

Capacity and Network Building Through Knowledge Sharing to Address Racism, Xenophobia and Other Forms of Intolerance

Training curriculum for Training of Trainers in the Baltic region on the topic of hate crime and how to tackle it from the civil society perspective.

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Training curriculum for Training of Trainers in the Baltic region on the topic of hate crime and how to tackle it from the civil society perspective.

Goals of the training:

After the training participants will:

1. Understand societal processes that contribute to inequality, bias, stereotypes and bias motivated incidents.
2. Understand exclusion/ marginalization of different groups from a human rights-based perspective.
3. Recognize and understand the dynamics of hate crimes and the impact that hate crimes have on victims and communities.
4. Understand the necessity to increase awareness of the impact of hate crimes in the society and among communities.
5. Have knowledge about victim support.
6. Understand legislation both at EU and state level.
7. Understand the extent of bias incidents and hate crimes in the Baltic states and EU.
8. Be familiar with case studies from EE, LV, LT and also from other EU countries.

Content of the training:

1. Discrimination and other mechanisms related to hate crime.

A) 'Discrimination begins with who I am'

Identity is a collection of answers to the difficult question "Who am I?".

On the one hand, it is a concept of building yourself which is based on beliefs, opinions and judgments, but also ideas about yourself. On the other hand, it is a psychological process based on self-awareness of functioning in relationships with other people and groups, such as family, friends, nation, a cultural group or other distinguished groups, among which we must be able to find each other. Identity is the sum of all social identification that people use when describing themselves. We are talking about two types of identity content: individual (also called personal) and social (group).

Individual identity is characterized by a tendency to differentiate from others, self-determination, own uniqueness, uniqueness and so-called "Being yourself". In this context, uniqueness and individual differences are emphasized and developed.

Individual identity:

- gives you a vision of yourself (a collection of ideas about yourself, feelings, judgments, experiences),
- shapes awareness of duration and being coherent in a changing reality,
- it creates the possibility of self-realization and is the basis for the goals set for itself and the selection of ways to achieve them.

The construction of one's "I", however, takes place in a context determined by culture, norms and collective values or larger communities to which person belongs to.

Regarding goal 1 and 2:

Understanding of societal processes that contribute to inequality, bias, stereotypes and bias motivated incidents AND Understanding exclusion/marginalization of different groups from a human rights-based perspective.

At the core of group identity lies the sense of belonging, being a member of the group, building community with others, sharing certain features that are similar to others. Based on such theories as the social theory of identity or the theory of social categorization, which we discuss in more detail, it was assumed that the similarities between the image of themselves and the group are an important basis for creating cohesive groups. Going further, social categorization emphasizes that people first think of themselves as members of the group, only later describe themselves as individuals¹.

On the one hand, the basis of the group has a sense of belonging to it, and on the other - borders towards other groups.

Group identity provides the individual with a number of benefits:

- awareness of participation in social groups,
- sense of belonging and acceptance,
- solidarity and support in a difficult situation,
- intimacy and security in social relations,
- predictability of behavior in the event of meeting unknown people.

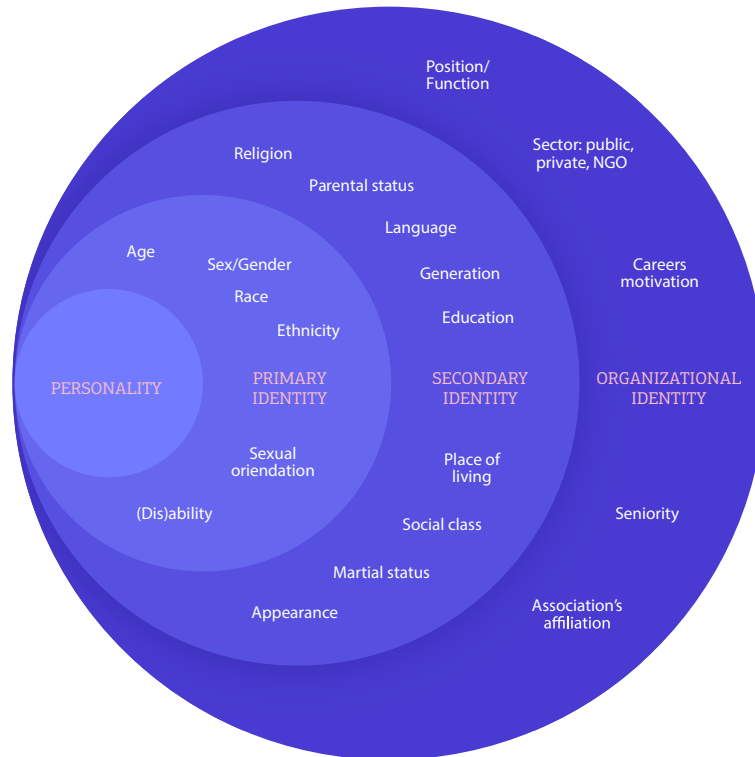
Another concept of identity, widely used in the context of anti-discrimination and diversity management and helpful in understanding the role of identity in hate crimes, is the idea to look at each other against social groups through the circle of diversity.

Diversity Wheel is a widely used tool illustrating the complexity of identity and identification².

Wheels show social identifications that are important for the functioning of the individual with itself, and, or above all, at home, in the workplace, organization or, more broadly, in society.

¹ "Anti-discrimination Education. Trainers' handbook." ed. Maja Branka, Dominika Cieřlikowska, Publishing house: Villa Decjusza, Cracow, 2010.

² The classic model, consists of two circles. Internal the circle is divided into six elements and corresponds particular social identifications: race, ethnicity, age, sex, physical abilities / possibilities and psychosexual orientation. The outer circle reflects such elements of identity as: profession, income, matrimonial status, experience military, religious beliefs, geographical location, parental status and education. was introduced by Marilyn Loden and Judy Rosener in "Workforce America! Managing Employee Diversity As and Vital Resource".



The model consists of co-centered circles: personality, primary identity, secondary identity and organizational identity. As personality is the individual core of one's identity that we will not elaborate on, the rest of the dimensions are commonly shared in society.

It is important to note that the **primary identity** is the one that we have little control of: with most of those features we are born and remain unchanged throughout our lives. Those are also the ones we usually feel most attached to. Very frequently these characteristics are identical with the premises of discrimination and therefore are often protected by law.

B) How stereotypes work?

A stereotype is an attitude or belief about a person or persons based on traits or characteristics they have or groups they belong to.

An alternative definition of stereotype is: "A preconceived or oversimplified generalisation about an entire group of persons without regard for their individual differences."

Examples of stereotypes are:

- All lesbians are masculine
- All African immigrants are criminals
- All police officers abuse their power
- All Muslims are religious extremists

Stereotypes are predetermined and caricatured perceptions which result in ascribing the same generalizing traits to all members of certain groups without paying attention to their individual traits. Stereotypes can lead to prejudices against other groups and ultimately to discriminating behavior and actions.

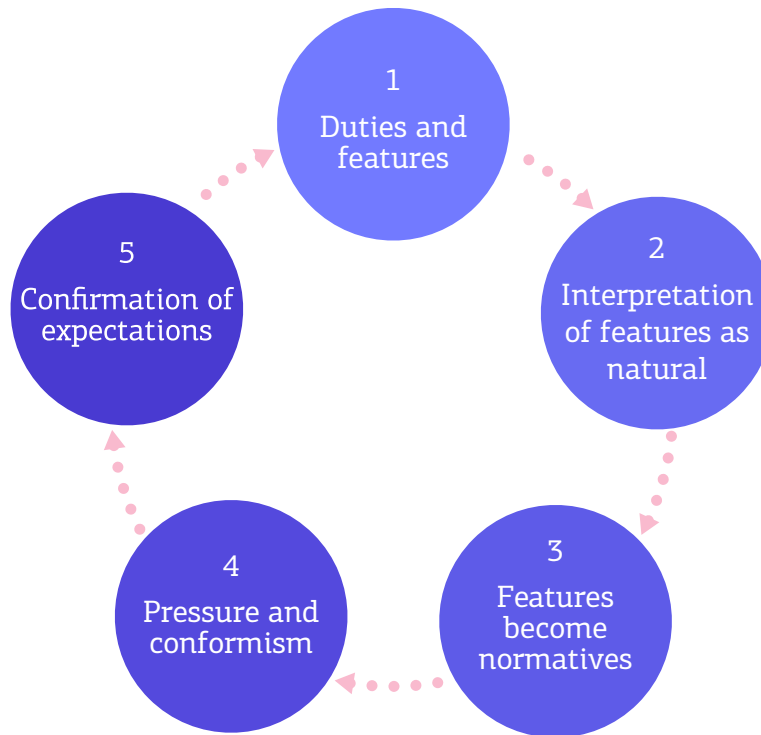
Features of stereotypes:

- Permanent, difficult to change, stiff
- Simplified, often incompatible with reality
- Generalized
- Inherited culturally
- Automatically excited
- Experimental unverifiable (exceptions only confirm the rule)
- We have the conviction that it is real
- Resistant to incompatible information

Though, most often negative, stereotypes can also seem to be flattering, complimentary. But don't forget, that so called "positive stereotypes" might still have a negative impact, not only because they involve broad generalizations that ignore individual realities but also because they build social expectations.

An example of this would be that women are more caring than man. It seems there is nothing wrong that people would see women as kind and thoughtful creatures, but when we realize that it creates expectations that it is women's duty to take care of dependent persons' we can see that it leads to eg. unfair division of tasks.

It is important to understand how stereotypes work, how come we get stereotypes “confirmed”. It can be illustrated by the **circle of stereotyping**.



STEP 1

The duties assigned to men and women are associated with certain psychological traits. Since most women deal with children, all women are given attributes such as caring or gentleness. Men more often work in managerial positions, so all men are assigned rationality, courage, etc.

STEP 2

Interpreting these traits as “natural”, rather than the effect of the specificity of task or social influence, strengthens the belief that women are “created” to some activities, and men to others.

STEP 3

The expectations for women and men are extended to other situations according to the assigned features. Expectations become the norm - a reference point.

STEP 4

Women and men, feeling the pressure resulting from the norms of functioning, submit to them, in order not to lose the social acceptance, not wanting to be perceived as maladjusted, strange.

STEP 5

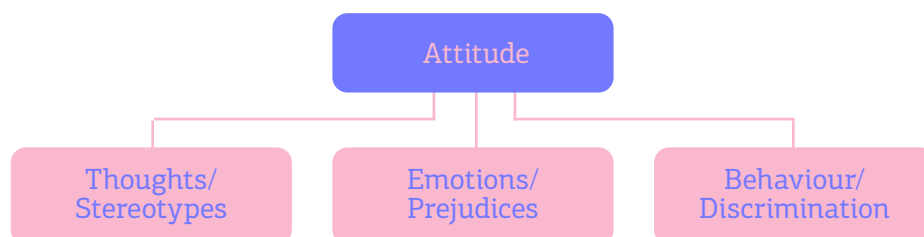
Their behavior, which goes along with expectations confirm the validity of the image of femininity and masculinity.

This way the circle closes.

It is crucial to see that the circle can be 'broken' in any point, when we see and understand that mechanisms. Every person can fight for their right to live the life one's want, but it does not necessarily change the way particular stereotype works. It is also important to know, that it always comes with a 'cost' as society is rather protecting already existed norms than supporting its modification toward more equal world. On personal level the knowledge should help to understand how to overcome social obstacles created by norms, on a social level it is important to see peoples' behavior in a social context, not only their own choice.

C) Attitudes and prejudice

How we treat others, also in working environment, is often connected with our attitude towards certain groups. Sometimes we can be unaware of the fact that we are simply biased.



The concept of **prejudice** is related to the concept of stereotype.

A **prejudice** is an advance emotional judgement and a preconceived idea about or attitude towards other persons or groups. Prejudices are often negative and are typically based on rumours, assumptions, feelings and beliefs rather than on knowledge and facts. Prejudices influence both our actions and our interpretations of the acts of others.



If we were to imagine a head
as a place for stereotypes



Then a heart is where prejudices
are placed, as they are rooted in
emotional judgments

And as far as fighting with stereotypes can be Don Quixote's fight with windmills, we can learn to recognize our biases and do not (re)act upon them. That will shape our attitude in a way that we can control and do not harm others, even if they represent a group in relation to whom we are prejudiced.

The key is to recognize your own prejudices and react in time, that is, not to let them direct our behavior. We have a whole range of opportunities to work with our own prejudices and the motivation for it may be that, in principle, each and every one of us can belong to a group that raises prejudices.

One way is to search for information about different cultures, groups, not to rely on unfair stereotypes but on reliable knowledge. The key is to gain knowledge about groups experiencing discrimination - in this way we learn about the reasons for their dissimilarity (we can also find what links us) and we gain arguments refuting myths about them.

D) Minority – majority groups and power relations

In sociology, a **minority group** refers to a category of people who experience relative disadvantage as compared to members of a dominant social group³. Minority group membership is typically based on differences in observable characteristics or practices, such as: ethnicity (ethnic minority), race (racial minority), religion (religious minority),

³ "Race, ethnicity, gender, & class : the sociology of group conflict and change" by Stepnick, Andi., O'Brien, Eileen, Thousand Oaks, California

sexual orientation (sexual minority), disability, or gender identity – as we see that in our identity chart, they often refer to primary identity. It is important to recognize that an individual may simultaneously hold membership in multiple minority groups (e.g. both a racial and religious minority). Likewise, individuals may also be part of a minority group in regard to some characteristics, but part of a dominant group in regard to others (e.g. gender and racial majority while sexual orientation minority).

The term **majority** does not necessarily refer to bigger in number (gender is an example) but it is related to **power, access to resources, capacity to take part in decision making processes** etc.

MAJORITY GROUP	MINORITY GROUP
Main	Woman, trans, non-binary
White	Non-white
Heterosexual	Non-heterosexual
Young (but not too young)	Too young/old
Healthy	With disability/ not healthy

Intersectionality refers to the added layers of discrimination that someone may experience by being part of more than one minority group. Intersectional issues can compound the challenges that exist in the lives of persons with minority identity. A black gay woman, for example, may have to deal with racism, homophobia and sexism. Discriminatory behavior may not just come from mainstream society; racism exists within LGBT communities and homophobia exists within racial minorities. A Muslim trans person may have to deal with both religious discrimination and transphobia, from within their religious community and from those outside of it.

In the perspective on hate crime related issues it is crucial to see the possible multiply discrimination and while investigating it, consider – as a mean of discrimination and hate crime - every possible feature and its’ combinations. The same person may suffer from hate crime on the basis of different identity features, depending on circumstances.

E) Discrimination⁴

Discrimination: Most countries have legal definitions of discrimination. The definitions often cover both direct and indirect discrimination. The following definition of discrimination is broader and reflects the experiences of LGBTI and other minority communities in many countries:

“Discrimination occurs when members of a more powerful social group behave unjustly or cruelly to members of a less powerful social group. Discrimination can take many forms, including both individual acts of hatred or injustice and institutional denials of privileges normally accorded to other groups.”

Legal definition of discrimination

Discrimination is legally defined as unjustified, unequal treatment:

1. **Direct discrimination** occurs when, for a reason related to one or more prohibited grounds, a person or group of persons is treated less favorably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when, for a reason related to one or more prohibited grounds, a person or group of persons is subjected to a detriment.

In simpler terms: Direct discrimination is when a person or persons are treated less favorably than the majority population because of membership of a minority group.

Examples of this would be the refusal of a police officer to take a crime report from a victim of crime because the victim is transgender, Roma or from a minority religious community.

2. **Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds (e.g. ethnicity, sexual orientation, disability) at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

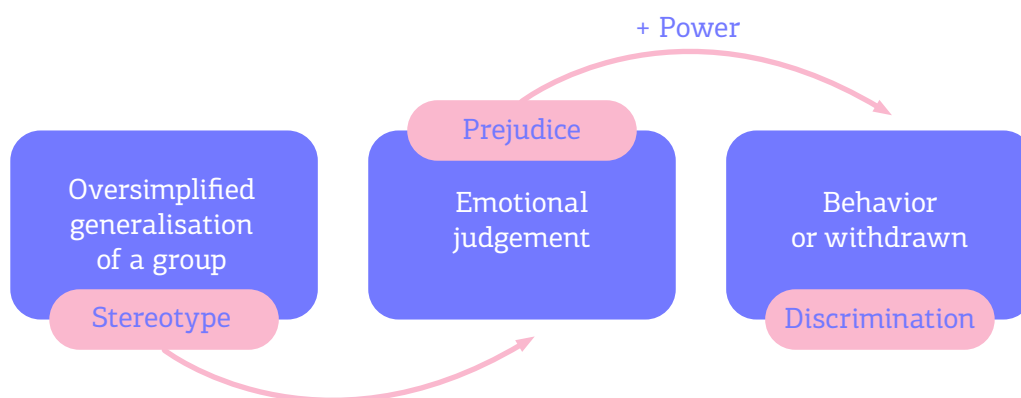
⁴You can read more about the topic, definitions and relevant institutions from Handbook on European non-discrimination law – 2018 edition: <https://fra.europa.eu/en/publication/2018/handbook-european-law-non-discrimination>

In simple terms: Indirect discrimination is where certain practices, rules or policies place a person or persons at a disadvantage as compared to members of the majority. Indirect discrimination is sometimes harder to identify than direct discrimination.

An example of this would be giving special annual leave entitlements to married police officers where policies and/or legislation do not recognize same sex relationships.

Although discrimination is usually associated with action, it is worth paying attention to the situation in which it is discriminatory not to take action, for example if someone (due to prejudice) does not want to help a person because of their Roma origin. Then the lack of reaction is also a sign of discrimination.

Chain of discrimination:



Discrimination happens on different levels/dimensions:

Individual discrimination - unequal treatment occurs between individuals and results in unequal access to resources, inability to achieve goals, mistreatment.

Institutional discrimination - at the level of an institution or organization (or in a group) there are formal or informal arrangements that make one of the groups (or a few of them) in a worse situation.

Structural discrimination is the effect of the legal, social, economic and political system, as a result of which persons belonging to a certain group (often distinguished on the basis of a legally protected characteristic) are not able to fully use all resources and rights, resulting in social exclusion.

1. What is ‘hate crime’?

This curriculum concentrates on the essence and effects of hate crimes but since hate speech and hate crimes are both closely related to prejudice, intolerance and exclusion, you may also consider adding information about hate speech to your training depending on local context and legislation. For definition and further information on hate speech, we recommend Human Rights Guide at <http://www.inimoigusteg-iid.ee/en/themes/freedom-of-expression-media/freedom-of-expression/hate-speech>

Regarding goal 3 and 4:

Recognizing and understanding the dynamics of hate crimes and the impact that hate crimes have on victims and communities AND understanding the necessity to increase awareness of the impact of hate crimes in the society and among communities.

A) Definition

A **hate crime**⁵ is a criminal act motivated by **bias or prejudice towards particular groups** of people. A hate crime therefore comprises two distinct elements:

- It is an act that constitutes an offence under criminal law; and
- In committing the crime, the perpetrator acts on the basis of prejudice or bias.

A hate crime or hate-motivated incidents are connected to victims’ identity (however it can be a real one or assigned by a perpetrator), usually it is connected with the primary identity, so it can be based on one of the following motivations: race/ethnicity, religion, nationality, age, disability, sex, sexual orientation, gender identity. Legal definitions of hate crime vary a great deal from one country to another and do not necessarily include all violent acts based on the motivations mentioned above. Key issue is that **the perpetrator** of a hate crime or hate motivated incident **selects the victim** based on the victim’s membership or perceived **membership of a particular group**.

A **hate-motivated incident** is an act that **involves prejudice** and bias of the sort described above but **does not amount to a crime**.

⁵This chapter is mostly based on “Make hate crimes visible. Guidelines for Monitoring of Hate Crimes and Hate Motivated Incidents” a publication produced by CEJI - A Jewish Contribution to an Inclusive Europe on behalf of the Facing Facts! Partnership and TAHCLE: Training Against Hate Crimes for Law Enforcement. Curriculum for Trainers prepared by Tolerance and Non-Discrimination Department OSCE Office for Democratic Institutions and Human Rights.

Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany or provide the context of hate crimes. The incidents can be precursors to more serious crimes. Records of hate-motivated incidents can be useful to demonstrate not only a context of harassment, but also provide evidence of escalating patterns of violence⁶. It is also very important issue while preparing an advocacy activity for changing the law eg. when hate crime covers only some of the identity features and we want to upgrade it in order to protect every vulnerable group.

2. How is hate crime different from other crimes?

A) First of all, **hate crimes attack the deepest core of person's identity** – you became the victim because of who you are, not for what you've done. At the same time, it sends a “message” to victims and their communities that they are not welcome and that they do not belong to the society. Also, consequences of hate crimes are greater than those of other crimes: hate crime victims spend longer periods of time in hospitals, lose more time from work and have more intense and longer lasting feeling of lack of safety than do victims of similar crimes committed for other motives⁷.

Some common emotional reactions of victims of hate crimes are the following:

- **Fear and terror:** Some individuals may cease their everyday activities out of fear for themselves or their families.
- **Isolation:** Some victims may believe that the majority population does not care about or even will approve of the hate crime they were targeted with. This leads victims to feel isolated and alone.

Denial: Many victims of bias-motivated harassment or violence do not want to talk about what occurred because they believe that the conduct only will increase if they report it to the police. Other victims convince themselves that they were targeted for reasons other than bias because the idea that people hate them is too frightening.

⁶ See: Hate Crime Laws, a practical Guide, The Office for Democratic Institutions and Human Rights, <http://www.osce.org/odihr/36426> p. 16

⁷ See: Anti-LGBTI hate crime in Europe. Working papers on Research, Policy and Practice, p. 118

- **Self-blame:** Some victims who have been the target of slurs and stereotypes may convince themselves that the stereotypes are true and conclude that their own conduct caused the perpetrators to attack them.
- **Anxiety, loss of hope and spirit:** Some individuals, particularly young people, who are continually subject to slurs and feel that they are at constant risk of violence may begin to lose hope and spirit. Some individuals have been targets of bias for so long that they lose the capacity to be outraged at their own victimization.
- **Anger, aggression and violent behavior:** Some individuals move beyond fear and become angry. Anger may lead to violence and acts of retaliation.

Individual hate crimes can have a deeply destructive impact on individual victims as they undermine the sense of security and safety for victims and their family and friends.

B) Hate crimes **can threaten community stability**: Hate crimes often are directed at particular ethnic, national or religious groups. Impact of Hate Crimes on Targeted Communities and Societies may be varied eg. when these crimes grow in number, communities can split apart and retaliatory violence may result. But most often, especially when government officials, in particular law enforcement officials, do not respond robustly and swiftly to hate crimes, this can have serious consequences such as:

- Targeted communities can **lose confidence in law enforcement** and government officials, and become increasingly alienated;
- Some members of targeted communities may decide to **retaliate**, thus engaging in criminal activity themselves;
- Retaliation may provoke **further civil disturbances** that may increase the number of individuals harmed and increase property damage; and
- Hate crimes can **escalate** into significant ethnic conflict or in some instances into genocide.

C) Hate crimes are one of the few crimes in **which the perpetrator's motivation is a critical part of the offense**: In an ordinary assault, the police and prosecu-

tors do not need to establish in court the attacker's motivation. With hate crimes, however, the perpetrator's bias motivation is a critical part of the investigation. Determining whether evidence establishes that the perpetrator acted because of bias is the most significant difference between investigating hate crimes and most other crimes.

Secondary victimization occurs when the seriousness of the hate crime that victims have experienced is minimized by the broader community and particularly by police or other government officials. Hate crimes continue and escalate if not stopped: Hate crimes are usually part of a pattern of escalating conduct beginning with non-criminal acts of bias that, if not confronted, end with hate crimes.

- D) In order to find out whether what we deal with is a hate crime or not, we should go through **bias indicators**, which will help us to establish the nature of the crime. Bias indicators are objective facts that should be considered in determining the presence of a bias crime. They do not, in themselves, confirm that any incident was a hate offence. However, a bias indicator provides an indication that further investigation with a view to establishing the motive may be required. It is vital to record this information in order to evidence the possibility that an incident was bias motivated.

Here is a list of bias indicators enlisted in "Guidelines for Monitoring of Hate Crimes and Hate Motivated Incidents":

Victim perception: directly ask, if the victim perceives that the incident was motivated by bias, but keep in mind that the victim does not always understand that she/he/they may have been victimized in a bias-motivated attack. Victims often search for other reasons to explain an attack because their group membership represents an aspect of themselves that is not generally possible to change; they will forever be identified as a member of that group and therefore vulnerable to attack. They may also lack the knowledge or awareness to identify themselves as a hate crime victim.

Witness Perception: Ask witness, if they perceive that the incident was motivated by bias. At the same time, be prepared, that victim perception and witness perception may be different. Both need to be considered thoroughly.

Difference between suspect and victim in terms of racial, religious ethnic/national origin, gender, sexual orientation, etc. Try to see them in relation to majority-minority groups. Ask yourself questions:

- Do the suspect and victim differ in terms of racial, religious, ethnic/national origin, gender or sexual orientation?
- Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
- Has the victim recently moved to the area in which the incident took place?
- Is there a history of animosity between the victim's group and the suspect's group? Was the victim engaged in activities of his/her group at the time of the incident?
- Is the victim, although not a member of the targeted group, a member of an advocacy group that supports the victim's group, or was the victim in the company of a member of the targeted group?
- Is the victim associated to a member of the targets group (e.g. married to a member of the targeted group, or a family member of the member of the target group)?
- Is the victim's religious/ national origin/ sexual orientation/disability, etc. publicly known?

Location: Sometimes the place is not accidental, but it can refer us toward hate crime. That is when the victim was in (or near) an area or place commonly associated with a particular group (e.g. a community centre, or a mosque, church, synagogue, or other place of worship; a religious cemetery) or in an informal meeting place for certain communities (e.g. an LGBT bar, venue). Or the incident happened near locations related to the perpetrator's group (e.g. headquarters of extremist organisations) or any hot spots for hate crimes.

Timing: Also when the attack happens may be a clue. That is when the incident occurred on a date of particular significance for the target group of the victim (e.g. religious holiday or ethnic celebration national day; day of LGBT pride march etc.). On the other hand, if the incident occurred on any significant date for the perpetrator's group or on a date that the perpetrator considers as related to the victim's target group (e.g. Gaza war; 11th September; release of certain types of media messages at the time of the offense).

Language and word used, including written statements, **gestures, graffiti, visible signs** of the suspect. Hate crimes mean to send a “message” to the victim’s community, so look for significant comments, written statements or gestures regarding the victim’s background. Drawings, markings, symbols or graffiti left at the scene of the incident may also be a clue. If the target was property, check if it is religiously or culturally significant place, such as a historical monument or a cemetery.

Take a closer look to the suspect, as any visible sign (tattoo, clothes, haircut) can deduce to his/her membership to a specific group which is opposed to the target group of the victim.

Organised hate groups: check if there were objects or items left at the scene that suggest the crime was the work of paramilitary or extreme nationalist organisations. Look for evidence of such a group being active in the neighborhood (e.g. graffiti signs). It is also worth to check if any organized hate group claimed responsibility for committing the crime (e.g. released on-line statement).

History of previous hate crimes/ incidents: as escalation is one of the hate crime features, search for answers to the following questions:

- Is there a history of similar incidents in the same area?
- Has the victim received harassing mails or phone calls or experienced verbal abuse based on his/her affiliation or membership of a targeted group?
- Has the victim been blackmailed that his/her affiliation to a target group will be made public (e.g. the victim’s identity as LGBT)?

E) Barriers in investigating hate crimes can be visible on three parts: victims, law enforcement and political ones.

Recently conducted research, supported by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), shows that victims’ needs are linked to trust towards public institutions:

(...) for victims to report a crime it is essential that they trust public institutions. Victims must be confident that the report will be handled with due seriousness, that the reporting person will be perceived as trustworthy, that officers will not display a hostile attitude towards them and that procedures will be efficient, short and accommodating of victims’ needs, including the need to work⁸.

⁸ “Survey on the nature and scale of unreported hate crimes against members of selected communities in Poland”, Warsaw 2018 available: <https://www.osce.org/odihr/412445?download=true>

It reveals the need for intersectional cooperation as only together different partners can build required trust. Police officers must treat victims with respect and awareness of specifics of hate crime consequences. Law enforcement representatives need to inform victims of their rights, which may not be known by them. Victim support centers (whether public or non-governmental institutions) should thoroughly and honestly introduce possibilities and options victims have in their particular case, remembering the lack of legal recognition of particular incident as hate-crime does not change the psychological effect it might cause (majority of hate crime victims reported experiencing at least one symptom of PTSD exceeds).

While analyzing potential needs of hate-crime victims, it is crucial to remember, that it has a very particular effect on victims' behavior, often forcing them to change their routines in order to reduce the risk of exposure to events that led to the attack. Such reaction can lead to unhealthy and excessive behaviors or cause them to withdraw from everyday life, which does not make cooperation with such person an easy task, but we cannot blame the victim for that. This has to be taken into account and people dealing with hate-crime victims need to be prepared for that.

Lack of Reporting by Victims is related with victim's attitude, which can be:

- In denial that the attack was bias motivated
- Scared of reporting any crimes to the police
- Not trust police to investigate hate crimes
- Fearful of retaliation from the perpetrators if they report to police
- May blame themselves for the attack

Lack of Response by Law Enforcement is connected to the Police and prosecutors, who are to investigate hate crime. That refers to:

- Lack of reporting by police officers
- Lack of resources of police
- Lack of support by police commanders or other high government officials
- Lack of interest by prosecutors in handling hate crime cases
- Biases held by some portion of the law enforcement establishment

Lack of Response by Political Leaders manifests as lack of political will to recognize hate crimes as a serious issue.

F) How to deal with underreporting?

All of those mentioned above in section E are factors influencing the phenomena of underreporting of hate crime. Victims rarely report incidents to the authorities for fear of retaliation or of not being taken seriously, or because they have no confidence in the justice system. This contributes to lack of data which makes it difficult to quantify the extent of the problem and take effective measures to address it. European Commission against Racism and Intolerance (ECRI) recommends EU states to provide practical support to those targeted by hate crime as well as hate speech and prejudice-based violence: they should be made aware of their rights to redress through administrative, civil and criminal proceedings and encouraged to report to the authorities, and receive legal and psychological assistance.

However, in thinking about how to remove barriers it is easy to become side-tracked by thinking only about how to encourage people to report. That is why, it is also necessary to think about the service they get once they have reported. To inform this it can be productive to consider why people report, taking into account the following reasons:

- To be told what happened was wrong
- To get practical assistance
- To get emotional assistance
- To be believed and respected
- To make it stop

Good practice:

The challenge to overcome underreporting in hate motivated cases (whether they are recognized as hate-crimes or not) is overwhelming and widespread but there are some examples to look up to, in order to understand how the international, interdisciplinary, intersectional and intersectoral projects cooperation might look like. This good practice is based on the following projects:

- “Come Forward: Empowering and Supporting Victims of Anti-LGBT Hate Crimes”⁹. A project developed and implemented by a consortium encompassing 22 partners from 10 European countries, with diverse legal regulations regarding protection of hate crimes (in general and in particular in the context of sexual orientation and gender identity).
- Project “Call it hate”¹⁰, implemented in 10 European countries by a consortium of almost 50 partner organizations in similarly diverse context.

The philosophy for countering hate crime in those projects is based on addressing **three key needs**:

- The need to build infrastructure and improve the capacity of professionals to work with victims;
- The need to raise awareness among the general public and empower victims and witnesses to react;
- And the need to further our understanding of hate crime to inform all advocacy and policy activities. Building the capacity of professionals (e.g., police, prosecutors and victim support centers) to effectively recognize anti-LGBT hate crime and support victims is the first step to tackle the problem.

Once the infrastructure for reporting and victim support is put in place, there comes a time to raise awareness of hate crimes among victims and witnesses, encouraging both of these key groups to call out hate crime. For campaigns to be effective, it is crucial to make sure that there are evidence-based and target well-defined groups.

In the Come Forward project, the focus was on understanding and addressing gaps in the infrastructure which create barriers in the access to justice for victims of violence based on sexual orientation and gender identity. Legal and policy approaches to hate crime, systems to support victims, raising awareness and collecting data were documented in the book *Running Through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes in Europe* (Godzisz and Viggiani 2018). Based on the findings of that research, handbooks on working with victims of anti-LGBT hate crimes¹¹ and a training manual (Stoecker and Magić 2018) have been developed. Next, a pool of trainers was created, who then delivered capacity-building sessions for over 800 professionals across 10 EU member states. This has helped to improve the availability of inclusive facilities where

⁹ More about the project: http://lgbthatecrime.eu/project/project_cf

¹⁰ More about the project: http://www.lgbthatecrime.eu/project/project_cih

¹¹ The handbooks are available for download on <http://lgbthatecrime.eu/resources/handbook>.

victims of anti-LGBT hate crime may receive professional, confidential and effective advice, protection and support.

As the next step after building the infrastructure, the work on outreach and campaign activities started. The first steps included the development of info packs for victims of anti-LGBT hate crime – in most countries the first such publications¹². Over 15,000 info packs were distributed during outreach activities by Come Forward partners. Following started the work on the “Call It Hate” campaigns targeting, on the one hand, witnesses, and, on the other, members of the LGBT communities. Before doing so, it was ensured that country campaigners received bespoke training in how to communicate and frame equality issues. A special training session was organized in September 2018 in Sofia in cooperation with ILGA-Europe. Following the training, country-specific campaigns were developed, which separately targeted both members of the general public and members of the LGBT communities. While the tools and methods in each country were different, all partners had the same goals: to encourage witnesses to intervene on behalf of victims and to empower victims to respond.

The information for the campaigns, were generated from original data on reactions to hate crime, empathy for victims, awareness of hate crime and support for hate crime laws. Specifically, 20 focus group interviews with members of the LGBT community were conducted and undertook a large-scale survey (n = 10,612) polling the representative samples of populations in ten EU states. The received responses were used to inform the country campaigns. The results of the quantitative research are also presented in the form of a report to additionally serve as inputs for broader policy and research activities.

The philosophy behind the Come Forward and Call It Hate projects can be, and should be, definitely replicated in other actions aimed at tackling anti-LGBT hate crimes in Europe, but it is also applicable in other hate-crime related contexts. To inspire future efforts, sets of good practices on countering underreporting and supporting victims gathered throughout the projects have been published. They may be downloaded from the website LGBThatecrime.eu, which serves as a repository of all publications developed during both projects.

¹²The info packs are available for download on <http://lgbthatecrime.eu/resources/infopack>

3. How to support the victim of hate crime?

An adequate and comprehensive support of those experienced hate crime need to take into account the following aspects and issues:¹⁵

- Those affected by hate violence sometimes need **urgent support** to deal with the immediate consequences

Before getting into deeper understanding what had happened, hate-crime victims may need medical treatment, repairs to damaged property or financial assistance. Because of the potential for repeat victimization, which is a particular risk for those who suffer hate violence, refuge away from the site of the attack might be needed— possibly even temporary housing or at least some other forms of increased security measures around the home and other sites of attack.

- Those affected by hate violence need **to be believed**

In many cases the hate motivation is not acknowledged or taken seriously when hate violence is reported to the police and other authorities. Those affected by hate violence need to be heard and know their experiences are valid.

- People who have experienced hate violence need **time to articulate** their needs

Open, heedful and empathetic questions are keys to getting to know more about the victim's story. Whoever is talking to the victim needs to be sensitive and patient.

- Victims might need **help to communicate** their need

Regarding goal 5:
Gaining knowledge
about victim support

¹⁵Prepared on the basis of Kees et al., "Hate Crime Victim Support in Europe – A Practical Guide 2016".

From language services (in case of recent asylum seekers and refugees) to specialist disability support (in case of clients with communication difficulties) be prepared there might be need to help to communicate.

- Victims might need an **advocate or supporter** to express their needs

The presence of a friend, relative, or other advocate might help to articulate victim's needs.

- The expressed needs of the person who suffered from hate violence need **to be recognized, acknowledged and addressed**

Hate-crime victims need someone who understands their particular needs, in other case there is the potential for frustration, disappointment and withdrawal from offered support.

- Help will be needed to identify **resources** to overcome the consequences of hate violence

In the case of hate violence, where the social identity of the person affected places them in a minority in the locality or the community where they reside, they may feel marginalized and alienated from those around them, and at worst, feel under siege. Focusing on person's own resilience— namely their strengths and capacities—is fundamental to help overcoming the multiple impacts of hate violence or hate-crime.

- Needs specific to the victim's social identity

Victim's social identity creates specific needs, for instance:

People from particular **religious communities** might have some distinct faith and cultural needs and such needs might differ according to gender.

Persons with disabilities who have suffered hate violence and who have limited mobility will need accessible locations where casework support is offered, or alternatively visits by a caseworker to their home or another accessible place might be more suitable.

Those who suffer hate violence because of their **sexual orientation or gender identity** may potentially present a number of issues for support services but being accepted and not having their sexual orientation or gender identity questioned by a service is paramount. In addition, a hate crime service should identify LGBT friendly, supportive services, for example, when considering medical care, and LGBT specific peer support groups to strengthen identity, confidence, and to empower the victim.

Refugees, asylum seekers and migrants might need specialist legal support, as they might be concerned about their rights to residence if they report their experience of hate violence to the police or other authorities.

What is also crucial is to be aware of the fact that people hold plenty elements of identity, which should be taken into account as a refugee might be a gay person with some impairment.

- Support might be needed by those **indirectly affected** by hate violence

Sometimes not only the person who is (the 'main'?) victim might need help. The family of the person who experienced hate violence, friends, and any witnesses of the attack, may well need support too given that the impact of hate violence can spread well beyond the person targeted.

A) Victim's rights

People who experienced hate crime may not fall into our 'most wanted' picture of the victim (someone how communicated clearly, cooperates etc.). They may be traumatized or angry, sometimes not easy to cooperate, but it is important to pay attention to the victims' rights throughout the entire process. Rights that are particularly relevant to victims of hate crime include:

- Right to courtesy, compassion and respect
- Information about services and remedies
- Access to services
- Information about trial process
- Protection from contact with perpetrator

- Victim anonymity
- Victim impact awareness
- Information on victim compensation

B) Assistance to report

For many people facing hate crime, reporting can seem like an uncertain or risky option. Common worries include fear of wasting police time, the potential for a prejudicial response from authorities or risk retribution from a perpetrator. This is why it is important to build up a **support services** (e.g. a network of CSO and local authorities) and provide **assisted reporting**. Such services allow people to tell the police about a hate crime or incident (in a named or anonymous manner) with the backing of someone who has an understanding of minority group members' experiences and can give them emotional or practical backing to get what they need from police and other agencies.

Keep in mind, that there are different kinds of CSOs that can contribute to your network:

Legal aid clinics (e.g. citizen rights centers or advocacy CSOs) channel resources to the provision of legal services. Thus, they allocate the core of their resources - time, expertise, financial, etc. - to all kinds of legal aid, which is always needed.

Human rights CSOs tend to either specialize in different human rights issues or combine this expertise with social care provision. The latter may be more appropriate as the first port of call. They are often well educated on the subject of vulnerable groups, keep contact with representatives of those groups, which may be needed in your network.

Social service CSOs often have a range of highly professional tools at their disposal, but may be unable to effectively provide adequate legal support or be familiar with anti-discrimination education.

In all cases, therefore, synergy between all stakeholders is the optimal source of a comprehensive support network. Then adequate procedures should be based on and reflect the victim needs. The type and amount of resources available depends essentially on the type of the CSO concerned but has to be taken into consideration while building a support network.

Other types of assistance

Many people feel dissatisfied after reporting, choose not to report, or have needs that criminal justice agencies are not designed to fulfil. The range of needs that can be met by voluntary and community's organization services is broad and you need to take them into account while creating the support network. The 'must have' for consideration includes:

- **Emotional support:** from hotline services to psychological support or psychotherapy, it has to be provided by qualified staff or volunteers.
- **Independent advice and assistance:** sometimes what is missing is someone not involved, who has a "third eye" or keeps cold blood.
- **Restorative justice:** a concept in which victim's autonomy and efficiency are crucial.
- **State compensation for crime victims:** in cases the perpetrator is not found or insolvent.
- **Assistance moving home:** having a roof over one's head is crucial for living but sometimes it is a great demand to find a proper place.
- **Non-criminal legal measures:** especial in states which do not have a decent hate crime legislation, it does not mean nothing can be done.

Apart from individual barriers, which are discussed above, it is crucial to underline cultural barriers in various aspects. Removing organization barriers, namely getting rid of discriminatory practices in supporting organizations (in CSO and public ones) can be a long-term and arduous process. Anti-discrimination trainings should occur for the whole organization, preferably from top to dawn (to set the importance of the issue).

C) Why guidelines for data collection and reporting on hate crime¹⁴?

Collecting data, analysing it and reporting on hate crime can provide communities and Civil Society Organisations (CSOs) with a powerful tool with which to present their concerns to government, law enforcement, media and others. Credible data provides the facts needed to advocate for improved public policies to prevent and combat hate crime as well as for services that respond to the needs of victims.

¹⁴This subsection, apart from last paragraph, is directly taken from "Make hate crimes visible. Guidelines for Monitoring of Hate Crimes and Hate Motivated Incidents" p. 5-6.

Today across Europe there are huge differences in how data is collected, verified and how CSOs report on hate crime. The diversity of approaches and methodologies is rich but challenging at the same time. This is especially true when trends across countries need to be compared with the aim to design European policies and to encourage EU Member States to push for better national policies.

The following Facing Facts! guidelines provide CSOs with methodological advice on how to collect data on hate incidents, how to verify and classify the collected data, and how to report hate crime and hate-motivated incidents. By no means do the guidelines pretend to impose the only possible way of how data can be collected or how hate crime should be reported. Facing Facts! draws upon the rich experience of CSOs which have been active for many years in combating hate crime and engaged together in an in-depth reflection about their way of working, the lessons they have learned in the past years and how they can improve further.

CSOs are encouraged to report on hate crime in their countries in order to fill the gaps left by governments or to provide a more complete perspective to determine prevention and intervention services. For data on hate crime to be used by governments and their criminal justice agencies, it should be presented in a way that is compatible with criminal justice standards if it is to be credible. Data collection must therefore rely as much as possible on direct evidence which may also be used for subsequent investigation or verification.

The speed with which news of hate crime can spread within communities is one reason why accurate and speedy reporting and recording is so important. It only takes a small number of media news reports of hate crimes against a particular community to generate the sense that a particular group is being targeted. Yet without firm data, it is impossible to know whether a perceived growth reflects an actual increase. If there is an increase, firm data is needed to know where and when the hate crimes take place, what forms they take, and therefore what the policing and community response ought to be.

Data sources might be:

- Victims
- CSOs who provide reports on hate crime where the victim is unable or unwilling to report an incident in person (known as third party reporting)
- Friends and relatives of a victim

- Police
- Newspaper articles and radio and television news items

Depending upon the needs and resources of the victim group(s) and the risks associated with their coming forward with a complaint, CSOs need to think through the various implications for setting up one or more of the following mechanisms for receiving reports of hate crime incidents directly from victims.

- On-line reporting forms with option of anonymity
- Phone hotline
- Face-to-face meetings

All data collection systems require CSOs to be thoroughly prepared to respond to victims' needs at their level of direct contact with them, and provide the training needed for personnel/volunteers accordingly. More on victim support can be found in Chapter 6.

With credible data collection mechanisms, useful reports and an experience of good cooperation between CSOs and law enforcement, the processes of sharing data can be institutionalized through formal contractual agreements. Data sharing agreements allow police to share information on a hate crime, the victim/s and perpetrators. Examples include: a generic data sharing protocol developed by the Association of Chief Police Officers (ACPO), the national police umbrella body in the UK, variants of which have been signed between the CST and the Greater Manchester Police Authority, and Hertfordshire Constabulary; a protocol signed by the government of Catalonia to enable them to share information with local CSOs.

The model to follow may be that a local cooperation and network can be further developed on regional or state level. It is especially important to build local coalitions against hate crime in states where the legal protection is low, as closer and more often face to face cooperation brings more opportunity to find nonstandard solutions which may raise the protection vulnerable groups. Local activities and solutions may be inspirational for others as well as may be treated as a trial mode eg. the liaisons officers may first operate regionally (even in just one region) and to try out new solutions, that later on may be implement in further regions on statewide. The challenge this solution may faced is that it brings a lot of effort to show the importance of such position – the liaison officer should be a respected person and should hold a recognizable power, which enables to lead the process honestly and consistently.

4. Legal aspect of hate crime

A) International legislation.

Hate crime legislation is grounded in international and regional obligations to combat discrimination and to protect and promote equality.

There are universal and regional sources of international obligations to combat hate crimes¹⁵, including:

- The UN treaties and conventions;
- OSCE commitments
- Case law of the European Court of Human Rights.

Universal Declaration of Human Rights

“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”;

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”;

International Covenant on Civil and Political Rights (ICCPR): Reading the provisions as a whole— obligates states to investigate violence committed against individuals and to discharge these duties without discrimination.

Articles 6 &7 obligate states to investigate violations of right to life & inhumane treatment committed by public or private actors;

Article 2 echoes same principle of equality of UNDHR; “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and

Regarding goal 6:

Understanding legislation both at EU and state level

¹⁵ In this section, the International legal part is taken from TAHCLE: Training Against Hate Crimes for Law Enforcement p. 73-75.

subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 26 requires equality before the law, equal protection of the law and protection from discrimination: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Convention on the Elimination of all Forms of Discrimination (CERD): Represents the international standard for combating discrimination.

Obligation to punish racist violence:

ARTICLE 4 (a): Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as **all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin**, and also the provision of any assistance to racist activities, including the financing thereof;

Broad interpretation of the concept of ‘race’

“Race” refers to groups of people who are considered distinct due to physical characteristics such as skin color. Many people are unaware that “race” is a social construct, and has no basis as a scientific concept.

The use of the term race therefore remains prevalent, and is used in international and national legal texts. If there is no definition of race at a national level, it can be useful to refer to international and regional instruments which provide definitions or explanations.

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

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

tural or any other field of public life.”

European Convention on Human Rights and Hate Crime: Article 14 prohibits discrimination of the rights and freedoms contained in the Convention on specific grounds.

ARTICLE 14: Prohibition of discrimination

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

European Commission on Racism and Intolerance (ECRI): The Council of Europe’s body dedicated to addressing issues of racism and intolerance, have issued a number of recommendations relating to combating hate crime.

In “ECRI General Policy Recommendation N 11: Combating racism and racial discrimination in policing”, Adopted by ECRI on 29 June 2007, it encourages the investigation of racist incidents, recording them, and using a broad definition for the purposes of recoding racist incidents: “any incident which is perceived to be racist by the victim or any other person.”

The relevant excerpt from the recommendation is below:

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

12. To establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences;

13. To encourage victims and witnesses of racist incidents to report such incidents; 14. To these ends, to adopt a broad definition of racist incident;

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

For the purposes of this Recommendation, a racist incident shall be: “any incident which is perceived to be racist by the victim or any other person”;

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

The Ministerial Council Decision in 2009 (9/09) on Combating Hate Crime remains one of the most comprehensive commitments by the international community concerning state obligations to address hate crime.

Participating States, inter alia, committed themselves to:

- Collect, and make public, data on hate crimes;
- Enact, where appropriate, specific, tailored legislation to combat hate crimes;
- Take appropriate measures to encourage victims;
- Develop professional training and capacity-building activities for law-enforcement; prosecution and judicial officials dealing with hate crimes;

Promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership.

Case law of the European Court of Human Rights: Duty to investigate and bring to justice bias- motivated crime

Angelova and Illiev v. Bulgaria (26 July 2007): The Court held that there had been a **violation of Article 14 taken in conjunction with Article 2** because the authorities failed to make the “**required distinction from other, non-racially motivated offences, which constitutes unjustified treatment irreconcilable with Article 14.**” The Court noted that the domestic authorities had failed to conduct a **prompt and effective investigation into the incident**, especially “considering the racial motives of the attack and the need to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racial violence. ”The Court held that Bulgaria was in breach of its obligations to protect and prosecute human rights violations and that it was “completely unacceptable” that, **being aware of the racist motives of the perpetrators, there had been a failure to bring the case to justice promptly.**

Šečić v. Croatia (31 May 2007): The Court held that there had been a **violation of Article 3 and a violation of Article 14 of the Convention in conjunction with Article 3** for the following reasons: the applicant's attackers were suspected of belonging to a group of skinheads, and it was in the nature of such groups to be governed by extremist and racist ideology; accordingly, knowing that the attack was probably the result of ethnic hatred, the police should not have allowed the investigation to drag on for more than seven years without taking any serious steps to identify or prosecute those responsible. The Court also stated that "...State authorities **have the additional duty to take all reasonable steps to unmask any racist motive** and to establish whether or not ethnic hatred or prejudice may have played a role in the event." Failing to do so and "...treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."

Therefore, the state had failed in its obligation to take reasonable steps to investigate the racist motivation in the case.

Stoica v. Romania (4 March 2008): In the case of Stoica v Romania, where the alleged ill-treatment by police of a 14 year old Roma boy left him with permanent disabilities, the Court found a **violation of Article 14 of the Convention taken in conjunction with Article 3**. The Court held that the **authorities did not do everything in their power to investigate the possible racist motives behind the conflict**. The evidence indicating the racial motives behind the police officers' actions was clear and neither the prosecutor in charge with the criminal investigation nor the Government could explain in any other way the incidents or, to that end, put forward any arguments showing that the incidents were racially neutral. The evidence in particular included the following: the military prosecutors had premised their findings on the statements of the police officials who clearly had every reason to wish to exonerate themselves and their colleagues from any liability. At the same time, the prosecutors had dismissed all statements by villagers, all of whom were of Romani ethnicity, on the grounds of an alleged bias in favour of the applicant. Additionally, the prosecutors had ignored statements by police officials that the villagers' behaviour was "purely Gypsy", a statement that in the eyes of the Court demonstrated the stereotypical views of the police.

M.C. and C.A. v. Romania (12 April 2016): The Court found that the Romanian authorities' failure to efficiently investigate the incident and its potential **discriminatory motive breached Article 3** (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, **read together with the anti-discrimination Article 14**. The Court held that the investigations into the applicants' allega-

tions of ill-treatment **had been ineffective as they had lasted too long, had been marred by serious shortcomings, had failed to take into account possible discriminatory motives**. Importantly, the Court stated that **the hostile environment for the LGBTI community in Romania means that investigating a discriminatory motive was “indispensable”**. The Court also stated that if hate crimes are not differentiated from violent attacks that have no bias motives, then this indifference is tantamount to state acquiescence with hate crime.

Balázs v. Hungary (20 October 2015): The Court noted that the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence is part of the responsibility incumbent on States under Article 14 of the Convention taken in conjunction with Article 3. The Court pointed out that not only acts based solely on a victim’s characteristic can be classified as hate crimes, perpetrators may have mixed motives. The prosecuting authorities’ insistence on identifying an exclusive racist motive, their reluctance to link the perpetrator’s posts to the incident despite remarkable concordances, and their failure to identify the racist motive in the face of powerful hate crime indicators such as the racist social network posts resulted from a manifestly unreasonable assessment of the circumstances. These failures amounted **to a violation of Article 14 read in conjunction with Article 3** of the ECHR.

EUROPEAN UNION: EU Member States are obligated to ensure that racist and xenophobic motivation is considered at sentencing and to ensure that hate crime victims are properly assessed for special protection measures.

- [Victims Directive \(Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime\)](#)

(56) to recognize possible hate or bias motivation of the crime

(57) to assess whether hate crime victims are at risk of secondary victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures

Art. 22: individual assessments of victims and protection needs should take into account whether someone is a hate crime victim

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

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

B) State legislations

The following part of the curriculum should be always reviewed before training. The laws and/or interpretations may change over time. This section only offers base text for this part of training.

B/1 – Estonia

Estonian anti-discrimination legislation is based on **§12 of the Constitution**, which prohibits discrimination and incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. The principle in the Constitution is applied when there isn't a more specific law.

The Penal Code includes provisions which prohibit incitement of hatred as well as breach of equality in general but there is nothing about hate crimes. Hate-motivated criminal incidents are investigated and prosecuted under the general provisions of the Penal Code.

The provision prohibiting incitement of hatred is as follows: **§ 151 (1) Incitement of hatred Activities** which publicly incite to hatred, violence or discrimination on the basis of nationality, race, color, sex, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to the life, health or property of a person is punishable by a fine of up to three hundred fine units or by detention.

This prohibition does not work in practice – it has been applied on only a few occasions, for example in 2017 and 2018 there was zero cases reported under the § 151 (1). The problem lies in the wording of the provision, according to which only such incitement of hatred is punishable, which poses an immediate danger to life, health or property of a person.

Despite the lack of a specific law prohibiting hate crimes, in 2016 the state added the **possibility for police officers of registering reported hate crime** cases. Also, a guide has been developed to assist police officers in recording the crime as a hate crime. The police registration system enables police officers to tick a special box, marking a case as a hate crime. This “**hate crime flag**” is not restricted to hate crimes only and it is not mandatory to flag something as a hate crime. In 2017, the total number of recorded hate crimes was 4, all related to the race or ethnicity of the victim. In 2018 the total number was 6, five of them related to the race or ethnicity of the victim and one sexual orientation/identity.

B/2 - Latvia

Latvian hate crime legislation is comprised of several **articles in the Criminal Law**. It includes:

Section 48 (1) 14 according to which racial, ethnic, national and religious motives can be applied as an aggravating circumstances during penalty enhancement. So far there is information about only one case when the court evaluated the application of the norm, however, refused to apply it.¹⁶

Section 78 envisages criminal liability for incitement to racial, ethnic, national, and religious hatred. The Section is included in the Chapter IX “Crimes against humanity and peace, war crimes and genocide.” These crimes are investigated by the State Security Service (called Security Police until 2018).

Since 2014, **Section 150** envisages criminal liability for incitement to social hatred. The Section includes age, disability, gender and other features as hate motive. The provision can be applied in cases of anti-migrant hatred when no racial motive is present. The investigation of crimes falling under Section 150 are in the State Police jurisdiction. So far, two persons have been sentenced according to the Section 150.¹⁷

Section 78 and 150 are used to address both hate speech and hate crimes, even if the provisions have been designated to address incitement to hatred.

- Legal gaps regarding hate crimes and hate speech

¹⁶ Augstākā tiesa (2018), Naida runa un vārda brīvība (*Tiesu prakse krimināllietās par Krimināllikuma 74.¹, 78., 150.pantū*) (2012.gada oktobris - 2018.gada maijs), available at: <http://www.at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas>

¹⁷ Ibid. p.43

The provisions of the Section 78 and 150 of the Criminal Law cover hate crimes and incitement to hatred, however, the understanding of hate crimes in Latvia is largely reduced to incitement to hatred on the Internet. The application of ethnic, national, racial or religious motive as an aggravating circumstance (Section 48 (1) 14) is ineffective. So far there is information about only one case when the court evaluated the application of the norm, however, refused to apply it.¹⁸

In 2014, the Parliament amended Section 150, replacing former incitement of religious hatred by “Incitement of social hatred and enmity”. The provision follows a similar structure as the incitement to racial/ethnic/ national hatred provision, and also criminalizes both hate speech and hate crimes on grounds of person’s gender, age, disability or any other feature. However, in cases of incitement to social hatred (Section 150 (1)) one needs to prove that substantial harm has been caused by such act. Despite the fact that surveys indicate high levels of intolerance against the LGBT in Latvia, there was not sufficient support in the parliament to include explicitly sexual orientation among protected characteristics.¹⁹

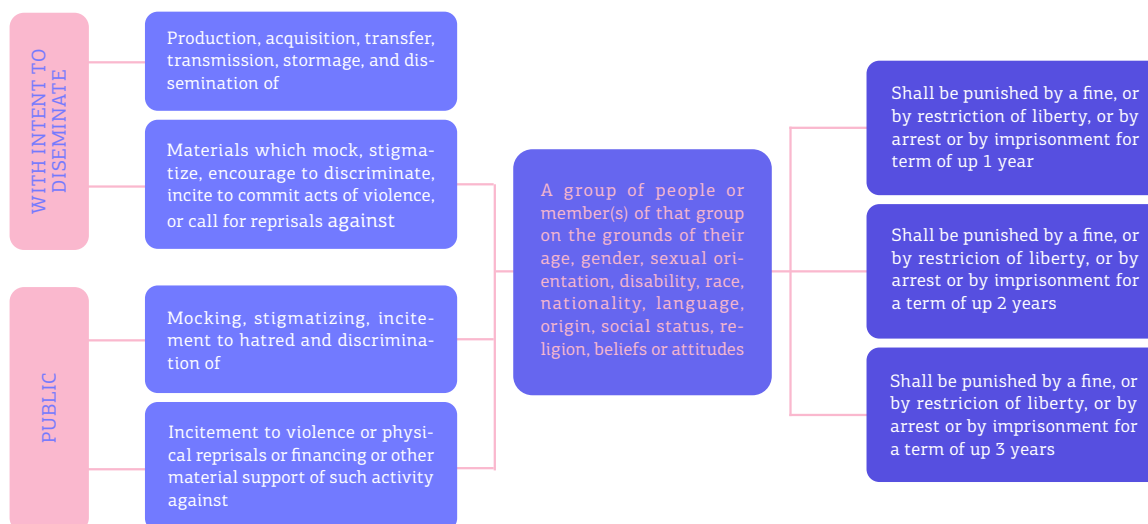
B/3 – Lithuania

In Lithuania, the concept of hate crimes is used to describe crimes motivated by hatred (bias) towards a group of persons or individuals who belong to such group because of their **age, gender, sexual orientation, disability, race, nationality, language, descent, social status, faith, beliefs, or opinions**. Therefore, nearly every crime against a person, the society or property may be considered to be a hate crime insofar as it is motivated by prejudices and advance negative views regarding the groups of persons concerned or the persons that belong to them.²⁰

¹⁸ Augstākā tiesa (2018), Naida runa un vārda brīvība (*Tiesu prakse krimināllietās par Krimināllikuma 74.¹, 78., 150. pantu*) (2012.gada oktobris - 2018.gada maijs), available at: <http://www.at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas>

¹⁹ Latvian Centre for Human Rights, Kamenska A. (2017), *Lifecycle of a hate crime. Country report for Latvia*, p.36, available at http://cilvektiesibas.org.lv/media/attachments/01/03/2018/ENG_brosura_internetam.pdf

²⁰ For more information about hate crimes, see: Methodological recommendations for the peculiarities of the organization, supervision and execution of pre-trial investigation regarding criminal offenses based on racial, nationalistic, xenophobic, homophobic or other discriminatory motives, approved by Order No.12.14-40 of the Prosecutor General of 23 December 2009, <http://www.prokuraturos.lt/data/public/uploads/2015/12/met-rek-del-neapykantos-2009-12-23.pdf>



The Constitution of the Republic of Lithuania enshrines the fundamental human rights, including the right to express beliefs and impart information, also notes the fact that these rights are incompatible with criminal acts – incitement to national, religious, racial or social hatred, violence, and discrimination.²¹ Since incitement to hatred threatens the fundamental values of the rule of law – equality of people and freedom of conscience, prohibition of acts related to incitement to hatred in Lithuania derives directly from the Constitution, the Criminal Law and international obligations.

However, it is important to note that the definition of hate crimes is a generic term used to define violence and criminal offence motivated by hate and it is not appear in criminal legislation. 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 Freedom 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 „Incitement against national, ethnic, racial, religious or other groups of people”²² (see table).

If racial, nationalistic, xenophobic, homophobic, religious or other motives of intolerance or of discriminatory nature are not mandatory attributes for the **qualification of a crime**, the Criminal Code specifies that if a crime was committed with the intention to express hatred against a group of people or a member of that group on the ground of his/her age, gender, sexual orientation, disability, race, ethnicity, language, descent, social status, religion, beliefs or opinions, it is deemed that motivation of a crime is considered an **aggravating circumstance**.²³

²¹Constitution of the Republic of Lithuania, part 4 of Article 25, <http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>

²² Criminal Code of the Republic of Lithuania, Article 170, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/vVrMmyDxLS>

²³ Criminal Code of the Republic of Lithuania, Article 60, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/vVrMmyDxLS>

Offensive actions, which also may incite hatred include other actions listed in the Criminal Code:

- discrimination on the basis of nationality, race, gender, ethnicity, religion or other belonging to a group – article 169 of the Criminal Code;
- creation, participation in or financing of an organised group or organisation aiming at discriminating or incite against certain groups of people – article 1701 of the Criminal Code;
- public approval of international crimes, the crimes of the USSR or Nazi Germany against the Republic of Lithuania and its people, and denial or gross denigration of those crime – article 1702 of the Criminal Code;
- hindering of religious worship or ceremonies – article 171 of the Criminal Code;
- part 2 of the article 312 of the Criminal Code can be mentioned here as well, as it establishes liability for the desecration of a grave or other public place of respect by vandalism based on the racial, national or religious motives.

5. Hate crimes – practical challenges

Case studies are a crucial element of the training resources they should illustrate specific issues which are highlighted in the previous parts of the manual – as well as give opportunity to apply gained knowledge and put into practice the skills acquired during the training to devise responses to specific cases.

Please note, that case studies are not made up stories, that we build in order to prove some thesis. It is crucial that introduced case studies are actual information (sometimes shorten or anonymized) but they refer to facts.

Crucial part to work with case studies are questions for reflection and/or group tasks related to it.

Regarding goal 7 and 8:

Understanding the extent of bias incidents and hate crimes in the Baltic states and EU AND being familiar with case studies from EE, LV, LT and also from other EU countries.

Depending on your goal you need to prepare adequate questions. If, in our training, we want to make sure participants gained knowledge about hate crime and the know how to recognize them, we can prepare the following questions after reading some case studies:

- Why do you think it is a “crime”? Is it illegal? If yes, is it a criminal offence? Which one?
- Why do you think it is a “hate” crime? What makes you think it is motivated by “hatred”?
- Apart from motivation, what other features distinguish this crime from other, common crimes, i.e. crimes which are not motivated by prejudice?

Based on given answers the group should be able to build a definition of hate crime and describe some related concepts (like hate incidents, hate speech).

Please find below some useful case studies from Baltic states.

Case study 1

Vandalism against the premises of an LGBT association led to positive cooperation with the Estonian Police and Border Guard

In 2018 the sign on the building of the Estonian LGBT Association was vandalized twice: it was bent in half and later covered with the stickers of far-right party. Both incidents received public attention but no charges were filed since the perpetrators were not identified.

Due to these events and the Tallinn Pride, the Estonian LGBT Association has established contact with the online police constables. Web constables are police officers working on the Internet, including social media. They respond to notifications and letters submitted by people online and they also deal with hate speech on social media and

online bullying. The Association had a meeting with constable Maarja Punak in May 2018 and the parties agreed to stay in permanent contact with each other to tackle the topic of anti-LGBTI hate speech, and also to address concrete cases. As part of the cooperation, the police officers have carried out several workshop meetings with the LGBT community to make contacts but also assure the community that the police also protects the wellbeing of LGBT people in Estonia.

Case study 2

Verbal attack on head of Estonian Jewish Congregation – despite quick conviction, hate motivation is not taken into account

In 2019, a young man speaking in Estonian who had been removed from a tram in downtown Tallinn by the municipal police (mupo) for stealing a ride shouted remarks “Jews to the oven” and “Heil Hitler” at the chief rabbi who was passing the man with his children. After shouting the remarks, the young man stopped his activity and with that the incident ended. Mupo forwarded video recordings to the police.

“The visibly nervous young man who had made profane remarks at the patrol kept talking to an acquaintance of his on the cellphone throughout [the incident]. During the procedural act, the rabbi with children passed by at some distance, in whose direction the young man in a state of nervousness voiced insulting remarks. The mupo patrol intervened in the situation immediately and ended the young man’s improper behavior, promising to call the police if not obeyed,” spokesperson for the municipal police explained the situation to the public. The police immediately opened a criminal proceeding following a verbal attack.

Case study 3

A racist attack against a man from Ecuador, living in Lithuania, that happened in July, 2018. The case went into trial in Court for violation of public order (art. 284 of the Criminal Code) and incitement of hatred (art. 170 of the Criminal code). The Court found the accused guilty on both counts. One of the convicted persons filed the appeal, but it was dismissed by the Court of Appeal.

The person was attacked in a public place by two persons, wearing a skinhead type of outfit shouting “Lithuania for Lithuanians”. Two men punched the victim several times.

The victim believed to be attacked because of his race and beliefs (as he informed that he had done a videoblog where he encouraged the idea of “Lithuania for all”). Also he went to one of the so called neo-nazis march on the Restoration of Independence day, when many people march with slogans “Lithuania for Lithuanians” and peacefully held a poster “Lithuania for all”.

The victim explained that right after the attack, he called the police and that the police officers merely asked him if he needed to be brought to hospital and that there was nothing they could do. As he explained that there was only pain, but no blood, he did not want to go to the hospital, but was very disappointed by the answer. Therefore, he wrote a public Facebook post, after which he received consultations from other foreigners, who have experienced something similar, experts, etc. He was advised to write a written complaint and go to the hospital for assessment injuries as quick as possible, which he did. According to the victim, the investigation was initiated only after a public outrage. According to the victim, the police officers explained in public that he refused to submit a written complaint, and during the investigation he believed he was ensured his right to translation, but he was refused a right to have an accompanying person for some time during the investigation, also a right to ask for investigation to be audio or video recorded. He said he asked if he could record his questioning, and he received a negative answer, but no explanation that he had a right to ask for the investigators to make a recording.

The victim said that he could notice that the police officers were really trying hard, but it seemed that it was difficult for them to understand the hate crime motive. The victim also stressed that after sharing his story, he received many stories of racist attacks against other foreigners residing in Lithuania or who have already left Lithuania and told him to get out of there, because they experienced racist attacks.

Experts believed that the hate motivation was recorded and the investigation was started because of the outrage by the wider public. There were many procedural problems: the right to interpretation and translation was not guaranteed at the very beginning when the police arrived; the person was discouraged saying there is nothing the police could do or not informed of how to file a formal complaint, then the police said they couldn't start a pre-trial investigation until they got a complaint, even though according to the procedure, no written complaint is required.

During one of the court hearings the defendants came with the posters saying: “The truth is on our side! Lithuania for Lithuanians 14/88”. According to the Anti-Defamation League's, a Jewish civil rights organization, hate symbols database „Hate on Dis-

play”, 1488 is the combination of two common white supremacist numeric symbols: 1) 14 (shorthand for the “14 Words” slogan: “We must secure the existence of our people and a future for white children”) and 2) 88 (standing for “Heil Hitler”).²⁴ This was taken into account by the Court of Appeal in deciding to uphold the charge of the incitement of hatred.

²⁴ Anti-Defamation League, Hate on Display, Hate Symbols Database, <https://www.adl.org/hate-symbols>

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