



Forum 18 <http://www.forum18.org>

*The right to believe, to worship and witness  
The right to change one's belief or religion  
The right to join together and express one's belief*

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#### ***Session 4: The role of legislation, law enforcement, data collection, and civil society in combating and preventing intolerance and discrimination, including hate crimes***

This session's Annotated Agenda looks at hate crimes, in the ODIHR working definition "any criminal offence, including offences against persons or property, where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership with a group. A group may be based upon their real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or other similar factor". Yet an apparently missing dimension of hate crime is that participating States are themselves responsible for many of the most serious intolerant and discriminatory actions in the OSCE area. Similarly, some participating States have made a central part of a human right and an OSCE human dimension commitment a *de jure* or *de facto* "criminal offence" - and this labelling directly targets victims associated with or part of groups as defined in the working definition.

Examples of the missing dimension are some freedom of religion or belief violations - and this is not the only fundamental freedom that could be chosen. Time does not allow more than a brief sketch, but one example is requiring religious communities to register to practice their faith. This is clearly against OSCE commitments and international human rights law. Yet in Uzbekistan all unregistered religious activity is a criminal offence, leading directly to the targeting of groups such as in the country's north-west all Protestants and Muslims outside state-controlled structures. Similarly, unregistered religious activity is a criminal offence in Belarus, and although Turkmenistan has made unregistered religious activity an administrative offence, in practice there is no difference from when it was a criminal offence. Here in Kazakhstan, people are often prosecuted for unregistered activity.

Another example of the missing dimension is the ability to share religious and non-religious beliefs, and to express criticism of any or all religious views. This is a key part of freedom of religion or belief, as defined in international human rights standards such as the International Covenant on Civil and Political Rights. Participating States have long committed themselves to observe international human rights law, as in the Copenhagen Document whose 20<sup>th</sup> anniversary was marked this month. Yet in Uzbekistan sharing beliefs is banned by Article 216-2 of the Criminal Code, which states that the "conversion of believers belonging to a certain religion to other religions (proselytism) and other missionary activities, will, after the application of penalties under Administrative Law for similar activities, be punished by a fine of between 50 and 100 times the minimum wage or up to six months' detention or up to three years in prison." Similarly, Article 5 of the Religion Law states that: "Actions aimed at turning believers from one faith to another (proselytism) are forbidden, as is any other form of missionary activity." Here in Kazakhstan, proposed revisions to the Administrative Code retain punishments for unregistered religious activity, including "missionary activity" without a state licence.

So how can this missing dimension of hate crime be addressed? Recommendations for participating States and the OSCE as a whole could include:

- consider how the OSCE and its institutions can respond to participating States which engage in attacks and other discriminatory or intolerant actions against persons or property - including places of worship - related to a group within the meaning of the ODIHR working definition;
- consider how the OSCE and its institutions can respond to participating States which criminalise - *de jure* or *de facto* - OSCE human dimension commitments and international human rights;
- insist that politically binding human dimension commitments are for implementation by all participating States - including those holding the Chairperson-in-Office role;
- and affirm the dependence of genuine tolerance and non-discrimination on effective protection of fundamental human rights and the rule of law.

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