cobzaru v. Romania*
- Hate crime by association — *Škorjanec v. Croatia*
- Criminal justice system must be able to adequately investigate, prosecute and adequately punish hate crimes — *Angelova and Iliev v. Bulgaria, Sabalić v. Croatia*

## ANNEXE 3

# BIAS INDICATORS – SLIDES

### Slide 1. Definition of bias indicators

**BIAS INDICATORS** are “objective facts, circumstances, or patterns attending a criminal act(s), which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole or in part, by any form of bias.”

(Massachusetts Model Protocol for Bias Crime Investigation)

### Slide 2. Main categories of bias indicators



## ANNEXE 4

# HATE CRIME LEGISLATION – SLIDES

### Slide 1. What is a hate crime law?

- Does not need a special title or a special section in the legislation
- Any criminal provision that specifically addresses bias motivation in proving or sentencing a crime

### Slide 2. Types of hate crime laws

- **Substantive offence:** Separate offences that include the bias motive as an integral element of the legal definition of the offence.

Examples: “racially motivated assault”; “violence against a group of individuals”

Example from the jurisdiction of the training

### Slide 3. Types of hate crime laws

- **Specific penalty enhancement:** Provisions attached to particular base offences with aggravation for bias motives.

Examples: the crime of “bodily harm” has several qualifying factors/aggravating circumstances that increase the sentence, including bias motivation;

Example from the jurisdiction of the training

### Slide 4. Types of hate crime laws

- **General penalty enhancement:** general sentencing provisions applicable to all crimes that have a list of aggravating circumstances, including bias motivation, for consideration when imposing sentence.

**Example from the jurisdiction of the training**

## Slide 5. Local hate crime provisions

### TO BE ADDED IN THE PROCESS OF CUSTOMIZATION

| Type of hate crime provisions | Article and text of the provision |
|-------------------------------|-----------------------------------|
|                               |                                   |
|                               |                                   |
|                               |                                   |

## Slide 6. Gaps and ways around them

### a. TYPES OF NATIONAL HATE CRIME PROVISIONS?

- What crimes/conduct is covered by these provisions?

### b. WHAT PROTECTED CHARACTERISTICS ARE COVERED?

- What groups at risk of hate victimization in the given national / local context are not covered by the law?

### c. PRACTICE: USE OF HATE CRIME PROVISIONS?

- Invoking a general penalty enhancement provision (prosecutor or judge)?
- Proving bias motivation: hostility or discriminatory selection?
- Is 'hate' required?
- Is the victim's affiliation to a particular group necessary?
- Is it possible to take bias motive into consideration if other motives are present?

## ANNEXE 5

# PROSECUTING HATE CRIME AT THE INTERSECTION OF HATE CRIME AND CRIMINALIZED ‘HATE SPEECH’ – SLIDES

### Slide 1. Examples of misqualification of hate crime offences and criminalized ‘hate speech’

- Physical assaults involving racial slurs are prosecuted as simple assault and the racial slurs are additionally charged as incitement to hatred offences
- Biased threats are prosecuted as criminalized ‘hate speech’

## Slide 2. The consequences of the misqualification of hate crimes

| <b>CONSEQUENCES OF MISQUALIFICATION</b>  |   |
|--|---|
| <b>✘</b>   | <b>✔</b>  |
| <b>INCORRECT QUALIFICATION</b>   | <b>CORRECT QUALIFICATION</b>  |
| <b>Fails to give effect to the specific purpose</b> intended by national legislature for the criminalization of certain offences | Ensures <b>legal certainty</b> for defendants   |
| <b>Undermines legal certainty</b> for defendants   | <b>Increases access to participation rights</b> in criminal proceedings and access to specialist support and protection for victims   |
| <b>Diminishes access to participation rights</b> in criminal proceedings for victims   | <b>Improves visibility of hate crimes</b> in police recording, official crime statistics, national policies and international data such as ODIHR's annual Hate Crime Report |
| <b>Risks limiting access to specialist support</b> and protection for victims  | <b>Informs effective strategic responses</b> by national authorities, including prosecution services  |
| <b>Provides misleading assessment</b> of nature and extent of hate crimes  | <b>Increases visibility</b> of a comprehensive response to hate crime at the national level and conceptual coherence and synergies at the international level.              |
| <b>Produces misinformed policy</b> and legal responses   |   |

## Slide 3. Hate crime laws: limited visibility

### GENERAL OBSERVATIONS

- Hate crime laws, including **penalty enhancements**, are **less visible** to practitioners.

### REASONS FOR REDUCED VISIBILITY

- Penalty enhancements:
  - Are not **substantive offence provisions**
  - Typically, part of the **sentencing provisions** and **not included in the charge or indictment**
  - Invoked only at the **sentencing stage**, reducing the likelihood of application by the courts

## Slide 4. 'Hate speech' laws: greater visibility

### CHARACTERISTICS OF HATE SPEECH LAWS

- Take the form of **specific, substantive offences** in criminal codes
- Examples include:
  - Incitement to hatred or violence
  - Public dissemination of hate materials
- Police and prosecutors are generally **more familiar with hate speech laws** due to:
  - Their visibility **in legal frameworks**
  - Their frequent application in criminal cases

## Slide 5. Different definitions of 'hate'

### DIFFERENT DEFINITIONS OF "HATE"



#### 'INCITEMENT SPEECH'

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Article 20 ICCPR defines 'hatred' and 'hostility' as "intense and irrational emotions of opprobrium, enmity and detestation towards the target group"

#### HATE CRIME

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OSCE guidance: "In many hate crime cases, the perpetrator neither feels 'hate' towards their target nor is driven by their experience with the victim. Rather, the perpetrator is motivated by their stereotypes, preconceived ideas or intolerance towards a particular group of people and the protected characteristic(s) they share."

## Slide 6. Different objects of protection

### HATE CRIME

- **Intent:** Harm individual(s) (e.g., threats, property damage) with discriminatory motive
- **Object of protection:**
  - o **Physical/psychological integrity** of the individual(s)

### INCITEMENT SPEECH

- **Intent:** Publicly incite violence or hatred against groups or individuals with a protected characteristic
- **Object of protection:**
  - o **Public order and security**
  - o **Security of targeted communities**

## Slide 7. 'Incitement Speech' is an inchoate offence

### KEY CHARACTERISTICS

- Crime exists even if the action advocated does not occur
- **Some risk of harm must be identified** for prosecution

### PROSECUTORIAL STRATEGY

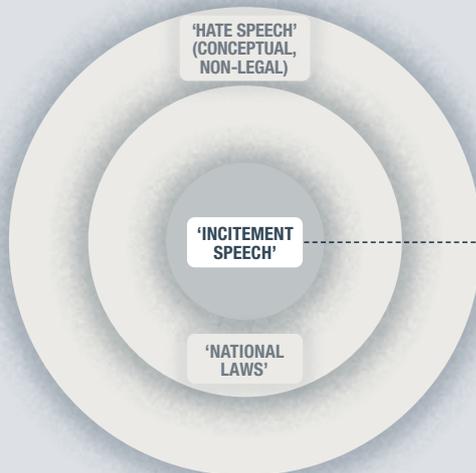
- Courts must determine
  - o **Reasonable probability** of the speech inciting actual action
  - o Recognition that causation must be relatively direct

### GUIDANCE

- **OHCHR:** Courts focus on whether the speech directly and reasonably risks causing harm to the target group

## Slide 8. 'Hate speech'

NO UNIVERSALLY AGREED LEGAL DEFINITION



### Legal and policy references

- ▶ **ICCPR 20(2)**: prohibits 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. Defined by OHCHR as 'incitement speech'.
- ▶ **Article 4(a) ICERD**: mandates States to criminalize: incitement to racial discrimination, hostility, or violence.
- ▶ **Article 1 of the 2008 EU Framework Decision** requires Member States to criminalize public incitement to violence or hatred directed at individuals or groups based on race, color, religion, descent, or national or ethnic origin; as well as denial, condoning, or trivialization of genocide, crimes against humanity, or war crimes, when likely to incite violence or hatred.
- ▶ Council of Europe (CoE) **Recommendation on Combating 'hate speech'**.

## Slide 9. Balancing protections: 'hate speech' vs. freedom of expression

- **Article 19 ICCPR** and **Article 10 ECHR** guarantee freedom of expression
- Criminalization of '**hate speech**' must:
  - o Protect equality and non-discrimination
  - o Avoid undue restrictions on free speech

## Slide 10. The Rabat Plan's Six-Part Test

### 1. CONTEXT:

Consider the social, economic, and political background in which the speech occurs;

### 4. CONTENT AND FORM:

Analyse the nature and presentation of the speech;

### 2. SPEAKER:

Assess the speaker's influence, authority and intent;

### 5. EXTENT OF THE SPEECH:

Evaluate the scope, audience reach and magnitude of the speech's impact; and

### 3. INTENT:

Determine if the speaker intended to incite discrimination, hostility or violence;

### 6. LIKELIHOOD AND IMMINENCE:

Assess the probability of the speech leading to real harm, including incitement to violence.

## Slide 11. Challenges

### LACK OF ENFORCEMENT AND MISUSE OF LAWS:

- Perpetrators of incidents meeting the threshold of **Article 20 ICCPR** are often **not prosecuted or punished**
- Overly vague domestic incitement laws may lead to **persecution of minorities**

### BROADER CRIMINALIZATION OF 'HATE SPEECH'

- Domestic provisions often criminalize conduct **beyond international standards**
- **Expanded interpretation** of hate speech laws may include:
  - o Public expression of ideas that are **deeply offensive** or **hurtful**
  - o Conduct perceived as threatening **social peace and security** or contributing to **hatred and violence**

## Slide 12. Prosecutorial responsibilities

### KEY CONSIDERATIONS FOR PROSECUTORS

- **Carefully evaluate the conduct involved:**
  - o Identify the **most appropriate criminal provision**
  - o Understand the **object of protection** intended by the legislature
- **Align with international standards:**
  - o Ensure actions uphold principles of **equality, non-discrimination** and **freedom of expression**

# HANDOUT 1

## HATE CRIME DEFINITION AND RELATED CONCEPTS



**A HATE CRIME IS A CRIMINAL OFFENCE, BASED ON A BIAS MOTIVE. HATE CRIMES ALWAYS COMPRISE TWO ELEMENTS:**

1. The **first element** of a hate crime is that an act is committed which is a crime. Hate crimes always require a base offence to have occurred. If there is no underlying crime, there is no hate crime. Hate crimes could include murder, an act of intimidation, threats, property damage, assault, arson, robbery or any other criminal offence.
2. The **second element** of a hate crime is that the perpetrator must commit the criminal act with a particular motive, referred to as 'bias'. It is this element of bias motive that differentiates hate crimes from ordinary crimes. The **bias motive** means that: (i) the perpetrator intentionally chose the target of the crime because of some protected characteristic; or (ii) while committing an ordinary crime, immediately before or after, the perpetrator expressed hostility towards the protected characteristics of the targeted person, group or property.

Hate crimes can **target** one person, multiple people or property associated with a group that shares a particular characteristic. The perpetrator might target the victim because of **actual or even perceived membership** in, or **association with**, a group. For example, a perpetrator may attack someone because they think the victim is Jewish. The attack can still be prosecuted as a hate crime, even if the victim was not Jewish, simply because the perpetrator selected the victim because of a perceived religious or ethnic background.

A **protected characteristic** is a common feature shared by a group, such as race, ethnicity, language, religion, nationality, sexual orientation, gender identity or any other similar common factor that is fundamental to their identity. As all people have protected characteristics, anyone — both members of majority and minority groups — can become targets of a hate crime.



## HATE VERSUS BIAS

**A hate crime does not require that the perpetrator feels hate.** Instead, it requires only that the crime is committed out of **bias motivation**. Bias means that a person holds prejudiced ideas about a group. Since hate crimes are committed because of what the targeted person, people or property represent, the perpetrator may have no feelings at all about an individual victim. Hate crimes can be committed for a number of reasons:

- ▶ The perpetrator may act out of resentment, jealousy, peer pressure, or to seek a thrill;
- ▶ The perpetrator may have no feelings about the individual target of the crime, but may have hostile thoughts or feelings about the group to which the target belongs;
- ▶ The perpetrator may feel hostility to all persons who are outside the group to which they identify themselves;
- ▶ At an even more abstract level, the target may simply represent an idea or principle, such as immigration, multiculturalism or diversity, or gender equality, to which the perpetrator is hostile; or
- ▶ A combination of the above or other reasons.

**Discrimination** refers to the less favourable treatment of individuals in areas such as education, employment and access to goods and services on the basis of group characteristics such as race, religion or ethnicity. Discrimination is most frequently regulated under civil law, and even if criminal penalties are envisioned, these acts (e.g. exclusion from businesses, termination from employment, etc.) are NOT criminal offences without the bias motivation. Additionally, discrimination law is subject to different and very detailed legal principles and jurisprudence. Acts of discrimination are part of a spectrum of behaviours that can lead to hate crimes.

**Hate-motivated incidents** are acts that involve prejudice and bias but do not amount to a crime. The term describes acts motivated by bias or prejudice ranging from those that are merely offensive to those constituting criminal acts in which the crime has not been proven. Thus, they share the second but not the first element of a hate crime. Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany or provide the context for hate crimes. Hate incidents can be precursors to more serious hate crimes.

There is no universally agreed legal definition of **'hate speech'**. The UN Strategy and Plan of Action on Hate Speech (2019) defines it as "Any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group based on identity factors such as religion, ethnicity, nationality, race, gender, or other characteristics." The **Council of Europe Recommendation on Hate Speech** (2022) provides further guidance on addressing its impact.

The key **difference** between hate crime and 'hate speech' is that **hate crime involves a criminal act**, while 'hate speech' **can include lawful, offensive or inciteful expressions**. Both **harm marginalized communities**, fuelling discrimination and division.

More materials on the difference between hate crime and 'incitement speech' can be found in [Handout 2](#).

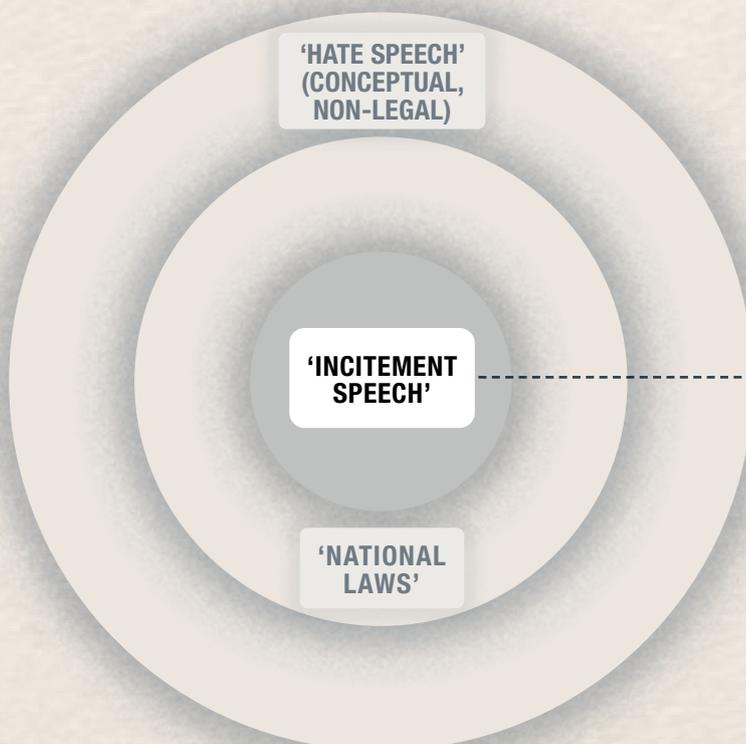
# HANDOUT 2

## CONCEPTUAL ISSUES AT THE INTERSECTION OF HATE CRIME AND ‘INCITEMENT SPEECH’

This handout highlights the key differences between hate crime and a certain form of criminalized ‘hate speech’: ‘incitement speech’ as defined by Article 20 of the ICCPR. Figure 1 below explains the conceptual differences between hate crime and criminalized ‘hate speech’. Figure 2 describes the difference definitions of hate in the two concepts. The final points explain the difference in the ‘objects of protection’ for the different concepts and that ‘hate speech’ is an inchoate offence.

Figure 1. Conceptual differences between hate crime and criminalized ‘hate speech’

### NO UNIVERSALLY AGREED LEGAL DEFINITION



#### Legal and policy references

- ▶ **ICCPR 20(2)**: prohibits ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’. Defined by OHCHR as ‘incitement speech’.
- ▶ **Article 4(a) ICERD**: mandates States to criminalize: incitement to racial discrimination, hostility, or violence.
- ▶ **Article 1 of the 2008 EU Framework Decision** requires Member States to criminalize public incitement to violence or hatred directed at individuals or groups based on race, color, religion, descent, or national or ethnic origin; as well as denial, condoning, or trivialization of genocide, crimes against humanity, or war crimes, when likely to incite violence or hatred.
- ▶ Council of Europe (CoE) **Recommendation on Combating ‘hate speech’**.

Figure 2. Different definitions of 'hate'



## DIFFERENT DEFINITIONS OF "HATE"

**'INCITEMENT SPEECH'**

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Article 20 ICCPR defines 'hatred' and 'hostility' as **"intense and irrational emotions of opprobrium, enmity and detestation towards the target group"**

**HATE CRIME**

---

OSCE guidance: "In many hate crime cases, the perpetrator **neither feels 'hate' towards their target** nor is driven by their experience with the victim. Rather, the perpetrator is motivated by their stereotypes, preconceived ideas or intolerance towards a particular group of people and the protected characteristic(s) they share."

**'OBJECTS OF PROTECTION' AND INCHOATE OFFENCE**

**Hate Crime**

**Intent:** Harm individual(s) (e.g., threats, property damage) with discriminatory motive

**Object of protection:**

- ▶ Physical/psychological integrity of the individual(s)

**'Incitement Speech'**

**Intent:** Publicly incite violence or hatred against groups or individuals with a protected characteristic

**Object of protection:**

- ▶ Public order and security
- ▶ Security of targeted communities

**'INCITEMENT SPEECH' IS AN INCHOATE OFFENCE**

**Key characteristics**

**Object of protection:**

- ▶ Crime exists even if the action advocated does not occur
- ▶ **Some risk of harm must be identified** for prosecution

**Prosecutorial strategy**

**Courts must determine:**

- ▶ **Reasonable probability** of the speech inciting actual action
- ▶ Recognition that causation must be relatively direct

# HANDOUT 3

## INTERNATIONAL AND REGIONAL FRAMEWORK AND TOOLS

### WHERE DOES THE HATE CRIME CONCEPT COME FROM?

The hate crime concept is grounded in the fundamental human rights' principles of equality and non-discrimination that are recognized in a number of different international instruments. A few notable instruments are mentioned below.

#### UNIVERSAL DECLARATION OF HUMAN RIGHTS<sup>41</sup>

- “Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”
- “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

41 [Universal Declaration of Human Rights](#), United Nations, 10 December 1948.

#### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)<sup>42</sup>

Reading the provisions as a whole — obligates states to investigate violence committed against individuals and to discharge these duties without discrimination.

- Articles 6 and 7 obligate states to investigate violations of right to life & inhumane treatment committed by public or private actors.<sup>43</sup>
- Article 2 echoes same principle of equality of UNDHR: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- Article 26 requires equality before the law, equal protection of the law and protection from discrimination: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

42 [International Covenant on Civil and Political Rights](#), United Nations, 16 December 1966.

43 [General Comment 31, UNHRC, CCPR/C/21/Rev.1/Add.13](#), 26 May 2004, paras. 6-8.

## EUROPEAN CONVENTION ON HUMAN RIGHTS<sup>44</sup>

Article 14 prohibits discrimination of the rights and freedoms contained in the Convention on specific grounds.

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

## OSCE COMMITMENTS ON HATE CRIME: 2003-2009

The OSCE’s Ministerial Council has repeatedly asserted that hate crimes not only affect individual human rights to equality and non-discrimination, but have the potential to lead to conflict and violence on a wider scale. Since the OSCE requires consensus for any decisions or commitments, every participating State has actively agreed to abide by these commitments. While OSCE commitments are not legally binding, they form a set of principles which have moral weight on states.

The Ministerial Council Decision in 2009 on Combating Hate Crime<sup>45</sup> remains one of the most comprehensive commitments by the international community concerning state obligations to address hate crime.

OSCE participating States, inter alia, committed themselves to:

- Collect, and make public, data on hate crimes;
- Enact, where appropriate, specific, tailored legislation to combat hate crimes;
- Take appropriate measures to encourage victims;
- Develop professional training and capacity-building activities for law-enforcement; prosecution and judicial officials dealing with hate crimes;
- Promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership.

44 [European Convention on Human Rights](#), Council of Europe, 3 September 1953.

45 <https://www.osce.org/cio/40702>, OSCE High-Level Conference on Tolerance and Non-Discrimination, 4 December 2009.

## LEGAL STANDARDS & RECOMMENDATIONS

### CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION<sup>46</sup>

Obligation to punish racist violence:

**ARTICLE 4 (a):** Shall declare an offence punishable by law all dissemination of 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**, and also the provision of any assistance to racist activities, including the financing thereof;

**ARTICLE 1:** defines the related term, “racial discrimination”, as:

“[T]he term ‘racial discrimination’ shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

46 [International Convention on the Elimination of All Forms of Racial Discrimination](#), United Nations, UN GA resolution 2106 (XX), 21 December 1965.

## JURISPRUDENCE FROM THE CERD COMMITTEE

47 Committee on the Elimination of Racial Discrimination, *Communication No. 46/2009*, Opinion adopted by the Committee at its eightieth session, 13 February to 9 March 2012, CERD/C/80/D/46/2009.

The jurisprudence from the CERD Committee is instructive on what these duties mean in actual case application for investigating and prosecuting racist hate crime. In *Mahali Dawas and Yousef Shava v. Denmark*,<sup>47</sup> the Committee was of the opinion that when investigating and prosecuting crimes with a potential bias motivation, the prosecution has a duty to ensure that racist motivation is fully investigated through the criminal proceedings. Failure to do so when there is prima facie evidence of bias motivation in connection with a serious crime is considered a violation of Article 6 (effective remedies) and Article 2, paragraph 1(d) (bringing an end to racial discrimination by all appropriate means).

## COUNCIL OF EUROPE

48 CM/Rec(2024)4.

Recommendation of the Committee of Ministers to member States on combating hate crime (CM/Rec(2024)4)<sup>48</sup> mentions that Council of Europe member States should take all necessary measures and dedicate sufficient resources to **prevent and combat hate crime and support its victims**, in cooperation with civil society and other stakeholders. Effective, proportionate and dissuasive provisions to prevent and combat hate crime should be included in criminal law, and priority should be given to unmasking, acknowledging and recording the hate element of the crime.

## EUROPEAN COMMISSION ON RACISM AND INTOLERANCE (ECRI)<sup>49</sup>

49 ECRI website.

50 ECRI General Policy Recommendation N°11, ECRI 29 June 2007.

The Council of Europe's body dedicated to addressing issues of racism and intolerance, have issued a number of recommendations relating to combating hate crime.

"ECRI General Policy Recommendation No. 11: Combating racism and racial discrimination in policing",<sup>50</sup> adopted by ECRI on 29 June 2007, encourages the investigation of racist incidents, recording them, and using a broad definition for the purposes of recoding racist incidents: "any incident which is perceived to be racist by the victim or any other person."

The relevant excerpt from the recommendation is below:

11. To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;

12. 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;

13. To encourage victims and witnesses of racist incidents to report such incidents;

14. To these ends, to adopt a broad definition of racist incident;

For the purposes of this Recommendation, a racist incident shall be:

'...any incident which is perceived to be racist by the victim or any other person';"

## EUROPEAN UNION

At the European Union level, EU Member States are obligated to ensure that racist and xenophobic motivation is considered at sentencing and to ensure that hate crime victims are properly assessed for special protection measures.

## COUNCIL FRAME- WORK DECISION 2008/913/JHA ON COMBATING CERTAIN FORMS AND EXPRES- SIONS OF RACISM AND XENOPHOBIA BY MEANS OF A CRIMINAL LAW

Art 4: “shall take the necessary measures to ensure that **racist and xenophobic motivation is considered an aggravating circumstance**, or, .... **may be taken into consideration by the courts** in the determination of the penalties.

## VICTIMS DIRECTIVE (DIRECTIVE 2012/29/ EU<sup>51</sup> OF THE EURO- PEAN PARLIAMENT AND OF THE COUNCIL OF 25 OCTOBER 2012 ESTABLISHING MINI- MUM STANDARDS ON THE RIGHTS, SUPPORT AND PRO- TECTION OF VICTIMS OF CRIME)

- Recognizes hate crime victims as a **particularly vulnerable category of victims with specific protection needs**;
- Requires individual assessment of the hate crime victim’s support and protection needs; and
- Provides for additional protection during criminal proceedings.

# HANDOUT 4

## EUROPEAN COURT OF HUMAN RIGHTS CASE LAW ON HATE CRIMES



By interpreting substantive and procedural aspects of the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) highlighted a number of the hate crime-specific duties and operational points, which need to be followed by the national authorities, police and criminal justice professionals, in order to fulfil the obligations under the ECHR.

A number of key principles have emerged from the case law of the ECtHR. These principles build upon each other for a coherent jurisprudence on the obligation of states to promptly and effectively investigate bias-motivated crimes, by either state actors or private individuals, and to ensure that bias-motivation is uncovered and appropriately addressed by the criminal justice system. While there is more detailed jurisprudence in this area for the ECHR, it echoes the same legal interpretations of the international standards relating to the ICCPR and CERD.

Below are the core principles from the ECtHR with regards to investigating hate crime and a short synopsis of the cases that support those holdings.<sup>52</sup>

A state has a duty to conduct prompt and effective investigation into bias-motivated crimes, including a duty to investigate and uncover a possible bias motivation

<sup>52</sup> The text that follows is adapted from the [Analysis of the Jurisprudence of the European Court on Human Rights related to Hate Speech and Hate Crime](#) | OSCE.



***Nachova  
v. Bulgaria  
(2005)***

In the case of *Nachova v. Bulgaria* (2005), the Court for the first time specified the state's procedural duty to adequately investigate possible discriminatory motives that might have played a role in the events. The Court explained that, to give meaning to the right to life (Article 2) and the right to be free from ill-treatment (Article 3) under the ECHR, States have a "positive obligation" to undertake effective investigations into crimes which interfere with those rights. This has two aspects: the first is that States are required to take measures to ensure that individuals within their jurisdictions are not subjected to ill treatment, whether by state actors or by private individuals. The second aspect is that States are required to conduct an official investigation that is reasonably expeditious.

Further, the Court looked into a procedural aspect of Article 14 (prohibition of discrimination), which implies a procedural duty to adequately investigate possible racist motives. In particular, "the state authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."<sup>53</sup>

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53 *Nachova v. Bulgaria*, § 160.



***Milanovic  
v. Serbia  
(2012)***

In *Milanovic v. Serbia* (2012), the Court extended the same principles concerning crimes motivated by racism to crimes motivated by an anti-religious bias. The applicant, a member of the Vaishnava Hindu, or Hare Krishna, religious community, was subjected to numerous physical attacks around the time of major Serbian Orthodox religious holidays. The state was held in breach of the procedural aspect of Article 3 (the right to be free from ill-treatment) in conjunction with Article 14 (prohibition of discrimination) for failing to effectively and promptly investigate the religious bias motivation of the crimes. The Court especially took note that the police failed to take the victim's case seriously, even though there was a pattern of targeting around religious holidays. Instead, the police referred to the victim's religion and "strange appearance", which suggested that any investigative steps were *pro forma* and inadequately addressed the seriousness of the anti-religious bias motivation presented in the case.

***Identoba and Others v. Georgia***  
**(2015)**

In *Identoba and Others v. Georgia* (2015), the Court extended the same principles to homophobic hate crimes, in cases where national law includes sexual orientation among protected characteristics. In this specific Georgian context, the Court considered that it was essential for the relevant domestic authorities to take all reasonable steps with the aim of unmasking the role of possible homophobic motives for the events in question. The Court considered that, without such a strict approach from the law enforcement authorities, prejudice-motivated crimes would inevitably be treated on an equal footing with ordinary cases without such overtones, and the resulting indifference would be tantamount to official acquiescence to, or even connivance with hate crimes.

Procedural duty to investigate and unmask discriminatory motives covers the offences committed by state actors and the offences committed by private individuals

As the case of *Nachova v. Bulgaria* (2005) related to offences committed by state actors, the Court stipulated this duty in relation to violent incidents, in particular, committed by state agents.

***Secic v. Croatia***  
**(2007)**

In the case of *Secic v. Croatia* (2007), the Court considered the case of a Roma man who was severely beaten with wooden bats by two people belonging to a skinhead group while shouting racial abuse. Despite several leads, the authorities failed to conduct effective investigation to find the perpetrators and to take reasonable steps to investigate the racist motivation in the case. The Court reiterated that, when investigating violent incidents, the authorities have an additional duty to take all reasonable steps to unmask any racist motive and that this also applies “in cases where the treatment contrary to Article 3 (right to be free from ill-treatment) is inflicted by private individuals.”<sup>54</sup> In this case, the Court found violation of Article 3 (right to be free from ill-treatment) due to the authorities’ failure to obtain any tangible evidence with a view to identifying and arresting the attackers over a prolonged period of time. Further, the Court found violation of Article 14 (prohibition of discrimination) taken in conjunction with the procedural aspect of Article 3 (right to be free from ill-treatment), as it found it “unacceptable that, being aware that the event at issue was most probably induced by ethnic hatred, the police allowed the investigation to last for more than seven years without taking any serious action in view to identifying or prosecuting the perpetrators.”<sup>55</sup>

<sup>54</sup> *Secic v. Croatia*, §§ 66-67.

<sup>55</sup> *Ibid.* § 105.

Procedural duty to investigate and unmask discriminatory motives applies to Article 2 (right to life), Article 3 (right to be free from ill treatment) and Article 8 (right to respect for private and family life)

In the case above of *Nachova v. Bulgaria* (2005), the Court noted that Article 2 (right to life) implies a state duty to conduct an effective investigation into crimes which interfere with the right to life, and if there is a suspicion that racist attitudes induced a violent act, Article 2 (right to life), taken in conjunction with Article 14 (prohibition of discrimination), also implies a procedural duty to adequately investigate possible racist motives. The Court applied the same principle in relation to Article 3 (right to be free from ill-treatment); e.g., in the case of *Secic v. Croatia* (2007) the Court reiterated this duty in relation to crimes which interfere with the right to be free from ill-treatment and torture.



***Association  
ACCEPT and  
others v.  
Romania (2015)***

The Court has also examined and confirmed the duty to investigate and unmask discriminatory motives in relation to Article 8; i.e., interference with the right to respect for private and family life; for example, in the case of *Association ACCEPT and others v. Romania* (2021), in which the Court considered a state's alleged failure to protect the applicants from homophobic verbal abuse and threats during the LGBT History Month movie screening, and its failure to conduct a subsequent effective investigation into the applicants' complaint.

The criminal justice system must be able to adequately investigate, prosecute and punish hate crimes



***Angelova  
and Iliev v.  
Bulgaria***

In the case of *Angelova and Iliev v. Bulgaria*,<sup>54</sup> the applicants alleged that the state had failed in its obligation to conduct an effective and prompt investigation into the death of a Roma man, and that the lack of legislation for racially-motivated murder failed to provide adequate legal protection against such crimes. The Court held that a lack of direct hate crime laws did not hinder their ability to pursue the racist motivation during the criminal process, and that the general legal framework could allow for appropriate and enhanced punishment for these types of crimes. In this case, there was a possibility in domestic legislation to impose a more severe sentence depending on, inter alia, the motive of the offender; and the authorities charged the assailants with aggravated offences. This, although failing to make a direct reference to the racist motives of the perpetrators, provided for more severe sentences than those envisaged in domestic legislation for racial hatred offences.

<sup>54</sup> *Angelova and Iliev v. Bulgaria*, Application no. 55523/00, 26 July 2007.

## ***Sabalić v. Croatia*** **(2021)**

The need for the criminal justice system to be able to adequately investigate and sanction hate crimes was also recently highlighted in the case of ***Sabalić v. Croatia*** (2021), in which a woman was violently attacked after disclosing she was a lesbian. The Croatian authorities failed to investigate the motive behind the attack and instituted only minor offence proceedings for breach of public peace and order. The Court reiterated that in relation to hate crimes “compliance with the State’s positive obligations requires that the domestic legal system must demonstrate its capacity to enforce criminal law against the perpetrators of such violent acts.”<sup>57</sup> In particular, it implies “an effective application of domestic criminal-law mechanisms capable of elucidating the possible hate motive with homophobic overtones behind the violent incident and of identifying and, if appropriate, adequately punishing, those responsible.”<sup>58</sup>

<sup>57</sup> *Sabalić v. Croatia*, § 95.

<sup>58</sup> *Ibid.*

### Procedural duty to unmask possible discriminatory motivations implies taking into consideration hate crime bias indicators

The State’s duty to unmask possible discriminatory motivations requires the authorities to look at all the facts of the case pointing to a possible role of discriminatory overtones in the events. In other words, the authorities are required to consider bias indicators.

## ***Balazs v. Hungary*** **(2015)**

In the case of ***Balazs v. Hungary*** (2015), the Court has specifically referred to the use of hate crime indicators. The case concerned a racist attack on a man of Roma origin by a penitentiary officer and the authorities’ alleged failure to conduct an effective investigation into the attack and, in particular, lack of sufficient action to establish a possible racist motive. Although the investigating authorities (the prosecutor’s office), had started an investigation into the offence and pursued the examination of a possible racial motive behind the offence, they discontinued the case on the grounds that, although there was a likelihood of racist motives, this could not be established beyond doubt so as to warrant the offender’s indictment. To that end, the Court observed the facts of the case established by the investigating authorities, in particular, the offender used offensive and racist language (e.g., “*You cannot handle a dirty little [anti-Roma slur]?*”) before the fight with the victim; the day after the incident, he posted on a social media and commented that he “had been kicking in the head a [anti-Roma slur] lying on the ground”; he also posted a film scene with explicitly racist message, and commented that “some other types of rubbish live among us”.

The Court noted that that the prosecuting authorities failed to explain why the content of the posts and the applicant’s subsequent testimony could not be unequivocally linked to the impugned events and could not be regarded as evidence of racially biased motives.

An investigation cannot exclude bias motivation because other motives are present

In the case of *Balazs v. Hungary* (2015) considered above, along with other aspects, the authorities refused to indict a perpetrator of a racist attack on a man of Roma origin based on the argument that his racist motives could not be established “unequivocally and beyond doubt”. In particular, they argued that the reason for the attack might have had other motives than racial hatred. In this regard, the Court noted that “not only acts based solely on a victim’s characteristic can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude towards the group the victim belongs to.”<sup>59</sup> Therefore, the Court rejected the authorities’ argument on proving that the insult was “precisely” due to the applicant being a Roma.

<sup>59</sup> *Balazs v. Hungary*, § 70.

Investigating and prosecuting authorities must be neutral and impartial in their assessment of the evidence before them



***Stoica v  
Romania  
(2008)***

In the case of *Stoica v Romania* (2008), where the alleged ill-treatment by police of a 14-year-old Roma boy left him with permanent disabilities, the Court found that the military prosecutors had premised their findings on the statements of the police officials who clearly had every reason to wish to exonerate themselves and their colleagues from any liability. At the same time, the prosecutors had dismissed all statements by villagers, all of whom were of Romani ethnicity, on the grounds of an alleged bias in favour of the applicant. Additionally, the prosecutors had ignored statements by police officials that the villagers’ behaviour was “purely [anti-Roma slur]”, a statement that in the eyes of the Court demonstrated the stereotypical views of the police.



***Cobzaru v.  
Romania  
(2007)***

In the case of *Cobzaru v. Romania* (2007), which concerned the alleged ill-treatment of a Roma man by the police in the police station, the Court, analysing the state’s duty to investigate possible racial motives, considered that the tendentious remarks made by the prosecutors in relation to the applicant’s Roma origin throughout the investigation disclosed a general discriminatory attitude of the authorities and questioned the neutrality and the effectiveness of the investigation. The Court noted the failure on the part of the prosecutors to verify whether the police officers involved in the violence

had been involved in previous similar incidents or whether they had been accused previously of displaying anti-Roma sentiments. In the eyes of the Court, this, together with the state's failure to provide any justification for these omissions, was an important factor to which the Court had regard in finding a violation of Article 14 (prohibition of discrimination) taken in conjunction with Articles 3 (right to be free from ill-treatment) in its procedural limb.

Procedural duty to investigate and uncover a possible bias motivation extends to hate crime by association



**Škorjanec  
v. Croatia  
(2017)**

In the case of *Škorjanec v. Croatia* (2017), the applicant — a victim of a racial attack by association with her partner, a man of Roma origin who was also attacked — complained about the failure of the authorities to protect her as a victim of hate crimes by association, and a failure of the authorities to pay due attention to the racial overtones of the attack along with a failure to prosecute the attackers merely because she had not been of Roma origin herself. Elaborating on the scope of the duty to investigate possible bias behind an assault, the Court stated that the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence, under Article 3 (right to be free from ill-treatment) taken in conjunction with Article 14 (prohibition of discrimination) “concerns not only acts of violence based on a victim’s actual or perceived personal status or characteristics but also acts of violence based on a victim’s actual or presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic.”<sup>60</sup>

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<sup>60</sup> *Škorjanec v. Croatia*, § 56.

# HANDOUT 5

## BIAS INDICATORS

**BIAS INDICATORS** are “objective facts, circumstances, or patterns attending a criminal act(s), which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole or in part, by any form of bias.”

(Massachusetts Model Protocol for Bias Crime Investigation)

The list presents a comprehensive, but not exhaustive collection of indicators that suggest a crime committed may have been bias-motivated.

It is important to note that the existence of such indicators does not automatically prove the crime was a hate crime. However, 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. Bias indicators, like all evidence, should also be viewed in relation to each other.

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### **VICTIM/WITNESS PERCEPTION**

Online hate material presents operational challenges for law enforcement, including:

- Does the victim or witnesses perceive that the criminal act that occurred was motivated by bias?
- Was the victim engaged in activities promoting his/her group at the time of the incident?

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### **COMMENTS, WRITTEN STATEMENTS, GESTURES OR GRAFFITI**

Perpetrators of hate crimes frequently make their prejudices clear before, during or after the act. Those who commit hate crimes generally want to send a message to their victims and to others and these messages, from shouted insults to graffiti, are powerful evidence of motivation.

- Did the suspect make comments, written statements or gestures regarding the victim’s membership or perceived membership in a group?
  - Were drawings, markings, symbols or graffiti left at the scene of the incident?
  - If the target was property, was it an object or place with religious or cultural significance, such as a cultural centre or a historical monument?
-

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### **DIFFERENCES BETWEEN PERPETRATOR AND VICTIM ON ETHNIC, RELIGIOUS OR CULTURAL GROUNDS**

- Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?
  - Is there a history of animosity between the victim's group and the suspect's group?
  - Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
- 

### **ORGANIZED HATE GROUPS**

While not all hate crimes are perpetrated by organized groups, members or associates of such groups are often involved in the commission of such crimes.

- Were objects or items left at the scene that suggest the crime was the work of a hate group?
  - Is there evidence that such a group is active in the neighbourhood (e.g., posters, graffiti or leaflets)?
  - Did the offender use behaviour associated with membership in a hate organization, such as using Nazi salutes?
  - Did the offender have clothing, tattoos or other insignia association with a particular extremist or hate group?
  - Did the incident occur during or shortly after a rally of such group?
  - Did a hate group recently make public threats towards a particular group?
- 

### **LOCATION AND TIMING**

- Did the incident occur on a date of particular significance (e.g., a religious holiday or national day)?
  - Did the incident occur during a specific part of the day, when other members associated with the victim group frequent the area when the incident occur (e.g., during prayers, etc.)?
  - Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church or other place of worship)?
  - Did the incident occur only a short time after a change in a minority's presence in the area (e.g., the first minority family to move into the area, the opening of a refugee centre)?
- 

### **PATTERNS/ FREQUENCY OF PREVIOUS CRIMES OR INCIDENTS**

- Have there been similar incidents in the same area against the same group?
  - Has there been a recent escalation of incidents against the same group, beginning with low-level harassment and non-criminal activity to more serious criminal conduct such as vandalism or assault?
  - Was there a previous incident that may have sparked a retaliatory response against the targeted group?
  - Has the victim or community recently received threats or other forms of intimidation in the form of phone calls or mail?
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**NATURE OF VIOLENCE**

As hate crimes tend to be message crimes, the degree of violence, damage and brutality tend to be serious.

- Did the incident involve unprovoked and extreme violence or degrading treatment?
  - Was the incident carried out publicly and in such a way as to make it public, e.g., recording and posting on the internet?
  - Did the violence involve the mutilation of racist symbols or did the property damage involve symbols meant to defile or desecrate, such as excrement or animal parts?
- 

**LACK OF OTHER MOTIVES**

- Considering the nature of the violence, was there no other apparent motive for the crime, especially when considering other potential bias indicators, such as the difference between the victim and the perpetrator, or the victim was in an area where other such attacks occurred?
-

# **HANDOUT 6**

## **APPLYING LOCAL LEGISLATION**

# HANDOUT 7

## THE CONSEQUENCES OF MISQUALIFYING HATE CRIMES

During its capacity-building activities, ODIHR has found a common trend that hate crimes can be misqualified as criminalized ‘hate speech’ or as less serious offences. Other examples include where biased threats are prosecuted as criminalized ‘hate speech’. These misqualifications can have several negative consequences, as set out in the table below.

Figure 3. Consequences of Misqualification Hate Crime

| CONSEQUENCES OF MISQUALIFICATION<br>HATE CRIME   |   |
|--|---|
| ✘<br>INCORRECT QUALIFICATION   | ✔<br>CORRECT QUALIFICATION  |
| <b>Fails to give effect to the specific purpose</b> intended by national legislature for the criminalization of certain offences | Ensures <b>legal certainty</b> for defendants   |
| <b>Undermines legal certainty</b> for defendants   | <b>Increases access to participation rights</b> in criminal proceedings and access to specialist support and protection for victims   |
| <b>Diminishes access to participation rights</b> in criminal proceedings for victims   | <b>Improves visibility of hate crimes</b> in police recording, official crime statistics, national policies and international data such as ODIHR’s annual Hate Crime Report |
| <b>Risks limiting access to specialist support</b> and protection for victims  | <b>Informs effective strategic responses</b> by national authorities, including prosecution services  |
| <b>Provides misleading assessment</b> of nature and extent of hate crimes  | <b>Increases visibility</b> of a comprehensive response to hate crime at the national level and conceptual coherence and synergies at the international level.              |
| <b>Produces misinformed policy</b> and legal responses   |   |

## KEY REASONS FOR THE LOWER VISIBILITY OF HATE CRIMES COMPARED TO CRIMINALIZED 'HATE SPEECH'?

### 1. HATE CRIME LAWS: LIMITED VISIBILITY

- ▶ Hate crime laws, including **penalty enhancements**, are **less visible** to practitioners.
- ▶ Penalty enhancements:
  - ▷ Are not **substantive offence provisions**
  - ▷ Typically, part of the sentencing provisions and not included in the **charge or indictment**
  - ▷ Invoked only at the **sentencing stage**, reducing the likelihood of application by the courts

### 2. 'HATE SPEECH' LAWS: GREATER VISIBILITY

- ▶ Take the form of **specific, substantive offences** in criminal codes (e.g., incitement to hatred or violence and public dissemination of hate materials).
- ▶ Police and prosecutors are generally **more familiar with hate speech laws** due to:
  - ▷ Their **visibility in legal frameworks**
  - ▷ Their frequent application in criminal cases

# HANDOUT 8

## INTERNATIONAL STANDARDS ON HATE SPEECH

Incitement to discrimination, hostility or violence on national, racial or religious grounds is proscribed under Article 20(2) of the ICCPR, by Article 4(a) of the International Convention on the Elimination of Racial Discrimination (ICERD), Article 1 of the EU Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law (EU Framework Decision) and the Council of Europe (CoE) Recommendation on Combating ‘hate speech’.

### **United Nations Strategy and plan of action on hate speech**

“Any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor. This is often rooted in, and generates intolerance and hatred and, in certain contexts, can be demeaning and divisive.”

### **Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech**

“...hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.”

### **Article 20(2) of the ICCPR**

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

### **Article 4 of the International Convention on the Elimination of Racial Discrimination (ICERD)**

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of 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, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

### **The EU Council Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law (EU Framework Decision)**

#### **“HATE SPEECH:**

Certain forms of conduct as outlined below, are punishable as criminal offences:

- public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin;
- the above-mentioned offence when carried out by the public dissemination or distribution of tracts, pictures or other material;
- publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) and crimes defined in Article 6 of the Charter of the International Military Tribunal, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or a member of such a group.

Instigating, aiding or abetting in the commission of the above offences is also punishable.

With regard to these offences listed, EU countries must ensure that they are punishable by:

- effective, proportionate and dissuasive penalties;
- a term of imprisonment of a maximum of at least one year.

With regard to legal persons, the penalties must be effective, proportionate and dissuasive and must consist of criminal or non-criminal fines. In addition, legal persons may be punished by:

- exclusion from entitlement to public benefits or aid;
- temporary or permanent disqualification from the practice or commercial activities;
- being placed under judicial supervision;
- a judicial winding-up order.

The initiation of investigations or prosecutions of racist and xenophobic offences must not depend on a victim's report or accusation."

### **Rabat plan of action six-part test**

Article 20 of the ICCPR requires a high threshold because limitation of freedom of expression must remain an exception. The Rabat Plan of Action (A/HRC/22/17/Add.4, appendix) suggests that each of the six parts of the following threshold test needs to be fulfilled in order for a statement to amount to a criminal offence:

(1) **Context:** Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated;

(2) **Speaker:** The speaker's position or status in the society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed;

(3) **Intent:** Article 20 of the ICCPR anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the ICCPR, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience;

(4) **Content and form:** The content of the speech constitutes one of the key foci of the court's deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed;

(5) **Extent of the speech act:** Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public; and

(6) **Likelihood, including imminence:** Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

# HANDOUT 9

## THE PROSECUTOR DECISION TREE: OVERVIEW

**The purpose of this handout is to provide context for the Prosecutor Decision Tree.**

The Decision Tree aims to highlight key differences in prosecution practice between hate crimes and criminalized ‘hate speech’ offences and to provide guiding questions to support prosecutors in mapping and applying their national provisions.

It cannot apply to all situations, and prosecutors will need to use their own judgement and apply national law as appropriate.

The Decision Tree starts from the point where a case is referred to the prosecutor. Depending on the legal system and the powers and the role of the prosecutor, a case may be referred to the prosecutor at some point during or towards the completion of the investigation, or at the point of charge. By this stage, the investigation process has most likely identified a potential criminal offence that indicates a potential charge.

The criminal offence could involve any crime in the criminal code.

### BACKGROUND TO QUESTIONS AND POINTS IN THE PROSECUTOR DECISION TREE

#### Question 1: Does the incident involve hate, bias or prejudice?

- The purpose of this question is to cast the net as wide as possible, especially important for identifying, recording and responding to hate crime offences.
- The presence of hate, bias or prejudice will be more obvious in cases of criminalized ‘hate speech’. For hate crime cases, investigators and prosecutors may have to coordinate closely to identify and capture evidence of a bias motive. At the earliest stage, it is recommended to use bias indicators to identify possible evidence of bias. These tests should be re-visited and re-applied by prosecutors, as appropriate.
- If the answer to Question 1 is ‘yes’, prosecutors should check if the victim(s) has been referred to a specialist support service and, where appropriate, a lawyer. If the prosecutor anticipates that the victim is likely to be required to give evidence should the case progress, it isn’t too early to consider the need for procedural and other accommodations. Prosecutors should also refer to further guidance on victims’ needs.
- If the answer to Question 1 is ‘no’, or where a prosecutor is unsure, they are encouraged to look again, especially if the victim or witness perceives the offence to be a hate crime or motivated by bias. It is important for prosecutors to ‘look again’ because hate crimes can be hard to identify and bias indicators must be carefully considered.

- Consideration could be given to seeking the advice of a more experienced colleague or, if available, a hate crime specialist. If, after careful consideration, the answer is still 'no', the case is not a hate crime or criminalized 'hate speech' and should be handled according to national law and procedures.

#### **Civil and administrative law response**

- If hate or bias is present and the criminal threshold is not met, it is important to remember that sub-criminal offences can indicate a risk of escalation into more serious criminal offending and also cause significant harm to victims. Prosecutors should coordinate with victims and their lawyers and other relevant stakeholders, such as equality bodies, media regulators or other authorities that can take forward a response under civil or administrative law.

### **Question 2: Does the incident include biased speech or expression?**

- 'Biased expression' can be verbal, gestures or written (including online or graffiti).
- Prosecutors should consider if there is any hate or bias expression present. At this point, it is not necessary to consider if the content of the expression itself reaches the criminal threshold (this is considered from Question 3 onwards).
- If there is no obvious bias or hate expression, prosecutors might consider one more time if there are any other indicators of bias or prejudice present in the offence, as outlined in question 1. If the answer is 'yes', proceed to Question 3 (Is the incident a crime if the biased expression is removed?). If the answer is 'no', but other bias indicators have been identified in Question 1, then proceed to Question 4 (What crime is involved? What is the base offence?).

### **Question 3: Is the incident a crime if the biased expression is removed?**

- Hate crimes are criminal offences committed with a bias motive. The 'bias' manifests itself where a perpetrator has intentionally targeted an individual or property because of one or more identity traits or expressed hostility towards these identity traits during the crime.
- Even if the bias is removed, an identifiable crime, contained in the criminal code, such as an assault has still taken place.
- Alternatively, in the case of criminalized 'hate speech', it is the content of the expression that constitutes the offence. In other words, if the biased expression is removed, there is no offence.
- If the answer is 'yes', the incident is likely to be a hate crime. If the answer is 'no', the incident is likely to include some form of criminalized 'hate speech'.

**Question 4: What crime is involved? What is the base offence?**

- Point 4a: the base offence does not include speech or expression. These offences tend to be crimes commonly found in national criminal codes, such as forms of physical and sexual assault, homicide and damage to property.
- Point 4b: the base offence includes speech or expression. Criminal offences such as threats are committed through speech or expression, for example, a threat to kill or cause serious harm or harassment. In other words, these offences are still crimes if the biased expression is removed; the base offence itself is also committed through expression.

**Point 5: Identify, collect and capture indicator evidence of bias motivation.**

At this stage, prosecutors can return to the evidence of bias indicators identified in Questions 1 and 2. Prosecutors can work with the police, where appropriate, to build evidence of bias motive that can be presented to court.

**Point 6: Select the bias motivation provision.**

- Prosecutors should carefully review their criminal codes to identify the most appropriate provision to recognize the bias motive:
  - o (6a, 6b, 6c): substantive offence, specific penalty enhancement or general penalty enhancement.
- It may be that there is no legal provision that corresponds to the bias motive (6d). For example, the offence may involve a homophobic motive, but national hate crime law does not include sexual orientation as a protected characteristic. In this case:
  - o Prosecutors can acknowledge the bias motive to the victim, check if they have support and explain how the case will proceed where the criminal code does not contain an appropriate legal tool to address the specific bias motive.
  - o It may be that the court can consider general sentencing policies on aggravating and mitigating factors, such as the motivation of the perpetrator, which do not specifically mention bias motive but which could be applicable to the case.
  - o In the absence of an appropriate hate crime provision, prosecutors may be tempted to use a criminalized 'hate speech' provision to recognize the bias element of the offence. This is unlikely to be an appropriate prosecution strategy and risks undermining the principles of legality and proportionality.
  - o At the appropriate time in the policymaking process, prosecutors can play an important role in highlighting to decision-makers and legislators the missing legal tools to address hate crimes.

## Questions 7 and 8:

- The Decision Tree identifies commonly criminalized ‘hate speech’ provisions to support prosecutors in mapping their national legal tools.
- Questions 7 and 8 of the Decision Tree address the target (individual, group, the general public) and the effect of the speech or expression. Criminalized ‘hate speech’ offences are public in nature; however, the legal meaning of the terms ‘public’ or ‘publicly’ and the target of the speech or expression can vary greatly.
- ‘Incitement speech’ offences:
  - o In these cases, the speech or expression aims to incite others to hatred or violence against a particular group (7c + 8d). Prosecutors should draw on the Rabat Plan six-part test, national case law and, where appropriate, relevant judgements from the ECtHR to guide their assessment.
  - o It is important to note that, in the case of ‘incitement speech’ offences, the Decision Tree highlights the technical requirement involved when proving an inchoate offence. In other words, to show that the speech would succeed in inciting others to hatred or violence against the targeted group: the speech addresses those who would be incited to hatred or violence against a protected group, or members of that group, as opposed to directly addressing the individual target.

### **Bias-motivated insults**

- Speech or expression is targeted towards an individual victim (7a) and can be harassing, insulting, threatening and offensive or expose the victim to hatred and/or ridicule (8a).
- Prosecutors should be mindful that this sort of conduct could escalate to direct threats of violence, in which case a qualification of ‘threat’ or something similar might be more appropriate.

### **Bias-motivated disturbance of the peace and nuisance offences and Bias-motivated hooliganism**

While these offences can first appear to be examples of criminalized ‘hate speech’, close consideration shows that they are usually best addressed as hate crime offences.

#### **Bias-motivated disturbance of the peace and nuisance offences**

- In these cases, the speech or expression usually takes place offline and in public (point to 7c of the Decision Tree)
- It aims to, or has the effect of being abusive, alarming or distressing (point to 8b of the Decision Tree).
- It is important to note that inciting others to hate or act is not a constituent element of these offences.

#### **Bias-motivated hooliganism**

- In these cases, the conduct involves violence carried out by groups.
- The focus is on violation of public order, but the conduct can also involve the targeting of individual victims.
- The conduct aims to, or has the effect of being abusive, alarming or distressing (see 8b of the Decision Tree) to the surrounding public (see 7c of the Decision Tree).
- Inciting others to hate or act is not a constituent element of these offences.

# HANDOUT 10

## PROSECUTION AT THE INTERSECTION – CASE STUDIES

Each case study consists of Part I (background to the case) and Part II (learning points).

### CASE STUDY 1: APPLYING ‘HATE SPEECH’ PROVISIONS TO PROSECUTE HATE CRIME

#### PART I - Background to the case

*Instructions: Read the case study and work together to answer the questions below and apply the Decision Tree to the case.*

The events took place in Žepče municipality, Zenica-Doboj Canton, Bosnia and Herzegovina in 2022. This is a mixed municipality, composed of ethnic Croats and ethnic Bosniaks, with a history of ethnic division and violence.

During the night, two men resisted arrest and attacked two police officers, after being pulled over for committing multiple traffic violations. The perpetrators were of Croat ethnicity and the police officers had name tags displayed on their uniforms indicating their Bosniak ethnic identity. While one of the police officers was in the process of issuing a written citation against the driver, the driver commented and uttered anti-Bosniak racist insults. The driver also knocked the official documentation out of the police officer’s hands. The police officer tried to apprehend the driver, who responded by pushing the officer and kicking the flashlight and handcuffs out of his hands.

At that same moment, the passenger exited the vehicle and attacked the same police officer by grabbing him by the vest and ripping it. The driver also ripped the police officer’s shirt. The second police officer, intending to help his partner, grabbed the passenger’s hands so that his partner could apprehend the driver. The passenger resisted arrest by attacking the second police officer, kicking his glasses, mobile telephone and his badge. Eventually, he too was apprehended. The driver further offended and threatened the first police officer, including with anti-Bosniak slurs and saying, “*I will slaughter you sooner or later. You came here to ustaša<sup>61</sup> territory to enforce laws.*”

As a result of this attack, both police officers suffered light bodily injuries.

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61 The Ustaše was a Croatian fascist and ultranationalist organization active, as one organization, between 1929 and 1945, formally known as the Ustaša — Croatian Revolutionary Movement (see, e.g., [Ustaša | Fascist Regime, Genocide & War Crimes | Britannica](#).)

Use the Prosecutor Decision Tree to consider the following questions and points, where relevant.

**Question 1: Does the incident involve hate, bias or prejudice?**

**Question 2: Does the incident include biased speech or expression?**

**Question 3: Is the incident a crime if the biased expression is removed?**

**Question 4: What crime is involved? What is the base offence?**

**Point 5: Identify, collect and capture indicator evidence of bias motivation**

**Point 6: Select the bias motivation provision (this depends on national law and will be covered in the feedback session)**

## **PART II – Learning points**

### **The prosecution decision**

The driver and the passenger were charged with “Attacking an Official while Carrying out Security Work”. The driver was also charged with “Inciting National, Racial or Religious Hatred, Discord or Hostility”. Both accused were charged with committing these criminal offences as accomplices.

### **Applying the Prosecutor Decision Tree below highlights the considerations in this approach**

The answer to both Questions 1 and 2 is ‘yes’. The incident presented strong bias indicators, including differences in ethnicity between the victims and the accused; and unprovoked violence. A key bias indicator was also the specific language/expression used during the attack.

The answer to Question 3 is ‘yes’. The incident involved several assaults, which would remain crimes without the bias expression. In this case, the prosecutor should follow the left side of the Decision Tree to establish the type of hate crime offence and to determine applicability of relevant national law.

Question 4 (what crime is involved?): the base offence could have been identified as Article 359 of the Criminal Code, paragraph 2, “Attacking an Official while Carrying out Security Work” (4a).<sup>62</sup> Article 2.11 says, “Hate crime is any criminal offence committed for reasons of race, colour, religious belief, national or ethnic origin, language, disability, sex, sexual orientation or gender identity. Such an act shall be considered an aggravating circumstance unless this Code expressly provides for a more severe punishment for the aggravated form of the crime committed out of hatred.”

Point 5: The bias indicators are identified above, and evidence should be available through witness statements taken from the two police officers.

Point 6: The relevant bias motivation provision is identified as Article 2.11, a general penalty enhancement, which establishes bias as an aggravating circumstance for any criminal offence (6c).

62 Criminal Code of the Federation of Bosnia and Herzegovina, Art. 359, para. 2, as at 2022: “Whoever attacks or seriously threatens to attack an official person or a person who assists an official person in carrying out work related to public security or security of the Federation, or duties related to the maintenance of public order, shall be punished by imprisonment for a term between three months and three years.” (In Bosnian, unofficial translation).

### Technical points

The Criminal Code of the Federation of Bosnia and Herzegovina, Art. 163, as at 2022: “Whoever publicly incites and inflames national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation, shall be punished by imprisonment for a term between one and five years.”<sup>63</sup>

The essential elements of Article 163 of the Criminal Code of the Federation of Bosnia and Herzegovina (FBiH) are: a) publicity, b) incitement, c) national, racial or religious hatred, discord or hostility, d) constituent peoples.

Element a), publicity, entails an offence committed publicly with an audience that is able to see, hear or read, rather than an offence committed in a public place. Importantly, Article 163 itself prescribes that the criminal act should be inciting or inflaming hatred (as a continuous action) among “constituent peoples and others who live in the FBiH”. incites and inflames national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation, shall be punished by imprisonment for a term between one and five years.”

In this case, only four people were aware of the attack at the time of the crime (two police officers and two perpetrators), and the incident occurred at 4:20 AM in a relatively isolated area. This criminal offence must be committed with intent and, given the circumstances, it would be difficult to demonstrate that the accused attacked the police officers in order to incite hatred among constituent peoples or others in FBiH or with the knowledge that such an outcome would be the likely result of their actions. Therefore, if there is no audience or awareness of the incident, it is difficult to argue that an act is, indeed, inciting hatred among the specified people.

Based on the above, it would have been open to the prosecutor to have brought a charge under Article 359 of the Criminal Code, paragraph 2, “Attacking an Official while Carrying out Security Work”, committed with bias motivation. Article 2.11 of the Criminal Code establishes bias as an aggravating circumstance for any criminal offence. With such a charge, even if the prosecutor was unable to prove the bias motivation, there would likely still be sufficient evidence to prove that the attack — the basic offence — did occur. It is important for prosecutors to note in these cases that the bias indicators of racial slurs that accompany commission of a hate crime should not be ‘double charged’ as ‘hate speech’ and hate crime. In these cases, hate crime and ‘hate speech’ prosecutions are alternative strategies and should not be combined.

### Other observations

- In choosing to charge incitement to hatred rather than charging as a hate crime, the prosecutor’s office could face difficulties in proving the required elements of the offence, which may result in an acquittal on all charges.
- The bias expression outlined in this case appeared in fact to be evidence of a potential discriminatory motive for the assaults rather than amounting to the offence of incitement to violence or hatred.
- If the prosecutor fails to prove incitement to hatred, the resulting, more lenient sentencing would de facto contribute to impunity for bias motivation. This, in turn, fails to meet the statutory purpose of punishment, per Article 42 of the Criminal Code, namely, to condemn the offence, to deter both the offender in question and others from committing such offences, and to increase community awareness

63 *Ibid.*, Art.163. (In Bosnian, unofficial translation).

of the danger of the offence. Such uncertainty and inconsistency can undermine the purpose of sanctioning, which should correspond to the perpetrator's wrongdoings and which — with individualization of sentencing — should inform the sanctions being sought/applied.

- When improper charges survive judicial scrutiny, it establishes jurisprudence based on factual descriptions that do not correspond to the elements of the crime alleged. This can bring into question the legality and fairness of the proceedings, which are relevant to the broader considerations of the criminal justice system as a whole.

### **Impact on data**

The judicial database would have data on this case under Article 163 of the Criminal Code as a standalone criminal offence of public incitement to hatred. This would, therefore, provide a misleading impression of the prevalence of 'hate speech' as a crime, and of the overall absence of hate crimes, resulting in poorly informed policy decisions. Victims of both hate crimes and 'hate speech' should be able to rely on available data to understand their rights and manage expectations. Accurate data is also necessary to raise awareness among the general public about the nature and prevalence of hate crime and criminalized 'hate speech'.

### **Potential implications for victims**

The charges selected by the prosecutor do not recognize the police officers as victims of a hate crime, and the police officers were interviewed as witnesses and not injured parties. It is also important to note that, during the main trial, the presiding judge asked the police officers whether they would like to submit a compensation claim as a result of the damage inflicted on them.

## **CASE STUDY 2: APPLYING ‘HATE SPEECH’ PROVISIONS TO PROSECUTE HATE CRIME**

### **PART I - Background to the case**

*Instructions: Read the case study and work together to answer the questions below and apply the Decision Tree to the case.*

This case was adapted from the website of the Swiss Federal Commission Against Racism. It took place in Switzerland and was adjudicated in 2016 under applicable law.

A woman using a mobility aid asked a motorist to move his car so that she could access the lowered pavement and enter a shop. The driver refused to move his vehicle and shouted at her from the window that she should “fend for herself”. A passer-by approached to help the woman. The driver shouted racist, and, specifically, anti-Albanian abuse and punched the passer-by, inflicting a two-centimetre wound on her face.

*Use the Prosecutor Decision Tree to consider the following questions and points, where relevant.*

**Question 1: Does the incident involve hate, bias or prejudice?**

**Question 2: Does the incident include biased speech or expression?**

**Question 3: Is the incident a crime if the biased expression is removed?**

**Question 4: What crime is involved? What is the base offence?**

**Point 5: Identify, collect and capture indicator evidence of bias motivation**

**Point 6: Select the bias motivation provision (this depends on national law and will be covered in the feedback session)**

### **PART II – Learning points**

#### **The prosecution decision**

The criminal prosecution authority qualified the acts as simple bodily harm (Article 123.1, para. 1), of insult (Article 177, para. 1) and racial discrimination (Article 261bis, para. 4). It argued that, when racist expressions are used to portray Albanians as people of lesser value, they constitute an attack on human dignity and that it is not necessary for the people discriminated against to belong to the ‘race’, ethnic group or religion to which they are attributed. The court found the accused guilty of the three charges listed above. They were sentenced to a pecuniary penalty of 60 day’s fine at CHF 30.00113 and incurred the costs of the proceedings of CHF 510.00.

## **Applying the Prosecutor Decision Tree below highlights the considerations in this approach**

In this case, the answer to both Questions 1 and 2 is 'yes'. The incident presented strong bias indicators, unprovoked violence and the specific language/expression used during the assault. Other bias indicators — victim perception and difference in ethnicity between the victims and the accused — were possibly also present.

The answer to Question 3 is also 'yes'. The incident involved an assault, which would remain a crime without the bias expression. In this case, the prosecutor should follow the left side of the Decision Tree to establish the type of hate crime offence and to determine the applicability of relevant national law.

Question 4 (what crime is involved?): The base offence of simple bodily harm (Article 123.1, para. 1) appears to best match the incident, and was one of the qualifications chosen by the prosecutor. The two other charges of insult and racial discrimination might not be necessary, because the insults are closely connected to the assault and are therefore more accurately interpreted as indicators of bias motive for the assault and not separate additional offences. The incident, including bias motive, appears to be most appropriately addressed as a racially aggravated assault (see Point 6 below).

Point 5: The bias indicators are identified above and evidence should be available through witness statements taken from the two victims: the woman using the mobility aid and the passer-by who was assaulted.

Point 6: The relevant bias motivation provision is Article 47 of the Swiss Criminal Code, which could apply to this case as a general sentencing enhancement provision (6c). In jurisdictions where the hate crime law is a penalty-enhancement provision and the sentencing and finding of guilt are separate stages of the proceedings, a judge may refuse to sentence on the basis of a bias motive if the bias element has not been included in evidence during the trial phase. Similarly, in the case of a guilty plea, the motivation must be included within the accepted facts in order for the penalty enhancement to be applied. In jurisdictions where hate crime laws are rarely used, it can be helpful for prosecutors to ensure that the case file includes a clear analysis of why sentencing should take into account the bias motive. The analysis should clearly specify the presence of a racist or xenophobic motive, including references to international standards, and draw on arguments that demonstrate the perpetrator selected the victim because of their protected characteristic or that bias was demonstrated during the attack. This should be sufficient for the court to consider the offence as a hate crime.

Point 6d: Prosecutors might also use this and similar cases as evidence of a potential gap in national hate crime laws, which do not currently recognize specific bias motive such as a racist or xenophobic motive.

### **Technical points**

Article 261bis para. 4 of the Swiss Criminal Code<sup>64</sup> is a complex provision that contains both hate crime and criminalized 'hate speech' offences and could present prosecution challenges as a result. The wording is, "Anyone who publicly, by speech, writing, image, gesture, by assault or in any other way, degrades or discriminates in a way that violates human dignity a person or a group of people because of their racial, ethnic or religious affiliation or their sexual orientation [...] is punishable by a custodial sentence of up to three years or a monetary penalty."

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64 Swiss Criminal Code, SR 311.0, of 21 December 1937 (Status as of 1 July 2024).

The elements that refer to “publicly”, “speech, writing, image and gesture” in the first part of the provision correspond to criminalized ‘hate speech’, while “assault” could correspond to the base offence of a hate crime. In this case, another relevant provision not used in this case is Article 47 of the Swiss Criminal Code, which could apply to this case as a general sentencing enhancement provision: (1) The court determines the sentence according to the culpability of the offender. It takes account of the previous conduct and the personal circumstances of the offender as well as the effect that the sentence will have on their life. (2) Culpability is assessed according to the seriousness of the damage or danger to the legal interest concerned, the reprehensibility of the conduct, the offender’s motives and aims, and the extent to which the offender, in view of the personal and external circumstances, could have avoided causing the danger or damage. It is also open to prosecutors to share this and similar cases with policymakers to illustrate the gaps and challenges presented by current national legal frameworks. For example, many hate crimes may fall outside the protection of Article 261 bis para. 4 because of its requirement that the offence is committed “publicly”.

Furthermore, the general sentencing enhancement option offered by Article 47 is not in line with international standards relevant to hate crime laws, which recommend that protected characteristics regarding ‘motive’ are specified.

### **Impact on data**

The provision that was used to prosecute the incident outlined in this case included a mix of hate crimes and other offences. As a result, specific hate crime data would be unavailable to the authorities and policymakers.

### **Potential implications for victims**

The lack of visibility of hate crimes in official data and statistics can hinder efforts to advocate for specialist victim services or training for law enforcement and judicial authorities

## **CASE STUDY 3: USING CRIMINALIZED ‘HATE SPEECH’ PROVISIONS IN THE ABSENCE OF RELEVANT HATE CRIME PROVISIONS**

### **PART I - Background to the case**

*Instructions: Read the case study and work together to answer the questions below and apply the Decision Tree to the case.*

This case was adapted from the website of the District Courts of Iceland.<sup>65</sup> It took place in Reykjavík in 2016 and was prosecuted under applicable law.

The victim, of Arab and Muslim background, was working as a security guard in a shop. During an extended incident, the offender, an Icelandic man, grabbed the victim by the throat and choked his airway, elbowed him in the head and body, pushed him in the side and caused him to fall on the railing. These actions were accompanied by threats to kill. The victim suffered rib fractures, bruises on the chest, head injuries and a sprained neck.

During the incident, the offender swore at the victim and said he was going to see to it that the Arabs who were working at the shop were fired. He also said, “You Arabs should not be here and should go to your homes” and insulted the victim with a mix of racist and homophobic slurs.

*Use the Prosecutor Decision Tree to consider the following questions and points, where relevant.*

**Question 1: Does the incident involve hate, bias or prejudice?**

**Question 2: Does the incident include biased speech or expression?**

**Question 3: Is the incident a crime if the biased expression is removed?**

**Question 4: What crime is involved? What is the base offence?**

**Point 5: Identify, collect and capture indicator evidence of bias motivation**

**Point 6: Select the bias motivation provision (this depends on national law and will be covered in the feedback session)**

### **PART II – Learning points**

#### **The prosecution decision**

At the time of the offence, in 2016, Iceland’s Criminal Code<sup>66</sup> did not include a hate crime law. The case was prosecuted using Article 218 (Threat), Article 233 (Deliberate Assault) and Article 233a (Defamation and Offences against the inviolability of Private life).

65 The website of the District Courts of Iceland.

66 General Penal Code of Iceland No. 19, February 12, 1940, 1 March 2004, as at 2016.

## **Applying the Prosecutor Decision Tree highlights the issues with, and considerations of this approach**

In this case, the answer to both Questions 1 and 2 is ‘yes’. The incident presented strong bias indicators, including unprovoked violence, the specific language/expression used during the attack and difference in ethnicity between the victims and the accused.

The answer to Question 3 is also ‘yes’. The incident involved an assault, which would remain a crime without the bias expression. In this case, the prosecutor should follow the left side of the Decision Tree to establish the type of hate crime offence and to determine the applicability of relevant national law.

In relation to Question 4 (What crime is involved?), the base offences were identified as Article 218, threat and Article 233, deliberate assault. The crime of “Defamation and Offences against the inviolability of Private life” was also selected; however, as explained above, the facts of the case do not appear to match this charge.

On Point 5, even without the legal tool to address the bias motive in this offence, it is still important to collect evidence of bias motive and to acknowledge its existence to the victim.

On Point 6, at the time of the offence, there was no available tool to present to the court for it to acknowledge bias motive. However, it is open to prosecutors to consider point 6d in the Decision Tree and, as explained above, to use these examples to highlight gaps in legal protection for hate crime victims.

### **Technical points**

While the incident happened in public, Article 233a requires that the offender “publicly mocks, defames, denigrates, or threatens a person or groups of people with comments, or an expression of other nature...for their ethnic origin, colour, race, religion...”. There is a difference in meaning between ‘in public’ and ‘publicly’. The latter term suggests that the offender is engaging in the comments and expression with the public as their intended audience. In this case, it appears that the offensive remarks were closely connected to the assault and are better understood as bias indicators, i.e., insults and biased language directed towards the individual victim during the commission of the offence. Taken together, the facts of the case appear to better match a hate crime qualification where the assault was motivated by bias towards the victim’s ‘race’ or religion or belief. The first element of the hate crime prosecution is the assault (Article 218), and the second element, the bias motive, should be addressed by a penalty enhancement in the form of a substantive offence, specific penalty enhancement or general penalty enhancement.

This incident occurred before Iceland’s general penalty enhancement was in place. As such, there was no available tool to prove and allow for the punishment of the bias motive. While it can be tempting to use other offences — in this case Article 233a — to seek to recognize the bias motive in a racist assault, prosecutors should be cautious when choosing qualifications that do not fully reflect the actions of the defendant. Charges that do not match the crime undermine broader rule of law principles of legality and proportionality. Where the appropriate legislative provisions are not in place, prosecutors can consider raising awareness about these gaps for legislators to consider during the course of debating and crafting hate crime legislation. In this regard, it is important for prosecutors to gather examples of such cases and to share other data that informs policymakers about the types of legislative provisions that are necessary for the most effective and fair hate crime prosecutions.

### Impact on data

At the time of the offence, Iceland's Criminal Code did not include a hate crime law. As the case was prosecuted using base offences (Threat and Assault) alongside a Defamation offence, the case will not be visible in any available hate crime data or statistics.

Iceland has since enacted a general penalty enhancement provision: "When punishment is decided, the following factors, in particular, are to be considered. [...] 10. Whether the offence can be attributed to ethnic or national origin, colour, race, religion, disability, gender characteristics, sexuality, gender identity or other similar factors."<sup>67</sup>

### Potential implications for victims

The limited hate crime legal framework prohibited the court from recognizing and appropriately punishing the bias motive, denying the victim an effective remedy. This gap also limits the visibility of hate crimes in official data and statistics, hindering efforts to advocate for specialist victim services or training for law enforcement and judicial authorities.

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67 General penalty enhancement provision: Art. 70 (Chapter VIII. Factors influencing the severity of punishment). (In Icelandic, unofficial translation).

## CASE STUDY 4: MIXED CASES — INCIDENTS THAT INCLUDE HATE CRIME AND CRIMINALIZED ‘HATE SPEECH’ OFFENCES

### PART I - Background to the case

*Instructions: Read the case study and work together to answer the questions below and apply the Decision Tree to the case.*

This case took place in Liège, Belgium in 2023 and was prosecuted under applicable law.

In this case, a family provided shelter to a 35-year-old homeless man, offering him a place to live. As he became more settled, his behaviour changed in specific ways. Professing ‘extremist’ beliefs, he targeted the family’s underage daughter in Facebook posts, declaring his intentions to marry her forcibly, abduct her and father her children.

Based on the statements to the police of the victim’s father and mother, and from the suspect’s own publications on the social network Facebook, the defendant claimed to have been elected to be the King, that the victim (aged 17) was destined for him, that he would therefore make her his Queen, marry her, convert her to Islam and have children with her, regardless of any opposition from her parents or anyone else.

The victim told investigators, “(...) Yesterday, I learned from my father about the presence of videos on social networks where the suspect talks about my identity and his plans with me. As a result, I am deeply shocked and fear for my physical integrity. I’m afraid to run into him. I have had several occasions to find myself in groups where he was also present (meals with my family) and I was struck by his behaviour. He showed interest in me. He had contact with my mother, but I don’t know how (...) Today, out of fear, I stay with my other brother (...) I think the suspect is crazy. He often talked to himself and would sometimes shout incoherent things (war, conspiracy...). I have nothing else to add except that I don’t want to see him anymore.”

The father of the victim said, “When he became more comfortable with me, his remarks became unbearable and he became aggressive. I kicked him out of my house and changed the gate code (...) I managed to record some less compromising videos, but it was still frightening (he is against the system, etc. ...). I filed a complaint and requested an urgent restraining order (...) I fear for my physical integrity, as well as that of my daughter. He clearly mentions that anyone who stands in his way will suffer the consequences (...)”. The father confirmed this serious disturbance to his peace of mind, saying, “He really scared me with his words (...) He scared me with his intolerance, and he gives me the impression that he could harm someone. He is a walking time bomb to me. His remarks about society are frightening. They are just words, but he scared me (...) I have lost trust and he scares me.”

During his police interview and during the trial, the defendant admitted the accuracy of his reported actions and statements concerning the victim, but clarified at the hearing on 22 September 2023, “My intention was good. I didn’t want to scare her.” He also explained that he was in a disturbed state of mind at the time, which he attributed to his excessive consumption of alcohol and drugs.

Through his Facebook profiles, he posted numerous writings and personal videos in which he expressed a desire for the death of individuals towards whom he harboured a manifest hatred. On one hand, based on their ethnic or national origin, specifically targeting Western white individuals, Flemish, Dutch and Belgians, and on the other, based on their religion, specifically targeting Christians and anyone not following Islam. His actions escalated further when he communicated these views repeatedly to both a national television network and the Prime Minister's office.

*Use the Prosecutor Decision Tree to consider the following questions and points, where relevant.*

**Question 1: Does the incident involve hate, bias or prejudice?**

**Question 2: Does the incident include biased speech or expression?**

**Question 3: Is the incident a crime if the biased expression is removed?**

**Question 4: What crime is involved? What is the base offence?**

**Point 5: Identify, collect and capture indicator evidence of bias motivation**

**Point 6: Select the bias motivation provision (this depends on national law and will be covered in the feedback session)**

## **PART II – Learning points**

### **The prosecution decision**

The case was assigned to a hate crime/‘hate speech’ specialist prosecutor, who selected a mix of hate crime and criminalized ‘hate speech’ charges. The hate crime prosecution strategy relied on building a case for bias-motivated harassment, relying on the specific offence of harassment and a general penalty enhancement provision to recognize the bias motive. The prosecutor relied on Article 78 of the Belgian Penal Code<sup>68</sup> to argue that “one of the perpetrator’s motives was hatred, contempt, or hostility towards a person because of their alleged race, skin colour, ancestry, national or ethnic origin, nationality, gender... religious or philosophical belief... , whether this characteristic was actually present or only assumed by him, or that one of his motives consisted of a real or assumed link between the victim and a person towards whom he harboured hatred, contempt, or hostility for one or more of the aforementioned actual or assumed characteristics, to the detriment of BF (father’s victim) and RF (victim).”

The ‘hate speech’ prosecution strategy relied on building a case for the substantive offence of incitement to hatred under Article 444 of the Belgian Penal Code. Based on the offender’s behaviour of publishing messages and videos on social networks “wishing for the death of Western white people, Flemish, Dutch and Belgians on several occasions between 1 May 2023 and 8 June 2023”, the defendant was charged with inciting hatred or violence towards a group, community, or their members because of one of the protected criteria referred to in Article 4, 4° of the Law of 30 July 1981.

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68 Belgian Penal Code (2024). (In French, unofficial translation).

### **Applying the Prosecutor Decision Tree below highlights the issues with and considerations of this approach**

In this case, both branches of the Prosecutor Decision Tree are relevant. First, the offender's behaviour towards the daughter in the household is considered.

The answer to both Questions 1 and 2 is 'yes'. The incident presented strong bias indicators, including victim perception, difference in ethnicity between the victims and the accused, and the specific language/ expression used during the attack.

The answer to Question 3 is 'yes'. The incident involved a course of harassment, which would remain a crime without the bias expression. In this case, the prosecutor followed the left side of the Decision Tree to establish the type of hate crime offence and to determine the applicability of relevant national law.

Question 4 (what crime is involved?): the base offence includes expression and was qualified as harassment (4b).

Point 5: The bias indicators are identified above, and evidence was available through witness statements taken from the daughter and the father.

Point 6: The relevant bias motivation provision is identified as a general penalty enhancement, Article 78 of the Belgian Penal Code, which establishes bias as an aggravating circumstance for any criminal offence (6c).

Second, the criminalized 'hate speech' elements of the incident are considered.

The answer to Questions 1 and 2 is 'yes'. His Facebook profiles contained expressions of bias towards specific ethnic and religious groups.

The answer to Question 3 is 'no. If the biased expression is removed from the content, there would be no qualifiable crime. As such the content of the expression constitutes the potential criminal offence. In this case, the prosecutor should follow the right side of the Decision Tree to determine the target of the expression (7) — which appears to be the general public as well as the Prime Minister (7c) — and the aim of the expression, which is set out in points 8a, 8c, 8c and 8d. In this case, the prosecutor qualified the expression as incitement to hatred under Article 444 of the Belgian Penal Code (8d).

### **Technical points**

The correction to the prosecution strategy was made because the duty prosecutor had the presence of mind to alert their specialized colleague. If this had not been done, it is likely that the specific charges set out above would never have been pursued.

It is important to note that the charges selected were potentially incomplete. The suspect also published a series of hateful comments about the LGBTI community, but these actions could not be prosecuted because, according to the Court of Cassation, they constitute a press offence. Article 150 of the Constitution does not allow a criminal court to hear a press offence of a homophobic nature (the exception provided by Article 150 covering only press offences of a racist or xenophobic nature). For these homophobic remarks on Facebook, it would have been necessary to refer the case to an assize court, which was not feasible from a pragmatic perspective.

**Impact on data**

Since the police did not correctly register the complaint as a hate crime and criminalized 'hate speech', it will not appear as such in police statistics. However, the correction was made at the judicial level.

**Potential implications for victims**

The statements of the victim and her family indicate that the perpetrator's behaviour was very distressing, with a severe impact on their wellbeing. The actions of the prosecutors and outcome of the court process also provided them relief and reassurance.

## **CASE STUDY 5: ADDRESSING VERBAL ABUSE AND SPEECH ACTS AT THE BORDER OF HATE CRIME AND ‘HATE SPEECH’**

### **PART I - Background to the case**

*Instructions: Read the case study and work together to answer the questions below and apply the Decision Tree to the case.*

One night, a gay couple was walking in downtown Budapest. During the walk, a man followed the couple, shouting homophobic abuse and said, “I’ll catch up with you and beat you up.” The couple tried to seek shelter at a shop that was open all day and night, where the man caught up with them. They tried to go into the shop, where the perpetrator wanted to follow them, so one of them blocked his way. After a brief exchange of words, the offender punched one of the victims in the face with his palm and grabbed him by the neck. A group of three people were standing outside the shop supporting the offender, only one of whom tried to defend the victims when the offender grabbed him by the neck. In the meantime, the first police patrol arrived, as the victims had called the emergency line several times. A member of the group outside the shop pulled the hair of one of the victims in the presence of the police patrols and commented that the victim was ‘gay’.

*Use the Prosecutor Decision Tree to consider the following questions and points, where relevant.*

**Question 1: Does the incident involve hate, bias or prejudice?**

**Question 2: Does the incident include biased speech or expression?**

**Question 3: Is the incident a crime if the biased expression is removed?**

**Question 4: What crime is involved? What is the base offence?**

**Point 5: Identify, collect and capture indicator evidence of bias motivation**

**Point 6: Select the bias motivation provision (this depends on national law and will be covered in the feedback session)**

### **PART II – Learning points**

#### **The prosecution decision**

The victims called the police hotline several times, while the man was following them and also when they were waiting at the shop on Kolosy Square. At first, they were advised to stop and wait for the police but, when the offender continued to approach aggressively, the victims walked on. The victims were on the police hotline throughout the assault outside the shop. Proceedings were initiated on the basis of a complaint by one of the victims, and police

investigated the case for a misdemeanour of assault. The Háttér Society, which provides legal and practical support to victims of hate crime, requested that the investigation be continued for a hate crime offence of violence against a member of the community. As a result, the Budapest District III Police Headquarters transferred the criminal proceedings to the Budapest Police Headquarters Criminal Investigation Department, which is competent to conduct the proceedings. The Háttér Society had to request an update about the procedural steps taken, since no information was provided after the investigation had been moved to the Budapest Police Headquarters. The defendant in the case was charged with nuisance (vandalism) under Section 339 of the Criminal Code as at 2021.126. The defendant received a fine (300.000 HUF, approx. 790 EUR).

### **Applying the Prosecutor Decision Tree below highlights the considerations in this approach**

In this case, the answer to both Questions 1 and 2 is 'yes'. The incident presented strong bias indicators, including victim perception, unprovoked violence and the specific language/expression used during the attack.

The answer to Question 3 is also 'yes'. The incident involved an assault, which would remain a crime without the bias expression. In this case, the prosecutor should follow the left side of the Decision Tree to establish the type of hate crime offence and to determine the applicability of relevant national law.

In relation to Question 4 (what crime is involved?), the base offences should be qualified under Section 216, Violence Against a Member of the Community.

On Point 5: The bias indicators are identified above and evidence should be available through witness statements taken from the two victims and from the bystanders present during the assault.

On Point 6: It is open to the prosecutor to charge the aggravated form of Section 216, Violence Against a Member of the Community, at the time of the offence, which is a substantive hate crime offence (6a).

### **Other observations**

The facts of the case indicate that the incident constituted the hate crime offence of violence against a member of a community. Bias indicators were present and the Budapest District III Police Headquarters agreed with the Háttér Society's request to transfer the case to the competent body. For the charge of 'nuisance', the constitutive element of the crime is to exhibit behaviour that is capable of causing outrage or alarm in others, and as such there are no direct victims. Had the crime been qualified under Section 216, Violence Against a Member of the Community, the victims in this case would have been entitled to participation rights as victims.

### **Impact on data**

As the case was not investigated or prosecuted as a hate crime, it will not have been recorded as a hate crime or be visible in hate crime data or statistics. “(1) A person who, because of the fact that another person, actually or presumably, belongs to a national, ethnic, racial or religious group or another group of society, in particular because of his disability, gender identity or sexual orientation, displays a conspicuously anti-social conduct that is capable of causing alarm in members of the respective group is guilty of a felony and shall be punished by imprisonment for up to three years.”<sup>69</sup>

### **Potential implications for victims**

The Háttér Society interviewed one of the victims in November 2022. The judicial procedure had a serious impact on him, causing him periods of depression. The inactivity of the police, the lack of adequate information made him feel that “his report was put in a drawer and left there”. He did not receive adequate information on the procedure. The police officers did not show any empathy towards them. He felt that his case was a “five-minute topic” before everyone moved on. He lost his victim status in the judicial procedure and received no communication on the charges. He and his legal representatives were only informed of the prosecution service’s position in the court hearing, without notice. He said that he had lost trust in the criminal justice system as a result. More generally, misqualifying hate crimes limits their visibility in official data and statistics, hindering efforts to advocate for specialist victim services or training for law enforcement and judicial authorities.

## **CASE STUDY 6: ADDRESSING VERBAL ABUSE AND SPEECH ACTS AT THE BORDER OF HATE CRIME AND ‘HATE SPEECH’**

### **PART I - Background to the case**

*Instructions: Read the case study and work together to answer the questions below and apply the Decision Tree to the case.*

Three men with intellectual disabilities and their support worker were out in the local town centre when they were approached by a man — the defendant — who demanded money from them. When they refused, the defendant became very aggressive and started shouting, using disablist insults against the men. The support worker encouraged the three men to go to a nearby church and then called the police. The defendant followed the men into the church where he was identified by the support worker and arrested by the police on suspicion of a disability-aggravated section 4a Public Order Offence. Police took a witness statement from the support worker. Statements were not taken from the three men because they were too distressed.

*Use the Prosecutor Decision Tree to consider the following questions and points, where relevant.*

**Question 1: Does the incident involve hate, bias or prejudice?**

**Question 2: Does the incident include biased speech or expression?**

**Question 3: Is the incident a crime if the biased expression is removed?**

**Question 4: What crime is involved? What is the base offence?**

**Point 5: Identify, collect and capture indicator evidence of bias motivation**

**Point 6: Select the bias motivation provision (this depends on national law and will be covered in the feedback session)**

### **PART II – Learning points**

#### **The prosecution decision**

The perpetrator was charged under section 4a of the Public Order Act 1986 as at the time of the offence. The defendant pleaded not guilty but was convicted after trial and sentenced to a 12-month community order with 12 months supervision as well as attendance on a six-month alcohol treatment course. During the sentencing hearing, the prosecutor followed national guidance to draw the court’s attention to the relevant law allowing the court to recognize the aggravating factor of ‘disability hate’ in the case in its sentencing decision.

### **Applying the Prosecutor Decision Tree below highlights the considerations in this approach**

The answer to Questions 1 and 2 is 'yes'. The incident presented strong bias indicators through the specific language/expression used during the incident.

The answer to question 3, 'Is the incident a crime if the biased expressions is removed?', places the incident on the border of hate crime and criminalized 'hate speech'. The defendant was shouting and following the three men with intellectual disabilities, which, on its own can amount to 'intent to cause a person harassment, alarm or distress'. The inclusion of disablist insults as part of his harassing behaviour is also relevant to the question of whether the defendant's behaviour fits the offence. As such, it is open to the prosecutor to consider that the content of all of the expression comprises the crime.

Following the Decision Tree down the right-hand side, the answer to question 7, 'Who does the speech address?' is a mix of individual targets (7a) and a specific target group (7b).

In answer to Question 8, the behaviour best fits the description of 8b 'abusive, alarming distressing', leading to the 'borderline' offences of 'disturbance of the peace', 'nuisance' and, in this case, a 'public order' offence. It is important to note that, depending on the precise facts and circumstances of the case and the available law, prosecutors might consider charges such as threats or harassment, or insults alongside disturbance of the peace, nuisance and other similar offences.

On point 6, the prosecutor selected a general penalty enhancement to present to the court, which was applied.

### **Technical points**

There are several points to consider in this case. Section 4A of the Public Order Act 1986, Intentional harassment, alarm or distress, is a basic offence. In this incident, the defendant shouted at the three men because they did not give him money. He then followed them into the church where they had sought safety. The defendant also shouted disablist slurs and insults at the men, thus demonstrating hostility towards disability at the time of committing the basic public order offence. In this case, Section 66 of the Sentencing Act 2020 (s.66 SA) applied, which covers cases where 'hostility' towards 'disability' is 'demonstrated' (...) '(a) at the time of committing the offence, or immediately before or after doing so' ...

In this case, both elements of a hate crime prosecution were present — the basic offence and the bias motive. The second consideration is how the sentencing uplift is applied by the court. If the defendant admits the basic offence, but denies the hate crime element, the prosecutor's duty is to then call evidence to prove the hate crime element to the criminal standard. Only once the hate crime element is admitted by the defendant or proved by the prosecution can the court apply s.66 SA 2020 to uplift the defendant's sentence. Once the hate crime element is admitted or proved, England and Wales case law requires the court to adopt the following two-stage approach to sentencing:

- First, the court must calculate (using the relevant sentencing guidelines) the appropriate sentence if there had been no bias motive, and announce that in open court;
- Second, the court must calculate the appropriate sentence, taking into account the extra aggravating factor of the bias motive and announce that in open court as the actual sentence that the defendant will receive.

### **Impact on data**

Recording guidance for prosecutors in England and Wales allows this and similar incidents to be recorded as a disability hate crime, even though there are no substantive disability hate crime offences in the national Criminal Code. This approach is particularly positive because it allowed the incident to be visible in prosecution performance data and also highlighted in the Crown Prosecution Service annual hate crime report.

### **Potential implications for victims**

The correct investigation, recording and prosecution of all elements of the disability hate crime offences should contribute to improving the visibility of the victim experience at the national level. The access needs for victims with intellectual disabilities with regard to giving a statement and, where appropriate, to giving evidence should also be addressed in national policies, guidelines, training and practice.

# HANDOUT 11

## SENSITIVE AND RESPECTFUL ESSENTIALS DURING THE CRIMINAL JUSTICE PROCESS

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### PREPARING FOR TRIAL:

- At the earliest possible stage in the proceedings, consider granting the victim the necessary status to facilitate their active participation.
  - Initiate an individual needs assessment process to see if other needs are identified to support the victim during the proceedings.
  - Offer interpretation and translation support, if needed. Access should be granted free of charge, both in the preparation stage and during the trial (e.g., for consulting a lawyer).
  - Determine whether legal advice and representation is required. If available, access should be granted through legal aid.
  - Discuss with the victim their options or requirements with regard to appearing in court, whether protection and support mechanisms can be accessed at the trial stage and, if so, which type (e.g., psychosocial support).
  - Guide the victim through the trial by explaining their participation rights. Explain how to provide evidence or make a statement regarding evidence produced by the prosecution or the defence.
  - Inform the victim whether they have the option to withdraw from participation or the right not to be informed about the proceedings.
  - Inform the victim of any court or other fees that could potentially be incurred as a result of the criminal proceedings, including legal representation costs or damages the alleged offender might be entitled to claim from the victim in the event of their acquittal.
  - Provide information on the victim's rights to reimbursement of costs, including for travel expenses, translation or interpretation, support services and legal advice and representation.
  - Point out the right to compensation from the state and/or the alleged offender and how to access this right, if available in your jurisdiction.
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**DURING  
THE TRIAL:**

- Discriminatory or degrading language must be prohibited at all times, and this must be enforced by the judge during the proceedings.
- Access to legal representation, translation services and other protection and support measures should be determined and offered throughout the trial.
- Ensure the possibility to be accompanied by a support person, such as family or a community member, as well as a CSO representative, throughout the trial.
- Reduce unwanted possible contact with the alleged offender during or after the hearing, for example, by arranging for separate waiting rooms and/or entrances.
- The victim should be informed whether there are court or other fees potentially incurred by the criminal proceedings and about the potential right to compensation from the state and/or the alleged offender, and how to exercise this right, if available in the victim's jurisdiction.
- During all questioning, inquiries into a victim's personal life should be restricted to what is strictly necessary for presenting the case.
- Ensure the victim's right to be heard (e.g., by presenting an impact statement) and facilitate their active participation rights, using communications technology as appropriate.
- If requested by the victim and available under law, the hearing should take place without the presence of the public, to protect the victim's privacy.
- Take account of the bias motivation in the decision where there is evidence. Clearly state the court's findings on bias motivation, both in the courtroom reading and in the written decision.

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**AFTER  
THE TRIAL:**

- Provide a comprehensive briefing to the victim on the judgement and the grounds for the decision.
  - Support the victim in exercising any right they have to compensation and/or appeal.
  - Respect the victim's wishes and safety and privacy needs when considering communication with the media about the verdict.
  - Continue available protection and support measures in the post-trial stage.
  - Provide information on, or renew the offer to refer the victim to specialist victim support providers.
  - Communicate about any remaining processes or follow-up, providing detailed information.
  - Consider the use of restorative justice programmes offered or designed by those communities against which the offender's bias motivation was directed.
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# HANDOUT 12

## CASE STUDIES I: BIAS INDICATORS

### HANDOUT 12-A CASE STUDIES I: BIAS INDICATORS

Amir is a man of North African background living in a capital city. He was in a shop at 8 PM on 11 January when another man, Z, assaulted him. Specifically, he took him by the throat and choked his airway, elbowed him in the head and body, pushed him in the side and caused him to fall on the railing. The owner of the shop saw the scene and by the time he reacted, the assailant ran away. He helped the victim to sit down and called the police as well as an ambulance.

Amir explained to the police that he was simply going out of the shop when Z assaulted him, and that during the attack the assailant said to him, “I’m going to kill you” and uttered a curse directed at Arabs (such as “hell Arab” in a local language and “go home”). He briefly described the assailant as being white and bald.

Amir went to the emergency department, and in a certificate from there, it is noted that a man attacked him with “insults and called him derogatory names related to religion.”

The owner of the shop confirmed what he could see from the counter and described what happened as an unprovoked attack. He mentioned hearing the assailant’s comments, “You Arabs should not be here and should go to your homes” and “Muslim [homophobic slur]”. He also confirmed that the perpetrator, Z, was bald and wearing a green jacket.

Later that same evening, a person matching the description of Z was arrested by the police. The person admitted that, while entering a shop, he had a small dispute with another man earlier in the evening.

Investigators also conducted interviews in the neighbourhood of the shop showing the picture of the assailant and asking neighbours if they knew anything about Z. A bartender told the police that Z came regularly to his bar with other friends and that, a couple of days ago, he heard them talking about “slitting the throat of a Muslim.” The bartender thought they were just joking and showing off.

#### **Questions:**

1. *What are the bias indicators in this case?*
2. *Considering the Criminal Code of your country, which offence would you consider indicting? Which legal provisions would you consider?*
3. *Would you require any further investigative actions? If so, which ones and why?*
4. *In the context of the investigation and interaction with the police, one of the investigating officers makes an Islamophobic comment during an informal conversation with you. How would you respond?*

## HANDOUT 12-B CASE STUDIES I: BIAS INDICATORS

K is a journalist of Roma origin and author of an Internet blog, which is quite popular with readers. On the occasion of the International Roma Holocaust Day on 2 August, she was critical about discrimination against the Roma people in your country, and shared her article, among others, on the wall of her public profile on a social network. A discussion unfolded under the post, in which a certain Z noted: "Mrs. K would do better if she cleaned the streets like her Black mates. Or, all of them should rather go straight back to India where they came from. Under the Protectorate, they knew how to make short shrift of this scum."

As she received several similar comments from user Z on her wall, she reported the matter in person at the nearest police station. According to her statement, the comments were full of hatred against the Roma and she herself felt like a victim of stalking by Z.

The following day, after returning from work, K discovered a plastic bag full of faeces in front of her flat. She called the police and they immediately sent a patrol to K's place of residence. Two police officers interrogated K and her neighbour D who stated that during K's absence she had let a man into the building who had introduced himself as K's relative, saying he had a parcel for her. The police also ascertained that one of the TV cameras of the 'city surveillance system' was watching over the entrance of K's apartment building.

The same day, in the evening, K received a message from Z through the Messenger service, which said, "This was just a warning shot. I know where you live!" K reported this incident in person at the same police station as before.

### Questions:

1. *What are the bias indicators in this case?*
2. *Considering the Criminal Code of your country, do you have sufficient information to justify charging the social network account holder named Z with a bias-motivated offence?*
3. *Would you require further investigative acts? What other obstacles would have to be overcome with respect to access to the data about the social network user's identity and to electronic communications, and how could these be addressed?*
4. *In the context of the investigation and interaction with the police, one of the investigating officers has an uncontrollable fit of laughter over a joke about Roma during an informal conversation with you. How would you respond?*

## HANDOUT 12-C CASE STUDIES I: BIAS INDICATORS

An LGBTI-friendly gathering is scheduled to take place on 11 May in your city, organized by a coalition of NGOs known as the 'LGBTI Coalition', with the aim of raising awareness about hate speech and harassment of the LGBTI community.

In recent weeks, the LGBTI Coalition has organized an educational campaign, including posters around the city. The posters showed a variety of people's faces, with the line underneath: "We are like you — LGBTI Coalition." At the same time, religious leaders and a prominent political leader spoke out against the event, calling LGBTI people "deviants attacking our traditional values", and urging people to stop the campaign.

On 9 May, you are given a case file involving the following complaint.

### **Statement by Milo M.**

"I am a volunteer with 'Human Rights for All', an NGO. On the evening of 4 May, I was in a bar downstairs from our office with some friends, when I noticed a pair of men looking at us. One of them raised his hand to his throat and made a threatening, cutting motion at me. I had never seen them before. I ignored them and stayed in the bar for another 20 minutes before I left the bar to go home.

As I left the bar with a male friend, I heard footsteps coming towards us from behind. I turned and saw the same two men who were in the bar. One of them punched me in the head and kicked me in the stomach; the other one was attacking my friend. I was afraid to fight back and only shouted for help. Before the attackers ran away, they managed to pull my pants off.

I had soreness and bruising to my face from the punch. In the last few weeks, our office has received threatening telephone and email messages. I was one of the faces in the LGBTI poster campaign and I am sure that is why they attacked me."

The witness, who was with Milo M. refused to report the attack or make a statement to the police. The police apprehended two men who admitted having attacked two men outside the bar. They referred to the victim as "deviants, taking away our values". Neither suspect had a criminal record nor affiliation with an extremist group.

### **Questions:**

1. *What are the bias indicators in this case?*
2. *Considering, the Criminal Code of your country, do you have enough information to justify charging one or both suspects with a hate crime? Which legal provisions would you consider?*
3. *Would you require any further investigative actions? If so, which ones and why?*
4. *In the course of supervising the investigation, you encounter a situation in which one of the investigating officers bursts into uncontrollable laughter over the fact that one of the victims had his pants pulled off. This police officer has also been heard making derogatory comments about homosexuals. How would you respond?*

## HANDOUT 12-D CASE STUDIES I: BIAS INDICATORS

Nina is an employee of a non-governmental organization, 'Women for Women', dealing with issues of women of foreign origin living in your country. On 8 March, Nina shared a post published by the NGO earlier the same day, which included a video with the testimonies of migrant women on domestic violence. Nina accompanied the video with the following post: "I have a loving partner, who respects me as an emancipated woman, and we are happily awaiting our first child. I am saddened that there are women in this country suffering from physical violence on a daily basis."

Soon after the post, through the Messenger service, she received a message from a user called "Deni M.", which said, "[Misogynist slur]! You should rather stay in the kitchen and...". Nina did not finish reading it, because she did not have the user Deni M. among her friends on that particular social network and reading the entire message would require communication consent, which Nina did not want to give, because she feared that her privacy might be violated and was afraid of other hate messages.

The following day she received a message at her work email address, which read: "[Misogynist slur]! You should rather stay in the kitchen and do not mingle in public affairs. You should be raped." The email message came from an email address containing no real name.

After having read the entire email, Nina reported the incident to the police, saying that she did not know the user and that she was afraid of further verbal assaults. She mentioned both the message and the email and indicated that the content seemed to be the same. Since the office address of the organization where Nina works is publicly known, she feared that the words would turn into actions. Moreover, she and her NGO colleagues received several other similar emails coming from the same address.

As a first step, the police checked Deni M.'s profile on the social network and found out that his profile photo contained the statement, "no to the Istanbul Convention" and that his wall contained a number of misogynist statements and memes about women and LGBTI people.

### **Questions:**

1. *What are the bias indicators in this case?*
2. *Considering the Criminal Code of your country, which charges would you consider? Would you consider the owner of Deni M.'s profile as a suspect?*
3. *Would you require any further investigative actions? What obstacles would need to be overcome with respect to access to the data about the social network user's identity and to electronic communication and how could these be addressed?*
4. *In the context of the investigation and interaction with the police, one of the investigating officers gets an uncontrollable fit of laughter over a joke about women of Ukrainian origin during an informal conversation with you. How would you respond?*

## HANDOUT 12-E CASE STUDIES I: BIAS INDICATORS

Three men with intellectual disabilities and their support worker were in the town centre when they were approached by the defendant, a man in his late 30s with a known history of disorderly behaviour. The defendant demanded money from them in an aggressive manner. When they refused, he began shouting, using derogatory language targeted at their disabilities. The support worker quickly intervened, advising the men to move towards a nearby church while she called the police. The defendant followed them, continuing his verbal abuse, until officers arrived at the scene and arrested him.

The police took an immediate witness statement from the support worker, who said, “I have worked with these men for several years, and I know how much incidents like this can affect them. As soon as the defendant started shouting, I could see the fear and distress in their eyes. He wasn’t just angry; he was using words meant to hurt them because of who they are. He called them ‘stupid’ and ‘useless’ and told them they shouldn’t be allowed out in public. That’s when I knew I needed to get them somewhere safe.”

The three men, still visibly distressed, were unable to give statements at the time. However, their support accommodation manager later provided a statement outlining the impact the incident had on them: “Since the incident, all three residents have been anxious about leaving the house. One of them, who used to enjoy visiting the local café, has refused to go outside at all. They are struggling to understand why someone would target them in this way.”

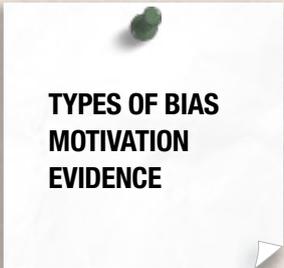
In his police interview, the defendant denied any discriminatory intent. He admitted to being drunk at the time and claimed he was merely frustrated because they had refused to give him money. However, CCTV footage from a nearby shop captured the moment he approached the group, aggressively pointing at them. It was clear that he was shouting something at them, but the CCTV footage does not have audio.

### **Questions:**

1. *What are the bias indicators in this case?*
2. *Considering the Criminal Code of your country, which offences should the suspect be charged with, and how should the bias motivation be addressed in the prosecution?*
3. *Would you require any further investigative actions? If so, which ones and why?*
4. *What evidence of bias motive is available? What additional evidence should be sought? How should the CCTV footage, witness statements, and social media posts be used to strengthen the prosecution’s case?*
5. *How should the prosecution respond to the defendant’s claim that he was intoxicated and did not intentionally target the victims?*

# HANDOUT 13

## TYPES OF BIAS MOTIVATION EVIDENCE



**TYPES OF BIAS  
MOTIVATION  
EVIDENCE**

| Type of evidence  | Sources  |
|---|--|
| Offensive statements towards the victim during the incident | Victim, witnesses to the incident  |
| Statements before the event that indicate planning          | <ul style="list-style-type: none"> <li>▶ Suspect's associates, friends, family or other witnesses present at location of statement</li> <li>▶ Search of suspect's mobile phone, phone camera, computer and internet usage</li> </ul>   |
| Statements of admission after the event                     | <ul style="list-style-type: none"> <li>▶ Suspect's associates, friends, family or other witnesses present at location of statement of admission</li> <li>▶ Search of suspect's mobile phone, phone camera, computer and internet usage</li> <li>▶ Statements made in public or overheard in public settings</li> </ul> |
| Statements of direct admission                              | First responders to scene, witnesses, police/prosecution investigators   |
| Connections to organized hate group                         | <ul style="list-style-type: none"> <li>▶ Search of suspect's house for magazines, posters, books, leaflets, etc</li> <li>▶ Search of suspect's mobile phone, phone camera, computer and internet usage</li> </ul>  |
| Circumstances of the crime                                  | <ul style="list-style-type: none"> <li>▶ Time, place with significant relevance for the offender or for the victim</li> <li>▶ Brutality of attack and manner of commission</li> <li>▶ Patterns of similar incidents that are committed in the same way</li> </ul>  |

# HANDOUT 14

## CASE STUDIES II: MOTIVE EVIDENCE

### HANDOUT 14-A CASE STUDIES II: MOTIVE EVIDENCE

#### Facts:

Z was brought to the police station and arrested on suspicion of a physical assault. The police asked what happened and explained that both the victim and the owner had testified that the attack was unprovoked and that they suspected that he had committed the assault because of the victim's origin and religion. Z immediately denied these facts and explained that he had nothing against Arabs and Muslims and that he doesn't hate them.

Z explained that he reads the news online and that, with all the migrants around, it's better to "take care of one's own security" and that "if a Muslim like Amir stands again on his way, he might even need to use a knife."

#### Questions:

1. *Which offences would you indict Z with? Are there any new bias indicators? What evidence of bias motive would you rely on? What further evidence might you seek?*
2. *How would you ensure that the court takes the bias motivation into consideration at sentencing?*
3. *How would you respond to Z's argument that this was not a hate crime?*
4. *Your supervisor has asked you to prepare a public statement about the case. What should it say?*
5. *From your perspective, what are the key learning points from this case study?*

## HANDOUT 14-B CASE STUDIES II: MOTIVE EVIDENCE

### Facts:

After watching the CCTV recording, police officers discovered that, around the time the incident could have happened, a man in a green jacket had entered the building carrying a plastic bag under his arm which matched the one left on K's doorstep.

The police also asked the social network operator for the IP address of Z's profile. The profile photo quite clearly did not match the appearance of the man on the CCTV recording. Nevertheless, it turned out that, on the day of the incident at K's house (at night-time), a man, N, who matched the looks of the suspect in the green jacket was arrested after a brawl at a restaurant in the same neighbourhood. During the investigation of this violent incident, witness X stated that one of men from the group that later provoked the brawl had mentioned that he had helped out a friend a bit that day by "scaring one cunning [anti-Roma slur] a little". Allegedly this man was, according to witnesses, dressed in a green jacket and matched the looks of N.

After examining the identity and records of suspect Z, the police also ascertained that this person was on probation; having received a suspended sentence for the criminal offence of violence against a group of people and against an individual.

### Questions:

1. *What charges would you bring against Z and N? Are there any new bias indicators in the case? What evidence of bias motivation would you rely on? What additional evidence should be sought?*
2. *How would you proceed with the aspects of the case related to the online threats made by user Z?*
3. *How would you respond to a defence argument, if any, that N only jokingly scared K, and that there was no evidence of racial or other bias-motivated hatred against K?*
4. *How would you ensure that the court takes bias motivation into account when sentencing? How would you address the fact that K faces similar threats almost daily, causing long-term stress, and considers the incident with the faeces a direct, racially motivated attack on her? What will you do if the court convicts N of disorderly conduct and entirely disregards any bias motive, and fails to consider N's role?*
5. *From your perspective, what are the key messages from this case study?*

## HANDOUT 14-C CASE STUDIES II: MOTIVE EVIDENCE

### Facts:

The LGBTI gathering took place in a park in the city centre. There were approximately 150 participants. There were also counter-demonstrators, around 50 people, including religious groups holding signs and groups of young men shouting homophobic insults. The police officers stood between the participants of the LGBTI gathering and the counter-demonstrators. A number of stones and plastic bottles were thrown at the police and at the participants of the LGBTI gathering. Throughout the gathering the police recorded using video cameras.

Most participants left the gathering peacefully.

Dragan K. was waiting at a bus stop with two female friends, they had all been at the LGBTI gathering. A group of 3 men appeared, shouting “[Homophobic slur] out”, “Die”. The two women ran away, but Dragan was caught, and two men beat him all over his body. He was injured in the genital area with a sharp object. Another man, apparently member of the same group, stood close by and kept watch. Upon hearing police sirens, they tried to run, but police arrived and arrested them close to the scene.

Dragan K. was taken to a nearby hospital. It was found that, as a result of the assault, he had sustained multiple rib fractures. It was necessary to keep him in hospital for further treatment. He was released a week later. He attended a psychiatric clinic and was diagnosed with depression, anxiety, panic attacks, fears for his own safety and that of his family, intermittent insomnia and nightmares and, in general, an emotional breakdown.

**Suspect #1** – 18 years old. He had a shaven head and tattoos. He was wearing a black T-shirt and jeans, with black boots.

**Suspect #2** – 18 years old. Denied hatred towards LGBTI people, arguing that one of his friends in high school was gay.

**Suspect #3** – 17 years old, wearing jeans and a T-shirt with the logo of an extremist group. In interview, he denied being involved in extremist activities. The extremist symbols were tattooed on his bicep.

### Questions:

1. *What are the bias indicators in this case? How would you proceed with the investigation and case against the suspects?*
2. *Which offences would you indict the suspects with, and how would you address the bias motivation aspect in the charges?*
3. *What evidence of bias motive would you rely on? How would you ensure that the court takes bias motivation into account when sentencing?*
4. *How would you respond to Suspect # 2's argument that he does not hate LGBTI people?*
5. *Your supervisor has asked you to prepare materials for the press spokesperson for a press release on the case. What key points should be included in the statement?*

**Additional information:**

Suspect #3 was identified from police videos as having thrown stones and a plastic bottle and shouted homophobic insults at the LGBTI gathering participants.

The LGBTI Coalition wrote to draw attention to the fact that there had been numerous attacks against LGBTI people in the city in the same period, and that two of these other victims, I.S. and O.D., had told them that they would be able to identify the perpetrators. One of the perpetrators in both attacks had extremist symbols tattooed on his bicep.

*How does this information affect your approach? How would you proceed with the case?  
From your perspective, what are the key messages from this case study?*

## HANDOUT 14-D CASE STUDIES II: MOTIVE EVIDENCE

### Facts:

The investigating officers, in cooperation with the e-mail server operator, managed to obtain an IP address registered to a family home, lived in by R, a 45-year-old man who ran a car repair business. Police officers visited R and asked him for an explanation. They informed him that he was suspected of having committed a bias-motivated crime.

R confirmed he had written the email, but denied being the owner of the social network profile in question or sending the message from his Messenger account. He explained the contents of the email, saying that he did not agree with activities of a number of non-profit organizations, including the organization for which Nina works, and that he personally considered these to be parasites on the system. Moreover, he said he explicitly disagreed with organization's activities and did not appreciate that they go against the "idea of a traditional norms and values". However, he had nothing against Nina personally and he did not mean the threat. He definitely did not harbour feelings of hatred towards Nina.

On the recommendation of the suspect's neighbour, the police also talked to two of R's friends, a man, L, and a woman, O, with whom R went to the local pub for beer. When asked if the name Deni M. rang a bell with her, O said it was R's nickname on the social network they both used. Together with L, they all were also members of the group 'The Family Movement' on this social network.

### Questions:

1. *What charges would you bring against R? Are there any new bias indicators in the case? What evidence of bias motive would you rely on? What additional evidence should be sought?*
2. *How would you respond to R's argument that he personally had nothing against Nina and that hate was out of question?*
3. *How would you ensure that the court takes bias motivation into account when sentencing? How would you handle a situation in which the court convicts R of a criminal threat but disregards bias motivation as an aggravating circumstance?*
4. *From your perspective, what are the key messages from this case study?*

## HANDOUT 14-E CASE STUDIES II: MOTIVE EVIDENCE

### Facts:

As the case progressed, further evidence came to light. A witness who had been in the church at the time of the incident came forward, stating: "I was sitting near the back when the group came in. I saw the defendant follow them, still shouting. He was laughing and calling them names, saying they should be 'locked up' and 'kept away from normal people.' It was horrible."

Further police inquiries revealed that several local businesses had previously reported the defendant for harassing disabled customers.

A forensic review of the defendant's phone revealed recent searches for hate content, including forums that promoted negative stereotypes about disabled people. Additionally, the police uncovered a private messaging exchange in which the defendant bragged about the incident, saying: "Had some fun scaring the [disablist slur] today. They don't belong here anyway."

His social media accounts also contained posts mocking people with disabilities, including one where he wrote, "These people just take and take — they shouldn't be allowed to walk around like the rest of us."

During sentencing, the court was initially reluctant to apply the sentencing uplift. The prosecutor had to emphasize the legislative requirement to increase the penalty when hostility towards a protected characteristic is proven. The court ultimately applied a sentencing enhancement but did not provide detailed reasoning in its judgement.

### Questions:

1. *Are there any new bias indicators in the case? How do they strengthen the bias motive argument?*
2. *How should the defendant's prior behaviour, social media activity, and private messages be used as evidence?*
3. *What steps should prosecutors take to ensure the bias motivation is explicitly acknowledged in court? If the court fails to adequately apply the sentencing uplift, what options are available to challenge this?*
4. *How can the impact on the victims, as described by the support worker and accommodation manager, be effectively presented in court?*
5. *What are the main messages from this case study for prosecutors handling disability hate crime cases?*
6. *What key points should be included in a press release to highlight the significance of this case?*

# HANDOUT 15

## EVALUATION FORM

### 1. Gender

- Woman       Man       Other       Prefer not to say

### 2. Has your understanding of hate crimes changed as a result of the training?

- Yes       No

**If yes, please specify:**

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### 3. Has your understanding of the role of a prosecutor in hate crime cases changed as a result of the training?

- Yes       No

**If yes, please specify:**

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**4. Do you intend to use the skills and knowledge obtained during the training in your work?**

Yes

No

**If yes, please specify:**

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**5. Please identify three key strengths of the training:**

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**6. Please identify three key weaknesses (areas you would propose for further improvement/revision) of the training:**

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**7. Please provide below any other comments on the training, including tips for improvement:**

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