



Understanding Hate Crimes

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Understanding Hate Crimes

INTRODUCTION

Hate crimes are crimes based on prejudice. They happen everywhere. No society is immune to the effects of prejudice and intolerance. Individual hate crimes carry the seeds of potential conflict, as they can escalate both in terms of the number of incidents and the level of violence. If this is understood and firm measures are taken, the cycle of violence can be stopped.

This booklet aims to help the police, prosecutors, judges, legislators, local authorities and NGOs better understand the problem of hate crimes. It explains the significance of hate crimes and suggests how authorities and communities can prevent and better respond to hate crimes.

This booklet has been prepared by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in conjunction with the OSCE Mission in Kosovo. It is not a comprehensive guide to hate crimes. For those seeking further information, ODIHR's Tolerance and Non-Discrimination Information System (<http://tandis.odihr.pl/>) offers a number of tools and specialized guides in various languages.

What is a HATE CRIME?

Crimes motivated by intolerance towards certain groups in society are described as hate crimes.

Hate crimes consist of two elements:

- *The act must first be a crime under the Criminal Code.*
- *The crime must have been committed with a bias motivation.*

“Bias motivation” means that the perpetrator chose the target of the crime based on some *protected characteristic*.

- *The target may be a person, people or property associated with a group that shares a protected characteristic.*
- *A protected characteristic is a fundamental or core characteristic shared by a group, such as “race”, religion, ethnicity, language or sexual orientation.*

Crime + bias motivation = HATE CRIME

A hate crime does not require that the perpetrator feels hate. Instead, it requires only that the crime is committed out of bias motivation. Bias means that a person holds prejudiced ideas about a person or a group. Since hate crimes are committed because of what the targeted person, people or property represents, the perpetrator may have no feelings at all about an individual victim.

Case Example:

Teenagers go to a Jewish cemetery, where they kick over a number of gravestones and spray-paint others with swastikas. The gravestones are selected randomly.

This is a hate crime. The graffiti is evidence of bias motivation, even though the perpetrators’ hatred is not targeted at any specific person.

Case Example:

A grave in a Serbian Orthodox cemetery was desecrated the day after the burial. The coffin was dug up and severely damaged. The grave belonged to the first Kosovo Serb to be buried in a town in Kosovo since the 1999 conflict, more than ten years earlier.

The timing of the incident, the day after the burial, and the fact that no material

property was missing, indicates the bias motivation of the perpetrators against the Kosovo Serb community. The community perceived the incident as a message not to bury their family members in the Orthodox cemetery in the town. The family requested that the body be exhumed and transferred to another cemetery in a Kosovo Serb village.

HATE CRIMES LAWS IN KOSOVO¹

In Kosovo, limited provisions in the Criminal Code authorize the imposition of increased punishment for crimes committed with a bias motivation.²

For example, in the Criminal Code there are specific provisions for aggravated murder³ and damage to movable property when committed with a bias motivation.⁴ The Criminal Code also has an aggravating and mitigating circumstances provision applicable to all crimes. These provisions allow judges to consider the motives for committing the criminal act, which could include bias motivation, when imposing a sentence.⁵

Kosovo also has separate provisions on public-order offenses that criminalize the incitement to national, racial, religious or ethnic hatred, discord and intolerance,⁶ as well as criminal anti-discrimination provisions.

The victims of hate crime

Anyone can be a victim of a hate crime, although members of minority communities are the most frequent victims. Hate crimes also target property belonging to, or associated with, a community, such as places of worship.

All hate crimes must be treated with equal seriousness, regardless of who is the victim and who is the perpetrator.

1 There is no consensus among OSCE participating States on the status of Kosovo and, as such, the Organization does not have a position on this issue.

2 Use of these provisions, however, often results in incorrect legal qualifications and inconsistent application.

3 Criminal Code, Article 147(6).

4 Criminal Code, Article 260(2).

5 Criminal Code, Article 64 (1).

6 Criminal Code, Article 115. Similar provisions are also contained in Article 4 of the Law on Freedom of Religion in Kosovo and Article 6(8) of the Law on Protection and Promotion of the Rights of Communities.

HATE CRIMES TARGETS IN KOSOVO

Hate crimes in Kosovo often target:

- *Returnees and members of non-majority⁷ communities, who are often isolated and vulnerable. Hate crimes against members of these communities send strong messages of intolerance and create high levels of fear.*
- *Religious and sacred objects, such as churches, mosques and graveyards, as well as private property belonging to returnees or members of non-majority communities.*
- *Traffic and road signs in non-majority languages that are often subject to graffiti and vandalism. The targeting of such public objects widely broadcasts messages of intolerance across the community.*
- *Members of sexual minorities. Members of this group are extremely vulnerable to hate crimes. Attacks frequently occur outside gay bars or nightclubs.*

Why should **HATE CRIMES** be treated differently than other crimes?

Hate crimes tend to increase: Because perpetrators feel they are acting on behalf of their community, they feel morally justified in their behaviour. If that community does not effectively punish and repudiate hate crimes, these and other potential perpetrators are encouraged to continue their activities, and the number of hate crimes increases.

Hate crimes tend to escalate: Offenders who start committing minor offences often go on to commit increasingly violent acts if they are not caught and stopped. Therefore, even minor offences committed with bias motivation are dangerous and require firm responses.

Hate crimes tend to spiral: If victims and their communities feel unsafe and unprotected by state authorities, they are likely to retaliate against members of the community that is blamed for attacking them. This can lead to further attacks, creating a spiral of violence that leads to serious social breakdown. In countries with a history of ethnic conflict, this is a particularly prominent phenomenon.

⁷ For the purpose of this booklet, non-majority communities are all those communities who constitute a numerical minority at the municipal level in Kosovo.

How to identify a HATE CRIME?

Bias indicators are one or more facts that suggest that a crime may have been committed with a bias motivation. They provide objective criteria by which to judge the probable motive, but do not necessarily prove that an offender's actions were motivated by bias. Bias indicators should be used to decide whether to investigate further the views and motives of the perpetrator.

Bias indicators are useful for police, prosecutors and NGOs to use when analysing whether a reported crime might be a hate crime. Many countries and organizations have compiled their own sets of bias indicators. A non-exhaustive list of bias indicators follows:

Victim/Witness Perception

→ *Does the victim or witnesses perceive that the incident was motivated by bias?*

Comments, Written Statements, Gestures or Graffiti

→ *Did the suspect make comments, written statements or gestures regarding the victim's community?*

→ *Were drawings, markings, symbols or graffiti left at the scene of the incident?*

→ *If the target was property, was it an object or place with religious or cultural significance, such as a historical monument or a cemetery?*

Racial, Ethnic, Gender, and Cultural Differences

→ *Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?*

→ *Is there a history of animosity between the victim's group and the suspect's group?*

→ *Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?*

→ *Was the victim engaged in activities promoting his/her group at the time of the incident?*

→ *Did the incident occur on a date of particular significance (e.g. a religious holiday or national day?)*

Organized Hate Groups

→ *Were objects or items left at the scene that suggest the crime was the work of a paramilitary or extremist organization?*

→ *Is there evidence that such a group is active in the neighborhood (e.g., posters, graffiti or leaflets?)*

Previous Bias Crimes/Incidents

→ *Have there been similar incidents in the same area? Who were the victims?*

→ *Has the victim received harassing mail or phone calls or been the victim of verbal*

- abuse based on his/her affiliation or membership of a targeted group?*
- *Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church or other place of worship).*

WAR CRIMES, GENOCIDE, AND HATE CRIMES

War crimes and genocide are often crimes with a bias motivation. However, because war crimes and genocide are violations of international humanitarian law and of concern to the international community as a whole, they do not fall under the rubric of hate crimes. War crimes and genocide are often prosecuted by international or special tribunals.

Another distinguishing factor is that certain war crimes and genocide require proof of a special intent (genocide, for example, requires proof of intent to destroy, in whole or in part, the target group) beyond the proof of bias required for hate crimes.

Law Enforcement and Justice Agencies' Responses

In most cases, proving motive in a crime is not necessary. Since motive is a complex issue and there are limits to the kind of evidence that can be used to prove it, hate crime cases demand a different approach from police, prosecutors and judges than other crimes.

THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights has held that states have positive obligations to thoroughly investigate the potential racial motivation behind crimes. It stated, in the case of **Šečić v Croatia**:

*"...State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the event." Failing to do so and, "...treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."*⁸

⁸ European Court of Human Rights, *Šečić v. Croatia*, Application No. 40116/02, paragraphs 66-67, 31 May 2007.

Police:

In order to effectively investigate hate crimes and collect data, police must be able to identify hate crimes. Bias indicators are an essential tool. When interviewing perpetrators, motives should be explored. Many perpetrators openly admit their motivation, as they feel their behaviour is justified and approved of by the rest of their community.

Collecting data on hate crimes is a key law enforcement tool. This enables authorities to detect where trouble is building up, which locations may require greater protection to prevent future crimes, and which communities need extra reassurance. Data collection provides improved intelligence and enables resources to be properly allocated

Prosecutors:

Prosecutors should pursue indictments under hate crimes provisions (if there are any) in criminal codes, where possible. In every case, however minor, prosecutors should treat the offence as aggravated if the motive is present. This should result in gathering and presenting evidence of motive to the court, even if no aggravated form of the crime is contained in the code. In the absence of an admission, prosecutors can consider other forms of evidence:

- *Hate crimes are often accompanied by verbal insults or graffiti at the scene of the crime – crucial evidence of motive.*
- *If the perpetrator's music, literature, websites or web-postings, clothing, jewellery or tattoos show membership in or support for extremist groups, this is relevant evidence of his/her general views.*
- *There may have been previous similar conduct by the perpetrator, whether against this victim or others.*

Courts:

Where a hate crime is proven, the punishment should be increased to reflect the motivation and the potential impact of the crime on the community, beyond the victim. To maximize the impact of this, judges should state in open court and in the written verdict that the motive has resulted in an increased sentence.

Angelova and Iliev v Bulgaria (2005)

In 1996, Mr. Angel Iliev died after being beaten and stabbed by a group of teenagers. The attackers were arrested within hours. They admitted that they had been looking for Roma to attack and expressed their hatred of Roma and other minorities. Five of the attackers were indicted for “hooliganism of exceptional cynicism

and impudence”, but for nine years nothing further was done to bring them to justice. The European Court of Human Rights held that Bulgaria was in breach of its obligations to protect and prosecute human rights violations and that it was “completely unacceptable” that, being aware of the racist motives of the perpetrators, there had been a failure to bring the case to justice promptly.⁹

Local Authorities’ responses

There are many benefits to improving responses to hate crimes:

Early warning:

Serious violent unrest is often sparked by one, small, bias-motivated incident, catching authorities by surprise. Recognizing and tracking hate crimes allows law enforcement agencies to anticipate the eruption of serious incidents.

Stronger communities:

The identification and punishment of hate crimes raises the confidence of affected communities, as trust in the criminal justice system increases and communities feel safer.

Enhanced intelligence:

As confidence in police increases, so does information and co-operation received from those communities affected by hate crimes. Improved community relations lead to more investigations being successful, not only in cases of hate crime but also in other matters in which police require community assistance.

RESPONDING TO HATE CRIMES

There are a number of good practices that local authorities can adopt:

- *Quickly removing offensive graffiti with bias-motivated content. This is a small but important step to improving community confidence.*
- *Immediate outreach to the affected communities by municipal officials and use of community safety forums to enable municipalities and local law enforcement*

⁹ European Court of Human Rights, *Angelova and Iliev v. Bulgaria*, Application No. 55523/00, 26 July 2007.

agencies to meet with civil society and community representatives to exchange information and concerns.

- When suspected bias-motivated incidents occur, ensuring that mayors and local politicians reassure the community that a thorough investigation will take place and make positive public statements. It is important to recognize community concerns and explain what action is being taken. Such statements are taken more seriously if there is a record of listening to and working with community organizations.*
- Promoting school projects to educate students about hate crimes and to combat possible bias-motivated bullying. This can form a component of civic education classes, such as in “twinning” with other schools locally or in a more ethnically diverse area to organize joint activities to explore mutual prejudices and experiences.*
- Systematically educating all students about prejudice and intolerance. This can be achieved if education authorities ensure that the subject is mainstreamed into school curricula and teacher-training faculties. classes, such as in “twinning” with other schools locally or in a more ethnically diverse area to organize joint activities to explore mutual prejudices and experiences.*

International and Regional Standards

There is a comprehensive body of international and regional instruments that impose clear duties on states to respond to hate crimes.

The UN Convention on the Elimination of All Forms of Racial Discrimination also requires states to implement laws punishing crimes motivated by racism. The European Union’s Framework Decision on Combating Racism and Xenophobia is also of relevance for EU member states and any future member. Adopted by the EU in 2008, the Framework Decision aims to establish a common criminal law approach to hate crimes, including aggravated penalties for bias motivation.

In relation to law enforcement, the European Court of Human Rights has held that states have a duty to properly investigate the potential racial motivations of crimes. OSCE participating States have committed to ensuring their legislation is adequate, collecting statistics, ensuring that hate crimes are thoroughly investigated and prosecuted, and implementing training where necessary.



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