

Combating **hate** crimes

Guide for practitioners and decision-makers

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Foreword

The present material has the purpose of providing a general understanding of the hate crime phenomenon and its effects, as well as a framework for strategic action in combating hate crimes, also tackling specific issues of relevance to Romania in this field. It also aims to draw a very serious warning as to a dire need for a shift of paradigm in the way Romania deals with hate crimes. It argues that political and institutional will at highest level is needed in order to achieve change and finally deliver adequate protection and policing for all, together with a fair and equitable justice making process.

Hate crimes represent a topic of serious concern across the world and the objective of adequately tackling and combating the phenomenon of crime determined by prejudice is assumed at international level, and in many countries at national level through specific strategic actions and/or policies. Romania has numerous times received criticism both in relation to insufficient action in order to adequately combat the phenomenon, and, most worryingly, in relation to police abuse towards the Roma in particular. Furthermore, the European Court of Human Rights has decided against Romania in cases involving police abuse in Roma communities and/or the presence of discrimination and prejudice within the justice delivery process. In these cases, Romania failed miserably to deliver justice, and instead added insult to injury to a very serious extent, resulting in further breaches of rights. Some of these cases are also presented in this material, the last one having been decided in 2015. Unfortunately, situations similar to the ones described in cases for which Romania lost before the ECtHR continue to be reported by Roma and human rights NGOs.

This material also includes numerous elements related to how Romania could adopt a strategic approach towards combating hate

crimes and adequately delivering justice when such crimes occur, and a demonstration on why this is of utmost importance. A specific topic is related to data collection, Romania being the only country in the EU which does not collect administrative case-related data on hate crimes disaggregated according to grounds of discrimination. An analysis of arguments invoked accompanied by explanations as to why such collection must be done is provided, as well as arguments for going further than administrative data on cases and conducting crime victimization surveys. Such surveys are necessary in order to have an understanding of the real dimension of the phenomenon and of who those most at risk of becoming victims are. It must be stressed here, together with international bodies who have also noted this in relation to Romania, that lack of cases reaching courts is not a reflection of the absence of the phenomenon, but moreover a reflection of underreporting for various reasons or of lack of prosecutions. Lack of prosecutions also appears in the low number of cases sent to court by Prosecutor's Offices in Romania. Finally, the material includes a chapter on good practices in combating hate crimes. These practices have been selected with a very pragmatic focus in mind: namely those practices or elements of practices which were considered to be easily transferable.

However, in order to be able to adequately tackle hate crimes, and before being able to raise the issue of strategic approach towards combating hate crimes, the Romanian authorities must undergo a shift of paradigm in their approach towards hate crimes. They must effectively ensure while also communicate publicly an effective zero tolerance policy towards police abuse and they must put in place measures for eliminating prejudice from the act of delivering justice.

Delia Niță, Anti-discrimination Programme Manager, Centre for Legal Resources

Chapter 1: What are hate crimes?

Hate crimes is a broader term which refers to all crimes that have been committed based on discrimination. Even if the term itself is not expressly provided in the Romanian legislation, the concept of *hate crimes* helps professionals and academia in the area of criminal law to approach a type of crime which is considered by the European Court of Human Rights and international intergovernmental organizations to have a serious impact on democracies.

In an explanation offered by the Organization for Security and Co-operation in Europe (further referred to as OSCE), hate crimes comprise two elements: (1) they are acts which are provided as crimes under criminal law and (2) when committing the crime, the perpetrator acts based on prejudice or bias.¹ A person becomes victim of a crime based on her real or perceived membership to a specific group which shares a specific trait (e.g. gender, race, ethnic origin, sexual orientation, etc.). For example, the Romanian law provides a series of such elements of identity which, if found to be part of the perpetrator's motive, result in considering the act as a hate crime: „*race, nationality, ethnic origin, language, religion, gender, sexual orientation, political opinion or membership, possessions, social origin, age disability, chronic non-communicable disease or HIV/AIDS status*” or other criteria. Another simple definition provided by the OSCE regards hate crimes as “*crimes motivated by intolerance towards certain groups in society*”².

¹ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, p.15.

² The Organization for Security and Co-operation in Europe, the Office for Democratic Institutions and Human Rights, *Hate Crime Laws: A Practical Guide*, 2009, p.16

Each State has a different criminal law approach to hate crimes, according to their respective criminal law systems. The differences arise when considering hate crimes as individual crimes or as aggravating circumstances, or when establishing which criteria are expressly provided by law as part of the hate grounds. The specific definitions of hate crimes included in a State's criminal law system influence the way in which hate crime data is collected by the authorities. For example, data on individual hate crimes is easier to collect than data on the instances when the aggravating circumstance has been applied³.

● **Hate crimes in the Romanian criminal law**

The motivation based on discrimination was first introduced as an aggravating circumstance in the Romanian legal criminal framework by Law no. 287/2006⁴ which added to the Criminal Code which was in force at that moment⁵. The new Criminal Code⁶ kept the same legal approach and, in addition, opened the list of criteria which can be considered when establishing the motivation based on discrimination. Apart from the aggravating circumstance provision, the discrimination component is found in the definition of other individual crimes in the Criminal Code or in special criminal laws.

Presently, the Romanian Criminal legal framework contains two types of provisions on hate crimes:

³ The Organization for Security and Co-operation in Europe, the Office for Democratic Institutions and Human Rights, *Hate Crime Laws: A Practical Guide*, 2009, p.7.

⁴ Law no.278 of 4 July 2006 for the amendment and supplementation of the Criminal Code, as well as the amendment and supplementation of other laws.

⁵ We refer to the Criminal Code of Romania, of 21 June 1968, repealed through Law no. 187/2012 for implementing *Law* no. 286/2009 on the *Criminal Code*.

⁶ Law no. 286 17 July 2009 on the Criminal Code (further referred to as the Criminal Code).

1. Hate crime as an aggravating circumstance, provided in art.77, h) in the Criminal Code

"The following constitute aggravating circumstances: (...) h) the offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or membership, possessions, social origin, age, disability, chronic non-communicable disease or HIV/AIDS status, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals."

The consequence of applying the aggravating circumstance is provided in art.78 of the Criminal Code, thus: *"(1) In case the aggravating circumstances exist, sentencing can go up to the special maximum. If the special maximum is not sufficient, in the case of a prison sentence an addition of up to 2 years can be added without exceeding one-third of the maximum, and in the case of a fine one-third of the special maximum can be added at most. (2) Increasing the threshold of the maximum penalty can only be done once, irrespective of the number of aggravating circumstances found."*

2. Hate crimes as individual crimes provided by the Criminal Code or other special criminal laws

There are individual crimes provided in the criminal law framework where the motives based on discrimination (listed in art.77 h) are part of the definition of the crime.

These are examples of individual crimes which can be considered individual hate crimes:

- Incitement to hatred or discrimination (art.369 Criminal Code)⁷
- Abuse of office, in the version based on discrimination (art.297, para.(2) Criminal code)⁸
- Torture based on any form of discrimination (art.282, para.(1), d) Criminal Code)⁹
- Preventing the freedom to practice religion (art 381 Criminal Code)¹⁰
- Desecration of places or objects of worship (art.382 Criminal

⁷ Criminal Code, art.369 entitled Incitement to hatred or discrimination: „*Inciting the public, using any means, to hatred or discrimination against a category of individuals shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.*” Official translation of the Romanian Criminal Code available at: <http://www.just.ro/LinkClick.aspx?fileticket=72y7HkFZ%2BRw%3D&tabid=89> (last accessed at: 27.05.2015)

⁸ Criminal Code, art.297 entitled Abuse of office, para. (2): “*The same punishment applies [no less than 2 and no more than 7 years of imprisonment and the ban from exercising the right to hold a public office] to the action of a public servant who, while exercising their professional responsibilities, limits the exercise of a right of a person or creates for the latter a situation of inferiority on grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, political membership, wealth, age, disability, chronic non-transmissible disease or HIV/AIDS infection.*”

⁹ Criminal Code, art. 282 entitled Torture, para. (1) let. d): “*(1) The act of a public servant holding an office that involves the exercise of state authority or of other person acting upon the instigation of or with the specific or tacit consent thereof to cause an individual pain or intense suffering, either physically or mentally: (...) d) for a reason based on any form of discrimination, shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.*”

¹⁰ Criminal Code, art. 381 entitled Preventing the freedom to practice religion: “*(1) The act of preventing or disturbing the freedom to practice any ritual specific to a religion, which was organized and operates according to the law, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine. (2) The act of compelling a person, by coercion, to take part in the service of any religion or to perform a religious act related to the practice of a religion shall be punishable by no less than 1 and no more than 3 years of imprisonment or by a fine. (3) The same penalty shall apply to compelling an individual, by violence or threats, to perform a religious act forbidden by the religion, organized according to the law, to which they belong.*”

code)¹¹

- Desecration of corpses or graves, in certain situations and when the aggravating circumstance is applied (art.383 Criminal Code)¹²
 - All crimes provided in the Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity.
-
- **The difference between hate crime and hate speech**

In the Annex of the Recommendation No. R(97)20 of the Committee of Ministers of the Council of Europe, hate speech is considered to cover *“all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against*

¹¹ Criminal Code, art. 382 entitled Desecration of places or objects of worship: *“The desecration of a place or object of worship belonging to a religious denomination which is organized and operates according to the law, shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine.”* In the criminal law legal studies, the desecration of a place or object of worship has been defined as the action of *“manifesting lack of respect towards a place or object of worship pertaining to a religious cult which is recognized by law”*. Whenever the act itself of desecrating meets the requirements of a different crime, then both crimes are considered when criminal charges are brought against the person. See Tudorel Toader and others, *Noul Cod penal. Comentarii pe articole* [The New Criminal Code. Comments on Articles], Editura Hamangiu, 2014, p.586.

¹² Criminal Code, art. 383 entitled Desecration of corpses or graves: *“(1) The theft, removal, destruction or desecration of a corpse or of the ashes resulting from its cremation shall be punishable by no less than 6 months and no more than 3 years of imprisonment. (2) The desecration, by any means, of a grave, of a funeral urn or of a funereal monument shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.”*

minorities, migrants and people of immigrant origin.”

Hate speech is approached differently in the Council of Europe member States and there is no mandatory and generally agreed upon definition for it. If we use the explanation offered by Recommendation no. R(97)20 in order to compare hate speech and hate crimes, we observe that hate speech is not a crime by definition, however, hate speech can become a crime in certain situations. For example, the Romanian Criminal Code condemns “incitement to hatred or discrimination” (art.369 Criminal Code) which, according to its legal definition, can be manifested “using any means”, thus including hate speech – which is often the case.

As to the means of communication for promoting hate speech, these can be verbal, online, through printed publications or even drawings of specific symbols. Online hate speech deserves a special attention from authorities, from the point of view of the multiplying effect which the internet has on the hate message¹³. For instance, hate speech which comes in the form of racist and xenophobic acts committed through a computer system, is considered to pose such a high risk that the Council of Europe instructs states to impose criminal punishments in the following cases: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system; denial, gross minimization, approval or justification of genocide or crimes against humanity¹⁴.

Hate speech becomes relevant in the discussion on hate crimes when it appears in the form of evidence related to a crime. Thus, evidence of hate speech expressed by the perpetrator in the context of a specific crime can help investigators and prosecutors apply the aggravating

¹³ For more information on hate speech, see Anne Weber, Council of Europe, *Manual on Hate Speech*, 2009.

¹⁴ Council of Europe, *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, 28 January 2003, ratified by Romania through Law no. 105/2009.

circumstance provided in art.77 h) Criminal Code or to categorize de acts as an individual hate crime.

An example where hate speech constituted relevant evidence used by the investigative authorities for categorizing the crime as one motivated by hate is a case from Hungary, regarding attacks against Roma persons, between the years 2008 and 2009. Roma communities were the targets of a series of violence, carried out in similar manners, using weapons and Molotov cocktails. As a result of the attacks, members of the Roma communities were wounded and others were killed. In one of the cases, the investigators found that the suspects were dressed in clothes symbolizing their allegiance to extreme right groups and one of the suspects had tattoos of racist anti-Roma speech on his body¹⁵.

- **The Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law**

The Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (further referred to as the Council Framework Decision) considers that racism and xenophobia are direct violations of the principles upon which the European Union is founded. These acts are considered to be threats which are serious enough to require an adequate reaction from all Member States. Thus, the Council Framework Decision provides the need for the harmonization of criminal laws of Member States with regard to the definition of racism

¹⁵ Amnesty International, *Violent attacks against Roma in Hungary: Time to investigate racial motivation*, 2010, p.30. The specific situation refers to the „Szigetvár” case when, on 22 January 2008, a Roma woman and her daughter were attacked by five young men when they were returning home in Szigetvár, Hungary.

and xenophobia and the establishment of criminal punishments which are effective, proportional and dissuasive. The criteria which are protected in the Framework Decision refer to race, color, religion, descent or national or ethnic origin; however, the Council Framework Decision does not prevent Member State from adopting provisions in national law which extend these criteria to others¹⁶.

The Council Framework Decision requires the Member States to ensure that their criminal law has criminal punishments which are effective, proportional and dissuasive with regards to the following crimes: publicly inciting to violence or hatred directed against a protected group of persons¹⁷; publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes when the conduct is carried out in a manner likely to incite to violence or hatred against the protected groups¹⁸. In the viewpoint of the Council Framework Decision, a criminal punishment for these crimes which is effective, proportional and dissuasive has a maximum of at least between 1 and 3 years of imprisonment¹⁹.

The racist and xenophobic motivation represents another key point of the Council Framework Decision. For all other offences other than those mentioned in the above paragraph, Member States shall take the necessary measures to approach the racist and xenophobic motivation in the following ways:

- to ensure that it is considered an aggravating circumstance
- or, alternatively that such motivation may be taken into

¹⁶ Council Framework Decision 2008/913/JHA of 28 November 2008, preamble, pt. (10).

¹⁷ Council Framework Decision 2008/913/JHA of 28 November 2008, art.1, para. (1), let. a) and b). The protected group of persons are mentioned in the preamble, at pt. (10).

¹⁸ Council Framework Decision 2008/913/JHA of 28 November 2008, art.1, para.(1), let. c) and d).

¹⁹ Council Framework Decision 2008/913/JHA of 28 November 2008, art. 3.

consideration by the courts in the determination of the penalties.²⁰

- **Why is it important to prevent hate crimes?**

It is necessary to prevent hate crimes first of all because they represent crimes, thus they are acts which have been considered dangerous enough to be included in the criminal legal framework. In addition, hate crimes are considered to reach a certain level of seriousness which distinguishes them from other crimes and require a firm reaction from state authorities.

The European Court of Human Rights states that hate crimes are *"a particular affront to human dignity"* and *"in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction"*. Combating this type of crimes results in *"reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment"*²¹. The European Union's institutions qualify racism and xenophobia as *"direct violations of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles upon which the European Union is founded and which are common to the Member States"*²².

However, what makes hate crimes so serious in order to require special attention from authorities with regards to the prevention and

²⁰ Council Framework Decision 2008/913/JHA of 28 November 2008, art. 4.

²¹ *Nachova and Others v. Bulgaria*, [GC], nos. 43577/98 and 43579/9, §145, 2005-VII.

²² Council Framework Decision 2008/913/JHA of 28 November 2008, preamble, pt (1).

combating of such crimes? In the following paragraphs we will present a series of answers for this question.

Hate crimes are forms of discrimination and humiliation of victims

Victims of hate crimes are targeted by the perpetrators based on elements of their identity. The perpetrator considers that the victim's identity is proof of her inferiority or is unacceptable and commits the crime sending this message of humiliation. Thus, in the case of hate crimes, victims are forced to accept that they were targeted solely based on their identity and that they risk finding themselves in the same situation – either them or their family²³ or loved ones who share the same identity (eg. race, ethnicity, sexual orientation, etc...) or fundamental (eg. political opinion, religion) characteristics.

Hate crimes have the potential to inflict greater post-victimization emotional and psychological trauma compared with similar crimes not motivated by hate. Overall, a body of research evidence comparing samples of hate crime victims and victims of comparison crimes has shown that as a group hate crime victims are more likely to report experiencing post-victimization distress symptoms such as anxiety, nervousness, loss of confidence, anger, crying, difficulty sleeping, difficulty concentrating, withdrawal and depression. Such particular and unique reactions to hate crime occur because they are attacks upon the core of the victim's identity. Hate crimes can be seen as 'message crimes', conveying to the victim, and those who share the victim's identity that they are devalued, unwelcome, denigrated, despised and even hated²⁴

²³ European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.20.

²⁴ Iganski, P. and Lagou, S, *Hate crimes hurt some more than others: Implications for just sentencing of offenders*, Journal of Interpersonal Violence, 2015, Vol. 30, No. 10:1696-1718, and Iganski, P and Levin, J. *Hate crime. A global perspective*, Routledge, New York, 2015.

Hate crimes have a larger impact on society

According to the European Union Agency for Fundamental Rights (further referred to as FRA), hate crimes create an impact at the society level, which goes beyond the sphere of the criminal act itself²⁵. The message conveyed through the hate crimes is that some groups do not have the right to be part of the society²⁶. Thus, persons from the same group as the victim will perceive the signal that they also risk to become the targets of such crimes. At the same time, hate crimes have the potential to incite other perpetrators as well.

At the larger level of the society, hate crimes widen the differences between groups and run counter to values such as human dignity, individual autonomy and a pluralistic society²⁷. Similarly, the OSCE warns that discrimination and intolerance affect both the safety of the individual as well as the cohesion of the society and can lead to wide scale violence²⁸.

Hate crimes endanger entire groups of people who have not been passive subjects of the crime

Since the perpetrator targeted the victim based on her social identity, it means that any person who shares the same characteristics as the victim could have been in the same position as her. Thus, more people are endangered by hate crimes, even if they did not participate directly in the criminal act itself, and there is a need for a firm reaction from authorities in order to protect such groups of people who are

²⁵ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.7.

²⁶ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, p.9.

²⁷ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.19.

²⁸ The Organization for Security and Co-operation in Europe Ministerial Council Decision no. 10/07, *Tolerance and non-discrimination Promoting mutual respect and understanding*, Madrid, 30 November 2007.

vulnerable to hate crimes.

- **What does the prevention and combating of hate crimes generally imply?**

The adoption of criminal legislation on hate crimes as the monitoring of the enforcement of such legislation

A first step in approaching hate crimes is adopting legislation which punishes such criminal acts motivated by discrimination. The adoption of special provisions regarding hate crimes is important from many points of view: it sends an explicit message that the phenomenon is treated with seriousness; it is a process that encourages discussion on this issue and raises public awareness; it facilitates the collection of data on the phenomenon²⁹, with special focus on prevention. Regarding the latter, FRA has stated that if a clear definition of hate crimes is provided in the national legislation, then there is also a positive impact on data collection³⁰.

The collection of complementary data regarding the hate crime phenomenon

In addition to hate crime data collected by authorities, states must also use hate crime victimization surveys. The results of such surveys offer useful information regarding unreported crimes, the experience of hate crime victims, and the relationship between victims and the authorities³¹. An example of crime victimization survey which also provides questions on hate crimes is the European Union minorities

²⁹ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, pp.19-20.

³⁰ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.10.

³¹ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.10.

and discrimination survey (EU-MIDIS) conducted by FRA. In 2009, one such survey explored the experiences of Roma people in Europe as victims of crime and discrimination. The results show that, at the level of the 7 Member States included in the survey³², 79% of the Roma people who considered themselves victims of crime did not report the crimes to the police. The most frequent answer for not reporting was the lack of trust anything will happen or change after reporting, which determined the FRA to conclude that further efforts are needed to stimulate the trust of the Roma in the police.³³

Increasing the visibility of hate crime and the prosecution of perpetrators

Increasing the visibility of hate crimes in the society entails disseminating data on hate crimes, as well as the actual convictions which were applied to perpetrators³⁴. The communication of this information by authorities can be done through annual reports, specific reports on hate crimes or through other such means. More examples of best practices on this topic are presented in Chapters 3 and 4.

Strengthening victims' trust in the authorities

The OSCE considers³⁵ that factors which deter victims from approaching authorities represent obstacles in the monitoring and reporting of hate crimes. Victims and witnesses must be encouraged to file reports and testimonies of hate crimes. At the same, time, authorities must also inspire trust by ensuring that hate crimes are responded to in a positive

³² Bulgaria, The Czech Republic, Greece, Hungary, Poland, Romania and Slovakia.

³³ The European Union Agency for Fundamental Rights, EU-MIDIS European Union Minorities and Discrimination Survey, *Data in Focus Report 1: The Roma, 2009*, pp. 6 - 7.

³⁴ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.13.

³⁵ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, pp.34.

manner and that victims are given appropriate protection. One of the factors which deter victims from reporting crimes to the police is the fear of having their identity or affiliation disclosed to the public during the investigation³⁶. In relation to this, adequately instrumenting and managing these files also from the perspective of the protection of personal data is of utmost importance. This argument will be detailed in Chapter 2.

- **What is the role of monitoring the phenomenon of hate crimes in the effort to prevent and combat this type of crimes?**

The victims' lack of trust in the ability of authorities to offer the protection against hate crimes hinders the reporting of these crimes to the police. Consequently, hate crimes remain not just unpunished, but also invisible to authorities³⁷. Without any information on of hate crimes, authorities cannot draw up and implement public policies to efficiently prevent and combat this phenomenon.

- **Positive obligations of states under the European Convention of Human Rights, in relation to hate crimes**

Similar to all the states which have ratified the European Convention

³⁶ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, pp.35.

³⁷ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.13.

of Human Rights³⁸, Romania has positive obligations stemming from the Convention – this means that the State must not only refrain from infringing human rights, but also take specific action to prevent the violation of human rights provided by the Convention³⁹. The positive obligations of States also apply to hate crimes, in relation to the rights safeguarded in the Convention.

For instance, state authorities are obliged to investigate the potential link between racist attitudes and the violence that has been committed; if evidence appears during the investigation indicating racist motivation (such as racist slurs used by the perpetrators), authorities must verify this evidence and make an in-depth analysis of all facts, in order to discover the existence of the racist motivation of the crime⁴⁰.

In cases of violence, states must take all reasonable steps to unmask any racist motivation and any possible link between the violence and the hate or the racial prejudice against the victims. This is an obligation of diligence on behalf of the authorities, which must collect evidence, explore any practical “*means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence*”⁴¹. The obligation entails diligence as opposed to reaching a certain result, since the authorities must take all reasonable steps and make all necessary efforts, according to the circumstances of the case.

To be more precise, in the case of *Nachova and Others v. Bulgaria*, the Court has examined the means through which the State fulfilled

³⁸ The European Convention of Human Rights was ratified by the Romanian State through Law no. nr. 30/1994.

³⁹ Philip Leach, *Taking a case to the European Court of Human Rights*], Third Edition, Oxford University Press, 2011, pp.5,18.

⁴⁰ *Nachova and Others v. Bulgaria*, [GC], nos. 43577/98 and 43579/9, §161,164, 2005-VII.

⁴¹ *Bekos and Koutropoulos v. Greece* , no. 15250/02, § 69, ECHR 2005-XIII.

its positive obligations under Article 2 (the right to life) in conjunction with Article 14 (prohibition of discrimination), to take all reasonable steps to investigate whether discrimination had played a part in the killing of two Roma people from Bulgaria, following the use of force by the Bulgarian Police. In this case, the Court considered that the authorities failed to unmask the racist motivation and have not taken all reasonable steps in that sense, and listed a series of flaws in the investigation, such as: verifications were not made into the statement of a neighbour who claims to have heard the perpetrator utter a racial slur immediately after the shooting⁴²; the authorities did not inquire into the excessive use of force against the two unarmed and non-violent men⁴³; no attempt was made to verify whether the officer who shot his weapon had previously been involved in similar incidents or had been accused in the past of displaying anti-Roma sentiment⁴⁴. The Court established that these aspects would have been plausible and sufficient information to alert the authorities to the need to carry out an initial verification and a further investigation into possible racist overtones of the events⁴⁵ something the Bulgarian authorities did not do.

The abovementioned principles established by the court in *Nachova and Others v. Bulgaria* were subsequently applied in other cases where the authorities failed to conduct effective investigations in situations of hate crime. For example, *Šečić v. Croatia* refers to an attack on a Roma person on which there was evidence that the perpetrator belonged to an extremist group. The Court held that the State had not taken all reasonable steps to unveil the racist motivation because, during the seven years in which the investigation was stagnating,

⁴² *Nachova and Others v. Bulgaria*, [GC], nos. 43577/98 and 43579/9, §163, 2005-VII.

⁴³ *Nachova and Others v. Bulgaria*, [GC], nos. 43577/98 and 43579/9, §165, 2005-VII.

⁴⁴ *Nachova and Others v. Bulgaria*, [GC], nos. 43577/98 and 43579/9, §167, 2005-VII.

⁴⁵ *Nachova and Others v. Bulgaria*, [GC], nos. 43577/98 and 43579/9, §166, 2005-VII.

there was no measure taken in order to identify the attackers, in spite of the authorities admitting that the attackers were part of a group known as being extremist (*skinheads*)⁴⁶.

Apart from the hate crimes motivated by racism, the Court heard cases where the ground for committing the crime was the religion of the victim (*Milanović c. Serbiei*⁴⁷) or the political opinion of the victim (*Virabyan v. Armenia*⁴⁸).

• **Cases against Romania before the European Court of Human Rights**

The Romanian State has also responded before the European Court of Human Rights, in various cases regarding violence against the Roma, where the Court established that the national investigations into these cases were ineffective. In a series of cases, the Court considered that the State had violated the prohibition of discrimination regarding the applicants, because the authorities did not conduct effective investigations to uncover the racist motivation behind the attacks. In this regard, the Court has also underlined a series of problematic aspects related to the investigation and prosecution of the crimes, some pointing to outright racist attitudes, others to what appeared as convenient omissions, thus failing to see the crimes as racially motivated, in spite of the available evidence pointing to the racist motivation of the perpetrators:

The positive obligation imposed by the Court with regard to the verification and analysis of evidence pointing to the discriminatory

⁴⁶ *Šečić v. Croatia*, no. 40116/02, §68, 31 May 2007. See also the similar case of *Angelova and Iliev v. Bulgaria*, no. 55523/00, 26 July 2007

⁴⁷ *Milanović v. Serbia*, no. 44614/07, 14 December 2010.

⁴⁸ *Virabyan v. Armenia*, no. 40094/05, 2 octombrie 2012.

nature of the crime is linked to the way in which the criminal investigation authorities collect data on crimes. More precisely, in order to unmask the discriminatory motivation, authorities must pay attention to some categories of information which lead to establishing that the criminal act falls in the hate crime category. Such information can refer to: the victim's group membership, hate speech used by the perpetrator, potential similarities between the attack and other attacks aimed at the same group etc. A more detailed discussion on these categories of information can be found in Chapter 3, where we present a series of indicators which can be used by authorities when investigating hate crimes.

In the following section a brief presentation of a selection of cases against Romania brought before the European Court of Human Rights is provided. These cases, right from the first one in 2005, should have determined concerted action from Romanian authorities in order to make sure that the breaches found in the *Moldovan* case are never repeated. Instead, more cases pointing to the same failure of delivering justice free of discrimination followed and were brought before the ECtHR. Given that cases which reach the ECtHR represent but the tip of the iceberg, the cases below indicate the imperative need for a strategic approach at the level of the justice system in order to eliminate discrimination by state authorities in criminal proceedings.

Moldovan and Others v. Romania (no. 2)(2005)⁴⁹

In September 1993, following a dispute between two non-Roma and three Roma men, in the Hădăreni village, Mureş county, one of the non-Roma men died. As a consequence, a number of the locals sought revenge by setting fire to the house where the three Roma men were

⁴⁹ *Moldovan and Others v. Romania* (no. 2), nos. 41138/98 and 64320/01, ECHR2005-VII.

hiding. Two of the men were lynched after leaving the flaming house, while the other died in the fire. According to the statements in the file before the Court, police officials were present at the events. Later, the non-Roma locals targeted the possessions of the Roma people and destroyed their houses, stables and vehicles and cast them away from the community. At the time of the events Romania was not part of the Council of Europe. Therefore the ECtHR decision mainly refers to what followed after the pogrom and looks at the pursuit for justice of the victims.

The criminal investigations that followed the attacks were discontinued with regard to the police officials involved, and the applicants' claims for compensation for the damages inflicted on them were rejected by the national courts. In this case, the Court held that the ethnic origin of the applicants "*appears to have been decisive for the length and the result of the domestic proceedings*"⁵⁰, while at the same time local authorities and national courts used discriminatory statements when rejecting the claims of the Roma applicants. Consequently, the court held that there had been a violation of the Convention Article 14 (the prohibition of discrimination) taken together with Articles 6 (the right to a fair trial) and 8 (the right to respect for private and family life).

Moreover, in the *Moldovan and Others v. Romania* case, the Court underlined a series of specific problems which indicate the discriminatory attitude of the authorities towards the applicants, such as: one of the domestic court decisions contained discriminatory remarks regarding the ethnic origin of the applicants; the authorities responsible for solving the applicants' petitions made discriminatory statements regarding the honesty and lifestyle of the applicants, without any other reason than the applicants' ethnic origin, which prompted the Court to consider these acts as purely discriminatory⁵¹.

⁵⁰ *Moldovan and Others v.. România* (no. 2), nos. 41138/98 and 64320/01, §139, ECHR2005-VII.

⁵¹ *Moldovan and Others v.. România* (no. 2), nos. 41138/98 and 64320/01, §§107-114, ECHR2005-VII.

Another very important conclusion of the Court in *Moldovan and Others v. Romania* concerns the level of seriousness of the discrimination to which the applicants were subjected. The Court considered that “*the applicants’ living conditions and the racial discrimination to which they have been publicly subjected by the way in which their grievances were dealt with by the various authorities, constitute an interference with their human dignity*”⁵² and that these problems reach the minimum threshold of severity to be considered “degrading treatment” under Article 3 (prohibition of degrading treatment).

Cobzaru v. Romania (2007)⁵³

The applicant, a Roma man, was severely beaten up by police officers at police premises where he had gone to seek help after a domestic incident involving his partner and her relatives, in July 1997. Although the applicant filed complaints against the officers, the prosecutor did not investigate the incident and based the official decisions on discriminatory statements regarding the applicant and the applicant’s father, mentioning that they are “*antisocial elements prone to violence and theft*”⁵⁴. At the same time, the prosecutor did not consider the statements of witnesses, considering that since they have the same ethnic origin as the applicant, their testimonies were insincere and subjective. The decision to discontinue the investigations remained final after it was upheld by prosecutors which also based their arguments on discriminatory statements.

The Court considered that even if the prosecuting authorities did not have *prima facie* evidence on the hatred-induced violence, “*special care should have been taken in investigating possible racist motives behind the violence*”⁵⁵. For example, the prosecutor should have

⁵² *Moldovan and Others v. România* (no. 2), nos. 41138/98 and 64320/01, §113, ECHR2005-VII.

⁵³ *Cobzaru v. România*, no. 48254/99, 26 July 2007.

⁵⁴ *Cobzaru v. România*, no. 48254/99, §28, 26 July 2007.

⁵⁵ *Cobzaru v. România*, no. 48254/99, §97, 26 July 2007.

investigated whether the officers involved in the events had ever been involved in similar incidents or had ever displayed anti-Roma sentiment⁵⁶. On the contrary, according to the findings of the Court, not only did the authorities fail to take any steps in that regard, but they engaged in racist statements when arguing their decisions regarding the applicants. Consequently, in the case of *Cobzaru v. Romania*, the court found a violation of Article 14 (the prohibition of discrimination) taken together with Article 3 (prohibition of degrading treatment) and Article 13 (the right to an effective remedy) of the Convention.

Stoica v. Romania (2008)⁵⁷

The applicant, a 14 year old Roma boy, was the target of a violent attack in April 2001 and claimed that the perpetrators were police officers. The attack happened against the background of what the applicant described as beatings against the Roma started by police officers and public guards at the instigation of the deputy mayor whom they were accompanying. According to the applicant's statements before the Court, he was caught by the officer who started hitting him in the back of the head and pushed him in into a ditch. Although the applicant told the officer that he had undergone head surgery and that the beating could endanger his life, the attacker kept hitting him until the applicant lost consciousness. During the attack, eye witnesses stated that they had heard slurs uttered by the police and local officials who were present. The violence left such serious consequences on the applicant's health that he was placed in a first-degree disability category, requiring permanent supervision and a personal assistant.

The Court held that not only did the investigating authorities ignore the racist motive behind the attacks, but also used themselves racist prejudice in the investigation. In order to establish that the applicants were discriminated against and that racism was a causal factor in the attitude of the authorities, the Court considered the following facts:

⁵⁶ *Cobzaru v. România*, no. 48254/99, §98, 26 July 2007.

⁵⁷ *Stoica v. României*, no. 42722/02, 4 March 2008.

(1) the general behaviour of the state agents during the conflict in the community was not neutral and there were testimonies regarding the racist motivation; (2) police records contained mentions of racist stereotypes towards Roma, such as “[T]he way in which some of the Roma acted is pure Gypsy behaviour”⁵⁸; (3) the investigation excluded the racist overtones of the attack, based only on the statements of the state officials and one witness; (4) the prosecutor disregarded the testimony of the Roma locals, considering that they are insincere based on their ethnicity, and used only the state agents’ statements in order to issue a decision; (5) the prosecutor did not address the “pure Gypsy behaviour” expression which was mentioned in the police record. Consequently, the ECtHR established that the Romanian authorities ignored the evidence which proved discrimination, and the investigations were influenced by prejudice based on ethnicity.

Ciorcan and Others v. Romania (2015)⁵⁹

In September 2006, the chief of the Mureş County police sent police agents accompanied by special forces agents in order to communicate a summon before the prosecutor to the applicants which were under investigations for alleged insults towards a police officer. According to the facts presented before the Court, the chief of the police justified the decision to send special forces as a means to protect the police agents against the community where the applicants lived. There were also officers in plain clothes sent to accompany the rest of the agents. All of law enforcement representatives arrived at the scene with one van and two cars. Seeing the police vehicles, the locals – mainly women and children – gathered around to see what was happening, at which point the police used tear gas on the crowd. In the confusion which was created, people started pushing each other and running, and the police opened fire at the crowd. The applicants were at the

⁵⁸ *Stoica v. României*, no. 42722/02, § 36, 4 March 2008.

⁵⁹ *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, 27 January 2015

scene and suffered injuries.

The applicants claimed that the excessive use of force (sending thirteen law enforcement agents, including special forces, to communicate a summon) was linked to their status as Roma, and the authorities did not have reasons to believe that the locals were dangerous or armed. Although the Roma invoked the racist motivation of the police, the prosecuting authorities did not investigate this issue. The Court held that there was indeed a display of force which was disproportionate compared to the aim of communicating a summon which could have been sent by post, while, at the same time, the authorities took this measure without reasons to believe that the community members were armed or dangerous.

With regards to the State's positive obligation to conduct an effective investigation of the violence, the Court criticizes the inquiries made in this case, since the authorities did not fulfill their positive obligation to verify the role of discrimination in the behavior of the law enforcement agents. The following were considered by the court to be the flaws of the domestic investigation⁶⁰: (1) the county police chief was not requested to provide explanations regarding the number of law enforcement agents sent to the community; (2) the county police chief was not confronted with the contradictory statements of the law enforcement agents concerning the shootings; (3) there was no verification of any possible display of anti-Roma sentiment on behalf of the police chief or the law enforcement agents; (4) the prosecutors ignored relevant facts in the case and issued solutions affected by serious flaws (they did not clarify the course of events or the contradictory statements given by the participants, they did not establish which of the seven police officers fired their guns or which type of bullet injured some of the applicants, they did not clarify why some of the victims were shot in the back and did not collect evidence etc.). Given the facts and the arguments of the parties, the Court

⁶⁰ *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, §§,148-150, 160-167, 27 January 2015

held that there has been a violation of Article 14 (the prohibition of discrimination), taken together with Article 2 (the right to life) and Article 3 (the prohibition of inhuman or degrading treatment).

Conclusions

The type of systemic failure of law enforcement and judicial authorities to treat Roma adequately and deliver justice in a non-discriminatory and dignified manner described by these decisions is very worrying, all the more since they do not seem to have determined any change of paradigm particularly in what concerns police behavior towards the Roma. In Written Comments sent in 2013 for the consideration of the UN Human Rights Council 110 Session, the NGO Romani CRISS stated that it documented approximately 50 cases of abuse of law enforcement agents against the Roma in the past years. Some of the cases are from recent years such as 2012 and 2013 and are described in the written comments, along with the mention that: *"In many cases, the reaction of the representatives of the Ministry of Administration and Interior (MAI) was to make public statements in which they sustained the legality of the action. This approach shows that the purpose of those statements is more to exonerate the policemen involved. They are also likely to cast shadows on the independence and efficiency of the internal investigation system of the MAI".*⁶¹

Furthermore, at the time of writing of this material in May 2015 the Romanian Helsinki Committee - APADOR-CH issued a monitoring report from the locality of Racos, Brasov county, where the Roma inhabitants claim that for about three-four years they are regularly targeted and beaten up by the local police. According to the report, a number of people filed complaints, but these would have not been

⁶¹ Written Comments of the European Roma Rights Centre and Romani CRISS, Concerning Romania, for Consideration by the Human Rights Committee at its 110th Session (10-28 March, 2013), p. 4, available at: <http://www.errc.org/cms/upload/file/romania-iccpr-january-2014.pdf> (last accessed at: 28.05.2015)

through on account of lack of witnesses while the police denied the beatings. Furthermore, an activist who used to help people with their complaints was also beaten up by four men two of them wearing balaclavas.⁶²

In its 2014 report on Romania during the fourth monitoring cycle, the European Commission against Racism and Intolerance noted the following: *"ECRI has been informed that, other than the approval in 2015 of a new Code of Ethics and Conduct for police Officers, no significant steps have been taken to ensure compliance with the principle of non-discrimination included in the current and previous code, or to enquire as to the reasons why no complaints have been lodged against police officers. More specifically, to this day, Romania does not have an independent body responsible for looking into complaints made against police officers or law enforcement officials; these are handled by the police itself or by the Ministry of Internal Affairs."*⁶³

In May 2015, in its concluding observations on Romania, the UN Committee against Torture concerned with reports of alleged violence by law enforcement officials as well as the low number of prosecutions and convictions of such cases, considered that Romania should:

"(b) Carry out prompt, impartial, thorough and effective investigations into all allegations of the use of violence, including torture and ill-treatment, by law enforcement officials and prosecute and punish those responsible; (...)

(c) Establish an independent monitoring and oversight mechanism in order to avoid the investigation of complaints by peers, through

⁶² APADOR-CH, *Report of APADOR-CH on police abuse in Racoş, Braşov county, against Roma ethnic citizens*, 25.05.2015.

⁶³ European Commission against Racism and Intolerance, *ECRI Report on Romania (fourth monitoring cycle)*, adopted on 19 March 2014, Published on 3 June 2014, pt. 188.

Making sure that the law enforcement treat Roma and all minorities or vulnerable groups in an adequate and equitable manner is not simply a matter of complying with international standards and recommendations, it is firstly a matter of rule of law, of functional democracy. Swift and adequate reaction to police abuse, whose results are then publicly and transparently communicated, cannot continue to be missing if Romania is to claim it represents a country based on the rule of law.

The following chapters will develop certain necessary aspects in the process of combating hate crimes such as collecting data on the phenomenon to better understand it and specific details which must be taken into consideration during the investigation process. Following these issues, a series of good practices will be presented, mainly related to police work, in order to effectively combat hate crime and deliver effective protection and good policing to all, irrespective of their race, ethnicity, religion, sexual orientation, religion, disability, or any other protected ground. Such an approach will however be impossible to implement in Romania unless it stands on the pre-existing condition of zero tolerance towards law enforcement abuse, all the more in relation to minorities.

⁶⁴ United Nations Committee Against Torture, *Concluding Observations on the second periodic report of Romania*, CAT/C/SR.1316, 7 May 2015, pt. 9.

Chapter 2: The current framework for administrative data collection on hate crimes in Romania

Collecting data on hate crimes is part of the larger effort of preventing and combating this type of crimes. The Ministerial Council of the OSCE recommends participating states to collect and publish reliable data and statistics regarding hate crime and other violent manifestations of intolerance, which should include the number of cases reported to the police, the number of cases pursued in justice as well as the penalties applied. Also, the OSCE underlines that collecting data on victims must respect the possible restrictions imposed by the national legal framework in the field of data protection.⁶⁵

The last report of FRA raised concerns about Romania's data collection activity when it comes to hate crimes. Of all the EU member states, Romania is the only one which does not also collect data according to the ground which motivated the crime (sex/gender, ethnic affiliation, sexual orientation, disability, etc.)⁶⁶. The absence of information on hate crimes must be seen from the point of view of the obligations which authorities have towards the victims of these crimes, including from the perspective of combating the phenomenon as such.

This chapter describes the current framework in which Romanian institutions collect and publish certain data regarding hate crimes and underlines the existing problems within this process. Thus, this chapter presents the manner in which authorities collect data on certain individual hate crimes, underlines the lack of data collection

⁶⁵ OSCE, Ministerial Council, Decision No. 9/09 „Combating hate crimes” [*Combaterea infracțiunilor motivate de ură*], 2 December 2009, available at: <http://www.osce.org/cio/40695?download=true> (last accessed on 22 of May 2015).

⁶⁶ EU Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012.

disaggregated according to the criteria of discrimination, discusses the topic of authorities' justifications for the lack of such data collection (against the background of domestic data protection legislation) and, finally, it draws attention on the connection between the low number of hate crimes reflected in the administrative data and the underreporting or lack of prosecution of hate crimes in Romania.

The content of the chapter is based on the analysis of the current legal framework, as well as on answers received by the Centre for Legal Resources (CLR) to requests for public information⁶⁷. The topic is described on two levels of discussion with the intent of clarifying the fact that these two levels cannot and must not be overlapped. More precisely, on the one hand, we are talking about the importance of protecting personal data related to the discrimination ground when handling the criminal files, and, on the other hand, it is about the importance of collecting statistical administrative data on the phenomenon of hate crime having in view the obligation to prevent this phenomenon. Each of these levels requires specific attention from the authorities and must benefit from adequate legal and procedural safeguards.

- **Brief presentation of the mandate of authorities in the criminal field in collecting data on the crime phenomenon**

The **Romanian Police** has legal duties connected to specific activities

⁶⁷ Given the changes of the criminal legislation once the new codes, the criminal code and the criminal procedure code, came into force, we shall present information obtained as a result of requests for public information sent by the Centre for Legal Resources both before and after February 1st, 2014.

for the collection and use of data⁶⁸. According to the law, the Romanian Police organizes its own database in order to fulfil its mandate⁶⁹, while the Directorate on Criminal Records, Statistics, and Operative Records is the structure which centralizes the data on judicial statistics⁷⁰.

Regarding the exact way in which the data is collected at the level of this institution, the General Inspectorate of the Romanian Police (hereon GIRP) offered the following description: *"at the beginning of each year statistical tables are compiled, which contain the indicators that are of interest to the Romanian Police. These are established depending on the requests made by the operative units, in order to highlight the crime phenomenon, make the analyses and establish areas of action. During the year, depending on the operative situation or the legal amendments which intervene, the indicators can be changed"*⁷¹. In the same reply, GIRP explained the fact that the territorial and central units of the police keep criminal records filled in with information on the complaints made to the police. These records include: *„data on the circuit of criminal files, criminal deeds under investigation and their particularities, the persons under investigation, victims and parties who have been harmed, identification data"*⁷². At the same time, GIRP mentions that the processing of these data is being done in compliance with Law 677/2001 on data protection.

Within the **General Prosecutor's Office** attached to the High Court of Cassation and Justice (hereon GPO) functions the Judicial

⁶⁸ According to Law. on the organization and functioning of the Romanian police republished, art.26, para.(1), pt.6, 23, 24, these duties refer to collecting information with a view of understanding, preventing and combating crime, compiling a database necessary in order to fulfill the specific operational duties of the police, conducting studies and research on the dynamics of crime.

⁶⁹ Law. 218/2002, art.26, para.(2).

⁷⁰ General Inspectorate of the Romanian Police, Reply No..708959/S4/ID/14.09.2011.

⁷¹ General Inspectorate of the Romanian Police, Reply No. 511394/19.05.2015.

⁷² General Inspectorate of the Romanian Police, Reply No. 511394/19.05.2015.

Statistics Office.⁷³ This later structure is responsible, among others, for centralizing statistical data regarding the activity of Prosecutor's Offices, coordinating the activity of judicial statistics of prosecutor's offices, providing statistical data upon the request of institutions and making available statistical data in order to compile the Annual activity report of the Public Ministry (another name for GPO)⁷⁴. The statistical reporting system is unitary, for all the Prosecutor's Offices. The current legal basis for collecting, transmitting and centralizing the statistical data from the Public Ministry is the Decision of the Plenary of the Superior Council of Magistracy No. 69 of January 16, 2014⁷⁵. This decision was issued in the context of the reassessment of the statistical forms once the new Criminal codes entered into force and it approves the new forms for Prosecutor's Offices, the official statistical classification for the criminal cases before prosecutor's offices, as well as the guidelines on how to fill in the forms.⁷⁶

The **Ministry of Justice** has as its main attribute the coordination and steering of the judicial statistical activity of courts and Prosecutor's Offices. To this end, the Ministry of Justice issues norms and compulsory instructions for the uniform implementation of the legal provisions in the field.⁷⁷

- **What type of hate crime data are actually collected by Romanian authorities**

⁷³ Internal Order regulations of prosecutor's offices approved through Order of the Minister of Justice, No. 2832/C/2014, art.33.

⁷⁴ Internal Order regulations of prosecutor's offices approved through Order of the Minister of Justice, No. 2832/C/2014, art.37.

⁷⁵ Public Ministry, Reply No. 887/VIII-3/2015 of 19 May, 2015

⁷⁶ Plenary of the Superior Council of Magistracy Decision No. 69 of January 16, 2014, available at: http://www.csm1909.ro/csm/linkuri/27_01_2014_65021_ro.PDF (last accessed on 27 May, 2014).

⁷⁷ Government Decision No. 652 of 27 of May 2009 on the organizing and functioning of the Ministry of Justice, last modified on December 2nd, 2014, art. 6. point VII, 12.

The replies to requests for public information received by CLR show that the police, the prosecutor's offices and the courts collect data on individual hate crimes each in different manners and only regarding some of the hate crimes. It can be concluded that most of the times the statistical data cannot be compared and one cannot have an image of the activity of authorities in the case of each type of hate crime from the time it was reported to law enforcement up to the time when it was solved by the prosecutor or by the court.

The Centre for Legal Resources sent requests for public information to relevant authorities on various occasions in order to find out precisely what kind of statistical data on hate crimes is being collected at the level of each institution. The main problems resulting from the replies of institutions refer firstly to the difficulty of comparing the statistical data (both in following the data in between institutions and in following data provided at different moments by the same institution), and secondly to the small number of individual hate crimes which are prosecuted (when it comes to prosecutor's offices) or in which the perpetrator is convicted (at the level of courts).

Another problem is connected to the fact that, in some instances, even where the hate crimes are provided as individual articles, the authorities still collect global data, this time disaggregated according to entire chapters in the Criminal Code, chapters which also include articles on hate crimes⁷⁸. The same applies to the Government Emergency Ordinance 31/2002, where data is collected globally for the whole law⁷⁹.

⁷⁸ Public Ministry, Reply No. 887/VIII-3/2015 of 19 May, 2015. It is about the crimes of desecrating worship places provided in art.382 Criminal Code and desecrating corpses or graves provided in art.383 Criminal Code about which the Public Ministry states that they "are not recorded distinctly (based on the crime) but for the whole of chapter III of the Criminal code titled crimes against religious freedom and the respect owed to the deceased".

⁷⁹ General Inspectorate of the Romanian Police, Reply No. 2281705/10.02.2014, Public Ministry, Reply No. 7460/1727/C/2012.

Further on, we will provide a short presentation of the most recent data available on demand which was communicated in relation to data existing at the level of the police, the prosecution services and the courts following specific public information requests. It is important to mention that, since there is no unitary data collection system for all, each institution gathers only the data which concerns its own proceedings and does not show how the specific hate crimes were treated before the institution was notified with solving that particular hate crime.

Abuse in office in the specific version based on a discriminatory motive:

Data regarding abuse in office based on a discriminatory motive (previously regulated as art. 247 of the former Criminal Code as abuse in office with the restriction of certain rights) have been communicated to CLR by the GIRP and the Ministry of Justice. In 2012, at the level of the GIRP there were 786 complaints invoking this crime and a number of 132 crimes "from the files with criminal investigation initiated by the Romanian Police or forwarded to the Prosecutor's Office proposing to decline competence [to the prosecutor]"⁸⁰ For the same year, the Ministry of Justice communicated that at the level of courts there were 5 cases regarding abuse in office based on a discriminatory motive which were solved through conviction: 2 criminal fines, 1 suspended sentence and 2 suspended sentence under surveillance.⁸¹ For 2013, the Superior Council of Magistracy communicated the existence of once person convicted with suspended sentence as the manner of serving the sentence.⁸²

⁸⁰ General Inspectorate of the Romanian Police, Reply sent through electronic mail on 16.01.2013, in reply to the Centre for Legal Resources Request for public information No. 507/19.12.2012 and the General inspectorate of the Romanian police, Reply No. 292115/14.03.2013

⁸¹ Ministry of Justice, Reply No. 94148/03.12.2013 .

⁸² Superior Council of Magistracy, Reply No. 3/30340/1154 of 17.02.2014.

For the year 2013 no data on complaints to the police were communicated.⁸³ For the same year, the Ministry of Justice communicated that there was one conviction and one restitution to the prosecutor at the level of first instance courts. At the level of tribunals and courts of appeal there was no case finalized on merits, so no convictions for 2013.⁸⁴

As for 2014, a year marked by the entry into force of a new Criminal Code, GIRP, has collected and communicated to the Centre for Legal Resources data on paragraph 2 of art. 297 on abuse in office in the version based on discrimination, as follows: 91 reported cases, 151 cases with the criminal investigation initiated, 7 cases sent to the Prosecutor's office and 11 cases solved.⁸⁵ The Ministry of Justice has not communicated data related to this crime for the year 2014.⁸⁶

In 2015, the Public Ministry has communicated the following: "We note the fact that we do have data on the crime of torture (art.282 Criminal Code) and abuse in office (art 297 Criminal Code) but they are not segregated according to paragraphs but according to the total of crimes".⁸⁷ Similarly, in the Report for 2014 of the Superior Council of Magistracy on the state of justice, the data regarding the crime abuse in office are representing globally, for the whole of article 297.⁸⁸

This aspect indicates the fact that transforming the abuse in office based on discriminatory motivation from a separate article into a paragraph of another article, having in view how statistical data are currently collected, has every change of presenting additional

⁸³ General Inspectorate of the Romanian Police, Reply No. 2921386/04.11.2013.

⁸⁴ Ministry of Justice, Reply No. 112176/31.01.2014

⁸⁵ General Inspectorate of the Romanian Police, Reply No. 511394/19.05.2015.

⁸⁶ Ministry of Justice, Reply No. 41139/27.05.2015

⁸⁷ Public Ministry, Reply No. 887/VIII-3/2015 of 19 May 2015.

⁸⁸ Superior Council of Magistracy, Annual report for 2014 on the status of justice, p.76, available at http://www.csm1909.ro/csm/linkuri/30_04_2015_73618_ro.docx (last accessed on 27 of May, 2015)

difficulties in relation to the data collected regarding this hate crime, in the sense that the data will no longer be collected separately. The Public Ministry has otherwise not provided any data about this hate crime before the entry into force of the new Criminal Code.

Crimes included in the special criminal law represented by the Government Emergency Ordinance no. 31/2002 on banning of fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity

In 2012, the General Prosecutor's Office reported that, as regards the special criminal law GEO 31/2002, of 26 cases to solve, 11 were solved, none through prosecution, so no person sent to court.⁸⁹ In 2013 13 cases were solved, 0 through prosecution.⁹⁰ The data communicated by the Ministry of Justice for 2012 showed that there were no convictions⁹¹ and neither were there any for 2013.⁹² The Superior Council of Magistracy however communicated the existence of one person convicted to a fine penalty in 2013.⁹³

In the time frame between 1 February 2014 and 31 December 2014, the GIRP reported that, at the level of their institution, there were: 25 reported cases, 30 cases with criminal investigations initiated, 0 cases sent to the prosecutor's office and 2 cases solved.⁹⁴ According to the statistical data sent by the General Prosecutor's Office regarding the year 2014, there were 64 cases pending solving and 20 cases had

⁸⁹ Public Ministry, Reply No. 1727/C2/7460/2012 of 29 January, 2013.

⁹⁰ Public Ministry, Reply No. 2062/VIII-3/2013 of 29 January 2014.

⁹¹ Ministry of Justice, Reply No. 94148/03.02.2013.

⁹² Ministry of Justice, Reply No. 112176/31.01.2014

⁹³ Superior Council of Magistracy, Reply No. 3/30340/1154 of 17.02.2014.

⁹⁴ General Inspectorate of the Romanian Police, Reply No. 511394/19.05.2015.

been solved either by discontinuing the investigation (2 cases) or by closing the investigation (18 cases)⁹⁵. From the data communicated by the Public Ministry it could be noted that, although no case had been solved through prosecution, a person was however prosecuted. Regarding this case, the Public Ministry offered the following explanation: *"The crime provided in GEO 31/2002 was held in the prosecution act together with another crime for which the Criminal Code provides for a higher penalty; the case was statistically recorded under the more serious crime held under prosecution or agreement of admission of guilt and against one offender a crime provided by GEO 31/2002 was held."*⁹⁶ The Ministry of Justice showed that in 2014, the statistical system reported only one case, which was not solved up until 1 May 2015⁹⁷.

Incitement to hatred or discrimination (art.369 Criminal Code)

The text of this hate crime was renumbered (former art.317) and had a change of name in the new Criminal Code, and partially of content, the grounds of discrimination no longer being enumerated.⁹⁸ Data regarding this crime were communicated by the Public Ministry and by the Ministry of Justice and partially also by the Superior Council of Magistracy. In 2012, the Public Ministry communicated that, out of 66 cases pending, 30 were solved, none through prosecution, that is, no defendants sent before the court.⁹⁹ The same year, the Ministry

⁹⁵ Public Ministry, Reply No. 887/VIII-3/2015 of 19 of May 2015.

⁹⁶ Public Ministry, Reply No. 887/VIII-3/2015 of 27 of May 2015.

⁹⁷ Ministry of Justice, Reply No.. 41139 /27.05.2015.

⁹⁸ Text in the former Criminal Code: Art. 317. Incitement to discrimination: Incitement to hatred, on grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion, political belonging, beliefs, wealth, social origin, age, disability, chronic non-contagious illness or HIV/AIDS infection is punishable by prison from 6 months to 3 years or a fine. Text in the New Criminal Code: Incitement to hatred or discrimination: inciting the public, through any means, to hatred or discrimination against a category of persons is punishable by prison from 6 months to three years or fine.

⁹⁹ Public Ministry, Reply No. 1727/C2/7460/2012 of 29 January, 2013.

of Justice communicated the existence of 4 convictions with a fine penalty, for cases classified under “according to nationality”.¹⁰⁰ The same data was communicated by the Superior Council of Magistracy.¹⁰¹ In 2013, at the level of prosecutor’s offices there were 32 cases which had been solved, 0 through prosecution, that is, no defendants sent before a court.¹⁰² For the same year, the Superior Council of Magistracy communicated the existence of only 12 cases under this crime, without any prosecution.¹⁰³ In 2013, the Ministry of Justice communicated for first instance courts data reported globally for crimes related to social living together (art.303-330), so without being able to find out the number of cases referring to art. 317, and also communicated that at the level of tribunals and courts of appeal no case was finalized on merits, and consequently, no conviction was registered.¹⁰⁴ The Superior Council of Magistracy communicated 0 final convictions for 2013 in relation to art. 317,¹⁰⁵ although in a previous answer for the first 6 months of 2013, the institution had communicated the existence of 22 cases, all under the indicator “according to nationality” finalized with 8 convictions to a fine penalty, 5 to prison from 1 to 5 years and 9 to suspended sentences.¹⁰⁶

For the first time in 2014, the GIRP communicated data related to this crime. Thus, the GIRP reported that between 1 February 2014 and 31 December 2014, the system shows the following data: 25 cases reported, 32 cases with the criminal investigation initiated, 1 case sent to the prosecutor’s office and 0 cases solved.¹⁰⁷ The Public Ministry reported that for the year 2014 there were 59 cases pending

¹⁰⁰ Ministry of Justice, Reply No. 94148/03.12.2013.

¹⁰¹ Superior Council of Magistracy, Reply No. 3/25392/1154 of 26.11.2013.

¹⁰² Public Ministry, Reply No. 2062/VII/3/2013 of 29.01.2014

¹⁰³ Superior Council of Magistracy, Reply No. 3/30340/1154 of 17.02.2014.

¹⁰⁴ Ministry of Justice, Reply No. 112176/31.01.2014

¹⁰⁵ Superior Council of Magistracy, Reply No. 3/30340/1154 of 17.02.2014

¹⁰⁶ Superior Council of Magistracy, Reply No. 4/20809/1154 of 09.09.2013.

¹⁰⁷ General Inspectorate of the Romanian Police, Reply No. 511394/19.05.2015.

solving and 19 cases solved (all 19 solved through the closing of the investigation)¹⁰⁸. At the level of the Ministry of Justice there were no data related to this crime for the year 2014.¹⁰⁹

The aggravating circumstance

For the year 2012, the Public Ministry communicated 0 cases solved in what concerns crimes related to battery and bodily harm where the aggravating circumstance was held¹¹⁰ and 0 cases on crimes related to patrimony¹¹¹ (mentioning it does not hold data on the number of pending cases). For the year 2013, the Public Ministry communicated the existence of 4 cases regarding crimes against patrimony where the aggravating circumstance was held, all solved through prosecution with 11 defendants sent before a court.¹¹² For the year 2013, the Superior Council of Magistracy communicated the existence of an additional case solved through prosecution with 2 defendants sent before a court, regarding crimes foreseen in special criminal laws, but it did not mention which law exactly¹¹³. For the year 2014, the Public Ministry communicated that no crime where the aggravating circumstance was held was statistically recorded¹¹⁴. The police and the Ministry of Justice did not communicate data on the aggravating circumstance during these years.

What hate crime cases statistics reflect

As it is evident from the statistical data above, the Ministry of Justice reported very few or even zero cases of convictions for various hate

¹⁰⁸ Public Ministry, Reply No 887/VIII-3/2015 of 19 of May, 2015..

¹⁰⁹ Ministry of Justice, Reply No. 41139/27.05.2015.

¹¹⁰ Public Ministry, Reply No. 1727/C2/7460/2012 of 29 January 2013.

¹¹¹ Public Ministry, Reply No. 7460/1727/C/2012 of 31 October 2013

¹¹² Public Ministry, Reply No. 2062/VIII-3&2013 of 29.01.2014.

¹¹³ Superior Council of Magistracy, Reply Nr. 3/30340/1154 din 17.02.2014

¹¹⁴ Public Ministry, Reply Nr. 887/VIII-3/2015 of 27 May 2015.

crimes in the years 2012, and, where the data did exist, very few cases before courts in general. At the same time, the data offered by the Public Ministry show that, although prosecutor's offices have had hate crime cases before them, these cases are not usually finalized with the prosecution of offenders¹¹⁵. The statistical data in relation to abuse in office based on a discriminatory motivation, where the data does exist, indicated a very high discrepancy between the number of cases reported to the police and the number of cases with convictions in a court (786 cases reported and 5 convictions in 2012), and a very low number in courts, without being able to complete this image, since we do not have data from the Public Ministry.

In this context, it is further necessary to underline, together with international organisations which have been constantly communicating their concerns to Romania on this topic, that the lack of registered criminal complaints does not at all indicate to the absence of the hate crime phenomenon. On the contrary, in effect it indicates the failure of law enforcement at various levels, when it comes to communities vulnerable to hate crime.

In this context, it is relevant to quote the UN Committee on the Elimination of Racial Discrimination which stated the following in its concluding observations: „*With reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that the absence of any complaints and legal proceedings brought by victims of racial discrimination may indicate the lack of any specific legislation in the matter, an ignorance of the remedies available, fear of social disapproval or **a lack of will on the***

¹¹⁵ Public Ministry, Reply No. 1727/C2/7460/2012 of 29.01.2013, noted above as well, offers data also for the crime of hindering the freedom of cults (religious denominations), in connection to which, for 2012, there were 18 pending cases before prosecutor's offices, 10 were solved, no defendant was sent before a court. While through Reply No. 2062/VIII-3/2013 of 29.01.2014 also noted above, in relation to this same crime, the Public ministry communicated that during 2013, 13 cases were solved, none through prosecution.

part of the authorities responsible for bringing prosecutions [our underline]. *The Committee recommends that the State party disseminate its legislation on racial discrimination and inform the public — in particular minorities such as the Roma — of all available legal remedies. It also recommends that the State party provide, in its next report, complete information on complaints, proceedings, convictions and sentences for acts of racial discrimination.*"¹¹⁶

For example, a 2009 survey ordered by the EU Agency for Fundamental Rights in seven EU countries showed that 75% of Romanian Roma who said they were victims of a hate crime did not report it to the police, 72% of the Roma in all seven countries who did not report said they did not do it because they were not confident the police would be able to do anything, 40% were concerned about negative consequences, 36% feared intimidation from perpetrators and 33% because they disliked/were afraid of the police or had had previous bad experiences with the police.¹¹⁷

The European Commission against Racism and Intolerance, observing the low number of convicted cases of hate crimes in Romania, reiterates its very powerful recommendation given its implications if the same *status quo* is maintained: "*ECRI reiterates its recommendation that the authorities ensure that the criminal law provisions against racism are applied more forcefully so that they are not voided of their meaning.*"¹¹⁸

¹¹⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the elimination of Racial Discrimination. Romania CERD/C/ROU/CO/16/19*, pt. 18, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fCO%2fROU%2fCO%2f16-19&Lang=en (last accessed on 27 May 2015)

¹¹⁷ EU Agency for Fundamental Rights, *EU-MIDIS, Data in focus report. The Roma*, 2009, pp. 8-9, available at: http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf (last accessed on 27 May 2015)

¹¹⁸ European Commission Against Racism and Intolerance, *ECRI Report on Romania (fourth monitoring cycle)*, adopted on March 19th, 2014, published on July 3rd, 2014, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf> (last accessed on 27.05.2015)

- **Lack of data collection on the grounds of discrimination**

On various occasions, the Romanian authorities have explained that, although certain individual hate crimes are reflected in their administrative statistics, the discriminatory ground based on which the crime was done is not highlighted in the data base.

Thus, **GIRP** stated that at the level of their institution: *"there are no statistical data on the number of cases where police officers noted the presence of a discriminatory motivation on which the crime was based"*¹¹⁹. In a subsequent reply GIRP additionally explained that *"In what concerns the grounds for committing the hate crimes (eg. race, nationality, ethnicity, religion, sexual orientation, etc.), we mention that, within the registries of the criminal files these information are mentioned, but they are not quantified within the statistical situation"*,¹²⁰

GIRP justifies the lack of data collection invoking the provisions of *Law No. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of such data* which, under the interpretation of this institution, would forbid the processing of personal data regarding the racial or ethnic origin, the health status or sexual life.¹²¹ From a legal perspective, such an interpretation is incorrect if we are to look at the national legislation on data protection. A more detailed discussion on the implementation of the legislation on data protection in the field of data collection on hate crimes is presented at the end of this chapter.

The Ministry of Justice explained in 2013 that the statistical applications managed by the Ministry: *"do not include reports dedicated*

¹¹⁹ General Inspectorate of the Romanian Police, Reply No. 2921386/04.11.2013.

¹²⁰ General Inspectorate of the Romanian Police, Reply No. 511394/19.05.2015.

¹²¹ General Inspectorate of the Romanian Police, Reply No. 2281705/10.02.2014.

to the cases where convictions in which the aggravating circumstances were held" such as the ones related to the discriminatory motivation for the crime.¹²² For the year 2012, the Ministry of Justice offered data on incitement to discrimination and for abuse in office based on a discriminatory motivation, split according to the following categories: "according to nationality", "according to ethnicity", "according to sex" and "according to serious illness" (cases under these categories were only recorded for the only incitement to discrimination hate crime, more precisely under "according to nationality", 4 cases of the 4 registered for this crime, also solved through convictions to a fine penalty, and none of the 5 cases recorded under the abuse in office hate crime fell under these categories). The Ministry explained the manner of collecting as follows: "If the text of the incriminating article includes circumstances, including of the types specified under art. 75 letter C [C] Code [the aggravating circumstance connected to the discriminatory motivation from the previous Criminal Code], these are reported distinctly, but only at a general level, without detailing the concrete case (for example, if convictions on the basis of art. 317 are registered according to ethnicity, these convictions will be mentioned, but without noting the precise ethnicity against which the crime was committed...)"¹²³ It results that we may have data in relation to a few criteria, but the indicators are too general to be able to identify the precise group. For the year 2013 however, the Ministry of Justice no longer communicated the data according to the indicators mentioned.¹²⁴

In 2015, the Ministry of Justice communicated that the statistical application managed by the institution (*Electronic Court Record Information System - ECRIS*) is in the process of renewal, the novelty element which is relevant for hate crimes being the fact that we may have a potential representation of the aggravating circumstance for

¹²² Ministry of Justice, Reply No. 94148/03.12.2013.

¹²³ Ministry of Justice, Reply No. 94148/32/12/2013

¹²⁴ Ministry of Justice, Reply No. 112176/31.01.2014

the discriminatory motivation. For the new version of the application, the implementation of the statistical indicator foreseen under art. 77 h) (the discriminatory motivation for the crime) was not yet implemented definitively, at the moment being still in a testing phase on the test server, when this information was received from the Ministry, and the institution clearly mentioned that the information from the system will not reflect separately the grounds of discrimination provided for by the aggravating circumstance¹²⁵. It can be inferred that, at least at the level of the Ministry of Justice, the change of the *status quo* on how to represent statistically the grounds of discrimination on which hate crimes are based and the exact groups which fall victim, is not taken into consideration.

Furthermore, the Ministry of Justice explained that, aside from GEO 31/2002 and other articles which have the aggravating motivation included in their own text, the indicator of art. 77 h) will be applicable from the point of view of the system only to certain articles from the Criminal Code¹²⁶. Among the articles mentioned by the Ministry as possibly measured in relation to the aggravating circumstance of the discriminatory motive there are also articles presented in this guide as individual crimes – art 369 (incitement to hatred or discrimination) and art. 382 (desecration of places or objects of worship), which makes little sense and begs the question as to how these articles were selected in order for them to receive the application of the aggravating circumstance in the statistical system.

Last but not least, the Ministry of Justice stated that the relevant hate crime indicators discussed above will not be utilized for the retroactive collection of data – more precisely from February 2014, when the Criminal Code and implicitly the order of articles and their

¹²⁵ Ministry of Justice, Reply No. 41139 /27.05.2015.

¹²⁶ According to the Reply of the Ministry of Justice No.. 41139 /27.05.2015, we are talking about the following crimes in the Criminal Code: 188, 189, 193, 194, 195, 197, 198, 199, 203, 204, 205, 206, 207, 208, 210, 211, 212, 214, 215, 218, 219, 223, 224, 225, 226, 227, 228, 229, 230, 233, 234, 236, 253, 254, 256, 299, 321, 323, 326,353, 354, 368, **369**,373, 374, **381**, **382**, 383 402.

text changed. It results that the Ministry does not offer statistical data related to hate crimes from the new Criminal Code for the period of the year 2014. The institution offered in its reply to the Centre for Legal Resources only data on the number of cases recorded under OUG 31/2002 - these reflect, as mentioned above, a single case which entered the system in 2015 and is still unsolved on May 1st 2015.¹²⁷.

At the level of the **Public Ministry** the statistical data on hate crimes have not been communicated disaggregated according to grounds such as gender/sex/ethnicity/race/nationality, disability, sexual orientation, religion, age or other grounds¹²⁸. The institution explained that there are four system indicators which can be used to draw statistics regarding certain manners of solving the cases with the aggravating circumstance: (1) sending to court while also holding art. 77 h) (2) agreements of admission of guilt where art. 77 h) has been held, (3) individual offenders sent to court where art. 77 h) has been held and (4) individual offenders sent to court through agreements of admission of guilt where art. 77 h) has been held. However, the Public ministry mentions that in 2014 there are no statistics on crimes where this aggravating circumstance would have been held in the ways explained here¹²⁹, with other words, there were no cases. Also, the institution explicitly mentions that: "*In what regards holding art. 77 h from the Criminal code, we do not have statistical data recording on various grounds mentioned in the law*".¹³⁰

Based on the information received from the authorities it becomes clear that, since data is absent on the specific grounds of discrimination, no conclusions can be drawn on the groups affected by these crimes. At the same time, this void of information affects the potential public policies to prevent and combat hate crimes, since, on the one hand,

¹²⁷ Ministry of Justice, Reply No. 41139 /27.05.2015.

¹²⁸ Public Ministry, Reply No..887/VIII-3/2015 of 19 May 2015

¹²⁹ Public Ministry, Reply No. 887/VIII-3/2015 of 27 May 2015.

¹³⁰ Public Ministry, Reply No. 887/VIII-3/2015 from 19 May 2015.

there are no administrative data to serve as grounds for such policies and, on the other hand, there does not seem to exist any institutional will to change this *status quo*.

It is not clear in the case of each institution, what is the motive for which they do not collect statistical data regarding the discriminatory motivation. In what concerns the police, the institution invoked the need for personal data protection. As we shall discuss below however, personal data protection and the collection of statistical data on hate crime incidence are two separate issues. The provisions under Law 677/2001 on data protection have as their aim the protection of individual persons, when their data processing may lead to the association of these individual, identifiable persons with the data, more precisely, in the specific context of the criminal case file management. Therefore, just as the police admit, the grounds on which the crimes are based do appear in the files where a hate crime is concerned. It could not be imagined how otherwise the deed could be described and then a hate crime file be built without recording the ground of discrimination. Indeed, the data protection measures refer to the manner of processing data in connection to the management of the specific criminal files, which police and prosecutors engage in, and it is a different activity from that of transforming into statistical data information connected to the crimes invoked or held in each case. Data processing for statistical purposes is the equivalent of making the data anonymous, and in effect it represents one of the general manners in which data processing ends, according to the same Law 677/2001 on data protection (art. 6 c). Through the process of transforming file data into statistical data the possibility of associating cases with individuals is eliminated. Furthermore, using statistics about crime in general and hate crime in particular is an indispensable method for understanding the phenomenon in view of combating it. And combating crime is one of the main legal obligations of the Romanian police. Also this explanation offered by the Romanian police whereby it invokes data protection in order to explain why it does not collect statistical data on the discriminatory motivation of crimes raises questions as to

the level of understanding of the police in what regards not only the phenomenon of hate crimes, but also the purpose of personal data protection in general.

• Annual reports as instruments for making IMU visible

One of the good practices presented in this guide refers to the publication by law enforcement agencies in Finland of an annual report on hate crimes. Such annual reports can help make visible the hate crime phenomenon and offer sound basis for public policies aimed at tackling hate crimes. More details on this practice can be found in Chapter 4. At the same time, in the context of the Universal Periodic Review (UN Mechanism) in 2013, Romania received and accepted the following relevant recommendation from Austria: „109.59 Ensure the systematic collection and publication of statistical data on hate crimes”.¹³¹

At the present moment, Romanian authorities publish annual reports on the activity of police, prosecutor’s offices and courts. These reports confirm that there is no collection of data regarding the distinct grounds of discrimination and that almost all individual hate crimes are kept at the level of internal statistical data and are not published *ex officio*.¹³²

¹³¹ Human Rights Council, Twenty-third Session, Agenda Item 6, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review. Romania*, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ROSession15.aspx> (last accessed at: 27 May 2015)

¹³² Superior Council of Magistracy, Annual report for 2014 on the status of justice, available at http://www.csm1909.ro/csm/linkuri/30_04_2015_73618_ro.docx (last accessed on 27 of May, 2015); Public Ministry, Prosecutor’s Office attached to the High Court of Cassation and Justice, Annual report for 2014, available at: http://www.mpublic.ro/presa/2015/raport_activitate_2014.pdf (last accessed on 23 May 2015); Ministry of Internal Affairs, Evaluation of the Ministry of Internal Affairs’ activities in 2014, available at: <http://www.mai.gov.ro/documente/evaluari/Bilant%20MAI%202014.pdf> (last accessed on 23 May 2014)

Why is protecting personal data¹³³ important in a hate crime context

The current legal framework in the field of data protection is made of Law No. 677/2001¹³⁴, of the decisions of the National Authority for the Supervision of Processing of Personal Data (hereon NASPPD), as well as other legal acts applicable to the processing of personal data in specific circumstances such as those related to the prevention, investigation and combating of crimes¹³⁵.

Collecting data on hate crimes also implies the collection of data, by the authorities, on the grounds which are the basis for the discriminatory motivation of the offender, enumerated under art. 77 h) Criminal code and within the text of individual hate crimes.

As mentioned above, understanding the hate crime phenomenon through administrative statistical data collection on the ground of discrimination is a separate situation from the obligations established through the legislation on data protection.

In what regards the second aspect, the protection of personal data when data is collected and processed in order to instrument and manage files, is of crucial importance. When such collection of data for each individual case is being done, it is necessary to respect legal safeguards, in order to ensure the respect of fundamental rights and freedoms of each person, in particular the right to private life. It is

¹³³ According to the legal definition provided by Law 677/2001 in Art.3, let. a), personal data refer to *"any information referring to an identified or identifiable individual person; an identifiable person is that person who can be identified, directly or indirectly, particular in reference to an identification number or to one or more factors specific to that person's physical, physiological psychic, economic, cultural or social identity"*

¹³⁴ Law No. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of such data.

¹³⁵ For example, Law No 238/2009 on the regulation of personal data processing by the structures/units of the Ministry of Administration and Interior in what regards the activities of prevention, investigation, and combating of crime as well as in maintaining and ensuring public order.

important to mention here that these safeguards primarily target the protection of specific persons, victims or offenders, with the purpose of keeping these data safe, and prevent any potential harm which might be brought to the individual persons through their identification or through the use in any other way of the data on their belonging to a vulnerable category. It is these concerns that are being detailed in the legislation on data protection and in specific legislation at the level of the police.

Thus, law 677/2001 is applicable to the processing¹³⁶ of personal data done by public legal persons, including in the field of activities related to prevention, investigation and repressing of crime and in the field of other activities undertaken in the field of criminal law, within the limits foreseen by law¹³⁷. The law provides for two categories of applicable rules for personal data processing – rules with a general character and rules with a special character – depending on the category of data to which the processing refers.

Data connected to the racial or ethnic origin, political or religious beliefs, the health status or sexual life represent “special categories of data”, and their processing is generally forbidden, with the exception of the following situations expressly provided by the law and which we consider to be relevant in connection to data collection on hate crimes¹³⁸:

- *When the processing is necessary for the establishment, exercise or defence of a right in the justice system;*

¹³⁶ According to the legal definition offered by Law 677/2001 Art.3, let. b), the processing of personal data refers to “any operation or set of operations of personal data, done through automatic or non-automatic means, such as collecting, recording, organizing, depositing, adapting or modifying, extracting, consulting, using, passing on to third parties through transmission, dissemination, or in any other manner, putting together or modifying, extracting or combining, blocking, deleting or destroying”

¹³⁷ Law No. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of such data, art.2, para.(4) and (5).

¹³⁸ Law No. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of such data, art.7, para.(2), let.a), e), f), h).

- *When the law expressly provides for the processing in view of protecting an important public interest, on condition that the processing is done respecting the rights of the person in question and the other safeguards provided by the present law.*

These exceptions practically refer to the necessities connecting to the management of case files, but also to the needs of understanding the hate crime phenomenon in view of its prevention and combating, at the same time warning with regards to the need of respecting certain safeguards within the data collection process, precisely in order to avoid potential harm brought to the victim as a result of inadequate or insufficient protection of their data.

In addition, the police activity in connection to the processing of personal data is regulated through a special law - **Law nr. 238/2009** which is explicitly applicable to the activities of prevention, investigation and combating of crime, as well as to maintaining and ensuring public order.¹³⁹ This law underlines that the systems and means for data processing in the field of preventing, investigating and combating crime must be utilized: *"with the respect of human rights and implementing the principles of legality, necessity, confidentiality, proportionality and only if, through their use, the protection of the data processed is ensured"*¹⁴⁰. Furthermore, the regulations in the field of the activity of police officers include provisions connected to the data collection. As a safeguard established by the law, police officers must collect information on potential crimes in a manner which does not: *"illegally harm or hinder the fundamental rights and freedoms of citizens, their private life, honour and reputation"*¹⁴¹. In addition, when it comes to

¹³⁹ Law No 238/2009 on the regulation of personal data processing by the structures/units of the Ministry of Administration and Interior in what regards the activities of prevention, investigation, and combating of crime as well as in maintaining and ensuring public order

¹⁴⁰ Law No. 238/2009, art.3, para.(2).

¹⁴¹ Law No. 218/2002 on the organizing and functioning of the Romanian Police, republished, art.32, para.(3).

vulnerable groups, the law expressly provides that the police officer has the duty to show "*solicitude and respect*"¹⁴².

Thus, personal data such as those related to racial origin, religious or political beliefs, or sexual behaviour can be collected by Ministry of Interior structures/units, but only for determined cases where such data is necessary in order to undertake the criminal investigation or prosecution, as a result of a crime having happened.¹⁴³

Concretely, data protection applied in a hate crime context should entail creating a system of file management where all those involved respect a set of rules in relation to what is communicated and to whom, how they keep and protect sensitive data, and moreover, constantly asking themselves whether any type of processing could in any way harm fundamental rights and freedoms. To this end, in order to understand what and how to protect in the specific steps of the investigation, prosecution or court hearing of specific hate crime cases, police workers, prosecutors, lawyers or judges or other persons who come into contact with the victim (eg. forensic specialists, psychologists) must be trained on non-discrimination as well as to raise awareness and understanding of the contexts of various vulnerable groups also as connected to confidentiality needs (eg. the situations when the court sessions must be private).

Furthermore, the visible care for a correct management and protection of special data coming from police workers, prosecutors and the other professionals the victim of a hate crime interacts with in the criminal trial, will increase the trust of victims in the system and therefore, the number of reported hate crime incidents. Thus, there will be at least a partial elimination of the fear of victims that if they report what happened, others may find out aspects of their lives which they may not want to make public in the Romanian context where discrimination

¹⁴² Law No. 360/2002 on the status of the police worker, art.41, let.b).

¹⁴³ Law 238/2009, art.5, para. (5)

and social rejection towards various categories is very high.

We repeat the fact that, having in view the specificity of statistical data (anonymous data), there is no argument, legal or otherwise, which could justify the refusal of Romanian authorities to collect and publish statistical administrative data on hate crimes. Moreover, from the perspective of personal data collection in the case of each file, it could be much more important that authorities focus their efforts in order to ensure that the activity of data collection at the level of police, prosecutor's offices and courts respects all the legal safeguards and for this purpose develop new guidelines and safeguards where it is observed that the existing safeguards are not sufficiently strong or allow abuses – without all of these efforts excluding the possibility of transparently researching the hate crime phenomenon.

There are multiple reasons to collect and publish data on hate crimes, mainly related to the public interest for a good administration of justice, particularly in a country condemned before the European Court of Human Rights for a discriminatory administration of justice in the cases in question, as well as for reasons connected to the general importance of combating crime. Unfortunately, Romania seems to be the only EU country which refuses to understand this aspect.

It is of utmost importance that this data collection be accompanied by crime victimization surveys and polls which may lead to wider image and better understanding of the real hate crime phenomenon, and not simply an image of the number of registered complaints. At the same time, data collection must be part of a set of measures having the aim of increasing the quality of the justice process for minorities and persons vulnerable to hate crime, in order to avoid the situation where the lack of cases is interpreted as the absence of the

phenomenon.

Indeed, the low number of prosecuted cases or criminal investigations does not point to a reduced hate crime phenomenon, but may on the other hand indicate other problems affecting the delivery of justice, problems which should be tackled by authorities as such. For example, the low reporting of hate crimes is a possible symptom of the lack of trust of victims in authorities¹⁴⁴ and the low number of criminal investigations, of prosecuted cases or of criminal convictions may reflect the failure of the authorities to recognize and hold the discriminatory motive of the crimes¹⁴⁵.

Conclusions

The current data collection system is failing on many aspects. Thus, certain data on individual hate crimes are being collected by the authorities, but this collection is being done in an uncoordinated manner, where the data cannot generally be compared either among institutions or at the level of the same institution. Furthermore, the collection of data on the discriminatory motive is missing and, considering the justifications and other explanations offered by the authorities, there seems to exist no institutional will in order to change this aspect.

One of the justifications provided for the lack of statistical recording of the discriminatory motivation refers to the fact that the national legislation in the field of data protection would forbid it. This is a flawed argument, which raises worrying questions regarding the understanding of the hate crime phenomenon on the one hand, and of the purpose of protecting data on the other hand. The legislation in

¹⁴⁴ See, for example the data presented above as excerpts from the EU Agency for Fundamental Rights, *EU-MIDIS. Data in focus report. The Roma*, 2009, pp.8-9, available at: http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf (last accessed at: 27.05.2015).

¹⁴⁵ See, for example, the presentation of the EctHR cases in Chapter 1.

the field of data protection does indeed put in place bans on collecting data on belonging to a vulnerable group, but these interdictions are aimed at the protection of individual persons and avoiding potential harm being brought against such persons as a consequence of it being known that they belong to a vulnerable group, and in no way do they refer to statistical data. However, the same legislation provides exceptions from the interdiction of collecting data on belonging to a vulnerable group, including in situations of managing a hate crime file – it would not be possible to manage such files correctly otherwise – and, perhaps most importantly, it institutes safeguards. These safeguards refer to the protection of personal data of the victim in the specific activity of working and managing cases and they can under no circumstance be interpreted as an obstacle against creating statistics for understanding the hate crime phenomenon in general.

At the same time, the scarcity of data, as well as the absence of statistics on the discriminatory motivation, maintain the impression that hate crimes would not represent a problem of interest for Romanian authorities. If this vicious circle continues, Romania will never be able to respect its international commitments and it will not be able to remedy the serious problems related to the potential discrimination within the justice system which was repeatedly highlighted by the European Court of Human Rights.

Chapter 3: Alternative hate crime data collection

Hate crime data collection conducted by state authorities differs in each country, according to the specific data collection system and the duties of relevant authorities in the area of crime prevention. This section presents some examples of hate crime data collection steps which refer both to administrative data and to complementary data gathered through surveys.

1. Data collected by European Union Member States

The different manners in which EU Member States collect hate crime data were researched and described in the European Union Agency for Fundamental Rights Report entitled "*Making hate crime visible in the European Union: acknowledging victims' rights*", and published in 2012. In this report, administrative data or official data was defined as „data collected by law enforcement agencies, criminal justice systems and relevant state ministries“¹⁴⁶.

According to the FRA report, with the exception of Romania, all other EU Member States collect administrative data regarding all or only some of the bias motivation of the crime (the data collected shows each individual bias): racism/xenophobia, anti-Semitism, sexual orientation, extremism, religious intolerance, islamophobia, anti-Roma, disability, gender identity and other such grounds¹⁴⁷.

¹⁴⁶ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.7.

¹⁴⁷ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, p.31.

FRA places the States' administrative data collection systems of in three main categories: *comprehensive data collection mechanisms*¹⁴⁸ (the state collects a broad range of bias motivations and types of crime and the data is always published), *good data collection mechanisms* (the state collects data on a range of bias motivation and data are generally published)¹⁴⁹ and *limited data collection mechanism* (the state collects data on a few incidents and on few bias motivations and data is usually not published)¹⁵⁰. Data are collected by different authorities in the Member states, such as prosecution authorities, police, specialized committees or agencies, justice departments, statistical offices etc.

Here are just a few examples of specific hate crime data collection activities from EU Member States presented in the FRA report¹⁵¹:

- **Finland:** The police publish an annual report on racist/xenophobic violence, as well as hate crimes motivated by the religion, sexual orientation, gender identity or disability of the victim; the report is drafted using the police data base and shows data disaggregated according to types of crimes, the home country of the victim, as well as the gender and age of victims and perpetrators. This example is viewed as a good practice in combating hate crime and is further presented in Chapter 4.
- **Sweden:** the hate crime reports are published by a specialized council, based on the data collected by the police and the narrative reports of police officers; collected data include the nature of the contact and the relationship between the

¹⁴⁸ Finland, Netherlands, Sweden, United Kingdom.

¹⁴⁹ Austria, Belgium, Czech Republic, Denmark, France, Germany, Lithuania, Poland, Slovakia.

¹⁵⁰ Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Slovenia, Spain.

¹⁵¹ The European Union Agency for Fundamental Rights, *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012.

victim and the perpetrator, the type of crime and the regional distribution of crimes.

- **The Netherlands:** there is a national expertise centre on diversity in the structure of the police which centralizes hate crime data and draws up an annual report; data presented in the report are disaggregated according to the gender of the perpetrator and the victims, the ground for discriminatory motivation, the nature of the incident and the locations where the incidents occurred.
- **Belgium:** data is collected by the national equality body and the prosecution services: specific registration codes are used by prosecutors when registering a hate crime.
- **France:** a specialized human rights commission is responsible for drawing up an annual report on the incidence of hate crimes motivated by racism, anti-Semitism and xenophobia; the report is based both on administrative data and on data provided by relevant NGOs.
- **Germany:** the administrative data collection system distinguishes between violent and non-violent hate crimes, offers disaggregated data according to the bias of the perpetrator, as well as to the provinces where the crime occurred.
- **Poland:** the police has its own crime statistics system which offers disaggregated data according to the Criminal Code articles, the gender, age and citizenship of the alleged perpetrator the citizenship of the victim, number of cases where charges were pressed, number of cases where the charges were dropped for failure to establish the perpetrator of the act; the prosecution services publish a bi-annual report on crimes motivated by racism or xenophobia.

2. The importance of identifying hate crimes as such

The importance of paying special attention to unmask the discriminatory motivation behind the crime is underlined by the ECtHR in one of the cases against Romania, where the Court states that “*Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.*”¹⁵²

Therefore, in order to ensure that hate crime is identified and treated as such, the collection of data regarding a potential hate crime must begin from the first notes taken by the police or other competent authorities with regard to a certain act, shortly after it was committed. The manner in which data is collected at this stage and the attention paid to certain factual details have an influence over the identification of the discriminatory motivation and, consequently, on the qualification of the crime as one of hate. In addition, the actions performed by the investigating authorities also have an important role to present the crime as a hate crime to the courts of justice. Investigating the relevant evidence which unmasks the discriminatory motivation of the crime and taking into consideration this motivation when pressing charges results in setting a frame where the crime will be heard by the court as a hate crime.

Chapter 1 briefly presents the ECtHR cases where Romania was held responsible for ineffective investigations of anti-Roma hate crimes. The investigations were ineffective partly because the authorities ignored information and evidence indicating the discriminatory motive of the crime.

¹⁵² *Stoica v. României*, no. 42722/02, §119, 4 March 2008.

The OSCE considers that the most frequent mistake regarding the investigation of hate crimes is the refusal or failure of authorities to identify the discriminatory motivation and it draws attention to the need for adequate criteria in this sense¹⁵³. Thus, in relation to the gathering of information in order to unmask the possible discrimination, the OSCE presents a series of “*hate crime indicators*” which can be used by key –actors in the prevention and combating of hate crimes¹⁵⁴. In the view of the OSCE, these indicators refer to “facts that signal that a cause may involve a hate crime” and instructs that if such indicators exist, the crime should immediately be recorded as a hate crime and further investigations should be done regarding the motivation of the crime¹⁵⁵.

The following is a list of such indicators suggested by the OSCE, presented in the form of questions and answers, which can help structure the information gathered by investigative authorities:

- *What is the perception of the victim and the witnesses regarding the incident?* This helps record if the victim considers that she has been targeted based on her membership to a certain group.
- *What was the conduct of the offender?* The question leads the investigator to observe if, for example, the perpetrator uttered slurs about the identity of the victim, showed or drew Fascist or Nazi symbols at the crime scene etc.
- *What are the characteristics of the victim and the perpetrator?* This question is used in order to take into consideration details about the victim and perpetrators’

¹⁵³ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, p.21.

¹⁵⁴ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, p.21.

¹⁵⁵ The Organization for Security and Co-operation in Europe, *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*, 2009, p.21.

identity, such as their membership to a certain minority or majority group, religious groups etc. It checks if there is any history of incidents between the groups, if the incident occurred in an area where the victim's group is outnumbered as opposed to the perpetrator's group, or if the perpetrator's group entered an area usually inhabited by the victim's group. The question also shows if the victim is the leader of an ethnic or religious community, for example.

- *If the crime was committed against property, what type of property was targeted?* It is possible that the property targeted by the perpetrator has a symbolic importance for the victim's group. For example: the perpetrator destroys a church, synagogue or religious cemetery in order to send the hate message towards a religious community; the perpetrator commits the act against an important building for a specific group, such as a school, an NGO headquarters, a cultural center etc. It must also be added that the relevance of the property for the purpose of identifying a hate crime must be based on the relevance of the property in relation to the victimized group, and not on the economic value of the property itself.
- *Are there any clues about the perpetrator's membership or connection to groups which have an extremist ideology or promote discrimination?* Attention is paid to evidence indicating the participation of such groups or their members in the investigated incident. For example, such evidence can consist in tattoos with extremist messages, symbols shown or drawn at the scene of the crime, choosing a day to commit the crime which is symbolic for the extremist group or committing the crime after a march of the extremist groups.
- *What other aspects related to the time and place of the*

crime are relevant for recording the crime as a hate crime? This question helps identify if, for example, the crime was committed in an area frequented by the victim's group or during a day which is symbolic for the victims.

- *Is there any history of similar attacks on the victim or on the victim's group?*
- *What is the actual nature of the violence?* Important indications of hate crime are also given by the specific nature of the violence, such as sexual violence to humiliate and debase an LGBTI (lesbian, gay, bisexual, transgender, intersex) person, violence committed in a public place or filming the crime and distributing the footage on the internet for a higher impact.

3. Hate crime victimization surveys conducted by the state

In order to reach a better understanding of hate crimes, state authorities must rely on more than administrative data. As it was mentioned in Chapter 1, there can be many reasons for which victims do not report hate crimes to the authorities or, even when these crimes are reported, the authorities do not take into consideration and record the discriminatory motive behind the incident. It results that even if administrative data shows a small incidence of hate crimes, it does not mean that the hate crime social phenomenon is insignificant or unproblematic, given that there is no other alternative data that can shed light on the incidence of unreported or unregistered hate crimes.

Two of the United Nation structures, namely the United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe (UNECE), drafted a manual for conducting crime victimization surveys. UNODC-UNECE promote the argument

that public policies aimed at tackling hate crimes must be based on sound evidence regarding the phenomenon and that crime victimization surveys are a source of information which can aid decision makers in this sense¹⁵⁶.

The UNODC-UNECE Manual offers a series of guidelines which States can follow for the purpose of conducting victimization surveys on crimes in general, which also apply to hate crimes in particular. The UNODC-UNECE considers that the harmonization of such surveys between different countries is useful for the subsequent comparability of data at the international level, which in turn offers a wider perspective on hate crime¹⁵⁷.

Using crime victimization surveys, authorities can reach a better understanding of the dimensions of crime in their country, as well as of the public perception on community safety and trust in state authorities¹⁵⁸. Of course, hate crime victimization surveys have their own limitations, such as the difference between the respondents' perception of a crime and the legal definitional of that crime, the influence of time on the representation of events, the respondents not considering some incidents as crimes, the shame associated with revealing the victimization and other similar limitations¹⁵⁹.

The following is a list of differences between administrative and crime victimization survey data, presented by the UNODC-UNECE Manual:

¹⁵⁶ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010, points. 26 and 27.

¹⁵⁷ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010, point. 6.

¹⁵⁸ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010, point. 27.

¹⁵⁹ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010.

Crime victimization surveys	Administrative data
<p>Range of data collected:</p> <ul style="list-style-type: none"> • Offers information on both crime which is reported to the police, as well as unreported or unregistered crime. • Offers additional information on topics such as fear and the attitudes towards crime and the justice system, socio-demographic information which can help evaluate the grounds submitted to the risks of becoming victims, but also the potential problems that the police or the justice system may have in the interaction with the public and in the process of delivering justice. 	<p>Range of data collected:</p> <ul style="list-style-type: none"> • Only offers information in the crimes that have been reported to the police or have been recorded by the police. • For the information to reach the police, a complaint is needed, someone providing information or an ex officio investigation started by the police or the prosecutor. In addition, it is possible that the victim may renounce their complaint.
<p>The results of the survey can be influenced by:</p>	<p>The fluctuation of the number of crimes reported to the police is influenced by:</p>

<ul style="list-style-type: none"> • Statistical errors • The availability of victims to talk about experiences related to the crime, given the sensitive character of these experiences • The time that has passed between the victim's having gone through the experience and the time of the survey • The content of the questions, the structure of the survey, testing the survey and training those who administer it previous to it being important 	<ul style="list-style-type: none"> • Legislative changes through which provisions related to certain crimes are abrogated or new provisions are adopted • Changes in the attitudes of society towards certain deeds falling under the criminal law • Changes regarding the attitudes of the police towards certain deeds • The way in which the system of crime reporting to the police is organized; for example, in some states the crimes can be reported to a specific phone number, while in others it is necessary that the victim files a complaint to the police in person • The obligation to file a criminal complaint in order to be able to benefit from the provisions of other laws, such as, for example, in the case of claiming insurance for theft. • The seriousness of the consequences of the crime, the value of the goods affected by the crime as perceived by the victim • Lack of trust in the authorities of the victims, the perception of the victims that authorities have certain prejudice. • The fear of the victims of potential publicity of the case which would follow if they report to the police.
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UNODC-UNECE recommends treating the two categories of data as complementary. The simultaneous presentation of administrative data together with the data from surveys offers to the public a more comprehensive image of the crime phenomenon¹⁶⁰.

The UNODC-UNECE manual comprises a special section which refers to **hate crime victimisation surveys**. The manual shows that for such surveys an approach towards hate crimes from the victim's perspective is the adequate one, the participants being asked whether they perceived the incident as one which was motivated by prejudice against them. If their answer is positive, additional questions may be asked in order to help the respondent remember details that would indicate hate crime (for example, if offensive words were pronounced, or if certain symbols were used, etc.)¹⁶¹

Another essential component of surveys refers to police reporting which respondents mentioned within the survey. This component is useful, among others, in order to compare the survey data with official data in order to explore the reasons for not reporting the incidents to the police or in order to check whether those who did report were satisfied with the way the police treated their complaint¹⁶².

¹⁶⁰ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010, point 56.

¹⁶¹ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010, points 315-317.

¹⁶² The United Nations Office on Drugs and Crime (UNODC) and the United Nations Economic Commission for Europe, (UNECE) *Manual on Victimization Surveys*, 2010, point 338.

Chapter 4 : Combating hate crimes - List of Good practices

1. Strategic Approach to Combat Hate Crime

The United Kingdom Hate Crime Strategy

On 22 April 1993, a black British man called Stephen Lawrence was murdered, as he and a friend waited for a bus. Unprovoked, a group of white young men attacked Stephen all of a sudden and stabbed him to death. The perpetrators were heard casting racial slurs on Stephen prior to embedding a knife in his chest and arm.¹⁶³ The crime became a watershed in the history of racism in the United Kingdom (UK), igniting a discussion on structural racism in a post-colonial society, and the need for a better understanding of hate-motivated crimes, their prevention and why it is important to fight them.

However, Stephen Lawrence's parents had to campaign for years after their son's murder for proper investigation of the incident since the first investigation was fraught with errors and failed to fully acknowledge the racist nature of the attack. As a consequence of the parents' vocal activism, the police forces' reputation was challenged and the need to address institutional racism within the forces was widely recognized.¹⁶⁴ These circumstances led to a second investigation and

¹⁶³ Macpherson of Cluny, Sir William (1999) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*, London: The Stationery Office, p. 18, available at: http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.

¹⁶⁴ Hughes, Mark (2012) "Stephen Lawrence murder: a tale of two police investigations" in *The Telegraph*, 2 January 2012, available at: <http://www.telegraph.co.uk/news/uknews/crime/8974032/Stephen-Lawrence-murder-a-tale-of-two-police-investigations.html>.

it was after publishing the comprehensive police investigation report compiled by Sir William Macpherson of Cluny in 1999 that racially motivated crimes were given particular weight by the government and the judiciary. Out of the 70 recommendations of the Macpherson report, 67 “led to specific changes in practice or the law within two years of its publication”¹⁶⁵.

These endeavours have resulted in adopting the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 that treat hate-based motivations as aggravating circumstances when sentencing if the offender committed the crime because of the perceived ethnic background, creed, sexual orientation, disability or other status of the victim. Moreover, the operational response of the law enforcement and the authorities applying the law is more efficient and integrated. In general, in the society, “there is greater understanding now of the disproportionate impact hate crimes have on victims”¹⁶⁶. This example shows that authorities who acknowledge their own problems and in good faith make every effort to correct them in order to deliver a better public service can bring about changes not only in policies and legislation, but also in social norms.

Furthermore, combating hate crime was included in the UK government programme in 2011. Following this commitment, the government drafted a hate crime strategy for mitigating the phenomenon, preceded by wide consultations with various experts working on law enforcement, crime prevention, victim support, local and voluntary organizations, and prison and probation administration. Drawing from this cross-sectoral cooperation, the Challenge it, Report it, Stop it – The Government’s Plan to Tackle Hate Crime is a strategic approach to guide the law enforcement officials and other relevant professionals to tackle the problem. The strategy has three core objectives:

¹⁶⁵ Travis, Alan (2013) “Stephen Lawrence: how his murder changed the legal landscape” in *The Guardian*, 22 April 2013, available at: <http://www.theguardian.com/uk/2013/apr/22/stephen-lawrence-murder-changed-legal-landscape> .

¹⁶⁶ HM Government (March 2012) *Challenge it, Report it, Stop it – The Government’s Plan to Tackle Hate Crime*, p. 5, available at: http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf.

- "Preventing hate crime – by challenging the attitudes that underpin it, and early intervention to prevent it escalating;
- Increasing reporting and access to support – by building victim confidence and supporting local partnerships; and
- Improving the operational response to hate crimes – by better identifying and managing cases, and dealing effectively with offenders."¹⁶⁷

In other words, by means of raising the awareness on the subject and the understanding of the adverse effects of hatred on both the victim and the perpetrator – and the society as a whole, the strategy firstly attempts to prevent hate crimes from being committed. Secondly, in the case of hate- or bias-motivated crimes, encouraging victims to report the incidents helps in bringing them justice and compensation. Improved reporting also increases the general understanding of the nature and magnitude of the problem. Thirdly, the strategy acknowledges that providing the victims with counselling and other support services prevents further trauma, and thus provides for these services. Finally, an appropriate and effective response by the law enforcement and administrators stands as a warning to other potential offenders.

The strategy lists altogether 53 concrete actions for achieving the three core objectives. Among these are: supporting civil society organizations in organizing workshops for preventing discriminatory attitudes; developing better and easily accessible reporting systems for victims; and increasing the amount of training of the police officers about the subject. These measures all have the aim of building local

¹⁶⁷ HM Government (March 2012) *Challenge it, Report it, Stop it – The Government's Plan to Tackle Hate Crime*, p. 9, available at: http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf

capacities in identifying and responding to the problem.¹⁶⁸

After two years of running the strategy, the UK government had the implementation of the strategy evaluated to assess its progress. The report lists as achievements, among others, the adoption of the new Code of Practice for Victims of Crime.¹⁶⁹ Another example comes from Lancashire, England, where a local awareness charity called the Sophie Lancaster Foundation has set up an awareness raising programme on hate crimes for primary school children.¹⁷⁰ Furthermore, the strategy has fed into local hate crime strategies. For example, in Manchester, the local hate crime strategy aims at better responding to the local setting and particular problems encountered. As a local initiative in Manchester, people belonging to the so called sub-cultures, - affiliating themselves with, for instance, a certain genre of music or political ideology - were also included as groups vulnerable to hate crimes.¹⁷¹ Moreover, the evaluation revealed a few emerging threats that require increased attention. These were: the increasing number of assaults against people with disabilities, growing importance of social media as a platform for hatemongering and growing anti-Muslim sentiments, to name but a few.¹⁷²

¹⁶⁸ HM Government (March 2012) *Challenge it, Report it, Stop it – The Government’s Plan to Tackle Hate Crime*, p. 11-21, available at:http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf

¹⁶⁹ HM Government.(May 2014) *Challenge It, Report It, Stop It – Delivering the Government’s hate crime action plan*, p. 6, available at:http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf.

¹⁷⁰ Cree, Jessica (2014) “East Lancs primary children get lessons in hate crime” in *Lancashire Telegraph*, 13 September 2014, available at:http://www.lancashiretelegraph.co.uk/news/11472164.East_Lancs_primary_children_get_lessons_in_hate_crime/.

¹⁷¹ HM Government.(May 2014) *Challenge It, Report It, Stop It – Delivering the Government’s hate crime action plan*, p. 19, available at:http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf.

¹⁷² HM Government.(May 2014) *Challenge It, Report It, Stop It – Delivering the Government’s hate crime action plan*, p. 7-8, available at:http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf.

2. Law Enforcement Training Policy

UK National Policing Hate Crime Strategy and Hate Crime Operational Guidance

Similarly to the Stephen Lawrence case, another case, that of Fiona Pilkington called for better law enforcement response to hate-related crimes. Ms. Pilkington and her family were seriously harassed for years by a youth gang, partly because her daughter was severely disabled. After years' ordeal and more than thirty futile contacts to the Leicestershire police, Ms. Pilkington killed herself and her daughter. The tragedy raised serious concerns over the local police force's ability to respond to the special needs of vulnerable families. Moreover, it exposed omissions in the understanding of and adequate response to disability hate crimes among the law enforcement bodies.¹⁷³ These cases have underlined the special role of the law enforcement in responding to hate crimes and the importance of ensuring sufficient knowledge and know-how among the police officers to minimize the adverse effects racism and other forms of bias can have in a society.

The law enforcement officers are in a key position to identify, investigate and respond to hate crimes, in addition to which police officers are often the first ones to arrive at the crime scene. Under these circumstances it is of utmost importance that the law enforcement officials are well trained about the particularities of hate crimes and the proper code of conduct when encountering a victim. Also, the police need to cultivate sensitivity to better identify potential hate-induced crime and the special needs of vulnerable groups. Furthermore, when working with people with diverse background, the police needs to remain objective, professional and calm in order to not reinforce discriminatory attitudes and behaviour that lie behind hate-related crimes. All this needs a strategic approach, clear objectives and well-planned curriculum for

¹⁷³ Walker, Peter (2011) "Fiona Pilkington case: police face misconduct proceedings" in *The Guardian*, 24 May 2011, available at: <http://www.theguardian.com/uk/2011/may/24/fiona-pilkington-police-misconduct-proceedings>.

passing the knowledge on to police officers and police trainees.

Following the UK Government Hate Crime Strategy commitments, the College of Policing – the academy responsible for training the law enforcement officials – has drafted its own strategy outlining the police force’s objectives in tackling hate crime. The National Policing Hate Crime Strategy from 2014 sets out two main goals in relation to hate crimes: “reducing the harm caused by hate crime” and “increasing the trust and confidence in the police of communities which fear they may be targeted by such crime.” More specifically, these aims are achieved by reducing the “overall incidence of hate crimes”, their harmful effects on the victim and the underreporting of hate crimes. In addition, the Strategy also has the objective of strengthening social cohesion within and between communities, with a sound balance between curbing hateful messages and allowing people to exercise their freedom of speech.¹⁷⁴

The six page Police Strategy, which also serves as policy background behind police training on hate crime, is accompanied by a practical manual, the Hate Crime Operational Guidance, which is an extensive document that analyses the hate crime phenomenon from various angles and gives the law enforcement officials a comprehensive look into hate crime mitigation and response. Among others, the Guidance contains sections on definition and different forms of hate crimes; relevant legislation; reporting mechanisms; investigation; and community engagement.¹⁷⁵ For instance, the community engagement section lists a few useful methods for building confidence within communities and cooperating with them. One example of successful community engagement is to establish independent advisory groups with the communities affected by or vulnerable to hate crimes. Members of communities, such as different ethnic groups or representatives of

¹⁷⁴ College of Policing (2014) *The Hate Crime Strategy*, College of Policing Limited, pp. 2–3, available at: http://www.report-it.org.uk/files/national_policing_hate_crime_strategy.pdf.

¹⁷⁵ College of Policing (2014) *The Hate Crime Operational Guidance*, College of Policing Limited, available at: <http://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf>.

the LGBTI community or people with disabilities advise the police on and monitor the particular challenges these groups face.¹⁷⁶

These two documents set out the way the police and partners should deal with hate crime and also provide information to victims about the kind of service they should expect to receive when reporting a crime to the police. The documents, along with other relevant material, are used in training the law enforcement. Further to these documents, local constabularies can draft localized strategies and action plans, taking into account special grass-roots characteristics.

3. Diversity Management of Police Forces

Platform on "Police and Management of Diversity", Spain

During the last decades, Spain has experienced major changes in its ethnic and religious composition, in addition to which the challenging of the traditional lifestyles has produced a diverse and multi-cultural society. Without leaving aside the obvious benefits this diversification has brought to cultural exchange, personal liberty and mutual learning from others' differences, without proper management this change can also impose a strain to the modern Spanish *convivencia* ('coexistence', a concept traditionally alluded to peaceful and inclusive coexistence of different creeds during the Muslim occupation of southern Spain in the turn of the first millennium).

The policy is grounded on a certain response to this new reality. Therefore, it considers that in order to adjust to the growing number of people with different backgrounds, adaptation of the society's norms generally needs to be a constant self-reflective process. Since the modern society has granted the police forces the monopoly of law enforcement, the police has an important role in updating its

¹⁷⁶ College of Policing (2014) *The Hate Crime Operational Guidance*, College of Policing Limited, pp. 93-95, available at: <http://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf> .

own mechanisms to the benefit of all citizens irrespective of their ethnicity, religion, political affiliation, sexual orientation or other personal characteristics.

The best quarters to hold the police accountable and monitor its policies towards the minorities are the representatives of these groupings themselves. Therefore, the role of religious, ethnic, LGBTI, disability and other civil society organizations is crucial in this process. The best result is attained when the law enforcement forces have an open dialogue with the minority group representatives to learn directly from them about their particular needs and challenges. While this example comes from Spain, it is one which can be easily translated in other countries, as different kinds of monitoring bodies with relevant stakeholders from the law enforcement, other public authorities and the civil society are easy to put in place everywhere even with meagre resources.

In Spain, the police diversity management is organized in the form of a platform that gathers representatives from civil society minority groups and heads of local police departments. The "Platform for Police Diversity Management" (*Plataforma por la Gestión Policial de la Diversidad*) convenes periodically to discuss issues regarding police interaction with various minority groups and tries to find ways to build mutual trust between the police officers and vulnerable groups. The activities of the Platform include training of police forces, awareness raising campaigns, studies and surveys, and awards for local police departments and officials for innovative approaches and effective implementation of diversity management strategies. The Platform also supports programmes and initiatives advancing police accountability and impartiality towards minority subjects.¹⁷⁷

¹⁷⁷ Saéz, Javier (26 September 2012) *Two experiences for improving communication with victims of discrimination: Platform on "Police and Management of Diversity" and Network of Centers for Assisting Victims of Discrimination*, Fundacion Secretariado Gitano, presentation available at: http://www.equineteurope.org/IMG/pdf/PRINT_THIS_Spanish_presentation.pdf.

4. Special Police Forces to Combat Hate Crime

Hate Crime Unit of the Stockholm Police, Sweden

Sweden has long exercised an open immigration policy, and thus today one fifth out of the roughly 10 million people living in Sweden have an immigrant background – they were either born abroad themselves (to non-Swedish parents) or both their parents are of non-Swedish origin.¹⁷⁸ Moreover, manifestations of personal characteristics, such as gender identity or sexual orientation, are generally accepted and even encouraged in the Swedish society. However, there are also vocal opponents to the open immigration policy and liberal values in the country. These frictions became apparent in the 1990s with the growing movement of neo-Nazis who opposed Swedish immigration policies and the immigrants themselves, at times with violent consequences¹⁷⁹.

The way the Swedish police has responded to the challenges of a multicultural and diverse society has been to focus on preventive measures to combat discrimination and hate crime. With their significant share of immigrants, the police departments in the cities of Stockholm and Malmö have been the forerunners in establishing mechanisms for efficient diversity management.

The Stockholm City police opened a 24-hour emergency number accompanied by further emergency service advice for hate crime victims in 2007. Since then, the hate crime response has developed into a special hate crime unit, or hate crime group (*hatbrottgruppen*). As a standard operating procedure, submitting a report of an offence

¹⁷⁸ Sweden Statistics (2014). *Summary of Population Statistics 1960 – 2013*, available at: http://www.scb.se/en_/Finding-statistics/Statistics-by-subject-area/Population/Population-composition/Population-statistics/Aktuell-Pong/25795/Yearly-statistics--The-whole-country/26040/.

¹⁷⁹ Floman, Marcus (2011) "Kamp mot rasism – En kort tillbakablick" in *Ny tid*, 16 November 2011, available at: <http://www.nytid.fi/2011/11/kamp-mot-rasism-en-kort-tillbakablick/>.

is currently accompanied by questions of possible hate- or bias-based motives, such as whether the victim thinks the reason behind the offence was connected to discriminatory attitudes toward his or her ethnicity or sexual orientation. The hate crime group is then responsible for investigating the alleged hate crimes and turning them to the prosecutor if necessary. Also, since there has been a tendency of under-investigating crimes as hate crimes, the hate crime group attempts to go through the whole offence report flow to see whether potential hate crimes have been filed under other criminal offences by accident or under false pretences. Moreover, the hate crime group works in tight cooperation with the Police Criminal Records Service (*Kriminalunderrättelsetjänsten*) for compiling sound data on hate crime prevalence.¹⁸⁰

In addition to investigating and reporting, the hate crime group makes an outreach effort to raise awareness on hate crime. The group is visible in events where there is an elevated risk of hate-related incidents, such as political rallies or gay parades. Also, they are involved in raising awareness about hate crimes and on how to respond to them correctly. For instance, the Stockholm County Police has published a leaflet targeting the LGBTI people and informing them about the phenomenon. Being Yourself is Not a Crime leaflet contains hate crime definitions, emergency contacts, basic legislation and encouragement to report in the first place as well as explaining why it is important to report hate-motivated assaults as hate crimes.¹⁸¹

Finally, the hate crime group is involved in training police officers and police trainees in the whole Stockholm County about hate crime. This

¹⁸⁰ Riskpolisstyrelsen (2013) *Inspektion av polismyndigheternas förmåga att upptäcka och utreda hattbrot*, pp.25–26, available at:http://polisen.se/Global/www%20och%20Intrapolis/Rapporter-utredningar/01%20Polisen%20nationellt/Ovriga%20rapporter-utredningar/Inspektioner-tillsyns%20rapporter/2013/Tillsynsrapp_4_Hatbrott_130411.pdf.

¹⁸¹ Stockholm County Police, *Being Yourself is Not a Crime*, available at:http://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/being_yourself_hatbrott_09.pdf.

is nowadays part of the established policing curriculum. The group also cooperates with other countries' police forces. For instance, two Swedish policemen specialized on homophobic crime were invited by the local LGBTI rights organization Asociatia Accept to visit Bucharest during the 2014 Pride Week and give trainings to local police officers and civil society on combatting anti-LGBTI sentiments and the resulting assaults.

5. Anonymous Online Reporting Mechanism for Victims of Hate Crimes

True Vision in the UK

In the view of the UK police in the unfortunate event of a hate crime being committed, it is crucial that the crime is reported without unnecessary delay, which will allow the relevant authorities to start investigating the crime and take precautionary measures to avoid similar incidents taking place. It is also beneficial for the victim or someone close to the victim to get information about criminal procedures and adequate support services.

However, it is also often the case that the victim might be reluctant to reveal his or her identity out of shame, fear of retaliation or other reasons. If this is the case, it is important nonetheless that the police gets sufficient information about what has happened in order to protect others at risk and to start investigating the alleged crime. Hence, providing the option to report hate crimes anonymously will both protect the identity of a victim or an eyewitness, and pass the relevant information on to the law enforcement officers.

True Vision is an online reporting facility supported by the police forces of England, Wales and Northern Ireland, available both in English and Welsh languages. It allows the victims, eyewitnesses or third parties to report to their local police force either leaving their contact data or anonymously about a crime that had elements of potential

hate motivation. Even in anonymously reported cases the police will start an investigation. The service runs also a mobile application for smartphones.

The report form contains detailed questions related to the incident: the victim, witness or “other” can describe the perceived motivation behind the attack; give the course of events; list injuries or damages occurred; describe the offender(s) and their possible vehicle; and add other relevant information related to the incident, the victim and the offender(s). At the end of the form, the person reporting an incident can disclose his or her contact details if he or she so chooses. In this case, police will contact the person for further information. In cases of emergency, the service encourages the victim to call an emergency number. In addition to offering the reporting facility, the online platform contains a lot of valuable information and data about hate crime and victim support services.¹⁸²

6. State Data Collection on Hate Crime

Annual Report on Hate Crimes Reported to the Police in Finland in 2013

Collecting statistics and other information on hate crime at the state level makes the phenomenon more visible, which helps the further design of hate crime prevention mechanisms and victim support. It also gives a certain snap-shot of the society: which groups are the most prone to be victims of hate-motivated crimes and what societal changes can be seen behind the change? This information is valuable for the law enforcement and other relevant authorities for planning targeted special measures for the most vulnerable groups. Furthermore, state-level data facilitates international comparison of the phenomenon and cooperation initiatives to fight the problem.

¹⁸² The True Vision online report form can be accessed at: http://www.report-it.org.uk/your_police_force. The form itself can be accessed by choosing any police force from the drop-down list.

In Finland, data on racist crimes has been collected for more than 15 years. For long, Finland was a country with one of the smallest communities of foreigners in Europe. Gradually, the country started to open up in the 1990s when Finland both entered the EU and increased its quota for refugees. Most of the first refugees of the 1990s came from the war-torn Somalia, and some of them fell victims to racism and racist crimes in Finland. Following the political discussion on the need to curb racism, the Police Department of the Ministry of the Interior started to collect data on racist crimes in 1998. Starting from 2009, hate crime statistics have included also crimes committed on other grounds, such as disability status, anti-LGBTI sentiment or aversion towards a certain religion.¹⁸³

The Finnish legislation does not include a clause on hate crime as such although the Finnish Criminal Code makes, for instance, “committing a crime against a person, on account of one’s national, racial, ethnic or equivalent group” (Section 5, Art. 4) an aggravating circumstance in sentencing. In addition, incitement to ethnic hatred (*kiihotus kansanryhmää vastaan*) is criminalized (Section 10a).

When compiling the hate crime report, the Police College uses several methods to define the number of hate-related offences in a year. The data is based on the police files of reports of an offence. Firstly, cases listed under one or several of the articles in the Finnish Criminal Code that indicate to a hate-based motive are considered. Also, the reports of an offence’s narratives go through an electronic search to look for certain key words that suggest the case could be hate-based. There are altogether 269 key words used that are mainly abusive words for LGBTI people, people with disabilities and members of ethnic, national or religious groups. Secondly, cases indexed under a list of words (10 altogether), such as “discrimination”, “genocide” or “torture” are marked. Thirdly, all reports of an offence with the words “rasist*” or

¹⁸³ Jäämeri, Hannele (2013) “Mitä viharikosraportti kertoo – ja mitä ei” in *Suomen Kuvalehti*, 27 October 2011; updated 29 November 2013. Available at: <http://suomenkuvalehti.fi/jutut/kotimaa/mita-viharikosraportti-kertoo-ja-mita-ei/>.

"rasism*" ¹⁸⁴ in their title are included for further consideration. Fourth, the police officers can nowadays include a hate crime tag themselves for the report of an offence to be considered a hate crime. Finally, all the hits are read through to confirm whether the case indeed had a hate-based motive. ¹⁸⁵

The above-mentioned methods gave a body of 7373 potential hate crimes out of which 833 cases were listed as hate crimes in 2013. ¹⁸⁶ Perceived ethnic or national origin was the motive in around 85 % of the cases, religious conviction or view of life in almost 10 % of the cases, and sexual orientation in 4 % of the cases. Gender identity or disability were the motive in around 1 % of the cases. ¹⁸⁷

It must be noted that the crimes added to the state data collection are reports of an offence, not convicted or even suspected crimes. At the moment, there is no mechanism for cross-checking with the court decision statistics in place to establish the number of convictions based on a hate motive. However, year by year the data collection system is refined and the methodology improved by lessons learnt. Even though approximate, this information gives a suggestion of the magnitude of the problem.

¹⁸⁴ These entries give all the possible derivations of the Finnish words for racist '*rasisti*' or racism '*rasismi*'.

¹⁸⁵ Tihveräinen, Tero (2014) *Poliisin tietoon tullut viharikos Suomessa 2013 – Poliisiammattikorkeakoulun katsauksia 7/2014*, p. 3, available at: [http://www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/13BA59295308237FC2257D9B002D9712/\\$file/Katsauksia7_web.pdf](http://www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/13BA59295308237FC2257D9B002D9712/$file/Katsauksia7_web.pdf).

¹⁸⁶ Tihveräinen, Tero (2014) *Poliisin tietoon tullut viharikos Suomessa 2013 – Poliisiammattikorkeakoulun katsauksia 7/2014*, p. 3, available at: [http://www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/13BA59295308237FC2257D9B002D9712/\\$file/Katsauksia7_web.pdf](http://www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/13BA59295308237FC2257D9B002D9712/$file/Katsauksia7_web.pdf).

¹⁸⁷ Tihveräinen, Tero (2014) *Poliisin tietoon tullut viharikos Suomessa 2013 – Poliisiammattikorkeakoulun katsauksia 7/2014*, p. 6, available at: [http://www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/13BA59295308237FC2257D9B002D9712/\\$file/Katsauksia7_web.pdf](http://www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/13BA59295308237FC2257D9B002D9712/$file/Katsauksia7_web.pdf).

7. Hate Crime Victim Support Services

Victim Quick Response Programme, Ontario, Canada

Despite the numerous possible prevention measures that this chapter gives examples of, crimes, including hate crimes, are unlikely to be eradicated totally. Therefore, a number of people fall victims to hate-motivated crimes, which is why mechanisms for victim support need to be in place to prevent adverse effects. These can be further victimisation leading to physical or mental trauma, economic losses or material damage. In addition, it is important to ensure the victims are treated with respect and dignity. Providing services for the victims supports them overcome the traumatic event and helps them return to normal life as soon as possible. The victim support programmes signal both to the victim and to the whole of society that hate crimes are taken seriously and are not tolerated. These programmes need to take into account both immediate needs and long-term support. A promising example of an emergency support service comes from Canada.

The Canadian society is increasingly heterogeneous: out of the roughly 30 million Canadian citizens, every fifth or so is an immigrant – there are also close to 100 000 Romanians (born in Romania) in Canada and more than 200 000 people with Romanian descent. Moreover, one third of the population professes a religious affiliation (including those with no religious affiliation) other than the Christian creed.¹⁸⁸ In order to prevent and mitigate the potential risks of discrimination and hostility between individuals or groups, phenomena which can appear in a diverse society, the Government of Canada has an anti-hate crime legislation in place, in addition to which the law enforcement

¹⁸⁸ Government of Canada: Statistics Canada (2011) *National Household Survey Profile, Canada, 2011*, available at: <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/prof/details/Page.cfm?Lang=E&Geo1=PR&Code1=01&Data=Count&SearchText=Canada&SearchType=Begins&SearchPR=01&A1=All&B1=All&GeoLevel=PR&GeoCode=10>.

is trained on the subject and the police monitors the number of hate crimes in an annual report.¹⁸⁹

According to the annual hate crime report, “about half of police-reported hate crimes in 2012 were reported in Ontario (53%) which had the highest rate of hate crimes among provinces per 100 000 population in 2012”.¹⁹⁰ This is somewhat understandable since many large cities, such as Toronto, Ottawa and Thunder Bay are located in Ontario. One can argue that large cities with their heterogeneous population composition and diverse sub-cultures and life styles are more prone to hate crimes.

To tackle the issue and provide support services to victims of hate crimes, the Ontario Ministry of the Attorney General’s Victim Quick Response Programme is designed as an immediate assistance to help fill the gap between the time a crime occurs and when the victim receives longer-term support services. The services of the programme include, for instance: financial assistance for short-term and immediate counselling; funeral expenses for victims of homicide; and other emergency expenses such as removal of hate crime graffiti from home property or vehicle. Although the programme is not designed exclusively for hate crime victims, they are mentioned as one eligible group among other groups of victims of violent crimes.¹⁹¹

Similar services will soon need to be provided to crime victims across the European Union, when the EU Directive 2012/29 on strengthening victims’ rights in EU reaches its transposition dead-line on 16

¹⁸⁹ Allen, Mary (2014) “Police-reported hate crime in Canada, 2012” in *Government of Canada: Statistics Canada*, available at: <http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14028-eng.htm#n01-refa>.

¹⁹⁰ Allen, Mary (2014) “Police-reported hate crime in Canada, 2012” in *Government of Canada: Statistics Canada*, available at: <http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14028-eng.htm#n01-refa>.

¹⁹¹ Ministry of the Attorney General Ontario Victim Services Secretariat.(July 2011) *Victim Quick Response Program Information for Community Agencies and Victims of Crime*, available at:http://www.attorneygeneral.jus.gov.on.ca/english/ovss/vqrp_program_info_booklet.pdf.

November 2015. The Directive sets minimum standards for victims' protection mechanisms, access to justice, and access to compensation mechanisms. When the necessary transposing legislation in member states is in force, the same guarantees are applicable throughout the EU irrespective of the victim's country of residence or nationality.

Conclusion

The examples from around the world on how to prevent and mitigate hate crimes and minimize their adverse effects have a few common denominators: they have evolved over time, they are moreover representative of a process rather than a result, they have been tailored to the country's particular needs, and they do not necessarily require significant financial resources.

In the UK, Stephen Lawrence's murder in 1993 and the following flawed investigation sparked off a discussion about structural racism and its connection to the legacy of colonialism. The police forces' reputation was particularly tarnished by the incident, which compelled the law enforcement to review its policies and practices. Since racist and other hate crimes affect the society at large, effective response required a broad societal intervention. As a result of two decades' hard work, the UK can be now considered a world leader in combatting hate crimes: the country has streamlined strategies in place both at the state and local levels, and has undertaken extensive police training on the subject. Moreover, hate crime reporting mechanisms for victims or witnesses are easily accessible – even by a smartphone. These tools and others have the added value that they send a firm message in the society, that hate crimes are taken seriously, which in itself can have a positive, crime-reducing effect.

Also, the two examples from Finland and Sweden have the characteristics of having got their current form in time, but through

constant and increasingly comprehensive work. The special hate crime group of the Stockholm police started off as an on-call duty in response to the growing number of racist and other hate-motivated attacks. Over the years, the service grew beyond just reacting to crimes but preventing and studying them to increase the understanding of the phenomenon within the law enforcement and the whole society. Similarly, the Finnish practice of data collection on hate crimes has improved from merely gathering data on racist incidents to also including other vulnerable groups in the statistics. Year by year, the data collection methodology gets more and more accurate in depicting the phenomenon in a reliable manner.

The practices presented in this manual offer several examples to be considered by the Romanian authorities. Some of them, like the cross-sectoral diversity management platform in Spain, are easy to replicate directly or with minor adjustments straight to the Romanian setting. Some practices, such as the Finnish data collection example, are tailored to the particular legal environment but have qualities that can be introduced to other systems. Therefore, international cooperation and learning from other countries' experiences should be at the core of building the criminal investigative, hate crime reporting and data collection capacity of the Romanian law enforcement.

Chapter 5 : General Conclusions

Regarding hate crimes as a specific category of crimes

- Hate crimes are a specific category of crimes which are distinguished by the discriminatory motivation behind them and by their increased impact on the victim, on the victim's social group and on democratic values, in general. The European Court of Human Rights considers that these types of crimes are "*a particular affront to human dignity*".
- In the criminal legal framework of Romania, hate crimes are provided in a mixed system: they are considered aggravating circumstances, as well as, in some instances, individual hate crimes included in the Criminal code and other special criminal laws.
- Aside from an adequate functioning of the rule of law in a state which pretends to be democratic, the Romanian state has international human rights obligations to punish hate crimes and to conduct effective investigations in order to identify and hold the discriminatory motive of the crime, every time there are suspicions of such motive.
- Romania has been held accountable several times by the European Court of Human Rights, because the investigation authorities ignored evidence of racist crimes against Roma and engaged in further racist discrimination during the domestic proceedings. It is particularly alarming that some of the cases we refer to in this Guide are a result of police abuse against

Roma people.

- Considering the increased impact of hate crimes, there is a need for specific actions, amongst others, in order to: prevent and combat hate crimes through monitoring the application of the criminal legislation in practice, collect data on hate crimes (through administrative means and other types of sociological data collection) and increase the trust of victims towards authorities.

Regarding the administrative framework for hate crime data collection

- The police, prosecution and courts have different data collection systems, which often renders administrative data impossible to compare. Consequently, it is either very difficult or even impossible to follow data regarding a hate crime, from the moment of reporting to the police to the moment of the court solution, going through all the stages of the case.
- None of the relevant authorities collects disaggregated data according to the ground which made the discriminatory motive, so that the concrete group targeted can be identified. It results that it is not possible to ascertain which social groups are more vulnerable to hate crimes in Romania.
- The manner in which data on hate crimes is being collected shows the lack of interest for the phenomenon at the level of the Romanian justice system;
- Although reports on the activity of the police, prosecution and courts are published each year, these documents do not include data on hate crimes.
- The domestic legal framework in the field of data protection is incorrectly interpreted by some authorities which have

expressed themselves on this aspect in the sense that processing special categories of data (such as those connected to the discriminatory motive of the crime) would be forbidden if done to collect statistical data. Although the law protects additionally data connected to belonging to a vulnerable group, this protection has the purpose to avoid the breach of rights of individual persons, and is a separate issue from data collection on the incidence of hate crimes, data which is, by their very essence, anonymous, and whose collection otherwise justifies the public interest of knowing the phenomenon in order to combat it.

- The legislation on data protection allows the processing of data related to one's belonging to a vulnerable group in specific cases, such as instrumenting and managing hate crime files, so long as the processing is being done with the respect for legal safeguards towards the fundamental rights and freedoms of the persons in question, particularly the right to private life – safeguards whose main purpose is to protect the victim.

Regarding different systems of hate crime data collection

- With the sole exception of Romania, all other EU Member states collect data on the discriminatory criteria to a certain extent. Such data is collected and published differently, either by the police or prosecution, or by specialized structures for combating discrimination and hate crime.
- Investigating authorities play an important part in identifying the discriminatory motivation behind the crime. By using specific questions and leads, investigators can uncover the discriminatory ground, which leads to the classification of the crime as being motivated by hate. In Chapter 3 we presented a series of suggested questions, inspired by the Organization for

Security and Co-operation in Europe guidelines for combating hate crimes.

- In order to fully understand the hate crime phenomenon, authorities should not only take into consideration administrative data. For various reasons, such as fear or mistrust, victims do not report crimes to the police. Thus, crime victimization surveys and other types of sociological research are a complementary method for understanding the phenomenon and drafting public policies to prevent and combat hate crimes, which is not only useful but also necessary.

Regarding good practices for preventing and combating hate crimes

- The list of good practices for preventing and combating hate crimes which are presented in this guide includes the following: a strategic approach to combat hate crime, law enforcement training policies, diversity management of police forces, special police forces to combat hate crime, anonymous online reporting mechanisms for victims, annual reports on hate crimes and hate crime victim support services.
- All the good practices presented in Chapter 4 have common denominators, such as: they have evolved over time, they are moreover representative of a process rather than a result, they have been tailored to the country's particular needs, and they do not necessarily require significant financial resources.
- The Romanian State can learn from the examples offered by countries such as the United Kingdom, Spain, Sweden, Finland or Canada and adapt these good practices to the specific contexts of the Romanian system of preventing and combating crime.

Chapter 6 : Recommendations for Romania

The recommendations featured in this guide are drafted considering the need for a strategic approach from the Romanian State towards hate crimes. A strategic approach means a firm commitment from the State to prevent and combat hate crimes, based on a coherent vision informed by data on the phenomenon of hate crime and on the cooperation of all relevant authorities in the criminal law field: Ministry of interior, Ministry of Justice, police, prosecutors, probation services and prison administration, non-governmental organisations in elaborating, implementing (NGOs only with an assisting role here) and monitoring the strategy.

A strategic approach to preventing and combating hate crimes must be assumed at the highest level of all authorities which have a role in identifying, prosecuting and punishing crimes, and must comprise at least the following elements:

- A deep understanding of the hate crime phenomenon, based on research which considers both administrative data which must be collected by authorities, and hate crime victimization surveys and other types of sociological research.
- Training of all professionals who come in contact with hate crime victims and who play a role in identifying, prosecuting and punishing hate crimes or defending victims, as well as training of all professionals who collect and process personal data related to hate crime files.
- Taking specific targeted action for groups which are vulnerable to hate crimes, together with a substantial improvement of the

law enforcement authorities' capacity to efficiently respond to hate crimes. All of these actions must lead to strengthening the victims' trust in authorities and, thus, to raise the number of victims who report hate crimes.

- Increasing the quality of the hate crimes identification and prosecution process by police and prosecutors, which means correctly establishing which crime falls in the category of hate crimes and taking into consideration, where necessary, the discriminatory motivation of the perpetrator.
- Zero tolerance towards police abuse which is motivated by discrimination and towards all instances of discrimination in the justice system. This entails a quick reaction to all incidents where there is suspicion of discrimination and the establishment of monitoring mechanisms to oversee the justice system from the point of view of non-discrimination.

Considering all the above elements of a strategic approach, together with all aspects related to the specific Romanian hate crime prevention and combating system, this guide makes a list of targeted recommendations for domestic authorities which play a role in identifying, prosecuting and punishing hate crime:

Initial and continuous professional training

- Ensure an individual approach to hate crimes in the initial training of police officers and all legal professions. Include hate crimes as a separate topic in all relevant areas of legal study (criminal law, human rights, criminology, forensics etc.) in training institutions such as police schools and academies, law faculties and institutes for the training of judges, prosecutors and lawyers. Focus these topics on aspects regarding evidence collection and handling and the protection of and respect for the fundamental rights of victims.

- Include separate training sessions on hate crimes in the continuous professional training of police officers, judges, prosecutors and lawyers.
- Ensure particular training of all persons who have legal duties in the course of a criminal trial, with the aim of better identifying and reporting hate crime, conducting an effective investigation and punishing hate crimes,¹⁹² as well as better communicating with the victims of such crime and using the necessary support services.
- Establish knowledge exchange programs with professionals from countries which provide examples of good practices in preventing and combating hate crimes.

Strengthening the relationship between the police and the community

- Continue the recruiting of professionals from minority groups in the police structures¹⁹³ and include this process of recruiting in a wider strategy for promoting diversity, showing that police schools and academies have a public commitment towards promoting diversity and serving diverse communities.
- Continue offering training programs to police officers on how to communicate with the local communities.
- Drawing from the Spanish example of diversity management,

¹⁹² This recommendation was also included in the United Nations Committee Against Torture *Concluding Observations on the second periodic report of Romania*, CAT/C/SR.1316, 7 May 2015, pt.10 (f) available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ROU/CAT_C_ROU_CO_2_20493_E.pdf, (last accessed on 27 May 2015)

¹⁹³ This recommendation was also included in the United Nations Committee Against Torture *Concluding Observations on the second periodic report of Romania*, CAT/C/SR.1316, 7 May 2015, pt.10 (d) available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ROU/CAT_C_ROU_CO_2_20493_E.pdf, (last accessed on 27 May 2015)

the police administration should convene a platform or a working group to discuss ways to prevent and mitigate hate crimes. In addition to the law enforcement and other relevant authorities, the platform should include members of groups vulnerable to hate crimes (Roma, Hungarian, Jewish, LGBTI people, people with disabilities, religious minorities, etc...).

Administrative data collection systems

- Harmonize the hate crime data collection systems of the police, prosecutors and courts, in order to ensure the comparability of such data.
- Modify the hate crime data collection system in order to avoid global data collection for hate crimes which are provided by law as versions of another main crime and are drafted as separate paragraphs of an article (for example, in art.297 Criminal Code, the abuse in office on discriminatory grounds is included in the second paragraph of the main article entitled "Abuse in office") and in order to avoid data collection which can only be disaggregated according to entire chapters in the Criminal code or entire special criminal laws, meaning that the specific articles regarding hate crimes are lost among the data (for example, Government Emergency Ordinance no. 31/2002 on banning the fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of committing crimes against peace and humanity).

Safeguards for the protection of hate crime victims in the process of hate crime data collection

- The police administration should develop a system for reporting and recording hate-based incidents and crimes targeted at victims and witnesses. Such a system should provide the ability to report crimes from locations other than police stations, also online and preferably via a smartphone application, too. The reporting facility should be available 24 hours a day.
- The police administration together with other relevant authorities, particularly from the health sector, should develop guidelines regarding how to handle victims of hate crimes. These should feed into developing support services, also having in view the need to effectively implement Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.
- Undertake a consultation process between the National Data Protection Authority, the General Inspectorate of the Romanian Police, the Ministry of Justice and the Superior Council of Magistracy in order to draft instructions and safeguards for hate crime data collection and processing. Such instructions should focus on protecting hate crime victims, while at the same time providing for the need and manner in which data can be collected in order to understand the phenomenon also from the perspective of the grounds on which the crime was based, all with prevention purposes in mind.
- Train all persons involved in the collection and processing of sensitive data.

Safeguards for investigating hate crimes perpetrated by state officials

- Establish an independent monitoring and supervising mechanism to ensure that claims against state officials are not investigated by their peers, in domestic disciplinary proceedings. This recommendation was specifically drafted for Romania by the United Nations Committee Against Torture after expressing concern regarding the low number of prosecutions and convictions of state officials reported for abusive behaviour¹⁹⁴.

¹⁹⁴ This recommendation was also included in the United Nations Committee Against Torture *Concluding Observations on the second periodic report of Romania*, CAT/C/SR.1316, 7 May 2015, pt.9 (c) available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ROU/CAT_C_ROU_CO_2_20493_E.pdf, (last accessed on 27 May 2015)



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www.eeagrants.org