



# MANUAL ON JOINT HATE CRIME TRAINING FOR POLICE AND PROSECUTORS

Intended for use in Bulgaria

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# INTRODUCTION

This manual on joint hate crime training for police and prosecutors was developed as part of a project developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to build a comprehensive criminal justice response to hate crime. The project is co-funded by the European Union and the United States.

This publication is intended for use in the Bulgarian context and draws on the long-standing co-operation between ODIHR and the Bulgarian authorities in countering hate crime.<sup>1</sup>

This manual sets out the basic principles for conducting joint hate crime training activities for police and prosecutors. It outlines what issues need to be raised and how such training activities are expected to shape police and prosecutors' understanding of hate crimes. The publication addresses a range of topics, including the concepts of diversity and intolerance; the concept and impact of hate crimes; bias indicators; investigating hate crimes; international obligations and national legislation aimed at countering hate crimes; prosecuting hate crimes; obstacles to investigating and prosecuting hate crimes; and good practices to overcome such obstacles. These topics are divided into sub-chapters that reflect key learning outcomes when conducting joint hate crime training activities for police and prosecutors.

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1 In 2012, Bulgaria's Ministry of Interior and ODIHR agreed to implement ODIHR's Training Against Hate Crime for Law Enforcement (TAHCLE) programme, and in 2015, the Bulgarian National Institute of Justice (NIJ) and ODIHR implemented ODIHR's Prosecutors and Hate Crime Training (PAHCT) programme. In 2016, the NIJ agreed to co-operate with ODIHR to produce this manual as part of a European Union project. In early 2018, the Bulgarian authorities also submitted a request to ODIHR to review and provide recommendations on Bulgaria's criminal code.

Although it briefly describes potential training methodologies, this manual does not provide a comprehensive training curriculum. Therefore, it is recommended that the manual be used in combination with other relevant ODIHR resources, including the *Training Against Hate Crimes for Law Enforcement (TAHCLE)* and *Prosecutors and Hate Crime Training (PAHCT)*,<sup>2</sup> or other hate crime training curricula already available in Bulgaria.

The manual was based on three pilot training courses that brought together police and prosecutors from different regions of Bulgaria, namely Sofia, Veliko Tarnovo and Plovdiv. It builds on previous TAHCLE and PAHCT activities, desk research and a review of key documents provided by ODIHR's partners in Bulgaria, as well as training modules focused on enhancing co-operation between police and prosecutors. The manual also draws on the findings of a needs assessment mission conducted to customize ODIHR's guide on addressing the security needs of Jewish communities to the Bulgarian context.

This manual also benefits from the participatory approach of the pilot training courses and draws on the open discussions and exchanges among the trainers and participants, as well as the recommendations and good practices shared by trainers from the Netherlands, Spain and the United Kingdom.

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2 For the TAHCLE programme description, see: <https://www.osce.org/odihr/tahcle>; for the PAHCT programme description, see: <https://www.osce.org/odihr/pahct>.

# 1. BEFORE THE TRAINING

## Planning logistics

In order to conduct a successful training activity, organizers must first consider the logistics of the event. This includes details such as the layout of the room, what materials are needed and the location of the event.<sup>3</sup> It is recommended that organizers identify a venue that allows participants to be sat in a U-shape, as this provides for a more participatory environment than a lecture or theatre-style setting, and also allows trainers to interact more closely with participants.

Other logistical issues to consider can include:

- The availability of a breakout room or rooms for conducting group work.
- Whether the activities require technical equipment (audio and video devices) and other materials (flipcharts, markers, notebooks, pens, etc.).
- Whether translation equipment is required.

## Who will participate?

There are many considerations to bear in mind regarding participants when organizing a training event for police and prosecutors.

In order to ensure high levels of participation, organizers should consider the maximum number of participants invited to take part. During the pilot training, groups of between 20 and 25 participants allowed for the most engaged participation.

The balanced representation of police officers and prosecutors is important to allow for equal exchanges between the groups. During the pilot phase, ODIHR aimed to make sure that police and prosecutors were represented in almost equal numbers.

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3 The pilot training sessions were held in venues provided by Bulgaria's National Institute of Justice (NIJ), which has training facilities in Batak, Izgrev and Trendafila. For information and contact details, see: <http://www.nij.bg/Default.aspx?lang=bg-BG>.



As a general rule, it is important to engage mainly investigative police and first instance prosecutors in such training activities, as they are active in investigating hate crimes and bringing charges against perpetrators. In some of the pilot training activities, the prevalent participation of security police impeded the effective implementation of the joint exercises.

A human rights-based approach to such training activities requires the balanced representation of female and male participants. Of those participating in the pilot training courses, a majority of the prosecutors were women (25 out of 36), while the overwhelming majority of police officers were men (31 out of 35). Organizers should always aim to ensure that training activities reflect and incorporate the experiences and opinions of both genders, including by providing for the equal participation of men and women. Such training activities also benefit from ensuring the participation of those representing different cultural, ethnic or religious groups present in the local context.

It is a good idea to find out what participants' levels of expertise are in advance. Trainers will want to know whether participants have received prior training on the topic, whether the level of expertise is homogeneous, or whether there are strong disparities among participants. This information will impact how trainers design the training materials. For example, if the group is experienced, a trainer might decide to skip some basic modules and to address more complex issues straight away. If the expertise of the group is very diverse, then the trainer might want to invite some of the more experienced participants to share concepts or stories with the group.

When conducting joint hate crime training activities, organizers should capitalize on previous TAHCLE and PAHCT experiences in Bulgaria by drawing on participants' prior knowledge. In particular, they could make use of the 29 police officers who participated in the initial TAHCLE training-of-trainers sessions, and the 26 prosecutors already trained as trainers within the PAHCT programme. Trainers must manage participants' varying experiences by asking more complex questions to such participants, inviting them to share their expertise and encouraging them to represent the working groups. Their role and expertise are valuable tools in transferring ownership of the knowledge to the participants themselves.

The lists of those police and prosecutors trained under TAHCLE and PAHCT should be updated and reviewed for accuracy, and former trainees should be invited

to participate in more advanced courses. The needs assessment conducted as part of ODIHR's Words into Action project also found that other capacity building courses for law enforcement agencies have been held in Bulgaria.<sup>4</sup> Future hate crime training activities should aim to capitalize on those experiences.

Participants' professional experience of hate crimes might vary greatly according to the geographic focus of their work. Exposure to hate crimes is usually greater in cities than in rural areas, for example. The prevalent types of crime or vulnerable groups may also differ between regions. Therefore, it is a good idea to obtain this information in advance in order to customize training activities and address the needs of trainees.

### Who will be the trainer?

While it is very important that trainers are knowledgeable about hate crimes, it is not sufficient; they must also be familiar with the specific context of the country and region and be able to share good practices from other contexts and countries.

They also need to have experience in conducting interactive training activities, training professionals and engaging with groups. Very often, this expertise and experience may not be found in a single person.

Therefore, it is a good idea to bring in two trainers (for example, one police representative and one prosecutor) who can complement and support each other. Gender balance should be taken into account when selecting the trainers. These pairs of trainers could be formed as part of the existing Agreement for Co-operation between the NIJ, the Prosecutor's Office, the Ministry of Interior and the State Agency "National Security".<sup>5</sup> Currently, there are no set teams of joint trainers that include representatives of the Police and Prosecutor's Office, and this opportunity could be explored further.

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4 The needs assessment found that Bulgaria's Interior Ministry held training courses on criminal code provisions, human rights including related topics for 21,500 and 10,171 police officers in 2016 and 2017, respectively.

5 Co-operation agreement between the National Institute for Justice, the Ministry of Interior, the Prosecutors Office and the State Agency "National Security" of 25 September 2014.

## 2. OPENING THE TRAINING EVENT

### Introduce participants to the training event

Trainers should provide a brief description of how the training was organized. Organizers should present their institution and the reasons why the training is necessary.

It is a good idea to review the Bulgarian hate crime context by summarizing international obligations and relevant case law on this subject. This includes the 2014 report by the European Commission against Racism and Intolerance (ECRI), which encourages the Bulgarian authorities to make full use of Criminal Code provisions specifically targeting racist violence.<sup>6</sup> Trainers should also mention rulings by the European Court of Human Rights (ECtHR) regarding relevant cases brought against Bulgaria.<sup>7</sup> In addition, it would be useful to outline the 2009 OSCE Ministerial Council Decision No. 9 on combating hate crimes,<sup>8</sup> which calls on OSCE participating States to “introduce or further develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes”.

Trainers may also emphasize the Bulgarian authorities’ efforts to counter hate crimes, such as those detailed in government reports responding to ECtHR rulings,<sup>9</sup> Bulgaria’s implementation of ODIHR’s TAHCLE (2012) and PAHCT (2015) programmes, the guidelines for prosecutors on addressing crimes with discrimi-

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6 ECRI report on Bulgaria (fifth monitoring cycle), 16 September 2014, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-V-2014-036-ENG.pdf>.

7 See, for example, *Abdu v. Bulgaria*, ECtHR application no. 26827/08, 11 June 2014; *Angelova and Iliev v. Bulgaria*, ECtHR application no. 55523/00, 26 July 2007; and *Nachova and others v. Bulgaria*, ECtHR applications nos. 43577/98 and 43579/98, 6 July 2005.

8 Ministerial Council Decision No. 9 on combating hate crimes, Athens, 2 December 2009, <https://www.osce.org/cio/40695>.

9 “Report on the results from the study and analysis of the judgments of the European Court of Human Rights finding that the Bulgarian authorities have not complied with their obligation to carry out an effective investigation, as well as of the cases, in which they are rendered, and the measures required to remedy the established omissions”, Supreme Cassation Prosecutor’s Office of Bulgaria, 2016.

natory motives,<sup>10</sup> and the authorities' efforts to customize ODIHR's practical guide addressing the security needs of Jewish communities. Finally, trainers can refer to ODIHR's 2018 Opinion on Provisions of the Bulgarian Criminal Code pertaining to Anti-Discrimination, Bias-Motivated Crime and Hate Speech.<sup>11</sup>

Trainers should provide information about the format of the training. Participants also need to be informed of the training objectives and what is expected of them. The training event should be expert driven (participants are expected to share expertise and experiences) and participatory (participants are expected to engage, including in workgroups). The trainers should also set out some ground rules (for example, participants must respect each other, listen carefully, respect the schedule, etc.) to ensure respectful and productive discussions.

Trainers should then present the content and agenda of the training event in broad terms (see Annex 1). They should make sure that participants understand how the different activities and topics relate to one another.

It is also a good idea to forewarn participants that some of the topics discussed may require participants to break out of their comfort zones. It should be highlighted that hate crime is a sensitive subject, and raising awareness of the issue among participants is a crucial first step to enabling them to investigate and prosecute hate crimes more effectively.

It is important that trainers and participants are given the opportunity to get to know one another. Trainers should introduce themselves, explain why they were selected to conduct the training event and mention their relevant experience and qualifications on the topic of hate crime. Participants should also be asked to introduce themselves. Trainers should make sure that participants share their experiences and expectations of the training event. This information will help the trainer decide what messages he/she will need to reinforce, when to allocate more time for discussion, and what examples to share with the participants during the event, among other considerations.

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10 "Methodological Guidance on the Work upon Criminal Acts Committed with a Discriminatory Motive", Supreme Cassation Prosecutor's Office of Bulgaria, 2013.

11 "Opinion on certain provisions of the criminal code of Bulgaria pertaining to bias-motivated crime, 'hate speech' and discrimination", OSCE/ODIHR, Warsaw, 17 April 2018, available via: <http://www.legislationline.org/countries/country/39>.

## 3. UNDERSTANDING AND ENDORSING DIVERSITY

### Understanding the diversity in society

In many countries, police and prosecutors tend to be very homogenous groups. They are also very often composed of representatives of the dominant groups in a given society. Working in a very homogenous professional environment might pose an obstacle to understanding diversity in society. A homogenous professional environment might also increase the perception of society as dualistic, composed of “us” – those who are truly representatives of the country, its culture and values – and “them” – those who do not conform to the prevailing understanding of the country’s values and culture.

Society is often more diverse than what individuals are able to experience or perceive. It can also undergo rapid change. This means that police officers and prosecutors must be ready to serve a society that presents often unexpected challenges. Serving each individual equally is the duty of each criminal justice professional. In the case of vulnerable groups, however, serving them equally does not mean providing them with the same protection and service as provided to others. Rather, it means providing them with a service that considers their specific position of vulnerability.<sup>12</sup> This inclusive attitude sometimes requires important social skills, such as empathy and sensitivity.

### Identifying potentially vulnerable groups in society

Once police and prosecutors understand that their society is diverse, the next step is to identify which groups in society are potentially vulnerable. Diversity is often understood in terms of race, nationality, ethnicity or religion. It is often more of a challenge to perceive diversity as a broader concept that includes colour, sex, gender identity, disability or sexual orientation. Moreover, it is not always clear

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<sup>12</sup> See the principles related to victims’ rights in the section addressing international obligations.

which vulnerable group an individual represents and as individuals have multiple identities, they may identify with several different vulnerable groups at once. It is key that police and prosecutors are aware of the groups that are more susceptible to becoming the target of hate crimes in the national or local context.

In Bulgaria, understanding and endorsing diversity is important on many levels, and will require police and prosecutors to take an introspective review of their practices and approaches. In doing so, colleagues within these professions will be better able to express themselves, thereby sensitizing other colleagues to the presence of diverse identities. It will also allow professionals to look at diversity in a broader sense not limited only to those of different ethnic identities, but to also identify other vulnerable groups.

### **Understanding and endorsing diversity: a brief training methodology**

**Step 1:** Prepare four flipcharts. Write “Race and Ethnicity” on Sheet 1; “Religion” on Sheet 2; “Gender Identity and Sexual Orientation” on Sheet 3; and “Physical and Mental Disability” on Sheet 4.

**Step 2:** Ask participants to think about people they know (such as friends, relatives and colleagues) and – without naming them – to identify what particular sub-category they represent. For example, under “religion”, a participant might write “Muslim” and “Christian”, to indicate that there are Muslims and Christians among their acquaintances. Similarly, under “ethnicity”, they might write “Turkish” or “Roma”. The purpose of this is to get people to think about the many groups represented in their immediate community.

**Step 3:** Discuss the outcomes of the exercise by reflecting on the diversity of society, including the distinct groups represented by participants or people they know. Reflect on the consequences of bias behaviours, and how what people say about a specific group, even when not in their presence, might affect them and other people present. Discuss professionalism, and how police and prosecutors are responsible for providing a safe environment for everyone in society and, therefore, need to pay extra attention to diversity.

## 4. UNDERSTANDING INTOLERANCE

### **Police and prosecutors should be aware of their own stereotypes and prejudices**

It is not unusual for police and prosecutors, as for any other human beings, to have stereotypes and prejudices. The training event should aim to raise awareness about these stereotypes and prejudices, so that police and prosecutors do not allow them to affect their professionalism.

### **Police and prosecutors should act professionally regardless of their prejudices**

Professionalism is key. Police and prosecutors are experts on criminal behaviour. In this context, patterns of crime do exist, and they can lead to generalizations or preconceived ideas against specific groups. If members of a group are often perceived as frequent perpetrators of crime, then it might be a challenge for police and prosecutors not to generalize about the entire group. Subsequently, it might be even more difficult to perceive representatives of this group as victims of crime, including hate crime. In such cases, the victim of a crime may be unfairly required to justify that he/she did not provoke the perpetrator's actions. Such prejudices can lead law enforcement representatives to be less than professional in their treatment of some victims. Police and prosecutors should, therefore, be careful to put their prejudices to one side when analysing a case.

In the context of Bulgaria, specific groups might be negatively affected by the prejudice and preconceived ideas of some police and prosecutors. Understanding intolerance allows police and prosecutors to exercise their job in a more professional way.

### **Understanding that hate incidents cause harm**

Because police and prosecutors often represent the dominant group in a given society, and because they are not usually the primary targets of intolerance, police and prosecutors may not be aware of the extent of intolerance and the types of incidents affecting vulnerable communities in their country. As a result, police and prosecutors may assess the level of tolerance in their society rather positively, and

may be surprised to learn of incidents and crimes affecting different communities in the national or local context.

Some incidents are not taken seriously because police and prosecutors do not perceive the harm that they can cause to communities. They may, for example, laugh at jokes or derogatory comments affecting certain groups to which they do not belong. Police and prosecutors must be able to empathize with the experiences of vulnerable groups in order to understand the harm caused by manifestations of intolerance.

### **Understanding intolerance: a brief training methodology**

**Step 1:** Ask participants to assess the level of tolerance in their country on a scale from one to seven, with one representing a very tolerant society free of hate crimes, and seven representing a very intolerant society. Ask those participants who gave a different answer to others in the group to explain their assessment.

**Step 2:** Prepare some examples of jokes, hate incidents, hate speech, discrimination or hate crimes that have happened in your country (these can be collected through police/prosecutor work, via interviews with victims or focus groups with vulnerable groups). Make sure all affected groups are represented in the examples. Ask participants to read out these examples and discuss how these incidents can affect individual victims and vulnerable groups. Think about including one or two examples of prejudices and stereotypes against police or prosecutors.<sup>13</sup>

**Step 3:** Ask participants to provide the assessment from another perspective of the level of tolerance in their country by reflecting on the experiences of groups that have been targeted by hate crimes. Conclude by explaining that perceptions of tolerance can differ according to a person's position in society and her or his past experiences.

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13 Examples can also be found in the February 2015 Amnesty International report: "Missing the point: lack of adequate investigation of hate crimes in Bulgaria", <https://www.amnestyusa.org/reports/missing-the-point-lack-of-adequate-investigation-of-hate-crimes-in-bulgaria/>.



## 5. UNDERSTANDING HATE CRIME

### Understanding the concept of hate crime

A hate crime is a criminal offense with a bias motivation. It can be any criminal offense provided for in the criminal code (including homicide, threat and arson). Bias motivation refers to the selection of the target (a person or a property) by the perpetrator because of a protected characteristic. Any crime will be a bias-motivated crime if at least one of the motives for committing the crime is the target's presumed or actual membership or association with a defined group of persons. Such groups usually share an often visible and immutable characteristic that is protected by the law.

### Understanding the concept of protected characteristics

Protected characteristics are features that define the person or the group; they are fundamental, unchangeable or very difficult to change, and are a marker of the group's identity. Protected characteristics related to hate crime include colour, disability, ethnicity, gender identity, nationality, race, religion, sex and sexual orientation. There is no conclusive list of protected characteristics and the selection of these characteristics may vary from country to country depending on social and historical context as well as the international treaties ratified by the country.<sup>14</sup>

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14. The protected characteristics stem from many international human rights treaties such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights but also the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of Persons with Disabilities.

In many countries, as has been the case in Bulgaria, questions and discussions arise regarding the limited scope of protected characteristics and lack of inclusion of some. It is beneficial to discuss these issues to understand which are not protected characteristics and why. The questions often revolve around why police officers or football fans are not considered to be groups with a protected characteristic? First, the characteristics of these groups are not permanent – police officers can take off their uniform when they are not at work and would not be identified as a police officer. They are also unlikely to remain police officers their whole life. Second, these characteristics are not expressed in sufficiently general terms (for example, a police officer is a type of professional, a football fan a type of sports fan). When expressed in these terms, the characteristics lose all their accuracy and are no longer relevant to the hate crime context. Finally, there are more specific legal frameworks addressing violence against police officers<sup>15</sup> or the actions of football fans<sup>16</sup>. These legal frameworks are much more accurate in dealing with such crimes than the hate crime framework.

## Understanding different hate crime models

The literature on hate crime distinguishes between two different models of hate crime related to different manifestations of such crimes.

The **hostility model** requires that the perpetrator expresses animosity or hostility towards the target. In this model, the threshold to prove a hate crime is higher. A typical example of hostility would be the use of offensive language, such as racist or homophobic slurs. The **discriminatory selection model** has a broader approach in defining a hate crime, and refers to cases where the perpetrator selects the target based on prejudices or biases (although the perpetrator may also use expressions of hostility). One example of the selection model would be a perpetrator who selects people on an online dating website on the basis of their sexual orientation, and once they meet, attacks the victims.

Hate crime may seem like a misleading concept, therefore, as there is no need to “hate” people in order to perpetrate a hate crime. The mere selection of the victim

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15 Art. 116(2) or Art.131(2) of Bulgaria’s Criminal Code

16 See, for example, the Bulgarian Act on Protection of Public Order upon Conduct of Sports Events.

based on some protected characteristic is sufficient to qualify an act as a hate crime. It is important to add that the Bulgarian Criminal Code has adopted the more inclusive approach of the selection model. As noted in the section on national legislation (below), Bulgaria's Criminal Code does not require proof of the perpetrator's hate.

## **Understanding the concepts of misperception, hate crime by association and mixed motives**

It is important to note that, when qualifying hate crime, the key concern is the motivation of the perpetrator to commit such a crime, and not the identity of the victim. If a perpetrator wrongly perceives the target as belonging to a group with a protected characteristic, then the crime would still qualify as a hate crime. For example, a man from the Sikh community wearing a traditional turban may be attacked on the incorrect presumption that he is Muslim or a person with a darker skin complexion may be attacked because the perpetrator assumes that the person is Roma. If two men walking next to each other are attacked on the assumption that they are gay, then this would qualify as an attack against LGBTI persons, regardless of their sexual orientation. In all these cases, it is irrelevant whether the victims actually hold these characteristics, it is sufficient that the perpetrator perceives them as such.

The identity of the victim also does not matter in cases of hate crime by association. One example of hate crime by association would be a mixed-race couple being the target of a racist attack. In such a scenario, both can be considered victims of a hate crime.

In a hate crime, the bias motivation of the perpetrator does not need to be the only motivation for the crime. A hate crime can also be committed with mixed motives. One example would be a perpetrator who targets Jewish shops because he thinks Jews are wealthy. In this case, the perpetrator has pecuniary motives, but is also motivated by anti-Semitism.

## **Learning to differentiate hate crime from discrimination and hate speech**

Hate crimes are distinct from hate speech. In cases of suspected hate crime, even where no bias motivation is established, police and prosecutors must still conduct a criminal investigation and prosecute the underlying crime (physical attack, damage to property etc.). In the case of hate speech, however, it lacks the essential

element of a hate crime law: that the same conduct, without a bias motivation, could still be prosecuted as a crime.

Hate crimes also differ from discrimination for the same reason. If the discriminatory element is removed, then what is left is a legitimate distinction that does not represent a violation.

In some countries, as is the case in Bulgaria, some manifestations of hate speech, such as incitement to hatred, can be prosecuted as criminal acts.<sup>17</sup> Such hate speech provisions require a very different approach from police and prosecutors as compared to that of hate crimes. In instances of incitement to hatred, police and prosecutors will need to prove that the speech was made publicly and that it was of an inciting nature. They will also need to prove the scope and impact of the speech and the intent of the perpetrator.<sup>18</sup> In instances of hate crimes, police and prosecutors need to prove the basic offence and the bias motivation. In Bulgaria, violations of anti-discrimination laws are usually addressed through administrative or civil and not criminal proceedings.<sup>19</sup>

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17 Article 162(1) of Bulgaria's Criminal Code states that: "Anyone who, by speech, press or other media, by electronic information systems or in another manner, propagates or incites discrimination, violence or hatred on the grounds of race, nationality or ethnic origin shall be punishable by imprisonment from one to four years and a fine from BGN 5,000 to 10,000, as well as public censure." Also, Article 164(1) of Bulgaria's Criminal Code states that: "A person who propagates or instigates discrimination, violence or hatred on religious basis by speech, through the press or other mass media, through electronic information systems or in another way, shall be punished by imprisonment for up to four years or probation and a fine from BGN five thousand to ten thousand." See: [http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria\\_Criminal\\_Code\\_1968\\_am2017\\_ENG.pdf](http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf).

18 See paragraph 29 of the 2013 "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights, 11 January 2013, A/HRC/22/17/Add.4, [http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf).

19 See articles 71 and 73 of the 2003 Bulgarian Law on Protection against Discrimination, which introduces administrative proceedings for protection against discrimination. The main proceeding follows a complaint before a special body, which declares the violation, names the perpetrator and imposes sanctions. The civil protection is subsidiary. Moreover, if the discrimination comes from an administrative act, then there is a direct administrative remedy before the court (article 73), file:///C:/Users/Admin/Downloads/Bulgaria\_anti-discrimination\_law\_2003\_en.pdf.

## Understanding hate crime: a brief training methodology

**Step 1:** Ask participants what they think a hate crime is, and classify the answers as either a) the elements of a hate crime, or b) different manifestation of intolerance, such as hate speech or discrimination.

**Step 2:** As an example of a hate crime, show participants pictures or video of hate crimes that occurred in your country. Trainers can, for example, make use of cases that have been analysed by the European Roma Rights Centre.<sup>20</sup>

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<sup>20</sup> Jonathan Lee, “Bulgarian judge rules for Mitko in landmark case: a bitter-sweet victory?”, European Roma Rights Centre, <http://www.errc.org/blog/bulgarian-judge-rules-for-mitko-in-landmark-case-a-bitter-sweet-victory/116>.

## 6. UNDERSTANDING THE IMPACT OF HATE CRIME

### Understanding that hate crimes have a greater impact than other crimes

Hate crimes can have a greater impact on their victims than other crimes. Many victims of hate crimes experience fear, anger, denial and self-blame. They fear a repeat attack, as hate crimes target an identity that can be difficult to conceal. Feelings of anger may also be magnified, as the attack targets a core aspect of their identity. They are also more likely to deny what happened to them as they struggle to come to terms with an attack motivated by who they are. Some victims of hate crime may blame themselves, especially if they already experience identity issues.<sup>21</sup>

### Understanding that hate crimes have a broader impact than other crimes

Hate crimes are message crimes. They send a message to the victims, their families and their communities that they are not welcome. Hate crimes are also recognized as posing a threat to the security and cohesion of society. Indeed, if left unchecked by the criminal justice system, hate crimes tend to increase. The perpetrator, if left unpunished, may likely continue to commit other crimes. Hate crimes also have a tendency to escalate rapidly. Small-scale crimes, such as offensive graffiti, can quickly escalate into more severe crimes, such as an arson attack or a homicide. If communities feel unprotected by the responsible authorities, then hate crimes can also escalate as a result of retaliation by the vulnerable group, resulting in a vicious circle of violence. Hate crimes can also serve to marginalize vulnerable groups by making them feel that they are not part of society, having a negative effect on the cohesion of society as a whole.

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<sup>21</sup> Paul Iganski, "Hate crimes hurt more", *American Behavioural Scientist*, Vol.45, Issue 4, 2001.

## Police and prosecutors must show that vulnerable groups will be protected from hate crimes

Because of the potential impact of hate crimes on individuals and society, and because hate crimes are message crimes, they require a specific approach by law enforcement authorities. They need to be identified at an early stage and investigated and prosecuted properly to send the message that this type of crime is not tolerated, and that the criminal justice system will protect all individuals and communities equally. Failing to do so can open the door to major security risks.

### Understanding the impact of hate crime: a brief training methodology

**Step 1:** Based on a hate crime example, ask participants to discuss how the victim must feel after such an attack.

**Step 2:** Ask participants why they think hate crimes are a security issue.

## 7. UNDERSTANDING BIAS INDICATORS: HOW TO IDENTIFY HATE CRIMES

### Understanding the concept of bias indicators

Bias indicators are objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the perpetrator's actions were motivated in whole or in part by bias, prejudice or hostility.

Once police and prosecutors have identified bias indicators, they should use them as red flags to guide the investigation.

The following are bias indicators that police and prosecutors should be able to recognize:

#### *Victim/witness perception*

What victims or witnesses say about the motivation of the perpetrator is key. If victims or witnesses perceive an attack as having been motivated by bias, then this should be taken into consideration by police. Adopting a victim-centred approach and taking seriously the victim's story is an important part of investigating potential hate crimes.

#### *Comments, written statements, gestures or graffiti*

As hate crimes are message crimes, the perpetrators will very often want to make a statement about the crime they committed and about their bias motivation. Therefore, their comments, statements, gestures and any graffiti they left at the crime scene need to be analysed and recorded. When taking statements, it is important to record the exact wording (even if the language is offensive or slang), as the perpetrator's comments are very often a key resource in identifying hate crimes and in proving the motivation.



## ***Differences between perpetrator and victim on ethnic, religious or cultural grounds***

Not all crimes involving perpetrators and victims of different ethnic, religious or cultural backgrounds will be hate crimes. Nevertheless, this kind of information must be recorded, as it may help to confirm whether or not the incident constitutes a hate crime.

## ***The presence of organized hate groups***

Although most hate crimes are not committed by organized groups, when police identify the presence of an organized group on the crime scene, this element needs to be investigated further to reveal a possible bias motivation. Of course, not all crimes committed by organized groups are hate crimes.

### **Šečić v. Croatia: an example of the duty to investigate a potential bias motivation in relation to organized groups**

“In the present case, it is suspected that the applicant’s attackers belonged to a skinhead group which is by its nature governed by extremist and racist ideology. Both the police and the Government admitted this fact. The Court considers it unacceptable that, being aware that the event at issue was most probably induced by ethnic hatred, the police allowed the investigation to last for more than seven years without taking any serious action to identifying or prosecuting the perpetrators.”<sup>22</sup>

## ***Location and timing***

The timing of a crime can be a key indicator of a bias motivation. Police and prosecutors should consider a potential bias motivation when crimes are perpetrated, for example, on a specific religious calendar day, or on days celebrated by groups known for their xenophobic, racist, anti-Semitic, anti-migrant sentiments, anti-LGBT or other attitudes. The location of the crime can also be a crucial element in assessing

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22 Šečić v. Croatia, ECtHR application no. 40116/02, paras. 68 and 69, 31 July 2007.

a potential bias motivation. Therefore, police and prosecutors should look for other indicators of bias motivation when investigating a crime with a significant location, such as next to places of association, places of worship, or in a cemetery.

### ***Patterns and frequency of crimes and incidents***

If previous bias-motivated incidents or crimes were committed in the same neighbourhood, by the same perpetrator or against the same group, then this is potentially a strong indication that a crime was bias-motivated. It is important to remember that hate crimes have a tendency to escalate, and serious bias-motivated crimes often follow more minor incidents.

### ***A lack of other motives***

In many cases, perpetrators commit crimes because of a personal grievance against someone they know. Very often, victims of hate crime do not know the perpetrator or why they were targeted. When combined with other indicators, the absence of other motives can be a red flag in identifying a potential bias motivation. As discussed previously, the presence of another motive does not exclude the possibility of a hate crime, as hate crimes can be perpetrated with mixed motives.

### ***The nature of the attack***

As hate crimes are message crimes, they are often accompanied by extreme violence or humiliation. For example, a particularly violent crime (in which the victim is stabbed multiple times, for example), the use of acts aimed at humiliation (such as urinating on a target), or the use of symbols intended to threaten specific groups (such as leaving a pig's head in a synagogue) are all indicators of a potential bias-motivated crime.

## **Applying bias indicators to undertake further investigations**

When assessing bias indicators, police and prosecutors are in the process of identifying a potential hate crime. Bias indicators on their own are not enough to prove the bias motivation of the crime, although some bias indicators may be used as evidence at a later stage of the investigation. Bias indicators must be used as red flags to guide the investigation. Sometimes, a hate crime will be accompanied by just one bias indicator; other crimes may present multiple bias indicators, but

the investigation will find no evidence of a hate crime. All bias indicators must be investigated thoroughly to assess whether the crime was indeed bias-motivated. Rulings by the European Court of Human Rights related to discriminatory violence have repeatedly emphasized the importance of investigating bias indicators thoroughly, as discussed below.

## Assessing bias indicators objectively

The objective assessment of a case is a precondition to being able to identify bias indicators. In some instances, police and prosecutors may jump to conclusions without first assessing all the objective facts of a case. This is particularly problematic in hate crime cases where, in the eyes of the police or prosecutors, the victim represents a group usually associated with perpetrating crime. In such cases, police or prosecutors may wrongfully assume that the victim provoked the perpetrator's behaviour. These biases are sometimes very explicit and reflect the stereotypes prevalent in society (for example, refugees or migrants who were attacked "must have assaulted the perpetrator's sister", or a Roma victim "must have stolen something from the perpetrator"). Even when there are no grounds to support such accusations against the victim, such biases and preconceived ideas can lead to an investigation that does not treat bias indicators seriously. In such cases, police and prosecutors are representing the interests of the defendant, without having objectively established the circumstances of the crime.

For example, during one of the pilot training courses held in preparation for this manual, participants were shown a video of a physical assault against a black man by three white men, who also shouted racist slurs against the victim. The first response of some participants was to assume that the attack occurred for reasons other than a bias motivation (racism). They asked questions that revealed their assumption that the victim of the attack must be in some way to blame, such as "Did he know the perpetrators?", "Was he having an affair with one of the perpetrator's sisters?", and "Was the black man attacked for previously assaulting the white men?"

In another example, when discussing the assault of two Roma men, some participants overlooked clear and objective bias indicators, and focused instead on other reasons to explain the attack, such as "Were the Roma making a lot of noise?", and "Had they stolen something from the perpetrators?"

In both examples, participants' prejudices and preconceived ideas about the vulnerable groups would have affected how they conducted an investigation into the incidents. The questions they asked were not based on objective information, but on assumptions that, while potentially grounded in previous experiences, were also guided by prejudice. Although police and prosecutors are expected to be aware of patterns of crime, they must not allow their previous experiences to cause them to overlook objective facts when investigating motives for a crime.

Such assumptions among criminal justice professionals are not unique to Bulgaria, and when addressed can improve the quality of investigations. Therefore, when investigating cases involving individuals from groups that are often perceived as perpetrators, police and prosecutors must avoid generalizations and should treat all incidents on a case-by-case basis and each case on its own merit. The close examination of all bias indicators will inevitably assist in this process.

### **Understanding bias indicators: a brief training methodology**

**Step 1:** Discuss the definition and types of bias indicator.

**Step 2:** Show participants pictures or videos of hate crimes featuring different bias indicators, and ask them to identify the bias indicators.

**Step 3:** Explain that indicators are not evidence of a hate crime, but that they should be used as a red flag and lead to further investigation into a potential hate crime.

## 8. UNDERSTANDING POLICE FIRST RESPONSE: HOW TO INVESTIGATE HATE CRIMES

### Registering bias incidents

Every bias incident that police are aware of is relevant to an investigation. Bias incidents that do not amount to crimes should also be captured and registered properly, as this will allow police to build a picture of potential bias-motivated crimes in the future. As discussed, hate crimes often escalate, and taking bias incidents seriously has the added advantage of demonstrating to perpetrators that the police are familiar with the signals that perpetrators send when committing hate crimes.

### Reacting promptly

If police or prosecutors do not respond promptly to small-scale bias-motivated crimes (such as offensive graffiti), this sends the wrong message to both perpetrators and vulnerable groups. For perpetrators, a slow response provides them with an incentive to continue perpetrating such crimes; at the worst, it can increase the scale of bias-motivated crimes. For vulnerable groups, it reinforces feelings of fear, rejection and insecurity, thereby increasing the risk that communities will find ways to protect themselves or retaliate. Therefore, a prompt response to all bias-motivated crimes, regardless of their scale, is key to avoiding an escalation of the situation and shows that law enforcement agencies do care about and take such crimes seriously.

### Investigating the bias motivation

In many crimes, investigators will consider the potential motivation of perpetrators in order to find potential suspects and solve a case. In cases where bias indicators are present, investigators are expected not only to investigate the basic offence, but to also investigate the bias motivation to prove that a hate crime has occurred.

As discussed previously, investigating a potential bias motivation requires that police and prosecutors are able to identify bias indicators. Once bias indicators are identified, they must establish whether or not the bias indicators confirm the perpetrator's bias motivation. In some cases, investigating bias indicators demands more work and more resources, such as those needed to investigate the perpetrator's online activities. In other cases, investigating bias indicators requires that police and prosecutors take a certain approach when examining evidence. For example, CCTV images may merely be used to confirm that a crime occurred. However, by examining the video in greater detail, police and prosecutors may be able to identify a potential motive. They might look for an answer to the following questions:

- What was the perpetrator wearing?
- Were there any differences between the perpetrator and victim in terms of their ethnicity, religion or other fundamental characteristic?
- What did the perpetrator say during the assault?
- What kind of violence did the perpetrator use?
- Was the attack unprovoked?
- Is the location or timing of the attack relevant?

In order to investigate potential hate crimes thoroughly, police and prosecutors must keep in mind the different types of bias indicators and apply them when examining pieces of evidence.

### ***Abdu v. Bulgaria: an example of the duty to investigate the bias motivation***

“The Court notes that the prosecuting authorities concentrated their investigations and analyses on whether the two Sudanese men or the two Bulgarians had started the fight. They thus confined themselves to establishing the *actus reus* of the offense governed by Article 162 § 2 of the Criminal Code, that is to say the violence perpetrated, merely noting the lack of evidence that the violence had been motivated by racist considerations. The authorities accordingly did not deem it necessary to question the eyewitness explicitly on any exchanges he might have heard during the fight or to question the two Bulgarian youths about any possible racist motivation for their acts. Yet right

from the beginning of the investigation the applicant had claimed that he suffered racist insults, and the police report described the two Bulgarians as skinheads, well-known for their extremist, racist ideology [...]. The applicant also highlighted these shortcomings in the investigation in the appeal which he lodged against the decision not to prosecute, drawing the prosecutor's attention to the way in which the two youths were dressed and the need to question them about their motives, but these requests were ignored by the higher prosecutor".<sup>23</sup>

## Interviewing victims and witnesses without bias

Police and prosecutors need to consider several points when interviewing victims and witnesses without demonstrating bias. First, witnesses should not be selected based on their prejudices. For example, investigators should not exclude some witnesses because they represent one group or another.<sup>24</sup>

Second, investigators should avoid secondary victimization by blaming the victim or exposing her/his identity. Unless there is a clear case of provocation, as defined in the criminal code, victims are not responsible for crimes committed against them. Therefore, it is important to avoid blaming the victim by asking questions that insinuate that the victim was somehow responsible, such as, "Why were you out that late?", "Why were you wearing this type of clothing?", and "What did you do to be attacked?".

It is also important not to expose the victim's identity and affiliation with a specific group, as this is not necessary to solve a hate crime. What is relevant is the perpetrator's motivation, not the effective belonging of the victim to a protected group. Therefore, instead of asking questions about the victim's identity or affiliation with a group, police and prosecutors should ask the victim how did they perceive the perpetrator's reasons for the attack.

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23 *Abdu v. Bulgaria*, ECtHR application no. 26827/08, para. 49, 11 June 2014.

24 *Stoica v. Romania*, ECtHR application no. 42722/02, para. 121, 4 June 2008.

When interviewing victims or witnesses, police and prosecutors can reveal potential bias motivations by asking questions that enable them to identify bias indicators. Again, this does not require additional work, just that investigators ask questions that allow them to understand all the circumstances of a case, such as what the perpetrator said before, during or after the attack, how they looked, and what they were they wearing.

## **Liaising with community representatives**

Ideally, law enforcement agencies liaising with community representatives on a regular basis should be a standard part of crime prevention, as such dialogue can help to develop strategies and policies to prevent crime.

When investigating hate crime cases, the broader context is key. Involving community representatives during the investigation will help to contextualize a crime. Community representatives may have valuable information about potential perpetrators or potential previous bias incidents. For example, if a crime is committed in a specific location (such as a Jewish neighbourhood, near a mosque or an office of a Roma-Sinti NGO), then representatives of these communities should be involved during the investigation.

## **Communicating information about the investigation and prosecution of hate crimes**

As previously discussed, hate crimes are message crimes, intended to send a message to the vulnerable group that they are not welcome. By communicating information about the investigation and mentioning that the crime is being investigated as a potential hate crime, investigators can help to reassure vulnerable groups that the crime is being treated seriously.

This simple measure can help to build trust and address the issue of hate crime under-reporting. Future hate crime victims might be less reluctant to report a crime to the police if they think the police will investigate this type of crime seriously.

Such communication also answers a specific need of hate crime victims: the need to be recognized not only as victims of crime, but as victims of bias-motivated crimes.

On a positive note, following the pilot course held in Veliko Tarnovo, the Bulgarian Prosecutor's Office published information about the event in which it affirmed



its commitment to train police and prosecutors to investigate hate crimes. The Prosecutor's Office also communicates information about specific cases via its public relations personnel.

## Understanding police first response: a brief training methodology

**Step 1:** Provide participants with a scenario in which a series of bias-motivated incidents<sup>25</sup> escalated into a serious security concern.

**Step 2:** Ask participants at which point they think the situation started to deteriorate (participants should be able to detect the first small-scale bias-motivated incident), and discuss how the police should have reacted.

**Step 3:** Referring to a more serious bias-motivated crime included in the scenario, ask participants how they would conduct an investigation. Focus on who they would involve in the investigation, what types of questions they would ask, and how they would communicate information about the case to the public.

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<sup>25</sup> For this exercise, real-life examples can be used, such as the anti-Roma rallies that have taken place in different locations in Bulgaria (for example, in Radnevo in May 2016 and in Katunitsa in September 2011).

# 9. UNDERSTANDING INTERNATIONAL OBLIGATIONS

## Understanding equality and non-discrimination as fundamental principles of human rights

Hate crimes are recognized as crimes that require a specific response as they violate the basic human rights principles of equality and non-discrimination. Hate crimes are inspired by the belief that human beings are not equal, which is why they are viewed more seriously than other crimes, and why international obligations have been developed to help states counter hate crimes.

The principles of equality and non-discrimination are outlined in numerous international documents, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the European Convention on Human Rights (ECHR). Specifically, Article 1 of the UDHR states that “All human beings are born free and equal in dignity and rights.” Article 26 of the ICCPR provides that “the law shall prohibit any discrimination.” Article 4 of the CERD requires ratifying states to “declare an offence punishable by law [...] all acts of violence [...] against any race or group of persons of another colour or ethnic origin”. The Committee on the Elimination of Racial Discrimination, which monitors the convention’s application, has also issued recommendations for Bulgaria, most recently in 2017.<sup>26</sup>

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26 See: “Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria”, Committee on the Elimination of Racial Discrimination, 31 May 2017, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/BGR/CO/20-22&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/BGR/CO/20-22&Lang=En).

Finally, Article 14 of the ECHR states that:

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

As a monitoring body of the Convention, European Commission against Racism and Intolerance (ECRI) has also issued recommendations to Bulgaria, most recently in 2014.<sup>27</sup>

As a European Union member state, Bulgaria is also bound by the provisions of 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 (hereafter this will be referred to as the “2008 EU Framework Decision”).<sup>28</sup>

## OSCE commitments on hate crime

The following is taken from OSCE Ministerial Council Decision No.9/09 on combating hate crimes, which calls on OSCE participating States to:<sup>29</sup>

1. Collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance [...];
2. Enact, where appropriate, specific, tailored legislation to combat hate crimes [...];
3. Take appropriate measures to encourage victims to report hate crimes, recognizing that under-reporting of hate crimes prevents States from devising efficient policies. In this regard, explore, as complementary measures, methods for facilitating, the contribution of civil society to combat hate crimes;

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27 Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Bulgaria (fifth monitoring cycle), 16 September 2014, CRI(2014)36, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-V-2014-036-ENG.pdf>.

28 Council of the European Union, Council Framework Decision 2008/913/JHA, 28 November 2008, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0913>.

29 OSCE Ministerial Council Decision No. 9, “Combating Hate Crimes”, Athens, 2 December 2009, <https://www.osce.org/cio/40695>.

4. Introduce or further develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes;
5. In co-operation with relevant actors, explore ways to provide victims of hate crimes with access to counselling, legal and consular assistance as well as effective access to justice;
6. Promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership;
7. Ensure co-operation, where appropriate, at the national and international levels, including with relevant international bodies and between police forces, to combat violent organized hate crime;
8. Conduct awareness-raising and education efforts, particularly with law enforcement authorities, directed towards communities and civil society groups that assist victims of hate crimes.

## **Understanding the principles behind rulings by the European Court of Human Rights regarding discriminatory violence**

Based on Article 14 (Prohibition of discrimination), Article 2 (Right to life), and Article 3 (Prohibition of torture) of the ECHR, the European Court of Human Rights (ECtHR) has developed, through its jurisprudence, some principles that are binding for all ratifying states.

The binding effect of the decisions of the ECtHR means that the principles of these decisions need to be respected by ratifying states when applying national legislation.

The following paragraphs contain excerpts of ECtHR rulings relating to discriminatory violence and how this should be treated by the state.

### ***Duty to take all reasonable steps to unmask any racist motive***

In *Angelova and Iliev v. Bulgaria*, the ECtHR ruled that:

“When investigating violent incidents State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether

or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights”.<sup>30</sup> The ECtHR has ruled that the above holds true for all bias-motivated crimes, including cases where they are committed with anti-religious,<sup>31</sup> homophobic,<sup>32</sup> racial or political motives,<sup>33</sup> as well as in cases where private individuals violate the ECHR.

### **No need for specific hate crime provisions to investigate and prosecute hate crimes**

In *Angelova and Iliev v. Bulgaria*, the ECtHR also ruled that national legislation did not need to contain specific hate crime provisions for states to investigate and prosecute hate crimes:

“As to whether the respondent State’s legal system provided adequate protection against racially motivated offences, the Court observes that it did not separately criminalise racially motivated murder or serious bodily injury (Articles 115–135 of the Criminal Code), nor did it contain explicit penalty-enhancing provisions relating to such offences if they were motivated by racism (Articles 116 and 131 of the Criminal Code). However, the Court considers that other means may also be employed to attain the desired result of punishing perpetrators who have racist motives. It observes in this respect that the possibility existed in domestic legislation to impose a more severe sentence depending on, *inter alia*, the motive of the offender (see paragraph 63 above).”<sup>34</sup>

### **Duty to take into account bias indicators**

The ECtHR has also ruled that state authorities are responsible for investigating bias indicators (“suspicious facts that may be indicative of a racially induced violence”), as in the case of *Nachova and others v. Bulgaria*:

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30 *Angelova and Iliev v. Bulgaria*, ECtHR application no. 55523/00, para. 15, 26 July 2007.

31 *Mianovic v. Serbia*, ECtHR application No. 44614/07, 14 December 2010.

32 *Identoba and others v. Georgia*, ECtHR application no. 73235/12, para. 67, 12 May 2015.

33 *Virabyan v. Armenia*, ECtHR application no. 40094/05, paras. 218 and 219, 2 October 2012.

34 *Angelova and Iliev v. Bulgaria*, ECtHR application no. 55523/00, para. 104, 26 July 2007.

“[...] Where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society’s condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.”<sup>35</sup>

The Court goes on to note that proving racial motivation will often be extremely difficult in practice:

“The respondent State’s obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute [...]. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence. In the present case, certain facts which should have alerted the authorities and led them to be especially vigilant and investigate possible racist motives were not examined.”<sup>36</sup>

Specifically, the Court highlights the “disproportionate and unnecessary” use of force, and the use of “racist verbal abuse”.<sup>37</sup>

### ***Duty to assess evidence without bias***

In the case of *Stoica v. Romania*, the ECtHR considered that the Romanian authorities did not do everything in their power to investigate possible racist motives in the case. The ECtHR noted that “only the villagers, mainly Roma, were considered to be biased in their statements during the criminal investigations, while the police officers’ statements were integrated into the military prosecutor’s reasoning and conclusion”.<sup>38</sup> Moreover, the “prosecutor did not address in any way the remarks from the Suceava Police report describing the villagers’ alleged aggressive behav-

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35 *Nachova and others v. Bulgaria*, ECtHR applications nos. 43577/98 and 43579/98, para. 157, 6 July 2005.

36 *Ibid.*, paras. 159 and 160

37 *Ibid.*, paras. 160 and 162

38 *Stoica v. Romania*, ECtHR application no. 42722/02, para. 121, 4 June 2008.

our as “purely Gypsy”, although such remarks are clearly stereotypical.”<sup>39</sup>

### ***Perpetrators may have mixed motives***

The case of *Balázs v. Hungary* featured a fight in front of a club between two men. The Hungarian Court considered that the racist motives could not be established “unequivocally and beyond doubt”, that it was impossible to establish how exactly the fight had started, and given certain elements, that there could have been other motives besides racial hatred. In its judgement, ECtHR explained that:

“[N]ot only acts based solely on a victim’s characteristic can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude towards the group the victim belongs to.”<sup>40</sup>

### ***Hate crime by association***

The case of *Škorjanec v. Croatia* involved an attack against a man of Roma origin and his non-Roma wife. The Croatian Court only considered the racial motives of the attack on the man, but not in the case of the wife. The European Court explained in its judgment that:

“[U]nder the Convention the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence exists not only with regard to acts of violence based on the victim’s actual or perceived personal status or characteristics but also with regard to acts of violence based on the victim’s actual or perceived association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic [...]. Indeed, some hate-crime victims are chosen not because they possess a particular characteristic but because of their association with another person who actually or presumably possesses the relevant characteristic. This connection may take the form of the victim’s membership of or association with a particular group, or the victim’s actual or perceived affiliation with a member of a particular group through, for instance, a personal relationship, friendship or marriage”.<sup>41</sup>

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39 Ibid., para. 122.

40 *Balázs v. Hungary*, ECtHR application no. 15529/12, para. 70, 14 March 2016.

41 *Škorjanec v. Croatia*, ECtHR application no. 25536/14, para. 66, 28 March 2017.

## Understanding the need for special protection for hate crime victims

Victims of hate crimes have specific needs. Their specific protection needs have been recognized by European Union Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime.<sup>42</sup> The Directive establishes the authorities' duty to individually assess the needs of every crime victim, and refer such victim to a provider capable of delivering support corresponding with these needs – whether a governmental or non-governmental entity. The Directive also specifically identifies victims of hate crimes as especially vulnerable and stipulates their entitlement provision of *specialist support and special protection measures*.<sup>43</sup>

Police and prosecutors must take the accounts of hate crime victims seriously and must support them by listening carefully and engaging with them respectfully. Failure to take a hate crime victim's account seriously might lead to secondary victimization. Victims of hate crimes need to have their experiences acknowledged and validated by the criminal justice agents. It is important to recognize that they have been victims of crimes and, even more important, to seriously investigate potential bias motivations.

Victims of hate crimes may also require urgent support to ensure their security, safety and well-being, as this support may not be available within their social networks or families.

Some hate crime victims have specific needs depending on their belonging to a particular group. Privacy needs can be very acute for victims of hate crimes against

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42 DIRECTIVE 2012/29/EU of the European Parliament and of the EU Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

43 These terms can mean, for example, provision of shelters or any other appropriate interim accommodation for victims in a need of a safe place; targeted and integrated support for victims with specific needs, including trauma support and counseling; during investigation: interviews made in adapted offices by a trained professional, and of the same sex in certain cases; and during trial: use of technology to avoid contact with the offender or the public, hearing on distance or in camera, no questioning on private life not related to the offence.



LGBT persons (for example, they may not want to disclose their sexual orientation to their family). Some hate crime victims may face a language barrier, such as recently arrived immigrants, while those with a disability may have accessibility needs.

One of the best ways to make sure that hate crime victims' need for special protection is met is to ensure that those needs are assessed on a case-by-case basis. This will help to identify the corresponding support measures required by each victim.<sup>44</sup>

### **Understanding international obligations: a brief training methodology**

**Step 1:** Introduce participants to the international instruments and obligations protecting human rights in relation to hate crime.

**Step 2:** Ask participants to discuss excerpts of rulings by the European Court of Human Rights, and ask them to identify the human rights principles reflected in the excerpts.

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44 See the collection of national transposition measures for Bulgaria, available via: <http://eur-lex.europa.eu/>.

# 10. UNDERSTANDING NATIONAL LEGISLATION: HOW TO PROSECUTE HATE CRIMES

## Understanding what hate crime provisions are

Hate crime provisions are very often scattered throughout a country's criminal code, which may not include a chapter dedicated to hate crimes. Hate crime provisions can take different forms, and most criminal codes combine several types of hate crime provisions.

Hate crimes are sometimes provided for in the criminal code as **substantive offences**, whereby the bias motivation is integrated into the crime. One example would be a criminal provision on “racially motivated homicide”.

Other types of hate crime provisions enhance the criminal penalty in comparison to the ones for the “regular” crimes. They can take the form of either specific or general penalty enhancements.

**Specific penalty enhancement** provisions enhance the envisaged sanction for a specific criminal offense, if it was committed with a bias motivation. Thus, for a base offence, the law increases the penalty if it was perpetrated because of the victim's actual or perceived colour, disability, ethnicity, gender identity, nationality, race, religion, sex and sexual orientation for example.

**General penalty enhancements** are provisions applicable to all crimes listed in the criminal code. They specifically provide for an increased sanction if the crime is perpetrated based on bias motivation.

States can also use **general sentencing provisions** to address bias motivation and impose a proportionate sentence for hate crimes. These sentencing provisions require the motive to be examined to determine whether an increased penalty is warranted due to the (bias) motivation or other sentencing factors. The (bias) motivation and other factors need to be present to the court within the indictment of the case.

## Understanding the gaps in national legislation

Any gaps in a country's hate crime legislation are often related to different areas of the criminal justice system. Therefore, it is a good idea to ask the following questions in order to identify such gaps:

- What protected characteristics are covered by the legislation?
- What types of crimes cannot be committed with a bias motivation?
- Does the legislation protect against hate crimes by association?
- Does the legislation recognize that hate crimes can have mixed motives?
- Does the legislation require proof of the perpetrator's hate, or is the selection of the target based on protected characteristics sufficient to qualify an act as a hate crime?

Difficulties can sometimes arise from the interpretation and implementation of the law. A lack of clarity or mutual understanding about the meaning of some concepts can lead to difficulties in applying hate crime provisions. What, for example, do the words hooliganism, racism, xenophobia, ethnicity, religion and political conviction mean in a legal context? The full meaning of such terms must be understood for the law to be applied correctly.

## Hate crime provisions in Bulgarian legislation<sup>45</sup>

Bulgaria's hate crime laws are a combination of specific penalty enhancements and substantive offences, as defined by the Criminal Code.<sup>46</sup>

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45 For an analysis of the hate crime provisions in Bulgarian legislation, see ODIHR's 2018 opinion, available via: <http://www.legislationline.org/countries/country/39>.

46 The following excerpts are taken from the English-language translation of Bulgaria's Criminal Code, see: [http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria\\_Criminal\\_Code\\_1968\\_am2017\\_ENG.pdf](http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf).

### ***Specific penalty enhancement:***

- Article 116 par 1 (11) provides a specific penalty enhancement for the crime of “murder [...] committed by hooligan, racist or xenophobic motives”.
- Article 131 par 1 (12) provides a specific penalty enhancement for the crime of “inflicting bodily injury [...] out of hooligan, racist or xenophobic motives”.

Articles 116 par 1 (11) and 131 par 1 (12) focus on the perpetrator’s motive and not on the victim’s affiliation to a vulnerable group, and this is the proper approach. The selection of the target is sufficient to prove a bias-motivated crime and thus qualify as hate crimes even for incidents when the perpetrator had mistaken the characteristics of the victim. However, Articles 116 par 1 (11) and 131 par 1 (12) only cover two specific types of crime and the list of protected characteristics is not comprehensive.

Some participants were very much inclined to use the hooligan motives in instances of hate crimes, merely because these are easier to prove. Participants were also wary of placing hooliganism as a motive on the same footing as racism or xenophobia, as this could potentially prevent prosecutors and judges from assessing the bias motivation of a crime in which there is already evidence of hooliganism.

Trainers should explain the differences between the meanings of each of the “hooligan, racist or xenophobic motives” in order to enable the participants’ proper understanding and application of the law. At this time, it would be beneficial to mention the reports responding to ECtHR rulings and the guidelines for prosecutors on addressing crimes with discriminatory motives that give direction on the implementation of the law.

### ***Substantive provisions:***

- Article 162 (2) defines the following as a substantive offence: “Anyone who uses violence against another person or damages his/her property because of the person’s race, nationality, ethnic origin, religion or political convictions”.
- Article 163 (1) defines the following as a substantive offence: “The persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national, ethnic or racial affiliation”.
- Article 165 (3) defines as substantive offences “acts under Article 163, committed against groups of the population, individual citizens or their property, in connection with their religious affiliation”.

- Article 164 (2) defines the following as a substantive offence” A person who desecrates, destroys or damages a religious temple, a house of prayer, sanctuary or an adjoined building, their symbols or gravestones”.

Articles 162 (2) and 163 (1) focus on the victim’s identity, making it possible that the victim’s membership to a protected group must be proved for the crime to be a hate crime. However, the selection of the target seems sufficient to prove the motive, as there is no need to prove hate. The articles also do not explicitly cover hate crimes by association and the list of protected characteristics is not comprehensive.

Participants agreed that hate crime by association are not explicitly protected under Articles 162 (2) and 163 (1), and that these provisions would need to be interpreted according to ECtHR rulings.

### **General provision:**

Bulgaria’s Criminal Code also includes a **general provision** that the Court will assess the motives for perpetrating a crime:

- Article 54 (1): “The court shall mete out punishments within the limits provided by law for the crime committed, guided by the provisions of the general part of this Code and taking into consideration the following: the degree of social danger of the act and the perpetrator, the motives for crime perpetration, and other attenuating or aggravating circumstances.”

Some police and prosecutors agreed that Article 54 should be used to enhance the penalty regarding homophobic crimes, while others argued that this was impossible because the Criminal Code does not specifically foresee such an enhancement. Still others suggested that the xenophobic motives referenced in the Code could be extended to acts motivated by homophobia.

The message conveyed by the trainers was that all cases featuring one or more bias indicator should be investigated to the fullest. In line with international obligations, the absence of a national provision does not excuse the lack of an effective investigation by the authorities. In cases where the protected characteristics are not specifically mentioned in the Criminal Code, the police should still obtain information on a potential bias motivation. The prosecutor should then include this information in the indictment and request an increased sentence due to the gravity that the act of hate crime has on the values and sentiments of society as a whole.

### **Hate speech provisions:**

- Article 162 (1) defines the penalty for “[ ] anyone who, by speech, press or other media, by electronic information systems or in another manner, propagates or incites discrimination, violence or hatred on the grounds of race, nationality or ethnic origin”.
- Article 164 (1) defines the penalty for “[a] person who propagates or instigates discrimination, violence or hatred on religious basis by speech, through the press or other mass media, through electronic information systems or in another way”.

### **Understanding how to overcome legislative gaps in practice**

As stated by the European Court of Human Rights, there is no need for specific hate crime provisions to investigate and prosecute hate crimes thoroughly. The Court notes that there are other means provided for in legislation to enhance the penalty when a crime is committed because of someone’s perceived protected characteristic.

In that respect, one solution applied in many countries is to develop guidelines on how to prosecute hate crimes. In 2013, Bulgaria’s Supreme Prosecutor’s Office of Cassation developed a set of methodological guidelines for prosecutors working on criminal cases containing a discriminatory element. The guidelines are not mandatory but are intended to serve as a general reference material when investigating such cases and to be read by the prosecutors and all criminal justice professionals. They provide a good basis for the proper identification and distinction of hate crime as distinct from “regular” crimes and crimes against humanity. In addition, the guidelines explain relevant bias indicators, describe situations with mixed motives and outline some of the obstacles in prosecuting hate crimes.

The guidelines’ observations on crimes motivated by “hooliganism” are especially valuable. They explain that hooliganism is a brutal violation of the general social order, and not an attack against a specific person or community. Accordingly, it would be improper to qualify an attack against a person on the basis of her/his race as hooliganism, as this should clearly be qualified as a racist attack. The guidelines accept that there may be certain cases where a person targets another person on the basis of her/his protected characteristic while committing an act motivated by

hooliganism. However, the guidelines call for these cases to be considered in their entirety, including the aggravating impact they have on society.

Another value of the guidelines is that they expand on the list of protected characteristics provided for in the Criminal Code. While the Criminal Code includes eight protected characteristics, the guidelines advise that the Law on Protection from Discrimination includes 11 more protected characteristics that deserve legal protection. Although these characteristics (which include education and property status) do not fall within the definition of the “fundamental” characteristics presented above, it is useful to take such a broad approach when investigating a potential bias motivation. Furthermore, the guidelines state that, in cases where all these protected characteristics are attacked, then an enhanced penalty should be issued in accordance with the sentencing provisions of Article 54 of the Criminal Code.

# 11. SOLVING POTENTIAL HATE CRIME CASES: IDENTIFICATION, INVESTIGATION AND PROSECUTION

## Practicing identifying, investigating and prosecuting hate crimes

In order to reinforce their knowledge of the issues, police and prosecutors should practice identifying, investigating and prosecuting hate crimes by working on case studies.<sup>47</sup>

Such case studies should focus on the ability of police and prosecutors to identify bias indicators. They should also address their ability to conduct further investigations in order to unmask bias motivations, such as deciding what further investigative steps should be ordered. Case studies can also help to train prosecutors on how to qualify and indict potential hate crime cases.

Ideally, police and prosecutors should work with real-life cases of previous hate crimes, or at least case studies that reflect potential scenarios relevant to a given country context. Case studies should also allow for an assessment of how participants overcome gaps in legislation.

The case studies provided in Annex 2 of this manual can be used to practice identifying, investigating and prosecuting hate crimes. The first case study is a clear example of a racially motivated crime. The case study can be used primarily to

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<sup>47</sup> See, for example, the hate crime case studies included in Annex 2.



test participants' ability to identify bias indicators, by answering questions such as: "Was the attack unprovoked?", "Was the violence disproportionate?", "Was it perpetrated by a group known for its racist ideology in a neighbourhood populated by a community holding a protected characteristic?", and "Did the perpetrators and victims belonging to different ethnic groups?". The case study can also be used to see whether participants are able to correctly apply specific penalty enhancement provisions.

In the second case study, the victim is perceived as belonging to a targeted group. The primary use of the case study is to encourage participants to assess the broader context of a hate crime (such as previous bias incidents against the targeted group) and to reflect on the relevance of the perpetrators' motives in light of the victim's relationship to the targeted group.

The third case study depicts a hate crime by association in which the perpetrator has mixed motives. The case study demonstrates how hate crimes can target anybody, regardless of race and ethnicity, and to allow participants to reflect on the concepts of hate crime by association and mixed motives.

The fourth case study is an example of a protected group not covered by Bulgarian legislation. The case study can be used to assess the participants' ability to substantiate the perpetrator's motives and to reflect on how general motives can be applied to the indictment.

### **Solving potential hate crime cases: a brief training methodology**

**Step 1:** Create sub-groups of four to five people.

**Step 2:** Ask the groups to discuss a case study included in Annex 2, answer the questions and present their findings with the rest of the group.

## 12. SPECIFIC OBSTACLES TO CO-OPERATION BETWEEN POLICE AND PROSECUTORS

### Improving co-operation between police and prosecutors

#### *Understanding technical obstacles*

Although police and prosecutors regularly co-operate on many different crimes, the particular nature of hate crimes demands an increased awareness of the other's professional needs and procedures.

As discussed previously, the context of a crime can be key to unmasking a potential hate crime. When investigating and prosecuting hate crimes, police must take into account the broader context of the crime, and then present it comprehensively to prosecutors. As police and prosecutors' tools are focused on crime, the broader context can be difficult to capture. Police and prosecutors may not have the necessary tools to record contextual elements of a crime in crime files or on databases.

For example, imagine a scenario in which a heavy political debate takes place related to the potential construction of a new mosque in a city. If a Muslim woman wearing a headscarf is assaulted, will the current debate regarding the mosque be mentioned in the crime file, and is this information relevant to prosecutors? In another scenario, an anti-Roma demonstration occurs

in a village, and that night there is an anti-Roma arson attack in a neighbouring village. Will the demonstration be mentioned in the crime file, and is this information relevant to prosecutors? Police officers sometimes take a narrow focus when examining crimes and lack adequate means to record bias-motivated crimes; this needs to be discussed by police and prosecutors for them to recognize each other's needs.

In another scenario, imagine a large event, such as a music festival to support refugees taking place in a city. As discussed, hate crimes have a tendency to escalate, and there is the potential that small-scale crimes will take place that are either closely or remotely connected to these events. It is possible that such crimes will be dealt with by different police and prosecutor's offices, even if the investigative steps taken are very similar or coincide at some point. How does the criminal justice system inform all police and prosecutors of similar bias incidents that have taken place, and do they know who is dealing with each case? How do police and prosecutors ensure that previous bias-motivated incidents are taken into consideration during the investigation and prosecution of such cases? A lack of communication and information sharing between police and prosecutors, as well as deficiencies in recording the bias motivation of crimes, can pose an obstacle to investigating and prosecuting hate crimes. Such structural obstacles must be discussed and addressed by police and prosecutors.

### *Understanding existing procedures*

Various criminal code procedures exist to facilitate co-operation between police and prosecutors. In some systems, prosecutors play a critical role in guiding and supervising the investigation; in others, the investigation is fully in the hands of the police. Prosecutors' guidance may be optional or mandatory. In some countries, pre-trial procedures exist that establish a specific timeline for the transfer of a file from the police to prosecutors. In others, an investigation must be finalized before the file can be sent to prosecutors. It is important that police and prosecutors are given sufficient time and opportunity to discuss, review and reach a collective understanding about how and when to apply these procedures.

Where specific hate crime procedures exist – including standard operating procedures for police, specific instructions for prosecutors and specially appointed bodies within the police or Prosecutor's Office – these must all be discussed and fully understood by police and prosecutors.

The Bulgarian code for criminal procedures<sup>48</sup> covers these issues.

## **Bulgaria's code for criminal procedures: relevant provisions related to co-operation between police and prosecutors.**

### ***Guidance and supervision by the prosecutor over the investigation / Article 196 (1)***

When exercising guidance and supervision the prosecutor may:

1. control the progress of investigation, studying and inspecting all case materials;
2. give instructions in relation to the investigation;
3. take part or perform investigative actions;
4. remove the investigative body, where he has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation;
5. withdraw a case from an investigative body and transfer it to another;
6. assign the implementation of individual actions related to the detection of the crime to the relevant bodies of the Ministry of Interior, the State Agency for National Security, or the Customs Agency;
7. revoke on his own motion or on the basis of a complaint by the interested individuals decrees of investigative bodies.

### ***Binding instructions of the prosecutor / Article 197***

Written instructions of the prosecutor to the investigative body shall be binding and shall not be subject to objections.

### ***Institution of pre-trial proceedings / Article 212***

- (1) Pre-trial proceedings shall be instituted by a decree of the prosecutor.
- (2) Pre-trial proceedings shall be considered instituted upon drafting the record for the first investigative action, where an on-site observation is

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48 The following excerpts are taken from the English-language translation of Bulgaria's Penal Procedure Code, see: [http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria\\_Criminal\\_Code\\_1968\\_am2017\\_ENG.pdf](http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf).

conducted, including physical examination, search, seizure, and witness interrogation, provided their immediate performance is the only possible way to collect and preserve evidence, as well as where a search is conducted as per the conditions and procedures laid down in Article 164.

- (3) The investigative body that has performed such action under Paragraph 2 shall immediately notify the prosecutor, and in any event shall do so no later than 24 hours thereof.

### ***Action before presentation of the investigation / Article 226***

- (1) Where the investigative body finds that all investigative action necessary to discover the objective truth has been taken, he/she shall report the case to the prosecutor.
- (2) The prosecutor shall verify whether the investigation has been lawful, objective, comprehensive and complete.
- (3) Where the prosecutor finds that during investigation a serious violation of procedural rules has been made or that evidence required for the discovery of the objective truth has not been collected, or that a new constitution is required, he/she shall alone take the required action or instruct the investigative body to perform it.

### ***Forwarding the file to the prosecutor / Article 235***

After finalizing the investigation, the investigative body shall immediately forward the file to the prosecutor enclosing a written opinion, as well as: a list of the persons to be summoned to the court hearing; a summary of the remand measure undertaken indicating the date of detention of the accused party, where the measure is remand in custody or house arrest; a summary of the documents and material evidence; a summary of any expenses incurred and the security measures taken, as well as information on the placement of children in cases under Article 63(9).

## Understanding specific obstacles to co-operation between police and prosecutors: a brief training methodology

Police and prosecutors may be reluctant to critically examine their professional practices. Therefore, this subject is best approached by discussing scenarios, as this will encourage police and prosecutors to openly reflect on their current practices and troubleshoot any challenges.

**Step 1:** Prepare complex case studies featuring multiple incidents and important contextual elements.<sup>49</sup>

**Step 2:** Ask police officers to write at least one report on those cases that need to be sent to the prosecutors. Have them refer to the relevant procedures and include a timeline for their activities.

**Step 3:** Ask the prosecutors to review the reports prepared and discuss these with the police officers.

**Step 4:** Ask the prosecutors to draft instructions for the investigation of the cases. Have them refer to the relevant procedures and include a timeline for their activities.

**Step 5:** Ask the police officers to review the instructions and discuss them with the prosecutors.

**Note:** In some settings, a more flexible approach to this exercise might work better. Instead of following each step, police and prosecutors can simply discuss the potential difficulties they may encounter and the solutions they would implement to investigate the scenario, and then share the results of these discussions with the group.

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<sup>49</sup> See the complex case studies in Annex 3.

During the pilot training, this session was one of the most challenging to conduct. Some participants said the exercise was unnecessary, as they believe co-operation between police and prosecutors to be very good. Others only read the scenario, claiming that this is how they co-operate in reality. However, it is not enough for police and prosecutors to engage in direct communication; for co-operation to be effective, they must also take into account the real challenges they face, including in terms of the procedural tools they use on a daily basis to record and follow up on an investigation.

Once participants properly applied themselves to resolving the case studies, the sessions fulfilled the learning objectives contained in this chapter. As a result, participants gained a better understanding of the technical obstacles and existing procedures related to co-operation between police and prosecutors.

When holding such interactive sessions, it is important to ensure that participants are fully engaged. Consideration should be given to the time of day, so that the exercise is not held at the end of the day, when participants have less energy. Moreover, organizers should pay attention to the composition of the groups to allow for the best possible dynamic between participants. Finally, organizers should have real procedural documents (including police and prosecutor forms and case studies) to ensure that the exercises are realistic.

For example, during the final pilot training session, trainers adopted a more flexible approach, to ensure participants' productive engagement. Instead of dividing police and prosecutors into separate groups, they were brought together to directly discuss the potential difficulties they might encounter and the solutions they would implement when investigating a complex case.

# 13. GENERAL OBSTACLES TO INVESTIGATING AND PROSECUTING HATE CRIMES

## Understanding obstacles related to the victim

### *The impact of the crime on the victim*

As discussed previously, victims can be in denial about crimes committed against them. They may not accept that they have been targeted because of who they are or what they represent. Victims also sometimes blame themselves for such crimes, which can prevent them from reporting them to the police.

### *The victim's distrust and/or fear of law enforcement*

It may be that the victim, or someone the victim knows, has had a previous negative experience with the police. They may fear being exposed to secondary victimization or prejudice by the police, and will not report the crime for that reason. Victims may have other reasons to fear the police. For example, if a hate crime victim is staying in the country illegally, then they may fear being deported if they report the crime. Very often, victims do not report crimes because they think the police will not investigate.

Studies have shown that under-reporting is one of the biggest challenges in countering hate crimes. In the European Union, according to the Second European Union Minorities and Discrimination Survey, about 80 per cent of hate crimes are believed not to be reported to the authorities.<sup>50</sup>

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<sup>50</sup> Fundamental Rights Agency: Second European Union Minorities and Discrimination Survey – Main results <http://fra.europa.eu/en/publication/2017/eumidis-ii-main-results>.



## **Understanding obstacles related to the police**

Some police officers may have prejudices. Others may not understand what a hate crime is because of a lack of training. The police may also not have the necessary resources to record or investigate all crimes thoroughly, causing hate crimes to be seen as not a priority for higher ranking officials.

## **Understanding obstacles related to prosecutors**

As with the police, some prosecutors may have prejudices. Again, others may not understand what a hate crime is because of a lack of training. In some cases, prosecutors do not receive complete files from the police. In others, prosecutors are not willing or do not have the resources to seek additional evidence of bias motivation when, for example, there is already sufficient evidence for a conviction. As in the case of the police, prosecutors may not receive the support of higher ranking prosecutors or other government officials.

## **Understanding obstacles related to judges**

Judges' abilities to consider hate crime cases may also be affected by their own prejudices, a lack of training or a lack of resources. They also potentially experience the greatest difficulties in applying legislation that lacks clarity on hate crimes. Moreover, if a country's criminal code demands a very high evidentiary threshold of evidence, it can be difficult to prove the bias motivation and adjudicate hate crime cases properly.

## 14. OVERCOMING OBSTACLES TO INVESTIGATING AND PROSECUTING HATE CRIMES

There are many ways to overcome obstacles to investigating and prosecuting hate crimes. Some countries have developed good practices in order to do so. The examples provided in this chapter focus on Spain and the Netherlands, as they were illustrated by the international trainers coming from those countries during the training sessions.

### Implementing hate crime training for police and prosecutors

To provide a strong criminal justice response to hate crime, and to fulfil OSCE commitments regarding hate crime training, it is crucial to introduce or further develop professional training and capacity-building activities for criminal justice professionals at all levels.

In 2012, the Spanish authorities developed a handbook on training security forces to identify and record racist and xenophobic incidents. The handbook reflects the commitment of the Spanish state at all levels to counter hate crimes. It was written by representatives of the Public Prosecutor's Office and the Ministry of Interior and had the support of relevant ministries, including the Secretary of State for Security of the Ministry of Interior. As a result, the European Union-funded publication successfully trained 165 police officers as trainers, who went on to share their knowledge with more than 22,000 law enforcement professionals.

## Using policy guidelines for investigation and prosecution of hate crimes

As discussed previously, recording and investigating hate crimes requires specific skills and knowledge. Bias indicators need to be recognized and recorded, victims and witnesses need to be interviewed respectfully, and community representatives need to be consulted. Investigative instructions or standard operating procedures can be of great help in assisting police officers and investigators in their work. The same applies to instructions for prosecuting hate crimes, and the methodological guidelines developed for Bulgaria's prosecutors represent a solid base for identifying and distinguishing hate crimes from other crimes. As already discussed, these instructions will help prosecutors to apply legislation more effectively in order to properly prosecute hate crimes.

In Spain, the Ministry of Interior has issued a special protocol for law enforcement agencies on investigating and prosecuting hate crimes. The document addresses ways to improve co-operation between police officers and prosecutors and establishes unified guidelines for police forces on the identification and registration of hate crimes. The protocol has also become a compulsory part of the curriculum for trainee police officers.

In the Netherlands, a "Discrimination Instruction" contains binding guidelines for prosecutors and the police on how to deal with hate crime cases. The Instruction also sets out directives for co-operation at the regional level and among the public prosecutor, police, local government and anti-discrimination agencies.

## Appointing specialized police and prosecutors

Police or prosecutors that specialize in hate crimes can help to build expertise nationally by creating a network of local experts, as well as in assisting and sharing expertise with colleagues dealing with hate crime cases.

In 2013, a national network of prosecutors was created in Spain. The network comprises representatives of the provincial prosecutor's office and a repre-

sentative of the Chief Prosecutor's Office. The purposes of the network are to guarantee a uniform approach in dealing with cases of hate crime and to collect data and statistics. The network meets once a year, although regional meetings take place when necessary.

In 2001, a national centre specializing in diversity was formed within the Dutch police. The centre provides support and advice to the police on questions of diversity and aims to increase skills and knowledge related to investigating hate crimes.

## Creating joint working groups of police and prosecutors

Regular meetings of police and prosecutors can help to improve their communication and to increase understanding of the other's working procedures.

In some regions of the Netherlands, consultative meetings on hate crimes between police and prosecutors are held every six to ten weeks. During these meetings, recent hate incidents or crimes that have occurred in the region are discussed. The meetings are chaired by prosecutors, and civil society organizations are also invited to participate.

## Increasing co-operation with civil society organizations and community leaders

Civil society organizations can be very useful when investigating hate crimes in a variety of ways. In particular, they can provide background information about hate incidents targeting their communities, and can help to increase the reporting of hate crimes by working as a bridge between victims and police. Some civil society organizations also provide support and assistance to the victims of hate crimes. Engaging with civil society organizations is an important part of successfully addressing hate crimes. It is a good practice to appoint a liaison officer to serve as a communication channel and to build trust between communities and the police.

In the Netherlands, police take an inclusive approach to investigating hate crimes and seek to co-operate with multiple stakeholders, including civil society organizations. For example, the Dutch police work with civil society organizations representing the interests of different communities, including the Jewish, Muslim and LGBT communities.

Police in the Netherlands also encourage the use of internal networks. For example, the police network *Roze in Blauw* (“Pink in Blue”) aims to help those who have become victims of hate crime because of their gender identity or sexual orientation by encouraging them to report the crimes and consult with the police for advice and assistance.

In Spain, a hate crime protocol foresees the creation of “police social interlocutors”. These specially appointed police officers serve as a communication channel between vulnerable groups and the police, holding periodic meetings and disseminating information about police work

In Bulgaria, some civil society actors already monitor hate crime in the country. The Office of the Grand Mufti and the Bulgarian Helsinki Committee, for example, provide information about hate incidents to ODIHR. Other stakeholders, such as UNHCR Bulgaria, the Anti-Discrimination Commission and the National Network of Roma Lawyers, could be involved in countering hate crimes in Bulgaria.

## **Increasing diversity among police and prosecutors**

Establishing the composition of law enforcement agencies in which all groups of the society are represented (maintaining the competition procedures for their appointment based on merits) and which include both women and men, is an important step towards increasing trust from the vulnerable groups.

In the 1990s, the Dutch police met with members of the commission that investigated race riots in Brighton, United Kingdom. Police were alarmed by the similarities between the circumstances in Brighton and those that led

to riots in Dutch cities. This led the police to develop a programme to recruit police officers from ethnic minorities and to develop their first national police programme on discrimination.

## Recording hate incidents and gathering hate crime statistics

Recording hate incidents can help to build the full picture of a hate crime case. Gathering accurate hate crime statistics can be very useful in assessing the extent of the phenomena, and also when developing policies to prevent hate crime.

In Spain, concerns about the lack of information about the contextual elements of a potential hate crime led to the creation of a new field in the criminal justice system for recording the context of a crime. This contextual field also allows for a potential bias motivation to be recorded. Instructions on selecting the contextual field “bias motivation” notes that the incident must be registered as “bias-motivated” if anyone involved in the investigation perceived it as such.

## Recognizing victims of hate crime as particularly vulnerable

As discussed, victims of hate crimes may be in vulnerable positions. Therefore, it is important to assess their needs on a case-by-case basis and to help them find the support they need.

In Spain, the hate crime protocol expressly establishes that victims of hate crimes should be recognized and treated respectfully. Moreover, hate crime victims are entitled to protection, information, support, assistance and information about the status of the investigation, without discrimination of any kind. The protocol also recalls that victims of hate crimes are often particularly vulnerable, that their privacy must be protected, that they may need protection from reprisals, and that information provided to them should be clear and comprehensible.

# CONCLUSION

This manual has provided key information on how to successfully train police and prosecutors to investigate and prosecute hate crimes. It has developed a wide set of principles to enable training organizers, including on questions related to event logistics and the selection of participants and trainers. It has addressed in detail various aspects of hate crimes, and related these to the Bulgarian context.

In order for this publication to be applied effectively, it is essential that state authorities allocate the necessary resources to organize such training courses for criminal justice personnel.

Prior planning by training organizers will help to ensure that the principles contained in this manual are implemented successfully. Organizers should think carefully about whom to train, when, how and who to select as trainers. When planning a training event, organizers should also consider how they will monitor and evaluate the success of the event and, if needed, must be ready to adjust their approach as necessary.

Strengthening co-operation and co-ordinating with institutions, administrations and ministries is also a key to ensuring the success of such training activities, and all relevant stakeholders must be involved in the process of developing such events, including civil society organizations.

The hate crime-related work of police and prosecutors – and, by extension, the implementation of the knowledge and skills they acquire through hate crime training – would be greatly facilitated if police and prosecutors are provided with the appropriate tools to conduct their work. Accurate recording forms, criminal databases, investigative or prosecutorial guidelines and hate crime provisions – all are essential to the proper investigation and prosecution of hate crimes.

Finally, political will, support and commitment are crucial for any country to effectively address hate crimes through a proper criminal justice response.

ODIHR will continue to assist participating States in meeting this challenge.

# Annex 1:

## INDICATIVE AGENDA

### DAY 1

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09:30 – 09:45

#### **Introduction**

The session will provide information about the general and specific goals of the training activities.

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09:45 – 10:15

#### **Experiences from the community**

Statements by victims and/or witnesses will be studied to facilitate a discussion of the extent of bias and prejudice in the local context, with the aim of enhancing participants' understanding of the effect of hate crimes.

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10:15 – 11:15

#### **Understanding hate crimes and their impact**

The characteristics of hate crimes will be examined in order to distinguish from them from “regular” crimes and other acts, such as hate speech and discrimination. The session will also focus on the roles of police and prosecutors and why a proper criminal justice response is necessary. Video materials of hate crime cases, including in the Bulgarian context, will also be studied.

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11:15 – 11:30

*Coffee break*

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11:30 – 12:00	<b>International and regional legal framework</b>
	The session will introduce participants to international documents on investigating, prosecuting and sentencing hate crimes, as provided for by the UN, the OSCE and, in particular, the ECtHR. The session will study hate crimes cases based on different protected characteristics.
12:00 – 12:30	<b>Identifying a potential hate crime case: bias indicators</b>
	This session will provide participants with the tools to identify bias motivation in a potential hate crime case. Special attention will be given to hate symbols and the importance of reviewing bias indicators in the specific context of each case.
12:30 – 13:30	<i>Lunch</i>
13:30 – 14:15	<b>Response and investigation</b>
	During the session, participants will review the procedures for identifying and recording the information found at the scene of a hate crime. The procedures will be discussed in connection with the initial response, the proper registration of relevant facts, dealing with victims and witnesses and the criminal procedural requirements.
14:15 – 15:00	<b>Using Bulgarian law to prosecute hate crimes</b>
	National hate crime provisions will be reviewed, with a focus on general and specific penalty enhancements, protected characteristics, the legal qualification of a crime, plea bargaining and the status of a victim, among other aspects.
15:00 – 15:15	<i>Break</i>
15:15 – 16:00	<b>Bias indicators and evidence</b>
	The session will closely consider the threshold of evidence in the Bulgarian criminal justice system, and will look at how to prove a case, how to substantiate claims made in the indictment and what to do if perspectives differ between police and prosecutors.
16:00 – 16:30	<b>Conclusions on Day 1</b>

## DAY 2

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09:30 – 09:45

### Recap of day one

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09:45 – 11:00

### Case study 1: Bias indicators and evidence of motive: training session

This session will be a group exercise, in which participants will develop and practice their skills in identifying a potential hate crime case and using the evidence to prove bias motivation for convictions and sentencing. The trainers will provide feedback and guidance on participants' performance.

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11:00 – 11:15

*Coffee Break*

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11:15 – 12:45

### Case study 2: Bias indicators and evidence of motive: real-life setting

This exercise will be more complex and will reflect a complicated, real-life situation. The groups will review each other's work and will make notes on the obstacles to effective investigation and prosecution of a hate crime.

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12:45 – 13:45

*Lunch*

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13:45 – 14:45

### Obstacles to prosecuting hate crimes and ways to overcome them

The session will present the cycle of a hate crime and all the potential obstacles to its successful investigation and prosecution for different stakeholders. It will also explain law enforcement obligations to support victims and discuss some specific situations. The mapping of obstacles will enable participants to anticipate and resolve them in advance.

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14:45 – 15:00

### Conclusions and evaluations

This session will summarize the issues discussed during the training event. Participants will also fill out an evaluation form, which will provide an anonymous assessment of the event and enable improvements to be made.

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## Annex 2:

# HATE CRIME CASE STUDIES

*Disclaimer:* These case studies are designed for learning purposes. Please note that some of the following case studies contain offensive language. It is necessary to include this language, as it may figure as a significant element when investigating and prosecuting a potential hate crime.

### Case study 1

G.D., a Bulgarian citizen of Turkish origin, was brutally attacked near his house in Sofia. G.D. and his partner, M., were living in a residential complex that is home to a large number of migrants.

M. later described to police what happened as she was waiting for G.D. to return home from work on the day of the attack: “Five skinheads entered the courtyard and started banging on the doors... They were drunk and scary. They had shaved heads and wore black clothes... I locked the door from the inside... They caught an Arab man who lived in the complex and tried to hit him with a metal pole. Luckily, he managed to run away. The landlord intervened and asked them why they were attacking the man and they shouted: ‘Why are you defending them? They are killing Bulgarian girls’”.

After the five men left the complex, M. went looking for G.D. and found him in the street, covered in blood. The police were already at the scene. She told them that she believed the five men had attacked G.D. because they thought he was a migrant.

G.D. did not remember much about the attack. He testified: “I was going home with a friend of mine, Emin, who is Moroccan. When we were almost at home, five guys with black clothes and tattoos on their forearms approached us and surrounded us. One of them said ‘So, you are Arab, fuck your Arab mother!’ and punched my friend in the face. I don’t remember much else, because the same person then hit me with some metal object on the head. Everything happened so quickly.” G.D. sustained life-threatening injuries and spent several weeks in a coma. He was still experiencing health problems as a result of the attack a year later.

Three suspects were apprehended later in the day and led the police to arrest the remaining two.

**Please answer the following questions:**

1. Has there been a hate crime? What is/are the base offence(s)?
2. In your view, was the offence motivated by bias? If so, list all the bias indicators.
3. What pieces of information are missing and what other investigative steps would you order?

## Case study 2

Daniel R. runs the Centre for the Revival of Jewish Heritage in city V. The Centre organizes cultural events, has a theatre and museum, and co-operates with Jewish communities in Bulgaria and abroad. Daniel himself is not Jewish, but he is a locally well-known for his work at the Centre.

Since 2012, Daniel and the Centre have been the targets of an anti-Semitic poster campaign. In 2013, someone spray-painted Daniel's car with a large Star of David and the word "Jew" while it was parked outside his house. On two occasions in the same month of 2013, the Centre's windows were broken by stones thrown from the street, while a swastika was drawn on them with a marker.

In July 2014, someone threw a Molotov cocktail into Daniel's car, which caught fire and was completely destroyed. No suspect was identified at the time, although witnesses saw two persons running away from the burning car, yelling or singing something. Daniel informed police officers that he believed this to be a continuation of anti-Semitic attacks against him.

In August 2014, at a pro-Palestinian demonstration held in V., A.M. said on a loud-speaker: "as long as they [Israel] burn Gaza, we will continue doing the same to them. And some of them live among us."

Daniel learned about these statements and reported them to police, who brought A.M. in for questioning. They also inquired about a bomb found next to Daniel's house. A.M. denied any connection with the bomb and told the police officers that they were "Zionist slaves". Police let A.M. go.

**Please answer the following questions:**

1. Has there been a hate crime? What is/are the base offence(s)?

2. In your view, was the offence motivated by bias? If so, list all the bias indicators.
3. What pieces of information are missing and what other investigative steps would you order?

### Case study 3

Simone, a black French national visiting Sofia from France, where she lives, was waiting for the bus with her Bulgarian boyfriend Stoyan. When the bus arrived, a man on the bus started staring at Simone and Stoyan from the window and making noises imitating a monkey. When the bus doors opened, the man got off the bus with two other men.

The three men continued making the monkey grunts in Simone's direction. One of the men spat on Simone's clothes and said: "*Where is the monkey to protect you?*" Stoyan told them to stop and the three men attacked him with punches and kicks, pushing Simone aside. Witnesses stated that the men shouted racist abuse during the attack, using the word "*monkey*" and "*monkey-lover*", and also the slogan "*Bulgaria for Bulgarians!*"

Simone tried to call the police but to no avail. About one minute into the attack, Stoyan stopped moving. The three attackers took a wallet and cell-phone from his pocket, as well as Simone's phone, and left. Stoyan was left motionless on the pavement. Three days later, Stoyan died from the internal injuries he suffered as a result of the beating.

#### **Please answer the following questions:**

1. Has there been a hate crime? What is/are the base offence(s)?
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### Case study 4

An Equality March is scheduled to take place in your city on 15 June, organized by a coalition of LGBT civil society organizations known as the "Rainbow Alliance". This event takes place annually and, in the past, it has been subject to counter protests by conservative Christian and Muslim groups. It has also been subject to violent attacks by extremist organizations that threw rocks and bottles at the march,

provoked physical confrontations with participants and burned down a piece of art in the form of a rainbow arch. Speaking on television, a prominent politician that the Equality March constitutes the “promotion of deviant propaganda” and urged people to “stop the event no matter what”.

The Equality March took place. Approximately 500 supporters participated, heavily guarded by riot police. Around 300 opponents were gathered in one place along the march route and were kept separate from the participants by the police. Counter-demonstrators included religious groups holding signs, and also groups of young men shouting homophobic insults. In one incident, two counter-protesters ran into participants of the Equality March, shouted “*Come out faggot!*”, and tried to pull out one participant. This was unsuccessful due to the resistance of other participants, and the two counter-protesters disappeared. Police recorded these events using video cameras. When the Equality March passed by, counter-protesters left the gathering peacefully, under police escort.

The morning after the Equality March, on 16 June, a passer-by reported finding the body of a dead young man on a construction site near the Rainbow Club, which is frequented by members of the LGBT community. The victim, a 20-year old student named Plamen, had his face covered with bruises. He was not wearing shoes, and his trousers had been pulled down and his shirt rolled up.

The forensic medical examination established drowning as the cause of death; his face had probably been pushed into a puddle on the clay soil of the construction site. The examination excluded that he had been raped.

Two men were identified on the basis of witnesses’ statements and CCTV footage from inside the Rainbow Club and on the street outside. In the footage, the two men are seen talking to Plamen inside the club and then leaving with him. Police later identified the two men as K.L. and M.N. It was also found that K.L. was one of the two men who tried to attack the Equality March participant on 15 June.

**Please answer the following questions:**

1. Has there been a hate crime? What is/are the base offence(s)?
2. In your view, was the offence motivated by bias? If so, list all the bias indicators.
3. What pieces of information are missing and what other investigative steps would you order?

## Annex 3:

# COMPLEX CASE STUDIES

### Case study 1

These events took place in Pazardzhik, Bulgaria.

Over three days in May, anti-Roma protests were organized by local nationalists. The protests started because of a quarrel between a group of non-Roma and a group of Roma about loud music. The first two days of protest were relatively peacefully, although language such as “Gypsies get out of here” were heard by some witnesses and reported to the police.

**A Roma woman to a police officer during the protest:** *“Why are you waiting to stop them? Do you want them to beat or kill us? Don’t you see that they will never stop? How do I take my kids safely to school with all these angry people in the street? They will kill us, they want to make soap out of Gypsies and this is what they say.”*

On the third day of the protest, the protesters were joined by other groups, such as local football fans. While protesters were being dispersed, two Roma men were attacked by a mob; one of them had his jaw broken, and the other lost three teeth.

**Roma man who was attacked:** *“I was coming back from work when a mob started to run after me and my friend. They spotted us and said: “you damn Gypsy, come here, we will teach you a lesson”. They surrounded us and started to humiliate us, saying that we will never be equal. Then they told us to kneel down and were laughing at us. The one that punched me in the face was wearing an armband with the Bulgarian flag.”*

**The man wearing an armband with the Bulgarian flag:** *“They started to run away as soon as they saw us, so we thought they had stolen something. Come on, when two Roma start running away from you, what do you do? Of course you try to catch them. Then they pretended that they were scared of us and that they had not stolen anything, so I kicked the liar. That’s it. I don’t like liars.”*

Media reported many similar protests during the following days in different cities of Bulgaria. There were reports of violent racist mobs attacking Roma in Gurmen, Vidin, Varna and other locations. The attacks generated different reactions from the

authorities, and some politicians even used prejudiced language and hate speech against Roma, accusing them of being responsible for the attacks.

A week later, a bomb exploded in front of a Romani café popular with Roma activists. The bomb killed the person who opened the package and destroyed one window of the establishment. The victim was the head of a Roma NGO, but was not an ethnic Roma.

## Case study 2

These events took place in Pleven, Bulgaria.

On 10 June 2015, the Appellate Court ruled in favour of the restitution of the Mosque attached to the Grand Mufti's Office, which was expropriated under the Communist regime. The Court's decision was widely reported in the media. A day later, Members and supporters of nationalist groups gathered in front of the Court to express their discontent about the decision.

The next morning, "Allah is a pig" was graffitied on the door of the Mosque.

**Imam:** *"This morning I noticed Islamophobic graffiti on the door of the Mosque. We immediately cleaned it so that worshippers are not scared when they come for prayers tomorrow."*

On the same day, a political party asked supporters via its Facebook page to gather in the park adjacent to the Mosque at 11 a.m. the next day (before Friday prayers) to protest the Court's decision.

**The Facebook post read:** *"Dear friends, we must defend our Christian values. Come and say NO to those who have handed our country to Muslims."*

On the Friday, Police were only alerted at 10.30 a.m. that the protest was authorized to take place by the authorities. By 11 a.m., more than 100 protesters had gathered in the park in front of the mosque. Protesters held placards reading "Bulgaria is our land, Turks out", and "Filthy terrorists". At 12 p.m., protesters marched to the Mosque and started throwing stones and firecrackers at the Mosque and at worshippers praying on a nearby pavement. As a result, two worshippers received head injuries and the windows of the mosque were smashed.

**Ahmed, a worshipper:** *"I have never witnessed such an aggressive attack before. They came with stones and batons – this was not a protest. Someone threw a stone at my*



head. They saw that we were there praying. My injuries could have been much worse.”

**The Mufti:** “Two of the Mosque’s windows were smashed. If I may say, this wasn’t a protest against the Court’s decision; this was an attack against a place of worship and against peaceful worshippers.”

**An organizer of the protest:** “It’s a pity that the demonstration turned violent. We were there to denounce the material loss for the Bulgarian people, and when you see these fans of Allah praying outside the building to provoke us, I can understand why it went wrong. But I’m sorry that people from both sides were injured.”

**An arrested protester:** “Yes, I threw stones at the Mosque because; if the building must belong to Muslims, then I prefer it to be destroyed than for it to have value for them. What will be left for us? Everything in Bulgaria belongs to Bulgarians, not to Turks, don’t you think?”

On Friday evening, a woman wearing a headscarf and passing in front of the Mosque was stopped by three men wearing black clothes and using anti-Muslim insults. The perpetrators aggressively removed the woman’s headscarf and ran away when they saw a police car patrolling the area. The woman reported the incident to the police.

**Woman:** “The men who ran away were blocking my path and insulting my religion. One of them told me that I’d better stop walking here alone with a ‘fucking carpet’ on my head and tore it off me. They looked very aggressive, but luckily you arrived.”

### Case study 3

These events took place in Sofia, Bulgaria.

A group of volunteers decided to organize an LGBT film festival. After the festival was announced, there was considerable opposition to the initiative. As reported by newspapers, the city authorities received numerous complaints against the organizing such a festival, including from fans of the local football club, among others.

The organizers of the festival and the leader of a local LGBT organization also received several threats through social media. Due to the nature of the threats, the organizers sought police protection on 4 June, a couple of days before the start of the festival. Police protection was refused because of the late demand and because of a football game taking place at the same time and requiring important police deployment.

**Organizer:** “I received threats via my Facebook account against a film festival I’m organ-

izing next week. People I don't know wrote to me that they will burn down the venue. They also sent me a picture of the programme, which mentions the venues where movies will be screened. I'm scared, and therefore request police protection for the festival."

On 10 June, the first day of the festival, a group of seven to eight people tried to break into one of the venues where the festival was due to take place. They were unable to enter because the venue's security staff intervened. The attempted attack was reported to the police.

**Security staff:** "Around 9 PM, a group of teenagers tried to enter the venue without paying. They seemed very aggressive and called me and my colleagues 'faggots'. I suppose they were frustrated that they couldn't enter."

On 12 June, at around 7 p.m., a group of football fans was standing in front of the pub where another film was due to be screened and started insulting people entering the venue. When the film started, the group entered the venue, smashed the projector and then left. The owner of the pub called the police to report the incident.

**The owner:** "People resembling a group of football fans entered my establishment at around 7 p.m., when a documentary film was about to be screened, and destroyed the film projector. I estimate the cost of my loss at more than 2,000 Euros."

**A witness sitting at the terrace of the pub:** "I saw the group of football supporters waiting at the entrance of the pub for a long time and drinking heavily. They were insulting clients sitting on the terrace and those entering the pub. They called us 'perverts', but I suppose that was because they were drunk."

**One of the football fans arrested based on CCTV footage:** "I don't have anything against gay people; they can do whatever they want as long as I don't see them. But seriously, in what society do we live if gays are now allowed to make propaganda and organize festivals to promote their sexual preferences? This is why we intervened. We need to protect our kids from this kind of propaganda. I'm not shouting everywhere that I love women."

On the same evening, at around midnight, a student was brutally murdered in the Borisova Gardens. The park is well known as a meeting place for LGBT people, and many groups on social media had previously expressed their wish to "cleanse" the park. The body was discovered by a member of the city's cleaning services the next morning at 6 a.m., after which police arrived on the scene.

