Training module III. HATE CRIMES

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1. The nature of “hate crime”

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.\(^1\)

Hate crimes are criminal acts committed with a bias motive.\(^2\) Thus they are also commonly referred to as “bias-motivated” crimes, which immediately brings to the fore their two defining characteristics. The first is that the act committed needs to be recognized as a punishable offence under national or international criminal law. In this context, and notwithstanding small divergences between states as to the exact array of conducts which may qualify as constitutive of a criminal offence (as opposed to misdemeanor, for instance), the first prerequisite of a hate crime is a deeply entrenched and essential characteristic of every legal system in every society of the world. Examples of hate crimes may thus include – without being limited to– acts of threat and/or other attempts at intimidation, damage of property, assault and murder.

The second distinguishing feature, however, which also serves to differentiate “hate” from other crimes, is less tangible and easy to define, as it pertains to the underlying motivation that triggered the act. Namely, for an offense to constitute a hate crime, as opposed to an ordinary offence of the criminal law, the perpetrator(s) needs to have been motivated by a biased view towards their target(s); a biased view, moreover, which needs to have been intrinsically linked to the target’s displaying (actually or presumably) one or more protected characteristics, which make him/her a target in the perpetrator’s eyes. Let us expand on both these aspects before further discussing their interrelation.

1.1 On Bias

‘A person who commits a ‘hate crime’ need not actually be motivated by hatred for his or her victim, but rather it is his or her expression of prejudice or bias against the victim’s (presumed) group membership that more properly characterizes such crimes’\(^3\)

When considering bias, the first thing to note is that “bias” does not necessarily equate to the psychological state of “hate”. Thus terminologically employing the word “hate” to designate “hate crimes” is to a degree misleading. In practice, “hate” is only one potential manifestation of bias, which when considered under the rubric of hate crimes legislation, prosecution and investigation, should be seen as an extreme manifestation of prejudice towards what the victim represents, rather than who they actually are.\(^4\) Alternatives to “hate” could be the perpetrator’s having acted out of the desire to be approved by his/her peers, – which could very well be the result of a feeling of unworthiness– out of hostility towards any individual and/or group of individuals that does not belong to the same one they do, –which, especially when the perpetrator’s group is the dominant one, could emanate from a fear of

\(^1\) Article I of the Universal Declaration of Human Rights. See UN General Assembly, (1948), Universal Declaration of Human Rights, available at: http://www.refworld.org/docid/3ae6b3712c.html
\(^4\) ODIHR, (2009), op.cit., p.16
losing this “prestigious” position (e.g. from a minority-come-majority)– or simply due to the target’s representing a value or idea towards which they are hostile.  

A characteristic example of the latter is that of Islam. With the post-9/11 “war on terror” and the rise of extremist groups, such as ISIS, Islam has tended to be perceived (by some) as intrinsically linked –or even the very root– of contemporary acts of terrorism. The implication, amongst others, has been the demonization (again, by some) of a religious idea-belief, in its totality, which by far transcends the rational choice of condemning the violent acts, themselves, as perpetrated by radical extremists. In turn, this unsubstantiated overgeneralization (i.e. the belief that to be Muslim means to be a potential terrorist), which has led to the spread of enmity and prejudice against persons of Islamic belief by segments of the western populations, has led to the seeming creation of pattern, whereby following each act of terrorism in the western world, a subsequent “response”, in the form of increased hate crimes against Muslims, has been observed. In a perverted way this highlights the existence of a link between the sentimental state of hate or hostility towards an idea (in this case, religious), and a misbegotten sense of retribution (e.g. in the names of those killed during terrorist attacks), whereby the perpetrator may very well be primarily motivated by a belief that he/she undertakes the role of his/her society’s vigilante-protector. This sort of “vigilantism”, of course, is not limited to the field of anti-Islamic hatred, as can be easily attested by the following example:

**European Court of Human Rights, Király and Dömötör v. Hungary, Application no. 63409/11, Judgment of 17 January 2017**

**Facts:** The case concerned two Hungarian nationals, of Roma origin, who claimed that the police had failed to protect them from racist abuse during an anti-Roma demonstration and to properly investigate the incident. The demonstration had been attended by nine far-right groups, known for their militant behaviour and anti-Roma stance, which should have raised the police’s awareness that the potential for violence was high. Furthermore, during the demonstration, the main speaker had ‘called on the demonstrators to sweep out the “rubbish” from the country, to revolt and to chase out the treasonous criminal group supressing Hungarians. He closed his speech by saying that ‘the Hungarians were entitled to use all means to achieve those goals...mention[ing] that the Roma minority was genetically encoded to behave in a criminal way and declaring that the only way to deal with the Roma was by applying force to “stamp out this phenomenon that needs to be purged.’

**Comments:** This is a characteristic example of the aforementioned “vigilante” attitude at times underlying a hate crime, and a prominent example as to the elements of a crime which must be investigated in order to uncover hate crimes. In this example, the unambiguously racist speech and call to violence against an ethnic minority, the participation of far-right groups in the demonstration, as well as the place of the demonstration (Roma-inhabited neighborhood), speak for themselves as to the nature of the crime. Other elements which could be taken into consideration in similar cases are any potential symbols (e.g. Nazi) the perpetrators may wear, or previous inter-ethnic tensions, which may lead to acts of retribution.

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5 Ibid, pp. 17-19  
Analysis: The Court found that the authorities’ investigations into the incident had been limited. Namely, one of the investigations – concerning the speeches made during the demonstration – had not taken into account the specific context of the abuse and another – concerning the offence of violence against a group – had been slow and limited to acts of physical violence. The investigations had not therefore established the true and complex nature of the events. The cumulative effect of these shortcomings had meant that an openly racist demonstration, with sporadic acts of violence, had remained virtually without legal consequences. Indeed, the applicants’ psychological integrity had not been effectively protected against what had amounted to nothing less than organised intimidation of the Roma community, by means of a paramilitary parade, verbal threats and speeches advocating a policy of racial segregation. The Court was concerned that this could be perceived by the public as the State’s legitimisation and/or tolerance of such behaviour.

Para. 64: As regards the decision of the police, subsequently reviewed by the Administrative and Labour Court and the Kúria, not to disperse the demonstration, this Court has previously accepted that in certain situations the domestic authorities might be required to proceed with the dispersal of a violent and blatantly intolerant demonstration in order to protect an individual’s private life under Article 8 (see R.B. v. Hungary, cited above, § 99). Examining the domestic approach to dispersal of demonstrations, it appears that the police have a similar obligation to disband an assembly if the exercise of the right of assembly constitutes a criminal offence or a call to commit such an offence, or if it violates the rights and freedoms of others, as demonstrated by the judgment of the Constitutional Court (see paragraph 35 above).

Para. 77: Moreover, the event was organised in a period when marches involving large groups and targeting the Roma minority had taken place on a scale that could qualify as “large-scale, coordinated intimidation” (see Vona, cited above, § 69).

Para. 78: For the Court, these were relevant factors that should have been taken into consideration when assessing the nature of the speeches. This is all the more so that according to the domestic courts’ case-law, racist statements together with the context in which they were expressed could constitute a clear and imminent risk of violence and violation of the rights of others (see paragraph 36 above). However, it appears that the investigating authorities paid no heed to those elements when concluding that the statements had been hateful and abusive but that they had not incited violence. Thus, the domestic authorities inexplicably narrowed down the scope of their investigations.

Para. 79: As regards the criminal investigations into the offence of violence against a member of a group, the Court recalls that for an "investigation to be regarded as ‘effective’, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means” (see, albeit in the context of Article 3, Identoba and Others v. Georgia, no. 73235/12, § 66, 12 May 2015). In the present case, these proceedings lasted almost three years; and their scope was statutorily bound to be limited to the actual acts of violence. The authorities eventually identified one incident liable to prosecution; the perpetrator was prosecuted for, and charged with, violence against a member of a group and convicted of that offence. Although the police had sufficient time to prepare themselves for the event and should have been able to interrogate numerous persons after the incident (see paragraph 17 above), only five demonstrators were questioned; and three of the alleged perpetrators could not be identified. For the lack of any other elements possibly falling within the
hypothesis of the offence in question, the police were not in a position to extend
the scope of the prosecution to any other protagonists. In these circumstances,
the Court finds that this course of action in itself was not “capable of leading to
the establishment of the facts of the case” and did not constitute a sufficient
response to the true and complex nature of the situation complained of.

Para. 80: The cumulative effect of those shortcomings in the investigations,
especially the lack of a comprehensive law enforcement approach into the
events, was that an openly racist demonstration, with sporadic acts of violence
(see paragraphs 11-12 and 25-26 above) remained virtually without legal
consequences and the applicants were not provided with the required protection
of their right to psychological integrity. They could not benefit of the
implementation of a legal framework affording effective protection against an
openly anti-Roma demonstration, the aim of which was no less than the
organised intimidation of the Roma community, including the applicants, by
means of a paramilitary parade, verbal threats and speeches advocating a policy
of racial segregation. **The Court is concerned that the general public might have perceived such practice as legitimisation and/or tolerance of such events by the State.**

In a similar vein, one could consider the issue of Migration, which especially following
the Refugee-European Crisis of 2015-2016, has once again brought to the fore an
antagonistic debate between its (i.e. Migration’s) being a “threat” or an “opportunity”. In
terms of the former, hostility against the figure of the migrant –or even the refugee– can be
rooted in a number of reasons (the fear of terrorism being one). Yet very commonly, in
modern times, this hostility has also been connected to a sort of abstract fear towards
“change”. A “change” that, embodied as it is in the figure of the stranger (i.e. the migrant),
whose arrival-establishment in the local community may be perceived as bearing the risk of
alienating cultural norms and customs, may lead to the creation of feelings of resentment
towards this figure by parts of the local population.⁷

Point being that, irrelevantly of its exact psychological manifestation (hate, resentment, fear, the need to be accepted by others?), whose triggering rationality can range
from highly concrete to highly abstract reasons, **prejudice** is the first precondition of a hate
crime. And for the purposes of retaining its multifaceted nature, one can perceive it as ‘any
attitude, emotion or behaviour towards members of a group which directly or indirectly
implies some negativity or antipathy towards that group’.⁸

That being said, the emphasis placed on the word “group” is of crucial importance for
understanding hate crimes, and for this reason we now need to turn to the matter of
protected characteristics.

### 1.2 Protected Characteristics

Protected characteristics are quintessential features of individual and group identity. More
precisely, they are those core elements considered as being shared between members of a
group and accordingly distinguishing groups from one another. They are ultimately the link
between persons’ shared sense of identity and belonging, and, in this context, they can

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⁷ For instance, see Equality and Human Rights Commission, (2016), op.cit., p.28, refers to Gadd et al., 2005; Ray and Smith, 2002

include elements ranging from nationality, ethnic origin, language, religion, and race, to sexual orientation, gender, physical and/or mental disabilities.9

The list, of course, is not exhaustive, and it should be mentioned that, with respect to what constitutes a protected characteristic, different provisions are and have been adopted by different states, and at different points in time. Race and religion, for instance, and as opposed to sexual orientation or ideology –whose recognition as equally fundamental, to a person’s identity, characteristics, has been more recent– have historically been more rapidly and widely accepted as defining of a person’s sense of the self, and have subsequently been more rapidly and widely adopted as characteristics protected under hate crime legislation.10 As to the “why”, reasons vary, but to a degree they are all connected to the sociopolitical specificities and needs of states and societies, as these evolve throughout time.

For instance –and no less due to a history of colonialism, slavery, and the counter-movements that gradually led to their abolition– the issue of racial segregation and discrimination became a deplorable aspect of social life far earlier than that of discrimination on the basis of sexual orientation. The latter effectively took force throughout the 1970s, following mass movements for the respect of gay and lesbian rights, as opposed to the former, whose legal roots can be traced as far back as the 19th century in the post-Civil War United States.11

Another reason pertains to each state’s legal system and, specifically, the choice between adopting open-ended or exhaustive lists of protected characteristics. The first, though allowing for a relative freedom of interpretation that can facilitate the legal recognition of protected characteristics as per evolving social norms, tend to provide too vague a basis upon which protected characteristics can be interpreted, thus risking eroding the essence of a hate crime by virtually creating the potential of every crime being interpreted under this rubric. The second, on the other hand, though serving to establish a legal certainty for both legal practitioners and citizens as to the characteristics that are ultimately protected, make it harder to keep up to evolving historical conditions, as they tend to create a type of legal rigidity that is difficult to overcome.12

That being said, and far from it being the aim of this module to resolve the differences characteristic of each state’s legal system, the crucial issue to remember is that, aside from their being fundamental aspects of a person’s identity, protected characteristics simultaneously function as ‘marker[s] of group identity’.13 In principle, then, these characteristics serve both as integral, to a person’s sense of the self, elements, as well as elements distinguishing them as members of a specific group within society (e.g. homosexuals). It is this latter belonging –actual or presumed– that forms the ultimate target of a hate crime or of the perpetrator’s prejudice, and consequently the crime’s second prerequisite.

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10 ODIHR, (2009), op.cit., p. 37-39
13 ODIHR, (2009), op.cit., p.38
1.3 Victimization on the basis of Protected Characteristics

At this point we can reformulate and state that hate crimes are criminal acts triggered by an extreme form of prejudice –extreme, in that its manifestation is violent– towards individuals, based on their actual or presumed affiliation with specific groups within society. An affiliation pertinent upon the victim’s displaying (actually or presumably) a set of fundamental (protected) characteristics, and thus a certain type of identity. What does this mean in terms of uncovering hate crimes?

For starters, that when prosecuting hate crimes one should not be necessarily looking to uncover the one, fundamental, aspect of a victim’s identity, which may have triggered the hate crime itself. As is the case with individual identity, so too group identity is not monolithic, but rather multifaceted and comprises of a variety of characteristics that serve to constitute it in its perceived totality. For instance, in many parts of the world, religion forms a quintessential aspect of ethnic or national identity, and thus can, at times, be seen as inseparable from the latter. The same, of course, can be said about language, which as a precondition for national state formation, is the par excellence attribute of ethnic or national identity and belonging. This overlapping and complementarity exhibited by protected characteristics, in turn, means that individuals may be victimized due to their displaying a combination of characteristics (e.g. nationality and religion), which, as has been observed, is the case with approximately 50% of the hate crimes committed in the UK during recent years.

Second, ‘[h]ate crimes do not occur in a vacuum’. Though their time-bound, accumulating, conditions of possibility are something far exceeding the scope of this analysis, prejudice –including the extreme form of prejudice that can lead to the perpetration of a hate crime– does not take root overnight. For the same reason, hate crimes are not necessarily limited to a one-time victimization of their target(s), which necessitates preventive measures so as to avoid such acts repeating in the future. For instance, in the following case, the victim was patently assaulted due to their religious identity on multiple occasions:

**European Court of Human Rights, CASE MILANOVIĆ v. SERBIA, Application no. 44614/07, Judgment of 20 June 2011 (link)**

**Facts:** The applicant, a leading member of the Vaishnava Hindu religious community in Serbia, otherwise known as Hare Krishna, began receiving anonymous threatening phone calls in 2000-2001. In 2001 (September), he was attacked two times; once, seemingly by an assailant with a (baseball) bat, and a second, by an assailant with a knife. In 2005 (July), the applicant suffered another attack (stabbed in his abdomen). In 2006 (June) the applicant was attacked, yet again, with the assailant stabbing him in the abdomen and scratching a crucifix on his head. Lastly, in 2007 (June), the applicant was assaulted once again and stabbed at the chest, hands and legs. On all occasions, the police had failed to identify and bring the perpetrators to justice. Most of

16 ODIHR, (2009), op.cit., pp. 21-22
17 For instance, see Arendt’s masterpiece on the “Origins of Totalitarianism”, which goes to great lengths to show how the anti-Semitism characteristic of Nazi Germany was a phenomenon which had its roots in the three centuries preceding World War II. Arendt, H., (2009), The Origins of Totalitarianism, UK: Benedicton
the attacks against the applicant had been reported around Vidovdan, a major orthodox religious holiday.

**Analysis:** Inter alia, the Court considered that the authorities had not taken all reasonable measures to conduct an adequate investigation and that they had failed to take effective steps in order to prevent Mr Milanović’s repeated illtreatment. In their report of 12 April 2010, the police had, amongst others, noted that: (a) most of the attacks against the applicant had been reported around Vidovdan, a major orthodox religious holiday; (b) the applicant had subsequently publicised these incidents through the mass media and, whilst so doing, “emphasised” his own religious affiliation; (c) the nature of the applicant's injuries had been such that their self-infliction could not be excluded; and (d) the injuries had all been very shallow, which could be considered peculiar and would imply great skill on the part of the applicant's attackers who had never managed to hold him down but had “assailed him from a distance”. The statements made by the police, however, with respect to Mr Milanović’s beliefs, his appearance and the fact that he had publicised the incidents in the media, implied that they had doubts as to whether he was a genuine victim in respect of his religion. As a consequence, although the authorities had explored several leads proposed by Mr Milanović concerning the motivation of his attackers these steps amounted to little more than a pro forma investigation.

**Para. 89:** ...as of July 2005, at the latest, it should have been obvious to the police that the applicant, who was a member of a vulnerable religious minority (see, mutatis mutandis, Okkali v. Turkey, no. 52067/99, § 70, ECHR 2006-XII (extracts)), was being systematically targeted and that future attacks were very likely to follow, particularly in June or July of each year in advance of or shortly after a major religious holiday (see paragraph 64 above). Yet, nothing was done to prevent such attacks on another two occasions. No video or other surveillance was ever put in place in the vicinity of the flat where the incidents had occurred, no police stakeout seems to have even been contemplated, and the applicant was never offered protection by a special security detail which might have deterred his future assailants.

**Para. 90:** In view of the foregoing and while the respondent State’s authorities took many steps and encountered significant objective difficulties, including the applicant’s somewhat vague descriptions of the attackers as well as the apparent lack of eyewitnesses, the Court considers that they did not take all reasonable measures to conduct an adequate investigation. They have also failed to take any reasonable and effective steps in order to prevent the applicant's repeated ill-treatment, notwithstanding the fact that the continuing risk thereof was real, immediate and predictable.

**Para. 100:** Finally, though perhaps most importantly, it is noted that the police themselves referred to the applicant’s well-known religious beliefs, as well as his “strange appearance”, and apparently attached particular significance to “the fact” that most of the attacks against him had been reported before or after a major orthodox religious holiday, which incidents the applicant subsequently publicised through the mass media in the context of his own religious affiliation (see paragraphs 22 and 64 above). The Court considers, once again, that such views alone imply that the police had serious doubts, related to the applicant’s religion, as to whether he was a genuine victim, notwithstanding that there was no evidence to warrant doubts of this sort. It follows that even though the authorities had explored several leads proposed by the applicant concerning the underlying motivation of his attackers these steps amounted to little more than a pro forma investigation.
Similarly, and contrary to common belief that the type of mentality underlying a hate crime is to be found solely in the sphere of radicalism (e.g. the far right), delinquency or even illiteracy – the presupposition being that education serves to extinguish savagery from peoples’ minds– such mentality is not to be exclusively found in the marginal and/or marginalised societal strata. On the contrary, factors contributing to the formation of prejudiced views can be found in virtually every aspect of “ordinary”, societal life, with hate crimes simply constituting the escalating or final stage of a state of ongoing group victimization which, most often than not, had been in place or evolved over long periods of time.\(^{18}\)

Examples of parameters which can contribute to the development of prejudiced-biased views include influences acquired through the systems of education, family and/or peer environments, as well as stereotypical representations of particular groups by politicians or the media (e.g. migrants depicted as “threats” to security, economic welfare or cultural homogeneity). That is, influences towards which we are all susceptible in our daily lives.\(^{19}\)

For instance, one way of looking at systems of education is as national institutions charged with the responsibility of educating a country’s youth. Once some aspects of the means by which these institutions perform their roles, however, are considered, the issue becomes somewhat more complex. An integral part of most – if not all– education systems is to educate the youth in matters pertaining to the history of their nation-state. That is, a history which most often than not is rife with instances of heroic narratives of the country’s glorious past. Amongst such instances, of course, are also wars of liberation and/or revolutions against past oppressors. Important as these lessons may be, we should not forget that, as is the case with every war needing its “heroes”, so to every hero is in need of their antagonist or “villain”, as without the latter, the former’s existence would have never been possible. And when this antagonist, – this “Other”– who is commonly distinguished from the hero due to his usually displaying the opposite, from the hero’s, characteristics (e.g. the hero is brave-the enemy not so much), is seen as a representative example of another group (e.g. national-ethnic minority) – as is the case, for instance, with the traditional antagonists of the international state system– then a precondition for the potential development of prejudice, in the form of extreme nationalism, has taken its roots.

This is not to say that history should either not be taught or that its teaching equates to a de facto promulgation of prejudice. Rather, what it is meant to show is that when considering bias, we should always already be aware of our own capacity to express or be affected by it, due to environmental stimuli which, often times, are overlooked and not recognized as potentially affecting our judgment. In other words, we are all susceptible to some form of prejudice or another, because the conditions for its existence form an integral part of every society.

Lastly, because, as already mentioned, protected characteristics act as markers of group identity, whether the victim(s) of the crime is actually a member of the targeted group is irrelevant. Hate crimes, ultimately, are never solely about causing harm to the direct recipient of the committed violence. In direct proportion to the array or group of individuals towards which bias is displayed, the primary target of hate crimes are distinct groups, in their perceived totality. The individual or individuals directly affected are mostly interchangeable parts of a group which, for the perpetrator(s), constitutes a homogenous target. It is this (actual or alleged) belonging that makes someone a target of a hate crime, and it is for the same reason that the exertion of direct or indirect physical harm to the victim is only one of its aspects. The other, which also needs to be kept in mind and which, in the long run, is even more harmful, is the perpetrator’s

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18 Equality and Human Rights Commission, (2016), op.cit., p.20
19 For more, see Equality and Human Rights Commission, (2016), op.cit., pp. 27-34
will to indirectly harm the group by sending a message. A message, about the victim’s and consequently the group’s, to which the former is seen as belonging, rightful place within society; specifically, a message ‘that they are not welcome in [it]’. A message which, at times, extends to encompass not only the victimized group, but also persons close to him or her. Thus, not uncommonly, hate crimes victims are not always members of the targeted group (albeit, this does not alleviate the obligation to effectively investigate the crime in its nature). For instance:

European Court of Human Rights, CASE OF ŠKORJANEC v. CROATIA, Application no. 25536/14, Judgment of 28 March 2017 (link)

Facts: The applicant claimed that the state had failed to effectively discharge their positive obligations in relation to a racially motivated act of violence against her. The applicant, a Croatian national, and her partner, of Roma origin, had been insulted and physically abused on racial grounds (anti-Roma hatred). The perpetrators had been convicted of racially motivated threats and bodily harm against her partner, but not against her, due to her non-Roma origin.

Analysis: The Court found that the prosecuting authorities had deficiently assessed the circumstances of the case. Insisting on the applicant’s non-Roma origin, they had failed to identify whether the attackers had perceived her as being of Roma origin herself, and to establish the link between the racist motive for the attack and the applicant’s association with her partner. The result was the impairment of the Croatian authorities’ procedural response to the applicant’s allegations, and with respect to taking all reasonable steps in unmasking the role of racist motives in the incident. The Court concluded that, in rejecting the applicant’s complaint without conducting further investigation, the authorities had failed in their obligations under the Convention and had been in violation of Article 3 under its procedural aspect in conjunction with Article 14.

Para. 65: The Court would reiterate that where any evidence of racist verbal abuse comes to light in an investigation, it must be checked and, if confirmed, a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives (see Balázs, cited above, § 61). Moreover, the general context of the attack has to be taken into account. As explained in the Court’s case-law, the domestic authorities should be mindful that perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude (see paragraph 55 above).

Para. 66: (...) it is salutary to reiterate that under the Convention the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence exists not only with regard to acts of violence based on the victim’s actual or perceived personal status or characteristics but also with regard to acts of violence based on the victim’s actual or perceived association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic (see paragraph 56 above). Indeed, some hate crime victims are chosen not because they hold a particular characteristic but because of their association with another person who actually or presumably possesses the relevant characteristic. This connection may take the form of the victim’s membership of or association with a particular group, or the victim’s actual or perceived affiliation with a member of a particular group through, for instance, a personal relationship, friendship or marriage (see paragraphs 33-34 above).

2. Implications of hate crimes

Victims of hate crimes often continue to feel threatened long after an attack due to being targeted simply because of who they are. These crimes victimize everyone - individuals and our entire community.\(^1\)

As mentioned, the two principle characteristics of hate crimes are that they need to constitute acts punishable under national criminal legislation, and that their perpetrators need to have been motivated by a biased view towards the victim(s). That is, the motive need not relate to who the victim(s) actually are or what they have done, but rather to what they represent.

It is through this latter aspect that it becomes apparent why the implications of hate crimes are far more extensive and grave in relation to those of a regular crime, and why a range of international and European instruments have been created to address them (for more, see Section 4 of the current manual). Hate crimes are not only meant to directly harm the victim; they are simultaneously meant to harm the wider community to which the victim belongs, by inducing fear or otherwise terrorizing the totality of its members. This is also why there is need to have a different legal approach when addressing hate crimes, as their extended impact necessitates additional means for both adequately addressing them at their roots, as well as for serving justice. Hate crimes, ultimately, pertain not only to the physical, material and/or psychological well-being of the victims, themselves, but they are also in direct contradiction to established laws and norms pertaining to the respect of democratic rights and values in modern day societies.

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**European Court of Human Rights, CASE OF ŠKORJANEC v. CROATIA, Application no. 25536/14, Judgment of 28 March 2017** link

53. [...] the Court would reiterate that when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person’s ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see Abdu, cited above, § 44).

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For the purposes of this section, the implications of hate crimes will be distinguished at two different levels: the individual/group, and that of society as a whole.

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\(^1\) Centers for Educational Justice and Community Inclusion, (n/a), *What is a hate crime*, available at: [http://ejce.berkeley.edu/report-incident/what-hate-crime](http://ejce.berkeley.edu/report-incident/what-hate-crime)
2.1 Implications for the victim(s)

As discussed, hate crimes have far deeper implications than those of regular crimes. The victim or victims are targeted due to how they are perceived by the perpetrator(s). Whether this perception is the result of an actual or alleged characteristic that designates them as members of a particular societal group is irrelevant. The important things to remember is that the motive behind the offence lies on a highly stereotypical and negative view of such a group, and that the crime is meant to clearly send the message that individuals whom are perceived as belonging to that group are unwanted within society.

Put otherwise, victims are targeted, not due to something they have done and thus which they can, theoretically, address, but due to what they are perceived to be; on the basis of their very identity, and thus of an intrinsic and immutable characteristic which provides them with a sense of belonging and, more importantly, a sense of the self. As a consequence, hate crimes have a much deeper psychological impact on the victim’s private life, and, amongst others, can create fear for their physical integrity, anxiety and depression. This is also amongst the main reasons why hate crimes are underreported at an EU-wide level, as victims often feel psychologically unable to report the crime.

For the same reason, the actual victim(s) are not the sole targets of the offence. Rather, the crime has a number of adverse effects on all other members of the group that share the designated, protected characteristic, which motivated the hate crime. Members of the same group can feel frightened or intimidated by the thought they may become the victims of a similar crime in the future. The fact that the victim was chosen due to a characteristic they all share in common, and thus to an extent randomly, means that the actual target of the attack, after all, is interchangeable. Accordingly, members of the same group identify more directly with the victim and may experience the crime as if it were directly aimed against them.

This is especially the case in societies where there is an ongoing history and acceptance of discrimination, and where hate crimes are not given appropriate attention. As a result, aside from ramifications at the personal level, the absence of the necessary provisions for punishing hate crimes also creates disillusionment to the members of the group, as to the state’s and the judiciary’s capacity to protect them and serve justice. As a consequence, there is also a significant symbolic power stemming from the adoption and enforcement of strong hate crime laws, as victimized individuals and communities regain their trust in the state’s capacity to protect them.

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European Court of Human Rights, Király and Dömötör v. Hungary, Application no. 63409/11, Judgment of 28 March 2017

41. The notion of “private life” within the meaning of Article 8 of the Convention is a broad term that is not susceptible to exhaustive definition. It covers the physical and

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22 ODIHR, (2009), op.cit., p.20
24 ODIHR, (2009), op.cit., p.20
psychological integrity of a person. The notion of personal autonomy is an important principle underlying the interpretation of the guarantees provided for by Article 8. It can therefore embrace multiple aspects of a person’s physical and social identity. The Court has accepted in the past that an individual’s ethnic identity must be regarded as another such element (see S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008-V, and Ciubotaru v. Moldova, no. 27138/04, § 49, 27 April 2010). In particular, any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group’s sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group (see Perinçek v. Switzerland [GC], no. 27510/08, § 200, ECHR 2015 (extracts). On this basis, the Court found in Aksu that proceedings in which a person of Roma origin who had felt offended by passages in a book and dictionary entries about Roma in Turkey had sought redress had engaged Article 8 (see Aksu v. Turkey [GC], nos. 4149/04 and 41029/04, § 60, ECHR 2012).

43. Turning to the circumstances of the present case, the Court observes that the threats uttered against the Roma minority, which constitute the basis of the applicants’ complaint under Article 8 of the Convention, did not actually materialise into concrete acts of physical violence against the applicants themselves. Nonetheless, it considers that the fact that certain acts of violence were carried out by at least some of the demonstrators, and that following the speeches the demonstrators marched down Vásárhelyi Street in the Roma neighbourhood (see paragraph 11 above) where the police requested the inhabitants not to leave their houses and the demonstrators shouted that they would come back later, any threats made during the demonstration would have aroused in the applicants a well-founded fear of violence and humiliation. Furthermore, the demonstration of an openly anti-Roma stance took place in a municipality where there had already been tension between Roma and non-Roma inhabitants (see paragraph 6 above). Lastly, the threats were directed against the inhabitants of Devecser on account of their belonging to an ethnic minority, necessarily affecting the feelings of self-worth and self-confidence of members of the group, including the applicants. More generally, as the Court has held before in the context of Article 11, the reliance of an association on paramilitary demonstrations which express racial division and implicitly call for race-based action must have an intimidating effect on members of an ethnic minority, especially when they are in their homes and as such constitute a captive audience (see Vona v. Hungary, no. 35943/10, § 66, ECHR 2013). These elements, in the Court’s estimation, would be enough to affect the applicants’ psychological integrity and ethnic identity, within the meaning of Article 8 of the Convention.

2.2 Implications for society

As mentioned, the state’s capacity to address hate crimes reinforces the victimized community’s trust in the system of justice. As is easily understood, of course, the inverse is similarly the case. In itself, the lack of appropriate measures to address hate crimes creates disillusionment about the state’s capacity to protect specific societal groups and this, in turn, can lead to a number of catastrophic consequences for society as whole on mainly two levels.

Firstly, this lack creates a society of non-equals, whereby the rights of some to freedom of thought, conscience and religion, or the right to freedom of expression,25 for instance, are violated. This is in direct contradiction to established European and International Law.

25 Articles 9 & 10 of the European Convention on Human Rights
• 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.26
• 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.27

Hence why failure to address hate crimes is of such immense symbolic value.28 In practice, it has the potential to perpetuate the view that established Laws are not applicable for all, and are thus characterized by an intrinsic kind of discrimination. Put otherwise, failure to adequately address hate crimes is a symbol that Laws, do not matter when it comes to some segments of a state’s population. Secondly, absence of effective hates crime penalization may also have repercussions on societal cohesion and public order. Most commonly, a history of unpunished hate crimes can contribute to exacerbating relations between societal groups and even lead to interethnic or other tensions. It is not by chance that hate crimes are most prominently observed during the escalating phases of internal conflict. Similarly, though, it is not random that unpunished hate crimes can provide the stepping stone for the ignition of conflicts, such as internal or international wars.29 For this reason, tackling hate crimes also forms an integral part of the core mandate undertaken by the Organization for Security and Co-operation in Europe (OSCE).30

European Court of Human Rights, Identoba and Others v. Georgia, Application no. 73235/12, Judgment of 12 May 2015 link

Facts: The applicants, a non-governmental organization advocating for lesbian, gay, bisexual and transgender (LGBT) rights, claimed that the police had failed to protect them, during a peaceful march, from anti-demonstrators of two religious groups who insulted, threatened and assaulted them on the basis of discriminatory intent.

Analysis: The Court found that the perpetrators had been motivated by a clear homophobic bias, as demonstrated by their use of threatening and insulting language,

26 Article 14 of the European Convention on Human Rights
27 Article 2, Universal Declaration of Human Rights
28 ODIHR, (2009), op. cit., p.19
29 ODIHR, (n/a/), What is hate crime, available at: http://hatecrime.osce.org/what-hate-crime
30 ODIHR, (2010), op.cit.
the material damage of LGBT flags and posters, as well as the direct assault against some of the applicants. Furthermore, the Court found that the authorities had failed in their responsibility to protect the applicants, as shown, amongst others, by their having distanced themselves when the insults started—which provided the conditions for the situation to escalate into physical violence—and by their having arrested, for the purposes of evacuation, the victims (i.e. the applicants) instead of the perpetrators. Lastly, the Court found that the authorities had failed to conduct a proper investigation into the applicants’ allegations of ill-treatment. The Court concluded that in light of the authorities’ inability to protect the applicants, despite their having received prior warnings (by the applicants) of the likelihood of abuse, and more crucially their inability to effectively uncover the biased motivation of the perpetrators, the State’s capacity to preserve the peace during subsequent, peaceful, demonstrations was undermined, as was public confidence towards its anti-discrimination policy.

Para. 77: (...) The necessity of conducting a meaningful inquiry into the discrimination behind the attack on the march of 17 May 2012 was indispensable given, on the one hand, the hostility against the LGBT community and, on the other, in the light of the clearly homophobic hate speech uttered by the assailants during the incident. The Court considers that without such a strict approach from the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes (compare, for instance, with Milanović, §§ 96 and 97; Abdu, §§ 32-35; and Begheluri and Others § 141, 142 and 175, all cited above).

Para. 99: (...) the Court reiterates that despite the fact that the domestic authorities were given prior notice on 8 May 2012 about the intention to organise a peaceful march on 17 May 2012, they did not manage to use that generous period of nine days for careful preparatory work. Indeed, given the attitudes in parts of Georgian society towards the sexual minorities, the authorities knew or should have known of the risk of tensions associated with the applicant organisation’s street march to mark the International Day Against Homophobia. They were thus under an obligation to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance (compare with Ouranio Toxo, cited above, § 42) as well as to warn potential law-breakers of the nature of possible sanctions. Furthermore, it was apparent from the outcome of the LGBT procession, that the number of police patrol officers dispatched to the scene of the demonstration was not sufficient, and it would have been only prudent if the domestic authorities, given the likelihood of street clashes, had ensured more police manpower by mobilising, for instance, a squad of anti-riot police (contrast with Plattform “Ärzte für das Leben”, §§ 37 and 38; and also Ouranio Toxo, cited above, 43).

3. Addressing hate crimes

Hate crimes deny the human dignity and individuality of the victim and attack the principle that each individual is entitled to the equal protection of the law.31

It becomes apparent that the necessity to address hate crimes stems not only from the need to vindicate the victim(s) of the offence, but also from the need to reaffirm that

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human rights and laws are indeed equal for all, and that justice is blind in its capacity to protect the individuality of each and every citizen. Ultimately, it is about ensuring that democratic values are, in practice, upheld within modern societies, and are thus contributing to the ever establishment of peaceful societal interrelations. In this context, hate crime laws serve two functions: a symbolic one, aimed at clearly passing the message that bias-motivated violence are not tolerated, and a protective one, aimed at safeguarding the rights of vulnerable individuals and groups.32

It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment (Nachova and Others v. Bulgaria; Timishev v. Russia). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (Timishev, § 58; D.H. and Others v. the Czech Republic, § 176).33

Towards this aim, there is an acknowledged need for state actors, such as the police and the judiciary, to be ever vigilant and be able to act swiftly not only in order to address, but also in order to uncover a hate crime. Some of the obligations have been briefly highlighted in the previous section and some will be highlighted through case law that has been provided for further reading at the end of this section. Beforehand, though, is important to mention that, crucial as this task may be, it is neither easy, nor straightforward.

In November 2016, for instance, the European Union’s Agency for Fundamental Rights (FRA) published a paper on violence, harassment, threats and xenophobic speech targeting asylum seekers and migrants.34 FRA data – as of November 2016 – indicate that these issues remain pervasive and grave across the European Union, whether committed by state authorities, private companies or individuals, or vigilante groups. Namely, the reports finding showed that:

- Violent acts targeting asylum seekers, migrants and persons with ethnic minority backgrounds – including killings, threats and intimidation – are committed in a number of Member States.
- Evidence indicates that racist and xenophobic violence is committed by a variety of offenders, including people stemming from the general population and members of vigilante groups.
- State authorities’ responses to hate crime against asylum seekers and migrants are perceived as weak by civil society in many Member States. In some cases, political actors welcomed the activities of vigilante groups.
- Most Member States do not collect or publish statistical data on incidents and hate crimes against asylum seekers and migrants.

32 INHS (International Network for Hate Studies), (2016), op.cit.
• Where such data do exist – for example, collected by civil society – they indicate that such incidents are pervasive and grave.

• In addition to asylum seekers and migrants, other groups – including Muslims, especially women and persons with ethnic backgrounds – are specifically targeted, as are human rights advocates, ‘pro-refugee’ politicians and journalists reporting on the issue.

• A number of factors impede the reporting of hate crimes against asylum seekers and migrants to authorities or other organizations. Low reporting renders the issue invisible.

• There is evidence of growing hate speech targeting asylum seekers and migrants on the internet, with investigation remaining difficult.

• Victim support services tailored to the needs of asylum seekers and migrants are limited in the Member States. There is a perception among practitioners that asylum seekers and migrants have limited access to victim support services.

In conclusion, not only are hate crimes on the rise, but as of yet there is still a significant lack of mechanisms to address them. Not only this, but as if in a state of nature, whereby the only law is that of survival of the fittest, there seems to be a legitimization of vigilante groups, which have undertaken to unilaterally and violently enforce their own beliefs as to the way society should be. This, of course, speaks volumes of the necessity to address the situation. How?

As already mentioned, the most notable issue would be increasing the capacity to monitor and report hate crimes. After all, without full and accurate knowledge of a problem, it is hardly possible to actually address it.35

To tackle hate crime and address related fundamental rights violations, the EU and its Member States need to make such crimes more visible and hold perpetrators accountable.36

That being said, the issue of how this knowledge is used –towards what end– is of similar, if not higher, importance. Acquiring knowledge on hate crimes is only one aspect of the equation, reinforcing the democratic norms and values, by making it clear that such crimes will under no circumstances be tolerated, is the second. And it is at the conjunction of both these actions that the role of the judiciary becomes necessarily one of crucial importance, since it is the par excellence authority capable of positively addressing both.

European Court of Human Rights, Király and Dömötör v. Hungary, Application no. 63409/11, Judgment of 17 January 2017 link

Facts: The case concerned two Hungarian nationals, of Roma origin, who claimed that the police had failed to protect them from racist abuse during an anti-Roma demonstration and to properly investigate the incident.

Analysis: The Court found in particular that the authorities' investigations into the incident had been limited. Namely, one of the investigations – concerning the speeches made during the demonstration – had not taken into account the specific context of the abuse and another – concerning the offence of violence against a group – had been slow and limited to acts of physical violence. The investigations had not therefore established the true and complex nature of the events. The cumulative effect of these shortcomings had meant that an openly racist demonstration, with sporadic acts of violence, had remained virtually without legal consequences. Indeed, the applicants' psychological integrity had not been effectively protected against what had amounted to nothing less than organised intimidation of the Roma community, by means of a paramilitary parade, verbal threats and speeches advocating a policy of racial segregation. The Court was concerned that this could be perceived by the public as the State’s legitimisation and/or tolerance of such behaviour.

Para. 64: As regards the decision of the police, subsequently reviewed by the Administrative and Labour Court and the Kúria, not to disperse the demonstration, this Court has previously accepted that in certain situations the domestic authorities might be required to proceed with the dispersal of a violent and blatantly intolerant demonstration in order to protect an individual’s private life under Article 8 (see R.B. v. Hungary, cited above, § 99). Examining the domestic approach to dispersal of demonstrations, it appears that the police have a similar obligation to disband an assembly if the exercise of the right of assembly constitutes a criminal offence or a call to commit such an offence, or if it violates the rights and freedoms of others, as demonstrated by the judgment of the Constitutional Court (see paragraph 35 above).

Para. 77: Moreover, the event was organised in a period when marches involving large groups and targeting the Roma minority had taken place on a scale that could qualify as "large-scale, coordinated intimidation" (see Vona, cited above, § 69).

Para. 78: For the Court, these were relevant factors that should have been taken into consideration when assessing the nature of the speeches. This is all the more so that according to the domestic courts’ case-law, racist statements together with the context in which they were expressed could constitute a clear and imminent risk of violence and violation of the rights of others (see paragraph 36 above). However, it appears that the investigating authorities paid no heed to those elements when concluding that the statements had been hateful and abusive but that they had not incited violence. Thus, the domestic authorities inexplicably narrowed down the scope of their investigations.

Para. 79: As regards the criminal investigations into the offence of violence against a member of a group, the Court recalls that for an “investigation to be regarded as ‘effective’, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means” (see, albeit in the context of Article 3, Identoba and Others v. Georgia, no. 73235/12, § 66, 12 May 2015). In the present case, these proceedings lasted almost three years; and their scope was statutorily bound to be limited to the actual acts of violence. The authorities eventually identified one incident liable to prosecution; the perpetrator was prosecuted for, and charged with, violence against a member of a group and convicted of that offence. Although the police had had sufficient time to prepare themselves for the event and should have been able to interrogate numerous persons after the incident (see paragraph 17 above), only five demonstrators...
were questioned; and three of the alleged perpetrators could not be identified. For the lack of any other elements possibly falling within the hypothesis of the offence in question, the police were not in a position to extend the scope of the prosecution to any other protagonists. In these circumstances, the Court finds that this course of action in itself was not “capable of leading to the establishment of the facts of the case” and did not constitute a sufficient response to the true and complex nature of the situation complained of.

Para. 80: The cumulative effect of those shortcomings in the investigations, especially the lack of a comprehensive law enforcement approach into the events, was that an openly racist demonstration, with sporadic acts of violence (see paragraphs 11-12 and 25-26 above) remained virtually without legal consequences and the applicants were not provided with the required protection of their right to psychological integrity. They could not benefit of the implementation of a legal framework affording effective protection against an openly anti-Roma demonstration, the aim of which was no less than the organised intimidation of the Roma community, including the applicants, by means of a paramilitary parade, verbal threats and speeches advocating a policy of racial segregation. The Court is concerned that the general public might have perceived such practice as legitimisation and/or tolerance of such events by the State.

3.1 Obligations

Duty to conduct efficient investigation and expeditious proceeding:

- Nachova et al v. Bulgaria [link]
- Király and Dömötör v Hungary [link]

Impartial assessment of evidence:

- Stoica v Romania [link]
- Milanovic v Serbia [link]

Obligation to unmask bias motivation:

- ethnicity: for ex. Secic v Croatia [link]
- R.B. v Hungary [link]
- religious affiliation: for ex. Begheluri v. Georgia [link]
- sexual orientation, gender identity: Identoba v. Georgia [link]
- disability: Dordevic v. Croatia [link]

Obligation to unmask bias motivation also in lack of hate crime legislation:

- Angelova and Iliev v. Bulgaria [link]

Mixed motivation does not exclude the obligation to unmask bias motivation:

- Balázs v. Hungary [link]
4. Instruments

4.1. Universal instruments

4.1.1 Universal Declaration of Human Rights (link)

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

4.1.2. International Covenant on Civil and Political Rights (link)

Article 2

1. 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

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.

Monitoring Body

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

Individual Complaints

The Human Rights Committee (CCPR) may consider individual communications alleging violations of the rights set forth in the International Covenant on Civil and Political Rights by States parties to the First Optional Protocol to the International Covenant on Civil and Political Rights.\(^{37}\)

\(^{37}\)See interactive map available at [http://indicators.ohchr.org/](http://indicators.ohchr.org/). Also, for a Model Complaint Form for communications under the Optional Protocol to the International Covenant on Civil and Political Rights, the
4.1.3. International Convention on the Elimination of All Forms of Racial Discrimination (link)

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965 by the UN General Assembly, as the par excellence international treaty aimed at combating discriminations against human rights and fundamental freedoms.

By this –i.e. racial discrimination– is meant ‘any distinction, exclusion, restriction or preference based on race, color, 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’ (Article 1). However, it should be noted that the treaty does not include provisions on the matter of sovereign distinctions made between the identification of citizens and non-citizens, as long as these are not discriminatory at their core. Thus, as per Article 5 of the Convention, no discrimination is to be applied with respect to persons’ access to:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

**Monitoring Body**

*The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.*

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

**Individual Complaints**

*The Committee on the Elimination of Racial Discrimination (CERD) may consider individual petitions alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination by States parties who have made the necessary declaration under article 14 of the Convention.*

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**4.2. European instruments**

**4.2.1. European Union**

**4.2.1.a Article 67(3) of the Treaty on the Functioning of the European Union (TFEU)**

The Union shall endeavor to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

**4.2.2. a Convention for the Protection of Human Rights and Fundamental Freedoms**

*(link)*

**Article 14**

*Prohibition of discrimination*

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.

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38 See interactive map available at [http://indicators.ohchr.org/](http://indicators.ohchr.org/). Also, for a Model Complaint Form for communications under the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture and the International Convention on the Elimination of Racial Discrimination, see [http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx](http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx)
The purpose of the Framework Decision is to ensure that certain serious manifestations of racism and xenophobia are punishable by effective, proportionate and dissuasive criminal penalties throughout the European Union (EU). Furthermore, it aims to improve and encourage judicial cooperation in this field.

As a follow-up to Joint Action 96/443/JHA, the Framework Decision provides for the approximation of laws and regulations of EU countries on offences involving certain manifestations of racism and xenophobia. Certain serious manifestations of racism and xenophobia must constitute an offence in all EU countries and be punishable by effective, proportionate and dissuasive penalties.

**The Framework Decision applies to all offences committed:**

- within the territory of the European Union (EU), including through an information system;
- by a national of an EU country or for the benefit of a legal person established in an EU country. To that end, the Framework Decision provides criteria on how to determine the liability of legal persons.

**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.
Hate crime

In all cases, racist or xenophobic motivation shall be considered to be an aggravating circumstance or, alternatively, the courts must be empowered to take such motivation into consideration when determining the penalties to be applied.

According to the Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law [COM(2014) 27 final of 27.1.2014 - not published in the Official Journal], it appears that a number of Member States have not transposed fully and/or correctly all the provisions of the Framework Decision, namely in relation to the offences of denying, condoning and grossly trivialising certain crimes. The majority of Member States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the Framework Decision. Some gaps have also been observed in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction.39

Overall, states have tended to implement different approaches in the consideration of hate crimes. Amongst others, providing for hate crimes as sui generis crimes of the penal law, including provisions pertaining to penalty enhancements, when crimes are perpetrated with a bias motivation, or adopting mixed approaches between these limits of substantive offences and penalty enhancements. Importantly, however, and irrelevantly of the approach adopted by member states—prosecuting bias-motivated crimes as distinct from ordinary crimes is an obligation not perinon upon the explicit existence of hate crimes-specific legislation.40


Article 22(3)

In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.41

Importantly, however, the implementation of this Directive faces a series of challenges, amongst which the very fact that, according to professionals, victims of hate crimes seem to usually be reluctant to report the offence. Amongst the reasons for this reluctance are their

own (i.e. the victims’) or the police and judiciary’s lack of awareness as to what hate crimes are, or their very fear that upon submitting a report they would be treated in a similar, discriminatory, manner, as that enacted by the offender(s); this time, however, by state officials.42

4.2. Council of Europe

4.2. a ECRI

ECRI is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language (racial discrimination); it prepares reports and issues recommendations to member States. 43

ECRI elaborates General Policy Recommendations (GPR) addressed to the governments of all member States. They provide detailed guidelines which policy-makers are invited to use when drawing up national strategies and policies in a variety of fields.

- **ECRI General Policy Recommendation No.1**: Combating racism, xenophobia, antisemitism and intolerance
- **ECRI General Policy Recommendation No.2**: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level
- **ECRI General Policy Recommendation No.3**: Combating racism and intolerance against Roma/Gypsies
- **ECRI General Policy Recommendation No.4**: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims
- **ECRI General Policy Recommendation No.5**: Combating intolerance and discrimination against Muslims
- **ECRI General Policy Recommendation No.6**: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet
- **ECRI General Policy Recommendation No.7**: National legislation to combat racism and racial discrimination
- **ECRI General Policy Recommendation No.8**: Combating racism while fighting terrorism
- **ECRI General Policy Recommendation No.9**: The fight against antisemitism
- **ECRI General Policy Recommendation No.10**: Combating racism and racial discrimination in and through school education
- **ECRI General Policy Recommendation No.11**: Combating racism and racial discrimination in policing
- **ECRI General Policy Recommendation No.12**: Combating racism and racial discrimination in the field of sport
- **ECRI General Policy Recommendation No.13**: Combating anti-Gypsyism and discrimination against Roma
- **ECRI General Policy Recommendation No.14**: Combating racism and racial discrimination in employment
- **ECRI General Policy Recommendation No.15**: Combating Hate Speech
- **ECRI General Policy Recommendation No.16**: Safeguarding irregularly present migrants from discrimination


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4.2.3. Organization for Security and Co-operation in Europe

4.2.3.a Ministerial Council Decision No. 4/2003 on tolerance and non-discrimination
www.osce.org/mc/19382

4.2.3.b Permanent Council Decision No. 621/2004 on tolerance and the fight against racism, xenophobia and discrimination
www.osce.org/pc/35610

4.2.3.c Ministerial Council Decision No. 9/2009 on combating hate crimes
www.osce.org/cio/40695

4.2.3.d Office for Democratic Institutions and Human Rights
The Office for Democratic Institutions and Human Rights (ODIHR) is tasked with assisting OSCE participating States to ensure full respect for human rights and fundamental freedoms; to abide by the rule of law; to promote principles of democracy; to build, strengthen and protect democratic institutions; and to promote tolerance throughout their societies. The Office also plays an important role in enhancing dialogue among States, governments and civil society. It organizes the yearly OSCE Human Dimension Implementation Meeting, three supplementary meetings and a seminar, which review governments’ progress and give NGOs a platform to freely voice their concerns.

Racism, xenophobia and other forms of intolerance continue to threaten security in the increasingly diverse societies across the OSCE region. ODIHR has developed a collection of resources and programmes to raise awareness about discrimination, hate crimes, anti-Semitism and other forms of intolerance, including against Muslims, Christians and members of other religions. Through advising on policy and the training of law enforcement personnel and educators, the Office works to build the capacity of governments in preventing and responding to this problem. ODIHR also works to increase the ability of civil society to monitor and report on hate crimes and incidents.

Learn more about ODIHR’s work on:
- countering intolerance and discrimination against Muslims
- countering anti-Semitism and promoting Holocaust remembrance
- countering racism, xenophobia and discrimination
- hate crime reporting
- Tolerance and Non-Discrimination Information System (TANDIS)
### 5. References


Fundamental Rights in Practice:
European Judicial Training on the rights of persons in need of international protection JUST/2014/JTRA/AG/EJTR/6856