

**INTRODUCTORY STATEMENT BY MS. ANITA SOBOLEVA,
EXECUTIVE DIRECTOR OF LAWYERS FOR CONSTITUTIONAL
RIGHTS AND FREEDOMS (JURIX), AT THE SUPPLEMENTARY
HUMAN DIMENSION MEETING ON HATE CRIMES – EFFECTIVE
IMPLEMENTATION OF LEGISLATION**

4 and 5 May 2009

**Working session II
Improving the Policing and Prosecution of Hate Crimes**

The desire to combat hate crimes must be sincere

Distinguished members of the official delegations,
Distinguished guests,
Distinguished representatives of non-governmental organizations, experts and other
participants in this meeting,

Allow me to thank you for the opportunity to address you today and to make a
number of suggestions about what should be done and what, in my view, should not be done
to improve the work of law enforcement authorities in combating hate crimes.

Conditions for effective application of laws and obstacles to their implementation

Underestimation of the threat and of the scale of the wave of violence

In order to improve the policing and prosecution of hate crimes, the scale of the threat
and the consequences of hate crimes need to be recognized.

The legislative answer to this challenge of the times has probably come too late. We
have underestimated the scale of the threat and the speed with which this wave of violence
has begun to gather momentum.

In Russia, for example, one of the reasons for the belated and insufficiently tough
response by the authorities to violent racially motivated hate crimes committed by young
fascists has been the deeply rooted misconception that fascism and Nazism were impossible
in a country that had defeated fascism. Mr. Nikolay Svanidze, a member of the Public
Chamber of the Russian Federation, rightly called particular attention to this in his statement
at a conference on 22 April of this year. For a long time, an unwillingness and inability to
investigate the ethnic or ideological component of a crime, an indifference to the motives, an
attempt to sugar-coat the reality by trivializing racially motivated murders and beatings have

made it impossible to take preventive measures in good time and draw up an effective policy for combating the rise in violence and intolerance in our country. As a result, the news has become full of reports about the audacity of skinheads and nationalists who are convinced that they are immune to punishment.

For example, members of a gang of skinheads led by Artur Ryno and Pavel Skachevskiy managed to commit 20 ethnically motivated murders and 12 such attempted murders before they were arrested and convicted. On 28 April 2009, the Supreme Court of the Russian Federation upheld the sentence of those convicted of carrying out attacks on persons who did not look European, videoing the murders and posting the footage on the Internet. The gang was active in 2006 and 2007. The sentences received by members of the gang ranged from 6 to 20 years' imprisonment. The gang leaders, Artur Ryno and Pavel Skachevskiy, received ten-year sentences because they were under 18 years of age at the time the crimes were committed.

But, criminals by no means always openly declare their motives in court, making it possible for them to get off with minimum or even suspended sentences.

How to prove the motive?

How in fact does one prove the motive? The attackers do not always belong to a skinhead group, shout Nazi or racist slogans, or leave symbols or other objects at the scene of the crime indicating that they belong to hate groups. Among the possible signs of hate as a motive might be the date on which the crime was committed (which may coincide with a special holiday or memorial day), the existence of similar crimes against other people belonging to the same group, the absence of mercenary motives or other reasons for the attack and the hurling of offensive insults at the victim. It is important that the victims themselves perceive the incident as a crime. No less important is the desire on the part of the law enforcement authorities to investigate this motive and take every possible measure to prove the motive, if there was indeed one.

I am convinced that human rights organizations, primarily the European Roma Rights Centre, are quite right to repeatedly urge the European Court of Human Rights to realize that the investigation of the murder of a member of a minority, in this case a member of the Roma community, should not be regarded as proper unless it considers the possibility of an ethnic motive. It would be a good thing if this approach were nevertheless reflected in international and national practice.

The problem of proof

The main difficulty in investigating this kind of crime (hate crimes) is the collection and preservation of evidence. But this is the main prerequisite for bringing the guilty to justice. Many crimes are committed by a group of persons, and it is fairly difficult to accurately establish the role and degree of responsibility of each of the persons involved in an attack. Witnesses – if there are any – may be intimidated or may hurry to get away from the scene of the crime because they are scared; witness protection programmes do not exist in all countries and, as a rule, are not available for this kind of crime. The victims, unlike the defendant, are not provided with a lawyer free of charge, and as they usually belong to the poorest segments of the population, they do not have the money to pay for the services of a

lawyer. This complicates the course of the investigation and makes it impossible to request additional evidence.

Victims who are migrants may be scared to ask for help because they are afraid that they will be deported or that they themselves might be accused of violating the host country's laws (whether this is the case or not). Some victims are afraid that confidential information will be disclosed to their family or employer (in the event, for example, of an attack on someone with an unconventional sexual orientation).

Furthermore, the victim (if he or she survives) and his or her relatives are sometimes so intimidated that they are afraid to testify, to persevere in the event of an ineffective investigation or to help the investigating team.

This would not be such a problem if in all cases of this kind (hate crimes) the safety of victims and witnesses could be guaranteed, and these persons were automatically informed by the police in good time and in a friendly manner as to what possibilities were available for their present and future protection and how they could take advantage of them.

Victimization

The motive of hostility and hate as an aggravating circumstance must also be taken into account when prosecuting crimes committed against lawyers, experts, journalists, human rights activists and witnesses with a view to intimidating them into not "interfering" in the investigation process. Attacks on journalists, experts and human rights activists carried out by members of radical groups are not usually regarded as hate crimes but as attacks associated with the performance of professional duties. However, victimization should also be classed as a hate crime and consequently should be subject to the most severe penalties.

Professional conduct of the police: sympathy with victims and their trust as the key to a successful investigation

In the investigation of a crime, it is very important that the victim trusts the investigators and feels that he or she has their sympathy and support, something that unfortunately is not always the case with this type of crime. Law enforcement officers involved in investigations need to be provided with training; instructions and guidance material need to be drafted on how to deal with victims, and the rules developed need to be strictly observed. The victim should not be afraid of the police and should not encounter any disapprobation or rudeness on their part. It is unacceptable for law enforcement officers to first try to find an explanation for the crime in the behaviour of the victim, begin to criticize the victim and trivialize the seriousness and significance of the crime.

If a police department has established close relations with expatriates, with minority groups living locally and with human rights organizations providing psychological and legal support to citizens, if sympathy for the victim rather than contempt and tacit approval of the actions of the criminal can be read in the eyes of the investigator, it will be much easier to obtain information that may prove to be useful in investigating the crime and establishing the real motives.

Police officers should talk with schoolchildren and students and unambiguously and strongly condemn any manifestations of aggression against religious or ethnic groups that are

particularly hated by the local population, and they should make it clear to society and potential offenders that any act of aggression or any crime will be exposed and that the police will not be complicit with the criminals. This message must be publicized regularly by law enforcement officers in the media.

Training of law enforcement officers and clear instructions

As part of the professional training of law enforcement officers and the assessment of their suitability for the profession, it must be ensured that persons with racial, ethnic or religious prejudices do not end up among the ranks of this profession. Programmes on tolerance must be introduced for police officers, and in areas with large minority communities there must be courses on their culture, customs and beliefs.

The law enforcement authorities should not only conduct effective investigations into hate crimes but should also pay attention to any incidents – attacks, insults or harassment – that are motivated by a victim's race, nationality, religious affiliation, gender, age, sexual orientation or language. They must be registered and taken into account when preparing authoritative decisions and formulating policies to counter intolerance and violence associated with it.

Instructions to law enforcement officers must be intelligible and clear and must leave as little as possible to the officers' discretion.

Only through a timely, uncompromising and tough response by the law enforcement authorities to every attack on a person belonging to a group considered to be at risk will it be possible to stabilize the situation and reassure people. Criminals should be punished and victims should receive compensation for their suffering and complete reimbursement for any material damage.

More community-based organizations need to be involved in co-operation efforts. Openness on the part of the law enforcement authorities to dialogue with these organizations has a very important role to play. Wherever law enforcement authorities are not interested in making light of the realities but want to succeed in their efforts to combat hate crimes, community-based organizations will not be seen as provocateurs inflaming the situation but will be regarded as allies, and the results of their monitoring will be taken seriously.

These are very simple steps, but they are difficult ones to take, particularly in places where the law enforcement authorities are not willing to banish stereotypes and prejudices.

I hope that the course that has been embarked upon in this area in Russia in recent years will result in positive changes, and that it will be possible to avoid mistakes and distortions in the process. The intention to seriously tackle the problem of xenophobia and other hate crimes has been voiced at a high level. The Public Chamber, which on 22 April organized the forum entitled "For civil accord and against intolerance and extremism", has repeatedly drawn attention to this problem. In recent years, the offices of the public prosecutor have also begun to pay considerable attention to this problem. An expert working group has been set up under the Office of the Prosecutor General consisting of representatives of non-profit organizations, members of the Public Chamber and experts. This group has announced that manuals are being prepared with the help of experts and human rights activists for the law enforcement authorities on how to respond to hate crimes. In April 2009,

a training conference was held in Yekaterinburg for law enforcement officers on the subject of “Current problems in countering extremism. Improving mechanisms of interaction between agencies combating extremism”, which discussed the problem of combating inter-ethnic discord and, in particular, proposed measures such as further training for officers investigating this kind of crime, the introduction of special courses at institutions of higher learning and schools to educate people about the unacceptability of extremism and inter-ethnic discord, and the involvement of community-based organizations in co-operation efforts.

Collecting statistics on hate crimes

And now statistics. By dividing up hate crimes according to the targeted group, it is possible to collect and analyse statistics on attacks carried out against representatives of a particular group. Objective and complete statistical information is needed to formulate a government policy on the prevention of hate crimes. For such a policy to be effective, however, the statistics need to clearly reflect the situation and make it possible to assess the problem without being sidetracked. We need to have a clear idea of which groups are victims of crimes, which groups are most at risk, where the threat comes from and what link there is between violent and non-violent crimes of a discriminatory nature.

Statistics will provide a distorted picture unless all hate-related attacks and incidents are documented and the motive for the crime is established in all cases where there actually was one. It is precisely for this reason that monitoring carried out by independent centres and community-based organizations is so important. Comparing official and unofficial figures may show up problem areas and help to improve the strategy.

In addition to statistics on hate crimes, statistics are also needed on the status of the victim – whether or not the victim had one or several “protected characteristics” – if a true picture is to be obtained.

Here the difficulty lies in the fact that it is not always possible to indicate the victim’s ethnicity in protocol documents and, still less, the ethnic group to which his or her attacker belonged. The criminal’s ethnicity cannot be established either, since according to the constitutions and laws of many countries a person’s ethnicity may not be indicated in official documents. The absence of statistics on the ethnic composition of a particular local community and on the ethnic group of the attackers and victims makes it difficult to identify trends and take preventive action.

Crimes and incidents

Undoubtedly, society must respond to all manifestations of aggression on racial, ethnic, religious, linguistic or other personal grounds. In this context, however, there is a need to differentiate between criminal actions and behaviour that is antagonistic to certain groups or individuals but that does not constitute a crime. It is important that laws and law enforcement practice permit a clear differentiation between these forms of behaviour. The desire to criminalize *any* manifestations of hostility will hinder rather than help us in the fight against hostility and hatred, since it will distract law enforcement forces and judicial bodies from serious violent crimes. Many manifestations of disrespectful, discriminatory and degrading behaviour may be prosecuted through administrative and civil law procedures, while professional codes of ethics, internal rules and public opinion are also used to combat

such manifestations. We must not transfer total responsibility and all measures for combating this phenomenon to the law enforcement authorities alone.

Racist, anti-Semitic and homophobic views must be seen by the public as abhorrent, unacceptable and not to be tolerated. On 22 April 2009, the Disciplinary and Control Committee of the Russian Football Association fined Spartak Moscow 500,000 roubles for a poster celebrating Hitler's birthday, which had been displayed by some of the team's supporters on 5 April 2009 in a match against Spartak Nalchik during the third round of the Russian Championship. The club management asked the office of the prosecutor to investigate the incident and punish the guilty parties.

On 16 September 2008, the Public Press Complaints Panel agreed in part with the complaint brought by Roma leaders Nadezhda Demeter and Alexander Bariyev regarding the television programme "Coma", which was broadcast in February 2004 and contained a whole series of anti-Roma assertions. The Panel's ruling specifically noted that the journalists who had made the programme appeared to be in the thrall of a fairly widespread conception of the ethnic origins of crime and the programme itself could be seen to insult the national feelings of the Roma community and to reinforce the marginalization of the Roma in society but did not foment inter-ethnic hatred. It was proposed that NTV should discuss the Panel's ruling with the journalists and then inform the Panel of the results of those discussions. Unfortunately, NTV refused to co-operate with the Panel.

If anti-Semitic, racist or nationalistic literature is published or pseudo-scientific or educational material distorting historical facts is cited as proving certain theories that are not based on scientific knowledge, if articles appear in the press that insult the dignity of a particular people or religion, the matter should be dealt with by the professional community, the academic community and colleagues, which should also have responsibility for disciplinary proceedings in accordance with professional codes and internal rules. The problem should not be resolved solely through criminal proceedings.

Freedom of speech and responsibility for fomenting hostility and hatred: seeking a balance

I should like to mention in particular the importance of balanced judgement when establishing responsibility for fomenting hostility and hatred. The main danger lying in wait for us here is the desire to criminalize any forms of speech and self-expression that may be unacceptable and may be interpreted as shocking, insulting or provocative. While ensuring that the fomenting of hostility and hatred is always punished and while ensuring a tough response on the part of the authorities and society to attempts at sowing discord and intolerance that result in violence, fear and public disorder, we must not, nevertheless, forget about freedom of speech as a fundamental value proclaimed both in documents under international law common to the countries of the OSCE region and in our constitutions.

Absolute freedom of speech does not exist anywhere in reality. The requirements of political correctness may limit it even more than criminal law, and in a number of countries people can lose their seat in Parliament or their job on television or in the education system for making racist comments. Not everything a person says is protected by freedom of speech. The Council of Europe recognizes that hateful and xenophobic comments, Holocaust denial, fascist and neo-Nazi propaganda and the wholesale classification of Muslims as terrorists are incompatible with the democratic values of the European Convention for the Protection of

Human Rights and Fundamental Freedoms and may be prosecuted. What prohibitions are placed on speech and what kind of responsibility – criminal, civil or moral – is to some degree determined by the State itself, since every country has its own wound points and its own historical memory. But the list of banned topics and books must not grow indefinitely as there is the danger that this will lead to censorship and the end of public discussion on those subjects that are most sensitive for society and about which public discussion is most important.

The restrictions of freedom of speech necessary in a democratic society must be very narrow, clearly formulated, leave no room for wide interpretation, and be intelligible and comprehensible to every member of society so that people can adapt their own behaviour without involving a swarm of experts each time they want to open their mouth, write an article or draw a cartoon or caricature.

It is significant that the Durban Review Conference held in Geneva in April of this year noted in its final document the importance of observing freedom of expression when combating racism and intolerance. There were no references to prosecution for blasphemy and defamation of religion, and this is very important because, as I have been saying today, we should not be combating intolerance of just one view of the world or a single religion, or the fomenting of hatred towards just one ethnic group, country or nation. But the discussions on this topic have shown that we still have a very long and difficult path ahead of us if we are to achieve a common understanding of the existing approaches to combating hatred and hostility. We hope that this path will not be clouded by new cataclysms, wars and confrontations.

Conclusion

In conclusion, I should like to point out that our main task is to ensure that those guilty of committing hate crimes are punished and that the victims of racism and other forms of intolerant and hostile behaviour are protected. The toughest sanctions under the law cannot help to deal with this problem if criminals go unpunished and feel that the authorities and the police are complicit. If we are to be successful, what we need first and foremost is a desire on the part of States and government authorities to eradicate fear and intolerance. Complicity with criminals and attempts to place at least part of the blame on the victim calls into question the sincerity of the desire to introduce tolerance and combat xenophobia and other forms of intolerance. I should like to conclude by quoting Senator Lyudmila Narusova, who speaking at the forum “For civil accord and against intolerance and extremism” at the Public Chamber in Moscow on 22 April, noted that the legal framework for combating intolerance is small because there must be also be a desire and this desire must be sincere.