



What the ODIHR's Hate Crime Report for 2011 Reveals about States' Implementation of OSCE Commitments

Summary

This year's attacks on a Jewish school in Toulouse, France, and a Sikh Temple in Wisconsin, USA, resonated throughout the world. In the last six months, at least 500 migrants have been attacked in Greece. After several years of significant progress due to stronger law enforcement, Russia's record in racist and neo-Nazi violence is worsening once again, with NGOs reporting at least 11 racist murders this year. Roma communities and LGBTI persons throughout the OSCE are targeted in some of the most violent incidents that often go unreported or altogether ignored by police.

The responsibility to respond to such acts of hate crime violence through comprehensive policies lies with governments. The Organization for Security and Cooperation in Europe (OSCE) offers such policy prescriptions through the range of commitments adopted by all participating States and the resulting reporting, know-how, tools, and the training resources developed by OSCE institutions. The findings of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) latest annual report—"Hate Crimes in the OSCE Region" Report for 2011—point to the lack of progress of most States to fulfill commitments to combat hate crimes.

The annual report is an important tool in understanding the nature and frequency of hate crime across the OSCE region. Such reporting is undermined though when states either don't collect such data at the national level or fail to contribute their findings to the ODIHR on a timely basis.

For this latest report, only 30 countries submitted completed questionnaires, and another six participating States sent in general information. When the current methodology for the hate crime report was launched three years ago, 47 questionnaires were submitted to ODIHR. While Malta and San Marino have never filled out this questionnaire, countries that failed to update a questionnaire or submit information since 2008 include Albania, Armenia, Luxembourg, Russian Federation, Tajikistan, Turkmenistan, United States¹; since 2009: Belarus, Kyrgyzstan,

The Former Yugoslav Republic of Macedonia, Monaco, Slovak Republic; and since 2010: Estonia, France, Georgia, Greece, Netherlands.

The resulting information gaps are best seen in ODIHR's own compilation of the data submitted by participating States (ODIHR's Table: pages 23-28). The predominance of empty cells in this table is emblematic of the certain "fatigue" seen in government responses to hate crimes across the OSCE. The failure of governments to consistently submit data to the ODIHR makes it impossible to conduct year-on-year comparisons or use the data in other helpful ways.

Importantly, the report makes use of NGO information to fill broad data gaps left by the absence of official reporting. Seventy-two NGOs submitted hate crime data to ODIHR for the 2011 reporting period, compared to a peak of 93 NGO submitted for the previous reporting cycle, 73 submissions for 2009 and 47 for 2008. ODIHR's cooperation with other intergovernmental bodies, such as UNHCR or ECRI, is also improving and leads to better information flow and better analyses even in spite of the shortcomings in the official reporting.

The questionnaires received by ODIHR this year indicate additional problems in official reporting of hate crimes. A number of participating States still collect no statistics on hate crime. Information on cases recorded by police in 2011 is missing for 32 States, and is not yet available in four. In addition, five countries reported fewer than twenty incidents nationally. Even countries that have made efforts to establish more robust monitoring systems generally do not disaggregate the data—limiting its usefulness to serve as a tool to develop sound policies to protect those vulnerable to bias-motivated attacks. Few countries provide information on the criminal justice response to these crimes.

Although States have taken on commitments to adopt hate crime laws, seventeen countries still have not done so. Even participating States that have such laws often fall short of extending protection to frequently targeted groups. For example, only seventeen States have hate crime laws that include sexual orientation in the list of protected categories.

¹Annual data on hate crime in the United States and publicly and readily available, even if the United States doesn't regularly submit that and other relevant information to the ODIHR as part of the formal reporting process.

OSCE Commitments

Since 2003, the fifty-six participating States of the OSCE have adopted Ministerial and other decisions that have highlighted their commitments to combat hate crimes, including by improving their efforts to collect data and adopt adequate hate crime legislation. As part of those decisions, States have agreed to the following:

Government Data Collection

- “Collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance, including the number of cases reported to law enforcement, the number prosecuted and sentences imposed” (Ministerial Council Decision No. 9/09);
- “Collect and maintain reliable data and statistics on hate crimes which are essential for effective policy formulation and appropriate resource allocation in countering hate motivated incidents and, in this context, also invites the participating States to facilitate the capacity development of civil society to contribute in monitoring and reporting hate motivated incidents and to assist victims of hate crimes” (MC Decision No. 13/06);
- “Strengthen efforts to collect and maintain reliable information and statistics on hate crimes and legislation, to report such information periodically to the ODIHR, and to make this information available to the public and to consider drawing on ODIHR assistance in this field, and in this regard, to consider nominating national points of contact on hate crimes to the ODIHR” (MC Decision No. 10/05).

Hate Crime Laws

- “Enact, where appropriate, specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes” (MC Decision No. 9/09);
- “Recognize the importance of legislation regarding crimes fuelled by intolerance and discrimination, and, where appropriate, seek the ODIHR’s assistance in the drafting and review of such legislation” (MC Decision No. 4/03).

ODIHR Data Collection

- “Nominate, if they have not yet done so, a national point of contact on hate crimes to periodically report to the ODIHR reliable information and statistics on hate crimes” (MC Decision No. 9/09);
- “Encourage the ODIHR, based on existing commitments, including through cooperation with the relevant OSCE

executive structures to continue to serve as a collection point for information and statistics on hate crimes and relevant legislation provided by participating States and to make this information publicly available through its Tolerance and Non-discrimination Information System and its report on Challenges and Responses to Hate-Motivated Incidents in the OSCE Region” (MC Decision No. 13/06).

In line with these commitments, the Office for Democratic Institutions and Human Rights (ODIHR) has reported on hate crimes in the OSCE region and government responses to them in annual reports on the subject. In this connection, the ODIHR sought to identify National Points of Contact on Combating Hate Crimes representing each participating State—individuals and bodies responsible for channeling hate crime statistics to ODIHR. As part of this data collection effort, the ODIHR also developed a questionnaire for States to submit data to the ODIHR in line with their commitments. Although 50 participating States claim to collect hate crime data, only 31 countries submitted questionnaires to ODIHR for the Annual Report for 2010, which provides a record of the latest data on hate crimes available in and provided by the OSCE participating States.

Group I: No Public Hate Crime Data Collected

No Hate Crime Data Available

The **Former Yugoslav Republic of Macedonia, Luxembourg, and Portugal** submitted questionnaires indicating that they do not compile any data on hate crime incidents, while **Holy See, Malta, Monaco, San Marino** did not indicate whether or not they collect hate crime data.

No Public Data Available

Thirteen governments—**Albania, Azerbaijan, Croatia, Estonia, Greece, Italy, Kyrgyzstan, Lithuania, the Netherlands, Spain, Tajikistan, Turkey, and Uzbekistan**—claim to collect data, but either do not publicize it or make it available to the public only upon request. Such a policy essentially eliminates the public from discussions about the nature and scale of hate crimes as well as measures taken by the government to combat them. In addition to informing policymakers, data on violent hate crimes should be made publicly available so as to better involve civil society in a robust public debate on effective responses.

Recommendations

- For those countries in which no hate crime data is available, undertake to establish a system for the collection of hate crime data.

- Make hate crime data, including the data submitted to the ODIHR and other international institutions, available to the public.

Group II: Few or No Hate Crimes Reported

Five governments—**Azerbaijan, Kazakhstan, Lithuania, Ukraine, and Uzbekistan**—reported that *fewer than twenty incidents* were recorded by police in 2011. While underreporting of hate crime incidents remains a problem throughout the region, low official figures in some cases run counter to records of incidents reported in the media and by nongovernmental monitors. Such low numbers may also reveal shortcomings in police reporting of hate crime and demonstrate the need for States to examine the effectiveness of official data collection systems and to ensure greater outreach to community-based and other nongovernmental organizations.

Recommendations

- Conduct an inquiry into the potential shortcomings in existing reporting and data collection systems.
- Train police to identify and properly record bias-motivated incidents and to forge links with community groups.
- Reach out to nongovernmental organizations and develop programs to enhance reporting of hate crimes.

Group III: Data Is Insufficiently Disaggregated According to Bias

One of the goals of effective systems of data collection is to identify the groups that are most affected by hate crimes—a process that hopefully guides the creation of effective policies aimed at protecting any such vulnerable groups. However, few participating States disaggregate hate crime data on the basis of the bias motivations or victims' characteristics. Even fewer actually submit data to back up those claims.

Table 1 demonstrates the discrepancy between the claims made by OSCE participating States and the data they actually submit to the ODIHR.

Recommendations

- Develop monitoring systems that provide disaggregated data on the characteristics of the victims or on the bias motivations.
- Make disaggregated hate crime data available to the ODIHR and to the public.

Bias type	States that claim to collect data	States that submitted information on specific cases	States that submitted actual data to ODIHR ²
Racism and Xenophobia	40	2 (Belgium, Poland)	11 (Austria, Croatia, Germany, Ireland, Italy, Kazakhstan, Latvia, Lithuania, Poland, Sweden, United Kingdom)
Antisemitic	21	1 (Austria)	5 (Germany, Ireland, Italy, Sweden, United Kingdom)
Anti-Muslim	18	0	2 (Sweden, Switzerland)
Anti-Christian (or against members of other religions)	12	3 (Germany, Turkey, United Kingdom)	1 (Sweden)
Anti-LGBT	29	1 (Serbia)	4 (Germany, Ireland, Sweden, United Kingdom)
Anti-Roma	13	4 (Bulgaria, Czech Republic, Hungary, Serbia)	1 (Sweden)

Group IV: Data Is Insufficiently Disaggregated Between Violent Crimes, Incitement, Discrimination, and other Violations

Bulgaria, Cyprus, Estonia, Iceland, Hungary, and Portugal fail to disaggregate data by the type of crime to distinguish between violent crime, verbal threats and insults, and incitement to hatred.

However, even where governments do claim to disaggregate on this basis, such data is rarely available publicly, and was in most cases not submitted to the ODIHR.

Due to insufficient disaggregation of incidents between violent crimes, incitement, discrimination, and other violations, it is difficult to assess the exact nature of the problem in a given country and to identify the targeted measures that would be most effective.

Recommendations

- Classify data on the basis of all types of bias motivated crime, disaggregating between violent crimes and nonviolent criminal violations.
- Make hate crime data—disaggregated by crime type—available to the ODIHR and to the public.

² 2011 data from Canada, Finland, Spain, and the United States were not available in time for this report.

Group V: Existence of Hate Crime Laws in Criminal Codes

A growing number of the 56 countries in the OSCE are adopting criminal laws to expressly address violent hate crimes, largely in the form of penalty enhancement provisions, since the ODIHR began to track the issue. At present, there are 40 countries in which legislation treats at least some bias-motivated violent crime as a separate crime or in which one or more forms of bias is regarded as an aggravating circumstance that can result in enhanced penalties.

However, 15 OSCE countries still have no express provisions defining bias as an aggravating circumstance in the commission of a range of violent crimes against persons. They are: **Estonia, Germany, Holy See, Hungary, Iceland, Ireland, Luxembourg, Monaco, Montenegro, the Netherlands, Poland, San Marino, Serbia, Switzerland, and Turkey.**

Data from government bodies, NGOs and media in several of these countries indicate that violent hate crimes are occurring, but criminal justice authorities are unable to address the bias nature of the crime because they lack a legislative basis to do so.

All laws in 42 countries where legislation addresses bias-motivated violence as a separate crime or as an aggravating circumstance cover bias based on race, ethnicity, and/or national origin, while 37 also cover religious bias. However, hate crime legislation extends to bias motivated by animus based on sexual orientation in only seventeen countries—**Andorra, Belgium, Canada, Croatia, Denmark, France, Greece, Lithuania, the Netherlands, Norway, Portugal, Romania, Slovenia, Spain, Sweden, United Kingdom, and the United States**—and disability in only eleven—**Andorra, Belgium, Canada, Lithuania, Malta, Norway, Romania, Spain, Slovenia, United Kingdom, and the United States.**³

Recommendations

- Enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
- Concrete steps to begin this process could involve utilizing the ODIHR publication *Hate Crime Laws: a Practical Guide* as a basis for a training or consultation among experts and officials across relevant ministries.

³ Information in this section comes largely from Human Rights First's Hate Crime Report Card: <http://www.humanrightsfirst.org/discrimination/>.

Group VI: Lack of Data on Prosecution and Sentencing

Statistics for sentencing and prosecutions are necessary to assess the government response to hate crimes.

However, the vast majority of participating States did not submit data regarding prosecutions in hate crime cases in 2010. Thus, though there are an increasing number of States that are adopting hate crime laws, there is little evidence to evaluate how those laws are used.

Recommendation:

- Establish and/or enhance existing monitoring systems to disclose the record of both prosecutions of hate crime cases and the use of sentence enhancement provisions.

Discrepancies in State, NGO, and IGO Reporting

Table 2 on the following page demonstrates how little data is reported to ODIHR, across the board. Total number of cases officially recorded by state authorities is rarely broken down into data disaggregated by bias types—although OSCE commitments call on participating States to do so.

Each chapter in ODIHR's hate crime report lists all three types of data or incident information submitted to the office by these three types of sources. Discrepancies and deficiencies in the reporting—e.g., poorly disaggregated officially recorded data; NGO figures varying significantly from official reporting; the complete lack of official, intergovernmental, and civil society data; or predominance of data that comes from intergovernmental sources, such as OSCE or UNHCR—is apparent in the Table 2 below.⁴ The table shows, for example, that racist and xenophobic attacks are better recorded than other types of hate crime, that information on anti-Roma hate crimes is almost nonexistent, and that homophobic data comes primarily from NGOs.

⁴ Legend to Table 2:

•—no data submitted to ODIHR.

14—number of hate crimes against persons (including threats) and property submitted to ODIHR by NPCs (official data), civil society: nongovernmental or community groups, or intergovernmental organizations (includes Holy See's international observations). N/A—No data available at the time of publication.

General Recommendations

This paper highlights the different stages of compliance with commitments among the 56 participating States in the areas of data collection and implementation of hate crime laws. While specific recommendations are provided in the sections above, some general recommendations for all States are outlined in Human Rights First's **Ten-Point Plan** for Combating Hate Crimes:

- 1. Acknowledge and condemn violent hate crimes whenever they occur.** Senior government leaders should send immediate, strong, public, and consistent messages that violent crimes which appear to be motivated by prejudice and intolerance will be investigated thoroughly and prosecuted to the full extent of the law.
- 2. Enact laws that expressly address hate crimes.** Recognizing the particular harm caused by violent hate crimes, governments should enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
- 3. Strengthen enforcement and prosecute offenders.** Governments should ensure that those responsible for hate crimes are held accountable under the law, that the enforcement of hate crime laws is a priority for the criminal justice system, and that the record of their enforcement is well documented and publicized.
- 4. Provide adequate instructions and resources to law enforcement bodies.** Governments should ensure that police and investigators—as the first responders in cases of violent crime—are specifically instructed and have the necessary procedures, resources and training to identify, investigate and register bias motives before the courts, and that prosecutors have been trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.
- 5. Undertake parliamentary, interagency or other special inquiries into the problem of hate crimes.** Such public, official inquiries should encourage public debate, investigate ways to better respond to hate crimes, and seek creative ways to address the roots of intolerance and discrimination through education and other means.
- 6. Monitor and report on hate crimes.** Governments should maintain official systems of monitoring and public reporting

to provide accurate data for informed policy decisions to combat violent hate crimes. Such systems should include anonymous and disaggregated information on bias motivations and/or victim groups, and should monitor incidents and offenses, as well as prosecutions.

Governments should consider establishing third party complaint procedures to encourage greater reporting of hate crimes and conducting periodic hate crime victimization surveys to monitor underreporting by victims and underrecording by police.

- 7. Create and strengthen antidiscrimination bodies.** Official antidiscrimination and human rights bodies should have the authority to address hate crimes through monitoring, reporting, and assistance to victims.
- 8. Reach out to community groups.** Governments should conduct outreach and education efforts to communities and civil society groups to reduce fear and assist victims, advance police-community relations, encourage improved reporting of hate crimes to the police and improve the quality of data collection by law enforcement bodies.
- 9. Speak out against official intolerance and bigotry.** Freedom of speech allows considerable latitude for offensive and hateful speech, but public figures should be held to a higher standard. Members of parliament and local government leaders should be held politically accountable for bigoted words that encourage discrimination and violence and create a climate of fear for minorities.
- 10. Encourage international cooperation on hate crimes.** Governments should support and strengthen the mandates of intergovernmental organizations that are addressing discrimination—like the Organization for Security and Cooperation in Europe, the European Commission against Racism and Intolerance, and the Fundamental Rights Agency—by encouraging such organizations to raise the capacity of and train police, prosecutors, and judges, as well as other official bodies and civil society groups to combat violent hate crimes. Governments should also provide a detailed accounting on the incidence and nature of hate crimes to these bodies in accordance with relevant commitments.

Recent Examples of Hate Crimes

- On November 6, 2012, a group of young men attacked a 20-year-old Tajik migrant on a train platform in Odintsovo, Moscow Oblast, **Russia**. The victim was severely beaten and died of his wounds; relatives said the attack was prompted by his phone conversation in Tajik, which was overheard by the unknown perpetrators.
- On September 28, 2012, an explosive device was detonated at a Jewish communal building in the early morning hours in Malmo, **Sweden**. No one was injured, but damage was caused to the building. A series of antisemitic attacks in Malmo, including acts of vandalism and firebombings, prompted a demonstration of support of the Jewish community by local residents. Following an increase in attacks on Jewish and Muslim targets, the police created a dedicated hate crimes hotline.
- A wave of attacks against foreigners erupted in **Greece** in July, culminating with the beating and murder of an Iraqi immigrant on August 12, 2012. The United Nations High Commissioner for Refugees (UNHCR) joined the Racist Violence Recording Network in associating the rise in violence on widespread impunity for attacks against migrants and refugees.
- On August 5, 2012, a mass shooting took place at a Sikh temple in Oak Creek, Wisconsin, **USA**. A white supremacist stormed the temple, killing six people and wounding four others. The attacker was first shot by a police officer and later fatally shot himself in the head. The investigation, headed by U.S. Attorney General, was referred to as a hate crime.
- In **Hungary**, violence broke out at an anti-Roma demonstration in Devecser on August 5, 2012. Organized by far-right party Jobbik, as many as one thousand far-right sympathizers and vigilante groups came to the village. According to reports, concrete, stones, bottles, and other debris was thrown at Roma households while the police did little to interfere or investigate the acts and threats.
- In June 2012, the police in Sussex, **United Kingdom**, investigated a series of graffiti incidents as hate crimes. Anti-religious graffiti was daubed on the doors of a church in Hastings and at St. Mary's church in the High Street.
- After Sviatoslav Sheremet, head of a **Ukrainian** LGBTI organization, spoke to the media announcing the cancellation of a pride event in Kyiv, he was assaulted by masked men. Sheremet's face was severely bloodied, though no other injuries have been reported. Following the pride event's cancellation, hundreds of neo-Nazis and other right-wing extremists spread throughout the city and began to attack people, at least two of whom required hospital treatment.
- In May, the body of a gay **Belgian** man who disappeared on April 22 was discovered by the police in Liege. Three suspects were later arrested for the murder of the 32-year-old victim. A number of acts of homophobic violence occurred in the country in 2012, including attacks in Ghent, Antwerp, Aaist, and another brutal murder in Liege.
- On April 9, 2012, unknown assailants threw paint bombs at the largest mosque in Berlin, **Germany**. An insulting image was also placed at the entrance to Sehitlik mosque, which previously suffered four arson attacks over three years.
- In **Turkey**, three unidentified individuals attacked and beat Protestant Pastor Semih Serkek on April 7, 2012, immediately after an Easter service at the pastor's church in Istanbul. Christian clerics across Turkey expressed anxiety regarding the growing threats they face in wake of the attack on Pastor Serek.
- In March 2012 in **France**, a 23-year-old French-Algerian Islamist terrorist murdered four Jews, including a rabbi and three children, at the Ozar Hatorah Jewish school in Toulouse. After a long siege at his home, he was killed by the police.
- In March 2012, several Roma women and men were attacked by three young men in Kosice, **Slovakia**. The perpetrators tripped and kicked one of the women, and punched another woman and a man. The attackers were caught and tried; two of them received suspended sentences and the third man was sentenced to 18 months in prison.



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