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DEVELOPING A COMPREHENSIVE RESPONSE TO HATE CRIMES ON A REGIONAL LEVEL

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Background information

In February 2017, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) launched a two-year project to help improve skills of, and collaboration among, criminal justice professionals in each of four OSCE participating States – Bulgaria, Greece, Italy and Poland – and to improve their co-operation with civil society. The overall aim was to contribute to building a comprehensive criminal justice response to hate crime in each country.¹

ODIHR's partner in Italy is the Catholic University of Sacred Heart (Università Cattolica del Sacro Cuore) in Milan. Additionally, the project established links with other relevant national institutions such as the Observatory for Security against Acts of Discrimination of the Ministry of Interior of Italy (OSCAD), the Milan Bar Association (MBA) and the Regional Training Centres of the Superior School for Magistrates in Milan (SSM). Project activities in Italy focused on training police officers, prosecutors, judges, lawyers and civil society organizations working with hate crime victims on a regional level in Lombardy as well as analysing data on hate crimes collected by the Court of Milan.

The outcomes and experiences of project activities were presented and discussed at a workshop in Milan on 15 January 2019. The event was organised together with the Milan Bar Association (MBA) and the Catholic University of Sacred Heart. The event was divided in two parts. The first part was the plenary session which brought together around 150 participants, of which 129 signed the attendance list (42 men and 87 women), representing the Italian criminal justice system. The second part consisted of thematic workshops which gathered a smaller group of some 25 participants (12 men and 13 women).

Lessons learned from project activities in Italy helped design a guide on regional approach to hate crime representing a significant segment in a toolkit for comprehensive response to hate crimes, which should be applicable within the criminal justice systems throughout the OSCE region.²

ODIHR announced the event with a news item on its website and social media.³

¹ The project “Building a Comprehensive Criminal Justice Response to Hate Crime” is co-funded by the European Union and the United States and implemented by ODIHR.

² Guide to Addressing Hate Crime at the Regional Level available for download at <<https://www.osce.org/odihr/402536>>.

³ The news item can be accessed at: <<https://www.osce.org/odihr/409151>>.

Plenary session

Opening remarks and greetings

Mr. Remo Danovi, President of the MBA, opened the event underlining the importance of addressing hate crimes as it was in line with the values of the Italian state. He also said that the MBA strived to improve the quality of the services that it provided to citizens by participating in the project.

Mr. Roberto Bichi, President of the Court of Milan, while providing opening remarks, informed participants that thanks to the survey conducted with the support of the former Minister of Interior, covering the period 2015-2017, hate crime cases (883 in total) had been identified across the country. He informed participants that most hate crimes were committed in Rome and Milan, followed by other regions of the country. He added that hate crimes were fuelled by hate speech and that a cultural climate based on hatred was dominant at the moment. He underlined the duty of the lawyers to protect citizens.

Ms. Christie Edwards, Deputy Head of the Tolerance and Non-Discrimination Department at ODIHR, greeted the participants. She emphasized Italy's contribution to the work done by the OSCE in the light of the fact that the Italians had been Chair-in-Office of the organization in 2018. She praised Italy for its long-standing commitments and co-operation with ODIHR as part of the Training against Hate Crimes for Law Enforcement (TAHCLE) and other programmes, as well as for its work under the auspices of the project. She underlined that Italy piloted the component of the project aimed at building a model regional approach to hate crimes. She informed the participants of the workshop about ODIHR's local partners, including the Regional Training Centres of the SSM, OSCAD and MBA. She enumerated the activities implemented by ODIHR in Italy: training for the State Police and Carabinieri (national military police), review of 13,000 judgments issued by the Court of Milan aimed at better understanding whether judges considered bias motivation when deciding cases, as well as focus groups with academics and criminal justice practitioners that followed the research. She praised the exchange of experience between the MBA and Athens Bar Association, which was interested in following the Italian example of providing free legal aid to victims of hate crimes. She expressed the opinion that work done in Italy would have an impact well beyond its borders.

OSCE Commitments and the toolkit to comprehensively address hate crime

Mr. Mattia Ferrero, Project Advisor and Lecturer at the Catholic University of Sacred Heart in Milan, Italy, provided introductory remarks.

Mr. Tome Shekerdjiev, Project Manager at ODIHR, provided an overview of the project. He informed the participants of the sources of financing for the project and its four national components. He explained that the region of Lombardy was selected to test a regional approach to hate crime due to its size and considerable population. He added that the lessons learned and best practices found their place into the publications forming a toolkit on

addressing hate crime. He thanked the local actors in Italy for their support, in particular the MBA, which made the national workshop a part of its continuous learning programme.

Mr. Shekerdjiev presented the joint police and prosecutors training manual based on the Bulgarian experience. He explained that a lot of attention during the trainings was devoted to questions related to diversity, biases shared by participants and the general professionalism of police forces. He added that case studies used real hate crime cases and that participants were asked to process them to uncover potential gaps in the files. He also underlined the need to evaluate every single training effort.

Mr. Shekerdjiev described the Greek experience during the project, which consisted of creating an inter-agency agreement on addressing hate crimes in the country. The project partnered in Greece with the Ministry of Justice, Transparency and Human Rights. He explained that the agreement was drafted by a working group that encompassed representatives of institutions, including those that do not normally deal with hate crimes, such as the Ministry of Health, Ministry of Migration and Ministry of Shipping and Island Policy. He informed participants about the results of inter-agency co-operation in Greece, consisting of the appointment of 24 specialized prosecutors across the country and instructing the criminal justice system actors in how to mark hate crime cases when processing files.

Finally, Mr. Shekerdjiev informed the participants about the efforts to uncover hate crimes in Poland, where the project co-operated with the Commissioner for Human Rights. He briefly described the Respondent-Driven Sampling (RDS) method used to survey the nature and scale of unreported hate crimes. He informed the participants about the changes of daily habits that the victims, according to the survey results, displayed. He added that the survey showed the significant scale of underreporting in Poland.

Ms. Maria Giannakaki, Secretary General for Transparency and Human Rights at the Ministry of Justice, Transparency and Human Rights of Greece, informed the participants about the main activities conducted in Greece in co-operation with ODIHR. These included the inter-agency agreement on addressing hate crimes signed on 6 June 2018 in Athens, an agreement aimed at improving co-operation to record and retain data on hate crime as well as training events for prosecutors conducted in line with the PAHCT methodology.⁴ She underlined that the Greek success in these activities consisted of bringing together the political leadership of the country with representatives of the public administration, the judiciary and civil society. She explained that the Ministry of Health was involved in the process to raise awareness of and provide knowledge to nurses and doctors so that they could encourage victims to report violent attacks to the police. She also said that involving the Ministry of Migration was crucial, because of the influx of migrants vulnerable to hate crimes to Greece.

⁴ Prosecutors and Hate Crimes Training (PAHCT), more information available at: <https://www.osce.org/odihr/pahct>

Moreover, Ms. Giannakaki expressed the opinion that the underreporting problem was persistent partly due to negative experiences that victims had with the police. She informed participants that the agreement on inter-agency co-operation imposed certain commitments on its signatories and built a legal basis for a coordinated effort against hate crimes. It foresaw the following actions: raising awareness, producing visibility materials, capacity-building through trainings, workshops and seminars, in co-operation with civil society, improving data recording and evaluation, providing better support to the victims, providing guidelines for each institution, consulting legislative initiatives, supporting research and surveying victims of hate crimes. She added that the working group that drafted the agreement agreed to meet on a regular basis to monitor the agreement's implementation.

Ms. Giannakaki also said that some institutions were reluctant to undertake additional tasks. Because the participating institutions shared different interests on the issue of hate crimes, their level of commitment varied considerably. The lesson learned from that situation is that any such undertaking should take into consideration the goals and limitations of each stakeholder taking part in the process.

Ms. Giannakaki emphasized that addressing hate crimes required multi-dimensional approach and that the inter-agency co-operation must go hand in hand with capacity building. That is why PAHCT's methodology was used in the training provided to Greek prosecutors on 1-3 December 2017. Twenty-nine participants took part in the event, including five specialized hate crime prosecutors. She added that the effective follow-up to these activities would rely on further training initiatives (including ODIHR's TAHCLE programme) and the personal involvement of senior officials. She also informed participants of the appointment of 24 specialized hate crime prosecutors across the country.

Mr. Tome Shekerdjiev underlined the need to involve senior officials in hate crime activities and provided the positive example of the Prosecutor of the Supreme Court of Greece, who actively participated in the entire PAHCT training, sending a reinforcing message to all prosecutors to get involved in the process.

Ms. Silvia Belloni, Councilperson of the MBA, provided remarks on activities in Italy to address hate crimes. She emphasized that projects such as "Building a Comprehensive Criminal Justice Response to Hate Crime" helped raise visibility of the problem, as well as of MBA and its activities. She agreed with Mr. Roberto Bichi, who provided the opening remarks, that addressing hate crimes protects human dignity. She said that according to a social and economic survey held in 2018, the Italians appeared to be aggressive and intolerant towards other people, perceiving otherness as a threat. She stated that, given these results, lawyers had a great responsibility to take action and oppose such views. She presented the role of the MBA in raising awareness and praised the involvement of civil society in project activities, carried out by the MBA in the form of seminars and workshops in two separate sessions in 2018. She also informed participants about the services that the MBA provided for the citizens, such as running helpdesks with free legal aid to victims of hate crimes.

Mr. Shekerdjiev added that thanks to co-operation with the MBA, the project staff learned to think about addressing hate crimes from a different angle, given that the association counts over 20.000 members. He also informed participants of the interest of the Athens Bar Association in learning from the Italian experience.

Mr. Mattia Ferrero thanked ODIHR for its long-standing co-operation on hate crimes and the MBA for their support in the project. He explained that the project was an opportunity to train police officials, lawyers and civil society representatives on hate crimes and exchange best practices. Thanks to the training sessions, the participants realized the crucial role civil society could play in addressing hate crimes, and civil society representatives learned to better understand the Italian legal system. He also mentioned activities carried out by the Catholic University of Sacred Heart in schools, where they trained teachers to recognize hate crimes and incidents, as well as raised awareness of discrimination. He stated that it would be beneficial if joint police and prosecutors training courses were implemented in Italy.

Mr. Ferrero also mentioned the study on judgements issued by the Court of Milan. He said that the study showed that hate crimes were perpetrated but not prosecuted in the proper manner. Therefore, he said, the problem did exist, even though it was not visible. He added that a better data collection system would be of benefit in Italy, as otherwise hate crimes may not be counted in the official statistics.

Mr. Ferrero also said that the project in Italy focused on the regional level, which established a network of stakeholders. He also added that it would be beneficial to translate the upcoming ODIHR guide on victim support into Italian. He drew attention of the participants to other tools on addressing hate crimes, made available by ODIHR. He expressed hope to continue co-operation with ODIHR and other involved institutions.

Discussion

Mr. Tome Shekerdjiev opened the floor for discussions.

Mr. Alessandro Maniaci, a lawyer, expressed an opinion that education was as important as prosecution in preventing hate crimes.

Mr. Shekerdjiev agreed that preventing hate crimes was a great task. He gave the example of one of the Greek prosecutors, who having completed the training with ODIHR, decided to teach students in Thessaloniki high schools about hate crimes.

Ms. Giannakaki informed the participants that the Greek National Council Against Racism and Intolerance was created in 2015. The Council paid a lot of attention to education as a preventive measure and to communication with the Ministry of Education.

Ms. Maria Chiara Ubiali, the researcher who reviewed the decisions of the Court of Milan, added that the study showed a number of judgements in which the bias motivation was identified, but that were not treated as hate crimes by the Italian legal system. She asked about the data collection systems in other countries.

Ms. Giannakaki responded that while she was not in a position to comment on court decisions, she admitted that interpreting legislation was a problem in Greece as well. She said that the Ministry of Justice tried to address this issue by training judges and prosecutors, with the support of international organizations.

Mr. Shekerdjiev underlined that the review of 13,000 judgements of the Court of Milan was not a judicial review, but a study. He added that while international organizations could not comment on verdicts issued by independent judiciaries, the European Court of Human Rights could and its judgements should be used to provide guidance. He also explained that there are currently many different ways of collecting data across the OSCE area. He gave the example of the United Kingdom's system, which is based on the perception of victims and witnesses. He said that the Greek system involves marking hate crime cases and using drop-down menus to select bias motivations. He added that ODIHR's new Information Against Hate Crimes Toolkit (INFAHCT) is ready and available online.⁵

Mr. Ales Giau Hanek, Hate Crime Officer at ODIHR, said that the study of judgements of the Court of Milan is the first of its kind and that ODIHR would continue recommending this sort of study to its participating States. He added that the results demonstrated that the criminal justice system did not deal with hate crimes in a good way.

Ms. Gabriela Fernández Rojo, a civil society representative, raised the issue of people who have unregulated legal status in Italy, who were vulnerable to hate crimes and would risk deportation if they reported such crimes. She asked about their ability to access justice in Italy.

Ms. Belloni answered that hate crime goes hand in hand with other social problems. She added that the question was highly complex and needed consideration in terms of migrant protection laws. She emphasized the role of institutions such as the MBA and civil society in tackling the issue. She also added that criminal justice actors should be instructed on how to open new channels to protect migrants from hate crime. In addition to that, she said that thanks to efforts of the MBA, victims of ordinary crimes were protected to a much greater degree than in the past.

Ms. Giannakaki added that in Greece even if a person without legal status is protected. She added that the police lacked trust and that influenced the reluctance to report hate crimes.

Mr. Shekerdjiev recommended that the participants take advantage of the project's toolkit.

⁵ "Information Against Hate Crimes Toolkit (INFAHCT): Programme Description, available at: <<https://www.osce.org/odihr/INFAHCT>>.

Break-out sessions

After the plenary session presenting the project outputs to the community of legal professionals in Milan, break-out sessions were held. The aim of the sessions was to proceed with in-depth discussions among the invited experts, related to policies pursued by the Italian authorities to address hate crimes.

Mr. Mattia Ferrero, Project Advisor and Lecturer at the Catholic University of Sacred Heart in Milan, Italy, moderated the three sessions.

1. Mechanisms for assisting victims of hate crimes- experiences and discussion

Ms. Silvia Belloni, Councilperson of the Milan Bar Association, informed the participants that the MBA decided to take part in the project to create training materials and export its best practices. She explained the practical functioning of the helpdesks created by the MBA for victims of crimes. She underlined that the Italian law on legal professions created the opportunity for these helpdesks. Helpdesks started their operations in 2007 and gradually improved their services. The MBA received a local award for their activities two years earlier. Ms. Belloni informed the participants that the main desk had one operated located in Milan's Palace of Justice, who offered a list of lawyers with specific skills and specializing on certain subject matters (based on professional training attended by specific lawyers). Another nine helpdesks were located around the city of Milan, working in turns or offering legal advice on specific subjects on particular days. In addition to this, the MBA was asked local municipalities to provide counselling on specific issues, thus, specialized desks had been introduced (domestic violence, family members of gamblers, etc.). MBA was supported by civil society, which offers other kinds of advice. Moreover, there were three desks Milan's three main jails, providing legal support related to the inmates, related to trial procedures, laws on property, tax, etc.

Mr. Fabio Roia, Magistrate at the Court of Milan, explained that changes in the Italian legal system were influenced by the adoption of the EU's Victims' Directive (hereinafter: the Directive).⁶ He added that the Italian law referred to the person offended by a criminal rather than to a victim and the difference was practical, not only linguistic. He also said that the Italian legislature was a little late in implementing the international law provisions on victims' rights. The Italian criminal code defines who is to be considered a vulnerable person. The distinction, according to the Italian legislation, foresaw a subjective profile: psychological, taking into account subjective conditions such as age, psychological and economic problems, etc.; and an objective profile: general circumstances, specific motivations (racism, organized crime, terrorism, human trafficking, etc.). Mr. Roia said that the Italian legislation, in his opinion, was not fully in line with the Directive, especially in instances when subjective criteria were taken into consideration.

⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>>.

Mr. Roia also explained that every time a crime was motivated by racism, a statement of vulnerability was requested from the victim and attached to the case file. Such declaration should trigger protection systems, including the presence of an expert (psychologist, language assistant) while being interviewed by the police and prosecution. Although the system in Italy was not fully in line with these requirements, different solutions had been on offer (including videoconferencing for hearings, hearings outside the court building). Mr. Roia explained that according to the Directive, a lot of information should be provided to the victim, including interpretation and an explanation of what happened in the hearing room. However, the most common solution in Italy is to hand a translated text on a sheet of paper. This is, in his opinion, not in compliance with the Directive, as it did not transfer the spirit of the legislation. He also explained that a lot of recent Italian legislation was based on the *Talpis v. Italy* case, which concerned article 14 of the European Convention of Human Rights.

Mr. Ales Giau Hanek, Hate Crime Officer at ODIHR, informed the participants that ODIHR realized some time ago that it was putting a lot of effort on the punitive aspect of hate crimes, while little attention was paid to the victims. In the meantime, the Directive came into force in the EU in 2015 and all European countries have been struggling with its implementation. While, in his opinion, the Directive was not comprehensive and addressed selected legal institutes, it specifically highlighted victims of hate crimes and granted them special support. In order to provide such support, however, needs assessment should be performed, which was precisely the idea behind the Directive. It stated that the first time a victim approached the authorities, they should assess the needs of the victim, which should trigger a process of continuous support going even beyond the trial. This needs assessment could be supported by community-based organizations and civil society, as state bodies were not equipped to do this effectively. The well-being of a victim demands the collaboration of both external and internal actors of the criminal justice system. When service providers are identified outside the criminal justice system, the authorities need to be able to refer a victim to such a provider, therefore they need to keep their contact lists updated. According to Mr. Giau Hanek, the biggest challenge was the fact that most of the countries were used to approach victims of crime from a processual perspective (rights in the proceedings, hearings, etc.), while the Directive brought an Anglo-Saxon approach of viewing the victim as a person. The combination of those two different traditions has caused many problems. Mr. Giau Hanek explained that a robust system of victim support must be built, consisting of civil society, private providers, and government adjustments to criminal proceedings.

Mr. Giau Hanek also informed participants that ODIHR's "Victims of Hate Crime in the Criminal Justice System: A Practical Guide" would be published in 2019 and it would be addressed at criminal justice system agencies and state-run victim support systems, dealing with policies, policy adjustments and the build-up of a system. It would also present good practices from OSCE participating States.

Mr. Giau Hanek praised the idea of helpdesks. He expressed the opinion that the idea could develop in two directions. First, helpdesks might serve to provide information to citizens, explain the process and provide simple legal advice. Alternatively, they might play a pioneering role if they assume more responsibility and not only focus on procedure, but also

provide potential individual needs assessment for victims. He also said that when there was an existing needs assessment methodology, these methodologies should be coordinated. If a methodology consisting of a questionnaire or a structured conversation does not exist, it should be developed.

Discussion

Ms. Belloni responded that the MBA could consider organizing the helpdesk service according to the mentioned principles and other professionals, such as psychologists and social workers, could be present at the helpdesks. She referred to best practices related to women victims of domestic violence.

Ms. Giannakaki expressed her interest in the presentation on challenges with implementing the Directive in Italy. She informed participants that the transposition of the Directive in Greece was also challenging, for example when protecting minors.

Mr. Roia responded that Italy had advanced legislation in terms of protecting minors. However, the Directive met strong resistance when it came to women victims of domestic violence. He said that the harmonization of the national law with the Directive was not successful.

Mr. Stefano Chirico, Lieutenant Colonel at OSCAD, informed the participants that the organization he represented had trained 11.000 police officers since 2012. He said that the lack of adequate national legislation put a lot of responsibility on the police, which had to make assessments related to the state of the victim upon first contact.

Mr. Roia responded that the temporary solutions used by the police in the absence of proper legislation were good practices. However, he underlined, it meant that every police department was handling cases in a different manner when the European legislation should be implemented at the national level. He informed participants about a draft law which was discussed at the parliament, aimed at protecting female victims of domestic violence. He said that the police sometimes invite experts to be present during hearings, but not every police station followed the same procedure.

2. Training criminal justice agencies on investigation, prosecution and adjudication of hate crimes- experiences and discussion

Mr. Mattia Ferrero informed the participants of the Memorandum of Understanding between ODIHR and Italian Ministry of Interior signed at the premises of the UCSC related to implementation of the TAHCLE programme.

Mr. Stefano Chirico, Lieutenant Colonel at OSCAD, presented his institution and its mission to the participants. He also said that OSCAD worked on data recording, training police and other issues related to hate crimes. He added that the institution has co-operated with ODIHR since 2013. He underlined that OSCAD had experience in conducting training sessions for the State Police and Carabinieri in Italy. He expressed the opinion that over the years OSCAD had been gradually improving its expertise in this respect. He also said that there is

little awareness among the public on hate crime, even though awareness among criminal justice professionals is increasing.

Mr. Chirico praised the co-operation with ODIHR on hate crimes. He underlined that the customization of the training materials to the Italian context was successful, selection of case studies was proper and the police forces to be trained (State Police and the Carabinieri, rather than municipal police forces) were identified correctly. Mr. Chirico paid special attention to the aspect of customization related to community statements and the impact statements, explaining the influence that hate crimes had on entire communities. He explained that ODIHR and OSCAD selected cases that were well known and documented in order to facilitate trainers' work. He also positively assessed ODIHR's high expertise in the field and large knowledge of the international environment that contributed to the quality of the training sessions.

Ms. Daniela Biella, a trainer on hate crimes, informed the participants about her attendance at the training for magistrates conducted in Italy in the framework of the project. She also mentioned the training for lawyers and civil society activists working with victims of hate crimes, underlining that every professional coming into contact with victims should be properly trained. She recalled some of the challenges of the training sessions, including little knowledge of the concept of hate crimes among the trainees. She explained that the training sessions were interactive and forced the participants to share their perceptions on prejudice. She pointed out that, according to evaluations filed out by participants, the trainees appreciated the real case studies used in the process and the fact that they could compare different answers. Ms. Biella explained that the legislation of Italy, although not very specific, allowed hate crime to be identified in legal proceedings. She praised the UCSC for educating teachers on the issue of hate crimes.

Mr. Ferrero agreed that the prevention of hate crimes should start at schools.

Mr. Tome Shekerdjiev, Project Manager at ODIHR, explained that the reason for having the three break-out sessions at the national workshop was to share best practices on conducting training, given that all the stakeholders in Italy had been involved in some kind of a training activity. He assured participants of the availability of ODIHR's support. He informed the participants of the nine training events for police, prosecutors, magistrates, lawyers and civil society representatives conducted as part of the project.

Mr. Shekerdjiev enumerated the lessons learned during the project's implementation. He said that extensive preparation was crucial to its success. This was possible thanks to co-operation with partner institutions, such as OSCAD, with whom real case studies based on UNAR's documentation (*L'Ufficio Nazionale Antidiscriminazioni Razziali* the national equality body) were identified. He also said that proper needs assessment and research was important, involving reading international reports, civil society reports and discussing with local civil society organizations. He added that it was important to determine the previous knowledge of the trainees, understand the environment of hate crime and diversity in the local context, as well as identify vulnerable groups. He underlined that the training sessions were designed in such a way that trainees had to confront their own biases, get clear understanding of the

concept of hate crime, but also of hate crime by mistakes in perception. Emphasis was put on preventing secondary victimization and liaising with the community. All the training sessions were followed by an evaluation.

Mr. Shekerdjiev called on Italian partners to endorse the implementation of the PAHCT programme in Italy to the Superior Council of Magistracy. He also said that ODIHR's offer of support consists of not only TAHCLE and PAHCT programmes, but also of coalition building, INFAHCT and data collection-related tools.

Discussion

Mr. Ferrero opened the floor for discussion.

A lawyer from Milan who participated in the course on hate crimes organized by the project in 2018 praised the course for its usefulness in her work regarding discrimination issues. She referred to her experience in addressing cases of discrimination at Besta hospital, specializing in neurological illnesses.

Mr. Ferrero thanked her for sharing her experience and underlined that this was a great example of how the knowledge gained at the training was applied in real life conditions.

Mr. Chirico praised the joint training for lawyers and civil society organisations working with victims of hate crime. He expressed hope to organize a similar event including police officers. He underlined that using real life cases at the training sessions helped identified where were the deficits in the Italian criminal justice system. He expressed the opinion that both the police and the judiciary in Italy were not fully ready to address hate crime, partly due to work overload. He praised the outcomes of the project, attempting to address different parts of the system.

Mr. Giau Hanek informed the participants that out of 57 OSCE participating States, 55 had hate crime laws, but only between 15 and 20 submitted hate crime data on a regular basis. He added that in the case of Italy, a hate crime law exists but it is not comprehensive and only rarely used. He offered ODIHR's assistance to conduct legal reviews of criminal code provisions. He expressed the opinion that including bias motivation in a legal provision should provoke a major change in how hate crimes were addressed in Italy.

One of the participants asked what could be done with regards to the judicial system in Italy.

Mr. Ferrero explained that UCSC has carried out research on data collection and will be presented in the upcoming session.

Mr. Giuseppe Cernuto, a Judge at the Court of Milan, explained that one of the problems is the fact that police and prosecutors do not identify and do not enter the hate crime data at an early stage of the criminal procedure. This makes data collection complex.

3. Hate crime data and results from the analysis of decisions of Court of Milan-experiences and discussion

Mr. Giuseppe Cernuto, Judge of Court of Milan, emphasized that data on hate crimes was of the highest importance in addressing the phenomenon and providing adequate victim support. He said that while ODIHR was collecting data on hate crimes from its participating States, there was a problem with identifying effective strategies. Problems often occur from the lack of definition of a hate crime and lack of training. He said that there was a significant gap between the number of data entries by the police and the court. He added that acquiring data from victims was difficult and decision on whether a crime was a hate crime often rested upon the police and prosecutors. He added that the Italian legislation did not allow for detecting the bias motivation in all cases, therefore the existing statistics did not represent the real situation and were not reliable. This, coupled with the general lack of awareness in the society, made it difficult to verify the subjective factors influencing crimes. Correcting the data already included in the system is problematic, as it requires authorization from the police.

He also said that most of the recorded crimes were not of a serious nature, therefore they were handled by a separate group of judiciary officials. In these cases, bias motivation was very often omitted. Finally, Mr. Cernuto said that the problems were partly caused by the lack of a legal definition of hate crime in the Italian criminal code. While penalty enhancements were foreseen for some types of crime, other were not covered, therefore the system could not be treated as comprehensive. He added that sexual orientation was not a protected characteristic in Italy and there was an ongoing debate related to that issue.

Ms. Maria Chiara Ubiali, the researcher who reviewed the decisions of Court of Milan, informed the participants about her role in the project, consisting of analysing 13,000 decisions issued by the Court of Milan in 2016 and attempting to identify hate crimes. She explained that she was able to identify 54 cases. She was looking at whether bias motivation was included in the investigation and the judgement. She added that the Italian law included penalty enhancements for some time, focusing on what could be considered hate crime. Therefore, there were tools in the criminal code allowing to take into account the specific impact a hate crime had on the victim. She was able to find only a couple of cases where such penalty enhancements were used. In the identified cases the protected characteristics were in line with the list developed by ODIHR. The victims were mostly people belonging to religious minorities and people representing different nationalities and ethnicities. She added that there were three cases of discrimination based on sexual orientation, but the Italian law did not explicitly mention this protected characteristic. When it comes to bias indicators, the only form of bias indicator that Ms. Ubiali was able to find was related to verbal abuse reported by victims or perpetrators. She also expressed the opinion that the Italian judicial system was only considering bias motivation as a secondary factor.

Mr. Cernuto provided an overview of the study results. He explained that the most frequent hate crime was physical assault, which occurred 27 times, followed by threats (12 cases),

robbery (6 cases), stalking (4 cases), damage of property (3 times), and affray, resistance to public officer, family abuse and battery (2 cases).

Mr. Cernuto explained that most of the cases were based on bias against the race or nationality of the victim: 11 crimes targeted a Black person, nine cases concerned victims from South America, seven from North Africa, four from China or the Philippines, and four against Arabs, whereas in different individual decisions, the victims were from Albania, Romania or were Roma. In one case, the offence was against a person just because she was “a foreigner”. In three cases, hate crimes were committed against people from Italy's southern regions. Jews had been victims twice, while Christians and Muslims once each. Among the selected decisions, there were also three cases of bias on the basis of sexual orientation of the victims, who were homosexual men. Two judgments revealed bias discrimination due to the political ideas of the victims. Mr. Cernuto emphasized the existence of political and territorial biases, typical for Italy.

Discussion

Mr. Stefano Chirico, Lieutenant Colonel at OSCAD, congratulated the researchers and confirmed that investigating the motivation of the perpetrator is of secondary importance in the Italian procedure. He also confirmed that political and territorial biases were not included in the Italian legislation. He asked how article 61 of the Italian penal code, related to aggravating circumstances, was invoked, considering that it was used in some cases of demonstrated homophobia.

Ms. Ubiali explained that she picked all the cases related to discrimination, even though some of them were not covered by the Italian legislation. She told Mr. Chirico that only one case based on article 61 had been identified.

Mr. Cernuto added that some of the hate crimes included in the selection were not considered as hate crimes by the court. Once again, he emphasized the need to train criminal justice agencies.

One of the participants intervened and expressed the opinion that in the case of minor crimes, alternatives to the criminal justice system could be used.

Mr. Cernuto responded that such alternatives were not covered by the study, but were used with juvenile offenders.

Mr. Chirico underlined the need to train the police. He also commented cases related to article 604 of the Italian criminal code, related to hate speech. In his opinion, the provisions of that article were not used often and there was a general difficulty in tackling hate speech committed online.

Mr. Cernuto explained that aggravating factors were included into Italian legislation along with the so-called “Mancino law” (Law N° 205/1993 (Decree-Law No. 122 of 26 April 1993 converted into Law No. 205 of 25 June 1993). He informed participants that the cases related to article 604 (hate speech) were not included in the study.

Ms. Ubiali added that there were very few court decisions on hate speech.

Mr. Ferrero also said that some social media decided to voluntarily remove harmful content. He expressed hope that ODIHR comes up with an advisory approach to that issue, but noted that the understanding of hate speech and its intersection with freedom of speech was understood differently in the United States, which are an OSCE participating State and have influence on its decisions.

Mr. Chirico underlined the role of civil society in addressing hate speech.

Mr. Tome Shekerdjiev, Project Manager at ODIHR, informed the participants that ODIHR will publish the full study on the decisions issued by the Court of Milan on the project's webpage. He underlined that the report and the low number of identified hate crime cases showed that hate crimes were either not reported, or not recognised. He suggested that a victimization survey, similar to the one conducted in Poland under the auspices of the project, could be one of the solutions to the problem. He also advocated following the Greek example to improve data collection by marking hate crime cases. He also referred to the example of United Kingdom, which used the marking system throughout the judicial process. He pointed out the need to establish an effective system of data collection. Mr. Shekerdjiev also expressed the opinion that further capacity building would be of benefit to Italian criminal justice system and proposed the adoption of PAHCT programme in Italy, as well as further training through Regional Training Centres of the Superior School for Magistracy.

Mr. Ales Giao Hanek, Hate Crime Officer at ODIHR, praised the research on the decisions of the Court of Milan. He said that the 54 selected cases were the ones that could have been identified, demonstrating that recording bias motivation was the key to recording a hate crime. He referred to the recording system in the United Kingdom, where the police used an open criteria of recording hate crimes based on a broad working definition (broader than the legal definition), agreed between the police and prosecutors, based on the perception of victims and witnesses. Recording at an early stage with transferable data made the system very effective. Such an effective system generated, in turn, reliable statistics. Mr. Hanek explained that the key issue was the ability to recognise hate crimes, therefore, training was essential as well as introduction of proper recording procedures, securing the transferability of the data. He informed the participants of existing and upcoming ODIHR tools to support participating States, including the guide on hate crime data collection, INFACHT toolkit and workshops organized by ODIHR in co-operation with the EU's Agency for Fundamental Rights.

Christie Edwards, Deputy Head of the Tolerance and Non-Discrimination Department at ODIHR, thanked the participants of the workshop. She expressed hope that co-operation started under the auspices of the project would be continued. She also praised the exchange of experience and opportunities of co-operation between the project stakeholders.

Conclusions

Workshop participants agreed on a number of issues and proposed several activities to better address hate crimes in Italy. The main themes that recurred during the workshop were related to the provision of quality support to the victims of hate crimes, continuous training of

criminal justice system actors on hate crimes and improving hate crime data collection system in Italy. Participants also pointed out deficiencies in the Italian response to hate crimes, related to systemic problems and partial implementation of the EU Victim's Directive.

Participants presented the following decisions and suggestions:

- the need to improve the Italian legislation so that it covers all bias motivations in a clear way, and also so that it fully reflects the provisions of the EU Victim's Directive;
- holding joint police and prosecutor training courses in Italy;
- training sessions for the police similar to those organized for the lawyers and civil society working with victims of hate crimes;
- pursuing education and training on hate crimes on different levels both as a preventive measure and a way of building capacity of the criminal justice system;
- improving the hate crime data collection system to produce clear and reliable statistics;
- the need to record hate crimes at an early stage of the criminal procedure in Italy;
- interest in further and deeper co-operation between the Italian institutions and ODIHR;
- the MBA would share their experience and best practices related to operating free legal aid to victims of hate crimes with the Athens Bar Association;
- the necessity of raising general awareness of hate crimes in the society.

In addition, ODIHR:

- informed the participants that ODIHR will publish the full text of the study on decisions of the Court of Milan on the project's webpage;
- suggested that the free legal aid helpdesks in Milan try to expand their activities and start to play a role in individual needs assessment for the victims of hate crimes;
- called on Italian partners to endorse the national implementation of the PAHCT programme in Italy;
- offered its support in parts of the TAHCLE and PAHCT programmes, as well as in terms of coalition-building, INFAHCT and data collection-related tools;
- informed the participants that it would continue recommending studies on court decisions analysing the application of domestic law in other OSCE participating States;
- recommended applying the elements of the toolkit on addressing hate crimes produced as a result of the “Building a Comprehensive Criminal Justice Response to Hate Crimes” project in the Italian context;
- informed participants that a guide on victims support would be published in 2019. Participants suggested to translate the guide into Italian language.

The participants agreed that the tools produced basing on the Italian experience would serve as a model of regional approach to hate crimes for other EU and OSCE participating States.

Annex 1 – Workshop agenda

NATIONAL WORKSHOP

“BUILDING A COMPREHENSIVE CRIMINAL JUSTICE RESPONSE TO HATE CRIME” DEVELOPING A COMPREHENSIVE RESPONSE TO HATE CRIMES ON A REGIONAL LEVEL

15 JANUARY 2018

PALACE OF JUSTICE, MILAN

SALONE VALENTE Hall

9:00- 9:30 Registration of participants

9:30- 9:45 Opening remarks:

Christie Edwards, Deputy Head of the Tolerance and Non-Discrimination Department at ODIHR

9:45- 10:00 Institutional greetings

Marina Tavassi, President of the Court of Appeal in Milan

Roberto Bichi, President of the Court of Milan

Remo Danovi, President of the Milan Bar Association

10:00- 11:15 OSCE Commitments and the toolkit to comprehensively address hate crime

Tome Shekerdjiev, Project Manager, ODIHR

Silvia Belloni, Councilperson of the Milan Bar Association

Maria Giannakaki, Secretary General of Transparency and Human Rights at the Ministry of Justice, Transparency and Human Rights of Greece

11:15- 11:45 Coffee break

Break-out session on specific topics on addressing hate crime in the room of the Council of the Milan Bar Association

11:45- 13:15 Mechanisms for assisting victims of hate crimes- experiences and discussion

Fabio Roia, Magistrate at the Court of Milan

Silvia Belloni, Councilperson of the Milan Bar Association

Ales Giau Hanek, Hate Crime Officer at ODIHR

- 13:15-14:30 Lunch**
- 14:30-16:00 Training criminal justice agencies on investigation, prosecution and adjudication of hate crimes- experiences and discussion**
- Stefano Chirico, Lieutenant Colonel at the Observatory for Security against Acts of Discrimination of the Italian National Police
- Daniela Biella, Trainer on hate crimes
- Tome Shekerdjiev, Project Manager, ODIHR
- 16:00-16:30 Coffee break**
- 16:30-18:00 Hate crime data and results from the analysis of decisions of Court of Milan- experiences and discussion**
- Giuseppe Cernuto, Judge of Court of Milan
- Maria Chiara Ubiali, researcher of the decisions of Court of Milan
- Ales Gao Hanek, Hate Crime Officer at ODIHR
- 18:00 Conclusion of the event**
- Christie Edwards, Deputy Head of the Tolerance and Non-Discrimination Department at ODIHR

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