



Irena Bihariová and col.

# **TACKLING HATE CRIME AND HATE SPEECH IN EUROPE**

Irena Bihariová and col.

# TACKLING HATE CRIME AND HATE SPEECH IN EUROPE



## INTRODUCTION

The publication entitled *“Tackling Hate Crime and Hate Speech in Europe”* came into being as one of the final outputs of the project of the same name that was implemented by an international team of non-governmental organisations:

- **People in Need** (Slovakia);
- **In IUSTITIA** (Czech Republic);
- **Subjective Values Foundation** (Hungary);
- **Human Rights Monitoring Institute** (Lithuania);
- **The People for Change Foundation** (Malta).

This team was amalgamated by the joint ambition to examine the issues of criminal offences motivated by hate (“hate crime”) and illegal hateful verbal speeches targeted against other persons because of their racial, national or ethnic origin, religious belief or sexual orientation (“hate speech”).

For quite some time, international organisations such as Fundamental Rights Agency (FRA) or Organisation for Security and Cooperation in Europe (OSCE) have been presenting statistical data that suggest high latency of these types of crime and warn about insufficient mechanisms of gathering data on their incidence. Therefore, the project partners set for themselves the **goal to examine the phenomenon of high latency of these types of crimes in the context of national factors that affect it and to contribute to creating reporting mechanisms and tools that may help eliminate them.**

One of the first and the most obvious things the partner organisations set out to do was **mapping out “hate crime” and “hate speech” on the national level, i.e. in all five participating countries**, both from the viewpoint of official statistics as well as that of non-governmental organisations and local experts who specialise in providing support and assistance to the victims of these types of crime. The main output of these findings, including an analysis of legislative or law application obstacles, was a series of national reports on the state of hate crime and hate speech that described the *status quo* in each participating country. These reports became the vantage point for a summarising **comparative survey**, which forms the opening part of this publication.

Another key task was to **examine the existing reporting mechanisms** that are currently in place for victims or witnesses of these crimes; they are available particularly online and are operated primarily by non-governmental organisations across Europe. In order to collect information on the reporting mechanisms, the project partners chose a two-step approach. First, in March 2017, they organised in Bratislava an international seminar of legal experts, representatives of non-governmental organisations, government officials and academics who either operate similar tools or have experience with creating them. In doing so, they created **space to highlight good practice examples in the field of creating reporting mechanisms and exchanging experiences with their operation**. Subsequently, they approached singled-out organisations that operate online systems for the victims and witnesses of hate crime and hate speech in the form of a structured questionnaire. The result was a **collection of good practice examples featuring a description of strengths and weaknesses of analysed reporting tools**, which forms the second part of this publication.

The third principal activity of the project was **creating a brand new reporting tool** for Slovakia and Hungary. The gathered know-how of all participating players in the field of preparing, designing and operating these mechanisms paved the way to the final part of this publication, which is a **manual on developing reporting tools** for hate crime and hate speech.

The principal purpose of this publication is to guide the reader through the most relevant issues of hate crime and hate speech, not merely from the viewpoint of legislative or law application practice in select European countries. Another ambition of the book is to reveal to laymen as well as experts a potentially effective tool of increasing the currently low rate of detecting and reporting these crimes. Last but not least, it may serve as a valuable aid for all those who may feel inspired by efforts to establish such a tool and launch its operation in their home country.

The project “Tackling Hate Crime and Hate Speech” was implemented between 2016 and 2018 thanks to financial support from the European Commission and the International Visegrad Fund.

*Irena Bihariová, Editor*

---

## COMPARATIVE HATE CRIME REPORT

## INTRODUCTION

The **Comparative Report on Hate Crimes in Select European Countries** was elaborated as one of the outputs of the project titled Tackling Hate Crime and Hate Speech (JUST/2015/RRAC/AG/VICT/8991) that has been jointly implemented by non-governmental organisations from Slovakia (People in Need), Czech Republic (In IUSTITIA), Hungary (Subjective Values Foundation), Lithuania (Human Rights Monitoring Institute), and Malta (The People for Change Foundation).

The key ambition of the project financially supported by the European Commission is to create an effective online tool to report the so-called crimes motivated by hate (hereinafter “hate crime”) and illegal statements motivated by specific hate (hereinafter “hate speech”).

The present survey sums up the basic findings of the said partner organisations presented in the National Report on the Situation in Hate Crime and Hate Speech for 2014-2016. In their respective national reports, each of the five partner organisations analysed the mentioned phenomena, not only in the context of national legislation but also in the context of identifying the shortcomings in terms of detecting, investigating and prosecuting this type of crime. Subsequently, the comparative survey categorised and summarised their findings and conclusions, thus creating a comparative framework to identify the *status quo* of both phenomena in the Czech Republic, Hungary, Lithuania, Malta and Slovakia.

The lowest common denominator of deficiencies in the field of tackling hate crime and hate speech is the high latency of this type of crime. At the same time, the identified shortcoming corroborates the conclusion that it is inevitable to increase effectiveness of reporting mechanisms as well as the system of protecting and supporting the victims of hate crime.

The authors of this report firmly believe that attaining this objective will eventually help accomplish the project’s final ambition, which is to create an online reporting tool for Slovakia and Hungary.

*Editor*

## TERMINOLOGY AND METHODOLOGY

On the factual basis, this comparative survey focuses primarily on crimes motivated by hate and illegal statements motivated by specific hate expressed either in person or via online networks.

None of the five participating countries (i.e. the Czech Republic, Hungary, Lithuania, Malta and Slovakia) has a legislative concept of hate crime defined in their respective criminal codes that would strictly copy definitions by international organisations. While incorporating the traditional European understanding of hate crime, national legislations tend to perceive the problem more broadly and include also actions that otherwise wouldn’t fit most traditional definitions of hate crime. Let us mention the definition of hate crime as it was adopted by OSCE – ODIHR:

“Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people. To be considered a hate crime, the offence must meet two criteria: first, the act must constitute an offence under criminal law; second, the act must have been motivated by bias.

Bias motivations can be broadly defined as preconceived negative opinions, stereotypical assumptions, intolerance or hatred directed to a particular group that shares a common characteristic, such as race, ethnicity, language, religion, nationality, sexual orientation, gender or any other fundamental characteristic. People with disabilities may also be victims of hate crimes.

Hate crimes can include threats, property damage, assault, murder or any other criminal offence committed with a bias motivation. Hate crimes don’t only affect individuals from specific groups. People or property merely associated with – or even perceived to be a member of – a group that shares a protected characteristic, such as human rights defenders, community centres or places of worship, can also be targets of hate crimes.”<sup>1</sup>

Basically, hate crime includes all actions that involve a physical assault against a person or property, while the perpetrator targets the victim because of specific hate of his or her race, ethnicity, nationality, sex-

.....  
1 OSCE, available at: <http://hatecrime.osce.org/what-hate-crime>

ual orientation or religion.<sup>2</sup> The motivation for the assault is neither a personal dispute between the perpetrator and the victim, jealousy, revenge or any other kind of “settling of accounts”, nor the perpetrator’s intention to take control over the victim’s property or gain any material benefit by the assault. This is exactly what sets hate crime apart from other types of crime.

It is important to note that the definition of “hate crime” used by OSCE did not cover illegal rhetoric, although it may be motivated by the same kind of hate. Therefore, we are compelled to point out that this term covers exclusively a physical intervention with another person’s integrity or an assault against this person’s property.

## TERMINOLOGY

Since each of the participating countries has a different legal regime with respect to said phenomena, at first it was necessary to clarify how the respective national hate crime reports treat and reflect them. The table below indicates what types of action – whose nature corresponds most closely to the phenomena of hate crime and hate speech – are viewed as illegal and punishable by participating countries’ national legislations.

For the purpose of this report, the meaning of the terms “hate crime” and “hate speech” corresponds to the definition, which representatives of non-governmental organisations from participating countries identified as “intersectional”. The only exceptions in this respect are sections in which the comparative survey examines individual countries’ national legislative frameworks. In these cases, we focused on specific criminal acts and specific content that is attributed to the phenomena of hate crime and hate speech by criminal law of each participating country.

## METHODOLOGY

The source materials that provided basic data necessary for this comparative survey were the so-called national hate crime reports. These reports were elaborated by the partner non-governmental organisa-

.....  
 2 These are the so-called protected characteristics. While their exact definition is a matter of national legislation, the fundamental “minimum” basically includes race, complexion, nationality, ethnicity and religion, and also sexual orientation in most EU member states.

Table 1: Legal meaning of hate crime and hate speech in the selected countries

TYPE OF CRIMINAL BEHAVIOR	SLOVAKIA	CZECH REPUBLIC	MALTA	LITHUANIA	HUNGARY
<b>HATE CRIME</b>					
Violence and physical attack	✓	✓	✓	✓	✓
Attack against property	✓	✓	✓	✓	✓
Any crime with bias motive (aggravating circumstance)	✓	✓	✓	✓	✓
<b>HATE SPEECH</b>					
Threat of attack	✓	✓	✓	✓	✓
Defamation of race, nationality, or religion	✓	✓	✓	✓	✓
Incitement to hatred, call to violence	✓	✓	✓	✓	✓
Denial of the Holocaust or crimes against humanity	✓	✓	✓	✓	✓
Production and distribution of hate materials	✓	✓	✓	✓	✓
Approval of totalitarian regimes	✓	✓	✓	✓	✓
Setting up or supporting hate groups	✓	✓		✓	✓

tions that take part in the implementation of a joint European project titled Tackling Hate Crime and Hate Speech, namely:

- **People in Need** (Slovakia)  
Author of the national hate crime report: Irena Bihariová
- **In IUSTITIA** (Czech Republic)  
Author of the national hate crime report: Dr Klára Kalibová, Dr Václav Walach, Benjamin Petruželka, Martina Houžvová
- **Subjective Values Foundation** (Hungary)  
Author of the national hate crime report: Bak Árpád, Magyarkuti Zsófia Krisztina
- **Human Rights Monitoring Institute** (Lithuania)  
Author of the national hate crime report: Kristina Normantaitė, edited by Natalija Bitiukova.
- **The People for Change Foundation** (Malta)  
Author of the national hate crime report: Author's team of the People for Change Foundation

The reports mapped out and analysed the situation in this sphere in 2014, 2015 and 2016. The state of affairs as it is described in the national hate crime reports and in the comparative survey does not reflect legislative changes adopted after the examined period.

The structure of the comparative survey copies the structure of the national hate crime reports:

### **1. Brief description of criminal legislation valid in the given country with respect to criminal acts motivated by specific hatred ("hate crimes") and criminal acts of extremism.**

In this chapter, the participating non-governmental organisations analysed national criminal legislation with respect to the concept of hate crime as defined by international bodies. Their basic ambition was not to provide a detailed description of individual criminal acts but rather to describe the general understanding of these types of crime in the respective national criminal codes.

The principal sources of data were the following:

- Currently applicable legislation;
- Official reports of government bodies (i.e. government decrees containing policies or measures related to hate crime/hate speech);
- Publicly available minutes and decisions of the commissions and committees;
- Analyses of the legislation drafted by public authorities (i.e. Office of General Prosecutor, Ministry of Interior, their advisory bodies or committees);
- Analysis of legislation drafted by academic circles (e.g. faculties of law);
- Analysis of legislation drafted by NGOs.

### **2. Quantitative indicators on the state of hate crime and hate speech**

This chapter was divided into two sections. The first section featured data from official statistics and sources provided by national authorities and government bodies. In particular, national reports focused on the overall number of hate crime acts and, if available data allowed, the number of hate speech acts perpetrated annually. Also, national reports collected data on the number of convicted perpetrators, types of sentences issued and, if available data allowed, detailed specification of the motive of hatred. Eventually, the comparative survey only features the overall number of hate crime/hate speech incidents registered annually (i.e. for 2014, 2015 and 2016), mostly because there were some countries (e.g. Slovakia or Malta) where it was not possible to reliably define the number of indicted or convicted perpetrators.

In the second section, the collected data was complemented with findings of non-governmental organisations. The process of data collection in each participating country took the form of a structured questionnaire, which the partner organisations sent to civil society subjects in their country. The basic criterion to select the participating organisations was that they had to operate in the field of hate crime/hate speech monitoring or providing legal assistance to hate crime victims. The only exceptions from this methodology were Slovakia and the Czech Republic as it were the partner non-governmental organisations

(People against Racism<sup>3</sup> and In IUSTITIA, respectively) that were the leading NGOs in their country in this respect.

When collecting official data, the following official statistics and data by public authorities were used:

- Crime statistics by the police, Ministry of Interior or Office of General Prosecutor;
- Judgments issued by the courts, including reports of judgments, online database of court decisions (if available);
- Information provided at request by competent authorities;
- National hate crime reports (see <http://hatecrime.osce.org/>);
- Reports by other intergovernmental organisations (e.g. ECRI).

Data from the academia or civil society was also used, for instance:

- Questionnaire and interview table;<sup>4</sup>
- National shadow reports (such as ENAR national country reports);
- Reports by other intergovernmental organisations (e.g. FRA, ECRI, ODIHR, CERD, OHCHR);
- Official websites of national NGOs dealing with hate crime and extremism;
- Final reports from various research projects and surveys;
- Reports elaborated at the regional level (i.e. regions or municipalities).

### **3. Identification and analysis of deficiencies in the field of law application**

In this part of the analysis, which can be identified as crucial, the partner countries in their national reports outlined the most frequently occurring legal or practical shortcomings, both in the process of detecting and investigating these types of crime and in the process of prosecuting and trying their perpetrators.

In the case of the Czech Republic (In IUSTITIA) and Slovakia (People

.....  
<sup>3</sup> The author of Slovakia's National Hate Crime Report is Irena Bihariová who leads the non-governmental organisation People against Racism and also works as a senior researcher in the project titled Tackling Hate Crime and Hate Speech.

<sup>4</sup> The questionnaire and the methodology were developed by an external expert involved in the project.

against Racism), the methodology was based primarily on examining extensive case studies that had been produced during many years of providing free legal assistance to victims of these types of crime, complemented with rulings and decisions requested from relevant authorities. When it comes to Hungary, the partner organisation (Subjective Values Foundation) approached several non-governmental organisations that possess applicable rulings and decisions. Besides that (as in the case of Lithuania and Malta), the authors had to rely mostly on the sources described above.

## **LEGAL FRAMEWORK**

When analysing criminal legislation of all examined countries, the authors of this comparative survey had to look for the common denominator since the concept of hate crime as defined by European or international organisations does not represent a separate or self-contained notion in their criminal codes. Wrongful conduct that pursues violating or threatening fundamental human rights of individuals (or threatening the interest of the state) based on racial, ethnic, national, religious or other reasons is regulated along various lines. Most frequently, this kind of conduct is regulated in criminal codes that list it as separate criminal offences (whose motive is implicit in the basic body of offence) and simultaneously as aggravating circumstances that may accompany other criminal offences.

The same goes for hate speech: illegal rhetoric including written, visual or online speech, if motivated by hate, is either defined as a separate criminal offence or a verbal criminal offence that may be qualified as one including the motive of hatred (e.g. in Slovakia, Czech Republic or Hungary).

Slovakia has a special status in this respect as its criminal code is the only one that works with the concept of extremism (like in Germany or Russia); other examined countries' criminal codes do not recognise this notion.



The country's criminal legislation in the field of hate crime/extremism recently saw partial changes that didn't take effect until 2017. Because of that, this comparative survey examined the state of affairs that was valid as of December 31, 2016.<sup>5</sup>

Act No. 300/2005 (Criminal Code) works with the concept of criminal offences motivated by extremism. This concept is defined in Section 140a) of the Criminal Code, which stipulates the criminal offences in question, without distinguishing whether they were perpetrated in the form of a physical or verbal assault.

Pursuant to Section 140 a) of the Criminal Code, the notion of "extremist crimes" is used to describe the following two subgroups of crimes:

1. Crimes perpetrated with specific motivation pursuant to Section 140 d) and 140 f) (the recently amended wording of the Criminal Code lists them under Section 140 e))
2. The crimes explicitly enumerated in Section 140 a)

**Ad1: Extremist crimes perpetrated with specific motivation**

It is an act, which is unlawful pursuant to the provisions of the Criminal Code, but at the same time it shall be demonstrated that the perpetrator acted with specific motivation. In the Criminal Code that was valid until the end of 2016, this motivation was defined as follows:

- a. The acts that have been perpetrated with the intent to publicly incite violence or hatred towards a group of persons or an individual because of their race, nation, nationality, complexion, ethnicity, or-

.....  
<sup>5</sup> These changes were neither fundamental nor radical; however, the official names of some of the criminal offences, their numerical specification as well as specification of the motive of hate are now slightly different from what they were as of December 31, 2016. The said amendment to the Criminal Code that took effect in 2017 changed some of the names; also, some of the bodies of offence were merged under a single definition (e.g. Articles 424 and 424 a)). Besides, the amendment introduced the criminal offence of apartheid; pursuant to Article 424 a), this criminal offence is perpetrated by anybody who performs racial, ethnic, national or religious segregation or other kind of extensive or systematic discrimination against a group of individuals.

igin or religion, if it is the pretext for the threats based on previous reasons (Section 140 d)).

- b. The acts that have been perpetrated because of national, ethnic or racial hate or because of the victim's complexion or sexual orientation (Section 140 f)).

The latest amendment that took effect in 2017 defined these acts more simply, merging them into one provision (Section 140 e)) and adjusting the so-called protected characteristics. According to it, extremist crimes are motivated by "*hated against a group of persons or an individual because of their actual or alleged race, nation, nationality, and ethnicity, for their actual or presumed origin, complexion, sexual orientation, political belief or religion*".<sup>6</sup>

For the sake of simplicity, we will refer to all of them as "crimes with specific motivation".

Basic characteristics of this subgroup of crimes include:

- Essentially, a crime with specific motivation may be any crime that is proven to have been perpetrated on one of enumerated accounts. Therefore, the qualified body of offence, as opposed to the basic body of offence, stipulates a more severe penalty for the perpetrator. It is not the factor of aggravating circumstances but rather that of fulfilling a qualified (i.e. more severe) body of crime.
- The act remains a crime even if the investigation fails to prove that the act has been perpetrated with specific (i.e. racial) motivation. In that case, the perpetrator shall be punished by a penalty based on the body of crime that is less severe than the qualified body of offence.<sup>7</sup>
- These crimes primarily affect specific individuals or groups and they usually have specific victims.

.....  
<sup>6</sup> Article 140 e) of the Criminal Code 300/2005 as amended by Act No. 316/2016

<sup>7</sup> We can illustrate this on the example of the crime of murder. For "standard" murder, the perpetrator is punishable by imprisonment of 15 to 20 years. If, however, it is established that the murder was committed with racial (i.e. specific) motivation, the perpetrator may face imprisonment of 20 to 25 years. If the prosecution fails to prove in court that the murder was perpetrated because of racial, ethnic or national hatred, it does not change the fact that it is a murder and the act remains a crime.

- Arguably, this subgroup of crimes is the nearest to the meaning of the term “hate crime” because the action of the perpetrator is directed primarily at a specific victim (i.e. at the victim’s physical integrity, honour, dignity or property) and the principal reason for these actions is the perpetrator’s hatred of the victim because of his or her race, nationality, ethnicity, religion or sexual orientation.

**Ad2: Extremist crimes explicitly enumerated in section 140 a)**

This is the subgroup of crimes that are precisely enumerated and defined in Section 140 a) of the Criminal Code. The definitions of these bodies of crime can be found in Chapter XII of the Criminal Code; therefore, for the sake of simplicity the report will refer to them as “extremist crimes of XII Chapter”.

According to the Criminal Code that was effective until 2017, these acts included:

- a. The crime of supporting and promoting groups aimed at the suppression of fundamental rights and freedoms pursuant to Sections 421 and 422;
- b. Production of extremist materials pursuant to Section 422 a);
- c. Dissemination of extremist materials pursuant to Section 422 b);
- d. Possession of extremist materials pursuant to Section 422 c);
- e. Denial and approval of the Holocaust and crimes of political regimes pursuant to Section 422 d);
- f. Defamation of nation, race and belief pursuant to Section 423;
- g. Incitement to national, racial and ethnic hatred pursuant to Section 424;
- h. Incitement, defamation and threats to persons for their affiliation to any race, nation, nationality, complexion, ethnicity or origin pursuant to Section 424 a).

The aforementioned amendment to the Criminal Code that took effect in 2017 changed some of the crimes’ names, and some of the bodies of offence were merged under a single definition (e.g. Sections 424 and 424 a)). Moreover, the amendment introduced the criminal offence of apartheid; pursuant to Section 424 a), this criminal offence is perpetrated by anybody who performs racial, ethnic, national or religious segregation or other kind of extensive or systematic discrimination against a group of individuals.

The basic characteristics of this subgroup of crimes include:

- This is a specific group of criminal acts that are explicitly enumerated in Section 140 a) of the Criminal Code.
- The specific motivation (sometimes simply referred to as “racial”) is already incorporated in the basic body of offence in most cases. If racial motivation is not proven by the investigation, the act is not considered a crime because essential characteristics of the body of offence (i.e. basic definition criteria necessary to qualify the act as a crime) have not been fulfilled.
- For the sake of completeness, it should be noted that not every crime in this subgroup includes the racial motivation in the basic body of offence, for example the crime of manufacturing extremist materials; however, logically they belong to the subgroup of extremist crimes.<sup>8</sup>
- Most of the crimes in this subgroup are punishable because they violate interests of the state (i.e. protection of democratic values, public order and state security). As such, they do not necessarily need to be directed against a specific victim (e.g. the aforementioned crime of manufacturing extremist materials). The remaining crimes in this subgroup, theoretically, may or may not have a specific victim. The prosecution practice shows that most perpetrators of these crimes were not prosecuted for violating the rights of a specific victim.

.....  
8 Article 422 a) of the Criminal Code 300/2005

## CZECH REPUBLIC

In the Czech Republic, criminal acts related to hate crime and hate speech are regulated in the Act No. 40/2009 (Criminal Code).

While the Criminal Code does not explicitly use the term “hate crime”, according to In IUSTITIA, the leading Czech non-governmental organisation operating in this field, the usage of the term has been on the increase over the past three years, both by the police<sup>9</sup> and by the Ministry of Interior.

Like in other examined countries, crimes motivated by hatred do not represent an integral concept that would be dedicated a separate chapter in the country’s criminal code. Instead, the Czech Criminal Code defines these crimes in the following way:

### 1. Criminal acts whose basic body of offence includes the motive of hatred

The motive of hatred (as well as corresponding unlawful displays and actions) is defined in the basic body of offence. This category includes all crimes when the basic definition of the criminal offence includes the motive of hatred.

- Violence against an individual and against a group of individuals;
- Defamation of the nation, race, ethnic group or other groups of individuals;
- Incitement to hatred of a group of individuals or to infringement of their rights and freedoms;
- Genocide;
- Attack against humanity;
- Apartheid and discrimination against a group of individuals;
- Setting up, supporting and promoting movements aimed at the suppression of rights and freedoms of the man;
- Display of sympathies to movements aimed at the suppression of rights and freedoms of the man;
- Denying, disputing, approving and apologising genocide.

<sup>9</sup> Zpráva o problematice extremismu na území České republiky pro rok 2002 [Report on the State of Extremism on the Territory of the Czech Republic], Praha: Ministerstvo vnitra, 2003, p.2 (accessed 17. 4. 2017); available at: [www.mvcr.cz/soubor/extremismus-zprava-o-problematice-extremismu-2002.aspx](http://www.mvcr.cz/soubor/extremismus-zprava-o-problematice-extremismu-2002.aspx)

### 2. Criminal acts whose qualified body of offence includes the motive of hatred

The motive of hatred is defined in the qualified body of offence and forms the so-called circumstance that justifies a more severe punishment. In such a case, as long as the investigation and prosecution manage to establish the motive of hatred that accompanied certain criminal offences, the court of law is obliged to impose a stricter sentence.

If the motivation of bias is established, the term of imprisonment automatically increases by approximately one third. If the motivation of bias fails to be established, the perpetrator may still be found guilty of the same kind of crime while receiving a regular sentence.

With respect to criminal offences motivated by hatred, the valid legislation recognises only the following motives as specific aggravating circumstances that may be stipulated in the qualified body of offence: actual or assumed affiliation to race, nationality, ethnic group, political or religious confession (or the absence thereof).

Table 2: The examples of criminal offences whose qualified body of offence includes the motive of hatred

Felonies for which bias motivation is a component of the basic facts of the case	
Chapter X. Felonies against order in public affairs, Part 5 Felonies disrupting coexistence among people	
Violence against a group of inhabitants and its individual member	Section 352 paragraph 2
Defamation of a nation, race, ethnic or other group	Section 355
Incitement to hate a group or to limit its rights and freedoms	Section 356
Chapter XIII. Crimes against humanity, against peace, and war crimes, Part 1 Crimes against humanity	
Genocide	Section 400
Assault against humanity	Section 401 letter e)

Apartheid and discrimination against a group	Section 402
Establishment, support and promotion for a movement aimed at suppressing human rights and freedoms	Section 403
Display of sympathy for a movement aimed at suppressing human rights and freedoms	Section 404
Denying, doubting, approving and justifying genocide	Section 405
<b>Felonies for which a discriminatory motivation conditions the use of higher sentencing</b>	
<b>Chapter I. Crimes against life and health</b>	
Murder	Section 140 para. 1 and 2, 3 letter g)
Grievous bodily harm	Section 145 para. 1, 2 letter f)
Battery	Section 146 para. 1, 2 letter e)
Torture and other inhumane and cruel treatment	Section 149 para 1, 2 letter c)
<b>Chapter II. Crimes against freedom and rights to protection of personality, privacy and secure correspondence</b>	
Deprivation of personal liberty	Section 170 para. 1, 2 letter b)
Restricting of personal liberty	Section 171 para. 1, 2 letter b)
Abduction	Section 172 para. 1 and 2, 3 letter b)
Blackmail	Section 175 para. 1, 2 letter f)
Violation of the secrecy of documents and other papers kept in privacy	Section 183 para. 1, 3 letter b)

<b>Chapter V. Crimes against property</b>	
Damaging third-party property	Section 228 para. 1 and 3 letter b)
<b>Chapter X. Crimes against order in public affairs</b>	
Abuse of the powers of a public official	Section 329 para. 1, 2 letter b)
<b>Chapter XII. Military crimes</b>	
Affront between soldiers	Section 378 para. 1,2
Affront between soldiers using force or the threat of force	Section 379 para. 1, 2 letter d)
Affront of a soldier of the same rank using violence or the threat of violence	Section 380 para. 1, 2 letter c)
Violating the rights and protected interests of a soldier of the same rank	Section 382 para. 1, 2 letter c)
Violating the rights and protected interests of lower-ranked or directly subordinate soldiers	Section 383 para. 1, 2 letter c)
<b>Generally aggravating circumstance Section 42 letter b)</b>	

Source: *National Hate Crime Report of Czech Republic, 2017*

### 3. Aggravating circumstance

The general aggravating circumstance may be applied if the concrete body of offence fails to include special aggravating circumstance. In judicial practice, the application of the general aggravating circumstance requires the court of law to issue a sentence within the limits of the basic penalty; however, the court may take into account aggravating or mitigating circumstances and issue a sentence near the upper or near the lower limit of the basic penalty, respectively. With respect to hate crime, the court may view as an aggravating circumstance the fact that the criminal offence has been perpetrated because of national, racial, ethnic, religious, class or other similar hatred.

## Hate speech

Quite logically, most criminal offences related to hate speech may be perpetrated verbally, graphically or audio-visually, for instance defamation of a nation, race, ethnic group or other groups of individuals. Yet, some of them may be perpetrated both verbally as well as non-verbally, for instance displays of sympathies to movements aimed at the suppression of rights and freedoms of the man. Consequently, what does or does not constitute illegal hate speech depends not only on the actual definition of the offence by the Criminal Code but also on the manner of perpetration.

### MALTA

The issue of crimes motivated by hatred is regulated by the Criminal Code. Hate crime as defined by the table in the Terminology chapter can be taken into account as an aggravating circumstance. The sole exception is incitement to hatred, or hate speech, which is a specific crime. Aggravating circumstances can be found in different chapters of the Criminal Code.

#### 1. Crimes against public peace

This category of crimes includes criminal acts that basically threaten society as such and/or basic values, interests or operation of the state. Here, hateful motivation may be considered as an aggravating circumstance, except incitement to hatred, which is also a crime in itself.<sup>10</sup>

The Criminal Code includes a general provision applicable to criminal offenses that are motivated by xenophobia or homophobia. Section 83B stipulates that punishment for any offense shall be increased by one or two degrees if such motivation is established.

This category of criminal offences includes, for instance:

.....  
<sup>10</sup> Jean-Pierre Gauci and Patricia Cassar Torregiani, "National Report for Malta Study on the Legal Framework Applicable to Racist or Xenophobic Hate Speech and Hate Crime in the EU Member States," Commissioned by European Commission DG Justice (Brussels: Milieu Law & Policy Consulting, ICF GHK, October 2012).

- Condoning, denying or trivialising genocide, etc., against a group;
- Condoning, denying or trivialising crimes against peace of a group.

#### 2. Bodily harm

The Criminal Code specifies these actions as follows: "Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm." (Section 214)

According to Section 222A(2), punishments for bodily harm shall be increased by one or two degrees when aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.

#### 3. Crimes against property

The Criminal Code also contains provisions pertaining to crimes against property, which include "spoil, damage or injury to or upon any movable or immovable property belonging to any other person" (Section 325(1)). Section 325A(1) further specifies: "The punishments established in the foregoing provisions of this sub-title shall be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion within the meaning of sub-Sections (3) to (6), both inclusive, of Section 222A."

#### Hate speech

When it comes to hate speech, the main provisions are formulated in Section 82A of the Criminal Code, which stipulates:

1. Whosoever uses any **threatening, abusive or insulting** words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up **violence** or racial or religious **hatred** against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language,

ethnic origin, religion or belief or political or other opinion or whereby such violence or racial or religious hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

2. For the purposes of the foregoing sub-Section, “violence or racial or religious hatred” means violence or racial or religious hatred against a person or against a group of persons **in Malta** defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.

Threatening, abusive or insulting words (written or verbal) or behaviour with the intent to stir up violence or hatred against another person or group on grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion are the subject of the relevant provisions.

The legal tools of protection against hate speech and cyberhate are also anchored in **The Press Act**<sup>11</sup> and **The Broadcasting Act**.<sup>12</sup>

## HUNGARY

### Hate crime

In Hungary, the term “hate crime” is not included in the body of laws, but a number of conceptual elements of this body of laws have a direct relevance to the concept of hate crime.

#### 1. Criminal acts whose basic body of offence includes the motive of hatred

The Criminal Code (Act C of 2012 on the Criminal Code) covers several criminal offences that are related to hate crime:

- Genocide (Section 142);

<sup>11</sup> “Press Act,” Laws of Malta (1991)

<sup>12</sup> “Broadcasting Act,” Laws of Malta (1991); available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom & itemid=8820 & l=1>.

- Crimes against humanity (Section 143);
- Apartheid (Section 144);
- Violation of the freedom of conscience and religion (Section 215);
- Violence against a member of a community (Section 216).

#### 2. Criminal acts whose qualified body of offence includes the motive of hatred

Criminal offences, which according to the Criminal Code have been perpetrated with **malice aforethought** or with **malicious motive** as an aggravating circumstance, can also have a bias motive, such as in the case of the following:

- Homicide (Section 160);
- Personal Freedom (Section 194);
- Unlawful Detention (Section 304).

### Hate speech

In Hungary, the term “hate speech” is not included in the body of laws, but a number of conceptual elements of this body of laws have a direct relevance to the concept of hate speech. Like hate crime, illegal hate speech can be either prosecuted as a separate criminal offence with hateful motivation (which is stipulated in the basic body of offence) or can become an aggravating circumstance to accompany other criminal offences.

#### 1. Basic body of offence:

The latest version of the Criminal Code (Act C of 2012 on the Criminal Code) covers a number of criminal offenses related to hate speech:

- Violation of the freedom of conscience and religion (Section 215);
- Incitement against a community (Section 332);
- Open denial of Nazi crimes and communist crimes (Section 333);
- Desecration of national symbols (Section 334), use of symbols of totalitarianism (Section 335).

#### 2. Aggravating circumstance:

The Criminal Code also recognises certain criminal offences, for in-

stance defamation (Section 226), to which **malice aforethought** or **malicious motive** can become an aggravating circumstance.

## LITHUANIA

According to the National Hate Crime Report elaborated by the Human Rights Monitoring Institute, all offensive actions against individuals, society or property, if perpetrated in order to express hatred toward individuals or groups of people that share certain characteristics, are generally classified as hate crimes.<sup>13</sup>

Criminal legislation of Lithuania, like that of other examined countries, includes hate speech to this type of crime. And like in other examined countries, this type of crime can be divided into criminal offences whose basic body of offence includes a hateful motivation (i.e. they constitute specific criminal offences by themselves) and criminal offences for which a hateful motivation is stipulated in the qualified body of offence.

According to Lithuanian criminal legislation, hate crimes can be divided into two categories:

### 1. Incitement to hatred

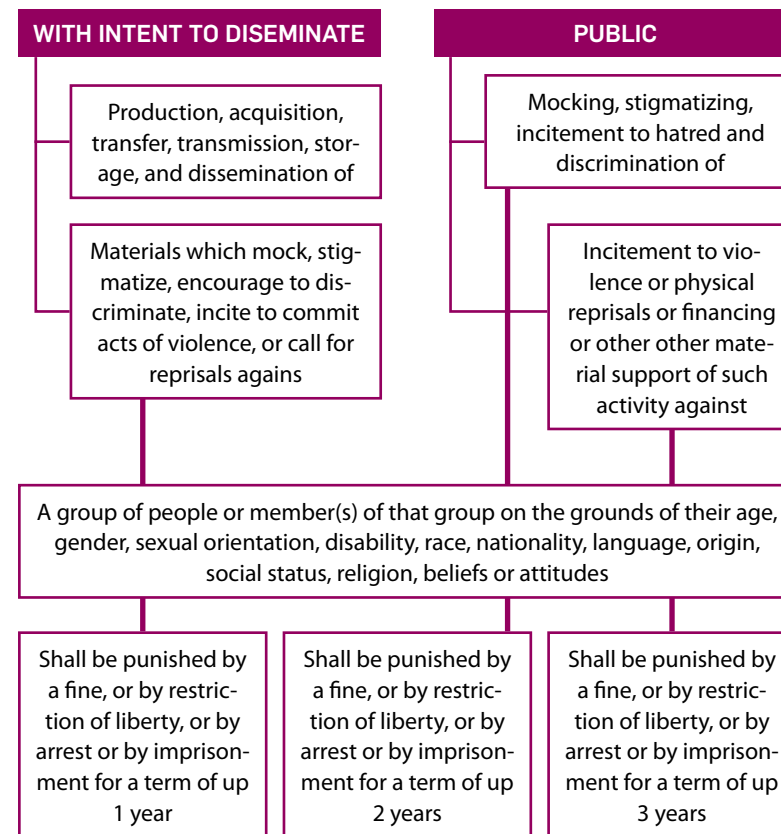
- These criminal offenses are usually perpetrated by using linguistic means, i.e. expressing certain statements, words, and ideas as well as symbols of discriminatory or inflammatory nature, either in writing or orally;<sup>14</sup>
- Contempt, marginalisation and psychological abuse.

Criminal offenses related to incitement to hatred are provided for in Chapter XXV of the Criminal Code of the Republic of Lithuania entitled “Crimes and Misdemeanours against a Person’s Equal Rights and Free-

<sup>13</sup> General Prosecutor’s Office of the Republic of Lithuania. Methodical guidelines for the organisation, management and performance characteristics of pre-trial investigations of offenses committed on racial, nationalistic, xenophobic, homophobic or other discriminative grounds, 2009, <http://www.prokuraturos.lt/data/public/uploads/2015/12/met-rek-delneapykantos-2009-12-23.pdf>

<sup>14</sup> Ibid.

dom of Conscience”. The majority of pre-trial investigations of crimes against person’s equality or freedom of conscience is commenced and conducted under Section 170 of the Criminal Code.



Parts 1, 2, and 3 of the Section 170 of the Criminal

Source: National Hate Crime Report of Lithuania, 2017

## 2. Other criminal acts motivated by hate

Not only incitement to hatred, contempt, marginalization but also mental or physical violence, crimes against the individual or common property of certain groups of people can manifest in various attacks and vandalism.

This category includes criminal offences that take the form of:

- Physical assaults (e.g. killing, battery, bodily harm);
- Property crimes (e.g. property damage, vandalism, church or cemetery desecration);
- Other criminal acts.

In 2009, Parliament of the Republic of Lithuania passed a law amending the Criminal Code<sup>15</sup>. According to this amendment, perpetrator's intent to express hate against a group of persons or a person that belongs to it due to racial, nationalist, xenophobic, homophobic, and religious or other motives of discriminatory or otherwise biased nature, shall be considered an **element that qualifies the crime**.<sup>16</sup> These provisions are defined in the Sections of the Criminal Code that specify perpetrators' criminal liability, while the main area of concern is as follows:

- **Human life** (i.e. murder);
- **Health of a person** (i.e. grievous bodily harm, minor bodily harm).

### Aggravating circumstances

If racial, nationalist, xenophobic, homophobic, religious or other motives of intolerance or of discriminatory nature are not mandatory at-

.....  
<sup>15</sup> Law on the amendment of articles 60, 129, 135, and 138 of the Criminal Code of the Republic of Lithuania, 16 June 2009, No.XI-303; available at: <https://www.e-tar.lt/portal/legalAct/TAR.DE961C8C6D7D>

<sup>16</sup> In cases when physical violence was used during a crime of the said nature and an attempt on human life or health was made (Article 129, section 2, paragraph 13; Article 135, section 2, paragraph 13 of the Criminal Code), or an attempt at a memory of the dead was made through acts of vandalism (Article 312, section 2 of the Criminal Code) but there was no evidence obtained during a pre-trial investigation that the aforementioned crime also has elements of a hate incitement or of the personal discrimination crimes (Articles 170, 169 of the Criminal Code), the crime should be qualified according to one of the articles of the Criminal Code that were previously stated in this paragraph.

tributes for the qualification of a crime, the Criminal Code specifies that if a crime was perpetrated with the intention to express hatred against a group of people or a member of that group on the ground of age, gender, sexual orientation, disability, race, ethnicity, language, descent, social status, religion, beliefs or opinions, it shall be considered an **aggravating circumstance** of the crime in question.<sup>17</sup>

The Criminal Code also enumerates other offensive actions that may be qualified as inciting hatred:

- Discrimination on the basis of nationality, race, gender, ethnicity, religion or belonging to other groups (Section 169 of the Criminal Code);
- Creation, participation in or financing of an organised group or organisation aiming at discriminating or incite hatred against certain groups of people (Section 170/1 of the Criminal Code);
- Public approval of international crimes, the crimes of the Soviet Union or Nazi Germany against the Republic of Lithuania and its people, and denial or gross denigration of those crimes (Section 170/2 of the Criminal Code);
- Hindering of religious worship or ceremonies (Section 171 of the Criminal Code);
- Paragraph 2 of Section 312 of the Criminal Code can be mentioned here as well, since it establishes penal liability for the desecration of a grave, or other public places of respect by acts of vandalism based on racial, national or religious motives.<sup>18</sup>

.....  
<sup>17</sup> When a crime specified in the Criminal Code has been perpetrated and the body of offence indicates that the victim belongs to a group that is specific on grounds of age, gender, sexual orientation, disability, race, ethnicity, language, origin, social status, faith, beliefs or views, but the traits of such affiliation (one or several of them) are not the traits that qualify the crime, or when the crime is not concurrent with the ones specified in Chapter XXV of the Criminal Code, such crime should be qualified according to the body of offence specified in the applicable article of the Criminal Code, while the established motivation should be evaluated by the prosecutor in the indictment and noted as the circumstance that aggravates the criminal liability for the perpetrated crime.

<sup>18</sup> Criminal Code of the Republic of Lithuania; available at: <https://www.etar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/vVrMmyDxLS>



## PROTECTED CHARACTERISTICS AND GROUPS

### SLOVAK REPUBLIC

The list of protected characteristics of individuals and population groups for which the Criminal Code recognises hatred as a specific motivation includes the following:

- Race;
- Nationality;
- Ethnicity;
- Religious beliefs or the lack thereof;
- Sexual orientation;
- Genus;
- Origin;
- Complexion.

The amendment that took effect in 2017 better summarised the “protected characteristics”. At the same time, it has been extended to include supposed affiliation and political beliefs. Effective from January 1, 2017, the Criminal Code recognises crimes that are perpetrated because of hatred against a group of persons or an individual because of their actual or alleged:

- Race;
- Nation;
- Nationality;
- Ethnic group;
- Actual or putative origins;
- Skin colour;
- Sexual orientation;
- Political beliefs;
- Religious belief.

### CZECH REPUBLIC

The Czech criminal law explicitly protects five categories of persons threatened by hate crime and related violence. Their actually or allegedly shared characteristics include the following:

- Race;
- Nationality;
- Ethnicity;
- Religious beliefs and/or
- Political convictions.

With respect to the criminal offence of incitement to hatred of a group of individuals or to infringement of their rights and freedoms (Section 356), the Criminal Code also allows prosecution of anybody who incites to hatred of **another group of individuals**, which may include persons whose shared characteristics is their sexual orientation, health condition, gender, age, social status, etc.

Last but not least, the general aggravating circumstance according to Section 42 b) of the Criminal Code allows the court of law to take into account that the assault was motivated by the so-called **other similar hatred** when issuing a sentence.

### MALTA

According to the Criminal Code of Malta, the following characteristics are protected:

- Race, colour;
- Gender, gender identity;
- Sexual orientation;
- Ethnic origin;
- Language;
- Citizenship, national origin;
- Religion or belief;
- Political or other opinion;
- Disability.

### HUNGARY

In Hungary, the list of groups protected against hate crime and hate speech by legal means is *open*. On the other hand, the range of protected characteristics differs from one criminal offence to another, which means that the same traits do not apply to all types of hate crimes/hate speech:

- National, ethnic, racial, community or religious group;
- Certain social groups, particularly those defined on the grounds of disability, gender identity or sexual orientation;
- Language minority.

## LITHUANIA

The Criminal Code of Lithuania provides a rather extensive list of traits of a person or group of persons that would define the subjects vulnerable to hate crimes:

- Age;
- Gender;
- Sexual orientation;
- Disability;
- Race;
- Nationality;
- Language;
- Descent;
- Social status;
- Faith, beliefs;
- Opinions.

Table 3: Overview of characteristics and traits that are protected in partner countries

TRAITS	SLOVAKIA	CZECH REPUBLIC	MALTA	HUNGARY	LITHUANIA
Race	☒	☒	☒	☒	☒
Nationality	☒	☒	☒	☒	☒
Ethnicity	☒	☒	☒	☒	☒
Religion	☒	☒	☒	☒	☒
Political opinion	☒	☒	☒		☒
Gender	☒ (some crimes)		☒	☒ (some crimes)	☒
Age					☒
Disability			☒	☒ (some crimes)	☒
Sexual orientation	☒		☒	☒ (some crimes)	☒
Social status	☒ (some crimes)			☒	☒
Other		☒	☒	☒	☒

## QUANTITATIVE INDICATORS ON HATE CRIME/HATE SPEECH IN PARTICULAR COUNTRIES

In order to examine the situation in the Czech Republic, Hungary, Lithuania, Malta and Slovakia, the partner organisations collected data on the number of reported criminal offences involving hate crime and hate speech. The collected data covered the period of 2014 – 2016.

When quantifying the delinquency in question, non-governmental organisations from participating countries used official data from publicly available sources, particularly crime statistics kept by the national authorities or reports elaborated by the national governments for international organisations, for instance the Organisation for Cooperation and Security in Europe – Office for Democratic Institutions and Human Rights (OBSE – ODIHR).

Subsequently, this data was complemented to include the findings of non-governmental organisations, using shadow reports they publish by themselves, monitoring and information from their own legal practice in this field, etc. Moreover, national non-governmental organisations operating in this area were asked to answer questions from a structured questionnaire specifically designed to collect the required data.

In all examined countries, the official number of hate crimes/hate speech cases identified and registered by state authorities differed from the actual occurrence of these types of crime. All participating non-governmental organisations concluded that these types of crime show a high degree of latency. The reasons for this latency are analysed in the following chapter.

### OFFICIAL DATA

#### Number of reported hate crime/hate speech incidents

## SLOVAK REPUBLIC

The annual crime statistics kept by the Ministry of Interior quantify how many extremist crimes were committed in the territory of the Slovak

Republic in a given year. It is a record of the so-called “prevalence of the crime” and includes criminal acts that have been detected either on the ministry’s own initiative or as a result of criminal complaint, and for which prosecution has been initiated.

In this summary, we included crimes that are explicitly enumerated in Chapter XII of the Criminal Code as well as different crimes committed with specific motivation (which the statistics interchangeably describe as “racial motivation”). Unfortunately, when it comes to the latter subgroup of extremist crimes (i.e. crimes with a specific hateful motivation), the statistics fail to specify the actual nature of crimes that are included. Therefore, we only focused on crimes that have the nature of violent crimes against another person; however, according to Slovak Criminal Code, this may potentially include the crime of disorderly conduct pursuant to Section 364 with a specific motivation, the crime of desecrating a place of eternal rest (in the context of Jewish cemeteries) pursuant to Section 365 with a specific motivation, etc.

**Table 4: Prevalence of extremist crimes in 2014 – 2016 according to the statistics of the Ministry of Interior**

Year	All crimes	Subgroup of crimes defined by Chapter XII of the Criminal Code	Subgroup of violent crimes with hateful motivation <sup>1</sup> (“hate crimes”)	Subgroup of crimes with hateful motivation, unspecified <sup>2</sup>
2014	66	61	2 (bodily harm)	3
2015	30	26	1 (bodily harm)	3
2016	58	55	1 (bodily harm)	2

Source: Ministry of Interior of the Slovak Republic

## CZECH REPUBLIC

The official document that sums up available information on hate crime and hate speech at the national level is the annually issued *Report on Extremism in the Territory of the Czech Republic*. The problem is that the document includes all crimes motivated by extremism, which means that the statistics also include criminal offences that do not fall within the scope of hate crime and hate speech.

On the other hand, the main advantage of this report is that it incorporates data from all official sources, namely the Police Presidium of the Czech Republic, the Office of General Prosecutor, the Ministry of Justice of the Czech Republic and the Probation and Mediation Service.

Another important source of data for the report is the monitoring of hate crime that is performed by In IUSTITIA, a pro bono organisation that publishes annual reports entitled *Report on Hate Crime in the Czech Republic*.

**Table 5: Extremist crimes in the territory of the Czech Republic in 2014 – 2016**

Year	Hate speech	Hate crime	Total
2014	146	24	170
2015	114	24	138
2016	94	27	121

Source: National Hate Crime Report of Czech Republic, 2017

## MALTA

Malta does not report to the OSCE hate crime database and has often been a blind spot for comparative studies (e.g. FRA reports on crimes motivated by hatred and prejudice,<sup>19</sup> crimes against minorities,<sup>20</sup> official data collection mechanisms pertaining to hate crime,<sup>21</sup> or official data pertaining to hate crime published in 2016, by bias motivation and by EU Member State<sup>22</sup>). Such information is not collected by the National Commission for the Promotion of Equality, either.<sup>23</sup> In FRA's interviews with experts, a discrepancy was identified between the incidence of hate crime as estimated by law enforcement authorities on the one hand and by victim support services on the other.<sup>24</sup>

## HUNGARY

The Department of Coordination and Statistics of the Ministry of Interior published statistical data on registered crimes in the category of "violence against a member of a community" for the years 2014, 2015 and 2016.

Although the statistical data published by the Ministry of Interior also include data on "crimes against humanity", it is not featured in the table below. The reason is that there is no information on whether the victims of these crimes were targeted on the grounds of group affili-

<sup>19</sup> European Agency for Fundamental Rights (FRA), "FRA Brief: Crimes Motivated by Hatred and Prejudice in the EU", (Vienna, March 2013); available at: <http://fra.europa.eu/en/publication/2013/fra-brief-crimes-motivated-hatred-and-prejudice-eu>.

<sup>20</sup> European Agency for Fundamental Rights (FRA), "Minorities as Victims of Crime," EU-MIDIS Data in Focus Report 6 (Luxembourg: Publications Office of the European Union, November 2012); available at: <http://fra.europa.eu/en/publication/2012/eu-midis-data-focus-report-6-minorities-victims-crime>.

<sup>21</sup> European Agency for Fundamental Rights (FRA), "Making Hate Crime Visible in the European Union: Acknowledging Victims' Rights" (Luxembourg: Publications Office of the European Union, 2012).

<sup>22</sup> European Agency for Fundamental Rights (FRA), "Fundamental Rights Report 2017" (Luxembourg: Publications Office of the European Union, May 2017); available at: <http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017>.

<sup>23</sup> Correspondence with Maria Theresa Portelli, PR & Communications Officer at the National Commission for the Promotion of Equality, May 31, 2017.

<sup>24</sup> European Agency for Fundamental Rights (FRA), "Ensuring Justice for Hate Crime Victims: Professional Perspectives".

ation or not. Also, there is no statistical data on criminal offences (e.g. homicides) with the aggravating circumstance of "malice aforethought or malicious motive" (and, within that, the bias motive), or on criminal offences with direct relevance to the concept of hate crime (e.g. genocide, apartheid).

Table 6: Registered hate speech in Hungary, 2014 - 2016

Terminology Used in the National Hate Crime Report	Relevant Concept in Hungarian Legislation	2014	2015	2016
Threat of attack		No data	No data	No data
Defamation of race, nation, religion	Blasphemy of National Symbol	0	2	0
Incitement to hatred, call to violence	Incitement Against a Community	4	4	5
Holocaust or crimes against humanity denial	Open Denial of Nazi Crimes and Communist Crimes	19	13	10
Hate materials		No data	No data	No data
Approval of totalitarian regimes	Use of Symbols of Totalitarianism	44	23	23
Setting up, supporting the hate groups	Offence Against Regulation of the Press	No data	No data	No data
<b>TOTAL</b>		<b>67</b>	<b>42</b>	<b>38</b>
Source of Data: Ministry of Interior, Department of Coordination and Statistics ( <a href="https://bsr.bm.hu">https://bsr.bm.hu</a> )				

Source: National Hate Crime Report of Hungary, 2017

**Table 7: Registered hate crimes in Hungary, 2014 - 2016**

Terminology Used in the National Hate Crime Report	Relevant Concept in Hungarian Legislation	2014	2015	2016
Violence and physical attack	Violence Against a Member of the Community	48	32	33
Attack against property				
Any crime with bias motive (aggravating circumstance)		No data on any other crime with a bias motivation	No data on any other crime with a bias motivation	No data on any other crime with a bias motivation
Source of Data: Ministry of Interior, Department of Coordination and Statistics ( <a href="https://bsr.bm.hu">https://bsr.bm.hu</a> )				

Source: National Hate Crime report of Hungary, 2017

The Department of Coordination and Statistics of the Ministry of Interior published statistical data on registered crimes in the category “incitement against the community, open denial of Nazi crimes and communist crimes, use of symbols of totalitarianism and desecration of national symbols” for the years 2014, 2015 and 2016. It did not publish any statistical data on the number of administrative and criminal offences that may have direct relevance to the concept of hate speech (i.e. genocide, apartheid, violation of the freedom of conscience and religion, violation of personal freedom, unlawful detention, offence against regulation of the press, participating in the activity of a dissolved association) and on the criminal offence of defamation with the aggravating circumstance of “malice aforethought or malicious motive” (and, within that, the bias motive).

## LITHUANIA

The official information on hate crime in Lithuania is rather limited. According to official statistics, only a part of all criminal offences with hateful motivation can be quantified. It includes crimes that were de-

scribed as “criminal offences whose basic body of offence includes a hateful motivation” in the previous chapter, i.e. crimes punishable in compliance with Section 170 (incitement to hatred against a group of people of any nationality, race, ethnicity, religion or belonging to other group).

According to the information provided by the Information Technology and Communications Department of the Ministry of Interior, the number of registered cases of incitement to hatred under the Section 170 of the Criminal Code varies. 2016 was markedly different as only 47 cases were registered, a decline by over one half compared to several previous years.<sup>25</sup>

The limited availability of statistical data partly results from simple technical barriers to data collection. According to data processing rules of the Departmental Register of Criminal Acts, when registering a crime with a hateful motivation, police officers must indicate the motive of such crime when filling out the applicable form; however, the analysis shows that data contained in the registry on hate crimes are not accurate. Some of the criminal acts perpetrated on the grounds of hatred do not fall within these data due to the simple human error when police officers fail to mark the motive of the crime in the relevant registry.<sup>26</sup>

**Table 8: Crimes registered under the Section 170 of the Criminal Code<sup>27</sup>**

Year	Incitement to hatred
2014	102
2015	138
2016	47

Source: National Hate Crime Report of Lithuania, 2017

<sup>25</sup> Statistical data available from the Information Technology and Communications Department at the Ministry of Interior; available at: <http://old.ird.lt/statistines-ataskaitos/?lang=lt & rt=1>

<sup>26</sup> Regarding the activity of the working group, created by the order No. 1V-813 of the minister of interior of 21 November 2016.

<sup>27</sup> Statistical data available from the Information Technology and Communications Department at the Ministry of Interior; available at: <http://old.ird.lt/statistines-ataskaitos/?lang=lt & rt=1>

## Quantitative situation in the sphere of hate crime/hate speech according to data supplied by non-governmental organisations

When commenting on respective official national statistics, all participating non-governmental organisations from examined countries pointed out the same thing, saying that **the high degree of latency** was typical for these types of crime. In other words, official statistics on the overall number of reported cases of hate crime/hate speech do not reflect the actual state of affairs.

Another commonly mentioned criticism was aimed at the very way state authorities **keep these statistics**. Non-governmental organisations argued that the system of recording and filing these crimes was confusing as it often did not provide a precise specification of the hateful motive, that data provided by state administration authorities often showed a high rate of discrepancy and in the case of Malta there were no official data on hate crime available at all.

### SLOVAK REPUBLIC

According to People against Racism, a Slovak civic association that was providing free legal assistance to victims of hate crime for almost ten years, official statistics seldom reflect the actual reality. The generally low numbers of detected/reported cases of such incidents by no means indicate that these types of crime are being eliminated; on the contrary, it may rather indicate insufficient ability of law enforcement authorities to detect such incidents and correctly qualify their perpetrators' actions. Generally speaking, a typical feature of this type of criminality is a high degree of latency.

- People against Racism, which operated a special hotline but was forced to stop providing free legal assistance to the victims in 2013 states that on average, approximately 35 - 45 cases of illegal actions motivated by hatred were reported via the hotline every year;
- On average, about ten of these cases involved discrimination, which is not part of this comparative survey's focus;
- Approximately 10 - 15 cases involved illegal hate speech against individuals or groups of individuals that shared common protected characteristics, especially in the virtual environment (i.e. online);
- The civil association tackled about five to six cases per year, acting

either on the client's motion or on its own initiative, especially when these incidents did not have any direct victims or they involved delinquency of extremist groups;

- A minor share of all cases (five on average) involved violent behaviour;
- By far the most frequent targets of these incidents were members of the Romani minority.

The main reasons for the high latency of these crimes are the following:

#### 1. The relationship between the victims and law enforcement authorities

- Typical for this relation is the significant distrust on the part of members of vulnerable communities. This distrust has been only encouraged by the numerous incidents when special police units raided the Romani settlements, often using unjustifiable violence.<sup>28</sup>
- The victims often encounter attempts to trivialise the incident on the part of law enforcement authorities; consequently, it is difficult for them to believe that they can attain just punishment of the perpetrators.
- The victims are often victimised as law enforcement authorities are primarily interested in whether the victims did or did not provoke the assault, whether the victims or their relatives lead an orderly life or don't, or whether the perpetrator had a moral reason to attack or not. This perception of victims, particularly when they hail from the Romani minority, is strongly present in the public and partly also in the media discourse.

#### 2. Objective obstacles on the part of the victims

- Limited social and financial capacity;
- Unavailability of free legal assistance;
- Perpetrator's access to the victim is not limited after they report the crime, which is why most victims fear revenge.

<sup>28</sup> "The Police Used Truncheons against the Roma, Gašpar Sees Excessive Force", *Sme* daily, May 24, 2017; available at: <https://domov.sme.sk/c/20541316/policajti-bilibobuskami-romov-gaspar-vidi-neprimerane-zakroky.html>

### 3. Insufficient awareness of legal procedures and consequent anxiety

- Most victims do not know what criminal procedures entail (e.g. how many times they have to testify, how they can procure evidence, how long the whole process will take, etc.);
- Most victims fear that law enforcement authorities are unable to protect them as witnesses (e.g. questions asked of the protected witness, requests not to testify in court in the presence of the accused, keeping the witness's identity secret in the case file, etc.).

### 4. Objective obstacles on the part of law enforcement authorities

- The strategies of early detection of criminal offences are not sufficiently elaborated;
- Until 2016, law enforcement authorities showed little initiative in terms of investigating and combating these crimes;
- Many of these crimes do not even make it to official crime statistics, either because the investigation fails to recognise a hateful motive or qualifies the incident as a misdemeanour.

The aforementioned reasons were confirmed by all non-governmental organisations that are involved in the process of elaborating national hate crime reports.

## CZECH REPUBLIC

In IUSTITIA is essentially the only non-governmental organisation in the Czech Republic that deals with monitoring and collecting data on hate crime. It is also the only civil society subject that provides legal assistance to victims, including representing them at courts of law.

The table 9 shows the annual number of cases that are reported to In IUSTITIA.

In its National Hate Crime Report, In IUSTITIA observed the following regarding the categorisation of hateful motives in the Czech Republic: "In its everyday practice, In IUSTITIA encounters different types of motivation. It often deals with cases of assaults on the Roma or foreigners. Also, there have been a number of incidents related to the so-called

Table 9: Occurrence of select types of incidents

	Attacks on property and physical violence		Verbal incidents		Verbal incidents on the Internet	
	N	%	N	%	N	%
2015	72	51	69	49	25	18
2014	33	38	53	62	22	26

Source: Own monitoring performed by In IUSTITIA

"refugee crisis". In 2014, these incidents made up 14% of all assaults motivated by hatred but in 2015 their share increased to 43%. But apart from the victims' Islamic religion, Arabic origin, status of a refugee or an immigrant, the motives also included their political conviction as most of these victims were individuals involved in the process of helping the refugees."

In IUSTITIA also documented which criminal offences were most typically perpetrated against members of particular vulnerable groups:

- 15 out of 34 (i.e. 44%) incidents motivated by the victim's Romani origin involved a physical assault.
- Incidents that are related to the refugee crisis typically involve intimidation or threatening. However, most victims of these incidents are attacked because of their political conviction; these incidents are recorded separately and make up almost one third of all incidents related to the refugee crisis. Therefore, one may conclude that intimidation or threatening occur especially with respect to individuals who help refugees or advocate this assistance in various ways. It is interesting that assaults against people of Arabic origin or ethnicity take mostly verbal forms.
- Assaults against people of Jewish origin and people with a status of a refugee or an immigrant typically take the form of graffiti, while attacks on property typically involve victims whose political conviction opposes that of the perpetrator with respect to the refugee crisis.



## HUNGARY

The country profile of Hungary at the official website of the OSCE – ODIHR contains no official data on hate crime in Hungary for 2015 and 2016.<sup>29</sup>

For 2014, it indicates that the police recorded 79 cases of hate crime in Hungary, without specifying which criminal offences were included in the concept of hate crime apart from “violence against a member of a community”.

In the process of gathering data on the state of hate crime/hate speech for the purpose of elaborating the National Hate Crime Report of Hungary, Subjective Values Foundation approached five Hungarian non-governmental organisations (see the table below). Their answers to the questions from a structured questionnaire were summarised in the report, indicating the following:

- The overall number of hate crimes they admitted to tackling annually is 10 incidents;
- All participating non-governmental organisations agreed that the most frequent targets of hate crime and hate speech incidents are the Roma, followed by migrants and LGBTI persons;
- Most frequently, these incidents take the following forms:
  - Violence against a member of a community (physical abuse);
  - Threatening;
  - Anti-Gypsy hate speech and hate crime (the most common are incidents of hate speech that are not qualified as criminal offences).

<sup>29</sup> Hungary, OSCE Office for Democratic Institutions and Human Rights (ODIHR); available at: <http://www.osce.org/resources/csce-osce-key-documents>

Name of NGO interviewed	Estimated number of hate speech cases	Estimated number of hate crime cases
Háttér Society (Háttér Társaság)	Official statistics do not reflect real numbers. Hate speech incidents are registered only in extremely rare cases.	Only 10-15% of hate crime victims report hate crime incidents.
Hungarian Civil Liberties Union (Társaság a Szabadságjogokért)	(no estimate)	Hundreds or thousands of incidents instead per year.
Hungarian Helsinki Committee (Magyar Helsinki Bizottság)	The actual number of incidents is higher exponentially by orders of magnitude than that registered by the authorities. 8000 hate speech incidents, including online hate speech	The number of incidents is higher exponentially by orders of magnitude than that registered by the authorities. 80-800 hate crime incidents
Action and Defense Foundation (Tett és Védelem Alapítvány)	Official data shows only 10-13% of the real number of incidents.	Official data shows only 10-13% of the real number of incidents.
Amnesty International Hungary (Amnesty International Magyarország)	(no estimate)	Over 100.

**Table 10: Number of hate crime and hate speech incidents estimated by Hungarian NGOs**

Source: *National Hate Crime Report of Hungary, 2017*

Like their colleagues from Slovakia and the Czech Republic, experts from Hungarian non-governmental organisations also suggest that the official number of reported cases is substantially lower than the actual one. The factors discouraging people to report hate crime/hate speech incidents are included below:



- a. Most victims are afraid that the criminal proceedings will not be successful;
- b. Most victims are afraid of secondary victimisation or even criminalisation by the local authorities, especially in small villages;
- c. Most victims are afraid to meet the perpetrators in person;
- d. Members of the LGBTI community may have privacy concerns regarding their affiliation to this vulnerable community;
- e. Most victims are ignorant of the special legal qualification of the offence against them and of available legal aid.

## MALTA

According to the National Hate Crime Report that was elaborated by the partner organisation called People for Change Foundation, the data on hate crime are unavailable not only on the part of state authorities but also on the part of non-governmental organisations. The only phenomenon that is at least partially monitored is cyberhate. Here are the hard figures:

- 183 cases of hate speech were reported to the Cybercrime Unit in 2014;
- 10 cases were taken to court between 2014 and 2017;
- Four convictions between 2014 and 2017.

## LITHUANIA

The project's partner organisation, the Human Rights Monitoring Institute (HMRI), observed that despite clear regulation one can see the existence of a certain "grey zone" between the law and its actual application in Lithuania. The available legal instruments are not effectively used and those who incite hatred are often not properly punished according to the relevant Sections of the Criminal Code.

HRMI formulated the reasons for the high latency of hate crime/hate speech incidents as follows:

- Distrust of the authorities;
- Lack of faith in the penal system;
- Fear of suffering further trauma.

In response to this discrepancy between legal regulation and the ac-

tual reality, proposals have lately been made to replace criminal liability for incitement to hatred with administrative one.<sup>30</sup> HRMI raised an objection that such proposals should be treated with caution, arguing that decriminalization of incitement to hatred might indicate that the danger of such acts and possible harm to the public is underestimated by the authorities.

It is also worth noting that the protection of victims, including their procedural guarantees that were strengthened by the EU Directive on Victims' Rights, is incomparably better ensured in criminal proceedings than in administrative proceedings. Therefore, from the victim's point of view, transferring responsibility from law enforcement to administrative authorities, particularly in cases where the incitement to hatred affects a particular person would actually worsen the victim's position in the process.

.....  
 30 The issue was discussed in greater detail during the round table discussion entitled "Effective Response to Hate Crime" at the Ministry of the Interior on June 15, 2017, as well as during a closed-door discussion with representatives of foreign IT companies operating in Lithuania at the Ministry of Justice. For further details, please see: <http://lt.efhr.eu/2017/05/23/efhr-susitikime-su-facebook-ir-google-atstovais/>

# QUALITATIVE ASSESSMENT OF HATE CRIME AND HATE SPEECH ISSUES – IDENTIFICATION OF OBSTACLES TO INVESTIGATION AND PROSECUTION

## SLOVAK REPUBLIC

### 1. PROBLEMS RELATED TO LEGAL QUALIFICATION

#### a. *The act was not qualified as hate crime*

This chronic shortcoming is corroborated not only by the experience of the People against Racism civic association, which was providing free legal assistance to victims of extremist crimes and hate crimes for 10 years, but also by police investigators. They admit difficulties when trying to prove the intent and motivation of the perpetrator. (Without proving the hatred motivation, the crime can not be registered as a hate crime.) In case of incidents where the victims belong to a vulnerable group, the police do not always manage to prove that the perpetrator acted with the intent of racial, ethnic or national hatred. At best, these cases end up being qualified as “ordinary” offences without proving a specific motivation. In the worstcase scenario, which unfortunately is a standard, the act is qualified as an offence against neighbourly coexistence (Section 49 of the Act No. 372/1990 (Code of Administrative Offences)).

There are also other possible explanations of this problem:

- The police do not seem to take seriously the victims’ claims that they may have been attacked because of their affiliation to a protected group and they do not make adequate effort to investigate the specific motivation. This argument has been repeatedly mentioned especially by the victims of the Romani origin.
- The police make mistakes when legally qualifying the criminal act. Many victims have complained that their case was viewed by the police merely as “a brawl among youngsters”, which in practice often leads to qualification of the act as a misdemeanour or as a criminal offence of disorderly conduct (i.e. without specific motivation).

#### b. *Trivialisation of the act*

Perhaps the most common reason for the high latency of hate crime or extremist crimes is the widespread habit of police investigators to qualify criminal acts as misdemeanour instead of a crime. It is a common rule in the legal practice that if the victim did not suffer an injury that would cause at least seven days of unfitness for work (i.e. the physical injury is not serious enough), the act is not qualified as a crime of bodily harm.

Many investigators seem to forget that these incidents need not be investigated as crimes of bodily harm. The point is that they are often accompanied by verbal defamatory statements and therefore may also be qualified as crimes of incitement to racial hatred or defamation of nation, race and conviction; unfortunately, the verbal statements that actually provide the context to qualify the act as a hate crime are considered merely “concurrent” circumstances of a minor incident, which is subsequently qualified as a “brawl” (i.e. an offense against neighbourly coexistence).

#### *An example from practice*

This can be illustrated by a case from the hotline operated by People against Racism. The victim said the following: *“In addition to ethnical-defamatory invectives (e.g. “you black blind son of a bitch, throw yourself into the lime... you have nothing to do here in this country, get out of [here]”, etc.), other threats followed. Those were uttered in the presence of my wife and my son and afterwards in the presence of police officers of the district police department in Brodské... M.J. (i.e the perpetrator, author’s note) explicitly sent us to the gas, incited his dog to attack us, saying: “Nip that black gypsy”, and threatened us that they were going to break our apartment windows and burn us down... I totally disagree that the police officers from Brodské, even after what they saw and heard, dealt with the whole incident as an misdemeanour. They did not even call me to testify...”*<sup>31</sup>

#### c. *Benevolent qualification of verbal extremist crimes perpetrated against minorities (i.e. when hate speech becomes part of the public discourse)*

.....  
31 People against Racism, helpline for hatecrime victims, 2012

Crime statistics kept by the Ministry of Interior until 2017 shows a minimum number of detected verbal criminal offences, despite the fact that all kinds of real-life as well as virtual discussion forums are soaking with harsh anti-Romani and anti-Muslim (or anti-immigration) rhetoric, which can be easily investigated and prosecuted as the criminal offence of defamation of nation, race and conviction. Quite paradoxically, the police recorded only four cases of such crimes in 2014.

Even if the police detect a case of online extremism, it almost exclusively concerns posted pictures and photographs depicting neo-Nazi symbolism as opposed to unlawful displays of hatred of protected groups, this despite the fact that inciting hatred against vulnerable groups, calling for their extermination, threatening to murder individuals and their families or burning down their homes on the grounds of their ethnicity or sharing numerous statements that celebrate infamous perpetrators of racially or religiously motivated murders have a substantially more negative impact on the society than the picture of a histrionic "Heil Hitler!" gesture performed by an inebriated youngster shared via social network.

It is these criminal acts that create social atmosphere vis-à-vis vulnerable population groups and the increasing degree of their "legal acceptance" is also pushing the limits of their social acceptance. By failing to act against them, law enforcement authorities actually legalise them. Whereas the statements on 'Gypsy parasites' or encouragements to gas the Roma circulated only in closed neo-Nazi circles in the past, today they have become a part of the mainstream public discourse.

## 2. PROBLEMS RELATED TO SUBSTANTIATING

### a. *Excessive use of expert witnesses*

According to the Code of Criminal Procedure, law enforcement authorities must require an expert opinion if an expertise is necessary to clarify the facts important to criminal proceedings (Section 141 Sect. 1 of the Code of Criminal Procedure). This should be the case if particular expertise (i.e. knowledge that is linked to a specific profession, vocation or specialisation) is needed in order to explain the facts of the case.

Over the past five years, it has been an informal rule that in almost all investigations of extremist crimes, an expert was called in during pre-

liminary proceedings. In this way, law enforcement authorities seek the confirmation whether a swastika is indeed the swastika or whether some trivial song lyrics really mean what the investigator hears and whether he or she understands them the same way as the expert. In simple terms - the investigators use expert opinions even when there is no objective reason for asking expert's opinion.

### b. *Legal questions and answers surrounding the gathering of evidence by expert assessment*

However, the biggest problem related to the excessive use of experts is not assessment of chronically known facts. Far more troubling is that investigators use experts to ask them for legal opinion, i.e., whether the perpetrator's hate speech against Roma was motivated by hatred, which is a question that should be answered by the investigator, not an expert on history. In cases where law enforcement resort to formulating legal questions, the provision of Section 145 of the Criminal Code is violated.

According to Section 145 of the Code of Criminal Procedure, an expert must not be summoned to answer a legal question. In other words, law enforcement authorities must not ask experts any questions related to punishability, legal qualification, subsumption, guilt or innocence, etc. Also, experts are obliged to abstain from assessment of legal aspects of the case to which they provide their opinion. Their task is to express opinions about the facts of the case, i.e. its technicalities and particularities; in practice, though, both prosecutors and investigators accept that summoned experts are asked legal questions and/or they express opinions of legal issues.

Since this is an obvious legal defect which causes that the evidence thus obtained cannot be used in a court of law, it is even more striking that this defect is being overlooked and tolerated even at the level of the prosecution. Unofficial explanations provided to parties representing victims of hate crime and extremist crimes is that the prosecutors actually do not have time, or some of them are simply not willing, to study the file in detail.

### c. *Proving intent and hateful motive*

In the process of elaborating this survey, almost 70 closed cases have

been examined. In most cases the prosecution was stopped at the stage of preliminary proceedings on the grounds that the conduct that had been the merit of the case was not a crime. In other words, the investigator failed to prove during pre-trial proceedings that the perpetrator's conduct fulfilled the condition of the presence of subjective element (i.e. hateful motive) of the crime.

Although it is an objectively difficult process, the investigator must not stop the prosecution simply because "the accused responded that he had no relations with the extremists nor did he know such persons when asked about his membership in extremist groups" or "his answer to the question whether he sympathised with extremist views was negative and he denied that he was an extremist himself".<sup>32</sup>

Sure, this kind of questions may be asked during the interrogation, but to consider the perpetrator's negative answers to be something that prevents the investigator from establishing the presence of subjective element of the crime is simply absurd.

## CZECH REPUBLIC

### 1. PROBLEMS INHERENT IN OR ENSUING FROM LEGAL REGULATION

#### a. *Inconsistency of legal regulation*

Perhaps the main problem of establishing the appropriate punishment for perpetrators of hate crime is insufficient and inconsistent legislation.

As far as the legislation on hate crime is concerned, Czech Republic's Criminal Code lacks a consistent legal regulation of hate crime for the time being. The legal regulation is quite fragmented, scattered through different parts of the Criminal Code amongst almost two dozens of bodies of offence. The concept of prosecuting hate crime combines hateful motivation determining guilt and punishment, relatively illogically: on the level of general aggravating circumstance and also on the level of qualified body of offence. As a result, the existing legislation does not provide protection to all persons that are threatened by discriminative criminal offences.

<sup>32</sup> Examples of argumentation contained in a judgments and decisions of law enforcement or courts (Archive of People Against Racism)

#### b. *Omitting the hateful motive from certain bodies of offence*

Most reports on extremism on the territory of the Czech Republic observe that sympathisers of extremist groups regularly perpetrate criminal offences of dangerous threatening, dangerous persecution and disorderly conduct.<sup>33</sup> Although hate crimes in the form of threatening, discrimination and disorderly conduct (i.e. criminal offences aimed against individuals) demonstrably take place, Czech legislation does not seem to react to that as yet. The Czech Republic's legal order does include provisions on the protection of groups of individuals sharing common characteristics such as race or religion; however, there are no provisions that would **protect an individual** against assaults motivated by hate, bias or discrimination.

In IUSTITIA has elaborated an extensive analysis of rulings issued by courts of law of the first and second instance, which indicated that when adjudicating on hate crimes that took place in public, courts of law usually choose to adjudicate also on the criminal offence of disorderly conduct; however, due to the absence of a hateful motive in the case of disorderly conduct, the criminal law insufficiently responds to the essence of such assaults, which lies not as much in attacking others but primarily in attacking others because of their dissimilarity. It goes without saying that attacking others solely on the grounds of their racial or other dissimilarity should be punished more severely because it is substantially more harmful to society than simple disorderly conduct caused by, say, drunkenness. If hate crimes are viewed as criminal offences that are primarily symbolic, or carrying a message, then their harmfulness lies exactly in their effect on the public.

#### c. *Courts of law do not punish actions that have actually been perpetrated but rather actions that are socially less harmful*

Due to the inconsistent and illogical legislation, courts of law often face problems with correct qualification of attacks motivated by hatred. The analysis of court rulings revealed that courts of law repeatedly (at least in one third of all examined cases) qualified these assaults incorrectly. When adjudicating on attacks that had been accompanied with defamatory statements, courts of law automatically tended to qualify perpetrators' actions merely as defamation while ignoring other, often

<sup>33</sup> Compare, for instance, to the *Report on Extremism 2015*, p. 33.

much more serious actions, like in the following case from the town of Hodonín, when vulgar insults were uttered in conjunction with death threats and the act therefore should have been qualified as dangerous threatening: “[The defendant] *continued in vulgar insults directed at the police patrol while insulting officer [...] with racially motivated expressions, making allusions to his affiliation with the Romani ethnic group and threatening to kill him.*”<sup>34</sup>

Similarly, a District Court in the town of Jičín adjudicated on a case in which the defendant obviously made a death threat on the grounds of the plaintiff’s nationality: “[The defendant] *first verbally attacked [...] and [...] with abusive and offensive statements, then attacked her physically [...] by knocking her to the ground; subsequently, he threatened to kill both of them by shooting them dead with a pistol, which he would bring, while yelling that he would “shoot down all the blacks and that the Gypsies should be gassed.”*”<sup>35</sup>

In both cited cases, a verbal attack of lower intensity was immediately followed by dangerous threats and even a physical assault. Therefore, both cases should have definitely been interpreted not as separate actions but as a display of intent in conjunction with subsequent dangerous threats or physical assaults.

A conclusion may be drawn that due to the absence of more appropriate bodies of offence, courts of law fail to punish actions that have actually been perpetrated; instead, they punish actions that are viewed as socially less harmful and therefore bear more moderate punishments.

## **2. VICTIMS’ DISTRUST OF LAW ENFORCEMENT AUTHORITIES**

In IUSTITIA has repeatedly encountered inadequate training and insufficient preparation of police officers in terms of treating victims of hate crime and members of vulnerable population groups in general.

A case in example was an assault against a music camp for talented Romani children during the school holiday of 2016. The camp ground was adjacent to the property of a man, who first attacked the children

34 Ruling of the District Court in Hodonín of January 6, 2015, case file No.3T171/2014.

35 Warrant of the District Court in Jičín, case file No.2T46/2012.

verbally, then he shot from an unknown type of weapon in the vicinity of the camp, and finally he broke into the camp’s kitchen and attacked one man. The camp principal called the police via the emergency hot-line. The police officer who answered the call tried to disparage the incident and reacted to the principal’s announcement of a shooting by saying that the perpetrator had already contacted him and said he was having problems with “Gypsies”. The police patrol was never dispatched to the crime scene, they started the investigation few days later. For all these reasons, the aggrieved party filed repeated complaints about the conduct of the police through In IUSTITIA. The police handled all complaints in a very brief and formalistic way without even trying to lull the fears of the aggrieved Roma or ever apologising to them, sending them a clear message that the police would not intervene in their favour if the need be.

This conduct of the police may increase the latency of hate crime in the future. After such a negative experience with law enforcement authorities, it is difficult to expect victims of future assaults with hateful motivation to turn to them again, while it is obvious that a failure to report hate crimes is a principal obstacle to investigating and prosecuting these crimes.

## **3. TENDENCY TO DISPARAGE HATE CRIMES**

In IUSTITIA has repeatedly encountered with unwillingness of law enforcement authorities to investigate and prosecute hate crime incidents at all or investigate and prosecute them as hate crime incidents. A great number of hateful assaults are being qualified as offences against neighbourly coexistence, which is particularly true of verbal criminal offences.

For instance, such was the way the police qualified actions of members of one family who attacked their neighbours of Ukrainian origin, including their 10-year-old daughter. They used xenophobic and humiliating language against the aggrieved.

Misdemeanour proceedings are bound by time limits. If the applicable authority fails to issue a decision on a reported misdemeanour within one year of filing a complaint, there is no way of punishing the unlawful action. Needless to say, a great number of misdemeanours proceedings end up this way.

As far as punishments are concerned, most victims generally perceive the punishments the Czech Republic's legal order envisages for these misdemeanours as too moderate and inadequate to the effects of perpetrators' actions.

#### **4. SECONDARY VICTIMISATION OF VICTIMS**

Throughout criminal proceedings, the victims who belong to various minorities (e.g. the Roma, foreigners, members of religious minorities, etc.) face a whole range of problems that lead to their secondary victimisation.

Generally speaking, very few police officers have undergone a proper training of how to treat victims of hate crime. Their knowledge of the victim's needs continues to be inadequate as the victims are still perceived primarily as the source of evidence.

In IUSTITIA once provided legal assistance to a Romani girl that had been attacked at a dance party. The investigating police officer began her interrogation by asking her about past criminal proceedings of her brother, although he must have known that the brother had been acquitted. Besides, he treated the victim improperly, using inadequately familiar language.

Also, In IUSTITIA continues to represent a Romani girl who was attacked during celebration of the New Year's Eve 2015. Although the investigation of her case has not been closed as yet, her boyfriend who allegedly attacked a female bartender on the same occasion has been convicted as of the day of elaborating this survey, this despite the fact that the bartender, unlike the Romani girl, did not suffer any wounds and there were no witnesses to the assault against her.

#### **5. EXCESSIVE EFFORTS TO PROTECT PERPETRATORS**

As part of its activities, In IUSTITIA often witnesses cases in which law enforcement authorities provide perpetrators with the kind of protection that may be perceived as excessive and is certainly not proportionate to the victim's interest in obtaining satisfaction.

In 2015, In IUSTITIA recorded a case in which two foreigners were attacked and stabbed; one of the victims suffered far-reaching conse-

quences. The assailant who stabbed both men because they spoke a foreign language received a suspended sentence. The courts justified the sentence by saying that the perpetrator used to lead an orderly life in the past and also referred to his problems during adolescent years when he was bullied, which caused his personality to develop in a pathological direction with propensity to addictions. The courts actually took the perpetrator's resocialisation to the heart so much that they sent him to resocialisation and rehab programmes. So, while one of his victims may never get his health entirely back, the perpetrator may come out of the whole thing as a cured person with a chance for a good future, which he wouldn't have had unless he brutally attacked two persons and almost ended the life of one of them.

Although ruining the perpetrator's life obviously should not be the goal of the punishment, the glaring disproportion between the damage caused to the victim and the punishment issued for the perpetrator may encourage the feeling in the former that state authorities protect majority perpetrators and therefore it is necessary to take justice in their own hands.

#### **6. PROBLEMS RELATED TO PROVING INTENT AND HATEFUL MOTIVE**

When investigating hate crimes, it is generally very difficult to prove the perpetrator's intent to attack the victim because of its dissimilarity, i.e. with a hateful motive. As a result, these actions are often qualified as simple assaults without hateful motives.

From this viewpoint, it is particularly problematic to prove intent and hateful motive with respect to hate speech. The police often tend to prove them by explicitly asking the perpetrators what they meant to say by their speeches or statements. As soon as the perpetrator (most probably out of completely purposeful motivation) denies any wrongful intent or motive, the police consider the case closed. Sometimes, the police justify harmlessness of perpetrators' actions by the fact that they do not show allegiance to any hateful movement on their social network profiles. As a result, the police may often shelve cases of threatening, defamation or instigation to hatred, although it is apparent or obvious that they are dealing with a textbook example of hate speech aimed against a national or religious minority where the perpetrator openly threatens to kill members of this minority.

## 7. INCONSISTENT INTERPRETATION AND APPLICATION OF LAW BY LAW ENFORCEMENT AUTHORITIES

In IUSTITIA frequently witnesses inconsistent interpretation and application of valid laws and sometimes completely different approaches to investigation and prosecution of hate crimes, which very much depend on the particular investigator or prosecutor that deals with the case. This inconsistency leads to undermining of legal peace as it largely impossible for lawyers working with In IUSTITIA to explain their clients what direction their case may take, unless they personally know specific investigators, prosecutors or judges. Needless to say, this has extremely disturbing effects on most victims of hate crime.

## 8. PROBLEMS RELATED TO PROSECUTING OF ONLINE HATE SPEECH

Last but not least, another problem In IUSTITIA repeatedly encounters in its practice is poor investigation and prosecution of hate speech crimes perpetrated via Facebook. As a communication platform that operates in a number of countries, Facebook will not provide information on its users unless it receives a qualified official request from a law enforcement or public security authority of a given country. For obvious reasons, it cannot afford to waste time reacting to regular e-mails or letters from investigators. Unfortunately, sending official requests is too cumbersome and time-consuming for the Czech law enforcement authorities; moreover, communication with Facebook representatives is often beyond their competence as it would have to be in English, which is a language most police officers cannot speak.

As a result, the police are often unable to identify the perpetrators of online hate speech and therefore shelve these cases.

### HUNGARY

This section summarizes the findings of interviews with representatives of five non-governmental organisations and the Supreme Court of Hungary.

None of our interviewees holds the opinion that it is the criminal legislation or the rules of the criminal procedure that seriously hinder the efficiency of criminal proceedings related to hate speech and hate crime. Instead, it is the law enforcement and application that causes the large

est problems, especially in the stage of investigation. However, our interviewees also directed some of their criticism at the legal context.

## 1. PROBLEMS IN CRIMINAL LEGISLATION (ACT C OF 2012 ON THE CRIMINAL CODE)

### a. Certain types of hate speech and hate crime are not covered

- **Discrimination is not covered at all:** The country report on Hungary issued by the European Commission on Racism and Intolerance (ECRI) found that certain types of incitement or violence against a member of a community was not covered in the legislation. Therefore, ECRI recommended extending the scope of relevant legislation to include, for example, incitement to discrimination against a member of a community.
- **Homicide with bias motive is not covered at all:** Háttér Society noted that the statutory definition of “violence against a member of a community” (Section 216) does not cover homicide with bias motive. Homicide (Section 160) itself can be qualified by the aggravating circumstance of “malice aforethought or malicious motive”, which is used to imply a bias motive, among a number of other motives, but there is no way of separately qualifying homicide with a bias motive.
- **Attack against property is not covered clearly enough:** As already mentioned, according to the government’s justification of the Criminal Code, “violence against a member of a community” includes an attack on property, but it is not explicitly stated in the text of that section. Therefore, Háttér Society argues, an attack against property with a bias motive is not always qualified as “violence against a member of a community” in legal application practice. Háttér Society recommends explicitly including an attack against property in “violence against a member of a community” or including a bias motive in the paragraph on vandalism (Section 371) as an aggravating circumstance.
- **The scope of hate crime is not defined clearly enough:** According to the Hungarian Helsinki Committee, “incitement against a community” is usually interpreted in the narrowest possible sense, which makes it a “dead, dormant legal concept”. The representative of Háttér Society is not sure whether the legal measure should be revised or law enforcement authorities should be encouraged to interpret the legal measure more broadly.



## b. The open list of protected groups

- **The open list of protected groups creates legal uncertainty:** In its analysis, the Hungarian Civil Liberties Union argues that the phrasing “certain social group” or “certain social groups” in the legal definitions of “violence against a member of a community” and “incitement against a community” creates legal uncertainty and allows for practices that oppose the intention of legislators.

## 2. PROBLEMS RELATED TO PERFORMANCE AND ORGANISATIONAL CULTURE OF LAW ENFORCEMENT AUTHORITIES

### *On the part of the police:*

- **Police patrols lack professional competence:** The lack of knowledge about hate crime and hate speech results in failing to identify reported incidents involving these types of crime properly and refer them to the proper specialised investigation body called Police Hate Crime Network. Investigation by insufficiently qualified professionals consequently leads to failing to examine the actual motives and qualifying the case as disorderly conduct (Section 339), vandalism (Section 371) or battery (Section 164). Action and Defence Foundation emphasised the need for specific training of the part of the police.
- **Prejudiced organisational culture:** Almost all interviewed NGOs pointed out that the efficiency of the police in investigating these crimes is negatively affected by their stereotyped approach to vulnerable groups, which leads to subjecting the victims of hate crime and hate speech to secondary victimisation. This results in distrust of the police, especially among members of vulnerable groups, and contributes to systematic underreporting of such incidents and eventually to distorted crime statistics. This prejudiced organisational culture and the ensuing distrust is a general trend all around in Europe, but the representative of Amnesty International Hungary noted that it is manifested more strongly in Hungary than, for example, in Great Britain.
- **Pervasive anti-Gypsyism:** According to Amnesty International Hungary, it is members of the Romani minority that have the least trust in the Hungarian police. Hungarian Civil Liberties Union seconded this opinion, adding that the Roma faced the strongest prejudice from

the police and that members of Hungary’s largest ethnic minority were humiliated by the police even as plaintiffs. The situation is the worst in north-eastern regions of Hungary. As a result, a vast majority of hate crime assaults against the Roma remains unreported.

- **Selective priorities of police leadership:** The top brass of law enforcement authorities do not consider hate crime and hate speech to be a special priority, based on the misconception that the low number of hate crime and hate speech incidents in official statistics reflects the occurrence of these crimes accurately. According to the Hungarian Helsinki Committee, efforts are needed to make the authorities recognise the existing inaccuracy of crime statistics.
- **Bad communication strategies:** The representative of Amnesty International Hungary recollected that in 2013, after LGBTI participants of the Budapest Pride parade had been attacked, the official police statement issued to the public claimed that the attack had not been motivated by bias. It turned out quite soon that the statement was wrong. Cases like this can also contribute to distrust of the police, especially among members of vulnerable groups.

### *On the part of the prosecution*

- **Dependence on the work of the police:** Once the police fail to qualify an incident as hate crime or hate speech during the phase of reporting and investigation, the work of the prosecution will also work with the false qualification. At later stages of criminal proceedings, it is primarily thanks to the efforts of NGOs that at least some of these cases are requalified as hate crime or hate speech incidents.
- **Pressure for quantitative results:** As professional advancement largely depends on the number of successful indictments, prosecutors are motivated to opt for simpler indictments that are easier to prove in court, such as disorderly conduct, instead of violence against a member of a community, which requires more work to produce the necessary proofs.
- **Lack of transparency:** The representative of Háttér Society noted during the interview that it was difficult for them to track activities of the prosecution, as compared to the police, due to the lack of communication on the part of the Office of General Prosecutor, which always uses the same person to communicate with the society regarding particular issues, giving an impression that the Office wishes to keep this NGO at bay for some reason.



### 3. PROBLEMS IN LAW ENFORCEMENT PROCEDURES

- **Legislation on hate speech is virtually neglected:** According to Háttér Society and the Hungarian Civil Liberties Union, law enforcement authorities virtually do not use the legal concept of “incitement against a community” in investigations and legal proceedings.
- **Other members of the community are not entitled to take action:** In case of the criminal offence of “incitement against a community”, only direct victims of incidents can act as plaintiffs, not just any member of their community. Action and Defence Foundation recently filed a complaint with the Constitutional Court of Hungary regarding this issue.
- **Incitement to hatred is not sanctioned:** Although the concept of the criminal offence of “incitement against a community” includes incitement to hatred, in practice it is used to sanction only incitement to violence, i.e. when there is a clear and imminent danger of violence. The representative of Action and Defence Foundation suggested that it would be justified to extend law application to include sanctioning of incitement to hatred alone, i.e. without the necessity of a clear and imminent danger of violence to be present.
- **Focus on the perpetrator instead of the plaintiff:** The Hungarian Civil Liberties Union is of the opinion that criminal proceedings pay attention primarily to the perpetrator, while the plaintiff is seen as a marginal element. Sometimes, for instance, victims are required to testify against their children’s murderer who is standing right behind them; a physical separation of the perpetrator would be preferable in such cases. In a number of cases, victims dropped the charges they had pressed because they were afraid to meet the perpetrators in the courtroom. Also, the representative of the Hungarian Civil Liberties Union is yet to succeed in getting the police to provide protection to the first hate crime victim.
- **Double standards in victim treatment:** The experience of Action and Defence Foundation is that when their representative accompanies victims of hate crime or hate speech, law enforcement authorities treat them in a way that respects human dignity and applicable laws; however, he has doubts whether the victims receive the same treatment without a qualified legal representative.
- **Wrong qualification:** The police typically qualify incidents of hate crime as disorderly conduct (Section 339, Act C of 2012 on the Criminal Code) instead of violence against a member of a community (Section 216).

- **Improper collection of evidence:** The representatives of Hungarian Civil Liberties Union and the Hungarian Helsinki Committee mentioned the following typical police shortcomings in the process of collecting evidence:
  - a. Inadequate investigation of the crime scene, including failures to seize all pieces of evidence;
  - b. Insufficient questioning of witnesses, including failures to identify potentially hateful motives;
  - c. Failing to obtain surveillance camera footage;
  - d. Failing to research the background of the suspect(s). Generally speaking, investigators often fail to take prejudice into account (“Authorities do not pay attention to the contents of the consciousness.”).
- **Requests to divulge information are refused:** A large part of hate speech takes place online. But the representative of Action and Defence Foundation pointed out that companies operating social media seldom divulge information that is required by investigators (e.g. personal data of its users).
- **Failing to disperse anti-Roma demonstrations:** Hate crime against the Roma often takes place during anti-Roma demonstrations organised by extremist groups. The representative of the Hungarian Civil Liberties Union mentioned several occasions when the police not only failed to disperse such demonstrations, which eventually escalated into violence against the Roma, but they even seemed to endorse these events by their presence.
- **Excessive workload on the part of the police:** The representative of Action and Defence Foundation noted that the cooperation between the police and the NGO was negatively affected by the lack of capacity on the part of the police due to overwork. It makes the police focus on issues that presumably have more social impact, such as crimes against life.

### 4. PROBLEMS ENSUING FROM THE STATUS OF THE VICTIMS

According to Háttér Society, it is necessary to make constant efforts aimed at increasing people’s awareness of hate crime and hate speech issues and teaching them that it is important to report these incidents even if they think there is a low chance that the criminal proceedings will be successful.

## MALTA

According to the National Report on the State of Hate Crime that was elaborated by The People for Change Foundation, the legal framework is relatively clear but the lack of resources and political will to investigate and prosecute these crimes constitutes an obstacle.

### 1. NON-EXISTENCE OF AVAILABLE DATA ON HATE CRIME/HATE SPEECH

The fact that law enforcement authorities do not have a habit of collecting, analysing and publishing data on hate crime and hate speech is a serious problem, which partly explains the gap between government officials and civil society subjects regarding the perception of the extent of these types of crime. The police in Malta declined to cooperate in the research of this project.

### 2. APPROACH OF THE POLICE TO VICTIMS

There is no evidence to support the claim that the institutional setting is the principal problem. Although a recent FRA report, citing experts from civil society circles, highlights concerns that law enforcement officers may hold discriminatory attitudes themselves, this is mostly a matter of training and raising of awareness rather than an institutional setting per se.

For example, a prison warden was arrested after he posted a comment of “I hope it’s burning with them inside” below a shared online article about a string of arson attacks on facilities housing asylum seekers in Sweden; he had to pay a fine of €5,000 on the charge of abusing official computer equipment but was acquitted of the charge of inciting racial hatred because the targeted group was not in Malta.<sup>36</sup>

The main challenges pointed out by the participating non-governmental organisation include the following:

- The police are uncooperative as they refuse to collect and/or provide data on hate crime;

<sup>36</sup> Matthew Agius, “Magistrate Highlights Loophole in Online Hate Speech Law,” *Malta Today*, May 13, 2016; available at: <http://www.maltatoday.com.mt/printversion/65222/#.WQL8I4h97IV>.

- Hate crime incidents are dealt with by the police directly as there is no involvement on the part of General Prosecutor except in appeals process;
- Lack of available data;
- Lack of resources, particularly financial resources to follow up on cases;
- Lack of capacity, especially awareness-raising of trained personnel;
- The notion of “victim” is imbued with gender and racial aspects (“the victim needs to get over it”);
- Hate crime and hate speech incidents are the violent result of layers of xenophobia and racism within society.

## LITHUANIA

### 1. LOW CLEARANCE RATE OF THE CASES INVOLVING INCITEMENT TO HATRED

Official statistics indicate that a significant part of investigations of cases involving incitement to hatred is terminated or suspended on the basis of Sections 3 and 212 of the Code of Criminal Procedure, which provide for circumstances under which criminal proceedings are not possible as well as instances of terminating pre-trial investigation.<sup>37</sup> The criminal proceedings are usually terminated without establishing that the act had the character of a criminal offense and without identifying the person who committed the act.

According to one of the NGOs that work in the field of hate crimes<sup>38</sup>, the most frequent arguments cited by law enforcement authorities to explain their failure to initiate criminal proceedings include the following:

- “During the examination of the statement, no data was retrieved that it was purposefully, intentionally intended to incite violence or hatred against a group of people”;
- “The content of the written comment by the person does not con-

<sup>37</sup> Code of Criminal Procedure of the Republic of Lithuania, 2002, No. 37-1341, Article 3 and Article 212, <https://www.etar.lt/portal/lt/legalAct/TAR.EC588C321777/eOTCCBWCJC>

<sup>38</sup> European Foundation for Human Rights (EFHR) actively submits complaints to the police and the prosecutor’s office for cases of incitement to hatred (mainly in the cyberspace). Throughout the years of EFHR’s activities there are 591 complaints for the cases of incitement to hatred and around 50 successful cases. During 2015-2017 this organisation provided around 180 complaints, for less than half of which investigations were initiated. More information: <http://lt.efhr.eu/>

tain a direct call to incite other persons to discriminate against a group of people or a person belonging to it, but rather expresses a negative opinion, an indignation, a critical, irrational opinion”;

- *Ultima ratio* – “The mere unethical dimension of the public comment or statement is not enough to be criminalised”.

Meanwhile, police representatives state that investigation of cases that possibly involve incitement to hatred is often not initiated when investigators assume in advance that the outcome of the investigation will be “unsuccessful”. In other words, when law enforcement officers do not see a sign of criminal offense in actions that have taken place or, in compliance with the existing case law, they assume that perpetrators will not be convicted in court, they choose to do nothing. According to police representatives, investigation of such cases is considered as a “waste of resources”.<sup>39</sup> Since law enforcement officers strongly rely on the existing case law when refusing to initiate investigation of cases that possibly involve incitement to hatred, it should be worth reviewing recent case law of Lithuanian courts regarding incitement to hatred.

## 2. ADJUDICATING ON CRIMINAL ACTS BY COURTS OF LAW

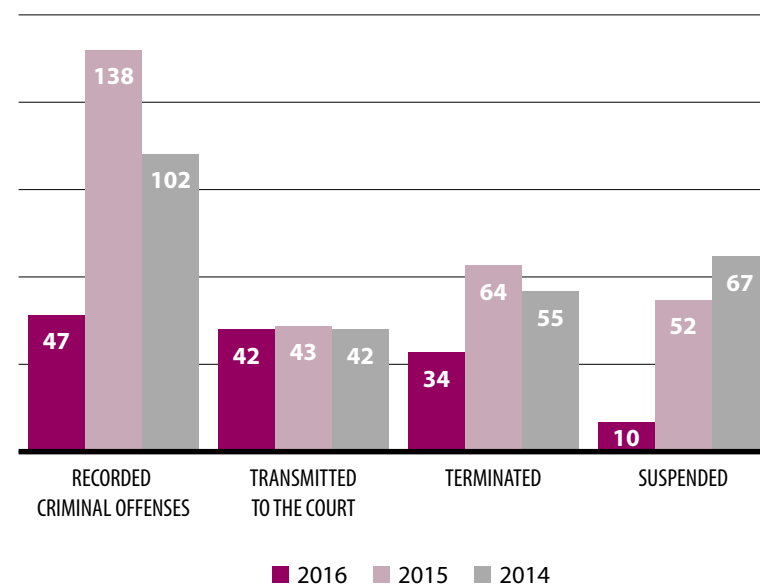
By analysing recent case law, it is possible to identify certain criteria that national courts of law consider when qualifying an act as a hate crime or incitement to hatred and deciding on the application of criminal liability as *ultima ratio*. However, such criteria as (i) the context; (ii) the reality of incitement; and (iii) the expert’s conclusion cause certain problems in cases involving incitement to hatred. As legal practice in this category of cases is still developing, it is worth noting that these criteria are attributed different weight at times. There are cases when courts of law do not assess aforementioned criteria at all or they evaluate them contrary to the previously developed practice.

When deciding whether a certain expression has gone beyond the bounds of freedom of expression, the European Court of Human Rights (ECHR) also draws attention to the context, which is undoubtedly one of the criteria highly relevant to jurisprudence. The ECHR notes that a decision on the necessity to limit the freedom of expression is usually

<sup>39</sup> Round table discussion “Effective response to hate crimes”, at the Ministry of the Interior, 15 June 2017.

determined by the interaction of various factors, not any of them being considered in isolation. Consequently, the assessment of the provisions of Section 10 of the European Convention on Human Rights and Fundamental Freedoms with respect to the cases in question is highly relevant to the context of a particular case.<sup>40</sup>

**Investigation termination - Article 170 of the Criminal Code**



**Graph 2: Results of criminal investigation according to Section 170 of the Criminal Code in 2014 – 2016**

Source: National Hate Crime Report of Lithuania, 2017

<sup>40</sup> European Court of Human Rights, *Perinçek v. Switzerland*, Application no. 27510/08, 15 October 2015, <http://hudoc.echr.coe.int/eng?i=001-158235>

Meanwhile, in the latest case law of Lithuania, the criterion of context is not ambiguous. For example, having acquitted a person who incited hatred by commenting on the LGBTI community on one news portal, Supreme Court of Lithuania argued: *“The general social context and the context of the particular case under discussion are not so tense that in itself would justify stricter restrictions on the exercise of the freedom of expression associated with it and the ultimate punishment of criminal liability as ultima ratio application”*.<sup>41</sup>

It is important to rely on objective facts of social relationships that are relevant to a particular case in order to properly apply the criterion of context. Bearing in mind the aforementioned comment, it is worth noting that public opinion polls suggest a distance between the “majority” population and the LGBTI community, while organisations representing the LGBTI community feel a great deal of bullying and hate speech directed at this community.<sup>42</sup> In this particular case, the court’s opinion that the social context is not tense is not entirely accurate.

It is also worth noting that the criterion of context is not consistently taken into account in all cases of incitement to hatred; for example, some court rulings ignore this criterion completely.<sup>43</sup>

The analysis of the case law also reveals that for Lithuanian courts to view that statement as an incitement to hatred, a requirement for individuals to be actually instigated or inclined to commit a criminal offense occurs to be in order. For example, in the aforementioned case, the Supreme Court of Lithuania argued: *“By such a statement, V. G. could not cause a real threat to the protected values of the criminal law at issue, i.e. to violate the equality of the homosexual group, its dignity as a community (to the extent that dignity is protected in compliance with Section 170 of the Criminal Code). Also, this statement, which is contrary to morality, could not actually incite the readers of the portal to violence against this group of people.”* This interpretation of the court is not consistent

.....  
41 Decision of the Supreme Court of Lithuania of 1 March 2016 in the criminal case No. 2K-86-648/2016.

42 Izabelė Švaraitė “How much do hate crimes really happen in Lithuania?“, 13 January 2017, <http://manoteises.lt/straipsnis/kiek-lietuvoje-tiesu-ivykdoma-neapykantos-nusikaltime/>

43 Decision of Vilnius County Court of 24 May 2016 in the criminal case No. 1A-335-209-2016, Decision of Panevėžys County Court of 19 December 2016 in the criminal case No. 1A-276-337/2016.

with the definition of a criminal offence provided in both the case law of the ECHR<sup>44</sup> and Parts 2 and 3 of Section 170 of the Lithuania’s Criminal Code.<sup>45</sup>

### 3. EXPERT OPINION

It is also interesting that when adjudicating on cases of incitement to hatred, courts of law usually require an expert opinion assessing the content of a statement or comment.<sup>46</sup> It is not possible to determine from the case law why in some cases the courts rely on such assessment while in other cases they decide not to take them into account at all. Also, the expert opinions that assess the content of a speech are usually provided to the courts by philologists who evaluate the statements only from the linguistic viewpoint. But in order to evaluate the content of a statement or comment properly, it would be useful to refer to experts who are familiar with different human rights issues.

### 4. INSUFFICIENT AWARENESS OF VULNERABLE GROUPS

As mentioned before, police officers are often unable to qualify hate crimes properly. This often leads to situations when victims of hate crime fail to receive proper help from police officers, which contravenes the EU Directive on Victims’ Rights. In 2016, Human Rights Monitoring Institute together with its partner NGO organised training courses for police officers and investigators. Not only did these trainings reveal that most officers were unfamiliar with the Directive on Victims’ Rights, but they lacked even the elementary knowledge of vulnerable groups of persons and their needs. Due to this, the risk of secondary or repeated victimisation of hate crime victims increases, while the probability of victims contacting law enforcement if they encounter crimes of similar nature in the future declines.

.....  
44 European Court of Human Rights, *Perinçek v. Switzerland*, Application no. 27510/08, 15 October 2015, <http://hudoc.echr.coe.int/eng?i=001-158235>

45 Part 2 of Article 170 of the Criminal Code provides that provides that criminal acts can be both bullying and contempt.

46 The conclusions are usually provided by the The Office of the Inspector of Journalist Ethics, Office of the Equal Opportunities Ombudsperson specialists and other experts.

## SUMMARY AND CONCLUSIONS

This comparative survey attempted to summarise the findings, which the partner non-governmental organisations identified in their national hate crime reports. Based on this summary, a conclusion may be drawn that the phenomena of hate crime and hate speech have become a household problem in all five participating countries.

**The common feature of all examined countries** is that their **penal codes recognise a hateful motive**, be it vis-à-vis verbal criminal offences and vis-à-vis physical assaults against individuals or their property. All analysed criminal codes regulate the issue of hate crime in the form of qualified bodies of offence and in the form of separate specific criminal offences (i.e. crimes whose hateful motive is directly incorporated in the basic body of offence). At the same time, this approach pre-determines that hate crime **does not have a separate place in criminal codes** but individual provisions are basically scattered through different parts of the law.

In their national reports, the partner countries also agreed that **legislation was not perceived as a cardinal problem** that would prevent combating and eliminating these types of crime, perhaps except for the Czech Republic, which included shortcomings of the existing legal regulation among the key problems; nevertheless, all participating countries claimed in unison that the key problem was the process of law enforcement and application.

In terms of legislation, the closest two countries are Slovakia and the Czech Republic, which both work with the concept of extremism; while in the latter case, it is primarily at the level of government policies, in the case of Slovakia the phenomenon of hate crime is directly incorporated among the so-called criminal offences of extremism. From the viewpoint of **specification and legal elaboration of unlawful actions**, Hungarian and Slovak legislation seem to be the most specific and thoroughly elaborated. On the other hand, the least elaborated in terms of unlawful actions' specification is the criminal law of Lithuania, which apart from "incitement to hatred" does not recognise any other separate criminal offence whose hateful motivation would be incorporated in its basic body of offence.

**With respect to protected characteristics of vulnerable groups and**

their explicit incorporation into the criminal code, the Criminal Code of the Czech Republic is perhaps the least generous, as it explicitly protects only five groups. Hungary seems to have an opposite problem in this respect as the enumeration of protected groups is relatively open and in some cases the law fails to specify what group it actually refers to. According to Hungarian non-governmental organisations, such approach undermines legal peace and law predictability.

In Slovakia, Hungary and the Czech Republic **the most frequent victims of hate crime are the Roma**, closely followed by immigrants, which was the case especially in 2015. In Lithuania, the dominant motive for hate crime was victims' affiliation to another nation and to the LGBTI community. In Malta, the only available data on hate crime are related to members of the LGBTI community.

When attempting to **quantify the problem of hate crime and hate speech**, all participating countries encountered the same problem: official statistics kept by applicable law enforcement authorities are not sufficiently specific and do not allow for identifying certain closer specifications of perpetrated crimes, for instance whether the criminal offence was perpetrated verbally, or which particular hateful motive was involved. For instance, one can never learn from official statistics kept by Slovakia's Ministry of Interior how many cases were perpetrated in a given year in the category of crimes whose hateful motive is incorporated in the basic body of offence (except violent hate crimes). Something similar also applies to Lithuania. Malta is a completely failing country in this respect, as its law enforcement authorities do not keep any publicly available information on prevalence of these types of crime.

Another commonly shared and recognised problem of examining the number of hate crime and hate speech incidents in particular countries was their **high degree of latency**. All participating non-governmental organisations agreed that officially registered numbers of hate crime and hate speech incidents failed to reflect reality. They identified the following main reasons for the high degree of latency:

- Mutual distrust between law enforcement authorities and vulnerable communities;
- Shortage of resources and capacities to provide assistance to victims, which determines not only practical possibilities of helping

the victims but also the victims' willingness to enter legal proceedings alone, without legal and other support;

- Victims' first-hand experience with victimisation as well as with disparaging of the criminal acts and lack of resolution on the part of law enforcement authorities, which discourages the victims from reporting the crimes and cooperating with them.

The core of the comparative survey was to analyse the shortcomings in the field of law application and enforcement, i.e. investigating and prosecuting hate crime. It is interesting that despite their different legal environments, virtually **all participating countries encounter with same kind of problems**, particularly:

- Problems related to legal qualification, particularly the tendency of law enforcement authorities to qualify acts of hate crime and hate speech in a mitigating and even disparaging manner (Slovakia, Czech Republic, Hungary, Lithuania);
- Tendency to ignore virtual hate speech (all countries);
- Problems with proving perpetrators' intent and hateful motive (Czech Republic, Slovakia, Lithuania);
- Problems with using expert opinions (Slovakia, Lithuania);
- Often hostile disposition of the police toward members of the Romani minority (Czech Republic, Hungary, Slovakia).

Direct results of these problems include the low number of criminal acts qualified as hate crime or hate speech, the low clearance rate, the tendency to terminate criminal proceedings and the low number of prosecuted and convicted perpetrators.

The partner non-governmental organisations from Slovakia and Hungary intend to contribute at least partially to eliminating some of the factors determining the high latency of hate crime and hate speech by introducing an **effective online tool to report these types of crime** in their respective countries. When designing the tool, they intend to build on the past experience of their partner organisation from the Czech Republic, which has already implemented a similar tool. The online reporting mechanism, which was scheduled to be launched in the mid 2018, will simultaneously represent a culmination in the mutual cooperation of all the partner countries that participated in implementing of the project entitled Tackling Hate Crime and Hate Speech.

---

## HATECRIME AND HATE SPEECH REPORTING MECHANISMS IN EUROPE: A COLLECTION OF GOOD PRACTICES

---

## METHODOLOGY

This document on hate crime and hate speech reporting mechanisms is one of the outcomes of the *Tackling Hate Crime and Hate Speech* project (JUST / 2015 / RRAC / AG / VICT / 8991), supported by the European Commission. The implementation of the project was carried out by non-governmental organizations from Slovakia (People in Need), Czech Republic (In IUSTITIA), Hungary (Subjective Values Foundation), Lithuania (Human Rights Monitoring Institute) and Malta (The People for Change Foundation).

The basis for creating a collection of examples of good practice in reporting hate crime and hate speech were two methods of collecting data on such mechanisms in Europe:

### 1. IDENTIFICATION OF EXAMPLES OF GOOD PRACTICE BY PARTNER COUNTRIES

One of the roles of partner organizations involved was to identify existing hate crime and hate speech reporting tools in their country. Collection of data on these mechanisms was guided by a methodology developed within the project as well as structured questionnaire capturing all the essential elements of hate crime and hate speech reporting mechanisms.

#### CZECH REPUBLIC

Out of all the partners, In IUSTITIA from the Czech Republic was the only one who operates its own reporting mechanism. In addition, the partner organization also described a tool operated by the police:

- In IUSTITIA tool
- Hate crime reporting mechanism provided by the Czech police
- Hate speech and cyberhate reporting mechanism provided by the Czech police

#### MALTA

The People for Change Foundation, a non-governmental organization from Malta, described three reporting tools:

- eMORE – Monitoring and Reporting Online Hate Speech in Europe
- Report Racism Malta
- UNI-FORM: Bringing together NGOs and security forces to tackle hate crime and on-line hate speech against LGBT persons

#### LITHUANIA

Lithuanian representatives analysed the tools operated by a fellow NGO from Lithuania and also a tool provided by state authority:

- [www.epolicija.lt](http://www.epolicija.lt)
- Lithuanian centre for human rights (online application form)
- Communications regulatory authority of the republic of Lithuania: hotline “Friendly Internet”
- Uni-form – mobile application

#### HUNGARY

The Hungarian partners - Subjective Values Foundation- analysed three examples of good practice namely by:

- Hate speech Action and Protection Foundation
- Hate Crime European Roma Rights Centre
- Hate Speech National Media and Info-communications Agency.

#### SLOVAKIA

In the case of Slovakia, the situation was different since there is no on-line reporting mechanism for hate crime. Only one hate speech tool has been identified, but it cannot be regarded as an example of good practice, quite on the contrary. For this reason, it is presented in this publication rather as an example of bad practice and can serve as an example of what to avoid in the development and operation of the reporting mechanism:

- [www.stopline.sk](http://www.stopline.sk)

### 2. INTERNATIONAL SEMINAR ON REPORTING INSTRUMENTS IN BRATISLAVA

Additional source of information used in this collection was an interna-

tional seminar on online mechanisms for collecting data on hate crime and hate speech organized by the People in Need as one of the outputs of the project. The seminar was organised in Bratislava on November 2017 with participants from several European countries representing NGOs, state authorities and academia. Presentation of online tools was provided by the representatives of the Czech partners from In Iustitia, the Maltese partners The People for Change Foundation and two invited participants: **Mrs. Kopytowska from University of Lodz**, presenting the existing mechanism in Poland and **Mr. Shane O'Curry the representative of ENAR-Ireland**, who presented a similar mechanism implemented in Ireland.

The presented collection of examples of good practice has emerged as a joint material of the countries participating in the project and Shane O'Curry from ENAR Ireland and Mrs. Kopytowska from University of Lodz, who attended the seminar.

### 3. ONLINE QUESTIONNAIRE

The description and information on the analysed mechanisms are mostly contained in the answers in the questionnaire that was disseminated during the project.

We received a completed questionnaire also from organisation **Faith Matters** from United Kingdom: **Tell Mama**, which is one of the best examples of good practices and which we have also included in this publication.

We believe that this collection will help other colleagues from non-governmental organizations in Europe or other entities that are currently facing the same challenges as Slovakia is: to create an effective mechanism for collecting data on hate crime and hate speech. In doing so, they might want to draw inspiration from examples of similar working tools already implemented throughout Europe.

*Irena Bihariova, editor*

## COLLECTION OF ANALYSED REPORTING MECHANISM IN EUROPE

The outcome of data collection on reporting mechanisms is presented below in a table. The table contains an overview of the majority of tools analysed by the project partners and experts from across Europe. None of them could be regarded as an ideal example of such mechanism. During the analysis, strengths and weaknesses of several such mechanisms were identified. A notable exemption is the *stopline.sk* - tool from the Slovak Republic, which has been analyzed as an example of bad practice.

When evaluating the questionnaires that were used to collect information on individual instruments, the following aspects were considered in particular:

### 1. The aim and purpose of the instrument

- Is the tool used for data collection and monitoring, or is it linked to law enforcement?
- What is happening with the report that is reported to the mechanism operator?
- Are the collected incidents reflected in the official crime statistics, or processed in national reports?
- Is any assistance offered to the person reporting the incident and if there is, what kind of assistance?

### 2. Accessibility to the target groups

- The form of the mechanism/communication channel (online questionnaire, hotline, email address etc.)
- Who can report the incident (victim, witnesses, third parties)
- Languages used
- Visibility and methods of promotion
- Number of reported incidents annually

### 3. Protection of the reporting individual and communication with him/her

- The possibility to report the incident anonymously
- Who receives information obtained using the tool



HUNGARY	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
<b>Action and Protection Foundation</b> (NGO) <ul style="list-style-type: none"> <li>• online, questionnaire,</li> <li>• email address,</li> <li>• in person</li> <li>• Telephone hotline 24/7</li> </ul>	Reporting hate speech <ul style="list-style-type: none"> <li>• Reports are weeded first by NGOs to remove clearly irrelevant reports</li> <li>• Legal assistance</li> </ul>
<b>European Roma Rights Centre</b> <sup>3</sup> (NGO) <ul style="list-style-type: none"> <li>• online questionnaire</li> </ul>	Reporting hate crime and hate speech <ul style="list-style-type: none"> <li>• Data collection to gain understanding of the extent of the issue</li> <li>• A member of the legal department selects relevant reports in order to submit FOI requests to national authorities (e.g. to know if an investigation was opened)</li> </ul>
<b>The National Media and Info-communications Authority</b> (state authority) <ul style="list-style-type: none"> <li>• online questionnaire</li> </ul>	Reporting hate speech <ul style="list-style-type: none"> <li>• Reports are screened first by NGOs to remove clearly irrelevant reports</li> <li>• All information is submitted to the law enforcement authorities</li> <li>• The National Media and Info-communications Authority operates a central database of rulings on disabling access to electronic information (hereinafter referred to as “KEHTA”). KEHTA collects currently the data of orders on disabling access adopted by courts and National Tax and Customs Administration and forwards it to electronic communications service providers. The data contained in the KEHTA is not considered public information.</li> </ul>

Table 1: Overview of the majority of tools analysed by the project partners and experts

MALTA	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
eMORE – Monitoring and Reporting Online Hate Speech in Europe <sup>4</sup> <ul style="list-style-type: none"> <li>• mobile app</li> <li><a href="https://www.emoreproject.eu/about-project/">https://www.emoreproject.eu/about-project/</a></li> </ul>	Reporting hate speech <ul style="list-style-type: none"> <li>• Referrals to NGOs and services</li> <li>• The reports are used for research, and the NGO does not undertake to report them further.</li> <li>• According to the NGO running the service, the reporting tool will serve in data collection and streamlining of referrals.</li> <li>• When there occurs a clear case of hate speech, SOS Malta will report it to social networks and authorities, and sends follow-up to the reporting individual on the app.</li> </ul>
REPORT RACISM MALTA - the People for Change Foundation (NGO) <ul style="list-style-type: none"> <li>• online questionnaire</li> <li>• paper forms</li> <li><a href="http://www.reportracism-malta.org/">http://www.reportracism-malta.org/</a></li> </ul>	Reporting hate speech and hate crime <ul style="list-style-type: none"> <li>• Reports are weeded first by NGOs to remove clearly irrelevant reports</li> <li>• The decision to refer to authorities depends on the wishes of the victim or witness reporting.</li> <li>• Support for victims: basic information on the process, support with filing formal reports, referral to other services.</li> </ul>
UNI-FORM The representative in Malta is Malta Gay Rights Movement (MGRM). <sup>5</sup> <ul style="list-style-type: none"> <li>• mobile app</li> <li><a href="http://www.uni-form.eu/en-us">http://www.uni-form.eu/en-us</a></li> </ul>	Reporting hate speech and hate crime against LGBTI persons <ul style="list-style-type: none"> <li>• Reports are weeded first by NGOs to remove clearly irrelevant reports</li> <li>• Legal assistance</li> <li>• Psychological assistance/counselling</li> </ul>

LITHUANIA	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
Lithuanian Police Department under the Ministry of Interior  • Online questionnaire <a href="http://www.epolicija.lt">www.epolicija.lt</a>	Reporting all criminal acts  • Reports are submitted to the law enforcement authorities • If applicant provides his/her contact details, police can contact them for additional questions or inform about the course of investigation
Lithuanian Centre for Human Rights (NGO),  • Form on website <sup>6</sup>	Reporting Incitement to hatred  • A simplified reporting form on website; after the submission, it is converted into a complaint and then the individual has to forward it to the police through an e-mail reporting mechanism themselves
Hotline "Friendly Internet" - Communications Regulatory Authority of the Republic of Lithuania (RRT).  <a href="https://pranesk.draugiskasinternetas.lt/en/about-us/7">https://pranesk.draugiskasinternetas.lt/en/about-us/7</a>	Reporting cyberbullying, paedophilia, pornography, violence, racism/xenophobia • All reports are screened by dedicated hotline employees • If the reported content is illegal or harmful and is located on the Lithuanian servers, the information is forwarded to the appropriate Lithuanian institutions (Police Department or the Office of the Inspector of Journalist Ethics). • In case the illegal or harmful content is located in international servers, such information is forwarded to appropriate hotline of INHOPE
CZECH REPUBLIC	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
In IUSTITIA <sup>7</sup> (NGO)  • online questionnaire • email address – <a href="mailto:poradna@in-ius.cz">poradna@in-ius.cz</a> • telephone • in person  <a href="http://www.in-ius.cz/formular/">http://www.in-ius.cz/formular/</a>	Reporting bias-motivated crime, hate speech, misdemeanour or harassment • The reporting person is notified about the report by way of automatic response. When asked for help, the person is contacted within 3 working days and provided with necessary information and/or offer of social and legal services. • Legal assistance – representation at the court by In IUSTITIA • Psychological assistance/counselling – only contact details of the respective counsellors • social assistance and counselling, assistance with media coverage, assistance with safety plan etc.

IRELAND	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
iReport.ie ENAR Ireland	Reporting: 1. Racism in the media or on the Internet 2. Physical harm / abuse / damage / discrimination 3. Graffiti • The primary purpose of iReport.ie is to produce parallel data on hate incidents and hate crime, rather than refer to the Police • ENAR Ireland has an agreement with some legally empowered bodies on referring of possible strategic litigation cases. • Its "Signposting document" provides people with information on support services and pathways to redress. • They also link victims with relevant network member organisations who can provide support. The principle purpose of the system is to be able to log racist incidents for an existing network of support organisations. • Anonymised cases and data are published in reports and are used for analyses. <sup>8</sup> ENAR Ireland publishes its data in twice yearly reports and thematic reports on specific aspects of racism (EG Afrophobia, Islamophobia etc). Reports are distributed to the media, to law makers and government ministers, to National Authorities including police, to International and Intergovernmental Organisations.
UNITED KINGDOM	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
Tell MAMA -Faith Matters (NGO)  • telephone • email • whatsapp • messenger • online form <a href="https://tellmamauk.org/">https://tellmamauk.org/</a>	Reporting hate crime, hate speech, vandalism or discrimination against Muslims • Tell MAMA's trained case workers provide emotional support to victims, and offer to advocate on their behalf toward institutions such as the police (in terms of reporting their incident), housing associations, schools etc. • They also direct victims toward specialist organisations that provide legal/psychological support, such as Victim Support. • Due to partnership agreement with 18 police forces across the UK, they will pass on sanitised anonymised data to said police forces upon request.

POLAND	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
<p>Otwarta Rzeczpospolita/ Open Republic – Association against Anti-Semitism and Xenophobia</p> <ul style="list-style-type: none"> <li>• online questionnaire www.zglosnienawisc.otwarta.org</li> </ul>	<p>Reporting hate speech, discrimination and acts of violence and vandalism</p> <ul style="list-style-type: none"> <li>• Reports are first screened by NGOs to remove clearly irrelevant reports. Afterwards the information is submitted to the law enforcement agencies, usually in the form of notification of a possible indictable offence. The incidents reported are stored and published in an online database.</li> <li>• Legal assistance</li> </ul>
<p>HejtStop - "Project: Poland" Association (NGO)</p> <ul style="list-style-type: none"> <li>• online questionnaire</li> <li>• phone App for Android and iOS</li> </ul>	<p>Reporting online hate speech and offline graffiti (the person reporting graffiti provides address, description and a photo)</p> <ul style="list-style-type: none"> <li>• Reports are first screened by NGOs to remove clearly irrelevant reports, then the information is submitted to the law enforcement agencies.</li> <li>• In the case of online hate speech administrators are notified.</li> <li>• The incidents reported are stored and published in online database.</li> </ul>
<p>C.O.N.T.A.C.T (international team of NGOs)<sup>9</sup></p> <p>www.reportinghate.eu</p>	<p>Reporting physical violence, sexual violence, verbal abuse, damage to or desecration of property or theft, discrimination, online hatred on a dedicated website</p> <ul style="list-style-type: none"> <li>• The main purpose of the system is to create a database of hate speech and hate crime-related incidents for research purposes and awareness-raising activities (also, possibly, as a stimulus for policy changes).</li> <li>• The reports are reviewed and analyzed by researchers.</li> <li>• The information is not submitted to the law enforcement agencies.</li> <li>• The incidents reported are stored and published in online database</li> </ul>

SLOVAKIA	
PROVIDER AND FORM	THE PURPOSE OF THE TOOL, PROCESSING OF THE REPORTS, ASSISTANCE PROVIDED
<p>STOPLINE.SK, E-Slovakia (NGO)</p> <p>Online questionnaire www.stopline.sk</p>	<p>Reporting hate speech and other illegal or harmful online phenomena (child pornography, stalking, cyberbullying, etc.)</p> <ul style="list-style-type: none"> <li>• Removing hate speech or harmful content from online environment (communication with admins, providers or server owner)</li> </ul>

1. The information is contained in the statistical overview (Statistics of crime of Ministry of Interior) based on the title of crimes.
2. This figure represents the result of subtraction of the violent racially motivated crimes and extremist crimes as defined by Chapter XII of the Criminal Code from the overall number of crimes.
3. The Reporting Tool is operated by The European Roma Rights Centre, which is based in Budapest, but the data is collected from France and Italy. It is also in the last stages of development and is set to officially be ready by the beginning of 2018. This report contains information from the pilot phase of the tool – 2016
4. International team, represented in Malta by SOS Malta, an NGO
5. Other partners are ILGA Portugal, Çavaria, Estonian Human Rights Centre, Háttér Society, MOZAIKA, LGL, FELGTB and Galop.
6. <http://manoteises.lt/reikia-pagalbos/pranesk-apie-neapykantos-kurstyma/>
7. Aside from the reporting mechanism itself, In IUSTITIA has a significant outreach program. Its employees regularly monitor media, social networks and other sources to identify possible hate incidents.
8. The data generated is presented in a manner compatible with the monitoring requirements of UN CERD, the EU Fundamental Rights Agency (FRA), the ODIHR, ECRI, and other international Human Rights bodies.
9. Creating an Online Network, monitoring Team and phone App to Counter hate crime Tactics) is a European Union supported project that focuses on hate speech and hate crime of a racist, xenophobic, homophobic or transphobic nature. The project includes partners from Cyprus, Denmark, Greece, Italy, Lithuania, Malta, Poland, Romania, Spain and UK

## MAIN STRENGTHS AND WEAKNESSES OF THE IDENTIFIED REPORTING MECHANISMS

### 1. Selection of the appropriate form of reporting mechanism for a particular target group

Nearly all of the analysed tools allowed reporting via online questionnaires. However, for some types of incidents or for the collection of data on specific phenomena, additional forms should be available. For example, in the case of an online tool run by the Action and Protection Foundation (Hungary), which collects anti-Semitic incidents, it seems useful to operate also a telephone hotline. As they declare, a 24/7 telephone hotline is particularly useful for elderly people, who often become victims of anti-Semitic incidents, but do not use online tools with sufficient confidence.<sup>1</sup>

Similar approach is relevant also for Slovakia with regards to the Roma minority living in the marginalised excluded communities, without any access to the Internet.

The partners from Lithuania see the web-based character of the tool provided by RRT as an advantage. Whereas apps are convenient for spontaneous reporting, many mobile phone users are short of space on their devices, and the apps they do not use in their daily life are the first to go.<sup>2</sup> On the other hand, the advantage of a mobile app is the quickness of access, mostly for young people. Sometimes, the victim is more inclined to report an incident immediately, via mobile phone. By the time they are by their computer to fill out the questionnaire, they could change their mind. The combination of both versions (an app and a web-based form) could be optimal.

### 2. Appropriate structure and length of questionnaire.

The structure of the questionnaire should always correspond to the

1 Paper on good practices in Hungary about hate crimes and hatespeech mechanism, Subjective Values Foundation, 2018

2 Paper on good practices in Lithuania about hate crimes and hatespeech mechanism, Human Rights Monitoring Institute, 2017

purpose for which the tool is designed (research purposes, data collection, victim identification, legal aid etc.)

Equally important is the structure and length of questionnaire: e.g. in the case of ERRC (Hungary), the tool of Enar Ireland and the particular tool provided by In IUSTITIA (Czech Republic), a very detailed character of the form can become a weakness. On the contrary, in the case of the Slovak stopline.sk, the questionnaire was very limited - it contained only a box for the description of the online incident and the box for the address.

A particular advantage of online questionnaires is the possibility to combine various forms of answers. It means the form includes questions with several possible answers ("click" boxes) and also includes open questions giving the reporter the possibility to provide all the details that she/he considers as important.

### 3. Support for victims and the issue of capacities

The project partners and experts analyzing the identified tools almost unanimously agree that if the mechanism does not offer further cooperation with the victims, does not provide legal advice or other types of services, its impact is diminishing. It is much harder to motivate a victim to report an incident if they know that it does not improve their situation and it has no benefit for them.

In this regard, the tool developed by In IUSTITIA, which offers clients the widest range of services - including representation before a court - can be recommended. It is rather the awareness of the vulnerable groups about the legal services provided by In IUSTITIA than the very existence of the instrument which motivates the victims to report incidents.

Ensuring at least partial legal services for the victims, however, proves to be the greatest challenge for NGOs, since personal and financial demands for such services are in many cases beyond their capacities.

A pioneering compromise solution can be seen in the examples from Ireland, GB, or partly from Malta - to build a tool as a referral mechanism.

The institutional cooperation was identified as the main strength of the UNI-FORM tool, which enables users to choose whether or not to

report an incident to the police, while being robust enough to serve as a referral mechanism.

In the case of the tool developed by ENAR Ireland, its strength is the existence of agreement with some legally empowered bodies to refer possible strategic litigation cases to the relevant network member organisations that can provide support.

Tell MAMA's trained case workers provide emotional support to victims, and offer to advocate on their behalf toward institutions such as the police (in terms of reporting their incident), housing associations, schools etc. They also direct victims toward specialist organisations that provide legal/psychological support.<sup>3</sup>

#### **4. Protection of victims/witnesses and trust building**

Several analysed tools (with the exception of Ireland or Poland, for example) enabled to address the complaint to the police. The ideal solution can be considered if the questionnaire allows the client to choose whether the report, after initial assessment, should be referred to the police.

The problem arises in the situation after the operator of the tool forwards the report to the police and a legal action required, but the notifier is not interested in taking a legal action. Colleagues from both Slovakia and the Czech Republic draw attention to the situation where the law enforcement authorities require direct cooperation from the victim and it is not sufficient to communicate with the tool operator. In this case, it is difficult to balance two conflicting interests that arose after the occurrence of the act. On the one hand, the instrument manager wants to protect the client (the notifier) who does not wish to participate in the actions in relation to the law enforcement agencies (LEAs), but does not prevent the operator from reporting the act to the police; on the other hand, the LEAs are interested in contacting the victim/notifier in order to carry out the required legal steps in the particular case.

One of the recommendations and suggestions for a professional discourse in this respect could be a measure whereby the LEAs would accept the tool operator as the person authorized (along with the

.....  
<sup>3</sup> Paper on good practices in United Kingdom about hate crimes and hatespeech mechanism, Faith Matters, 2017

mandate from the notifier) to provide the necessary information to the law enforcement agencies. In such case, the NGO would become the notifier of the reported act, and it will be the one who is called to the necessary legal action and responsibility.

In addition to the protection of victims with regards to LEAs, it is also important to protect the database of cases itself. The weakness of the tool operated by the ERRC was the fact that the questionnaire is running as a google form/questionnaire.

#### **5. The right targeting and visibility**

Lack of visibility and proper targeting were the weak spot of almost all the instruments. These weaknesses can also affect the extent of the crimes that the tool is designed to map: e.g. in the case of an instrument operated by the Lithuanian Police Department, it serves as a tool for reporting any criminal offenses. This can be described as a potential weakness because it is not primarily built or targeted specifically on victims of hate crime and therefore is not very suitable to serve as a reporting tool for these particular offences.

On the contrary, the approach of SOS Malta, the Maltese NGO, which is a member of the team operating the E-More tool can be regarded as interesting. The app is a research tool and is targeting teachers, NGOs and other stakeholders already interested in hate speech reporting. SOS Malta found out that people are more likely to trust their teachers, family or community members rather than formal institutions, as there is general doubt that the police would take hate speech seriously.<sup>4</sup>

Regarding the visibility, Mrs. Kopytowska from University of Lodz (who was one of the experts cooperating on this document) recommends the following: The function of such platforms should comprise three aspects:

1. to raise awareness of the problem by providing information about the scale, consequences, and legal instruments;
2. to offer a reporting tool and become a (direct or indirect) link with national law enforcement agencies; and
3. by increasing the visibility of individual incidents, to encourage cit-

.....  
<sup>4</sup> Paper on good practices in Malta about hate crime and hate speech mechanism, The People for Change Foundation, 2017

izens to notify law enforcement agencies and institutions and state officials to act within their legal capacity.<sup>5</sup>

## **SUMMARY**

### **Main Principles of good practices**

#### **1. FIND THE RIGHT BALANCE BETWEEN THE AMOUNT OF INFORMATION REQUIRED AND THE LENGTH OF QUESTIONNAIRE.**

Some countries have developed quite extensive questionnaires, which provide extensive information regarding various aspects of reported cases. While this information is valuable, it often discourages people from using such mechanisms if it takes too much time to complete such form. Less is more – there is always an option to ask for further information.

#### **2. MANAGE THE EXPECTATIONS AND BE TRANSPARENT ABOUT THE PROCESSES.**

People reporting hate speech and hate crime cases quite often have different expectations as to what is supposed to happen with their case. Some want just to report an incident, but do not want to file a criminal complaint, others, on the contrary, expect legal assistance in filing the case to the police or prosecutor's office. Be clear about the process with respect to what would happen after the submission. Before sending the reports to the police, make sure the reporting individual is aware that they might be approached by the police.

#### **3. ALLOW FOR ANONYMOUS REPORTING**

Unlike official criminal complaint, reporting mechanisms are often used by victims or witnesses who do not want to be identified. By allowing them to submit anonymous reports, these mechanisms serve as an important tool to gather data on cases not reported to official authorities.

.....  
<sup>5</sup> Monika Kopytowska: "Paper on good practices in Malta about hate crime and hate speech mechanism", Poland, 2018

#### **4. ADVERTISE MECHANISMS TO THE RIGHT AUDIENCE.**

Without awareness reporting mechanisms are not used by the victims of witnesses of hate crime and hate speech cases. Make sure you target your awareness-raising and advertising campaigns on the right audience, which is most effected by such cases in your country.

#### **5. MULTIPLE LANGUAGE INTERFACE.**

Since many of the hate crime victims could be foreigners or members of ethnic minorities, make sure the mechanism is available also in English or any other language relevant to the vulnerable groups.

#### **6. PROTECT YOUR DATA AND IDENTITY OF THE REPORTING INDIVIDUALS.**

Information provided by the victims and witnesses could be sensitive, so it is necessary to protect the system/database of the reported cases from any breaches. Organised hate groups could use hackers or exploit weaknesses to access and steal valuable and sensitive data from your system. Basic IT security relevant to other aspects of NGO activities should be further strengthened.

---

# MANUAL FOR DEVELOPMENT OF ONLINE HATE CRIME REPORTING MECHANISM

## INTRODUCTION

Between 2016 and 2018, five non-governmental organizations from the Czech Republic (In IUSTITIA), Slovakia (People in Need), Hungary (Subjective Values Foundation), Lithuania (Human Rights Monitoring Institute) and Malta (The People for Change Foundation) implemented a project titled „*Tackling Hate Crime and Hate Speech*“, which aimed, among other things, at sharing experience with the functioning of online tools for reporting hate crime and hate speech.

While there were such instruments already implemented in the Czech Republic, Lithuania, Hungary and Malta, only one online tool was known in Slovakia, and it was out of operation at the time of the project implementation. The non-governmental organization People in Need, which analysed the instrument described it as an example of bad practice rather than good practice. This only underlined the need to take advantage of the experience of the project partners and to develop such an instrument in Slovakia as well.

In this publication, we describe the process that we have applied based on the compiled examples of good practice from abroad when creating a reporting tool in Slovakia. The development of the tool itself was preceded by several steps and stages described in this publication. The goal was to ensure that the tool would:

- Provide the most trusted space for victims, witnesses or others to share their experience with hate crime and hate speech-related incidents.
- Serve as a tool to enable non-governmental organizations as well as the state to confront and compare the official hate crime and hate speech statistics with the real situation.

Likewise, when preparing the tool, we focused on predicting and eliminating risks that could negatively affect its use.

Based on an analysis of the existing reporting mechanisms across Europe, we have identified key policies and procedures that can help meet the desired requirements of such reporting tool. In this publication, we tried to identify such principles and transfer these principles to other entities that may choose to develop a similar online reporting tool in their own country.

*Irena Bihariova, author*

## I. THE MAPPING PHASE

The mapping process, which we applied before starting the actual development of the tool, is not an absolute necessity, but it can help to set the tool correctly and eliminate any risks related to its operation.

At this stage, we tried to answer the following questions:

### WHAT IS THE STATUS QUO OF HATE CRIME / HATE SPEECH IN THE COUNTRY BEFORE THE TOOL IMPLEMENTATION?

#### Analysis of the problem in the country in which the tool is to be operated

To accurately evaluate the functionality of the mechanism later on (whether it can really improve collection of data on this issue), it is necessary to get the initial baseline data.

We have achieved this goal by mapping the status quo of hate crime/hate speech, using the official statistics, as well as information from non-governmental organizations that deal with this type of crime.

Since crime rates of this type of crimes have a high latency rate (they do not appear in statistics and their actual prevalence does not correspond to the officially reported number of cases), we tried to identify the sources of this discrepancy. We have therefore analysed the most common barriers to detection and prosecution of these acts by the law enforcement agencies, as well as the needs and obstacles on the part of the victims.

For obtaining such data, we recommend preparing a questionnaire for non-governmental organizations and local stakeholders (field workers, social workers, community authorities and vulnerable groups etc.). Questions should be directed at gaining an overview of cases from the stakeholders' practice: how they are informed, what channels the victims or witnesses use to report incidents, what kind of cases are most prevalent, what services they provide to clients, what they perceive to be the main issues related to application of hate crime/hate speech legislation, what are the reasons their clients refuse to cooperate with the police etc.

### WHAT REPORTING MECHANISMS ARE THERE EXISTING IN THE COUNTRY WHERE THE TOOL IS TO BE IMPLEMENTED?

#### Mapping of the domestic reporting tools and identification of their strengths and weaknesses

To avoid producing a tool that would replicate the weaknesses of other existing mechanisms, we have come to identify other domestic tools. We assessed their functionality, visibility, the extent of the data collected and, if possible, ways of processing of the incoming reports and follow-up communication with the individual reporting the incident ("the notifier"). To that end, we have developed an additional questionnaire and methodology to help us categorize the information obtained and to identify the strengths and weaknesses of specific reporting mechanisms.

We also tried to find examples of good practices in reporting mechanisms from countries not involved in the project. To this end, we organized an international seminar with the participation of organizations and institutions that run online reporting tools and collected examples of good practice presented in a joint document.

## II. THE GOAL SETTING PHASE

We consider this phase crucial as it will significantly influence the final form of the questionnaire in the online tool and set the conditions for its smooth operation.

To streamline the preparation process, this section offers a selection of the most important questions that should be addressed at this stage. Answering them should help matching the expectations of the tool authors with those of the target group (victims, witnesses) for whom the tool is designed.

### WHAT IS THE PURPOSE OF DATA COLLECTION? WHAT PURPOSE SHOULD THE TOOL SERVE?



## **Be clear about what exactly you want and can do with reporting of the incidents.**

It may seem that the answer to this question is less important than others, or that the answer could wait until the cases are actually reported.

In fact, the answer to this question is crucial for creating the structure of the questionnaire itself. If the main objective is to use the reported cases for legal purposes (e.g. to forward them to law enforcement agencies, or provide legal aid to the victims, etc.) then it is important that the questionnaire itself provide enough information relevant to assess the legal aspects of the reported incident.

If the primary objective is to use the data obtained rather for “sociological purposes” (data collection to gain better understanding of the problem), then the questionnaire will comprise completely different questions than in the previous case.

If the developers, or operators of the tool do not seek further cooperation with the notifier and do not plan to provide specific assistance, then it is necessary to state this information on the website itself where the tool will be located. It will allow the user to decide in advance whether he/she wants to report the incident despite the fact that no service will be provided, and the information will be used only for “statistical purposes”. At the same time, this will enable to correctly manage the expectations of the notifiers.

## **WHAT PURPOSE COULD THE TOOL FULFIL AND WHAT SHOULD BE TAKEN INTO ACCOUNT:**

### **a. The tool is intended only to gain better understanding of the problem**

Making use of the tool for monitoring purposes is a useful and often necessary solution. Often, given the lack of NGO capacities, this is the only way to map the problem of hate crime and hate speech more

closely without having to act directly on the ground and bear the costs associated with it.

Such a “statistically-oriented” questionnaire may include questions that will allow to get an overview of the following issues:

Who is the most frequent victim?

- What is the age of the victims
- The vulnerable group who were targeted
- The gender of the person concerned
- Whether she was the victim for the first time, or has had experience with a similar type of incident

Where the incidents occur most often

- The area where the incident occurred
- Online or offline

Whether the victims report their cases to the competent authorities, and if not, why

- Did the person report the incident to the police (it is possible to insert a range of options with a box to complete the reasons for not doing so)
- Which organizations (if any) have already been approached with the request for help

The nature of incidents

- Did the act involve violence or weapons
- Was it verbal or physical
- Did the offender act against the victim or other persons in the past in a similar way (if that is the case)

### **Advantages:**

- Minimal cost of operating the tool and high level of sustainability

### **Disadvantages:**

- Reduced willingness to report cases and the resulting greater effort required to motivate victims to report incidents

### **b. The tool serves for better detection of hate motivated incidents and the operator will cooperate with the police**

One of the purposes that the reporting mechanism may serve is the correction of official hate crime statistics. The goal is to reduce the traditionally high latency of this kind of crime - a situation where official statistics do not reflect the real extent of this category of crime in the society.

Such a use of the tool involves a certain type of cooperation with law enforcement agencies. At least to the extent that the tool operator acts as a "screening element": it performs the legal qualification of the incoming cases, possibly assessing which criminal offense might be involved pursuant to the national criminal legislation. Subsequently, the case is referred to the competent authorities. This refers them a greater number of cases that they would not otherwise receive.

Using the tool for this purpose may be sensitive, as we assume that many victims may not be willing to participate in criminal proceedings with their testimony.

In any case, when using the "legal" tool, it is important to inform the user in advance that their report may be processed as a complaint to the police, while allowing them to decide whether to report it anonymously or using their real name. Likewise, the questionnaire should offer them the opportunity to check whether they will be interested in direct cooperation with the law enforcement agencies.

### **Advantages:**

- It helps to objectify information about the crime
- Some of the notifiers will appreciate if the operator of the tool, on their behalf, addresses the authorities

### **Disadvantages:**

- One part of the users who do not want to make their case available to the police could be discouraged from reporting
- Requires existence of legal capacities on the operator's side
- Requires correct, pre-agreed cooperation with law enforcement agencies<sup>1</sup>

### **c. The tool will serve as a hotline (legal, psychological, social)**

This purpose may also be an additional feature while operating the other instruments mentioned above, in particular the second type.

In this case, the questionnaire should not omit questions that identify the needs of the notifier and allow them to determine what type of service the client needs or may be recommended. Finally, the questionnaire, as a mandatory field, should include the possibility of contacting the client.

### **Advantages:**

- It is assumed that a large proportion of clients will be more motivated to use the tool
- The tool operator gains a very detailed insight into the problem (both from the point of view of the victims as well as from the point of view of the possibilities and obstacles to the faced by the law enforcement agencies' practice)
- The tool operator has direct contact with the notifier

### **Disadvantages:**

- Costs for sustainability of the operation (specialized service personnel necessary)
- Longevity in terms of achieving measurable results in provision of the services

.....  
<sup>1</sup> They must accept the operator as the entity that performs the "screening mechanism" role. Their cooperation agreement may include an undertaking that the operator sends the police the data either as a ground for initiating criminal proceedings or as merely operational information (in which case it leaves the police the option of deciding and assessing whether or not to initiate proceedings ex off).

---

## WHAT SHOULD BE REPORTED?

---

### Identify what types of data should be collected by the tool

Clarifying the thematic scope is also one of the questions to be answered before developing the mechanism itself. If you decide to collect data on hate crimes and/or on illegal hate speech (such as hatred on the Internet), focus only on these particular areas. Do not extend the scope to cover other illegal phenomena (violence against women, domestic violence, abuse of minors, violations of other human rights, etc.).

There was a tool in Slovakia that covered many issues related to illegal or objectionable online content. However, it covered different types of crime, with different types of victims who had very different needs and assistance requirements (cyberbullying, child pornography, stalking, hate speech etc.).

Such a wide range required targeted way of promoting the tool, corresponding with the diversity of the target groups. It is not easy to manage such a broadly defined tool, as it results in a significant demand for personnel capacities and special skills, but also requires focused and well-planned visibility of the tool in the target communities. Since such capacities and efforts were lacking, in the end, it led to poor awareness of the tool and a low reporting rate. Except for removing malicious content from the Internet - and ultimately only the content related to child pornography was being removed - it has failed to serve any other purpose.

In this respect, we therefore recommend focusing on one type of crime and not to add hate crime as an additional element of an instrument that has been created for reporting of other online or offline phenomena.

## III. THE TOOL DESIGN PHASE

The following recommendations have been formulated mainly through the mapping and evaluation of tools in various European countries analysed in the project before launching the tool itself. Based on this, we identified the following recommendations:

### 1. Formulate the questions so that they fulfil the main aim of the tool

This recommendation is implementing the conclusions from the previous phase in which the objectives have been defined. The questions in the form must therefore lead to obtaining the information that points towards the set objectives and to serve the purpose why the tool was designed.

If we want to use the tool, for example for legal purposes, the questionnaire cannot ignore questions relevant with regards to criminal proceedings. The questionnaire may include questions about witnesses of the incident, evidence from the incident as an attachment, medical reports etc. For example, in the context of Slovak criminal law, it is relevant whether the victim of bodily harm with hateful motives suffered injuries with treatment taking more than 7 days. Therefore, the form contains a question as to whether the victim contacted a physician and whether his or her incapacity for work lasted more or less than 7 days.

If you devise a questionnaire to generate statistics and explore the hate crime-hate speech phenomenon on a sociological level, you can leave some space in the questionnaire for example to indicate the vulnerable group, to which the action was directed, the age of the victim etc. With periodic evaluation of questionnaires, you can generate statistics for a certain period of time.

### 2. Keep the optimal balance between the degree detail and length

It is understandable that we want the tool to capture as much relevant information as possible. However, keep in mind that user's patience is limited. A too detailed questionnaire usually discourages the user from completing it.

In a consultancy with IT experts, we have been advised that the questions should only appear gradually after the previous one has been completed. But at the same time, the user will see how many questions (steps) are generally needed for reporting and in which phase the user currently is.

### **3. Work with the perspective of the victims - keep the language and design user-friendly**

Identify who the most vulnerable group that your tool can best serve and think about the group you presume will really be able to use it. If they are foreigners or ethnic minorities, prepare the tool also in their linguistic mutation.

Whatever language you use, think it must be comprehensible from the point of view of the formulated instructions - avoid long, unclear expressions, professional vocabulary.

Even the visual aspect may be important - in this case, however, less is more. The website user should not leave a too sterile and impersonal impression, but the user should not be disturbed by the cramped page design either.

### **4. The notifier must feel safe and secure on your website**

The user who wants to report the incident must be confident that the data provided will not be misused and that the purpose of the tool's operation will be fulfilled.

Think about how you can strengthen this confidence and incorporate this information into the actual site where the tool will be hosted. For example:

- Describe the operator's previous experience with hate crime or working with victims to emphasize your credibility and experience.
- Highlight how you protect your database of reported incidents
- Explain the process following the notification of an incident, explain your relationship with the police or other authorities
- Explain how the notifier can communicate with you
- Describe the purpose for which you want to use the data and what type of service you provide to the reporting party

### **5. Enable anonymous reporting but leave the option to provide contacts**

In connection with the above-mentioned rule of trust and security, it

is important for the notifier to be able to report the act anonymously. The questionnaire should therefore allow also anonymous submission. However, even an anonymous client may also ask for feedback. Therefore, the form should offer a non-mandatory field with contact details (e.g., the email address) of the reporting person for sending feedback.

### **6. Prepare the web page where the tool is hosted**

The tool itself will be a part of a website, so its content should be well-structured. It should not be a universal "all-encompassing" portal that covers all sorts of issues since a website filled with articles, videos, blogs, or studies may reduce access to the tool itself. At the same time, however, the website must offer at least brief information on the issue, so that the user understands what falls within the range of incidents to be reported. Therefore, the site should have the opportunity to briefly introduce the user to the issue and explain clearly what cases can be reported by the tool.

In addition, the site should provide information about:

- Who is running the tool
- To whom the reported information is sent and how it is protected
- What are the follow-up options after reporting the case - how the tool operator handles them and to whom it is being forwarded (if it is forwarded at all)
- Define precisely the purpose for which the tool is set up to prevent mistakes in user expectations
- Provide a brief instruction on operating the tool

When designing a website, it is obvious that the name of the domain should be as close as possible to the theme and focus of the tool.

Optimizing the website for mobile phone use is essential. Any hate crime/hate speech victim/witness may want to report the incident immediately after it took place and will probably first look for the tool through search engines on their mobile phone. If the site is not optimized for mobile devices, it may happen that until the victim gets to the computer, the initial emotion and the decision to report the act between time is gone and therefore the incident is not reported.

## IV. THE PHASE TO ENSURE SUSTAINABILITY OF THE TOOL OPERATION

### 1. Visibility and accessibility of the tool to the target groups

The future and sustainability of the instrument depends on whether it will actually become a relevant choice for victims or witnesses if they want to report an incident. This will not happen if there is a weak awareness of the instrument.

The tool and its promotion should therefore be highly targeted. If young people are frequently victims of hate crimes in your country, set up cooperation with schools and ask them to promote the tool. You can also target online portals for the youth (music sites, student sites) using banners or articles. Youth targeting is also worthwhile if your tool collects information about unlawful hate speech in the online environment, as the youth is the most active group online. You can ask Facebook page administrators who manage attractive youth groups to feature links to your tool from time to time.

Establish collaboration with people in your country who might serve as “liaison officers” for vulnerable communities: field workers, social workers, non-governmental organizations working with minorities or representing minorities. Ask them to help you with promoting the tool in their communicating with their clients or on their online channels.

You do not need to forget about regular tool information or publishing your reports with your own communication tools (website, fan page, press release, etc.)

### 2. Working with data, statistics and data protection

Generation of regular statistics of incoming reports and protection of such a database should be a matter of course. When developing this tool, you can request that the automated case sorting be featured according to the chosen criteria so that you and your employees do not have to manually encode reports into spreadsheets.

Secure this database with encryption and host it in a strictly protected area with restricted access.

### 3. Regular evaluation of the tool operation

Introduce the tool evaluation period and identify the strengths and weaknesses you encountered during the operation. If possible, eliminate the obstacles that have proven to be the causes of shortcomings and strengthen and promote what has proven to be the advantages of your tool.

## TABLE OF CONTENT

Introduction- - - - -	5	Malta- - - - -	24
<b>COMPARATIVE HATE CRIME REPORT</b> - - - - -	7	Hate speech - - - - -	25
Introduction- - - - -	8	Hungary - - - - -	26
Terminology and methodology - - - - -	9	Hate crime- - - - -	26
Terminology- - - - -	10	Hate speech - - - - -	27
Methodology - - - - -	10	Lithuania - - - - -	28
Legal framework - - - - -	15	Aggravating circumstances - - - - -	30
Slovak republic - - - - -	16	Protected characteristics and groups - - - - -	32
Ad1: extremist crimes perpetrated with specific motivation - - - - -	16	Slovak republic - - - - -	32
Ad2: extremist crimes explicitly enumerated in section 140 a) - - - - -	18	Czech republic - - - - -	32
Czech republic - - - - -	20	Malta- - - - -	33
Criminal acts whose basic body of offence includes the motive of hatred- - - - -	20	Hungary - - - - -	33
Criminal acts whose qualified body of offence includes the motive of hatred- - - - -	21	Lithuania - - - - -	34
Hate speech - - - - -	24	Quantitative indicators on hate crime/ hate speech in particular countries - - - - -	35
		Official data - - - - -	35
		Number of reported hate crime/hate speech incidents - -	35

Slovak republic	35	Hungary	60
Czech republic	37	Malta	66
Malta	38	Lithuania	67
Hungary	38	Summary and conclusions	72
Lithuania	40	<b>HATECRIME AND HATE SPEECH</b>	
Quantitative situation in the sphere of hate crime/hate speech according to data supplied by non-governmental organisations	42	<b>REPORTING MECHANISMS IN EUROPE:</b>	
Slovak republic	42	<b>A COLLECTION OF GOOD PRACTICES</b>	75
Czech republic	44	Methodology	76
Hungary	46	Czech republic	76
Malta	48	Malta	76
Lithuania	48	Lithuania	77
Qualitative assessment of hate crime and hate speech issues – identification of obstacles to investigation and prosecution	50	Hungary	77
Slovak republic	50	Slovakia	77
Czech republic	54	Collection of analysed reporting mechanism in europe	79
		Hungary	80
		Malta	81
		Lithuania	82

Czech republic - - - - -	82
Ireland - - - - -	83
United kingdom- - - - -	83
Poland - - - - -	84
Slovakia - - - - -	85
Main strengths and weaknesses of the identified reporting mechanisms - - - - -	86
Summary - - - - -	90
Main principles of good practices - - - - -	90
<b>MANUAL FOR DEVELOPMENT OF ONLINE HATE CRIME REPORTING MECHANISM- - - - -</b>	<b>92</b>
Introduction- - - - -	93
<b>I. The mapping phase - - - - -</b>	<b>94</b>
Analysis of the problem in the country in which the tool is to be operated - - - - -	94
Mapping of the domestic reporting tools and identification of their strengths and weaknesses - - -	95
<b>II. The goal setting phase- - - - -</b>	<b>95</b>

Be clear about what exactly you want and can do with reporting of the incidents.- - - - -	96
What purpose could the tool fulfil and what should be taken into account - - - - -	96
Identify what types of data should be collected by the tool - - - - -	100
<b>III. The tool design phase - - - - -</b>	<b>100</b>
<b>IV. The phase to ensure sustainability of the tool operation - - - - -</b>	<b>104</b>



Irena Bihariová and col.

## TACKLING HATE CRIME AND HATE SPEECH IN EUROPE

**Title:** Tackling hate crime and hate speech in Europe

**Editor:** Irena Bihariová (Slovakia)

**Publishers:** People in Need (Slovakia), The People for Change Foundation (Malta), Human Rights Monitoring Institute (Lithuania), Subjective Values Foundation (Hungary), In IUSTITIA, o.p.s. (Czech republic)



### Authors:

#### Chapter: Comparative report on hate crime and hate speech in Europe

Irena Bihariová (People in Need), Kristina Normantaitė (Human Human Rights Monitoring Institute), Natalija Bitiukova (Human Rights Monitoring Institute), Bak Árpád (Subjective Values Foundation), Magyarkuti Zsófia Krisztina (Subjective Values Foundation), Klára Kalibová (In IUSTITIA), Václav Walach (In IUSTITIA), Benjamin Petruželka (In IUSTITIA), Martina Houžvová (In IUSTITIA), the author's team of The People for Change Foundation

#### Chapter: Hate crime and hate speech reporting mechanisms in Europe: A collection of good practices

Irena Bihariová (People in Need), Kristina Normantaitė (Human Human Rights Monitoring Institute), Bak Árpád (Subjective Values Foundation), Magyarkuti Zsófia Krisztina (Subjective Values Foundation), Klára Kalibová (In IUSTITIA), Václav Walach (In IUSTITIA), Benjamin Petruželka (In IUSTITIA), Martina Houžvová (In IUSTITIA), Monika Kopytowska (University of Lodz, Poland), Shane O'Curry (ENAR Ireland, Ireland), Fiyaz Mughal (Faith Matters, United Kingdom)

#### Chapter: Manual for development of online hate crime reporting mechanism

Irena Bihariová (People in Need)

**Cover design and graphic work:** Waldemar Švábenský, [www.waldemarski.com](http://www.waldemarski.com)

**Print:** Polygrafické centrum, s.r.o., Bratislava (Slovakia)

Copyright © In IUSTITIA, o.p.s. People in Need, The People for Change Foundation, Human Rights Monitoring Institute, Subjective Values Foundation, authors, editors and publishers

ISBN: 978 – 80 – 89817 – 20 – 7



Tackling hate crime and hate speech:  
This project is co-funded by the Rights,  
Equality and Citizenship Programme of the  
European Union and by the Visegrad Fund



ISBN: 978-60-69817-20-7

